

BEFORE THE BOARD OF COUNTY COMMISSIONERS  
FOR COLUMBIA COUNTY, OREGON

In the Matter of Claim No. 07-29 )  
for Compensation under Measure 37 ) Order No. 36-2007  
Submitted by Hubert J. and Mary E. Harms )

WHEREAS, on November 20, 2006, Columbia County received a claim under Measure 37 (codified at ORS 197.352) and Order No. 84-2004 from Hubert J. Harms and Mary E. Harms, for a parcel of property of approximately 8.05 acres, and having Tax Account Number 4130-020-00200; and

WHEREAS, according to the Claim, the Claimants desire to subdivide the parcel into two acre parcels; and

WHEREAS, according to the information presented with the Claim, H.J. Harms and Mary E. Harms (the "Claimants"), acquired an interest in the property on March 30 1967 , and have continuously held an interest in the parcel since said acquisition date; and

WHEREAS, at the time of acquisition the parcel was not zoned by Columbia County; and

WHEREAS, Tax Account Number 4130-020-00200 is currently zoned Rural Residential (RR-5) pursuant to the Columbia County Zoning Map; and

WHEREAS, pursuant to CCZO Section 604.1, the parcel cannot be divided into less than 5 acre parcels; and

WHEREAS, Claimants claim that CCZO Section 604.1 has restricted the use of the property and has reduced the value of the property by \$400,000; 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 07-37, dated February 14, 2007, which is attached hereto as Attachment 1, and is incorporated herein by this reference.

2. In lieu of compensation, the County waives CCZO Section 604.1 to the extent necessary to allow the Claimants to divide the parcel into two acre minimum lot size parcels.
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 descriptions which are attached hereto as Attachment 2, and are incorporated herein by this reference, without cost.

Dated this 28<sup>th</sup> 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

**COLUMBIA COUNTY LAND DEVELOPMENT SERVICES  
MEASURE 37 CLAIM  
STAFF REPORT**

DATE: February 14, 2007  
FILE NUMBER(s): CL 07-29  
CLAIMANT: Hubert J & Mary E Harms  
PROPERTY LOCATION: 34249 Slavens Road  
TAX ACCOUNT NUMBER: 4130-020-00200  
ZONING: Rural residential (RR-5)  
SIZE: 8.05 acres  
REQUEST: To divide property into 2 acre parcels for residential use.  
CLAIM RECEIVED: November 20, 2006  
REVISED 180 DAY DEADLINE: May 19, 2007  
RECEIPT OF CLAIM NOTICE: February 14, 2007. No comments or request for hearing received.

**I. BACKGROUND:**

The subject property contains a single-family dwelling, addressed 34249 Slavens Road, and associated improvements. The claimants appear to have acquired the subject property in March of 1967, and have retained an interest in the property since such time.

Whether or not a property is a legally platted lot or parcel created by a Subdivision or Land Partition, respectively, or a legal lot-of-record is not included in the review for a Measure 37 Claim. If the property reviewed by this claim is neither of these, this could impact any subsequent development under this claim.

**II. APPLICABLE CRITERIA & 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 & OWNERSHIP INTERESTS**

1. **Current ownership:** Based on the information provided, it appears the subject property is

owned by the claimants.

2. **Date of Acquisition:** The property was acquired by the claimants on March 30, 1967.

B. LAND USE REGULATION(S) IN EFFECT AT THE TIME OF ACQUISITION

The County did not have a Zoning Ordinance which applied to the subject property until August 29, 1973. Therefore, the subject property was not subject to any County zoning regulations when it was acquired by the claimants on March 30, 1967. The first County zoning ordinance in effect on August 29, 1973, zoned the subject property Rural Residential (RR) until the adoption of the current zoning ordinance on August 1, 1984 at which time the subject property was designated Rural Residential (RR-5).

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

The claimants allege that Section 604.1 of the County's current Zoning Ordinance, which became effective August 1, 1984, has resulted in a reduction of the property's fair market value. Section 604.1 restricts the minimum lot or parcel size to 5 acres in the Rural Residential (RR-5) zone.

Based on the claim, it appears that the County regulation that clearly prevents the Claimants from developing the property as desired is:

CCZO 604.1                      Establishing the 5-acre minimum lot/parcel size in the RR-5 zone

D. CLAIMANT'S ELIGIBILITY FOR FURTHER REVIEW

The Claimants acquired an interest in the property before the minimum lot/parcel size standards of the Rural Residential (RR-5) zone became effective. Therefore, the Claimant may be eligible for compensation and/or waiver of CCZO Section 604.1 under Measure 37.

E. STATEMENT AS TO HOW THE REGULATIONS RESTRICT USE

The Claimants have not specified, in the application, as to how current provisions reduce value or restrict development, although staff understands, based on the request to divide the subject property into 2 acre parcels, that the current provision alleged to restrict use is the minimum lot size of the Rural Residential (RR-5) zone. Staff concedes that CCZO 604.1 can be read and applied to "restrict" the use of Claimant's property within the meaning of Measure 37.

F. EVIDENCE OF REDUCED FAIR MARKET VALUE

1. **Value of property as regulated:** Based on County Assessor data the property's real market value for the land itself is \$342,700.
2. **Value of property not subject to cited regulations:** Claimant submitted a comparative market analysis that indicates a value of \$200,000 per lot. If the subject property could be redeveloped to a 2-acre density this would suggest a value of \$800,000.
3. **Loss of value as indicated in the submitted documents:** The claim alleges a total reduction in value of \$400,000.

Staff notes that this value assumes that the resulting lots or parcels will be developed with dwellings prior to sale to third parties. If the subject property is merely divided and sold as-is, the value is

significantly lower, as an Attorney General opinion concludes that while the Claimant may avail itself 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.

Staff does not agree that the information provided by the Claimant 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(s). Staff concedes, however, that it is more likely than not that the property would have a higher value if it could be divided for residential development as proposed.

G. COMPENSATION DEMANDED

As noted on page 1 of the Measure 37 Claim Form: \$400,000.

**(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 604.1 does not qualify for any exclusions listed.

Staff notes that other standards including but not limited to fire suppression/protection, access, adequacy of domestic water, subsurface sewage, erosion control and stormwater requirements 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(s) has/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(s) or in lieu of compensation, modify, remove, or not apply CCZO Section 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/parcel size of the Rural Residential (RR-5) zone, which was enacted prior to the effective date of Measure 37 on December 2, 2004. The subject claim was filed on November 20, 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 Claimant(s) has/have demonstrated a reduction in fair market value of the property due to the cited regulation(s), the Board may pay compensation in the amount of the reduction in fair market value caused by said regulation(s) or in lieu of compensation, modify, remove, or not apply said regulations.

**III. STAFF RECOMMENDATION:**

The following table summarizes staff findings concerning the land use regulation(s) 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 regulations identified in this table have been found to apply to this Measure 37 claim.

LAND USE CRITERION	DESCRIPTION	RESTRICTS USE?	REDUCES VALUE?	EXEMPT?
CCZO 604.1	Minimum 5 acre lot/parcel size	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 Claimants' property, and act accordingly to pay just compensation in that amount, or, in the alternative, to not apply CCZO Section 604.1.

## ATTACHMENT 2

### EXHIBIT A

#### LEGAL DESCRIPTION

A tract of land situate in the Northwest quarter of Section 30, Township 4 South, Range 1 West of the Willamette Meridian, Columbia County, Oregon, more particularly described as follows:

BEGINNING at a point which is West 57.63 chains and North 00° 14' 00" West 8.63 chains from the Southeast corner of the Joseph Stoughton Donation Land Claim in Section 30, Township 4 North, Range 1 West of the Willamette Meridian, Columbia County, Oregon, said point being the Northwest corner of the Fred A. Luttrell property as recorded in Deed Book 120, Page 253;  
Thence South 89° 41' 00" East along the North line of said Luttrell tract a distance of 683.20 feet to the TRUE POINT OF BEGINNING of the following described tract;  
Thence South 89° 41' East, along said North line, a distance of 760.26 feet;  
Thence South 26° 50' West, a distance of 637.31 feet to the North right of way line of the County Road;  
Thence North 89° 40' West, along said right of way, a distance of 470.23 feet;  
Thence North 00° 14' West, a distance of 570.09 feet to the TRUE POINT OF BEGINNING.