

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 (PA06-5051, Masters)

BACKGROUND

Applicant: Linnea Masters

Current Owner: Linnea Masters (2/3) and Marilee Rutherford (Williams) (1/3)

Agent: James W. Sprickerman (Gleaves Swearington Potter & Scott)

Map and Tax lot: TRS 18-12-01, tax lot 600

Acreage: approximately 80 acres.

Current Zoning: CLWP (Clear Lake Watershed Protection Zone) and F2 (Impacted Forest Land)

Date Property Acquired: August 7, 1980 (Circuit Court in the State of Washington – County of Washington: Order approving Interim Accounting, Order of Partial Distribution and Order Reducing Administratrix Bond [Book 423, Page 686-687 (#8061427)]).

Date claim submitted: Partial submittal on January 10, 2006 (placed on hold). Supplemental information submitted and fee paid on December 13, 2006.

180-day deadline: June 7, 2007

Land Use Regulations in Effect at Date of Acquisition: FF20 (LC 10.105)

Restrictive County land use regulation: Minimum parcel size of eighty acres and limitations on new dwellings in the Clear Lake Watershed Protection Zone (CLWP – LC 16.258) and Impacted Forest Lane (F2 – LC 16.211).

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 Linnea Masters (2/3 interest) and Marilee Rutherford (1/3 interest). They acquired an interest in the property on August 7, 1980 (Circuit Court in the State of Washington – County of Washington: Order approving Interim Accounting, Order of Partial Distribution and Order Reducing Administratrix Bond [Book 423, Page 686-687 (#8061427)]).

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

The property was zoned Farm-Forest FF20 when it was acquired. The minimum lot size and limitation on new dwellings in the CLWP (Clear lake Watershed Protection Zone) and the F2 (Impacted Forest Land Zone) prevent the current owner from developing the property as allowed in 1980.

The applicant has submitted a Land Appraisal Report that alleges a reduction in current market value from \$1,200,000 to \$160,000 with an indicated loss in value due to loss of homesite utility and down zoning of site estimated at \$1,040,000.

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

Ballot Measure 37 states that any regulations that restrict or prohibit “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;” are exempt from a claim. Because the purpose of the CLWP zone is to preserve the Clear Lake Watershed as a source of public drinking water, all the regulations in that zone are considered public health and safety and/or pollution control regulations and would be exempt from a claim.

The Board of County Commissioners addressed this policy decision in the BM37 claim PA05-6805 (Omlid) on November 8, 2006, and determined that the Clear Lake Watershed Protection Zone (CLWP) as implemented by Lane Code 16.258, is exempt from a Ballot Measure 37 claim.

Approximately four-fifths of the subject property is located within the CLWP zone and one-fifth or approximately 400 feet of the eastern portion of the property is located in the F2 (Impacted Forest Land) Zone. That portion of the subject property within the CLWP is exempt from this BM37 claim.

The minimum parcel size and dwelling restrictions of the F2 (Impacted Forest Land) Zone (LC 16.211) do not appear to be exempt regulations.

CONCLUSION

It appears this is a valid claim for the eastern portion of the subject property that is located in the F2 zone and outside the CLWP zone if the Board determines the

submitted evidence demonstrates a reduction in fair market value resulting from enforcement of a restrictive land use regulation.

RECOMMENDATION

The County Administrator recommends the Board adopt the attached order to waive the restrictive land use regulations for the eastern portion of the subject property located in the F2 zone.

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 (PA06-5051/Masters)

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 Linnea Masters (PA06-5051), the owner of real property specifically described in the records of the Lane County Assessor as map 18-12-01, tax lot 600, consisting of approximately 80 acres in Lane County, Oregon; and

WHEREAS, the County Administrator has determined that the application for that portion of the property zoned F2 (Impacted Forest) but not the portion subject to the CLWP (Clear Lake Watershed Protection) zone, 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 for that portion of the property zoned F2 (Impacted Forest) but not the portion subject to the CLWP (Clear Lake Watershed Protection) zone 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 (PA06-5051) of Linnea Masters and has now determined that the restrictive F2 (Impacted Forest) zone dwelling and land division requirements of LC 16.211 were enforced and made applicable to prevent Linnea Masters from developing that portion of the property that is zoned F2 (Impacted Forest) as might have been allowed at the time she acquired an interest in the property on August 7, 1980, and that the public benefit from application of the current F2 dwelling and division land use regulations to that portion of the applicant's property is outweighed by the public burden of paying just compensation; and

WHEREAS, Linnea Masters requests either \$1,040,000 as compensation for the reduction in value of their property, or waiver of all land use regulations that would restrict the division of the property into lots

containing less than eighty acres and placement of a dwelling on each lot, uses that could have otherwise been allowed at the time Linnea Masters 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 F2 zone but not the CLWP (Clear Lake Watershed Protection) 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 Linnea Masters to make application for development of that portion of the property zoned F2 (Impacted Forest) in a manner similar to what could have been done under the regulations in effect when she acquired an interest in the property on August 7, 1980; and

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

NOW, THEREFORE IT IS HEREBY ORDERED that the applicant, Linnea Masters, made a valid claim under Ballot Measure 37 for that portion of the property zoned F2 (Impacted Forest) but not that portion zoned CLWP (Clear Lake Watershed Protection) 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 she acquired an interest in 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 Linnea Masters shall be granted and the current restrictive provisions of LC 16.211 shall not apply to her so she can make application for approval to develop that portion of the property zoned F2 (Impacted Forest) described in the records of the Lane County Assessor as map 18-12-01, tax lot 600, consisting of approximately 80 acres in Lane County, Oregon, in a manner consistent with the land use regulations in effect when Linnea Masters acquired an interest on August 7, 1980. The Board further orders that the claim for that portion of the property zoned CLWP (Clear Lake Watershed Protection) is not valid for the reasons stated in the report and recommendation of the County Administrator incorporated here by this reference.

IT IS HEREBY FURTHER ORDERED that Linnea Masters still needs to make application and receive approval of any land division or placement of a dwelling for that portion of the property zoned F2 (Impacted Forest), under the other land use regulations applicable to dividing the property or placing a dwelling that were not specifically identified or established by her as restricting the division 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 the dwelling or division restrictions 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 Linnea Masters does not constitute a waiver or modification of state land use regulations and does not authorize immediate division of the subject property or immediate construction of a dwelling. The requirements of state law may contain specific standards regulating development of the subject property and the applicant should contact the Department of Administrative Services (DAS - State Services Division, Risk Management - Measure 37 Unit, 1225 Ferry Street SE, U160, Salem, OR 97301-4292; Telephone: (503) 373-7475; website address:

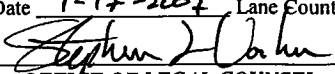
<http://www.oregon.gov/DAS/Risk/M37.shtml>) and have the State of Oregon evaluate a Measure 37 claim and provide evidence of final state action before seeking county land use approval.

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 applicant 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