

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

In the Matter of Claim No. 07-04 Submitted)
Emad Al-Attrash for Compensation Under) Order No. 18-2007
Measure 37)

WHEREAS, on August 8, 2006, Columbia County received a claim for compensation under Measure 37 and Order No. 84-2004 from Emad Al-Attrash, related to a parcel of property located on Hazen Road, in Warren, Oregon, having tax account number 7316-000-00300; and

WHEREAS, according to the information presented with the claim, Mr. Al-Attrash acquired an interest in the property in 1978 in a land sale contract, and is currently the fee owner of the property; and

WHEREAS, in 1978, the land was zoned Rural Residential, allowing property divisions of 2 acres or more; and

WHEREAS, the County zoned the subject property as FA-19 in 1984; and

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

WHEREAS, Mr. Al-Attrash claims 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 by \$1,500,000; and

WHEREAS, Mr. Al-Attrash desires to subdivide the property into 3 acre parcels; 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 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

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 07-04, dated February 2, 2007, which is attached hereto as Attachment 1, and is incorporated herein by this reference.
2. The County approves the Claim Emad Al-Attrash, (hereinafter referred to as the "Claimant"). In lieu of compensation, the County waives CCZO Sections 202, 407.1 and 409 to the extent necessary to allow the Claimant to subdivide the property into

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 17th day of February, 2007.

Approved as to form

By: Sarah Hanson
Assistant County Counsel

BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

By: Rita M. Bernhard
Rita Bernhard, Chair

By: Anthony Hyde
Anthony Hyde, Commissioner

By: Joe Corsiglia
Joe Corsiglia, 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: February 2, 2007
FILE NUMBER: CL 07-04
CLAIMANT/OWNER: Emad Al-Attrash
57187 Hazen Road
Warren, OR 97053
**CLAIMANT'S
REPRESENTATIVE:** Jack Weisgerber
57187 Hazen Road
Warren, OR 97053

SUBJECT PROPERTY

PROPERTY LOCATION: 51787 Hazen Road
Warren, OR 97053
TAX ACCOUNT NUMBER: 4118-030-00100
ZONING: Forest Agriculture (FA-19)
SIZE: 48.54 acres
REQUEST: To subdivide the parcel into up to 3 parcels for residential development
CLAIM RECEIVED: August 8, 2006
180 DAY DEADLINE: February 8, 2007
NOTICE OF RECEIPT OF CLAIM: Mailed December 15, 2006. Comments were received by: Rosemary Silen, 57021 Raasee Lane, Warren OR, 97053.

I. BACKGROUND:

The subject property includes 48.54 acres and is developed with a single family dwelling. Approximately 10 acres of the property is a lake, and other portions of the property are identified by the claimant as wetland. Claimant purchased the property via a land sale contract in 1978. According to information presented by the claimant, the property was conveyed to claimant and others via a warranty deed dated October 17, 1994.

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:** On October 21, 1994, Sharon Ainsworth, conveyed the property via warranty deed filed in the Columbia County Deed Records on October 21, 1994. According to assessor's records, the claimant acquired sole title to the property via a deed filed at October 25, 1994. However, the deed referenced in the assessor's records appear to rely on the October 21, 1994 conveyance to give title to claimant. Claimants submitted a Measure 37 Report issued by Columbia County Title and Escrow Services, Inc. on July 12, 2006. The report states that as of July 13, 2006, the property was vested in Emad Al-Attrash, in fee simple absolute. There is no other evidence in staff's file to show why the title company concludes that claimant has sole title to the property. Nevertheless, because there is no evidence to the contrary, staff assumes that claimant is the sole fee owner of the property.

2. **Date of Acquisition:** Claimant and three others entered into a land sale contract in 1978 to purchase the subject property. In 1982, the other purchasers conveyed their interest in the land sale contract to a third party. It is not clear from the evidence provided by the claimant, but it can be inferred that the 1982 conveyance fell through and as a result, the three purchasers were reinstated as obligees with claimant under the land sale contract.

A land sale contract has the effect of giving the purchasers an interest in property. The seller has legal title, which is held in trust for the benefit of the purchasers. *Panuska v. Panuska*, 221 Or 145, 349 P2d 450 (1960). Accordingly, staff uses December 1, 1978 as the date of acquisition for the purposes of evaluating the claim.¹

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

The property was zoned RR(Rural Residential) under the South County Zoning ordinance which was enacted on August 29, 1973. The RR zone allows single family residential use and established a minimum lot size of two acres.

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

The claimant alleges that the FA-19 zoning regulations prevent the claimants from dividing their property and constructing dwellings it. The zoning district was first applied to the subject property in 1984 and established a minimum lot size of 19 acres.

CCZO 407.1 establishing a minimum lot size of 19 acres.

¹It may be that the contract itself provides for a date of conveyance, however, only the first page of the land sale contract is in the file. Accordingly, staff turns to general tenets of conveyancing law for guidance.

D. CLAIMANT'S ELIGIBILITY FOR FURTHER REVIEW

Claimant acquired an interest in the property before CCZO Section 407.1 became effective and therefore the Claimant may be eligible for compensation and/or waiver of the cited regulation under Measure 37.

E. STATEMENT AS TO HOW THE REGULATIONS RESTRICT USE

The Claimant states that he cannot divide the property as proposed due to the county's FA-19 zoning. Staff concedes that CCZO 407.1 "restricts" 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 a letter from J. F. Weisgerber, the claimant's representative. In the letter, Mr. Weisgerber estimates that the current land value of the property at \$285,000 (not including the dwelling, which has an assessed value of 54,800). However, July 2006 assessor records for the property value the property, not including the dwelling at \$338,400, and \$413,000, including the dwelling. Staff uses the assessors' estimated value of the property, including the dwelling as the value of the property as regulated. That value is \$413,000.

2. Value of Property Not Subject To Cited Regulations.

Mr. Weisgerber estimates that the property would have a value of \$1,500,000, if the property was divided into at least three parcels, one including the existing dwelling, and two others developed with single-family residential dwellings. However, it is not clear how that value is calculated.

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

The written documentation in support of the claim alleges a total reduction in value of \$1,500,000. However, that estimate is based on the value of two additional dwelling sites (at \$500,000 each).

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 three residential lots than as a 48.54 acre resource parcel.

G. COMPENSATION DEMANDED

\$1,500,000 per page 1 of claimants' 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.**

CCZO Section 407.1 does not qualify for any of the exclusions listed.

However, 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. Staff also notes that the comments received from Mrs. Silen notes the existence of wetlands and wildlife areas on the property and questions how access to the western portion of the property will be obtained.

Wetlands are subject to federal and state regulations and are not subject to waiver by the county. Further development will be subject to regulations that protect public health and safety.

(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 407.1 .

(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 parcel standards of the FA-19 zone and variance regulations which were enacted prior to the effective date of Measure 37 on December 2, 2004. The subject claim was filed on August 8, 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 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 407.1 .to the extent necessary to allow up to three parcels of not less than 2 acres in size for residential development.

III. STAFF RECOMMENDATION:

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 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 meet these requirements of a valid Measure 37 claim.

LAND USE CRITERION	DESCRIPTION	RESTRICTS USE?	REDUCES VALUE?	EXEMPT?
CCZO 407.1	Establishing a minimum lot size of 19 acres.	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 Section 407.1 to the extent necessary to allow up to three parcels of not less than 2 acres in size for residential development.

ATTACHMENT 2

EXHIBIT A

LEGAL DESCRIPTION

PARCEL 1:

BEGINNING at a point in a boundary line of the Franklin Cooper Donation Land Claim in Section 18, Township 4 North, Range 1 West of Willamette Meridian, Columbia County, Oregon, which is North 1255 feet and East 1056 feet from the Southwest corner of said Franklin Cooper Donation Land Claim;
Thence West 1056 feet to a point on the Westerly line of said Donation Land Claim;
Thence North, along claim line to a point of intersection with the East and West quarter section line running through the center of Section 13, Township 4 North, Range 2 West of Willamette Meridian and also Section 18, Township 4 North, 1 West of the Willamette Meridian;
Thence Easterly on said quarter section line to a point in the center of Bennett Road;
Thence Southwesterly, along the center line of said Bennett Road to a corner of the Franklin Cooper Donation Land Claim;
Thence West 13 chains to another corner of the said Cooper Claim;
Thence South, along claim line to the POINT OF BEGINNING.

PARCEL 2:

BEGINNING at a point in a boundary line of the Franklin Cooper Donation Land Claim in Section 18, Township 4 North, Range 1 West of Willamette Meridian, Columbia County, Oregon, which is North 1255 feet and East 1056 feet from the Southwest corner of said Franklin Cooper Donation Land Claim;
Thence South, along the claim line 1031.70 feet;
Thence West, 429.70 feet;
Thence North, 1031.70 feet;
Thence East, 429.70 feet to the POINT OF BEGINNING.

PARCEL 3:

BEGINNING at the Northwest corner of the Franklin Cooper Donation Land Claim in Section 13, Township 4 North, Range 2 West of Willamette Meridian, Columbia County, Oregon; e
Thence South, along the West line of said Donation Land Claim, 80 rods to the Southwest corner of the J. W. Haggquist Tract, as described in deed recorded October 30, 1914 in Book 21, Page 90, Deed Records of Columbia County, Oregon;
Thence East, along the South line of said Haggquist Tract, 20 rods to the Southeast corner thereof and the TRUE POINT OF BEGINNING of the following described tract;
Thence North 250 along East line of said Haggquist tract, a distance of 250 feet;
Thence East, along the North line of the Ben R. Copeland tract as described in Deed recorded April 2, 1928 in Book 45, Page 185, Deed Records of Columbia County, Oregon, a distance of 900 feet to the Northeast corner thereof;
Thence South, a distance of 250 feet;
Thence West, a distance of 900 feet to the TRUE POINT OF BEGINNING.

100
48.54 AC.

SEE MAP 41182

POND

NW COR. COV. LOT 4
ANGLE COR. IN S. LINE F. COOPER D.L.C. #58
NW COR. J.G. MARTIN D.L.C.

ANGLE COR. N.S. LINE
F. COOPER D. .C. #58
& N. LINE J.G. MARTIN D.L.C.

200
39.31 AC.

300
1.05 AC.

400
23.44 AC.

1-10

PT IS: N.1255' & E.1056' FRM
SW COR. F. COOPERS D.L.C. #58

1200
14.29 AC.

100

(S10 75')

CS / 15

(2)

CS / 75

CS / 18

CS / 2051



COMPLIMENTS OF
Columbia County
Title & Escrow Services, Inc.
This sketch is furnished to assist
in property location and the company
does not guarantee its accuracy.

900
0.87 AC.

800
1.28 AC.

1000
3.29 AC.

7
2

H.T. BENNETT RD.