

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

In the Matter of Claim No. 06-18 Submitted by David) Order No. 76-2006
and Carolyn Young for Compensation Under Measure 37)

WHEREAS, on May 4, 2006, Columbia County received a claim for compensation under Measure 37 and Order No. 84-2004 from David and Carolyn Young related to a parcel of property located on Young Road in St. Helens, Oregon, having tax account number 4201-000-01500; and

WHEREAS, according to the information presented with the claim, David Young acquired an interest in the property from the estate of his father upon the death of his father in 1979, and Carolyn Young acquired an interest in the property from David Young in 1999; and

WHEREAS, the County zoned the subject property as FA-19 in 1984, after the acquisition by David Young, but prior to the acquisition by Carolyn Young; and

WHEREAS, pursuant to Columbia County Zoning Ordinance (CCZO), Sections 210 and 407.1 and 409, the minimum lot or parcel size for new land divisions in the FA-19 Zone is 19 acres; and

WHEREAS, Mr. and Mrs. Young 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; and

WHEREAS, the Youngs claim that the minimum lot size requirement for new land divisions restricts the use of her property and reduces the value thereof by \$2,095,080.00; and

WHEREAS, the Youngs desire to subdivide the property into thirteen 2 acre parcels and one 10.32 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; and

WHEREAS, in 1979, the property was zoned Rural Residential (RR), prohibiting lot divisions of less than 2 acres;

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 06-18, dated September 8, 2006, which is attached hereto as Attachment 1, and is incorporated herein by this reference.
2. The County denies the Claim of Carolyn Young.
3. The County approves the Claim of David Young. In lieu of compensation, the County waives CCZO Sections 202 and 407.1 and 409 to the extent necessary to allow the Claimant to subdivide the property into thirteen 2 acre lots and one 10.32 acre lot.
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, David Young, 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.

///
///
///
///
///

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 18th day of October, 2006.

BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

Approved as to form

By: Sarah Hanson
Assistant County Counsel

By: Joe Corsiglia
Joe Corsiglia, Chair

By: Rita Bernhard
Rita Bernhard, Commissioner

By: Anthony Hyde
Anthony Hyde, Commissioner

After recording please return to:
Board of County Commissioners
230 Strand, Room 331
St. Helens, Oregon 97051

ATTACHMENT 1
**COLUMBIA COUNTY
LAND DEVELOPMENT SERVICES**

Measure 37 Claim

Staff Report

DATE: September 8, 2006

FILE NUMBERS: CL 06-18

CLAIMANTS/OWNERS: David C. Young
Carolyn A. Young
33940 Young Road
St. Helens, OR 97051

SUBJECT PROPERTY

PROPERTY LOCATION: 33940 Young Road
St. Helens, OR 97051

TAX ACCOUNT NUMBERS: 4201-000-01500

ZONING: Forest Agriculture (FA-19)

SIZE: 32.32 acres

REQUEST: To subdivide the parcel into 13 two-acre parcels, and one 10.32 acre parcel

CLAIM RECEIVED: May 4, 2006

180 DAY DEADLINE: October 20, 2006

NOTICE OF RECEIPT OF CLAIM: Notice of the receipt of claim was mailed to neighboring property owners. Responses have been received from:

D and L Sandberg
33965 Young Road
St. Helens, OR 97051

The Badger Family
33955 Young Road
St. Helens, OR 97051

Craig and Rhonda Melton.
58014 Bachelor Flat Road
Warren, OR 97053

The Badgers and the Sandbergs requested a hearing before the Board of County Commissioners.

I. BACKGROUND:

The subject property includes 36.32 acres and is improved with a dwelling. Claimants seek to sever approximately 27 acres from the parent parcel and subdivide it into 13 two-acre lots. Staff infers from the record that the dwelling will remain on the resulting 10.32 acre parcel. According to the claimants, the property has been in the Young family since the 1920s.

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:** Claimants submitted a title report issued by Ticor Title on April 5, 2006 for the subject property identified by Tax Acct. No. 02-11-2-4201-000-01500, with legal description attached.

Vested In: David C. Young, who acquired title as David Charles Young and Carolyn A. Young, as tenants by the entirety

2. **Date of Acquisition:** The claim states that David C. Young acquired the subject property from his father, Steven B. Young, in 1979. Stephen B. Young held title to the property until his death in 1979. His will bequeathed the subject property to David C. Young. The subject property was in probate from 1979 until 1986. Columbia County Probate File No. 4846 includes a Decree of Final Distribution that conveys the subject property to claimant on December 16, 1986. A copy of the assessor's deed card submitted by the claimants in support of the claim indicates that a deed conveying the property to Mr. Young from his father's estate was filed in the property records on March 16, 1987. ORS 114.215(b) states that upon the death of a decedent, title to the property of the decedent vests "In the persons to whom it is devised by the will of the decedent, subject to support of spouse and children, rights of creditors, right of the surviving spouse to elect against the will, administration and sale by the personal representative." There is no information in the record indicating that there was any challenge to Mr. Young's right to the subject property under the will. Therefore, staff finds that Mr. Young acquired an interest in the property upon the death of his father in 1979.

Claimant David C. Young conveyed title to the property to himself and Carolyn A. Young, his wife, as tenants by the entirety in 1999. Therefore, Carolyn Young first acquired an interest in the property in 1999.

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

The property was zoned in FA-19 1986. The property was subject to subdivision regulations adopted by the county in 1973, and partition regulations adopted in 1975. The property was subject to the FA-19 zoning regulations in 1984.

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

The claimants allege that the county's FA-19 zoning regulations prevent the claimants from dividing their property. The FA-19 zoning was applied to the subject property in 1984, after the date of claimant David C. Young's acquisition, in 1979, and prior to Carolyn Young's acquisition in 1999.

D. CLAIMANT'S ELIGIBILITY FOR FURTHER REVIEW

Claimant, David Young acquired an interest in the property before the FA-19 zoning was adopted. Therefore, it appears that the Claimant, David Young, is eligible for waiver of the cited regulation under Measure 37. For purposes of compensation, both Claimants may be eligible for compensation, based on Mr. Young's acquisition of the property from relatives who held title to the property prior to the imposition of land division requirements and zoning on the property.

E. STATEMENT AS TO HOW THE REGULATIONS RESTRICT USE

The Claimants state that they cannot divide their property as proposed due to the county's FA-19 zoning restrictions.

F. EVIDENCE OF REDUCED FAIR MARKET VALUE

1. Value of the Property As Regulated.

The Claimants have not submitted evidence regarding the value of the property as regulated.

2. Value of Property Not Subject To Cited Regulations.

Claimants allege that if 26.86 acres of the property are subdivided into two-acre lots, each lot would be worth \$156,000. They base their estimate on a "Comparative Market Analysis" prepared by Jeff Yarbor, Century 21 Realty. The market analysis identifies five parcels, ranging in size from 1.86 to 2.5 acres. The market analysis is dated March 24, 2006, and provides general descriptions of the location and services available to the properties. The 1.89 acre parcel is located on a paved road, and sold for \$156,000. A 2 acre parcel sold for \$155,000. Other parcels have been offered for sale at between \$138,000 and \$250,000. There is no evidence with respect to whether those parcels have sold.

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

The written documentation in support of the claim alleges the value of the property if it is subdivided. It does not provide any evidence as to the present value of the property.

While staff does not agree that the information provided by the Claimants 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 regulations, staff concedes that it is more likely than not that the property would have a higher value as a rural subdivision than as a 36.32-acre resource parcel developed with a single dwelling.

G. COMPENSATION DEMANDED

\$2,095,080 per page one of the Measure 37 claim.

(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.

Staff concedes that the claimants have submitted evidence to show that a family member of the owner owned the subject property prior to the adoption of the county's comprehensive plan and zoning ordinance. Staff has already noted that there is little evidence in the record regarding the current value of the subject property and the evidence with respect to the estimated value of the property if it is developed as requested is scant.

Neighboring property owners submitted written testimony that expressed concerns regarding: adequate access to and through the property, pollution from septic systems infiltrating groundwater, storm water drainage and protection of Milton Creek, which crosses the subject property, and the loss of wildlife and agricultural uses in the area. Neighbors also expressed concerns that if this claim is approved, activities on neighboring agricultural parcels will have to be altered or limited to accommodate the rural residential lifestyles of the residents of the subdivision.

Staff notes that other siting standards, including 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. With respect to limitations on generally accepted agricultural activities, staff believes the right to farm provisions set out in ORS 30.936 and 30.937 provide adequate protection against lawsuits arising from nuisance claims against farmers for their normal agricultural activities.

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 Claimants have 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 or in lieu of compensation, modify, remove, or not apply CCZO Sections 202, 210, and 407.1 to the extent necessary to allow the Claimants to subdivide the property into two acre lots.

(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 the FA-19 zone which were enacted prior to the effective date of Measure 37 on December 2, 2004. The subject claims were filed on May 4, 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.

Should the Board determine that the that the Claimants have 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. Because the zoning ordinance provisions were adopted prior to the owner's acquisition of the subject property, staff asserts that a waiver is not an available option.

III. STAFF RECOMMENDATION:

Based on the above findings, staff concludes that the Claimant, David Young, has met the threshold requirements for proving a Measure 37 waiver claim. However, based on her 1999 acquisition date, Carolyn Young has not met the threshold requirements for proving a Measure 37 waiver claim.

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 or waive regulations to allow David Young a use of the property that was allowed in 1979.

ATTACHMENT 2

PARCEL 1: The South 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 following:

The West 20 acres of that portion of the premises above described lying North of center line of the Milton Creek conveyed to Charles L. Lovell, and wife by deeds recorded in Book 11, page 564 and in Book 14, page 389, and Book 20 at page 62, deed records of Columbia County, Oregon.

Also excepting a strip of land 9.6 feet in width along a portion of the Easterly line of the premises above described conveyed to Effie C. Brown by deed recorded in Book 30 at page 94, Deed records of Columbia County, Oregon.

Also excepting a tract of land conveyed by John Gaman et ux to Alcoa Mining Company recorded May 5, 1947 in Book 93 at page 447, Deed Records.

Also excepting that tract of land conveyed to the Columbia County in Deed Book 174, page 437, recorded August 27, 1969, now known as Young Road.

PARCEL 2:

Beginning at a point that is North 0° 02' East 1296.05 feet and South 89° 43' East 741.0 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 West 20.0 acres of the Southwest quarter of the Northeast quarter as deeded to Ernest M. Harris and recorded in Book 76 page 77 Deed Records; thence along the East line of said 20 acres tract South 0° 02' West a distance of 317.6 feet; thence North 4° 30' West a distance of 316.5 feet; thence South 89° 43' East a distance of 25.1 feet to the point of beginning.

I hereby certify that the within instrument was received for record and recorded in the County of Columbia, State of Oregon.

13156 '99 SEP 24 AM 11:43

ELIZABETH HUSER, County Clerk

By: ELONG Deputy

Receipt # 19567 of Pages 2

FEES \$ 40.00