

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

RESOLUTION NO. 08-020

Urging the Oregon State Department of Land Conservation and Development to Use the County's Interpretation of its Historic F-2 Zoning District Regulations in Certain State Determinations Under Measure 49

The Multnomah County Board of Commissioners Finds:

- a. On November 6, 2007, voters in the State of Oregon approved Measure 49, which substantially amends Measure 37. The new law went into effect December 6, 2007.
- b. For areas outside an Urban Growth Boundary, the Oregon State Department of Land Conservation and Development (DLCD) will be evaluating claims that were filed prior to the end of the last legislative session to determine if they are eligible for relief in the form of a specific number of home sites.
- c. Under Measure 49, DLCD is charged with determining whether, on the claimant's acquisition date, the claimant lawfully was permitted to establish the number of home sites requested. To make this determination, DLCD will review and interpret both state and local regulations.
- d. It is in the best interests of the County to share its interpretation of its own regulations with DLCD.
- e. In particular, the County should share with DLCD the County's interpretation of its historic F-2 zoning district regulations in effect from 1958 to 1975 because those regulations apply to approximately one-third of the claims filed in Multnomah County that are now subject to review by DLCD under Measure 49.
- f. The F-2 zoning district implemented the County's planning policy to preserve rural lands for agriculture and open space uses at densities appropriate to the limited infrastructure in these areas.
- g. In relevant part, the F-2 district regulations permitted a dwelling or dwellings for the owner, operator and/or help required to carry out grazing, agriculture, horticulture or the growing of timber.
- h. **The F-2 district regulations did not incorporate a test for determining whether a dwelling was required to carry out a farm or timber use.**
- i. **The County presumed, within limits, that new dwellings in the F-2 district were associated with farm or timber uses given the rural location of the district and viewed this presumption as sufficient to implement its rural lands policy.**
- j. Multnomah County planning records establish the existence and application of the presumption. Within the F-2 district, the County approved permits for dwellings and subdivisions of modest size without requiring a showing that such dwellings were required for a farm or forest use. For example, the largest subdivision approved and developed in the F-2 district without a showing of its necessity for a farm or forest use consisted of 19 lots.

- k. Multnomah County planning records establish further that the presumption was limited—larger scale development and residential subdivisions were denied as inconsistent with the County's rural land policy. The fact that the presumption is limited is further supported by the 2007 decision of the Multnomah County Circuit Court in *Fred Hall v. Multnomah County*, in which the court determined that the County would not have approved a 62-lot subdivision in the F-2 district in 1971.
- l. The evidence shows that even the maximum relief per property under Measure 49—ten new home sites—does not exceed the number of new dwellings that would have been approved by the County under and in accordance with the F-2 zoning district regulations without a showing that such dwellings were required to carry out a farm or timber use.
- m. Restrictions on new dwellings under Measure 49 operate to ensure further that, where applicable, relief under the Measure will be consistent with the historic F-2 zoning district regulations. The restrictions include a three home site cap on high value farm and forest land; a prohibition on new claims challenging historic regulations; and the limitation that a claimant cannot ask for more units than they listed in their original claim.

The Multnomah County Board of Commissioners Resolves:

- 1. When interpreting the County's F-2 zoning district regulations for purposes of implementing Measure 49, the Board urges the DLCD to employ the same presumption used by the County and to find a request by a claimant for ten or fewer home sites to be consistent with the F-2 regulations and County Comprehensive Plan. To that end, the Board urges DLCD to refrain from incorporating into the F-2 zoning district regulations a test for determining whether a dwelling was required to carry out a farm or timber use.
- 2. In accordance with Section 8(4) of Measure 49, the Multnomah County Division of Land Use and Transportation will send a copy of this Resolution together with supporting documentation to DLCD.

ADOPTED this 28th day of February, 2008.

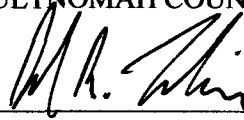


BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON


Ted Wheeler, Chair

REVIEWED:

AGNES SOWLE, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY, OREGON

By 
Jed R. Tomkins, Assistant County Attorney

SUBMITTED BY:
Ted Wheeler, County Chair