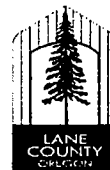


T.M. 37



Memo Date: February 27, 2007
Hearing Date: March 20, 2007

TO: Board of County Commissioners

DEPARTMENT: Public Works Dept./Land Management Division

PRESENTED BY: BILL VANVACTOR, COUNTY ADMINISTRATOR
KENT HOWE, PLANNING DIRECTOR

AGENDA ITEM TITLE: Hearings on twenty seven 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 that require additional deliberation can be removed and discussed by the Board in separate actions.

Hearing Process

The order of testimony for hearings on 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 27 claims scheduled for a hearing. There are 4 claims recommended for denial. Of these, two do not appear 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 Brown and Lamb2. Refer to the staff reports for those claims for further details. The other claim recommended for denial has not submitted adequate evidence regarding ownership or the alleged reduction of value despite requests for that information. Because of this, the County Administrator is compelled to recommend denial of that claim. 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.	Barr	06-7040	18-05-01 #200 and 201	95	21-Nov-06	20-May-07	Valid		Adopt order
2.	Brown	05-6198	18-02-11 #1000	25	15-Aug-05	11-Feb-06	Not valid	No reduction in value	Deny
3.	Cate1	06-7055	16-05-34 #1102	40	22-Nov-06	21-May-07	Valid		Adopt Order
4.	Cate2	06-7056	16-05-34 #1103	16	22-Nov-06	21-May-07	Valid		Adopt Order
5.	Childers	06-7073	17-04-07 #3500 and 1900	120	24-Nov-06	23-May-07	Valid		Adopt Order
6.	Davidson 2	06-7072	20-35-34 #401	27	24-Nov-06	23-May-07	incomplete	Ownership unclear, no value reduction	Deny
7.	Dersham	06-6999	19-03-16 #1300	7	16-Nov-06	15-May-07	Valid		Adopt Order
8.	Gammell	06-7080	15-04-30 #300; 15-04-29 #900	23	27-Nov-06	26-May-07	Valid		Adopt Order
9.	Hammond	06-7011	18-02-28#700 and 1200	79	17-Nov-06	16-May-07	Valid		Adopt Order
10.	Harding1	06-6979	18-04-09 #3606	36	15-Nov-06	14-May-07	incomplete	Ownership unclear, conflicting valuations	Deny
11.	Harding2	06-6980	18-04-09 #3606	36	15-Nov-06	14-May-07	Valid		Adopt Order
12.	Hibler	06-7012	18-05-11 #600	151	17-Nov-06	16-May-07	Valid		Adopt Order
13.	Hyland	06-7029	18-05-06-30#101	20	20-Nov-06	19-May-07	Valid		Adopt Order
14.	Johnson3	06-7000	17-11-30 #700 and 800	18	16-Nov-06	15-May-07	Valid		Adopt Order
15.	Johnson4	06-7004	18-02-30 #400	7	17-Nov-06	16-May-07	Valid		Adopt Order
16.	Lamb2	06-7325	18-12-02 #203	19	4-Dec-06	2-Jun-07	Not valid	No reduction in value	Deny
17.	Lopes	06-7013	15-05-34 #201	343	17-Nov-06	16-May-07	Valid		Adopt Order
18.	Mchugill	06-7074	20-03-29-33 #1300	4	24-Nov-06	23-May-07	Valid		Adopt Order
19.	McKee	06-7082	18-02-34 #4200	29	27-Nov-06	26-May-07	Valid		Adopt Order
20.	McVey	06-7326	19-01-28 #2900	8	4-Dec-06	2-Jun-07	Valid		Adopt Order

	Name	PA#	Tax parcels	Acres	Submitted	180 days	Status	Issues/Notes	Recommendation
21.	Murry1	06-7041	17-04-01 #8100	7	21-Nov-06	20-May-07	Valid		Adopt Order
22.	Myers1	06-7049	18-04-19 #2200; 18-04-20 #200 and 206	120	22-Nov-06	21-May-07	Valid		Adopt Order
23.	Nielsen1	06-7014	16-04-16 #300 and 517; 16-04-09 #1900	19	17-Nov-06	16-May-07	Valid		Adopt Order
24.	Peters	06-7079	18-04-06 #311	81	27-Nov-06	26-May-07	Valid		Adopt Order
25.	Piper	06-7324	17-05-18 #1700	8	4-Dec-06	2-Jun-07	Valid		Adopt Order
26.	Weeldreyer	06-7064	21-04-01 #2500	7	24-Nov-06	23-May-07	Valid		Adopt Order
27.	Wickwire	06-7078	16-04-04 #2600 and 2601	20	27-Nov-06	26-May-07	Valid		Adopt Order

ATTACHMENT "B"
Table 2: Hearing Notes

Name		PA#	Recommendation	NOTES
1.	Barr	06-7040	Adopt order	
2.	Brown	05-6198	Deny	
3.	Cate1	06-7055	Adopt Order	
4.	Cate2	06-7056	Adopt Order	
5.	Childers	06-7073	Adopt Order	
6.	Davidson 2	06-7072	Deny	
7.	Dersham	06-6999	Adopt Order	
8.	Gammell	06-7080	Adopt Order	
9.	Hammond	06-7011	Adopt Order	
10.	Harding1	06-6979	Deny	
11.	Harding2	06-6980	Adopt Order	
12.	Hibler	06-7012	Adopt Order	
13.	Hyland	06-7029	Adopt Order	
14.	Johnson3	06-7000	Adopt Order	
15.	Johnson4	06-7004	Adopt Order	
16.	Lamb2	06-7325	Deny	
17.	Lopes	06-7013	Adopt Order	
18.	Mchugill	06-7074	Adopt Order	
19.	McKee	06-7082	Adopt Order	
20.	McVey	06-7326	Deny	
21.	Murry1	06-7041	Adopt Order	

	Name	PA#	Recommendation	NOTES
22.	Myers1	06-7049	Adopt Order	
23.	Nielsen1	06-7014	Adopt Order	
24.	Peters	06-7079	Adopt Order	
25.	Piper	06-7324	Adopt Order	
26.	Weeldreyer	06-7064	Adopt Order	
27.	Wickwire	06-7078	Adopt Order	

Memo Date: February 28, 2007
Order Date: March 20, 2007



TO: Board of County Commissioners

DEPARTMENT: Public Works Dept./Land Management Division

PRESENTED BY: BILL VANVACTOR, COUNTY ADMINISTRATOR
KENT HOWE, PLANNING DIRECTOR

AGENDA ITEM TITLE: In the Matter of Considering a Ballot Measure 37 Claim and Deciding Whether to Modify, Remove or Not Apply Restrictive Land Use Regulations in Lieu of Providing Just Compensation (PA06-7040, Barr)

BACKGROUND

Applicant: Stuart W. Barr

Current Owner: Sylvia Judith Barr Revocable Trust

Agent: C. W. Walker and Associates LLC

Map and Tax lot: 18-05-01 tax lots #200 & #201

Acreage: approximately 95 acres

Current Zoning: E40 (Exclusive Farm Use)

Date Property Acquired: August 12, 1968 (deed # 35036)

Date Claim Submitted: November 21, 2006

180-day Deadline: May 20, 2007

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

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 owner is listed as the Sylvia Judith Barr Revocable Trust. Sylvia Judith Barr and her husband, Stuart W. Barr, first acquired an interest in the property on August 12, 1968, (WD#35036) when it was zoned AGT (Agriculture, Grazing, Timber Raising). On March 23, 2005, they placed the property into a revocable Trust (#021342). The Trust is not considered a new owner because it is revocable and Sylvia and Stuart are the Trustees. As a result, the ownership interest of Sylvia and Stuart Barr is continued. Currently, the property is zoned E40 (LC16.212).

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) when it was acquired by the current owners. The minimum lot size and limitations on new dwellings in the E40 zone prevent the current owners from developing the property as could have been allowed when they acquired it in 1968. The alleged reduction in fair market value is \$1,089,000, 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 (Barr/PA06-7040)

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 Stuart W. Barr (PA06-7040), the owner of real property located at 87340 Dukhobar Road, Eugene, and more specifically described in the records of the Lane County Assessor as map 18-05-01, tax lots 200 and 201, consisting of approximately 95 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 20, 2007, the Board conducted a public hearing on the Measure 37 claim (PA06-7040) of Stuart and Sylvia Judith Barr 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 Stuart and Sylvia Judith Barr from developing the property as might have been allowed at the time she acquired an interest in the property on August 12, 1968, 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, Stuart and Sylvia Judith Barr request either \$1,089,000 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 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 Stuart and Sylvia Judith Barr 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 applicant Stuart and Sylvia Judith Barr 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 Stuart and Sylvia Judith Barr 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 Stuart and Sylvia Judith Barr, so they can make application for approval to develop the property located at 87340 Dukhobar Road, Eugene, and more specifically described in the records of the Lane County Assessor as map 18-05-01, tax lots 200 and 201, consisting of approximately 95 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 12, 1968.

IT IS HEREBY FURTHER ORDERED that Stuart and Sylvia Judith Barr 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 claimants 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 Stuart and Sylvia Judith Barr 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 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 3-13-2007 Lane County


OFFICE OF LEGAL COUNSEL

Memo Date: February 28, 2007
Hearing Date: March 20, 2007



TO: Board of County Commissioners

DEPARTMENT: Public Works Dept./Land Management Division

PRESENTED BY: BILL VANVACTOR, COUNTY ADMINISTRATOR
KENT HOWE, PLANNING DIRECTOR

AGENDA ITEM TITLE: In the Matter of Considering a Ballot Measure 37 Claim and Deciding Whether to Modify, Remove or Not Apply Restrictive Land Use Regulations in Lieu of Providing Just Compensation (PA05-6198, Brown)

BACKGROUND

Applicant: Milton O. Brown

Current Owner: Milton O. Brown

Agent: Bob Harris

Map and Tax lot: 18-02-11 tax lot #1000

Acreage: approximately 25 acres

Current Zoning: F2 (Impacted Forest Land)

Date Property Acquired: August 12, 1985 (SD # 8530499)

Date claim submitted: August 15, 2005

180-day deadline: February 11, 2006

Land Use Regulations in Effect at Date of Acquisition: GR10 (General Rural)

Restrictive County land use regulation: Minimum parcel size of twenty five 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

The current owner is Milton O. Brown. Mr. Brown acquired an interest in the property on August 12, 1985 (WD #8530499), when it was zoned GR10 (General Rural). 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 zoned GR 10 (General Rural) when it was acquired by the current owner. The minimum lot size and limitations on new dwellings in the F2 zone prevent the current owner from developing the property as could have been allowed when they acquired it. The alleged reduction in fair market value is \$3,000,000, which is not based on any analysis, appraisal, or comparison sales. No documentation or value reduction determination was included in the application and the County Administrator has not waived the requirement of 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. The claimant has not identified any other restrictive land use regulations that allegedly reduce the fair market value of the property.

CONCLUSION

The claimant has not paid the processing fee and has not provided valuation analysis for the property, therefore, 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 28, 2007
Hearing Date: March 20, 2007



TO: Board of County Commissioners

DEPARTMENT: Public Works Dept./Land Management Division

PRESENTED BY: BILL VANVACTOR, COUNTY ADMINISTRATOR
KENT HOWE, PLANNING DIRECTOR

AGENDA ITEM TITLE: In the Matter of Considering a Ballot Measure 37 Claim and Deciding Whether to Modify, Remove or Not Apply Restrictive Land Use Regulations in Lieu of Providing Just Compensation (PA06-7055, Cate1)

BACKGROUND

Applicant: Leona M. Cate
Current Owner: Leona M. Cate
Agent: none
Map and Tax lot: 16-05-34, tax lot #1102
Acreage: approximately 40 acres
Current Zoning: E40 (Exclusive Farm Use)
Date Property Acquired: August 22, 1972 (WD #15322)
Date claim submitted: November 22, 2006
180-day deadline: May 21, 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

The current owner is Leona M. Cate. She acquired an interest in the property on August 22, 1972, when it was unzoned (WD #15322). Currently, the property is zoned E40.

In 1980 the property was placed into a Trust. The trust is not considered a new owner because it is revocable and Leona Cate is a trustee. As a result, the ownership interest of Leona M. Cate is continued.

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 the current owner from developing the property as could have been allowed when she acquired it. The alleged reduction in fair market value is \$527,600 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 of the E40 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 (Cate1/PA06-7055)

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 Leona M. Cate (PA06-7055), the owner of real property located at 91211 Starlite Lane, Junction City, and more specifically described in the records of the Lane County Assessor as map 16-05-34, tax lot 1102, consisting of approximately 40 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 20, 2007, the Board conducted a public hearing on the Measure 37 claim (PA06-7055) of Leona M. Cate 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 Leona M. Cate from developing the property as might have been allowed at the time she acquired an interest in the property on August 22, 1972, 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, Leona M. Cate request either \$527,600 as compensation for the reduction in value of her property, or waiver of all land use regulations that would restrict the division of land into lots containing less than forty acres and placement of a dwelling on each lot, 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 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 Leona M. Cate 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 Leona M. Cate 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 Leona M. Cate 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 Leona M. Cate, so she can make application for approval to develop the property located at 91211 Starlite Lane, Junction City, and more specifically described in the records of the Lane County Assessor as map 16-05-34, tax lot 1102, consisting of approximately 40 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 August 22, 1972.

IT IS HEREBY FURTHER ORDERED that Leona M. Cate 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.

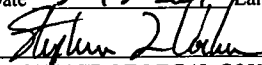
IT IS HEREBY FURTHER ORDERED that this action making certain Lane Code provisions inapplicable to use of the property by Leona M. Cate does not constitute a waiver or modification of state land use regulations and does not authorize immediate division of the subject property or immediate construction 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 3-13-2007 Lane County


OFFICE OF LEGAL COUNSEL

Memo Date: February 28, 2007
Hearing Date: March 20, 2007



TO: Board of County Commissioners

DEPARTMENT: Public Works Dept./Land Management Division

PRESENTED BY: BILL VANVACTOR, COUNTY ADMINISTRATOR
KENT HOWE, PLANNING DIRECTOR

AGENDA ITEM TITLE: In the Matter of Considering a Ballot Measure 37 Claim and Deciding Whether to Modify, Remove or Not Apply Restrictive Land Use Regulations in Lieu of Providing Just Compensation (PA06-7056, Cate2)

BACKGROUND

Applicant: Leona M. Cate

Current Owner: Leona M. Cate

Agent: N/A

Map and Tax lot(s): 16-05-34, tax lot 1103

Acreage: 16.04 acres

Current Zoning: E40 (Exclusive Farm Use)

Date Property Acquired: 16-05-34, tax lot 1103 – October 18, 1972
(Memorandum of Land Sales Contract, #28248);

Date claim submitted: November 22, 2006

180-day deadline: May 21, 2007

Land Use Regulations in Effect at Date of Acquisition:
16-05-34, tax lot 1103 (16.04 acres) – 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

The current owner of tax lot 1103 is Leona M. Cate. Leona M. Cate and her husband, Ralph George Cate, acquired an interest in tax lot 1103 on October 18, 1972 (Memorandum of Land Sales Contract, #28248) when the property was unzoned. Currently, the property is zoned E40.

In 1980, the property was placed into a revocable Trust (November 10, 1980, 1109R, #8062500). The Trust is not considered a new owner because it is revocable and Leona and Ralph were the Trustees. As a result, the ownership interest of Leona and Ralph was continued. Ralph died on April 1, 1993. Leona is the sole owner of the property.

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

Tax lot 1103 was unzoned when it was acquired by the current owner. The minimum lot size and limitations on new dwellings in the E40 zone prevent the current owner from developing the property as could have been allowed when she acquired it. The claimant, a real estate broker, has submitted comparable sales alleging a reduction in fair market value of \$422,319.

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 (PA 06-7056, Cate2)

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 Leona M. Cate, of real property located south of First Street and west of Starlite Lane, and north of the unincorporated community of Alvadore, Oregon, and more specifically described in the records of the Lane County Assessor as map 16-05-34, tax lot 1103, consisting of approximately 16.04 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 20, 2007, the Board conducted a public hearing on the Measure 37 claim (PA 06-7075) of Leona M. Cate, 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 Leona M. Cate from developing the property as might have been allowed at the time she acquired an interest in the property on October 18, 1972, 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 Leona M. Cate requests either \$422,319, 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 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 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 Leona M. Cate 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 Leona M. Cate 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 Leona M. Cate 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 Leona M. Cate, so he can make application for approval to develop the properties located south of First Street and west of Starlite Lane, and north of the unincorporated community of Alvadore, Oregon, and more specifically described in the records of the Lane County Assessor as map 16-05-34, tax lot 1103, consisting of approximately 16.04 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 October 18, 1972.

IT IS HEREBY FURTHER ORDERED that Leona M. Cate 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 Leona M. Cate 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 3-13-2007 Lane County


OFFICE OF LEGAL COUNSEL

Memo Date: February 22, 2007
Hearing Date: March 20, 2007



TO: Board of County Commissioners

DEPARTMENT: Public Works Dept./Land Management Division

PRESENTED BY: BILL VANVACTOR, COUNTY ADMINISTRATOR
KENT HOWE, PLANNING DIRECTOR

AGENDA ITEM TITLE: In the Matter of Considering a Ballot Measure 37 Claim and Deciding Whether to Modify, Remove or Not Apply Restrictive Land Use Regulations in Lieu of Providing Just Compensation (PA06-7073, Childers)

BACKGROUND

Applicant: Bill D. Childers

Current Owner: Bill D. Childers Revocable Living Trust

Agent: Norm Waterbury

Map and Tax lot(s): 17-04-07, tax lots 3500 (88.67 acres) and 1900 (28.87 acres).

Acreage: 117.54 acres

Current Zoning: E40 (Exclusive Farm Use)

Date Property Acquired: October 12, 1971 (Bargain and Sale Deed, #67925)

Date claim submitted: November 24, 2006

180-day deadline: May 23, 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

The current owner is the Bill D. Childers Revocable Living Trust.

Bill D. Childers acquired an interest in the property on October 12, 1971, when it was unzoned (WD #67925).

Currently, the property is zoned E40. On March 2, 1994, the property was placed into the Childers Living Trust.

The Trust was not considered a new owner because it is revocable and Bill was one of the two Trustees (Bill and Sally Childers). As a result, the ownership interest of Bill was continued.

On October 12, 2006, the property was placed into a different trust named the Bill D. Childers Revocable Living Trust with three co-trustees: Bill D. Childers, Catherine L. Schmidt, and Sharon G. Zeller. Bill is one of the Trustees (Bill and Sally Childers) and the ownership interest of Bill is continued.

Catherine L. Schmidt, and Sharon G. Zeller acquired interest as co-trustees in the Bill D. Childers Revocable Living Trust on October 16, 2006 (Reception No. 2006-074753) when the property was 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 Bill D. Childers. The minimum lot size and limitations on new dwellings in the E40 zone prevent the Bill D. Childers from developing the property as could have been allowed when he acquired it. The alleged reduction in fair market value is \$2,400,000, based on the submitted appraisal.

Because the minimum lot size and dwelling restrictions of the E40 zone were applicable in 2006, when Catherine L. Schmidt and Sharon G. Zeller, acquired an interest in the property as co-trustees, these regulations can not be waived for them.

The applicant has also alleged the following regulations have affected the 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 for Bill D. Childers.

RECOMMENDATION

The County Administrator recommends the Board adopt the attached order to waive the restrictive land use regulations of the E40 zone for Bill D. Childers.

**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 06-7073, Childers)

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 Bill D. Childers, a co-trustee in the Bill D. Childers Revocable Living Trust and a co-owner with Catherine L. Schmidt and Sharon G. Zeller, of real property located south of Clear lake Road, east of Fern Ridge Reservoir, and west of the incorporated city of Eugene, Oregon, and more specifically described in the records of the Lane County Assessor as map 17-04-07, tax lots 3500 and 1900, consisting of approximately 117.54 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 20, 2007, the Board conducted a public hearing on the Measure 37 claim (PA 06-7073) of Bill D. Childers, 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 Bill D. Childers from developing the property as might have been allowed at the time he acquired an interest in the property on October 12, 1971, 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 Bill D. Childers requests either \$2,400,000 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 forty acres respectively, 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 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 Bill D. Childers 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 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 Bill D. Childers 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 Bill D. Childers 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 Bill D. Childers, so he can make application for approval to develop the properties located south of Clear Lake Road and west of the incorporated city of Eugene, Oregon, and more specifically described in the records of the Lane County Assessor as map 17-04-07, tax lot 3500 and 1900, consisting of approximately 117.54 acres in Lane County, Oregon, in a manner consistent with the land use regulations in effect when he acquired an interest in the properties on October 12, 1971.

IT IS HEREBY FURTHER ORDERED that Bill D. Childers 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.

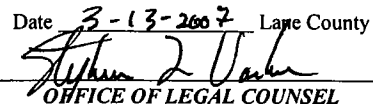
IT IS HEREBY FURTHER ORDERED that this action making certain Lane Code provisions inapplicable to use of the property by Bill D. Childers does not constitute a waiver or modification of state land use regulations and does not authorize immediate division of the subject property or immediate construction 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 3-13-2007 Lane County

OFFICE OF LEGAL COUNSEL

Memo Date: February 21, 2007
Hearing Date: March 20, 2007



TO: Board of County Commissioners

DEPARTMENT: Public Works Dept./Land Management Division

PRESENTED BY: BILL VANVACTOR, COUNTY ADMINISTRATOR
KENT HOWE, PLANNING DIRECTOR

AGENDA ITEM TITLE: In the Matter of Considering a Ballot Measure 37 Claim and Deciding Whether to Modify, Remove or Not Apply Restrictive Land Use Regulations in Lieu of Providing Just Compensation (PA06-7202, Davidson2)

BACKGROUND

Applicant: Davidson Investments LLC

Current Owner: Davidson Investments LLC

Agent: Norm Waterbury

Map and Tax lot(s): 20-35-34, tax lot 401

Acreage: 27.8 acres

Current Zoning: RR10 (Rural Residential)

Date Property Acquired: July 19, 2002, (WD, 2002-054921)

Date claim submitted: November 24, 2006

180-day deadline: May 23, 2007

Land Use Regulations in Effect at Date of Acquisition: RR10 (Rural Residential).

Restrictive County land use regulation: Minimum parcel size of ten acres and limitations on new dwellings in the RR (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 appears to be the Davidson Investments LLC who may have acquired an interest in the property on July 19, 2002, (WD, 2002-054921) when it was zoned Rural Residential RR10. Currently, the property is zoned Rural Residential RR10.

Conveyance history per the A&T deed description card and recorded warranty deeds (WD) and Bargain and Sale Deeds (BSD) for TRS 20-35-34, tax lot 401:

Date		Grantor	Grantee	Recorded
June 1, 1974	BSD	Wesley E. Titus	Lila L. Titus	June 7, 1974 693R-7424486
May 12, 1975	WD	Byron Libby & Lila Libby	*Unknown –“husband & wife”	July 19, 2002 2002-054921
January 29, 1980	BSD	Bryon H. Libby	Lila Titus Libby	June 30, 1980 1053R-8005096

*When the 1975 deed was recorded in 2002, the previously typed description or names on the deed which read “_____ Grantees; each husband and wife shall own an undivided ½ interest in hereinafter described real property as an estate by the entirety”, had been erased or whited-out and “Davidson Investments, LLC” had been handwritten in the space of the prior “_____” identities.

Approximately five years after the 1975 deed was originally written and approximately 22 years before the 1975 deed was recorded, another Bargain and Sale Deed was executed and recorded in 1980 conveying the property to Lila Titus Libby. It is unknown when the change in “grantees” occurred between 1975 and 2002 or under what circumstances.

Based on the submitted record, the first recorded document which seems to include the claimant, Davidson Investments LLC, as acquiring an interest in tax lot 401 has the recording date of July 19, 2002 (2002-054921). It is unclear whether that document actually was intended to or had the effect of a conveyance to the claimant. The evidence in the record is insufficient to determine ownership and acquisition dates of the claimant.

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

The property was zoned RR10 Rural Residential when it was acquired by the current owner, Davidson Investments LLC, in 2002. The alleged reduction in fair market value is \$515,000, 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, but they can not be waived for the current owner because they were applicable before the claimants acquired an interest in the property in 2002. The claimant has not identified any other restrictive land use regulations that allegedly reduce the fair market value of the property.

CONCLUSION

It appears this is not a valid claim for Davidson Investments LLC.

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 21, 2007
Hearing Date: March 20, 2007



TO: Board of County Commissioners

DEPARTMENT: Public Works Dept./Land Management Division

PRESENTED BY: BILL VANVACTOR, COUNTY ADMINISTRATOR
KENT HOWE, PLANNING DIRECTOR

AGENDA ITEM TITLE: In the Matter of Considering a Ballot Measure 37 Claim and Deciding Whether to Modify, Remove or Not Apply Restrictive Land Use Regulations in Lieu of Providing Just Compensation (PA06-6999, Dersham)

BACKGROUND

Applicant: Ronald R. and Connie D. Dersham

Current Owner: Dersham Loving Trust

Agent: Steve Cornacchia, Hershner Hunter, LLP

Map and Tax lot(s): 19-03-16 #1300

Acreage: Approximately 7 acres

Current Zoning: RR5 (Rural Residential)

Date Property Acquired: February 27, 1975 (WD #7508731)

March 26, 1993, the property was conveyed into the Dersham Loving Trust (B&SD #9320535)

Date claim submitted: November 16, 2006

180-day deadline: May 15, 2007

Land Use Regulations in Effect at Date of Acquisition: Unzoned;

Restrictive County land use regulation: Minimum parcel size of five acres and restrictions on commercial uses 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

The current owner of the subject property is the Dersham Loving Trust. Ronald R. and Connie D. Dersham acquired an interest in the property on February 27, 1975 when it was unzoned (WD #7508731).

In 1993, Ronald and Connie placed the property into the Dersham Loving Trust (B&SD #9320535). The Trust is considered a new owner but because it is revocable and Ronald and Connie are the Trustees, the ownership interests of Ronald and Connie Dersham are continued.

Currently, the property is zoned 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 Ronald and Connie Dersham. The minimum lot size and restrictions on commercial uses in the RR5 zone prevent the Dershams from developing the property as could have been allowed when they acquired it. The alleged reduction in fair market value is \$390,000, 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:

LC10.100-10, 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 commercial uses 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 RR5 zone.