

**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 (PA06-6999, Dersham)

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 on behalf of Ronald R. and Connie D. Dersham and the Dersham Loving Trust (PA06-6999, Dersham), the owner of real property described in the records of the Lane County Assessor as map19-03-16, tax lot 1300, consisting of approximately 7 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, 2006, the Board conducted a public hearing on the Measure 37 claim (PA06-6999) of Ronald R. and Connie D. Dersham and has now determined that the commercial use restrictions and land division requirements of the RR5 (Rural Residential) zone of LC 16.290 were enforced and made applicable to prevent Ronald R. and Connie D. Dersham from developing their property as might have been allowed at the time it was acquired on February 27, 1975 and that the public benefit from application of the current RR5 land use regulations to the applicants' property is outweighed by the public burden of paying just compensation; and

WHEREAS, Ronald R. and Connie D. Dersham request up to \$390,000 as compensation for the reduction in value of their property, or waiver of all land use regulations that would restrict the commercial development of their property and/or the division of their land into multiple lots and the placement of a dwelling on each lot, uses that could have otherwise been allowed at the time they acquired the property; and

WHEREAS, the Board finds that under LC 2.760(3) the public interest would be better served by modifying, removing or not applying the challenged land use regulations of the RR5 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 Ronald R. and Connie D. Dersham to make application for development of the subject property in a manner similar to what they could have been able to do under the regulations in effect when they acquired an interest in the property; and

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

NOW, THEREFORE IT IS HEREBY ORDERED that the applicants Ronald R. and Connie D. Dersham 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 Ronald R. and Connie D. Dersham shall be granted and the restrictive provisions of LC 16.290 that limit the commercial uses as well as the development of dwellings and the division of land in the RR5 (Rural Residential) zone shall not apply to Ronald R. and Connie D. Dersham so they can make application for approval to develop the property located at 32466 Camas Swale Rd, Creswell, OR and more specifically described in the records of the Lane County Assessor as map 19-03-16, tax lot 1300, consisting of approximately 7 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 February 27, 1975.

IT IS HEREBY FURTHER ORDERED Ronald R. and Connie D. Dersham still need to make application and receive approval of any division of the property or placement of a commercial or residential structure under the other land use regulations applicable to dividing the property or placing a commercial or residential structure that were not specifically identified or established by Ronald R. and Connie D. Dersham as restricting the division of the property or placement of a commercial or residential structure, 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.

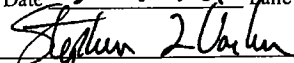
IT IS HEREBY FURTHER ORDERED that this action making certain Lane Code provisions inapplicable to use of the property by Ronald R. and Connie D. Dersham not constitute a waiver or modification of state land use regulations and does not authorize immediate division of the subject property or immediate construction of a commercial structure or 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 27, 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 (PA06-7080, Gammell)

BACKGROUND

Applicant: Betty J. Gammell
Current Owner: Betty J. Gammell
Agent: Daniel Stotter
Map and Tax lot: 15-04-29, #900 and 15-04-30, #300
Acreage: 22.9 acres
Current Zoning: E-30 (Exclusive Farm Use)
Date Property Acquired: January 9, 1975 (WD 7501372)
Date claim submitted: November 27, 2006
180-day deadline: May 26, 2007
Land Use Regulations in Effect at Date of Acquisition: unzoned
Restrictive County land use regulation: Minimum parcel size of thirty acres and limitations on new dwellings in the E-30 (Exclusive Farm Use) zone (LC 16.212).

ANALYSIS

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

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

The current owner is Betty J. Gammell. Betty J. Gammell acquired an interest in the property on January 9, 1975, when it was unzoned. Currently, the property is zoned E-30.

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

The property was unzoned when it was acquired by the current owner. The minimum lot size and limitations on new dwellings in the E-30 zone prevent the current owner from developing the property as could have been allowed when she acquired it. The alleged reduction in fair market value is \$896,000, based on the opinion of value reduction submitted by a real estate broker.

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 (Gammell/PA06-7080)

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 Betty J. Gammell (PA06-7080), the owner of real property located at 94973 Toftdahl Road, Junction City, and more specifically described in the records of the Lane County Assessor as map 15-04-29, tax lot 900 and 15-04-30, tax lot 300, consisting of approximately 22.9 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 (PA06-7080) of Betty J. Gammell and has now determined that the restrictive E-30 (Exclusive Farm Use) zone dwelling and land division requirements of LC 16.212 were enforced and made applicable to prevent Betty J. Gammell from developing the property as might have been allowed at the time she acquired an interest in the property on January 9, 1975, and that the public benefit from application of the current E-30 dwelling and division land use regulations to the applicant's property is outweighed by the public burden of paying just compensation; and

WHEREAS, Betty J. Gammell request either \$896,000 as compensation for the reduction in value of her property, or waiver of all land use regulations that would restrict the division of land into lots containing less than thirty acres and placement of a dwelling on each lot, uses that could have otherwise been allowed at the time she acquired an interest in the property; and

WHEREAS, the Board finds that under LC 2.760(3) the public interest would be better served by modifying, removing or not applying the challenged land use regulations of the E-30 zone to the subject property in the manner and for the reasons stated in the report and recommendation of the County Administrator incorporated here by this reference except as explicitly revised here to reflect Board deliberation and action to allow Betty J. Gammell 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 Betty J. Gammell 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 Betty J. Gammell shall be granted and the restrictive provisions of LC 16.212 that limit the development of dwellings and the division of land in the E-30 (Exclusive Farm Use) Zone shall not apply to Betty J. Gammell, so she can make application for approval to develop the property located at 94973 Toftdahl Road, Junction City, and more specifically described in the records of the Lane County Assessor as map 15-04-29, tax lot 900 and 15-04-30, tax lot 300, consisting of approximately 22.9 acres in Lane County, Oregon, in a manner consistent with the land use regulations in effect when she acquired an interest in the property on January 9, 1975.

IT IS HEREBY FURTHER ORDERED that Betty J. Gammell 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.

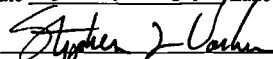
IT IS HEREBY FURTHER ORDERED that this action making certain Lane Code provisions inapplicable to use of the property by Betty J. Gammell does not constitute a waiver or modification of state land use regulations and does not authorize immediate division of the subject property or immediate construction 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 (PA06-7011, Hammond)

BACKGROUND

Applicant: Mildred Hammond

Current Owner: Mildred Hammond

Agent: Michael E. Farthing

Map and Tax lot(s): 18-02-28 #700 & #1200

Acreage: Tax lot 700 is approximately 25 acres and tax lot 1200 is approximately 53 acres

Current Zoning: E25 (Exclusive Farm Use)

Date Property Acquired: Tax lot 700 was acquired on March 29, 1948 (WD #63998)
Tax lot 1200 was acquired on October 10, 1957 (WD #23786)

Date claim submitted: November 17, 2006

180-day deadline: May 16, 2007

Land Use Regulations in Effect at Date of Acquisition: Unzoned

Restrictive County land use regulation: Minimum parcel size of twenty-five acres and limitations on new dwellings in the E25 (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 the subject property is Mildred Hammond. Mildred acquired the property through two separate transactions. Tax lot 700 was acquired on March 29, 1948 (WD #63998). Tax lot 1200 was acquired on October 10, 1957 (WD #23786). Neither property was zoned when they were originally acquired by Mildred. Currently, both tax lots are zoned E25.

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 Mildred Hammond. The current minimum lot size and limitations on new dwellings in the E25 zone prevent Mildred from developing the property as could have been allowed when she acquired it. The alleged reduction in fair market value is \$2,700,000, 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 of the E25 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
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) REGULATIONS IN LIEU OF PROVIDING JUST
) COMPENSATION (PA06-7011, Hammond)

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 Mildred Hammond (PA06-7011, Hammond), the owner of real property described in the records of the Lane County Assessor as map18-02-28, tax lots 700 and 1200, consisting of approximately 78 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, 2006, the Board conducted a public hearing on the Measure 37 claim (PA06-7011) of Mildred Hammond and has now determined that the restrictive E25 (Exclusive Farm Use) zone dwelling and land division requirements of LC 16.212 were enforced and made applicable to prevent Mildred Hammond from developing her property as might have been allowed at the time it was acquired on March 29, 1948 and on October 10, 1957 and that the public benefit from application of the current E25 dwelling and division land use regulations to the applicants' property is outweighed by the public burden of paying just compensation; and

WHEREAS, Mildred Hammond requests up to \$2,700,000 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~~ containing less than five acres 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 E25 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, Mildred Hammond 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 Mildred Hammond 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 Mildred Hammond shall be granted and the restrictive provisions of LC 16.212 that limit the development of dwellings and the division of land in the E25 (Exclusive Farm Use) zone shall not apply to Mildred Hammond, so she can make application for approval to develop the property located at 35883 Willama Vista Dr., Pleasant Hill, OR and more specifically described in the records of the Lane County Assessor as map18-02-28, tax lots 700 and 1200, consisting of approximately 78 acres in Lane County, Oregon, in a manner consistent with the land use regulations in effect when she acquired an interest in tax lot 700 on March 29, 1948 and when she acquired an interest in tax lot 1200 on October 10, 1957.

IT IS HEREBY FURTHER ORDERED Mildred Hammond 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 Mildred Hammond 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 Mildred Hammond 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.

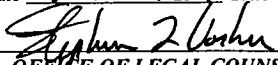
IT IS HEREBY FURTHER ORDERED that the other county land use regulations and rules that still apply to the property require that land use, sanitation and building permits be approved by Lane County before any development can proceed. Notice of this decision shall be recorded in the county deed records. 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 (PA06-6980, Harding1)

BACKGROUND

Applicant: Harding Living Trust

Current Owner: Lonal V. Harding (The applicant lists the Harding Living Trust as the current owner)

Agent: Norman Waterbury

Map and Tax lot(s): 18-04-09 #3600

Acreage: Approximately 40 acres (The applicant lists the acreage as 35.97)

Current Zoning: F2 (Impacted Forest), /CAS (Commercial Airport Safety Combining Zone)

Date Property Acquired: April 15, 1967, Property acquired by V.A. & Clara Harding (WD #7718895)

April 13, 1995, Property sold to Lonal V. and Linda M. Harding (SC #9520426)(land sale contract)

Date claim submitted: November 15, 2006

180-day deadline: May 7, 2007

Land Use Regulations in Effect at Date of Acquisition: In 1967, the property was zoned AGT (Agriculture, Timber and Grazing). In 1995, the property was zoned F2 (Impacted Forest).

Restrictive County land use regulation: Minimum parcel size of eighty acres and limitations on new dwellings in the F2 (Impacted Forest) 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 of the subject property appears to be Lonal V. Harding. Lonal acquired an interest in the property on April 13, 1995, pursuant to a land sale contract (SC #9520426). At that time, the property was zoned F2. Prior to Lonal's acquisition of an interest, the property apparently was owned by his parents, V.A. & Clara Harding. V.A. & Clara acquired an interest in the property on April 15, 1967 (WD #7718895). In 1967, the property was zoned AGT. Currently, it is zoned F2. The application materials list the Harding Living Trust as the current owner, although no documentation has been submitted to that establish that fact. It is unclear whether the land sale contract with Lonal is still in effect or whether the claim has been submitted on his behalf.

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

The applicant has alleged a reduction in value of \$815,000 based on a figure stated in the application but has submitted an appraisal demonstrating a reduction of \$960,000.

The property was zoned F2 when it was acquired by Lonal V. Harding and it is still zoned as such. Because the minimum lot size and dwelling restrictions were applicable when the Lonal acquired the property, these regulations cannot be waived.

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

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

LC10.104-40 – 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.

LC16.004, LC16.006, LC16.007 - The applicant has failed to demonstrate how these 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, but they can not be waived for the current owner.

Regulations found within the /CAS (Commercial Airport Safety Combining Zone) of LC16.245 are exempt regulations as defined by LC2.710 (2) and cannot be waived.

CONCLUSION

It appears this is not a valid claim because the application materials submitted do not correspond with this property and do not clearly show ownership or value reduction for this claim. The applicant has submitted duplicate application forms for two separate claims on two adjacent parcels (PA06-6979, Harding1 and PA06-6980, Harding2). The submitted application form for this claim lists V.A. & Clara Harding as the applicants and The Harding Living Trust as the land owner but it does not appear that V.A. and Clara or the Trust have any interest in the property.

RECOMMENDATION

If clarifying 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 (PA06-6980, Harding2)

BACKGROUND

Applicant: V.A. & Clara Harding

Current Owner: Harding Living Trust

Agent: Norman Waterbury

Map and Tax lot(s): 18-04-09 #3606

Acreage: Approximately 36 acres

Current Zoning: F2 (Impacted Forest), /CAS (Commercial Airport Safety Combining Zone)

Date Property Acquired: July 14, 1971 (Deed #7860292)
October 6, 1997, Transferred to the Harding Living Trust (Warranty Deed #9779498)

Date claim submitted: November 15, 2006

180-day deadline: May 7, 2007

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

Restrictive County land use regulation: Minimum parcel size of eighty acres and limitations on new dwellings in the F2 (Impacted Forest) 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 of the subject property is The Harding Living Trust. V.A. & Clara Harding acquired an interest in the property on July 14, 1971 (Deed #7860292). At that time, it was zoned AGT. Currently, the property is zoned F2.

On October 6, 1997, the property was transferred into the Harding Living Trust (Warranty Deed #9779498). The Trust is considered a new owner but because it is revocable and V.A. & Clara are the Trustees, the ownership interest of V.A. & Clara are continued.

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

The property was zoned AGT when it was acquired by V.A. & Clara Harding. The minimum lot size and limitations on new dwellings in the F2 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 \$815,000 based on the submitted appraisal.

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

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

LC10.104-40 – 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.

LC16.004, LC16.006, LC16.007 - The applicant has failed to demonstrate how these 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.

Regulations found within the /CAS (Commercial Airport Safety Combining Zone) of LC16.245 are exempt regulations as defined by LC2.710 (2) and cannot be waived.

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 F2 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 (PA06-6980, Harding2)

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 on behalf of V.A. and Clara Harding and the Harding Living Trust (PA06-6980, Harding2), the owner of real property described in the records of the Lane County Assessor as map 18-04-09, tax lot 3606, consisting of approximately 36 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, 2006, the Board conducted a public hearing on the Measure 37 claim (PA06-6980) of V.A. and Clara Harding 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 V.A. and Clara Harding from developing their property as might have been allowed at the time it was acquired on July 14, 1971, 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 V.A. and Clara Harding request up to \$815,000 as compensation for the reduction in value of their property, or waiver of all land use regulations that would restrict the division of land into multiple lots and placement of a dwelling on each lot, uses that could have otherwise been allowed at the time they acquired the property; and

WHEREAS, the Board finds that under LC 2.760(3) the public interest would be better served by modifying, removing or not applying the challenged land use regulations of the 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, V.A. and Clara Harding to make application for development of the subject property in a manner similar to what they could have been able to do under the regulations in effect when they acquired an interest in the property; and

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

NOW, THEREFORE IT IS HEREBY ORDERED that the applicants V.A. and Clara Harding 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 V.A. and Clara Harding 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 to V.A. and Clara Harding, so they can make application for approval to develop the property located at 29345 Gimpl Hill Rd, Eugene, OR and more specifically described in the records of the Lane County Assessor as map18-04-09, tax lot 3606, consisting of approximately 36 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 July 14, 1971.

IT IS HEREBY FURTHER ORDERED V.A. and Clara Harding 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 V.A. and Clara Harding 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.

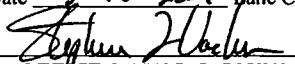
IT IS HEREBY FURTHER ORDERED that this action making certain Lane Code provisions inapplicable to use of the property by V.A. and Clara Harding not constitute a waiver or modification of state land use regulations and does not authorize immediate division of the subject property or immediate construction 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 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 (PA06-7012, Hibler)

BACKGROUND

Applicant: The Hibler Family

Current Owner: The Hibler Family; James R. Hibler, Debra L. Hibler, Philip Hibler, Gerald Warren Hibler, Charlotte E. Bruno, Karen Hibler

Agent: Norman Waterbury

Map and Tax lot(s): 18-05-11 # 600

Acreage: Approximately 151 acres

Current Zoning: E40 (Exclusive Farm Use)

Date Property Acquired: February 1, 1953 – the property is acquired by Douglas F. Hibler and Clarabel Hibler (WD #96526)

December 10, 1993 – the property is conveyed to James Hibler, Phillip Hibler and Gerald Hibler (WD #9380858), and to Debra Hibler (WD #9380859) and to Charlotte Hibler (WD # 9383757)

January 3, 1994 – Karen Hibler acquires an interest in the property (WD #9400448)

Date claim submitted: November 17, 2006

180-day deadline: May 16, 2007

Land Use Regulations in Effect at Date of Acquisition: When the Hibler family originally acquired the subject property on February 1, 1953, it was not zoned. On December 10, 1993, when James, Philip, Gerald, Debra and Charlotte gained an interest in the property, it was zoned E40 (Exclusive Farm Use). In addition to the E40 base zone, the following regulations also applied to the

property on that date: /FP (Floodplain Combining Zone), /CAS (Commercial Airport Safety Combining Zone) and the Class I stream riparian regulations found in LC 16.253. When Karen Hibler gained an interest in the property on January 3, 1994 the property carried the E40, /FP, /CAS and riparian regulations.

Restrictive County land use regulation: Minimum parcel size of forty acres and limitations on new dwellings in the E40 (Exclusive Farm Use) zone of LC 16.212 as well as the regulations and standard found within the /FP (Floodplain Combining Zone) of LC 16.244, /CAS (Commercial Airport Safety Combining Zone) of LC 16.245 and the Class I stream (Riparian Regulation) ordinance of LC 16.253.

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

Douglas F. Hibler and Clarabel Hibler acquired an interest in the property on February 1, 1953 (WD #97257). At that time, it was unzoned. On December 10, 1993, the property was conveyed to James Hibler, Phillip Hibler and Gerald Hibler (WD #9380858), to Debra Hibler (WD #9380859) and also to Charlotte Hibler, now Charlotte Bruno (WD # 9383757). Finally, on January 3, 1994, Karen Hibler acquired an interest in the property (WD #9400448). On December 10, 1993 and on January 3, 1994, the following land use regulations were applicable to the subject property and remain in effect to this date: E40 (Exclusive Farm Use Zone - LC 16.212), FP (Floodplain Combining Zone - LC 16.244), /CAS (Commercial Airport Safety Combining Zone - LC 16.245) and the Class I stream (Riparian Regulations - LC 16.253).

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 Douglas F. Hibler and Clarabel Hibler. The minimum lot size and limitations on new dwellings in the E40 zone prevent the current owners from developing the property as would have been allowed at the time it was first acquired by the family. However, because the minimum lot size, dwelling restrictions and riparian regulations were applicable when the current owner acquired the property, these regulations cannot be waived.

The alleged reduction in fair market value is \$1,650,000, 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 new dwellings as well as the riparian setback regulations do not appear to be exempt regulations, but they can not be waived for the current owners. The floodplain and airport safety zones are exempt.

CONCLUSION

It appears this is a valid claim. However, the minimum lot size and dwelling restrictions of LC 16.212 and the riparian setback regulations of LC 16.253 were in effect when the current owners acquired an interest in the property and cannot be waived. In addition, the 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.

RECOMMENDATION

The County Administrator recommends the Board adopt the attached order to waive the restrictive land use regulations that have been applied to the property since James Hibler, Phillip Hibler, Gerald Hibler, Debra Hibler and Charlotte Bruno acquired an interest in it on December 10, 1993 and also to waive the restrictive land use regulations that have been applied to the property since Karen Hibler acquired an interest in it on January 3, 1994.

**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 (PA06-7012, Hibler)

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 James R. Hibler, Debra L. Hibler, Philip Hibler, Gerald Warren Hibler, Charlotte E. Bruno and Karen Hibler (PA06-7012, Hibler), the owners of real property described in the records of the Lane County Assessor as map18-05-11, tax lots 600, consisting of approximately 151 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, 2006, the Board conducted a public hearing on the Measure 37 claim (PA06-7012) of James R. Hibler, Debra L. Hibler, Philip Hibler, Gerald Warren Hibler, Charlotte E. Bruno and Karen Hibler and has now determined that land use regulations were enforced and made applicable to prevent the property from being developed as it might have been when it was first acquired by the Hibler family on February 1, 1953, and that the public benefit from application of the current land use regulations to the applicants' property is outweighed by the public burden of paying just compensation; and

WHEREAS, James R. Hibler, Debra L. Hibler, Philip Hibler, Gerald Warren Hibler, Charlotte E. Bruno and Karen Hibler request up to \$1,650,000 as compensation for the reduction in value of their property, or waiver of all land use regulations that would restrict uses of their property that could have otherwise been allowed at the time they acquired the property; and

WHEREAS, the Board finds that under LC 2.760(3) the public interest would be better served by modifying, removing or not applying the challenged land use regulations of the E40 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 James R. Hibler, Debra L. Hibler, Philip Hibler, Gerald Warren Hibler, Charlotte E. Bruno and Karen Hibler to make application for development of the subject property in a manner similar to what they could have been able to do under the regulations in effect when they acquired an interest in the property; and

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

NOW, THEREFORE IT IS HEREBY ORDERED that the applicants James R. Hibler, Debra L. Hibler, Philip Hibler, Gerald Warren Hibler, Charlotte E. Bruno and Karen Hibler made a valid claim under Ballot Measure 37 by describing the use being sought, identifying the county land use regulations prohibiting that use, submitting evidence that those land use regulations have the effect of reducing the value of the property, showing evidence that the Hibler family 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 the applicants shall be granted and the restrictive provisions of the E40 (Exclusive Farm Use) zone that have been applied to the property since the dates that applicants acquired an interest in the property shall not apply to James R. Hibler, Debra L. Hibler, Philip Hibler, Gerald Warren Hibler, Charlotte E. Bruno and Karen Hibler, so they can make application for approval to develop the property located at 27608 Crow Rd, Eugene, OR and more specifically described in the records of the Lane County Assessor as map 18-05-11, tax lot 600, consisting of approximately 151 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 December 10, 1993, for James R. Hibler, Debra L. Hibler, Philip Hibler, Gerald Warren Hibler, Charlotte E. Bruno and on January 3, 1994, for Karen Hibler.

IT IS HEREBY FURTHER ORDERED that James R. Hibler, Debra L. Hibler, Philip Hibler, Gerald Warren Hibler, Charlotte E. Bruno and Karen Hibler still need to make application and receive approval of any future development of the property under the land use regulations applicable to the property that were not specifically identified or established by James R. Hibler, Debra L. Hibler, Philip Hibler, Gerald Warren Hibler, Charlotte E. Bruno and Karen Hibler as restricting the use of the property, 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 land use regulations of the applicable zone described above, the claimant shall submit appropriate applications for review and approval of any development 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.

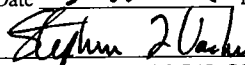
IT IS HEREBY FURTHER ORDERED that this action making certain Lane Code provisions inapplicable to use of the property by James R. Hibler, Debra L. Hibler, Philip Hibler, Gerald Warren Hibler, Charlotte E. Bruno and Karen Hibler not constitute a waiver or modification of state land use regulations and does not authorize development of the subject property. 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 27, 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 (PA06-7029, Hyland)

BACKGROUND

Applicant: Dennis & Margaret Hyland

Current Owner: Dennis & Margaret Hyland

Agent: Larry Reed

Map and Tax lot: 18-05-06-30 tax lot # 101

Acreage: approximately 20 acres

Current Zoning: F2 (Impacted Forest Land)

Date Property Acquired: Dennis R. Hyland, July 1, 1969 (WD #71323)
Margaret S. Hyland, August 11, 1981 (WD #42182)

Date Claim Submitted: November 20, 2006

180-day Deadline: May 19, 2007

Land Use Regulations in Effect at Date of Acquisition:
July 1, 1969, unzoned.
August 11, 1981, FF20 (Farm Forest)

Restrictive County Land Use Regulation: Minimum parcel size of forty 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 owners are Dennis & Margaret Hyland. Dennis Hyland acquired an interest in the property on July 1, 1969, when it was unzoned. Currently, the property is zoned F2. Margaret Hyland acquired an interest in the property on August 11, 1981 by deed from Dennis Hyland. The property was zoned FF20 (Farm Forest) on August 4, 1976, prior to Margaret S. Hyland's date of ownership. The property is currently 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 property was unzoned when it was acquired by Dennis R. Hyland. The minimum lot size and limitations on new dwellings in the F2 zone prevent him from developing the property as could have been allowed when he first acquired it. The alleged reduction in fair market value is \$600,000, based on the submitted market analysis.

Margaret is a member of the Hyland family as defined by Measure 37. Because of this, she is allowed to demonstrate a reduction in value from the date the Hyland family acquired an interest in the property. It appears the Hyland family has a valid claim based on the submitted market analysis. Any waiver granted to Margaret will be to the date she acquired and interest in the property (August 11, 1981).

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. The restrictive regulations of the F2 zone can be waived to July 1, 1969 for Dennis Hyland and to August 11, 1981 for Margaret Hyland.

RECOMMENDATION

The County Administrator recommends the Board adopt the attached order.

**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 (Hyland/PA06-7029)

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 Dennis and Margaret Hyland (PA06-7029), the owner of real property located at 25253 Strawberry Lane, Veneta, and more specifically described in the records of the Lane County Assessor as map 18-05-06-30, tax lot 101, consisting of approximately 20 acres in Lane County, Oregon; and

WHEREAS, the County Administrator has determined that the application appears to meet all of the criteria of LC 2.740(1) (a)-(d), appears to be eligible for just compensation and appears to require modification, removal or not applying the restrictive land use regulations in lieu of payment of just compensation and has referred the application to the Board for public hearing and confirmation that the application qualifies for further action under Measure 37 and LC 2.700 through 2.770; and

WHEREAS, the County Administrator has determined under LC 2.740(4) that modification, removal or not applying the restrictive land use regulation is necessary to avoid owner entitlement to just compensation under Ballot Measure 37 and made that recommendation to the Board; and

WHEREAS, the Board has reviewed the evidence and confirmed the application appears to qualify for compensation under Measure 37 but Lane County has not appropriated funds for compensation for Measure 37 claims and has no funds available for this purpose; and

WHEREAS, on March 20, 2007, the Board conducted a public hearing on the Measure 37 claim (PA06-7029) of Dennis and Margaret Hyland 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 Dennis and Margaret Hyland from developing the property as might have been allowed on July 1, 1969, the date the Hyland family acquired an interest in the property, 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, Dennis & Margaret Hyland request either \$600,000 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 the Hyland family acquired an interest in the property in 1969; 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 Dennis & Margaret Hyland 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 on July 1, 1969 for Dennis Hyland and on August 11, 1981 for Margaret Hyland; and

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

NOW, THEREFORE IT IS HEREBY ORDERED that the applicants Dennis and Margaret Hyland 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 Dennis & Margaret Hyland 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 to Dennis & Margaret Hyland, so they can make application for approval to develop the property located at 25253 Strawberry Lane, Veneta, and more specifically described in the records of the Lane County Assessor as map 18-05-06-30, tax lot 101, consisting of approximately 20 acres in Lane County, Oregon, in a manner consistent with the land use regulations in effect when Dennis Hyland acquired an interest in the property on July 1, 1969 and on August 11, 1981 for Margaret Hyland.

IT IS HEREBY FURTHER ORDERED that Dennis & Margaret Hyland still will 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 Dennis & Margaret Hyland 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 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 (PA06-7000, Johnson3)

BACKGROUND

Applicant: Eva C.E. Johnson

Current Owner: Alfred G. Johnson Revocable Trust

Agent: Steve Cornacchia, Hersher Hunter, LLP

Map and Tax lot(s): 17-11-30 tax lots 700 & 800

Acreage: Tax lot 700 is approximately 8 acres and tax lot 800 is approximately 11 acres in size.

Current Zoning: RR5 (Rural Residential) - western portion of both lots and F2 (Impacted Forest) - eastern portion of both lots. Portions of both tax lots also carry combining zone designations of /PW (Prime Wildlife) and /NRC (Natural Resource Conservation).

Date Property Acquired: Tax lot 800 was acquired on October 6, 1945
(QCD #17219)

Tax lot 700 was acquired on December 2, 1953
(QCD #36486)

Tax lots 700 & 800 are transferred to the Alfred G. Johnson Revocable Trust on May 20, 1992
(QCD #9228231)

Date claim submitted: November 16, 2006

180-day deadline: May 15, 2006

Land Use Regulations in Effect at Date of Acquisition: Tax lot 800 was unzoned on October 6, 1945 and tax lot 700 was unzoned on December 2, 1953.

Restrictive County land use regulation: Minimum parcel size of 80 acres and limitations on new dwellings in the F2 (Impacted Forest) zone (LC 16.211) and the minimum parcel size of 5 acres in the RR5 (Rural Residential) zone (LC16.290).

ANALYSIS

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

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

The current owner of the subject property is The Alfred G. Johnson Revocable Trust. Eva C.E. Johnson acquired tax lot 800 on October 6, 1945 (QCD #17219) and later acquired tax lot 700 on December 2, 1953 (QCD #36486). Tax lots 700 and 800 were both unzoned when they were acquired by Eva.

On May 20, 1992, Eva C.E. Johnson and her husband, Alfred (now deceased) created the Alfred G. Johnson Revocable Trust (QCD #9228231). The Trust is considered a new owner but because it is revocable and Eva is the Trustee, the ownership interest of Eva 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 Eva Johnson. The minimum lot size and limitations on new dwellings in the F2 and RR5 zone prevent the current owner from developing the property as could have been allowed when Eva Johnson acquired it. The alleged reduction in fair market value is \$1,300,000, 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:

LC16.238 - These provisions apply to the /PW (Prime Wildlife) combining zone which affects a portion of each tax lot. No evidence has been provided that demonstrates how these regulations have lowered the fair market value of the property.

LC16.239 - These provisions apply to the NRC (Natural Resource Conservation) combining zones which affect a portion of each tax lot. No evidence has been provided that demonstrates how these regulations have lowered the fair market value of the property.

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

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

lowered the fair market value of the property.

LC15.045, 15.070, 15.080, 15.137 & 15.138 - These provisions apply to road and driveway approach spacing standards and building setbacks from roads. No evidence has been provided that demonstrates how these regulations have lowered the fair market value of the property.

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

The minimum lot size and restrictions on new dwellings do not appear to be exempt regulations.

CONCLUSION

It appears this is a valid claim.

RECOMMENDATION

The County Administrator recommends the Board adopt the attached order to waive the restrictive land use regulations of the F2 and RR5 zones.

**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 (PA06-7000, Johnson3)

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 on behalf of Eva C.E. Johnson and the Alfred G. Johnson Revocable Trust (PA06-7000, Johnson3), the owner of real property described in the records of the Lane County Assessor as map17-11-30, tax lots 700 and 800, consisting of approximately 19 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, 2006, the Board conducted a public hearing on the Measure 37 claim (PA06-7000) of Eva C.E. Johnson and The Alfred G. Johnson Revocable Trust, and has now determined that the restrictive F2 (Impacted Forest) 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 Eva C.E. Johnson from developing her property as might have been allowed at the time it was acquired in part on October 6, 1945, and in entirety on December 2, 1953 and that the public benefit from application of the current F2 and RR5 dwelling and division land use

regulations to the applicants' property is outweighed by the public burden of paying just compensation; and

WHEREAS, Eva C.E. Johnson requests up to \$1,300,000 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 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 Eva C.E. Johnson 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 applicants Eva C.E. Johnson 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 Eva C.E. Johnson 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) and RR5 (Rural Residential) zone shall not apply to Eva C.E. Johnson, so she can make application for approval to develop the property located at 89260 Dahlin Road, Florence, OR and more specifically described in the records of the Lane County Assessor as map 17-11-30 tax lots 700 and 800, consisting of approximately 19 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 October 6, 1945 and on December 2, 1953.

IT IS HEREBY FURTHER ORDERED Eva C.E. Johnson 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 Eva C.E. Johnson 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 Eva C.E. Johnson 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 (PA06-7004, Johnson4)

BACKGROUND

Applicant: Donald Ray Johnson & Imogene I. Johnson

Current Owner: Donald Ray Johnson & Imogene I. Johnson

Agent: Corinne L. Johnson & Patti J. Johnson

Map and Tax lot(s): 18-02-30-0 #400

Acreage: Approximately 7 acres

Current Zoning: RR5 (Rural Residential), /FP (Floodplain Combining), (Greenway Development Permit)

Date Property Acquired: July 2, 1953 - property acquired (WD #73598)
November 20, 1996 – property transferred to
The Johnson Living Trust (WD #9678805)

Date claim submitted: November 17, 2006

180-day deadline: May 16, 2007

Land Use Regulations in Effect at Date of Acquisition: Unzoned

Restrictive County land use regulation: Minimum parcel size of five acres 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 owners are Donald Ray Johnson & Imogene I. Johnson. Donald and Imogene acquired an interest in the property on July 2, 1953 (WD #73598). At that time, the property was unzoned. Currently, the property is zoned RR5.

In 1996, the property was placed into The Johnson Living Trust (WD #9678805). The Trust is considered a new owner but because it is revocable and Donald and Imogene are the Trustees, their ownership interests are 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 owners. The minimum lot size requirements of the RR5 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 \$890,000, 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.

LC10.130 - These provisions only apply to those RR (Rural Residential) zoned properties within the Urban Growth Boundaries of a city and are not applicable to the subject property.

LC10.332 - These provisions only apply to Greenway Development Permit 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.

LC16.231 - These provisions only apply to non-resource RR (Rural Residential) zoned properties and are not applicable to the subject property.

LC16.244 - These provisions apply only to federally designated special flood hazard areas and are exempt regulations as defined by LC 2.710 (2).

LC 16.254 - These provisions apply only to those portions of the subject property within the Willamette Greenway. The applicant has failed to demonstrate how these provisions 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 requirements do not appear to be exempt regulations.

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

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.