

SUPERVISOR OF ASSESSMENTS
OF WASHINGTON COUNTY

vs.

AUSTIN A. FLOOK

and

THE MAYOR AND COUNCIL OF
BOONSBORO

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IN THE

MARYLAND TAX COURT

No. 09-RP-WA-0426

MEMORANDUM AND ORDER

The Supervisor of Assessments of Washington brings this appeal to the Maryland Tax Court from a decision of the Property Tax Assessment Appeals Board for Washington County. The Board determined that the Supervisor erred in removing the agricultural use assessment from the subject property for the 2007-2008 tax year.

The Respondent, Austin Flook, owns unimproved farmland on the south side of Lappans Road (MD Route 68) in Washington County. The Mayor and Council of Boonsboro intervened as a Respondent in this appeal by Order of the Maryland Tax Court on September 2, 2009.

Mr. Flook, whose family farmed the property for several generations, was receiving the benefit of the agricultural assessment under Md. Ann. Code, Tax-Property Article, Section 8-209.

The Mayor and Council of Boonsboro, desiring to establish a needed transportation corridor through the Flook property, persuaded Mr. Flook to consider annexation, resulting in the filing of a petition by Mr. Flook in 2006. After negotiations, Mr. Flood and the Town entered into an Annexation Agreement for the express purpose

of preserving Mr. Flook's agricultural assessment, while allowing the Town of Boonsboro to obtain the by-pass road through Mr. Flook's property. In addition, the annexation of Mr. Flook's property, together with other properties, expanded the future tax base of the Town and provided for necessary waste water sewer plant upgrades. The by-pass collector road was required due to the location of other properties seeking rezoning.

Mr. Flook did not seek or request more intensive rezoning during the annexation process . The Annexation Petition stated in part that: "The Petitioner is not applying for or requesting a particular zoning classification in this Petition." Mr. Flook desired to continue farming with the benefit of the existing agricultural use assessment. Although the initial municipal zoning classification of the property was in accordance with the Town's comprehensive plan as determined by the Town Planning Commission, the Annexation Agreement between Mr. Flook and the Town established limitations on the use of the land following annexation and provided in pertinent part:

"[T]he parties agree that the uses of the Property, upon and after the effective date of the Resolution, shall be limited to those uses which are permitted as of the time of the execution of this Agreement under the applicable provisions of the Washington County Zoning Ordinance."
Annexation Agreement, pp. 2-3

After the annexation, Mr. Flook continued to farm the property and remained otherwise eligible to receive the continuing benefit of the agricultural assessment.

Although the Agreement clearly provides that the property will retain the same limitations on intensity of use which applied prior to annexation (agricultural use), the Supervisor construed the Annexation Agreement as a request for more intensive

zoning of the property. The Supervisor of Assessments of Washington County terminated Mr. Flook's agricultural assessment, and Mr. Flook appealed the assessment to the Property Tax Assessment Appeals Board for Washington County, which reversed the determination of the Supervisor and reinstated the agricultural assessment finding that Mr. Flook had not requested the municipal zoning of his land.

The Court also disagrees with the Supervisor's determination. The Supervisor removed the agricultural use assessment because he contended that the property no longer qualified under Tax-Property Article, Section 8-209 (h)(1)(i) of the Maryland Annotated Code. The statute disallows agricultural assessment of land rezoned to a more intensive use than the use that immediately preceded the rezoning, if a person with an ownership interest in the land has applied for or requested the rezoning. We agree with the Respondent that the Supervisor has not established: (i) that Mr. Flook requested rezoning in the annexation to a more intensive use; (ii) that the zoning of the property enacted by the Town was that which had been requested by Mr. Flook; and (iii) that the revised zoning permitted a more intensive use of the property after annexation than that permitted before annexation.

The testimony of Roger Bainard and Mayor Charles Kauffman confirmed that Mr. Flook did not request rezoning to a more intensive use. Michael Thompson, Director of Planning for Washington County suggested that the change to GC (General Commercial) and MR (Multi-Family Residential) was automatic, but Mr. Flook did not request a change. In fact, the Annexation Petition provided that the property would be restricted to only uses per agricultural zoning unless and until final unappealable

approval of a site plan or final subdivision plat was received from the Town Planning Commission.

There is no requirement that the annexation process establish municipal zoning as part of the annexation process. A request for annexation is not a request to rezone. Moreover, a municipal government is not required to rezone at the time of annexation. If the municipality process does not establish zoning at the time of annexation, the annexed property retains the zoning status which existed prior to the annexation. *Mayor & Council of Rockville v. Rylyns Enterprises, Inc.*, 372 Md. 514 (2002).

In the present case, the absence of a zoning request for more intensive zoning status by Mr. Flook is uncontroverted. Mr. Flook expressly disavowed any request for rezoning by the very terms of the Annexation Petition which allowed Mr. Flook to use the land in accordance with an agricultural zoning designation.

In *Supervisor of Assessments of Montgomery County v. Ely*, 272 Md. 77 (1974), the Town of Gaithersburg received an Annexation Petition from Mr. and Mrs. Ely in which no municipal zoning was requested. The Tax Court restored the agricultural assessment since the Town and not the owners requested a change to a more intensive use, and the Court of Appeals affirmed.

The Supervisor, as the Petitioner in this appeal, bears the burden of persuasion. Maryland Annotated Code, Tax-General Article, Section 13-528(b) provides:

“Absent affirmative evidence in support of the relief being sought or an error apparent on the face of the decision, determination, or order from which the appeal is taken shall be affirmed.”

The Supervisor introduced no convincing affirmative evidence suggesting a request for more intensive zoning on the part of Mr. Flook. Mr. Flook's participation in an Annexation Agreement cannot be construed as a request for more intensive zoning, particularly when his participation was at the request of the Town, and he specifically requested a continuation of pre-existing zoning limitations on the land.

Accordingly, it is this *26th* day of *May*, 2010, by the Maryland Tax Court ORDERED that the decision of the Property Tax Assessment Appeals Board for Washington County be and the same is hereby **AFFIRMED**.

CERTIFIED TRUE COPY
TEST: John T. Hearn, Clerk

NOTICE: You have the right of appeal from the above Order to the Circuit Court of any County or Baltimore City, wherein the property or subject of the assessment may be situated. The Petition for Judicial Review **MUST** be filed in the proper Court within thirty (30) days from the date of the above Order of the Maryland Tax Court. Please refer to Rule 7-200 et seq. of the Maryland Rules of Court, which can be found in most public libraries.

CC: WILLIAM C. WANTZ, ESQ.
D. BRUCE POOLE, ESQ.
WILLIAM K. HAMMOND, ESQ.
KENT FINKELSEN, ADMINISTRATOR