



DEPARTMENT OF PLANNING AND DEVELOPMENT

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LAND USE REGULATION COMPENSATION CLAIM

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

CASE FILE: 05-LURCC-06

DATE FILED: 3/29/06

CLAIMANT: Caroline Stevens

REQUEST: The claimant seeks compensation for, or the modification or removal of, land use regulations that restrict land divisions in the R-1 and T-C zones.

A. REPORT OF FACTS:

1. **Lot Size:** 5.47 acres.
2. **Property Location:** The property is located at 5616 NE Stevens Road and is identified as tax lot 201 on Lincoln County Assessor's map 07-11-12-B.
3. **Zoning Designation:** R-1 (Single Family Residential) and T-C (Timber Conservation)
4. **Plan Designation:** Suburban Residential and Forest Land
5. **Surrounding Land Use:** The subject property is located in an area of scattered rural residential home sites, bordered on the east by industrial forest lands.
6. **Topography & Vegetation:** The subject property is sloping and wooded, with typical coastal forest vegetation.
7. **Existing Structures:** A single-family residence is located on the property.

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

- a. Sewer: On-site
- b. Water: Lincoln City.
- c. Electricity: PP&L.

9. **Development Constraints:** None identified.

B. EVALUATION OF THE REQUEST:

1. Background:

Caroline Stevens filed a land use regulation compensation claim pursuant to Ballot Measure 37 on March 29, 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 Stevens property is located off of East Devils Lake Road at 5616 NE Stevens Road. The current zoning of the property is R-1, Single Family Residential, and T-C, Timber Conservation. The claimant asserts a diminution in the value of the property resulting from the current minimum lot size restrictions of the R-1 and T-C zones applied after her date of acquisition. The claimant states that her desired remedy to the claim is the removal or modification of these lot size and dwelling restrictions in a manner that will permit the division of the subject property into three home sites.

Claimant has documented an acquisition date of March 2, 1972. At that time, the property was zoned Single Family Residential (R-1) pursuant to Lincoln County Ordinance #1.

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 claimant 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 acquired her original interest in the subject property on March 2, 1972, via Bargain and Sale Deed, recorded at Book 31, page 1725 of the Lincoln County Deed Records. Records of the Lincoln County Assessor's office confirm that Caroline Stevens remains the owner 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 regulations applicable to the subject property are the R-1 zone (LCC 1.1310) and the T-C zone (LCC 1.1375). 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 prohibit any further land divisions and place 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 and T-C zone limit land divisions to parcels of five acres or more and also limit uses. Claimant asserts that these restrictions reduce fair market value of the property by \$256,000. Supporting market value data in the form of an appraisal has been provided for the claim. The appraisal concludes that there has been 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 requirements of the R-1 and T-C zones. 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 does it have any federal nexus.

The current R-1 zone lot size restriction applicable to the subject property was enacted by Lincoln County in 1983 (Ordinance #168); the current T-C zone restrictions were enacted in 1994 (Ordinance #347). The claimant has documented that her original interest in the property was acquired in March of 1972, 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 March 29, 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 claimant has documented a date of acquisition of 1972. For purposes of Section 8 of Measure 37, March 2, 1972 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 applicable to subject property was enacted by Lincoln County in 1983; the T-C zone restrictions were enacted in 1994.

C. Recommended Findings and Conclusions:

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

Findings:

1. Caroline Stevens filed a Land Use Regulation Compensation claim with the Lincoln County Department of Planning Development on March 29, 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 201 on Lincoln County assessor's map 07-11-12-B, which is taxed as real property by Lincoln County.
4. The R-1 zone (LCC 1.1310) and T-C zone (LCC 1.1375) provisions applicable to the subject property are land use regulations enacted and enforced by Lincoln County, a public entity.
5. The R-1 and T-C zones, as applied to the subject property, prohibit further land divisions and the placement of additional dwellings.
6. The claimant has asserted a diminution in value of \$256,000 caused by the R-1 and T-C zone restrictions, which has been documented through an appraisal performed by an Oregon certified appraiser.
7. According to the Lincoln County deed records, claimant Caroline Stevens first acquired an ownership interest in the subject property on March 2, 1972 and remains the current owner of the property. The currently effective R-1 zone restrictions were enacted by Lincoln County in 1983; the currently effective T-C zone restrictions were enacted in 1994 (Ordinance # 347), after the claimant's date of acquisition.
8. The R-1 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.
9. The subject claim was filed on March 29, 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 owner, Caroline Stevens, pursuant to Subsection (5) of Ballot Measure 37.
2. Based on the claimant's date of acquisition of March 2, 1972, the R-1 zone (LCC 1.1310) and T-C zone (LCC 1.1375) 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 claimant; 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 owner of the property, Caroline Stevens, is 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 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 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 her 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, and the minimum parcel size and dwelling placement restrictions of T-C zone not be applied to the subject property. This would allow the claimant to divide the subject property into three residential parcels as was permitted at the time of the claimant's acquisition of the subject property in 1972. This allowance would, in accordance with the requirements of Subsection (8) of Ballot Measure 37, allow the owner 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 R-1 and T-C zones to allow the creation of three residential parcels is the claimant's desired resolution.
3. The division of the subject property in the manner requested by claimant would result in additional residential development that is not inconsistent 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, and the T-C zone minimum lot size and dwelling placement 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 identified land use restrictions to the subject property, subject to applicable public health and safety regulations.

Respectfully submitted,

Matt Spangler
Director