

In the Matter of the Claim for Compensation)
under Measure 37 submitted by Dixie Blaha) Order No. 96-2006
Trustee of the Joseph F. Blaha Credit Shelter Trust)

Page 1

1991.

3. This waiver is subject to the following limitations:

- A. This waiver does not affect any land use regulations of 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 Claimant. If it is later determined that Claimant is 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, Claimant is 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 Rural Residential Zone, and the building code.
- D. This waiver is personal to the Claimant, 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, Claimant does so at Claimant's 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.

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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 29th day of November, 2006.

BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

Approved as to form

By: Sarah Hunsan
Assistant County Counsel

By: Joe Corsiglia
Joe Corsiglia, Chair

By: Rita Bernhard
Rita Bernhard, Commissioner

By: Anthony Hyde
Anthony Hyde, Commissioner

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

Measure 37 Claim

Staff Report

DATE: November 17, 2006

FILE NUMBERS: CL 06-21

CLAIMANT: Dixie Blaha, Trustee
Joseph F. Blaha Credit Shelter Trust
PO Box 626
St. Helens, OR 97051

SUBJECT PROPERTY

PROPERTY LOCATION: Blaha Road, Warren, Oregon

TAX ACCOUNT NUMBERS: 4212-020-02206

ZONING: Rural Residential-5 (RR-5)

SIZE: 16.65 acres

REQUEST: To subdivide the property in approximately two-acre lots for residential development

CLAIM RECEIVED: June 7, 2006

REVISED 180 DAY DEADLINE: December 4, 2006

NOTICE OF RECEIPT OF CLAIM: September 2006

As of the date of the staff report, no requests for hearing have been received.

DATE OF BOCC REVIEW: November 29, 2006

I. BACKGROUND:

The subject property is a remainder parcel of an approximately 35.10 acre devise from claimant's mother-in-law to claimant's husband in 1983. From 1983 through 1991, portions of the property were sold to third parties for residential development. In 1990, claimant's husband died and by operation of law, she obtained title to the then 21.27-acre property. In 1991, claimant transferred the property to the Joseph S. Credit Shelter Trust. Claimant is the trustee and primary beneficiary of the trust. Through other more recent partitions and conveyances, the property now includes the subject 16.65 acres.

Claimant requests that minimum parcel size standards that were imposed after the trust acquired title to the property be waived so she can divide the subject property into 2-acre parcels/lots. Claimant states that she intends to develop the parcels for residential uses.

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:** According to information supplied by the claimant, the property is owned by the Joseph S. Blaha Credit Shelter Trust u/w dated July 12, 1985 for the benefit of Dixie D. Blaha. As noted above, Dixie D. Blaha received the property in 1990. Dixie D. Blaha is the trustee of the trust and conveyed the subject property into the trust on December 6, 1991.
2. **Date of Acquisition:** The property was acquired by the trust on December 6, 1991.

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

The property was zoned in RR-5 in 1984 and that zoning has remained on the property to date. At the time the RR-5 zoning designation was applied, property with access to a community water system could be divided into parcels as small as two acres. The subject property has access to Warren Water Association lines, and accordingly, could have been divided into two acre parcels/lots at the time the property was acquired by the trust in 1991.

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

In 2000, the county adopted Ordinance 99-5, which amended the provisions of the RR-5 zone to prohibit the creation of new lots or parcels smaller than five acres in size. The claimant asserts that the revised rural residential development standards reduced the fair market value of the property by eliminating the ability to subdivide the parcel into smaller than five acre lots. Accordingly, based on the claim, it appears that the county standard that clearly prevents the claimant from developing the property as desired are:

CCZO 604.1 Establishing the five acre minimum parcel size standard in the RR-5 zone

D. CLAIMANT'S ELIGIBILITY FOR FURTHER REVIEW

Claimant acquired an interest in the property before the current provisions of the RR-5 zone became effective. Therefore the Claimant 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 Claimant states that the property cannot be divided as proposed due to the county's 5-acre minimum parcel size standard. Staff concedes that CCZO 201, 210 and 604.1 can be read and applied to "restrict" the use of claimant's property within the meaning of Measure 37.

F. EVIDENCE OF REDUCED FAIR MARKET VALUE

1. Value of the Property As Regulated.

The claimant's representative submitted copies of assessor's tax records showing that the property has a current value of \$310,000. In addition, the claimant submitted property value estimates from a realtor that

estimates the current value of the property as \$175,000. However, the realtor's estimate appears to be based on the value of each parcel if the property was divided into five acre parcels, as the comparables used to estimate property value are all based on existing five acre lots within the Columbia County area. Accordingly, staff multiplies the \$175,000 value by three because the property could currently be divided into three parcels to reach an estimated regulated property value of \$525,000.

2. Value of Property Not Subject To Cited Regulations.

Claimant alleges that if the property is subdivided, it would be worth more. Based on the difference between the amount set forth on page one of the claim form and the evidence of the current value of the property, it appears that the claimant alleges that the value of the property without regulations would be between \$985,000 and \$1,200,000.

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

The claim alleges a total reduction in value of \$675,000.

Staff notes that this value assumes that the resulting lots will be developed with dwellings prior to sale to third parties, and that the property has access to Blaha Road. Assessor's maps attached to the claim depict a narrow strip of land paralleling Blaha Road that appears to limit access to the property from Blaha Road. According to county information, tax lot 2200, the intervening tax lot, is owned by the claimant, and staff assumes that the trust will permit access across tax lot 2200 for the development of the subject property as allowed by M37.

If the subject property is merely subdivided and then sold as undeveloped lots, there is a significantly lower value, as the attorney general opinion concludes that while the claimant may avail itself of the benefits of Measure 37 and develop the property according to the regulations in place at the time of acquisition, that benefit is not transferable.

Staff does not agree that the information provided by the claimant 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 regulation. Staff concedes, however, that it is more likely than not that the property would have a higher value if subdivided for residential development.

G. COMPENSATION DEMANDED

Claimant claims the following compensation, per page 1 of the Measure 37 claim forms: \$675,000.

(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 604.1 does not qualify for any of the exclusions listed.

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 Claimant has 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 Section 604.1.

(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 amendments for RR-5 zoned parcels created after 2000, which were enacted prior to the effective date of Measure 37 on December 2, 2004. The subject claim was filed on June 8, 2006, 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.

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

STAFF RECOMMENDATION:

With the exception of road access, staff concludes that the claimant has met the threshold requirements for proving a Measure 37 claim.

The following table summarizes staff findings concerning the land use regulation cited by the Claimant as a basis for the 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 regulation below has been found to meet these requirements of a valid Measure 37 claim:

LAND USE CRITERION	DESCRIPTION	RESTRICTS USE?	REDUCES VALUE?	EXEMPT?
CCZO 604.1	Minimum 5-acre parcel size standard	Yes	Yes	No

Staff recommends the Board of County Commissioners take action to determine the amount, if any, by which the cited regulation 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 Section 604.1.

ATTACHMENT 2

EXHIBIT "A"

Beginning at the Southeast corner of the Southwest quarter of the Southeast quarter of Section 12, Township 4 North, Range 2 West, Willamette Meridian, Columbia County, Oregon; thence South $89^{\circ}31'40''$ West along the South line of said Section 12 a distance of 60.0 feet to the Southwest corner of the David A. Wilson, Jr. tract, as described in Deed Book 164 at page 290 and the true point of beginning of the parcel herein described; thence North $1^{\circ}31'$ East along the West line of said Wilson tract a distance of 282.00 feet to the Southeast corner of the William Rodgers tract, as described in County Clerk's File No. 89-6302; thence South $89^{\circ}31'40''$ West along the South line of said Rodgers tract a distance of 332.50 feet to the Southwest corner thereof; thence North $1^{\circ}31'$ East along the West line of said Rodgers tract a distance of 262.00 feet to the Northwest corner thereof; thence North $89^{\circ}31'40''$ East along the North line of said Rodgers tract a distance of 332.50 feet to the West line of said Wilson tract; thence North $1^{\circ}31'$ East along said West line a distance of 281.00 feet; thence North $24^{\circ}26'$ West a distance of 548.11 feet to the North line of said Southwest quarter of the Southeast quarter; thence North $89^{\circ}17'4''$ West along said North line a distance of 1028.34 feet to the Northwest corner thereof; thence South $1^{\circ}25'$ West along the West line of said Southwest quarter of the Southeast quarter a distance of 368.00 feet more or less to the Northwest corner of the Charles J. Carsner tract, as described in Deed Book 242 at page 372; thence South $88^{\circ}35'$ East along the North line of said Carsner tract a distance of 410.00 feet to the Northeast corner thereof; thence South $1^{\circ}25'$ West along the East line of said Carsner tract a distance of 591.72 feet to the Northerly Southeast corner thereof; thence North $88^{\circ}35'$ West along the South line of said Carsner tract a distance of 330.00 feet; thence South $1^{\circ}25'$ West a distance of 300.00 feet to the Southerly Southeast corner of said Carsner tract and the North right-of-way line of the County Road; thence Easterly along said County Road right-of-way line to the point of beginning. INCLUDING THE easement as described in County Clerk's File No. 90-6439.

Parcel 1: The South half of the North half of the Northeast quarter and the North half of the South half of the Northeast quarter of Section 22, Township 4 North, Range 2 West, Willamette Meridian, Columbia County, Oregon, excepting therefrom the Warren Water Association tract, as described in Deed Book 244 at page 10. ALSO EXCEPTING the Warren Water Association tract, as described in Deed Book 252 at page 824.

ST. HELE

Parcel 2: Beginning at the Southeast corner of the Northeast quarter of the Southwest quarter of the Northwest quarter of Section 23, Township 4 North, Range 2 West, Willamette Meridian, Columbia County, Oregon; thence North 89°22'17" West along the South line of said Northeast quarter of the Southwest quarter of the Northwest quarter a distance of 391.69 feet to the Southwest corner of the Alan D. Haebe tract, as described in County Clerk's File No. 89-3422 and the true point of beginning of the parcel herein described; thence North 0°20'09" West along the West line of said Haebe tract a distance of 668.28 feet to the South right-of-way line of a 40 foot road; thence Westerly along said right-of-way line to the East line of the Northwest quarter of the Southwest quarter of the Northwest quarter of said Section 23; thence Northerly a distance of 40 feet more or less to the Southwest corner of Parcel 1 of the B. W. Overstreet tract, as described in County Clerk's File No. 89-5934; thence North along the West line of said Parcel 1 a distance of 620.00 feet to the South line of the North half of the Northwest quarter of the Northwest quarter of said Section 23; thence West along said South line to the West line of said Section 23; thence South along said West line of Section 23 a distance of 1320.00 feet more or less to the Southwest corner of the Northwest quarter of the Southwest quarter of the Northwest quarter of said Section 23; thence East along the South line of the North half of said Southwest quarter of the Northwest quarter a distance of 928.00 feet more or less to the true point of beginning. SUBJECT TO THE Life Estate of Albin Backlund, as described in Deed Book 214 at page 765.

I hereby certify that the within instrument was received for record and recorded in the County of Columbia, State of Oregon.

7206 91 NOV 22 P3:45

Instrument # 91-7206
Pages 3

ELIZABETH HUSBY, County Clerk

By: *[Signature]* Deputy

Receipt # Fees \$45.00

[Signature]

SI. HELI