

M-2000 - 2727

IN THE COUNTY COURT OF THE COUNTY OF MORROW

**IN THE MATTER OF ADOPTING A)
PROCEDURE FOR SUBMITTING AN)
APPLICATION FOR COMPENSATION)
ARISING UNDER THE PROVISIONS OF)
SECTION 18, ARTICLE I OF THE OREGON)
CONSTITUTION, AS AMENDED BY BALLOT)
MEASURE NO. 7 ADOPTED NOVEMBER 7,)
2000 AND DECLARING AN EMERGENCY)**

Corrected
Ordinance No. MC-C-3-00

Replaces M-2000 2673 for the purpose of correcting typographical errors

WHEREAS, On November 7, 2000, the voters of the State of Oregon approved Ballot Measure 7 which amended Article I, Section 18 of the Constitution of Oregon to require, under certain circumstances, payment to land owners if government regulation reduces property value; and

WHEREAS, Ballot Measure 7 provides that a land owner, in order to receive compensation, must apply for compensation from the government whose regulation allegedly has caused a reduction in the fair market value of property; and

WHEREAS, Ballot Measure 7 does not set forth a process for filing or review of applications for compensation and it is in the best interests of affected governments to establish such a process in order to be able to process and evaluate such claims in a timely manner.

NOW THEREFORE, the Morrow County Court **ORDAINS** as follows:

Section I. Purpose and Intent

A. The purpose of this ordinance is to:

1. Provide procedures for the submittal, processing and adjudicating applications for compensation submitted pursuant to Article I, Section 18 of the Oregon Constitution (Ballot Measure 7).

2. Promote the timely, orderly and efficient consideration of such claims.
 3. Ensure that sufficient information is available to the County to thoroughly review such claims and make a decision that addresses the interests of the property owner under Ballot Measure 7 and the interests of the public in protecting limited public financial resources.
 4. Establish an adequate record for judicial review of any decision made hereunder.
- B. This ordinance is not intended in any way to expand the rights or remedies available to property owners under Ballot Measure 7 or any other law. Neither shall it be construed so as to contravene the express terms of Ballot Measure 7. This ordinance in no way amends, repeals, exempts or implements the County's Comprehensive Plan, Zoning Ordinance, Subdivision Ordinance, statewide planning goals or any other land use statute, rule, regulation or policy.

Section II. Definitions

A. The following definitions shall apply to this ordinance:

“Adopted” – The date a regulation is enacted or passed by the Morrow County Court.

“Applied” – The date of a county administrative action or final county quasi-judicial decision that gives effect to a regulation concerning a specific property.

“Appraisal” – An appraisal approved 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 the Endangered Species Act, Clean Water Act, Clean Air Act, Telecommunications 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 of an administrative action to enforce a regulation.

“Imposed” – The date a regulation is adopted, first enforced or applied to a real property.

“Property” – Any real property and any structure built or sited on the property, aggregate or other removable minerals and any forest product or other crop grown on the property.

“Property Owner” – The legal owner(s) of record as shown in the deed records of Morrow County, including the purchaser(s) under a duly recorded land sales contract.

“Reduction in Value” – The difference in the fair market value of the property before and after the application of the regulation, and shall include the net cost to the land 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.

“Regulation” – A County ordinance or other enforceable legislative enactment of Morrow County.

“Restricts the Use” – A regulation that restricts the type of use of private real property, but does not include a regulation that effects either the extent or location of a use, a land division, subdivision, or a regulation that governs development standards or construction.

Section III. Exhaustion of Administrative Remedies

No application for compensation pursuant to Ballot Measure 7 shall be filed until the property owner has exhausted all remedies of applications for planning/zoning changes, permits, variances, and/or modifications.

Section IV. Application Requirements

- A. An application for compensation pursuant to Ballot Measure 7 shall be filed with the Morrow County Planning Department.

- B. At a minimum, an application for compensation shall include the following:**
- 1. The signature of all owners of the property. One owner or other person shall be designated as the claimant who shall serve as contact for the application for purposes of all correspondence and notices.**
 - 2. The names, addresses and telephone numbers of all owners.**
 - 3. A current assessor's map or survey clearly delineating the entire property that is the subject of the claim, together with the street address and assessor's map and lot reference.**
 - 4. A preliminary title report for the subject property disclosing all interests and encumbrances of record. The report shall have been issued no more than 30 days prior to filing the application.**
 - 5. A copy of the documents whereby the owner(s) claim ownership of the property.**
 - 6. A complete list of all other interests or encumbrances, including but not limited to leases and encroachments, of which the property owners are aware or have reason to believe may exist.**
 - 7. A specific and detailed reference to each and every regulation that the owner(s) assert restricts the use of the property and has the affect of reducing the value of the property. Regulations shall be identified by ordinance number or with similar specificity. Each regulation cited shall be accompanied by a statement addressing whether such regulation is mandated by state or federal statute, rule, regulation, goal, guideline or other law.**
 - 8. A specific and detailed explanation as to how and why each and every section of the regulation restricts the use of the property and impacts the value of the property.**
 - 9. A complete list of all compensation claims, development or permit applications previously filed with any regulatory body relating to the property and any enforcement actions taken by any governmental body as regards the property.**

10. Copies of all appraisals, market studies, economic feasibility studies, development schemes, environmental assessments or similar studies relating to the property.
11. All other documents that the property owner intends to rely upon in support of the claim.
12. Appraisal(s) meeting the standards set forth in paragraph IV.B.
13. A process fee of \$300.
14. A sworn statement that the information submitted is true and complete to the best knowledge and belief of the claimant.

C. Appraisal

All claimant's appraisals shall comply with the following:

1. For claims under \$10,000, the appraisal shall be prepared by an Oregon State Certified General Appraiser. For claims of \$10,000 or more, the appraisal shall be prepared by and in accordance with the standards of, an MAI or SRA appraiser.
2. Set forth the appraisal assignment, including a complete list of all regulation evaluated.
3. Include a description of the area and a detailed description of the subject property.
4. A statement of the highest and best use of the property assuming applicability of the regulation(s) and a corresponding valuation of the property.
5. A statement of the highest and best use of the property prior to the regulation and a corresponding valuation of the property.
6. Set forth the date of appraisal and an explanation as to how it was reached.
7. Provide a detailed explanation of the facts, methodology and analysis used to reach the appraiser's opinion as to the reduction in fair market value caused solely by the application of the regulation(s) and as otherwise provided

under Ballot Measure 7. To the extent practicable, the opinion of reduction in fair market value shall be apportioned among each regulation such that the County may separately consider the alleged impact on fair market value of each regulation.

Section V. Application Submittal

- A. The application shall be considered filed on the business day that it is physically received in the Morrow County Planning Department.
- B. Within 10 days of filing, the Planning Department shall issue a notice to the claimant stating what, if any, items must be submitted to meet the requirements of Section III. The claimant shall have 20 days to submit the required information.
- C. The application shall be reviewed notwithstanding whether the claimant has submitted the required information. The County, however, shall be entitled to exclude from the record and not consider any information not submitted as provided for in Sections III and IV.

Section VI. Administrative Review

- A. The Planning Department shall conduct an informal review of the application and make a recommendation as to whether to deny the claim, grant the claim in whole or in part, and if granted what remedy should be provided.
- B. The Planning Department shall be entitled to obtain an appraisal or rely on such other information deemed relevant and appropriate, including requesting additional information from the claimant. The claimant shall have an obligation to provide all requested information within 5 business days. The claimant shall not be entitled to place into the record any information requested but not provided. All information relied on shall be placed in the record and shall be available for review by the claimant except for material privileged or otherwise exempt from disclosure as provided by law.
- C. The Planning Department shall provide the claimant with a copy of the recommendation and notice of a hearing before the County Court at least 10 days prior to the hearing.

Section VII. County Court Determination

- A. The County Court shall conduct a hearing on the claim as follows:**
- 1. The applicant shall have such time as the County Court deems appropriate, but not less than 30 minutes, to present evidence and argument in support of the claim.**
 - 2. The Planning Department or other representative shall have the same amount of time to present evidence and argument as to why the claim should be denied.**
 - 3. The County Court may, but is not required to, hear testimony from other interested persons.**
 - 4. The applicant shall have such time as the County Court provides, but no less than 5 minutes, to rebut.**
 - 5. The County Court shall adopt written findings and conclusions setting forth its determination as to the validity of the claim and the appropriate remedy, if any.**
- B. The applicant and the opposing party may request that the County Court admit new evidence. The County Court shall have sole discretion as to whether to admit evidence, however, material required to be submitted as part of the application, or that the Planning Department should have obtained at the time of making its recommendation shall not be admitted unless the County Court finds that extraordinary circumstances beyond the control of the moving party prevented earlier submittal. The County Court may condition the receipt of new information from the applicant on the applicant stipulating to an extension of time for consideration of the materials and a waiver of the 90 day provisions of Ballot Measure 7.**
- C. Either party may require that the appraiser or other person relied upon by the other party attend the hearing with all relevant materials and be available for questioning from the County Court or cross examination by providing at least 5 days prior written notice to the party. If the person is not made available, the County Court may strike from the record any information provided by the person at any stage herein.**
- D. All testimony shall be under oath. The rules of evidence shall not apply, but the County Court may consider the reliability and credibility of the evidence as it deems appropriate. The County Court may exclude repetitious, irrelevant, unduly prejudicial or immaterial evidence.**

Section VIII. Review Standards

- A. The Planning Department and the County Court shall consider the following in adjudicating a claim:**
- 1. Whether the regulation(s) at issue was adopted, first enforced or applied after the current owner(s) became the owner(s).**
 - 2. What regulations were in place prior to the time determined to govern the claim.**
 - 3. What regulations, if any, are determined to restrict the use of the property and have the effect of reducing the value of the property as provided in Measure 7.**
 - 4. What regulations presented, if any, do not restrict the use of the property.**
 - 5. The impacts of any of the exceptions set forth in Ballot Measure 7.**
 - 6. The availability of public financial resources to pay the claim in consideration of competing priorities in the public interest.**
 - 7. The impact of removing, not enforcing or otherwise permitting the use on other properties and the public interest.**
 - 8. Consideration of other factors as are determined to be in the interest of the property owner and the public in adjudicating the claim.**
- B. The decision of the County Court shall be deemed final upon execution of a written order. The order shall be mailed to the claimant within two business days following execution. In the event that the order provides for compensation, it shall be deemed tendered on the date of execution of the order.**
- C. Unless the applicant obtains extensions as provided for herein, failure of the County Court to make a decision on the claim within 180 days of receipt of the application shall be deemed a denial. If the County Court grants the claim and provides for compensation as the remedy, the applicant shall be entitled to reasonable costs and attorney fees if compensation is not paid within 90 days of receipt of the application. The applicant shall have 14 days after**

the decision to submit a detailed statement which shall be reviewed and, if approved, paid within 30 days of receipt of the statement by the County.

Section IX. Evidence

- A. The burden of proof of any material element of the claim shall be on the applicant(s) for all matters required to be shown that the applicant is entitled to compensation and shall be upon the County to show that the regulation(s) are exempt from the obligation for compensation.

Section X. Miscellaneous Provisions

- A. The County Court may continue its hearing to a date and time certain without providing further notice.
- B. The applicant(s) shall be entitled to one 30 day continuance at any time in the review process provided that the request is presented in writing and accompanied by a commensurate waiver of the 90 day Ballot Measure 7 deadline containing the signatures of all the property owners.
- C. The applicant(s) shall be entitled to request additional continuances on the same terms as set forth above. Continuances shall not be unreasonably denied.

Section XI. Judicial Review

- A. Review of a decision of the County Court shall be solely by Writ of Review pursuant to ORS Chapter 34 (1999 Replacement Part).
- B. The prevailing party on review shall be entitled to reasonable attorney fees and costs as determined by the court.
- C. Failure of the applicant to exhaust the remedy provided for herein shall be a bar to judicial review.

Section XII. Severability

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


Section XIII. Emergency Declared

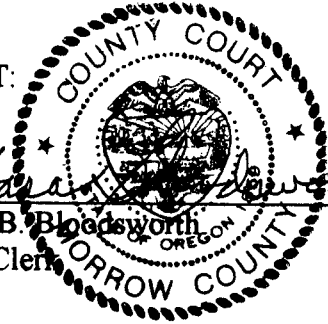
- A. This Ordinance being necessary for the preservation of the health, safety, and welfare of the residents of Morrow County, by unanimous vote of the County Court an emergency is hereby declared to exist and this Ordinance shall take effect immediately upon approval.

DATED this 6 day of December, 2000


MORROW COUNTY COURT

ATTEST:


 Barbara B. Bloodsworth
 County Clerk



Absent
 Terry K. Tallman, County Judge


 John E. Wenzholz, Commissioner

APPROVED AS TO FORM:


 County Counsel


 Dan Brosnan, Commissioner

STATE OF OREGON }
 County of Morrow } SS

I certify that this instrument was received and recorded in the book of records of said county.

BARBARA BLOODSWORTH,
Morrow County Clerk

by:  Deputy.

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