

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 07-52 Submitted by)
Richard and Ellen Faulhaber for Compensation) Order No. 81-2007
Under Measure 37)

WHEREAS, on November 29, 2006, Columbia County received a claim for compensation under Measure 37 and Order No. 34-2007 from Richard and Janet Faulhaber (the "Claimants"), related to a parcel of property located on Tide Creek Road in Deer Island, Oregon, having tax account number 6235-000-00400; and

WHEREAS, according to the information presented with the Claim, the Claimants acquired an interest in the property in 1982; and

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

WHEREAS, pursuant to Columbia County Zoning Ordinance (CCZO), Section 221, only one dwelling may be placed on the subject parcel; and

WHEREAS, the Claimants claim that the one dwelling per parcel regulation has restricted the use of the property and has reduced the value of the property by \$73,500; and

WHEREAS, the Claimants desire to place a second dwelling on the subject parcel for residential use; 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 1982, the Claimants could have placed a second dwelling on the subject parcel for residential use;

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 07-52, dated April 9, 2007, which is attached hereto as Attachment 1, and is incorporated herein by this reference.
2. The County approves CL 07-52. In lieu of compensation, the County waives CCZO Section 221 to the extent necessary to allow the Claimants to site a second dwelling on the subject 7.51 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 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: April 9, 2007

FILE NUMBERS: CL 07-52

CLAIMANTS/OWNERS: Richard and Ellen Faulhaber
32331 Tide Creek Rd.
Deer Island OR 97054

**CLAIMANT'S
REPRESENTATIVE:** NA

SUBJECT PROPERTY

PROPERTY LOCATION: 31125 Dowd 32331 Tide Creek Rd., Deer Island, Oregon

TAX ACCOUNT NUMBERS: 6235-000-00400

ZONING: Primary Forest-76 (PF-76)

SIZE: 7.51 acres

REQUEST: To develop property with a second dwelling (mobile home).

CLAIM RECEIVED: November 29, 2006

180 DAY DEADLINE: May 29, 2007

NOTICE: Sent March 15, 2007.
No comments nor request for hearing was received.

I. BACKGROUND:

The subject property includes 7.51 acres with a mobile home on it. Claimants acquired the property in 1982. 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 on November 12, 2006, by Columbia County Title & Escrow Services, Inc. The report reflects that as of November 2, 2006, the property was titled in the names of Richard D. Faulhaber and Ellen J. Faulhaber as tenants by the entirety.

2. **Date of Acquisition:** Claimants acquired the subject property by warranty deed dated October 5, 1982, and recorded at Book 244, page 653, of Columbia County Deed Records.

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

The subject property was not zoned at the time of Claimants' acquisition of the property in 1982.

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

Claimants allege that the subject property's fair market value has been reduced by Columbia County Zoning Ordinances (CCZO) section 502 (setting forth permitted uses in the PF 76 zone) and 221 (which provides that only one principal use may be placed on each legal lot or parcel). Staff finds that Section 502 does not restrict the use of the property because some dwellings are permitted uses in the zone. Section 221 prevents more than one dwelling on a legal lot or parcel, as proposed and therefore restricts the use of the Claimants' property.

D. CLAIMANT'S ELIGIBILITY FOR FURTHER REVIEW

Claimants acquired an interest in the property before the CCZO sections cited above became effective, and therefore Claimants may be eligible for compensation and/or waiver of the cited regulation under Measure 37.

E. STATEMENT AS TO HOW THE REGULATIONS RESTRICT USE

Claimants state that with current zoning ordinances, they cannot place a second dwelling on the parcel. Section 221 restricts the proposed development of two single family dwellings on the subject parcel. Section 502 lists permitted uses including single family dwellings and therefore does not restrict the uses allowed on the property. As stated above, Section 221 restricts the use of the property by preventing the placement of a second dwelling on one legally parcel.

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 \$124,900.

2. Value of Property Not Subject To Cited Regulations.

Claimants have provided comparables of 2 to 2.9 acre parcels, some of properties which have sold and others of properties which were listed. The properties were sold/listed for an average of \$122,483. Staff notes that the Claimants did not provide comparables to show the relative value of one parcels of 7.51 acres with two dwellings.

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

Based on the information above, Claimants' land, if divided into 2 parcels could be worth somewhat less than \$367,449.

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 221, staff concedes that it is more likely than not that the property would have a higher value if the parcel had 2 dwellings.

G. COMPENSATION DEMANDED

\$73,500, 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 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 Section 221.

(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 November 29, 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.

III. STAFF RECOMMENDATION:

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

The following table summarizes staff findings concerning the land use regulations either cited by the Claimants or inferred by Staff 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 221	Provides that only one principal use may be placed on each legal lot or parcel	Yes	Yes	No
CCZO 502	Sets forth permitted uses in the Primary Forest zone	No	No	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 Claimant's property, and act accordingly to pay just compensation in that amount, or, in the alternative, to not apply CCZO Section 221.

ATTACHMENT 2

EXHIBIT A

LEGAL DESCRIPTION

That portion of the Northeast quarter of the Northwest quarter of Section 35, Township 6 North, Range 2 West of the Willamette Meridian, Columbia County, Oregon, lying Northwesterly of Clark and Wilson Road No. P-101.