



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:

E133921

CLAIMANTS:

Jerry Daniel Arvin
1734 SE 40th Avenue
Portland, OR 97214

Jean Lynnette Pohl
97 Mill Plain Road
Branford, CT 06405

MEASURE 37 PROPERTY
IDENTIFICATION:

Township 3S, Range 1W
Section 6BC, Tax lot 100
Section 6CB, Tax lot 100
Township 3S, Range 2W, Section 1DA
Tax lots 100, 200, 300 and 400
Washington County

The claimants, Jerry Arvin and Jean Pohl, filed a claim with the state under ORS 197.352 (2005) (Measure 37) on December 4, 2006, for property located at 24794 SW Middleton Road, near Sherwood, in Washington 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.

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 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 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 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 more than three home sites. Therefore, the claimants may qualify for a maximum of three 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 claimants 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 claimants, Jerry Arvin and Jean Pohl, filed a Measure 37 claim, M133921, with the state on December 4, 2006. The claimants filed a Measure 37 claim, 37CL0861, with Washington County on December 4, 2006. The state claim was filed on December 4, 2006.

The claimants timely filed a Measure 37 claim with both the state and Washington 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 deed submitted by the claimants, Jerry Arvin and Jean Pohl are the owners of fee title to the property as shown in the Washington County deed records and, therefore, are owners of the property under Measure 49.

Washington County has confirmed that the claimants are the current owners of the property.

3. All Owners of the Property Have Consented in Writing to the Claim

All owners of the property must consent to the claim in writing.

Findings of Fact and Conclusions:

The deed by which the claimants acquired the property indicates that there is one co-claimant owner who has not consented to the claim: Jean Pohl. Without the consent of all claimant owners, the department is not authorized to provide any relief under Measure 49. Such consent was not provided in writing within the time periods set for comment on this claim set forth in OAR 660-041-0090.

4. The Property Is Located Entirely Outside Any Urban Growth Boundary and Entirely Outside the Boundaries of Any City

The Measure 37 claim property must be located entirely outside any urban growth boundary and entirely outside the boundaries of any city.

Findings of Fact and Conclusions:

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

5. One or More Land Use Regulations Prohibit Establishing the Lot, Parcel or Dwelling

One or more land use regulations must prohibit establishing the requested lot, parcel or dwelling.

Findings of Fact and Conclusions:

The property is currently zoned Agriculture and Forest (AF-5) by Washington County, in accordance with Goal 14, which prohibits the urban use of rural land and requires local comprehensive plans to identify and separate urbanizable from rural land in order to provide for the orderly and efficient transition from rural to urban use. State laws, namely Goal 14 and OAR 660-004-0040, prohibit the establishment of a lot or parcel less than 20 acres for property within one mile of the UGB for the Portland metropolitan area. However, those provisions do not prohibit the establishment of a dwelling on an existing vacant lot or parcel on such property provided it is located within an acknowledged rural residential area.

The claimants' property is within one mile of the Portland UGB and within Washington County's acknowledged AF-5 zone. The claimant's property consists of tax lot 100 (section 6BC, 5.05 acres), tax lot 100 (section 6CB, 8.02 acres), tax lot 100 (section 1DA, 6.90 acres), tax lot 200 (5.43 acres), tax lot 300 (5.36 acres), and tax lot 400 (5.63 acres). No state law prohibits the claimants from establishing the requested dwellings on the existing vacant lots or parcels. Therefore, it appears that no state law prohibits the claimants from establishing the three home sites on the Measure 37 claim property.

II. COMMENTS ON THE PRELIMINARY EVALUATION

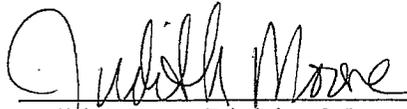
The department issued its Preliminary Evaluation for this claim on December 30, 2009. Pursuant to OAR 660-041-0090, the department provided written notice to the owners of surrounding properties. No written comments were received in response to the 28-day notice.

III. CONCLUSION

Based on the analysis above, the claimants do not qualify for Measure 49 home site approvals because no land use regulation prohibits the claimants from establishing the requested home sites. Additionally, without the consent of all claimant owners, the department is not authorized to provide any relief under Measure 49. Such consent was not provided in writing within the time periods set forth in OAR 660-041-0090.

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 7th day of April 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.