



DEPARTMENT OF PLANNING AND DEVELOPMENT

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LAND USE REGULATION COMPENSATION CLAIM

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

CASE FILE: 12-LURCC-05

DATE FILED: 05/23/05

CLAIMANT: Norman Lawrence Wiebe and Judith Mae Wiebe (husband and wife).

REQUEST: The claimants seek compensation for, or the modification or removal of, land use regulations that establish an 80-acre minimum parcel size for land divisions and prohibit the establishment of an additional single family dwelling on the subject property.

A. REPORT OF FACTS:

1. **Lot Size:** 10 acres.
2. **Property Location:** The property is located approximately 9.5 miles east of Yachats at 9466 Yachats River Road and is further identified on Lincoln County Assessor's Map #15-11-01 as tax lot 403.
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, with some small scale agricultural activities.

6. **Topography & Vegetation:** The property consists of moderately sloping to level forested areas and open land.
7. **Existing Structures:** Existing structures on the subject property include a residence, constructed in 1979, along with out-buildings.
8. **Utilities:** The following utilities currently serve the subject property:
 - a. Sewer: On-site sewage disposal
 - b. Water: On-site well
 - c. Electricity: Consumers Power.
9. **Development Constraints:** A small portion of the property, immediately along the river bank, is located in an area containing a high groundwater table. No other constraints were identified.

B. EVALUATION OF THE REQUEST:

1. Background:

Norman Lawrence Wiebe and Judith Mae Wiebe (husband and wife), filed a Land Use Regulation Compensation Claim on May 23, 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 Wiebe property is located in an area commonly known as the Yachats River Valley at 9466 Yachats River 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 after their date of acquisition, more specifically, those restrictions that preclude the division of and the development of an additional residence 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 division of the subject property into one additional parcel of roughly 5 acres in size, and permit the establishment of one single-family dwelling on the resulting parcel.

Planning staff met with claimants prior to the filing of their claim and discussed in detail the basic elements of the claim. Deed records submitted with the claim document the claimants' acquisition of the subject property in 1976. At that time, provisions applicable to the subject property permitted the creation of 5-acre parcels.

On August 8, 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 claimants 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 claimants, Norman Lawrence Wiebe and Judith Mae Wiebe acquired their original interest in the property by contract sale in 1976 (recorded at Book 73 Page 1620, Lincoln County Deed Records). Records of the Lincoln County Assessor’s office confirm that Norman Lawrence Wiebe and Judith Mae Wiebe 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 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 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:**

As noted, the requirements of the A-C zone currently in effect prohibit any division of the subject property; these restrictions also prohibit the placement of any additional dwellings on the property.

Claimants assert that these restrictions reduce fair market value of the property. In support of this claim, claimants have submitted a Comparative Market Analysis prepared by a real estate broker licensed in the State of Oregon of the value of one additional parcel that could be created based on the acquisition date regulations. The broker estimates one additional 5-acre parcel would be valued at \$99,000. The broker also estimates the 5-acre parcel developed with an additional single-family dwelling would be valued at \$325,000 or more. Because the claim does not include an analysis of the fair market value of the property

subject to current regulations, it is difficult to substantiate the specific diminution in value caused by the A-C zone restrictions. Nonetheless, the information on its face; i.e, the market value difference between one home site versus the two potential home sites permitted at the time of acquisition, leads the department to conclude that it is more likely than not that there has been some reduction in fair market value of the subject property as a result of the enactment of the cited land use regulations.

- 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 claimants' original interest in the property was acquired December 31, 1976. The A-C zone, in its present form, was enacted in 1994, so the regulation giving rise to the claim was enacted after 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 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 May 23, 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. Norman Lawrence Wiebe and Judith Mae Wiebe (husband and wife) filed a Land Use Regulation Compensation claim with the Lincoln County Department of Planning Development on May 23, 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 403 on Lincoln County Assessor's map 15-11-01, 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 division of the subject property and the establishment of an additional single-family dwelling.
6. The claimants have submitted evidence of a diminution in value caused by the A-C zone restrictions in the form of a Comparative Market Analysis prepared by a real estate broker licensed in the State of Oregon. The analysis indicates that the land use regulations that prohibit the division of and the establishment of an additional dwelling on the subject property have the effect of reducing the fair market value of the subject property by \$325,000.
7. According to the Lincoln County deed records, the claimants, Norman Lawrence Wiebe and Judith Mae Wiebe, first acquired an interest in the subject property in 1976, and have maintained an ownership interest continuously since that time.
8. The A-C zone regulations currently in effect governing the establishment of dwellings were enacted by Lincoln County in 1994 (Ordinance # 347), after the claimants' 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 May 23, 2005, 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 on behalf of the owners, Norman Lawrence Wiebe and Judith Mae Wiebe (husband and wife), pursuant to Subsection (5) of Ballot Measure 37.
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; and they have the effect of reducing the fair market value of the property.
3. The owners of the property, Norman Lawrence Wiebe and Judith Mae Wiebe (husband and wife), 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 owners to use the property for a use permitted at the time of their 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

minimum parcel size requirements and the restrictions on dwellings in the A-C zone not be applied to the subject property. This would allow the claimants to divide the subject property into one additional parcel of not less than 5 acres in size (assuming total parcel is at least 10 acres or greater) as permitted by the A-1 zone in effect at the time of acquisition of the subject property. This would, in accordance with the requirements of Subsection (8) of Ballot Measure 37, allow the owners 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 owners to create one additional 5-acre homesite in accordance with provisions of the A-1 zone. The creation of one site five acres in size would be generally consistent with the prevailing land use pattern in the area.
3. Not applying the land division and dwelling restrictions of the A-C zone in order to permit the establishment of additional rural home sites is the claimants' desired resolution.

This recommended resolution would be subject to the following limitations:

- The non-application of regulations would be limited to the minimum parcel size requirements and restrictions on dwellings provided for in LCC 1.1373. All other provisions of the Lincoln county code would continue to apply.
- Establishment of an additional land parcel and dwelling on the subject property would be subject to all applicable public health and safety regulations, including but not limited to land division procedures, building codes, on-site sewage disposal rules and requirements, flood hazard area regulations, and county road approach permit requirements.

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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 to not apply the minimum parcel size requirements and dwelling restrictions of the A-C zone on the subject property, subject to applicable public health and safety regulations.

Respectfully submitted,

Matt Spangler
Director

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