



DEPARTMENT OF PLANNING AND DEVELOPMENT

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LAND USE REGULATION COMPENSATION CLAIM

PLANNING DIRECTOR'S STAFF REPORT and RECOMMENDATION

CASE FILE: 28-LURCC-05

DATE FILED: 09/29/05

CLAIMANT: Carl and Carolyn Yaeger; Litchfield & Carstens, agent.

REQUEST: The claimants seek compensation for, or the modification or removal of, land use regulations that establish development restrictions in areas of exceptional scenic quality.

A. REPORT OF FACTS:

1. **Lot Size:** 27.35 acres
2. **Property Location:** The property is located immediately north of the Sea Crest development at Otter Rock. It is identified as tax lot 401 on Lincoln County Assessor's map 9-11-29.
3. **Zoning Designation:** R-1 (Single Family Residential)
4. **Plan Designation:** Suburban Residential; Rural Community.
5. **Surrounding Land Use:** Immediately adjacent uses include the Sea Crest residential development to the south, the Lookout gift shop to the north and the Cape Foulweather View Estates development to the east.
6. **Topography & Vegetation:** The property consists of an open grassy headland area adjoining the ocean shore bluff, bordered by steeply sloping forested uplands to the east.

7. **Existing Structures:** None.

8. **Utilities:** The following utilities are available to serve the subject property:

- a. Sewer: H2O & S (private).
- b. Water: Johnson Creek Water Company (private)
- c. Electricity: Central Lincoln PUD.

9. **Development Constraints:** Areas of steep slopes and potential instability are identified on the subject property.

B. EVALUATION OF THE REQUEST:

1. **Background:**

Litchfield & Carstens, on behalf of property owners Carl and Carolyn Yaeger, filed a land use regulation compensation claim pursuant to Ballot Measure 37 on September 29, 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 Yaeger property is located west of Otter Crest Scenic Loop road immediately north of the Sea Crest development in Otter Rock. The current zoning of the property is R-1, single family residential, and it is located within the Otter Rock rural community boundary. In addition, the property is within the Coastal Shorelands boundary and is subject to the restrictions of the C-S overlay zone for areas of exceptional aesthetic quality. The claimants assert a diminution in the value of the property resulting from the restrictions of 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 assert an acquisition date of December 28, 1979, at which time the property was zoned R-1.

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. Valerie Sovern, an adjacent property owner, provided testimony in opposition to the claim. Ms. Sovern also submitted written testimony in opposition to the claim, which is included as a part the record considered in this report and recommendation.

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, Carl and Carolyn Yaeger, acquired their current interest in the subject property on December 28, 1979 via a Memorandum of Contract, recorded at Book 109, page 1737 of the Lincoln County Deed Records. Records of the Lincoln County Assessor’s office confirm that Carl and Carolyn Yaeger 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 R-1 zone (LCC 1.1310), 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:**

As noted, the currently effective requirements of the C-S overlay zone limit the development on the subject property to that which does “not substantially alter the scenic character of the area”. Claimants assert that these restrictions reduce fair market value of the property by \$3.42 million. In support of this claim, claimants have submitted a market analysis prepared by a licensed real estate broker. The calculation of the total value reduction attributable to current regulations appears to be based on certain undocumented assumptions. 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 the C-S overlay 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 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 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 December 1979, 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 29, 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 claimant has documented a date of acquisition of 1979. For purposes of Section 8 of Measure 37, December 28, 1979 is the operative date for determining “a use permitted at the time the owner acquired the property.” As previously noted, the 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. Carl and Carolyn Yaeger filed a Land Use Regulation Compensation claim with the Lincoln County Department of Planning Development on September 29, 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 401 on Lincoln County assessor's map 9-11-29 which is taxed as real property by Lincoln County.
4. 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 C-S overlay zone restricts uses; specifically, as applied to the subject property, it limits development which would substantially impact scenic values.
6. The claimants have asserted a diminution in value caused by the C-S overlay zone restrictions. Claimants have provided a market analysis from a real estate broker which estimates a value reduction attributable to land use restrictions of \$3.42 million. The county rejects this estimate of diminution of value as overstated in that is based on false assumptions regarding the intensity of development which could be achieved absent the C-S restrictions. Nonetheless, 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 C-S overlay requirements enacted after the claimants' date of acquisition.
7. According to the Lincoln County Deed Records, the claimants, Carl and Carolyn Yaeger, first acquired an ownership interest in the subject property on December 28, 1979, and are the current owners of the property. The currently effective C-S overlay restrictions were enacted by Lincoln County on June 30, 1980 (Ordinance # 139), after the claimants' date of acquisition.
8. The 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 29, 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, Carl and Carolyn Yaeger, pursuant to Subsection (5) of Ballot Measure 37.
2. Based on the claimants' date of acquisition of December 28, 1979, 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, Carl and Carolyn Yaeger, 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 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 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 use restrictions of the of the C-S overlay zone enacted in 1980 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 1979. 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 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 currently effective restrictions of 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 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