



DEPARTMENT OF PLANNING AND DEVELOPMENT

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LAND USE REGULATION COMPENSATION CLAIM

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

CASE FILE: 13-LURCC-05

DATE FILED: 05/27/05

CLAIMANTS: Samuel and Cheryl Scheinberg and Scheinberg Family Trust; Joan M. Chambers, agent.

REQUEST: The claimants seek compensation for, or the modification or removal of, land use regulations that prohibit land divisions and the placement of additional dwellings on the subject property.

A. REPORT OF FACTS:

1. **Lot Size:** 120 acres
2. **Property Location:** The subject property is located at 5590 NE Devils Lake Road and is further identified as tax lots 900 and 1102 on Lincoln County Assessor's map 6-11-36.
3. **Zoning Designation:** T-C (Timber Conservation)
4. **Plan Designation:** Forest Land
5. **Surrounding Land Use:** Surrounding uses are predominantly rural residential uses in the adjacent Highland Estates subdivision. Urban level development is present to the south within the Lincoln City UGB.
6. **Topography & Vegetation:** The property consists of moderate slopes

vegetated by a mix of conifers and alder, with typical coast range under story species. The western portion of the property is open pasture.

7. **Existing Structures:** One single-family residence, a horse barn and indoor riding arena are present on the subject property.
8. **Utilities:** The following utilities are available to serve the subject property:
 - a. Sewer: On-site sewage disposal
 - b. Water: On-site well(s)
 - c. Electricity: Pacific Power and Light.
9. **Development Constraints:** None identified.

B. EVALUATION OF THE REQUEST:

1. Background:

Joan Cambers of Kulla, Ronnau, Schaub and Chambers, P.C., filed a Land Use Regulation Compensation Claim on behalf of property owners Samuel and Cheryl Scheinberg on May 27, 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 Scheinberg property is located north of Lincoln City off of NE Devils Lake Road. The current zoning of the property is T-C, Timber Conservation. The claimants assert a diminution in the value of their property resulting from the restrictions of the T-C zone applied after their date of acquisition, more specifically, those restrictions that preclude subdivision and the placement of additional residences on the subject property. The claimants state that their desired remedy to the claim is the removal or modification of the T-C zone restrictions in a manner that will permit the development of up to 120 residential home sites on the property.

Deed records submitted with the claim document acquisition of tax lot 900 by the claimants in 1975. The claimants acquired title to tax lot 1102 in March 1980.

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' representative provided testimony in support of the claim. Written testimony in opposition to the claim was submitted into the record by Charles and Doris Cline, property owners and residents of the adjoining Highland Estates development.

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, Samuel and Cheryl Scheinberg, acquired their original interest in the tax lot 900 portion of the subject property in 1975 via Bargain and Sale Deed, recorded at Book 199, page 1841 of the Lincoln County Deed Records. The claimants acquired title to tax lot 1102 on March 6, 1980 via warranty deed recorded at Book 111, page 1051, Lincoln County Deed Records. In 1997, both properties were transferred to the Scheinberg Family Trust, a revocable trust with the claimants designated as beneficiaries and acting as trustees. Records of the Lincoln County Assessor’s office confirm that the Schienberg Family Trust 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:**

Current land use regulations applicable to the subject property are contained in the T-C zone (LCC 1.1375). These regulations were enacted by Lincoln County and apply to the subject property, which is private real property. These regulations restrict the use of this private real property to only those uses expressly authorized. Specifically, in the case of the subject property, these regulations limit land divisions and place restrictions on the placement of dwellings and other improvements.

- 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 T-C zone limit any non-forest uses or development on the subject property; land divisions are prohibited. Claimants assert that these restrictions reduce fair market value of the property. In support of this claim, claimants have provided an estimate of the difference in current fair market value of the property if subject to regulations in effect in 1975 (tax lot 900) and 1980 (tax lot 1102) as opposed to current regulations of \$2.9 million. Absent a complete appraisal, it is not possible to substantiate the specific dollar amount demanded by the claimants as compensation is overstated. Nonetheless, the information on its face; i.e. the market value difference between the current permissible uses in the T-C zone, and the uses allowed at the time acquisition, leads the department to conclude

that it is more likely than not that there has been at least some reduction in fair market value of the subject property as a result of the enactment and enforcement 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 in the T-C zone applicable to the subject property. These regulations were enacted to comply with the Statewide Planning Goals 4, and have as their purpose the conservation of forest lands for forest uses. They do not directly address common nuisances, health and safety, adult businesses or activities, nor do they have any federal nexus.

The claimants have provided documentation from the Lincoln County Deed Records that the claimants' original interest in the property was acquired in 1975 (tax lot 900) and 1980 (tax lot 1102).

Based on these dates of acquisition, the T-C zone restrictions enacted by Ordinance #347 in 1994 applicable to the subject property are subject to compensation under Ballot Measure 37.

- 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 were enacted prior to the effective date of Ballot Measure 37 (Lincoln County has enacted no new land use regulations after December 2, 2004). The subject claim was filed on May 27, 2005, 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 claimants have documented a date of acquisition of 1975 (Tax lot 900) and 1980 (tax lot 1102). For purposes of Section 8 of Measure 37, this is the operative date for determining “ a use permitted at the time the owner acquired the property.” Lincoln County zoning in effect on both of these dates was A-2, Rural Residential (Lincoln County Ordinance #34), which permitted, among other use, single family residences on parcels of one acre or greater in size. Uses permitted under the provisions of Ordinance #34 also included a procedure and requirements for a Planned Development, which provided for “clustering” and other flexible design concepts.

C. Recommended Findings and Conclusions:

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

Findings:

1. Samuel and Cheryl Scheinberg filed a Land Use Regulation Compensation claim with the Lincoln County Department of Planning Development on May 27, 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 lots 900 and 1102 on Lincoln County Assessor’s map 6-11-36, which is taxed as real property by Lincoln County.
4. The T-C zone (LCC 1.1375) applicable to the subject property is a land use regulation enacted and enforced by Lincoln County, a public entity.
5. The T-C zoning restricts uses; specifically, the T-C zone standards limit the division of the subject property to 80-acre minimum parcels and places restrictions on allowances for dwellings.
6. The claimants have submitted evidence of a diminution in value caused by the T-C zone restrictions in the form of an estimated value of the property subject to current regulations and an estimated value of the property if developed in accordance with regulations in effect at the time of their acquisition. This

estimate concludes that the land use regulations that limit the division of and placement of dwellings on the subject property have the effect of reducing the fair market value of the subject property by \$ 2.9 million.

7. According to the Lincoln County deed records, the claimants acquired the property in two separate transactions in 1975 (tax lot 900) and 1980 (tax lot 1102) and have maintained an interest in the property continuously since that time.
8. The Planned Development provisions currently in effect were enacted in 1997 (Ordinance #367) and the T-C zone restrictions were enacted by Lincoln County in 1994 (Ordinance # 347), both after the claimants' date of acquisition.
9. The Planned Development and T-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 27, 2005, 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 on behalf of the owners, Samuel and Cheryl Scheinberg, pursuant to Subsection (5) of Ballot Measure 37.
2. Based on the claimants' dates of acquisition of 1975 and 1980, the land use regulations subject to the claim include restrictions of the T-C zone (LCC 1.1375) enacted by Ordinance #347 and the current limitations of the Planned Development (PD) procedure enacted by Ordinance #367. These provisions of the Lincoln County Code 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, Samuel and Cheryl Scheinberg, 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 T-C zone restrictions enacted by Ordinance #347 and Planned Development restrictions enacted by Ordinance #367 or, in lieu of the payment of just compensation, the Board, as the governing body responsible for the enactment of these restrictions, may modify, remove or not apply the 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 T-C zone provisions enacted by Ordinance #347 in 1994 and the Planned Development prohibition on application in the T-C zone enacted by Ordinance #367 not be applied to the subject property. This would permit the application of the A-2 zone regulations in effect on March 26, 1980 (the claimants' date of acquisition of the subject property), along with the provisions of the PD procedure. 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 owners' 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 current T-C zone restrictions and permitting the application of the A-2 zoning previously in effect 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 currently effective provisions of LCC 1.1375 as enacted by Ordinance #347 and LCC 1.1380 as enacted by Ordinance #367. Instead, the provisions of Ordinance #34 in effect on March 26, 1980 would apply to the subject property. **All other provisions of the Lincoln County Code would continue to apply.**
- Establishment of any permissible uses 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.

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 direct application to the subject property of the Ordinance #34 provisions in effect in March 1980, subject to applicable public health and safety regulations.

Respectfully submitted,

Matt Spangler
Director