

**BALLOT MEASURE 37 (CHAPTER 1, OREGON LAWS 2005)
CLAIM FOR COMPENSATION**

OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT

Final Staff Report and Recommendation

July 20, 2005

STATE CLAIM NUMBER: M119478

NAME OF CLAIMANTS: Virginia Corey and
Bergis Road, LLC

MAILING ADDRESSES: Virginia Corey
1718 Northwest Dodge Court
Waldport, Oregon 97394

Bergis Road LLC,
Bernita Johnston
3424 Southwest Hamilton Court
Portland, Oregon 97239

IDENTIFICATION OF PROPERTY: Township 2S, Range 1E, Section 15B
Tax Lots 600 and 690,
Clackamas County

OTHER CONTACT INFORMATION: Donald P. Roach, Attorney
140 Southwest Arthur Street
Suite 200
Portland, Oregon 97201

OTHER INTEREST IN PROPERTY: Charles Wesley Owens
(one-third interest)

DATE RECEIVED BY DAS: January 27, 2005

180-DAY DEADLINE: July 26, 2005

I. CLAIM

Virginia Corey and the Bergis Road, LLC, the claimants, seek compensation in the amount of \$4,985,000 for the reduction in fair market value as a result of certain land use regulations that are alleged to restrict the use of certain private real property. The claimants desire compensation or the right to divide and develop the subject property for residential use. The property subject to this claim is an undivided two-thirds interest in a 23-acre parcel located south of the City of Lake Oswego on Bergis Road in Clackamas County. (See claim.)

II. SUMMARY OF STAFF RECOMMENDATION

Based on the findings and conclusions set forth below, the Department of Land Conservation and Development (the department) has determined that the claim is valid. Department staff recommend, in lieu of compensation, that the following laws enforced by the Land Conservation and Development Commission (the Commission) and the department, not apply to the claimants use of the property to allow them to divide it and develop the property for single-family dwellings: applicable provisions of Statewide Planning Goals 3 and 14, ORS 215, and OAR 660, division 33. For Virginia Corey, only those applicable provisions of these laws that were enacted after December 11, 1978, will not apply to her use of the property. For the Regis Road, LLC, only the applicable provisions of these laws that were enacted after August 12, 2004 will not apply to its use of the property. These laws will not apply to the claimants' use of the property only to the extent necessary to allow the two claimants a use of the property permitted at the time each acquired their respective interest in the property. The department acknowledges that the relief recommended in this report will not allow the Bergis Road, LLC to use the property in the manner set forth in the claim. (See Section VI. of this report for the complete recommendation.)

III. COMMENTS ON THE CLAIM

Comments Received

On March 15, 2005, pursuant to OAR 125-145-0080, the Oregon Department of Administrative Services (DAS) provided written notice to the owners of surrounding properties. According to DAS, there were no written comments, evidence or information received by DAS in response to the 10-day notice.

IV. TIMELINESS OF CLAIM

Requirement

Ballot Measure 37, Section 5, requires that a written demand for compensation be made:

1. For claims arising from land use regulations enacted prior to the effective date of the measure (December 2, 2004), within two years of that effective date or the date the public entity applies the land use regulation as an approval criteria to an application submitted by the owner, whichever is later; or,
2. For claims arising from land use regulations enacted after the effective date of the measure (December 2, 2004), within two years of the enactment of the land use regulation, or the date the owner of the property submits a land use application in which the land use regulation is an approval criteria, whichever is later.

Findings of Fact

The claim was submitted to DAS on January 27, 2005 for processing under OAR 125, division 145. The claim identifies Clackamas County's Exclusive Farm Use (EFU) zoning that

restricts the use of the property as the basis for this claim. Only laws that were enacted prior to December 2, 2004, the effective date of Measure 37, are the basis for this claim. (See citations of statutory and administrative rule history of the Oregon Revised Statutes and Oregon Administrative Rules.)

Conclusions

The claim has been submitted within two years of December 2, 2004, the effective date of Measure 37, based on land use regulations enacted prior to December 2, 2004, and is therefore timely filed.

V. ANALYSIS OF CLAIM

1. Ownership

Ballot Measure 37 provides for payment of compensation or relief from specific laws for “owners” as that term is defined in the Measure. Ballot Measure 37, Section 11(C) defines “owner” as “the present owner of the property, or any interest therein.”

Findings of Fact

According to the claim and supporting documents, Caroline Olson, the mother of Virginia Corey and Bernita Johnson, acquired the subject property on November 1, 1973. (See land sale contract in department file; Clackamas County Deed Records 73-35586).

Caroline Olson died on December 11, 1978, and her will left the property to her three surviving children: Bernita Johnston, Virginia Corey and Wesley Olson.¹

On December 2, 1993, Ms. Johnston transferred her one-third interest in the property to the Bernita C. Johnston Trust (Clackamas County Deed Records 93-91338). On August 12, 2004, Ms. Johnston subsequently transferred her one-third interest to the Bergis Road, LLC (Clackamas County Deed Records 2004-077873).

On October 10, 1995, Ms. Corey conveyed her one-third interest in the property to a revocable living trust, with herself as trustee (Clackamas County Deed Records 95-021750).

Conclusions

The claimants, Virginia Corey and the Bergis Road, LLC, are “owners” of an interest in the property as that term is defined by Section 11(C) of Measure 37. Ms. Corey acquired her one-third interest in the property on December 11, 1978, upon her mother’s death. The transfer

¹ Source: Petition for Probate of Will and Appointment of Personal Representative. At the conclusion of probate of Caroline Olsen’s estate in 1982, her three children each received a deed granting each an undivided one-third interest in the subject property (Clackamas County Deed Records 82-28917 and 81-33045). (See the department’s claim file.)

of the property to a revocable living trust does not result in a transfer of ownership for purpose of reviewing this claim. The Bergis Road LLC, formed by Ms. Johnston, acquired her interest in the property on August 12, 2004. The subject property has been owned by a “family member” of the claimants, as that term is defined in Measure 37, since November 1, 1973.

2. The Laws that are the Basis for the Claim

In order to establish a valid claim, Section 1 of Ballot Measure 37 requires, in part, that a law must restrict the claimant’s use of private real property in a manner that reduces the fair market value of the property relative to how the property could have been used at the time the claimant or a family member acquired the property.

Findings of Fact

According to the claimants’ attorney, in “January, 1980, after title invested to my clients, this property was rezoned to EFU-80 from R-20 allowing one dwelling per 80 acres.”²

The claim is based on Clackamas County’s EFU Zone and the applicable provisions of state law that require such zoning. The claimant’s property is zoned EFU as required by Statewide Planning Goal 3 (Agricultural Lands) in accord with OAR 660, division 033 and ORS 215 because the claimants’ property is “agricultural land” as defined by Goal 3. Goal 3 became effective on January 25, 1975, and required that agricultural lands as defined by the Goal be zoned EFU.

Land that is zoned EFU also is subject to restrictions based on certain provisions of ORS 215, namely ORS 215.263, 215.283, 215.284, 215.705 and 215.780. These laws do not allow the subject property to be divided into parcels less than 80 acres in size, and establish standards for dwellings. ORS 215.705 and 215.780 became effective on November 4, 1993. (Chapter 792, Or Laws 1993.) ORS 215.263 (land divisions), 215.283 (uses allowed on EFU zoned land (and its predecessor, 215.213)), and 215.284 (non-farm dwellings) first became effective in 1973.

Statewide Planning Goal 3, in addition to requiring agricultural land to be zoned for exclusive farm use, generally requires such land to be used for farm uses. Statewide Planning Goal 14 (Urbanization) generally requires that land outside of urban growth boundaries be used for rural uses. As noted above, Goal 3 became effective on January 25, 1975 as did Goal 14. The administrative rules implementing these goals that restrict residential development of EFU land are OAR 660-033-0130 and 0135. OAR 660-033-0135 (farm dwellings) became effective on March 1, 1994. OAR 660-033-0130(4) (non-farm dwellings) became effective on August 7, 1993, and was amended to comply with ORS 215284(4) on March 1, 1994. Subsequent amendments to comply with HB 3326 (Chapter 704, Or Laws 2001, and effective January 1, 2002) were adopted by the Commission effective May 22, 2002. (See citations of administrative rule history for OAR 660-033-0100, 0130, and 0135)

² The initial date of family ownership for purposes of this review is 1973 when Caroline Olson acquired the property.

As a result of these laws, the subject property cannot be further divided or developed for residential use.³ Family member Caroline Olson acquired the property on November 1, 1973 prior to the date most of the land use regulations identified above were enacted.

Conclusions

The minimum lot size and dwelling requirements of Goal 3, Goal 14, ORS 215.780, 215.263, 2165.284 and OAR 660 division 33 adopted since the family acquired the property in 1973, do not allow the division of the property or the placement of dwellings. Land use laws adopted since 1973 restrict the use of the property from what could have been done when the property was acquired by the claimants' family in 1973.

3. Effect of Regulations on Fair Market Value

In order to establish a valid claim, Section 1 of Ballot Measure 37 requires that any laws described in Section V.(2) of this report must have "the effect of reducing the fair market value of the property, or any interest therein."

Findings of Fact

The claimants' attorney provided the following statement:

"That the current value of the property is approximately \$75,000 per acre. If this property reverts to the R-20 zone in effect at the time my client's family acquired the property and the EFU-80 zone and/or the urban growth boundary were removed, the fair market value of this property would be not less than the sum of \$400,000 per acre."

"My clients hereby request compensation for two-thirds of the 23-acres or 15.34 acres at a rate of \$325,000 per acre, the difference between the property's fair market value as zoned R-20 as opposed to its value as EFU-80 zone. Therefore, the total amount of the demand is \$4,985,000."

There is no certified appraisal or other substantiating documentation to substantiate the claimed value either before or with state land use laws. Information in the claim is insufficient to establish a fair market value reduction of \$4,985,500, to establish that a reduction in value is actually attributable to land use regulations enacted after the claimants' family acquired the property in 1973.

Conclusions

³ The minimum parcel size for the creation of new farm parcels is 80-acres (ORS 215.780). Because the property is located in the Willamette Valley it cannot be divided to allow a non-farm dwelling under ORS 215.263(4). The existing parcel is also not eligible for a non-farm dwelling because the property is composed of Class III and IV agricultural soils, and therefore the property would not qualify for a non-farm dwelling under ORS 215.284(1). (Soils Survey of Clackamas County, property located on Sheet #6. Soil map units for 7B, 13C and 48C found on pages 22, 23, 30, 31 and 68, November 1985.)

As explained in section V. (1) of this report, Virginia Corey and Bergis Road LLC are the current owners of the subject property, acquired by a family member in 1973. The claimants are due compensation for land use laws that restrict the use of the subject property in a manner that reduces its fair market value since it was acquired in 1973.

Without an appraisal or other substantiating documentation, it is not possible to substantiate the specific dollar amount the claimant demands for compensation. Nevertheless, the department has determined that it is more likely than not that there has been some reduction in the fair market value of the subject property as a result of laws enforced by the Commission or the department.

4. Exemptions under Section 3 of Measure 37

Ballot Measure 37 does not apply to certain land use regulations. In addition, under Section 3 of the Measure, certain types of laws are exempt from the Measure.

Findings of Fact

The state laws that are the basis of the claim include relevant provisions of Statewide Planning Goal 3 (Agricultural Lands), Statewide Planning Goal 14 (Urbanization), ORS 215, and OAR 660 division 33. Most of the specific state land use regulations cited in the claim were enacted after the claimants' family acquired the property in 1973, with the exception of some provisions of ORS 215.213 and 215.263. With the exception of provisions of ORS 215 in effect when the claimants' family member acquired the property, none of the laws identified in the claim appear to be exempt under Section 3 of Ballot Measure 37.

Conclusions

It appears that the general statutory, goal and rule restrictions on the division, residential development and use of agricultural land apply to the owner's use of the property, and for the most part these laws would not come under any of the exemptions in Measure 37. The restrictions in ORS 215 in effect when the claimants' family member acquired the property will continue to apply to the property. There may be other specific laws that continue to apply under one or more of the exemptions in the Measure, or because they are laws that are not covered by the Measure.

VI. FORM OF RELIEF

Section 1 of Measure 37 provides for payment of compensation to an owner of private real property if the Commission or the department has enforced a law that restricts the use of the property in a manner that reduces its fair market value. In lieu of compensation, the department may choose to not apply a law to allow the present owner to carry out a use of the property permitted at the time the present owner acquired the property. The Commission, by rule, has directed that if the department determines a claim is valid, the Director must provide only non-monetary relief unless and until funds are appropriated by the legislature to pay claims.

Findings of Fact

Based on the findings and conclusion set forth in this report, laws enforced by the Commission or the department restrict the division of the subject property into parcels or lots, and the use of the property for residential purposes. The laws enforced by the Commission or the department reduce the fair market value of the subject property to some extent. The claim asserts this amount to be \$4,985,500. No appraisal or other documenting evidence for how the specified restrictions reduce the fair market value of the property was provided and thus a specific amount of compensation cannot be determined. Nevertheless, based on the current record for this claim, the department believes that the laws on which the claim is based likely have reduced the fair market value of the property to some extent.

No funds have been appropriated at this time for the payment of claims. In lieu of payment of compensation, Ballot Measure 37 authorizes the department to modify, remove or not apply one or more land use regulations to the extent necessary to allow Ms. Corey to use the subject property for a use permitted at the time she acquired interest in the property on December 11, 1978; and to allow the Bergis Road, LLC, to use the subject property for a use permitted at the time the it acquired an interest in the property on August 12, 2004.

The claimant, Virginia Corey acquired a 1/3 interest in the property upon her mother's death on December 11, 1978, when it was zoned by the County as Urban Low Density Residential (R-20) and had a 20,000 square foot minimum parcel size requirement for the creation of new lots or parcels (adopted on March 10, 1964). However, at that time, the County's R-20 Zone was not acknowledged by the Commission under the standards for state approval of local comprehensive plans and land use regulations pursuant to ORS 197.250 and 197.251. Because the Commission had not acknowledged Clackamas County's local comprehensive plan and land use regulations, including the R-20 zone that applied to the subject property, certain site-specific Goal provisions, including Statewide Planning Goal 3, applied directly to the property when the claimants acquired it on December 11, 1978.⁴ Clackamas County's EFU-20 and GAD (General Agriculture District) zones were acknowledged on December 31, 1981. Until the County's land use regulations were acknowledged by the Commission, the use of the subject property was subject to both the county's ordinances and the applicable statewide land use planning goals.⁵

⁴ Statewide Planning Goal 3 became effective on January 25, 1975, and was applicable to legislative land use decisions and some quasi-judicial land use decisions, on a site-specific basis, prior to the Commission's acknowledgment of local plans. See *Sunnyside Neighborhood Assn. v. Clackamas County*, 280 Or 569 (1977), *1000 Friends of Oregon v. Benton County*, 32 Or App 413 (1978), *Jurgenson v. Union County*, 42 Or App 505 (1979), *Alexanderson v. Polk County*, 289 Or 427, rev. denied, 290 Or 137 (1980) and *Perkins v City of Rajneeshpuram*, 300 Or 1, (1985). After the County's plan and land use regulations were acknowledged by the Commission, the Statewide Planning Goals and implementing rules no longer directly applied to such local land use decisions (See *Byrd v. Stringer*, 295 Or 311 (1983)). However, the applicable statutes continue to apply and insofar as the local implementing provisions are materially the same as the rules, the local provisions must be interpreted consistent with the substance of the rules. *Forster v. Polk County*, 115 Or App 475 (1992) and *Kenagy v. Benton County*, 115 Or App 131 (1992).

⁵ The subject property was zoned R-20 until it was ultimately rezoned on August 23, 1979 to EFU-20, a little more than two years after the claimant purchased the property. In 1981, the County revised the zone to comply with a Commission order that directed the County to bring its EFU-20 Zone into compliance with Goal 3. On December 11, 1981, the Commission determined that the County's revised EFU-20 Zone complied with Goal 3

Statewide Planning Goal 3 (Agricultural Lands), as adopted in 1975, required that agricultural land be “preserved and zoned for EFU pursuant to ORS 215.” The subject property is “agricultural land” as defined by Goal 3 because it is composed of Class III and IV soils and was subject to EFU zoning pursuant to ORS 215 when the claimant Virginia Corey acquired an interest in the property on December 11, 1978.

Statewide Planning Goal 14 (Urbanization), which also was adopted in 1975, requires that lands outside of an urban growth boundary be used for rural uses. Case law interpreting Goal 14, and the Commissions’ more recent rule implementing this goal on rural residential lands, generally indicates that residential development at a density of between one and five acres per home may violate the goal by creating urban level development. The property was subject to Goal 14 when Virginia Corey acquired an interest in the property on December 11, 1978.

In 1978, the state standards for a land division involving property where the local zoning was not acknowledged required that the resulting parcels must be of a size that are “appropriate for the continuation of the existing commercial agricultural enterprise in the area” (Statewide Planning Goal 3). Further, ORS 215.263 (1977 Edition) required that all divisions of land subject to the provisions for EFU zoning comply with the legislative intent set forth in ORS 215.243 (Agricultural Land Use Policy). Thus, the opportunity to divide the property when interest was acquired by the claimant on December 11, 1978 was limited to land divisions done consistent with Goal 3 that required the resulting parcels be: (1) “appropriate for the continuation of the existing commercial agricultural enterprise in the area;” and (2) shown to comply with the legislative intent set forth in ORS 215.243.

As for dwellings allowed under EFU zoning as required by Goal 3 on the date of acquisition on December 11, 1978, farm dwellings were allowed if determined to be “customarily provided in conjunction with farm use” under ORS 215.213(1)(e) (1977 Edition) and non-farm dwellings were subject to ORS 215.213(3) (1977 Edition).⁶

The claimant, Bergis Road, LLC, acquired the property from Bernita Johnston on August 12, 2004. The current state restrictions on property division and establishment of dwellings in land zone EFU were all adopted prior to August 12, 2004 and will continue to apply to the Bergis Road, LLC use of the subject property.

because the County included the proper standards for land divisions (LCDC Continuance Order, December 31, 1981, DLCD October 23, 1981 Report, pp. 9-13).

⁶ Under the version of ORS 215.213 in effect when the claimants acquired interest in the property, a farm dwelling could be established on agricultural land, only if the farm use to which the dwelling relates is existing. (*Matteo v. Polk County*, 11 Or LUBA 259, 263 (1984) *affirmed without opinion*, 70 Or App 179 (September 14, 1984) and *Newcomer v. Clackamas County*, 92 Or App 174, modified 94 Or App 33, November 23, 1988). An indication of the appropriate land division standards that may have applied to the property when interest was acquired in 1978 and that complied with the Goal 3 minimum lot size standard in Clackamas County are the land division standards in the County’s later-acknowledged EFU Zone which provided for the creation of new farm parcels on a case-by-case basis (see end note i.)

Conclusions

Based on the record, the department recommends that the claim be approved, subject to the following terms:

1. In lieu of compensation under Measure 37, the State of Oregon will not apply the following laws to claimant Virginia Corey's division of the property or to the establishment of a single family dwelling on each lot or parcel created: applicable provisions of Statewide Planning Goals 3 and 14 that were enacted after December 11, 1978; the applicable provisions of ORS 215.263, 215.283, 215.284, 215.705 and 215.780 that were enacted after December 11, 1978; and the applicable provisions of OAR 660-033-0130 and 660-033-0135 that were enacted after December 11, 1978. These land use regulations will not apply to Ms. Corey's use of the property only to the extent necessary to allow her to use the property for a use permitted at the time she acquired an interest in the property.
2. In lieu of compensation under Measure 37, the State of Oregon will not apply the following laws to Bergis Road, LLC division of the property or to the establishment of a single family dwelling on each lot or parcel created: applicable provisions of Statewide Planning Goals 3 and 14 that were enacted after August 12, 2004; the applicable provisions of ORS 215.263, 215.283, 215.284, 215.705 and 215.780 that were enacted after August 12, 2004; and the applicable provisions of OAR 660-033-0130 and 660-033-0135 that were enacted after August 12, 2004. These land use regulations will not apply to Bergis Road, LLC's use of the property only to the extent necessary to allow it to use the property for a use permitted at the time it acquired an interest in the property. The department acknowledges that the relief recommended in this report will not allow the Bergis Road, LLC to use the property in the manner set forth in the claim.
3. The action by the State of Oregon provides the state's authorization to Ms. Corey to use the property subject to the standards in effect on December 11, 1978. On that date, the property was subject to Statewide Planning Goal 3 and applicable provisions of ORS 215 (1975 editions). (See description of the standards that applied in the "findings of fact" of this section.)
4. The action by the State of Oregon provides the state's authorization to Bergis Road, LLC to use the property subject to the standards in effect on August 12, 2004. On that date, the property was subject to Statewide Planning Goal 3 and applicable provisions of ORS 215 and OAR 660 division 33.
5. To the extent that any law, order, deed, agreement or other legally-enforceable public or private requirement provides that the property may not be used without a permit, license, or other form of authorization or consent, the order will not authorize the use of the property unless the claimants first obtain that permit, license or other form of authorization or consent. Such requirements may include, but are not limited to: a building permit, a land use decision, a permit as defined in ORS 215.412 or ORS 227.160, other permits or authorizations from local, state or federal agencies, and restrictions on the use of the property imposed by private parties.
6. Any use of the property by the claimants under the terms of the order will remain subject to the following laws: (a) those laws not specified in (1) above; (b) any laws enacted or enforced

by a public entity other than the Commission or the department; and (c) those laws not subject to Measure 37 including, without limitation, those laws exempted under section (3) of the Measure.

7. Without limiting the generality of the foregoing terms and conditions, in order for the claimants to use the property, it may be necessary for them to obtain a decision under Measure 37 from a city and/or county and/or metropolitan service district that enforces land use regulations applicable to the property. Nothing in this order relieves the claimants from the necessity of obtaining a decision under Measure 37 from a local public entity that has jurisdiction to enforce a land use regulation applicable to a use of the property by the claimants.

VII. COMMENTS ON THE DRAFT STAFF REPORT

The department issued its draft staff report on this claim on June 29, 2005. OAR 125-145-0100(3), provided an opportunity for the claimant or the claimant's authorized agent and any third parties who submitted comments under OAR 125-145-0080 to submit written comments, evidence and information in response to the draft staff report and recommendation. Comments received have been taken into account by the department in the issuance of this final report.

Endnotes

ⁱ The EFU Zone revised in 1981 included the following review criteria (County Order 81-1268):

- “A. Principle Use: Lot divisions proposed for principal uses may be permitted by the Planning Director, subject to review with notice pursuant to subsection 1305.02, when the applicant provides a farm management plan, as provided under 401.10.A, and other evidence as necessary to demonstrate that all of the following criteria are satisfied:
1. All lots created are at least twenty (20) acres in size or as large as the acreage supporting the typical commercial farm unit in the area, whichever is larger (area is defined for purposes of Section 401.09 as the line within a one-mile radius of the subject property);
 2. The proposed principle use stated in the farm management plan is appropriate for the area, considering such factors as climate, water availability, soils, marketing capabilities and delivery systems;
 3. The lot size will be sufficient to adequately support the proposed principle use stated in the farm management plan, considering the following factors:
 - a. Soil type, topography, and existing buildings or improvements,
 - b. Cultivation, irrigation, harvesting, spraying, fertilizing, and other farm practices associated with the proposed principle use;
 4. The lot division will not adversely affect or limit the existing or potential commercial farm uses in the area; and
 5. The lot division will not reduce the agricultural productivity of the area.

The Oregon State University Extension Service shall be notified of and asked to comment on all application filed pursuant to Section 401.09A.

Lot divisions for principle uses shall be described and recorded as approved by the Planning Director at the time when the property is transferred.

Lots less than a “typical commercial farm unit in the area” can also be approved subject to the following criteria (Section 401.09(I)):

- I. Principle Use Lot Size Variance: A variance from the lot size requirements, for principle uses under 401.09A and 401.093D, may be granted by the Hearings Officer after a hearing conducted pursuant to Section 1300 when the applicant provides a farm management plan for intensive commercial farm uses, as provided under 401.10.A, and other evidence as necessary to demonstrate that all of the following criteria are satisfied:
 1. The hardship asserted as a ground for the variance must arise out of this section of the Zoning Ordinance.
 2. The undersized lot(s) is particularly suitable for intensive commercial farm uses considering characteristics such as soil type, geographic location, lot size, and topography, location of compatible and complimentary commercial farm uses in the area, and location of buildings and other improvements on the property.
 3. Alternative locations, such as rural areas and existing undersized lots in the area have been considered and are not available or suitable for the use.
 4. The granting of the variance does not allow the property to be used in a manner that is incompatible with, or limits farm use.
 5. Allowing the variance of the overall land use pattern in the area, assuming a principal dwelling may be allowed on the lot.

The Oregon State University Extension Service shall be notified of a request to comment on all application filed pursuant to this provision.

Lot divisions for principle uses shall be described and recorded as approved by the Hearings Officer prior to any development occurring on the lots.

A “commercial” and “non-commercial” farm have been defined as follows (Section 202 as amended by Order 81-1268):

“FARM, COMMERCIAL: A farm unit with all of the following characteristics:

- (a) The land is used for the primary purpose of obtaining a profit in money from activities described in Sections 401.03A and B, and 402.03A and B;
- (b) The net income derived from farm products is significant; and
- (c) Products from the farm unit contribute significantly to the agricultural economy, to agricultural processors and farm markets.

FARM, NON-COMMERCIAL: A parcel where all or part of the land is used for production of farm products for use or consumption by owners or residents of the property, or which provides insignificant income.”