

**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. 07-45 Submitted by            )  
Cedric and Barbara Olsen for Compensation Under        )        Order No. 77-2007  
Measure 37    )

WHEREAS, on November 27, 2006, Columbia County received a claim for compensation under Measure 37 and Order No. 84-2004 from Cedric and Barbara Olsen, (the "Claimants"), related to a parcel of property located on Evergreen Lane in Warren, Oregon, having tax account numbers 4118-030-01000 and 4118-030-01100; and

WHEREAS, according to the information presented with the Claim, the Claimants acquired an interest in the property in 1963; and

WHEREAS, the County zoned the subject property as Forest Agriculture (FA-19) in 1984, after the acquisition by the Claimants; and

WHEREAS, pursuant to Columbia County Zoning Ordinance (CCZO), Section 407.1, the minimum lot or parcel size for new land divisions in the FA-19 Zone is 19 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 \$110,000; and

WHEREAS, the Claimants desire to subdivide the property into two parcels of 1.72 acres and 3.29 acres respectively; 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 1963, the Claimants could have divided the property into 2 parcels of 1.72 and 3.29 acres;

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 07-45, dated April 9, 2007, which is attached hereto as Attachment 1, and is incorporated herein by this reference.
2. The County approves CL 07-45. In lieu of compensation, the County waives CCZO Sections 407.1 to the extent necessary to allow the Claimants to partition the property into 2 parcels of 1.72 and 3.29 acres.
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.

///  
///  
///  
///  
///  
///  
///  
///  
///  
///

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 18<sup>th</sup> 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: Anthony Hyde  
Anthony Hyde, Commissioner

By: Joe Corsiglia  
Joe Corsiglia, Commissioner

# COLUMBIA COUNTY LAND DEVELOPMENT SERVICES

## Measure 37 Claim

### Staff Report

**DATE:** April 9, 2007

**FILE NUMBERS:** CL 07-45

**CLAIMANTS/OWNERS:** Cedric L. Olsen and Barbara A. Olsen  
57026 Evergreen Lane  
Warren, OR 97053

### SUBJECT PROPERTY

**PROPERTY LOCATION:** 57026 Evergreen Lane, Warren, Oregon

**TAX ACCOUNT NUMBERS:** 4118-030-01000 and 01100

**ZONING:** Forest Agriculture (FA-19)

**SIZE:** 5.01 Acres

**REQUEST:** Division into two parcels for use as separate home sites

**CLAIM RECEIVED:** November 27, 2006

**180 DAY DEADLINE:** May 26, 2007

**NOTICE SENT:** March 7, 2007  
One comment was received from neighbors Ray and Barbara Day, and was in support of the M37 claim. No request for hearing was received.

#### I. BACKGROUND:

The subject property is 5.01 acres and (tax lot # 01100) is improved with a dwelling. Claimants seek to divide the property into two parcels of 1.72 and 3.29 acres. Claimants acquired the property in 1963.

#### 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:** Claimants submitted a Measure 37 Report, with legal description attached, for the subject property. The report, created on February 22, 2007 by Ticor Title, reflects that Cedric L. Olsen and Barbara A. Olsen are owners as tenants by the entirety.
2. **Date of Acquisition:** Cedric L. Olsen and Barbara A. Olsen acquired the subject property on September 25, 1963. (Deed recorded in the Columbia County Records of Deeds at Book 153, page 905).

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

The property was not zoned at the time of Claimants' acquisition.

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

Claimants allege that the 1984 Columbia County zoning Ordinance and 1984 Columbia County Comprehensive Plan and subsequent amendments to them have reduced the fair market value of the subject property. Claimants have not identified specifically which specific regulations reduce the fair market value of their property.

Columbia County Comprehensive Plan

The Columbia County Comprehensive Plan is implemented through the Columbia County Zoning Ordinance and is not in and of itself applicable in a conditional use, subdivision or partition process other than the minimum lot size for the zone established on the Comprehensive Plan Map. However, if the County waives the minimum lot size for the Zone, the Comprehensive Plan Map has no effect on development. Therefore, the Comprehensive Plan does not restrict or prohibit the use of the property or reduce the value the property.

Columbia County Zoning Ordinance

Staff has identified CCZO Forest Agriculture Zoning regulation Section 407.1 (minimum lot size) as the regulation which prevents Claimants from dividing the property as intended.

D. CLAIMANT'S ELIGIBILITY FOR FURTHER REVIEW

Claimant acquired an interest in the property identified above before the adoption of the current county zoning ordinances and therefore the Claimant may be eligible for compensation and/or waiver of the cited regulations under Measure 37.

E. STATEMENT AS TO HOW THE REGULATIONS RESTRICT USE

Claimants state that the current zoning ordinances prevents them from dividing and building on the subject property.

F. EVIDENCE OF REDUCED FAIR MARKET VALUE

1. Value of the Property As Regulated.

The assessed real market value of the subject land is \$179,900 (\$53,200 for tax lot 0100, and \$126,700 for tax lot 0110).

2. Value of Property Not Subject To Cited Regulations.

Claimants submitted a statement of value from George Hafeman Jr. Of Windermere/St. Helens Real Estate, Inc., providing that as of 7/14/06, (presumably if partitioned) the 1.72 acre parcel, with home, is valued at \$340,000 to \$375,000, and the 3.29 acre parcel is valued at between \$175,000 to \$200,000.

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

The written documentation in support of the claim alleges the value of the property if it is divided. 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 divided into two parcels than as a resource parcel developed with a single dwelling.

G. COMPENSATION DEMANDED

The claim is in the amount of \$110,000, per page one of the Measure 37 claim.

(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 cited regulations are not regulations restricting public nuisances, protecting public health and safety, required by federal law, or related to the restriction of pornography. The FA-19 regulations were applied to the subject property after the owner acquired it. They are 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 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 407.1 to the extent necessary to allow a use of the property that was allowed in 1963.

**(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**

his 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 FA-19 zone which were enacted prior to the effective date of Measure 37 on December 2, 2004. The subject claim was filed on November 27, 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 regulations, the Board may pay compensation in the amount of the reduction in fair market value caused by said regulation.

**III. STAFF RECOMMENDATION:**

Based on the above findings, staff concludes that the claimants have met the threshold requirements for proving a Measure 37 waiver claim.

The following table summarizes staff findings concerning the land use regulations 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 meet these requirements of a valid Measure 37 claim.

LAND USE CRITERION	DESCRIPTION	RESTRICTS USE?	REDUCES VALUE?	EXEMPT?
Comprehensive Plan	Contains land use policies which are implemented by Zoning Regulations,	No, implemented by Zoning Regulations		No
CCZO 407.1	Establishing a minimum lot size of 19 acres.	Yes	Yes	No

Based on the foregoing, Staff recommends that the Board waive CCZO Section 407.1.

Beginning at the angle corner of the J.G. Martin Donation Land Claim on the South line of Section 18, Township 4 North, Range 1 West of the Willamette Meridian, Columbia County, Oregon, said angle corner being 1445 feet East of the Southwest corner of said Section; thence East 700 feet; thence North  $29^{\circ}14'$  East 298.6 feet to the Southwesterly line of tract conveyed to Mabelle A. Rutherford by deed recorded May 17, 1943 in Book 72, page 225; thence North  $62^{\circ}$  West along the Southwesterly line of said Rutherford tract and the Southwesterly of tract conveyed to Alvin A. Larson, et al by deed recorded July 29, 1940 in Book 66, page 364, 969.3 feet to the Northeast corner of tract conveyed to Stella Hughes by deed recorded April 30, 1945 in Book 77, page 92; thence South  $5^{\circ}22'$  West along the East line of said Hughes tract 740.22 feet to the point of beginning. EXCEPTING THEREFROM that portion conveyed to Lorne Everett Hampton et ux, by deed recorded April 17, 1969 in Book 172, page 937, Deed Records of Columbia County, Oregon.

Also a non-exclusive easement for roadway purposes described as follows:

Beginning at the most Southerly Southwest corner of the J.G. Martin Donation Land Claim in Section 19, Township 4 North, Range 1 West of Willamette Meridian, Columbia County, Oregon; thence North 1325.5 feet to the angle corner of said Donation Land Claim on the South line of Section 18, said Township and Range; thence East 30 feet; thence South parallel to the West line of said Donation Land 1325.5 feet to the South line of said Donation Land Claim; thence West along South line of said Donation Land Claim; thence West along South line of said Donation Land Claim 30 feet to the point of beginning.