

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. 07-121 Submitted by)
Jesse and Shirley Hudson for Compensation Under) Order No. 82-2007
Measure 37)

WHEREAS, on December 4, 2006, Columbia County received a claim for compensation under Measure 37 and Order No. 34-2007 from Jesse E. Hudson and Shirley M. Hudson, (the "Claimants"), related to a parcel of property located on Kappler Road in St. Helens, Oregon, having tax account number 4202-000-01801; and

WHEREAS, according to the information presented with the Claim, Jesse Hudson acquired an interest in the property in 1984, and Shirley Hudson acquired an interest in the property in 1998; and

WHEREAS, the County zoned the subject property as Rural Residential (RR-2) in 1983, prior to the acquisition by the Claimants; and

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

WHEREAS, in 1999, after the acquisition by Shirley Hudson, 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, 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 \$332,800; and

WHEREAS, the Claimants desire to partition 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

WHEREAS, in 1984, Jesse Hudson could have divided the property into 2 acre minimum lot size parcels; and

WHEREAS, in 1998, Shirley Hudson 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 07-121, dated April 3, 2007, which is attached hereto as Attachment 1, and is incorporated herein by this reference.
2. The County approves CL 07-121. In lieu of compensation, the County waives CCZO Section 604.1 to the extent necessary to allow Jesse Hudson to partition the property into 2 acre minimum lot size parcels. The County further waives CCZO Section 604.1 to allow Shirley Hudson to partition 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.

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

Measure 37 Claim**Staff Report**

DATE: April 3, 2007

FILE NUMBERS: CL 07-121

CLAIMANT: Jesse E. And Shirley M. Hudson
59671 W. Kappler Rd.
St. Helens, OR 97051

SUBJECT PROPERTY

PROPERTY LOCATION: 59671 W. Kappler Rd., St. Helens OR

TAX ACCOUNT NUMBER: 4202-000-01801

ZONING: Rural Residential-5 (RR-5)

SIZE: 7.19 acres

REQUEST: Claimants seek to divide the property into two and three acre lots

CLAIM RECEIVED: December 4, 2006

80 DAY DEADLINE: May 30, 2007

NOTICE OF CLAIM: Mailed March 20, 2007
No request for hearing or comments were received by the deadline.

I. BACKGROUND:

The subject unimproved property consists of 7.19 acres. Claimant, Jesse Hudson, acquired the property from Edythe E. Sauls, formerly Edythe E. Hudson, in 1984. Claimant, Judith Hudson, acquired an undivided one half interest from Jesse Hudson in 1998.

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:** According to a Measure 37 Application Report prepared by Columbia county Title & Escrow Services, Inc. ("Measure 37 Report"), as of November 27, 2006, the property was owned by Jesse E. Hudson and Shirley Marilyn Hudson as tenants by the entirety.
2. **Date of Acquisition:** According to information contained in the Measure 37 Report, Claimant, Jesse Hudson, acquired the property from Edythe E. Sauls, formerly Edythe E. Hudson, on July 27, 1984. (Deed recorded in the Columbia County Records of Deeds at Book 261, page 130). On June 12, 1998, Jesse E. Hudson conveyed the property to himself and Shirley Marilyn Hudson, as husband and wife (Deed recorded in the Columbia County Records of Deeds as Instrument No. 98-8438). Therefore, Jesse Hudson's acquisition dated is July 27, 1984, and Shirley Hudson's acquisition dated is June 12, 1998.

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

On the date in 1984 that Claimant, Jesse Hudson, acquired the property the property was zoned RR-2 under the 1983 Zoning Ordinance which prescribed a 2 acre minimum lot size. By the time Shirley Hudson also became an owner in 1998, the property was zoned RR-5 with a minimum lot size of 5 acres and allowing two acre lots under certain circumstances. This 2 acre "go below" provision was removed from the RR-5 minimum lot size provisions (Section 604.1) in 1999.

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

Claimants allege that the fair market value of their property was reduced by the enactment of Section 600 (Rural Residential) section of the Columbia County Zoning Ordinance (CCZO), and specifically, section 604.

Based on the Claim, it appears that the county standards 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. CLAIMANT'S ELIGIBILITY FOR FURTHER REVIEW

Claimant, Jesse Hudson, may be eligible for compensation and/or waiver of the CCZO 604.1 under Measure 37. Claimant, Shirley Hudson, acquired her interest after the subject property was zoned RR-5. However, Shirley acquired an interest in the property in 1999, before the ability to go below the minimum 5 acre lot size was eliminated, and may be eligible for compensation and/or waiver of Ordinance 98-4 (effective 2/99), which eliminated the ability to "go below" the 5 acre lot size in the RR-5 zone.

E. STATEMENT AS TO HOW THE REGULATIONS RESTRICT USE

The Claimants state that CCZO 604 restricts the use of their property because they cannot divide their property. 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

1. Value of the Property As Regulated.

The assessed real market value of the subject property is \$97,000.

2. Value of Property Not Subject To Cited Regulations.

Claimants submitted five comparison parcels of between 1.86 and 2.9 acres of unknown zoning. The parcels were listed (not sold) for between \$129,900 and \$154,900 each.

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

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. Staff concedes, however, that it is more likely than not that the property would have a higher value if it could be divided as proposed.

G. COMPENSATION DEMANDED

Claimants claim the following compensation, per page 1 of the Measure 37 claim form: \$332,800.

(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 regulation(s) are not regulation(s) restricting public nuisances, protecting public health and safety, required by federal law, or related to the restriction of pornography. The current version of CCZO 604.1 was applied to the subject property after the Claimants acquired it. It is 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 Sections 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 amendments for RR-5 zoned parcels that were enacted prior to the effective date of Measure 37 on December 2, 2004. The subject claim was filed on December 4, 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, the Board may pay compensation in the amount of the reduction in fair market value caused by said regulation, or waive Section 604.1 for Claimants to allow a use permitted at the time the Claimants acquired the property in 1984 and 1998, respectively.

I. STAFF RECOMMENDATION:

The following table summarizes staff findings concerning the land use regulation 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 apply to this Measure 37 claim:

LAND USE CRITERION	DESCRIPTION	RESTRICTS USE?	REDUCES VALUE?	EXEMPT?
CCZO 604.1	Minimum 5-acre parcel size standard	Yes	Yes	No

Staff recommends that the Board determine the amount of reduction in fair market value of the subject property, if any, due to CCZO 604.1 and pay compensation in that amount or, in the alternative, to waive CCZO 604.1 to allow Claimants to divide the property in accordance with the zoning in effect at the time the parcel was acquired.

ATTACHMENT 2

EXHIBIT A

LEGAL DESCRIPTION

BEGINNING at the point of intersection of the South line of Kappler County Road No. 158 and the East line of the Southeast quarter of the Northeast quarter of Section 2, Township 4 North, Range 2 West of the Willamette Meridian, Columbia County, Oregon;
 Thence South 89° 43' West, along the South line of said County Road, 185 feet to the Northwest corner of the Jesse E. Hudson tract as described in deed recorded June 8, 1965 in Book 158, Page 648, Deed Records of Columbia County, Oregon and the TRUE POINT OF BEGINNING OF THE FOLLOWING DESCRIBED TRACT;
 Thence South 89° 43' West, along the South line of said County Road 238 feet to a point;
 Thence South parallel with the East line of said Southeast quarter of the Northeast quarter, 807 feet, more or less, to the North line of the Bill F. O'Brien, et ux tract, as described in Deed recorded May 11, 1970 in Book 177, Page 133, Deed Records of Columbia County, Oregon;
 Thence East along the North line of said O'Brien, et ux tract 423 feet, more or less to the East line of said Southeast quarter of the Northeast quarter;
 Thence North, along the East line of said Southeast quarter of the Northeast quarter 687 feet, more or less, to the Southeast corner of said Hudson Tract;
 Thence South 89° 43' West, along the South line of said Hudson tract, 185 feet to the Southwest corner thereof;
 Thence North, along the West line of said Hudson tract, 120 feet to the TRUE POINT OF BEGINNING..

EXCEPTING THEREFROM, That portion lying within the County Road.

CHAIN OF CONVEYANCES

DOCUMENT	BOOK	PAGE	RECORDED	FEE#	GRANTOR	GRANTEE
WARRANTY DEED	158	648	6-8-1965		HUDSON, TANDIE C.---JESSE HUDSON EDYTHE E.	
BSD	98-03438		7-10-1998		JESSE HUDSON--- JESSE HUDSON SHIRLEY MARILY HUDSON	

← See 1984 Deed

this 1998 document Does not match the deed