

Board of County Commissioners
230 Strand Street
St. Helens, Oregon 97051

In the Matter of Claim Nos. CL 07-73)
for Compensation under Measure 37) Order No. 54-2007
Submitted by Dean and Patricia Werth)

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 07-73, dated March 15, 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 5 five acre minimum lot size parcels, and 1 approximately 51.31 acre parcel.
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 11th day of April, 2007.

Approved as to form

By: Sarah Hanson
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 15, 2007

FILE NUMBER(s): CL 07-73

CLAIMANT: Dean & Patricia Werth; 33180 NE Haugen Road; Newberg, OR 97132

PROPERTY LOCATION: Near 32410 Bishop Road; Rainier, OR 97048

TAX ACCOUNT NUMBER: 6211-000-01300

ZONING: Primary Forest - 76 (PF-76)

SIZE: Approximately 76.31 acres

REQUEST: To divide property into five 5-acre residential parcels, and one approximately 51.31 acre parcel.

CLAIM RECEIVED November 30, 2006

REVISED 180 DAY DEADLINE: May 29, 2007

RECEIPT OF CLAIM NOTICE

I. BACKGROUND:

The subject property is undeveloped. Access is provided by Bishop Road, which runs along the northeast portion of the property. Approximately 60-70% of the property is forested in varying stages of growth. The Claimants appear to have acquired the property in June of 1969. At that time the property was approximately 80 acres. Since then the Claimants have conveyed 0.65 acres for the road, and 3.04 acres was carved out for Tax Lot 1301, which was conveyed to a third party.

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 in June of 1969 by a deed executed on June 25, 1969. The deed was recorded on July 2, 1969, and appears in Book 173, Page 788 of the Columbia County deed records.

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 Claimants in 1969.

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

The Claimants cite the "Current Columbia County Zoning Ordinance, first effective [August] 1984, any modifications and amendments thereto which would restrict land divisions, limit the number of dwellings or restrict the minimum lot size" as regulations that have reduced the fair market value of the property. This specific claim is to divide PF-76 zoned property into lots/parcels having less than the 76 acre minimum lot size. As such, the most applicable County Regulation is Section 506.1 of the County's current Zoning Ordinance, which restricts the minimum lot or parcel size to 76 acres in the PF-76 zone.

The Claimants have also submitted a Measure 37 claim to the state regarding state laws which place restrictions on the intended use of the property.

Based on the claim, it appears that the County regulation that clearly prevents the Claimants 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

Claimants acquired an interest in the property before the minimum lot/parcel size standards of the PF-76 zone became effective. Therefore, the Claimants 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 Claimants state that the current Columbia County Zoning regulations prevent the property from being divided and developed 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 property's real market value for the land itself is \$239,700.

2. **Value of property not subject to cited regulations:** Claimants submitted a Land Value Comparison Report stating that if the property were divided into five 5-acre parcels, and the remainder was left as forest, the value would be approximately \$1,197,500. The comparables included in the report all have existing dwellings, as well as water and septic. According to the value analysis performed by realtor Rob Molzahn, the value of the parcels without water, septic and power would be approximately \$812,500.
3. **Loss of value as indicated in the submitted documents:** The claim alleges a total reduction in value of \$958,500.

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 Claimants may avail themselves 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 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 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: \$958,500.

(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 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(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 30, 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 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 Claimants 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 Claimants' property, and act accordingly to pay just compensation in that amount, or, in the alternative, to not apply CCZO Section(s) 506.1.

ATTACHMENT 2

EXHIBIT A

LEGAL DESCRIPTION

The North half of the Southwest quarter of Section 11, Township 6 North,
Range 2 west of the Willamette Meridian, Columbia County, Oregon.

EXCEPTING THEREFROM, that portion conveyed to Thomas H. Clark Jr. and Deborah
K. Clarke Trustees under the Clarke Living Trust by Deed Recorded April 5,
2004 in Instrument No. 04-04368.