

FILED WASCO CTY
THE DALLES OR.

DEC 6 3 36 PM '00

KAREN R. LEBRETON
COUNTY CLERK

IN THE COUNTY COURT OF THE STATE OF OREGON

IN AND FOR THE COUNTY OF WASCO

PROVIDING A PROCESS FOR CLAIMS ARISING)
UNDER THE 2000 AMENDMENT TO ARTICLE I,)
SECTION 18 OF THE OREGON CONSTITUTION) O R D I N A N C E
(BALLOT MEASURE 7), AND PROVIDING AN)
ALTERNATE PROCESS FOR DISPOSITION OF)
CLAIMS, AND DECLARING AN EMERGENCY.)

WHEREAS, this Ordinance is adopted as a procedure to comply with
Ballot Measure 7, which was adopted through the initiative process on
November 7, 2000. The measure approved an amendment to the State of
Oregon Constitution allowing compensation for private landowners when
regulation reduces the value of their land; and

WHEREAS, Ballot Measure 7 amends the Oregon Constitution by
adding subsections (a) through (f) to Section 18 of Article I. The
text of Ballot 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.

2000-0406 (10)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

"(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;

////

2000-0406 (10)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

'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."

WHEREAS, Ballot Measure 7 becomes effective as an amendment to the State Constitution on December 7, 2000; and

WHEREAS, the meaning of the various provisions in the measure is not clear by the language used, and there is no legislative history which can be used to discern the intent of vague and undefined terms, therefore this Ordinance is necessary to assist in the filing and adjudication of claims for compensation made to the County; and

WHEREAS, the County has no identified funds to pay claims for compensation under Ballot Measure 7 and therefore it becomes necessary to implement a process to allow the County other alternatives in meeting the intent of Ballot Measure 7.

02000-0406(10)

1 NOW, THEREFORE, THE WASCO COUNTY COURT HEREBY ORDAINS as follows:

2 **Section 1. Purpose.** The purpose of this Ordinance is to:

3 a. Create a process for the evaluation for compensation
4 of claims filed under the 2000 amendment to Article I,
5 Section 18 of the Oregon Constitution, adopted by the voters in
6 November, 2000.

7 b. Enable persons, with legitimate claims, to have an
8 adequate and fair opportunity to present and seek resolution of
9 them in a timely, efficient, thorough and consistent manner.

10 **Section 2. Definitions.** For the purpose of this Ordinance, the
11 following terms, phrases, words and their derivations thereof shall
12 have the meaning given in this Section. Words not defined in this
13 Ordinance shall be given the meaning intended in Article 18,
14 Section I of the Oregon Constitution, or as those words may be
15 subsequently defined by statute or case law. If not defined there,
16 the words shall be given their common and ordinary meaning.

17 a. "Affected property" means the private real property
18 claimed to be reduced in value because of a regulation and
19 includes contiguous units of property under the same ownership
20 and any structure built or sited on the property, aggregate and
21 other removable minerals, and any forest product or other crop
22 grown on the property.

23 b. "Exempt regulation" means:

24 (1) A regulation which imposes a restriction required
25 under federal law, to the minimum extent required by
26 federal law; or

2000-0406(10)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
Page

(2) A 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; or

(3) A regulation governing historically and commonly recognized nuisance laws.

c. "Property owner" means a combination of legal title owners, possessory property owners, contract purchasers, and all persons or entities who hold a security interest or long term leasehold interest in the affected property.

d. "Reduction in fair market value" means 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 spaces, historical, archeological or cultural resources, or low income housing.

e. "Regulation" means a duly adopted County ordinance, resolution, policy, or other enforceable enactment of the County.

Section 3. Filing of Claim.

a. No claim arising from the 2000 Amendment to Article I, Section 18 (Ballot Measure 7) shall be considered a claim unless the claim meets the procedural requirements specified by this Section.

//////

//////

02000-0406 (10)

1 b. The claim must be a written communication from a
2 claimant filed with the Compensation Review Officer on a form
3 provided for that purpose and must include:

4 (1) Name, address, telephone number and signature of
5 person(s) filing the claim.

6 (2) Names, addresses and signatures of all property
7 owners and all persons who hold a security interest in the
8 affected property, as shown on a preliminary title report,
9 dated not more than thirty (30) days from the date the
10 claim is filed, from a licensed title insurance company, or
11 as shown on a complete abstract of record dated not more
12 than thirty (30) days from the date the claim is filed.

13 (3) Legal description and street address of the
14 affected property, including contiguous units of property
15 under the same ownership.

16 (4) Description of the regulation which restricts the
17 use of the private property.

18 (a) Date the regulation was adopted, applied or
19 enforced on the affected property.

20 (b) Date the property owner or owners obtained
21 title to the property or became the contract
22 purchasers of record.

23 (5) Description of the use that has been restricted
24 by the regulation described in Subsection b.(4) above, plus
25 a statement explaining how the regulation restricts the use
26 of the affected property and why the regulation has the

D2000.0406 (10)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

effect of reducing the value of the property upon which the restriction is imposed.

(6) The amount that the affected property has been reduced in value because of the restriction.

(7) A written appraisal by an Oregon licensed appraiser, providing an opinion of the difference in the fair market value of the affected property before and after application of the regulation. 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, archeological or cultural resources or low income housing, the appraisal must establish that net cost. If the claim is for more than \$10,000.00, two appraisals from separate appraisers must be submitted.

(8) A statement of the relief sought by the claimant.

c. A claim must be accompanied by a fee to be paid in advance of acceptance for filing, to cover the costs of completeness review and application processing. This fee shall be established by a Resolution of the Wasco County Court. The application fee shall be refunded if the County or an appellate body determines that just relief should be granted.

d. The County Judge, in its discretion may waive any or all of the requirements for an individual application. Such a waiver shall render that individual application complete.

02000-0406(10)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
Page

Section 4. Procedure to Evaluate a Claim.

a. Upon filing of a {complete} claim, the Compensation Review Officer shall forward the claim to the County Judge or the County Judge's designee.

b. The County Judge shall review the claim and make a decision regarding the granting of relief. The County Judge may decide on any of the following actions with regard to the claim:

(1) Decide that the claim is valid and authorize payment of compensation in fair amount;

(2) Decide that the claim is valid and authorize alternatives to compensation listed in Sections 7a and 7b to the minimum extent possible in order to relieve the basis for the claim;

(3) Decide that the claim is not valid and deny all claims for compensation; and

(4) The decision shall be in writing.

Section 5. Appeals. Final decisions of the County Judge under this Ordinance may be appealed to the Circuit Court of the State of Oregon for the County of Wasco by Writ of Review as set forth in Oregon Law.

Section 6. No Re-Application. If an application is denied or withdrawn following the final decision of the County Judge, no re-application for the same or substantially similar compensation claim may be made by the current owner of the subject property.

////

////

02000-0406(10)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
Page

Section 7.

a. Prosecutorial Review. Notwithstanding any other Section of this ordinance, law, rule, resolution, goal or other enforceable enactment of law, and not withstanding any other methods legally available, the County Judge or designee may consult with the prosecuting attorney responsible for the enforcement and/or application of the regulation to determine if there is any discretion in the continued application of the particular rule, regulation. If it is determined by the prosecuting attorney that discretion may be exercised and that the result of that discretion the regulation will not continue to apply to the property, the County Judge or designee may determine that compensation is not due for the reason that the regulation will not be enforced and thus, no longer applies to the property.

b. Authorization for Compensation Alternatives. If Section 7a of this Ordinance is inapplicable to any particular application for compensation made pursuant to the Amendment to Article I, Section 18 of the Oregon Constitution, which requires compensation for legitimate claims involving restriction of use of private real property, provides that if the regulation continues to apply ninety (90) days after the claim is made, the owner shall be compensated and is entitled to reasonable attorney fees. If the County Judge determines that the County has no identified funds with which to pay such legitimate claims and therefore, as an alternative to compensation and on an

O2000-0406(10)

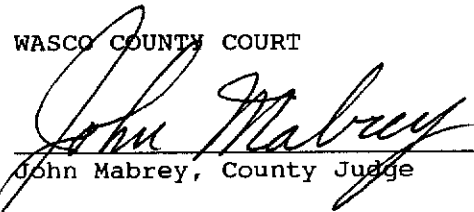
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
Page

individual, case-by-case basis, the Judge, or its designee is granted the authority to release the regulation affecting the claim for compensation to the minimum extent possible in order to relieve the basis for the claim. Any determination made under this Subsection may be treated as an alternative to a decision made pursuant to Section 7a.

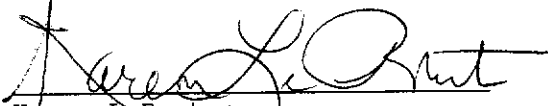
Section 8. Emergency Clause. Inasmuch as it is deemed necessary for the public peace, health, safety and welfare of the citizens of Wasco County that this Ordinance become effective by December 6, 2000, the County Court, by its vote, declares an emergency to exist and this Ordinance to be in full force and effect on December 7, 2000.

Regularly passed and adopted by a unanimous vote of all members of the County Court of the County of Wasco, State of Oregon, this 6th day of December, 2000.

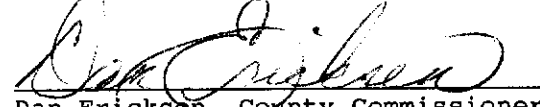
WASCO COUNTY COURT


John Mabrey, County Judge

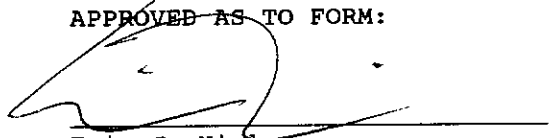
ATTEST:


Karen LeBreton
Wasco County Clerk

Absent
Scott McKay, County Commissioner


Dan Ericksen, County Commissioner

APPROVED AS TO FORM:


Eric J. Nisley
Wasco County District Attorney

02000-0406 (10)