

**AFTER RECORDING, RETURN TO:**

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

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**BEFORE THE BOARD OF COUNTY COMMISSIONERS  
FOR COLUMBIA COUNTY, OREGON**

In the Matter of Claim No. 07-80 Submitted by Bendy Ho     ) Order No.59-2007  
and Karen Gordon for Compensation Under Measure 37     )

WHEREAS, on November 30, 2006, Columbia County received a claim for compensation under Measure 37 and Order No. 34-2007 from Bendy Ho and Karen Gordon, related to a parcel of property located on Barger Road in St. Helens, Oregon, having tax account number 75225-000-02200; and

WHEREAS, according to the information presented with the claim, Bendy Ho acquired an interest in the property in 1995, and Karen Gordon acquired an interest in the property in 2002; and

WHEREAS, the County zoned the subject property as RR-5 in 1984, prior to the acquisition by the Claimants; and

WHEREAS, in 1999, the County eliminated the 2 acre go-below for the RR-5 zone through Ordinance 98-4; and

WHEREAS, pursuant to Columbia County Zoning Ordinance (CCZO), Section 604.1, the minimum lot or parcel size for new land divisions in the RR-5 zone is 5 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 \$135,000; and

WHEREAS, the Claimants desire to partition the property into two parcels for residential development; 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 1995, the property was zoned RR-5, with a two acre minimum lot size in accordance with the 2 acre go-below standards;

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 07-80, dated March 29, 2007, which is attached hereto as Attachment 1, and is incorporated herein by this reference.
2. The County denies the Claim of Karen Gordon.
3. The County approves the Claim of Bendy Ho (hereinafter referred to as the "Claimant"). In lieu of compensation, the County waives CCZO Sections 604.1 to the extent necessary to allow the Claimant to partition the property into two parcels having not less than 2 acres minimum lot size, in accordance with the 1984 2 acre go-below standards.
4. 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 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, Bendy Ho, 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 Claimant's 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.

5. 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 11<sup>th</sup> day of April, 2007.

Approved as to form

By: Sarah Hanson  
Assistant County Counsel

BOARD OF COUNTY COMMISSIONERS  
FOR COLUMBIA COUNTY, OREGON

By: Rita Bernhard  
Rita Bernhard, Chair

By: Anthony Hyde  
Anthony Hyde, Commissioner

By: Joe Corsiglia  
Joe Corsiglia, Commissioner

**Measure 37 Claim****Staff Report**

**DATE:** March 29, 2007

**FILE NUMBERS:** CL 07-80

**CLAIMANT:** Bendy Ho and Karen Gordon  
61070 Barger Rd.  
St. Helens OR 97051

**SUBJECT PROPERTY**

**PROPERTY LOCATION:** 61070 Barger Rd., St. Helens OR

**TAX ACCOUNT NUMBER:** 5225-000-02200

**ZONING:** Rural Residential-5 (RR-5)

**SIZE:** 5.42 acres

**REQUEST:** Claimants seek to divide the property to build a house

**CLAIM RECEIVED:** November 30, 2006

**REVISED 180 DAY DEADLINE:** May 29, 2007

**NOTICE OF RECEIPT OF CLAIM:** March 27, 2007  
As of the date of the staff report, no requests for hearing have been received.

**I. BACKGROUND:**

The subject 5.42 acre is improved with a dwelling. Claimant, Bendy Ho, acquired the property in 1995. Claimant, Karen Gordon acquired the property in 2002. Claimants want to build another house on the property which will require a land division.

**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 Measure 37 Application Report prepared by Columbia county Title and Escrow Services, Inc. ("Measure 37 Report"), as of November 27, 2006, the property was owned by Bendy Ho and Karen Gordon as tenants by the entirety.
2. **Date of Acquisition:** According to information contained in the claim, Bendy Ho acquired the subject property by Statutory Warranty Deed on August 29, 1995. (Deed recorded in the Columbia County Records of Deeds as Instrument No. 95-07411). On October 29, 2002, Bendy Ho transferred the property to Bendy Ho and Karen A. Gordon, as tenants by the entireties. (Deed recorded in the Columbia County Records of Deeds as Instrument No. 02-14233).

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

In 1984, the property was zoned RR-5. At the time that the RR-5 zoning designation was applied, property with access to a community water system could be divided into parcels as small as two acres. This 2 acre "go below" provision was removed from the RR-5 minimum lot size provisions (Section 604.1) in 1999.

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

Claimants allege that Ordinance 1998-4, by eliminating the 2 acre go-below from RR-5 reduced the fair market value of the property.

Based on the claim, it appears that the county standards that clearly prevent the Claimant from developing the property as desired are:

- CCZO 604.1      Establishing the five acre minimum parcel size standard in the RR-5 zone

D. CLAIMANT'S ELIGIBILITY FOR FURTHER REVIEW

Claimants cite Ord. 98-5 as the ordinance that prevents them from, by inference, dividing their property into parcels smaller than 5 acres. Ordinance 99-5 clarified under what conditions land can be rezoned from RR-5 to RR-2. Claimants have not tried to rezone their property to RR-2.

Ordinance 98-4 (effective 2/99), however, eliminated the ability to "go below" the 5 acre lot size in the RR-5 zone. Claimant Ho acquired an interest in the property in 1995, before the ability to go below the minimum 5 acre lot size was eliminated. Therefore Bendy Ho may be eligible for compensation and/or waiver of the CCZO 604.1 under Measure 37. However, Karen Gordon is not eligible for compensation or waiver under Measure 37 according to the information provided with the Claim.

E. STATEMENT AS TO HOW THE REGULATIONS RESTRICT USE

The Claimants state that the regulation that eliminated the 2 acre "go below" from property zoned RR-5 restricts the use of their property because they cannot build a house. Staff concedes that CCZO 604.1 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 assessed real market value of the subject property is \$203,600.
2. Value of Property Not Subject To Cited Regulations.

Claimants submitted three comparison parcels, a two-acre parcel of unknown zoning that sold for \$129,900, a 2 acre parcel zoned RR-2 which sold for \$155,000, and a RR-5 acre parcel that sold for \$109,500. Claimant notes that the Assessor's RMV is \$350,800, which includes a residence on the property, and alleges that it would be worth \$485,800 at a two acre size. (Presumably this represents land also with a dwelling on it).

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

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. Staff concedes, however, that it is more likely than not that the property would have a higher value if it could be divided as proposed.

G. COMPENSATION DEMANDED

Claimant claims the following compensation, per page 1 of the Measure 37 claim form: \$135,000.

**(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 604.1 was applied to the subject property after Bendy Ho acquired it. It is 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 604.1.

**(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 size amendments for RR-5 zoned parcels that were 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, the Board may pay compensation in the amount of the reduction in fair market value caused by said regulation, or waive Section 604.1 for Bendy Ho to allow a use permitted at the time Bendy Ho acquired it, in accordance with the 1984 go-below standards.

**III. STAFF RECOMMENDATION:**

The following table summarizes staff findings concerning the land use regulation 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 apply to this Measure 37 claim:

LAND USE CRITERION	DESCRIPTION	RESTRICTS USE?	REDUCES VALUE?	EXEMPT?
CCZO 604.1	Minimum 5-acre parcel size standard	Yes	Yes	No

As to claimant, Bendy Ho, Staff recommends that the Board determine the amount of reduction in fair market value of the subject property, if any, due to CCZO 604.1 and pay compensation in that amount or, in the alternative, waive CCZO 604.1 to allow division of the property in accordance with the 1984 go-below standards.

Staff recommends denial of the claim by Karen Gordon.

BENDY HO  
 61070 BARGER ROAD  
 ST. HELENS, OR 97051  
 Grantor's Name and Address

BENDY HO AND KAREN A. GORDON  
 61070 BARGER ROAD  
 ST. HELENS, OR 97051  
 Grantee's Name and Address

After recording, return to (Name, Address, Zip):  
 BENDY HO AND KAREN A. GORDON  
 61070 BARGER ROAD  
 ST. HELENS, OR 97051

Until requested otherwise, send all tax statements to (Name, Address, Zip):  
 SAME AS ABOVE

I hereby certify that the within instrument was received for record and recorded in the County of Columbia, State of Oregon.

14233 02 NOV -6 AM 101



ELIZABETH WISER, County Clerk  
 By: *[Signature]* Deputy  
 Receipt # 3743 of Pages 26.00  
 FEES \$26.00

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BARGAIN AND SALE DEED

KNOW ALL BY THESE PRESENTS that BENDY HO

hereinafter called grantor, for the consideration hereinafter stated, does hereby grant, bargain, sell and convey unto BENDY HO AND KAREN A. GORDON, husband and wife, as tenants by the entirety hereinafter called grantee, and unto grantee's heirs, successors and assigns, all of that certain real property, with the tenements, hereditaments and appurtenances thereunto belonging or in any way appertaining, situated in COLUMBIA County, State of Oregon, described as follows, to-wit:

Parcel 1 of PARTITION PLAT NO. 1994-42 as recorded under Columbia County Clerk's Fee No. 94-11888, Columbia County, Oregon.

2002C155 FIRST AMERICAN TITLE COMPANY ORDER NO.

(IF SPACE INSUFFICIENT, CONTINUE DESCRIPTION ON REVERSE)

To Have and to Hold the same unto grantee and grantee's heirs, successors and assigns forever.  
 The true and actual consideration paid for this transfer, stated in terms of dollars, is \$ -0- . However, the actual consideration consists of or includes other property or value given or promised which is  part of the  the whole (indicate which) consideration. (The sentence between the symbols @, if not applicable, should be deleted. See ORS 93.030.)

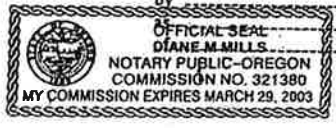
In construing this deed, where the context so requires, the singular includes the plural, and all grammatical changes shall be made so that this deed shall apply equally to corporations and to individuals.

IN WITNESS WHEREOF, the grantor has executed this instrument on October 29, 2002; if grantor is a corporation, it has caused its name to be signed and its seal, if any, affixed by an officer or other person duly authorized to do so by order of its board of directors.

THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930.

Bendy Ho *[Signature]*

STATE OF OREGON, County of Columbia  
 This instrument was acknowledged before me on *ss. Oct. 29, 2002*  
 by *Bendy Ho*  
 This instrument was acknowledged before me on \_\_\_\_\_  
 by \_\_\_\_\_



*[Signature]*  
 Notary Public for Oregon  
 My commission expires 3.29.03