



## DEPARTMENT OF PLANNING AND DEVELOPMENT

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# LAND USE REGULATION COMPENSATION CLAIM

## PLANNING DIRECTOR'S STAFF REPORT and RECOMMENDATION

**CASE FILE:** 18-LURCC-05

**DATE FILED:** 07/13/05

**CLAIMANT:** Timothy Grant and Sterling Grant; George Heilig, agent

**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 restrict the establishment of additional single family dwellings on the subject property.

### **A. REPORT OF FACTS:**

1. **Lot Size:** 436 acres
2. **Property Location:** The property is located near Harlan adjacent to Feagles Creek Road, Grant Creek Road and Harlan Road, and is further identified on Lincoln County Assessor's map #12-8-7, as tax lots 600 and 601; map 12-8, tax lots 5400 and 5401; and map 12-09, tax lot 3300.
3. **Zoning Designation:** A-C (Agricultural Conservation) and T-C (Timber Conservation)
4. **Plan Designation:** Agricultural Land and Forest Land
5. **Surrounding Land Use:** Adjacent uses along Feagles Creek, Grant Creek and Harlan Roads are comprised of large ownership commercial agricultural uses and

public and industrial forest lands, along with scattered rural residences.

6. **Topography & Vegetation:** The property consists of a series of alluvial terraces and adjoining foothills along Grant Creek, Feagles Creek and Big Elk Creek. It is predominantly in pasture, with some forested uplands.
7. **Existing Structures:** Two residences along with a number of outbuildings are located on the subject property.
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:** Small portions of the property, immediately along the creek banks, are within the regulated flood hazard area of Grant Creek and the Big Elk.

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

### **1. Background:**

George Heilig acting as agent filed a Land Use Regulation Compensation Claim on behalf of property owners Timothy Grant and Sterling Grant on July 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 Grant property is located on Big Elk Creek, Feagles Creek and Grant Creek River at Harlan. The current zoning of the property is A-C, Agricultural Conservation, and T-C, Timber Conservation. The claimants assert a diminution in the value of their property resulting from the restrictions of the A-C and T-C zone applied after their date of acquisition, more specifically, those restrictions that limit the division of additional land parcels and the development of additional residences on the subject property. The claimants state that their desired remedy to the claim is the removal or modification of the A-C and T-C zone restrictions in a manner that will permit the division of five-acre parcels and permit the establishment of one single-family dwelling on each 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 claimant's acquisition of the subject property in December of 1975 (tax lot 601) and December of 1976 (the balance of the property). The properties were acquired by the claimants from family members, whose ownership history dates back

to the 1800's. The subject properties were zoned A-1 (Lincoln County Ordinance #34) at the time of acquisition by the present owners in 1975 and 1976.

On October 25, 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. 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, Timothy Grant and Sterling Grant, acquired their original interest in tax lot 601 by warranty deed recorded at Book 61, pages 1243-1244, Lincoln County Deed Records on December 30, 1975. The claimants acquired their interest in the remainder of the subject property by warranty deed recorded on December 8, 1976, at Book 70, page 1552. Records of the Lincoln County Assessor's office confirm that Timothy Grant and Sterling Grant 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 and T-C zone regulations (LCC 1.1373 and 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 A-C and T-C zones. These regulations restrict the use of this private real property to only those uses expressly authorized in the A-C and T-C zones. Specifically, in the case of the subject property, these regulations limit the further division and the placement of 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 and A-C zones limit

the division of the subject property to 80- acre minimum parcels; these restrictions also limit the outright placement of additional dwellings on the property to parcels of not less than 160 acres.

Claimants assert that these restrictions reduce fair market value of the property. In support of this claim, claimants have submitted a market evaluation prepared by a real estate broker. The evaluation states the current value of the property, as is with current regulations, at \$1,275,000. The evaluation estimates the sales price of the property with regulations as in effect at the time of acquisition by the current owners to be \$4,100,000. The difference in value attributed to the current land use restrictions is \$2,825,000. Based on this information and evidence provided, the department concludes that there has been diminution in value as a result of the current land use regulations imposed after the date of the current owners' 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 A-C and T-C zones. The A-C and T-C zones were enacted to comply with Statewide Planning Goals 3 and 4, respectively, which mandate the placement of defined agricultural and forest lands into zones intended to limit development to only farm or forest related uses in compliance with the requirements of ORS Chapter 215. The purpose of these zones is to preserve resource lands for agricultural and forest uses. These regulations 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 that the claimants' original interest in the property was acquired in 1975 and 1976. The A-C and T-C zones, in their present form, were enacted in 1994, so the regulations giving rise to the claim were enacted after the 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 A-C and 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 July 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. Timothy Grant and Sterling Grant filed a Land Use Regulation Compensation claim with the Lincoln County Department of Planning Development on July 13, 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 600 and 601 on Lincoln County Assessor's map 12-8-7; tax lots 5400 and 5401 on Lincoln County Assessor's map 12-8 and tax lot 3300 on Lincoln County Assessor's map 12-9. These parcels are taxed as real property by Lincoln County.
4. The A-C zone and T-C zone provisions (LCC 1.1373; LCC 1.1375) applicable to the subject property are land use regulations enacted and enforced by Lincoln County, a public entity.
5. The A-C and T-C zoning restrict uses; specifically, the A-C and T-C zone standards limit 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 A-C and T-C zone restrictions in the form of a market evaluation prepared by a licensed real estate broker. The evaluation concludes that the land use regulations that limit 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 \$2,825,000.

7. According to the Lincoln County deed records, the claimants, Timothy Grant and Sterling Grant, first acquired an interest in a portion of the subject property on December 30, 1975, and in the remainder of the property on December 8, 1976, and have maintained an ownership interest continuously since that time.
8. The currently effective A-C and T-C zone regulations governing the division of land and the establishment of dwellings were enacted by Lincoln County in 1994 (Ordinance # 347), after the claimants' date of acquisition.
9. The A-C 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 July 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 owners, Timothy Grant and Sterling Grant, 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) and 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, Timothy Grant and Sterling Grant, 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 and 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 A-C

and 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 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 and T-C zones not be applied to the subject property. This would allow the claimants to divide the subject property into parcels of a minimum of five acres as proposed and to establish one single-family dwelling on each of the resultant parcels. Lincoln County zoning regulations applicable at the time of the claimants' acquisition of the subject property in 1975 and 1976 (A-1 zoning, Lincoln Ordinance #34) permitted the creation of five-acre parcels and one dwelling per parcel as an outright use. Therefore, the allowance to partition the subject property into five-acre parcels and establish dwellings on the resultant parcels 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 land division and dwelling restrictions of the A-C and T-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 and LCC 1.1375 in order to permit the creation of additional land parcels of not less than five acres in size 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 A-C zone on the subject property, subject to applicable public health and safety regulations.

Respectfully submitted,

Matt Spangler  
Director