

CAROL E. JONES
CIRCUIT JUDGE



YAMHILL COUNTY COURTHOUSE
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March 28, 2007

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DEPARTMENT OF JUSTICE
TRIAL DIVISION

Re: Lajoie v State of Oregon CV060162

Dear Mr. Gunn and Ms. Staley:

This matter came before me on November 13, 2006. I took the matter under advisement. My ruling follows:

First, on January 31, 2007, the Oregon Court of Appeals issued its ruling in *Corey v. DLCD*, 210 Or App 542 (2007), in which it determined that judicial review of final orders in "Measure 37" cases was properly brought in the Court of Appeals, rather than the Circuit Court, at least where the claim is deemed valid by the agency (i.e. Petitioners have a protected property interest in Measure 37 waivers which are deemed valid, thus agency hearings should proceed as "contested cases" pursuant to ORS 183.482 and the Court of Appeals has jurisdiction on review). In this case, Petitioner's claim was approved with respect to 23.44 acres, and denied with respect to 29 acres. Inasmuch as the portion of the claim which was denied pertains to the 29 acres in dispute here, this court has jurisdiction.

Petitioners purchased the subject property on June 23, 1974. Petitioners wish to subdivide the property into approximately 2-acre lots and build a home on each parcel. At issue are the statewide interim land use planning goals which were enacted October 5, 1973; one of those goals being "to conserve prime farmlands for the production of crops." The 29 acres at issue are formally designated as prime farmland, as evidenced by a soil map, soil classification information, and a Yamhill County tax lot map, all in the Record, although they were not so designated until after Petitioners acquired the subject property.

Petitioners frame the issue as whether or not they could have used the 29 acres for their

intended purpose when they purchased the property. Petitioners argue that although the interim goals envisioned the conservation of prime farmland; they were mere policy statements, and further that, because the property was not designated as prime farmland at that time and that they could not, then, have been restricted from developing it as they now wish; application of the "prime farmland" interim goal to their property constitutes a retroactive application of a regulation that entitles them to compensation or waiver under ORS 197.352 (Measure 37). As further support for their position, Petitioners cite Yamhill County's approval of their claim.

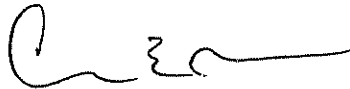
Respondent argues that it is not relevant whether Petitioners would have been allowed to proceed with the development at the time they purchased the property, and that the issue is properly framed as whether, applying the laws in effect at the time Petitioner purchased the property, Petitioners would be allowed to develop the property in that manner now. Respondent argues that the Interim Goals were "regulations" as that term is defined by Measure 37 (ORS 197.352(11)(B)) and not mere guiding policy, and that Governmental planning agencies were mandated to act in accordance with them. The Respondents further argue that, had the County acted pursuant to law, it would not have approved Petitioners' request.

The interim goal at issue is to preserve prime farmland for agriculture. That goal was contained in ORS 215.515 in 1973: "Goals for comprehensive physical planning are: * * * (d) To conserve prime farmland for the production of crops." This, and other goals are "regulations" as defined by ORS 197.352(11)(B). Therefore, the interim goals were regulations in effect when Petitioners purchased the property. That Petitioners' land was not yet classified as prime farmland until later is of no consequence; the pertinent fact is that it is prime farmland, and it would violate the goal of conserving prime farmland for agricultural use to allow Petitioners to divide it into approximately 2-acre parcels and build a home on each. This is not "retroactive application" of a regulation, as Petitioners argue; it is application of the same regulations that were in effect at the time of acquisition to now prohibit a use of land which was prohibited at that time. An analogous situation might be one involving a regulation which restricts the use of pesticides which have certain environmental effects. If, when the regulation was promulgated, Pesticide X was not yet known to have such effects, and was allowed to be used, but later was determined to have such effects, undoubtedly it's use would be prohibited today, even if it was allowed before. In that scenario, as here, the rule has not changed or been applied retroactively; even though an evolving body of scientific knowledge has resulted in certain acts falling within the prohibition which previously did not. The statewide land use planning goals at issue here were not applicable only to land then designated as prime farmland, but to prime farmland. In 1974, when purchased by Petitioners, the subject 29 acres was prime farmland, and is today. What Petitioners propose, contrary to their assertions, was not "a use permitted" at the time of purchase. It is not the "use permitted" which has changed; it is the knowledge that this particular parcel of land is prime farmland.

The agency's Final Order is supported by substantial evidence, is a correct application of the law, and is affirmed.

Petitioners' claim for compensation is also denied, because Petitioners have requested compensation for reduction in the property's value resulting from restrictions which were already in effect at the time Petitioners purchased the property.

Yours truly,

A handwritten signature in black ink, appearing to read "Carol E. Jones". The signature is fluid and cursive, with a large initial "C" and a long horizontal stroke at the end.

Carol E. Jones
Circuit Judge