

## Second Supplemental Memo



**Memo Date:** May 25, 2007

**Hearing Date:** June 5, 2007 (Continued from April 3<sup>rd</sup> and May 8<sup>th</sup> 2007)

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**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 (PA05-6425, Bixler)

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### BACKGROUND

**Applicant:** David L. Bixler and Loyce Evelyn Bixler

**Current Owner:** David L. Bixler and Loyce Evelyn Bixler

**Agent:** Selene Bixler Price and Lucette Bixler Wood

**Map and Tax lot(s):** 16-03-30, tax lot 802

**Acreage:** 56.01 acres

**Current Zoning:** E40 Exclusive Farm Use

**Date Property Acquired:**

Loyce Evelyn Bixler: September 7, 1997 (Bargain & Sale Deed: Reel 1395, No. 8611530).

**Date claim submitted:** September 28, 2005

**180-day deadline:** March 27, 2006 (Time wavier approved)

**Land Use Regulations in Effect at Date of Acquisition:** unknown

**Restrictive County land use regulation:** Minimum parcel size of forty acres and limitations on new dwellings in the E40 (Exclusive Farm Use) zone (LC 16.212).

This claim was originally heard on April 3, 2007. The Board continued the discussion of this claim to the May 8, 2007 public hearing in order to allow the claimants time to submit additional information and have the Board reconsider the recommendation. On May 8, 2007 the Board held a second hearing and at the conclusion the Board

continued the discussion of this claim to June 5<sup>th</sup>, 2007 public hearing to allow the claimants time to submit additional information and have the Board reconsider the recommendation. The Board requested all new information to be submitted to Lane County by May 25, 2007. On May 8<sup>th</sup>, the claimant submitted two additional documents into the record.

## **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 initial Bixler family member who acquired a future springing executory interest in the subject property was Loyce Evelyn Bixler on November 29, 1974 (Bargain and Sale Deed, Reel 719, No. 7450837). The grantors, Leon and Lily Colthar, reserved unto themselves, a life estate.

A second Bargain and Sale Deed was executed on September 2, 1997 with Leon and Lily Colthar as grantors and Loyce Evelyn Bixler as grantee. The grantors released the life estate reserved for them in 1974. A third document, Full Reconveyance, was recorded on September 30, 1997, by the Colthars referencing a Deed of Trust dated April 1, 1986 (Reel 1395, No. 8611530).

One of the two deeds submitted on May 8<sup>th</sup> was a copy of the Trust Deed dated April 1, 1986 (Reel 1395, No. 8611530) that identifies Leon Houston Colthar and Lily Emma Colthar, husband & wife, as Grantor, Cascade Title Company as Trustee, and Loyce Evelyn Bixler as Beneficiary. The other deed submitted on May 8<sup>th</sup> was a Bargain and Sale Deed dated November 12, 1974, and recorded on Reel 716R as Reception No. 7448358. This deed identified Riviera Enterprises, Inc. as the Grantor and Leon H. Colthar and Lily E. Colthar, husband and wife as Grantee. In paragraph 4. under "Subject to:" a mortgage is mentioned executed by three couples including David L. Bixler and Loyce E. Bixler, husband and wife, to The Federal Bank of Spokane dated September 23, 1974 and recorded September 30, 1974 Reel 710, Reception No. 42188. No further evidence of ownership by the Bixlers was submitted.

According to the Subdivision Guarantee #7199-1016966 submitted on April 2<sup>nd</sup> (First American Title Insurance Company of Oregon), the current owners are David L. Bixler and Loyce Evelyn Bixler (husband and wife, as tenants by the entirety). The Subdivision Guarantee does not cite a deed or conveyance establishing the ownership of David L. Bixler. The applicant's narrative (page 4) states ". . . the Claimant has continuously retained an ownership interest in the subject property since February 5, 1982. The Claimant is the present owner of the subject property." There is no deed or document in the April 2<sup>nd</sup> submittal to substantiate the acquisition date of an interest in the property for David L. Bixler.

On the date that Loyce Evelyn Bixler acquired an interest (September 2, 1997) the subject property was zoned E40 (Exclusive Farm Use) LC 16.212.

Currently, the property is zoned E40.

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

The property was zoned E40 when it was acquired by the current owner, Loyce Evelyn Bixler. The minimum lot size and limitations on new dwellings in the E40 zone prevent the current owner from developing the property as could have been allowed when she acquired it. The alleged reduction in fair market value is \$720,000, based on the submitted comparative market analysis. However, since the current LC 16.212 regulations were applicable when the applicant acquired the property, there is no reduction in value.

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

The minimum lot size and restrictions on new dwellings in the E40 zone appear to be exempt regulations.

**CONCLUSION**

It appears this is not a valid claim since the applicant acquired the property after the current zoning was applicable.

**RECOMMENDATION**

If additional information is not submitted at the hearing, the County Administrator recommends the Board direct him to deny the claim.