

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

In the Matter of Claim No. CL 07-10)
for Compensation under Measure 37) Order No. 37-2007
submitted by Erickson Enterprises Inc.)

WHEREAS, on October 25, 2006, Columbia County received a claim under Measure 37 and Order No. 84-2004 from Erickson Enterprises Inc., Scappoose, Oregon, for property having Tax Account Numbers: 6333-000-00100, 6333-000-00200, 6328-000-00300, and 6333-000-00300; and

WHEREAS, according to the information presented with the Claim, Erickson Enterprises Inc. has continuously owned an interest in the property since June 26, 1961, and is currently the sole fee owner of the property; and

- WHEREAS, in 1961 Columbia County had not yet zoned the subject property; and

WHEREAS, the subject parcels, comprised of 926.50 acres, are currently zoned Primary Forest (PF-76) pursuant to the Columbia County Comprehensive Plan; and

WHEREAS, pursuant to Columbia County Zoning Ordinance (CCZO), Section 506.1, the minimum size for new parcels is 76 acres; and

WHEREAS, Erickson Enterprises Inc. claims that the county's PF-76 zoning requirements for new land divisions has restricted the use of the property and has reduced the value of the property by \$5,294,500.00; and

WHEREAS, Erickson Enterprises Inc. desires to subdivide 926.50 acre property into approximately 2 acre residential lots or otherwise develop it for non-forest uses; 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 Claimant's property and reduces the fair market value of the property to allow a use which was allowed at the time the Claimant acquired the property;

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 07-10, dated March 13, 2007, which is attached hereto as Attachment 1, and is incorporated herein by this reference.

Order No. 37-2007

2. In lieu of compensation, the County waives CCZO 506.1 to the extent necessary to allow the Claimant to subdivide 926.50 acre property into 2 acre minimum lot size parcels.
3. This waiver is subject to the following limitations:
 - A. This waiver does not affect any land use regulations promulgated by 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 are 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 are 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, 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 its 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.

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4. 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 28th day of March, 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

After recording please return to:
Board of County Commissioners
230 Strand, Room 331
St. Helens, Oregon 97051

COLUMBIA COUNTY LAND DEVELOPMENT SERVICES

Measure 37 Claim

Staff Report

DATE: March 13, 2007
FILE NUMBER: CL 07-10
CLAIMANT/OWNER: Erickson Enterprises Inc.
55349 Columbia River Hwy
Scappoose, OR 97056

SUBJECT PROPERTY

PROPERTY LOCATION: Apiary Rd.
TAX ACCOUNT NUMBER: 6333-000-00100 (Tax lot 100)
6333-000-00200 (Tax lot 200)
6328-000-00300 (Tax lot 300)
6333-000-00300 (Tax lot 6333-000-00300)
ZONING: Primary Forest-76 (PF-76)
SIZE: 6333-000-00100 477.50 acres
6333-000-00200 152.50 acres
6333-000-00300 10.00 acres
6328-000-00300 286.00 acres
REQUEST: To subdivide and develop the 926-acre Primary Forest (PF-76) zoned parcels into 2 acre residential lots or develop the property of non-forest uses.¹
CLAIM RECEIVED: October 25, 2006
180 DAY DEADLINE: April 25, 2007
NOTICE OF RECEIPT OF CLAIM: December 14, 2006
As of the date of this staff report, no request for hearing had been filed.

I. BACKGROUND:

The subject property has been owned by Erickson Enterprises Inc. since 1961. The property is subject to a reservation of mineral rights by Columbia County, and access easements of record. Only tax lot 200 is developed with a structure; the remaining tax lots have been managed for timber production.

¹Because the claimant has not specified the non-forest uses it wishes to develop, staff has evaluated the claim based on claimant's default request to develop the property for residential uses on two-acre lots.

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's president, Robert K. Erickson, the property is owned by Erickson Enterprises Inc.

2. **Date of Acquisition:** Claimant acquired the subject property by Warranty Deed on June 26, 1961 from Walter S. Erickson and Z. Marjorie Erickson, Husband and wife, parents of Robert K. Erickson. According to Robert Erickson, his father and mother acquired the subject property in 1940.

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

The property was unzoned in 1961. The property was 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 general zoning provisions that prevent uses of land not permitted by the zoning ordinance and the PF-76 zoning prevents the claimant from subdividing the property or otherwise developing the property for non-forest uses. The PF-76 zoning designation was applied to the subject property in 1984.

The claimant alleges that the county zoning ordinance, in particular, CCZO 500-510 restrict the use of the property within the meaning of Measure 37. To the extent claimant alleges a valid claim, it appears that the county standard that clearly prevents the claimant from developing its 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

Claimant acquired an interest in the property before CCZO Section 500 et. seq., (PF-76 zoning provisions) became effective and therefore the Claimant may be eligible for compensation and/or waiver of the cited regulations under Measure 37.

E. STATEMENT AS TO HOW THE REGULATIONS RESTRICT USE

The Claimant states that the property cannot be subdivided or otherwise developed for non-forest use 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 copies of assessor's tax records dated June 2006 showing that tax lot 100 has an estimated fair market value of \$144,700; tax lot 200 has an estimated fair market value of \$67,880 for the land and \$3,700 for the structure; tax lot 6333-000-00300 has an estimated fair market value of \$3,160; and tax lot 300 has an estimated fair market value of \$99,680. The total estimated value of the property as regulated is \$315,420.

2. Value of Property Not Subject To Cited Regulations.

Claimant alleges that if the property is subdivided or otherwise developed for non-forest uses, the property would be worth \$6,000 per acre, or \$5,556,000 (\$6,000 x 926.)

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

The claimant asserts the difference in the value between the property with the PF-76 zoning and the value as subdivision lots is \$5,294,500.00. According to staff's calculations, the difference between the estimated market value as regulated (\$319,120) subtracted from the estimated value if not subject to regulations (\$5,556,000) is \$5,236,880.

Staff notes that these values assume 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 the claimant may avail itself 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.

Staff also notes that all but one of the parcels are dividable into 76 acre parcels which has not been reflected in the current value of the property submitted by the Claimants.

While staff does not agree that the information provided by the claimant 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 demands the following compensation, per page 1 of the Measure 37 claim form: \$5,294,500.00.

(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 of the exclusions listed. CCZO 505, 506 (not including 506.1), and 510 are exempt from Measure 37 per Section 3(B), above. Other CCZO provisions cited by claimant, including CCZO 500, 502, 503, 504, 507, 508 and 509 either do not "restrict" the use of land within the meaning of Measure 37, or apply to the property.

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 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 do not apply CCZO Section 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 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 claim was filed on October 25, 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 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.

III. STAFF RECOMMENDATION:

Based on the above findings, staff concludes that the claimant has 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 regulations below have been found to meet these requirements of a valid Measure 37 claim:

LAND USE CRITERION	DESCRIPTION	RESTRICTS USE?	REDUCES VALUE?	EXEMPT?
CCZO 501	Purpose of the PF-76 zone	No	No	No
CCZO 502	Permitted Uses in the PF-76 zone	No	No	No
CCZO 503	Conditional Uses in the PF-76 zone	No	No	No
CCZO 504	Conditional Use Process	No	No	No
CCZO 505	Development Restrictions for Structures	No	No	Yes
CCZO 506	Parcel Dimensional and Setback Standards	No	No	Yes
CCZO 506.1	Land division requirements for non-forest parcels	Yes	Yes	No
CCZO 507	Homestead lot provisions	No	No	No
CCZO 508	Re-establishment of non-forest uses	No	No	No
CCZO 509	Notification	No	No	No
CCZO 510	Fire siting standards	No	No	Yes

Staff recommends the Board of County Commissioners take action to determine the amount, if any, by which the cited regulations reduced the value of the Claimant's property, and act accordingly to pay just compensation in that amount, or, in the alternative, to not apply CCZO Section 506.1.

T6N R3W WM

Sec 33 NW 1/4 & W 1/2 NW 1/4 SW 1/4

WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS that we, Walter S. Erickson and Z. Marjorie Erickson, husband and wife, in consideration of Ten Dollars and other valuable consideration to us paid by Erickson Enterprises, Inc., a corporation of the State of Oregon, do hereby grant, bargain, sell and convey unto the said Erickson Enterprises, Inc., its successors and assigns, all of the following real property, with the tenements, hereditaments and appurtenances situate in the County of Columbia, State of Oregon, bounded and described as follows, to-wit:

All of Section 33, Township 6 North, Range 3 West, Willamette Meridian;

ALSO the West one-half of the Northwest quarter; the West one-half of the Southwest quarter; the South one-half of the Southeast quarter; the Southeast quarter of the Southwest quarter of Section 28, Township 6 North, Range 3 West, Willamette Meridian;

ALSO the South 66.0 feet of even width of the Northeast quarter of the Southwest quarter and the South 66.0 feet of even width of the North one-half of the Southeast quarter, all in Section 29, Township 6 North, Range 3 West, Willamette Meridian.

SUBJECT to Don Nys' right to go upon the within described property and remove his mill within four years from date of December 31, 1960.

TO HAVE AND TO HOLD the above described and granted premises unto the said Erickson Enterprises, Inc., a corporation of the State of Oregon, its successors and assigns forever. We, the grantors above named, do covenant to and with the above named grantee, its successors and assigns, that we are lawfully seized in fee simple of the above granted premises; that the above granted premises are free from all encumbrances, and that we will, and our heirs, executors and administrators shall, warrant and forever defend the above granted premises, and every part and parcel thereof, against the lawful claims

T6N R3W WM

All of Sec 33

Except the following:

$SW\frac{1}{4}NE\frac{1}{4}$;

$NW\frac{1}{4}SE\frac{1}{4}$;

$SE\frac{1}{4}SE\frac{1}{4}NE\frac{1}{4}NW\frac{1}{4}$;

$S\frac{1}{2}N\frac{1}{2}SW\frac{1}{4}NW\frac{1}{4}$;

$S\frac{1}{2}SW\frac{1}{4}NW\frac{1}{4}$;

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$SE\frac{1}{4}NE\frac{1}{4}NE\frac{1}{4}SW\frac{1}{4}$;

$E\frac{1}{2}SE\frac{1}{4}NE\frac{1}{4}SW\frac{1}{4}$ all ly in sd Sec 33 T6N R3W WM

T6N R3W WM

Sec 33

SW $\frac{1}{4}$ NE $\frac{1}{4}$;

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E $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ all ly in Sec 33 T6N R3W WM