

AFTER RECORDING, RETURN TO:

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

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON**

In the Matter of Claim No. 07-46 Submitted by)
Paul A. Nys, Trustee of the Paul Alfred Nys Trust, and) Order No.74-2007
Judy I. Nys, Trustee of the Judy Irene Nys Trust)
for Compensation Under Measure 37)

WHEREAS, on November 27, 2006, Columbia County received a claim for compensation under Measure 37 and Order No. 84-2004 from Paul A. Nys, Trustee of the Paul A. Nys revocable living trust, and Judy I. Nys, trustee of the Judy Irene Nys revocable living trust, related to a parcel of property located on Meissner Road in Rainier, Oregon, having tax account number 6323-000-00400; and

WHEREAS, according to the information presented with the Claim, both trusts acquired an interest in the property in 2001; and

WHEREAS, according to the information presented with the Claim, Paul Nys acquired an interest in the property in 1947, and transferred an interest in the property to Judy Irene Nys in 1995; and

WHEREAS, the County zoned the subject property as Primary Forest (PF-76) in 1984, after the acquisition by Paul Nys, but prior to the acquisition by the trusts, and prior to the acquisition by Judy Nys, individually; 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 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 \$445,725; and

WHEREAS, the Claimants desire to subdivide the property into five 5 acre parcels and one 128.59 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 property and reduces the fair market value of the property to allow a use which was allowed at the time the owner acquired the property; and

WHEREAS, in 1947, Paul Nys could have divided the property into 5 acre minimum lot size parcels; and

WHEREAS, in 1995, Judy Nys could not have divided the property into 5 acre minimum lot size parcels; and

WHEREAS, in 2001, the trusts could not have divided the property into 5 acre minimum lot size parcels;

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 07-46, dated April 9, 2007, which is attached hereto as Attachment 1, and is incorporated herein by this reference.
2. The County denies the Claim as to Paul A. Nys and Judy Irene Nys, as trustees of the Paul Alfred Nys Trust and the Judy Irene Nys Trust.
3. The County denies the Claim as to Judy I. Nys, individually.
4. The County approves the Claim as to Paul Nys, individually (hereinafter referred to as the "Claimant"). In lieu of compensation, the County waives CCZO Section 506.1 to the extent necessary to allow the Claimant to subdivide the property into five 5 acre minimum lot size parcels and one 128.59 acre minimum lot size parcel.
5. 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, Paul Nys, 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 Claimant's 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.
6. 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 25th day of April, 2007.

Approved as to form

By: Sarah Huson
Assistant County Counsel

BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

By: Rita M. Bernhard
Rita Bernhard, Chair

By: [Signature]
Anthony Hyde, Commissioner

By: Joe Corsiglia
Joe Corsiglia, Commissioner

COLUMBIA COUNTY LAND DEVELOPMENT SERVICES

Measure 37 Claim

Staff Report

DATE: April 9, 2007

FILE NUMBERS: CL 07-46

CLAIMANTS/OWNERS: Paul A. Nys, Trustee, Paul Alfred Nys Trust
and Judy I. Nys, Trustee, Judy Irene Nys

68800 Meissner Rd.
Rainier, OR 97048

**CLAIMANT'S
REPRESENTATIVE:** NA

SUBJECT PROPERTY

PROPERTY LOCATION: 68800 Meissner Rd., Rainier, Oregon

TAX ACCOUNT NUMBERS: 6323-000-00400

ZONING: Primary Forest-76 (PF-76)

SIZE: 153.59 acres

REQUEST: Subdivide into five 5-acre parcels and one 128.59 acre parcel on Meissner Road for home sites.

CLAIM RECEIVED: November 27, 2006

180 DAY DEADLINE: May 26, 2007

NOTICE: March 6, 2007.
One comment was timely received. Neighbor Lisa Archuleta opposes the Claim, noting that forest land should be preserved, and that traffic on Meissner Road will increase.

I. BACKGROUND:

The subject property includes 153.59 acres and is improved with a single family dwelling. Paul Nye acquired the subject property in 1947. The property is currently owned by the Paul Alfred Nys and Judy Irene Nys revocable living trusts established in 2001. 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 Claimants submitted a Measure 37 Application Report issued by Columbia County Title & Escrow Services, Inc. on February 22, 2007. The report reflects that the current owners of the subject property are Paul Alfred Nys, Trustee under the Paul Alfred Nys Trust Agreement Dated 1/22/01, and Judy Irene Nys, Trustee under the Judy Irene Nys Trust Agreement dated 1/22/01.

2. **Date of Acquisition:** Paul Alfred Nys acquired the subject property by deed dated March 3, 1947, and recorded in the Columbia County Deed Records at Book 92, page 364. He transferred an undivided half interest to Judy Irene Nys on March 21, 1995, through deed recorded at document no. 95-02301. On January 22, 2001, Paul Alfred Nys and Judy Irene Nys transferred the property to Paul Alfred Nys, Trustee under the Paul Alfred Nys Trust Agreement Dated 1/22/01 and Judy Irene Nys, Trustee under the Judy Irene Nys Trust Agreement dated 1/22/01. The trusts are the current owners of the property, with acquisition dates of January 22, 2001. However, because the Paul and Judy Nys, as Settlers of their respective trusts, transferred the property into revocable living trusts, they have maintained an interest in the property for purposes of Measure 37. The date of acquisition for Paul Nys is March 3, 1947. The date of acquisition for Judy Nys is March 21, 1995.

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

The subject property was not zoned at the time of Paul Nys' acquisition in 1947. The property was zoned PF-76 at the time of Judy Nys' acquisition, and at the time of acquisition by the two revocable living trusts.

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

The Claimants state that Columbia County Zoning Ordinance (CCZO) section 507.1, establishes 76 acres as the minimum number of acres to accommodate a dwelling in the forest zone. Staff believes that Claimants meant to cite CCZO section 506.1, which provides that the minimum lot size for land divisions in the PF zone is 76 acres. Claimants also cite Columbia County Comprehensive Plan, Part IV - Forestlands, section 8, which also provides that 76 acres is the minimum lot size in the primary forest zone.

Claimants also cite state statutes, state senate bills, and administrative rules for which they will have to seek Measure 37 compensation from the state, not the county.

D. CLAIMANT'S ELIGIBILITY FOR FURTHER REVIEW

Paul Nys acquired an interest in the property before CCZO Section 506.1 became effective and therefore, he may be eligible for compensation and/or waiver of the cited regulation under Measure 37. A family member of Judy Nys (Paul Nys) acquired an interest in the property before CCZO Section 506.1 became effective, and therefore, Judy Nys is eligible for compensation due to a family member's ownership as of 1947. However, Ms. Nys did not acquire a personal interest in the property before CCZO Section 506.1 became effective, and her acquisition date for waiver purposes is 1995.

E. STATEMENT AS TO HOW THE REGULATIONS RESTRICT USE

Claimants state that they cannot divide their 153 acre parcel to create five 5 acre parcels that front Meissner Road due to the minimum lot size regulation in Section 507.1(506.1) and due to Columbia County Comprehensive Plan, Part IV Forest policies, page 33 including reference to the need for a minimum lot size of 76.

Columbia County Zoning Ordinance

Staff finds that CCZO Section 506.1 restricts the division of the property into five acre parcels as proposed.

Columbia County Comprehensive Plan

The Columbia County Comprehensive Plan is implemented through the Columbia County Zoning Ordinance and is not in and of itself applicable in a conditional use, subdivision or partition process other than the minimum lot size for the zone established on the Comprehensive Plan Map. However, if the County waives the minimum lot size for the Zone, the Comprehensive Plan Map has no effect on development. Therefore, the Comprehensive Plan does not restrict or prohibit the use of the property or reduce the value the property.

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 \$354,000.

2. Value of Property Not Subject To Cited Regulations.

Using sales listings of similar unimproved rural properties in Columbia county, Claimants established an average fair market value of \$20,000 per acre, or \$100,000 per five acre parcel. (They do not provide a value for the 128.59 acres remaining after their proposed division of 25 acres from the parcel).

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

Claimants determined that if 25 acres of their property were divided into 5 acre parcels, the total market value would be \$500,000. Whereas, using their current tax statement, the average real market value of 25 acres would be \$54,275, or a difference of \$445,725.

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 CCZO section 506.1, staff concedes that it is more likely than not that the property would have a higher value if divided into six parcels, than as single 153.59-acre resource parcel developed with a single dwelling.

G. COMPENSATION DEMANDED

\$445,725, per page 1 of Claimants' 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 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 the provisions of CCZO Section 506.1 that prohibit land divisions that result in parcels of less than 76 acres.

(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 claims were filed on November 27, 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 or in lieu of compensation, modify, remove, or not apply the regulations cited below, to allow the owners a use of the property permitted at the time the owner acquired the property.

III. STAFF RECOMMENDATION:

Based on the above findings, staff concludes that the Paul Nys has met the threshold requirements for proving a Measure 37 claim.

The following table summarizes staff findings concerning the land use regulations cited by Paul Nys 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 in the Primary Forest zone. | Yes | Yes | No |
| Comprehensive Plan Part IV, section 8 | Sets forth policy for minimum lot size implemented in the Zoning Ordinance | No, implemented by Zoning Ordinance. | | 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 property, and act accordingly to pay just compensation in that amount, or, in the alternative, to waive CCZO Section 506.1 as to Paul Nye.

Staff recommends denial as to Judy Nys who acquired the property in 1995, when the property was already zoned PF-76, as well as to both trusts, due to their acquisition dates in 2001.



Columbia County Title & Escrow Services, Inc.

February 26, 2007

Order No: 07-00148

OWNER : NYS

RECEIVED

FEB 28 2007

LAND DEVELOPMENT SERVICES

TO: PAUL ALFRED NYS
68800 MEISSNER ROAD
RAINIER, OREGON 97048

| TYPE OF POLICY: | AMOUNT\$ | CODE | PREMIUM\$ |
|-------------------------------|----------|------|-----------|
| MEASURE 37 APPLICATION REPORT | N/A | | \$150.00 |

Effective Date: February 22, 2007

That, according to the public records which impart constructive notice of matters affecting title to the premises hereinafter referred to, we find:

The Northwest Quarter of Section 23, in Township 6 North, Range 3 West of the Willamette Meridian, Columbia County, Oregon.

EXCEPTING THEREFROM, any portion lying with County Road No. P-222.

And as of February 21, 2007 at 8:00 A.M., we find the grantee(s) in the last deed filed for record is (are):

PAUL ALFRED NYS TRUSTEE, OR HIS SUCCESSOR IN TRUST, UNDER THE PAUL ALFRED NYS TRUST AGREEMENT, DATED: JANUARY 22, 2001;

AND

JUDY IRENE NYS TRUSTEE, OR HER SUCCESSOR IN TRUST, UNDER THE JUDY IRENE NYS TRUST AGREEMENT, DATED: JANUARY 22, 2001.

in fee simple estate

We also find the following apparent encumbrances, easements, restrictive covenants and rights of way:

1. The rights of the public in and to that portion of the premises herein described lying within the limits of streets, roads and highways.
2. The assessment roll and the tax roll disclose that the within described premises were specially assessed as farm land. If the land has become or becomes disqualified for the special assessment under the statute, an additional tax and interest and/or penalty may be levied retroactively.