

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

ORDER NO. 07-034

Order Granting with Conditions, Ballot Measure 37 Request of Dorothy Pauline English to Not Apply Certain Land Use Regulations in Lieu of Payment of Compensation to Allow the Creation of Eight Legal Parcels for the Construction of Single Family Residences on Real Property Located At 13100 NW McNamee Road, Portland

The Multnomah County Board of Commissioners Finds:

- a. Dorothy Pauline English ("Claimant") filed a demand for compensation ("Claim") under Ballot Measure 37 with Multnomah County on December 2, 2004. The Claim was for payment of \$1,150,000 or waiver of regulations to allow her to create 8 separate legal parcels out of her existing property located at 13100 NW McNamee Road, Portland, Oregon 97231 ("Property") by serial partitions not to exceed two partition parcels per year for the construction of single family homes ("Proposed Development").
- b. On March 17, 2005 the Board approved Order 05-041 ("2005 Order") in response to the Claim and waived certain regulations with the intent to permit the Proposed Development.
- c. On May 18, 2006, the Board approved Order 06-083 ("2006 Order"). The 2006 Order was in response to a letter dated March 24, 2006 from Donald Joe Willis, attorney for Claimant. The letter and attached map described a partition to create two new parcels on the Property. The regulations that remained in effect after the 2006 Order concerned health and safety and the procedure by which the County determines that health and safety requirements have been met.
- d. On May 16, 2006, Claimant filed a complaint in the Multnomah County Circuit Court seeking compensation under Measure 37 based on her Claim ("Litigation"). In the Litigation, Claimant and the County agreed that certain regulations in the 2005 Order and the 2006 Order could continue to be applied to the Proposed Development as health and safety regulations under Measure 37 without payment of compensation. On December 26, 2006, judgment was entered in the Litigation in favor of Claimant in the sum of \$1,150,000 as just compensation under Measure 37.
- e. It is in the best interest of Multnomah County to not apply land use regulations to allow the Proposed Development in lieu of payment of just compensation.
- f. It is in the best interest of the County to not apply the County's procedural regulations relating to land divisions to Claimant's Proposed Development and to

allow Claimant to instead use the approval process described below to obtain approval of the Proposed Development.

The Multnomah County Board of Commissioners Orders:

1. In lieu of payment of just compensation, Multnomah County elects to not apply all land use regulations except those described in Section 3.a. below to allow Claimant to create 8 separate legal parcels out of her Property for the construction of single family homes.
2. Because Claimant did not apply for partitions in 2005 and 2006, Claimant shall be entitled to seek approval for up to 7 new parcels in one application utilizing the process set out below.
3. Upon receipt by the County Attorney of a drawing and legal descriptions from Claimant describing parcels proposed for partition together with a request to approve the proposed parcels under Measure 37 as legal parcels, the Board shall consider the request at a public hearing. Notice of the hearing shall be given to owners of property within 750 feet of Claimant's property not less than 14 days prior to the hearing. At the hearing the Board shall take testimony from Claimant and the public and shall then consider the request. All parcels approved by the Board as legal parcels shall be subject to the following conditions:
 - a. After approval of parcels as provided above but prior to issuance of a building permit on any of the approved parcels, Claimant shall, for each approved parcel, submit information and documents to the County Land Use Planning Program sufficient to comply with the requirements of the following regulations:
 1. §33.5500 to 33.5525 Hillside Development and Erosion Control
 2. §29.330 to 29.345 Grading and Erosion Control Code
 3. §§29.012 through 29.013 Building and Fire Codes
 4. §§29.571 and 29.573 Right-of-Way and Drainage
 5. §33.2273 Access. (without application of the words "and convenient")
 6. §§33.2261(excluding paragraph (B)(2)) Development Standards for Dwellings and Structures
 7. §33.2310 Exceptions to Secondary Fire Safety Codes
 8. §33.7890 Land Suitability
 9. §33.7950 and 33.7985 Water Systems
 10. §33.7955 and 33.7990 Sewage Disposal (except that no sanitary sewer line or branches to the right of way will be required)
 11. §33.7960 and 33.7995 Surface Drainage
 12. §33.8015-8035 Requirements for a plat. (In addition to these requirements the plat shall state in a note: "Subject to the

conditions in Multnomah County Order No. ____ approved pursuant to Ballot Measure 37 (ORS 197.352)")

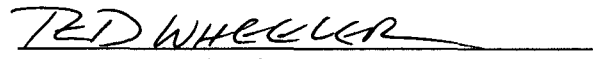
13. §29.506 Permits Required for Work in Right of Way (except no fees will be assessed)
 14. Road Rules §§4.200, 4.300, 4.400 and 4.500 (access to Claimant's parcels on both sides of McNamee Road is allowed and not prohibited by these rules)
 15. Road Rule §18.000 et seq except §18.120, §18.150, §18.170, §18.280, and §18.300 (access to Claimant's parcels on both sides of McNamee Road is allowed and not prohibited by these rules)
- b. If any of the proposed parcels cannot meet the requirements set forth in paragraph 3.a. above, Claimant may submit amended drawings and legal descriptions to the Board for review and approval.
 - c. No land use application for approval of the partition or development of parcels will be required of Claimant. No fees will be assessed to Claimant to obtain approval of the partition or development under the regulations listed in 3.a. above. In the administration of the above regulations, where a County procedure provides for notice to owners of property within 750 feet of Claimant's property, such notice will be given.
 - d. If there is a disagreement between Claimant and the County concerning whether Claimant has complied with the requirements of any of the above-referenced regulations, to expedite approval of Claimant's proposed partition, Claimant shall have the right to elect to have such disagreement resolved by binding arbitration in accordance with the following procedure: The arbitrator will be selected by agreement of Claimant and the County or, if no agreement can be reached, then by the presiding judge of the Multnomah County Circuit Court from a list of arbitrators supplied by each party. The arbitrator will determine whether each regulation at issue has been administered by the County in accordance with its terms and, if the arbitrator deems it appropriate, according to relevant recent practice of the County in similar circumstances. The County will pay for the costs of the arbitrator. Each party shall be responsible for that party's costs to prepare and present information to the arbitrator. The arbitration process shall be as determined by the arbitrator. If Claimant elects arbitration, the arbitrator's decision will be final and binding on the parties.
4. If multiple approvals are sought, all partitions under the Proposed Development shall be done following the procedure described above.
 5. The right of Claimant to transfer rights under this Order shall be as provided by law.

6. In the event that any provision of ORS 197.352 is repealed or amended such that the non-application of County land use regulations to the Property is not required by state law, the terms and conditions set forth above shall, upon the effective date of such repeal or amendment, be of no further force and effect. From and after the effective date of such repeal or amendment, all regulations which the County elected to not apply to Claimant's Claim in this Order shall be enforced.

ADOPTED this 15th day of February, 2007.

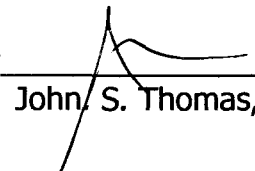


BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON


Ted Wheeler, Chair

REVIEWED:

AGNES SOWLE, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY, OREGON

By 
John S. Thomas, Deputy County Attorney

SUBMITTED BY:
Chair Ted Wheeler