

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

In the Matter of Claim Number CL 07-69)
for Compensation Under Measure 37 Submitted by) Order No. 61-2007
Craig and Rhonda Melton)

WHEREAS, on November 30, 2006, Columbia County received a claim under Measure 37 from Craig and Rhonda Melton, (the "Claimants") related to a parcel of property Bachelor Flat Road, in Warren, Oregon, having Tax Account Number 4201-000-00400; and

WHEREAS, according to the information presented with the claim, Craig and Rhonda Melton are the current owners of the parcel; and

WHEREAS, the Claimants acquired an interest in a portion of the property in 1994, and a portion of the property in 2002; and

WHEREAS, the property was zoned Forest Agriculture (FA-19) in 1984, prior to the date of acquisition by the Claimants; and

WHEREAS, the Claimants state that the FA-19 zoning regulations restrict the use of the property and reduces its value, by restricting land divisions and the placement of dwellings; and

WHEREAS, the FA-19 zoning regulations were enacted prior to the 1994 and 2002 acquisition date for the Claimants;

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 07-69, dated March 29, 2007, which is attached hereto as Attachment 1 and is incorporated herein by this reference.
2. The Board of County Commissioners finds that the Claimants are neither entitled to compensation under Measure 37, nor waiver of County regulations in lieu thereof.

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3. The Board of County Commissioners denies Claim Number CL 07-69.

Dated this 11th day of April, 2007.

BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

Approved as to form

By: Sarah Hanson
Assistant County Counsel

By: Rita Bernhard
Rita Bernhard, Chair

By: Anthony Hyde
Anthony Hyde, Commissioner

By: Joe Corsiglia
Joe Corsiglia, Commissioner

**COLUMBIA COUNTY
LAND DEVELOPMENT SERVICES**

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Measure 37 Claim**Staff Report**

DATE: March 29, 2007

CLAIM NUMBER: CL 07-69

CLAIMANT: Craig J. Melton and Ronda L. Melton
58014 S. Bachelor Flat Rd.
Warren, OR 97053

**CLAIMANTS'
REPRESENTATIVE:** Frank Walker & Associates

SUBJECT PROPERTY

PROPERTY LOCATION: 33758 Pittsburg Rd., St. Helens

TAX ACCOUNT NUMBERS: 4201-000-00400

ZONING: Forest Agriculture (FA-19)

SIZE: 19.84 acres

REQUEST: To permit land division and the placement of dwellings

CLAIM RECEIVED: November 30, 2006

REVISED 180 DAY DEADLINE: May 29, 2007

NOTICE OF RECEIPT OF CLAIM: March 22, 2007
As of the date of this report no comments or request for hearing has been received.

I. BACKGROUND:

This claim involves a 19.84 acre parcel which is improved with a dwelling. The Claimants acquired title to the property in 1994. The Claimants seek to partition or subdivide and place dwellings on the parcel. The parcel was zoned FA-19 in 1984.

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 information supplied by the Claimants, the property is owned by Craig J. Melton and Ronda L. Melton.
2. **Date of Acquisition:** Claimants, Craig J. Melton and Ronda L. Melton acquired a portion of the subject property by deed from John D. Howard and Diana L. Howard on August 17, 1994. (Deed recorded as Fee no. 94-08180 of Columbia County Deed Records). Craig Melton and Rhonda Melton received another portion of the property by deed from Jack D. Sherer and Jeanne B. Sherer on December 16, 2002. (Deed recorded (twice) as Fee no. 02-16588 and 02-16715 of Columbia County Records). The deed notes that the property is part of a property line adjustment between tracts of land. Staff uses the 1994 acquisition date for those portions of the subject property before the lot lines were adjusted and 2002 for the portion of the property acquired in 2002.

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

The property was zoned FA-19 in August 1984, and that zoning has remained on the property to date. The property was subject to the FA-19 zoning regulations at the time of acquisition in 1994 and 2002.

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

The Claimants allege that the county's FA-19 zoning regulations, specifically Columbia County Zoning Ordinance (CCZO) sections 404.13, 407.1, 408, and 409.1 have resulted in a reduction of the property's fair market value by preventing them from dividing and building on their property. Section 404.13 allows conditional approval of one-family dwellings only upon certain findings. Section 407.1 provides that the minimum lot size for all permitted and conditional non-forest and non-farm uses in a FA-19 zone is 20,000 square feet. Section 408 (Homestead Lot) provides criteria for non-farm use after a lot division for a principal dwelling existing on the date of the ordinance. Section 409.1 (partitions), provides that any proposed land division resulting in the creation of a parcel smaller than 19 acres shall be reviewed by the procedures established by Section 1504. Major Variances (those equal to or greater than 10%) from a minimum lot or parcel size requirement of the Forest Agriculture (FA-19) zones are not permitted. Sec. 1504.

D. CLAIMANT'S ELIGIBILITY FOR FURTHER REVIEW

Section 3(E) of Measure 37 provides that there is no entitlement for compensation for claims based on land use regulations that were applied or adopted "prior to the date of acquisition of the property by the owner or family member of the owner." The FA-19 zoning was applied to the subject property 1984, prior to the date of Claimants Craig J. Melton and Ronda L. Melton's acquisition in 1994. Claimants acquired an interest in the

property from a non-family member after the FA-19 zoning was adopted. Therefore, it appears that the Claimants are not eligible for compensation due to the cited regulations under Measure 37.

E. STATEMENT AS TO HOW THE REGULATIONS RESTRICT USE

The Claimants state that they cannot divide and build on their property as proposed due to the county's FA-19 zoning restrictions. However, as noted above, those restrictions were placed on the property prior to claimants' acquisition of the subject property.

F. EVIDENCE OF REDUCED FAIR MARKET VALUE

1. Value of the Property As Regulated.

Based on County Assessor data the property's real market value for the land itself is \$315,000.

2. Value of Property Not Subject To Cited Regulations. Claimants submitted eight comparables of unimproved property with an average parcel size of 2.72 acres and an average sales price of \$173,525. They also submitted comparables for four improved parcels with an average size of 2.29 acres and average sales price of \$279,450.

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

According to Claimants' documentation, the difference in value is \$949,997.25 based on the price per acre of the unimproved land and \$2,420,771. based on the price per acre of the improved land.

Staff notes that this second value assumes that the resulting lots will be developed with dwellings prior to sale to third parties. If the subject property is merely divided and with two to three acre parcels sold as-is, the value is significantly lower, as an attorney general opinion concludes that while the Claimants may avail themselves of the benefits of Measure 37 and develop the property according to the regulations in place at the time of acquisition, that benefit is not transferable.

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 regulation. 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

Claimants claim the following compensation, per page 1 of the Measure 37 claim form: \$2,515,050.

(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) sections 404.13, 407.1, 408, and 409.1 qualify for any exclusions listed in 3(E), 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.

Claimants do not qualify for compensation under subsection 1 of Measure 37.

(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 FA-19 zone, which was adopted by the Board of County Commissioners 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.

Because the Claimants are not entitled to compensation under subsection 1 of the Measure, the Claimants are not entitled to waiver in lieu thereof.

III. STAFF RECOMMENDATION:

Based on the above findings, staff concludes that the claimant has not met the threshold requirements for proving a Measure 37 claim.

ORS 197.352 provides that the requirement to compensate in subsection (1) of Measure 37 shall not apply to land use regulations 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. ORS 197.352(3)(E). Claimants acquired the subject property after enactment of the land use regulation(s) for which they are seeking compensation.

Staff recommends denial of the claim.

LEGAL DESCRIPTION

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Parcel 1: Beginning at the Northeast corner of Section 1, Township 4 North, Range 2 West of the Willamette Meridian, Columbia County, Oregon; thence running South on the East line of said section to the center of Milton Creek; thence running Southwesterly up the center of said creek to a point where the South line of the Northeast quarter of the Northeast quarter of said Section intersects said creek; thence West on said South line of said Northeast quarter of the Northeast quarter to a point where a line running North and parallel with the East line of said Section 1 to the North line of said Section will include 30 acres; thence North on said line to the North line of Section 1; thence East to the point of beginning. EXCEPTING THEREFROM the following described tract:

Beginning at the Northeast corner of Section 1, Township 4 North, Range 2 West of the Willamette Meridian, Columbia County, Oregon; running thence South on the East line of said Section 1 to the center of Milton Creek; thence Southwesterly up to the center of said creek a sufficient distance to a point where a line running North and parallel with the East line of said Section to the North line thereof would include and contain 10 acres of land; thence North and parallel with said East line of said Section 1 to the North line thereof; thence East to the point of beginning.

Parcel 2: A tract of land in the North half of the Northeast quarter of Section 1, Township 4 North, Range 2 West, Willamette Meridian, Columbia County, Oregon, being more particularly described as follows:

Beginning at the Northeast corner of said Section 1; thence North 89°39'30" West, along the North line of said Section 1, a distance of 1269.41 feet; thence South 00°25'50" West a distance of 37.93 feet to a 5/8 inch iron rod with yellow plastic cap marked "REYNOLDS LAND SURVEYING, INC." on the Southerly right of way line of Pittsburg-St. Helens County Road and the true point of beginning of the following described tract; thence South 00°25'50" West a distance of 1242.78 feet to a 5/8 inch iron rod with yellow plastic cap marked "REYNOLDS LAND SURVEYING, INC." on the South line of the North half of the Northeast quarter of said Section 1; thence South 89°33'20" East, along said South line of the North half of the Northeast quarter of Section 1, a distance of 18 feet, more or less, to the Southwest corner of the Craig Melton and Ronda Melton tract as described in Instrument No. 94-08180, Clerk's Records of Columbia County, Oregon; thence North, along the West line of said Melton tract, to said Southerly right of way line of Pittsburg-St. Helens County Road; thence North 89°15'59" West along said Southerly right of way line, a distance of 18 feet, more or less, to the true point of beginning.