

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. CL 07-72)
for Compensation under Measure 37 Submitted) Order No. 55-2007
by Lorette Wagner)

WHEREAS, on November 30, 2006, Columbia County received a claim under Measure 37 (codified at ORS 197.352) and Order No. 34-2007 from Lorette Wagner (the "Claimant"), for 23.62 acres of property having Tax Account Number 4106-020-00200 on Pittsburg Road, St. Helens, Oregon; and

WHEREAS, according to the Claim, the Claimant desires to subdivide the parcel into seven parcels of approximately 1.5 to 6 acres; and

WHEREAS, according to the information presented with the Claim, the Claimant has continuously had an interest in the property since 1979; and

WHEREAS, in 1979, the property was subject to the 1973 South County Zoning Ordinance which established a 2 acre minimum lot size; and

WHEREAS, the subject parcel is currently zoned Rural Residential (RR-5) pursuant to the Columbia County Zoning Map; and

WHEREAS, pursuant to Columbia County Zoning Ordinance (CCZO), Section 604.1, the property cannot be divided into less than 5 acre minimum lot size parcels; and

WHEREAS, the Claimant claims that CCZO Section 604.1 has restricted the use of the property and has reduced the value of the property by \$1,033,200.00; 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 Claimant's 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;

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 07-72, dated March 14, 2007, which is attached hereto as Attachment 1, and is incorporated herein by this reference.
2. In lieu of compensation, the County waives CCZO 604.1 to the extent necessary to allow the Claimant to divide the property into parcels having a 2 acre minimum lot size each in accordance with the 1973 South County Ordinance.
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, Lorette Wagner, 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 11th day of April, 2007.

BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

Approved as to form

By:

Rita Bernhard
Rita Bernhard, Chair

By:

Sarah Hanson
County Counsel

By:

Anthony Hyde
Anthony Hyde, Commissioner

By:

Joe Corsiglia
Joe Corsiglia, Commissioner

ATTACHMENT 1

COLUMBIA COUNTY LAND DEVELOPMENT SERVICES
MEASURE 37 CLAIM
STAFF REPORT

DATE: April 2, 2007

FILE NUMBER(s): CL 07-72

CLAIMANT: Lorette Wagner; c/o Art & Pat Wagner; 12941 NW Newberry Road; Portland, OR 97231

PROPERTY LOCATION: 34087 Pittsburg Road; St. Helens, OR 97051

TAX ACCOUNT NUMBER: 4106-020-00200

ZONING: Forest Agriculture (FA-19)

SIZE: 23.62 acres

REQUEST: To divide the property into seven residential lots, between 1 ½ and 6 acres in size.

CLAIM RECEIVED: November 30, 2006

REVISED 180 DAY DEADLINE: May 29, 2007

RECEIPT OF CLAIM NOTICE: Claim notices were mailed on March 16, 2007. Comments were due on March 30, 2007.

On March 29, 2007, a written comment concerning the Claim was received. Don LaMunyon, a neighboring property owner, stated that he is concerned with the proposed development because the Claimant's septic field had contaminated his well, and he wants to ensure that denser development does not cause further contamination.

No request for hearing has been received.

I. BACKGROUND:

The subject property contains a single-family dwelling, addressed 34087 Pittsburg Road, and associated improvements. The Claimant states that she acquired the subject property in August of 1967 with her husband, who is deceased. As discussed below, the documentation produced by the Claimant supports a finding that the property may not have been legally conveyed until April 10, 1979. The property has remained unaltered since the date of acquisition. The Wagners conveyed a small portion of tax lot 200 (approximately 1.88 acres) to Michael and Mary Ann Peterson on May 11, 1979.

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 Claimant states that she acquired the property on August 27, 1967. In support of this acquisition date, the Claimant offers a probate court document referencing the sale of the subject property to the Claimant on June 29, 1967. However, the deed conveying the property was executed on April 10, 1979 and recorded on April 26, 1979. The Claimant has not produced a deed or land sale contract supporting the 1967 acquisition date. Therefore, Staff finds that the earliest acquisition date supported by the records is April 10, 1979.

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

In 1979 when the property was purchased, it was subject to the 1973 South County Zoning Ordinance, which went into effect on August 29, 1973. The property was zoned Rural Residential (RR) in 1973, which established a 2-acre minimum lot size for residential development. The current Zoning Ordinance became effective on August 1, 1984, at which time the subject property was designated Forest Agriculture (FA-19).

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

The Claimant alleges that "the regulations that restrict the use of and reduce the value of the property are the FA-19 zoning regulations in Section 400, et. seq., of the Columbia County zoning ordinance." Staff notes that the applicable regulation is Section 407.1 of the County's current Zoning Ordinance, which restricts the minimum lot or parcel size to 19 acres for farm or forest use. 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 .

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

CCZO 407.1 Establishes the minimum lot size of 19 acres in the FA-19 zone

D. CLAIMANT'S ELIGIBILITY FOR FURTHER REVIEW

The Claimant acquired an interest in the property before the minimum lot/parcel size standards of the Forest Agriculture (FA-19) zone became effective. Therefore, the Claimant may be eligible for compensation and/or waiver of CCZO Section 407.1 under Measure 37.

STATEMENT AS TO HOW THE REGULATIONS RESTRICT USE

The Claimant states that the property cannot be divided and developed into 1.5 to 6 acre parcels due to the 19-acre minimum lot size of the FA-19 zone. Staff finds that CCZO 407.1 can be read and applied to "restrict" the use of Claimant's property within the meaning of Measure 37. However, the property was zoned RR when it was acquired in 1979, limiting development to a minimum lot size of 2 acres.

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 \$358,400.
2. **Value of property not subject to cited regulations:** The Claimant submitted a Land Value Comparison Report that indicates a value of \$203,300 per lot if the property were to be divided into seven residential lots. The Claimant states that the value of the property if it were not subject to FA-19 zoning regulations would be \$1,423,100.
3. **Loss of value as indicated in the submitted documents:** The claim alleges a total reduction in value of \$1,033,200.

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: \$1,033,200.

- 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 407.1 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 407.1 to allow division of the property into 2 acre minimum lots size parcels in accordance with the 1973 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 minimum lot/parcel size of the Forest Agriculture (FA-19) 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 Claimant has 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 407.1	Minimum 19-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 407.1 to allow division of the property into not less than 2-acre parcels.

EXHIBIT A

LEGAL DESCRIPTION

All that part of the Northwest quarter of the Northwest quarter of Section 6, Township 4 North, Range 1 West of the Willamette Meridian, Columbia County, Oregon, lying East of Pittsburg-St. Helens Road.

EXCEPTING THEREFROM:

BEGINNING at the Southwest corner of Section 31, Township 5 North, Range 1 West of the Willamette Meridian, Columbia County, Oregon;
Thence South $89^{\circ}55'$ East, along the South line of said Section 31, a distance of 607.70 feet;
Thence South a distance of 156.08 feet;
Thence South $63^{\circ}06'25''$ West, a distance of 80.81 feet;
Thence South $86^{\circ}40'25''$ West, a distance of 28.80 feet;
Thence South $79^{\circ}20'$ West, a distance of 188.72 feet to the Easterly right of way line of Pittsburg-St. Helens County Road;
Thence, along said Easterly right of way line North $34^{\circ}04'$ West, a distance of 28.04 feet;
Thence North $46^{\circ}37'$ West, a distance of 121.38 feet;
Thence North $56^{\circ}45'$ West, a distance of 112.04 feet;
Thence North $65^{\circ}57'$ West, a distance of 66.05 feet to the South line of Section 36, Township 5 North, Range 2 West of the Willamette Meridian, Columbia County, Oregon;
Thence South $89^{\circ}43'$ East, along said South line, a distance of 43.37 feet to the POINT OF BEGINNING.