

BEFORE THE BOARD OF COUNTY COMMISSIONERS  
FOR MULTNOMAH COUNTY, OREGON

**ORDER NO. 06-083**

Supplemental Order to Not Apply Land Use Regulations to 13100 NW McNamee Road Under Ballot Measure 37

**The Multnomah County Board of Commissioners Finds:**

- a. **Parties:** Dorothy Pauline English, Christie Anne Verhoef and Douglas James Sellers
- b. **Subject Real Property:** This claim relates to real property commonly known as 13100 NW McNamee Road, Multnomah County, Portland, Oregon 97231, and more specifically described as:

Section 32A, T2N, R.1W, Willamette Meridian, consisting of 19.74 acres in Multnomah County, Oregon; Tax Account #R971320170 (Tax Lot 1200).

**Adequacy of Demand for Compensation:** By Order No. 05-041 the Board determined that the materials submitted by the claimants with the original claim were adequate to satisfy the requirements of Ballot Measure 37.

**Relevant Dates of Property Ownership:** The relevant dates and property ownership were discussed in Order No. 05-041. There has been no change in ownership since the date of that Order.

- c. **Supplemental Claim:** Claimant Dorothy English has made a supplemental claim by letter from counsel dated March 24, 2006, copy attached as Exhibit 1. She seeks to create three lots at the locations shown on a map attached to the letter. Ms. English claims that under Ballot Measure 37 she can create legal parcels by recording deeds describing the parcels to be created. She says this is the process by which parcels were created in 1953 when she purchased the property. She further asserts that after recording the deeds she is entitled to apply for a building permit for construction of a home on each parcel so created. She claims that she is entitled to establish compliance with health and safety regulations in conjunction with her building permit application. She says that the County has no authority under Ballot Measure 37 to consider compliance with health and safety related code provisions at the time of creation of the parcels.

By Order No. 05-041 the Board determined to not apply certain code sections to allow claimant Dorothy English to establish an eight lot subdivision. The new claim to create three specific parcels requires that the Board consider whether it should further determine to not apply additional code sections that do not concern health and safety.

The Board's Order, below, lists each code provision that the Board has determined will continue to apply and be enforced with respect to the request by Claimant Dorothy English to create three legal parcels and construct homes on each parcel. The Board finds that under Ballot Measure 37 the County is required to apply and enforce health and safety regulations related to the creation of parcels or development of property. The Board further finds that procedural regulations relating to the manner in which applications for land use approvals are submitted and reviewed are not within the purview of Measure 37 and should continue to apply to the supplemental claim of

claimant Dorothy English. The Board also finds that all code provisions not listed should not be applied to the supplemental claim of claimant Dorothy English.

- d. **County Code Restrictions Reduce Fair Market Value:** By Order No. 05-041 the Board found that land use restrictions prohibit Claimant Dorothy English from constructing additional homes or creating additional lots and that the appraisal she submitted to the County is evidence to support a finding of diminution in value. The finding applies to the supplemental claim.
- e. **Enforcement of County Code Restrictions:** By Order No. 05-041 the Board found that there is no land use application that Claimant Dorothy English can apply for that could lead to the approval of additional homes or the creation of additional lots and that regulations, on their face, have been enforced. The finding applies to the supplemental claim
- f. **Validity of Claim for Compensation:** By Order No. 05-041 the Board made certain findings concerning the validity of the claim by Dorothy English. Those findings apply to the supplemental claim. The Board reaffirms its election not to pay the compensation demanded by Claimant Dorothy English.

**The Multnomah County Board of Commissioners Orders:**

1. Claimant Dorothy English's request be granted with respect to all Multnomah County land use regulations restricting the use of her property except:
  - (a) Those regulations that the Board determined will continue to apply and be enforced by Order 05-041, and
  - (b) The following code provisions relating to health and safety and the procedure for application for land use approvals:
    - §4.000 et. seq., Access to County Roads. This section of the road rules regulates access onto County roads, to ensure that it is safe.
    - §6.000, Improvement Requirements. This section of the road rules addresses how what is required for work within the public right-of-way, which in this case is a modification to the approach road onto McNamee Road to ensure that the access is safe.
    - §9.000, Compliance Method. This section of the road rules addresses how infrastructure improvements are guaranteed (e.g. developer constructs them, they pay the County to build, non-remonstrance, etc.). These are administrative criteria that may not be relevant given the limited scale of the project.
    - §18.000 et. seq., Right-of-way Permits. Section of the road rules that includes criteria for how and where approaches onto a County Road are constructed to ensure they are safe.
    - §29.001 through 29.013, Fire Codes. These sections implement optional state building code regulations providing standards for fire flow and emergency access.

- §29.506, Permits Required. Section of the building code that regulates work within the right-of-way which will be necessary for safety improvements to be made to the approach road.
- §29.571 through 29.573, Right-of-Way and Drainage. These sections of the building code regulate how work is conducted within road rights-of-way and drainage improvements that impact rights-of-way. They are drafted to ensure that work does not compromise safety of the County roads.
- §33.2290, Access. Requires properties abut a public street or have other access that is safe for pedestrian, passenger, and emergency vehicles.
- §33.2305(A)(5) through 33.2305(D), Development Standards for Dwellings and Structures. The requirements listed in this section apply to construction of homes on forest land and designed to minimize potential hazard or damage from fire.
- §33.2310, Exception to Secondary Fire Safety Zones and Forest Practice Setbacks. Alternative to fire break requirement, relying instead on certain fire resistant building materials, sprinkler systems, alarms, etc.
- §33.7860, Content of Category 3 Tentative Plan. This section of the County code lists the types of information that must be included on a tentative plan for a partition. It is a submittal requirement for filing a partition application.
- §33.7865, Tentative Plan Approval Time Limits; Staged Development. This is a procedural requirement regarding the expiration and extension of tentative plan approvals.
- §33.7890, Land Suitability. This section prohibits approval of a land division unless there is evidence that the new parcels are suitable, or can be made suitable for the intended use considering soil, slope, or subsurface constraints.
- §33.7950 and 33.7985, Water Systems. These sections address the provision of water service to new properties, requiring evidence that a suitable domestic water supply is or can be made available to each proposed parcel.
- §33.7955 and 33.7990 Sewage Disposal. These sections require that new parcels be sized such that they have sufficient area to support a waste disposal system appropriate to the intended use.
- §33.7960 and 33.7995, Surface Drainage. These sections require surface drainage be appropriately managed.
- §33.8005, Variance. This section includes rules that would need to be met to ensure that a private street that does not conform to a standard county design is safe and convenient for pedestrian, passenger, and emergency vehicles.
- §33.8015 through 33.8035, Information Required for Final Partition Plat. These sections of the code list the types of information that need to be included on the final

partition plat and steps that need to be followed to record the document and create the parcels.

- Chapter 37, Administration and Procedures. This chapter of the code lists the procedures by which the County reviews and decides upon applications for all permits related to the use or division of land.

2. **Conditions of Approval:**

- (a) This Board Order does not constitute a waiver or modification of state law or administrative rules.
- (b) This action by the Board, to not apply certain regulations to Claimant Dorothy. English's property does not authorize immediate construction of the dwellings. Rules that still apply to the property require that land use and building permits be approved by the County before development can proceed.
- (c) Any plat must include a note that the plat is being recorded pursuant to Ballot Measure 37.

ADOPTED this 18th day of May, 2006.



BOARD OF COUNTY COMMISSIONERS  
FOR MULTNOMAH COUNTY, OREGON

Diane M. Linn, Chair

REVIEWED:

AGNES A. SOWLE, COUNTY ATTORNEY  
FOR MULTNOMAH COUNTY, OREGON

By \_\_\_\_\_

John S. Thomas, Deputy County Attorney