

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

In the Matter of Claim Numbers CL 06-01, CL 06-02,)
CL 06-03 and CL 06-04 Submitted by Lenske Properties) Order No. 30-2006
LLC for Compensation Under Measure 37)

WHEREAS, on July 26, 2005, Columbia County received a claim under Measure 37 from Lenske Properties, LLC, related to four tax lots located between Rainier and Claskanie, Oregon, having Tax Account Numbers 7304-020-01700 (Tax Lot 1700), 7305-000-00400 (Tax Lot 400), 7303-000-00600, (Tax Lot 600) and 7304-030-02000 (Tax Lot 2000); and

WHEREAS, according to the information presented with the claim, the Lenske Properties LLC is the current owner of the properties named and has continuously owned an interest in the property since March 1, 2001; and

WHEREAS, the Claimant states that CCZO Section 506.1 restricts the use of the properties and reduces their value; and

WHEREAS, CCZO 506.1 was enacted prior to the 2001 acquisition date for Lenske Properties LLC.

NOW, THEREFORE, it is hereby ordered as follows:

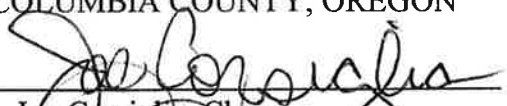
1. The Board of County Commissioners adopts the findings of fact set forth in the Staff Report for Claim Numbers CL 06-01, CL 06-02, CL 06-03 and CL 06-04, dated April 7, 2006, which is attached hereto as Attachment 1, and is incorporated herein by this reference.
2. The Board of County Commissioners 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 06-01, CL 06-02, CL 06-03 and CL 06-04.

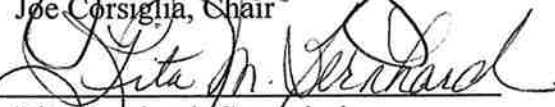
Dated this 12th day of April, 2006.

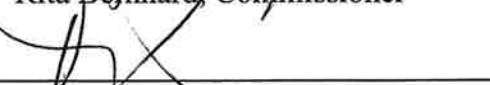
BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

Approved as to form

By: 
County Counsel

By: 
Joe Corsiglia, Chair

By: 
Rita Bernhard, Commissioner

By: 
Anthony Hyde, Commissioner

COLUMBIA COUNTY LAND DEVELOPMENT SERVICES

Measure 37 Claim

Staff Report

DATE: April 7, 2006

FILE NUMBERS: CL 06-01, CL 06-02, CL 06-03, CL 06-04

CLAIMANT: Shirley Lenske, President
Lenske Properties, LLC
7475 SE 52nd Avenue
Portland, OR 97205

**CLAIMANTS'
REPRESENTATIVE:** Lance Harris

SUBJECT PROPERTY

PROPERTY LOCATIONS: CL 06-01 8.5 acres on Delena Mayger Road
CL 06-02 78.84 acres NE of Rutter Road
CL 06-03 59.90 acres East of Mayger-Allston Road
CL 06-04 21.46 acres West of the Robert Warren Road/Maygar Delena
Road intersection
The properties included in CL 06-01, 06-02 and 06-04 are contiguous.

TAX ACCOUNT NUMBERS: CL 06-01 7304-020-01700 (Tax Lot 1700)
CL 06-02 7305-000-00400 (Tax Lot 400)
CL 06-03 7303-000-00600 (Tax Lot 600)
CL 06-04 7304-030-02000 (Tax Lot 2000)

ZONING: Primary Forest-76 (PF-76)

SIZE: 8.5 to 78.84 acres, totaling 168.70 acres

REQUEST: To subdivide the property

CLAIM RECEIVED: July 26, 2005 per stay agreement; claim signature date July 12, 2006

REVISED 180 DAY DEADLINE: April 19, 2006 (Based on July 26, 2006 claim date)

NOTICE OF RECEIPT OF CLAIM: Mailed March 10, 2006
As of April 6, 2006, no requests for hearing have been filed.

I. BACKGROUND:

The claim involves four parcels totaling approximately 168.70 acres and zoned Primary Forest-76 (PF-76). None are developed. Tax Lots 1700, 400, and 600 are subject to BPA powerline easements. Claimant is the manager of Lenske Properties, LLC, the titleholder of all of the property.

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 information supplied by the claimant, the property is owned by Lenske Properties, LLC, an active Oregon limited liability corporation.
- 2. Date of Acquisition:** Lenske Properties LLC acquired the property via a bargain and sale deed signed March 1, 2001, and recorded March 26, 2001 in the deed records of the Columbia County Clerk. Shirley Lenske is manager of Lenske Properties LLC.
- 3. Acquisition by Predecessor in Interest:** The grantor to Lenske Properties, LLC was Rueben Lenske, President, Manifold Business and Investment, Inc. According to deed records supplied by the claimant, Manifold Business and Investment, Inc. acquired the subject properties via a Bargain and Sale deed signed on March 11, 1968 and recorded March 20, 1968 in the deed records of the Columbia County Clerk. Claimant asserts that the "date of acquisition" for the purposes of establishing a Measure 37 claim is March 11, 1968, the date Manifold Business and Investment Inc. acquired the property.

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

The property was unzoned in 1968. All of the parcels subject to the claims were zoned PF-76 in August 1984, and that zoning has remained on the property to date.

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

The claimant alleges that the PF-76 zoning prevents the claimant from subdividing its property. The PF-76 zoning designation was applied to the subject property in 1984, after Manifold Business and Investment, Inc. acquired the parcels but prior to their acquisition by Lenske Properties LLC in 2001.

To the extent claimant alleges a valid claim, it appears that the county standard that clearly prevents the claimants from developing their property as desired is:

CCZO 506.1 limiting substandard parcel divisions to uses that do not include non-forest dwellings.

D. CLAIMANT'S ELIGIBILITY FOR FURTHER REVIEW

Section 3(E) of Measure 37 provides that there is no entitlement for compensation for claims based on land use regulations that were applied or adopted "prior to the date of acquisition of the property by the owner or family member of the owner." In relevant part, section 11(E) of Measure 37 defines "family member," as including "wife, husband, son, daughter, mother, father, brother, * * * an estate of any of the foregoing family members or a legal entity owned by any one or combination of these family members or the owner of the property."

As noted above, claimant appears to assert a claim based on a familial relationship between the officers of Manifold Business and Investments Inc. and Lenske Properties LLC.

Staff disagrees with the assertion that Lenske Properties, LLC, a limited liability corporate owner acquiring property from another corporate owner, can benefit from the provisions of Measure 37 that allow an owner to file a claim based on title being held by a family member or "legal entity owned by * * * a family member." First, claimant has not established the familial relationship between the entities sufficiently to evaluate their claim. Staff assumes, based on the information provided, that Rueben Lenske, President of Manifold Business and Investments Inc, is related to Shirley Lenske, Manger of Lenske Properties, LLC. However, there is no other information available to explain the relationship between the corporate entities, if any, and why claimant believe that the relationship entitles it to compensation or waiver under Measure 37.

Second, one of the principal purposes of an LLC is to shield the individual owners from liability arising from the ownership of the property. ORS 63.239 provides: "A membership interest [in an LLC] is personal property. A member is not a co-owner of and has no interest in specific limited liability company property." It does not make sense for a member of one LLC to be able to take advantage of a blood or marital relationship with another member of a corporate entity in order to obtain development rights for the LLC-owned property.

Finally, if the Board of County Commissioners does conclude that claimant may use the relationship between the principals of two corporate entities to establish eligibility for a Measure 37 claim, then staff asserts that the "date of acquisition" for the purposes of Measure 37 should relate back to the date the family member became associated with the corporate owner, and not the date that the corporation acquired the property. In this case, appears that Rueben Lenske was named agent and president of Manifold Business and Investments, Inc. in 1986, two years after the imposition of the PF-76 zoning on the subject properties. See Copy of Secretary of State Corporation Division webpage, Business Entry Data, showing that Reuben Lenske started as a registered agent of Manifold Business and Investment Inc. on January 14, 1986. There is no evidence to show that Mr. Lenske had the authority to acquire or sell property on behalf of Manifold Business and Investments Inc. before that date.

E. STATEMENT AS TO HOW THE REGULATIONS RESTRICT USE

The Claimant states that it cannot subdivide its property as proposed due to the county's 76-acre minimum parcel size standard. 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 the Property As Regulated.

The claimant submitted a property appraisal dated June 22, 2005 that estimates the value of the property in its current condition and as developed with septic systems and domestic wells for dwellings. The estimated current value of the property does not include timber standing on each parcel. According to the appraisal, the parcels have an aggregate fee simple value of \$170,000. According to assessor records included in each claim, CL 06-01 (Tax Lot 1700) has a current value of \$33,760; CL 06-02 (Tax Lot 400) has a current value of \$147,910; CL 06-03 (Tax Lot 600) has a current value of \$112,330 and CL 06-04 (Tax Lot 2000) has a current value of \$55,840, totaling \$299,840.

2. Value of Property Not Subject To Cited Regulations.

Claimant alleges that if its property is subdivided, the developed property would be worth more. Specifically, claimant alleges that the value of Tax Lot 600 if it is subdivided into five lots and improved with infrastructure to support a dwelling on each lot, the property is worth \$130,000. If Tax Lots 1700, 400 and 2000 are subdivided into an aggregate 18 lots, again with supporting infrastructure, the aggregate value of that property is \$340,000.

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

According to the appraisal report, the difference in value between the value of the property with the PF-76 zoning, and the value as developed subdivision lots is \$300,000.

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 the cited regulation, staff concedes that it is more likely than not that the property would have a higher value if subdivided for residential development.

G. COMPENSATION DEMANDED

Claimant claims the following compensation, per page 1 of the Measure 37 claim form:

CL 06-01	\$ 18,062
CL 06-02	\$167,535
CL 06-03	\$ 70,100
CL 06-04	\$ 45,603
Totaling:	\$301,300

(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.**

For the reasons set forth above, staff asserts that the PF-76 zoning was applied to the subject properties prior to the date of acquisition by the property owner. Therefore, staff contends that claimant is not entitled to compensation or to a waiver of the offending regulation.

(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 that the Claimant has demonstrated that it is entitled to use the date of acquisition by Manifold Business and Investments Inc. as the date of acquisition for establishing a Measure 37 claim, and if the Board concludes that claimant has established 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.

(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 July 26, 2005, 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 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.

III. STAFF RECOMMENDATION:

Based on the evidence and conclusions of law set forth above, staff recommends that the Board of County Commissioners DENY CL 06-01, CL 06-02, CL 06-03 and CL 06-04.