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Timothy P. Alexander
Senior Judge
State of Oregon

JUN 05 2018
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Department of Justice
Trial Division

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF CLACKAMAS

W. LEIGH CAMPBELL, CEILLE W.

CAMPBELL, AND DONALD B

BOWERMAN,

No. CV07120048

Plaintiffs,

v.

STATE OF OREGON,

Defendant.

OPINION OF THE COURT

W. LEIGH CAMPBELL, CEILLE W.

CAMPBELL, AND DONALD B.

BOWERMAN,

No. CV07120049

Plaintiffs,

v.

CLACKAMAS COUNTY,

Defendant.

This comes before the court for trial on Count One, Declaratory Judgment. After reviewing the evidence and considering the written and oral presentations of counsel, I find as follows:

1. The Measure 37 . waivers tendered by the County and the State are personal to plaintiffs, not Gordon Root;
2. The development contract is binding on all parties and is contained in the original written agreement;
3. Attempts to modify the agreement to provide evidence for this case is too late to be effective;
4. Plaintiffs have not actually spent any money to develop the property.

Therefore, pursuant to the relevant case law, Plaintiffs have not sufficiently vested in order to satisfy the language and intent of Measure 49. I find in favor of Defendants and against Plaintiff on Count One, and decline to issue declaratory judgment in favor of Plaintiffs.

As I indicated at the end of trial, in the event that Plaintiffs successfully persuade an appellate court that I am mistaken on the above issue, I will make additional findings based on the evidence presented to avoid the need for a new trial. In view of the opinion in Clackamas County v. Holmes, 265 Or 193,508 P2d 190(1973), I make the following determinations as to each of the factors:

1. RATIO

Developer has spent \$1,295,869. The total cost of building approximately 40 homes on the available lots and completing the infrastructure already contemplated is a minimum of \$30,000,000. I arrived at that figure after concluding from the evidence that the type of homes that can reasonably be built on these lots will cost over \$750,000 including the materials and labor for the house, the driveway, the landscaping, the well, and the cost of the development attributable to each lot. Even if the land sells for \$150,000, as contended by Plaintiffs, the sale price of the average home in the development will be \$900,000. It does not make economic sense for Mr. Root to agree to sell the lots for that amount, since he would lose money, therefore it is more likely that the lots will be held until the market improves and the parties can make a fair profit. I am also convinced that prospective buyers for a home in this area with

1 ½ acres of land and similar lots on all sides will be able and willing to spend more than \$900,000. For purposes of the Holmes analysis, the ratio is 1/23. Plaintiffs have not vested.

2. GOOD FAITH

Plaintiffs have acted in good faith. Anyone who claims to be able to predict the outcome of a vote on a ballot measure in Oregon should buy a Megabucks ticket. It was reasonable for plaintiffs to continue with development until Measure 49 actually became law.

3. ADVANCE NOTICE

See 2 above. If anything, the statement attributed to a key member of the legislature would have induced plaintiffs to continue preliminary work on the site even if measure 49 should pass.

4. NATURE OF EXPENDITURES

The evidence weighs against Plaintiffs on this point. The work done to level the property and begin the erosion control and rock base for certain roads can be used for three homes. Given the removal of the drain tiles, it is unlikely that the land can be used for livestock, but it could be sold as large homesites.

5. NATURE OF THE DEVELOPMENT

Plaintiffs have identified use of the land for residential homes, and the early efforts have been for that purpose. Holmes is satisfied on this issue.

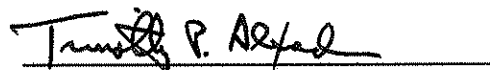
6. MERE CONTEMPLATION

Plaintiffs have demonstrated a clear intent to develop a residential subdivision, and the steps taken are beyond the mere contemplation identified in Holmes.

If called upon to make the determination of the totality of the circumstances, I would still find that Plaintiffs have not vested under Measure 49. Defendants would still be prevailing parties.

Defendants may elect which party will submit a partial judgment for consideration.

June 3, 2008

A handwritten signature in black ink, appearing to read "Timothy P. Alexander", is written over a horizontal line.

Timothy P. Alexander

Senior Judge