

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

In the Matter of Claim No. CL 05-18 for Compensation)
under Measure 37 submitted by Jeanne Sherer) Order No. 75-2005

WHEREAS, on May 31, 2005, Columbia County received a claim under Measure 37 and Order No. 84-2004 from Jeanne Sherer related to a 47.33 acre parcel located at 33598 Pittsburg Road, St. Helens, Oregon, having Tax Account Number 4201-000-00500 as described in Book 167, Page 686 of the Columbia County Deed Records; and

WHEREAS, according to the information presented with the Claim, Jeanne Sherer has continuously owned an interest in the property since 1967, and is currently the sole fee owner of the property; and

WHEREAS, in 1967 Columbia County did not regulate minimum lot sizes for the division of forest land in the St. Helens area; and

WHEREAS, the subject parcel is currently zoned Forest Agriculture (FA-19) pursuant to the Columbia County Comprehensive Plan; and

WHEREAS, pursuant to Columbia County Zoning Ordinance (CCZO), Section 407.1, the minimum lot or parcel size for new land divisions in the FA-19 zone is 19 acres; and

WHEREAS, Jeanne Sherer 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 \$2,700,000.00; and

WHEREAS, Jeanne B. Sherer desires to partition the property into 2 acre parcels; 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 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 05-18, dated September 20, 2005, which is attached hereto as Attachment 1, and is incorporated herein by this reference.
2. In lieu of compensation, the County waives CCZO 407.1 to the extent necessary to allow the Claimants to partition the property into 2 acre parcels.

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. **On October 15, 2005, the Marion County Circuit Court declared that Ballot Measure 37 is unconstitutional, making State waivers invalid. The County cannot authorize development that would be contrary to State law.**
- 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. **If it is later determined that Claimant is not entitled to relief under Measure 37 by a court of competent jurisdiction, this waiver shall be automatically revoked.**
- 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 her 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 9th day of November, 2005.

BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

Approved as to form

By: Sarah Hanson
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

ATTACHMENT 1
COL...TY
LAND DEVELOPMENT SERVICES

Measure 37 Claim

Staff Report

DATE: September 20, 2005
FILE NUMBER: CL 05-18
CLAIMANT/OWNER: Jeanne B. Sherer
P.O. Box 773
St. Helens, Oregon 97051-0773



SUBJECT PROPERTY

PROPERTY LOCATION: 33598 Pittsburg Road
St. Helens, Oregon 97051-0773

TAX ACCOUNT NUMBER: 4201-000-00500

ZONING: Forest Agriculture (FA-19)

SIZE: 47.33

REQUEST: To subdivide the 47.33 acres in 2.0 acre parcels.

CLAIM RECEIVED: 05/31/04 **180 DAY DEADLINE:** 11/27/05

I. BACKGROUND:

Jeanne B. Sherer, filed a claim under Measure 37 on May 31, 2005. The amount of the claim is based upon a market analysis which was submitted with the claim alleging a \$2,700,000.000 loss in fair market value due to Section 407.1 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 this subject parcel, addressed at 33598 Pittsburg Road. The Claimants' intention is to partition the property into 2.0 acre parcels 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 Ticor Title, Inc. on February 17, 2005 for the subject property identified by Tax Acct. No. 4201-000-00500, with legal description attached.
Vested In: Jeanne B. Sherer, 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, Jeanne B. Sherer, and her husband, Jack D. Sherer, acquired an interest in the property from George H. & Betty Harris, and from Gerald B. & Ardith M. Harris, by a statutory warranty deed dated November 13, 1963, recorded on December 28, 1967 in Deed Book 167, Page 686 of Columbia County, Oregon. It is noted that the Claimant's husband, Jack D. Sherer, released interest in the property on the date of his death, December 29, 2004, therefore leaving full interest in the property to the Claimant, Jeanne B. Sherer.

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

The property was unzoned when the Claimant acquired a property interest in 1967 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 Forest Agriculture (FA-19) Regulations as follows:

Section 407.1 Standards - requiring a minimum lot or parcel size of ^{1.9}~~2.0~~ acres.

Enacted in July 1984.

D. CLAIMANT'S ELIGIBILITY FOR FURTHER REVIEW

The Claimant acquired an interest in the property before CCZO Section 407.1 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 she cannot divide their property as proposed due to CCZO Section 407.1. Staff finds that the cited regulation restricts the use of the property by preventing the division of the property into 2.0 acre parcels.

F. EVIDENCE OF REDUCED FAIR MARKET VALUE

1. Value of the Property As Regulated.

To document the "as is" value of the 47.33 acre property, the Claimant submitted a 2005 County property tax statement indicating an assessed value for the land of \$75,180 and assessed value of the structure of \$140,500 for a total assessed value of \$174,230.

2. Value of Property Not Subject To Cited Regulations.

A Comparative Market Analyses prepared by Jeff Yarbor of Century 21 Elite Reality, Inc. was submitted indicating a "suggested price" of \$135,000 based on sale prices of three vacant 2 acre residentially zoned parcels.

3. Alleged Loss of Fair Market Value:

The Claimant did not state how she arrived at the alleged loss in value of \$2,700,000. Staff understands that the Claimant is assuming that potential division of the 47.33 acre property into 20 2-acre lots priced at \$135,000 each will result in a value of 2,700,000. The market analysis did not take into account any differences in the availability of services, development costs or other locational factors between the subject property and properties compared in arriving at the value of an undeveloped 2 acre lot nor did the Claimant explain how she arrived at the alleged loss in fair market value using "as is" value and the value of the property if the cited regulation was not applied. Staff finds that whereas the enactment of the minimum lot size regulations in the FA-19 zone may have resulted in the reduction in fair market value of the property, the specific compensable amount of fair market value has not been adequately

demonstrated by the Claimant.

G. COMPENSATION DEMANDED

\$2,700,000

(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 407.1 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 FA-19 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 FA-19 zoning regulation which was enacted in 1984, prior to the effective date of Measure 37 on December 2, 2004. The subject claim was filed on May 31, 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 regulation has 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 407.1 CCZO Forest Agriculture (FA-19) 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 407.1	Minimum lot size for permitted uses is eighty (80) acres <i>19 acres</i>	Yes	Possible	No

Staff recommends the Board of County Commissioners take action to determine the amount, if any, by which the cited regulation 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 407.1.

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WARRANTY DEED

BOOK 167 PAGE 686

KNOW ALL MEN BY THESE PRESENTS, That we, George H. Harris and Betty Harris, husband and wife, and Gerald B. Harris and Ardith M. Harris, husband and wife, grantors, in consideration of Ten Dollars, to us paid by Jack D. Sherer and Jeanne B. Sherer, husband and wife, grantees, do hereby grant, bargain, sell and convey unto the said grantees, their heirs and assigns, all the following real property, with the covenants, hereditaments and appurtenances, situated in the County of Columbia, State of Oregon, bounded and described as follows, to-wit:

100
 700
 100
 200
 200
 201
 202
 200

Parcel 1: The North half of the Northeast quarter of Section 1, Township 4 North of Range 2 West of the Willamette Meridian, Columbia County, Oregon; excepting therefrom the tract of land conveyed to Leopold Dupont by J. A. Wikstrom and Mary L. Wikstrom, his wife, by deed dated and recorded March 25, 1908 in Book 9 at page 512, Deed Records of Columbia County, State of Oregon; also excepting therefrom that tract of land conveyed to Lucy Howard by C. L. Lovell and Sadie E. Lovell by deed dated January 2, 1912 and recorded January 10, 1912 in Book 17, page 202 of said deed records; excepting therefrom that tract of land deeded by Ernest H. Harris, et ux to George H. Harper, et ux by deed recorded February 28, 1955 in Book 125, page 120, Deed Records, Columbia County, Oregon.

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Parcel 2: Beginning at the Northwest corner of the Southwest quarter of the Northeast quarter of Section 1, Township 4 North of Range 2 West of the Willamette Meridian; thence running South on the West boundary line of said Northeast quarter to the Southwest corner thereof; thence running East on the South boundary line of said Northeast quarter to the center of Milton Creek; thence running in a Northeasterly direction along the center of Milton Creek to a point, said point to be a sufficient distance east of the West line of said Northeast quarter from which a line, if extended North and parallel with said West boundary line to intersect the North boundary line of said Southwest quarter of the Northeast quarter, the within described tract would contain 20 acres; thence from said point in Milton Creek North and parallel with the West boundary line of said Northeast quarter to the North boundary line of the Southwest quarter of the Northeast quarter; thence West to the place of beginning, the same being situated on the North and West side of Milton Creek in the Southwest quarter of the Northeast quarter of said Section 1; excepting therefrom the tract of land conveyed to Nehalem Investment Company by Charles L. Lovell and Sadie E. Lovell, his wife, by deed dated February 2, 1917 and recorded February 17, 1917 in Book 24, page 268, Deed Records of Columbia County, Oregon; also excepting land deeded by Ernest Harris, et ux to Glen M. Anderson, et ux by deed recorded March 28, 1961 in Book 144, page 968, Deed Records of Columbia County, Oregon, and by Ernest Harris, et ux to Stephen B. Young, et ux by deed recorded March 28, 1961 in Book 144, page 966, Deed Records of Columbia County, Oregon.

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Parcel 3: Beginning at a point that is North 0°02' East 1296.05 feet and South 89°43' East 741.8 feet from the Southwest corner of the Northeast quarter of Section 1, Township 4 North, Range 2 West of the Willamette Meridian, Columbia County, Oregon, said point being the Northeast corner of the 20.0 acres of the Southwest quarter of the Northeast quarter as deeded to Ernest H. Harris and recorded in Book 76, page 77; thence along the East line of said 20 acre tract South 0°02' West 317.6 feet to the true point of

See 12-28-67

My Commission Expires December 31, 1968
Notary Public for Oregon

Thomas J. Kelly

Personally appeared the above named George H. Harris and Betty Harris and acknowledged the foregoing instrument to be their voluntary act and deed.

My Commission Expires
Notary Public for Washington

Paul E. Smith

Personally appeared the above named George H. Harris and Betty Harris and acknowledged the foregoing instrument to be their voluntary act and deed.

STATE OF WASHINGTON
County of Benton

Robert M. ... (SEAL)

Donald ... (SEAL)

George H. Harris (SEAL)

Betty Harris (SEAL)

Witness our hands and seals this 17 day of November, 1967

demands of all persons whosever
 granted premises, and every part and parcel thereof, against the lawful claims and
 heirs, executors and administrators, shall warrant and forever defend the above
 the above granted premises free from all incumbrances, and that we will and our
 and the grantees do covenant that we are lawfully seized in fee simple of
 To have and to hold the above described and granted premises unto the said

beginning for the following described property: thence south 0°02' west
 a distance of 639.3 feet to the center of Milton Creek; thence along the
 center of Milton Creek north 28°21' east a distance of 188.1 feet; thence
 north 9°53' east a distance of 121.41 feet; thence north 13°28' west a
 distance of 631.8 feet; thence leaving said creek south 85°30' west a
 distance of 30.6 feet; thence north 43°30' west a distance of 293.5 feet to
 the true point of beginning.

EXM 117 * 1187