

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

In the Matter of Claim No. CL 07-09)
for Compensation under Measure 37)
submitted by John J. Vlastelicia &)
Charlotte Vlastelicia) Order No. 35-2007

WHEREAS, on October 17, 2006, Columbia County received a claim under Measure 37 (codified at ORS 197.352) and Order No. 84-2004 from John J. Vlastelicia and Charlotte Vlastelicia, for property having Tax Account Numbers 3223-000-00400 (Tax Lot 400) and 3223-000-00401 (Tax Lot 401); and

WHEREAS, according to the information presented with the Claim, John J. Vlastelicia and Charlotte Vlastelicia have continuously had an interest in the property subject to CL 07-09 since December 30, 1966, and

WHEREAS, Tax Lot 400 has been zoned Primary Forest-76 (PF-76) and Tax Lot 401 has been zoned Rural Residential-5 (RR-5) since 1985; and

WHEREAS, the default minimum parcel size in the PF-76 zone is 76 acres and the default minimum parcel size in the RR-5 zone is five acres; and

WHEREAS, John J. Vlastelicia and Charlotte Vlastelicia claim that CCZO 201 through 222, 501, 502, 506.1 and 604.1 have restricted the use of the property and have reduced the value of the property by \$3,027,624.00; and

WHEREAS, John J. Vlastelicia and Charlotte Vlastelicia desire to divide the properties to create up to 36 residential homesites, an action that could have been achieved under the land use regulations in place at the time they acquired their property; 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 07-09, dated March 12, 2007, which is attached hereto as Attachment 1, and is incorporated herein by this reference.

2. In lieu of compensation, the County waives CCZO 506.1 and 604.1 to the extent necessary to allow the Claimants to divide the property into parcels having no less than 2 acre minimum lot sizes.
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.

/

/

/

/

/

/

/

/

/

/

/

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 21st day of March, 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

After recording, please return to:

Board of County Commissioners
230 Strand Street, Room 331
St. Helens, Oregon 97051

COLUMBIA COUNTY LAND DEVELOPMENT SERVICES

Measure 37 Claim

Staff Report

DATE: March 12, 2007

FILE NUMBER: CL 07-09

CLAIMANTS/OWNERS: John J. Vlastelicia
Charlotte Vlastelicia
32710 Callahan Road
Scappoose, OR 97056

SUBJECT PROPERTY

PROPERTY LOCATION: 32710 Callahan Road
Scappoose, OR 97056

TAX ACCOUNT NUMBER: 3223-000-00400
3223-000-00401

ZONING: Primary Forest-76 (PF-76) (Tax lot 400)
Rural Residential-5 (RR-5) (Tax lot 401)

SIZE:

Lot 400	70.16 acres
Lot 401	6.50 acres

REQUEST: To subdivide the 76.66 acre property into approximately 36 lots for rural residential development averaging 2.1 acres in size. Individual parcel sizes may vary from 1 to 5+ acres to make best use of topography, access to services, and environmental values.

CLAIM RECEIVED: October 17, 2006

180 DAY DEADLINE: April 17, 2007

NOTICE OF RECEIPT OF CLAIM: December 18, 2006 and revised on December 22, 2006. Received one response of concern from Ted M. Rice, 32432 Callahan Rd., Scappoose, OR 97056. However, no requests for hearing have been filed.

I. BACKGROUND:

The subject property includes two tax lots. Tax lot 400 includes 70.16 acres, is zoned PF-76, and is undeveloped. Tax lot 401 includes 6.5 acres, is zoned RR-5 and is developed with a dwelling. The Claimants first acquired an interest in the property in December 30, 1966 (Land Sale Contract, converted to Warranty Deed/Mortgage on February 20, 1967 as recorded in Columbia County Deed Record Book 164, pg. 233. At the time of acquisition, the property was not zoned.

According to information supplied by the Claimants, it appears that the property was zoned AH-5 and RR-2 on the South County Zoning map, adopted by the county in 1973. The property was rezoned to PF-76 and RR-5 in 1984.

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 Claimants, the property is owned by John J. Vlastelicia and Charlotte Vlastelicia in fee simple.

2. **Date of Acquisition:** Claimants first acquired an interest in the subject property through a Land Sale Contract dated December 30, 1966. Full title was conveyed to the Claimants via a Warranty Deed dated February 20, 1967. Staff uses the date the land sale contract was executed (December 30, 1966) as the date of acquisition for the purposes of evaluating the M37 claim.

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

The property was unzoned in 1966. As noted above, the property was first zoned in 1973, and later zoned to PF-76 and RR-5 in 1984. The PF-76 and RR-5 zoning have remained on the property to date.

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

The Claimants allege that the general zoning provisions that prevent uses of land not permitted by the zoning ordinance, and the PF-76 and RR-5 zoning prevent the Claimants from subdividing the property as proposed. The zoning designations were applied to the subject property in 1984.

To the extent Claimants allege a valid claim, it appears that the county standards that clearly prevent the Claimants from developing their property as desired are:

- CCZO 506.1 Limiting substandard parcel divisions to uses that do not include non-forest dwellings
- CCZO 604.1 Establishing the five acre minimum parcel size for the RR-5 zone¹

D. CLAIMANT'S ELIGIBILITY FOR FURTHER REVIEW

Claimants acquired an interest in the property before CCZO Sections 200-222 (General Provisions) 500 et. seq., (PF-76 zoning provisions) and, 604.1 (minimum RR-5 parcel sizes) became effective and 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 state that they cannot subdivide his property as proposed due to the county's 76-acre and five-acre minimum parcel size standards. Staff concedes that CCZO 201, 210, 506.1 and 604.1 can be read and applied to "restrict" the use of Claimants' property within the meaning of Measure 37. However, staff disagrees with Claimants that CCZO 501 and 502 (list of permitted and conditional uses) restrict development within the meaning of M37.

F. EVIDENCE OF REDUCED FAIR MARKET VALUE

1. Value of the Property As Regulated.

The Claimants submitted copies of assessor's tax records showing that TL 400 has an estimated fair market value of \$183,100 as of June 2006. Tax Lot 401 has an estimated fair market value of \$262,100 (\$76,110 for the land and \$186,000 for the structure.) Accordingly, the evidence shows that the total fair market value for the property as of June 2006 was \$448,100.

2. Value of Property Not Subject To Cited Regulations.

Claimants allege that if the property is subdivided, the undeveloped property would be worth more. Based on the information submitted, it appears that the Claimants allege that if Tax Lot 400 is subdivided into approximately 32 lots, and Tax Lot 401 is divided into up to 4 lots, the property would have a per lot value of 110,000. In total, staff understands Claimants to estimate that the property, if divided as described, has a market value of \$3,960,000.

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

The Claimants assert the difference in the value between the property with the PF-76 and RR-5 zoning and the value as subdivision lots is \$3,027,624.²

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 subdivided and then sold as undeveloped lots, there is a significantly lower value, as the attorney general opinion concludes that while the Claimant himself may avail himself 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.

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 regulation, staff concedes that it is more likely than not that the property would have a higher value if subdivided for residential development.

G. COMPENSATION DEMANDED

Claimants claim the following compensation, per page 1 of the Measure 37 claim form: \$3,027,624.

(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;

² Staff realizes that if the value of the property as regulated is subtracted from the estimate provided by Claimants, the total reduction in value is \$3,511,900. Staff cannot account for the discrepancy, but for the purposes of this evaluation, the difference is not relevant.

(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 Sections 201, 210, 506.1 and 604.1 do not qualify for any of the exclusions listed. Staff asserts that CCZO Sections 202-209, 211-222, 501 and 502 either do not restrict development within the meaning of Measure 37 or are allowed exemptions under Section (3).

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 notes that Ted A. Rice, a neighboring property owner, expressed concerns about the intensity of development in this area and its impact on roads, water quantity and quality, and on livability in general. Staff contends that while these issues may be relevant in evaluating a subdivision application submitted by Claimants after the issuance of a Measure 37 waiver, those issues do not pertain to the question of whether the Claimants are eligible for waivers under Measure 37.

(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 506.1 and 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 PF-76 zoning regulations, which were enacted prior to the effective date of Measure 37 on December 2, 2004. The subject claim was filed on October 17, 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.

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 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 201 through 222	General Provisions	No	No	Some
CCZO 502	Permitted Uses in the PF-76 zone	No	No	No
CCZO 503	Conditional Uses in the PF-76 zone	No	No	No
CCZO 506.1	Land division requirements for non-forest parcels	Yes	Yes	No
CCZO 604.1	Minimum RR-5 parcel sizes	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 506.1 and 604.1.

LEGAL DESCRIPTION

PARCEL 1: All that portion of the following described tracts lying Southeasterly of the Southeasterly right of way line of the F.W. Swager County Road #112:

The Northwest quarter of the Northeast quarter; ALSO the Northeast quarter of the Northeast quarter, EXCEPT the East 30 rods thereof; ALSO the Southwest quarter of the Northeast quarter, EXCEPTING THEREFROM the South 660 feet and the West 10 feet conveyed to Fred Fortier by deed recorded March 1, 1941 in Book 67, page 596, Deed Records of Columbia County, Oregon, all being in Section 23, Township 3 North, Range 2 West of the Willamette Meridian, Columbia County, Oregon. ALSO EXCEPTING THEREFROM that portion conveyed to Daniel J. Vlastelicia et ux, by deed recorded February 8, 1999 as Fee Number 99-01800, Records of Columbia County, Oregon.

PARCEL 2: Commencing at a point which is South 493.65 feet and South 65°21' West 263.2 feet from the quarter corner at the Northeast corner of the Northeast quarter of the Northwest quarter of Section 23, Township 3 North, Range 2 West, Willamette Meridian, Columbia County, Oregon; thence running South 18°18' East 740.7 feet, more or less, to the South line of the Northeast quarter of the Northwest quarter of said Section 23; thence East on said line to the Southeast corner thereof; thence Northerly along the East line of the Northeast quarter of Northwest quarter of said Section 23 to a point 493.65 feet South of the quarter section corner on the North line of said Section 23; thence South 65°21' West 263.2 feet to the point of beginning. EXCEPTING THEREFROM that portion of said premises lying in Swager County Road. ALSO EXCEPTING THEREFROM that portion conveyed to Daniel J. Vlastelicia et ux, by deed recorded February 8, 1999 as Fee Number 99-01800, Records of Columbia County, Oregon.

Together with an easement for ingress, egress and utilities as reserved in instrument recorded February 8, 1999 as Fee Number 99-01800, Records of Columbia County, Oregon.