

**Memo Date:** April 20, 2007  
**Hearing Date:** May 15, 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 (PA06-7248, Keep)

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## **BACKGROUND**

**Applicant:** Scott and Sharon Keep

**Current Owner:** Scott and Sharon Keep

**Agent:** None

**Map and Tax lot(s):** 17-05-24 tax lots 2000 and 3900

**Acreage:** Approximately 58 acres

**Current Zoning:** E40, LC 16.212 (Exclusive Farm Use), /CAS LC 16.245(Commercial Airport Safety Combining Zone)

**Date Property Acquired by Family** October 2, 1973 (WD #7650463)

**Date Property Acquired by Current Owner:** January 4, 1989 (WD #8901322)

**Date claim submitted:** December 1, 2006

**180-day deadline:** May 30, 2007

**Land Use Regulations in Effect at Date of Acquisition:** The property was zoned (Exclusive Farm Use) E40 in 1989 and AGT (Agriculture, Grazing and Timber) 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**

Scott and Sharon Keep are the current owners of the subject property. Scott and Sharon Keep acquired an interest in the property January 4, 1989 (WD #8901322). On that date, the property was zoned E40/CAS and is still zoned as such.

Roy & Donna Marshall are the parents of Sharon Keep and they acquired an interest in the property on October 2, 1973 (WD 7650463). In 1973, the property was zoned AGT.

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.

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 it was acquired by Roy & Donna Marshall. 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 it was acquired by the family. The alleged reduction in fair market value is \$1,700,000, based on the submitted appraisal.

The applicant is also claiming that the following sections of Lane Code have restricted the use of the subject property:

LC10.100-10, 30 & 40– These provisions only apply to those EFU (Exclusive Farm Use District) zoned properties within the Urban Growth Boundaries of a city and are not applicable to the subject property.

LC13.050(1), (2), (5) and (12) – These provisions apply to subdivision and partitioning of property. No evidence has been provided that demonstrates how these regulations have lowered the fair market value of the property.

LC15.137.045(1), 15.070, 15.080, 15.137 & 15.138 – These provisions apply to road and driveway approach spacing standards and building setbacks from roads. No evidence has been provided that demonstrates how these regulations have lowered the fair market value of the property.

**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 E40 zone do not appear to be exempt regulations, but they can not be waived for the current owner.

The /CAS (Commercial Airport Safety Combining Zone) regulations of LC16.245 are exempt regulations as defined by LC 2.710 (2) and cannot be waived.

**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 cannot 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 Scott and Sharon Keep.

**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 (Keep, PA06-7248)

**WHEREAS,** Scott and Sharon Keep requests up to \$1,700,000 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 multiple lots and placement of a dwelling on each lot, uses that could have otherwise been allowed at the time the property was acquired by Sharon Keep's family; 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 Scott and Sharon Keep 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, Scott and Sharon Keep, 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 Sharon Keep's 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 Scott and Sharon Keep shall be granted and the restrictive provisions of LC 16.212 that limit the development of dwellings and the division of land in the E40 (Exclusive Farm Use) Zone shall not apply to Scott and Sharon Keep so they can make application for approval to develop the property located at 88920 Fir Butte Rd., Eugene, OR and more specifically described in the records of the Lane County Assessor as map17-05-24 tax lots, 2000 and 3900 in a manner consistent with the land use regulations in effect when they acquired the property on January 4, 1989.

**IT IS HEREBY FURTHER ORDERED** Scott and Sharon Keep 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 Scott and Sharon Keep 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 claimant 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.

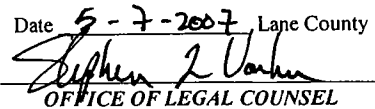
**IT IS HEREBY FURTHER ORDERED** that this action making certain Lane Code provisions inapplicable to use of the property by Scott and Sharon Keep not constitute a waiver or modification of state land use regulations and does not authorize immediate division of the subject property or immediate construction 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.

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Faye Stewart, Chair  
Lane County Board of County Commissioners

APPROVED AS TO FORM

Date 5-7-2007 Lane County  
  
OFFICE OF LEGAL COUNSEL