

**PLANNING COMMISSION  
MINUTES**

January 13, 2020

6:30 p.m., DSB Auditorium

Commissioners present: Brian Pasko, Louise Lopes, Mary Phillips, Gerald Murphy, Thomas Peterson, Tammy Stevens, Michael Wilson

Commissioners absent: Christine Drazan, Steven Schroedl

Staff present: Jennifer Hughes, Glen Hamburg.

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

General public testimony not related to agenda items: none.

The public hearing tonight is a continuation of the study session from December 9<sup>th</sup> regarding ZDO-276: Minor and Time Sensitive Amendments. Tonight's meeting will address suggested modifications and questions from the last meeting as well as the three proposed amendments that we did not get to at the last meeting. There is also a suggested addition from the BCC that relates to marijuana.

Glen Hamburg provided background on commercial dog kennels in the rural residential zones. At our last meeting, we had discussed modifying the setback requirements. Currently, these operations require a Conditional Use and a setback of 200 feet from property lines. The County has had a setback requirement for commercial dog kennels in these zones in one form or another since the 1960s. It has changed over time, starting with an original setback of 200 feet from other residences, then changing to 500 feet to other residences. It was then changed to 350 feet from property lines. In the 1980s it was changed to 200 feet from property lines. There is an exception to the County's general noise ordinance in rural zones, so it would not be applicable. There is another pathway to getting commercial kennel operations approved without a Conditional Use or necessarily meeting the 200-foot setback requirement. An applicant could do this through the Home Occupation Exception process. This process would follow a similar process as a Conditional Use, which allows for public comment, and requires a public hearing and a site-specific review of the particular proposal and the property and its surrounding neighborhood. The Home Occupation Exception would also require that the principal operator live on the premises, which is not a requirement of a Conditional Use. Commissioner Stevens asked about the renewal period/time limit for each. Glen answered that there is no renewal period for a Conditional Use, but there is for a Home Occupation Exception. We also discussed minimum parcel sizes that would be practical for commercial kennel operations under the existing 200-foot setback requirement. With the setback, you would practically need at least a 5-acre piece of property in order to effectively accommodate the needs of the kennel (assuming a 2,500-square-foot kennel space). There is a list of things that can be considered in the Conditional Use process, including noise impacts, but the County's general noise limits do not apply to animals in the rural zones. The definition of kennel is anything that houses 4 or more dogs, 6 months of age or older OR with permanent canine teeth are kept for purposes other than that of a veterinary clinic. The definition could include uses breeding dogs. The BCC did an interpretation some time ago that determined this definition, however, does not apply to people's pets—it only applies if you are trying to make a profit. There is a wide range of setback requirements, or lack of, within other zones. Options that the Planning Commission has to consider are: 1. No change (keep the 200-foot setback and apply the Conditional Use criteria); 2. Reduce the setback; 3. Repeal the setback entirely and rely only on the Conditional Use permit criteria; or 4. Allow an alternative to meeting the otherwise applicable setback. Commissioner Stevens asked if there were any requests to have the PC look at this, other

than from a previous PC member. Jennifer Hughes replied that there is a woman who has been operating one of these facilities, but she is unable to meet the 200-foot setback and has asked us to consider this as an amendment. There is a problem with using a measurement from the surrounding residence because the applicant/kennel operator does not necessarily have a legal right to enter their neighbor's property to measure distance. Commissioner Pasko feels that commercial kennels are a real need within the community, and there are rural residential properties that have roosters, sheep, etc. that make a lot more noise than the dogs. Jennifer said that we might consider implementing a property line setback that applies to those lines which abut a property with a residence. Commissioner Phillips has a variety of animals as neighbors, but the dogs that live around her are far more disruptive than the roosters, horses, sheep, etc. There are other impacts that are considered in the Conditional Use process as well, including traffic. The Conditional Use process should address each unique situation. Commissioner Phillips feels that there is a reason why we, and neighboring counties, have a minimum setback of at least 100 feet. Commissioners Stevens, Pasko, and Murphy agree. The applicant would also need to address provisions for waste. Glen did some quick calculations and said that if the setbacks were 100 feet, then you might need a minimum of 1.5 acres if the property were pretty much square. Consensus is to recommend a reduction to a 100-foot setback, while still also requiring Conditional Use criteria to met.

Last month, we also discussed allowing small-scale manufacturing in conjunction with an on-site retail use in our two Community Commercial zoning districts. Other nearby jurisdictions that already allow this use in similar zones do not have a minimum square footage requirement for the retail component. Estacada has a couple of models that seem to work really well—they just have manufacturing in conjunction with a retail use. The uses seem to fit into the community's Downtown zone really well. In Sandy, there are quite a few opportunities for this combination of uses under their zoning rules as well, without a minimum square footage requirement. Staff recommends that, whatever we end up proposing for the C-2 District and the RTC zone, we make sure that the language in the ZDO allows the use in the General Commercial District as well. Commissioner Phillips feels that the flexibility that this would provide is very important and is behind it 100%. Commissioner Stevens agrees.

We had some initial numbers brought forward about what it would take to increase our notice distances in the rural residential, RC, RI, and natural resource zoned properties. Originally, the BCC asked us to look at this issue because of their concern the current noticing requirements aren't picking up enough properties. Jennifer's concern is that we have two permit specialists who need to be able to get the notices out fairly quickly and without a lot of complications. One consideration is to keep the notice radii the same, but to also extend noticing to those properties who have frontage property with frontage on the same street. This would create a significant administrative burden to staff as well as raise concerns around whether or not notice was done consistently and correctly. Glen explained the difference between Type II and Type III land use applications. Commissioner Stevens is mostly concerned about the few applications that have greater significance, such as solar farms and major subdivisions. Glen provided an estimate of the cost of several extended noticing distances for just applications receiving public hearings (e.g., Type IIIs and appeals). Extending the noticing distances in urban areas has not been considered in any of the estimates. Commissioner Phillips likes the idea of only expanding the notice distance for those that require public hearings. Another possibility is to either double the notice distance in the rural zones to 1,000 feet and the natural resource zones to 1,500 feet, or just set a prescribed distance for both. Commissioner Murphy asked if the costs for notification is included into the application fee. Jennifer explained that, by statute, appeals cannot cost more than \$250. Other applications that go to public hearing are assessed an additional amount to cover the costs. Commissioner Lopes asked if it were possible to have a larger notice radius for properties that are in the natural resource zones than the rural residential zones. Glen and Jennifer clarified that we already do and said that it is possible to continue to differentiate the distance between the zones. Glen

showed the Commissioners existing online resources for obtaining information on pending applications, including our online page that shows all current and pending land use applications, the online customer access portal where you can search in detail based on different criteria, and the webpage where you can sign up to receive specific notifications from the County. Commissioner Lopes prefers the option to increase notice distance for those that require public hearings (e.g., Type IIIs and appeals), with the distance being ¼ mile in the EFU, AG/F, and TBR zones, and the distance being 1,000 feet in the other rural zones. Commissioner Pasko does not think that \$4000 is a significant amount to provide enough notice to people who may be affected by some of these proposals. Consensus is that we notice ¼ mile for rural properties that are currently in a 500 foot notice radius, and ½ mile notice distance for those zones with larger parcels (EFU, TBR, and AG/F), but this only applies to those applications requiring a public hearing.

Glen mentioned a few points about small cell wireless facilities. We have reached out to some individuals in the industry who are interested in putting some of these devices in the County, and they are happy to discuss some of the issues that were brought up by the PC at the last study session. Small cell devices would require the same electrical permit as any other device that would have to be hard wired. Staff's assumption is that the initial interest in these devices will be in commercial and industrial areas, so there may actually be very little interest in these being installed on private residences. They will most likely be in the public right-of-way in the urban areas. Washington County and other jurisdictions seem to have pretty prescriptive standards. There is a federally-mandated timeline that we have to adhere to for consideration of applications for the small wireless facilities, so a Conditional Use process will not work. Commissioner Pasko is not sure that there is really anything we need to regulate on these, but we should still get more information. Commissioner Phillips feels that noise, light, and aesthetics should be regulated. Commissioner Peterson thinks that we will have a better understanding of what the real impacts are once we have gotten more information from industry experts—right now we are just guessing.

Because of recent legislation, the County now has the option to allow accessory forest worker dwellings. It is similar to accessory farm worker dwellings, but in the forest zones. If the County were to allow this use, state law requires that the parcel be 80 acres in size, the dwelling be within 200 feet of a primary dwelling on the same property, the resident of the accessory dwelling be a family member, and there be qualifying forest/timber operations on the property. There are those who are in opposition to allowing this use because there is no income test, no post-succession or change in ownership language, and it may increase wildfire risks. There is also the concern about putting more dwellings in forest areas, although there are requirements in the enabling statute to mitigate wildfire risks. Clackamas County generally allows all optional land uses available under State law for putting a dwelling on farm and forest zones. There was discussion at the last meeting on whether or not the County should allow this option as well. Christmas tree farms are considered agriculture, not forestry. Commissioner Stevens said that if done appropriately, the harvesting and maintenance of timber is all done at one time. She does not necessarily see a need for a second dwelling on a property for relatives to help with forestry operation, but it might make more sense if it was a temporary dwelling such as an RV. Staff estimates that there are fewer than 58 properties in the County that would even qualify for this use, so there may not be much of an overall impact even if the use were allowed. Commissioner Pasko asks what we are really protecting by not allowing a second dwelling under the proposed terms. What concerns Jennifer the most is that these would be site-built homes and not likely removed once a relative is no longer living there—it could become a rental. It seems like there are enough concerns (even without having a lot of standards applied) that we may want to look at this later. The legislation is so new that many jurisdictions haven't even decided whether or not to allow this use. Glen offered to draft an amendment with a requirement to have a shared driveway and a mobile home as the standards. Commissioners Stevens, Phillips, and Pasko are interested in what the public comment on this would be.

A new option for consideration is EFU land divisions for siting of utilities. Currently, you can divide an EFU property into parcels that are each less than 80 acres if you have a certain approved non-farm use. This includes fire suppression facilities. If the proposed amendments were adopted, EFU land divisions resulting in parcels smaller than 80 acres could also be allowed for the siting of approved utility facilities. The utility provider could then purchase only the part of a formerly larger parcel property that was needed for the approved use instead of the entire piece. Jennifer would advocate for consistency within the code.

Right now, approved dwellings in natural resource zones (i.e. in conjunction with a farm use) have an implementation period of four years. State law already allows a two-year time extension, which effectively gives an applicant six years to get a building permit. State law now allows us to grant five additional one-year time extensions. General consensus is that the current timelines are adequate.

Another consideration is to align the forest template dwelling requirements with State minimums. The template process considers the amount of parcelization and residential development (in 1993) in a 160-acre area, centered on the subject TBR or AGF zoned property. There is a certain number of lots and lots with dwellings that you have within that template in order to get an approval for a new dwelling on an existing forest lot. That number varies depending on the productivity of the soil. In one instance, you must have 11 lots of record, and 5 that had dwellings in 1993, within the template. These minimums exceed those required by the state. We haven't done any deep analysis at this point, but it may be worth doing in the future to see if the County's more restrictive template requirements are still warranted. After all, other changes to template dwelling requirements made might mean that the County approves fewer dwellings moving forward anyway. Almost always, the reason a template test does not meet the requirements is because they do not have the number of lots within the 160 acre template. Glen doesn't feel that reducing the number of required dwellings in the template will have much impact on approvals, but changing the number of lots within the template may. There is a concern that recent changes to template requirements imposed by the state that restrict how template tests can approve dwellings on adjacent lots under common ownership might open up Measure 49 claims. Unless something changes in these new state requirements, we will probably just apply the State law directly without amending the ZDO to include the new state restrictions.

The last issue is to consider repeal of the current operating hours for retail marijuana sites. The State allows marijuana to be retailed from 7 am to 10 pm, while the County rule is 10 am to 9 pm. There is an argument that this is putting those in unincorporated areas at a competitive disadvantage because neighboring jurisdictions' marijuana retailing hours are not this restrictive. Generally, marijuana retailing is only allowed in our commercial zones. There isn't really a land use implication for changing the allowed operating hours, and we don't regulate the hours of any other commercial enterprise in a commercial zone through land use. The Planning Commission is in agreement that we should propose repealing the County's more restrictive hours and rely on the state's minimum operating hours.

Jennifer anticipates that this amendment package will come back for a public hearing on April 13<sup>th</sup>. We will be sharing your thoughts with the BCC, and they may have a different view on what the amendments should look like.

Commissioner Phillips moved to approve the minutes from December 9<sup>th</sup> with changes as noted.  
Commissioner Peterson seconds. Ayes= 6 (Peterson, Philips, Lopes, Wilson, Murphy, Pasko); nays=0; abstain=1 (Phillips).

Jennifer provided an update to the PC schedule.

There being no further business, the meeting was adjourned at 9 pm.