TESTIMONY IN OPPOSITION TO HB 4153

Committee members, I am Ed Sullivan, a retired land use lawyer who has been involved with the Oregon land use system since before the passage of SB 100 in 1973. I am still involved with that system as an advocate for affordable housing and speak, write, and present on that system both inside and outside the United States.

Please find below an article I co-wrote for the Portland Daily Journal of Commerce that gives my view of this bill and similar bills that reject the opportunism inherent in an attitude that ignores the effect of these proposals on farming and farmland. Oregon is Oregon because of the preservation of farm and forestlands from those that would commodify it solely as an economic opportunity to use it as a low-level commercial vehicle for non-recourse revenues. Please reject this proposal.

AGRITOURISM AND FARMLAND PRESERVATION COLLIDE (VIRTUALLY)

By Edward J. Sullivan and Carrie A. Richter

The media reported recently that the Land Conservation and Development Commission (LCDC) had suspended rulemaking directed at farm stands in Oregon's Exclusive Farm Use (EFU) zones. That coverage lacked much explanation of what really happened. The Governor initiated this rulemaking to provide clearer lines as to just what was permitted within the confines of existing state laws protecting farmland. LCDC cannot change the law to allow any greater degree of nonfarm activity. That didn't stop social media campaigners that successfully killed the rulemaking from railing against the laws enacted by the legislature. Unfortunately, the suspension has now thwarted any opportunity for greater clarity.

Oregon's agricultural lands preservation program is over a half century old. That program is based upon legislative policies that preserving land for farm use through EFU zoning is "an

efficient means of conserving natural resources," protects the farm economy, ensures food supplies, and avoids high cost of utilities to serve rural areas. Oregon's EFU laws represent a compact between farmers and other taxpayers. In exchange for limiting uses on EFU lands to farming and legislatively designated nonfarm uses, farms are assessed not at their market value, as would be a home or business in an urban area, but at its "farm use" value, which is almost always a fraction of its market value.

Farm uses allowed in EFU zone range from crops and animals to Christmas tree operations and commercial horse stables. It's a broad, but not inexhaustible, term. The list of other allowed nonfarm uses include those that support rural communities, such as schools and churches, or are allowed because the legislature says they should be allowed. The list of permitted nonfarm uses has ballooned from six in 1973 to over 60 today. Regardless of the wisdom of these expansions, the legislature has the final word. However, if LCDC is approached to provide details of an existing legislatively created use, it must act within the confines of state law and taking actions that further the state's existing farmland preservation policies. LCDC cannot allow additions, or removal, or alterations of use authorizations in the EFU zone that have not been blessed ed by the legislature. And that's the rub.

Under Oregon law, "farm stands" are allowed in EFU zones but they are limited – their structures must be designed and used for crops or livestock grown either on that farm operation or other such operations in the area. Farm stand sales may include "retail incidental items and fee-based activities," but only if those sales do not make up more than 25% of the total sales. Finally, farm stands may not include any residential uses or "structures for banquets, public gatherings, or public entertainment."

There's no question that LCDC has the power to enact rules, consistent with Oregon's EFU statutes, to allow, limit, or prohibit aspects of a nonfarm use allowed in an EFU zone but it must do so within the confines of the legislative enactment. Rules that increase the percentage of incidental, nonfarm associated total sales or allowing banquets would contravene state law. However, LCDC could identify a boundary of the surrounding area from which farm crops may be sold or clarify what items are included or excluded from the 25% incidental threshold, but it can't do away with the 25% rule or allow an auditorium on EFU lands as part of a farm stand.

The original impetus for this rulemaking came at the behest of the Governor after the Oregon Property Owners Association (OPOA), a property rights-oriented entity, failed to get the legislature to act on HB 3133, which would have eliminated the 25% limit, allowing for greater retail activities and dining so long as the structures were built to accommodate farm activities. When HB 3133 failed, OPOA lobbied the Governor to create a Rules Advisory Committee (RAC) to review existing rules and suggest rule changes within the EFU statutes. Most of the "usual suspects" participated – interested state agencies, the Oregon Farm Bureau, 1000 Friends, and OPOA. When it appeared that the RAC effort might fall short of achieving all of the HB 3133 objectives, it turned to social media pushing a narrative that farmers needed nonfarm, commercial activities to stay viable. Rather than acknowledge the OPOA-initiated ask was something that LCDC could not deliver, the Governor ordered a pause in the rulemaking, saying that she was hearing the commentary and "paying attention." So right now, nothing is happening. The Governor let LCDC take the fall for the failure of the process she initiated, knowing full well that it was doomed for failure.

The point is that LCDC works in a small confine, given existing statutes and policies that would frustrate the nonfarm commercial expectations of a portion of the farming community.

This controversy isn't about produce sales, u-pick operations, or corn mazes. It's about money and allowing the secondary commercial exception to swallow the farmland preservation rule. It's about a well-crafted and well-directed social media game to challenge state policy on an incremental basis – 50 acres in Eastern Oregon here, easier urban growth boundary opportunities there, allowing commercial uses unconnected with farming – you get the picture. This gnawing around the edges of state policy and the enabling of places like Deschutes and Yamhill Counties to game the system by the death of 1000 cuts has existed for the last 50 years.

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