

STATE BOARD OF LAND COMMISSIONERS
July 29, 1996
Regular Agenda

SUBJECT

Approval of Settlement Agreement, State v. Idaho Forest Industries, Inc. and Evans Brothers Construction, Inc., Ada County Case No. 97796.

BACKGROUND

The Department is seeking Land Board approval of a Settlement Agreement to resolve the above litigation.

The case concerns completion of construction of a greenbelt and bicycle pathway adjacent to the Boise River and the Riverside Village Subdivision. The area in question is located on the north bank of the river and extends about one mile downstream from the Glenwood Bridge, the length of the Riverside Village Subdivision. The Land Board is involved because the greenbelt involves public lands quitclaimed to the State as part of the resolution of land title questions on what is now Riverside Village.

In 1974, Jack and Elaine Hoke contacted the Department to clear title to riparian lands adjacent to the Boise River. At the time, the Hokes planned to develop a small airport on the property. The lands were undeveloped and consisted of sloughs and small channels of the Boise River. The State and the Hokes exchanged quitclaim deeds so that Hoke acquired most of the old river areas, and the State acquired approximately 18 acres contiguous to the river. The State also obtained sportsmen's easements to the old river channel area owned by the Hokes.

Eventually, the Hokes abandoned the airport plan and decided to develop a subdivision on the property. The Land Board was again approached, and an agreement between the Hokes and the Board was reached in 1980; a copy is attached as Attachment A. Attachment A includes two Exhibits, a letter from Robert Ennis concerning the developer's intent in entering the agreement, and a map of the proposed greenbelt and subdivision (State land is shown in red on the map).

In summary, the 1980 Agreement involves the following:

1. The developers would build at their expense a public greenbelt and park area on State and private land adjacent to the Boise River from the Glenwood Bridge along the length of the development. The developer agreed to build a bike path, lakes, pedestrian bridges and a parking lot in the east part of the area. Some of the land was to be part of a public road.

2. Upon completion of the improvements, the State and the developers agreed to convey the land upon which the improvements were constructed to the City of Garden City, or some other public or quasi-public entity if Garden City declined to accept the greenbelt. The road areas were to be transferred to the Ada County Highway District. It is contemplated that Garden City would maintain the area as a public amenity.

3. The State agreed to terminate the sportsmen's easements when the greenbelt was completed in view of the fact that public access to the river would be provided by the greenbelt, and public access would be inconsistent with the proposed residential development. The developers were also granted the exclusive use of the greenbelt area while they were making improvements in the area, and the use of fill material from the lakes that were excavated on State land adjacent to the river.

Most of the development contemplated by the 1980 Agreement, such as the park area and parking lot, was completed in the mid-80's and is not in dispute in the case.

The dispute centers on the eastern portion of the greenbelt that was paved in the early 1980's. The pavement deteriorated rapidly due primarily to buckling from tree roots adjacent to the river, was not useable by bicycle and was difficult even for walking. The Department had also determined that the buckled pathway was unacceptable and not built to proper standards. The Department and Evans Brothers Construction² discussed resolution of the problem for several years to no avail. The lawsuit under discussion was finally filed in May 1994.

In addition to the pathway buckling, there were deficiencies with two pedestrian bridges that needed correction. Also, a sign has been posted at the eastern entrance to the pathway that stated the greenbelt was private property and no entry was allowed to the public, despite the 1980 Agreement and the fact that the State owned significant portions of the greenbelt.

At present, the pathway dead-ends at the downstream end of the Riverside Village development.

After the lawsuit was filed, the "No Trespassing" sign was removed by the defendants. The parties also commenced negotiation of a resolution of the case, resulting in the proposed settlement

²The subdivision was purchased by Idaho Forest Industries in about 1986, and Evans Brothers Construction was the local manager for IFI.

agreement attached as Attachment B. Additionally, attached as Attachment C is a copy of an agreement between Garden City and Idaho Forest Industries concerning completion of the pathway.

DISCUSSION

The primary issue of concern to satisfy the 1980 Agreement is completion of the deteriorated pathway. In the proposed Settlement, the Department has agreed to allow replacement of the paved portion with 3/4" angular bedding chips on a six-foot wide pathway. The Department feels that this is acceptable for public access, and probably preferable given the problem with tree roots in the area; bicycles can still use a surface of this type.

Although the City of Garden City is not a party to the lawsuit, the Department, IFI and Evans agree that they should be made a signatory to the Settlement given the City's role in accepting title to the property after completion of the pathway.

The Department and IFI have communicated with the Riverside Village Homeowner's Association during the course of negotiations and development of the proposed Settlement. The Homeowners have declined to intervene in the lawsuit or actively participate in the negotiations, although they have expressed some of their concerns to the Department's legal counsel. Concerns about maintenance and security must be addressed to Garden City as the entity that will manage the greenbelt.

The Land Board and the Department have treated the State lands involved in the greenbelt as public trust lands since these lands were obtained as part of a settlement of title to riparian lands and river channels that are now part of the subdivision. Pursuant to the public trust doctrine, these lands can be alienated by the State only if the public's interest in the lands is protected.² The proposed Settlement stipulates that the deed from the State to Garden City will contain a restriction that provides automatic reversion of title of the lands to the State if public use of the area should be terminated. This is a real concern of the Department's because there have been attempts in the past to restrict public access to the area. Also, the Riverside Village Homeowners are attempting to obtain title to whatever "excess" lands may remain that are not needed for the greenbelt. The Department does

²The 1980 Agreement predated the Idaho Supreme Court's modern articulation of the public trust doctrine in Kootenai Environmental Alliance, Inc. v. Panhandle Yacht Club, Inc., 105 Idaho 622, 671 P.2d 1085 (1983), wherein the restriction of alienation of public trust lands was established in Idaho. Nevertheless, it appears that the 1980 Agreement is in conformity with this case because the transfer of State land will be to a public entity for public purposes consistent with the public trust doctrine.

not believe these public lands should be granted to a private entity since they represent a replacement for river channel to the Hokes in 1974.

If the Board determines to approve the Settlement, legal counsel plans to file the Settlement with the district court for approval and dismissal of the lawsuit.

RECOMMENDATION

The Department recommends that the Board approve the Settlement Agreement.

BOARD ACTION

APPROVED JUL 29 1996