

AFTER RECORDING, RETURN TO:

Board of County Commissioners
Columbia County Courthouse
230 Strand, Room 331
St. Helens, OR 97051

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

In the Matter of Claim No. 07-32 Submitted by Roy) Order No. 52-2007
and Joyce Jobin for Compensation Under Measure 37)

WHEREAS, on November 21, 2006, Columbia County received a claim for compensation under Measure 37 and Order No. 84-2004 from Roy and Joyce Jobin (the "Claimants"), related to a parcel of property located on Stone Road in Warren, Oregon, having tax account number 4211-000-0030; and

WHEREAS, according to the information presented with the claim, the Jobins acquired an interest in the property in 1977 under a Land Sale Contract; and

WHEREAS, the County zoned the subject property as Agriculture Residential District A-2 in 1973, prior to the acquisition by the Claimants; and

WHEREAS, the County re-zoned the property as Forest Agriculture (FA-19), in 1992, after the acquisition by the Claimants; and

WHEREAS, pursuant to Columbia County Zoning Ordinance (CCZO), Sections 407.1, the minimum lot or parcel size for new land divisions in the FA-19 Zone is 19 acres; and

WHEREAS, the Claimants claim that the minimum lot size requirement for new land divisions has restricted the use of the property and has reduced the value of the property by \$801,400; and

WHEREAS, the Claimants desire to subdivide the property into seven approximately 5 acre parcel; 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 property and reduces the fair market value of the property to allow a use which was allowed at the time the claimant acquired the property; and

WHEREAS, in 1977, the property was zoned Agriculture Residential with a five acre minimum lot size;

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 0-32, dated March 20, 2007, which is attached hereto as Attachment 1, and is incorporated herein by this reference.
2. The County approves the Claim of Roy and Joyce Jobin. In lieu of compensation, the County waives CCZO Sections 407.1 to the extent necessary to allow the Claimants to subdivide the property into 5 acre parcels, subject to the provisions of the 1973 zoning ordinance.
3. This waiver is subject to the following limitations:
 - A. This waiver does not affect any land use regulations of 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 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: Sarah Hausoe
Assistant County Counsel

By: Rita M. Bernhard
Rita Bernhard, Chair

By: [Signature]
Anthony Hyde, Commissioner

By: not present
Joe Corsiglia, Commissioner

**COLUMBIA COUNTY
LAND DEVELOPMENT SERVICES**

Measure 37 Claim

Staff Report

DATE: March 20, 2007
FILE NUMBER: CL 07-32
CLAIMANTS/OWNERS: Roy & Joyce Jobin
52330 SW Jobin Ln.
Scappoose, OR 97056
**CLAIMANT'S
REPRESENTATIVE:** N/A

SUBJECT PROPERTY

PROPERTY LOCATION: Stone Road, no site address (vacant)
Warren, OR 97053
TAX ACCOUNT NUMBER: 4211-000-00301
ZONING: Forest Agriculture (FA-19)
SIZE: 36.12 acres
REQUEST: Divide the land into 5 acre parcels to be used as home sites.
CLAIM RECEIVED: November 21, 2006
180 DAY DEADLINE: May 20, 2007
NOTICE OF RECEIPT OF CLAIM: Date mailed: February 14, 2007. No comments received.

I. BACKGROUND:

The subject property includes 36.12 acres and is undeveloped. Claimants acquired the property from Deane Chappell via a Real Estate Contract in June 1977. This claim is based on the acquisition of property by Roy and Joyce Jobin, Claimants, in June 1977. There is no evidence that either Claimants have sold or transferred any of their interest in the property to any other party, to this date

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:** Claimants submitted a Measure 37 Report issued by Ticor Title on October 27, 2006. The report shows that the property is vested in Roy Gene Jobin and Joyce Jobin, as tenants by entirety. The property is subject to additional taxation as described in the Columbia County tax rolls as special assessment for farm and forest uses, and subject to other normal exclusions.

2. **Date of Acquisition:** The Claimants, Roy and Joyce Jobin, acquired the property via Real Estate Contract on June 23, 1977. The Contract was recorded in the deed records of the Columbia County Clerk at Book 212, page 540 on July 1, 1977. The report issued by Ticor Title does not subject the title to the property to any other person or entity but shows the title vested in the Claimants entirely. There is no evidence of any break in title since the Claimants first acquired the property. Therefore, staff uses the date Claimants acquired the property, 1977, as the date of acquisition for the purposes of evaluating claim.

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

The property was zoned in 1977. The 1973 Zoning Ordinance, effective August 29, 1973, was in effect at the time of Claimants acquisition. According to the 1973 Zoning Map the property was zoned Agriculture Residential District A-2. Single family dwellings were allowed in the A-2 zone, and if creating a parcel or lot, the minimum size was 5 acres. The Claimants intend to use the property as zoned when they purchased it, and therefore are subject to the 5 acre minimum parcel size requirements and other provisions of the 1973 County Zoning Ordinance.

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 FA-19 zoning regulations prevent the Claimants from dividing their property and constructing dwellings on it. The Claimant's property was zoned PF-76(Primary Forest) in 1984. The property was rezoned to FA-19 (Forest-Agriculture) by Planning Commission Final Order No. ZC 1-92 on March 2, 1992. The county's current FA-19 zoning provisions permit substandard parcel sizes and non-forest related dwellings in certain circumstances. See CCZO 404.13, 407.1, and 409.1 (FA-19 standards, adopted 1988). It appears that the county standards that clearly prevent the Claimants from developing their property as desired (5 acre home sites) are:

CCZO 407.1 establishes a minimum lot size of 19 acres.

D. CLAIMANT'S ELIGIBILITY FOR FURTHER REVIEW

Claimants acquired an interest in the property before CCZO Section 407.1 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 divide their property as proposed due to the county's FA-19 zoning. Staff concedes that CCZO Section 407.1 can be read and applied to "restrict" the use of Claimants' property within the meaning of Measure 37.

F. EVIDENCE OF REDUCED FAIR MARKET VALUE

1. Value of the Property As Regulated.

The Claimants submitted a County Assessor print-out of the property estimating that the current real market value is \$548,600.

2. Value of Property Not Subject To Cited Regulations.

The Claimants estimated that the property would have a value of \$1,350,000, if the property was divided into six five acre lots, at \$225,000/lot.

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

The written documentation in support of the claim alleges a total reduction in value of \$801,400 (the difference between the estimated market value of the property in its current condition, and the value of the property if divided as proposed.)

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 regulations, staff concedes that it is more likely than not that the property would have a higher value as six lots than as a 36.12-acre undeveloped parcel.

G. COMPENSATION DEMANDED

\$801,400 per page 1 of Claimants' 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 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 Section 407.1 does not qualify for any of the exclusions listed.

However, 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.

(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 Section 407.1

(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 parcel standards of the FA-19 zone and variance regulations which were enacted prior to the effective date of Measure 37 on December 2, 2004. The subject claim was filed on August 2, 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 that were enacted after the Claimants acquired the property, 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 407.1.

The 1973 Zoning Ordinance first limited the use of the subject property in August of 1973, prior to the Claimants ownership acquisition in July 1977. Therefore, the Board may not waive the provisions of the 1973 Zoning Ordinance, A-2 Zone, which set a minimum lot size of 5 acres.

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 Claimant as a basis for their 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 407.1	Establishes a minimum lot size of 19 acres.	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 407.1.

ATTACHMENT 2

LEGAL DESCRIPTION

A tract in the North half of the Southeast quarter of Section 11, Township 4 North, Range 2 West, Willamette Meridian, Columbia County, Oregon, described as follows:

Beginning at the East quarter corner of Section 11, Township 4 North, Range 2 West, Willamette Meridian, Columbia County, Oregon; thence South $88^{\circ}49'$ West along the North line of the Southeast quarter of said Section 11 a distance of 1102.94 feet; thence South $20^{\circ}17'05''$ East a distance of 92.94 feet; thence South $11^{\circ}01'56''$ East a distance of 292.83 feet; thence South $44^{\circ}36'52''$ West a distance of 580.00 feet to the Northeasterly right of way line of E.N. Stone Road #P-94; thence Southeasterly along said Northeasterly right of way line to the South line of the Northeast quarter of the Southeast quarter of said Section 11; thence Easterly along said South line to the Southeast corner of said Northeast quarter of the Southeast quarter; thence North $1^{\circ}37'35''$ West a distance of 1321.49 feet to the point of beginning.