



**LAND USE & TRANSPORTATION
PLANNING PROGRAM**

1600 SE 190TH Avenue Portland, OR 97233
PH: 503-988-3043 FAX: 503-988-3389
http://www.co.multnomah.or.us/dbcs/LUT/land_use

Summary Sheet

Subdivision vs. No Subdivision Dorothy English Measure 37 Claim

Whether or not an 8 lot subdivision is or is not allowed, depends upon how the County interprets the measure. A rationale for each choice are summarized below. The analysis that the County must follow is similar, with either approach, because in both cases the claimant is seeking the ability to develop additional homes on the property, which is not presently allowed.

Subdivision Option:

Rationale: Because Mrs. English was a chief petitioner of Ballot Measure 37, and had expressed an interest in further dividing her property as part of that campaign, it is appropriate to not apply County codes that would prevent the subdivision of the property into 8 lots, and construction of 8 homes. This is, notwithstanding that the measure is unclear that dividing land is a "use" of property that can be granted by not applying regulations, and that any rights to divide and develop the property gained by the claimant cannot be transferred to subsequent buyers. Because of the uncertainties surrounding this issue for both claimants and buyers, the Board does not view this action as a precedent for deciding future claims and would hope that the matter is clarified by the legislature.

No Subdivision Option:

Rationale: Ballot Measure 37 is directed at a landowner's ability to establish a use on an existing property, not create new properties. Accordingly, land division laws that define what is necessary to create new conveyable pieces of real property are not subject to this measure. A division of land is not a *use* of land. To accept otherwise harms the public, going beyond the voter mandate and creating circumstances where lots or parcels, created as a result of a modification or waiver of a land use regulation, cannot be built upon. New parcels or lots would be subject to land use laws in effect on the date they are formed because they would not have existed at the time the claim was filed. Further, a new owner is not entitled to a waiver or modification that might allow development because the measure provides that they are personal to the claimant. For these reasons the measure cannot be read to provide a right to divide land, meaning that land division laws are subject to a claim only to the extent that they prevent the establishment of a use on an existing property.