

MINUTES OF DIRECTORS MEETING

LANE TRANSIT DISTRICT

EMERGENCY MEETING

Wednesday, August 24, 1988

Pursuant to notice given by telephone to members of the media on the mailing list of the District on August 24, 1988, an emergency meeting of the Board of Directors of the Lane Transit District was held on Wednesday, August 24, 1988 at 7:00 p.m. in Municipal Courtroom #1 at Eugene City Hall, Eugene. An emergency meeting was called in order to allow the Board to ask questions of a potential witness for James and Patricia Spicer prior to a scheduled court date regarding the value of the Spicers' Glenwood property, which was taken by LTD in eminent domain proceedings for a new maintenance/administrative facility.

Present: Peter Brandt, Treasurer
Janet Calvert, President, presiding
Keith Parks
Gus Pusateri, Secretary
Rich Smith
Phyllis Loobey, General Manager
Jo Sullivan, Recording Secretary

Absent: Janice Eberly, Vice President
Dean Runyan

CALL TO ORDER: Ms. Calvert called the meeting to order at 7:05 p.m.

AUDIENCE PARTICIPATION: Ms. Calvert opened the meeting for public testimony. Thomas Hoyt, attorney for Mr. and Mrs. Spicer, spoke first. He said they had asked for this meeting because they believed the Board members did not understand the Spicers' position or that the Spicers had reduced their price to \$1.58 per square foot in their last compromise offer on August 19. He said that because of that type of confusion, it was imperative that the Board members know exactly what the numbers were and how the negotiations have gone, and what evidence was to be presented by the Spicers at trial.

Mr. Hoyt gave the Board members copies of the trial brief that had been filed with the Court and given to Richard Bryson, District Counsel, at the pre-trial settlement conference that morning, a copy of the settlement document which he said recapped accurately the negotiations, and a copy of a chart showing how the numbers in the negotiations relate. He said that the basic concept was one of fair market cash value for the property taken. He stated that LTD condemned 5.1431 acres of the Spicers' property. In order to determine how many square feet in 5.1431 acres, he multiplied by 43,560, the number of square feet in an acre, which amounted to 224,033.24 square feet. He added that LTD and the Spicers were in agreement on the acreage or number of square feet.

Mr. Hoyt said that on February 23, 1987, through Mr. Bryson, Ms. Loobey filed a notice that told the Spicers their property would be condemned and LTD would pay them \$.96 per square foot, or \$215,071.91. He explained that the letter actually said \$215,466, but that is very close to \$.96 per square foot. The Spicers responded by stating that they thought the property was worth substantially more. Mr. Hoyt stated that the District filed its complaint on June 17, 1987, which is the date for determination of the cash fair market value, and took the property on a quick take. In August 1987, the Spicers filed an answer saying that they thought the property was worth \$2.20 per square foot, or \$492,873.12. He explained that the District's offer of \$215,466 and the Spicers' answer of \$492,873.12 would be the two figures that the jury would deal with at the trial which was to begin the next day. As a result of a reduction of the District's offer, made in June 1988, which he had not written on his chart because he did not believe it was a valid assessment and he thought there were a lot of problems with it because of some false assumptions. In the District's pleadings, then, the District's offer would be \$.84 per square foot instead of \$.96. For his comparison, he said, he would use \$.96 and \$2.20, because those were the original figures in 1987. He said it was not a coincidence that on the previous Friday (August 19, 1988), the Spicers said they would settle for \$1.58 per square foot, plus interest on that amount, their remnant damage, and their professional fees. He said that some of the Board members did not understand that offer, so they were bringing the same message to the Board that evening. He explained that the \$1.58 per square foot, or \$353,972.51, now formed the top of the settlement offer. He said that when LTD took the property, \$.5 million was put into an interest-bearing account and had been earning interest since June 1987. The Spicers had lost their property at that time, and Mr. Hoyt stated that there was no question that they were entitled to interest on any award the jury would give them. He also said that in the event that there is a settlement at \$353,000, interest would be calculated on that figure. Nine percent annual interest equated to \$87.28 per day. Multiplied by 433 days since June 17, 1987, the interest amounted to \$37,792.63 to that day (August 24, 1988).

Mr. Hoyt stated that one of the problems of the whole experience had been with communications. He said that the District had consistently told the Spicers, through their pleadings, appraisals, lawyers, and negotiator, that the Spicers had experienced absolutely no remnant damage to their property. He said the District had represented that to the court and would argue that to the jury, but it was false. He said there were two types of remnant damage, which they had told the District about in August 1987, and were prepared to prove. Mr. Hoyt said that Mr. Eugene Schaudt, an engineer, was there that evening to tell the Board exactly how he had calculated sewer remnant damage at \$22,712.18.

Mr. Hoyt then showed a diagram of the Spicers' property which was taken, as well as a .79 acre remnant and a 3+ acre remnant. He said the three-acre remnant, south of Seventeenth Avenue, is no longer practical to farm because their nearest equipment is ten miles away and it is not economically feasible to farm less than three acres from that distance.

The other remnant, .79 acres, is on the north. He said they would argue to the jury that the property was served by sewer in two spots when it was taken by the District, connected to a 24-inch sanitary sewer which runs on the west side of Glenwood Boulevard. He used the diagram to explain that the .79-acre property was part of the whole before the taking, and was subject to being served by sewer. The whole parcel, in order to be served by sewer, had to incur a sewer assessment of \$8,000. Mr. Hoyt stated that if the remnant is not served by sewer after the time of taking, there is a severance damage or remnant damage. He said that Mr. Schaudt had calculated the square foot cost of bringing sewer to the remnant at \$23,790. However, he said, in order to find out the severance damage, that amount had to be divided by the total number of square feet in .79 acres, or 34,412.4. The cost per square foot to the .79-acre remnant, then, would be \$.69 per square foot to bring in the sewer. He said, however, that the Spicers were not asking the District to pay \$.69 per square foot because prior to the taking there was a sewer assessment on this property of \$8,587.32. The Spicers will have to pay this amount out of any proceeds they receive from the jury or through settlement; that is a lien against the property and their obligation. Mr. Hoyt went on to say that \$.03 is the per square foot cost attributable to this assessment, so that has to be subtracted from the \$.69 per square foot sewer damage cost, for a total of \$.66 per square foot. If \$.66 is multiplied by the number of square feet in .79 acre, the resulting number is \$22,712.18.

Mr. Hoyt then discussed remnant damage from farm deferral, stating that prior to the taking, the Spicers had the property in wheat as a farm deferral, a tool to defer taxes on that property until they could develop it for its highest or best use in commercial or industrial use. He said that farm deferral laws have changed; at the present time he said, a farm deferral law could best be described as a moving train, moving in five-year cycles. Because of the District's taking, he said, the Spicers have lost their farm deferral and owe \$9,296.10 on the property south of 17th Avenue. The reason this is a damage is because of the probability that the Spicers would not have taken this property out of farm deferral for five years. In the event that there was no condemnation and the property stayed in farm deferral for five years, this obligation would have stopped being a lien against the property. There can only be a farm deferral lien for the last five years.

In discussing professional fees and expenses, Mr. Hoyt stated that prior to the time of condemnation, the Spicers incurred \$7,000 in professional fees and expenses, which he said was not a recoverable expense, and was not included in his figures. The amount he was discussing included all of the attorney fees, legal assistant fees, clerk fees, all of the work from Mr. Hoyt's office, all the work from appraisers that he had consulted with, all the work from engineers, surveyors, land use planners, Mr. Pedersen, and all of the professionals that had advised him and the Spicers through that date. The total for land, damages, and fees, \$468,140.61, had not been given to the Board before, and was lower than the number mentioned after the previous Board meeting on August 19, primarily because they had found out the sewer assessment was less.

Mr. Hoyt stated that he had given the trial brief to Mr. Bryson, Ms. Loobey, and the judge at the settlement conference that morning. The trial brief, he said, told exactly what the evidence and legal arguments for the Spicers' case were going to be. He said that this was the first time the Board had heard about the Spicers' witness Steve Romania, because Mr. Hoyt had not talked to Mr. Romania about the case until two days ago. He stated that when he talked to Steve Romania and shared that information with the Spicers, they were visibly shaken and unhappy that they had offered to settle for \$1.50 a square foot. Mr. Hoyt said that Mr. Romania would testify that in his opinion the property is worth \$2.29 a square foot. Mr. Hoyt describes Mr. Romania as a player in the market, a buyer and seller of property and said he is competent to testify because not only do he and his family own two acres abutting the Spicers' property, which he thinks is worth \$100,000 an acre or \$2.21 per square foot, but also they were very actively looking to purchase property in this immediate vicinity in June 1987. Mr. Hoyt stated that appraisers try to take a "snapshot" of what the players were doing in the market; appraisers are not players--they try to "read the tea leaves." Mr. Hoyt said that in the Spicers' litigation, they would be bringing to the jury exactly what the market was doing. He said there was nothing in the constitution that says that once the Spicers' property is condemned, they have to hire three or four expensive appraisers to tell the jury what the appraisers' opinions are.

Mr. Hoyt said that in his opening statement the next day, he would tell the jury that the theme of the case for the Spicers is, "the third time, let the jury decide." The third time they have been condemned, they are going to let the jury decide what the fair cash market value of the property is, and they have done their own homework. Mr. Hoyt said that the Spicers are prepared to testify as to a number of comparables, some of which the Board had seen from previous depositions. He added that the jury may weigh the evidence differently than the Spicers were presenting it, but they were confident that the jury would weigh it at least above \$1.50 a square foot. Mr. Hoyt concluded the background on the case, and next asked Mr. Romania some questions, which Mr. Bryson had recorded by a court reporter.

Mr. Hoyt asked Mr. Romania to refer to a map to show the Board what property ownerships he and his family had on Glenwood. Mr. Romania showed an area of two acres right next to the Case property on Glenwood Boulevard. Mr. Hoyt then asked Mr. Romania to tell the Board about his background. Mr. Romania stated that he graduated from the University of Oregon in 1976 in Business Management and started working full-time for his father's business, Joe Romania Chevrolet. He was a manager then and held various management positions until 1979, when he became general manager of the dealership and took the active role of controlling and guiding and future development of the dealership. He said he still holds the position of general manager, in addition to being a partner in the dealership.

Mr. Hoyt then asked Mr. Romania if, after he became general manager of the dealership, he had any responsibilities with regard to property acquisition or property management. Mr. Romania stated that at that time, his sisters, his parents, and he owned the property and lease payments were already established. He did try to diversify and expand the business, beginning in 1982 with the development of RV sales, which was first done at the current location at Franklin Boulevard. They later decided that to be active and successful in RV sales, they needed a separate facility. In 1982 and 1983 they looked for a facility to lease. In order to stay close to the Chevrolet dealership, they looked at property along Franklin Boulevard. Because they owned two acres in Glenwood, they wanted to take advantage of that. They didn't believe that their property had enough frontage on Glenwood Boulevard, so they looked at the lot on the corner directly opposite Case, where there was a Rexius or similar business and a used car lot. That facility was not large enough, so they began talking with the person who had the lease on the Mac Truck dealership at that time, and decided that the Mac Truck dealership was well suited for their needs, since it had ten service stalls and was basically designed for vehicles the size of RVs. They signed a six-year lease, broken into a three-year lease with an option for another three years. That lease was signed in 1983, and the RV center was moved to its current location at 901 Franklin Boulevard. In 1986, in order to make a decision on whether or not to extend that lease, they made a brief search of property in the area. They were again not ready to purchase property, and their current property was seen as the most economical, so they signed the option and continued the lease for three more years. The lease will be up on December 31 of this year.

Mr. Romania went on to say that in June 1987, one and a half years before the lease was up, they knew they had to find additional property. He said it was their understanding that the 30-year lease of the former Mac Truck dealer was up. There are actually four property owners of their current location, and it became clear that it was nearly impossible to extend that lease.

Mr. Hoyt asked if that property is the gateway for the Riverfront Research Park. Mr. Romania said that was one of the reasons; it was targeted as the gateway early this year. He continued by saying that they began a search for property to purchase, and hired a real estate consultant to help in the search to identify property. His name is Dennis Strand, and he had been in the area for quite awhile, and had worked with Wildish and Mr. Romania thought he had also worked with the Board. They conducted a search all along Interstate 5, because they felt I-5 was extremely important for their needs because of the market. They looked from Goshen in the south to Coburg in the north, and identified three areas. One was the Irwin marina building at the 30th Avenue interchange; the second was the Glenwood area; and the third was the Coburg area where the Country Squire is. Mr. Romania stated that the Irwin property at 30th Avenue wasn't large enough, so they narrowed the search to the Glenwood area and the Coburg area. He said that the two people they dealt with were Ross Murry in the Coburg area and Dale Fischer around Glenwood.

Because Mr. Romania's father was personal friends with Dale, he conducted a lot of the negotiations. They asked Mr. Fischer what he wanted, and he was extremely firm at \$100,000 an acre, or \$2.21 per square foot. The Romanias made an offer at \$50,000 an acre, and their offer was not even returned. Mr. Fischer did have an additional conversation with Joe Romania, and remained firm at \$100,000 an acre. He had five acres on Franklin Boulevard and some other property just next to Sanipac, and either would be sold for \$100,000 an acre.

The Romanias also contacted Case, because the best thing to do would be to use the Romania's property there; if they were able to buy the Case property, they would have the corner and their own two acres. They talked about relocating Case, and found that the lease could not be broken and Case was not interested in moving. Looking for land in the north, Mr. Romania said he dealt with Ross Murray personally, and they were at \$60,000 an acre as a firm figure, even though the Romanias offered \$35,000. In the meantime, Mr. Romania said, they were pursuing a foreign car franchise that some other dealers were also pursuing, and in June 1988 received a letter of intent from that franchise, stating that the Romanias would be given the franchise if they located the property at Valley River. He said he had been approached by some property owners at Valley River for the RV center, but felt that was too expensive, until the point where Hyundai said they had to be out there to obtain that franchise. They entered into negotiations to purchase the only piece of property which was available, the six acres next to Central Lincoln Mercury, but felt that they could put both the foreign car franchise and the RV center there. They signed an option in July, with a closing date of October 1. The price of that property he said, is right at \$4.44 a square foot, or about \$200,000 an acre. Mr. Hoyt asked what it is worth per usable square foot. Mr. Romania replied that it is right at \$5.00 a square foot for usable acreage.

Mr. Hoyt then asked Mr. Romania if freeway access was important when he was making his search for property for the RV center. Mr. Romania replied that freeway access was the most important thing; they wanted it to be visible from the freeway if possible, and that was why the Coburg property looked good. The Glenwood property, he said, was extremely attractive because it was so close to the dealership and had freeway access. From the Glenwood interchange, he said, you could look right down and see that property.

Mr. Hoyt said that he and Mr. Romania had driven out to look at the property the day before, and asked Mr. Romania how the Spicers' property compared as far as desirability for a motor home dealership. Mr. Romania said it would have been better for them, and at the time they had discussed it but it was their understanding that the property was not available. Their two acres on Franklin Boulevard in Glenwood abuts that property, so they would definitely have been interested in that piece of property.

Mr. Hoyt asked Mr. Romania if he had an opinion as to what his two acres on Franklin Boulevard are worth. Mr. Romania replied "\$100,000 an acre." Mr. Hoyt asked if it was worth that in June of 1987. Mr. Romania said that it was, because that was when Dale Fischer was very firm on his price and they would have had to pay \$100,000 an acre to him. He said that if it was not for the negotiations with the foreign car franchise, they would have purchased the property in Glenwood because of its proximity to their Chevrolet dealership. He added that the Glenwood property would have been less than they actually ended up paying, so it would have been a better deal for them.

Mr. Hoyt asked if Mr. Romania had an opinion as to what the value of the square feet taken of the Spicers' property was in June 1987, to which Mr. Romania replied that at \$100,000 an acre that would be \$2.21 a square foot.

Mr. Hoyt asked the Board members if they had questions for Mr. Romania. Mr. Parks asked if Mr. Romania had inquired about any other property in the Glenwood area when they were talking to Mr. Fischer about buying his property for \$100,000 an acre. Mr. Romania said it was their understanding that Mr. Fischer had the only vacant property that would suit their purposes. Mr. Parks also asked if that property had been sold; Mr. Romania said it had not, but that it is on the market and if someone wanted to pay \$100,000 an acre, Mr. Fischer would sell it.

Ms. Calvert asked if, when the Romanias offered Mr. Fischer \$50,000 an acre, they thought that was a fair price at the time. Mr. Romania said they were in the car business, the negotiation business, and tried to get the property as inexpensively as they could and had never offered the asking price, and did not pay the asking price at Valley River. Ms. Calvert asked if that would also be true of his two acres. Mr. Romania stated that if he thought it was worth \$100,000, he would put it on the market for more than he wanted. Ms. Calvert then stated that there is a difference of opinion, and Mr. Romania said that there was, and, as in his business, what the buyer is willing to pay is what determines the price.

Mr. Brandt asked how the property Mr. Romania purchased at Valley River is zoned. Mr. Romania said it is zoned C-2, commercial. Mr. Brandt then asked how Mr. Romania's two acres were zoned. Mr. Romania said he did not know, but he believed that property was zoned C-2, but could not really testify to that. Mr. Brandt then asked if Mr. Romania knew the Lane County tax assessment on that property. Mr. Romania did not know. Mr. Brandt also asked what Mr. Romania had paid for the property, to which Mr. Romania replied that he did not know that, either.

Mr. Hoyt stated that the reason Mr. Romania's testimony is relevant is that Dave Pedersen, the Spicers' land use consultant, will testify that in 1987 there was a strong probability that the Spicers' property would have been zoned commercial; that is why commercial comparables are relevant. Mr. Brandt asked at whose desire the property would have been zoned commercial. Mr. Hoyt replied that it would have been at the desire

of a purchaser. He said you had to "take a snapshot" of the market and see if the property had a reasonable probability of being zoned commercial on the date of taking, and that Mr. Pedersen would so testify.

Mr. Brandt asked if Mr. Hoyt meant that the Spicers had someone who was interested in purchasing the property if they could get it zoned commercial. Mr. Hoyt replied that they were not required to go out as a condemnee and find someone who was ready to offer \$2.20 a square foot. What they did have to do, he said, was to determine what the price was in the marketplace, and they do that by evidence of what the players were doing in the marketplace and what comparable sales were. He said they were going to do that with Mr. Romania and other players in the marketplace, using both commercial and industrial comparables. He said that the District's appraisers, Mr. Lau or Mr. Knox, when he took their deposition the previous month, assumed that the property was not suitable for commercial development. Mr. Hoyt said that was a false assumption as far as Mr. Pedersen is concerned, that it was suitable for commercial development and, therefore, commercial comparable sales are relevant. He stated that commercial sales are much higher per square foot, and that they also have industrial sales that will more than justify \$2.20 per square foot.

Mr. Brandt said that he wasn't quite sure of the use of the term "suitable." He thought that any property would be suitable, but that it had to be likely or probable that it would have been able to be zoned commercial, not that it is suitable. Mr. Hoyt stated that there has to be a reasonable probability that in June of 1987 the Spicers' property could have been zoned commercial. He stated that the Glenwood Planning Team has designated the other three corners at 17th and Glenwood for commercial purposes. Ms. Calvert asked what caused them to do that. Mr. Hoyt replied that the Glenwood Planning Team has been meeting two years or so, but that is not the basis of Mr. Pedersen's opinion; rather, it is based on his own analysis of what was going on, what was doable, what was capable, and some other experiences he had. Mr. Hoyt said that the fact that the Glenwood Planning Team has designated this area for commercial just confirms that he is right, so they were pretty confident that they would be able to convince the jury that this property had a commercial probability; therefore, commercial comps were relevant; and therefore, Mr. Romania's testimony was relevant.

Mr. Brandt asked Mr. Romania if he would pay \$490,000 for that part of that property for his business when it wasn't zoned commercial. Mr. Romania stated that, if they would not have gone to Valley River, they would have selected the property in Glenwood, and if the Spicers' property was available, it would have been under consideration. They would have requested an option and made it contingent upon being properly zoned for their uses, and the price would have been \$100,000 an acre, because that was what they were willing to pay. Mr. Brandt then asked Mr. Romania to clarify that he was not willing to pay Fischer that much per acre. Mr. Romania said that initially they were not. He said that was just like Ross Murray's property; they offered him quite a bit less

than he asked, a year and a half before they had to vacate their property. Coming into this summer, he said, they were ready to come to the table, and are paying considerably more than that for their RV facility. He said they would have paid in Glenwood what they had to pay, so if they would have wanted Dale Fischer's property, they would have had to pay \$100,000.

Mr. Brandt asked Mr. Romania if he thought Dale Fischer probably thinks his property value increased substantially as a result of what LTD is doing in Glenwood. Mr. Romania said he had no idea, but repeated that Mr. Fischer was not willing to negotiate on his price.

Ms. Calvert asked if Mr. Romania felt that the designation of commercial on the other three corners might have been as a result of the location of the LTD facility. Mr. Romania said it looked to him like a great commercial location because of the property, because of the interchange, the wide boulevard, and good access. Ms. Calvert said that fact is that the rezoning to commercial hadn't happened before. Mr. Romania said it hadn't yet happened in a lot of areas, and Ms. Calvert asked if there were a lot of areas that could be great commercial locations. Mr. Romania said that Coburg was a good area, as well as 30th Avenue.

There were no further questions for Mr. Romania. The Board thanked him for his testimony.

Mr. Hoyt then asked the Board members if they were interested in talking to Eugene Schaudt about how he arrived at the sewer assessment. The Board members declined.

MOTION

EXECUTIVE SESSION: Mr. Brandt moved that the Board move into Executive Session pursuant to ORS 192.660(1)(e), to conduct deliberations with persons designated by the governing body to negotiate real property transactions; and pursuant to ORS 192.660(1)(h), to consult with counsel concerning the legal rights and duties of a public body with regard to current litigation or litigation likely to be filed. Mr. Parks seconded the motion, and the Board voted unanimously to move into Executive Session. Ms. Calvert reminded the press that they could attend the Executive Session, but comments during the session could not be reported.

VOTE

RETURN TO REGULAR SESSION AND ADJOURNMENT: After returning to regular session, a motion to adjourn was made and seconded. With no further discussion, the meeting was duly adjourned at 8:10 p.m.

Gus Pusadai 9-15-88
Board Secretary