

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

ORDER NO. 06-207

Order Denying Ballot Measure 37 Request of Elinor Wiley Relating to Real Property Located at 13801 NW Charlton Road, Multnomah County, Oregon

The Multnomah County Board of Commissioners Finds:

- a. **Party:** Elinor Wiley is a Ballot Measure 37 claimant who filed a demand for compensation to Multnomah County on July 7, 2006.
- b. **Subject Real Property:** This claim relates to real property commonly known as 13801 NW Charlton Road, Multnomah County, Oregon more specifically described as:

Tax Lot 900, Sec 16, T2N, R1W, W.M.
Tax Account # R971160060

- c. **Adequacy of Demand for Compensation:**
On July 7, 2006, the claimant submitted a completed Measure 37 Claim Form; a Real Property Consulting Appraisal Report, prepared by PGP Valuation Inc., which includes a narrative, site description, estimated property valuation, and copies of the regulations which the claimant assert reduces the property value; the claimant's Measure 37 Claim submitted to the State of Oregon; and a copy of the deed which transferred ownership of the property to the claimant. On July 10, 2006, the claimant submitted a \$1500 deposit to the County in order to process the claim.

The Board finds that the materials submitted by the claimant constitute a complete "written demand for compensation" within the meaning of the measure.

- d. **Relevant Dates of Property Ownership:**
A deed submitted by the claimant, shows that she acquired the property on September 7, 1955.

The property was encumbered by interim zoning on May 26, 1953 and August 4, 1955. Permanent zoning was put in place on July 10, 1958. The claimant's appraisal assumes zoning in effect on November 15, 1962 as pre-dating the acquisition date for purpose of their analysis. The 1962 zoning and maps are consistent with what was adopted in 1958. The zoning designation applied to the property was known as "F-2". The F-2 district was an agricultural zone, that allowed dwellings for the owner, operator, or help required to carry out grazing, agriculture, horticulture, or the growing of timber (§3.112, Ord. #100). The minimum lot size in this 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 claimant is challenging the current EFU regulations.

County assessment records identify the claimant as the current owner of the property. These documents, the title report, and other information provided by the claimant show continual ownership since 1955 and are sufficient to establish that she acquired an interest in the property prior to the county adopting the EFU regulations.

The Board finds that the Claimant obtained an interest in the property on September 7, 1955 prior to the county adopting the challenged regulations set out in the claim; and, has retained continual ownership since that date.

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

The use the claimant asserts has been restricted is her ability to partition her 103.04 acre property. The appraisal submitted by the applicant assumes the landowner will be able to convey the property for development purposes. 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 claimant and will result in no restriction in use if transferred to a third party. No restriction in use would occur for the third party because he/she would not be able to divide the property or develop a newly purchased parcel (were the claimant to divide) because he/she 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, the Board finds this claim seeking the right to partition the property to be invalid.

The Board finds that the claimant has failed to establish that the challenged regulations have restricted her use of the property.

f. County Codes have not reduced the value of the property.

The claimant's appraisal includes an "As Is" range of value for claimant's property of \$600,000 to \$800,000. The "As Previously Zoned" range is \$1,050,000 to \$1,600,000. This results in a claimed diminished value range of \$250,000 to \$1,000,000. However, 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 claimant 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. five, 20 acre parcels are of no more value as farmland than a 100 acre property).

Bob Alcantara, Senior Appraisal Supervisor with the Multnomah County Division of Assessment and Taxation also provided his department's interpretation on the reduction of value issue for this claim. He states:

I have reviewed the appraisal report prepared by Rick Walker. I found the report well written and the estimates of value well supported.

The claim asks for compensation of up to \$800,000 [sic] or relief from current land use regulations to divide the property into 5 lots and to develop at least four residential home sites within the EFU zone district. As the ability to transfer development rights is not allowable there appears to be no loss in value to the property.

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

g. Public Notice

Public notice of this hearing has been mailed to all property owners within 750 feet of the subject property, including the claimant. A public hearing was held on December 7, 2006. Deliberation and action on this item was taken after interested citizens had an opportunity to testify and provide written comment in accordance with the Board of Commissioners rules of procedure for the hearing.

h. Validity of Claim for Compensation: The Board finds that:

- (1) Claimant made a demand for compensation under the requirements set forth in Ballot Measure 37 by describing the use being sought, by identifying the regulations that prohibit the use, and by submitting evidence that land use regulations have reduced the value of the property;
- (2) Claimant provided evidence to prove that she acquired the property on September 7, 1955, before the adoption of regulations challenged in the claim;
- (3) The claimant has failed to establish that the challenged regulations have restricted her use of the property;
- (4) The claimant has failed to establish that the challenged regulations have reduced the fair market value of the property; and
- (5) This Measure 37 claim decision is based primarily upon the non-transferability of Measure 37 rights. If Measure 37 rights were transferable, this would have been a valid claim.

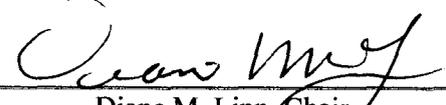
The Multnomah County Board of Commissioners Orders:

Claimant's request is denied.

ADOPTED this 14th day of December, 2006.

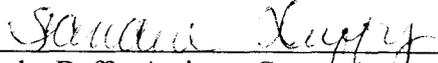


BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON


Diane M. Linn, Chair

REVIEWED:

AGNES SOWLE, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY, OREGON

By 
Sandra Duffy, Assistant County Attorney