



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:

E133893

CLAIMANTS:

Laverne and Mary Jean Ratzlaff¹
15391 Airlie Road
Monmouth, OR 97361

MEASURE 37 PROPERTY
IDENTIFICATION:

Township 9S, Range 5W
Section 7, Tax lots 401 and 509
Section 18, Tax lots 102, 103 and 104²
Polk County

The claimants, Laverne and Mary Ratzlaff, filed a claim with the state under ORS 197.352 (2005) (Measure 37) on December 4, 2006, for property located at 15391 Airlie 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 claimants have elected supplemental review of their 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 Claimants 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

¹ A-1 Products, Inc. is listed as a claimant on the election form, but it was not a claimant under Measure 37 and, therefore, is not eligible for relief under Measure 49.

² The Measure 37 claim property consisted of tax lots 102, 103, 104, 401 and 509. The claimants included tax lot 603 (T9S R5W S7) for supplemental review with this claim; however, tax lot 603 was not part of the claimants' Measure 37 claim and a claim cannot be amended to include additional claim property. In addition, the claimants did not elect supplemental review on tax lot 104. While a claim cannot be amended to remove claim property, analysis of a claimants' eligibility for relief on a portion of claim property may, in some cases, be immaterial. In this case whether the claimants are eligible for relief on tax lot 104 is not relevant to the analysis of whether the claimants are eligible for relief on the remainder of the Measure 37 claim property. Therefore, because tax lot 104 is not relevant to the analysis, this final order addresses only the claimants' eligibility for relief for tax lots 102, 103, 401 and 509.

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 claimants have requested more than three home site approvals in the election material. No waiver was issued for this claim. The Measure 37 claim filed with the state describes more than three home sites. Therefore, the claimants 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 claimants 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 claimants, Laverne and Mary Ratzlaff, filed a Measure 37 claim, M133893, with the state on December 4, 2006. The claimants filed Measure 37 claims, M06-257 and M06-258, with Polk County before May 30, 2007. The state claim was filed on December 4, 2006.

The claimants 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 and trust documents submitted by the claimants, Laverne and Mary Ratzlaff are the owners of fee title to tax lots 102, 401 and 509 of the property as shown in the Polk County deed records and, therefore, are owners of the property under Measure 49.

Polk County has confirmed that the claimants are the current owners of the property.

According to the information submitted by the claimants, Laverne and Mary Ratzlaff have not established ownership of tax lot 103 of the property for the purposes of Measure 49. Claimants Laverne and Mary Ratzlaff acquired tax lot 103 on November 11, 1976, as reflected by a recorded deed included with the claim. However, Laverne and Mary Ratzlaff conveyed fee title to Howard Schwanke on November 7, 2003, retaining for themselves a life estate. Under Measure 49, a life estate holder is not an owner of property; thus, Laverne and Mary Ratzlaff no longer own tax lot 103 of the Measure 37 claim property.

Because this requirement has not been met for tax lot 103, the remaining approval criteria will not be evaluated for that portion of the claim 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 tax lots 102, 401 and 509 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:

Tax lots 102, 401 and 509 of the property are currently zoned Exclusive Farm Use (EFU) by Polk County, in accordance with ORS chapter 215 and OAR 660, division 33, because the property is "agricultural land" as defined by Goal 3. Goal 3 requires agricultural land to be zoned exclusive farm use. Applicable provisions of ORS chapter 215 and OAR 660, division 33, enacted or adopted pursuant to Goal 3, generally prohibit the establishment of a lot or parcel less than 80 acres in size in an EFU zone and regulate the establishment of dwellings on new or existing lots or parcels.

Tax lots 102, 401 and 509 of the claimants' property consist of 50.06 acres. Therefore, state land use regulations prohibit the claimants from establishing on the Measure 37 claim property the three home sites the claimants 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 claimants, it does not appear that the establishment of the three home sites for which the claimants 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 claimants acquired tax lots 102, 401 and 509 of the property on October 10, 1997.³

On October 10, 1997, tax lots 102, 401 and 509 of the Measure 37 claim property were subject to Polk County's acknowledged Exclusive Farm Use (EFU) zone. Polk County's EFU zone required 80 acres for the creation of a new lot or parcel on which a dwelling could be

³ The deed records indicate claimants reacquired tax lots 102, 401 and 509 on October 10, 1997, after conveying the tax lots to another entity. Claimants Laverne and Mary Jean Ratzlaff reacquired tax lots 102 and 509 from A-1 Products Inc. and reacquired tax lot 401 from Laverne Ratzlaff's irrevocable trust. Regarding reacquisition of claim property, Measure 49 section 21(3) provides: "If a claimant conveyed the property to another person and reacquired the property, whether by foreclosure or otherwise, the claimant's acquisition date is the date the claimant reacquired ownership of the property."

established. The claimants' property consists of 50.06 acres and is developed with a dwelling. Therefore, the claimants lawfully could not have established any home sites on their date of acquisition.

II. COMMENTS ON THE PRELIMINARY EVALUATION

The department issued its Preliminary Evaluation for this claim on January 8, 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. Specifically, the department received comments from claimants asserting that Laverne Ratzlaff has remained the owner of tax lot 401 since March 3, 1972. However, the deed records indicate that claimants transferred tax lot 401 to Laverne Ratzlaff's irrevocable trust on September 3, 1985. Conveyance of property into an irrevocable trust is a break in ownership for purposes of Measure 49. Because claimants reacquired tax lot 401 from the irrevocable trust on October 9, 1977, this is the claimants' relevant date of acquisition under Measure 49.

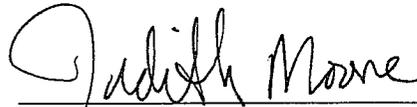
III. CONCLUSION

Based on the analysis above, the claimants do not qualify for Measure 49 home site approvals on tax lot 103 because the claimants no longer own the Measure 37 claim property.

Based on the analysis above, the claimants do not qualify for Measure 49 home site approvals on tax lots 102, 401 and 509 because the claimants were 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 14th 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.