

**Memo Date:** May 1, 2007  
**Hearing Date:** May 15, 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 (PA06-7314, Murphy314)

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## **BACKGROUND**

**Applicant:** John Murphy

**Current Owner:** The Murphy Company

**Agent:** Michael Farthing

**Map and Tax lot(s):** 17-09-30, #900 and 17-09-30-31, #100, #200 and #300

**Acreage:** 13.6 acres

**Current Zoning:** RI/C (Rural Industrial/Community) and RR-2 (Rural Residential/Community)

**Date Property Acquired:** #900 – August 24, 1979 (WD#7971627)

#100 – May 13, 1974 (BSD#7431810)

#200 and #300 – January 15, 1974 (WD #7408969)

**Date claim submitted:** December 1, 2006

**180-day deadline:** May 30, 2007

**Land Use Regulations in Effect at Date of Acquisition:** #900 – RR-2 (Rural Residential); #100, #200 and #300 were unzoned

**Restrictive County land use regulation:** Minimum parcel size of two acres in the RR-5 (Rural Residential) zone (LC 16.290) and residential restrictions in the RI/C (Rural Industrial/Community) zone.

## **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 Murphy Company. The Murphy Company acquired an interest in tax lot #100, #200 and #300 in 1974 when the property was unzoned. Currently, #100 and #200 are zoned RI/C and #300 is zoned RR-2. The Murphy Company acquired an interest in tax lot #900 in 1979 when it was zoned RR-2. Tax lot #900 is currently zoned RI/C.

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

Tax lots #100, #200 and #300 were unzoned when they were acquired by the current owner. Tax lot #900 was zoned RR-2 when it was acquired by the current owner. The dwelling restrictions in the RI/C zone and the minimum lot size restrictions in the RR-2 zone prevent the current owner from developing the property as could have been allowed when it was acquired. The alleged reduction in fair market value is \$230,000, based on the submitted appraisal.

The applicant has submitted a reduction analysis by their attorney that represents competent evidence of valuation reduction that the County Commissioners have accepted on previous claims. Because of this, the County Administrator has waived the requirement for an appraisal.

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

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

## **CONCLUSION**

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 RI/C and RR-2/C zone for the subject properties.

**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 (Murphy314/PA06-7314)

**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 The Murphy Company (PA06-7314), the owner of real property located at 12717 Sutherland Road, Swisshome, and more specifically described in the records of the Lane County Assessor as map 17-09-30, tax lot 900 and 17-09-30-31, #100, #200 and #300 consisting of approximately 13.6 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 May 15, 2007, the Board conducted a public hearing on the Measure 37 claim (PA06-7314) of The Murphy Company and has now determined that the restrictive RI/C (Rural Industrial/Community) zone dwelling requirements of LC 16.292 and the restrictive RR-2/C (Rural Residential/Community) land division requirements of LC 16.290 were enforced and made applicable to prevent The Murphy Company from developing the property as might have been allowed at the time it acquired an interest in the property on August 24, 1979, for tax lot 900, on May 13, 1974 for tax lot 100 and on January 15, 1974 for tax lots 200 and 300, and that

the public benefit from application of the current RI/C and RR-2/C dwelling and division land use regulations to the applicant's property is outweighed by the public burden of paying just compensation; and

**WHEREAS**, The Murphy Company request either \$230,000 as compensation for the reduction in value of its property, or waiver of all land use regulations that would restrict the division of land into lots containing less than two acres and placement of a dwelling on each lot, uses that could have otherwise been allowed at the time it 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 RI/C and RR-2/C 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 The Murphy Company to make application for development of the subject property in a manner similar to what it could have been able to do under the regulations in effect when it 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 The Murphy Company 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 it acquired an interest in the property before the restrictive county land use regulations were enacted or enforced and the Board hereby elects not to pay just compensation but in lieu of payment, the request of The Murphy Company shall be granted and the restrictive provisions of LC 16.292 that limit the development of dwellings in the RI/C (Rural Industrial/Community) Zone and the restrictive land division provisions of the RR-2/C (Rural Residential/Community) shall not apply to The Murphy Company, so it can make application for approval to develop the property located at 12717 Sutherland Road, Swisshome, and more specifically described in the records of the Lane County Assessor as map 17-09-30, tax lot 900 and map 17-09-30-31, tax lots 100, 200 and 300 consisting of approximately 13.6 acres in Lane County, Oregon, in a manner consistent with the land use regulations in effect when it acquired an interest in the property on August 24, 1979, for tax lot 900, May 13, 1974, for tax lot 100 and January 15, 1974 for tax lots 200 and 300.

**IT IS HEREBY FURTHER ORDERED** that The Murphy Company 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 it 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.

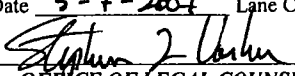
**IT IS HEREBY FURTHER ORDERED** that this action making certain Lane Code provisions inapplicable to use of the property by The Murphy Company does not constitute a waiver or modification of state land use regulations and does not authorize immediate division of the subject property or immediate construction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

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Faye Stewart, Chair  
Lane County Board of County Commissioners

APPROVED AS TO FORM

Date 5-7-2007 Lane County  
  
OFFICE OF LEGAL COUNSEL