

DEPARTMENT OF COMMUNITY SERVICES
LAND USE AND TRANSPORTATION PROGRAM
MULTNOMAH COUNTY PLANNING COMMISSION

MINUTES OF APRIL 4, 2011

- I. Call to Order:** Chair John Ingle called the meeting to order at 6:30 p.m. on Monday, April 4, 2011 at the Multnomah Building, Room 101, located at 501 S.E. Hawthorne Blvd., Portland, OR.
- II. Roll Call:** Present - Chair Ingle, Chris Foster, Michelle Gregory, Katharina Lorenz, Julie Snelling
Absent - John Rettig, Jim Kessinger, Bill Kabeiseman, Julie Cleveland
- III. Approval of Minutes: March 7, 2011.**
Motion by Lorenz; seconded by Gregory
Motion passed unanimously.
- IV. Opportunity to Comment on Non-Agenda Items:**
None
- V. Election of Chair and Vice-Chair**
Motion by Lorenz to keep status quo with John Ingle as Chair and Chris Foster as Vice-Chair, seconded by Snelling. Motion passed.
- VI. Continued Hearing: Amendments to the EFU Zone Regarding consistency with the Religious Land Use & Institutionalized Persons Act (RLUIPA) PC 2011-1395 and Implementation of HB 3099 (2007) PC 10-006**

Chair Ingle read into the record the Legislative Hearing Process for the Planning Commission for a public hearing, and the process to present public testimony. The commissioners disclosed no actual or potential financial or other interests which would lead to a member's bias or partiality. There were no objections to the Planning Commission hearing the matter.

Chuck Beasley, Multnomah County Senior Planner, presented an update to the staff report, reminding the commissioners that the hearing was continued from the March 7, 2011 meeting. Beasley noted that the Open Door Baptist Church's lawyer, Dorothy Cofield, had submitted a lengthy memo for review, which had been forwarded to the commissioners upon receipt.

Beasley pointed out some language changes the commission had requested. In Part IV, Proposed New Code Section and Standards, 33.2640(B), it was suggested there be a reference regarding separation, so "from other enclosed structures" was added for clarification. Under 33.6010(C), Approval Criteria, staff worked with County Counsel to change the definition to state "The use will not: (1) Force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; *nor* (2) Significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use." This change is proposed for both Conditional Use and Community Service Use criteria.

Ingle opened the floor for public testimony.

Dorothy Cofield, Cofield Law Office, 9755 SW Barnes Rd Ste 450, Portland OR 97225. Ms. Cofield represents Open Door Baptist Church & School, which is considered a non-conforming use on high value farmland. The church and school's non-conforming use status was grandfathered in via ORS 215.130. Under that statutory right, a use that started before zoning laws or regulations that no longer allow the use, can continue and expand, as long as there is no greater adverse impact by the expansion. In 2003, the legislature did not allow new churches on high value farmland within three miles of the Urban Growth Boundary (UGB), and as of 2009, churches cannot be sighted on high value farmland at all. This decision resulted in a court case in Clackamas County, which determined that there cannot be discrimination against

a church or religion. LCDC added schools, community parks, community uses, etc, and amended their administrative rules in June 2010 to read "existing uses within three miles of the UGB cannot expand". Cofield believes the LCDC rule went beyond what the legislature allowed in HB 3099, which continues to allow schools as a non-conforming use on high value farmland.

Because churches and schools were formally an outright permitted use on EFU land until the 2003 and 2009 laws, it is believed the LCDC rule was not intended to imply that non-conforming uses cannot expand. Also in 2009, the legislature enacted HB 3099, which states that schools that had existed as of January 1, 2009, could continue to expand under the non-conforming use statute ORS 215.130(5)(9). Clackamas County recently updated its code to be in compliance with the RLUIPA amendments, but allows preexisting uses on high value farmland as a non-conforming use and expansion of a non-conforming school without the three mile prohibition. Counsel argues that the LCDC rule 130(2)(c) does not refer to non-conforming use rights within the three mile boundary.

Foster asked Cofield if it is her opinion that LCDC overstepped, or if it is just poorly written. Cofield said that in listening to the audio tapes, she believes there was no intent to take away non-conforming use rights. It appears that Clackamas County did not try to implement the ORS 197.646(3) portion of the LCDC rule, and Open Door Baptist Church would like Multnomah County to do the same. In closing, Cofield requested that the Planning Commission postpone their recommendation to adopt these code amendments until further research could be conducted, and to keep the record open for week.

RJ Turner, 3131 SW Orchard Place, Gresham OR 97080 wanted to reiterate that his family has a long history with the Open Door Baptist. Since there are several other families with similar histories (parents to children to grandchildren), the 100 person restriction would present a problem in their ability to add family members through the years. He thanked the commission for giving them the opportunity to speak.

Mel Tittle, 1050 SE Paloma Place, Gresham OR 97080 who is the pastor at Open Door Baptist and concurred with their lawyer to mirror Clackamas County's adoption of their amendments to RLUIPA. He said he is not opposed to land use regulations, but asked that the Church's longevity be taken into consideration, and be treated reasonably and fairly.

Ingle wrapped up public testimony for the evening.

Foster said that before he felt comfortable about a recommendation, County Counsel should be consulted regarding some of Ms. Cofield's comments. Assuming that expansions and alterations can be allowed, there are two sections of the code that are relevant. One is the non-conforming use; the other is who is subject to Design Review. Multnomah County's non-conforming use is broken down between meeting health and safety requirements, or making discretionary expansions. In reading those two codes, it appears that everything is subject to Design Review, except Single Family Residence and Type B Home Occupations.

Beasley wanted the commissioners to know that County Counsel was extensively involved with the code language, and that the purpose of this exercise is to clarify the requirements of the statutes and rules for a facility under a non-conforming use, not to impose additional requirements on the process. But the interpretation will be reviewed again with County Counsel. For uses that are not confined by the non-conforming process or limitations to expansion, the purpose is to make the review process for schools and parks as close to equivalent with other Community Service uses, but that can be looked at again as well.

Foster asked for Beasley's opinion about the Design Review, which appears to be inescapable for anything other than a single family residence or home occupation. Beasley said Multnomah County would not apply it to non-conforming uses, as that has its own evaluation procedure and criteria. In considering the impacts of an expansion, the Design Review elements that are relevant to the proposed expansion could be brought into play.

Gregory commented on the difficulty of absorbing the complexity of this subject, and believes it bears more research before coming to a decision. She indicated concerns about potential precedent setting liabilities. Ingle concurred that they were not adequately prepared to address many of the issues Ms. Cofield presented and recommended continuing the hearing to May. Gregory moved to continue the hearing until the May 2nd meeting and leave the public record open for two weeks. Snelling seconded. Motion passed.

VII. Work Session: Revise Chapter 29 Access & Fire Flow Standards PC 10-007

Lisa Estrin, Staff Planner, presented the staff report to update the County's fire flow and fire apparatus access standards. The purpose is to streamline the process and reduce conflicts with the current Oregon Fire Code (OFC). Since the last work session in May 2010, staff corresponded with the six fire districts within Multnomah County and requested their comments and input. The fire chiefs' comments and concerns are included in Attachment 1. Multnomah County Land Use Counsel was consulted for clarification about the county's role in adopting the Oregon Fire Code. It was determined that we could adopt the OFC, and choose to be more restrictive, but cannot be less restrictive.

Staff asked the commission if they thought a new property development should be served by a residential service provider, or follow the OFC, which allows for alternative means. For those properties within a fire district, the Fire Chief has discretion to grant variances, etc. For those not in a fire district, the OFC appears to grant the Building Inspector that discretion. In Washington County, where there are similar situations to Multnomah County, properties can be developed, but cannot use any alternative means.

The next issue deals with fire flow and access requirements. Multnomah County currently has fire flow standards as part of the code, but they differ from the Oregon Fire Code standards. Staff recommends deleting Multnomah County's fire code standards, and rely on the OFC, which is detailed and inclusive. This appears to be the most logical decision, as it would continue to allow the Fire Chief's discretionary decisions in each district, and would not have to be updated every couple of years.

Tom Layton, Fire Chief for Multnomah County RFPD #14, PO Box 1, Corbett OR 97019, joined Estrin at the presenter's table to provide clarification and answer questions.

Ingle asked if it would be feasible to combine the two Residential Fire Protection Service options rather than choose one or the other. Estrin explained they are two different scenarios. Option 1 requires all development proposals to be serviced by a residential fire provider; however, some of the county's properties do not have access to a provider. Option 2 would cover those properties, which is staff's recommendation.

Gregory asked how the different fire districts encompass the county, and what percentage of the county's land is not in a fire district. Layton said Multnomah County has two different types of fire departments, the city department of Gresham and Portland, and fire protection districts, which include Multnomah County #14, Sauvie Island Rural Fire, Tualatin Valley Fire & Rescue, Scappoose and Cascade Locks. There is a seventh district, which is the Port of Portland fire department, which services the airport. The fire protection districts are created by special taxing districts, which provide revenue for services & equipment, while the city departments go through the city's budget process.

Foster asked about annexation and how some pockets can be left out. Layton said it could be those pockets chose not to be included, or were excluded due to the inability to meet certain regulatory requirements. Also, public lands are not under fire protection unless they have a contract with the district. They fall under land use agencies, such as the U.S. Fire Service.

Foster asked Layton which option he recommended, and he said the fire districts unanimously favored Option 2. Foster asked if the concerns in his memo had been addressed. Layton had a couple he wanted to discuss. He suggested that the term "Residential" could be misleading, because the districts handled commercial and agricultural areas as well. Staff said they had no issues with changing the term to

"structural". Regarding the lack of follow-up for re-inspections, Layton requested there be better communication among the agencies, and that the fire districts be informed of the outcome. He said in general, he was pleased with the direction Multnomah County is taking.

The commissioners agreed with staff's recommendations in the staff report, and thanked Chief Layton for taking the time to help them better understand the process.

VIII. Work Session: Temporary Hardship Dwellings PC 2011-1397

Lisa Estrin began with the discussion questions from the staff report. She explained that since the permit requirements were originally intended to address dual urban and rural settings, and have not had any major changes in several years, it was time to readdress the issue.

The first proposal is to include park-model recreational vehicles as allowable temporary hardship dwellings. Staff spoke with the Gorge Commission, and believes the park model RV's would be allowable in the NSA as well. She also asked if they approved of allowing RV's and travel trailers that were not Park models. Foster thought that if it would assist people by being more reasonably priced, it would be a good idea, as long as the State allows that option. Estrin said she believes state law does allow it, but would check with the Building Department to see if there were any current problems with those types of structures.

Foster asked if there were standards that older RV's would have to meet and Estrin said she wasn't sure and would check on that. Gregory and Foster want to ensure that older structures would pass today's health and safety standards. Lastly, Estrin said that although Oregon Revised Statutes (ORS) allows the temporary conversion of an existing building, staff does not recommend adopting that option. It is generally thought those structures tend to become permanent and more difficult to regulate.

The County's Exclusive Farm Use (EFU) zones currently allow temporary health hardship permits for the care of the infirm and the aged, and Estrin asked if the commission would consider expanding that approval to other zones. The commissioners felt that would probably be acceptable, but would like to think about it.

Presently, the county's Health Hardship code requires that people use existing utilities, which staff recommends continuing. Also, the county currently allows separate driveways, but thought perhaps sharing a driveway would be something to consider. Staff also suggests that a temporary health hardship dwelling be within 100 feet of the permanent dwelling. By requiring shared utilities, driveways and clustered dwellings, staff believes it would help protect the property's resources. The commissioners thought requiring all three standards is a reasonable expectation for a temporary health hardship dwelling.

The next question is whether to allow a variance or adjustment. An adjustment is a reduction of the limitation of up to 40%, while a variance would be over that amount. Also, an adjustment is an Type I administrative decision, whereas a variance is a Type III requiring a public hearing. Staff recommends the more formal process to avoid confusion about the minimum requirements and deviations. The commission agreed with that recommendation.

Multnomah County currently requires a \$1,000 penal bond, the original intent meant to ensure the removal of the temporary dwelling. This has not proven to be a successful process and adds administration costs, so staff recommends eliminating the requirement. Ingle asked how the County is notified about the cessation of a health hardship situation and Estrin said it currently is not a formal process. Land Use Planning is discussing the best way to incorporate follow-up into the permitting process. Clackamas County and Washington County require that a statement be recorded on the deed, which could be an option.

Lastly, Estrin asked if the commission wanted to consider changing the renewal process from a Type 2 application, which requires notification to the neighbors, to a non-discretionary Type 1, which does not. They felt keeping it a Type 2 would allow for a better method of tracking.

IX. Director's Comments:

Chuck Beasley said there was not much to report. We intend to wrap up the issues presented tonight at the May and June sessions in preparation for the commission's July break.

Also, regarding Reserves, it appears that Metro and Washington County have reached a consensus, so staff will be going back before the Board to readopt findings. It is anticipated the issue will go back to LCDC in early fall.

Meeting adjourned at 9:00 p.m.

The next Planning Commission meeting will be May 2, 2011.

Recording Secretary,

Kathy Fisher