

**PLANNING COMMISSION
MINUTES**

June 22, 2020

Meeting held via Zoom meeting online

Commissioners present: Brian Pasko, Michael Wilson, Mary Phillips, Gerald Murphy, Thomas Peterson, Tammy Stevens, Carrie Pak, Steven Schroedl

Commissioners absent: Louise Lopes

Staff present: Jennifer Hughes, Glen Hamburg, Darcy Renhard.

Commission Chair Stevens called the meeting to order at 6:34 pm.

General public testimony not related to agenda items: none.

Commissioner Stevens opened the public hearing for ZDO-276, a proposal for amendments to the Clackamas County Comprehensive Plan (Comp Plan) and Zoning and Development Ordinance (ZDO).

Glen Hamburg provided a presentation of the proposed amendments, including those to address three significant issues identified in the Long-Range Planning Work Program and a fourth significant issue raised by the BCC. The amendments reflect recommendations from the Planning Commission study sessions and a BCC policy session. The entire amendment package would amend Comp Plan Chapter 4, *Land Use*, Comp Plan Table 4-1, *Land Use Designations & Implementing Zoning Districts*, as well as 18 separate sections of the ZDO. The amendments would achieve 24 proposed actions.

The first is to increase noticing distances for certain land use actions in 11 rural and natural resource zones to ½ mile from the affected property. Currently, the notice distance in AG/F, EFU, FF-10, FU-10, RA-1, RA-2, RC, RI, RR, RRFF-5, and TBR zones is either 500 or 750 feet. The BCC has asked for a larger notice distance increase than initially suggested for consideration by the Planning Commission earlier this year. As proposed by the BCC and in the draft amendments, notices of all Type III applications and their hearings, all Type II appeal hearings, and all Type II applications and decisions for nonconforming uses and vested rights in these rural and natural resource would be increased to ½ mile. There are other types of land use applications that we could also provide this larger notice for, but there is less likelihood that a neighbor ½ mile away would be impacted by those other types of applications or that neighbors that far away could inform those other applications' approval criteria. Staff feels that the proposal to increase the noticing distance would increase public awareness and provide greater opportunity for input from those who are impacted by these land use actions. One problem with the proposal may be that some property owners will receive notice of an appeal, but they may not have received notice of the original application, potentially leading to some confusion. ZDO-276 does not propose to increase the distance of land use actions in urban type areas due to the narrow scope called for in the Work Program and the significant increase in cost to provide notices in urban areas. There have been some controversial nonconforming use decisions issued within the County which have raised concerns from rural property owners that were outside of our current notice range, which is partly why the noticing radius of nonconforming use decisions in rural areas have been of concern. In nonconforming use and vested right applications, a property owner who has concerns may be able to impact the outcome of the application by providing input. Commissioner Phillips appreciates the BCC proposing expanding the notice distance beyond what the Planning Commission originally suggested. Commissioner Pasko thinks that the increased notice distance is especially important out in the rural zones that do not have an active CPO. Commissioner Murphy would like the MRR and HR zones to be considered for inclusion.

Action 2 concerns minimum setbacks for dog kennels approved as conditional uses in the FF-10, RA-1, RA-2, and RRRF-5 zoning districts. The question is whether the setback distance should be reduced from 200 feet to 100 feet. With the current setback requirement of 200 feet, a property would need to be roughly 4.65 acres in order to meet the setbacks (assuming a 50-foot by 50-foot kennel space). The proposed reduction in setbacks would allow more properties to qualify, which could potentially increase business and service opportunities. The conditional use criteria would still apply, which would allow the Hearings Officer to apply greater setbacks if they were warranted. It is difficult to accurately determine how many properties will actually qualify due to variables that staff is unable to predict. The conditional use process would allow an applicant to show how noise and other impacts would be mitigated. During consideration of the Work Program, there were members of the public who felt that the 200-foot setback was too restrictive. A kennel is defined as any lot or premises where four or more dogs more than 6 months of age, or with permanent canine teeth, kept for purposes other than a veterinary clinic. The definition of “kennel” does not include keeping dogs only as pets. To be considered a “kennel”, it must be for commercial purposes. Commissioner Pasko feels that this type of business is really needed, especially in rural zones.

Action 3 concerns manufacturing of edible or drinkable products that are also retailed on the same site, and related wholesale distribution, in Community Commercial (C-2), Corridor Commercial (C-3), General Commercial (CC), Office Commercial (OC), Rural Tourist Commercial (RTC), and Station Community Mixed Use (SCMU) zoning districts. Areas with these zoning designations include the intersection of Oak Grove Blvd and River Rd., Sunnyside Rd. and 122nd, Hwy 212 and 135th, and Johnson Creek Blvd. and 82nd; along McLouglin Blvd., Johnson Creek Blvd. west of Hwy 205, and Fuller Rd., and in areas of Government Camp, Wemme/Welches, and Rhododendron. The related amendments in Attachment A would allow breweries, cideries, bakeries, and the like within these zoning districts. Even though certain types of manufacturing is already permitted in some of these zones, primary processing of raw materials (i.e., processing of raw ingredients) is still prohibited. Allowing these uses would increase business and employment opportunities within the County. It would also increase the functionality of the property. Design Review would still be required for new development, which would address parking, access, circulation, building design, and landscaping. There may be a limited number of vacant properties that could allow this use, but the Oak Grove residents and community representatives have supported the proposal. Commissioner Phillips asked why the new use would be limited to the manufacture of edible and drinkable products, and not allow the manufacture of other products. Glen explained that Oak Grove’s interest has been to find a way to allow brewpubs and bakeries specifically. Other types of manufacturing (that doesn’t involve the primary processing of raw materials) is already permitted in most of these commercial zones, as are art studios. What the current code prohibits is the manufacturing of edible or drinkable products that are sold on the same site, as well as the primary processing of raw materials that are used as ingredients in these products.

Action 8, and the fourth and final significant issue given specific consideration, concerns whether or not the County should repeal its own restrictions on marijuana retail operating hours. The State’s OLCC currently allows marijuana retailers to operate between 7 a.m. and 10 p.m. Clackamas County has more restrictive hours for these operations, limiting their operations to between 10 a.m. and 9 p.m. Repealing the County’s restriction would allow marijuana retailers to compete with retailers in adjacent jurisdictions. The County does not regulate the operating hours of any other type of use in commercial zoning districts. An increase in operating hours would increase business opportunities and possibly improve overnight security. It would also provide regulatory clarity. Some potential negative results might be that if there is more access to marijuana sales, then consumption might increase, which may result in negative health impacts. Under the proposal, operating hours would be any that are set by the State; it does not necessarily mean that operating hours would be 7 a.m. to 10 p.m. for all marijuana retailers always. Commissioner Wilson does not feel that it

is appropriate to restrict a specific retailer's operating hours. Commissioner Peterson agrees that our retailers should not be at a competitive disadvantage to those in other jurisdictions who allow for longer operating hours.

Commissioner Pak asked Glen to explain the urban road frontage FILO proposal. When the developers put together their frontage improvement cost estimates for their projects, they use wage estimates that are less than what it actually ends up costing the County to complete. She would like to see like-for-like cost estimates used. Jennifer Hughes explained that the majority of the funds collected through the FILO program have recently been used for Safe Routes to Schools projects. The money is not being used for repairs; it is being used to install new facilities where there has been a noted deficiency. The proposed amendments would newly allow FILO to be collected in two additional situations: when there are public storm drainage constraints or when the improvements would be located on a public street frontage that is 100 feet or less and nothing for the improvements to connect to. The County could collect the FILO money and use it where it is actually needed, instead of requiring developers to install frontage improvements in these cases. Commissioner Pasko is concerned that there may not be equitable distribution of projects funded with the money collected through the FILO program. Commissioner Pak would like the County to have a comprehensive sidewalk plan so we do not end up with 'islands' without sidewalks in the future. To be clear, about the proposal does not concern just sidewalks; about it concerns frontage improvements that may include sidewalks, but may also include bikeways or other types of improvements. Jennifer informed the Commission that it is a goal of Transportation Engineering to have a formal sidewalk plan in the near future. It is important to note that most of the properties that take advantage of FILO are infill projects and not large developments. Commissioner Pasko would like to have this proposal separated from the rest of the amendment package when it comes time to vote. Glen reiterated that this proposal increases the opportunities for the County to collect FILO fees, and allows FILO regardless of the road classification and whether or not the road is on the "Essential Pedestrian Network".

Commissioner Phillips asked for clarification on the renewable energy facility criteria. There is an inconsistency in the use table, which Glen will look into. What is allowed now will still be allowed, but certain energy uses will be reviewed at the County level rather than by the State. It is unlikely that any of the facilities now to be reviewed at the County level will actually be proposed, however, given their large size and the limited availability of qualifying property.

Commissioner Phillips asked about the design standards that we are proposing for small wireless facilities. These facilities could be attached to existing utility poles, street lights, or bus stops that are within the public right-of-way, or could be attached to private buildings. The FCC does not require us to regulate them under the zoning code or the roadway standards, but does limit the type and scope of regulations the County can have on these facilities. Under the proposal, the zoning code would regulate small wireless facilities that are installed on private property outside of the public right-of-way of County-controlled easements, while those that are within public right-of-way or County-controlled easements would be regulated under the County's Roadway Standards. There are two public comments included in the exhibits addressing small wireless facilities. One suggests that we exempt all small wireless facilities from any setbacks, in any zone, when installed on private property. Staff feels that it is appropriate to still apply setback requirements as we would any other structure. The FCC mandate specifically prohibits the County from considering the health impacts when it comes to regulating these facilities. One requirement that staff is proposing is that any small wireless facility match the color of any portion of a building it is attached to or mounted on. The other comment was from a representative of AT&T. They would like us to amend the proposed standards to say that the facility must match the color of the building "unless not technically feasible". Glen feels that this language would be too subjective. Staff has not identified any other jurisdiction with this kind of provision, while the proposed

language is similar to those of other jurisdictions. The primary focus of service providers will likely be deploying these in rights-of-way, not on private property, so there may not be a lot of instances where the appearance of small wireless facilities on private property would even be an issue. Commissioner Schroedl is concerned that there could be an addition placed on top of power poles without PGE permission. Glen replied that the amendments do not mean that the carrier could just place these facilities wherever they want. Commissioner Murphy pointed out that there are some neighborhoods that do not have utilities above ground, which means that there are no utility poles to install these units on. The FCC mandate states that small wireless facilities must be allowed within the public rights-of-way and within County-controlled easements, but could be regulated by the County Roadway Standards.

Commissioner Stevens asked if there were any representatives of CPOs, hamlets, or villages who wished to provide testimony.

Suzanne Wolf (Historic Downtown Oak Grove)- On behalf of the HDOG Board, she is in favor of allowing the onsite manufacture of edible and drinkable products retailed on site in the C-2 and C-3 Districts in their community. They have been advocating for this type of change since 2012. An informal poll of community members showed that 20% of the respondents would like to see bakeries, cideries, and brewpubs in their community. They feel that it would increase the business opportunities as well as employment opportunities in the area.

Joseph Edge (14850 SE River Forest Dr., Oak Grove) – Mr. Edge represents the Oak Grove Community Council. He submitted a letter in support of the amendment to allow the manufacture of edible and drinkable products retailed on site in the C-2 and C-3 Districts in his community. They are strongly in support of the amendments as drafted by staff. Commissioner Wilson asked if Mr. Edge was aware of any businesses that would take advantage of this new use allowance, if the proposed amendments were approved. Mr. Edge answered that there were two interested parties in the past, but only one is still interested at this time. Commissioner Murphy asked how they might address parking issues. Mr. Edge replied that there is a church with a large parking lot with close proximity that has offered to allow use of their parking lot. Parking requirements would continue to be those currently listed in the ZDO.

Karen Manske (AT&T) – The reason that they have asked for the change to the proposed amendment language is because these wireless facilities may have signal interference if you paint over them. There may also be limitations on the colors that their suppliers can currently provide. Given the area that the provider is trying to cover, it is not ideal to mount them on the sides of buildings. They are trying to cover areas with high density, not the more rural areas yet. Commissioner Schroedl asked why the utility facilities can't be colored to match a building. Ms. Manske answered that the 5G technology does not function in the same way the 4G does. Putting a film or covering over the component may create interference with the signal. Commissioner Phillips suggested using the term 'substantially similar'. Commissioner Pak pointed out that other jurisdictions have adopted language that is the same as what we are proposing and asked how AT&T is addressing their requirements. Ms. Manske answered that they are more interested in installations within the public right-of-way. They haven't installed units in Oregon City or Lake Oswego yet, but they are interested in putting them in Lake Oswego. Commissioner Pak thinks that they are going to have a challenge getting the City of Lake Oswego to allow these installations if they are not compatible with the appearance of the building. Commissioner Murphy asked if these would be co-locations with other carriers. Ms. Manske explained that these are typically installed on existing poles with telephone and electrical utility companies. Co-location of multiple wireless carriers on the same pole isn't always feasible, so new poles may need to be installed in some areas. The proposed amendments would not limit a private property owner from requiring additional standards of facilities located on their property. Glen reiterated that the primary interest of the

wireless companies, as expressed by industry representatives, is not to install these on private property other than in commercial and industrial districts. It is more likely that the provider will install them in public rights-of-way.

Commissioner Stevens asked if there was anyone else who wished to provide testimony. There were none. There is no additional correspondence other than what has already been submitted to the Planning Commission.

Commissioner Phillips asked if the proposal on ADUs was to meet the updates to State law. Glen answered that it would codify recent State prohibitions of the requirement for off-street parking and owner occupancy for ADUs that are both within an urban growth boundary and in a zone that allows detached single family dwellings as a primary use. The proposed amendments would also repeal the requirement for owner occupancy in the MRR District, but would retain the off-street parking requirement for ADUs in this zoning district due to the nature of the roads and snow accumulation in the Mt. Hood area.

Commissioner Phillips moved to close the public testimony portion of the hearing but to leave the record open for additional written testimony, and to continue the hearing to July 13th, 2020 at 6:30 p.m. Commissioner Pasko seconded. *Ayes=8; Nays=0. Motion passes.*

Commissioner Schroedl was interested in learning what the City of San Diego has done to regulate small wireless facilities.

Commissioner Pasko would like more information from our Transportation Engineering Division on how the FILO funds are distributed and the rationale for the proposed amendments.

Commissioner Phillips would like Glen to clarify the language in the uses table in Section 401 regarding renewable energy facilities and what is allowed.

Commissioner Murphy would like to have vegetative weirs as a consideration for FILO. These allow the stormwater back into the ground and also significantly reduces the amount of toxins that end up back in our waterways.

Staff recommendation is approval of the amendments as presented in Attachment A.

Commissioner Pasko moved to approve the minutes from June 8th as submitted. Commissioner Murphy seconds. *Ayes= 6, Nays=0, Abstain=2 (Wilson, Phillips). Minutes are approved.*

There being no further business, the meeting was adjourned at 10:03 pm.