



Multnomah County Oregon

Board of Commissioners & Agenda

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CORRECTION

APRIL 17, 18 & 19, 2007 BOARD MEETINGS FASTLOOK AGENDA ITEMS OF INTEREST

BOARD OF COMMISSIONERS

Ted Wheeler, Chair

501 SE Hawthorne Boulevard, Suite 600
Portland, Or 97214

Phone: (503) 988-3308 FAX (503) 988-3093

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Pg 2	9:00 a.m. Tuesday Executive Session
Pg 2	9:30 a.m. Tuesday Briefings on Co-Chairs' Budget Implications; and Evidence Based Treatment Practices
Pg 3	9:00 a.m. Wednesday Public Hearings on three Measure 37 Claims: Alfred Feller; Martha Glaser; and Robert and Cheryl Wiley
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Pg 4	9:45 a.m. Thursday Chair Ted Wheeler's Executive Budget Message for FY 2008
Pg 5	10:20 a.m. Thursday Ordinance Repealing Ordinances 1055 and 1060 to Delete Real Property Compensation Law (Ballot Measure 37) Subchapter from County Code

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Tuesday, April 17, 2007 - 9:00 AM
Multnomah Building, Sixth Floor Commissioners Conference Room 635
501 SE Hawthorne Boulevard, Portland

EXECUTIVE SESSION

- E-1 The Multnomah County Board of Commissioners will meet in Executive Session Pursuant to ORS 192.660(2)(d),(e) and/or (h). Only Representatives of the News Media and Designated Staff are allowed to attend. News Media and All Other Attendees are Specifically Directed Not to Disclose Information that is the Subject of the Session. No Final Decision will be made in the Session. Presented by County Attorney Agnes Sowle. 15-30 MINUTES REQUESTED.
-

Tuesday, April 17, 2007 - 9:30 AM
Multnomah Building, First Floor Commissioners Boardroom 100
501 SE Hawthorne Boulevard, Portland

BOARD BRIEFINGS

- B-1 Review Co-Chairs' Budget and Implications to County Services. Presented by Gina Mattioda, Joanne Fuller, and Steve Liday. 30 MINUTES REQUESTED.
- B-2 Evidence Based Treatment Practices. Presented by Commissioner Lisa Naito, LPSCC Chair; Eric Martin, Director of Addiction Counseling and Certification; Dennis McCarty, OHSU; Michael Finigan, NPC, and Invited Others. 90 MINUTES REQUESTED.

Wednesday, April 18, 2007 – 9:00 AM
Multnomah Building, First Floor Commissioners Boardroom 100
501 SE Hawthorne Boulevard, Portland

PUBLIC HEARINGS

**[Please Note: Any action taken by the Board on the following Measure 37
Claims will be ratified at the April 19th Board Meeting.]**

- PH-1 Public Hearing to consider and possibly act upon a Measure 37 Claim by Alfred Feller for compensation or relief from regulations to allow for the development of a single family residence on property located north of 34242 SE Smith Road, Corbett. [1S, R4E, Sec 03B, TL 400] (Case File T1-06-077)
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Thursday, April 19, 2007 - 9:30 AM
Multnomah Building, First Floor Commissioners Boardroom 100
501 SE Hawthorne Boulevard, Portland

REGULAR MEETING

CONSENT CALENDAR - 9:30 AM **DEPARTMENT OF COMMUNITY SERVICES**

- C-1 RESOLUTION Authorizing the Private Sale of a Tax Foreclosed Property to BOBBY A. BERG
- C-2 RESOLUTION Authorizing the Private Sale of a Tax Foreclosed Property to CREIGHTON TONG

- C-3 Ratification of an ORDER in the matter of the Measure 37 Claim by Alfred Feller for compensation or relief from regulations to allow for the development of a single family residence on property located north of 34242 SE Smith Road, Corbett
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PUBLIC COMMENT - 9:30 AM

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DEPARTMENT OF COUNTY MANAGEMENT – 9:30 AM

- R-1 PROCLAMATION Proclaiming the week of April 22 through April 28, 2007 ADMINISTRATIVE PROFESSIONALS WEEK in Multnomah County, Oregon

DISTRICT ATTORNEY'S OFFICE – 9:35 AM

- R-2 PROCLAMATION Proclaiming the week of April 22, through April 28, 2007 as NATIONAL CRIME VICTIMS' RIGHTS WEEK in Multnomah County, Oregon

NON-DEPARTMENTAL - 9:40 AM

- R-3 PROCLAMATION Proclaiming April 15 through April 21, 2007 as MULTNOMAH COUNTY VOLUNTEER WEEK and April 25, 2007 as a SPECIAL DAY OF RECOGNITION FOR MULTNOMAH COUNTY VOLUNTEERS
- R-4 Chair Ted Wheeler's Executive Budget Message for Fiscal Year 2008

- R-5 Public Hearing and Consideration of RESOLUTION Approving the Chair's Proposed Fiscal Year 2008 Budget for Submittal to the Tax Supervising and Conservation Commission as Required by ORS 294.421
- R-6 First Reading and Proposed Adoption of ORDINANCE Repealing Ordinances 1055 and 1060 to Delete the Real Property Compensation Law (Ballot Measure 37) Subchapter from the Multnomah County Code (§§27.500 – 27.565), and Declaring an Emergency
- R-7 Sustainable Development Commission Annual Report. Presented by Commissioner Jeff Cogen, Sustainable Development Commission Chair Pamela Brody and Invited Others. 25 MINUTES REQUESTED.

DEPARTMENT OF COUNTY MANAGEMENT – 10:50 AM

- R-8 RESOLUTION Certifying an Estimate of Expenditures for Fiscal Year 2007-2008 for Assessment and Taxation in Accordance with ORS 294.175

DEPARTMENT OF COUNTY HUMAN SERVICES – 10:55 AM

- R-9 Budget Modification DCHS-19 Increasing the Mental Health and Addiction Services Appropriation by \$1,853,919 to Reflect State of Oregon Funding Revisions, Increased Oregon Health Plan Premiums, and Increasing County General Contingency by \$37,550

DEPARTMENT OF COMMUNITY JUSTICE – 11:00 AM

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MULTNOMAH COUNTY
AGENDA PLACEMENT REQUEST (short form)

Board Clerk Use Only

Meeting Date: 04/18/07
 Agenda Item #: PH-1
 Est. Start Time: 9:00 AM
 Date Submitted: 04/04/07

Agenda Title: **Public Hearing to consider and possibly act upon a Measure 37 Claim by Alfred Feller for compensation or relief from regulations to allow for the development of a single family residence on property located north of 34242 SE Smith Road, Corbett [1S, R4E, Sec 03B, TL 400] (Case File T1-06-077)**

Note: If Ordinance, Resolution, Order or Proclamation, provide exact title. For all other submissions, provide a clearly written title.

Requested Meeting Date: April 18, 2007 **Amount of Time Needed:** 20 minutes
Department: Community Services **Division:** Land Use & Transportation
Contact(s): Derrick Tokos, Don Kienholz, Sandra Duffy
Phone: 503-988-3043 **Ext.** 29270 **I/O Address:** 455/116
Presenter(s): Don Kienholz, Sandra Duffy

General Information

1. What action are you requesting from the Board?

Action requested is to provide a public hearing and render a decision regarding a Measure 37 claim by Alfred Feller to waive land use regulations which prohibit the development of a single family dwelling on property located north of 34242 SE Smith Road. Land use planning has outlined an approach to deciding this claim in a staff report dated April 4, 2007.

2. Please provide sufficient background information for the Board and the public to understand this issue. Please note which Program Offer this action affects and how it impacts the results.

For a claim to be valid, the land use regulations challenged must restrict the claimants 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 the staff report dated April 4, 2007, and memorandum from the County Attorney's Office, this requirement has been met.

The claimant, Alfred Feller, is seeking compensation or relief from land use regulations to allow the

2.01 acre property to be developed with a single family dwelling. He acquired an interest in the property on July 6, 1977. County zoning for the property in 1977 was F-2. Current Exclusive Farm Use (EFU) zoning regulations contain approval criteria in order to establish a new primary farm dwelling on vacant land. As discussed in the staff report, the claimant cannot satisfy these criteria.

The use the claimant asserts has been restricted is their ability to develop a single family dwelling. The F2 zone in effect at the time the claimants purchased the property allowed a dwelling. The claimants have established that land use regulations enacted after they acquired the subject property have prevented them from building a home.

Staff recommends the Board of Commissioners find this to be a valid claim.

3. Explain the fiscal impact (current year and ongoing).

Comparable sales data provided by the claimant establishes that current regulations have reduced the fair market value of the property. The County Assessor concurred in a memo dated February 21, 2007. Additional appraisal work is needed should the Board prefer compensation as an alternative to regulatory relief.

4. Explain any legal and/or policy issues involved.

Policy and legal issues are outlined in a staff report from Land Use Planning dated April 4, 2007. The County Attorney has advised that any property rights obtained by relief from land use regulations are not transferable under Ballot Measure 37, consistent with the DOJ opinion of February 2005.

5. Explain any citizen and/or other government participation that has or will take place.

Public notice of this hearing has been mailed to all property owners within 750 feet of the subject property, and the claimant. Deliberation and any action on this item will be done following a public hearing at which interested citizens will have an opportunity to testify and provide written comment in accordance with the Board of Commissioners rules of procedure for the hearing.

Required Signature

Elected Official or
Department/
Agency Director:



Date: 04/04/07



**LAND USE & TRANSPORTATION
PLANNING PROGRAM**

1600 SE 190TH Avenue Portland, OR 97233
PH: 503-988-3043 FAX: 503-988-3389
<http://www.co.multnomah.or.us/landuse>

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

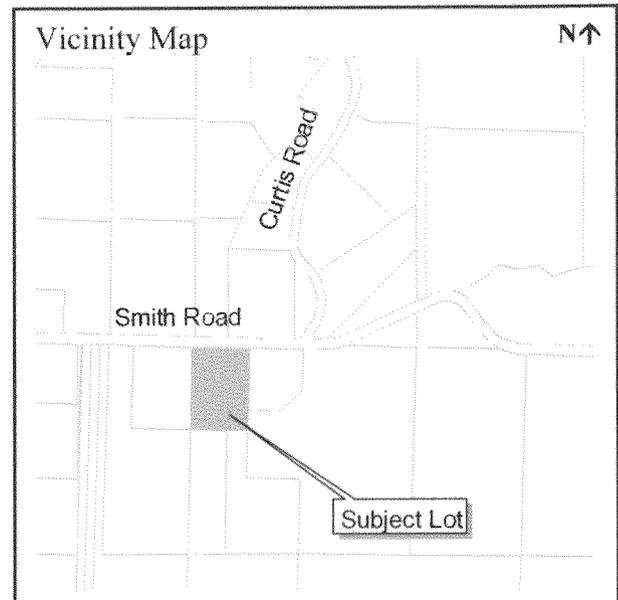
Hearing Date, Time, & Place:

Wednesday, April 18, 2007 at 9:00 AM or soon thereafter, in the Commissioners' Board Room of the Multnomah Building, located at 501 SE Hawthorne, Portland, Oregon.

Case File: T1-06-077

Claimants: Alfred Feller
34242 SE Smith Road
Corbett, OR 97079

Location: North of 34242 SE Smith Road
R994030830
Tax Lot 400, Section 03B, Township 1S,
Range 4E, W.M.



Claim: Compensation or relief from County land use regulations to allow the claimant to construct a single-family dwelling on Exclusive Farm Use zoned property.

Zoning: Exclusive Farm Use (EFU)

Site Size: 4.0 acres

Approach to Deciding the Claim:

Alfred Feller (claimant) acquired an interest in the subject property on July 6, 1977. The claimant has indicated that the challenged regulations enacted after he acquired the property have prevented him from building a single family dwelling. Our analysis confirms that current land use regulations prohibit the construction of a dwelling. The claimant's data on comparable sales is adequate to show that some of the challenged regulations have reduced the property's value. Consequently, the Board must either:

- a. Pay compensation equal to the reduction in fair market value of the property attributed to the challenged regulations which restrict claimants' use of their property; **or**.
- b. Not apply the challenged 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.

The claimant's data is inadequate as evidence to establish value, so additional appraisal work would be needed if compensation is the desired course of action.

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?*

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

On November 7, 2006, the claimant submitted a Measure 37 Claim Form (Exhibit 1). Title information from Chicago Title Insurance Company was submitted January 19, 2007 (Exhibit 2). A comparative market analysis was submitted with the November 7 claim (Exhibit 3). The claimant identified the specific regulations that restrict the use of the property and reduce the fair-market value of the property. These and other materials in the claim record constitute a complete written demand for compensation complying with the county's requirements (MCC 27.520).

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

Yes. The Claimant obtained an interest in the property on July 6, 1977 (Exhibit 4) prior to the county adopting the challenged regulations set out in the claim.

The zoning of the parcel was F-2 on July 6, 1977 when the claimant acquired the property (Book 1190, Pages 2360 to 2361). A copy of the zoning map in effect on July 6, 1977 is included as Exhibit 5. A copy of the F-2 regulations in effect on July 6, 1977 is presented as Exhibit 6. The F-2 district was an agricultural zone, that allowed dwellings (§3.1231, Ord. #100). The minimum lot size in this district was 2 acres (§3.1240.1, Ord. #100). The zoning changed from F-2 to MUA-20 on October 6, 1977 (20 ac. min. lot size) and to EFU on August 14, 1980 (80 acre min. lot size). EFU rules also generally limit the establishment of new dwellings to those that are necessary for farm purposes (§35.2600 et. seq.). The claimant is challenging the current EFU regulations.

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

Yes. Some of the challenged regulations have restricted the use of the property by prohibiting the construction of a dwelling.

The F-2 zoning in effect when the claimant acquired the property allowed a dwelling (§3.1231, Ord. #100). The property is presently zoned Exclusive Farm Use (EFU). A copy of the current regulations and zoning map are included as Exhibit 7 and Exhibit 8. The EFU regulations contain specific standards for qualifying a dwelling that are more restrictive than the F-2 requirements, and have the effect of preventing a dwelling from being constructed on the property.

The following are the specific EFU regulations which would prevent the establishment of a dwelling on the property. These regulations and the Comprehensive Plan policies they implement, would need to be set aside should the Board choose to not apply regulations in lieu of compensation:

- **MCC 35.2625(D)(2) –Large Acreage Farm Dwelling on Non-High Value Farmland Soils**

The claimant's property consists of Mershon Silt Loam soils with an 8 to 15 percent slope (Unit 27C)¹. These are not high-value soils. Properties, such as the claimants, that do not contain high value soils must be 160-acres in order to qualify for a dwelling. The subject property cannot meet this requirement because it is only 4 acres in size.

- *MCC 35.2625(D)(3) – Farm Dwelling on Non-High Value Farmland Soils capable of producing the median level of annual gross sales*

This regulation includes a standard prohibiting authorization of a dwelling on properties smaller than 10 acres in size. Since the subject property is only 4 acres, a dwelling could not be approved.

- *MCC 35.2625(D)(4) – Farm Income Test for Establishing a Farm Dwelling on Non-High Value Farmland Soils*

This regulation requires proof of a certain level of farm income related to the property in order to establish a new primary farm dwelling on vacant land. The threshold for properties consisting of non-high value soils is \$40,000 gross annual income from the sale of farm products grown on a subject tract in the last two years, or for three of the last five years. At only 4 acres in size and with a creek running through the property, staff does not expect that this property can produce enough agricultural yield to meet this income requirement.

- *MCC 35.2625(F) – Heritage Tract Dwelling on parcel not containing high-value farmland.*

This regulation requires the subject tract to not contain another single family dwelling and not be identified as high-value farmland in order to qualify for a new single family dwelling. The claimant's property at 34242 SE Smith Road is part of the tract and contains a dwelling. Consequently, a second dwelling cannot be approved.

Statewide Planning Goals were effective January 25, 1975, prior to the date the claimant acquired the property. Standards for farm and non-farm dwellings in Exclusive Farm zones were also codified in state law prior to 1975. While the County had not yet implemented these rules, the state has taken the position they are nonetheless applicable and that local jurisdictions must require claimants meet them (Exhibit 9). We anticipate the state will take a similar position with this claim. This may impact the claimant's ability to construct a dwelling on the property should the Board grant regulatory relief.

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

Yes. Current EFU regulations that prohibit construction of a dwelling have reduced the fair market value of the property. The alternative data provided by the claimant is sufficient to establish that the property is more valuable if a home can be constructed.

The zoning of the lot was F-2 when the claimant acquired the property as previously discussed. In 1977, the zone district allowed a "*Single family dwelling constructed on the site and for which a building permit is required.*" Current EFU regulations further restrict the property, such that a dwelling cannot be constructed. It is these additional restrictions that have reduced the fair market value of the property.

¹ (1983) Soil Survey of Multnomah County, United States Department of Agriculture & Soil Conservation Service.

The claimant has not submitted an appraisal which assesses the current value of the property without the right to build a home. Instead, the claimant has submitted a comparable analysis (Exhibit 3). The dataset contains a Market Action Report prepared by Frani Grover of the Willamette Realty Group. The data set includes sales prices of buildable lots and non-buildable lots in the 97060, 97019 and 97055 zip codes.

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.²

Bob Alcantara, Senior Appraisal Supervisor with the Multnomah County Division of Assessment and Taxation provided his department's interpretation on the reduction of value issue for this claim (Exhibit 10). In that memo, Mr. Alcantara indicated that the comparables were reasonable and there had been a reduction in real market value.

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 March 8, 2007. No comments were received. Public notice of this hearing was mailed to all property owners within 750 feet of the subject property. Deliberation and any action on this item will be done following a public hearing at which interested citizens will have an opportunity to testify and provide written comment in accordance with the Board of Commissioners rules of procedure for the hearing.

Conclusion

Considering the above findings, Alfred Feller has established that land use regulations enacted after he acquired the subject property have restricted the use of the property. To allow the claimant to construct a single family dwelling on the property, the Board would need to grant the request to not apply the following regulations:

- *MCC 35.2625(D)(2) – Large Acreage Farm Dwelling on Non-High Value Farmland Soils*
- *MCC 35.2625(D)(3) – Farm Dwelling on Non-High Value Farmland Soils capable of producing the median level of annual gross sales*
- *MCC 35.2625(D)(4) – Farm Income Test for Establishing a Farm Dwelling on Non-High Value Farmland Soils*
- *MCC 35.2625(F) – Heritage Tract Dwelling on parcel not containing high-value farmland.*

² The alternative data submitted assumes the ability to develop the lots is transferable by sale which contradicts the Attorney General's opinion on transferability. Also, the alternative data looks only at the current market value of the property and comparable properties. It does not look at the impact of the regulations at the time they were imposed. The land use regulations challenged in this claim have constrained the supply of developable properties in this area, the result of which may impact land values of the remaining developable properties in a positive manner [(2006) Jaeger, W., The effects of Land-Use Regulations on Property Values, Environmental Law (VOL 36) Pages 105-130]. That impact on the value is not considered in the analysis.

The comparable sales data provided by the claimant establishes that the property is more valuable if a home can be constructed.

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. Note that waiver of the listed regulations also constitutes a waiver of Comprehensive Plan and Rural Area Plan policies that the rules implement.
3. 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.
4. Include a statement that the statewide Planning Goals were effective January 25, 1975, prior to the date the claimant acquired the property. Standards for farm and non-farm dwellings in Exclusive Farm zones were also codified in state law prior to 1975. While the County had not yet implemented these rules, the state has taken the position they are nonetheless applicable and that local jurisdictions must require claimants meet them (Exhibit 9). The County anticipates the state will take a similar position with this claim. This may impact the claimant's ability to construct a dwelling on the property.
5. Include a statement that any right obtained by a claimant through the Board's grant of a waiver of County land use regulations is transferable only to the extent allowed by law.

Issued by:

By: _____
Don Kienholz, Planner

For: Karen Schilling- Planning Director

Date: April 4, 2007

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.

1. Measure 37 Claim Form
2. Chicago Title Title Report For Property
3. Claimant's Comparative Market Analysis
4. July 6, 1977 Deed Conveying Property To Claimant
5. Zoning Map Effective July 6, 1977
6. Zoning Regulations Effective July 6, 1977
7. Current Zoning Regulations
8. Current Zoning Map
9. Stafford Letter
10. Assessment And Taxation Memo Dated February 21, 2007

Multnomah County Attorney's Office
501 S.E. Hawthorne Blvd., Suite 500
Portland, Oregon 97214
PHONE: (503) 988-3138
FAX: (503) 988-3377



MEMORANDUM

To: Don Kienholz
Multnomah County Planner

Cc: Derrick Tokos, Principal Planner
Chuck Beasley, Planner

From: Jed Tomkins
Assistant County Attorney
Multnomah County Attorney's Office

Date: April 3, 2007

Re: Alfred Feller
T1-06-077

I have reviewed your staff report for legal sufficiency under MCC 27.500 *et. seq.* Your staff report has adequately addressed each required criteria and correctly applied Measure 37 and the county's implementing regulations.

Script for Feller; Glaser and Wiley 04/18/07 Measure 37 Hearings

Wednesday, April 18, 2007 – 9:00 AM
Multnomah Building, First Floor Commissioners Boardroom 100
501 SE Hawthorne Boulevard, Portland

PUBLIC HEARINGS

[Please Note: Any action taken by the Board on the following Measure 37 Claims will be ratified at the April 19th Board Meeting.]

Chair Ted Wheeler convenes the meeting at 9:00 a.m., with Vice-Chair Maria Rojo de Steffey and Commissioners Lisa Naito, Lonnie Roberts and Jeff Cogen present.

INTRODUCTION:

Chair: This is the time set for public hearings on the claims of **Alfred Feller; Martha Glaser; and Robert and Cheryl Wiley** under Ballot Measure 37. I am Ted Wheeler, Chair of the Multnomah County Board of Commissioners. Also in attendance are Commissioners Maria Rojo, Lisa Naito, Jeff Cogen and Lonnie Roberts.

All information relevant to these claims may be submitted and will be considered in these hearings. The evidence may be in any form including oral and written testimony, letters, petitions or other written material, slides, photographs, maps drawings or other items.

The Commission will base its decision on the evidence presented, along with the information on the claim in the Planning file. The Board decision will be by Order adopted by the Board.

DISCLOSURES:

Chair: Board members are required to disclose the content of any *ex parte* contacts. Any Board member who has received any factual information obtained outside the information provided by the county planning staff or this hearing is an *ex parte* contact. A visit to the property is considered an *ex parte* contact. Any *ex parte* contacts should be disclosed at this time. Such disclosures should include the time and date of the visit, what he/she observed, who (if anyone) the Commissioner talked to at the site and any other relevant facts or observations obtained as a result of the site visit.

Chair: I have *no ex parte* contacts to disclose regarding any of the claims we are hearing today.

or if the Chair has disclosures to make

I have the following disclosures to make: _____

Script for Feller; Glaser and Wiley 04/18/07 Measure 37 Hearings

Chair: [Invite the other Commissioners to make any necessary disclosures.]
Commissioner Rojo? Commissioner Naito? Commissioner Cogen? Commissioner Roberts? [If there are none, each Commissioner should say “none” on the record.]

[If there are disclosures of *ex parte* contacts, the claimant and the public should be given an opportunity to rebut the substance of any disclosure. “Does anyone have any rebuttal testimony relating to any disclosure?”]

Chair: Board members are also required to disclose any conflicts of interest and to recuse themselves from deliberation and voting if a conflict exists. It is deemed a conflict of interest if any Board member, or a member of his/her immediate family or household, has a financial interest in the outcome of a matter before the Board. It is a conflict of interest if a Board member lives within the geographical area entitled to notice of a claim.

Chair: Does any Board member, or a member of his/her immediate family or household, have a financial interest in the outcome of any of the claims now before us?

I do [do not] have a financial interest in the outcome of any of these claims. [Invite other commissioners to make any necessary disclosures.] **Commissioner Rojo? Commissioner Naito? Commissioner Cogen? Commissioner Roberts?** [If yes, that person must recuse himself/herself on the record.]

Does any Board member live within the geographical area entitled to notice of any of these claims?

I do [do not] live within the geographical area of any of these claims. **Commissioner Rojo? Commissioner Naito? Commissioner Cogen? Commissioner Roberts?**

[Any commissioner who lives within the relevant geographical area of a claim must recuse himself/herself. MCC 7.540]

CONDUCT OF THE HEARING:

Chair: In each of these hearings, I will ask for testimony and other evidence in the following order:

1. Staff report
2. Claimant or claimant’s representative
3. Others who wish to be heard on the claim
4. Commission discussion, questions, deliberation
5. Future scheduling if necessary

Script for Feller; Glaser and Wiley 04/18/07 Measure 37 Hearings

HOW TO PRESENT TESTIMONY:

Chair: There are testimony cards at the back of the room and should be filled out by anyone wishing to testify. The claimants need not fill out a card. The cards should be given to the Board Clerk.

1. State your name and address before you begin your presentation
2. Avoid repetitive testimony
3. During the hearing, I ask those in the audience to refrain from any demonstration in support or opposition to the claim.

Chair: Please call the first hearing.

Board Clerk:

PH-1 Public Hearing to consider and possibly act upon a Measure 37 Claim by Alfred Feller for compensation or relief from regulations to allow for the development of a single family residence on property located north of 34242 SE Smith Road, Corbett. [1S, R4E, Sec 03B, TL 400] (Case File T1-06-077)

Chair: [Ask for testimony in the order previously stated]

AT THE CONCLUSION OF THE TESTIMONY:

Chair: [Ask for Board discussion, questions, deliberation, motion and/or future scheduling if necessary]

AFTER DISCUSSION:

Do I have a motion on PH-1?

**COMMISSIONER _____ MOVES
COMMISSIONER _____ SECONDS
APPROVAL OF AN Order Denying or
Granting, with Conditions, Measure 37
Claim by Alfred Feller for compensation or
relief from regulations to allow for the
development of a single family residence on
property located north of 34242 SE Smith
Road, Corbett**

OPPORTUNITY FOR BOARD COMMENTS

ALL IN FAVOR, VOTE AYE, OPPOSED ____?

Script for Feller; Glaser and Wiley 04/18/07 Measure 37 Hearings

**THE MOTION FAILS
OR
THE ORDER IS ADOPTED**

Chair: Please call the next hearing.

Board Clerk:

PH-2 Public Hearing to consider and possibly act upon a Measure 37 Claim by Martha Glaser for compensation or relief from regulations to allow the development of a single family residence on property located west of 13801 NW Charlton Road, Portland. [T2N, R1W, Sec 16C, TL 600] (Case File T1-06-093

Chair: [Ask for testimony in the order previously stated]

AT THE CONCLUSION OF THE TESTIMONY:

Chair: [Ask for Board discussion, questions, deliberation, motion and/or future scheduling if necessary]

AFTER DISCUSSION:

Do I have a motion on PH-2?

**COMMISSIONER _____ MOVES
COMMISSIONER _____ SECONDS
APPROVAL OF AN Order Denying or
Granting, with Conditions, Measure 37
Claim by Martha Glaser for compensation or
relief from regulations to allow the development
of a single family residence on property located
west of 13801 NW Charlton Road, Portland**

OPPORTUNITY FOR BOARD COMMENTS

ALL IN FAVOR, VOTE AYE, OPPOSED ____?

**THE MOTION FAILS
OR
THE ORDER IS ADOPTED**

Chair: Please call the next hearing.

Script for Feller; Glaser and Wiley 04/18/07 Measure 37 Hearings

Board Clerk:

PH-3 Public Hearing to consider and possibly act upon a Measure 37 Claim by Robert and Cheryl Wiley for \$225,000 in compensation or relief from regulations to allow the development of a single family residence on property located west of 13801 NW Charlton Road, Portland. [T2N, R1W, Sec 16C, TL 500] (Case File T1-06-078)

Chair: [Ask for testimony in the order previously stated]

AT THE CONCLUSION OF THE TESTIMONY:

Chair: [Ask for Board discussion, questions, deliberation, motion and/or future scheduling if necessary]

AFTER DISCUSSION:

Do I have a motion on PH-3?

**COMMISSIONER _____ MOVES
COMMISSIONER _____ SECONDS
APPROVAL OF AN Order Denying or
Granting, with Conditions, Measure 37
Claim by Robert and Cheryl Wiley for \$225,000
in compensation or relief from regulations to
allow the development of a single family
residence on property located west of 13801
NW Charlton Road, Portland**

OPPORTUNITY FOR BOARD COMMENTS

ALL IN FAVOR, VOTE AYE, OPPOSED ____?

**THE MOTION FAILS
OR
THE ORDER IS ADOPTED**

**THERE BEING NO FURTHER BUSINESS, THE MEETING IS
ADJOURNED.**

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BEFORE THE BOARD OF COUNTY COMMISSIONERS FOR MULTNOMAH COUNTY, OREGON

ORDER NO. _____

Order Granting, with Conditions, Ballot Measure 37 Request of Alfred Feller Relating to a Parcel of Land Located North of 34242 SE Smith Road, Tax Lot 400, Section 03B, Township 1S, Range 4E, W.M., Corbett, Multnomah County, Oregon

The Multnomah County Board of Commissioners Finds:

- a. **Party:** Alfred Feller is the Ballot Measure 37 Claimant who filed a demand for compensation to Multnomah County on November 7, 2006.
- b. **Subject Real Property:** This claim relates to real property located North of 34242 SE Smith Road, Multnomah County, Oregon, more specifically described as:

Tax Lot 400, Section 03B, Township 1S, Range 4E, W.M.
Tax Account # R-994030830

- c. **Adequacy of Demand for Compensation:**

The material submitted by the Claimant constitutes a complete written demand for compensation as required by Multnomah County Code 27.520.

On November 7, 2006, the claimant submitted a Measure 37 Claim Form. Title information from Chicago Title Insurance Company was submitted January 19, 2007. A comparative market analysis was submitted with the November 7 claim. The claimant identified the specific regulations that restrict the use of the property and reduce the fair-market value of the property. These and other materials in the claim record constitute a complete written demand for compensation complying with the county's requirements (MCC 27.520).

The Board finds that the materials submitted by the claimant constitute a complete "written demand for compensation" within the meaning of the measure.

- d. **Relevant Dates of Property Ownership:**

The Claimant has established that he obtained an interest in the property prior to the County's adoption of the land use regulations challenged in this claim.

The zoning of the parcel was F-2 on July 6, 1977 when the claimant acquired the property (Book 1190, Pages 2360 to 2361). The F-2 district was an agricultural zone, that allowed dwellings (§3.1231, Ord. #100). The minimum lot size in this district was 2 acres (§3.1240.1, Ord. #100). The zoning changed from F-2 to MUA-20 on October 6, 1977 (20 ac. min. lot size) and to EFU on August 14, 1980 (80 acre min. lot size). EFU rules also

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generally limit the establishment of new dwellings to those that are necessary for farm purposes (§35.2600 et. seq.). The claimant is challenging the current EFU regulations.

The Board finds that the claimant obtained an interest in the subject property on July 6, 1977, prior to the county adopting the challenged regulations set out in the claim.

e. **County Codes as a Restriction on Use of the Property:**

The Claimant has established that the challenged land use regulations have restricted his use of the property.

The F-2 zoning in effect when the claimant acquired the property allowed a dwelling (§3.1231, Ord. #100). The property is presently zoned Exclusive Farm Use (EFU). The EFU regulations contain specific standards for qualifying a dwelling that are more restrictive than the F-2 requirements, and have the effect of preventing a dwelling from being constructed on the property.

The following are the specific EFU regulations which would prevent the establishment of a dwelling on the property. These regulations and the Comprehensive Plan policies they implement, need to be set aside in lieu of compensation:

- ***MCC 35.2625(D)(2) – Large Acreage Farm Dwelling on Non-High Value Farmland Soils***

The claimant's property consists of Mershon Silt Loam soils with an 8 to 15 percent slope (Unit 27C)¹. These are not high-value soils. Properties, such as the claimant's, that do not contain high value soils must be 160-acres in order to qualify for a dwelling. The subject property cannot meet this requirement because it is only 4 acres in size.

- ***MCC 35.2625(D)(3) – Farm Dwelling on Non-High Value Farmland Soils capable of producing the median level of annual gross sales***

This regulation includes a standard prohibiting authorization of a dwelling on properties smaller than 10 acres in size. Since the subject property is only 4 acres, a dwelling could not be approved.

- ***MCC 35.2625(D)(4) – Farm Income Test for Establishing a Farm Dwelling on Non-High Value Farmland Soils***

This regulation requires proof of a certain level of farm income related to the property in order to establish a new primary farm dwelling on vacant land. The threshold for properties consisting of non-high value soils is \$40,000 gross annual income from the sale of farm products grown on a subject tract in the last two years, or for three of the last five years. At only 4 acres in size and with a creek running through the property, this property cannot produce enough agricultural yield to meet this income requirement.

¹ (1983) Soil Survey of Multnomah County, United States Department of Agriculture & Soil Conservation Service.

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- *MCC 35.2625(F) – Heritage Tract Dwelling on parcel not containing high-value farmland.*

This regulation requires the subject tract to not contain another single family dwelling and not be identified as high-value farmland in order to qualify for a new single family dwelling. The claimant's property at 34242 SE Smith Road is part of the tract and contains a dwelling. Consequently, a second dwelling cannot be approved.

Statewide Planning Goals were effective January 25, 1975, prior to the date the claimant acquired the property. Standards for farm and non-farm dwellings in Exclusive Farm zones were also codified in state law prior to 1975. While the County had not yet implemented these rules, the state has taken the position they are nonetheless applicable and that local jurisdictions must require claimants meet them. The County anticipates the state will take a similar position with this claim. This may impact the claimant's ability to construct a dwelling on the property.

The Board finds that the Claimant has established that the challenged land use regulations have restricted his use of the subject property.

f. **County Code Restrictions Reduce Fair Market Value:**

The Claimant has established that the challenged land use regulations have reduced the fair market value of the property.

The zoning of the lot was F-2 when the claimant acquired the property as previously discussed. In 1977, the zone district allowed a "*Single family dwelling constructed on the site and for which a building permit is required.*" Current EFU regulations further restrict the property, such that a dwelling cannot be constructed. It is these additional restrictions that have reduced the fair market value of the property.

The claimant has not submitted an appraisal which assesses the current value of the property without the right to build a home. Instead, the claimant has submitted a comparable analysis. The dataset contains a Market Action Report prepared by Frani Grover of the Willamette Realty Group. The data set includes sales prices of buildable lots and non-buildable lots in the 97060, 97019 and 97055 zip codes.

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.²

² The alternative data submitted assumes the ability to develop the lots is transferable by sale which contradicts the Attorney General's opinion on transferability. Also, the alternative data looks only at the current market value of the property and comparable properties. It does not look at the impact of the regulations at the time they were imposed. The land use regulations challenged in this claim have constrained the supply of developable properties in this area, the result of which may impact land values of the remaining developable properties in a positive manner [(2006) Jaeger, W., The effects of Land-Use Regulations on Property Values, Environmental Law (VOL 36) Pages 105-130]. That impact on the value is not considered in the analysis.

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Bob Alcantara, Senior Appraisal Supervisor with the Multnomah County Division of Assessment and Taxation provided his department's interpretation on the reduction of value issue for this claim (Exhibit 10). In that memo, Mr. Alcantara indicated that the comparables were reasonable and there had been a reduction in real market value.

The Board finds that the Claimant has established that the challenged regulations have reduced the fair market value of the subject property.

g. Public Notice

Section 3.50 of the County Charter requires notice to the public of all Board agenda matters. This notice was provided. The Claimant and persons who own land within 750 feet of the subject property received notice by mail.

h. Validity of Claim for Compensation: The Board finds that:

- (1) The claim material submitted by the Claimant constitutes a complete written demand for compensation as required by Measure 37 and Multnomah County Code 27.530.
- (2) The Claimant's acquisition of the subject property on July 6, 1977, preceded the County's adoption of the land use regulations challenged in this claim.
- (3) The Claimant has established that the challenged land use regulations have restricted his use of the subject property.
- (4) The Claimant has established that the challenged land use regulations have reduced the fair market value of the subject property.

The Multnomah County Board of Commissioners Orders that:

- 1. Claimant's Measure 37 claim is granted.**
- 2. The County will not pay the compensation demanded by Claimant.**
- 3. In lieu of compensation, the County shall not apply the challenged regulations to allow the Claimant to use the property for residential purposes as described in this Order. This action by the Board provides the County's authorization to the claimant to use their property subject to the standards in effect on July 6, 1977.**
- 4. Section 3 above, constitutes a waiver of Comprehensive Plan and Rural Area Plan policies that the regulations implement.**

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5. The following Conditions of Approval apply to this decision:

- (a) Section 3 above does not constitute a waiver or modification of corresponding state laws, state administrative rules or metropolitan service district regulations that enforce land use regulations applicable to the property.
- (b) To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the property may not be used without a permit, license, or other form of authorization or consent, this order does not authorize the use of the property unless the claimants first obtain that permit, license or other form of authorization or consent. Such requirements may include, but are not limited to: a building permit, a land use decision, other permits or authorizations from local, state or federal agencies, and restrictions on the use of the property imposed by private parties.
- (c) Any use of the property by the claimant under the terms of this order remain subject to the following laws or local codes: (a) those in effect on the date of the acquisition of the subject property; (b) any enacted or enforced by a public entity other than the County; and (c) those laws not subject to Measure 37 including, without limitation, those exempted under Section (3) of Measure 37.
- (d) Any rights obtained by a claimant through the Board's grant of a waiver of County land use regulations, is transferable only to the extent allowed by law.

ADOPTED this 18th day of April, 2007, ratified April 19, 2007.

BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

Ted Wheeler, Chair

REVIEWED:

AGNES SOWLE, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY, OREGON

By _____
Sandra N. Duffy, Assistant County Attorney

SUBMITTED BY:
Agnes Sowle, County Attorney

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

ORDER NO. 07-061

Order Granting, with Conditions, Ballot Measure 37 Request of Alfred Feller Relating to a Parcel of Land Located North of 34242 SE Smith Road, Tax Lot 400, Section 03B, Township 1S, Range 4E, W.M., Corbett, Multnomah County, Oregon

The Multnomah County Board of Commissioners Finds:

- a. **Party:** Alfred Feller is the Ballot Measure 37 Claimant who filed a demand for compensation to Multnomah County on November 7, 2006.
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The Board finds that the materials submitted by the claimant constitute a complete "written demand for compensation" within the meaning of the measure.

- d. **Relevant Dates of Property Ownership:**

The Claimant has established that he obtained an interest in the property prior to the County's adoption of the land use regulations challenged in this claim.

The zoning of the parcel was F-2 on July 6, 1977 when the claimant acquired the property (Book 1190, Pages 2360 to 2361). The F-2 district was an agricultural zone, that allowed dwellings (§3.1231, Ord. #100). The minimum lot size in this district was 2 acres (§3.1240.1, Ord. #100). The zoning changed from F-2 to MUA-20 on October 6, 1977 (20 ac. min. lot size) and to EFU on August 14, 1980 (80 acre min. lot size). EFU rules also

generally limit the establishment of new dwellings to those that are necessary for farm purposes (§35.2600 et. seq.). The claimant is challenging the current EFU regulations.

The Board finds that the claimant obtained an interest in the subject property on July 6, 1977, prior to the county adopting the challenged regulations set out in the claim.

e. **County Codes as a Restriction on Use of the Property:**

The Claimant has established that the challenged land use regulations have restricted his use of the property.

The F-2 zoning in effect when the claimant acquired the property allowed a dwelling (§3.1231, Ord. #100). The property is presently zoned Exclusive Farm Use (EFU). The EFU regulations contain specific standards for qualifying a dwelling that are more restrictive than the F-2 requirements, and have the effect of preventing a dwelling from being constructed on the property.

The following are the specific EFU regulations which would prevent the establishment of a dwelling on the property. These regulations and the Comprehensive Plan policies they implement, need to be set aside in lieu of compensation:

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The claimant's property consists of Mershon Silt Loam soils with an 8 to 15 percent slope (Unit 27C)¹. These are not high-value soils. Properties, such as the claimant's, that do not contain high value soils must be 160-acres in order to qualify for a dwelling. The subject property cannot meet this requirement because it is only 4 acres in size.

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The Board finds that the Claimant has established that the challenged land use regulations have restricted his use of the subject property.

f. **County Code Restrictions Reduce Fair Market Value:**

The Claimant has established that the challenged land use regulations have reduced the fair market value of the property.

The zoning of the lot was F-2 when the claimant acquired the property as previously discussed. In 1977, the zone district allowed a "*Single family dwelling constructed on the site and for which a building permit is required.*" Current EFU regulations further restrict the property, such that a dwelling cannot be constructed. It is these additional restrictions that have reduced the fair market value of the property.

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² The alternative data submitted assumes the ability to develop the lots is transferable by sale which contradicts the Attorney General's opinion on transferability. Also, the alternative data looks only at the current market value of the property and comparable properties. It does not look at the impact of the regulations at the time they were imposed. The land use regulations challenged in this claim have constrained the supply of developable properties in this area, the result of which may impact land values of the remaining developable properties in a positive manner [(2006) Jaeger, W., *The effects of Land-Use Regulations on Property Values*, Environmental Law (VOL 36) Pages 105-130]. That impact on the value is not considered in the analysis.

Bob Alcantara, Senior Appraisal Supervisor with the Multnomah County Division of Assessment and Taxation provided his department's interpretation on the reduction of value issue for this claim (Exhibit 10). In that memo, Mr. Alcantara indicated that the comparables were reasonable and there had been a reduction in real market value.

The Board finds that the Claimant has established that the challenged regulations have reduced the fair market value of the subject property.

g. Public Notice

Section 3.50 of the County Charter requires notice to the public of all Board agenda matters. This notice was provided. The Claimant and persons who own land within 750 feet of the subject property received notice by mail.

h. Validity of Claim for Compensation: The Board finds that:

- (1) The claim material submitted by the Claimant constitutes a complete written demand for compensation as required by Measure 37 and Multnomah County Code 27.530.
- (2) The Claimant's acquisition of the subject property on July 6, 1977, preceded the County's adoption of the land use regulations challenged in this claim.
- (3) The Claimant has established that the challenged land use regulations have restricted his use of the subject property.
- (4) The Claimant has established that the challenged land use regulations have reduced the fair market value of the subject property.

The Multnomah County Board of Commissioners Orders that:

- 1. Claimant's Measure 37 claim is granted.**
- 2. The County will not pay the compensation demanded by Claimant.**
- 3. In lieu of compensation, the County shall not apply the challenged regulations to allow the Claimant to use the property for residential purposes as described in this Order. This action by the Board provides the County's authorization to the claimant to use their property subject to the standards in effect on July 6, 1977.**
- 4. Section 3 above, constitutes a waiver of Comprehensive Plan and Rural Area Plan policies that the regulations implement.**

5. The following Conditions of Approval apply to this decision:

- (a) Section 3 above does not constitute a waiver or modification of corresponding state laws, state administrative rules or metropolitan service district regulations that enforce land use regulations applicable to the property.
- (b) To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the property may not be used without a permit, license, or other form of authorization or consent, this order does not authorize the use of the property unless the claimants first obtain that permit, license or other form of authorization or consent. Such requirements may include, but are not limited to: a building permit, a land use decision, other permits or authorizations from local, state or federal agencies, and restrictions on the use of the property imposed by private parties.
- (c) Any use of the property by the claimant under the terms of this order remain subject to the following laws or local codes: (a) those in effect on the date of the acquisition of the subject property; (b) any enacted or enforced by a public entity other than the County; and (c) those laws not subject to Measure 37 including, without limitation, those exempted under Section (3) of Measure 37.
- (d) Any rights obtained by a claimant through the Board's grant of a waiver of County land use regulations, is transferable only to the extent allowed by law.

ADOPTED this 18th day of April, 2007, ratified April 19, 2007.



BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON


Ted Wheeler, Chair

REVIEWED:

AGNES SOWLE, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY, OREGON

By 
Sandra N. Duffy, Assistant County Attorney

SUBMITTED BY:

Agnes Sowle, County Attorney



MULTNOMAH COUNTY
AGENDA PLACEMENT REQUEST (short form)

Board Clerk Use Only

Meeting Date: 04/18/07
 Agenda Item #: PH-2
 Est. Start Time: 9:20 AM
 Date Submitted: 04/18/07

Public Hearing to consider and possibly act upon a Measure 37 Claim by Martha Glaser for compensation or relief from regulations to allow the development of a single family residence on property located west of 13801 NW Charlton Road, Portland [T2N, R1W, Sec 16C, TL 600] (Case File T1-06-093)

Note: If Ordinance, Resolution, Order or Proclamation, provide exact title. For all other submissions, provide a clearly written title.

Requested Meeting Date: April 18, 2007 Amount of Time Needed: 20 minutes
 Department: Community Services Division: Land Use & Transportation
 Contact(s): Derrick Tokos, Don Kienholz, Sandra Duffy
 Phone: 503-988-3043 Ext. 29270 I/O Address: 455/116
 Presenter(s): Don Kienholz, Sandra Duffy

General Information

1. What action are you requesting from the Board?

Action requested is to provide a public hearing and render a decision regarding a Measure 37 claim by Martha Glaser to waive land use regulations which prohibit the development of a single family dwelling on property located west of 13801 NW Charlton Road. Land use planning has outlined an approach to deciding this claim in a staff report dated April 3, 2007.

2. Please provide sufficient background information for the Board and the public to understand this issue. Please note which Program Offer this action affects and how it impacts the results.

For a claim to be valid, the land use regulations challenged must restrict the claimants use of private real property in a manner that reduces its fair market value relative to how it could have been used at the time the claimant acquired the property. As outlined in the staff report April 3, 2007, and memorandum from the County Attorney's Office, this requirement has been met.

The claimant, Martha Glaser, is seeking compensation or relief from land use regulations to allow the 2.01 acre property to be developed with a single family dwelling. She acquired an interest in the

property on October 14, 1975. County zoning for the property in 1975 was F-2. The F-2 zoning in effect when the claimant acquired the property allowed a dwelling or dwellings for the owner, operator, or help required to carry out grazing, agriculture, horticulture, or the growing of timber. The minimum lot size in the F-2 zone was 2 acres. Current Exclusive Farm Use (EFU) zoning regulations contain specific standards for qualifying a dwelling that the claimant cannot meet, such as proof that she has generated \$80,000 gross annual income from the sale of farm products grown on a subject tract in the last two years, or for three of the last five years.

The use the claimant asserts has been restricted is her ability to develop a single family dwelling. The claimant has established that land use regulations enacted after she acquired the subject property have prevented her from building a home and that has reduced the fair market value of the property.

Staff recommends the Board of Commissioners find this to be a valid claim.

3. Explain the fiscal impact (current year and ongoing).

Comparable sales data provided by the claimant establishes that current regulations have reduced the fair market value of the property. The County Assessor concurred in a memo dated February 21, 2007. Additional appraisal work is needed should the Board prefer compensation as an alternative to regulatory relief.

4. Explain any legal and/or policy issues involved.

Policy and legal issues are outlined in a staff report from Land Use Planning April 3, 2007. The County Attorney has advised that any property rights obtained by relief from land use regulations are not transferable under Ballot Measure 37, consistent with the DOJ opinion of February 2005.

5. Explain any citizen and/or other government participation that has or will take place.

Public notice of this hearing has been mailed to all property owners within 750 feet of the subject property, and the claimant. Deliberation and any action on this item will be done following a public hearing at which interested citizens will have an opportunity to testify and provide written comment in accordance with the Board of Commissioners rules of procedure for the hearing.

Required Signature

Elected Official or
Department/
Agency Director:



Date: 04/04/07



**LAND USE & TRANSPORTATION
PLANNING PROGRAM**

1600 SE 190TH Avenue Portland, OR 97233
PH: 503-988-3043 FAX: 503-988-3389
<http://www.co.multnomah.or.us/landuse>

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

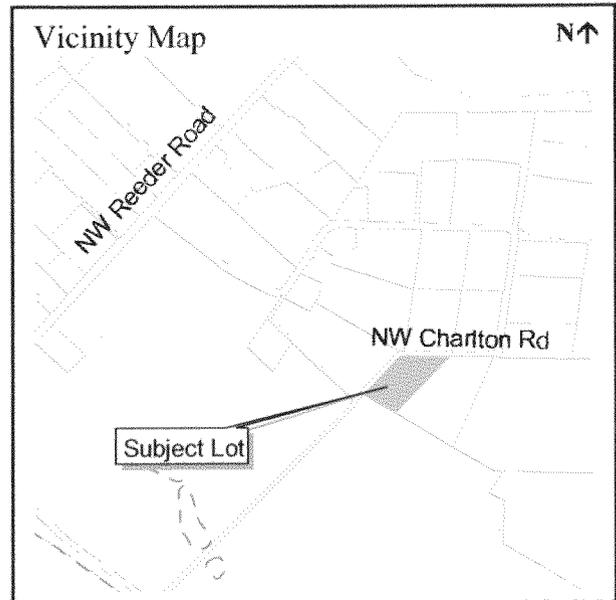
Hearing Date, Time, & Place:

Wednesday, April 18, 2007 at 9:00 AM or soon thereafter, in the Commissioners' Board Room of the Multnomah Building, located at 501 SE Hawthorne, Portland, Oregon.

Case File: T1-06-093

Claimants: Martha Glaser
31915 Seven Mile Lane
Tangent, OR 97389

Location: West of 13801 NW Charlton Road
R971160380
Tax Lot 600, Section 16C, Township 2N,
Range 1W; W.M.



Claim: Compensation or relief from County land use regulations to allow the claimant to construct a single-family dwelling on the property.

Zoning: Exclusive Farm Use (EFU)

Site Size: 2.01 acres

Approach to Deciding the Claim:

Martha Glaser (claimant) acquired an interest in the subject property on October 14, 1975. The claimant has indicated that the challenged regulations enacted after they acquired the property have prevented them from building a single family dwelling. Our analysis confirms that current land use regulations prohibit construction of a dwelling. The claimant's data on comparable sales is adequate to show that some of the challenged regulations have reduced the property's value. Consequently, the Board must either:

- a. Pay compensation equal to the reduction in fair market value of the property attributed to the challenged regulations which restrict claimants' use of their property; **or**.
- b. Not apply the challenged 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.

The claimant's data is inadequate as evidence to establish value, so additional appraisal work would be needed if compensation is the desired course of action.

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?*

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

On November 22, 2006, the claimants submitted a Measure 37 Claim Form (Exhibit 1). Title information from Tigor Title Insurance Company was submitted January 18, 2007 (Exhibit 2). A comparative market analysis was submitted with the November 22 claim (Exhibit 3), along with the zoning regulations applicable in 1975 when the claimant acquired the property (Exhibit 4). The claimant identified regulations that restrict the use of the property and explained how they reduce the fair-market value of the property. These and other materials in the claim record constitute a complete written demand for compensation complying with the county's requirements (MCC 27.520).

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

Yes. The Claimant obtained an interest in the property on October 14, 1975 (Exhibit 5) prior to the county adopting the challenged regulations set out in the claim.

The zoning of the parcel was F-2 on October 14, 1975 when the property was divided out of a larger parcel and gifted to the claimant (Book 1067, Page 946). A copy of the zoning map in effect on October 14, 1975 is included as Exhibit 6. A copy of the F-2 regulations in effect on October 14, 1975 is presented as Exhibit 4. The F-2 district was an agricultural zone, that allowed dwellings for the owner, operator, or help required to carry out grazing, agriculture, horticulture, or the growing of timber (§3.112, Ord. #100). The minimum lot size in this district was 2 acres (§2.10, Ord. #100). The zoning changed from F-2 to RL-C on December 5, 1975 (38 ac. min. lot size), to Exclusive Farm Use-38 on October 6, 1977 (76 acre min. lot size), and to Exclusive Farm Use on August 14, 1980. EFU rules also generally limit the establishment of new dwellings to those that are necessary for farm purposes (§34.2600 et. seq.). The claimant is challenging the current EFU regulations.

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

Yes. Some of the challenged regulations have restricted the use of the property by prohibiting the construction of a dwelling.

The F-2 zoning in effect when the claimant acquired the property allowed a dwelling or dwellings for the owner, operator, or help required to carry out grazing, agriculture, horticulture, or the growing of timber (§3.112, Ord. #100). The property is presently zoned Exclusive Farm Use (EFU). A copy of the current regulations and zoning map are included as Exhibit 4 and Exhibit 7. The EFU regulations contain specific standards for qualifying a dwelling that are more restrictive than the F-2 requirements, and have the effect of preventing a dwelling from being constructed on the property.

The following are the specific EFU regulations which would prevent the establishment of a dwelling on the property. These regulations and the Comprehensive Plan policies they implement, would need to be set aside should the Board choose to not apply regulations in lieu of compensation:

- **MCC 34.2625(D)(1)** – *Farm Income Test for Establishing a Farm Dwelling on High Value Farmland Soils*

This regulation require proof of a certain level of farm income related to the property in order to establish a new primary farm dwelling on vacant land. The threshold for properties consisting of high value soils is \$80,000 gross annual income from the sale of farm products grown on a subject tract in the last two years, or for three of the last five years.

Although the subject property consists of high value Burlington fine sandy loam soils (Unit 6B)¹, it is only 2.01 acres in size and is unlikely to be able to produce enough agricultural yield to meet the \$80,000 farm income test.

According to statistics published jointly by the Oregon Agricultural Statistics Service and Oregon State University Extension Service in 2001, the 1999 gross sales in Multnomah County averaged only \$11,079 per acre for nursery and greenhouse operations. Of Oregon's top 40 commodities for 2000, greenhouse and nursery products ranked number one in dollar value and were estimated to have constituted over half of the total sales of farm products in the county. This provides a reasonable high end farm related income projection for an acre of farm land². This \$11,079 estimate provides further support that the 2.01 acre subject property is most likely too small to meet the \$80,000 farm income regulation required to establish a primary farm dwelling. In fact, the average farm size in Multnomah County is 48-acres³ making the 2.01 acre subject property quite small in comparison.

- **MCC 34.2625(F)** – *Heritage Tract Dwelling on parcel not containing high-value farmland.*

This regulation requires the subject tract to not be identified as high-value farmland in order to qualify for a new single family dwelling. As referenced above, soils on the property consist of high value Burlington fine sandy loam soils (Unit 6B)

- **MCC 34.2630(N)** – *Heritage Tract Dwelling on parcel containing high-value farmland*

This criterion allows for a new single family dwelling on farmland that cannot practicably be managed for farm use due to extraordinary circumstances inherent in the land or its physical setting that do not apply generally to other land in the vicinity. These circumstances include "very steep slopes, deep ravines, rivers, streams, roads, railroad or utility lines or other similar natural or physical barriers that by themselves or in combination separate the subject lot or parcel from adjacent agricultural land and prevent it from being practicably managed for farm use." The generally flat subject property does not contain features which consist of these physical elements, and thus could not qualify for a right to develop a new home under this standard.

- **MCC 34.2630(O)** – *Heritage Tract Dwelling on parcel containing high-value farmland*

¹ (1983) Soil Survey of Multnomah County, United States Department of Agriculture & Soil Conservation Service.

² (2001) Oregon Agricultural Statistics and Oregon State University Extension Service, Oregon Agriculture: Facts and Figures.

³ (2002) USDA census data.

This regulation requires that the subject tract be not composed of predominately of irrigated or non-irrigated soils classified prime, unique, Class I or Class II. Burlington fine sandy loam is classified as a prime soil, as indicated in the High-Value Farmland Soils table included as Exhibit 8.

Statewide Planning Goals were effective January 25, 1975, prior to the date the claimant acquired the property. Standards for farm and non-farm dwellings in Exclusive Farm zones were also codified in state law prior to 1975. While the County had not yet implemented these rules, the state has taken the position they are nonetheless applicable and that local jurisdictions must require claimants meet them (Exhibit 9). We anticipate the state will take a similar position with this claim. This may impact the claimant's ability to construct a dwelling on the property should the Board grant regulatory relief.

Further, if the Board grants regulatory relief to construct a dwelling, a separate land use decision will be required in order to confirm that the dwelling is needed to carry out farm or timber operations on the subject property.

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

Yes. Current EFU regulations that prohibit construction of a dwelling have reduced the fair market value of the property. The alternative data provided by the claimant is sufficient to establish that the property is more valuable if a home can be constructed.

The zoning of the lot was F-2 when the claimants acquired the property as previously discussed. In 1975, the zone district allowed for a "*dwelling or dwellings for owner, operator and/or help required to carry out grazing, agriculture, horticulture or the growing of timber.*" Current EFU regulations further restrict the property such that a dwelling cannot be constructed. It is these additional restrictions that have reduced the fair market value of the property.

The claimant has not submitted an appraisal which assesses the current value of the property without the right to build a home. Instead, the claimant has submitted a comparable analysis (Exhibit 3). The analysis contains data on recent sales of four properties on NW Charlton Road. The dataset contains location information, physical information, sale information, and assessment information.

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.⁴

Bob Alcantara, Senior Appraisal Supervisor with the Multnomah County Division of Assessment and Taxation provided his department's interpretation on the reduction of value issue for this claim in a memo dated February 21, 2007 (Exhibit 10). In that memo, Mr. Alcantara indicated that the comparables were reasonable and there had been a reduction in real market value.

⁴ The alternative data submitted assumes the ability to develop the lots is transferable by sale which contradicts the Attorney General's opinion on transferability. Also, the alternative data looks only at the current market value of the property and comparable properties. It does not look at the impact of the regulations at the time they were imposed. The land use regulations challenged in this claim have constrained the supply of developable properties in this area, the result of which may impact land values of the remaining developable properties in a positive manner [(2006) Jaeger, W., The effects of Land-Use Regulations on Property Values, Environmental Law (VOL 36) Pages 105-130]. That impact on the value is not considered in the analysis.

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 February 13, 2007. No comments were received. Public notice of this hearing was mailed to all property owners within 750 feet of the subject property. Deliberation and any action on this item will be done following a public hearing at which interested citizens will have an opportunity to testify and provide written comment in accordance with the Board of Commissioners rules of procedure for the hearing.

Conclusion

Considering the above findings, Martha Glaser has established that land use regulations enacted after she acquired the property prevent her from building a home. To allow the claimant to construct a home on the property, the Board would need to grant the request to not apply the following regulations:

- *MCC 34.2625(D)(1) – Farm Income Test for Establishing a Farm Dwelling on High Value Farmland Soils*
- *MCC 34.2625(F) – Heritage Tract Dwelling on parcel not containing high-value farmland.*
- *MCC 34.2630(O) – Heritage Tract Dwelling on parcel containing high-value farmland*
- *MCC 34.2630(N) – Heritage Tract Dwelling on parcel containing high-value farmland*

The comparable sales data provided by the claimant establishes that the property is more valuable if a home can be constructed.

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. Note that waiver of the listed regulations also constitutes a waiver of Comprehensive Plan and Rural Area Plan policies that the rules implement.
3. 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. Specifically, a land use permit will be required to verify that a dwelling proposed by the claimants is for the "owner, operator and/or help required to carry out grazing, agriculture, horticulture of the growing of timber."
4. Include a statement that the statewide Planning Goals were effective January 25, 1975, prior to the date the claimant acquired the property. Standards for farm and non-farm dwellings in Exclusive Farm zones were also codified in state law prior to 1975. While the County had not yet

implemented these rules, the state has taken the position they are nonetheless applicable and that local jurisdictions must require claimants meet them (Exhibit 9). The County anticipates the state will take a similar position with this claim. This may impact the claimant's ability to construct a dwelling on the property.

5. Include a statement that any right obtained by a claimant through the Board's grant of a waiver of County land use regulations is transferable only to the extent allowed by law.

Issued by:

By: _____
Don Kienholz, Planner

For: Karen Schilling- Planning Director

Date: April 3, 2007

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.

1. Measure 37 Claim Form
2. Tigor Insurance Title Report For Property
3. Claimant's Comparative Market Analysis
4. 1975 F-2 Zoning Regulations
5. October 14, 1975 Deed Conveying Property To Claimant
6. 1975 Zoning Map
7. Current Zoning Map
8. Map Of High Value Soils
9. Stafford Letter
10. Assessment And Taxation Memo Dated February 21, 2007

Multnomah County Attorney's Office
501 S.E. Hawthorne Blvd., Suite 500
Portland, Oregon 97214
PHONE: (503) 988-3138
FAX: (503) 988-3377



MEMORANDUM

To: Don Kienholz
Multnomah County Planner

Cc: Derrick Tokos, Principal Planner
Chuck Beasley, Planner

From: Jed Tomkins
Assistant County Attorney
Multnomah County Attorney's Office

Date: April 3, 2007

Re: Martha Glaser
T1-06-093

I have reviewed your staff report for legal sufficiency under MCC 27.500 *et. seq.* Your staff report has adequately addressed each required criteria and correctly applied Measure 37 and the county's implementing regulations.

Script for Feller; Glaser and Wiley 04/18/07 Measure 37 Hearings

Wednesday, April 18, 2007 – 9:00 AM
Multnomah Building, First Floor Commissioners Boardroom 100
501 SE Hawthorne Boulevard, Portland

PUBLIC HEARINGS

[Please Note: Any action taken by the Board on the following Measure 37 Claims will be ratified at the April 19th Board Meeting.]

Chair Ted Wheeler convenes the meeting at 9:00 a.m., with Vice-Chair Maria Rojo de Steffey and Commissioners Lisa Naito, Lonnie Roberts and Jeff Cogen present.

INTRODUCTION:

Chair: This is the time set for public hearings on the claims of **Alfred Feller; Martha Glaser; and Robert and Cheryl Wiley** under Ballot Measure 37. I am Ted Wheeler, Chair of the Multnomah County Board of Commissioners. Also in attendance are Commissioners Maria Rojo, Lisa Naito, Jeff Cogen and Lonnie Roberts.

All information relevant to these claims may be submitted and will be considered in these hearings. The evidence may be in any form including oral and written testimony, letters, petitions or other written material, slides, photographs, maps drawings or other items.

The Commission will base its decision on the evidence presented, along with the information on the claim in the Planning file. The Board decision will be by Order adopted by the Board.

DISCLOSURES:

Chair: Board members are required to disclose the content of any *ex parte* contacts. Any Board member who has received any factual information obtained outside the information provided by the county planning staff or this hearing is an *ex parte* contact. A visit to the property is considered an *ex parte* contact. Any *ex parte* contacts should be disclosed at this time. Such disclosures should include the time and date of the visit, what he/she observed, who (if anyone) the Commissioner talked to at the site and any other relevant facts or observations obtained as a result of the site visit.

Chair: I have *no ex parte* contacts to disclose regarding any of the claims we are hearing today.

or if the Chair has disclosures to make

I have the following disclosures to make: _____

Script for Feller; Glaser and Wiley 04/18/07 Measure 37 Hearings

Chair: [Invite the other Commissioners to make any necessary disclosures.]

Commissioner Rojo? Commissioner Naito? Commissioner Cogen? Commissioner Roberts? [If there are none, each Commissioner should say “none” on the record.]

[If there are disclosures of *ex parte* contacts, the claimant and the public should be given an opportunity to rebut the substance of any disclosure. “Does anyone have any rebuttal testimony relating to any disclosure?”]

Chair: Board members are also required to disclose any conflicts of interest and to recuse themselves from deliberation and voting if a conflict exists. It is deemed a conflict of interest if any Board member, or a member of his/her immediate family or household, has a financial interest in the outcome of a matter before the Board. It is a conflict of interest if a Board member lives within the geographical area entitled to notice of a claim.

Chair: Does any Board member, or a member of his/her immediate family or household, have a financial interest in the outcome of any of the claims now before us?

I do [do not] have a financial interest in the outcome of any of these claims. [Invite other commissioners to make any necessary disclosures.] **Commissioner Rojo? Commissioner Naito? Commissioner Cogen? Commissioner Roberts?** [If yes, that person must recuse himself/herself on the record.]

Does any Board member live within the geographical area entitled to notice of any of these claims?

I do [do not] live within the geographical area of any of these claims. **Commissioner Rojo? Commissioner Naito? Commissioner Cogen? Commissioner Roberts?**

[Any commissioner who lives within the relevant geographical area of a claim must recuse himself/herself. MCC 7.540]

CONDUCT OF THE HEARING:

Chair: In each of these hearings, I will ask for testimony and other evidence in the following order:

1. Staff report
2. Claimant or claimant’s representative
3. Others who wish to be heard on the claim
4. Commission discussion, questions, deliberation
5. Future scheduling if necessary

Script for Feller; Glaser and Wiley 04/18/07 Measure 37 Hearings

HOW TO PRESENT TESTIMONY:

Chair: There are testimony cards at the back of the room and should be filled out by anyone wishing to testify. The claimants need not fill out a card. The cards should be given to the Board Clerk.

1. State your name and address before you begin your presentation
2. Avoid repetitive testimony
3. During the hearing, I ask those in the audience to refrain from any demonstration in support or opposition to the claim.

Chair: Please call the first hearing.

Board Clerk:

PH-1 Public Hearing to consider and possibly act upon a Measure 37 Claim by Alfred Feller for compensation or relief from regulations to allow for the development of a single family residence on property located north of 34242 SE Smith Road, Corbett. [1S, R4E, Sec 03B, TL 400] (Case File T1-06-077)

Chair: [Ask for testimony in the order previously stated]

AT THE CONCLUSION OF THE TESTIMONY:

Chair: [Ask for Board discussion, questions, deliberation, motion and/or future scheduling if necessary]

AFTER DISCUSSION:

Do I have a motion on PH-1?

**COMMISSIONER _____ MOVES
COMMISSIONER _____ SECONDS
APPROVAL OF AN Order Denying or
Granting, with Conditions, Measure 37
Claim by Alfred Feller for compensation or
relief from regulations to allow for the
development of a single family residence on
property located north of 34242 SE Smith
Road, Corbett**

OPPORTUNITY FOR BOARD COMMENTS

ALL IN FAVOR, VOTE AYE, OPPOSED ____?

Script for Feller; Glaser and Wiley 04/18/07 Measure 37 Hearings

**THE MOTION FAILS
OR
THE ORDER IS ADOPTED**

Chair: Please call the next hearing.

Board Clerk:

PH-2 Public Hearing to consider and possibly act upon a Measure 37 Claim by Martha Glaser for compensation or relief from regulations to allow the development of a single family residence on property located west of 13801 NW Charlton Road, Portland. [T2N, R1W, Sec 16C, TL 600] (Case File T1-06-093

Chair: [Ask for testimony in the order previously stated]

AT THE CONCLUSION OF THE TESTIMONY:

Chair: [Ask for Board discussion, questions, deliberation, motion and/or future scheduling if necessary]

AFTER DISCUSSION:

Do I have a motion on PH-2?

**COMMISSIONER _____ MOVES
COMMISSIONER _____ SECONDS
APPROVAL OF AN Order Denying or
Granting, with Conditions, Measure 37
Claim by Martha Glaser for compensation or
relief from regulations to allow the development
of a single family residence on property located
west of 13801 NW Charlton Road, Portland**

OPPORTUNITY FOR BOARD COMMENTS

ALL IN FAVOR, VOTE AYE, OPPOSED ____?

**THE MOTION FAILS
OR
THE ORDER IS ADOPTED**

Chair: Please call the next hearing.

Script for Feller; Glaser and Wiley 04/18/07 Measure 37 Hearings

Board Clerk:

PH-3 Public Hearing to consider and possibly act upon a Measure 37 Claim by Robert and Cheryl Wiley for \$225,000 in compensation or relief from regulations to allow the development of a single family residence on property located west of 13801 NW Charlton Road, Portland. [T2N, R1W, Sec 16C, TL 500] (Case File T1-06-078)

Chair: [Ask for testimony in the order previously stated]

AT THE CONCLUSION OF THE TESTIMONY:

Chair: [Ask for Board discussion, questions, deliberation, motion and/or future scheduling if necessary]

AFTER DISCUSSION:

Do I have a motion on PH-3?

**COMMISSIONER _____ MOVES
COMMISSIONER _____ SECONDS
APPROVAL OF AN Order Denying or
Granting, with Conditions, Measure 37
Claim by Robert and Cheryl Wiley for \$225,000
in compensation or relief from regulations to
allow the development of a single family
residence on property located west of 13801
NW Charlton Road, Portland**

OPPORTUNITY FOR BOARD COMMENTS

ALL IN FAVOR, VOTE AYE, OPPOSED ____?

**THE MOTION FAILS
OR
THE ORDER IS ADOPTED**

**THERE BEING NO FURTHER BUSINESS, THE MEETING IS
ADJOURNED.**

DRAFT

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

ORDER NO. _____

Order Granting, with Conditions, Ballot Measure 37 Request of Martha Glaser Relating to a Parcel of Land Located West of 13801 NW Charlton Road, Tax Lot 600, Section 16C, Township 2N, Range 1 W, W.M., Portland, Multnomah County, Oregon

The Multnomah County Board of Commissioners Finds:

- a. **Party:** Martha Glaser is the Ballot Measure 37 Claimant who filed a demand for compensation to Multnomah County on November 22, 2006.
- b. **Subject Real Property:** This claim relates to real property located West of 13801 NW Charlton Road, Multnomah County, Oregon, more specifically described as:

Tax Lot 600, Section 16C, Township 2N, Range 1 W, W.M.
Tax Account # R-994030830

- c. **Adequacy of Demand for Compensation:**

The materials submitted by the Claimant constitute a complete written demand for compensation as required by Multnomah County Code 27.520.

On November 22, 2006, the claimant submitted a Measure 37 Claim Form. Title information from Ticor Title Insurance Company was submitted January 18, 2007. A comparative market analysis was submitted with the November 22 claim, along with the zoning regulations applicable in 1975 when the claimant acquired the property. The claimant identified regulations that restrict the use of the property and explained how they reduce the fair-market value of the property. These and other materials in the claim record constitute a complete written demand for compensation complying with the county's requirements (MCC 27.520).

The Board finds that the materials submitted by the claimant constitute a complete "written demand for compensation" within the meaning of the measure.

- d. **Relevant Dates of Property Ownership:**

The Claimant has established that she obtained an interest in the property prior to the County's adoption of the land use regulations challenged in this claim.

The zoning of the parcel was F-2 on October 14, 1975 when the property was divided out of a larger parcel and gifted to the claimant (Book 1067, Page 946). The F-2 district was an agricultural zone, that allowed dwellings for the owner, operator, or help required to carry out grazing, agriculture, horticulture, or the growing of timber (§3.112, Ord. #100). The minimum lot size in this district was 2 acres (§2.10, Ord. #100). The zoning changed from

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F-2 to RL-C on December 5, 1975 (38 ac. min. lot size), to Exclusive Farm Use-38 on October 6, 1977 (76 acre min. lot size), and to Exclusive Farm Use on August 14, 1980. EFU rules also generally limit the establishment of new dwellings to those that are necessary for farm purposes (§34.2600 et. seq.). The claimant is challenging the current EFU regulations.

The Board finds that the claimant obtained an interest in the subject property on October 14, 1975, prior to the county adopting the challenged regulations set out in the claim.

e. **County Codes as a Restriction on Use of the Property:**

The Claimant has established that the challenged land use regulations have restricted her use of the property.

The F-2 zoning in effect when the claimant acquired the property allowed a dwelling or dwellings for the owner, operator, or help required to carry out grazing, agriculture, horticulture, or the growing of timber (§3.112, Ord. #100). The property is presently zoned Exclusive Farm Use (EFU). The EFU regulations contain specific standards for qualifying a dwelling that are more restrictive than the F-2 requirements, and have the effect of preventing a dwelling from being constructed on the property.

The following are the specific EFU regulations which would prevent the establishment of a dwelling on the property:

- ***MCC 34.2625(D)(1) – Farm Income Test for Establishing a Farm Dwelling on High Value Farmland Soils***

This regulation requires proof of a certain level of farm income related to the property in order to establish a new primary farm dwelling on vacant land. The threshold for properties consisting of high value soils is \$80,000 gross annual income from the sale of farm products grown on a subject tract in the last two years, or for three of the last five years.

Although the subject property consists of high value Burlington fine sandy loam soils (Unit 6B)¹, it is only 2.01 acres in size and is unlikely to be able to produce enough agricultural yield to meet the \$80,000 farm income test.

According to statistics published jointly by the Oregon Agricultural Statistics Service and Oregon State University Extension Service in 2001, the 1999 gross sales in Multnomah County averaged only \$11,079 per acre for nursery and greenhouse operations. Of Oregon's top 40 commodities for 2000, greenhouse and nursery products ranked number one in dollar value and were estimated to have constituted over half of the total sales of farm products in the county. This provides a reasonable high end farm related income projection for an acre of farm land². This \$11,079 estimate provides further support that the 2.01 acre subject

¹ (1983) Soil Survey of Multnomah County, United States Department of Agriculture & Soil Conservation Service.

² (2001) Oregon Agricultural Statistics and Oregon State University Extension Service, Oregon Agriculture: Facts and Figures.

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property is most likely too small to meet the \$80,000 farm income regulation required to establish a primary farm dwelling. In fact, the average farm size in Multnomah County is 48-acres³ making the 2.01 acre subject property quite small in comparison.

- *MCC 34.2625(F) – Heritage Tract Dwelling on parcel not containing high-value farmland.*

This regulation requires the subject tract to not be identified as high-value farmland in order to qualify for a new single family dwelling. As referenced above, soils on the property consist of high value Burlington fine sandy loam soils (Unit 6B)

- *MCC 34.2630(N) – Heritage Tract Dwelling on parcel containing high-value farmland*

This criterion allows for a new single family dwelling on farmland that cannot practicably be managed for farm use due to extraordinary circumstances inherent in the land or its physical setting that do not apply generally to other land in the vicinity. These circumstances include “very steep slopes, deep ravines, rivers, streams, roads, railroad or utility lines or other similar natural or physical barriers that by themselves or in combination separate the subject lot or parcel from adjacent agricultural land and prevent it from being practicably managed for farm use.” The generally flat subject property does not contain features which consist of these physical elements, and thus could not qualify for a right to develop a new home under this standard.

- *MCC 34.2630(O) – Heritage Tract Dwelling on parcel containing high-value farmland*

This regulation requires that the subject tract to not be composed of predominately irrigated or non-irrigated soils classified prime, unique, Class I or Class II. Burlington fine sandy loam is classified as a prime soil, as indicated in the High-Value Farmland Soils table in the record.

Statewide Planning Goals were effective January 25, 1975, prior to the date the claimant acquired the property. Standards for farm and non-farm dwellings in Exclusive Farm zones were also codified in state law prior to 1975. While the County had not yet implemented these rules, the state has taken the position they are nonetheless applicable and that local jurisdictions must require claimants meet them. We anticipate the state will take a similar position with this claim. This may impact the claimant’s ability to construct a dwelling on the property.

The Board finds that the Claimant has established that the challenged land use regulations have restricted her use of the subject property.

³ (2002) USDA census data.

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f. **County Code Restrictions Reduce Fair Market Value:**

The Claimant has established that the challenged land use regulations have reduced the fair market value of the property.

The zoning of the lot was F-2 when the claimant acquired the property as previously discussed. In 1975, the zone district allowed for a *“dwelling or dwellings for owner, operator and/or help required to carry out grazing, agriculture, horticulture or the growing of timber.”* Current EFU regulations further restrict the property such that a dwelling cannot be constructed. It is these additional restrictions that have reduced the fair market value of the property.

The claimant has not submitted an appraisal which assesses the current value of the property without the right to build a home. Instead, the claimant has submitted a comparable analysis. The analysis contains data on recent sales of four properties on NW Charlton Road. The dataset contains location information, physical information, sale information, and assessment information.

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.⁴

Bob Alcantara, Senior Appraisal Supervisor with the Multnomah County Division of Assessment and Taxation provided his department’s interpretation on the reduction of value issue for this claim in a memo dated February 21, 2007. In that memo, Mr. Alcantara indicated that the comparables were reasonable and there had been a reduction in real market value.

The Board finds that the Claimant has established that the challenged regulations have reduced the fair market value of the subject property.

g. **Public Notice**

Section 3.50 of the County Charter requires notice to the public of all Board agenda matters. This notice was provided. The Claimant and persons who own land within 750 feet of the subject property received notice by mail.

h. **Validity of Claim for Compensation:** The Board finds that:

⁴ The alternative data submitted assumes the ability to develop the lots is transferable by sale which contradicts the Attorney General’s opinion on transferability. Also, the alternative data looks only at the current market value of the property and comparable properties. It does not look at the impact of the regulations at the time they were imposed. The land use regulations challenged in this claim have constrained the supply of developable properties in this area, the result of which may impact land values of the remaining developable properties in a positive manner [(2006) Jaeger, W., The effects of Land-Use Regulations on Property Values, Environmental Law (VOL 36) Pages 105-130]. That impact on the value is not considered in the analysis.

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- (1) The claim materials submitted by the Claimant constitute a complete written demand for compensation as required by Measure 37 and Multnomah County Code 27.530.
- (2) The Claimant's acquisition of the subject property on October 14, 1975, preceded the County's adoption of the land use regulations challenged in this claim.
- (3) The Claimant has established that the challenged land use regulations have restricted her use of the subject property.
- (4) The Claimant has established that the challenged land use regulations have reduced the fair market value of the subject property.

The Multnomah County Board of Commissioners Orders that:

1. **Claimant's Measure 37 claim is granted and the following regulations do not apply to claimant's property:**
 - *MCC 34.2625(D)(1) – Farm Income Test for Establishing a Farm Dwelling on High Value Farmland Soils*
 - *MCC 34.2625(F) – Heritage Tract Dwelling on parcel not containing high-value farmland.*
 - *MCC 34.2630(O) – Heritage Tract Dwelling on parcel containing high-value farmland*
 - *MCC 34.2630(N) – Heritage Tract Dwelling on parcel containing high-value farmland*
2. **The County will not pay the compensation demanded by Claimant.**
3. **In lieu of compensation, the County shall not apply the challenged regulations to allow the Claimant to use the property for residential purposes as described in this Order. This action by the Board provides the County's authorization to the claimant to use their property subject to the standards in effect on October 14, 1975.**
4. **Section 3 above, constitutes a waiver of Comprehensive Plan and Rural Area Plan policies that the regulations implement.**
5. **The following Conditions of Approval apply to this decision:**
 - (a) Section 3 above does not constitute a waiver or modification of corresponding state laws, state administrative rules or metropolitan service district regulations that enforce land use regulations applicable to the property.
 - (b) To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the property may not be used without a permit, license, or other form of authorization or consent, this order does not authorize the use of the property unless the claimants first obtain that permit,

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license or other form of authorization or consent. Such requirements may include, but are not limited to: a building permit, a land use decision, other permits or authorizations from local, state or federal agencies, and restrictions on the use of the property imposed by private parties.

- (c) Any use of the property by the claimant under the terms of this order remain subject to the following laws or local codes: (a) those in effect on the date of the acquisition of the subject property; (b) any enacted or enforced by a public entity other than the County; and (c) those laws not subject to Measure 37 including, without limitation, those exempted under Section (3) of Measure 37.
- (d) Any rights obtained by a claimant through the Board's grant of a waiver of County land use regulations, is transferable only to the extent allowed by law.

ADOPTED this 18th day of April, 2007, ratified April 19, 2007.

BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

Ted Wheeler, Chair

REVIEWED:

AGNES SOWLE, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY, OREGON

By _____
Sandra N. Duffy, Assistant County Attorney

SUBMITTED BY:
Agnes Sowle, County Attorney

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

ORDER NO. 07-062

Order Granting, with Conditions, Ballot Measure 37 Request of Martha Glaser Relating to a Parcel of Land Located West of 13801 NW Charlton Road, Tax Lot 600, Section 16C, Township 2N, Range 1 W, W.M., Portland, Multnomah County, Oregon

The Multnomah County Board of Commissioners Finds:

- a. **Party:** Martha Glaser is the Ballot Measure 37 Claimant who filed a demand for compensation to Multnomah County on November 22, 2006.
- b. **Subject Real Property:** This claim relates to real property located West of 13801 NW Charlton Road, Multnomah County, Oregon, more specifically described as:

Tax Lot 600, Section 16C, Township 2N, Range 1 W, W.M.
Tax Account # R-994030830

- c. **Adequacy of Demand for Compensation:**

The materials submitted by the Claimant constitute a complete written demand for compensation as required by Multnomah County Code 27.520.

On November 22, 2006, the claimant submitted a Measure 37 Claim Form. Title information from Ticor Title Insurance Company was submitted January 18, 2007. A comparative market analysis was submitted with the November 22 claim, along with the zoning regulations applicable in 1975 when the claimant acquired the property. The claimant identified regulations that restrict the use of the property and explained how they reduce the fair-market value of the property. These and other materials in the claim record constitute a complete written demand for compensation complying with the county's requirements (MCC 27.520).

The Board finds that the materials submitted by the claimant constitute a complete "written demand for compensation" within the meaning of the measure.

- d. **Relevant Dates of Property Ownership:**

The Claimant has established that she obtained an interest in the property prior to the County's adoption of the land use regulations challenged in this claim.

The zoning of the parcel was F-2 on October 14, 1975 when the property was divided out of a larger parcel and gifted to the claimant (Book 1067, Page 946). The F-2 district was an agricultural zone, that allowed dwellings for the owner, operator, or help required to carry out grazing, agriculture, horticulture, or the growing of timber (§3.112, Ord. #100). The minimum lot size in this district was 2 acres (§2.10, Ord. #100). The zoning changed from

F-2 to RL-C on December 5, 1975 (38 ac. min. lot size), to Exclusive Farm Use-38 on October 6, 1977 (76 acre min. lot size), and to Exclusive Farm Use on August 14, 1980. EFU rules also generally limit the establishment of new dwellings to those that are necessary for farm purposes (§34.2600 et. seq.). The claimant is challenging the current EFU regulations.

The Board finds that the claimant obtained an interest in the subject property on October 14, 1975, prior to the county adopting the challenged regulations set out in the claim.

e. **County Codes as a Restriction on Use of the Property:**

The Claimant has established that the challenged land use regulations have restricted her use of the property.

The F-2 zoning in effect when the claimant acquired the property allowed a dwelling or dwellings for the owner, operator, or help required to carry out grazing, agriculture, horticulture, or the growing of timber (§3.112, Ord. #100). The property is presently zoned Exclusive Farm Use (EFU). The EFU regulations contain specific standards for qualifying a dwelling that are more restrictive than the F-2 requirements, and have the effect of preventing a dwelling from being constructed on the property.

The following are the specific EFU regulations which would prevent the establishment of a dwelling on the property:

- ***MCC 34.2625(D)(1) – Farm Income Test for Establishing a Farm Dwelling on High Value Farmland Soils***

This regulation requires proof of a certain level of farm income related to the property in order to establish a new primary farm dwelling on vacant land. The threshold for properties consisting of high value soils is \$80,000 gross annual income from the sale of farm products grown on a subject tract in the last two years, or for three of the last five years.

Although the subject property consists of high value Burlington fine sandy loam soils (Unit 6B)¹, it is only 2.01 acres in size and is unlikely to be able to produce enough agricultural yield to meet the \$80,000 farm income test.

According to statistics published jointly by the Oregon Agricultural Statistics Service and Oregon State University Extension Service in 2001, the 1999 gross sales in Multnomah County averaged only \$11,079 per acre for nursery and greenhouse operations. Of Oregon's top 40 commodities for 2000, greenhouse and nursery products ranked number one in dollar value and were estimated to have constituted over half of the total sales of farm products in the county. This provides a reasonable high end farm related income projection for an acre of farm land². This \$11,079 estimate provides further support that the 2.01 acre subject

¹ (1983) Soil Survey of Multnomah County, United States Department of Agriculture & Soil Conservation Service.

² (2001) Oregon Agricultural Statistics and Oregon State University Extension Service, Oregon Agriculture: Facts and Figures.

property is most likely too small to meet the \$80,000 farm income regulation required to establish a primary farm dwelling. In fact, the average farm size in Multnomah County is 48-acres³ making the 2.01 acre subject property quite small in comparison.

- *MCC 34.2625(F) – Heritage Tract Dwelling on parcel not containing high-value farmland.*

This regulation requires the subject tract to not be identified as high-value farmland in order to qualify for a new single family dwelling. As referenced above, soils on the property consist of high value Burlington fine sandy loam soils (Unit 6B)

- *MCC 34.2630(N) – Heritage Tract Dwelling on parcel containing high-value farmland*

This criterion allows for a new single family dwelling on farmland that cannot practicably be managed for farm use due to extraordinary circumstances inherent in the land or its physical setting that do not apply generally to other land in the vicinity. These circumstances include “very steep slopes, deep ravines, rivers, streams, roads, railroad or utility lines or other similar natural or physical barriers that by themselves or in combination separate the subject lot or parcel from adjacent agricultural land and prevent it from being practicably managed for farm use.” The generally flat subject property does not contain features which consist of these physical elements, and thus could not qualify for a right to develop a new home under this standard.

- *MCC 34.2630(O) – Heritage Tract Dwelling on parcel containing high-value farmland*

This regulation requires that the subject tract to not be composed of predominately irrigated or non-irrigated soils classified prime, unique, Class I or Class II. Burlington fine sandy loam is classified as a prime soil, as indicated in the High-Value Farmland Soils table in the record.

Statewide Planning Goals were effective January 25, 1975, prior to the date the claimant acquired the property. Standards for farm and non-farm dwellings in Exclusive Farm zones were also codified in state law prior to 1975. While the County had not yet implemented these rules, the state has taken the position they are nonetheless applicable and that local jurisdictions must require claimants meet them. We anticipate the state will take a similar position with this claim. This may impact the claimant’s ability to construct a dwelling on the property.

The Board finds that the Claimant has established that the challenged land use regulations have restricted her use of the subject property.

³ (2002) USDA census data.

f. **County Code Restrictions Reduce Fair Market Value:**

The Claimant has established that the challenged land use regulations have reduced the fair market value of the property.

The zoning of the lot was F-2 when the claimant acquired the property as previously discussed. In 1975, the zone district allowed for a *“dwelling or dwellings for owner, operator and/or help required to carry out grazing, agriculture, horticulture or the growing of timber.”* Current EFU regulations further restrict the property such that a dwelling cannot be constructed. It is these additional restrictions that have reduced the fair market value of the property.

The claimant has not submitted an appraisal which assesses the current value of the property without the right to build a home. Instead, the claimant has submitted a comparable analysis. The analysis contains data on recent sales of four properties on NW Charlton Road. The dataset contains location information, physical information, sale information, and assessment information.

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.⁴

Bob Alcantara, Senior Appraisal Supervisor with the Multnomah County Division of Assessment and Taxation provided his department’s interpretation on the reduction of value issue for this claim in a memo dated February 21, 2007. In that memo, Mr. Alcantara indicated that the comparables were reasonable and there had been a reduction in real market value.

The Board finds that the Claimant has established that the challenged regulations have reduced the fair market value of the subject property.

g. **Public Notice**

Section 3.50 of the County Charter requires notice to the public of all Board agenda matters. This notice was provided. The Claimant and persons who own land within 750 feet of the subject property received notice by mail.

h. **Validity of Claim for Compensation:** The Board finds that:

⁴ The alternative data submitted assumes the ability to develop the lots is transferable by sale which contradicts the Attorney General’s opinion on transferability. Also, the alternative data looks only at the current market value of the property and comparable properties. It does not look at the impact of the regulations at the time they were imposed. The land use regulations challenged in this claim have constrained the supply of developable properties in this area, the result of which may impact land values of the remaining developable properties in a positive manner [(2006) Jaeger, W., *The effects of Land-Use Regulations on Property Values*, Environmental Law (VOL 36) Pages 105-130]. That impact on the value is not considered in the analysis.

- (1) The claim materials submitted by the Claimant constitute a complete written demand for compensation as required by Measure 37 and Multnomah County Code 27.530.
- (2) The Claimant's acquisition of the subject property on October 14, 1975, preceded the County's adoption of the land use regulations challenged in this claim.
- (3) The Claimant has established that the challenged land use regulations have restricted her use of the subject property.
- (4) The Claimant has established that the challenged land use regulations have reduced the fair market value of the subject property.

The Multnomah County Board of Commissioners Orders that:

- 1. Claimant's Measure 37 claim is granted and the following regulations do not apply to claimant's property:**
 - *MCC 34.2625(D)(1) – Farm Income Test for Establishing a Farm Dwelling on High Value Farmland Soils*
 - *MCC 34.2625(F) – Heritage Tract Dwelling on parcel not containing high-value farmland.*
 - *MCC 34.2630(O) – Heritage Tract Dwelling on parcel containing high-value farmland*
 - *MCC 34.2630(N) – Heritage Tract Dwelling on parcel containing high-value farmland*
- 2. The County will not pay the compensation demanded by Claimant.**
- 3. In lieu of compensation, the County shall not apply the challenged regulations to allow the Claimant to use the property for residential purposes as described in this Order. This action by the Board provides the County's authorization to the claimant to use their property subject to the standards in effect on October 14, 1975.**
- 4. Section 3 above, constitutes a waiver of Comprehensive Plan and Rural Area Plan policies that the regulations implement.**
- 5. The following Conditions of Approval apply to this decision:**
 - (a) Section 3 above does not constitute a waiver or modification of corresponding state laws, state administrative rules or metropolitan service district regulations that enforce land use regulations applicable to the property.
 - (b) To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the property may not be used without a permit, license, or other form of authorization or consent, this order does not authorize the use of the property unless the claimants first obtain that permit,

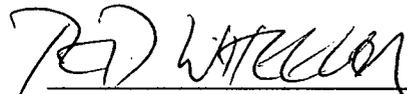
license or other form of authorization or consent. Such requirements may include, but are not limited to: a building permit, a land use decision, other permits or authorizations from local, state or federal agencies, and restrictions on the use of the property imposed by private parties.

- (c) Any use of the property by the claimant under the terms of this order remain subject to the following laws or local codes: (a) those in effect on the date of the acquisition of the subject property; (b) any enacted or enforced by a public entity other than the County; and (c) those laws not subject to Measure 37 including, without limitation, those exempted under Section (3) of Measure 37.
- (d) Any rights obtained by a claimant through the Board's grant of a waiver of County land use regulations, is transferable only to the extent allowed by law.

ADOPTED this 18th day of April, 2007, ratified April 19, 2007.



BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON



Ted Wheeler, Chair

REVIEWED:

AGNES SOWLE, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY, OREGON

By  For

Sandra N. Duffy, Assistant County Attorney

SUBMITTED BY:

Agnes Sowle, County Attorney



MULTNOMAH COUNTY
AGENDA PLACEMENT REQUEST (short form)

Board Clerk Use Only

Meeting Date: 04/18/07
 Agenda Item #: PH-3
 Est. Start Time: 9:40 AM
 Date Submitted: 04/04/07

Public Hearing to consider and possibly act upon a Measure 37 Claim by Robert and Cheryl Wiley for \$225,000 in compensation or relief from regulations to allow the development of a single family residence on property located west of 13801 NW Charlton Road, Portland [T2N, R1W, Sec 16C, TL 500] (Case File Title: T1-06-078)

Note: If Ordinance, Resolution, Order or Proclamation, provide exact title. For all other submissions, provide a clearly written title.

Requested Meeting Date: April 18, 2007 Amount of Time Needed: 20 minutes
 Department: Community Services Division: Land Use & Transportation
 Contact(s): Derrick Tokos, Ken Born, Sandra Duffy
 Phone: 503-988-3043 Ext. 29397 I/O Address: 455/116
 Presenter(s): Ken Born, Sandra Duffy

General Information

1. What action are you requesting from the Board?

Action requested is to provide a public hearing and render a decision regarding a Measure 37 claim by Robert and Cheryl Wiley to waive land use regulations which prohibit the development of a single family dwelling on property located west of 13801 NW Charlton Road. Land use planning has outlined an approach to deciding this claim in a staff report dated April 3, 2007.

2. Please provide sufficient background information for the Board and the public to understand this issue. Please note which Program Offer this action affects and how it impacts the results.

For a claim to be valid, the land use regulations challenged must restrict the claimants use of private real property in a manner that reduces its fair market value relative to how it could have been used at the time the claimants acquired the property. As outlined in the staff report dated April 3, 2007, and memorandum from the County Attorney's Office, this requirement has been met.

The claimants, Robert and Cheryl Wiley, are seeking \$225,000 in compensation or relief from land use regulations to allow the 3.61 acre property to be developed with a single family dwelling. They

acquired an interest in the property on October 14, 1975. County zoning for the property in 1975 was F-2. The F-2 zoning in effect when the claimants acquired the property allowed a dwelling or dwellings for the owner, operator, or help required to carry out grazing, agriculture, horticulture, or the growing of timber. The minimum lot size in the F-2 zone was 2 acres. Current Exclusive Farm Use (EFU) zoning regulations contain specific standards for qualifying a dwelling that the claimants cannot meet, such as proof that they have generated \$80,000 gross annual income from the sale of farm products grown on a subject tract in the last two years, or for three of the last five years.

The use the claimants assert has been restricted is their ability to develop a single family dwelling. The claimants have established that land use regulations enacted after they acquired the subject property have prevented them from building a home and that has reduced the fair market value of the property.

Staff recommends the Board of Commissioners find this to be a valid claim.

3. Explain the fiscal impact (current year and ongoing).

The claimants assert a reduction in value of \$225,000. Comparable sales data provided by the claimants does establish that the above listed regulations have reduced the fair market value of the identified property. Additional appraisal work is needed should the Board prefer compensation as an alternative to regulatory relief.

4. Explain any legal and/or policy issues involved.

Policy and legal issues are outlined in a staff report from Land Use Planning dated April 3, 2007. The County Attorney has advised that any property rights obtained by relief from land use regulations are not transferable under Ballot Measure 37, consistent with the DOJ opinion of February 2005.

5. Explain any citizen and/or other government participation that has or will take place.

Public notice of this hearing has been mailed to all property owners within 750 feet of the subject property, and the claimant. Deliberation and any action on this item will be done following a public hearing at which interested citizens will have an opportunity to testify and provide written comment in accordance with the Board of Commissioners rules of procedure for the hearing.

Required Signature

**Elected Official or
Department/
Agency Director:**



Date: 04/04/07



**LAND USE & TRANSPORTATION
PLANNING PROGRAM**

1600 SE 190TH Avenue Portland, OR 97233
PH: 503-988-3043 FAX: 503-988-3389
<http://www.co.multnomah.or.us/landuse>

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

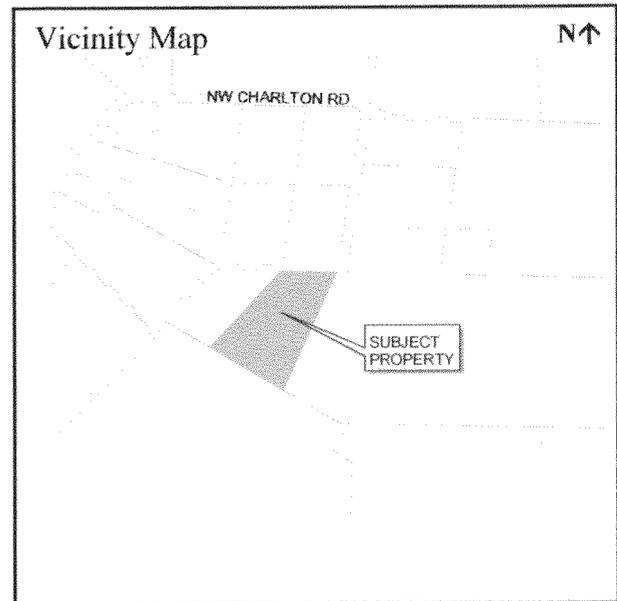
Hearing Date, Time, & Place:

Wednesday, April 18, 2007 at 9:00 AM or soon thereafter, in the Commissioners' Board Room of the Multnomah Building, located at 501 SE Hawthorne, Portland, Oregon.

Case File: T1-06-078

Claimants: Robert and Cheryl Wiley
13755 NW Charlton Road
Portland, OR 97231

Location: West of 13801 NW Charlton Road
R971160370
Tax Lot 500, Section 16C,
Township 2N, Range 1W, W.M.



Claim: Up to \$225,000 in compensation or relief from Multnomah County Code land use regulations to allow the claimants to construct a single family dwelling on the property.

Zoning: Exclusive Farm Use (EFU)

Site Size: 3.61 acres

Approach to Deciding the Claim:

Robert and Cheryl Wiley (claimants) acquired an interest in the subject property on October 14, 1975. The claimants have indicated that the challenged regulations enacted after they acquired the property have prevented them from building a single family dwelling. Our analysis confirms that current land use regulations prohibit the construction of a dwelling on their property. The claimant's data on comparable sales is adequate to show that some of the challenged regulations have reduced the property's value. Consequently, the Board must either:

- a. Pay compensation equal to the reduction in fair market value of the property attributed to the challenged regulations which restrict claimants' use of their property; **or**.
- b. Not apply the challenged land use regulations to allow the owner to use the property for a use permitted at the time the owner acquired the property.

The claimant's data is inadequate as evidence to establish value, so additional appraisal work would be needed if compensation is the desired course of action.

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?*

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

On November 8, 2006, the claimants submitted a Measure 37 Claim Form (Exhibit A.1), title information from Tigor Title Insurance Company (Exhibit A.2), a comparative market analysis (Exhibit A.3), and copies of applicable land use regulations in effect in 1975 (Exhibits A.4 & A.5). On January 4, 2007, the applicant additional title information the County required in order to process the claim (Exhibit A.6). These and other materials in the claim record constitute a complete written demand for compensation complying with the county's requirements (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 October 14, 1975 (Exhibit A.2) prior to the county adopting the challenged regulations set out in the claim.

The zoning of the parcel was F-2 on October 14, 1975 when the property was divided out of a larger parcel and gifted to the claimants (Book 1067, Page 944-945). A copy of the zoning map in effect on October 14, 1975 is included as Exhibit B.1. A copy of the F-2 regulations in effect on October 14, 1975 is presented as Exhibit B.2. The F-2 district was an agricultural zone, that allowed dwellings for the owner, operator, or help required to carry out grazing, agriculture, horticulture, or the growing of timber (§3.112, Ord. #100). The minimum lot size in this district was 2 acres (§2.10, Ord. #100). The zoning changed from F-2 to RL-C on December 5, 1975 (38 ac. min. lot size), to Exclusive Farm Use-38 on October 6, 1977 (76 acre min. lot size), and to Exclusive Farm Use on August 14, 1980. EFU rules also generally limit the establishment of new dwellings to those that are necessary for farm purposes (§34.2600 et. seq.). The claimant is challenging the current EFU regulations.

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

Yes. Some of the challenged regulations have restricted the use of the property by prohibiting the construction of a dwelling.

The F-2 zoning in effect when the claimant acquired the property allowed a dwelling or dwellings for the owner, operator, or help required to carry out grazing, agriculture, horticulture, or the growing of timber only (§3.112, Ord. #100). The property is presently zoned Exclusive Farm Use (EFU). A copy of the current regulations and zoning map are included as Exhibit A.5 and B.2. The EFU regulations contain specific standards for qualifying a dwelling that are more restrictive than the F-2 requirements, and have the effect of preventing a dwelling from being constructed on the property.

The following are the specific EFU regulations which would prevent the establishment of a dwelling on the property. These regulations and the Comprehensive Plan policies they implement, would need to be set aside should the Board choose to not apply regulations in lieu of compensation:

- **MCC 34.2625(D)(1)** – *Farm Income Test for Establishing a Farm Dwelling on High Value Farmland Soils*

This regulation requires proof of a certain level of farm income related to the property in order to establish a new primary farm dwelling on vacant land. The threshold for properties consisting of high value soils is \$80,000 gross annual income from the sale of farm products grown on a subject tract in the last two years, or for three of the last five years.

Although the subject property consists of high value Burlington fine sandy loam soils (Unit 6B)¹, it is only 3.61 acres in size and is unlikely to be able to produce enough agricultural yield to meet the \$80,000 farm income test.

According to statistics published jointly by the Oregon Agricultural Statistics Service and Oregon State University Extension Service in 2001, the 1999 gross sales in Multnomah County averaged only \$11,079 per acre for nursery and greenhouse operations. Of Oregon's top 40 commodities for 2000, greenhouse and nursery products ranked number one in dollar value and were estimated to have constituted over half of the total sales of farm products in the county. This provides a reasonable high end farm related income projection for an acre of farm land². This \$11,079 estimate provides further support that the 3.61 acre subject property is most likely too small to meet the \$80,000 farm income regulation required to establish a primary farm dwelling. In fact, the average farm size in Multnomah County is 48-acres³ making the 3.61 acre subject property quite small in comparison.

- **MCC 34.2625(F)** – *Heritage Tract Dwelling Allowed on Land Not Identified as High-Value Farmland.*

This regulation requires the subject tract to not be identified as high-value farmland in order to qualify for a new single family home. As referenced above, soils on the property consist of high value Burlington fine sandy loam soils (Unit 6B).

- **MCC 34.2630(N)** - *Heritage Tract Dwelling Allowed on Land Identified as High-Value Farmland Due to Extraordinary Circumstances Inherent in Physical Setting.*

This criterion allows for a new single family dwelling on farmland that cannot practicably be managed for farm use due to extraordinary circumstances inherent in the land or its physical setting that do not apply generally to other land in the vicinity. These circumstances include "very steep slopes, deep ravines, rivers, streams, roads, railroad or utility lines or other similar natural or physical barriers that by themselves or in combination separate the subject lot or parcel from adjacent agricultural land and prevent it from being practicably managed for farm use." The generally flat property does not contain features which consist of these physical elements, and thus could not qualify for a right to develop a new home under this standard.

¹ (1983) Soil Survey of Multnomah County, United States Department of Agriculture & Soil Conservation Service.

² (2001) Oregon Agricultural Statistics and Oregon State University Extension Service, Oregon Agriculture: Facts and Figures.

³ (2002) USDA census data.

- **MCC 34.2630(O) - Heritage Tract Dwelling Allowed on Land Identified as High-Value Farmland With Small Surrounding Tracts.**

This regulation requires that the subject tract not be predominately composed of irrigated or non-irrigated soils classified prime, unique, Class I or Class II. Burlington fine sandy loam is classified as a prime soil, as indicated in the High-Value Farmland Soils table included as Exhibit B.4.

Statewide Planning Goals were effective January 25, 1975, prior to the date the claimant acquired the property. Standards for farm and non-farm dwellings in Exclusive Farm zones were also codified in state law prior to 1975. While the County had not yet implemented these rules, the state has taken the position they are nonetheless applicable and that local jurisdictions must require claimants meet them (Exhibit B.5). We anticipate the state will take a similar position with this claim. This may impact the claimant's ability to construct a dwelling on the property should the Board grant regulatory relief.

Further, if the Board grants regulatory relief to construct a dwelling, a separate land use decision will be required in order to confirm that the dwelling is needed to carry out farm or timber operations on the subject property.

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

Yes. Current EFU regulations that prohibit construction of a dwelling have reduced the fair market value of the property. The alternative data provided by the claimant is sufficient to establish that the property is more valuable if a home can be constructed.

The zoning of the lot was F-2 when the claimants acquired the property as previously discussed. This zone district allowed for "Dwelling or dwellings for owner, operator and/or help required to carry out grazing, agriculture, horticulture of the growing of timber." Current EFU regulations further restrict the property, such that a dwelling cannot be constructed. It is these additional restrictions that have reduced the fair market value of the property.

The claimant has not submitted an appraisal which assesses the current value of the property without the right to build a home. Instead, the claimant has submitted a market analysis (Exhibit A.3). The analysis contains data on recent sales of four properties on NW Charlton Road. The dataset contains location information, physical information, sale information, and assessment information.

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.⁴ The data shows that, if listed as buildable, the property should be listed for sale at a value between \$76,955 and \$105,213 per acre.

⁴ The alternative data submitted assumes the ability to develop the lots is transferable by sale which contradicts the Attorney General's opinion on transferability. Also, the alternative data looks only at the current market value of the property and comparable properties. It does not look at the impact of the regulations at the time they were imposed. The land use regulations challenged in this claim have constrained the supply of developable properties in this area, the result of which may impact land values of the remaining developable properties in a positive manner [(2006) Jaeger, W., The effects of Land-Use Regulations on Property Values, Environmental Law (VOL 36) Pages 105-130]. That impact on the value is not considered in the analysis.

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

The claim asks for compensation of up to \$225,000 or relief from current land use regulations to allow claimants to construct a single family dwelling. In my opinion if the site was buildable it would have a real market value of \$250,000. As an unbuildable parcel with its highest and best use as farmland its real market value would be \$45,000.

A copy of current assessment data is included as Exhibit B.3.

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 January 9, 2007. No comments were received. Public notice of this hearing was mailed to all property owners within 750 feet of the subject property. Deliberation and any action on this item will be done following a public hearing at which interested citizens will have an opportunity to testify and provide written comment in accordance with the Board of Commissioners rules of procedure for the hearing.

Conclusion

Considering the above findings, Robert and Cheryl Wiley have established that land use regulations enacted after they acquired the subject property have prevented them from building a home. To allow the claimants to construct a home on the property, the Board would need to grant the request to not apply the following regulations:

- *MCC 34.2625(D)(1) – Farm Income Test for Establishing a Farm Dwelling on High Value Farmland Soils*
- *MCC 34.2625(F) – Heritage Tract Dwelling Allowed on Land Not Identified as High-Value Farmland.*
- *MCC 34.2630(N) - Heritage Tract Dwelling Allowed on Land Not Identified as High-Value Farmland Due to Extraordinary Circumstances.*
- *MCC 34.2630(O) - Heritage Tract Dwelling Allowed on Land Not Identified as High-Value Farmland With Small Surrounding Tracts.*

The comparable sales data provided by the claimants establishes that the property is more valuable if a home can be constructed.

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. Note that waiver of the listed regulations also constitutes a waiver of Comprehensive Plan and Rural Area Plan policies that the rules implement.
3. 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. Specifically, a land use permit will be required to verify that a dwelling proposed by the claimants is for the "owner, operator and/or help required to carry out grazing, agriculture, horticulture of the growing of timber."
4. Include a statement that the statewide Planning Goals were effective January 25, 1975, prior to the date the claimant acquired the property. Standards for farm and non-farm dwellings in Exclusive Farm zones were also codified in state law prior to 1975. While the County had not yet implemented these rules, the state has taken the position they are nonetheless applicable and that local jurisdictions must require claimants meet them (Exhibit B.5). The County anticipates the state will take a similar position with this claim. This may impact the claimant's ability to construct a dwelling on the property.
5. Include a statement that any right obtained by a claimant through the Board's grant of a waiver of County land use regulations is transferable only to the extent allowed by law.

Issued by:

By: _____
Kenneth Born, AICP, Planner

For: Karen Schilling- Planning Director

Date: April 3, 2007

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		Signed Measure 37 Application Form	11/08/06
A.2	6	Title Information - Ticor Title Insurance Company 1. Deed of Gift, Recorded in Book 1067, Page 944-945, October 14, 1975 (David and Elinor Wiley	11/08/06

to Robert Wiley)			
A.3	2	Comparative Market Analysis	11/08/06
A.4	14	Copy of F-2 Ordinance in Effect on 10/14/1975	11/08/06
A.5	24	Copy of adopted EFU Code	11/08/06
A.6	6	Status of Record Title Report – Ticor Title Insurance Company	01/04/07
'B'		Staff Exhibits	Date
B.1	1	Zoning Map in Effect on 10/14/1975	N/A
B.2	1	Current Zoning Map	N/A
B.3	1	Assessment and Taxation Property Information	N/A
B.4	4	High-Value Farmland Soils Table	N/A
B.5	2	Letter re. Stafford, County Order No. 06-123 (State Department of Land Conservation and Development)	11/08/06
'C'		Administration & Procedures	Date
C.1	1	Incomplete Letter	12/08/06
C.2	1	Complete Letter – Day 1	01/09/07
C.3	4	Opportunity to Comment	01/09/07
'D'		Comments Received	Date
D.1	1	Multnomah County Transportation Program	01/12/07
D.2	1	Multnomah County Division of Assessment and Taxation	02/09/07
D.2	1	Multnomah County Attorney's Office	04/03/07

Multnomah County Attorney's Office
501 S.E. Hawthorne Blvd., Suite 500
Portland, Oregon 97214
PHONE: (503) 988-3138
FAX: (503) 988-3377



MEMORANDUM

To: Ken Born
Multnomah County Planner

Cc: Derrick Tokos, Principal Planner
Chuck Beasley, Planner

From: Jed Tomkins
Assistant County Attorney
Multnomah County Attorney's Office

Date: April 3, 2007

Re: Robert and Cheryl Wiley
T1-06-078

I have reviewed your staff report for legal sufficiency under MCC 27.500 *et. seq.* Your staff report has adequately addressed each required criteria and correctly applied Measure 37 and the county's implementing regulations.

Script for Feller; Glaser and Wiley 04/18/07 Measure 37 Hearings

Wednesday, April 18, 2007 – 9:00 AM
Multnomah Building, First Floor Commissioners Boardroom 100
501 SE Hawthorne Boulevard, Portland

PUBLIC HEARINGS

**[Please Note: Any action taken by the Board on the following Measure 37
Claims will be ratified at the April 19th Board Meeting.]**

***Chair Ted Wheeler convenes the meeting at 9:00 a.m., with
Vice-Chair Maria Rojo de Steffey and Commissioners Lisa Naito,
Lonnie Roberts and Jeff Cogen present.***

INTRODUCTION:

Chair: This is the time set for public hearings on the claims of **Alfred Feller; Martha Glaser; and Robert and Cheryl Wiley** under Ballot Measure 37. I am Ted Wheeler, Chair of the Multnomah County Board of Commissioners. Also in attendance are Commissioners Maria Rojo, Lisa Naito, Jeff Cogen and Lonnie Roberts.

All information relevant to these claims may be submitted and will be considered in these hearings. The evidence may be in any form including oral and written testimony, letters, petitions or other written material, slides, photographs, maps drawings or other items.

The Commission will base its decision on the evidence presented, along with the information on the claim in the Planning file. The Board decision will be by Order adopted by the Board.

DISCLOSURES:

Chair: Board members are required to disclose the content of any *ex parte* contacts. Any Board member who has received any factual information obtained outside the information provided by the county planning staff or this hearing is an *ex parte* contact. A visit to the property is considered an *ex parte* contact. Any *ex parte* contacts should be disclosed at this time. Such disclosures should include the time and date of the visit, what he/she observed, who (if anyone) the Commissioner talked to at the site and any other relevant facts or observations obtained as a result of the site visit.

Chair: I have *no ex parte* contacts to disclose regarding any of the claims we are hearing today.

or if the Chair has disclosures to make

I have the following disclosures to make: _____

Script for Feller; Glaser and Wiley 04/18/07 Measure 37 Hearings

Chair: [Invite the other Commissioners to make any necessary disclosures.]

Commissioner Rojo? Commissioner Naito? Commissioner Cogen? Commissioner Roberts? [If there are none, each Commissioner should say “none” on the record.]

[If there are disclosures of *ex parte* contacts, the claimant and the public should be given an opportunity to rebut the substance of any disclosure. “Does anyone have any rebuttal testimony relating to any disclosure?”]

Chair: Board members are also required to disclose any conflicts of interest and to recuse themselves from deliberation and voting if a conflict exists. It is deemed a conflict of interest if any Board member, or a member of his/her immediate family or household, has a financial interest in the outcome of a matter before the Board. It is a conflict of interest if a Board member lives within the geographical area entitled to notice of a claim.

Chair: Does any Board member, or a member of his/her immediate family or household, have a financial interest in the outcome of any of the claims now before us?

I do [do not] have a financial interest in the outcome of any of these claims. [Invite other commissioners to make any necessary disclosures.] **Commissioner Rojo? Commissioner Naito? Commissioner Cogen? Commissioner Roberts?** [If yes, that person must recuse himself/herself on the record.]

Does any Board member live within the geographical area entitled to notice of any of these claims?

I do [do not] live within the geographical area of any of these claims. **Commissioner Rojo? Commissioner Naito? Commissioner Cogen? Commissioner Roberts?**

[Any commissioner who lives within the relevant geographical area of a claim must recuse himself/herself. MCC 7.540]

CONDUCT OF THE HEARING:

Chair: In each of these hearings, I will ask for testimony and other evidence in the following order:

1. Staff report
2. Claimant or claimant’s representative
3. Others who wish to be heard on the claim
4. Commission discussion, questions, deliberation
5. Future scheduling if necessary

Script for Feller; Glaser and Wiley 04/18/07 Measure 37 Hearings

HOW TO PRESENT TESTIMONY:

Chair: There are testimony cards at the back of the room and should be filled out by anyone wishing to testify. The claimants need not fill out a card. The cards should be given to the Board Clerk.

1. State your name and address before you begin your presentation
2. Avoid repetitive testimony
3. During the hearing, I ask those in the audience to refrain from any demonstration in support or opposition to the claim.

Chair: Please call the first hearing.

Board Clerk:

PH-1 Public Hearing to consider and possibly act upon a Measure 37 Claim by Alfred Feller for compensation or relief from regulations to allow for the development of a single family residence on property located north of 34242 SE Smith Road, Corbett. [1S, R4E, Sec 03B, TL 400] (Case File T1-06-077)

Chair: [Ask for testimony in the order previously stated]

AT THE CONCLUSION OF THE TESTIMONY:

Chair: [Ask for Board discussion, questions, deliberation, motion and/or future scheduling if necessary]

AFTER DISCUSSION:

Do I have a motion on PH-1?

**COMMISSIONER _____ MOVES
COMMISSIONER _____ SECONDS
APPROVAL OF AN Order Denying or
Granting, with Conditions, Measure 37
Claim by Alfred Feller for compensation or
relief from regulations to allow for the
development of a single family residence on
property located north of 34242 SE Smith
Road, Corbett**

OPPORTUNITY FOR BOARD COMMENTS

ALL IN FAVOR, VOTE AYE, OPPOSED ____?

Script for Feller; Glaser and Wiley 04/18/07 Measure 37 Hearings

**THE MOTION FAILS
OR
THE ORDER IS ADOPTED**

Chair: Please call the next hearing.

Board Clerk:

PH-2 Public Hearing to consider and possibly act upon a Measure 37 Claim by Martha Glaser for compensation or relief from regulations to allow the development of a single family residence on property located west of 13801 NW Charlton Road, Portland. [T2N, R1W, Sec 16C, TL 600] (Case File T1-06-093

Chair: [Ask for testimony in the order previously stated]

AT THE CONCLUSION OF THE TESTIMONY:

Chair: [Ask for Board discussion, questions, deliberation, motion and/or future scheduling if necessary]

AFTER DISCUSSION:

Do I have a motion on PH-2?

**COMMISSIONER _____ MOVES
COMMISSIONER _____ SECONDS
APPROVAL OF AN Order Denying or
Granting, with Conditions, Measure 37
Claim by Martha Glaser for compensation or
relief from regulations to allow the development
of a single family residence on property located
west of 13801 NW Charlton Road, Portland**

OPPORTUNITY FOR BOARD COMMENTS

ALL IN FAVOR, VOTE AYE, OPPOSED ____?

**THE MOTION FAILS
OR
THE ORDER IS ADOPTED**

Chair: Please call the next hearing.

Script for Feller; Glaser and Wiley 04/18/07 Measure 37 Hearings

Board Clerk:

PH-3 Public Hearing to consider and possibly act upon a Measure 37 Claim by Robert and Cheryl Wiley for \$225,000 in compensation or relief from regulations to allow the development of a single family residence on property located west of 13801 NW Charlton Road, Portland. [T2N, R1W, Sec 16C, TL 500] (Case File T1-06-078)

Chair: [Ask for testimony in the order previously stated]

AT THE CONCLUSION OF THE TESTIMONY:

Chair: [Ask for Board discussion, questions, deliberation, motion and/or future scheduling if necessary]

AFTER DISCUSSION:

Do I have a motion on PH-3?

**COMMISSIONER _____ MOVES
COMMISSIONER _____ SECONDS
APPROVAL OF AN Order Denying or
Granting, with Conditions, Measure 37
Claim by Robert and Cheryl Wiley for \$225,000
in compensation or relief from regulations to
allow the development of a single family
residence on property located west of 13801
NW Charlton Road, Portland**

OPPORTUNITY FOR BOARD COMMENTS

ALL IN FAVOR, VOTE AYE, OPPOSED ____?

**THE MOTION FAILS
OR
THE ORDER IS ADOPTED**

**THERE BEING NO FURTHER BUSINESS, THE MEETING IS
ADJOURNED.**

DRAFT

BEFORE THE BOARD OF COUNTY COMMISSIONERS FOR MULTNOMAH COUNTY, OREGON

ORDER NO. _____

Order Granting, with Conditions, Ballot Measure 37 Request of Robert and Cheryl Wiley Relating to a Parcel of Land Located West of 13801 NW Charlton Road, Tax Lot 500, Section 16C, Township 2N, Range 1W, W.M., Portland, Multnomah County, Oregon

The Multnomah County Board of Commissioners Finds:

- a. **Parties:** Robert and Cheryl Wiley are the Ballot Measure 37 Claimants who filed a demand for compensation to Multnomah County on November 8, 2006.
- b. **Subject Real Property:** This claim relates to real property located West of 13801 NW Charlton Road, Multnomah County, Oregon, more specifically described as:

Tax Lot 500, Section 16C, Township 2N, Range 1 W, W.M.
Tax Account # R-971160370

- c. **Adequacy of Demand for Compensation:**

The materials submitted by the Claimants constitute a complete written demand for compensation as required by Multnomah County Code 27.520.

On November 8, 2006, the claimants submitted a Measure 37 Claim Form, title information from Ticor Title Insurance Company, a comparative market analysis, and copies of applicable land use regulations in effect in 1975. On January 4, 2007, the applicants provided additional title information that the County required in order to process the claim. These and other materials in the claim record constitute a complete written demand for compensation complying with the county's requirements (MCC 27.520).

The Board finds that the materials submitted by the claimant constitute a complete "written demand for compensation" within the meaning of the measure.

- d. **Relevant Dates of Property Ownership:**

The Claimants have established that they obtained an interest in the property prior to the County's adoption of the land use regulations challenged in this claim.

The zoning of the parcel was F-2 on October 14, 1975 when the property was divided out of a larger parcel and gifted to the claimants (Book 1067, Page 944-945). The F-2 district was an agricultural zone, that allowed dwellings for the owner, operator, or help required to carry out grazing, agriculture, horticulture, or the growing of timber (§3.112, Ord. #100). The minimum lot size in this district was 2 acres (§2.10, Ord. #100). The zoning changed from F-2 to RL-C on December 5, 1975 (38 ac. min. lot size), to Exclusive Farm Use-38 on

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October 6, 1977 (76 acre min. lot size), and to Exclusive Farm Use on August 14, 1980. EFU rules also generally limit the establishment of new dwellings to those that are necessary for farm purposes (§34.2600 et. seq.). The claimants are challenging the current EFU regulations.

The Board finds that the claimants obtained an interest in the subject property on October 14, 1975, prior to the county adopting the challenged regulations set out in the claim.

e. **County Codes as a Restriction on Use of the Property:**

The Claimants have established that the challenged land use regulations have restricted their use of the property.

The F-2 zoning in effect when the claimants acquired the property allowed a dwelling or dwellings for the owner, operator, or help required to carry out grazing, agriculture, horticulture, or the growing of timber only (§3.112, Ord. #100). The property is presently zoned Exclusive Farm Use (EFU). The EFU regulations contain specific standards for qualifying a dwelling that are more restrictive than the F-2 requirements, and have the effect of preventing a dwelling from being constructed on the property.

The following are the specific EFU regulations which would prevent the establishment of a dwelling on the property:

- *MCC 34.2625(D)(1) – Farm Income Test for Establishing a Farm Dwelling on High Value Farmland Soils*

This regulation requires proof of a certain level of farm income related to the property in order to establish a new primary farm dwelling on vacant land. The threshold for properties consisting of high value soils is \$80,000 gross annual income from the sale of farm products grown on a subject tract in the last two years, or for three of the last five years.

The subject property consists of high value Burlington fine sandy loam soils (Unit 6B)¹, but it is only 3.61 acres in size and cannot produce enough agricultural yield to meet the \$80,000 farm income test.

According to statistics published jointly by the Oregon Agricultural Statistics Service and Oregon State University Extension Service in 2001, the 1999 gross sales in Multnomah County averaged only \$11,079 per acre for nursery and greenhouse operations. Of Oregon's top 40 commodities for 2000, greenhouse and nursery products ranked number one in dollar value and were estimated to have constituted over half of the total sales of farm products in the county. This provides a reasonable high end farm related income projection for an acre of farm land². This \$11,079 estimate provides further support that the 3.61 acre subject property is most likely too small to meet the \$80,000 farm income regulation required to

¹ (1983) Soil Survey of Multnomah County, United States Department of Agriculture & Soil Conservation Service.

² (2001) Oregon Agricultural Statistics and Oregon State University Extension Service, Oregon Agriculture: Facts and Figures.

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establish a primary farm dwelling. In fact, the average farm size in Multnomah County is 48-acres³ making the 3.61 acre subject property quite small in comparison.

- *MCC 34.2625(F) – Heritage Tract Dwelling Allowed on Land Not Identified as High-Value Farmland.*

This regulation requires the subject tract to not be identified as high-value farmland in order to qualify for a new single family home. As referenced above, soils on the property consist of high value Burlington fine sandy loam soils (Unit 6B).

- *MCC 34.2630(N) - Heritage Tract Dwelling Allowed on Land Identified as High-Value Farmland Due to Extraordinary Circumstances Inherent in Physical Setting.*

This criterion allows for a new single family dwelling on farmland that cannot practicably be managed for farm use due to extraordinary circumstances inherent in the land or its physical setting that do not apply generally to other land in the vicinity. These circumstances include “very steep slopes, deep ravines, rivers, streams, roads, railroad or utility lines or other similar natural or physical barriers that by themselves or in combination separate the subject lot or parcel from adjacent agricultural land and prevent it from being practicably managed for farm use.” The generally flat property does not contain features which consist of these physical elements, and thus could not qualify for a right to develop a new home under this standard.

- *MCC 34.2630(O) - Heritage Tract Dwelling Allowed on Land Identified as High-Value Farmland With Small Surrounding Tracts.*

This regulation requires that the subject tract not be predominately composed of irrigated or non-irrigated soils classified prime, unique, Class I or Class II. Burlington fine sandy loam is classified as a prime soil, as indicated in the High-Value Farmland Soils table included as Exhibit B.4.

Statewide Planning Goals were effective January 25, 1975, prior to the date the claimant acquired the property. Standards for farm and non-farm dwellings in Exclusive Farm zones were also codified in state law prior to 1975. While the County had not yet implemented these rules, the state has taken the position they are nonetheless applicable and that local jurisdictions must require claimants meet them. The County anticipates that the state will take a similar position with this claim. This may impact the claimants’ ability to construct a dwelling on the property.

A separate land use decision will be required in order to confirm that the dwelling is needed to carry out farm or timber operations on the subject property.

The Board finds that the Claimants have established that the challenged land use regulations have restricted their use of the subject property.

³ (2002) USDA census data.

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f. **County Code Restrictions Reduce Fair Market Value:**

The Claimant has established that the challenged land use regulations have reduced the fair market value of the property.

The zoning of the lot was F-2 when the claimants acquired the property as previously discussed. This zone district allowed for "*Dwelling or dwellings for owner, operator and/or help required to carry out grazing, agriculture, horticulture of the growing of timber.*" Current EFU regulations further restrict the property, such that a dwelling cannot be constructed. It is these additional restrictions that have reduced the fair market value of the property.

The claimants have not submitted an appraisal which assesses the current value of the property without the right to build a home. Instead, the claimant has submitted a market analysis. The analysis contains data on recent sales of four properties on NW Charlton Road. The dataset contains location information, physical information, sale information, and assessment information.

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.⁴ The data shows that, if listed as buildable, the property should be listed for sale at a value between \$76,955 and \$105,213 per acre.

Bob Alcantara, Senior Appraisal Supervisor with the Multnomah County Division of Assessment and Taxation provided his department's interpretation on the reduction of value issue for this claim. It found that the parcel as buildable would have a real market value of \$250,000 and as farmland would have a real market value of \$45,000.

The Board finds that the Claimants have established that the challenged regulations have reduced the fair market value of the subject property.

g. **Public Notice**

Section 3.50 of the County Charter requires notice to the public of all Board agenda matters. This notice was provided. The Claimant and persons who own land within 750 feet of the subject property received notice by mail.

⁴ The alternative data submitted assumes the ability to develop the lots is transferable by sale which contradicts the Attorney General's opinion on transferability. Also, the alternative data looks only at the current market value of the property and comparable properties. It does not look at the impact of the regulations at the time they were imposed. The land use regulations challenged in this claim have constrained the supply of developable properties in this area, the result of which may impact land values of the remaining developable properties in a positive manner [(2006) Jaeger, W., The effects of Land-Use Regulations on Property Values, Environmental Law (VOL 36) Pages 105-130]. That impact on the value is not considered in the analysis.

DRAFT

h. **Validity of Claim for Compensation:** The Board finds that:

- (1) The claim materials submitted by the Claimants constitute a complete written demand for compensation as required by Measure 37 and Multnomah County Code 27.530.
- (2) The Claimants' acquisition of the subject property on October 14, 1975, preceded the County's adoption of the land use regulations challenged in this claim.
- (3) The Claimants have established that the challenged land use regulations have restricted their use of the subject property.
- (4) The Claimants have established that the challenged land use regulations have reduced the fair market value of the subject property.

The Multnomah County Board of Commissioners Orders that:

1. **Claimants' Measure 37 claim is granted and the following regulations do not apply to claimants' property:**

- *MCC 34.2625(D)(1) – Farm Income Test for Establishing a Farm Dwelling on High Value Farmland Soils*
- *MCC 34.2625(F) – Heritage Tract Dwelling Allowed on Land Not Identified as High-Value Farmland.*
- *MCC 34.2630(N) - Heritage Tract Dwelling Allowed on Land Not Identified as High-Value Farmland Due to Extraordinary Circumstances.*
- *MCC 34.2630(O) - Heritage Tract Dwelling Allowed on Land Not Identified as High-Value Farmland With Small Surrounding Tracts.*

2. **The County will not pay the compensation demanded by Claimants.**

3. **In lieu of compensation, the County shall not apply the challenged regulations to allow the Claimants to use the property for residential purposes as described in this Order. This action by the Board provides the County's authorization to the claimants to use their property subject to the standards in effect on October 14, 1975.**

4. **Section 3 above, constitutes a waiver of Comprehensive Plan and Rural Area Plan policies that the regulations implement.**

5. **The following Conditions of Approval apply to this decision:**

- (a) Section 3 above does not constitute a waiver or modification of corresponding state laws, state administrative rules or metropolitan service district regulations that enforce land use regulations applicable to the property.

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- (b) To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the property may not be used without a permit, license, or other form of authorization or consent, this order does not authorize the use of the property unless the claimants first obtain that permit, license or other form of authorization or consent. Such requirements may include, but are not limited to: a building permit, a land use decision, other permits or authorizations from local, state or federal agencies, and restrictions on the use of the property imposed by private parties.
- (c) Any use of the property by the claimant under the terms of this order remain subject to the following laws or local codes: (a) those in effect on the date of the acquisition of the subject property; (b) any enacted or enforced by a public entity other than the County; and (c) those laws not subject to Measure 37 including, without limitation, those exempted under Section (3) of Measure 37.
- (d) Any rights obtained by a claimant through the Board's grant of a waiver of County land use regulations, is transferable only to the extent allowed by law.

ADOPTED this 18th day of April, 2007, ratified April 19, 2007.

BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

Ted Wheeler, Chair

REVIEWED:

AGNES SOWLE, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY, OREGON

By _____
Sandra N. Duffy, Assistant County Attorney

SUBMITTED BY:
Agnes Sowle, County Attorney

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

ORDER NO. 06-063

Order Granting, with Conditions, Ballot Measure 37 Request of Robert and Cheryl Wiley Relating to a Parcel of Land Located West of 13801 NW Charlton Road, Tax Lot 500, Section 16C, Township 2N, Range 1W, W.M., Portland, Multnomah County, Oregon

The Multnomah County Board of Commissioners Finds:

- a. **Parties:** Robert and Cheryl Wiley are the Ballot Measure 37 Claimants who filed a demand for compensation to Multnomah County on November 8, 2006.
- b. **Subject Real Property:** This claim relates to real property located West of 13801 NW Charlton Road, Multnomah County, Oregon, more specifically described as:

Tax Lot 500, Section 16C, Township 2N, Range 1 W, W.M.
Tax Account # R-971160370

- c. **Adequacy of Demand for Compensation:**

The materials submitted by the Claimants constitute a complete written demand for compensation as required by Multnomah County Code 27.520.

On November 8, 2006, the claimants submitted a Measure 37 Claim Form, title information from Ticor Title Insurance Company, a comparative market analysis, and copies of applicable land use regulations in effect in 1975. On January 4, 2007, the applicants provided additional title information that the County required in order to process the claim. These and other materials in the claim record constitute a complete written demand for compensation complying with the county's requirements (MCC 27.520).

The Board finds that the materials submitted by the claimant constitute a complete "written demand for compensation" within the meaning of the measure.

- d. **Relevant Dates of Property Ownership:**

The Claimants have established that they obtained an interest in the property prior to the County's adoption of the land use regulations challenged in this claim.

The zoning of the parcel was F-2 on October 14, 1975 when the property was divided out of a larger parcel and gifted to the claimants (Book 1067, Page 944-945). The F-2 district was an agricultural zone, that allowed dwellings for the owner, operator, or help required to carry out grazing, agriculture, horticulture, or the growing of timber (§3.112, Ord. #100). The minimum lot size in this district was 2 acres (§2.10, Ord. #100). The zoning changed from F-2 to RL-C on December 5, 1975 (38 ac. min. lot size), to Exclusive Farm Use-38 on

October 6, 1977 (76 acre min. lot size), and to Exclusive Farm Use on August 14, 1980. EFU rules also generally limit the establishment of new dwellings to those that are necessary for farm purposes (§34.2600 et. seq.). The claimants are challenging the current EFU regulations.

The Board finds that the claimants obtained an interest in the subject property on October 14, 1975, prior to the county adopting the challenged regulations set out in the claim.

e. **County Codes as a Restriction on Use of the Property:**

The Claimants have established that the challenged land use regulations have restricted their use of the property.

The F-2 zoning in effect when the claimants acquired the property allowed a dwelling or dwellings for the owner, operator, or help required to carry out grazing, agriculture, horticulture, or the growing of timber only (§3.112, Ord. #100). The property is presently zoned Exclusive Farm Use (EFU). The EFU regulations contain specific standards for qualifying a dwelling that are more restrictive than the F-2 requirements, and have the effect of preventing a dwelling from being constructed on the property.

The following are the specific EFU regulations which would prevent the establishment of a dwelling on the property:

- ***MCC 34.2625(D)(1) – Farm Income Test for Establishing a Farm Dwelling on High Value Farmland Soils***

This regulation requires proof of a certain level of farm income related to the property in order to establish a new primary farm dwelling on vacant land. The threshold for properties consisting of high value soils is \$80,000 gross annual income from the sale of farm products grown on a subject tract in the last two years, or for three of the last five years.

The subject property consists of high value Burlington fine sandy loam soils (Unit 6B)¹, but it is only 3.61 acres in size and cannot produce enough agricultural yield to meet the \$80,000 farm income test.

According to statistics published jointly by the Oregon Agricultural Statistics Service and Oregon State University Extension Service in 2001, the 1999 gross sales in Multnomah County averaged only \$11,079 per acre for nursery and greenhouse operations. Of Oregon's top 40 commodities for 2000, greenhouse and nursery products ranked number one in dollar value and were estimated to have constituted over half of the total sales of farm products in the county. This provides a reasonable high end farm related income projection for an acre of farm land². This \$11,079 estimate provides further support that the 3.61 acre subject property is most likely too small to meet the \$80,000 farm income regulation required to

¹ (1983) Soil Survey of Multnomah County, United States Department of Agriculture & Soil Conservation Service.

² (2001) Oregon Agricultural Statistics and Oregon State University Extension Service, Oregon Agriculture: Facts and Figures.

establish a primary farm dwelling. In fact, the average farm size in Multnomah County is 48-acres³ making the 3.61 acre subject property quite small in comparison.

- *MCC 34.2625(F) – Heritage Tract Dwelling Allowed on Land Not Identified as High-Value Farmland.*

This regulation requires the subject tract to not be identified as high-value farmland in order to qualify for a new single family home. As referenced above, soils on the property consist of high value Burlington fine sandy loam soils (Unit 6B).

- *MCC 34.2630(N) - Heritage Tract Dwelling Allowed on Land Identified as High-Value Farmland Due to Extraordinary Circumstances Inherent in Physical Setting.*

This criterion allows for a new single family dwelling on farmland that cannot practicably be managed for farm use due to extraordinary circumstances inherent in the land or its physical setting that do not apply generally to other land in the vicinity. These circumstances include “very steep slopes, deep ravines, rivers, streams, roads, railroad or utility lines or other similar natural or physical barriers that by themselves or in combination separate the subject lot or parcel from adjacent agricultural land and prevent it from being practicably managed for farm use.” The generally flat property does not contain features which consist of these physical elements, and thus could not qualify for a right to develop a new home under this standard.

- *MCC 34.2630(O) - Heritage Tract Dwelling Allowed on Land Identified as High-Value Farmland With Small Surrounding Tracts.*

This regulation requires that the subject tract not be predominately composed of irrigated or non-irrigated soils classified prime, unique, Class I or Class II. Burlington fine sandy loam is classified as a prime soil, as indicated in the High-Value Farmland Soils table included as Exhibit B.4.

Statewide Planning Goals were effective January 25, 1975, prior to the date the claimant acquired the property. Standards for farm and non-farm dwellings in Exclusive Farm zones were also codified in state law prior to 1975. While the County had not yet implemented these rules, the state has taken the position they are nonetheless applicable and that local jurisdictions must require claimants meet them. The County anticipates that the state will take a similar position with this claim. This may impact the claimants’ ability to construct a dwelling on the property.

A separate land use decision will be required in order to confirm that the dwelling is needed to carry out farm or timber operations on the subject property.

The Board finds that the Claimants have established that the challenged land use regulations have restricted their use of the subject property.

³ (2002) USDA census data.

f. **County Code Restrictions Reduce Fair Market Value:**

The Claimant has established that the challenged land use regulations have reduced the fair market value of the property.

The zoning of the lot was F-2 when the claimants acquired the property as previously discussed. This zone district allowed for "*Dwelling or dwellings for owner, operator and/or help required to carry out grazing, agriculture, horticulture of the growing of timber.*" Current EFU regulations further restrict the property, such that a dwelling cannot be constructed. It is these additional restrictions that have reduced the fair market value of the property.

The claimants have not submitted an appraisal which assesses the current value of the property without the right to build a home. Instead, the claimant has submitted a market analysis. The analysis contains data on recent sales of four properties on NW Charlton Road. The dataset contains location information, physical information, sale information, and assessment information.

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.⁴ The data shows that, if listed as buildable, the property should be listed for sale at a value between \$76,955 and \$105,213 per acre.

Bob Alcantara, Senior Appraisal Supervisor with the Multnomah County Division of Assessment and Taxation provided his department's interpretation on the reduction of value issue for this claim. It found that the parcel as buildable would have a real market value of \$250,000 and as farmland would have a real market value of \$45,000.

The Board finds that the Claimants have established that the challenged regulations have reduced the fair market value of the subject property.

g. **Public Notice**

Section 3.50 of the County Charter requires notice to the public of all Board agenda matters. This notice was provided. The Claimant and persons who own land within 750 feet of the subject property received notice by mail.

⁴ The alternative data submitted assumes the ability to develop the lots is transferable by sale which contradicts the Attorney General's opinion on transferability. Also, the alternative data looks only at the current market value of the property and comparable properties. It does not look at the impact of the regulations at the time they were imposed. The land use regulations challenged in this claim have constrained the supply of developable properties in this area, the result of which may impact land values of the remaining developable properties in a positive manner [(2006) Jaeger, W., The effects of Land-Use Regulations on Property Values, Environmental Law (VOL 36) Pages 105-130]. That impact on the value is not considered in the analysis.

h. Validity of Claim for Compensation: The Board finds that:

- (1) The claim materials submitted by the Claimants constitute a complete written demand for compensation as required by Measure 37 and Multnomah County Code 27.530.
- (2) The Claimants' acquisition of the subject property on October 14, 1975, preceded the County's adoption of the land use regulations challenged in this claim.
- (3) The Claimants have established that the challenged land use regulations have restricted their use of the subject property.
- (4) The Claimants have established that the challenged land use regulations have reduced the fair market value of the subject property.

The Multnomah County Board of Commissioners Orders that:

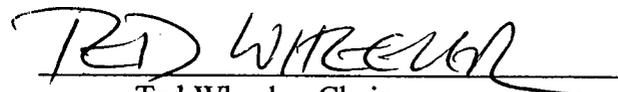
- 1. Claimants' Measure 37 claim is granted and the following regulations do not apply to claimants' property:**
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- 2. The County will not pay the compensation demanded by Claimants.**
- 3. In lieu of compensation, the County shall not apply the challenged regulations to allow the Claimants to use the property for residential purposes as described in this Order. This action by the Board provides the County's authorization to the claimants to use their property subject to the standards in effect on October 14, 1975.**
- 4. Section 3 above, constitutes a waiver of Comprehensive Plan and Rural Area Plan policies that the regulations implement.**
- 5. The following Conditions of Approval apply to this decision:**
 - (a) Section 3 above does not constitute a waiver or modification of corresponding state laws, state administrative rules or metropolitan service district regulations that enforce land use regulations applicable to the property.

- (b) To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the property may not be used without a permit, license, or other form of authorization or consent, this order does not authorize the use of the property unless the claimants first obtain that permit, license or other form of authorization or consent. Such requirements may include, but are not limited to: a building permit, a land use decision, other permits or authorizations from local, state or federal agencies, and restrictions on the use of the property imposed by private parties.
- (c) Any use of the property by the claimant under the terms of this order remain subject to the following laws or local codes: (a) those in effect on the date of the acquisition of the subject property; (b) any enacted or enforced by a public entity other than the County; and (c) those laws not subject to Measure 37 including, without limitation, those exempted under Section (3) of Measure 37.
- (d) Any rights obtained by a claimant through the Board's grant of a waiver of County land use regulations, is transferable only to the extent allowed by law.

ADOPTED this 18th day of April, 2007, ratified April 19, 2007.



BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON


Ted Wheeler, Chair

REVIEWED:

AGNES SOWLE, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY, OREGON

By 
Sandra N. Duffy, Assistant County Attorney

SUBMITTED BY:

Agnes Sowle, County Attorney