

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

ORDER NO. 06-148

Order Denying Measure 37 Request of Kent and June Meyer Relating to Real Property Located at 19544 NW Sauvie Island Road

The Multnomah County Board of Commissioners Finds:

- a. **Parties: Kent and June Meyer** are the Ballot Measure 37 Claimants who filed a demand for compensation to Multnomah County on October 19, 2005.
- b. **Subject Real Property:** This claim relates to real property located at 19544 NW Sauvie Island Road, Multnomah County, Portland, Oregon, more specifically described as:

TL 1100, Sec 08, 2N-1W

- 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.

This claim was submitted to Multnomah County on October 19, 2005. On October 25th, the county sent the claimants a letter indicating the review would be suspended in light of the October 14th Marion County ruling MacPherson v. Department of Administrative Services finding Measure 37 unconstitutional. On February 24, 2006, a letter was sent to the claimants indicating the review would again commence because three days earlier, Oregon's Supreme Court overturned this ruling. On March 21, 2006, county staff provided a letter to the claimants outlining the outstanding information required for a complete claim pursuant to the provisions of MCC 27.500 – 27.565. This letter indicated the need for the \$1,500 processing deposit and appraisal to support the alleged reduction in value.

By May 3, 2006 the required information for a complete claim had not been submitted. A letter was mailed on that date to the claimants indicating that the county could either process the claim as an invalid claim, or put the claim on hold in order to see how the land division issue is resolved by the courts. We have not received a response to the May 3rd request and have therefore prepared this report.

The Board finds that the materials submitted by the claimant do not constitute a complete written demand for compensation as required by Measure 37 and the county's code.

- d. **Relevant Dates of Property Ownership:**
County assessment records show that the claimants are the current owners of Tax Lot 1100. A title report, dated August 1, 2005, shows that they acquired the property on April 11, 1973 and have maintained an ownership interest in the land since that date. County zoning at that time was F-2 Agricultural. The minimum lot size in this agriculture, grazing, horticulture, and timber district was 2 acres (§2.10, Ord. #100). The

zoning changed from F-2 to RL-C on December 5, 1975 (38 ac. min. lot size), to Exclusive Farm Use-38 on October 6, 1977 (76 acre min. lot size), and to Exclusive Farm Use on August 14, 1980. Current Exclusive Farm Use (EFU) zoning requires newly created properties from a land division to be at least 80-acres in size (MCC 34.2660(A)). EFU rules also generally limit the establishment of new dwellings to those that are necessary for farm purposes (§34.2600 et. seq.). The claimants challenge the EFU regulations in their claim letter. The claimants have established that they acquired an interest in the property prior to the county adopting the EFU regulations.

The Board finds that the chain of title provided by the claimants show that they acquired the property prior to the date the challenged regulations were adopted and have owned it continuously.

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

The use the claimants assert has been restricted is their ability to partition the properties so that the resulting parcels can be sold for development. They also want the ability to market the property as dividable so that someone else can do the division and are only interested in regulatory relief if they can transfer the right to partition and develop the properties. 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 purchaser. No restriction in use would occur for the purchaser because they would not be able to divide the property or develop a newly purchased parcel (were the claimants to divide) because they would be subject to the current Exclusive Farm 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 found that this claim seeking the right to partition the property was 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:**

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 claimants and are of no value to a new owner. For instance, the current Exclusive Farm 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 EFU zoning regulations (i.e. three, 2 acre parcels are of no more value as farmland than a 6 acre property).

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

g. **Validity of Claim for Compensation:** The Board finds that:

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

(2) The chain of title provided by the claimants show that they acquired the property prior to the date the challenged regulations were adopted and have owned it continuously.

(3) There has been no restriction in use because 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 purchaser.

(4) 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 claimants and are of no value to a new owner. 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 EFU zoning regulations.

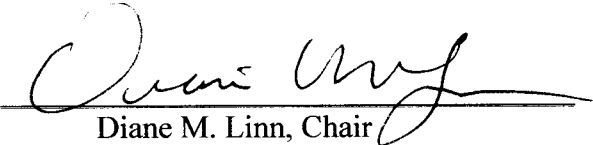
The Multnomah County Board of Commissioners Orders:

Claimant, Kent and June Meyers' request is denied.

ADOPTED this 17th day of August, 2006.

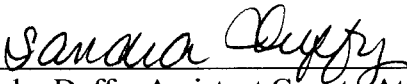


BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON


Diane M. Linn, Chair

REVIEWED:

AGNES SOWLE, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY, OREGON

By 
Sandra Duffy, Assistant County Attorney