

WHEREAS, in 1992, the Claimants could have divided the property into 2 acre minimum lot size parcels, subject to the 1984 zoning ordinance go-below requirements;

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 07-95, dated April 3, 2007, which is attached hereto as Attachment 1, and is incorporated herein by this reference.
2. The County approves CL 07-95. In lieu of compensation, the County waives CCZO Sections 604.1 to the extent necessary to allow the Claimants to partition the property into 3 two acre minimum lot size parcels, subject to the 1984 zoning ordinance go-below requirements.
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: Smack Hanson
Assistant County Counsel

COLUMBIA COUNTY LAND DEVELOPMENT SERVICES

Measure 37 Claim

Staff Report

DATE: April 3, 2007

FILE NUMBER: CL 07-95

CLAIMANTS: Alvin & Audrey Sinner; 34206 Sykes Rd.; St. Helens, OR 97051

PROPERTY LOCATION: same

TAX ACCOUNT NUMBER: 4106-030-02900

ZONING: Rural Residential-5 (RR-5)

SIZE: 6.94 acres

REQUEST: To divide the property into three 2-acre parcels for residential development.

CLAIM RECEIVED: December 1, 2006

REVISED 180 DAY DEADLINE: May 30, 2007

RECEIPT OF CLAIM NOTICE: Claim notices were mailed on March 21, 2007. The comment period ended on April 2, 2007.

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

I. BACKGROUND:

The subject property includes 6.94 acres developed with a single-family dwelling and accessory buildings. Access is provided by Sykes Road. Claimants acquired the property in March of 1992.

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 the claim is neither of these, this could impact any subsequent development under this claim.

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:** Based on the information provided, a Sort Report from Ticor Title dated November 30, 2006, it appears that the subject property is owned by the Claimants as tenants by the entirety.
2. **Date of Acquisition:** Claimants acquired the property in March of 1992. The Claimants provided a copy of a warranty deed executed on March 11, 1992. The deed was recorded on March 13, 1992 in Book 92, Page 1609 of the Columbia County deed records.

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

The property was zoned RR-5 in 1984. The property was subject to the RR-5 zoning regulations when it was acquired by the Claimants in 1992. At the time 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 pursuant to the "go below" provision.

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

The Claimants cite Section 604.1 of the current Columbia County Zoning Ordinance (CCZO) as restricting the use of their property. In 1999, the county amended the provisions of the RR-5 zone and eliminated the "go below" provision to prohibit the creation of new lots or parcels smaller than five acres in size. The Claimants assert that the rural residential zoning designation reduced the fair market value of the property by eliminating the ability to divide their parcel into smaller than five acre parcels.

The Claimants also cite Administrative Rule 4-1998 of the Oregon Land Conservation and Development Department as a regulation restricting their intended development. This state agency regulation is not applicable to the claim at hand.

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

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

D. CLAIMANTS' ELIGIBILITY FOR FURTHER REVIEW

Claimants acquired an interest in the property before the 1999 amendment to the RR-5 zone, eliminating the 2 acre go-below, became effective. Therefore the Claimants may be eligible for compensation and/or waiver of the cited regulations under Measure 37.

E. STATEMENT AS TO HOW THE REGULATIONS RESTRICT USE

The Claimants state that they cannot divide the property as proposed due to the County's 5-acre minimum parcel size standard. Because the 2 acre go below was eliminated in 1999, the property is no longer subject to division into 2 acre parcels. Staff concedes that CCZO 604.1, as amended in 1999, 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 \$196,400.

Value of property not subject to cited regulations: Claimant submitted real-estate listings for two other properties for sale in St. Helens but did not provide a specific value if the subject property could be redeveloped to a 2-acre density. One listing was for a 1.43-acre property offered at \$189,900. The

other listing was for a 4.42-acre property offered at \$179,900. Based on the information submitted, Staff is not able to determine the value of the property if it were not subject to the cited regulations.

3. **Loss of value as indicated in the submitted documents:** The claim alleges a total reduction in value of \$375,000.

While 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 regulations, 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.

G. COMPENSATION DEMANDED

As noted on page 1 of Claimants' Measure 37 Claim form: \$375,000.

(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.

CCZO Section 604.1, as amended in 1999, does not qualify for any of the exclusions listed.

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 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 or in lieu of compensation, modify, remove, or not apply CCZO Section 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 provisions of the RR-5 zoning regulations which were enacted prior to the effective date of Measure 37 on December 2, 2004. The subject claim was filed on December 1, 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 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 Section 604.1.

III. STAFF RECOMMENDATION:

Based on the above findings, Staff concludes that the Claimants have met the threshold requirements for proving a Measure 37 claim.

The following table summarizes Staff findings concerning the land use regulations cited by the Claimants as a basis for their 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 meet these requirements of a valid Measure 37 claim:

LAND USE CRITERION	DESCRIPTION	RESTRICTS USE?	REDUCES VALUE?	EXEMPT?
CCZO 604.1 As amended in 1999	Establishing the five acre minimum parcel size standard in the RR-5 zone, Eliminating the 2 acre go-below	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 604.1 to allow the Claimants to divide the property into three 2-acre minimum lot size parcels for residential development subject to the 1984 Zoning Ordinance.

ATTACHMENT 2

LEGAL DESCRIPTION

Beginning at a point on the East line of the Southwest quarter of the Southwest quarter, Section 6, Township 4 North, Range 1 West, Willamette Meridian, Columbia County, Oregon, that is on the Southerly right of way line of Sykes Road No. P-214; thence South along the East line of said Southwest quarter of the Southwest quarter 610 feet to the most Easterly Northeast corner of the William Ostrander Tract as described in instrument Recorded in June 14, 1978 in Book 218, page 497, Deed Records of Columbia County, Oregon; thence West, parallel with the North line of said Southwest quarter of the Southwest quarter and along the most Southerly North line of said Ostrander tract, 500 feet to an angle corner in said Ostrander Tract; thence North parallel to and 500 feet from the East line of said Southwest quarter of Southwest quarter and along the most Northerly East line of said Ostrander Tract, to said Southerly right of way line of said Sykes Road No. P-214; thence East along said Southerly right of way line of said Sykes Road No. P-214, a distance of 500 feet, more or less, to the point of beginning.