

## SUPPLEMENTAL MEMO



**Memo Date:** May 26, 2007

**Hearing Date:** June 5, 2007 (Continued from May 8, 2007)

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**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 (PA06-7224, Kester)

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### BACKGROUND

**Applicants:** Linde G. Kester and Sharon K. Kester

**Current Owners:** Kester Family Trust, and Linde and Sharon Kester

**Agent:** Jim Belknap

**Map and Tax lot(s):** M37 tract 1: 20-04-05, #300, 301, & 302; 20-05-01, #200;  
M37 tract 2: 20-04-06, #200; and 20-05-12, #200;

**Acreage:** approximately 1,248 acres

**Current Zoning:** E40 (Exclusive Farm Use)

**Date Property Acquired:** M37 tract 1: Dec. 9, 1981; 20-04-05, #301; (D #00069)  
January 8, 1982, 20-04-05, #300 & #302; 20-05-01, #200; (D #02761)

M37 tract 2: June 13, 1983; 20-04-06, #200 & 20-05-12 #200; (WD #20996)

**Date claim submitted:** December 1, 2006

**180-day deadline:** May 30, 2007

**Land Use Regulations in Effect at Date of Acquisition:** FM (Forest Management)

**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).

This claim was originally heard on May 8, 2007. The Board continued the discussion of this claim to the June 5, 2007 public hearing in order to allow for the claimants time to submit additional information and have the Board reconsider the recommendation.

## **ANALYSIS**

This claim ownership was presented in two separate groupings. M37 tract 1 is currently owned by the Kester Family Trust. M37 tract 1 dates of acquisition for Linde & Sharon Kester are December 9, 1981 for tax lot # 301 (D #8200069) and January 8, 1982 for tax lots #200, 300, and 302 (D #8202761). The property was zoned FM when acquired by the current owner.

The Trust is considered a new owner. It is a revocable inter vivos trust agreement, and Linde Kester and Sharon Kester are trustees. The trust is revocable to Linde and Sharon as long as Linde is alive. When Linde dies, Sharon's revocability ceases, as a result, the ownership interest of Linde and Sharon is continued while both are living.

M37 tract 2 is currently owned by Linde G. and Sharon K. Kester as tenants by the entirety. M37 tract 2 was acquired by Linde & Sharon Kester on June 13, 1983, (WD #8320996), and fee title was conveyed on March 1, 1996 (WD #9619345) when it was zoned FM.

The entire property was zoned FM when it was acquired by the current owners, it is now zoned E40. The current owners allege the requirements for a gross annual income of \$80,000 from the sale of farm products prevent them from developing the property as could have been allowed under the EFU zone when that zone was first applied to the property after they acquired it.

The alleged reduction in fair market value is \$1,217,000, based on the submitted comparative market analysis (CMA). The applicant's CMA is considered competent evidence of valuation that the County Commissioners have accepted on previous claims. Because of this, the County Administrator has waived the requirement for an appraisal.

The Kester family intends to divide the property into lots of 80 to 100 acres in size and place a dwelling on each lot. The current E40 zone allows for this size of lot division, and this zone has special use permit provisions that allow for dwellings in this zone. The claimant has not demonstrated that the provisions of the E40 zone preclude the use of the property as it could have been used under the FM zone when the claimants acquired the property. Dwellings were allowed under Special Use Permit provisions in the FM zone when the claimants acquired the property.

The minimum lot size, gross farm income requirements, and other EFU restrictions on new dwellings in the E40 zone do not appear to be exempt regulations. The Kester family has not, however, identified how any of these restrictive land use regulations that allegedly reduce the fair market value of the property when compared to uses allowed under regulations applicable under FM zoning when they acquired the property.

## **CONCLUSION**

It appears this is still not a valid claim because the alleged loss of valuation does not appear to consider that the FM zone in place when the current owners acquired the property allowed for dwellings through a Special Use permit process under the FM zone and that option is still available for the current owners for future development of their property.

## **RECOMMENDATION**

Unless further information is provided, the County Administrator recommends the Board direct him to deny the claim.