

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

In the Matter of Claim Number CL 05-05, Submitted by)
Raymond and Stephen Barrett for Compensation Under) Order No. 29-2005
Measure 37)

WHEREAS, on December 21, 2004, Columbia County received a claim under Measure 37 from Raymond and Stephen Barrett related to a parcel of property on NW Reeder Road on Sauvie Island having Tax Account Number 3114-000-00100, as described in a Memorandum of Contract, recorded at Deed Book 260, Pages 61-63, on November 11, 1985; and

WHEREAS, according to the information presented with the claim, Raymond and Stephen Barrett have continuously owned an interest in the property since November 11, 1985, and are currently the sole fee owners of the property; and

WHEREAS, since 1985 two of the regulations cited by Claimant were amended, but such regulations do not have the effect of restricting the use of Claimant's property so as to reduce the value of such property;

NOW, THEREFORE, it is hereby ordered as follows:

1. The Board of County Commissioners adopts the findings of fact set forth in the Staff Report for Claim Number CL 05-05 dated May 28, 2005, which is attached hereto as Attachment 1, and is incorporated herein by this reference.
2. The Board of County Commissioners finds that the Claimants are neither entitled to compensation under Measure 37, or waiver of County regulations in lieu thereof.
3. The Board of County Commissioners denies Claim Number CL 05-05.

Dated this 22nd day of June, 2005.

BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

Approved as to form

By: _____
Anthony Hyde, Chair

By: Shari T. Good
Assistant County Counsel

By: not present
Joe Corsiglia, Commissioner

By: Rita M. Bernhard
Rita Bernhard, Commissioner

Order No. 29-2005

COLUMBIA COUNTY LAND DEVELOPMENT SERVICES

Measure 37 Claim

Staff Report

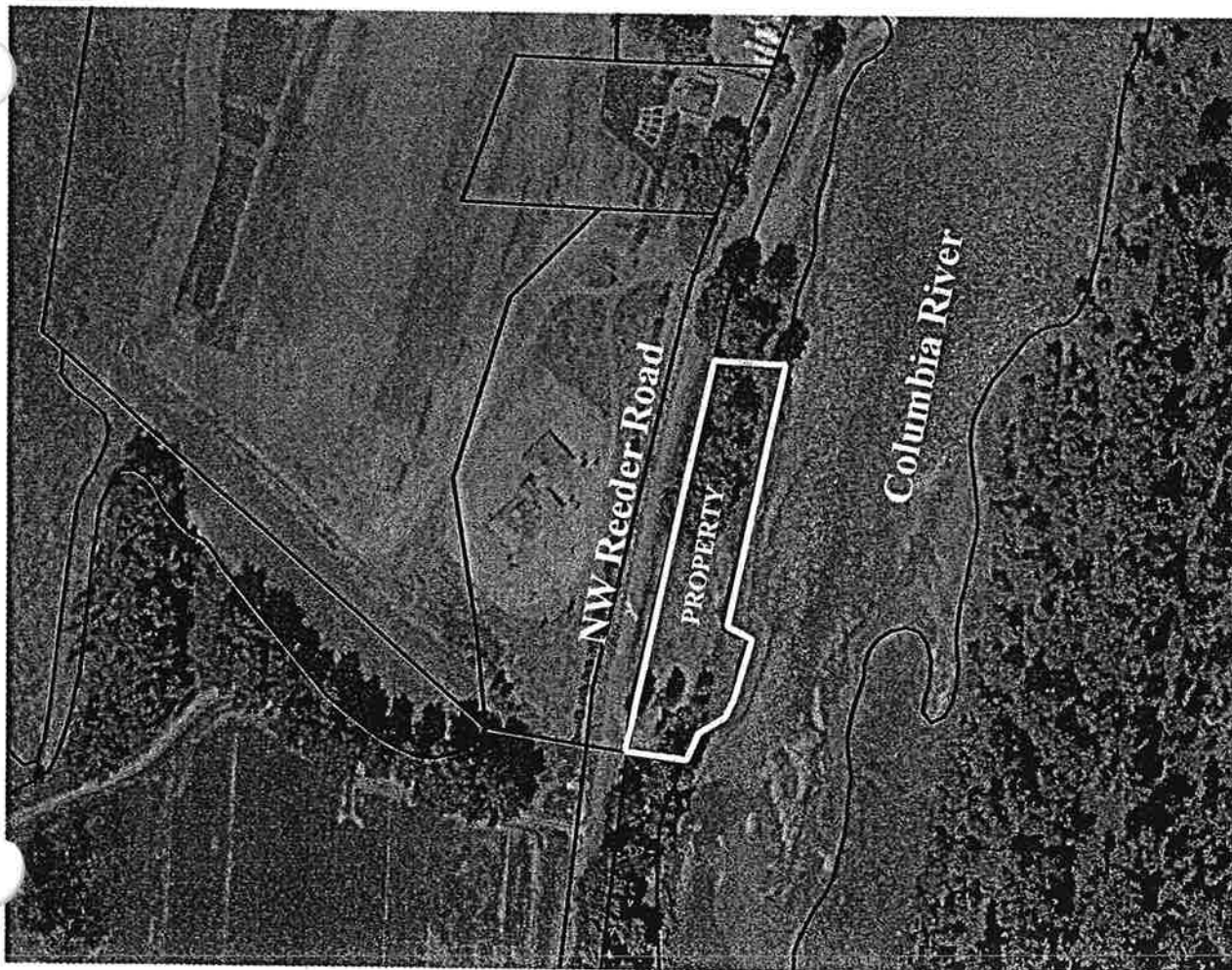
DATE: May 28, 2005

FILE NUMBER: CL 05-05

CLAIMANT/OWNER: Raymond E. Barrett and Stephen J. Barrett
9470 N.W. Leahy Road
Portland, Oregon 97229

Stephen J. Barrett
23285 N.E. 17th Street
Sammamish, WA 98074

PROPERTY LOCATION: 31131 N.W. Reeder Road
Sauvie Island



TAX ACCOUNT NUMBER: 3114-000-00100
ZONING: Existing Commercial(EC)
SIZE: 1.97 Acres
REQUEST: To subdivide the subject property into 2 parcels for 2 single family dwellings with shops or offices and joint use dock and boat ramp.

CLAIM RECEIVED: 12/21/04 **180 DAY DEADLINE:** 6/21/05

I. BACKGROUND: Raymond Barrett and Stephen Barrett filed a claim under Measure 37 on December 21, 2004. The amount of the claim is \$275,000. The claim is based upon a Purchase Sale Agreement/Offer on the property and RMLS listings from the RMLS website for Columbia River waterfront residential properties similarly sized to those proposed to be created by division of the property. The claim alleges reduction in fair market due to restrictions on division of the property, residential use of the divided property and riparian setbacks from the Columbia River. Justification for this alleged loss of value will be reviewed below. Claimants state their desire to divide the property into two approximately 1 acre lots; to build a single family residence with shop or office on each and a dock/boat ramp to be shared by the two lots.

II. CLAIM SUMMARY:

A. PROPERTY OWNER AND OWNERSHIP INTERESTS:

1. **Current Ownership:** Ticor Title Issued a title report dated March 1, 2005 for the subject property identified by Tax Acct. No. 3114-000-00100, with legal description attached. Vested In: Raymond E. Barrett and Stephen Barrett as tenants in common
Subject to: The rights of the public for portions of the property lying below the high water mark of the Columbia River; lying within the limits of public roads; rights of way and easements of the Columbia Drainage District; hunting privileges conveyed to Ed Bingham(1879); easement for use of water pump in favor of Sally Kennedy Murdock; and easements in favor of the Cove Marina, Inc for drainage and a Deed of Trust, given to secure indebtedness in favor of Seattle Funding Group LTD.
No other property interests are listed.
2. **Date of Acquisition:** Claimants state that Raymond Barrett acquired the property from Sally Kennedy by a land sales contract in 1975. However further deed research indicates that Raymond and Eleanor Barrett's land sales contract was later assigned to Barrett and Warrington Enterprises in which claimant had an property interest(quit claim, 1979; Deed Book 228, Pages 459-460) and assigned by Barrett and Warrington Enterprises to Bill Warrington(assignment of contract, 1980, Deed Book 252; Pages 70-71). Warrington then assigned the land sales contract to James W. Baker(assignment of contract, 1983, Deed Book 247, Page 742). Sally Kennedy(Murdock) then foreclosed on the land sales contract and all rights to the property reverted to her(Circuit Court judgement, 1984). Thereafter, Sally Kennedy(Murdock) entered into a land sales contract with Raymond Barrett and Stephen Barrett(Memorandum of Contract, 11/29/85, Deed Book 260, Pages 61-63). The claimants date of acquisition for purposes of Measure 37 was when Raymond Barrett and Stephen Barrett entered into a land sales contract to purchase the property from Sally Murdock. Sally Murdock later

B. APPLICANT/RELATIONSHIP TO OWNER

The claimants, Raymond Barrett and Stephen Barrett, are the current owners of the property who have signed the claim for compensation.

C. FAMILY MEMBER STATUS

Claimants Raymond E. Barrett and Stephen Barrett, current tenants in common, are father and son. Claimants acquired an interest in the property by land sales contract in 1985.

D. LAND USE REGULATIONS IN EFFECT AT TIME OF ACQUISITION

The property was zoned Existing Commercial(EC) in July 1984 before the claimants acquired the property in 1985. In 1985 the EC zone, CCZO Section 670, allowed Neighborhood Commercial(C-4) uses outright and continuation and expansion of lawful commercial uses existing in July 1984 by conditional use permit. The EC zone, Section 674, required minimum lot sizes of 5 acres(without specified services and access) and 2 acres(with specified services and access). In July 1985 Zoning Ordinance, Section 1170, required a riparian area setback of 50 feet from the Columbia River and any wetland area.

E. LAND USE REGULATION(S) APPLICABLE TO SUBJECT PROPERTY ALLEGED TO HAVE REDUCED FAIR MARKET VALUE/EFFECTIVE DATES/CLAIMANT ELIGIBILITY

Claimants recount the history of rezoning on the property since Raymond Barrett and his wife's acquisition of a property interest in 1975 by land sales contract. However, ownership of the property passed from the Barretts between 1975 and 1985. Only land use regulations enacted or enforced after acquisition in 1985 are eligible under Measure 37. Claimants cite amendments enacted after 1985 including CCZO Section 675(Lots of Record in EC zone; Ordinance 98-2) and CCZO Sections 1171B, 1171C and 1172(A)(3) and 1178(Riparian Corridor Standards, Ordinance 2003-5) which are alleged to have reduced the value of the property. The claimants meet eligibility criteria for only those regulations enacted or enforced after 1985.

F. STATEMENT AS TO HOW THE REGULATIONS RESTRICT USE

Claimants list "15 actions, regulations and ordinance amendments related to the use of the property". All but two of the regulations cited were enacted before claimant acquired the property in 1985. Changes to Lot of Record provisions in the EC zone were enacted in 1998. An increase in riparian/wetland setbacks for the Columbia River were enacted in 2004. Claimants state that the cited regulations restrict division of the property into two 1 acre C2 lots, construction of a single family dwelling, shop or office and a boat ramp and dock to serve both lots. The claimants state that they want to eliminate Columbia County riparian corridor restrictions affecting development of the property.

G. EVIDENCE OF REDUCED FAIR MARKET VALUE SUBMITTED

1. Value of Property As Regulated:

A 2003 Purchase and Sale Agreement between the claimants and Henry and Susan Chamberlin for a purchase amount of \$205,000 was submitted by claimants to substantiate current "as regulated"

fair market value. The sale was not consummated. The claimants state that the sale failed due to restrictions on the property which allegedly prevented the prospective purchasers from constructing a large shop for boat construction including use of the waterfront for launching boats and a home.

2. Value of Property Not Subject to Cited Regulations and Developed As Proposed.

The claimant's submitted several sheets of RMLS listings from the RMLS website including Columbia River waterfront residentially zoned properties, between 20,000 square feet and 1 acre in size, to support a value of \$500,000 for the two parcels they intend to create. The reduction in value is alleged to be \$295,000(\$500,000 less \$205,000). The claimant intends to divide the 1.97 acre property into lots under one acre in size. The prices for properties listed averaged \$289,000. Claimant assumes a value of \$250,000 for each of the two proposed lots for a total of \$500,000. However, no documentation was submitted as to the current value of the property. Furthermore, comparables were largely for property within the City of Portland or Urban Growth Boundary and are likely of higher value than rural Sauvie Island property.

H. COMPENSATION DEMANDED

\$295,000.00

DETERMINATION OF CLAIMANT ELIGIBILITY FOR FURTHER REVIEW:

The Claimant acquired a property interest in 1985. All but two regulations cited became effective in July 1984, before the acquisition date, including provisions prohibiting division of the property into parcels under 2 acres in size and which regulate permitted uses. The claimant is not eligible for review of those regulations. Cited regulations enacted after acquisition in 1985 include CCZO EC zoning district lot of record provisions, Section 675 and Section 1170 amendment to riparian corridor regulations. Further review should be taken for these regulations enacted since claimants acquired the property.

CRITERIA FOR REVIEW

COLUMBIA COUNTY ORDINANCE 84-2004

Interim Procedure to Process Applications for Compensation Under Oregon Statewide Ballot Measure 37

- III. **PRE-APPLICATION CONFERENCE.** Before submitting a Claim, Owners are encouraged to schedule and attend a pre-application conference with Land Development Services Department staff to discuss the Claim.

Finding 1: The Claimant did attend a pre-application conference with staff to obtain information concerning Measure 37 and the County claims process and submitted a related public records request for County ordinances.

- IV. **APPLICATION FEE.** The fee to submit a claim for compensation shall be \$500.00. The Board of County Commissioners may, by order or resolution, modify the fee for

processing Claims. The fee shall be based upon the reasonable cost to the County of processing such application including the cost of technical review.

Finding 2: The Claimant submitted the required \$500.00 filing fee.

V. **CLAIM FILING PROCEDURES.**

- A. An Owner Seeking to file a Claim for Compensation under Measure 37, must be the present owner of the property that is subject to the claim at the time the claim is submitted. The claim shall be filed with the Land Development Services Department.

Finding 3: The claim was filed with Land Development Services on December 21, 2004. According a title report prepared by Tigor Title, dated March 1, 2005, Raymond E. Barrett and Stephen J. Barrett are the current owners of the subject property as tenants in common.

- B. Claims should be submitted on the Claim Form approved by the Board of County Commissioners.

Finding 4: The applicant submitted the Claim for Compensation under Measure 37 on the claim form approved by the Board of County Commissioners.

- C. The Claim Form should be accompanied by all necessary information and materials and the appropriate filing fee, sufficient to demonstrate a claim under Measure 37. The Board of County Commissioners may waive the fee if the Claimant establishes a financial hardship. A complete Claim Form includes all the information and materials listed on the Claim Form. The Owner is responsible for the completeness and accuracy of the application and supporting information and materials.

Finding 5:

A. Claim Form

The applicant has submitted a Claim under Measure 37 on the appropriate form(Attachment 1).

B. Compensation Documentation

The applicant has requested compensation in the amount of \$295,000.00. The applicant has provided justification for this amount of compensation in the form of a 2003 Purchase and Sale Agreement between the claimants and Henry and Susan Chamberlin for a purchase amount of \$205,000 and several sheets of RMLS listings from the RMLS website including Columbia River waterfront residentially zoned properties to support a value of \$500,000 for the two parcels they intend to create.

The documentation for a current "as regulated" value of \$205,000 is not adequate since it did not

result in an actual sale. In addition, reasons suggested by the claimants for why the sale did not occur cited some of the regulations on which the claim for compensation is based. Therefore, the proposed sale amount is neither a comparable sales price nor reflective of what the value of the property was as regulated(see IIG above). Furthermore, the Claimant made no connection between the lot of record and riparian setback regulations and the alleged reduction in value. -

The documentation for a current "as regulated" value of \$500,000 is inadequate because it is based on a website search of properties that compared only two basic characteristics of the properties; property acreage range and waterfront location. Other key characteristics affecting value, including availability of services and costs of development, were not considered.

C. Eligibility Under Cited Regulations

The documentation for the value of the property without the cited regulations assumed that the claimants acquired the property in 1975 and could have divided the 1.97 acre property into two parcels. As noted in IIA above, the claimants did not acquire their current interest until 1985. Therefore, staff finds that the claimants are not eligible for compensation due to Section 674 limits on parcel size in the EC zone. However, the claimants cite five specific regulations; CCZO Section 675, lot of record provisions in the EC zone; CCZO Section 1171B(Purpose to prohibit structures and development from riparian areas as defined in the ordinance), Section 1171C(Definition of development in riparian corridor to include grading, placement of fill, paved or gravel parking areas and removal of trees and vegetation);and Section 1172(A)(3)(riparian/wetland setback of 75 feet from river/slough) enacted after their acquisition of the property.

Therefore, staff finds that the claimants acquired the property(1985) prior to enactment of amendments to the Columbia County Zoning Ordinance, Sections 675 in 1998 and amendments to Section 1170 in 2004 which apply to their property. Whether or not these regulations restrict use under Measure 37 will be reviewed below.

MEASURE 37

(1) If a public entity enacts or enforces a new land use regulation or enforces a land use regulation enacted prior to the effective date of this amendment that restricts the use of private real property or any interest therein and has the effect of reducing the fair market value of the property, or any interest therein, then the owner of the property shall be paid just compensation.

(2) Just compensation shall be equal to the reduction in the fair market value of the affected property interest resulting from enactment or enforcement of the land use regulation as of the date the owner makes written demand for compensation under this act.

Finding 6:

A. Restrictions on Use

Claimants allege that CCZO Section 675, lot of record provisions, amended in 1998 by Ordinance 98-2 restrict their proposed use. Ordinance 98-2 clarified under what circumstances dwellings may

be permitted on pre-existing, substandard lots and parcels. It was initiated to address issues related to RR-5 zoned lots of record, that is lots which did not meet current lot size and dimensional standards. The claimant's property is subject to Section 675 since it is 1.97 acres in size; under the minimum lot size of 2 acres in the EC zone. The amended language clarifies but does not further restrict use of EC zoned property. Staff finds that amendments to Section 675 do not restrict the use of the property.

Claimants allege that 2003 amendments to CCZO, Section 1170, namely, 1171B & C, 1172(A)(3) and 1178 restrict the use of their property by "essentially prohibiting building and/or development of commercial waterfront property". Sections 1171B&C merely state the purposes of Section 1170 which are to regulate development in the riparian corridor and further define development as that term is used elsewhere in the regulations. Staff finds that these sections do not restrict the use of the property. Subsequent sections which carry out the stated purpose and use the term "development" may restrict use.

Section 1172(A)(3) amended previous language in force at the time of property acquisition by the claimant to increase the riparian/wetland setback from 50 feet to 75 feet; an increase in setback of 25 feet. The setback does not apply to water dependent uses such as docks or boat ramps as proposed by the claimant. Furthermore, variance provisions added by the same 2004 amendments in Section 1178, provide a process by which setbacks may be varied when, for example, the building area is restricted to a depth of 30 feet or less. Staff finds that the applicant has not demonstrated how an additional 25 foot setback restricts uses allowed at the time of property acquisition.

Section 1178, added by amendment in 2004, provides a set of criteria for granting relief to the riparian corridor regulations under certain conditions. The claimant has not chosen to use this procedure. These provisions do not restrict use until or unless the claimant is denied a variance request and a finding is made that docks are not permitted in a riparian corridor. Staff finds that Section 1178 does not restrict use.

B. Reduction in Fair Market Value Due to Cited Regulations

Staff finds that the cited regulations that are reviewable do not restrict use. Even if the regulations could be found to restrict use, the claimant has not demonstrated a reduction in value due to the cited regulations(see Finding 5 above). Staff finds that no reduction in fair market value due to regulations enacted or enforced after acquisition of the property by the claimant has been demonstrated.

(3) Subsection (1) of this act shall not apply to land use regulations:

(A) Restricting or prohibiting activities commonly and historically recognized as public nuisances under common law. This subsection shall be construed narrowly in favor of a finding of compensation under this act;

(B) Restricting or prohibiting activities for the protection of public health and safety, such as fire and building codes, health and sanitation regulations, solid or hazardous waste regulations, and pollution control regulations;

© To the extent the land use regulation is required to comply with federal law;

(D) Restricting or prohibiting the use of a property for the purpose of selling pornography or performing nude dancing. Nothing in this subsection, however, is intended to affect or alter

rights provided by the Oregon or United States Constitutions; or

(E) Enacted prior to the date of acquisition of the property by the owner or a family member of the owner who owned the subject property prior to acquisition or inheritance by the owner, whichever occurred first.

Finding 7: Staff finds that none of the cited regulations enacted after property acquisition in 1985 identified by the claimant qualify for any of the exclusions listed.

(4) Just compensation under subsection (1) of this act shall be due the owner of the property if the land use regulation continues to be enforced against the property 180 days after the owner of the property makes written demand for compensation under this section to the public entity enacting or enforcing the land use regulation.

Finding 8: Should the Board determine that the claimant has demonstrated a specific reduction in fair market value of the property due to the cited regulation(s), the Board is to pay compensation in the amount of the reduction in fair market value caused by said regulations or in lieu of compensation, modify, remove, or not apply the cited regulations.

(5) For claims arising from land use regulations enacted prior to the effective date of this act, written demand for compensation under subsection (4) shall be made within two years of the effective date of this act, or the date the public entity applies the land use regulation as an approval criteria to an application submitted by the owner of the property, whichever is later. For claims arising from land use regulations enacted after the effective date of this act, written demand for compensation under subsection (4) shall be made within two years of the enactment of the land use regulation, or the date the owner of the property submits a land use application in which the land use regulation is an approval criteria, whichever is later.

Finding 9: The subject claim arises CCZO amendments which were enacted in 1998 and 2004, prior to the effective date of Measure 37 on December 2, 2004. The subject claim was filed on December 21, 2004 which is within two years of the effective date of Measure 37.

(8) Notwithstanding any other state statute or the availability of funds under subsection (10) of this act, in lieu of payment of just compensation under this act, the governing body responsible for enacting the land use regulation may modify, remove, or not to apply the land use regulation or land use regulations to allow the owner to use the property for a use permitted at the time the owner acquired the property.

Finding 10: As noted in Findings 6 and 7 above, Staff finds the 1998 amendment of CCZO Section 675, lots of record, and the 2003 amendments to CCZO Section 1170, riparian corridors and wetlands, do not restrict the use of the property so as to reduce the fair market value of the property. However, if the Board finds that the cited regulations have reduced the value of the property, the Board should authorize payment of just compensation in the amount of the reduction in fair market value. Or, in lieu of such compensation, the Board should waive only land use regulations enacted or

enforced after acquisition of the property by the Claimant in 2004 which would restrict use of the property as allowed at the time of acquisition by the Claimant. The Board need not waive any specific regulations in response to this claim.

STAFF RECOMMENDATION

Based on the above findings, it is Staff's opinion that the Claimant has not met the threshold requirements for proving a Measure 37 claim.

The following table summarizes staff findings concerning the land use regulations cited by the claimants as a basis for their claim. In order to meet the requirements of Measure 37 for a valid claim the cited land use regulation must be found to restrict use, reduce fair market value, and not be one of the land use regulations exempted from Measure 37. None of the applicable regulations below have been found to meet these requirements of a valid Measure 37 claim.

LAND USE CRITERION	DESCRIPTION	RESTRICTS USE?	REDUCES VALUE?	EXEMPT?
CCZO 675	1998 Amendments: Lots of Records	No	No	No
CCZO 1171(A)	2004 Amendment Adding Purpose of Section to Prohibit Structures and Development in Riparian Corridor	No	No	No
CCZO 1171B	2004 Amendment Adding Definition of Development as Used in Section 1170	No	No	No
CCZO 1172(A)(3)	2004 Amendment Increasing Riparian/Wetland Setbacks from 50 to 75 feet on Columbia River	No	No	No
CCZO 1178	2004 Amendment Adding a Variance Procedure for Riparian Corridor standards of Section 1170.	No	No	No

Staff recommends the Board of County Commissioners take action to deny the claim.