Murray | HUNTER

STEVE CORNACCHIA
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March 27, 2007

HAND DELIVERED

Lane County Board of Commissioners
125 E. 8th Avenue
Eugene, OR 97401

Re: James & Gladys Murray Measure 37 Claim (PA 06-7041)
Our File No. 31867.00001

Dear Commissioners:

We represent James and Gladys Murray regarding their Measure 37 claim with Lane County. On March 20, 2007, our clients' claim was included in your public hearing. At that hearing, representatives of Goal One Coalition gave testimony in opposition to our clients' claim. That testimony included untrue statements regarding the provisions of regulations in existence when our clients' first obtained their interest in the subject property. Those untrue statements nearly led the Board to inappropriately deny our clients' claim. Fortunately, the Board decided to roll our clients' claim to the April public hearing to allow parties to provide additional evidence and testimony to the record. This letter is our response to the Board's request for additional testimony.

All of the factual information necessary to establish the legitimacy of this claim and to identify the uses to which the claimants could have established on the subject property at the time they purchased it is already in the record. Unfortunately, the representatives of Goal One Coalition failed to completely review the provisions of the regulations and provided you with testimony that was not factual or true.

The representatives of Goal One Coalition stated to you that, in 1975 when our clients purchased the subject property, Lane Code provisions required a minimum parcel size of five (5) acres in the AGT zone. That statement is neither factual nor true. That statement led Commissioner Dwyer to state that he would vote to deny the claim because the opponents had provided evidence that the property, at the time of our clients' purchase of it, was restricted by Lane Code to divisions no smaller than five acres. Commissioner Dwyer's reliance on the statements of

Goal One Coalition was misplaced because Goal One Coalition was totally wrong in its statement.

As Lane County Planning Staff confirmed during my testimony before you, at the time our clients purchased the subject property, Lane Code provided that it could be divided into parcels no smaller than one (1) acre—not five acres as asserted by Goal One Coalition.

In our initial filing of this claim, we provided Lane County with a copy of Lane Code 10.110 which regulated the AGT (Agriculture, Grazing, Timber Raising District) Zone in 1975. It is included as Exhibit "I" to the narrative supporting our clients' claim. In 1975, Lane Code 10.110-42 provided:

> 42. Area
> (1) Any property zoned AGT after May 14, 1971, shall be designated AGT-5, and the minimum area for division of land for any property so designated shall be five (5) acres; except:
> (a) * * * * *
> (b) * * * * *
>
> **(2) The minimum area for the division of land for any property zoned prior to May 14, 1971, shall be one (1) acre and shall have a lot width of not less than one hundred fifty (150) feet.**

The representatives of Goal One Coalition obviously only read the first paragraph of LC 10.110-42. If they had fully read the provisions they would not have provided untrue testimony to you and we would not be in the current situation that we find ourselves in.

LC 10.110-42 provided that if the property had been zoned "AGT" prior to 1971, then land division minimums remained at one acre, as they were prior to the enactment of those LC 10.110 provisions. Lane Code essentially provided what Commissioner Fleenor accurately described as an "AGT-1" zone for all property zoned "AGT" prior to 1971 and an "AGT-5" zone for all property zoned "AGT" after 1971. The subject property was zoned "AGT" when Lane County enacted Ordinance No. 187 on December 9, 1964. Accordingly, owners of the subject property at that time were entitled to divide it into one-acre parcels in 1964 (and in 1975 when our clients purchased it).

Exhibit "H" of our narrative in support of our clients' claim contains Ordinance No. 187 which demonstrates that the subject property was zoned "AGT" in 1964, prior to 1971 as required by LC 10.110-42.

The Board's decision on this claim requires no interpretation of Lane Code provisions or other analysis. A complete and accurate reading of Ordinance No. 187 and LC 10.110-42 provides the

Board with its only legal conclusion: our clients have a valid claim and that claim includes evidence that they were entitled to divide the subject property into one-acre parcels at the time they purchased it. Lane County Planning Staff continues to confirm that conclusion. Once representatives of Goal One Coalition have finished reading LC 10.110-42 in its entirety, they would arrive at the same conclusion.

Thank you for having the foresight to roll this claim to a subsequent hearing so that the matter of parcel size could be clarified for you. That clarification will assist you in making a decision that is consistent with the provisions of Measure 37.

Best regards,

STEVE CORNACCHIA

PSC:ss
Cc: clients

Attachment 2

HOWE Kent

From: Megan Kemple [megank@efn.org]
Sent: Friday, April 13, 2007 8:11 AM
To: HOWE Kent
Subject: the intent of agricultural zoning

Dear Mr. Howe:
I am a Lane County resident concerned about the impact Measure 37 is having on our agricultural land.

Measure 37 claim #06-7041 (by the Murray Family) on lot #17-04-01 #8100 is an example which is currently being decided.

In their wisdom our predecessors planned for this Eastern section of Santa Clara to remail agricultural. Lane County enventually zoned these farms to denote the intended use should be farming. Unfortunately, the attorneys for those claiming Measure 37 losses have seemingly convinced the planning department and the majority of County Commissioners that zoning language allowed residences on lots of a minimum of one acre in size without considering that the intended meaning was not a house on every acre of zoned ag. land, but a house on a (minimum 1 acre) parcel, whereby enabling a resident to farm the remaining acreage on that parcel.

This agrument flies in the face of the letter and the spriit of the planning ordinance applicable at the time individuals purchased farmland. Class I and II soils are at risk of inappropriate development.
Please correctly interpret the intent of the agriculutal zoning.

Megan Kemple
39 Cedar St.
Eugene, OR 97402

PA06-7041 Mtg 1

(3)

HOWE Kent

From: HOWE Kent
Sent: Friday, April 06, 2007 12:19 PM
To: FLEENOR Bill A; 'Catherine Lesiak'
Subject: RE: AGT codes- interpretation

Hi Ms. Lesiak,

I think there is a misunderstanding of the older zoning provisions and an assumption that they were meant to do what our current regulations do towards implementing the Statewide Planning Program. The old AGT zone in effect in 1973 did not meet the purpose of today's Exclusive Farm Use zone, which is to preserve and maintain agricultural lands through the use of an Exclusive Farm Use zone.

Please refer to the purpose section of the 1973 version of the AGT zone (LC10.110-05):
"Purpose - The Agriculture, Grazing, Timber Raising District is intended to provide areas for rural density residential development and continuation of farm uses and timber production where compatible with each other." This language is a far from the purpose section of the current EFU zone.

The purpose of the current EFU zone (LC 16. 212(1)) reads as follows:
a) To preserve open land for agricultural use.....
b) To preserve the maximum amount of the limited supply of agricultural land in large blocks.....
c) To substantially limit the expansion of urban development into rural areas.....
d) To provide incentives for owners of rural lands to hold such lands in the exclusive farm use zone because of the substantial limits placed on the use of these lands....
e) To identify and protect high value farm land.....

The 1973 AGT zone allowed as a permitted use, one single-family dwelling per lot. Under the division standards of the 1973 AGT zone, any property zoned AGT after May 14, 1971, the minimum area for the division of land was five acres. However, the minimum area for the division of land for any property zoned AGT prior to May 14, 1971, shall be one (1) acre.

The 1973 AGT zone did not read as Ms Lesiak asserts, "that a family farm dwelling was allowed in conjuction with farm use, provided the lot it occupied was at least one acre". If the zone had read that way, Ms Lesiak's reasoning would be appropriate. In 1973, the purpose of the zone was different than now, and the division standards and use standards were separate. The AGT zone outright allowed one single-family dwelling per lot as a permitted use.

The review of the validity of aM37 claim is relatively narrow under the language of M37 - current owner, date of acquisition, reduction in fair market value as a result of a restrictive land use regulation that has been applied to the property since the current owner acquired the property. If a waiver is authorized, citizens have an opportunity to participate in the land use development approval process and address the health and safety concerns regarding water, sanitation and traffic impacts, etc.

I hope this helps in your understanding of the 1973 AGT zone, and the M37 claim process.

Kent Howe
Planning Director
Lane County

-----Original Message-----
From: FLEENOR Bill A
Sent: Friday, April 06, 2007 9:12 AM
To: Catherine Lesiak; HOWE Kent
Subject: RE: AGT codes- interpretation

Kent,

Would you be so kind as to address Ms. Lesiak's concern regarding the PA06-7041 M 37 Claim, and the applicant's assertion of a zoning condition of AGT 1, that Ms. Lesiak contends (see below) did not exist at the time the property was purchased.

Thank you,

Bill F.

From: Catherine Lesiak [mailto:cathy_martini@yahoo.com]
Sent: Fri 4/6/2007 12:10 AM
To: FLEENOR Bill A
Subject: AGT codes- interpretation

Commissioner Fleenor,

I am one of a group of small farmers on E. Beacon Drive feeling besieged by Measure 37 claims. Most urgent at present is claim PA06-7041,(Murrays). I feel that we must find some clarity about the intent and interpretation of the AGT code - particularly as it stood in 1973. I have read AGT codes from 1949 onwards and can find no such thing as an "AGT 1" zone refered to by Mr Cornacchia (after all oppostion had left Harris Hall on March 23rd- an unfair procedure I believe).

As I read the code, a family farm dwelling was allowed in conjunction with farm use, provided the lot it occupied was at least one acre. (farms are often made up of several contiguous parcels) It stands to reason that the code did not mean divide the farm into one acre parcels and put a house on each. This would have destroyed the very farm that the AGT purported to protect. After AGT 5 was introduce in 1971 it appears that some farms North of Beacon and East of River Road in the flood plain, were divided into lots of 5 plus acres. The older farms do not show a pattern of dividing off one acre parcels to sell off as homesites. I believe that this is further evidence that the AGT code did not have this intent; farmers are frequently hard-up and we would have seen these divisions in the pattern of land use.

The lawyers who are presenting claims based on a devaluation because EFU zoning restricted subdivisions that AGT would have allowed, are misinforming their clients and threatening to destabilize productive, vital farming communities.

I understand from our commissioner Bill Fleenor, that even if the waiver is granted we will have the opportunity to oppose subdivisions at a later time. However,it takes a huge amount of time and energy for a citizen to oppose a developer. We would therefore like to see a thorough examination of the AGT code at this point in the procedure. We would welcome the

opportunity to discuss AGT zoning with both planners and commissioners before more waivers are granted on incorrect assumptions.

Sincerely, Catherine Lesiak.

4-13-07

Catherine Lesiak
1600 E Beacon
Eugene, 97404

(4)

PA 06-7041 Murray

Dear Mr Howe,

Following our email exchange I am still dissatisfied with your interpretation of the ordinances pertaining to AGT lands and division of AGT lands into one acre parcels. I do not feel that the misunderstanding lies with confusion of EFU and AGT as you suggest, nor with understanding measure 37. I realize that a waiver may have to be granted based on the fact that EFU 30 was more restrictive in not allowing a farm dwelling on less than 30 acres where AGT allowed one per lot. Our disagreement still lies in the question of what constituted a lot, and whether land could be subdivided into one acre lots.

The one acre area seems to appear first in ordinance 293, which came into effect Sept 13 1968.

Section V1, b. AREA
1. Size of Lot.
A. No dwelling unit or mobile home shall be erected or located on less than one acre of lot area having a minimum average width of not less than one hundred fifty feet. Not-withstanding the lot area and lot width requirements of this section, a single family dwelling or mobile home may be erected or located on any lot separately owned at the time ofthe passage of this amendment, or on any numbered lot, in an approved and filed major or minor subdivision plat that was on record at the time of the passage of this amendment.

In this area North of Beacon Drive no subdivisions were plated in 1968. South of Beacon such plats included the Vogt Farm -(Beacon and Seacon Parks) and Top Deck Subdivision off River loop 2.Other lands out here (including the Murrays andSvingens) were not platted and recorded as separately owned one acre lots at this time. I believe that careful reading of code pertaining to " one acre lots" must be considered and interpreted in light of this original intent of ordinance 293.

Regarding the AGT zone(LC10.110-05) statement of purpose, it may be more useful to interpret this suggestion of lands transitioning from rural to urban or "lands with marginal suitability for agricultural production" in light of the later zoning. Some of the AGT lands became EFU which attests to their rural agricultural nature while others were given a RR(rural residential) zoning. North of Beacon land was zoned EFU.

I suggest that Mr Howe's interpretation is not the only valid one and that this must be thoughtfully examined. People who have claimed farm deferral, enjoyed the status of farmers and lived in their family farm homes, will soon be demanding subdivisions based on measure 37 waivers that refer to this " one acre minimum". There is a long history of land use issues, interpretation of codes and the Santa Clara Land Use Plan that should be examined before this 'one acre minimum' becomes the standard for subdivisions newly created under measure 37. A number of us in this neighbourhood would welcome the chance to talk with both commissioners and planners about this matter.

Sincerely, Catherine Lesiak

Murry1 Attachment 5

April 13, 2007

Testimony regarding Measure 37
Application by James and Gladys
Murray, PA 06-7041

Esteemed commissioners:

At the previous hearing for this claim, you saw fit to continue the hearing while we gathered more information. At that hearing, the applicant's attorney stated that this property is "AGT 1" as opposed to AGT 5. **There is no such thing as AGT 1.** There is AGT as a zone and AGT 5 as a provision of AGT zoning. The AGT5 zoning allows subdivision into 5 acre parcels outright. The intention of AGT zoning was not to have AGT land subdivided into 1 acre parcels, but to provide the opportunity for those stewarding AGT lands to build dwellings and accessory buildings customarily used in conjunction with their work AGT zoning, in its purpose, describes criteria for creating one acre pieces. The purpose is quoted here:

> "The AGT district is intended to provide areas for rural density residential development and continuation of farm uses and timber production **where compatible with each other.** It is appropriate to be applied to areas which have, by nature of use and land division activity, already begun a transition from rural to urban use, primarily in the outer portions of the rural-urban fringe areas where public facilities and services will be necessary before intensive urbanization should occur, **and in rural lands with marginal suitability for agricultural production."** (Lane code 10.110-05 from 1972)

This criteria for subdividing agricultural land is clearly laid out and the applicant's site does not meet this criteria in these ways:

- The applicant bought the property with AGT zoning in place and is subject to the above provisions. Given that applicant's property is surrounded on all 4 sides by active farming operations using manure, sprays and machinery that generate dust noise and odors considered unpalatable by development, the level of urbanization he plans is not compatible with the existing land use pattern or nature of use.
- The applicant's land is made up of Newburg loam, classified by the USDA as "***prime farmland*** *producing the highest yields with minimal units of energy and economic resources"*(Soil survey of Lane County p.155). **Class 2 soil is some of the highest quality agricultural soil in the nation, not land with marginal suitability for agricultural production.**
- The area surrounding this site has not transitioned to urban use and is not characterized by land divisions. It is in the center of a large swath of prime agricultural land actively being farmed by local farmers. The erroneous appraisal report submitted by Mr. McKern qualifies the area as being suburban, over 75% developed, and states that changes in present land use are "taking place". In truth the area surrounding this site is zoned for exclusive farm use, is actively farmed as it has been for generations, and has an average of 1 residence per 25 acres.

Additionally, Ordinance 293 adopted in 1968 amended section VI to create the 1 acre lot size for AGT zoning. In this ordinance, it states:

B (1) Size of Lot

a. No dwelling unit or mobile home shall be erected or located on less than one acre of lot area having a minimum average width of not less than 150 feet. Notwithstanding the lot area and lot width requirements of this section, a singe-family dwelling or mobile home may be erected or located on any lot separately owned at the time of the passage of this amendment, or on any numbered lot, in an approved and filed major or minor subdivision plat that was on record at the time of the passage of this amendment.

This is borne out in later (1972) versions of Lane Code

> 10.110-42 (4) A single-family dwelling or mobile home only may be established on any lot separately owned as of Sept. 13, 1969....

The applicant had one legal lot with one dwelling when they purchased the property, and did not have any separately owned lots or platted lots at that time. Therefore the prospect for dividing that property today should be dismissed.

I am asking you to carefully consider this claim. The owners have not experienced loss of value due to land use regulation restrictions, but have profited from it. They purchased agricultural land and practiced agriculture thereby receiving significant tax relief through tax deferral for decades. The land was zoned AGT before date of purchase and they bought it understanding that was the case.

Thank you for your consideration,

Kate Perle
4740 Wendover
Eugene, OR 97404