

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

ORDINANCE NO. 1060

Amending Ordinance No. 1055, Adopting Provisions in Chapter 7 of the Multnomah County Code for the Review of Demands for Compensation under Oregon Revised Statutes Chapter 197 as Amended by Ballot Measure 37 Passed November 2, 2004.

(Language stricken is deleted; double underlined language is new.)

Multnomah County Ordains As Follows:

Section 1. Chapter 7, Business and Community Services, of the Multnomah County Code is amended as follows:

7.515 SCOPE OF CLAIMS.

(A) An owner of private real property located within unincorporated Multnomah County, or an owner of contiguous parcels purchased at the same time, who asserts a right to compensation under ORS 197, as amended by Ballot Measure 37, shall make a claim for compensation as provided in this subchapter. Owners of noncontiguous properties, or contiguous properties purchased at different times, must file separate claims.

~~—— (B) — A claim must be submitted for each land use regulation which the owner asserts restricts the use of a property and has the effect of reducing the fair market value of the property.~~

~~—— (C) — If an owner wishes to assert that more than one regulation restricts use of the property, and has the effect of reducing the fair market value of the property, all claims regarding that property must be filed simultaneously and considered by the county simultaneously.~~

~~—— (D) — Separate claims must be submitted for each parcel of real property.~~

(BE) Claims based on regulations that contain discretionary criteria for approval of development on a property may only be filed after Multnomah County has enforced its regulations through approval or denial of a land use application. Such an approval or denial is necessary to establish whether a particular land use regulation “restricts the use” of a property.

7.520 CONTENT OF WRITTEN CLAIM.

(A) A Claim pursuant to MCC 7.510 shall only be submitted to and accepted for review by the Director, or the Director’s designee, and shall include the following information:

(1) A description of the private real property for which the owner is claiming compensation, including the street address and either a legal description or a County Tax Assessor’s description of the property, specifically identifying whether the claim relates to real property other than land or, to a portion of the ownership less than fee simple absolute;

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

(3) The date the claimant acquired ownership of or an interest in the private real property and a copy of the document which provides proof of first ownership;

(4) A title report, including title history, current within 30 days prior to the claim date, verifying the ownership or interests in the private real property;

(5) Copies of any land use decisions claimant believes are related to the claim.

(6) If the claim is based upon the date a family member acquired the property, then documentation sufficient to establish the familial relationship along with a chain of title showing continual ownership;

(7) Copies of any Covenants, Conditions and Restrictions (CCR's), leases, or other encumbrances applicable to the real property;

(8) Identification of the specific land use regulation which restricts the owner's use of the real property, and for which the owner is claiming compensation;

(9) A statement describing the manner in which, and the extent to which, the regulation restricts the use of the private real property and has the effect of reducing the fair market value of the property for which the owner is claiming compensation;

(10) The amount of the ~~reduction in value claimed, claim, based upon the alleged reduction in value,~~ supported by an appraisal of the private real property for which the owner is asserting a claim.

(a) If the value of the claim exceeds \$1 million0,000, a second appraisal by a second appraiser is required, or the Director may accept alternative data in lieu of the second appraisal to substantiate the value of the claim. Alternative data must be in writing and may include but is not limited to, detailed sales information verified by a real estate broker of comparable properties or other evidence of the difference in value of parcels with and without the right to use the property in a manner prohibited by existing land use regulations. then copies of two appraisals, prepared by different appraisers, must be included;

(b) Notwithstanding subsection (a), the validity of a claim seeking a waiver of land use regulations for placement of a single dwelling on a parcel, may be based solely upon alternative data. A claim for compensation shall not be granted based solely on alternative data.

(11) A statement of the relief sought by the owner, such as a monetary payment in a specific amount; waiver of the applicable regulation; or modification of the applicable regulation. If a modification of the regulation is sought, then a description of the desired modification must be included;

(12) Payment of any required claim processing fee; and

(13) The signature of the claimant.

(B) The Director shall conduct a completeness review within 30 days after submittal of the claim and shall advise the owner, in writing, of any material remaining to be submitted. Once all of the required materials for a complete claim are received, the Director shall declare the claim complete and send the notice required by MCC 7.530(A) and (B).

(C) Commencement of the 180-day period allowed for local government claim procedures prior to any cause of action being authorized for the owner in circuit court as specified in Oregon Revised Statutes Chapter 197 starts on the date the Director deems the claim complete and accepts it for filing.

7.530 CLAIM REVIEW PROCESS.

(A) After a claim for compensation is declared complete pursuant to MCC 7.520(B), the Director shall mail notice of the claim to the claimant, other owners of record of the property, and all owners of property within 750 feet of the subject property. Additional mail notice shall be sent to any public entities with land use regulatory authority over the property and other organizations or persons as the Director may designate.

(B) The Director's notice under subsection (A) shall:

- (1) Indicate the date that the claim was filed;
- (2) State the basis of the claim, the amount of the compensation or waiver sought and the land use regulation that the owner asserts gives rise to a claim;
- (3) Identify the property by the street address or other easily understood geographical reference;
- (4) State that persons noticed may provide written comments on the claim, and provide the date written comments are due;
- (5) Indicate a timeframe within which the Board will take action on the claim and identify how interested persons can learn of the specific date the Board will meet on the matter, once a meeting date is set;
- (6) Provide the name and phone number of a county representative who can be contacted for additional information; and
- (7) State that a copy of the claim and the supporting documents submitted by the owner are available for inspection at no cost, or that copies will be provided at reasonable cost.

(C) Written comments regarding a demand may be submitted to the Director by any interested person. Comments must be received by the Director within 14 days from the date of the notice required under subsections (A) and (B) above. The owner shall have an additional 7 days after the deadline set out above to respond to any written comments received by the Director. It is the duty of the owner to determine if comments have been received by the Director.

(D) The Director shall prepare a draft staff report within 30 days after the comment period has ended. The report shall apply the standards of Oregon Revised Statutes Chapter 197, as implemented through this subchapter, to the claim.

(E) After the Director has completed a draft staff report, the Director shall send a copy of it to Assessment and Taxation for review of the appraisal(s) submitted by the owner and shall send a copy of it to the County Attorney's Office for review. Assessment and Taxation and the County Attorney's Office will have 30 days for review.

(F) After the Director receives the comments from Assessment and Taxation and the County Attorney's Office, the Director will prepare a final staff report and make it available to the public at least 10 days prior to the Board meeting. The final staff report shall include options for Board action.

(G) The Board shall conduct a public hearing before taking final action on the claim. The procedures for the hearing must include, but are not limited to staff presentation and public testimony, followed by deliberation and a decision by the Board.

(H) The Board's options for its decision include, but are not limited to the following:

(1) Find the claim invalid and issue a Board Order to deny the claim based on one or more of the following findings:

(a) The land use regulation does not restrict the use of the private real property;

(b) The fair market value of the property is not reduced by the enactment, enforcement or application of the land use regulation;

(c) The demand was not timely filed;

(d) The owner failed to comply with the requirements for making a demand as set forth in this subchapter;

(e) The owner is not the present property owner, or the property was not owned by a family member or the claimant was not the property owner at the time the land use regulation was enacted, enforced or applied;

(f) The land use regulation is an exempt regulation as defined in Oregon Revised Statutes Chapter 197, as amended by Ballot Measure 37, passed November 2, 2004;

(g) The land use regulation in question is not an enactment of the county;

(h) The county has not taken final action to enact, or enforce the land use regulation to the property;

(i) The owner is not entitled to compensation under Oregon Revised Statutes Chapter 197, as amended by Ballot Measure 37, passed November 2, 2004, for a reason other than those provided herein.

(2) Find the claim valid and issue a Board Order to award compensation, either in the amount requested, or in some other amount supported by the evidence in the record, subject to the availability and appropriation of funds for that purpose;

(3) Find the claim valid and issue a Board Order to modify the regulation which restricts the use beyond those restrictions in place on the property at the time the owner acquired the property; or

(4) Find the claim valid and issue a Board Order to waive the regulation which restricts the use beyond those restrictions in place on the property at the time the owner acquired the property.

(I) If the Board modifies or waives the challenged county land use regulation in response to a claim by owner, the modification or waiver is valid only as to the owner during owner's ownership of the property for those regulations listed in the claim which were found by the Board to be valid; all other current regulations remain in effect. The Board may, at its discretion, reinstate any or all of the land use regulations in effect at the time the owner acquired the property. A Board waiver is not a waiver of any state law or Metro Code provision.

(J) The final decision on a claim shall be made by the Board. After review the Board shall, under the standards of Oregon Revised Statutes Chapter 197, as amended by Ballot Measure 37 determine whether compensation is granted, the amount of compensation if any, whether any exceptions to the requirement for compensation apply or whether the regulation should be modified, removed or deemed not to apply to the property. A copy of the Board Order shall be sent by mail to the owner and to each individual or entity that participated in the Director or Board process, provided a mailing address was provided to the Director as part of the claim process.

(K) Waiver of a county land use regulation does not constitute a waiver of any corresponding state statutes.

(L) Any right obtained by a claimant through the Board's grant of a waiver of county land use regulations is transferable only to the extent allowed by law. A decision by the Board to waive or modify a land use regulation shall be personal to the owner, and if not acted upon, shall automatically become invalid and void upon transfer of any ownership interest in the subject property. Upon transfer of any ownership interest in the subject property, any use of the property that is not consistent with regulations in effect at the time of transfer, shall be deemed to be a noneconforming use and all state laws, rules and county code provisions relating to noneconforming uses shall be applicable.

(M) If the Board issues an Order finding that an owner has a valid claim and granting compensation or a modification or a waiver, the Planning Director or the Director's designee ~~the owner~~ shall record a copy of the Order in the Recorder's Office of Multnomah County. The Order must include a legal description of the subject property.

(N) Notwithstanding the provisions of MCC 7.520, which sets out the contents of a claim and authorizes the Director to determine whether a claim is complete, the Director, or the Director's designee, may review a claim and may recommend to the Board that the claim be denied if it is invalid on its face.

(O) This subchapter shall be interpreted in a manner consistent with Oregon Revised Statutes Chapter 197, as amended by Ballot Measure 37, Passed November 2, 2004, and other implementing statutes or regulations and as interpreted by Oregon appellate courts.

7.565 SEVERABILITY CLAUSE

The provisions, sections and subdivisions of this Ordinance, shall be considered to be severable, so that if any provision, section and/or subdivision, or its application to any person or circumstance, is

altered, amended, abrogated, repealed, superseded by state law or held invalid, the remainder of the particular provision, section and/or subdivision or Ordinance, or the application thereof to other persons or circumstances, shall not be deemed affected.

FIRST READING:

_____ May 12, 2005 _____

SECOND READING AND ADOPTION:

_____ May 19, 2005 _____



BOARD OF COUNTY COMMISSIONERS,
FOR MULTNOMAH COUNTY, OREGON

_____ *Diane M. Linn* _____
Diane M. Linn, Chair

REVIEWED:

AGNES SOWLE, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY, OREGON

By *Sandra N. Duffy*
Sandra N. Duffy, Assistant County Attorney