

CHAPTER 34

PROCEDURE FOR REVIEWING DEMANDS FOR COMPENSATION FOR REDUCTION IN PROPERTY VALUE

ADMINISTRATION

34.005. Purpose. The purpose of this Chapter is to provide procedures and standards for processing claims for compensation made pursuant to 2004 Measure 37. [Ord. 2005-204]

34.010. Definitions. As used in BCC Chapter 34, unless the context requires otherwise:

- (1) **“Affected property”** means the private real property that is alleged to have suffered a reduction in fair market value as result of a County’s regulation restricting the use of that property and for which a property owner seeks compensation for the reduction in value.
- (2) **“Board”** means the Benton County Board of Commissioners.
- (3) **“Claimant”** means the property owner who submits a written claim for compensation under BCC 34.100.
- (4) **“Director”** means the Community Development Department Director or his or her designee.
- (5) **“Family member”** means wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent, stepchild, grandparent, or grandchild of the owner of the affected property, an estate of any of the foregoing family members, or a legal entity owned by any one or combination of these family members or the owner of the property.
- (6) **“Owner”** means the present owner of the property, or any interest therein.
- (7) **“Regulation”** means any Benton County:
 - (a) comprehensive plan, zoning ordinance, land division ordinance or transportation ordinance; or
 - (b) law, rule, ordinance, or other enforceable enactment of the County which regulates the use of land or any interest therein.
- (8) **“Restricts the use of property”** means prohibiting a particular use of the property or making that use permissible only under certain conditions. Standards that regulate the form of development or how a structure must be constructed, such as setback requirements, height limitations, erosion control measures and building code standards, are not restrictions on the use of property. Regulations requiring or setting fees to be charged are not restrictions on the use of property. [Ord. 2005-204; Ord. 2006-212]

PROCEDURE

34.100. Claim for Compensation or Waiver. The purpose of this section is to require a claimant to submit sufficient information with a written claim to allow Benton County to adequately evaluate the claim. Claimants are encouraged to meet with the Director prior to filing a claim for the purpose of exploring the claim and alternatives. Each of the subsections hereunder describes an essential element of the evaluation process.

(1) A property owner wishing to make a claim against the County under Measure 37 shall first submit a written demand for compensation to the County. The claimant must be the present owner of the property that is the subject of the claim at the time the claim is submitted. A written demand for compensation must be filed with the Community Development Department and shall include:

- (a) Identification of the affected property by street address, subdivision lot number, assessor's map and tax lot number, or any other information that clearly identifies the property;
- (b) Proof of ownership interest such as a copy of the deed of ownership, land sale contract or lease agreement;
- (c) A deed history report issued no more than 60 days prior to the submission of the claim that illustrates the ownership history of the affected property back to, and including, the date claimant asserts his or her ownership interest was established;
- (d) A list, with current addresses, of all persons who have a recorded interest in the affected property;
- (e) The name, address and telephone number of the person making the claim, the date the Claimant acquired the property, and, if applicable, the date that a family member of Claimant acquired the property;
- (f) Identification of the regulation that is alleged to restrict the use of the affected property;
- (g) A statement describing how the restriction affects the value of the property;
- (h) The amount claimed as compensation;
- (i) The property value claimed to have been lost due to regulations imposed or enforced by Benton County shall be substantiated as follows:
 - (A) The claimant shall submit a valuation report prepared by an Oregon licensed appraiser or an Oregon licensed real estate broker. The report shall compare:
 - (i) The value of the property immediately prior to the imposition or enforcement of the regulation(s) in question, and

(ii) The value of the property after the imposition or enforcement of the regulation(s) in question, as of the date the claim is filed with the County.

(B) The valuation shall not include speculative land uses, post-infrastructure installation value or any other value attributable to a land use that is not approved for the subject property as of the date the claim is filed.

(C) All dollar values shall be adjusted to current values to compensate for inflation.

(j) A statement describing the extent to which the regulation would need to be waived, suspended, or modified to avoid the need for compensation;

(k) A statement identifying whether the application seeks compensation or a waiver, suspension or modification of the regulation; and

(l) The processing fee or deposit, which shall be set by Board order. [Ord. 2005-204; Ord. 2006-212]

34.105. Notice. The County shall provide notice of the hearing required by BCC 34.120 to all owners of the property and as required in BCC 51.610 and to anyone who has requested notice. Nothing in this section shall prohibit the County from providing additional notice where the County, in its discretion, deems additional notice appropriate. The notice shall identify the property, state the date, time and place of the hearing, state the amount of the claim, list a county contact person and phone number, advise of the availability of the staff report and summarize the hearing procedures and nature of the claim. Failure of any person to receive notice or any defect in the notice shall not invalidate any action taken or decision made at the hearing. [Ord. 2005-204]

34.110. Staff Report. Community Development Department staff shall prepare a report analyzing the claim. The staff report may be reviewed by the Assessor, Finance Manager, and County Counsel before being submitted to the Board. The staff report shall be submitted to the Board, mailed to the Claimant, and made available to the public at least 7 days before the public hearing required by BCC 34.120. Staff may recommend offsetting a compensation claim by an amount equal to payment of back taxes owed upon release of an affected property from special tax deferral status. [Ord. 2005-204; Ord. 2006-212]

34.115. Board Proceedings. The Board shall hold a public hearing on the claim. The public hearing should normally be set within 150 days of the demand for compensation but may be set at any time. The Board may hold an executive session on the claim at any time. [Ord. 2005-204]

34.120. Public Hearing. The Claimant and any other person shall be provided a reasonable opportunity to present evidence and argument at the public hearing. The Board may limit the duration of testimony. [Ord. 2005-204]

BOARD DECISION

34.200. Board Decision. In deciding the claim, the Board may take any of the following actions:

- (1) Deny the claim based on any one or more of the following findings:
 - (a) The 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 or enforcement of the regulation.
 - (c) The claim was not timely filed.
 - (d) The Claimant is not the current property owner.
 - (e) The Claimant or family member of Claimant was not the property owner at the time the regulation was adopted.
 - (f) The regulation is a historically and commonly recognized nuisance law or a law regulating pornography or nude dancing.
 - (g) The regulation is required by federal law.
 - (h) The regulation protects public health or safety.
 - (i) The County is not the entity responsible for payment because it is not responsible for the challenged law, rule or ordinance.
 - (j) The County has not taken final action to enforce or apply the regulation to the property for which compensation is claimed.
 - (k) The Claimant is not legally entitled to compensation from the County for a reason other than those listed in subsections (a) through (g). The basis for this finding must be clearly explained.
 - (l) The County has not established a fund for payment of claims under Measure 37.
 - (m) The claimant has not provided sufficient evidence:
 - i. Of ownership interest;
 - ii. Of reduction of value of affected property; or
 - iii. That waiver, suspension or modification of a regulation will alter the permissible uses of the property.
 - (n) Claimant has failed to meet the requirements of Section 34.100(1).

- (2) Pay compensation, either in the amount requested or in some other amount supported by the evidence, which may include an offset due to payment of back taxes upon release of the affected property from special tax deferral status. If the County pays compensation, it shall continue to apply and enforce the regulation. Any compensation shall be paid from funds appropriated for that purpose.
- (3) Waive or not apply the regulation to allow the owner to use the property for a use permitted at the time the Claimant acquired the property or when the regulation was enforced by the County and resulted in diminution in property value.
- (4) Modify the regulation so that it does not give rise to a claim for compensation. Any such modification shall be as to only the subject property unless the County follows the procedure for a legislative land use decision.
- (5) Conditionally waive or suspend the regulation subject to receipt of a defined amount of contributions toward compensation by a specified date from persons opposed to the waiver or suspension, such as persons who believe they would be negatively affected by waiver or suspension, with the waiver or suspension being granted if the defined amount of contributions is not received by the specified date. If the contributions are received, compensation shall be paid within 180 days of the date the written demand for compensation was filed. The specified date shall allow the County time to process the contributions and pay compensation.
- (6) A decision by the Board to waive or modify a land use regulation shall be personal to the claimant(s) and shall automatically become invalid and void upon the transfer of any ownership interest in the affected property by the claimant to anyone.

The Board may take other actions it deems appropriate in individual circumstances, may modify the listed actions, and/or may combine the listed actions, consistent with Measure 37. The Board may negotiate an acceptable solution with the Claimant or may direct staff to negotiate with the Claimant. In the event the Board directs staff to negotiate, the Board shall set the matter for further action no more than 175 days from the date of the notice of claim became complete. If the Board directs staff to negotiate, it may delegate authority to staff. The Board shall take final action within 180 days of the written demand for compensation. The County shall take actions (2) through (5) only if it determines the claim is valid. [Ord. 2005-204; Ord. 2006-212]

34.205. Private Right of Action. If the Board's approval of a claim by removing or modifying a land use regulation causes a reduction in value of other property located in Benton County, the affected party shall have a cause of action in state circuit court to recover from the claimant the amount of the reduction, and shall also be entitled to attorney's fees. [Ord. 2005-204]

34.210. Authority. In relation to a claim, the Board shall have the authority to take the actions listed in BCC 34.200, including the authority to waive or suspend any provision of any County code or ordinance, notwithstanding any inconsistent provision in this code or the Development Code. The County may retain an appraiser to assist the Board determination. [Ord. 2005-204]

34.215. Severability. If any section, phrase, clause, or part of this Chapter is found to be invalid by a court of competent jurisdiction, the remaining phrases, clauses, and parts shall remain in full force and effect. [Ord. 2005-204]