

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

ORDINANCE NO. 952

Amends MCC Chapter 27, Environment and Property, to add provisions relating to Real Property Compensation Law, and Declaring an Emergency

The Multnomah County Board of Commissioners Finds:

a. This ordinance is adopted to comply with the results of the statewide vote on November 7, 2000, that approved an amendment to the State of Oregon constitution on the subject of compensation for individual landowners when regulation reduces the value of their land. The amendment was placed on the ballot through the initiative process and is designated as Ballot Measure 7.

b. Measure 7 amends the Oregon Constitution by adding subsections (a) through (f) to Section 18 of Article I. The text of Measure 7 (slightly reformatted for clarity) is:

THE CONSTITUTION OF THE STATE OF OREGON IS AMENDED BY
ADDING THE FOLLOWING SUBSECTIONS TO SECTION 18 OF
ARTICLE I:

(a) If the state, a political subdivision of the state, or a local government passes or enforces a regulation that restricts the use of private real property, and the restriction has the effect of reducing the value of a property upon which the restriction is imposed; the property owner shall be paid just compensation equal to the reduction in the fair market value of the property.

(b) For purposes of this section, adoption or enforcement of historically and commonly recognized nuisance laws shall not be deemed to have caused a reduction in the value of a property. The phrase "historically and commonly recognized nuisance laws" shall be narrowly construed in favor of a finding that just compensation is required under this section.

(c) A regulating entity may impose, to the minimum extent required, a regulation to implement a requirement of federal law without payment of compensation under this section. Nothing in this 2000 Amendment shall require compensation due to a government regulation prohibiting the use of a property for the purpose of selling pornography, performing nude dancing, selling alcoholic beverages or other controlled substances, or operating a casino or gaming parlor.

(d) Compensation shall be due the property owner if the regulation was adopted, first enforced or applied after the current owner of the property became the owner, and continues to apply to the property 90 days after the owner applies for compensation under this section.

(e) Definitions: For purposes of this section,
"regulation" shall include any law, rule, ordinance, resolution, goal, or other enforceable enactment of government;
"real property" shall include any structure built or sited on the property, aggregate and other removable minerals, and any forest product or other crop grown on the property;
"reduction in the fair market value" shall mean the difference in the fair market value of the property before and after application of the regulation, and shall include the net cost to the landowner of an affirmative obligation to protect, provide, or preserve wildlife habitat, natural areas, wetlands, ecosystems, scenery, open space, historical, archaeological or cultural resources, or low income housing; and
"just compensation" shall include, if a claim for compensation is denied or not fully paid within 90 days of filing, reasonable attorney fees and expenses necessary to collect the compensation.

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

c. Measures approved by voters at the general election are effective the 30th day after election, unless otherwise specified for later implementation (OR CONST. ART. IV). The effective date of Measure 7 is December 7, 2000.

d. The general welfare of the people of Multnomah County is promoted by having this ordinance effective December 7, 2000, when Measure 7 is effective.

e. The meaning of the various provisions in the measure is not clear by the language used, and the only legislative history which can be used to discern the intent of vague and undefined terms found in the voter pamphlet statements that include conflicting statements. This ordinance is necessary to adjudicate claims made to the County.

f. 55% of the voters in Multnomah County voted against the measure.

g. Multnomah County intends to protect and preserve the quality of life and social benefits that accrue to both rural and urban citizens by continued implementation of the existing regulatory framework in conjunction with implementation of Measure 7.

h. This ordinance defines the terms of Measure 7 to further the public interest by restricting the number and value of claims for compensation that may be made, consistent with the apparent intent of Measure 7.

Multnomah County Ordains as follows:

Section 1. The following provisions are added to MCC Chapter 27, Environment and Property:

REAL PROPERTY COMPENSATION LAW

27.500 PURPOSE.

This subchapter is the Real Property Compensation Law. It implements the provisions added to Oregon Constitution Article I, section 18 by Measure 7 (November 7, 2000). The measure permits owners of private real property to apply for compensation for the reduction of property value resulting from a regulation that *restricts the use* of that property. The subchapter provides a prompt, open and thorough process that enables property owners to present their legitimate claims consistent with the Oregon Constitution.

27.501 DEFINITIONS.

For the purposes of this subchapter, the following definitions, and those of MCC 1.002 and MCC 33.005 apply unless the context requires a different meaning. The definitions in this subchapter prevail over any conflicting definitions in Chapters 1 or 33.

ADOPTED. The date a regulation is enacted or passed by the Board.

APPLIED. The date the zoning map became effective against a specific real property.

APPRAISAL. An *appraisal* by an appraiser licensed or certified by the Appraiser Certification and Licensure Board of the State of Oregon or an appraiser registered under state law.

EXEMPT REGULATION. A regulation that:

- (1) is a historically and commonly recognized nuisance law (Ore Const, Art I, sec 18(b));
- (2) implements a requirement of federal law, including but not limited to the Endangered Species Act, Clean Water Act, Telecommunications Act, Columbia River Gorge National Scenic Area Act, Clean Air Act, Wild and Scenic Waterways Act, National Environmental Policy Act, Comprehensive

- Environmental Response, Compensation and Liability Act, Resource Conservation and Recovery Act, and Surface Mining Control and Reclamation Act to the minimum extent required; or
- (3) prohibits selling pornography, performing nude dancing, selling alcoholic beverages or other controlled substances, or operating a casino or gaming parlor (Ore Const, Art I, sec 18(c)).

FIRST ENFORCED. The date a regulation becomes effective against a specific real property.

PASSES. The date a regulation is adopted by the Board of County Commissioners.

PROPERTY OWNERS. The owners of record or contract purchasers identified in a preliminary title report.

REGULATION. A county ordinance, resolution or other enforceable legislative enactment.

RESTRICTS THE USE. A regulation that restricts the type of use of private real property, but does not include a regulation that affects either the extent or location of a use, a land division, subdivision, or a regulation that governs development standards or construction.

27.502 INITIATION OF CLAIM.

Owners of record before the regulation was *adopted* or *first enforced* or *applied* may initiate applications for compensation for reduction in real property value due to a county regulation.

27.503 CODE COMPLIANCE AND APPLICATIONS.

The county will not approve any application for compensation for any property that is not in full compliance with all applicable provisions of the Multnomah County Land Use Code, Zoning Code, Land Division Code, Building and Specialty Codes and any permit approvals previously issued for that property by the county.

27.504 APPLICATION REQUIREMENTS.

All claims applications must be submitted at the Land Use Planning Division office on the most current form provided by the county, along with the appropriate fee and all necessary supporting documentation and information, sufficient to demonstrate compliance with all applicable approval criteria. The applicant has the burden of demonstrating, with substantial evidence, that all applicable approval criteria are, or can be met.

27.505 APPLICATION INFORMATION.

The applicant is responsible for the completeness and accuracy of the application and all of the supporting documentation. Unless specifically waived by the Planning Director, the following must be submitted:

(A) One copy of a completed county application form that includes the following information:

(1) An accurate legal description, tax account number(s), map and property address of all private real properties that are the subject of the application.

(2) Name, address, telephone number and authorization signature of all property owners.

(B) A current (within 30 days prior to application) preliminary title report for the subject property that includes title history, date applicant acquired ownership of the property, and any co-owners or security interests in the property.

(C) Identification of the *regulation* alleged that it *restricts the use* of the subject private real property, including when the *regulation* was *adopted*, *first enforced* or *applied*. Identification of the *regulation* applicable to the property immediately before the *regulation* that allegedly *restricts the use* of the property.

(D) The alleged effect of regulation that *restricts the use* on the property, including copies of appraisals by Appraisers showing the alleged reduction in fair market value of the property by showing the difference in the fair market value of the property within six months before and six months after the regulation is *adopted* or *first enforced* or *applied*. If the claimed reduction in fair market value is based on an alleged net cost to the property owner of an affirmative obligation to protect, provide or preserve wildlife habitat, natural areas, wetlands, ecosystems, scenery, open space, historical, archaeological or cultural resources or low income housing, the Appraisal must establish that net cost. If the claim is for more than \$10,000, two Appraisals must be submitted.

(E) A statement by the applicant of why the *regulation* alleged to *restrict the use* of the property is not an *exempt regulation*.

(F) A statement of the effect that a release of the *regulation* alleged to *restrict the use* of the property would have on the fair market value of the property, and the development potential for the property if it were not subject to that *regulation*.

(G) A statement of the relief sought by the applicant.

(H) All required application fees and any additional costs as set by Board resolution.

(I) Statement addressing the criteria in MCC 27.511.

27.506 COMPLETENESS REVIEW AND 90-DAY RULE.

(A) Upon submission of a compensation claim, the Planning Director will date stamp the application form and verify that the appropriate application fee has been submitted. The Planning Director will then review the application.

(B) The county will take action on the application within 90 days as required by Article I, section 18(d) of the Oregon Constitution unless the applicant waives or extends the 90-day period. The 90-day period does not apply when the applicant requests a hearing continuance or other process delay. Such requests by the applicant will be deemed an extension or waiver of the 90-day period.

27.507 HEARINGS NOTICE.

Notice for all public hearings for compensation claim applications must conform to the requirements of this section. At least 20 days prior to the hearing, the county will send by first class mail, notice of the hearing to all owners of record of property within 750 feet of the subject property. Notice will also be sent to any county-recognized neighborhood association or identified agency whose territory includes the subject property. The county may also publish the notice in a newspaper of general circulation within the county at least 20 days prior to the hearing. Notice of the hearing will include the following information:

- (A) The time, date and location of the public hearing;
- (B) Property address or other easily understood location of the subject property and county assigned case file number;
- (C) A description of the applicant's claim, along with a list of the approval criteria that the county will use to evaluate the claim;
- (D) A statement that any interested party may testify at the hearing or submit written comments on the claim or prior to the hearing, and that a staff report will be prepared and made available to the public at least seven days prior to the hearing;
- (E) A statement that any issue that is intended to provide a basis for an appeal must be raised before the close of the public record. Issues must be raised and accompanied by statements or evidence sufficient to afford the county and all parties an opportunity to respond to the issue;
- (F) A statement that the application and all supporting materials and evidence submitted in support of the application may be inspected at no charge, and that copies may be obtained at cost, at the county Land Use Planning Division during normal business hours; and
- (G) The name and telephone number of the planning staff person responsible for the application and who is otherwise available to answer questions about the application.

27.508 POSTING NOTICE REQUIREMENTS.

The requirements of this section may apply to compensation claims hearings at the discretion of the Planning Director.

- (A) The county will supply all of the notices that the applicant must post on the subject property, and will specify the dates the notices must be posted.
- (B) The applicant must place the notice along the frontage of the subject property. If a property's frontage exceeds 300 feet, the applicant must post one copy of the notice for each 300 feet or fraction thereof, not to exceed four signs. Notices must be posted within 10 feet of the right of way and must be clearly visible to pedestrians and motorists. To the extent practicable, all signs must be equally spaced. Notices must not be posted within the public right of way or on trees. The applicant must remove all signs within 10 days following the public hearing announced in the notice.

27.510 HEARINGS PROCESS.

All public hearings on compensation claims applications will be quasi-judicial. The hearings will be held by the Board of County Commissioners and comply with the procedures of this section.

(A) Once the Planning Director determines that an application for a compensation claim is complete, the Land Use Planning Division will schedule a hearing.

(B) Notice of the hearing will be issued in accordance with MCC 27.507.

(C) The property subject to the compensation claim application will be posted in accordance with MCC 27.508.

(D) The Planning Director will prepare a staff report on the application that describes the application and the applicant's claim, summarizes all relevant county department, agency and public comments, describes all other pertinent facts, and recommends whether the claim should be approved or denied. The Planning Director may retain the services of an Appraiser to appraise the property and the application claim to determine if the identified regulation reduced the fair market value of the property. The applicant must pay the cost of this *appraisal*.

(E) At the beginning of the initial public hearing authorized under these procedures, a statement will be announced that:

(1) Lists the applicable criteria;

(2) The hearing will proceed in the following general order: staff report, applicant's presentation, testimony in favor of the application, testimony in opposition to the application, rebuttal, record closes, deliberation and decision;

(3) All testimony and evidence submitted, orally or in writing, must be directed toward the applicable approval criteria. If any person believes that other criteria apply in addition to those addressed in the staff report, those criteria must be listed and discussed on the record. The Board may reasonably limit oral presentations in length or content depending upon time constraints. Any party may submit written materials of any length while the public record is open;

(4) Any party wishing a continuance or to keep open the record must make that request while the record is still open;

(5) The Board must disclose any ex parte contacts, conflicts of interest or bias before the beginning of each hearing item and provide an opportunity for challenge. Advised parties must raise challenges to the procedures of the hearing at the hearing and raise any issue relative to ex parte contacts, conflicts of interest or bias, prior to the start of the hearing.

(F) The Board may continue the hearing from time to time to allow submission of additional information or for deliberation without additional information. New notice of a continued hearing need not be given so long as the Board establishes a time certain and location for the continued hearing. The Board may close the hearing but keep open the record for the submission of additional written material or other documents and exhibits. The Board may limit the factual and legal issues that may be addressed in any continued hearing or open-record period.

(G) After the record is closed, the Board will make a decision that:

(1) Approves the claim to pay just compensation due to the property owner for reduction in the fair market value of the property from the time the regulation was *adopted* or *first enforced* or *applied* conditioned upon granting of a conservation easement or other interest in the property; or

(2) Denies the claim for compensation and releases the application of the regulation to the subject real property for two years from the final County decision or until Measure 7 is no longer valid, whichever is earlier in time. Any use established during the two-year release will be a nonconforming use at the expiration of the two-year period. The release of the regulation is a land use decision that may be appealed to the Land Use Board of Appeals; or

(3) Denies the claim based on failure to meet the required criteria. The denial of a claim is not a land use decision. The denial of the claim may be appealed to the Circuit Court.

27.511 CRITERIA AND EVIDENCE.

For a compensation claim to be approved, the applicant has the burden of establishing by clear and convincing evidence that the following findings can be made:

- (A) That the current owner has owned the property continuously since the *regulation* was *adopted* or *first enforced* or *applied* and the *regulation* will otherwise apply to the property for at least 90 days from the date of the application; and
- (B) That the *regulation* alleged to *restrict the use* of the property is not an *exempt regulation*; and
- (C) That the land use was permitted outright, or a primary use or an allowed use under applicable regulations at the time the current owner acquired the property; and
- (D) The land use has been denied or that there is other evidence that a specific land use is not permitted outright, or a primary use or an allowed use under current zoning; and
- (E) That the release of the *regulation* alleged to *restrict the use* of the property would have an effect on the fair market value of the property based on the development potential of the property if it were not subject to the *regulation*; and
- (F) The *regulation* has reduced the fair market value of the property in a sum certain when: (1) it was *adopted* or (2) *first enforced* or (3) *applied*.

27.515 NO REAPPLICATION.

If an application is denied or withdrawn following the close of the public hearing, no reapplication for the same or substantially similar compensation claim may be made by the current owner of the subject property.

27.520 NOTICE OF DECISION.

(A) The county will send notice by first class mail of all decisions made under this subchapter. Notice will be mailed to all parties within 750 feet of the subject property, to those who submitted written comment, and those that requested the decision in writing or provided

oral testimony at the hearing on the matter. The notice of decision must include the following information:

- (1) The file number and effective date of decision;
- (2) The name of the applicant;
- (3) The property address or other easily understood location of the subject property;
- (4) A brief summary of the decision, and if an approval, a description of the claim approved;
- (5) A statement that the decision is final unless appealed to the Circuit Court, and a description of the requirements for perfecting an appeal; and
- (6) The contact person, address and a telephone number for use in inspecting or obtaining a copy of the final decision.

(B) Any applicant request to modify a claim approval must be processed in the same manner, and shall be subject to the same criteria, as was the original application.

27.521 RECORDING OF DECISION.

The county may require that the applicant record with the county the Notice of Decision. The Notice of Decision must be placed in the county deed records prior to any payment of the claim. Proof of recording must be filed with the Land Use Planning Division. Recording must be at the applicant's expense. Any recording required under this section must be properly signed and executed within 30 days after the decision. Failure to sign and record the Notice of Decision within the prescribed period will void the decision.

27.522 REVOCATION OF DECISIONS.

If an applicant fails to fully comply with any condition of approval or otherwise does not comply fully with the compensation claim decision, the county may revoke or modify the decision. The revocation procedures of MCC 37.0760 apply.

27.530 EX PARTE CONTACT, CONFLICT OF INTEREST AND BIAS.

The following governs challenges to a commissioner's participation in a Board hearing:

(A) Any factual information obtained by a commissioner outside the context of a quasi-judicial hearing is an ex parte contact. Before close of a record, any commissioner who has obtained any material factual information through an ex parte contact must declare the content of that contact. Any interested party may comment on the substance of that contact. This rule does not apply to contacts between county staff and a commissioner.

(B) Whenever a commissioner, or any member of a commissioner's immediate family or household, has a financial interest in the outcome of a particular quasi-judicial matter, that commissioner must not participate in the deliberation or decision on that matter.

(C) All decisions in quasi-judicial matters must be fair, impartial and based on the

applicable criteria and the evidence in the record. Any commissioner who is unable to render a decision on this basis in any matter must refrain from participating in the deliberation or decision on that matter.

27.540 PROCEDURAL OBJECTIONS.

Any party who objects to the procedure followed in any particular matter, including bias, conflict of interest and undisclosed ex parte contacts, must make a procedural objection prior to the county final decision. Procedural objections may be raised at any time prior to a final decision, after which they are deemed waived. In making a procedural objection, the objecting party must identify the procedural requirement that was not properly followed and identify how the alleged procedural error harmed that person's substantial rights.

Section 2. This ordinance, being necessary for the health, safety, and general welfare of the people of Multnomah County, an emergency is declared and the ordinance shall take effect on December 7, 2000, pursuant to section 5.50 of the Charter of Multnomah County.

ONE READING AND ADOPTION:

November 30, 2000



BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

Beverly Stein
Beverly Stein, Chair

REVIEWED:

THOMAS SPONSER, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY, OREGON

By

Thomas Sponsler
Thomas Sponsler, County Attorney