

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

ORDER NO. 06-193

Order Denying Ballot Measure 37 Request of Tomasz Fijak Relating to Real Property Located at 22740 NW Rocky Point Road, Scappoose

The Multnomah County Board of Commissioners Finds:

- a. **Party:** Tomasz Fijak is the Ballot Measure 37 claimant who filed a demand for compensation to Multnomah County on April 6, 2006.
- b. **Subject Real Property:** This claim relates to real property located at 22740 NW Rocky Point Road, Scappoose, Multnomah County, Oregon more specifically described as:

TL 12, Sec. 34, T3N, R2W, W.M.
Tax Account # R982340120

- c. **Adequacy of Demand for Compensation:**
The materials submitted by the claimant do not constitute a complete written demand for compensation as required by Multnomah County Code 27.520.

On April 6, 2006, the claimant submitted a completed Measure 37 Claim Form, a \$1,500 deposit; copies of regulations which the claimants assert reduce their property value, a narrative, and a copy of the deed which transferred ownership of the property to the claimants. On June 29, 2006, the claimants submitted a title report prepared by First American Title Insurance Company. Also on June 29th, County staff met with Ms. Kasha Fijak, who clarified that the subject claim consisted of a request to divide the property into three lots, in addition to the right to develop the two newly created vacant lots. Given that clarification, the reduction in value claimed must be supported by an appraisal of the property. The claimant has not submitted an appraisal to date. The claim is considered to be incomplete consistent with the county's requirements outlined under MCC 27.520.

The Board finds that the materials submitted by the claimant do not 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. The zoning of the lot was Commercial Forest Use-80 (CFU-80) on November 30, 1983 when the claimant acquired the property. The zoning first changed from F-2 to CFU-38 on October 6, 1977. The zoning changed to CFU-80 on August 14, 1980. Commercial Forest Use-2 regulations challenged by the claimant first came into effect on August 8, 1998 and was amended on May 15, 2002.

The Board finds that the Claimant obtained an interest in the property on November 30, 1983 prior to the county adopting the challenged regulations set out in the claim.

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

CFU-80 regulations in effect on November 30, 1983 prohibit further division, meaning relief from challenged regulations would not allow the development that is sought. A land division in the CFU-80 zone would have required the subject property to be at least 160 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 and that development rights gained through a waiver are personal to the claimants 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 not be able to divide the property or develop a newly purchased parcel (were the claimant to divide) because they would be subject to the current Commercial Forest Use regulations which prohibit the partition and dwellings.

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 Board finds that the claimant has failed to establish that the challenged regulations have restricted their use of the property.

f. **County Code Restrictions Reduce Fair Market Value:**

Using the alternative data submitted by the claimant to substantiate the value of the claim, staff extrapolated that the claimant was requesting \$497,000 in compensation (Exhibit A.4). However, a reduction in value has not occurred because development rights cannot be transferred. Even if a partition could have been approved at the time the owners acquired the property, Measure 37 rights are personal to the claimant and are of no value to a new owner. For instance, the current Commercial Forest Use zoning regulations would be applied once a newly created parcel is sold to a new owner. These regulations would prohibit the establishment of a dwelling on the property rendering it unbuildable. Because the resulting parcels would have no development value, no reduction in value will occur as compared to the present value of the property under the current CFU zoning regulations (i.e. three, 14 acre parcels are of no more value as forest land than a 43 acre property). Further, the CFU-80 regulations in effect when the owners acquired the property did not allow for land divisions for properties less than 160 acres in size.

Bob Alcantara, Senior Appraisal Supervisor with the Multnomah County Division of Assessment and Taxation also provided his department's interpretation on the reduction of value issue for this claim (Exhibit D.2):

The parcel has a pre-existing home on the parcel. Per the zoning when acquired there are no additional home sites allowed at this time. I don't recognize any loss in value to the site.

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:

This action is before the Board under MCC 27.530(N), which authorizes the Planning Director to determine whether a claim is complete and allows the Director to recommend to the Board that the claim be denied if it is invalid on its face. Section 3.50 of the County Charter requires notice to the public of all Board agenda matters. This notice was provided. The claimant and persons who own land within 750 feet of the subject property received notice by mail.

h.

Validity of Claim for Compensation: The Board finds that:

(1) The claim materials submitted by the claimant do not constitute a complete written demand for compensation as required by Measure 37 and Multnomah County Code 27.530.

(2) The claimant has established that he has had continuous ownership of the subject property since November 30, 1983, prior to the county adopting some challenged regulations set out in their claim.

(3) The CFU-80 regulations in effect on November 30, 1983, prohibited further division of the subject property. Dividing property in itself is not a "use" of land subject to the provisions of Measure 37.

(4) Development rights gained through a waiver are personal to the claimant and cannot be transferred to a purchaser of a subdivided parcel. Since the rights are not transferable there has been no reduction in the fair market value of the property.

The Multnomah County Board of Commissioners Orders:

Based on the above findings, Claimant's request is denied.

ADOPTED this 30th day of November, 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
Sandra Duffy, Assistant County Attorney