

SENATE COMMITTEE ON AGRICULTURE AND NATURAL RESOURCES Subcommittee on
Land Use

March 29, 1993 Hearing Room 137 4:30 p.m. Tapes 13 -14
MEMBERS PRESENT: Sen. Ron Cease, Chair Sen. Bob Shoemaker Sen. Gordon
Smith MEMBERS EXCUSED: None VISITING MEMBERS: Rep. Marilyn Dell
STAFF PRESENT: Chris Warner, Administrator Pamella Andersen,
Committee Clerk MEASURES CONSIDERED: SB 97 Informational Meeting:
Overview of Land Use Taxation

WITNESSES: Sue Hanna, Legislative Counsel Office Greg Wolf,
Department of Land Conservation and Development Russ Nebon, County
Planners, Marion County

These minutes contain materials which paraphrase and/or summarize
statements made during this session. Only text enclosed in quotation
marks report a speaker's exact words. For complete contents of the
proceedings, please refer to the tapes.

TAPE 13, SIDE A

004 CHAIR CEASE: Calls the meeting to order at 4:42 p.m. - Welcomes
Representative Marilyn Dell. - Sue Hanna will give testimony on farm and
forest taxes and land use. - She is the most qualified person in the
building to give testimony on this issue. 022 SUE MANNA: Offers her
background relative to land use issues and taxation. - I worked at the
Department of Revenue where I conducted hearings. - I spent my years as
a law clerk in Washington County dealing with farm and forest assessment
issues. - Notes statutes where you can find references to special
assessment and land use planning: ORS 215, 308 and 321. - Department of
Revenue and Department of Land Conservation and Development rules should
also be referenced. - Historically, taxes came before land use planning.
- In 1961, a tax and zoning program was enacted to assist farmers to
continue farming. - The program was hampered because there was very
little rural zoning and it was narrow in scope. Senate CommiKee on
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050 - A more comprehensive tax and zoning program was enacted in
1963, the basis of which was valuation of farmland at its value for farm
use rather than its "highest and best use." SEN. SMITH: Once you choose
farm use that is no longer a consideration. MANNA: The zoning must be
there, then the use must be chosen to get a special assessment SEN.
SMITH: A hobby farmer would not qualify, or anyone else not farming for
profit? CHAIR CEASE: How did they determine eligibility in earlier
legislation? MANNA: Counties provided zoning for certain zones and
called them exclusive farm use. That's when we adopted ORS 215.203 which
sets forth a list of farm uses. 075 - It also addresses a profit
in money. - In 1983-85 it was almost impossible for an assessor to
disqualify someone from farm use. - The 1963 program included
allowances in farm use zones that would not disqualify the zone from
farm use. - In the situation with the "church in the valley" from
last session, the statute allowed a church and a graveyard, but the
county knew it, wasn't required to allow that use. - Past Senate
Bills 100 and 101 created the statewide land use planning program, as
well as enhancement to the special assessment program. 102 - It is
hard to distinguish these two bills. Much of today's land use planning

policy is in the tax bill. - I have seen a number of proposals to adjust our secondary lands system. - It is critical to understand the relationship between the tax program and the land use planning program, and the kinds of changes that might be made in the statutes must take into consideration special assessments as well as planning.

114 - Explains this statement further. - If the phrase "farm use zone" is unilaterally changed to "resource zone" confusion will result. - Continues with history of the issue. - In 1974, LCDC reviewed the uses allowed in ORS 215.213 and determined to link their zoning program to the exclusive farm uses. That connection has remained for many years. - In 1983, there was a move toward a secondary lands program, then known as marginal lands. - ORS 215.283 has a list for those counties that don't adopt marginal lands. 148 - Only Lane and Washington counties use ORS 215.213. - In 1992, LCDC adopted a secondary lands program, breaking from the tax program. - A narrower list of uses on the highest land resulted. - Small scale land will not qualify for EFU because of the housing allowance.
175 - (Introduces EXHIBIT A) The tax primer is used to apply this information to the individual.

SEN. SMITH: I don't know many counties that will want to pursue this program if the farmers understand the relationship to taxes.

CHAIR CEASE: I would not argue the policy issue. - Giving a tax break for farming is acceptable unless the person is not farming. - A definition of farming is needed. - What do you have to do to legally qualify for the exemption? .,

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MANNA: We will review that as we read the tax primer. - Some proposals deal unknowingly with the tax systems. - Mentions an article by Ed Sullivan on the "greening of the taxpayer" and explains its purpose. 200- The article was written in 1973. I will provide it for committee members. - Begins review of the Farm and Forest Tax Primer, Exhibit A. 244 - Reviews example of average rural property on page 2 of Exhibit A. - One qualifies for exclusive farm use because they are in that zone and are farming. - If an assessor chooses to disqualify you, the burden is on the assessor to prove farming is not taking place. - Notes "Butler" case, where the court considered the hardship of the rollback and determined the assessor had to provide certain information to prove farming was not taking place.

CHAIR CEASE: Does that mean because the burden is on the assessor these are not questioned as much as they should be? MANNA: Gives example of Washington County case of a filbert orchard the assessor wanted removed from deferral. - Notes extensive work by staff to provide proof of the reasons for disqualification. 311 - Reviews additional tax on page 3. - Notes the required penalty is the benefit gained from not paying market value taxes, and is termed "the rollback." CHAIR CEASE: At what point do you determine the farm is not a working farm? MANNA: Reviews procedure for determining such. CHAIR CEASE: Are the counties systematic in reviewing these types of properties? MANNA: Yes. The counties vary based on the resources. - Reviews page 4, on valuing the homesite. - In the 1987-89 session a formula was developed. 363- For non-exclusive

EFU, you can still get the benefit of the valuation by meeting the income test. CHAIR CEASE: If you were in an EFU zone you would be qualified unless the assessor determined you were not using it for farm use purposes? MANNA: And in EFU, you are qualified when you make application and the assessor determines you are qualified. - The rollback is a five-year rollback. - Explains reason for choosing this length of time. CHAIR CEASE: Is there very much rollback at all? Senate Committee on Agriculture and Natural Resources Land Use Subcommittee March 29, 1993 - Page 4

MANNA: There have been some really drastic cases. - When I was at Revenue, a judge in a divorce proceeding awarded the wasteland to the woman and the farm to the man. -She received a demand to pay a \$79,000 rollback. - Notes this was resolved legislatively. 428 - In the forest program the system is different. -The land and trees are valued differently. - The trees are the severance tax as you can't generate income from them while they are young. - The focus here is on the value of the land.

TAPE 14, SIDE A

MANNA: Reviews value determinations on page 6 of Exhibit A. - Reviews page 7, relative to small woodlots, a program governed by the Department of Forestry which may be eliminated by a bill in this session.

SEN. SHOEMAKER: Under LCDC rules for secondary lands, how would this be impacted?

MANNA: If your farm was in high value farmland in an EFU zone, you would qualify under that. - Notes a second example with a different type of farm. - There are provisions for elimination of the rollback when changes are made by local government.

038 SEN. SHOEMAKER: Under existing rules, tax deferment is probably okay?

MANNA: The way it has been set up, there is no conflict between the tax rules.

SEN. SMITH: If you are in an EFU zone now, you qualify. - If you are in eastern Oregon and your county adopts small scale resource land and you are farming on marginal land, you can still qualify if you meet the burden of proof?

MANNA: You wouldn't want to use the term "marginal land." - If you were farming on small scale, you could continue to qualify.

CHAIR CEASE: Would you have to do anything to maintain that qualification?

GREG WOLF: Under our rules, you would have to prove up, which means you would have to prove you meet the income requirements. - Notes the income requirements.

CHAIR CEASE: You move from qualifying by zoning to qualifying by income.

070 SEN. SMITH: Even though the standard is modest, I assume there are considerations for those having a bad crop year?

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MANNA: You have to meet the income test for three of the preceding five years. - Gives specifics for this consideration. - The standard is incredibly modest.

SEN. SHOEMAKER: If you are farming in the EFU zone you are okay; but if you go into small scale resource land, the burden rests upon you to show your farm produces the right amount of income. - You wouldn't have a rollback problem because you would have been legal under the former zone?

MANNA: That is correct.

092 CHAIR CEASE: If you are in the EFU zone do you have to prove you are farming?

MANNA: It is automatic. You have to prove you are not farming to be removed from that designation.

CHAIR CEASE: (To Greg Wolf) Is there any sense of how many people may be in EFU zones without farming?

WOLF: There is some evidence in our farm/forest study that some parcels approved as farms are shown to be generating no income.

CHAIR CEASE: Requests copies of the article previously mentioned by Ms. Hanna. - Opens public hearing on SB 97.

PUBLIC HEARING ON SB 97 - NO EXHIBITS

120 GREG WOLF: Offers background on past periodic review reform legislation. - The new statutes allow cities and counties to complete the current review under the old system if they wish. - Some jurisdictions have not completed their review, causing the department to maintain two separate systems. - This bill would move all jurisdictions to the new process. - We expected the jurisdictions completing periodic reviews would have completed the process over the last two years, but 40 remain unfinished and unconverted. - Notes reasons why they believe this bill should pass. - Reviews the increased costs because of the two lists and systems. - Transitioning to the new process would gain closure on specific work program tasks, allowing partial completion. - Before, partial completion was not valued; the entire process had to be finished before it could be submitted.

172 RUSS NEBON: The County Planners are opposing this bill. - When we were supporting the new system we understood the counties using the old process would be allowed to finish under the old process. - I can't speak for cities, but counties want to keep the option to use the old system.

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- We received from the department a list of what needs to be resolved. - The Goal 5 process was on that list. - Many of the resources for which we lack inventories and have been determining how to identify and protect, are on that list. - Notes some of the reasons counties are taking so long to complete the review process.

- Mentions Douglas County is segmented with both partial and nonpartial periodic review. - Mentions the Curry County court case that is 5 years old and remains unresolved. - We need policy guidance from the commission to resolve these issues. - Some counties are waiting for conclusion on that case. - Notes counties represented at the planners' meeting that were concerned about this legislation.

212 - They would like to complete under the old process before they have to report under the new system. - Notes Josephine County's proposed work program. -I have been given an extension until the end of the year, which coincides with the deadline proposed in the bill.

- I don't see what we are going to gain if we pass this bill with a few counties still there using the old system. -This would result in counties needing to operate under new procedures, with new ground rules.

- We would like to finish under one set of rules before we move on a to new set.

242 SEN. SHOEMAKER: What would the differences be between the new and old rules. Would work have to be redone? WOLF: The work would not have to start over again. - Existing work would be converted into a new work program. - Our interest is getting them into the new system, not reopening a lot of issues. SEN. SHOEMAKER: What about the portions of periodic review that were completed under the old rules? WOLF: We expect those would be completed under the old system. - The advantage of the new system is it would identify only those items that need to be completed. SEN. SHOEMAKER: If the new requirements would demand differing information, would you impose that set of requirements or would there be a grandfather protection? WOLF: There is no grandfather provision in the bill, but that is how we would intend to implement it.

290 NEBON: Goal 5 is evolving; mineral and aggregate is evolving. - We have certain data bases and inventories we would like to wrap up and submit under Goal 5. - There is nothing in the bill that gives me any assurance this work will be protected from the addition of any further requirements.

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SEN. SHOEMAKER: That suggests some amendments might be appropriate. WOLF: I believe since the state of the art does evolve on some of these planning issues, if I were in a local jurisdiction, I would like to gain closure on what I need to do to comply with the law. 324- At the conclusion of the next two years, a new set of expectations will exist for jurisdictions. - It is advantageous to them to gain closure. SEN. SHOEMAKER: Has there been an effort by these two parties to negotiate transition provisions as part of the bill? NEBON: No. My understanding is there is to be a four-year lapse between periodic reviews. - The reason we want to get it wrapped up is we have been bogged down in a state-mandated process that we do not see as critical, keeping us from accomplishing local planning. - If we go to this system, we buy into

state-mandated planning and lose a window of opportunity for local planning. WOLF: You will see a bill from the Homebuilders asking that Goal 5 be completed in two years. - This is an effort to try to narrow down some of that work as much as we can. - We are trying to respond to the identified criticism of the program that completion is not being reached locally. 364 - Ten counties fall into this category of incompleteness.

NEBON: You have heard of Marion County's encounter with the mineral and aggregate provisions. - They are spending an extra \$20,000 to implement a planning process to try and resolve how Goal 5 can work in a county with an overabundance of aggregate resources. - The committee needs to understand the counties under the old system are doing a lot of creative planning to make it work politically at the local level. - We would like to get out of that position and let other jurisdictions be the pioneers for a while.

394 CHAIR CEASE: Closes the public hearing on SB 97. - Adjourns the meeting at 5:38 p.m.

Submitted by,

Reviewed by,

Pamella Andersen

Chris Warner Clerk

Administrator Senate Committee on Agriculture and
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EXHIBIT LOG: A Farm and Forest Property Tax Primer, Sue Hanna, 8 pages
B Article: "The Greening of the Taxpayer: The Relationship of Farm Zone
Taxation in Oregon to Land Use, . Sue Hanna, 13 pages

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