



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:

H134289

CLAIMANTS:

Earl Doman, Tim Doman and Donna Doman
2 Progress Way
Woodburn, OR 97071

Earl A. Doman LLC
2146 Progress Way
Woodburn, OR 97071

MEASURE 37 PROPERTY
IDENTIFICATION:

Township 5S, Range 1W,
Section 16, Tax lots 500, 700, 800 and 900
Section 16A, Tax lot 500
Marion County

The claimants, Earl Doman, Tim Doman, Donna Doman and Earl A. Doman LLC, filed a claim with the state under ORS 197.352 (2005) (Measure 37) on February 21, 2007, for property located at 2330 East Lincoln Road, near Woodburn, in Marion 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 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. However, as initially enacted in 2007, a claimant was not eligible for relief under Measure 49 if the claimant filed a Measure 37 claim with the state after December 4, 2006, but did not comply with the provisions of OAR 660-041-0020, then in effect. Earl Doman, Tim Doman, Donna Doman and Earl A. Doman, LLC were not entitled to Measure 49 relief on that basis.

However, the Oregon State Legislative Assembly subsequently amended this Measure 49 requirement through the passage of House Bill 3225 (Chapter 855 (2009 Laws)) (HB 3225). As a result, this requirement no longer prevents the claimants, Earl Doman, Tim Doman, Donna Doman and Earl A. Doman LLC from obtaining Measure 49 relief. The claimants elected to seek relief under Measure 49, as amended by HB 3225, and submitted the \$175 fee required by Section 18 of HB 3225 in order to have the claim reviewed.

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 more than 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, as amended by HB 3225, 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 the state before Measure 49 became effective on December 6, 2007. If the claimant filed their state Measure 37 claim after December 4, 2006, the claimant must also have either (a) filed the claim in compliance with the provisions of OAR 660-041-0020 then in effect; (b) submitted a land use application as described in OAR 660-041-0020 then in effect prior to June 28, 2007; or (c) filed a Measure 37 claim with the county on or before December 4, 2006.

Findings of Fact and Conclusions

The claimants, Earl Doman, Tim Doman, Donna Doman and Earl A. Doman LLC, filed a Measure 37 claim, M134289, with the state on February 21, 2007. The claimants filed a Measure 37 claim, M06-284, with Marion County on December 1, 2006. The state claim was filed after December 4, 2006, and the claimants also filed a county Measure 37 claim before December 4, 2006.

The claimants filed a timely Measure 37 claim with the state along with any additional claims or applications that the claimants had to have filed in order to be eligible for review under Measure 49, as amended by HB 3225.

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 claimant, Earl A. Doman LLC is the owner of fee title to the property as shown in the Marion County deed records and, therefore, is an owner of the property under Measure 49.

Marion County has confirmed that claimant Earl A. Doman LLC is the current owner of the property.

According to the information submitted by the claimants, Earl Doman, Tim Doman and Donna Doman have not established their ownership of the property for the purposes of Measure 49. The claimants transferred their interest in the property to Earl A. Doman LLC in 2005.

Because this requirement has not been met, claimants Earl Doman, Tim Doman and Donna Doman are not entitled to any relief under Measure 49, and, therefore, the remaining approval criteria will not be evaluated for these claimants.

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:

All owners of the property have consented to the claim in writing.

4. The Majority of the Measure 37 Claim Property Is Located Outside Any Urban Growth Boundary and Outside the Boundaries of Any City or the Measure 37 Claim Property is Located within the Boundaries of A City and Entirely Outside Any Urban Growth Boundary

Either the majority of the Measure 37 claim property must be located entirely outside any urban growth boundary and outside the boundaries of any city or the Measure 37 Claim Property must be located within the boundaries of a city and entirely outside any urban growth boundary.

Findings of Fact and Conclusions:

The Measure 37 claim property is located in Marion County and the property is located outside any urban growth boundary and outside the city boundary of the nearest city, Woodburn.

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 Exclusive Farm Use (EFU) by Marion 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 32.33 acres. Therefore, state land use regulations prohibit claimant Earl A. Doman LLC from establishing on the Measure 37 claim property the three home sites the claimant may qualify for under Section 6 of Measure 49.

6. 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.

Findings of Fact and Conclusions

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

7. 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.”

Findings of Fact and Conclusions

Marion County deed records indicate that claimant Earl A. Doman LLC acquired the property on August 16, 2005.

On August 16, 2005, the Measure 37 claim property was subject to Marion County's acknowledged Exclusive Farm Use (EFU) zone. As it does today, in 1984 Marion County's EFU zone required 80 acres for the creation of a new lot or parcel on which a dwelling could be established. The claimant's property consists of 32.33 acres. Therefore, claimant Earl A. Doman LLC lawfully could not have established any home sites on its date of acquisition.

II. COMMENTS ON THE PRELIMINARY EVALUATION

The department issued its Preliminary Evaluation for this claim on May 4, 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 submitted comments alleging that the department should consider claimants Earl Doman, Tim Doman and Donna Doman to be owners of the Measure 37 claim property because they control the Earl A. Doman LLC. The comments also argue that the transfer to the LLC was done for estate planning purposes and thus is analogous to transferring the property to a revocable living trust and the department should treat the transfer as such for purposes of this claim. The department disagrees with this analysis. An LLC is a separate and legal entity distinct from its members. Therefore, when claimants Earl Doman, Tim Doman and Donna Doman transferred their ownership interest in the subject property to the Earl A. Doman LLC, they transferred their ownership in the Measure 37 claim property for purposes of Measure 49. Further, the department's analysis of ownership in the context of revocable trusts is controlled by the definition of owner found in Section 2(16)(c) of Measure 49 (2007). No such definition exists for LLCs and therefore Section 2(16)(a) controls. The deed records reflect that Earl A. Doman LLC is the only owner of the subject property and that it acquired the property on August 16, 2005. Therefore, Earl Doman, Tim Doman and Donna Doman are no longer owners of the Measure 37 claim property for purposes of Measure 49 and are not entitled to relief under Measure 49.

III. CONCLUSION

Based on the analysis above, claimants Earl Doman, Tim Doman and Donna Doman do not qualify for Measure 49 home site approvals because the claimants no longer own the Measure 37 claim property.

Based on the analysis above, claimant Earl A. Doman LLC does not qualify for Measure 49 home site approvals because the lawfully permitted use of the claimant's property has not changed since it acquired it.

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:



Kristin May, Division Manager

Dept. of Land Conservation and Development

Dated this 5th day of August 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.