

Supplemental Memo



Memo Date: May 21, 2007

Hearing Date: June 5, 2007 (Continued from 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

Note: "New-Old" - The numerical listings below include two numbers. The "New" column to the left corresponds to the listing of properties on the applicant's supplemental submittal of May 18th and the attached "Lien and Encumbrance Report" submitted by Evergreen Land Title Company dated May 11th. The "old" number to the right between the "New" column and the column of "Map and Tax lot" numbers, appeared in the original staff memo dated April 25, 2007. This change was made to permit easier references from the earlier memo and the most recent submittal.

<u>No.</u>	<u>Map and Tax lot(s):</u>	<u>Acres</u>	<u>Current Zoning</u>
New/Old			
1. 4	Map 17-02-09, tax lot 400	251.60 acres	E40 (Exclusive Farm Use), and
		50.00 acres	F2 (Impacted Forest Land),
2. 7	Map 17-02-10, tax lot 100	118.13 acres	F2 (Impacted Forest Land),
3. 1	Map 17-02-00, tax lot 1800	197.13 acres	F1 (Nonimpacted Forest Land),
4. 8	Map 17-02-10, tax lot 600	47.97 acres	F2 (Impacted Forest Land),
5. 5	Map 17-02-09, tax lot 100	46.84 acres	E40 (Exclusive Farm Use),
6. 3	Map 17-02-04, tax lot 1100	72.06 acres	E40 (Exclusive Farm Use),
7. 2	Map 17-02-03, tax lot 602	50.22 acres	E40 (Exclusive Farm Use),

- | | | | |
|-----|------------------------------|--------------|--|
| 8. | 11 Map 17-02-16, tax lot 100 | 486.36 acres | E40 (Exclusive Farm Use), and
F1 (Nonimpacted Forest Land), |
| 9. | 10 Map 17-02-10, tax lot 700 | 6.69 acres | E40 (Exclusive Farm Use), |
| 10. | 9 Map 17-02-10, tax lot 500 | 2.28 acres | RR10 (Rural Residential), |
| 11. | 6 Map 17-02-09, tax lot 500 | 1.40 acres | E40 (Withdrawn by applicant). |

Total Acreage: 1,330.98 acres

Date Properties Acquired:

<u>New #</u>	<u>TRS – tax lot</u>	<u>Recording</u>	<u>Date Executed</u>	<u>Conveyance to</u>
1.	Map 17-02-09, tax lot 400	Bk 198, Pg 294-5	February 7, 1939	Pete and Vera Hansen Quitclaim Deed
		Unrecorded contract	February 15, 1960	<u>Pete Hansen & Sons</u> Partnership Agreement

2.	Map 17-02-10, tax lot 100	Bk 233, Pg 603-4	July 14, 1942	Pete and Vera Hansen Warranty Deed
		Unrecorded contract	February 15, 1960	<u>Pete Hansen & Sons</u> Partnership Agreement

3.	Map 17-02-00, tax lot 1800	461R – No. 89274	December 1, 1969	<u>Pete Hansen & Sons</u> ("Parcel #2") Bargain and Sale Deed

4.	Map 17-02-10, tax lot 600	461R – No. 89274	December 1, 1969	<u>Pete Hansen & Sons</u> ("Parcel #1") Bargain and Sale Deed

5.	Map 17-02-09, tax lot 100	Bk 260, Pg 372	December 20, 1943	Pete and Vera Hansen (<u>only</u> - NW c of Lot 3 – Sec 9 . . .) Warranty Deed
		Unrecorded contract	February 15, 1960	<u>Pete Hansen & Sons</u> Partnership Agreement
		386R – No. 19871	March 28, 1968	<u>Pete Hansen & Sons</u> (<u>only</u> - Govt Lots 1 and 2 in Sec 9 . . .) Administrator's Deed Circuit Court Probate No. 18177.

6. Map 17-02-04, tax lot 1100 386R – No. 19871 March 28, 1968 Pete Hansen & Sons
Administrator's Deed
Circuit Court Probate
No. 18177.

7. Map 17-02-03, tax lot 602 386R – No. 19871 March 28, 1968 Pete Hansen & Sons
Administrator's Deed
Circuit Court Probate
No. 18177.

8. Map 17-02-16, tax lot 100 unrecorded contract February 15, 1960 Pete Hansen & Sons

9. Map 17-02-10, tax lot 700 Unrecorded contract February 15, 1960 Pete Hansen & Sons
Partnership Agreement
(#6 in Applicant's
Appraisal)

10. Map 17-02-10, tax lot 500 457R – No. 85371 February 27, 1969 Pete Hansen & Sons

11. Map 17-02-09, tax lot 500 **Withdrawn by applicant – May 15, 2007**

Date claim submitted: December 1, 2006

180-day deadline: May 30, 2007

Land Use Regulations in Effect at Dates of Acquisition: Unzoned. The first zoning designations for the subject properties were adopted on August 29, 1980 (Ord. No. 841). At the time of the original Partnership Agreement (February 15, 1960) and the Administrator's Deed - Circuit Court Probate No. 18177 (March 28, 1968), all of the ten (10) subject properties were unzoned.

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).

This claim was originally heard on May 15, 2007. The Board continued the discussion of this claim to the June 5, 2007 public hearing in order to allow the claimants time to submit additional information and have the Board reconsider the recommendation. The Board requested all new information to be submitted to Lane County by May 25, 2007.

ANALYSIS

On May 14, 2007 and May 19, 2007, the claimant submitted supplemental information into the record addressing four of the five properties that staff requested additional information about the dates of ownership by the Partnership. The claim for the fifth property (map 17-02-09, tax lot 500) has been withdrawn. Using the submitted deeds and history, staff has revised the deed history in the above "**Date Properties Acquired**" table to identify the dates of ownership by family members and the Partnership. The applicant has provided documentation in the record to substantiate that all ten of the remaining properties subject to this claim were in the ownership of Pete Hansen & Sons Partnership by February 27, 1969. The subject properties were unzoned during the period of acquisition between February 15, 1960 and February 27, 1969.

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 the E40, F1 and F2 zones.

**BEFORE THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY,
OREGON**

ORDER No. 07-5-15-12

) 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 and 400; map 17-02-10, tax lots 100, 500, 600 and 700; and map 17-02-16, tax lot 100, consisting of approximately 1,329.58 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 and June 5, 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 the property as might have been allowed at the time they acquired an interest in the

properties, from February 15, 1960 through, December 1, 1969; 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 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 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 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), and E40 (Exclusive Farm Use) zones shall not apply to Pete Hanson & Sons, a partnership, so they can make application for approval to develop 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 17-02-09, tax lots 100 and 400; map 17-02-10, tax lots 100, 500, 600 and 700; and map 17-02-16, tax lot 100, consisting of approximately 1,329.58 acres in Lane County, Oregon, in a manner consistent with the land use regulations in effect when they acquired an interest in each of the properties as follows: map 17-02-09, tax lot 400 (February 15, 1960); map 17-02-10, tax lot 100 (February 15, 1960); map 17-02-00, tax lot 1800 (December 1, 1969); map 17-02-10, tax lot 600 (December 1, 1969); map 17-02-09, tax lot 100 (February 15, 1960 and March 28, 1968); map 17-02-04, tax lot 1100 (March 28, 1968); map 17-02-03, tax lot 602 (March 28, 1968); map 17-02-16, tax lot 100 (February 15, 1960); map 17-02-10, tax lot 700 (February 15, 1960); map 17-02-10, tax lot 500 (February 27, 1969);

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.

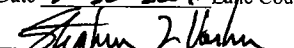
IT IS HEREBY FURTHER ORDERED that this action making certain Lane Code provisions inapplicable to use of the property by Pete Hanson & Sons, a partnership, does not constitute a waiver or modification of state land use regulations and does not authorize immediate division of the subject property or immediate 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.

Faye Stewart, Chair
Lane County Board of County Commissioners

APPROVED AS TO FORM
Date 5-30-2007 Lane County



OFFICE OF LEGAL COUNSEL