



Bend City Council
May 2, 2007 Council Meeting

Issue Summary

Department: Community Development Department
Staff Member: Craig Chenoweth, Senior Planner

Public Hearing on a Measure 37 Claim (File No. PZ-06-824). The Claimant is seeking compensation for the reduction in fair market value for the amount of \$2,600,000 dollars per lineal mile, which equates to \$4,564,000 for the 1.79 mile easement. The claim is based on all of the City of Bend land use regulations that have been adopted since 1975 which are claimed to restrict the use of land for utilities and reduce the value of the subject property. Specifically, the claimant has identified Chapter 2.1.200, Ordinance No. NS-2016 (August 7, 2006), as providing restrictions that were placed upon utilities by making a utility a conditional use in the RM and RS zones. The property is located south of Reed Market Road and west of American Loop in southeast Bend.

History:

Claim Filed: December 1, 2007
180-Day Action Deadline: May 29, 2007

Background: Measure 37 was approved by the voters and became effective on December 2, 2004. Measure 37 generally provides that, if certain land use regulations reduce the value of real property, after the current owner assumes ownership, the owner may be entitled to compensation for the reduction in value. Instead of paying compensation, the governing body that enacted the regulation may elect to waive the regulation or regulations that are alleged to have reduced property value.

On December 1, 2004, the City Council adopted procedures for processing claims made under Measure 37. This claim was filed with the City on October 23, 2006. The claim is incomplete, and does not comply with requirements of the Measure 37 procedures ordinance.

Discussion of the Issue and Alternatives Explored: The claimant in this case is Central Electric Cooperative, who acquired the subject property in 1975. The claim is incomplete, lacking basic information on the nature and manner of land use regulations or restrictions that are alleged to have resulted in a reduced property value.

In addition, zoning ordinance NS-796 was in place at the time the applicant acquired the property. At that time, the ordinance in effect did not specifically list utilities as a permitted use or conditional use in the zone. Furthermore, the subsequent ordinance (NS-1178) only allowed for public utilities to be permitted in any zone. The applicant's claim to being a private utility, as stated in their burden of proof,

limits the applicant's ability to utilize the regulations for public utilities under NS-1178;

“Central Electric Cooperative of Redmond Oregon (“CEC”) has been one of the primary suppliers of electricity to its members in Deschutes County since 1940. CEC is a Private Member-Owned Cooperative organized under Oregon Revised Statutes Chapter 6. CEC is not a “public” utility under Oregon law. ORS 757.005”

Therefore, given the applicant's description, Staff cannot come to a determination that would allow the use, as suggested, to be allowed under the codes that were in effect at the time of ownership. In short, reverting back to the old codes would not assist the applicant in achieving the goals for utility construction.

Based on findings as detailed in the attached staff report, staff finds that this claim can be denied for the following reasons:

1. The claim is incomplete and not consistent with City Code requirements (Ordinance No. NS-1966, Section 1.950).
2. The claimant has not shown that the property has been devalued or that the land use regulations that are in place today restrict the use of the claimants property more than the regulations that were in effect at the time that the current owner acquired the property.

However, based upon the City Attorney's advice to achieve a desired legal position, staff recommends that the claim be partially approved.

Staff Recommendations: Staff has reviewed the claim as outlined in the attached Staff report. Staff recommends that the City Council conduct a public hearing on this matter and consider any additional testimony received during the hearing. At the conclusion of the hearing staff recommends:

That the City hereby shall not apply (or remove) the current regulations listed in section 2.1.200 in the Development Code to the property that is subject to the claim, subject to the following provisions:

The City of Bend's decision to not apply (or remove) the regulations stated in section 2.1.200 on the property subject to the claim shall have the effect of requiring the property to be subject to the regulations in place at the time the present owner of the property acquired the property until August 7, 2006..

In doing this the City of Bend denies the claim to the extent that it asserts that any other City of Bend land use regulations or plans reduce the value of the property that are subject to the claim, because the City of Bend finds that such regulations do not reduce the value of the property.

Committee Review and Recommendation to Council: There was no committee review of this claim.

Budgetary Considerations: None at this time. The adopted procedures ordinance for processing Measure 37 claims allows the City to recover costs associated with processing the claim above what is covered by the initial application fee. The City's Legal Counsel advises, however, that defending a Measure 37 claim in court carries with it the possibility of paying the attorney's fees for the claimant, if the claimant is successful.