

AFTER RECORDING, RETURN TO:

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

**BEFORE THE COLUMBIA COUNTY
LAND DEVELOPMENT SERVICES DEPARTMENT**

In the Matter of Claim No. 07-81 Submitted by)
Charles and Marie Anderson for Compensation) Order No. 68-2007
Under Measure 37)

WHEREAS, on December 1, 2006, Columbia County received a claim for compensation under Measure 37 and Order No. 34-2007 from Charles and Marie Anderson (the "Claimants"), related to a parcel of property located near Tide Creek Road in Deer Island, Oregon, having tax account number 6236-000-00300; and

WHEREAS, according to the information presented with the Claim, Charles Anderson acquired an interest in the property in 1959 and Marie Anderson acquired an interest in the property 1961; and

WHEREAS, the County zoned the subject property as Primary Forest (PF-76) in 1984, prior to the acquisition by the Claimants; and

WHEREAS, pursuant to Columbia County Zoning Ordinance (CCZO), Section 506.1, the minimum lot or parcel size for new land divisions in the PF-76 zone is currently 76 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 \$1,000,000; and

WHEREAS, the Claimants desire to subdivide the property into four 5 acre minimum lot size 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 Claimants acquired the property; and

WHEREAS, in 1959 and 1961, the Claimants could have divided the property into

5 acre minimum lot size parcels;

NOW, THEREFORE, it is hereby ordered as follows:

1. The County adopts the findings of fact set forth in the Staff Report for Claim Number CL 07-81, dated April 3, 2007, which is attached hereto as Attachment 1, and is incorporated herein by this reference.
2. The County approves CL 07-81. In lieu of compensation, the County waives CCZO Sections 506.1 to the extent necessary to allow the Claimants to subdivide the property into four 5 acre minimum lot size 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 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, as individuals, 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 16th day of April, 2007.

BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

Approved as to form

By: Todd Dugdale
Todd Dugdale, Director
Land Development Services

By: Sarah Hanson
Assistant County Counsel

COLUMBIA COUNTY LAND DEVELOPMENT SERVICES
MEASURE 37 CLAIM
STAFF REPORT

DATE: April 3, 2007

FILE NUMBER(s): CL 07-81

CLAIMANT: Charles & Marie Anderson
64365 Columbia River Highway
Deer Island, OR 97054

PROPERTY LOCATION: Near Tide Creek Road, Deer Island, OR 97054

TAX ACCOUNT NUMBER: 6236-000-00300

ZONING: Primary Forest - 76 (PF-76)

SIZE: Approximately 20 acres

REQUEST: To divide property into four 5-acre residential parcels and build a single family residence on each parcel.

CLAIM RECEIVED: December 1, 2006

REVISED 180 DAY DEADLINE: May 29, 2007

RECEIPT OF CLAIM NOTICE: Claim notices were mailed on March 21, 2007. The comment period ended on April 3, 2007.

As of the date of this Staff Report, no comments or request for hearing have been received.

I. BACKGROUND:

The subject property is undeveloped timberland. There does not appear to be a direct means of access to the property, although there is a private drive on an adjacent parcel which may provide access to the property. Claimant, Charles Anderson, appears to have acquired the property in February of 1959, although Claimant Marie Anderson did not acquire an ownership interest until June of 1961.

Whether or not a property is a legally platted lot or parcel created by a Subdivision or Land Partition, respectively, or a legal lot-of-record is not included in the review for a Measure 37 Claim. If the property reviewed by this claim is neither of these, this could impact any subsequent development under this claim.

II. APPLICABLE CRITERIA & 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 & OWNERSHIP INTERESTS

1. **Current ownership:** Based on the information provided, it appears the subject property is owned by the Claimants.
2. **Date of Acquisition:** The property was acquired by Charles Anderson and his parents in February of 1959. The Claimants provided a copy of a deed executed on February 16, 1959. Charles Anderson's parents conveyed their interest in the property to him by a deed executed on June 6, 1961. On the same day, a deed creating a tenancy by the entirety was executed, granting Marie Anderson an undivided one-half interest in the property. These deeds were recorded on June 20, 1961, and appear in Book 145, Pages 701 and 705, respectively, of the Columbia County deed records. For the purpose of this Claim, the acquisition date for both Claimants is June 6, 1961.

B. LAND USE REGULATION(s) IN EFFECT AT THE TIME OF ACQUISITION

The County did not have a Zoning Ordinance which applied to the subject property until August 1, 1984. The property was not subject to County zoning regulations when it was acquired by Claimants in 1961.

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

The Claimants cite Section 506.1 of the current Columbia County Zoning Ordinance as regulations that have reduced the fair market value of the property because the Claimants are "not...able to develop and build on [the] property." This specific claim is to divide PF-76 zoned property into lots/parcels less than the 76 acre minimum. As such, the most applicable County Regulation is Section 506.1 of the County's current Zoning Ordinance, effective August 1, 1984, which restricts the minimum lot or parcel size to 76 acres in the PF-76 zone.

The Claimants have also submitted a Measure 37 claim to the state regarding state laws which place restrictions on the intended use of the property.

Based on the claim, it appears that the County regulation that clearly prevents the Claimants from developing the property as desired is:

CCZO 506.1 Establishing the 76-acre minimum lot/parcel size in the PF-76 zone

D. CLAIMANT'S ELIGIBILITY FOR FURTHER REVIEW

Claimants acquired an interest in the property before the minimum lot/parcel size standards of the PF-76 zone became effective. Therefore, the Claimants may be eligible for compensation and/or waiver of CCZO 506.1 under Measure 37.

E. STATEMENT AS TO HOW THE REGULATIONS RESTRICT USE

The Claimants state that Section 506.1 of the current Columbia County Zoning regulations prevent the property from being divided and developed due to the 76-acre minimum lot size of the PF-76 zone. Staff concedes that CCZO 506.1 can be read and applied to "restrict" the use of Claimants' property within the

meaning of Measure 37.

F. EVIDENCE OF REDUCED FAIR MARKET VALUE

1. **Value of property as regulated:** Based on County Assessor data the property's real market value for the land itself is \$122,900.
2. **Value of property not subject to cited regulations:** Claimants submitted real estate listings for comparable 5-acre properties in the area. The average sale price for these properties was \$128,414. This information suggests that the value of the property if it could be divided into four 5-acre residential parcels would be \$513,656.
3. **Loss of value as indicated in the submitted documents:** The claim alleges a total reduction in value of \$1,000,000.

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(s). Staff finds that the information provided suggests that the reduction in value is approximately \$390,756. Staff arrived at this figure by subtracting the land value according to the County Assessor (\$122,900) from the estimated value of the property if it were not subject to the applicable zoning regulations (\$513,656). 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.

Staff notes that 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.

G. COMPENSATION DEMANDED

As noted on page 1 of the Measure 37 Claim Form: \$1,000,000. However, as noted in Section II(F)(3) above, Staff estimates that the reduction in value is approximately \$390,756.

(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 506.1 does not qualify for any exclusions listed.

Staff notes that other standards including but not limited to fire suppression/protection, access, adequacy of domestic water, subsurface sewage, erosion control and stormwater requirements 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 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(s) or in lieu of compensation, modify, remove, or not apply CCZO Section(s) 506.1.

(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/parcel size of the PF-76 zone which was 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 Claimants have demonstrated a reduction in fair market value of the property due to the cited regulation(s), the Board may pay compensation in the amount of the reduction in fair market value caused by said regulation(s) or in lieu of compensation, modify, remove, or not apply said regulations.

III. STAFF RECOMMENDATION:

The following table summarizes Staff findings concerning the land use regulation(s) cited by the Claimants 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 regulations identified in this table have been found to apply to this Measure 37 claim.

LAND USE CRITERION	DESCRIPTION	RESTRICTS USE?	REDUCES VALUE?	EXEMPT?
CCZO 506.1	minimum 76 acre lot/parcel size	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(s) 506.1.



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Charles Anderson
64365 Columbia River Hwy
Deer Island, OR 97054

December 6, 2006
Buyer/Borrower: Anderson
Re: MEASURE 37 REPORT

Report No: 07-57963
Property: 64365 Columbia River Hwy.
Deer Island, OR 97054

SERVICE FOR:
Chain of Title Report: \$200.00

A.

The North Half of the Northwest Quarter of the Northwest Quarter of Section 36, Township 6 North, Range 2 West, Willamette Meridian, Columbia County, Oregon.

B.

Ticor Title certifies that a search of the public records of Columbia County, Oregon discloses the following deeds, contracts, leases and/or memoranda thereof, described the Subject Property, recorded during the period from June 20, 1961 and ending with December 1, 2006.

C.

1. Warranty Deed, including the terms and provisions thereof,
Grantor: L.J. Waite
Grantee: Charles Randolph Anderson and Mildred Anderson and
Charles Reece Anderson
Recorded: February 16, 1959
Book: 138 Page: 749
Records of Columbia County, Oregon.