

**Memo Date:** January 24, 2007  
**Order Date:** February 13, 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 (PA06-6744, Iverson2)

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**BACKGROUND**

**Applicant:** Boyd Iverson, Judith Iverson, and Jordon Iverson

**Current Owners :** Judy Iverson – 16-55-15, tax lot 201;  
16-55-15, tax lot 205;  
Boyd Iverson – 16-55-15, tax lot 203; and  
Jordon Iverson – 16-55-15, tax lot 204

**Agent:** Boyd Iverson

**Map and Tax lot:** 16-55-15, tax lots 201, 203, 204 & 205

**Acreage:** Tax lot 201 = 2,613 square feet or 0.06 acre  
Tax lot 203 = 34,848 square feet or 0.80 acre  
Tax lot 204 = 8,276 square feet or 0.19 acre  
Tax lot 205 = 435 square feet or 0.001 acre  
Total 46,172 square feet or 1.051 acre

**Current Zoning:** 16-55-15, tax lots 201 and 205 – Non-Impacted Forest (F-1)  
16-55-15, tax lots 203 and 204 – Impacted Forest Land (F-2)

**Date Property Acquired By Current Owner:**

Tax lot	Owner	Deed-Recording	Date of Interest
201	Judith Iverson	Reel 1447, # 8709002	January 26, 1987
203	Boyd Iverson	Reel 1111, # 8064030	November 1, 1980

204 Jordan Iverson (Reel 2566, # 99059106) July 2, 1999  
205 Judith Iverson (Reel 1447, # 8709002); February 26, 1987

**Date claim submitted:** October 6, 2006

**180-day deadline:** April 4, 2007

**Land Use Regulations in Effect at Date of Acquisition by Current Owners:**

16-55-15, tax lots 201 & 205 was zoned F-1 (Non-Impacted Forest Land) on February 26, 1987;

16-55-15, tax lot 203 was zoned FF2 (Farm-Forest) on November 1, 1980 (Boyd Iverson);

16-55-15, tax lot 204 was zoned F2 (Impacted Forest Land) on July 2, 1999.

**Restrictive County land use regulation:** Minimum parcel size of 80 acres and limitations on new dwellings in the F-1 (Non-Impacted Forest Land) zone (LC 16.210) and the F-2 (Impacted Forest Land) zone (LC 16.211).

**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**

**Tax lot 203, 16-55-15**

Tax lot 203 was unzoned in 1962 when it was acquired by the Iverson family (WD Reel 418R, #47860). The current owner, Boyd Iverson, of 16-55-15, tax lot 203, acquired the property from family members, Vernon and Margaret Iverson, by Bargain and Sale Deed # 8064031, on November 1, 1980. On the date of acquisition by Boyd Iverson, the property (tax lot 203) was zoned FF20 (Farm-Forest) (Lane Code 10.105), with a 20-acre minimum parcel size and allowed "one single family dwelling or one mobile home per lot" (LC 10.105(5)). Tax lot 203 is currently zoned F2 (Impacted Forest Land).

**Tax lot 204, 16-55-15**

Tax lot 204 was unzoned in 1962 when it was acquired by the Iverson family (WD Reel 418R, #92407). The current owner, Jordon Iverson, of 16-55-15, tax lot 204, acquired the property from a family member, Vernon and Margaret Iverson (Bargain & Sale Deed # 99059106) on, July 2, 1999, when it was zoned F2 (Impacted Forest).

**Tax lots 201 and 205, 16-55-15**

The current owner, Judith Iverson, of 16-55-15, tax lots 201 and 205, acquired interest in the two properties on February 26, 1987, through conveyance by Personal Representative's Deed (Reel 1447, #8709002) when it was zoned F1 (Non-Impacted Forest).

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

The current property owners claim the minimum lot size and limitations on new dwellings in the F-1 and F-2 zones prevent the current owners from developing the properties as could have been allowed when they acquired it. For the purposes of compensation, the alleged reduction in fair market value for the four properties (tax lots 201, 203, 204 and 205) is \$400,000 to \$465,000, based on the submitted real estate broker opinion of comparable sales data. It is not clear how much of the value reduction applies to tax lots 201 and 205. The claimants have not identified any other restrictive land use regulations that allegedly reduce the fair market value of the property.

**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 of LC 16.210 and LC 16.211 do not appear to be exempt regulations.

**CONCLUSION**

**Tax lots 201 and 205 – 16-55-15 (Judith Iverson)**

It appears this is not a valid claim. Judith Iverson purchased the two properties in 1987. At that time, the properties were zoned F1 and the LC 16.210 regulations were applicable on tax lots 201 and 205 prior to the current owner acquiring them.

**Tax lot 204 – 16-55-15 (Jordan Iverson)**

It appears this is a valid claim based on the Iverson family ownership. However, waiver for the current owner, Jordan Iverson, will have no effect because the LC 16.211 regulations were applicable on the property, tax lot 204, prior to the current owner acquiring them. The claimant has not identified any other restrictive land use regulations that allegedly reduce the fair market value of the property.

**Tax lot 203 – 16-55-15 (Boyd Iverson)**

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 for 16-55-15, tax lots 203 and 204.

**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 (PA 06-6744, Iverson2)

**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 Boyd Iverson, Jordan Iverson and Judy Iverson, the owners of real property located south of the public road right-of-way of Highway 126 and north of the McKenzie River, and more specifically described in the records of the Lane County Assessor as map 16-55-15, tax lots 201, 203, 204 and 205, consisting of approximately 1.051 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 February 13, 2007, the Board conducted a public hearing on the Measure 37 claim (PA 06-6744) of Boyd Iverson, Jordan Iverson and Judy Iverson, and has now determined that the restrictive F2 (Impacted Forest Land) requirements of LC 16.211 were enforced and made applicable to prevent the Iverson family from developing portions the subject property as might have been allowed at the time the family first acquired it, and that the public benefit from application of the current F2 regulations to the property is outweighed by the public burden of paying just compensation; and

**WHEREAS**, Boyd Iverson, Jordan Iverson and Judy Iverson request either \$400,000 as compensation for the reduction in value of their property, or waiver of all land use regulations that would restrict them from developing the property as could have been allowed on November 1, 1980, the date they acquired an interest in the property; and

**WHEREAS**, the Board finds that under LC 2.760(3) the public interest is served by modifying, removing or not applying the land use regulations of the F2 zone to portions of 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 Boyd Iverson and Jordan Iverson to make application for development of the subject property in a manner similar to what they could have been able to do under the regulations in effect when they 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 applicants Boyd Iverson and Jordan Iverson 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 they acquired an interest in some of 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 Boyd Iverson and Jordan Iverson shall be granted and the restrictive provisions of LC 16.211 that limit the development of land in the F2 (Impacted Forest Land) Zone shall not apply to Boyd Iverson and Jordan Iverson, so they can make application for approval to develop the property specifically described in the records of the Lane County Assessor as map 16-55-15, tax lots 203 and 204, consisting of approximately 0.99 of an acre in Lane County, Oregon, in a manner consistent with the land use regulations in effect when they acquired an interest in the property on November 1, 1980 (for Boyd Iverson) and tax lot 204 on July 2, 1999 (for Jordan Iverson).

**IT IS HEREBY FURTHER ORDERED** that Boyd Iverson and Jordan Iverson still need to make application and receive approval of any development under the other land use regulations applicable to placing a dwelling that were not specifically identified or established by them as restricting the development of the land, and it would be premature to not apply those regulations given the available evidence. To the extent necessary to effectuate the Board action to apply the dwelling restrictions of the applicable zone described above, the claimants 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 Boyd Iverson and Jordan Iverson does not constitute a waiver or modification of state land use regulations and does not authorize immediate development of the subject 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.

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Faye Stewart, Chair  
Lane County Board of County Commissioners

APPROVED AS TO FORM

Date 2-9-2007 Lane County

Stephen J. Walker  
OFFICE OF LEGAL COUNSEL