

County wants Residents' lawsuit dismissed

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By RaeLynn Gill

Hood River County is seeking to have the lawsuit brought against its timber exchange with Mt. Hood Meadows, Ltd., dismissed, arguing it was incorrectly filed and has no merit.

Teunis Wyers, county general counsel, and Will Carey, land-use attorney, said the case brought by the Hood River Valley Residents Committee and Mike McCarthy, a Parkdale landowner, does not qualify for court scrutiny.

"Hopefully this will be resolved quickly and we are confident we will prevail," said David Meriwether, county administrator. "We feel the actions of the county were appropriate and legitimate in the best interests of forestry practices and should not be construed as anything other than that."

Meadows has legally joined with the county in the petition for dismissal and Dave Riley, vice-president/general manager, said the entire situation is ironic since McCarthy's brother, Steve, went unchallenged by the HRVRC on the same type of timber trade with the county in 1998.

According to Hood River County Forester Ken Galloway, both exchanges in the southern sector of the county involved land zoned for forestry and both appraisals were based on the "highest and best" existing use of the property.

"It is our opinion that the petitioners are using this lawsuit to pump misinformation into the media and community in order to further their no-growth agenda," said Riley.

But Mike McCarthy said the county has been working for years to help Meadows develop a destination resort on the north face of Mt. Hood; first by allowing that type of development with a conditional use permit in a forest zone and then by incorporating the commercial enterprise into the economic development plan.

"The major difference between the two trades is that my brother's land has stayed in forest base but the county and Meadows have demonstrated their clear intent to develop a destination resort," said McCarthy.

He said the lawsuit initiated in late March by the HRVRC, the land-use watch dog group of which he is a member, was necessary to stop Meadows from enacting major construction in a "pristine wilderness" area.

Riley contested that property definition for the trade which netted the county 785 acres and Meadows 640 acres, with a \$1 million differential paid by the county to offset the value inequities. He said the county land has been "worked very hard" as a tree farm for decades and currently has very little diversity of species, large tracts of congested even-aged stands and is crisscrossed by roads.

"The attempt by HRVRC and McCarthy to mis-characterize the area as wilderness is just outrageous," said Riley. "Hood River County got a great deal, the land they received had far more marketable timber than the land they conveyed."

McCarthy and the HRVRC are asking the court to overturn the deal between the two parties because the "illegal" appraisal did not take into account the developable value of the properties.

Wyers and Carey use six examples of Oregon case law to support their position that the matter should be dismissed because the plaintiffs were wrongly seeking to have the court review a legislative process that applies generally to all taxpayers when the legal remedy is reserved solely for "injury" to a plaintiff from a limited statutory ruling.

In addition, Wyers and Carey allege that McCarthy and the HRVRC failed to file their protest within the 60 day allotted timeframe and, in fact, waited 218 days to initiate the request for a legal review. On Aug, 20, 2001 the county board gave the official go-ahead for the trade and decided not to revisit the issue unless the value difference between the two properties exceeded \$1.5 million.

McCarthy said he asked twice at different public meetings in early 2002 whether the exchange had been completed and was told it had not been, so that the request for court oversight was valid when filed on March 27. In rebuttal, Wyers and Carey point to five examples of case law where citizens challenged the decision of governmental bodies with the legal conclusion that the 60 day appeal period was triggered by the formal vote and not the "ministerial acts" to execute the deed.

The third argument for dismissal raised by Wyers and Carey is that McCarthy and the HRVRC do not have "standing" to initiate a court action because neither party has been directly or indirectly affected by the exchange. The two attorneys outline four examples of case law to underscore that the public entity has the express authority under state law to initiate a forest land exchange on behalf of all the taxpayers in the county.

They said McCarthy's attempts to bolster his standing by alleging that his property may be affected by the development of a destination resort is a "red herring" since there is no application on the table for any type of development.

"Petitioners cannot create standing to challenge one decision by alleging that they may be impacted by a hypothetical decision that has not been requested," wrote Wyers in the county's petition for dismissal.

McCarthy and the HRVRC are being represented by the Cascade Resource Advocacy Group, a public interest law firm from Portland. They contend that the public interest has not been protected since the value of the forest zone, appraised at \$325 per acre, is down dramatically from the \$40,000 per quarter-acre of nearby developable properties.

Wyers said arguments will most likely be brought before the Hood River Circuit Court within the next two-three weeks.

"When we looked at the trade proposed by our forestry department we looked at it strictly from the standpoint that we were going to get the best trees for future generations," said Carey.