



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:

E132341¹

CLAIMANTS:

John A. and Agnes M. Petersen
33625 Tide Creek Road
Deer Island, OR 97054

MEASURE 37 PROPERTY
IDENTIFICATION:

Township 6N, Range 2W, Section 25
Tax lot 401
Columbia County

AGENT CONTACT INFORMATION:

Agnes M. Petersen
PO Box 748
St. Helens, OR 97051

The claimants, John and Agnes Petersen, filed a claim with the state under ORS 197.352 (2005) (Measure 37) on November 30, 2006, for property located at 33541 Tide Creek Road, near St. Helens, in Columbia 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 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

¹ Claimant John Petersen also has claims E132329, E132330, E132331, E132332, E132333, E132334, E132335, E132336 and E132337; claimants John and Agnes Petersen also have claims E132338, E132339, E132340 and E132342; and claimant Agnes Petersen also has a claim, E132343, for property that is either not contiguous to tax lot 401 or not in the same ownership.

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 non-residential development, and more than three home sites. Therefore, the claimants 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 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, John and Agnes Petersen, filed a Measure 37 claim, M132341, with the state on November 30, 2006. The claimants filed a Measure 37 claim, CL07-58, with Columbia County on November 30, 2006. The state claim was filed prior to December 4, 2006.

The claimants timely filed a Measure 37 claim with both the state and Columbia 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 Order Approving Final Account and Judgment of Final Distribution in the Estate of Agnes Jane Thompson obtained by the department, Agnes Petersen is the owner of fee title to the property as shown in the Columbia County deed records and, therefore, is an owner of the property under Measure 49.

Columbia County has confirmed that claimant Agnes Petersen is the current owner of the property.

According to the information submitted by the claimants, John Petersen is not at owner of the property for the purposes of Measure 49. The claimants originally obtained ownership interest in the Measure 37 claim property on October 6, 1965, as reflected by the recorded warranty deed included with the Measure 37 claim. However, the claimants conveyed all of their interest in the property to Agnes Jane Thompson on December 29, 1966, as reflected by a recorded warranty deed included with the claim. Claimant Agnes M. Petersen re-acquired an ownership interest in the property on July 18, 2006, upon the death of Agnes J. Thompson as evidenced by the Order of Final Account and Judgment of Final Distribution in the Estate of Agnes Jane Thompson. There is no evidence that John Petersen re-acquired an ownership interest in tax lot 401.

Because this requirement has not been met, claimant John Petersen is not entitled to any relief under Measure 49, and, therefore, the remaining approval criteria will not be evaluated for that claimant.

3. 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.

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 Columbia County, outside the urban growth boundary and outside the city limits of the nearest city, St. Helens.

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 Forestry Agriculture (FA-19) by Columbia County, 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 lot or parcel less than 80 acres in size in a mixed farm/forest zone and regulate the establishment of dwellings on new or existing lots or parcels.

The claimant's property consists of 69.09 acres. Therefore, state land use regulations prohibit the claimant from establishing on the Measure 37 claim property the three home sites the claimant may 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, it does not appear that the establishment of the three home sites for which the claimant may qualify on the property is 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

Columbia County deed records indicate that claimant Agnes Petersen acquired the property on July 18, 2006, when Agnes Jane Thompson passed away.²

On July 18, 2006, the Measure 37 claim property was subject to Columbia County's acknowledged Forestry Agriculture (FA-19) zone. Columbia County's FA-19 zone required 80 acres for the creation of a new lot or parcel on which a dwelling could be established.

² In their Measure 37 claim, the claimants asserted an acquisition date of December 30, 1966, for the Measure 37 claim property. The claimants recorded a deed signed by Agnes Thompson, dated December of 1966, and recorded on October 2, 2006. This deed is invalid because it was not notarized as required by ORS 93.010 and ORS 93.410. Additionally, the Estate of Agnes Jane Thompson indicates that the Measure 37 claim property was an asset of the Estate of Agnes Jane Thompson. The Order Approving Final Account and Judgment of the Final Distribution (the Estate) dated October 11, 2007 distributed the property from the Estate to claimant Agnes Petersen.

The claimant's property consists of 69.09 acres and is developed with a dwelling. Therefore, claimant Agnes Petersen lawfully could not have established any home sites on her date of acquisition.

II. COMMENTS ON THE PRELIMINARY EVALUATION

The department issued its Preliminary Evaluation for this claim on December 29, 2009. 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.

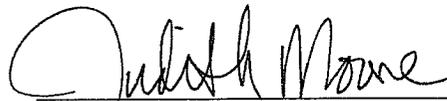
III. CONCLUSION

Based on the analysis above, claimant Agnes Petersen is not eligible for any relief under Measure 49 because the claimant would not have been lawfully permitted to establish any home sites when she acquired the property.

Based on the analysis above, claimant John Petersen does not qualify for Measure 49 home site approvals 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 8th day of February 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 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.