

BEFORE THE BOARD OF COUNTY COMMISSIONERS  
FOR MULTNOMAH COUNTY, OREGON

**ORDER NO. 07-078**

Order Denying Ballot Measure 37 Request of The Raymond Smith, LLC and Lenske Properties, LLC Relating to Seventeen Real Properties Located in East Multnomah County, Oregon

**The Multnomah County Board of Commissioners Finds:**

- a. **Parties:** The Raymond Smith, LLC and Lenske Properties, LLC are the Ballot Measure 37 Claimants who filed a demand for compensation to Multnomah County on November 15, 2006.
- b. **Subject Property:** This claim relates to Seventeen Real Properties Located in East Multnomah County, Oregon, more specifically described as:

PROPERTY #	ACCT NUMBER	DESCRIPTION	SIZE	ZONING
1	R994010190	TAX LOT 100, SECTION 1, T1S, R4E	157.66	CFU-4/SEC-s/HD
2	R995060080	TAX LOT 100, SECTION 6D, T1S, R5E	80.00	CFU-4/SEC-s/HD
3	R995060020	TAX LOT 600, SECTION 6, T1S, R5E	80.00	CFU-4/HD
4	R995060030	TAX LOT 200, SECTION 6, T1S, R5E	37.87	CFU-4/HD
5	R995060040	TAX LOT 500, SECTION 6, T1S, R5E	82.62	CFU-4/SEC-s/HD
6	R995060060	TAX LOT 300, SECTION 6, T1S, R5E	63.05	CFU-4/SEC-s/HD
7	R995060110	TAX LOT 400, SECTION 6, T1S, R5E	20.00	CFU-4/HD
8	R995030030	TAX LOT 1200, SECTION 3, T1S, R5E	8.04	CFU-3
9	R944340030	TAX LOT 300, SECTION 34C, T1S, R4E	0.98	RR
10	R995030160	TAX LOT 1300, SECTION 3, T1S, R5E	9.21	CFU-3
11	R994010050	TAX LOT 800, SECTION 1B, T1S, R4E	7.35	CFU-4/SEC-s/HD
12	R994010370	TAX LOT 1000, SECTION 1C, T1S, R4E	3.62	CFU-4

13	R994010230	TAX LOT 1000, SECTION 1DC, 2.45 T1S, R4E	RR
14	R995060290	TAX LOT 300, SECTION 6, T1S, 19.35 R5E	CFU-4/HD
15	R994010530	TAX LOT 1300, SECTION 1DC, 3.51 T1S, R4E	RR/HD
16	R995030180	TAX LOT 1400, SECTION 3, T1S, 5.61 R5E	CFU-3
17	R944341220	TAX LOT 1800, SECTION 34C, 0.99 T1S, R4E	RR

**c. Relevant Dates of Property Ownership:**

**The Claimants have not established that they obtained an interest in the property prior to the County's adoption of the land use regulations challenged in this claim.**

Ownership of the subject property was transferred to The Raymond Smith, LLC and Lenske Properties, LLC on March 1, 2001. Under Oregon law, a conveyance of property to an LLC constitutes a change in ownership even though prior owners of the property may also be members of the LLC. ORS 63.077 (LLC is an independent legal entity) and ORS 63.239 (members of an LLC have no ownership interest in LLC property). Accordingly, the Claimants acquired an interest in the subject property on March 1, 2001. The County adopted the land use regulations challenged in this claim prior to that date (see section d. below).

The Board finds that the Claimants' acquisition of an interest in the subject property on March 1, 2001, occurred after the County adopted the land use regulations challenged in this claim.

**d. County Codes as a Restriction on Use of the Property:**

**The Claimants have not established that the challenged land use regulations have restricted the proposed use of the property.**

With respect to the Claimants' proposed uses, the applicable zoning regulations in effect on March 1, 2001, continue to apply without alteration today. The applicable zoning codes are listed in the table in section b. above. These minimum lot size regulations within the various zoning codes prohibit the Claimants from creating 1 to 10 acre lots on the subject property.

The County's land use regulations do not restrict the harvesting of timber. The CFU-3, CFU-4, and RR zoning codes expressly state that forest operations, such as timber harvests, are an outright allowed use. E.g., MCC 35.2220. The SEC-s overlay zone, adopted to protect, conserve, enhance, and restore natural features such as stream and riparian areas, similarly exempts timber harvests from County permitting requirements

recognizing that it is an activity regulated by the State Forest Practices Act. MCC 35.4515.

The Board finds that the Claimants have not established that the challenged land use regulations have restricted their use of the subject properties.

e. **County Code Restrictions Reduce Fair Market Value:**

**The Claimants have not established that the challenged land use regulations have reduced the fair market value of the property.**

As established above, regulations in effect when the Claimants acquired the subject property on March 1, 2001, did not allow the creation of 1 to 10 acre lots on that property. Furthermore, County land use regulations do not restrict the Claimants' proposed timber harvest activities. Since the Claimants have not shown that their use of the properties has been restricted, there is no reduction to the fair market value of the properties.

The Board finds that the Claimants have not established that the challenged regulations have reduced the fair market value of the subject property.

f. **Public Notice**

Section 3.50 of the County Charter requires notice to the public of all Board agenda matters. This notice was provided. The Claimant and persons who own land within 750 feet of the subject property received notice by mail.

g. **Validity of Claim for Compensation:** The Board finds that:

(1) The Board finds that the Claimants' acquisition of an interest in the subject property on March 1, 2001, occurred after the County adopted the land use regulations challenged in this claim.

(2) The Board finds that the Claimants have not established that the challenged land use regulations have restricted their use of the subject properties.

(3) The Board finds that the Claimants have not established that the challenged regulations have reduced the fair market value of the subject property.

**The Multnomah County Board of Commissioners Orders:**

**Based on the above findings, the Claimant's request is denied.**

ADOPTED this 26th day of April, 2007.




BOARD OF COUNTY COMMISSIONERS  
FOR MULTNOMAH COUNTY, OREGON

  
Ted Wheeler, Chair

REVIEWED:

AGNES SOWLE, COUNTY ATTORNEY  
FOR MULTNOMAH COUNTY, OREGON

By   
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SUBMITTED BY:

Agnes Sowle, County Attorney