

Memo Date: May 1, 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 (PA06-7239, Langan)

BACKGROUND

Applicant: Dennis and Susan Langan

Current Owner: Dennis and Susan Langan

Agent: N/A

Map and Tax lot(s): 19-01-03, tax lot 408

Acreage: 3.71 acres

Current Zoning: RR10 (Rural Residential)

Date Property Acquired: Dennis J. Langan – April 24, 1970 (Memorandum of Land Sales Contract, Reel 477R, No. 3869 / Deeds recorded May 3, 1973, Reception No. 7320822 and July 27, 1977 Reception No. 7747306);

Susan L. Langan – *November 17, 1978 (Deed, Reception No. 7877366) and *October 22, 2004 (Lot Line Adjustment Deed, Reception No. 2004-082097.

Note: * The Lot Line Adjustment Deed (October 22, 2004) increased the acreage of the November 17, 1978 Deed metes and bounds description of tax lot 408 from 1.90 acres to 3.85 acres.

Date claim submitted: December 1, 2006

180-day deadline: May 30, 2007

Land Use Regulations in Effect at Date of Acquisition:

Dennis Langan: (1970): Original 1.9 acres – Unzoned;

(2004): Lot Line Adjustment 1.81 acres – RR10 (Rural

Residential).

Susan Landon: (1978): Original 1.9 acres - FF-20 (Farm-Forestland) Ordinance No. 564, as of November 12, 1975;

(2004): Lot Line Adjustment 1.81 acres – RR10 (Rural Residential).

Restrictive County land use regulation: Minimum parcel size of ten acres and limitations on a second dwellings in the RR10 (Rural Residential) zone (LC 16.290).

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 the Dennis J. Langan and Susan L. Langan.

Dennis acquired an interest in the original 1.90 acres of tax lot 408 on April 24, 1970 (Memorandum of Land Sales Contract, Reel 477R, No. 3869), when it was unzoned. He acquired an interest in the additional 1.81 acres of tax lot 408 by lot line adjustment on October 22, 2004, when it was zoned RR10.

Susan acquired an interest in the original 1.90 acres of tax lot 408 on November 17, 1978 (Deed, Reception No. 7877366) when it was zoned FF-20 (Farm-Forestland: Ordinance No. 564, as of November 12, 1975). She acquired an interest in the additional 1.81 acres of tax lot 408 by lot line adjustment on October 22, 2004, when it was zoned RR10.

Currently, the property is zoned RR10.

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

The original 1.90 acres of tax lot 408 was unzoned when it was acquired by Dennis J. Langan, and FF20 when an interest was acquired by Susan L. Langan, the current owners. The minimum lot size and limitations on second dwellings in the RR10 zone prevent the current owners from developing the property as could have been allowed when Dennis acquired it. The alleged reduction in fair market value is \$145,000, based on the submitted appraisal.

The additional 1.81 acres of tax lot 408 was zoned RR10 when it was acquired through lot line adjustment by Dennis J. Langan and Susan L. Langan on October 22, 2004. No valid claim has been established for those 1.81 acres.

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 for the original 1.90 acres do not appear to be exempt regulations. The minimum lot size and restrictions on new dwellings (RR10) for the lot line adjustment 1.81 acres, appear to be exempt regulations

CONCLUSION

It appears this is a valid claim for the original 1.90 acres of tax lot 408.

RECOMMENDATION

The County Administrator recommends the Board adopt the attached order to waive the restrictive land use regulations of the RR10 zone to the date of acquisition of each individual for the original 1.90 acres of tax lot 408, and reject the claim for the 1.81 acres added by the 2004 lot line adjustment to tax lot 408.

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 (Langan, PA 06-7239)

WHEREAS, on May 8, 2007, the Board conducted a public hearing on the Measure 37 claim (PA 06-7239) of Dennis J. Langan and Susan L. Langan and has now determined that the restrictive RR10 (Rural Residential) zone dwelling and land division requirements of LC 16.290 were enforced and made applicable to prevent Dennis J. Langan and Susan L. Langan from developing the 1.90 acre portion of tax lot 408 as might have been allowed at the time Dennis acquired an interest in that 1.90 acre portion of tax lot 408, map 19-01-03 on April 24, 1970, and

Susan acquired an interest in the 1.90 acre portion of tax lot 408 on November 17, 1978; and that the public benefit from application of the current RR10 dwelling and division land use regulations to the 1.90 acres of tax lot 408 is outweighed by the public burden of paying just compensation; and

WHEREAS, Dennis J. Langan and Susan L. Langan requests either \$145,000 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 ten acres and placement of a dwelling on each lot, and development uses that could have otherwise been allowed at the time they 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 RR10 zone to the 1.90 acres of tax lot 408 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 Dennis J. Langan and Susan L. Langan to make application for development of the 1.90 acres of tax lot 408 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; and

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

NOW, THEREFORE IT IS HEREBY ORDERED that the applicant Dennis J. Langan and Susan L. Langan 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 1.90 acre portion of tax lot 408, showing evidence that they acquired an interest in the 1.90 acre portion of tax lot 408 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 Dennis J. Langan and Susan L. Langan shall be granted and the restrictive provisions of LC 16.290 that limit the development of dwellings and the division of land in the RR10 (Rural Residential) Zone shall not apply to Dennis J. Langan and Susan L. Langan, so they can make application for approval to develop the 1.90 acre portion of tax lot 408 located at 38720 Place Road, Fall Creek, Oregon, and more specifically described in the records of the Lane County Assessor as map 19-01-03, tax lot 408 (also described in Deed Records, Reception No. 7320822), and consisting of approximately 1.90 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 April 24, 1970, for Dennis J. Langan and on November 17, 1978, for Susan L. Langan.

IT IS HEREBY FURTHER ORDERED that Dennis J. Langan and Susan L. Langan still needs 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 them 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.

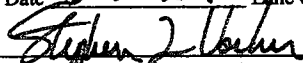
IT IS HEREBY FURTHER ORDERED that this action making certain Lane Code provisions inapplicable to use of the 1.90 acre portion of tax lot 408 by Dennis J. Langan and Susan L. Langan does not constitute a waiver or modification of state land use regulations and does not authorize immediate division of 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 5-2-2007 Lane County

OFFICE OF LEGAL COUNSEL