

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. CL 07-51 Submitted by)
Donald and Louise Hill for Compensation Under) Order No. 85-2007
Measure 37)

WHEREAS, on November 28, 2006, Columbia County received a claim for compensation under Measure 37 and Order No. 34-2007 from Donald and Louise Hill, (the "Claimants"), related to a parcel of property located on Chappell Lane in Scappoose, Oregon, having tax account number 4324-000-02400; and

WHEREAS, according to the information presented with the Claim, the Claimants acquired an interest in the property in 1979; and

WHEREAS, the County zoned the subject property as Rural Residential (RR-5) in 1984, after the acquisition by the Claimants; 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 \$311,788; and

WHEREAS, the Claimants desire to partition the property into one 2.71 acre parcel and two 2 acre 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 1979, the Claimants could have divided the property into 2 acre 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 Number CL 07-51, dated April 11, 2007, which is attached hereto as Attachment 1, and is incorporated herein by this reference.
2. The County approves CL 07-51. In lieu of compensation, the County waives CCZO Sections 604.1 to the extent necessary to allow the Claimants to partition the property into three 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 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 19th 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 11, 2007

FILE NUMBER: CL 07-51

CLAIMANTS: Donald & Louise Hill; P.O. Box 546; Scappoose, OR 97056

PROPERTY LOCATION: 27721 Chappell Lane; Scappoose, OR 97056

TAX ACCOUNT NUMBER: 4324-000-02400

ZONING: Rural Residential-5 (RR-5)

SIZE: 6.71 acres

REQUEST: To divide the property for residential development. The Claimants state that they intend to create three separate parcels—one 2.71-acre* parcel with the existing dwelling, and two 2-acre parcels to be developed with houses.

*The claim form listed the proposed parcel sizes as 2.41 acres and two 2-acre parcels. Staff assumed this was a mathematical error, and that the Claimants intended to reserve 2.71 acres for their residence.

CLAIM RECEIVED: November 28, 2006

REVISED 180 DAY DEADLINE: May 27, 2007

RECEIPT OF CLAIM NOTICE: Claim notices were mailed on March 15, 2007. The comment period ended on March 29, 2007.

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

I. BACKGROUND:

The subject property includes 6.71 acres developed with a single-family dwelling. Most of the property is forested. Access is provided by Chappell Lane. Claimants acquired the property in May of 1979.

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 report from Ticor Title dated November 9, 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 May of 1979. The Claimants provided a copy of a warranty deed executed on May 7, 1979. The deed was recorded in Book 223, Page 773 of the Columbia County deed records.

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

When the Claimants acquired the property in 1979, it was unzoned. The property was then zoned Rural Residential (RR-5) in 1984, under the current Columbia County Zoning Ordinance.

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. 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.

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

CCZO 604.1 Establishing the 5-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

1. **Value of property as regulated:** Based on County Assessor data the property's real market value for the land itself is \$128,200.
2. **Value of property not subject to cited regulations:** Claimant submitted real-estate listings for eight comparable properties for sale, but did not provide a specific value if the subject property could be redeveloped to a 2-acre density. The average list price for the comparables was \$157,655. Staff notes

that list price can vary significantly from final sale price. Based on the information submitted, this would suggest a value of roughly \$528,000 for the entire property.

On the claim form, the Claimants appear to state that the property would be worth \$350,000 if it were not subject to the cited regulations, and that the present value is \$38,212. Staff notes that those figures do not appear to be supported by the information provided.

3. **Loss of value as indicated in the submitted documents:** The claim alleges a total reduction in value of \$311,788.

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: \$311,788.

(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 November 28, 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 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 5-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 partition the property, creating one approximately 2.71 acre parcel and two 2-acre minimum lot size parcels for residential development.

LEGAL DESCRIPTION

Part of Tract 104, Scappoose Acre Tracts in Section 24, Township 4 North, Range 3 West of the Willamette Meridian, Columbia County, Oregon, more particularly described as follows:

Beginning at a point on the East line of said Tract 104, which is South 0°04' West 550.9 feet from the Northeast corner of said Tract 104, said point being the Southeast corner of the S.P. Swanson tract as described in deed recorded April 8, 1913 in Book 18, page 494, Deed Records of Columbia County, Oregon; thence South 0°04' West, along the East line of said Tract 104, a distance of 760.6 feet to the Southeast corner of said Tract 104; thence South 86°56' West, along the South line of said Tract 104, a distance of 724.2 feet to the Southwest corner of said Tract 104; thence North 4°09' West, along the West line of said Tract 104, a distance of 754.3 feet to the Southwest corner of said Swanson tract; thence North 86°33' East, along the South line of said Swanson tract, a distance of 780.1 feet to the point of beginning. EXCEPTING THEREFROM the following described tract:

Beginning at a point on the East line of Tract 104, Scappoose Acre Tracts in Section 24, Township 4 North, Range 3 West of the Willamette Meridian, Columbia County, Oregon, which is South 0°04' West 550.9 feet from the Northeast corner of said Tract 104, said point being the Southeast corner of the S.P. Swanson tract as described in deed recorded April 8, 1913 in Book 18, page 494, Deed Records of Columbia County, Oregon; thence South 0°04' West, along the East line of said Tract 104, a distance of 780.6 feet to the Southeast corner of said Tract 104; thence South 86°56' West, along the South line of said Tract 104, to a point which is North 86°56' East 346.49 feet from the Southwest corner of said Tract 104 and the true point of beginning of the following described tract; thence South 86°56' West 346.49 feet to the Southwest corner of said Tract 104; thence North 4°09' West, along the West line of said Tract 104, a distance of 754.3 feet to the Southwest corner of said Swanson tract; thence North 86°33' East, along the South line of said Swanson tract, a distance of 346.49 feet to a point; thence South 4°09' West parallel with the West line of said Tract 104 to the true point of beginning. Together with the easement as described by instrument recorded August 2, 1977 in Book 213, page 87, Deed Records of Columbia County, Oregon.