

SUPPLEMENTAL MEMO

Memo Date: June 8, 2007

Hearing Date: June 20, 2007 (Continued from May 8 & 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 (PA06-7226, Schrenk)

BACKGROUND

Applicants: Corrin M. Schrenk and Betty M. Schrenk

Current Owners: Corrin M. and Betty M. Schrenk

Agent: Jim Belknap

Map and Tax lots: 19-02-06, #100 and #201; 18-02-31 #303

Acreage: approximately 311 acres

Current Zoning: (Exclusive Farm Use) E30 for tax lots #100 & #201;
E40 for tax lot #303

Dates Property Acquired: May 1, 1966 for that portion of 18-02-31, tax lot #303 included in the Land Sales Contract recorded and conveyed in January 1, 1978, (BSD #7842533); and 19-02-06, tax lot #201.

January 1, 1978 (BSD #7841404 & BSD #7842533); 19-02-06, tax lot #100

April 19, 1979 (BSD #7923230) remaining 4 acres of 18-02-31, tax lot #303

Date claim submitted: December 1, 2006

180-day deadline: May 30, 2007

Land Use Regulations in Effect at Date of Acquisition: AGT (Agriculture, Grazing, Timber Raising) and FF-20 (Farm-Forestland)

Restrictive County land use regulation: Minimum parcel size of thirty and forty acres and limitations on new dwellings in the E30 and E40 (Exclusive Farm Use) zone (LC 16.212).

This claim was originally heard on May 8 and June 5, 2007. The applicant submitted additional information into the record on May 18, and on June 5, 2007 and provided additional testimony at the June 5, 2007 hearing. 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 and testimony provided by the claimant on June 5th and the claimant time to submit additional information and have the Board reconsider the recommendation. The Board requested all new information to be submitted to the

County by June 8th. The applicant submitted additional information on June 8, 2007.

ANALYSIS

The current owners are Corrin M. and Betty M. Schrenk. They entered into a Land Sales Contract between themselves and Belva D. Schrenk and Ernest E. Schrenk for 18-02-31, tax lot #303 (except that portion reserved to Belva Schrenk as an individual) and 19-02-06 tax lot #201 on May 1, 1966 when the property was zoned AGT. That Land Sales Contract was completed by a conveyance recorded under a Bargain and Sales Deed on January 27, 1978. (BSD #7841404). The portion of tax lot 303 reserved to Belva was added to the deed on January 27, 1978 upon the settlement of the estate of Ernest (BSD #7842533).

The current owners acquired title to most of the rest of the property in the claim upon the death of Ernest E. Schrenk, when it was zoned FF20. That date of acquisition was January 27, 1978 (BSD #7842533), from the Estate of Ernest E. Schrenk pursuant to the terms of his last will and testament. The 4 acres in Belva's ownership were finally conveyed through a correction deed on April 19, 1979 (BSD #7923230).

The portion of the property identified as 19-02-06, tax lot #100 and the four acres of 18-02-31, tax lot #303 owned originally by Belva as an individual, were zoned FF20 when acquired by Corrin M. and Betty M. Schrenk, the current owners. When an interest in the remainder of 18-02-31, tax lot #303 and all of 19-02-06, tax lot #201 was first acquired by the current owners in 1966, the zoning was AGT. The property is currently zoned E30 & E40 (Exclusive Farm Use).

The minimum lot size and limitations on new dwellings in the E30 and E40 zone prevent the current owners from developing the property as could have been allowed when they or the family first acquired it. The alleged reduction in fair market value is \$3,105,000, based on the submitted Comparative Market Analysis (CMA). The County Commissioners have accepted CMA's as competent evidence of valuation on previous claims. Because of this, the County Administrator has waived the requirement for an appraisal.

The minimum lot size and restrictions on new dwellings in the E30 and E40 zone do not appear to be exempt regulations.

CONCLUSION

It appears the additional information provided by the applicant on June 8, 2007 has clarified the dates of acquisition to determine this is a valid claim for the Schrenk family. The current owners acquired the property over time, in 1966, 1978, and in 1979.

RECOMMENDATION

The County Administrator recommends the Board adopt the attached order to waive the restrictive land use regulations of the E30 and E40 zone for Corrin M. and Betty M. Schrenk to May 1, 1966 for approximately 230 acres of 18-02-31, tax lot #303 and 19-02-06, tax lot #201; January 1, 1978 for 19-02-06, tax lot #100; and April 19, 1979 for 4 acres of 18-02-31, tax lot #303 that was originally owned by Belva Schrenk as an individual.

**BEFORE THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY,
OREGON**

ORDER No. 07-5-8-18

) 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 (Schrenk/PA06-7226)

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 Corrin M. and Betty M. Schrenk (PA06-7226), the owners of real property located at 84100, 84300, & 84366 Cloverdale Road, Creswell, and more specifically described in the records of the Lane County Assessor as map 19-02-06, tax lots #100 and #201, and 18-02-31, tax lot #303, consisting of approximately 311 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 May 8, June 5, and June 20, 2007, the Board conducted public hearings on the Measure 37 claim (PA06-7226) of Corrin and Betty Schrenk and has now determined that the restrictive E30 and E40 (Exclusive Farm Use) zone dwelling and land division requirements of LC 16.212 were enforced and made applicable to prevent Corrin and Betty Schrenk from developing the property as might have been allowed at the time the Schrenk family acquired an interest in the property on May 1, 1966, January 1, 1978 and April 19, 1979, and that the public

benefit from application of the current E30 and E40 dwelling and division land use regulations to the applicant's property is outweighed by the public burden of paying just compensation; and

WHEREAS, Corrin and Betty Schrenk request either \$3,105,000 as compensation for the reduction in value of their property, or waiver of all land use regulations that would restrict the division of land into lots containing less than thirty and forty acres and placement of a dwelling on each lot, uses that could have otherwise been allowed at the time the Schrenk family acquired an interest in the property; 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 E30 and 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 Corrin and Betty Schrenk 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; and

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

NOW, THEREFORE IT IS HEREBY ORDERED that the applicants Corrin and Betty Schrenk 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 Corrin and Betty Schrenk shall be granted and the restrictive provisions of LC 16.212 that limit the development of dwellings and the division of land in the E30 and E40 (Exclusive Farm Use) Zone shall not apply to Corrin and Betty Schrenk, so they can make application for approval to develop the property located at 84100, 84300, and 84366 Cloverdale Road, Creswell, and more specifically described in the records of the Lane County Assessor as map 19-02-06, tax lots #100 & #201, and 18-02-31, tax lot #303, consisting of approximately 311 acres in Lane County, Oregon, in a manner consistent with the land use regulations in effect when they acquired an interest in the property on May 1, 1966 for 19-02-06, tax lot #201 and all but four (4) acres of 18-02-31, tax lot #303, January 1, 1978 for 19-02-06, tax lot #100 and April 19, 1979 for the four (4) acres of 18-02-31, tax lot #303 originally owned by Belva Schrenk as an individual.

IT IS HEREBY FURTHER ORDERED that Corrin and Betty Schrenk still need to make application and receive approval of any division of the property or placement of a dwelling under the other land use regulations applicable to dividing the property or placing a dwelling that were not specifically identified or established by them as restricting the division of the property or placement of a dwelling, 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 dwelling or division restrictions of the applicable zone described above, the claimants shall submit appropriate applications for review and approval of a new dwelling 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.

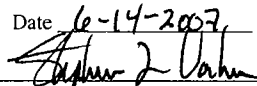
IT IS HEREBY FURTHER ORDERED that this action making certain Lane Code provisions inapplicable to use of the property by Corrin and Betty Schrenk does not constitute a waiver or modification of state land use regulations and does not authorize immediate division of the subject property or immediate construction 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 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 6-14-2007 Lane County


OFFICE OF LEGAL COUNSEL