

Oregon Court of Appeals Lays Down the Law on Farm Stands

Legal Alert
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Garvey Schubert Barer Legal Update, December 4, 2013

On December 4, 2013, the Oregon Court of Appeals issued a decision in *Greenfield v. Multnomah County* that lays down new rules about farm stands in exclusive farm use zones. The clarity will be welcome, but may cause some farm stands to reconsider their operations.

The case began with enforcement issues regarding Bella Farms, a farm stand located in the Sauvie Island area. In order to resolve the enforcement issues, Bella applied to modify its permit to allow it to conduct a variety of fee-based activities, including farm-to-plate dinners, harvest festivals and small scale gatherings, such as birthday parties, picnics and similar activities. Bella also sought to use food carts, tents, ticket kiosks and other temporary structures for those activities.

The application was heard before the county hearings officer and several opponents testified against the application. Ultimately, the hearings officer approved some of the proposed activities, but limited others. Specifically, she allowed 22 farm-to-plate dinners, limited to 75 guests, 24 harvest festivals (including the use of food carts) and unlimited small gatherings. The hearings officer denied the use of tents and other temporary structures. Both the applicant and an opponent appealed the County's decision to the Land Use Board of Appeals (LUBA). LUBA affirmed in part and reversed in part and all three parties – the applicant, the opponents and the County – appealed to the Court of Appeals.

The issues on appeal all involved the interpretation of the farm stand statute, ORS 215.283(1) (o), which authorizes farm stands as an outright allowed use in the exclusive farm use zone. The statute also authorizes the sale of retail incidental items and fee-based promotional activities, but with language that created significant ambiguities. The court used its standard statutory construction approach set out in *PGE v. Bureau of Labor and Industries*, 317 Or 606, 610-12, 859 P2d 1143 (1993), and *State v. Gaines*, 346 Or 160, 171-73, 206 P3d 1042 (2009), which require a review of the text and context of the statute, as well as any legislative history that may be proffered.

Thus the court, relying significantly on the legislative history of the bill, concluded that, as originally adopted in 1993, the farm stand statute “pertained exclusively to the use and design of the farm stand structure” and allowed the sale of farm products and limited amounts of incidental items. Promotional activities were not allowed as part of a farm stand. However, the statute was amended in 2001 to “add to the uses allowed by the statute – to authorize promotional activities, outside of a farm stand structure, as part of the farm stand permit.” The

court concluded that the clause is not limited to allowing sales or promotional activities only inside farm stand structures, but the “legislative concern was to avoid the placement of commercial structures on farmland that were related to farm marketing.”

Based on its reading of the statute, the Court first found that the farm-to-plate dinners are permitted at farm stands; however, it remanded the issues to consider additional procedural issues related to the farm-to-plate dinners. Next, the court agreed with LUBA that any structure on the farm stand cannot be used “solely for promotional use and the sale of retail incidental items.” In other words, the predominant use of any structure must be for the sale of farm crops or livestock. The court interpreted the term “structure” broadly to include tents, canopies, viewing structures, ticket kiosks and, specifically, food carts. Finally, the Court agreed with LUBA that birthday parties and other small-scale activities could be considered “primarily [to] promote the sale of products at the farm stand” if they are properly conditioned to result in the contemporaneous sale of farm crops.

The Court of Appeals remanded the decision to LUBA, and possibly the County, to resolve several procedural issues and to determine whether certain structures, e.g., food carts, can be considered “designed and used for the sale of farm crops or livestock grown on the farm operation.

Questions about topics covered in this update?

Contact [William Kabeiseman](mailto:billkab@gsblaw.com): billkab@gsblaw.com.