



**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

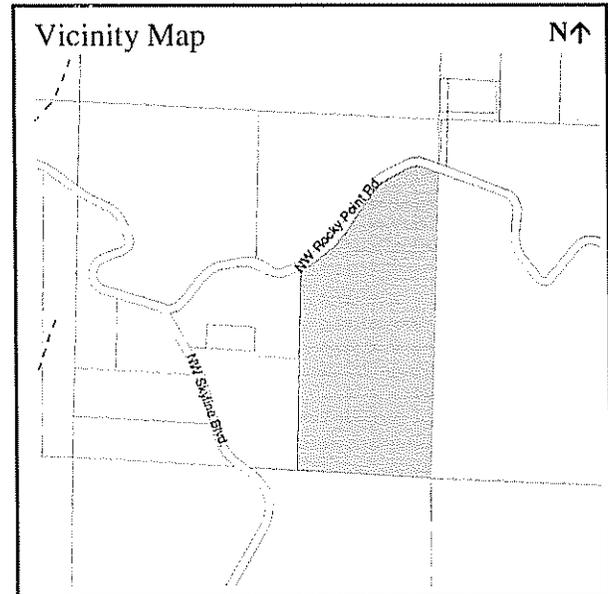
Hearing Date, Time, & Place:

November 30, 2006 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: T1-06-027

Claimants: Tomasz Fijak
22440 NW Rocky Point Road
Scappoose, OR 97056

Location: 22740 NW Rocky Point Road
TL 12, Sec 34, T3N, R2W, W.M.
Tax Account # R982340120



Claim: Up to \$494,700 in compensation or relief from land use regulations to allow the land to be divided into 3 parcels with homes on each parcel.

Zoning: Commercial Forest Use-2 (CFU-2), Significant Environmental Concern overlay for wildlife habitat and views (SEC-h, -v), and Hillside Development overlay.

Site Size: 43.92 acres

Approach to Deciding the Claim:

For a claim to be valid, the land use regulations challenged must restrict the claimant's use of private real property in a manner that reduces the fair market value of the property relative to how the property could have been used at the time the claimants acquired the property. As outlined in this report and memorandum from the County Attorney's Office dated June 8, 2006, this requirement has not been met because (a) CFU regulations in effect when the owner acquired the property did not allow a further division of the property, (b) dividing property in itself is not a "use" subject to the provisions of Measure 37, and (c) in any event, development rights gained through a waiver are personal to the claimants and cannot be transferred to a purchaser of a subdivided parcel. Since the rights are not transferable there has been no reduction in the fair market value of the property.

Staff Analysis

(The following is a step-by-step evaluation of the claim, which consists of the application materials submitted by the claimants. 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?

No. The materials submitted by the claimant do not constitute a complete “written demand for compensation” within the meaning of the measure.

On April 6, 2006, the claimants submitted a completed Measure 37 Claim Form (Exhibit A.1), a \$1,500 deposit, copies of regulations which the claimants assert reduce their property value, a narrative (Exhibit A.3), a copy of the deed which transferred ownership of the property to the claimants (Exhibit A.2). On June 29, 2006, the claimants submitted a title report prepared by First American Title Insurance Company (Exhibit A.4). Also on June 29th, County staff met with Ms. Kasha Fijak, who clarified that the subject claim consisted of a request to divide the property into three lots, in addition to the right to develop the two newly created vacant lots. Given that clarification, the reduction in value claimed must be supported by an appraisal of the property. The claimant has not submitted an appraisal to date. The claim is considered to be incomplete consistent with the county's requirements outlined under MCC 27.520.

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

Yes. The Claimants obtained an interest in the property on November 30, 1983 (Exhibit A.2) prior to the county adopting the challenged regulations set out in the claim.

County assessment records show that the claimants are the current owners of the subject property. The zoning of the lot was Commercial Forest Use-80 (CFU-80) on November 30, 1983 when the claimants acquired the property. A copy of the zoning map in effect on November 30, 1983 is included as Exhibit B.1. A copy of the CFU-80 regulations in effect in 1983 is presented as Exhibit B.2. The zoning first changed from F-2 to CFU-38 on October 6, 1977. The zoning changed to CFU-80 on August 14, 1980. Commercial Forest Use-2 regulations challenged by the claimant first came into effect on August 8, 1998 and was amended on May 15, 2002.

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

No. The claimant has failed to establish that the challenged regulations have restricted their use of the property.

CFU-80 regulations in effect on November 30, 1983 prohibit further division, meaning relief from challenged regulations would not allow the development that is sought. A land division in the CFU-80 zone would have required the subject property to be at least 160 acres. Even if land divisions were allowed, Multnomah County's interpretation of the law as reflected in its Measure 37 ordinance is that dividing property in itself is not a 'use' of land subject to the provisions of Measure 37 and that development rights gained through a waiver are personal to the claimants and will result in no restriction in use if transferred to a third party. No restriction in use would occur for the third party because they would not be able to divide the property or develop a

newly purchased parcel (were the claimants to divide) because they would be subject to the current Commercial Forest Use regulations which prohibit the partition and dwellings.

This legal issue is analyzed in detail within a memo prepared by the Assistant County Attorney, Sandra Duffy, dated June 8, 2006. For the reasons outlined in this legal memorandum, staff finds this claim seeking the right to partition the property to be invalid.

4. *Have the regulations reduced the fair market value of the properties?*

No. The claimants have failed to establish that the challenged regulations have reduced the fair market value of the property.

Using the alternative data submitted by the claimant to substantiate the value of the claim, staff extrapolated that the claimant was requesting \$497,000 in compensation (Exhibit A.4). However, a reduction in value has not occurred because development rights cannot be transferred. Even if a partition could have been approved at the time the owners acquired the property, Measure 37 rights are personal to the claimants and are of no value to a new owner. For instance, the current Commercial Forest Use zoning regulations would be applied once a newly created parcel is sold to a new owner. These regulations would prohibit the establishment of a dwelling on the property rendering it unbuildable. Because the resulting parcels would have no development value, no reduction in value will occur as compared to the present value of the property under the current CFU zoning regulations (i.e. three, 14 acre parcels are of no more value as forest land than a 43 acre property). Further, the CFU-80 regulations in effect when the owners acquired the property did not allow for land divisions for properties less than 160 acres in size.

Bob Alcantara, Senior Appraisal Supervisor with the Multnomah County Division of Assessment and Taxation also provided his department's interpretation on the reduction of value issue for this claim (Exhibit D.2):

The parcel has a pre-existing home on the parcel. Per the zoning when acquired there are no additional home sites allowed at this time. I don't recognize any loss in value to the site.

Public Comment

After a claim for compensation is declared complete pursuant to MCC 27.520(B), the Director shall mail notice of the claim to the claimant, other owners of record of the property, and all owners of property within 750 feet of the subject property. Additional mail notice shall be sent to any public entities with land use regulatory authority over the property and other organizations or persons as the Director may designate (MCC 27.530(A)).

Pursuant to the provisions of MCC 27.530, a 14-day Opportunity to Comment packet was mailed on August 28, 2006. No comments were submitted.

Conclusion

In conclusion, the claimants have failed to establish that regulations preventing them (or others) from dividing the property so that they can develop homes on the new parcels have resulted in a restriction of their use of the land and reduction in its value. Dividing property is not a "use" subject to the provisions of Measure 37 and, in any event, development rights gained through a waiver are personal to the claimants and cannot be transferred to a purchaser. The CFU-80 regulations in effect when the owners acquired the property did not allow for land divisions for properties less than 160 acres in size.

Consequently, staff recommends that the Board of Commissioners deny this claim.

Issued by:



By: Kenneth Born, AICP, Planner

For: Karen Schilling- Planning Director

Date: October 23, 2006

Exhibits

Copies of the exhibits, referenced herein, and 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.

Exhibit #	# of Pages	Description of Exhibit	Date Received/ Submitted
A.1	1	Signed Measure 37 Application Form	04/06/06
A.2	1	Measure 37 Deed Information narrative	04/06/06
A.3		Measure 37 Lot Book Service, First American Title 1. Deed, Recorded in Book 2009, Pages 382, May 16, 1960 2. Deed, Recorded in Book 2191, Page 499, October 18, 1963 3. Bargain and Sale Deed, Recorded in Book 641, Page 633., September 20, 1968 4. Sales Agreement, Recorded in Book 1512, Pages 1873-1877, March 27, 1981 5. Personal Representative Deed, Recorded in Book 1709, Page 836-838, November 30, 1983 6. Quitclaim Deed, 98-072862, April 20, 1998 7. Warranty Deed, 98-199514, November 3, 1998	06/14/06
A.4	1	Alternative data to substantiate the value of the claim, <i>Oregonian</i> Real Estate section	04/06/06
A.5	8	Tenancy in Common Agreement	04/06/06

'B'		Staff Exhibits	Date
B.1	1	Zoning Map in Effect on 11/30/1983	N/A
B.2	1	Copy of CFU-80 Zone in Effect on 11/30/1983	N/A
B.3	1	Current Zoning Map	N/A
B.4	1	Assessment and Taxation Property Information	N/A
'C'		Administration & Procedures	Date
C.1	1	Incomplete Letter	05/02/06
C.2	2	Abatement Offer Letter	06/29/06
C.3	4	Opportunity to Comment	08/14/06
'D'		Comments Received	Date
D.1	1	Multnomah County Transportation Program	08/21/06
D.2	1	Multnomah County Division of Assessment and Taxation	10/24/06