



COUNCIL RESOLUTION NO. 5202

**A RESOLUTION DENYING A MEASURE 49 CLAIM FOR
PROPERTY LOCATED AT 1777 E. 30TH AVENUE, EUGENE,
OREGON (ASSESSOR'S MAP 18-03-08-11, TAX LOT 602).**

PASSED: 7:0

REJECTED:

OPPOSED:

ABSENT: Ward 4 seat vacant

CONSIDERED: June 26, 2017



RESOLUTION NO. 5202

A RESOLUTION DENYING A MEASURE 49 CLAIM FOR PROPERTY LOCATED AT 1777 E. 30TH AVENUE, EUGENE, OREGON (ASSESSOR'S MAP 18-03-08-11, TAX LOT 602).

The City Council of the City of Eugene finds that:

A. Chad and Katie Wilson submitted a claim to the City seeking compensation or a waiver of regulations under Ballot Measure 49. Claimants alleged that the maximum height limit provision in subsection (17)(c)9. of Section 9.2751 of the Eugene Code, 1971 (EC), that applies to detached secondary dwellings on the subject property restricts the residential use and diminished the fair market value of the property at 1777 E. 30th Avenue, Eugene, Oregon (the Property).

B. The City Manager has caused the claim to be investigated and has submitted to the Council a Report and Recommendation, attached as Exhibit A to this Resolution, recommending that the claim be denied.

C. Considering the requirements of Measure 49, the materials related to the claim submitted to the City by the claimants and others, and the City Manager's recommendation and conclusion as to the validity of the claim, the City Council finds that the claim should be denied.

NOW, THEREFORE,

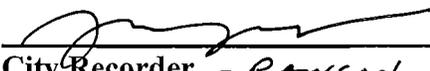
BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EUGENE, a Municipal Corporation of the State of Oregon, as follows:

Section 1. Based on the above findings, which are adopted, and the findings and analysis contained in the Report and Recommendation of the City Manager attached as Exhibit A to this Resolution, the City Council hereby denies the Measure 49 claim submitted by Claimants Chad and Katie Wilson, for the property located at 1777 E. 30th Avenue, Assessor's Map 18-03-08-11, Tax Lot 602.

Section 2. A copy of this Resolution shall be forwarded to Chad and Katie Wilson at 1777 E. 30th Avenue, Eugene, Oregon 97405, to their representative, Bill Kloos at 375 W. 4th Street, Suite 204, Eugene, Oregon 97401, to the City's Planning & Development Department, and to any person who submitted written arguments or evidence before the close of the record. A copy of this Resolution shall also be forwarded to Lane County Deeds and Records.

Section 3. This Resolution shall become effective immediately upon its adoption.

The foregoing Resolution adopted the 26th day of June, 2017.


Deputy City Recorder - RAWSON BAYLOR-PINO

**BALLOT MEASURE 49
(ORS 195.300 – ORS 195.336)**

CLAIM FOR COMPENSATION

REPORT AND RECOMMENDATION OF THE CITY MANAGER

NAME OF CLAIMANTS:	Chad and Katie Wilson
PROPERTY ADDRESS:	1777 E. 30th Avenue Eugene, OR 97405
CLAIMANTS' REPRESENTATIVE:	Bill Kloos
PROPERTY IDENTIFICATION:	Tax Lot 602 of Assessor's Map 18-03-08-11
ZONING:	Low Density Residential; R-1

I. Summary of Claim

Chad and Katie Wilson (Claimants) submitted a claim under Ballot Measure 49 for compensation for the alleged reduction in fair market value to their property located at 1777 E. 30th Avenue in Eugene, Oregon. The property currently contains a residence, built in 2004, located on the southwest portion of the property. Claimants assert that EC 9.2751(17)(c)9., which limits and prescribes a certain method of measuring the height/sloped setback of detached secondary dwelling units, restricts the residential use of their property, as it prevents the existing residence on their property from automatically qualifying as a secondary dwelling. Claimants also contend that EC 9.2751(17)(c)9., enacted in 2014, reduces the fair market value of their property. Claimants assert a \$60,000 decline in the value of their property, but do not specifically articulate a request for compensation. Rather, Claimants request that the City waive EC 9.2751(17)(c)9., allowing them to construct a new primary dwelling on their property and to convert the existing dwelling into a legal detached secondary dwelling unit.

II. Summary of City Manager's Recommendation

Measure 49 generally grants a property owner of residentially zoned land the right to compensation or to waiver of a land use regulation adopted by the City if five substantive requirements are met. First, the regulation must constitute a "land use regulation" as that term is defined by Measure 49. Second, the City must have enacted the regulation after January 1, 2007, but not more than five years before the date the claim was filed. Third, the regulation must "restrict the residential use" of residentially zoned private property. Fourth, the effect of the regulation must be to cause a reduction of the fair market value of the property. Fifth, the regulation must not fall within one of Measure 49's six exemptions.

As discussed below, the claim submitted by the Wilsons meets two of the five substantive requirements of Measure 49: 1) the regulation that is the subject of this claim, EC 9.2751(17)(c)9., was enacted after January 1, 2007, and less than five years before the date the claim was filed; and 2) EC 9.2751(17)(c)9. does not fall within one of Measure 49's six exemptions. However, as discussed in more detail below, the City Manager finds that: 1) EC 9.2751(17)(c)9. does not qualify as a land use regulation as defined by Measure 49; 2) EC 9.2751(17)(c)9. does not effectively restrict a previously allowed residential use on claimants' residentially zoned property; and 3) Claimants have not adequately demonstrated that their property value has been reduced as required by Measure 49. For these reasons, the City Manager recommends that the Council deny the Wilsons' claim.

III. Analysis of Claim

A. Ownership

Measure 49 provides for payment of compensation or relief from (waiver of) specific regulations for "owners" of real property. Measure 49 defines "owner" to include "[t]he owner of fee title to the property as shown in the deed records of the county where the property is located[.]" ORS 195.300(18).

Based on the information submitted by the Claimants (Warranty Deed 2003-082408 and Deed 2014-049003, and information from the Lane County Regional Land Information Database), the City Manager concludes that the subject property was acquired by Claimant Chad Wilson on August 26, 2003, and an undivided one-half interest in the property was transferred to Claimant Katie Wilson on December 9, 2014. Accordingly, both Claimants are owners.

B. "Land Use Regulations"

Measure 49 requires compensation (or waiver) only for those regulations that constitute "land use regulations" as that term is defined by Measure 49. Further, the regulation must have been enacted after January 1, 2007, but within five years of the date of the claim. Measure 49 defines "land use regulation," with respect to cities, as a "provision of a city comprehensive plan, zoning ordinance or land division ordinance *that restricts the residential use of private real property zoned for residential use.*" ORS 195.300(14)(c). (Emphasis added).

EC 9.2751(17)(c)9. is a provision of the City's zoning ordinance, and it regulates residential uses on property zoned for residential uses. EC 9.2751(17)(c)9. was adopted as part of Ordinance No. 20526, which became effective April 12, 2014. The Wilsons' Measure 49 claim was filed on February 24, 2016. EC 9.2751(17)(c)9. was enacted after January 1, 2014, and within five years of the date of the Wilsons' claim. However, as discussed in more detail in section C, below, EC 9.2751(17)(c)9. does not restrict the residential use of the Wilson's property; therefore, EC 9.2751(17)(c)9. does not qualify as a "land use regulation" for purposes of Measure 49.

C. Restriction on Residential Use

A "land use regulation" only gives rise to a Measure 49 claim if the regulation restricts the residential use of private real property zoned for residential use. EC 9.2751(17)(c)9. provides a height limit for new attached and detached secondary dwelling units within the city-recognized boundaries of Amazon Neighbors, Fairmount Neighbors and South University Neighborhood, and

proscribes a method for determining the height of a building. Claimants allege that EC 9.2751(17)(c)9. restricts the residential use of their property, as it prevents the existing residence on their property from automatically qualifying as a secondary dwelling.

Adopted on March 12, 2014 (by Ordinance No. 20526) and effective on April 12, 2014, EC 9.2751(17)(c)9. establishes the following limitations for detached secondary dwellings within the city-recognized boundaries of Amazon Neighbors, Fairmount Neighbors and South University Neighborhood:

(17) Secondary Dwellings in R-1

....

(c) Area-Specific Secondary Dwelling Standards. The following standards apply to all new attached or detached secondary dwellings in the R-1 zone within the city-recognized boundaries of Amazon Neighbors, Fairmount Neighbors and South University Neighborhood Association:

....

9. Building Height/Interior Setback. For detached secondary dwellings:

- a. The interior yard setback shall be at least 5 feet from the interior lot line. In addition, at a point that is 8 feet above grade, the setback shall slope at the rate of 10 inches vertically for every 12 inches horizontally (approximately 40 degrees from horizontal) away from the lot line until a point not to exceed a maximum building height of 18 feet.
- b. The allowances for setback intrusions provided at EC 9.6745(3) do not apply within the setback described in 1. above, except that eaves, chimneys and gables are allowed to project into this setback no more than 2 feet.

Prior to the Council's adoption of the above-quoted code provision, the code-prescribed manner for measuring the building height of a detached secondary dwelling would have allowed conversion of the Claimants' existing dwelling into a lawful detached secondary dwelling. See Section 2 of Ordinance No. 20417. That is, under the code provisions that existed prior to the adoption of Ordinance No. 20526, the Claimants' existing structure met the height requirement for a detached secondary dwelling. However, the code-prescribed manner for measuring the building height of a detached secondary dwelling that went into effect on April 12, 2014 (quoted above), prevents the Claimants from converting the existing structure to a lawful detached secondary

dwelling. Based on the measuring method adopted in 2014, the Claimants' existing structure exceeds the maximum height allowed for a detached secondary dwelling.

Claimants assert that EC 9.2751(17)(c)9. is a "land use regulation" that "restricts the residential use" of their property because prior to the 2014 adoption of Ordinance No. 20526, the existing residence on Claimants' property would have automatically qualified as a detached secondary dwelling unit. However, following the adoption of Ordinance No. 20526, the existing residence no longer automatically qualifies as a detached secondary dwelling unit because, based on the way the structure must be measured, the existing residence is too tall to qualify as a detached secondary dwelling unit.

However, despite the height restrictions imposed by EC 9.2751(17)(c)9., staff has identified a number of additional ways claimants could construct a secondary dwelling on the subject property. In a memo dated June 5, 2017, Alissa Hansen, Principal Planner, identified the following four options that would allow the Claimants to develop a secondary dwelling on the existing property:

1. The existing dwelling could remain the primary residence, and a secondary dwelling could be built on the property.
2. The kitchen could be removed from the existing dwelling (and the existing dwelling would therefore be considered detached accessory living space rather than a secondary dwelling unit), and a new primary dwelling and a secondary dwelling could be built on the property.
3. The entire structure containing the existing dwelling could be demolished, and a new dwelling and a secondary dwelling could be built on the property.
4. The structure containing the existing dwelling could be altered to meet the current height limit for secondary dwelling (this would likely require removing the top floor, and using the lower portion, currently a garage, for the dwelling) and then be converted to a secondary dwelling in conjunction with a new primary dwelling built on the property.

As Planning staff point out, while EC 9.2751(17)(c)9. prevents claimants from treating the existing structure on the property as a secondary dwelling without alterations, EC 9.2751(17)(c)9. does not foreclose the Claimants from developing both a primary dwelling and a secondary dwelling on the subject property. The Claimants argue that their use of the property is restricted because prior to EC 9.2751(17)(c)9., the structure on their property would have automatically qualified as a secondary dwelling and now it does not. However, Measure 49 requires that a land use regulation restrict a residential *use* and as noted above, EC 9.2751(17)(c)9. does not prevent the residential use of the property generally, nor does it prohibit Claimants from establishing both a primary and a secondary dwelling on the subject property. Paul Conte and Carolyn Jacobs also submitted testimony into the record arguing that EC 9.2751(17)(c)9. does not restrict the use of Claimant's property.

Because there are other ways for Claimants to place a secondary dwelling unit on the subject property, the City Manager concludes that EC 9.2751(17)(c)9. does not restrict the residential use of Claimants' property as required by Measure 49.

D. Reduction in Value

To succeed on their Measure 49 claim, claimants must show that EC 9.2751(17)(c)9. reduced the fair market value of their property. To show a reduction in fair market value, Measure 49 requires that Claimants provide an appraisal showing the fair market value of the property one year before the enactment of the land use regulation and the fair market value of the property one year after enactment. The appraisals submitted by the Claimants must comply with the Uniform Standards of Professional Appraisal Practice. ORS 195.310(2)(b). Claimants submitted appraisals of the fair market value of the property one year before the adoption of EC 9.2751(17)(c)9. (March 12, 2013), and one year after the adoption of EC 9.2751(17)(c)9. (March 12, 2015). The March 12, 2013, appraisal identifies a property value of \$470,000. The March 12, 2015, appraisal identifies a property value of \$410,000.

Evidence submitted by Paul Conte, Carolyn Jacobs and Bill Aspergren calls the Claimants' appraisals into question in several particulars. First, Claimants originally submitted a set of appraisals with dates that did not comply with Measure 49 requirements. Claimants rectified that issue when it was brought to their attention by City staff. However, testimony submitted by Carolyn Jacobs and Bill Aspergren points out that although the dates of the appraisals changed, the value of the property in the appraisals did not. In addition, testimony in the record raises questions about properties selected by the appraiser for use as comparables as well as the choice to base the appraisal on the value of a hypothetical primary residence and secondary dwelling unit, rather than on the structure that actually exists on the property.

Finally, an appraisal review conducted by C. Spencer Powell and included in the record concludes that the appraisals submitted by the Claimants do not comply with the Uniform Standards of Professional Appraisal Practice in several particulars. The claimants had an opportunity to review Mr. Powell's findings and conclusions and to submit evidence and argument rebutting those findings and conclusions. Claimants failed to provide any evidence or argument challenging Mr. Powell's findings and conclusions. The City Manager finds Mr. Powell's findings and conclusions credible. Based on the evidence and argument in the record, the City Manager concludes that the appraisals submitted by the applicant do not comply with the Uniform Standards of Professional Appraisal Practice as required by ORS 195.310(2)(b). The City Manager further concludes that Claimants have not shown that EC 9.2751(17)(c)9. has caused a reduction in the fair market value of their property as required by Measure 49.

E. Exemptions

Finally, a Measure 49 claim is not valid if the challenged regulation falls within one of the exemptions listed in ORS 195.305(3). The regulation at issue in this claim does not fall within any of the exemptions listed in ORS 195.305(3).

IV. Conclusion and Recommendation

Based on the findings and analysis set forth above, the City Manager recommends that the City Council deny the Wilsons' Measure 49 claim.