

Memo Date: March 27, 2007
Hearing 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 (PA06-7172, Heceta Lake)

BACKGROUND

Applicant: Heceta Lake Joint Venture (acting through its general partner, Coastal Western Land Company, Inc.)

Current Owner: Heceta Lake Joint Venture, a Partnership consisting of Coastal Western Land Co., Inc, LJW, LLC and Nevada Cascades, LLC

Agent: Michael J. Lilly

Map and Tax lot(s): 18-12-10-10 tax lot 100 (portion) specifically, Lots 88, 89, 99, 100 and 101 of Phase II of the preliminary subdivision plan for Heceta Lake Estates First Edition

Acreage: Approximately 11 acres

Current Zoning: RR1/ BD (Rural Residential) / Beaches and Dunes Combining Zone)

Date Property Acquired: August 11, 2004 (Bargain and Sale Deed #063701)

Date claim submitted: November 30, 2006

180-day deadline: May 29, 2007

Land Use Regulations in Effect at Date of Acquisition: RR1 (Rural Residential)

Restrictive County land use regulation: Minimum parcel size of two acres in the RR1 (Rural Residential) zone of LC 16.290, as required under OAR 660-004-0040(7) and (8) and codified into Lane Code on April 17, 2002, by Ordinance #6-02.

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 current owner of the subject property is Heceta Lake Joint Venture, a Partnership consisting of Coastal Western Land Co., Inc, LJW, LLC and Nevada Cascades, LLC,

Ownership of this property between October 21, 1986 and August 11, 2004, was conveyed in the following manner.

- October 21, 1986, Dean M. DeVoe, et al conveys property to Jeral L. Bingham and Louise M. Bingham (Bargain and Sale Deed; 1425R/8642037). The Bingham convey the property to Heceta Lake Joint Venture, a partnership, on the same date.
- July 29, 1988, Warranty Deed; 1526R/8830762 is recorded to correct the vesting of the subject property. The Grantor is Heceta Lake Joint Venture, a Partnership and the Grantee is Heceta Lake Joint Venture, a Partnership consisting of Jeral L. Bingham and Louise M. Bingham, h/w, John J. Bingham, Lee H. Williams & Kathryn J. Williams, h/w, and Coastal Western Land Co.
- April 15, 2002, Louise M. Bingham conveys her interest to Jeral L. Bingham following a divorce (Bargain and Sale Deed; 2002-031903).
- August 11, 2004, Heceta Lake Joint Venture, a Partnership consisting of Jeral L. Bingham and Mary F. Bingham, Lee H. Williams & Kathryn J. Williams, and Coastal Western Land Co. deeds the property to Heceta Lake Joint Venture, (Bargain and Sale Deed; 2004-063701) adding new partners and removing the named individuals as partners. The Grantee is Heceta Lake Joint Venture, a Partnership consisting of Coastal Western Land Co., Inc, LJW, LLC and Nevada Cascades, LLC

Heceta Lake Joint Venture, a Partnership consisting of Coastal Western Land Co., Inc, LJW, LLC and Nevada Cascades, LLC acquired its interest in the property on August 11, 2004. Due to the provision of ORS 67.060 which states "property acquired by a partnership is property of the partnership and not of the partners individually" it appears that the legal ownership of the subject property changed when new partners were added and the partnership changed in 2004. For this reason, it does not appear that the county has enacted or enforced a restrictive land use regulation since the current owner acquired the property.

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

The applicant has submitted a Comparative Market Analysis alleging a reduction in the fair market value of the property in the amount of \$545,000. In previous Measure 37 deliberations the County Commissioners have accepted CMAs as competent evidence of valuation. Because of this, the County Administrator has waived the requirement for an appraisal.

On April 17, 2002, the Rural Residential zone was amended to reflect a DLCD rule change. This update effectively limited the minimum lot size in the RR1 zone to 2 acres. The minimum lot size requirement that was applied to the property in 2002 occurred prior to the acquisition date of the current owner. For this reason, it does not appear that a diminution in the fair market value of the property has occurred.

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

The minimum lot size requirement of the RR1 zone appears to be an exempt regulation and it cannot be waived for the current owner.

The regulations found within the /BD (Beaches and Dunes Combining Zone) of LC16.243 are exempt as defined by LC 2.710 (2) and cannot be waived.

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.