

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

In the Matter of Claim Number CL 07-47 and CL 07-48,)	
for Compensation Under Measure 37 Submitted by)	Order No. 49-2007
Fred Luttrell, Trustee of the Fred Luttrell Trust)	

WHEREAS, on November 26, 2006, and November 27, 2006, Columbia County received two claims under Measure 37 from Fred Luttrell, Trustee of the Fred Luttrell Trust, related to two parcels of property on Luttrell Farms Drive and Dart Creek Road in Scappoose, Oregon, having Tax Account Numbers 5236-000-00200 and 5225-000-01600; and

WHEREAS, according to the information presented with the claim, the Fred Luttrell Trust is the current owner of the two parcels; and

WHEREAS, the current owner most recently acquired an interest in the property in 2000; and

WHEREAS, Fred Luttrell as an individual and the Settlor of the Fred Luttrell Trust, (the "Claimant") acquired an interest in tax lot 5236-000-00200 in 1966, and in tax lot 5225-000-01600 in 1946; and

WHEREAS, Fred Luttrell claims that Columbia County Subdivision and Partitioning Ordinance (S&PO), Section 1005.A restricts the use of the property and reduces its value; and

WHEREAS, the 1963 Subdivision and Partitioning Ordinance was enacted prior to the 1966 acquisition date for tax lot 5236-000-00200; and

WHEREAS, the 1963 Subdivision and Partitioning Ordinance had a public road requirement for subdivisions; and

WHEREAS, the public road frontage requirement was enacted after the 1946 acquisition date for tax lot 5225-000-01600; and

WHEREAS, the public road frontage requirement is exempt from compensation or waiver under Measure 37 under ORS 197.352(3)(E) for tax lot 5236-000-00200, and under ORS 197.352(3)(B) for both tax lots 5225-000-01600 and 5236-000-00200;

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 Numbers CL 07-47 and CL 07-48, dated March 1, 2007, which is attached hereto as Attachment 1 and is incorporated herein by this reference.
2. The Board of County Commissioners finds that the Claimant is neither entitled to compensation under Measure 37, nor waiver of County regulations in lieu thereof.

Order No. 49-2007

3. The Board of County Commissioners denies Claim Numbers CL 07-47 and CL 07-48.

Dated this 11th day of April, 2007.

Approved as to form

By: Sarah Henson
Assistant County Counsel

BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

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: March 1, 2007

FILE NUMBER(s): CL 07-47 and CL 07-48

CLAIMANT: Fred Luttrell, Trustee
Fred Luttrell Trust, UID March 27, 2000
61271 Dart Creek Road
ST. Helens, OR 97051

PROPERTY LOCATION: CL 07-47 is located at the end of Luttrell Farms Drive and
CL 07-48 is located at 61271 Dart Creek Road

TAX ACCOUNT NUMBER: 5236-000-00200 and
5225-000-01600

ZONING: Primary Agriculture (PA-38)

SIZE: Tax lot 00200 is approximately 51 acres and
Tax lot 01600 is approximately 34 acres

REQUEST: To allow residential development on newly created lots that are not
served by public road(s), required by Section 1005.A of the Columbia
County Subdivision and Partitioning Ordinance.

CLAIMS RECEIVED November 26 and 27, 2006

REVISED 180 DAY DEADLINE: March 8, 2007

RECEIPT OF CLAIM NOTICE: February 22, 2007
As of the date of this Staff Report, Land Development Services has not
received any request for a hearing but has received comments from
Gordon Jarman, 33798 Luttrell Farms Drive expressing concerns about
further traffic on Luttrell Farms Road as a result of proposed
development.

I. BACKGROUND:

Mr. Fred Luttrell owned and operated a large farm in the St. Helens area for many years. In the past 16 years, Mr. Luttrell has ceased farming operations and has divided his property into residential home sites. The properties at issue are resource parcels that are interspersed among developed non-farm residential parcels created by the prior land conveyances. In 2000, Fred Luttrell transferred the property into the Fred Luttrell Revocable Living Trust. Therefore, the trust is the current owner of the property, and its date of acquisition is 2000. However, as the settlor of a revocable living trust, Fred Luttrell continues to have an interest in the property for purposes of Measure 37. For purposes of this Claim, staff assumes that Fred Luttrell, the individual, is the Claimant even

though the trust is the current owner of the property.

This first claim, CL 07-47, involves approximately 51 acres at the end of an existing private road, Luttrell Farms Drive. On July 3, 2002, the Board of Commissioners' Order No. 42-2002 approved the Claimant's son, Joe Luttrell's, petition to name this private road as such. The second Claim, CL 07-48, involves another approximate 34-acre property located northeast of the intersection of Gensman Road and Dart Creek Road which is where the applicant currently lives at 61271 Dart Creek Road.

Through two previous Measure 37 Claims, CL 05-20 and CL 05-19, the Claimant has already had provisions related to minimum parcel sizes, setbacks, and conditional uses in the PA -38 Zone waived for these 2 properties through the Board of County Commissioners' Order No. 41-2006 on May 17, 2006. These waivers however were subject to 5 limitations, one of which the applicant is now refile for relief or compensation for both of these Claims. Specifically the Claimant is petitioning the Board to relieve or compensate him from requiring his proposed undersized residential lots in the PA-38 Zone to be served by a public road or a dedicated public right-of-way which is a provision of Section 1005.A of the Columbia County Subdivision & Partitioning Ordinance.

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:

CL 07-47: According to information filed by the claimant, Fred Luttrell and Elladonah Luttrell acquired the portion of tax lot 200 lying in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ as part of a larger conveyance on October 6, 1966 as tenants by the entireties. The portion of tax lot 200 lying south of the NW $\frac{1}{4}$ NW $\frac{1}{4}$ line of tax lot 200 was acquired by Fred Luttrell and Elladonah Luttrell as part of a larger conveyance by warranty deed on December 30, 1966. It is not clear when the portion of tax lot 200 lying east of the NW $\frac{1}{4}$ of section 36 was acquired. Elladonah Luttrell died on July 1, 1968, and by operation of law, Fred Luttrell acquired fee title to tax lot 200. Mr. Luttrell conveyed his interest in the properties to a revocable trust in 2000. According to the information provided by the Claimant, the trust holds fee title to the properties.

CL 07-48: According to information filed by the Claimant, Fred Luttrell acquired tax lot 1600 as part of a larger conveyance in 1946 via a bargain and sale deed from the Oregon State Land Board. Mr.

Luttrell conveyed his interest in the properties to a revocable trust in 2000. According to the information provided by the Claimant, the trust holds fee title to the properties.

2. **Date of Acquisition:** Based on an advisory opinion by the Oregon Attorney General, if a property is conveyed by a grantor into a revocable living trust, the settlor of the trust retains an interest in the property until and unless the trust becomes irrevocable. The date of acquisition for purposes of the trust is 2000. However, the date of acquisition for purposes of the Settlor, Fred Luttrell, is his original date of acquisition of the property. Mr. Luttrell acquired an interest in tax lot 1600 in 1946 and in tax lot 200 in 1966. Staff assumes that Fred Luttrell, the individual, is the Claimant for purposes of this Claim. Staff also assumes that Fred Luttrell, the individual, received Measure 37 waivers under CL 05-20 and CL 05-19.

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

Both of these properties were un- zoned when the Claimant acquired them, and were therefore not subject to any minimum parcel size requirements or dwelling siting standards set out in the county zoning ordinance. However tax lot 200 was subject to the Subdivision Regulations for Columbia County, Oregon effective April 8, 1963 when the Claimant acquired it in 1966.

The 1963 Subdivision Ordinance defined subdivision as "to partition land into four or more parcels of less than five acres..."(Section 1(13)). Section 21 required public street access for newly created lots meeting minimum improvement standards "except that a private easement of way to be established by deed without full compliance with these regulations may be approved by the planning commission provided it is the only reasonable method by which the rear portion of an unusually deep lot large enough to warrant partitioning into more than two parcels may be provided with access or it is in a rural area and is related to farm or forest land uses in which no land parcel is of less than five acres"(Section 22). Mr. Luttrell has previously obtained a waiver of minimum lot size regulations to develop 1 to 2 acre residential lots on the subject properties. Therefore, the public road requirement was in effect at the time of acquisition of tax lot 200.

The Board of Commissioners amended the 1963 Subdivision Regulations Ordinance and adopted the resulting Subdivision and Partitioning Ordinance which became effective January 10, 1975. When the Board amended this ordinance, through Ordinance 97-3, the Board found that *"It is in the best interest of the county to retain the requirements for 50' frontage on a public right of way in the rural residential zones. The Board deems it necessary to assure orderly and efficient transportation access and circulations to support existing and future development. This requirement is consistent with Columbia County Comprehensive Plan Transportation Policy 2, which requires the dedication of adequate rights of way to support subdivisions and partitions."*

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

Tax lot 200 was subject the provisions of the 1963 Subdivision Ordinance upon his acquisition in 1966. The 1963 ordinance required public street access to new subdivisions defined as four or more parcels. In 1975 the County amended the Subdivision Ordinance to include requirements for partitions(creation of 3 or fewer parcels). The 1975 ordinance was further amended in 1982 to require all subdivisions and partitions to have "frontage or approved access to an existing public street"(Section 902(7)A.). The subject

requirement for 50 feet of frontage on a public street for all newly created lots was first enacted in the 1990 Subdivision and Partitioning Ordinance(Section 905). In the purpose section of the 1990 regulations(Section 102), it is stated that "These regulations are necessary...to assure adequate widths of streets, avoid undue congestion of population...., to provide for the protection, conservation, and proper use of land and to protect in other ways the public health, safety and welfare..." Both the purpose language in Section 102 and Section 905 in the 1990 regulations requiring public road frontage and access for all land divisions were retained in successive amendments to the present. Section 905 language was recodified as Section 1005A. Claimant alleges that Section 1005(A)by requiring public access to newly created lots and parcels prevents him from dividing these properties and constructing dwellings on them and reduces the value of the property. Staff finds that this provision is necessary to protect the public's safety and health and therefore, is exempt from Measure 37's intention, purpose and eligibility.

D. CLAIMANT'S ELIGIBILITY FOR FURTHER REVIEW

The Claimant acquired an interest in the approximate 34 acres off Dart Creek Road in 1946 and acquired an interest in of the approximate 51 acres off Luttrell Farms Drive in 1966. Although the 1946 acquisition of tax lot 1600 predated the county's 1963 Subdivision Regulations ordinance, the 1966 acquisition of the tax lot 200 did not. Both of these acquisitions however predated the January 10, 1975 effective date of the current Columbia County Subdivision and Partitioning Ordinance. Because the public road requirement predates the Claimant's acquisition date for tax lot 200, the regulation is exempt from compensation or waiver under ORS 197.352 (3)(E). In addition, with respect to both tax lots, the public road frontage requirements restrict activities for the protection of health and safety and is therefore exempt from Measure 37 under ORS 197.352(3)(B).

E. STATEMENT AS TO HOW THE REGULATIONS RESTRICT USE

The Claimant submitted documentation from TFT Construction, Inc. estimating the price of improving Luttrell Farms Drive to existing public right-of-way standards would be \$110,000 before it would be able to serve future residences on CL 07-47's 51-acres. Likewise, dedicating and improving a public right-of-way off Dart Creek Road to serve residences on CL 07-48's 34-acres property would cost the Claimant \$30,000.

Although Staff concedes that while Section 1005.A of the Columbia County Subdivision and Partitioning Ordinance may make it more expensive for the Claimant to subdivide and develop both of these properties(public versus private road improvement costs), the Claimant has not demonstrated that the requirement to provide public access restricts the use of the land because the residential use of the land is still allowed. In addition, the Applicant has failed to demonstrate that property with public road frontage is worth less than property with private road frontage. Development costs do not, in and of themselves, reduce the value of property. Furthermore, as noted in Section C above, Staff finds that the requirement is exempt under Measure 37 because it was adopted as a public health, welfare and safety regulation. Access for new parcels by means of a minimum 50-foot public right-of-way frontage for new residential development is necessary to ensure that emergency vehicles can safely access residential development in the more remote areas of our county. In particular, the county cannot prohibit property owners from restricting access to residences served by minimally improved private roads that may be accessed through

locked gates. In addition, since these private easements are owned and controlled by abutting property owners they are less likely to be able to be extended to provide necessary circulation and alternative emergency access as the area develops. Response time to emergencies occurring on these private roads will increase if fire fighters or law officers need to stop to unlock a gate or are otherwise limited in their access via private access easements. The Claimant seeks to develop up to 85 homes and staff finds that a private road, built to private road standards, is inadequate to protect the health and safety of the existing and proposed residents by failing to provide adequate fire and emergency service access, as well as safe ingress and egress to the subdivided lots.

Columbia County considers that the protection of county residents' safety also supercedes a property owner's right to develop his or her property before a minimum level of infrastructure is available to adequately and safely support the proposed development. Although Columbia County agrees with the Claimant that Section 1005.A of the Subdivision and Partitioning Ordinance's provision requiring all new development to have at least 50-feet of public right-of-way frontage is a development cost, Staff finds that because this restriction is necessary to protect the public's health and safety it is ineligible from Measure 37's relief or compensation.

F. EVIDENCE OF REDUCED FAIR MARKET VALUE

1. **Value of property as regulated:** These figures are taken from the current Assessor's Office records of the Real Market Value of these 2 properties

Tax Lot 200: \$ 427,100.

Tax Lot 1600: \$231,500. This estimate excludes the value of the existing dwelling, outbuildings, and the three acres those structures are located on this tax lot.

2. **Value of property not subject to cited regulations:** These figures are the same ones Columbia County used for the Claimant's 2 previous Measure 37 Claims, CL 05- 20 and CL 05-19. For these claims, the Claimant proposed to develop both these properties into one or two acre residential lots.

Tax Lot 200: The value of this 51 acres would be \$3,500,000 if the Claimant could develop it into one or two acre residential lots.

Tax Lot 1600: Likewise, the value of this 34-acres would be \$1,600,000, if the Claimant could develop it into one or two acre residential lots. This estimate excludes the value of the existing dwelling, outbuildings, and the three acres those structures are located on.

3. **Loss of value as indicated in the submitted documents:** The Claimant alleges a total reduction in value of \$110,000 for tax lot 200 and \$30,000 for tax lot 1600. These reductions in value however, reflect what it would cost the Claimant to build 2 new dedicated public right-of-ways to serve one or two acre residential lots on these properties.

Staff finds that the Claimant has not demonstrated that the value of the subject property has been reduced by the requirement to provide standard public access to newly created parcels. To the contrary, Staff finds that a lot with public access would more likely be worth more than a lot without public access. The Claimant assumes without adequate evidence that value of the property developed as proposed would be worth less if the newly created parcels are provided with public rather than private road access. As noted above, Staff further finds that even if the public road access requirement could be shown to reduce property value, the regulation is exempt under Measure 37 because it is necessary to protect the public's safety.

G. COMPENSATION DEMANDED

As noted on page 1 of the Measure 37 Claim Form Staff assumes the Claimant is asking the County to compensate him for the estimated cost of constructing 2 new public right-of-ways on these properties. Specifically, he is asking to be compensated \$110,000 for the cost of improving Luttrell Farms Drive serving tax lot 200 to existing public right-of-way standards, and \$30,000 for dedicating a new public right-of-way to serve his property off Dart Creek Road for tax lot 1600.

(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.

As stated in previous Sections of this Report, the public road standards are exempt under ORS 197.352(3)(B). In addition, the regulations are exempt for tax lot 200 because they were enacted prior to the Claimant's acquisition date under ORS 197.352(3)(E). Therefore, the County consequently considers the Subdivision and Partitioning Ordinance Section 1005.A's requirement of 50 feet frontage on a public road or dedicated public right-of-way is exempt from Measure 37 compensation or waiver because it is exempt under Subsection 3(B) and (3)(E) 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 regulation, and that the regulation is not exempt under ORS 197.352(3), 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 Section 1005.A of the Subdivision and Partitioning Ordinance.

(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 provision of Section 1005.A of the Subdivision and Partitioning Ordinance that newly created properties and related development have 50 feet of frontage on an existing public right-of-way or road. This ordinance was enacted prior to the effective date of Measure 37 on December 2, 2004. The subject claim was filed on November 27, 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 has demonstrated entitlement to compensation under Measure 37 for the cited regulation, 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 Section 1005.A.

III. STAFF RECOMMENDATION:

The following table summarizes staff findings concerning the land use regulation 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 regulation identified in this table is found to apply to this Measure 37 claim.

LAND USE CRITERION	DESCRIPTION	RESTRICT S USE?	REDUCES VALUE?	EXEMPT?
Section 1005.A of the Subdivision and Partitioning Ordinance	Requires all new development to have 50 feet of frontage on a public road or dedicated public right-of-way	No	No	Yes

Staff recommends the Board of County Commissioners take action to deny the Claimant's request to not apply the provision of the Columbia County Subdivision and Partitioning Ordinance Section 1005.A that requires all new development have 50 feet of frontage on an existing public road or dedicated public right-of-way.