

**PLANNING COMMISSION
MINUTES**

June 26, 2023 (Part 1, ZDO-283)
Meeting held online via Zoom

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

Commissioners absent: Tom Middaugh, Steven Schroedl

Staff present: Martha Fritzie, Jennifer Hughes, Darcy Renhard, Ellen Rogalin

Commission Chair Murphy called the meeting to order at 6:32 pm.

General public testimony not related to agenda items: Bill Leslie commented that there is a solar farm next door to him that has not been complying with the conditions of their land use approval. He has already contacted Code Enforcement but is really frustrated at this point with the lack of response from the solar farm and the County. Jennifer Hughes said she would look into the matter and report back to the Commission.

Commission Chair Murphy opened the public hearing for Planning file number ZDO-283.

Jennifer Hughes and Martha Fritzie presented staff's report for file number ZDO-283. This is a legislative Comprehensive Plan (Comp Plan) and Zoning and Development Ordinance (ZDO) amendment package for minor and time sensitive amendments. These proposed amendments are intended to bring the Clackamas County Comp Plan and ZDO into compliance with current mandates and State law, to clarify existing language and correct errors, and to adopt optional provisions that require minimal staff analysis.

The Planning Commission held a study session for the proposed amendments in June of 2022. The Board of County Commissioners policy session for the same proposal was held in July 2022.

The most substantive changes in the amendment package would: 1. Allow "stand alone" restrooms in the RTC (Rural Tourist Commercial) zone; 2. Align forest template test dwelling requirements with those in State law; 3. Align nonconforming use discontinuance and implementation periods; 4. Modify the ZDO's definition of "lot of record"; and 5. Streamline and clarify processes within Habitat Conservation Areas and Water Quality Resource Areas. Other less substantive amendments in the proposal would 6. Exempt detached single family dwellings, manufactured dwellings, and accessory uses from design review in commercial and industrial zones; 7. Expressly allow electronic signatures on land use applications; 8. Reduce the number of pages that are mailed with notice of decision; and 9. Make minor, non-substantive changes to the Comp Plan and ZDO. Jennifer Hughes explained the most substantive amendments:

1. Standalone public restrooms in the RTC district would be permitted through the conditional use process. The County would consider the suitability of the subject property, the surrounding area, and applicable County policies. They would have to meet existing design standards. It would require a public hearing. The RTC zones are within Wemme/Welches, Government Camp, and Rhododendron.
2. Clackamas County's review for a forest template dwelling has used the same criteria since the mid 1990's. Under the new standards, more forestland properties could qualify for a dwelling (but staff can not quantify how many more). Making these revisions is consistent with the County's practice in more recent years of conforming its code to State law in natural resource zones. Under the current

template test rules, a 160 acre “square template” is placed over the property in question, with the subject property in the mathematical center of the template and rotated so that it is most advantageous to the property owner. If there are 4 or 5 lots with dwellings (the number depends on soil capabilities) within the template that existed on January 1, 1993 then the subject property would qualify for a dwelling. However, lots and dwellings on lots that are larger than 80 acres are not counted.. Under the proposed changes, a template dwelling would be allowed if there were only 3 qualifying lots within the template and lots (and dwellings on lots) that are over 80 acres in size would also be counted.

3. Staff is proposing to extend the nonconforming use discontinuance period from 1 year to 2 years, as well as reducing the nonconforming use alteration implementation period from 4 years to 2 years. A nonconforming use is a use that was at one time legally established, but that would not be allowed under current zoning regulations. Under the current ZDO, nonconforming use alterations have 4 years for implementation. There is also a discontinuance period of only 1 year, meaning that if a nonconforming use is discontinued for a period of one year or more, the nonconforming status is lost and the use may not resume. The problem is that sometimes a nonconforming use is discontinued for a period of time during the implementation period for an alteration. Staff is proposing to line these up and make each one a period of 2 years.
4. There are multiple ways to refer to a unit of land, and each has a different purpose. A “tax lot” is used for assessment purposes, a “discrete parcel” is used for the purposes of ownership and/or sale, and a “lot of record” is used for development purposes. The proposed definition would remove the lot consolidation and foreclosure provisions in the existing definition. It would make the definition clearer and reduce the research complexity, costs, and delays. It would also be consistent with other jurisdictions and state-required minimum lot size requirements.
5. The proposed amendments would eliminate the Construction Management Plan application requirement for the HCAD and WQRAD processes. The same standards would be addressed through either a building or development permit. The amendments would also add a clear and objective standards option for development within an area that is both HCAD and WQRAD and would no longer require a HCA map verification if the applicant agreed with the existing map. It would also allow for a restricted development area instead of a tract in land divisions.

Staff finds that all of the proposed amendments meet the applicable approval criteria in the Statewide Planning Goals, ORS 92.010 & 215.010, the Metro Urban Growth Management Functional Plan, Clackamas County’s Comprehensive Plan, and the Clackamas County Zoning & Development Ordinance. Therefore, staff is recommending that the Planning Commission move to forward the proposed amendments to the BCC for approval as submitted in ZDO-283, and with the changes that staff mentioned to the lot of record definition.

Commissioner Pak is concerned about the potential damage to protected areas if we change the HCAD or WQRAD standards. Jennifer explained that there would be clear and objective standards. The Restricted Development Area (RDA) that is applied to developments in these areas is much clearer than the current option to move the protected area into a tract. An RDA may actually be more protective to these areas than to place them in a tract since tracts can be affected in multiple ways (such as foreclosures and encroachment). The standards would still be the same as far as protecting the areas during development, it would just be included in the development or building permit requirements.

Commissioner Lopes asked what the history was behind not allowing the 80 acres in the counting of the lots in the forest template tests. Jennifer does not know the history on this, but Glen Hamburg did research it when he was working on the proposed amendments. It would seem that they wanted to make sure these larger Forest lots (that comply with the 80-acre minimum lot size for the zone) were considered commercial

Commented [HJ1]: I think I recommended the LOR edits at this point didn't I?

Commented [HJ2]: I don't think I said an RDA was much clearer . . . if I did, I must have been off my game. The more protective part also lacks context. I recall talking about what can happen to tracts (foreclosure, adjacent property owners extending their yards into the tracts).

Commented [HJ3]: I didn't look. I believe Glen did and I think I mentioned that.

forestlands before residential. Commissioner Murphy said that his sense is that opening up these larger forest lots for residences is not very popular. If we start opening up timber land for development, we are running more power lines in, we are **hardening** our forest, and we are subjecting them to more fire hazards.

Commented [HJ4]: ? Not sure what Murph meant, but that is the term that he used.

There were no government agencies who wished to provide testimony.

Tracy (last name not on record), Vice-Chair of Clarkes-Highland CPO: She and her husband and their neighbors are in support of the changes to the forest template dwelling standards. They are aware of the fire dangers and would be clearing underbrush and trees to protect their houses.

Ann & Jason Delfel: They bought their 20-acre property about 6 years ago. It was approved for a dwelling in 2001 with electricity and a well. They checked with the County prior to purchasing the property in 2016 and were told that it met the template test criteria when it was done with paper maps and templates. They did not renew the application right away as they decided to remain in their current school district until their children finished school. In 2020 they applied for a new template test and were told they were 40 feet shy of the eleventh property needed for the set criteria. Staff was now using GIS software to apply the template and to determine mathematical center of a property. Their application was denied, so they appealed the decision. It was once again denied. If the County were to adopt the new standards for the template test, their property would qualify.

Sarah Mitchell, Kellington Law Group (PO Box 2209, Lake Oswego, 97035): Ms. Mitchell is not appearing on behalf of any particular client, but for the good of the order. Land use practitioners like herself, and landowners as well, are often frustrated by how nonconforming use provisions can be unclear and confusing. These applications often lead to litigation because of how unclear they are. She is very supportive of the proposed amendments to simplify the language and clarify the timelines. She would also like to see a provision to the amendments that would allow an applicant to toll the time period that it takes to obtain their permits.

David Harrison, Harrison Farms, Sandy, OR: Mr. Harrison inherited their farm from his family. They have 200 acres total, but have only been able to build a single family dwelling. They would like to have the amendments to the forest template test approved as it would allow them to qualify for a second dwelling on the property. The proposed amendments to the lot of record definition would make his back lot developable so that he and his wife and children would be able to live near to his parents who are aging and starting to need more assistance.

Commented [HJ5]: I think he testified about the LOR definition, not the template test provisions, but maybe I was confused . . . he talked about old "adjustments" to the lots, and I wasn't sure how that related to the amendments.

Commissioner Pak moved to close public testimony, Commissioner Lopes seconded.

Commissioner Stevens asked about the idea of an applicant being able to toll the approval period for an alteration of nonconforming use. Jennifer said that she is not comfortable having it completely open-ended, but some sort of extension does seem reasonable.

Commissioner Stevens is supportive of everything that has been presented with one exception. She is not in favor of changing the template test standards. Not only does approval of a template test allow for a house, but it is a house, it's a septic tank, drain fields, fencing, barns, other outbuildings and so on. We value our resource land, whether it be farming or timber, and we need to protect it as much as we can.

Commissioner Lopes agrees with Commissioner Stevens in that we need to preserve the natural resource zones. We need to prohibit continued development in those areas and she does not support lessening the

standards on the template test. She also supports what Ms. Mitchell said about the discontinuance of nonconforming use. She suggests giving an additional year extension if the applicant has obtained their building permits.

Commissioner Moss feels that there might be some sort of compromise to opening resource lands up for development and preserving them for timber and agricultural. There is a shortage of buildable land, so opening these lands up would help bring housing prices down and allow people to get into home ownership.

Commissioner Stevens moved to advise the BCC to approve ZDO-283 as presented, with the exception of the forest template test standards, that staff amend the draft definition to the lot of record to ensure that changes are consistent with the summary that was presented, and that there be an additional 2 years granted for implementation of a nonconforming use at the point when all of the necessary permits have been obtained. Commissioner Moss seconded. (*Ayes=7; Nays=0. Motion is passed*).

Commissioner Moss moved to approve the amendments to the forest template test standards as presented. Commissioner Peterson seconded. (*Ayes=3: Wilson, Moss Peterson; Nays=4: Stevens, Lopes, Murphy, Pak. Motion fails.*)

The hearing was closed at 8:34 pm. The Planning Commission moved on to hear ZDO-287.

There was an additional hearing and other Commission discussion following the hearing on ZDO-283. This content will be added to these draft minutes for the hearing on ZDO-287.

Commented [FM6]: I think the motion also included the additional edits to the lot of record definition that Jennifer recommended.

Commented [FM7]: Maybe add a placeholder for the ZDO-287 public hearing here and then include the time the meeting adjourned – around 9:50ish, I believe.