



## LAND USE & TRANSPORTATION PLANNING PROGRAM

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### Staff Analysis of Measure 37 Claim

The following matter is scheduled for public hearing, deliberation and possible action before the Multnomah County Board of Commissioners

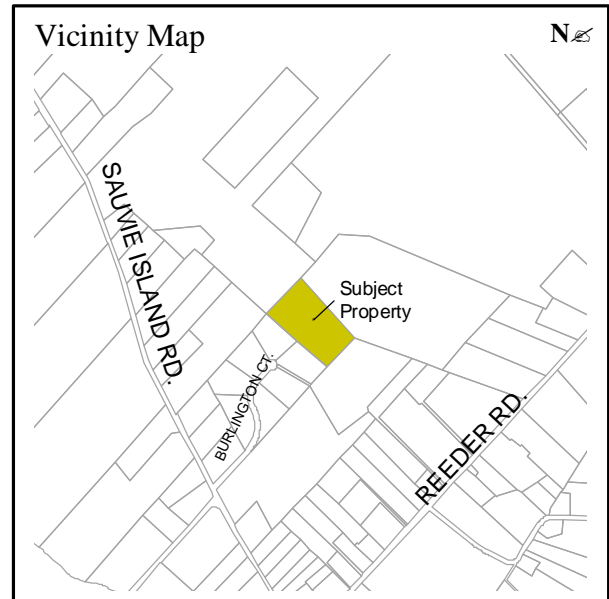
Hearing Date, Time, & Place:

**Thursday, July 14, 2005, at 9:30 am** or soon thereafter, in the Commissioners' Board Room of the Multnomah Building, located at 501 SE Hawthorne, Portland, Oregon.

**Case File:** T1-05-003

**Claimant:** Ann Jones

**Location:** 15100 NW Burlington Ct.  
TL 300, Sec 17A, T2N, R1W, W.M.  
Tax Account #R971170530



**Claim:** Demand for waiver of Multnomah County Code land use regulations which restrict the owner's desired use of the property (the challenged regulations) to allow the construction of one dwelling on an existing parcel or compensation in an amount equal to the reduction in fair market value (to be determined).

**Zoning:** Exclusive Farm Use (EFU), Significant Environmental Concern for wetlands overlay on portion of site.

**Site Size:** 6.78 acres

#### Approach to Deciding the Claim:

Anne Jones acquired the subject property on August 15, 1973. Mrs. Jones has established that the challenged regulations enacted after she purchased the property have prevented her from building a home on the subject property. The claimant's appraisal is adequate to show that the challenged regulations have reduced the property's value. Consequently, the Board must either:

- Pay compensation equal to the reduction in fair market value of the property attributed to the challenged regulations; **or**,
- Not apply the challenged regulations to allow Mrs. Jones to construct one dwelling on the subject property. The challenged regulations for which a waiver is sought are listed in Addendum A to this

report.

The claimant's appraisal, by its own terms, is inadequate as evidence of value, so additional appraisal work would be needed if compensation is the desired course of action.

## Staff Analysis

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*(The following is a step-by-step evaluation of the claim, which consists of the application materials submitted by Greg and Anne Jones. The analysis is structured as a series of questions that must be answered to establish if a claim is valid, comparable to the methodology outlined in a February 24, 2005 memo authored by the State Attorney General's Office.)*

### *1. Has the owner made a complete written demand under Ballot Measure 37?*

**Yes. The materials submitted by the claimant constitute a complete "written demand for compensation" within the meaning of the measure.**

On February 15, 2005, Greg and Anne Jones submitted a completed Measure 37 Claim Form, a \$1,500 deposit, a narrative (Exhibit A1), an appraisal (Exhibit A2), and a chain of title with copies of the referenced deeds. These materials constitute a complete written demand for compensation which complies with the county's code requirements (MCC 7.520). Anne Jones is the property owner and the claimant. Greg Jones is the son of Anne Jones and is assisting her with the processing of her Measure 37 Claim.

The appraisal submitted by the Joneses is adequate to determine there was a loss in value due to the application of the challenged regulations. This appraisal by itself is not adequate to determine the exact amount of the loss in value due to the application of current regulations. If the Board elects to pay compensation, the Joneses must provide additional appraisals to determine the specific loss in value for which compensation would be due.

### *2. Did the claimant acquire the property before the laws in question were adopted?*

**Yes. The Claimant, Anne Jones, acquired the property on August 15, 1973, prior to the County adopting the challenged regulations set out in the claim.**

Ballot Measure 37 exempts land use regulations enacted prior to the date the current owner acquired the property. The deed records and chain of title documents submitted by the Joneses show that Robert and Anne Jones, husband and wife, acquired the property on August 15, 1973 through Instrument Number 408141 recorded in Book 945, Page 311 on August 23, 1973. A subsequent deed (Instrument 2003-000088) was recorded on December 31, 2002 transferring ownership from Robert and Anne Jones to Anne Jones. This does not affect Ms. Jones standing to make a Measure 37 claim based on the August 15, 1973 date of her original acquisition of the property and her continuous ownership interest to date..

### *3. Have the challenged regulations restricted the use of the property?*

**Yes. The current zoning restricts the use of the property by limiting Mrs. Jones' ability to establish a house on the subject property in two ways: First, the Lot of Record provisions limit Mrs. Jones's ability to apply for development on this lot. Second, the Exclusive Farm**

**Use zoning limits Mrs. Jones ability to establish a primary dwelling without meeting a farm related income test or proving the land is not capable of being farmed.**

County maps show the subject property is zoned Exclusive Farm Use (EFU), with a Significant Environmental Concern overlay for wetlands on a portion of the site. These zoning rules implement both local and statewide planning policies, and either limit what the property can be used for or influence the manner in which development occurs, both of which can restrict the use of property. Mrs. Jones is seeking a waiver of only the EFU provisions. As such, staff has only addressed the EFU provisions below.

Mrs. Jones owns two adjoining properties, one of which contains a dwelling. This means that a new dwelling on the vacant parcel is not allowed under any of the provisions in the EFU portion of the County's code. (MCC 34.2600-34.2690) Adjacent properties under the same ownership in 1990 are viewed together as one Lot of Record in the EFU zone (MCC 34.2675). This means that any land use application must look at both lots together as one piece of property. There are provisions for obtaining a farm-related second dwelling on the Lot of Record, but all of these provisions require the second dwelling to be contained on the parcel that currently has a house.

If the Lot of Record provisions are waived, then the County may look at the two parcels separately. In this case, there are two ways to qualify for a dwelling- as a farm dwelling and as a Heritage Tract dwelling. In order to establish a farm-related dwelling on the vacant parcel, the Joneses must prove they have made \$80,000 in farm income for two years in a row or three of the last five years from farming the vacant parcel. This requires the investment of at least two years of time and a substantial amount of money to start and run a farm operation capable of producing \$80,000 in income. The Joneses can not demonstrate \$80,000 a year in farm income from the subject property and, as such, it cannot be approved for a farm-related dwelling.

The Heritage Tract standards require, among other things, that the property must not be capable of being farmed on its own or in conjunction with other land and that the property must not be contiguous to other land under the same ownership which already contains a house. The property is level and is classified as high-value farm land, meaning that it is capable of being farmed. Additionally it is adjacent to land under the same ownership which already contains a house. The Jones would not be able to qualify for a Heritage Tract dwelling under these provisions. Therefore, the Lot of Record regulations restrict the use of the subject property (for a dwelling) and must be waived to allow a dwelling.

*4. Have the restrictions reduced the fair market value of the property?*

**Yes, insofar as they prohibit Mrs. Jones from constructing one home on the subject lot because a buildable parcel is more valuable than an unbuildable parcel. The specific amount of the reduction in fair market value has not been established.**

The property was zoned F2 on the date Mrs. Jones acquired the property (August 15, 1973). This zone allowed the construction of one single family dwelling on a parcel and allowed the creation of parcels with a minimum lot size of two acres.

In her claim, Mrs. Jones lists two sections of the County code that restrict the use of the property which did not exist when the property was purchased, and she asserts these restrictions reduce the value of the property. The appraisal submitted in support of this claim is, by its own terms, inadequate for valuation purposes and limited to the question of what the property might be worth as one home site (\$275,000). This appraisal has been reviewed by Bob Alcantara, Appraisal Supervisor in the County's Division of Assessment and Taxation. Mr. Alcantara determined that the \$275,000 appraisal is a conservative estimate of the value of the land if it is eligible for the construction of a home (Exhibit B5).

The applicant has not submitted an appraisal stating the current value of the property without the right to build a home. Instead, the applicant has submitted the current Multnomah County Tax Assessment information, which values the 6.78 acre property at \$11,670. The tax value is \$1,721.24 per acre. The claimant has also submitted current Multnomah County Tax Assessment information for the adjoining property under her ownership which contains a dwelling. This data values the land separately from the improvements. The 9.24 acre property's land value is assessed at \$37,300, which is \$4,036.80 per acre.

While this information is not sufficient to establish a dollar amount for compensation, it is adequate to establish that property which is eligible for the construction of a dwelling is valued more highly than property which is not eligible for the construction of a dwelling.

Regulations that unequivocally prohibit the construction of a home have reduced the fair market value of the subject property. Given the limited amount of information, it is not possible to state a specific dollar amount of the reduction in value of this property.

*5. Have those regulations that reduce the fair market value of the property been enforced?*

**Yes. The plain language of the Exclusive Farm Use (EFU) zoning district prohibits the construction of a primary dwelling on the parcel.**

Land use regulations enacted after the date the owner acquires the property must be enforced for the measure to be operative. The Exclusive Farm Use (EFU) zoning rules effectively prohibit the construction of a primary dwelling on the subject parcel, reducing the value of the property. There is no application that Mrs. Jones can apply for that could lead to the approval of a primary dwelling on the subject parcel. On their face these regulations have been enforced.

### **Conclusion**

Considering the above, Mrs. Jones has established that land use regulations enacted after she purchased the property in 1973 have prevented her from building a home on the subject property. To allow Mrs. Jones to construct a home on this property, the Board would need to grant the request to not apply the regulations in Addendum A.

If the Board of Commissioners chooses to not apply the regulations listed, Land Use Planning would recommend that the Board of Commissioners address the following in the Board Order:

1. Include a statement that any waiver or modification of the county land use regulations does not constitute a waiver or modification of corresponding state laws, or administrative rules. Before any building permits may be issued, an authorization from the state must be secured.
2. Action by the Board of Commissioners to not apply regulations does not authorize immediate construction of the dwellings. Rules that still apply require that land use and building permits be approved by the County before development can proceed.
3. Include a statement that the deferred property taxes must be paid prior to the issuance of a building permit. The Assessment and Taxation office has estimated the deferred taxes due in Attachment B5.

If the Board of Commissioners chooses to pay compensation for the loss in fair market value, Land Use Planning would recommend that the Board of Commissioners address the following in the Board Order:

1. Include a statement that the claimant must provide one additional appraisal of the fair market value of the property as a homesite and two appraisals of the fair market value of the property as farm land not eligible for a home.
2. Include a statement reserving the right to determine the amount of compensation to be paid based on the information provided in the additional appraisals.

Issued by:

By: \_\_\_\_\_  
Tammy Boren-King, Planner

For: Karen Schilling- Planning Director

Date: June 1, 2005

### **Exhibits**

Copies of the exhibits, referenced herein, are included with this report. All other materials submitted to the County related to this claim are included in the case record that is on file at the Land Use and Transportation Planning Office.

### **Applicant Exhibits**

- A1. Applicant's narrative, submitted on February 15, 2005 and March 8, 2005
- A2. Appraisal prepared by Robert Gill and Associates, submitted February 15, 2005

A3. Assessment & Taxation Records

Staff Exhibits

B1. Text of Ballot Measure 37

B2. F2 ordinance in place on date claimant purchased property

B3. Current Zoning Map

B4. 2002 Aerial Photo of property and vicinity

B5. May 24 Memo from Bob Alcantara regarding appraisal and tax deferral.

**Regulations that would not be applied to allow a primary dwelling to be established on the property.**

- ? §34.2615, Uses. Requires that any building, structure, or land be used in compliance with the Exclusive Farm Use rules, which prohibit the creation of small lots and limit new dwellings because of the inherent conflict between residential and commercial farm uses.
- ? §34.2620, Allowed Uses. Lists the uses allowed without County review in the Exclusive Farm Use zone, pursuant to Statewide Planning Goal 3. Developing a dwelling on a parcel is not listed as allowed.
- ? §34.2625, Review Uses. Although not listed in the claim letter, this category of uses in the Exclusive Zone would also need to be set aside, as it lists those activities that are allowed subject to administrative review by the County. The development rights being sought are not listed in this section, and, like other sections of the Exclusive Farm Use code that list allowed uses, this one should not be applied to avoid any confusion as to whether or not Mrs. Jones can proceed to develop the property.
- ? §34.2630, Conditional Uses. Lists the uses allowed when approved through a hearings process and found to meet specific approval criteria. The development rights being sought are not listed in this section, and like other sections of the Exclusive Farm Use code that list uses that are allowed, this one should not be applied to the dwelling request to avoid any confusion as to whether or not Mrs. Jones can proceed to develop the property.
- ? §34.2675, Lot of Record. These rules require that all contiguous parcels held under the same ownership on February 20, 1990 shall be aggregated to comply with a minimum lot size of 19 acres. This section aggregates Mrs. Jones two parcels into one Lot of Record for development purposes, therefore this regulation must not be applied.