

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 (PA06-5549, Lone Rock1)

BACKGROUND

Applicant: Richard Fohs Sohn

Current Owner: Lone Rock Timberland Co.

Agent: Danny Cawthon

Map and tax lots: 17-02-23 #200; 17-02 #1300; 17-02-13 #300

Acreage: Approximately 762 acres

Current Zoning: F1 / FP (Non Impacted Forest) (Floodplain Combining Zone)

Date Property Acquired: June 1, 1994 (Articles of Merger # 175321-10)

Date claim submitted: April 6, 2006. The 180-day deadline is October 3, 2006.

180-day deadline: The applicant has requested that the processing deadline be extended.

Land Use Regulations in Effect at Date of Acquisition: LC 16.210, F1 (Non Impacted Forest) zone.

Restrictive County land use regulation: Minimum parcel size of eighty acres and limitations on new dwellings in the F1 (Non Impacted Forest) zone (LC 16.210).

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 owner of the subject property, Lone Rock Timberland Co., a Washington corporation acquired the property under its former name Lone Rock Timber Co. on June 1, 1994, by merger with Lone Rock Timber Co. This transaction is documented in the Articles of Merger (Registry Number 175321-10) maintained by the Secretary of State's Corporation Division.

On June 1, 1994, the property was zoned F1 and is still zoned as such.

The applicant, Richard Fohs Sohn asserts that he is the owner of the subject property and that he has maintained an unbroken interest in the property since March 31, 1953 because he has held stock in the chain of companies which have owned the property. It appears that Richard Fohs Sohn is not an "owner" of the property as the term is defined by ORS 197.352(11)(C).

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

The property was zoned F1 (Impacted Forest) when it was acquired by the current owner in 1994. The current minimum lot size and limitations on new dwellings in the F1 zone were applicable when the current owner acquired the property. The applicant has submitted numerous listings from the MLS as evidence of a reduction in value. The applicant has not identified the alleged reduction in fair market value. Instead, the applicant has identified the total revenue that could be obtained from dividing the property into lots that range from 20 to 35 acres and placing a dwelling on each lot. The total estimated revenue is \$14,794,760. This does not appear to be an estimate of the alleged reduction in fair market value from enforcement of a restrictive land use regulation. Furthermore, this evidence assumes the property can be divided into lots as small as twenty acres, which could not be done in 1994.

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 not be waived for the current owner.

The /FP (Floodplain Combining Zone) regulations of LC16.244 are exempt regulations as defined by LC 2.710 (2) and cannot be waived.

CONCLUSION

It appears this is not a valid claim for Lone Rock Timberland Co. or Richard Fohs Sohn. On April 30, 2007, Lane County received correspondence dated April 25, 2007, from the applicant's agent, Stoel Rives LLP, withdrawing the PA 06-5549 (Lone Rock 1) claim and stating Lone Rock is no longer seeking Lane County determination under ORS 197.352.

RECOMMENDATION

No further action is necessary.