

Memo Date: January 10, 2007
Order Date: January 23, 2007



TO: Board of County Commissioners

DEPARTMENT: Public Works Dept./Land Management Division

PRESENTED BY: BILL VANVACTOR, COUNTY ADMINISTRATOR
KENT HOWE, PLANNING DIRECTOR

AGENDA ITEM TITLE: In the Matter of Considering a Ballot Measure 37 Claim and Deciding Whether to Modify, Remove or Not Apply Restrictive Land Use Regulations in Lieu of Providing Just Compensation (PA06-6316, Garvin)

BACKGROUND

Applicant: Robert, Jr. and Aimie Garvin

Current Owner: Robert, Jr. and Aimie Garvin

Agent: Norm Waterbury

Map and Tax lot: 18-02-31 #301

Acreage: approximately 7 acres.

Current Zoning: E40 (Exclusive Farm Use)

Date Property Acquired: August 13, 1999 (WD 99071389)

Date claim submitted: July 24, 2006.

180-day deadline: January 20, 2007.

Land Use Regulations in Effect at Date of Acquisition: E40 (Exclusive Farm Use) zone

Restrictive County land use regulation: Minimum parcel size of forty acres and limitations on new dwellings in the E40 (Exclusive Farm Use) zone (LC 16.212).

ANALYSIS

To have a valid claim against Lane County under Measure 37 and LC 2.700 through 2.770, the applicant must prove:

1. Lane County has enacted or enforced a restrictive land use regulation since the owner acquired the property, and

The current owners are Robert Jr. Garvin and Aimie Garvin. The grandparents of Aimie Garvin, Ernest and Belva Schrenk, acquired the property in 1948, when it was unzoned (Document #7844). It was transferred among other the Schrenk family members until Robert, Jr. and Aimie Garvin acquired the property on December 23, 1986 (Statutory Warranty Deed #8705550). They conveyed the property to Robert Garvin, Sr. on May 13, 1994 (WD #9438004). Robert Sr. conveyed the property back to Robert Jr and Aimie on August 13, 1999 (WD 99071389). Based on this evidence, the Schrenk family has maintained and ownership interest in the property since 1948 and the current owners, Robert Jr. and Aimie Garvin, have maintained a continuous interest in the property since August 13, 1999. Any waiver of the restrictive regulations will be to August 13, 1999.

2. The restrictive land use regulation has the effect of reducing the fair market value of the property, and

The property was unzoned when it was acquired by the Schrenk family in 1948. It has remained in the family since that date. The minimum lot size and limitations on new dwellings in the E40 (Exclusive Farm Use) zone prevent the current owners from developing the property as could have been allowed when the Schrenk family acquired it in 1948. The applicants have submitted comparable sales as evidence of a reduction in value. It appears there is a reduction in fair market value although a specific monetary reduction has not been provided. Based on this evidence, this appears to be a valid claim. The family has held a continuous interest since 1948 and the current owners have maintained continuous ownership of the property since August 13, 1999. However, the minimum lot size and dwelling restrictions can not be waived because those regulations were applicable in 1999 when the current owners acquired the property. Only restrictive regulations enacted after August 13, 1999 can be waived.

3. The restrictive land use regulation is not an exempt regulation as defined in LC 2.710.

The applicant has not identified any restrictive regulations enacted since August 13, 1999.

CONCLUSION

It appears this is a valid claim because the restrictive regulations of the E40 zone do not allow the current owners to development the property as could have been allowed when the Schrenk family acquired it in 1948.

RECOMMENDATION

If the Board determines this is a valid claim, the County Administrator recommends the Board adopt the attached order to waive the restrictive land use regulations of the E40 (Exclusive Farm Use) zone enacted since August 13, 1999.

**BEFORE THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY,
OREGON**

ORDER No.

) IN THE MATTER OF CONSIDERING A BALLOT
) MEASURE 37 CLAIM AND DECIDING
) WHETHER TO MODIFY, REMOVE OR NOT
) APPLY RESTRICTIVE LAND USE
) REGULATIONS IN LIEU OF PROVIDING JUST
) COMPENSATION (Garvin/PA06-6316)

WHEREAS, the voters of the State of Oregon passed Ballot Measure 37 on November 2, 2004, which added provisions to Oregon Revised Statutes (ORS) Chapter 197 to require, under certain circumstances, payment to landowner if a government land use regulation restricts the use of private real property and has the effect of reducing the property value; and

WHEREAS, the Board of County Commissioners of Lane County enacted Ordinance No. 18-04 on December 1, 2004, to establish a real property compensation claim application process in LC 2.700 through 2.770 for Ballot Measure 37 claims; and

WHEREAS, the County Administrator has reviewed an application for a Measure 37 claim submitted by Robert Jr. Garvin and Aimie Garvin (PA06-6316), the owners of real property described in the records of the Lane County Assessor as map 18-02-31, tax lot 301, consisting of approximately 7 acres in Lane County, Oregon; and

WHEREAS, the County Administrator has determined that the application appears to meet all of the criteria of LC 2.740(1)(a)-(d), appears to be eligible for just compensation and appears to require modification, removal or not applying the restrictive land use regulations in lieu of payment of just compensation and has referred the application to the Board for public hearing and confirmation that the application qualifies for further action under Measure 37 and LC 2.700 through 2.770; and

WHEREAS, the County Administrator has determined under LC 2.740(4) that modification, removal or not applying the restrictive land use regulation is necessary to avoid owner entitlement to just compensation under Ballot Measure 37 and made that recommendation to the Board; and

WHEREAS, the Board has reviewed the evidence and confirmed the application appears to qualify for compensation under Measure 37 but Lane County has not appropriated funds for compensation for Measure 37 claims and has no funds available for this purpose; and

WHEREAS, on January 23, 2007, the Board conducted a public hearing on the Measure 37 claim (PA06-6316) of Robert Jr. Garvin and Aimie Garvin and has now determined that the restrictive E40 (Exclusive Farm Use) zone dwelling and land division requirements of LC 16.212 were enforced and made applicable to prevent Robert Jr. Garvin and Aimie Garvin from developing the property as might have been allowed on March 29, 1948, the date the Schrenk family acquired an interest in the property, and that the public benefit from application of the current E40 restrictions to the applicant's property is outweighed by the public burden of paying just compensation; and

WHEREAS, Robert Jr. Garvin and Aimie Garvin request either monetary compensation for the reduction in value of their property, or waiver of all land use regulations that would prevent the division of the land into lots that contain less than 40 acres and placement of a dwelling on each lot, uses that could have otherwise been allowed at the time the Schrenk family acquired an interest in the property; and

WHEREAS, the Board finds that under LC 2.760(3) the public interest would be better served by modifying, removing or not applying the challenged land use regulations of the E40 zone to the subject property in the manner and for the reasons stated in the report and recommendation of the County Administrator incorporated here by this reference except as explicitly revised here to reflect Board deliberation and action to allow Robert Jr. Garvin and Aimie Garvin to make application for development of the subject property in a manner similar to what they could have been able to do under the regulations in effect when they acquired an interest in the property on August 13, 1999; and

WHEREAS, this matter having been fully considered by the Lane County Board of Commissioners.

NOW, THEREFORE IT IS HEREBY ORDERED that the applicants Robert Jr. Garvin and Aimie Garvin made a valid claim under Ballot Measure 37 by describing the use being sought, identifying the county land use regulations prohibiting that use, submitting evidence that those land use regulations have the effect of reducing the value of the property, showing evidence that the family acquired the property before the restrictive county land use regulations were enacted or enforced and the Board hereby elects not to pay just compensation but in lieu of payment, the request of Robert Jr. Garvin and Aimie Garvin shall be granted and the restrictive provisions of LC 16.212 that were enacted after August 13, 1999, shall not apply to Robert Jr. Garvin and Aimie Garvin, so that they can make application for approval to develop the property described in the records of the Lane County Assessor as map 18-02-31, tax lot 301, in a manner consistent with the land use regulations in effect when they acquired the property on August 13, 1999.

IT IS HEREBY FURTHER ORDERED that Robert Jr. Garvin and Aimie Garvin still need to make application and receive approval for development of the property under the other land use regulations applicable to developing the property that were not specifically identified or established by Robert Jr. Garvin and Aimie Garvin as restricting the development of the property, and it would be premature to not apply those regulations given the available evidence. To the extent necessary to effectuate the Board action to not apply certain regulations of the applicable zone described above, the claimant shall submit appropriate applications for review and approval to show the specific development proposals and in the event additional county land use regulations result in a restriction of those uses that have the effect of reducing the fair market value of the property, the County Administrator shall have the authority to determine those restrictive county land use regulations that will not apply to that development proposal to preclude entitlement to just compensation under Measure 37, and return to the Board for action, if necessary. All other Lane Code land use and development regulations shall remain applicable to the subject property until such time as they are shown to be restrictive and that those restrictions reduce the fair market value of the subject property.

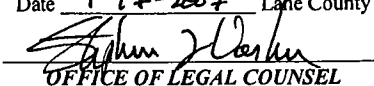
IT IS HEREBY FURTHER ORDERED that this action making certain Lane Code provisions inapplicable to use of the property by Robert Jr. Garvin and Aimie Garvin does not constitute a waiver or modification of state land use regulations and does not authorize immediate development of the property. The requirements of state law may contain specific standards regulating development of the subject property and the applicants should contact the Department of Administrative Services (DAS - State Services Division, Risk Management - Measure 37 Unit, 1280 Ferry Street SE, U160, Salem, OR 97301-4292; Telephone: (503) 373-7475; website address: <http://www.oregon.gov/DAS/Risk/M37.shtml>) and have the State of Oregon evaluate a Measure 37 claim and provide evidence of final state action before seeking county land use approval.

IT IS HEREBY FURTHER ORDERED that the other county land use regulations and rules that still apply to the property require that land use, sanitation and building permits be approved by Lane County before any development can proceed. Notice of this decision shall be recorded in the county deed records. This order shall be effective and in effect as described in LC 2.770 and Ballot Measure 37 to the extent permitted by law. This order does not resolve several questions about the effect and application of Measure 37, including the question of whether the right of applicants to divide or build dwellings can be transferred to another owner. If the ruling of the Marion County Circuit Court in *MacPherson v. Dept. of Administrative Services*, (Marion County Circ. Ct. Case No. 00C15769, October 14, 2005) or any other court decision involving Ballot Measure 37 becomes final and that decision or any subsequent court decision has application to Lane County in a manner that affects the authority of this Board to grant relief under Ballot Measure 37 and LC 2.700 through 2.770 then the validity and effectiveness of this Order shall be governed by LC 2.770 and the ruling of the court.

DATED this _____ day of _____, 2007.

Faye Stewart, Chair
Lane County Board of County Commissioners

APPROVED AS TO FORM

Date 1-17-2007 Lane County

OFFICE OF LEGAL COUNSEL