

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

In the Matter of Claim Number CL 05-06, Submitted by)
the Rainier Rod and Gun Club Under Measure 37) Order No. 40-2005

WHEREAS, on December 29, 2005, Columbia County received a claims under Measure 37 from the Rainier Rod and Gun Club related to a parcel of property off Old Rainier Road, having Tax Account Number 7218-000-00200, as described in a Warranty Deed, recorded at Deed Book 103, Pages 462-463, in 1949; and

WHEREAS, according to the information presented with the claim, the Rainier Rod and Gun Club has continuously owned an interest in the property since 1949, and is currently the sole fee owner of the property; and

WHEREAS, in 1984 the property was zoned as Rural Residential (RR-5), making the Claimant's use of the property as a Gun Club non-conforming. However, according to the County's non-conforming use regulations the Rainier Rod and Gun Club is allowed to continue the use of the property as a Gun Club; and

WHEREAS, notice of the Measure 37 Claim was sent to neighboring property owners; and

WHEREAS, David Nelson, on behalf of Judy Jordan, a neighboring property owner, requested a hearing in the matter; and

WHEREAS, on June 22, 2005, the Board of County Commissioners held a hearing in the matter and;

WHEREAS, during the hearing County Counsel's file, which is attached hereto as Attachment 1, and is incorporated herein by this reference, was entered into the record; and

WHEREAS, during the hearing, the Board of County Commissioners heard testimony from Bill Everman and Rod Harding on behalf of the Rainier Rod and Gun Club;

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 Number CL 05-06 dated May 28, 2005, which is attached hereto as Attachment 2, and is incorporated herein by this reference.
2. The Board of County Commissioners finds that cited County land use regulations do not restrict the Claimant's use of the Property. The Board of County Commissioners also finds that the Claimant has failed to establish that the cited regulations have reduced the value of the property.

3. The Board of County Commissioners finds that the Claimant is neither entitled to compensation under Measure 37, nor waiver of County regulations in lieu thereof, and therefore, denies Claim Number CL 05-06.

Dated this 29th 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

ATTACHMENT 1

RAINIER ROD AND GUN CLUB RECORD OF MEASURE 37 CLAIM HEARING
CL 05-06
JUNE 22, 2005

EXHIBIT 1-COUNTY COUNSEL'S RECORD

1. Board Communication dated June 6, 2005 with the following attachments:
 - a. Staff Report to the Board of County Commissioners dated May 28, 2005;
 - b. Measure 37 Claim Form received January 3, 2005;
2. Notice of Public Hearing (publication);
3. Affidavit of Publication;
4. Notice of Public Hearing (property owner notice);
5. Affidavit of Mailing;
6. Board Communication dated May 31, 2005, with the following attachments:
 - a. Measure 37 notice dated May 10, 2005;
 - b. Letter to LDS from the Nelson Law Firm dated May 24, 2005, requesting a hearing;
 - c. List of persons to receive notice;
7. Information regarding proposed club house cost;
8. Certificate of Filing Articles of Incorporation for Rainier Rod and Gun Club;
9. Chain of Title dated December 29, 2004;
10. Certificate of Mailing dated May 10, 2005
11. Letter to Land Development Services from the Nelson Law Firm dated May 24, 2005, with the following attachments:
 - a. Columbia County Planning Commission Staff Report dated July 26, 2001;
 - b. Final Order DR 01-20;
 - c. Supplemental Findings DR 01-02 dated August 20, 2001;
 - d. Jordan v. Columbia County, LUBA No. 2001-152 dated July 1, 2002;
12. Letter to Land Development Services from Stephen Petersen, LLC dated June 21, 2005;
13. Letter to Rainier Rod and Gun Club dated May 8, 2001 from Land Development Services;
14. Letter to Land Development Services from Stephen Petersen dated December 30, 2004;
15. Letter to Rainier Rod and Gun Club from Land Development Services dated May 25, 2005;

COLUMBIA COUNTY LAND DEVELOPMENT SERVICES

Measure 37 Claim

Staff Report

DATE: May 28, 2005

FILE NUMBER: CL 05-06

CLAIMANT/OWNER: Rainier Rod and Gun Club

PROPERTY LOCATION: 28291 Old Rainier Road
Rainier, Oregon



TAX ACCOUNT NUMBER: 7218-000-00200

ZONING: Rural Residential(RR-5)

SIZE: 14.62 Acres

REQUEST:

To rebuild main clubhouse building and use property for gun club uses.

CLAIM RECEIVED: 12/29/04**180 DAY DEADLINE:**

6/30/05

I. BACKGROUND: The Rainier Rod and Gun Club filed a claim under Measure 37 on December 29, 2004. The amount of the claim is \$250-\$500,000. The claim did not provide any documentation for the alleged reduction in value. The claim alleges reduction in fair market due to Rural Residential(RR-5) zoning district regulations that made the gun club use legal non-conforming and related Non-Conforming Use regulations which claimant alleges have prevented the rebuilding of the main clubhouse, destroyed by fire in 1990, and limited the intensity of use of the property for gun club purposes. Claimants state their desire to rebuild the main clubhouse and resume use of the property "at frequencies and times" that it has been used up until the time of rezoning to RR-5 in 1984.

II. CLAIM SUMMARY:**A. PROPERTY OWNER AND OWNERSHIP INTERESTS:**

1. **Current Ownership:** The claimant submitted a chain of title report dated December 27, 2004 for an adjoining property identified by Tax Acct. No. 7218-000-00201, not the subject property. A title report for the subject property will be required to verify current ownership and all ownership interests
2. **Date of Acquisition:**
The above referenced chain of title report included a Warranty Deed by which Rainier Rod and Gun Club acquired Tax Lots 7218-000-00200(subject property); 7218-000-00201 and 7218-000-00202 in 1949(Warranty Deed, Deed Book 103; Pages 462-3). The claim indicates that the property was acquired by claimants in 1934 but provide no documentation of this. A chain of title for the subject property will be required to verify date of acquisition under Measure 37 and that there is an unbroken property interest continuing until the date of claim.

B. APPLICANT/RELATIONSHIP TO OWNER

The claimant, Rainier Rod and Gun Club, is the current owner of the property and officers for the non-profit corporation have signed the claim for compensation.

C. FAMILY MEMBER STATUS

There is no ancestor succession for this property.

D. LAND USE REGULATIONS IN EFFECT AT TIME OF ACQUISITION

The property was unzoned when acquired in 1949.

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

Rural Residential zoning(CCZO Sections 602, permitted uses and 603, conditional uses) enacted in July 1984

Non-conforming use regulations(CCZO Section 1506)

July 1984.

These cited regulations were enacted after the date of acquisition of the property in 1949.

F. STATEMENT AS TO HOW THE REGULATIONS RESTRICT USE

The claimants allege that Rural Residential zoning(CCZO Sections 602, permitted uses and 603, conditional uses) enacted in July 1984 after the claimant acquired the property in 1949 rendered the existing Gun Club use, legal non-conforming and thereby restricted the use. Non-conforming use regulations(CCZO Section 1506) also enacted in July 1984 limited the rebuilding of the Clubhouse destroyed by fire in 1991 and frequency and times of gun club activities. No statement was given as to how these regulations reduce the value of the property.

G. EVIDENCE OF REDUCED FAIR MARKET VALUE SUBMITTED

1. Value of Property As Regulated:

No documentation of a reduction in fair market value due to this regulation was submitted.

2. Value of Property Not Subject to Cited Regulations and Developed As Proposed.

No documentation of a reduction in fair market value due to this regulation was submitted.

H. COMPENSATION DEMANDED

\$250,000 to \$500,000

DETERMINATION OF CLAIMANT ELIGIBILITY FOR FURTHER REVIEW:

The Claimant acquired the property in 1949. Cited regulations enacted after acquisition include RR-5 use regulations(CCZO Section 603 and 604) and Non-conforming Use regulations(CCZO Section 1506.5 and 1506.6). Further review should be taken for these regulations enacted since the claimant acquired the property.

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 attended a pre-application conference with staff to obtain information concerning Measure 37 and the County claims process and submitted a related public records request for County ordinances.

- 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.

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 29, 2004. A chain of title report prepared by Ticor Title dated December 27, 2004 for a parcel adjacent to the property for which the claim was filed was submitted (Tax parcel 7218-000-00201 sold by the claimant to and currently owned by Charles and Betty Wright). The report does not document current ownership of the subject property; 7218-000-00200.

- 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:

A. Claim Form

The applicant has submitted a Claim under Measure 37 on the appropriate form (Attachment 1).

B. Compensation Documentation

The applicant has requested compensation in the amount of \$250-500,000. No documentation has been submitted to support the claim that the cited regulations have reduced the fair market value of the property.

C. Eligibility Under Cited Regulations

The property was unzoned in 1949. The cited regulations including use restrictions in the CCZO Section 603 and 604, RR-5 zoning district standards which rendered the gun club use as legal non-conforming and CCZO Section 1506, non-conforming use regulations were enacted in July 1984. Therefore, staff finds that the claimants acquired the property (1949) prior to enactment of CCZO Section 603 and 604, RR-5 zoning district standards which rendered the gun club use as legal non-conforming and CCZO Section 1506, non-conforming use regulations (1984). These regulations are reviewable under Measure 37.

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:

A. Restrictions on Use

Claimants allege that CCZO Section 600, RR-5 zoning use provisions and the related provisions of CCZO Section 1506, limiting the rebuilding and expansion of legal non conforming uses restrict the use of their property for a gun club.

CCZO Section 600, RR-5 zoning regulations enacted in 1984 do not permit a gun club use as an outright permitted use or a conditional use. CCZO Section 1506 is intended to allow legal non-conforming uses and structures to continue after zoning the use even though the uses may not be in conformity with the regulations of the current zoning district. However, Section 1506 imposes limitations on the continuation, modification and expansion of non-conforming uses and structures and requires review and approval by the County Planning Director according to criteria contained in Section 1505.5. This criteria was applied to a design review application filed by the claimant in 2001 to rebuild the clubhouse. The application was approved by the Planning Commission on appeal of the Planning Director's decision. The County's decision to approve the rebuilding of the clubhouse was appealed to the State Land Use Board of Appeals(LUBA No. 2001-152) and LUBA reversed the County's decision citing State laws(ORS 215.130(6) and ORS 215.130(7)(a) which they found require that work to rebuild the clubhouse was discontinued for more than one year. Therefore, staff finds that CCZO Section 1506.6 allows rebuilding of the clubhouse. the claimant's assertion that "the County has refused to grant the club a building permit to rebuild" the clubhouse is not correct since the refusal is based on State law not upon County ordinance. CCZO Section 1506.6 allows rebuilding of the clubhouse and does not restrict the use of the property.

The claimant, further alleges that Section 1506 also has limited their use of the property concerning operation and that the club intends on using the property in the frequency and at the times that the property has been used and was used for the last 70 years. Section 1506 provides for the continuation of a non-conforming use at levels existent when the use became non-conforming; in this case when the RR-5 zoning was imposed in 1984. The Claimants entered into an agreement with the County in 1995, entitled "Rainier Rod and Gun Club Operating Hours and Base-Line Conditions", in which Claimant agreed to hours of operation and base-line conditions for the use of the property and to limit their future use of the property accordingly. County regulations do not affect the agreement made by the Claimant. If the existing use of the property in 1984 was greater than exists today, then the County's regulations would allow such use to continue. The claimants want to expand shooting hours and other activities on the site from current levels of activity negotiated with adjacent property owners. They believe the expanded level of activity reflects the levels of activity and hours of

operation in place in 1984 when RR-5 zoning was imposed. Section 1506.5 would restrict use only to the extent that Claimants want to expand the legal non-conforming use, have applied for said expansion and have been denied.

B. Reduction in Fair Market Value Due to Cited Regulations

As noted above, only regulations enacted or enforced after their acquisition of the property in 1949 are reviewable under Measure 37. The documentation of reduction in fair market value must be adequate to show that the regulations enacted or enforced after claimant acquisition in 1949 have reduced fair market value.

No documentation was submitted with the claim to demonstrate a reduction in fair market value based on the RR-5 zoning regulations and Non-conforming use regulations imposed on the property in 1984. Furthermore, staff does not find any justification or support for a conclusion that the value of the property has been reduced.

(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;

© 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: Gun club activities involving the shooting of guns in a residential zone is a health and safety issue and are therefore exempt from Measure 37. Furthermore, the noise associated with shooting of guns may qualify as a common law nuisance also excluded under Measure 37.

(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 said regulations or in lieu

of compensation, modify, remove, or not apply the RR-5 use and/or Non-conforming use 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 CCZO RR-5 zoning district use regulations and Non-Conforming Use regulations which were enacted in 1984, prior to the effective date of Measure 37 on December 2, 2004. The subject claim was filed on December 29, 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 that the County's RR-5 zoning district use regulations do not restrict the use of the property because the use of the property as a gun club is allowed as a legal non-conforming use. The County has already approved the rebuilding of the clubhouse under County regulations. Furthermore, to the extent that the Claimant can prove that their use in 1984 exceeds their current use, the extended use is allowed under the County regulations. and Non-conforming Use regulations restrict the use of the property. The Claimant should make an application to continue or restore such use. The State non-conforming use statutes limit the rebuilding of the club house. However, the County cannot waive State laws or regulations.

Non-conforming use regulations do limit the modification and expansion of the gun club use and therefore restrict the use to levels of activity existing in 1984. Staff finds that restrictions in Section 1506.5 apply, but these requirements have not been enforced on the applicants property under terms of Measure 37 and therefore cannot be the basis for a valid claim until or unless an application submitted pursuant to Section 1506.5 for modification or expansion of use been denied or condition has been imposed that restricts use. Further, no documentation has been provided to support the claim that Section 1506.5 has reduced fair market value. Staff finds that the Non-conforming use regulations in 1506.5 do not reduce the fair market value of the property.

However, 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 not met the threshold requirements for proving a Measure 37 claim.

The following table summarizes staff findings concerning the land use regulations cited by the claimants 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. None of the applicable regulations below have been found to meet these requirements of a valid Measure 37 claim. In addition, the claimant has not provided a title report that shows them as current owner and any other ownership interests of record.

LAND USE CRITERION	DESCRIPTION	RESTRICTS USE?	REDUCES VALUE?	EXEMPT?
CCZO 603 & 604	Permitted and Conditionally Permitted Uses in the RR-5 Zoning District	No	No	No
CCZO 1506.5	Requires review/applies criteria to modification or expansion of non-conforming use.	No	No	No
CCZO 1506.6	Allows rebuilding of fire damaged structure if beyond control of owner.	No	No	No

Staff recommends the Board of County Commissioners take action to deny the claim.

COLUMBIA COUNTY



OREGON

File No. CL 05-06

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): **JAN**

Rainier Rod & Gun Club, an Oregon Corp.

Name(s) of Claimant(s):

503-556-4120 (Attorney)

Daytime phone #

P.O. Box 596

Rainier, OR 97048

Mailing address for Claimant(s)

City, State, Zip

Mailing address for Claimant(s)

City, State, Zip

Property Information:

See Exhibit A, attached hereto

Property location/address 28291 OLD RAINIER Rd

7218-000-00261
Property tax account #

\$200

Claim Information:

14.62 ACRES

1) Amount of claim: \$ \$250,000 - \$500,000

2) Please list the intended use of the property which you believe is restricted by a County land use regulation: Since 1934, the property has been used as a shooting range. The Gun Club intends on using the property in the frequency and at the times that the property has been used and was used for the last 70 years. The Club intends to rebuild the main building that burned down in 1991. The County has restricted the Club from rebuilding the Rainier Gun Club building.

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):
In 1984, the County zoned this property rural residential zone (RR5). The Club existed at this time and continued on pursuant to Section 1506 of the Columbia County's Zoning Ordinance as a non-conforming use. The County has refused to grant the Club a building permit to rebuild the property and has limited their use of the property concerning operation

4) Have you applied for land use approval for your intended use of the property? yes
If so, when? _____

If so, what did you apply for? Building permit to rebuild burnt down building.

If so, what was the file number? _____

5) When did you acquire the property: 1934, see attached Ticor Title report

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

Please see the Ticor Title report, attached hereto

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

No

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) No

If so, from who? _____

If so, what is the family relationship to you? _____

If so, when did you acquire the property? _____

If so, when did your family member acquire the property? _____

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: The property is presently being appraised by a qualified appraiser. We will supply the County an appraisal when finished and if necessary.

SIGNATURES

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

William Baerman Pres

Claimant

Date

12/29/04

Steven Dr Christopher

Claimant

Date

12-29-04

Cecil Ryan

Claimant

Date

12-29-04

Claimant

Date

FOR OFFICIAL USE ONLY

Date Received 1-3-05 Receipt # _____ Received By: JN