

T. M37



Memo Date: February 27, 2007
Hearing Date: March 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: Hearings on twenty eight Ballot Measure 37 Claims. See the attached reports for the individual title of each Ballot Measure 37 claim to be heard.

PUBLIC HEARINGS/ MEASURE 37 CLAIMS

All claims set for hearing and consideration by the Board are listed in Table 1 and will be reviewed together in a single, day-long proceeding. The hearings will allow anyone the opportunity to speak to any claim during public testimony and/or submit written testimony. Anyone who submits testimony will be sent notice of subsequent land use applications that rely on the Ballot Measure 37 claim. The Board may elect to adopt all or a subset of the provided draft orders in one motion. Any of the claims with issues can be removed and discussed by the Board in separate actions.

Hearing Process

The order of testimony for each claim listed in Table 1 will be as follows:

1. Applicant.
2. Others.
3. Rebuttal by applicant.
4. Questions from the Board, if necessary.

After closing or continuing the hearings on all the listed claims, the Board may:

1. Identify claims for further discussion.
2. Act on those not requiring more discussion (by number from Table 1).

Possible Motions following the Hearings

1. Motion for Board to adopt the proposed orders for the claims that appear valid.
2. Motion for Board on individual orders or claims pulled for discussion.
3. Motion that remaining claims have inadequate information to determine their validity and direct the County Administrator to issue letters of denial.

ANALYSIS AND RECOMMENDATIONS

There are 9 claims recommended for denial. Of these, three are not valid because there does not appear to be any reduction in the fair market value from enforcement of a restrictive land use regulation. Those claims are Barrowcliff, Johnson² and Murphy³¹⁵. The other six are incomplete because they have not submitted adequate evidence regarding the alleged reduction of value despite requests for that information. Because of this, the County Administrator is compelled to recommend denial of these claims. If the Board concurs, the County Administrator will issue a letter to that effect for each claim. The remaining claims appear valid as described in the attached reports and the County Administrator recommends the Board adopt the proposed orders for those claims.

ATTACHMENTS

- A. Table 1: Summary of Claims and Recommendations
- B. Table 2: Hearing Notes
- C. Reports and Orders where provided

Attachment "A"

Table 1: Summary of Claims and Recommendations

| | Name | PA# | Tax parcels | Acres | Submitted | 180 days | Status | Issues/Notes | Recommendation |
|-----|---------------|---------|-------------------------------------|-------|-----------|-----------|------------|---------------------------|----------------|
| 1. | Bailey | 06-6821 | 20-03-23 #120 | 50 | 19-Oct-06 | 17-Apr-07 | Valid | | Adopt order |
| 2. | Barnes | 06-7323 | 16-05-15 #300 | 308 | 4-Dec-06 | 2-Jun-07 | incomplete | No valuation | Deny |
| 3. | Barrowcliff | 06-6975 | 16-02-11 #200 | 338 | 15-Nov-06 | 14-May-07 | Not valid | No reduction in value | Deny |
| 4. | Boss | 06-6876 | 19-03-22 #1600 | 9 | 31-Oct-06 | 29-Apr-07 | Valid | | Adopt order |
| 5. | Chambers | 06-6903 | 20-03-35 #2807 | 14 | 6-Nov-06 | 5-May-07 | Valid | | Adopt order |
| 6. | Danker | 06-6859 | 18-02-12 #103 | 158 | 26-Oct-06 | 24-Apr-07 | Valid | | Adopt order |
| 7. | Day 3 | 06-6937 | 20-03-11 #125 | 20 | 9-Nov-06 | 8-May-07 | Valid | | Adopt order |
| 8. | Dixon | 06-6978 | 16-04-23 #200 | 39 | 15-Nov-06 | 14-May-07 | Valid | | Adopt order |
| 9. | Dowdy | 06-6951 | 19-03-22 #1400 | 22 | 13-Nov-06 | 12-May-07 | Incomplete | No valuation | Deny |
| 10. | Dowling | 06-6856 | 15-05-22 #200, 208, 209, 600 | 72 | 26-Oct-06 | 24-Apr-07 | Valid | | Adopt order |
| 11. | Dresser | 06-6905 | 20-05-22 #907 | 8 | 6-Nov-06 | 5-May-07 | Valid | | Adopt order |
| 12. | Gorham | 06-6928 | 17-05-32 #100, 101 and 103 | 115 | 8-Nov-06 | 7-May-07 | Valid | | Adopt order |
| 13. | Green 2 | 06-6896 | 17-04-30 #1400 | 23 | 3-Nov-06 | 2-May-07 | incomplete | No deeds, no valuation | Deny |
| 14. | Huddleston 1 | 05-5829 | 18-05-14 #504. | 13 | 17-Jun-05 | 17-Dec-05 | incomplete | No valuation, No fee | Deny |
| 15. | Huddleston 2 | 06-6900 | 16-06-21 #2400 | 20 | 3-Nov-06 | 2-May-07 | Valid | | Adopt order |
| 16. | Hudson | 06-6810 | 21-02-05 #400 | 58 | 18-Oct-06 | 16-Apr-07 | Valid | | Adopt order |
| 17. | Johnson 2 | 06-6830 | 17-03-09 #800 | 15 | 23-Oct-06 | 21-Apr-07 | Not valid | No reduction in value | Deny |
| 18. | Kirkpatrick 1 | 06-6936 | 17-02-03 #2904 | 21 | 9-Nov-06 | 8-May-07 | Valid | | Adopt order |
| 19. | McNutt 2 | 06-6909 | 17-01-27 #1800; 17-01-22-44 #400 | 258 | 6-Nov-06 | 5-May-07 | Valid | | Adopt order |
| 20. | Murphy 315 | 06-7315 | 18-11-30-20 #8900 | 18 | 1-Dec-06 | 30-May-07 | Not valid | No reduction in value | Deny |

| | Name | PA# | Tax parcels | Acres | Submitted | 180 days | Status | Issues/Notes | Recommendation |
|-----|-------------------|------------|---------------------------------------|--------------|------------------|-----------------|---------------|---------------------|-----------------------|
| 21. | Murphy 316 | 06-7316 | 18-11-30-20 #400, 5700, 5800, 6100 | 29 | 1-Dec-06 | 30-May-07 | Valid | | Adopt order |
| 22. | Neely 2 | 06-6955 | 16-04-35 #402 | 10 | 13-Nov-06 | 12-May-07 | Valid | | Adopt order |
| 23. | ONeil | 06-6827 | 20-04-15 #701 | 50 | 23-Oct-06 | 21-Apr-07 | Valid | | Adopt order |
| 24. | Prucha | 06-5563 | 19-12-12 #2202 | 32 | 18-Dec-06 | 16-Jun-07 | Valid | | Adopt order |
| 25. | Quick | 06-6870 | 19-03-31 #200 | 42 | 31-Oct-06 | 29-Apr-07 | Valid | | Adopt order |
| 26. | Schott | 06-6805 | 19-03-27 #602 | 39 | 17-Oct-06 | 15-Apr-07 | Valid | | Adopt order |
| 27. | Swenson | 06-6879 | 16-04-33 #1200 | 64 | 31-Oct-06 | 29-Apr-07 | Valid | | Adopt order |
| 28. | Titus | 06-6846 | 17-02-36-40 #200 | 24 | 25-Oct-06 | 23-Apr-07 | Incomplete | No valuation | Deny |

ATTACHMENT "B"
Table 2: Hearing Notes

| | Name | PA# | Recommendation | NOTES |
|-----|---------------|------------|-----------------------|--------------|
| 1. | Bailey | 06-6821 | Adopt Order | |
| 2. | Barnes | 06-7323 | Deny | |
| 3. | Barrowcliff | 06-6975 | Deny | |
| 4. | Boss | 06-6876 | Adopt Order | |
| 5. | Chambers | 06-6903 | Adopt Order | |
| 6. | Danker | 06-6859 | Adopt Order | |
| 7. | Day 3 | 06-6937 | Adopt Order | |
| 8. | Dixon | 06-6978 | Adopt Order | |
| 9. | Dowdy | 06-6951 | Deny | |
| 10. | Dowling | 06-6856 | Adopt Order | |
| 11. | Dresser | 06-6905 | Adopt Order | |
| 12. | Gorham | 06-6928 | Adopt Order | |
| 13. | Green 2 | 06-6896 | Deny | |
| 14. | Huddleston 1 | 05-5829 | Deny | |
| 15. | Huddleston 2 | 06-6900 | Adopt Order | |
| 16. | Hudson | 06-6810 | Adopt Order | |
| 17. | Johnson 2 | 06-6830 | Deny | |
| 18. | Kirkpatrick 1 | 06-6936 | Adopt Order | |
| 19. | McNutt 2 | 06-6909 | Adopt Order | |
| 20. | Murphy 315 | 06-7315 | Deny | |
| 21. | Murphy 316 | 06-7316 | Adopt Order | |

| Name PA# Recommendation | | | NOTES |
|-------------------------|---------|---------------------|-------|
| 22. | Neely 2 | 06-6955 Adopt Order | |
| 23. | ONeil | 06-6827 Adopt Order | |
| 24. | Prucha | 06-5563 Adopt Order | |
| 25. | Quick | 06-6870 Adopt Order | |
| 26. | Schott | 06-6805 Adopt Order | |
| 27. | Swenson | 06-6879 Adopt Order | |
| 28. | Titus | 06-6846 Deny | |

Memo Date: January 29, 2007
Order Date: March 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 (PA06-6821, Bailey)

BACKGROUND

Applicant: Robert C. and Elnora J. Bailey

Current Owner: Robert C. and Elnora J. Bailey

Agent: Jim Belknap, Territorial Land Co.

Map and Tax lot: 20-03-23 #120 and #123

Acreage: Lot 120 is approximately 44 acres; lot 123 is approximately 5 acres

Current Zoning: Lot 120 is zoned E30 (Exclusive Farm Use) Lot 123 is zoned RR10 (Rural Residential)

Date Property Acquired: November 1, 1973 (Filed Land Sale Contract)

Date claim submitted: October 19, 2006

180-day deadline: April 17, 2007

Land Use Regulations in Effect at Date of Acquisition: FR-5 (Farm and Recreation)

Restrictive County land use regulation: Minimum parcel size of 30 acres and limitations on new dwellings in the E30 (Exclusive Farm Use) zone (LC 16.212) and the minimum parcel size of 10 acres in the RR10 (Rural Residential) zone (LC16.290).

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 are Robert C. and Elnora J. Bailey. Robert and Elnora acquired an interest in the property on November 1, 1973 through a signed Land Sale Contract which is referenced on the property description card. At that time, the entire property was zoned FR-5 (Farm and Recreation). Within the FR-5 zone one dwelling was permitted per 5 acre lot. Currently, Tax lot 120 is zoned E30 (Exclusive Farm Use) and tax lot 123 is zoned RR10 (Rural Residential). Within the E30 zone dwellings require a special use permit and the minimum lot size is 30 acres. In the RR10 zone, one dwelling is permitted per lot and the minimum lot size is 10 acres.

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 E30 and RR10 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 \$812,000, based on the submitted property evaluation and comparable sales analysis.

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.

**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 (PA06-6821, Bailey)

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 Robert C. and Elnora J. Bailey (PA06-6821, Bailey), the owner of real property described in the records of the Lane County Assessor as map 20-03-23, tax lots 120 and 123, consisting of approximately 49 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 March 13, 2006, the Board conducted a public hearing on the Measure 37 claim (PA06-6821) of Robert C. and Elnora J. Bailey and has now determined that the restrictive E30 (Exclusive Farm Use) and RR10 (Rural Residential) zone dwelling and land division requirements of LC 16.212 and LC 16.290 were enforced and made applicable to prevent Robert C. and Elnora J. Bailey from developing their property as might have been allowed at the time it was acquired on November 1, 1973, and that the public benefit from application of the current E30 and RR10 dwelling and division land use regulations to the applicants' property is outweighed by the public burden of paying just compensation; and

WHEREAS, Robert C. and Elnora J. Bailey request up to \$812,000 as compensation for the reduction in value of their property, or waiver of all land use regulations that would restrict the division of land into multiple lots and placement of a dwelling on each lot, uses that could have otherwise been allowed at the time they acquired 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 E30 and RR10 zones 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 Robert C. and Elnora J. Bailey 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 Robert C. and Elnora J. Bailey 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 Robert C. and Elnora J. Bailey shall be granted and the restrictive provisions of LC 16.212 and LC 16.290 that limit the development of dwellings and the division of land in the E30 (Exclusive Farm Use) and RR10 (Rural Residential) zone shall not apply to Robert C. and Elnora J. Bailey, so they can make application for approval to develop the property located at 33544 Molitor Hill Rd, Cottage Grove, OR and more specifically described in the records of the Lane County Assessor as map 20-03-23, tax lots 120 and 123, consisting of approximately 49 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 November 1, 1973.

IT IS HEREBY FURTHER ORDERED Robert C. and Elnora J. Bailey 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 Robert C. and Elnora J. Bailey 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.

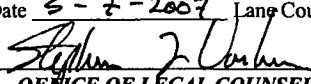
IT IS HEREBY FURTHER ORDERED that this action making certain Lane Code provisions inapplicable to use of the property by Robert C. and Elnora J. Bailey not constitute a waiver or modification of state land use regulations and does not authorize immediate division of the subject property or immediate construction of a dwelling. The requirements of state law may contain specific standards regulating development of the subject property and the 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 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 3-7-2007 Lane County


OFFICE OF LEGAL COUNSEL

Memo Date: February 14, 2007
Order Date: March 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 (PA06-7323, Barnes)

BACKGROUND

Applicant: W. Lynn & Ethelma A. Barnes

Current Owner: W. Lynn & Ethelma A. Barnes

Agent: none

Map and Tax lot: 16-05-15, #300 & #400

Acreage: 308 acres

Current Zoning: Exclusive Farm Use (E-40)

Date Property Acquired: March 5, 1959 (WD 7352292)

Date claim submitted: December 4, 2006

180-day deadline: June 2, 2007

Land Use Regulations in Effect at Date of Acquisition: unzoned

Restrictive County land use regulation: Minimum parcel size of forty acres and limitations on new dwellings in the E-40 (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 are W. Lynn & Ethelma A. Barnes. They acquired an interest in the property on March 5, 1959, when it was unzoned. The claimants have not provided a title report, so we do not know if they have continuously owned the property or if they are the current owners of the property. Currently, the property is zoned E40.

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 Lynn and Ethelma Barnes. Assuming they are the current owners of the property, the minimum lot size and limitations on new dwellings in the E-40 zone prevent them from developing the property as could have been allowed when they acquired it. The claimants have not provided any evidence of an alleged reduction in fair market value.

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 there is insufficient evidence to determine the validity of this claim. Because of this, the County Administrator is compelled to recommend denial.

RECOMMENDATION

If additional information is not submitted at the hearing, the County Administrator recommends the Board direct him to deny the claim.

Memo Date: February 14, 2007
Hearing Date: March 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 (PA06-6975, Barrowcliff Partnership, Ltd.)

BACKGROUND

Applicant: Barrowcliff Partnership, Ltd.

Current Owner: Barrowcliff Partnership, Ltd.

Agent: Jack Barrowcliff

Map and Tax lot(s): 16-02-11 # 200

Acreage: 338 acres

Current Zoning: Non-impacted and Impacted Forest Land (F-1 and F-2)

Date Property Acquired:

Jack Barowcliff: March 17, 1952 (WD #85035)

Barrowcliff Partnership, Ltd: December 21, 1983 (BSD #8401013)

Date claim submitted: November 15, 2006

180-day deadline: May 14, 2007

Land Use Regulations in Effect at Date of Acquisition: Important Forest Land (F-1) Ordinance 841, adopted August 29, 1980

Restrictive County land use regulation: Minimum parcel size of eighty acres and limitations on new dwellings in the F-1 and F-2 (Non-impacted and Impacted Forest Land) zone (LC 16.210 and 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 current owner is the Barrowcliff Partnership, Ltd. Jack Barrowcliff acquired an interest in the property by warranty deed on March 17, 1952, when the property was unzoned. However, he transferred his interest in the property to the Barrowcliff Partnership, Ltd. on December 21, 1983, by Bargain and Sale Deed #8401013, at which time it was zoned F-1 (Important Forest Land). The Barrowcliff Partnership, Ltd. is considered a new owner, but it appears Jack Barrowcliff has maintained an ownership interest in the Partnership. Currently, only 80 acres of the property is zoned F-1 and the remainder is zoned F-2.

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 Jack Barrowcliff. He transferred it to the Barrocliff Partnership, Ltd. in 1983 when it was zoned F-1 (Important Forest Land). The limitations on new dwellings in the current F-1 and F-2 zones prevent the Barrowcliff Partnership from developing the property as could have been allowed when it was acquired by Jack Barrowcliff. The alleged reduction in fair market value is \$1,197,220 based on the applicant's opinion. This opinion alleges a reduction of \$1,197,220 if the property can not be subdivided into 10 five-acre lots. This value is based on the date Jack Barrowcliff acquired an interest in the property. Because Jack Barrowcliff maintains an interest in the Partnership, the Partnership may be allowed to demonstrate a reduction in value from the date Mr. Barrowcliff acquired an interest. However, no competent form of value reduction analysis has been provided. The applicant has provided only Assessment and Taxation information. Due to the lack of a competent form of evidence of value reduction analysis, it appears this is not a valid claim. With a competent form of value reduction analysis, the Board may be able to determine this is a valid claim. Since the applicant has not submitted a competent form of value reduction analysis, the County Administrator has not waived the requirement for an appraisal.

The property was conveyed to the Barrowcliff Partnership, Ltd. on December 21, 1983. Since the Partnership is considered a new owner for the purposes of this Measure 37 claim, the only regulations that can be waived are those enacted since the Partnership acquired the property. In 1983, the F1 zone did not have a minimum lot size requirement and new dwellings required a special use permit. Currently, the minimum lot size in the F1 and F2 zones is 80 acres. In addition, the current F1 zone prohibits new dwellings and the F2 zone requires a special use permit for new dwellings.

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

Without additional reduction value analysis, it appears this is not a valid claim.

RECOMMENDATION

If additional information regarding the alleged reduction in fair market value is not submitted at the hearing, the County Administrator recommends the Board direct him to deny the claim.

Memo Date: February 15, 2007
Order Date: March 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 (PA06-6876, Boss)

BACKGROUND

Applicant: Theodore A. Boss

Current Owner: M. Ruth Boss

Agent: none

Map and Tax lot: 19-03-22-00 tax lot #1600

Acreage: approximately 9.15

Current Zoning: RR10 (Rural Residential)

Date Property Acquired: M. Ruth Boss, September 15, 1971, (WD # 17888)

Date Claim Submitted: October 31, 2006

180-day Deadline: April 29, 2007

Land Use Regulations in Effect at Date of Acquisition: Unzoned

Restrictive County Land Use Regulation: Minimum parcel size of ten acres and limitations on new dwellings in the RR10 (Rural Residential) zone (LC 16.290).

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 owner is M. Ruth Boss. She and her husband, John E. Boss, acquired the property on September 15, 1971, through Warranty Deed # 7517888, when the property was unzoned. John E Boss is now deceased. Currently, the property is zoned RR10 (Rural Residential) and the minimum parcel size is ten acres. The last deed of record for tax lot #1600 runs to M. Ruth Boss who retains ownership interest from her date of acquisition in 1971.

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 owner, M. Ruth Boss. The minimum lot size and limitations on new dwellings in the RR10 zone prevent the current owner from developing the property as could have been allowed when she acquired it. The alleged reduction in fair market value is \$801,892, based on the comparative market analysis completed and provided by a certified realtor.

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 M. Ruth Boss.

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 (Boss/PA06-6876)

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 M. Ruth Boss (PA06-6876), the owner of real property located at 82411 Butte Road, Creswell, and more specifically described in the records of the Lane County Assessor as map 19-03-22, tax lot 1600, consisting of approximately 9.15 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 March 13, 2007, the Board conducted a public hearing on the Measure 37 claim (PA06-5583) of Theodore A. Boss and has now determined that the restrictive RR10 (Rural Residential) zone dwelling and land division requirements of LC 16.290 were enforced and made applicable to prevent M. Ruth Boss from developing the property as might have been allowed at the time she acquired an interest in the property on September 15, 1971, and that the public benefit from application of the current RR10 dwelling and division land use regulations to the applicant's property is outweighed by the public burden of paying just compensation; and

WHEREAS, M. Ruth Boss request either \$801,892 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 ten acres and placement of a dwelling on each lot, uses that could have otherwise been allowed at the time she 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 RR10 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 M. Ruth Boss to make application for development of the subject property in a manner similar to what she could have been able to do under the regulations in effect when she 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 applicant M. Ruth Boss 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 she 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 M. Ruth Boss shall be granted and the restrictive provisions of LC 16.290 that limit the development of dwellings and the division of land in the RR10 (Rural Residential) Zone shall not apply to M. Ruth Boss, so she can make application for approval to develop the property located at 82411 Butte Road, Creswell, and more specifically described in the records of the Lane County Assessor as map 19-03-22, tax lot 1600, consisting of approximately 9 acres in Lane County, Oregon, in a manner consistent with the land use regulations in effect when she acquired an interest in the property on September 15, 1971.

IT IS HEREBY FURTHER ORDERED that M. Ruth Boss 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 M. Ruth Boss 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 3-7-2007 Lane County



OFFICE OF LEGAL COUNSEL

Memo Date: January 31, 2007
Order Date: March 13, 2007



TO: Board of County Commissioners

DEPARTMENT: Public Works Department/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 (PA06-6903, Chambers)

BACKGROUND

Applicant: Wayne Chambers

Current Owner: Wayne F. Chambers Revocable Trust

Agent: Norm Waterbury

Map and Tax lot: 20-03-35, 2807

Acreage: 13.92 acres

Current Zoning: E-40 Exclusive Farm Use

Date Property Acquired: April 20, 1963 (WD Reel 217D, #8398)

Date claim submitted: November 6, 2006

180-day deadline: May 5, 2007

Land Use Regulations in Effect at Date of Acquisition: Unzoned

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).

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

Interest in the subject property was acquired by Wayne F. Chambers and Patricia L. Chambers by warranty deed on April 20, 1963 (Reel 217D, No. 8398). When Mr. & Mrs. Chambers acquired the property it was unzoned.

In 1995, the Chambers placed the property into the Patricia Louis Chambers Revocable Trust Living Trust. The Trust is considered a new owner but because it is revocable and Wayne F. Chambers and Patricia L. Chambers are the Trustees, the ownership interest of Wayne F. Chambers and Patricia L. Chambers continues.

Currently, the property is zoned E40 (Exclusive Farm Use).

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 owner. The minimum lot size and limitations on new dwellings in the E40 zone prevent Wayne F. Chambers and Patricia L. Chambers from developing the property as it could have been allowed when they acquired it in 1963. The alleged reduction in fair market value is \$543,000, 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 for Wayne F. Chambers and Patricia L. Chambers.

RECOMMENDATION

The County Administrator recommends the Board adopt the attached order to waive the restrictive land use regulations for Wayne F. Chambers and Patricia L. Chambers.

**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 06-6903, Chambers)

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 Wayne Chambers and Patricia L. Chambers, Trustees of the Patricia Louis Chambers Revocable Living Trust, the owners of real property located south of Row River Road and west of Row River, and more specifically described in the records of the Lane County Assessor as map 20-03-35, tax lot 2807, consisting of approximately 13.92 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 March 13, 2007, the Board conducted a public hearing on the Measure 37 claim (PA 06-6903) of Wayne Chambers and Patricia L. Chambers, Trustees of the Patricia Louis Chambers Revocable Living Trust, and has now determined that the restrictive E40 (Exclusive Farm Use), dwelling and land division requirements of LC 16.212 were enforced and made applicable to prevent Wayne Chambers and Patricia L. Chambers, Trustees of the Patricia Louis Chambers Revocable Living Trust from developing the property as might have been allowed at

the time they acquired an interest in the properties on April 20, 1963, and that the public benefit from application of the current E40 dwelling and division land use regulations to the applicants' property is outweighed by the public burden of paying just compensation; and

WHEREAS, Wayne Chambers and Patricia L. Chambers, Trustees of the Patricia Louis Chambers Revocable Living Trust requests either \$543,000 as compensation for the reduction in value of their 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, uses that could have otherwise been allowed at the time 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 E40 zones 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 Wayne Chambers and Patricia L. Chambers, 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 properties; and

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

NOW, THEREFORE IT IS HEREBY ORDERED that the applicant Wayne Chambers and Patricia L. Chambers 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 Wayne Chambers and Patricia L. Chambers 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 Wayne Chambers and Patricia L. Chambers so they can make application for approval to develop the properties located south of Row River Road, west of Row River, and more specifically described in the records of the Lane County Assessor as map 20-03-35, tax lot 2807, consisting of approximately 13.92 acres in Lane County, Oregon, in a manner consistent with the land use regulations in effect when she acquired an interest in the properties on April 20, 1963.

IT IS HEREBY FURTHER ORDERED that Wayne Chambers and Patricia L. Chambers still need 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 them 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.

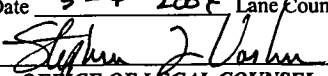
IT IS HEREBY FURTHER ORDERED that this action making certain Lane Code provisions inapplicable to use of the property by Wayne Chambers and Patricia L. Chambers does not constitute a waiver or modification of state land use regulations and does not authorize immediate division of the subject property 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 3-7-2007 Lane County

OFFICE OF LEGAL COUNSEL

Memo Date: February 15, 2007
Order Date: March 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 (PA06-6859, Danker)

BACKGROUND

Applicant: Clinton F. Danker

Current Owner: Danker Family Trust & Danker Survivor's Trust

Agent: Michael Farthing

Map and Tax lot: 18-02-12 tax lots #103, #105, #106, and #107.

Acreage: approximately 128 acres

Current Zoning: E30 (Exclusive Farm Use)

Date Property Acquired: June 30, 1962 (WD #83118)

Date Claim Submitted: October 26, 2006

180-day Deadline: April 24, 2007

Land Use Regulations in Effect at Date of Acquisition: none

Restrictive County Land Use Regulation: Minimum parcel size of thirty acres and limitations on new dwellings in the E30 (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 ownership is divided half interest each to the Clinton Danker Family Revocable Trust and the Clinton F. Danker Survivor's Trust. Clinton F. Danker and Betty Danker acquired the property on June 30, 1962 when it was unzoned.. In October 1995, Clinton and Betty Danker deeded their property to the Danker Family

Trust. Betty Danker is now deceased. In 1996, after Betty Danker's death, Clinton F. Danker deeded half ownership in their property to each of two trusts, the Danker Family Trust and the Clinton F. Danker Survivor's Trust (WD #771800 & WD #771900).

Tax lot 102 of the original tax lot 100 was determined to be a legal lot (WD # 9020472) in June, 2000. Tax lot 102 is not included in this M37 claim. Removing #102 may be an issue because it is owned by the claimant and like the Renaghan claim, all the land under the claimant's ownership must be considered for the reduction in value.

The Danker Family Trust and the Clinton F. Danker Survivor's Trust are not considered new owners because they are both revocable to Clinton F. Danker, who is listed as trustee to both trusts, and he has retained ownership in the property continuously since 1962. As a result, the ownership interest of Clinton F. Danker is continued. Currently, the property is zoned E30.

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 owner Clinton F. Danker. The minimum lot size and limitations on new dwellings in the E30 zone prevent the current owner from developing the property as could have been allowed when he acquired it. The alleged reduction in fair market value is \$1,862,000, based on the detailed comparison of property values (as if un-developed) as submitted by a principal broker with a local realtor firm.

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.

**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 (Danker/PA06-6859)

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 Clinton F. Danker (PA06-6859), the owner of real property located at 37745 Wallace Creek Road, Springfield, and more specifically described in the records of the Lane County Assessor as map 18-02-12, tax lots 103, 105, 106, and 107, consisting of approximately 128 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 March 13, 2007, the Board conducted a public hearing on the Measure 37 claim (PA06-6859) of Clinton F. Danker and has now determined that the restrictive E30 (Exclusive Farm Use) zone dwelling and land division requirements of LC 16.212 were enforced and made applicable to prevent Clinton F. Danker from developing the property as might have been allowed at the time he acquired an interest in the property on June 30, 1962, and that the public benefit from application of the current E30 dwelling and division land use regulations to the applicant's property is outweighed by the public burden of paying just compensation; and

WHEREAS, Clinton F. Danker requests either \$590,000 as compensation for the reduction in value of his property, or waiver of all land use regulations that would restrict the division of land into lots containing less than thirty acres and placement of a dwelling on each lot, uses that could have otherwise been allowed at the time he 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 E30 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 Clinton F. Danker to make application for development of the subject property in a manner similar to what he could have been able to do under the regulations in effect when he 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 applicant Clinton F. Danker 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 he 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 Clinton F. Danker shall be granted and the restrictive provisions of LC 16.212 that limit the development of dwellings and the division of land in the E30 (Exclusive Farm Use) Zone shall not apply to Clinton F. Danker, so he can make application for approval to develop the property located at 37745 Wallace Creek Road,, Springfield, and more specifically described in the records of the Lane County Assessor as map 18-02-12, tax lots 103, 105, 106, and 107, consisting of approximately 128 acres in Lane County, Oregon, in a manner consistent with the land use regulations in effect when he acquired an interest in the property on June 30, 1962.

IT IS HEREBY FURTHER ORDERED that Clinton F. Danker 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 him 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 Clinton F. Danker 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 3-6-2007 Lane County

Stephen J. Parker
OFFICE OF LEGAL COUNSEL

Memo Date: February 15, 2007
Order Date: March 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 (PA06-6937, Day3)

BACKGROUND

Applicant: David Day

Current Owner: David Day

Agent: Michael Farthing

Map and Tax lot: 20-03-11, #125

Acreage: 20 acres

Current Zoning: E-30 (Exclusive Farm Use)

Date Property Acquired: April 29, 1972 (WD 7774213)

Date claim submitted: November 9, 2006

180-day deadline: May 8, 2007

Land Use Regulations in Effect at Date of Acquisition: Unzoned

Restrictive County land use regulation: Minimum parcel size of thirty acres and limitations on new dwellings in the E-30 (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 owner is David Day. David acquired the property from his brother, Alan, who acquired an interest in the property on April 29, 1972, when it was unzoned. Through an unrecorded contract David, had an interest in the property at the time it was acquired by Alan and made monthly payments to his brother, Alan. On November 7, 1975, Alan and his wife Sharon transferred the property to David by Warranty Deed at which time it had been zoned FF-20 (Farm-Forest with a 20 acre minimum). Currently, the property is zoned E-30.

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

The property was unzoned when David Day acquired an interest in the property. The minimum lot size and limitations on new dwellings in the E-30 zone prevent the current owners from developing the property as could have been allowed when he acquired an interest in it. The alleged reduction in fair market value is \$543,000, based on the submitted value reduction analysis opinion provided by a real estate broker analyzing 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.

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 (Day3/PA06-6937)

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 David Day (PA06-6937), the owner of real property located at 33749 Witcher Gateway Road, Cottage Grove, and more specifically described in the records of the Lane County Assessor as map 20-03-11, tax lot 125, consisting of approximately 20 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 March 13, 2007, the Board conducted a public hearing on the Measure 37 claim (PA06-6937) of David Day and has now determined that the restrictive E-30 (Exclusive Farm Use) zone dwelling and land division requirements of LC 16.212 were enforced and made applicable to prevent David Day from developing the property as might have been allowed at the time he acquired an interest in the property on April 29, 1972, and that the public benefit from application of the current E-30 dwelling and division land use regulations to the applicant's property is outweighed by the public burden of paying just compensation; and

WHEREAS, David Day request either \$543,000 as compensation for the reduction in value of his property, or waiver of all land use regulations that would restrict the division of land into lots containing less than thirty acres and placement of a dwelling on each lot, uses that could have otherwise been allowed at the time he 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 E-30 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 David Day to make application for development of the subject property in a manner similar to what he could have been able to do under the regulations in effect when he 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 applicant David Day 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 he 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 David Day shall be granted and the restrictive provisions of LC 16.212 that limit the development of dwellings and the division of land in the E-30 (Exclusive Farm Use) Zone shall not apply to David Day, so he can make application for approval to develop the property located at 33749 Witcher Gateway Road, Cottage Grove, and more specifically described in the records of the Lane County Assessor as map 20-03-11, tax lot 125, consisting of approximately 20 acres in Lane County, Oregon, in a manner consistent with the land use regulations in effect when he acquired an interest in the property on April 29, 1972.

IT IS HEREBY FURTHER ORDERED that David Day 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 him 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.

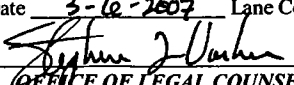
IT IS HEREBY FURTHER ORDERED that this action making certain Lane Code provisions inapplicable to use of the property by David Day does not constitute a waiver or modification of state land use regulations and does not authorize immediate division of the subject property or immediate construction of 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 3-16-2007 Lane County

OFFICE OF LEGAL COUNSEL

Memo Date: February 14, 2007
Hearing Date: March 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 (PA06-6978, Dixon)

BACKGROUND

Applicant: Mary C. Dixon
Current Owner: Mary C. Dixon
Agent: Norm Waterbury
Map and Tax lot(s): 16-04-23 # 200
Acreage: 39 acres
Current Zoning: Exclusive Farm Use (E-30)
Date Property Acquired: April 25, 1969 (WD #61967)
Date claim submitted: November 15, 2006
180-day deadline: May 14, 2007
Land Use Regulations in Effect at Date of Acquisition: Unzoned
Restrictive County land use regulation: Minimum parcel size of thirty acres and limitations on new dwellings in the E-30 (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 owner is Mary C. Dixon. She acquired an interest in the property on April 17, 1969, when it was unzoned (WD #61967). Currently, the property is zoned E-30.

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 owner. The minimum lot size and limitations on new dwellings in the E-30 zone prevent the current owner from developing the property as could have been allowed when she acquired it. The alleged reduction in fair market value is \$1,076,000, based on the submitted appraisal.

The applicant is also claiming that the following sections of Lane Code have restricted the use of the subject property:

LC12.160 (1) & (2) – These provisions refer to the authority of the Lane County Planning Commission in recommending code amendments. No evidence has been provided that demonstrates how these regulations have lowered the fair market value of the property.

LC10.100-10, 30 & 40– These provisions only apply to those EFU (Exclusive Farm Use District) zoned properties within the Urban Growth Boundaries of a city and are not applicable to the subject property.

LC13.050 – These provisions apply to subdivision and partitioning of property. No evidence has been provided that demonstrates how these regulations have lowered the fair market value of the property.

LC15.070, 15.080, 15.137 & 15.138 – These provisions apply to road and driveway approach spacing standards and building setbacks from roads. No evidence has been provided that demonstrates how these regulations have lowered the fair market value of the property.

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 of the E-30 zone.

**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 (Dixon/PA06-6978)

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 Mary C. Dixon (PA06-6978), the owner of real property located at 30776 Maple Drive, Junction City, and more specifically described in the records of the Lane County Assessor as map 16-04-23, tax lot 200, consisting of approximately 39 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 March 13, 2007, the Board conducted a public hearing on the Measure 37 claim (PA06-6978) of Mary C. Dixon and has now determined that the restrictive E-30 (Exclusive Farm Use) zone dwelling and land division requirements of LC 16.212 were enforced and made applicable to prevent Mary C. Dixon from developing the property as might have been allowed at the time she acquired an interest in the property on April 25, 1969, and that the public benefit from application of the current E-30 dwelling and division land use regulations to the applicant's property is outweighed by the public burden of paying just compensation; and

WHEREAS, Mary C. Dixon requests either \$1,076,000 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 thirty acres and placement of a dwelling on each lot, uses that could have otherwise been allowed at the time she 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 E-30 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 Mary C. Dixon to make application for development of the subject property in a manner similar to what she could have been able to do under the regulations in effect when she 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 applicant Mary C. Dixon 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 she 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 Mary C. Dixon shall be granted and the restrictive provisions of LC 16.212 that limit the development of dwellings and the division of land in the E-30 (Exclusive Farm Use) Zone shall not apply to Mary C. Dixon, so she can make application for approval to develop the property located at 30776 Maple Drive, Junction City, and more specifically described in the records of the Lane County Assessor as map 16-04-23, tax lot 200, consisting of approximately 39 acres in Lane County, Oregon, in a manner consistent with the land use regulations in effect when she acquired an interest in the property on April 25, 1969.

IT IS HEREBY FURTHER ORDERED that Mary C. Dixon 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.

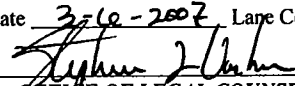
IT IS HEREBY FURTHER ORDERED that this action making certain Lane Code provisions inapplicable to use of the property by Mary C. Dixon does not constitute a waiver or modification of state land use regulations and does not authorize immediate division of the subject property or immediate construction 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 3-12-2007 Lane County


OFFICE OF LEGAL COUNSEL