

1 **BEFORE THE BOARD OF COMMISSIONERS**

2 **FOR LINCOLN COUNTY, OREGON**

3 ORDINANCE # 405

4 _____
5
6 **Relating to Measure 7; creating new provisions; and declaring an emergency.**
7 _____

8 The Lincoln County Board of Commissioners ordains as follows:

9 **SECTION 1.**

10 Sections 2 through 8 of this Ordinance are added to and made a part of LCC chapter 7,
11 as indicated.

12 **SECTION 2.**

13 **7.205 Definitions for LCC 7.205 to 7.240**

14 **(1) As used in LCC 7.205 to 7.240:**

15 **(a) "Hearings officer" means the person designated by the Board of**
16 **Commissioners to conduct a hearing pursuant to LCC 7.230.**

17 **(b) "Measure 7" means Article I, Section 18(a) to (f), of the Oregon**
18 **Constitution, adopted November 7, 2000, and effective December 7, 2000.**

19 **(2) Other words or phrases used in LCC 7.205 to 7.240 shall have the same**
20 **meaning as those words or phrases have under Measure 7, as determined by law or**
21 **courts of competent jurisdiction, and shall not have any different interpretation under**
22 **LCC 7.205 to 7.240.**

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1 SECTION 3.

2 **7.210 Purpose and Effect of LCC 7.205 to 7.240**

3 (1) **The purpose of LCC 7.205 to 7.240 is to provide procedures for the**
4 **processing of claims against Lincoln County under Measure 7.**

5 (2) **Notwithstanding any other term to the contrary, LCC 7.205 to 7.240 shall**
6 **not in any way expand or create new rights or remedies available to property owners**
7 **under Measure 7 or any other law.**

8 (3) **This section does not amend, repeal or implement any changes to state laws,**
9 **regulations, or rules, or the Lincoln County Code, including but not limited to LCC**
10 **Chapters 1, 2, 3, 6, and 10, except to the extent authorized by operation of Measure 7.**

11 SECTION 4.

12 **7.215 Claims Application Procedure**

13 (1) **Any person desiring to make a claim against Lincoln County under Measure**
14 **7 shall submit the claim to the office of the Board of Commissioners within the time**
15 **limit provided by any applicable statute of limitation.**

16 (2) **The claim shall be on forms provided by the County and shall include true**
17 **and accurate accompanying information and documentation as necessary to establish**
18 **the validity and value of the claim including, but not necessarily limited to, the**
19 **information described in this section. Any claim submitted shall include, but shall**
20 **separately state, all claims which have arisen and which exist and are outstanding with**
21 **respect to the subject property on the date the claim is tendered to the County, and**

1 shall specifically identify each and every regulation, as that term is defined in Measure
2 7, which the property owner alleges restricts the use of the subject property. If
3 multiple properties are involved, an individual claim form for each property must be
4 submitted. The forms shall require, but are not limited to, the following information:

5 (a) The identity of the owner of fee title to the subject property, and any parties
6 having a security interest in the property, and the date on which the owner and those
7 parties acquired their interests in the subject property;

8 (b) The specific regulation or regulations that the claimant alleges reduces the
9 fair market value of the subject property;

10 (c) An identification of whether the regulation or regulations on which the claim
11 is based arise from the adoption, first enforcement or application of the regulation or
12 regulations.

13 (d) An identification of the date on which the claim is alleged to have arisen.

14 (e) A description of the manner and extent to which the regulation or
15 regulations restrict use of the subject property;

16 (f) A description of the manner and extent to which the regulation or
17 regulations reduce the fair market value of the subject property;

18 (g) Identification of any previous applications, permits, or enforcement actions
19 involving the subject property, including whether or not the owner has contested the
20 validity, application, or manner in which the regulation or regulations have been
21 imposed, interpreted, or enforced;

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1 **(h) A statement addressing whether or not the claimant believes the regulation**
2 **or regulations are exempt from compensation under historically and commonly**
3 **recognized nuisance laws, or implement minimum federal law requirements, or are**
4 **prohibited uses under the terms of Measure 7; and**

5 **(i) The amount claimed as compensation under Measure 7.**

6 **(3) The following additional information and materials must be submitted with**
7 **each claim:**

8 **(a) The tax lot and Assessor's map numbers, street address if available, and a**
9 **legal description in compliance with the provisions of ORS 93.600, sufficient to identify**
10 **and locate the subject property;**

11 **(b) A preliminary title report prepared by a title insurance company licensed**
12 **and authorized to do business in the State of Oregon, showing when the claimant**
13 **acquired its interest in the subject property, and identifying all other security interests**
14 **in the subject property. The report shall have been issued no more than 30 days prior**
15 **to filing the claim with the County; and**

16 **(c) A real property appraisal prepared by an appraiser certified or licensed to**
17 **do appraisals in the State of Oregon stating the appraiser's opinion of the fair market**
18 **value of the subject property before and after the application of the regulation or**
19 **regulations asserted to reduce the fair market value and considering those additional**
20 **factors identified in Measure 7. Included in that opinion must be a description of the**
21 **methodology by which the values were determined, showing and disclosing that in**

1 arriving at such values the appraiser recognized lawful principles of property
2 valuation. The appraisal shall separately identify any net costs to the claimant of any
3 affirmative obligations imposed on the owner that are alleged to be compensable under
4 Measure 7, including itemized estimates or proof of the costs. The appraisal opinion
5 shall, to the extent possible, apportion value reduction among each regulation claimed
6 to reduce value.

7 (4) Each claim shall be signed by all owners of the subject property, as
8 claimants, or shall be signed by at least one of the property owners and accompanied
9 by the written consent of all other owners to the submission of the claim. The claim
10 shall be verified under penalty of perjury that the information contained in the notice
11 of claim and supporting materials is true and correct.

12 **SECTION 5.**

13 **7.220 Completed Application**

14 (1) No application shall be deemed filed with the County unless all information
15 required in LCC 7.215, together with any fees set by the Board of Commissioners, are
16 provided to the County. Within seven working days of receipt of an application, the
17 County shall review the submitted materials and either:

18 (a) Deem the application complete and filed; or

19 (b) Inform the applicant by certified letter of additional information needed to
20 complete the filing.

1 (2) If the applicant files the additional necessary information within 10 working
2 days of the date the certified letter is mailed, the application shall be deemed filed on
3 the original date of filing. In all other cases, the application shall not be considered
4 filed until the County receives all the information.

5 (3) The County may also, at its discretion, obtain its own appraisal or assemble
6 other information with which to review the claim. Any appraisal information shall be
7 provided to the applicant at least 10 working days before the hearing conducted under
8 LCC 7.230.

9 SECTION 6.

10 **7.230 Application Review and Hearing**

11 (1) The Board of Commissioners shall designate one or more persons to serve as
12 hearings officers to review Measure 7 claim applications, and make recommendations
13 to the Board as to whether or not to accept claims in whole or part or deny claims.

14 (2) Prior to making a recommendation on a particular claim, a hearings officer
15 shall conduct a public hearing on the application, after notice to the claimant and to
16 the media. The applicant shall have the opportunity to present oral arguments on the
17 application materials submitted in support of the claim, and to rebut any appraisal
18 information prepared by or for the County.

19 (3) A hearing conducted under this section shall be informal. All witnesses at
20 the hearing shall be placed under oath. The rules of evidence shall not apply, but the
21 hearings officer shall consider the reliability and creditability of evidence, as the

1 hearings officer deems appropriate. The hearings officer may establish other
2 reasonable hearing procedures.

3 (4) Other interested parties, at the discretion of the hearings officer, may be
4 given an opportunity to be heard.

5 (5) The applicant shall be given an opportunity to rebut any appraisal provided
6 by the County, and any information opposing the application provided by other
7 interested parties.

8 (6) The burden of proving the claim, and the inapplicability of any exceptions to
9 the claim, shall lie with the applicant.

10 (7) The applicant may request admission of new evidence. Admission of new
11 evidence is at the sole discretion of the hearings officer. Admission will be allowed only
12 if the applicant agrees to extend the time for considering the material and extend the
13 application of the 90-day requirement under Measure 7 until the Board of
14 Commissioners renders its decision.

15 (8) Other continuances may be granted by the hearings officer for good cause,
16 but only if the applicant agrees to extend the application of the 90-day requirement
17 under Measure 7 until the Board of Commissioners renders its decision.

18 (9) The hearings officer shall prepare written findings, conclusions, and a
19 recommendation to the Board of Commissioners. If the recommendation is to accept
20 the claim in whole or in part, the person conducting the hearing shall also recommend
21 what remedy should be provided in accordance with Measure 7.

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1 **SECTION 7.**

2 **7.235 Determination by Board of Commissioners**

3 **(1) The Board of Commissioners shall consider the recommendations of a**
4 **hearings officer at any regular or special meeting. In exercising its discretionary**
5 **review of the application, the Board shall consider:**

6 **(a) The provisions of Measure 7, including, but not limited to, the validity of the**
7 **claim and the applicability of any exceptions;**

8 **(b) The availability of public funds to pay for any claim found to be**
9 **compensible, in light of competing public funding priorities and interests;**

10 **(c) The impact of releasing application of any regulations pursuant to Measure**
11 **7; and**

12 **(d) Such other factors in the public interest as determined by the Board of**
13 **Commissioners.**

14 **(2) Based on its review, the Board will make a determination to accept or reject**
15 **all or part of a claim. If a claim is accepted in whole or in part, the Board will**
16 **determine the amount of compensation to be paid in accordance with law, or will**
17 **release application of the regulation or regulations to that property owner which the**
18 **Board determines have restricted the use of the property and reduced the value of the**
19 **property on which the restriction is imposed. The Board's decision may include any**
20 **other remedy or conditions allowable under law and its authority over matters of**
21 **county concern. A written decision memorializing the Board's determinations shall be**

1 provided to the applicant. Review of any Board decision shall be solely by writ of
2 review pursuant to ORS Chapter 34.

3 **SECTION 8.**

4 **7.240 Impact of Judicial and Legislative Actions**

5 (1) Measure 7 will likely be the subject of court challenges and legislative
6 review. If any regulation or regulations are released from application to a property
7 owner under LCC 7.205 to 7.240 and a final court judgment, after all appeals are
8 exhausted, invalidates all of Measure 7, then the release from the regulation shall be
9 automatically invalidated and deemed ineffective as of the date of the final Board
10 decision, without the necessity of any further Board action. The Board may, in its
11 discretion, also seek return of any compensation paid to a property owner.

12 (2) If a final court judgment, after all appeals are exhausted, interprets Measure
13 7, or if any new law is enacted by the legislature which implements or affects Measure
14 7, in a manner which calls into question, in the opinion of the Board, the continuing
15 validity of a compensation claim paid or a regulation or regulations released from
16 application to a property owner, the Board at its discretion, may serve notice on the
17 property owner of its intent to seek return of monies paid, or to review the release of
18 application of the restriction. In doing so, the Board will refer the matter back for
19 rehearing under LCC 7.230 for application of the new court decision or state law.
20 Upon receipt of a recommendation, the Board may uphold the original claim, modify

1 or reverse its previous decision, or order such other remedies as it deems appropriate
2 under law.

3 **SECTION 9. – Severability Clause**

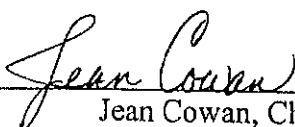
4 If any phrase, clause, or part of this Ordinance is found to be invalid by a court of
5 competent jurisdiction, the remaining phrases, clauses and parts shall remain in full force and
6 effect.

7 **SECTION 10. – Emergency Clause**

8 This Ordinance being necessary for the immediate preservation of the public peace,
9 health and safety, an emergency is declared to exist and this Ordinance shall take effect upon
10 its passage.

DATED this 6th day of December, 2000.

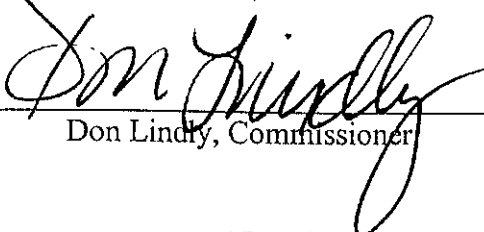
LINCOLN COUNTY BOARD OF COMMISSIONERS



Jean Cowan, Chair

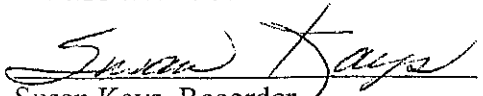


Karen L. Gerttula, Commissioner



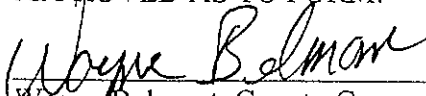
Don Lindy, Commissioner

ATTESTED TO:



Susan Kays, Recorder

APPROVED AS TO FORM:



Wayne Belmont, County Counsel

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