

Memo Date: January 25, 2007
Order Date: February 13, 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 (PA06-6743, Dunlap)

BACKGROUND

Applicant: John E. Dunlap, Robert L. Dunlap, Ruth E. Dunlap, Loretta Downs and George Downs, Jr.

Map and Tax Lots – Acres – Current Owners:

18-04-10, tax lot 700	(115.0 acres)	John E. Dunlap (1/3), Robert L. Dunlap (1/3), Dorothy Parker (deceased) heirs & devisees (1/3);
18-04-10, tax lot 701	(7.89 acres)	John E. Dunlap;
18-04-10, tax lot 702	(6.91 acres)	John E. Dunlap and Estate of Reta M. Dunlap (deceased);
18-04-10, tax lot 703	(8.27 acres)	Robert Lewis Dunlap and Ruth E. Dunlap;
18-04-10, tax lot 704	(8.23 acres)	Estate of Marion Curtis Parker (deceased) and Dorothy I. Parker (deceased);
18-04-09, tax lot 5300	(4.57 acres)	Robert Louis Dunlap and Ruth E. Dunlap;
18-04-09, tax lot 5400	(3.97 acres)	Loretta I. Downs and George A. Downs Jr.

Total acres 154.84 acres

Agent: Boyd Iverson

Map and Tax lot: 18-04-09, tax lots 5300 and 5400;
18-04-10, tax lots 700, 701, 702, 703 and 704

Acreage: 170 acres

Current Zoning: Impacted Forest Land (F-2)

Date Property Acquired by a Family Member: October 10, 1900

Date claim submitted: October 6, 2006

180-day deadline: April 4, 2007

Land Use Regulations in Effect at Date of Acquisition: Varies (see below)

Restrictive County land use regulation: Minimum parcel size of 80 acres and limitations on new dwellings in the F-2 (Impacted Forest Land) zone (LC 16.211).

ANALYSIS

To have a valid claim against Lane County under Measure 37 and LC 2.700 through 2.770, the applicant must prove:

1. Lane County has enacted or enforced a restrictive land use regulation since the owner acquired the property, and

The Dunlap family acquired the property in 1900 and current owners appear to be family members. Maps 18-04-09 and 18-04-10 were unzoned until February 11, 1966. On that date the subject properties were designated AGT (Agriculture/Grazing/Timber) by the adoption of Ordinance 65-161. All of the properties remained AGT until 1980 when they were rezoned by Ordinance #840 on August 29, 1980. The acquisition dates of the current owners are as follows:

18-04-09, tax lot 5300	WD # 7419089	April 7, 1965	Robert L. Dunlap, Ruth E. Dunlap
18-04-09, tax lot 5400	WD # 8812254	March 29, 1988	Loretta I. Downs George A. Downs Jr
18-04-10, tax lot 700	Probate Case # 16488	July 30, 1964	John E. Dunlap, Robert L. Dunlap
18-04-10, tax lot 701	WD # 7414149	April 10, 1974	John E. Dunlap
18-04-10, tax lot 702W	WD # 7419088	April 7, 1965	John E. Dunlap
	702 E WD # 7534279	July 30, 1975	John E. Dunlap
18-04-10, tax lot 703	WD # 7534277	July 30, 1975	Robert L. Dunlap, Ruth E. Dunlap
18-04-10, tax lot 704	2002/ # 54542	July 18, 2002	Estate of Marion Curtis Parker and Dorothy I. Parker .

For the purposes of this claim, the applicable zoning at the time the current owners acquired their interests is:

Unzoned – tax lot 700, western half of tax lot 702, and tax lot 5300

AGT – tax lot 701, eastern half of tax lot 702, tax lot 703 (LC 10.110)

F2 – tax lot 704 and tax lot 5400 (LC 16.211)

John E. Dunlap and Reta M. Dunlap conveyed their interests in Tax lots 700, 701 and 702 (18-04-10) by Bargain & Sale Deed to the Dunlap Loving Trust on November 14, 1990 (1665R - #

9055355). The Dunlap Loving Trust is a revocable living trust and the trustees were: John E. Dunlap and Reta M. Dunlap, now deceased. The Trust is considered a new owner but because it is revocable and John E. Dunlap is still a trustee the ownership interest of John E. Dunlap continues. It is unclear whether or when the Estate of Reta M. Dunlap acquired an interest in tax lot 702.

Currently, all of the subject properties are zoned F2 Impacted Forest Land (Lane Code 16.211).

2. The restrictive land use regulation has the effect of reducing the fair market value of the property, and

The minimum lot size and limitations on new dwellings in the F-2 zone prevent the current owners from developing the property as could have been allowed when the family acquired it. The alleged reduction in fair market value is \$3,900,565, based on the submitted real estate broker opinion of comparable sales data.

3. The restrictive land use regulation is not an exempt regulation as defined in LC 2.710.

The minimum lot size and restrictions on new dwellings do not appear to be exempt regulations.

CONCLUSION

It appears this is a valid claim for 18-04-09, tax lot 5300 (Unzoned, 4-7-65) and 18-04-10, tax lot 703 (AGT, 7-30-75) for Robert L. Dunlap and Ruth E. Dunlap.

It appears this is a valid claim for 18-04-10, tax lot 700 (Unzoned, 7-30-64) for John E. Dunlap and Robert L. Dunlap.

It appears this is a valid claim for 18-04-10, tax lot 701 (AGT, 4-10-74) for John E. Dunlap.

It appears this is a valid claim for 18-04-10, western 1/2 of tax lot 702 (unzoned, 4-7-65) and eastern 1/2 of tax lot 702 (AGT, 7-30-75) for John E. Dunlap.

It appears this is a valid claim for 18-04-10, tax lot 703 (AGT, 7-30-75) for Robert L. Dunlap and Ruth E. Dunlap.

It appears this is a valid claim for 18-04-09, tax lot 5400 (F2, 3-29-88) for Loretta I. Downs and George A. Downs Jr.

It appears this is a valid claim for 18-04-10, tax lot 704 (F2, 7-18-02) for the Estate of Marion Curtis Parker and Dorothy I. Parker, however the transfer to the heirs will create a new date of acquisition and waiver to the Estate will not remove the F2 restrictions. It is also unclear how ownership of this tax lot is held.

RECOMMENDATION

The County Administrator recommends the Board adopt the attached order to waive the restrictive land use regulations.

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY, OREGON

ORDER No.

) 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 (PA 06-6743, Dunlap)

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 John E. Dunlap, Robert L. Dunlap, Ruth E. Dunlap, Loretta Downs and George Downs, Jr., the owners of real property located east of the public road right-of-way of Bailey Hill Road and southwest of Eugene, and more specifically described in the records of the Lane County Assessor as map 18-04-09, tax lot 5300 and 5400 and map 18-04-10, tax lots 700, 701, 702, 703 and 704, consisting of approximately 155 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 February 13, 2007, the Board conducted a public hearing on the Measure 37 claim (PA 06-6743) of John E. Dunlap, Robert L. Dunlap, Ruth E. Dunlap, Loretta Downs and George Downs and has now determined that the restrictive F2 (Impacted Forest Land) requirements of LC 16.211 were enforced and made applicable to prevent the Dunlap family members from developing the subject property as might have been allowed at the time the family first acquired it and that the public benefit from application of the current F2 regulations to the property is outweighed by the public burden of paying just compensation; and

WHEREAS, John E. Dunlap, Robert L. Dunlap, Ruth E. Dunlap, Loretta Downs and George Downs requests either \$3,900,565 as compensation for the reduction in value of their property, or waiver of all land use regulations that would restrict them from developing the properties as could have been allowed on the dates they acquired an interest in the properties; 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 F2 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 John E. Dunlap, Robert L. Dunlap, Ruth E. Dunlap, Loretta Downs, George Downs and the estate of Marion C. Parker and Dorothy I. Parker 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 interests 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 applicants John E. Dunlap, Robert L. Dunlap, Ruth E. Dunlap, Loretta Downs, George Downs, Jr. and the Estate of Marion C. Parker and Dorothy I. Parker 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 the Dunlap family acquired an interest in 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 John E. Dunlap, Robert L. Dunlap, Ruth E. Dunlap, Loretta Downs, George Downs, Jr. and the Estate of Marion C. Parker and Dorothy I. Parker shall be granted and the restrictive provisions of LC 16.211 that limit the division and development of dwellings in the F2 (Impacted Forest Land) Zone shall not apply to John E. Dunlap, Robert L. Dunlap, Ruth E. Dunlap, Loretta Downs, George Downs, Jr. and the Estate of Marion C. Parker and Dorothy I. Parker so they can make application for approval to develop the property specifically described in the records of the Lane County Assessor as map 18-04-09, tax lots 5300 and 5400 and map 18-04-10, tax lots 700, 701, 702, 703 and 704, consisting of approximately 155 acres in Lane County, Oregon, in a manner consistent with the land use regulations in effect when they acquired an interest in the properties as follows:

- April 7, 1965 (18-04-09, tax lot 5300 for Robert L. and Ruth E. Dunlap),
- March 29, 1988 (18-04-09, tax lot 5400 for Loretta I. and George A. Downs, Jr.),
- July 30, 1964 (18-04-10, tax lot 700 for John E. Dunlap and Robert L. Dunlap),
- April 10, 1974 (18-04-10, tax lot 701 for John E. Dunlap),
- April 7, 1965 (18-04-10, western half of tax lot 702 for John E. Dunlap),
- July 30, 1975 (18-04-10, eastern half of tax lot 702 for John E. Dunlap),
- July 30, 1975 (18-04-10, tax lot 703 for Robert L. and Ruth E. Dunlap), and
- July 18, 2002 (18-04-10, tax lot 704 for estate of Marion C. Parker and Dorothy I. Parker).

IT IS HEREBY FURTHER ORDERED that John E. Dunlap, Robert L. Dunlap, Ruth E. Dunlap, Loretta Downs, George Downs, Jr. and the Estate of Marion C. Parker and Dorothy I. Parker still need to make application and receive approval of any development under the other land use regulations applicable to dividing the land or placing a dwelling that were not specifically identified or established by them as restricting the development of the land, and it would be premature to not apply those regulations given the available evidence. To the extent necessary to effectuate the Board action to apply the dwelling restrictions of the applicable zone described above, the claimant shall submit appropriate applications for review and approval 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 John E. Dunlap, Robert L. Dunlap, Ruth E. Dunlap, Loretta Downs, George Downs, Jr. and the Estate of Marion C. Parker and Dorothy I. Parker does not constitute a waiver or modification of state land use regulations and does not authorize immediate development of the subject property. 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.

APPROVED AS TO FORM

Date 2-9-2007 Lane County

Stephen J. Cohen
OFFICE OF LEGAL COUNSEL

Faye Stewart, Chair
Lane County Board of County Commissioners