

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

In the Matter of Claim No. CL 06-24)
for Compensation under Measure 37 submitted)
by Penny Leader) Order No. 99-2006

WHEREAS, on June 21, 2006, Columbia County received a claim under Measure 37 (codified at ORS 197.352) and Order No. 84-2004 from Penny Leader related to approximately 7.44 acres located on Evergreen Lane, a private road in Warren, Oregon, having Tax Account Number 41191-021-00300; and

WHEREAS, according to the information presented with the Claim, Penny Leader has continuously owned an interest in the property since 1988; and

WHEREAS, the subject property is zoned RR-5 and Claimant states that CCZO Sections 604.1 and 604.5 (1984) restrict the use of the property and reduce its value; and

WHEREAS, CCZO 604.5 (1984) requires that the property have 50 feet of usable frontage on a public right-of-way, and Claimant acquired the property after that regulation was adopted; and

WHEREAS, CCZO 604.5 (1984) is a public health and safety standard that is exempt from Measure 37 waiver or compensation remedies; and

WHEREAS, in 1988 CCZO 604.1 allowed RR-5 zoned property to be divided into two acre parcels if a community water system is available; and

WHEREAS, Ms. Leader claims that cited restrictions restrict the use of her property and reduce the value thereof by \$138,000.00; and

WHEREAS, Ms. Leader desires to partition the property into one (1) approximately five (5) acre parcel and one (1) approximately two (2) 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;

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 06-24, dated November 28, 2006, which is attached hereto as Attachment 1, and is incorporated herein by this reference.
2. In lieu of compensation, the County waives CCZO Section 201, 210 and 604.1 to the extent necessary to allow the Claimant to partition the property into one (1) approximately five (5) acre parcel, and one (1) approximately two (2) acre parcel, in accordance with the regulations in effect in 1998.
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 a 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 Rural Residential 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 Claimant's own risk and expense. The County makes no representations about the legal effect of this waiver of 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.

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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 14th day of December, 2006.

BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

Approved as to form

By: Sarah Hausdor
County Counsel

By: Joe Corsiglia
Joe Corsiglia, Chair

By: Rita M. Bernhard
Rita Bernhard, Commissioner

By: Anthony Hyde
Anthony Hyde, Commissioner

ATTACHMENT 1

Measure 37 Claim

Staff Report

DATE: November 28, 2006
FILE NUMBERS: CL 06-24
CLAIMANT: Penny Leader
56996 Evergreen Lane
Warren, OR 97053

SUBJECT PROPERTY

PROPERTY LOCATION: 56996 Evergreen Lane
TAX ACCOUNT NUMBER: 4119-021-00300
ZONING: Rural Residential-5 (RR-5)
SIZE: 7.44 acres
REQUEST: To partition the subject property into an approximately 2 acre parcel and an approximately 5 acre parcel, and to develop the 5 acre parcel for residential use
CLAIM RECEIVED: June 21, 2006
REVISED 180 DAY DEADLINE: December 18, 2006
NOTICE OF RECEIPT OF CLAIM: September 2006

As of the date of the staff report, no requests for hearing have been received.

DATE OF BOCC REVIEW: December 13, 2006

I. BACKGROUND:

The subject property is developed with a single family dwelling and associated outbuildings. It is accessed via a private easement to Church Road. Claimant acquired the property from her mother-in-law, Iris Leader, in 1988, subject to a life estate for Iris Leader. Iris Leader died in late 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 information supplied by the claimant, the property is owned by Penny Leader, in fee simple.
2. **Date of Acquisition:** The property was acquired by Penny Leader on December 9, 1988, subject to a life estate held by Iris Leader.

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

The property was zoned in RR-5 in 1984 and that zoning has remained on the property to date. At the time the RR-5 zoning designation was applied, property with access to a community water system could be divided into parcels as small as two acres. According to the Claimant, the subject property has access to a community water system, and accordingly, could have been divided into two acre parcels/lots at the time the property was acquired in 1988. In addition, at the time the Claimant acquired the subject property, Claimant argues that access for newly created parcels could be obtained from an access road easement over private property rather than comply with public road access standards adopted after that time. The subject property does not have frontage on a public road.

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

In 2000, the county adopted Ordinance 99-5, which amended the provisions of the RR-5 zone to prohibit the creation of new lots or parcels smaller than five acres in size. The Claimant asserts that the revised rural residential development standards reduced the fair market value of the property by eliminating the ability to subdivide the parcel into smaller than five acre lots.

In addition, as noted above, Claimant asserts that CCZO 605.5(B) allows the use of 50 feet of frontage on either a public right-of-way or private nonexclusive easement if the lot or parcel was created prior to June 4, 1991. By negative inference, Claimant appears to assert that regulations in place at the time she acquired the subject property in 1988 would have allowed new lots to be created with only access to a private nonexclusive easement. Staff does not agree that such is the case. The 1984 county zoning provisions, which applied at the time the property was acquired by Claimant, required 50 feet of usable frontage on a public road. CCZO 604.5 (1984). In addition, the county has taken the position that the frontage requirement is a public health and safety standard and, as such, is exempt from the waiver or compensation provisions of Measure 37.

Based on the claim, it appears that the county standards that clearly prevent the Claimant from developing the property as desired are:

- | | |
|------------|--|
| CCZO 604.1 | Establishing the five acre minimum parcel size standard in the RR-5 zone |
| CCZO 604.5 | 50 feet of usable frontage on a public right-of-way |

D. CLAIMANT'S ELIGIBILITY FOR FURTHER REVIEW

Claimant acquired an interest in the property before the 2000 minimum parcel size provisions of the RR-5 zone became effective. Therefore the Claimant may be eligible for compensation and/or waiver of the CCZO 604.1 under Measure 37. CCZO 604.5 applied at the time the property was conveyed to Claimant and accordingly, staff does not believe that CCZO 604.5 frontage requirements are waivable in this instance.

E. STATEMENT AS TO HOW THE REGULATIONS RESTRICT USE

The Claimant states that the property cannot be divided as proposed due to the county's 5-acre minimum parcel size standard, and it does not front onto a public right-of-way. Staff concedes that CCZO 604.1 and 604.5 can be read and applied to "restrict" the use of Claimant's property within the meaning of Measure 37.

F. EVIDENCE OF REDUCED FAIR MARKET VALUE

1. Value of the Property As Regulated.

The Claimant submitted real estate listing comparables showing that the property has a current value of \$359,900.

2. Value of Property Not Subject To Cited Regulations.

Claimant submitted evidence of a range of prices for two acre and five acre parcels to establish the value of the property if developed as proposed is \$498,000.

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

The claim alleges a total reduction in value of \$138,000.

Staff notes that this value assumes that the resulting lots will be developed with dwellings prior to sale to third parties. If the subject property is merely divided and with the five acre parcel sold as-is, the value is significantly lower, as an attorney general opinion concludes that while the Claimant may avail itself 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.

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. Staff concedes, however, that it is more likely than not that the property would have a higher value if it could be divided for residential development as proposed.

G. COMPENSATION DEMANDED

Claimant claims the following compensation, per page 1 of the Measure 37 claim form: \$138,000.

(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 604.1 does not qualify for any of the exclusions listed.

CCZO 604.5 is a public health and safety standard, as it assures adequate access for emergency vehicles. In addition, the frontage requirement applied to the property at the time the property was acquired by the Claimant.

(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 or in lieu of compensation, modify, remove, or not apply CCZO Sections 604.1. However, even if the minimum parcel size standard is waived, the Claimant will not be able to develop the property as proposed, because the subject property does not have frontage on a public road.

(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 amendments for RR-5 zoned parcels created after 2000, which were enacted prior to the effective date of Measure 37 on December 2, 2004. The subject claim was filed on June 21, 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 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.

III. STAFF RECOMMENDATION:

The following table summarizes staff findings concerning the land use regulation cited by the Claimant as a basis for the 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 apply to this Measure 37 claim:

LAND USE CRITERION	DESCRIPTION	RESTRICTS USE?	REDUCES VALUE?	EXEMPT?
CCZO 604.1	Minimum 5-acre parcel size standard	Yes	Yes	No
CCZO 604.5	50 feet of usable frontage on a public right-of-way	Yes	No	Yes

The Claimant may be eligible for compensation and/or waiver of the CCZO 604.1 under Measure 37. However, CCZO 604.5 applied at the time the property was conveyed to Claimant and accordingly, staff does not believe that CCZO 604.5 frontage requirements are waivable in this instance.

Staff recommends the Board of County Commissioners deny the claim as to CCZO 604.5 and recommends that the Board determine the amount of reduction in fair market value of the subject property, if any, due to CCZO 604.1 and pay compensation in that amount or, in the alternative, waive CCZO 604.1.

ATTACHMENT 2

LEGAL DESCRIPTION

PARCEL 1:

BEGINNING at that corner of the J.G. Martin Donation Land Claim, which is East 1445 feet from the Southwest corner of Section 18, Township 4 North, Range 1 West, Willamette Meridian, Columbia County, Oregon;
Thence North 89° 30' East, along South line of a tract of land conveyed to Cedric L. Olsen as recorded in Deed Book 153, Page 905, Deed Records of Columbia County, Oregon, a distance of 700 feet to the Southeast corner thereof;
Thence North 28° 59' 00" East along the Easterly line of said Olsen tract, a distance of 298.60 feet to the most Easterly corner thereof;
Thence South 60° 49' 00" East along the Southerly line of a tract of land conveyed to Mabelle A. Rutherford, as recorded in Book 72, Page 225, Deed Records of Columbia County, Oregon; and Southeasterly extension thereof, a distance of 748.45 feet;
Thence South 33° 56' West a distance of 600.82 feet to the Northeasterly line of a tract of land conveyed to Gustaf J. Lindahl, as recorded in Book 11, Page 462, Deed Records of Columbia County, Oregon;
Thence, along the North line of said Lindahl tract North 58° 40' West, a distance of 516.00 feet;
Thence, along Northerly line of said Lindahl tract, South 76° 50' West, a distance 426.10 feet;
Thence West, along Northerly line of said Lindahl tract, a distance of 306.76 feet to the West line of said J.G. Martin Donation Land claim;
Thence North 0° 13' West, along said West line a distance of 424.49 feet to the TRUE POINT OF BEGINNING.

EXCEPTING THEREFROM:

BEGINNING at a point which is North 89° 30' 00" East 2145 feet from the Southwest corner of Section 18, Township 4 North, Range 1 West, Willamette Meridian, Columbia County, Oregon, said point being the Southeast corner of the Cedric L. Olsen property as recorded in Deed Book 153, Page 905;
Thence North 28° 59' 00" East along the Easterly line of said Olsen property a distance of 298.6 feet to the Southerly line of the Mabelle A. Rutherford property as recorded in Deed Book 72, Page 225;
Thence South 60° 49' 00" East along said Rutherford property a distance of 748.45 feet;
Thence South 33° 56' 00" West a distance of 326.18 feet;
Thence North 60° 49' 00" West a distance of 705.33 feet;
Thence North 00° 30' 00" West a distance of 30 feet to the POINT OF BEGINNING.

EXCEPTING THEREFROM:

BEGINNING at a point which is East 1445.00 feet and South 00° 13' 00" West, 30.00 feet from the Northwest corner of Section 19, Township 4 North, Range 1 West, Willamette Meridian, Columbia County, Oregon, said point being on the West line of the J. G. Martin Donation Land Claim and the TRUE POINT OF BEGINNING of the parcel herein described;
Thence North 89° 30' 00" East, a distance of 306.77 feet;
Thence South 00° 13' 00" East, a distance of 397.17 feet;
Thence West 44.25 feet;
Thence North 00° 13' 00" West, a distance of 376.78 feet;
Thence South 89° 30' 00" West, a distance of 232.50 feet;
Thence South 00° 13' 00" East, a distance of 374.75 feet;
Thence West a distance of 30.02 feet to said West line of the Martin Donation Land Claim;
Thence North 00° 13' 00" West, along said West line of the Martin Donation Land Claim, a distance of 394.49 feet to the TRUE POINT OF BEGINNING.

PARCEL 2:

A non-exclusive easement for roadway purposes described as follows:

BEGINNING at the most Southerly Southwest corner of the J. G. Martin Donation Land Claim in Section 19, Township 4 North, Range 1 West of the Willamette Meridian, Columbia County, Oregon;
Thence North 1325.50 feet to the angle corner of said Donation Land Claim on the South line of Section 18 of said Township and Range;
Thence East 30 feet;
Thence South parallel to the West line of said Donations Land Claim, 1325.50 feet to the South line of said Donation Land Claim;
Thence West, along South line of said Donation Land Claim, 30 feet to the POINT OF BEGINNING.