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**THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE TWELFTH JUDICIAL DISTRICT**

Trial Division, Dept. of Justice
Salem, Oregon

William M Horner
Circuit Court Judge

Polk County Courthouse, Room 301
850 Main Street, Dallas, OR 97338-3178

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March 20, 2007

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1162 State Street
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RE: KOWALSKI TRUST v. STATE of OREGON via DEPARTMENT of LAND
CONSERVATION and DEVELOPMENT, 06P-1539

Dear Disputants:

Each of you filed Motion for Summary Judgments and both were heard on March 7, 2007. After each of you made your arguments, I took the matter under advisement. I have now had a chance to re-read your written memorandum as well as the notes I took.

Plaintiff is a vendor under a land sales contract for a piece of Polk County realty. The land is currently zoned as Farm/Forest [FF] and they have applied under Measure 37 to allow them to divide the property into two 10 acre tracts and the remainder a 28.22 acre parcel or be financially compensated in the sum of \$132,000.00. That request was denied because of the decision that the plaintiffs were not owners for the purposes of Measure 37. That is the issue to be decided.

The measure is written in terms of a present remedy. If you apply and are successful the governmental agency will remove the land use restriction or pay accordingly. Neither of those remedies would be available to the plaintiff.

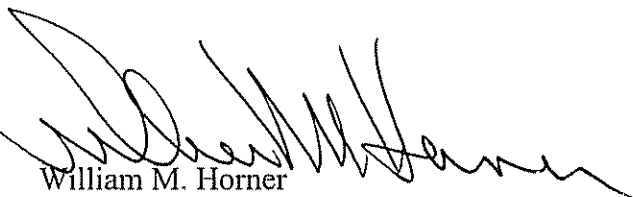
Plaintiff's interest in the realty would not come within the description of just compensation as set out in ORS 197.352[2]. The statute provides the reduction in value is as of the date of application. The value of plaintiff's interest is set out in the land sales contract minus any payments made by the vendee. It is not affected by Measure 37 nor any application that the vendors may make.

If the governmental unit had removed the zoning restriction, plaintiff would not be able to divide the property as, again, its interest in the real property is restricted by the land sale contract.

I am granting defendant's cross motion for summary Judgment finding that the Final Order was based upon a correct interpretation or application of the law. The parties stipulated that the facts were not in dispute.

Ms. Posegate shall prepare the appropriate form of judgment for my signature.

in friendship,

A handwritten signature in black ink, appearing to read "William M. Horner". The signature is written in a cursive style with a large initial "W" and "H".

William M. Horner
Circuit Court Judge