

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

In the Matter of Claim No. CL 06-07 for)
Compensation under Measure 37 submitted)
by Hillcrest Investments, Ltd.) Order No. 47-2006

WHEREAS, on May 27, 2005, Columbia County received claims under Measure 37 and Order No. 84-2004 from Hillcrest Investments, Ltd., Scappoose, Oregon, for property having Tax Account Numbers 3222-012-05000 and 3222-012-08000 (lots 6 and 7, respectively); and

WHEREAS, on October 14, 2005, the Circuit Court for Marion County declared Measure 37 unconstitutional in a decision entitled *McPherson v. State of Oregon*; and

WHEREAS, in light of the Marion County decision, Claimants stipulated to toll the 180-day claim period until June 16, 2006; and

WHEREAS, according to the information presented with the Claim, Hillcrest Investments, Ltd. has continuously owned an interest in the property since May 1, 1992, and is currently the sole fee owner of the property; and

WHEREAS, the subject properties are located within the Hillcrest Subdivision, and is subject to subdivision and partitioning requirements set out in Ordinance No. 84-3 as amended; and

WHEREAS, Section 207A of the Subdivision and Partitioning Ordinance requires that property line adjustments within subdivisions be accomplished through a partition or a re-plat of the subdivision; and

WHEREAS, that interpretation of the provisions of Section 207A was adopted by the Board of County Commissioners in findings set out in amendments to the subdivision and partitioning ordinance adopted in 1997; and

WHEREAS, Hillcrest Investments, Ltd. seeks convey a portion of one lot and the entirety of another to an abutting property owner by using the property line adjustment process; and

WHEREAS, Hillcrest Investments, Ltd. alleges that the if the property line adjustment process is not used, that the value of its remainder property within the subdivision will be reduced by \$3,000.00; 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 06-7 dated June 12, 2006, which is attached hereto as Attachment 1, and is incorporated herein by this reference.
2. Based on the findings of fact set out in the staff report, the Board of County Commissioners concludes that claimant has not established a loss in value based on the ~~application~~ *interpretation* of the replatting requirements of Section 207A to the subject property.
3. This Order shall be recorded in the Columbia County Deed Records, referencing Tax Lot numbers 3222-012-05000 and 3222-012-08000 without cost.

Dated this 21st day of June, 2006.

BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

Approved as to form

By: *John Hyde*
County Counsel

By: *Joe Corsiglia*
Joe Corsiglia, Chair

By: *Rita M. Bernhard*
Rita Bernhard, Commissioner

By: *Not Present*
Anthony Hyde, 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: June 12, 2006

CLAIM NUMBER: CL 06-7

CLAIMANT: Hillcrest Investments, Ltd.
50606 Crystal Ridge Road
Scappoose, OR 97056

**CLAIMANTS'
REPRESENTATIVE:** J. Richard Recht/Mike Stone

SUBJECT PROPERTY

PROPERTY LOCATION: Hillcrest Subdivision, west of Scappoose

TAX ACCOUNT NUMBERS: 3222-012-5000/8000

ZONING: Forest Agriculture (FA-19)

SIZE: Approximately one-half acre total

REQUEST: To permit a lot line adjustment without requiring a replat of the Hillcrest subdivision

CLAIM RECEIVED: May 27, 2005 per claim; August 14, 2005 per stay agreement

REVISED 180 DAY DEADLINE: Claimant has stipulated to a June 16, 2006 claim deadline

NOTICE OF RECEIPT OF CLAIM: April 25, 2006
As of June 8, 2006, no requests for hearing have been filed.

I. BACKGROUND:

The claim two lots located within the Hillcrest subdivision, which was platted in 1957, prior to county adoption of subdivision and zoning standards. The claimant acquired title to the property in 1992. The claimant seeks to reconfigure the two subdivision lots to allow it to convey a portion of tax lot 5000 to an abutting property owner. Such a reconfiguration is not permitted through a lot line adjustment process under the current interpretation and application of county zoning regulations.

II. APPLICABLE CRITERIA AND 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:** According to information supplied by the claimant, the property is owned by Hillcrest Investments, Ltd.

2. **Date of Acquisition:** According to claimant, Hillcrest Investments, Ltd. acquired the property in September 1992. That date is supported by a copy of an assessor's record card for the parcels, which show that the lots were acquired on September 29, 1992 through a deed recorded in the Deed Records of the Columbia County Clerk at F 92 3719. However, the title company's summary documents show that the property was acquired on August 27, 1985 through a deed recorded in the Columbia County Deed Records at Book 258 Page 693.

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

The property was zoned FA-19 in August 1984, and that zoning has remained on the property to date. The county Subdivision and Partitioning Ordinance, including Section 207A (hereafter Section 207A), were adopted 1984. A prior version of Section 207A was adopted by the Board of County Commissioners in September 1982 (See Ordinance No. 82-3, Section 1007).

At the time claimant acquired the subject property, Section 207A provided:

"Changes in Approved Partitions and Subdivisions. For any change in a map of an approved or recorded subdivision or partition, if such change affects any street layout shown on such map, or area reserved thereon for public use, or any lot line, or if it affects any map or plan legally reached prior to the adoption of any regulations controlling subdivisions or partitions, such parcel shall be reviewed by the Commission or Planning Department under the same procedure, rules and regulations as for a subdivision or partition."

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

As amended through Ordinance 97-3, Section 207A now provides:

"Changes in Approved Partitions and Subdivision[s]. Except for road vacations reviewed pursuant to Section 209, any change in a map of an approved or recorded subdivision or partition, if such change affects any street layout shown on such map, or area reserved thereon for public use, or any lot line, or if it affects any map or plan legally reached prior to the adoption of any regulations controlling subdivisions or partitions, such parcel shall be reviewed by the Commission or Planning Department under the same procedure, rules and regulations as for a subdivision or partition."

In 1997, the Board of County Commissioners amended Section 207A to exclude road vacations from the replatting requirements set out in that section. The Board of County Commissioners adopted the following findings in support of the amendment:

“ * * * The Board of County Commissioners believes it is in the best interests of the County to allow property line adjustments outside of recorded subdivision and partition plats. The [amendment to Section 207A] retains the replatting requirements to make change to property lines within recorded subdivisions and partitions so that the resulting reconfigurations comply with minimum parcel sizes, setback requirements and other development requirements in the ordinance. The Board of [County] Commissioners further finds that [the] current language in Section 207A is to be interpreted to allow the use of the partition plat, reviewed according to the provisions of the Subdivision and Partitioning Ordinance, to make change to portions of recorded subdivisions and to recorded partition plats. Use of the partition plat instead of property line adjustment procedure[s] for changes to recorded subdivision plats both simplifies the process for making changes and assures that such changes fully comply with applicable zoning and subdivision regulations. * * * ” Ordinance No. 97-3, page 3.”

The claimant alleges that prior to 1997, the county approved property line adjustments within recorded subdivisions and that the interpretation of Section 207A adopted by the Board of County Commissioners in Ordinance 97-3, has had the practical result of prohibiting the use of a property line adjustment to modify lot lines within subdivision boundaries. Claimant alleges that the alternative--a replat of all or a portion of the subdivision--is cost prohibitive.

D. CLAIMANT'S ELIGIBILITY FOR FURTHER REVIEW

Section 3(E) of Measure 37 provides that there is no entitlement for compensation for claims based on land use regulations that were applied or adopted “prior to the date of acquisition of the property by the owner or family member of the owner.” In relevant part, section 11(E) of Measure 37 defines “family member,” as including “wife, husband, son, daughter, mother, father, brother, * * * an estate of any of the foregoing family members or a legal entity owned by any one or combination of these family members or the owner of the property.”

As noted above, claimant appears to assert a claim based on a Board interpretation of Section 207A that was adopted after the claimant acquired the subject property. To the extent an interpretation of a land use regulation is an “application or adoption of a regulation” within the meaning of Measure 37, the claimant has demonstrated that the pertinent interpretation was adopted after the claimant acquired the subject property.

E. STATEMENT AS TO HOW THE REGULATIONS RESTRICT USE

The Claimant states that under the current application of Section 207A of the Subdivision and Partitioning Ordinance, it cannot proceed with a property line adjustment to sell a portion of a lot within the Hillcrest Subdivision to an adjoining property owner.

Staff has four concerns with respect to claimant's assertion. First, the pertinent provisions complained of were adopted in 1982, prior to the acquisition of the property by the claimant. Second, there is no evidence showing that the application of Section 207A to the subject property results in a reduction in fair market value for the subject property. Third, the subject property can be developed without the property line adjustment; the request is to allow a property line adjustment to benefit another property owner. Finally, staff is concerned about the precedential effect a waiver would have on other claims that are based on the cost of complying with applicable regulations, rather than on the loss in value as a result of the application of land use regulations to prohibit the desired development.

F. EVIDENCE OF REDUCED FAIR MARKET VALUE

1. Value of the Property As Regulated.

According to the Claimant, the abutting property is worth between \$400,000 and \$450,000. The subject properties, when combined with other lots on the block to form a building site, is valued at approximately \$150,000.

2. Value of Property Not Subject To Cited Regulations.

According to the Claimant, if the property line adjustment is permitted, the abutting property would be worth

approximately \$500,000. The subject property would retain its value or would be subject to a minimal loss as a result of the transfer of a portion of lot 6 and all of lot 8 to the abutting property owner.

3. Loss of value indicated in the submitted documents is:

The claimant submitted a property appraisal dated August 2, 2005 that estimates the loss in value to claimant if claimant is forced to sell the entirety of lots 6 and 8 at between \$5,000 and \$10,000. This estimate is based on the reduction in buildable area on the block where lots 6 and 8 are located.

Staff does not agree that the information provided by the claimant is adequate to fully establish the current value of the property or the value of the property if it was not subject to the cited regulation. The majority of the loss in value is based on the benefit to be conferred on an adjacent property owner, not the claimant. However, claimant has demonstrated that if a property line adjustment is allowed, it will be better able to develop the remainder of the block.

G. COMPENSATION DEMANDED

Claimant claims the following compensation, per page 1 of the Measure 37 claim form: \$3,000

(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.

For the reasons set forth above, staff does not endorse or oppose the claim. The Board of County Commissioners will have to decide if it interprets Measure 37 to apply to changes in interpretations of land use regulations in addition to actual adoption or application of land use regulations. Also, the Board of County Commissioners will have to decide whether the application of additional development standards that result in increased development costs, but do not restrict the development proposed, is subject to compensation or waiver.

(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 that it is entitled to use the property the adjustment procedure rather than a partial replat of the Hillcrest Subdivision, and if the Board concludes that claimant has established a reduction in fair market value of the property due to the cited regulations the Board may pay compensation in the amount of the reduction in fair market value caused by said regulation.

(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 an interpretation of Section 207A, which was adopted by the Board of County Commissioners prior to the effective date of Measure 37 on December 2, 2004. The subject claim was filed on May 27, 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.

Should the Board determine that the that the Claimant has demonstrated a reduction in fair market value of the property due to the cited interpretation of Section 207A, the Board may pay compensation in the amount of the reduction in fair market value caused by said regulation.

III. STAFF RECOMMENDATION:

If the Board concludes that an interpretation of a county ordinance "adopts" or "applies" a land use regulation as those terms are used in Measure 37, and concludes that the application of Section 207A in this instance "restricts" the use of property, then the Board may either compensate the claimant for the loss in value or waive the interpretation.

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