

**Memo Date:** March 28, 2007  
**Hearing Date:** April 17, 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 (PA06-7189, Kempf)

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## **BACKGROUND**

**Applicant:** Patricia M. Clarke Kempf

**Current Owner:** Patricia M. Clarke Kempf

**Agent:** Michael Reeder

**Map and Tax lot(s):** 17-02-17, #401 and #404

**Acreage:** 115.32 acres

**Current Zoning:** #401: F-2 (Impacted Forest Land) & #404: E-40 (Exclusive Farm Use)

**Date Property Acquired:** #401 – January 29, 1971 (WD #35194)  
#404 - September 28, 1967 (WD 2145)

**Date claim submitted:** November 30, 2006

**180-day deadline:** May 29, 2007

**Land Use Regulations in Effect at Date of Acquisition:** unzoned

**Restrictive County land use regulation:** #401: Minimum parcel size of eighty acres and limitations on new dwellings in the F-2 (Impacted Forest Land) zone (LC 16.211). #404: Minimum parcel size of forty acres and limitations on new dwellings in the E-40 (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 owner is the Patricia M. Clarke Kempf Revocable Trust. Patricia M. Clarke Kempf acquired an interest in tax lot #401 on January 29, 1971, when it was unzoned. And she acquired an interest in tax lot #404 on September 28, 1967, when it was unzoned. Currently, tax lot #401 is zoned F-2 and tax lot #404 is zoned E-40.

In 1991, the property was placed into a Trust. The Trust is considered a new owner but it is revocable and Patricia M. Clarke Kempf is the Trustee. As a result, the ownership interest of Patricia M. Clarke Kempf is continued.

**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 the current owner. The minimum lot size and limitations on new dwellings in the E-40 and F-2 zone prevent the current owner from developing the property as could have been allowed when she acquired it. The alleged reduction in fair market value is \$16,352,937, based on the submitted appraisal.

**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 do not appear to be exempt regulations.

**CONCLUSION**

It appears this is a valid claim.

**RECOMMENDATION**

The County Administrator recommends the Board adopt the attached order to waive the restrictive land use regulations of the F-2 zone for tax lot #401 and the E-40 zone for tax lot #404.

**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 (Kempf/PA06-7189)

**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 Patricia Mae Clarke Kempf (PA06-7189), the owner of real property located at Old Mohawk Road and Hill Road, Springfield, and more specifically described in the records of the Lane County Assessor as map 17-02-17, tax lots 401 and 404, consisting of approximately 115.32 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 17, 2007, the Board conducted a public hearing on the Measure 37 claim (PA06-7189) of Patricia Mae Clarke Kempf and has now determined that the restrictive F2 (Impacted Forest) zone and E-40 (Exclusive Farm Use) zone dwelling and land division requirements of LC 16.211 and LC 16.212, respectively, were enforced and made applicable to prevent Patricia Mae Clarke Kempf from developing the property as might have been allowed at the time she acquired an interest in the tax lot 401 portion of the property on January 29, 1971, and an interest in the tax lot 404 portion of the property on September 28, 1967, and that the

public benefit from application of the current F2 and E-40 dwelling and division land use regulations to the applicant's property is outweighed by the public burden of paying just compensation; and

**WHEREAS**, Patricia Mae Clarke Kempf requests either \$16,352,937 as compensation for the reduction in value of her property, or waiver of all land use regulations that would restrict the division of land into lots containing less than eighty acres on tax lot #401 and less than forty acres on tax lot #404 and placement of a dwelling on each lot, uses that could have otherwise been allowed at the time she acquired an interest in 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 use regulations of the F2 and E-40 zones 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 Patricia Mae Clarke Kempf 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 Patricia Mae Clarke Kempf 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 Patricia Mae Clarke Kempf shall be granted and the restrictive provisions of LC 16.211 and LC 16.212 that limit the development of dwellings and the division of land in the F2 (Impacted Forest) Zone and the E-40 (Exclusive Farm Use) Zone, respectively, shall not apply to Patricia Mae Clarke Kempf, so she can make application for approval to develop the property located at Old Mohawk Road and Hill Road, Springfield, and more specifically described in the records of the Lane County Assessor as map 17-02-17, tax lots 401 and 404, consisting of approximately 115.32 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 January 29, 1971 for tax lot #401 and September 28, 1967, for tax lot #404.

**IT IS HEREBY FURTHER ORDERED** that Patricia Mae Clarke Kempf 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 her 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 Patricia Mae Clarke Kempf does 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 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.

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Faye Stewart, Chair  
Lane County Board of County Commissioners

APPROVED AS TO FORM

Date 4-10-2007 Lane County

  
OFFICE OF LEGAL COUNSEL