

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

In the Matter of Claim No. CL 07-06)
for Compensation under Measure 37 submitted)
by George and Emilie Skach, Trustees of the)
Trust Agreement dated June 16, 1978) Order No. 24-2007

WHEREAS, on August 24, 2006, Columbia County received a claim under Measure 37 (codified at ORS 197.352) and Order No. 84-2004 from George and Emilie Skach, Trustees of the Trust Agreement dated June 16, 1978, c/o Judy Gregg, Successor Trustee, to divide approximately 78.95 acres located west of Wonderly Road, Rainier, Oregon; and

WHEREAS, according to the information presented with the Claim, the trust acquired the property in 1978 and has continuously owned an interest in the property until 1998; and

WHEREAS, upon the death of Claimants, the Claimants no longer have an interest in the property; and

WHEREAS, the beneficiaries of the trust acquired a vested interest in the property in 1998; and

WHEREAS, Claimants allege that the 38 acre minimum lot size regulation restricts the use of the property and reduces its value; and

WHEREAS, CCZO Section 304.1, the 38 acre minimum lot size in the PA-38 zone, was enacted prior to the trust beneficiaries' acquisition date;

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 07-06, dated February 16, 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 finds that the trust beneficiaries are neither entitled to compensation under Measure 37, nor waiver of County regulations in lieu thereof.
4. The Board of County Commissioners denies Claim No. CL 07-06.

5. The Board of County Commissioners issues this order based on the information provided with the Claim. If the Claimants, through their representatives, desire to submit supplemental information related to the claim, or to request a hearing, the Board will reconsider this denial.

Dated this 21st day of February, 2007.

BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

Approved as to form
By: Sarah Hanson
County Counsel

By: Rita Bernhard
Rita Bernhard, Chair

By: Anthony Hyde
Anthony Hyde, Commissioner

By: Joe Corsiglia
Joe Corsiglia, Commissioner

COLUMBIA COUNTY LAND DEVELOPMENT SERVICES

Measure 37 Claim

Staff Report

DATE: February 16, 2007

FILE NUMBER: CL 07-06

CLAIMANTS/OWNERS: George Skach and Emilie Skach, Trustees of the Trust Agreement dated June 16, 1978
c/o Judy Gregg, Successor Trustee
12347 West Maya Way
Peoria, AZ 85383

SUBJECT PROPERTY

PROPERTY LOCATION: 78.95 acres west of Wonderly Road
Rainier, Oregon

**TAX ACCOUNT NUMBER
AND PARCEL SIZE:** 7311-040-00100 78.95 acres

ZONING: Primary Agriculture (PA-38)

REQUEST: To subdivide the property into five to eight acre lots

CLAIM RECEIVED: August 24, 2006

180 DAY DEADLINE: February 21, 2007

NOTICE OF RECEIPT OF CLAIM: December 14, 2006. As of the date of this staff report, no person has requested a hearing on the claim.

BOC REVIEW DATE: February 21, 2007

I. BACKGROUND:

The subject property includes approximately 79 acres located west of Wonderly Road, Rainier. The property is undeveloped and has been logged recently. The property was acquired by George and Emilie Skach via warranty deed filed in the Columbia County deed records at Book 155, Page 1 on May 6, 1964. Mr. and Mrs. Skach transferred the property to a revocable trust on June 12, 1979. That conveyance was recorded in Columbia County deed records at Book 224, page 523. Mr. Skach died July 25, 1979, and Mrs. Skach died October 14, 1998. After Mrs. Skach's death, the trust became irrevocable. Per the terms of the trust, Douglas R. Korten, Judy Gregg, and Anita Tianhaara, were named successor trustees upon the death of Mr. and Mrs. Skach.

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 Title report provided by the claimant, as of June 29, 2006, the property was vested in the George and Emily Skach, Trustee(s) of the Trust Agreement dated June 16, 1978. However, both Mr. and Mrs. Skach are deceased, and cannot own property either as trustees or individually. The trust names Douglas R. Korten, Judy Gregg, and Anita Tianhaara as successor trustees. But, there is no evidence in the record showing that the property was ever deeded to such successor trustees. Nevertheless, according to the terms of the trust, the trust assets were to be distributed to the trust beneficiaries upon the death of Mrs. Skach, the surviving spouse. The property therefore vested in the beneficiaries in 1998 upon the death of Mrs. Skach. The named beneficiaries of the trust are Judith Ianthe Gregg, Anita Jessica Tienharra, Irene Theresa Skach Rodman, and Renee Elizabeth Rodman.

2. **Date of Acquisition:** The trust acquired the property on June 12, 1979. The trust beneficiaries acquired a vested interest in the trust property in 1998.

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

The property was not zoned when the trust acquired the parcels and was therefore not subject to any minimum parcel size requirements or dwelling siting standards set out in the county zoning ordinance. The property was zoned PA-38 in 1998 when the current owners, the beneficiaries, acquired an interest in the property.

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

The property was unzoned when acquired by the Trust in 1979.

The PA-38 zoning designation was applied to the subject property in 1984 and was in effect when the beneficiaries acquired an interest in the property. The claimants allege that the PA-38 zoning designation prevents the claimants from dividing the property into 5 to 8 acre lots. Accordingly, based on the claim, it appears that the county standard that clearly prevents the Claimants from developing the property as desired are:

CCZO 304.1 Minimum parcel sizes

Staff notes that Claimants do *not* allege that the portions of the properties that may be subject to a Wildlife protection overlay have development restrictions as a result of that overlay.

D. CLAIMANT'S ELIGIBILITY FOR FURTHER REVIEW

According to the information that the County has the trust was terminated and the Claimants are deceased. Therefore, the Claimants have not continuously held an interest in the property since 1979. The beneficiaries of the trust acquired their interest in the property in 1998, after the adoption date of CCZO Section 304.1 and therefore the beneficiaries are not eligible for waiver of CCZO Section 304.1.

E. STATEMENT AS TO HOW THE REGULATIONS RESTRICT USE

Claimant states that the property cannot be divided as proposed due to the county's PA-38 zoning regulations. Staff finds that the conditional use permit process requirements and standards contained in CCZO 303 do not restrict use nor reduce value until or unless a conditional use process results in denial of the use or the imposition of a conditions which restricts use and reduces value. The property consists of all Class VI soils so criteria in CCZO Section 303.13(D) requiring that dwellings be limited to soils not suitable for agriculture(Class I thru IV soils) can be met. CCZO, 304.1 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

The claimant submitted property appraisals by PGP Valuation Inc. The appraisals include a current market value, and estimate the market value of the property if developed by the claimant into 14 residential lots.

1. Value of the Property As Regulated. PGP Valuation Inc. estimated that the property had a regulated value of \$80,000 as of September 12, 2005.

2. Value of Property Not Subject To Cited Regulations. PGP Valuation Inc. estimated that if developed as proposed, the property would have a value of \$300,000.

3. Loss of value indicated in the submitted documents is:
PGP Valuation Inc. estimated that the loss in value was \$220,000. However, page 1 of the claim asserts a loss in value of between \$300,000 and \$1,500,000.

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 regulations, staff concedes that it is more likely than not that the property would have a higher value if subdivided into five to eight-acre lots developed with single family dwellings than a single, undeveloped, logged resource parcel.

Staff notes that this value assumes that the resulting lots will be developed with dwellings prior to sale to third parties. If the subject property is merely subdivided and then sold as undeveloped lots, there is a significantly lower value, as the attorney general opinion concludes that while claimants themselves may avail themselves of the benefits of Measure 37 and develop the property according to the regulations in place at the time of acquisition, that benefit is not transferable.

G. COMPENSATION DEMANDED

Between \$300,000 and \$1,500,000. per page 1 of claimant's Measure 37 Claim.

(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 Section 304.1 does not qualify for any of the exclusions listed.

Staff notes that other siting standards, including 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 that the Claimant has 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 304.1.

(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 claim arises from the minimum lot size provisions of the PA-38 zoning regulations which were enacted prior to the effective date of Measure 37 on December 2, 2004. The subject claims were filed on August 24, 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 that the Claimant has 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 304.1.

III. STAFF RECOMMENDATION:

Based on the above findings, staff concludes that the Claimants have not met the threshold requirements for proving a Measure 37 claim. Staff further concludes that the trust beneficiaries have not met the threshold requirements for proving a Measure 37 claim.

The following table summarizes staff findings concerning the land use regulations cited by the Claimant as a basis for the 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 not to meet the requirements of a valid Measure 37 claim:

LAND USE CRITERION	DESCRIPTION	RESTRICTS USE?	REDUCES VALUE?	EXEMPT?
CCZO 304.1	Minimum parcel sizes and setback standards	No	No	No

Staff recommends the Board of County Commissioners take action to deny CL 07-06.