



**OREGON DEPARTMENT OF LAND CONSERVATION AND
DEVELOPMENT**

**ORS 195.300 to ORS 195.336 (MEASURE 49) SUPPLEMENTAL REVIEW
OF MEASURE 37 CLAIM
Preliminary Evaluation**

December 3, 2009

STATE ELECTION NUMBER: E131634

CLAIMANT: James E. Knight, Sr.
32625 Denny School Road
Lebanon, OR 97355

**MEASURE 37 PROPERTY
IDENTIFICATION:** Township 12S, Range 2W, Section 8D
Tax lot 1200
Linn County

I. ELECTION

The claimant, James Knight, Sr., filed a claim with the state under ORS 197.352 (2005) (Measure 37) on November 29, 2006, for property located on Denny School Road, near Lebanon, in Linn 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.

II. SUMMARY OF PRELIMINARY EVALUATION

Based on the department's preliminary analysis, it appears that the claimant is not eligible for any relief under Measure 49 because he has not established that he is an owner of the property and the zoning and lawfully permitted uses of the claimant's property have not changed since he acquired it.

**III. THE MAXIMUM NUMBER OF HOME SITE APPROVALS 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 material; 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 has requested three home site approvals in the election material. No waiver was issued

for this claim. The Measure 37 claim filed with the state describes one home site. Therefore, the claimant may qualify for a maximum of one home site approval under Section 6 of Measure 49.

IV. PRELIMINARY ANALYSIS OF QUALIFICATION FOR HOME SITE APPROVAL

1. Preliminary Analysis

To qualify for a home site approval under Section 6 of Measure 49, 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.

The claimant, James Knight, Sr., filed a Measure 37 claim, M131634, with the state on November 29, 2006. The claimant filed a Measure 37 claim, M37-208-06, with Linn County on November 28, 2006. The state claim was filed prior to December 4, 2006.

It appears that the claimant timely filed a Measure 37 claim with both the state and Linn County.

In addition to filing a claim with both the state and the county in which the property is located, to qualify for a home site approval under Section 6 of Measure 49 the claimant must establish each of the following:

(a) 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."

According to the information provided in the claim and from the Linn County deed records, the claimant has never been an owner of the property. The record of ownership for the subject property is as follows:

On January 16, 1991, a land sale contract was executed between the Pruitts (seller) and James E. Knight, Jr. (buyer) and recorded in Linn County on April 5, 1991. On October 7, 1993, a warranty deed conveyed the property from the Pruitts (grantors) to James E. Knight, Jr. (grantee). Finally, on November 3, 2006, the 1993 warranty deed was recorded again with a hand written change to the grantee's name from James E. Knight, Jr. to James E. Knight, Sr. The claim does not include any information or documentation of how an ownership interest in the property may have been conveyed from James Knight, Jr. to the claimant, James E. Knight, Sr. Without further documentation, James E. Knight, Sr. cannot be the current owner based solely on the twice-recorded 1993 deed.

The Department concludes that the claimant has failed to establish that he is an owner of the property. However, this evaluation analyzes the claim for compliance with the balance of the Section 6 criteria because the claimant may be able to provide additional evidence sufficient to establish that he is a current owner of the property.

(b) All Owners of the Property Have Consented in Writing to the Claim

Linn County deed records indicate that there is a non-claimant owner who has not consented to the claim: James E. Knight, Jr. Without the consent of all non-claimant owners, the department is not authorized to provide any relief under Measure 49. Such consent must be provided in writing within the time periods set for comment on this claim, set forth in OAR 660-041-0090. If the claimant can submit evidence that he is the sole owner of the property this consent is not needed.

(c) The Measure 37 Claim Property Is Located Entirely Outside Any Urban Growth Boundary and Entirely Outside the Boundaries of Any City

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

(d) One or More Land Use Regulations Prohibit Establishing the Dwelling

As stated in Section III above, the claimant may qualify for up to one home site approval.

The property is currently zoned Exclusive Farm Use (EFU) by Linn 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 (EFU). Applicable provisions of ORS chapter 215 and OAR 660, division 33, enacted or adopted pursuant to Goal 3, provide standards for the establishment of a dwelling in an EFU zone. In general and subject to some exceptions, those standards require that the property be a minimum of 80 acres in size in an EFU zone and generate a minimum annual income from the sale of farm products.

The combined effect of the standards for the establishment of a dwelling in an EFU zone is to prohibit the claimant from establishing a dwelling on the Measure 37 claim property.

(e) The Establishment of the 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.

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

(f) On the Claimant's Acquisition Date, the Claimant Lawfully Was Permitted to Establish at Least the Number of 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."

Linn County deed records indicate that the claimant acquired the property on November 3, 2006.

On November 3, 2006, the Measure 37 claim property was subject to Linn County's acknowledged Exclusive Farm Use (EFU) zone. Linn County's EFU zone required 80 acres for the establishment of a dwelling on a vacant lot or parcel and to generate a minimum annual income from the sale of farm products. The Measure 37 claim property consists of 4.13 acres. Therefore, the claimant lawfully could not have established a home site on the Measure 37 claim property on his date of acquisition.

2. Preliminary Conclusion

Based on the preliminary analysis, the claimant, James Knight, Sr., does not qualify for Measure 49 home site approvals because he has not established that he is an owner of the property for purposes of Measure 49 and the zoning and lawfully permitted uses of the claimant's property have not changed since he acquired it.

V. NOTICE OF OPPORTUNITY TO COMMENT

A claimant or a claimant's authorized agent, a county and any third party may submit written comments, evidence and information in response to the preliminary evaluation. The comments, evidence and information must be filed with the department no more than twenty-eight (28) calendar days after the date this evaluation is mailed to the claimant and the claimant's agent and notice of this evaluation is mailed to third parties.

The department will mail a copy of all materials timely filed by a county or a third party with the department to the claimant and the claimant's agent. A claimant or a claimant's authorized agent may then file written comments, evidence or information in response to the materials filed by the third party or county. That response must be filed no more than twenty-one (21) calendar days after the date the department mails the materials to the claimant and the claimant's authorized agent.

All comments, evidence and information in response to the preliminary evaluation and all responses to materials filed by a third party or a county shall be delivered to Supplemental Measure 49 Claim Review, 635 Capitol Street NE, Suite 150, Salem, Oregon 97301-2540 and will be deemed timely filed either (1) if actually delivered to the department before the close of business on the final eligible calendar day, or (2) if mailed on or before the final eligible calendar day.

Note: Please reference the claim number and claimant name and clearly mark your comments as "Preliminary Evaluation Comments." Comments must be submitted in original written form only. Comments submitted electronically or by facsimile will not be accepted.