

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

In the Matter of Claim Number CL 07-71)
for Compensation Under Measure 37 Submitted by) Order No. 51-2007
Reed Bruegman)

WHEREAS, on November 30, 2006, Columbia County received a claim under Measure 37 from Reed Bruegman, (the "Claimant") related to a 16.16 acre parcel on Holaday Road in Scappoose, Oregon, having Tax Account 3204-000-00902; and

WHEREAS, according to the information presented with the claim, Reed Bruegman and Beverly Bruegman, as trustees of the Bruegman Family Revocable Living Trust, are the current owners of the property; and

WHEREAS, the current owners, acquired an interest in the property in 2006; and

WHEREAS, Reed Bruegman originally acquired an interest in the property in 1973, but transferred the property to Rick and Tammi Niemi in 1997, and thereafter reacquired the property in 2000; 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 2000 acquisition date for the Claimant, and before the 2006 acquisition date of the current owners;

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 C07-71, dated March 14, 2007, 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.

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- 3. The Board of County Commissioners denies Claim Number CL 07-71 both as to the current owners and as to Reed Bruegman, individually.

Dated this 11th day of April, 2007.

BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

Approved as to form

By: Sarah Hanson
Assistant County Counsel

By: Rita M. Bernhard
Rita Bernhard, Chair

By: Anthony Hyde, Commissioner

By: Joe Corsiglia
Joe Corsiglia, Commissioner

**COLUMBIA COUNTY LAND DEVELOPMENT SERVICES
MEASURE 37 CLAIM
STAFF REPORT**

DATE: March 14, 2007

FILE NUMBER(s): CL 07-71

CLAIMANT: Reed Bruegman; 1853 Henson Lane; Las Vegas, NV 89156

PROPERTY LOCATION: 30878 Holaday Road, Scappoose, OR 97056

TAX ACCOUNT NUMBER: 3204-000-00902

ZONING: Primary Forest - 76 (PF-76)

SIZE: Approximately 16.16 acres

REQUEST: To divide property into eight two-acre residential lots.

CLAIM RECEIVED November 30, 2006

REVISED 180 DAY DEADLINE: May 29, 2007

RECEIPT OF CLAIM NOTICE:

I. BACKGROUND:

The subject property is developed with a single-family home and accessory buildings. Access is provided by Holaday Road. The Claimant appeared to have originally acquired the property on July of 1973. At that time the property was approximately 22 acres. In July 1979, Columbia County approved a subdivision of the property into six parcels, and the Claimant sold one of the parcels, reducing his property to 16.16 acres. Whether or not a property is a legally platted lot or parcel created by a Subdivision or Land Partition, respectively, or a legal lot-of-record is not included in the review for a Measure 37 Claim. If the property reviewed by this claim is neither of these, this could impact any subsequent development under this claim.

II. APPLICABLE CRITERIA & 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 & OWNERSHIP INTERESTS

1. **Current ownership:** Based on the information provided, it appears the subject property is owned by the Bruegman Family Revocable Living Trust, dated July 14, 2006, with Reed Bruegman and Beveral Bruegman as co-trustees.
2. **Date of Acquisition:** The property was acquired by the current owner, the Bruegman Family Revocable Living Trust, on July 21, 2006. Therefore, the date of acquisition for purposes of the current owner is July 21, 2006. However, because the trust is a revocable living trust, and the property was owned by Reed Bruegman, as one of the Settlers of the Bruegman Family Trust, he may retain an interest in the property, as an individual. Reed Bruegman originally acquired the property on July 24, 1973. In January of 1996, the Claimant transferred a two-acre portion of the property (Tax Lot 900) to his daughter, Tammy Niemi and her husband Rick, so that she could build a home there. In October of 1997, the Reed Bruegman consolidated his lots in order to obtain a permit to build a home on Lot 900. The Claimant then transferred Tax Lot 902 to his daughter Tammy Niemi, who in turn transferred Tax Lot 900 back to him. In April 2000, Reed Bruegman acquired Lot 902 from the Niemis to avoid foreclosure. Lot 900 was subsequently sold to a third party. Because there was an intervening owner of the property between 1997 and 2000, Mr. Bruegman's date of acquisition for purposes of Measure 37, is on April 14, 2000, when he reacquired the property.

The Claimant contends that despite this series of conveyances, he never gave up his ownership interest in the property. The Claimant argues that because he never had the intent to convey a present interest to his daughter, there was no "delivery" of the deed, and therefore the deed which was executed and recorded in 1997 was inoperative. To show his intent, the Claimant offers evidence of his use of the property and payment of taxes and bills for improvements and maintenance. Staff finds that according to Mr. Bruegman's statements, he executed the deed to his daughter and son-in-law in order to obtain a building permit to build a house on the property, allegedly due to regulations that required such a transfer. Therefore, staff finds that Mr. Bruegman intended to transfer a present interest in the property in order to receive a building permit, which he thereafter received. While Mr. Bruegman claims to have retained control or possession over the property after conveying it, such control or possession is not inconsistent with a proper conveyance under ORS 93.010. Staff finds Mr. Bruegman's arguments insufficient to establish that the deed executed and recorded in 1997 was "inoperative to convey an interest in the [p]roperty" and rendered the conveyance "completely without legal effect." Staff finds that the conveyance of Lot 902 to the Niemis constituted a break in ownership. Consequently, the date of acquisition for Mr. Bruegman, as an individual, is April 14, 2000.

B. LAND USE REGULATION(s) IN EFFECT AT THE TIME OF ACQUISITION

The property was subject to County Zoning regulations when it was acquired by Reed Bruegman in 2000. The County's current Zoning Ordinance took effect on August 1, 1984.

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

Reed Bruegman alleges that Section 506.1 of the County's current Zoning Ordinance has resulted in a reduction of the property's fair market value by prohibiting a subdivision of the property into 8 residential lots. Section 506.1 restricts the minimum lot or parcel size to 76 acres in the PF-76 zone.

D. CLAIMANT'S ELIGIBILITY FOR FURTHER REVIEW

Reed Bruegman acquired an interest in the property after the minimum lot/parcel size standards of the

PF-76 zone became effective. Therefore, Mr. Bruegman is not eligible for compensation and/or waiver of CCZO 506.1 under Measure 37.

E. STATEMENT AS TO HOW THE REGULATIONS RESTRICT USE

Mr. Bruegman states that the property cannot be divided and developed due to the 76-acre minimum lot size of the PF-76 zone. Staff concedes that CCZO 506.1 can be read and applied to "restrict" the use of Primary Forest property within the meaning of Measure 37, but Mr. Bruegman is not entitled to waiver due to his 2000 date of acquisition.

F. EVIDENCE OF REDUCED FAIR MARKET VALUE

1. **Value of property as regulated:** Based on County Assessor data the property's real market value for the land itself is \$169,500.
2. **Value of property not subject to cited regulations:** Claimant submitted a Land Value Comparison Report that suggests that the property's value would be \$2,653,336 if it could be redeveloped to a 2-acre density.
3. **Loss of value as indicated in the submitted documents:** The claim alleges a total reduction in value of \$2,327,936.

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(s). Staff concedes, however, that it is more likely than not that the property would have a higher value if it could be divided for residential development as proposed.

G. COMPENSATION DEMANDED

As noted on page 1 of the Measure 37 Claim Form: \$2,327,936.

(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.**

Staff finds that 506.1 is not exempt under Section 3 of the Measure.

III. STAFF RECOMMENDATION:

Staff recommends the Board of County Commissioners deny this claim both as to the Bruegman Family Revocable Living Trust and as to Reed Bruegman, individually.

Bruegman M37 Claim Notes

Halleck v. Halleck, 216 Or 23.

TH Halleck to Charles Bickford. Two days later...

Charles Bickford conveyed to TH Halleck and Theron H. Halleck with rights of survivorship, their assigns and the heirs of such survivor. Dated September 22, 1950.

Plaintiff is Theron Halleck. TH Halleck is Charles Bickford's father. Defendant is widow of T.H. Halleck. Deed from H.H. Halleck to Frances Halleck June 5, 1953. Defendant contends that no interest passed to the plaintiff during his fathers lifetime.

The recording of a deed creates a presumption of delivery. If the deed is recorded by the grantor the presumption can be supported on the ground that his conduct in placing the deed on record is evidence that he executed the deed with the intent to make it legally operative. *Lancaster v. May*, 1952, 194 Or 647. If the deed is recorded by the grantee the presumption of delivery arises, not from the act of recording itself but from the grantee's possession of the deed. *Tiffany, Real Property* (3d ed.), Section 1044. We commonly speak of the delivery of a deed. However, as the term is used in the law delivery is effected by a mental, not a physical process. Properly defined, delivery describes the passage of a property interest, normally the full legal title, from the grantor to the grantee. The interest passes if the grantor manifests the intention to pass it immediately—in the case of transfers of interest in real property the intention to make legally operative a properly executed deed. *Lemon v. Madden*, 1955, 205 Or. 107, 284 P.2d 1037. *Witham v. Witham*, 1937, 156 Or. 59, 66 P.2d 281. The handing over of a deed to the grantee is significant only as evidence reflecting the intent of the grantor. Likewise the retention of the deed by the grantor is not controlling and it may be shown that in spite of the failure to transfer physically the deed to the grantee, the grantor intended the deed to have an immediate operative effect to pass all or a part of his interest in the land. Occasionally it is said that the grantor must give up dominion and control over the deed. This means only that the grantor must intend to pass presently the interest which the deed purports to convey and thus deprive himself of control over that interest. *Fain v. Smith*. Control by the grantor over the deed itself is evidence, of course, that he may not have intended to pass an interest to the grantee. Recording of the deed overcomes the fact that the deed was available to the grantor after recording. *Lessee of Mitchell v. Ryan*, 1854 3 Ohio St. 377. Court looks at statements and conduct for evidence as to the time when T.H. intended title to pass. Court said, all of the evidence presented by Defendant of Th's intent to pass as a will did not overcome evidence of delivery. The execution of the two deeds is integral. A presumption of delivery arises from the recording of the deed. The fact that the instrument used is in the form of a deed is some evidence that the grantor intended to create a present interest.

present interest passes, enjoyment postponed to a later date.

Acceptance by the grantee is necessary to vest title in him. A deed is a contract and acceptance is necessary to the formation of a contract. But, title may be passed to a grantee who because of nonage or insanity is incapable of acceptance. It is more accurate to regard the conveyance of