

Memo Date: April 10, 2007
Order Date: May 1, 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 (PA06-6612, Henton)

BACKGROUND

Applicant: Michael Evans, Land Planning Consultants

Current Owner: DR Henton, Inc.

Agent: Michael Evans, Land Planning Consultants

Map and Tax lot: 17-01-20-20 #200, 300 and 17-01-20-30 #300

Acreage: Approximately 183 acres

Current Zoning: E60 (Exclusive Farm Use)

Date Property Acquired: December 31, 1991 (WD #9163586)

Date claim submitted: September 15, 2006

180-day deadline: March 14, 2007

Land Use Regulations in Effect at Date of Acquisition: E60 (Exclusive Farm Use) zone, LC 16.212

Restrictive County land use regulation: The requirement that a "woodlot dwelling", as conditionally permitted under LC 16.212(7)(f), be situated on a lot or parcel containing soils predominantly in capability classes IV-VIII.

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

D.R. Henton Inc. is the current owner of the subject property. The property was acquired by D.R. Henton Inc. on December 31, 1991 (WD #9163586). On that date, the property was zoned E60 (Exclusive Farm Use). The property is currently zoned E60.

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

The applicant alleges that a reduction in the fair market value of the property has occurred because LC 16.212 was amended on June 2, 2004. Specifically, the applicant argues that prior to the 2004 update, a dwelling was potentially permissible on a legal lot under the "woodlot dwelling" provision of LC16.212 (3)(B), regardless of the soils classification of the site. The 2004 Lane Code update modified the EFU zone to reflect to the Goal 3, Agricultural Land Rule (OAR 660-033-0135(6)) which limited the application of ORS 215.213(2)(b) on high value farmland. This update was codified through Ordinance No. 5-02 that amended the previous woodlot dwelling provisions of LC16.212 (3)(B) to those currently found in under LC 16.212(7)(f).

The applicant has submitted a comparative market analysis alleging a reduction in the fair market value of the property in the amount of \$1,071,200. This figure assumes that the hypothetical application of the 1991 woodlot dwelling provision would allow a dwelling on each of the three parcels created by partition plat #96-P0874 on September 19, 1996.

The CMA submitted by the applicant appears to qualify as a competent evidence of valuation that the County Commissioners have accepted on previous claims. Because of this, the County Administrator has waived the requirement for an appraisal.

3. The restrictive land use regulation is not an exempt regulation as defined in LC 2.710.

The "Woodlot Dwelling" approval criteria of LC 16.212(7)(f) do not appear to be exempt regulations.

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 of 16.212(7)(f) to allow the applicant to apply under the woodlot dwelling provision of LC16.212 (3)(B) that were in effect on December 31, 1991.

**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 (Henton, PA06-6612)

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 DR Henton, Inc.(PA06-6612), the owner of real property described in the records of the Lane County Assessor as map 17-01-20-20 tax lots 200 and 300 and map 17-01-20-30 tax lot 300 consisting of approximately 183 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 1, 2007, the Board conducted a public hearing on the Measure 37 claim (PA06-6612) of DR Henton, Inc. and has now determined that the restrictive E60 (Exclusive Farm Use) zone dwelling and land division requirements of LC 16.212 were enforced and made applicable to prevent DR Henton, Inc from developing the property as might have been allowed at the time it was acquired on December 31, 1991 and that the public benefit from application of the current E60 dwelling and division land use regulations to the applicants' property is outweighed by the public burden of paying just compensation; and

WHEREAS, DR Henton, Inc. requests up to \$1,071,200 as compensation for the reduction in value of its' property, or waiver of the current applicable woodlot dwelling special use permit criteria of LC16.212 (7) that restrict the applicant from applying for one or more special use permits as would have been possible at the time the property was acquired on December 31, 1991; 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 E60 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 DR Henton, Inc. to make application for development of the subject property in a manner similar to what it 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, DR Henton, 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 it 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 DR Henton, Inc. shall be granted and the provisions of LC 16.212 that restrict the applicant from applying under the special use permit criteria in effect on the date it acquired the property shall not apply to DR Henton, Inc. so it can make application for approval to develop the property specifically described in the records of the Lane County Assessor as map 17-01-20-20 tax lots 200 and 300 and map 17-01-20-30 tax lot 300 , in a manner consistent with the land use regulations in effect when it acquired the property on December 31, 1991

IT IS HEREBY FURTHER ORDERED DR Henton, 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 DR Henton, Inc. 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.

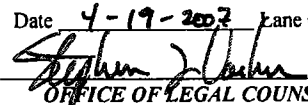
IT IS HEREBY FURTHER ORDERED that this action making certain Lane Code provisions inapplicable to use of the property by DR Henton, Inc. not constitute a waiver or modification of state land use regulations and does not authorize immediate division of the subject property or immediate construction of 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 4-19-2007 Lane County

OFFICE OF LEGAL COUNSEL