

BEFORE THE BOARD OF COUNTY COMMISSIONERS  
FOR COLUMBIA COUNTY, OREGON

In the Matter of Amending the Procedures to )  
Process Applications for Compensation Under )  
Oregon Statewide Ballot Measure 37 )  
\_\_\_\_\_ )

**ORDER NO. 34 - 2007**

WHEREAS, on December 1, 2004, the Board of County Commissioners approved Order No. 84 - 2004, *In the Matter of Establishing an Interim Procedure to Process Applications for Compensation Under Oregon Statewide Ballot Measure 37*; and

WHEREAS, Measure 37 required that property owners making claims based on land use regulations enacted before December 2, 2004, file their claims on or before the latter of two dates: December 4, 2006, or the date the city, county or state applies the regulation as an approval criterion to an application by the owner of the property; and

WHEREAS, approximately 80 applications for Measure 37 claims were filed on or before December 4, 2006; and

WHEREAS, staff handling Measure 37 claims since the passing of the measure have recommended alternative means of processing these claims more efficiently;

NOW THEREFORE, it is hereby ordered as follows:

1. That the amended Procedure to Process Applications for Compensation under Oregon Statewide Ballot Measure 37, which is attached hereto as Attachment 1 and is incorporated herein by this reference, is hereby adopted.
2. That the amended procedures attached hereto are hereby effective retroactive to claims filed on or after November 28, 2006, and shall remain in effect unless amended.

Dated this 7<sup>th</sup> day of March, 2007.

BOARD OF COUNTY COMMISSIONERS  
FOR COLUMBIA COUNTY, OREGON

By: Rita M. Bernhard  
Rita Bernhard, Chair

Approved as to form

By: Sarah Hausman  
County Counsel's Office

By: not present  
Anthony Hyde, Commissioner

By: Joe Corsiglia  
Joe Corsiglia, Commissioner

## ATTACHMENT 1

### PROCEDURE TO PROCESS APPLICATIONS FOR COMPENSATION UNDER OREGON STATEWIDE BALLOT MEASURE 37

- I. DEFINITIONS. For purposes of this Procedure, the following definitions shall have the meaning given, unless definitions are required by law or the context requires a different meaning:
- A. Adopted. A land use regulation is adopted on the date that it is approved by the legislative or administrative body with authority to regulate the use in question.
  - B. Appraisal. Means a written report by an appraiser either licensed by the Appraiser Certification and Licensure Board of the State of Oregon or who qualifies as a registered appraiser under ORS 308.010 or ORS 308.015.
  - C. Claim. Means the "written demand for compensation" required to be made by an "owner" of "real property" under Ballot Measure 37. Demands shall not be considered "made" under Ballot Measure 37 until the County accepts the demand after the requirements for making a demand under this procedure are fulfilled by the Owner of the real property.
  - D. Exempt Land Use Regulation. Means a land use regulation that :
    - 1. Restricts or prohibits 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;
    - 2. Is required in order to comply with federal law;
    - 3. Restricts or prohibits the use of property for the purpose of selling pornography or performing nude dancing; or
    - 4. Was enacted prior to the date of acquisition of the real 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.

5. Restricts or prohibits activities commonly and historically recognized as public nuisances under common law.
- E. Family Member. Includes the wife, husband, son, daughter, mother, father, brother, brother-in-law, aunt, uncle, niece, nephew, stepparent, stepchild, grandparent, or grandchild of the owner of the property, an estate of any of the foregoing family members, or a legal entity owned by any one or combination of these family members or the owner of the property.
- F. Land Use Regulation. Includes,
1. Any statute regulating the use of land or any interest therein;
  2. Administrative rules and goals of the Land Conservation and Development Commission;
  3. Local government comprehensive plans, zoning ordinances, land division ordinances, and transportation ordinances;
  4. Metropolitan Service District regional framework plans, functional plans, planning goals and objectives; and
  5. Statutes and administrative rules regulating farming and forest practices.
- G. Owner. Means the present owner of the real property that is the subject of the demand for compensation, or any interest therein. The owner must be a person who is the sole fee simple owner of the real property or all joint owners whose interests add up to a fee simple interest in property including all persons who represent all recorded interests in property, such as co-owners, holders of less than fee simple interests, leasehold owners, and security interest holders.
- H. Property. Means any private real property or interest therein. It includes only a single parcel or contiguous parcels in single ownership. It does not include contiguous parcels or parcels not contiguous that are under different ownerships.
- I. Use. Means the use of private real property, but does not include a regulation that affects either the extent of a use or a regulation that governs development or construction.
- J. Reduction in Value. Means the difference in the fair market value of the

property before and after enactment or enforcement of a land use restriction.

- K. Valid Claim. Means a claim submitted by the Owner of real property that is subject to a non-exempt land use regulation adopted or enforced by the County that restricts the use of the private real property in a manner that reduces the fair market value of the real property.

## II. CLAIM FOR COMPENSATION

An Owner may file a claim for compensation with the County when any land use regulation is enacted or enforced against the Property after the Owner became the owner of the Property, when such land use regulation causes a reduction in the fair market value of the property, as provided in Measure 37. Claims for compensation are subject to the requirements herein.

III. PRE-APPLICATION CONFERENCE. Before submitting a Claim, Owners are encouraged to schedule and attend a pre-application conference with Land Development Services Department staff to discuss the Claim.

- A. To schedule a pre-application conference, the Owner must contact the LDS Department. The pre-application conference is for the Owner to provide a summary of the Owner's claim for compensation to staff and for staff to provide information to the Owner about regulations that may affect the Claim.
- B. LDS and other County staff are not authorized to settle any compensation claim, or waive or modify a land use regulation at a pre-application conference.

IV. APPLICATION FEE. The fee to submit a claim for compensation shall be \$500.00. The Board of County Commissioners may, by order or resolution, modify the fee for processing Claims. The fee shall be based upon the reasonable cost to the County of processing such applications including the cost of technical review.

## V. CLAIM FILING PROCEDURES.

- A. An Owner seeking to file a Claim for Compensation under Measure 37, must be the present owner of the property that is the subject to the claim at the time the claim is submitted. The claim shall be filed with the Land Development Services Department.

- B. Claims should be submitted on the Claim Form approved by the Board of County Commissioners, which is attached hereto as Exhibit A, and is incorporated herein by this reference. The Board of County Commissioners may amend the Claim Form at any time by a majority vote.
- C. The Claim Form should be accompanied by all necessary information and materials and the appropriate filing fee, sufficient to demonstrate a claim under Measure 37. The Board of County Commissioners may waive the fee if the Owner establishes a financial hardship. A complete Claim Form includes all the information and materials listed on the Claim Form. The Owner is responsible for the completeness and accuracy of the application and supporting information and materials.
- D. The Owner should provide one Claim Form for each separate parcel of property. The Board of Commissioners may waive multiple Claim fees.

VI. REVIEW OF CLAIM.

- A. Completeness Review. Upon submission of a Claim Form, the LDS Director (the "Director") will date-stamp the Claim and verify that the Claim fee has been submitted. The LDS Director will then review the Claim and evaluate whether the Claim is complete. After reviewing the Claim, the Director may request additional information or materials where useful to address claims criteria, including appraisals, market studies, feasibility studies, environmental assessments or similar studies relating to the Property.
- B. Claim Review. Following an investigation, and review of the information submitted, the Director, upon consultation of the County Counsel's Office, shall assess any Claim for Compensation, and make a determination that the Claim be denied or approved.
- D. Approval of a Claim. If the Director, upon consultation with County Counsel, determines that the Claim should be approved, the Director shall send notice, as described in Section VII, below. After the notice period, as described in Section VII, below, the Director shall make a final decision and shall place the matter on the Board's agenda for ratification. However, if the Owner requests a hearing, the Board shall make a decision in accordance with VIII(B), below.
- E. Denial of a Claim. If the Director, upon consultation with County Counsel, determines that the Claim should be denied, the Director shall send notice. After the notice period, as described in Section VII, below, the Director shall forward his or her recommendation to the Board of Commissioners for Board action. The Board of Commissioners shall thereafter make a final decision in

accordance with Section VIII, below.

- VII. NOTICE. Upon receipt of a complete Measure 37 Claim, the Director shall mail notices to the Owner and neighboring property owners, as follows:
- A. The Director shall mail notice of the Claim to all owners of property within the quasi-judicial land use notice areas as set forth in ORS 197.763, as amended. The Director may mail such notice to additional property owners, if in the Director's discretion, the public interest in the Claim reaches beyond the statutory notice area. The Director shall also mail notice to the Oregon Department of Land Conservation and Development, and such other local and state agencies that may be interested in the Claim.
  - B. The Notice in Section VII(A), above, shall:
    - 1. State the basis for the demand, the amount of compensation sought, and the regulation that causes the compensation to be alleged to be due.
    - 2. Identify the property by the street address or other easily understood geographical reference.
    - 3. State that persons may provide written comments related to the Claim and the date such comments are due.
    - 4. Include a general explanation of the requirements for submission of written comments.
    - 5. Identify the County representative and telephone number and contact information to obtain additional information; and
    - 6. State that a copy of the demand and the supporting documents submitted by the Owner are available for inspection at no cost, and that copies will be provided at reasonable cost.
  - C. Written comments, described in VII(A), above, regarding a Claim shall be submitted to the Director. Any such comments must be received by the Director within fourteen (14) calendar days from the date that the Notice was mailed.
  - D. The Director shall mail notice to the Claimant indicating that the Claimant has the following rights:

1. To request a hearing. A request for a hearing must be received by the Director within 14 days of the date of the notice.
2. To respond to any comments received. The notice shall state the date that comments are due. The Claimant shall have fourteen (14) days from the date that comments are due to respond to any such comments. The Owner shall be responsible for verifying whether comments have been received by the Director.

VIII. BOARD OF COUNTY COMMISSIONERS DETERMINATION.

- A. If a hearing is requested by the Claimant within the 14 day notice period, the Board of County Commissioners shall hold a hearing prior to making a determination.
- B. If a hearing is conducted:
  1. All documents or evidence relied upon by the Owner shall be submitted to the Board of County Commissioners by the Director together with any additional information received or collected by the Director related to the Claim.
  2. The Director shall prepare a staff report which shall make the recommendation to the Board of County Commissioners as set forth in Section VI(B) above.
  3. The Director shall give written notice of the hearing at least seven (7) days prior to the date of the hearing, to all persons entitled to notice under VII(A) above.
  4. During the hearing, no particular procedure shall be required.
  5. At the conclusion of the hearing, the Board of County Commissioners shall make a decision applying the standards of ORS Chapter 197, as amended by Ballot Measure 37, based on the information presented.
- C. If no hearing is conducted:
  1. The Director shall prepare a staff report. All documents or evidence relied upon by the Owner shall be submitted to the Board of County Commissioners by the Director together with any additional information received or collected by the Director related to the Claim.

2. After reviewing the staff report and supporting documentation, the Board of County Commissioners shall make a decision applying the standards of ORS Chapter 197, as amended by Ballot Measure 37, based on the information presented.

D. Upon making a determination, the Board of County Commissioners shall notify the Owner, and all persons who participated in the decision making process of the Board's decision.

IX. SEVERABILITY.

If any phrase, clause, or other part of this Procedure is found to be invalid by a court of competent jurisdiction, the remaining phrases, clauses and other part or parts shall remain in full force and effect.

X. APPLICABLE STATE LAW, NO INDEPENDENT RIGHTS CREATED.

For all Claims filed, the applicable state law is that portion or portions of ORS Chapter 197, added or made part of said chapter by Ballot Measure 37, passed on November 2, 2004, and as amended, modified or clarified by subsequent amendments or regulations adopted by the Oregon State Legislature or by the State of Oregon. Any Claim that has not been processed completely under this Article shall be subject to any such amendments, modifications, clarifications or other actions taken at the State level and this Procedure shall be read in a manner so as not to conflict with such amendments, modifications, clarifications or other actions taken at the State level and this Procedure shall be read in a manner so as not to conflict with such amendments, modifications, clarifications or other actions taken at the State level. This Procedure is adopted solely to address demands filed under the authority of those provisions of Oregon Revised Statutes Chapter 197 added or made part of said Chapter by Ballot Measure 37, passed November 2, 2004. No rights independent of said provisions are created by adoption of this Procedure. This Procedure may be amended by the Board of County Commissioners at any time.

XI. VENUE.

Venue for all claims arising out Ballot Measure 37 against Columbia County shall be in the Circuit Court of the State of Oregon for Columbia County.