

Supplemental Memo

Memo Date: July 3, 2007
Hearing Date: July 24, 2007 (Continued from May 15 & June 20, 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 (PA06-7253, Shelley)

BACKGROUND

Applicants: Lynnette G. & Eric A. Seitz and Zora M. Studer
Current Owner: Shelley Family Trust
Agent: Donald Joe Willis
Map and Tax lots: 18-02-27, #600
Acreage: approximately 112 acres
Current Zoning: E25 (Exclusive Farm Use)
Date Property Acquired: Shelley Family Trust, May 27, 1993 (BSD # 9333342); Lynnette G. & Eric A. Seitz, April 28, 1989 (LOA unrecorded); Zora M. Studer, February 29, 2004 (Date Mabel died and property transferred to Shelley Trust beneficiary.)
Date claim submitted: December 1, 2006
180-day deadline: May 30, 2007
Land Use Regulations in Effect at Date of Acquisition: E25 on May 27, 1993
Restrictive County land use regulation: Minimum parcel size of twenty five acres and limitations on new dwellings in the E25 (Exclusive Farm Use) zone (LC 16.212).

This claim was originally heard on May 15 & June 20, 2007. The applicant testified at both hearings. The Board will deliberate on this claim on July 24, 2007, and the record was held open until June 29, 2007 in order to allow staff the opportunity to evaluate testimony provided at the hearings and the claimant time to submit additional information for evaluation by staff and have the Board reconsider staff's recommendation. The claimant submitted additional information on June 28, 2007.

ANALYSIS

The current owner of record is the Shelley Family Trust. The Shelley family appears to have acquired an interest in the property some time prior to 1938 and 1941, when it was unzoned. The claimants submitted copies of what appear to be two of the original deeds, although the conveyances appear to be from Shelley to Shelley. Testimony indicated the property was part of a land donation claim in the 1800s. No further deed history is provided. Currently, the property is zoned E25.

On May 27, 1993, the property was placed into a revocable Trust with Mabel Shelley as the trustee. The trust is considered a new owner. In the trust, Mabel Shelley identified John G. Shelley and Zora M. Studer as her family. Zora Studer was listed as successor trustee and according to testimony and affidavits is also the beneficiary of the trust, so her date of 'ownership' allegedly coincides with the date the Trust document was created. The complete trust document information on beneficiaries and distribution has not been provided by the claimant, therefore, other details of the ownership history and the current status of the trust ownership interests remain unclear. Zora Studer lives on adjacent property and has used the subject property for cattle ranching for a number of years. She believes the oral agreement between herself and her parents for her to use the family land for her cattle operation in the 1960s is sufficient evidence of ownership interest in the subject property. See pictures of cattle and children for evidence of long term ranching on the property. Under Measure 37, use of the property by permission may not be sufficient ownership to support a claim.

The applicant Lynnette Seitz is Zora Studer's daughter, and Eric Seitz is Lynnette's husband. They are not listed in the trust as family or as beneficiaries, nor on any of the deeds provided in the application, therefore, they do not appear to have a legal ownership interest in the property. The supplemental information provided by the agent on May 15, 2007 argues the Shelley Family Trust is in the shoes of Mabel E. Shelley and disputes the County position that the trust is a new owner and the date of the trust is a new date of acquisition. Mabel Shelley passed away February 29, 2004.

On June 28, 2007, the claimant provided a copy of the unrecorded Lease and Option Agreement between Mabel Shelley and Lynnette and Eric Seitz, dated April 28, 1989. This appears to be the date that Lynnette and Eric Seitz assert they acquired an ownership interest in the subject property. Testimony from the claimant's lawyer who drafted the document indicated it was intended to create an interest as a buyer. It authorizes use of the property as a tenant and enables the purchase of a portion of the property during the period of time covered by the agreement, thirty years. Under the agreement, any purchase must equal the minimum parcel size of Lane County regulations applicable at the time the option is exercised. Evidence of when the option was exercised has not been provided and affidavits seem to indicate it was never exercised. In addition, the recorded conveyances appear to place current ownership of the property in the trust.

The property was unzoned when it was acquired by the Shelley family. The minimum lot size and limitations on new dwellings in the E25 zone would prevent the Shelley family from developing the property as could have been allowed when they acquired it. The alleged reduction in fair market value is \$2,000,000, based on the submitted

appraisal. Because the minimum lot size and dwelling restrictions were applicable when the current owner, the Shelley Family Trust acquired the property in 1993, these regulations can not be waived beyond that date, if that is the appropriate date for waiver.

CONCLUSION

It appears this could be a valid claim for the current owner, the Shelley Family Trust, however, the date of acquisition for the trust is 1993 and the existing zoning applied to the subject property at that time. It appears this also could be a valid claim for the Shelley family, for compensation purposes to 1938 and 1941. Zora Studer asserts that her date of ownership interest began when she and her parents made an oral arrangement for her to use the subject property for grazing cattle as part of her cattle ranch. Staff analysis of documentation provided by the claimants indicates one date of actual ownership may be the date her mother died, which may have left Zora as both trustee and beneficiary of the Shelley Family Trust. It is unclear if there is sufficient information to establish the waiver date and who actually is the owner of the subject property. In any event, the minimum lot size and dwelling restrictions on the subject property were in place when both the trust and Zora Studer acquired ownership interests in the property. Lynnette and Eric Seitz assert ownership interests in the property by a lease option agreement that was not exercised. In the opinion of staff, there is a lack of clear evidence on acquisition dates and when interests in the property 'ripened' to ownership or how those ownerships related to the Trust or were affected by conveyance to the Trust. The applicant has paid the processing fee.

RECOMMENDATION

The additional information submitted on June 28, 2007 did not add enough clarity on the nature of the trust ownership interests and does not appear sufficient to reverse the original recommendation of the County Administrator for the Board to direct him to deny the claim. If the Board considers the oral or other unrecorded arrangements among family members sufficient to establish ownership, it will be necessary to determine the appropriate dates each individual acquired ownership interests in the property and would require completion of a Board Order.