

BEFORE THE BOARD OF COMMISSIONERS OF DOUGLAS COUNTY

AN ORDINANCE CONCERNING)	
REAL PROPERTY COMPENSATION;)	Ordinance No. 2004-12-01
ADOPTING PROCEDURES FOR)	
PROCESSING CLAIMS; DECLARING)	First Reading: December 1, 2004
AN EMERGENCY; AND PROVIDING)	Second Reading: December 1, 2004
AN IMMEDIATE EFFECTIVE DATE.)	Effective Date: December 1, 2004

THE BOARD OF COUNTY COMMISSIONERS OF DOUGLAS COUNTY
ORDAINS AS FOLLOWS:

SECTION ONE: In order to implement Ballot Measure 37, Douglas County hereby enacts a new Chapter 10 to its Land Use and Development Ordinance, as follows:

10.010 Purpose. This chapter shall be referred to as the “Real Property Compensation Ordinance” and is intended to implement the provisions added to chapter 197 of Oregon Revised Statutes by Ballot Measure 37 (November 2, 2004). These provisions establish a prompt, open, thorough and consistent process that enables property owners an adequate and fair opportunity to present their claims to the County; preserves and protects limited public funds; and establishes a record of the County’s decision capable of circuit court review.

10.020 Definitions. As used in this ordinance, the following words and phrases have the following meaning:

1. “Planning Director” means the Douglas County Planning Director or his or her designee.
2. “Claim” means a claim filed under Ballot Measure 37. A decision by the County made under Ballot Measure 37 shall not be considered a “land use decision” as that term is defined in ORS 197.015(10).
3. “Claimant” means an owner who submits a claim to the County.
4. “County” means Douglas County.
5. “Exempt land use regulation” means a land use regulation that:
 - (a) Restricts or prohibits activities commonly and historically recognized as public nuisances under common law;
 - (b) Restricts or prohibits 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) Is required in order to comply with federal law;

(d) Restricts or prohibits the use of property for the purpose of selling pornography or performing nude dancing; or

(e) Was enacted prior to the date of acquisition of the property by the owner or a family member of the owner who owned the subject property prior to acquisition or inheritance by the owner, whichever occurred first.

6. "Family member" includes the wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent, stepchild, grandparent, or grandchild of the owner of the property, an estate of any of the foregoing family members, or a legal entity owned by any one or combination of these family members or the owner of the property.

7. "Land use regulation" includes:

(a) Any statute regulating the use of land or any interest therein;

(b) Administrative rules and goals of the Land Conservation and Development Commission;

(c) Local government comprehensive plans, zoning ordinances, land division ordinances, and transportation ordinances;

(d) Metropolitan service district regional framework plans, functional plans, planning goals and objectives; and

(e) Statutes and administrative rules regulating farming and forest practices.

8. "Owner" means the present owner of the property or any interest therein.

9. "Valid claim" means a claim submitted by the owner of real property that is subject to a land use regulation(s) adopted or enforced by the County that restricts the use of the private real property in a manner that reduces the fair market value of the real property that was enacted after the date of acquisition of the property.

10.030 Claim Filing Procedures.

(1) A person seeking to file a claim under this ordinance must be the present owner of the property that is the subject of the claim at the time the claim is submitted. The claim shall be filed with the Planning Director.

(2) A claim shall include:

(a) The name, address and telephone number of all owners, and anyone with any interest in the property, including lien holders, trustees, renters, lessees, and a description of the ownership interest of each;

(b) The address, tax lot, and legal description of the real property that is the subject of the claim and the date the property was acquired;

(c) The current land use regulation(s) that allegedly restricts the use of the real property and allegedly causes a reduction in the fair market value of the subject property;

(d) The amount of the claim, based on the alleged reduction in value of the real property supported by an appraisal by an appraiser licensed by the Appraiser Certification and Licensure Board of the State of Oregon. However, the Planning Director may waive the requirement of an appraisal if alternative information is provided by the claimant that is trustworthy and documents the reduction in value of the real property; and

(e) Copies of any leases or covenants, conditions and restrictions applicable to the real property, if any, that impose restrictions on the use of the property.

(3) The following criteria apply to claims:

(a) The land use regulation(s) for which a claim is submitted must have been enacted or enforced by the County after the date of acquisition of the property by the owner or a family member of the owner who owned the subject property prior to acquisition or inheritance by the owner, whichever occurred first;

(b) The claimant must document that there has been a reduction in the value of the property;

(c) The claimant must request compensation from the County; and

(d) The claimant must show that the regulation(s) for which a claim is submitted was enacted or enforced by the County after the date of acquisition of the property by the owner or a family member of the owner who owned the subject property prior to acquisition or inheritance by the owner, whichever occurred first, and restricts the use of the property with the resulting effect of reducing the value of the property.

(4) If the County elects to compensate the property owner for a valid claim, then the current land use regulation(s) for which compensation has been paid will fully apply to the owner's property.

(5) Notwithstanding a claimant's failure to provide all of the information required by subsections (2) and (3) of this section, the County may review and act on a claim.

10.040 County Planning Director Investigation and Action.

(1) Following an investigation of a claim, the Planning Director shall act on the claim. The Director may:

- (a) Deny the claim;
- (b) Investigate further;
- (c) Declare the claim valid and waive or modify the land use regulation(s) at issue; or
- (d) Declare the claim valid and recommend to the Board of Commissioners that the claimant be compensated.

(2) If the Planning Director's action is that a claim be denied or the land use regulation(s) be waived or modified and no Commissioner informs the Planning Director within 10 days of notice as provided in 10.060(1)(a) that the Commissioner disagrees, then the Planning Director's action shall become final.

~~10.050 Notice. For claims other than those denied by the Planning Director, the Planning Director shall provide notice to the claimant and to owners of property within 750 feet of the perimeter of the subject property at least 14 days in advance of a decision.~~

10.060 Board Review.

(1) Prior to the expiration of 180 days from the date the claim was filed, the Board:

- (a) Shall be provided notice of the Planning Director's decision to deny the claim or waive or modify the land use regulation(s) within five days of the decision; and
- (b) May on its own motion passed within ten days of the notice given pursuant to subsection (a), above, review the decision of the Planning Director. If the Board does not do so, then the Board shall be deemed to have ratified the Planning Director's decision.

(2) Claims reviewed by the Board shall be reviewed in a public hearing.

(3) For claims reviewed by the Board, the Board shall adopt a resolution with findings that supports a determination that the claim is valid or invalid and shall direct that the claimant be compensated in an amount set forth in the resolution for the

reduction in value of the property; or that the challenged land use regulation(s) be modified or not be applied to the property; or deny an application as invalid.

10.070 Fees.

(1) The Board will, by resolution, adopt a fee schedule which may be amended from time to time by further resolution.

(2) Any claimant may conduct his or her own research and provide all necessary information on all relevant land use laws applicable to the property when the ownership was acquired. If a claimant would like to hire the County to research and review the land use regulation archive related to claims submitted to the County, the claimant may do so and, in that event, the claimant will need to pay the County the established research fee.

~~10.080 Mitigation Standards. The Planning Director or Board, as appropriate, may impose impact mitigation siting standards on decisions to waive or modify applicable land use regulations, providing the standards do not restrict the use of the property subject to the claim. Impact mitigation siting standards may be used to minimize impacts of waivers or modifications of land use regulations and may include the following:~~

- ~~(1) Yards, spaces, fences and walls;~~
- ~~(2) Parking and/or loading areas;~~
- ~~(3) Vehicular access points, ingress and egress and improvements;~~
- ~~(4) Special provisions for signs;~~
- ~~(5) Landscaping;~~
- ~~(6) Resource management covenants and waivers of objection;~~
- ~~(7) Siting and/or physical orientation of proposed structures; and~~
- ~~(8) Natural hazards protections.~~

10.090 State Claims. Claims for compensation based solely upon laws administered by the state should be filed with the State of Oregon. Douglas County may forward such claims to the State of Oregon and advise the claimant of the need to file a claim with the State of Oregon.

