

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

In the Matter of Claim Nos. CL 05-02, CL 05-03,)
and CL 05-04 Submitted by Wayne and Catherine) Order No. 22-2005
Stevens for Compensation under Measure 37)

WHEREAS, on December 9, 2004, Columbia County received 3 claims under Measure 37 and Order No. 84-2004 from Wayne and Catherine Stevens related to 3 parcels of property on Robinette Road having Tax Account Numbers 5131-000-02400, 5131-000-02401 and 5131-000-02402, as described in Partition Plat 2000-26, recorded by Instrument No. 00-06400 on June 29, 2000; and

WHEREAS, according to the information presented with the claim, Wayne and Catherine Stevens have continuously owned an interest in the property since March 31, 1972, and are currently the sole fee owners of the property; and

WHEREAS, in 1972 Columbia County did not regulate minimum lot sizes for the division of rural residential land; and

WHEREAS, the subject parcel is currently zoned Rural Residential (RR-5) pursuant to the Columbia County Comprehensive Plan; and

WHEREAS, pursuant to Columbia County Zoning Ordinance (CCZO), Section 604.1, the minimum lot or parcel size for new land divisions in the RR-5 zone shall be five acres; and

WHEREAS, Mr. and Mrs. Stevens claim that the minimum lot size requirement for new land divisions has restricted the use of the property and has reduced the value of the property as follows:

- Lot 1, Tax Account No. 5131-000-02400 reduced by \$275,000;
- Lot 2, Tax Account No. 5131-000-02401 reduced by \$50,000;
- Lot 3, Tax Account No. 5131-000-02402 reduced by \$65,000; and

WHEREAS, Mr. and Mrs. Stevens desire to further divide the property as follows:

- Lot 1, Tax Account No. 5131-000-02400 consisting of 11.57 acres into three 2 acre parcels and one 5.57 acre parcel for residential development;
- Lot 2, Tax Account No. 5131-000-02401 consisting of 5 acres into one 2 acre parcel and one 3 acre parcel;
- Lot 3, Tax Account No. 5131-000-02402 consisting of 6.22 acres into two 2.5 acre parcels;

and

WHEREAS, pursuant to Measure 37, in lieu of compensation the Board may opt to not apply

Order No. 22-2005

Page 1

COLUMBIA COUNTY, OREGON 2005-007386
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This is a no fee document
NO FEE

(hereinafter referred to as "waive" or "waiver") any land use regulation that restricts the use of the Claimant's property and reduces the fair market value of the property to allow a use which was allowed at the time the Claimant acquired the property;

NOW, THEREFORE, it is hereby ordered as follows:

1. The Board of County Commissioners adopts the findings of fact set forth in the Staff Report for Claim Numbers CL 05-02, CL 05-03 and CL 05-04, dated May 6, 2005, which are attached hereto as Attachments 1, 2, and 3, respectively, and are incorporated herein by this reference.
2. In lieu of compensation, the County waives CCZO §506.1 to the extent necessary to allow the Claimant to divide Lot 2, Tax Account Number 5131-000-02401, and Lot 3, Tax Account Number 5131-000-02402 into parcels having a minimum lot size of two acres, and Lot 1, Tax Account Number 5131-000-02400 into three 2 acre parcels and one 5.57 acre parcel.
3. This waiver is subject to the following limitations:
 - A. This waiver does not affect any land use regulations of the State of Oregon. If the use allowed herein remains prohibited by a State of Oregon land use regulation the County will not approve an application for land division, other required land use permits or building permits for development of the property until the State has modified, amended or agreed not to apply any prohibitive regulation, or the prohibitive regulations are otherwise deemed not to apply pursuant to the provisions of Measure 37.
 - B. In approving this waiver, the County is relying on the accuracy, veracity, and completeness of information provided by the Claimants. If it is later determined that Claimants are not entitled to relief under Measure 37 due to the presentation of inaccurate information, or the omission of relevant information, the County may revoke this waiver.
 - C. Except as expressly waived herein, Claimants are required to meet all local laws, rules and regulations, including but not limited to laws, rules and regulations related to subdivision and partitioning, dwellings in the forest zone, and the building code.
 - D. This waiver is personal to the Claimants, does not run with the land, and is not transferable except as may otherwise be required by law.
 - E. By developing the parcel in reliance on this waiver, Claimants does so at their own risk and expense. The County makes no representations about the legal effect of this waiver on the sale of lots resulting from any land division, on the rights of future land owners, or on any other person or property of any sort. By accepting this waiver, and developing the property in reliance thereof, Claimants agree to indemnify and hold the County harmless from and

against any claims arising out of the division of property, the sale or development thereof, or any other third party claim arising from or related to this waiver.

F. This Order shall be recorded in the Columbia County Deed Record referencing Partition Plat 2000-26, recorded by instrument No. 00-06400, without cost.

Dated this 1st day of June, 2005.

BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

Approved as to form

By: [Signature]
Anthony Hyde, Chair

By: [Signature]
Assistant County Counsel

By: [Signature]
Joe Corsiglia, Commissioner

By: [Signature]
Rita Bernhard, Commissioner

After recording please return to
Board of County Commissioners
230 Strand, Room 331
St. Helens, Oregon 97051

COLUMBIA COUNTY LAND DEVELOPMENT SERVICES

Measure 37 Claim

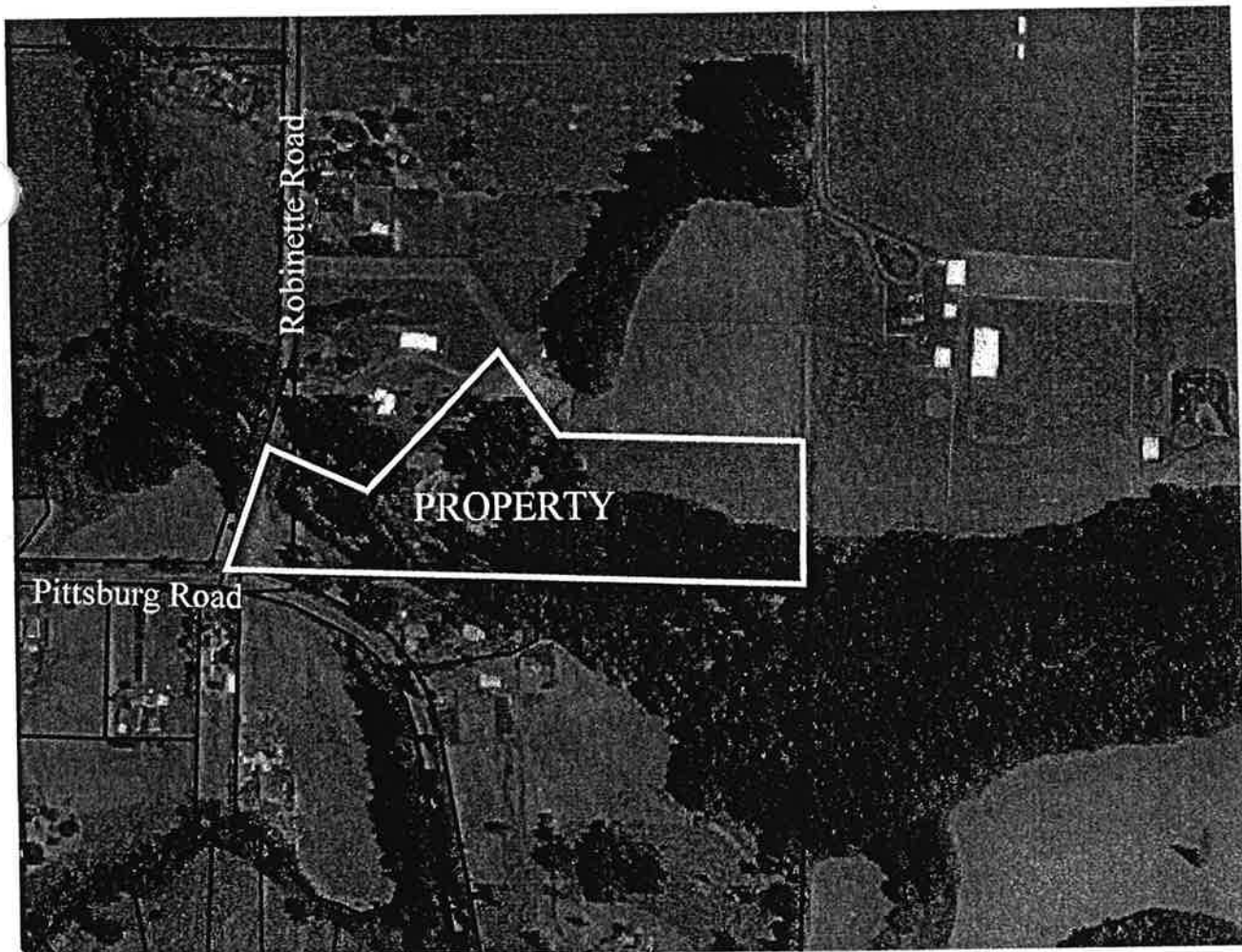
Staff Report

DATE: May 6, 2005

FILE NUMBER: CL 05-02

CLAIMANT/OWNER: Wayne M. And Catherine J. Stevens
60094 Robinette Road
St. Helens, Oregon 97051

PROPERTY LOCATION: 60094 Robinette Road
St. Helens, Oregon 97051



TAX ACCOUNT NUMBER: 5131-000-02400

ZONING: Rural Residential (RR-5)

SIZE: 11.57 Acres

REQUEST: To subdivide the subject property into 4 residential parcels.

CLAIM RECEIVED: 12/09/04

180 DAY DEADLINE:

6/03/05

I. BACKGROUND: Wayne and Catherine Stevens filed a claim under Measure 37 on December 9, 2004. The amount of the claim is based upon a Market Analysis which was submitted with the claim alleging a \$275,000 loss in fair market value due to the current RR-5 land use regulations (minimum lot size and public ROW frontage requirements) applicable to their property. Justification for this alleged loss of value will be reviewed below. Mr. And Mrs. Stevens state their desire to divide the property into three 2 acre parcels and one 5.5 acre parcel. The claimants state that it is their intention to make one private road with one gate to serve the proposed land division in lieu of the a public road which is currently required.

II. CLAIM SUMMARY:

A. PROPERTY OWNER AND OWNERSHIP INTERESTS:

1. Columbia County Title & Escrow Services, Inc. Issued a Measure 37 Application Report Order No. 05-00218, dated February 24, 2005 for the subject property identified by Tax Acct. No. 5131-000-02400, with legal description attached.
Vested In: Wayne M. Stevens and Catherine J. Stevens, an estate in fee simple
Subject to: The rights of the public for public roads; easements; and 3 other Deeds of Trust, given to secure indebtedness.
No other property interests are listed.
Date of Acquisition: The claimants indicated that they acquired the property in 1968. However, the deed to which they referred, Warranty Deed recorded at Deed Book 171 Page 241, conveys the property from the claimants to Marvin and Ava Warner. The property is not conveyed back to the claimants until March 31, 1972 by Warranty Deed recorded at Book 186, Page 123. The date of acquisition for purposes of Measure 37 is March 31, 1972.
2. The claimants most recently acquired the property in March 1972.

B. APPLICANT/RELATIONSHIP TO OWNER

The applicants, Wayne and Catherine Stevens, are the owners of the property who have signed the claim for compensation.

C. FAMILY MEMBER STATUS

Applicants Wayne and Catherine Stevens, last acquired the property from Marvin and Ava Warner in March 1972. Because of a break in ownership in 1968 after which the property was reconveyed back to the claimants, there is no earlier ancestor acquisition date.

D. LAND USE REGULATION(S) APPLICABLE TO SUBJECT PROPERTY ALLEGED TO HAVE REDUCED FAIR MARKET VALUE/EFFECTIVE DATES/CLAIMANT ELIGIBILITY

CCZO Rural Residential (RR-5) Zoning Regulations as follows:

Section 604 Standards regarding minimum lot or parcel size, and Section 604.5 requiring 50' road frontage

E. STATEMENT AS TO HOW THE REGULATIONS RESTRICT USE

"When Wayne's grandparents purchased the land in the early 1900's land use laws were basically non-existent. When we purchased the land in 1968 there were few restriction up to the time LCDC rules were enforced. Provisions in Section 600 Rural Residential - 5 have restricted us in breaking up our land into less than 5 acres. ... Land use laws restrict us from making the most money our of our property. By being able to divide our property as we wish, which was our understanding when we purchased it, would enable us to recoup our losses due to Enron and retire gracefully."

F. EVIDENCE OF REDUCED FAIR MARKET VALUE SUBMITTED

Comparative Market Analyses indicating fair market value for the undivided 11.57 acre parcel and fair market value for the property as it is proposed to be divided into three 2 acre parcels and one 5.5 acre parcel were submitted by the applicant and were prepared for the applicant by Mark Didier, Century 21 Elite on December 8, 2004, December 9, 2004; December 13, 2004.

G. COMPENSATION DEMANDED

\$275,000.00

DETERMINATION OF CLAIMANT ELIGIBILITY FOR FURTHER REVIEW:

The Claimant acquired the property in 1968. The regulations cited became effective in July 1984. The claimant is eligible for further review and action should be taken under Measure 37.

CRITERIA FOR REVIEW

COLUMBIA COUNTY ORDINANCE 84-2004

Interim Procedure to Process Applications for Compensation Under Oregon Statewide Ballot Measure 37

- III. PRE-APPLICATION CONFERENCE. Before submitting a Claim, Owners are encouraged to schedule and attend a pre-application conference with Land Development Services Department staff to discuss the Claim.

Finding 1: The applicant did attend a pre-application conference on approximately December 2, 2004 with staff to obtain information concerning Measure 37 and the County claims process

- IV. APPLICATION FEE. The fee to submit a claim for compensation shall be \$500.00. The Board of County Commissioners may, by order or resolution, modify the fee for processing Claims. The fee shall be based upon the reasonable cost to the County of processing such application including the cost of technical review.

Finding 2: The applicant submitted the required \$500.00 filing fee. A hardship fee waiver was requested and granted.

V. CLAIM FILING PROCEDURES.

- A. An Owner Seeking to file a Claim for Compensation under Measure 37, must be the present owner of the property that is subject to the claim at the time the claim

is submitted. The claim shall be filed with the Land Development Services Department.

Finding 3: The claim was filed with Land Development Services on December 9, 2004. According to the Measure 37 Application Report submitted with the claim, Wayne M. Stevens and Catherine J Stevens are the current owners of the subject property in fee simple estate as tenants by the entirety.

- B. Claims should be submitted on the Claim Form approved by the Board of County Commissioners.

Finding 4: The applicant submitted the Claim for Compensation under Measure 37 on the claim form approved by the Board of County Commissioners.

- C. The Claim Form should be accompanied by all necessary information and materials and the appropriate filing fee, sufficient to demonstrate a claim under Measure 37. The Board of County Commissioners may waive the fee if the Claimant establishes a financial hardship. A complete Claim Form includes all the information and materials listed on the Claim Form. The Owner is responsible for the completeness and accuracy of the application and supporting information and materials.

Finding 5: The applicant has submitted a Claim under Measure 37 on the appropriate form(Attachment 1). The applicant has requested compensation in the amount of \$275,000.00. The applicant has provided justification for this amount of compensation in the form of a Comparative Market Analysis for the current 11.57 acre parcel and a Fair Market Analysis Difference for the property if divided as proposed into three 2 acre lots and one 5.5 acre (ll F above). The sufficiency of the documents submitted to demonstrate a claim under Measure 37 is addressed in Findings 6 through 10 below.

Additionally, the applicant submitted a title report entitled, "Measure 37 Application Report". The claimants indicated that they acquired the property in 1968. However, the deed to which they referred, Warranty Deed recorded at Deed Book 171 Page 241, conveys the property from the claimants to Marvin and Ava Warner. The property is not conveyed back to the claimants until March 31, 1972 by Warranty Deed recorded at Book 186, Page 123. The date of acquisition for purposes of Measure 37 is March 31, 1972. The County enacted its first Zoning Ordinance for the subject property on August 29, 1973. Therefore, staff finds that the current owner/claimant acquired the property(1968) prior to enactment of the Columbia County Zoning Ordinance(1973).

MEASURE 37

(1) If a public entity enacts or enforces a new land use regulation or enforces a land use regulation enacted prior to the effective date of this amendment that restricts the use of private real property or any interest therein and has the effect of reducing the fair market value

of the property, or any interest therein, then the owner of the property shall be paid just compensation.

(2) Just compensation shall be equal to the reduction in the fair market value of the affected property interest resulting from enactment or enforcement of the land use regulation as of the date the owner makes written demand for compensation under this act.

Finding 6: The claimants state their desire to divide the 11.57 acres into approximately three 2 acre parcels and one 5.5 acre parcel. The Stevens claim that CCZO Section 604.1, minimum lot size requirements in the RR-5 zone and Section 604.5 which requires frontage on a public right of way restricts them from dividing and developing the property with access by means of a private road.

The Claimants became owners of the subject property in 1972 and the subject property was unzoned.

In 1973 the County adopted the first Zoning Ordinance for the south County area around St. Helens where the subject property is located. In 1973 the subject property was zoned RR. The minimum lot size in 1973 for the subject property in the RR zone was 2 acres. Access requirements in 1973 required that "Every lot shall abut a street, other than an alley, for at least sixty (60) feet, or shall have such other legal access held suitable by the Board of Adjustment."

In 1984 the County adopted the first County wide Zoning Ordinance and the subject property then was rezoned to FA-40 which was then amended to FA-19 zone in 1985.

On September 9, 1992 the County Commissioners approved Ordinance No. 92-10, a Comprehensive Plan Amendment and zone change, ZC 8-91 which allowed the subject property and other property in the area to be rezoned from FA-19 to the current RR-5 zoning designation which allowed a 5 acre minimum parcel size with a go-below provision for 2 acre parcels if served by community water.

In November of 1998 the County adopted amendments(Ordinance No. 98-4) to the RR-5 zone which became effective in February 2000. These amendments removed the go-below provision which allowed the property to be divided into minimum 2 acre parcel sizes if served by community water. This amendment made 5 acres the minimum parcel size in the RR-5 zone.

The 5 acre minimum parcel size requirement for the subject property has not changed since the last amendment to the RR-5 zoning district in 1998.

The claimant maintains that these regulations; namely the minimum 5 acre parcel size requirement and the 50' of frontage on a public right-of-way requirement ;restrict use of the property by preventing the claimants from dividing their property into parcels less than 5 acres and by requiring frontage on a public right-of-way instead of a private road. Staff finds that the claimant has shown that the RR-5 minimum parcel size requirement and public road frontage requirement(CCZO, Section 604.1 & 604.5 respectively), which were adopted after the claimants date of acquisition restrict the proposed use of the property.

The claimant has submitted documentation to demonstrate reduction in fair market value of their property in the form of a comparative Market Analysis for the single 11.57 acre parcel, as well as a market analysis showing the current value of proposed three 2.0 acre parcels and one 5.5 acre parcel (II F above). The Comparative Market Analysis for the single 11.57 acre lot submitted by the applicant was prepared by Mark Didier on December 9, 2004. The analysis estimates the subject property to be worth approximately \$180,000 for the entire 11.57 acre parcel under the current Land Use Regulations. The applicant submitted a Fair Market Analysis Difference showing three 2 acre parcels valued at \$100,000 per parcel for a total of \$300,000; and one parcel of 5.5 acres valued at \$155,000; for a grand total \$275,000.

Staff finds that under current RR-5 zoning the applicant could have applied for a partition to divide the subject property into two parcels greater than 5 acres and therefore the market analysis undervalued the property under current RR-5 regulations. The Comparative Market Analysis should have determined the current property value based upon the value of two 5 acre parcels instead of one 11.57 acre parcel. If, based upon the Claimant's comparative Fair Market Analysis, one parcel of 5.5 acres is worth \$155,000, then it is reasonable to assume that two parcels of 5.5 and 5.07 acres are worth approximately \$310,000. Following this logic, the difference between 310,000 and the value of the property if divided into three 2 acre parcels worth \$100,000 each plus one 5.5 acre parcel worth \$155,000 for a total of \$455,000 is \$145,000 instead of \$275,000. Furthermore, staff finds that some of the RR-5 properties used for comparison in the Market Analysis submitted had developed road access. Therefore, the costs of providing road access was not considered in determination of the fair market value of the property if the cited regulations were not applicable.

The claimant did not submit any documentation that indicates that the public road frontage requirement will have the effect of reducing the fair market value of the property.

Based on the above, the staff finds that the market analysis is not adequate to demonstrate the specific amount of the reduction in fair market value resulting from the minimum lot size regulations in the RR-5 zone regulations. The market analysis does not take into account the value of the 11.57 acres if it were divided into two parcels greater than 5 acres before doing the Comparative Market Analysis, costs of development of the land including the costs of road access, water, sewer and other public and private services necessary to develop the property as proposed. Therefore, staff finds that whereas the minimum lot size regulations in the RR-5 zone may have resulted in some reduction in value, the specific compensable amount of reduction in fair market value has not been adequately demonstrated.

(3) Subsection (1) of this act shall not apply to land use regulations:

(A) Restricting or prohibiting activities commonly and historically recognized as public nuisances under common law. This subsection shall be construed narrowly in favor of a finding of compensation under this act;

(B) Restricting or prohibiting activities for the protection of public health and safety, such as fire and building codes, health and sanitation regulations, solid or hazardous waste regulations, and pollution control regulations;

- (C) To the extent the land use regulation is required to comply with federal law;**
- (D) Restricting or prohibiting the use of a property for the purpose of selling pornography or performing nude dancing. Nothing in this subsection, however, is intended to affect or alter rights provided by the Oregon or United States Constitutions; or**
- (E) Enacted prior to the date of acquisition of the property by the owner or a family member of the owner who owned the subject property prior to acquisition or inheritance by the owner, whichever occurred first.**

Finding 7: Staff finds that the RR-5 minimum lot size regulations, CCZO, Section 604.1; and the frontage on a public right-of-way requirement, Section 604.5 identified by the claimant do not qualify for any of the exclusions listed.

(4) Just compensation under subsection (1) of this act shall be due the owner of the property if the land use regulation continues to be enforced against the property 180 days after the owner of the property makes written demand for compensation under this section to the public entity enacting or enforcing the land use regulation.

Finding 8: Should the Board determine that the that the claimant has demonstrated a specific reduction in fair market value of the property due to the cited regulation(s), the Board is to pay compensation in the amount of the reduction in fair market value caused by the RR-5 land use regulations or in lieu of compensation, modify, remove, or not apply the RR-5 minimum lot size regulations.

(5) For claims arising from land use regulations enacted prior to the effective date of this act, written demand for compensation under subsection (4) shall be made within two years of the effective date of this act, or the date the public entity applies the land use regulation as an approval criteria to an application submitted by the owner of the property, whichever is later. For claims arising from land use regulations enacted after the effective date of this act, written demand for compensation under subsection (4) shall be made within two years of the enactment of the land use regulation, or the date the owner of the property submits a land use application in which the land use regulation is an approval criteria, whichever is later.

Finding 9: The subject claim arises from public road frontage provisions of the RR-5 zoning regulations which were enacted in 1984 and minimum lot size provisions of RR-5 zoning regulations which were enacted in 1998, prior to the effective date of Measure 37 on December 2, 2004. The subject claim was filed on December 9, 2004 which is within two years of the effective date of Measure 37.

(8) Notwithstanding any other state statute or the availability of funds under subsection (10) of this act, in lieu of payment of just compensation under this act, the governing body

responsible for enacting the land use regulation may modify, remove, or not to apply the land use regulation or land use regulations to allow the owner to use the property for a use permitted at the time the owner acquired the property.

Finding 10: As noted in Findings 6 and 7 above, Staff finds the 1998 enactment and enforcement of CCZO, Section 604.1, the RR-5 minimum lot size regulation and CCZO, Section 604.5, the RR-5 minimum public road frontage requirement restricts the use of the property. Additionally, the RR-5 minimum lot size requirement may reduce the value of the subject property. Therefore, if the Board finds that the cited regulations have reduced the value of the property, the Board should authorize payment of just compensation in the amount of the reduction in fair market value. Or, in lieu of such compensation, the Board should not apply the cited regulations to which Measure 37 applies to allow the owner to use the property for a use which was permitted at the time the owner acquired the property.

STAFF RECOMMENDATION

Based on the above findings, it is Staff's opinion that the applicant has met the threshold requirements for proving a Measure 37 claim.

The following table summarizes staff findings concerning the land use regulations cited by the claimant as a basis for their claim. In order to meet the requirements of Measure 37 for a valid claim the cited land use regulation must be found to restrict use, reduce fair market value, and not be one of the land use regulations exempted from Measure 37. The highlighted regulations below have been found to meet these requirements of a valid Measure 37 claim.

LAND USE CRITERION	DESCRIPTION	RESTRICTS USE?	REDUCES VALUE?	EXEMPT?
CCZO 604.1	Minimum lot size for permitted uses is five acres	Yes	Yes	No
CCZO 604.5A	Lots or parcels recorded on or after June 4, 1991 shall have a minimum of 50 feet on a public right of way. The ROW shall be improved to County Road Standards. In lieu of improvements a performance guarantee may be provided per the Columbia County Subdivision and Partitioning Ordinance.	No	No	No

Staff recommends the Board of County Commissioners take action to determine the amount, if any, by which the cited regulations reduced the value of the claimant's property, and act accordingly to pay just compensation in that amount, or, in the alternative, to not apply CCZO Section 604.1.

COLUMBIA COUNTY



OREGON

Measure 37 Claim

Fee: \$500.00 (Required with application)

Land Development Services - Planning Division
Columbia County Courthouse

230 Strand, St. Helens, OR 97051 (503) 397-1501

Claimant Information (attach additional pages for multiple Claimants):

<u>Wayne M. Stevens and Catherine J. Stevens</u>	<u>503-397-1230</u>
Name(s) of Claimant(s):	Daytime phone #
<u>60094 Robinette Rd, St. Helens, OR 97051</u>	
Mailing address for Claimant(s)	City, State, Zip
_____	_____
Mailing address for Claimant(s)	City, State, Zip

Property Information:	
<u>60094 Robinette Rd. St. Helens, OR 97051</u>	<u>5131-000-02400</u>
Property location/address	Property tax account #

Claim Information:

1) Amount of claim: \$ 275,000.00 See Attached Market Analysis

2) Please list the intended use of the property which you believe is restricted by a County land use regulation:
Single family homesites See attached maps as property is now and proposed.

3) Please list all land use regulations related to your intended use of the property which you believe have reduced the fair market value of the property, followed by the date of adoption or the date the regulations were enforced against the property (be as specific as possible...Ordinance, Chapter, Section, Subsection):

RR5 Section 600
Road frontage Section 604.5 50 ft road frontage.
See attached property Provisions & memo from Dave Hill

4) Have you applied for land use approval for your intended use of the property? No
If so, when? _____
If so, what did you apply for? _____
If so, what was the file number? _____

5) When did you acquire the property: 1968, Oct 10 recorded

6) Ownership of property: Sole Joint Other (please list):
Wayne and Catherine - husband and wife

7) Does anyone else have an ownership interest in the property? If so, please list each person and their respective ownership interest:

On Five acre parcel (House/shop) Washington Mutual holds mortgage.
But not on this 11.57 acre piece.

8) Did you acquire the property from a family member? (Family member includes wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, daughter-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent, stepchild, grandchild, the estate of any of the family members listed, or a legal entity owned by any one or a combination of such family members) See attached history of property

If so, from who? Aunt Myrtle Pimm - Deed copy attached

If so, what is the family relationship to you? Aunt of Wayne

If so, when did you acquire the property? 10/10/68 recorded

If so, when did your family member acquire the property? 1950 From Wayne's Grandma
Grandma dates back to 1903

9) List all documentation that you have to establish that the fair market value of the property has been reduced by the land use regulation(s) listed. Attach any such documentation, including appraisals, to this Claim Form: Attached

SIGNATURES

I/we certify that the information contained in and attached to this claim form is accurate and complete.

Wayne M. Stevens
Claimant

12-9-04
Date

Catherine J. Stevens
Claimant

12-9-04
Date

Claimant

Date

Claimant

Date

FOR OFFICIAL USE ONLY

Date Received 12-16-04 Receipt # 46751 Received By: JN

CK# 2198

COLUMBIA COUNTY LAND DEVELOPMENT SERVICES

Measure 37 Claim

Staff Report

DATE: May 6, 2005

FILE NUMBER: CL 05-03

CLAIMANT/OWNER: Wayne M. And Catherine J. Stevens
60094 Robinette Road
St. Helens, Oregon 97051

PROPERTY LOCATION: 60094 Robinette Road
St. Helens, Oregon 97051



TAX ACCOUNT NUMBER: 5131-000-02401

ZONING: Rural Residential (RR-5)

SIZE: 5.0 Acres

REQUEST: To subdivide the subject property into 2 residential parcels(3ac and 5ac).

CLAIM RECEIVED: 12/09/04

180 DAY DEADLINE: 6/03/05

I. BACKGROUND: Wayne and Catherine Stevens filed a claim under Measure 37 on December 9, 2004. The amount of the claim is based upon a Market Analysis which was submitted with the application indicating the value diminished by the current RR-5 land use regulations (minimum lot size and public road frontage requirements) applicable to their property is \$50,000.00. Justification for this alleged loss of value will be reviewed below. Mr. And Mrs. Stevens state their desire to divide the property into one 3 acre parcel and one 2 acre parcel. The claimants state that it is their intention to make one private road with one gate to serve the proposed land division in lieu of the a public road which is currently required.

II. CLAIM SUMMARY:

A. PROPERTY OWNER AND OWNERSHIP INTERESTS:

1. Columbia County Title & Escrow Services, Inc. Issued a Measure 37 Application Report Order No. 05-00218, dated February 24, 2005 for the subject property identified by Tax Acct. No. 5131-000-02400, with legal description attached.
Vested In: Wayne M. Stevens and Catherine J. Stevens, an estate in fee simple
Subject to: The rights of the public for public roads; easements; and 3 other Deeds of Trust, given to secure indebtedness.
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Date of Acquisition: The claimants indicated that they acquired the property in 1968. However, the deed to which they referred, Warranty Deed recorded at Deed Book 171 Page 241, conveys the property from the claimants to Marvin and Ava Warner. The property is not conveyed back to the claimants until March 31, 1972 by Warranty Deed recorded at Book 186, Page 123. The date of acquisition for purposes of Measure 37 is March 31, 1972.
2. The claimants most recently acquired the property in March 1972.

B. APPLICANT/RELATIONSHIP TO OWNER

The applicants, Wayne and Catherine Stevens, are the owners of the property who have signed the claim for compensation.

C. FAMILY MEMBER STATUS

Applicants, Wayne and Catherine Stevens, last acquired the property from Marvin and Ava Warner in March 1972. Because of a break in ownership in 1968 after which the property was reconveyed back to the claimants, there is no earlier ancestor acquisition date.

D. LAND USE REGULATION(S) APPLICABLE TO SUBJECT PROPERTY ALLEGED TO HAVE REDUCED FAIR MARKET VALUE/EFFECTIVE DATES/CLAIMANT ELIGIBILITY

CCZO Rural Residential (RR-5) Zoning Regulations as follows:

Section 604 Standards regarding minimum lot or parcel size, and Section 604.5 requiring 50' road frontage

E. STATEMENT AS TO HOW THE REGULATIONS RESTRICT USE

"When Wayne's grandparents purchased the land in the early 1900's land use laws were basically non-existent. When we purchased the land in 1968 there were few restriction up to the time LCDC rules were enforced. Provisions in Section 600 Rural Residential - 5 have restricted us in breaking up our land into less than 5 acres. ... Land use laws restrict us from making the most money our of our property. By being able to divide our property as we wish, which was our understanding when we purchased it, would enable us to recoup our losses due to Enron and retire gracefully."

F. EVIDENCE OF REDUCED FAIR MARKET VALUE SUBMITTED

Comparative Market Analyses indicating fair market value for the undivided 5 acre parcel(\$290,000) and fair market value for the property as it is proposed to be divided into one 2 acre parcel and one 3 acre parcel with house and shop(\$340,000) were submitted by the applicant and were prepared for the applicant by Mark Didier, Century 21 Elite on December 8, 2004 and December 13, 2004.

G. COMPENSATION DEMANDED

\$50,000.00

DETERMINATION OF CLAIMANT ELIGIBILITY FOR FURTHER REVIEW:

The Claimant acquired the property in 1968. The regulations cited became effective in July 1984. The claimant is eligible for further review and action should be taken under Measure 37.

CRITERIA FOR REVIEW

COLUMBIA COUNTY ORDINANCE 84-2004

Interim Procedure to Process Applications for Compensation Under Oregon Statewide Ballot Measure 37

- III. PRE-APPLICATION CONFERENCE. Before submitting a Claim, Owners are encouraged to schedule and attend a pre-application conference with Land Development Services Department staff to discuss the Claim.

Finding 1: The applicant did attend a pre-application conference on approximately December 2, 2004 with staff to obtain information concerning Measure 37 and the County claims process

- IV. APPLICATION FEE. The fee to submit a claim for compensation shall be \$500.00. The Board of County Commissioners may, by order or resolution, modify the fee for processing Claims. The fee shall be based upon the reasonable cost to the County of processing such application including the cost of technical review.

MEASURE 37

(1) If a public entity enacts or enforces a new land use regulation or enforces a land use regulation enacted prior to the effective date of this amendment that restricts the use of private real property or any interest therein and has the effect of reducing the fair market value of the property, or any interest therein, then the owner of the property shall be paid just compensation.

(2) Just compensation shall be equal to the reduction in the fair market value of the affected property interest resulting from enactment or enforcement of the land use regulation as of the date the owner makes written demand for compensation under this act.

Finding 6: The claimants state their desire to divide the 5.0 acres into one 3 acre parcel with house and shop and one 2 acre parcel. The Stevens claim the County's land use regulations prevent them from doing so. The land use regulations restricting use of property referred to in the claim are CCZO Section 604.1, minimum lot size requirements in the RR-5 zone and Section 604.5 which requires frontage on a public right of way.

The Claimants became owners of the subject property in 1972 and the subject property was unzoned.

In 1973 the County adopted the first Zoning Ordinance for the south County area around St. Helens where the subject property is located. In 1973 the subject property was zoned RR. The minimum lot size in 1973 for the subject property in the RR zone was 2 acres. Access requirements in 1973 required that "Every lot shall abut a street, other than an alley, for at least sixty (60) feet, or shall have such other legal access held suitable by the Board of Adjustment."

In 1984 the County adopted the first County wide Zoning Ordinance and the subject property then was rezoned to FA-40 which was then amended to FA-19 zone in 1985.

On September 9, 1992 the County Commissioners approved Ordinance No. 92-10, a Comprehensive Plan Amendment and zone change, ZC 8-91 which allowed the subject property and other property in the area to be rezoned from FA-19 to the current RR-5 zoning designation which allowed a 5 acre minimum parcel size with a go-below provision for 2 acre parcels if served by community water.

In November of 1998 the County adopted amendments; Ordinance No. 98-4; to the RR-5 zone which became effective in February 2000. These amendments removed the go-below provision which allowed the property to be divided into minimum 2 acre parcel sizes if served by community water. This amendment made 5 acres the minimum parcel size in the RR-5 zone.

The 5 acre minimum parcel size requirement for the subject property has not changed since the last amendment to this zone in 1998.

The claimant maintains that these regulations; namely the minimum 5 acre parcel size requirement and the 50' of frontage on a public right-of-way requirement, restrict use of the property by preventing the claimants from dividing their property into parcels less than 5 acres and by requiring frontage on a public right-of-way instead of a private road. Staff finds that the claimant has shown that the RR-5

minimum parcel size requirement and frontage on a public right of way regulations; CCZO, Section 604.1 & 604.5, are regulations which were adopted after the claimants began ownership of the property and thus restrict the proposed use of the property.

The claimant has submitted documentation to demonstrate reduction in fair market value of their property in the form of a comparative Market Analysis for the single 5.0 acre parcel, as well as a market analysis showing the current value of proposed 3.0 acre parcel with house and shop and 2.0 acre parcel (II F above). The Comparative Market Analysis for the single 5.0 acre lot submitted by the applicant was prepared by Mark Didier on December 13, 2004. The analysis estimates the subject property to be worth approximately \$290,000 for the entire 5.0 acre parcel with house and shop under the current RR-5 minimum lot size. The applicant submitted a market analysis for the property assuming it was able to be divided into one 3 acre parcel with house and shop valued at \$240,000; and one parcel of 2.0 acres valued at \$100,000 totaling \$340,000; for a difference of and monetary claim value of \$50,000. Staff finds that some of the RR-5 properties used for comparison in the Market Analysis submitted had developed road access and were approved for septic systems. Therefore, the cost of utilities and road access was not considered in the determination of the fair market value of the property if the cited regulations where not applicable.

The claimant did not submit any documentation that indicates that the public road frontage requirement will have the effect of reducing the fair market value of the property.

Based on the above, the staff finds that the market analysis is not adequate to demonstrate the specific amount of the reduction in fair market value resulting from the minimum lot size regulations in the RR-5 zone regulations. The market analysis does not take into account the costs of development of the land including the costs of road access and sanitary facilities necessary to develop the property as proposed. Therefore, staff finds that whereas the minimum lot size regulations in the RR-5 zone may have resulted in some reduction in value, the specific compensable amount of reduction in fair market value has not been adequately demonstrated.

(3) Subsection (1) of this act shall not apply to land use regulations:

- (A) Restricting or prohibiting activities commonly and historically recognized as public nuisances under common law. This subsection shall be construed narrowly in favor of a finding of compensation under this act;**
- (B) Restricting or prohibiting activities for the protection of public health and safety, such as fire and building codes, health and sanitation regulations, solid or hazardous waste regulations, and pollution control regulations;**
- (C) To the extent the land use regulation is required to comply with federal law;**
- (D) Restricting or prohibiting the use of a property for the purpose of selling pornography or performing nude dancing. Nothing in this subsection, however, is intended to affect or alter rights provided by the Oregon or United States Constitutions; or**
- (E) Enacted prior to the date of acquisition of the property by the owner or a family member of the owner who owned the subject property prior to acquisition or inheritance by the owner, whichever occurred first.**

Finding 7: Staff finds that the RR-5 minimum lot size regulations, CCZO, Section 604.1; and the frontage on a public right-of-way requirement, Section 604.5 identified by the claimant do not qualify for any of the exclusions listed.

Based on the above findings, it is Staff's opinion that the applicant has met the threshold requirements for proving a Measure 37 claim.

The following table summarizes staff findings concerning the land use regulations cited by the claimant as a basis for their claim. In order to meet the requirements of Measure 37 for a valid claim the cited land use regulation must be found to restrict use, reduce fair market value, and not be one of the land use regulations exempted from Measure 37. The highlighted regulations below have been found to meet these requirements of a valid Measure 37 claim.

LAND USE CRITERION	DESCRIPTION	RESTRICTS USE?	REDUCES VALUE?	EXEMPT?
CCZO 604.1	Minimum lot size for permitted uses is five acres.	Yes	Yes	No
CCZO 604.5A	Lots or parcels recorded on or after June 4, 1991 shall have a minimum of 50 feet on a public right of way. The ROW shall be improved to County Road Standards. In lieu of improvements a performance guarantee may be provided per the Columbia County Subdivision and Partitioning Ordinance.	No	No	No

Staff recommends the Board of County Commissioners take action to determine the amount, if any, by which the cited regulations reduced the value of the claimant's property, and act accordingly to pay just compensation in that amount, or, in the alternative, to not apply CCZO Section 604.1.

COLUMBIA COUNTY



OREGON

Measure 37 Claim

Fee: \$500.00 (Required with application)

Land Development Services - Planning Division

Columbia County Courthouse

230 Strand, St. Helens, OR 97051 (503) 397-1501

Claimant Information (attach additional pages for multiple Claimants):

Wayne M. and Catherine J. Stevens

Name(s) of Claimant(s):

503-391-1230

Daytime phone #

60094 Robine He Rd, St. Helens, OR 97051

Mailing address for Claimant(s)

City, State, Zip

Mailing address for Claimant(s)

City, State, Zip

Property Information:

60094 Robine He Rd, St. Helens, OR 97051

Property location/address

5131-000-02401

Property tax account #

Claim Information:

1) Amount of claim: \$50,000 see attached Market Analysis

2) Please list the intended use of the property which you believe is restricted by a County land use regulation:

Single family homesites, see attached maps - As property is new and proposed changes.

3) Please list all land use regulations related to your intended use of the property which you believe have reduced the fair market value of the property, followed by the date of adoption or the date the regulations were enforced against the property (be as specific as possible...Ordinance, Chapter, Section, Subsection):

RR5 Section 600
Road frontage section 604.5 50' road frontage
See attached property provisions, and memo from Duwe Hill

4) Have you applied for land use approval for your intended use of the property? NO
If so, when? _____

If so, what did you apply for? _____

If so, what was the file number? _____

5) When did you acquire the property: Recorded 10/10/68

6) Ownership of property: Sole Joint Other (please list):
Wayne M and Catherine J. Stevens husband & wife

7) Does anyone else have an ownership interest in the property? If so, please list each person and their respective ownership interest:

Washington Mutual Mortgage

8) Did you acquire the property from a family member? (Family member includes wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, daughter-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent, stepchild, grandchild, the estate of any of the family members listed, or a legal entity owned by any one or a combination of such family members) See History of Property attached

If so, from who? Wayne's Aunt Myrtle Pimin - Copy of deed attached.

If so, what is the family relationship to you? Aunt of Wayne

If so, when did you acquire the property? recorded 10/10/68

If so, when did your family member acquire the property? 1950 from Wayne's Grandma
Grandma dates back to 1903

9) List all documentation that you have to establish that the fair market value of the property has been reduced by the land use regulation(s) listed. Attach any such documentation, including appraisals, to this Claim Form: Attached

SIGNATURES

I/we certify that the information contained in and attached to this claim form is accurate and complete.

Wayne M. Stevens 12-09-04
Claimant Date

Catherine J. Stevens 12-9-04
Claimant Date

Claimant Date

Claimant Date

FOR OFFICIAL USE ONLY		
Date Received _____	Receipt # _____	Received By: _____

COLUMBIA COUNTY LAND DEVELOPMENT SERVICES

Measure 37 Claim

Staff Report

DATE: May 6, 2005

FILE NUMBER: CL 05-04

CLAIMANT/OWNER: Wayne M. And Catherine J. Stevens
60094 Robinette Road
St. Helens, Oregon 97051

PROPERTY LOCATION: 60094 Robinette Road
St. Helens, Oregon 97051



TAX ACCOUNT NUMBER: 5131-000-02402
ZONING: Rural Residential (RR-5)
SIZE: 6.22 Acres
REQUEST: To divide the subject property into two 2.5 acre parcels with 1.22 acres in road.

CLAIM RECEIVED: 12/09/04 **180 DAY DEADLINE:** 6/03/05

I. BACKGROUND: Wayne and Catherine Stevens filed a claim under Measure 37 on December 9, 2004. The amount of the claim is based upon a Market Analysis which was submitted with the application indicating the value diminished by the current RR-5 land use regulations (minimum lot size and public frontage requirements) applicable to their property is \$65,000.00. Justification for this alleged loss of value will be reviewed below. Mr. And Mrs. Stevens state their desire to divide the 6.22 acre property into two 2.5 acre parcels with the remaining acreage of 1.22 acres in private road (this effectively creates 3 parcels). The claimants state that it is their intention to make one private road with one gate to serve the proposed land division in lieu of the a public road which is currently required.

II. CLAIM SUMMARY:

A. PROPERTY OWNER AND OWNERSHIP INTERESTS:

1. Columbia County Title & Escrow Services, Inc. Issued a Measure 37 Application Report Order No. 05-00218, dated February 24, 2005 for the subject property identified by Tax Acct. No. 5131-000-02400, with legal description attached.
Vested In: Wayne M. Stevens and Catherine J. Stevens, an estate in fee simple
Subject to: The rights of the public for public roads; easements; and 3 other Deeds of Trust, given to secure indebtedness.
No other property interests are listed.
Date of Acquisition: The claimants indicated that they acquired the property in 1968. However, the deed to which they referred, Warranty Deed recorded at Deed Book 171 Page 241, conveys the property from the claimants to Marvin and Ava Warner. The property is not conveyed back to the claimants until March 31, 1972 by Warranty Deed recorded at Book 186, Page 123. The date of acquisition for purposes of Measure 37 is March 31, 1972.
2. The claimants most recently acquired the property in March 1972.

B. APPLICANT/RELATIONSHIP TO OWNER

The applicants, Wayne and Catherine Stevens, are the owners of the property who have signed the claim for compensation.

C. FAMILY MEMBER STATUS

Applicants Wayne and Catherine Stevens, last acquired the property from Marvin and Ava Warner in March 1972. Because of a break in ownership in 1968 after which the property was reconveyed back to the claimants, there is no earlier ancestor acquisition date.

D. LAND USE REGULATION(S) APPLICABLE TO SUBJECT PROPERTY ALLEGED TO HAVE REDUCED FAIR MARKET VALUE/EFFECTIVE DATES/CLAIMANT ELIGIBILITY

CCZO Rural Residential (RR-5) Zoning Regulations as follows:

Section 604.1 Standards regarding minimum lot or parcel size; and Section 604.5 requiring 50' road frontage on a public right-of-way.

E. STATEMENT AS TO HOW THE REGULATIONS RESTRICT USE

"When Wayne's grandparents purchased the land in the early 1900's land use laws were basically non-existent. When we purchased the land in 1968 there were few restriction up to the time LCDC rules were enforced. Provisions in Section 600 Rural Residential - 5 have restricted us in breaking up our land into less than 5 acres. ... Land use laws restrict us from making the most money our of our property. By being able to divide our property as we wish, which was our understanding when we purchased it, would enable us to recoup our losses due to Enron and retire gracefully."

F. EVIDENCE OF REDUCED FAIR MARKET VALUE SUBMITTED

Comparative Market Analyses indicating a Fair Market Analysis Difference of the 6.22 acre parcel before dividing and after dividing into two 2.5 acre parcels, and a 1.22 acre private road were submitted by the applicant and were prepared for the applicant by Mark Didier, Century 21 Elite on December 8, 2004 and December 13, 2004.

G. COMPENSATION DEMANDED

\$65,000.00

DETERMINATION OF CLAIMANT ELIGIBILITY FOR FURTHER REVIEW:

The Claimant acquired the property in 1968. The regulations to which the claim refers became effective in July 1984. The claimant is eligible for further review and action should be taken under Measure 37.

CRITERIA FOR REVIEW

COLUMBIA COUNTY ORDINANCE 84-2004

Interim Procedure to Process Applications for Compensation Under Oregon Statewide Ballot Measure 37

- III. **PRE-APPLICATION CONFERENCE.** Before submitting a Claim, Owners are encouraged to schedule and attend a pre-application conference with Land Development Services Department staff to discuss the Claim.

Finding 1: The applicant did attend a pre-application conference on approximately December 2, 2004 with staff to obtain information concerning Measure 37 and the County claims process

- IV. APPLICATION FEE. The fee to submit a claim for compensation shall be \$500.00. The Board of County Commissioners may, by order or resolution, modify the fee for processing Claims. The fee shall be based upon the reasonable cost to the County of processing such application including the cost of technical review.

Finding 2: The applicant submitted the required \$500.00 filing fee. A hardship fee waiver was requested and granted.

V. CLAIM FILING PROCEDURES.

- A. An Owner Seeking to file a Claim for Compensation under Measure 37, must be the present owner of the property that is subject to the claim at the time the claim is submitted. The claim shall be filed with the Land Development Services Department.

Finding 3: The claim was filed with Land Development Services on December 9, 2004. According to the Measure 37 Application Report submitted with the claim, Wayne M. Stevens and Catherine J Stevens are the current owners of the subject property in fee simple estate as tenants by the entirety.

- B. Claims should be submitted on the Claim Form approved by the Board of County Commissioners, which is attached hereto as Exhibit A, and is incorporated herein by this reference. The Board of County Commissioners may amend the Claim Form at any time by a majority vote.

Finding 4: The applicant submitted the Claim for Compensation under Measure 37 on the claim form approved by the Board of County Commissioners.

- C. The Claim Form should be accompanied by all necessary information and materials and the appropriate filing fee, sufficient to demonstrate a claim under Measure 37. The Board of County Commissioners may waive the fee if the Claimant establishes a financial hardship. A complete Claim Form includes all the information and materials listed on the Claim Form. The Owner is responsible for the completeness and accuracy of the application and supporting information and materials.

Finding 5: The applicant has submitted a Claim under Measure 37 on the appropriate form (Attachment 1). The applicant has requested compensation in the amount of \$65,000.00. The applicant has provided justification for this amount of compensation in the form of Comparative

Market Analysis for the current 6.22 acre parcel and a Fair Market Analysis Difference for the property if divided as proposed into two 2.5 acre parcels and 1.22 acres in private road (II F above). The sufficiency of the documents submitted to demonstrate a claim under Measure 37 is addressed in Findings 6 through 10 below.

Additionally, the applicant submitted a title report entitled, "Measure 37 Application Report". The claimants indicated that they acquired the property in 1968. However, the deed to which they referred, Warranty Deed recorded at Deed Book 171 Page 241, conveys the property from the claimants to Marvin and Ava Warner. The property is not conveyed back to the claimants until March 31, 1972 by Warranty Deed recorded at Book 186, Page 123. The date of acquisition for purposes of Measure 37 is March 31, 1972. The County enacted its first Zoning Ordinance for the subject property on August 29, 1973. Therefore, staff finds that the current owner/claimant acquired the property(1968) prior to enactment of the Columbia County Zoning Ordinance(1973).

MEASURE 37

(1) If a public entity enacts or enforces a new land use regulation or enforces a land use regulation enacted prior to the effective date of this amendment that restricts the use of private real property or any interest therein and has the effect of reducing the fair market value of the property, or any interest therein, then the owner of the property shall be paid just compensation.

(2) Just compensation shall be equal to the reduction in the fair market value of the affected property interest resulting from enactment or enforcement of the land use regulation as of the date the owner makes written demand for compensation under this act.

Finding 6: The claimants state their desire to divide the 6.22 acres into two 2.5 acre parcels with 1.22 acres left in private road. The Stevens claim the County's land use regulations prevent them from doing so. The land use regulations restricting use of property referred to in the claim are CCZO Section 604.1, minimum lot size requirements in the RR-5 zone and Section 604.5 which requires frontage on a public right of way.

The Claimants became owners of the subject property in 1972 and the subject property was unzoned.

In 1973 the County adopted the first Zoning Ordinance for the south County area around St. Helens where the subject property is located. In 1973 the subject property was zoned RR. The minimum lot size in 1973 for the subject property in the RR zone was 2 acres. Access requirements in 1973 required that "Every lot shall abut a street, other than an alley, for at least sixty (60) feet, or shall have such other legal access held suitable by the Board of Adjustment."

In 1984 the County adopted the first County wide Zoning Ordinance and the subject property then was rezoned to FA-40 which was then amended to FA-19 zone in 1985.

On September 9, 1992 the County Commissioners approved Ordinance No. 92-10, a Comprehensive

Plan Amendment and zone change, ZC 8-91, which allowed the subject property and other property in the area to be rezoned from FA-19 to the current RR-5 zoning designation which allowed a 5 acre minimum parcel size with a go-below provision for 2 acre parcels if served by community water.

In November of 1998 the County adopted amendments; Ordinance No. 98-4; to the RR-5 zone which became effective in February 2000. These amendments removed the go-below provision which allowed the property to be divided into minimum 2 acre parcel sizes if served by community water. This amendment made 5 acres the minimum parcel size in the RR-5 zone.

The 5 acre minimum parcel size requirement for the subject property has not changed since the last amendment to this zone in 1998.

The claimant maintains that these regulations; namely the minimum 5 acre parcel size requirement and the 50' of frontage on a public right-of-way requirement, restrict use of the property by preventing the claimants from dividing their property into parcels less than 5 acres and by requiring frontage on a public right-of-way instead of a private road. Staff finds that the claimant has shown that the RR-5 minimum parcel size requirement and frontage on a public right of way regulations; CCZO, Section 604.1 & 604.5, are regulations that were adopted after the claimants began ownership of the property and thus restrict the proposed use of the property.

The claimant has submitted documentation to demonstrate reduction in fair market value of their property in the form of a comparative Market Analysis for the 6.22 acre parcel, as well as a market analysis showing the current value of proposed two 2.5 acre parcels and the private 1.22 acre road (II F above). The Comparative Market Analysis for the single 6.22 acre lot submitted by the applicant was prepared by Mark Didier on December 13, 2004. The analysis estimates the subject property to be worth approximately \$165,000 under the current Land Use Regulations. The applicant submitted a Fair Market Analysis Difference showing two 2.5 acre parcels with 1.22 acre private road valued at \$220,000; for a difference of and monetary claim value of \$65,000. Due to a math error, the actual difference as shown in the market analyses between these values is \$55,000 not the \$65,000 stated by the claimant. Staff finds that some of the RR-5 properties used for comparison in the Market Analysis submitted had developed road access and were approved for septic systems. Therefore, the cost of utilities and road access was not considered in the determination of the fair market value of the property if the cited regulations where not applicable.

This claim did not make clear how the requirement; CCZO Section 604.5, that each parcel have 50' of usable frontage on a public right-of-way reduces fair market value.

Based on the above, the staff finds that the market analysis is not adequate to demonstrate the specific amount of the reduction in fair market value resulting from the minimum lot size regulations in the RR-5 zone. The market analysis does not take into account the costs of development of the land including the costs of road access and sanitary facilities necessary to develop the property as proposed. Therefore, staff finds that whereas the minimum lot size regulations in the RR-5 zone may have resulted in some reduction in value, the specific compensable amount of reduction in fair market value has not been adequately demonstrated.

(3) Subsection (1) of this act shall not apply to land use regulations:

- (A) Restricting or prohibiting activities commonly and historically recognized as public nuisances under common law. This subsection shall be construed narrowly in favor of a finding of compensation under this act;**
- (B) Restricting or prohibiting activities for the protection of public health and safety, such as fire and building codes, health and sanitation regulations, solid or hazardous waste regulations, and pollution control regulations;**
- (C) To the extent the land use regulation is required to comply with federal law;**
- (D) Restricting or prohibiting the use of a property for the purpose of selling pornography or performing nude dancing. Nothing in this subsection, however, is intended to affect or alter rights provided by the Oregon or United States Constitutions; or**
- (E) Enacted prior to the date of acquisition of the property by the owner or a family member of the owner who owned the subject property prior to acquisition or inheritance by the owner, whichever occurred first.**

Finding 7: Staff finds that the RR-5 minimum lot size regulations, CCZO, Section 604.1; and the frontage on a public right-of-way requirement, Section 604.5 do not qualify for any of the exclusions listed.

(4) Just compensation under subsection (1) of this act shall be due the owner of the property if the land use regulation continues to be enforced against the property 180 days after the owner of the property makes written demand for compensation under this section to the public entity enacting or enforcing the land use regulation.

Finding 8: Should the Board determine that the claimant has demonstrated a specific reduction in fair market value of the property due to the cited regulation(s), the Board is to pay compensation in the amount of the reduction in fair market value caused by the RR-5 land use regulations or in lieu of compensation, modify, remove, or not apply the RR-5 minimum lot size regulations.

(5) For claims arising from land use regulations enacted prior to the effective date of this act, written demand for compensation under subsection (4) shall be made within two years of the effective date of this act, or the date the public entity applies the land use regulation as an approval criteria to an application submitted by the owner of the property, whichever is later. For claims arising from land use regulations enacted after the effective date of this act, written demand for compensation under subsection (4) shall be made within two years of the enactment of the land use regulation, or the date the owner of the property submits a land use application in which the land use regulation is an approval criteria, whichever is later.

Finding 9: The subject claim arises from public road frontage provisions of the RR-5 zoning regulations which were enacted in 1984 and minimum lot size provisions of RR-5 zoning regulations which were enacted in 1998, prior to the effective date of Measure 37 on December 2, 2004. The subject claim was filed on December 9, 2004 which is within two years of the effective date of Measure 37.

(8) Notwithstanding any other state statute or the availability of funds under subsection (10) of this act, in lieu of payment of just compensation under this act, the governing body responsible for enacting the land use regulation may modify, remove, or not to apply the land use regulation or land use regulations to allow the owner to use the property for a use permitted at the time the owner acquired the property.

Finding 10: As noted in Findings 6 and 7 above, Staff finds the 1998 enactment and enforcement of CCZO, Section 604.1, the RR-5 minimum lot size regulation and CCZO, Section 604.5, the RR-5 minimum public road frontage requirement restricts the use of the property. Additionally, the RR-5 minimum lot size requirement may reduce the value of the subject property. Therefore, if the Board finds that the cited regulations have reduced the value of the property, the Board should authorize payment of just compensation in the amount of the reduction in fair market value. Or, in lieu of such compensation, the Board should not apply the cited regulations to which Measure 37 applies to allow the owner to use the property for a use which was permitted at the time the owner acquired the property.

STAFF RECOMMENDATION

Based on the above findings, it is Staff's opinion that the applicant has met the threshold requirements for proving a Measure 37 claim.

The following table summarizes staff findings concerning the land use regulations cited by the claimant as a basis for their claim. In order to meet the requirements of Measure 37 for a valid claim the cited land use regulation must be found to restrict use, reduce fair market value, and not be one of the land use regulations exempted from Measure 37. The highlighted regulations below have been found to meet these requirements of a valid Measure 37 claim.

LAND USE CRITERION	DESCRIPTION	RESTRICTS USE?	REDUCES VALUE?	EXEMPT?
CCZO 604.1	Minimum lot size for permitted uses is five acres.	Yes	Yes	No
CCZO 604.5A	Lots or parcels recorded on or after June 4, 1991 shall have a minimum of 50 feet on a public right of way. The ROW shall be improved to County Road Standards. In lieu of improvements a performance guarantee may be provided per the Columbia County Subdivision and Partitioning Ordinance.	No	No	No

Staff recommends the Board of County Commissioners take action to determine the amount, if any, by which the cited regulations reduced the value of the claimant's property, and act accordingly to pay just compensation in that amount, or, in the alternative, to not apply CCZO Section 604.1.

COLUMBIA COUNTY



OREGON

Measure 37 Claim

Fee: \$500.00 (Required with application)

Land Development Services - Planning Division

Columbia County Courthouse

230 Strand, St. Helens, OR 97051 (503) 397-1501

Claimant Information (attach additional pages for multiple Claimants):

Wayne M. and Catherine J. Stevens

503-397-1230

Name(s) of Claimant(s):

Daytime phone #

60094 Robynette Rd. St. Helens, OR 97051

Mailing address for Claimant(s)

City, State, Zip

Mailing address for Claimant(s)

City, State, Zip

Property Information:

10094 Robynette Rd. St. Helens, OR 97051

5131-000-02402

Property location/address

Property tax account #

Claim Information:

1) Amount of claim: \$ 65,000 - See attached Market Analysis

2) Please list the intended use of the property which you believe is restricted by a County land use regulation:

Single family homesites. See attached maps - As property is now and proposed changes.

3) Please list all land use regulations related to your intended use of the property which you believe have reduced the fair market value of the property, followed by the date of adoption or the date the regulations were enforced against the property (be as specific as possible...Ordinance, Chapter, Section, Subsection):

RR-5 Section 600

Road Frontage - Section 604.5 50' road frontage
See memo from Dave Hill - attached

4) Have you applied for land use approval for your intended use of the property? NO

If so, when? _____

If so, what did you apply for? _____

If so, what was the file number? _____

5) When did you acquire the property: Recorded 10/10/68

6) Ownership of property: Sole Joint Other (please list):

Wayne M. and Catherine J. husband and wife

7) Does anyone else have an ownership interest in the property? If so, please list each person and their respective ownership interest:

Not on this 6.22 parcel
Washington Mutual mortgage holder on 5 acre parcel only.

8) Did you acquire the property from a family member? (Family member includes wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, daughter-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent, stepchild, grandchild, the estate of any of the family members listed, or a legal entity owned by any one or a combination of such family members) See history of property attached

If so, from who? Myrtle Pimm - copy of deed attached

If so, what is the family relationship to you? Aunt of Wayne

If so, when did you acquire the property? recorded 10/10/68

If so, when did your family member acquire the property? 1950 from Wayne's Grandma
Grandma dates back to 1903

9) List all documentation that you have to establish that the fair market value of the property has been reduced by the land use regulation(s) listed. Attach any such documentation, including appraisals, to this Claim Form: attached

SIGNATURES

I/we certify that the information contained in and attached to this claim form is accurate and complete.

Wayne M. Stevens

Claimant

12-09-04

Date

Catherine J. Stevens

Claimant

12-9-04

Date

Claimant

Date

Claimant

Date

FOR OFFICIAL USE ONLY

Date Received _____ Receipt # _____ Received By: _____

Finding 1: The applicant did attend a pre-application conference on approximately December 2, 2004 with staff to obtain information concerning Measure 37 and the County claims process

- IV. **APPLICATION FEE.** The fee to submit a claim for compensation shall be \$500.00. The Board of County Commissioners may, by order or resolution, modify the fee for processing Claims. The fee shall be based upon the reasonable cost to the County of processing such application including the cost of technical review.

Finding 2: The applicant submitted the required \$500.00 filing fee. A hardship fee waiver was requested and granted.

V. **CLAIM FILING PROCEDURES.**

- A. An Owner Seeking to file a Claim for Compensation under Measure 37, must be the present owner of the property that is subject to the claim at the time the claim is submitted. The claim shall be filed with the Land Development Services Department.

Finding 3: The claim was filed with Land Development Services on December 9, 2004. According to the Measure 37 Application Report submitted with the claim, Wayne M. Stevens and Catherine J Stevens are the current owners of the subject property in fee simple estate as tenants by the entirety.

- B. Claims should be submitted on the Claim Form approved by the Board of County Commissioners, which is attached hereto as Exhibit A, and is incorporated herein by this reference. The Board of County Commissioners may amend the Claim Form at any time by a majority vote.

Finding 4: The applicant submitted the Claim for Compensation under Measure 37 on the claim form approved by the Board of County Commissioners.

- C. The Claim Form should be accompanied by all necessary information and materials and the appropriate filing fee, sufficient to demonstrate a claim under Measure 37. The Board of County Commissioners may waive the fee if the Claimant establishes a financial hardship. A complete Claim Form includes all the information and materials listed on the Claim Form. The Owner is responsible for the completeness and accuracy of the application and supporting information and materials.

Finding 5: The applicant has submitted a Claim under Measure 37 on the appropriate form (Attachment 1). The applicant has requested compensation in the amount of \$65,000.00. The applicant has provided justification for this amount of compensation in the form of Comparative

Market Analysis for the current 6.22 acre parcel and a Fair Market Analysis Difference for the property if divided as proposed into two 2.5 acre parcels and 1.22 acres in private road (II F above). The sufficiency of the documents submitted to demonstrate a claim under Measure 37 is addressed in Findings 6 through 10 below.

Additionally, the applicant submitted a title report entitled, "Measure 37 Application Report". The claimants indicated that they acquired the property in 1968. However, the deed to which they referred, Warranty Deed recorded at Deed Book 171 Page 241, conveys the property from the claimants to Marvin and Ava Warner. The property is not conveyed back to the claimants until March 31, 1972 by Warranty Deed recorded at Book 186, Page 123. The date of acquisition for purposes of Measure 37 is March 31, 1972. The County enacted its first Zoning Ordinance for the subject property on August 29, 1973. Therefore, staff finds that the current owner/claimant acquired the property(1968) prior to enactment of the Columbia County Zoning Ordinance(1973).

MEASURE 37

(1) If a public entity enacts or enforces a new land use regulation or enforces a land use regulation enacted prior to the effective date of this amendment that restricts the use of private real property or any interest therein and has the effect of reducing the fair market value of the property, or any interest therein, then the owner of the property shall be paid just compensation.

(2) Just compensation shall be equal to the reduction in the fair market value of the affected property interest resulting from enactment or enforcement of the land use regulation as of the date the owner makes written demand for compensation under this act.

Finding 6: The claimants state their desire to divide the 6.22 acres into two 2.5 acre parcels with 1.22 acres left in private road. The Stevens claim the County's land use regulations prevent them from doing so. The land use regulations restricting use of property referred to in the claim are CCZO Section 604.1, minimum lot size requirements in the RR-5 zone and Section 604.5 which requires frontage on a public right of way.

The Claimants became owners of the subject property in 1972 and the subject property was unzoned.

In 1973 the County adopted the first Zoning Ordinance for the south County area around St. Helens where the subject property is located. In 1973 the subject property was zoned RR. The minimum lot size in 1973 for the subject property in the RR zone was 2 acres. Access requirements in 1973 required that "Every lot shall abut a street, other than an alley, for at least sixty (60) feet, or shall have such other legal access held suitable by the Board of Adjustment."

In 1984 the County adopted the first County wide Zoning Ordinance and the subject property then was rezoned to FA-40 which was then amended to FA-19 zone in 1985.

On September 9, 1992 the County Commissioners approved Ordinance No. 92-10, a Comprehensive

Plan Amendment and zone change, ZC 8-91, which allowed the subject property and other property in the area to be rezoned from FA-19 to the current RR-5 zoning designation which allowed a 5 acre minimum parcel size with a go-below provision for 2 acre parcels if served by community water.

In November of 1998 the County adopted amendments; Ordinance No. 98-4; to the RR-5 zone which became effective in February 2000. These amendments removed the go-below provision which allowed the property to be divided into minimum 2 acre parcel sizes if served by community water. This amendment made 5 acres the minimum parcel size in the RR-5 zone.

The 5 acre minimum parcel size requirement for the subject property has not changed since the last amendment to this zone in 1998.

The claimant maintains that these regulations; namely the minimum 5 acre parcel size requirement and the 50' of frontage on a public right-of-way requirement, restrict use of the property by preventing the claimants from dividing their property into parcels less than 5 acres and by requiring frontage on a public right-of-way instead of a private road. Staff finds that the claimant has shown that the RR-5 minimum parcel size requirement and frontage on a public right of way regulations; CCZO, Section 604.1 & 604.5, are regulations that were adopted after the claimants began ownership of the property and thus restrict the proposed use of the property.

The claimant has submitted documentation to demonstrate reduction in fair market value of their property in the form of a comparative Market Analysis for the 6.22 acre parcel, as well as a market analysis showing the current value of proposed two 2.5 acre parcels and the private 1.22 acre road (II F above). The Comparative Market Analysis for the single 6.22 acre lot submitted by the applicant was prepared by Mark Didier on December 13, 2004. The analysis estimates the subject property to be worth approximately \$165,000 under the current Land Use Regulations. The applicant submitted a Fair Market Analysis Difference showing two 2.5 acre parcels with 1.22 acre private road valued at \$220,000; for a difference of and monetary claim value of \$65,000. Due to a math error, the actual difference as shown in the market analyses between these values is \$55,000 not the \$65,000 stated by the claimant. Staff finds that some of the RR-5 properties used for comparison in the Market Analysis submitted had developed road access and were approved for septic systems. Therefore, the cost of utilities and road access was not considered in the determination of the fair market value of the property if the cited regulations where not applicable.

This claim did not make clear how the requirement; CCZO Section 604.5, that each parcel have 50' of usable frontage on a public right-of-way reduces fair market value.

Based on the above, the staff finds that the market analysis is not adequate to demonstrate the specific amount of the reduction in fair market value resulting from the minimum lot size regulations in the RR-5 zone. The market analysis does not take into account the costs of development of the land including the costs of road access and sanitary facilities necessary to develop the property as proposed. Therefore, staff finds that whereas the minimum lot size regulations in the RR-5 zone may have resulted in some reduction in value, the specific compensable amount of reduction in fair market value has not been adequately demonstrated.

(3) Subsection (1) of this act shall not apply to land use regulations:

- (A) Restricting or prohibiting activities commonly and historically recognized as public nuisances under common law. This subsection shall be construed narrowly in favor of a finding of compensation under this act;**
- (B) Restricting or prohibiting activities for the protection of public health and safety, such as fire and building codes, health and sanitation regulations, solid or hazardous waste regulations, and pollution control regulations;**
- (C) To the extent the land use regulation is required to comply with federal law;**
- (D) Restricting or prohibiting the use of a property for the purpose of selling pornography or performing nude dancing. Nothing in this subsection, however, is intended to affect or alter rights provided by the Oregon or United States Constitutions; or**
- (E) Enacted prior to the date of acquisition of the property by the owner or a family member of the owner who owned the subject property prior to acquisition or inheritance by the owner, whichever occurred first.**

Finding 7: Staff finds that the RR-5 minimum lot size regulations, CCZO, Section 604.1; and the frontage on a public right-of-way requirement, Section 604.5 do not qualify for any of the exclusions listed.

(4) Just compensation under subsection (1) of this act shall be due the owner of the property if the land use regulation continues to be enforced against the property 180 days after the owner of the property makes written demand for compensation under this section to the public entity enacting or enforcing the land use regulation.

Finding 8: Should the Board determine that the claimant has demonstrated a specific reduction in fair market value of the property due to the cited regulation(s), the Board is to pay compensation in the amount of the reduction in fair market value caused by the RR-5 land use regulations or in lieu of compensation, modify, remove, or not apply the RR-5 minimum lot size regulations.

(5) For claims arising from land use regulations enacted prior to the effective date of this act, written demand for compensation under subsection (4) shall be made within two years of the effective date of this act, or the date the public entity applies the land use regulation as an approval criteria to an application submitted by the owner of the property, whichever is later. For claims arising from land use regulations enacted after the effective date of this act, written demand for compensation under subsection (4) shall be made within two years of the enactment of the land use regulation, or the date the owner of the property submits a land use application in which the land use regulation is an approval criteria, whichever is later.

Finding 9: The subject claim arises from public road frontage provisions of the RR-5 zoning regulations which were enacted in 1984 and minimum lot size provisions of RR-5 zoning regulations which were enacted in 1998, prior to the effective date of Measure 37 on December 2, 2004. The subject claim was filed on December 9, 2004 which is within two years of the effective date of Measure 37.

(8) Notwithstanding any other state statute or the availability of funds under subsection (10) of this act, in lieu of payment of just compensation under this act, the governing body responsible for enacting the land use regulation may modify, remove, or not to apply the land use regulation or land use regulations to allow the owner to use the property for a use permitted at the time the owner acquired the property.

Finding 10: As noted in Findings 6 and 7 above, Staff finds the 1998 enactment and enforcement of CCZO, Section 604.1, the RR-5 minimum lot size regulation and CCZO, Section 604.5, the RR-5 minimum public road frontage requirement restricts the use of the property. Additionally, the RR-5 minimum lot size requirement may reduce the value of the subject property. Therefore, if the Board finds that the cited regulations have reduced the value of the property, the Board should authorize payment of just compensation in the amount of the reduction in fair market value. Or, in lieu of such compensation, the Board should not apply the cited regulations to which Measure 37 applies to allow the owner to use the property for a use which was permitted at the time the owner acquired the property.

STAFF RECOMMENDATION

Based on the above findings, it is Staff's opinion that the applicant has met the threshold requirements for proving a Measure 37 claim.

The following table summarizes staff findings concerning the land use regulations cited by the claimant as a basis for their claim. In order to meet the requirements of Measure 37 for a valid claim the cited land use regulation must be found to restrict use, reduce fair market value, and not be one of the land use regulations exempted from Measure 37. The highlighted regulations below have been found to meet these requirements of a valid Measure 37 claim.

LAND USE CRITERION	DESCRIPTION	RESTRICTS USE?	REDUCES VALUE?	EXEMPT?
CCZO 604.1	Minimum lot size for permitted uses is five acres	Yes	Yes	No
CCZO 604.5A	Lots or parcels recorded on or after June 4, 1991 shall have a minimum of 50 feet on a public right of way. The ROW shall be improved to County Road Standards. In lieu of improvements a performance guarantee may be provided per the Columbia County Subdivision and Partitioning Ordinance.	No	No	No

Staff recommends the Board of County Commissioners take action to determine the amount, if any, by which the cited regulations reduced the value of the claimant's property, and act accordingly to pay just compensation in that amount, or, in the alternative, to not apply CCZO Section 604.1.

COLUMBIA COUNTY



OREGON

Measure 37 Claim

Fee: \$500.00 (Required with application)

Land Development Services - Planning Division

Columbia County Courthouse

230 Strand, St. Helens, OR 97051 (503) 397-1501

Claimant Information (attach additional pages for multiple Claimants):

Wayne M. and Catherine J. Stevens

Name(s) of Claimant(s):

503-397-1230

Daytime phone #

60094 Robinette Rd. St. Helens, OR 97051

Mailing address for Claimant(s)

City, State, Zip

Mailing address for Claimant(s)

City, State, Zip

Property Information:

100094 Robinette Rd. St. Helens, OR 97051

Property location/address

5131-000-02402

Property tax account #

Claim Information:

1) Amount of claim: \$ 65,000 - See attached Market Analysis

2) Please list the intended use of the property which you believe is restricted by a County land use regulation:

Single family homesites. See attached maps - A's property is now and proposed changes.

3) Please list all land use regulations related to your intended use of the property which you believe have reduced the fair market value of the property, followed by the date of adoption or the date the regulations were enforced against the property (be as specific as possible...Ordinance, Chapter, Section, Subsection):

RR-5 Section 600

Road frontage - Section 604.5 50' road frontage
See memo from Dave Hill - attached

4) Have you applied for land use approval for your intended use of the property? NO

If so, when? _____

If so, what did you apply for? _____

If so, what was the file number? _____

5) When did you acquire the property: Recorded 10/10/68

6) Ownership of property: Sole Joint Other (please list):
Wayne M. and Catherine J. husband and wife

7) Does anyone else have an ownership interest in the property? If so, please list each person and their respective ownership interest:
Not on this 6.22 parcel
Washington Mutual mortgage holder on 5 acre parcel only.

8) Did you acquire the property from a family member? (Family member includes wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, daughter-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent, stepchild, grandchild, the estate of any of the family members listed, or a legal entity owned by any one or a combination of such family members) See history of property attached
If so, from who? Myrtle Pimm - copy of deed attached
If so, what is the family relationship to you? Aunt of Wayne
If so, when did you acquire the property? recorded 10/10/68
If so, when did your family member acquire the property? 1950 from Wayne's Grandma
Grandma dates back to 1903

9) List all documentation that you have to establish that the fair market value of the property has been reduced by the land use regulation(s) listed. Attach any such documentation, including appraisals, to this Claim Form: attached

SIGNATURES

I/we certify that the information contained in and attached to this claim form is accurate and complete.

Wayne M. Stevens
Claimant

12-09-04
Date

Catherine J. Stevens
Claimant

12-9-04
Date

Claimant

Date

Claimant

Date

FOR OFFICIAL USE ONLY

Date Received _____ Receipt # _____ Received By: _____