



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: E129700¹

CLAIMANT: Dean-Val Properties LLC
19508 S Henrici Road
Oregon City, OR 97045

MEASURE 37 PROPERTY
IDENTIFICATION: Township 3S, Range 2E, Section 12D
Tax lot 103
Clackamas County

The claimant, Dean-Val Properties LLC, filed a claim with the state under ORS 197.352 (2005) (Measure 37) on July 18, 2006, for property located at 19692 South Henrici Road, near Oregon City, in Clackamas 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 claimant has elected supplemental review of its 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 Claimant 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 claimant has requested two home site approvals in the election material. The Measure 37 waiver

¹ Claim M118636 also addressed tax lot 103. Measure 49 Section 6(5) provides:

“If multiple claims were filed for the same property, the number of lots, parcels or dwellings that may be established for purposes of subsection (2)(a) of this section is the number of lots, parcels or dwellings in the most recent waiver issued by the state before the effective date of this 2007 Act or, if a waiver was not issued, the most recent claim filed with the state, but not more than three in any case.”

This final order addresses M129700 and tax lot 103 because this claim is the most recent claim filed with the state for tax lot 103.

issued for this claim describes six home sites. Therefore, the claimant may qualify for a maximum of two 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 claimant 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 claimant, Dean-Val Properties LLC, filed a Measure 37 claim, M129700, with the state on July 18, 2006. The claimant filed a Measure 37 claim, ZC140-05, with Clackamas County on May 19, 2005. The state claim was filed prior to December 4, 2006.

The claimant timely filed a Measure 37 claim with both the state and Clackamas 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 information submitted by the claimant, Dean-Val Properties LLC has not established its ownership of the property for the purposes of Measure 49. On February 13, 2008, Dean-Val Properties LLC transferred the property to Dean and Valerie Reed and therefore, is not an owner under Measure 49.

Because this requirement has not been met, the claimant is not entitled to any relief under Measure 49, and, therefore, the remaining approval criteria are not evaluated.

II. COMMENTS ON THE PRELIMINARY EVALUATION

The department issued its Preliminary Evaluation for this claim on March 31, 2010. Pursuant to OAR 660-041-0090, the department provided written notice to the owners of surrounding properties. Comments received have been taken into account by the department in the issuance of this Final Order of Denial. Specifically, the claimants' agent submitted comments stating that Dean and Valerie Reed have maintained continuous ownership of the Measure 37 claim property. The comments state that the transfer of the Measure 37 claim property to the Dean-Val Reed Properties, LLC was done for estate planning purposes and should not result in a denial of the Measure 49 claim. However, an LLC is a separate and distinct legal entity from its members. Because the LLC transferred the property to its members in their individual capacities, it no longer owns the Measure 37 claim property for purposes of Measure 49. Further, Dean and Valerie Reed were not claimants on the controlling Measure 37 claim and a claim cannot be amended to add claimants. Even if Dean and Valerie Reed were considered claimants under Measure 49, their claim would still be a denial. Section 21 of Measure 49 (2007) provides that "if a claimant conveyed the property to another person and reacquired the property, whether by foreclosure or otherwise, the claimant's acquisition date is the date the claimant reacquired ownership of the property." Therefore, because Dean and Valerie Reed conveyed the property to an LLC, their acquisition date would be the date they reacquired the property, February 13, 2008.

III. CONCLUSION

Based on the department's analysis, the claimant is not eligible for any relief under Measure 49 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 26th day of May 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 is 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.