

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

In the Matter of Claim No. CL 05-10 for Compensation)
under Measure 37 submitted by George and Myrna) Order No. 64-2005
McGinnis)

WHEREAS, on April 28, 2005, Columbia County received a claim under Measure 37 and Order No. 84-2004 from George and Myrna McGinnis related to a 5.55 acre parcel on Rutter Road in Clatskanie, Oregon, having Tax Account Number 7403-040-01000 as described in Book 238, Page 780 of the Columbia County Deed Records; and

WHEREAS, according to the information presented with the Claim, Mr. and Mrs. McGinnis have continuously owned an interest in the property since 1976, and are currently the sole fee owners of the property; and

WHEREAS, in 1976 Columbia County did not regulate minimum lot sizes for the division of rural residential land in the Clatskanie area; 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 is 5 acres; and

WHEREAS, Mr. and Mrs. McGinnis 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 by \$60,000.00; and

WHEREAS, Mr. and Mrs. McGinnis desire to partition the property into two approximately 2 acre parcels and one approximately 1.55 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 Claimants' property and reduces the fair market value of the property to allow a use which was allowed at the time the Claimants 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 05-10, dated August 26, 2005, which is attached hereto as Attachment 1, and is incorporated herein by this reference.

2. In lieu of compensation, the County waives CCZO 604.1 to the extent necessary to allow the Claimants to partition the property into 2 two acre parcels and 1 approximately 1.55 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 do 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 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 14th day of September, 2005.

BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

Approved as to form

By: Sarahitson
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

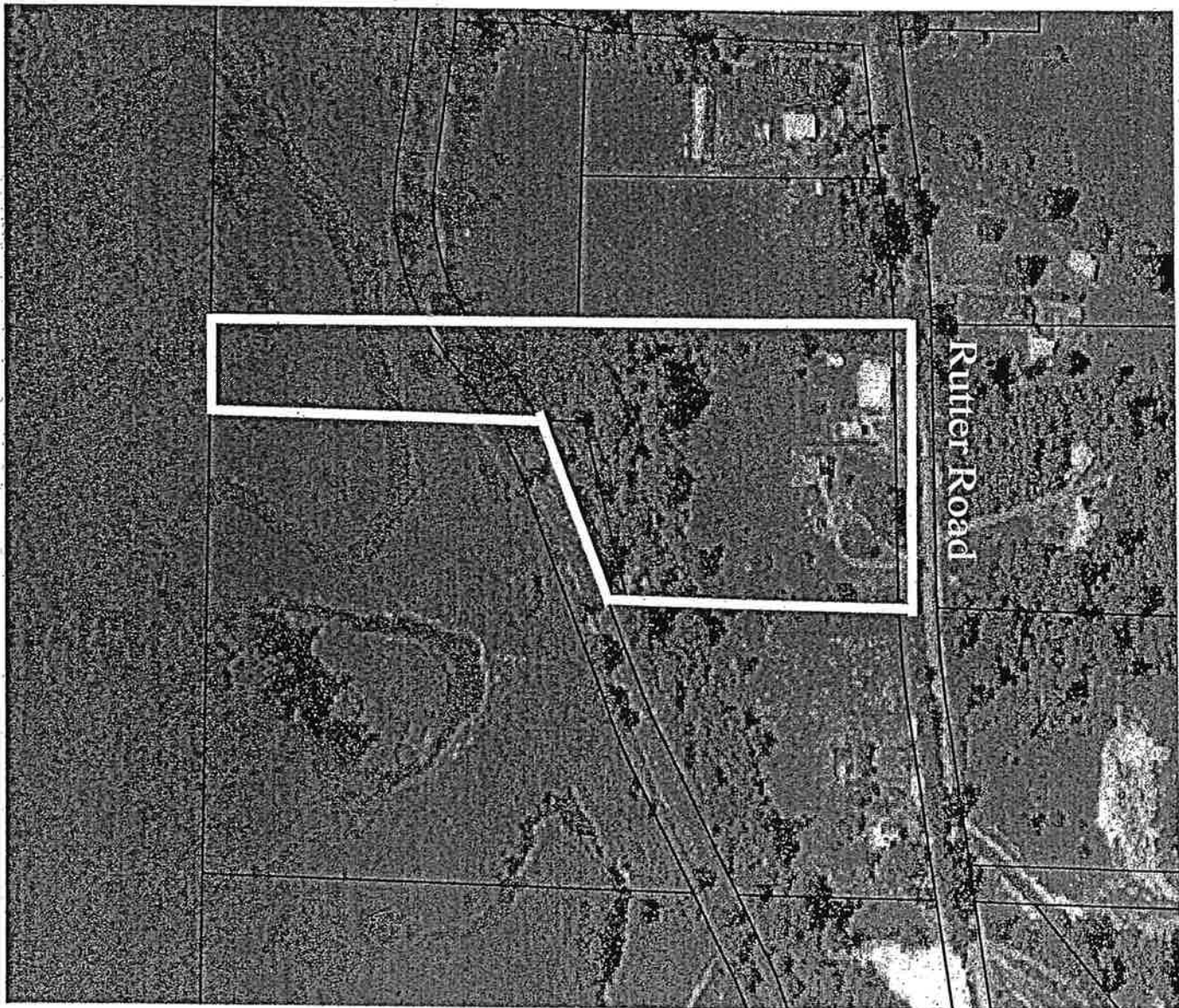
Measure 37 Claim

Staff Report

DATE: August 26, 2005

FILE NUMBER: CL 05-10

CLAIMANT/OWNER: George A. & Myrna McGinnis
77225 Rutter Road
Clatskanie, Oregon 97016



SUBJECT PROPERTY

PROPERTY LOCATION: 77225 & 77173 Rutter Road
Clatskanie, Oregon 97016

TAX ACCOUNT NUMBER: 7403-040-01000

ZONING: Rural Residential (RR-5)

SIZE: 5.55

REQUEST: To subdivide the 5.55 acres into two 2.0 acre parcels and one 1.55 acre parcel.

CLAIM RECEIVED: 04/28/05 180 DAY DEADLINE: 09/25/05

I. BACKGROUND:

George A. & Myrna McGinnis, filed a claim under Measure 37 on April 28, 2005. The amount of the claim is based upon a market analysis which was submitted with the claim alleging a \$60,000 loss in fair market value due to Section 604.1 of the Columbia County Zoning Ordinance (CCZO). Justification for this alleged loss of value will be reviewed below. Currently, there are two existing single-family dwellings on parcel 7403-040-01000, addressed at 77225 & 77173 Rutter Road. The Claimants' intention is to partition the property into three parcels, two 2.0 acre parcels, and one 1.55 acre parcel for residential development.

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 March 23, 2005 for the subject property identified by Tax Acct. No. 7403-040-01000, with legal description attached.
Vested In: George A. and Myrna McGinnis 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 Claimants, George A. McGinnis, and his wife, Myrna McGinnis, acquired an interest in the property from Faith A. Watts by a statutory warranty deed dated March 5, 1976, recorded on August 25, 1981 in Deed Book 238, Page 780 of Columbia County, Oregon.

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

The property was unzoned when the Claimant acquired a property interest in 1976 and there were no minimum lot size requirements for division of the property.

C. 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 - requiring a minimum lot or parcel size of 5 acres.

Enacted in July 1984.

D. CLAIMANT'S ELIGIBILITY FOR FURTHER REVIEW

Claimants acquired an interest in the property before CCZO Section 604.1 became effective and therefore the Claimants 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 Claimants state that they cannot divide their property as proposed due to CCZO Section 604.1. Staff finds that the cited regulation restricts the use of the property by preventing the division of the property into parcels of less than 5 acres.

F. EVIDENCE OF REDUCED FAIR MARKET VALUE

1. Value of the Property As Regulated.

To document the "as is" value of the 5.5 acre property, the Claimants submitted three documents. An appraisal prepared by Al Hays, a licenced appraiser from Portland Oregon dated 2/27/2003 was submitted indicating a value of the property to be \$136,800. The appraisal did not include the second dwelling, a mobile home, in the value determination. A 2004 County Tax Assessors print out was also submitted indicating a real market land value of \$77,600 and a real market improvements value of \$110,000 for a total value of \$187,600.

2. Value of Property Not Subject To Cited Regulations.

Three comparative Market Analyses prepared by John F. Stennick of John F. Stennick Realty, Inc. were submitted indicating a value for the site built home on one of the proposed lots of \$124,000; a value for the mobile home on one of the proposed lots of \$122,000 and a value for the proposed undeveloped lot of \$45,000. The total value of the property partitioned as proposed from these documents is \$291,000.

Loss of value indicated in the submitted documents is:

\$291,000 - 187,600 or \$103,400. The Claimants have claimed a loss in value of \$60,000. Staff finds that whereas the enactment of the minimum lot size regulations in the RR-5 Zone 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

\$60,000

(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.

CCZO Section 604.1 does 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.

Should the Board determine that the that the Claimant has demonstrated a reduction in fair market value of the property due to the cited regulation, the Board may pay compensation in the amount of the reduction in fair market value caused by said regulation 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.

The subject claim arises from the minimum lot size provisions of RR-5 zoning regulations which were enacted in 1984, prior to the effective date of Measure 37 on December 2, 2004. The subject claim was filed on April 28, 2005 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.

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 604.1 CCZO Rural Residential (RR-5) 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 604.1	Minimum lot size for permitted uses is five (5) acres.	Yes	Yes	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.

ATTACHMENT 2

EXHIBIT A

LEGAL DESCRIPTION

A tract of land situate in Section 3, Township 7 North, Range 4 West, Willamette Meridian, Columbia County, Oregon, being that portion of the following described property lying West of the Westerly right-of-way line of Thomas Rutter Road:

BEGINNING at a point on the East line of Section 3, Township 7 North, Range 4 West, Willamette Meridian, Columbia County, Oregon, that is South 00° 15' East 1402.5 feet from the East quarter corner of said Section 3; said point being the Southeast corner of that tract of land as described in Book 116, Page 143, Columbia County Deed Records; Thence South 89° 42' West a distance of 2597.30 feet to a point in the West line of the Southeast quarter of said Section 3; Thence along said West line of said Southeast quarter South 0° 47' East a distance of 123.66 feet to the Northwest corner of the George Ollila property described in Book 100, Page 93, Deed Records of Columbia County, Oregon; Thence along the Northerly line of said Ollila property as described in Book 100, Page 93, South 89° 05' East a distance of 586.08 feet; Thence South 16° 53' East a distance of 252.22 feet; Thence South 89° 05' East a distance of 1936.95 feet to said East line of said Section 3; said point being the Northeast corner of the Ollila property described in Book 100, Page 93, Deed Records of Columbia County, Oregon; Thence North 00° 15' West a distance of 419.00 feet to the POINT OF BEGINNING.

EXCEPTING THEREFROM, that portion lying within Columbia River Highway.

SEE MAP 7 4 3

COMPLIMENTS OF
Columbia County
Title & Escrow Services, Inc
This sketch is furnished to assist
in property location and the company
does not guarantee its accuracy.

