

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 Nos. CL 07-116 and)
CL 07-117 Submitted by David Wilson Jr. for) Order No. 73-2007
Compensation Under Measure 37)

WHEREAS, on December 1, 2006, Columbia County received two claims for compensation under Measure 37 and Order No. 34-2007 from David A. Wilson Jr. (the "Claimant"), related to two parcels of property located on Lindsay Lane in Warren, Oregon, having tax account numbers 4212-000-01900 and 4212-000-01917 (the "property"); and

WHEREAS, according to the information presented with the Claims, the Claimant acquired an interest in the property in August, 1966; 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 \$705,000; and

WHEREAS, the Claimant desires to subdivide the property into two 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 Claimant acquired the property; and

WHEREAS, in 1966, the Claimant could have divided the property into two 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 Numbers CL 07-116 and CL 07-117, dated April 3, 2007, which is attached hereto as Attachment 1, and is incorporated herein by this reference.
2. The County approves CL 07-116 and CL 07-117. In lieu of compensation, the County waives CCZO Sections 604.1 to the extent necessary to allow the Claimant to subdivide the property into 2 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 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, David A. Wilson, Jr., 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 his 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 07-116 & 07-117

CLAIMANT: David A. Wilson, Jr.; 58435 Lindsay Lane; Warren, OR 97053

PROPERTY LOCATION: same

TAX ACCOUNT NUMBER: CL 07-116: 4212-000-01900
CL 07-117: 4212-000-01917

ZONING: Rural residential (RR-5)

SIZE: Tax Lot 1900: Approximately 19.29 acres
Tax Lot 1917: Approximately 5.0 acres

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

CLAIM RECEIVED: December 1, 2006

REVISED 180 DAY DEADLINE: May 29, 2007

RECEIPT OF CLAIM NOTICE: Claim notices were mailed on March 21, 2007. Comments were due April 3, 2007.

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

I. BACKGROUND:

The Claimant, David Wilson, Jr., has submitted two claims under Measure 37 for two contiguous parcels, hereinafter referred to as Tax Lot 1900 and Tax Lot 1917. Tax Lot 1900 is developed with a single-family dwelling and associated improvements. Tax Lot 1917 is undeveloped. Access to the entire property is provided by Lindsay Lane. It appears that the Claimant acquired both parcels in August of 1966. At that time, the property was approximately 86.74 acres. Since then, the Claimant has sold parcels to third parties, and the tax lot lines have changed, reducing the portion owned by the Claimant to 24.29 acres. In 2000, the Claimant partitioned the larger parcels into smaller resulting lots, including Tax Lots 1900 and 1917, as shown on Partition Plat No. 2000-38.

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 properties are owned by the Claimant.
2. **Date of Acquisition:** The property was acquired by in the Claimant and his former wife in August of 1966. The Claimant provided a copy of a warranty deed executed on August 30, 1966. The Claimant subsequently divorced his wife and obtained sole ownership of the property. A title report issued on April 26, 2006 shows the Claimant as the sole owner of the subject property in fee simple.

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

When the Claimant purchased the property in 1966, it was not subject to any zoning requirements. The County did not have a Zoning Ordinance which applied to the subject property until August 29, 1973, when the South County Zoning Ordinance went into effect. At that time, the property was zoned Rural Residential (RR), which established a 2-acre minimum lot size for residential development. The current Zoning Ordinance became effective on August 1, 1984, at which time the subject property was designated Rural Residential (RR-5).

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

The Claimant alleges that County Zoning Ordinance 604.1, which "increased the minimum lot size for a single family dwelling to 5 acres," has restricted his use of the property. Section 604.1 restricts the minimum lot or parcel size to five acres in the Rural Residential (RR-5) zone.

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

CCZO 604.1 Establishing the 5-acre minimum lot/parcel size in the RR-5 zone

D. CLAIMANT'S ELIGIBILITY FOR FURTHER REVIEW

The Claimant acquired an interest in the property before the minimum lot/parcel size standards of the Rural Residential (RR-5) zone became effective. Therefore, the Claimant may be eligible for compensation and/or waiver of CCZO Section 604.1 under Measure 37.

E. STATEMENT AS TO HOW THE REGULATIONS RESTRICT USE

The Claimant states that the property cannot be divided and developed into 2-acre parcels due to the 5-acre minimum lot size of the RR-5 zone. Staff finds that CCZO Section 604.1 can be read and applied to "restrict" the use of Claimant's 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 \$234,900 for Lot 1900 and \$124,200 for Lot 1917.
2. **Value of property not subject to cited regulations:** The Claimant submitted real estate listings for comparable properties in the area. The claim forms state that the Claimant provided four listings for 2-acre properties and two listings for 5-acre properties; however, only five listings for 2-acre properties were submitted with the Claims. Staff has estimated the value of the property based on the information submitted. The comparable properties had an average sale price of \$161,700. This indicates a total value of \$1,940,400 if the entire property were to be divided into twelve 2-acre residential lots.
3. **Loss of value as indicated in the submitted documents:** The Claims allege a total reduction in value of \$705,000 (\$565,000 for Lot 1900 and \$140,000 for Lot 1917). As discussed above, this figure is not based on the documentation provided by the Claimant. Staff estimates that the total reduction in value is \$1,581,300.

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(s). 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

As noted on page 1 of the Measure 37 Claim Forms: \$565,000 (Lot 1900) and \$140,000 (Lot 1917) for a total of 705,000.

(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 604.1 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 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(s) 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 Claims arise from the minimum lot/parcel size of the Rural Residential (RR-5) zone, which was enacted prior to the effective date of Measure 37 on December 2, 2004. The subject Claims were 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(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 Claimant as a basis for the Claims. 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 604.1	Minimum 5-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 Claimant's property, and act accordingly to pay just compensation in that amount, or, in the alternative, to not apply CCZO Section 604.1 to allow division of the property into 2-acre parcels.



2534 Sykes Rd., Suite C
PO Box 1271
St. Helens OR 970518271
(503) 397-3537
(800) 243-2304
(503) 397-0104

May 1, 2006

Doug Wilson
315 Riverside Drive
St. Helens, OR 97051

Buyer/Borrower: Wilson, Jr.

Re: MEASURE 37

Report No: 07-55176

SERVICE FOR:
Sort Report: \$200.00

We have searched our Tract Indices as to the following described real property:

Parcels 1 and 2 of Partition Plat No. 2000-38, recorded December 22, 2000, Fee No. 00-12320, in Columbia County, Oregon.

Real Property Tax Account No.: 02-11-2-4212-000-01900, 02-11-2-4212-000-01917

Situs Address as disclosed by Columbia County Tax Roll:

54385 Lindsay Lane, Warren, OR 97053

Dated as of April 26, 2006 at 8:00 a.m.

VESTED IN:

VESTING

Subject to the following on record matters:

1. The assessment roll and tax roll discloses that the premises herein described were specially assessed as Forest Land. If the land becomes disqualified for the special assessment under the statute, an additional tax may be levied for previous years in which the land was subject to the special land use assessment.