

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

ORDINANCE NO. 1098

Amending MCC Chapters 33, 34, 35 and 36 to Update the County Code Relating to Exclusive Farm Use and Commercial Forest Use Zoning Districts, and Chapters 37 and 38 to Modify Newspaper Notice Publishing Requirements for Appeals of Type II Land Use Decisions and Type III Land Use Applications

(Language ~~stricken~~ is deleted; double underlined language is new.)

The Multnomah County Board of Commissioners Finds:

- a. The Planning Commission is authorized by Multnomah County Code Chapter (MCC) § 33.0140 and by ORS 215.110 to recommend to the Board the adoption of ordinances to implement the Multnomah County Comprehensive Plan. The Planning Commission exercised this authority in recommending the proposed ordinance with Resolutions PC-06-007 and PC-06-010.
- b. The County Zoning Code implements the Comprehensive Plan and must be periodically amended to include updates of land use laws and rules enacted by the State of Oregon. In addition, there is a need for continuing reexamination of procedures for review of land use applications to verify the requirements effectiveness and to improve efficiencies.
- c. Under the State of Oregon Land Use Planning Program, regulation of land uses on farm and forest lands is based in State Statute and Administrative Rules, which Counties then administer. The State Legislature and the Land Conservation and Development Commission continue to modify and amend those statutes and rules. The amendments in this ordinance update Multnomah County Zoning Code Chapters 33, 34, 35, and 36 to comply with those changes in state requirements.
- d. The existing Zoning Code chapters 37 and 38 require newspaper notices to be published for all Type III land use applications and appeal of Type II land use applications. However, publication of these notices is not a requirement of the State of Oregon or the Columbia River Gorge Commission. Planning program staff's experience is that response from the public that results directly from the published notices of these land use applications is very rare. Nearly all response to proposed applications is from the mailed notices that are sent to surrounding property owners or from the posting of signs at the subject property. Modification of the requirement to publish these notices will reduce the expense of publication and the amount of staff time to prepare the notices while not appreciably reducing the effective amount of notice given to the public.
- e. No regulations are being proposed that further restrict the use of property and no mailed notice to individual property owners is required ("Ballot Measure 56" notice).
- f. The provisions of this ordinance were submitted to the State of Oregon Department of Land Conservation and Development and their staff was given an opportunity to comment on the proposed amendments. No comments were received.
- g. Noticed public hearings were held before the Planning Commission on October 2, 2006 and Board of County Commission on August 9, 2007, where all interested persons were given an opportunity to appear and be heard.

Multnomah County Ordains as follows:

PART I – UPDATE OF CFU AND EFU DISTRICTS

Section 1. §§ 33.2240, 33.2440, 35.2240 and 36.2040 are amended as follows:

[CFU-2]

§ 33.2240 Template and Heritage Tract Dwellings

[CFU-5]

§ 33.2440 Template Dwellings

[CFU-4]

§ 35.2240 Template and Heritage Tract Dwellings

[CFU]

§ 36.2040 Template and Heritage Tract Dwellings

(A) A template dwelling may be sited on a tract, subject to the following:

* * *

(3) The tract shall meet the following standards:

(a) If the tract is predominantly composed of soils which are capable of producing 0 to 49 cubic feet of Douglas Fir timber per acre per year (cf/ac/yr); and

1. The lot upon which the dwelling is proposed to be sited and at least all or part of 3 other lawfully created lots existed on January 1, 1993 within a 160-acre square when centered on the center of the subject tract parallel and perpendicular to section lines; and

2. At least three dwellings lawfully existed on January 1, 1993 within the 160-acre square and those dwellings either continue to exist or have been replaced by lawful replacement dwellings, or

(b) If the tract is predominantly composed of soils which are capable of producing 50 to 85 cf/ac/yr of Douglas Fir timber; and

1. The lot upon which the dwelling is proposed to be sited and at least all or part of 7 other lawfully created lots existed on January 1, 1993 within a 160-acre square when centered on the center of the subject tract parallel and perpendicular to section lines; and

2. At least three dwellings lawfully existed on January 1, 1993 within the 160-acre square and those dwellings either continue to exist or have been replaced by lawful replacement dwellings, or

(c) If the tract is predominantly composed of soils which are capable of producing above 85 cf/ac/yr of Douglas Fir timber; and

1. The lot upon which the dwelling is proposed to be sited and at least all or part of 11 other lawfully created lots existed on January 1, 1993 within a 160-acre square when centered on the center of the subject tract parallel and perpendicular to section lines; and

2. At least five dwellings lawfully existed on January 1, 1993 within the 160-acre square and those dwellings either continue to exist or have been replaced by lawful replacement dwellings.

* * *

(k) “Within” as used in the context of (a)2., (b)2. and (c)2. shall mean that all of the dwellings or any part of the dwellings are in the 160-acre square.

* * *

Section 2. §§ 33.2610, 34.2610, 35.2610 and 36.2610, Definitions, are amended as follows:

* * *

Contiguous refers to parcels or lots which have any common boundary, excepting a single point, and shall include, but not be limited to, parcels or lots separated only by an alley, street or other right-of-way.

Deferred replacement permit is a building permit for replacement of an existing dwelling that allows construction of a replacement dwelling at any time. The *deferred replacement permit* may not be transferred, by sale or otherwise, except by the applicant to the spouse or a child of the applicant. The replacement dwelling must comply with applicable building codes, plumbing codes, sanitation codes and other requirements relating to health and safety or to siting at the time of construction.

Farm Operator means a person who operates a farm, doing the work and making the day-to-day decisions about such things as planting, harvesting, feeding and marketing.

* * *

Section 3. §§ 33.2620, 34.2620, 35.2620 and 36.2620, Allowed Uses, are amended as follows:

* * *

(L) Alteration, restoration or replacement of a lawfully established habitable dwelling.

(1) In the case of a replacement dwelling:

(a) ~~the~~ The existing dwelling must be removed, demolished or converted to an allowable nonresidential use within three months of the completion of the replacement dwelling, or

(b) If the applicant has requested a *deferred replacement permit*, the existing dwelling must be removed or demolished within three months after the *deferred replacement permit* is issued. If, however, the existing dwelling is not removed or demolished within three months after the *deferred replacement permit* is issued, the permit becomes void.

* * *

Section 4. §§ 33.2625, 34.2625, 35.2625 and 36.2625, Review Uses, are amended as follows:

* * *

(H) Farm Stands when found that:

(1) The structures are designed and used for the sale of farm crops or livestock grown on the farm operation, or grown on the farm operation and other farm operations in the local agricultural area, including the sale of retail incidental items, and fee-based activity to promote the sale of farm crops or livestock sold at the farm stand if the annual sale of incidental items and fees from promotional activity do not make up no more than 25 percent of the total sales of the farm stand; and

(2) The farm stand does not include structures designed for occupancy as a residence or for activities other than the sale of farm crops and livestock and does not include structures for banquets, public gatherings or public entertainment.

(3) As used in this section, “farm crops or livestock” includes both fresh and processed farm crops and livestock grown on the farm operation, or grown on the farm operation and other farm operations in the local agricultural area. As used in this subsection, “processed crops and livestock” includes jams, syrups, apple cider, animal products and other similar farm crops and

livestock that have been processed and converted into another product but not prepared food items.

(4) As used in this section, "local agricultural area" includes Oregon or an adjacent county in Washington that borders Multnomah County.

* * *

Section 5. §§ 33.2630, 34.2630, 35.2630 and 36.2630 are amended as follows:

§ 33.2630 Conditional Uses

The following uses may be permitted when approved by the Hearings Officer pursuant to the provisions of MCC 33.6300 to 33.6335:

* * *

(K) The propagation, cultivation, maintenance and harvesting of aquatic species that are not under the jurisdiction of the State Fish and Wildlife Commission. In accordance with ORS 215.283(2)(p) 2006, notice of all applications shall be mailed to the State Department of Agriculture at least 20 calendar days prior to any initial hearing on the application.

* * *

§ 34.2630 Conditional Uses

The following uses may be permitted when approved by the Hearings Officer pursuant to the provisions of MCC 34.6300 to 34.6335:

* * *

(K) The propagation, cultivation, maintenance and harvesting of aquatic species that are not under the jurisdiction of the State Fish and Wildlife Commission. In accordance with ORS 215.283(2)(p) 2006, notice of all applications shall be mailed to the State Department of Agriculture at least 20 calendar days prior to any initial hearing on the application.

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§ 35.2630 Conditional Uses

The following uses may be permitted when approved by the Hearings Officer pursuant to the provisions of MCC 35.6300 to 35.6335:

* * *

(K) The propagation, cultivation, maintenance and harvesting of aquatic species that are not under the jurisdiction of the State Fish and Wildlife Commission. In accordance with ORS 215.283(2)(p) 2006, notice of all applications shall be mailed to the State Department of Agriculture at least 20 calendar days prior to any initial hearing on the application.

* * *

§ 36.2630 Conditional Uses.

The following uses may be permitted when found by the approval authority to satisfy the applicable provisions in MCC 36.6300 to 36.6335 or the criteria listed for the use:

* * *

(H) The propagation, cultivation, maintenance and harvesting of aquatic species that are not under the jurisdiction of the State Fish and Wildlife Commission subject to the approval criteria in MCC 36.6315(A) through (H). In accordance with ORS 215.283(2)(p) 2006, notice of all applications shall be mailed to the State Department of Agriculture at least 20 calendar days prior to any initial hearing on the application.

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PART II – AMENDMENT TO NEWSPAPER NOTICE REQUIREMENTS

Section 6. §§ 37.0620 and 38.0620 are amended as follows:

§ 37.0620 Hearings Notice - Type II Appeals, Type III Or Type IV Applications.

Except for appeals of Hearings Officer decisions by the Planning Director which have different notice requirements in MCC 37.0640(B), notice for all public hearings for Type III, IV or an appeal of a Type II application shall conform to the requirements of this section. At least 20 days prior to the hearing, the county shall prepare and send, by first class mail, notice of the hearing to all owners of record, based upon the most recent Multnomah County records, of property within 750 feet of the subject tract and to any county-recognized neighborhood association or identified agency whose territory includes the subject property. The county shall further provide notice at least 20 days prior to a hearing to those persons who have identified themselves in writing as aggrieved or potentially aggrieved or impacted by the decision prior to the required mailing of such notice. The county shall also publish the notice in a newspaper of general circulation within the county at least 20 days prior to the hearing. Notice of the hearing shall include the following information:

- (A) The time, date and location of the public hearing;
- (B) Street address or other easily understood location of the subject property and County assigned case file number;
- (C) A description of the applicant's proposal, along with a list of citations of the approval criteria that the County will use to evaluate the proposal;
- (D) A statement that any interested party may testify at the hearing or submit written comments on the proposal at or prior to the hearing, and that a staff report will be prepared and made available to the public at least 7 days prior to the hearing;
- (E) A statement that any issue which is intended to provide a basis for an appeal to the Land Use Board of Appeals must be raised before the close of the public record. Issues must be raised and accompanied by statements or evidence sufficient to afford the County and all parties to respond to the issue;
- (F) A statement that the application and all supporting materials and evidence submitted in regard to support of the application may be inspected at no charge, and that copies may be obtained at cost, at the Multnomah County Land Use Planning Division during normal business hours; and
- (G) The name and telephone number of the planning staff person responsible for the application and who is otherwise available to answer questions about the application.
- (H) Notice published in a newspaper shall include the information in (A), (B) and (G) above, along with a brief description of the applicant's proposal, and a statement that all interested parties may testify at the hearing or submit written comments on the proposal at, or prior to the hearing.

§ 38.0620 Hearings Notice - Type II appeals or Type III applications.

Notice for all public hearings for Type III application or an appeal of a Type II application shall conform to the requirements of this section. At least 20 days prior to the hearing, the County shall prepare and

send, by first class mail, notice of the hearing to all owners of record, based upon the most recent Multnomah County records, of property within 750 feet of the subject tract and to the Gorge Commission, the U.S. Forest Service, the Indian tribal governments. Notice shall also be sent to the State Historic Preservation Office, and the Cultural Advisory Committee, unless the appeal is of a decision subject to expedited review. The County shall further provide notice to those persons who have identified themselves in writing as aggrieved or potentially aggrieved or impacted by the decision prior to the required mailing of such notice. The County shall also publish the notice in a newspaper of general circulation within the County. For all Type II and III hearings except development reviewed with the expedited process, the County shall mail provide and publish notice of hearing at least 20 days prior to hearing. For development reviewed with the expedited process, the County shall mail provide and publish notice of the hearing at least 14 days prior to the hearing. Notice of the hearing shall include the following information:

* * *

(F) A statement that the application and all supporting materials and evidence submitted in regard to support of the application may be inspected at no charge, and that copies may be obtained at cost, at the Multnomah County Land Use Planning Division during normal business hours; and

* * *

(H) Notice published in a newspaper shall include the information in (A), (B) and (G) above, along with a brief description of the applicant's proposal, and a statement that all interested parties may testify at the hearing or submit written comments on the proposal at, or prior to the hearing.

* * *

Section 7. The effective date of the amendments to Chapter 38 Columbia River Gorge National Scenic Area, General Management Areas shall be the date they are approved by the Bi-State Gorge Commission. Amendments to Special Management Areas shall be effective upon acknowledgement by the United States Secretary of Agriculture.

FIRST READING: August 9, 2007

SECOND READING AND ADOPTION: August 16, 2007



BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

Ted Wheeler
Ted Wheeler, Chair

REVIEWED:

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