

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

ORDER NO. 06-208

Order Denying Ballot Measure 37 Request of Cecelia Hunziker Relating to Real Property Located at 13715 NW Germantown Road, Multnomah County, Oregon

The Multnomah County Board of Commissioners Finds:

- a. **Party:** Cecelia Hunziker is a Ballot Measure 37 claimant who filed a demand for compensation to Multnomah County on October 11, 2005.
- b. **Subject Real Property:** This claim relates to real property commonly known as 13715 NW Germantown Road, Multnomah County, Oregon more specifically described as:

TL 300, Sec 09, T1N, R1W, W.M.
Tax Account # R961090210

- c. **Adequacy of Demand for Compensation:**
On October 11, 2005, the claimant submitted a completed Measure 37 Claim Form, a \$1,500 deposit, a list of regulations which the claimant asserts reduce their property value, a narrative, a copy of the 1989 contract of sale a copy of the November 7, 2002 Warranty Deed which transferred ownership of the property to the claimant. On May 19, 2006, the claimants submitted a title report prepared by Fidelity National Title Company of Oregon. Also on May 19, 2006, the claimant submitted the required appraisal of the property. The claim is considered to be complete consistent with the county's requirements outlined under MCC 27.520.

The Board finds that the materials submitted by the claimant constitute a complete "written demand for compensation" within the meaning of the measure.

- d. **Relevant Dates of Property Ownership:**
County assessment records show that the claimant is the current owner of the subject property. A land sale contract was submitted showing that the current owner had entered into an agreement to purchase the property in 1989. A warranty deed dated November 7, 2002 was submitted showing a transfer of ownership to the current owner, Cecelia Hunziker. Normally, a vendee's interest in a land sale contract would be sufficient to establish an interest or ownership for a Measure 37 claim. However, the 1989 contract, as well as the warranty deed from 2002, have terms that prohibited the current owner from possessing or using the property because a Life Estate was reserved for Wesley and Fern Wiseman. In essence, the previous owners had exclusive use of the property until their deaths, which occurred in 2005. The current owner, Cecelia Hunziker, did not obtain a right to possess and use the property until the Life Estate expired on February 28, 2005. However, in the State's Measure 37 decision, it indicated that Cecelia Hunziker obtained fee interest to the property on November 7, 2002, which gave the claimant a right to use and possess the property. It is not clear why the State used the November 7, 2002 date, because the life estate was still in effect until the death of the second life estate in 2005.

On February 28, 2005, the zoning of the lot was Rural Residential (RR). Oregon Administrative Rule 660-004-0040 prohibits the creation of lots and parcels smaller than 20-acres within 1-mile of the Urban Growth Boundary. This rule was effective on October 4, 2000, prior to the claimant having a right to possess and use the property. Because the OAR was not codified, the County

was obligated to implement the rule directly after its adoption in 2000. The County adopted the rule and amended its code on May 16, 2002.

That Board finds that the Claimant obtained a warranty deed for the property on November 7, 2002, but did not obtain a right to use the property until February 28, 2005 when the exclusive Life Estate of the previous owners expired.

e. County Codes as a Restriction on Use of the Property:

Rural Residential regulations in existence when the claimant acquired the property prohibit further division of the subject property, meaning relief from challenged regulations would not allow the development that is sought.

A land division in the RR zone within one mile of the UGB would have required the subject property to be at least 40 acres. Even if land divisions were allowed, Multnomah County's interpretation of the law as reflected in its Measure 37 ordinance is that dividing property in itself is not a 'use' of land subject to the provisions of Measure 37. Development rights gained through a waiver are personal to the claimant and will result in no restriction in use if transferred to a third party. No restriction in use would occur for the third party because they would be subject to the same Rural Residential regulations which have prohibited the partition of parcels under 40-acres in size since 2000.

This legal issue is analyzed in detail within a memo prepared by the Assistant County Attorney, Sandra Duffy, dated June 8, 2006. For the reasons outlined in this legal memorandum, staff finds this claim seeking the right to partition the property to be invalid.

The claimant also identified regulations pertaining to the Significant Environmental Concern overlay, land division regulations, and land use definitions as part of her claim. However, those issues are moot since the claimant obtained the property after the RR regulations prohibited lots smaller than 20-acres, which was the primary regulation in her claim.

The Board finds that the Claimant obtained a warranty deed for the property on November 7, 2002 but did not obtain a right to possess and use the property until February 28, 2005 when the exclusive Life Estate of the previous owners expired.

f. County Codes have not reduced the value of the property.

An appraisal submitted by the claimant was performed by a licensed Oregon Certified General Appraiser. The appraisal did not give a specific reduction in the dollar amount of the value of the property based on the regulations; rather, it stated that the restrictions the claimant claimed were on the property did in fact reduce the value of the property. A specific dollar amount would need to be determined later if the County was to pay the claim.

Using the narrative materials and appraisal data submitted by the claimant to substantiate the claim, staff determined that the claimant was requesting between \$491,700 and \$890,000 in compensation. However, a reduction in value has not occurred because a right to use the property was not acquired in 1989 as claimed. Rather, the right to possess and use the property was acquired in 2005, after the 2000 adoption of OAR 660-04-0040. As such, regulations restricting the use of the property were already in effect. Additionally, development rights cannot be transferred.

As stated earlier, the claimant identified several other regulations other than the minimum lot size that reduced the fair market value of their property. Again, they are moot since the property was acquired after the primary regulation of their claim was adopted.

The Board finds that the claimant has failed to establish that the challenged regulations have reduced the fair market value of the property.

g. Public Notice

Public notice of this hearing has been mailed to all property owners within 750 feet of the subject property, including the claimant. A public hearing was held on December 14, 2006. Deliberation and action on this item was taken after interested citizens had an opportunity to testify and provide written comment in accordance with the Board of Commissioners rules of procedure for the hearing.

h. Validity of Claim for Compensation: The Board finds that:

- (1) Claimant made a demand for compensation under the requirements set forth in Ballot Measure 37 by submitting a completed Measure 37 Claim Form, a \$1,500 deposit, a list of regulations which the claimant asserts reduces her property value, a narrative, a copy of the 1989 contract of sale, a copy of the November 7, 2002, Warranty Deed, a title report and the required appraisal.
- (2) The claimant failed to provide evidence to prove that she acquired the property before the adoption of regulations challenged in the claim;
- (3) The claimant has failed to establish that the challenged regulations have restricted her use of the property; and
- (4) The claimant has failed to establish that the challenged regulations have reduced the fair market value of the property.

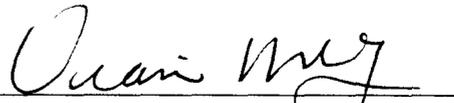
The Multnomah County Board of Commissioners Orders:

Claimant's request is denied.

ADOPTED this 14th day of December, 2006.

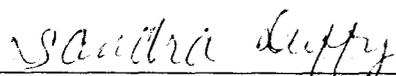


BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON


Diane M. Linn, Chair

REVIEWED:

AGNES SOWLE, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY, OREGON

By 
Sandra Duffy, Assistant County Attorney