



**THE CIRCUIT COURT OF THE STATE OF OREGON
TWENTY-FIFTH JUDICIAL DISTRICT
YAMHILL COUNTY**

JOHN L. COLLINS,
PRESIDING JUDGE

YAMHILL COUNTY COURTHOUSE
McMINNVILLE, OREGON 97128
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December 3, 2006

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Ms. Darsee Staley
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Re: ***Marla Robison v. DLCD***, CV05-305

Counsel:

This matter came before the court for trial on October 19, 2006. The parties submitted stipulated evidence and argued the case without additional testimony or evidence. The state did preserve the right, after stipulated facts, to argue the relevance of certain evidence. The court took the matter under advisement. This letter constitutes the court's findings of fact, conclusions and ruling.

General Background. Petitioner is the owner of 40 acres of rural property on Parrett Mountain in Yamhill County. When she purchased the property in May, 1972, it was zoned "Agricultural A" under the county zoning ordinance adopted in 1968. Pursuant to Measure 37, petitioner sought monetary compensation from the state for loss in value of the property due to restrictions placed after 1972 and stated her intention to divide the property into 2.5 acre residential lots. In lieu of monetary compensation, the state elected to waive the restrictions.

The parties also stipulated that trial testimony would be that in the late 1960s through 1972 the practice of Yamhill County Assessor was to grant automatic farm tax deferral to all rural properties, regardless of the zoning, if any, and that Yamhill county land use planning decisions during that time were based, when appropriate, on state law restrictions for farm land and were also intended to be consistent with the 1968 Yamhill County Zoning Ordinance.

Respondent DLCD found in this case that Yamhill County's Agricultural A zone was a qualified exclusive farm use zone when petitioner acquired her property in 1972. If it was, petitioner's use of the property is limited to the uses authorized by ORS 215.213 for exclusive farm use property. If not, then petitioner can use her property as set forth in the Yamhill County Zoning Ordinance in effect in 1972. Significantly, if the property is determined to have been subject to ORS 215.213 as exclusive farm use, any dwelling constructed on the property must be a "dwelling customarily provided in conjunction with farm use."

As indicated by the court at trial, the court concedes that it's prior summary judgment ruling, to the extent it focused on whether the property can be subdivided went beyond what was presented at the time. Subdivision of the property is not the central issue.

Standard of Review. This case comes before the court for judicial review of a state agency order in other than a contested case. ORS 183.484. The issue presented is whether the DLCD's ruling is either legally erroneous or lacking sufficient evidence to support the conclusion that the property remains subject to the limitations of ORS 215.213 relating to exclusive farm use.

Analysis. Petitioner presents an argument that focuses on the court's determination of the intent of the county in adopting the 1968 zoning ordinance. Notably, the ordinance was adopted well before the 1973 legislature adopted the current system of statewide centralized land use planning. Prior to 1973, state law did not require counties to adopt exclusive farm use zones, though they could choose to do so. The question, then, according to petitioner's perspective, is whether the county *intended* its Agricultural A zone to qualify as an exclusive farm use zone under state law existing at the time.

Analysis of this issue required the court to examine the text and context of the ordinance. Petitioner points out aspects of the ordinance which appear inconsistent with an intent that the Agricultural A zone be a state-qualified exclusive farm use. Respondent counters that the county in fact allowed the property the tax benefits of an exclusive farm zone and, therefore, it was the county's intent that it be subject to exclusive farm zone restrictions under the statute.

Specifically, petitioner points out the following:

- The ordinance itself authorizes 24 conditional uses that are inconsistent with exclusive farm use.
- The Agricultural A description does not specifically mention the state statute, use the term "exclusive farm use" or otherwise use words evidencing an intent to link the classification to state law.
- The ordinance does in fact create, in section 3.360, an "exclusive farm use" zone that does refer to ORS chapter 215 and use the term, "exclusive farm use".
- The county was providing farm tax assessment pursuant to ORS 308.770 (1971 ed)¹ to *all* rural property in 1972. Therefore, petitioner asserts, *all* rural property was EFU and that clearly is not logical since there are also forest zone, rural residential zones, and rural center zones where farming is not allowed.

Respondent argues that the intent of the county does not govern, the applicable law does and, further, whether the county assessed forest and other rural property as if it was farm property is not relevant to what law applied to *petitioner's* property. I agree with respondent. What restrictions would have applied to forest property in 1972 is not before the court.

It is true that there were non-farm uses of Agricultural A zoned property in 1972. But they are *conditional* uses subject to the approval process of article 6 of the ordinance.² The fact that the ordinance does have an exclusive farm use zone that makes reference to chapter 215 makes is absolutely clear such property would be subject to the EFU statute. But that does not mean that Ms. Robison's property is not also subject to those restrictions since the outright permitted use is consistent with state farm use law and the property was taxed at

¹ Now amended and re-numbered ORS 308A.318.

² Logic suggests that if, in 1972, an owner of an Agricultural A zoned property obtained approval for one of the 24 non-farm conditional uses, such as a hospital, cemetery or airport, the property would lose its farm tax deferral pursuant to state law. However, here is no evidence before this court from which the court could conclude that, one way or the other.

a lower rate reflective of that use and restriction.

Conclusion. The DLCD's ruling is neither legally erroneous nor lacking sufficient evidence to support the finding that the property was granted farm use tax assessment and the conclusion that the property remains subject to the limitations of ORS 215.213 relating to exclusive farm use.

Ms. Staley, you can submit the judgment.

Sincerely,

A handwritten signature in black ink, appearing to read 'John L. Collins', with a long horizontal line extending to the right.

JOHN L. COLLINS
Presiding Judge