

1 BEFORE THE LAND USE BOARD OF APPEALS  
2 OF THE STATE OF OREGON  
3

4 CLARK ANDERSON, LYNN ANDERSON,  
5 PATRICIA CHOMYN, AMY DONNELLY,  
6 MARTIN DREISBEICH, ROBERT EMMONS,  
7 NENA LOVINGER, TIM McMAHEN,  
8 JOHN A. RICHARDSON, JONNY B. WATSON  
9 and ROBERT WINKLER,  
10 *Petitioners,*  
11

12 vs.

13  
14 LANE COUNTY,  
15 *Respondent,*  
16

17 and

18  
19 CAROL DENNIS,  
20 *Intervenor-Respondent.*  
21

22 LUBA No. 2006-236  
23

24 FINAL OPINION  
25 AND ORDER  
26

27 Appeal on remand from Court of Appeals.  
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29 Jannett Wilson, Eugene, represented petitioners.  
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31 Stephen L. Vorhes, Assistant County Counsel, Eugene, represented respondent.  
32

33 P. Steve Cornacchia, Eugene, represented intervenor-respondent.  
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35 BASSHAM, Board Member; HOLSTUN, Board Chair; RYAN, Board Member,  
36 participated in the decision.  
37

38 REMANDED

03/24/2008

39  
40 You are entitled to judicial review of this Order. Judicial review is governed by the  
41 provisions of ORS 197.850.

1 Opinion by Bassham.

2 This matter is on remand from the Court of Appeals. *Anderson v. Lane County*, 216  
3 Or App 332, 172 P3d 302 (2007). In a *per curiam* opinion, the Court stated:

4 “\* \* \* Petitioners seek judicial review, raising two assignments of error: First,  
5 they argue that LUBA erred in approving the county’s use of 1983 prices in  
6 calculating the potential value of timber on that land; and, second, they argue  
7 that LUBA erred by allowing the county, in the same calculation, to presume  
8 a uniform 50-year growth cycle for the timber. In *Herring v. Lane County*,  
9 216 Or App 84, 171 P3d 1025 (2007), we held that LUBA erred in using 1983  
10 prices but did not err in using a 50-year growth cycle. *Herring* resolves the  
11 issues in this case.

12 “Reversed and remanded to LUBA with instructions to remand to county for  
13 further proceedings.” *Id.* at 333.

14 Petitioners’ second assignment of error, first sub-assignment of error, challenged the  
15 county’s use of 1983 timber prices. As explained in *Herring*, the county erred in using 1983  
16 timber prices to determine whether the subject property is “marginal land” under  
17 ORS 197.247(1)(a) (1991). Remand is necessary for the county to calculate potential annual  
18 gross income based on timber prices in the five calendar years that precede 1983.

19 The second assignment of error is sustained, in part. The Court’s remand did not  
20 require changes to other dispositions in our decision, which remain in effect.

21 The county’s decision is remanded.