



DEPARTMENT OF PLANNING AND DEVELOPMENT

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## LAND USE REGULATION COMPENSATION CLAIM

### PLANNING DIRECTOR'S STAFF REPORT and RECOMMENDATION

**CASE FILE:** 23-LURCC-05

**DATE FILED:** 09/08/05

**CLAIMANT:** D. C. Lunstedt and L.H. Lunstedt

**REQUEST:** The claimant seeks compensation for, or the modification or removal of, land use regulations restrict land divisions and uses in the RR-5 and Coastal Shorelands overlay zones.

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

1. **Lot Size:** 14.33 acres
2. **Property Location:** The property is located on the Siletz River at 1148 Siletz Highway and is identified as tax lot 803 on Lincoln County Assessor's map 8-11-12 and tax lot 400 on Lincoln county Assessor's map 8-11-13-BA
3. **Zoning Designation:** RR-5 (Rural Residential)
4. **Plan Designation:** Dispersed Residential
5. **Surrounding Land Use:** Immediately adjacent uses include the Fun River residential development to the east, with scattered residences located to the west and forest land to the north.
6. **Topography & Vegetation:** The property consists of a complex of wetlands intermixed with upland area.

7. **Existing Structures:** None.
8. **Utilities:** The following utilities are available to serve the subject property:
  - a. Sewer: On-site
  - b. Water: Lower Siletz Water District
  - c. Electricity: Pacific Power and Light
9. **Development Constraints:** The entire property is located within the designated flood hazard area of the Siletz River

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

### **1. Background:**

Donald C. Lunstedt and Lewis H. Lunstedt filed a land use regulation compensation claim pursuant to Ballot Measure 37 on September 8, 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 Lunstedt property is located on the Siletz River east of Kernville. The current zoning of the property is RR-5, rural residential. In addition, the property is within the Coastal Shorelands boundary and is subject to the restrictions of the C-S overlay zone for areas designated as major marshes. The claimants assert a diminution in the value of the property resulting from the restrictions of the RR-5 zone and the C-S overlay zone applied after their date of acquisition. The claimants state that their desired remedy to the claim is the removal or modification of the restrictions of the C-S overlay.

Claimants have documented an acquisition date of June 25, 1964, at which time the property was not subject to county zoning regulations.

On December 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. 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, D.C. and L.H. Lundstedt, acquired their current interest in the subject property on June 25, 1964 via Warranty Deed, recorded at Book 245, page 531 of the Lincoln County Deed Records. Records of the Lincoln County Assessor's office confirm that D.C. and L.H. Lundstedt 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:**

Current land use regulations applicable to the subject property include the RR-5 zone (LCC 1.1355), and the C-S overlay zone (LCC 1.1381). 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 buildings and other improvements.

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

The currently effective requirements of the RR-5 zone limit land divisions to parcels of five acres or more and also limit uses. The C-S overlay zone effectively prohibits development in areas identified as major marshes, a designation that includes at least portions of the subject property. Claimants assert that these restrictions reduce fair market value of the property by an unspecified amount. No supporting market value data is provided for the claim. However, the information on its face; i.e. the market value difference between the current likely permissible development, versus the value based on the absence of any land use restrictions, 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 development imposed by the RR-5 zone and the C-S overlay zone. These regulations were enacted to comply with the Statewide Planning Goals. They do not directly address common nuisances, health and safety, adult businesses or activities, nor do they have any federal nexus.

The RR-5 and C-S overlay zone restrictions were enacted by Lincoln County on June 30, 1980 (Ordinance #139). The claimants have documented that their original interest in the property was acquired in June 1964, prior to the enactment of the cited land use regulations.

- 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 3, 2004). The subject claim was filed on September 8, 2005, within two years of the December 3, 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 1964. For purposes of Section 8 of Measure 37, June 25, 1964 is the operative date for determining “a use permitted at the time the owner acquired the property.” As previously noted, the RR-5 zone and C-S overlay zone restrictions were enacted by Lincoln County on June 30, 1980.

**C. Recommended Findings and Conclusions:**

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

Findings:

1. D. C. Lunstedt and L.H. Lunstedt filed a Land Use Regulation Compensation claim with the Lincoln County Department of Planning Development on September 8, 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 803 on Lincoln County assessor's map 8-11-12 and tax lot 400 on Lincoln County Assessor's map 8-11-13-BA, which are taxed as real property by Lincoln County.
4. The RR-5 zone (LCC 1.1355) and the C-S overlay zone (LCC 1.1381) provisions applicable to the subject property are land use regulations enacted and enforced by Lincoln County, a public entity.
5. The RR-5 zone and C-S overlay zone restrict uses; specifically, as applied to the subject property, they limit land divisions and other development.
6. The claimants have asserted a diminution in value caused by the RR-5 zone and C-S overlay zone restrictions. Although the claimed reduction in value has not been quantified by the claimants, the record as a whole supports a finding that it is more likely than not that there has been some diminution in value as a result of the RR-5 zone and C-S overlay requirements enacted after the claimants' date of acquisition.
7. According to the Lincoln County deed records, the claimants, D. C. Lunstedt and L. H. Lunstedt, first acquired an ownership interest in the subject property on June 25, 1964, and are the current owners of the property. The currently effective RR-5 zone and C-S overlay restrictions were enacted by Lincoln County on June 30, 1980 (Ordinance # 139), after the claimants' date of acquisition.
8. The RR-5 zone and C-S overlay 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 September 8, 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 by the owners, D. C. Lunstedt and L. H. Lunstedt, pursuant to Subsection (5) of Ballot Measure 37.
2. Based on the claimants' date of acquisition of June 25, 1964, the RR-5 zone (LCC 1.1355) and the C-S overlay (LCC 1.1381) provisions of the Lincoln County Code are land use regulations enacted by Lincoln County prior to the effective date of Ballot Measure 37, and after the date of acquisition of the claimants; 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, D. C. Lunstedt and L. H. Lunstedt, 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 RR-5 zone and C-S overlay zone restrictions or, in lieu of the payment of just compensation, the Board, as the governing body responsible for the enactment of these land use regulations, 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 his 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 and use restrictions of the RR-5 zone and the C-S overlay zone not be applied to the subject property. This would allow the claimants to divide the subject property into residential parcels and/or develop other uses on the property as was permitted at the time of the claimants' acquisition of the subject property in 1964. This allowance 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 currently effective restrictions of the RR-5 zone and the C-S overlay zone 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 RR-5 zone and C-S overlay zone restrictions.
- Establishment of additional land parcels, dwellings, and other 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 and geologic hazard area regulations, and state or 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 and use restrictions of the RR-5 zone and the C-S overlay zone to the subject property, subject to applicable public health and safety regulations.

Respectfully submitted,

Matt Spangler  
Director