

Supplemental Memo

Memo Date: May 2, 2007

Hearing Date: June 20, 2007 (Continued from May 22, 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 (PA06-7302, Davidson302)

BACKGROUND

Applicant: Davidson Industries, Inc., an Oregon Corporation

Current Owner: Davidson Industries, Inc.

Agent: William R. Potter & Micheal M. Reeder

Map & Tax lots: 18-10-07 #201; 18-10-08 #200, 18-10-08-30 #100, 201, 300, 400, 401

Acreage: approximately 126 acres

Current Zoning: F1 (Non-Impacted Forest Land) on tax lot #201;
RI (Rural Industrial) on the rest of the property

Date Property Acquired: 18-10-07 #201 & 18-10-08 #200 (WD#7441094): July 19, 1974;
18-10-08-30 #100 (WD #28568): June 28, 1974
18-10-08-30 #201 (WD#23753) May 12, 1975 & (WD#23754) May 5, 1975
18-10-08-30 #300 (WD#41094) July 19, 1974
18-10-08-30 #400 (WD #41095) July 19, 1974
18-10-08-30 #401 (WD #7441093) July 19, 1974

Date claim submitted: December 1, 2006

180-day deadline: May 30, 2007

Land Use Regulations in Effect at Date of Acquisition: unzoned

Restrictive County land use regulation: Minimum parcel size of eighty acres and limitations on new dwellings in the F1 (Non-Impacted Forest Land) zone (LC 16.210) and limitations on uses and development in the RI (Rural Industrial) zone (LC 16.292).

This claim was originally heard on May 22, 2007. The applicant submitted supplemental information into the record at the hearing on May 22, 2007. The Board continued the

discussion of this claim to the June 20, 2007 public hearing in order to allow staff the opportunity to evaluate the information received at the May 22nd hearing and the claimant time to submit additional information and have the Board reconsider staff's recommendation. The Board requested all new information to be submitted to Lane County by June 5, 2007. No additional information was received after May 22, 2007.

ANALYSIS

The current owner is Davidson Industries, Inc., an Oregon Corporation. Davidson Industries, Inc. acquired interest in the property as follows:

18-10-07 #201 & 18-10-08 #200 (WD #7441094), 18-10-08-30 #300 (WD #7441094), #400 (WD #7441095) & #401 (WD #7441093) on July 19, 1974.

18-10-08-30 # 100 (WD #28568) on June 28, 1974

18-10-08-30 #201 (WD # 23753) on May 12, 1975 and (WD #(23754) on May 5 1975)

Currently, the property is zoned RI.

The property was unzoned when it was acquired by Davidson Industries Inc. The minimum parcel size of eighty acres and limitations on new dwellings in the F1 zone and use and development limitations in the RI zone could prevent Davidson Industries from developing the property as could have been allowed when it was acquired. The alleged reduction in fair market value is \$850,000, based on the submitted Comparative Market Analysis (CMA) which identifies this M37 claim as the 'Fredrickson Hill' site.

The minimum lot size and restrictions on new dwellings in the F1 zone and use and development restrictions in the RI zone do not appear to be exempt regulations.

CONCLUSION

It appears this is a valid claim. The submitted deeds for 18-10-08-30 #100, 201, 300, and 400 verifies the date of acquisition on these tax lots is consistent with the rest of the property.

RECOMMENDATION

The County Administrator recommends the Board direct him to adopt the attached order to waive the restrictive land use regulations of the F1 and RI zones for Davidson Industries, Inc.

**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 (Davidson302/PA06-7302)

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 Davidson Industries, Inc. (PA06-7301), the owner of real property known as Fredrickson Hill, located at 9677 Highway 126, Mapleton, and more specifically described in the records of the Lane County Assessor as map 18-10-08, tax lot 200, 18-10-07, tax lot 201, and 18-10-08-30, tax lots 100, 201, 300, 400, and 401, consisting of approximately 126 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 May 22 and June 20, 2007, the Board conducted public hearings on the Measure 37 claim (PA06-7302) of Davidson Industries, Inc. and has now determined that the restrictive F1 (Non Impacted Forest) RI (Rural Industrial) zone use and development requirements of LC 16.210 and LC 16.292 were enforced and made applicable to prevent Davidson Industries, Inc. from developing the property as might have been allowed at the time the company acquired an interest in the property on June 28, 1974 for 18-10-08-30 tax lot #100,

July 19, 1974 for 18-10-07 tax lot #201, 18-10-08 tax lot #200, and 18-10-08-30 tax lots #300, #400 & #401, and May 5 & 12, 1975 for 18-10-08-30 tax lot #201, and that the public benefit from application of the current F1 and RI use and development restrictions to the applicant's property is outweighed by the public burden of paying just compensation; and

WHEREAS, Davidson Industries requests either \$850,000 as compensation for the reduction in value of the property, or waiver of all land use regulations that would restrict the development and uses that could have otherwise been allowed at the time the company 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 F1 and RI 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 Davidson Industries to make application for development of the subject property in a manner similar to what the company could have been able to do under the regulations in effect when it 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 Davidson Industries, Inc. 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 company 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 Davidson Industries shall be granted and the restrictive provisions of LC 16.210 and LC16.292 that limit the use and development of the land in the F1 (Non Impacted Forest) and RI (Rural Industrial) zones shall not apply to Davidson Industries, Inc. so the company can make application for approval to develop the property located at 9677 Highway 126, Mapleton, and more specifically described in the records of the Lane County Assessor as map 18-10-08, tax lot 200, 18-10-07 tax lot 201, 18-10-08-30, tax lots 100, 201, 300, 400, and 401, consisting of approximately 126 acres in Lane County, Oregon; in a manner consistent with the land use regulations in effect when the company acquired an interest in the property on June 28, 1974 for 18-10-08-30 tax lot #100, July 19, 1974 for 18-10-07 tax lot #201, 18-10-08 tax lot #200, 18-10-08-30 tax lots #300, #400 & #401, and May 5 & 12, 1975 for 18-10-08-30 tax lot #201.

IT IS HEREBY FURTHER ORDERED that Davidson Industries, Inc. 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 the company 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.

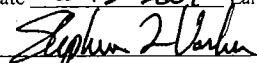
IT IS HEREBY FURTHER ORDERED that this action making certain Lane Code provisions inapplicable to use of the property by Davidson Industries does not constitute a waiver or modification of state land use regulations and does not authorize immediate division of the subject property or immediate construction 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.

Faye Stewart, Chair
Lane County Board of County Commissioners

APPROVED AS TO FORM

Date 6-13-2007 Lane County


OFFICE OF LEGAL COUNSEL