



DEPARTMENT OF PLANNING AND DEVELOPMENT

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LAND USE REGULATION COMPENSATION CLAIM

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

CASE FILE: 16-LURCC-05

DATE FILED: 06/28/05

CLAIMANT: Mary Jane Robb and Teresa Simmons; Dennis Bartoldus, agent

REQUEST: The claimants seek compensation for, or the modification or removal of, land use regulations which limit land divisions and the placement of dwellings in the T-C (Timber Conservation) zone.

A. REPORT OF FACTS:

1. **Lot Size:** Total combined acreage is approximately 336 acres.
2. **Property Location:** The subject property is located at 458 Steere Creek Road and is identified on Lincoln County Assessor's Map #10-08-08 as tax lot 500 and Map #10-08-17 as tax lots 100, 102, 104, and 105.
3. **Zoning Designation:** T-C (Timber Conservation).
4. **Plan Designation:** Forest Lands.
5. **Surrounding Land Use:** The subject property is located in a remote area of east Lincoln County where widely dispersed rural homesites can be found; otherwise, the surrounding properties consist of industrial forest lands.
6. **Topography & Vegetation:** The property consists of varying topography

ranging from open pasture to steeper forested lands.

7. **Existing Structures:** Two single-family dwellings and outbuildings are located on tax lot 500 of Assessor's Map #10-08-08.
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: Consumers Power.
9. **Development Constraints:** Environmental Bulletin 81 of the Yaquina River Section indicates portions of the subject property contain landslide topography. No other constraints were identified.

B. EVALUATION OF THE REQUEST:

1. Background:

Dennis Bartoldus, agent for Mary Jane Robb and Teresa Simmons (mother and daughter), filed a Land Use Regulation Compensation Claim on behalf of property owners Robb and Simmons on June 28, 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 Robb/Simmons property is located at 458 Steere Creek Road in east Lincoln County. 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 the division of and the development of additional residences on the subject property. Claimant Robb 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 three- to five-acre parcels or for a total of approximately 67 parcels and permit the establishment of one single-family dwelling on each of the resulting parcels. The remedy for claimant Simmons, whose original date of acquisition followed claimant Robb's, seeks the removal or modification of the T-C zone restrictions in a manner that would permit land divisions with a minimum lot size of 40 acres, and permit the establishment of one single-family dwelling on each of the resulting parcels.

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 claimant Robb's acquisition of a portion of the property in 1953 (Property identified on Lincoln County Assessor's Map #10-08-17 as tax lots 100, 102, 104 and 105) and a separate portion (property identified on Lincoln County Assessor's

Map #10-08-08 as tax lot 500) in 1977. For purposes of evaluating applicable regulations in effect at the time of acquisition, tax lots 100, 102, 104 and 105 of Section 17 will be referred to as Property A, and tax lot 500 of Section 8 will be referred to as Property B. There were no land use regulations in effect at the time Property A was acquired in 1953 by claimant Robb. At the time Property B was acquired by claimant Robb, acknowledged county code provisions applicable to the subject property permitted the creation of one- (1) acre parcels. Claimant Simmons acquired an original interest in the property in its entirety in 1990. At that time, acknowledged county code provisions of the T-C zone permitted the creation of 40-acre parcels. The T-C zone in 1990 permitted one-family dwelling on a parcel of land when used in conjunction with farm or forest use.

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' agent 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.”**

Claimant Mary Jane Robb acquired her original interest in Property A by warranty deed in 1953 (recorded at Book 158 Page 100, Lincoln County Deed Records). The original interest in Property B was acquired by claimant Mary Jane Robb, in 1977 by warranty deed (recorded at Book 81, Page 1246 of Lincoln County Deed Records). In 1990, claimant Mary Jane Robb conveyed by Bargain and Sale Deed (recorded at Book 224, Page 1658 of Lincoln County Deed Records) both Property A and Property B to Teresa Miller (now last name Simmons) and Mary Jane Robb (daughter and mother). The senior claimant, Mary Jane Robb, has retained interest in Property A and Property B since the dates of original acquisition. The junior claimant Simmons has held an interest in the property in its entirety since 1990. Records of the Lincoln County Assessor's office confirm that Mary Jane Robb and Teresa Simmons 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 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 minimum lot size and use of this private real property to only those sizes and uses expressly authorized in the T-C zone.

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

The requirements of the T-C zone currently in effect allow the creation of parcels with a minimum lot size of 80 acres. However, these requirements also restrict the placement of any additional dwellings on the property. As noted previously, there were no land use regulations in effect at the time Property A was acquired in 1953 by claimant Robb. At the time Property B was acquired by claimant Robb, county code provisions applicable to the subject property permitted the creation of one- (1) acre parcels. When claimant Simmons took an interest in the property in 1990, acknowledged county code provisions permitted the creation of 40-acre parcels of land.

Claimants assert that these restrictions reduce fair market value of the property. In support of this claim, claimants' agent asserts a loss in fair market value of approximately \$3,350,000 based on the potential to create 67 home sites minus development costs. This asserted value would apply to claimant Robb. Claimant Simmons' reduction in fair market value is the loss of creating any additional homesites. 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 T-C zone restrictions. Nonetheless, the information on its face; i.e. the market value difference between no additional home sites versus an additional six for claimant Simmons and at least 67 or more potential home sites for claimant Robb 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 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 zones which comply with the requirements of OAR 660, Division 6. The purpose of the T-C zone is to preserve 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 claimants have provided documentation that claimant Robb's original interest in the property was acquired December 22, 1973 and November 16, 1977, and claimant Simmons' was acquired on December 12, 1990. The T-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 owners.

- 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 28, 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, agent for Mary Jane Robb and Teresa Simmons (mother and daughter), filed a Land Use Regulation Compensation Claim on behalf of property owners Robb and Simmons with the Lincoln County Department of Planning Development on June 28, 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 500 on Lincoln County Assessor's Map #10-08-08 and tax lots 100, 102, 104 and 105 on Lincoln County Assessor's map 10-08-17, 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 restrict the division of the subject property and the establishment of additional single-family 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 market value prepared by the claimants' agent of \$3,350,000. The analysis indicates 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.
7. According to the Lincoln County deed records, claimant, Mary Jane Robb first acquired an interest in the subject property A in 1953 and Property B in 1977, and has maintained an ownership interest continuously since that time. Claimant Mary Jane Robb conveyed an interest in the properties A and B to herself and to her daughter, claimant Simmons, in 1990.
8. The currently effective T-C zone regulations governing land divisions and the establishment of dwellings were enacted by Lincoln County in 1994 (Ordinance # 347), after the claimants' date of acquisition.
9. 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.
10. The subject claim was filed on June 28, 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, Mary Jane Robb and Teresa Simmons, 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 owners of the property, Mary Jane Robb and Teresa Simmons (mother and daughter), 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 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 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 T-C zone enacted under Ordinance #347 in 1994 not be applied to the subject property. This would allow claimant Robb to divide the subject property into 67 parcels, each with one single-family dwelling, as permitted at the time of acquisition of the subject property. Claimant Simmons would be allowed to divide the subject property into 40-acre parcels, each with a homesite used in conjunction with farm or forest use, as permitted at the time she acquired an interest in 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 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 dwelling restrictions of the T-C zone would permit senior claimant Robb to create rural homesites on a parcel of approximately 336 acres. Claimant Robb's stated intent is to create up to 67 three- to five-acre parcels. Claimant Simmons would be permitted to create 40-acre parcels from the same acreage.
3. 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 each 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. All other provisions of the Lincoln County Code would continue to apply.
- Establishment of each 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.

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

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