

**Memo Date:** April 16, 2007  
**Hearing Date:** May 8, 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 (PA06-7238, Novick)

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**BACKGROUND**

**Applicants:** Adam P. Novick and David G. Novick

**Current Owners:** Adam P. Novick and David G. Novick

**Agent:** Frederick A. Batson and Robert S. Russell

**Map and Tax lot(s):** 18-04-25, tax lot 300 (263.26 acres) and 18-03-30, tax lot 1201 (0.76 of an acre)

**Acreage:** Total – 264.02 acres

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

**Date Property Acquired:** Map 18-04-25, tax lot 300 - December 27, 1976 -  
(Bargain & Sale Deed – Reel 827R, No. 7669571).  
Map 18-03-30, tax lot 1201 – September 12, 1991 -  
(Bargain & Sale Deed, Reel 1723R, No. 9150164).

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

**180-day deadline:** May 1, 2007

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

Map 18-04-25, tax lot 300 – December 27, 1976 (AGT - Agriculture, Grazing, Timber);

Map 18-03-30, tax lot 1201 – September 12, 1991 (F2 - Impacted Forest Land).

**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 owners of map 18-04-25, tax lot 300 are Adam P. Novick and David G. Novick. They acquired an interest in tax lot 300 on December 27, 1976 (Bargain & Sale Deed – Reel 827R, No. 7669571) when it was zoned AGT-5 (Agriculture, Grazing & Timber).

The current owners of map 18-03-30, tax lot 1201 are Adam P. Novick and David G. Novick. They acquired an interest in tax lot 1201 on September 12, 1991 - (Bargain & Sale Deed, Reel 1723R, No. 9150164) when it was zoned F2 (Impacted Forest Land).

Currently, the properties are zoned F2.

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

**18-04-25, tax lot 300**

Tax lot 300 was zoned AGT-5 when it was acquired by the current owners in 1976. The minimum lot size and limitations on new dwellings in the F2 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 \$2,186,389, based on the submitted comparative market analysis.

The applicant has submitted a CMA or other competent evidence of valuation that the County Commissioners have accepted on previous claims. Because of this, the County Administrator has waived the requirement for an appraisal.

**18-03-30, tax lot 1201**

Tax lot 1201 was zoned F2 (LC 16.211) when it was acquired by the current owners in 1991. Because the minimum lot size and dwelling restrictions were applicable when the current owner acquired the property, these regulations can not be waived.

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

LC Chapter 12 (Comprehensive Plan) – These provisions refer to the authority of the Lane County Planning Commission in recommending code amendments. No evidence has been provided that demonstrates how these regulations have lowered the fair market value of the property.

LC10.104-05 to -95 – 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.

LC Chapter 13 – 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.

LC Chapter 14 – These provisions apply to application review and appeal procedures. No evidence has been provided that demonstrates how these regulations have lowered the fair market value of the property.

LC Chapter 15 – 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.**

#### **18-04-25, tax lot 300**

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

#### **18-03-30, tax lot 1201**

The minimum lot size and restrictions on new dwellings appear to be exempt regulations, and they can not be waived for the current owner. The claimant has not identified any other restrictive land use regulations that allegedly reduce the fair market value of tax lot 1201.

### **CONCLUSION**

It appears this is a valid claim for tax lot 300.

It appears this is not a valid claim for tax lot 1201.

### **RECOMMENDATION**

The County Administrator recommends the Board adopt the attached order to waive the restrictive land use regulations of the F2 zone for tax lot 300 (map 18-04-25) and reject the claim for tax lot 1201 (map 18-04-25).

**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 (Novick, PA 06-7238)

**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 Adam P. Novick and David G. Novick, the owners of real property located west of South Willamette Street, southwest of Eugene, OR 97405, and more specifically described in the records of the Lane County Assessor as map 18-04-25, tax lot 300 and map 18-03-30, tax lot 1201, and consisting of approximately 264.02 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 for tax lot 300 (map 18-04-25) and made that recommendation to the Board; and

**WHEREAS,** the Board has reviewed the evidence and confirmed the application appears to qualify for compensation for tax lot 300 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 8, 2007, the Board conducted a public hearing on the Measure 37 claim (PA 06-7238) of Adam P. Novick and David G. Novick 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 Adam P. Novick and David G. Novick from developing the property as might have been allowed at the time they acquired an interest in the property, map 18-04-25, tax lot 300, on December 27, 1976, but not map 18-03-30, tax lot 1201; and that the public benefit from application of the current F2 dwelling and division land

use regulations to a portion of the property is outweighed by the public burden of paying just compensation; and

**WHEREAS**, Adam P. Novick and David G. Novick requests either \$2,186,389 as compensation for the reduction in value of their property, or waiver of all land use regulations that would restrict the division of land into lots containing less than eighty acres and placement of a dwelling on each lot, and development uses that could have otherwise been allowed on tax lot 300 at the time they acquired an interest in the property; and

**WHEREAS**, the Board finds that under LC 2.760(3) the public interest would be better served by modifying, removing or not applying the challenged land use regulations of the F2 zone to the subject property (map 18-04-25, tax lot 300 but not map 18-03-30, tax lot 1201) 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 Adam P. Novick and David G. Novick to make application for development of the tax lot 300 in a manner similar to what they could have been able to do under the regulations in effect when they acquired an interest in that 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 Adam P. Novick and David G. Novick made a valid claim under Ballot Measure 37 for tax lot 300 by describing the use being sought, identifying the county land use regulations prohibiting that use, submitting evidence that those land use regulations have the effect of reducing the value of the property, showing evidence that they acquired an interest in the properties 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 Adam P. Novick and David G. Novick 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 Adam P. Novick and David G. Novick, so they can make application for approval to develop the property located west of South Willamette Street, southwest of Eugene, OR 97405, and more specifically described in the records of the Lane County Assessor as map 18-04-25, tax lot 300, and consisting of approximately 263.26 acres in Lane County, Oregon, in a manner consistent with the land use regulations in effect when they acquired an interest in the property on December 27, 1976.

**IT IS HEREBY FURTHER ORDERED** that Adam P. Novick and David G. Novick 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 Adam P. Novick and David G. Novick 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 5-1-2007 Lane County  
  
OFFICE OF LEGAL COUNSEL