

In the Matter of Claim No. CL 07-43)
for Compensation under Measure 37 Submitted)
by Ruby Leno) Order No. 46-2007

Page 1

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 Claimant. If it is later determined that Claimant is 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, Claimant is 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 Claimant, Ruby Leno, as an individual, 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, Claimant does so at her 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 description which is attached hereto as Attachment 2, and is 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:

Samuel Henderson
County Counsel

By:

Anthony Hyde
Anthony Hyde, Commissioner

By:

not present
Joe Corsiglia, Commissioner

COLUMBIA COUNTY LAND DEVELOPMENT SERVICES

Measure 37 Claim

Staff Report

DATE: February 23, 2007

FILE NUMBER: CL 07-43

CLAIMANTS/OWNERS: Ruby Leno
76888 Atkins Road
Rainier, OR 97048

SUBJECT PROPERTY

PROPERTY LOCATION: 76888 Atkins Road
Rainier, OR 97048

TAX ACCOUNT NUMBER: 7309-010-00600

ZONING: Rural Residential-5 (RR-5)

SIZE: 9.84 acres

REQUEST: To divide the parcel into three additional parcels (for a total of 4 parcels)
for residential development

CLAIM RECEIVED: November 22, 2006

180-DAY DEADLINE: May 22, 2007

NOTICE OF RECEIPT OF CLAIM: February 14, 2007.
As of February 23, 2007, no comments or request for a hearing have
been received.

I. BACKGROUND:

The subject property includes 9.84 acres developed with a single-family dwelling and a manufactured dwelling. Claimant first acquired the property on July 5, 1968.

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 claimant supplied information supporting their claim that Ruby M. Leno is the fee title owner of the subject property.

2. **Date of Acquisition:** Claimant first acquired the property via deed on July 5, 1968. In 2005, she transferred the property in fee to 4 individuals, reserving a life estate for her life. However, in 2006, the 4 fee owners transferred fee title back to Ms. Leno. Because she retained an interest in the property in the form of a life estate, Ms. Leno has continuously held an interest in the property since July 5, 1968, for purposes of Measure 37.

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

The property was zoned RR-5 in 1984.

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

The claimant asserts that the rural residential zoning designation reduced the fair market value of the property by eliminating the ability to divide the subject parcel into smaller than five acre parcels. Accordingly, based on the claim, it appears that the county standards that clearly prevent the claimant from developing the property as desired are:

CCZO 604.1 Establishing the five acre minimum parcel size standard in the RR-5 zone

D. CLAIMANTS'S ELIGIBILITY FOR FURTHER REVIEW

Claimant acquired an interest in the property before the current provisions of the RR-5 zone became effective. Therefore the Claimant 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 Claimant states that she cannot divide the property as proposed due to the county's 5-acre minimum parcel size standard. 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 the Property As Regulated.** The claimant submitted copies of county assessor's records that estimate the RMV value of the property as \$301,500 (\$103,200 for the land and \$198,300 for improvements). In addition, claimant submitted an appraisal report that estimates the value of the property as \$303,000. 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.**

Claimant submitted copies of real estate listings showing that sales prices for undeveloped rural residential land are between \$15,421 and \$40,021 per acre. Claimant appears to allege that if her property is divided, the property would be worth approximately \$540,000.

loss of value indicated in the submitted documents is:
the claim alleges a total reduction in value of \$237,000.

While staff does not agree that the information provided by the claimant is adequate to find the current value of the property or the value of the property if it was not subject to the cited regulations, it concedes that it is more likely than not that the property would have a higher value if divided into two parcels than a 9.84-acre parcel developed with a single family manufactured dwelling.

G. COMPENSATION DEMANDED

\$237,000 per page 1 of claimant's Measure 37 Claim form.

- (3) Subsection (1) of this act shall not apply to land use regulations:
- (A) Restricting or prohibiting activities commonly and historically recognized as nuisances under common law. This subsection shall be construed narrowly in finding of compensation under this act;
 - (B) Restricting or prohibiting activities for the protection of public health and safety, 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 the 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 Section 604.1 does not qualify for any of the exclusions listed.

Staff notes that other siting standards, including fire suppression requirements, access requirements, requirements for adequate domestic water and subsurface sewage, 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 has 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 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. or 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 date the owner of the property subject to the land use regulation, or the date the owner of the property subject to 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 regulation enacted prior to the effective date of Measure 37 on December 2, 2004. The subject claim is an approval criteria, whichever is later.

(8) Notwithstanding any other state statute or the availability of funds under subsection (4), 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 regulation or land use regulations to allow the owner to use the property permitted at the time the owner acquired the property.

Should the Board determine that the Claimant has 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 604.1.

III. STAFF RECOMMENDATION:

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

The following table summarizes staff findings concerning the land use regulations cited by the Claimant on its basis for its 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 for a valid Measure 37 claim:

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



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September 18, 2006

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

Buyer/Borrower: Leno

Re: MEASURE 37

Report No: 07-57041

SERVICE FOR:
Sort Report: \$200.00

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

Tract 12, in McLean Acres, Columbia County, Oregon.

Real Property Tax Account No.: 03-06-2-7309-010-00600

Situs Address as disclosed by Columbia County Tax Roll:

76888 Atkins Rd., Rainier, OR 97048

Dated as of September 13, 2006 at 8:00 a.m.

VESTED IN:

Ruby M. Leno, an estate in fee simple

Subject to the following on record matters:

1. Taxes for the fiscal year 2006-2007, a lien in an amount to be determined, but not yet payable.
2. Subject to the requirements and provisions of ORS Chapter 820 pertaining to the registration and transfer of ownership of a mobile home and any interest or liens disclosed thereby.