

Supplemental Memo



Memo Date: April 10, 2007
Meeting Date: April 17, 2007

TO: Board of County Commissioners

DEPARTMENT: Public Works Dept./Land Management Division

PRESENTED BY: BILL VANVACTOR, COUNTY ADMINISTRATOR
KENT HOWE, PLANNING DIRECTOR

AGENDA ITEM TITLE: In the Matter of Considering a Ballot Measure 37 Claim and Deciding Whether to Modify, Remove or Not Apply Restrictive Land Use Regulations in Lieu of Providing Just Compensation (PA06-6830 Johnson2)

BACKGROUND

Applicant: Doris V. Johnson

Current Owner: The Doris V. Johnson Revocable Living Trust

Agent: Micheal M. Reeder and William W. Potter (Arnold Gallagher Saydack Percell Roberts & Potter, P.C.)

Map and Tax lot(s): 17-03-09 # 800 (The northern portion of tax lot 800 that falls outside the Eugene UGB is the subject of this claim)

Acreage: Approximately 10 acres

Current Zoning: SG (Sand and Gravel)

Date Property Acquired: November 10, 1954, Original acquisition (WD#42769)
December 29, 2005, Trust est. (WD#2005-103494)

Date claim submitted: October 23, 2006

180-day deadline: April 21, 2007

Land Use Regulations in Effect at Date of Acquisition: AGT (Agriculture, Grazing, Timber Raising District)

Restrictive County land use regulation: Limitations on new dwellings in the SG (Sand and Gravel) zone (LC 16.216).

Previous Board Action: This item was first heard on March 13. At the hearing the recommendation of the County Administrator was to deny the claim due to insufficient analysis of value reduction. The applicant requested additional time to submit the

required analysis. The Board closed the hearing, left the record open until April 6 and scheduled deliberation for April 17. The applicant submitted additional information on March 13 and on April 4 which appears to satisfy the valuation requirements of Measure 37 and LC 2.740 (1)(b).

ANALYSIS

To have a valid claim against Lane County under Measure 37 and LC 2.700 through 2.770, the applicant must prove:

1. Lane County has enacted or enforced a restrictive land use regulation since the owner acquired the property, and

The Doris V. Johnson Revocable Living Trust is the current owner of the subject property. Doris V. Johnson acquired an interest in the property on November 10, 1954 (WD#42769). On December 29, 2005 Doris placed the property into a Trust (WD#2005-103494). The Trust is considered a new owner but because it is revocable and Doris is the Trustee, the ownership interest of Doris is continued.

Currently, the portion of the property that is the subject of this claim is zoned SG (Sand and Gravel).

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

The property was zoned AGT (Agriculture, Grazing, Timber Raising District) when it was acquired by Doris in 1954. The limitations on new dwellings in the SG zone prevent Doris from developing the property as could have been allowed in 1954.

The applicant has alleged a reduction in the fair market value of the property of \$1,270,787. This figure is based on a comparative market analysis and a supporting argument of value reduction submitted by the applicant's attorney. This information appears to address the concerns regarding the potential value of the property if used for aggregate extraction and the value of the portion inside the UGB. The County Commissioners have accepted similar evidence of valuation during previous Measure 37 deliberations. Because of this, the County Administrator has waived the requirement for an appraisal.

3. The restrictive land use regulation is not an exempt regulation as defined in LC 2.710.

The restrictions on new dwellings in the SG zone do not appear to be exempt regulations.

CONCLUSION

It appears this is a valid claim.

RECOMMENDATION

The County Administrator recommends the Board adopt the attached order to waive the restrictive land use regulations of the SG zone.

**BEFORE THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY,
OREGON**

ORDER No.) IN THE MATTER OF CONSIDERING A BALLOT
) MEASURE 37 CLAIM AND DECIDING
) WHETHER TO MODIFY, REMOVE OR NOT
) APPLY RESTRICTIVE LAND USE
) REGULATIONS IN LIEU OF PROVIDING JUST
) COMPENSATION (Johnson 2, PA06-6830)

WHEREAS, the voters of the State of Oregon passed Ballot Measure 37 on November 2, 2004, which added provisions to Oregon Revised Statutes (ORS) Chapter 197 to require, under certain circumstances, payment to landowner if a government land use regulation restricts the use of private real property and has the effect of reducing the property value; and

WHEREAS, the Board of County Commissioners of Lane County enacted Ordinance No. 18-04 on December 1, 2004, to establish a real property compensation claim application process in LC 2.700 through 2.770 for Ballot Measure 37 claims; and

WHEREAS, the County Administrator has reviewed an application for a Measure 37 claim submitted by Doris V. Johnson (PA06-6830), the owner of real property described in the records of the Lane County Assessor as map 17-03-09, tax lot 800, consisting of approximately 15 acres in Lane County, Oregon; and

WHEREAS, the County Administrator has determined that the application appears to meet all of the criteria of LC 2.740(1)(a)-(d), appears to be eligible for just compensation and appears to require modification, removal or not applying the restrictive land use regulations in lieu of payment of just compensation and has referred the application to the Board for public hearing and confirmation that the application qualifies for further action under Measure 37 and LC 2.700 through 2.770; and

WHEREAS, the County Administrator has determined under LC 2.740(4) that modification, removal or not applying the restrictive land use regulation is necessary to avoid owner entitlement to just compensation under Ballot Measure 37 and made that recommendation to the Board; and

WHEREAS, the Board has reviewed the evidence and confirmed the application appears to qualify for compensation under Measure 37 but Lane County has not appropriated funds for compensation for Measure 37 claims and has no funds available for this purpose; and

WHEREAS, on March 13, 2007, the Board conducted a public hearing on the Measure 37 claim (PA06-6830) of Doris V. Johnson and has now determined that the restrictive SG (Sand and Gravel) zone dwelling and land division requirements of LC 16.216 were enforced and made applicable to prevent Doris V. Johnson from developing her property as might have been allowed at the time it was acquired on November 10, 1954, and that the public benefit from application of the current SG dwelling land use regulations to the applicants' property is outweighed by the public burden of paying just compensation; and

WHEREAS, Doris V. Johnson requests up to \$1,270,787 as compensation for the reduction in value of her property, or waiver of all land use regulations that would restrict the division of land into multiple lots and placement of a dwelling on each lot, uses that could have otherwise been allowed at the time she acquired the property; and

WHEREAS, the Board finds that under LC 2.760(3) the public interest would be better served by modifying, removing or not applying the challenged land use regulations of the SG zone to the subject property in the manner and for the reasons stated in the report and recommendation of the County Administrator incorporated here by this reference except as explicitly revised here to reflect Board deliberation and action to allow Doris V. Johnson to make application for development of the subject property in a manner similar to what she could have been able to do under the regulations in effect when she acquired an interest in the property; and

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

NOW, THEREFORE IT IS HEREBY ORDERED that the applicant, Doris V. Johnson, made a valid claim under Ballot Measure 37 by describing the use being sought, identifying the county land use regulations prohibiting that use, submitting evidence that those land use regulations have the effect of reducing the value of the property, showing evidence that she acquired an interest in the property before the restrictive county land use regulations were enacted or enforced and the Board hereby elects not to pay just compensation but in lieu of payment, the request of Doris V. Johnson shall be granted and the restrictive provisions of LC 16.216 that limit the development of dwellings in the SG (Sand and Gravel) Zone shall not apply to Doris V. Johnson so she can make application for approval to develop the property located at 3650 County Farm Rd. Eugene, OR and more specifically described in the records of the Lane County Assessor as map 17-03-09, tax lot 800, consisting of the 10 acre portion of which falls outside of the Urban Growth Boundary of the City of Eugene, in a manner consistent with the land use regulations in effect when she acquired the property on November 10, 1954.

IT IS HEREBY FURTHER ORDERED Doris V. Johnson still needs to make application and receive approval of any division of the property or placement of a dwelling under the other land use regulations applicable to dividing the property or placing a dwelling that were not specifically identified or established by Doris V. Johnson as restricting the division of the property or placement of a dwelling, and it would be premature to not apply those regulations given the available evidence. To the extent necessary to effectuate the Board action to not apply the dwelling or division restrictions of the applicable zone described above, the claimant shall submit appropriate applications for review and approval of a new dwelling to show the specific development proposals and in the event additional county land use regulations result in a restriction of those uses that have the effect of reducing the fair market value of the property, the County Administrator shall have the authority to determine those restrictive county land use regulations that will not apply to that development proposal to preclude entitlement to just compensation under Measure 37, and return to the Board for action, if necessary. All other Lane Code land use and development regulations shall remain applicable to the subject property until such time as they are shown to be restrictive and that those restrictions reduce the fair market value of the subject property.

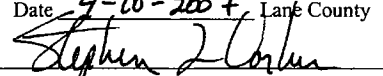
IT IS HEREBY FURTHER ORDERED that this action making certain Lane Code provisions inapplicable to use of the property by Doris V. Johnson not constitute a waiver or modification of state land use regulations and does not authorize immediate division of the subject property or immediate construction of a dwelling. The requirements of state law may contain specific standards regulating development of the subject property and the applicant should contact the Department of Administrative Services (DAS - State Services Division, Risk Management - Measure 37 Unit, 1225 Ferry Street SE, U160, Salem, OR 97301-4292; Telephone: (503) 373-7475; website address: <http://www.oregon.gov/DAS/Risk/M37.shtml>) and have the State of Oregon evaluate a Measure 37 claim and provide evidence of final state action before seeking county land use approval.

IT IS HEREBY FURTHER ORDERED that the other county land use regulations and rules that still apply to the property require that land use, sanitation and building permits be approved by Lane County before any development can proceed. Notice of this decision shall be recorded in the county deed records. This order shall be effective and in effect as described in LC 2.770 and Ballot Measure 37 to the extent permitted by law. This order does not resolve several questions about the effect and application of Measure 37, including the question of whether the right of applicant to divide or build dwellings can be transferred to another owner. If the ruling of the Marion County Circuit Court in *MacPherson v. Dept. of Administrative Services*, (Marion County Circ. Ct. Case No. 00C15769, October 14, 2005) or any other court decision involving Ballot Measure 37 becomes final and that decision or any subsequent court decision has application to Lane County in a manner that affects the authority of this Board to grant relief under Ballot Measure 37 and LC 2.700 through 2.770 then the validity and effectiveness of this Order shall be governed by LC 2.770 and the ruling of the court.

DATED this _____ day of _____, 2007.

Faye Stewart, Chair
Lane County Board of County Commissioners

APPROVED AS TO FORM

Date 4-10-2007, Lane County

OFFICE OF LEGAL COUNSEL

ARNOLD GALLAGHER SAYDACK
PERCELL ROBERTS & POTTER

APR - 5 2007

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MICHEAL M. REEDER

April 4, 2007

Stephen L. Vorhes
Assistant County Counsel
Lane County
125 East 8th Avenue
Eugene, Oregon 97401

Re: D.V. Johnson Measure 37 Claim – Supplemental Info (PA06-6830)
Please Refer to Our File No. 15865-1

Dear Steve:

Please find, among the various attached correspondence, a letter to the State Measure 37 claims manager, correspondence to the City of Eugene, and correspondence to Steve Hopkins, all of which support the conclusion that the Johnsons have a valid Measure 37 claim.

You asked me to address two issues in regards to this claim, the first issue being valuation and the second issue being whether there was a claim filed with the City of Eugene. Both of these issues hinge on the fact that the Eugene-Springfield Metropolitan Urban Growth Boundary (UGB) bisects the claimants' property.

Issue #1: Valuation

As you know, we have unequivocally stated that the portion of Tax Lot 800 that is inside the UGB is not part of our claim and therefore should have no bearing on the evaluation of this claim. However, in order to comply with your request and not delay the process, we will analyze in detail what is obvious—that the value of the claim is either unchanged or enlarged by including the UGB portion of TL 800 in the claim. However, the Department of Land Conservation and Development (DLCD), in its Draft Staff Report, has also raised a similar issue regarding valuation, an issue that was raised in the County's Initial Staff Report. This issue was addressed in the County hearing on March 13, 2007. I will address it here because I am copying DLCD with this letter so that they understand this issue as well. Since the State has "piggybacked" off of Lane County's Initial Staff Report (see the attached DLCD Draft Staff Report, page 5), I will address the State's issue first.

Stephen L. Vorhes

April 4, 2007

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Sand and gravel removal is not the highest and best use for this property. Since there are no comparable sand and gravel sites available, as stated in the original submission, the current fair market value of the property was estimated at \$324,773 based on agricultural values. (See the attached email dated March 13, 2007 from real estate broker and appraiser John Brown and the email dated March 13, 2007 from “Sister Act” real estate broker Shawn Williams, who did the original Comparative Market Analysis.) Ms. Williams’ email indicates that there is currently no market for a property of this size zoned for sand and gravel removal. John Brown, who is a well-respected real estate broker with extensive appraisal experience, states in his email that the sand and gravel zoning is less valuable than AGT land. The cost of extracting the sand and gravel on this site would be financially unfeasible. Furthermore, the property owners testified at the March 13, 2007 Lane County hearing that sand and gravel use is impracticable and that they have attempted to rid the property of this designation. As you know, a property owner’s testimony as to the value of the property may be used to determine compensation in condemnation cases. Therefore, the current highest and best use for this property is the current use, which is agriculture. I appreciate Lane County staff’s willingness to look at this issue of valuation and agree with us that we have clearly shown that the sand and gravel designation reduces the fair market value of the subject property. The state’s Draft Staff Report states: “If the property were first used for sand and gravel removal and then used for residential uses, the fair market value of the property would be greater than asserted in the claim.” This statement assumes (erroneously) that sand and gravel extraction can be a profitable exercise at this particular site. However, this was rebutted by real estate professionals who have analyzed the subject property, as well as by the current property owner. Even if the State’s statement is correct, the analysis does nothing to further the State’s intent to deny this claim. In fact, it advances the claimant’s claim—that the current land use restrictions that prohibit residential development reduce the fair market value of the subject property. In other words, the fair market value of the subject property is still reduced by the imposition of state regulations on Goal 5, and other related regulations, than if the State allowed for residential development. This fact is made clear by the Department of Justice (DOJ) in its brief for reconsideration in the recent *Corey* decision, wherein the State argues:

“...[W]hether the fair market value of the property has been reduced as a result of restrictions imposed by land use regulations is rarely an issue, since any diminution of value suffices, [for a waiver] and developable property is more valuable than property with development restrictions.” Respondent’s Petition for Reconsideration, page 9, footnote 2.

Clearly the sand and gravel designation, although allowing for sand and gravel removal (which might be considered “development”), still restricts residential development.

In short, Lane County and the State limit the ability of the claimant to divide the property and construct residential units on the majority of Tax Lot 800. This fact alone should be sufficient evidence for a reduction of fair market value and hence a waiver of such restrictive regulations. However, in order to support the obvious conclusion, we have included the following analysis supported by the attached documents:

Stephen L. Vorhes

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Scenario #1—Possible Ability to Extract Sand and Gravel (State's issue)

This scenario assumes what we have already shown to be false—that sand and gravel removal is a profitable enterprise on this roughly 10-acre site.

The current fair market value of the subject property with the land use restrictions (for agricultural purposes) = \$324,773

The fair market value of the subject property without the land use restrictions (for residential purposes) = \$1,595,560

Reduction in fair market value = \$1,270,787 (\$1,595,560 - \$324,773)

Now, suppose there is value in the sand and gravel zoning designation, i.e. the property owner (or others) can profitably extract sand or gravel from the site. I will use an arbitrary number for simplicity of \$1,000,000.

Under this scenario, the current fair market value for the property is at least \$1,000,000, possibly more if the property can be used for something else after extraction is completed. Under the current land use regulations, no residential development is allowed. It may be possible (however it is doubtful) that the property can then be used again for agricultural purposes. Assuming that it can be, then we would add \$324,773 (ag value) to the \$1,000,000 (extraction value) for a total of \$1,324,773. However, although the sand and gravel designation theoretically could add value over an ag zoning, the fact that state and county regulations currently restrict residential development still has the effect of reducing the fair market value of the subject property regardless of the value of the property for extraction purposes! This is admitted by DLCD in the Draft Staff Report, which states: "The comparative market analysis assumes the highest and best use of the property is residential, rather than for sand and gravel removal followed by residential use." Draft Staff Report, page 5.

So, if we insert the fictional sand and gravel value of \$1,000,000 into the equation, we come to the same result—the restrictive land use regulations reduce the fair market value of the subject property:

The "assumed" current fair market value of the subject property with the land use restrictions (for agricultural purposes AND extraction purposes) = \$1,324,773 (\$324,773 (ag) + \$1,000,000 (extraction)).

The fair market value of the subject property without the land use restrictions (for residential purposes AND extraction purposes) = \$2,595,560 (\$1,595,560 (residential) + \$1,000,000 (extraction)).

Stephen L. Vorhes

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Reduction in fair market value = \$1,270,787, the same amount as the original claim. Because the extraction value is a constant, the analysis is the same regardless of how much extraction value there is in the property (except for the above-noted exceptions for when the value is negative or when the extraction process makes the remainder uses less valuable). In other words, inclusion of the extraction value is “a wash.”

Scenario #2—Inclusion of UGB Property in Claim (Lane County’s Issue)

The analysis in Scenario #1 is similar to the analysis for Scenario #2 – the result is “a wash.”

The current fair market value of the entire property (i.e. TL 800) with current land use restrictions on the north 10 acres (for agricultural purposes) = \$1,824,773 (\$1,500,000 for the 5 acres inside the UGB) + \$324,773 (for the 10 acres outside the UGB).

The fair market value of the entire subject property without the current land use restrictions on the 10 acres outside the UGB (for residential purposes) = \$3,095,560 (\$1,595,560 for the 10 acres outside the UGB that could be developed residentially) + 1,500,000 (for the 5 acres that can currently be developed to R-1, urban standards). (See October 4, 2006 letter from real estate professionals Randal and Cindy Whipple.) Inclusion of the 5 acres into the claim will have no effect on the value of the property inside the UGB since the zoning currently allows residential, urban development.

Reduction in fair market value = \$1,270,787 (\$3,095,000 - \$1,824,773).

Again, the inclusion of the UGB property in the claim would have no effect on the valuation.

Issue #2: Other Claims

The claimant has not filed any claims with the City of Eugene, for this property or for any other property, based on earlier discussions with you and city attorney Glenn Klein and our own independent analysis that any such claims would not be advisable.

Very truly yours,



Micheal M. Reeder

MMR:jgh

Attachments

cc: Client (w/attachments)

DLCD (w/attachments)

Alice Beals, DAS (w/attachments)

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MICHEAL M. REEDER

April 4, 2007

Oregon Department of Administrative Services
Measure 37 Unit
Risk Management – State Services Division
1225 Ferry Street, S.E., U160
Salem, Oregon 97301-4292

Re: Claim No. M130400/D.V. Johnson - Draft Staff Report Comments
Please Refer to Our File No. 15865-1

Ladies and Gentlemen:

Please accept this letter as a response to the Department of Land Conservation and Development (“DLCD”) Draft Staff Report and Recommendation dated March 27, 2007. Our firm represents the claimant, Doris V. Johnson, in this Measure 37 matter. Please find enclosed correspondence to Lane County. We ask that the State incorporate the enclosed attachments as part of the record and consideration in the Final Staff Report and Recommendation.

Page 4 of the Draft Staff Report states in part: “The claimant summarily cites ORS 197.175, 197.200, 197.250 and 227.110 and OAR 660, Division 14, as applicable to this claim but does not establish that the regulations either apply to the subject property or restrict its use with the effect of reducing its fair market value. On their face, they either do not apply to the claimant’s property or do not restrict the use of the claimant’s property with the effect of reducing its fair market value.” It is assumed that if the State grants a waiver to the claimant for the subject property back to 1954 that the State may not thereafter use the above-cited regulations in a way to stop the claimant from developing the property as indicated in the claim application with the State.

Page 5 of the State’s Draft Staff Report concludes that “the claimant is not entitled to compensation under ORS 197.352 because state land use regulations enacted or adopted since the claimant acquired the subject property have not been shown to reduce its fair market value.” This statement is erroneous. The claimant has provided both the State and Lane County with information justifying the conclusion that State and County regulations have in fact reduced the

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fair market value of the property. Furthermore, in the attachments to this letter, the claimant has provided the State and Lane County with additional information which further proves that the land use regulations reduce the fair market value of the subject property. Please analyze this additional information and revise your Final Staff Report accordingly.

In short, there is no question that the State's and Lane County's land use regulations have reduced the fair market value of this property. As is noted on page 6 of the Draft Staff Report, "this staff report is not a final decision by the Department . . ." Therefore, I trust that the State will take this additional information seriously and incorporate this information into the Final Staff Report.

Please do not hesitate to contact me if you have any questions or need clarification on this matter.

Very truly yours,



Micheal M. Reeder
Agent for Claimants

MMR:jgh

Attachments

cc: Clients (w/attachments)

Stephen L. Vorhes, Lane County Assistant County Counsel (w/attachments)

Lane Shetterly, Director, DLCDC (w/attachments)

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MICHEAL M. REEDER

April 4, 2007

Alice M. Beals
Measure 37 Claims Manager
Department of Administrative Services
State Services Division, Measure 37 Unit
1225 Ferry Street, S.E., U160
Salem, Oregon 97301-4292

Re: Claim No. M130400/ Doris V. Johnson
Please Refer to Our File No. 15865-1

Dear Ms. Beals:

Thank you for your letter dated March 9, 2007, requesting a title report and other ownership documentation for this claim. Please find enclosed a Status of Record Title Report from Cascade Title Co. dated July 3, 2006 that should have been included in the original submittal for the Measure 37 claim but was inadvertently omitted. Please keep in mind that this is a title report for the entire Tax Lot 800; however, only the portion of Tax Lot 800 that is without the Eugene-Springfield urban growth boundary is subject to this Measure 37 claim. In short, not all of Tax Lot 800 is part of the claim.

You will find enclosed the deeds conveying this property to Doris V. Johnson, as well as the Lane County Assessor's tax lot history card for this property which shows the continuous ownership of this property.

Please feel free to contact me if you have any other questions.

Very truly yours,

Micheal M. Reeder
Agent for Claimant

MMR:jgh

Enclosures

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Eugene, OR 97440-1758

MICHEAL M. REEDER

September 14, 2006

Planning & Development
Building & Permit Services
99 W.10th Ave
Eugene, OR 97401

Re: Limited Consultation Narrative Description and List of Questions or Issues for Discussion for Annexation and Development of 3650 County Farm Road, Map 17-03-09-00, TL 800 (Portion of TL inside the UGB)
Please Refer to Our File Number 15865-1

Dear Sir or Madam:

Please consider this letter our client's narrative description of the project and characteristics of the use and proposed use of the subject property as well as our list of questions and issues to be discussed at the meeting. We have no meeting time preference. I have recently met with Patricia Thomas regarding the subject property to discuss our intentions for the future of the property.

Narrative Description

Currently our client owns the entire tax lot 800, part of which is inside the UGB and part that is outside the UGB. The subject property is on the north side of County Farm Road, directly east of Wildish Lane. (Please see the enclosed vicinity map.) The entire property is outside the City of Eugene's municipal limits. The entire tax lot is approximately 15 acres m/l. The UGB bisects the tax lot, but without a precise legal description, it is unclear exactly how much of the subject property is inside the UGB and how much is outside the UGB. Currently, there is a single-family house on the property and the entire property (minus improvements) is used for agricultural purposes. The current zoning base classification for the portion of the property inside the UGB is Agricultural, AG (Lane County) with a /UL overlay zone. However, the Metro Plan Diagram and the Willakenzie Refinement Plan both designate the portion of the property inside the UGB as "Low-Density Residential." The current zoning for the portion of the property outside the UGB is Sand, Gravel, and Rock Products Zone, SG. The Metro Plan designates the portion of the subject property outside the UGB as "Sand and Gravel."

Our client intends to request annexation of the portion of the subject property that is within the UGB and develop it to City, R-1 standards. We have discussed possible development options with Patricia and are open to suggestions from City staff. Our client would prefer to develop the subject property as an “upscale,” dense residential development.

Questions and Issues for Discussion

1. How is the exact location of the UGB determined? What is the process, and who makes the final decision? Is this done prior to annexation, or as part of the annexation request?
2. Suggestions for dense, residential development. Discuss PUD options.
3. Discussion of new stormwater standards and how they may apply to the proposed development.
4. Wastewater requirements and line location.

Thank you in advance for your assistance in this matter.

Very truly yours,

Micheal M. Reeder

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MICHEAL M. REEDER

October 23, 2006

Steve Hopkins, Planner
Lane County Land Management Division
125 East 8th Avenue
Eugene, Oregon 97401

Re: Doris V. Johnson Measure 37 Claim
Please refer to our file 15865-1

Dear Steve:

Attached is the written statement and relevant exhibits for a claim for compensation under ORS 197.352. I have discussed the UGB issue with Steve Vorhes, but recommend that you speak with him concerning this issue. Also, the "as-is" Comparative Market Analysis for the subject property is based on the fair market value of the property's highest and best use, which is agriculture, rather than sand and gravel extraction as it is currently zoned. Please feel free to contact me if you have any questions or concerns regarding this claim.

Thank you for your attention in this matter.

Very truly yours,

Micheal M. Reeder

MMR:jgh

Attachments

Cc: Client

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Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

635 Capitol Street NE, Suite 150

Salem, Oregon 97301-2524

Phone: (503) 373-0050

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Third Floor/Measure 37 Fax: (503) 378-5318

Web Address: <http://www.oregon.gov/LCD>



March 27, 2007

To: Interested Persons

From: Lane Shetterly, Director

Re: Ballot Measure 37 (ORS 197.352) Claim Number MI30400

Claimant: Doris V. Johnson

Enclosed, in regard to the above-referenced claim for compensation under Ballot Measure 37 (ORS 197.352), is the Department of Land Conservation and Development's Draft Staff Report and Recommendation.

This Draft Staff Report and Recommendation sets forth the department's evaluation of and recommendation on the claim. Oregon Administrative Rule 125-145-0100(3) provides that the claimant (or the claimant's agent) and any third parties who submitted comments on the claim may submit written comments, evidence, and information in response to any third-party comments contained in the report, and to the staff report and recommendation itself. Such response must be filed no more than ten calendar days after the date of mailing of this report. Any response from you must be delivered to the Oregon Department of Administrative Services (DAS), 1225 Ferry Street SE, U160, Salem, Oregon 97301, and will be deemed timely filed if either postmarked on the tenth day or actually delivered to DAS by the close of business on the tenth day.

This department will review any responses submitted, and a Final Order on the claim will be issued after such review.

ORS 197.352 (BALLOT MEASURE 37) CLAIM FOR COMPENSATION

**OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
Draft Staff Report and Recommendation**

March 27, 2007

STATE CLAIM NUMBER: M130400

NAME OF CLAIMANT: Doris V. Johnson

MAILING ADDRESS: 89733 Armitage Road
Eugene, Oregon 97408

PROPERTY IDENTIFICATION: Township 17S, Range 3W, Section 9
Northern two-thirds of tax lot 800
Lane County

OTHER CONTACT INFORMATION: William R. Potter
Michael M. Reeder
PO Box 1758
Eugene, Oregon 97440

DATE RECEIVED BY DAS: October 24, 2006

180-DAY DEADLINE: April 22, 2007

I. SUMMARY OF CLAIM

The claimant, Doris Johnson, seeks compensation in the amount of \$1,270,787 for the reduction in fair market value as a result of land use regulations that are alleged to restrict the use of certain private real property. The claimant desires compensation or the right to divide the approximately 10-acre subject property into ten 1-acre parcels and develop a dwelling on each resulting parcel.¹ The subject property is located at 3650 County Farm Road, near Eugene, in Lane County. (See claim.)

II. SUMMARY OF STAFF RECOMMENDATION

Based on the preliminary findings and conclusions set forth below, the Department of Land Conservation and Development (the department) has determined that the claim is not valid because the claimant has not shown that state land use regulations restrict her desired use of the subject property in a manner that will reduce its fair market value. (See the complete recommendation in Section VI of this report.)

¹ The subject property consists of the northern two-thirds of tax lot 800 (T. 17S, R.3W, Section 9), which is that portion of tax lot 800 that does not lie within the City of Eugene's urban growth boundary.

Findings of Fact

The claimant, Doris Johnson, acquired the subject property on November 10, 1954, as reflected by the warranty deed included in the claim. The claimant transferred the subject property to the Doris V. Johnson Revocable Living Trust, with herself as trustee, on April 16, 2003, as reflected by the certification of trust included with the claim.² The Lane County Assessor's Office confirms the claimant's current ownership of the subject property.

Conclusions

The claimant, Doris Johnson, is an "owner" of the subject property as that term is defined by ORS 197.352(11)(C), as of November 10, 1954.

2. The Laws That are the Basis for This Claim

In order to establish a valid claim, ORS 197.352(1) requires, in part, that a law must restrict the claimant's use of private real property in a manner that reduces the fair market value of the property relative to how the property could have been used at the time the claimant or a family member acquired the property.

Findings of Fact

The claim indicates the claimant's desire to divide the subject property into 10 one-acre buildable residential parcels. The claim identifies the following state land use regulations as restricting that use of the property: Goals 5 and 14; ORS 197.175, 197.200, 197.250 and 227.110; and OAR 660-14-0000 to 660-14-0070, 660-15-0000(5) and (14) and 660-16-0000 to 660-16-0030. The claim includes the following statements regarding the effect these state land use regulations on the desired use of the property:

1. Goal 5 and OAR 660, division 16:

"Requires the County to inventory and protect significant Goal 5 mineral aggregate resources."

2. Goal 14 and OAR 660, division 14:

"Restricts urban level development, including 1 acre residential parcels, in areas outside urban growth boundaries."

3. ORS 227.110:

"Requires city approval prior to recording subdivision plats within (6) miles of city limits."

4. ORS 197.175, 197.200 and 197.250:

"The ability of a local government to adopting planning restrictions and classifications, such as Lane County's Rural Comprehensive Plan may limit use of the subject property."

² Transfer of the property to a revocable trust does not result in a change of ownership for purposes of ORS 197.352.

Findings of Fact

The claim includes an estimate of \$1,270,787 as the reduction in the subject property's fair market value due to the regulations that restrict the claimant's desired use of the property. This amount is based on a comparative market analysis submitted with the claim. The comparative market analysis assumes that the highest and best use of the property is residential, rather than for sand and gravel removal followed by residential use. The claimant's claim to Lane County asserts, without support, that the parcel is too small for a sand and gravel operation.

Lane County has preliminarily determined that the highest and best use of the property may be for sand and gravel removal. If the property were first used for sand and gravel removal and then used for residential uses, the fair market value of the property would be greater than that asserted in the claim. As a result, the claim does not demonstrate that a state land use regulation has reduced the fair market value of the property.

Conclusions

As explained in Section V.(1) of this report, the claimant is Doris Johnson, who acquired the subject property on November 10, 1954. The claimant is not entitled to compensation under ORS 197.352 because state land use regulations enacted or adopted since the claimant acquired the subject property have not been shown to reduce its fair market value.

4. Exemptions Under ORS 197.352(3)

ORS 197.352 does not apply to certain land use regulations. In addition, under ORS 197.352(3), certain types of laws are exempt from ORS 197.352.

Findings of Fact

The claim is based on the assumption that state land use regulations, including Goal 5 and OAR 660, division 23, which Lane County has implemented through its SG zone, reduce the fair market value of the subject property. As set forth in Section V.(2) of this report, the state land use regulations restricting the claimant's desired use of the subject property have not been shown to reduce the fair market value of the subject property.

Conclusions

All of the state land use regulations that restrict the claimant's desired use of the subject property were in effect after the claimants acquired the property. Therefore, these state land use regulations are not exempt under ORS 197.352(3)(E), which exempts laws in effect when the claimant acquired the subject property. However, as set forth in Section V.(2) of this report, the state land use regulations restricting the claimant's desired use of the subject property have not been shown to reduce the fair market value of the subject property.

VI. FORM OF RELIEF

ORS 197.352(1) provides for payment of compensation to an owner of private real property if the Commission or the department has enforced one or more laws that restrict the use of the

Memo Date: February 9, 2007
Hearing Date: March 13, 2007



TO: Board of County Commissioners

DEPARTMENT: Public Works Dept./Land Management Division

PRESENTED BY: BILL VANVACTOR, COUNTY ADMINISTRATOR
KENT HOWE, PLANNING DIRECTOR

AGENDA ITEM TITLE: In the Matter of Considering a Ballot Measure 37 Claim and Deciding Whether to Modify, Remove or Not Apply Restrictive Land Use Regulations in Lieu of Providing Just Compensation (PA06-6830 Johnson2)

BACKGROUND

Applicant: Doris V. Johnson

Current Owner: The Doris V. Johnson Revocable Living Trust

Agent: Micheal M. Reeder and William W. Potter (Arnold Gallagher Saydack Percell Roberts & Potter, P.C.)

Map and Tax lot(s): 17-03-09 # 800 (northern portion outside the Eugene UGB)

Acreage: Approximately 10 acres

Current Zoning: SG (Sand and Gravel)

Date Property Acquired: November 10, 1954, Original acquisition (WD#42769)
December 29, 2005, Trust est. (WD#2005-103494)

Date claim submitted: October 23, 2006

180-day deadline: April 21, 2007

Land Use Regulations in Effect at Date of Acquisition: AGT (Agriculture, Grazing, Timber Raising District)

Restrictive County land use regulation: Limitations on new dwellings in the SG (Sand and Gravel) zone (LC 16.216).

ANALYSIS

To have a valid claim against Lane County under Measure 37 and LC 2.700 through 2.770, the applicant must prove:

1. Lane County has enacted or enforced a restrictive land use regulation since the owner acquired the property, and

The Doris V. Johnson Revocable Living Trust is the current owner of the subject property. Doris V. Johnson acquired an interest in the property on November 10, 1954 (WD#42769). On December 29, 2005 Doris placed the property into a Trust (WD#2005-103494). The Trust is considered a new owner but because it is revocable and Doris is the Trustee, the ownership interest of Doris is continued.

Currently, the portion of the property that is the subject of this claim is zoned SG (Sand and Gravel).

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

The property was zoned AGT (Agriculture, Grazing, Timber Raising District) when it was acquired by Doris in 1954. The limitations on new dwellings in the SG zone prevent Doris from developing the property as could have been allowed in 1954.

The applicant has alleged a reduction in the fair market value of the property of \$1,270,787. This figure is based on a comparative market analysis which assumes that the highest and best use of the property is agriculture, rather than sand and gravel. This method of analysis fails to evaluate the potential worth of the property if it were used for aggregate extraction, and therefore, does not competently demonstrate how the current SG zoning has reduced the fair market value of the property.

3. The restrictive land use regulation is not an exempt regulation as defined in LC 2.710.

The restrictions on new dwellings in the SG zone do not appear to be exempt regulations.

CONCLUSION

It appears this is not a valid claim.

RECOMMENDATION

If additional information is not submitted at the hearing, the County Administrator recommends the Board direct him to deny the claim.

From: "John Brown" <john@eebcre.com>
To: "Micheal Reeder" <mreeder@agsprp.com>
Date: 3/13/07 3:59AM
Subject: RE: Doris V. Johnson Revocable Living Trust M37 Property

Mr. Reeder: Before I respond I need to inform you that I was previously retained by Lane County to assist them in evaluating the validity of the loss in value relating to BM 37 Claims (contact Steve Vorhes for info).I am no longer providing that service.

In response to your questions I offer the following from the perspective as a Real Estate Broker under the premise that if I were to market the property what would be my recommendations:

1. Generally speaking the SG zoning designation on a parcel as small as 10 acres is viewed as a detriment, not a positive. The small size reduces the scale of economies as to mobilize an extraction operation to the site would severely reduce its financial feasibility to mine. The costs of berming, slopes, staging etc all require the use of portions of the site that would result in a greatly reduced area available for actual mining. In addition the requirements for reclamation also diminish its financial feasibility.

2. I have in my past experiences as an appraiser researched sales data of both SG and AGT lands. In my opinion, if I were to market the property in either a SG or AGT zoning, I would strongly recommend the AGT zone, with either a 1 or 2 acre parcel size, as that would produce the greatest value. If the parcel was zoned AGT with a 1 or 2 acre potential and then changed to SG, I believe that would substantially reduce the value of this particular parcel.

In closing, I hope I have provided you with enough information so as to assist you with your decision making and appeal relating to this property. I believe that the SG zoning designation on this site has resulted in a much lower value than an AGT with 1 or 2 acre parcel size potential, based primarily on the size of your parcel.

Please call if you have additional questions or need clarification on the preceding.

Respectfully Submitted

John H Brown
Evans, Elder & Brown
101 East Broadway Ste 101
Eugene, OR 97401
541-345-4860

-----Original Message-----

From: Micheal Reeder [mailto:mreeder@agsprp.com]
Sent: Monday, March 12, 2007 6:39 PM
To: john@eebcre.com
Subject: Doris V. Johnson Revocable Living Trust M37 Property

John:

My client owns approximately 10 acres of Sand and Gravel (S&G) property near the Wildish property on County Farm Road, Map 17-03-09, TL 800 (the northern portion outside of the UGB). When my client acquired the property in 1954,

the property was zoned AGT, which allowed my client to build single-family residential on 1-acre parcels.

I am having a realtor attempt to get comparable sales of S&G property for a CMA, but I am skeptical that she will be able to find much. Could you please offer me a general opinion of how the S&G zoning regulation has affected the fair market value of the property? In general terms, is S&G less valuable than property that can be used for residential purposes? Also, would you please offer your opinion regarding the limitations on this particular site?

Thank you for your assistance in this matter.

Yours,

Mike

Micheal M. Reeder
Arnold Gallagher Saydack
Percell Roberts & Potter
800 Willamette Street, Suite 800
Eugene, OR 97401
Telephone: (541) 484-0188
Facsimile: (541) 484-0536
E-Mail: mreeder@agsprp.com

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From: Sistersact Team <sistersact01@yahoo.com>
To: Mike Reeder - Work <mreeder@agsprp.com>
Date: 3/13/07 8:35AM
Subject: Doris V. Johnson Trust

Mike, thanks for calling Sister Act/Remax Integrity for all your CMA needs. Initially we sent you a CMA for Doris V. Johnson Trust and compared the property to other sold similar parcels. We then did a CMA comparing it to other sold sand and gravel zoned parcels. We looked back 10 years, searched between 10 -20 acres Commercial/Industrial from Vancouver to Roseburg and came up with nothing. I spoke with a Commercial Broker and he confirmed I would not find anything in our RMLS. His best estimate minimally between 10 - 20K and acre depending on what the potential profit the property could yield. I hope this has been of some help. Thanks again. Sister Act/Remax INtegrity

Shawn Williams/Broker
Sisters Act/RE/MAX Integrity
541-284-8080
541-653-0842

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October 4th, 2006

Regarding the Johnson property located on County Farm Road.

In searching for comparable properties there are several to consider.

A 2 acre parcel sold recently on Cal Young Road for \$700,000.

A 1.7 acre parcel on Hammock in Eugene sold recently for \$527,000. The builder feels he will be able to get 10 buildable lots from this acreage.

Three parcel on Oakway for a combined total of 2.5 acres sold recently for \$795,000. There has been some talk that in addition to the \$795,000 purchase price the owners received a home or a discount on a home.

6.2 acres was purchased from Wildish for \$1,000,000. It is estimated that the builder will be able to put 27 lots on this piece of land. The land is located in the North Gilham neighborhood by Shopco. This price seems very low. There may have been other considerations besides a straight forward sale.

The Johnson acreage is bordered on the west side by a road used by Wildish Sand and Gravel. The road receives significant truck traffic. The front 5 acres realistically are worth about \$300,000 per acre, for a total value of \$1,500,000. A developer/builder may be willing to pay more for the property considering the lack of buildable land in the North Gilham area. The back 10 acres divided into 1 acre parcels should be worth a minimum of \$1,500,000 for the 10 acres.

It would be nice, but not necessary, to have the same company develop the entire 15 acres. This would allow a planned look for the entire neighborhood. Smaller homes, located on the smaller lots on the front 5 acres, with larger similarly designed homes located on the 1 acre pieces. The lots bordering the busy streets would be less valuable than those located on the interior.

If the owners are considering selling the acreage it would be wise to allow a period of time for developers to submit bids and ideas for development. This would allow the family some time to evaluate all the offers before making a decision.

Anything we can do to help and/or be a part of the solution, please call.

Randal & Cindy Whipple