

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

ORDER NO. 07-085

Order Granting Ballot Measure 37 Request of Don Joyce Relating to a Parcel of Land identified as Tax Lot 1700, Township 2 North, Range 1 West, Section 20BC (Lots 4-7, Block 25, Burlington Subdivision), W.M., Multnomah County, Oregon

The Multnomah County Board of Commissioners Finds:

a. **Party:** Don Joyce is the Ballot Measure 37 Claimant who filed a demand for compensation to Multnomah County (Land Use Planning file # T1-06-112).

b. **Subject Real Property:** This claim relates to real properties specifically described as:

Tax Lot 1700,
Township 2 North, Range 1 West,
Section 20BC (Lots 4-7, Block 25, Burlington Subdivision).
Collectively (the Subject Property)

c. **Relevant Dates of Property Ownership:**

Claimant has established that he acquired an interest in the Subject Property prior to the County's adoption of land use regulations affecting the Subject Property.

Claimant asserts that he acquired the Subject Property as follows:

(1) (Lots 4 and 5) July 12, 1954, when there was no zoning in place on these lots of the Subject Property.

(2) (Lots 6 and 7) December 8, 1978 when these lots of Subject Property were zoned MUF-20.

The claimant asserts that the current zoning of the Subject Property (CFU-1) restricts his use of the Subject Property and diminishes its value.

The Board finds that the claimant obtained interests in the Subject Property on July 12, 1954 and December 8, 1978, prior to the county's adoption of the current CFU-1 regulations which affect the Subject Property as described in section d.

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

Claimant has established that the county has adopted land use regulations since August 9, 1967 and September 16, 1975 that restrict the use of the Subject Property.

A portion of the Subject Property was unzoned (Lots 4 and 5) and the remainder zoned MUF-20 (Lots 6 and 7) when the claimant acquired the Subject Property on July 12, 1954 and December 8, 1978, respectively. There were no restrictions on development for Lots 4 and 5. The MUF-20 zone in effect for Lots 6 & 7 upon acquisition allowed a single family dwelling on a lot (§ 3.143.1(e), Ord. #148). Current CFU-1 zoning regulations aggregate all four lots into one tract and prohibit dwellings on tracts smaller than 160 contiguous acres (§ 33.2035(B)). Both the unzoned portion of the Subject Property and

the MUF-20 zone portion allowed uses that are not permitted under the CFU-1, which is a more restrictive zone.

Statewide Planning Goals were effective January 25, 1975, prior to the date the claimant acquired the property. While the County had not yet implemented these rules, the state has taken the position they are nonetheless applicable and that local jurisdictions must require claimants meet them. We anticipate the state will take a similar position with this claim, and require the County apply Statewide Planning Goal 4, for Forest Lands, directly to this property. This may impact the claimant's ability to construct a dwelling.

The Board finds that the Claimant has established that the land use regulations adopted since July 12, 1954 and December 8, 1978, have restricted use of the Subject Property.

e. County Code Restrictions Reduce Fair Market Value:

Claimant has established that the county land use regulations affecting the Subject Property adopted subsequent to July 12, 1954 and December 8, 1978, have reduced the fair market value of the Subject Property.

Claimant asserts that the County land use regulations adopted after claimant's dates of acquisition have reduced the property value. The County Division of Assessment and Taxation reviewed the property for a determination of value, comparing its value if it is buildable to its value if unbuildable. According to a County appraiser, the property was last physically looked at in 1996. The property was valued as excess land and has no access. The current Real Market Value is \$6,900.

If the property was developable, the County appraiser estimated that one home could be put on the lot. The base value according to County adjustment tables is \$99,000. The property would be adjusted upward \$25,000 for its size and downward \$40,000 for development costs for a total real market value of \$84,000.

Thus, the change from no zoning (Lots 4 and 5) and MUF-20 (Lots 6 and 7) to a more restrictive zone, CFU-1, after Claimant acquired the Subject Property on July 12, 1954 and December 8, 1978, has reduced the value of the Subject Property by restricting the construction of dwellings on forest land.

The Board finds that the Claimant has established that land use regulations adopted since July 12, 1954 and December 8, 1978, have reduced the fair market value of the Subject Property.

f. Public Notice

Section 3.50 of the County Charter requires notice to the public of all Board agenda matters. This notice was provided. Notice of the hearing on this claim was given to persons who own land within 750 feet of the Subject Property by mail.

The Multnomah County Board of Commissioners Finds that Claimant has a Valid Measure 37 Claim for Compensation.

The Multnomah County Board of Commissioners Orders that:

- 1. The County will not pay the compensation demanded by Claimant.**
- 2. In lieu of compensation, the County shall not apply land use regulations adopted since July 12, 1954 (Lots 4 and 5) and December 8, 1978 (Lots 6 and 7), except for those exempted**

under ORS 197.352(3), to allow Claimant to use the Subject Property for uses permitted under regulations in effect on those dates. This Order does not assure Claimant can use the Subject Property for the uses requested in this claim. It provides Claimant with an opportunity to meet the requirements of the county land use regulations in place at the time of Claimant's acquisition of the Subject Property.

3. Section 2 above, constitutes a waiver of Comprehensive Plan and Rural Area Plan policies that the regulations implement.
4. Claimant shall provide the County with a chain of title to support his acquisition dates and his continuous ownership of the Subject Property prior to issuance of any building permits.
5. The rights obtained by a claimant through the Board's grant of a waiver of County land use regulations shall be transferable to the extent allowed by state law.

ADOPTED this 3rd day of May, 2007.

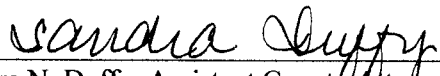


BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON


Ted Wheeler, Chair

REVIEWED:

AGNES SOWLE, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY, OREGON

By 
Sandra N. Duffy, Assistant County Attorney

SUBMITTED BY:

Agnes Sowle, County Attorney