

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

In the Matter of Claim Numbers CL 07-49 and CL 07-50)
for Compensation Under Measure 37 Submitted by Bonnie) Order No. 95-2007
Kay Parke, as Trustee of the Fred & Gladys Parke Living Trust)

WHEREAS, on November 28, 2006, Columbia County received two claims under Measure 37 from Bonnie Kay Parke, as trustee of the Fred and Gladys Parke Living Trust, (the "Claimant") related to two parcels of property on Alston Mayger Road in Clatskanie, Oregon, having Tax Account Numbers 8328-000-00100 and 8329-010-00600; and

WHEREAS, according to the information presented with the claim, the Trust is the current owner of the parcels; and

WHEREAS, the Trust most recently acquired an interest in the property on May 4, 1988; and

WHEREAS, the Claimant states that Columbia County Zoning Ordinance Section 506.1, restricts the use of the property and reduces its value; and

WHEREAS, the cited regulation was enacted prior to the 1988 acquisition date for the Trust;

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 07-49 and CL 07-50, dated April 19, 2007, which is attached hereto as Attachment 1 and is incorporated herein by this reference.
2. The Board of County Commissioners finds that the Claimant is neither entitled to compensation under Measure 37, nor waiver of County regulations in lieu thereof.
3. The Board of County Commissioners denies Claim Numbers CL 07-49 and CL 07-50.

Dated this 2nd day of May, 2007.

Approved as to form

By: Sarah Henson
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. 95-2007

COLUMBIA COUNTY LAND DEVELOPMENT SERVICES

Measure 37 Claim

Staff Report

DATE: April 19, 2007

FILE NUMBERS: CL 07-49, 07-50

CLAIMANTS/OWNERS: Bonnie Kay Parke, as trustee of the Fred & Gladys Parke Living Trust
3292 South Court
Palo Alto, CA 94306

SUBJECT PROPERTY

PROPERTY LOCATION: 79502 Alston-Mayger Road, Clatskanie, Oregon

TAX ACCOUNT NUMBERS: 8328-000-00100 and 8329-010-00600

ZONING: Primary Forest-76 (PF-76)

SIZE: 76.35 acres

REQUEST: To divide the 64.35 acre parcel into parcels of approximately 5-acres, and to divide the 12 acre parcel into two 6 acre parcels.

CLAIM RECEIVED: November 28, 2006

180 DAY DEADLINE: May 27, 2007

NOTICE: Mailed February 27, 2007. No request for hearing or neighbor's comments were received.

I. BACKGROUND:

The subject property includes two adjoining parcels along the Columbia River. The property is owned by a trust created by the trustee's parents who are now deceased. Ownership is claimed as of January 19, 1983.

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:** According to a Measure 37 Application Report prepared by Columbia County Title & Escrow Services, Inc., the property is titled in the name of Fred T. Parke and Gladys H. Parke, Trustees of the Fred and Gladys Parke Living Trust dated September 8, 1987 (the "Trust"). However, Fred and Gladys Parke are deceased and Bonny Kay Parke is the alternate trustee of the Trust. There is no evidence submitted with the Claim that the property was ever deeded to Bonny Kay Parke, as trustee.

2. **Date of Acquisition:** On April 3, 1969, Fred F. Parke and Gladys H. Parke became the assignee of a land sale contract between Richard Washburn, Seller, and Ernest and Violet Nikkila, Buyers, to purchase the subject property. (Assignment recorded at Book 172, page 866). Fred Parke received a fulfillment deed from Richard Washburn on January 19, 1983. (Deed recorded at Book 256, page 825). Gladys Parke was not named as a grantee under the fulfillment deed. On May 4, 1988, Fred F. Parke and Gladys H. Parke conveyed the property to themselves as Trustees of the Fred and Gladys Parke Living Trust dated September 8, 1987. (Deed recorded as document no. 88-2274). Fred Parke died in 1995. Gladys Parke died on January 7, 2004. Bonny Kay Parke is the current trustee; the beneficiaries are the children of Fred and Gladys Parke. The trust became irrevocable upon the death of the second Trustor, Gladys Parke. The trust acquired an interest in the property on May 4, 1988. Gladys Parke was the trustee until her death on January 7, 1994. Upon her death, the trust assets were to be divided into shares for each of the beneficiaries and held in separate trusts for each of the beneficiaries. There is no evidence in the record that the alternate trustee, Bonnie Kay Parke, was ever deeded the property. If the property was transferred to Bonnie Parke as trustee, it would not have been until her mother died in 2004. Because the trust is the current owner of the property, Staff uses the May 4, 1988, date of acquisition for purposes of the Measure 37 Claim.

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

The date of acquisition by the Fred and Gladys Revocable Living Trust for waiver purposes is May 4, 1988. The subject property was zoned PF-76 at the time of the Trust's acquisition.

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

Claimant alleges that PF-76 zoning regulations, Section 506.1 (minimum lot size of 76 acres in PF 76 zone) have reduced value in the subject properties.

D. CLAIMANT'S ELIGIBILITY FOR FURTHER REVIEW

The Trust acquired an interest in the property after CCZO Section 506.1 became effective and therefore the Trust is not eligible for compensation or waiver of the cited regulation under Measure 37.

E. STATEMENT AS TO HOW THE REGULATIONS RESTRICT USE

Claimant alleges that the subject property's fair market value has been reduced by Primary Forest Sections that restrict minimum parcel size to 76 acres.

F. EVIDENCE OF REDUCED FAIR MARKET VALUE

1. Value of the Property As Regulated.

The real market value of the subject land, according to the county assessor's records, is \$239,300 (\$206,000 for tax lot 100 and \$33,300 for tax lot 500).

2. Value of Property Not Subject To Cited Regulations.

Tax lot 100: Claimant provided comparable properties, some with a river view, valued at \$150,000 each, or \$750,000 for five 5 lots, and 3 to 10 acre lots without a river view with an average sale price of \$65,000, or a value of \$260,000 for four lots without a river view, for a combined value of \$1,010,000.

Tax lot 600: Claimant averaged the sales of all similar lots of between 3 and 10 acres within the year prior to the filing of the Claim and found that they sold for an average of \$65,000. Claimant is, therefore, valuing two 6 acre parcels at a total of \$130,000.

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

According to Claimant's documentation the loss of value due to current zoning and land use restrictions for the parcels is \$929,100 (using last year's assessor's values: \$829,600 for tax lot 100 and \$99,500 for tax lot 600)

G. COMPENSATION DEMANDED

\$929,100, per the sum of the Claims amounts on page 1 of Claimant's Measure 37 Claim forms.

(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 regulation is exempt from compensation under Subsection (3)(E). The Trust is the present Owner of the property. CCZO 506.1 was enacted prior to the 1988 date of acquisition of the Owner. The trust has no "family member" as that term is defined by the Measure.

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 also 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.

No compensation is due the Owner of the property because CCZO 506.1 is exempt under Subsection 3(E), of the Measure.

(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 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 28, 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.

Because the Owner is not entitled to compensation, the Owner is not entitled to waiver of the minimum lot size regulations. Even if the Owner were entitled to compensation, the Owner is not entitled to waiver of CCZO 506.1 because the Owner acquired an interest in the property in 1988, after the enactment date of CCZO 506.1.

III. STAFF RECOMMENDATION:

Based on the above findings, staff concludes that Claimant has not met the threshold requirements for a Measure 37 claim. Staff recommends that the Board of County Commissioners deny the Claims.

ATTACHMENT 2

EXHIBIT A

LEGAL DESCRIPTION

PARCEL 1:

Lot 1, in Section 28, Township 8 North, Range 3 West of the Willamette Meridian, Columbia County, Oregon,

PARCEL 2:

That portion of the of the following described tract lying East of the Mayger-Delena County Road as it existed in 1950;

BEGINNING at the quarter section corner between Sections 28 and 29 of Township 8 North, Range 3 West of the Willamette Meridian, Columbia County, Oregon;

Thence West 2,640 feet;

Thence North 1,817 feet;

Thence East 273.2 feet;

Thence South $36^{\circ} 00'$ East, 112 feet;

Thence South $10^{\circ} 30'$ East, 350 feet;

Thence South $22^{\circ} 30'$ East, 300 feet;

Thence South $34^{\circ} 00'$ East, 998.5 feet;

Thence East 1,501.5 feet;

Thence South 330 feet to the POINT OF BEGINNING.