

W. 8. C. 3

**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 (Jon and Lynna Gay Bowers /
) PA05-5708)

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 Jon and Lynna Gay Bowers (PA05-5708), the owners of real property north of Junction City off Love Lake Road and more specifically described in the records of the Lane County Assessor as map 15-04-28, tax lots 402 & 403, consisting of approximately 9 acres in Lane County, Oregon; and

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

WHEREAS, the Board has 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, 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, on October 19, 2005, the Board conducted a public hearing on Jon and Lynna Gay Bowers' Measure 37 claim (PA05-5708), and has now determined that the current restrictive Exclusive Farm Use zone (E-30) minimum land division size and dwelling requirements of Lane Code 16.212 that were enforced and made applicable to the property prevent Jon and Lynna Gay Bowers from developing the property as may have been allowed under the Agriculture, Grazing

and Timber Raising District (AGT) regulations of Ordinance #4 Section VI and the Lane County Revised Subdivision Ordinance in effect at the time Jon and Lynna Gay Bowers acquired the property on June 30, 1971 and that the public benefit from application of the current E-30 regulations to the applicants' property is outweighed by the public burden of paying just compensation; and

WHEREAS, Jon and Lynna Gay Bowers alleged entitlement to \$570,000 as compensation for reduction in the fair market value of their property as a result of Lane County's enforcement of the minimum land division size standards, farm income standard and other restrictive dwelling regulations and requested waiver of those regulations to allow creation of five parcels; 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 current E-30 zone to the subject property in the manner and for the reasons stated in the report and recommendation of the County Administrator incorporated here by this reference except as explicitly revised here to reflect Board deliberation and action to allow Jon and Lynna Gay Bowers to make application to develop the subject 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 made a valid claim under Ballot Measure 37 by specifying the amount of the claim, 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 Bowers' request shall be granted and the current E-30 restrictions for minimum lot sizes and dwellings in Lane Code 16.212(5), (6), (7) and (9) that restrict the division of the property and the placement of dwellings shall not apply to Jon and Lynna Gay Bowers, so that they can make application for land divisions and dwellings on the property described as Assessors Map 15-04-28, tax lots 402 & 403, in a manner consistent with the regulations of the AGT zone (Ordinance #4 Section VI) and the Lane County Revised Subdivision Ordinance in effect when they acquired an interest in the property on June 30, 1971.

IT IS HEREBY FURTHER ORDERED that Jon and Lynna Gay Bowers will still need to make application and receive approval for any land divisions and dwellings under other land use regulations applicable to placing dwellings on the property that were not specifically identified or established as restricting Jon and Lynna Gay Bowers' use of the property. To the extent necessary to effectuate the Board action to not apply the dwelling restrictions of the applicable zone described above, the claimant shall submit appropriate applications for review and approval of land divisions and any new dwellings to show the specific development proposal and in the event additional county land use regulations result in a restriction of those uses that has 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. 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 Jon and Lynna Gay Bowers' use of their property does not constitute a waiver or modification of any corresponding state law or administrative rules and does not authorize immediate construction of a dwelling. The requirements of state law, including ORS 215.213, Goal 3 and OAR chapter 660, division 33, contain specific standards regulating development on Exclusive Farm Use Land 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 claim for this property before seeking county land use approval.

IT IS HEREBY FURTHER ORDERED the county land use regulations and other 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 the applicant to build another dwelling 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) 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 October, 2005.

Anna Morrison, Chair
Lane County Board of County Commissioners

APPROVED AS TO FORM

Date 10-24-2005 Lane County


OFFICE OF LEGAL COUNSEL