

Memo Date: March 12, 2007
Hearing Date: April 3, 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 (PA 06-7117, DeFoe1)

BACKGROUND

Applicant: Daniel Defoe, Kristine Defoe and Jaymie Defoe

Current Owner: Daniel Defoe, Kristine Defoe and Jaymie Defoe

Agent: Norman Waterbury

Map and Tax lot(s): 15-04-18, tax lot 2000

Acreage: 46.43 acres

Current Zoning: E30 Exclusive Farm Use

Date Property Acquired: June 17, 1985 Karla Kay Defoe, Rec. No. 85-21213 -- Deed;
August 29, 2006 Kristine Marie Defoe, Daniel Major Defoe and Jaymie Madsen Defoe, Rec. No. 2006-062472 -- Deed of Personal Representative.

Date claim submitted: November 29, 2006

180-day deadline: May 28, 2007

Land Use Regulations in Effect at Date of Acquisition:

1985 - Karla Kay Defoe -- E30 Exclusive Farm Use.

2006 - Kristine Marie Defoe, Daniel Major -- E30 Exclusive Farm Use.

Restrictive County land use regulation: Minimum parcel size of thirty acres and limitations on new dwellings in the E30 (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 Kristine Marie Defoe, Daniel Major Defoe, and Jaymie Madsen Defoe who acquired interest in the property by Deed of Personal Representative (Oregon Probate No. 50-05-11046) on August 23, 2006, when it was zoned E30 Exclusive Farm Use. Currently, the property is zoned E30.

The applicant claims the "original family" acquired the property on November 18, 1941. However, the applicant hasn't identified the "original family", hasn't stated whether the current owners are members of that family as defined by Measure 37 and hasn't explained if the intervening owners were members of the "original family".

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

The property was zoned E30 when it was acquired by Karla Kay DeFoe in 1985 and it is currently designated the same, E30. As such, there is no reduction in fair market value as a result of the zoning between 1985 and 2007. The three current owners, Marie Defoe, Daniel Major Defoe, and Jaymie Madsen Defoe are members of the same DeFoe family and when they acquired interest in 2006, the property was zoned E30.

The minimum lot size and limitations on new dwellings in the E30 zone do not prevent the current owners from developing the property as could have been allowed when they acquired it.

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.

Because the current minimum lot size and restrictions on new dwellings in the E30 zone

were applicable when the current owners and the Defoe family first acquired the property, those regulations appear to be exempt and there does not appear to be a reduction in fair market value from enforcement of a restrictive land use regulation. The claimant has not identified any other restrictive land use regulations that allegedly reduce the fair market value of the property.

CONCLUSION

It appears this is not a valid claim because the minimum lot size and dwelling restrictions were applicable when the Defoe family acquired the property in 1985.

RECOMMENDATION

The County Administrator recommends the Board direct him to deny the claim.