

Memo Date: January 22, 2007
Order Date: February 13, 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 (PA06-6410, Grife)

BACKGROUND

Applicant: Everett & Helen Grife

Current Owner: Everett & Helen Grife

Agent: Larry & Connie Hedberg and Josha A. Clark

Map and Tax lot: 18-04-34, tax lots 301, 400, 500 and 600

Acreage: 146.82 acres

Current Zoning: 18-04-34, 301, 400 and 500 – Impacted Forest Land (F2)
18-04-34, 600 – Rural Residential (RR5)

Date Property Acquired: 18-04-34, tax lot 301	November 15, 1991
18-04-34, tax lot 400	August 1, 1951
18-04-34, tax lot 500	October 15, 1954
18-04-34, tax lot 600	March 14, 1973

Date claim submitted: August 10, 2006

180-day deadline: February 6, 2007

Land Use Regulations in Effect at Date of Acquisition:

18-04-34, tax lot 400 and 500: In 1951 and 1954, the two tax lots were unzoned.

18-04-34, tax lot 301: Tax lot 301 is an eighteen-foot (18') easement along the northern boundary of tax lots 400 and 500 of 18-04-34. In 1991, the zoning was F2 (Impacted Forest Land).

18-04-34, tax lot 600: Tax lot 600 is a 20-foot wide private road known as La

Bleu Road, and approximately 1.4 acres in size. The "road" was initially part of a larger property the claimant and his siblings acquired interest in, in 1973. A series of quitclaim deeds identifying the western metes and bounds of Le Bleu Road were executed by twelve individuals between December 17, 1999 and June 19, 2000, with Everett Grife as the grantee. The serpentine road flows through and provides access to eleven separate parcels within Developed & Committed (D&C) Exception Area #310-2. Tax lot 600 was unzoned at the time the claimant acquired interest.

Restrictive County land use regulation:

18-04-34, tax lots 301, 400 and 500 -- Minimum parcel size of eighty (80) acres and limitations on new dwellings in the F2 (Impacted Forest Land) zone - LC 16.211).

As encompassed, tax lot 600 is currently zoned RR5 (Rural Residential – 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 of the subject properties are Everett and Helen Grife.

Everett and Helen Grife acquired an interest in the properties, 18-04-34, tax lots 400 and 500, on August 1, 1951 and October 15, 1954, respectively, when they were unzoned. In 1994, they placed the two properties into a Trust. The Trust is considered a new owner but because it is revocable and Everett and Helen Grife are the Trustees, the ownership interest of Everett and Helen is continued. Currently, the properties are zoned F2.

18-04-34, tax lot 301 was conveyed as an 18-foot wide and 974-foot long strip of land by Bargain and Sale Deed between Greg Demars dba ATR Services (Grantor) and Everett Grife (Grantee) in 1995 (2060R, #9524405). Currently, the land is zoned F2. Tax lot 301 is currently zoned F2.

Tax lot 600 (Le Bleu Road) was unzoned when the claimant acquired interest. It is currently zoned RR5.

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

Tax lots 400, 500 and 600 (18-04-34) were unzoned when they were acquired by the current owners. The minimum lot size and limitations on new dwellings in the F2 zone and RR5 zone prevent the current owners from developing the property as could have been allowed when they acquired it. Tax lot 600, as it exists today as Le Bleu Road, was created as a legal access in a series of conveyances of the eleven properties in D&C Exception Area #310-2. The alleged reduction in fair market value is \$7,325,996,

based on the submitted appraisal.

Tax lot 301 was created in 1995 after the current F2 zoning was applied to the property in 1984, so there appears to be no basis for concluding the restrictive zoning has the effect of reducing the value of the land.

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.

CONCLUSION

It appears this is a valid claim for 18-04-34, tax lots 400, 500 and 600.

It appears this is not a valid claim for 18-04-34, tax lot 301.

RECOMMENDATION

The County Administrator recommends the Board adopt the attached order to waive the restrictive land use regulations for 18-04-34, tax lots 400, 500 and 600.

**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 (Grife, PA 06-6410)

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 Everett and Helen Grife the owners of real property located west of the public road right-of-way of Le Bleu Road, and more specifically described in the records of the Lane County Assessor as map 18-04-34, tax lots 400, 500, and 600, consisting of approximately 144 acres in Lane County, Oregon; and

WHEREAS, the County Administrator has determined that the application 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 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 February 13, 2007, the Board conducted a public hearing on the Measure 37 claim (PA 06-6410) of Everett and Helen Grife and has now determined that the restrictive F2 (Impacted Forest Land) requirements of LC 16.211 were enforced and made applicable to the subject property to prevent development as might have been allowed on August 1, 1951 (tax lot 400), October 15, 1954 (tax lot 500) and March 14, 1973 (tax lot 600), the dates they acquired an interest in the properties, and that the public benefit from application of the current F2 and RR5

regulations to the applicant's property is outweighed by the public burden of paying just compensation; and

WHEREAS, Everett and Helen Grife requests either \$7,325,996 as compensation for the reduction in value of their property, or waiver of all land use regulations that would restrict them from developing the properties as could have been allowed on August 1, 1951 (tax lot 400), October 15, 1954 (tax lot 500), and March 14, 1973 (tax lot 600), the dates they acquired an interest in the properties; and

WHEREAS, the Board finds that under LC 2.760(3) the public interest is served by modifying, removing or not applying the land use regulations of the F2 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 Everett and Helen Grife to make application for development of the subject properties 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 properties; and

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

NOW, THEREFORE IT IS HEREBY ORDERED that the applicants Everett and Helen Grife 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 they 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 Everett and Helen Grife shall be granted and the restrictive provisions of LC 16.211 and LC 16.290 that limit the minimum lot size and residential development of land in the F2 (Impacted Forest Land) and RR5 (Rural Residential) Zone shall not apply to Everett and Helen Grife, so they can make application for approval to develop the property specifically described in the records of the Lane County Assessor as map 18-04-34, tax lots 400, 500 and 600, consisting of approximately 144 acres in Lane County, Oregon, in a manner consistent with the land use regulations in effect when they acquired an interest in the properties on August 1, 1951 (tax lot 400), October 15, 1954 (tax lot 500) and March 14, 1973(tax lot 600).

IT IS HEREBY FURTHER ORDERED that Everett and Helen Grife still need to make application and receive approval of any development under the other land use regulations applicable to dividing the land or placing a dwelling that were not specifically identified or established by them as restricting the development of the land, and it would be premature to not apply those regulations given the available evidence. To the extent necessary to effectuate the Board action to apply the dwelling 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.

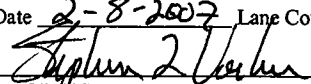
IT IS HEREBY FURTHER ORDERED that this action making certain Lane Code provisions inapplicable to use of the property by Everett and Helen Grife does not constitute a waiver or modification of state land use regulations and does not authorize immediate development of the subject property. The requirements 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 2-8-2007 Lane County

OFFICE OF LEGAL COUNSEL