

BEFORE THE BOARD OF COUNTY COMMISSIONERS  
FOR COLUMBIA COUNTY, OREGON

In the Matter of Claim No. CL 05-12 for Compensation )  
under Measure 37 by Jeff and Marilyn Yarbor ) Order No. 45-2005

WHEREAS, on January 5, 2005, Columbia County received a claim under Measure 37 and Order No. 84-2004 from Jeff and Marilyn Yarbor (also referred to as "Claimants") related to a 15.94 acre parcel off of Pittsburg Road having Tax Account Number 5230-000-00405, as described in Instrument #89-6478 of the Columbia County Deed Records; and

WHEREAS, according to the information presented with the Claim, Jeff and Marilyn Yarbor have continuously owned an interest in the property since 1981, and are currently the sole fee owners of the property; and

WHEREAS, in 1981, Columbia County did not regulate minimum lot sizes for the division of forest land; and

WHEREAS, the subject parcel is currently zoned Primary Forest (PF-76) pursuant to the Columbia County Comprehensive Plan; and

WHEREAS, pursuant to Columbia County Zoning Ordinance (CCZO), Section 506.1, the minimum lot or parcel size for new land divisions in the PF-76 zone is 76 acres; and

WHEREAS, Jeff and Marilyn Yarbor claim that the minimum lot size requirement for new land divisions has restricted the use of the property and has reduced the value of the property by \$84,792.83; and

WHEREAS, Jeff and Marilyn Yarbor desire to subdivide or partition the property; and

WHEREAS, pursuant to Measure 37, in lieu of compensation the Board may opt to not apply (hereinafter referred to as "waive" or "waiver") any land use regulation that restricts the use of a Claimant's property and reduces the fair market value of the property to allow a use which was allowed at the time the Claimant acquired the property; and

WHEREAS, when Jeff and Marilyn Yarbor acquired an interest in the property in 1981, it was lawful to subdivide or partition the property into 5 acre lots.

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 5-12 dated June 8, 2005, which is attached hereto as Attachment 1, and is incorporated herein by this reference.



4. This Order shall be recorded in the Columbia County Deed Records, referencing the legal description which is attached hereto as Attachment 2, and is incorporated herein by this reference, without cost.

Dated this 29<sup>th</sup> day of June, 2005.

Approved as to form

By: [Signature]

BOARD OF COUNTY COMMISSIONERS  
FOR COLUMBIA COUNTY, OREGON

By: [Signature]  
Anthony Hyde, Chair

By: [Signature]  
Joe Corsiglia, Commissioner

By: [Signature]  
Rita Bernhard, Commissioner

After recording please return to:  
Board of County Commissioners  
230 Strand, Room 331  
St. Helens, Oregon 97051

# COLUMBIA COUNTY LAND DEVELOPMENT SERVICES

## Measure 37 Claim

### Staff Report

**DATE:** June 8, 2005

**FILE NUMBER:** CL 05-12

**CLAIMANT/OWNER:** Jeff R. Yarbor and Marilyn S. Yarbor  
P.O. Box 686  
St. Helens, Oregon

**PROPERTY LOCATION:** 28071 Pittsburg Road  
St. Helens, Oregon 97051



**ZONING:** Primary Forest(PF-76)

**SIZE:** 15.94 Acres

**REQUEST:** To divide the non-conforming PF-76 property for residential development.

**CLAIM RECEIVED:** 1/5/05      **180 DAY DEADLINE:** 7/4/05

**I. BACKGROUND:** Jeff and Marilyn Yarbor filed a claim under Measure 37 on January 5, 2005. The amount of the claim is indicated on the claim form as \$207,220 and in supplemental materials as \$84,792. Based on the other information in the claim the \$84,792 claim figure is understood to be the intended claim amount. The claim is based upon the premise that the property cannot be lawfully divided under current PF-76, Primary Forest, zoning minimum lot size regulations. The Claimant submitted a Comparative Market Analysis prepared by the Claimant listing values of comparably sized rural residential, forest and farm-forest zoned parcels. Claimant states his desire to divide the property into smaller lots for residential use. The property is not a lawfully created lot of record.

## **II. CLAIM SUMMARY:**

### **A. PROPERTY OWNER AND OWNERSHIP INTERESTS:**

1. **Current Ownership:** The claimants submitted a Title Report issued by Tigor Title on January 12, 2005 which shows:  
Vested In: Jeffery R. Yarbor and Marilyn S. Yarbor as tenants in common.  
Subject to: Right of way easement in favor of PGE; a mineral rights reservation, an easement for ingress and egress above and below the surface implied by a mineral rights reservation in favor of Wallace and Darlene Wodecki; right of way easement in favor of Western Oregon Electric, a Deed of Trust, given to secure indebtedness and an easement in favor of Tyler E and Denice Liggett.
2. **Date of Acquisition:** Claimants submitted deeds by which claimant's mother, Irene Yarbor, acquired the property in 1952(Warranty Deed recorded at Book 115; Pages 397-398). The property was conveyed by contract from John V. and Irene Yarbor to Jeffrey R. Yarbor and Marilyn Prince on October 9, 1981 and a quitclaim deed, transferring title in fulfillment of the contract, was recorded on November 3, 1989(Instrument # 89-6478). A chain of title report was not submitted to verify that there was unbroken family ownership between 1952 and 1981.

### **B. APPLICANT/RELATIONSHIP TO OWNER**

The Claimants, Jeff and Marilyn Yarbor are the current owners of the property who have signed the claim for compensation.

### **C. FAMILY MEMBER STATUS**

The property was originally acquired by Irene Yarbor, Claimants mother, in 1952. Claimants Jeff and Marilyn Yarbor acquired an interest in the property in 1981 by contract with John and Irene Yarbor.

### **D. LAND USE REGULATIONS IN EFFECT AT TIME OF ACQUISITION**

The property was unzoned when the Claimant's mother acquired the property in 1952. Primary Forest(PF-76) regulations establishing a minimum lot size of 76 acres were enacted in 1984 after the claimant acquired the property in 1981.

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

CCZO Section 506.1

New land divisions must be a minimum of 76 acres(State Law 80 acres)

Effective Date: July 1984.

F. STATEMENT AS TO HOW THE REGULATIONS RESTRICT USE

Claimant states that "this property could be divided into smaller parcels". It may be inferred that the claimant is citing the minimum lot size restriction in CCZO Section 506.1 of 76 acres which prevents him from making the subject property a lawful parcel that may be sold.

G. EVIDENCE OF REDUCED FAIR MARKET VALUE SUBMITTED

1. Value of Property As Regulated:

The claimants have submitted a Comparative Market analysis, dated 12/14/2004, prepared by Jeff Yarbor which lists some prices for variously sized residential properties. They state "as is" fair market value of the subject property is \$122,427 but provide no explanation as to how they arrived at that number. Department records indicate that the property has a single family home on it. A current year assessment record was submitted indicating the real market value of the property with improvements of \$108,500.

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

Staff understands the claimants to be saying in their claim that the property cannot be further divided into smaller lots, but the Claimants do not specify the size of lots they intend to create. A Comparative Market Analysis submitted lists some variably sized properties subject to various zoning restrictions and concludes that the average fair market value for the property if dividable is \$ 207,220. No explanation is given as to how Claimants arrived at that amount. The claim is for \$84,792.83 (\$207,220 - \$122,427.17).

H. COMPENSATION DEMANDED

The claim is for \$84,792.83 (\$207,220 - \$122,427.17)

**DETERMINATION OF CLAIMANT ELIGIBILITY FOR FURTHER REVIEW:**

Claimants family(mother) acquired the property in 1952 before the PF-76 minimum lot size regulation became effective. Claimants acquired the property from Jeff Yarbor's mother and father by contract in 1981. Until a chain of title is provided between 1952 and 1981 showing continuous family ownership of the property, it cannot be determined whether the the claim meets the threshold criterion for compensation under Measure 37.

**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 applicant attended a pre-application conference with staff to obtain information concerning Measure 37 and the County claims process.

- 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 claimants submitted an \$800.00 filing fee for claims on seven separate but contiguous parcels including this claim. The fee was determined by the Board of Commissioners in response to a request by the claimants for a multiple parcel waiver.

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 January 5, 2004. According a title report prepared by Ticor Title, dated January 12, 2005, Jeffrey R. and Marilyn S. Yarbor are the current owners as tenants in common.

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

**Finding 4:** The claimants 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 Claimants have submitted a Claim under Measure 37 on the appropriate form(Attachment 1).

B. Compensation Documentation

The applicant has provided justification for this amount of compensation in the form of a Comparative Market Analysis which lists the prices of some farm-forest and residential properties.

They state that the "as is" value of the property is \$122,427.17 and the "as dividable" value is \$207,220 but do not explain how the documentation is related to these amounts. They are claiming compensation for the difference in these two values or \$84,792.83. They submitted a County tax assessment print out which indicates a current land and improvements real market value for the property of \$108,500.

Staff finds the documentation of reduced fair market value due to the cited regulation is inadequate to determine the specific amount of compensation due under Measure 37.

### C. Eligibility Under Cited Regulations

The family(mother) acquired the property in 1952 before the cited PF-76 minimum lot size regulations were enacted(1984). The claimants acquired the property in 1981 from Jeff Yarbor's mother and father after the enactment of the cited regulation. Therefore, staff finds that the claimant is eligible for compensation based on the family acquisition date.

## 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 506.1, minimum lot size regulations in the PF-76 zoning district restrict the further division of the subject property. The cited regulation limits newly created parcels to a minimum of 76 acres. The subject parcel is 15.94 acres. Therefore, staff finds that the cited regulation does restrict the use of the property.

#### B. Reduction in Fair Market Value Due to Cited Regulations

As noted in Finding 5, Staff finds that the documentation submitted is not adequate to demonstrate the specific amount of the reduction in fair market value of the subject property and therefore the specific amount of compensation due under Measure 37. However, the property could have been divided as currently configured on the family acquisition date in 1952 and it is reasonable to assume that since the property cannot be lawfully divided due to the cited regulation, some amount of reduction of fair market value of the property has occurred as a result

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

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

**(B) Restricting or prohibiting activities for the protection of public health and safety, such as**



fire and building codes, health and sanitation regulations, solid or hazardous waste regulations, and pollution control regulations;

(C) To the extent the land use regulation is required to comply with federal law;

(D) Restricting or prohibiting the use of a property for the purpose of selling pornography or performing nude dancing. Nothing in this subsection, however, is intended to affect or alter rights provided by the Oregon or United States Constitutions; or

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

**Finding 7:** Staff finds that none of the cited regulations identified by the claimants qualify for any of the exemptions 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 that the claimants have demonstrated a specific reduction in fair market value of the property due to the cited regulation(s), the Board may 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 land use regulations enacted or enforced which restrict the use allowed at the time the claimants acquired the property in 1981.

**(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 from CCZO Section 506.1, PF-76 minimum lot size regulations enacted in 1984 prior to the effective date of Measure 37 on December 2, 2004. The subject claim was filed on January 5, 2005 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.**

County

COLUMBIA COUNTY



OREGON

### Measure 37 Claim

Fee: \$500.00 (Required with application)

Land Development Services - Planning Division

Columbia County Courthouse

230 Strand, St. Helens, OR 97051 (503) 397-1501

#### Claimant Information (attach additional pages for multiple Claimants):

Jeffery R. YARBOR & Mavily S. YARBOR

Name(s) of Claimant(s):

P.O. Box 686

Mailing address for Claimant(s)

Mailing address for Claimant(s)

503-396-0121 or 503-397-502

Daytime phone #

St Helens Ore 97051

City, State, Zip

Columbia City Ore 970

City, State, Zip

#### Property Information:

28071 Pittsburg Rd St Helens Oregon 97051

Property location/address

02-2-19-2-5230-000-00405

Property tax account #

#### Claim Information:

1) Amount of claim: \$ 207,220

2) Please list the intended use of the property which you believe is restricted by a County land use regulation:

This property could be divided into smaller parcels.

3) Please list all land use regulations related to your intended use of the property which you believe have reduced the fair market value of the property, followed by the date of adoption or the date the regulations were enforced against the property (be as specific as possible...Ordinance, Chapter, Section, Subsection):

PF 76

4) Have you applied for land use approval for your intended use of the property? NO

If so, when? \_\_\_\_\_

If so, what did you apply for? \_\_\_\_\_

If so, what was the file number? \_\_\_\_\_

ATTACHMENT 2

LEGAL DESCRIPTION FOR TAX ACCOUNT NUMBER 5230-000-00405

A tract of land in Section 30, Township 5 North, Range 2 West of the Willamette Meridian. Beginning at the Section corner of Section 24, 19, 25 and 30, thence East 800 feet along the North Section line between Section 19 and 30 which is the point of beginning, thence East 400 feet, thence South to the Pittsburg Vernonia Market Rd. approximately 1700 feet, thence West 400 feet to the Ken and Linda Thomas East boundary line, thence North along the Ken and Linda Thomas line to the point of beginning.

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