Ruling makes it easier to rebuild houses on farmland

Previous legal interpretation required taxation within five years

By MATEUSZ PERKOWSKI
Capital Bureau

Dwellings can be rebuilt on Oregon farmland regardless of when the original structures were destroyed or removed, according to the Oregon Court of Appeals.

The ruling overturns an earlier interpretation of state law by Oregon's Land Use Board of Appeals, which held that dwellings can only be rebuilt if they were subject to property taxes within the past five years. It will make it easier for homes to be built on farm parcels.

Landwatch Lane County, a farmland preservation group, argues that the Oregon Court of Appeals has misconstrued the pertinent land use statute, creating an "end run" around the state planning goal of preserving farmland.

"I would call it devastating for Oregon farmland," said Lauri Segel-Vaccher, the group's legal analyst.

Long-lost homes could be rebuilt on farmland regardless of soil quality and with uncertain proof they existed in the first place, she said.

Counties are often "lackadaisical" in protecting farm and forestland, so they may require only scant evidence of a dwelling's location, Segel-Vaccher said.

"Anybody could come up with a photograph or a diary entry from the 1800s," she said.

Landwatch Lane County hasn't yet decided whether to challenge the decision before the Oregon Supreme Court, Segel-Vaccher said.

Oregonians In Action, a property rights group, believes state lawmakers were "fully informed" of the effect their revisions would have on the applicable land use statute in 2013.

"The whole purpose of the bill was to allow property owners to replace dwellings that had been removed, in some cases, decades earlier," said Dave Hunnicutt, the group's executive director.

The notion that a significant number of homes will be built as a result is "silly" because landowners must still demonstrate the existence of a dwelling, he said.

"Most rural land is on parcels that have never had farm dwellings," said Hunnicutt.

The legal dispute over replacement farmland dwellings stems from the case of landowner who sought to rebuild three houses on 100 acres of farmland near Florence, Ore., that were torn down more than two decades ago.

Lane County officials permitted the construction based on a 2013 bill that eased the replacement process for dilapidated or demolished farm dwellings.

However, the county's decision was reversed last year by the Land Use Board of Appeals, which found the dwelling replacement provision is "somewhat ambiguous" but only applies to a five-year "look back" period during which property taxes were imposed.

The Court of Appeals has disagreed with that understanding, ruling that it's "logical to conclude that the legislature intended to excuse demolished dwellings from the taxation requirement altogether."

ATHENA

AWERE grants $50,000 for public pool restoration

PENDLETON — The city of Athena is getting $50,000 for the ongoing restoration of its public pool.

The money was the largest award from the latest round of grants from the Athena-Weston Education and Resource Enhancement program. The Umatilla County Board of Commissioners approved the grants at its meeting Wednesday morning in Pendleton.

The county established AWERE in 2004. Donations and fees from FPL Energy's wind farm near Athena fund the grant program for community improvements. The six-member grant committee received requests for $332,620, but the program had approximately $151,000. The county board approved the pool project and the follow 10 grants totaling $150,844:

•$34,000 to the East Umatilla County Ambulance Area Health District for upgrading monitors;

•$27,440 to the Athena-Weston School District for the high school track parking lot;

•$18,000 to the Weston-McEwen High School for an FFA truck project;

•$5,000 to the Blue Mountain Kees Cemetery Board to repair memorials;

•$5,000 to the Weston Cemetery Maintenance District for memorials and a radar project;

•$5,000 to the American Legion Post 130 for the veterans' memorial park;

•$3,555 to Weston-McEwen High School for the weight room;

•$2,000 to the Jolly Circle Club for pioneer queens photograph restoration;

•$500 to Weston-McEwen High School to replace a grill;

•and $349 to Weston-McEwen High School for a tennis ball mower.

The terms of the grants require the completion of improvements or projects by Dec. 31, 2018. The county provides the funds as reimbursement to recipients.

PENDLETON

Council tables decision to fund downtown association

By ANTONIO SIERRA
East Oregonian

The Pendleton Downtown Association's longterm financial outlook is murky, and at this point, the Pendleton City Council isn't willing to clarify it.

The nonprofit downtown merchant group was in front of the city council on Tuesday as it tried to secure an annual contribution from the city for operational expenses.

City Manager Robb Corbett backed the association's proposal — $55,000 annually in the first and second year, decreasing by 10 percent each year through year 5 before permanently settling at $25,000 per year in year 6 and beyond.

"I see it as more as a partnership as opposed to (us) footing the bill," he said. "We'd be partnering longterm with downtown businesses."

Despite voicing support for the association, the council seemed hesitant to making a years-long monetary commitment, having already covered the association's expenses in 2017.

Councilor Paul Chalmers wondered whether approving an annual contribution to the association would set a precedent and spur businesses in other parts of town to band together and ask for money from the city.

"I have some concern about where we draw the line," he said.


Turner

Chalmers added why there needed to be distinction between the downtown association and the Pendleton Chamber of Commerce, an organization that already receives public money through the city's taxes on hotel rooms.

Councilor Becky Marks was blunt in her assessment of the association's proposal.

"I don't see how we can afford it," she said.

Referring to a statistic cited by association executive director Molly Turner that the association generated $5.74 in grant revenue for every dollar the city invested in her salary last year, Councilor Dale Primmer said the city needed to find a way to calculate the association's economic impact and what the city would lose without it.

Without any councilor verbalizing full-throated support for the association's proposal, Mayor John Turner, no relation to the association's executive director, said he would table the issue rather than put it up to a vote.

He suggested they return to the council with a one-year proposal or an alternative plan that would be more palatable to the council.

In an interview after the meeting, Molly Turner said she would continue to meet with city officials about funding options.

She touted the $100,000 grant the Rivoli Theater received with the assistance of the downtown association, a grant that wouldn't have been possible if the association wasn't a member of the Oregon Main Street program.

Turner said the association will be able to access more grant money this year through Oregon Main Street, which requires the applicant be an independent nonprofit rather than attached to a city or chamber of commerce.

If the city were to decline funding the association at all, Turner said it would be difficult to continue operations.

Private grants that cover operational costs are few and far between, and finding other sources of funding would be made harder without being able to leverage financial support from the city.

Turner said the association is amenable to a stopgap measure like a one-year funding plan and is generally supportive of providing regular reports on how it's spending public money if it were to get regular funding.

The association will need some sort of financial assistance soon. Without further monetary support, Turner said the association is set to go "belly-up" during the first quarter of 2019.

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Pass-through tax bill could be test case

By PARIS ACHEN
Capital Bureau


Left to right, Sens. Brian Boquist and Lee Beyer during a legislative committee meeting in 2017. Boquist says Senate Bill 1528 could be the ideal test case to gain clarity on the definition of a revenue-raising measure.

Pamplin Media Group

With a veto from Gov. Kate Brown increasingly unlikely, a tax bill that tempers state losses from federal tax reform may be decided in the Oregon courts.

The Oregon Legislature passed Senate Bill 1528 earlier this year to preserve $244 million in biennial state tax revenue that otherwise would have been given as tax breaks to businesses, under the federal tax plan.

Sen. Brian Boquist, R-Dallas, vice chairman of the Senate Finance and Revenue Committee, has said he plans to challenge the bill in court because he believes the way it was passed was unconstitutional.

Under the Oregon Constitution, bills to raise tax revenue must originate in the House of Representatives and receive a three-fifths majority vote from both chambers. Senate Bill 1528 passed with a simple majority, with all Republicans voting against it.

The bill presents an opportunity for the courts to clarify what constitutes a tax revenue increase, Boquist said.

"SB 1528 is the best bill since 2005 to test the definition of a 'revenue' bill under Article IX" (of the Oregon Constitution), Boquist wrote in a March 25 email to the Governor's Office.

"Taking this to regular tax court, then (on to) the Supreme Court will resolve the debate on Article IX for better or worse," he wrote.

Boquist said he will have to wait until after June 15 — the next quarterly tax filing deadline — to ensure "standing" in the case. He would name the governor, House Speaker Tina Kotek, D-Portland, and Senate President Peter Courtney, D-Salem, as defendants in the case.

The Governor's Office did not respond to a request for comment on the governor's plans for the bill and Boquist's threat to sue.

Boquist said his small businesses would be among many that would be affected by the legislation. Among them, two farms he owns in Polk and Yamhill counties are a sole proprietorship. He has a Wallowa timber property and cartridge and training company that are LLCs and a pinyon nut operation, which is an S-corporation.

Oregon automatically conforms to the federal tax code unless state lawmakers pass legislation specifically to modify it. That's what lawmakers did with Senate Bill 1528. The legislation prevented so-called pass-through businesses — sole proprietorships, partnership, limited liability corporations and S-corporations — from deducting up to 20 percent of their business income from their 2018 tax return. The businesses may still claim the deduction on their federal taxes but not on their state taxes.

Rep. Julie Parrish, R-West Linn, has said the bill will negatively affect hundreds of thousands of Oregonians who own small businesses.

Last month, Brown expressed reservations about earlier versions of bill and said her office was still analyzing how the revised bill would affect small businesses.

Gov. Kate Brown has until Friday, April 6, to announce whether she plans to veto the legislation. If she doesn't veto or sign the bill by April 13, it automatically becomes law.

Meanwhile, the Small Business Association has filed an initiative petition for the 2020 ballot that would require that all "tax rates, calculations and loopholes afforded to the largest publicly-traded companies" be provided to small and family-owned businesses."