

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

In the Matter of Claim No. CL 07-07)
for Compensation under Measure 37)
submitted by Clay and Lorraine Dawson) Order No. 31-2007

WHEREAS, on September 12, 2006, Columbia County received a claim under Measure 37 (codified at ORS 197.352) and Order No. 84-2004 from Clay Maron Dawson and Lorraine Marie Dawson (the "Claimants"), for property having Tax Account Number 4225-030-01200; and

WHEREAS, according to the information presented with the Claim, Claimants have continuously had an interest in the property subject to CL 07-07 since December 22, 1997; and

WHEREAS, the 8.85-acre property has been zoned Rural Residential-5(RR-5) since 1985; and

WHEREAS, in 1997 Columbia County permitted lot sizes as small as two acres in the RR-5 zone under certain circumstances, including connection to a community water system; and

WHEREAS, pursuant to Columbia County Zoning Ordinance (CCZO) provisions that were adopted in 1999, the minimum parcel size in the RR-5 zone is now five acres; and

WHEREAS, Claimants claim that CCZO 201, 210 and 604.1 have restricted the use of the property and have reduced the value of the property by \$325,000; and

WHEREAS, Claimants desire to divide the property to create one 4.85 acre parcel and two 2 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 Claimants' property and reduces the fair market value of the property to allow a use which was allowed at the time the Claimants 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 07-07, dated February 26, 2007, which is attached hereto as Attachment 1, and is incorporated herein by this reference.

2. In lieu of compensation, the County waives CCZO 202, 210 and 604.1 to the extent necessary to allow the Claimants to divide the property into two approximately three acre parcels, provided that the Claimants meet the 2 acre go-below community water system criteria.
3. This waiver is subject to the following limitations:
 - A. This waiver does not affect any land use regulations promulgated by 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 Claimants. If it is later determined that Claimants are 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, Claimants are 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 Claimants, 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, Claimants do so at their 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. By accepting this waiver, and developing the property in reliance thereof, Claimants agree to indemnify and hold the County harmless from and against any claims arising out of the division of property, the sale or development thereof, or any other claim arising from or related to this waiver.

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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 7th day of March, 2007.

Approved as to form

By: Sarah Hanson
Office of the County Counsel

BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

By: Rita M. Bernhard
Rita Bernhard, Chair

By: not present
Anthony Hyde, Commissioner

By: Joe Corsiglia
Joe Corsiglia, Commissioner

COLUMBIA COUNTY LAND DEVELOPMENT SERVICES

Measure 37 Claims

Staff Report

DATE: February 26, 2007

FILE NUMBER: CL 07-07

CLAIMANTS/OWNERS: Clay Maron Dawson
Lorraine Marie Dawson
55023 Leberg Rd
Warren, Oregon 97053

SUBJECT PROPERTY

PROPERTY LOCATION: 55023 Leberg Rd
Warren, OR 97053

TAX ACCOUNT NUMBER: 4225-030-01200

ZONING: Rural Residential-5 (RR-5)

SIZE: 8.85 acres

REQUEST: To divide the parcel into two 2-acre and one 4.85-acre parcels for residential development.

CLAIM RECEIVED: September 12, 2006

180-DAY DEADLINE: March 9, 2007

NOTICE OF RECEIPT OF CLAIM: Notice of the receipt of claim was mailed to neighboring property owners on December 18, 2006. Responses have been received from:

Christopher & Kimberly Jory 33050 Stonebrook Drive Warren, OR 97053	Vernon Reynolds 33300 Stonebrook Drive Warren, OR 97053
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The Jorys requested a hearing before the Board of County Commissioners.

BOC REVIEW DATE: March 7, 2007

I. BACKGROUND:

The subject property includes 8.85 acres developed with a single-family dwelling and an outbuilding. Claimants acquired an undivided 1/4 interest in the property on December 22, 1997 from W.T. Dawson and Joyce

Ruthelene Dawson. They obtained full deeded interest on January 8th 1999. According to the claimants, the property has been in the family since 1975, when their sister purchased the property.

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:** The claimants supplied information supporting their claim that Clay Maron Dawson and & Lorraine Marie Dawson are the fee title owners of the subject property.

2. **Date of Acquisition:** Claimants first acquired an interest in the property via Bargain and Sale Deeds dated December 22, 1997 and recorded in the Columbia County Deed Records at 98-00093 and 98-00094 on January 6, 1998. Staff used December 22, 1997 as the date of acquisition for the purposes of evaluating this claim.

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

The property was zoned RR-5 in 1984. 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. The property did not have community water service when claimants acquired the property in 1977, but could have sought and obtained access to a community water district ie by annexing to the nearby Warren Water District

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

In 1999, the county amended the provisions of the RR-5 zone to prohibit the creation of new lots or parcels smaller than five acres in size. The claimants assert that the changes in the rural residential zoning provisions reduced the fair market value of the property by eliminating their ability to divide their parcel into smaller than five acre parcels. Accordingly, based on the claim, it appears that the county standards that clearly prevent the claimants from developing the property as desired are:

CCZO 201	General requirement that all development conform with the zoning ordinance
CCZO 210	Prohibiting land divisions into lots or parcels smaller than the minimum parcel size required in the applicable zoning district
CCZO 604.1	Establishing the five acre minimum parcel size standard in the RR-5 zone

D. CLAIMANT'S ELIGIBILITY FOR FURTHER REVIEW

Claimants acquired an interest in the property before the current provisions of the RR-5 zone became effective. Therefore the Claimants may be eligible for compensation and/or waiver of the cited regulations under Measure 37.

E. STATEMENT AS TO HOW THE REGULATIONS RESTRICT USE

The Claimants states that they cannot divide the property as proposed due to the county's 5-acre minimum parcel size standard. Staff concedes that CCZO 201, 210, and 604.1 can be read and applied to "restrict" the use of claimants' property within the meaning of Measure 37.

F. EVIDENCE OF REDUCED FAIR MARKET VALUE

1. Value of the Property as Regulated:

The claimants submitted a Measure 37 appraisal report that estimates the value of the current property as \$250,000. Staff uses the appraisal value for the purposes of estimating the value of the property as regulated.

2. Value of Property Not Subject to Cited Regulations:

The appraisal document submitted by claimants includes hypothetical appraisal valuations assuming the land is divided in to three parcels.

Hypothetical 2.00 acre site with existing dwelling and site improvements as \$225,000

Hypothetical 2.00 acre parcel, as a legal building site as \$150,000

Hypothetical 4.85 acre parcel, as a legal building site as \$200,000

In addition, claimants submitted appraisal copies of real estate listings showing that sales prices for undeveloped two-acre rural residential parcels are between \$115,000 and \$135,000 and developed rural residential land is between \$181,000 and 359,900. Claimants appear to allege that if their property is divided, the property would be worth approximately \$325,000.

3. Loss of Value Indicated in the Submitted Documents is:

The claim alleges a total reduction in value of \$325,000.

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 divided into parcels developed with single family dwellings than a 8.85-acre developed with a single family dwelling. Neighbors have identified access, sanitation and water quality concerns as a basis for challenging the valuation information presented by the claimants.

Staff notes that value estimates presented by claimants assume 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 parcels, 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: \$325,000. per page 1 of the 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.

The 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. If the proposed parcels cannot be adequately served by public access or by a subsurface sewage disposal system, the land division and subsequent residential development will not be approved. However, the zoning provisions that claimants seek to waive do not implicate health and safety regulations, if access to a community water system can be obtained.

(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 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 201, 210, 604.1.

(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 lot size provisions of the RR-5 zoning regulations which were enacted prior to the effective date of Measure 37 on December 2, 2004. The subject claim was filed on September 12, 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 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 201, 210 and 604.1.

III. STAFF RECOMMENDATION:

Based on the above findings, staff concludes that the claimants have met the threshold requirements for proving a Measure 37 claim.

The following table summarizes staff findings concerning the land use regulations cited by the Claimants as a basis for their 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 CRITERIA	DESCRIPTION	RESTRICTS USE?	REDUCES VALUE?	EXEMPT?
CCZO 201	General requirement that all development conform with the zoning ordinance	Yes	Yes	No
CCZO 210	Prohibiting land divisions into lots or parcels smaller than the minimum parcel size required in the applicable zoning district	Yes	Yes	No
CCZO 604.1	Establishing the five acre minimum parcel size standard in the RR-5 zone	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 Sections 201, 210 and 604.1.

ATTACHMENT 2

Individual

After recording return to:

Lori Dawson

55023 Leberg Rd.

Warren OR 97053

Name, Address, Zip

Until a change is requested all tax statements shall be sent to the following address.

Clay & Lorraine Dawson

55023 Leberg Rd.

Warren, OR 97053

Name, Address, Zip

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

20383 '99 JAN 11 P1:22



ELIZABETH HUSER, County Clerk

By: Dawson Deputy

Receipt # 5276 # of Pages 3

FEES \$ 40.00

STATUTORY BARGAIN AND SALE DEED

W.T. Dawson & Joyce Ruthelene Dawson
Clay Maron Dawson & Lorraine Marie Dawson,
husband and wife

, Grantor, conveys to
, Grantee, the following described real property:

See Exhibit "A" attached.

THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930.

The true consideration for this conveyance is \$ none

(Here comply with the requirements of ORS 93.030)

Dated this 8 day of Jan, 1999.

W.T. Dawson
Joyce Ruthelene Dawson

STATE OF OREGON

County of Douglas) ss.

BE IT REMEMBERED, That on this 8th day of January, 1999, before me, the undersigned, a Notary Public in and for the State of Oregon, personally appeared the within named W.T. Dawson and Joyce Ruthelene Dawson

known to me to be the identical individual s described in and who executed the within instrument and acknowledged to me that they executed the same freely and voluntarily.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Erika E Schofield
Notary Public for Oregon
My Commission Expires Jan 15, 2001

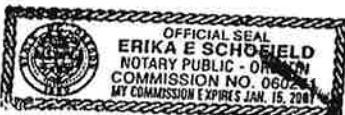


EXHIBIT "A"
STATUTORY BARGAIN AND SALE DEED, JOYCE RUTHELENE DAWSON
AND W. T. DAWSON to CLAY MARON DAWSON & LORRAINE MARIE DAWSON

Beginning at an iron pipe at the Southeast corner of the Nels P. Olson tract, said point being North 88° 17' East 2898.6 feet and South 0° 10' West 782 feet from the Northwest corner of the Josiah Fullerton Donation Land Claim in Sections 25 and 26, in Township 4 North, Range 2 West of the Willamette Meridian, Columbia County, Oregon; thence South 0° 10' West 257 feet to a large stake which is the Southeast corner of the tract conveyed by Ruth A. Hoyt and Frank M. Hoyt, to Peter Persson, Peter Swanson, Peter J. Olson and Charles Erickson on March 14, 1892; thence South 88° 35' West 2990 feet to the Southwest corner of the Josiah Fullerton Donation Land Claim; thence North 3° 17' East 257 feet to an iron pipe which is the corner of the Nels P. Olson tract; thence North 88° 35' East to the place of beginning.

EXCEPT THE FOLLOWING:

Beginning at the Southwest corner of the Josiah Fullerton Donation Land Claim in Township 4 North, Range 2 West of the Willamette Meridian, Columbia County, Oregon; thence North 3 degrees 17 minutes East along the West line of said Donation Land Claim, a distance of 257.00 feet to the Northwest corner of the Joyce Ruthelene Dawson tract as described in County Clerk's Instrument No. 89-1306; thence North 88 degrees 35 minutes East along the North line of said Dawson tract a distance of 1360.53 feet; thence South 3 degrees 17 minutes West a distance of 257.00 feet to the South line of said Fullerton Donation Land Claim; thence South 88 degrees 35 minutes West a distance of 1360.53 feet to the point of beginning.

ALSO EXCEPTING:

Beginning at the Southwest corner of the Josiah Fullerton Donation Land Claim in Township 4 North, Range 2 West, Willamette Meridian, Columbia County, Oregon; thence North 3°20'14" East along the West line of said Donation Land Claim a distance of 257.00 feet to the Northwest corner of the Joyce Ruthelene Dawson tract as described in County Clerk's Instrument No. 89-1306; thence North 88°35' East along the North line of said Dawson tract a distance of 1360.53 feet to the Northeast corner of the Robert E. Webster tract as described in County Clerk's Instrument No. 95-00291 and the true point of beginning of the parcel herein described; thence continuing North 88°35' East a distance of 86.76 feet; thence South 3°20'14" West a distance of 252.39 feet to the South line of said Dawson tract; thence South 88°56'18" West along said South line a distance of 86.72 feet to the Southeast corner of said Webster tract; thence North 3°20'14" East a distance of 251.85 feet to the true point of beginning.

SUBJECT TO:

1. The rights of the public in and to that portion of the above property lying within the limits of roads and highways.
2. An easement created by instrument, including the terms and provisions thereof dated October 22, 1940 and recorded October 22, 1940 in Deed Book 67, Page 87, Records of Columbia County, Oregon, in favor of United States of America for transmission lines.

TOGETHER WITH the rights of Grantor to that certain Declaration of Easement dated the 11th day of January, 1995, and recorded in the Columbia County, Oregon, records on the 12th day of January, 1995, Document No. 292.