

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

In the Matter of Claim Number CL 07-93)
for Compensation Under Measure 37 Submitted by) Order No. 57-2007
McClellan K. Stewart)

WHEREAS, on December 1, 2006, Columbia County received a claim under Measure 37 from McClellan K Stewart, (the "Claimant") related to a parcel of property on Hwy. 30, in Clatskanie, Oregon, having Tax Account Number 7504-000-01000; and

WHEREAS, according to the information presented with the claim, McClellan K. Stewart is the current owner of the parcel; and

WHEREAS, the Claimant acquired an interest in the property in 2000; and

WHEREAS, the Claimant states that CCZO Section 300 restricts the use of the property and reduces its value; and

WHEREAS, CCZO 300 was enacted prior to the 2000 acquisition date for the Claimant;

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 07-93, dated March 20, 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.
3. The Board of County Commissioners denies Claim Number CL 07-93

Dated this 11th day of April, 2007.

Approved as to form

By: [Signature]
Assistant County Counsel

BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

By: [Signature]
Rita Bernhard, Chair

By: [Signature]
Anthony Hyde, Commissioner

By: [Signature]
Joe Corsiglia, Commissioner

COLUMBIA COUNTY
LAND DEVELOPMENT SERVICES

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Measure 37 Claim**Staff Report**

DATE: March 20, 2007
FILE NUMBER: CL 07-93
CLAIMANTS/OWNERS: McClellan K. Stewart
12589 Hwy 30
Clatskanie OR 97016

SUBJECT PROPERTY

PROPERTY LOCATION: 12589 Hwy 30, Clatskanie OR
TAX ACCOUNT NUMBER: 7504-000-01000
PARCEL SIZE: 76.86 acres
ZONING: Primary Agriculture (PA-38)
REQUEST: To divide the property into a minimum of three parcels and create building sites on the parcels
CLAIM RECEIVED: December 1, 2006
180 DAY DEADLINE: May 29, 2007
NOTICE OF RECEIPT OF CLAIM: March 20, 2007. As of the date of this report there no comments have been received and no request for hearing has been received from the Claimant.

I. BACKGROUND:

The subject property includes approximately 77 acres located at the above address between the Columbia River Highway and the Anderson District Slough Holding Basin No. 1. The property is improved with a home. The property was purchased by Applicant's ancestor, R.B. Magruder, in 1918, and has been passed down through the family, with breaks during 1918-1919, and a transfer in 1971 to a company owned by Applicant's grandparents in exchange for stock therein. The property was then conveyed to a family trust in 1981, and in 2000, transferred from the trust to the Claimant.

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:** According to a Chain of Title report provided by the Claimant and prepared by Ticor Title, as of November 15, 2006, the property was owned by McClellan K. Stewart.

2. **Date of Acquisition:** Family member R.B. Magruder acquired the property on August 21, 1918, by deed recorded at Book 26, p. 392 of Columbia County Deed Records. R.B. Magruder and Grace Kent Magruder conveyed an undivided 17/100 of the property to John F. Logan on August 3, 1918, and reacquired full interest by April 30, 1919.¹ The Magruders conveyed the property away again in 1921, and reacquired full title on March 31, 1926.² On January 28, 1947, Grace Kent Magruder, a widow, conveyed the property to Richard Kent Magruder. On January 1, 1971, Richard Kent Magruder and Caroline P. Magruder, husband and wife, transferred the property to Magruder Farms, Incorporated in exchange for stock in the corporation. On August 12, 1981, Magruder Farms, Inc. Conveyed the property to Caroline P. Magruder and the Oregon Bank, co-Trustees of a trust agreement date August 12, 1981, for the benefit of beneficiaries Caroline P. Magruder, Richard Kent Magruder, Margaret Magruder Stewart, and Caroline P. Magruder and Richard Kent Magruder. On November, 2000, co-Trustees Margaret C. Magruder and successor trustee Bank of America, NA, transferred the property to Claimant, McClellan K. Stewart.

Staff, therefore, uses the date of acquisition by the Claimant in November 2000 for purposes of evaluating his Claim.

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

The property was zoned PA-38 and subject to the PA-38 district regulations cited by the Claimant in 1984 before the Claimant acquired the property in November of 2000.

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

¹[John F. Logan and Margaret Logan conveyed an undivided 6/100 interest to Leroy L. Levings on October 15, 1918, and their remaining 11/100 interest back to R.B. Magruder on May 1, 1919. Leroy and Rose Levings conveyed their 6/100 interest back to R.B. Magruder on April 30, 1919. This is unnecessary backup for the previous sentence.]

²[On March 1, 1921, the Magruders conveyed the property to Harold Everett, and on March 31, 1926, Harold Everett and wife conveyed the property back to R.B. Magruder and Grace Kent Magruder. Alternative sentence for previous one.]

Claimant alleges that the following sections of CCZO Article III have reduced the fair market value of the property:

CCZO 300	Section Heading. Staff understands that the claimant is citing the specific sections which follow the Section heading reference.
CCZO 303.13(D)	Requires that single family dwellings not provided in conjunction with farm use be situated upon generally unsuitable land for the production of farm crops and livestock.
CCZO 304.1	Contains minimum parcel sizes and setback standards

D. CLAIMANT'S ELIGIBILITY FOR FURTHER REVIEW

Claimant appears to have acquired an interest in the property identified above after the adoption of county zoning ordinances and therefore the Claimant is not eligible for waiver of the cited regulations under Measure 37.

E. STATEMENT AS TO HOW THE REGULATIONS RESTRICT USE

The PA-38 zoning designation was applied to the subject property in 1984. The Claimant alleges that the PA-38 zoning district minimum lot size provisions(Section 304.1) and conditional use criteria for a non-farm single family dwelling(Section 303.13D) prevents the Claimant from dividing the property and creating building sites on the resulting lots. Staff concedes that CCZO 303.13(D), and 304.1 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 assessor's real market value of the land is \$263,800

2. Value of Property Not Subject To Cited Regulations.

The Claimant submitted a competitive market analysis (CMA) developed by Richard N. Larson of Windermere/St Helens Real Estate in November, 2006. Included were three lots of size 33.4 to 47.85 acres with homes thereon with listing prices from \$235,000 to \$250,000. Without giving an analysis of how it came to that conclusion for the land only, the CMA concluded that a division into two 38+ acre parcels would add \$50 to \$60,000 over the current value as a single parcel. The CMA also included a comparison to the same type of land in Clatsop County adjacent to a subdivision and concluded that a single building site of ½ to 2 acres would have a value of \$150,000, or an additional \$100,000 per site of that size.

3. Loss of value indicated in the submitted documents:

As the CMA doesn't provide the difference in the land value only for that location, staff concedes that it is more likely than not that the property would have a higher value if subdivided into three or more parcels than as a 76.86 acre parcel.

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 regulations.

G. COMPENSATION DEMANDED

\$80,000, per page 1 of claimant's Measure 37 Claim.

(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.

The cited regulation(s) are not regulation(s) restricting public nuisances, protecting public health and safety, required by federal law, or related to the restriction of pornography. The current version of CCZO sections 303.13(D), and 304.1 were applied to the subject property after the owner acquired it. They are not exempt under the provisions of ORS 197.352(3), above.

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 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 sections 303.13(D), and 304.1 to allow the current owner to use the property for a use permitted in 2000. Property division into lots having less than 38 acres was not permitted in 2000.

- (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 size and dwelling siting provisions of the PA-38 zoning regulations which were enacted prior to the effective date of Measure 37 on December 2, 2004. The subject claims were filed on December 1, 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 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 Sections 303.13(D) and 304.1

III. STAFF RECOMMENDATION:

The following table summarizes staff findings concerning the land use regulations 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.

Staff recommends denial of the claim based on the acquisition of the claimant(November 2000) after the enactment of the cited PA-38 zoning regulations(August 1984).