

## Supplemental Memo



**Memo Date:** July 5, 2007

**Order Date:** July 24, 2007 (Continued from 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 (PA06-7333, Montgomery)

---

### BACKGROUND

**Applicant:** Alan, Bruce and Laura Montgomery

**Current Owner:** Alan, Bruce and Laura Montgomery

**Agent:** Ron Funke

**Map and Tax lot:** 19-12-25, #200, #299, #300, #700 and #1400

**Acreage:** 325 acres

**Current Zoning:** F-2 (Impacted Forest Land)

**Date Property Acquired:** The AMP-1 Limited Partnership acquired a 50% interest in tax lots #200, #299, #300 and #1400 on August 18, 1994. Bruce and Alan Montgomery acquired a 50% interest in tax lots #200, #299, #300 and #1400 on December 23, 1999 (WD 2000-000583). Laura Montgomery acquired tax lot #700 on December 14, 1990 and then conveyed it to the Montgomery Oregon Property Trust on August 25, 2000 (WD 2000-050665).

**Date claim submitted:** December 4, 2006

**180-day deadline:** June 2, 2007

**Land Use Regulations in Effect at Date of Acquisition:** F-2 (Impacted Forest)

**Restrictive County land use regulation:** Limitations on parks, campgrounds and destination resorts in the F-2 (Impacted Forest Land) zone (LC 16.211).

This claim was originally heard on April 10, 2007. The Board of Commissioners continued the discussion of this claim to the May 15, 2007 public hearing, and the June 20, 2007 public hearing to allow the claimant additional time to submit supplemental information regarding ownership and valuation. The Board then permitted the claimant time to submit final information, until June 29, 2007, when the record was closed. The Board will deliberate on the record on July 24, 2007. No additional information has been received since the June 20, 2007 public hearing.

## **ANALYSIS**

The current owners of tax lots #200, #299, #300 and #1400 are the AMP-1 Limited Partnership which acquired a 50% interest on August 18, 1994 and Bruce and Alan Montgomery (Children of Laura Montgomery) who acquired a 50% interest on December 23, 1999 (WD 2000-000583).

The current owner of tax lot #700 is the Montgomery Oregon Property Trust, trustee Laura Montgomery, which acquired an interest on August 25, 2000 (WD 2000-050665). The property was conveyed to the Montgomery Oregon Property Trust by Laura Montgomery who acquired an interest to tax lot #700 on December 14, 1990 (BSD 9102755). Verbal testimony on June 20, 2007, indicates the trust is revocable by Laura Montgomery. No other evidence or documentary information regarding the Montgomery Oregon Property Trust has been provided.

Information has also been provided regarding the Aurilla M. Powers Trust, established on October 28, 1993 and then amended on February 10, 1994, adding Laura Montgomery as co-trustee. These documents establish that Laura A. Montgomery is the daughter of Aurilla M. Powers.

Currently the property is zoned F-2. The present owners of the above referenced properties acquired them in 1990, 1994, and 1999, when they were already zoned F-2. Testimony and evidence submitted indicate family members acquired ownership in the early 1900s, before the property was zoned.

Verbal testimony given to the Board during the June 20, 2007, public comment period and then again on the specific M37 claim identifies the land use regulation that is reducing the value of the property as Lane Code 16.211, and specifically mentions that they previously had the ability to construct a campground and/or destination resort. Also, supplemental information submitted on April 24, 2007, by their agent Ron Funke, provides a general statement about Ordinance 884 and their ability to build a destination resort with store and caretaker building.

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

The property was zoned F-2 when it was acquired by the current owners; the AMP-1 Limited Partnership, Alan and Bruce Montgomery, and Laura Montgomery. The claimants have provided a value reduction analysis from a realtor alleging a claim of \$31,337,813, compared to properties with a resort. No new value information has been

provided since the public hearing on June 20, 2007. Combined with the written and verbal testimony on the restrictive land use regulations, it appears the submitted analysis is acceptable to establish that there has been a monetary loss of value for the owners of the property based on the early family ownership. The County Administrator has waived the appraisal requirement for this claim.

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

The applicant has identified the restrictive land use regulations of Lane Code 16.211 have caused a reduction in the fair market value of the property; specifically, the ability to construct a campground, destination resort with store and caretaker building. These are not exempt regulations under Measure 37.

**CONCLUSION**

It appears that this is a valid claim.

**RECOMMENDATION**

The County Administrator recommends the Board adopt the attached order to waive the current restrictive land use regulations of the F-2 zone to allow use of the property under the F-2 zone regulations that were in effect when the claimants acquired their interests in the property.

**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 (Montgomery/ PA06-7333).

**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 Alan, Bruce and Laura Montgomery (PA06-7333), the owners of real property described in the records of the Lane County Assessor as map 19-12-25, tax lots 200, 299, 300, 700 and 1400, consisting of approximately 325 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 owners 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 10, May 15, and June 20, 2007, the Board conducted public hearings on the Measure 37 claim (PA06-7333) of Alan, Bruce and Laura Montgomery and has now determined that the restrictive F2 (Impacted Forest Lands) zone requirements for uses including campgrounds and destination resort with store and caretaker building found in LC 16.211 were enforced and made applicable to prevent the Montgomery's from developing the property as might have been allowed on the date the family acquired an interest in the property, and that the public benefit from application of the current F2 restrictions on the applicant's property is outweighed by the public burden of paying just compensation; and

**WHEREAS**, Alan, Bruce and Laura Montgomery request either \$31,337,813 as compensation for the reduction in value of the property, or waiver of all land use regulations that would prevent them from developing the land as a campground and/or destination resort with store and caretaker building, or uses that could have otherwise been allowed at the time they acquired an interest in 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 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 Alan, Bruce and Laura Montgomery to make application for development of the subject property 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 property; and

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

**NOW, THEREFORE IT IS HEREBY ORDERED** that the applicants Alan, Bruce and Laura Montgomery 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 family 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 the applicants shall be granted and the restrictive provisions of LC 16.211 that prevent uses such as campgrounds and destination resort with store and caretaker building in the F2 (Impacted Forest Lands) Zone shall not apply to the Montgomery's, so that they can make application for approval to develop the property described in the records of the Lane County Assessor as map 19-12-25, tax lots 200, 299, 300, 700, and 1400, in a manner consistent with the land use regulations in effect when they acquired the property as follows: the AMP-1 Limited Partnership acquired a 50% interest in tax lots 200, 299, 300, and 1400 on August 18, 1994; Alan and Bruce Montgomery acquired a 50% interest in tax lots 200, 299, 300, and 1400 on December 23, 1999; Laura Montgomery acquired her interest in tax lot 700 on December 14, 1990.

**IT IS HEREBY FURTHER ORDERED** that Alan, Bruce, and Laura Montgomery still will need to make application and receive approval for any land division or new use proposed under the land use regulations applicable to dividing or beginning new uses that were not specifically identified or established by the Montgomery's as restricting their ability to develop their property. 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 current F2 (Impacted Forest Lands) zone regulations of Lane Code 16.211, the claimant shall submit appropriate applications for review and approval of a new uses 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.

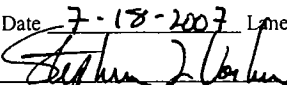
**IT IS HEREBY FURTHER ORDERED** that this action making certain Lane Code provisions inapplicable to use of the property by Alan, Bruce, and Laura Montgomery does not constitute a waiver or modification of state land use regulations and does not authorize immediate construction of any buildings. The 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 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 7-18-2007 Lane County  
  
\_\_\_\_\_  
OFFICE OF LEGAL COUNSEL