

AFTER RECORDING, RETURN TO:

Board of County Commissioners
Columbia County Courthouse
230 Strand, Room 331
St. Helens, OR 97051

**BEFORE THE COLUMBIA COUNTY
LAND DEVELOPMENT SERVICES DEPARTMENT**

In the Matter of Claim No. 07-102 Submitted by)
Carolyn Jean Neve for Compensation Under) Order No. 66-2007
Measure 37)

WHEREAS, on December 1, 2006, Columbia County received a claim for compensation under Measure 37 and Order No. 34-2007 from Carolyn Jean Neve (the "Claimant"), related to a parcel of property located on Dowd Road in Scappoose, Oregon, having tax account number 4203-020-00300; and

WHEREAS, according to the information presented with the Claim, the Claimant acquired an interest in the property in 1967; and

WHEREAS, the County zoned the subject property as Primary Forest (PF-76) in 1984, after the acquisition by the Claimant; and

WHEREAS, pursuant to Columbia County Zoning Ordinance (CCZO), Section 506.1, the minimum lot or parcel size for new land divisions in the PF-76 Zone is 76 acres; and

WHEREAS, the Claimant claims 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 \$143,000; and

WHEREAS, the Claimant desires to partition the property into three parcels, two having 1 acre each and one having approximately 4.14 acres; 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 1967, the Claimant could have divided the property into 2 one acre parcels and one 4.14 acre parcel;

NOW, THEREFORE, it is hereby ordered as follows:

1. The County adopts the findings of fact set forth in the Staff Report for Claim Number CL 0-102, dated March 29, 2007, which is attached hereto as Attachment 1, and is incorporated herein by this reference.
2. The County approves CL 07-102. In lieu of compensation, the County waives CCZO Sections 506.1 to the extent necessary to allow the Claimant to partition the property into 2 one acre parcels and 1 approximately 4.14 acre parcel.
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 forest zone, and the building code.
 - D. This waiver is personal to the Claimant, Carolyn Neve, as an individual, 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 her 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 16th day of April, 2007.

BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

Approved as to form

By: Todd Dugdale
Todd Dugdale, Director
Land Development Services

By: Sarah Hausen
Assistant County Counsel

COLUMBIA COUNTY LAND DEVELOPMENT SERVICES

Measure 37 Claim

Staff Report

DATE: March 29, 2007

FILE NUMBERS: CL 07-102

CLAIMANTS/OWNERS: Carolyn Jean Neve
PO Box 497
Scio, OR 97373

**CLAIMANT'S
REPRESENTATIVE:** NA

SUBJECT PROPERTY

PROPERTY LOCATION: 31125 Dowd Rd., St. Helens

TAX ACCOUNT NUMBERS: 4203-020-00300

ZONING: Primary Forest-76 (PF-76)

SIZE: 6.14 acres

REQUEST: The Claimant requests to divide the property into three lots.

CLAIM RECEIVED: December 1, 2006

180 DAY DEADLINE: May 29, 2007

NOTICE: March 20, 2007.
As of the date of this staff report no comments or request for hearing has been received.

I. BACKGROUND:

The subject property includes 6.14 acres and is improved with a single family dwelling that assessors records date to 1964. According to the Claimant, she jointly acquired the property with her former spouse on April 21, 1967, and was awarded the property through marriage dissolution on July 14, 1981. The property was then transferred into trust in 2003. The property was zoned Primary Forest in 1984.

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:** The claimant submitted a Chain of Title report issued by Tigor Title on December 5, 2006. The title report shows that Wilbert Gerhart Mueller and Carolyn Jean Mueller, husband and wife, entered into a land sale contract to purchase the subject property on April 21, 1967 (Land Sale Contract recorded at Book 172, p. 491 of the Columbia County Deed Records), and acquired full title through a warranty deed dated June 13, 1973 (recorded at Book 191, p. 831 of Columbia County Deed Records). Per documentation in the file, Ms. Neve (formerly Ms. Mueller) received the subject property through a divorce decree dated March 8, 1982. She then deeded to the property to Carolyn J. Neve as Trustee of the Carolyn J. Neve Trust Dated April 10, 2000, on February 23, 2003. (Deed recorded as fee no. 03-02867). The trust is the current owner of the property.

2. **Date of Acquisition:** Staff finds the current owner, the Carolyn J. Neve Trust, dated April 10, 2000, acquired an interest in the property on February 23, 2003. However, because the Claimant transferred the property into a trust that she set up and because the trust is a revocable living trust, Claimant has retained an interest in the property despite not being the current owner. Claimant's acquisition date is the date Claimant entered into the land sale contract -- April 21, 1967.

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

The subject property was not zoned at the time of Claimant's acquisition of the property in 1967.

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

Claimant alleges that the subject property's fair market value has been reduced by Primary Forest Section 506.1 (providing that the minimum lot size for land divisions in the PF zone is 76 acres) as well as 506.3 (covering minimum yard sizes). The Claimant does not provide an explanation or documentation as to how the yard size regulations restrict the proposed division and single family residential use. Claimant also cites state statutes and administrative rules for which she will have to seek Measure 37 compensation from the state, not the County.

D. CLAIMANT'S ELIGIBILITY FOR FURTHER REVIEW

Claimant acquired an interest in the property before CCZO Section 506.1 became effective and therefore Claimant may be eligible for compensation and/or waiver of the cited regulation under Measure 37.

E. STATEMENT AS TO HOW THE REGULATIONS RESTRICT USE

According to an Opinion of Value of Oregon Appraiser James Dias dated 1/27/05 ("Claimant's Opinion of Value"), Claimant would like to split off two one-acre buildable parcels from her 6.14 acres. Claimant states that she cannot divide Claimant's property as proposed due to the County's 76-acre minimum parcel size standard.

F. EVIDENCE OF REDUCED FAIR MARKET VALUE

1. Value of the Property As Regulated.

According to the County assessor's records, the real market value of the subject land is \$ 161,100.

2. Value of Property Not Subject To Cited Regulations.

According to Opinion of Value, if two one-acre parcels were split off from her property, they would be worth between \$70,000 and \$85,000 each. The Opinion of Value did not provide a value for land only of the remaining 4.14 acre parcel, but noted that the remaining 4.14 parcel *with* the 2-story house would be worth between \$198,000 and \$205,000. (These numbers could be revised upward somewhat because the Opinion of Value is about 1 ½ years old.)

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

Based on the information above, Claimant's land, if divided (without improvements) would be worth at least \$250,000 (two one-acre parcels averaging \$77,500 each and a third 4.1 acre parcel which must, conservatively, be worth at least \$95,000 for the land only (based on the value of the other two parcels and the much larger size of the remaining parcel). This value is greater than the Assessor's land value of \$161,100.

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 CCZO sections 506.1, staff concedes that it is more likely than not that the property would have a higher value if divided into three parcels than as single 6.14 acre resource parcel developed with a single dwelling.

G. COMPENSATION DEMANDED

\$143,000, per page 1 of claimant's 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.**

The challenged regulations do not qualify for any of the above exemptions.

Staff notes that other standards, including conditional use criteria and forest-related dwelling standards in effect in July 1984, 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 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 the provisions of CCZO Section 506.1 to allow the Claimant to divide the property into three lots of at least one acre each.

(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 December 1, 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 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 the regulations cited below.

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 their 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 506.1	Establishes a minimum lot size of 76 acres.	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 506.1 to allow the Claimant to divide the property into no more than 3 parcels, each having a minimum lot size of one acre.

LEGAL DESCRIPTION

Beginning at a point which is South 0°55 ½' East 302.61 feet from the Northeast corner of the Southwest quarter of the Northwest quarter of Section 3, Township 4 North, Range 2 West, Willamette Meridian, Columbia County, Oregon, said point being the Northeast corner of the Lionel L. Long tract as recorded in Deed Book 147, page 229, Deed Records of Columbia County, Oregon; thence South 89°07' West along the North line of said Long tract 413.26 feet to the true point of beginning of the parcel herein described; thence South 89°07' West along said line a distance of 241.25 feet to the Northeast corner of that certain tract conveyed to Joan A. Lamb by deed recorded January 14, 1970 in Book 175, page 928, Deed Records of Columbia County, Oregon; thence South 11°25' West along the Easterly line of said Lamb tract a distance of 757.06 feet to the Northerly right of way line of the County Road; thence following said right of way Easterly to a point which is South 0°55 ½' East from the true point of beginning; thence North 0°55 ½' West to the true point of beginning.