

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

In the Matter of Establishing a)
Procedure to Process Applications)
for Compensation under Oregon)
Statewide Ballot Measure 7)

ORDINANCE NO. 2000-6

The Board of County Commissioners for Columbia County, Oregon, ordains as follows:

SECTION 1. TITLE.

This ordinance shall be known as Ordinance No. 2000-6. Exhibit "A", which is attached hereto and incorporated herein by this reference, shall be known as the "Columbia County Ballot Measure 7 Claims Ordinance".

SECTION 2. AUTHORITY.

This ordinance is adopted pursuant to ORS 203.035 and Oregon Statewide Ballot Measure 7 (2000).

SECTION 3. FINDINGS.

A. On November 7, 2000, state voters approved Oregon Statewide Ballot Measure 7 that amends the Oregon Constitution by adding subsections (a) through (f) to Section 18 of Article 1. Ballot Measure 7 requires the payment of just compensation to property owners when government regulation results in the reduction in the fair market value of private real property. The effective date of Measure 7 is December 7, 2000.

B. Various provisions in the measure are not clear. It is probable that the Legislature and the courts will provide guidance in the interpretation of the measure. However, until then, it is in the public interest of the citizens of Columbia County to adopt an ordinance providing a fair and reasonable means for property owners to file legitimate claims under the measure, while at the same time protecting the taxpayers' funds from illegitimate claims.

C. The Board of Commissioners will review and, in all likelihood, need to amend the ordinance as guidance in the interpretation of the measure comes from the Legislature and the courts.

SECTION 4. PURPOSE.

The purpose of this ordinance is to adopt procedures for processing applications for compensation filed with the County pursuant to Oregon Statewide Ballot Measure 7.

SECTION 5. ADOPTION.

The "Columbia County Ballot Measure 7 Claims Ordinance", attached hereto, labeled Exhibit "A" and incorporated herein by this reference, is hereby adopted.

SECTION 6. SEVERABILITY.

If for any reason any court of competent jurisdiction holds any portion of this ordinance invalid, or any portion of the attached Exhibit "A", such portion shall be deemed a separate, distinct and independent portion, and any such holdings shall not affect the validity of the remaining portions thereof.

SECTION 7. EMERGENCY; EFFECTIVE DATE.

This ordinance being immediately necessary to maintain the public health, safety and welfare, an emergency is declared to exist and this ordinance shall take effect upon December 7, 2000.

DATED this 6th day of December, 2000.

Approved as to form by

BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

By: John K. [Signature]
Office of County Counsel

By: Jack R. [Signature]
Chair

Attest:
By: Jan [Signature]
Recording Secretary

By: [Signature]
Commissioner

By: [Signature]
Commissioner

First Reading: 12/6/00
Second Reading: 12/6/00
Effective Date: 12/4/00

EXHIBIT "A"

COLUMBIA COUNTY BALLOT MEASURE 7 CLAIMS ORDINANCE

Section 1. Title and Purpose. This Ordinance shall be known as the "Columbia County Ballot Measure 7 Claims Ordinance". This Ordinance implements the provisions added to Article I, section 18 of the Oregon Constitution by Oregon Statewide Ballot Measure 7. Ballot Measure 7 requires the payment of just compensation to property owners when government regulation results in the reduction in the fair market value of private real property. This Ordinance is intended to provide a prompt, open and thorough process for property owners to present legitimate claims consistent with the Oregon Constitution and to establish a record sufficient for judicial review.

Section 2. Definitions. For the purposes of this Ordinance, the following definitions apply unless definitions are required by law or the context requires a different meaning.

ADOPTED. A regulation is adopted on the date that it is approved by a legislative or administrative body with authority to regulate the use in question.

APPLIED. A regulation is applied to a property on the first day that the regulation affects the use of a particular property without regard to whether a particular use is contemplated or practical at that time.

APPRAISAL. A written report by an appraiser either licensed by the Appraiser Certification and Licensure Board of the State of Oregon or who qualifies as a registered appraiser under ORS 308.010 or ORS 308.015.

EXEMPT REGULATION. A regulation that is a historically and commonly recognized nuisance law (Or Const, Art I, §18(b)), a regulation imposed, to the minimum extent required, to implement a requirement of federal law, or 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 Const, Art I, § 18(c)).

FIRST ENFORCED. A regulation is first enforced on the day that it takes effect without regard to whether it applies to a particular property on that date.

PROPERTY OWNER. The legal owner(s) of record of private real

property, as shown in the deed records of Columbia County, and includes any purchaser(s) under a duly recorded land sales contract or memorandum of contract.

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 of a use or a regulation that governs development or construction.

Section 3. Application for Compensation. Property owners may apply for just compensation from the County when any regulation, adopted, first enforced or applied by the County after the current owner of the property became the owner, results in the reduction in the fair market value of the private real property upon which the regulation is imposed, as provided by Ballot Measure 7. Applications for compensation are subject to the provisions of this Ordinance.

Section 4. [Deleted.]

Section 5. Pre-application Conference. Before submitting an application, applicants are encouraged to schedule and attend a pre-application conference with Land Development Services (LDS) Department staff to discuss the claim.

A. To schedule a pre-application conference, the applicant must contact the LDS Department. The pre-application conference is for the applicant to provide a summary of the applicant's claim for compensation to staff and for staff to provide information to the applicant about regulations that may affect the claim.

B. LDS and other County staff are not authorized to settle any compensation claim at a pre-application conference. Any omission or failure by staff to recite to an applicant all relevant applicable land use regulations will not constitute a waiver or admission by the County.

Section 6. Application Fee. The Board of County Commissioners may, by order or resolution, adopt or modify a fee for processing applications for compensation under this Ordinance. The amount of any such fee shall be based upon the reasonable cost to the County of processing such applications including the cost of an independent appraisal and/or technical review.

Section 7. Applications. In order for a claim for compensation to be considered, complete applications shall be submitted to the LDS Department office, with all necessary additional information and materials, and the appropriate filing

fee, if any, sufficient to demonstrate a claim under Article I, Section 18 of the Oregon Constitution. A complete application includes all the information and materials listed in this section. The applicant is responsible for the completeness and accuracy of the application and supporting information and materials. Unless specifically waived by the County, the following is required for a complete application:

A. One copy of a completed application (on the most current application form provided by the County, if any) that includes the following information:

(1) An accurate legal description, tax account number(s), map and address of the property that is the subject of the application. Contiguous properties under the same ownership may be joined in a single application.

(2) The names, addresses, telephone numbers of all property owners of the property (or properties) subject to the application. One property owner or other person shall be designated as the chief applicant who shall serve as contact person for the application for purposes of correspondence and notice.

(3) Notarized affidavits from all property owners stating that the information submitted is true and complete to their best knowledge and belief and that they agree to the amount of compensation claimed.

(4) Identification of the regulation (or regulations) alleged to have restricted the use of the property (or properties), including the date the regulation(s) was adopted, first enforced, or applied. Identification of the regulation(s) which applied to the property (or properties) immediately before the adoption, first enforcement or application of the regulation(s) which allegedly restricts the use of the property (or properties).

(5) Identification of any Exempt Regulation that may apply (or may have applied) to the property, whether or not that regulation affects the fair market value of the property.

(6) An explanation as why the applicant believes the regulation (or regulations) are not Exempt Regulations.

(7) The amount of compensation sought by the property owners.

B. A current (within 30 days prior to the filing date of the application for compensation) title report for the subject property

or properties that includes a title history of the property, the date the applicant acquired ownership of the property, and any co-owners or owners of security interests in the property.

C. A detailed description of the alleged effect of regulation or regulations on the property, including copies of all appraisals, marketing feasibility studies, engineering feasibility studies, and all other documents that the applicant intends to rely on in support of the claim.

D. All required application fees including any additional costs imposed by the Board.

Section 8. Appraisals. All appraisals submitted in support of an application for compensation shall comply with the following:

(1) The appraisal must have been prepared by an appraiser certified or licensed by the Appraiser Certification and Licensure Board of the State of Oregon.

(2) The appraisal must meet the Uniform Standards of Professional Appraisal Practice (USPAP) and be performed by an appraiser who meets the Competency Rule of USPAP.

(3) The appraisal must be a Complete (not Limited) Appraisal and must be reported in a Self-Contained format.

(4) The appraisal shall set forth in detail the appraisal assignment, shall include a detailed description of the subject property, and a complete list of all regulations evaluated.

(5) The appraisal shall address the market feasibility and engineering feasibility of the use for which compensation is sought, taking into account all other relevant factors including the potential impact of Ballot Measure 7 on other properties, the availability of necessary public services, the probability of obtaining necessary approvals from other governmental bodies and other constraints.

(6) The appraisal shall include a statement as to which, if any, regulations the appraiser concluded restrict the use of the property and give rise, or not give rise, to a claim under Ballot Measure 7. The appraisal shall include a statement of the fair market value of the property (or properties) immediately before and after adoption, first enforcement or application of the regulation (or regulations). The appraisal shall include a statement of highest and best use of the property (or properties) immediately

before and after adoption, first enforcement or application of the regulation (or regulations).

(7) 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.

(8) The appraisal shall describe the date (or dates) on which a reduction of property value is believed to have occurred as a result of adoption, first enforcement or application of a regulation, and an explanation of why that date was employed.

(9) The appraisal shall include a detailed explanation of the facts, methodology and analysis used to reach the appraiser's opinion as to any compensable reduction in fair market value caused solely by application of the regulation(s) and as otherwise provided under Ballot Measure 7. To the extent practicable, the opinion of compensable 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 9. Completeness and the 90-Day Rule.

A. Completeness Review. Upon submission of an application for compensation, the LDS Director will date-stamp the application form and verify that the appropriate application fee has been submitted. The LDS Director will then review the application and evaluate whether the application is complete. After reviewing the application, the Director may request additional information or materials where useful to address claims criteria, including appraisals, market studies, feasibility studies, environmental assessments or similar studies relating to the property. Within 15 days of receipt of the application, the LDS Director will complete this initial review and issue to the applicant a completeness letter stating whether the application is complete.

B. Complete Applications. When the Director determines that an application is complete, or that an application is deemed to be complete, the County shall take final action on the application within 90 days unless the applicant waives or extends the 90-day period. The 90-day period begins on the date of the original submission or such later date as the application becomes, or is deemed to be, complete. The 90-day period does not apply when the applicant requests an extension of time to submit additional

information or materials, requests a hearing continuance, or requests any other process delay. Such requests by the applicant will be deemed an extension or waiver of the 90-day period.

C. Incomplete Applications.

(1) If the Director determines the initial application is not complete, the Director will notify the applicant in the completeness letter what information or materials are necessary to complete the application. Within 15 days after the mailing date of the completeness letter, the applicant shall either submit the information or materials necessary to complete the application, or shall request an extension of time in which to complete the application. Requests for extension shall be liberally granted as necessary to afford property owners the time to complete their application, but in no case shall the period (or periods) of extension go beyond 180 days after the original submittal date.

(2) If the applicant submits the additional information or materials within 15 days after the mailing date of the completeness letter, the application will become complete on the date the additional information or materials are submitted.

(3) If the applicant requests an extension of time in which to submit the additional information or materials, the extension is granted, and the additional information or materials are submitted within the extension period or periods granted (but not beyond 180 days after the original submittal date), the application will become complete on the date the additional information or materials are submitted, if they are responsive to the requirements of this Ordinance.

(4) If the applicant requests an extension of time in which to submit the additional information or materials, the extension is granted, and the additional information or materials are not submitted within the extension period or periods granted, the application will be deemed complete on the date the final extension period expires.

(5) If the applicant fails or refuses to submit the additional information or materials, and fails or refuses to request an extension of time, the application will be deemed to be complete as of the original submittal date.

(6) Additional information or materials submitted after the 15 day period specified in paragraph C(1) above, and any extension periods granted, will not be considered in the review of applications for compensation under this Ordinance.

D. Requests for Additional Information or Materials.

(1) In cases where the Director determines the initial application is complete, but requests additional information or materials to address claims criteria, the Director will specify in the completeness letter the additional information or materials requested. Within 15 days after the mailing date of the completeness letter, the applicant may either submit the information or materials requested, or may request an extension of time in which to complete the application. Requests for extension shall be liberally granted as necessary to afford property owners the time to submit additional information or materials, but in no case shall the period (or periods) of extension go beyond 180 days after the original submittal date.

(2) If the applicant submits the additional information or materials within 15 days after the mailing date of the completeness letter, the application will still be considered complete as of the original submittal date (or such later date as the application became complete) and the additional information and materials shall be considered along with the information and materials included with the original application.

(3) If the applicant requests an extension of time in which to submit the additional information or materials, the extension is granted, and the additional information or materials are submitted within the extension period or periods granted (but not beyond 180 days after the original submittal date), the application will still be considered complete as of the original submittal date (or such later date as the application became complete), the additional information and materials shall be considered along with the information and materials included with the original application, but the number of days of the extension period or periods shall not be included in determining the 90-day period in which the County shall take final action on the application.

(4) If the applicant requests an extension of time in which to submit the additional information or materials, the extension is granted, and the additional information or materials are not submitted within the extension period or periods granted, the application will still be considered complete as of the original submittal date (or such later date as the application became complete), but the number of days of the extension period or periods shall not be included in determining the 90-day period in which the County shall take final action on the application. In such cases, the 90-day period for final action by the County shall resume on the day after the date the final extension period

expires.

(5) If the applicant fails or declines to submit the additional information or materials, and fails or declines to request an extension of time, the application will still be considered complete as of the original submittal date (or such later date as the application became complete).

(6) Additional information or materials submitted after the 15 day period specified in paragraph D(1) above, and any extension periods granted, will not be considered in the review of applications for compensation under this Ordinance.

Section 10. Hearings. All hearings on compensation claims shall be public, quasi-judicial and comply with the procedures of this section.

A. When the LDS Director determines that an application is complete, or that an application is deemed to be complete, and at the conclusion of any extension period or periods requested by the applicant to submit additional information or materials, the Director shall schedule a compensation hearing before the Board of County Commissioners, and all information and materials submitted by the applicant shall be placed in the record.

B. The LDS Director shall provide notice of the compensation hearing as prescribed in Section 11 of this Ordinance.

C. The LDS Director shall obtain an independent appraisal of the property and/or retain an appraiser for a technical review of the appraisal submitted by the property owner. The cost of the independent appraisal and/or technical review shall be payable by the applicant as a part of the application fee. The review appraiser may submit an independent estimate of fair market value, and may inspect the property and/or comparable data. The review appraiser may also determine if the property owner's appraisal meets the Uniform Standards of Professional Appraisal Practice (USPAP). If the review appraiser determines the appraisal does not meet USPAP, the property owner may request an extension of time, not to exceed 60 days, in which to respond to the review appraiser's determination. Any such extension of time shall not be counted for purposes of determining the 90-day period for final action by the Board of County Commissioners. The Director may condition granting any such requested extension upon reimbursement to the LDS Department of any additional costs incurred in providing additional notice of the compensation hearing.

D. The LDS Director will prepare a staff report that

describes the application, the claim, summarizes all relevant County departments', outside agencies' and public comments, describes all other pertinent facts, including the recommendations of the review appraiser, and recommends whether or not the claim should be approved. The staff report shall be made available to the applicant and the public at least seven days before the hearing.

E. At the beginning of the initial public hearing authorized under these procedures, the LDS Director shall give a pre-hearing statement which shall include the following information:

(1) The applicable substantive criteria;

(2) The hearing requirements as described in subsections F through K below.

F. The Board of Commissioners shall disclose any ex parte contacts, conflicts of interest or bias before the beginning of the hearing as provided by Section 12 of this Ordinance, and as otherwise provided by Oregon law. Any party must raise any issues relative to ex parte contacts, conflicts of interest or bias, or any challenges to the procedures of the hearing as provided by Section 13 of this Ordinance.

G. The hearing shall proceed in the following general order: presentation of the staff report, applicant's presentation, testimony in favor of the application, testimony in opposition to the application, rebuttal, closure of the record, deliberation and decision.

H. 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 stated and discussed on the record. The Board may reasonably limit oral presentations in length or content depending upon time constraints.

I. Failure to raise an issue on the record, including Constitutional issues, with sufficient specificity and accompanied by statements or evidence sufficient to afford the County and all parties to respond to the issue, shall preclude review on that issue by the Circuit Court.

J. Any party wishing a continuance or to keep open the record must make that request while the record is still open. Any request for a continuance by the applicant shall be considered a waiver or extension of the 90-day period for final action for the

period of time the continuance is granted or the record is kept open. Any request for a continuance or to keep open the record by any other party shall not be considered a waiver or extension of the 90-day period. The decision whether to grant a continuance, or to keep open the record, shall be within the sole discretion of the Board.

K. The Board of Commissioners may continue the hearing from time to time to allow the 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 of Commissioners establishes a time certain and location for the continued hearing. The Board of Commissioners may close the hearing but keep open the record for the submission of additional written material or other documents and exhibits. The Board of Commissioners may limit the factual and legal issues that may be addressed in any continued hearing or open-record period.

Section 11. Notice of Hearings. Notice for all public hearings for compensation claim applications must conform to the requirements of this section.

A. 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:

(1) 250 feet of the subject property, if the subject property is wholly or in part within an urban growth boundary;

(1) 250 feet of the subject property, if the subject property is outside an urban growth boundary and not within a farm or forest zone; or

(1) 750 feet of the subject property if the property is within a farm or forest zone.

Notice also will be sent to any County-recognized neighborhood or community organization or identified agency whose territory includes the subject property. The County also will publish the notice in a newspaper of general circulation within the County at least 20 days prior to the hearing.

B. Notice of the hearing will include the following information:

(1) The time, date and location of the public hearing;

(2) The street address or other easily understood

location of the subject property;

(3) A description of the applicant's claims, along with a list of the approval criteria that the County will use to evaluate the claim;

(4) A statement that any interested party may testify at the hearing or submit written comments on the claim at 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;

(5) A statement that any issue which is intended to provide a basis for an appeal to the Circuit Court must be raised before the closure 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;

(6) 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 LDS Department during normal business hours; and

(7) The name and telephone number of the staff person responsible for the application and who is otherwise available to answer questions about the application.

Section 12. Ex Parte Contacts, Bias, Conflicts of Interest.

A. Any factual information obtained by a Commissioner outside the context of a quasi-judicial hearing will be deemed an ex parte contact. Before the opening of the hearing record, any Commissioner that has obtained any material factual information through an ex parte contact must declare the content of that contact and allow any interested party to rebut the substance of that contact. In the case of hearings which are continued from time to time, any additional ex parte contacts that occur must be fully disclosed at the earliest practical moment in the hearing process with an opportunity for rebuttal. This rule does not apply to contacts between County staff and any 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 matter, that Commissioner shall not participate in a decision on that matter.

C. All decisions must be fair, impartial and based on the applicable approval standards 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.

Section 13. 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 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 14. Evidence and Criteria.

A. Evidence. The applicant has the burden of demonstrating, by a preponderance of the evidence, that the approval criteria have been met and that, therefore, compensation or other relief is due under Article I, Section 18 of the Oregon Constitution. The Board may require that testimony be under oath. The rules of evidence shall not apply, but the Board of County Commissioners may consider the reliability and credibility of the evidence. Repetitious, irrelevant, unduly prejudicial and immaterial evidence may be excluded.

B. Approval Criteria. The approval criteria for an application for compensation shall include the terms and provisions of Ballot Measure 7 itself, as interpreted by any court of competent jurisdiction, and in addition shall include the following:

(1) The current property owner has owned the subject property continuously since the regulation was adopted, first enforced or applied, and the regulation will otherwise apply to the property for at least 90 days from the date the application was, or was deemed to be, complete.

(2) The regulation alleged to restrict the use of the property is not an exempt regulation.

(3) The land use was permitted outright, or was a primary use or an allowed use under applicable County regulations at the time the current owner acquired the property, and not otherwise prohibited by laws or regulations adopted, enforced or applied by other agencies or jurisdictions.

(4) The land use has been denied or there is other evidence that a specific land use is not permitted outright, or a

primary use or an allowed use under current regulations adopted, enforced or applied by the County.

(5) The regulation reduced the fair market value of the subject property in a sum certain when it was adopted, first enforced or applied to the subject property.

(6) The application for compensation includes all necessary information and materials required by this Ordinance.

Section 15. Board Decision and Notice of Decisions.

A. Notwithstanding any other provision of this Ordinance, no application for compensation will be approved or paid by the Board of County Commissioners which isn't clearly required by Ballot Measure 7, as interpreted by the Board or any reviewing court of competent jurisdiction.

B. Notwithstanding any other provision of this Ordinance, no application for compensation will be paid, unless the regulation for which compensation is requested continues to apply to the property 90 days after the property owner applies for compensation under this Ordinance.

C. Subject to subsections 13A and 13B above, if a right to compensation under Article I, section 18 of the Oregon Constitution has been established, the Board of Commissioners may provide for a monetary award as compensation for a reduction in market value of private real property. The award shall, at the discretion of the Board of Commissioners, provide for reimbursement of the application fee paid by a prevailing applicant. Approval of an application for compensation under this Ordinance shall preclude any subsequent claim for compensation under this Ordinance or Ballot Measure 7.

D. Unless waived by the applicant, the Board of Commissioners shall issue a final decision within 90 days of the date the application was, or was deemed to be, complete, and in every case shall adopt written findings in support of the decision.

E. The County will send, by first class mail, a notice of all decisions made under this Ordinance. Notice will be mailed to the applicant and to all parties who provided oral or written testimony at the hearing on the matter. The notice of decision must include the following information:

- (1) The effective date of decision;

(2) The name of the applicant;

(3) The street 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, subject to review by the Circuit Court pursuant to ORS 34.010 et seq.; and

(6) The contact person, address and a telephone number for use in inspecting or obtaining a copy of the final decision.

Section 16. Re-application. If an application is denied or withdrawn following the close of the public hearing, no re-application for the same or substantially similar compensation claim may be made by the current owner of the subject property.

Section 17. Recording Decision. The County shall record the Notice of Decision without costs in the County deed records prior to any payment of the claim.

Section 18. Review. Review of the Board of Commissioners' decision under this Ordinance shall be in the Circuit Court of Columbia County by Writ of Review pursuant to ORS 34.010 et seq.

A. Failure of an applicant to exhaust the remedy provided by this ordinance shall be a bar to judicial review.

B. The prevailing party on review shall be entitled to recover its reasonable attorney fees and costs as determined by the court.