

**PLANNING COMMISSION
MINUTES**

September 11, 2023

Meeting held online via Zoom

Commissioners present: Tammy Stevens, Carrie Pak, Gerald Murphy, Tom Peterson, Louise Lopes, Michael Wilson, Kevin Moss, Tom Middaugh.

Commissioners absent: None

Staff present: Joy Fields, Karen Buehrig, Jennifer Hughes, Darcy Renhard, Ellen Rogalin

Commission Chair Murphy opened the meeting at 6:31 pm.

Chair Murphy asked if there was anyone in the audience who wished to provide public comment on items other than what is on the agenda. There were none.

Chair Murphy opened the public hearing for file number ZDO-286, which is a proposed legislative amendment to set a framework for local jurisdictions to establish park master plans.

Joy Fields presented the staff report. Ms. Fields explained that this amendment is an amendment to the Clackamas County Comprehensive Plan intended to create a procedural framework for the county to consider the adoption of local park master plans on agricultural and forest lands in accordance with the Oregon Administrative Rules. Originally this project was part of the long range planning work program for 2021-2023 as a way of looking at the Luscher Farm park master plan. Luscher Farm is a city park that is partially within the City of Lake Oswego and partially in an exclusive farm use zone in the unincorporated area of Clackamas County. When Lake Oswego staff and County staff met with DLCD, they found that our Comprehensive Plan did not provide a clear pathway that would enable the County to consider a local park master plan.

Planning staff conducted work sessions with the Planning Commission and the Board of County Commissioners in June to provide updates on what staff found while conducting research. Staff also shared potential amendments and the possible directions that the amendments could go. After receiving input from the Planning Commission and Board of County Commissioners, staff drafted the proposed amendments that are before the Planning Commission tonight. Notice of the proposed amendments was also provided to interested parties, CPOs, DLCD, and published in *The Oregonian*.

We received written testimony prior to the meeting tonight. Additional testimony that was received since the Planning Commission packets were mailed was sent to the Planning Commission via email earlier today.

Oregon Administrative Rules allow local governments to adopt local park master plans into their comprehensive plans without taking an exception to Statewide Planning Goal 3 or 4. The reason for this provision is that the findings that are made associated with a local park master plan must be consistent with all of the Statewide Planning Goals. It also has to be prepared in a way that provides an opportunity for public comment and engagement. Additionally, County staff will have to find that the local park master plan will not cause a significant impact to farm and forest practices in the area surrounding the proposed location of the local park.

In order for the county to explicitly allow a local park master plan to be considered for adoption, we must first create a framework in our Comprehensive Plan (Comp Plan) and Zoning and Development Ordinance

(ZDO). If a local park master plan is adopted into the Comp Plan, it opens up a list of uses that could potentially be considered within the park. It does not mean that all uses would be allowed, simply that they could be considered. Each master plan and possible uses would be reviewed and considered on an individual basis.

As staff reviewed Chapter 9 of the Comp Plan, we found a few minor housekeeping amendments were needed as well as some outdated references. We also reformatted Chapter 9 to be consistent with the updated formatting in the rest of the Comp Plan. The new policy that provides the local park master plan framework is policy 9.B.11. If a local park master plan was adopted, it would apply a special use overlay district to that land for which the master plan is adopted. It would not change the underlying zoning district. In order to have a special use overlay district, it must be recognized in the Land Use chapter of the Comp Plan (Chapter 4).

Staff is proposing to add an entirely new section to the ZDO, Section 714-Special Use Overlay District. While the Oregon Administrative Rules explicitly say that this is not required, it is still recommended. What is presented as the last page of Appendix A in the Planning Commission packet is the proposed new language. ZDO Sections 401, 406, and 407 also have new language to specify that the Special Use Overlay District standards apply to development of park uses on sites where a local parks master plan has been adopted.

Staff is recommending that the Planning Commission recommend that the Board of County Commissioners approve the proposed amendments as presented.

Commissioner Stevens finds it curious that even though Metro did not want to allow Lake Oswego to annex this property into the city, they have not provided testimony in opposition to the proposed amendments. Ms. Fields explained that even though the proposed framework would provide a pathway for Lake Oswego to develop a parks master plan, and potentially bring Luscher Farm into compliance with the County Ordinance, the framework could be used by other local jurisdictions as well. It would not be only for Lake Oswego; it would apply to the entire unincorporated area of Clackamas County. Jennifer Hughes said that even though Metro staff recommended denying Lake Oswego's proposal to add this area to the UGB, nothing that we are considering tonight involves Metro's rules because what we are talking about doing is in a rural zone. So Metro really doesn't have a role in commenting on this. Commissioner Stevens said that one of the concerns that she has heard about consistently with Luscher Farm is that they have been operating as a land use violation for years. A lot of the buildings that are being used now and are being proposed for use in the future are not properly permitted. She has not done the research to find out how much of this is true, but it is something that she has heard about numerous times over the years. Ms. Fields answered that the building permits would be covered later when they actually get to the point of submitting a proposal for a parks master plan. Right now we are simply looking at whether or not to put the framework in place for a process to be able to consider parks master plans.

Commissioner Wilson asked what the process was in developing the special use overlay zone. Ms. Fields replied that it has not been developed yet, that is what we are here to decide. Any time there are proposed changes to our Comp Plan or ZDO we have to allow opportunity for public input. Commissioner Peterson explained that the overlay district is a mechanism for identifying where a parks master plan has been adopted into the Comp Plan.

Commissioner Murphy asked if there were other jurisdictions who have shown interest in implementing parks master plans, or is this all being done just for Lake Oswego? Ms. Fields said that there are other

jurisdictions who have expressed an interest if there is a framework in place. Or they may just get a conditional use for a trail; it depends on which direction they want to pursue.

When a local park master plan is submitted for consideration, we can look at the uses independently to see if the uses are appropriate for the area. Not every park will have every use that is on the list in OAR 660-034-0035(2)(a) to (g). Camping facilities may not be appropriate as an allowed use on some properties, just like boating and fishing facilities may not be appropriate on some properties. Private parks are more restrictive than public parks, but even if someone is applying for a public park master plan, they may not get all of the uses listed. Every proposal would be reviewed and considered on its own and would have two separate hearings for public input. If a park master plan is adopted, it would not automatically get every use. Each master plan would go through the review process and there would be a determination as to whether or not each potential use was appropriate. Tonight we are not considering a specific master plan; we are only considering whether or not to add the pathway to implement a master plan should a local jurisdiction wish to do so. Ms. Hughes explained that the Planning Commission could recommend a reduced list of potentially allowed uses as part of the adoption of ZDO-286.

Commissioner Lopes raised a concern about what happens if a jurisdiction starts to push the boundaries of what they are approved for in their master plan. What would be the mechanism to enforce and bring them back to what they are permitted to do? How do we protect the surrounding property owners when a master plan is not being followed? Ms. Fields said that Code Enforcement works with landowners to come into compliance with any land use application that is approved. If they are not complying with their master plan, then Code Enforcement would work with Planning to find a way of bringing them into compliance, and if there is no way to do that, they would have to cease and desist.

Commissioner Murphy is really concerned about the loss of farmland and forests. We really need to take a close look at what we are going to allow with these special overlays.

Commissioner Middaugh asked what the result would be if there is a master plan that crosses jurisdictions and one jurisdiction approved certain uses but the other jurisdiction did not. What would be the outcome? Ms. Fields said that Luscher Farm is an example of this very situation. Part of the farm is within the jurisdiction of Lake Oswego, and part of it is within Clackamas County jurisdiction. Whatever uses were approved by Clackamas County would be allowed within the County's jurisdiction. If there were uses that were approved by Lake Oswego but not Clackamas County, those uses would have to take place within the jurisdiction of Lake Oswego and would not be allowed on the property within Clackamas County. The jurisdictional boundary is the city limits. If we were to review these case by case, we would have the ability to individually review each of the potential impacts to the surrounding farm and forest practices. The burden is on the applicant to provide evidence that the use is not going to cause significant impacts to farm and forest operations.

Commissioner Pak asked which other jurisdictions are considering asking for a park master plan. Ms. Fields replied that there are no definition proposals at this time, just conversations that have occurred. Commissioner Pak said that even though we are not looking at Luscher Farm in particular, she can't help but think about the fact that the farm has been operating for quite a while in violation of current rules and regulations. If they have been operating in this mode for so many years without any kind of consideration, what is to change with having a master plan? It feels like if anything, it is going to get worse because now they can do even more things. The City of Lake Oswego advertises on their website that they offer things like movies in the park. She can understand the concerns of the neighbors. Based on past practices and the history of Luscher Farm they have valid concerns.

Commissioner Peterson agrees with all of the concerns that have been raised, but if we do not adopt these provisions, then we do not have a mechanism to address them. If we have a mechanism in place, then there is a way for the County to have more input and include public participation. There are legitimate issues and there have been violations, but the issue at hand is whether or not we want to adopt a mechanism to address these concerns or leave it as it is.

Chair Murphy opened the public testimony portion of the hearing.

Randall Yamada, Stafford/Tualatin Valley CPO – Mr. Yamada described his community as a rural area about the same geographic size of the City of Lake Oswego with about 3,000 residents. The Stafford area is now designated as an urban reserve which restricts changes to zoning ordinances and zones. In the presentation there was no addressing the actual restrictions that are required on EFU land for parks and park activities and events in order to maintain compatibility with other adjacent EFU lands in rural areas. A city park master plan could assume inclusion of urban activities far beyond the EFU limitations resulting in problems with traffic congestion and agricultural building limitations, building occupancy limitations and other things such as fire and life safety, water supply, and emergency access. The county could approve an application like we have seen on Borland Road for a huge athletic complex. Under this proposed ordinance there could be code violations that would require enforcement, but since Code Enforcement remains understaffed the violations could go on indefinitely as they have for the last 2 decades at Luscher Farm. We need an EFU park ordinance that will clearly define the terms, uses, allowances, and restrictions on parks and events in the EFU zone. This is why they cannot support this EFU zone change, along with the lack of Code Enforcement capability to enforce the ordinance.

Gale Wallmark – Ms. Wallmark is a resident of Lake Oswego and a director of Friends of Luscher Farm. They are in support of ZDO-286. She expressed her gratitude for the joint efforts between Clackamas County planning staff and Lake Oswego Parks & Recreation. If ZDO-286 is approved it would allow them to receive approval for their 2013 master plan. The Luscher area considered in the 2013 document comprises 8 properties that were acquired between 1991 and 2005 through parks bonds. Four of the properties are not relevant to these proceedings. The four relevant properties comprise just over 100 acres in unincorporated Clackamas County, stretching east along Rosemont Road from the Stafford/Rosemont roundabout. All of these properties are zoned EFU. The Luscher area is home to a 12 acre community supported agriculture program, some 160 community gardens, 35 adopt-a-plot gardens, a pollinator garden, a children's teaching area garden, and the renowned Rogerson Clematis Garden. All of these gardens are 100% organic. The three remaining properties present beautiful rolling agricultural landscape, open space, tree groves, streams, and wetlands. This is a treasured space for the local residents and they take the stewardship very seriously.

Rick Cook – Mr. Cook thanked staff for all of the work they put into this project. His family has a long history in Clackamas County. His property is on the National Register of Historic Places. There is a huge lack of a master plan for transportation out in the Stafford area. There are 21 venues, counting Lake Oswego School District, within a quarter of a mile of Luscher Farm. This includes Luscher Farm. With what Lake Oswego Parks and Recreation is just finishing off between the golf course, the recreational center, the aquatic center, the driving range, and the Rassekh Park right across from Luscher Farm, and Luscher Farm itself, there will be 500,000 new daily trips per year in this area. This is a huge concern for the residents. Traffic issues would be a consideration in the master plan, but it is really a huge issue for those who live in the area. During COVID it was nice to know that there was a secure food source in the region, that being Fiala Farm. He is very concerned that in the future, if Lake Oswego decides that they want to implement a use that is not approved in their master plan they will just do it anyway. He would like to see the list of uses shortened. There is also

the issue that the State Court of Appeals has remanded back the 5-party and 3-party IGAs. One thing that is concerning is that Luscher Farm is going to end up being a special district, but the 5-party IGA says that Clackamas County is not going to allow any more special districts. He loves what Luscher Farm is doing, he just wishes that they would do it legally. They are currently doing 58 different programs, events, or classes as their winter program. He suggests that the County tell them to stop until we have this thing solved. The fact that there is no code enforcement is another piece of the problem.

Commissioner Peterson asked Mr. Cook if the master plan would be a good mechanism to address his concerns. Right now there is no mechanism other than Code Enforcement, which is not working. Mr. Cook answered that he does love what the farm is doing, he would just like them to do it legally. He is concerned about the wide range of uses listed (A through G) and that it might open a big window that we aren't able to rein back in later. Commissioner Wilson asked if Mr. Cook was against the present proposal. Mr. Cook answered that he is against the A through G uses and the piece with the 5-party and 3-party IGAs. As long as there is some criteria that we can enforce he would feel better about it. After 25 years of looking the other way, there has never been an infraction that Lake Oswego has had to answer to.

Kyra Haggart, Lake Oswego Parks & Recreation – This proposal is not just for Lake Oswego, but they did request this and their staff are really appreciative to County staff for putting in all of this work. Approval of this proposal will enable them to implement a really longstanding vision for the public use of Luscher Farm. They do a lot at the farm to help reduce food insecurity for residents. Luscher is not a place that is just for city residents, but also county residents. Everyone can come and enjoy the natural beauty of the Stafford Basin. She hopes that the Planning Commission will consider approving this, whether it is a modified version that takes suggestions from community members and commissioners or if it is what staff has proposed. They want to legitimize what is happening at Luscher because they recognize the benefit to the community. It is a very important place to the community and they would hate to lose it.

Commissioner Peterson appreciates all of the good things the city is doing with Luscher and how it is being used. On the other hand, it is somewhat disturbing that they have continued to do this for all these years despite knowing it is not a permitted use. If the County does not approve this proposal and recommends that the County enforce the codes, what would that mean to Luscher Farm? Ms. Haggart said that it would depend on what the enforcement looked like, but she thinks it would be really damaging to the community members who are currently using the programs and community gardens as well as the walking trails and other spaces out there. They are hoping to legitimize all of these uses through this process. They have previously received direction from former Planning Directors that these things need approval. She is not able to make a determination on what the full impact would be, but it would be a very sad day for Luscher Farm. Commissioner Wilson asked who is responsible for the code enforcement in each jurisdiction. Ms. Hughes explained that each jurisdiction is responsible for enforcement within their respective areas. The City of Lake Oswego owns the land, so they would have an obligation to comply with our zoning code on the property within our jurisdiction. So it would be both jurisdictions who share the responsibility for compliance on the properties within unincorporated Clackamas County. Step one is to try and find a pathway where we can say that they are able to submit a master plan, the Planning Commission can hear it, the Board can hear it, the public can hear it, and a decision will be made. Then that is what should be enforced by both parties, the city and the county.

Ms. Hughes provided clarification that the 5-party IGA and the 3-party IGA stipulated that the County wouldn't support the formation of, or approve of, new special districts within the Stafford area. What that means is special districts that are providing public services for tax dollars. Something like a sewer district or public water district—a public entity. What we are talking about doing here is an overlay zone. Yes, we are

calling it the special use overlay zone, but it is not a special district as contemplated by those intergovernmental agreements (IGAs). There are limitations on doing zone changes and new uses in urban reserves, and Stafford is an urban reserve where Luscher Farm is located. There are other reserves around the county that have the same restrictions, but the ability to do these parks master plans is an exception to those restrictions that is specifically called out in state law.

Commissioner Middaugh asked that the Planning Commission include a strong missive to the Board about code enforcement. Many of the issues that we have heard tonight come down to fear of what might happen. It seems like these fears would be more properly dealt with by code enforcement rather than trying to thread the needle with specific language. Commissioner Stevens agreed and said that it is always an issue at any CPO summit or leaders meeting in Clackamas County. It is always the number one issue, but the problem is a staffing shortage. Every staff member has 100 or more cases on their desk, but this message should be clear because it is a huge area of concern. It won't be the first time the BCC has heard this. Commissioner Middaugh said that rules don't mean much if we don't enforce them. Change might not make it better, but nothing is going to get better if it doesn't change. Commissioner Peterson said that we have seen these quite often during his 11-year tenure on the Planning Commission. Someone has been operating something on their property that is a code violation, but there is never any enforcement. He agrees that we should include this in our recommendation and pass it on to the BCC. It would be negligent if we did not.

Commissioner Pak asked if we are required to recommend all of the uses listed in the proposal. Commissioner Stevens referred to Exhibit 9 submitted by Richard Fiala. Mr. Fiala provided a proposal to narrow the list of potential uses. Commissioner Stevens feels that he did an excellent job with his recommendation and that she would have supported implementing his list in the proposed amendments. But there is the fact that not every park is going to be identical. One park may be on a lake or river, in which case paddle boarding or boat ramps may be appropriate. Another park may have 5 miles that are appropriate for horse trails. Commissioner Middaugh agrees. Camping would be a nightmare on Luscher Farm but may be a perfect use at another location.

Chair Murphy moved the hearing to deliberations.

Commissioner Peterson – This is not perfect, which is often the case, because there is never anything we can do that will anticipate all of the special issues and needs that are specific to any one land use issue. Even though he agrees that a lot of these uses could be concerning in some locations they shouldn't be edited out for all cases. It is better to be deliberate on a case by case basis in his opinion. This is a much better framework than what there was to work with in the past and allows an opportunity for all the people who have concerns to voice those concerns. He is in support of the proposal as recommended by staff.

Commissioner Stevens- She is excited to see a possible solution for a problem that has been around for decades. She agrees with Commissioner Peterson. Although she likes the idea of cutting back the list of uses, every circumstance is going to be different. Her hope is that as we review master plans in the future that a great amount of thought and consideration is taken into community input. She also agrees with Commissioner Middaugh that so much of this has been caused by lack of enforcement. It is a real problem. Planning staff has come to an amazing possibility of a solution and she will be supporting this as well.

Commissioner Lopes – Agrees with what Commissioners Middaugh, Peterson, and Stevens have said. Although this is not a perfect solution, we need to go ahead with this as the staff recommends. Then we really need to scrutinize each master plan as it comes before us because that list of uses is going to be

specific to each application. The community members need to be allowed to give testimony on each master plan as they come up.

Commissioner Wilson – Would have liked to have seen the special use overlay district included with this proposal. Because it is not in there he is recommending that we not approve this.

Commissioner Pak – Does not like the idea of establishing campgrounds or park uses on EFU land, but also understands that we will be looking at these plans on an individual basis in the future. The public outreach for the master plans is a big deal. Master plans can take a long time—possibly up to a year or even more—because of all the public outreach and all of the steps that you have to go through to do a master plan. They get vetted pretty thoroughly before they ever come to the Planning Commission. She is happy to support what has been provided.

Commissioner Middaugh – this seems to be a tailor made solution for the Luscher Farms ongoing issue, and he certainly recognizes it as such. For that reason it is difficult to say no to this, although in the future we need to be prepared for some real hard “nos” with some of these potential uses. There may be times when we say yes, but we have to be prepared for the times when we have to say no. It will be difficult, but we do need to be prepared for it. He is also concerned about what the perception might be if we recommend approval of this. To be clear, we are not recommending that camping be allowed on Luscher Farm, or any such thing. We all know that is not the case, a master plan needs to be submitted and approved, but he wonders how we reassure those who have legitimate fears over code enforcement. Maybe we are just skirting around the larger issues of code enforcement.

Commissioner Moss – It is unlikely that someone is going to submit a proposal to bulldoze the farmland and put campsites in. They are going to want to put uses where they are most appropriate. We need to take these on a case by case basis and evaluate each one on its own.

Commissioner Murphy – He would like to take out D, E, and G. There is very little Sheriff coverage up where he is, so if you have a problem it is a real problem. We aren't going to be capitalizing on this in any way to fund law enforcement, and that is what he is looking at. So he proposes making an edit and removing uses D, E, and G.

Commissioner Moss moved to recommend approval of ZDO-286 as recommended by staff. Commissioner Peterson seconded. *Ayes=6 (Peterson, Stevens, Moss, Middaugh, Pak, Lopes); Nays=2 (Wilson, Murphy). Motion passes.*

The Planning Commission wishes unanimously to reiterate their concerns with the lack of code enforcement to the Board of County Commissioners.

“The Planning Commission remains concerned about the level of code enforcement in the county, and encourages the Board of Commissioners to seek all available options to support code enforcement so we continue to have a great county for all of our residents.” Ayes=8; Nays=0.

Commissioner Stevens said that this has been a very difficult proposal. If this had been any of us individual tax paying citizens, we would not have been granted hundreds and hundreds of hours and thousands of dollars of county support to help find the solution. Instead, we would have received letters and been fined and had a lien on our property. This has been a struggle because 2 decades of lack of compliance was rewarded with finding a way out. She does not appreciate municipalities who spend tax money and the

residents who pay tax money being treated so differently. To say that code enforcement needs to focus its resources is not the only issue. It is more than that. The right thing to do is to treat people the same whether it is an individual or a municipality. There was none of that here. Commissioner Middaugh added that nobody could be treated the same if there is not enough staff to do the work. Code enforcement is a long process in each case, but it seems like we are setting it up for failure. If you have a nonconforming neighbor and have no solution offered to you by the entity that is designed to provide that solution, that is going to be a problem.

In response to comments during the hearing, Ms. Hughes said that she is not aware of the status of the buildings at Luscher Farm or if they are permitted for public access. There was some permitting done, but to what extent she is not sure. She isn't sure if there is a violation related to building codes there. It is the uses that are in violation of our zoning code on the county side of the line.

Commissioner Murphy asked for any corrections to the Planning Commission minutes for ZDO-287. There were none. The minutes were approved by show of hands. *Ayes=7, Nays=0, Abstain=1 (Middaugh).*

Commissioner Murphy asked for any corrections to the Planning Commission minutes for ZDO-283. There were none. The minutes were approved by show of hands. *Ayes=7, Nays=0, Abstain=1 (Middaugh).*

Ms. Hughes provided a schedule update and announced that Commissioner Schroedl has submitted his resignation.

There being no further business, the meeting was adjourned at 9:21 pm.