

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 Nos. CL 07-74 and)
CL 07-75 Submitted by Berkley and Diane) Order No.84-2007
Tack for Compensation Under Measure 37)

WHEREAS, on November 30, 2006, Columbia County received two claims for compensation under Measure 37 and Order No. 34-2007 from Berkley and Diane Tack, related to two parcels of property located on Lentz Road in Rainer, Oregon, having tax account numbers 6206-000-00500 (CL 07-74), and 6206-000-00301 (CL 07-75); and

WHEREAS, according to the information presented with CL 07-74, Berkley Tack acquired an interest in Lot 500 in 1979, and Diane Tack acquired an interest in the property in 1990; and

WHEREAS, according to the information presented with CL 07-75, Berkley Tack acquired an interest in Lot 301 in 1998, and Diane Tack has never acquired an interest in the property; and

WHEREAS, the County zoned the subject property as Primary Forest (PF-76) in 1984; 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 \$1,073,700; and

WHEREAS, the Claimants desire to subdivide the property into five acre minimum lot size parcels for residential development; 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 current owner acquired the property; and

WHEREAS, in 1979, Berkley Tack could have subdivided Lot 500 into five acre minimum lot size parcels; and

WHEREAS, in 1990, Diane Tack could not have subdivided Lot 500 into five acre minimum lot size parcels; and

WHEREAS, in 1998, Berkley Tack could not have subdivided Lot 301 into five 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 Numbers CL 07-74 and CL 07-75, dated April 6, 2007, which is attached hereto as Attachment 1, and is incorporated herein by this reference.
2. The County denies the Claim of Diane Tack for both CL 07-74 and CL 07-75.
3. The County denies the Claim of Berkley Tack for CL 07-75.
4. The County approves the Claim of Berkley Tack (hereinafter referred to as the "Claimant") for CL 07-74. In lieu of compensation, the County waives CCZO Sections 506.1 to the extent necessary to allow the Claimant to subdivide the property into 5 acre minimum lot size parcels.
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, Berkley Tack, 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 Hanson
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 6, 2007

FILE NUMBER(s): CL 07-74 & 07-75

CLAIMANT: Berkley & Diane Tack; 71991 Lentz Road; Rainier, OR 97048

PROPERTY LOCATIONS: CL 07-74: 71991 Lentz Road; Rainier, OR 97048
 CL 07-75: 71995 Lentz Road; Rainier, OR 97048

TAX ACCOUNT NUMBERS: CL 07-74: 6206-000-00500
 CL 07-75: 6301-000-00301

ZONING: Primary Forest - 76 (PF-76)

SIZE: CL 07-74: Approximately 26 acres
 CL 07-75: Approximately 66.3 acres

REQUEST: CL 07-74: To divide property into four 5-acre residential forested lots for development and maintain 6-acre forested lot with Claimants' home.
 CL 07-75: To divide property into twelve 5-acre forested lots and one 6.3 acre forested lot for residential development.

CLAIM RECEIVED: November 30, 2006

REVISED 180 DAY DEADLINE: May 29, 2007

RECEIPT OF CLAIM NOTICE: Claim notices were mailed on March 22, 2007. The comment period ended on April 5, 2007.

A written comment was received from Robert Unger, a neighboring property owner. Mr. Unger stated that dividing the property as proposed is a "bad idea" because of the poor condition of Lentz Road.

As of the date of this Staff Report, no request for hearing has been received.

I. BACKGROUND:

The Claimants claim that they own two contiguous parcels: Tax Lot 500 (CL 07-74) and Tax Lot 301 (CL 07-75). Lot 500, which is owned by both Claimants jointly, is developed with a single-family home and accessory buildings. Lot 301, which is owned by Berkley Tack, is undeveloped timber land. Access is provided by Lentz Road. Berkley Tack appears to have acquired Lot 500 in February of 1979. Diane Tack acquired an interest in the property from Berkley Tack on December 27, 1990. Berkley Tack acquired an interest in Lot 301 from his mother in March of 1998 and acquired sole ownership in February 2000. There is no record that Diane Tack has or ever has had an interest in Lot 301.

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, it appears that Lot 500 is owned by the Claimants, Berkley and Diane Tack, and Lot 301 is owned by Berkley Tack.
2. **Date of Acquisition:** Lot 500 was acquired by Berkley Tack in February of 1979. Berkley Tack purchased the property from his mother, Margaret Tack, as shown in the land sale contract executed on February 8, 1979 and recorded in Book 222, Page 250 of the Columbia County deed records. The deed was executed on March 8, 1982, and recorded in Book 242, Page 175 of the Columbia County deed records. Diane Tack acquired an ownership interest in the property by means of a vesting deed creating a tenancy by the entirety, which was executed on December 27, 1990.

Lot 301 was acquired by Berkley Tack on March 20, 1998 by a quitclaim deed releasing the property, which had been held in trust, to Berkley and Tamsel Tack. On February 7, 2000, a quitclaim deed was executed releasing Tamsel Tack's interest in the property and leaving Berkley Tack with sole ownership. Therefore, Berkley Tack's date of acquisition is March 20, 1998. Diane Tack has never acquired an interest in the property for purposes of Measure 37.

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

Lot 500 was not subject to County zoning regulations when it was acquired by Claimant Berkley Tack in 1979. However, when Claimant Diane Tack acquired an interest in the property it was subject to the current Primary Forest(PF-76) zoning regulations adopted in August 1984. Lot 301 was subject to Primary Forest(PF-76) zoning regulations when it was acquired by Berkley Tack in 1998.

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

The Claimants cite Section 506.1 of the Current Columbia County Zoning Ordinance, which became effective on August 1, 1984, as reducing the fair market value of the properties. 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.

Based on the Claim, it appears that the County regulation that clearly prevents the Claimants from developing the properties as desired is:

D. CLAIMANT'S ELIGIBILITY FOR FURTHER REVIEW

CL 07-74: Claimant, Berkley Tack, acquired an interest in Lot 500 before the minimum lot/parcel size standards of the PF-76 zone became effective. Therefore, the Mr. Tack may be eligible for compensation and/or waiver of CCZO 506.1 under Measure 37. Mrs. Tack is not eligible because she acquired an interest in the property in 1990, after the applicable zoning standards were in place.

CL 07-75: Claimant, Berkley Tack, is ineligible for waiver of CCZO 506.1 under Measure 37 because he acquired Lot 301 after the minimum lot/parcel size standards of the PF-76 zone became effective.

E. STATEMENT AS TO HOW THE REGULATIONS RESTRICT USE

The Claimants state 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.

F. EVIDENCE OF REDUCED FAIR MARKET VALUE

1. **Value of property as regulated:** Based on County Assessor data the land's real market value is \$103,800 for Lot 500 and \$226,300 for Lot 301.
2. **Value of property not subject to cited regulations:** Claimants submitted two Comparative Market Analyses for the subject properties. The reports suggest an asking price of \$575,000 for the Claimants' home with its *existing* acreage, and an asking price of \$100,000 for each of the four 5-acre lots. The report does not include comparables for a home on a 6-acre lot, but Staff assumes the value would be considerably lower than \$575,000
3. **Loss of value as indicated in the submitted documents:** Claim 07-74 alleges a total reduction in value of \$316,960. Claim 07-75 alleges a total reduction in value of \$1,073,700.

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 Forms \$316,900 for CL 07-74 and \$1,073,700 for CL 07-75.

(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.

Staff notes that other standards including but not limited to fire suppression/protection, access, adequacy of domestic water, subsurface sewage, erosion control and stormwater requirements 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(s) or in lieu of compensation, modify, remove, or not apply CCZO Section(s) 506.1.

(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 claims arise from the minimum lot/parcel size of the PF-76 zone which was enacted prior to the effective date of Measure 37 on December 2, 2004. The subject claims were filed on November 30, 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 regulation(s), the Board may pay compensation in the amount of the reduction in fair market value caused by said regulation(s) or in lieu of compensation, modify, remove, or not apply said regulations.

III. STAFF RECOMMENDATION:

The following table summarizes Staff findings concerning the land use regulation(s) cited by the Claimants as a basis for the claims. 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 regulations identified in this table have been found to apply to these Measure 37 claims.

LAND USE CRITERION	DESCRIPTION	RESTRICTS USE?	REDUCES VALUE?	EXEMPT?
CCZO 506.1	minimum 76 acre lot/parcel size	Yes	Yes	No

CL 07-74: 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 Berkley Tack's property (Lot 500), and act accordingly to pay just compensation in that amount, or, in the alternative, to not apply CCZO Section(s) 506.1. Staff recommends the Board deny the claim pertaining to Lot 500 as to Diane Tack.

CL 07-75: Staff recommends the Board of County Commissioners deny this claim pertaining to Lot 301.

ATTACHMENT 2

EXHIBIT A

LEGAL DESCRIPTION

A tract of land situate in the Northeast quarter of Section 1, Township 6 North, Range 3 West, Willamette Meridian, Columbia County, Oregon, more particularly described as follows:

BEGINNING at the Northeast corner of said Section 1;
Thence South $1^{\circ}25'58''$ East, along the East line of said Section 1, a distance of 1194.0 feet to a point,
Thence leaving said East line, South $23^{\circ}18'43''$ West, a distance of 37.30 feet;
Thence South $39^{\circ}14'32''$ West, a distance of 453.60 feet;
Thence South $23^{\circ}59'32''$ West, a distance of 247.10 feet;
Thence South $12^{\circ}21'32''$ West, a distance of 116.20 feet;
Thence South $14^{\circ}21'32''$ West, a distance of 192.50 feet;
Thence South $17^{\circ}36'32''$ West, a distance of 226.70 feet;
Thence South $21^{\circ}23'32''$ West, a distance of 77.80 feet;
Thence South $25^{\circ}17'28''$ East, a distance of 17.78 feet to the South line of said Northeast quarter;
Thence South $88^{\circ}38'51''$ West, a distance of 649.86 feet along the South line of said Northeast quarter to the Southwest corner of the Southeast quarter of said Northeast quarter;
Thence North $01^{\circ}36'40''$ West, along the West line of the East half of said Northeast quarter, a distance of 2641.22 feet to the North line of said Section 1;
Thence North $88^{\circ}25'15''$ East, along said North line 1322.66 feet to the POINT OF BEGINNING.