

# CLACKAMAS COUNTY BOARD OF COUNTY COMMISSIONERS

## Policy Session Worksheet

**Presentation Date:** 12/04/18    **Approx. Start Time:** 1:30 p.m.    **Approx. Length:** 1 hour

**Presentation Title:** ZDO-272: Low Density Residential Zoning Policies

**Department:** Planning and Zoning Division, Department of Transportation and Development (DTD)

**Presenters:** Jennifer Hughes, Long Range Land Use Planning Manager and Martha Fritzie, Senior Planner

**Other Invitees:** Dan Johnson, DTD Director; Cheryl Bell, DTD Assistant Director; Lindsey Nesbitt, Planning Manager; and Rick McIntire, Senior Planner

### WHAT ACTION ARE YOU REQUESTING FROM THE BOARD?

Board direction on the scope of Project L-5 (Low Density Residential Zoning Policies) on the Long Range Land Use Planning Work Program and particularly as the scope relates to the portion of this project that would consider prohibiting or limiting up-zoning of existing urban low-density residential zoned lands.

### EXECUTIVE SUMMARY:

The purpose of this policy session is to discuss timing and direction for one of the projects included in the Board-approved Long Range Planning Work Program for the current fiscal year: Low Density Residential Zoning Policies. This project is generally described as an amendment to the Comprehensive Plan policies that guide which low-density residential zone (R-2.5 through R-30) is applied to specific properties.

This project contains two distinct parts:

- (1) A recent court decision has effectively changed the way the Planning Staff and the Hearings Officer must evaluate the County's urban Low Density Residential (LDR) policies when considering the application of one of the low-density residential zones to a property or properties. This change has necessitated Staff to take a thorough look at these policies, particularly as they apply to zone changes from one LDR zone to another, for example, a change from R-10 to R-8.5 (see attached memorandum for an explanation of the various LDR zones; the relevant zone change policies; and how they are practically applied).

The primary issue that arose through the court case was the way the policies were being weighted in the analysis. Essentially, the Court of Appeals found that particular factors cannot be weighted more heavily than others unless the express language of the particular factor provides for that. Specifically, the court found that "shall be zoned" has greater weight than "should be zoned," which has greater weight than "shall be considered.". It is unclear, however, whether those nuances were intended by the drafters of the factors. In addition, both LUBA and the Court of Appeals found that the county was impermissibly evaluating some of the factors based on qualitative distinctions that are not expressly included in the text (e.g., considering how easy it is to walk to a transit stop rather than just whether the transit stop is within ¼ mile of the property). As a result of this decision, Staff and the

Hearings Officer have changed the way in which the relevant policies are assessed and weighted.

The practical outcome of the court decision is that some zone changes between LDR zones are likely easier to approve, particularly where the site is in proximity to transit and trip generators and environmental constraints do not exist. Whereas previously the Hearings Officer often weighted the policy about retaining consistency with the existing development patterns in the “neighborhood” more than each of the several policies about simple proximity to such things as transit and/or jobs, now each of those policies carries the same, or very similar, weight.

The decision also brought to light some potential areas within those policies that may need additional clarity or more certain direction to decision-makers about which LDR zone may be most appropriate for a particular site. There are several considerations when contemplating amendments to these policies, however:

- As currently written, these policies allow for quite a bit of flexibility and discretion when assessing a property or properties for a zone change. Having flexibility is beneficial because no two situations are exactly the same and it allows for reasonable decisions to be made based on the individual circumstances and merits of a proposal.
- If more strict parameters are put around the policies, the flexibility is reduced and zone changes may become more difficult to approve, even in cases where all parties feel it would be the right decision. However, even in this scenario, some zone changes likely would still be approved.

Staff is confident that the language in these policies can be amended to provide a little more clarity and direction for each designation while retaining a moderate amount of flexibility.

- (2) The second part of this project is in response to work program suggestions submitted by the Jennings Lodge and Oak Grove Community Planning Organizations and the McLoughlin Area Plan Implementation Team. Oak Grove Community Council and MAP-IT cited the McLoughlin Area Plan Phase II priority to “modify the existing ZDO to better protect neighborhoods from up-zoning and incompatible development. Jennings Lodge CPO asked to have R-10 zoning frozen in their area, higher standards for zoning approvals in their area, and/or a limitation on the amount of development or infill allowed in their area.

Through the work program adoption, the Board initiated this project, but Staff seeks clarification on several questions before we draft a proposal and begin public outreach:

- Is the Board interested in prohibiting all rezoning of LDR property to more dense LDR zones? And if so, is the desire to do so everywhere in the urban LDR zones, or just in certain geographic areas of the county?

Prohibiting rezoning certain areas and not others potentially brings up legal questions which would need to be investigated, as well as issues of equity among property owners with the same zoning designation, but in different geographic areas of the county.

If the goal instead is to limit, rather than prohibit, up-zoning, that could potentially be done through thoughtful drafting of more strict parameters around the LDR policies, as discussed in part 1.

- If this part of the project is to move forward it will do so against the backdrop of the countywide Housing Needs Analysis (HNA), which is not expected to be completed until June 2019, and the Housing Affordability and Homelessness Task Force, which has been assembled to discuss housing needs and possible solutions to homelessness and to the increasing lack of affordability in the county's housing stock. By acting to prohibit or restrict up-zoning now, the county may send a signal that is incompatible with recommendations that arise from the HNA and the Task Force work.

For context, over the last 10 years, nine zone change applications have been approved in the urban unincorporated area from an R-10 or R-15 zoning district to a higher density (R-8.5 or R-7) urban low density residential district. In that time, one zone change application has been approved in the same area from an R-7 to a lower density (R-8.5) zoning district.

Given the work currently underway related to housing affordability issues in the county and the relatively modest number of LDR zone changes approved, Staff is concerned it is premature to pursue policies to prohibit or limit zone changes in the LDR zones. Staff expects that a package of proposed amendments related to housing will result from both the HNA and Task Force work and think it would be more prudent to wait until zone changes could be looked at as part of the bigger housing conversation.

**FINANCIAL IMPLICATIONS (current year and ongoing):**

Is this item in your current budget?  YES  NO

What is the funding source?

General Fund

**STRATEGIC PLAN ALIGNMENT:**

- How does this item align with your Department's Strategic Business Plan goals?

The project aligns with the Long-Range Planning program's purpose of providing land use and transportation plan development, analysis, coordination and public engagement services to residents; businesses; local, regional and state partners; and County decision-makers so they can plan and invest based on a coordinated set of goals and policies that guide future development.

- How does this item align with the County's Performance Clackamas goals?

Responding to work program priorities identified by community groups can support the goal to "Build public trust through good government," particularly if such priorities have wide community support.

**LEGAL/POLICY REQUIREMENTS:**

Not applicable

**PUBLIC/GOVERNMENTAL PARTICIPATION:**

Public notice will be provided, as required by law, for any proposed Comprehensive Plan amendments that come before the Board for consideration at a public hearing.

**OPTIONS:**

- (1) Initiate both parts of the proposed project including:
  - a. Amendments to clarify and provide more definitive direction in the Comprehensive Plan Policies that direct the designation of the various LDR zones; and
  - b. Proceed with identifying and recommending legally-available options to limit or prohibit up-zoning from one LDR zone to another,
    - i. throughout the urban area; or
    - ii. only in specific parts of the urban area.
- (2) Initiate only Part (1)(a), as identified above.
- (3) Do not initiate any amendments to the housing policies until such time as there have been recommendations developed from the Housing Needs Assessment and from the Housing Affordability and Homelessness Task Force.

**RECOMMENDATION:**

Staff recommends the Board authorize either Option (2) or (3) because Staff feels it is premature to initiate amendments to limit or prohibit zone changes, in light of all the work the county is doing to understand and address its affordable housing and homelessness problems.

**ATTACHMENTS:**

- Memorandum: General Information about the County’s Urban Low Density Residential zoning designations and zone change policies

**SUBMITTED BY:**

Division Director/Head Approval \_\_\_\_\_

Department Director/Head Approval \_\_\_\_\_

County Administrator Approval \_\_\_\_\_

For information on this issue or copies of attachments, please contact Martha Fritzie @ 503-742-4529



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November 26, 2018

To: Board of County Commissioners

From: Martha Fritzie, Senior Planner, DTD Planning & Zoning Division

RE: General Information about the County's Urban Low Density Residential zoning designations and zone change policies

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The purpose of this memo is to provide background information to accompany the Policy Session Worksheet for the December 4, 2018 policy session.

1. Comprehensive Plan Designation: Areas designated "Low Density Residential" (LDR) on the Comprehensive Plan are planned primarily for single-family residential development.

2. Zoning Districts / Minimum Lot Sizes: The urban Low Density Residential (LDR) zoning districts, found in Section 315 of the Zoning & Development Ordinance (ZDO), implement the LDR Comprehensive Plan designation. There are eight urban low density residential zoning districts with minimum lot sizes for density calculations ranging from 2,500 to 30,000 square feet (R-2.5, R-5, R-7, R-8.5, R-10, R-15, R-20 and R-30). Only the R-7 thru R-30 zones can be applied generally in the unincorporated urban area. The R-2.5 and R-5 zones are limited to the Clackamas Regional Center Area and specific corridors.

3. Design Standards: The ZDO includes a number of design standards to provide flexibility in the creation of new lots or parcels in urban low density residential districts.

**Flexible Lot Size Standards**: The flexible lot size standards allows for the creation of a lot or parcel smaller than the minimum lot size used for the density calculation. This standard does not allow the total number of lots to exceed the maximum density standard of the underlying zoning district; in effect, the newly created lots must average the minimum lot size. In the R-7 thru R-30 zoning districts, the smallest lot or parcel permitted is 80 percent of the minimum lot or parcel size in the underlying zoning district. (For example a flex lot in the R-10 zone may not be smaller than 8,000 square feet. If this were a two-lot partition, the other lot would have to be at least 12,000 square feet prior to right-of-way dedication.)

**Planned Unit Developments (PUD)**: A PUD is required under two circumstances for development in the urban low density residential zoning districts. First, a PUD is required for any site larger than one acre and where 10 percent or more of the site is designated Open Space on the Comprehensive Plan. Second, a PUD is required for any development that includes

attached single family dwellings on more than 20 percent of the proposed lots. A PUD may be proposed for any other partition or subdivision at the applicant's discretion. The design standards for PUD's are intended to encourage a creative approach in developing land, allow for design flexibility, preservation and use of open space and protection of natural features. All PUD's must include a minimum of 20% of the gross site area in open space. There is no minimum lot size for PUD's in the urban low density residential zoning districts. However, the maximum density standard may not be exceeded.

4. Residential Housing Types: The housing types permitted in the LDR zoning districts include detached single family dwellings, manufactured homes and attached single family dwellings. Attached single family dwellings are allowed on up to 20 percent of the lots in a subdivision and 100 percent of the lots in a planned unit development. In addition, each legal single-family dwelling (or manufactured home) may have one accessory dwelling unit (ADU), which, in most zones, may be up to 900 square feet in size.

Two-family and three family dwellings (duplexes and triplexes) may be allowed if approved through a conditional use permit, subject to certain density standards.

5. Zone Change Policies and Review Procedure: A zone change application is required to change the zoning from one LDR zoning district to another LDR zoning district (e.g., R-10 to R-8.5). A zone change requires review by the County land use hearings officer at a public hearing.

A zone change application is subject to the applicable policies in the Comprehensive Plan and zone change criteria in Section 1202 of the ZDO. The primary Comprehensive Plan policies applicable to this type of zone change are included in Policy 4.R.2 in Chapter 4 of the Comprehensive Plan. The policies are identified below.

*Policy 4.R.2: Zoning of Immediate Urban Low Density Residential areas and conversion of Future Urban areas to Immediate Urban Low Density Residential shall include zones of 2,500; 5,000; 7,000; 8,500; 10,000; 15,000; 20,000, and 30,000 square feet (R-2.5 through R-30). The following factors guide the determination of the most appropriate zone:*

*4.R.2.1 Physical site conditions such as soils, slope, and drainage:*

*a. Land with soils subject to slippage, compaction or high shrink-swell characteristics shall be zoned for larger lots.*

*b. Land with slopes of:*

*Less than 20 percent shall be considered for the R-2.5 through R-8.5 zoning districts.*

*20 percent and over shall be considered for the R-10 through R-30 zoning districts.*

*c. Land with hydrological conditions such as flooding, high water table or poor drainage shall be zoned for larger lots.*

This policy is fairly straight-forward and although there is no specific definition of "larger lots", it is inferred from this policy that "larger lots" are those zoned R-10 through R-30. This interpretation is used in this policy and elsewhere in this section of the Plan.

*4.R.2.2 Capacity of facilities such as streets, sewers, water, and storm drainage systems.*

This policy is also fairly straight-forward and Staff and the Hearings Officer rely heavily on the statements of feasibility from individual service providers and the applicant's study of the transportation system.

*4.R.2.3 Availability of transit: Land within walking distance (approximately one-quarter mile) of a transit stop should be zoned for smaller lots implemented by the R-2.5, R-5, R-7, and R-8.5 zoning districts.*

A recent Court of Appeals decision made it clear that this policy must be evaluated solely based on distance and that the "quality" or "safety" of the walk cannot be considered (including the existence of sidewalks on the route) in determining whether one of the four smaller-lot zones may be applied. However, such factors likely can be used to determine which of the four zones to apply.

*4.R.2.4 Proximity to jobs, shopping, and cultural activities: Areas in proximity to trip generators shall be considered for smaller lots implemented by the R-2.5, R-5, R-7, and R-8.5 zoning districts.*

The Hearings Officer has generally interpreted this policy to mean that if the parcel is approximately one-quarter to one-third of a mile from a commercial or industrial area or an area with cultural activities, it qualifies for the R-2.5, R-5 or R-7 zone; if the parcel is approximately one-third to three-quarters of a mile from such uses, then it qualifies for the R-8.5 zone.

Again, the Court's decision made it clear that this policy is to consider simply the distance, and the "quality", types, or even density of jobs, shopping or cultural activities nearby cannot be considered in determining whether one of the four smaller-lot zones may be applied. However, such factors likely can be used to determine which of the four zones to apply.

*4.R.2.5 Location of 2,500- and 5,000-square-foot lots: Location of 2,500 and 5,000 square foot lots, implemented by the R-2.5 and R-5 zoning districts, may be allowed in Corridor design type areas and where permitted by Community and Design Plans located in Chapter 10.*

This policy is fairly straight-forward. The specific areas where these zones can be applied are clearly identified in Chapter 10 of the Comprehensive Plan.

*4.R.2.6 Need for neighborhood preservation and variety: Areas that have historically developed on large lots where little vacant land exists should remain zoned consistent with the existing development pattern. Otherwise, unless physical or service problems indicate to the contrary, areas of vacant land shall be zoned for lots of 8,500 square feet or smaller.*

This policy is admittedly the most complicated and discretionary of the group, as it requires interpretations of such factors as whether “vacant” land includes large, partially vacant lots, and the meaning of “remain consistent with the existing development pattern” in a case where predominant lot size does not match existing zoning, and how to balance the competing values of neighborhood “preservation” and “variety”.

*4.R.2.7 Density average: To achieve an average of 7,500 square feet or less per lot in low density Future Urban areas when conversion to Immediate Urban low density residential occurs, the R-10 zone shall be limited to areas with 20 percent slope and greater. Flexible-lot-size land divisions and other buffering techniques shall be encouraged in those areas immediately adjacent to developed subdivisions with lots of 20,000 square feet or more to protect neighborhood character, while taking full advantage of allowed densities.*

This policy is fairly straight-forward and relates only to properties that are requesting a zone change from the FU-10 (Future Urban, 10 acre) “holding” zone that was applied to a number of properties when they were brought into the urban growth boundary.

In summary, the policies are intended to promote efficient use of residential land. All the policies are considered in the evaluation of a zone change application in order to determine the appropriate zoning district, although factors 5 and 7 are sometimes not applicable. In that consideration, it is important to keep in mind that these policies are “factors” not “criteria” and, as such, there does not need to be a favorable finding for every one of these policies, just the majority of those that are applicable, in order for a zone change to potentially be approvable.

6. Prior Zone Change Activity: In the last 10 years, nine zone change applications have been approved in the urban unincorporated area from an R-10 or R-15 zoning district to a higher density (R-8.5 or R-7) urban low density residential district. In that time, one zone change application has been approved in the same area from an R-7 to a lower density (R-8.5) zoning district.