

Memo Date: January 23, 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 (PA06-6615, Marshall)

BACKGROUND

Applicant: William and Christine Marshall

Current Owner: William and Christine Marshall

Agent: Norman Waterbury

Map and Tax lot: 17-05-24 #1900

Acreage: 58 acres

Current Zoning: E40 (Exclusive Farm Use)

Date Property Acquired:

Marshall family: October 2, 1973 (WD 7650463)

William Marshall: January 4, 1989 (WD #9427670).

Christine Marshall: March 25, 2003 (BS #2003-025668).

Date claim submitted: September 15, 2006

180-day deadline: March 14, 2007

Land Use Regulations in Effect at Date of Acquisition: AGT (Agriculture, Grazing, Timberland) in 1973.

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 William and Christine Marshall.

Roy & Donna Marshall are the parents of William and they acquired an interest in the property on October 2, 1973 (WD 7650463). William Marshall acquired an interest in the property on January 4, 1989 (WD #9427670, recorded on April 14, 1994). Christine Marshall acquired an interest in the property on March 25, 2003 (BS #2003-025668). Based on this evidence, the Marshall family acquired an interest in the property in 1973 and the current owners acquired an interest in the property in 1989 and 2003.

In 1973, the property was zoned AGT (Agriculture, Grazing, Timberland). It was rezoned to E40 (Exclusive Farm Use) in 1984 and it is still zoned E40.

The applicant has identified the minimum lot size and dwelling restrictions of the E40 zone as the restrictive land use regulations.

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

The property was zoned AGT when the Marshall family acquired an interest in 1973.

The minimum lot size and limitations on new dwellings in the E40 zone prevent the current owners from developing the property as could have been allowed when the Marshall family acquired an interest. The alleged reduction in fair market value is \$2,000,000, based on the submitted appraisal.

Because the 40 acre minimum lot size and dwelling restrictions were applicable when the current owners acquired the property in 1989 and 2003, those regulations can not be waived.

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 owners. 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 based on the date of acquisition by the Marshall family. However, the minimum lot size and dwelling restrictions can not be waived for the current owners because they acquired the property when those regulations were applicable.

RECOMMENDATION

The County Administrator recommends the Board adopt the attached order to waive the restrictive land use regulations enacted since January 4, 1989 for William Marshall and the regulations enacted since March 25, 2003 for Christine Marshall.

**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 (Marshall/ PA06-6615).

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 landowners 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 William and Christine Marshall (PA06-6615), the owners of real property described in the records of the Lane County Assessor as map 17-05-24, tax lot 1900, consisting of approximately 58 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 owners 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 January 23, 2007, the Board conducted a public hearing on the Measure 37 claim (PA06-6615) of William and Christine Marshall 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 William and Christine Marshall from developing the property as might have been allowed on October 2, 1973, the date the Marshall family acquired an interest in the property, and that the public benefit from application of the restrictive E40 regulations to the applicant's property is outweighed by the public burden of paying just compensation; and

WHEREAS, William and Christine Marshall request either \$2,000,000 as compensation for the reduction in value of the property, or waiver of all land use regulations that would prevent the division of the land into lots that contain less than 40 acres and placement of a dwelling on each lot, uses that could have otherwise been allowed at the time the Marshall family acquired an interest in the property in 1973; 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 William and Christine Marshall 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 they acquired an interest in the property on January 4, 1989 for William Marshall and on March 25, 2003 for Christine Marshall; and

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

NOW, THEREFORE IT IS HEREBY ORDERED that the applicant William and Christine Marshall 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 Marshall 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 William and Christine Marshall shall be granted and the restrictive provisions of LC 16.212 shall not apply to William and Christine Marshall, so that they can make application for approval to develop the property described in the records of the Lane County Assessor as map 17-05-24, tax lot 1900, in a manner consistent with the land use regulations in effect when William Marshall acquired an interest in the property on January 4, 1989, and on March 25, 2003 for Christine Marshall.

IT IS HEREBY FURTHER ORDERED that William and Christine Marshall still will need to make application and receive approval for development of the property that were not specifically identified or established by William and Christine Marshall as restricting development of the property, 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 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.

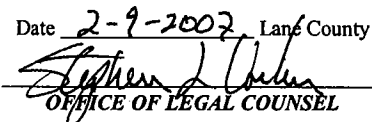
IT IS HEREBY FURTHER ORDERED that this action making certain Lane Code provisions inapplicable to use of the property by William and Christine Marshall does not constitute a waiver or modification of state land use regulations and does not authorize immediate construction of a dwelling. The requirements of state law may contain specific standards regulating development of the subject property and the applicants 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 applicants to divide or build dwellings can be transferred to another owners. 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 2-9-2007 Lane County

OFFICE OF LEGAL COUNSEL