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Community

Measure 49 takes effect today

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Developments begun under Measure 37 may be halted

Charlie Fischer thought he'd figured a way to pay the \$5,000 monthly nursing home bills for his ailing wife by developing his 33-acre orchard north of Corvallis into the Cherry Farm subdivision.

Now, after plowing \$63,000 into survey work, petitioning the county and state for a Measure 37 claim and wading through the required planning and building paperwork, Oregon's newest land-use law might make it all for naught.

"We didn't feel that this was a gamble," said Fischer, who is 85. "Measure 37 is like learning the ABCs compared to Measure 49."

Measure 49 becomes law in Oregon today.

In November, the state's voters scaled back rights granted in 2004 by Measure 37, which gave landowners the right to waive land-use rules imposed after they had purchased property if the value of their investment was reduced by the restrictions.

The new law limits large subdivisions, commercial and industrial developments, but it allows rural landowners to build from three to 10 homes.

Proponents of the law argued that it would protect mom and pop developers looking to put up a few homes for retirement by putting a "fast-track" process in place for small-scale projects. But Fischer's plan to sell six 5-acre parcels might be too big to breeze through without scrutiny.

Cases like Fischer's stand to test an overlooked wrinkle in the transition between the two land-use provisions: vesting.

So far, Fischer has spent 14 percent of the subdivision's \$457,000 budget on waiver fees, platting fees, erosion permits, wetlands delineation and survey work. But that might not be enough to allow the family to move forward with the plan.

It seems that no one — property owners, county officials, nor lawyers — knows how to interpret the law as yet, especially for those who've already moved forward with their waivers. Cases are lining up in Clackamas and Multnomah counties, which saw the most, and largest, claims under Measure 37.

The state Land Conservation and Development Commission chose not to discuss rules for interpreting the measure when it met in Corvallis last week, though it will issue letters this month to claimants who must resubmit claims.

Benton County will begin sending out letters of its own to Measure 37 claimants who may need to re-petition the county. The letters will explain how each of the 137 people who filed claims here should expect to proceed.

Fischer is the only landowner in Benton County granted a right to subdivide land under Measure 37 who has made progress toward developing it, according to county staff.

Until that letter arrives, everything is on hold, said George Heilig, Fischer's attorney.

"Until we receive that letter, we don't know what we'll do," he said. "Benton County Measure 37 claimants may wait to see what happens in other counties."

Last month, the county updated its community development fee schedule to account for the new law. The biggest change came in charges for determining a vested right, a process that is central to Measure 37 claimants such as Fischer who have begun developing their land.

The fee for processing a Measure 49 claim is \$750. To re-review a Measure 37 claim under the new law will cost \$300 above the \$600 each landowner was required to pay when originally filing a claim.

A vested rights investigation in Benton County now costs \$900, up from \$165. Greg Verret, interim director of Benton County's community development department, said the county has conducted only one investigation into vested rights in the eight years he's been working for the county.

Under the new law, more of the investigations are expected and the process is more involved for county staff members. County planners saw their workload double under the weight of Measure 37 claims, causing regular construction permits to take twice as long.

"It will really need to be determined case-by-case," he said. "It's hard to anticipate what we're going to see."

Most cases in Benton County won't be decided here, however. Proposed developments outside of urban growth boundaries, like Fischer's, will be decided by the Department of Land Conservation and Development.

Fischer said he started development in good faith and if his subdivision isn't approved, he will demand his \$63,000 back.

"That was the law of the state of Oregon," he said. "We complied with the law."

Heilig calls Measure 49 an "annuity for land-use attorneys."

"I think there's going to be much more litigation with Measure 49 than there ever was for Measure 37," he said. "There are many uncertainties with 49, and we're not totally sure we understand the procedural track or the substance of it."

For small-time landowners like Fischer, who said his savings will only pay the bills until April, the clock is ticking for untangling the specifics of the new law.

"So much of this is going to have to work out over time," he said. "As far as I'm concerned, I don't have the time."

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n CLAIMS: For information about Measure 37 claims and how they relate to the new Measure 49, see www.oregon.gov/LCD/measure49.shtml.