

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 Numbers CL 05-30(B)(Revised), dated July 25, 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 the Claimant has adequately established that CCZO Section 303.13(D) has restricted the use of his property and he is therefore entitled to a waiver of the cited regulations.
3. This waiver is subject to the following limitations:
 - A. This waiver does not affect any land use regulations promulgated by 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 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, 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.

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

Dated this 9th day of August, 2006.

BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

Approved as to form

By: Sarah Thurson
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

ATTACHMENT 1
CO _____ CITY
LAND DEVELOPMENT SERVICES

Measure 37 Claim

Staff Report

DATE: June 25, 2006
FILE NUMBER: CL 05-30B (REVISED)

CLAIMANT/OWNER: Francis D. Martin
56661 Turley Road
Warren, OR 97053

CLAIMANT'S REPRESENTATIVE: Betty Karsten
51637 SW Old Portland Road
Scappoose, OR 97056

SUBJECT PROPERTY

PROPERTY LOCATION: No address/west of 56431 Turley Rd.
Warren, OR 97053

TAX ACCOUNT NUMBER: 4223-030-00400

ZONING: Primary Agriculture-38 (previously identified as being zoned Rural Residential-5 (RR-5))

SIZE: 5.39 acres

REQUEST: To develop the subject property for residential use

CLAIMS RECEIVED: June 24, 2005 (original); revised claim filed on April 24, 2006

180 DAY DEADLINE: October 21, 2006

NOTICE OF RECEIPT OF CLAIM: Mailed May 24, 2006.
As of June 19, 2006, no requests for hearing have been filed.

I. BACKGROUND:

Claimant's mother acquired an interest in the subject property in 1958. The subject property was acquired by claimant and his wife by bargain and sale deed on January 28, 1977, subject to a life estate in favor of Claimant's mother. Claimant's mother died in December 1978 and title in the property vested in Claimant and his wife after that.

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 a title report prepared by Ticor Title on June 21, 2005, Claimant holds fee simple title to the subject property.

2. **Date of Acquisition:**

Mother: 1958 Claimant: January 28, 1977

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

For the purposes of this claim, staff evaluated the land use regulations at the time the property was acquired by the Claimant and his wife in 1977. The county had no local land use regulations until the early 1970s. According to information in the staff file, all of the property included in the claims was designated A-2 in the South County Zoning Ordinance in 1973. The A2 zoning designation established a five acre minimum parcel size for single family dwellings. In 1984, the subject property was zoned PA-38.

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

The Claimant alleges dwelling standards set out in CCZO 302 and 303 reduce the fair market value of his property. CCZO 302 permits farm related dwellings only if the farm is greater than 38 acres in size. CCZO 303 permits the establishment of nonfarm dwellings only if conditional use criteria are satisfied. He asserts that if the subject property is developed with a dwelling the property would have a greater value than if the property remains undeveloped and in farm use.

D. CLAIMANT'S ELIGIBILITY FOR FURTHER REVIEW

In 1973, the A2 regulations permitted the development of a single family dwelling on a parcel larger than five acres without further review. Staff does not dispute that if the property is developed with a dwelling, the value of the property would increase. Columbia County Zoning Ordinance(CCZO) Section 303.13 requires that a conditional use permit be obtained before development of a non-farm single family residential dwelling or mobile homes and their accessory uses in the PA-38 zone. Section 303.13 contains criteria that all such uses in the PA-38 zone must meet. Staff finds that in order for the parcel to be eligible for a non-farm dwelling under CCZO Section 303.13D it would have to be found to be unsuitable for agriculture. The parcel has Class 3 and 4 soils, which are suitable for agriculture pursuant to the Comprehensive Plan(Pg. 30). Therefore, Section 303.13D restricts the use of the parcel for residential purposes and thereby reduces the value of the property. However, the other conditional use criteria in Section 303.13 have not been enforced on the applicant's property under terms of Measure 37 and therefore cannot be the basis for a valid claim until or unless an application for a conditional use permit has been denied or condition has been imposed that restricts use. Staff

finds that CCZO Section 303.13 requiring review under a conditional use process and conditional use criteria in Sections 303.13A, 303.13B, 303.13C and 303.13E have not restricted the use of the Claimants property.

E. STATEMENT AS TO HOW THE REGULATIONS RESTRICT USE

Claimant states that as a result of the application of the PA-38 regulations, he cannot construct a dwelling on the subject property without satisfying either the standards for a farm related dwelling set out in CCZO 302 or a nonfarm dwelling set out in CCZO 303. However, if Section 313.13(D) is waived, Claimant should not have a problem obtaining a conditional use permit to build the desired dwelling and the use of the property for residential purposes will not be restricted. Therefore, if the Board waives CCZO Section 303.13(D), the Board does not need to also waive CCZO Section 302. As noted in Section D above, staff finds that the conditional use criteria in CCZO Section 303.13(D) restricts use of the property for a non-farm dwelling by requiring that the soils on the property not be suitable for agriculture. The soils are suitable for agriculture. However, the conditional use review process and remaining criteria in Section 303.13D do not restrict the use unless an application for a conditional use permit has been denied or condition has been imposed that restricts use

F. EVIDENCE OF REDUCED FAIR MARKET VALUE

1. Value of the Property as Regulated.

Claimant alleges that the current value of the subject parcel is \$67,000.

2. Value of Property Not Subject To Cited Regulations.

The Claimant asserts that the value of the subject property if developed with a single family dwelling is \$225,000.

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

Based on the claim documents, the estimated loss in value is \$158,000.

G. COMPENSATION DEMANDED

Claimant demands \$158,000 per page one of the claim form.

(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 303.13(D) does not fall into any of the above exceptions.

Staff notes that other siting standards, fire suppression requirements, access requirements and requirements for adequate domestic water and subsurface sewage, continue to apply as they are exempt from compensation or waiver under Subsection 3(B), above.

(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 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 the application of zoning regulations adopted in 1984. Accordingly, the cite regulations were enacted prior to the effective date of Measure 37 on December 2, 2004. The subject claims were filed on April 24, 2006, 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 concludes that Claimant has a reduced property value by virtue of the imposition of dwelling permit requirements set out in CCZO 302 and 303.13D, it appears that the Claimant has adequately demonstrated that he may receive a waiver in lieu of compensation.

III. STAFF RECOMMENDATION:

Based on the above evidence, staff concludes that the Claimant meets the threshold requirements for demonstrating eligibility for Measure 37 compensation and/or waiver with respect to CCZO Section 303.13D, but does not meet the threshold for compensation/waiver with respect to CCZO remaining portions of Section 303 including the requirement for a conditional use permit review process.

The following table summarizes staff findings concerning the land use regulations cited by the Claimant as a basis for his claim. In order to meet the requirements of Measure 37, 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 may meet these requirements of a valid Measure 37 claim:

LAND USE CRITERION	DESCRIPTION	RESTRICTS USE?	REDUCES VALUE?	EXEMPT?
CCZO 302	Standards for approving a farm related dwelling in the PA-38 zone	Not if CCZO 303.13(D) is waived	Not if CCZO 303.13(D) is waived	No
CCZO 303.13D	Standard requiring siting of non-farm dwelling on land unsuitable for agriculture.	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 303.13D.

ATTACHMENT 2

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th S 657.50';
th W 357.0';
th N 1° 05' 30"W 657.50';
th E to the POB