

Memo Date: January 10, 2007  
Order Date: January 23, 2007



---

**TO:** Board of County Commissioners

**DEPARTMENT:** Public Works Dept./Land Management Division

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

**AGENDA ITEM TITLE:** In the Matter of Considering a Ballot Measure 37 Claim and Deciding Whether to Modify, Remove or Not Apply Restrictive Land Use Regulations in Lieu of Providing Just Compensation (PA05-6806 Lucchesi)

---

## **BACKGROUND**

**Applicant:** Dorothy Lucchesi

**Current Owner:** Dorothy Irene Lucchesi Revocable Inter-Vivos Trust u/d/t January 29, 1997

**Agent:** Lee Omlid

**Map and Tax lot:** 17-12-36-30-3100

**Acreage:** Approximately 15.5 Acres

**Current Zoning:** F2 (Impacted Forest) Zone

**Date Property Acquired by family:** June 19, 1972 (WD 4734)

**Date Property Acquired by current owner:** June 5, 1981 (WD 8124595)

**Date claim submitted:** December 22, 2005

**180-day deadline:** June 20, 2006

**Land Use Regulations in Effect at Date of Acquisition:** FF20 (Farm-Forest)

**Restrictive County land use regulation:** The applicant alleges that the both the F2 Impacted Forest zone and the Goal 2, Policy 11a of the Lane County Rural Comprehensive Plan, have restricted the use and reduced the fair market value of the property.

## **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**

E.R. McGraw and Ethel McGraw, parents of Dorothy Lucchesi, acquired the subject property on June 19, 1972 (WD #4734). On the June 5, 1981 the property was conveyed to Dorothy via Warranty Deed #8124595. On April 1, 1997, Dorothy transferred the property to herself as Trustee under the Dorothy Irene Lucchesi Revocable Inter-Vivos Trust u/d/t January 29, 1997, via Grant Deed# 9721669. It appears that Dorothy Lucchesi is the grantor as well as the trustee of the revocable living trust and, as such, remains the owner of the property since June 5, 1981. On that date, the property was zoned Farm-Forest -20 (FF20). Currently, the property is zoned F2 (impacted Forest).

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

The property was unzoned on June 19, 1972 when it was purchased by Mr. and Mrs. McGraw. In 1981, the property was conveyed to Dorothy Lucchesi. At that time, the property was zoned Farm-Forest-20 (FF20). Per the 1981 FF20 zone, one dwelling per lot was permitted and the minimum area for division was 20 acres. The property was rezoned in 1984 to the Impacted Forest zone (F2). In the F2 zone an application for a new dwelling requires a special use permit and the minimum area for division is 80 acres.

The applicant has cited Lane Code 16.211(5)-(7), 10 and the RCP Goal 2, policy 11(a) as the offending land use restrictions. During review of the Cochran claim (PA 06-5995), the Board determined that the RCP Goal 2, policy 11(a) is only applicable to developed and committed exception areas and is not a valid basis for a claim for properties with a forest land designation

The applicant has submitted a CMA alleging a reduction of value of \$450,000 based on the potential development of 3 lots each of approximately 5 acres in size. For purposes of compensation, it appears that there has been a reduction in the value of the property since it was first acquired by the family in 1972.

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

The land division restrictions and special use permit requirements of LC16.211 do not appear to be exempt regulations.

**CONCLUSION**

It appears that this is a valid claim.

**RECOMMENDATION**

The County Administrator recommends the Board adopt the attached order to waive the restrictive F2 land use regulations which were applied to the property after Dorothy Lucchesi acquired it in 1981.

**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 (PA05-6806 Lucchesi)

**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 Dorothy Lucchesi on behalf of the Dorothy Irene Lucchesi Revocable Inter-Vivos Trust u/d/t January 29, 1997, the owner of real property described in the records of the Lane County Assessor as 17-12-36-30 tax lot 3100, consisting of approximately 15.5 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 January 23, 2007, the Board conducted a public hearing on the Measure 37 claim (PA05-6806) of the Dorothy Irene Lucchesi Revocable Inter-Vivos Trust u/d/t January 29, and has now determined that the restrictive F2 (Impacted Forest) zone dwelling and land division requirements of LC 16.211 were enforced and made applicable to prevent Dorothy Irene Lucchesi from developing the property as might have been allowed at the time it was acquired on June 5, 1981, and that the public benefit from application of the current F2 dwelling and division

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

**WHEREAS**, Dorothy Lucchesi requests up to \$450,000 as compensation for the reduction in value of her property, or waiver of all land use regulations that would restrict the division of the property and allow a dwelling on each lot, uses that could have otherwise been allowed at the time she acquired the property; and

**WHEREAS**, the Board finds that under LC 2.760(3) the public interest would be better served by modifying, removing or not applying the challenged land use regulations of the F2 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 , Dorothy Lucchesi 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, Dorothy Lucchesi, 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 Dorothy Lucchesi shall be granted and the restrictive provisions of LC 16.211 that limit the development of dwellings and the division of land in the F2 (Impacted Forest) Zone shall not apply to Dorothy Lucchesi so she can make application for approval to develop the property described in the records of the Lane County Assessor as map17-12-36-30 tax lot 3100, in a manner consistent with the land use regulations in effect when she acquired the property on June 5, 1981.

**IT IS HEREBY FURTHER ORDERED** Dorothy Lucchesi 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 Dorothy Lucchesi 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.

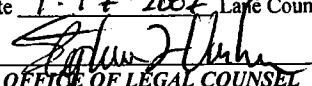
**IT IS HEREBY FURTHER ORDERED** that this action making certain Lane Code provisions inapplicable to use of the property by Dorothy Lucchesi not constitute a waiver or modification of state land use regulations and does not authorize immediate division of the subject property or immediate construction 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 1-17-2007 Lane County  
  
OFFICE OF LEGAL COUNSEL