



**CIRCUIT COURT OF OREGON**

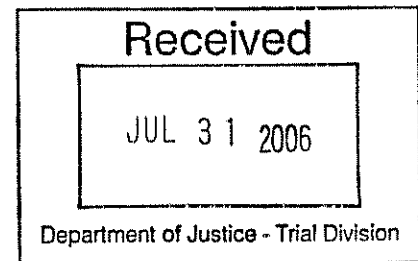
CURRY COUNTY COURTHOUSE  
P.O. BOX 810  
GOLD BEACH, OREGON 97444  
TELEPHONE (541) 247-4511

RICHARD K. MICKELSON  
CIRCUIT JUDGE

HOWARD S. LICHTIG  
CIRCUIT JUDGE

July 26, 2006

Frederick A. Batson  
Attorney at Law  
P.O. Box 1147  
Eugene, OR 97440



Darsee Staley  
Senior Assistant Attorney General  
1162 Court Street NE  
Salem, OR 97301

Dear Mr. Batson & Ms. Staley,

Respondent moved for summary judgment affirming the Final Order of the Dept of Administrative Services and the Dept of Land Conservation and Development denying petitioners' written demand for compensation under ORS 197.342 (Measure 37).

Summary judgment is appropriate under ORCP 47C when there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

Measure 37 provides that the owner of private real property may seek compensation for reductions in fair market value of their property caused by certain land use regulations imposed after the date petitioner became the owner of the property. As an alternative, public entities may waive said regulations, by modifying, removing or not applying them.

In the present case the petitioners became the owners of the subject property in 1979, when the property was zoned RA-1. The parties appear to agree that RA-1 allowed the property to be subdivided into one acre parcels, although there is disagreement as to whether statewide goal 4 would have prevented such subdivision in spite of the zoning. This disagreement about goal 4 is only relevant, however, if it is now contended that the present regulation of the property is more restrictive than in 1979.

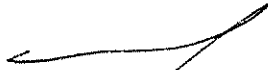
The parties also agree that the property is now within an Urban Growth Boundary, and, pursuant to statewide goal 14, the land is available for urban development. In fact, there is now no dispute

that the petitioners are presently allowed to divide the land into one acre parcels, and the county has already given consent to do so. Therefore, whether the petitioners were able to divide the property into one acre parcels in 1979 or not, the present regulations are clearly no more restrictive than they were in 1979.

Petitioners have raised the issue that the property is now less valuable than in 1979 because substantial steps and costs are necessary to get the property back to a position to be allowed to use the property in the same fashion as when it was zoned RA-1. However, ORS 197.352(1) requires that, in order to be eligible for compensation, two conditions are required. First, the public entity has to enact or enforce a new land use regulation that restricts the use of the private real property, and has the effect of reducing the fair market value of the property. In the present case the new zoning in the UGB is equal to or less restrictive than existed in 1979, so even if the value of the property is reduced, and the only evidence of that is a conclusionary statement in Mr. Wallin's affidavit, the land is no more restricted than it was in 1979.

The Motion for Summary Judgment is granted. Ms. Staley to prepare a judgment in accordance with this opinion.

Sincerely,



Howard S. Lichtig  
Circuit Court Judge

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF CURRY

Received  
JUL 31 2006  
Department of Justice - Trial Division

Lawrence K. Wallin, )  
Helen A. Wallin, )  
Plaintiff(s), )  
vs. )  
The Department of )  
Administrative Services, et al )  
Defendant(s). )

CIVIL PROCEEDING SHEET  
and ORDER

CASE NO. 05CV0573

MOTION Summary Jdg.  
CONFERENCE CALL \_\_\_\_\_

HEARING:

This matter was heard on the 17<sup>th</sup> day of July, 2006, and  
\_\_\_\_ Plaintiff(s) appeared in person and / by Attorney FREDERICK BATSON  
\_\_\_\_ Defendant(s) appeared in person and / by Attorney ~~GEORGE STOLEY~~  
DARSEE  
\_\_\_\_ Plaintiff(s) did not appear  
\_\_\_\_ Defendant(s) did not appear  
\_\_\_\_ Neither party appeared

DISPOSITION: Summary Jdy Granted. Rep. T. prep  
order.

The show cause/case is dismissed following the 28<sup>th</sup> day after the date of this ORDER unless an appropriate order or judgment is filed or good cause is shown by motion or affidavit.

DATED: 7/29/06  
Clerk: Sutter  
Reported by: -

[Signature]  
CIRCUIT JUDGE