

HOOD RIVER NEWS

Judge stays with decision

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For a second time, Hood River Circuit Court Judge Donald Hull has declined to scrutinize a disputed land trade between the county and Mt. Hood Meadows, Ltd.

On Wednesday, Hull denied a request by the Hood River Valley Residents Committee and Mike McCarthy, one of its members, that he reverse a prior dismissal of their case.

"This is just one small battle and we'll continue to aggressively pursue protection of the Crystal Springs Drinking Water Protection Area and forest lands in the forest zone," said McCarthy. "We're encouraged by the strong support we are getting from the citizens of Hood River County and across the state."

However, Dave Riley, Meadows general manager, questioned the HRVRC's tactics in light of the two dismissals.

"We are pleased but not surprised with the judge's opinion, the judge's affirmation that the plaintiffs lack standing in this matter indicates that the HRVRC should re-evaluate its strategy of continual litigation and appeals that go nowhere," said Riley.

Dave Meriwether, county administrator, said the county is satisfied with the ruling but it is unfortunate the matter had to be brought before the court in the first place.

"The County Commissioners really tried to address the petitioners' concerns and even went so far as to grant an extension to the original hearing," said Meriwether.

In May, Hull ruled that the Cascade Resources Advocacy Group, the Portland-based law firm representing the HRVRC and McCarthy, had followed the wrong legal format in their challenge. This week, Hull upheld that the county had taken a legislative action last summer to initiate the trade of 640 acres south of Parkdale for 786 owned by Meadows in the same vicinity. He said the "writ of review" request filed by CRAG would only apply if officials had been acting in a quasi-judicial, or legally binding, capacity.

On July 10, Hull again asserted that neither the HRVRC or McCarthy, who resides about one-fourth of a mile from the former county land, had "standing" to file the lawsuit since they had not sustained a personal injury from the trade.

With that pronouncement, Hull entered a final order to his judgment, closing the door on another request by HRVRC and McCarthy that he hold off on that entry. On May 31 the petitioners filed a "declaratory judgment" backup lawsuit and wanted to prevent the clock from winding down on the appeal period for one matter while arguments were being waged over almost the exact same issues.

The HRVRC and McCarthy allege the county violated the public interest with the exchange. They argue that the appraisal of the timber land did not factor in Meadows public intent to build a destination resort on the property which borders its Cooper Spur Inn holdings.

The county and Meadows contend that state law requires forest appraisals to be based on the "highest and best" existing use and not on speculation over a development proposal that had not even been submitted.

In a bid to change Hull's mind about their standing, both McCarthy and the HRVRC filed additional claims to show that the trade had cost them recreational rights. However, Ken Galloway, county forester, challenged that argument, since the county had actually gained 146 acres of property for public use, although he said some of the recreational activities listed by McCarthy have long been disallowed.

The HRVRC is also contending the trade harms its mission to protect resource land and, thereby, negatively affects its ability to attract volunteers and members necessary for financial support.

Teunis Wyers, county general counsel, declined to comment on Hull's latest ruling because of the second pending litigation. He has also personally come under fire from CRAG attorneys Ralph Bloemers and Chris Winter who have filed formal charges against him with the Oregon State Bar Association. They allege that Wyers "may" have committed ethical violations because 24 years ago he represented the HRVRC in its fight against a prior Meadows rezone request for a destination resort.

Wyers said there is no basis for that charge since there is no formal review of an application underway. In addition, he sharply rebuts Bloemers and Winters assertion that they were duty-bound to file an ethical violation complaint over what would be a technical violation of the conflict of interest rules.

"The duty to report exists only when the reporting party knows, rather than merely suspects, that a violation occurred, and if the violation raises a substantial question as to the lawyer's honesty, trustworthiness or fitness as a lawyer in other respect," wrote Wyers in his June 21, 2002 response to the Bar.

The case before the Disciplinary Counsel is still pending and no action has yet been taken.