

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 (PA06-6094, Stapleton)

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## **BACKGROUND**

**Applicant:** Virginia H. Stapleton

**Current Owner:** Virginia H. Stapleton

**Agent:** Norman Waterbury

**Map and Tax lot:** 19-01-23, tax lot 1300

**Acreage:** approximately 19.82 acres.

**Current Zoning:** F2 (Impacted Forest Land)

**Date Property Acquired:** February 18, 1987 (Bargain and Sale Deed – Reel 1448R, Instrument #8709606)

**Date claim submitted:** June 19, 2006

**180-day deadline:** December 16, 2006

**Land Use Regulations in Effect at Date of Acquisition:** Impacted Forest Land (F2 – LC 16.211).

**Restrictive County land use regulation:** 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 Virginia H. Stapleton. She acquired an interest in the subject property on February 18, 1987 (Bargain and Sale Deed – Reel 1448R, Instrument #8709606) when the property was zoned F2 (Impacted Forest). The Stapleton family acquired an interest in the property on May 5, 1977 (memo of contract R845/24707) when it was unzoned. The property has been owned by members of the Stapleton family since that date.

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

The property is currently zoned F2 (Impacted Forest) and was unzoned when the Stapleton family acquired an interest in 1977. The minimum parcel size and limitations on new dwellings in the F2 zone prevent the current owner from developing the property as could have been allowed when the Stapleton family acquired an interest. The submitted appraisal alleges a reduction of \$230,000.

Because the minimum parcel size and dwelling restrictions were applicable when the current owner acquired the property, they can not be waived. The applicant has not identified any restrictive land use regulations enacted since February 18, 1987.

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

The applicant has not identified any restrictive land use regulations enacted since February 18, 1987.

**CONCLUSION**

It appears this is a valid claim but the minimum lot size and dwelling restrictions can not be waived for the current owner.

**RECOMMENDATION**

The County Administrator recommends the Board adopt the attached order to waive the restrictive land use regulations of the F2 zone enacted since February 18, 1987.

**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 (PA 06-6094, Stapleton)

**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 Virginia Stapleton the owner of real property located between Dexter Reservoir and the public road right-of-way of Highway 58, and more specifically described in the records of the Lane County Assessor as map 19-01-23, tax lot 1300, consisting of approximately 19.82 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 06-6094) of Virginia Stapleton and has now determined that the restrictive F2 (Impacted Forest Land) requirements of LC 16.211 were enforced and were applicable to the subject property since her family acquired it and that the public benefit from application of the current F2 regulations to the applicant's property is outweighed by the public burden of paying just compensation; and

**WHEREAS**, Virginia Stapleton requests either \$235,000 as compensation for the reduction in value of her property, or waiver of all land use regulations that would restrict her from developing the property as could have been allowed on February 18, 1987, the date she 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 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 Virginia Stapleton to make application for development of the subject property in a manner similar to what she could have been able to do under the regulations in effect when she 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 Virginia Stapleton 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 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 Virginia Stapleton shall be granted and any restrictive provisions of LC 16.211 adopted after her date of acquisition on February 18, 1987, that limit the development of land in the F2 (Impacted Forest Land) Zone shall not apply to Virginia Stapleton, so she can make application for approval to develop the property specifically described in the records of the Lane County Assessor as map 19-01-23, tax lot 1300, consisting of approximately 19.82 acres in Lane County, Oregon, in a manner consistent with the land use regulations in effect when she acquired an interest in the property on February 18, 1987.

**IT IS HEREBY FURTHER ORDERED** that Virginia Stapleton 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 her 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 Virginia Stapleton 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

  
OFFICE OF LEGAL COUNSEL