



OREGON DEPARTMENT OF LAND CONSERVATION AND
DEVELOPMENT

ORS 195.300 to ORS 195.336 (MEASURE 49) SUPPLEMENTAL REVIEW
OF MEASURE 37 CLAIM
Final Order of Denial

STATE ELECTION NUMBER:

E119597I¹

CLAIMANTS:

Laverne W. Ratzlaff²
15391 Airlie Road
Monmouth, OR 97361

MEASURE 37 PROPERTY
IDENTIFICATION:

Township 8S, Range 5W, Section 33
Tax lots 610³
Polk County

The claimant, Laverne Ratzlaff, filed a claim with the state under ORS 197.352 (2005) (Measure 37) on February 4, 2005, for property located on Fishback Road, near Monmouth, in Polk County. ORS 195.300 to ORS 195.336 (Measure 49) entitles claimants who filed Measure 37 claims to elect supplemental review of their claims. The claimant has elected supplemental review of his Measure 37 claim under Section 6 of Measure 49, which allows the Department of Land Conservation and Development (the department) to authorize up to three home site approvals to qualified claimants.

This Final Order of Denial is the conclusion of the supplemental review of this claim.

¹ Claim E119597 has been divided into ten claims because the claim includes multiple tax lots or parcels that are not in the same ownership and/or are not contiguous. E119597A refers to tax lot 101 (T9S R5W S5) and claimants Laverne W. and Mary Jean Ratzlaff. E119597B refers to tax lots 102 and 108 (T9S R5W S5) and claimant Mary Ratzlaff. E119597C refers to tax lot 104 (T9S R5W S5) and claimants Laverne and Mary Ratzlaff. E119597D refers to tax lot 105 (T9S R5W S5) and claimant Laverne Ratzlaff. E119597E refers to tax lot 106 (T9S R5W S5) and claimants Laverne and Mary Ratzlaff. E119597F refers to tax lot 107 (T9S R5W S5) and claimant Laverne Ratzlaff. E119597G refers to tax lots 203, 600, 621 and 622 (T8S R5W S33) and claimants Laverne and Mary Ratzlaff. E119597H refers to tax lots 604, 612, 614 and 616 (T8S R5W S33) and claimant Laverne Ratzlaff. E119597I refers to tax lot 610 (T8S R5W S33) and claimant Laverne Ratzlaff. E119597J refers to tax lot 608 (T8S R5W S33) and claimant Mary Ratzlaff.

² The claimant has also submitted claims for properties not contiguous to the subject property, which are identified as E133893 and E133868.

³ The Measure 37 claim property consisted of tax lots 101, 102, 104, 105, 106, 107, 108 (T9S R5W S5), 203, 600, 604, 608, 610, 612, 616, 621 and 622 (T8S R5W S33). The claimant did not elect supplemental review for tax lot 104; however, a claim cannot be amended to remove claim property. The claimant also included tax lots 103 and 110 (T9S R5W S5), and tax lots 602, 603 and 605 (T8S R5W S33), in their Measure 49 claim but those lots were not part of the State Measure 37 claim and a claim cannot be amended to add claim property.

I. ANALYSIS OF CLAIM

A. Maximum Number of Home Sites for Which the Claimant May Qualify

Under Section 6 of Measure 49, the number of home site approvals authorized by the department cannot exceed the lesser of the following: three; the number stated by the claimant in the election materials; or the number described in a Measure 37 waiver issued by the state, or if no waiver was issued, the number of home sites described in the Measure 37 claim filed with the state. The claimant requested more than three home site approvals in the election material. The Measure 37 waiver issued for this claim, which includes this portion of the claim property, describes more than three home sites. Therefore, the claimant may qualify for a maximum of three home site approvals under Section 6 of Measure 49.

B. Qualification Requirements

To qualify for a home site approval under Section 6 of Measure 49, the claimant must meet each of the following requirements:

1. Timeliness of Claim

A claimant must have filed a Measure 37 claim for the property with either the state or the county in which the property is located on or before June 28, 2007, and must have filed a Measure 37 claim with both the state and the county before Measure 49 became effective on December 6, 2007. If the state Measure 37 claim was filed after December 4, 2006, the claim must also have been filed in compliance with the provisions of OAR 660-041-0020 then in effect.

Findings of Fact and Conclusions

The claimant, Laverne Ratzlaff, filed a Measure 37 claim, M119597, with the state on February 4, 2005. The claimant filed a Measure 37 claim, M05-10, with Polk County on February 2, 2005. The state claim was filed prior to December 4, 2006.

The claimant timely filed a Measure 37 claim with both the state and Polk County.

2. The Claimant Is an Owner of the Property

Measure 49 defines "Owner" as: "(a) The owner of fee title to the property as shown in the deed records of the county where the property is located; (b) The purchaser under a land sale contract, if there is a recorded land sale contract in force for the property; or (c) If the property is owned by the trustee of a revocable trust, the settlor of a revocable trust, except that when the trust becomes irrevocable only the trustee is the owner."

Findings of Fact and Conclusions:

According to the deeds submitted by the claimants, Laverne Ratzlaff is the owner of fee title to the property as shown in the Polk County deed records and, therefore, is an owner of the property under Measure 49.

Polk County has confirmed that the claimant is the current owner of the property.

3. All Owners of the Property Have Consented in Writing to the Claim

All owners of the property must consent to the claim in writing.

Findings of Fact and Conclusions:

All owners of the property have consented to the claim in writing.

4. The Property Is Located Entirely Outside Any Urban Growth Boundary and Entirely Outside the Boundaries of Any City

The Measure 37 claim property must be located entirely outside any urban growth boundary and entirely outside the boundaries of any city.

Findings of Fact and Conclusions:

The Measure 37 claim property is located in Polk County, outside the urban growth boundary and outside the city limits of the nearest city, Monmouth.

5. One or More Land Use Regulations Prohibit Establishing the Lot, Parcel or Dwelling

One or more land use regulations must prohibit establishing the requested lot, parcel or dwelling.

Findings of Fact and Conclusions:

The property is currently zoned Farm/Forest (FF) by Polk County, in accordance with Goals 3 and 4, as implemented by OAR 660-006-0050. State land use regulations, including applicable provisions of ORS chapter 215 and OAR 660, divisions 6 and 33, generally prohibit the establishment of a lot or parcel less than 80 acres in size in a mixed farm/forest zone and regulate the establishment of dwellings on new or existing lots or parcels. Under ORS 215.780(2)(a), counties may adopt minimum lot sizes smaller than 80 acres, subject to approval by the Land Conservation and Development Commission (the Commission). The Commission has approved Polk County's FF zone, which requires a minimum lot size of 40 acres.

The claimant's property consists of 20.07 acres. Therefore, state land use regulations prohibit the claimant from establishing on the Measure 37 claim property the three home sites the claimant may qualify for under Section 6 of Measure 49.

6. The Establishment of the Lot, Parcel or Dwelling Is Not Prohibited by a Land Use Regulation Described in ORS 195.305(3)

ORS 195.305(3) exempts from claims under Measure 49 land use regulations:

- (a) Restricting or prohibiting activities commonly and historically recognized as public nuisances under common law;
- (b) Restricting or prohibiting activities for the protection of public health and safety;
- (c) To the extent the land use regulation is required to comply with federal law; or
- (d) Restricting or prohibiting the use of a property for the purpose of selling pornography or performing nude dancing.

Findings of Fact and Conclusions

Based on the documentation submitted by the claimant, it does not appear that the establishment of the three home sites for which the claimant may qualify on the property is prohibited by land use regulations described in ORS 195.305(3).

7. On the Claimant's Acquisition Date, the Claimant Lawfully Was Permitted to Establish at Least the Number of Lots, Parcels or Dwellings on the Property That Are Authorized Under Section 6 of Measure 49

A claimant's acquisition date is "the date the claimant became the owner of the property as shown in the deed records of the county in which the property is located. If there is more than one claimant for the same property under the same claim and the claimants have different acquisition dates, the acquisition date is the earliest of those dates."

Findings of Fact and Conclusions

Polk County deed records indicate that the claimant Laverne Ratzlaff acquired the property on December 31, 1992.

On December 31, 1992, the Measure 37 claim property was subject to Polk County's acknowledged Farm/Forest (FF) zone. As it does today, in 1992 Polk County's FF zone required 40 acres for the creation of a new lot or parcel on which a dwelling could be established. The claimant's property consists of 20.07 acres. Therefore, the claimant lawfully could not have established any home sites on his date of acquisition.

II. COMMENTS ON THE PRELIMINARY EVALUATION

The department issued its Preliminary Evaluation for this claim on March 16, 2010. Pursuant to OAR 660-041-0090, the department provided written notice to the owners of surrounding properties. Comments received have been taken into account by the department in the issuance of this Final Order of Denial. The claimant requested and the department approved an extension of the comment period to May 10, 2010. No additional comments were received in response to

the extension of time of the comment period. In his request for an extension, the claimant submitted comments objecting to the department's exclusion of certain tax lots from the claimant's Measure 49 claim. Upon further review, it appears that tax lots 113 and 630 were originally part of the Measure 37 claim property but have since been partitioned into new tax lots. Therefore, the department agrees that the claimant included tax lots 113 and 630 in their Measure 37 claim filed with the state. However tax lots 103, 110, 602, 603 and 605 were not part of the Measure 37 claim filed with the state and a claim cannot be amended to add claim property. Therefore, the department will not analyze the claimant's eligibility for relief on those five tax lots.

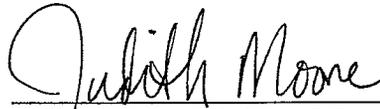
The claimant also commented that he believes a property transfer between husband and wife does not constitute a change in ownership. The department disagrees with this assertion. Section 2(16)(a) of Measure 49 (2007) defines owner as "the owner of fee title to the property as shown in the deed records of the county where the property is located." Similarly, Section 21(1) of Measure 49 defines acquisition date as "the date the claimant became the owner of the property as shown in the deed records of the county in which the property is located." Therefore, if the deed records reflect a change in ownership, whether between husband and wife or a third party, the department must rely on those records to determine the ownership of the property.

III. CONCLUSION

Based on the analysis above, the claimant does not qualify for Measure 49 home site approvals because the claimant was not lawfully permitted to establish the lots, parcels or dwellings on the claimants' date of acquisition.

IT IS HEREBY ORDERED that this Final Order of Denial is entered by the Director of the Department of Land Conservation and Development as a final order of the department and the Land Conservation and Development Commission under ORS 197.300 to ORS 195.336 and OAR 660-041-0000 to 660-041-0160.

FOR THE DEPARTMENT AND THE LAND
CONSERVATION AND DEVELOPMENT
COMMISSION:



Judith Moore, Division Manager
Dept. of Land Conservation and Development
Dated this 7th day of June 2010

NOTICE OF RIGHT TO APPEAL OR OTHER JUDICIAL RELIEF

You are entitled, or may be entitled, to judicial remedies including the following:

1. Judicial review is available to anyone who is an owner of the property as defined in Measure 49 that is the subject of this final determination, or a person who timely submitted written evidence or comments to the department concerning this final determination.
2. Judicial review under ORS 183.484 may be obtained by filing a petition for review within 60 days from the service of this order. A petition for judicial review under ORS 183.484 must be filed in the Circuit Court in the county in which the affected property is located. Upon motion of any party to the proceedings, the proceedings may be transferred to any other county with jurisdiction under ORS 183.484 in the manner provided by law for change of venue.
3. Judicial review of this final determination is limited to the evidence in the record of the department at the time of its final determination. Copies of the documents that comprise the record are available for review at the department's office at 635 Capitol St. NE, Suite 150, Salem, OR 97301-2540. Judicial review is only available for issues that were raised before the department with sufficient specificity to afford the department an opportunity to respond.