

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

In the Matter of Claim No. 07-08 Submitted by Dale C. Lee) Order No. 33-2007
and Lucile L. Lee for Compensation Under Measure 37)

WHEREAS, on September 13, 2006, Columbia County received a claim for compensation under Measure 37 and Order No. 84-2004 from Dale C. Lee and Lucile L. Lee (the Claimant) related to 5 acre parcel of property located on Hwy. 30, Clatskanie, Oregon, having tax account number 7317-000-0201; and

WHEREAS, according to the information presented with the claim, Dale C. Lee acquired an interest in the property in 1977, and became the sole fee owner from 1980 to August 27, 2003, when Lucile L. Lee acquired an interest in the property from Dale C. Lee; and

WHEREAS, the County zoned the subject property as Primary Forest (PF-76), after the acquisition by Dale C. Lee, but prior to the acquisition by Lucile L. Lee; and

WHEREAS, pursuant to Columbia County Zoning Ordinance (CCZO), Section 221, only one dwelling is allowed per parcel; and

WHEREAS, Mr. and Mrs. Lee claim that CCZO Section 221 has restricted the use of the property and has reduced the value of the property; and

WHEREAS, the Lees claim that CCZO Section 221 reduces the value thereof by \$155,000; and

WHEREAS, the Lees desire to have two dwellings on their 5 acre parcel; 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 Claimant's 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

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 07-08, dated March 2, 2007, which is attached hereto as Attachment 1, and is incorporated herein by this reference.
2. The County denies the Claim of Lucile L. Lee.
3. The County approves the Claim of Dale C. Lee. In lieu of compensation, the

5. 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 March, 2007.

BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

Approved as to form

By: Suzanne Hausman
Assistant County Counsel

By: Rita M. Bernhard
Rita Bernhard, Commissioner

By: not present
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: March 2, 2007

FILE NUMBER: CL 07-08

CLAIMANTS: Dale C. Lee
Lucile L. Lee
P.O. Box 629
23299 Hwy 30
Clatskanie, OR 97016

SUBJECT PROPERTY

PROPERTY LOCATION: 23299 Hwy 30
Clatskanie, OR 97016

TAX ACCOUNT NUMBER: 7317-000-00201

ZONING: Primary Forest-76 (PF-76)

SIZE: 5 acres

REQUEST: To allow two existing dwellings(primary and hardship dwelling) on 5-acre Primary Forest (PF-76) zoned parcel.

CLAIM RECEIVED: September 13, 2006

180 DAY DEADLINE: March 13, 2007

NOTICE OF RECEIPT OF CLAIM: Mailed December 18, 2006

I. BACKGROUND:

The subject property includes property acquired by claimant Dale C. Lee and his first wife via a Bargain and Sale Deed dated July 8, 1977. The property is developed with a single-family dwelling (built in 1977) and a temporary hardship dwelling. Access to the parcel is via a 60-foot wide road easement which leads to Highway 30.

Dale C. Lee and his first wife divorced on July 14, 1981. Mr. Lee received this 5-acre property with house and easement in through a divorce decree. Mr. Lee then conveyed title to the property to himself and his second wife, Lucile Lee, on August 22, 2003, as tenants by the entirety. DLCD's final order permitting waiver of applicable statewide land use regulations was issued on December 28, 2006.

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 currently owned by the Dale C. Lee and Lucile L. Lee, as tenants by the entireties.

2. **Date of Acquisition:** Claimant Dale C. Lee first acquired an interest in the property via a bargain and sale deed dated July 12, 1977. The deed is filed in the Columbia County Deed records at Book 212, Page 705. Mr. Lee has continuously held an interest in the property since that date. Accordingly, staff uses the July 12, 1977 date as the date of acquisition for the purposes of evaluating this claim, but concludes that only Mr. Lee may avail himself of the benefits conferred by Measure 37. The following evaluation reflects Mr. Lee's claim for eligibility.

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

The property was not zoned at the time of acquisition. Land use regulations were first applied to the property as of 1984, when the property was zoned Primary Forest (PF-76).

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

Claimant alleges that CCZO Section 221, which prohibits more than one permanent dwelling on a parcel, reduce the fair market value of his property.

D. CLAIMANT'S ELIGIBILITY FOR FURTHER REVIEW

To the extent claimant alleges a valid claim, it appears that the county standards that clearly prevent the claimant from developing the property as desired is:

CCZO 221 Limiting uses on a legal lot or parcel to one principal use.

E. STATEMENT AS TO HOW THE REGULATIONS RESTRICT USE

Claimant acquired an interest in the property before CCZO and 500 et. seq., (PF-76 zoning provisions) became effective and therefore the Claimant may be eligible for compensation and/or waiver of the cited regulations under Measure 37.

The Claimant states that he cannot lawfully permanently site the two existing dwellings(primary and a hardship dwelling) on the one parcel as proposed due to CCZO Section 221 which limits uses on a single legal lot or

parcel to one primary use. CCZO Section 221 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.

Claimant alleges that the current value of the property, as developed, is \$155,000. The file does not include any evidence that supports the allegation.

2. Value of Property Not Subject To Cited Regulations.

Claimant alleges that if two dwellings are allowed to remain on the parcel (the temporary dwelling is converted to a permanent dwelling), the value of the property would be \$414,000. This estimate is based on a comparative Market Analysis performed for claimant by Crystal Boothe, West Columbia Realty, LLC.

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

Based on the above statements, Claimant alleges a total reduction in value of \$259,000.

G. COMPENSATION DEMANDED

Per page 1 of the Measure 37 claim form, claimant demands: \$255,000.

(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 221 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 221.

(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 CCZO Section 221, which were enacted prior to the effective date of Measure 37 on December 2, 2004. The subject claim was filed on September 13, 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 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 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 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 221	Limits uses on single legal lot/parcel to one principal use.	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 Section 221.

LEGAL DESCRIPTION

PARCEL 1:

Beginning at a point which is South 01°45'54" West 166.83 feet from the Southwest corner of Government Lot 4, in Section 17, Township 7 North, Range 3 West of the Willamette Meridian, Columbia County, Oregon, said point being at the intersection of the West line of Government Lot 5 of said Section 17, and the Northerly right of way line of Columbia River Highway #30; thence North 86°20'42" East, along said Northerly right of way line 1231.37 feet to the center line of 60 foot road easement; thence North 50°20'53" West, along said center line 218.69 feet to the TRUE POINT OF BEGINNING of the parcel herein described; thence South 86°20'42" West, parallel with said Northerly right of way line a distance of 342.22 feet; thence North 03°39'18" West, perpendicular to said Northerly right of way line a distance of 490.0 feet; thence North 86°20'42" East, parallel with said Northerly right of way line a distance of 444.47 feet; thence South 03°39'18" East, perpendicular to said Northerly right of way line a distance of 490.00 feet; thence South 86°20'42" West, parallel with said Northerly right of way line a distance of 102.25 feet to the true point of beginning.

PARCEL 2:

A 60 foot road easement, being 30 feet on each side of the following described center line:

Beginning at the true point of beginning of the above described Parcel 1; thence South 50°20'53" East a distance of 218.69 feet to the Northerly right of way line of the Columbia River Highway.