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SUPPLEMENTAL MATERIAL



Memo Date: October 17, 2006
Order Date: October 18, 2006

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 (PA05-6835, WILBUR35).

This item was scheduled for a hearing on August 2, 2006. When the applicant received a copy of the preliminary staff report, he placed this claim on hold in order to submit additional information. On September 12, 2006, additional information regarding the Limited Partnership was submitted. At the hearing on October 4, the Board requested information regarding the valuation of this parcel and rolled this item to October 18. The applicant has not submitted any new evidence for this claim.

On October 16, the applicant resubmitted a real estate broker's opinion of value that was previously submitted on May 10 but misfiled. That opinion alleges a reduction of \$725,000 if this property can not be divided into seven parcels that contain less than 80 acres and a dwelling placed on each parcel. The minimum parcel size and dwelling restrictions of the F1 (Non-Impacted Forest) zone do not appear to be exempt from a Measure 37 claim. It appears this is a valid claim if the Board determines this evidence demonstrates a reduction in fair market value from enforcement of a restrictive regulation.

If the Board determines this is a valid claim, the County Administrator recommends the Board adopt the order attached to this memo and waive the restrictive regulations adopted after the current owner acquired the property (May 16, 2001).

Map and Tax lot: 17-09-14 #102, #103 and #1700.

Acreage: 68.8 acres

Current Zoning: F1 (Nonimpacted Forest)

ATTACHMENTS

- Draft order to approve the claim.
- Broker's opinion of value.

**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 (Wilbur/ PA05-6835)

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 the Don Wilbur Limited Partnership (PA05-6835), the owner of real property described in the records of the Lane County Assessor as map 17-09-14, tax lots 102 and 103, consisting of approximately 68 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 October 4, 2006, the Board conducted a public hearing on the Measure 37 claim (PA05-6835) of the Don Wilbur Limited Partnership and has now determined that the restrictive F1 (Non-Impacted Forest) land use regulations of LC 16.210 were enforced and made applicable to prevent Don Wilbur from developing the property as might have been allowed at the time he acquired an interest in parcels 102 and 103 on March 13, 1957, and that the public benefit from application of the restrictive regulations to the applicants' property is outweighed by the public burden of paying just compensation; and

WHEREAS, the Don Wilbur Limited Partnership requests either \$725,000 as compensation for the reduction in value of its property, or waiver of any restrictive land use regulations of the F1 zone enacted since May 9, 2001 (tax lot 103), and May 16, 2001 (tax lot 102); 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 land use regulations of the F1 zone enacted since May 9, 2001 (tax lot 103), and May 16, 2001 (tax lot 102), 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 Don Wilbur Limited Partnership 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 on May 9, 2001 and May 16, 2001, respectively; and

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

NOW, THEREFORE IT IS HEREBY ORDERED that the applicant Don Wilbur Limited Partnership 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 Don Wilbur acquired an interest in the property before the restrictive county land use regulations were enacted or enforced and that Don Wilbur currently has an ownership interest in the Don Wilbur Limited Partnership, the Board hereby elects not to pay just compensation but in lieu of payment, the request of the Don Wilbur Limited Partnership shall be granted and the restrictive provisions of LC 16.210 that were enacted since May 16, 2001 (parcel 102) and May 9, 2001 (parcel 103), shall not apply to the Don Wilbur Limited Partnership, so it can make application for approval to develop the property described in the records of the Lane County Assessor as map 17-09-14, tax lots 102 and 103, consisting of approximately 68 acres, in a manner consistent with the land use regulations in effect when it acquired an interest in tax lot 102 on May 16, 2001, and on May 9, 2001 for tax lot 103.

IT IS HEREBY FURTHER ORDERED that the Don Wilbur Limited Partnership still needs to make application and receive approval of any development of the property under the other land use regulations applicable to the property that were not specifically identified or established by the Don Wilbur Limited Partnership as restricting the use of the of the property, 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 the applicable regulations of the F1 zone described above, the claimant shall submit appropriate applications for review and approval of any development 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 Don Wilbur Limited Partnership does not constitute a waiver or modification of state land use regulations and does not authorize immediate development of the subject property. The requirements of state law may contain specific standards regulating development of the subject property and the applicants 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 applicants 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 _____, 2006.

Bill Dwyer, Chair
Lane County Board of County Commissioners

APPROVED AS TO FORM

Date _____ Lane County

OFFICE OF LEGAL COUNSEL



TR HUNTER REAL ESTATE
1749 Hwy. 101 P.O. Box 3104 Florence, OR 97439

Lane County Land Management Division
125 E. Eighth Avenue
Eugene, OR 97401

May 10, 2006

Re: PA 06-6835, Wilbur35
Map lots 17-09-14-00 #00103, 17-09-14-00 #00102, and 17-09-14-00 #01700

Dear Lane County:


I am the Owner and Principal Broker of TR Hunter Real Estate in Florence, Oregon. I have been a licensed broker in the State of Oregon and have dealt with property in the Florence and mid-coastal area for 15 years. Following is my Broker's Price Opinion of the subject property.

This is a 72.5-acre parcel containing three contiguous tax lots in Lane County, valued together at \$150,000.

Without the challenged land use regulations, and under this BM 37 Claim, this property would be able to be developed as seven 10-acre home sites. As home sites, my opinion of their value is \$125,000 for a total of \$875,000. The difference between these two values is \$725,000, which is the amount that the challenged land use regulation has reduced the fair market value of the subject property.

Please do not hesitate to contact me if you have any questions.

Thank you,


Tim Sapp

TS/mg