

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 J. S. Morrill*)
7 *Case File No. 6-LURCC-05*) **ORDER NO. 6-05-185**
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 January 4, 2005, J. S. (Steve) Morrill filed a Measure 37 claim seeking
37 compensation, or the modification, removal or non-application of land use regulations that establish an 80-
38 acre minimum lot size for T-C zoned property located on N. Bayview Loop. The property is identified as
39 Tax Lot 200 on Lincoln County Assessor's Map 13-11-15. County records and the filed claim are found in
40 Lincoln County Planning Department File No. 6-LURCC-05 and by this reference are incorporated into
41 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 23, 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
46 provided testimony in support of the claim. There was no testimony in opposition to the claim.
47

1 WHEREAS the Planning Director has issued his Department's Staff Report and Recommendation
2 which is attached to this order as Exhibit "A" and by this reference incorporated herein. That report finds
3 and concludes that the claim is not valid because Lincoln Count Deed records indicate that the Claimant
4 conveyed all interest in the subject property by warranty deed in 1999. As defined in Measure 37, the
5 Claimant, J. S. Morrill, is not the "owner" of the subject property, as he holds no current interest in the
6 property; and therefore cannot assert a Measure 37 claim. Claimant conceded at the hearing that he was
7 not the present owner when the claim was filed. Staff therefore recommends that the Board deny this
8 claim; and

9
10 WHEREAS the Board has considered the report and recommendations of the Planning Director
11 and County Counsel and finds that the claim should be denied.

12
13 NOW, THEREFORE IT IS HEREBY ORDERED THAT:

14 1. The Measure 37 claim of J. S. (Steve) Morrill, Lincoln County Case File No. 6-LURCC-05, is
15 hereby denied, as Claimant is not the present owner of the subject property and does not have an interest
16 therein as required under the Measure to assert a claim.

17
18 2. Copies of this Order be provided to the Planning Director, County Counsel, and Claimant's
19 representatives.

20 DATED this 15th day of June, 2005.

21 **LINCOLN COUNTY BOARD OF COMMISSIONERS**

22
23 
24 _____
25 TERRY N. THOMPSON, Chair

26 Excused

27 _____
28 DON LINDLY, Commissioner

29 
30 _____
31 BILL HALL, Commissioner

32
33
34 J:\LC\JEAMES\Measure 37\M-37 Orders\order Steve Morrill #6-LURCC-06.DOC



DEPARTMENT OF PLANNING AND DEVELOPMENT

210 S. W. 2nd ST
Newport, OR 97365
(541) 265-4192
Fax (541) 265-6945

LAND USE REGULATION COMPENSATION CLAIM

PLANNING DIRECTOR'S STAFF REPORT and RECOMMENDATION

CASE FILE: 6-LURCC-05

DATE FILED: 01/04/05

CLAIMANT: J. S. Morrill

REQUEST: The claimant seeks compensation for land use regulations that establish an 80 acre minimum parcel size for land divisions in the T-C zone.

A. REPORT OF FACTS:

1. **Lot Size:** 78.93 acres
2. **Property Location:** The property is located on N. Bayview Loop. It is identified as tax lot 200 on assessor's map 13-11-15.
3. **Zoning Designation:** T-C (Timber Conservation)
4. **Plan Designation:** Forest Land
5. **Surrounding Land Use:** Adjacent uses in the area consist of scattered rural residences to the west and north, transitioning to larger forest parcels to the south and east.
6. **Topography & Vegetation:** The property consists of rolling benches elevated above Bayview Loop.

7. **Existing Structures:** None

8. **Utilities:** The following utilities are available to serve the subject property:

- a. Sewer: On-site sewage disposal
- b. Water: On-Site
- c. Electricity: Central Lincoln P.U.D.

9. **Development Constraints:** None identified.

B. EVALUATION OF THE REQUEST:

1. Background:

J. S. Morrill filed a Land Use Regulation Compensation Claim on January 4, 2005. 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 subject property is located northeast of Waldport on N. Bayview Loop. The current zoning of the property is T-C, Timber Conservation. The claimant acquired the property in 1990; however, as stated in his filing, he is not the current owner of the subject property, having sold the property in 1999. The claimant asserts a diminution in the value of the property resulted from the imposition of additional restrictions of the T-C zone applied after his date of acquisition, more specifically, the restriction limiting new parcel creations to a minimum of 80 acres. The claimant seeks \$109,000 in compensation.

On May 23, 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, J. S. Morrill acquired his original interest in the property by warranty deed in 1990 (recorded at Book 220, page 0001, Lincoln County

Deed Records). Deed records indicate that the claimant conveyed all interest in the subject property by warranty deed in 1999 to the Hegstead Trust (Book 363, page 2039, Lincoln county Deed Records), and that the Hegsteads in turn sold the property to Gary and Cynthia Ford in 2002 (Book 456, page 0304, Lincoln County Deed Records).

Thus, as defined in Measure 37, the claimant, J.S. Morrill, is not the “owner” of the subject property, as he holds no current interest in the property. According to Lincoln County Assessor’s records, the current owners of the subject property are Gary and Cynthia Ford. The Fords are not a party to the claim.

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

The current T-C zone regulations (LCC 1.1375) 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 T-C zone. These regulations restrict the use of this private real property to only those uses expressly authorized in the T-C zone. Specifically, in the case of the subject property, these regulations prohibit the further division of the property through the establishment of an 80-acre minimum parcel size requirement.

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

As noted, the currently effective minimum lot size requirements of the T-C zone prohibit any division of the subject property.

Claimant asserts that these restrictions reduced fair market value of the property, resulting in a loss of value to him upon sale of the property. In support of this claim, claimant has provided his estimate of the value of the additional parcel he asserts could have been created based on the acquisition date regulations. The claim states the size of the subject property at 80.5 acres; however, there is no documentation as to the source of this acreage data. Lincoln county Assessor’s records list the property at 78.93 acres in size, which, if correct, would render the property indivisible under the regulations in effect at the time of the claimant’s acquisition.

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 imposed by the T-C zone. These restrictions were enacted to comply with Statewide Planning Goals 4, which mandate the conservation of forestlands. The purpose of the T-C zone is to conserve forestland for forest uses and to limit potentially conflicting uses such as residences. It does not directly address common nuisances, health and safety, adult businesses or activities, nor does it have any federal nexus.

The claimant has provided documentation that the claimant's original interest in the property was acquired August 1, 1990. The 80-acre minimum lot size requirement in the T-C zone was enacted in 1994, so the regulation giving rise to the claim was enacted after the date of acquisition of the claimant. However the current owners of the subject property, Gary and Cynthia Ford, acquired the property in 2002, after the date of enactment of the present T-C zone 80-acre minimum lot size. Therefore, under section (3)(E) of Measure 37, the regulation complained of was enacted prior to the date of acquisition of the property by 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 T-C zone 80-acre minimum lot size requirements, were enacted in their present form in 1994, prior to the effective date of Ballot Measure 37. The subject claim was filed on January 4, 2005, 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. J. S. Morrill filed a Land Use Regulation Compensation claim with the Lincoln County Department of Planning Development on January 4, 2005.
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 13-11-15, which is taxed as real property by Lincoln County.
4. The T-C zone provisions (LCC 1.1375) applicable to the subject property are land use regulations enacted and enforced by Lincoln County, a public entity.
5. The T-C zoning restricts uses; specifically, the T-C zone standards prohibit the division of the subject property through the imposition of an 80-acre minimum parcel size requirement.
6. Section (1) of Ballot Measure 37 provides that for land use regulations that reduce the fair market value of real property, the owner shall be paid just compensation. Ballot measure 37 defines "owner" as the "present owner of the property, or any interest therein." According to the claimant's written statements and confirmed by Lincoln County deed records, the claimant, J. S. Morrill, first acquired an interest in the subject property in 1990, but sold all interest in the subject property in 1999. According to Lincoln County Assessor's records, Gary and Cynthia Ford are the present owners of the property. The claimant is, therefore, not the owner of the property as defined by Ballot Measure 37.
7. The currently effective T-C zone regulations establishing the 80-acre minimum lot size for new land divisions were enacted by Lincoln County in 1994 (Ordinance # 347), after the claimant's date of acquisition. However, according to Lincoln county Deed Records, the present owners of the subject property, Gary and Cynthia Ford acquired the property in 2002. Therefore, the T-C zone restrictions, which are the subject of this claim, were enacted prior to the date of acquisition of the subject property by present owner.

Conclusions:

Based on the above findings of fact, the Board reaches the

following conclusions:

1. According to the record, the claimant, J.S. Morrill is not the present owner of the subject property. Section (4) of Ballot measure 37 states that written demands for compensation pursuant to the measure are to be made by "the owner". The present owners of the property, Gary and Cynthia Ford, have made no such demand for the subject property.
2. Section (1) of Ballot Measure 37 limits the right to compensation for land use regulations that reduce fair market value of real property to the owner of the property. Ballot Measure 37 defines "owner" as the "present owner of the property or any interest therein." The record establishes without dispute that the claimant, J.S. Morrill, is not the present owner of the subject property. Therefore, in accordance with Section (1) of Ballot Measure 37, the claimant is not due compensation.
3. According to the record, the present owners of the subject property, Gary and Cynthia Ford, acquired the property in 2002. The land use regulations which are the subject of the claim, specifically the restrictions on land divisions imposed by LCC 1.1375 (T-C zone) were enacted by Lincoln County Ordinance #347 in 1994. Therefore, the land use regulations which are the subject of this claim were enacted prior to the date of acquisition of the property by the present owner and, pursuant to Section (3)(E) of Ballot Measure 37, are not subject to the right of compensation established by Section (1).

D. Recommended Decision

Based on the preceding findings and conclusions that the subject claim is not valid, staff recommends that the Board enter an order denying the claim. If the Board concurs with this recommendation, you may direct staff to prepare an order for your adoption implementing this recommendation, and incorporating the above findings and conclusions.

Respectfully submitted,

Matt Spangler
Director

Name	Address	City
DLCD Attn: Laren Woolley North Coast Reg Rep	PO Box 451	Waldport, OR 97394-0451
Morrill, Steve & Patsy	PO Box 1629	Waldport, OR 97394

Mailed 6-21-05
06-LRCC-05
MORRILL