



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 1974, the tax account number 4107-000-00700 was zoned RR, 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 07-118, dated March 26, 2007, which is attached hereto as Attachment 1, and is incorporated herein by this reference.
2. The County denies the Claim of Ronald W. Bone, as trustee of the Bone Family Trust.
3. The County approves the Claim of Ronald Bone, as an individual (hereinafter referred to as the "Claimant"). In lieu of compensation, the County waives CCZO Sections 407.1 to the extent necessary to allow the Claimant to subdivide the property into one acre parcels. However, for tax account number 4107-000-00700, the Claimant must comply with the 1973 zoning standards, restricting the land division to two acre parcels.
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, Ronald Bone, 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 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 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 26, 2007

**FILE NUMBER:** CL 07-118

**CLAIMANT/OWNER:** Ronald W. Bone, Trustee  
34524 Millard Rd.  
St. Helens, OR 97051

### SUBJECT PROPERTY

**PROPERTY LOCATION:** 34524 Millard Rd., St. Helens, OR

**TAX ACCOUNT NUMBER:** 4107-000-00200, 00700,  
4148-010-00400

**ZONING:** Forest Agriculture (FA-19)

**SIZE:** 81 acres (48, 16.5, and 16.5 acres, respectively)

**REQUEST:** To divide the property into one acre parcels

**CLAIM RECEIVED:** December 1, 2006

**180 DAY DEADLINE:** May 30, 2007

**NOTICE:** Sent March 20, 2006  
Comments have been received from David Sprau 34531 Keliher Drive,  
Warren. No request for hearing has been received.

**I. BACKGROUND:** The subject property consists of three parcels. There is an improvement on one of the parcels. Claimant, the Bone Family Trust, has owned the property since 1994. However, Ronald Bone has retained an interest in the property due to his transfer of the property into his revocable living trust. Mr. Bone acquired an interest in parcels having tax accounts 4107-000-00200, and 4148-010-00400 in 1970, and an interest in the parcel having tax account 4107-000-00700 in 1974.

## **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:** The Bone Family Trust acquired the property from Ronald Bone on July 7, 1993. (Deed recorded as document no. 94-06473 of the Columbia County deed records).

2. **Date of Acquisition:** Ronald W. Bone and Shirley M. Bone acquired tax lots 4148-010-00400 and a portion of tax lot 4107-000-00200 from Earl W. And Emma Saxton on February 9, 1970 (deed recorded at Book 176, p. 260 of the Columbia County deed records); the Eastern 20 feet of tax lot 4107-000-00200 from the Saxtons on March 20, 1970 (deed recorded at Book 178, p. 453 of the Columbia County deed records); and tax lot 4107-000-00700 from Orion B. Click on May 10, 1974 (deed recorded at Book 196, p. 188 of the Columbia County deed records). Shirley Bone transferred the property to Ronald W. Bone, on April 18, 1991 (deed recorded as document 91-2458). Mr. Bone then transferred the property to himself, as trustee of the Bone Living Trust dated July 7, 1993, on June 24, 1994 (deed recorded as document no. 94-06473). The date of acquisition for the Bone Living Trust is June 24, 1994. However, as the Grantor/Settlor of the revocable living trust, Mr. Bone retained an interest in the property for purposes of Measure 37 going back to the date he acquired it, in 1970 and 1974 (for tax account 4107-000-00700.)

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

At the time the Claimant acquired the subject property, the property was zoned Forest Agriculture (FA-19). At the time Ronald Bone acquired tax account 4107-000-00700, the property was zoned Rural Residential (RR). All three parcels were zoned RR-5 in 1973, and came under the current zoning designation of Forest Agriculture -19 in 1984. In 1973, the minimum lot size for land divisions was two acres. Therefore, for purposes of 4107-000-00700, the two acre minimum lot size regulation was in effect on the date of acquisition. For purposes of the other two parcels, there was no zoning in effect on the date of acquisition, in 1970.

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

The Claimant alleges that Columbia County Zoning Ordinance (CCZO) section 407.1 has reduced the fair market value of the property by prohibiting or restricting subdivision into one acre parcels.

#### D. CLAIMANT'S ELIGIBILITY FOR FURTHER REVIEW

The Claimant, the Bone Living Trust, is not eligible for waiver under Measure 37 due to its 1994 acquisition date. However, Ronald Bone may be eligible for compensation and/or waiver of the cited regulation under Measure 37 due to his acquisition date in 1970 and 1974.

#### E. STATEMENT AS TO HOW THE REGULATIONS RESTRICT USE

The Claimant states that it cannot subdivide the subject property as proposed due to the cited CCZO section(s).

#### F. EVIDENCE OF REDUCED FAIR MARKET VALUE

Value of the Property As Regulated.

The total of the assessors' estimated real property value of the three parcels in this claim is \$1,000,100.

## 2. Value of Property Not Subject To Cited Regulations.

Claimant has provided realtor listings of two properties comparable to the property if it were divided into small parcels. A 1.39 acre parcel is listed for \$175,000, and a 1 acre parcel is listed for \$170,000. Extrapolating from Claimant's figures, the property, if not subject to size regulations, would be worth between \$10,071,942. and \$13,600,000.

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

The documentation in the file reflects a possible reduction of between \$9,071,842 and \$12,599,900. While 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, staff concedes that it is more likely than not that the property would have a higher value if subdivided into 80 one acre lots than as three parcels.

## G. COMPENSATION DEMANDED

Claimant's claim is in the amount of \$11,485,600, per page 1 of Claimant's Measure 37 claim form.

### **(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 challenged regulations do not qualify for any of the exclusions listed.

However, 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. Further development will be subject to regulations that protect public health and safety.

**(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 Ronald Bone 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 the challenged regulations.

**(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 parcel standards 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 December 1, 2006, which is within two years of the effective date of Measure 37. Claimant's claim was timely filed.

**(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 Ronald Bone 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 regulations or in lieu of compensation, modify, remove, or not apply the challenged regulations to allow a use permitted at the time Ronald Bone acquired the property. For purposes of tax lot 4107-000-00700, 1 acre parcels were not permitted at the time he acquired the property in 1974.

**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 407.1	Sets minimum lot size for permitted uses at nineteen(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 property, and act accordingly to pay just compensation in that amount, or, in the alternative, to not apply CCZO Sections 407.1 as to Ronald Bone, an individual.

Staff recommends the Board of County Commissioners deny the claim as to Ronald Bone, trustee of the Bone Living Trust.

BARGAIN AND SALE DEED

KNOW ALL MEN BY THESE PRESENTS, That RONALD W. BONE

hereinafter called grantor, RONALD W. BONE, SR., for the consideration hereinafter stated, does hereby grant, bargain, sell and convey unto Trustee of the BONE LIVING TRUST dated July 7, 1993

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 anywise appertaining, situated in the County of Columbia State of Oregon, described as follows, to-wit:

SEE EXHIBIT "A" ATTACHED HERETO AND INCORPORATED HEREIN BY REFERENCE.

(IF SPACE INSUFFICIENT, CONTINUE DESCRIPTION ON REVERSE SIDE)

To Have and to Hold the same unto the said 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 consideration (indicate which). (The sentence between the symbols @, if not applicable, should be deleted. See ORS 93.030.)

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

In Witness Whereof, the grantor has executed this instrument this 24 day of June, 1994; if a corporate grantor, it has caused its name to be signed and its seal 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 LAND SUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930.

Ronald W Bone RONALD W. BONE

WASHINGTON STATE OF OREGON, County of Clark ) ss. This instrument was acknowledged before me on June 24, 1994 by RONALD W. BONE This instrument was acknowledged before me on 1994 by

PAT L. PABST NOTARY PUBLIC STATE OF WASHINGTON COMMISSION EXPIRES APRIL 16, 1996

Pat L Pabst Notary Public for WA My commission expires 4-15-96

RONALD W. BONE 34524 Millard Road Warren, OR 97053 Grantor's Name and Address RONALD W. BONE, SR., Trustee UTD 7/7/93 34524 Millard Road Warren, OR 97053 Grantee's Name and Address After recording return to (Name, Address, Zip): HORENSTEIN & DUGGAN, P.S., P.O. Box 624 Vancouver, WA 98666 Until requested otherwise send all but return to (Name, Address, Zip): SAME AS GRANTEE ABOVE

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

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ELIZABETH HUSHER County Clerk By: [Signature] Deputy Receipt # Fees \$ 15.00 2001

Deputy



EXHIBIT "A"

Real property located in the County of Columbia, State of Oregon, described as follows:

PARCEL 1:

Commencing at the Southeast corner of the seven (7) acres of land conveyed by Joseph Copeland and Mary D. Copeland, his wife, to Thomas E. Grewell by deed dated May 1, 1902 which deed is recorded at page 157 Book "Z" of deeds for Columbia County, Oregon; thence North 1°30' East along the Eastern boundary line of said Thomas E. Grewell's seven (7) acre tract of land to the Northeast corner thereof; thence North 88°55' East along the South line of the land formerly owned by J. S. Millard to a point from which a line extended Southerly and parallel with said East line of said seven (7) acre tract of land to Thomas E. Grewell to the south boundary line of the S. C. Achilles Donation Land Claim which would contain 17.8 acres; thence southerly parallel with the said East line of said Thomas E. Grewell's seven (7) acre tract of land to the South boundary line of said S. C. Achilles Donation Land Claim; thence North 62° West along the South boundary line of said S. C. Achilles Donation Land Claim to the place of beginning.

Conveying also a strip of land for road right-of-way purposes, over land described as follows:

Commencing at the Southeast corner of the 7-acre tract of land of Thomas E. Grewell's on the South boundary line of the S. C. Achilles Donation Land Claim in Section 18, Township 4 North, Range 1 West, thence North 62° West along the South boundary line of said S. C. Achilles D.L.C. to the Southeast corner of Jacob Hegele's land; thence North 1°30' East to a point sufficient to make a strip of land 20 feet in width off the southerly end of said 7-acre tract of Thomas E. Grewell's; thence South 62° East parallel to and at a distance of 20 feet from said South boundary line of said Donation Land Claim to the Eastern boundary line of said Grewell's 7-acre tract of land; thence South 1°30' West to the place of beginning; and

Commencing at a point on the south boundary line of the S. C. Achilles Donation Land Claim in Section 18, Township 4 North, of Range 1 West, where the Southeast corner of the Jacob Hegele's land and the Southwest corner of Thomas E. Grewell's 7-acre tract of land meet in said line; thence North 62° West along South boundary line of said Donation Land Claim about 11 rods to present County Road; thence North 28° East 20 Feet; thence South 62° East to West boundary line of Thomas E. Grewell's 7-acre tract of land, thence to the place of beginning.

Beginning at the Northeast corner of the S. C. Achilles Donation Land Claim No. 57 in Section 7, Township 4 North, Range 1 West of Willamette Meridian in Columbia County, Oregon; thence along Claim line South 88°31½' West, 81.50 feet to an intersection with the North line of Lot 4 of the above said section 7; thence along the North line of said Lot 4, North 88°58½' West, 550.38 feet; thence paralleling the East boundary of the above said S. C. Achilles D.L.C. South 2°34'50" West, 855.0 feet to the place of beginning of the parcel of land to be herein conveyed; thence from this place of beginning continue South 2°34'50" West, 1202.4 feet; thence South 88°31½' West, 1020.0 feet; thence North 2°34'50" East, 1246.5 feet; thence paralleling the North boundary of the above said Lot 4, South 88°58½' East, 1019.0 feet to the place of beginning and containing 28.62 acres, all in the S. C. Achilles Donation Land Claim.

Also, beginning at the Northeast corner of the S. C. Achilles Donation Land Claim No. 57 in Section 7, Township 4 North, Range 1 West of Willamette Meridian in Columbia County, Oregon; thence along Claim line, South 88°31½' West 81.50 feet to an intersection with the North line of Lot 4 of the above said Section 7; thence along the North line of said Lot 4, North 88°58½' West, 550.38 feet to the place of beginning of the parcel of land to be herein conveyed; thence from this place of beginning continue along the North line of the above said Lot 4, North 88°58½' West 1019.0 feet; thence paralleling the East boundary of the above said S. C. Achilles D.L.C. South 2°34'50" West 855.0 feet; thence South 88°58½' East 1019.0 feet; thence North 2°34'50" East 855.0 feet to the place of beginning and containing 20 acres of land, being located in Lot 4, a portion of Lot 5 of the above said section 7 and in the S. C. Achilles Donation Land Claim, except a strip of land 20 feet in width off of the entire East side thereof, for road purposes.

Exhibit "A" (cont):

PARCEL 2:

A tract of land in Sections 7 and 18, Township 4 North, Range 1 West of the Willamette Meridian, Columbia County, Oregon, more particularly described as follows: Beginning at the Southeast corner of the Orion B. Click tract, as described in Parcel 1 of deed recorded September 30, 1952 in Book 116, page 215, Deed Records of Columbia County, Oregon, said point being South 2°11'10" West 2031.86 feet and North 88°31'30" East, 992.80 feet from the Northwest corner of the Schubel C. Achilles Donation Land Claim; thence South 88°31'30" West along the South line of said Click tract, a distance of 260 feet, more or less, to the center of McNulty Creek, as existing in April of 1974; thence Northerly, following the centerline of said McNulty Creek, to a point which is North 2°34'50" East a distance of 1752 feet from the Southeast corner of said Click tract, said point also being on the East line of said Click tract; thence South 2°34'50" West, along the East line of said Click tract, a distance of 1752 feet to the point of beginning.

PARCEL 3:

A: that part of the following described tract that lies Easterly of the center line of McNulty Creek:  
Beginning at the Southwest corner of the S. C. Achilles Donation Land Claim in Township 4 North of Range 1 West of the Willamette Meridian, Columbia County, Oregon; thence North 1°48' East on the West line of said claim 6.92 chains to a post; thence North 88°30' East 16.83 chains to a point; thence South 16.74 chains to the claim line; thence North 61°19' West 19.35 chains to the place of beginning; EXCEPT THEREFROM the 20 foot strip described in deed from Jacob Hegele to E. L. Pullen et al, recorded in Book 10, page 220 of Deed Records; AND ALSO EXCEPT THEREFROM the tract described in deed from Clair V. Smith and wife to Paul A. Griggs and Anna Maye Griggs recorded in Book 89, page 594, Deed Records of Columbia County, Oregon.

*Subject to and excepting:* Rights of the public in and to that portion of the herein described property lying within the limits of roads and highway, an adverse claims based upon the assertion that McNulty Creek has moved, rights of others thereto entitled in and to the continued uninterrupted flow of McNulty Creek and rights of upper and lower riparian owners in and to the use of the waters and the natural flow thereof.