

Memo Date: April 19, 2007
Hearing Date: May 15, 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 (PA06-7259, Van Duyn)

BACKGROUND

Applicant: Charles Van Duyn

Current Owner: Charles Van Duyn and Virginia Delgado

Agent: James W. Spickerman

Map and Tax lot(s): 17-04-09, tax lot 2700 (29.18 acres) and
17-04-16, tax lot 300 (113.9 acres).

Acreage: 143.08 acres (total)

Current Zoning: E40 (Exclusive Farm Use)

Date Property Acquired:

April 12, 1973 - Circuit Court – Lane County: Probate No. 20948 - Helen N. Quackenbush: Order approving interim accounting and authorizing partial distribution; Book 104, Page 14.)

Date claim submitted: December 1, 2006

180-day deadline: May 30, 2007

Land Use Regulations in Effect at Date of Acquisition: unzoned

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

The current owners are the Charles Van Duyn and Virginia Degado, who acquired an interest in the properties in 1973, when they were unzoned (Circuit Court – Lane County: Probate No. 20948 - Helen N. Quackenbush: Order approving interim accounting and authorizing partial distribution; Book 104, Page 14). It is unclear when conveyance of the property occurred and it is asserted the family acquired interests in the property in 1942 and 1945. Currently, the properties are zoned E40 (Exclusive Farm Use).

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

The properties were unzoned when they were acquired by the current owners. The minimum lot size and limitations on new dwellings in the E40 zone prevent the current owners from developing the properties as could have been allowed when they acquired them. The alleged reduction in fair market value is \$8,044,400 for tax lot 300 and \$2,383,280 for tax lot 2700, based on the submitted statement of a real estate broker.

The applicant has not submitted a comparative market analysis (CMA) or an appraisal as evidence of a reduction in fair market value from enforcement of a land use regulation and the County Administrator has not waived the requirement for a CMA or appraisal.

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

LC 16.245 Airport Safety/CAS zoning district – These provisions comply with State of Oregon (ODOT-Aviation) and Federal (FAA) law and are to insure public safety standards are applicable to development within flight approach paths of public air fields. These regulations are exempt regulations and cannot be waived.

3. The restrictive land use regulation is not an exempt regulation as defined in LC 2.710.

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

CONCLUSION

It appears this is a valid claim, however, there is insufficient evidence in the record to determine ownership and the validity of the alleged reduction in fair market value.

RECOMMENDATION

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