



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: E124488¹

CLAIMANT: Jessica Campbell²
PO Box 867
Carlton, OR 97111

MEASURE 37 PROPERTY IDENTIFICATION: Township 4S, Range 2E, Section 21
Tax lot 902
Clackamas County

AGENT CONTACT INFORMATION: Lawrence R. Derr
Josselson & Potter
9400 SW Beaverton Hillsdale Highway
Suite 131-A
Beaverton, OR 97005

The claimant, Jessica Campbell, filed a claim with the state under ORS 197.352 (2005) (Measure 37) on March 20, 2006, for property located at 14740 S Cinnamon Hill Lane, near Mulino, in Clackamas 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 her 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.

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

¹ The claimant also has claim E124532 for property that is not contiguous to tax lot 902.

² Edwin Campbell was also a Measure 37 claimant; however, he passed away since the filing of the Measure 37 claim.

was issued, the number of home sites described in the Measure 37 claim filed with the state. The claimant has requested three home site approvals in the election material. The Measure 37 waiver issued for this claim 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, Jessica Campbell, filed a Measure 37 claim, M124488, with the state on March 20, 2006. The claimant filed a Measure 37 claim, ZC024-06, with Clackamas County on March 27, 2006. The state claim was filed prior to December 4, 2006.

The claimant timely filed a Measure 37 claim with both the state and Clackamas 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 information submitted by the claimant and information obtained by the department, Jessica Campbell has not established her ownership of the property for the purposes of Measure 49. The claimant submitted a recorded contract and deed that indicates the claimant acquired the Measure 37 claim property on April 7, 1970. However, according to evidence in the record, including a General Judgment of the Clackamas County Circuit Court dated May 23, 2008, the Complaint and Answer filed in the above referenced action, and a partnership agreement concerning the property, title to, and ownership of, the property has been in Arrowhead Estate, an Oregon General Partnership, continuously since February 10, 1970. According to the information in the record, the claimant and her deceased husband were merely

nominees of the partnership. The property is, therefore, owned by the Arrowhead Estates General Partnership and not the claimant.

II. COMMENTS ON THE PRELIMINARY EVALUATION

The department issued its Preliminary Evaluation for this claim on October 28, 2009. 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's agent Lawrence Derr submitted comments that also referenced supplemental information submitted to the department on October 12, 2009. The comments and supplemental information allege that the claimant is and has been the owner of the subject property since 1970 and that the findings of fact and conclusions of law set forth in the General Judgment of the Clackamas County Circuit Court dated May 23, 2008 were in error. The supplemental information included a "Stipulated Corrected General Judgment" dated October 8, 2009, suggesting that Contrary to the May 23, 2008 General Judgment, the claimant, and not Arrowhead Estates, has been the owner of the subject property since February 10, 1970.

ORS 67, the Revised Uniform Partnership Act, provides guidance on how to determine if property is partnership property, as opposed to property of the individual partners. Specifically, ORS 67.065 identifies several rebuttable presumptions as to when property is partnership property or the separate property of the partners. Two are relevant here. ORS 67.065(3) provides:

"[i]t is a rebuttable presumption that property is partnership property if purchased with partnership assets, even if not acquired in the name of the partnership or of one or more partners with an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership."

ORS 67.065(4) provides:

"[i]t is a rebuttable presumption that property acquired in the name of one or more of the partners, without an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership and without use of partnership assets, is separate property, even if used for partnership purposes".

Even considering the Stipulated Corrected General Judgment, there is sufficient evidence to support the presumption that the property is partnership property and to rebut the presumption that the property was separate property. This evidence includes: the original General Judgment (resolving a disputed claim), the Complaint dated May 9, 2007 (wherein the plaintiffs allege the property is partnership property), claimant's Answer dated June 7, 2007 (wherein defendant/claimant admits the property is partnership property), and the Partnership Agreement between claimant and the plaintiffs. This evidence is sufficient to conclude that the subject property was and is owned by the partnership and not the individual partners. The department's analysis does not conflict with the requirement in Measure 49 that ownership be determined

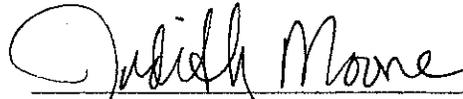
from the deed records, as the comments suggest, because the presumptions in ORS 67 are tools used to interpret the deed records for a specific class of property.

III. CONCLUSION

Based on the preliminary analysis, the claimant, Jessica Campbell, does not qualify for Measure 49 home site approvals because the claimant has not established her ownership of the property for the purposes of Measure 49.

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 1st day of April 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.