

In the Matter of Claim No. CL 07-02 )  
for Compensation under Measure 37 submitted ) Order No. 11-2007  
by Don West )

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3. The Board of County Commissioners denies Claim No. CL 07-02.

Dated this 22nd day of January, 2007.

BOARD OF COUNTY COMMISSIONERS  
FOR COLUMBIA COUNTY, OREGON

Approved as to form

By: Sarah Hanson  
County Counsel

By: Rita M. Bernhard  
Rita Bernhard, Chair

By: Anthony Hyde  
Anthony Hyde, Commissioner

By: Joe Corsiglia  
Joe Corsiglia, Commissioner

# **COLUMBIA COUNTY LAND DEVELOPMENT SERVICES**

## **Measure 37 Claim**

### **Staff Report**

**DATE:** January 11, 2007

**FILE NUMBER:** CL 07-02

**CLAIMANT/OWNER:** Don West  
33587 Bennett Road  
Warren, OR 97053

**CLAIMANT'S  
REPRESENTATIVE:** Harold L. Olsen  
Olsen, Horn LLC  
Attorneys at Law  
PO Box 688  
St. Helens, OR 97051

### **SUBJECT PROPERTY**

**PROPERTY LOCATION:** 33587 Bennett Road  
Warren, OR 97053

**TAX ACCOUNT NUMBER:** 4213-010-02800

**ZONING:** Rural Residential-5 (RR-5)

**SIZE:** 6.95 acres

**REQUEST:** To divide property into two acre lots/parcels

**CLAIM RECEIVED:** July 20, 2006

**180 DAY DEADLINE:** January 17, 2007

**NOTICE OF RECEIPT OF CLAIM:** As of the date of this staff report, no requests for hearing have been filed.

#### **I. BACKGROUND:**

The subject property is located on Bennett Road and is developed with a dwelling that was constructed on the property in the 1930s. Claimant's parents acquired the property in 1961. Claimant's father deeded the property to a revocable living trust in 1992. The trust named claimant's father and claimant as trustees of the trust. Claimant's father died on February 5, 2003. Claimant, as successor trustee to the living trust, deeded the property to himself as an individual via a bargain and sale deed on August 28, 2003.

#### **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 chain of title report prepared by Tigor Title, claimant owns fee title to the property.

2. **Date of Acquisition:** Claimant acquired title to the property via a bargain and sale deed from the Harold M. West Revocable Living Trust on August 28, 2003, recorded in the Deed Records of the Columbia County Clerk on September 4, 2003.

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

In 1984, the county zoned the property RR-5. That zoning designation permitted dwellings on parcels as small as two acres, providing the properties were served by a community water system. Although it is not entirely clear from the information provided with the claim, it appears that the subject property has access to community water. That two-acre parcel size provision was repealed in 1998 (Ordinance No. 98-4).

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

The claimant alleges the five acre minimum parcel size reduces the fair market value of his property. He asserts that if he were to subdivide the property into lots with a two-acre density, he could realize a greater return than the division and sale of the property into five-acre home sites. Claimant seeks a waiver of the RR-5 five acre minimum parcel size provisions.

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

Claimant acquired the property in 2003, after the adopted of Ordinance 98-4. Accordingly, it does not appear that claimant is eligible for a waiver of the minimum parcel size standard.

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

Claimant states that as a result of the application of the post-1998 RR-5 zoning regulations, he cannot partition his property to create two-acre lots. Staff concedes that the applicable minimum parcel size requirements can be read and applied to "restrict" the use of those tax lots within the meaning of Measure 37.

### F. EVIDENCE OF REDUCED FAIR MARKET VALUE

#### **1. Value of the Property as Regulated.**

The claimant asserts the value of the property as regulated is \$399,900, based on a market analysis prepared for the claimant by John L. Scott Realty. The value of the property includes the value of the improvements located on the property.

#### **2. Value of Property Not Subject To Cited Regulations.**

Based on the market analysis prepared by John L. Scott Realty, the claimant asserts that the value of the property divided into three parcels, with a dwelling on one of the new parcels, is \$192,000 for the undeveloped

two acre parcels, and \$399,900 for the developed parcel. The estimates were based on sales data from 1999 through 2005, with adjustments to the comparable sales prices to address the differences in sale dates. In total, the claimant estimates the value of the property if not regulated is \$783,900.

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

The applicant asserts that the five acre-minimum parcel size standards have reduced the value of his property by: \$384,000.00

Based on the evidence in the record, staff does not believe that the claimant has provided adequate evidence to demonstrate a loss in value. Staff concedes, however, that it is more likely than not that the property is more valuable if it is divided into two-acre residential parcels than if it retained as a 6.95 acre parcel.

**G. COMPENSATION DEMANDED:** \$384,000 per page one of the Measure 37 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.**

The 5 acre-minimum parcel size standards for the RR-5 zone do not fall under any of these 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 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. The waiver provisions do not apply, because the Claimant was not the owner of the property prior to the imposition of the identified regulations.

**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 standards amended in 1999, which were enacted prior to the effective date of Measure 37 on December 2, 2004. The subject claims were filed on July 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.**

The Measure 37 waiver provisions do not relate back to the date the claimant's relatives acquired their interests. Accordingly, the Board may either deny the request for a waiver of the minimum parcel size provisions and pay the compensation that has been proved, or deny the claim with respect to those tax lots, as claimant acquired those tax lots when they were subject to a five-acre minimum parcel size. In the alternative, the Board may interpret the provisions of Measure 37 to allow for waiver of regulations based on claims of diminution in value that relate back to when the claimant's relatives acquired the property.

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

Based on the above evidence, staff concludes that the claimant meets the threshold requirements for demonstrating eligibility for Measure 37 compensation. The claimant has not demonstrated that he is eligible for a waiver of the regulations.

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?
Ordinance 98-4	Eliminated 2-acre "go-below" standard for property zoned RR-5	Yes	No	No