

BEFORE THE BOARD OF COUNTY COMMISSIONERS  
FOR MULTNOMAH COUNTY, OREGON

**ORDER NO. 07-076**

Order Denying Ballot Measure 37 Request of Sandra Baker, Steven Barker, Margaret Barker, Gregory Barker, and Nancy Miller Barker and Barkers Five, LLC Relating to the Parcels of Real Property Located in the Vicinity of 15610 NW Germantown Road, Portland, Multnomah County, Oregon

**The Multnomah County Board of Commissioners Finds:**

- a. **Parties:** Sandra Baker, Steven Barker, Margaret Barker, Gregory Barker, and Nancy Miller Barker (hereinafter referred to as the Barker Family) and Barkers Five, LLC are the Ballot Measure 37 Claimants who filed a demand for compensation to Multnomah County on November 28, 2006.
- b. **Subject Real Property:** This claim relates to the parcel of real property located in the vicinity of 15610 NW Germantown Road, Portland, Multnomah County, Oregon, and more specifically described as:

Tax Lots 400 and 600, Section 08D, Township 1N, Range 1W, W.M.; and

Tax Lot 500, Section 08C, Township 1N, Range 1W, W.M.

- c. **Relevant Dates of Property Ownership:**

**The Claimants have not established that they obtained an interest in the property prior to the County's adoption of the land use regulations challenged in this claim.**

Tax Lots 400 and 600: On December 27, 1988, Barkers Investment Company, an Oregon corporation, transferred Tax Lots 400 and 600 to the Barker Family. In a decision dated November 30, 2006, the State of Oregon found that the foregoing conveyance constituted a change in ownership because, under Oregon law, shareholders of a corporation have no ownership interest in corporate property. ORS 60.431(2). The County agrees with the State that the Barker Family acquired an interest in Tax Lots 400 and 600 on December 27, 1988. The County adopted the land use regulations challenged in this claim prior to that date (see section d. below).

Tax Lot 500: On March 2, 2006, Barkers Investments, Five, an Oregon partnership, conveyed Tax Lot 500 by deed to Barkers Five, LLC, an Oregon Limited Liability Company (LLC). Under Oregon law, a conveyance by a partnership to an LLC constitutes a change in ownership even though partners of the partnership may also be members of the LLC. ORS 67.050 and 67.070 (partnership is an independent legal entity); ORS 67.060 (partners have no ownership interest in partnership property); ORS

63.077 (LLC is an independent legal entity); ORS 63.239 (members have no ownership interest in LLC property). Accordingly, Barkers Five, LLC acquired an interest in Tax Lot 500 on March 2, 2006. The County adopted the land use regulations challenged in this claim prior to that date (see section d. below).

The Board finds that the Barker Family acquired an interest in Tax Lots 400 and 600 on December 27, 1988, and that Barkers Five, LLC acquired an interest in Tax Lot 500 on March 2, 2006. In each case, the Claimants' acquisition of an interest in the subject properties occurred after the County adopted the land use regulations challenged in this claim.

d. **County Codes as a Restriction on Use of the Property:**

**The Claimants have not established that the challenged land use regulations have restricted the proposed use of the property.**

The Claimants seek compensation or relief from County land use regulations to allow the construction of three additional single family dwellings and the right to subdivide Tax Lots 400 and 500 into 2-acre lots for sale. The subject parcels are located within an Exclusive Farm Use (EFU) zoning district. EFU zoning prohibits the uses proposed in this claim. EFU zoning has applied to the subject parcels since August 14, 1980. Ord. #238. Because the County zoned the subject parcels EFU prior to the Claimants' acquisition of an interest in those parcels (see section c. above), the challenged land use regulations have not restricted the proposed use within the meaning of ORS 197.352.

Tax Lots 400 and 600: On December 27, 1988, a 38-acre minimum lot size standard applied to Tax Lots 400 and 600. Ord. #236 (1980). This standard prevented the Barker Family from subdividing and selling 2-acre lots on those parcels on December 27, 1988.

In 1993, Tax Lots 400 and 600 were incorporated as part of Parcel 1 of Partition Plat 1993-82. On December 27, 1988, EFU regulations applicable to the subject parcels only allowed a non-farm dwelling on lots or parcels created prior to August 14, 1980. MCC 11.15.2018(A)(1), Ord. #300 (1982). These regulations prevented the Barker Family from establishing a non-farm dwelling on Tax Lots 400 and 600 on December 27, 1988.

On December 27, 1988, EFU regulations applicable to Tax Lot 400 allowed a dwelling in conjunction with a farm use on a 38 acre parcel. MCC 11.15.2008(C), Ord. #300. On that date, the property was slightly over 41 acres in size and contained a farm dwelling that was later divided off as Parcel 2 of Partition Plat 1993-82. A second farm dwelling could not have been authorized under this provision on December 27, 1988. Accordingly, the dwelling proposed for Tax Lot 400 does not constitute a "use permitted at the time the owner acquired the property." ORS 197.352(8).

Tax Lot 500: Barkers Five, LLC acquired an interest in Tax Lot 500 on March 2, 2006. The land use regulations in effect on March 2, 2006 that govern the proposed use of Tax

Lot 500 remain in effect and have not been altered or amended in any way material to this claim since that date.

The Board finds that the Claimants have not established that the challenged land use regulations have restricted their use of the subject properties.

e. **County Code Restrictions Reduce Fair Market Value:**

**The Claimants have not established that the challenged land use regulations have reduced the fair market value of the property.**

As established above, regulations in effect when the Claimants acquired the properties in 1988 and 2006 did not allow construction of three additional dwellings or subdivision of the properties into 2-acre lots. Since the Claimants have not shown that their use of the properties has been restricted, there is no reduction to the fair market value of the properties.

The Board finds that the Claimants have not established that the challenged regulations have reduced the fair market value of the subject property.

f. **Public Notice**

Section 3.50 of the County Charter requires notice to the public of all Board agenda matters. This notice was provided. The Claimant and persons who own land within 750 feet of the subject property received notice by mail.

g. **Validity of Claim for Compensation:** The Board finds that:

(1) The Board finds that the Barker Family acquired an interest in Tax Lots 400 and 600 on December 27, 1988, and that Barkers Five, LLC acquired an interest in Tax Lot 500 on March 2, 2006. In each case, the Claimants' acquisition of an interest in the subject properties occurred after the County adopted the land use regulations challenged in this claim.

(2) The Board finds that the Claimants have not established that the challenged land use regulations have restricted their use of the subject properties.

(3) The Board finds that the Claimants have not established that the challenged regulations have reduced the fair market value of the subject property.

**The Multnomah County Board of Commissioners Orders:**

**Based on the above findings, the Claimant's request is denied.**

ADOPTED this 26th day of April, 2007.

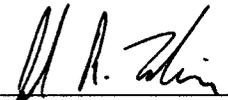


BOARD OF COUNTY COMMISSIONERS  
FOR MULTNOMAH COUNTY, OREGON

  
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Ted Wheeler, Chair

REVIEWED:

AGNES SOWLE, COUNTY ATTORNEY  
FOR MULTNOMAH COUNTY, OREGON

By   
\_\_\_\_\_  
Jed R. Tomkins, Assistant County Attorney

SUBMITTED BY:  
Agnes Sowle, County Attorney