

**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 (PA06-7004, Johnson4)

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 Donald Ray Johnson and Imogene I. Johnson (PA06-7004, Johnson 4), the owners of real property described in the records of the Lane County Assessor as map18-02-30, tax lot 400, 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 (PA06-7004) of Donald Ray Johnson and Imogene I. Johnson and has now determined that the restrictive RR5 (Rural Residential) land division requirements of LC 16.290 were enforced and made applicable to prevent Donald Ray Johnson and Imogene I. Johnson from developing their property as might have been allowed at the time it was acquired on July 2, 1953 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, Donald Ray Johnson and Imogene I. Johnson request up to \$890,000 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 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 Donald Ray Johnson and Imogene I. Johnson 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 Donald Ray Johnson and Imogene I. 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 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 Donald Ray Johnson and Imogene I. Johnson shall be granted and the restrictive provisions of LC 16.290 that limit the development of dwellings and the division of land in the RR5 (Rural Residential) zone shall not apply to Donald Ray Johnson and Imogene I. Johnson, so they can make application for approval to develop the property located at 34045 Mathews Rd, Eugene, OR and more specifically described in the records of the Lane County Assessor as map18-02-30, tax lot 400, 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 July 2, 1953.

IT IS HEREBY FURTHER ORDERED Donald Ray Johnson and Imogene I. 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 by Donald Ray Johnson and Imogene I. 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 Donald Ray Johnson and Imogene I. 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 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 3-14-2007 Lane County

OFFICE OF LEGAL COUNSEL

Memo Date: March 12, 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 (PA06-7325, Lamb2)

BACKGROUND

Applicant: Donald L. Lamb

Current Owner: Donald L. Lamb

Agent: none

Map and Tax lot: 18-12-02, #203

Acreage: 18.74 acres

Current Zoning: F-2 (Impacted Forest Land) and NR (Natural Resource)

Date Property Acquired: March 10, 2004 (WD 040026277)

Date claim submitted: December 4, 2006

180-day deadline: June 2, 2007

Land Use Regulations in Effect at Date of Acquisition: F-2 and NR

Restrictive County land use regulation: Minimum parcel size of eighty acres and limitations on new dwellings in the F-2 (Impacted Forest Land) zone (LC 16.211) and the NR (Natural Resource) zone (LC 16.239).

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 L. and Mary Ann N. Lamb. Donald and Mary originally acquired an interest in the property on April 14, 1986, when it was zoned F-2 and NR. In 1995, they transferred their interest in the property by Warranty Deed to Lamb-Quade, a Partnership (WD 9514874). On March 10, 2004, Lamb-Quade, a Partnership, conveyed the property interest back to Donald L. and Mary Ann N. Lamb (WD 040026277). As a result the above transfers created a new date of acquisition for the current owner. On March 10, 2004, the property was zoned F-2 and NR and has not changed.

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

The zoning of the property was F-2 and NR when the property was originally acquired in 1986. At that time, the current minimum lot size and dwelling restrictions were applicable.

The current zoning regulations of F-2 and NR are the same as when the current owners acquired an interest in the property. Therefore, they do not prevent the current owners from developing the property as could have been allowed when they first acquired it. Specifically, the minimum lot size and dwelling restrictions have not changed since the applicants acquired an interest in the property. No other regulations are alleged to reduction the fair market value. The claimant alleges a reduction in fair market value of \$1,800,000, but has not submitted any competent evidence to support that statement. The County Administrator has not waived the requirement for an appraisal.

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

The applicant has failed to demonstrate that a restrictive land use regulation has been enacted since they acquired an interest in the property.

CONCLUSION

It appears the date of acquisition by the current owner is March 10, 2004. The applicant believes the date of acquisition is April 14, 1986. However, it appears this is not a valid claim because the minimum lot size and dwelling restrictions were applicable on both dates.

RECOMMENDATION

The County Administrator recommends the Board direct him to deny the claim.

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



TO: Board of County Commissioners

DEPARTMENT: Public Works Dept./Land Management Division

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

AGENDA ITEM TITLE: In the Matter of Considering a Ballot Measure 37 Claim and Deciding Whether to Modify, Remove or Not Apply Restrictive Land Use Regulations in Lieu of Providing Just Compensation (PA06-7013, Lopes)

BACKGROUND

Applicant: Gloria S. Lopes

Current Owner: Gloria Small Lopes Revocable Living Trust

Agent: Norm Waterbury

Map and Tax lot: 15-05-34 tax lot #201

Acreage: approximately 343 acres

Current Zoning: E40 (Exclusive Farm Use)

Date Property Acquired: September 19, 1978 (WD # 49295)

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 forty acres and limitations on new dwellings in the E40 (Exclusive Farm Use) zone (LC 16.212).

ANALYSIS

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

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

The current owner is the Gloria N. Small Lopes Revocable Living Trust, which was created on November 4, 2004 (WD # 85253). Gloria N. Small acquired an ownership interest in the property on September 19, 1978, through a land sales contract (#63941). The land sales contract was fulfilled and the ownership was conveyed in 1989 as evidence by Warranty Deed (#49295). The Gloria N. Small Lopes Trust is not considered a new owner because it is revocable and Gloria is the trustee. As a result, the ownership interest of Gloria S. Lopes is continued from 1978. Currently, the property is zoned E40.

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

The property was unzoned when it was acquired by the current owner. The minimum lot size and limitations on new dwellings in the E40 zone prevents the current owner from developing the property as could have been allowed when she acquired it. The alleged reduction in fair market value is \$2,400,000, based on the submitted appraisal.

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

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

CONCLUSION

It appears this is a valid claim.

RECOMMENDATION

The County Administrator recommends the Board adopt the attached order to waive the restrictive land use regulations.

**BEFORE THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY,
OREGON**

ORDER No.) IN THE MATTER OF CONSIDERING A BALLOT
) MEASURE 37 CLAIM AND DECIDING
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) REGULATIONS IN LIEU OF PROVIDING JUST
) COMPENSATION (Lopes/PA06-7013)

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 Gloria S. Lopes (PA06-7013), the owner of real property located at 27288 Cox Butte Road, Junction City, and more specifically described in the records of the Lane County Assessor as map 15-05-34, tax lot 201, consisting of approximately 343 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 (PA06-7013) of Gloria S. Lopes and has now determined that the restrictive E40 (Exclusive Farm Use) zone dwelling and land division requirements of LC 16.212 were enforced and made applicable to prevent Gloria S. Lopes from developing the property as might have been allowed at the time she acquired an interest in the property on September 19, 1978, and that the public benefit from application of the current E40 dwelling and division land use regulations to the applicant's property is outweighed by the public burden of paying just compensation; and

WHEREAS, Gloria S. Lopes requests either \$2,400,000 as compensation for the reduction in value of her property, or waiver of all land use regulations that would restrict the division of land into lots containing less than forty acres and placement of a dwelling on each lot, uses that could have otherwise been allowed at the time she acquired an interest in the property; and

WHEREAS, the Board finds that under LC 2.760(3) the public interest would be better served by modifying, removing or not applying the challenged land use regulations of the E40 zone to the subject property in the manner and for the reasons stated in the report and recommendation of the County Administrator incorporated here by this reference except as explicitly revised here to reflect Board deliberation and action to allow Gloria S. Lopes 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 Gloria S. Lopes 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 Gloria S. Lopes shall be granted and the restrictive provisions of LC 16.212 that limit the development of dwellings and the division of land in the E40 (Exclusive Farm Use) Zone shall not apply to Gloria S. Lopes, so she can make application for approval to develop the property located at 27288 Cox Butte Road, Junction City, and more specifically described in the records of the Lane County Assessor as map 15-05-34, tax lot 201, consisting of approximately 343 acres in Lane County, Oregon, in a manner consistent with the land use regulations in effect when she acquired an interest in the property on September 19, 1978.

IT IS HEREBY FURTHER ORDERED that Gloria S. Lopes 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.

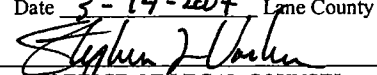
IT IS HEREBY FURTHER ORDERED that this action making certain Lane Code provisions inapplicable to use of the property by Gloria S. Lopes does not constitute a waiver or modification of state land use regulations and does not authorize immediate division of the subject property or immediate construction 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 3-14-2007 Lane County

OFFICE OF LEGAL COUNSEL

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



TO: Board of County Commissioners

DEPARTMENT: Public Works Dept./Land Management Division

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

AGENDA ITEM TITLE: In the Matter of Considering a Ballot Measure 37 Claim and Deciding Whether to Modify, Remove or Not Apply Restrictive Land Use Regulations in Lieu of Providing Just Compensation (PA06-7074, Mchugill)

BACKGROUND

Applicant: Aleene Mchugill

Current Owner: Aleene Mchugill

Agent: Norm Waterbury

Map and Tax lot(s): 20-03-29.3.3, tax lot 1300

Acreage: 3.56 acres

Current Zoning: RR (Rural Residential) -- inside the urban growth boundary of Cottage Grove.

Date Property Acquired: April 2, 1947 (Warranty Deed, Book 346, Page 571)

Date claim submitted: November 24, 2006

180-day deadline: May 23, 2007

Land Use Regulations in Effect at Date of Acquisition: unzoned

Restrictive County land use regulation: Minimum parcel size of five acres and limitations on new dwellings in the RR (Rural Residential) zone (LC 10.130).

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 Areene Mchugill. She acquired an interest in the property on April 2, 1947, when it was unzoned (WD, Book 346, Page 571). Currently, the property is zoned RR with a five-acre minimum lot size.

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 RR 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 \$145,500, 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 RR (LC 10.130) zone.

**BEFORE THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY,
OREGON**

ORDER No.

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) APPLY RESTRICTIVE LAND USE
) REGULATIONS IN LIEU OF PROVIDING JUST
) COMPENSATION (PA 06-7074, Mchugill)

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 Aleene Mchugill, the owner of real property located at 31782 Gowdyville Road, within the urban growth boundary of the incorporated city of Cottage Grove, Oregon, and more specifically described in the records of the Lane County Assessor as map 20-03-29-33, tax lot 1300, consisting of approximately 3.56 acres in Lane County, Oregon; and

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

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

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

WHEREAS, on March 20, 2007, the Board conducted a public hearing on the Measure 37 claim (PA 06-7074) of Aleene Mchugill, and has now determined that the restrictive RR (Rural Residential) zone dwelling and land division requirements of LC 10.130 were enforced and made applicable to prevent Aleene Mchugill from developing the property as might have been allowed at the time she acquired an interest in the property on April 2, 1947, and that the public benefit from application of the current RR dwelling and division land use regulations to the applicant's property is outweighed by the public burden of paying just compensation; and

WHEREAS Aleene Mchugill requests either \$145,500 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 five acres respectively and placement of a dwelling on each lot, uses that could have otherwise been allowed at the time she acquired an interest in the 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 RR 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 Aleene Mchugill 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 Aleene Mchugill 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 Aleene Mchugill shall be granted and the restrictive provisions of LC 10.130 that limit the development of dwellings and the division of land in the RR (Rural Residential) Zone shall not apply to Aleene Mchugill, so she can make application for approval to develop the property located at 31782 Gowdyville Road, within the urban growth boundary of the incorporated city of Cottage Grove, Oregon, and more specifically described in the records of the Lane County Assessor as map 20-03-29.3.3, tax lot 1300, consisting of approximately 3.56 acres in Lane County, Oregon, in a manner consistent with the land use regulations in effect when she acquired an interest in the property on April 2, 1947.

IT IS HEREBY FURTHER ORDERED that Aleene Mchugill still need to make application and receive approval of any division of the property or placement of a dwelling under the other land use regulations applicable to dividing the property or placing a dwelling that were not specifically identified or established by them as restricting the division of the property or placement of a dwelling, and it would be premature to not apply those regulations given the available evidence. To the extent necessary to effectuate the Board action to not apply the dwelling or division restrictions of the applicable zone described above, the claimant shall submit appropriate applications for review and approval of a new dwelling to show the specific development proposals and in the event additional county land use regulations result in a restriction of those uses that have the effect of reducing the fair market value of the property, the County Administrator shall have the authority to determine those restrictive county land use regulations that will not apply to that development proposal to preclude entitlement to just compensation under Measure 37, and return to the Board for action, if necessary. All other Lane Code land use and development regulations shall remain applicable to the subject property until

such time as they are shown to be restrictive and that those restrictions reduce the fair market value of the subject property.

IT IS HEREBY FURTHER ORDERED that this action making certain Lane Code provisions inapplicable to use of the property by Aleene Mchugill 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.

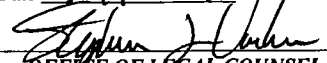
IT IS HEREBY FURTHER ORDERED that the other county land use regulations and rules that still apply to the property require that land use, sanitation and building permits be approved by Lane County before any development can proceed. Notice of this decision shall be recorded in the county deed records. 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 3-14-2007 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 (PA06-7082, McKee)

BACKGROUND

Applicant: Carl J. and Lois M. McKee

Current Owner: Carl J. and Lois M. McKee

Agent: Scott McKee

Map and Tax lot: 18-02-34, #4200

Acreage: 29.4 acres

Current Zoning: E-40 (Exclusive Farm Use)

Date Property Acquired: June 17, 1971, approximately 24 acres (WD 53220)
June 30, 1971, approximately 10 acres (WD 53221)

Date claim submitted: November 27, 2007

180-day deadline: May 26, 2007

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

Restrictive County land use regulation: Minimum parcel size of forty acres and limitations on new dwellings in the E-40 (Exclusive Farm Use) zone (LC 16.212).

ANALYSIS

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

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

The current owners are Carl J. and Lois M. McKee. They acquired an interest in the property on June of 1971 in two transactions. On June 17, 1971, they acquired the first portion of the property consisting of approximately 24 acres. On June 30, 1971, they acquired an adjacent property consisting of approximately 10 acres, making a total of approximately 34.6 acres. At this time, these properties were zoned AGT. In May of 1977, they subdivided and sold off a 5 acre parcel, leaving approximately 29.6 acres. In June, 1977, they dedicated 0.4 acres frontage along Bristow Road to the County. Finally, in January, 1991, they granted 0.1 acres frontage along Enterprise Road to the County, leaving the current property size of approximately 29.4 acres. Currently, the property is zoned E-40.

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 the current owners. At that time, the minimum lot size was one acre and dwellings were not restricted. The forty acre minimum lot size and limitations on new dwellings in the E-40 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 \$876,300, based on the submitted appraisal.

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

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

CONCLUSION

It appears this is a valid claim.

RECOMMENDATION

The County Administrator recommends the Board adopt the attached order to waive the restrictive land use regulations.

**BEFORE THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY,
OREGON**

ORDER No.

) IN THE MATTER OF CONSIDERING A BALLOT
) MEASURE 37 CLAIM AND DECIDING
) WHETHER TO MODIFY, REMOVE OR NOT
) APPLY RESTRICTIVE LAND USE
) REGULATIONS IN LIEU OF PROVIDING JUST
) COMPENSATION (McKee/PA06-7082)

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 Carl and Lois McKee (PA06-7082), the owner of real property located at 84529 Bristow Road, Pleasant Hill, and more specifically described in the records of the Lane County Assessor as map 18-02-34, tax lot 4200, consisting of approximately 29 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 (PA06-7082) of Carl and Lois McKee and has now determined that the restrictive E-40 (Exclusive Farm Use) zone dwelling and land division requirements of LC 16.212 were enforced and made applicable to prevent Carl and Lois McKee from developing the property as might have been allowed at the time they acquired an interest in the property on June 17 and June 30, 1971, and that the public benefit from application of the current E-40 dwelling and division land

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

WHEREAS, Carl and Lois McKee request either \$876,300 as compensation for the reduction in value of her property, or waiver of all land use regulations that would restrict the division of land into lots containing less than forty acres and placement of a dwelling on each lot, uses that could have otherwise been allowed at the time they acquired an interest in the property; and

WHEREAS, the Board finds that under LC 2.760(3) the public interest would be better served by modifying, removing or not applying the challenged land use regulations of the E-40 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 Carl and Lois McKee to make application for development of the subject property in a manner similar to what they could have been able to do under the regulations in effect when they acquired an interest in the property; and

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

NOW, THEREFORE IT IS HEREBY ORDERED that the applicant Carl and Lois McKee 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 Carl and Lois McKee 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-40 (Exclusive Farm Use) Zone shall not apply to Carl J. and Lois M. McKee, so they can make application for approval to develop the property located at 84529 Bristow Road, Pleasant Hill, and more specifically described in the records of the Lane County Assessor as map 18-02-34, tax lot 4200, consisting of approximately 29.4 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 June 17 and June 30, 1971.

IT IS HEREBY FURTHER ORDERED that Carl J. and Lois M. McKee still need to make application and receive approval of any division of the property or placement of a dwelling under the other land use regulations applicable to dividing the property or placing a dwelling that were not specifically identified or established by them as restricting the division of the property or placement of a dwelling, and it would be premature to not apply those regulations given the available evidence. To the extent necessary to effectuate the Board action to not apply the dwelling or division restrictions of the applicable zone described above, the claimant shall submit appropriate applications for review and approval of a new dwelling to show the specific development proposals and in the event additional county land use regulations result in a restriction of those uses that have the effect of reducing the fair market value of the property, the County Administrator shall have the authority to determine those restrictive county land use regulations that will not apply to that development proposal to preclude entitlement to just compensation under Measure 37, and return to the Board for action, if necessary. All other Lane Code land use and development regulations shall remain applicable to the subject property until

such time as they are shown to be restrictive and that those restrictions reduce the fair market value of the subject property.

IT IS HEREBY FURTHER ORDERED that this action making certain Lane Code provisions inapplicable to use of the property by Carl J. and Lois M. McKee do 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 3-14-2007 Lane County

OFFICE OF LEGAL COUNSEL

Memo Date: March 12, 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 (PA06-7326, McVey)

BACKGROUND

Applicant: Harold F. McVey
Current Owner: Harold F. McVey
Agent: none
Map and Tax lot(s): 19-01-28, #2900
Acreage: 8 acres
Current Zoning: RR-10 (Rural Residential)
Date Property Acquired: December 24, 1974 (WD #7453960)
Date claim submitted: December 4, 2006
180-day deadline: June 2, 2006
Land Use Regulations in Effect at Date of Acquisition: unzoned
Restrictive County land use regulation: Minimum parcel size of ten acres in the RR-10 (Rural Residential) zone (LC 16.290).

ANALYSIS

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

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

The current owner is Harold F. McVey. Harold F. McVey acquired an interest in the property from his parents on December 24, 1974, when it was unzoned. The property has been owned by the family since 1955. Currently, the property is zoned RR-10.

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

The property was unzoned when it was acquired by the current owner. The minimum lot size in the RR-10 zone prevents the current owners from developing the property as could have been allowed when they acquired an interest in it. The alleged reduction in fair market value is \$214,000 as evidenced by a Comparative Market Analysis prepared by a real estate broker.

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

LC10.130-42 – 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.

LC10.300 – These are the lot area and setback provisions that only apply to properties located within the Urban Growth Boundaries of a city and are not applicable to the subject property.

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

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

CONCLUSION

It appears this is a valid claim.

RECOMMENDATION

The County Administrator recommends the Board adopt the attached order to waive the restrictive land use regulations of the RR10 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 (McVey/ PA06-7326).

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

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

WHEREAS, the County Administrator has reviewed an application for a Measure 37 claim submitted by Harold F. McVey (PA06-7326), the owner of real property described in the records of the Lane County Assessor as map 19-01-28, tax lot 2900, consisting of approximately 8 acres in Lane County, Oregon; and

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

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

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

WHEREAS, on March 20, 2007, the Board conducted a public hearing on the Measure 37 claim (PA06-7326) of Harold F. McVey and has now determined that the restrictive RR10 (Rural Residential) zone dwelling and land division requirements of LC 16.290 were enforced and made applicable to prevent Harold F. McVey from developing the property as might have been allowed on December 24, 1974, the date he acquired an interest in the property, and that the public benefit from application of the restrictive RR10 regulations to the applicant's property is outweighed by the public burden of paying just compensation; and

WHEREAS, Harold F. McVey request either \$214,000 as compensation for the reduction in value of the property, or waiver of all land use regulations that would prevent the division of the land into lots that contain less than 10 acres and placement of a dwelling on each lot, uses that could have otherwise been allowed at the time the McVey family acquired an interest in the property; and

WHEREAS, the Board finds that under LC 2.760(3) the public interest would be better served by modifying, removing or not applying the challenged land use regulations of the RR10 zone to the subject property in the manner and for the reasons stated in the report and recommendation of the County Administrator incorporated here by this reference except as explicitly revised here to reflect Board deliberation and action to allow Harold F. McVey to make application for development of the subject property in a manner similar to what he could have been able to do under the regulations in effect when he acquired an interest in the property on December 24, 1974; and

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

NOW, THEREFORE IT IS HEREBY ORDERED that the applicant Harold F. McVey 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 McVey 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 Harold F. McVey shall be granted and the restrictive provisions of LC 16.290 shall not apply to Harold F. McVey, so that he can make application for approval to develop the property described in the records of the Lane County Assessor as map 19-01-28, tax lot 2900, in a manner consistent with the land use regulations in effect when he acquired an interest in the property on December 24, 1974.

IT IS HEREBY FURTHER ORDERED that Harold F. McVey will still need to make application and receive approval of any division of the property or placement of a dwelling under the other land use regulations applicable to dividing the property or placing a dwelling that were not specifically identified or established by him as restricting the division of the property or placement of a dwelling, and it would be premature to not apply those regulations given the available evidence. To the extent necessary to effectuate the Board action to not apply the dwelling or division restrictions of the applicable zone described above, the claimant shall submit appropriate applications for review and approval of a new dwelling to show the specific development proposal 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 Harold F. McVey does not constitute a waiver or modification of state land use regulations and does not authorize 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 applicants to divide or build dwellings can be transferred to another owners. 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 3-14-2007 Lane County

Stephen H. Hahn
OFFICE OF LEGAL COUNSEL

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



TO: Board of County Commissioners

DEPARTMENT: Public Works Dept./Land Management Division

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

AGENDA ITEM TITLE: In the Matter of Considering a Ballot Measure 37 Claim and Deciding Whether to Modify, Remove or Not Apply Restrictive Land Use Regulations in Lieu of Providing Just Compensation (PA06-7041, Murray1)

BACKGROUND

Applicant: James L. Murray and Gladys J. Murray

Current Owners: James L. Murray and Gladys J. Murray

Agent: Steve Cornacchia

Map and Tax lot: 17-04-01 tax lot #8100

Acreage: approximately 7 acres

Current Zoning: E30 (Exclusive Farm Use)

Date Property Acquired: March 29, 1973 (WD #13942)

Date Claim Submitted: November 21, 2006

180-day Deadline: May 20, 2007

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

Restrictive County Land Use Regulation: Minimum parcel size of twenty five acres and limitations on new dwellings in the E30 (Exclusive Farm Use) zone (LC 16.212).

ANALYSIS

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

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

The current owners are James L. Murray and Gladys J. Murray. They acquired the property in 1973, when it was zoned AGT (Agriculture, Grazing, Timber Raising). The Murray's have owned the property continuously since March 29, 1973. Currently, the property is zoned E30.

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

The property was zoned AGT when it was acquired by the current owners. The minimum lot size and limitations on new dwellings in the E30 zone prevent the current owners from developing the property into one-acre lots as could have been allowed when they acquired it. The alleged reduction in fair market value is \$580,000, based on the submitted hypothetical scenario 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 E30 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 (Murray1/PA06-7041)

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 L. Murray and Gladys J. Murray (PA06-7041), the owners of real property located north of Beacon Drive, in the Santa Clara area, and more specifically described in the records of the Lane County Assessor as map 17-04-01, tax lot 8100, 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, 2007, the Board conducted a public hearing on the Measure 37 claim (PA06-7041) of James L. Murray and Gladys J. Murray and has now determined that the restrictive E30 (Exclusive Farm Use) zone dwelling and land division requirements of LC 16.212 were enforced and made applicable to prevent James and Gladys Murray from developing the property as might have been allowed at the time they acquired an interest in the property on March 29, 1973, and that the public benefit from application of the current E30 dwelling and

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

WHEREAS, James and Gladys Murray request either \$580,000 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 thirty acres and placement of a dwelling on each lot, uses that could have otherwise been allowed at the time they acquired an interest in the property; and

WHEREAS, the Board finds that under LC 2.760(3) the public interest would be better served by modifying, removing or not applying the challenged land use regulations of the E30 zone to the subject property in the manner and for the reasons stated in the report and recommendation of the County Administrator incorporated here by this reference except as explicitly revised here to reflect Board deliberation and action to allow James and Gladys Murray 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 L. Murray and Gladys J. Murray 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 James L. Murray and Gladys J. Murray shall be granted and the restrictive provisions of LC 16.212 that limit the development of dwellings and the division of land in the E30 (Exclusive Farm Use) Zone shall not apply to James L. Murray and Gladys J. Murray, so they can make application for approval to develop the property located north of Beacon Drive in the Santa Clara area, and more specifically described in the records of the Lane County Assessor as map 17-04-01, tax lot 8100, 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 March 29, 1973.

IT IS HEREBY FURTHER ORDERED that James L. Murray and Gladys J. Murray still need to make application and receive approval of any division of the property or placement of a dwelling under the other land use regulations applicable to dividing the property or placing a dwelling that were not specifically identified or established by them as restricting the division of the property or placement of a dwelling, and it would be premature to not apply those regulations given the available evidence. To the extent necessary to effectuate the Board action to not apply the dwelling or division restrictions of the applicable zone described above, the claimants shall submit appropriate applications for review and approval of a new dwelling to show the specific development proposals and in the event additional county land use regulations result in a restriction of those uses that have the effect of reducing the fair market value of the property, the County Administrator shall have the authority to determine those restrictive county land use regulations that will not apply to that development proposal to preclude entitlement to just compensation under Measure 37, and return to the Board for action, if necessary. All other Lane

Code land use and development regulations shall remain applicable to the subject property until such time as they are shown to be restrictive and that those restrictions reduce the fair market value of the subject property.

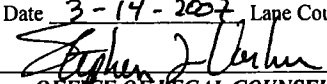
IT IS HEREBY FURTHER ORDERED that this action making certain Lane Code provisions inapplicable to use of the property by James L. Murray and Gladys J. Murray does not constitute a waiver or modification of state land use regulations and does not authorize immediate division of the subject property or 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 3-14-2007 Lane County

OFFICE OF LEGAL COUNSEL