



**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: E118637

CLAIMANTS: Julia Seibert
16300 Falls City Road
Dallas, Oregon 97338

Cory Seibert
PO Box 982
Dallas, Oregon 97338¹

**MEASURE 37 PROPERTY
IDENTIFICATION:** Township 8 South, Range 6 West,
Section 24, tax lot 1300
Polk County

The claimants, Cory Seibert and Julia Seibert, filed a claim with the state under ORS 197.352 (2005) (Measure 37) on May 20, 2005 for property located at 16300 Falls City Road, near Dallas, 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 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 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 four home site approvals in the election material. The Measure 37 waiver issued for this claim describes 17 home sites. Therefore, the claimants may qualify for a maximum of three home site approvals under Section 6 of Measure 49.

¹ Melinda S. Seibert is listed as a claimant on the election form, but she was not a claimant under Measure 37 and, therefore, is not eligible for relief under 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, Cory Seibert and Julia Seibert, filed a Measure 37 claim, M118637, with the state on May 20, 2005. The claimants filed a Measure 37 claim with Polk County, Order 05-04, on January 11, 2005. The state claim was filed prior to 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 deed obtained from Polk County, the claimant Cory Seibert is the owner of fee title to the property as shown in the Polk County deed records and, therefore, is an owner of the property under Measure 49. Polk County has confirmed that the claimant is the current owner of the property.

Claimant, Julia Seibert has not established her ownership of the property for the purposes of Measure 49. Julia Seibert currently holds a life estate in the Measure 37 claim property. However, a life estate does not qualify her as an owner under Measure 49 because a life estate does not fall into one of the ownership categories defined in the statute as listed above.

3. All Owners Have Consented in Writing to the Claim

All owners of the property must consent to the claim in writing.

Findings of Fact and Conclusions:

The deed by which the claimant acquired the property indicates that there is one non-claimant owner. The claimant has submitted a consent form signed by the non-claimant owner.

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, Dallas.

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:

The property is currently zoned Exclusive Farm Use (EFU) and Farm Forest (FF) by Polk County. A 57-acre portion of the property is zoned EFU. The Polk County EFU zone is 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.

A 20-acre portion of the property is zoned Farm Forest (FF). The Polk County FF zone is 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, generally prohibit the establishment of a dwelling on a lot or parcel less than 80 acres in size in a mixed farm/forest zone. Under ORS 215.780(2)(a), counties may adopt minimum lot sizes smaller than 80 acres, subject to approval by the Land Conservation and Development Commission (the Commission). The Commission has approved Polk County’s FF zone, which requires a minimum lot size of 40 acres.

The Measure 37 claim property consists of 77.94 acres with 57 acres zoned EFU and 20 acres zoned FF. Therefore, state land use regulations prohibit claimant, Cory Seibert, from establishing on the Measure 37 claim property the three home sites he appears to 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, the establishment of the three home sites for which the claimant may qualify on the property is not 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 claimant, Cory Seibert, acquired the property on June 29, 1990.

On June 29, 1990, the Measure 37 claim property was subject to Polk County’s acknowledged EFU and FF zones. Polk County’s EFU zone required 80 acres for the establishment of a dwelling on a lot or parcel. Polk County’s FF zone required 40 acres for the establishment of a dwelling on a lot or parcel. On the claimant’s acquisition date in 1990, the claimant lawfully could not have established a dwelling on a lot or parcel less than 80 acres in the EFU zone and 40 acres in the FF zone. The Measure 37 claim property consists of 77.94 acres with 57 acres zoned EFU and 20 acres zoned FF. Therefore, claimant Cory Seibert lawfully could not have established any additional home sites on his date of acquisition.

Because this requirement has not been met, the claimants are not entitled to any relief under Measure 49, and, therefore, the remaining approval criteria will not be evaluated.

II. COMMENTS ON THE PRELIMINARY EVALUATION

The department issued its Preliminary Evaluation for this claim on December 2, 2008. Pursuant to OAR 660-041-0090, the department provided written notice to the owners of surrounding properties. No written comments were received in response to the 28-day notice.

III. CONCLUSION

Based on the analysis above, claimant Cory Seibert does not qualify for Measure 49 home site approvals because he was not lawfully permitted to establish the lots, parcels or dwellings on his date of acquisition.

Based on the analysis above, claimant Julia M. Seibert does not qualify for Measure 49 home site approvals because she 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:

_____/S/_____
Richard Whitman, Director
Dept. of Land Conservation and Development
Dated this ____ day of February, 2009.

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 it 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.