

**PLANNING COMMISSION
MINUTES**

December 9, 2019
6:30 p.m., DSB Auditorium

Commissioners present: Brian Pasko, Thomas Peterson, Louise Lopes, Gerald Murphy, Michael Wilson, Christine Drazan, Tammy Stevens, Steven Schroedl.

Commissioners absent: Mary Phillips

Staff present: Jennifer Hughes, Glen Hamburg, Martha Fritzie.

Commission Chair Pasko called the meeting to order at 6:30 pm.

General public testimony not related to agenda items: none.

Glen Hamburg presented information regarding ZDO-276: Minor and Time Sensitive Amendments. The purpose of this proposed amendment package is to comply with recent state and federal mandates, to clarify exiting language and fix errors, and to adopt optional provisions which require minimal staff analysis.

There are also three specific issues on the Work Program to be considered in this project: dog daycare/kennels in rural residential areas; small-scale manufacturing in community commercial areas; and increasing the notice distance in rural areas. Staff is planning to have a first draft of all the proposals in mid-February, at which time the Planning Commission will receive an update.

The specific mandates that must be addressed are: forest template dwelling requirements; small-scale farm processing; EFU replacement dwelling property tax status; Nonconforming secondary school expansion in the EFU District; AG/F and EFU farm breweries; ADU off-street parking and owner occupancy; nonconforming licensed marijuana production premises; and small wireless facilities, with review "shot clocks".

HB2225 mandates that the "the center" of a property subject to a forest template test be the mathematical center of the property, and prohibits property line adjustments being used to qualify a property for a forest template dwelling; neither of these mandates will require any changes to our ZDO, because they are consistent with current ZDO rules. One element of HB2225 that will require a substantive amendment to the ZDO relates to multiple adjacent lots of record under common ownership. The State has tightened the rules on how these adjacent lots can be put under separate ownership in order to qualify for additional forest template dwellings. This statutory change is still going through the administrative rulemaking process, but staff will have clearer guidance on this issue once it gets through that process.

HB2844 requires the County to allow small-scale processing of farm products on farms without regards to "siting standards" when the farm processing is no more than 2,500 square feet. We aren't sure at this time whether "siting standards" include structural setbacks or other certain other dimensional standards, but again, staff will have more information in the coming months.

HB3024 changes the rules for replacement dwellings in the EFU district so that we can no longer consider the tax status/value of a dwelling at the time it was removed from the property.

HB3384 makes it potentially easier for a nonconforming secondary school to expand onto adjacent farmland, with limitations. HB3384 prohibits the County from considering the density and spacing of qualifying new

school buildings on the adjacent property, among other things, when we consider potential adverse impacts to the neighborhood.

SB287 provides a pathway for approval of “farm breweries” in the EFU District. The small scale breweries must be on a hop farm of 15 or more acres and the brewery cannot produce more than 15,000 barrels of malt production per year. If there are additional locations that are used for production and processing for the same brewery, there is a limitation of 150,000 barrels of malt production per year. This is similar to the allowances for wineries and cideries. SB287 also allows for approval of farm brewery tasting rooms and events similar to what is allowed at wineries.

HB2001 has new mandates regarding off-street parking and owner occupancy for accessory dwelling units (ADUs). Effective January 1, 2020, the County can no longer require either of these in areas where the state mandates that the County allow ADUs.

SB365 requires something that the County already does, which is to allow licensed marijuana production sites to continue operations under the regulations that were in effect when they were approved, notwithstanding changes to County marijuana production rules that would otherwise restrict or prohibit those premises. However, if the licensed premises wanted to expand, then the County would have the opportunity to consider and potentially disallow the proposed expansion if it was determined that it would have additional adverse impacts on the neighborhood.

An FCC Order regarding small wireless facilities requires that we allow small wireless facilities in public rights-of-way and on private property. The FCC Order allows the County to regulate some aspects of small wireless facilities, such as aesthetics, but limits the extent of these regulations and requires the County to review new proposals within a certain time period (“shot clocks”).

One thing that staff is proposing in the clarifications and corrections portion of this amendment package is to remove the CI District provisions. The only remaining property zoned campus industrial (CI) has now been annexed into the City of Lake Oswego.

There are several amendments to the sections related to natural resource zones. We may be just catching our code up with current State law.

There are eleven options for consideration.

Parking for ADUs where they are not mandated: we are not required to allow ADUs in the Mt. Hood Corridor, but we do. One suggestion is to remove the requirement for one off-street parking space HR District, and one off-street parking space and owner occupancy as required in the MRR District. Administratively, it would simplify things for staff, but given the fact that some of the roads in that area of the County are often more narrow and occasionally crowded with snow, it may be best to keep the off-street parking requirement for ADUs in the Mt. Hood Corridor. Commissioner Murphy raised concerns about the accessibility for snow removal if there is parking on the streets. Commissioner Pasko agrees with Commissioner Murphy. Commissioner Murphy is also concerned about what may come about with the ADUs and possible rules that allow short-term rentals.

The second item is accessory historic dwellings. The County chose to allow them where we are allowed by State law to do so (i.e., in rural residential zones outside of urban growth boundaries and urban reserves). So far, we have only approved about half a dozen of these in the County. We could repeal the owner occupancy

requirement for these. Commissioner Pasko feels that the owner occupancy requirement places limitations on these properties, and that for the sake of consistency with ADUs in urban areas, it should not be required, similar to how ADUs are treated in other zoning districts. The BCC was concerned about the potential impacts of not requiring owner occupancy, which is why the rule was added.

There was interest from a former Planning Commissioner in reevaluating the existing 200-foot setback requirement for kennels in the rural residential zoning districts. Glen pointed out that the impacts of a particular kennel, such as noise, could be addressed through the existing conditional use permit process, without also requiring kennels to be set back 200 feet from property lines. Commissioner Lopes said that the setbacks for other farming and livestock practices in these zones is significantly less than for kennels. Commissioner Peterson asked if we would be setting a precedent by allowing small setbacks for some kennels and requiring greater setbacks for others. Could someone argue that they are required to have larger setbacks when another property has shorter setbacks? Jennifer Hughes explained that the conditional use process takes into consideration the subject property's characteristics. A kennel on a property that backs up to BLM land and has no neighbors for at least a mile, for example, will not have the same impacts to neighbors as a kennel on a property that has neighbor right next door. Commissioner Stevens pointed out that by having 200-foot setbacks, you are very limited on the space that you could use for a kennel if your property is only an acre. There is also a traffic concern. These types of facilities tend to generate a lot of trips per day. Commissioner Schroedl worries that having a large group of dogs coming up to the property line would create significant impacts on neighbors. Commissioner Pasko feels that kennels provide a critical service within the County. Commissioners asked if barking dogs were addressed under the noise ordinance. There are a wide variety of kenneling options, from indoor to outdoor. Indoor kennels may not have the same noise issue as outdoor ones, and there are different ways of dealing with the dogs who are problematic. The definition of a "kennel" is the keeping of four or more adult dogs for the purpose of obtaining a commercial profit. Commissioner Pasko thinks that it is a good idea to consider reducing the setbacks, but to make sure there are provisions in the conditional use process that sets a more stringent standard on the noise control. Aside from traffic and the noise, there aren't many impacts to neighbors. Commissioner Stevens disagrees and thinks that the 200-foot setback is barely enough. There is also the question of whether or not one acre is even large enough to accommodate these operations. It depends on how many dogs and how large they are. Multnomah and Washington County both have smaller setbacks for commercial dog kennels in rural residential zones, but Washington County also requires a property be a minimum of 5 acres. We do need to be careful not to add new restrictions to properties with these amendments. Commissioner Peterson suggests that we let it go to a conditional use process and find out what the issues turn out to be. We can then come back and address issues as we need to.

Number four is small-scale manufacturing in Community Commercial zoning districts (the C-2 District and the RTC District). Currently, processing of raw materials is prohibited in the C-2 District. All processing and manufacturing is prohibited in the RTC District. Some residents feel like there are missed opportunities by not allowing these activities in the C-2 and RTC Districts. Oak Grove Community Council expressed specific interest in allowing things like a brewery, juice, tea, craftwares, etc. in these zones. There are small pockets of C-2 zoning at Oak Grove Blvd. and River Rd., King Rd. and Linwood Ave., Thiessen Rd. and Webster Rd., Sunnyside Rd. and 122nd Ave., and at Hwy 212 and 135th Ave. There are also several RTC-zoned areas up in Government Camp, Wemme, Welches, and Rhododendron. Generally, these lots are smaller and redevelopable and already have a mix of nearby and existing uses. We would continue to require the applications to go through design review, but the questions are whether we should allow an onsite retail component, and should it be limited to consumable goods, such as beer and baked goods. Staff's recommendation would probably be to limit it to consumable goods in this project. Commissioner Wilson asked what potential impacts there could be if small-scale manufacturing were to be allowed next to

residential zones. Glen answered that the residents of Oak Grove advocated for allowing this use, and their thinking was that during the day the facilities would operate as a brewery, for example, but later as a brew pub in the later hours of the day. Commissioner Wilson travels McLoughlin Boulevard frequently and would like to see more business activities brought in to the area. We would have to be very careful how we craft the language for any required retail component in conjunction with small-scale manufacturing, and we should consider either a retail space square-footage requirement or something else to ensure that there is a legitimate retail component associated with the small-scale manufacturing. Commissioner Pasko suggested using language that would require the manufacturing to be secondary to the retail use. Commissioner Wilson asked what the definition of “secondary” is. Jennifer replied that our code has certain categories of uses, which are either conditional, primary, accessory, or limited. Conditional is not applicable to what we are discussing; primary is the main use on the lot and does not require a conditional use permit; accessory use is a use in addition to or supportive of, but not as extensive as, the primary use; and limited is usually constrained by explicit square-footage restrictions. We are going to need to explore some different options, and it’s possible that we may have a model in our mixed use zone that we can look at. The more discretionary the language is, the harder it is to apply standards. We would like to have clear and objective language to work from. Commissioner Peterson suggested looking at what other jurisdictions have done with these types of uses. We will be discussing this again in January when we come back to discuss kennels.

Option five is to modify the application notification radius in rural areas. The Board has asked us to take a look at this. Glen presented a table showing the cost effect of increasing the notice distance from the current 500/750 feet notice radius to 1,000 feet, ¼ mile, and ½ mile. If we include the rural residential, RC, RI, and natural resource properties, the annual noticing costs increase significantly. Commissioner Lopes can see the ¼ mile notification working well in the more rural areas with larger lots. Commissioner Wilson asked where the money comes from to pay for the notices. Jennifer explained that part of the costs are from application fees, and part of the costs come from general fund. Perhaps we should consider the amount of impact from a certain type of application more than the area it is in. Commissioner Stevens agreed that the type of application and impact is what’s important, but part of the problem in making property owners aware of potentially impactful applications that we are facing right now is that roughly a third of our CPOs are currently inactive. The Commission discussed the importance of establishing an email distribution system instead of just relying on regular mail. Commissioner Pasko agrees that some Type II and Type III applications should have a greater area of notification. Half a mile might be too far of a notice, but 500/750 feet is too short. Something in between would be more appropriate. Commissioner Drazan likes the ¼ mile notice distance in the rural areas. Glen will be putting together more information based on PC conversation.

The next proposal is from the Development Review Team and the County’s Transportation Engineering Division. It deals with road frontage improvements. Right now, the ZDO allows developers, under certain circumstances, to pay for their required frontage improvements instead of doing the actual construction. This fee is referred to as FILO (fee in lieu of). Subdivisions and larger residential developments do not qualify for FILO, but partitions and smaller residential developments, such as duplexes, may qualify. Currently, developments qualify if they are located on a local, connector, or collector road within the Portland Metro UGB if the frontage improvements are not on the Essential Pedestrian Network (EPN); development could also qualify even if the frontage is on the EPN, but there are defined issues that create constraints to these improvements (e.g., topographical or drainage constraints). What these staff have recommended is that we amend the ZDO so that all roads within the Metro UGB, including arterials, could qualify for FILO under an expanded list of situations and/or conditions, without regard to being on the EPN. Essentially, this would standardize the opportunities for FILO and allow the County to collect fees for required improvements in more cases. Karen Buehrig answered that the current requirements for FILO have been in place for some time. They were implemented to allow projects to skip having to install frontage improvements where they

are not practical/necessary, while also allowing the County to collect revenue specifically for frontage and walkability improvements in other areas that might not otherwise have funding. There are areas of the County where sidewalks would have otherwise been required but would not have connected to anything. Using FILO funds, the County is able to construct sidewalks and improvements in areas where it is more needed. The improvements would still be required when feasible. Commissioner Peterson is concerned that there may be a potential equity issue with the way the funds are dispersed. FILO is not allowed for improvements outside of the Portland Metro UGB. Even with the FILO option, the developer still has the option of building the sidewalk if they prefer, but it is their choice whether to pay the fee or pay for the frontage improvements. It is important to remember that FILO is not applicable to large developments; it only applies to smaller ones. Commissioner Drazan feels that this program is reasonable and makes sense. Commissioner Pasko would like to see more case studies of how this is actually applied and more information on how the funding is distributed. The FILO only applies to duplexes and triplexes where there is only one on a lot, single family dwellings, and partitions where there is already a dwelling and they are wanting to divide the property to add one or two more. It doesn't apply to commercial, industrial, major developments, or lot divisions allowing 4 or more new residences.

The next item is related to a mandate for which we have some options. As noted earlier, there is a new federal mandate in an FCC Order that says we have to allow small wireless facilities in public rights-of-way and on private property. Jurisdictions can continue to impose regulations on the appearance and sighting of these structures to the extent that they are reasonable, no more burdensome than what is applied to other utility infrastructure, and that the rules are objective and published in advance. "Small wireless facilities" is a term applied to wireless telecommunication facilities that are smaller, more efficient, and less visually obtrusive. They provide short-distance transmission as well as increased capacity and coverage essential to 5G service. Setbacks, flashing lights, fan noise, and the appearance of wires may be things that we would be concerned about. Commissioner Schroedl said that these facilities would be attached directly onto a building and that they would not be attached to trees or posts in the middle of the yard. His concern would be potential safety risks due to driving distractions if they are mounted on traffic signal posts and possible radiation, which is what wifi is. Basically the question is whether or not the County wants to apply aesthetic standards.

The County has a new option per State legislation to allow accessory forest worker dwellings for a relative assisting with forestry activities on lots of record that are 80 or more acres. The accessory dwelling must be within 200 feet and accessory to the existing (lawfully established) dwelling. There are wildfire mitigation standards that must be adhered to as well. The dwellings could only be allowed in AG/F and TBR Districts. Staff estimates that there are less than 60 properties within the County that would even qualify. Commissioner Stevens doesn't feel that allowing accessory forest worker dwellings is really even necessary. Timber farming does not require someone to be working the land every day, all year round. Commissioner Lopes can see the need to have workers on timber property in order to keep brush down. There are administrative challenges involved in allowing accessory forest worker dwellings, given the fact that the accessory dwelling would only be allowed to remain on the property as long as there were forestry practices happening. The intent of the new law is to allow for succession planning.

The remaining two issues will be brought back to the Planning Commission in January. Commissioner Pasko asks that everyone write down their questions next week rather than having everyone jump in during the staff presentation.

Commissioner Schroedl moved that the minutes from the July 22nd meeting be approved as drafted by staff. Commissioner Stevens seconded. *Ayes=7, Nays=0, Abstain=1 (Wilson). Motion is approved.*

Martha Fritzie presented a tutorial on reviewing mining applications. The application will be presented at the hearing next week.

There are 10 steps in the decision making process. Statewide Planning Goal 5 deals with natural resources such as scenic rivers, groundwater resources, and aggregate resources. This Goal lays out the process for review of aggregate mining land use applications, which is very specific. You must go through a multi-step process and determine if the resource is significant. Then you look at potential impacts that mining on the site may have. If the site is determined to be significant, then you add it to the significant resource inventory through a Comp Plan amendment. A zone change is then used to apply the mineral aggregate overlay to the site.

Step 1 is the requirement for a complete application. A complete application requires several different components. Step 2 is to determine if the site is significant based on the quality, quantity, and location of the material. If you decide that the site is not significant, then you are done with the application and do not move on. Next, you determine what the potential impact is within the specified impact area, including conflicts with other existing uses. Once you have determined whether or not there are conflicts, you must then determine if these conflicts can be mitigated. If you decide that one or more of the conflicts cannot be minimized, then you must go through an ESEE analysis (Economical, Social, Energy, Environmental). Step 5 is to analyze the ESEE consequences and decide whether or not to allow mining. Step 7 is to determine the post-mining use, which is required from the applicant. The post-mining use must be consistent with the Comp Plan and ZDO and is overseen by DOGAMI. Step 8 is to identify future conflicting uses within the impact area as well as new uses that are allowed by the underlying zoning district and whether or not it is reasonable to restrict those in order to protect the resource. Here again, you come to an ESEE analysis to decide whether to allow, limit, or prohibit conflicting uses. Finally, in Step 10 you amend the Comprehensive Plan and add the site as a significant resource. Any conditions applied to the mining operation must be clear and objective. Mining cannot actually commence until the mineral aggregate overlay district site plan review application is approved.

Commissioner Pasko discussed the process that we will follow next week.

There being no further business, the meeting was adjourned at 9:38 p.m.