

BEFORE THE BOARD OF COUNTY COMMISSIONERS  
FOR COLUMBIA COUNTY, OREGON

In the Matter of Claim No. CL 05-23, for Compensation     )  
Under Measure 37 Filed By Reed Carl Bruegman            )     Order No. 59-2005

WHEREAS, on March 9, 2005, Columbia County received a claim under Measure 37 from Reed Carl Bruegman related to a parcel of property zoned PF-76, located on Holaday Road outside of Scappoose, and having Tax Account Number 3204-000-00902, as described in Fee No. F00 03729 on May 2, 2000; and

WHEREAS, the County received a request for a hearing from John Verbarendse, a neighboring property owner, by letter dated July 7, 2005; and

WHEREAS, on August 10, 2005, the Board of County Commissioners held a hearing in the matter; and

WHEREAS, during the hearing, the Board heard testimony from Reed Carl Bruegman, John and Hollis Verbarendse, Bob Stanton, Nita Greene and Nellie Arnold; and

WHEREAS, having heard evidence and testimony, the Board of County Commissioners closed the hearing for evidence and testimony and continued the matter to August 24, 2005, for deliberations; and

WHEREAS, on August 24, 2005, the Board of County Commissioners deliberated in the matter and voted to deny the Claimant's request for compensation or waiver of CCZO 506.1 under Ballot Measure 37.

NOW, THEREFORE, it is hereby ordered as follows:


1. The Board of County Commissioners adopts the findings of fact and conclusions of law set forth in the Staff Report for Claim Number CL 05-23 dated August 12, 2005, which is attached hereto as Attachment 2, and is incorporated herein by this reference.
2. The Board of County Commissioners finds that the Claimant is eligible for compensation under Measure 37, or waiver of County regulations in lieu thereof to allow a use of the property that was allowed at the time the Claimant acquired the property on May 2, 2000. However, the County has no money to pay compensation. Therefore, in lieu of paying compensation, the Board opts to not apply (waive) CCZO Section 506.1 to the extent necessary to allow the property to be used for a use allowed on May 2, 2005. It is not necessary to waive CCZO Section 506.1 to allow the property to be used for uses allowed

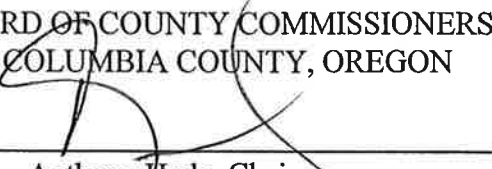
on May 2, 2005. Therefore, the Claimant is not entitled to waiver of CCZO Section 506.1.

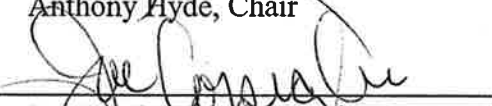
Dated this 31st day of August, 2005.


BOARD OF COUNTY COMMISSIONERS  
FOR COLUMBIA COUNTY, OREGON

Approved as to form

By:   
Assistant County Counsel

By:   
Anthony Hyde, Chair

By:   
Joe Corsiglia, Commissioner

By:   
Rita Bernhard, Commissioner

ATTACHMENT 1

REED BRUEGMAN RECORD OF MEASURE 37 CLAIM HEARING  
CL 05-23  
August 17, 2005

EXHIBIT 1- COUNTY COUNSEL'S RECORD

1. Board Communication dated August 12, 2005, with the following attachments:
  - a. Staff Report to the Board of County Commissioners dated August 12, 2005;
  - b. Measure 37 Claim Form received March 9, 2005;
2. Letter from John Marandas dated July 7, 2005;
3. Letter from John Verbarendse dated July 12, 2005;
4. Letter from John Marandas dated July 18, 2005;
5. Title Report dated January 10, 2005;
6. Comparative Market Analysis dated February 15, 2005;
7. Receipt dated July 6, 2005;
8. Letter from DLCD dated July 22, 2005;
9. Assessor's Records;
10. Measure 37 Pre-Claim meeting summary;
11. Aerial Map;
12. Certificate of Mailing;
13. Measure 37 Notice;
14. Letter from DLCD dated June 8, 2005;
15. Warranty Deed;
16. Affidavit of Publication;
17. Affidavit of Mailing;
18. Materials submitted by Reed Bruegman;

EXHIBIT 2- Deeds submitted by John and Hollis Verbarendse.

# COLUMBIA COUNTY LAND DEVELOPMENT SERVICES

## Measure 37 Claim

### Staff Report

**DATE:** August 12, 2005

**FILE NUMBER:** CL 05-23

**CLAIMANT/OWNER:** Reed Carl Bruegman  
1853 Henson Lane  
Las Vegas, Nevada 89156

**PROPERTY LOCATION:** 30878 Holiday Road  
Scappoose, Oregon 97056



TAX ACCOUNT NUMBER: 3204-000-00902  
ZONING: Primary Forest(PF-76)  
SIZE: 16.16 Acres  
REQUEST: To divide the parcel into 5 parcels.

CLAIM RECEIVED: 3/09/05                      180 DAY DEADLINE: 9/05/05

**I. BACKGROUND:** The subject property was previously partitioned into 5 parcels by the Claimant and his former wife(partitions 93-9466 and 93-9664). Subsequently, the Claimant's daughter acquired the property and applied for a conditional use permit to site a dwelling on one of these parcels. As a condition of approval, the Applicant was required to combine the parcels into one parcel to comply with OAR 660-006-002(1)(d)(B). The Applicant complied with the condition by recording replat 97-031, combining all 5 parcels in to one resultant parcel having tax account #3204-000-00902. Thereafter, Reed Bruegman acquired the property again in 2000.

The Claimant, Reed Carl Bruegman filed a claim under Measure 37 on March 9, 2005. The amount of the claim is \$685,000. The claim is based upon the premise that the property cannot be lawfully divided under current PF-76, Primary Forest, minimum lot size regulations. The Claimant submitted a comparative market analysis which indicates the property's value as one 16 acre parcel verses the property's value if the property can be divided into 5 parcels. A comparative market analysis was provided by the Claimant listing values of comparably sized properties in the area. The Claimant states his desire to restore the, "residential parcels as previously approved by Columbia County, November 3, 1993."

## **II. CRITERIA FOR REVIEW WITH STAFF FINDINGS:**

### **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.**

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

1. **Current Ownership:** DLCD forwarded a Chain of Title Report issued by Ticor Title on June 8, 2005 which indicates the subject property is:  
Vested In: Reed C. Bruegman, an estate in fee simple  
Subject to:
  1. The assessment roll and tax roll discloses that the premises herein

described were specially assessed as Forest Land. If the land becomes disqualified for the special assessment under the statute, an additional tax may be levied for previous years in which the land was subject to the special land use assessment.

2. The rights of the public in and to that portion of the premises herein described lying within the limits of public roads, streets and highways.
3. Restrictive covenants regarding forest improvements, including the terms and provisions thereof, and including among other things, a waiver of right of remonstrance.
4. Trust deed, including the terms and provisions thereof, given to secure indebtedness with interest thereon and such future advances as may be provided therein.

2. **Date of Acquisition:** The Chain of Title Report dated June 8, 2005 in part indicates the following sequence of ownerships:

1. RC & SB Bruegman acquired the property by Warranty Deed recorded on July 24, 1973.
2. R & T Niemi acquired the property by Bargain and Sale Deed on January 17, 1996; and again as RA and TL Niemi by Bargain and Sale Deed on October 14, 1997.
3. RC & SB Bruegman again acquired the property by Bargain and Sale Deed on October 17, 1997.
4. TL Niemi acquired the property by Bargain and Sale Deed on January 12, 1999.
5. R Bruegman, the Claimant and current owner of the property acquired current ownership by Warranty Deed recorded April 14, 2000.

**B. LAND USE REGULATIONS IN EFFECT AT TIME OF ACQUISITION**

The property was not zoned when the Claimant and his wife first acquired the property in 1973.

On April 14, 2000 when the Claimant re-acquired the property from his daughter the property was zoned Primary Forest (PF-76). Primary Forest (PF-76) regulations establishing a minimum lot size of 76 acres were enacted in 1984 before the Claimant acquired the property on April 14, 2000.

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

The Claimant listed CCZO Section 506.1 which establishes a minimum lot size of 76 acres in the PF-76 zoning district. Staff finds that the cited regulation restricts the use of the property by preventing the division of the property into parcels of less than 76 acres.

#### D. CLAIMANT'S ELIGIBILITY FOR FURTHER REVIEW

The Claimant and his wife acquired the property in 1973 before the PF-76 minimum lot size regulation became effective. The Claimant then deeded ownership of the property to Claimant's daughter and her husband who then, after a divorce, deeded the property back to the Claimant in 2000. Therefore for the purposes of Measure 37, the Claimant acquired the property in the year 2000.

The chain of title provided indicates that the property has an unbroken line of family ownership since 1973. Under Measure 37 provisions the County has the option of either paying compensation for the reduction in fair market value caused by a land use regulation. Or, in lieu of paying compensation the County may waive the regulation to allow a use of the property which was ~~not~~ allowed at the time the property owner acquired the property.

The Claimant acquired his current interest in the property in 2000 after the cited land use became effective. Therefore, the Claimant is not eligible for waiver of CCZO Section 506.1 under Measure 37.

#### E. STATEMENT AS TO HOW THE REGULATIONS RESTRICT USE

Claimant states regarding the intended use of the property, "Residential parcels as previously approved by Columbia County, November 3, 1993."

Claimant desires to divide the parcel into five parcels. CCZO Section 506.1 restricts the use of the property because no such property division is allowed.

#### F. EVIDENCE OF REDUCED FAIR MARKET VALUE SUBMITTED

##### 1. Value of Property As Regulated:

The Claimant has submitted a comparative market analysis, dated 2/15/2005, prepared by Michael Sykes which lists some prices for variously sized residential properties. This analysis states that, "the property has a value of approximately \$350,000 if it is sold as on undividable parcel. However, if the property can be divided into 5 parcels as it was originally platted, its total value is approximately \$1,035,000. ... It is my opinion that the home and 3.5 acres is valued at \$350,000 and that each of the 4 buildable parcels have a total estimated value of \$685,000." However, no explanation was given as to how Mr. Sykes arrived at the quoted numbers.

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

Staff understands the Claimant to be claiming that the property cannot be further divided into smaller lots. The comparative market analysis lists some variably sized properties subject to various zoning restrictions and concludes that the average fair market value for the property if dividable is \$1,035,000. No explanation is given as to how Mr. Sykes arrived at that amount.

Staff finds that the minimum lot size regulations in the PF-76 zone may have resulted in some reduction in fair market value of the property. However, the Claimant has failed to provide sufficient evidence that there has been a reduction in the value of the property.

#### G. COMPENSATION DEMANDED

The claim is for \$685,000 (\$1,035,000 - \$350,000).

**(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.**

CCZO Section 506.1 does not 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.**

Should the Board determine that the that the Claimant has demonstrated a reduction in fair market value of the property due to CCZO Section 506.1, the Board may compensation in the amount of the reduction in fair market value caused by said regulation.

**(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.**

The effective date of Measure 37 was December 2, 2004. The subject claim arises from the minimum lot size provisions of PF-76 zoning regulations which were enacted in 1984, prior to the effective date of Measure 37. The subject claim was filed on March 9, 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.

The PF-76 minimum lot size requirement may reduce the value of the subject property by preventing the division of the property. Therefore, if the Board finds that the cited regulations have reduced the value of the property, the Board may authorize payment of just compensation in the amount of the reduction in fair market value. Or, in lieu of compensation, the Board may opt not to apply (waive) CCZO Section 506.1 if necessary to allow a use of the property allowed in 2000. Staff finds that it not necessary to waive CCZO Section 506.1 in order to allow the Claimant to use the property for a use which was allowed in 2000.

### STAFF RECOMMENDATION

The following table summarizes staff findings concerning the land use regulation cited by the Claimant 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. The highlighted 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 506.1 Note: The Claimant is ineligible for waiver of this provision	Minimum lot size for permitted uses is seventy-six (76) acres	Yes	Maybe	No

The Claimant has demonstrated family succession necessary for compensation under Measure 37, however he is not eligible for waiver of CCZO Section 506.1 due to the fact that it was enacted prior to the Claimant's acquisition of the property in 2000. The Claimant is entitled to a waiver only to the extent necessary to allow a use of the subject property which was allowed in 2000. It is not necessary to waive CCZO Section 506.1 to allow a use of the property which was allowed in 2000.