

W18C

**AGENDA COVER MEMO
(Supplemental)**

SUPPLEMENTAL MATERIAL

DATE: June 29, 2005 (Hearing Date)
TO: LANE COUNTY BOARD OF COMMISSIONERS
FROM: KENT HOWE, PLANNING DIRECTOR
LAND MANAGEMENT DIVISION

**AGENDA TITLE: ORDER 05-6-29-13 / 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
(PA05-5165, ROBERT ERICSSON)**

The attached facsimile regarding the above agenda item was received after the packet materials were distributed to the Board.

DENTISTRY FOR CHILDREN NW, LLC
JAMES E. BARTA D.D.S., P.C.
DENNIS M. DUNNE D.D.S.
2215 WILLAMETTE ST.
EUGENE, OR 97405
541.345.4076 FAX 541.686.4834

facsimile transmittal

To: KENT HOWE Fax: 682 3991

From: James Barta Date: 6-23-05

Re: MEASURE 37 CLAIM Pages: 3 WITH COVER

CC: LETTR FROM ATTORNEY TO STATE LAND-USE BOARD

- Urgent
- For Review
- Please Comment
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COMMENTS: DUE TO WATER SCARCITY ON
ALL THE DEVELOPMENT, DIVISION LESS THAN
CURRENT SIZE OF 10 ACRES COULD NOT BE
SUPPORTED.

CONFIDENTIAL COMMUNICATION

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COPY**DOYLE, GARTLAND, NELSON, MCCLEERY & WADE, P.C.**

MICHAEL W. DOYLE
 JOHN C. GARTLAND
 DOUGLAS A. NELSON
 P. SCOTT MCCLEERY
 DAVID WADE
 MINDY WITTKOP
 HEATHER M. WALLOCH
 EMILY S. HILL

ATTORNEYS AT LAW
 44 CLUB ROAD, SUITE 200
 EUGENE, OR 97401

(541) 344-2174

June 20, 2005

CORRESPONDENCE TO:

P.O. BOX 11230
 EUGENE, OR 97440

FAX: (541) 344-0209

E-MAIL: pmccleery@dgnmw.com

Lane Shetterly
 Director
 Department of Land Conservation and Development
 635 Capitol Street NE, Suite 150
 Salem, OR 97301-2524

**VIA CERTIFIED MAIL
 RETURN RECEIPT REQUESTED
 NO. 7004 0750 0002 0215 3262
 AND VIA FIRST CLASS MAIL**

Oregon Department of Administrative Services
 1225 Ferry Street SE, U160
 Salem, OR 97310

**VIA CERTIFIED MAIL
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 AND VIA FIRST CLASS MAIL**

RE: Ballot Measure 37 Claim Number M119280
 Claimant: Robert Ericsson
 Respondent/Neighbor: James and Denise Barta
 Our File No. 4589-00A

Dear Sirs:

This firm represents James and Denise Barta in opposition to the Ballot Measure 37 Claim Number M119280 of Robert Ericsson. The Bartas object to the Department's Draft Staff Report and Recommendation on the following grounds:

1. The Claimant states that his intent is to develop the properties to the maximum extent allowable at time of purchase in 1973. He has verbally indicated that he thinks at that time he could have developed one acre Lots. A Lane County staff report on the claim indicates it is difficult to assess what level Claimant could have developed to under the unzoned designation of the property at that time.
2. In its conclusions, the Department concedes there has been no substantiation that in fact one acre Lots would have been allowed under the unzoned designation in 1973. Accordingly, there has been nothing submitted to substantiate Claimant's claim that zoning regulations have caused him any damages. In fact, the evidence in

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the record suggests that water scarcity on the properties throughout the development has made the existing density levels marginal and would in fact preclude, on health and safety bases, extensive development on the remaining sites. The Department has acted in an arbitrary and capricious manner to reach a conclusion based on assumptions that are not supported by any factual record. It is simply not appropriate for the Department to reach a conclusion on the assumption that the remaining portions of the Claimant's properties would have a greater value in an unzoned designation today than in their current 10 acre minimum designation. The Department cannot reach a conclusion that it is "more likely than not" based on assumptions. It is the Claimant's burden of proof to establish some reduction in the fair market value of that property. That proof cannot be submitted simply on the basis of the claim being made; the proof cannot be based on an assumption that unregulated development is necessarily more valuable than regulated development. This is the ultimate absurdity; Claimant's claim itself cannot establish the proof that is required to sustain the claim. Measure 37 requires claimants to sustain their burden of proof on the diminution of value. Claimant has not even attempted to do so and therefore the Board must not make its decision on an assumption but rather must demand a factual basis for its decision-making.

3. In considering facts regarding diminution of value, one cannot only look at the remaining properties that the Claimant has not yet developed but the entire holding in 1973 and the development that has occurred to date. Certainly, the economics of development could show that as developed, the property has met its highest and best use. Again, to assume otherwise is wholly inappropriate.

The Department should withdraw its findings and require Claimant to meet his burden of proof.

Sincerely,



P. SCOTT McCLEERY

cc: James and Denise Barta
Robert Ericsson