

SUPPLEMENTAL MEMO



Memo Date: June 8, 2007

Hearing Date: June 20, 2007 (Continued from May 1, May 15, & June 5, 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 (PA06-7202, Miller)

BACKGROUND

Applicant: Michael and Michelle Miller

Current Owner: Michael and Michelle Miller

Agent: Michael Farthing

Map and Tax lots: 17-02-19, tax lots #1100 and #1200

Acreage: approximately 20 acres

Current Zoning: E40 (Exclusive Farm Use)

Date Property Acquired: January 13, 1995 (WD # 049406)

Date claim submitted: December 1, 2006

180-day deadline: May 30, 2007

Land Use Regulations in Effect at Date of Acquisition: E40 (Exclusive Farm Use)

Restrictive County land use regulation: Minimum parcel size of forty acres, gross farm income level requirements and limitations on new dwellings in the E40 (Exclusive Farm Use) zone (LC 16.212).

This claim was originally heard on May 1, May 15, and June 5, 2007. The applicant submitted supplemental information into the record on April 25, May 18, and June 8, 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 on May 15 and to allow the claimant time to submit additional information and have the Board reconsider staff's recommendation. The Board requested all new information to be submitted to Lane County by June 8, 2007. No additional information was received after June 8, 2007.

ANALYSIS

The current owners are Michael and Michelle Miller. The Miller's acquired an interest in the property on January 13, 1995, when it was zoned E40 (WD # 049406). Currently, the 20 acre property is zoned E40, and consists of 2 tax lots. Approximately 2 out of the 20 acres are within the Eugene-Springfield Metropolitan Area Urban Growth Boundary (UGB). Tax lot 1200 has an existing dwelling inside the UGB. The claimant's agent stated at the June 5th hearing that the portion of the property that is inside the UGB is not included in this claim, therefore, no claim was filed with the city of Springfield.

The applicants submitted valuation analysis on April 25, May 18, and June 5, 2007. The alleged reduction in fair market value is \$750,000, based on comparable sales of riverfront dwellings and the alleged ability to place two dwellings on two new lots created from vacant farm land on the McKenzie River. The applicant proposes to partition the urbanizable portion of the ownership that is within the Metro UGB from the rural farm land, and takes the position that it is not relevant to address the valuation of the urban portion of the ownership on the remaining property. Staff's position is that the valuation analysis that determines the land owner's 'loss' or 'gain' should apply to the entire contiguous property as a whole.

The valuation documentation attempts to clarify the alleged loss of value due to changes in the EFU regulations applicable to the property, but does not address the value of urban development potential on the portion of the property under the Miller's ownership that lies within the Springfield UGB. However, the value of the urbanizable portion of tax lot 1200 should be considered, because the potential to develop that part of the property at urban densities once annexed, would affect the total valuation analysis of the entire property owned by the applicants.

The requirement of a gross annual income of \$80,000 from the sale of farm products allegedly prevents the owners from developing the property as could have been allowed when they acquired the property in 1995. At that time, the gross annual farm income requirement in the E40 zone was \$20,000. The E40 zone has always had provisions that allow for a dwelling, as understood by the applicants. At the time they acquired the property, both tax lots were below the minimum lot size for division, and a dwelling existed on tax lot 1200. There are numerous provisions besides the income test that might allow for a dwelling in that zone currently.

The claimant has not demonstrated how the income requirements of the E40 zone precludes the ability of the applicants to divide the property as desired. The gross farm income and other EFU regulations, minimum lot size, and restrictions on new dwellings do not appear to be exempt regulations, but without further value reduction analysis they can not be waived for the current owner. The ultimate use restriction has not changed from the time of acquisition to the present day. A farm dwelling is allowed on the rural EFU zoned portion of the land, and a farm dwelling was allowed at the time the Miller's acquired the property.

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

CONCLUSION

These claimants are asking for a waiver of the \$80,000 farm income rule as it exists today for EFU zoned land. The valuation presented does not appear to adequately address the difference in regulations in the EFU zone in 1995 and 2007. They have not addressed the valuation of the urbanizable portion of the property and how the potential for urban higher density development on the property that lies within the UGB affects the value of the land outside the UGB they propose for rural dwellings. Their position is that once partitioned, that portion's value doesn't effect the rest of the property.

Staff's position is that urban densities of development have potential for higher profits than farm dwellings in the floodplain. The entire ownership should be analyzed as to value, as a whole. In addition, more analysis of the specific development limitations of the property needs to be provided.

RECOMMENDATION

The submitted information addresses the issue of identifying the land use regulations in the E40 Exclusive Farm Use zone that have changed since 1995, when the claimants first acquired the property.

Staff's recommendation is unchanged: The minimum lot size and restrictions on new farm dwellings appear to be exempt regulations and it appears from the record that they can not be waived for the current owner.