

Memo Date: April 9, 2007
Hearing Date: May 1, 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 (PA06-7195, Obie)

BACKGROUND

Applicant: Obie Industries, Inc.

Current Owner: Obie Industries, Inc.

Agent: John B. Arnold and Micheal M. Reeder, Arnold Gallagher Saydack et al

Map and Tax lot(s): 19-04-07-701

Acreage: Approximately 67 acres

Current Zoning: F2 (Impacted Forest)

Date Property Acquired: April 26, 1985 (WD #8529586)

Date claim submitted: November 30, 2006

180-day deadline: May 30, 2007

Land Use Regulations in Effect at Date of Acquisition: F2 (Impacted Forest)

Restrictive County land use regulation: The current special use permit requirements for dwellings in the F2 (Impacted Forest) zone (LC 16.211).

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

Obie Industries, Inc. is the current owner of the subject property. Obie Industries, Inc acquired an interest in the property on April 26, 1985 (WD #8529586). On that date, the property was zoned F2 and is still zoned as such.

In 1993, Obie Industries, Inc. received approval of a special use permit (PA 2651-93) to develop a forest related dwelling under LC 16.211 (6). The owner failed to exercise the approval and it subsequently expired. On August 28, 2002 the provisions of the F2 zone were amended via Ordinances 1172 and 5-04. The applicant now alleges that the current special use permit criteria will not enable them to develop the property as would have previously been possible in 1993.

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

The applicant alleges that the current F2 (Impacted Forest) zone land use regulations have limited their ability to develop the property as would have been possible in 1993. The applicant has submitted a statement from a realtor alleging a reduction in the fair market value of the property in the amount of \$532,500. However, it does not appear that the applicant has competently demonstrated that the special use permit requirements in effect today have reduced fair market value of the property. They have simply stated that [The] "property was evaluated to determine if it could qualify for a dwelling under [the current] requirements. It was determined that the property could not qualify for a dwelling". This statement does not clearly demonstrate that a special use permit for a dwelling is impossible under the current regulations. Furthermore, it appears that the special use permit criteria in effect in 1993 were different than those in effect on April 26, 1985, the date the current owner acquired the property. The applicant has not addressed this issue.

Without sufficient evidence demonstrating how the current special use permit criteria have restricted the owner's ability to develop the property as would have been possible on April 26, 1985, and consequently, reduced the fair market value of the property, staff cannot determine the validity of the claim.

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 in the F2 zone do not appear to be exempt regulations but it is unclear if they can be waived for the current owner.

CONCLUSION

There is insufficient evidence to determine the validity of this claim.

RECOMMENDATION

If additional information is not submitted at the hearing, the County Administrator recommends the Board direct him to deny the claim.