

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



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**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 (PA06-7049, Myers1)

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## **BACKGROUND**

**Applicants:** Lew B. & Billie R. Myers

**Current Owner:** Lew B. Myers. Billie R. Myers is deceased.

**Agent:** Larry Reed, JRH

**Map and Tax lot(s):** 18-04-19 tax lot #2200; 18-04-20 tax lots #200 & 206

**Acreage:** approximately 123 acres

**Current Zoning:** E40 (Exclusive Farm Use)

**Date Property Acquired:** 18-04-19 #2200 – May 25, 1972 (WD #3094)  
18-04-20 #200 - August 7, 1980 (WD # 8927164)  
18-04-20 #206 - March 26, 1973 (WD # 7910349)

**Date claim submitted:** November 22, 2006

**180-day deadline:** May 21, 2007

**Land Use Regulations in Effect at Date of Acquisition:** AGT (Agriculture, Grazing, Timberland) for tax lots #206 & 2200, AGT20 for tax lot #200.

**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 Dr. Lew B. Myers. Dr. Myers and his wife, Billie R. Myers acquired an interest in tax lot #2200 in 1972 (WD #3094), tax lot #206 in 1973 (WD #7910349) and tax lot #200 in 1980 (WD #8927164). Tax lots # 2200 and #206 were zoned AGT (Agriculture, Grazing, Timber Raising) when acquired, and tax lot 200 was zoned AGT20 when acquired. Billie Myers is now deceased. Lew B. Myers has retained interest in the property continuously since the dates of purchase. Currently, the entire property is zoned E40.

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

Tax lots #2200 and #206 were zoned AGT (Agriculture, Grazing, Timber Raising) when they were acquired by the current owner. The minimum lot size and limitations on new dwellings in the E40 zone (LC16.212) prevent the current owner from developing the property as could have been allowed when he acquired an interest. The alleged reduction in fair market value for the entire M37 claim is \$3,046,679, based on the submitted comparative market analysis.

Tax lot 200 was zoned AGT20 when purchased by the Myers on August 6, 1980. Because the minimum lot size and dwelling restrictions were applicable to this tax lot when the current owner acquired the property, any waiver will reflect this minimum lot size requirement.

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

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

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

The minimum lot size and restrictions on new dwellings do not appear to be exempt regulations. The claimant has not identified any other restrictive land use regulations that allegedly reduce the fair market value of the property.

**CONCLUSION**

It appears this is a valid claim.

**RECOMMENDATION**

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

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

**ORDER No.**

) IN THE MATTER OF CONSIDERING A BALLOT  
) MEASURE 37 CLAIM AND DECIDING  
) WHETHER TO MODIFY, REMOVE OR NOT  
) APPLY RESTRICTIVE LAND USE  
) REGULATIONS IN LIEU OF PROVIDING JUST  
) COMPENSATION (Myers/PA06-7049)

**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 Lew B. Myers (PA06-7049), the owner of real property located at 28699 & 28701 Spencer Creek Road, Eugene, and more specifically described in the records of the Lane County Assessor as map 18-04-19, tax lot #2200, 18-04-20, tax lots #200 & #206, consisting of approximately 120 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 (PA06-7049) of Lew B. Myers 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 Lew B. Myers from developing the property as might have been allowed at the time he acquired an interest in the property on May 25, 1972 (tax lot #2200), March 26, 1973 (tax lot # 206), and August 7, 1980 (tax lot #200), 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**, Lew B. Myers request either \$3,046,679 as compensation for the reduction in value of his property, or waiver of all land use regulations that would restrict the division of land into lots containing less than forty acres and placement of a dwelling on each lot, uses that could have otherwise been allowed at the time he acquired an interest in the property; and

**WHEREAS**, the Board finds that under LC 2.760(3) the public interest would be better served by modifying, removing or not applying the challenged land use regulations of the E40 zone to the subject property in the manner and for the reasons stated in the report and recommendation of the County Administrator incorporated here by this reference except as explicitly revised here to reflect Board deliberation and action to allow Lew B. Myers to make application for development of the subject property in a manner similar to what he could have been able to do under the regulations in effect when he acquired an interest in the property; and

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

**NOW, THEREFORE IT IS HEREBY ORDERED** that the applicant Lew B. Myers 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 Lew B. Myers 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 Lew B. Myers, so he can make application for approval to develop the property located at 28699 & 28701 Spencer Creek Road, Eugene, and more specifically described in the records of the Lane County Assessor as map 18-04-19, tax lot #2200, 18-04-20, tax lots #200 & #206, consisting of approximately 120 acres in Lane County, Oregon; in a manner consistent with the land use regulations in effect when he acquired an interest in the property on May 25, 1972 (tax lot #2200), March 26, 1973 (tax lot # 206), and August 7, 1980 (tax lot #200).

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

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

**IT IS HEREBY FURTHER ORDERED** that this action making certain Lane Code provisions inapplicable to use of the property by Lew B. Myers 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.

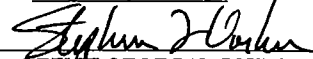
**IT IS HEREBY FURTHER ORDERED** that the other county land use regulations and rules that still apply to the property require that land use, sanitation and building permits be approved by Lane County before any development can proceed. Notice of this decision shall be recorded in the county deed records.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



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**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 (PA06-7014, Nielsen)

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## **BACKGROUND**

**Applicant:** Gordon J. Nielsen

**Current Owner:** Gordon J. Nielsen

**Agent:** Norm Waterbury

**Map and Tax lot:** 16-04-16 tax lots #300 & #517; 16-04-09 tax lot #1900

**Acreage:** approximately 19 acres

**Current Zoning:** E30 (Exclusive Farm Use)

**Date Property Acquired:** March 15, 1973 (WD #7311861)

**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 thirty acres and limitations on new dwellings in the E30 (Exclusive Farm Use) zone (LC 16.212).

## **ANALYSIS**

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

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

The current owner is Gordon J. Nielsen. Mr. Nelson acquired an interest in the property on March 15, 1973, when it was unzoned. Currently, the property is zoned E30.

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

The property was unzoned when it was acquired by the current owner. The minimum lot size and limitations on new dwellings in the E30 zone prevent the current owners from developing the property as could have been allowed when they acquired it.

The alleged reduction in fair market value is \$260,000, based on the submitted appraisal.

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

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

**CONCLUSION**

It appears this is a valid claim.

**RECOMMENDATION**

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

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

**ORDER No.**

) IN THE MATTER OF CONSIDERING A BALLOT  
) MEASURE 37 CLAIM AND DECIDING  
) WHETHER TO MODIFY, REMOVE OR NOT  
) APPLY RESTRICTIVE LAND USE  
) REGULATIONS IN LIEU OF PROVIDING JUST  
) COMPENSATION (Nielsen/PA06-7014)

**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 Gordon J. Nielsen (PA06-7014), the owner of real property located at 92815 Sovern Lane, Junction City, and more specifically described in the records of the Lane County Assessor as map 16-04-16, tax lots 300 & 517, and 16-04-09 tax lot 1900, 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, 2007, the Board conducted a public hearing on the Measure 37 claim (PA06-7014) of Gordon J. Nielsen 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 Gordon J. Nielsen from developing the property as might have been allowed at the time he acquired an interest in the property on March 15, 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**, Gordon J. Nielsen request either \$260,000 as compensation for the reduction in value of his property, or waiver of all land use regulations that would restrict the division of land into lots containing less than thirty acres and placement of a dwelling on each lot, uses that could have otherwise been allowed at the time he acquired an interest in the property; and

**WHEREAS**, the Board finds that under LC 2.760(3) the public interest would be better served by modifying, removing or not applying the challenged land use regulations of the E30 zone to the subject property in the manner and for the reasons stated in the report and recommendation of the County Administrator incorporated here by this reference except as explicitly revised here to reflect Board deliberation and action to allow Gordon J. Nielsen to make application for development of the subject property in a manner similar to what he could have been able to do under the regulations in effect when he acquired an interest in the property; and

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

**NOW, THEREFORE IT IS HEREBY ORDERED** that the applicant Gordon J. Nielsen 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 Gordon J. Nielsen 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 Gordon J. Nielsen, so he can make application for approval to develop the property located at 92815 Sovern Lane, Junction City, and more specifically described in the records of the Lane County Assessor as map 16-04-16, tax lots 300 and 517, and 16-04-09 tax lot 1900, consisting of approximately 19 acres in Lane County, Oregon, in a manner consistent with the land use regulations in effect when he acquired an interest in the property on March 15, 1973.

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

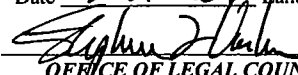
**IT IS HEREBY FURTHER ORDERED** that this action making certain Lane Code provisions inapplicable to use of the property by Gordon J. Nielsen does not constitute a waiver or modification of state land use regulations and does not authorize immediate division of the subject property or immediate construction 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 23, 2007  
**Hearing Date:** March 20, 2007



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**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 (PA06-7079, Peters)

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### **BACKGROUND**

**Applicant:** C. W. Peters Revocable Living Trust (Charles W. Peters and Susan Templeton, trustees)

**Current Owner:** C. W. Peters Revocable Living Trust

**Agent:** Norm Waterbury LLC

**Map and Tax lot(s):** 18-04-06, tax lot 311

**Acreage:** 81.28 acres

**Current Zoning:** F2 Impacted Forest Land: Approximately two-thirds of the property is within the Metro Plan Boundary and one-third is in the Rural area.

**Date Property Acquired:** May 10, 1973 (Memorandum of Agreement, 638R, # 7321823 - C.W. Peters)

**Date claim submitted:** November 27, 2006

**180-day deadline:** May 26, 2007

**Land Use Regulations in Effect at Date of Acquisition:** AGT (Ordinance 61-012, April 28, 1961) LC 10.110.

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

### **ANALYSIS**

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

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

The current owner of the subject property is the Charles William Peters Revocable Living Trust (Warranty Deed, 2005-009369) with Charles William Peters and Susan M. Templeton as Trustees. Charles William Peters (C. W. Peters) originally acquired an interest in the property on May 10, 1973, when it was zoned AGT (Memorandum of Agreement, 638R, 7321823). The Trust is not considered a new owner because it is revocable and Charles William Peters is one of the two Trustees. As a result, the ownership interest of Charles William Peters is continued. Currently, the property is zoned F2.

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

The property was zoned AGT when it was acquired by Charles William Peters in 1973. The minimum lot size and limitations on new dwellings in the F2 zone prevent the current owner from developing the property as could have been allowed when he acquired it. The alleged reduction in fair market value is \$1,480,000, based on the submitted appraisal.

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

LC10.104-40 – 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.

**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 (PA 06-7079, Peter)

**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 Charles William Peters Revocable Living Trust, the owner of real property located at 87525 Cherry Ridge Road, west of Oak Hill Road and south of Cantrell Road West, and southwest of the incorporated city of Eugene, Oregon, and more specifically described in the records of the Lane County Assessor as map 18-04-06, tax lot 311, consisting of approximately 81.28 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 06-7079) of the Charles William Peters Revocable Living Trust, and has now determined that the restrictive F2 (Impacted Forest Land) zone, dwelling and land division requirements of LC 16.211 were enforced and made applicable to prevent Charles William Peters from developing the property as might have been allowed at the time he acquired an interest in the property on May 10, 1973, 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** Charles William Peters Revocable Living Trust requests either \$1,480,000 as compensation for the reduction in value of his property, or waiver of all land use regulations that would restrict the division of land into lots containing less than eighty acres respectively, and placement of a dwelling on each lot, uses that could have otherwise been allowed at the time he acquired an interest in the property; and

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

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

**NOW, THEREFORE IT IS HEREBY ORDERED** that the applicant Charles William Peters Revocable Living Trust 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 Charles William Peters shall be granted and the restrictive provisions of LC 16.211 that limit the development of dwellings and the division of land in the F2 (Impacted Forest Land) Zone shall not apply to Charles William Peters, so he can make application for approval to develop the properties located at 87525 Cherry Ridge Road, west of Oak Hill Road and south of Cantrell Road West, and southwest of the incorporated city of Eugene, Oregon, and more specifically described in the records of the Lane County Assessor as map 18-04-06, tax lot 311, consisting of approximately 81.28 acres in Lane County, Oregon, in a manner consistent with the land use regulations in effect when he acquired an interest in the properties on May 10 , 1973.

**IT IS HEREBY FURTHER ORDERED** that Charles William Peters 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 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 Charles William Peters 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



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**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 (PA06-7324, Piper)

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### **BACKGROUND**

**Applicant:** Barbara A. Piper, Trustee of Piper Living Trust  
**Current Owner:** Barbara A. Piper, Trustee of Piper Living Trust  
**Agent:** Laura Johnson  
**Map and Tax lot:** 17-05-18, #1700  
**Acreage:** 7.75 acres  
**Current Zoning:** RR-5 (Rural Residential)  
**Date Property Acquired:** April 10, 1956 (WD 82217)  
**Date claim submitted:** December 4, 2006  
**180-day deadline:** June 2, 2007  
**Land Use Regulations in Effect at Date of Acquisition:** unzoned  
**Restrictive County land use regulation:** Minimum parcel size of five acres in the RR-5 (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 the Piper Living Trust. Barbara Piper acquired an interest in the property on April 10, 1956, when it was unzoned. The property was placed into the



Piper Living Trust in 1997. The Trust is considered a new owner, but because it is revocable and Barbara Piper is the Trustee, the ownership interest of Barbara Piper is continued. Currently, the property is zoned RR-5.

**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 Barbara Piper. The minimum lot size in the RR-5 zone prevent Barbara Piper from developing the property as could have been allowed when it was acquired. The alleged reduction in fair market value is \$510,000, 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 does 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 (Piper/PA06-7324)

**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 Barbara A. Piper (PA06-7324), the owner of real property located at 89784 Territorial Road, Elmira, and more specifically described in the records of the Lane County Assessor as map 17-05-18, tax lot 1700, consisting of approximately 7.75 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 (PA06-7324) of Barbara A. Piper and has now determined that the restrictive RR-5 (Rural Residential) zone land division requirements of LC 16.290 were enforced and made applicable to prevent Barbara A. Piper from developing the property as might have been allowed at the time she acquired an interest in the property on April 10, 1956, and that the public benefit from application of the current RR-5 land division regulations to the applicant's property is outweighed by the public burden of paying just compensation; and

**WHEREAS**, Barbara A. Piper requests either \$510,000 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 five 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 RR-5 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 Barbara A. Piper 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 Barbara A. Piper 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 Barbara A. Piper shall be granted and the restrictive provisions of LC 16.290 that limit the division of land in the RR-5 (Residential) Zone shall not apply to Barbara A. Piper, so she can make application for approval to develop the property located at 89784 Territorial Road, Elmira, and more specifically described in the records of the Lane County Assessor as map 17-05-18, tax lot 1700, consisting of approximately 7.75 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 10, 1956.

**IT IS HEREBY FURTHER ORDERED** that Barbara A. Piper 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.

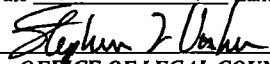
**IT IS HEREBY FURTHER ORDERED** that this action making certain Lane Code provisions inapplicable to use of the property by Barbara A. Piper does not constitute a waiver or modification of state land use regulations and does not authorize immediate division of the subject property or immediate construction 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



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**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 (PA06-7064, Weeldreyer)

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### **BACKGROUND**

**Applicant:** Lois Weeldreyer, Trustee of the Lois S. Weeldreyer Trust

**Current Owner:** Lois S. Weeldreyer Trust

**Agent:** Michael M. Reeder

**Map and Tax lot(s):** 21-04-01, tax lot 2500

**Acreage:** 7.29 acres

**Current Zoning:** Impacted Forest Land F2

**Date Property Acquired:** February 3, 1955, (WD, Reel 55D, #51654)

**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 eighty acres and limitations on new dwellings in the F2 (Impacted Forest Land) zone (LC 16.211).

### **ANALYSIS**

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

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

The current owner is the Lois S. Weeldreyer Trust (a revocable trust) and Lois S. Weeldreyer is the trustee. Lois S Weeldreyer acquired an interest in the property on February 3, 1955, when it was unzoned (WD, Reel 55D, #51654). Currently, the property is zoned F2.

On September 24, 1991, the property was placed the property into a Trust. The Trust is considered a new owner, but because it is revocable and Lois is the Trustee, the ownership interest of Lois is continued.

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

The property was unzoned when it was acquired by the current owner. The minimum lot size and limitations on new dwellings in the F2 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 \$210,000, 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 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 (PA 06-7064, Weeldreyer)

**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 Lois S. Weeldreyer, the owner of real property located south at 30713 Kenady Lane, southwest of the incorporated city of Cottage Grove, Oregon, and more specifically described in the records of the Lane County Assessor as map 21-04-01, tax lot 2500, consisting of approximately 7.29 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 (PA 06-7064) of Lois S. Weeldreyer, and has now determined that the restrictive F2 (Impacted Forest Land) zone, dwelling and land division requirements of LC 16.211 were enforced and made applicable to prevent Lois S. Weeldreyer from developing the property as might have been allowed at the time she acquired an interest in the property on February 3, 1955, 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** Lois S. Weeldreyer requests either \$210,000 as compensation for the reduction in value of her property, or waiver of all land use regulations that would prevent the division of land into lots containing less than eighty acres and placement of a dwelling on each lot, uses that could have otherwise been allowed at the time 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 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 Lois S. Weeldreyer to make application for development of the subject property in a manner similar to what she could have been able to do under the regulations in effect when she acquired an interest in the properties; and

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

**NOW, THEREFORE IT IS HEREBY ORDERED** that the applicant Lois S. Weeldreyer 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 Lois S. Weeldreyer shall be granted and the restrictive provisions of LC 16.211 that limit the development of dwellings and the division of land in the F2 (Impacted Forest Land) Zone shall not apply to Lois S. Weeldreyer, so she can make application for approval to develop the properties located at 30713 Kenady Lane, southwest of the incorporated city of Cottage Grove, Oregon, and more specifically described in the records of the Lane County Assessor as map 21-04-01, tax lot 2500, consisting of approximately 7.92 acres in Lane County, Oregon, in a manner consistent with the land use regulations in effect when she acquired an interest in the properties on February 3, 1955.

**IT IS HEREBY FURTHER ORDERED** that Lois S. Weeldreyer 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.



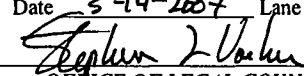
**IT IS HEREBY FURTHER ORDERED** that this action making certain Lane Code provisions inapplicable to use of the property by Lois S. Weeldreyer does not constitute a waiver or modification of state land use regulations and does not authorize immediate division of the subject property or immediate construction 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 23, 2007  
**Hearing Date:** March 20, 2007



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**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 (PA06-7078, Wickwire)

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## **BACKGROUND**

**Applicant:** Mark and Donna Wickwire

**Current Owner:** Mark and Donna Wickwire

**Agent:** Norm Waterbury

**Map and Tax lot(s):** 16-04-04, tax lots 2600 and 2601

**Acreage:** 19.86 acres (2601) and 0.58 of an acre (2600)

**Current Zoning:** 16-04-04, tax lot 2600 – RR5 Rural Residential (0.58 ac.)

16-04-04, tax lot 2601 – E30 Exclusive Farm Use (19.86 ac.)

**Date Property Acquired:** Mark Andrew Wickwire and Donna Marie Wickwire – September 8, 1988 (Bargain and Sale Deed, 1535R, 8838905).

**Date claim submitted:** November 27, 2006

**180-day deadline:** May 26, 2007

**Land Use Regulations in Effect at Date of Acquisition:**

16-04-04, tax lots 2600 – RR5 Rural Residential ; and

16-04-04, tax lots 2601 – E30 Exclusive Farm Use

**Restrictive County land use regulation:** Minimum parcel size of thirty acres and limitations on new dwellings in the E30 (Exclusive Farm Use) zone (LC 16.212), and minimum parcel size of five acres and limitations on new dwellings in the RR5 (Rural Residential) zone (LC 16.290).

## **ANALYSIS**

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

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

The original family member to own the subject property was Harold L. Wickwire. Harold acquired an interest in the property on October 18, 1945 (Bargain and Sale Deed, Book 303, page 363) when it was unzoned. Harold has not held any interest in the subject property since December 30, 1988 when he conveyed all of his interests in the property to the applicants.

The applicants, Mark Andrew Wickwire and Donna Marie Wickwire, are members of the Wickwire family as defined by Measure 37 and they acquired an ownership interest in the property on September 8, 1988 (Bargain and Sale Deed, 1535R, 8838905) when it was zoned E30 (16-04-04, 2601) and RR5 (16-04-04, tax lot 2600). Currently, 16-04-04, tax lot 2601 is zoned E30 and tax lot 2600 is zoned RR5.

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

The property was unzoned when it was acquired by the original family member, Harold L. Wickwire.

The property was zoned E30 and RR5 when it was acquired by the current owners, Mark Andrew Wickwire and Donna Marie Wickwire. The minimum lot size and limitations on new dwellings in the E30 and RR5 zones prevent the Wickwire family from developing the property as could have been allowed when the family acquired an interest in it. The alleged reduction in fair market value is \$285,000, 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, and 40– These provisions only apply to those EFU (Exclusive Farm Use District) zoned property within the Urban Growth Boundaries of a city and are not applicable to the subject property.

LC13.050 (1), (2), (5) and (12) – 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(1), 15.070, 15.137 and 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, but they can not be waived for the current owners because these restrictions were applicable when the current owners acquired an interest in the property on September 8, 1988. The claimant has not identified any other restrictive land use regulations that allegedly reduced the fair market value of the property.

**CONCLUSION**

It appears this is a valid claim. However, the minimum lot size and dwelling restrictions can not be waived for the current owner.

**RECOMMENDATION**

The County Administrator recommends the Board adopt the attached order to waive the restrictive land use regulations of the E30 and RR5 zone to September 8, 1988.

**ORDER No.** ) IN THE MATTER OF CONSIDERING A BALLOT  
 ) MEASURE 37 CLAIM AND DECIDING  
 ) WHETHER TO MODIFY, REMOVE OR NOT  
 ) APPLY RESTRICTIVE LAND USE  
 ) REGULATIONS IN LIEU OF PROVIDING JUST  
 ) COMPENSATION (PA 06-7078, Wickwire)

**WHEREAS**, on March 20, 2007, the Board conducted a public hearing on the Measure 37 claim (PA 06-7078) of Mark Andrew Wickwire and Donna Marie Wickwire, and has now determined that the restrictive E30 (Exclusive Farm Use) and RR (Rural Residential) zones, dwelling and land division requirements of LC 16.212 and LC 16.290 were enforced and made applicable to prevent the Wickwire family from developing the property as might have been allowed at the time they acquired an interest in the properties on October 18, 1945, and that the public benefit

from application of the current E30 and RR dwelling and division land use regulations to the applicant's property is outweighed by the public burden of paying just compensation; and

**WHEREAS** Mark Andrew Wickwire and Donna Marie Wickwire request either \$285,000 as compensation for the reduction in value of their property, or waiver of all land use regulations that would restrict the development of the properties that could have otherwise been allowed at the time they acquired an interest in the properties; and

**WHEREAS**, the Board finds that under LC 2.760(3) the public interest would be better served by modifying, removing or not applying the challenged land use regulations of the E30 and RR zone to the subject properties 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 Mark Andrew Wickwire and Donna Marie Wickwire to make application for development of the subject properties in a manner similar to what they could have been able to do under the regulations in effect when they acquired an interest in the properties; and

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

**NOW, THEREFORE IT IS HEREBY ORDERED** that the applicants Mark Andrew Wickwire and Donna Marie Wickwire 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 Wickwire 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 Mark Andrew Wickwire and Donna Marie Wickwire shall be granted and the restrictive provisions of LC 16.212 and LC 16.290 that limit the development of dwellings and the division of land in the E30 (Exclusive Farm Use) and RR (Rural Residential) Zones shall not apply to Mark Andrew Wickwire and Donna Marie Wickwire, so they can make application for approval to develop the properties located at 29800 Wickwire Lane, east of the incorporated city of Junction City, Oregon, and more specifically described in the records of the Lane County Assessor as map 16-04-04, tax lots 2601 and 2600, consisting of approximately 20.44 acres in Lane County, Oregon, in a manner consistent with the land use regulations in effect when they acquired an interest in the properties on September 8, 1988.

**IT IS HEREBY FURTHER ORDERED** that Mark Andrew Wickwire and Donna Marie Wickwire 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.

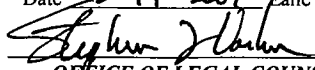
**IT IS HEREBY FURTHER ORDERED** that this action making certain Lane Code provisions inapplicable to use of the property by Mark Andrew Wickwire and Donna Marie Wickwire does not constitute a waiver or modification of state land use regulations and does not authorize immediate division of the subject 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