

## **Eugene developer loses in court**

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Eugene businessman John Hammer took another blow from the courts last week when a Lane County judge reversed her earlier decision and said that a suit he filed against the city of Eugene for allegedly taking his land without compensation must stand alone, not as part of a class-action suit that represents at least 200 developers.

The city asked Circuit Judge Lauren Holland to "decertify" the class-action suit, after both the Oregon and U.S. Supreme Courts declined to consider Hammer's appeals of a state Court of Appeals ruling against his case.

Hammer did not return several telephone calls requesting comment. Voice-mail greetings for his attorneys, Donald Joe Willis and Jill Gelineau of Schwabe Williamson & Wyatt in Portland indicated that both attorneys will be away from their offices until Aug. 6. The law firm representing the city, Harrang Long Gary Rudnik P.C., characterized Holland's ruling as "a major victory."

Her decision "drastically narrows the scope and complexity of the case and greatly reduces the amount of the city's alleged liability" for possible monetary damages, an inter-departmental memo from the firm said.

Hammer filed his suit seven years ago, claiming that Eugene acted illegally when it required him to cede small amounts of land to the city in exchange for permission to divide a parcel of land into smaller developable lots.

In the suit, Hammer contended that at least 200 other land owners - and perhaps as many as 500 - had been similarly divested of land, and asked the court to allow all of those claims to be consolidated in a class-action lawsuit seeking compensation.

Hammer had applied to the city to partition a piece of land he owned at Bailey Hill Road and Stewart Road in west Eugene into three parcels.

As a condition of approval, the city required him to give the city about 1,100 square feet of land for public right of way, including a 225 square-foot plot for future use for "unspecified electrical utility facilities," the court papers said.

Hammer claimed a loss of only \$2,401 from the city, plus accrued interest as the suit proceeded. By this time, had Hammer prevailed, the interest would have added \$1,548 to the amount owed. However, he contended in the suit that the city of Eugene for years had carried out similar land-takings from developers seeking minor partitions, without justifying the need or paying for the land.

The small amount of land and financial claim belie Hammer's status as a developer in Lane County. His property holdings at that time were valued in the tens of millions of dollars. His developments included the Creswell Marketplace commercial subdivision east of the Interstate 5 freeway at the Creswell exit, as well as both the Oakway Golf Course in Eugene and the Middlefield Golf Course in Cottage Grove.

In 2001, Lane County Circuit Court Judge Jack Billings gave Hammer's case class-action status, allowing several hundred developers to join his original suit. The legal basis for the action hinged on a 1994 Oregon Supreme Court decision in *Dolan vs. City of Tigard*. In that case, the court ruled that government cannot impose conditions or take land from developers unless it shows a rational link between the requirements and the permit sought by the developer.

It also stated that the amount of the burden imposed by government must be in proportion to the impact of the development on the surrounding area.

The *Dolan* case centered on a Tigard company that was required to dedicate a strip of land for a public bicycle path as a condition for approval to expand the business. The Supreme Court agreed with the business that the city's demand was out of proportion with the land-use request. In 2003, Judge Holland sided with Hammer, ruling that the city of Eugene failed to make written findings to prove that the concessions they required of Hammer and other developers met legal requirements.

"We appealed that decision to the (state) Court of Appeals," said attorney Jens Schmidt, one of the attorneys for the city of Eugene. "In 2005, the appeals court ruled that the city would have the opportunity to prove at trial that the conditions were proportional in each individual case." After losing that decision, Hammer appealed to the state and federal supreme courts; both declined to hear the case.

"The U.S. Supreme Court declined in October 2006, so we filed our request to decertify with Judge Holland early this year," Schmidt said. "We had a hearing on the motion on April 16, and she issued her ruling three months later."

Hammer could appeal Holland's decertification ruling to the appeals court, Schmidt said. "The issues that the courts have dealt with so far are different from the ruling to decertify," he said. "An appeal would be a narrow look at that specific question." Until the suit is permanently settled, the city will not disclose how much it has paid to defend against the Hammer suit, Schmidt said.