

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

In the Matter of Claim No. CL 05-09 for Compensation)
under Measure 37 by James Ray) Order No. 55-2005

WHEREAS, on February 9, 2005, Columbia County received a claim under Measure 37 and Order No. 84-2004 from James Ray related to a 9.05 acre parcel on Walker Road in Rainier, Oregon, having Tax Account Number 6209-000-00200 as described in Book 186, Page 250 of the Columbia County Deed Records; and

WHEREAS, according to the information presented with the Claim, James Ray has continuously owned an interest in the property since 1970, and is currently the sole fee owner of the property; and

WHEREAS, in 1970 Columbia County did not regulate minimum lot sizes for the division of forest land; and

WHEREAS, the subject parcel is currently zoned Primary Forest (PF-76) pursuant to the Columbia County Comprehensive Plan; and

WHEREAS, pursuant to Columbia County Zoning Ordinance (CCZO), Section 506.1, the minimum lot or parcel size for new land divisions in the PF-76 zone is 76 acres; and

WHEREAS, Mr. Ray claims 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 by \$58,750.00; and

WHEREAS, Mr. Ray desires to partition the property into one approximately 6 acre parcel and one approximately 3 acre parcel; and

WHEREAS, pursuant to Measure 37, in lieu of compensation the Board may opt to not apply (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 Number CL 05-09, dated July 27, 2005, which is attached hereto as Attachment 1, and is 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 partition the property into one approximately 6 acre parcel, and one approximately 3 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 Claimant. If it is later determined that Claimant is 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, Claimant is 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 Claimant, 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, Claimant does so at his 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, Claimant agrees 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 claim arising from or related to this waiver.

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4. This Order shall be recorded in the Columbia County Deed Records, referencing the legal description which is attached hereto as Attachment 2, and is incorporated herein by this reference, without cost.

Dated this 10th day of August, 2005.

BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

Approved as to form

By: Sarah T. [Signature]
Assistant County Counsel

By: [Signature]
Anthony Hyde, Chair

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: July 5, 2005

FILE NUMBER: CL 05-09

CLAIMANT/OWNER: James F. Ray c/o Douglas Ray
70898 Walker Road
Rainier, Oregon 97048

PROPERTY LOCATION: 70898 Walker Road
Rainier, Oregon 97048



TAX ACCOUNT NUMBER: 6209-000-00200
ZONING: Primary Forest (PF-76)
SIZE: 9.05
REQUEST: To subdivide the 9.05 acres into one 3 acre parcel and one 6 acre, each to allow one single-family dwelling per parcel.
CLAIM RECEIVED: 02/09/05 **180 DAY DEADLINE:** 08/08/05

I. BACKGROUND:

Rhonda Lee Benson, power of attorney for Claimant, James F. Ray, filed a claim under Measure 37 on February 9, 2005. The amount of the claim is based upon a market analysis which was submitted with the claim alleging a \$58,750 loss in fair market value due to Section 506.1 of the Columbia County Zoning Ordinance (CCZO). Justification for this alleged loss of value will be reviewed below. Currently, there is an existing single-family dwelling on parcel 6209-000-00200, addressed at 70898 Walker Road, and a manufactured home as a temporary hardship for the care of a relative, Mr. James F. Ray (Case# TP 10-95). The Claimant's intention is to subdivide the property so that the single-family dwelling addressed at 70898 Walker Road is on one 6 acre parcel and the manufactured home is on the remaining 3 acre parcel.

II. CRITERIA FOR REVIEW WITH STAFF FINDINGS:

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.

A. PROPERTY OWNER AND OWNERSHIP INTERESTS:

- 1. Current Ownership:** Claimant submitted a title report issued by Columbia County Title & Escrow Services, Inc. on January 27, 2005 for the subject property identified by Tax Acct. No. 6209-000-00200, with legal description attached.
Vested In: James F. Ray, an estate in fee simple
Subject to: Taxes for the fiscal year of 2004-2005; assessment and tax roll disclosure that the property is assessed as Forest Land. If disqualified, an additional tax may be levied; the rights of the public for public roads, street, and easements to access property; a waiver of right of remonstrance; and a Trust Deed given to secure indebtedness.
No other property interests are listed.

2. **Date of Acquisition:** The Claimant, James F. Ray, and his wife, Deanne Louise Ray, acquired an interest in the property from Marge Hinman Magdall and Edna Mae Eggebrecht by a real estate contract dated September 14, 1970, recorded on April 10, 1972 in Deed Book 186, Page 250 of Columbia County, Oregon. It is noted that the Claimant's wife, Deanne Louise Ray, released interest in the property on the date of her death, November 15, 2002, therefore leaving full interest in the property to the Claimant, James F. Ray.

B. LAND USE REGULATIONS IN EFFECT AT THE TIME OF ACQUISITION

The property was unzoned when the Claimant acquired a property interest in 1970.

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

CCZO Primary Forest (PF-76) Zoning Regulations as follows:

Section 506.1 Standards - requiring a minimum lot or parcel size of 76 acres.

Enacted in July 1984.

D. CLAIMANT'S ELIGIBILITY FOR FURTHER REVIEW

Claimant acquired an interest in the property before the cited land use became effective and therefore the Claimant may be eligible for compensation and/or waiver of the cited regulation under Measure 37.

E. STATEMENT AS TO HOW THE REGULATIONS RESTRICT USE

The Claimant states that he cannot divide his property as proposed into one 6 acre parcel and one 3 acre parcel due to the CCZO Primary Forest(PF-76) minimum lot size of 76 acres. Staff finds that the cited regulation restricts the use of the property by preventing the division of the property into parcels of less than 76 acres.

F. EVIDENCE OF REDUCED FAIR MARKET VALUE SUBMITTED

1. Value of the Property As Regulated.

To document the "as is" value of the 9.05 acre property, the Claimant submitted a Property Marketing Proposal prepared by Diane Erceg of Prudential Northwest Properties indicating the average land only value of 5 comparable undeveloped properties to be \$92,000. A 2004 County Tax Assessors print out was also submitted indicating a land value of \$80,100 and an improvements value of \$78,000 for a total of \$158,100.

2. Value of Property Not Subject To Cited Regulations.

The Claimant did not submit documentation showing the value of the property if it was not subject to the cited regulation.

Staff finds that, whereas the minimum lot size regulations in the PF-76 zone may have resulted in some reduction in fair market value of the property, the specific compensable amount of fair market value has not been adequately demonstrated.

G. COMPENSATION DEMANDED

\$58,750

(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

Staff finds that the 1984 enactment of CCZO, Section 506.1 PF-76 minimum lot size regulations restricts the use of the property. Additionally, the PF-76 minimum lot size requirement may reduce the value of the subject property by preventing the division of the 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 Section 506.1 CCZO Primary Forest(PF-76) minimum lot size regulation.

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 506.1 | Minimum lot size for permitted uses is seventy-six (76) acres | Yes | Possible | 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 506.1.

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

JAMES # 928 667 4808

Claimant Information (attach additional pages for multiple Claimants):

JAMES F RAY c/o Doug Ray
Name(s) of Claimant(s):

503 556-2606 (Doug's Home)

70898 Walker Rd
Mailing address for Claimant(s)

Daytime phone #
RAINIER, OR 97048
City, State, Zip

Mailing address for Claimant(s)

City, State, Zip

Property Information:

70898 Walker Rd. RAINIER, OR
Property location/address

6209-000-00200
Property tax account #

Claim Information:

1) Amount of claim: \$ 58,750⁰⁰

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

At this time we cannot sub-divide. We would like to split the property. ~~the~~ THE Home with approx. 6 acres AND the manufacturer home with approx. 3 acres.

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):

PFT6 Section 506.1

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: SEPTEMBER 17th 1970
6) Ownership of property: Sole Joint Other (please list): _____

7) Does anyone else have an ownership interest in the property? If so, please list each person and their respective ownership interest:
Citi Mortgage INC. - NAME changed from Principal Residential Mortgage INC AS OF 01-01-05

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: Property Marketing proposal from Prudential Northwest Properties.

SIGNATURES

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

James F. Ray by Rhonda Lee Benson
power of attorney
Claimant
DLD By
Claimant

2/9/05
Date
2/9/05
Date

Date

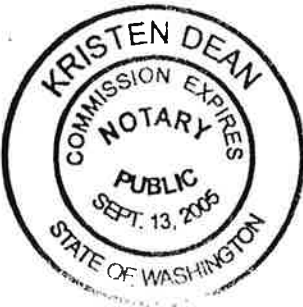
Date

Claimant

Claimant

FOR OFFICIAL USE ONLY

Date Received _____ Receipt # _____ Received By: _____



Kristen Dean
2-9-05

EL



POWER OF ATTORNEY COPY

STATE OF OREGON, } ss.
County of _____

I certify that the within instrument was received for recording on _____, at _____ o'clock ____M., and recorded in book/reel/volume No. _____ on page _____ and/or as fee/file/instrument/microfilm/reception No. _____, Records of this County.

Witness my hand and seal of County affixed.

NAME _____ TITLE _____

By _____, Deputy.

SPACE RESERVED FOR RECORDER'S USE

RAY, James F.

To
BENSON, Rhonda Lee

After recording, return to (Name, Address, Zip):

KNOW ALL BY THESE PRESENTS that I, James F. Ray

have made, constituted and appointed, and by these presents do hereby make, constitute and appoint Rhonda Lee Benson

my true and lawful attorney for me and in my name, place and stead, and for my use and benefit: to demand, sue for, recover, collect and receive all such sums of money, debts, rents, dues, accounts, legacies, bequests, interests, dividends, annuities and demands whatsoever, as are now or shall hereafter become due, owing, payable or belonging to me; to have, use and take all lawful ways and means in my name or otherwise for the recovery thereof, and to compromise, settle and adjust and to execute and deliver acquittances or other sufficient discharges for any of the same; to bargain, contract for, purchase, receive and take lands, tenements, hereditaments, and accept the seisin and possession thereof and all deeds and other assurances in the law therefor; and to lease, let, demise, bargain, sell, remise, release, convey, mortgage and hypothecate lands, tenements and hereditaments, including my right of homestead in any of the same for such price, upon such terms and conditions and with such covenants as my attorney shall think fit; to sell, transfer and deliver all or any shares of stock owned by me in any corporation for any price and receive payment therefor, and to vote any such stock as my proxy; to bargain for, buy, sell, mortgage, hypothecate and in any and every way and manner deal in and with goods, wares and merchandise, choses in action, and other property in possession or in action, and to make, do and transact all and every kind of business of whatsoever nature or kind; for me and in my name and as my act and deed, to sign, seal, execute, acknowledge and deliver all deeds, covenants, indentures, agreements, trust agreements, mortgages, pledges, hypothecations, bills of lading, bills, bonds, notes, evidences of debt, receipts, releases and satisfactions of mortgages, judgments and other debts payable to me and other instruments in writing of whatever kind and nature which my attorney in his/her absolute discretion shall deem to be for my best interests; to have access to any safe deposit box which has been rented in my name, or in the name of myself and any other person or persons; to sell, discount, endorse, deliver and/or deposit all checks, drafts, notes and negotiable instruments payable to my order; to withdraw any moneys deposited in my name with any bank, by check or otherwise, and generally to do any business with any bank or banker on my behalf; to complete, sign, and deliver any tax return or form and pay taxes thereon or collect refunds therefrom; also

GIVING AND GRANTING unto my attorney the full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises, as fully to all intents and purposes as I might or could do if personally present, with full power of substitution and revocation, hereby ratifying and confirming all that my attorney shall lawfully do or cause to be done by virtue of these presents.

This power shall take effect (delete inapplicable phrase):

- (a) on the date next written below;
- (b) on the date I am adjudged incompetent by a court of proper jurisdiction.

If neither phrase is deleted, this power shall take effect on the date next written below.

My attorney and all persons unto whom these presents shall come may assume that this power of attorney has not been revoked until given actual notice either of such revocation or of my death.

In construing this instrument, and where the context so requires, the singular includes the plural.

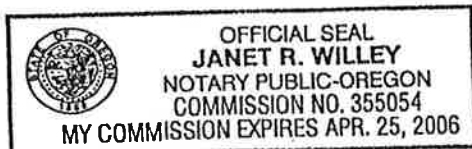
IN WITNESS WHEREOF, I have hereunto set my hand on March 31, 2003

James F. Ray

STATE OF OREGON, County of Columbia } ss.
This instrument was acknowledged before me on March 31, 2003
by James F. Ray

Janet R. Willey
Notary Public for Oregon

My commission expires 04/25/06



LEGAL DESCRIPTION

Part of Tract 125, Beaver Homes, Columbia County, Oregon, more particularly described as follows:

Beginning at the Northeast corner of Tract 125, Beaver Homes; thence tracing the North line of said Tract 125, South 89°26' West 741.2 feet to a point; thence due South 1130 feet to a point on the centerline of a proposed road; thence tracing the centerline of said proposed road to a point on the East line of said Tract 125 as follows: South 79°23' East 30 feet; thence North 86°30' East 240 feet; thence North 67°28' East 110 feet; thence North 14°29' East 370 feet; North 44°59' East 396 feet to said point on the East line of said Tract 125; thence tracing said East line due North 482 feet to the point of beginning, all in Tract 125, Beaver Homes, Columbia County, Oregon. EXCEPTING a strip 20 feet wide along the North side of the centerline of the above described proposed road, which is reserved for a road. ALSO EXCEPTING THEREFROM a parcel of land conveyed to T.H. Kerr and Nellie Kerr by deed recorded December 15, 1934 in Book 57, page 339, Deed Records of Columbia County, Oregon.