

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. 07-79 Submitted by)
Norman and Mary Jenkerson for Compensation) Order No. 58-2007
Under Measure 37)

WHEREAS, on November 30, 2006, Columbia County received a claim for compensation under Measure 37 and Order No. 34-2007 from Norman and Mary Jenkerson (the "Claimants"), related to a parcel of property located on Bennett Road in Warren, Oregon, having tax account number 4118-020-02100; and

WHEREAS, according to the information presented with the claim, the Claimants acquired an interest in the property in 1977; and

WHEREAS, the County zoned the subject property as Rural Residential District (RR) 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 \$1,983,200; and

WHEREAS, the Claimants desire to subdivide the property into ten 2 acre parcels, and one approximately 6.6 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 Rural Residential with a two 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 06-79, dated March 29, 2007, which is attached hereto as Attachment 1, and is incorporated herein by this reference.
2. The County approves the Claim of Norman and Mary Jenkerson. In lieu of compensation, the County waives CCZO Sections 407.1 to the extent necessary to allow the Claimants to subdivide the property into ten 2 acre minimum lot size parcels, and one approximately 6.6 acre parcel, 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 11th day of April, 2007.

Approved as to form

By: Sarah Hanson
Assistant County Counsel

BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

By: Rita M. Bernhard
Rita Bernhard, Chair

By: [Signature]
Anthony Hyde, Commissioner

By: Joe Corsiglia
Joe Corsiglia, Commissioner

**COLUMBIA COUNTY
LAND DEVELOPMENT SERVICES**

Measure 37 Claim

Staff Report

DATE: March 29, 2007
FILE NUMBERS: CL 06-79
CLAIMANTS/OWNERS: Norman G & Mary L. Jenkerson
34343 Bennett Rd.
Warren OR 97053

SUBJECT PROPERTY

PROPERTY LOCATION: 1 mile from Hwy. 30 across from 34343 Bennett Rd., Warren OR 97053
TAX ACCOUNT NUMBERS: 4118-020-02100
ZONING: Forest Agriculture (FA-19)
SIZE: 26.6 Acres
REQUEST: To subdivide the parcel into approximately ten 2 acre parcels and one 6.6 acre parcel for residential purposes.
CLAIM RECEIVED: November 30, 2006
180 DAY DEADLINE: May 30, 2007
NOTICE OF RECEIPT OF CLAIM: March 27, 2007
No comments or request for hearing has been received as of report date.

I. BACKGROUND:

The subject property is 26.6 acres. Claimants seek to divide the property into ten 2 acre parcels and one 6.6 acre parcel for residential use. Claimants acquired the property in June, 1977.

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 Application Report prepared by Columbia County Title & Escrow Services, Inc., with legal description attached, for the subject property ("M37 Report"). The report reflects, as of October 23, 2006, the last owners are Norman G. Jenkerson and Mary L. Jenkerson, owning as tenants by the entireties.
2. **Date of Acquisition:** Norman G. Jenkerson and Mary L. Jenkerson acquired the subject property on June 15, 1977 (Deed recorded in the Columbia County Records of Deeds at Book 212, page 306).

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

The property was zoned RR (Rural Residential District) at the time of Claimants' acquisition under the 1973 South County Zoning Ordinance. RR zoning allowed single family residential use on minimum parcel sizes of two acres. The zoning was changed to FA-19 in August 1984, and that zoning has remained on the property to date. The property was subject to subdivision regulations adopted by the county in 1973, and partition regulations adopted in 1975.

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

Claimants allege that FA-19 regulations - CCZO section 407.1 - does not allow them to divide the subject property for their intended purpose.

D. CLAIMANT'S ELIGIBILITY FOR FURTHER REVIEW

Claimant acquired an interest in the property identified above before the adoption of the current county zoning ordinances and therefore the Claimant may be eligible for compensation and/or waiver of the cited regulations under Measure 37.

E. STATEMENT AS TO HOW THE REGULATIONS RESTRICT USE

Claimants state that the minimum lot size requirement of CCZO section 407.1 prevents them from dividing the subject property.

F. EVIDENCE OF REDUCED FAIR MARKET VALUE

1. Value of the Property As Regulated.

The Claimants have not submitted evidence regarding the value of the property as regulated. The assessed real market value of the subject land is \$408,500.

2. Value of Property Not Subject To Cited Regulations.

Claimants provided a letter from Linda S. Bolen of Prudential N.W. Properties dated September 19, 2006, attaching several properties listed for sale. The zone classification of some of the properties are not provided. Some of the properties are zoned PF-76, in which zone Claimants would not be able to subdivide. There are several parcels zoned RR-5 and RR-2 reflecting values ranging from 3 to 20 acres, with several in the 5 acre range. The 5 acre parcels range between \$225,000 to \$260,000 in asking price. A 20.32 acre parcel zoned RR5 is valued at \$475,000, and a three acre parcel zoned RR-5 is listed at \$239,900. Ms. Bolen opined that Claimants' property, if zoned at a five acre minimum, would be valued at around \$230,000 to \$250,000 per

parcel. If approved for 10 home sites on 2 acre parcels, she estimated that the Claimant's 26.60 acres parcel would be valued at \$2,000,000.

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

The written documentation in support of the claim alleges the above value of the property if it is subdivided. 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 if subdivided into 11 parcels than as a 26.6 acre parcel zoned Forest Agriculture (FA-19).

G. COMPENSATION DEMANDED

The claim is in the amount of \$1,983,200, per page one of the 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 regulations are not regulations restricting public nuisances, protecting public health and safety, required by federal law, or related to the restriction of pornography. The FA-19 regulations 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 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 Sec. 407.1 to the extent necessary to allow a use of the property that was allowed in 1977.

(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 provisions of the FA-19 zone which were enacted prior to the effective date of Measure 37 on December 2, 2004. The subject claim was filed on November 20, 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, the Board may pay compensation in the amount of the reduction in fair market value caused by said regulation.

III. STAFF RECOMMENDATION:

Based on the above findings, staff concludes that the Claimants have met the threshold requirements for proving a Measure 37 waiver claim.

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. 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	Establishing 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

EXHIBIT A

LEGAL DESCRIPTION

A tract of land situate in the Northwest quarter of Section 18, Township 4 North, Range 1 West of the Willamette Meridian, Columbia County, Oregon, more particularly described as follows:

BEGINNING at the Southwest corner of the S. C. Achilles Donation Land Claim in Section 18, Township 4 North, Range 1 West of the Willamette Meridian, Columbia County, Oregon;

Thence along, the North line of the Franklin Cooper Donation Land Claim South 61° 19' East, 526.80 feet to the TRUE POINT OF BEGINNING;

Thence South 61° 19" East, 542.60 feet, more or less, to the Westerly line of Bennett Road extended Northerly;

Thence South 28° 32' West, 521.90 feet to the most Easterly corner corner of the Marion Lownsdale Hoyt et ux tract, as described in deed recorded January 2, 1959 in Book 138, Page 354, Deed Records of Columbia County, Oregon;

Thence North 57° 46' West, 180.00 feet;

Thence South 37° 04' West, 424.70 feet;

Thence North 57° 47' West, 26.00 feet;

Thence South 24° 34' West, 209.66 feet to the East and West centerline of said Section 18;

Thence, along said centerline of Section 18, North 89° 25 1/2' West, 572.24 feet to the East line of that tract as described in Book 45, Page 185, Deed Records of Columbia County, Oregon;

Thence North 250.00 feet;

Thence, along the North line of that tract as described in said Book 45, Page 185, North 89° 25 1/2' West, 295.15 feet to the East line of the Leonard B. Meadows et ux tract described in Deed Book 150, Page 688;

Thence North 16° 26' East, 554.00 feet;

Thence North 78° 52' East, 289.10 feet;

Thence North 62° 38' East, 421.60 feet;

Thence North 73° 55' East, 357.20 feet to the TRUE POINT OF BEGINNING.

EXCEPTING THEREFROM any portion thereof that may fall within tract described in Deed to Ernest E. Zimbrick et ux, recorded May 7, 1971 in Book 181, Page 455, Deed Records of Columbia County, Oregon.

ALSO, EXCEPTING THEREFROM any portion lying within the county road.