



## **Supplemental Memo**

**Memo Date:** April 20, 2007

**Hearing Date:** May 1, 2007 (Continued from March 20)

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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 (PA06-6979, Harding1)

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### **PREVIOUS BOARD ACTION**

On March 20, 2007, the Board held a hearing on the Measure 37 claim of Lonal V. Harding (PA06-6979, Harding1). At that hearing, the County Administrator recommended denial of the claim because the application materials submitted did not correspond with the property and did not clearly show ownership or value reduction. The original application submittal listed V.A. & Clara Harding as the applicants and The Harding Living Trust as the land owner. It appears that the applicant's agent submitted the same application materials for two adjacent properties that are owned by different members of the Harding family. A review by staff found that Lonal V. Harding (V.A. & Clara Harding's son) is the current owner of the property. It appears that he acquired an interest in the property from his parents on April 13, 1995, pursuant to a land sale contract (SC #9520426). It also appears that his parents are no longer alive.

At the March 20 hearing, the applicant requested additional time so that clarifying information could be reviewed by staff. The Board agreed to extend the open record period until April 13 and scheduled a second review of claim to the May 1 hearing.

Additional information provided by the applicant now correctly corresponds to the property and lists Lonal V. Harding as the applicant and land owner. The corrected information is reflected in this revised memo and recommendation of the County Administrator.

### **BACKGROUND**

**Applicant:** Lonal V. Harding

**Current Owner:** Lonal V. Harding

**Agent:** Norman Waterbury

**Map and Tax lot(s):** 18-04-09 #3600

**Acreage:** Approximately 40 acres

**Current Zoning:** F2 (Impacted Forest), /CAS (Commercial Airport Safety Combining Zone)

**Date Property Acquired:** April 15, 1967, Property acquired by V.A. & Clara Harding (WD #7718895)

April 13, 1995, Property sold to Lonal V. and Linda M. Harding (SC #9520426)(land sale contract)

**Date claim submitted:** November 15, 2006

**180-day deadline:** May 7, 2007

**Land Use Regulations in Effect at Date of Acquisition:** In 1967, the property was zoned AGT (Agriculture, Timber and Grazing). In 1995, the property was zoned F2 (Impacted Forest).

**Restrictive County land use regulation:** Minimum parcel size of eighty acres and limitations on new dwellings in the F2 (Impacted Forest) 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 owner of the subject property is Lonal V. Harding. Lonal acquired an interest in the property on April 13, 1995 (LSC #9520426). At that time, the property was zoned F2. Prior to Lonal's acquisition of an interest, the property was owned by his parents, V.A. & Clara Harding. V.A. & Clara acquired an interest in the property on April 15, 1967 (WD #7718895). In 1967, the property was zoned AGT. Currently, it is zoned F2.

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

The applicant has alleged a reduction in value of \$960,000 based on a submitted appraisal.

For purposes of compensation, it appears that the date of acquisition for the family is April 15, 1967. The minimum parcel size of eighty acres and limitations on new dwellings in the F2 prevent Lonal from developing the property as might have been possible when his family acquired an interest in it in 1967.

The property was zoned F2 when it was acquired by Lonal V. Harding on April 13, 1995 and it is still zoned as such. Because the minimum lot size and dwelling restrictions were applicable when the Lonal acquired the property, waiver of these regulations can only go to his acquisition date.

The applicant is also claiming that the following sections of Lane Code have restricted the use of the subject property:

LC12.160 (1) & (2) – These provisions refer to the authority of the Lane County Planning Commission in recommending code amendments. No evidence has been provided that demonstrates how these regulations have lowered the fair market value of the property.

LC10.104-40 – These provisions only apply to those F2 (Forest Land District) zoned properties within the Urban Growth Boundaries of a city and are not applicable to the subject property.

LC16.004, LC16.006, LC16.007 - 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.

### **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, but they can only be waived for the current owner to April 13, 1995.

Regulations found within the /CAS (Commercial Airport Safety Combining Zone) of LC16.245 are exempt regulations as defined by LC2.710 (2) and cannot be waived.

### **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 for Lonal V. Harding to those in effect on April 13, 1995, the date he acquired an interest in the property.

**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 (PA06-6979, Harding1)

**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 Lonal V. Harding (PA06-6979, Harding1), the owner of real property described in the records of the Lane County Assessor as map 18-04-09, tax lot 3600, consisting of approximately 40 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 March 20 and May 1, 2007, the Board conducted public hearings on the Measure 37 claim (PA06-6979) of Lonal V. Harding and has now determined that the restrictive F2 (Impacted Forest) zone dwelling and land division requirements of LC 16.211 were enforced and made applicable to prevent Lonal V. Harding from developing his property as might have been allowed at the time it was acquired by the family on April 15, 1967, and that the public benefit from application of the current F2 dwelling and division land use regulations to the applicants' property is outweighed by the public burden of paying just compensation; and

**WHEREAS** Lonal V. Harding request up to \$960,000 as compensation for the reduction in value of his property, or waiver of all land use regulations that would restrict the division of land into multiple lots and placement of a dwelling on each lot, uses that could have otherwise been allowed at the time his family acquired 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 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 Lonal V. Harding to make application for development of the subject property in a manner similar to what he could have been able to do under the regulations in effect when he 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 Lonal V. Harding 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 his 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 Lonal V. Harding shall be granted and the restrictive provisions of LC 16.211 that limit the development of dwellings and the division of land in the F2 (Impacted Forest) zone shall not apply to Lonal V. Harding, so he can make application for approval to develop the property located at 29400 Gimpl Hill Rd, Eugene, OR and more specifically described in the records of the Lane County Assessor as map18-04-09, tax lot 3600, consisting of approximately 40 acres in Lane County, Oregon, in a manner consistent with the land use regulations in effect when he acquired an interest in the property on April 13, 1995.

**IT IS HEREBY FURTHER ORDERED** Lonal V. Harding 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 Lonal V. Harding 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.

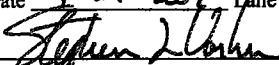
**IT IS HEREBY FURTHER ORDERED** that this action making certain Lane Code provisions inapplicable to use of the property by Lonal V. Harding not constitute a waiver or modification of state land use regulations and does not authorize immediate division of the subject property or immediate construction of a dwelling. The requirements of state law may contain specific standards regulating development of the subject property and the applicants 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 4-24-2007 Lane County  
  
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OFFICE OF LEGAL COUNSEL