

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

In the Matter of Claim Number CL 06-22 and CL 06-23,)
Submitted by Dixie Blaha, Trustee, for the Joseph F.) Order No. 97-2006
Blaha Credit Shelter Trust)

WHEREAS, on June 7, 2006, Columbia County received two claims under Measure 37 from Dixie Blaha, Trustee of the Joseph F. Blaha Credit Shelter Trust, related to two parcels of property on Church Road in Warren, Oregon, having Tax Account Numbers 4223-020-00200, 4223-020-00201 (CL 06-22), and 4223-000-00200 (CL 06-23); and

WHEREAS, according to the information presented with the claim, the Joseph F. Blaha Credit Shelter Trust, Dixie Blaha, Trustee, is the current owner of the three parcels and has continuously owned an interest in the property since 1990; and

WHEREAS, the Claimant states that CCZO Section 506.1 restricts the use of the property and reduces its value; and

WHEREAS, CCZO 506.1 was enacted prior to the 1990 acquisition date for then Joseph F. Blaha Credit Shelter Trust;

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 06-22 and CL 06-23, dated November 15, 2006, which is attached hereto as Attachment 1 and is incorporated herein by this reference.
2. The Board of County Commissioners finds that the Claimant is neither entitled to compensation under Measure 37, nor waiver of County regulations in lieu thereof.
3. The Board of County Commissioners denies Claim Number CL 06-22 and CL 06-23.

Dated this 29th day of November, 2006.

Approved as to form

By: Sarah Hanson
Assistant County Counsel

BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

By: Joe Corsiglia
Joe Corsiglia, Chair

By: Rita Bernhardt
Rita Bernhardt, Commissioner

By: Anthony Hyde
Anthony Hyde, Commissioner

Staff Report

DATE: November 15, 2006

FILE NUMBERS: CL 06-22
CL 06-23

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

SUBJECT PROPERTY

PROPERTY LOCATION: Terminus of Church Road, Warren, Oregon

TAX ACCOUNT NUMBERS: CL 06-22: 4223-020-00200 & 4223-020-00201 (30.90 acres total)
CL 06-23: 4223-000-00200 (78.92 acres)

ZONING: Primary Forest-76 (PF-76)

SIZE: 109.82 acres total for both claims

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, a request for hearing has been received from:

Nancy and Charles Bubl
32221 Church Road
Warren, OR 97053

DATE OF HEARING: November 29, 2006

I. BACKGROUND:

The property subject to these claims includes approximately 110 acres, acquired by Joseph S. and Dixie D. Blaha through conveyances from Joseph S. Blaha's father and mother. Since the acquisition of the property by the younger Blahas in 1954, some of the property has been made subject to easements for access and for powerline installations. A single family dwelling was constructed on tax lot 201 in 1975. The remainder of the property is undeveloped and is subject to forest tax assessment.

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. Joseph F. Blaha died in 1990. Dixie D. Blaha became the trustee of the trust on July 3, 1991 and is the principal income beneficiary of the trust.
2. **Date of Acquisition:** The property was placed in a credit shelter trust under the will of Joseph S. Blaha. When Joseph S. Blaha died, the property was conveyed from his estate to the trust. ORS 112.355 (a devise by will conveys interest as of the date of death.) Thus, for the purposes of this evaluation, the date of acquisition is the date of Joseph S. Blaha's death. From the record, it appears that Mr. Blaha died sometime in 1990.

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

The parcels subject to the claims were zoned PF-76 in August 1984, and that zoning has remained on the property to date.

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

The claimant alleges that the general zoning provisions that prevent uses of land not permitted by the zoning ordinance and the PF-76 zoning prevents the claimant from subdividing the property. The PF-76 zoning designation was applied to the subject property in 1984, prior to the acquisition of the property by the trust.

D. CLAIMANT'S ELIGIBILITY FOR FURTHER REVIEW

Claimant acquired an interest in the property after CCZO Section 506.1 became effective and therefore the Claimant is not 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 subdivided as proposed due to the county's 76-acre minimum parcel size standard. Staff concedes that CCZO 506.1 can be read and applied to "restrict" the use of claimants' property within the meaning of Measure 37, but asserts that the restrictive regulations were adopted after the property was acquired by the current owner, the Trust, in 1990.

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 three tax lots (including the dwelling on tax lot 201) have an estimated fair marked value of \$892,100. In addition, the claimant submitted property value estimates from a realtor that estimates the current value of the property as \$870,000. That value does not include the value of the timber located on the property.

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 information submitted it appears that claimant alleges that the value of the property if it is to be subdivided to be between \$6,670,000 and \$6,692,100 (\$5,800,000--the amount of reduction in value claimed on page one of the claims--plus \$870,000 or \$5,800,000 plus \$892,100).

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

Claimant's representative asserts that the difference in value between the value of the property with the PF-76 zoning, and the value as residential subdivision lots is \$5,800,000.

Staff notes that this value assumes that the resulting lots will be developed with dwellings prior to sale to third parties. 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 herself 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.

While 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 that it is more likely than not that the property would have a higher value if subdivided for residential development.

3. COMPENSATION DEMANDED

Claimant claims the following compensation, per page 1 of the Measure 37 claim forms: \$5,800,000.

(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 was adopted in 1984, prior to the date of acquisition by the property owner. Accordingly waiver of the stated regulations is not permitted.

(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.

(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 PF-76 zoning regulations, 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 regulations, the Board may pay compensation in the amount of the reduction in fair market value caused by said regulation.

III. STAFF RECOMMENDATION:

Based on the above findings, staff concludes that the claimant has NOT met the threshold requirements for proving a Measure 37 claim in that claimant acquired the property after the imposition of the PF-76 zoning on the property.