

PASSED

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

**ORDER No.** ) IN THE MATTER OF CONSIDERING A BALLOT  
06-1-18-12 ) MEASURE 37 CLAIM AND DECIDING  
 ) WHETHER TO MODIFY, REMOVE OR NOT  
 ) APPLY RESTRICTIVE LAND USE  
 ) REGULATIONS IN LIEU OF PROVIDING JUST  
 ) COMPENSATION (Virgil Ward /PA05-6130)

**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 landowners 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 Virgil Ward (PA05-6130), the owner of real property located at 88500 Periwinkle Road near Springfield and more specifically described in the records of the Lane County Assessor as map 17-02-24, tax lot 1400, consisting of approximately 14 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 Board has 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**, 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**, on January 18, 2006, the Board conducted a public hearing on Virgil Ward's Measure 37 claim (PA05-6130) and has now determined that the restrictive RR (Rural Residential) minimum lot and parcel size requirements of LC 16.290 were enforced and made applicable to prevent Virgil Ward from developing the property as he might have been allowed when he acquired the property on August 27, 1956, and that the public benefit from application of the current RR (Rural Residential) land use regulations to the applicants' property is outweighed by the public burden of paying just compensation; and

**WHEREAS**, Virgil Ward requests either \$670,000 as compensation for the reduction in value of his property or waiver of all land use regulations that would restrict division of land into lots or parcels smaller than five acres which could have otherwise been allowed at the time he acquired 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 RR (Rural Residential) 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 Virgil Ward to make application for development of the subject property in a manner similar to what he could have been able to do under the regulations in effect when he acquired 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 Virgil Ward 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 he acquired 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 Virgil Ward's request shall be granted and the restrictive provisions of LC 16.290 that require a minimum size of five acres for new lots and parcels in the RR (Rural Residential) zone shall not apply to Virgil Ward, so that he can make application for approval to develop the property at 88500 Periwinkle Road commonly known as Lane County Assessor map 17-02-24, tax lot 1400, in a manner consistent with the land use regulations in effect when he acquired the property on August 27, 1956.

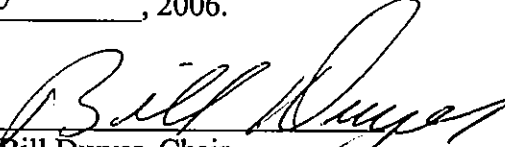
**IT IS HEREBY FURTHER ORDERED** that Virgil Ward will need to make application and receive approval for a subdivision under the other land use regulations applicable to dividing property in the RR (Rural Residential) zone that were not specifically identified or established by Virgil Ward as restricting the use 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 the division restrictions of the applicable zone described above, the claimant shall submit appropriate applications for review and approval of a land division to show the specific development proposal and in the event additional county land use regulations result in a restriction of those uses that has 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. 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 Virgil Ward's use of his property does not constitute a waiver or modification of state land use regulations and does not authorize immediate division of the land or immediate construction of a dwelling. The requirements of state law may contain specific standards

regulating development of the subject property and the applicants 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 applicants to build another dwelling 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) 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 18th day of January, 2006.

  
Bill Dwyer, Chair  
Lane County Board of County Commissioners

APPROVED AS TO FORM

Date 1-10-2006 Lane County

  
OFFICE OF LEGAL COUNSEL