

1
2
3
4
5
6 **BEFORE THE BOARD OF COMMISSIONERS**
7 **FOR LINCOLN COUNTY, OREGON**

8
9 In the Matter of)
10)
11 *The Ballot Measure 37 Claim of Ray Drayton, dba*) **ORDER NO.** 5-07-574
12 *Pacific Lands, Case File No. 139-LURCC-06*)
13

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

23
24 WHEREAS Ballot Measure 37 authorized the County to adopt and apply claims procedures
25 with certain limitations; and

26
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

31
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
36

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

7
8 WHEREAS on November 15, 2006, Ray Drayton, dba as Pacific Lands, filed a Measure 37
9 claim requesting compensation and also noting that the desired remedy to the claim is for "...all land
10 use regulations burdening the property not be either applied or enforced against the property ...".
11 The property is currently zoned R-1 (Single Family Residential). The property is 0.33 acres in size
12 and is located at 4607 Salmon River Highway. It is identified as tax lot 2601 on Lincoln County
13 Assessor's Map #6-10-34-D. County records and the filed claim are found in Lincoln County
14 Planning Department File No. 139-LURCC-06 and by this reference are incorporated into this order
15 as if fully set forth; and

16
17 WHEREAS after notice to surrounding property owners in accordance with Order #4-05-120,
18 a hearing was held on April 30, 2007, on the claim before the Planning Director as Hearings Officer,
19 for the purpose of receiving facts and evidence related to determining the validity of the claim. The
20 claimant's agent provided testimony in support of the claim. There was no testimony in opposition to
21 the claim; 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 not valid based on the
26 evidence in the record. No deed records documenting the claimant's date of acquisition of the subject
27 property were submitted with the claim. The Department's research of county deed records indicates
28 that claimant acquired the subject property in 1987. The restrictions in the R-1 Zone were adopted in
29 1980. Specifically, staff recommends that the claim be denied based on the provisions of ORS
30 197.352 (3)(E); and

31
32 NOW, THEREFORE IT IS HEREBY ORDERED THAT:

33
34 1. The Measure 37 claim of Ray Drayton, dba Pacific Lands Tryon, Lincoln County Case
35 File No. 139-LURCC-06, was not a valid claim when filed. Therefore the claim is denied.

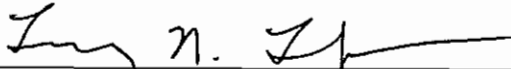
36
37 2. Copies of this order be provided to the Planning Director, County Counsel, claimant and
38 claimant's agent.

DATED this 9th day of May _____, 2007.

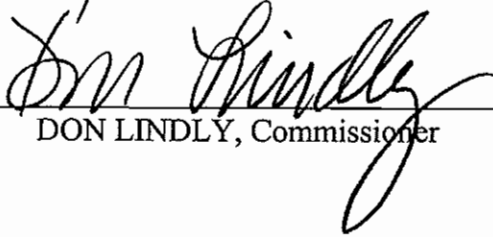
LINCOLN COUNTY BOARD OF COMMISSIONERS



BILL HALL, Chair



TERRY N. THOMPSON, Commissioner



DON LINDLY, Commissioner



DEPARTMENT OF PLANNING AND DEVELOPMENT

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

LAND USE REGULATION COMPENSATION CLAIM

PLANNING DIRECTOR'S STAFF REPORT and RECOMMENDATION

CASE FILE: 139-LURCC-06

DATE FILED: November 15, 2006

CLAIMANT: Ray Drayton dba Pacific Lands; Russell Baldwin, agent

REQUEST: The claimant seeks compensation for, or the modification or removal of, land use regulations that limit land divisions and uses in the R-1 (Single Family Residential) zone.

A. REPORT OF FACTS:

1. **Lot Size:** .33 acres.
2. **Property Location:** The subject property is located at 4607 Salmon River Highway and is identified on Lincoln County Assessor's Map #06-10-34-D as tax lot 2601.
3. **Zoning Designation:** R-1 (Single Family Residential)
4. **Plan Designation:** Suburban Residential/Rural Community.
5. **Surrounding Land Use:** The area is characterized by residential development along Salmon River Highway and North Bank Road.
6. **Topography & Vegetation:** The property consists of mostly level topography.
7. **Existing Structures:** None.

1 A-6

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: P P & L

9. **Development Constraints:** A portion of the subject property is within the regulatory floodway of the Salmon River.

B. EVALUATION OF THE REQUEST:

1. Background:

Russell Baldwin filed a Land Use Regulation Compensation Claim on behalf of property owners Ray Drayton (dba Pacific Lands) on November 15, 2006. This claim was presented in the form of a demand letter presented to the Department of Planning and Development. Although the demand letter did not contain any of the supporting documentation requested with the filing of a land use regulation compensation claim, the department is proceeding with the review of the claim in accordance with the procedure established for Ballot Measure 37 claims by Lincoln County Board of Commissioners Order # 12-04-318. The Drayton property is located at 4607 Salmon River Highway in the Rose Lodge area. The current zoning of the property is R-1, Single Family Residential. The claimant asserts a diminution in the value of the property apparently resulting from the restrictions of the R-1 zone, though specific restrictions or regulations are not identified in the claim. The claimant states that the desired remedy to the claim is for "...all land use regulations burdening the property not be either applied or enforced against the property ...".

No deed records documenting the claimant's date of acquisition of the subject property were submitted with the claim. The department's research of county deed records indicates that claimant acquired the subject property in 1987. The county has enacted no land use regulations restricting the use of the subject property since the claimant's date of acquisition in 1987.

On April 30, 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. The claimant's agent provided testimony in support of the claim. There was no testimony 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:

SEARCHED
SERIALIZED
INDEXED
FILED
A
2 11 06

- 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, Ray Drayton, acquired his original interest in the property by warranty deed on June 1, 1987 (recorded at Book 182, Page 1702, Lincoln County Deed Records). Records of the Lincoln County Assessor’s Office confirm that Ray Drayton dba Pacific Lands 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 R-1 zone regulations (LCC 1.1310) at issue in the subject claim were enacted by Lincoln County in their present form by Ordinance #139 in 1980. These regulations are applied to all private real property designated on the Lincoln County Comprehensive Plan and Zoning maps as being within the R-1 zone. These regulations restrict the minimum lot size and use of this private real property to only those sizes and uses expressly authorized in the R-1 zone.

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

The currently effective requirements of the R-1 zone allow the creation of parcels with a minimum lot size of 15,000 square feet. These requirements also restrict uses to single family dwellings and accessory uses and other compatible uses.

Claimant has demanded compensation for this reduction in value in the amount of \$300,000. There is no indication in the demand letter as to the basis for determining the amount of compensation sought.

- 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.

3 16

The regulations addressed by the subject claim are the restrictions on land divisions and uses imposed by the R-1 zone. The R-1 zone was enacted to comply with Statewide Planning Goal 2, which mandates comprehensive plans and implementing zoning regulations for all lands in Lincoln County. The purpose of the R-1 zone is to provide for single-family residences and compatible uses. 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 no documentation establishing his date of acquisition of the subject property. Research by the department indicates that the claimant acquired the subject property on June 1, 1987. As previously noted, the R-1 zone, in its present form, was enacted in 1980, some seven years before the claimant's date of acquisition (Lincoln County Ordinance #139). Therefore, pursuant to ORS 197.352 (3)(E), the compensation requirement of ORS 197.352 (1) does not apply to the land use regulations currently applicable to the subject property, as these regulations were enacted by Lincoln County prior to the date of acquisition of the property by the claimant owner.

- 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 R-1 zone restrictions on land divisions and uses, were enacted in their present form in 1980, 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.

C. RECOMMENDED FINDINGS AND CONCLUSIONS:

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

Findings:

1. Russell Baldwin filed a Land Use Regulation Compensation Claim on behalf of Ray Drayton dba Pacific Lands with the Lincoln County Department of Planning and Development on November 15, 2006.
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.