

BEFORE THE BOARD OF COUNTY COMMISSIONERS  
FOR COLUMBIA COUNTY, OREGON

In the Matter of Claim Number CL 07-126 )  
for Compensation Under Measure 37 Submitted by ) Order No. 83-2007  
Susan Wold, Affiant in re Estate of Ardelle Baden, )  
Susan Wold, and Michael Baden )

WHEREAS, on December 4, 2006, Columbia County received a claim under Measure 37 from Susan Wold, affiant in re estate of Ardelle Baden, Susan Wold, individually, and Michael Baden, individually, (the "Claimants") related to a parcel of property near the Crown Zellerbach Trail in Scappoose, Oregon, having Tax Account Number 4234-010-00100; and

WHEREAS, according to the information presented with the claim, Susan Wold and Michael Baden are the current owners of the parcel; and

WHEREAS, the current owners, acquired an interest in the property in 2002, upon the death of Ardelle Baden; and

WHEREAS, the Claimants state that CCZO Section 506.1 restricts the use of the property and reduces its value; and

WHEREAS, CCZO 506.1 was enacted prior to the 2002 acquisition date of the current owners;

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 07-126 dated April 6, 2007, which is attached hereto as Attachment 1 and is incorporated herein by this reference.
2. The Board of County Commissioners finds that the Claimants are neither entitled to compensation under Measure 37, nor waiver of County regulations in lieu thereof.
3. The Board of County Commissioners denies Claim Number CL 07-126.

Dated this 25th day of April, 2007.

Approved as to form

By: Sarah Hanson  
Assistant County Counsel

BOARD OF COUNTY COMMISSIONERS  
FOR COLUMBIA COUNTY, OREGON

By: Rita M. Bernhard  
Rita Bernhard, Chair

By: Anthony Hyde  
Anthony Hyde, Commissioner

By: Joe Corsiglia  
Joe Corsiglia, Commissioner

Order No. 83-2007

**COLUMBIA COUNTY LAND DEVELOPMENT SERVICES**  
**MEASURE 37 CLAIM**  
**STAFF REPORT**

DATE: April 6, 2007

FILE NUMBER(s): CL 07-126

CLAIMANTS: Susan Wold, Affiant in re Estate of Ardelle Baden, and Individually;  
 1405 SE Clatsop St.; Portland, OR 97202

Michael Baden; 3024 SE Boyd St.; Portland, OR 97222

PROPERTY LOCATION: Near Crown Zellerbach Rd.; Scappoose, OR

TAX ACCOUNT NUMBER: 4234-010-00100

ZONING: Primary Forest - 76 (PF-76)

SIZE: Approximately 38.67 acres

REQUEST: To divide property into five 5-acre residential parcels and develop each with, at a minimum, a single family residence and accessory structures.

CLAIM RECEIVED: December 4, 2006

REVISED 180 DAY DEADLINE: May 30, 2007

RECEIPT OF CLAIM NOTICE: Claim notices were mailed on March 22, 2007. The Comment period ended on April 5, 2007. As of the date of this Staff Report, no comments or request for hearing have been received.

**I. BACKGROUND:**

The subject property is undeveloped forest land. The Claimants are the estate of Ardelle Baden, through her daughter, Susan Wold, Susan Wold, individually and Michael Baden, individually. Susan Wold and Michael Baden are the children of Ardelle Baden, and are the named heirs of her will, dated 1967. Ardelle Baden acquired an interest in the property in 1958 through a land sales contract. Ms. Baden died in 2002. Susan Wold and Michael Baden are the named heirs under Ms. Baden's will.

Whether or not a property is a legally platted lot or parcel created by a Subdivision or Land Partition, respectively, or a legal lot-of-record is not included in the review for a Measure 37 Claim. If the property reviewed by this claim is neither of these, this could impact any subsequent development under this claim.

**II. APPLICABLE CRITERIA & 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 & OWNERSHIP INTERESTS

1. **Current ownership:** Based on the information provided, a title report issued by Ticor Title on December 7, 2006, the property is vested in the heirs and devisees of Ardelle Baden, deceased, an estate in fee simple. According to the will submitted with the Claim, Susan Wold and Michael Baden are the heirs and devisees of Ardelle Baden.
2. **Date of Acquisition:** The property was originally acquired by the Claimants' parents, Theodore and Ardelle Baden, in August of 1958 according to a contract of sale provided by the Claimants. A deed for the subject property was executed on June 7, 1973 and appears in Book 205, Page 635 of the Columbia County deed records. A correction to the legal description was made in 1998. Upon Ardelle Baden's death, she no longer held an interest in the property for purposes of Measure 37. Pursuant to ORS 114.215(1)(b), upon the death of a decedent, title to the property of the decedent vests in the persons to whom it is devised by the will of the decedent.

Susan Wold and Michael Baden obtained their interest in the property on December 28, 2002, the date of death of Ardelle Baden. For the purpose of this claim, the Claimants acquired the property on December 28, 2002.

B. LAND USE REGULATION(S) IN EFFECT AT THE TIME OF ACQUISITION

The County Zoning Ordinance which applies to the subject property became effective on August 1, 1984. The property was not subject to County zoning regulations when it was originally acquired by Ardelle and Theodore Baden in 1958. The property was subject to the current zoning requirements when it was acquired by the Claimants in December of 2002.

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

The Claimants cite the "Current Columbia County Zoning Ordinance, first effective [August] 1984, any modifications and amendments thereto which would restrict land divisions, limit the number of dwellings or restrict the minimum lot size" as regulations that have reduced the fair market value of the property. This specific claim is to divide PF-76 zoned property into lots/parcels less than the 76 acre minimum. As such, the most applicable County Regulation is Section 506.1 of the County's current Zoning Ordinance, which restricts the minimum lot or parcel size to 76 acres in the PF-76 zone.

The Claimants have also submitted a Measure 37 claim to the state regarding state laws which place restrictions on the intended use of the property. Based on the claim, it appears that the County regulation that clearly prevents the Claimants from developing the property as desired is:

CCZO 506.1      Establishing the 76-acre minimum lot/parcel size in the PF-76 zone.

D. CLAIMANT'S ELIGIBILITY FOR FURTHER REVIEW

Claimants acquired an interest in the property after the minimum lot/parcel size standards of the PF-76 zone became effective. Therefore, the Claimants are not eligible for waiver of CCZO 506.1 under Measure 37.

E. STATEMENT AS TO HOW THE REGULATIONS RESTRICT USE

The Claimants state that the "Subdivision and Partition Ordinance" and "Zoning Ordinance" restrict the division of the property and the construction of single family dwellings on the new parcels. Specifically, Staff notes that the current Columbia County Zoning regulations prevent the property from being divided and developed due to the 76-acre minimum lot size of the PF-76 zone. Staff concedes that CCZO 506.1 can be read and applied to "restrict" the use of Claimants' property within the meaning of Measure 37. However, the Claimants are not entitled to waiver due to the 2002 date of acquisition.

F. EVIDENCE OF REDUCED FAIR MARKET VALUE

1. **Value of property as regulated:** Based on County Assessor data the property's real market value for the land itself is \$330,000.
2. **Value of property not subject to cited regulations:** The Claimants submitted a Comparative Market Analysis which stated that the average sale price for comparable properties was \$232,500. This would suggest a value of \$1,627,500 if the Claimants were to divide and develop the property as proposed.
3. **Loss of value as indicated in the submitted documents:** The Claim alleges a total reduction in value of \$470,000.

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 regulation(s). Staff concedes, however, that it is more likely than not that the property would have a higher value if it could be divided for residential development as proposed.

G. COMPENSATION DEMANDED

As noted on page 1 of the Measure 37 Claim Form: \$470,000.

**(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.**

CCZO 506.1 does not qualify for any exclusions listed.

III. **STAFF RECOMMENDATION:**

Based on the foregoing, Staff recommends that the County Commissioners deny this claim as to Susan Wold and Michael Baden, individually, and as to Susan Wold, Affiant in re Estate of Ardelle Baden.

## ATTACHMENT 2

### LEGAL DESCRIPTION

PARCEL 1: Beginning at the point of intersection of the West line of the East half of the Northwest quarter of the Northeast quarter of Section 34, Township 4 North, Range 2 West, Willamette Meridian, Columbia County, Oregon, with the Westerly right of way line of the Scappoose-Vernonia Highway; said point being South 89° 08' East 663.5 feet and South 1° 29' West 206.6 feet from the North quarter corner of said Section 34; thence along the said West line of the East half of the Northwest quarter of the Northeast quarter South 1° 29' West a distance of 610.0 feet; thence North 83° 27' East a distance of 512.48 feet to the said Westerly right of way line of said Scappoose-Vernonia Highway; thence along the said Westerly right of way line of said Highway North 46° 53' West a distance of 328.2 feet; thence North 39° 54' West a distance of 305.36 feet; thence North 31° 58' West a distance of 109.46 feet to the point of beginning.

PARCEL 2: Beginning at the Northwest corner of the Northeast quarter of Section 34, Township 4 North, Range 2 West, Willamette Meridian, Columbia County, Oregon, thence South 89° 08' East along the North line of said Section, 663.5 feet to the West line of the East half of the Northwest quarter of Northeast quarter of Section 34; thence South 1° 29' West along said West line 816.56 feet; thence North 83° 27' East to the East line of the Scappoose-Vernonia Highway and the true point of beginning of the following described tract; thence from this point of beginning North 83° 27' East to the center line of Scappoose Creek; thence Southeasterly down said creek to the Northerly line of the H.D. Siercks County Road No. 119; thence Southeasterly along the Northerly line of said road to the East line of Section 34, Township 4 North, Range 2 West; thence North along the Section line to the Northeast corner thereof; thence West along the North line of said Section 34 to a point in the center of Scappoose Creek which point is South 89° 08' East 965.3 feet from the North quarter section corner of Section 34; thence Southerly down the center of Scappoose Creek 479.38 feet; thence South 52° 48' West 12.20 feet to the East line of the Scappoose-Vernonia Highway; thence Southerly along the edge of said highway to the point of beginning.