



SUPPLEMENTAL APPLICATION
Vested Right Determination

(August 2018)

What is a vested right?

A “vested right” protects uses that are not yet fully established. Approval of a “vested right determination” authorizes a property owner to complete and continue a use of real property even though the law has changed. Based upon decisions of the Oregon courts, a determination for a vested right is based upon common law. Typically, the primary issue in these determinations is whether there has been a sufficient good-faith commitment to a particular use that it may be completed even though it will become nonconforming. These are generally considered on a case-by-case basis.

Application process

A vested right determination is considered pursuant to the Planning Director Review process prescribed in Subsection 1305.02 of the Clackamas County Zoning and Development Ordinance (ZDO). Public comments received from the Community Planning Organizations (CPO), property owners, agencies and other interested parties may affect the decision on the application. A vested right determination may be approved, partially approved or denied based upon the fact circumstances of the case. Any decision on this application may be appealed to the County Land Use Hearings Officer pursuant to Subsection 1303 of the ZDO. The Hearings Officer’s decision would be the final action by the County.

What is needed to determine if a use or improvement may be a vested right?

- For a use, structure(s), or other physical improvements to be considered a lawfully established vested right, the applicant must submit evidence to prove there was a good faith commitment to complete the use, structure(s), or other physical improvements prior to the proposed change in law. Factors to be considered when determining a vested right have been established over time through court cases and include:
 - The ratio of expenses incurred at the time of the proposed change in law to the total cost of the completed project; the good faith of the landowner; whether or not the landowner had notice of any proposed change or mandatory change in law before starting the use or improvements;
 - The type of expenditures;
 - Whether the expenditures have any relation to the completed project or could apply to various other uses of the land; the kind of project; and the location and ultimate cost;
 - The acts of the landowner should rise beyond mere contemplated use or preparation, such as leveling of land, boring of test holes, or preliminary negotiations with contractors or architects.
- The applicant is responsible for providing evidence to support the request for a Vested Right.

What are my chances for approval?

Staff cannot predetermine the decision on this or any land use application. A decision of approval or denial will only be made after the complete application is processed, comments are sought, and the application and citizen and agency comments are reviewed by the Planning staff. The decision is based upon factors appropriate to this application as determined through previous court decisions.

When will I get a final decision on this application?

The final decision will be made approximately 60 days after the initial staff decision. If the decision is appealed, the final County decision by the Land Use Hearings Officer may take an additional 8 to 10 weeks or more.

Staff will attach the following information to your application:

Land Use application CPO Sample plot plan Application process

Please be as complete and thorough as possible. Use additional sheets of paper as necessary to completely describe your proposal and answer the questions contained herein. Please be advised the applicant is responsible for the burden of proof (evidence) to support the Vested Right.

To complete this application, please provide the following:

- 1. Completed Land Use Application** – Information about the applicant and land in the request.
- 2. Application Fee** - \$_____
- 3. Site Development Plan** drawn to scale on **8.5” x 11”** or **8.5” x 14”** paper. The plan must show and clearly identify the **existing** development of the property including all structures, parking areas, drain field locations, landscaping and/or significant vegetation, slope of the property, entrance/access location(s), north arrow, the scale of the drawing, dimensions of the property and structures.
- 4. Other Information and Evidence**
 - Description of the nature of the right you are trying to get “vested” through this process and how it is consistent with the Measure 37 claim. When was the proposed or existing use, structures and/or physical improvements established? (Please give specific dates, if possible).
 - List of expenditures for developing the use in relation to the total cost of establishing the use.
 - Description of why the improvements for the use could or could not be used for purposes allowed by the current zoning of the property.
 - Timeline describing the sequence of events establishing the proposed use or improvements, including when specific improvements or other work began and when such work was completed.
 - Copies of both County and State Measure 37 claim decisions.
 - Copies of information regarding land use, building, septic or other permit documents.
 - Copies of utility records, dated photographs, County property tax appraisal information, dated aerial photographs and tax records.
 - Copies of receipts, licenses, bills of sale, notarized affidavits, etc. to document the date of establishment of the proposed use, structure(s) and/or physical improvements, and the continuity of any portions of the use since established.
 - The expenditures for work (if any) and why it was initiated, continued or completed after Measure 49 was referred to the ballot by the 2007 Oregon Legislature.
 - The expenditures for work (if any) and why it was initiated, continued or completed after Measure 49 took effect on December 6, 2007.

Questions? Contact Rick McIntire, Senior Planner at 503-742-4516 or rickmci@co.clackamas.or.us