



**OREGON DEPARTMENT OF LAND CONSERVATION AND
DEVELOPMENT**

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

November 9, 2009

STATE ELECTION NUMBER: E132423B^{1,2}

CLAIMANTS:

Charles B. and Marilyn M. Roe
2400 Wedgewood Drive SE
Olympia, WA 98501

Harding T. and M. Cristina Roe
13201 Point Richmond Beach Road
Gig Harbor, WA 98322

**MEASURE 37 PROPERTY
IDENTIFICATION:** Township 2S, Range 3W, Section 20
Tax lot 500
Yamhill County

AGENT CONTACT INFORMATION: Walter R. Gowell
Haugeberg, Rueter, et al, PC
PO Box 480
McMinnville, Oregon 97128

I. ELECTION

The claimants, Charles Roe, Jr., Marilyn Roe, Harding Roe, and Cristina Roe, filed a claim with the state under ORS 197.352 (2005) (Measure 37) on December 1, 2006, for property located near Newberg, in Yamhill 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.

¹ Claim E132423 has been divided into two claims because the claim includes multiple tax lots or parcels that are not in the same ownership. E132423B refers to tax lot 500 and claimants Charles Roe, Jr. and Harding Roe. E132423A refers to tax lots 401 and 402 and claimants Charles Roe, Jr., Marilyn Roe, Harding Roe, and Cristina Roe.

² Claimants Charles Roe, Jr. and Harding Roe also have a claim, E132424, for property that is not contiguous to tax lot 500.

II. SUMMARY OF PRELIMINARY EVALUATION

Based on the department's preliminary analysis, it appears that claimants Charles Roe, Jr. and Harding Roe are not eligible for any relief under Measure 49 because they would not have been lawfully permitted to establish a home site when they acquired the property.

Based on the department's preliminary analysis, it appears that claimants Marilyn Roe and Cristina Roe are not eligible for any relief under Measure 49 because they have not established their ownership of the Measure 37 claim property.

III. THE MAXIMUM NUMBER OF HOME SITE APPROVALS 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 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 claimants have 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 consisting of a dwelling on tax lot 500. Therefore, the claimants 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 claimants, Charles Roe, Jr., Marilyn Roe, Harding Roe, and Cristina Roe, filed a Measure 37 claim, M132423, with the state on December 1, 2006. The claimants filed a Measure 37 claim, M37-135-06, with Yamhill County on November 28, 2006. The state claim was filed prior to December 4, 2006.

It appears that the claimants timely filed a Measure 37 claim with both the state and Yamhill 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 claimants 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 deeds submitted by the claimants, Charles Roe, Jr. and Harding Roe are the owners of fee title to the property as shown in the Yamhill County deed records and, therefore, are owners of the property under Measure 49.

According to the information submitted by the claimants, Marilyn Roe and Cristina Roe have not established their ownership of the property for the purposes of Measure 49 because they are not owners of the property as shown in the Yamhill County deed records.

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

It appears that claimants Charles Roe, Jr. and Harding Roe are the sole owners of the property. Therefore, no additional consent is required.

(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 Yamhill County, outside the urban growth boundary and outside the city limits of the nearest city, Newberg.

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

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

The property is currently zoned Agriculture/Forestry (AF-80) by Yamhill 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, provide standards for the establishment of a dwelling in a mixed farm/forest zone. In general and subject to some exceptions, those standards require that the property be a minimum of 80 acres and generate a minimum annual income from the sale of farm or forest products.

The combined effect of the standards for the establishment of a dwelling in a mixed farm/forest zone is to prohibit the claimants 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 claimants, it does not appear that the establishment of the three home sites for which the claimants 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."

Yamhill County deed records indicate that claimants Charles Roe, Jr. and Harding Roe, acquired tax lot 500 (10.00 acres) on June 19, 1976.

Claimants Charles B. Roe, Jr. and Harding Roe acquired the Measure 37 claim property after adoption of the statewide planning goals, but before the Commission acknowledged Yamhill County's comprehensive plan and land use regulations to be in compliance with those goals pursuant to ORS 197.250 and 197.251. At that time, the Measure 37 claim property was zoned Agriculture/Forestry (AF-20) by Yamhill County. However, the Commission had not acknowledged that zone for compliance with the goals when the claimants acquired the property on June 19, 1976. Accordingly, the statewide planning goals, and in particular Goals 3, 4, and ORS chapter 215 applied directly to the Measure 37 claim property when the claimants acquired it.

On June 12, 1980, the Commission acknowledged the application of Yamhill County's Agriculture/Forestry (AF-20) zone to the Measure 37 claim property. The Commission's acknowledgement of Yamhill County's AF-20 zone confirmed that zone's compliance with Goals 3, 4 and ORS chapter 215. Yamhill County's acknowledged AF-20 zone required 20 acres for the establishment of a dwelling on a vacant lot or parcel. The Measure 37 claim property consists of 10 acres. Therefore, on the claimant's acquisition date, they could not have established a home site on the Measure 37 claim property in the zone that was ultimately acknowledged to comply with the statewide planning goals and implementing regulations. It appears that the claimants do not qualify for a home site on the Measure 37 claim property unless the claimants can show that a direct application of the goals and ORS chapter 215 would have allowed the claimants to establish a home site on the Measure 37 claim property.

2. Preliminary Conclusion

Based on the preliminary analysis, the claimants, Charles Roe, Jr. and Harding Roe, do not qualify for Measure 49 home site approvals because they were not lawfully permitted to establish a dwelling on their date of acquisition.

Based on the preliminary analysis, the claimants, Marilyn Roe and Cristina Roe, do not qualify for Measure 49 home site approvals because they have not established their ownership of the property for the purposes of Measure 49.

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 claimants and the claimants' 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 claimants and the claimants' 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 claimants and the claimants' 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.