



SUPPLEMENTAL INFORMATION SUBMITTED

Submitted on: 4-9-07

Taken By: SS

SUPPLEMENTAL INFORMATION HAS BEEN RECEIVED BY THIS OFFICE IN REGARDS TO THE FOLLOWING:

BP# _____

PA# OG - 7277

Robinson

SP# _____

SI# _____

OTHER:

ARNOLD GALLAGHER SAYDACK
PERCELL ROBERTS & POTTER
A Professional Corporation

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MICHAEL M. REEDER

April 9, 2007

CERTIFIED MAIL, RETURN RECEIPT REQUESTED

APR 11 2007

State of Oregon
DAS—State Services Division
Risk Management—Measure 37 Unit
1225 Ferry Street S.E., U160
Salem, Oregon 97310-4292

Steve Hopkins, AICP
Department of Public Works
Land Management Division
125 East 8th Avenue
Eugene, Oregon 97401-2926

RE: Cecil L. Robinson Measure 37 Claim(s)
State File Nos.: M13297201 and M13297301
Lane County File No.: PA 06-7277
Please Refer to Our File: 15995-1

To the State of Oregon and Lane County:

This office represents Cecil L. Robinson and Freedom Way, LLC (the “client”). On December 1, 2006, our client filed separate claims with the State of Oregon and Lane County under ORS 197.352 (together, the “Claims”) for that certain real property (16-05-19-00 TL 200 & 220) commonly known as 25510 Highway 36, Cheshire, Oregon 97419, located in Lane County, Oregon (the “subject property”). We submitted two separate claims for each tax lot, 200 and 220 respectively. The State claims were assigned the following administrative numbers: **M13297201** and **M13297301**. We submitted only one claim for both tax lots with Lane County based on the County’s policy of allowing only one claim for property contiguously owned. The Lane County claim was assigned the following administrative number: **PA 06-7277**. This letter and the enclosed attachments are provided as additional support for each of the Claims. Specifically, the intent of this letter is to provide support for the approval of each claim in regards to Tax Lot 220, which is owned by Freedom Way, LLC.

In summary, Mr. Robinson is title owner of Tax Lot 200, and until recently was also title owner of Tax Lot 220. However, in order to secure an access permit for his legally created and buildable lot (Tax Lot 220), Mr. Robinson created a single-member LLC (Freedom Way, LLC) which is now the title “owner” of Tax Lot 220.

1. Cecil Robinson is the “owner” of the Tax Lot 220 under ORS 197.352 and thereby posses a valid Measure 37 claim.

a. Cecil Robinson is the “owner” of Tax Lot 220 by virtue of his “power of termination” and “right of reentry” interest in the property held as the sole member of the Freedom Way, LLC (an “interest therein”).

To understand the basis for Cecil Robinson’s interest in Tax Lot 220 (“TL 220”) as an “owner” under ORS 197.352, a brief discussion of the Limited Liability Company Act, ORS Chapter 63 (the Act) is necessary. Under the Act, a person creates a limited liability company (LLC) by filing articles of organization with the Oregon Secretary of State. Operation of the LLC is governed by the Act unless the member(s) of the LLC agree to an operating agreement that is not inconsistent with the Act, in which case the operating agreement shall govern. ORS 63.057 and 63.431. A member may contribute cash, property, or services to the LLC. ORS 63.175. A member’s “membership interest” in the LLC is that member’s “collective rights in [the] limited liability company, [which] include the member’s share of profits and losses of the limited liability company, the right to receive distributions of the limited liability company’s assets and any right to vote or participate in management.” ORS 63.001(23). A membership interest is personal property. ORS 63.239. Once property has been contributed to the LLC by a member, it may be distributed back out to the member in two ways.

First, an LLC may make an interim distribution of property to its member. ORS 63.195. It is true that a member does not have the right to demand a distribution of property; however, it is equally true that the LLC is not prohibited from distributing property to its members. See ORS 63.219, 63.130(1)(b), 63.195 and 63.001(6). A distribution is the direct or indirect transfer of money or other property to a member in respect of the member’s interest in the LLC. ORS 63.001(6). The only limitation on the LLC making such a distribution is that it must be approved by a majority of the members and such distribution may not be made if doing so would cause the LLC to be unable to pay its debts as they came due in the ordinary course of business or cause the fair value of the total assets to exceed its total liabilities plus such amount as would be needed if the LLC were to be dissolved at the time of distribution. ORS 63.130(1)(b) and ORS 63.229. Provided that those conditions are met, the LLC is free to distribute property to its members at any time.

The second means of distributing property to its members is to do so through a dissolution of the LLC. Upon the unanimous consent of the members, the LLC may be dissolved and distribute the assets of the LLC to its members, to include its property. See ORS

63.130(3)(c) and 63.625. Accordingly, where a person forms a single-member LLC and transfers property into the LLC, that person, as a member of the LLC, has retained the right under the Act to distribute such property back out of the LLC and into their person through either an interim distribution or dissolution of the LLC. The LLC's ownership of the property is held subject to this right. This right is known as a "right of reentry".

On June 2, 2005, Cecil Robinson created Freedom Way, LLC (LLC), by filing articles of organization with the Oregon Secretary of State. The LLC is a manager-managed LLC in which Cecil is the sole member and manager. On June 10, 2005, Cecil and his wife Nancy, transferred TL 220 to the LLC by warranty deed. By doing so, Cecil retained the right to terminate the LLC's ownership of the property subject to Cecil's rights to cause an interim distribution or dissolution. Cecil Robinson retained a "right of reentry" in TL 220.

An estate in land, also commonly known as an "interest", is the right to the present or future possession of the land. One type of estate in land is a fee simple estate subject to a condition subsequent ("FSSCS"). In an FSSCS, the grantor transfers its estate (fee simple) in the property to a grantee subject to the right of the grantor to terminate the grantee's estate in the property and retake possession of the property upon the happening of a stated condition (condition subsequent). At the happening of the stated condition, the grantor (or his heirs) may retake the property (aka "reenter") or allow the grantee to retain the property. When a grantor creates an FSSC in the grantee, the grantor simultaneously creates in itself an interest in the property known as a "right of reentry", sometimes called a "power of termination." A "right of reentry" is the grantor's right to terminate the estate created in the grantee when a stated condition happens. It is a "stick in the bundle" of property rights similar to an easement, timber rights or other interests in real property. In Cecil Robinson's case, he retained a "right of reentry" by retaining the right to terminate the LLC's ownership of the land by voting to make an interim distribution of the property or to dissolve the LLC and, at his election, retake possession of the land. Thus, in effect, the LLC possesses what amounts to a fee simple estate subject to a condition subsequent, because the LLC's possession of the property will come to an end by reason of a condition subsequent to the transfer from the grantor to the grantee (i.e. the interim distribution of the property or dissolution of the LLC).

The question is whether a right of reentry is an "interest therein" qualifying Cecil Robinson as an "owner" under ORS 197.352 who is entitled to bring a claim. An "owner" is a defined term in the statute. A plain reading of ORS 197.352(11)(C) provides that an "'owner' is the present owner of the property, or any interest therein." (emphasis added). To answer the question, one must analyze the statute as provided by the Oregon Supreme Court in *PGE v. Bureau of Labor and Industries*, 317 OR 606 (1993). Under *PGE*, the first step is to analyze the text and context of the provision at question. If the intent is clear, then the analysis stops. If it is not clear, then the court will analyze the legislative history of the statute. *See Id.* If the intent of the legislature remains unclear after completing the foregoing inquiries, the court may resort to maxims of statutory construction, *Id.* at 612.

We begin with the text of the provision – ORS 197.352(11)(C) states that an “owner” is the present owner of the property, or any interest therein.” Words of common usage are given their ordinary meaning. *Id* at 610. Interest is defined as a “right, title or legal share in something.” Webster’s Third New International Dictionary, Unabridged (2002). A “right of reentry” is the grantor’s right to terminate a grantee’s estate in the property and retake the property. It is a stick in the bundle of property rights and it is within the ordinary meaning of the words “any interest therein”.

The second step in the analysis is to analyze the provision in the context of the statute. Section 1 of the statute provides that the owner of the property is entitled to bring a claim for just compensation. It follows then to bring a claim for just compensation under Section 1, a person must have a “right, title or legal share” in the property. In lieu of compensation, under Section 8 the governing body may “waive” restricting land use regulations to the date the claimant (i.e. the person who has a right, title or legal share in the property) “acquired” the property. It follows then that in order to waive restricting regulations, the claimant must have acquired the property. Acquiring the property does not necessarily require that the claimant be the owner of the property. The common usage of word “acquire” is defined as “to come into possession, control or power” Webster’s Third New International Dictionary, Unabridged (2002). Therefore, under Section 8, the governing body may “waive” restricting regulations to when the claimant came into possession of the property, control of the property or had power over the property. In other words, to possess an “interest therein” a claimant must 1) have a right, title or legal share in the subject property, and 2) have either come into possession, control or power over the property. Importantly, it is not necessary for an “owner” then to actually have an “ownership interest” in the property. We know then that a person possessing an easement in the property, mineral rights in the property, a leasehold interest in the property and a right of reentry in the property are all “owners” entitled to bring a claim because they possess an “interest therein.” That is, they all have a right, title or legal share in the subject property, and have either come into possession, control or power over the property. The text and context of the provision are clear. Under *PGE*, the analysis ends here. A right of reentry is an “interest therein.” Cecil Robinson is entitled to bring a claim under ORS 197.352. The appropriate date to waive restricting land use regulation is the date Cecil Robinson acquired TL 220 on November 29 1974.

It has been suggested that transferring property into a single-member LLC extinguishes the transferring property owner’s right to bring a claim under ORS 197.352 as an “owner”. This was the conclusion reached by the Marion County Circuit Court in *Corey, et al, v. State of Oregon, et al*, Case No. 05C18840. With all due respect, we disagree.

Without referencing the rules and standards set forth by the Oregon Supreme Court in *PGE v. Bureau of Labor and Industries*, the *Corey* court proceeded to conduct an analysis of ORS 197.352(11)(C). The court skipped the first requirement of the analysis (the text of the

provision) and proceeded directly to analyzing the context of the provision. In doing so, the court held that:

An “owner” under the statute may include a person who has a partial, but present, ownership interest. But to have a meaningful “interest therein” in property for the purposes of ORS 197.352(11)(C), an owner must have “acquired” the property. *See* ORS 197.352(1),(2) & (3)(E) (providing that the owner of the property is entitled to compensation for the reduction in value to the property caused by land use rules enacted before the property was *acquired* by the owner (or a family member of the owner who owned the property prior to the acquisition or inheritance by the owner)); ORS 197.352(8)(providing that a public entity may “modify, remove or not *** apply the land use regulation *** to allow the owner to use the property for a use permitted at the time the owner *acquired* the property” (emphasis added)). “Acquisition” of the property, in turn, requires an owner to have the right to possess, control, or exercise power over the property. *See Webster’s Third New International Dictionary, Unabridged* (2002) (defining “acquire” as “to come into possession, control, or power”). The definition of “owner” contained in ORS 197.352(11)(C) therefore requires that the owner be a present legal owner of the property, or have a present legal ownership interest in the property.

While it is true that the context of the statute supports the requirement that an “owner” must “acquire” the property, there is no support in either the text or context of the statute for the *Corey* court’s requirement that an “interest therein” must be “meaningful” or that it is limited to only those claimants that have an “ownership interest” in the property. The court is not free to insert requirements and limitations which are not there. ORS 174.010 and *PGE v. BOLI*, 317 Or 606. Likewise, state agencies are not free to do so either. *Cook v. Worker’s Compensation Department*, 306 Or 134, 138 (1988); *U. of O. Co-oper. v. Dept. of Rev.*, 273 Or. 539, 550 (1975). Yet the *Corey* court did not stop its analysis there as required by *PGE*, but instead sought to interpret the requirements of ORS 197.352(11)(C) by applying the apparent limitation found within ORS 63.239¹, a provision of the LLC Act and by analyzing the intent of the legislature in drafting the LLC Act. Nowhere within the text of ORS 197.352 is any provision of LLC Act (ORS Chapter 63) referenced and nowhere within the confines of *PGE*’s statutory analysis is the court authorized or directed to extend the textual analysis of ORS 197.352 to any other chapter within the Oregon Revised Statutes. Followed to its logical end, the *Corey* court would have the requirements of an “owner” under ORS 197.352 hinge on the provisions of every other ORS statute wherein an entity is created. Contrary to the *Corey* court, the analysis is not so broad. The *Corey* court reached a flawed conclusion because it failed to apply the *PGE* analysis when

¹ ORS 63.239 A membership interest is personal property. A member is not a coowner of and has not interest in specific limited liability company property.

analyzing the statute, added additional requirements and limitations to the statute not found within the text of the statute, and extending its analysis beyond the provisions of ORS 197.352.

To accept the *Corey* court's decision that a member of a single-member LLC has no "interest" in the subject property requires one to ignore the clear requirements of *PGE* and to disregard the practical reality of the situation. In a single-member LLC, the LLC is operated wholly at the discretion of its sole member. At any time, the member may choose to distribute the property out of the LLC or dissolve the LLC and retake the property. No one doubts that Cecil Robinson, as the sole member of the LLC, could in his sole and absolute discretion elect to distribute TL 220 to himself as a member under the Act. In other words, the LLC's ownership of the property has always been held subject to Cecil Robinson's right to terminate its ownership by voting to either make an interim distribution of the property or voting to dissolve the LLC and distribute its assets. In short, Cecil Robinson possesses a very real interest in the property, a right of reentry.

Under a *PGE* analysis, it is clear that a member who transfers property into a single-member LLC and thereby retains the right to distribute the property or dissolve the LLC and thereby retake the property has retained an interest in the property. As such, the member is qualified as an "owner" for purposes of ORS 197.352. Based on the foregoing, it is indisputable that Cecil Robinson retained an "interest" in the subject property for purposes of his Measure 37 claim by retaining (a) management and control of the property as the only manager and member of the LLC, and (b) the right to distribute or dissolve the LLC and distribute the property unto himself in accordance with the LLC Act.

b. Equity demands that Cecil Robinson be considered the "owner" of Tax Lot 220 notwithstanding any transfer of ownership of Tax Lot 220 to the LLC because such transfer was done at the wrongful insistence of the State.

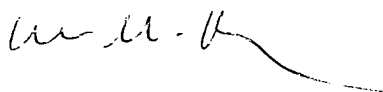
Even if the fact finder should decide that there has been a transfer of ownership of Tax Lot 220, equity demands that such transfer of ownership be disregarded based on the facts and circumstances of the instant case. Cecil Robison and his wife owned TL 220 for 31 years. In June 2005, they transferred TL 220 into Freedom Way, LLC, an LLC which has no business purpose. The transfer was not done for estate planning or succession purposes. It was not done for the management of the property or to shield the Robinsons from liability. It was done only as a result of the Oregon Department of Transportation's (ODOT) refusal to grant the Robinsons an access permit, a permit for which they were clearly due. See the attached letter from Joseph J. Leahy, attorney, to various ODOT officials, dated January 25, 2004, the "Statement in Support of Freedom Way, LLC Application for State Highway Approach," and the "Findings for Application for an Approach" prepared and filed by Mr. Leahy.

The Robinsons owned 3 legal parcels of property (which include Tax Lot 200 and Tax Lot 220) situated along Highway 36. The Robinsons desired to develop the parcels for sale. In

doing so, the Robinsons sought to gain a separate access to Tax Lot 220 as allowed by OAR 734-051-0080. ODOT denied this request although it was clearly permitted under the applicable regulations. ODOT insisted that, because all the parcels were owned by the same owner, there was no need for separate access but rather both of the parcels could use the same access point by crossing over the property where the Robinsons' home is located. In order to obtain separate access, ODOT required that the Robinsons transfer the subject property to a separate entity which ODOT purported would then be entitled to have its own access point. Although this was clearly not required by the applicable regulations, this was the only way that ODOT would grant to the Robinsons a separate access point even though there was no legal basis for requiring so. This transfer, done at the insistence of a state agency, cannot now be the basis for denying Cecil Robinson's Measure 37 claim. In this particular case, equity demands that the transfer be disregarded and Cecil Robinson be considered the "owner" of TL 220 for purposes of ORS 197.352.

Thank you for your time in considering this claim. Please contact me with your response to the claimant's application, or if you have any questions regarding this matter.

Yours truly,



MICHEAL M. REEDER

MMR:AJN

Enclosures

cc: Client

N:\P - T\Robinson, Cecil 15995\Measure 37 Claim 15995-1\Correspondence\State and County (Supplemental Ltr) 040507.doc

OAR 734-051-0080(1)(c)(C) Those requirements set forth in OAR 734-051-0190 and 734-051-0200 are met or a deviation is approved in accordance with the standards set forth in OAR 734-051-0320 through 734-0051-0350;

Findings:

The posted speed in section of highway is 55 MPH. The Access Management Spacing Standard for rural district highways at 55 miles per hour is 700 feet. The Minor Deviation limit is 650 feet. The distance between the requested approach and the next driveway to the east 185 feet, and to the west is 700 feet.

The property has approximately 1200 feet of frontage along the Mapleton-Junction City Highway. The spacing standards cannot be met.

Although the Department is not processing a request for a Major Deviation, approval of a Major Deviation would be required pursuant to OAR 734-051-0320 through 0350.

Determination:

The requested approach does not meet the criteria. Approval of a major deviation will be required.

OAR 734-051-0080(1)(c)(D) The effect of the approach will meet traffic operations standards, signals or signal systems standards as set forth in OAR 734-020-0400 through 734-020-0500;

Findings:

There are no traffic signals near the properties in question.

Determination:

Not applicable.

OAR 734-051-0080(1)(c)(E) The highway mobility standards as set forth in the 1999 Oregon Highway Plan are met;

Findings:

The highway mobility standards for this proposal are identified in the 1999 Oregon Highway Plan, Action 1F.1. The highway mobility standard for this section of highway is 0.75. Given the limited traffic generation of the site, mobility standards would not be exceeded.

Determination:

Highway mobility standards are met.

OAR 734-051-0080(1)(c)(F) The site design does not rely upon the highway for internal site circulation, as shown in a site plan set forth in OAR 734-051-0170;

Findings:

There is adequate room for circulation on-site; the site does rely upon the highway for internal circulation.

Determination:

Internal site circulation requirements are not met.

OAR 734-051-0080(1)(c)(G) The approach to the highway is consistent with an access management plan, as set forth in OAR 734-051-0360(8), for the segment of highway abutting the property, if applicable;

Findings:

There is no access management plan.

Determination:

Not applicable.

OAR 734-051-0080(1)(c)(H) The approach to the highway is adequate to serve the volume and type of traffic reasonably anticipated to the site, as set forth in OAR 734-051-0130; and

Findings:

ODOT would require the approach be designed to accommodate the typical traffic.

Determination:

If approved, this would be required.

OAR 734-051-0080(1)(c)(I) Where additional approaches are requested, more than one approach is necessary to accommodate and service traffic as may be reasonably anticipated to the property.

Findings:

Applicant has requested an additional approach to the highway.

Determination:

The condition is not met. More than one approach is not necessary to accommodate the traffic reasonably anticipated to this property.

734-051-0320 Requests for Deviations to Access Management Standards

OAR734-051-0320(4) A request for a minor deviation shall be approved by the Region Manager, and a request for a major deviation may be approved by the Region Manager, where the deviation would not result in significant safety or traffic operation problems, and if one or more of the following conditions exist:

OAR 734-051-0320(4)(a) Strict application of the access management standards would result in a safety or traffic operation problem;

Findings:

Standards can be met and there would be no safety or operational problems.

Determination:

The condition is not met.

OAR 734-051-0320(4)(b) Existing public approaches cannot be moved due to excessive cost, topography, or environmental concerns;

Findings:

Public approaches do not need to be moved to serve this property; the property is along the Mapleton-Junction City Highway OR 36 (Highway 201), Milepost 44.34. The property already has a permitted approach to the highway.

Determination:

The condition is not met.

OAR 734-051-0320(4)(c) Where the applicant provides joint access serving two or more properties or has shown efforts to work with adjacent property owners to improve existing conditions and shows that existing private approaches cannot be closed, relocated, or shared due to existing development patterns, topography or lack of existing alternate roadway system;

Findings:

There is currently only ONE approach (permitted) serving this property. The proposed approach is not intended to serve multiple properties. The applicant is not working with the adjacent property owners, and there are no development patterns, topography or lack of an existing alternate roadway system that would prevent a shared approach.

Determination:

The condition is not met.

OAR 734-051-0320(4)(d) Where the applicant has shown efforts to work with adjacent property owners to improve existing conditions and shows that existing development patterns or land holdings make it impossible to meet the spacing standards;

Findings:

The applicant is not working with adjacent property owners to improve existing conditions. Spacing standards cannot be improved for the existing approach.

Determination:

The condition is not met.

OAR 734-051-0320(4)(e) Establishing an alternate roadway system is not practical or cost effective;

Findings:

An alternate roadway system is not necessary; the existing permitted approach to the Mapleton-Junction City Highway is adequate to serve the property.

Determination:

Condition is not met.

OAR 734-051-0320(4)(f) The proposed deviation results from the existence of unrelocatable control points such as bridges, waterways, parks, historic or archaeological areas, cemeteries, or other unique natural features;

Findings:

There are no such control points necessitating a deviation.

Determination:

The condition is not met.

OAR 734-051-0320(4)(g) The proposed deviation improves traffic safety or operations; or

Findings:

This new approach would provide better sight distance. However, the existing permitted approach will not be removed as part of this application. Therefore, there would not be an improvement to safety or operations.

Determination:

The condition is not met.

OAR 734-051-0320(4)(h) Any other conditions deemed appropriate by the Region Manager.

Findings:

Not applicable here.

OAR 734-051-0320(6) A request for either a minor or major deviation shall not be approved by the Region Manager under the following conditions:

OAR 734-051-0320(6)(a) The access management standards can be met and application of the standards would not result in a safety or traffic operation problem, but the result would be higher site development costs;

Findings:

The access management spacing standards **cannot** be met because the property has approximately 1200 feet of frontage along the Mapleton-Junction City Highway. Adjacent approaches are 185 feet to the east and 700 feet to the west.

OAR 734-051-0320(6)(b) Options for meeting access management standards have not been considered or addressed;

Findings:

The applicant has not, to the best of our knowledge, considered meeting the standards because they want the approach constructed where it is proposed.

OAR 734-051-0320(6)(c) The deviation is requested because of a hardship which is self created, including:

OAR 734-051-0320(6)(c)(A) Conditions created by the proposed building footprint or location, or on-site parking or circulation; or

Findings:

Not applicable.

OAR 734-051-0320(6)(c)(B) Conditions created by the owner's lease arrangements or other voluntary legal obligations; or

Findings:

Not applicable.

OAR 734-051-0320(6)(d) The proposed deviation would result in significant safety or traffic operation problems.

Findings:

The Department does not believe that a safety problem would be created.

Determination:

The applicant does not meet the spacing standards required for approval of a private approach [OAR 734-051-0080(1)(c)(C)] nor meet any of the criteria for approval a major deviation to spacing standards [OAR 734-051-0320(4)].

DECISION:

The request for the deviation from the Access Management Standards is **DENIED**.

- The requested approach is located in a rural area as identified in OAR 734-051-0040(45) and must meet the requirements of OAR 734-051-0080(1)(c).
- The existing permitted approach provides reasonable access to the site and can be developed for uses identified in the local comprehensive plan and is reasonable to serve the volume and type of traffic anticipated to the site [OAR 734-051-0080(6)], the applicant does not meet the requirements of OAR 734-051-0080(1)(c).



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February 25, 2004

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District Manager
ODOT District 05
Maintenance Office
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Springfield, OR 97477

Jeff Sheick
ODOT Region 2 Mgr.
455 Airport Rd Bldg #B
Salem, OR 97301

Tony C. Martin, P.E.
Regional Access Mgr Eng.
455 Airport Rd Bldg #B
Salem, OR 97301

Jeffrey Lange
Permit Specialist
ODOT District 05
644 A Street
Springfield, OR 97477

Hearing Officer Panel
Transportation Section
1905 Lana Avenue
Salem, OR 97314

RE: Application for State Highway Approach by Cecil Robinson on
Highway 229 (Mapleton-Junction City) at Mile Point 44.34
Application No. 3404

Dear Sir or Madam:

This office represents Cecil Robinson, P.O. Box 7302, Eugene, Oregon 97401. Mr. Robinson submitted the above entitled application for a state highway approach. By copy of this letter to each of you Mr. Robinson is hereby withdrawing Application No. 3404. This withdrawal is based upon assurances received from Tony Martin that a subsequent application for the same parcel which is the subject of Application No. 3404 might be filed by

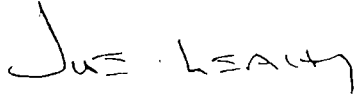
Application No. 3404
February 25, 2004
Page 2

someone or an entity other than Mr. Robinson without any waiting period to re-file.

Mr. and Mrs. Robinson are reviewing their plans for disposition of assets and it may be that it might make more sense to convey this property to a different person or legal entity which would be responsible for its development.

Thank you for your attention to this matter and your anticipated courtesy and cooperation.
Sincerely,

HAROLD, LEAHY & KIERAN

A handwritten signature in dark ink, appearing to read "Joe Leahy". The signature is written in a cursive, somewhat stylized font.

Joseph J. Leahy

JJL:llk
cc: Cecil Robinson

FINDINGS FOR APPLICATION FOR AN APPROACH

January 30, 2004

SUBJECT: Highway Number 229, (Mapleton-Junction City),
at Milepoint 44.34
Application Number 3404

BACKGROUND INFORMATION

APPLICANT

Cecil Robinson
P.O. Box 73082
Eugene, OR 97401

PROPERTY OWNER

Cecil Robinson
P.O. Box 73082
Eugene, OR 97401

This request cannot be approved because of the availability of reasonable access in a rural area. The following rules have been considered only to identify the spacing standards required, address safety and operations, and examine the deviation criteria and process.

734-051-0080(1)(c)

Criteria for Approving an Application for an Approach

(A) The private approach to the state highway can be accommodated or mitigated consistent with the safety of the traveling public pursuant to the criteria in Section (3) of this rule;

OAR 734-051-0080(3) Safety Criteria.

For the purposes of sections (1) and (2) of this rule, the factors considered when evaluating the safety of the traveling public for both the highway and the approach include, but are not limited to:

OAR 734-051-0080(3)(a) Roadway character, such as classification, number of lanes, capacity, median treatment, and traffic controls;

Findings:

The Mapleton-Junction City Highway, OR 36 (Highway 229) has one lane in each direction with narrow gravel shoulders on both sides. The centerline is striped for passing in both directions. There are no traffic signals near this location.

OAR 734-051-0080(3)(b) Traffic character, such as speed, crash history, existing and projected volume, vehicle types, pedestrians, site circulation and peak hour character;

Findings:

Posted speed is 55 MPH. Average Daily Traffic in 2002 at milepost 44.34 is estimated to be 1970 vehicles per day. Historical data shows approximately 1.4% annual growth in traffic volumes. The crash history for the period of January 1, 1998 to December 31, 2002 is one turn movement collision that is attributable to an improper turn.

OAR 734-051-0080(3)(c) Geometric character, such as topography, horizontal curves, vertical curves, stopping sight distance, intersection sight distance, clear zone, and right of way; and

Findings:

The highway in this vicinity is flat and on a tangent section. Sight distance is 1000 feet in both directions. Intersection sight distance for a design speed of 70 mph is 775 feet.

OAR 734-051-0080(3)(d) Environmental character, such as urban, rural, timber, wetland, drainage and snowplowing needs.

Findings:

The site is located in rural Lane County.

Determination:

Applicant meets the criteria listed in Section (3).

OAR 734-051-0080(1)(c)(B) The private approach is consistent with the classification of the highway and the highway segment designation of the state highway facility;

Findings:

This request is located on the Mapleton-Junction City Highway, OR 36 (Highway 229). This highway is classified as a District-level Highway. It is located in rural Lane County.

Determination:

This approach is consistent with the classification of the highway.



SUPPLEMENTAL INFORMATION SUBMITTED

Submitted on: 5-21-07

Taken By: _____

SUPPLEMENTAL INFORMATION HAS BEEN RECEIVED BY THIS OFFICE IN REGARDS TO THE FOLLOWING:

BP# _____

PA# CG-7277

Robinson

SP# _____

SI# _____

OTHER: _____

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MICHEAL M. REEDER

May 21, 2007

HAND DELIVERED

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

Re: Cecil L. Robinson Measure 37 Claim
Valuation Supplemental Info (PA067277)
Please Refer to Our File No. 15995-1

Dear Steve:

As you know, I represent Cecil Robinson, the claimant for this Measure 37 claim with Lane County and the State. The purpose of this letter is to respond to the staff memorandum dated May 2, 2007. Before addressing the staff memorandum, it may be helpful to restate the essential facts of this claim. Mr. Robinson acquired the entire subject property (what is now known as Tax Lot 200 and Tax Lot 220) on November 27, 1974, via a warranty deed (not January 1, 1975, as is claimed in the staff memorandum). In 1979, Lane County approved a minor land partition, creating two discrete, buildable parcels now known as Tax Lot 200 and Tax Lot 220. Tax Lot 200 is 15.73 acres, and Tax Lot 220 is 30.50 acres. In 2005, after repeated failed attempts by the Claimant and his attorney, Joseph J. Leahy, to secure vehicular access rights from the Oregon Department of Transportation for Tax Lot 220, a limited liability company (Freedom Way LLC) was created and Tax Lot 220 was deeded to the LLC. Please see the April 9, 2007 letter in the Record from me to the State and to Lane County staff wherein I describe this process and its legal effect. Currently, Tax Lot 200 has a single-family residential unit, while Tax Lot 220 is vacant.

The staff memorandum states in relevant part, "The applicant has not submitted competent evidence of a reduction of fair market value from enforcement of a land use regulation... There is a statement of value reduction in the application, but the CMA report does not provide evidence to support the conclusion in the narrative."

The evidence of a loss of fair market value is found in the material submitted by the Claimant. The difficulty may lie in the fact that County staff considers Freedom Way LLC, a single-member LLC owned by the Claimant, as the *only* owner of Tax Lot 220. However, even if the Board does not consider Cecil Robinson as having a Measure 37 ownership interest in Tax Lot 220, the claim is still valid as to Tax Lot 200. To conclude otherwise is to ignore the obvious.¹

Notwithstanding the obvious conclusion that a 15-acre parcel that is allowed to be divided into four to five residential units is more valuable than a 15-acre parcel that has restrictions on such use, the Claimant submitted three Comparative Market Analyses (CMA) as part of the original claim. The first CMA, dated November 28, 2006, analyzed sold properties for 30-acre parcels that allow for one primary residential unit. This is the "after" CMA for the property that is currently held in title by Freedom Way LLC, Tax Lot 220. The second CMA was a "before" analysis prepared for the entire subject property (both Tax Lot 200 and Tax Lot 220), also dated November 28, 2006. This CMA compared 3- to 4-acre buildable residential sold properties. The third CMA was an "after" analysis of the property owned only by Cecil and Nancy Robinson (no interest in the property by Freedom Way LLC), Tax Lot 200. Again, even if the Board does not waive the claim for Tax Lot 220, the claim for Tax Lot 200 is justified by the originally submitted CMAs.

The second CMA analyzes 3- to 4-acre buildable parcels. Tax Lot 200 is slightly more than 15 acres. Therefore, if the Board approved the claim and waived the restrictive land use regulations for Tax Lot 200 only, the Claimant would still be able to divide Tax Lot 200 into approximately 4 to 5 discrete buildable parcels. The CMA concludes that a 3- to 4-acre buildable parcel is valued at approximately \$177,500. Conservatively, the fair market value of Tax Lot 200 would be approximately \$710,000 ($\$177,500 \times 4 = \$710,000$). This is at least \$548,250 more than the 15-acre parcel is currently worth ($\$710,000 - \$161,750$ [current fair market value of Tax Lot 200] = \$548,250).

¹ 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 [DOJ's] Petition for Reconsideration, page 9, footnote 2.

It follows that a 15-acre parcel that is allowed to only have one residential unit is less valuable than a 15-acre parcel that is allowed to be divided into 5 separate, buildable parcels.

Stephen L. Vorhes
May 21, 2007
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Therefore, even if the Board chooses to not approve the claim for Tax Lot 220, the Board may clearly waive the restrictive land use regulations for Tax Lot 200.

Very truly yours,



Micheal M. Reeder

MMR:jgh

cc: ~~Client~~

✓ Kent Howe, Planning Director (hand delivered)

Alice Beals, DAS (certified mail, return receipt requested)

N:\P - T\Robinson, Cecil 15995\Measure 37 Claim 15995-1\Correspondence\Valuation Ltr to Steve Vorhes 052107.doc