

W. S. H.

AGENDA COVER MEMO

DATE: June 1, 2005

TO: BOARD OF COUNTY COMMISSIONERS

**FROM : 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 (PA05-5162, Kenny and Marta Gee)

I. MOTION: Move to Adopt Order

II. ISSUE OR PROBLEM

On May 11 and 18, 2005, the Board conducted public hearings on the Gee's Measure 37 claim. The Board concluded the claim was valid and that waiver of the restrictive land use regulations is necessary to avoid owner entitlement to just compensation under Measure 37.

The Board determined that the restrictive dwelling and minimum area land division requirements of the Exclusive Farm Use zone (E-30/RCP) prevent Kenny Gee from dividing or building additional dwellings on his property and directed staff to draft a revised order to waive application of the restrictive division and dwelling land use regulations to allow Kenny Gee to use the property for a use permitted at the time he acquired the property.

Attached is the revised order to waive application of specific land use regulations applicable to the Gee property.

III. IMPLEMENTATION / FOLLOW-UP

Upon adoption of the final order, within 5 days the County will mail notice of the decision to all parties to the proceeding and record notice of the Board decision in the county deed records.

VI. ATTACHMENTS:

Order No. 05-5-11-13

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

ORDER No. 05-5-11-13

) 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
) (Kenny and Marta Gee/PA 05-5162)

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 by Kenny and Marta Gee (PA05-5162), owners of real property commonly known as 81778 North Pacific Highway 99, Creswell, Oregon 97426 and more specifically described in the records of the Lane County Assessor as map 19-03-26, tax lot 6101 and consisting of approximately 56.36 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 M37 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 to Kenny Gee is necessary to avoid owner entitlement to just compensation under Ballot Measure 37 and made that recommendation to the Board; and

WHEREAS, on May 11 and 18, 2005, the Board conducted a public hearing on Kenny and Marta Gee's Measure 37 claim (PA05-5162) and determined that the restrictive dwelling and minimum area land division requirements of Lane Code 16.212(5), (6), (7) and (9) that were enforced and made applicable to the property prevent Kenny Gee from subdividing and developing his property with additional dwellings and the public benefit from application of the

land use regulation to the applicants' property is outweighed by the public burden of paying just compensation; and

WHEREAS, Kenny and Marta Gee wish to be able to subdivide their property and develop it with residences in at least a 2 acre density and the Board finds that proposal to be a use permitted at the time Kenny Gee acquired an interest in the property based on an interpretation of Measure 37 that concludes the land division regulations can restrict the use Kenny Gee could have made of the property at that time although dwelling development rights might not be transferable; and

WHEREAS, the Board finds that the restrictive dwelling and area requirements of Lane Code 16.212(5), (6), (7) and (9) applicable to the property prevent Kenny and Marta Gee from subdividing and developing the property with additional dwellings, a use permitted at the time Kenny Gee acquired the property, and under LC 2.760(3) the public interest would be better served by modifying, removing or not applying those challenged land use regulations of the EFU 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 authorize division of the property to create additional parcels and construction of additional dwellings by Kenny Gee; and

WHEREAS, this matter having been fully considered by the Lane County Board of Commissioners.

NOW, THEREFORE IT IS HEREBY ORDERED that the applicants Kenny and Marta Gee 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 Kenny Gee 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, the request of Kenny Gee shall be granted and the restrictive dwelling and minimum area provisions of Lane Code 16.212(5), (6), (7) and (9) that limit the division of land and restrict placement of dwellings shall not apply to Kenny Gee so that he can further divide the property into parcels or lots as small as two acres and build additional dwellings on the property commonly known as 81778 North Pacific Highway 99, Creswell, Oregon 97426 and more specifically described as map 19-03-26, tax lot 6101.

IT IS HEREBY FURTHER ORDERED that Kenny Gee will need to receive approval of any land division to allow creation of new lots or parcels and construction of an additional dwelling under the other land use regulations applicable to dividing land or placing additional dwellings on his property that were not specifically identified or established as restricting Kenny Gee's use of the property for home sites and it would be premature to not apply those regulations given the available evidence. Applicants may resubmit to the Board any county land use regulation for reconsideration under Ballot Measure 37 and LC 2.700 through 2.770 if enforcement of those regulations during development will result in a restriction in use that has the effect of reducing the fair market value of the property. 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 Kenny Gee's use of his property does not constitute a waiver or modification of any corresponding state law or administrative rules and does not authorize immediate division or construction of an additional dwelling. The requirements of state law, including ORS 215.213, 215.263 and OAR chapter 660, division 33, contain specific standards regulating land divisions and development on agricultural land and 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 claim for this property before seeking county land use approval. The county land use regulations and other 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 and a copy of this Order shall be recorded in the county deed records. This Order shall be effective and have 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 Kenny Gee to build additional dwellings can be transferred to another owner.

DATED this _____ day of _____, 2005.

Anna Morrison, Chair
Lane County Board of County Commissioners

APPROVED AS TO FORM

Date _____ Lane County

OFFICE OF LEGAL COUNSEL