



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: E133378B¹

CLAIMANTS: Ray Streeter and Jacquelyn S. Streeter
21495 Sandlake Drive
Cloverdale, OR 97112

MEASURE 37 PROPERTY IDENTIFICATION: Township 3S, Range 10W, Section 29
Tax lot 700
Tillamook County

PRIMARY CONTACT INFORMATION: Mike Streeter
21495 Sandlake Drive
Cloverdale, OR 97112

The claimants, Ray and Jacquelyn Streeter, filed a claim with the state under ORS 197.352 (2005) (Measure 37) on December 2, 2006, for property located at 24104, 24105 and 24115 Sandlake Road, near Cloverdale, in Tillamook 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 7 of Measure 49, which allows the Department of Land Conservation and Development (the department) to authorize up to ten 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 7 of Measure 49, the number of home site approvals authorized by the department cannot exceed the lesser of the following: ten; the number stated by the claimant in the election materials; 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; or the number of home site approvals with a total value that represents just compensation for the

¹ Claim E133378 has been split into two claims, E133378A and E133378B, because the Measure 37 claim sought relief for two non-contiguous parcels. Claim E133378A addresses the claimants' eligibility for Measure 49 relief on tax lot 400 and E133378B addresses their relief on tax lot 700.

reduction in fair market value caused by the enactment of one or more land use regulations that were the basis for the claim. The claimants have requested ten home site approvals in the election material. No waiver was issued for this claim. The Measure 37 claim filed with the state describes twenty home sites.² The appraisal submitted by the claimants attempts to support the assertion that the value of ten home site approvals is equal to or less than the loss of value caused by the enactment of land use regulations. Therefore, the claimants may qualify for a maximum of ten home site approvals under Section 7 of Measure 49.

B. Qualification Requirements

To qualify for a home site approval under Section 7 of Measure 49, the claimants must meet each of the following requirements:

1. Property not high-value farm, forest or groundwater restricted

The Measure 37 claim property must not be high-value farmland or high-value forestland, nor in a ground water restricted area, as defined in Section 2 of Measure 49.

Findings of Fact and Conclusions

The Measure 37 claim property is not high-value farmland or high-value forestland, nor in a ground water restricted area.

2. 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, Ray and Jacquelyn Streeter, filed a Measure 37 claim, M133378, with the state on December 2, 2006. The claimants filed a Measure 37 claim, M-06-40, with Tillamook County on December 1, 2006. The state claim was filed prior to December 4, 2006.

The claimants timely filed a Measure 37 claim with both the state and Tillamook County.

3. 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,

² The Measure 37 claim described the property for both tax lot 700, the property addressed in this report, and tax lot 400, which is addressed in the companion report, E133378A.

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 submitted by the claimants, Ray and Jacquelyn Streeter are the owners of fee title to the property as shown in the Tillamook County deed records and, therefore, are owners of the property under Measure 49.

Tillamook County has confirmed that the claimants are the current owners of the property.

4. All Owners of the Property Have Consented in Writing to the Claim

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

Findings of Fact and Conclusions:

All owners of the property have consented to the claim in writing.

5. 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 Tillamook County, outside any urban growth boundary and outside any city limits, near the community of Cloverdale.

6. One or More Land Use Regulations Prohibit Establishing the Lots, Parcels or Dwellings

One or more land use regulations must prohibit establishing the requested lots, parcels or dwellings.

Findings of Fact and Conclusions:

The property is currently zoned exclusive farm use (F-1) by Tillamook County, 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.

The claimants' property consists of 64.7 acres. Therefore, state land use regulations prohibit the claimants from establishing on the Measure 37 claim property the ten home sites the claimants may qualify for under Section 7 of Measure 49.

7. 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, it does not appear that the establishment of the ten home sites for which the claimants may qualify on the property is prohibited by land use regulations described in ORS 195.305(3).

8. 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 7 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

Tillamook County deed records indicate that the claimants acquired the property on May 18, 1965.

On May 21, 1965, the Measure 37 claim property was not subject to any local or state laws that would have prohibited the claimants from establishing at least ten lots or parcels and at least ten dwellings. Therefore, the claimants lawfully could have established the ten home sites the claimants may qualify for under Section 7 of Measure 49.

9. The enactment of one or more land use regulations that are the basis for this claim, caused a reduction in the fair market value of the Measure 37 claim property that is equal to or greater than the fair market value of the home site approvals requested

Sections 7 and 8 of Measure 49 require that the reduction in the fair market value of the property be demonstrated through an appraisal that meets the following requirements:

a) The appraisal must be submitted within 180 days after the Measure 49 election is filed with the department.

The claimants submitted their election on May 12, 2008, and their appraisal on November 6, 2008. Therefore, the appraisal was submitted within 180 days of the election filing.

b) The appraisal must be prepared by a person certified under ORS chapter 674 or a person registered under ORS chapter 308.

The appraisal submitted by the claimants was prepared by Laura M. Adkins, a Certified Residential Appraiser. ORS Chapter 674 is governed by Chapter 161 of the Appraiser Certification and Licensure Board Administrative Rules. Per Section 161-025-0005, "a State-Certified Residential Appraiser (SCRA) is authorized to appraise: all types of one- to four-family residential real property without regard to complexity or transaction value, which includes the appraisal of vacant or unimproved land that is utilized for one- to four-family residential purposes, and where the Highest and Best Use is for one- to four-family residential purposes." The State-Certified Residential Appraiser is also authorized to appraise all types of real property having a transaction value of less than \$250,000. Specifically, however, the Certified Residential Appraiser classification does not allow the appraisal of subdivisions which would involve any segregation of the property.

The appraiser conducted four valuations for which the Highest and Best Use was determined to be division into 2-acre lots with a potential for 10 to 12 lots: 1970, 1980, 2001 and 2006. Although not included in the section titled "highest and best use", the valuations all have the statement: "A Resident is the highest and best use for this property once divided into 2 acre lots." In addition, Measure 49 requires that "[t]he appraisal provided under this rule must also show the present fair market value of each lot, parcel or dwelling that the Claimant is seeking under section 7(2) of Measure 49." The claimants are seeking ten parcels. If properly prepared, the appraisal must show the value of the ten home site approvals relative to the Measure 37 property; this was not done and could not have been done by this appraiser because such an appraisal is beyond the scope of a State Certified Residential Appraiser. Therefore, this requirement has not been met.

c) The appraisal must comply with the Uniform Standards of Professional Appraisal Practice, as authorized by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

An appraisal review commissioned by DLCD has determined that the claimants' appraisal filed for the Measure 37 claim property does not meet the threshold requirements for

Uniform Standards of Professional Appraisal Practice (USPAP) compliance. For the reasons stated here and in 9(d) – (g), the appraisal is deficient relative to USPAP Standards.

The appraisal is deficient relative to Standards Rule 1-3(a) which states that the appraiser “must identify and analyze the effect on use and value of the existing land use regulations.” There is no mention of the zoning in existence prior to the initial value date. There is no discussion as to the zoning criteria found in the Addenda and how it relates to the highest and best use for each of the value dates. There is no specific date given as to the enactment of the various zones and thus the appraiser has been unable to provide a specific date of value related to same. The zoning code Addenda for the appraisals reflecting the 1972 zone change appear to be the same as included for the appraisals reflecting the 1982 zone change. The zoning criteria included in the Addenda reflecting the 2002 zone change include criteria for F-1 Farm zone and F Forest zone, but no explanation as to the portions falling within those zones or the highest and best use at that time. Based on the zoning information provided in the report and the lack of discussion, it is difficult to ascertain the actual impact of zoning on the subject property at each of the various valuation periods.

The appraisal is deficient relative to Standards Rule 1-3(b) which states that the appraiser “must develop an opinion of the Highest and Best Use of the real estate.” The statement “a Resident is the highest and best use once divided into 2 acre sites” included throughout the appraisal provides inadequate information to ascertain the Highest and Best Use of the property at each valuation date. The appraiser has included no Highest and Best Use discussion of the property for the various dates beyond that statement and gives no insight as to the Highest and Best Use related to the actual zoning at that time.

The appraisal is deficient relative to USPAP Standards Rule 2-1(b). The appraisal must “contain sufficient information to enable the intended users of the appraisal to understand the report properly.”

The Measure 37 property valuations for several dates were inadequately supported. The 1971 valuation is based on two comparable sales of 6.72 acres and 4.0 acres. The Measure 37 property is 64.70 acres. The Sales Analysis was limited to weighting of the two sales without any discussion as to their comparability to the subject property due to size difference. In addition, the analysis includes reference to a third comparable sale that was given a weight of 0. This sale was not identified in the report. Similarly, the 1973, 1980, 1983, 2001, 2003 and 2006 valuations were based on comparable sales for properties that varied widely from the 64.70-acre Measure 37 property. No comparative analyses were given beyond an unexplained weighting procedure. The analysis provided is inadequate to support a creditable conclusion.

Also, as determined above, the appraiser conducted work outside of the scope of her license which is a violation of USPAP. Therefore this requirement has not been met.

d) The appraisal must expressly determine the highest and best use of the property at the time the land use regulation was enacted and the highest and best use must be determined to be residential use.

The appraisal determined that the highest and best use of the property at the time the land use regulation was enacted was "a Resident...once divided into 2 acre sites." The appraisal also states that the property could be divided into "at least 10-12 homes, which would have been legal under the old Farm and Forest zoning." However, the appraiser was not licensed to evaluate property for which the highest and best use involved any segregation of land. Therefore, this requirement has not been met.

e) The appraisal must show the fair market value of the property one year before and one year after the enactment of the regulation(s) the claimants assert have resulted in a reduction of the fair market value of the Measure 37 claim property.

1970 – 1973 Appraisals

The appraisal determined that the fair market value of the property as "one building site; small land sales zoned Rural Residential, Farm or Forest" in 1971 was \$72,076 and in 1973 was \$45,743. The sales comparables upon which the decrease in market value was based occurred in March and August of 1973, before the state had enacted any land use regulations. The appraisal does not indicate what land use regulation was enacted in 1972 that reduced the fair market value of the property. Tillamook County enacted a land use regulation on March 23, 1972, that imposed a minimum lot size of one acre in the F-1 zone. The highest and best use at the time the land use regulation was enacted determined in the appraisal was 2-acre lots; therefore the enactment of the 1-acre restriction did not affect the highest and best use of the property.

The sales comparables for 1971 and 1973 include F-1 (Exclusive Farm Use) and F (Forest) zoning. As stated above, the F-1 zone was changed from no lot size restrictions to a 1-acre lot size in 1972. The F zone changed from no restrictions to a 40-acre minimum lot size in 1972. The subject property is only zoned F-1. Therefore, the decrease in the fair market value of the property from 1971 to 1973 determined in the appraisal reflects the enactment of a 40-acre lot size restriction that did not occur on the Measure 37 property. Therefore, the appraisal failed to accurately determine the fair market value of the property one year after the enactment of a land use regulation purportedly enacted in 1972..

1981 – 1983 Appraisals

From the information submitted, there is no possibility of determining the value the property one year before or one year after the enactment of any land use regulation. No zoning change is ever identified. The table (page 12) lists three comparables with sales dates in 1983. The text gives the dates for these same comparables as 1983, 1980 and 1982. The appraisal states a land use change occurred in 1981. The comparables are dated one year before, one year after and two years after the land use change. In addition, the zoning of all three comparables is SFW-20. As discussed above, the zoning of the subject property is F-1. There is no discussion as to how this zoning is relevant to the subject property. The first page of appraisal 08-F-36c states: "The purpose of this appraisal is to estimate the market value of

this property a year before the 1981 zoning change. The estimate of market value is to be determined by an analysis of sales of similar properties in the local area per 1980." The table (page 12) lists three comparables with sales dates of 1979, 1980 and 1982. The comparables are dated two years before, one year before and one year after the unidentified land use change. In addition, the zoning of the three comparables are F-1, RR and SFW-20. The zoning of the subject property is only F-1. There is no discussion as to how the RR and SFW-20 zones are relevant to the subject property. Therefore the appraisal failed to accurately determine the fair market value of the property one year before and one year after a land use regulation purportedly enacted in 1981.

2000- 2002 Appraisals

At this time the F-1 zone had a 40-acre minimum. The comparable sales given in this zone are 9.78 and 17.3 acres while the subject property is 64.7 acres. Again, the Sales Analysis did not include any discussion as to the comparability of these properties to the subject property due to size difference. The comparable sale given the most weight is zoned F and is only 8 acres. The F zone had an 80 acre min at that time.. The analysis provided is inadequate to support a reliable conclusion.

f) As required by Section 7 (6) and (7) the reduction in the fair market value of the Measure 37 property determined by the appraisal is equal to the decrease in the fair market value of the property from the date that is one year before the enactment of the land use regulation to the date that is one year after the enactment, plus interest. If the claim is based on the enactment of more than one land use regulation enacted on different dates, the reduction in the fair market value of the property caused by each regulation shall be determined separately and the values added together to calculate the total reduction in fair market value. Interest shall be computed using the average interest rate for a one-year United States Government Treasury Bill on December 31 of each year of the period between the date the land use regulation was enacted and the date the claim was filed, compounded annually on January 1 of each year of the period. The reduction in fair market value shall be adjusted by any ad valorem property taxes not paid, any severance taxes paid and any recapture of additional tax liability that the claimant has paid or will pay for the property if the property is disqualified from special assessment under ORS 308A.703.

As determined in subsection (e) above, the appraisal did not accurately determine a decrease in the fair market value of the Measure 37 property. In addition, the appraisal calculated interest from 1971, the year *before* the land use regulation was enacted. Also, the appraisal did not adjust the value by ad valorem property taxes not paid. The appraisal determined values for several years, presumably before and after land use regulations were enacted. None of these values were added to the total change in fair market value of the property. In addition, the highest and best use identified by the appraiser for each of the property valuations was division into 2-acre lots. As discussed in subsection (b) above, the appraiser was not licensed to make these evaluations. Therefore, these requirements have not been met.

g) The appraisal must show the present fair market value of each lot, parcel or dwelling that the claimant is seeking under Section 7(2) of Measure 49.

The claimants are seeking ten parcels and six new dwellings. The appraisal did not show the present fair market value of each of the requested parcels or dwellings. Instead, the appraisal provided a value of \$670,000 for the entire property as of 2006.

The submitted appraisal involved property for which the highest and best use was subdivision of the property into 10-12, 2-acre parcels. The appraisal must show the fair market value of each of the ten parcels that the claimants are seeking under Section 7(2) of Measure 49. These requirements are outside of the scope of the appraiser's Residential Appraiser license. In addition, the appraisal did not meet the requirements of Sections 7 and 8 of Measure 49. Finally, the reported reduction in fair market value due to a change in a land use regulation was \$277,310, without the required adjustment for ad valorem property taxes and was improperly trended. The only reported present fair market value of the property was \$670,000. Therefore, regardless of the appraisal's failure to meet the requirements of Sections 7 and 8, even if these numbers were to be used in the analysis, the loss in fair market value is not equal to or greater than the present value of the requested home sites and this requirement has not been met.

II. COMMENTS ON THE PRELIMINARY EVALUATION

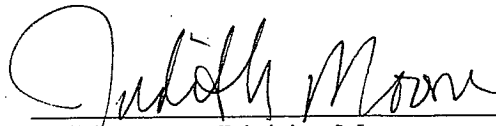
The department issued its Preliminary Evaluation for this claim on February 4, 2010. Pursuant to OAR 660-041-0090, the department provided written notice to the owners of surrounding properties. Comments received have been taken into account by the department in the issuance of this Final Order of Denial. Specifically, the claimants submitted comments that included a new appraisal to replace one of the claimants' original Measure 49 appraisal reports prepared by Laura Adkins of Pacific Coast Appraisals. The new appraisal report was submitted for the valuation of the property in 2006. The appraisal was authored by an appraiser, Patrick A. McKern of On-Time Appraisal Service, who was not identified in the original set of appraisal reports. Patrick A. McKern conducted his analysis of the property on or after February 15, 2010, as indicated in his cover letter and in the text of the appraisal. The new appraisal was required to have been submitted by November 8, 2008, within 180 days of the date the election was filed with the department. However, the claimants submitted the new appraisal on February 22, 2010. In addition, the new appraisal does not meet the requirements of Sections 7 and 8 of Measure 49 which require, in part, that the appraisal show the fair market value of each home site approval to which the claimants are entitled.

III. CONCLUSION

Based on the analysis set forth above, the claimants do not qualify for Measure 49 home site approvals. The appraisal submitted by the claimants does not meet the requirements of Sections 7 and 8 of Measure 49 and also cannot be used for the purpose of appraising the value of ten home sites under Section 7 of Measure 49 because the appraiser's Certified Residential Appraiser License does not allow the appraisal of subdivisions which would involve any segregation of the subject 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 ~~8th~~ day of June 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.