



**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: E124625

CLAIMANTS: Mayme Neely
50 Ruby Avenue #205
Eugene, OR 97404

Daniel and Sandra Teall
CMR 454 Box 2852
APO AE 09250

**MEASURE 37 PROPERTY
IDENTIFICATION:** Township 16S, Range 4W, Section 35
Tax lot 403
Lane County

PRIMARY CONTACT INFORMATION: Sandra Teall
CMR 454 Box 2852
APO AE 09250

The claimants, Mayme Neely, and Daniel and Sandra Teall, filed a claim with the state under ORS 197.352 (2005) (Measure 37) on March 27, 2006 for property located at 91177 and 91179 River Road, near Junction City, in Lane 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. This Final Order of Denial is the conclusion of the supplemental review of this claim.

I. ANALYSIS OF CLAIM

A. 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, Mayme Neely, and Daniel and Sandra Teall, filed a Measure 37 claim, M124625, with the state on March 27, 2006. The claimants filed a Measure 37 claim, PA 06-5132, with Lane County on January 25, 2006. The state claim was filed prior to December 4, 2006. The claimants timely filed a Measure 37 claim with both the state and Lane 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, Daniel and Sandra Teall are the owners of fee title to the property as shown in the Lane County deed records and, therefore, are owners of the property under Measure 49. Lane County has confirmed that the claimants, Daniel and Sandra Teall are the current owners of the property.

According to the information submitted by the claimants, Mayme Neely is not an owner of the property under Measure 49. Mayme Neely is the holder of a life estate.¹

3. All Owners 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.

¹ Claimant Mayme Neely acquired tax lot 403 on October 8, 1970, as reflected by a recorded warranty deed included with the claim. However, Mayme Neely transferred fee title in the property to Daniel and Sandra Teall on March 5, 1990, retaining only a life estate. Mayme Neely is therefore no longer an owner for the purposes of her Measure 49 claim.

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 Lane County, outside the urban growth boundary and outside the city limits of the nearest city, Junction City.

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 (E30) by Lane 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 (EFU). 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. Under ORS 215.780(2) (a), counties may adopt minimum lot sizes smaller than 80 acres, subject to approval by the Land Conservation and Development Commission (the Commission). The Commission has approved Lane County’s E30 zone, which requires a minimum lot size of 30 acres.

Daniel and Sandra Teall’s property consists of 12.22 acres. Therefore, state land use regulations prohibit the claimants from establishing on the Measure 37 claim property the three home sites the claimants 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, the establishment of the three home sites for which the claimants may qualify on the property is not 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:

Lane County deed records indicate that claimants, Daniel and Sandra Teall, acquired the property on March 5, 1990.

On March 5, 1990 the Measure 37 claim property was subject to state statutes, the statewide planning goals and implementing regulations. On Daniel and Sandra Teall’s date of acquisition the property was zoned E30 by Lane County. However, because the Commission had not acknowledged the county’s comprehensive plan and land use regulations as being in compliance with the statewide planning goals, the statewide planning goals and Goal 3 in particular, and ORS ch. 215 applied directly to claimants Daniel and Sandra Teall’s property.

On January 29, 1991 the Commission acknowledged the application of Lane County’s E30 zone to the Measure 37 claim property. The Commission’s acknowledgement of Lane County’s E30 zone confirmed that zone’s compliance with Goal 3 and ORS ch. 215. Lane County’s acknowledged E30 zone required 30 acres for the creation of a new lot or parcel on which a dwelling could be established. Claimants Daniel and Sandra Teall’s property consists of 12.22 acres. Therefore, on Daniel and Sandra Teall’s acquisition date, they could not have established any home sites in the zone that was ultimately acknowledged to comply with the statewide planning goals and implementing regulations. The claimants Daniel and Sandra Teall do not qualify for any home sites because they have not shown that a direct application of the Goals and ORS ch. 215 would have allowed them to establish additional home sites.

II. COMMENTS ON THE PRELIMINARY EVALUATION

The department issued its Preliminary Evaluation for this claim on January 12, 2009. 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. Comments received in response to the Preliminary Evaluation from claimants Daniel and Sandra Teall assert that Mayme Neely 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 where the property is located.” Life estate holders do not own the fee title to property and are thus not owners of property for purposes of Measure 49.

III. CONCLUSION

Based on the analysis above, the claimant Mayme Neely does not qualify for any Measure 49 home site approvals because she is not an owner of the Measure 37 claim property.

Based on the analysis above, the claimants Daniel and Sandra Teall do not qualify for Measure 49 home site approvals because they were not lawfully permitted to establish the lots, parcels or dwellings on their date of acquisition.

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:

_____/S/_____
Richard Whitman, Director
Dept. of Land Conservation and Development
Dated this ____ day of _____, 2009.

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 it 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.