

**Memo Date:** January 22, 2007  
**Order Date:** February 13, 2007



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**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 (PA06-6526, Wheeler)

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## **BACKGROUND**

**Applicant:** Verden W. Wheeler

**Current Owner:** Verden W. Wheeler and Lois A. Wheeler

**Agent:** N/A

**Map and Tax lot:** 19-02-01, tax lot 201

**Acreage:** 18.1 acres

**Current Zoning:** E25 (Exclusive Farm Use)

**Date Property Acquired:** June 22, 1966 (Reel 290R, #53492)

**Date claim submitted:** August 29, 2006

**180-day deadline:** February 24, 2007

**Land Use Regulations in Effect at Date of Acquisition:** unzoned

**Restrictive County land use regulation:** Minimum parcel size of twenty five acres and limitations on new dwellings in the E25 (Exclusive Farm Use) zone (LC 16.212).

## **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 current owners, Verden Wheeler and Lois Wheeler (husband and wife), acquired an interest in the property on June 22, 1966, (Warranty Deed, Reel 290R, #53492) when it was unzoned.

Currently, the property is zoned E25 (Exclusive Farm Use) Lane Code 16.212.

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

The property was unzoned when it was acquired by the current owners. The minimum lot size and limitations on new dwellings in the E25 zone prevent the current owners from developing the property as could have been allowed when they acquired it. The alleged reduction in fair market value is \$306,682, based on the submitted appraisal.

**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.

**RECOMMENDATION**

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



**WHEREAS**, Verden W. Wheeler and Lois A. Wheeler requests either \$306,682 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 June 22, 1966, the date they acquired an interest in the properties; and

**WHEREAS**, the Board finds that under LC 2.760(3) the public interest is served by modifying, removing or not applying the land use regulations of the E25 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 Verden W. Wheeler and Lois A. Wheeler 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 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 applicants Verden W. Wheeler and Lois A. Wheeler 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 they 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 Verden W. Wheeler and Lois A. Wheeler shall be granted and any restrictive provisions of LC 16.212 that limit the division and residential development of land in the E25 (Exclusive Farm Use) Zone shall not apply to Verden W. Wheeler and Lois A. Wheeler, so they can make application for approval to develop the property specifically described in the records of the Lane County Assessor as map 19-02-01, tax lot 201, consisting of approximately 18.1 acres in Lane County, Oregon, in a manner consistent with the land use regulations in effect when they acquired an interest in the property on June 22, 1966.

**IT IS HEREBY FURTHER ORDERED** that Verden W. Wheeler and Lois A. Wheeler 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.

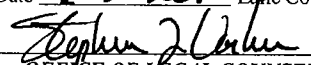
**IT IS HEREBY FURTHER ORDERED** that this action making certain Lane Code provisions inapplicable to use of the property by Verden W. Wheeler and Lois A. Wheeler does not constitute a waiver or modification of state land use regulations and does not authorize immediate development of the subject property. 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.

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Faye Stewart, Chair  
Lane County Board of County Commissioners

APPROVED AS TO FORM

Date 2-8-2007 Lane County  
  
OFFICE OF LEGAL COUNSEL