



**DEPARTMENT OF PLANNING AND DEVELOPMENT**

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**LAND USE REGULATION COMPENSATION CLAIM**

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

**CASE FILE:** 15-LURCC-05

**DATE FILED:** 06/13/05

**CLAIMANT:** Delores J. Orth and the Orth Marital Trust, Dennis Bartoldus, agent

**REQUEST:** The claimant seeks compensation for, or the modification or removal of, land use regulations of the T-C zone that establish an 80-acre minimum parcel size for land divisions and restrict the establishment of additional single-family dwellings on the subject property.

**A. REPORT OF FACTS:**

1. **Lot Size:** 79.37 acres
2. **Property Location:** The property is located east of NE Devils Lake Road off of NE 50<sup>th</sup> Street and is further identified on Lincoln County Assessor's map #7-11-1 as tax lot 100.
3. **Zoning Designation:** T-C (Timber Conservation)
4. **Plan Designation:** Forest Land
5. **Surrounding Land Use:** Adjacent uses include rural residences along NE Devils Lake Road and NE 50<sup>th</sup> Street; industrial forest lands are located to the east.

6. **Topography & Vegetation:** The property consists of moderately steep west facing slopes vegetated with mixed conifer and hardwood tree species.
7. **Existing Structures:** None
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: Pacific Power and Light
9. **Development Constraints:** None identified.

## **B. EVALUATION OF THE REQUEST:**

### **1. Background:**

Dennis Bartoldus, acting as agent, filed a Land Use Regulation Compensation Claim on behalf of property owner Orth on June 13, 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 Orth property is located off of NE Devils Lake Road at NE 50<sup>th</sup> Street. The current zoning of the property is T-C, Timber Conservation. The claimant asserts a diminution in the value of her property resulting from the restrictions of the T-C zone applied after the date of acquisition: more specifically, those restrictions that preclude the division of and the development of additional residences on the subject property. The claimant states that her desired remedy to the claim is the removal or modification of the T-C zone restrictions in a manner that will permit the division of the subject property into 35 lots or parcels and permit the establishment of one single-family dwelling on each resulting parcel.

Planning staff met with the claimant prior to the filing of her claim and discussed in detail the basic elements of the claim. Claimant asserts an acquisition date of 1967, which is the date of acquisition by Clifford F. and Delores J. Orth. The current ownership of the property is held by the Orth Marital Trust, of which Delores J. Orth is the beneficiary.

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 claimant's representative 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, Delores J. Orth, acquired her original interest in the property by warranty deed on December 5, 1967, recorded at Book 284, page 314, Lincoln County Deed Records. The Orth Marital Trust, a revocable trust with Delores J. Orth as the beneficiary, holds current ownership of the property.

- 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 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 currently effective requirements of the T-C zone prohibit any division of the subject property; these restrictions also prohibit the placement of any additional dwellings on the property.

Claimant asserts that these restrictions reduce fair market value of the property. In support of this claim, claimant has estimated the value of the parcels which could be created, absent any land use regulations. For purposes of this estimate, claimant has assumed an acquisition date of 1967. Based on this estimate of the retail price of each parcel individually, claimant seeks \$3,712,500 in compensation based on current restrictions. Absent a formal appraisal of the property, it is difficult ascertain whether the stated reduction in value is accurate. However, based on the information and evidence provided, the department concludes that there has been at least some diminution in value as a result of the current land use regulations imposed after the current owner's date

of 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 and dwellings imposed by the T-C zone. The T-C zone was enacted to comply with Statewide Planning Goal 4, which mandates the placement of defined forest lands into forest zones meeting the requirements of Goal 4 and OAR 660, Division 6. The purpose of the T-C zone is to conserve forest lands for forest 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 documentation that the claimant's original interest in the property was acquired on December 5, 1967 (Book 284, page 314). The claimant has maintained an interest in the property since that time through her interest as the beneficiary of the Orth Marital Trust, a revocable trust created in 1988. The T-C zone, in its present form, was enacted in 1994, so the regulation giving rise to the claim was enacted after the 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 T-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 June 13, 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. Dennis Bartoldus filed a Land Use Regulation Compensation claim with the Lincoln County Department of Planning Development on June 13, 2005 on behalf of Delores J. Orth and the Orth Marital Trust.
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 100 on Lincoln County Assessor's map 7-11-1, 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 and the establishment of additional single-family dwellings.
6. The claimant has submitted evidence of a diminution in value caused by the A-C zone restrictions in the form of an appraisal prepared by a State of Oregon Certified Appraiser. The appraisal concludes that the land use regulations that prohibit the division of and the establishment of additional dwellings on the subject property have the effect of reducing the fair market value of the subject property by \$611,590.
7. The currently effective T-C zone regulations governing the establishment of dwellings were enacted by Lincoln County in 1994 (Ordinance # 347), after the claimant's date of acquisition.
8. The 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.
9. The subject claim was filed on June 13, 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 owner, Delores J. Orth and the Orth Marital Trust, 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 1.1375 (T-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 owner of the property, Delores J. Orth and the Orth Marital Trust, is 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 T-C zone restrictions or, in lieu of the payment of just compensation, the Board, as the governing body responsible for the enactment of the T-C zone restrictions, may modify, remove or not apply these restrictions in order to permit the owner to use the property for a use permitted at the time of 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 current minimum parcel size requirements and the restrictions on dwellings in the T-C zone not be applied to the subject property. This would allow the claimant to divide the subject property into up to 35 additional parcels as proposed and to establish one single-family dwelling on each of the resultant parcels. As there were no zoning regulations

in place at the time of the claimant's acquisition of the subject property in 1967, the allowance to partition the subject property and establish dwellings on the resultant parcels would, in accordance with the requirements of Subsection (8) of Ballot Measure 37, allow the owner 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 land division and dwelling restrictions of the T-C zone in order to permit the establishment of additional rural home sites is the claimant's 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 1.1375 in order to permit the creation of up to 35 additional land parcels and the placement of one single family residence on each resultant parcel. All other provisions of the Lincoln county code would continue to apply.
- Establishment of additional land parcels and dwellings 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 the appropriate directives to not apply the minimum parcel size requirements and dwelling restrictions of the T-C zone on the subject property, subject to applicable public health and safety regulations.

Respectfully submitted,

Matt Spangler  
Director