

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. CL 07-124,)
Submitted by Sheryl Mathews)
for Compensation Under Measure 37) Order No. 67-2007

WHEREAS, on December 4, 2006, Columbia County received a claim for compensation under Measure 37 and Order No. 34-2007 from Sheryl Mathews (the "Claimant"), related to a parcel of property located on Columbia River Highway, Scappoose, Oregon, having tax account number 4130-030-00100; and

WHEREAS, according to the information presented with the Claim, the Claimant acquired an interest in the property on May 11, 1984; and

WHEREAS, the County zoned the property as Rural Residential (RR-2), with a two acre minimum lot size in 1983; and

WHEREAS, the County zoned the property as Rural Residential (RR-5), with a five acre minimum lot size in 1984, after the Claimant acquired an interest in the property; and

WHEREAS, pursuant to Columbia County Zoning Ordinance (CCZO), Section 604.1, the minimum lot or parcel size for new land divisions in the RR-5 zone is 5 acres; and

WHEREAS, the Claimant claims that CCZO Sections 604.1 has restricted the use of the property and has reduced the value of the property by \$54,100; and

WHEREAS, the Claimant desires to partition the property into two 2.5 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 1984, the Claimant could have subdivided the property into 2 acre parcels;

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 07-124 dated April 3, 2007, which is attached hereto as Attachment 1, and is incorporated herein by this reference.
2. The County approves CL 07-124. In lieu of compensation, the County waives CCZO Section 604.1 to the extent necessary to allow the Claimant to partition the property into two 2.5 acre minimum lot size parcels in accordance with the RR-2 zoning in effect on May 11, 1984; and
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, Sheryl Mathews, does not run with the land, and is not transferable except as may otherwise be required by law.
 - E. By developing the parcels 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: Sarah Hanson
Assistant County Counsel

By: Todd Dugdale
Todd Dugdale, Director
Land Development Services

Measure 37 Claim**Staff Report**

DATE: April 3, 2007

FILE NUMBERS: CL 07-124

CLAIMANT: Sheryl Mathews
55501 Columbia River Hwy.
Scappoose, OR 97056

SUBJECT PROPERTY

PROPERTY LOCATION: 5501 Columbia River Hwy., Scappoose, Oregon

TAX ACCOUNT NUMBER: 4130-030-00100

ZONING: Rural Residential-5 (RR-5)

SIZE: 5.34 acres

REQUEST: Claimant seeks to divide the property into 2 parcels.

CLAIM RECEIVED: December 4, 2006

REVISED 180 DAY DEADLINE: May 30, 2007

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

I. BACKGROUND:

The subject 5.34 acre is improved with a dwelling. Claimant acquired an interest in the property as tenants in common with Loren G. Tarbell on May 11, 1984. Claimant seeks to divide the parcel into two 2 ½ acre parcels.

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:** According to a Sort Report prepared by Tigor Title and dated December 5, 2006 ("Sort Report"), as of February 20, 2004, the property was vested in Loren G. Tarbell and Cheryl J. Mathews, as tenants in common. A May 12, 1999, entry in the Official Record of Descriptions of Real Properties of the Columbia County Assessor reflects a death certificate for Loren G. Tarbell. Without a copy of Mr. Tarbell's will, staff cannot determine whether Ms. Mathews owns the entire parcel, but this report will reflect analysis of her portion of the subject property, whether that be a 100% interest or less.
2. **Date of Acquisition:** According to the Sort Report, Loren G. Tarbell and Sheryl J. Mathews each received an undivided one-half interest in the property from Glenn O. Tarbell and Doris Tarbell on May 11, 1984 (Deed recorded at Book 251, page 962 of Columbia County Deed Records).

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

When Claimant acquired an interest in the property, the property was subject to the 1983 zoning ordinance (Ordinance 83-7). The subject property was zoned RR-2, which required a minimum lot size of two acres for residential development. Later in 1984, the property was zoned RR-5, which prescribed a minimum lot size of 5 acres; 2 acres if the property was served by a community water system.

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

Based on the claim, it appears that the county standards that prevent the Claimant from developing the property as desired are:

CCZO 604.1 Establishing the five acre minimum parcel size standard in the RR-5 zone

D. CLAIMANT'S ELIGIBILITY FOR FURTHER REVIEW

Under the RR zone regulations applicable at the time Claimant acquired the property, the minimum parcel size was 2 acres. Under the current RR-5 zoning, the minimum parcel size is five acres. Claimant may therefore, be eligible for compensation and/or waiver of CCZO 604.1 under Measure 37.

E. STATEMENT AS TO HOW THE REGULATIONS RESTRICT USE

Claimant cannot currently divide the subject property which is a 5.34 acre parcel. Staff concedes that CCZO 604.1 can be read and applied to "restrict" the use of Claimant's property within the meaning of Measure 37.

F. EVIDENCE OF REDUCED FAIR MARKET VALUE

1. Value of the Property As Regulated.

The assessed real market value of the subject property is \$167,500. An October 4, 2005, letter from Linda S. Bolen, Principal Broker at Prudential N.W. Properties ("Broker Letter") indicates that the value of 5 acres is running around \$200,000 for bare land.

2. Value of Property Not Subject To Cited Regulations.

Claimant's Broker Letter cited the last two acre parcel that recently sold had a selling price of \$150,000. By extrapolation, a five acre parcel would sell for more than the current assessed value of \$167,000.

3. Loss of value indicated in the submitted documents.

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, however, that it is more likely than not that the property would have a higher value if it could be divided as proposed.

G. COMPENSATION DEMANDED

Claimant claims the following compensation, per page 1 of the Measure 37 claim form: \$54,100.

(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 cited regulation(s) are not regulation(s) restricting public nuisances, protecting public health and safety, required by federal law, or related to the restriction of pornography. The current version of CCZO 604.1 was applied to the subject property after Sheryl Mathews acquired it. It is not exempt under the provisions of ORS 97.352(3), above.

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 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 Sections 604.1.

(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 regulation providing the minimum lot size for RR-5 zoned parcels that was enacted prior to the effective date of Measure 37 on December 2, 2004. The subject claim was filed on December 4, 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 regulation, the Board may pay compensation in the amount of the reduction in fair market value caused by said regulation, or waive Section 604.1 for Sheryl Mathews to allow a use permitted at the time she acquired the property, in accordance with the RR zoning in effect on May 11, 1984.

III. STAFF RECOMMENDATION:

The following table summarizes staff findings concerning the land use regulation 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 apply to this Measure 37 claim:

LAND USE CRITERION	DESCRIPTION	RESTRICTS USE?	REDUCES VALUE?	EXEMPT?
CCZO 604.1	Minimum 5-acre parcel size standard	Yes	Yes	No

Staff recommends that the Board determine the amount of reduction in fair market value of the subject property, if any, due to CCZO 604.1 and pay compensation in that amount or, in the alternative, waive CCZO 604.1 to allow division of the property in accordance with the RR-2 zoning in effect on May 11, 1984.



DEC 5 2006
 2534 Sykes Rd., Suite C
 PO Box 1271
 LAND DEVELOPMENT SERVICES St. Helens OR 970518271
 (503) 397-3537
 (800) 243-2304
 (503) 397-0104

December 5, 2006

Loren Tarbell & Sheryl Matthews
 33807 Tarbell Road
 Scappoose, OR 97056

Buyer/Borrower: Tarbell

Re: TARBELL-MATHEWS

Report No: 07-44404

SERVICE FOR:
 Sort Report: \$200.00

We have searched our Tract Indices as to the following described real property:

A tract of land being and lying in the Northerly part of the Phillip Laffer Donation Land Claim in Section 30, Township 4 North, Range 1 West, Willamette Meridian, Columbia County, Oregon and Section 25, Township 4 North, Range 2 West, Willamette Meridian, and more particularly described as follows:

Beginning at a point marked with a 1 inch iron pipe that is South 327.7 feet of the Southwest corner of the tract of land that is known as the Columbia County Poor Farm which is of record in Book 10, page 388, Deed Records of Columbia County, Oregon, and the last named corner is marked with a stone and a 1 inch iron pipe; thence East and parallel with the South line of the said County Poor Farm a distance of 2611.1 feet to the Westerly line of the Columbia River Highway; thence along the Westerly line of the Columbia River Highway, South 40°16' West 459.5 feet to a point marked with an iron pipe; thence West 1823.44 feet, more or less, to the Southeast corner of the Loren G. Tarbell et ux tract as described in deed recorded August 19, 1969 in Book 174, page 377, Deed Records of Columbia County, Oregon; thence North 1°18' East along the East line of said Tarbell et ux tract a distance of 178.50 feet to the Northeast corner thereof; thence West along the North line of said Tarbell et ux tract and continuation thereof, 508.6 feet to the West line of the Glenn O. Tarbell and Doris Tarbell tract as described in deed recorded July 17, 1939 in Book 64, page 411, Deed Records of Columbia County, Oregon; thence North along the West line of said Tarbell tract 178.50 feet, more or less, to the point of beginning. EXCEPT that portion lying in the County Road, Also except that portion conveyed to State of Oregon, by and through its Department of Transportation, Highway Division in deed recorded December 8, 1977 in Book 215, page 166, Deed Records of Columbia County, Oregon.

Together with a road easement, over the following described property:

A parcel of land in Section 30, Township 4 North, Range 1 West, Willamette Meridian, Columbia County, Oregon, more particularly described as follows:

Beginning at point which is North 1305.41 feet and East 3222.87 feet from the Southwest corner of the Philip Laffer Donation Land Claim in Section 25, Township 4 North, Range 2 West, Willamette Meridian, said point being the Northwest corner of the R.E. Tarbell tract as recorded in Deed Book 113, page 313; thence following the North line of said Tarbell tract and the South line of the Glenn O. Tarbell tract as recorded in Deed Book 64, at page 411 South 89°29' East 177.88 feet to the true point of beginning of the parcel herein described; thence South 89°29' East a distance of 863.09 feet to the Westerly right of way line of the Columbia River Highway; thence following said right of way along the arc of a curve to the left a distance of 17.75 feet (the long chord bears South 32°50' West 17.75 feet); thence North 89°29' West running parallel to and 15.0 feet distant from the North line of said Tarbell tract a distance of 853.60 feet; thence North 0°31' East a distance of 15.0 feet to the true point of beginning.

Real Property Tax Account No.: 01-08-2-4130-030-00100, 01-08-2-4225-014-02400

Situs Address as disclosed by Columbia County Tax Roll:

Scappoose, OR 97056

Dated as of February 20, 2004 at 8:00 a.m.

VESTED IN:

Loren G. Tarbell and Sheryl J. Mathews, as tenants in common

Subject to the following on record matters:

1. The assessment roll and tax roll discloses that the premises herein described were specially assessed as Forest Land. If the land becomes disqualified for the special assessment under the statute, an additional tax may be levied for previous years in which the land was subject to the special land use assessment.
2. The assessment and tax rolls disclose that the premises herein described have been specially assessed as Farm Use Land. If the land becomes disqualified for the special assessment under the statute, an additional tax may be levied for previous years in which the farm use assessment was in effect for the land. In addition thereto, a penalty may be levied if notice of disqualification is not timely given.
3. The following matters are excluded from the coverage of the policy based on the proximity of the property to UNNAMED CREEK.
 - a. Rights of the public and governmental bodies for commerce, fishing and navigation as to that portion of the premises lying below the high water mark of UNNAMED CREEK.
 - b. Some portion of said land has been brought within the boundaries thereof by an avulsive movement of the UNNAMED CREEK or has been formed by accretion to such portion.