

W. 14. 2.



Memorandum Date: September 26, 2006  
Order Date: October 4, 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 (PA05-6836, WILBUR36)

---

**I. MOTION**

Move to request additional information regarding ownership and the alleged reduction in value.

**II. AGENDA ITEM SUMMARY**

Shall the Board of County Commissioners compensate an applicant under Ballot Measure 37 and LC 2.700 through 2.770 for the reduction in fair market value of the affected property interest resulting from enactment or enforcement of restrictive land use regulations or modify, remove, or discontinue application of those land use regulations to the subject property to allow the Don Wilbur Limited Partnership to use the property as allowed at the time it acquired an interest in the property?

**III. BACKGROUND/IMPLICATIONS OF ACTION**

**A. Board Action and Other History**

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.

**Applicant:** Don Wilbur Limited Partnership

**F. Alternatives/Options**

The Board has these options:

- Determine the application appears valid and direct staff to draft an order to that effect.
- Require more information regarding the reduction in value or ownership.
- Conclude the application is not a valid claim and direct the issuance of a final written decision by the County Administrator denying the Claim.

**V. TIMING/IMPLEMENTATION**

If the Board determines this is a valid claim and waives a land use regulation, the claimant must receive a similar waiver from the state before a land use application and/or development proposal is submitted.

**VI. RECOMMENDATION**

The County Administrator recommends the Board request additional information regarding the ownership and the alleged reduction in value.

**VII. FOLLOW-UP**

If an order is adopted, it will be recorded.

**VII. ATTACHMENTS**

This cover memo prepared for the Board hearing does not contain the entire submittal. The entire submittal is contained in a notebook labeled "PA05-6836", available in the County Commissioners Office. The portions of the submittal included with this memo are identified below:

- Vicinity Map.
- Application form.
- Broker's Opinion of Value for PA 05-6833.
- Information submitted on September 12, 2006.
- Information submitted on September 20, 2006.



3300

2700

100

HWY 36

Wilbur 36  
PA 05-6836

**Legend**

— Roads

□ Wilbur

### Application for Claims Under LC 2.700 through 2.770

Due to Regulatory Reduction of Property Value Under Provisions Added to ORS Chapter 197 by BM37

Note: This completed form together with the referenced supporting documentation and application fee must be submitted to the Lane County Land Management Division, 125 East 8th Avenue, Eugene, Or., 97401 for all claims subject to the provisions added to ORS Chapter 197 by Ballot Measure 37 (November 2, 2004), to be considered for compensation under LC 2.700 through 2.770. In all cases, the applicant has the burden of demonstrating, with competent evidence, that all applicable criteria are met and the applicant would be entitled to compensation if the land use regulation continues to apply. Use additional paper, if necessary.

#### 1. Applicant/ Agent

Don Wilbue Ltd + Marie L McComb P.O. Box 40, Deadwood, Or. 97480 541-914-3345  
Applicant Name (Please Print) Mailing Address Phone

Lee Keeton / Jim Mann 2100 Country Club Rd. Ste 210, Eugene, Or. 97401 345-4312  
Agent Name (Please Print) Mailing Address Phone

#### 2. Property Owner

Please provide the Name, Mailing Address and telephone number of all property owners of record holding interest in the property that is the subject of this application. Include a complete listing of all lien holders, trustees, renters, lessees or anyone with an interest in the property and describe the ownership interest.

Don Wilbue Ltd. P.O. Box 40, Deadwood, Or. 97480 541-914-3345  
Property Owner Name (Please Print) Mailing Address Phone

Marie N. McComb-Lorenz 2136 Garden Valley Way, Grants Pass OR. 97526  
Property Owner Name (Please Print) Mailing Address Phone

#### 3. Legal Description

Please provide an accurate legal description; tax account number(s); map, street address and location of all private real properties that are the subject of this application.

Assessor Map & Tax Lot 17-09-00 00 02700, 17-09-21 00 00100 + 17-09-15 00 03300

Street Address Deadwood Legal Description Attached yes

#### 4. Identification of Imposed Land Use Regulation

Please identify the Lane Code section or other land use regulation imposed on the private real property that is alleged to restrict the use of the subject property in a manner that reduces the fair market value. Include the date the regulation was first adopted, enforced or applied to the subject property and a written statement addressing all the criteria in LC 2.740(1).

See attached

#### 5. Title Report

Please attach a Preliminary Title Report showing title history and continuous ownership traced to the earliest family member ownership, the date of current owner(s) acquisition and all current interests of record for the subject property, issued within 30 days of the application submittal. Provide copies of relevant deeds.

**6. Appraisal/Regulatory Effect**

Please provide one original, signed appraisal prepared by an appraiser licensed by the Appraiser Certification and Licensure Board of the State of Oregon addressing the requirements of provisions added to ORS Chapter 197 by Ballot Measure 37 (November 2, 2004) and indicating the amount of the alleged reduction in fair market value by showing the difference in the fair market value of the property before and after the application of the challenged regulations as of the date the owner makes written demand for compensation. Include all of the supporting methodology, assumptions and calculations affecting the appraisal.

To be provided upon request

**7. Leases, Covenants, Conditions and Restrictions**

Please provide copies of any leases or covenants, conditions and restrictions applicable to the subject property.

none

**8. Identification of Relief Sought**

Please specifically indicate what relief is being sought, either a monetary value of the claim describing the reduction in fair market value of the property or the specific use authorization sought in any waiver of the land use regulation.

expect a residence on each identified parcel

acquired in 1948

I (we) have completed all of the attached application requirements and certify that all statements are true and accurate to the best of my (our) knowledge and belief. I am (We are) authorized to submit this application on behalf of all those with an interest in the property and all the owner(s) agree to this claim as evidenced by the signature of those owner(s) below. Include additional signatures, as necessary.

Entry by County or its designee upon the subject property is authorized by the owner(s) and the owner(s) consent to the application for claims under provisions added to ORS Chapter 197 by Ballot Measure 37 (November 2, 2004).

Marvel N. McComb-Lorenz Don Wilbur

Marvel McComb + Don Wilbur Ltd.  
Owner(s) Signature

12-15-05  
Date

Same as above

Applicant/Agent Signature

12-15-05  
Date

The following contacts are provided to assist you in finding the necessary information for this application.

For zoning and land use information, please contact the Land Management Division at 682-3577.

*This phone contact is a message line. Please leave a message and a Planner will return your call.*

For deeds and records information, please contact Lane County Deeds and Records at 682-3654.



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 06-6833, Wilbur33  
Map lots 17-09-15-00 #03000, 17-09-16-00 #00401, and 17-09-16-00 #00700

Dear Lane County:

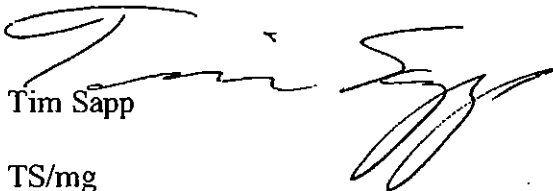
I am the Owner and Principal Broker of TR Hunter Real Estate in Florence, Oregon. I have been a licensed broker in the State of Oregon and have dealt with property in the Florence and mid-coastal area for 15 years. Following is my Broker's Price Opinion of the subject property.

This is a very private, approximately 100-acre parcel containing about 2 miles of Lake Creek frontage. The current market value for this property is a total of \$250,000.

Without the challenged land use regulations, and under this BM 37 Claim, this property would be able to be developed as 10-acre home sites. As home sites, my opinion of their value is \$150,000 each, for a total of \$1,500,000. The difference between these two values is \$1,250,000, 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

**LEE D. KERSTEN**  
**Attorney at Law**  
**260 Country Club Road, Suite 210**  
**Eugene, OR 97401**  
**Telephone: (541) 345-4312**  
**Fax: (541) 345-7098**

September 11, 2006

REC'D SEP 12 2006

Steve Hopkins  
Lane County Land Management  
125 E. 8<sup>th</sup> Avenue  
Eugene, OR 97401

Re: Wilbur BM 37 Claims  
PA 05-6833; PA 05-6834; PA 05-6835; PA 05-6836; PA 05-6837;

Dear Mr. Hopkins:

Please include this submission in the file for the above BM 37 Claims.

The draft staff report in this matter, in the "reduction in fair market value" section, discusses the property being conveyed to Don Wilbur Limited Partnership on March 16, 2001. The draft report then concludes that "...since the partnership is considered the new owner for the purposes of this Ballot Measure 37 Claim, the only regulations that can be waived are those enacted since the partnership acquired the property." The applicant believes this conclusion is incorrect.

There is no doubt that the property was conveyed to the Don Wilbur Limited Partnership on May 16, 2001. However, the applicant's position is that this does not automatically make the partnership a new owner for the purposes of this Ballot Measure 37 Claim.

BM 37 defines "owner" as "...the present owner of the property or any interest therein." The definition of family member includes ... "A legal entity owned by anyone or a combination of these family members or the owner of the property." In this matter, the applicant's position is that Don Wilbur qualifies under these definitions as the owner of the property. The limited partnership which was the grantee of the May 16, 2001 deed is in essence nothing more than Don Wilbur. The applicant represents that the general partner of Don Wilbur Limited Partnership is an Oregon corporation owned solely by Don Wilbur. The applicant also represents that the limited partnership interests are held by the general partner (which is owned entirely by Mr. Wilbur), Mr. Wilbur, Mr. Wilbur's daughter, and a long time companion of Mr. Wilbur.

Mr. Wilbur has total control over the property. The general partner has total control over the limited partnership. Mr. Wilbur totally controls the general partner. Additionally, Mr. Wilbur owns more than one-half of the limited partnership interests,

either directly, or through the general partner which he controls and is the sole shareholder. Additionally, the small minority interest held by Mr. Wilbur's long time companion is subject to a written option agreement allowing Mr. Wilbur to purchase that interest at any time.

Accordingly, nothing can occur on the property without Mr. Wilbur's consent. The limited partnership was established for estate planning purposes and through it, Mr. Wilbur still owns the real property which is the subject of this Claim. All this was done before BM 37 was ever drafted so there is clearly no intent to manipulate BM 37 rights.

It is clear from the above definition in BM 37 of "family" that BM 37 anticipates a legal entity as a qualifying interest under BM 37. Note particularly the concluding portion of the definition of family member in section 11 (A) of BM 37 ("...or a legal entity owned by anyone or combination of these family members or the owner of the property."). Note how this coordinates with section 3 (E) of BM 37 which references acquisition or inheritance by the owner, or a family member of the owner.

The applicant believes that the definitions in BM 37 clearly anticipate ownership by a family entity, particularly, as in this application, where the family member totally controls the entity. Accordingly, the Applicant believes Don Wilbur should be considered the present owner of the property for purposes of BM 37 section 6 and that waiver of land use regulations should occur from the time Don Wilbur initially acquired an interest in the property and not from the time the property was conveyed to the limited partnership.

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

Yours truly,

  
Lee D. Kersten

LDK/jmd

Copy: Client



**LEE D. KERSTEN**

**REC'D SEP 20 2006**

**Attorney at Law  
260 Country Club Road, Suite 210  
Eugene, OR 97401  
Telephone: (541) 345-4312  
Fax: (541) 345-7098**

September 19, 2006

Steve Hopkins  
Lane County Land Management  
125 E. 8<sup>th</sup> Avenue  
Eugene, OR 97401

Re: Wilbur BM 37 Claims  
PA 05-6833; PA 05-6834; PA 05-6835; PA 05-6836; PA 05-6837;

Dear Mr. Hopkins:

Please include the enclosure with this letter in the file for the above BM 37 claims.

As you can see, the issue in that referenced matter is whether land ownership dates back to when the land was originally acquired or to when it was transferred to a family owned limited liability company.

In the Wilbur applications, the applicant believes the Crook County judge is correct in that the date of ownership should extend back to the original purchase if the land owner retains an interest in the entity holding the property. In the Wilbur BM 37 claims, Mr. Wilbur has retained the vast bulk of the ownership with a small percentage being owned by his daughter and another small percentage being owned by his long time companion (which percentage is subject to an option to purchase in favor of Mr. Wilbur). The applicant hopes the Board will consider this when examining these applications and allow waiver back to the time Mr. Wilbur acquired the properties.

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

Yours truly



Lee D. Kersten

LDK/jmd

Enclosures: Cited

Copy: Client (w/encls)

# Yamhill Measure 37 claim triggers suit

## Counties differ on interpretation of property ownership status

By MITCH LIES

Capital Press Staff Writer

Bob Hemstreet — the latest landowner to fall victim to a narrow interpretation of Measure 37 — has filed suit against Yamhill County, alleging county officials mishandled his claim.

In a suit filed Aug. 31, Hemstreet claims county officials misinterpreted Oregon's statutes in restricting his development rights to no more than 17 lots on 852 acres of timberland near Sheridan. Hemstreet is seeking to develop 140 residential lots.

Hemstreet's claim hinges on whether land ownership dates back to when he acquired the land or to when he transferred ownership to a corporation. He acquired his 852 acres in the 1950s, well before Oregon's land-use laws were enacted. It has been operating under Lazy H Ranch, a limited liability corporation in which he and his wife, Mary, are principals, since 1997.

Under Measure 37, a landowner is eligible to be compensated for the loss of a property value caused by a regulation if the regulation was enacted after the owner purchased the land. Governments also can waive the regulation if the owner is seeking \$35 million in compensation or a waiver of the land-use restrictions.

Yamhill County commissioners determined in a May 31 decision ownership fell back only to when the corporation was formed in 1997. When the minimum lot size allowable on the land was 80 acres,

Union County commissioners in June used a similar precedent in denying a Measure 37 claim from Dennis Rasmussen, whose family ownership of more than 1,750 acres near La Grande dates back to 1946.

In its decision, Union County determined the relevant date of ownership for Rasmussen was 1976, when the Rasmussen family established Terra Magic Inc., which today is listed as the owner-operator of the farm.



Rasmussen has said he plans to appeal the decision. Dave Hunnicutt, executive director of Oregonians In

Action, which Hunnicutt wrote Measure 37, said counties have interpreted the law both ways — in some cases dating ownership back to when a landowner first purchased the land and in other cases dating ownership back only to when a family or landowner established a corporation.

In the lone court decision to reference the issue, Hunnicutt said a Crook County judge indirectly indicated

while ruling on another Measure 37 issue that the date of ownership should extend back to the original purchase if a landowner retains an interest

in the corporation holding the property. Hunnicutt said he believes Yamhill County's interpretation is not consistent with the measure.

Hemstreet filed his suit with the county circuit court rather than with the Land Use Board of Appeals because Measure 37 is not classified as a land-use measure.

### Interpretation

Hemstreet's claim hinges on whether land ownership dates back to when he acquired the land or to when he transferred ownership to a corporation.

Hemstreet filed his suit with the county circuit court rather than with the Land Use Board of Appeals because Measure 37 is not classified as a land-use measure.

Mitch Lies is based in Salem. His e-mail address is [miles@capitalpress.com](mailto:miles@capitalpress.com).