

BEFORE THE BOARD OF COUNTY COMMISSIONERS  
FOR COLUMBIA COUNTY, OREGON

In the Matter of Claim No. CL 06-20 for Compensation     )  
under Measure 37 submitted by Bob Cicerchi             )     Order No. 89-2006

WHEREAS, on May 30, 2006, Columbia County received a claim under Measure 37 (codified at ORS 197.352) and Order No. 84-2004 from Bob Cicerchi related to a 39.70 acre parcel on Olson Road, Deer Island, Oregon, having Tax Account Number 5201-000-00600; and

WHEREAS, according to the information presented with the Claim, Mr. Cicerchi continuously owned an interest in the property from 1963 to 2001, and is currently one of the trustees of a revocable trust that includes the property as an asset of the trust; and

WHEREAS, in 1963 the subject property was unzoned; and

WHEREAS, the subject parcel is currently designated FA-19 on the Columbia County Zoning Map; and

WHEREAS, pursuant to Columbia County Zoning Ordinance (CCZO) provisions that were adopted in 1984, nonresource dwellings and parcel sizes are regulated; and

WHEREAS, Mr. Cicerchi claims that the minimum lot size requirements and dwelling standards have restricted the use of his property and has reduced the value of the property by \$900,000.00; and

WHEREAS, Mr. Cicerchi desires to divide the property into approximately seven five-acre lots and place dwellings on those lots; 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 06-20, dated October 24, 2006, which is attached hereto as Attachment 1, and is incorporated herein by this reference.



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 8th day of November, 2006.

BOARD OF COUNTY COMMISSIONERS  
FOR COLUMBIA COUNTY, OREGON

Approved as to form

By: Smal Hanson  
Assistant County Counsel

By: Joe Corsiglia  
Joe Corsiglia, Chair

By: Rita M. 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

**COLUMBIA COUNTY  
LAND DEVELOPMENT SERVICES**

**Measure 37 Claim**

**Staff Report**

**DATE:** October 24, 2006

**FILE NUMBERS:** CL 06-20

**CLAIMANT/OWNER:** Bob Cicerchi  
65353 Olson Road  
Deer Island, OR 97054

**CLAIMANT'S  
REPRESENTATIVE:** Kevin Harker  
Vial Fotheringham  
7000 SW Varns Street  
Portland, OR 97223

**SUBJECT PROPERTY**

**PROPERTY LOCATION:** 65353 Olson Road  
Deer Island, OR 97054

**TAX ACCOUNT NUMBER:  
AND PARCEL SIZE** 5201-000-00600 39.70 Acres

**ZONING:** Forest/Agriculture-19 (FA-19)

**REQUEST:** To subdivide the property into approximately 7 residential lots

**CLAIM RECEIVED:** May 30, 2006

**180 DAY DEADLINE:** November 30, 2006

**NOTICE OF RECEIPT OF CLAIM:** August 24, 2006 (deadline). Comments have been received by  
Cathy Wright  
65495 Olson Road  
Deer Island, OR 97054

**BOCC REVIEW DATE:** November 8, 2006

**I. BACKGROUND:**

The subject property is a rectangular parcel located to the west of Olson Road. It is developed with a dwelling located on the eastern portion of the property. The Claimant acquired his interest in the property through a series of deeds from his mother and guardians from 1944

through 1963. In 1971, claimant conveyed a life estate interest in the property to Ettore E. Cicerchi.<sup>1</sup> It is unclear from the face of the deed whether the life estate was to be measured by Ettore E. Cicerchi's life, Bob Cicerchi's life or by some other person's life. The Claimant implies that the life estate was measured by Ettore E. Cicerchi and that Bob Cicerchi held a remainder so that upon the death of Ettore E. Cicerchi, fee simple again vested in Bob Cicerchi. However, the County has not received any documentation to support that claim. Claimant conveyed a tenants-by-the-entireties interest in the property to his wife, Janice R. Cicerchi in 1994. The property was placed in a revocable trust by Bob and Janice Cicerchi in 2001.

## 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 the Title Report, the property is currently owned by Bob G. and Janice R. Cicerchi, as Trustees of the Cicerchi Family Trust, dated January 10, 2001. The trust is a revocable trust. This determination of ownership presumes that the life estate granted to Ettore E. Cicerchi was measured by his life.

2. **Date of Acquisition:** Based on an advisory opinion by the Oregon Attorney General, if a property is conveyed by a grantor into a revocable living trust, the date of acquisition for the purposes of a Measure 37 Claim submitted by the trustor is the date the trustor acquired the property. In this case, the evidence shows that Bob and Janice Cicerchi conveyed the subject property into a revocable trust in 2001 and, therefore, staff uses the date claimant acquired the properties as the date of acquisition for the purposes of evaluating his claim. Mr. Cicerchi acquired an interest in the property via quit claim and warranty deeds, dated May 24, 1963 and August 23, 1963, respectively. Those deeds are recorded in the county deed records at Book 152, Page 195 and Book 152, Page 977. Therefore, for the purposes of this evaluation, staff assumes that the date of acquisition was August 23, 1963.

In contrast, the DLCD waiver dates to the date the life estate ended (December 14, 1992), reasoning that for the duration of the life estate, claimant had no ability to develop the property independent of the life estate. Using that reasoning, the state concluded that for the 30-plus year period the property was subject to the Ettore Cicerchi life estate, claimant had no land use

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<sup>1</sup>It is not clear to staff just what the life estate entailed. The deed establishing the life estate is rather cryptic, and can be read to allow a life estate only in the minerals located on the property. However, the actual scope of the life estate does not alter either the state's or staff's analysis of the Measure 37 claim.

regulations imposed on him that restricted *his* use of the property. Staff does not agree with this analysis. M37 pertains to regulations that restrict the use of property, and allows a person who has held an interest in the property prior to the adoption of the regulation the opportunity to obtain a waiver from the offending regulation. The plain language of the measure does not require that the owner to actually have the ability to develop the property under the laws of conveyancing when the offending regulation was adopted. Therefore, staff adheres to its conclusion that the appropriate date of acquisition is August 23, 1963 based on the ownership information provided by the Claimant.

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

The property was not zoned when the claimant acquired the parcels subject to the claims, and was therefore not subject to any minimum parcel size requirements or dwelling siting standards set out in the county zoning ordinance. The subject property is subject to subdivision regulations established by state statute in 1955.

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

The FA-19 zoning designation was applied to the subject property in 1984, many years after claimant acquired the subject property. The claimant alleges that the FA-19 zoning designation prevents the claimant from dividing his property and constructing dwellings on the resulting lots. Claimant alleges that CCZO Section 400, the county's FA-19 zoning regulations, preclude the development of his property as proposed.

#### **D. CLAIMANT'S ELIGIBILITY FOR FURTHER REVIEW**

Claimant acquired an interest in the property identified above before the adoption of county zoning ordinances and therefore the Claimant may be eligible for compensation and/or waiver of the cited regulations under Measure 37.

#### **E. STATEMENT AS TO HOW THE REGULATIONS RESTRICT USE**

Claimant states that he cannot divide his property as proposed due to the county's aforementioned land use regulations. Staff concedes that CCZO 400 can be read and applied to "restrict" the use of claimant's property within the meaning of Measure 37, as follows:

1. CCZO Section 401 describes the general purpose of the FA-19 zone. In and of itself, the section does not restrict or prohibit the use of the property.
2. CCZO Section 402 and Section 403 describe permitted uses in the FA-19 zone. These provisions do not restrict or prohibit the proposed subdivision for single family dwellings because dwellings are allowed in the FA-19 zone as a conditional use. Certain dwellings are also allowed in the zone as permitted uses.
3. CCZO Section 404, Section 405 and Section 406 do not restrict or prohibit the proposed subdivision for development of single family dwellings because single family dwellings are allowed as conditional uses. During the hearing process on the proposed conditional use dwellings conditions may be impose that may restrict or prohibit the use. Some of those conditions may be exempt from waiver under Measure 37. The County cannot determine whether conditions will qualify for waiver under Measure 37 until they have been imposed.

4. CCZO Section 407.1 prohibits a division of land in the FA-19 zone below 19 acres. Staff concedes that this minimum lot size regulation restricts and prohibits the use of the property. However, the County does not have any information that the remaining standards set forth in Section 407 cannot be met.
5. CCZO Section 408 relates to homestead lots and would not be applicable to a proposal to subdivide FA-19 property. Therefore, the section does not restrict or prohibit the proposed subdivision.
6. CCZO Section 409 describes the review process for partitions. The review process does not restrict or prohibit the use of the property.
7. CCZO Section 410 describes rights to reestablish a prior use after fire and is not applicable to a proposal to subdivide in the FA-19 zone. Therefore, the section does not restrict or prohibit the proposed subdivision.
8. CCZO Section 411 describes a notification process for state agencies. Notifying state agencies of proposed land uses does not restrict or prohibit the use of the property.
9. CCZO Section 412 describes fire siting standards for dwellings and roads in the FA-19 zone. These standards are applied during the conditional use process and might have the effect of prohibiting or restricting the use of the property if a person could not meet the standards and therefore was denied a conditional use permit. However, the County does not have any information that would indicate that the Claimant can't meet the fire siting standards. Furthermore, even if there was such information in the record, the fire siting standards for roads and dwellings are exempt from waiver under Section 3B of the Measure for public health and safety reasons.

#### F. EVIDENCE OF REDUCED FAIR MARKET VALUE

The applicant submitted a statement alleging that the value of the property if the property was divided into seven approximately five-acre lots. The claim includes a current market value of the improved property, and estimate the market value of the property if developed by the claimant as proposed. The appraisal does not consider the cost of improving the property or constructing roads, water or sewer systems to facilitate residential use.

1. Value of the Property As Regulated. \$460,000.
2. Value of Property Not Subject To Cited Regulations. According to an estimate provided by a Pat Parks, a Century 21 real estate broker, if the subject property is subdivided into five-acre residential lots, the property would be worth \$1.25 million.
3. Loss of value indicated in the submitted documents is: \$900,000 per page one of the claim.

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 if subdivided into five-acre lots developed with single family dwellings than a single resource-zoned parcel with a single-family dwelling located on it.

Staff notes that this value does not account for development costs and assumes that the resulting lots will be developed with dwellings prior to sale to third parties. If the subject property is merely subdivided and then sold as undeveloped lots, there is a significantly lower value, as the attorney general opinion concludes that while the claimants themselves may avail themselves of the benefits of Measure 37 and develop the property according to the regulations in place at the time of acquisition, that benefit is not transferable.

G. COMPENSATION DEMANDED \$900,000 per page 1 of claimant's Measure 37 Claim forms.

**(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.**

Cathy Wright, a neighboring property owner, commented that if domestic wells are developed on the proposed lots, there will be an adverse impact on existing wells. In addition, she complains that Olson Road is a substandard road and should be improved by the county before additional development on the road is approved. Staff notes that siting standards, including fire suppression requirements, access requirements and requirements for adequate domestic water and subsurface sewage, are exempt from compensation or waiver under Subsection 3(B), above, and therefore, the county will require a demonstration that adequate water, sewage and road facilities are available to safely serve the property at the time a development permit is requested.

**(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 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 or in lieu of compensation, modify, remove, or not apply the waivable provisions.



**(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 county's land use regulations which were enacted prior to the effective date of Measure 37 on December 2, 2004. The claim was filed on May 30, 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 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 or in lieu of compensation, modify, remove, or not apply those regulations.

### **III. STAFF RECOMMENDATION:**

Based on the above findings, staff concludes that the claimant 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 his claim. In analyzing the claim, staff has considered the regulations that must be waived or modified to accomplish claimant's stated development goal. In some circumstances, more information is needed at the time a specific development proposal is submitted in order for staff to determine whether a particular land use regulation is waivable.

In order to meet the requirements of Measure 37 for a valid claim the cited land use regulations must be found to restrict use, reduce fair market value, and not be one of the land use regulations exempted from Measure 37.

The regulations identified in the following table have been specifically included in the claim and are summarily analyzed:

LAND USE CRITERION	DESCRIPTION	RESTRICTS USE?	REDUCES VALUE?	EXEMPT?
CCZO 401	FA-19 General Purpose	No	No	No
CCZO 402 & 403	FA-19 Permitted Uses	No	No	No
CCZO 404, 405 & 406	FA-19 Conditional Uses	No	No	No
CCZO 407.1	FA-19 Minimum Lot Size	Yes	Yes	No
CCZO 407.2-407.5	FA-19 lot standards			
CCZO 408	Homestead Lots	No	No	Unknown
CCZO 409	Review Process for Partitions	No	No	No
CCZO 410	Re-establishment of Prior Use	No	No	No
CCZO 411	Agency Notification	No	No	No
CCZO 412	Fire Siting Standards	No	No	No
		No	No	Yes

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 Claimants' property, and act accordingly to pay just compensation in that amount, or, in the alternative, to not apply CCZO Section 407.1.

ATTACHMENT 2

LEGAL DESCRIPTION

The South one half of the North one half of the Southwest quarter of Section 1, Township 5 North, Range 2 West, Willamette Meridian, Columbia County, Oregon.