

1 **BEFORE THE BOARD OF COMMISSIONERS**  
2 **FOR LINCOLN COUNTY, OREGON**

3  
4 In the Matter of )  
5 )  
6 *The Ballot Measure 37 Claim of Mark Doyle* )  
7 *Case File No. 2-LURCC-04* ) **ORDER NO. 6-05-181**  
8

9 WHEREAS on November 2, 2004, the voters of the State of Oregon approved Ballot Measure 37.  
10 The Measure amends ORS Chapter 197 to require, under certain circumstances, actions to address claims  
11 of owners of real property if government land use regulations reduce fair market property value; and  
12

13 WHEREAS Ballot Measure 37 provides that to maintain a claim, an owner of real property must  
14 make a "written claim for compensation" to the government entity enacting, enforcing or applying a land  
15 use regulation that allegedly restricts the use of the owner's property and has the effect of reducing its fair  
16 market value; and  
17

18 WHEREAS Ballot Measure 37 authorized the County to adopt and apply claims procedures with  
19 certain limitations; and  
20

21 WHEREAS Ballot Measure 37 requires payment of just compensation for a valid claim that  
22 reduces fair market value of real property or, in the alternative and in lieu of payment of just  
23 compensation, allows the County to modify, remove or not apply the land use regulation allegedly  
24 supporting a claim reducing a property's fair market value; and  
25

26 WHEREAS Ballot Measure 37 imposes a duty on the County to review claims for compensation  
27 and make decisions on those claims. A determination to modify, remove or not apply a land use regulation  
28 or compensate a property owner must be based on substantial factual information and analysis; and  
29

30 WHEREAS the County recognizes that Ballot Measure 37 contains many unclear and ambiguous  
31 provisions and that future litigation or legislative action will be necessary to clarify the measure's terms.  
32 The County, therefore, adopted procedures in Board of Commissioners Orders 12-04-318 and 4-05-120 to  
33 assess claims in a timely manner and to require factual and analytical information as part of the claim so  
34 the County will have a rational basis for its decision on each claim; and  
35

36 WHEREAS on December 30, 2004, Mark Doyle filed a Measure 37 claim seeking compensation,  
37 or the modification, removal or non-application of land use regulations that restrict the placement of  
38 dwellings in the A-C zone on property 1.7 miles east of Yachats on Yachats River Road, and is further  
39 identified as Tax Lot 200, Lincoln County Assessor's Map #14-12-36-A0. County records and the filed  
40 claim are found in Lincoln County Planning Department File No. 2-LURCC-04 and by this reference are  
41 incorporated into this order as if fully set forth; and  
42

43 WHEREAS, after notice to surrounding property owners in accordance with Order #4-05-120, a  
44 hearing was held on May 12, 2005 on the claim before the Planning Director as Hearings Officer, for the  
45 purpose of receiving facts and evidence related to determining the validity of the claim. The Claimant's  
46 representative provided testimony in support of the claim. There was no testimony in opposition to the  
47 claim.

1  
2 WHEREAS the Planning Director has issued his Department's Staff Report and Recommendation  
3 which is attached to this order as Exhibit "A" and by this reference incorporated herein. That report finds  
4 and concludes that the claim when submitted was valid, and recommends that the Board, lacking funds for  
5 compensation, in the alternative modify, remove or not apply the restrictions (commonly referred to as a  
6 "waiver") by not applying the current A-C zone regulations (LCC 1.1373) at issue in the subject claim that  
7 were enacted by Lincoln County in their present form by Ordinance #347 in 1994. The current A-C zone  
8 standards prohibit the location of a non-farm dwelling on land that is not determined to be "generally  
9 unsuitable for the production of ... merchantable tree species ...." Applying the "waiver" would allow the  
10 Claimant to apply for a non-farm dwelling approval under the standards in effect at the time of the  
11 Claimant's acquisition of the subject property in 1993. This would, in accordance with the requirements  
12 of Subsection (8) of Ballot Measure 37, allow the owner to use the property for a use permitted at the time  
13 of the owner's acquisition; and

14  
15 WHEREAS the Board has considered the report and recommendations of the Planning Director  
16 and County Counsel and finds it is in the public interest, due to the lack of resources to pay compensation,  
17 to modify, remove or choose not to apply the challenged land use regulation to the subject property and  
18 issue the "waiver" to Claimant.

19  
20 NOW, THEREFORE IT IS HEREBY ORDERED THAT:

21 1. The Measure 37 claim of Mark Doyle, Lincoln County Case File No. 2-LURCC-04, was a valid  
22 claim when filed on December 30, 2004. The Board of Commissioners declines to pay just  
23 compensation for the claim. In lieu of compensation, Lincoln County Code (LCC) Section 1.1373 is  
24 modified, removed or not applied for Mark Doyle against the subject property to the following effect:

- 25
- 26 • The non-application of regulations would be limited to the current non-farm dwelling  
27 standards provided for in LCC 1.1373 (5). The applicable standards would instead be  
28 those found at LCC 1.1373 (2)(1) in effect on May 25, 1993. All other provisions of the  
29 Lincoln County Code would continue to apply.
  - 30
  - 31 • Establishment of any dwelling on the subject property would be subject to all applicable  
32 public health and safety regulations including, but not limited to: building codes, on-site  
33 sewage disposal rules and requirements, and county road approach permit requirements.
  - 34

35 2. A state of Oregon "waiver" under Measure 37 may be required for the development or use of  
36 the subject property. Lincoln County lacks authority to waive state regulations or laws. This Order does  
37 not affect any land use regulations of the State of Oregon. The Claimant is responsible for seeking  
38 compensation or "waiver" from the state of any applicable state laws. The Planning Director shall send  
39 notice of the Board's decision to the Director of the Department of Land Conservation and Development.

40  
41 3. This "waiver" provision is void if the property owner or property owner's successors are  
42 compensated by another governmental agency, including the state, for a reduction in value resulting from  
43 the same or similar land use regulations on the subject property.  
44

1 4. Excepting new land use regulations imposed after the date of this decision, and subject to  
2 applicable review rights as permitted under Measure 37, this final decision bars a subsequent Measure 37  
3 claim against the County as to the subject property.

4  
5 5. Transferability of the "waiver" granted by the County under this decision is unknown under the  
6 current status of Measure 37. Transferability of the "waiver" is allowed to the extent permitted by law.  
7 Granting of this "waiver" does not commit the County to issuance of development or building permits, if  
8 those actions are not allowed under law.

9  
10 6. This Order be recorded in the Lincoln County Deed Records maintained by the Lincoln County  
11 Clerk without payment of recording fees.

12  
13 7. Copies of this Order be provided to the Planning Director, County Counsel, and Claimant's  
14 representatives.

15 DATED this 15<sup>th</sup> day of June, 2005.

16 **LINCOLN COUNTY BOARD OF COMMISSIONERS**

17   
18 \_\_\_\_\_  
19 TERRY N. THOMPSON, Chair

20  
21 Excused

22 \_\_\_\_\_  
23 DON LINDLY, Commissioner

24   
25 \_\_\_\_\_  
26 BILL HALL, Commissioner

27  
28  
29  
30 J:\LC\VEAMES\Measure 37\M-37 Orders\order Mark Doyle\#2-LURCC-04.DOC



**DEPARTMENT OF PLANNING AND DEVELOPMENT**

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**LAND USE REGULATION COMPENSATION CLAIM**

**PLANNING DIRECTOR'S STAFF REPORT and  
RECOMMENDATION**

**CASE FILE:** 2-LURCC-04

**DATE FILED:** 12/30/04

**CLAIMANT:** Mark Doyle

**REQUEST:** The claimant seeks compensation for, or the modification or removal of, land use regulations that restrict the placement of dwellings in the A-C zone.

**A. REPORT OF FACTS:**

1. **Lot Size:** 3.4 acres
2. **Property Location:** The property is located 1.7 miles east of Yachats on Yachats River Road, and is further identified on Lincoln County Assessor's map #14-12-36-A0 as tax lot 200.
3. **Zoning Designation:** A-C (Agricultural Conservation)
4. **Plan Designation:** Agricultural Land
5. **Surrounding Land Use:** Adjacent uses along Yachats River Road are comprised primarily of scattered rural residences, agricultural uses (primarily grazing) and lands in forest production.

6. **Topography & Vegetation:** The property consists of an upland hill slope vegetated primarily with alder and typical understory species.
7. **Existing Structures:** None.
8. **Utilities:** The following utilities are proposed to serve the subject property:
  - a. Sewer: On-site sewage disposal
  - b. Water: On-site well
  - c. Electricity: Central Lincoln P.U.D.
9. **Development Constraints:** None identified.

## **B. EVALUATION OF THE REQUEST:**

### **1. Background:**

The claimant, Mark Doyle, filed a Land Use Regulation Compensation Claim on December 30, 2004. This claim was filed with the Department of Planning and Development in accordance with the procedure established for Ballot Measure 37 claims by Lincoln County Board of Commissioners Order # 12-04-318. The Doyle property is located east of Yachats on Yachats River Road. The current zoning of the property is A-C, Agricultural Conservation. The claimant asserts a diminution in the value of the property resulting from the restrictions of the A-C zone applied after his date of acquisition, more specifically, those restrictions that preclude the development of a residence on the subject property. The claimant states that his desired remedy to the claim is the removal or modification of the A-C zone restrictions in a manner that will permit the establishment of one single-family dwelling.

In March 1993, claimant secured an approval for a single-family dwelling not in conjunction with farm use ("non-farm dwelling"). This approval was not acted upon by the permittee, and subsequently expired. After the date the claimant was granted this land use approval, the 1993 legislature enacted HB 3661, which, among other changes, amended the provisions of ORS 215 that apply to non-farm dwellings. These amended non-farm dwelling standards were subsequently adopted into the Lincoln County Code through Ordinance #347 (1994). The standards contained in Ordinance #347 are the currently effective requirements for the evaluation of non-farm dwelling applications. Deed records submitted with the claim document the claimant's acquisition of the subject property on May 25, 1993, prior to the enactment of Ordinance #347.

Planning staff has discussed in detail with claimant on several previous

occasions the currently applicable restrictions on non-farm dwellings in the A-C zone. Based on these discussions, it does not appear that the subject property could be approved for the siting of a dwelling under current zoning.

On May 12, 2005, a public hearing was held on the subject claim for the purpose of receiving facts and evidence related to determining the validity of the claim. Notice of the hearing was provided in accordance with Board of Commissioners order #4-05-120. The claimant provided testimony in support of the claim. There was no testimony in opposition to the claim.

2. **Measure 37 Claim Requirements:** Measure 37 provides the following criteria for establishing eligibility for the supplemental right of compensation created by the measure:

- a. **Ballot Measure 37 provides for payment of compensation or relief from specific laws for "owners" of property, which is defined in Measure 37 as the "present owner of the property, or any interest therein."**

The claimant, Mark Doyle, acquired his original interest in the property by Warranty Deed on May 25, 1993. Records of the Lincoln County Assessor's office confirm that Mark Doyle remains the owner of the subject property.

- b. **A public entity enacts or enforces a land use regulation that restricts the use of private real property:**

The current A-C zone regulations (LCC 1.1373) at issue in the subject claim were enacted by Lincoln County in their present form by ordinance #347 in 1994. These regulations are applied to all private real property designated on the Lincoln County Comprehensive Plan and Zoning maps as being within the A-C zone. These regulations restrict the use of this private real property to only those uses expressly authorized in the A-C zone. Specifically, in the case of the subject property, these regulations prohibit the location of a non-farm dwelling on land that is not "generally unsuitable for ... the production of merchantable tree species ...".

- c. **The land use regulation has the effect of reducing the fair market value of the property:**

As noted, the currently effective requirements of the A-C zone effectively prohibit the approval of a non-farm dwelling on the subject property.

Claimants assert that these restrictions reduce fair market value of the property. In support of this claim, claimants have submitted an appraisal prepared by a State of Oregon Certified Residential Appraiser. The appraisal states that the fair market value of the subject property subject to current regulations is \$15,000, and that the fair market value of the property subject to regulations at the time of acquisition by the present owner is \$88,000. On this basis, claimants assert a diminution in value of \$53,000.

- d. **The land use regulation complained of is not a regulation; (a) restricting or prohibiting activities commonly and historically recognized as nuisances under common law; (b) restricting or prohibiting activities for the protection of public health and safety, such as fire and building codes, health and sanitation regulations, solid or hazardous waste regulations, and pollution control regulations; (c) required to comply with federal law; (d) restricting or prohibiting the use of a property for the purpose of selling pornography or performing nude dancing; or (e) enacted prior to the date of acquisition of the property by the owner or a family member of the owner.**

The regulations addressed by the subject claim are the restrictions on land divisions and dwellings imposed by the A-C zone. The A-C zone was enacted to comply with Statewide Planning Goal 3, which mandates the placement of defined agricultural lands into exclusive farm use zones meeting the requirements of ORS Chapter 215. The purpose of the A-C zone is to preserve agricultural lands for agricultural uses. It does not directly address common nuisances, health and safety, adult businesses or activities, nor does it have any federal nexus.

The claimants have provided documentation that the claimant's original interest in the property was acquired by warranty deed on May 25, 1993 (Book 262, Page 0338, Lincoln County Deed Records). The current A-C zone restrictions on non-farm dwellings were enacted in 1994, so the regulations giving rise to the claim were enacted after the date of acquisition of the present owner.

- e. **For claims arising from land use regulations enacted prior to December 3, 2004 (the effective date of Ballot Measure 37), written demand for compensation shall be made within two years of the effective date of the act.**

The land use regulations for which compensation is sought, the A-C zone restrictions on dwellings, were enacted in their present form in 1994, prior to the effective date of Ballot Measure 37. The subject claim was filed on December 30, 2004, within two years of the December 3, 2004 effective date of Ballot Measure 37.

**C. Recommended Findings and Conclusions:**

The director recommends for the board's consideration the following findings and conclusions:

**Findings:**

1. Mark Doyle filed a Land Use Regulation Compensation claim with the Lincoln County Department of Planning Development on December 30, 2004.
2. The claim is based on an assertion of a reduction in fair market value of real property due to the enforcement of land use regulations by Lincoln County.
3. The subject property is identified as tax lot 200 on Lincoln County Assessor's map 14-12-36-A0, which is taxed as real property by Lincoln County.
4. The A-C zone provisions (LCC 1.1373) applicable to the subject property are land use regulations enacted and enforced by Lincoln County, a public entity.
5. The A-C zoning restricts uses; specifically, the A-C zone standards prohibit the location of a non-farm dwelling on land which is not determined to be "generally unsuitable for the production of ... merchantable tree species ..."
6. The claimants have submitted evidence of a diminution in value caused by the A-C zone restrictions in the form of an appraisal prepared by a State of Oregon Certified Residential Appraiser. The appraisal concludes that the land use regulations that prohibit the the establishment of a dwelling on the subject property have the effect of reducing the fair market value of the subject property by \$53,000.
7. According to the Lincoln County deed records, the claimant, Mark Doyle, first acquired an interest in the subject property on May 25, 1993, and has maintained an ownership interest continuously since that time.

8. The currently effective A-C zone regulations governing the establishment of non-farm dwellings were enacted by Lincoln County in 1994 (Ordinance # 347), after the claimant's date of acquisition.
9. The A-C zone restrictions are not encompassed within the definition of regulations excluded from compensation requirements, as set forth in Subsection (3) of Ballot Measure 37.
10. The subject claim was filed on December 30, 2004 which is less than two years from the December 3, 2004 effective date of Ballot Measure 37.

**Conclusions:**

Based on the above findings of fact, the Board reaches the following conclusions:

1. The subject claim for compensation for reduction in value of private real property from the enforcement of land use regulations was timely filed by the owner, Mark Doyle, pursuant to Subsection (5) of Ballot Measure 37.
2. The land use regulations which are the subject of the claim, specifically the restrictions on non-farm dwellings imposed by LCC 1.1373 (A-C zone), are land use regulations enacted by Lincoln County prior to the effective date of Ballot Measure 37; they restrict the use of the subject private real property; and they have the effect of reducing the fair market value of the property.
3. The owner of the property, Mark Doyle, is therefore entitled to the payment of just compensation equal to the reduction in the fair market value of the subject property caused by the enforcement of the A-C zone restrictions or, in lieu of the payment of just compensation, the Board, as the governing body responsible for the enactment of the A-C zone restrictions, may modify, remove or not apply these restrictions in order to permit the owner to use the property for a use permitted at the time of his acquisition.

#### **D. Recommended Decision**

Based on the preceding findings and conclusions that the subject claim is valid, resolution of the claim requires either the payment of just compensation, or the modification, removal or non-application of the offending land use regulations. The selection of the remedy is at the discretion of the Board. Staff recommends that the Board choose the non-application of the subject land use regulations as the appropriate resolution for this claim. Specifically, staff recommends that the Board direct that the current non-farm dwelling restrictions enacted in 1994 in the A-C zone not be applied to the subject property. This would allow the claimant to apply for a non-farm dwelling approval under the standards in effect at the time of the claimant's acquisition of the subject property in 1993. This would, in accordance with the requirements of Subsection (8) of Ballot Measure 37, allow the owner to use the property for a use permitted at the time of the owner's acquisition. This recommendation is based on the following considerations:

1. No funds are currently budgeted in the county general fund for the payment of monetary compensation.
2. Not applying the dwelling restrictions of the A-C zone would permit the claimant owner to apply for a conditional use permit for a non-farm dwelling pursuant to the standards for such a use in effect in 1993. If this application succeeds, the claimant's stated intent to locate one dwelling on a parcel of roughly 3.5 acres in size would not be inconsistent with the prevailing land use pattern in the area.
3. Not applying the current non-farm dwelling restrictions of the A-C zone in order to permit the claimant to apply for a non-farm dwelling approval under the standards in effect in 1993 is the claimant's desired resolution.

This recommended resolution would be subject to the following limitations:

- The non-application of regulations would be limited to the current non-farm dwelling standards provided for in LCC 1.1373 (5). The applicable standards would instead be those found at LCC 1.1373 (2)(I) in effect on May 25, 1993. All other provisions of the Lincoln County Code would continue to apply.
- Establishment of any dwelling approved for the subject property would be

subject to all applicable public health and safety regulations, including but not limited to building codes, on-site sewage disposal rules and requirements, and county road approach permit requirements.

If the Board concurs with the above recommendation, you may direct staff to prepare an order for your adoption implementing this recommendation. This order will incorporate the above recited findings of fact and conclusions, and the appropriate directives for the application to the subject property of the non-farm dwelling standards in effect on May 25, 1993. It will also direct that any land use approval secured pursuant to the order will be subject to all applicable public health and safety regulations.

Respectfully submitted,

**Matt Spangler**  
Director

