



City of Keizer

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February 10, 2014

ELECTRONIC MAIL ONLY

Representative Brian Clem

Re: *Rural Community Committee – HB 4017 – LID Reform*

Dear Representative Clem:

This office represents the City of Keizer. Enclosed please find documents to be made a part of the record on House Bill 4017.

Please contact me if you have any questions in this regard. Thank you.

Yours truly,

E. Shannon Johnson
Keizer City Attorney
503-856-3432

ESJ/tmh
enclosures

1 **I. INTRODUCTION**

2 Until recently, the Rawlins Owners¹ have embraced the risks and rewards of capitalism.
3 They embraced those risks and rewards in 2005 when they abandoned legal challenges to the
4 inclusion of their properties within the Keizer Station Area A Local Improvement District (“the
5 LID”). They abandoned those legal challenges because they found a better alternative: a 30-year
6 ground lease entered into with Northwest National, LLC (“Northwest National”), as tenant, with a
7 personal guaranty from Charles Sides. In what Linda Rawlins calls a “triple-net lease”, the Rawlins
8 Owners stood to receive at least \$8.85 million in rent, while Northwest National paid all the
9 property taxes and LID assessments on their properties.² With the lease in hand, the Rawlins
10 Owners entered into the 2005 Settlement Agreement with the City, and, in doing so, waived any
11 objection to the inclusion of their properties in the LID.³

12 In early 2008, the Rawlins Owners again embraced the risks and rewards of capitalism. By
13 then, the City had completed the improvements on all properties in the LID, including the
14 Properties, and the property owners, including the Rawlins Owners, received their assessments.
15 Having full knowledge of the total improvements made on the Properties, Ms. Rawlins believed
16 they were “worth far less than half” of the \$6 million LID assessment.⁴ She also “believed this
17 amount to be wildly excessive and to have no relation whatsoever to any benefit the Propert[ies]

18
19 ¹ Following Defendants’ lead, the City refers to Defendant Rawlins Holding Company, Inc. and
20 Defendant Rawlins Investment Properties, LLC, who each own a one-half interest in the two
21 properties in question, as the “Rawlins Owners.” Thus, the term “Rawlins Owners” as used here
22 has the same meaning as the term “Rawlins Fee Owners” as used the City’s previous briefs.

23 ² Declaration of Linda Rawlins in Support of Defendants Rawlins’ Motion to Enlarge Time
24 (“Rawlins Decl.”) 3:6-8; A partially executed copy of the ground lease is Exhibit 9 to the
25 Declaration of E. Shannon Johnson in Support of Plaintiff’s Motions and Supporting Points and
26 Authorities for Summary Judgment filed on September 18, 2013 (“Johnson Summ. J. Decl.”). See
Ex. 9 at 1, 2nd and 3rd paragraphs (30-year lease with option of lessee to extend); at 4, sec. 4.1
(\$25,000 rent/month after first 12 months); at 4, sec. 4.2 (rent escalation provision); at 3, sec. 3
 (“Taxes”) (requiring lessee to pay not only all property taxes but also “any Local Improvement
District assessments”)

³ Declaration of E. Shannon Johnson in Opposition to Defendants’ Motion to Enlarge Time to
Respond to Plaintiff’s Motion for Summary Judgment (“Johnson Opp. to Enlargement Mot.
Decl.”), Ex. 7 at 3, sec. 2 (“Release”).

⁴ Rawlins Decl. 3:2-3.

1 had received by way of these improvements.”⁵

2 But, as shrewd capitalists, the Rawlins Owners did not expect to have to pay this amount
3 themselves—Northwest National was obligated to do so under the lease, with that obligation
4 backed by the personal guaranty of Charles Sides. In fact, by early 2008, pursuant to the lease, the
5 Rawlins Owners had already reaped the rewards of capitalism to the tune of \$550,000 in rent from
6 Northwest National. So, the Rawlins Owners stayed the course of capitalism to become multi-
7 millionaires under the lease and signed the 2008 Installment Contracts.⁶ In doing so, the Rawlins
8 Owners waived their remaining rights under the 2005 Settlement Agreement to challenge the
9 amount of the LID assessments.⁷

10 After executing the 2008 Installment Contracts with the City, the Rawlins Owners continued
11 to embrace the rewards of capitalism for at least two more years. Northwest National paid the
12 Rawlins Owners another \$600,000 in rent and the first four semi-annual installments of the LID
13 assessment.

14 But now that, years later, Northwest National has defaulted on the lease, the Rawlins
15 Owners no longer embrace the risks and rewards of capitalism. Instead of suing Northwest
16 National on the lease and Charles Sides on his personal guarantee, the Rawlins Owners want this
17 Court to give them a bailout at the expense of the City of Keizer and Oregon bondholders.
18 Moreover, in order to engineer that bailout, the Rawlins Owners are asking this Court to engage in a
19 rewrite of Oregon contract and writ or review law of epic proportions. Absent that rewrite, the
20 Rawlins Owners are bound by the waiver agreements they signed in 2005 and again in 2008. They
21 have no defenses, and summary judgment is appropriate without further discovery.

22 **II. SUMMARY OF ARGUMENT**

23 The waivers and releases in the 2005 Settlement Agreement and the 2008 Installment

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25 ⁵ Rawlins Decl. 3:3-5.

26 ⁶ Johnson Opp. Enlargement Mot. Decl. Exs. 8-9.

⁷ Johnson Opp. to Enlargement Mot. Decl., Ex. 8 at 1 (2nd paragraph above signature block) and
Ex. 9 at 1 (2nd paragraph above signature block).

KEIZER STATION LID/RAWLINS

Early 2005. The Keizer Station Local Improvement District (LID) process is initiated. At that time, and at all stages throughout the LID process, the Rawlins' properties were included. The LID was not amended to add the Rawlins' properties. Rawlins hire an attorney who appears in the LID proceedings at the local level and objects to the LID.

Mid 2005. Rawlins challenges the LID by filing a lawsuit in Circuit Court and appealing to the Land Use Board of Appeals (LUBA).

Late 2005. Rawlins and the City (both represented by attorneys) enter into settlement discussions. At the same time, the Rawlins continue lease/sale discussions with Chuck Sides with both parties being represented by attorneys.

October 2005. Rawlins and Chuck Sides' company (Northwest National LLC) enter into a long term ground lease for the properties. The lease provides that Northwest National will pay the LID assessments and property taxes on the Rawlins' properties, along with net rent to Rawlins of \$12,500 per month for the first year and \$25,000 per month thereafter.

November 2005. With lease in hand, Rawlins agree to dismiss the lawsuits and the LUBA appeal. The LID lawsuit in Circuit Court is dismissed with prejudice meaning it could never be brought again and the Rawlins could not object to the LID, except as allowed as part of the settlement. The Rawlins and the City sign the 2005 settlement agreement in which Rawlins consent to the City's construction of improvements in the Local Improvement District and to the assessment of construction costs against the Rawlins' properties and waive any future efforts to contest the imposition of the LID. Rawlins specifically reserve the right to object to the amount of the final assessment if it is unreasonable.

November 2005 through December 2007. The LID construction project commenced and significant sewer, water, storm drain, and transportation infrastructure was completed. Except for sewer, the Rawlins' properties had no real infrastructure to support any development of the properties. In 2006, the Marion County Assessor's real market value for the Rawlins' properties was \$256,920. The City's post-improvement commercial appraisal for Rawlins' property was \$7 million.

February 2008. Following conclusion of the LID construction project, the final assessments are established based on the actual cost of the construction. The Rawlins' properties are assessed approximately \$6 million out of a total of \$31 million. Pursuant to the 2005 settlement agreement, the Rawlins could object to the reasonableness of the assessment, but choose not to do so, even though the lease allows them to object. Instead they sign two installment contracts (one for each parcel). The installment contracts provide that the Rawlins waive all irregularities and defects with regard to the LID process and agree to the assessments.

For approximately two and one-half years, the LID payments on the Rawlins' properties are made, presumably by Northwest National LLC. The last LID payment made on the Rawlins' properties was in August 2010. The City of Keizer waited nearly three years before beginning to foreclose the LID assessments.

Though the LID payments stopped, the rent payments continued. The total estimated rent paid to the Rawlins is in excess of \$2,000,000. Rawlins have never paid or offered to pay any of the LID assessments. Rawlins purchased the subject properties for \$139,500 in 1994.

The Rawlins made their choices with the benefit of legal counsel. One can assume that they negotiated the absolute maximum monthly rent with the idea that if the rent stopped, they still would have received many times more for the property than what they paid for it. If the LID lien is voided, it would mean the Keizer taxpayers pay \$6 million and Rawlins make nearly \$2 million and still keep their property.