

Memo Date: January 24, 2007
Order Date: February 13, 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 (PA06-6761, Lombard)

BACKGROUND

Applicant: Herb Lombard & Rita Lombard

Current Owner: Herb Lombard & Rita Lombard

Agent: Jim Belknap

Map and Tax lot: 20-03-34, tax lot 300

Acreage: 57.95 acres

Current Zoning: Impacted Forest Land (F-2)

Date Property Acquired:

Herb Lombard – May 3, 1976 (Referenced in Memorandum of Contract if Sale, Reel 870R, # 7768066)

Rita Lombard -- September 15, 1989 (Deed creating Estate/Entirety, Reel 1593R, # 8941898)

Date claim submitted: October 10, 2006

180-day deadline: April 8, 2007

Land Use Regulations in Effect at Date of Acquisition:

Agriculture/Timber/Grazing (AGT-5) Herb Lombard (individual)

Restrictive County land use regulation: Minimum parcel size of 80 acres and limitations on new dwellings in 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

The current owners are Herb and Rita Lombard. Herb Lombard acquired an interest in the property on May 3, 1976, (See Memorandum of Sales Contract described as "Parcel 4 on Reel 870R, Instrument # 7768066) when it was zoned Agriculture/Timber/Grazing (AGT-5) which allowed a minimum land division of 5 acres. The Sales Contract was completed with an Warranty Deed on September 6, 1987 (AC 8941897).

Rita Lombard acquired an interest in the property on September 15, 1989, (Deed Creating Estate of the Entirety: Husband to Wife, Reel 1593R, Instrument # 8941898) when it was zoned Impacted Forest Land (F2).

Currently, the property is zoned Impacted Forest Land (F-2) which has a minimum land division requirement of 80 acres and restrictive dwelling requirements.

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

The property was zoned AGT-5 (Lane Code 10.110) when it was acquired by Herb Lombard. The minimum lot size and limitations on new dwellings in the F-2 zone prevent him from developing the property as could have been allowed when he acquired it.

Rita Lombard acquired an interest in the property on September 15, 1989 when the property was zoned F2 and the minimum lot size and dwelling restrictions were applicable.

The claimant proposes to divide the 57.95-acre property into eleven, 5-acre lots and develop each lot with a residence.

The alleged reduction in fair market value is \$1,133,500, based on the submitted real estate broker opinion of comparable sales data.

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. However, they can only be waived for Herb Lombard. They can not be waived for Rita beyond September 15, 1989, because she acquired an interest in the property when those regulations were applicable.

CONCLUSION

It appears this is a valid claim, but the minimum lot size and dwelling restrictions can only be waived for Herb Lombard and Rita Lombard to the date of each acquisition.

RECOMMENDATION

The County Administrator recommends the Board adopt the attached order.

**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 06-6761, Lombard)

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 Herb and Rita Lombard, the owners of real property located west of the public road right-of-way of Row River Road Cutoff, east of Landess Road and E. Madison Ave, Cottage Grove, and more specifically described in the records of the Lane County Assessor as map 20-03-34, tax lot 300, consisting of approximately 57.95 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 06-6761) of Herb and Rita Lombard and has now determined that the restrictive F2 (Impacted Forest Land) zone dwelling and land division requirements of LC 16.211 were enforced and made applicable to prevent Herb and Rita Lombard from developing the property as might have been allowed on May 3, 1976, that day the Lombard family acquired an interest in the property, and that the public benefit from application of the current F2 regulations to the applicant's property is outweighed by the public burden of paying just compensation; and

WHEREAS, Herb and Rita Lombard request either \$1,133,500 as compensation for the reduction in value of their property, or waiver of all land use regulations that would prevent Herb Lombard him from developing the property as could have been allowed on May 30, 1976, the date he acquired an interest in the property; and

WHEREAS, the Board finds that under LC 2.760(3) the public interest is served by applying the land use regulations of the F2 zone 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 Herb and Rita Lombard to make application for development of the subject properties in a manner similar to what they could have been able to do under the regulations in effect when the Lombard family 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 Herb and Rita Lombard 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 the Lombard family 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 Herb and Rita Lombard shall be granted and the restrictive provisions of LC 16.211 shall not apply to Herb and Rita Lombard, so that they can make application for approval to develop the property described in the records of the Lane County Assessor as map 20-03-34, tax lot 300, consisting of approximately 58 acres, in a manner consistent with the land use regulations in effect when each acquired an interest in the property, on May 3, 1976, for Herb Lombard and on September 15, 1989, for Rita Lombard.

IT IS HEREBY FURTHER ORDERED that Herb and Rita Lombard still need to make application and receive approval of any development under the other land use regulations applicable to dividing the land or 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 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 Herb and Rita Lombard 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.

Faye Stewart, Chair
Lane County Board of County Commissioners

APPROVED AS TO FORM

Date 2-9-2007 Lane County

OFFICE OF LEGAL COUNSEL