

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

In the Matter of Claim No. 07-03 Submitted by Richard) Order No.16-2007
and Shirley Bloomfeldt for Compensation Under Measure 37)

WHEREAS, on August 2, 2006, Columbia County received a claim for compensation under Measure 37 and Order No. 84-2004 from Richard and Shirley Bloomfeldt, as trustees of the Richard and Shirley Bloomfeldt Revocable Living Trust, related to a parcel of property located on Highway 30 in Clatskanie, Oregon, having tax account number 7316-000-00300; and

WHEREAS, according to the information presented with the claim, the Bloomfeldts acquired an interest in the property from Mrs. Bloomfeldt's parents in 1965, and transferred the property into the Richard and Shirley Bloomfeldt Revocable Living Trust in 1997; and

WHEREAS, the County zoned the subject property as FA-19 in 1984, after the acquisition by Shirley and Richard Bloomfeldt, but prior to the acquisition by the Richard and Shirley Bloomfeldt Revocable Living Trust; and

WHEREAS, pursuant to Columbia County Zoning Ordinance (CCZO), Sections 210 407.1 and 409, the minimum lot or parcel size for new land divisions in the FA-19 Zone is 19 acres; and

WHEREAS, The Bloomfeldts 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 \$384,000.00; and

WHEREAS, the Bloomfeldts desire to subdivide the property into seven three acre parcels and two seven 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 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, in 1965, the property was not zoned and there was no minimum lot size for land divisions;

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 07-03, dated January 26, 2007, which is attached hereto as Attachment 1, and is incorporated herein by this reference.

2. The County denies the Claim of the Richard and Shirley Bloomfeldt Revocable Living Trust, and its trustees.
3. The County approves the Claim of Richard and Shirley Bloomfeldt (hereinafter referred to as the "Claimants"). In lieu of compensation, the County waives CCZO Sections 202 and 407.1 and 409 to the extent necessary to allow the Claimants to subdivide the property into seven three acre parcels and two seven acre parcels.
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 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.

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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 7th day of February, 2007.

Approved as to form

By: *Sarah Hanson*
Assistant County Counsel

BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

By: *Rita M. Bernhard*
Rita Bernhard, Chair

By: *[Signature]*
Anthony Hyde, Commissioner

By: *Joe Corsiglia*
Joe Corsiglia, 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: January 26, 2007

FILE NUMBER: CL 07-03

CLAIMANTS/OWNERS: Richard L. Bloomfeldt and Shirley A. Bloomfeldt, Trustees
Richard & Shirley Bloomfeldt Revocable Living Trust dated 3/20/1997
71105 Holmes Road
Sisters, OR 97759

**CLAIMANT'S
REPRESENTATIVE:** Stephen D. Petersen, LLC
Attorney & Counselor at Law
PO Box 459
Rainier, OR 97048

SUBJECT PROPERTY

PROPERTY LOCATION: 24268 Highway 30
Clatskanie, OR 97016

TAX ACCOUNT NUMBER: 7316-000-00300

ZONING: Forest Agriculture (FA-19)

SIZE: 37.11 acres

REQUEST: To subdivide the parcel into seven three-acre and two seven-acre residential lots¹

CLAIM RECEIVED: August 2, 2006

180 DAY DEADLINE: February 6, 2007

NOTICE OF RECEIPT OF CLAIM: Mailed December 15, 2006. No request for hearing received.

I. BACKGROUND:

The subject property includes 37.11 acres and is undeveloped. Claimants acquired the property from Mrs. Bloomfeldt's parents, Albert and Anne Kroeker in 1965. Mr. and Mrs. Kroeker acquired the property in 1955. This claim is based on the acquisition of property by claimants, and not by Mrs. Kroeker's parents.

¹ The sum of the proposed lots equals less than 37.11 acres. Staff assumes the proposed acreages are approximate.

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 Measure 37 Report issued by Tigor Title on July 12, 2006. The report shows that the property is vested in Richard L. Bloomfeldt and Shirley A. Bloomfeldt, Trustee(s) of the Richard & Shirley Bloomfeldt Revocable Living Trust dated March 20, 1997. The property is subject to powerline easements. New access to the property via Highway 30 is subject to access permits that must be issued by the Oregon Department of Transportation.

2. **Date of Acquisition:** The Claimants, Richard L. Bloomfeldt and Shirley A. Bloomfeldt, acquired the property via warranty deed on April 12, 1965. The warranty deed was recorded in the deed records of the Columbia County Clerk at Book 158, page 98 on April 14, 1965. The Bloomfeldts transferred title to the property via warranty deed to the Richard & Shirley Bloomfeldt Revocable Living Trust dated March 20, 1997 on March 20, 1997. The date of acquisition of the trust for the purposes of Measure 37 is 1997. However, because the trust is revocable, and the Claimants are also the grantors of the trust, Mr. and Mrs. Bloomfeldt, as individuals, have retained an interest in the property despite the transfer into trust. The date of acquisition for the Bloomfeldts, as individuals, is April 12, 1965.

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

The property was not zoned in 1965, and was therefore not subject to any minimum parcel size requirements included in the county zoning ordinance.

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 FA-19 zoning regulations prevent the claimants from dividing their property and constructing dwellings it. The zoning district was first applied to the subject property in 1984. The minimum lot size for FA-19 zoned property is 19 acres according to CCZO Sections 202, 407.1 and 409. Therefore, it appears that Sections 202, 407.1 and 409 restrict the use of the property.

D. CLAIMANT'S ELIGIBILITY FOR FURTHER REVIEW

Claimants acquired an interest in the property before CCZO Sections 202, 407.1 and 409 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 FA-19 zoning.

Staff concedes that CCZO Sections 202, 407.1 and 409 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 a letter from Crystal Boothe, a Broker with West Columbia Realty, LLC. In the letter, Ms. Boothe estimates that the current land value of the property is \$187,000.

2. Value of Property Not Subject To Cited Regulations.

Ms. Boothe estimated that the property would have a value of \$535,000, if the property was divided into two seven acre and seven three-acre lots.

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

The written documentation in support of the claim alleges a total reduction in value of \$348,000 (the difference between the estimated market value of the property in its current condition, and the value of the property if divided as proposed.)

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 nine residential lots than as a 37.11-acre undeveloped resource parcel.

G. COMPENSATION DEMANDED

\$348,000 per page 1 of claimants' Measure 37 claim form.

(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 202, 407.1 and 409 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. In addition, to the extent ODOT access permit requirements are included in the definition of "land use regulations" within the meaning of ORS 197.352, the permit requirements are exempt from regulation because the access limits on the property were imposed in 1953, prior to the acquisition of the property by claimants and Mrs. Bloomfeldt's parents.

- 4) Just compensation under subsection (1) of this act shall be due the owner of the property 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 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 parcel standards of the FA-19 zone and variance regulations which were enacted prior to the effective date of Measure 37 on December 2, 2004. The subject claim was filed on August 2, 2006, which is within two years of the effective date of Measure 37.

3) 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 202, 407.1 and 409.

III. STAFF RECOMMENDATION:

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

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 Claimants' property, and act accordingly to pay just compensation in that amount, or, in the alternative, to not apply CCZO Sections 202, 407.1 and 409.1.

LEGAL DESCRIPTION

That portion of the Northwest Quarter of Section 16, Township 7 North, Range 3 West, Willamette Meridian, Columbia County, Oregon, described as follows:

Beginning at a point 4 rods (66 feet) West of the Northeast corner of said Northwest Quarter; thence West along the North section line a distance of 47 rods (775.5 feet) to a point; thence South 160 rods (2640 feet) to a point; thence East 51 rods (841.5 feet) to a point; thence North 80 rods (1320 feet) to a point; thence West 4 rods (66 feet) to a point; thence North 80 rods (1320 feet) to the point of beginning; EXCEPTING THEREFROM that portion conveyed to the State of Oregon, acting by and through its State Highway Commission by Deed recorded August 3, 1953 in Deed Book 119, page 519.

ALSO EXCEPTING THEREFROM the following described property: A parcel of land situated in the Northwest Quarter of Section 16, Township 7 North, Range 3 West, Willamette Meridian, Columbia County, Oregon, more particularly described as follows:

Commencing at the North Quarter corner of said Section 16, Township 7 North, Range 3 West, Willamette Meridian, Columbia County, Oregon; thence South $32^{\circ} 36' 11''$ West a distance of 122.32 feet to a point on the South right of way line of Columbia River Highway (U.S. 30) and the true point of beginning; thence South $00^{\circ} 03' 01''$ East a distance of 995.36 feet; thence South $89^{\circ} 55' 25''$ West a distance of 441.12 feet; thence North $00^{\circ} 03' 01''$ West a distance of 979.75 feet to the South right of way line of Columbia River Highway (U.S. 30); thence Northeast along said South right of way line of Columbia River Highway (U.S. 30) a distance of 441.40 feet more or less to the point of beginning.