

SUPPLEMENTAL INFORMATION SUBMITTED

Submitted on: 11/10/07 Taken By: [Signature]

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BP# _____

PA# 06-7253 Shelley

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=== COVER SHEET ===

FROM: SWW

FAX#: 503

TEL#: 503

COMMENT:



SCHWABE, WILLIAMSON & WYATT
ATTORNEYS AT LAW

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Date: June 5, 2007

To:	Fax No.	Phone No.
Teresa Wilson, County Counsel Lane County Public Services Bldg.	(541) 682-3803	(541) 682-4442
Kent Howe Planning Director - Lane County	(541) 682-3947	

From:	Phone No.	E-Mail Address:
Joshua P. Stump	503-796-2072	jstump@schwabe.com
Message: Claim for Lynnette and Eric Seitz, Zora Struder and the Shelley Family Trust. Thank you.		

File Number:	116206/151131		
No. of Pages, Including Cover:	9	Transmittal Time:	a.m. / p.m.
Via Fax Only:	X	Also Via:	

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Pacwest Center, 1211 SW 5th Ave., Suite 1900, Portland, OR 97204 | Phone 503.222.9981 | Fax 503.796.2900 | www.schwabe.com

JOSHUA P. STUMP
Direct Line: 503-796-2072
E-Mail: jstump@schwabe.com

June 4, 2007

VIA HAND DELIVERY

Teresa Wilson
County Counsel
Lane County
Lane County Public Services Bldg.
125 East 8th Avenue
Eugene, OR 97401

Kent Howe
Planning Director
Lane County
125 East 8th Avenue
Eugene, OR 97401

Re: *Measure 37 Claim for Lynnette G. Seitz, Eric A. Seitz, Zora M. Struder and Shelley Family Trust*
Our File No.: 116206/151131

Dear Ms. Wilson and Mr. Howe:

This letter is to supplement the information included with the original claim discussed above and to address the issues raised in discussion with Lane County's Legal Counsel and that you raised in your staff report and recommendation to Lane County in the above-referenced matter. As you know the Measure 37 claim for Lynnette G. Seitz, Eric A. Seitz, Zora M. Struder and Shelley Family Trust ("Claimants") is set for hearing on June 20, 2007. After receiving this letter and reviewing the other information submitted, if you feel further information is needed to properly assess this claim, please contact my office immediately and we will do our best to address those concerns where appropriate.

The ownership history of the subject property

In addition to the information previously submitted, this letter is to help clarify the various ownership interests in the subject property.

For purposes of this claim, the Shelley family first acquired the subject property via two deeds (attached hereto). The attached deeds show that the property was acquired by Frank and Mable Shelley in 1938 and 1941. Both Frank and Mabel Shelley are now deceased.

Zora Studer is the daughter of Frank and Mabel Shelley. She first acquired an interest in the property in 1968. Ms. Studer moved to and lived on property adjacent to the subject property

Teresa Wilson
Kent Howe
June 4, 2007
Page 2

beginning in 1968. At that same time she and her husband (now deceased) acquired a leasehold interest in the property via an oral lease which allowed for use of the property as part of an ongoing farming operation detailed in the affidavits previously submitted. In 1993, The Shelley Family Trust first acquired an interest in the property when a revocable trust was created. Mabel Shelley transferred ownership to the revocable trust where she was the trustee. Zora Studer was, at the time, a beneficiary. Ms. Studer is currently both the trustee and beneficiary of the trust

Lynnette and Eric Seitz first acquired an interest in the property in 1989 when they executed a lease option agreement that was recorded and previously submitted as a part of this claim. The lease includes an option to purchase a portion of the property for purposes of building a residence.

For the reasons stated in my prior letter the claimants are entitled to a waiver of land use regulations enacted since 1938 or 1941, the dates the Shelley family first acquired the property. At a minimum, claimants are entitled to a waiver dating back to 1968 for Zora Studer, 1989 for Lynnette and Eric Seitz and 1993 for the Shelley Family Trust. There are land use regulations, including but not limited to provisions of Goal 3, ORS 215 and OAE 660, which were adopted after May, 1993 and which diminish the value of the ownership interests described above.

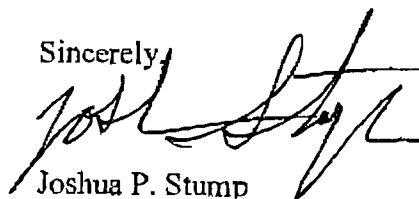
The Measure 37 Application Fee

The Staff report noted that the Claimants had not as of that earlier date paid the Measure 37 application fee imposed by the County. As explained in prior correspondence and conversation, we do not believe the Claimants are required under Measure 37 to pay this fee. Nevertheless, without waiving any rights or arguments, Claimants will submit payment of the application fee prior to the scheduled date for hearing on this claim on June 20, 2007.

Conclusion

We are hopeful this information helps to clarify the ownership interests of the various Claimants. We are likewise hopeful that the legal arguments articulated in my prior letter will persuade County staff to recommend granting this Measure 37 claim. If there is more information needed to process this claim, please contact me at your earliest convenience. It is my intent to provide further briefing on some of the legal issues we discussed prior to the hearing on the 20th. Thank you for your consideration.

Sincerely,



Joshua P. Stump

JPS:clh
Enclosures

SWW

WARRANTY DEED

06072

THIS INDENTURE WITNESSETH That W. H. Shelley and Myrtle Shelley, his wife,

do and to confirm the same of THE S. S. 100 follows to them said, do hereby bargain, sell and convey unto
Frank Shelley and Mabel Shelley, his wife, or the survivors of them, the following described
premises, to-wit:

Commencing at a point on the north line of the John Russell Donation Land Claim No. 72,
 in township No. 18 S. R. 2 West of the Willamette Meridian, Lane County, Oregon 10.78 chains
 East of the Northwest corner thereof, thence east 7.70 chains, to the Northeast corner of
 said claim, thence South 84.50 chains to the southeast corner of said claim, thence east
 85.50 chains, thence north 46.40 chains, thence east 18.50 chains, thence north 20.00 chains
 to the place of beginning, containing 153.51 acres of land in Lane County, Oregon excepting
 forty (40) acres more or less sold to Harry Shelley, also except 4.15 acre tract located to
 Doris Lyons by deed recorded in Volume 139, Page 47, Deed Records, Lane County, Oregon, on
 April 28, 1924.

TO HAVE AND TO HOLD the said premises, with their appurtenances, unto the said Frank Shelley and Mabel
Shelley, their

And the said W. H. Shelley and Myrtle Shelley, do
 hereby covenant to and with the said Frank Shelley and Mabel Shelley, their

heirs and assigns, that they are the owners in the single of said premises
 and that they are free from all incumbrances except a mortgage given to the Federal Land
 Bank of America with an unpaid balance of \$2,000.00.

and that they will warrant and defend the same from all lawful claims whatsoever.

IN WITNESS WHEREOF, they have hereunto set their hands and seals this fifth day of
 November, A.D. 1928.

In the presence of

(S-S-U, S. I. S.)
 (State Cancelled)

W. H. Shelley
Myrtle Shelley

(SEAL)
 (SEAL)

(SEAL)

(SEAL)

(SEAL)

(SEAL)

STATE OF OREGON
 COUNTY OF LANE

do hereby certify that on this fifth day of November, A.D. 1928

personally came before me, a Notary Public in and for said

county, the within named W. H. Shelley and Myrtle Shelley

to me personally known to be the identical persons described in and who executed the within instrument and
 acknowledged me that they executed the same freely and voluntarily for the uses and purposes therein stated.
 Witness my hand and seal this fifth day of November, A.D., 1928.

Notary Seal

Harry Roberts
 Notary Public for Oregon
 My Commission Expires 8/28/31.

W. H. Shelley, Myrtle Shelley, Harry Roberts, Notary Public for Oregon, My Commission Expires 8/28/31.

WARRANTY DEED

THIS INDENTURE WITNESSETH, THAT W. H. Shelley and Myrtle Shelley

his wife, for and in consideration of the sum of one and no/100 DOLLARS,
and the sum of ONE and no/100 DOLLARS,
to them paid, do hereby Enjoin, Sell and Convey unto Frank Shelley and
Mabel Shelley, husband and wife
the following described premises, to wit:

Beginning at a point 12.75 chains east and 6.483 chains south of the northwest corner of the John Russell Donation land claim number 72 in Township 18, South Range 2 West of the Willamette Meridian in Lane County, Oregon, and running thence east 7.70 chains to the east boundary of said claim, thence south along said east boundary 38.80 chains, thence west 26.50 chains, thence North 5.59 chains, thence east 18.80 chains, thence North 33.41 chains to the place of beginning, containing 40 acres of land in Section 22 in said township in Lane County, Oregon.

TO HAVE AND TO HOLD the said premises, with their appurtenances, unto the said grantee heirs and assigned forever.

And the said grantors do hereby covenant to and with the said grantee that the said grantee heirs and assigns shall have and enjoy the said premises, unto the said grantee heirs and assigns, free from all incumbrances;

and that the said grantee will warrant and defend the same from all lawful claims whatsoever.

IN WITNESS WHEREOF, the said grantors have hereunto set their hands and seal at this 14th day of November, A. D., 19 41.

Done at Portland, Oregon

Witness my hand and seal at this 14th day of November, A. D., 19 41.

W. H. Shelley (Seal)
Myrtle Shelley (Seal)
Frank Shelley (Seal)
Mabel Shelley (Seal)

STATE OF OREGON
COUNTY OF LANE

Be it remembered that on this 14th day of November, A. D., 19 41,
personally came before me, a Notary Public, in and for said County,

the within named W. H. Shelley and Myrtle Shelley, his wife,
to me personally known to be the identical persons described in, and who executed the within instru-
ment, and acknowledged to me that they executed the same freely and volun-
tarily for the uses and purposes therein named.

Witness my hand and seal this 14th day of November, A. D., 19 41.

[Signature]

Notary Public for Oregon.

My Commission Expires June 6, 19 1945



WARRANTY DEED

FROM

TO

State of Oregon
County of Lane
I, W. B. Dillard, County Clerk and ex-
traordinary Auditor of said County, do hereby certify that the within-
instrument was recorded for record at



NOV 19 1941 41

and
Recorded

In Book 224 on Page 103-4

Lane County DEED Records

W. B. DILLARD, County Clerk.

By *[Signature]* Deputy

Ret. Frank Shelley
Att. - Dillard

WARRANTY DEED

00378

THIS DEED BEING WITNESSED BY THE W. H. Shelley and Myrtle Shelley, his wife,

for and to confirmation of the sum of Ten and 00/100 Dollars to Mary said, do hereby bargain, sell and convey unto Frank Shelley and Mabel Shelley, his wife, or the survivors of them, the following described premises, to-wit:

Commencing at a point on the north line of the John Russell Donation Land Claim No. 78, in Township No. 18 S. R. 2 West of the Willamette Meridian, Lane County, Oregon 12.75 chains East of the Northwest corner thereof, thence east 7.90 chains, to the Northeast corner of said claim, thence South 24.20 chains to the southeast corner of said claim, thence west 26.50 chains, thence north 46.49 chains, thence east 18.00 chains, thence north 20.00 chains to the place of beginning, containing 153.01 acres of land in Lane County, Oregon excepting forty (40) acres more or less said to Harry Shelley, also except 4.15 acre tract deeded to Doris Lyons by deed recorded in Volume 100, Page 417, Deed Records, Lane County, Oregon, on April 26, 1924.

TO HAVE AND TO HOLD the said premises, with their appurtenances, unto the said Frank Shelley and Mabel Shelley, their

And the said W. H. Shelley and Myrtle Shelley, do hereby warrant to and with the said Frank Shelley and Mabel Shelley, their

here and assigns, that they are the owners in fee simple of said premises and that they are free from all incumbrances except a mortgage given to the Federal Land Bank of Spokane with an unpaid balance of \$2,000.00.

and that they will warrant and defend the same from all lawful claims whatsoever.

IN WITNESS WHEREOF they have hereunto set their hands and seals this fifth day of November, A.D. 1928,

In the presence of

(S. H. V. S. J. V.)
(Stamps Cancelled)

W. H. Shelley
Myrtle Shelley

(SEAL)
(SEAL)

(SEAL)

(SEAL)

(SEAL)

(SEAL)

STATE OF OREGON
COUNTY OF LANE

do hereby certify that on this fifth day of November, A.D. 1928 personally came before me, a Notary Public in and for said County, the within and above named W. H. Shelley and Myrtle Shelley,

to me personally known to be the identical persons described in and who executed the within instrument, and acknowledged to me that they executed the same freely and voluntarily for the DEED AND purpose therein named. Witness my hand and seal this fifth day of November, A.D., 1928.

Harry Roberts
Notary Public for Oregon
My Commission Expires 8/28/31.

Myrtal Hani

W. H. Shelley, Dec. 5, 1928, 8:01 a.m. at P. M.
W. H. Shelley, County Clerk
W. H. Shelley, County Clerk

WARRANTY DEED

THIS INDENTURE WITNESSETH THAT W. H. Shelley and Myrtle Shelley

his wife, for and in consideration of the sum of a good and sufficient consideration
and the sum of ONE and no/100 DOLLARS,
to them paid, do hereby Burgate, Sell and Convey unto Frank Shelley and
Neהל Shelley, husband and wife
the following described premises, to-wit:

Beginning at a point 18.75 chains east and 6.483 chains south of the northwest corner of the John Russell Donation Land Claim number 72 in Township 18, South Range 2 West of the Willamette Meridian in Lane County, Oregon, and running thence east 7.70 chains to the east boundary of said claim, thence south along said east boundary 38.80 chains, thence west 26.50 chains, thence North 5.59 chains, thence east 18.80 chains, thence North 33.41 chains to the place of beginning, containing 40 Acres of land in Section 22 in said Township in Lane County, Oregon

TO HAVE AND TO HOLD the said premises, with their appurtenances, unto the said
grantee, heirs and assigned forever.

And the said grantor do hereby covenant to and with the said grantee

that the said grantee shall have and design the same in fee simple of said premises; that the same are free from all incumbrances;

and that the said grantor will warrant and defend the same from all lawful claims whatsoever.

IN WITNESS WHEREOF, we have hereunto set our hands and seal this 14th day of November, A. D. 1941.

Donated to the State of Oregon

W. H. Shelley

Myrtle Shelley

Frank Shelley

Neהל Shelley

W. H. Shelley (SEAL)
Myrtle Shelley (SEAL)
Frank Shelley (SEAL)
Neהל Shelley (SEAL)

STATE OF OREGON,
COUNTY OF LANE,

Be it remembered that on this 14th day of November, A. D., 1941
personally came before me, a Notary Public, in and for said County,

the within named W. H. Shelley and Myrtle Shelley, his wife,
to me personally known to be the identical persons described in, and who executed the within instru-
ment, and acknowledged to me that they executed the same freely and volun-
tarily for the uses and purposes therein named.

Witness my hand and seal this 14th day of November, A. D., 1941

B. L. Rany
Notary Public for Oregon.

My Commission Expires June 8, 191945



WARRANTY DEED

FROM

TO

Notary Public
W. H. Rany, County Clerk and ex-
Officio Recorder of Deeds, in and for
said County, do hereby certify that the within
instrument was recorded for record at



NOV 19 1941

and
Recorded

In Book 221 on Page 103-4

Lane County DEED Records

W. B. DILLARD, County Clerk

By Frank Shelley Deputy

Pat Frank Shelley
Pat Frank Shelley

Pat Frank Shelley



SUPPLEMENTAL INFORMATION SUBMITTED

Submitted on: 5/15/07

Taken By: S. Vorhes, copy to LMD

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

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PA# 06-7253 Shelley

SP# _____

SI# _____

OTHER: For June 20 meeting

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TO: _____

FROM: SWW_____

FAX#: 503

TEL#: 503

COMMENT:



SCHWABE, WILLIAMSON & WYATT
ATTORNEYS AT LAW

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Date: May 15, 2007

To:	Fax No.	Phone No.
Teresa Wilson, County Counsel Lane County Public Services Bldg.	(541) 682-3803	(541) 682-4442
Kent Howe Planning Director - Lane County		

From:	Phone No.	E-Mail Address:
Joshua P. Stump	503-796-2072	jstump@schwabe.com

Message:

This letter is intended for your information regarding the hearing this morning concerning the Measure 37 Claim for Lynnette and Eric Seitz, Zora Struder and the Shelley Family Trust. Thank you.

File Number:	116206/151131		
No. of Pages, Including Cover:	8	Transmittal Time:	a.m. / p.m.
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Fax Operator:	Chris Hardy	Direct Dial Phone:	(503) 796-2900
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Seattle, WA 206-822-1711 | Vancouver, WA 360-694-7551 | Washington, DC 202-488-4302



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ATTORNEYS AT LAW

Pacwest Center, 1211 SW 5th Ave., Suite 1900, Portland, OR 97204 | Phone 503.222.9981 | Fax 503.796.2900 | www.schwabe.com

JOSHUA P. STUMP
Direct Line: 503-796-2072
E-Mail: jstump@schwabe.com

May 14, 2007

VIA HAND DELIVERY

Teresa Wilson
County Counsel
Lane County
Lane County Public Services Bldg.
125 East 8th Avenue
Eugene, OR 97401

Kent Howe
Planning Director
Lane County
125 East 8th Avenue
Eugene, OR 97401

Re: *Measure 37 Claim for Lynnette G. Seitz, Eric A. Seitz, Zora M. Struder and Shelley Family Trust*
Our File No.: 116206/151131

Dear Ms. Wilson and Mr. Howe:

This letter is to address the issues that you raised in your staff report and recommendation to Lane County in the above-referenced matter. As you know the Measure 37 claim for Lynnette G. Seitz, Eric A. Seitz, Zora M. Struder and Shelley Family Trust ("Claimants") is set for hearing on Tuesday, May 15, 2007. The report and recommendation made to the Board of County Commissioners ("Staff Report") raised some issues of concern and it is our hope that certain issues can be reevaluated prior to a decision on this claim.

Claimants have provided below some legal analysis that may prove helpful to the Board and County Staff. However, because the Staff Report was first available less than 2 business days before the hearing, we have truncated our submission. If the Board or Staff would like or accept additional briefing on these issues or other information, we will be glad to provide whatever is appropriate in that regard.

All Claimants are "owners" as that term is defined under Measure 37

Measure 37 recognizes all Claimants as "owners" of the subject property to whom just compensation is due because they have either an interest in the subject property or interests in both the property and in the family trust. An "owner" is the "present owner of the property, or any interest therein." ORS 197.352(1)(C).

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Teresa Wilson
Kent Howe
May 14, 2007
Page 2

The Shelley Family Trust first acquired an interest in the subject property on May 27, 1993, when a revocable trust was created. A title report was presented with the original Measure 37 claim showing the Shelley Family Trust as the owner of record. It appears that the Staff Report agrees with this fact.

Zora M. Struder first acquired an interest in the property in 1968 when she moved to the adjacent property and began using the subject property together with other members of the family for cattle and haying operations. Ms. Struder further has an interest in the Shelley Family Trust as both trustee and beneficiary.

Lynnette and Eric Seitz acquired an interest in the subject property via a recorded lease in 1989. A copy of the lease which contains a right to purchase part of the property was attached to the original Measure 37 claim.

Rights of ownership for Measure 37 need not be in any technical legal form. Measure 37 does not require "record" title or even a "recordable interest" in land. Measure 37 requires only a reduction in value of "any interest" in property. Because Lane County was not party to the transfer of bare legal title when possession was retained, it cannot challenge the transfer under the Statute of Frauds. See *Medford v. Bessonette*, 255 Or 53, 59 463 P2d 865 (1970).

The appropriate date of acquisition to consider in this case is 1938 or 1941

Plaintiffs are entitled to a waiver of land use regulations enacted since 1938 or 1941, the dates the Shelley family first acquired the property. The Staff Report appears to appropriately agree that the subject property was unzoned at that time. The Shelley family retained ownership in the property since that date and up to and including the present time. The Staff Report appears to only examine the zoning regulations in place in 1993 when the Shelley Family Trust came in to being. However, Measure 37 requires the County waive all non-exempt regulations or compensate the owner for the reduction in fair market value of the affected property. This would require that the County either waive non-exempt regulations dating back to 1938 or 1941 or compensate Claimants for the reduction in fair market value to the subject property as a result of those regulations.

A government's option to "not apply" "the land use regulation or land use regulations" which cause the reduction in value is "in lieu" of its statutory obligation to pay just compensation. ORS 197.352(8) (emphasis added).¹ Here, the land use regulations which

¹ Further, Measure 37 could not be clearer that a Measure 37 claim specifically arises from one or more land use regulations that have the effect of reducing the fair market value of the property (see ORS 197.352(1), (2), (4) and (5)) and ORS 197.352(10) provides that a public entity "shall have discretion to use available funds to pay claims or to ["waive"] a land use regulation or land use regulations pursuant to subsection (6) of this act." Emphasis added. As "subsection (6)," codified as ORS 197.352(6), only deals with the land use regulations which cause the reduction

SW

Teresa Wilson
Kent Howe
May 14, 2007
Page 3

entitled Plaintiffs to just compensation are all those enacted since 1938 or 1941 which reduce the value of the subject property. Under ORS 197.352(8), those regulations, the ones enacted since 1938 or 1941 and which entitle claimants to just compensation, are the ones which the government must "modify, remove, or not apply." It must be concluded, especially because of the "in lieu" language from ORS 197.352(8) and the reference in ORS 197.352(10) to subsection 6 (codified as ORS 197.352(6)), that the alternatives of just compensation and "waiver" are intended to negate the reduction of the property's fair market value that gave rise to the Measure 37 claim.

Only a waiver of land use regulations enacted since 1938 or 1941 is "in lieu" of just compensation owed for reduction in value caused by regulations enacted since that time. "In lieu" is defined as "instead, as substitute" (*Webster's New Millennium Dictionary of English* (Preview Edition)). Otherwise, the waiver remedy would be not only grossly disproportionate to the just compensation owed, but the offending ordinances upon which the claim for compensation was based would continue to apply and devalue the land.

To adopt a position of "non-symmetry" (where the just compensation and waiver alternatives are measured by different dates) would lead to an absurd result effectively rendering meaningless Measure 37's references to "family member" (both the exemption and definition related to "family member").² To illustrate, a property owner Measure 37 claimant can make two types of valid Measure 37 claims—(a) those related to land use regulations enacted after the claimant acquired the property and (b) those related to land use regulations enacted after the claimant's "family member" first acquired the property, but before the claimant acquired the property.

First, for Measure 37 claims related to regulations enacted after the claimant acquired the property, the definition of "family member" or the "family member" exemption is irrelevant. Next, if the Measure 37 claim is for regulations enacted after the claimant's "family member" acquired the property but prior to the claimant acquiring the property, no public entity will pay just compensation for the devaluing regulations if they may alternatively leave the devaluing regulations in place and "waive" another set of regulations (those enacted after the claimant acquired the property) which neither give rise to the Measure 37 claim nor cause a reduction in the fair market value of the property.

The problem with adopting a position of "non-symmetry" becomes clearer with the following hypothetical. Assume a claimant makes two separate Measure 37 claims to the same public entity (whether concurrently or at different times)—one claim for land use regulations

in value giving rise to the claim for just compensation and attorney fees, it is those regulations that must be waived should the public entity choose not to or fail to pay just compensation.

² ORS 197.352(3)(E) would need merely state: "Subsection (1) of this act shall not apply to land use regulations ... [e]nacted prior to the date of acquisition of the property by the owner or a family member of the owner who owned the subject property prior to acquisition or inheritance by the owner, whichever occurred first." Strikethrough added.

SW

Teresa Wilson
Kent Howe
May 14, 2007
Page 4

enacted after the claimant acquired the property and a second claim for land use regulations enacted after the first "family member" acquired the property, but prior to the claimant's acquisition.

The position of "non-symmetry" would lead to the absurd result where the public entity could deny the first Measure 37 claim regarding the regulations enacted after the claimant acquired the property, deeming that those regulations do not reduce the property's fair market value, and then turn around and approve the second Measure 37 claim relating to the regulations enacted and enforced against the "family member," and instead of paying just compensation for the decreased value to the property caused from those earlier regulations, choose to waive another set of land use regulations not relevant to that Measure 37 claim and having no devaluing effect on the property—the public entity would be waiving nothing to avoid paying just compensation. Measure 37 was clearly intended to be interpreted to protect "families" and not make the "family member" exemption and definition meaningless.

Regarding ORS 197.352(11)(C), defining "owner" to be "the present owner of the property, or any interest therein," this is clearly intended to limit who can bring a Measure 37 claim, so that no prior owner, whether or not a "family member," may bring a claim for or be entitled to just compensation under Measure 37.³ This is emphasized by the use of the term "present owner" in ORS 197.352(6) which specifically discusses the accrual of a cause of action to and the entitlement to attorney fees to the "present owner" if the land use regulation remains in place 180 days after the written demand for just compensation is made.⁴

The statements in ORS 197.352(8) and (10) that waiver (or failure of the public entity to make a decision whether to compensate) allows the claimant to use the property for a use "permitted at the time the owner acquired the property," given the purpose and context of Measure 37, does not preclude waiver that also allows the owner to use the property in a way that an earlier "family member" could have used the property. Such a waiver (to the same date as for which just compensation is owed) would clearly accomplish what is required by ORS 197.352(8) and (10), but a waiver of subsequent land use regulations which are not those regulations devaluing the property, fails to accomplish the clear intent of Measure 37—to provide property owners with just compensation for the reduction in fair market value of their property or with waiver of those regulations having the devaluing effect on the property.

³ See references to "owner" in ORS 197.352(1), (2), (4), (5), (6), and (7).

⁴ Measure 37 was clearly intended to benefit those owning property which has existed in family ownership for a long period of time prior to land use regulations that had the effect of devaluing the property. This Court must read Measure 37 so that it is consistent with its purpose of benefiting these property owners rather than reading one sentence in a literal manner to reach an absurd result. As in *DLCD v. Yamhill County*, if there is an ambiguity or multiple linguistic possibilities, Measure 37 should be read so that it accurately reflects Measure 37's purpose. 151 Or App 367, 372-373 (1997).

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No ambiguity should exist after analyzing the text of Measure 37—it requires “waiver” under Measure 37 to be of those regulations causing the reduction in fair market value. If any ambiguity does exist, then the Oregon voters’ intent should be respected. At the January 5, 2005 “Measure 37 Summit” MardiLyn Saathoff, General Counsel, Office of the Governor, stated that the Governor’s Measure 37 policy was to “implement and enforce Measure 37 consistent with and in accord with the intent of the voters.” Emphasis added. The intent of the Oregon voters, on November 2, 2004, is clear—they intended for symmetrical treatment (i.e., same dates for compensation and “waiver”). This is evident by the “Ballot Measure 37 title”, “explanatory statement” and the arguments for and against Measure 37, as published in the 2004 Oregon Voter’s Pamphlet.

First, the Ballot Measure 37 title provides: “Governments must pay owners, or forgo enforcement, when certain land use restrictions reduce property value.”⁵ Second, the “explanatory statement” provides:

Ballot Measure 37 adds a new statute to ORS chapter 197. As specified in the measure, the owner of private real property is entitled to receive just compensation when a land use regulation is enacted after the owner or a family member became the owner of the property if the regulation restricts the use of the property and reduces its fair market value.

If a property owner proves that a land use regulation restricts the use of the owner’s property, and reduces its value then the government responsible for the regulation will have a choice: pay the owner of the property an amount equal to the reduction in value or modify, change or not apply the regulation to the owner’s property.⁶

From this “explanatory statement,” it is only reasonable to conclude that the “waiver” contemplated, of “the regulation” is referring to the “land use regulation [that] restricts the use of the owner’s property, and reduces its value.” The above language indicates the possibility of waiver of a regulation enacted after a family member became the owner of the property (but before the current owner became the owner).

Further, certain Oregon State Legislators, in the Voter’s Pamphlet, argued in favor of Measure 37, stating that:

⁵ See http://www.sos.state.or.us/elections/nov22004/guide/meas/Measure 37_es.html (emphasis added).

⁶ See http://www.sos.state.or.us/elections/nov22004/guide/meas/Measure 37_es.html (emphasis added).



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Measure 37 provides an economic boost that Oregon so desperately needs. By allowing state and local government to return the property rights they have taken from Oregonians instead of paying compensation, Measure 37 allows Oregonians to use their land to create jobs, boost property and income tax revenues, and help fund essential government services. And this is all accomplished not through raising taxes, but by putting more faith in people and the private sector. What a concept!⁷

It does not make sense that a public body, "instead of paying compensation," may "return the property rights they have taken from Oregonians" if the property rights being returned (through waiver) are not the same lost property rights upon which compensation was calculated. Likewise, another "argument in favor" in the Voter's Pamphlet came from Ollie Wilcox:

All I want to do is to enjoy the rights I had when I purchased my property nearly 40 years ago.... Ballot Measure 37 will restore the rights of Oregonians, rights that were taken away by an unfair, unbalanced system.... Ballot Measure 37 will help families avoid losing retirement the way I lost mine.⁸

Even those in opposition to Measure 37 provided insight into the expected symmetry of Measure 37 (i.e., same retroactive dates for waiver and compensation). For example, Larry Wells, President, Board of Directors, Marion County Farm Bureau argued that:

Under this measure, unless a filed claim is compensated for a perceived loss of value in their property because of its zoning, the filer, in many cases may use their property as it was zoned or not zoned when acquired by them or their forefathers. Compensation is impracticable, without large increases in taxes, so current ordinances and laws that cover that property could be waived.⁹

It is clear that under this understanding of Measure 37 "waiver" was thought to apply to regulations in place when the property owner's "forefathers" owned the property. Mickey Killingsworth, Secretary-Treasurer, Jefferson County Farm Bureau, echoed this view in arguing that "[i]f measure 37 passes farmland owners will have a different set of land use regulations, depending upon their or their ancestors date of purchase."

⁷ See http://www.sos.state.or.us/elections/nov22004/guide/meas/Measure 37_fav.html (emphasis added).

⁸ See http://www.sos.state.or.us/elections/nov22004/guide/meas/Measure 37_fav.html (emphasis added).

⁹ See http://www.sos.state.or.us/elections/nov22004/guide/meas/Measure 37_opp.html (emphasis added).

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It is clear, considering the text and voters' intent that waiver under Measure 37 must be waiver of those regulations causing the reduction in fair market value to the property so that if a public entity chooses waiver, such a choice is actually "in lieu" of paying the just compensation it owes otherwise, if such land regulations remain in effect.

Transfer to a Revocable Family Trust does not create a new date of acquisition

The State of Oregon recognizes that transfer of bare legal title from a property owner to the property owner's revocable family trust, for estate planning purposes, does not create a new date of acquisition.¹⁰ The logical rationale supporting this position is that the transfer of bare legal title to the trust is only a technical name change; it does not cause any change in the use or control of the property, and title could be transferred back to the original owner at any time.

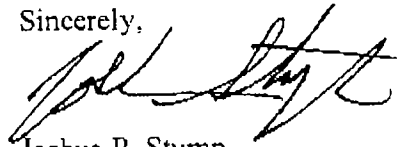
More importantly, this interpretation respects the explicit language of Measure 37, which says that "owner" includes any person who has "any interest therein." An owner who transfers bare legal title to a revocable trust or trustee retains an interest in the land because the revocable nature of the trust means that the owner retains the right of entry or power of termination. Thus, the owner has retained an interest in the land since the original acquisition date.

Therefore, the Shelley Family Trust is in the shoes of Mabel E. Shelley, who acquired the property with her now deceased husband in 1938 and 1941. Anyone with an interest in that trust, most notably Zora Struder, should be entitled to a waiver of all non-exempt regulations which devalue the fair market value of the property dating back to the time of acquisition.

Conclusion

In conclusion, Claimants have submitted appropriate and sufficient evidence to prove their claim. We are hopeful that this information will cause the Lane County Staff to appropriately revisit these issues and recommend that the board direct the County Administrator to approve this Measure 37 claim. Thank you for your consideration.

Sincerely,



Joshua P. Stump

JPS:clh
Enclosures

¹⁰ See, e.g., Nina Simmons, Claim No. M119385 (transfer of bare legal title to a revocable trust in 1994 did not create a new date of acquisition for owner who acquired property in 1943). See also Beverly J. Aspmo, Claim No. M119786 (transfer of bare legal title to shelter trust did not create new date of acquisition); Ralph and Norma Johnson, M119936 (transfer of bare legal title to living trust did not cause new date of acquisition).

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