



**DEPARTMENT OF PLANNING AND DEVELOPMENT**

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**LAND USE REGULATION COMPENSATION CLAIM**

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

**CASE FILE:** 04-LURCC-06

**DATE FILED:** 3/27/06

**CLAIMANT:** Kenneth and Dawn Dutton

**REQUEST:** The claimants seek compensation for, or the modification or removal of, land use regulations that restrict land divisions in the R-1 zone.

**A. REPORT OF FACTS:**

1. **Lot Size:** 2.62 acres.
2. **Property Location:** The property is located at Monroe Acres near MP 4.4 on the Siletz River Highway and is identified as tax lot 1200 on Lincoln County Assessor's map 08-10-17-AA.
3. **Zoning Designation:** R-1 (Single Family Residential)
4. **Plan Designation:** Suburban Residential
5. **Surrounding Land Use:** The subject property is located in an area characterized by rural residential home sites.
6. **Topography & Vegetation:** The subject property is relatively level and is residentially landscaped.
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: PP&L.
  
9. **Development Constraints:** The property is entirely within the designated flood hazard area of the Siletz River.

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

### **1. Background:**

Kenneth and Dawn Dutton filed a land use regulation compensation claim pursuant to Ballot Measure 37 on March 27, 2006. 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 Dutton property is located four miles east of Kernville at Monroe Acres. The current zoning of the property is R-1, Single Family Residential. The claimants assert a diminution in the value of the property resulting from the current minimum lot size restrictions of the R-1 zone applied after their date of acquisition. The claimants state that their desired remedy to the claim is the removal or modification of these lot size restrictions in a manner that will permit the division of the subject property into three home sites.

Claimants have documented an acquisition date of February 13, 1977. At that time, the property was zoned Marine Residential pursuant to Lincoln County Ordinance #34.

On May 23, 2006, 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 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.”**

Claimants acquired their original interest in the subject property on February 13, 1977, via Warranty Deed, recorded at Book 72, page 1549 of the Lincoln County Deed Records. Records of the Lincoln County Assessor's office confirm that Kenneth and Dawn Dutton 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 land use regulation applicable to the subject property is the R-1 zone (LCC 1.1310). This regulation was enacted by Lincoln County and applies to the subject property, which is private real property. This regulation restricts the use of this private real property to only those uses expressly authorized. Specifically, in the case of the subject property, this regulation prohibits any further land divisions and places restrictions on the placement of additional single-family dwellings.

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

The currently effective requirements of the R-1 zone limit land divisions to parcels of two acres or more and also limit uses. Claimants assert that these restrictions reduce fair market value of the property by \$110,000 to \$150,000. 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 permissible development of one home site, versus the value of the requested three home sites, 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 minimum lot size requirement of the R-1 zone. This regulation was enacted to comply with the Statewide Planning Goals. It does not directly address common nuisances, health and safety, adult businesses or activities, nor

does it have any federal nexus.

The current R-1 zone lot size restriction was enacted by Lincoln County in 2000 (Ordinance #396). The claimants have documented that their original interest in the property was acquired in February of 1977, prior to the enactment of the cited land use regulation.

- 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 regulation for which compensation is sought was 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 March 27, 2006, 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 1977. For purposes of Section 8 of Measure 37, February 13, 1977 is the operative date for determining “a use permitted at the time the owner acquired the property.” As previously noted, the current R-1 zone lot size restriction was enacted by Lincoln County in 2000.

### **C. Recommended Findings and Conclusions:**

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

Findings:

1. Kenneth and Dawn Dutton filed a Land Use Regulation Compensation claim with the Lincoln County Department of Planning Development on March 27, 2006.

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 1200 on Lincoln County assessor's map 08-10-17-AA, which is taxed as real property by Lincoln County.
4. The R-1 zone (LCC 1.1310) provisions applicable to the subject property are land use regulations enacted and enforced by Lincoln County, a public entity.
5. The R-1 zone, as applied to the subject property, prohibits further land divisions and the placement of additional dwellings.
6. The claimants have asserted a diminution in value caused by the R-1 zone restrictions. Although the 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 R-1 zone requirements enacted after the claimants' date of acquisition.
7. According to the Lincoln County deed records, claimants Kenneth and Dawn Dutton first acquired an ownership interest in the subject property on February 13, 1977 and remain the current owners of the property. The currently effective R-1 zone restrictions were enacted by Lincoln County in 2000 (Ordinance # 396), after the claimants' date of acquisition.
8. The R-1 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 March 27, 2006, 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, Kenneth and Dawn Dutton, pursuant to Subsection (5) of Ballot Measure 37.
2. Based on the claimants' date of acquisition of February 13, 1977, the R-1 zone (LCC 1.1310) 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, Kenneth and Dawn Dutton, 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 R-1 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 divide and use the property in a manner 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 minimum parcel size restrictions of the R-1 zone not be applied to the subject property. This would allow the claimants to divide the subject property into three residential parcels as was permitted at the time of the claimants' acquisition of the subject property in 1977. 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 R-1 zone to allow the creation of three residential parcels is the claimants' desired resolution.
3. The division of the subject property in the manner requested by claimants would result in additional residential development that is generally consistent with the prevailing pattern of development

in the area.

This recommended resolution would be subject to the following limitations:

- The non-application of regulations would be limited to the R-1 zone minimum lot size 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 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 restrictions of the R-1 zone applicable to the subject property, subject to applicable public health and safety regulations.

Respectfully submitted,

Matt Spangler  
Director