

EXHIBIT: 27 AGENDA ITEM: 12
LAND CONSERVATION & DEVELOPMENT
COMMISSION
DATE: 7-30-09
PAGES: 5
SUBMITTED BY: Carol Bolton

Your honorable commissioners:

Dennis Derby, Hanley Jenkins, Tim Jossi, Greg MacPherson, Christine Pellett, John M. VanLandingham, Marilyn Worrix.

Please submit this as my experience and testimony for today's board meeting and rule-making hearing.

Enclosed is a letter from Judith Moore, Division Manager M49, that documents the problems my father, a retired Oregon fire fighter, has had to endure just to build his dream home on property that he has owned for over 40 years. It is shameful that one of our own senior citizens has to jump through a mountain of paper work and short deadlines and refusals when I clearly documented that the paper work was not sent to the correct mailing address and my father was living in his other home in Arizona at the time this paperwork was mailed from the State of Oregon. His mail was forwarded and therefore would not have ever been returned to the State of Oregon. Living in Arizona during the winter months is not unusual for many Oregonian senior citizens.

This filing was made in a timely manner as required by HB3225, once the paperwork was received for my parents to complete. The person at LCDC who accepted my parents late filing admitted that they have processed many other filings that had been received past the deadline date.

Is this how we reward the senior citizens of the State of Oregon who have lived and worked here all of their adult lives?

My testimony is that rule-making should be in place to help our seniors in the State of Oregon (especially those that want to build homes and employ contractors at this time in our economy.) that attempted to file in a timely manner when the original request was sent to the incorrect address in the first place. This would appear to meet Legislative intent as well as the governor's goals of streamlining agency procedures. Or is it the intent of the LCDC to force senior citizens to hire lawyers? This is one home, not a 400 unit apartment building.

Thank you for accepting this testimony for rule-making. I would have submitted this sooner, however I was notified only yesterday of this meeting. I would request a response from the board, please.

Sincerely,



Carol J Bolton
16935 SW 125th Place
Tigard, Oregon 97224
Phone: 503-639-6200
Office: 1-800-762-4646



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

Measure 49 Development Services Division

635 Capitol Street, Suite 150

Salem, OR 97301-2540

(503) 373-0050

FAX (503) 378-5318

July 27, 2009

Phillip E Keller
P.O. Box 248
Wheeler, OR 97147

RE: State Measure 37 Claim M130344 - Keller

Dear Phillip Keller:

This letter is in response to a letter from Carol Bolton that the Department of Land Conservation and Development (department) received on July 22, 2009, regarding the above-referenced Measure 37 (M37) claim. The department has evaluated Ms. Bolton's letter dated July 9, 2009, and has determined that the request does not establish a legal or factual basis to reconsider the department's decision to close claim M130344.

On March 11, 2008, the department mailed an original Measure 49 (M49) Election Notice packet to you for the above M37 claim. The statutory 90-day timeframe for receipt of your M49 Election Form expired June 9, 2008. The department's records show no M49 Election form for your claim was received by that date. As a result, the letter you received dated July 8, 2008 was sent to inform you that your claim was closed.

I understand from Ms. Bolton's letter that due to the election packet being mailed to a street address rather than a post office box, you never received an election packet for your claim. On April 13, 2007, the department mailed to the same street address the final decision for your M37 claim, which was not returned to the department nor did we receive any information that the decision mailed was undeliverable.

House Bill (H.B. 3225) was passed by the 2009 Oregon Legislature. HB 3225 enables categories of otherwise ineligible M37 claimants to make M49 elections. A category of claimants includes those from which the department received a completed M49 election more than 90 days and not later than 120 days after the department mailed the original election form. You and Carolyn Keller signed the COPY "Measure 49 Election Form" on August 31, 2008, but did not notarize the document until September 10, 2008. The department received the form on September 12, 2008. All of these dates are later than 120 days after the department mailed the form. The 120th day after the department mailed your election form was July 9, 2009.

Please contact this office at (503) 373-0050 ext. 324, or via e-mail at measure49.info@state.or.us if you have any questions.

Sincerely,

Judith Moore, Division Manager
M49 Development Services Division

Encl: Notice of Temporary Administrative Rules Regarding Measure 49

C: Carol J Bolton, 16935 SW 125th Place, Tigard, OR 97224



Oregon

Thudore R. Kulongoski, Governor

Department of Land Conservation and Development Measure 49 Development Services Division

635 Capitol Street NE, Suite 150

Salem, Oregon 97301-2540

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www.oregon.gov/LCD/MEASURE49



July 22, 2009

TO: Interested Persons

FROM: The Department of Land Conservation and Development

RE: Notice of Temporary Administrative Rules Regarding Measure 49

The Land Conservation and Development Commission (LCDC) is considering the adoption of new and amended temporary rules intended to implement provisions of House Bill 3225 (HB 3225). The rules establish procedures that allow specified categories of Measure 37 claimants who were subject to denial of their claims under Measure 49, to be eligible for additional claim review under Measure 49. These procedures are estimated to affect approximately 400 claims. Additionally, the rules specify that a \$175 fee is required from affected claimants.

LCDC will hold a public hearing to consider adoption of the proposed temporary rules at the LCDC regularly scheduled meeting in Brookings, on July 29-31, 2009 at the Best Western Beachfront Inn, 16008 Boat Basin Road, Brookings. The topic is agenda item # 11, scheduled for Thursday, July 30, 2009. Interested persons may address the Commission concerning the proposed rules at this public hearing, or may provide written comments. Written comments may be accepted until the close of the hearing. Following the hearing, the Commission may adopt the proposed temporary rules. If adopted, the temporary rules will be effective immediately upon filing with the Secretary of State, in accordance with Oregon Revised Statutes (ORS) 183.325(5).

The draft temporary rules and related documents may be obtained from the DLCD website at <http://www.oregon.gov/lcd>. Alternatively, to obtain a copy of the proposed amendments through mail, email or fax, please contact Lisa Howard at (503)373-0050 ext. 271.

Address written comments to the Chair of the Land Conservation and Development Commission, care of Lisa Howard. Email comments to Lisa.Howard@state.or.us, or fax comments to Lisa Howard at 503-378-6033. The Commission will accept comments until the close of the public hearing on July 30, 2009.

If you have questions about the proposed rules, contact Judith Moore at (503) 373-0050 ext. 373; email Judith.Moore@state.or.us.

Summary of the Proposed Rules

Specifically, the proposed temporary rules would be codified in Division 41, under Oregon Administrative Rules (OAR) chapter 660, and would facilitate additional review under HB 3225 and Measure 49 for approximately 400 Measure 37 claims. HB 3225 enables categories of otherwise ineligible Measure 37 claimants to make Measure 49 elections, and revises certain criteria that were the

Carol Bolton

From: Carol Bolton [boltondc7@msn.com]
Sent: Wednesday, July 29, 2009 6:04 PM
To: carolb
Subject: FW: fyi: Statesman Journal, P. Wong, Jun 16--Bill lets land-use claims proceed

From: Steven@CascadePlanning.com
To: Steven@CascadePlanning.com; glue@gorge.net
Subject: fyi: Statesman Journal, P. Wong, Jun 16--Bill lets land-use claims proceed
Date: Tue, 16 Jun 2009 18:47:10 -0700

55 to 0 in favor. Can't beat that margin! Thanks go to those of you who answered my call for help and badgered your legislators about this. I also very much appreciate OIA President Dave Hunnicutt's ceaseless lobbying for us on this. As soon as the bill is signed by the Governor, I will alert those of you affected so you will be assured of getting your applications accepted. Stay tuned. --Steven

2009 Legislature

Bill lets land-use claims proceed

Some landowners will get relief from problems they had in filing their cases

By Peter Wong • Statesman Journal
June 16, 2009

By Peter Wong • Statesman Journal • June 16, 2009

A bill passed Monday by the Oregon House would allow relief for some landowners who failed to file Measure 49 claims with all affected governments, or who missed last year's deadline for choosing options.

House Bill 3225, which moved to the Senate on a 55-0 vote, would add an estimated 500 claims to the 4,200 filed with the state Department of Land Conservation and Development by the deadline last year under Measure 49.

Voters in November 2007 approved the measure, which scales back development rights in claims granted under Measure 37 in 2004.

The Senate prepared a similar version of the bill.

The opposing sides on the two ballot measures agree on the bills — and the bill's floor managers were the Democratic and Republican leaders of the House, who sit on the House Land Use Committee.

"This is a bipartisan bill, which has varied and numerous organizations as supporters," said House Minority Leader Bruce Hanna, R-Roseburg.

The bill would allow state officials to consider these applications:

- 150 claims filed with counties on time under Measure 37, but with the state after a deadline of December 2006.
- 140 claims from landowners who also seek to continue their projects, based on "vested rights"

7/29/2009

development done before Measure 49. A landowner can accept a claim or proceed under vested rights, but not both.

-20 claims filed with the state under Measure 37, but not with the affected county.

-Five claims split by an urban growth boundary.

-10 claims within a city, but not within an urban growth boundary.

-About 70 claims that were invalidated because the landowner failed to notify the state within 90 days of choosing an option under Measure 49. A landowner had a choice of building up to three homes without an appraisal, 10 homes with an appraisal, or seeking approval based on development progress. The 70 claims were late by up to a week; there are others, most of those up to 30 days late.

There are about 100 other claims seeking to build between four and 10 houses, but whose landowners did not file the appraisals required under Measure 49.

To offset most of the agency's cost of that work in a budget-cutting era, each of these claimants will pay a filing fee of \$175. The rest will come from the tax-supported general fund.

"Coincidentally, it's about what they would pay to file a case in court," said House Majority Leader Mary Nolan, D-Portland, who leads the land-use committee. "But this gets them quicker and more certain relief in the determination of their claims."

The bill also would direct the state land-use agency to investigate why 960 Measure 37 claims filed in five counties were not filed with the state. These claims would not be considered as part of the total, but lawmakers could legalize them during a planned 2010 session.

Richard Whitman, director of the state land-use agency, said back in April that the bill's most important sections are a deadline of June 30, 2010, for processing all remaining claims — and an allowance for up to 100 hardship cases to be processed regardless of when they were received.
rwong@StatesmanJournal.com or (503) 399-6745

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