

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. 07-76 Submitted by)
Richard and Janet Beebe for Compensation Under) Order No. 70-2007
Measure 37)

WHEREAS, on November 30, 2006, Columbia County received a claim for compensation under Measure 37 and Order No. 34-2007 from Richard D. And Janet C. Beebe, (the "Claimants"), related to a parcel of property located on Poplar Lane in Warren, Oregon, having tax account number 4213-040-00800; and

WHEREAS, according to the information presented with the Claim, the Claimants acquired an interest in the property in 1981; and

WHEREAS, the County zoned the subject property as Forest Agriculture (FA-19) in 1981, after the acquisition by the Claimants; and

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

WHEREAS, the Claimants 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 \$1,624,700; and

WHEREAS, the Claimants desire to subdivide the property into five 2 acre minimum lot size parcels, and four 5 acre minimum lot size 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 Claimants acquired the property; and

WHEREAS, in 1981, the Claimants could have divided the property into five 2 acre parcels and four 5 acre parcels, in accordance with the Rural Residential (RR) District zoning;

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 07-76, dated March 16, 2007, which is attached hereto as Attachment 1, and is incorporated herein by this reference.
2. The County approves CL 07-76. In lieu of compensation, the County waives CCZO Sections 407.1 to the extent necessary to allow the Claimants to subdivide the property into five 2 acre minimum lot size parcels and four 5 acre minimum lot size parcels, in accordance with the Rural Resource zoning regulations in effect in 1981.
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, as individuals, 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 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 Hanson
Assistant County Counsel

COLUMBIA COUNTY LAND DEVELOPMENT SERVICES

Measure 37 Claim

Staff Report

DATE: March 16, 2007

FILE NUMBERS: CL 07-76

CLAIMANTS/OWNERS: Richard D. And Janet C. Beebe
57001 Poplar Lane
Warren, OR 97053-9603

SUBJECT PROPERTY

PROPERTY LOCATION: 57001 Poplar Lane
Warren OR 97053-9603

TAX ACCOUNT NUMBERS: 4213-040-00800

ZONING: Forest Agriculture (FA-19)

SIZE: 32.32 Acres

REQUEST: To subdivide the parcel into five 2 acre parcels and four 5 acre parcels for residential use.

CLAIM RECEIVED: November 30, 2006

180 DAY DEADLINE: May 30, 2007

NOTICE SENT: March 22, 2007

As of April 6, 2007, two neighbor comments have been received. Comments from Donald W. And Karen J. Roppell, 56895 Hazen Rd., Warren, Oregon, dated March 24, 2007, were in favor of waiving the current land use regulations. Comments received from David and Patt Engh dated March 31, 2007, were in opposition.

I. BACKGROUND:

The subject property includes 32.32 acres and is improved with a dwelling. Claimants seek to divide the property into five 2 acre parcels plus four 5 acre parcels for residential use. Claimants acquired the property in 1981.

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 title report, with a legal description attached, for the subject property. The report, created on November 29, 2006, by Columbia County Title and Escrow Services, Inc., reflects that Richard D. Beebe and Janet C. Beebe are owners as tenants by the entireties.
2. **Date of Acquisition:** The title report reflects that Richard D. Beebe and Janet C. Beebe acquired the subject property on October 9, 1981. (Deed recorded in the Columbia County Records of Deeds at Book 240, page 122).

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

The property was zoned RR (Rural Residential District) at the time of Claimants' acquisition in 1981 which established a two acre minimum lot size for residential development. The zoning was changed to FA-19 in August 1984, and that zoning has remained on the property to date.

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

Claimants allege that FA-19 regulations - CCZO sections 400 (minimum lot size) and 407.1 (19 acres) are the regulations that do not allow them to divide the subject property.

D. CLAIMANT'S ELIGIBILITY FOR FURTHER REVIEW

Claimants acquired an interest in the property identified above before the adoption of the current county zoning ordinances 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

Claimants state that the minimum lot size requirement of CCZO Section 407.1 prevents them from dividing the subject property into two acre and five acre parcels as proposed.

F. EVIDENCE OF REDUCED FAIR MARKET VALUE

1. Value of the Property As Regulated.

The Claimants have not submitted evidence regarding the value of the property as regulated. The assessed real market value of the subject land is \$408,500.

2. Value of Property Not Subject To Cited Regulations.

Claimants included a comparative market analysis of six 2 to 5 acre parcels reflecting the value if the property could be divided into smaller lots. The value for the latter was from \$220,000 to 226,000 per parcel.

Claimants' parcel is 32.32 Acres.

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

The written documentation in support of the Claim alleges the value of the property if it is subdivided. 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 a rural subdivision than as a 32.32 acre resource parcel developed with a single dwelling.

3. COMPENSATION DEMANDED

The Claim is in the amount of \$1,624,700, per page one of the Measure 37 claim.

(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 regulations are not regulations restricting public nuisances, protecting public health and safety, required by federal law, or related to the restriction of pornography. The FA-19 regulations were applied to the subject property after the owner acquired it. They are not exempt under the provisions of ORS 197.352(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 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 sec. 407.1 to the extent necessary to allow a use of the property that was allowed in 1981.

(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 FA-19 zone which were enacted prior to the effective date of Measure 37 on December 2, 2004. The subject claim was filed on November 20, 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 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.

III. STAFF RECOMMENDATION:

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

LAND USE CRITERION	DESCRIPTION	RESTRICTS USE?	REDUCES VALUE?	EXEMPT?
CCZO 407.1	Establishing a minimum lot size of 19 acres.	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 Claimant's property, and act accordingly to pay just compensation in that amount, or, in the alternative, to not apply CCZO Section 407.1.

ATTACHMENT 2

EXHIBIT A

LEGAL DESCRIPTION

PARCEL 1:

All of Lot 3 of Section 13 in Township 4 North, Range 2 West of the Willamette Meridian, Columbia County, Oregon.
EXCEPTING THEREFROM that portion conveyed to Leslie T. Brady, et ux, by deed recorded October 14, 1968 in Book 171, Page 253, Deed Records, Columbia County, Oregon.

PARCEL 2:

A strip of land 16 and 1/2 feet wide and 80 rods long, more particularly described as follows:
BEGINNING at a point 30 rods East from the Northwest corner of the Northeast quarter of the Northeast quarter of Section 24, Township 4 North, Range 2 West of the Willamette Meridian, Columbia County, Oregon;
Thence East 1 rod;
Thence South 80 rods;
Thence West 1 rod;
Thence North to the PLACE OF BEGINNING.

PARCEL 3:

A right of way for a private road 15 feet wide off the South side of the Southwest quarter of the Southeast quarter of Section 13, Township 4 North, Range 2 West of the Willamette Meridian, Columbia County, Oregon, more particularly described as follows:
BEGINNING at the Southwest corner of the southeast quarter of said Section 13;
Thence North on quarter section line, 15 feet;
Thence East and parallel with the South line of said Section to the West line of Government Lot 3 of said Section 13;
Thence South on lot line to the South line of said Section 13;
Thence West on Section line to the PLACE OF BEGINNING.