

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. 07-82 Submitted by Mary) Order No. 62-2007
Sykes for Compensation Under Measure 37)

WHEREAS, on December 1, 2006, Columbia County received a claim for compensation under Measure 37 and Order No. 34-2007 from Mary Sykes (the "Claimant"), related to a parcel of property located on Hale Road in Scappoose, Oregon, having tax account number 4217-030-01800; and

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

WHEREAS, the County zoned the subject property as Rural Residential (RR-5) in 1984, after the acquisition by the Claimant; 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 Claimant claims 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 \$309,100; and

WHEREAS, the Claimant desires to subdivide the property into four approximately 2 acre parcels; 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 Claimant could have divided the property into four approximately 2 acre parcels;

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 0-82, dated March 29, 2007, which is attached hereto as Attachment 1, and is incorporated herein by this reference.
2. The County approves CL 07-82. In lieu of compensation, the County waives CCZO Sections 604.1 to the extent necessary to allow the Claimant to subdivide the property into 4 approximately 2 acre parcels.
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 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, 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 her 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.

BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

Approved as to form

By: Sarah Hanson
Assistant County Counsel

By: Rita M. Bernhard
Rita Bernhard, Chair

By: [Signature]
Anthony Hyde, Commissioner

By: Joe Corsiglia
Joe Corsiglia, Commissioner

Measure 37 Claim**Staff Report**

DATE: March 29, 2007

FILE NUMBERS: CL 07-82

CLAIMANT: Mary M. Sykes
746 Adams Ave.
Vernonia OR 97064

SUBJECT PROPERTY

PROPERTY LOCATION: 29395 Hale Rd., Scapoose, Oregon. Property straddles Hayfield Road and is south of Vernonia Hwy.

TAX ACCOUNT NUMBER: 4217-030-01800

ZONING: Rural Residential-5 (RR-5)

SIZE: 7.79 acres

REQUEST: Creation of four approximately 2 acre parcels to be developed as homesites. Claimant would also like to separate the two existing houses currently on the parcel onto separate lots.

CLAIM RECEIVED: December 1, 2006

REVISED 180 DAY DEADLINE: May 30, 2007

NOTICE: Sent March 20, 2007
As of the date of this report no comments or request for hearing has been received

I. BACKGROUND:

The subject 7.79 acres is improved with two dwellings. Claimant has owned the subject property since 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:** According to a November 29, 2006, Chain of Title Report prepared by Tigor Title, the property is owned by Randolph G. Sykes and Mary M. Sykes, husband and wife. Mr. Sykes passed away on February 15, 1989 (per Oregon Certificate of death dated February 23, 1989).
2. **Date of Acquisition:** According to information contained in the Chain of Title Report, Randolph G. Sykes and Mary M. Sykes acquired the subject property on December 14, 1977. (Deed recorded in the Columbia County Records of Deeds at Book 215, p. 254). Claimant states (but did not provide documentation indicating) that she purchased the property in 1963 under a land sales contract. Since documentation was not provided to substantiate the 1963 acquisition date, staff will use the December 14, 1977 acquisition date for the purposes of evaluating this claim.

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

The subject property was first zoned in 1984. It was not zoned at the time of Claimant's acquisition.

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

Claimant alleges that CCZO Rural Residential Sections 602 (permitted uses) and 604.1 (establishing a five acre minimum parcel size standard in the RR-5 zone) have reduced the value of the property.

D. CLAIMANT'S ELIGIBILITY FOR FURTHER REVIEW

Claimant acquired the subject property before the 5-acre minimum lot size requirement applied to the property. Therefore the Claimant may be eligible for compensation and/or waiver of CCZO 604.1 under Measure 37.

E. STATEMENT AS TO HOW THE REGULATIONS RESTRICT USE

The Claimant states that because the property is zoned RR-5, she cannot divide it to create more residential parcels. 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. Claimant also seeks put the two homes on the parcel into separate lots. Claimant cited CCZO Section 602.1, which provides that single family detached dwellings are a permitted use in the RR-5 zone Section 602.1 does not appear to restrict Claimants use, per se, of the parcels.

F. EVIDENCE OF REDUCED FAIR MARKET VALUE

1. Value of the Property As Regulated.

The assessed real market value of the subject property is \$210,900.

2. Value of Property Not Subject To Cited Regulations.

Claimants submitted ten comparison parcels of between one and five acres, which were sold for between \$129,900 and \$250,000. They are located in, respectively, the R-5, R-10, RR-2, RR-5 zones with some of unknown zoning. Claimant's November 26, 2006, letter from Kevin Beckerdite, sales associate at Elite Realty, Inc., opines that the value of the property would increase by a minimum of \$309,100 if Claimant were able to partition three additional 2 acre lots.

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

The reduced value due to an inability to divide the property cannot be determined from the documents submitted, but Staff concedes 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. 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.

G. COMPENSATION DEMANDED

Claimant claims the following compensation, per page 1 of the Measure 37 claim form: \$309,100.

(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 regulation(s) cited by Claimant are not regulation(s) restricting public nuisances, protecting public health and safety, required by federal law, or related to the restriction of pornography. CCZO 604.1 was applied to the subject property after the Claimant 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 regulations 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 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 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 in lieu thereof, the Board may waive 604.1 to allow the land division into four approximately 2 acre parcels.

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

Staff recommends the Board of County Commissioners 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.

LEGAL DESCRIPTION

Parcel 1: Tract 33, Scappoose Acre Tracts, Columbia County, Oregon.

Parcel 2: That portion of Tract 30, Scappoose Acre Tracts, Columbia County, Oregon, described as follows:

Beginning at a point on the West line of Tract 30, said point being the Northeast corner of Tract 34, of said Scappoose Acre Tracts, Columbia County, Oregon; thence South 89°21' East a distance of 170.0 feet; thence North 0°25' West a distance of 437.11 feet to the Northerly line of said Tract 30, which point is on the Southerly right of way line of the Portland, Southwestern Railroad; thence along the arc of a 855.4 foot radius curve to the left (the long chord of which curve bears North 73°28' West 177.34 feet) a distance of 177.6 feet to the Northwest corner of said Tract 30; thence South 0°25' East, along the West line of said Tract 30, a distance of 485.8 feet to the point of beginning. EXCEPT that part that lies within the right of way Hayfield County Road N. P-274.