



**OREGON DEPARTMENT OF LAND CONSERVATION AND
DEVELOPMENT**

**ORS 195.300 to ORS 195.336 (MEASURE 49) SUPPLEMENTAL REVIEW
OF MEASURE 37 CLAIM
Preliminary Evaluation**

December 17, 2009

STATE ELECTION NUMBER:

E130413¹

CLAIMANTS:

Oldenstadt, LLC
c/o Dennis L. Oldenstadt
24725 SW Mountain Road
West Linn, OR 97068

Dennis L. and Jacqueline Oldenstadt
24725 SW Mountain Road
West Linn, Oregon 97068

Allan and Donna Smith
24825 SW Mountain Road
West Linn, Oregon 97068

**MEASURE 37 PROPERTY
IDENTIFICATION:**

Township 3S, Range IE
Section 5B, Tax lot 300
Section 5A, Tax lot 800
Clackamas County

AGENT CONTACT INFORMATION:

John A. Rankin
John A. Rankin, LLC
26715 SW Baker Road
Sherwood, OR 97140

¹ The claimants also filed claim M121599 for the same property. 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 Preliminary Evaluation addresses M130413 because no waiver was issued under Measure 37 for either claim and it is the most recent claim filed with the state.

I. ELECTION

The claimants, Oldenstadt, LLC, Dennis and Jacqueline Oldenstadt and Allan and Donna Smith, filed claims with the state under ORS 197.352 (2005) (Measure 37) on July 27, 2005 and October 25, 2006, for property located at 24601 and 24725 SW Mountain Road, near West Linn, 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 claimants have elected supplemental review of their 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.

II. SUMMARY OF PRELIMINARY EVALUATION

Based on the department's preliminary analysis, it appears that claimant Oldenstadt LLC is not eligible for any relief under Measure 49 because the claimant would not have been lawfully permitted to establish any additional home sites when it acquired the property.

Based on the department's preliminary analysis, it appears that claimants Dennis and Jacqueline Oldenstadt and Allan and Donna Smith are not eligible for any relief under Measure 49 because they have not established their ownership of the property for the purposes of Measure 49.

III. THE MAXIMUM NUMBER OF HOME SITE APPROVALS FOR WHICH THE CLAIMANTS 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 claimants 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 claimants have requested three home site approvals in the election material. No waiver was issued for this claim. The Measure 37 claim filed with the state describes 46 home sites. Therefore, the claimants may qualify for a maximum of three home site approvals under Section 6 of Measure 49.

IV. PRELIMINARY ANALYSIS OF QUALIFICATION FOR HOME SITE APPROVAL

1. Preliminary Analysis

To qualify for a home site approval under Section 6 of Measure 49, 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.

The claimants, Oldenstadt, LLC, Dennis and Jacqueline Oldenstadt and Allan and Donna Smith, filed Measure 37 claims, M121599 and M130413, with the state on July 27, 2005 and

October 25, 2006, respectively. The claimants filed a Measure 37 claim, ZC-176-05, with Clackamas County on June 21, 2005. The state claims were filed prior to December 4, 2006.

It appears that the claimants timely filed a Measure 37 claim with both the state and Clackamas County.

In addition to filing a claim with both the state and the county in which the property is located, to qualify for a home site approval under Section 6 of Measure 49 the claimants must establish each of the following:

(a) 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."

According to the deeds submitted by the claimants and information from Clackamas County, Oldenstadt, LLC is the owner of fee title to the property as shown in the Clackamas County deed records and, therefore, is an owner of the property under Measure 49.

According to the information submitted by the claimants, Dennis and Jacqueline Oldenstadt and Allan and Donna Smith have not established their ownership of the property for the purposes of Measure 49. Claimant Dennis Oldenstadt asserts acquisition of an ownership interest in tax lots 300 and 800 on April 28, 1948, and claimants Jacqueline Oldenstadt and Allan and Donna Smith assert acquisition of an ownership interest in tax lots 300 and 800 on February 21, 1969. However, according to information from Clackamas County, the claimants transferred all of their individual interest in the subject property to the Oldenstadt Family Limited Partnership on June 23, 1997. The Oldenstadt Family Limited Partnership subsequently transferred the subject property to claimant Oldenstadt, LLC, as reflected by a bargain and sale deed included with the claim. An LLC is a distinct and separate entity from its members. Therefore, claimants Dennis and Jacqueline Oldenstadt and Allan and Donna Smith no longer own the Measure 37 claim property for the purposes of Measure 49.

Because this requirement has not been met with respect to Dennis and Jacqueline Oldenstadt and Allan and Donna Smith, they are not entitled to any relief under Measure 49, and, therefore, the remaining approval criteria will only be evaluated for claimant Oldenstadt, LLC.

(b) All Owners of the Property Have Consented in Writing to the Claim

It appears that claimant Oldenstadt, LLC is the sole owner of the property. Therefore, no additional consent is required.

(c) The Measure 37 Claim Property Is Located Entirely Outside Any Urban Growth Boundary and Entirely Outside the Boundaries of Any City

The Measure 37 claim property is located in Clackamas County, outside the urban growth boundary and outside the city limits of the nearest city, West Linn.

(d) One or More Land Use Regulations Prohibit Establishing the Lot, Parcel or Dwelling

As stated in Section III) above, claimant Oldenstadt, LLC may qualify for up to three home site approvals.

The property is currently zoned Exclusive Farm Use (EFU) by Clackamas County, in accordance with ORS chapter 215 and OAR 660, division 33, because the property is "agricultural land" as defined by Goal 3. Goal 3 requires agricultural land to be zoned exclusive farm use. Applicable provisions of ORS chapter 215 and OAR 660, division 33, enacted or adopted pursuant to Goal 3, generally prohibit the establishment of a lot or parcel less than 80 acres in size in an EFU zone and regulate the establishment of dwellings on new or existing lots or parcels.

The claimant's property consists of 92.84 acres. Therefore, state land use regulations prohibit claimant Oldenstadt, LLC from establishing on the Measure 37 claim property the three home sites the claimant may qualify for under Section 6 of Measure 49.

(e) The Establishment of the Lot, Parcel or Dwelling Is Not Prohibited by a Land Use Regulation Described in ORS 195.305(3)

ORS 195.305(3) exempts from claims under Measure 49 land use regulations:

- (a) Restricting or prohibiting activities commonly and historically recognized as public nuisances under common law;
- (b) Restricting or prohibiting activities for the protection of public health and safety;
- (c) To the extent the land use regulation is required to comply with federal law; or
- (d) Restricting or prohibiting the use of a property for the purpose of selling pornography or performing nude dancing.

Based on the documentation submitted by the claimants, it does not appear that the establishment of the three home sites for which claimant Oldenstadt, LLC may qualify on the property would be prohibited by land use regulations described in ORS 195.305(3).

(f) On the Claimant's Acquisition Date, the Claimant Lawfully Was Permitted to Establish at Least the Number of Lots, Parcels or Dwellings on the Property That Are Authorized Under Section 6 of Measure 49

A claimant's acquisition date is "the date the claimant became the owner of the property as shown in the deed records of the county in which the property is located. If there is more than

one claimant for the same property under the same claim and the claimants have different acquisition dates, the acquisition date is the earliest of those dates.”

Clackamas County deed records indicate that claimant Oldenstadt, LLC acquired the property on August 20, 1999.

On August 20, 1999, the Measure 37 claim property was subject to Clackamas County’s acknowledged Exclusive Farm Use (EFU) zone. Clackamas County’s EFU zone required 80 acres for the creation of a new lot or parcel on which a dwelling could be established. The claimants’ property consists of 92.84 acres, and is developed with two dwellings. Therefore, the claimant lawfully could not have established any additional home sites on its date of acquisition.

2. Preliminary Conclusion

Based on the preliminary analysis, claimant Oldenstadt, LLC does not qualify for Measure 49 home site approvals because the claimant was not lawfully permitted to establish the lots, parcels or dwellings on its date of acquisition.

Based on the preliminary analysis, claimants Dennis and Jacqueline Oldenstadt and Allan and Donna Smith do not qualify for Measure 49 home site approvals because they have not established their ownership of the Measure 37 claim property for the purposes of Measure 49.

V. NOTICE OF OPPORTUNITY TO COMMENT

A claimant or a claimant’s authorized agent, a county and any third party may submit written comments, evidence and information in response to the preliminary evaluation. The comments, evidence and information must be filed with the department no more than twenty-eight (28) calendar days after the date this evaluation is mailed to the claimants and the claimants’ agent and notice of this evaluation is mailed to third parties.

The department will mail a copy of all materials timely filed by a county or a third party with the department to the claimants and the claimants’ agent. A claimant or a claimant’s authorized agent may then file written comments, evidence or information in response to the materials filed by the third party or county. That response must be filed no more than twenty-one (21) calendar days after the date the department mails the materials to the claimants and the claimants’ authorized agent.

All comments, evidence and information in response to the preliminary evaluation and all responses to materials filed by a third party or a county shall be delivered to Supplemental Measure 49 Claim Review, 635 Capitol Street NE, Suite 150, Salem, Oregon 97301-2540 and will be deemed timely filed either (1) if actually delivered to the department before the close of business on the final eligible calendar day, or (2) if mailed on or before the final eligible calendar day.

Note: Please reference the claim number and claimant name and clearly mark your comments as “Preliminary Evaluation Comments.” Comments must be submitted in original written form only. Comments submitted electronically or by facsimile will not be accepted.