

Memo Date: March 8, 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 (PA06-7094, Neumann)

BACKGROUND

Applicant: Carol C. Neumann
Current Owner: Carol C. Neumann
Agent: None
Map and Tax lot(s): 16-05-18 # 211 & 16-15-18 #205
Acreage: Tax lot #205 & #211 are approximately 5 & 15 acres, respectively
Current Zoning: RR10 (Rural Residential), /FP (Floodplain Combining Zone),
Date Property Acquired: Tax lot #205 was acquired on April 1, 1973 (WD #7974532)
Tax Lot #211 was acquired on May 16, 1972 (WD #7974531)
Date claim submitted: November 28, 2006
180-day deadline: May 26, 2007
Land Use Regulations in Effect at Date of Acquisition: Unzoned;
Restrictive County land use regulation: Minimum parcel size of 10 acres and restrictions on commercial uses in the RR10 zone.

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 owner of the subject property is Carol C. Neumann. She acquired an interest in tax lot 205 on April 1, 1973 (WD #7974532) and in tax lot 211 on May 16, 1972 (WD# 7974531). The subject property was unzoned on both of these dates. Currently, the property is zoned RR10.

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

The property was unzoned when it was acquired by Carol Neumann. The minimum lot size and limitations on commercial uses in the RR10 zone prevent Carol from developing the property as could have been allowed when she acquired it. An alleged reduction in fair market value of the property has been calculated in two parts, using two separate methods. First, a comparative market analysis has been provided which alleges a reduction in the fair market value of the property in the amount \$389,201. This CMA evaluates the potential loss in value due to the application of the minimum lot size requirements of LC16.290. The second component of the claim is a market analysis which alleges an annual loss in revenue to the property owner due to the application of the conditions of approval on the wedding and special events business currently allowed through a special use permit (PA06-5018). Specifically, the applicant's market analysis appears to consider three conditions of approval which allegedly reduce the annual fair market value of the property by \$24,000 per year. These are conditions that limit the hours and months of business operation (condition 6), the number of events allowable (condition 7) and require that the business be operated by a resident of the property (condition 4). These conditions and the land use regulations from which they are derived may restrict the intensity of commercial uses on the property and therefore, be attributable to some reduction in value. However, the market analysis fails to take into consideration what value the special use approval potentially adds to the property by permitting the wedding and special events business. For this reason, the second component of the applicant's value reduction analysis is not considered complete or competent by the County Administrator.

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

The minimum lot size requirements of LC 16.290 do not appear to be exempt regulations.

Regulations found within the /FP (Floodplain Combining Zone) of LC16.244 and the requirements of the recorded farm and forest management agreement are exempt as defined by LC 2.710 (2) and cannot be waived.

The conditions of approval to the special use permit (PA06-5018) impose standards required under LC 16.290(1), (3), (4)(s) and (5) which may be both exempt and nonexempt. In Table 1, below, column "A" identifies the specific condition of approval to PA06-5018. Column "B" indicates the corresponding Lane Code requirement associated with the conditions in listed in column "A". Column "C" indicates whether or not the Lane Code requirement may be considered exempt or non-exempt as defined by LC 2.710 (2).

Table 1	A	B	C
	Condition of Approval	Corresponding Lane Code Requirement	Exemption Status
1)	The Special Use Permit shall remain valid unless discontinued for a period in excess of one year.	LC 16.251(5)	May be nonexempt
2)	The toilet facilities constructed and approved by BP030267 shall be maintained for use of the customers of the special event facility.	LC 16.290(5)(c)	Exempt
3)	During operation of the special event facility, the applicant shall maintain within the subject accessory building: 1) A preset, red light-green light sound meter, in a position recommended by an acoustical engineer, that will indicate when sound generated within the structure exceeds 60 dB,A at the subject property's boundary line, and 2) A built-in automatic gain control meter (pre-wired), recommended by an acoustical engineer, that restricts the volume on the house/accessory building sound system from producing sound exceeding 60 dB,A at the subject property line.	LC 16.290(5)(a),(b) & LC 5.700	Exempt
4)	The business shall be operated by a resident of the subject property.	LC 16.290(3)(b)	May be nonexempt
5)	The special events facility shall be conducted as represented in the applicant's written application, as shown on the approved plot plan identified as Exhibit "B" and made a part of these conditions and subject to the conditions of approval contained herein.	LC 16.290(4)(s)	This condition is nonexempt only as it relates to other nonexempt conditions
6)	The hours of operation of special events (weddings and other proposed events) shall be limited to 9:00 a.m. to sunset, during the months of May through October only each year. The applicant shall end events at least one hour before sunset (as indicated by Astronomical U.S. Naval Tables). The applicant shall assure that all event guests, caterers, landscape maintenance, musicians, and other vendors of services arrive on the subject property after 9:00 a.m. and leave the subject property before sunset.	LC 16.290(5)(a),(b)	May be nonexempt

Table 1 cont.	A	B	C
	Condition of Approval	Corresponding Lane Code Requirement	Exemption Status
7)	Special events shall be limited to one per week. Two events shall not be held on the same weekend. No events shall be held within the same week as a non-home occupation/temporary use event of a similar nature. No more than 150 people shall attend any one event.	LC 16.290(5)(a),(b)	150 person capacity requirement is exempt. All other requirements of this condition may be nonexempt
8)	Use of the sound system for rehearsal / setup periods on the day prior to an event is limited to one half hour and must not extend beyond one hour prior to sunset.	LC 16.290(5)(a)(b) & LC 5.700	Exempt
9)	No overnight use is allowed in conjunction with the home occupation or temporary use.	LC 16.290(5)(a)(b)	May be nonexempt
10)	The driveway, parking area and all other exterior areas related to the home occupation and temporary permit shall be maintained in a dust-free condition during the event season.	LC 16.290(5)(a)(b)	May be nonexempt
11)	The applicant shall maintain the existing berms and plants in good condition.	LC 16.290(5)(a)(b)	May be nonexempt
12)	All fencing and landscaping shall comply with applicable Lane Code provisions.	LC 16.290(5)(a),(b)	May be nonexempt
13)	Lighting is not required in the accessory building. Any lighting constructed or placed within or upon the accessory building shall be directed away, as much as reasonably possible, from adjoining property. Such lighting shall be of the minimum wattage necessary to provide adequate lighting under the circumstances existing at that time.	LC 16.290(5)(a),(b)	May be nonexempt

Table 1 cont.	A	B	C
	Condition of Approval	Corresponding Lane Code Requirement	Exemption Status
14)	<p>The identification sign shall not extend over the public right-of-way of any public road or project beyond the property line, shall not be illuminated, shall not be capable of movement and shall be limited in size to 2' x 3'. Directional signs and signs designating "smoking areas" and "no smoking areas" shall be posted on the subject property. Fireworks shall not be allowed during special events and a "no fireworks" sign shall be posted during events held on the Fourth of July. No off-premise signs shall be allowed. The applicant is responsible to inform clients of this restriction and shall take reasonable steps to insure compliance.</p>	LC 16.290(5)(d)	Exempt
15)	<p>Any vegetation removal within the 50-foot setback of Jones Creek shall comply with Lane Code provisions regarding vegetation removal.</p>	LC 16.290(1)(c)	May be nonexempt
16)	<p>Roadside ditches and other drainage facilities shall be designed and constructed solely to promote drainage of roadways without interfering with natural waterways. Whenever a roadway crosses a natural channel or waterway, culverts shall be installed to maintain natural water flow. Such natural waterways shall be identified by survey of the topography and/or aerial photography of the surrounding area. Roadside ditches shall not be used as channels for water diverted from property, except through Facility Permit issued to the landowner on application to the Director, Department of Public Works.</p>	LC 16.290(5)(d)	Exempt
17)	<p>The applicant shall meet all applicable federal state and local regulations.</p>	N/A	Exempt
18)	<p>Participants at special events shall be limited to 70 vehicles. Adequate parking shall be provided on site, without blocking the driveway or impeding the access for emergency vehicles. Parking shall occur in conformance with the approved parking site plan identified as Exhibit "C".</p>	LC 16.290(5)(d)	Exempt

CONCLUSION

It appears this is a valid claim.

RECOMMENDATION

The County Administrator recommends the Board adopt the attached order to waive the restrictive minimum lot size standards and nonexempt restrictions on commercial uses in the Rural Residential zone.

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

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 (PA06-7094, Neumann)

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 Carol C. Neumann (PA06-7094, Neumann), the owner of real property described in the records of the Lane County Assessor as map16-05-18, tax lots 211 and 205, consisting of approximately 20 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 April 3, 2006, the Board conducted a public hearing on the Measure 37 claim (PA06-7094) of Carol C. Neumann and has now determined that the restrictive RR10 (Rural Residential) zone land division requirements and commercial use restrictions of LC 16.290 were enforced and made applicable to prevent Carol C. Neumann from developing her property as might have been allowed on May 16, 1972, (tax lot 211) and also on April 1, 1973, (tax lot 205 and that the public benefit from application of the current RR10 land division and commercial use regulations to the applicant's property is outweighed by the public burden of paying just compensation; and

WHEREAS, Carol C. Neumann requests up to \$413,201 as immediate compensation and \$24,000 as annual compensation for the reduction in value of her property, or waiver of all land use regulations that would restrict the division of land into multiple lots and limit the intensity of business operations on the property, uses that could have otherwise been allowed at the time she acquired 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 division and nonexempt use regulations of the RR10 zone as outlined in Table 1 of the County Administrator's report 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 Carol C. Neumann to make application for development of the subject property in a manner similar to what she could have been able to do under the regulations in effect when she 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 applicant Carol C. Neumann 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 she 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 Carol C. Neumann shall be granted and the nonexempt restrictive provisions of LC 16.290 that limit the division of land and commercial uses in the RR10 (Rural Residential) zone shall not apply to Carol C. Neumann, so she can make application for approval to develop the property located at 25545 Hall Road, Junction City, OR, and more specifically described in the records of the Lane County Assessor as map16-05-18, tax lots 205 and 211, consisting of approximately 20 acres in Lane County, Oregon, in a manner consistent with the land use regulations in effect when she acquired an interest in the property on May 16, 1972, (tax lot 211) and also on April 1, 1973, (tax lot 205).

IT IS HEREBY FURTHER ORDERED Carol C. Neumann still needs 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 Carol C. Neumann as restricting the division of the property or placement of a dwelling or other uses, 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, use or division restrictions of the applicable zone described above, the claimant shall submit appropriate applications for review and approval 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 Carol C. Neumann 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 or other use of the property. The requirements of state law may contain specific standards regulating development of the subject property and the applicant 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.

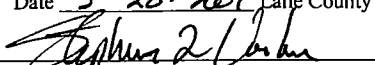
IT IS HEREBY FURTHER ORDERED that the other county land use regulations and rules that still apply to the property require that land use, sanitation and building permits be approved by Lane County before any development can proceed. Notice of this decision shall be recorded in the county deed records. 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 3-28-2007 Lane County


OFFICE OF LEGAL COUNSEL