

Chapter 215

County Planning; Zoning; Housing Codes

Chapter 215

NOTES OF DECISIONS

This chapter requires that any change in zoning ordinance must be made in accordance with the comprehensive plan adopted pursuant to this chapter. *Roseta v. County of Washington* (1969) 254 Or 161, 458 P2d 405.

FURTHER CITATIONS: *Archdiocese of Portland v. County of Washington*, (1969) 254 Or 77, 458 P2d 682.

ATTY. GEN. OPINIONS: County ordinance regulating trailer houses, 1952-54, p 230; procedure to repeal a zoning ordinance, 1964-66, p 330.

215.010 to 215.233

LAW REVIEW CITATIONS: 46 OLR 329; 48 OLR 248; 4 WLJ 443, 452, 456, 458.

215.010

ATTY. GEN. OPINIONS: Power of county planning commission to establish a building code, 1954-56, p 47.

215.020

ATTY. GEN. OPINIONS: Duty of school district to pay filing fees charged by county planning commission, 1964-66, p 203; procedure to adopt interim zoning, 1966-68, p 271.

215.030

ATTY. GEN. OPINIONS: City residents voting on ordinance, 1966-68, p 469.

215.050

CASE CITATIONS: *Smith v. County of Washington*, (1965) 241 Or 380, 406 P2d 545; *Roseta v. County of Washington* (1969) 254 Or 161, 458 P2d 405.

ATTY. GEN. OPINIONS: Setback lines, 1954-56, p 164; timber tax classification of land zoned for farm use, 1962-64, p 478; authority to withdraw land from a district, 1964-66, p 239; procedure to adopt interim zoning, 1966-68, p 271.

LAW REVIEW CITATIONS: 46 OLR 329.

215.055

NOTES OF DECISIONS

These standards were a consitutional delegation of the legislative power. *Warren v. Marion County*, (1960) 222 Or 307, 353 P2d 257.

FURTHER CITATIONS: *Lane County v. R.A. Heintz Const. Co.*, (1961) 228 Or 152, 364 P2d 627; *State v. Hudson House,*

Inc., (1962) 231 Or 164, 371 P2d 675; *Perkins v. Marion County*, (1968) 252 Or 313, 448 P2d 374.

ATTY. GEN. OPINIONS: Setback lines, 1954-56, p 164; adoption of septic tank regulations, 1962-64, p 391; authority to withdraw land from a district, 1964-66, p 239; procedure to repeal a zoning ordinance, 1964-66, p 330; procedure to adopt interim zoning, 1966-68, p 271.

LAW REVIEW CITATIONS: 40 OLR 261; 46 OLR 329; 6 WLJ 605-611.

215.060

NOTES OF DECISIONS

A zoning map is only supplemental to the text of a zoning ordinance, and the authority for each entry made on the map must be found in the written content of the ordinance or ordinances amendatory thereto. *Lane County v. R.A. Heintz Const. Co.*, (1961) 228 Or 152, 364 P2d 627.

215.090

ATTY. GEN. OPINIONS: Building construction by school district, 1958-60, p 398; procedure to adopt interim zoning, 1966-68, p 271.

215.100

ATTY. GEN. OPINIONS: Building construction by school district, 1958-60, p 398.

215.104

NOTES OF DECISIONS

Zoning ordinances, being in derogation of common law and operating to deprive an owner of property of a use thereof which would otherwise be lawful, are to be strictly construed in favor of the property owner. *County of Clatsop v. Rock Island Constructors, Inc.*, (1971) 5 Or App 15, 482 P2d 541.

FURTHER CITATIONS: *Warren v. Marion County*, (1960) 222 Or 307, 353 P2d 257.

ATTY. GEN. OPINIONS: Timber tax classification of land zoned for farm use, 1962-64, p 478; procedure to adopt interim zoning, 1966-68, p 271; procedure for initiative to repeal zoning ordinance, 1966-68, p 644.

215.110

NOTES OF DECISIONS

An amendment to a zoning ordinance is a legislative Act and clothed with a presumption in its favor. *Smith v. County of Washington*, (1965) 241 Or 380, 406 P2d 545; *Perkins v. Marion County*, (1968) 252 Or 313, 448 P2d 374. Changes in a comprehensive plan should be made only

when consistent with the overall objectives of the plan and in keeping with changes in the character of the area covered by the plan. *Smith v. County of Washington*, (1965) 241 Or 380, 406 P2d 545.

"Spot" zoning requires substantial evidence of change to justify amendment of the plan. *Id.*

Statute was not an unconstitutional delegation of legislative power. *Warren v. Marion County*, (1960) 222 Or 307, 353 P2d 257.

A county building code ordinance is not a zoning or land use ordinance requiring submission to the voters. *Id.*

An ordinance must be definite and certain as to place and area of operation. *Lane County v. R.A. Heintz Const. Co.*, (1961) 228 Or 152, 364 P2d 627.

The board has the burden of proving that rezoning is in keeping with the comprehensive plan. *Roseta v. County of Washington*, (1969) 254 Or 161, 458 P2d 405.

The zoning ordinance was not unconstitutionally vague as to defendant's land. *Washington County v. Stearns*, (1970) 3 Or App 366, 474 P2d 360.

There was insufficient evidence to justify the change and the change constituted invalid "spot zoning." *Perkins v. Marion County*, (1968) 252 Or 313, 448 P2d 374.

Substantial evidence supported reclassification of the subject property by the board. *Follmer v. County of Lane*, (1971) 5 Or App 185, 480 P2d 722.

ATTY. GEN. OPINIONS: Scope of subdivision regulation authority, 1954-56, p 164; subdivision in area zoned for agricultural purposes, 1956-58, p 36; formation of zoning district as condition precedent to promulgating ordinances, 1958-60, p 147; application to school buildings, 1962-64, p 136; application of building code to farm residence, 1962-64, p 221; adoption of septic tank regulations, 1962-64, p 391; duty of school district to pay filing fees charged by county planning commission, 1964-66, p 203; procedure to repeal a zoning ordinance, 1964-66, p 330; procedure to adopt interim zoning, 1966-68, p 271; city residents voting on ordinance, 1966-68, p 469; county zoning procedure by initiative, 1966-68, p 481; construing "area affected," 1966-68, p 533; procedure for initiative to repeal zoning ordinance, 1966-68, p 644; authority to adopt housing code, (1968) Vol 34, p 248.

LAW REVIEW CITATIONS: 40 OLR 260, 261; 46 OLR 251, 263; 48 OLR 245.

215.130

NOTES OF DECISIONS

There was no discontinuance of business. *Bither v. Baker Rock Crushing Co.*, (1968) 249 Or 640, 438 P2d 988, 440 P2d 368.

The nonconforming use was vastly increased. *Id.*

FURTHER CITATIONS: *Perkins v. Marion County*, (1968) 252 Or 313, 448 P2d 374.

ATTY. GEN. OPINIONS: Validity of permits issued prior to election authorizing county court to enact zoning and land use regulations, 1950-52, p 356; subdivision in area zoned for agricultural purposes, 1956-58, p 36; whether property used must be principal source of income of user, 1956-58, p 197; pig raising as "agriculture" and "grazing," 1960-62, p 10; application to school buildings, 1962-64, p 136; application of building code to farm residences, 1962-64, p 221; duty of school district to pay filing fees charged by county planning commission, 1964-66, p 203; maintaining a cattle feed lot in a district zoned for agriculture, 1964-66, p 249; city residents voting on ordinance, 1966-68, p 469; county zoning procedure by initiative, 1966-68, p 481; pro-

cedure for initiative to repeal zoning ordinance, 1966-68, p 644.

LAW REVIEW CITATIONS: 46 OLR 263, 266; 4 WLJ 445, 458.

215.180

ATTY. GEN. OPINIONS: Adoption of septic tank regulations, 1962-64, p 391.

215.185

ATTY. GEN. OPINIONS: Adoption of septic tank regulations, 1962-64, p 391.

215.190

CASE CITATIONS: *Tualatin Dev. Co. v. Dept. of Rev.*, (1969) 3 OTR 499, aff'd, 256 Or 323, 473 P2d 660.

ATTY. GEN. OPINIONS: Adoption of septic tank regulations, 1962-64, p 391.

215.203

NOTES OF DECISIONS

In common parlance the growing and harvesting of Christmas trees would not be the growing and harvesting of a perennial which bears crops. *Monner v. Dept. of Rev.*, (1969) 3 OTR 523.

To qualify for assessment for farm use, an owner must ultimately receive compensation, in some form, from farming or grazing operations. *Ritch v. Dept. of Rev.*, (1970) 4 OTR 206.

Taxpayers' use of the land was exclusively for farm use. *Reter v. State Tax Comm.*, (1969) 3 OTR 477, aff'd, 256 Or 294, 473 P2d 129.

The use of the land was not primarily for the purpose of obtaining a profit in money. *Hart v. Dept. of Rev.*, (1969) 3 OTR 493.

Plaintiff-taxpayer had not applied for a reforestation classification under ORS 321.255 to 321.360 and therefore his land was not subject to ORS chapter 321. *Monner v. Dept. of Rev.*, (1969) 3 OTR 523.

A pond used to irrigate taxpayer's orchard was an integral part of the orchard and entitled to the farm use classification. *Id.*

FURTHER CITATIONS: *Thomas v. State Tax Comm.*, (1968) 3 OTR 333; *Reynolds v. State Tax Comm.*, (1969) 3 OTR 408; *Hartsock v. State Tax Comm.*, (1969) 3 OTR 434; *Harding v. Dept. of Rev.*, (1969) 3 OTR 513; *Spoooner v. Dept. of Rev.*, (1970) 4 OTR 66; *Thornburgh v. Dept. of Rev.*, (1970) 4 OTR 248.

ATTY. GEN. OPINIONS: Last date for establishing farm use for tax purposes, 1966-68, p 534; tax deferral for state-owned farm land, (1969) Vol 34, p 634.

LAW REVIEW CITATIONS: 4 WLJ 445-461.

215.213

LAW REVIEW CITATIONS: 4 WLJ 445-461.

215.223

NOTES OF DECISIONS

The notice and other procedural requirements precedent to valid action on an ordinance were met. *Follmer v. County of Lane*, (1971) 5 Or App 185, 480 P2d 722.

ATTY. GEN. OPINIONS: Duty to give notice of hearing on interim zoning ordinance, 1966-68, p 271.

LAW REVIEW CITATIONS: 6 WLJ 608.

