

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 a landowner who sought to rebuild three houses on 100 acres of farmland near Florence 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."

Initiative petition seeks gun storage requirements

By Claire Withycombe
Capital Bureau

Advocates want to get a second gun-related measure on the statewide ballot in November.

Initiative Petition 44, filed Monday, would create additional storage, transfer and reporting requirements for gun owners.

The petition's filing follows the Feb. 14 shooting at Marjory Stoneman Douglas High School in Parkland, Florida, and subsequent student walk-outs and marches in support of tightening gun regulations.

It also follows another statewide initiative petition, IP 43, that would ban the sale of certain types of firearms in Oregon and require current owners of those types of guns to undergo a new background check and register them.

The new measure filed on Monday would amend state statutes to require that a person who owns or possesses a firearm to "secure the firearm with a trigger or cable lock engaged or in a locked container equipped with a tamper-resistant lock."

It would also require a person who "owns, possesses or controls" a firearm to report if the gun was stolen or lost within 24 hours of learning of the theft or loss. Additionally, it would require people transferring firearms to do so with a trigger or cable lock engaged or in a locked container with a tamper-resistant lock.

Transfer is defined in the measure as "the delivery of a firearm, including, but not

limited to, sale, gift, loan or lease of the firearm."

Finally, the measure would require that a person transferring a firearm to a minor must directly supervise the minor's use of the firearm.

Under the measure, gun owners would also face liability for injuries that result from failure to meet those requirements, unless the injury "results from a lawful act of self-defense or defense of another person." The liability would apply for five years after a violation of the measure, such as an unsecured transfer.

One of the petitioners, Paul Kemp, says part of the impetus behind the measure was the death of his brother-in-law, Steve Forsyth, who was killed in the Dec. 11, 2012 Clackamas Town Center shooting.

The shooter, who killed Forsyth, 45, and Cindy Ann Yuille, 54, and injured a 15-year-old girl, before killing himself, stole the gun, a Stag Arms AR-15, from a friend.

"Most folks who have guns are pretty good about securing them," Kemp, himself a gun owner, said. "The problem is, there's too many folks who aren't."

The idea, says Jake Weigler, a spokesman for Oregonians For Safe Gun Storage, which supports the petition, is to create an enforcement system in the event that a crime is committed, similar to how adults can be held liable if they furnish alcohol to a minor.

The state doesn't go around searching your liquor

cabinet, but if, for example, a minor gets into a car accident while intoxicated and authorities learn that an adult purchased or provided them alcohol, then the law can be enforced.

Kevin Starrett, head of the Oregon Firearms Federation, criticized IP 44, and said that a gun owner should have the right to store the gun in a manner they see fit and that is in line with their "personal circumstances," such as whether or not there are young children in the home.

"This is not how you solve the problem of people who use guns in a criminal fashion, by punishing people who don't use guns in a criminal fashion," Starrett said.

Starrett also took issue with a section of the measure that would hold a gun owner who transferred a gun without securing it — either with a trigger lock, cable lock or secured container — liable for another person's injuries for five years after the gun is transferred.

Gun control advocates have tried to pass similar legislation in prior legislative sessions, mostly focused on preventing minors' access to firearms.

Petitioners are aiming for the November 2018 ballot. In order to go forward in the ballot title process, the petitioners must collect 1,000 sponsorship signatures.

Brown to sign tax bill, calls for special session

By Claire Withycombe
Capital Bureau

Oregon Gov. Kate Brown says she'll sign a controversial business tax bill into law and wants to convene a special session of the Legislature to extend a tax break to sole proprietorships.

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 owners of 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 state tax return. The deduction was created by the recent federal tax overhaul.

Brown wants lawmakers to convene to tweak Oregon law so that owners of sole proprietorships can receive special tax rates offered to other "pass throughs" since 2013.

Brown contends that making those changes and disallowing the 20 percent deduction would make the tax system for small business more equitable.

"Through my review and analysis it has become apparent that Oregon's existing preferred rate structure for



File photo

Gov. Kate Brown says she will sign a bill that keeps owners of small businesses from taking a 20 percent deduction created by federal law on their state tax return. She has also called for a special legislative session to extend special tax rates offers to other small business owners and owners of sole proprietorships.

pass-through entities, which is relatively new, is not perfect and has some inequities in it," Brown, a Democrat running for reelection, wrote in a bill signing letter Friday to Oregon Secretary of State Dennis Richardson. "...It is clear to me that sole proprietors ought to be allowed to participate in this preferred rate structure."

Lawmakers passed the bill in the last days of the recent short session to blunt

the effects of the federal tax overhaul on Oregon's revenues. It is expected to raise \$244 million in the current two-year budget cycle, which concludes in mid-2019.

Many Republicans in the Legislature and some members of the business community had been vocal about their opposition to the bill and called on the governor to veto it.

In a press conference Friday, Brown noted that those business owners already receive special rates from the state and will be able to use the deductions on their federal returns. Brown said signing the bill "prevents a third tax break at the expense of our schools, our children and our seniors."

Senate Republican Leader Jackie Winters, of Salem, disagreed, saying in a statement after Friday's announcement that "the right thing to do would be to veto this partisan tax increase on small business."

"Start-ups, mom and pop shops, and young entrepreneurs are doing great things for Oregon, but the majority party insists on passing an unfair tax increase that will stifle their growth, and harm the very Oregonians we should be helping," Winters said. "There is no budgetary need to raise taxes on small businesses."

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