



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: E129430B^{1, 2}

CLAIMANT: William McAllister
80445 Ross Road
Tygh Valley, OR 97063

MEASURE 37 PROPERTY
IDENTIFICATION: Township 4S, Range 13E, Sections 7 & 8
Tax lot 1300^{3, 4}
Wasco County

AGENT CONTACT INFORMATION: Victor W. VanKoten
Annala, Carey, Baker, Thompson &
VanKoten, P.C.
PO Box 325
Hood River, OR 97031

The claimant, William McAllister, filed a claim with the state under ORS 197.352 (2005) (Measure 37) on May 31, 2006, for property located along Wamic Market Road, near Wamic, in Wasco 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.

This Final Order of Denial is the conclusion of the supplemental review of this claim.

¹ Claim E129430 has been divided into two claims because the claim includes multiple tax lots or parcels that are not in the same ownership. E129430A refers to tax lot 100 (section 7). E129430B refers to tax lot 1300.

² The claimant also has a claim E124931 for property that is not contiguous to tax lot 1300.

³ The Measure 37 claim property consisted of tax lot 1300. Tax lot 1300 has since been partitioned into tax lots 1300 and 1301. Tax lot 1301 has been transferred to a different owner.

⁴ The Measure 37 claim property consisted of tax lots 100, 200 and 300 (T4S R13E S7); tax lot 1300 (T4S R13E S7 and T4S R13E S8) and tax lots 100 and 500 (T4S R12E S12). The claimant did not elect supplemental review under Measure 49 for tax lots 200 and 300 (section 7) and tax lots 100 and 500 (section 12). Those tax lots are not in the same ownership as either tax lot 100 (section 7) or tax lot 1300. Therefore, this final order addresses only the claimant's eligibility for relief for tax lot 1300 and all references to Measure 37 claim property refer only to tax lot 1300.

I. ANALYSIS OF CLAIM

A. Maximum Number of Home Sites 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 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 claimant has requested three home site approvals in the election material. The Measure 37 waiver issued for this claim describes residential and non-residential uses.⁵ Therefore, the claimant 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 claimant 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 claimant, William McAllister, filed a Measure 37 claim, M129430, with the state on May 31, 2006. The claimant filed a Measure 37 claim, M37-06-105, with Wasco County on May 30, 2006. The state claim was filed prior to December 4, 2006.

The claimant timely filed a Measure 37 claim with both the state and Wasco 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."

⁵ The Measure 37 waiver described the property and provided relief for both tax lot 1300, the property addressed in this report, and tax lot 100 (Section 7) which is addressed in the companion report E129430A.

Findings of Fact and Conclusions:

According to information from Wasco County and the deed records, William McAllister has not established his ownership of tax lot 1300 of the Measure 37 claim property. On July 16, 2006 the claimant conveyed his entire interest in tax lot 1300 to James A. Miller and Laurie M. Hesla and therefore, is not an owner of the property under Measure 49.

According to information from Wasco County, William McAllister has not established his ownership of tax lot 1301 of the Measure 37 property for the purposes of Measure 49 because he is no longer an owner of the property.

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

II. COMMENTS ON THE PRELIMINARY EVALUATION

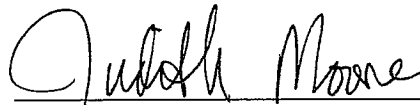
The department issued its Preliminary Evaluation for this claim on March 11, 2010. Pursuant to OAR 660-041-0090, the department provided written notice to the owners of surrounding properties. Comments received have been taken into account by the department in the issuance of this Final Order of Denial. Specifically, Wasco County commented that their records reflect that the claimant no longer owns tax lot 1300 and included a deed in support of this assertion. The claimant's attorney responded that the claimant still owns a one-half interest in tax lot 1300. The department, however, agrees with Wasco County. The recorded warranty deed provided by the county demonstrates that on July 16, 2006, the claimant conveyed his entire interest in tax lot 1300 to James Miller and Laurie Hesla. The claimant's attorney alleges this deed only conveyed a one-half interest in tax lot 1300 because it was in fulfillment of an earlier contract under which the claimant agreed to sell a one-half interest in tax lot 1300. However, the terms of the deed do not reserve a half-interest for the claimant in tax lot 1300. Further, the deed does not reference the earlier contract by date nor does it contain the same legal description as the earlier contract. In other words, the recorded deed conveyed the claimant's entire interest in tax lot 1300. Therefore, as pointed out by Wasco County, the county deed records no longer reflect that the claimant owns fee title to the property. Therefore the claimant is not an owner for purposes of Measure 49.

III. CONCLUSION

Based on the department's analysis, the claimant is not eligible for any relief under Measure 49 because the claimant no longer owns the Measure 37 claim property.

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 24th day of May 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.