

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

In the Matter of Claim Number CL 07-53)
for Compensation Under Measure 37 Submitted by) Order No. 87-2007
Priscilla Jauron)

WHEREAS, on November 30, 2006, Columbia County received a claim under Measure 37 from Priscilla Jauron, (the "Claimant") related to a parcel of property on Cater Road in St. Helens, Oregon, having Tax Account Number 4202-000-04000; and

WHEREAS, according to the information presented with the claim, Priscilla Jauron, Susan Jo Jauron, Tommy Souther, Sam Steven Jauron, Joanna Jauron, and George Gerald Jauron are the current owners of the parcel; and

WHEREAS, Priscilla Jauron acquired an interest in the property in 1988, from her husband; and

WHEREAS, the remaining owners acquired an interest in the property in 2002, from Priscilla Jauron; and

WHEREAS, CCZO 407.1 was enacted prior to the 1988 and 2002 acquisition dates of the current owners;

NOW, THEREFORE, it is hereby ordered as follows:

1. The Board of County Commissioners adopts the findings of fact set forth in the Staff Report for Claim Number CL 07-53 dated April 16, 2007, which is attached hereto as Attachment 1 and is incorporated herein by this reference.
2. The Board of County Commissioners finds that the Claimant is neither entitled to compensation under Measure 37, nor waiver of County regulations in lieu thereof.
3. The Board of County Commissioners denies Claim Number CL 07-53.

Dated this 25th day of April, 2007.

Approved as to form

By: Sarah Hanson
Assistant County Counsel

BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

By: Rita M. Bernhard
Rita Bernhard, Chair

By: Anthony Hyde
Anthony Hyde, Commissioner

By: Joe Corsiglia
Joe Corsiglia, Commissioner

Order No. 87-2007

COLUMBIA COUNTY LAND DEVELOPMENT SERVICES
MEASURE 37 CLAIM
STAFF REPORT

DATE: April 16, 2007

FILE NUMBER(s): CL 07-53

CLAIMANT: Priscilla Jauron; 120 Oakwood Drive; St. Helens, OR 97051

PROPERTY LOCATION: 32549 Cater Road; St. Helens, OR 97051

TAX ACCOUNT NUMBER: 4202-000-04000

ZONING: Forest Agriculture (FA-19)

SIZE: 58.64 acres

REQUEST: To divide the property into 5-acre parcels for residential development.

CLAIM RECEIVED: November 30, 2006

REVISED 180 DAY DEADLINE: May 29, 2007

RECEIPT OF CLAIM NOTICE: Claim notices were mailed on March 15, 2007. Comments were due on March 29, 2007.

On March 27, 2007, a written comment concerning the claim was received. Richard and Loretta Hopkins, neighboring property owners, stated the opinion that if the property cannot be divided as requested, the owner should be compensated for her loss.

No request for hearing has been received.

I. BACKGROUND:

The subject property contains a single-family dwelling and accessory structures. Access is provided by Cater Road, which runs through the eastern portion of the property, and Brooks Road, which runs along the northern boundary. The Claimant appears to have acquired the property in February of 1988, though the property has been owned by the Jauron family since 1925. The property was originally 66.90 acres, but 2.90 acres was conveyed for Brooks and Cater Roads, and 5.36 acres was carved out to create Tax Lot 4001, which was conveyed to Sam Stephen Jauron. A PGE power transmission line easement consisting of about four acres is located on the eastern portion of the property.

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 property is jointly owned by the Claimant and her children and their spouses. A title report issued by Columbia County Title & Escrow Services on October 30, 2006 shows as the record owners: "Priscilla A. Jauron, Susan Jo Jauron and Tommy G. Souther, Husband and Wife; Sam Steven Jauron and Joanna Jauron, Husband and Wife; and George Gerald Jauron not as tenants in common, but with right of survivorship."
2. **Date of Acquisition:** The property was originally acquired by Treffe and Raymond Jauron in 1925. The property passed through the Jauron family by a series of conveyances. The Claimant's deceased husband Ernest M. Jauron obtained an interest in the property by warranty deed on May 4, 1982 from his mother who acquired an interest in the property in 1934. Mr. Jauron obtained sole ownership of the property on January 28, 1987, when his mother Cordie Jauron, the remaining co-owner of the subject property, died.

The Claimant acquired an interest in the property from her husband Ernest M. Jauron on February 5, 1988, by a deed creating an estate by the entirety. Ernest M. Jauron died on April 22, 1996, leaving the Claimant as the sole owner. On April 15, 2002 the Claimant conveyed interest in the property to her children and their spouses for estate planning purposes. For the purpose of this claim, the Claimant's acquisition date is February 5, 1988.

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

In 1988 when the property was acquired by the Claimant, it was subject to the current Columbia County Zoning Ordinance, which went into effect on August 1, 1984. The property was zoned Forest Agriculture (FA-19).

The property was unzoned in 1934 when it was originally acquired by Claimant's family members, as defined by Measure 37. Under section 11(A) of the statute, the term "family member" includes a mother and father-in-law, but not a grandparent-in-law. Therefore, the 1934 acquisition by the Claimant's parents-in-law qualifies as the family acquisition date, while the 1925 acquisition by the Claimant's grandparents-in-law does not. However, the family acquisition date is relevant only for determining eligibility for compensation under Measure 37, not for waiver of land use regulations.

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

The Claimant submitted a document listing various rules, regulations and laws of the State of Oregon and Columbia County that “have impacted the use of the land by restricting development.”

State statutes, administrative rules, and statewide planning goals which may apply to the subject property cannot be waived by the County. The Claimant must seek waiver of these regulations from the State. Since the State regulations cited by the Claimant are not applicable to this Claim, they are not discussed further in this report.

The Claimant cites the following provisions of the current Columbia County Zoning Ordinance as regulations restricting the use of her property:

LAND USE CRITERION	DESCRIPTION
200	Section heading
201	Requires compliance with the Zoning Ordinance
202	Sets forth the Zoning Districts and Minimum Lot Sizes
203-208	General sections referring to the Zoning Map, amendments to the Zoning Map, boundaries of zones, building in hazard areas, condominiums, and redevelopment plans.
209	Requires that all requests for dwellings on resource land shall be reviewed in accordance with the provisions established in each district.
210	Restricts the partition or subdivision of land into parcels smaller than the parcel size established in the zoning district.
211	Requirements for lots of record.
212	Property line adjustment standards.
213-19	General setbacks, pending building permits, ingress and egress, unsafe building, and basement dwelling and building conversion provisions applicable to all zoning districts.
220	State coordination regarding Archeological sites.
221	Prohibits more than one principal use on a legal lot or parcel.
222	Limits septic systems to one per lot or parcel.
300	Section heading
302	Requires 38 acres or more for a dwelling which must be for farm use only
303	Establishes conditional uses in PA-38 zone. CCZO 303.13(D) restricts non-resource related dwellings to land generally unsuitable for farm use.
304	Establishes 38-acre minimum lot/parcel size, setback and building requirements for PA-38 zone
305	Establishes partition requirements for PA-38 zone
309	Restricts division of land into parcels smaller than 38 acres in the PA-38 zone

400	Section heading. Does not contain regulations.
401	Provides that the purpose of the FA-19 Zone is to protect and promote farm and forest uses. Contains no regulations.
402	Sets forth the permitted uses in the FA-19 zone
403	Review procedure concerning big game habitat.
404, 405 and 406	Conditional Uses and requirements for Conditional Uses in the FA-19 zone and non-resource dwellings.
407.1	Establishes a minimum lot size of 19 acres in the FA-19 zone.
Remainder of 407	Sets forth standards for minimum lot width, depth, setbacks and building height requirements for the FA-19 zone.
408	Homestead Lot provision allowing partition of smaller lots from larger resource area.
409.1	Requires that partitions creating lots under 19 acres be reviewed as under variance procedure and criteria in Section 1504.
Remainder of 409	Requires partitions creating parcels under 19 acres to be reviewed under conditional use criteria for non-resource dwellings in Section 404.13.
410	Sets forth fire Siting Standards for Dwellings and Roads
411	Coordination requirement with affected agencies .
412	Fire siting standards for dwellings and roads.

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

CCZO 407.1 Establishes the minimum lot size of 19 acres in the FA-19 zone

D. CLAIMANT'S ELIGIBILITY FOR FURTHER REVIEW

The Claimant acquired an interest in the property after the minimum lot/parcel size standards of the Forest Agriculture (FA-19) zone became effective. Therefore, the Claimant is not eligible for waiver of CCZO Section 407.1 under Measure 37. The Claimant may be eligible for compensation due to a family acquisition date of 1934.

E. STATEMENT AS TO HOW THE REGULATIONS RESTRICT USE

Columbia County Zoning Ordinance

1. Section 200 *et seq.*- General Provisions

Section 200 is a section heading for general provisions and does not contain regulations.

Section 201 requires compliance with the zoning ordinance provisions within the zoning districts. Staff finds that with exception of provisions that are subject to waiver, the Claimant must comply with the zoning ordinance and there is no basis for waiver of this section.

Section 202 sets forth the Zoning Districts and Minimum Lot Sizes. While this is merely a general provision, further regulated under the relevant zoning district applied to the subject property, this provision could be read to restrict the use of the subject property.

Sections 203-208 contain general sections referring to the Zoning Map, amendments to the Zoning Map, boundaries of zones, building in hazard areas, condominiums, and redevelopment plans, and a requirement for dwellings to be reviewed in accordance with provisions in each district. Staff finds that these provisions are not relevant to the claim and do not restrict uses intended by the Claimant.

Section 209 requires that all requests for dwellings on resource land shall be reviewed in accordance with the provisions established in each district. Staff finds that such a review requirement does not restrict the use of the property, or reduce its use. Review is merely a process. One or more conditions may be imposed during the review process that may restrict use and reduce the property value. However, one cannot assume such an outcome.

Section 210 restricts the partition or subdivision of land into parcels smaller than the parcel size established in the zoning district. While this section is general in nature, it can be read to restrict the use of the property.

Section 211 applies to lots of record and is irrelevant according to the information provided with the Claim. Claimant has failed to establish how this provision restricts the use of her property.

Section 213-219 prescribe general setbacks, address how pending building permits are to be processed, prescribe ingress and egress requirements, restoration of unsafe buildings, basement used for dwellings and building conversion provisions applicable to all zoning districts. Based on the information provided in the Claim, the County has no knowledge that any building to be built on the property cannot meet setbacks, ingress and egress, and building requirements. In addition, these requirements are a matter of public safety and are therefore exempt from waiver under Measure 37.

Section 220 contains coordination procedures with the State when archeological resources are present. Staff finds that there is no information provided with the Claim suggesting that there are archeological resources present on the property or how state notification would restrict the use of the property. Staff further finds that this is a procedural requirement that of itself does not restrict use.

Section 221 limits a lot or parcel to one principal use. Based on the claim, Staff finds that this provision will not restrict use.

Section 222 limits septic systems to one per lot or parcel. Staff finds that this is a health and safety related regulation and is exempt under Measure 37.

2. Section 300 *et seq.*- Primary Agriculture

Section 300 *et seq.* sets forth the zoning requirements for property which is zoned as PA-38. The subject property is zoned FA-19, not PA-38. Since the PA-38 zoning requirements do not apply to the subject property, they don't restrict the use of the property or reduce its value.

3. Section 400 *et seq.* - Forest Agriculture

The Claimant(s) state that the property cannot be divided and developed due to the FA-19 zoning district provisions of Section 400-412 including the 19-acre minimum lot size of the FA-19 zone. Section 400 *et seq.* sets forth the zoning regulations for FA-19 zoned property. However, with the exception of Section 407.1, imposing the 19-acre minimum lot size and Section 409.1 requiring that new parcels under 19 acres comply with the variance process and criteria, the regulations don't restrict the use of the property for residential development.

Section 401 describes the general purpose of the FA-19 zone and does not restrict or prohibit the use of the property.

Sections 402 describes the permitted uses in the FA-19 zone. These provisions do not restrict or prohibit the proposed subdivision for single family dwellings because non-resource dwellings are allowed in the FA-19 zone as a conditional use and other types of dwellings are allowed as permitted uses

Section 403 requires a staff review procedure for uses permitted by Section 402 to determine the consistency of residential structures with big game habitat. Staff finds that this a review procedure and does not restrict use in itself.

Sections 404, 405 and 406 include uses allowed conditionally in the FA-19 zone and criteria for review of conditional use permits for non-resource dwellings. These provisions do not restrict or prohibit the proposed subdivision for development of single family dwellings because single family dwellings are allowed as conditional uses. During the hearing process on the proposed conditional use dwellings, conditions may be imposed that may restrict or prohibit the use. Some of those conditions may be exempt from waiver under Measure 37. However, the County cannot determine whether conditions will qualify for waiver under Measure 37 until the County knows what they are.

Section 407.1 prohibits a division of land in the FA-19 zone below 19 acres. Staff concedes that these minimum lot size provisions restrict or prohibit the use of the property. The remainder of Section 407 includes standards for minimum lot width, depth, setbacks and building height. Staff finds that these standards are health and safety related and are therefore not eligible for waiver under Measure 37.

Section 408 allows a smaller homestead lot down to two acres be partitioned from the remainder of a resource parcel containing the land to remain in resource use. Staff finds that this is permissive and does not restrict use for non-resource dwellings on smaller parcels under a waiver of 407.1.

Section 409 prescribes requirements for partitions of FA-19 zoned land. Section 409.1 requires use of the variance process and criteria in Section 1504 for new parcels under 19 acres. Staff concedes that Section 409.1 related to minimum lot size regulations restrict use and prohibit the use of the property. Sections 409.2

requires that partitions of FA-19 property use the conditional use process and criteria in Section 404.13 and therefore does not restrict or prohibit land divisions for non-resource dwellings since non-resource dwellings are allowed as conditional uses. Section 409.3 requires that the creation of new lots follow the procedures in the County Subdivision Ordinance. Staff finds that this is a procedural requirement and does not of itself restrict use. Further, the Subdivision Ordinance generally contains regulations which are exempt health and safety regulations.

Section 410 allows replacement of a non-resource dwelling destroyed by fire or other casualty. Staff finds that his provision references exempt health and safety code requirements. Furthermore, Staff finds that nothing submitted with the Claim supports a finding that this provision would apply to the subject property.

Section 411 contains coordination requirements with State and local agencies during the review process. Staff finds that this procedural requirement does not restrict the use of the property.

Section 412 contains fire siting requirements for dwellings and roads. Staff finds that these provisions are health and safety regulations exempt under Measure 37.

The subject property cannot be divided and developed into 5-acre residential parcels due to the 19-acre minimum lot size of the FA-19 zone. Staff finds that CCZO Sections 202, 210, 407.1 and 409.1 can be read and applied to "restrict" the use of Claimant's property within the meaning of Measure 37. However, CCZO Sections 202, 210, 407.1 and 409.1 were in effect at the time it was acquired by the Claimant.

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 \$390,800. The Claimant submitted an appraisal which estimated the property's market value as \$286,000.

2. **Value of property not subject to cited regulations:** The appraisal estimated that if the property could be redeveloped to a 5-acre density, not including a 3-acre parcel for the existing dwelling and a 4-acre portion along the transmission line, the value would be \$1,820,000. The Claimant also submitted a Comparative Market Analysis which stated a suggested list price of \$210,000 - \$220,000 per 5-acre parcel. In addition, the Claimant submitted a statement that in her opinion, the property "would be worth not less than \$1,000,000" if it were not subject to the cited land use regulations.

3. **Loss of value as indicated in the submitted documents:** The Claim alleges a total reduction in value of \$1,534,000.

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 Form: \$1,534,000.

(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 202, 210, and 407.1 do 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).

(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/parcel size of the Forest Agriculture (FA-19) zone, which was enacted prior to the effective date of Measure 37 on December 2, 2004. The subject claim was filed on November 30, 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.

CCZO Sections 202, 210, 407.1, 409.1 applied to the subject property when the Claimant acquired it in 1988. Therefore, the Claimant is not eligible for a waiver of CCZO Sections 202, 210, 407.1 and 409.1 under Measure 37.

III. STAFF RECOMMENDATION:

Staff recommends the Board of County Commissioners deny this Claim based on the Claimant's 1988 acquisition date.

ATTACHMENT 2

EXHIBIT A

LEGAL DESCRIPTION

A Tract of land situated in the South 1/2 of Section 2, Township 4 North, Range 2 West of the Willamette Meridian, Columbia County, Oregon, more particularly described as follows:

BEGINNING at the quarter corner between Sections 2 and 11, Township 4 North, Range 2 West of the Willamette Meridian, Columbia County, Oregon;
Thence, along said section line North 88° 41' East, 1310.50 feet;
Thence North 00° 42' West, 1222.20 feet to center line of old logging railroad grade;
Thence up said logging railroad grade South 43° 54' West, 470.00 feet;
Thence South 79° 56' West, 497.10 feet;
Thence North 76° 03' West, 225.10 feet;
Thence North 58° 35' West, 192.20 feet;
Thence North 13° 39' West, 213.90 feet;
Thence North 40° 34' West, 121.50 feet;
Thence North 68° 49' West, 109.00 feet, more or less to the North line of the Southeast quarter of the Southwest quarter of said Section 2;
Thence, along said North line South 88° 45' West, 403.00 feet;
Thence South 74° 30' West, 529.00 feet;
Thence North 79° 48' West, 285.00 feet to the West line of the Southeast quarter of the Southwest quarter of said Section 2;
Thence, along the said West line, South 00° 45' East 1247.00 feet, more or less to the Southwest corner thereof;
Thence, along said section line North 88° 41' East, 1310.50 feet to the PLACE OF BEGINNING

EXCEPTING THEREFROM a 20 foot strip for road purposes lying South of the centerline of the above described logging road.

ALSO, EXCEPTING THEREFROM that tract of land conveyed to Sam Stephen Jauron, as described in deed recorded December 28, 1983 in Book 250, Page 249, Deed Records of Columbia County, Oregon and more particularly described as follows:
BEGINNING at the Northwest corner of the Southwest quarter of the Southeast quarter of Section 2, Township 4 North, Range 2 West of the Willamette Meridian, Columbia County, Oregon;
Thence South 50° 00' 02" West 84.38 feet to an angle point in the Southerly right-of-way line of Brooks County Road #P-89 and the TRUE POINT OF BEGINNING of the parcel herein described;
Thence South 23° 25' 11" West, a distance of 460.67 feet;
Thence South 07° 50' 53" East, a distance of 326.73 feet;
Thence North 88° 31' 25" East, a distance of 290.37 feet;
Thence North 27° 09' 32" East, a distance of 351.29 feet to the Southerly right of way line of said Brooks County Road;
Thence, along said Southerly right of way line North 57° 55' 26" West, a distance of 149.96 feet;
Thence North 23° 12' 26" West, a distance of 330.68 feet;
Thence North 51° 59' 26" West, a distance of 69.50 feet to the TRUE POINT OF BEGINNING.