

# Oregon using farm rules to stop churches from building

by Randy Bright <http://www.tulsabeacon.com/?p=5469>

In 2002, Mollala Christian Church in Clackamas County, Oregon, purchased farmland at the outskirts of town and began work on getting the necessary permits.

What they didn't know was how valuable their land was, or more specifically, how valuable the dirt was. The property had been zoned in an "Exclusive Farm Zone (EFU)" as part of the county's "Zoning and Development Ordinance (ZDO)" because of its "high-value farm land" and "Aloha 1A" dirt.

I can't say I have ever heard of Aloha 1A dirt, but given the amount of protection given to it in the ordinance, it must have been some really good dirt.

When the church sought approval for their new church project, the county planning director issued a directive claiming that churches were not allowed in the Exclusive Farm Zone because it was within three miles of an Urban Growth Boundary.

Urban Growth Boundaries are established to contain development within specified areas. To prevent development on the opposite side of the line, they usually are surrounded by another area in which little or no development is allowed. In a real sense, an Urban Growth Boundary is not a line, but a swath that can be many miles wide.

The church appealed the planning director's decision, and the county hearing officer held two public hearings before upholding the earlier decision. The reason given was that the soil on the site made the site "predominantly high-value farm land" as defined by their Zoning and Directive Ordinance, and that there was a "compelling government interest" to ensure that the limited amount of farmland in their county remained available for farming.

Oregon is a state whose land is highly regulated. Randall O'Toole explains the extent of the regulation in his book, *The Best Laid Plans - How Government Planning Harms Your Quality of Life, Your Pocketbook, and your Future*. He wrote: "Oregon planners, for example, believe that the only legitimate lifestyles are urban and rural. State planning rules prohibit anyone from building a house on their own land in the 95 percent of the state that is zoned rural unless they own at least 160 acres, actually farm the land, and earned \$40,000 to \$80,000 (depending on land productivity) farming it in two of the past three years. This rule was needed, said the state, to prevent "lawyers, doctors, and others not really farming (from) building houses in farm zones."

The church's attorney argued with the county hearings officer that the county was violating the rights of the church under RLUIPA (the Religious Land Use and Institutionalized Persons Act), but his argument was rejected and he was told "RLUIPA does not apply to a land-use decision or permit, because RLUIPA is not part of the Constitution and is not incorporated into the ZDO." The rejection meant that there was to be a "complete prohibition on churches in a limited area of

the EFU zone - where preservation of that area is most important to realizing the compelling governmental purpose - (and) is the least restrictive means of serving the county's compelling governmental interest." The Becket Fund for Religious Liberty intervened in the case, convincing the county commissioners to vote 2-1 in favor of giving a use-permit to the church. Apparently, the fact that the county was allowing the construction of "community centers, wedding facilities, golf courses, wineries and farm stands" in the same zone while denying the church led them to conclude that they were indeed violating the church's rights.

There were a lot of problems that occurred in advance of this conflict between the church and the county. At some point in the past, someone ignored the Constitution and the concept of property rights, which led not only to severe land use regulations, but also to the institution of a person or persons who were given the ability to make rules without the consent of the people. This led to the imposition of severe zoning rules that included an Urban Growth Boundary and a prohibition of development in most of the area surrounding it. That created a shortage of land both inside and outside the boundary, when in reality, there was no land shortage at all.

The trend toward preservation of farmland is a growing one, and will continue to place additional restrictions on churches that can no longer find sufficient land within an urban growth boundary to expand their facilities. If they alternately look at land that is not farmland, they may just as likely be stopped by environmentalists claiming that species must be protected, that a potential property is in someone's "viewshed", or that the land must be placed in a conservation easement. When will this madness stop? When Americans reclaim the true definition of property rights they will see how detrimental land use regulations are. And perhaps they will also realize that a church is worth much more than the dirt it is built on.

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