



**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:

E132790

CLAIMANT:

Woodburn Golf Club, Inc.
c/o Philip Hand
PO Box 377
Woodburn, OR 97071

**MEASURE 37 PROPERTY
IDENTIFICATION:**

Township 5S, Range 2W, Section 11B
Tax lot 200
Marion County

PRIMARY CONTACT INFORMATION:

James Horrocks
35500 NE Corral Creek Road
Newberg, OR 97132

The claimant, Woodburn Golf Club, filed a claim with the state under ORS 197.352 (2005) (Measure 37) on December 1, 2006, for property located at 7899 Highway 214, near Woodburn, in Marion 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 its 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 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. No waiver was issued for this claim. The Measure 37 claim filed with the state describes 30 home sites. 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, Woodburn Golf Club, filed a Measure 37 claim, M132790, with the state on December 1, 2006. The claimant filed a Measure 37 claim, M06-274, with Marion County before March 16, 2007. The state claim was filed prior to December 4, 2006.

The claimant timely filed a Measure 37 claim with both the state and Marion 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 records obtained from the county, Woodburn Golf Club is the owner of fee title to the property as shown in the Marion County deed records and, therefore, is an owner of the property under Measure 49.

However, on June 3, 1981, the claimant was administratively dissolved by the Oregon Secretary of State, Corporation Division (ORS 60.647 – 60.657). ORS 60.654 allows for the reinstatement of administratively dissolved corporations within five years after the date of dissolution. The Corporation Division has no record that any effort was made within that five-year period to reinstate the claimant corporation.

ORS 60.637(2) provides, "Dissolution of a corporation does not: (a) Transfer title to the corporation's property." While the claimant's 1981 dissolution does not affect the claimant's title to the property, the fact that the claimant corporation was dissolved limits its authority to act as an owner with regard to its property. ORS 60.651(3) provides:

A corporation administratively dissolved continues its corporate existence but may not carry on any business except that necessary to wind up and liquidate its business and affairs under ORS 60.637, and notify claimants under ORS 60.641 and 60.644.

ORS 60.651(3) provides that an administratively dissolved corporation may only carry on those activities listed in ORS 60.637 that are "necessary" to wind up and liquidate its business and affairs. The department finds that the pursuit of this claim for relief under Measure 49 is not within the scope of activities in which the claimant, as an administratively dissolved corporation, is permitted to engage. The claimant's claim for relief under Measure 49, more than 26 years after the corporation was administratively dissolved, is not "necessary" to wind up the corporation's business and affairs and, therefore, is not within the scope of activities authorized under its ownership interest.

Based on this determination, the department does not make any further evaluation or determination on the merits or substance of the claim.

II. COMMENTS ON THE PRELIMINARY EVALUATION

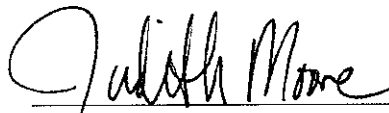
The department issued its Preliminary Evaluation for this claim on August 26, 2009. Pursuant to OAR 660-041-0090, the department provided written notice to the owners of surrounding properties. Comments received have been taken into account by the department in the issuance of this Final Order of Denial. The claimant's representative clarified that he is an authorized representative of Woodburn Golf Club and further clarified that Woodburn Golf Club, which acquired the property in 1934 and was dissolved in 1981, is the claimant for purposes of this claim for relief under Measure 49.

III. CONCLUSION

Based on the analysis above, the claimant does not qualify for Measure 49 home site approvals because the claimant lacks legal authority under the laws governing Oregon business corporations, to pursue a Measure 37 claim under 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:



Judith Moore, Measure 49 Division Manager
Dept. of Land Conservation and Development
Dated this 9th day of November 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.