

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

In the Matter of Claim Nos. CL 05-24 and)	
CL 05-25 for Compensation under Measure 37)	ORDER NO. 19-2006
submitted by Donald D. Dahl and Diana L.)	
Dahl)	

WHEREAS, on May 18, 2005 and June 15, 2005, Columbia County received claims under Measure 37 and Order No. 84-2004 from Donald D. Dahl and Diana L. Dahl, Scappoose, Oregon, for property having Tax Account Number 3203-000-00703 and 3210-000-00100; and

WHEREAS, on October 15, 2005, the Circuit Court for Marion County declared Measure 37 unconstitutional in a decision entitled *McPherson v. State of Oregon*; and

WHEREAS, in light of the Marion County decision, the County and Claimants entered into a stipulated agreement on November 14, 2005 to toll the 180-day claim period pending review of the Marion County decision by the Oregon Supreme Court; and

WHEREAS, on March 7, 2006, the Oregon Supreme Court entered a judgment overturning the Marion County Circuit Court decision, and declaring Measure 37 constitutional; and

WHEREAS, pursuant to the November 14, 2005 stipulation, the deadline for a County decision on the claims is now May 3, 2006 for CL 05-24 and April 6, 2006 for CL 05-25; and

WHEREAS, according to the information presented with the Claim, Mr. and Mrs. Dahl have continuously owned an interest in the property since August 20, 1979, and are currently the sole fee owners of the property; and

WHEREAS, in 1979 Columbia County had not yet zoned the subject property; and

WHEREAS, the subject parcel is currently split zoned Forest Agriculture (FA-19)(Tax Lot 703) and Primary Forest (PF-76)(Tax Lot 100) pursuant to the Columbia County Comprehensive Plan; and

WHEREAS, pursuant to Columbia County Zoning Ordinance (CCZO), Sections 409.1, 506.1 and 1504, the minimum size for new parcels is 19 acres and 76 acres, respectively; and

WHEREAS, Mr. and Mrs. Dahl 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 \$600,000.00; and

WHEREAS, Mr. and Mrs. Dahl desire to subdivide the property into four approximately four-acre parcels; 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 the Claimants' property and reduces the fair market value of the property to allow a use which was allowed at the time the Claimants acquired the 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 Numbers CL 05-24 and 05-25, dated March 24, 2006, which is attached hereto as Attachment 1, and is incorporated herein by this reference.
2. In lieu of compensation, the County waives CCZO 409.1, 506.1 and 1504 to the extent necessary to allow the Claimants to subdivide the property into four four-acre parcels. As an alternative to subdividing the property, the Claimants may choose to partition their property in accordance with serial partition regulations.
3. This waiver is subject to the following limitations:
 - A. This waiver does not affect any land use regulations promulgated by the State of Oregon. If the use allowed herein remains prohibited by a State of Oregon land use regulation, the County will not approve an application for land division, other required land use permits or building permits for development of the property until the State has modified, amended or agreed not to apply any prohibitive regulation, or the prohibitive regulations are otherwise deemed not to apply pursuant to the provisions of Measure 37.
 - B. In approving this waiver, the County is relying on the accuracy, veracity, and completeness of information provided by the Claimants. If it is later determined that Claimants are not entitled to relief under Measure 37 due to the presentation of inaccurate information, or the omission of relevant information, the County may revoke this waiver.
 - C. Except as expressly waived herein, Claimants are required to meet all local laws, rules and regulations, including but not limited to laws, rules and regulations related to subdivision and partitioning, dwellings in the forest zone, and the building code.
 - D. This waiver is personal to the Claimants, does not run with the land, and is not transferable except as may otherwise be required by law.

- E. By developing the parcel in reliance on this waiver, Claimants do so at their own risk and expense. The County makes no representations about the legal effect of this waiver on the sale of lots resulting from any land division, on the rights of future land owners, or on any other person or property of any sort. By accepting this waiver, and developing the property in reliance thereof, Claimants agree to indemnify and hold the County harmless from and against any claims arising out of the division of property, the sale or development thereof, or any other claim arising from or related to this waiver.
4. This Order shall be recorded in the Columbia County Deed Records, referencing Tax Parcel Nos. 3203-000-00703 and 3210-000-00100.

Dated this 29th day of March, 2006.

BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

Approved as to form

By: _____

County Counsel

By: _____

Joe Corsiglia, Chair

By: _____

Rita Bernhard, Commissioner

By: _____

Anthony Hyde, 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: March 24, 2006

FILE NUMBERS: CL 05-24 & CL 05-25

CLAIMANTS/OWNERS: Donald D. Dahl
Diana L. Dahl
PO Box 291
Scappoose, OR 97056

SUBJECT PROPERTY

PROPERTY LOCATION: 31850 Valley Hideaway Lane
Scappoose OR 97056

TAX ACCOUNT NUMBERS: 3203-000-00703 (Tax Lot 703)
3210-000-00100 (Tax Lot 100)

ZONING: Forest Agriculture (FA-19) (Tax Lot 703)
Primary Forest-76 (PF-76) (Tax Lot 100)

SIZE: 16 acres

REQUEST: To subdivide the parcel into four four-acre parcels

CLAIM RECEIVED: CL 05-24: June 15, 2005; Claim Stayed per Agreement dated November 14, 2005
CL 05-25: May 18, 2005; Claim Stayed per Agreement dated November 14, 2005

REVISED 180 DAY DEADLINE: CL 05-24: May 3, 2006
CL 05-25: April 6, 2006

NOTICE OF RECEIPT OF CLAIM: Mailed September 27, 2005. No request for hearing received.

I. BACKGROUND:

The subject property includes 16 acres of a 20-acre parcel acquired by the claimants in 1979. In August 1982, claimants applied for, and received, approval to partition the property into two parcels: a four-acre parcel and a 16-acre remainder parcel. The Dahls sold the four acre parcel, and have retained title to the 16 acres. The property is divided into two tax lots because it is split zoned. As noted above, Tax Lot 703 is zoned FA-19 and Tax Lot 100 is zoned PF-76. However, it is one parcel for land use planning purposes.

In 2001, the claimants applied for a lot of record determination to support their assertion that the 16-acre parcel is comprised of two eight acre parcels. In support of this argument, the claimants supplied deed descriptions that show that the subject property is described in two separate deeds, and thus were separate parcels pursuant to ORS 92.017. The application was denied, and that decision was not appealed. (LRD 02-05)

In subsequent conversations with the claimants or their representatives, County staff informed claimants that the regulations in place at the time require an 80-acre minimum parcel size for properties zoned for forest use. Those regulations (specifically OAR Chapter 660, division 06) continue to apply, and are not affected by the Dahls' claim for compensation against the county. The Dahls have filed a Measure 37 claim against the state, presumably to waive the 80-acre parcel size limitation. That claim is pending.

Claimants submitted two claims for compensation under Measure 37. Those claims assume that each tax lot is a separate eight-acre parcel, and identify the development goal as dividing each tax lot into two four acre parcels. Because the property is one parcel with two tax lots rather than two separate parcels, the claims have been consolidated and modified to request a subdivision of the 16-acre parcel into four four-acre lots. According to the claimants, the difference in value between their property as it is currently configured and developed, and the fair market value of the property as they desire to develop it, is \$600,000.

II. APPLICABLE CRITERIA AND 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:** Claimants submitted a title report issued by Ticor Title on May 24, 2006 for the subject property identified by Tax Acct. No. 3203-000-0703 and 3210-000-00100, with legal description attached.

Vested In: Donald D. Dahl and Diana L. Dahl, as tenants by the entirety

Subject to:

- a. Reservation of mineral rights and easements for ingress and egress above and below the surface of the land as implied by the mineral rights in the deed;
- b. Easements for access to Telephone Utilities of Oregon (Deed No. 94-0467)
- c. A 20 foot wide access easement
- d. Security interests held by the State of Oregon, Department of Veterans Affairs and St. Helens Community Federal Credit Union.

No other property interests are listed.

2. **Date of Acquisition:** The Claimants, Donald D. Dahl and Diana L. Dahl, acquired the property through a warranty deed from Craig J. MacDonald and Fred C. MacDonald, trustees on behalf of Craig J. MacDonald, on August 20, 1979. (Columbia County Deed Records Book 226, Pages 64-65.)

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

The property was not zoned in 1979, and was therefore not subject to any minimum parcel size requirements included in the county zoning ordinance. The property was subject to subdivision regulations adopted by the county in 1973, and partition regulations adopted in 1975.

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

The claimants allege that the county's PF-76 and FA-19 zoning regulations prevent the claimants from dividing their property and constructing dwellings on them. The two zoning districts were applied to the subject property after 1979; however, the county's forest zoning provisions permit substandard parcel sizes and non-forest related dwellings in certain circumstances. See CCZO 404.13, 407.1, and 409.1 (FA-19 standards, adopted 1988) and CCZO 503.9, 506.1 (PF-76 standards, adopted February 1990). It appears that the county standards that clearly prevent the claimants from developing their property as desired are:

- CCZO 409.1 subjecting applications for substandard parcels sizes to the county's variance process
- CCZO 506.1 limiting substandard parcel divisions to uses that do not include non-forest dwellings
- CCZO 1504 prohibiting use of county variance standards to permit creation of substandard resource parcels

D. CLAIMANT'S ELIGIBILITY FOR FURTHER REVIEW

Claimants acquired an interest in the property before CCZO Sections 409.1, 506.1 and 1504 became effective and therefore the Claimants may be eligible for compensation and/or waiver of the cited regulations under Measure 37.

E. STATEMENT AS TO HOW THE REGULATIONS RESTRICT USE

The Claimants state that they cannot divide their property as proposed due to the county's 80-acre minimum parcel size standard. Staff finds that there are no county imposed 80-acre minimum parcel sizes and that the code provisions that address the 80-acre parcel size standard note that the standard was adopted by state regulation. (See, e.g., CCZO 407.1 "[Note: State law now requires 80 acres minimum parcel size.]")

However, staff concedes that CCZO 409.1, 506.1 and 1504 can be read and applied to "restrict" the use of claimants' property within the meaning of Measure 37.

F. EVIDENCE OF REDUCED FAIR MARKET VALUE

1. Value of the Property As Regulated.

The claimants submitted copies of county assessor's records that estimate the value of the property as \$369,300 (\$326,200 for land and improvements on Tax Lot 100 and \$43,100 for land included in Tax Lot 703).

2. Value of Property Not Subject To Cited Regulations.

Claimants allege that if their property is subdivided, each lot would be worth \$250,000. They base their estimate on realtor summary sheets for five properties, ranging in size from 1.07 acre to 9.66 acres in size. The summary sheets are dated April 11, 2005, and provide general descriptions of the location and services available to the properties. The 1.07 acre parcel was offered at \$175,000; the 9.66 acre parcel was offered at \$185,000. Two five acre parcels were offered at \$200,000 and \$220,000, respectively. A 1.68 acre parcel was offered at \$235,000. There is no evidence indicating the actual selling price of any of the parcels.

3. Loss of value indicated in the submitted documents is:

The written documentation in support of the claim appears to allege a total reduction in value of \$630,700 (the difference between the estimated market value of the property in its current condition, and the value of the four lots at \$250,000 per lot based on the offering prices included on the realtor's summaries.)

While staff does not agree that the information provided by the claimants is adequate to fully establish the current value of the property or the value of the property if it was not subject to the cited regulations, staff

concedes that it is more likely than not that the property would have a higher value as four rural residential lots than as a 16-acre resource parcel developed with a single dwelling.

G. COMPENSATION DEMANDED

\$600,000.00

(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 Sections 409.1, 506.1 and 1504 do not qualify for any of the exclusions listed.

However, staff notes that other siting standards, including fire suppression requirements, access requirements and requirements for adequate domestic water and subsurface sewage, continue to apply as they are exempt from compensation or waiver under Subsection 3(b), above.

(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 Claimants have demonstrated a reduction in fair market value of the property due to the cited regulations, the Board may pay compensation in the amount of the reduction in fair market value caused by said regulation or in lieu of compensation, modify, remove, or not apply CCZO Sections 409.1, 506.1 and/or 1504.

(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 subject claim arises from the minimum lot size provisions of the FA-19, PF-76 and variance regulations which were enacted prior to the effective date of Measure 37 on December 2, 2004. The subject claims were filed on May 18, 2005 and June 15, 2005, which are within two years of the effective date of Measure 37.

(6) 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.

Should the Board determine that the that the Claimants have demonstrated a reduction in fair market value of the property due to the cited regulations, the Board may pay compensation in the amount of the reduction in fair market value caused by said regulation or in lieu of compensation, modify, remove, or not apply CCZO Sections 409.1, 506.1 and/or 1504.

III. STAFF RECOMMENDATION:

Based on the above findings, staff concludes that the claimants have met the threshold requirements for proving a Measure 37 claim.

The following table summarizes staff findings concerning the land use regulations 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 409.1	Subjecting applications for substandard parcels sizes to the county's variance process.	Yes	Yes	No
CCZO 506.1	Limiting substandard parcel divisions to uses that do not include non-forest dwellings	Yes	Yes	No
CCZO 1504	Prohibiting use of county variance standards to permit creation of substandard resource parcels	Yes	Yes	No

Staff recommends the Board of County Commissioners take action to determine the amount, if any, by which the cited regulations reduced the value of the Claimant's property, and act accordingly to pay just compensation in that amount, or, in the alternative, to not apply CCZO Sections 409.1, 506.1 or 1504.