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6 **BEFORE THE BOARD OF COMMISSIONERS**
7 **FOR LINCOLN COUNTY, OREGON**

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9 In the Matter of)
10)
11 *The Ballot Measure 37 Claim of Joseph and Cathy Steere*) ORDER NO. 5-07-571
12 *Case File No. 110-LURCC-06*)

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

18
19 WHEREAS Ballot Measure 37 provides that to maintain a claim, an owner of real property
20 must make a “written claim for compensation” to the government entity enacting, enforcing or
21 applying a land use regulation that allegedly restricts the use of the owner’s property and has the
22 effect of reducing its fair market value; and

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24 WHEREAS Ballot Measure 37 authorized the County to adopt and apply claims procedures
25 with certain limitations; and

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27 WHEREAS Ballot Measure 37 requires payment of just compensation for a valid claim that
28 reduces fair market value of real property or, in the alternative and in lieu of payment of just
29 compensation, allows the County to modify, remove or not apply the land use regulation allegedly
30 supporting a claim reducing a property’s fair market value; and

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32 WHEREAS Ballot Measure 37 imposes a duty on the County to review claims for
33 compensation and make decisions on those claims. A determination to modify, remove or not apply
34 a land use regulation or compensate a property owner must be based on substantial factual
35 information and analysis; and
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1 WHEREAS the County recognizes that Ballot Measure 37 contains many unclear and
2 ambiguous provisions and that future litigation or legislative action will be necessary to clarify the
3 measure's terms. The County, therefore, adopted procedures in Board of Commissioners Orders #12-
4 04-318 and #4-05-120 to assess claims in a timely manner and to require factual and analytical
5 information as part of the claim so the County will have a rational basis for its decision on each
6 claim; and

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8 WHEREAS on December 1, 2006, Joseph and Cathy Steere filed a Measure 37 claim seeking
9 compensation for, or the modification or removal of, land use restrictions that limit land divisions and
10 the placement of dwellings in the A-C (Agricultural Conservation) zone. The property is 17.63 acres
11 in size and located at 3870 S. Immonen Road. It is identified as tax lot 403 on Lincoln County
12 Assessor's Map #8-11-24. County records and the filed claim are found in Lincoln County Planning
13 Department File No. 110-LURCC-06 and by this reference are incorporated into this order as if fully
14 set forth; and

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16 WHEREAS after notice to surrounding property owners in accordance with Order #4-05-120,
17 a hearing was held on April 5, 2007, on the claim before the County Counsel as Hearings Officer, for
18 the purpose of receiving facts and evidence related to determining the validity of the claim. There
19 was no testimony in support or opposition to the claim. At the Board's public meeting to consider
20 this matter, claimant Joseph Steere appeared and informed the Commissioners that claimant Joseph
21 Steere acquired an earlier interest in the property through a recorded land sales contract in 1993; and

22
23 WHEREAS the Planning Director has issued his Department's Staff Report and
24 Recommendation that is attached to this order as Exhibit "A" and by this reference incorporated
25 herein. That report finds and concludes that the claim when submitted was valid, and recommends
26 that the Board, lacking funds for compensation, in the alternative modify, remove or not apply the
27 subject land use regulations; staff therefore recommends that the Board choose the non-application of
28 land use regulations as the appropriate resolution for this claim. Specifically, staff recommends that
29 the Board direct that the restrictions on dwellings in the A-C zone not be applied as to claimant
30 Joseph Steere. For claimant Cathy Steere, her interest came after the A-C zone in its present form
31 was enacted in 1994, therefore no waiver will apply¹. This recommendation would allow claimant
32 Joseph Steere to apply for a conditional use for a single-family dwelling on the subject property as
33 permitted at the time of acquisition of the subject property. This would allow the owner to use the
34 property for a use permitted at the time of the owner's acquisition in accordance with the
35 requirements of ORS 197.352 (8); and

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37 WHEREAS the Board has considered the report and recommendations of the Planning
38 Director and County Counsel, including the implications known at this time concerning ambiguous

¹ Cathy Steere's interest was acquired in 1996.

1 provisions in Measure 37 which are and will continue to be subject to judicial clarification for the
2 foreseeable future. Given that status, the Board desires to proceed cautiously with processing this
3 Measure 37 claim. Therefore, the Board will decide this Measure 37 claim after placing the claimant
4 on notice of possible future court decisions and interpretations. In addition, the Oregon Legislature is
5 considering changes to Measure 37 that may impact these claims; and

6
7 WHEREAS based on what is known at this time, the Board finds it is in the public interest,
8 due to the lack of resources to pay compensation, to modify, remove or choose not to apply the
9 challenged land use regulation to the subject property and issue the “waiver” to claimant.

10 NOW, THEREFORE IT IS HEREBY ORDERED THAT:

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12 1. Claimants are placed on notice that Oregon courts continue to interpret provisions in
13 Measure 37 which may change the way claims are treated. Claimants proceed in this matter
14 knowing that any action taken by the Lincoln County Board of Commissioners could be null and
15 void if a court of competent jurisdiction interprets Measure 37 in any fashion which alters the
16 Board’s approval. In addition, the Oregon Legislature is currently considering changes that may
17 impact these claims. Lincoln County does not waive any rights or remedies under law by granting a
18 “waiver” under the law.

19
20 2. The Measure 37 claim of Joseph and Cathy Steere, Lincoln County Case File No. 110-
21 LURCC-06, was a valid claim when filed on December 1, 2006. The Board of Commissioners
22 declines to pay just compensation for the claim. In lieu of compensation, the Board elects to
23 modify, remove or not apply the current restrictions on minimum parcel size and dwellings in the
24 A-C zone to the subject property for claimant Joseph Steere. This allows claimant Joseph Steere to
25 apply for a conditional use for a dwelling under the A-C zone restrictions in place in 1993 as
26 permitted at the time of acquisition of the subject property. Granting of the conditional use is
27 discretionary. This waiver is to the effect as follows:

- 28 • The non-application of regulations would be limited to the current minimum
29 parcel size requirements and restrictions on dwellings provided for in LCC
30 1.1373. All other provisions of the Lincoln County code would continue to apply.
- 31 • Establishment of one single-family dwelling on the subject property, if granted,
32 would be subject to all applicable public health and safety regulations, including
33 but not limited to land division procedures, building codes, on-site sewage
34 disposal rules and requirements, flood hazard area regulations, and county road
35 approach permit requirements.
- 36 • Claimant Cathy Steere’s claim is invalid as the A-C zone restrictions for which
37 waiver is sought were in place when she acquired her interest in the property in
38 1996.

1 3. A State of Oregon "waiver" under Measure 37 may be required for the development or use
2 of the subject property. Lincoln County lacks authority to waive state regulations or laws. This
3 order does not affect any land use regulations of the State of Oregon. The claimants are responsible
4 for seeking compensation or "waiver" from the state of any applicable state laws. The Planning
5 Director shall send notice of the Board's decision to the Director of the Department of Land
6 Conservation and Development. If a State Measure 37 claim is required, no use, development,
7 permits or other development applications will be processed or approved by Lincoln County unless
8 the state has issued, if appropriate, its own "waiver".

9
10 4. This "waiver" provision is void if the property owner or property owner's successors are
11 compensated by another governmental agency, including the state, for a reduction in value resulting
12 from the same or similar land use regulations on the subject property.

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14 5. Excepting new land use regulations imposed after the date of this decision, and subject to
15 applicable review rights as permitted under Measure 37, this final decision bars a subsequent
16 Measure 37 claim against Lincoln County as to the subject property.

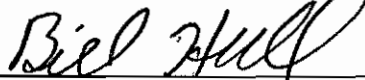
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18 6. Transferability of the "waiver" granted by the County under this decision is unknown
19 under the current status of Measure 37. Transferability of the "waiver" is allowed to the extent
20 permitted by law. Granting of this "waiver" does not commit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

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23 7. This order be recorded in the Lincoln County Deed Records maintained by the Lincoln
24 County Clerk without payment of recording fees.

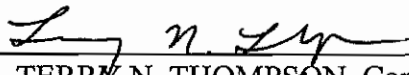
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26 8. Copies of this order be provided to the Planning Director, County Counsel, and claimants.

DATED this 9th day of May, 2007.

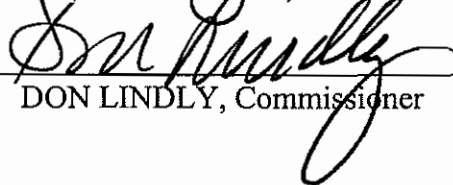
LINCOLN COUNTY BOARD OF COMMISSIONERS



BILL HALL, Chair



TERRY N. THOMPSON, Commissioner



DON LINDLY, Commissioner



DEPARTMENT OF PLANNING AND DEVELOPMENT

210 S. W. 2nd ST
Newport, OR 97365
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LAND USE REGULATION COMPENSATION CLAIM

PLANNING DIRECTOR'S STAFF REPORT and RECOMMENDATION

CASE FILE: 110-LURCC-06

DATE FILED: December 1, 2006

CLAIMANT: Joseph and Cathy Steere

REQUEST: The claimants seek compensation for, or the modification or removal of, land use regulations that restrict the placement of dwellings in the AC (Agricultural Conservation) zone.

A. REPORT OF FACTS:

1. **Lot Size:** Approximately 17.63 acres.
2. **Property Location:** The property is located across from 3870 S. Immonen Road and is identified as tax lot 403 on Lincoln County Assessor's Map #8-11-24.
3. **Zoning Designation:** A-C (Agricultural Conservation)
4. **Plan Designation:** Agricultural Land
5. **Surrounding Land Use:** Adjacent uses along Immonen Road are comprised primarily of scattered rural residences, with some small scale agricultural activities.
6. **Topography & Vegetation:** The property consists of moderately sloping to level open land.

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7. **Existing Structures:** None on tax lot 403.
8. **Utilities:** The following utilities would serve the subject property:
 - a. Sewer: On-site sewage disposal
 - b. Water: On-site well
 - c. Electricity: Consumers Power.
9. **Development Constraints:** No constraints were identified.

B. EVALUATION OF THE REQUEST:

1. Background:

Joseph and Cathy Steere filed a Land Use Regulation Compensation Claim on December 1, 2006. 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 Steere property is located across from 3870 S. Immonen Road. The current zoning of the property is A-C, Agricultural Conservation. The claimants assert a diminution in the value of their property resulting from the restrictions of the A-C zone applied to their property, more specifically, those restrictions that preclude the establishment of a single-family dwelling on the subject property. The claimants state that their 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 on tax lot 403.

Deed records submitted with the claim document acquisition by the claimants' family in 1963. The claimants acquired fee title in 1996. At the Board's public meeting to consider this matter, claimant Joseph Steere appeared and informed the Commissioners that he had acquired an earlier interest in the property through a recorded land sales contract in 1993.

On April 5, 2007, 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. There was no testimony either in favor or in opposition to the claim.

2. Measure 37 Claim Requirements:

ORS 197.352 (Ballot 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 claimants, Joseph and Cathy Steere, acquired their original interest in the subject property by warranty deed on May 14, 1996 (recorded at Book 318 Page 0489 Lincoln County Deed Records). At the Board’s meeting, the county was informed by claimant Joseph Steere that a recorded land sales contract in 1993 evidences an earlier interest in the property (recorded at Book 269 Page 0901 Lincoln County Deed Records). This was confirmed. Records of the Lincoln County Assessor’s office also confirm that the Steeres remain the owners 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 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 further division and the placement of any additional dwellings on the property.

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

The currently effective requirements of the A-C zone restrict the placement of dwellings and further land divisions of the subject property.

Stating that the currently effective land use regulations applicable to the subject property restrict the establishment of additional dwellings on the subject property, the claimants assert a reduction in fair market value of \$325,000.

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 claimant Joseph Steere's family's original interest in the property was acquired by warranty deed in 1963 (recorded at Book 74 Page 1469, Lincoln County Deed Records). Claimant Joseph Steere acquired an interest in the property via a recorded land sales contract in 1993 (recorded at Book 269 Page 0901 Lincoln County Deed Records) and claimant Cathy Steere acquired her interest (along with Joseph Steere) by the sale by warranty deed on May 14, 1996 (recorded at Book 318 Page 0489). The 1993 interest predates the A-C zone, in its present form, which was enacted in 1994. The A-C zone as it existed in 1993 would allow claimant to seek a conditional use for a residence. Cathy Steere's 1996 interest came after the A-C zone in its present form was enacted in 1994.

- e. **For claims arising from land use regulations enacted prior to December 2, 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 land divisions and 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 1, 2006, within two years of the December 2, 2004 effective date of Ballot Measure 37.

- f. **In lieu of compensation, the governing body may modify, remove or not apply the land use regulation or land use regulations to allow the owner to use the property for a use permitted at the time the owner acquired the property.**

The claimant has documented a date of acquisition by a family member of 1963 and then by present owner Joseph Steere in 1993. Although ORS 197.352(1) permits an owner to go back to the date of prior acquisition by a family member for purposes of determining just compensation, the "waiver" remedy provided for in Section 8 does not relate back to the prior date of acquisition by a family member. It applies only to the "present owner". Therefore, the transfer of ownership of the subject property to the claimant in 1993 established the date of

acquisition for purposes of the waiver remedy for Joseph Steere, regardless of the fact that the prior owner was a family member. So while claimant Joseph Steere's claim for compensation relates back to the original acquisition by his family member in 1963, any waiver cannot extend to regulations that predate his 1993 acquisition of the property. For claimant Cathy Steere, her interest came after the A-C zone in its present form was enacted in 1994, therefore no waiver will apply.

C. RECOMMENDED FINDINGS AND CONCLUSIONS:

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

Findings:

1. Joseph and Cathy Steere filed a Land Use Regulation Compensation claim with the Lincoln County Department of Planning and Development on December 1, 2006.
2. According to records of the Lincoln County Assessor, Joseph and Cathy Steere are the current owners of the subject property.
3. 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.
4. The subject property is identified as tax lot 403 on Lincoln County Assessor's Map #8-11-24, which is taxed as real property by Lincoln County.
5. 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.
6. The A-C zoning restricts uses; specifically the A-C zone standards, prohibit the division of the subject property and the establishment of additional single-family dwellings.
7. The claimants assert a diminution in value caused by the A-C zone restrictions of \$325,000.
8. According to the Lincoln County deed records, a family member of the claimants first acquired an interest in the subject property in 1963. Claimant Joseph Steere acquired his interest in the subject property from a family member in 1993. Claimant Cathy Steere acquired her interest in 1996. Both claimants have maintained an interest continuously since the time of their initial respective acquisitions.
9. The currently effective A-C zone regulations governing the establishment of dwellings were enacted by Lincoln County in 1994 (Ordinance #

347), prior to the date of acquisition by the claimants' family member. The A-C zone regulations in effect in 1993 would allow claimant Joseph Steere to seek a conditional use to establish a residence.

10. Claimant Joseph Steere acquired his interest in the subject property prior to the enactment of Ordinance #347 governing the establishment of dwellings on property zoned A-C.
11. The A-C zone restrictions are not encompassed within the definition of regulations excluded from compensation requirements, as set forth in ORS 197.352 (3) of Ballot Measure 37.
12. The subject claim was filed on December 1, 2006, which is less than two years from the December 2, 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 Joseph and Cathy Steere, pursuant to ORS 197.352 (5).
2. The land use regulations which are the subject of the claim, specifically the restrictions on land divisions and 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; they were enacted after the date of acquisition by the present owners' family member, and they have the effect of reducing the fair market value of the property.
3. The owners of the property, Joseph and Cathy Steere, are 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 present owners to use the property for a use permitted at the time of their individual acquisitions.

D. RECOMMENDED DECISION

Based on the preceding findings and conclusions that the subject claim is valid, resolution of the claim requires either payment of just compensation, or the modification, removal or non-application of land use regulations in a manner which will permit the present owners to use the property as allowed at the time of their acquisition. The selection of the remedy is at the discretion of the Board. Staff recommends that the Board choose the non-application of land use regulations as the

appropriate resolution for this claim. Specifically, staff recommends not applying any applicable provisions of LCC 1.1373 enacted since 1993 to the claim of Joseph Steere. Because the claim of claimant Cathy Steere does not “ripen” until after 1994 when the current A-C regulations were in place, her claim is not valid.

Granting Joseph Steer’s waiver claim would, in accordance with the requirements of ORS 197.352(8), allow the owner to use the property for a use permitted at the time of the owner’s acquisition. Based on this date of acquisition, claimant Joseph Steere would be able to apply for a conditional use for a dwelling under the A-C zone restrictions in place in 1993. Granting of the conditional use is discretionary. This would, in accordance with the requirements of ORS 197.352 (8), allow the owner to use the property for a use permitted at the time of his acquisition.

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 of the A-C zone provision in effect in 1993 to the claim of Joseph Steere, subject to applicable public health and safety regulations.

Respectfully submitted

Matt Spangler
Director