

**Memo Date:** March 27, 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 (PA06-7181, Cone Investments)

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**BACKGROUND**

**Applicant:** Cone Investments Limited Partnership

**Current Owner:** Cone Investments Limited Partnership

**Agent:** Barry D. Smith

**Map and Tax lot(s):** 18-03-23, tax lot 100

**Acreage:** 105.36 acres

**Current Zoning:** E40 (Exclusive Farm Use)

**Date Property Acquired:** March 10, 1993 (Bargain and Sale Deed, Reception No. 93-14939).

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

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

**Land Use Regulations in Effect at Date of Acquisition:** E40 (Exclusive Farm Use)

**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 owner is Cone Investments Limited Partnership, an Oregon limited partnership, which acquired an interest in the property on March 10, 1993 ( Bargain and Sale Deed, Reception No. 93-14939) when the property was zoned E40 (Exclusive Farm Use). The claimant is also alleging earlier interests dating back to the acquisition of the property by Cone Lumber Company, a co-Partnership on May 7, 1969 (Contract and Grant, Reception No. 63164) when the property was zoned AGT (Agricultural, Grazing and Timber – Ordinance No. 66-091, August 25, 1966). And, the claimant also allegedly received an additional interest from Louise E. Cone and Marjorie J, Whitney with the conveyance of the property by Bargain and Sale Deed on July 31, 1979 (Reel 1034R, Reception No. 7966739) to Cone Lumber Company, a partnership whose members were: Edwin E. Cone; Edwin E. Cone, Trustee; Richard Bruce Cone; Douglas Earl Cone; Gregory Paul Cone; and June E. Cone and Bruce J. Herzinger, Trustees. The property was zoned AGT at the time of this action.

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

The claimant has alleged a reduction in fair market value of \$4,935,000.

The property was zoned E40 (Exclusive Farm Use) when it was acquired by the current owner, Cone Investments Limited Partnership, in 1993, and the claimant has not identified any restrictive regulations enacted since the current owner acquired the property in 1993. Specifically, the current minimum lot size and dwelling restrictions of Lane Code 16.212 were applicable to the property in 1993.

The applicant has claimed that the following sections of Lane Code did restrict the use of the subject property between 1969 and 1993, prior to its ownership:

Ordinance No. 3 (Lane County Subdivision Ordinance) – This ordinance enacted subdivision regulations in the unincorporated territory of Lane County in accordance with the provisions of the County Planning Law under Chapter 537, Oregon Laws, 1947. No evidence has been provided that demonstrates how these regulations have lowered the fair market value of the property.

Ordinance No. 4 (Zoning and Land Use Ordinance), June 2, 1949 -- This ordinance established land use code to be used in establishing the land use districts. No evidence has been provided that demonstrates how these regulations have lowered the fair market value of the property.

Ordinance No. 223 (Zoning and Land Use), July 27, 1966 – This ordinance implemented regulations in 1966. No evidence has been provided that demonstrates how these regulations have lowered the fair market value of the property.

Ordinance No. 26, September 28, 1951 -- Amended Ordinance No. 4. No evidence has been provided that demonstrates how these regulations have lowered the fair market value of the property.

Ordinance No. 45 – Amended Ordinance No. 4. No evidence has been provided

that demonstrate how these regulations have lowered the fair market value of the property.

Ordinance No. 293 – Amended Ordinance No. 4, August 14, 1968. No evidence has been provided that demonstrate how these regulations have lowered the fair market value of the property.

Lane County Revised Subdivision Ordinance, April 2, 1962. No evidence has been provided that demonstrate how these regulations have lowered the fair market value of the property.

Ordinance 15-68 – Amended Lane County revised Subdivision Ordinance, January 8, 1969. No evidence has been provided that demonstrate how these regulations have lowered the fair market value of the property.

Ordinance No. PA 884 – Applied rural comprehensive plan zones, February 29, 1984. Ordinance No. PA 891 – Amended Ord. No 884 to change the Plan and zoning designations of some rural parcels, September 12, 1984.

Lane Code Chapters 10, 15 and 16, in entirety.

Lane Code 10 provisions only apply to those zoned properties within the Urban Growth Boundaries of a city and are not applicable to the subject property.

Lane Code 15 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.

Lane Code 16.212. The applicant has failed to demonstrate how these provisions relate to the subject property or how they have reduced the fair market value of the property after it was acquired in 1993.

**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 appear to be exempt regulations and they cannot be waived for the current owner. The claimant has not identified any other restrictive land use regulations that allegedly reduced the fair market value of the property after Cone Investments Limited Partnership acquired an interest in 1993.

**CONCLUSION**

It appears this is not a valid claim for Cone Investments Limited Partnership.

**RECOMMENDATION**

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