THE GREENING OF THE TAXPAYER: THE RELATIONSHIP OF FARM ZONE TAXATION IN OREGON TO LAND USE

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I. INTRODUCTION

Agriculture in Oregon has always been a legislative concern. Faced with pressure from rural areas, the legislature has passed bounty laws,[1] provided for a system of agricultural education,[2] maintained stations for pursuit of agricultural scientific activities[3] and provided for state agricultural stations.[4]

It takes little knowledge of national affairs to know that the plight of the small farmer, and those who directly depend upon him, is worsening.[5] While in 1900 45,615,000 out of 75,994,575 Americans lived on farms, in 1970 only 9,712,000 out of 203,212,000 Americans could be classified as "rural dwellers."[6] Oregon has fared somewhat better—280,356 out of 413,536 in 1900 as compared with 689,000 out of 2,091,385 in 1970.[7] The state legislature has continued to undertake efforts on behalf of the small farmer to preserve one of the state's leading industries.

Two of these efforts are the subject of this paper. One relates to land use regulation and its relationship to agricultural activities; the other concerns the grant of tax relief to the farmer by the present system of farm assessments, farm exemptions and farm deferrals. The *farm assessment system* provides that realty engaged in "farm use," be assessed not on the basis of its "highest and best use," but solely at its "farm use" value.[8] The *farm exemption system* provides

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[1] ORS Chapter 610.

[2] ORS 561.080 to 561.110; ORS 566.210 to 566.260.

[3] ORS Chapter 567.

[4] ORS 565.020 to 565.180. *See also* ORS 565.210 to 565.570, relating to County agricultural fairs and exhibitions.

[5] *See*, for example, the declaration of legislative policy to protect farmland in ORS 308.345 and Roberts, *The Taxation of Farm Land in Oregon*, 4 WILL. L.J. 431, 432-439 (1967).

[6] United States Dept. of Commerce, Bureau of Foreign and Domestic Commerce, *Statistical Abstract of the United States* (1929 and 1972). United States Dept. of Commerce, Bureau of Census, *Historical Abstract of the United States*.

[7] *Ibid*.

[8] ORS 308.345. Without use of the farm assessment system, farm property must be assessed at its market value, often at subdivision prices. Hurlburt v. Dept. of Rev., 4 OTR 475 (1971); Bohnert v. Commission, 3 OTR 423 (1969); [1962-64] 31 OPS. ATT'Y GEN. 478; OF 1377-V (December 23, 1970); OF 881-V (July 19, 1968). The anomaly of this system, however, is that the assessor must make a *land use* decision which will have great impact upon whether the property can afford to remain in agricultural use and which decision must be a function of the intensity of the present agricultural usage. Ritch v. Dept. of Rev., 94 Or. Adv. Sh. 69, 493 P.2d 38 (1972); Kellems v. Dept. of Rev., 4 OTR 561 (1971); Linfoot v. Dept. of Rev., 4 OTR 489 (1971); Spooner v. Dept. of Rev., 4 OTR 66 (1970); Reter v. Comm., 3 OTR 477 (1969), *aff'd*, 256 Or. 294, 473 P.2d 129 (1970); Hartsock v. Comm., 3 OTR 434 (1969); Reynolds v. Comm., 3 OTR 408 (1969); Thomas v. Comm., 3 OTR 333 (1968); [1968-70] 34 OPS. ATT'Y GEN. 634; OF 1491-V (Nov. 26, 1971); OF 1337-V Opinion and Order VL 70-69 (March 4, 1970); OF 1275-

for a mandatory assessment at farm use value for qualifying realty located in an "exclusive farm use zone." Regardless of any use to which the property is put in subsequent years, the realty is exempt from any liability resulting from the tax differential benefits of this system (i.e., the tax liability imposed on an assessment at "highest and best use" versus the tax liability resulting from assessment at "farm use" value).[9] The *farm deferral system* provides, upon application by the taxpayer, for farm use assessment for qualifying realty located in other than an "exclusive farm use zone." The deferral system, as its name implies, merely defers liability for the tax differential while the realty continues in "farm use." If the land use is changed to other than "farm use," liability immediately attaches for any taxes deferred during the last five years. While the farm use continues, the assessor maintains, for the five-year period, a record of the land's value on the farm use basis rather than its market value basis.[10] The potential liability for the deferred taxes gives the farmer an added incentive to keep his land in "farm use."

It is the purpose of this article to demonstrate not only the inadequacies of the present law and its interpretation, but also to show how such legislation can, and does, work contrary to the purposes for which it was intended. Further, the thesis of this paper is that the following reforms ought to be made in Oregon laws relating to agricultural property taxation and land use regulation:

1. The separation of land use and taxing statutes, so that land use status does not depend upon gross income from property;

2. The repeal of ORS 215.130(4) which prohibits regulation of land within farm use zones used exclusively for farm purposes;

3. A re-evaluation of the farm exemption system, either to abolish the present system outright or to frame the same in terms of the open-space taxation provisions, i.e., requiring a binding commitment from the farmer for use of his land on a long-term basis for agricultural pursuits; and

4. A re-evaluation of the farm deferral system in terms of:

   (a) raising the minimum gross income requirements.
   (b) raising the five-year term of deferral.

V and Order VL 69-64 (Feb. 7, 1969); OF 1363-V an Opinion and Order VL 69-31 (Jan. 16, 1969); OF 921-V (Nov. 1, 1968); OF 761-V (Sept. 19, 1967).

[9] ORS 308.370(1). However, the assessor must still make the determination about whether the land in an "exclusive farm use" zone is so used as to qualify for a farm exemption. OF 740-V (August 11, 1967).

[10] ORS 308.370 to 308.395. *See also* OF 1561-V (July 28, 1972); OF 1260-V (Jan. 7, 1969). The deferral system, with its mandatory filing and approval procedures is fraught with dangers to those applicants who inadvertently miss a step. Marriott v. Dept. of Rev., 4 OTR 508 (1971); Harding v. Dept. of Rev., 3 OTR 513 (1969); OF 1429-V (June 15, 1971); OF 1338-V (Oct. 6, 1970); OF 1260-V (Jan. 7, 1969); OF 917-V (Oct. 25, 1968); OF 864-V (June 14, 1968); OF 834-V (March 22, 1968).

II. THE FARM TAX DILEMMA

A. *Introduction.*

The present farm tax dilemma involves two major problems. The first is a system of patchwork legislation built up over a number of biennial legislative sessions in place of a unified approach to farm, as well as other aspects, of property taxation. This problem results from a part-time legislature meeting only every biennium, over-worked staff, and simple inertia.

While this problem can be alleviated by legislative action, a second problem is not so easily solved. This problem involves the incursion of urban uses into farm uses in farm areas with the consequent destruction of a rural setting by urban sprawl. While this phenomenon acts imperceptibly (the metropolitan area, for example, has undergone vast movements of people to the suburban areas from the central city[11]) the result is the often-unplanned conversion of farmland possibly for less appropriate land uses. Further, this destruction is aided and abetted by present Oregon law relating to land in "exclusive farm use."[12]

Many American cities, including Portland, were founded on lowlands near river banks for easy access.[13] The pattern for city growth depends upon contemporary transportation patterns. Thus, Chicago, which was served by early commuter railroads, influenced the establishment and growth of towns along the railroad stations so that the areas surrounding the city formed a star-like pattern emanating from The Loop.[14] Pre-1940, Portland, on the other hand, grew along its trolley lines, the outer reaches of which formed its city boundaries. With the growth of the automobile as a mode of transportation[15] came the tendency for metropolitan areas to grow anywhere the land is cheap, accessible to the city and supplied with amenities.[16]

Unregulated growth has been seen by many people as an evil to be avoided. To this end, zoning legislation, which once found credence in its ability to free single-family neighborhoods

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[11] Portland City Club, *Planning for Transportation in the Portland Metropolitan Area* at 263-64 (Portland City Club, 1968).

[12] The "exclusivity" requirement has usually been easier to dispose of than the nature of "farm use" and both the Tax Court, Attorney General and Dept. of Revenue have found agricultural and timber exemption systems to be mutually exclusive except for the "woodlot exception" of ORS 215.203(2)(c). Linfoot v. Dept. of Rev., 4 OTR 489 (1971); Monner v. Dept. of Rev., 3 OTR 523 (1969); [1962-64] 31 OPS. ATT'Y GEN. 478; OF 1377-V (Dec. 23, 1970); OF 921-V (Nov. 1, 1968).

[13] YATES & GARNER, THE NORTH AMERICAN CITY 33-39 (1971).

[14] *Id*. at 408-11.

[15] "*Planning for Transportation in the Portland Metropolitan Area*," *supra* note 11, at 263.

[16] YATES & GARNER, *supra* note 13, at 442-46.

from commercial and industrial uses,[17] became a means whereby future community growth could be planned in advance and in which zoning could "carry out" that plan.[18]

At first zoning affected only the cities, because the early emphasis was on nuisance control in more populated areas.[19] But the postwar housing boom, congressional promises for a decent home for every American, and population growth forced nonurban areas to consider their future. In 1947, 28 years after the legislature recognized the need for zoning in incorporated areas, Oregon followed other states in granting enabling legislation which allowed counties to provide for comprehensive planning and zoning regulations.[20]

A "comprehensive plan" is not only an estimate of future desirable uses in a jurisdiction; to some extent, the plan should anticipate the timing of development in those areas.[21] The plan should also be predicated on the assumption that most urban areas expand, even if the population of a central city itself declines. Therefore, comprehensive planning for areas experiencing metropolitan growth should anticipate the timing of such growth. If truly "comprehensive," the plan should relate to the supply of community facilities, such as roads, sewers, water systems, open spaces, parks and schools as elements of metropolitan growth.[22]

But most cities do not expand into unused space. As urbanization spreads, the density tends to rise. The closer to the city, the more accessible its charms, the greater the availability of sewer, water and other community facilities, the greater the demand for land. The greater the demand, the higher price the land brings on the market and the greater the interest of the city in areas likely for annexation.[23]

The use of space surrounding urbanized areas usually falls into two major categories: low density residential and agricultural. Of the former, due to the factors just mentioned, market value and consequent rising taxes often force the landowner to sell his land. As additional community facilities are installed to meet urbanization, taxes and assessments rise. The higher the value (and consequent property tax), the greater the incentive to sell off parcels of land especially for rural residential lots, without providing community facilities for these lots.[24]

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[17] In Village of Euclid v. Ambler Realty Co., 272 U.S. 365 (1927), Mr. Justice Sutherland at p. 394 based the validity of zoning, *inter alia*, upon betterment of "the safety and serenity of home life," prevention of street accidents, "reducing the traffic and resulting confusion in residential sections," "preserve a more favorable environment in which to rear children," and added: "With particular reference to apartment houses, it is pointed out that development of detached house sections is greatly retarded by the coming of apartment houses, which has sometimes resulted in destroying the entire section for private house purposes * * *" It can safely be said that originally, zoning was oriented to the single-family home.

[18] ORS 215.110; Roseta v. County of Washington, 254 Or. 161, 458 P.2d 405 (1969). There remains much to be said for this approach in the segregation of agricultural activities which may be seen as nuisances to other land uses.

[19] In Oregon, the first zoning enabling legislation was passed in 1919 (Ch. 300, OR. LAWS 1919).

[20] Chs. 537 & 558, OR. LAWS 1947.

[21] ORS 215.055. *See also* Golden v. Town Planning Board of Ramapo, 30 N.Y.2d 359, 334 N.Y.S.2d 138, 285 N.E.2d 291.

[22] ANDERSON, AMERICAN LAW OF ZONING § 5.02 (lst ed. 1968).

[23] *See* ORS 92.042, which gives cities plat approval powers for land within six miles of their boundaries if the counties do not have a Planning Commission.

[24] Unfortunately, development in the metropolitan area is regulated by inadequate subdivision legislation which may be evaded easily. In Oregon, ORS 92.010 defines "subdividing land" as the partitioning of a parcel of land into four

Agricultural lands are in a different category, at least in theory. If such land is being assessed at its "farm use" value instead of its market value, the farmer should be insulated against the pressures of the marketplace and the assessor.[25] Thus, the farm taxation system is designed to provide positive incentive and a negative alternative to keeping land in farm use. Again, this is fine in theory.

In reality, the Oregon farm taxation system works badly in farm areas adjoining the metropolis. It gives the farmer the best of all worlds—if he wishes to farm the land, he can do so, but he need not farm it extensively to keep in the good graces of the assessor.[26] Further, under certain conditions, he can opt out of farming at any time with a minimum of expense and a maximum amount of impact on the community. The last two decades have witnessed a generation of squire-farmers who have turned land speculators at public expense. How have these circumstances come about?

In order to qualify automatically for farm assessment under the farm exemption scheme, a landowner need only use his land "exclusively" for farm purposes and be in a "farm use zone."

To qualify for farm deferral, the land must be outside an exclusive "farm use" zone but such land must nevertheless be devoted exclusively to "farm use," and the owner must receive approval from the assessor and a deferral certificate under ORS 308.370(2) and ORS 308.375.

Let us examine the statutory basis for the Oregon farm taxation system. ORS 215.203(1) provides:

> Zoning ordinances may be adopted under ORS 215.010 to 215.190 to zone designated areas of land within the county as farm use zones. Land within such zones shall be used exclusively for farm use except as otherwise provided in

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or more parcels of less than five acres when the land existed as a unit or contiguous units under the same ownership on the previous year's tax roll. There are three major loopholes in this definition:

1. the four or more parcel requirement—splitting a parcel of land into three parcels may have the same adverse impact on the jurisdiction as four.
2. the five-acre requirement—is easily evaded by lot splits resulting in parcels of five acres or more.
3. the last tax year's requirement—this gives the landowner the option of selling three parcels of property every year, a subdivision on the installment plan.

Because provision for community facilities is a result of subdivision legislation, partitioning not covered by these laws and ordinances is often done without provision for community facilities and hence, the land is less expensive.

[25] ORS 308.345 to 308.495. No violation of the "uniformity of taxation" requirement of art. 9, § 1, OR. CONST. is created by the system as the provision merely requires taxes to be the same on each class of taxed objects. [1960-62] 30 OP. ATT'Y GEN. 279. *See also* Bohnert v. Comm., 3 OTR 423 (1969); Thomas v. Comm., 3 OTR 333 (1968). *But see* Tilghman v. Kane, 448 Pa. 38, 279 A.2d 53 (1971) and William G. Halby, "*Is the Income Tax Unconstitutionally Discriminatory?*", 58 ABAJ 1291 (December, 1972).

[26] If land otherwise qualifies for farm assessment, a farmer needs merely to have a gross farm income of $500 per year for three of the five prior years. *But see* Spooner v. Dept. of Rev., 4 OTR 66 (1970), in which plaintiff, a landscape architect, claimed a farm use exemption of 125 acres on which the court found he raised about 30 sheep. The land was farmed, but not irrigated, and a barn which burned down in 1969 had not been replaced at the time of trial. The court found that even though plaintiff met all the statutory requirements for "farm use" under ORS 215.203, the subject property could not all have been used for grazing and limited the farm assessment to 30 acres of the property. *See also* Linfoot v. Dept. of Rev., 4 OTR 489 (1971); OF 761-V (Oct. 29, 1967).

> ORS 215.213. Farm use zones shall be established only when such zoning is consistent with the overall plan of development of the county.

ORS 215.203(2)(a) and (b) define "farm use" to mean:

> (a) As used in this section, "farm use" means the current employment of land for the purpose of obtaining a profit in money by raising, harvesting and selling crops or by the feeding, breeding, management and sale of, or the produce of, livestock, poultry, fur-bearing animals or honeybees or for dairying and the same of dairy products or any other agricultural or horticultural use of animal husbandry or any combination thereof. "Farm use" includes the preparation and storage of the products raised on such land for man's use and animal use and disposal by marketing or otherwise. It does not include the use of land subject to the provisions of ORS Chapter 321, or to the construction and use of dwellings and other buildings customarily provided in conjunction with the farm use.
> (b) Except as limited by paragraph (c) of this subsection, farm use land shall not be regarded as being used for the purpose of obtaining a profit in money if the whole parcel has not produced a gross income from farm uses of $500 per year for three of the five calendar years immediately preceding the assessment day of the tax year for which farm use is claimed by the owner or allowed by the assessor, notwithstanding that such land is included within the boundaries of a farm use zone. In case of question, the burden of proving the gross income of a parcel of land for the years designated in this paragraph is placed upon the owner of the land.

Therefore, ordinarily, the farmer has only to gross $500 in three out of the last five years to retain his farm use assessment through exemption or deferral method.[27] It matters not whether one acre or 500 were involved.

The Oregon farm taxation system dependent on zoning to differ farm exemption from farm deferral, is a product of the effort of six legislative sessions which adapted this system to meet certain problems with little apparent overview of the existing problem of farm taxation or land use. This effort has several distinct phases:

1. Making any tax relief to the farmer dependent on zoning (1961);

2. Separating farm exemption or farm deferral by farm zoning or absence thereof (1963);

3. Remedying farm assessment defects in the statutes (1965, 1967, 1969);

4. Making farm exemption or deferral dependent on gross income (1967); and

[27] ORS 215.203(2)(c) provides that certain uses or activities not contained in the definition of "farm use" qualify as such within the farm taxation system.

5. Changing farm deferral procedure (1971).

To understand the present farm taxation system, it is necessary to examine its legislative history. Present legislation relating to farm property taxation is found at ORS 308.345 through 308.395 and ORS 215.203 to 215.213.

B. *Legislative History.*

In 1961, in response to rural pressure, the Oregon legislature passed 695 Or. Laws 1961, the former ORS 308.237 and 308.238, which stated:

> Section 1. (1) Notwithstanding the provisions of ORS 308.205 or 308.235, *farm land which is zoned exclusively for farm use by cities* or, pursuant to ORS 215.010 to 215.190, *by counties*, shall be assessed at its true cash value for farm uses and not at the true cash value it would have if applied to other than farm uses.
> (2) Farm land subject to subsection (1) of this section shall mean any tract of five acres or more as shown on the tax roll for the current year which during the previous year was used to raise, harvest or store crops, feed, breed or manage livestock, or to produce plants, trees, fowl or animals useful to man, including the preparation of the products raised thereon for man's use and disposal by marketing or otherwise. It includes but is not limited to such land used for agriculture, grazing, horticulture, forestry and dairying.
> Section 2. *Zoned farm land* which is subject to section 1 of this Act for purposes of assessment on January 1 but is removed from such zoning before July 1 of the same year shall be assessed at its true cash value as defined by law without regard to section 1 of this Act. If such land is withdrawn from such zoning on or after July 1 of any year, its value shall continue on the assessment roll for that year as computed pursuant to section 1 of this Act. (Emphasis supplied.)

The emphasis at this time was to grant a preferential assessment and consequent exemption from additional taxes based on market value to "farm land" of five acres or more in an "exclusive farm use zone," regardless of farm income. The end is clear—tax relief for farmers, but the means was to use zoning as the referent. In other words, zoning was used to carry out a taxing policy and such zoning had no independent importance for farmers.[28]

The 1961 legislation proved to be inadequate. Farm areas needed supporting facilities such as churches, schools and open space, which, by definition, were excluded from "exclusive farm zones," necessitating patchwork zoning with no more justification than the peculiarities of the enabling legislation. Farmers outside "exclusive farm use zones" were discriminated against as they were denied farm assessments and exemptions. In fact, most of rural Oregon was unzoned.

[28] *Compare* the former ORS 215.130(1) with the present ORS 215.130(4). *See also* Roberts, *supra* note 5, at 442-445.

In 1963, the Oregon legislature repealed the 1961 legislation and adopted the predecessor to the present statutes. The enactments, Chs. 577 and 619, Or. Laws 1963, then numbered as ORS 308.370 through 308.395, and 215.203 and 215.213, provided a program that:

1. Granted lands within a "farm use zone" a farm assessment under the exemption approach if the land were used exclusively for farm purposes as defined in ORS 215.203.[29]

2. Allowed land not within a farm zone, but being used as a farm as defined in ORS 215.203, upon application, farm assessment under the farm deferral approach.[30]

This legislation had land use implications, though again they were primarily taxing statutes. Section 2 of Ch. 577, Or. Laws 1963, duplicated by Subsections (2) and (3) of § 1 of Ch. 619, Or. Laws 1963 provided:

> (1) Zoning ordinances may be adopted under ORS 215.010 to 215.190 to zone designated areas of land within the county as farm-use zones. Land within such zones shall be used exclusively for farm use except as otherwise provided in section 3 of this 1963 Act.
> (2) As used in this section, "farm use" means the use of land for raising and harvesting crops or for the feeding, breeding and management of livestock or for dairying or any other agricultural or horticultural use or any combination thereof and includes the preparation of the products raised thereon for man's use and disposal by marketing or otherwise. It includes the construction and use of dwellings and other buildings customarily provided in conjunction with the farm use.[31]

The above provisions became the former ORS 215.203. Both sessions laws provided for enumerated nonfarm uses within such "exclusive farm zones" such as schools, churches, golf courses, community centers and utility facilities. This provision became the former ORS 215.213.

Ch. 577 Or. Laws 1963, provided the basis for the present farm assessment, farm exemption and farm deferral problems. Section 5(1) provides the basis for farm assessment through exemption:

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[29] § 2, Ch. 577, OR. LAWS 1963; § 1, Ch. 619, OR. LAWS 1963.
[30] §§ 5 to 10, Ch. 577, OR. LAWS 1963.
[31] Apparently, subsections (2) and (3) of Section 1 of Ch. 619, OR. LAWS 1963, were inserted at the last minute, perhaps for fear that Ch. 577 would not pass. The reference to "Section 3 of this 1963 Act" in Ch. 619 refers to an amendment of ORS 215.050, not to the predecessor to the present ORS 215.213, to which Ch. 577 did make reference. This error was not corrected until 1967 by Section 1 of Ch. 386, OR. LAWS 1967. Ch. 619 did refer to permitted "nonfarm uses" in an exclusive farm zone in § 1(a). Until 1967, therefore, there was some ambiguity as to the scope of permissible nonfarm uses in an "exclusive farm use" zone. Also see the discussion of this confusion in § III, *infra*.

> Any land which is within a farm use zone established under ORS 215.010 to 215.190 or 227.210 to 227.310, and which is used exclusively for farm use as defined in subsection (2) of section 2 of this Act, shall be assessed at its true cash value for farm use and not at the true cash value it would have if applied to other than farm use.

Section 5(2) provides the basis for farm assessment through deferral:

> Any land which is not within a farm use zone but which is being used, and has been used for the preceding two years exclusively for farm use as defined in subsection (2) of section 2 of this Act shall, upon compliance with section 6 of this Act, be assessed at its true cash value for farm use and not at the true cash value it would have if applied to other than farm use. * * *

Section 6 of this chapter provided for a system of application to the assessor for farm deferral. Section 9 required an entry of notation of potential taxes as if the land were assessed at market value, which notation shall be kept for up to five years after the farm use assessment was granted. Finally, Section 10 of the Act provided for property tax liability with interest if the deferred land was taken out of "farm use" within the five-year period. As a curious addendum, the legislature delegated to the State Tax Commission (now the Department of Revenue) the duty and authority to "provide by regulation for a more detailed definition of farm use, consistent with the general definition in (ORS 215.203(2)), to be used by county assessors in determining entitlement to special assessment under (ORS 308.370(2))"[32] and added that "such regulations shall be designated to exclude from the special assessment those lands which are not bona fide farms for which tax relief is intended."[33] Thus, the Department was empowered to expand upon land use criteria for tax purposes. A landowner could hold a farm and use it for an agricultural purpose but fail to qualify for farm deferral if the assessor, following State Tax Commission interpretation of "legislative intent," denied the application,[34] a clear case of legislation on a 'you-know-what-we-mean' basis."

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[32] In Hartsock v. Comm., 3 OTR 434 (1969), these regulations were challenged by a part-time farmer who was denied farm assessment and deferral on an 8.5-acre parcel of land. The Tax Court did not find the regulations invalid, as they were consistent with ORS 215.203, but found that the taxpayer met a substantial number of them and therefore he was entitled to the farm use assessment and deferral. A comparison of this case and Spooner v. Dept. of Rev., 4 OTR 66 (1970), discloses that the extent of the owner's occupation, while not decisive, is one factor considered as to whether the landowner is entitled to farm use assessment and deferral. *See also* OF 1275-V and Order VL 69-64 (Feb. 27, 1969). Usually, land use decisions are based on the character of the land and not the status of the landowner, but Oregon makes a curious exception. The delegation to an administrative agency to add to its own standards is somewhat unique The legislation also provided for exclusion from farm assessment "those lands which are not bona fide farms for which the tax relief is intended." Just what a "bona fide farm" meant remained unclear until Ch. 512, OR. LAWS 1969 made ORS 215.203(2) the basis of *bona fides*. Masters v. Dept. of Rev., 5 OTR 134 (1972). *See also* ROBERTS, *supra* note 5, at 445-46.

[33] The boarding, training and feeding of horses qualifies as a "farm use" if the gross income and other requirements are met. OF 926-V (Nov. 15, 1968). *See also* Linfoot v. Dept. of Rev., 4 OTR 489 (1971). To qualify for farm use benefits, land need not be contiguous so long as it is part of a unitary farm operation. OF 926-V (Nov. 15, 1968); OF 857-V (May 24, 1968).

[34] Spooner v. Dept. of Rev., 4 OTR 66 (1970).

The 1963 legislation created two classes of recipients of farm property tax relief—those who received farm assessment and exemption and those who received farm assessment and deferral. Class differentiation was based solely on whether the property was in a farm zone. With modification, this is the basic system used in Oregon today.

In 1965, the legislature sought to correct a problem found in farm assessment procedure and stated through § 1 of Ch. 622, Or. Laws 1965:

> Many farm properties throughout the state are being assessed for ad valorum purposes based on market data information which does not represent the sale of comparable property for comparable uses and the particular sales which are utilized as indicators if the value of other farm properties, upon independent investigation, have been shown to represent sales for investment or other purposes not connected with bona fide farm use.

The legislature directed that farm assessments (whether for zoned or unzoned farmland) be based on values so as to "justify their purchase by a prudent investor for farm use."[35]

In 1967, further changes to the farm taxation statutes were made. In Ch. 386, Or. Laws 1967, the misleading reference in ORS 215.203 to "Section 3 of this Act" was corrected to reflect ORS 215.213. More importantly, the definition of "farm use," in ORS 215.203(2), necessary to determine whether a farm was devoted to such use, was changed in the following major particulars:

1. Mere "use" of land for farm purposes became insufficient; one needed to show that he made a "profit in money" from such activity, which profit had to equal $500 in gross income for three of the last five years preceding the claim for farm assessment, exemption or deferral.[36]

2. The burden of proving entitlement to farm assessment lay on the claimant.[37]

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[35] The use of an "income approach" rather than the market value plan as the basis of assessment benefits the farmer by looking to the rental value of the land rather than the highest price a willing seller would pay a willing buyer for farm property. Kellems v. Dept. of Rev., 4 OTR 561 (1971); Thornburgh v. Dept. of Rev., 4 OTR 248 (1970); Carl v. Dept. of Rev., 4 OTR 117 (1970); Carman v. Dept. of Rev., 3 OTR 516 (1969); Correa v. Comm., 3 OTR 450 (1969); Bohnert v. Comm., 3 OTR 423 (1969); ROBERTS, *supra* note 5, at 440-42 and 447-49.

[36] The income requirement has been somewhat effective against marginal land either in an exclusive farm use zone or the subject of an application for farm deferral. Monner v. Dept. of Rev., 3 OTR 523 (1969); Hart v. Dept. of Rev., 3 OTR 493 (1969); Reynolds v. Dept. of Rev., 3 OTR 408 (1969); Thomas v. Comm., 3 OTR 333 (1968); 34 OP. ATT'Y GEN. 634 (1968-70); OF 1275-V and Order VL 69-64 (Feb. 7, 1969); OF 761-V (Sept. 19, 1967); OF 1363-V Opinion and Order No. VL 69-31 (Jan. 16, 1969). Coupled with the "rule of reason" standard of *Spooner*, the grosser abuses of the system can be eliminated. However, there remains some question as to the scope of inquiry as to what constitutes a "bona fide" farm.

[37] However, in Reter v. Comm., 3 OTR 477 (1969), *aff'd*, 256 Or. 294, 473 P.2d 129 (1970), it is stated that a strict interpretation of the farm assessment system will not be used if it would defeat the legislative intent to grant relief to owners of qualifying agricultural property.

3. Specific exclusion (whereas since 1963, there had been specific inclusion) of dwellings or other buildings customarily provided for in conjunction with a farm use.[38]

4. Certain specific inclusions and exclusions from the definition of "farm use."[39]

The bill is hardly surprising. The requirement of a certain "profit in money" and burden of proof on the claimant reflects legislative concern over "hobby farms" in which one who held several acres for investment could take a loss by planting a crop, but recoup that loss and more by the combination of the farm taxation system and later resale. The legislature attempted to provide the benefits of the farm tax system only to bona fide farms. The exclusion of farm buildings underscored the intent to apply the preferential assessment only to land, thereby negating a 1961 Circuit Court case from Washington County, which found any building on farmland exempt from any land use regulation adopted under ORS Ch. 215, including building codes.[40]

During the same session, the legislature reiterated its concern for farm assessment procedures by amending ORS 308.239 by Ch. 633, Or. Laws 1967 as follows:

> [I]t is the legislative intent that bona fide properties (sic) shall be assessed at a value that is exclusive of values attributable to urban influences or speculative purchases.

This chapter provided for a county board of review to advise the County Assessor as to comparable sales figures, or income approach factors, for farm properties. The board was to advise the assessor as to the appropriateness of his comparable sales figures. Further, this chapter defined "prudent investor for farm use" as one who had a reasonable expectation for an annual return in his investment not less than "the current rate of interest charged by the Federal Land Bank on first mortgages of farm land in the county in which the agricultural lands are located," and farmland valuation was given an income, rather than a farm market value, approach for assessment purposes. Additionally, in the best traditions of special interest legislation, § 5 of this chapter allowed that "[a]ny group or organization representing owners of farm properties"

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[38] Hurlburt v. Dept. of Rev., 4 OTR 475 (1971), Reter v. Comm., 3 OTR 477 (1969), *aff'd*, 256 Or. 294, 473 P.2d 129 (1970), OF 926-V (Nov. 15, 1968).

[39] These inclusions (not requiring fulfillment of the gross income requirements) refer to land within a federal soil bank program (but not if such land is not used for crop raising or livestock grazing OF 720-V (May 15, 1967)): land lying fallow if such is done as a normal and regular requirement of animal husbandry. *See* Kellems v. Dept. of Rev., 4 OTR 561 (1971), and Monner v. Dept. of Rev., 3 OTR 523 (1969); lands planted in orchards or other perennials prior to maturity, Reter v. Comm., 3 OTR 477 (1969), *aff'd*, 256 Or. 294, 473 P.2d 129 (1970); but this does not apply to "Christmas tree farms"; Masters v. Dept. of Rev., 5 OTR 135 (1972); Monner v. Dept. of Rev., 3 OTR 523 (1969). *But see* OF 1275-V and Order VL 69-64 (Feb. 7, 1969); and farm woodlots of less than 20 acres appurtenant to a bona fide farm (but that woodlot must be "currently employed" as an appurtenance to the farm and not be of minimal utility or marginal use, as in Masters v. Dept. of Rev., 5 OTR 135 (1972), and Linfoot v. Dept. of Rev., 4 OTR 489 (1971); the wood need not be cut and drawn regularly if it otherwise qualifies, no part of any woodlot over 20 acres may qualify, but several woodlots on the same farm may qualify. OF 1377-V (Dec. 23, 1970)). The exclusions refer to land which is not currently employed in farm use or used to obtain a profit in money, land under the timber exemption statutes (ORS Ch. 321) or buildings on lands in the "farm use" category. For an analysis of the 1967 legislation, *see* ROBERTS, *supra* note 5, at 449-55.

[40] Jaross v. Lee (Wash. County Cir. Ct. No. 23-182, 1961).

had standing to demand administrative and judicial review of regulations adopted under the farm assessment statutes[41] and provided that the chapter was to be construed to carry out the legislative intent[42] but was not meant to modify or alter "the tax laws of this state." In the special session of this same legislature, it was found necessary to add further clarification to the assessment statute by defining a "prudent investor for farm use." All in all, 1967 was a good year for farmers and a poor one for legislators.

In 1969, the legislature made a few changes in farm tax law. Because "dwellings and other structures customarily provided in conjunction with a farm use" were excluded from the definition of "farm use" by the 1967 legislature in 1967 and were not among the "permitted non farm uses," they had to be specifically included once more.[43] Again, zoning was used as a referent to a taxing statute as the legislature had done rather consistently up to that time. Another Act allowed persons other than the owner of the farm to apply for farm deferral (allowing otherwise disqualified property owners to qualify under the system by leasing their property for farmers) and, in another feat of special legislation, required some evidence that the applicant show his interest as a matter of public record or file a document showing such interest with the assessor. If only filed with the assessor, this document would not constitute a public record, thereby forbidding one agency of government from knowing the acts of another.[44] Lastly,

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[41] Apparently, this statute was meant to combat the effect of Oregon Farm Bureau v. State Tax Comm., 2 OTR 440 (1966), in which the Oregon Tax Court denied the Oregon Farm Bureau a declaratory judgment with regard to certain questions raised over the construction of the predecessor to the present ORS 308.345.

[42] Legislative intent of the farm taxation system has been mentioned on occasion with some helpful discussion as to its limits. In Kellems v. Dept. of Rev., 4 OTR 561, 564 (1971), the Oregon Tax Court stated: "* * * the legislative policy manifested by statute is to give a tax benefit which will stimulate the retention for agricultural use of currently productive agricultural land. * * *" In Linfoot v. Dept. of Rev., 4 OTR 489, 496-97 (1971), the Tax Court stated:

> The policy established by the legislature is buttressed by such a conclusion. In this time of spreading urbanization and steadily increasing land values, there is no reason to reward the land speculator who, while operating a farm lacking woodlots, is tempted to pick up several such tracts desirable as woodlots, remote from his farm and not essential to it, for speculative purposes. * * *

In Hurlburt v. Dept. of Rev., 4 OTR 475, 479 (1971), it is stated:

> [T]he major purpose of the legislation is to defeat the effect on the bona fide farmer of increased assessments growing out of the "highest and best use" requirement. Farming operations are to be encouraged by diminution of taxes in the face of urban expansion, land speculation, determinations of "higher and better use" and the like. * * *

See also Thornburgh v. Dept. of Rev., 4 OTR 248, 253 (1970), and Foy v. Comm., 3 OTR 307, 310 (1968). The oddity of liberal construction of a tax exemption statute under ORS 308.365 is noted in dictum in Emanuel Lutheran Charity Board v. Dept. of Rev., 4 OTR 410, 416-17 (1971). For other indications of legislative intent, *see* Reter v. Comm., 3 OTR 477 (1969), *aff'd*, 256 Or. 294, 473 P.2d 129 (1970); Masters v. Dept. of Rev., 5 OTR 135 (1972).

[43] Ch. 258, OR. LAWS 1969. There are no cases during the period 1967-69 in which any party contended that farm dwellings and other agricultural buildings were not permissible uses in an "exclusive farm use" zone though such contention could certainly have been made. Other accessory uses have always been allowed as part of an agricultural operation. Monner v. Dept. of Rev., 3 OTR 523 (1969); Reter v. Comm., 3 OTR 477 (1969), *aff'd*, 256 Or. 294, 473 P.2d 129 (1970).

[44] Ch. 396, OR. LAWS, 1969. *See also* OF 1542-V (July 14, 1972); OF 1559-V (Jan. 12, 1972).

ORS 308.350 was amended to more greatly reflect an income approach to farm assessment and to change the composition and terms of the assessor's board of review.[45]

In 1971, the legislative session saw a number of important changes in farm taxation law. One act provided for application for farm deferral in the first year only, instead of annually, and provided for loss of the farm deferral by:

1. Simple notification to the assessor by the taxpayer;

2. Sale or transfer to one who fails to make farm deferral application 60 days thereafter;

3. Transfer by death to one who fails to make application within 120 days thereafter;

4. Sale or transfer to one exempt from taxation;

5. Disqualification from farm deferral status by the assessor; or

6. Platting the land.

This act also required notification of disqualification for deferral to the landowner, deleted the requirement for annual market value assessment on deferred property in favor of assessment upon disqualification, and other matters.[46] The intent seemed to be to provide guidelines as to how the deferral could be lost and made the deferral system more convenient for the farmer.

C. *Summary.*

As tax legislation, the Oregon farm tax system has been ill-conceived and inadequate. Every year since its inception in 1961, the system has had to be revised. The power of the farmer in securing this ends or simple legislative frustration, has led to errors in drafting and bad compromises which have plagued assessors.

As tax legislation, the Oregon system has, in 1973, a number of major defects which create a need for the following actions:

1. The use of zoning as a referent for the farm taxation system should be discontinued. Independent tax criteria should be established to distinguish "bona fide" and "hobby" or "speculator" farms.

2. All farmland should be placed on the deferral system because there is no compelling state interest or rational basis to treat land used for similar purposes in a different way merely by the accident of a county creating a "nonexclusive" rather than an "exclusive" farm zone. In addition, the tax

[45] Ch. 512, OR. LAWS 1969.
[46] Ch. 629, OR. LAWS 1971. *See also* OF 1561-V (July 28, 1972).

differential may itself be a justification for equal treatment. Again, under the present system, land used for "farm uses" and located within an "exclusive" farm zone, is wholly exempt from any liability for the tax differential. However, identical land put to the same use but located in a "nonexclusive" farm zone is subject to liability for the tax differential upon change of use.

3. The $500 gross income requirement without regard to size of farm should be deleted and other criteria established.

4. The "board of review" which looks over the assessor's shoulder in determining comparable farm prices should be abolished. Its existence, solely as a product of legislative compromises, is unnecessary due to the supervisory powers of the Department of Revenue and is a burden to the assessor.

5. The crude legislative attempt to establish ever-changing criteria to farm use assessment in ORS 308.345, *et seq*. (Ch. 633, Or. Laws 1967) should be abolished.

6. If the legislature determines the qualifications for "farm use" assessment, the Department of Revenue should not have to "provide by regulation for a more detailed definition," as it now must do.

The present system of farm taxation provides no penalty to a farmer or speculator in an "exclusive farm use zone" who sells off his property in small pieces of, say, at least five acres (enough to avoid subdivision regulations), whereas the farmer whose taxes are deferred must pay a five-year tax differential. Presumably, zoning ordinances were thought to prevent such activity. They do not, as will be seen. Moreover, the tax laws provide no sufficient reason for a farmer to hold his land for future sales without regard to planning future growth in presently unincorporated areas.

III. THE FARM LAND USE DILEMMA

The immensity of unimproved land in Oregon, the idea that zoning was fine for urban areas but inappropriate in the country and a bald hostility to zoning itself, all explain the inclusion of the following section into the first county zoning enabling legislation in 1947:

> No ordinance adopted under ORS 215.010 to 215.190 shall regulate lands used for grazing, agriculture, horticulture or for growing of timber.

This provision, codified until 1963 as ORS 215.130(1), remained on the statute books for 16 years. The simplicity of the provision was deceptive. What was "agriculture," for example—would a backyard garden suffice? What was "the growing of timber"? Would a Christmas tree suffice? Further still, the provisions of ORS 215.010 to 215.190 included more than planning and zoning—i.e., subdivision and building code regulations. Were these not applicable?[47]

[47] Jaross v. Lee (Wash. County Cir. Ct. No. 23-182, 1961). *See also* [1964-66] 32 OPS. ATT'Y GEN. 249.

In 1963, the legislature eliminated the confusion by enacting Chs. 577 and 619, Or. Laws, 1963, referred to above. In an attempt to modify the prohibition of regulation of farm and timberlands, Ch. 577, which was filed with the Secretary of State on June 19, 1963, after the signature of the Governor, stated:

> Except as provided in section 3 of this 1963 Act, no ordinance adopted under ORS 215.010 to 215.190 shall regulate lands used for grazing, agriculture, horticulture or for the growing of timber.

Section 3 of that Act provided, in relevant part, that:

> (1) * * * Land within such (farm use) zones shall be used exclusively for farm use except as provided in (ORS 215.213) * * *
> (2) As used in this section, "farm use" means the use of land for raising and harvesting crops or for the feeding, breeding and management of livestock or for dairying or any other agricultural or horticultural use or any combination thereof and includes the preparation of the products thereon for man's use and disposal by marketing or otherwise. It includes the construction of buildings and use of dwellings and other buildings customarily provided in conjunction with the farm use.

This bill would have provided some workable framework for planning and zoning purposes. It enabled planners to predict that there would be farm use zones which could be relatively permanent and provide one basis for planning future growth with the knowledge that nonfarm uses would not be permitted in such an "exclusive" farm zone. This was not to be, however.

The second bill, Ch. 619, Or. Laws 1963, was filed with the Secretary of State on June 24, 1963, after receiving the Governor's signature. As it was the later bill, it would supersede Ch. 577 in areas in which the bills conflicted. This act read:

> Land within a farm-use zone which is used exclusively for farm purposes shall be exempt from a zoning ordinance enacted by authority of ORS 214.010 to 215.190.

The differences between the two bills is significant. The first required land in a farm use zone to be used for farm use purposes but exempted farm, timber and grazing lands in other zones from land use regulation while the second exempted land which was used exclusively for farm purposes from any zoning regulation. The burden would be on the party attempting to regulate rural lands to show they were not exempt from land use regulation, rather than a legislative mandate requiring such use. This latter bill still comprises ORS 215.130(4).

In 1967, the legislature compounded its error twice. In Ch. 386, Or. Laws 1967, in its haste to deny farm tax relief to "hobby farms" and allow the regulation of farm structures, the legislature:

> 1. Required a $500 gross income for three of the last five years before tax relief was sought; and

2. Deleted farm structures from the definition of "farm use."

Both errors were unfortunate. The second one is easier to understand: farm structures escaped land use regulations by the general language of ORS 215.130(4). The remedy was simply to delete farm structures in the definition of "farm use." Yet, it is often impossible to separate land use from structural use for zoning purposes. For almost any land use, structures are required. However, there is little sense in regulating structures but not uses. If there were a general zoning requirement for access to a public street, setbacks, distance of houses from barns or other structures, would these regulations apply to the use or the structure? Would they be valid? No one knows. Finally, if dwellings and other farm structures were no longer a part of a "farm use" and not among the "permitted nonfarm uses," were they not prohibited in an "exclusive farm zone." In separating structures and uses, the provisions of ORS 215.130(4) could have been used, since this exempts only "land" within such a zone from zoning regulation, but again, "land" and "land use" are closely bound.

The first change, requiring a gross income of $500 in three of the last five years, has an adequate taxing basis but lacks any land use basis. If land in an "exclusive farm zone" must be used solely (with the exceptions enumerated in ORS 215.213) for farm use and if "farm use" means "current employment of land for the purpose of obtaining a profit in money" from agricultural activity, the retrospective use of "profit in money" to mean a gross income requirement of $500 per year for three of the last five years effectively prevents the denial of a building permit for a "hobby farm" of five or less acres, since, even though it is unlikely, it is *possible* that one can gross a total of $500 per year for three of the next five years (e.g., through the raising of chinchillas, even though a cattle breeder attempting to build a herd would have considerable difficulty meeting the income requirements for several years.) Therefore, if the farmer chooses to sell off large chunks of his property with impunity, he may do so with the protection of ORS 215.130(4), which prohibits zoning from interfering with the use of this land. It is possible for the county to come to the purchaser three years later and ask to see his "farm" income statements for his two-acre tract. If there was no "farm use" income, the county may enjoin the use of the land for nonfarm purposes, consistent with its zoning ordinance, but by that time the new family has been there three years, and it is nearly impossible to extirpate the residential use. If a farmer sells all of his property in similar pieces, the result is an unplanned and unregulated residential growth with cost of provision of community facilities on the taxpayers who gave the farmer the opportunity to impose such a burden on them in such a circuitous manner.

In 1969, the legislature added farm dwellings or other accessory structures to the permitted nonfarm uses in an "exclusive farm zone," the latest result of the in-again, out-again approach.[48]

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[48] Cases cited note 38, *infra*. In Ritch v. Dept. of Rev., 94 Or. Adv. Sh. 69, 493 P.2d 38 (1972), *rev'd*, 4 OTR 206 (1970), the Oregon Supreme Court allowed state lands leased to Boeing Co. and subleased and used for agricultural purposes to be qualified for farm deferral, the court noting the future commitment of the land for non-agricultural purposes. The land met the statutory income requirements for three of the past five years to qualify for farm deferral. [1968-70] 34 OPS. ATT'Y GEN. 634. *See also* Foy v. Comm., 3 OTR 307 (1968); 1338-V (Oct. 6, 1970); OF 1309-V (Feb. 18, 1969); OF 849-V (May 3, 1969).

Finally, in the 1971 session, the legislature recognized the inconsistency of farm deferral and subdivision, automatically terminating the deferral upon platting.[49] This did not apply, however, unless the land were divided into four or more "farms" of less than five acres each. Further still, in an excessive farm use zone, there can be no zoning regulations according to ORS 215.130(4); and so it can be said with some degree of certainty that the problem has not as yet been solved.[50]

Only one solution can solve this land use dilemma: taxing statutes must be segregated from land use statutes, in recognition of the separate functions served by each set of provisions. The farm zone should not be the unhappy referent upon which to differ farm exemptions from farm deferrals, or any other taxing matter.

Furthermore, the adoption of a zoning ordinance by a predominantly agricultural county under ORS 215.110 presumes that the county will recognize agriculture as a dominant feature of county land use and economy. There is no need to require a separate statement that land in farm-use zones shall be used for farm purposes. Still less is there a need to enumerate permitted nonfarm uses within an exclusive farm zone, a matter which may well require local determination. Finally, it is antithetical to impose a zoning restriction based on future income, especially during a declining farm economy, a restriction based on no land use consideration. Therefore, ORS 215.203 and 215.213 should be repealed or reworded to reflect a taxing, rather than a land use, orientation and placed in ORS Chapter 308.

Finally, the time has come for the legislature to realize that no land, except perhaps federal land, can be exempt from land use regulation. Farmland is very desirable for residential settlement and must be regulated so that the timing of this settlement is regulated, if indeed it comes at all. Therefore, ORS 215.130(4) must be repealed.

IV. THE AGRICULTURAL COUNTY'S DILEMMA

The aforementioned taxing and land use statutes pose unique problems by themselves. However, in tandem, they provide a most agonizing choice for agricultural counties.

Upon the zoning designation of farmland is placed the difference between whether a farm exemption or a farm deferral will be offered the farmer. The difference, it may be recalled, is substantial. The farmer on one side of a zoning boundary is free from all tax claims, so long as he uses the land for farm purposes until July 1 of each year[51] and fulfills the minimum gross

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[49] Ch. 629, OR. LAWS 1971. It should be noted that § 43 of Ch. 776, OR. LAWS 1971, allows for the leasing of subsurface mineral rights if the lease does not affect the farm use, with the ability of that land to qualify for farm use assessment. *See* Ritch v. Dept. of Rev., 94 Or. Adv. Sh. 69, 493 P.2d 38 (1972).

[50] *See especially* Reginald Walters "*Subdivision Control with Emphasis on Location and Timing*" (Unpublished Master's Thesis, Georgia Institute of Technology, 1956).

[51] Under ORS 308.370, land in a "farm use" zone or land which is not in such a zone but the subject of an application for deferral, must qualify by January 1 of each year. However, if the land is in a "farm use" zone or has had an application for deferral approved and that land becomes disqualified by July 1 of any year, the assessor must assess the land at its market value and deny the special farm assessment. [1966-68] 33 OP. ATT'Y GEN. 534; OF 846-V (April 26, 1968). If the land becomes disqualified, the assessor is authorized to add the land to the

income requirements. But if he lives outside an exclusive farm zone and either sells or uses his land for other than exclusive farm purposes, he must pay the tax differential and interest based on the assessment at farm use and market values.

If agriculture is a significant county industry, there will be great political pressure to place all actual or potential agricultural lands in an exclusive farm zone for the purposes, even though the actual creation of an exclusive farm zone is a discretionary act.[52] However, counties have the duty to provide for the adoption of a comprehensive plan and to enact ordinances to "carry out" that plan.[53]

It is this second duty which often finds conflict with the first. An agricultural zone is frequently seen as a "holding zone" or as a "reservoir of future uses," in planning a county. In other words, in urbanizing counties, the farmland is seen as a temporary expedient for residential uses. A comprehensive plan may be "carried out" if some statements are contained therein reflecting present agricultural conditions and forecasting future urbanization. The conflict occurs between the assessor, who is usually elected, and the appointed planner.

The assessor is subject to strong rural pressure to grant the farm exemption to land which is so used. However, the planner is reluctant to do so because this means the loss of any land use regulation over farmland, which loss is especially critical in urbanizing areas. The planner frequently has to resort to the tactic of advocating nonexclusive farm zoning for two reasons:

1. The list of permitted nonfarm uses in ORS 215.213 is too small, but if even one unpermitted nonfarm use is allowed, the farm zone loses its "exclusive" character, becomes subject to land use regulation and the farmer must apply for his deferral.[54]

2. The need for land use regulations to carry out the comprehensive plan.

Yet, why must the planner resort to such tactics? It seems the answer lies in the legislative history of the farm property taxation statutes. In 1963, ORS 215.203 had an adequate land use basis for determining the nature of an "exclusive farm use." However, in 1967, with the minimum gross income requirement, the legislature abandoned any pretense of land use regulation, making the whole agricultural land use regulation system impossible to enforce. But

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assessment roll under the "omitted property" statutes. ORS 308.242; ORS 311.205 to 311.215. OF 883-V (August 2, 1968). If land within an "exclusive farm use" zone fails to qualify for special assessment and exemption, the land must be assessed at its market value but must be used, if at all, exclusively for farm purposes. OF 855-V (May 24, 1968).

[52] ORS 215.203(1). *See also* "Rural Zoning" (Planning Bulletin No. 4, Bureau of Governmental Research and Service, Univ. of Oregon, June 1971).

[53] ORS 215.505. *See also* ORS 215.050 to 215.060; 215.110.

[54] In order for a "farm use" zone to be "exclusive" and allow automatic farm use assessment and exemption, the zone must allow only those uses enumerated in ORS 215.203(2) and ORS 215.213. If other uses are permitted, the zone will lose its "exclusive" status and owners of qualifying farmland must apply (the application need only be made once, instead of annually ever since the effective date of Ch. 629, OR. LAWS 1971, for deferral. OF 1464-V (Sept. 30, 1971); OF 1329-V (August 10, 1970); OF 921-V (Nov. 1, 1968); OF 856-V (May 24, 1968); OF 795-V (Dec. 1, 1967). *See also* [1960-62] 30 OP. ATT'Y GEN. 279.

the need to regulate rural lands from urban encroachments has carried some hardship to farmers who must apply for a deferral,[55] in place of receiving an exemption.

There is no reason for the imposition of this choice on Oregon counties. If Oregon is committed to planned growth, its legislature cannot allow powerful interests to erode legislation implementing planning while also (but separately so) providing for rural tax relief. Even more basic is the ability for counties to choose which uses can and should be permitted in rural areas.

V. A FINAL CONSIDERATION

Planning is the art of anticipating future needs and presenting a program for their fulfillment. If we have indeed abandoned the "prairie psychology" of unlimited land, we must act quickly to plan, with full citizen participation, the entire State of Oregon to give the people confidence in the future of the area in which they live, to consider growth in terms of environmental impact and to prevent public or private actions inconsistent therewith.

This commitment to planning entails an increased awareness by the legislature as to the nature and necessity of planning. The legislators must abandon the policy of bowing to special interests, as evidenced here by farm taxation legislation, to frustrate the ends of planning. A complete farm deferral system, without regard to zoning, would enable those concerned with tax policies to focus on tax problems less hampered by the land use ramifications of those policies.[56]

Farm areas, especially around cities, will not always remain in agriculture. These open spaces are a reservoir of future uses.[57] As such, they should not be permitted to develop into other than farm uses, in a premature and unplanned manner. The legislation on the subject is characterized by its inadequacies and is a planning and ecological disaster. The legislative approach shows an insensibility and ignorance of planning despite an awareness of the serious tax problem. The proposals listed above advocate a fresh approach to both problems. A change of legislative priorities is clearly in order.

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[55] A complete deferral system, without regard to zoning, makes more sense than a farm exemption system in which a speculator may hold land awaiting development and consequent zone changes or sale to one wishing to use the land for any of the activities listed in ORS 215.213. In such cases, a portion of the profit can be ascribed to the taxpayer, who subsidizes the farm use assessment. The deferral system would allow the taxpayer to have the tax differential returned upon conversion. OF 886-V (August 9, 1968); OF 881-V (July 19, 1968); OF 838-V (April 5, 1968); OF 798-V (December 29, 1967). *See also* OF 822-V (Feb. 23, 1968; OF 702-F (March 17, 1967).

[56] The Western Oregon Small Tract Optional Tax Statutes (ORS 321.705 to 321.765) provide a means for handling tax benefits to small parcels of timberland which could serve as one approach to taxation of agricultural lands. One thing is certain—the piecemeal approach to farm taxation is inadequate. ROBERTS, *supra* note 5, at 455.

[57] For an excellent study on preservation of open space with a good discussion on tax policies, *see State Open Space and Resource Conservation Program for California* (California Legislature Joint Committee on Open Space Lands, Ecklo, Dean, Austin & Williams, April, 1972). *See also* Krasnowiecki & Paul, *The Preservation of Open Space in Metropolitan Areas*, 110 UNIV. PA. L. REV. 179 (1961). Another suggestion is that government take scenic easements with compensation. Mandelker, *Notes from the English: Compensation in Town and Country Planning*, 49 CAL. L. REV. 699 (1961).