

Memo Date: April 18, 2007
Hearing Date: May 8, 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 (PA06-7229, Betz)

BACKGROUND

Applicant: Paul R. Betz

Current Owners: Paul R. and Nadine E. Betz

Agent: Michael Evans, Land Planning Consultants

Map and Tax lots: 17-02-04, #708

Acreage: approximately 32 acres

Current Zoning: E40 (Exclusive Farm Use)

Date Property Acquired: May 8, 1972 (WD # 8037480)

Date claim submitted: December 1, 2006

180-day deadline: May 30, 2007

Land Use Regulations in Effect at Date of Acquisition: unzoned

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 Paul R. Betz and Nadine E. Betz. Paul R. Betz acquired an interest in the property on May 8, 1972, when it was unzoned (WD # 8037480). Nadine E. Betz acquired an interest in the property on January 12, 1996, (BSD #9602650) when it was zoned E40. Currently, the property is zoned E40.

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 Betz family. The minimum lot size and limitations on new dwellings in the E40 zone prevent Paul R. Betz from developing the property as could have been allowed when he acquired it. The alleged reduction in fair market value is \$1,280,000, based on the submitted Comparative Market Analysis (CMA). The County Commissioners have accepted CMA's as competent evidence of valuation previous claims. Because of this, the County Administrator has waived the requirement for an appraisal.

Because the minimum lot size and dwelling restrictions were applicable when Nadine E. Betz acquired the property in 1996, these regulations can only be waived for her to her date of acquisition.

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

The minimum lot size and restrictions on new dwellings do not appear to be exempt regulations, but they can only be waived for Paul R. Betz to 1972 and Nadine to 1996. The claimant has not identified any other restrictive land use regulations that allegedly reduce the fair market value of the property.

CONCLUSION

It appears this is a valid claim for Paul R. Betz. However, the minimum lot size and dwelling restrictions can not be waived for Nadine Betz.

RECOMMENDATION

The County Administrator recommends the Board adopt the attached order to waive the restrictive land use regulations of the E40 zone for Paul R. Betz to 1972 and Nadine E. Betz to 1996.

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 (Betz/PA06-7229)

WHEREAS, on May 8, 2007, the Board conducted a public hearing on the Measure 37 claim (PA06-7229) of Paul and Nadine Betz 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 them from developing the property as might have been allowed at the time the Betz family acquired an interest in the property on May 8, 1972, and that the public benefit from application of the current E40 dwelling and division land use regulations to the applicant's property is outweighed by the public burden of paying just compensation; and

WHEREAS, Paul and Nadine Betz request either \$1,280,000 as compensation for the reduction in value of their property, or waiver of all land use regulations that would restrict the division of land into lots containing less than forty acres and placement of a dwelling on each lot, uses that could have otherwise been allowed at the time the Betz 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 Paul and Nadine Betz 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 the Betz family acquired an interest in the property; and

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

NOW, THEREFORE IT IS HEREBY ORDERED that the applicants Paul and Nadine Betz 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 Betz family 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 Paul R. and Nadine E. Betz shall be granted and the restrictive provisions of LC 16.212 that limit the development of dwellings and the division of land in the E40 (Exclusive Farm Use) Zone shall not apply to Paul R. and Nadine E. Betz, so they can make application for approval to develop the property located at 90357 Hill Road, Springfield, and more specifically described in the records of the Lane County Assessor as map 17-02-04, tax lot 708, consisting of approximately 32 acres in Lane County, Oregon, in a manner consistent with the land use regulations in effect when they acquired an interest in the property; on May 8, 1972, for Paul R. Betz and on January 12, 1996, for Nadine E. Betz.

IT IS HEREBY FURTHER ORDERED that Paul R. and Nadine E. Betz still need to make application and receive approval of any division of the property or placement of a dwelling under the other land use regulations applicable to dividing the property or placing a dwelling that were not specifically identified or established by him as restricting the division of the property or placement of a dwelling, 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 of a new dwelling 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 Paul R. and Nadine E. Betz 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 5-1-2007 Lane County

Stephen J. Vorkes
OFFICE OF LEGAL COUNSEL