CONVENEED:

10:08 a.m.

BOARD OF COMMISSIONERS:

Chairman Tom Brian
Commissioner Dick Schouten
Commissioner Desari Strader

Vice Chair Roy Rogers and Commissioner Andy Duyck were absent on this date.

STAFF:

Robert Davis, County Administrator
Ellen Conley, Senior Deputy County Administrator
Dan Olsen, County Counsel
Kathy Lehtola, Director, LUT
Mark Brown, Land Development Manager, LUT
Tom Harry, Senior Planner  Measure 37, LUT
Bill Gaffi, General Manager, CWS
Carrie Pak, Engineering Division Manager - Conveyance, CWS
Linda Gray, CPO Coordinator
Jeff Friend, Audiovisual Specialist
Barbara Hejtmanek, Recording Secretary

PRESS:

Kathy Gorman, The Oregonian

APPROVAL OF MINUTES:

March 20, 2007
March 27, 2007
April 3, 2007

1. CONSENT AGENDA

It was moved to adopt the Consent Agenda.

Motion  Schouten
2nd  Strader
Vote  3-0

CLEAN WATER SERVICES
1.a.
CWS RO 07-21
Acquire Easements for Sanitary Sewer Water Quality Preservation and Storm and Surface Water Drainage (Approved Under Consent Agenda)

1.b.
CWS MO 07-36
Accept the Construction of the Willow Creek Sanitary Trunk Upgrade and Release Retainage to Emery & Sons Construction, Inc. (Approved Under Consent Agenda)

LAND USE AND TRANSPORTATION

1.c.
MO 07-107
Approve Amendment to the Intergovernmental Agreement with the Oregon Department of Transportation Accepting 2005 and 2006 Rural Surface Transportation Program Funds (CPO 13 and 14) (Approved Under Consent Agenda)

1.d.
RO 07-94
Establish the Road in Kimberly Place Subdivision as County Road No. No. 3239 (CPO 6) (Approved Under Consent Agenda)

1.e.
RO 07-95
Establish the Road in Oakville West Subdivision as County Road No. 3241 (CPO 6) (Approved Under Consent Agenda)

1.f.
RO 07-96
Approve Declaration of Necessity and Protective Rent Payments for Right-of-Way Acquisition for the Pottratz Road Culvert Replacement Project (Approved Under Consent Agenda)

1.g.
RO 07-97
Approve Establishment of a Road Maintenance Local Improvement District (MLID) for Saltzman Gardens (CPO 1) (Approved Under Consent Agenda)

1.h.
RO 07-98
Establish the Road in Thompson Glen Subdivision as County Road No. 3240 (CPO 1 and 7) (Approved Under Consent Agenda)

1.i.
MO 07-108
Execute Deed Dedicating County-Owned Property to the Public as Right-of-Way for the West Union Deerfield Intersection Project (CPO 7) (Approved Under Consent Agenda)

1.j.
RO 07-99
Amend the 2006-2007 Work Program; Approve Bid Awards for 2007 Maintenance Overlay Projects (All CPOs) (Approved Under Consent Agenda)

HOUSING SERVICES

1.k.  
MO 07-109  
Approve 2006 Supportive Housing Program Homeless Management Information Systems Grant Agreement (Approved Under Consent Agenda)

1.l.  
MO 07-110  
Approve 2006 Supportive Housing Program Transitional Housing Grant Agreement (Approved Under Consent Agenda)

SUPPORT SERVICES

1.m.  
MO 07-111  
Grant Waiver/Authorize Contract with EcoNorthwest for Economics, Finance and Planning Services for the North Bethany Urban Growth Boundary (Approved Under Consent Agenda)

SERVICE DISTRICT FOR LIGHTING NO. 1-A COUNTY SERVICE DISTRICT

1.n.  
SDL RO 07-16  
Form Assessment Area, Authorize Maximum Annual Assessment and Impose a First Year Assessment for Parker Woods (CPO 6) (Approved Under Consent Agenda)

1.o.  
SDL RO 07-17  
Form Assessment Area, Authorize Maximum Annual Assessment and Impose a First Year Assessment for Wood Hollow (CPO 6) (Approved Under Consent Agenda)

2. ORAL COMMUNICATION (2 MINUTE OPPORTUNITY)

Former County Commissioner John Leeper, 11160 SW Muirwood, Portland, Oregon, wished to speak to the Board about planning. He strongly encouraged the Board to get started with planning, effective November 1, 2007, for where the large number of people in the county are going to live, work and how they are going to get around. Mr. Leeper continued to have a keen interest in an MSTIP4. He thought it would be appropriate for any planning to be done in conjunction with the cities within Washington County. Mr. Leeper suggested that this be coordinated with Metro if the timing is right; however, he proposed that the County effort be a separate study and work effort. He selected the date of November 1st because Planning has a busy schedule through the remainder of the ordinance cycle, which runs through October 31, 2007. Mr. Leeper recommended getting started on this planning the next day.

Chairman Brian thanked Mr. Leeper for these good suggestions.

Chuck Wagner, 13900 SW Whitmore Road, wished to address item 6.a on the agenda but,
judging from the crowded auditorium, did not wish to wait for it to come up. He therefore made his remarks now regarding the franchise for Verizon. Mr. Wagner stated that regional and local governments invest in the creation of artificial scarcity in land that is suitable for earning a living and housing. He said that the same entities avoid creating rural infrastructure that would allow people to prosper economically on rural land. Mr. Wagner encouraged the Board, as well as regional and state government, to look at investing or causing investment in 21st century technologies—specifically, high-speed broadband communications—for rural residents. He believed that this is the sole bit of infrastructure that will keep people off roads, not commuting, and able to earn an effective living in rural environments. Mr. Wagner claimed that, instead, we invest in 19th century technology. He told the Board that if the County could create the kind of value in rural land that exists for urban dwellers, it would not have Measure 37 problems.

OFF DOCKET  COUNTY ADMINISTRATIVE OFFICE

MO 07-112
Proclaim Recognition for Jane Turner's Service to King City
Chairman Brian mentioned that Jane Turner served the City of King City as administrator for seventeen or eighteen years and did an excellent job. He indicated that the neighboring cities and the county have found her great to work with. Chairman Brian wished to offer Ms. Turner recognition for her fine service.

The Clerk of the Board read the proclamation into the record.

It was moved to authorize the Chairman to execute the proclamation to recognize Jane Turner for her service to the City of King City.

Motion Schouten
2nd Strader
Vote 3-0

3. BOARDS AND COMMISSIONS

3.a.
MO 07-105
Announce Vacancies on Boards and Commissions

Chairman Brian announced vacancies on the following Board-appointed advisory committees:

- Accessibility and Disability Services Advisory Council (1 vacancy; 2 terms to expire 6/30/07)
- Aging and Veteran Services Advisory Council (1 vacancy; 7 terms to expire 6/30/07)
- Farm Board of Review (1 term to expire 6/30/07)
- Park and Recreation Advisory Board (3 terms to expire 6/30/07)
- West Slope Community Library Advisory Board (2 terms to expire 6/30/07)
- Metzger Park Advisory Board (2 terms to expire 6/30/07)

He encouraged citizens to obtain the volunteer applications for these or other commissions.

To maximize time efficiency, the Board elected to take items 5.a. and 6.a. out of order.
5. PUBLIC HEARING  CLEAN WATER SERVICES

5.a. CWS RO 07-20
Conduct a Public Hearing and Adopt Revised Design and Construction Standards

Carrie Pak stated that the Districts Design and Construction Standards set the minimum standards for construction of sanitary sewer and stormwater facilities, erosion control requirements, provision for permanent water quality and quality control facilities, and requirements for permits for connection to the sanitary and storm sewer system. She indicated that these standards are adopted pursuant to Ordinance 27. Ms. Pak said that the standards also serve to: 1) reduce adverse effects on water quality and quantity resulting from construction activities, 2) safeguard the public health and safety and operations of the Districts sanitary, storm and surface water systems. She went on to say that they aid the District in achieving compliance with rules and requirements of the Oregon Department of Environmental Quality and that they further efforts to improve the water quality of the Tualatin River and its tributaries. Ms. Pak reported that the Districts last update to the contents of its standards occurred in February of 2004. She listed the four major areas of focus for this revision:

- Clarification of key areas of current standards, including standards relating to vegetated corridor management
- Incorporation of technical details associated with low impact development practices to fulfill the Districts role relating to the Tualatin Basin Goal 5 process
- Incorporation of changes required by Districts MS-4 stormwater management plan
- Various minor revisions to clarify existing rules

Ms. Pak related that no major policy changes are being proposed with this update. She stated that a comprehensive public involvement process was completed to review proposed changes. Ms. Pak went on to say that between April 25, 2006 and March 6, 2007, twelve stakeholder meetings and three presentations to the Advisory Commission were completed. She remarked that email invitations were sent to over 180 stakeholders representing nearly 100 entities, including conservationists, builders, developers, engineering and landscape consultants, cities, Washington County staff, park districts, Oregon Department of Transportation, and other regulators such as the Corps of Engineers. Ms. Pak commented that more than 200 stakeholders have participated in the twelve meetings, in addition to District staff. She said that a core group of individuals attended many of these meetings and that all meeting notices were posted on the District website. Ms. Pak provided further detail regarding the scope of outreach. She acknowledged receipt of written comments from 22 entities and said that most of these are directly reflected in the proposed changes. Ms. Pak reported that the Advisory Commission met on March 21, 2007 and adopted a statement of support for the Revised Design and Construction Standards. She called attention to a revised Resolution and Order, that provides additional clarification on the actual implementation dates and allows staff to modify Exhibit A to remove reader notes, etc.

The public hearing was opened.

Jim Wiley, 1807 19th Avenue Court, Milton, Washington, identified himself as a regional engineer for Advanced Drainage Systems with Handcore. He explained that this firm manufactures corrugated high-density polyethylene storm drainage pipe. Mr. Wileys
comments addressed Section 5.06.7 regarding pipe cover. He observed that Table 5-2 has a minimum cover requirement for his product of 48 inches in paved areas and 36 inches in unpaved areas. Mr. Wiley pointed out that a nationally-accepted standard is one foot of minimum cover for his product. He stated that the Oregon Department of Transportation and the Oregon APWA specifications have a two foot minimum cover requirement; he supported that and asked for consideration of it.

Brian Wegener, Watershed Watch Coordinator, Tualatin Riverkeepers, 12360 SW Main Street, Tigard, Oregon, submitted written testimony, which may be found in the Meeting File. He wished to comment about the water quality design storm, which is a statistical model that dictates the capacity of stormwater facilities. Mr. Wegener said that Clean Water Services developed its water quality design storm in 1990 and was one of the first agencies to require stormwater treatment on new developments. He testified that the design storm has not changed since that time. Mr. Wegener told the Board that a study was published in December of 2000 that compared water quality design storms for municipalities in the northwest. He reported that the conclusion of that comparison was that in the Tualatin Basin, the flow rate treated is about half of that (typical of the City of Portland) and about one quarter of that (typical of cities and counties in the State of Washington). Mr. Wegener said the result is that in the Tualatin Basin, water quality facilities are designed significantly smaller and with less capacity for flow and treatment than in all other areas of the northwest. He explained that the difference is primarily due to the design storm and the associated method of calculation used by Clean Water Services. Mr. Wegener remarked that the discrepancy does not generally reflect any local meteorological phenomenon. He reported that in 2004, CWS hired Pacific Water Resources to do a study, which noted some deficiencies in the design storm and came up with some specific recommendations including increasing the treatment rate from 0.09 inches per hour to 0.12 inches per hour and increasing the volume from 0.36 inches of rain to 0.72 inches of rain in order to meet the criteria of treating 90 percent of the dry season runoff. Mr. Wegener said that Noah Fisheries has recommended an even stricter standard, based upon western Washington, that would treat 99 percent of the effective impervious area runoff. He was concerned that this is the second time the Design and Construction Standards have been revised without reflecting the recommendation of the consultant hired by Clean Water Services. Mr. Wegener urged the Board to change the Design and Construction Standards to use the recommendations made by Pacific Water Resources in 2004. He further recommended that the agencies of the Willamette Basin meet and devise a standard methodology that meets all needs.

Ernie Platt, Homebuilders Association of Metropolitan Portland, 15555 SW Bangy Road, Lake Oswego, Oregon, identified the Homebuilders as an active participant in the nearly two year process of revisiting the construction standards. He recognized that an extensive list of individuals and organizations have been involved in the extensive review of the Design and Construction Standards. Mr. Platt urged the Board to move forward with the approval of this document as presented. He believed that it adequately represents the interest of a multitude of organizations and individuals that work on a daily basis with Clean Water Services. Mr. Platt appreciated the opportunity to have been involved in this process.

Sean Darcy (name may be misspelled; did not sign in), Contact Stormwater Solutions, 12021 NE Airport Way, Portland, Oregon, agreed with comments made by Brian Wegener regarding the need for an increase in the design storm. He felt this would improve water quality across the basin. Mr. Darcy recommended that as many changes as possible be made to the Design
and Construction Standards. He emphasized that the changes must be made before the next permit is issued. Mr. Darcy encouraged additional guidance on Chapter 1, Section 101 because he did not understand it. He attributed the confusion to how proprietary systems are described in the Design Standardsspecifically media filters, which are used in the State of Washington for phosphorous control. Mr. Darcy indicated that these meet water quality needs for sensitive waters in Washington. He encouraged Clean Water Services to look at all BMPs and to use as many tools as possible in addressing the phosphorous concerns across the basin. Mr. Darcy believed this would give Clean Water Services a variety of techniques to utilize to meet these standards.

Bill Gaffi recommended responding to the minimum cover issue first.

Carrie Pak characterized Jim Wiley as an active participant throughout the whole process. She was aware of his concerns and his request to shorten the depth of the requirements. Ms. Pak said that staff has looked at this issue in depth. She recommended that the standards not change at this time.

Commissioner Schouten asked staff to compare and contrast those standards.

Carrie Pak referenced Table 5-2, which contains this information. She said that Clean Water Services decided to change the language of "non-reinforced pipe" to "other approved pipe". Ms. Pak stated that for other approved pipe types, Clean Water Services would allow for minimum cover to be 48 inches in paved areas and 36 inches in unpaved areas. She explained that a lot of this is due to unenforced pipe materials. Ms. Pak summarized that Clean Water Services allows a lesser amount of cover, depending on the strength of the reinforcement of the pipe. She remarked that this speaks to the structural integrity of the pipe. Ms. Pak told the Board that the reason the paved areas have a deeper minimum coverage is because cars on the road place additional force on the pipes. She reported that the standards in Table 5-2 are based on not only the national standards but also the experience of Clean Water Services with various types of pipes. Ms. Pak indicated that the speaker is asking for a shallower cover.

Bill Gaffi advised the Board that Clean Water Services does intend to address the design storm beginning in July of 2007. He added that this is a little more complex than it might appear on the surface. Mr. Gaffi commented that for a number of years, Clean Water Services has been trying to formulate an integrated strategy for the restoration of the watershed. He said this includes a great many activities that are done nowhere else. Mr. Gaffi provided an example of flow restoration, whereby Clean Water Services proposes to invest close to $100 million in restoring flows to urban and rural streams. He remarked that this will have a dramatic positive effect. Mr. Gaffi proposed, too, to try to see how each of these elements properly integrates into an overall strategy so that Clean Water Services properly proportions the investments to maximize the ecological return. He reported that there is growing information throughout the Puget Sound region as to the ecological benefits of end of pipe treatment strategies. Mr. Gaffi concluded that all of this needs to be considered. He stated that there are dramatic differences throughout the region and throughout the state in terms of other design storms, such as the design storms that are specified or required by state and federal government to control sanitary sewer overflows or combined system overflows. Mr. Gaffi intended to look at this beginning in July and to see how it fits into an overall strategy and then to report to the Board.

Relative to the maintenance standards, Mr. Gaffi said that Clean Water Services is
discovering that a variety of stormwater management strategies that are in place, being applied to new development, or that may be applied to new development under the proposed standards have rather substantial maintenance costs. He reported that Clean Water Services is trying to address the concern that as the portion of the urban area that is served by these systems grows, the impacts on drainage fees could be rather dramatic. Mr. Gaffi wished to ensure that Clean Water Services is approaching these strategies in the most cost effective way possible. He added that staff will be looking at additional strategies to move some of the treatment techniques to more consolidated applications where there are better unit costs.

The public hearing was closed.

It was moved to adopt the proposed Revised Design and Construction Standards.

Motion Schouten
2nd Strader
Vote 3-0

Commissioner Schouten regarded testimony as illustrating that honest people can disagree about where money can best be spent. He felt that there is a limited amount of money that can be expended in both the long and short term, in terms of what ratepayers will pay. Commissioner Schouten believed that the money being spent under the current Design Standards and Workplans is probably most efficient and will have the most environmental benefits for the dollars spent. He looked forward to further analysis in the coming year or two.

Commissioner Strader observed that this was a two-year process. She recognized the hope that everyone comes to the table in a good faith effort to ensure that whatever design standards are selected are the most effective and efficient. Commissioner Strader further desired the standards to be safe to the environment for the entire County.

6. PUBLIC HEARING COUNTY ADMINISTRATIVE OFFICE

6.a.
RO 07-93
Grant Cable Franchise to Verizon Northwest, Inc.

Chairman Brian acknowledged that this has been the subject of at least one Worksession, as well as of other discussions.

The public hearing was opened.

Charles Wagner mentioned that he has previously submitted two rounds of written testimony that establish facts and offer analysis as to why the County should not grant a competitive franchise to Verizon. (Mr. Wagner testified about this topic under Oral Communication earlier today.) He had the impression that one Commissioner, who is not present today, was puzzled as to why he should oppose a competitive franchise that would apparently do nothing but improve the situation for existing customers. Mr. Wagner stated that granting a competitive franchise to Verizon if they have incompetent management is no competition at all for Comcast. He considered television service to be a luxury. Mr. Wagner did not regard high speed broadband communication as a luxury, particularly in the 21st century. He said that if the Board wants its rural residents to keep up with the urban dwellers that dominate the County, it needs to pay attention to high speed broadband in the coming century. Mr. Wagner
stated that one way to do that is to not establish a competitive franchise with a company that is not equal to the competition now or in the future.

Commissioner Schouten asked how not approving the franchise agreement would address the issues raised by the speaker.

Mr. Wagner thought the Board could extract additional information from Verizon as to why they are competent to be competition for Comcast in opposition to his contention. He did not think this has been established. Mr. Wagner used an example of automobiles in the past, contrasting Studebaker with Ford/Chevrolet, etc. He stressed that it is important to pay attention to the management capability of the company that is able to produce future opportunities and benefits for citizens.

Commissioner Schouten suggested that it is the Boards job to simply provide people with the opportunities to compete. He added that it is up to the companies to be competitive.

Mr. Wagner said if the Boards objective is to put up competition for Comcast, then it needs to look to the nature and capability of the competition. He concluded that if this is the objective, then it is the Boards job to decide whether the management is competent. Mr. Wagner added that this would be a legitimate reason to deny the franchise.

The public hearing was closed.

Bruce Crest, Administrator, Metropolitan Area Communications Commission, provided a brief staff report. He reported that on February 8, 2007, the Commission recommended to eleven of its jurisdictions that they should adopt the Verizon franchise for Verizon Northwest to provide competitive cable television services. Mr. Crest believed that franchise is reasonably comparable to the Comcast agreement, which is already in place. He specified that this is a 15-year agreement, which is intended to provide significant benefits to subscribers and, especially, to provide them a choice between two cable television companies.

Commissioner Schouten asked for a response to Mr. Wagners last question.

Mr. Crest said it is important to remember that Verizon is one of the largest telecommunication providers in the country if not the world. He related that Verizon has been providing this type of cable television service for over two years. Mr. Crest has heard significant good reports from other jurisdictions where Verizon offers this service. His understanding was that Mr. Wagners concerns are primarily with the broadband internet services. Mr. Crest clarified that these are not services that are regulated by MACC or by the Board but rather are information services regulated by the Federal Communications Commission. He saw nothing in Verizons legal, financial or technical qualifications that tell us they could not do the job that they consent to do in this agreement.

It was moved to grant the proposed cable television franchise to Verizon Northwest, Inc. and to adopt the Resolution and Order containing findings as required by County Code Section 5.08.050 B, as amended.

Motion  Schouten  
2nd  Strader  
Vote  3-0  

For the benefit of the television audience, Commissioner Strader noted that this item was
continued to today from a prior Board meeting. She recognized that the Board was inundated with a large amount of information relative to granting this franchise. Commissioner Strader explained that the item was continued in order to provide the Board with the extra time to study everyone’s feedback. She thanked the Chair for delaying the matter initially because the extra time provided the Board with a chance to take an in-depth look at the issues associated with this action.

Chairman Brian mentioned that he had needed more time to read all of the material received and to get answers to questions. Having received the additional information, he was ready to act today. Chairman Brian spoke of the County’s reliance on advisory groups, such as the Metropolitan Area Communications Commission, as well as the entire written record. He saw no evidence that Verizon is anything but a well-managed and successful company.

The Board now prepared to entertain a series of six Measure 37 claim hearings.

Chairman Brian stated that whether or not the Board likes Measure 37 is irrelevant because the Board is charged to implement the law. He noted that if the claims comply with the State statutes, they are approved and that they are rejected if they do not comply. Chairman Brian clarified that today is not the day to testify about sewer, water, septic tank, ingress/egress, transportation, loss of view, runoff issues, or such issues. He said that an exception would be if staff is proposing a specific item to be waived that is a health and safety matter per se. Chairman Brian stated that if and when a property owner comes in for actual development of anything, then is the time for testimony about the issues just listed. He defined the expedited hearing process and listed the four conditions associated with that.

Chairman Brian determined that only item 4.c. qualifies for the expedited hearing process today.

4. PUBLIC HEARINGS  LAND USE AND TRANSPORTATION

4.c.
RO 07-89
Consider Measure 37 Claim No. 37CL0819; Eunice Vandyke Claimant (CPO 13)

It was moved to adopt Resolution and Order approving Claim No. 37CL0819 to not apply the following regulations: 2006 Community Development Code (1) Section 340-5.1 and 340-7.2; (2) Section 424-3; (3) Section 430-85.1 and (4) Rural/Natural Resource Plan Policy 22 (community water system requirements only) and require a land division and building permits for the proposed dwellings.

Motion Schouten
2nd Strader
Vote 3-0

4.a.
RO 07-87
Consider Measure 37 Claim Nos. 37CL0688 & 689; Crescent Grove Cemetery Association Claimant (CPO 6)

Mark Brown provided the following information in his staff report:
This property is located on the north side of Scholls Ferry Road at 175th.
Claimant acquired this property in 1969.
Property is just over 76 acres in size and is comprised of four tax lots.
Proposed development is to divide the property into 20,000 square foot lots that could result in as many as 165 lots and dwellings.
The property had an R-20 zoning designation when acquired, which allowed 20,000 square foot lots.
Part of the property today is in an AF-20 district; the minimum lot size in that district is 80 acres.
There is a small portion of the property on the south side of Scholls Ferry Road that is in Future Development 20, which allows 20-acre minimum lot size.
Property is also in the Bull Mountain/Cooper Mountain Critical Ground Water areas, which limit new wells to one per ten acres.
Regulations adopted since the claimant acquired the property have led the claimant to estimate a loss in value of $20 million.
Staff has determined that the claim meets the minimum requirements for a Measure 37 claim.

Mr. Brown had a two part recommendation:

1. Reject that part of the claim asking to have the County Transportation Plan waived, which shows a realignment of 175th across their property. Staff's reasoning is that that regulation either is a safety regulation not waivable under Measure 37 because the realignment will provide a safer intersection at Scholls Ferry Road and, secondarily, the County will compensate the owner of the property for any right-of-way acquisition that is necessary to construct that improvement.

2. Grant waivers for a set of regulations for 37CL0688 and 37CL0689, as identified in the recommendation portion of the staff report.

The public hearing was opened.

CLAIMANT

Jim Zupancic, Zupancic Group, 16869 SW 55th, Lake Oswego, Oregon, appeared on behalf of the Crescent Grove Cemetery Association, a non-profit Oregon corporation. He agreed with staff that the Measure 37 claim should be approved and he agreed with the Chair's articulation that this hearing is not for the land use application. However, Mr. Zupancic did not wish the two to be confused. He objected to the transportation plan ordinances being rejected as part of the waiver. Mr. Zupancic stated that Measure 37 specifically identifies transportation regulations as land use regulations. He remarked that to the extent that a transportation plan is exempt because of health and safety concerns, that could apply to any transportation regulation anywhere in the state. Mr. Zupancic regarded that type of characterization as inappropriate. He recognized that a condemnation proceeding to take the land is separate and independent from Measure 37. Mr. Zupancic believed this should not have a bearing on whether or not the Transportation Plan is subject to Measure 37. He thought that it is and that it should be included as part of the waiver. Likewise, Mr. Zupancic stated that whether or not water can or cannot get to the site is a land use application issue and should not be considered as part of this. He asked that the Board consider including the Transportation Plan, with the understanding that the Board can come back later if there is a
declaration of necessity on a condemnation and move forward as it sees fit. Mr. Zupancic did not believe this should have a bearing on the Measure 37 claim, however.

IN SUPPORT

None.

IN OPPOSITION

None.

Commissioner Schouten asked the speaker to elaborate on his testimony relative to application of the public health and safety exemption.

Jim Zupancic believed that the Board can categorically make a finding that a specific transportation ordinance has health and safety ramifications as it relates to a particular parcel. He did not think a Measure 37 hearing should be confused with a declaration for necessity and, ultimately, a condemnation proceeding. Mr. Zupancic did not think the County has yet decided whether or not the extension of 175th is what it wants to do. He reasoned that if the County wishes to proceed with that, it can do so under declaration of necessity. Mr. Zupancic believed that unless that finding has been made before this hearing, it is premature and that it should be independent.

Chairman Brian wanted to hear staffs response to the speakers point of view.

Mark Brown replied that staff spent a fair amount of time pondering the relationship of a number of events that would have to occur in the process of compensating a property owner for future purchase of a right-of-way. He reported that staff concluded that even though the Board has not yet approved a declaration of necessity for this right-of-way acquisition, the County is well on the way there. In fact, Mr. Brown noted that this item was scheduled to go to the Board a couple of weeks ago. He recalled that the fact that one thing was not quite in place kept it off the agenda. Mr. Brown recognized that the property owner will be compensated even though the County has not taken this somewhat legal step in advance of the date of consideration of this claim. He said that in the end, the value of the right-of-way will be paid to the property owner. Mr. Brown concluded that under Measure 37, therefore, there is no loss in value.

Dan Olsen indicated that that analysis was discussed pretty thoroughly with Chris Gilmore in the Office of County Counsel. Based on his own experience doing condemnation work, Mr. Olsen agreed with the position. He stated that an appraiser, if asked to look at this, is going to examine what is the most likely scenario that will occur with the property. Mr. Olsen said that, clearly, the most likely scenario is that there will be a declaration of necessity and there will be compensation paid which will include residual damage, if any, to the remaining property. He commented that the net effect will be no loss in value.

Chairman Brian assumed that staff concludes that consideration of this element is appropriate in the context of the claim, as well as further consideration later as a land use matter.

Dan Olsen responded that consideration of the transportation element is proper in the claim. However, he concurred with staffs recommendation that it is not subject to being waived under Measure 37 because it does not meet one of the components, namely, that the
regulations results in a loss of value.

Commissioner Schouten asked if transportation projects and the Transportation Plan are, per se, health and safety issues. He also wanted to know if these are relevant to today’s decision.

Dan Olsen thought that transportation projects can serve one of two functions or both: they can be capacity improvements, in which case the regulations relating to them would not necessarily be exempt under Measure 37 under the health and safety exemption. He said they could also be a safety improvement, in which case they would be, and that they could even be a mixture of both. Mr. Olsen was not familiar enough with this particular project to know exactly where this falls. He stated that, clearly, there is an exemption for safety and said it has been staff’s position that certain transportation improvements and transportation regulations are primarily directed toward safety and therefore are exempt.

Commissioner Schouten asked where the public health and safety issues may be found in the staff report.

Mark Brown directed Commissioner Schouten to the last paragraph on page 3. He spoke specifically of this case, where the realignment of the intersection (Scholls at 175th) has elements of a public safety improvement so that what is currently an offset intersection situation is eliminated. Mr. Brown explained that this would provide for safer turning movements than the current situation.

Commissioner Schouten asked if the findings say that this public health and safety exemption is in place because of the very specific facts in this case.

Mark Brown responded that all of the items in the staff report are basically findings. He reported that the 180th day for this claim is May 28, 2007. Mr. Brown went on to say that if the Board would be more comfortable waiting for the declaration of necessity, staff could probably continue this until later in May and get the declaration of necessity in front of the Board prior to issuing a decision on this claim.

Commissioner Schouten asked if the public health and safety exemption is tied to the very specific facts and circumstances for this particular intersection or area.

Mr. Brown replied that there are two reasons why the County would not waive the Transportation Plan in this case. He indicated that the simpler one is the fact that the property owner will be compensated and so, under Measure 37, there is no loss in value. Mr. Brown stated that there are elements of public safety associated with the realignment of the intersection that may not be fully spelled out in the staff report.

Chairman Brian observed that staff is distinguishing this particular road improvement from all road improvements, in that there are safety issues (alignment, traffic movement, etc.). He noted that this is different than needing a future public right-of-way to help straighten out a curve a little bit or help capacity a little bit. Chairman Brian understood that this alignment issue (and the current movement compared to the future movement) is a safety issue.

The public hearing was closed.

It was moved to:

- Adopt Resolution and Order approving Claim No. 37CL0688 to not apply the following
regulations: 2006 Community Development Code (1) Section 344-5.1 and 344-7; (2) Section 424-1; (3) Section 430-85.1 and (4) Rural/Natural Resource Plan Policy 22 (community water system requirements only) and apply the R-20 regulations in effect in 1969 when the claimant obtained the property. Also approving Claim No. 37CL0689 to not apply the following regulations: 2006 Community Development Code (1) Section 308-6.1 and apply the R-20 regulations in effect in 1969 when the claimant obtained the property.

- Reject that portion of the claim requesting the waiver of that portion of the Washington County Transportation Plan that calls for the realignment of SW 175th Avenue across the property to the intersection of SW Scholls Ferry Road and SW Roy Rogers Road.

Motion Schouten
2nd Strader
Vote 3-0

4.b.
MO 07-113
Consider Measure 37 Claim No. 37CL0468; Donna M. Cone Revocable Trust Claimant (CPO 15)

Chairman Brian announced that the claimant has submitted a written request that this matter be continued indefinitely. He said that if the Board takes that action, then new notices will be sent to all of the required parties prior to any further consideration.

Mark Brown acknowledged receipt of a letter dated March 14, 2007 from Bill Kabeiseman, who represents one of the adjacent property owners. He concurred with continuing this matter indefinitely until staff is requested by the claimant to activate it, at which time a new notice would be issued.

The public hearing was opened.

CLAIMANT

None.

IN SUPPORT

None.

IN OPPOSITION

David Papworth, 32500 SW Johnson School Road, Cornelius, Oregon, mentioned that this is his third appearance on this claim. He pointed out that this is the fourth request for extension of this claim and the third by the claimant. While Mr. Papworth did not object to the continuance, he urged the Board not to make the continuance "indefinite" in fairness to himself and his neighbors. He desired more than the typical 10 or 14 day notice of any future hearing. Mr. Papworth felt that the Board should consider that the volume of claims will increase exponentially as the 180 day window is approached, relative to December 6th. He asked the Board to resolve the issue of when the claimant has extended the 180 day deadline and to consider not hearing this claim before June or July in order to give everyone a chance
to plan schedules. Mr. Papworth wanted the Board to consider this issue without being flooded by the volume of other difficult matters.

Chairman Brian asked if there is a limitation to this extension.

Mark Brown responded in the negative.

Chairman Brian wanted to know if it is possible to schedule this hearing after the deadline of the big pile of claims coming in.

Mr. Brown replied that based on discussions with the claimants representatives, this claim will likely not be heard until August. He reported that the claimant has agreed to give staff 30 days notice in advance of when the claimant wants to reactivate this matter. Mr. Brown went on to say that staff would then have 60 days to render a decision.

Chairman Brian was comfortable with this timeline.

Commissioner Schouten commented on the importance of providing adequate notice to neighbors so they can come and testify at the hearing.

Mark Brown reported that the ordinance regarding notice calls for 21 days and added that this is what staff provides. He reiterated that in this case, 1) the claimant would give the County 30 days notice prior to reactivation, 2) staff would have to pick a hearing date in the 60 day window that follows, and 3) staff would provide notice 21 days prior to that. Mr. Brown welcomed Mr. Papworth being in touch with staff to inquire if the County has heard from the claimants representative.

It was moved to continue this matter indefinitely.

Motion  Schouten
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4.d.
MO 07-114
Consider Measure 37 Claim No. 37CL0726; Howard Grabhorn Claimant (CPO 10)

Mark Brown called attention to a revised staff report for this claim dated April 16, 2007. He provided a staff report containing the following information:

- The property is located on Vandermost Road, south of Scholls Ferry.
- There are three ownership dates with this property: the earliest is 1985 and the latest is 1974.
- There previously had been a Tax Lot 2300 that was part of the original claim but that Tax Lot has been removed. (Tax Lot 2300 is on the west side of the landfill site.)
- The three remaining tax lots in the claim comprise a total of just over 124 acres.
- Claimant proposes to continue to operate a solid waste landfill and a composting operation. Additionally, claimant has asked to be able to, at some future date, establish a material recovery facility, a transfer station or a recycling center.
- At the time Tax Lot 100 was acquired, that property had an EFU designation.
- At the time of acquisition, Tax Lot 2302 had a GFU-38 designation.
- Tax Lot 900 (on the east side of the property) had an F-1 designation when acquired.
There have been a number of regulations adopted since acquisition that have limited the use of the property. Claimant has estimated that loss in value at $5 million.

There are a number of things in the original claim that staff does not recommend be waived. A number of provisions over time have not changed from date of acquisition; staff has not recommended that these provisions be waived. Other provisions generally regarded as process regulations have not been recommended to be waived because they do not lead to a reduction in market value.

Staff believes that the claim meets the minimum requirements for a Measure 37 claim.

Mr. Brown based his recommendation upon the various tax lots. He clarified that the staff report lists a set of regulations to be waived that relate only to Tax Lot 100 and 900; another set relates only to Tax Lot 2302; and there are a couple of regulations that are recommended to be waived that relate to both Tax Lot 900 and 2302. He acknowledged receipt of, at last count, about 30 letters. Mr. Brown commented that most of these letters identify a number of issues with the operation of the landfill; they point to a number of things that the writers of the letters regard as nuisances. He recognized that a number of good points and important issues are identified in the letters; however, given the narrow purview of Measure 37, most of the issues in the letters are either for the DEQ permitting process or for what might be a subsequent land use application and decision by the County if the claimant moves ahead with any of the future development that has been proposed in the claim.

The public hearing was opened.

CLAIMANT

Wendie Kellington, Attorney, P. O. Box 1930, Lake Oswego, Oregon, represented Howard Grabhorn and Grabhorn, Inc. doing business as Lakeside Reclamation Landfill. She stated that the landfill has been in operation since the 1950s since the area was populated and, as such, operates as a non-conforming use. Ms. Kellington said that it operates under a 1991 County land use compatibility statement determining that the operations are a non-conforming use. She commented that all subsequent permits are built on that determination of the County. Ms. Kellington went on to say that it operates under a DEQ permit for the landfill operations, a DEQ permit for the composting operations, a County franchise agreement and a Metro designated facilities agreement. She reported that Mr. Grabhorn built his home at the landfill, which is on Tax Lot 900. Ms. Kellington recalled that in 1998, the County evaluated the landfills transportation and neighbor impacts and gave Lakeside high marks. She said that while the landfill operates on the same engineering footprint and height restrictions as in 1998, neighbor issues intensified when a non-conforming use application was submitted in 2001. Ms. Kellington today sought to obtain through Measure 37 the ability to do three things outside of a non-conforming use process:

- Ability to submit a land use application to the County, primarily to respond to Metro requirements without being restricted to non-conforming use processes.
- Ability to withdraw that land use application if, for example, it becomes too litigious or contentious.
- Ability to adjust lot lines to follow ownerships.

Ms. Kellington noted that an article in the Oregonian reported that the proposal was to punch
a road through Tax Lot 2300 to Pleasant Valley Road and to triple the size of the landfill. She
told the Board that there are no such proposals. Ms. Kellington stressed there is no plan to
punch a road through Pleasant Valley or to increase the size of the height or footprint of the
landfill. She clarified that the plan is to close the existing landfill under its existing DEQ
permits and to potentially respond to Metro requirements to establish a material recovery
facility, a transfer station or a reload facility through traditional land use processes rather than
non-conforming use processes. Ms. Kellington said that the final landfill finished height to the
north is 260 feet, which is the height of the eaves of the old farmhouse that represents Tax Lot
100. She remarked that the long-standing engineering of how the landfill fills and closes
demands a complicated sequence of events and protections designed to take the landfill to
closure. Ms. Kellington indicated that this is in the latter stages of that engineered sequence.
She stated that, at most, the landfill has nine years left; however, it could be as early as six
years away from closing. Ms. Kellington commented that the National Association of
Homebuilders estimates that each new home of 2,000 square feet constructed generates 4-7
tons of waste. She said that unless homes will stop being built when Lakeside closes in 6-9
years, another landfill will have to be sited to take its place. Ms. Kellington reiterated that Mr.
Grabhorn will be finished supplying that landfill resource for the County construction
industry in 6-9 years. She divulged that he has been accumulating a fund of money from the
revenue he takes in to pay for the cost of closing the landfill and also enough money to close
the landfill and make sure it stays safe and healthy over a period of 30 years after it closes.
Ms. Kellington reported that he is well on his way to meeting those requirements. She
declared that the primary feature of this Measure 37 claim is to remove the prohibition that a
landfill cannot be approved by the Board on land that is mapped as high-value farmland. Ms.
Kellington told the Board that the existing landfill footprint has always been on land that is
mapped as high-value soils. She said, however, that when the landfill was acquired by the
claimant, the high-value farmland prohibitions were not enacted. Ms. Kellington concluded
that removing the prohibition allows Lakeside to submit an application for consideration. She
acknowledged hearing concerns that the landfill cannot restore farmland but believed this to
be wrong. Ms. Kellington reviewed that several years ago, Mr. Grabhorn worked with one of
his neighbors to fill a part of what is now a neighbors productive vineyard. She shared that
Mr. Grabhorn is proud of this productive vineyard and believes it shows that farming is
possible when the filling is finished. Ms. Kellington went on to say that the landfill proposes
its closure to be populated with a forest of trees that will uptake water instead of a black
visqueen-like cover as seen on other landfills. She understood that some people prefer the
cover to trees and clarified that this Measure 37 claim does not interfere with that, if it is
required as opposed to the forest cover. Ms. Kellington reiterated that Mr. Grabhorns
intention is to restore this land to its original beauty. She anticipated the Measure 37 claim
would allow Lakeside to submit a traditional land use application rather than relying on
non-conforming use principles, allow Lakeside to withdraw such a land use application if it
becomes litigious or unreasonably contentious and allow Lakeside to adjust property lines to
reflect ownership. Ms. Kellington stated that it would not divest the County of control but
rather would allow the landfill to be ultimately approved as a conditional as opposed to a
non-conforming use.

Jill Gelineau, Attorney, Schwabe, Williamson & Wyatt, 1211 SW 5th Avenue, Portland,
Oregon, also represented Mr. Grabhorn. She reviewed that there are three tax lots impacted by
this Measure 37 claim and that there is no dispute regarding the acquisition dates of any of
those claims. Ms. Gelineau noted that Tax Lot 2300 is not part of the claim. She recognized
that there has been some discussion that some of the regulations that Mr. Grabhorn seeks waiver of are health and safety regulations. Ms. Gelineau said that the regulations Mr. Grabhorn seeks waiver of primarily have to do with allowing him to make an application on high value farmland to allow composting, to allow him to make an application for property line adjustment, to allow application of that withdrawal, and to allow a development proposal to be accepted by the County even if it does not comply with all land use regulations. She emphasized that in no way are any of these regulations health and safety regulations. Ms. Gelineau stated that Measure 37 exempts regulations restricting or prohibiting activities for the protection of public health and safety, such as fire and building codes, health and sanitation regulations, solid or hazardous waste regulations, and pollution control regulations. She did not seek waiver of any of those regulations. Ms. Gelineau shared that Mr. Grabhorn intends to continue to operate in conformance with all applicable health and safety regulations. Ms. Gelineau referenced the Measure 37 discussion out of the States 2004 ballot measure presentation. She indicated that it distinguished health and safety from welfare. Ms. Gelineau reported that the State found that the health and safety exemption likely does not include laws for the protection of economic, social and aesthetic interests that may be described as general welfare. She concluded, along with staff, that none of the regulations that Mr. Grabhorn seeks to have waived are anything to do with health and safety. Ms. Gelineau went on to say that 1) the ability to do a lot line adjustment obviously involves ownership issues, 2) the ability to withdraw an application of right has nothing to do with health and safety, and 3) the ability to move forward with siting on high-value farmland is not a health and safety regulation. She submitted a letter, which may be found in the Meeting File, regarding the nuisance issue. Ms. Gelineau told the Board that Mr. Grabhorns landfill is a lawful, non-conforming use. She added that it is permitted by Oregon law and therefore is not a nuisance. (Letter cites legal authorities for that proposition.)

Commissioner Schouten asked if the attorneys have areas of disagreement with the staff report dated April 16, 2007.

Jill Gelineau concurred with the staff report in full. She explained that the reason for the late letter was to respond to the staff report.

**IN SUPPORT**

None.

**IN OPPOSITION**

David Van Riper, 14800 SW Pleasant Valley Road, Beaverton, Oregon, submitted two letters, which may be found in the Meeting File. He referred to the first letter from Schwabe, Williamson & Wyatt dated November 29, 2006 regarding Mr. Grabhorns legal representation on filing the claim. Mr. Van Riper referenced the third paragraph, where Mr. Grabhorn speaks of plans to expand the operation on the balance of the property as well as adjust the lot lines. He turned to the second page, where he read "and to expand as described above". Mr. Van Riper went to the third page and quoted "to expand the operation as set forth herein". He then focused on the second letter from Mr. Grabhorn dated April 9, 2007, which was sent to surrounding neighbors, which allegedly says that he has no plan to expand the landfill size. Mr. Van Riper further quoted the letter, "I dont plan to change anything."
Neither my DEQ permit renewal nor my Measure 37 claim I have filed seek changes to the landfill." He claimed that these letters are in opposition to each other and do not represent good faith to the surrounding community.

Chairman Brian stated that the contrast in the documents is clear. He explained that whether Mr. Grabhorn ever files a claim for expansion or not is a different proposition. Chairman Brian commented that the County has 873 claims involving 73,000 acres under Measure 37. He said that a lot of those people may file an application for development and a lot probably will not. Chairman Brian remarked that inconsistencies in his documents do not really pertain to the Measure 37 requirements that the Board has to consider. He understood Mr. Van Ripers point, though, and thought it is well taken.

Commissioner Schouten asked if there is new correspondence from the Schwabe firm.

Mark Brown acknowledged receipt of one submittal from Schwabe this morning at the hearing. He had only one copy of it and so asked staff to make copies for the Board.

Maria Ponzi Fogelstrom, 14665 SW Winery Lane, Beaverton, Oregon represented Ponzi Vineyards, which is just east of the landfill. She stated that Ponzi Vineyards has been in business since 1970. Ms. Fogelstrom understood that the Board does not wish to discuss health and safety issues today but felt it is logical to assume that someone filing a Measure 37 claim will expand, enlarge or change operations. She wished to share what she is experiencing at her place of business. Ms. Fogelstrom told the Board that Ponzi Vineyards is a leading winery in the state and that the testing room is probably one of the most frequented due to its location. She said Ponzi Vineyards sees hundreds of visitors throughout the year from all areas of the country and even internationally. Ms. Fogelstrom testified that with the growth of the existing landfill, its operations are becoming more visible to winery visitors and changing their experience. She interjected that the wine industry brings $2 billion into the state and that Ponzi Vineyards takes tourism seriously. Ms. Fogelstrom described one change over the last few years, namely, that people traveling down Vandermost Road get a full view of the landfill. She said the operators of Ponzi Vineyards are faced with discussing land use issues with visitors as opposed to talking about world class wines. Ms. Fogelstrom voiced concerns with noise, odors, a fire last Fall, mud, traffic, and contaminated water. Traffic was one of her greatest concerns and she cautioned that the road cannot take any more traffic. On behalf of the Oregon Wine Industry and Oregon Tourism, Ms. Fogelstrom urged the Board to support her business as well as the neighbors who live adjacent to this nuisance and hazard.

Elizabeth Thoresen, 19885 SW Aten Road, Beaverton, Oregon, had intended to speak to health and safety issues. Since the scope of the hearing is limited, she said that if the Board rubber stamps these recommendations, it is setting a precedent for environmental anarchy. Mrs. Thoresen went on to say that the Board would be allowing this landfill to operate far beyond the scope of what was initially intended, when accepting solid waste was legal on high-value farmland. She opposed this Measure 37 claim.

Richard Thoresen, 19885 SW Aten Road, Beaverton, Oregon, had also intended to address some environmental issues. He disagreed with Mr. Grabhorns counsel that the landfill is not a nuisance; he regarded it as such. Mr. Thoresen heard testimony relative to Mr. Grabhorns closing time of nine years. He recalled that in 1973, Mr. Grabhorn told the Board that the landfill would be at capacity in five years. Mr. Thoresen said that in 1989, Mr. Grabhorn predicted that the landfill would close in eight years. He went on to recall that in 2000, Mr.
Grabhorn said he would close in 15 years. Mr. Thoresen's point was that the closing date continually changes. He feared that if Mr. Grabhorn is allowed to expand, there is no telling how long the landfill will stay open. Mr. Thoresen reviewed that in 1998, Mr. Grabhorn told the Board that he needed an additional $8.6 million added to the existing $1.2 million for closure funds. He maintained that that goal has not yet been met. Mr. Thoresen said that this is required by law to be available every day the landfill is open. He stated that he received the same letter referenced by Mr. Van Riper regarding Mr. Grabhorn having no desire to expand this landfill. Mr. Thoresen wondered why, if that is the case, Mr. Grabhorn is applying for a Measure 37 claim. He urged the Board to deny the claim if Mr. Grabhorn does not want to expand. Mr. Thoresen regarded Lakeside Landfill as a disgrace and a cancer on the landscape. He asked the Board not to make a bad situation worse by making it larger. Mr. Thoresen at least wanted the Board to approve this with reservations, if at all.

John Frederick, 13622 SW Pleasant Valley Road, Beaverton, Oregon, testified that he has lived at this address 43 years. He reserved the right to disagree with the Board and Mark Brown about Measure 37 assessments. Mr. Frederick quoted from the text of Measure 37, where it mentions public nuisances, health and safety, health and sanitation, hazardous waste and pollution and contamination. He felt that the Board must address these issues because they are part of Measure 37. Mr. Frederick stated that Mr. Grabhorn is in violation of all five of the above specifications and believed that the claim must therefore be dismissed in its entirety. He asked the Board to take a better look at this and to assess what is actually being addressed here. Mr. Frederick thought this matter should either be denied or continued today. He told the Board that Measure 37 states that the claims must comply with federal law. Mr. Frederick maintained that federal law governs contaminated groundwater. He recited a long list of substances that are in the landfill. Mr. Frederick reported that DEQ has issued four citations to the landfill since 2002 and there have been OSHA-2 violations.

Wendy Burchfield, 20050 SW Aten Road, Beaverton, Oregon, said that the crafters of Measure 37 anticipated that public health and safety could be endangered by relaxing land use restrictions on some kinds of land use that, by their nature, must be properly regulated to prevent public harm to citizens. She believed that the Lakeside landfill is an example of such land use. Ms. Burchfield reported that it is well documented that health and safety issues apply to the landfill. She felt that the Board has the ability to reject this claim or limit its scope. Ms. Burchfield urged the Board to act in the public's best interest by rejecting this claim.

Nick Ponzi, 22230 Jaquith Road, Newberg, Oregon, testified that he has an interest in Ponzi Vineyards and property adjacent to the landfill. He wished to address the issues of health and safety. Mr. Ponzi planned to document statements made by DEQ to describe some of the contamination coming from the landfill. He emphasized that this is an unlined landfill. Mr. Ponzi said that leakage goes down the hill into the Tualatin River and into the groundwater. He reported that test wells surround the landfill to detect any impurities or toxic materials that may leach out of the landfill, as required by DEQ. Mr. Ponzi went on to say that on an annual basis, the landfill is required to take samplings of those wells to determine if there is anything leaving the landfill. He recalled that in the Fall of 2003, samplings were taken by the landfill, which showed high levels of selenium. Mr. Ponzi said that levels that exceed the standards must be reported to DEQ but added that they were not. He told the Board that samplings were again taken in 2004, with increased levels of selenium detected. Mr. Ponzi remarked that as a result, the landfill was cited and asked to monitor those wells more closely. He quoted from a
DEQ document to illustrate the extent of the violation(s). Mr. Ponzi related that leaching is now coming from Tax Lot 2302. He disagreed that planting trees on the landfill will divert flow of rain/water and permeate into groundwater because he believed that the trees go dormant during the rainiest time of the year. Mr. Ponzi stated that to allow the landfill to expand will only aggravate future generations. He again quoted from the DEQ document to convey the extent of leakage in the landfill. Mr. Ponzi regarded the leakage into the Tualatin River as a health and safety consideration.

Katie Twombly, 19809 SW Aten Road, Beaverton, Oregon, said that she lives west of the landfill. She stated that she will repeat a lot of what has already been spoken because she feels that it needs to be repeated. Ms. Twombly submitted a letter and three exhibits, which may be found in the Meeting File, and then read the letter into the record. She said that the landfill is located on some of the states most valuable farmland and zoned EFU. Ms. Twombly referred to DEQs website, which contains significant documentation about the landfill. She quoted from the website materials relative to disposal of unpermitted materials, site groundwater contamination and unauthorized disposal. Ms. Twombly voiced concerns about the growth of the landfill "mountain", noise and odors. She quoted from a letter from Mr. Grabhorn dated April 9, 2007: "I have no plan to expand the size of the landfill. I plan to operate the landfill the way it is now engineered on the existing footprint and as provided in my DEQ permit until it closes in about 9 years." Ms. Twombly claimed there are well documented environmental, health and safety concerns, such as groundwater contamination, Tualatin River contamination, air/water pollution, accepting unpermitted (illegal) materials, poor management practices, record of repeated violations. She believed that this Measure 37 claim should be referred to the state for decision because Washington County has a conflict of interest in this matter based upon the fact that it "saves money by dumping at Grabhorn/LRL". Ms. Twombly recommended that the Board not approve this claim.

Megan Walseth, Attorney, Ball Janik, presented testimony for her colleague, Christen White. (Written testimony may be found in the Meeting File.) She said that Ball Janik represents Dick Ponzi and John Frederick in their opposition to this Measure 37 claim. Ms. Walseth stated that the Board needs to deal very explicitly with how the public health and safety exception applies or does not apply in this case. She acknowledged that DEQ and Metro have the primary regulatory authority over solid waste sites but said that this does not eliminate the County's authority and responsibility under its police power to protect the public health and safety of its residents. Ms. Walseth said that the Board has the discretion to interpret the County's prohibition of solid waste disposal sites on high-value farmland as a protection of public health and safety specifically of the health and safety not only of the residents in the area but also for the high-value agricultural uses. She remarked that in this instance, DEQ and Metro regulations over the years have not eliminated the public health and safety issues testified about today. Ms. Walseth reiterated that the County has the authority to interpret its regulations as an additional layer of protection for its citizens pertaining to public health and safety. She commented that in this instance, the prohibition on solid waste disposal sites on this particular high-value farmland is a public health and safety regulation and that Measure 37 does not offer a waiver. Ms. Walseth said that the procedural provision having to do with the ability to withdraw an application if there are violations on the property can only be waived to the extent that the violations that prevent the applicant from withdrawing the application do not have to do with public health and safety. She believed that that needs to be more explicitly defined in the Board's decision. Ms. Walseth stated that under staffs
approach (waive Section 215-5 to the extent that the violations are not related to public health and safety), a situation is set up whereby staff makes an ad hoc determination on an undetermined ongoing basis about what violations on the site relate to public health and safety. She summarized that it allows an ongoing interpretation of Measure 37 that is not consistent with ORS 197.352. Ms. Walseth commented that if the Board approves this claim, the decision needs to be very clear that this conditional use, Type III or non-conforming use review would be required for any change at the site that requires a land use review. She noted that the staff report indicates that the development proposed under the claim will be subject to those reviews that were required by the historic code. Ms. Walseth believed that the proposed development should be specifically defined to reference only what was stated to be proposed by claimants counsel today or that it should simply state that any future change on the site that requires a land use review will have to go through these particular reviews.

Chairman Brian wondered whether the speaker had submitted her arguments to either staff or counsel.

Ms. Walseth responded that she has not had the time to get it to staff and apologized for that.

Chairman Brian appreciated that Ms. Walseth submitted written comments today.

Leslie Frederick, 14020 SW Pleasant Valley Road, found it obvious that health and safety issues are involved with this claim. She urged the Board to study this further. Ms. Frederick said that if the Board approves this claim today, it implies that conditions resulting from the landfill do not affect her health and safety; she does not believe that. She stated that there is more to learn and reiterated that health and safety are at the core of this matter. Ms. Frederick said it is deplorable that the yearly well tests are done by Mr. Grabhorns organization. She felt harmed by not knowing what is going on in her back yard.

Commissioner Schouten wanted to know how much time is left on this claim.

Mark Brown replied that the 180th day is May 29, 2007. He proposed continuing this to May 22nd if the Board decides on postponement of this hearing.

Commissioner Schouten wished further detail on Sections 340-5.2 K and 215-5. He suggested adding a qualifying sentence, "to the extent that they are not issues that involve public health and safety." Commissioner Schouten wanted an expanded discussion on Sections 215 and 340.

Mark Brown said that inasmuch as at least two communications arrived this morning and that staff has not had the chance to review them, staff would like the opportunity to perhaps supplement the staff report and to respond to Commissioner Schoutens points.

Commissioner Strader wanted staff to explain to the audience what the Board is really here to review today in terms of health and safety standards, DEQ, Metros authority, etc.

Dan Olsen thought that the testimony heard today would be relevant if the applicant was asking the County to waive any County health and safety regulations. However, he noted that it is staffs opinion that the claimant is not asking for that; rather, the applicant is asking the County to waive land use regulations. Mr. Olsen stated that the claimant may decide, at some point, to go to DEQ or some other State agency to ask for a waiver of some of their regulations (which may be health or safety regulations) and the waiver might be denied. He remarked that staff does not believe the County issues in this matter are health and safety regulations. Mr. Olsen observed that it is possible that 215-5, in certain circumstances, might
relate to a safety issue; this is why staff drafted the language to explain that it is generally not a safety provision but could be in certain circumstances. He went on to say that staff says that the County is not waiving it if that is the issue. Mr. Olsen commented that the letter from Ball Janik talks about the prohibition on landfills on EFU land being a safety regulation. His opinion was that although it might have some safety-related impacts in certain situations, those regulations were not adopted as safety regulations but rather primarily farmland preservation and through the general authority of the County to protect the welfare of the community. Mr. Olsen stated that Measure 37 expressly takes that authority away from the Board, relative to people who purchased the property prior to the regulation going into effect.

Commissioner Schouten said that in terms of Section 215, it is waived only to the extent that it does not impact or involve health and safety. He commented that while that is in the body of the document, it is not stated explicitly in the conclusion piece. Commissioner Schouten could not be comfortable unless that piece is taken care of. He related that one problem he has with Measure 37 is that it causes the Board to have to ignore the community welfare, while the Board focuses on the narrow rights of a particular property owner. Commissioner Schouten took the view that this is a policy decision, but not a happy one.

REBUTTAL

Jill Gelineau wished to clarify a statement made in the claim letter, which was characterized as misleading. She did not wish her client to have to take responsibility for her broad drafting. Ms. Gelineau stated that her original claim letter says that Mr. Grabhorn wants to continue using the property as a landfill, expand the operation on the balance of the property, adjust the lot lines, and add a transfer station and a reload facility. She said that expanding the landfill was particularly directed to the fact that the footprint of the landfill stays the same but there is expansion within that footprint. Ms. Gelineau reported that Mr. Grabhorn wrote that letter when neighbors raised the concern that there was some other type of expansion involved. She apologized to the Board if this sounded misleading. Ms. Gelineau indicated that the only intention was to calm some of the fears of the neighbors. As to the health and safety, she concurred with the opinion of County Counsel that no health and safety regulation waivers are requested in this proceeding. Ms. Gelineau observed that many of the neighbors are unhappy that there is a landfill nearby but added that this, as a matter of law, does not mean that the Board has broader authority under Measure 37 than to do as staff recommends. She clarified that, as a matter of law, this is not a public nuisance.

Wendie Kellington noted that she cannot respond to the testimony in two minutes. She told the Board that the landfill operator has no plan to go beyond his footprint and that he will be done in six to nine years. Ms. Kellington predicted that the Board will get to hear all of the testimony today and more again in the context of siting a new landfill. She reported that the National Association of Homebuilders state that there are four to seven tons of waste for every 2,000 square feet of home. Ms. Kellington stated that Howard Grabhorn has run a clean, good site for more than fifty years. She said that as late as 1998, the County did a study that determined that neighbor and transportation impacts were fine. Ms. Kellington reviewed that the angst started in the context of a land use application asking for a non-conforming use approval. She now sought the opportunity to go through a straight land use approval, a conditional use permit approval, an approval that would achieve a material recycling/recovery facility or transfer station if Metro wants or requires that in order to achieve recycling goals. Ms. Kellington mentioned that the same people who said such mean
things about the landfill asked Metro to require that those things be done. She asked that Mr. Grabhorn be allowed to submit an application to the Board. Ms. Kellington explained that Mr. Grabhorn would like the opportunity to ask the question in the context of a real land use process as opposed to a non-conforming use process. Relative to water, she stated that two firms perform the water samplingsParametrix and URSnor Mr. Grabhorn himself. Ms. Kellington thought they were doing well if there was only one late report over 50+ years. She reported that Mr. Grabhorn is specifically allowed to accept most of the materials found in the landfill. Ms. Kellington admitted that some renegades have come to the landfill but added that most materials were caught before being disposed of. She concluded that Mr. Grabhorn operates a construction and demolition landfill. Ms. Kellington summarized that he does an awfully good job, based upon his history. She divulged that Mr. Grabhorn is paying to have a rate change calculated, which includes a surcharge on people with small loads so that there will less transportation in the area. Ms. Kellington stated that an odor study detected odors coming from grape crushings which someone had placed along the fence line. She characterized all of the allegations during testimony as issues against the heart of a business owner who is trying to finish and who wants to have the opportunity to submit a land use application based on real evidence and argument to determine compliance with approval standards. Ms. Kellington hoped the Board would approve this claim.

Chairman Brian gathered that anyone can submit written material up until the new hearing date, if this matter is continued today.

Mr. Olsen verified that that is correct.

Chairman Brian specified that the Board would not look to have a repeat of information already provided by proponents or opponents at the continued hearing. He said that to the extent that there is any amendment to the recommendation, the hearing should be kept open for comment on those.

Staff recommended continuing this matter to May 22, 2007, if the Board chooses to revisit this item.

Kathy Lehtola pointed out that May 22nd will be the Boards night meeting.

Chairman Brian observed that the advantage to that is that people who cannot attend during the day will be able to hear this item.

Commissioner Schouten felt the need to have further, more detailed discussions about 340-5.2 and 215-5. He sought details in a staff report regarding which parts of those are not relevant to public health and safety and those that may be. Commissioner Schouten wished to see a more detailed setting out of conclusions to make sure that all public health and safety exceptions are coveredin light of Measure 37 and in light of the large volume of material received today.

It was moved to continue this public hearing to May 22, 2007.

Motion Schouten
2nd Strader
Vote 3-0

Chairman Brian thanked everyone for being here today and offering their opinions about this claim. He announced that this public hearing will begin sometime after 6:30 p.m. on May 22, 2007.
Commissioner Schouten pointed out that this will also give Vice Chair Rogers and Commissioner Duyck a chance to consider this claim.

4.e.
RO 07-91
Consider Measure 37 Claim No. 37CL0692; Katherine G. Hermmen Claimant (CPO 13)

Mark Brown briefed the Board on this claim and imparted the following information:

- This property is located on NW Hobbs Road, off Susauer and north of Cornelius.
- Claimant has a 25 percent interest in the property, which she acquired in 1965.
- Property is approximately 125 acres.
- Claimant proposes to divide the property into a yet-to-be-determined number of lots.
- At the time the claimant acquired the property, it had an F-1 zoning designation.
- In addition to the regulations that have been adopted since the claimant acquired the property, the claimant has also requested waiver of a number of overlay designations which include the floodplain designation and the significant natural resource designation on the property.
- As a result of the regulations that have been adopted since the claimant acquired her interest in the property, she has estimated the loss in value as $25 million.
- Staff has determined that the claim does meet the minimum requirements for a Measure 37 claim.

Mr. Brown recommended that the Board approve the claim by adopting the Resolution and Order in the packet, thereby deciding to modify the land use regulations listed in the staff report. He noted that staff recommends in this claim that the claimant be granted a proportional claim, given that she has a 25 percent interest and given that the other interest holder in the property has had his/her claim previously rejected. Mr. Brown concluded that the only interest left in the property that is eligible for a claim is that of Katherine G. Hemmen.

The public hearing was opened.

CLAIMANT

William Cox, Attorney, 0244 SW California Street, Portland, Oregon, represented both owners of this property. He explained that the Kraft family has three siblings. Mr. Cox went on to say that they formed an LLC in 1998. He stated that their cousin, Ms. Hemmen, got her interest through various family members. Mr. Cox expressed appreciation for the continued courtesies afforded him and his clients by Tom Harry, Jim Tice and other staff members. He believed that his clients have a need to discuss two issues: 1) the idea that this claim can be limited to 25 percent of the property, and 2) staffs recommendation that some of the overlay zones are exempt from Measure 37. In terms of the 25 percent ownership, Mr. Cox recalled that he has never understood how this reasoning was reached. He said that the idea of separating out 25 percent of this property goes against all recognized common law and statutory property law in the sense that this is held in common and you cannot divide any grain of this parcel under the law as being separable. Mr. Cox concluded that Ms. Hemmen has a right to be on every grain of ground out there. He stated that to say that she somehow has only 25 percent of the right is to say that she cannot go on some of the other properties. Mr. Cox commented that if the County was to buy this property, then it could offer her 25
percent ownership. However, he noted that they would still only own 25 percent and would be partners with the Kraft family. Mr. Cox did not know how to distinguish and achieve the County's goal by only granting her 25 percent. He regarded this as an incorrect interpretation.

Mr. Cox said that his second point is a little more esoteric in the sense that he asked for a review and removal of overlay zones. He clarified that while he included the label "floodplain", what he meant is that the floodplain is a federal standard. Mr. Cox stated that to the extent that this federal standard is applicable, he cannot ask for that to be waived. He remarked that he can ask for any of the buffer zones that have been imposed on that to be waived, including wetland, buffers, or any of the other 421 buffers that are discussed on page 3 of the staff report. Mr. Cox believed that the 100 foot setback on all property within a certain distance or that contains a wetland is a standard that is not exempt. His reasoning was that a lot of those were established by Clean Water Services, which is a government entity controlled by the Washington County Board of Commissioners. Mr. Cox said that to say it is off limits for anything created by Clean Water Services is to ignore that the governing authority has through a separate entity established standards that otherwise would be waivable. He went on to say that just because they are not said to be County directly, but rather a district that the County controls, is an improper distinction. Mr. Cox stated that matters common to overlays, such as tree standards and vegetation standards, are created as more aesthetic than public health or safety oriented. He commented that safety issues can be achieved through engineering standards that are not being asked to be waived; those are development standards. Mr. Cox said that the goal of those general regulations can be achieved by the standards for development. He remarked that to say that this land automatically has to have a 100 foot setback does not address whether this land in fact needs a 100 foot setback. Mr. Cox indicated that federal law recommends 25 foot setbacks. He noted that he has seen those setbacks get larger and larger. Mr. Cox added that to the extent that they are an interpretation of the federal law, they are not exempt. He told the Board that LUBA has held that decisions by Clean Water Services are, in fact, land use decisions. Mr. Cox explained that they are therefore subject to and not exempt from any interpretation that goes beyond a provable health or safety risk. He said that the interesting point about all of this law is that while it is the applicants burden to establish that he has been damaged, once that burden has been established, all of the other regulations and their impact on this land are a burden that the local government must shouldershowing that these overlay zones are there for only safety or health standards. Mr. Cox stated that anything beyond that is fair game as far as being waivable.

Commissioner Schouten asked if it has to be a strict standard, in terms of the County's police powers in the area of health and safety. He wanted to know if it has to be a strict standard or if there can be a rational, reasonable connection between the ordinance and what is trying to be accomplished in terms of public health and safety. Commissioner Schouten wondered if this would be the kind of thing that is not waivable under Measure 37, if it is a reasonable standard. William Cox responded that this is an interesting concept from a legal standpoint, which has to do with the shifting of the burdens. He said that if the applicant has the burden to show that the 100 feet is excessive, it is very difficult (if not impossible) to meet that standard. However, Mr. Cox stated that Measure 37 is more specific to an applicants land. He reasoned that if the County has the burden to show that its overlay zone protects against a specific safety or health standard, he would prefer for his clients sake to have the burden on the County. Mr. Cox did not believe that the burden has ever really been established by the
local government. He observed that general things have been adopted out of hearings but that the due process application of the law has never happened. Mr. Cox indicated that the burden has been set onto the applicant, such that the applicant has the burden in many cases of disproving a negative. He now believed, under Measure 37, that it is the governments turn to disprove the negative.

**IN SUPPORT**

None.

**IN OPPOSITION**

None.

**REBUTTAL**

None.

The public hearing was closed.

As to the notion of proportionality, Mark Brown clarified that it is not staffs recommendation to assign a particular 25 percent of the tax lot to the claimant. He said that based on the concept of proportionality, the claimant is entitled to 25 percent of what could be gotten on the property in the way of development. Mr. Brown indicated that where they put it on the property is up to them. He stated that in this case, staff made an estimate of what might be obtainable on the property. Mr. Brown reasoned that a claimant with a 25 percent interest would be entitled to up to 62 lots. He noted this interpretation is consistent with how the Board has previously looked at these claims when this matter has come up.

Regarding the overlay district, Tom Harry observed that there are two overlays on this particular property: 1) the 100-year floodplain and 2) the significant natural resource designations (the water areas/wetlands and water areas/wetlands/fish and wildlife habitat). He stated that in the rural code, there are no specific setback or requirements regarding the floodplain. Mr. Harry explained that you can build right up to the edge of the floodplain. He specified that you are required to delineate that by an engineer. Mr. Harry said that as far as the significant natural resource standards, those also do not have a minimum setback. He noted that by definition, the water areas and wetlands designation is strictly that area that is within the 100-year floodplain. Mr. Harry stated that the Department of Fish and Wildlife has indicated that if you are within 125 feet, then you need to provide some analysis regarding what type of resources might be in that 100-year floodplain. He commented that typically, most of the floodplain has been historically farmed and so there are minimal, if any, significant natural resources. Mr. Harry acknowledged that there are some but he did not know what they are. He indicated that this would be part of the analysis on their application.

Commissioner Schouten asked if the Board and County staff must provide deference to the standards set out by Clean Water Services.

Dan Olsen was not sure he understood the question and asked for a recap by Mr. Cox.

William Cox said that the staff report in essence says that if the standard is adopted by Clean Water Services, it is immune from Measure 37 scrutiny. He took issue with that view because
Clean Water Services is controlled by the County and added that the other applicable Measure 37 standards are under the same control.

Mark Brown clarified that this claim concerns the rural area and is outside the Clean Water Services District. He emphasized that Clean Water Services has no regulations in this area. Mr. Brown recognized that Clean Water Services has setback and buffer standards but reiterated in this particular case, the property is out beyond their jurisdiction.

William Cox remarked that his client owns 25 percent of every lot that can be achieved. He clarified that she does not own 25 percent of all of the lots. Mr. Cox said that if there could be 150 lots on this parcel, she has a right to 25 percent of each one of those lots.

He noted that staffs interpretation is that she only gets the right to 25 percent of the lots. Mr. Cox did not think staff can make that distinction.

It was moved to adopt Resolution and Order approving Claim No. 37CL06932 to modify the land use regulations to allow a use based on each claimants proportional interest in the property. It was further moved to waive the following regulations: 2006 Community Development Code (1) Section 340-4.2.B, 340-4.2.C, 340-5.1 D, 340-7.1 and 340-7.2; (2) Section 344-4.2.B, 344-4.2.C, 344-5.1.D, 344-7.1 and 344-7.2; (3) Section 424-1 and 3; (4) Section 430-37.2.A. and B., and (5) Section 430-85.1 and apply the F-1 regulations in effect in 1965 when the claimant obtained the property. The claimant will be entitled to a proportional number of the total lots allowed based on her proportional 25 percent interest in the property. (See Findings #10 and Conditions of Approval.)

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Chairman Brian observed that the record will show that he has not supported proportional approvals. He noted that he has voted "no" on the other claims that have come before the Board with similar proportional issues. Chairman Brian pointed out that today, however, if he votes "no", then the item is rejected and dead. He said that if the Board alternately continues this item to another week when the full Board is present, it will be approved because the majority has been consistent in approving these. Rather than defer this and create additional load for future meetings, Chairman Brian preferred to make a courtesy vote so as not to obstruct the will of the majority.

4.f.
RO 07-92
Consider Measure 37 Claim No. 37CL0736; Lolich Living Trust Claimant (CPO 6)

Mark Brown briefed the Board on this claim, as follows:

- Property is located on the north side of SW Scholls Ferry Road at its intersection with SW Vandermost Road.
- Claimants acquired this property in 1976.
- Site is approximately 20 acres in size and is located in what is today an AF-20 district.
- The claimant proposes to develop a 9-hole pitch and putt golf course on this site.
- At the time they acquired the property, it was in an AF-10 district.
- In 1976, that district permitted golf courses as a conditional use.
There have been regulations adopted since their acquisition of the property that no longer allow the use that they have requested.
Claimants have estimated their loss in value from those regulations as $3 million.
Staff has determined that the claim meets the minimum requirements for a Measure 37 claim.

Mr. Brown recommended that the Board adopt the Resolution and Order in the packet, thereby deciding not to apply the regulations listed in the recommendation portion of the staff report.

CLAIMANT

None.

IN SUPPORT

None.

IN OPPOSITION

None.

Commissioner Schouten wanted to know what has been the chain of title, the dates, and whether the trust is revocable or irrevocable, etc.

Tom Harry verified that it is a revocable trust.

The public hearing was opened.

No public testimony was offered.

The public hearing was closed.

It was moved to adopt Resolution and Order approving Claim No. 37CL0736 to not apply the following regulations: 2006 Community Development Code (1) Section 344, 344-5.2 E; and (2) Section 430-50; and apply the AF-10 regulations and Goal 3 requirements in effect in 1976 when the claimant obtained the property.

Motion Schouten
2nd Strader
Vote 3-0

7. LAND USE AND TRANSPORTATION

7.a.
MO 07-106
Interpret the F-1 District Standards

Chairman Brian mentioned that although this is not a public hearing, the Board intends to allow comments. He added that the Board will take these remarks under advisement and discuss the matter next week, when the full Board is present.
Art Lutz, 12880 SW Glacier Lily, Tigard, Oregon, indicated that his counsel, Mike Robinson, was here today at 10:00 a.m. but had to leave to keep a 2:00 p.m. appointment. He intended to ask the Board next week to delay this another week so that he will have a chance to respond to whatever is said next Tuesday. Mr. Lutz thought this would be a fair approach.

Heather Van Dyke, OTAK Engineering, 17355 SW Boones Ferry Road, Lake Oswego, Oregon, indicated that Mike Robinson was going to request a two week continuance of this matter to May 1, 2007. She hoped the extension would allow parties to review information, following which the public could make meaningful comments about it.

David Noren, Attorney, 217 E. Main Street, Hillsboro, Oregon, provided the clerk with a submittal, which may be found in the Meeting File. He intended to provide additional comments when the County Counsel memorandum is made available. Mr. Noren wanted to know if the Board has received the December 7, 2006 memo from Chris Gilmore in County Counsels office to Jim Tice. He indicated that this is part of the record in the Lutz application for their subdivision and that it talks about the distinction between EFU zones and the F-1 zone. Mr. Noren hoped that this is available to the Board because it provides background information. He stated that he has spent a considerable amount of time on this because he has appeared before the Board on other Measure 37 claims that concern the F-1 zone including claims that adjoin his own property. Mr. Noren urged the Board to focus on the text of the measure when it makes its interpretation. He said that it does talk about dwellings and other structures that are required. Mr. Noren stated that analysis of the income standards that are required to qualify a portion of the property for tax exemption may help the Board understand what the Department of Revenue thinks or what the Legislature at one time thought might be adequate for agriculture. He pointed out that this is not really what the question is. Rather, Mr. Noren remarked that the question is what is the use of the property. He commented that with a development such as the one proposed by Mr. Lutz, it is clear that the primary use of the property is residential and that a very small component of that use is agricultural. Mr. Noren summarized that the use, then, is residential use not agricultural. He said that the fact that a small portion of the property might qualify for tax exemption does not alter what the primary use of the property is, namely, a 53-unit residential development. Mr. Noren asked the Board to bear in mind that the request just made by Mr. Lutz and his representatives is in the context of their application, which will be heard by the Hearings Officer this Thursday. He understood from staff that they do not feel that this matter can be continued; the hearing will likely be left open for a rather short period of time to receive the Boards input. Mr. Noren indicated that otherwise, they will run out of their 150 days. He suggested that if the Board is going to grant the additional time requested by Mr. Lutz, then the Board should require from him an extension of that 150 day period. Mr. Noren reasoned that the Hearings Officer could then continue the matter and really give people an opportunity to get the benefit of the Boards input.

Commissioner Schoutens understanding that there are at least a couple of important legal points associated with this matter: one has to do with the definition of "required" and the second one has to do with whether subdivisions are allowed in an F-1 zone. He asked if Mr. Noren intends to talk further about the definition itself.

Mr. Noren offered context for the F-1 zone. (The December 7th memo from Mr. Gilmore goes into this at some length.) He stated that there were tax provisions intended to encourage farming and provide some protection for farmers from the hit of taxes, that were based on
more urban level of uses in the 1950s. Mr. Noren reviewed that in 1961, there were provisions for counties to regulate with respect to farm use zones. He added that those were amended in 1963 by a couple of different acts and then amended again in 1967 and 1969. Mr. Noren stated that Ed Sullivan, who was County Counsel here from 1969 to 1974, was very active in the cases with law review articles in the 1970s talking about these issues; Mr. Noren has examined these. He said that one of the memorandums that is attached to Chris Gilmores memo is an Ed Sullivan memo from the early 1970s that makes the distinction between an F-1 zone that is a County zone and the State EFU zone, concluding that the F-1 zone is not an EFU zone and that they are two different things. Mr. Noren went on to say that when it was initially conceived (as early as 1962) before Chapter 215 was actually authorizing Exclusive Farm Use zones back when farm use zones were a tax feature in 1962, the County adopted its F-1 zone. He believed that this was an attempt perhaps an imperfect attempt to create an Exclusive Farm Use Zone under State law to provide that protection for farmers. Mr. Noren indicated that subsequent cases (this is what Chris Gilmores memo tracks) suggest that because it was imperfect, it allowed some uses that were not allowed in EFU zones and should not be considered an Exclusive Farm Use zone. He thought that this was the general intent and that it should be interpreted consistently with that. Mr. Noren said that when you look at "required", it is similar to what is involved in the EFU zone the language customarily provided in conjunction with farm use. He remarked that this language has been there for 40 years now in the EFU statute for farm dwellings. Mr. Noren felt that this is the general direction the Board should look to for "required":

- Is it really necessary?
- Is it customarily there?
- In order to have a farm, do you really need that dwelling?

Mr. Noren commented that since what is being talked about is F-1 only in the context of Measure 37 claims, the Board should focus on the fact that it is the owner, operator or help that are required to have a dwelling. He said that if you only have one owner or perhaps two owners, the question is how many dwellings that owner needs and how many farm helper dwellings are needed, if you have 50 acres and a little bit of blueberries somewhere in that 50 acres.

Chairman Brian prepared to ask Mr. Lutz a question and told him that he does not even have to respond if he does not want to. He noted that Mr. Lutz asked for a two week extension and more opportunity to discuss this matter. Chairman Brian wanted to know if Mr. Lutz is willing to give the extension on the consideration of the land use decision.

Art Lutz stated that the County has until June 17th to give him a final decision. He mentioned that his hearing is the day after tomorrow. Mr. Lutz said it seems like there is plenty of time between now and June 17th to decide this. He was not willing to extend the time. Mr. Lutz remarked that if the Board does not wish to grant him extra time for review, then so be it. He believed that the County is singling him and the two widows he represents out unfairly.

Chairman Brian reviewed that the County has been saying for two years on these claims that if and when someone applies for development, that is when the County will consider sewer, water, etc. as well as the F-1 zoning, if it applies.

Art Lutz recalled that on January 17, 2007, he was deemed complete. He added that a letter written on October 10, 2005 clearly set out the guidelines for what it meant to qualify for F-1.
Mr. Lutz remembered that this was updated in August of 2006 but said that it did not change. He testified that the County offered multiple agricultural items that could be planted; his plans were to plant 4,000 square feet of blueberries on every house. Mr. Lutz felt that he has the law 100 percent on his side and stated that he will not bend on this issue. He commented that F-1 zone building permits were given to people loosely. Mr. Lutz did not think it is fair of the County to rewrite history. He said that he has 45 acres and wants 53 lots. Mr. Lutz stated that if this was in the Urban Growth Boundary, he would be required to have approximately 250. He went on to say that he has sewer and water 900 feet up the road. Mr. Lutz told the Board that these lots back up to the Reserve Golf Course and will make a very nice residential community, with less impacts on schools and transportation. He said that he has a Measure 37 claim in to Metro to try to get utilities to his project. Mr. Lutz stated that he has a suit filed with the State of Oregon, if he has to implement it. He was prepared to do whatever he could do to protect his private property rights on these 45 acres. It was Mr. Lutz’s opinion that these 45 acres should have developed years ago because they go right up to the Urban Growth Boundary. He mentioned that he is in the South Hillsboro Study Area, which the County is cooperating on with Metro and Hillsboro. Mr. Lutz reported that his widow partners are getting old and that he is also; he hoped to see some financial benefits from this in his lifetime. He said that if he loses this fight, then he has no doubt that his estate will profit. Mr. Lutz recalled that he recommended to his three partners that they buy this property because they could develop it. (At the time, they could have developed it.) He stated that those rights were then taken away. Mr. Lutz felt that he owes it now to two of the surviving wives to bring this forth so that they can get some money.

Commissioner Schouten said that if the matter can be continued for two weeks without causing complications relative to the Hearings Officer proceeding this week, he would be willing to take that action.

Dan Olsen’s understanding was that although the hearing is this Thursday and the decision is not due until June 17, 2007, under State law there is a kind of complicated long process of, at a party’s request, keeping the record open, allowing another record open and then allowing the applicant to have a final rebuttal. He explained that this extends several weeks from the date of the hearing. Mr. Olsen said that staff makes a practice of providing the Hearings Officer at least a month to actually write the opinion and come to a conclusion. He stated that since this involves an issue of first impression for the County, he suspected that the Hearings Officer will need this time. Mr. Olsen commented that his understanding, after talking with staff, is that there really is not a lot of flexibility in the time schedule. He went on to say that since the Board’s interpretation does relate to the F-1 zone and it will be one of the issues in this and many other applications, staff feels that it is important that the Hearings Officer gets the benefit of the Board’s interpretation. Mr. Olsen concluded that under the current schedule, probably the only time to be able to do that would be by next Tuesday.

It was moved to continue this matter to April 24, 2007.

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Commissioner Schouten hoped that the County can give all concerned, including the claimant, as much time as possible within that period to be able to respond and to have the attorneys provide counseling to the claimant.
Chairman Brian said that if, at any time, the applicant would choose to give the County more time to deliberate these issues, that could still be done.

Dan Olsen clarified that the applicant would be looking at extending the June 17th date.

Art Lutz told the Board that he has been asked on two other occasions to extend and has said "no" both times. He said that if his counsel advises him to delay, that would be a different story. Unless that happens, Mr. Lutz would not extend and was eager to move forward.

Chairman Brian recommended that Mr. Lutz receive the advice of his counsel on whatever he decides to do.

Commissioner Schouten would have liked to continue this item for two weeks but was not comfortable doing that in light of the comments from County Counsel.

8. ORAL COMMUNICATION (5 MINUTE OPPORTUNITY)

None.

9. BOARD ANNOUNCEMENTS

None.

10. ADJOURNMENT:

1:40 p.m.

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MINUTES APPROVED THIS ___ DAY ___________________________ 2006

_______________________________
RECORDING SECRETARY

_______________________________
CHAIRMAN

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