

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. 07-122 Submitted
Charles and M. Jil Wardle for Compensation
Measure 37

Order No. 80-2007

WHEREAS, on December 4, 2006, Columbia County received a claim for compensation under Measure 37 and Order No. 80-2007 from Charles and M. Jil Wardle, (the "Claimants"), related to a parcel of property located on Hirtzel Road in Rainier, Oregon, having tax account number 7230-000-00100; and

WHEREAS, according to the information presented with the Claim, the Claimants acquired an interest in the property in 1994; and

WHEREAS the County zoned the subject property as Rural Residential (RR-5) in 1984, prior to the acquisition by the Claimants; and

WHEREAS in 1998 the County amended the RR-5 zoning regulations to eliminate the 2 acre go-below provisions; 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, 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 \$700,000; and

WHEREAS, the Claimants desire to subdivide the property into 2 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

Order No. 80-2007

WHEREAS, in 1994, the Claimants could have divided the property into 2 acre minimum lot size parcels in accordance with the Rural Residential 2 acre go-below provisions of the 1984 Zoning Ordinance;

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 07-122, dated April 9, 2007, which is attached hereto as Attachment 1, and is incorporated herein by this reference.
2. The County approves CL 07-122. In lieu of compensation, the County waives CCZO Sections 604.1 to the extent necessary to allow the Claimants to subdivide the property into 2 acre minimum lot size parcels, in accordance with the RR-5 provisions of the 1984 Zoning Ordinance.
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: Smah Hanson
Assistant County Counsel

By: Todd Dugdale
Todd Dugdale, Director
Land Development Services

Measure 37 Claim**Staff Report**

DATE: April 9, 2007

FILE NUMBER: CL 07-122

CLAIMANTS: Charles & M. Jil Wardle; 74410 DeBast Rd.; Rainier, OR 97048

PROPERTY LOCATION: 72888 Hirtzel Rd.; Rainier, OR 97048

TAX ACCOUNT NUMBER: 7230-000-00100

ZONING: Rural Residential-5 (RR-5)

SIZE: 14.61 acres

REQUEST: To divide the parcel into two-acre parcels for residential development.

CLAIM RECEIVED: December 4, 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 3, 2007.

On April 3, 2007 a written comment was received concerning this Claim. Edward and Mary Scott, neighboring property owners, stated that they object to the proposed development because of problems with run-off from the Wardle property saturating their downhill property, and concerns regarding the capacity of the existing septic fields and County roads to handle the proposed development. No request for hearing has been received as of the date of this Staff Report.

I. BACKGROUND:

The subject property is 14.61 acres developed with a single-family dwelling. It appears that Claimants originally acquired the property in February of 1977, but they obtained their current interest in June of 1994.

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 Chain of Title Report by Ticor Title dated December 8, 2006, it appears that the subject property is owned by the Claimants.
2. **Date of Acquisition:** Claimants first acquired the property in February of 1977. The Claimants provided a copy of a warranty deed executed on February 15, 1977. However, in 1989 Columbia County brought suit for unpaid property taxes, and obtained a deed to the property on October 4, 1991, after the redemption period had expired. The Claimants did not redeem the property within the redemption period. The Claimants re-acquired the property from the County by a quitclaim deed executed on June 29, 1994, recorded on July 13, 1994 in Book 94, Page 6717 of the Columbia County deed records. For the purpose of this Claim, the date of acquisition is June 29, 1994.

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 1994. 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.

The subject property does not have access to community, *i.e.*, Rainier, water. However, it is possible that the Claimants could obtain access to Rainier water by annexation and subsequently develop their property pursuant to the "go below" provision in effect in 1994.

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

The Claimants state that Section 604.1 of the County Zoning Ordinance, which became effective on August 1, 1984, has reduced the fair market value of the property by eliminating their ability to divide their parcel into smaller than 5-acre parcels. Section 601.4 restricts the minimum lot or parcel size to five acres in the Rural Residential (RR-5) zone. 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. Staff notes that the current rural residential zoning designation reduced the fair market value of the property by eliminating the ability to divide the Claimants' parcel into smaller than 5-acre parcels.

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

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 current provisions of the RR-5 zone 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. Staff concedes that CCZO 604.1 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

Value of property as regulated: Based on County Assessor data the property's real market value for the land itself is \$109,800.

2. **Value of property not subject to cited regulations:** Claimants submitted a Comparative Market Analysis for 2-acre parcels. Based on the comparable properties, the Analysis concluded that the suggested list price should be \$140,000 for each 2-acre parcel. Based on that information, the suggested list price for the entire property if it were divided into seven 2-acre parcels would be \$980,000. Staff notes that list price is usually slightly higher than sale price.

Claimants also submitted Comparative Market Analysis for 5-acre parcels. Since the property is currently zoned RR-5 and the Claimants are requesting to divide and develop their property to a 2-acre density, this Analysis is not relevant to determining the value of the property if it were not subject to the RR-5 zoning requirements.

3. **Loss of value as indicated in the submitted documents:** The claim alleges a total reduction in value of \$700,000.

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 divided and developed with single family residences as proposed.

G. COMPENSATION DEMANDED

As noted on page 1 of Claimants' Measure 37 Claim form: \$700,000.

(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 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 4, which is within two years of the effective date of Measure 37. (As December 2, 2006 fell on a weekend, the County extended the filing deadline until the following Monday, December 4, 2006.)

(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	Establishing the five acre minimum parcel size standard in the RR-5 zone	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 parcels not smaller than two acres for residential development in accordance with regulations in effect in 1994.

LEGAL DESCRIPTION

All that part of the East half of the Northeast quarter of the Northeast quarter of Section 30, Township 7 North, Range 2 West of the Willamette Meridian, Columbia County, Oregon, lying Southerly and Easterly of the Southeasterly right of way line of the County Road. EXCEPTING THEREFROM that portion lying within the Garland Hagey et ux tract as described in deed recorded October 31, 1947 in Book 96, page 475, Deed Records of Columbia County, Oregon.