

**NOTICE OF A MEASURE 49 CLAIM TENTATIVE
DETERMINATION
BY THE LANE COUNTY PLANNING DIRECTOR**

Mailing Date:	August 1, 2008
Property Owner:	Aleene Mchugill
Claimant:	Same as above
Agent:	Norm Waterbury LLC
Acreage:	3.6 acres
Location:	31782 Gowdyville Rd., Cottage Grove, Or. 97424
Assessor's Map & Tax Lot:	20-03-29.3.3 #1300
Base Zone:	Rural Residential (RR)/UGB, LC 10.130
Comprehensive Plan:	City of Cottage Grove Comprehensive Plan

You own/occupy property near the above referenced property which is the subject of this Measure 49 claim review by the Lane County Planning Director. In the alternative, you are entitled to receive this notice per Section 10 of Measure 49. The purpose of this letter is to inform you about this claim, where you may receive more information about it, and advise you have 15 days to submit evidence and arguments in response to the tentative determination.

PROPOSAL: This is a Measure 49 “Tentative Determination” on a previous Measure 37 waiver for property located, in whole or in part, within an urban growth boundary. Pursuant to Measure 49, if a County issued a Measure 37 waiver for property located, in whole or in part, within an urban growth boundary, the County that issued the waiver must review the claim, the record on the claim and the waiver to determine whether the claimant is entitled to relief under Measure 49. The entire 3.6 acre parcel is located within the City of Cottage Grove Urban Growth Boundary. The objective of the claim is to establish two parcels with one dwelling on each parcel. This claim has been evaluated per Sections 9.(1), (2)(a) & (c), (5)(a)-(k), (6), (7) and Section 10.(1) of Measure 49.

Enclosed is a vicinity map of the subject property and surrounding properties.

Tentative Determination: The property owner does not appear to be entitled to relief under Measure 49 and Lane County does not propose to authorize any additional single family dwellings. If you disagree and wish to request a hearing, please so advise in writing by 5:00 PM August 18, 2008, with responsive evidence and arguments supporting your position. If a hearing is requested, notice will be provided to all interested parties.

The claim application, all documents and evidence relied upon by the applicant, the applicable criteria, and a copy of the Lane County Planning Director's tentative review are available for inspection at the Lane County Land Management Division at no cost, and copies will be provided at reasonable cost. The name of the Lane County Land Management Division representative to contact is **Kent Howe**, and the telephone number where more information can be obtained is (541) **682-3734**.

Authorized by: _____
Kent Howe/Planning Director

Date: _____

**Measure 49 Claim Tentative Determination for property
within the Urban Growth Boundary
of the City of Cottage Grove**

Report Date:	August 1, 2008
Property Owner:	Aleene Mchugill
Applicant:	Same as above
Agent:	Norm Waterbury LLC
Acreage:	3.6 acres
Location:	31782 Gowdyville Rd., Cottage Grove, Or. 97424
Assessor's Map & Tax Lot:	20-03-29.3.3 #1300
Base Zone:	Rural Residential (RR)/UGB, LC 10.130
Comprehensive Plan:	City of Cottage Grove Comprehensive Plan

I. BACKGROUND INFORMATION

The voters of the State of Oregon passed Ballot Measure 37 on November 2, 2004. On March 20, 2007, via Order No. 07-3-20-14, the Lane County Board of Commissioners granted to Alenne Mchugill a waiver to the dwelling and land divisions standards and restrictions of LC 10.130, the Rural Residential Zone, which prevented her from developing the property as she might have been allowed at the time she acquired an interest in the property on April 2, 1947.

On November 5, 2007, the State of Oregon, through its Administrative Services and the Department of Land Conservation and Development, issued Final Order Claim No. M131310, allowing Alenne Mchugill to use the subject property for the requested use (two parcels with a dwelling on each), subject to the standards in effect on April 2, 1947.

On November 6, 2007, the voters of the State of Oregon passed Ballot Measure 49, which replaced Measure 37. The measure became effective on December 6, 2007. Per the standards of Measure 49 (Chapter 424 Oregon Laws 2007, printed following ORS 195.305), if a County issued a Measure 37 waiver for property located, in whole or in part, within an urban growth boundary, the County that issued the waiver must review the claim, the record of the claim and the waiver to determine whether the claimant is entitled to relief under Measure 49. This report constitutes a “tentative determination” of whether Aleene Mchugill is entitled to relief under Measure 49.

II. APPROVAL CRITERIA & FINDINGS OF FACT

The claim is being evaluated per Sections 9.(1), (2)(a) & (c), (5)(a)-(k), (6) & (7), and 10.(1) of Measure 49. The ballot measure language is in **boldface** type, followed by the tentative determination by the Planning Director for each subsection.

Sec. 10. (1) If Metro, a city or a county issued a waiver before the effective date of this 2007 Act [December 6, 2007] for property located, in whole or in part, within an urban growth boundary, the public entity that issued the waiver must review the claim, the record on the claim and the waiver to determine whether the claimant is entitled to relief under section 9

of this 2007 Act. If the public entity that issued the waiver lacks information needed to determine whether the claimant is entitled to relief, the public entity shall issue a written request to the claimant for the required information. The claimant must file the required information within 90 days after receiving the request. If the claimant does not file the information, the public entity shall review the claim based on the information that is available. The public entity shall complete a tentative review no later than 240 days after the effective date of this 2007 Act. The public entity shall provide written notice to the claimant, the Department of Land Conservation and Development and any other person entitled to notice of the tentative determination as to whether the claimant qualifies for relief under section 9 of this 2007 Act and, if so, the specific number of single-family dwellings that the public entity proposes to authorize. The notice must state that the recipient has 15 days to submit evidence or arguments in response to the tentative determination, after which the public entity shall make a final determination. A public entity shall make the final determination under this subsection within 300 days after the effective date of this 2007 Act.

Tentative determination:

As stated in the background section, Lane County issued a Measure 37 waiver on March 20, 2007 (Order No. 07-3-20-14), for the subject property, Map 20-03-29.33, tax lot 1300. The issuance of that Order was prior to the effective date of Measure 49 on December 6, 2007. The subject parcel is located entirely within the Urban Growth Boundary of the City of Cottage Grove.

On March 3, 2008, a letter was sent to the claimant requesting more information addressing Measure 49 which resulted in this claim being filed on June 30, 2008.

This tentative determination is being issued on August 1, 2008, which is no later than 240 days after Measure 49 took effect.

Notice of this tentative determination is being served the Department of Land Conservation and Development, as well as to other parties entitled to such notice per this section, and under the county procedures utilized to evaluate Measure 37 claims.

This tentative determination examines a claim for one additional dwelling to be placed or constructed on the subject parcel. This determination also examines the claimant's desire to divide the subject parcel into two parcels, with one dwelling on each parcel (total of two dwellings). Such action would require a subsequent partition application.

The notice for this tentative determination states that the recipient of the notice has 15 days to submit evidence or arguments in response to this determination. After that Lane County will issue a final determination by October 1, 2008 (i.e., within 300 days of the effective date of the measure). The notice also indicates the property owner does not appear to be entitled to any relief and Lane County does not propose to authorize any additional dwellings.

Sec. 9. (1) A claimant that filed a claim under ORS 197.352 [renumbered 195.305] on or before the date of adjournment sine die of the 2007 regular session of the Seventy-fourth Legislative Assembly [June 28, 2007] for property located, in whole or in part, within an urban growth boundary may establish one to 10 single-family dwellings on the portion of the property located within the urban growth boundary.

(2) The number of single-family dwellings that may be established on the portion of the property located within the urban growth boundary under this section may not exceed the

lesser of:

(a) The number of single-family dwellings described in a waiver issued by Metro, a city or a county before the effective date of this 2007 Act [December 6, 2007] or, if a waiver was not issued, the number described in the claim filed with Metro, a city or a county;

(c) The number of single-family dwellings the total value of which represents just compensation for the reduction in fair market value caused by the enactment of one or more land use regulations that were the basis for the claim, as set forth in subsection (6) of this section.

Tentative determination:

The Measure 37 waiver filed by the Applicant, and issued by Lane County on March 20, 2007, was to establish a total of two dwellings on the property, and to partition that property into two parcels with one dwelling on each parcel. The county's waiver was issued pursuant to Measure 37 before the adjournment of the 2007 regular session (on June 28, 2007), and before the effective date of Measure 49 of December 6, 2007. No analysis or information addressing Section 9.2(c) has been provided by the claimant so compliance with this standard has not been established.

(5) To qualify for the relief provided by this section, the claimant must have filed a claim for the property with the city or county in which the property is located. In addition, regardless of whether a waiver was issued by Metro, a city or a county before the effective date of this 2007 Act, to qualify for relief under this section, the claimant must establish that:

(a) The claimant is an owner of the property;

Tentative determination:

Current Lane County Assessment and Taxation records indicate that Aleene Mchugill is the owner of the subject property.

(b) All owners of the property have consented in writing to the claim;

Tentative determination:

The claimant, Aleene Mchugill, authorized the processing of the Measure 37 claim with her signature. No such authorization has been provided specifically for this Measure 49 claim. Such authorization can be secured prior to a final determination.

(c) The property is located, in whole or in part, within an urban growth boundary;

Tentative determination:

The subject property lies entirely within the urban growth boundary of the City of Cottage Grove.

(d) On the claimant's acquisition date, the claimant lawfully was permitted to establish at least the number of dwellings on the property that are authorized under this section;

Tentative determination:

The claimant acquired the subject property on April 2, 1947. At that time there were no land use or division standards. The claimant could have placed a second dwelling and divided the property in 1947.

(e) The property is zoned for residential use;

Tentative determination:

The property is zoned Rural Residential (LC 10.130).

(f) One or more land use regulations prohibit establishing the single-family dwellings;

Tentative determination:

The subject property is 3.56 acres in size and contains one dwelling built in 1950. The property was first zoned Rural Residential on March 23, 1973. The ordinance which was enacted on that date applied LC 10.130 to the property. Although revised since that date, the same ordinance currently applies to the subject property.

The regulations of Measure 49 differ from those of Measure 37 in that under this standard, the minimum lot size in the Rural Residential Zone needs to be determined per LC 10.130-142. No analysis has been provided by the claimant, other than a conclusion that the land use regulations “restricts lot sizes”. Accordingly, the claim has failed to meet this standard.

(g) The establishment of the single-family dwellings is not prohibited by a land use regulation described in ORS 197.352 (3) [renumbered 195.305 (3)];

Tentative determination:

To the extent there is a land use regulation that restricts dwellings, the zoning that applies does not fit within the land use regulations described in ORS 195(3).

(h) The land use regulation described in paragraph (f) of this subsection was enacted after the date the property, or any portion of the property, was brought into the urban growth boundary;

Tentative determination:

LC 10.130 was enacted and applied to the property on March 23, 1973. The subject property was brought into the urban growth boundary of the City of Cottage Grove via the acknowledgement of its comprehensive plan by LCDC on February 6, 1981. Therefore, the land use regulation in paragraph (f) was enacted before the property was placed inside the urban growth boundary. The claimant provided no evidence addressing this subsection and the claim appears to have failed this standard.

(i) If the property is located within the boundaries of Metro, the land use regulation that is the basis for the claim was enacted after the date the property was included within the boundaries of Metro;

Tentative determination:

The property is not within the Metro boundaries.

(j) If the property is located within a city, the land use regulation that is the basis for the claim was enacted after the date the property was annexed to the city; and

Tentative determination:

The property is not within a city.

(k) The enactment of one or more land use regulations, other than land use regulations described in ORS 197.352 (3), that are the basis of the claim caused a reduction in the fair market value of the property, as determined under subsection (6) of this section, that is equal to or greater than the fair market value of the single-family dwellings that may be established on the property under subsection (2) of this section.

Tentative determination:

The claimant has instructed the Planning Director to “see cover sheet of appraisal (used for waivers)”, and lists the amount of reduction in fair market value as \$145,500. Whereas no appraisal was provided along with this Measure 49 claim, the Director assumes that the appraisal cover letter found in the Measure 37 claim file is to be used.

Neither the cover letter by Sara A. Fraser, SRA, dated November 21, 2006, nor the appraisal information provided in the Measure 37 claim meets the requirements of subsections (6) and (7) of section (9) as required. Those subsections read as follows:

(6) The reduction in the fair market value of the property caused by the enactment of one or more land use regulations that were the basis for the claim is equal to the decrease, if any, 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. The reduction in fair market value shall be adjusted by any ad valorem property taxes not paid as a result of any special assessment of the property under ORS 308A.050 to 308A.128, 321.257 to 321.390, 321.700 to 321.754 or 321.805 to 321.855, plus interest, offset by any severance taxes paid by the claimant and by any recapture of potential 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. Interest shall be computed under this subsection 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.

(7) For the purposes of subsection (6) of this section, a claimant must provide an appraisal showing the fair market value of the property one year before the enactment of the land use regulation that was the basis for the claim and the fair market value of the property one year after the enactment. The appraisal also must show the fair market value of each single-family dwelling to which the claimant is entitled under subsection (2) of this section, along with evidence of any ad valorem property taxes not paid, any severance taxes paid and any recapture of additional tax liability that the owner has paid or will pay for the property if the property is disqualified from special assessment under ORS 308A.703. The actual and reasonable cost of preparing the claim, including the cost of the appraisal, not to exceed \$5,000, may be added to the calculation of the reduction in fair market value under section 7 (6) of this 2007 Act. The appraisal must:

(a) Be prepared by a person certified under ORS chapter 674 or a person registered

under ORS chapter 308;

(b) Comply with the Uniform Standards of Professional Appraisal Practice, as authorized by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989; and

(c) Expressly determine the highest and best use of the property at the time the land use regulation was enacted.

The cover letter and appraisal information referenced for use in this claim does not contain the elements required in the subsections above.

The claimant's current response fails to address or meet this standard.

IV. CONCLUSION

The submitted Measure 49 claim for Aleene Mchugill has been tentatively determined by the Lane County Land Management Division to be invalid and not entitled to relief. Lane County cannot authorize any additional single-family dwellings for the portion of the property within the Urban Growth Boundary.