

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 (PA06-6113, Lee)

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## **BACKGROUND**

**Applicant:** Ronald Ted Lee and Regina Marie Lee

**Current Owner:** Ronald Ted Lee and Regina Marie Lee

**Agent:** Norman Waterbury

**Map and Tax lot:** 15-05-30-00, tax lots 300 and 307

**Acreage:** approximately 19.47 acres.

**Current Zoning:** E40 (Exclusive Farm Use)

**Date Property Acquired:** Ronald: May 18, 1971 (Bargain and Sale Deed, Reel 532R, Instrument No. 47712); Regina: February 12, 1991 (Deed 1679/9107391).

**Date claim submitted:** June 22, 2006

**180-day deadline:** December 29, 2006

**Land Use Regulations in Effect at Date of Acquisition:** Ronald: Unzoned. Regina: E40 (Exclusive Farm Use).

**Restrictive County land use regulation:** Minimum parcel size of forty acres and limitations on new dwellings in the E40 zone (LC 16.212).

## **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 owners of tax lots 300 and 307 of Assessors Map 15-05-30 are Ronald Ted Lee and Regina Marie Lee. On May 18, 1971, Ronald Ted Lee acquired a 50% interest in the subject properties (tax lot 300 and 307 of 15-05-300), when the properties were unzoned. On February 12, 1991, Regina Marie Lee acquired interest in the subject properties. On that date, the properties were zones E40 (Exclusive Farm Use).

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

When Ronald Ted Lee acquired interest in the subject properties, the properties were unzoned. The minimum lot size and limitation on new dwellings in the E40 (Exclusive Farm Use) zone prevent the current owner from developing the property as allowed in unzoned lands in 1971. The claimant has submitted an appraisal that alleges a reduction in fair market value of \$405,000.

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

The minimum parcel size and dwelling restrictions do not appear to be exempt regulations.

**CONCLUSION**

It appears this is a valid claim.

**RECOMMENDATION**

The County Administrator recommends the Board waive the restrictive land use regulations.

**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 (Lee PA 06-6113)

**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 Ronald Ted Lee and Regina Marie Lee (PA06-6113), the owner of real property located at 25552 Ferguson Road, Junction City, OR 97448, and more specifically described in the records of the Lane County Assessor as map 15-05-30, tax lots 300 and 307, consisting of approximately 19.47 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 06-6113) of Ronald Ted Lee and has now determined that the restrictive E40 (Exclusive Farm Use) zone dwelling and land division requirements of LC 16.212 were enforced and made applicable to prevent Ronald Ted Lee from developing the property as might have been allowed at the time he acquired an interest in the property on May 18, 1971, and that the public benefit from application of the current EFU dwelling and division land use regulations to the applicant's property is outweighed by the public burden of paying just compensation; and

**WHEREAS**, Ronald Ted Lee and Regina Marie Lee request either \$405,000 as compensation for the reduction in value of the property, or waiver of all land use regulations that would restrict the division of land into lots containing less than forty acres and placement of a dwelling on each lot, uses that could have otherwise been allowed at the time Ronald Ted Lee 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 EFU 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 Ronald Ted Lee to make application for development of the subject property in a manner similar to what could have been allowed when he acquired an interest in the property on May 18, 1971, and to allow Regina Marie Lee to make application for development of the subject property in a manner similar to what could have been allowed when she acquired an interest in the property on February 12, 1991; and

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

**NOW, THEREFORE IT IS HEREBY ORDERED** that the applicant Ronald Ted Lee and Regina Marie Lee 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 she 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 Ronald Ted Lee and Regina Marie Lee shall be granted and the restrictive provisions of LC 16.212 enacted since May 18, 1971 shall not apply to Ronald Ted Lee, and the restrictive provisions of LC 16.212 enacted since February 12, 1991 shall not apply to Regina Marie Lee, so they can make application for approval to develop the property located at 25552 Ferguson Road, Junction City, OR 97448, and more specifically described in the records of the Lane County Assessor as map 15-05-030, tax lots 300 and 307, consisting of approximately 19.47 acres in Lane County, Oregon, in a manner consistent with the land use regulations in effect on May 18, 1971, for Ronald Ted Lee, and in effect on February 12, 1991, for Regina Marie Lee; and

**IT IS HEREBY FURTHER ORDERED** that Ronald Ted Lee and Regina Marie Lee still need to make application and receive approval of any development of the property under the other land use regulations applicable to developing the property that were not specifically identified or established by them as restricting the development of the property, 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 certain 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.

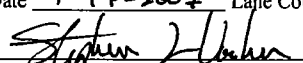
**IT IS HEREBY FURTHER ORDERED** that this action making certain Lane Code provisions inapplicable to use of the property by Ronald Ted Lee and Regina Marie Lee does not constitute a waiver or modification of state land use regulations and does not authorize immediate division of the subject property 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 1-17-2007 Lane County  
  
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OFFICE OF LEGAL COUNSEL