

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

In the Matter of Claim Nos. CL 07-41 and CL 07-42)
for Compensation under Measure 37)
Submitted by James and Sarah Middleton) Order No. 45-2007

WHEREAS, on November 22, 2006, Columbia County received a claim under Measure 37 (codified at ORS 197.352) and Order No. 84-2004 from James and Sarah Middleton (the "Claimants"), for two parcels of property of approximately 40 acres, having Tax Account Numbers 7334-000-00600 and 7334-000-00601; and

WHEREAS, according to the Claim, the Claimants desire to subdivide the parcels into 5 acre parcels; and

WHEREAS, according to the information presented with the Claim, the Claimants acquired an interest in the property on January 18, 1974, and have continuously held an interest in the property since said acquisition date; and

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

WHEREAS, the parcels are currently zoned Primary Forest (PF-76) pursuant to the Columbia County Zoning Map; and

WHEREAS, pursuant to CCZO Section 506.1, the parcels cannot be divided into less than 76 acre parcels; and

WHEREAS, Claimants claim that CCZO Section 506.1 has restricted the use of the property and has reduced the value of the property by \$610,000; 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 CL 07-41 and CL 07-42, dated March 23, 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 506.1 to the extent necessary to allow the Claimants to divide the parcel into five (5) 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.

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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 4th day of April, 2007.

BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

Approved as to form

By: Rita M. Bernhard
Rita Bernhard, Chair

By: Sarah Hanson
County Counsel

By: _____
Anthony Hyde, Commissioner

By: not present
Joe Corsiglia, Commissioner

ATTACHMENT 1

COLUMBIA COUNTY LAND DEVELOPMENT SERVICES
MEASURE 37 CLAIM
STAFF REPORT

DATE: March 23, 2007
FILE NUMBER(s): CL 07-41 & 42
CLAIMANT: James & Sarah Middleton; 25590 Wolden Road; Rainier, OR 97048
PROPERTY LOCATION: Wolden Road; Rainier, OR 97048
Section 34, T7N, R3W
TAX ACCOUNT NUMBER: 7334-000-00600
7334-000-00601
ZONING: Primary Forest - 76 (PF-76)
SIZE: Two 20 acre parcels
REQUEST: To divide property into 5 acre lots/parcels.
CLAIM RECEIVED: November 22, 2006
180-DAY DEADLINE: May 22, 2007
RECEIPT OF CLAIM NOTICE: February 14, 2007
As of the date of this Staff Report, no comments nor request for hearing has been received.

I. BACKGROUND:

The subject two parcels are vacant. Access to the site is by a driveway easement to Wolden Road. Claimants acquired the property on December 2, 1972 as indicated by a warranty deed executed on that date and recorded in Columbia County Deed Records, Volume 189, Page 494 on January 18, 1974. It appears that the parcel was 44.52 acres until it was divided into two twenty acre parcels in 1983.

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 claimant.
2. **Date of Acquisition:** The property was acquired by the claimants on December 2, 1972 as indicated by a warranty deed executed on that date and recorded in Columbia County Deed Records, Volume 189, Page 494 on January 18, 1974.

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 1, 1984. The property was not subject to County zoning regulations when it was acquired by claimant in 1972.

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

The claimant cites both Oregon Revised Statutes and Oregon Administrative Rules, alleging they have resulted in a reduction of the property's fair market value. Generally, those State regulations cited pertain to land divisions and dwellings on forest zoned land. This specific claim is to divide PF-76 zoned property into lots/parcels less than the 76 acre minimum. As such, the most applicable County Regulations are contained in Section 500 of the County's current Zoning Ordinance which became effective August 1, 1984. Section 506.1 restricts the minimum lot or parcel size to 76 acres in the PF-76 zone.

Based on the claim, it appears that the County regulation that clearly prevents the Claimant(s) from developing the property as desired is:

CCZO 506.1 Establishing the 76-acre minimum lot/parcel size in the PF-76 zone

D. CLAIMANT'S ELIGIBILITY FOR FURTHER REVIEW

Claimant acquired an interest in the property before the minimum lot/parcel size standards of the PF-76 zone became effective. Therefore, the Claimant may be eligible for compensation and/or waiver of CCZO 506.1 under Measure 37.

E. STATEMENT AS TO HOW THE REGULATIONS RESTRICT USE

The claimant specified Section 506.1 as prohibiting the division of the property due to the 76-acre minimum lot size of the PF-76 zone. Staff concedes that CCZO 506.1 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 real market value for each 20 acre parcel, for the land itself is \$67,760.

2. **Value of property not subject to cited regulations:** Claimant submitted real-estate listings for other properties for sale in the County and reported that the estimated appraised median value of the land itself is estimated to be \$75,000 for 3 – 5 acre parcels, as of October 2006.
3. **Loss of value as indicated in the submitted documents:** The claim alleges a total reduction in value of \$610,000.00. The County finds that based on an appraised land value of the 40 acres (2 parcels) at a median value of \$75,000 per roughly 5 acre lots (8 lots x \$75,000 = \$600,000) minus the current appraised value of the existing two lots at \$135,520 results in a reduction value of an estimated \$474,000.00.

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: \$610,000.00

(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 506.1 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(s) 506.1.

(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 PF-76 zone which was enacted prior to the effective date of Measure 37 on December 2, 2004. The subject claim was filed on November 22, 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 506.1 | Minimum 76 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 Claimant's property, and act accordingly to pay just compensation in that amount, or, in the alternative, to not apply CCZO Section(s) 506.1.



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November 3, 2006

Stephen D. Petersen, L.L.C.
Attorney & Counselor at Law
P.O. Box 459
Rainier, OR 97048

Buyer/Borrower: Middleton

Re: MEASURE 37B REPORT

Report No: 07-57584

SERVICE FOR:
Sort Report: \$200.00

We have searched our Tract Indices as to the following described real property:

The Southwest quarter of the Northeast quarter of Section 34, Township 7 North, Range 3 West of the Willamette Meridian, Columbia County, Oregon.

Real Property Tax Account No.: 19019 733400600 CODE 0304, 19020 733400601 CODE 0304

Situs Address as disclosed by Columbia County Tax Roll:

Dated as of October 31, 2006 at 8:00 a.m.

VESTED IN:

James W. Middleton and Sarah J. Middleton, as tenants by the entirety

Subject to the following on record matters:

1. The assessment roll and tax roll discloses that the premises herein described were specially assessed as Forest Land. If the land becomes disqualified for the special assessment under the statute, an additional tax may be levied for previous years in which the land was subject to the special land use assessment.