

Memo Date: February 27, 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 (PA06-6951, Dowdy)

BACKGROUND

Applicant: Donald D. and Jacqueline E. Dowdy
Current Owner: Dowdy Living Trust
Agent: Tony Chapman
Map and Tax lot: 19-03-22, # 1400
Acreage: 22.5 acres
Current Zoning: Exclusive Farm Use (E-30)
Date Property Acquired: August 28, 1969 (unrecorded contract)
Date claim submitted: November 13, 2006
180-day deadline: May 12, 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 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 owner is the Dowdy Living Trust. As evidenced by an unrecorded contract, Donald D. and Jacqueline E. Dowdy acquired an interest in the property on August 28, 1969, when it was unzoned. The contract was fulfilled and the ownership was conveyed by deed on May 6, 1985 (WD #8516153). In the property was conveyed into a revocable living Trust. The Trust is not considered a new owner because it is revocable and Donald and Jacqueline are the Trustees and beneficiaries. As a result, the ownership interest of Donald and Jacqueline 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 owners. The minimum lot size and limitations on new dwellings in the E30 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 \$1,400,000, based on the opinion of Tony Chapman. However, the applicant has not submitted a competent form of value reduction analysis and the County Administrator has not waived the requirement for an 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

There is insufficient evidence to determine the validity of this claim.

RECOMMENDATION

If additional information regarding the alleged reduction in 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 (PA06-6856, Dowling)

BACKGROUND

Applicant: Hazel J. Dowling

Current Owner: Hazel J. Dowling Revocable Living Trust

Agent: Steve Cornacchia

Map and Tax lot: 15-05-22 tax lots #200, 208, 209, and 600

Acreage: approximately 72 acres

Current Zoning: tax lot 208, RR5 (Rural Residential) approx. 5 acres
tax lots 200, 209, 600 E40 (Exclusive Farm Use) approx. 67 ac.

Date Property Acquired:

Kathleen J. Wheat, June 19, 1998 (Deed # 53712)

Hazel J. Dowling; March 14, 1947 for tax lots 200, 208, and 209 (WD # 8108); June 28, 1955 for tax lot 600 (Sale Deed # 66210)

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 forty acres in the E40 (Exclusive Farm Use) zone (LC 16.212) and five acres in the RR5 (Rural Residential) zone (LC 16.290) and limitations on dwellings in those zones.

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 Hazel J. Dowling Revocable Living Trust.. Hazel J. Dowling acquired an interest in the property when it was unzoned, in 1947 and 1955, while married to Ernest E. Dowling. Mr. Dowling passed away on March 2, 1998. On June 19, 1998, Hazel J. Dowling placed the property in a Trust. The Trust is not considered a new owner because it is revocable and Hazel is one of the trustees. As a result, the ownership interest of Hazel J. Dowling in the property is continuous from March 14, 1947 and June 28, 1955.

Kathleen J. Wheat, daughter of Hazel J. Dowling, is named a co-trustee of the Trust. Therefore, Kathleen J. Wheat acquired an interest in the property on June 19, 1998. Currently, the property is zoned E40 and RR5.

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 and the RR5 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 \$2,620,000, 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.

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 (Dowling/PA06-6856)

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 Hazel J. Dowling (PA06-6856), the owner of real property located at 26985 Ferguson Road, Junction City, and more specifically described in the records of the Lane County Assessor as map 15-05-22, tax lots 200, 208, 209, and 600, consisting of approximately 72 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 (PA06-6856) of Hazel J. Dowling and has now determined that the restrictive E40 (Exclusive Farm Use) zone and RR5 (Rural Residential) zone dwelling and land division requirements of LC 16.212 and LC 16.290 were enforced and made applicable to prevent Hazel J. Dowling from developing the property as might have been allowed at the time she acquired an interest in the property on March 14, 1947 and June 28, 1955, and that the public benefit from application of

the current E40 and RR5 dwelling and division land use regulations to the applicant's property is outweighed by the public burden of paying just compensation; and

WHEREAS, Hazel J. Dowling request either \$2,620,000 as compensation for the reduction in value of her property, or waiver of all land use regulations that would restrict the division of land into lots containing less than forty acres in the E40 zone and less than 5 acres in the RR5 zone, 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 E40 and RR5 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 Hazel J. Dowling 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 Hazel J. Dowling 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 Hazel J. Dowling 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 E40 (Exclusive Farm Use) and RR5 (Rural Residential) Zones shall not apply to Hazel J. Dowling, so she can make application for approval to develop the property located at 26985 Ferguson Road, Junction City, and more specifically described in the records of the Lane County Assessor as map 15-05-22, tax lots 200, 208, 209, and 600 consisting of approximately 72 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 March 14, 1947 (tax lots 200, 208, 209) and on June 28, 1955 (tax lot 600).

IT IS HEREBY FURTHER ORDERED that Hazel J. Dowling 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.

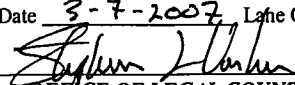
IT IS HEREBY FURTHER ORDERED that this action making certain Lane Code provisions inapplicable to use of the property by Hazel J. Dowling does not constitute a waiver or modification of state land use regulations and does not authorize immediate division of the subject property or immediate construction 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 13, 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 (PA06-6905, Dresser)

BACKGROUND

Applicant: Nancy Dresser

Current Owner: Nancy Dresser

Agent: Karl Mueller

Map and Tax lot: 20-05-22, tax lot 907

Acreage: 7.65 acres

Current Zoning: RR10 – Rural Residential (LC 16.290)

Date Property Acquired: December 28, 1976 (Memorandum of Land Sale Contract - No. 7668968)

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 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, Nancy J. Dresser, acquired an interest in the property on December

28, 1976, when it was unzoned (Memorandum of Land Sale Contract – No. 7668968). Currently, the property is zoned RR10 (Rural Residential) and the minimum parcel size is 10 acres.

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 in the RR10 zone (LC 16.290) 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 \$124,900, based on the submitted appraisal.

The applicant is also claiming that the following sections of the Rural Comprehensive Plan have restricted the use of the subject property:

LC16.231 – This designation applied to the subject property from 1984 – 2002 and was superseded by the Rural Residential RR10 designation pursuant to LC 16.290 on April 17, 2002, which is the current zoning. The applicant has failed to demonstrate how these LC 16.231 provisions relate to the subject property or how they have reduced the fair market value of the property.

Rural Comprehensive Plan General Plan Policies – Goal Two, Policy 11.a.iii.G. “Lorane: 2 acres for areas zoned RR2 and 5 acres for areas zoned RR5 prior to the adoption of Ord. PA 1194.” The applicant has failed to demonstrate how these Policy provisions relate to the subject property or how they have reduced 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 RR10 (LC 16.290) 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 (PA 06-6905, Dresser)

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 Nancy Dresser (PA06-6905), the owner of real property located at 79543 Fire Road, Lorane, OR 97451, and more specifically described in the records of the Lane County Assessor as map 20-05-22, tax lot 907, consisting of approximately 7.65 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 06-6905) of Nancy Dresser 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 Nancy Dresser from developing the property as might have been allowed at the time she acquired an interest in the property on December 28, 1976, 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, Nancy Dresser requests either \$124,900 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 Nancy Dresser 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 Nancy Dresser 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 Nancy Dresser 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 Nancy Dresser, so she can make application for approval to develop the property located at 79543 Fire Road, Lorane, OR 97451, and more specifically described in the records of the Lane County Assessor as map 20-05-22, tax lot 907, consisting of approximately 7.65 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 December 28, 1976.

IT IS HEREBY FURTHER ORDERED that Nancy Dresser 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.

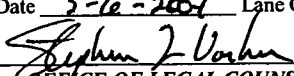
IT IS HEREBY FURTHER ORDERED that this action making certain Lane Code provisions inapplicable to use of the property by Nancy Dresser does not constitute a waiver or modification of state land use regulations and does not authorize immediate division of the subject property or immediate construction 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 5, 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 (PA06-6928, Gorham)

BACKGROUND

Applicant: Rodger Gorham, Mark Gorham and Ollie Virginia (Gorham) Bojorquiz

Current Owner: Rodger Gorham (50%), Mark Gorham (50%) and Ollie Virginia (Gorham) Bojorquiz (Life Estate)

Agent: Norm Waterbury

Map and Tax lot: 17-05-32, tax lots 100, 101, 102, 103, 1500

Acreage: 115.81 acres

Current Zoning: 17-05-32, tax lots 100, 101, 102, and 103: F2 (Impacted Forest Land);
17-05-32.1, tax lot 1500: RR5 (Rural Residential)

Date Property Acquired:

- Ollie Virginia (Gorham) Bojorquiz - February 24, 1953 (Warranty Deed, Reel 12'53D, #97644);
- Ollie Virginia Gorham (Life Estate) - June 21, 2000 (Bargain & Sale Deed, # 2000035319, 20, 21);
- Ollie Virginia Gorham Trust - May 3, 1999 (Warranty Deed, Reel 2551R , #99045776)

Date claim submitted: November 8, 2006

180-day deadline: May 7, 2007

Land Use Regulations in Effect at Date of Acquisition: Unzoned

Restrictive County land use regulation:

Minimum parcel size of eighty (80) acres and limitations on new dwellings in the F2 (Impacted Forest Land) zone (LC 16.211);

Minimum parcel size of five (5) acres and limitations on new dwellings in the RR5 (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

Interest in the subject properties was acquired by Ollie Virginia Gorham (aka Ollie Virginia Bojorquiz) on February 24, 1953 (Warranty Deed #97644) On that date, it was unzoned.

Interest in the subject properties was acquired by Rodger Stephen Gorham and Mark Wayne Gorham on June 21, 2000 (Bargain & Sale Deeds, #2000035319, #2000035320, #2000035321, #2000035322). On that date, it was zoned F2 (Impacted Forest Land).

Currently, the property is zoned F2 (Impacted Forest Land).

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

The properties were unzoned when they were acquired by the current owner, Ollie Virginia (Gorham) Bojorquiz. The minimum lot size and limitations on new dwellings in the F2 and RR5 zones prevent Ollie Virginia (Gorham) Bojorquiz from developing the properties as could have been allowed when she acquired them in 1958.

The alleged reduction in fair market value is \$3,000,000, based on the submitted appraisal.

The properties were zoned F2 when Rodger and Mark Gorham acquired interest in the family properties in 2000. They have a valid claim but the minimum lot size and dwelling restrictions in the F2 zone can not be waived for them.

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 Ollie Virginia (Gorham) Bojorquiz, Rodger Gorham and Mark Gorham.

RECOMMENDATION

The County Administrator recommends the Board adopt the attached order to waive the restrictive land use regulations for the claimant, Ollie Virginia (Gorham) Bojorquiz.

**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 06-6928, Gorham)

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 Ollie Virginia (Gorham) Bojorquiz, Rodger Gorham and Mark Gorham, the owners of real property located south of Highway 126, west of Fern Ridge Reservoir and east of the incorporated city of Veneta, Oregon, and more specifically described in the records of the Lane County Assessor as map 17-05-32, tax lot 100, 101, 102, 103 and 17-05-32.1, tax lot 1500, consisting of approximately 115.81 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 06-6928) of Ollie Virginia (Gorham) Bojorquiz, Rodger Gorham and Mark Gorham, and has now determined that the restrictive F2 (Impacted Forest Land) zone and RR5 (Rural Residential) zone, dwelling and land division requirements of LC 16.211 and LC 16.290 were enforced and made applicable to prevent Ollie Virginia (Gorham) Bojorquiz from developing the property as might have been allowed at the time she acquired an interest in the properties on

February 24, 1958, and that the public benefit from application of the current F2 and RR5 dwelling and division land use regulations to the applicant's property is outweighed by the public burden of paying just compensation; and

WHEREAS, Ollie Virginia (Gorham) Bojorquiz requests either \$3,000,000 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 eighty acres or five acres respectively, and placement of a dwelling on each lot, uses that could have otherwise been allowed at the time she acquired an interest in the properties; and

WHEREAS, the Board finds that under LC 2.760(3) the public interest would be better served by modifying, removing or not applying the challenged land use regulations of the F2 and RR5 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 Ollie Virginia (Gorham) Bojorquiz 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 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 Ollie Virginia (Gorham) Bojorquiz 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 Ollie Virginia (Gorham) Bojorquiz shall be granted and the restrictive provisions of LC 16.211 and LC 16.290 that limit the development of dwellings and the division of land in the F2 (Impacted Forest Land) Zone and RR5 (Rural Residential) Zone shall not apply to Ollie Virginia (Gorham) Bojorquiz, so she can make application for approval to develop the properties located south of Highway 126, west of the Fern Ridge Reservoir, and east of the incorporated city of Veneta, Oregon, and more specifically described in the records of the Lane County Assessor as map 17-05-32, tax lot 100, 101, 102 and 103, and 17-05-32.1, tax lot 1500, consisting of approximately 115.81 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 February 24, 1958.

IT IS HEREBY FURTHER ORDERED that Ollie Virginia (Gorham) Bojorquiz 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 Ollie Virginia (Gorham) Bojorquiz 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 (PA06-6896, Green2)

BACKGROUND

Applicant: Steven R. & Nichole Green

Current Owner: Steven R. & Nichole Green

Agent: none

Map and Tax lot: 17-04-30 tax lot #1400

Acreage: approximately 23 acres

Current Zoning: E40 (Exclusive Farm Use)

Date Property Acquired: No evidence, unknown date of acquisition

Date Claim Submitted: November 3, 2006

180-day Deadline: May 2, 2007

Land Use Regulations in Effect at Date of Acquisition: E40 (Exclusive Farm Use) zone LC 16.212

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

The current owners are Steven R. and Nichole Green. No evidence was submitted that identifies the date the current owners acquired 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

Acquisition date is unknown. There is insufficient information to conclude the property value has been reduced by the current regulation. Since the applicant has not submitted a competent form of value reduction analysis, the County Administrator has not waived the requirement for an appraisal.

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

The claimant has not identified any restrictive land use regulations that allegedly reduce the fair market value of the property.

CONCLUSION

It appears this is not a valid claim.

RECOMMENDATION

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 (PA05-5829, Huddleston1)

BACKGROUND

Applicant: Ronald and Nancy Huddleston

Current Owner: Unknown

Agent: Kristian Roggendorf

Map and Tax lot(s): 20-04-15 # 701

Acreage: Approximately 14 acres

Current Zoning: E40 (Exclusive Farm Use), /FP (Floodplain Combining Zone), /CAS (Commercial Airport Safety Combining Zone)

Date Property Acquired: Inconclusive evidence provided by the applicant suggests that the Huddleston family may have had an interest in the property as early as August 6, 1970.

Date claim submitted: June 17, 2005

180-day deadline: December 17, 2005

Land Use Regulations in Effect at Date of Acquisition: On August 6, 1970 the property was zoned AGT (Agriculture, Grazing and Timber).

Restrictive County land use regulation: Minimum parcel size of forty acres and limitations on new dwellings in the E40 (Exclusive Farm Use Zone) 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 applicant has identified the E40 (Exclusive Farm Use) zone as the restrictive land use regulation but has failed to clearly demonstrate who the current owner is or at what date they acquired an interest in the property.

The applicant submitted the following documents pertaining to ownership:

- Assignment of Contract dated August 5, 1970, assigned contract from Ozburn to Huddleston and referenced a contract between Stechelin and Ozburn
- Warranty Deed 2004-074749, dated November 22, 1970, conveyed property from Ozburn to Huddleston

It appears Stechelin is the original owner who sold the property to Ozburn on contract. Then, Ozburn assigned the contract to Huddleston. Later, Ozburn conveyed the ownership to Huddleston. The evidence showing conveyance of ownership from Stechelin to Ozburn is missing. Currently, Stechelin is identified on the Assessor's information as the owner and Huddleston is listed as the tax payer. The applicant has not demonstrated that Ronald and Nancy Huddleston are the current owners.

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

No evidence has been submitted to demonstrate a reduction in the fair market value of the property. Since the applicant has not submitted a competent form of value reduction analysis, the County Administrator has not waived the requirement for an 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 in the E40 zone do not appear to be exempt regulations.

Regulations found within the /FP (Floodplain Combining Zone) of LC16.244 and the /CAS (Commercial Airport Safety Combining Zone) of LC16.245 are exempt regulations as defined by LC 2.710 (2) and cannot be waived.

CONCLUSION

It appears this is not a valid claim. The applicant has not identified who the current owner is or at what date they acquired an interest in the property. Nor have they submitted any evidence demonstrating a reduction in the fair market value of the property. In addition, the applicant has failed to pay the processing fee.

RECOMMENDATION

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

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 (PA06-6900, Huddleston2)

BACKGROUND

Applicant: Mary Huddleston (Harpole) Evans

Current Owner: John C. Huddleston, and Mary Huddleston (Harpole) Evans

Agent: Norm Waterbury

Map and Tax lot: 16-06-21, 2400

Acreage: 20.14 acres

Current Zoning: F2 – Impacted Forest Land

Date Property Acquired:

John C. Huddleston – May 9, 1957

Mary Huddleston (Harpole) Evans - December 27, 1985

Date claim submitted: November 3, 2006

180-day deadline: May 2, 2007

Land Use Regulations in Effect at Date of Acquisition:

John C. Huddleston – Unzoned in 1957

Mary Huddleston (Harpole) Evans – F2 (Impacted Forest) in 1985

Restrictive County land use regulation: Minimum parcel size of eighty acres and limitations on new dwellings in the F2 (Impacted Forest Land) zone (LC 16.211).

ANALYSIS

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

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

Interest in the subject property was acquired by John C. Huddleston and Catherine Huddleston (husband and wife, as tenants by the entirety) by warranty deed on May 9, 1957 (Reel 125D, No. 546560). When Mr. & Mrs. Huddleston acquired the property it was unzoned.

The subject property was conveyed to the applicant, Mary Huddleston (Harpole) Evans as grantee and John C. Huddleston and Catherine Huddleston as grantors, with the grantors retaining a life estate, by Deed - Reserving Life Estate on December 27, 1985 (Reel 1471R, No. 8734744). When the applicant, Mary Huddleston (Harpole) Evans acquired the property it was zoned F2 (Impacted Forest Land).

Catherine Huddleston passed away on August 22, 2000. John C. Huddleston still holds an interest (life estate) in the subject property.

Currently, the property is zoned F2 (Impacted Forest Land)

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

The Huddleston family acquired an interest in the property on May 9, 1957 and the property has been in continuous ownership by family member since. One of the current owners (John Huddleston) is allowed to demonstrate a reduction in value from the date the family acquired an interest in 1957.

The minimum lot size and limitations on new dwellings in the F2 zone prevent the John C. Huddleston from developing the property as it could have been allowed when he acquired it in 1957. The alleged reduction in fair market value is \$305,000, based on the submitted appraisal.

The property was zoned F2 (Impacted Forest Land) when Mary Huddleston (Harpole) Evans acquired interest in 1985.

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 John C. Huddleston.

It also appears this is also a valid claim for Mary Huddleston (Harpole) Evans because she is a member of the Huddleston family. However, a waiver for her can only be to the time she acquired interest in the property on December 27, 1985, and the County can not waive lot size and dwelling restrictions of the F2 zone for her.

RECOMMENDATION

The County Administrator recommends the Board adopt the attached order to waive the restrictive land use regulations for John C. Huddleston, only.

**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 06-6900, Huddleston2)

WHEREAS, the voters of the State of Oregon passed Ballot Measure 37 on November 2, 2004, which added provisions to Oregon Revised Statutes (ORS) Chapter 197 to require, under certain circumstances, payment to landowner if a government land use regulation restricts the use of private real property and has the effect of reducing the property value; and

WHEREAS, the Board of County Commissioners of Lane County enacted Ordinance No. 18-04 on December 1, 2004, to establish a real property compensation claim application process in LC 2.700 through 2.770 for Ballot Measure 37 claims; and

WHEREAS, the County Administrator has reviewed an application for a Measure 37 claim submitted by John C. Huddleston and Mary Huddleston (Harple) Evans (PA06-6900), the owners of real property located at 23488 Hall Road, Cheshire, OR 97419, and more specifically described in the records of the Lane County Assessor as map 16-06-21, tax lot 2400, consisting of approximately 20.14 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 06-6900) of John C. Huddleston and Mary Huddleston (Harpole) Evans and has now determined that the restrictive F2 (Impacted Forest Land) zone dwelling and land division requirements of LC 16.211 were enforced and made applicable to prevent John C. Huddleston and Mary Huddleston (Harpole) Evans from developing the property as might have been allowed at the time he acquired an interest in the property on May 9, 1957, and she acquired an interest in the property on December 27, 1985, and that the public benefit from application of the current F2

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

WHEREAS, John C. Huddleston requests either \$305,000 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 eighty 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 F2 zone to the subject property in the manner and for the reasons stated in the report and recommendation of the County Administrator incorporated here by this reference except as explicitly revised here to reflect Board deliberation and action to allow John C. Huddleston 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 on May 9, 1957, and Mary Huddleston (Harpole) Evans 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 she acquired an interest in the property on December 27, 1985; and

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

NOW, THEREFORE IT IS HEREBY ORDERED that the applicant John C. Huddleston and Mary Huddleston (Harpole) Evans 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 John C. Huddleston and Mary Huddleston (Harpole) Evans shall be granted and the restrictive provisions of LC 16.211 that limit the development of dwellings and the division of land in the F2 (Impacted Forest Land) Zone shall not apply to John C. Huddleston and Mary Huddleston (Harpole) Evans, so they can make application for approval to develop the property located at 23488 Hall Road, Cheshire, OR 97419, and more specifically described in the records of the Lane County Assessor as map 16-06-21, tax lot 2400, consisting of approximately 20.14 acres in Lane County, Oregon, in a manner consistent with the land use regulations in effect when each acquired an interest in the property, on May 9, 1957, for John C. Huddleston and on December 27, 1985, for Mary Huddleston (Harpole) Evans.

IT IS HEREBY FURTHER ORDERED that John C. Huddleston and Mary Huddleston (Harpole) Evans 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 John C. Huddleston and Mary Huddleston (Harpole) Evans 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.

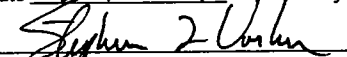
IT IS HEREBY FURTHER ORDERED that the other county land use regulations and rules that still apply to the property require that land use, sanitation and building permits be approved by Lane County before any development can proceed. Notice of this decision shall be recorded in the county deed records. 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 7, 2007, 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 (PA06-6810, Hudson)

BACKGROUND

Applicant: Bertha L. Hudson
Current Owner: Bertha L Hudson
Agent: None
Map and Tax lot: 21-02-05 # 400
Acreage: Approximately 58 acres
Current Zoning: F2 (Impacted Forest)
Date Property Acquired: February 5, 1959
Date claim submitted: October 18, 2006
180-day deadline: April 16, 2007
Land Use Regulations in Effect at Date of Acquisition: None
Restrictive County land use regulation: Minimum parcel size of 80 acres and limitations on new dwellings in the F2 (Impacted Forest) zone of 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 of the subject property is Bertha L. Hudson. Bertha acquired an interest in the property on February 5, 1959 (WD #60269). At that time, the property was unzoned. In 1996, Bertha placed the property into a Trust (WD #9615327) and later conveyed ownership back to herself at the request a mortgage company during refinance of the property. The Trust was considered a new owner but because it was revocable and Bertha was the trustee, the ownership interest of Bertha was not intervened. Currently, the property is zoned F2.

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 Bertha. The minimum lot size and limitations on new dwellings in the F2 zone prevent Bertha from developing the property as could have been allowed when she acquired it. The alleged reduction in fair market value is \$410,000, 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:

LC10.104 – These provisions only apply to those F2 (Forest Land 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.

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 (PA06-6810, Hudson)

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 Bertha L. Hudson (PA06-6810, Hudson), the owner of real property described in the records of the Lane County Assessor as map 21-02-05, tax lot 400, consisting of approximately 58 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 (PA06-6810) of Bertha L. Hudson and has now determined that the restrictive F2 (Impacted Forest) zone dwelling and land division requirements of LC 16.211 were enforced and made applicable to prevent Bertha L. Hudson from developing her property as might have been allowed at the time it was acquired on February 5, 1959, and that the public benefit from application of the current F2 dwelling and division land use regulations to the applicants' property is outweighed by the public burden of paying just compensation; and

WHEREAS, Bertha L. Hudson requests up to \$410,000 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 multiple lots and placement of a dwelling on each lot, uses that could have otherwise been allowed at the time she 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 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 Bertha L. Hudson 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 Bertha L. Hudson 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 Bertha L. Hudson shall be granted and the restrictive provisions of LC 16.211 that limit the development of dwellings and the division of land in the F2 (Impacted Forest) zone shall not apply Bertha L. Hudson, so she can make application for approval to develop the property located at 77768 Gillispie Rd, Dorena, OR and more specifically described in the records of the Lane County Assessor as map 21-02-05, tax lot 400, consisting of approximately 58 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 February 5, 1959.

IT IS HEREBY FURTHER ORDERED Bertha L. Hudson 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 Bertha L. Hudson 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.

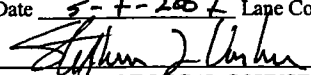
IT IS HEREBY FURTHER ORDERED that this action making certain Lane Code provisions inapplicable to use of the property by Bertha L. Hudson not constitute a waiver or modification of state land use regulations and does not authorize immediate division of the subject property or immediate construction of 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 9, 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 (PA06-6830 Johnson2)

BACKGROUND

Applicant: Doris V. Johnson

Current Owner: The Doris V. Johnson Revocable Living Trust

Agent: Micheal M. Reeder and William W. Potter (Arnold Gallagher Saydack Percell Roberts & Potter, P.C.)

Map and Tax lot(s): 17-03-09 # 800 (northern portion outside the Eugene UGB)

Acreage: Approximately 10 acres

Current Zoning: SG (Sand and Gravel)

Date Property Acquired: November 10, 1954, Original acquisition (WD#42769)
December 29, 2005, Trust est. (WD#2005-103494)

Date claim submitted: October 23, 2006

180-day deadline: April 21, 2007

Land Use Regulations in Effect at Date of Acquisition: AGT (Agriculture, Grazing, Timber Raising District)

Restrictive County land use regulation: Limitations on new dwellings in the SG (Sand and Gravel) zone (LC 16.216).

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 Doris V. Johnson Revocable Living Trust is the current owner of the subject property. Doris V. Johnson acquired an interest in the property on November 10, 1954 (WD#42769). On December 29, 2005 Doris placed the property into a Trust (WD#2005-103494). The Trust is considered a new owner but because it is revocable and Doris is the Trustee, the ownership interest of Doris is continued.

Currently, the portion of the property that is the subject of this claim is zoned SG (Sand and Gravel).

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

The property was zoned AGT (Agriculture, Grazing, Timber Raising District) when it was acquired by Doris in 1954. The limitations on new dwellings in the SG zone prevent Doris from developing the property as could have been allowed in 1954.

The applicant has alleged a reduction in the fair market value of the property of \$1,270,787. This figure is based on a comparative market analysis which assumes that the highest and best use of the property is agriculture, rather than sand and gravel. This method of analysis fails to evaluate the potential worth of the property if it were used for aggregate extraction, and therefore, does not competently demonstrate how the current SG zoning has reduced 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 restrictions on new dwellings in the SG zone do not appear to be exempt regulations.

CONCLUSION

It appears this is not a valid claim.

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 15, 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 (PA06-6936, Kirkpatrick 1)

BACKGROUND

Applicant: Gerald W. Kirkpatrick and Gladys V. Kirkpatrick
Current Owner: Gerald W. Kirkpatrick and Gladys V. Kirkpatrick
Agent: same as applicant
Map and Tax lot: 17-02-03, tax lot 2904
Acreage: 21.33 acres
Current Zoning: E40 (Exclusive Farm Use)
Date Property Acquired: August 3, 1978 (WD, Reel 929R, # 7853074).
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 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, Lane County Assessor's Map 17-02-03, tax lot 2904, was acquired by Gerald W. Kirkpatrick and Gladys V. Kirkpatrick by deed on August 2, 1978 (Reel 929R, # 7853074). When the claimant acquired the property, it was unzoned.

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 Gerald W. Kirkpatrick and Gladys V. Kirkpatrick from developing the property as could have been allowed when they acquired it in 1978.

The alleged reduction in fair market value is \$818,300, based on the submitted comparative sales of properties that have been concluded in the area.

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 for the claimant.

**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 06-6936, Kirkpatrick1)

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 Gerald W. Kirkpatrick and Gladys V. Kirkpatrick, the owners of real property located at 90161 Sunderman Road, Springfield, Oregon, and more specifically described in the records of the Lane County Assessor as map 17-02-03, tax lot 2904, consisting of approximately 21.33 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 06-6936) of Gerald W. Kirkpatrick and Gladys V. Kirkpatrick, and has now determined that the restrictive E40 (Exclusive Farm Use) zone dwelling and land division requirements of LC 16.212 were enforced and made applicable to prevent Gerald W. Kirkpatrick and Gladys V. Kirkpatrick from developing the property as might have been allowed at the time they acquired an interest in the property on August 3, 1978, and that the public benefit from application of the

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

WHEREAS, Gerald W. Kirkpatrick and Gladys V. Kirkpatrick requests either \$818,300 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 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 E40 zone to the subject property in the manner and for the reasons stated in the report and recommendation of the County Administrator incorporated here by this reference except as explicitly revised here to reflect Board deliberation and action to allow Gerald W. Kirkpatrick and Gladys V. Kirkpatrick 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 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 Gerald W. Kirkpatrick and Gladys V. Kirkpatrick 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 Gerald W. Kirkpatrick and Gladys V. Kirkpatrick 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 Gerald W. Kirkpatrick and Gladys V. Kirkpatrick, so they can make application for approval to develop the property located at 90160 Sunderman Road, Springfield, Oregon, and more specifically described in the records of the Lane County Assessor as map 17-02-03, tax lot 2904, consisting of approximately 21.33 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 August 3, 1978.

IT IS HEREBY FURTHER ORDERED that Gerald W. Kirkpatrick and Gladys V. Kirkpatrick 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 Gerald W. Kirkpatrick and Gladys V. Kirkpatrick 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.

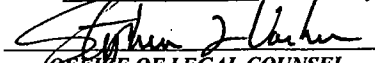
IT IS HEREBY FURTHER ORDERED that the other county land use regulations and rules that still apply to the property require that land use, sanitation and building permits be approved by Lane County before any development can proceed. Notice of this decision shall be recorded in the county deed records. 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 3-10-2007 Lane County


OFFICE OF LEGAL COUNSEL