

Memo Date: April 25, 2007
Hearing Date: May 15, 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 (PA06-7261, Hansen2)

BACKGROUND

Applicant: Pete Hansen & Sons: Ronald Peter Hansen and Donald James Hansen (partnership).

Current Owner: Pete Hansen & Sons: Ronald Peter Hansen and Donald James Hansen (partnership).

Agent: Bill Kloos

No.	Map and Tax lot(s):	Acres	Current Zoning
1	Map 17-02-00, tax lot 1800	197.13 acres	F1 (Nonimpacted Forest Land),
2	Map 17-02-03, tax lot 602	50.22 acres	E40 (Exclusive Farm Use),
3	Map 17-02-04, tax lot 1100	72.06 acres	E40 (Exclusive Farm Use),
4	Map 17-02-09, tax lot 400	251.60 acres	E40 (Exclusive Farm Use), and
		50.00 acres	F2 (Impacted Forest Land),
5	Map 17-02-09, tax lot 100	46.84 acres	E40 (Exclusive Farm Use),
6	Map 17-02-09, tax lot 500	1.40 acres	E40 (Exclusive Farm Use),
7	Map 17-02-10, tax lot 100	118.13 acres	F2 (Impacted Forest Land),
8	Map 17-02-10, tax lot 600	47.97 acres	F2 (Impacted Forest Land),
9	Map 17-02-10, tax lot 500	2.28 acres	RR10 (Impacted Forest Land),
10	Map 17-02-10, tax lot 700	6.69 acres	E40 (Exclusive Farm Use),
11	Map 17-02-16, tax lot 100	486.36 acres	E40 (Exclusive Farm Use), and
			F1 (Nonimpacted Forest Land).

Total Acreage: 1,330.98 acres

Date Properties Acquired:

Parcel	TRS – tax lot	Recording	Date Executed	Conveyance to
1	Map 17-02-00, tax lot 1800	461R – No. 89274	December 1, 1969 ("Parcel #2")	<u>Pete Hansen & Sons</u> Bargain and Sale Deed
2	Map 17-02-03, tax lot 602	386R – No. 19871	March 28, 1968	<u>Pete Hansen & Sons</u> Administrator's Deed Circuit Court Probate No. 18177.
3	Map 17-02-04, tax lot 1100	386R – No. 19871	March 28, 1968	<u>Pete Hansen & Sons</u> Administrator's Deed Circuit Court Probate No. 18177.
4	Map 17-02-09, tax lot 400	Bk 198, Pg 294-5 unknown	February 7, 1939 unknown	Pete and Vera Hansen Quitclaim Deed <u>Pete Hansen & Sons</u>
5	Map 17-02-09, tax lot 100	Bk 260, Pg 372 (<u>only</u> - NW c of Lot 3 – Sec 9 . . .) unknown 386R – No. 19871 (<u>only</u> - Govt Lots 1 and 2 in Sec 9 . . .)	December 20, 1943 unknown March 28, 1968	Pete and Vera Hansen Warranty Deed <u>Pete Hansen & Sons</u> <u>Pete Hansen & Sons</u> Administrator's Deed Circuit Court Probate No. 18177.
6	Map 17-02-09, tax lot 500 (#3Applicant's Narrative)	unknown	unknown	<u>Pete Hansen & Sons</u>
7	Map 17-02-10, tax lot 100	Bk 233, Pg 603-4 unknown	July 14, 1942 unknown	Pete and Vera Hansen Warranty Deed <u>Pete Hansen & Sons</u>
8	Map 17-02-10, tax lot 600	461 – No. 89274 ("Parcel #1")	December 1, 1969	<u>Pete Hansen & Sons</u>
9	Map 17-02-10, tax lot 500	457R – No. 85371	February 27, 1969	<u>Pete Hansen & Sons</u>

10	Map 17-02-10, tax lot 700 (#6 in Applicant's Appraisal)	unknown	unknown	<u>Pete Hansen & Sons</u>
----	--	---------	---------	-------------------------------

11	Map 17-02-16, tax lot 100	unrecorded contract	February 15, 1960	<u>Pete Hansen & Sons</u>
----	---------------------------	---------------------	-------------------	-------------------------------

Date claim submitted: December 1, 2006

180-day deadline: May 30, 2007

Land Use Regulations in Effect at Date of Acquisition:

Restrictive County land use regulation: Minimum parcel size of forty acres in the E40 zone, eighty acres in the F1 and F2 zones, and ten acres in the RR10 zone; and limitations on new dwellings in the E40 (Exclusive Farm Use – LC 16.212), F1 (Nonimpacted Forest Land – LC 16.210), F2 (Impacted Forest Land - LC 16.211), and RR10 (Rural Residential – LC 16.290).

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 eleven “tax lots” identified, which include approximately 1,330.98 acres, is the claimant, Pete Hansen & Sons, a partnership. Pete Hansen & Sons was created by partnership agreement on February 15, 1960, with Peter Hansen, Vera Hansen, Donald James Hansen and Ronald Peter Hansen, as equal partners.

Some of the tax lots include multiple metes and bounds descriptions from prior conveyances that were consolidated into a single tax lot. Some descriptions were conveyed at different times to different Hansen family members, consolidated into one or more tax lots, and later conveyed to the Pete Hansen & Son partnership.

The listing of the tax lots and record of interests were reviewed through comparison of:

- the Applicant’s Narrative (page 2);
- the Legal Descriptions on pages 1 through 7 of Exhibit “A” to the Evergreen Land Title Company’s amended preliminary title report;
- the Official Records of Descriptions of Real Properties in Exhibit “J”; and
- the deed and documentation in Exhibit “H”.

The claimant’s record does not clearly document the conveyance of the following five “tax lots” or portions of the land within the tax lots from family members to the partnership:

- Map 17-02-09, tax lot 400 (301.60 acres);
- Map 17-02-09, tax lot 100 (portion of 46.84 acres);

- Map 17-02-09, tax lot 500 (1.40 acres);
- Map 17-02-10, tax lot 700 (6.99 acres); and
- Map 17-02-10, tax lot 100 (118.13 acres).

Currently, the properties (tax lots) are zoned E40, F2, F1, RR10 or a combination thereof. Refer to **Current Zoning** above, on page 1.

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

The properties were unzoned until August 29, 1980 (Ordinance No. 841). Since it is not known when five of the properties were acquired by the current owner, Pete Hansen & Sons, the validity of the claim for those tax lots can not be determined.

The minimum lot size and limitations on new dwellings in the E40, F1, F2, and RR10 zones prevent the current owners from developing some of the properties as could have been allowed when they acquired it. The alleged reduction in fair market value is \$26,000,000, based on the submitted appraisal and comparative market analysis.

The applicant has submitted a CMA in summary of the Appraisal as evidence of valuation that the County Commissioners have accepted on previous claims.

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 for six of the subject properties (tax lots) do not appear to be exempt regulations.

The minimum lot size and restrictions on new dwellings do not appear to be exempt regulations for five of the subject properties (tax lots) but they can not be waived for the current owner since the date of acquisition by the Hanson & Son partnership is not known.

The claimant has not identified any other restrictive land use regulations that allegedly reduce the fair market value of the properties.

CONCLUSION

It appears this is a valid claim for six of the eleven "tax lots". However, the minimum lot size and dwelling restrictions can not be waived for the current owners for five of the "tax lots" since the record is not clear when those properties were conveyed to the Pete Hansen & Son partnership and thus, the validity of the five claims has not been determined.

RECOMMENDATION

The County Administrator recommends the Board adopt the attached order to waive the restrictive land use regulations of the E40, F2 and F1 zone for six of the properties;

- Map 17-02-00, tax lot 1800 197.13 acres F1 (Nonimpacted Forest Land),
- Map 17-02-03, tax lot 602 50.22 acres E40 (Exclusive Farm Use),

- Map 17-02-04, tax lot 1100 72.06 acres E40 (Exclusive Farm Use),
- Map 17-02-10, tax lot 600 47.97 acres F2 (Impacted Forest Land),
- Map 17-02-10, tax lot 500 46.84 acres E40 (Exclusive Farm Use),
- Map 17-02-16, tax lot 100 486.36 acres E40 (Exclusive Farm Use), and
F1 (Nonimpacted Forest Land); and

If additional information is not submitted at the hearing, the County Administrator recommends the Board direct him to deny the claim for five of the properties:

- Map 17-02-09, tax lot 400 301.60 acres;
- Map 17-02-09, tax lot 100 46.84 acres;
- Map 17-02-09, tax lot 500 1.40 acres;
- Map 17-02-10, tax lot 100 118.13 acres; and
- Map 17-02-10, tax lot 700 6.69 acres.

**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 (Hansen2, PA 06-7261)

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 Pete Hanson & Sons, a partnership, the owners of real property located at 89975 Marcola Road, Springfield, OR 97478, and more specifically described in the records of the Lane County Assessor as map 17-02-00, tax lot 1800; map 17-02-03, tax lot 602; map 17-02-04, tax lot 1100; map 17-02-09, tax lots 100, 400 and 500; map 17-02-10, tax lots 100, 500, 600 and 700; and map 17-02-16, tax lot 100, consisting of approximately 1,330.98 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 15, 2007, the Board conducted a public hearing on the Measure 37 claim (PA 06-7261) of Pete Hanson & Sons, a partnership, and has now determined that the restrictive F1 (Nonimpacted Forest Land), F2 (Impacted Forest Land) and E40 (Exclusive Farm Use) zone dwelling and land division requirements of LC 16.210, LC 16.211 and LC 16.212 were enforced and made applicable to prevent Pete Hanson & Sons, a partnership, from developing some of the

property as might have been allowed at the time they acquired an interest in the property, map 17-02-00, tax lot 1800 on December 1, 1969; map 17-02-03, tax lot 602 on March 28, 1968; map 17-02-04, tax lot 1100 on March 28, 1968; map 17-02-10, tax lots 500 on February 27, 1969 and 600 on December 1, 1969; and map 17-02-16, tax lot 100 on February 15, 1960; and that the public benefit from application of the current F1, F2 and E40 dwelling and division land use regulations to those applicant properties is outweighed by the public burden of paying just compensation; and

WHEREAS, Pete Hanson & Sons, a partnership, requests either \$26,000,000 as compensation for the reduction in value of their property, or waiver of all land use regulations that would restrict the division of land into lots containing less than eighty acres in the F1 and F2 zones and forty acres in the E40 zone, placement of a dwelling on each lot, and development uses that could have otherwise been allowed at the time they 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, F2 and E40 zones to some of the subject properties 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 Pete Hanson & Sons, a partnership, to make application for development of some of the subject properties 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 properties; and

WHEREAS, this matter having been fully considered by the Lane County Board of Commissioners.

NOW, THEREFORE IT IS HEREBY ORDERED that the applicant Pete Hanson & Sons, a partnership, 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 some of the property, showing evidence that they acquired an interest in the properties 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 Pete Hanson & Sons, a partnership, shall be granted and the restrictive provisions of LC 16.210, LC 16.211 and LC 16.212 that limit the development of dwellings and the division of land in the F1 (Nonimpacted Forest Land), F2 (Impacted Forest Land), E40 (Exclusive Farm Use) zones shall not apply to Pete Hanson & Sons, a partnership, so they can make application for approval to develop some of the property located at 89975 Marcola Road, Springfield, OR 97478, and more specifically described in the records of the Lane County Assessor as map 17-02-00, tax lot 1800; map 17-02-03, tax lot 602; map 17-02-04, tax lot 1100; map 17-02-10, tax lots 500 and 600; and map 17-02-16, tax lot 100, consisting of approximately 898.58 acres in Lane County, Oregon, in a manner consistent with the land use regulations in effect when they acquired an interest in those properties: map 17-02-00, tax lot 1800 on December 1, 1969; map 17-02-03, tax lot 602 on March 28, 1968; map 17-02-04, tax lot 1100 on March 28, 1968; map 17-02-10, tax lots 500 on February 27, 1969 and 600 on December 1, 1969; and map 17-02-16, tax lot 100 on February 15, 1960.

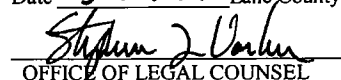
IT IS HEREBY FURTHER ORDERED that Pete Hanson & Sons, a partnership, still needs to make application and receive approval of any division of the properties or placement of a

dwelling under the other land use regulations applicable to dividing the properties or placing a dwelling that were not specifically identified or established by them as restricting the division of the properties 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 Pete Hanson & Sons, a partnership, 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 properties 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.

APPROVED AS TO FORM
Date 5-8-2007 Lane County

OFFICE OF LEGAL COUNSEL

Faye Stewart, Chair
Lane County Board of County Commissioners