

Second Supplemental Memorandum



Supplemental Memo: May 25, 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 (PA06-7309, Harper1)

BACKGROUND

Applicant: Janet L. Harper

Current Owner: Harper Family Limited Partnership

Agent: Frederick A. Batson

Map and Tax lot(s): 16-04-23, tax lots 301, 901, 1401 and 1600
16-04-26, tax lots 100, 200 and 900

Acreage: 16-04-23, tax lots 301 (29.22 ac), 901 (5.76 ac), 1401 (20.80 ac) and 1600 (30.23 ac);

16-04-26, tax lots 100 (130.15 ac), 200 (0.69 ac) and 900 (1.02 ac).

Total acreage of all subject properties: 217.87 acres

Current Zoning: E30 (Exclusive Farm Use)

Date Property Acquired:

Janet L. Harper:

October 29, 1965 – Map 16-04-23, tax lots 301 and 1600 (Warranty Deed, Reel 627R, No. 738747: recorded February 28, 1973);

October 29, 1965 – Map 16-04-26, tax lots 100, 200 and 900 (Warranty Deed, Reel 627R, No. 738747: recorded February 28, 1973);

May 25, 1966 – Map 16-04-23, tax lot 901 (Warranty Deed, Reel 228, No. 49182)

March 17, 1967 – Map 16-04-23, tax lot 1401 (Land Sales Contract, Reel 425R, No. 53996; Warranty Deed, Reel, 823R, No. 7663732).

Harper Family Limited Partnership:

December 11, 1996 – Map 16-04-23, tax lots 301, 1401, 1600; and
Map 16-04-26, tax lots 100, 200 and 900 (Warranty Deed, Reel 2249R, No. 9686270).

*Tax lot 901 (16-04-23) was not part of the 1996 conveyance to the Partnership.

Date claim submitted: December 30, 2006

180-day deadline: May 30, 2007

Land Use Regulations in Effect at Date of Acquisition: unzoned

Restrictive County land use regulation: Minimum parcel size of thirty acres and limitations on new dwellings in the E30 (Exclusive Farm Use) zone (LC 16.212).

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 staff's recommendation. The Board requested all new information to be submitted to Lane County by May 25, 2007.

ANALYSIS

On May 25, 2007, Dan Webb Howard, agent for the applicant, submitted title report by Cascade Title Co., attesting that one of the seven subject properties, tax lot 901 of map 16-04-23, was not placed in the Harper Family Limited Partnership in 1996. No new information for the other six properties was submitted addressing the applicable date of acquisition by the current owner of the subject properties, Harper Family Limited Partnership.

The applicant is requesting reconsideration of staff's recommendation to waive the restrictive land use regulations of the E30 zone on six of the subject properties to December 11, 1996, and on tax lot 901 (16-04-23), to the date Janet Harper acquired interest in tax lot 901 on May 25, 1966.

CONCLUSION

It appears this is a valid claim. However, the minimum lot size and dwelling restrictions can only be waived for the current owner, Harper Family Limited Partnership to the date of acquisition for Map 16-04-23, tax lots 301, 1401, 1600; and Map 16-04-26, tax lots 100, 200 and 900, on December 11, 1996 (Warranty Deed, Reel 2249R, No. 9686270);

and to the date of acquisition for Map 16-04-23, tax lot 901 on May 25, 1966, for Janet Harper as an individual.

RECOMMENDATION

The County Administrator recommends the Board adopt the attached order to waive the restrictive land use regulations of the E30 zone to the date of acquisition by Harper Family Limited Partnership on December 11, 1996, for tax lots 100, 200, 301, 900, 1401, and 1600; and to the date of acquisition by Janet Harper on May 25, 1966, for tax lot 901.

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

ORDER No. 07-5-15-13

) 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 (Harper1, PA 06-7309)

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 Janet L. Harper, individually and as partner in the Harper Family Limited Partnership, the owner of real property located southeast of Maple Drive, east of Lone Pine Road and west of the Willamette River, and more specifically described in the records of the Lane County Assessor as map 16-04-23, tax lots 301, 901, 1401 and 1600; and map 16-04-26, tax lots 100, 200 and 900, and consisting of approximately 217.87 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 06-7309) of Janet L. Harper as an individual and as partner in the Harper Family Limited Partnership and has now determined that the restrictive E30 (Exclusive Farm Use) zone dwelling and land division requirements of LC 16.212 were enforced and made applicable to prevent the owners from developing the property as might have been allowed at the time the Harper family acquired an interest in the properties, map 16-04-23, tax lots 301 and 1600 and map 16-04-26, tax lots 100, 200, and 900, on October 29, 1965, map 16-04-23, tax lot 1401 on

March 17, 1967 and map 16-04-23, tax lot 901, on May 25, 1966; and that the public benefit from application of the current E30 dwelling and division land use regulations to the applicant's property is outweighed by the public burden of paying just compensation; and

WHEREAS, Janet L. Harper as an individual and as partner in the Harper Family Limited Partnership requests either \$10,420,000 to \$17,819,000 as compensation for the reduction in value of the properties, or waiver of all land use regulations that would restrict the division of land into lots containing less than thirty acres and placement of a dwelling on each lot, and development uses including sand and gravel operations that could have otherwise been allowed at the time the Harper family 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 E30 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 Janet L. Harper individually and as partner in the Harper Family Limited Partnership to make application for development of the subject properties in a manner similar to what could have been done under the regulations in effect when each 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 Janet L. Harper as partner in the Harper Family Limited Partnership and as an individual 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 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 Janet L. Harper and the Harper Family Limited Partnership shall be granted and the restrictive provisions of LC 16.212 that limit the development of dwellings, the division of land, and sand and gravel operations in the E30 (Exclusive Farm Use) Zone shall not apply to the Harper Family Limited Partnership or Janet L. Harper as an individual, so the Harper Family Limited Partnership can make application for approval to develop the property located southeast of Maple Drive, east of Lone Pine Road and west of the Willamette River, and more specifically described in the records of the Lane County Assessor as map 16-04-23, tax lots 301, 1401 and 1600; and map 16-04-26, tax lots 100, 200 and 900, and consisting of approximately 212.11 acres in Lane County, Oregon, in a manner consistent with the land use regulations in effect when the Harper Family Limited Partnership acquired an interest in those properties on December 11, 1996; and Janet L. Harper as an individual can make application to develop the property more specifically described in the records of the Lane County Assessor as map 16-04-23, tax lot 901 consisting of approximately 5.76 acres in Lane County, Oregon, in a manner consistent with the land use regulations in effect when she acquired an interest in that property on May 25, 1966.

IT IS HEREBY FURTHER ORDERED that Janet L. Harper and the Harper Family Limited 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 property or placing a dwelling that were not specifically identified or established by them as

restricting the division of the property 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 properties by Janet L. Harper or the Harper Family Limited 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 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 5-30-2007 Lane County

Stephen J. Walker
OFFICE OF LEGAL COUNSEL