

Memo Date: January 10, 2007  
Order Date: January 23, 2007



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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 (PA06-6112, Hinnenkamp Trust)

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## **BACKGROUND**

**Applicant:** George Leland John Hinnenkamp Trust

**Current Owner:** George Leland John Hinnenkamp Trust

**Agent:** Mike Reeder (Arnold Gallagher Saydack Percell Roberts & Potter)

**Map and Tax lot:** 19-04-30-00, tax lot 300; 19-05-25-00, tax lot 600

**Acreage:** approximately 159 acres.

**Current Zoning:** E40 (Exclusive Farm Use) and F2 (Impacted Forest Land)

**Date Property Acquired:** December 21, 1979

**Date Claim Submitted:** June 22, 2006

**180-day deadline:** December 19, 2006

**Land Use Regulations in Effect at Date of Acquisition:** FF-20 (Farm-Forestland).

**Restrictive County land use regulation:** Minimum parcel size of forty acres and limitations on new dwellings in the E40 zone (LC 16.212); minimum parcel size of eighty acres and limitations on new dwellings in the F2 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 is George Leland John Hinnenkamp Trust, a revocable living trust. George Leland John Hinnenkamp, as claimant, is the trustee and sole beneficiary of the revocable trust. The claimant initially acquired a 1/3 interest in the subject property on June 24, 1966 (Warranty Deed, Reel 622R – No. 73 3875). He acquired additional interest in the property in 1967. However, the claimant conveyed the property in 1979 to a third party and regained interest in the subject property through Circuit Court action in 1980 as evidenced by Reel 491, Page 315, Circuit Court of the State of Oregon for the County of Lane, Case No. 16-79-8714, December 21, 1979. Due to the intervening conveyance from Hinnenkamp to Elvidge, the date of acquisition by George Leland John Hinnenkamp for the purposes of this Ballot Measure 37 claim (PA 06-6112) is December 21, 1979. On that date, the property was zoned FF-20 (Farm-Forestland).

The eastern portion of the claim is 80.80 acres in size and identified as tax lot 300 of Assessor's map 19-04-30. It is currently zoned F2 (Impacted Forest Land).

The western portion of the claim is 78.44 acres in size and identified as tax lot 600 of Assessor's map 19-05-25. It is currently zoned EFU E40 (Exclusive Farm Use).

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

The claimant is claiming a reduction in fair market value for the subject property in the sum of \$240,000 resulting from Lane County's enforcement of the E40 and F2 regulations that restrict the use of the subject property by not allowing a division of the subject property into various sized lots for single-family residential use. Specifically, the claimant is proposing to divide the subject property as follows: eight (8) 5-acre lots, one lot of 47 acres, and one (1) lot of 72 acres. Although the proposed lot sizes were not allowed by the FF20 zone, it appears there is some reduction in value since the current minimum lot size in the F2 zone is 80 acres and 40 acres in the E40 zone. the alleged reduction in fair market value is \$240,000.

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

The minimum parcel size and dwelling restrictions of the E40 and F2 zones 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 that were applicable on the date of acquisition on December 21, 1979.

**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 (Hinnenkamp/ PA 06-6112)

**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 George Leland John Hinnenkamp Trust the owner of real property located east of the public road right-of-way of Territorial Road and north of the public road right-of-way of Hamm Road, and more specifically described in the records of the Lane County Assessor as map 19-04-30, tax lot 300 and map 19-05-25, tax lot 600, consisting of approximately 160 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 January 23, 2007, the Board conducted a public hearing on the Measure 37 claim (PA 06-6112) of George Leland John Hinnenkamp and has now determined that the restrictive F2 (Impacted Forest Land) requirements of LC 16.211 and the restrictive E40 (Exclusive Farm Use) requirements of LC 16.212 were enforced and were applicable to the subject property and that the public benefit from application of the current F2 and E40

regulations to the applicant's property is outweighed by the public burden of paying just compensation; and

**WHEREAS**, George Leland John Hinnenkamp requests either \$240,000 as compensation for the reduction in value of his property, or waiver of all land use regulations that would restrict him from developing the property as could have been allowed on December 21, 1979, 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 and the E40 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 George Leland John Hinnenkamp 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 George Leland John Hinnenkamp to 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 he acquired an interest in the property after 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 George Leland John Hinnenkamp shall be granted and any restrictive provisions of the F2 and E40 zones adopted in Lane Code 16.211 and Lane Code 16.212 after his date of acquisition on December 21, 1979, that limit the development of land in the F2 (Impacted Forest Land) Zone and E40 (Exclusive Farm Use) Zone shall not apply to George Leland John Hinnenkamp, so he can make application for approval to develop the property specifically described in the records of the Lane County Assessor as map 19-04-30, tax lot 300, and map 19-05-25, tax lot 600, consisting of approximately 160 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 December 21, 1979.

**IT IS HEREBY FURTHER ORDERED** that George Leland John Hinnenkamp still needs to make application and receive approval of any development under the other land use regulations applicable to placing a dwelling that were not specifically identified or established by him 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 George Leland John Hinnenkamp 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.

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Faye Stewart, Chair  
Lane County Board of County Commissioners

APPROVED AS TO FORM

Date 1-17-2007 Lane County

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*Stephen J. Lahn*  
OFFICE OF LEGAL COUNSEL