

## Supplemental Memo



**Memo Date:** July 11, 2007

**Hearing Date:** July 24, 2007 (Continued from April 3, May 8, & June 20, 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 (PA05-6425, Bixler)

---

### BACKGROUND

**Applicant:** David L. Bixler and Loyce Evelyn Bixler

**Current Owner:** David L. Bixler and Loyce Evelyn Bixler

**Agent:** Selene Bixler Price and Lucette Bixler Wood

**Map and Tax lot(s):** 16-03-30, tax lot 802

**Acreage:** 56.01 acres

**Current Zoning:** E40 Exclusive Farm Use

**Date Property Acquired:** Loyce Evelyn Bixler: September 2, 1997

(Bargain & Sale Deed: Reel 1395, No. 8611530)

**Date claim submitted:** September 28, 2005

**180-day deadline:** March 27, 2006 (Time waiver approved)

**Land Use Regulations in Effect at Date of Acquisition:** E40

**Restrictive County land use regulation:** Minimum parcel size of forty acres and limitations on new dwellings in the E40 (Exclusive Farm Use) zone (LC 16.212).

This claim was originally heard on April 3, 2007. The Board continued the discussion of the claim to the May 8, 2007 and then again to the June 20, 2007 public hearing. At the June 20, 2007, public hearing the Board continued the discussion of the claim once again to July 24, 2007, to allow staff time to evaluate recently submitted information concerning the ownership interest of the Bixlers.

**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 (Bixler, PA 05-6425)

**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 Loyce Evelyn Bixler, the owner of real property located at 31668 Green Island Road, Eugene, Oregon and more specifically described in the records of the Lane County Assessor as map 16-03-30, tax lot 802, and consisting of approximately 56.01 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 April 3, 2007, May 8, 2007, June 20, 2007, and July 24, 2007, the Board conducted public hearings on the Measure 37 claim (PA 05-6425) of Loyce Evelyn Bixler and has now determined that the restrictive E40 (Exclusive Farm Use) zone dwelling and land division requirements of LC 16.212 were enforced and made applicable to prevent Loyce Evelyn Bixler from developing the property as might have been allowed at the time her family acquired an interest in the property, map 16-03-30, tax lot 802, on October 10, 1974; and that the public

## **ANALYSIS**

A Deed of Trust and Promissory Note were submitted on June 7, 2007. These and previously submitted documents do not appear to show that Loyce Evelyn Bixler acquired an ownership interest in the property in 1982, as her claim asserts. Rather, the documents appear to demonstrate that Loyce Evelyn Bixler's parents, Leon and Lily Colthar, owed Loyce Evelyn Bixler a sum of money and that the money was invested in the subject property. The property was intended to provide security for payment of the money. The 1974 deed, 1982 agreement, note and trust deed all attempted to create an ownership interest in the property but the reserved life estate meant it might never actually be owned by Loyce Evelyn Bixler. A Bargain and Sale Deed (#9768289) shows the actual conveyance of an ownership interest in the property from Leon and Lily Colthar to Loyce Evelyn Bixler on September 2, 1997.

## **CONCLUSION**

It appears this may be a valid claim for compensation based on the ownership by the claimant's parents, but waiver will not benefit the applicant since she ultimately acquired an ownership interest in the property after the current zoning was applicable.

## **RECOMMENDATION**

The County Administrator recommends the Board adopt the attached order.

benefit from application of the current E40 dwelling and division land use regulations to the applicant's property is outweighed by the public burden of paying just compensation; and

**WHEREAS**, Loyce Evelyn Bixler requests either \$720,000 as compensation for the reduction in value of her property, or waiver of all land use regulations that would restrict the division of land into lots containing less than forty acres and placement of a dwelling on each lot, development uses that could have otherwise been allowed at the time her family acquired an interest in the property on October 10, 1974; 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 E40 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 Loyce Evelyn Bixler to make application for development of the subject properties in a manner similar to what she could have been able to do under the regulations in effect when she acquired the property on September 2, 1997; and

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

**NOW, THEREFORE IT IS HEREBY ORDERED** that the applicant Loyce Evelyn Bixler 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 her family acquired an interest in the properties 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 Loyce Evelyn Bixler shall be granted and the restrictive provisions of LC 16.212 that limit the development of dwellings and the division of land in the E40 (Exclusive Farm Use) Zone shall not apply to Loyce Evelyn Bixler, so she can make application for approval to develop the property located at 31668 Green Island Road, Eugene, Oregon and more specifically described in the records of the Lane County Assessor as map 16-03-30, tax lot 802, and consisting of approximately 56.01 acres in Lane County, Oregon, in a manner consistent with the land use regulations in effect when she acquired the property on September 2, 1997.

**IT IS HEREBY FURTHER ORDERED** that Loyce Evelyn Bixler still needs to make application and receive approval of any division of the property or placement of a dwelling under the other land use regulations applicable to dividing the property or placing a dwelling that were not specifically identified or established by her as restricting the division of the property or placement of a dwelling, 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 dwelling or division restrictions of the applicable zone described above, the claimant shall submit appropriate applications for review and approval of a new dwelling 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 Loyce Evelyn Bixler does not constitute a waiver or modification of state land use regulations and does not authorize immediate division of the subject property or immediate construction of a dwelling. 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.

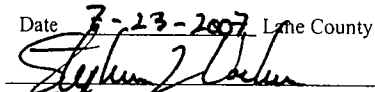
**IT IS HEREBY FURTHER ORDERED** that the other county land use regulations and rules that still apply to the property require that land use, sanitation and building permits be approved by Lane County before any development can proceed. Notice of this decision shall be recorded in the county deed records. 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.

\_\_\_\_\_  
Faye Stewart, Chair  
Lane County Board of County Commissioners

APPROVED AS TO FORM

Date 7-23-2007 Lane County

  
OFFICE OF LEGAL COUNSEL