

## Supplemental Memo

**Memo Date:** May 4, 2007

**Meeting Date:** June 20, 2007(Cont. from March 13, April 17, and May 22, 2007)



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**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 (PA06-6896, Green2)

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### BACKGROUND

**Applicants:** Steven R. & Nichole Green

**Current Owners:** Nichole Lee Green & Eddy O. Chernecki

**Agent:** Barry D. Smith

**Map and Tax lot:** 17-04-30 tax lot #1400

**Acreage:** approximately 23 acres

**Current Zoning:** E40 (Exclusive Farm Use)

**Date Property Acquired:** Chernecki family, October 31, 1975 (WD #9611059)  
Nichole Lee Green, February 25, 1998, (unrecorded Trust Deed in application)  
Eddy O. Chernecki, January 13, 2002 (SBSD #2002-004850)

**Date Claim Submitted:** November 3, 2006

**180-day Deadline:** May 2, 2007

**Land Use Regulations in Effect at Date of Acquisition:** E40 (Exclusive Farm Use) zone LC 16.212.

**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).

This claim was originally heard on March 13, 2007, and subsequently heard on April 17, and May 22, 2007. The Board continued the discussion of this claim to the June 20, 2007 public hearing in order to allow staff the opportunity to evaluate the information received, and the claimant time to submit additional information and have the Board reconsider staff's recommendation. The Board requested all new information for the June 20 hearing be submitted before June 5, 2007. Additional information was provided on March 13, May 1, May 22, and June 5, 2007.

### ANALYSIS

The claimants submitted additional information on valuation on March 30, 2007. They provided valuation analysis in the form of an appraisal that alleges a reduction in fair

market value of \$176,500.

The applicants submitted additional information, including an Ownership Report, on May 1, 2007 that identified Eddy O. Chernecki as an additional property owner, with a 50% ownership interest in the property. Nichole L. Green, as an individual, is shown as the other 50% owner of the land. Steve R. Green does not have ownership in the property, he and Nichole Green own 100% of the improvements.

Eddy O. Chernecki also requested the addition of three other tax lots he owns; 1403, 1407, and 1408, to the M37 claim. Those tax lots have been identified as illegally created lots, and because of that, the claimants assert they should be considered as one for the M37 claim. Mr. Chernecki transferred out his entire interest in tax lot 1400 in 1998, and subsequently reacquired 50% interest in 2002. He provides a statement to the effect that his actions were inadvertent, and he never intended to release ownership of the property.

The deed information provided by the applicant shows that in 1998, the property was placed into a Trust. The Trust is not revocable to Steven and Nichole, the grantors, it is a custodian trust for their heirs. The ownership interests of other individuals does not seem to assist the original applicants.

The property was zoned E40 in 1998 when it was acquired by family of the current applicants. The minimum lot size and limitations on new dwellings in the E40 zone were applicable when the current owners acquired the property, therefore, these regulations appear to be exempt and cannot be waived.

Tax lots 1402, 1403, and 1500 were not included in the original claim filed by Steve and Nichole Green. The May 1, 2007 ownership report includes an 'Exhibit A' that describes the property as including tax lots 1400 and 1500. Tax lots 1402 and 1403 were not reviewed for ownership, nor do they appear to have been included in any of the analysis of valuation reduction due to land use regulation.

## **CONCLUSION**

Steve R. Green does not have ownership of the property, he only has ownership of the improvements, therefore, he is not a valid claimant. Nichole Lee Green and Eddy O. Chernecki each have 50% ownership in tax lots 1400 & 1500 as described on the Ownership Report Exhibit "A" provided by the claimants. Nichole acquired an interest in the property on February 25, 1998, and Eddy O. Chernecki acquired his current interest in the property in 2003.

Because the minimum lot size and dwelling restrictions were applicable to tax lots 1400 & 1500 when Nichole Lee Green acquired the property in 1998, and when Eddy O. Chernecki acquired current ownership in the property in 2003, these regulations cannot be waived.

## **RECOMMENDATION**

The County Administrator recommends the Board deny the claim.