

DEPARTMENT OF COMMUNITY SERVICES
LAND USE PLANNING DIVISION
MULTNOMAH COUNTY PLANNING COMMISSION

MINUTES OF OCTOBER 4, 2021

- I. Call to Order:** Chair Ingle called the virtual Zoom meeting to order at 6:34 p.m. on Monday, October 4, 2021.
- II. Roll Call:** Present - John Ingle, Kari Egger, Chris Foster, Stephanie Nystrom, Victoria Purvine, Susan Silodor, Tim Wood
Absent – Alicia Denny, Bill Kabeiseman

- III. Approval of Minutes: June 7, 2021.**
Motion by Commissioner Purvine; seconded by Egger.

Commissioner Nystrom notes that on page 8, section 7 of the minutes, it is noted that there was a motion to indefinitely table item 7. Work Session – Annual Election of Planning Commission Officers pursuant to Multnomah County Code 39.1620. She recalls that this vote had taken place.

A roll call vote is held. **The motion to approve minutes is rejected unanimously.**

Staff is asked to review the meeting recording from June 7, 2021 and confirm the “motion to indefinitely table item 7. Work Session – Annual Election of Planning Commission Officers pursuant to Multnomah County Code 39.1620.”

- IV. Opportunity to Comment on Non-Agenda Items:**
Written comments were received by the following individuals prior to the meeting and added to the record:

- Susan & Kirk Andrews, 13410 NW Springville Rd Portland OR 97229
 - Email feedback regarding difficulty in getting enforcement of code violations, dated 09/17/2021;
- Klaus Heyne, email address on file
 - Email regarding residential rooftop solar permit process, dated 9/28/2021;
- Michael Arion 41010 SE Loudon Rd Corbett OR 97019
 - Email regarding rooftop panel solar permit process, dated 9/28/2021.

Michael Arion also provides oral comment regarding difficulties he has encountered obtaining a permit for additional rooftop solar panels for his property during the past year. He specifically mentions that he has greenhouses and other agricultural structures on his property, and the County has indicated that a site inspection is necessary as part of the permitting process. In the face of climate change, he urges the County to adopt a more streamlined, expedited permitting process for solar panels. In 2012, he was able to obtain a trade permit for solar panels through the City of Gresham within three weeks. He further adds that all the panels on a residential roof should be permitted in an expedited format, regardless of square footage. He indicates that the Federal Department of Energy has recently made funds available to communities to fast track solar permitting.

Commissioner Foster asks Staff to clarify existing impediments to the solar panel permitting process.

Adam Barber, Land Use Planning Deputy Director, indicates that he has spoken with both Klaus Heyne and Michael Arion regarding their comments. As he understands it, the request is for the Planning Commission to take up a project for next year's work program, looking particularly at renewable energy systems and to see how those fit into the County's full compliance standard. The County reviews all of the development on a property whenever any kind of development request is proposed, and there's a sentiment from Mr. Arion and Mr. Heyne that solar permitting should be treated differently. The County expects to have a work program discussion during the next Planning Commission meeting in November.

Carol Johnson, Land Use Planning Director, adds that the definition of development and building is very broad, so even something that would be considered to be trade permits, such as an electrical permit and mechanical permit, triggers a review of the entire property. In many of the less centralized locations in the county, there have been accessory structures built over time, some of which might have been exempt from the building code, but which the County has no records for. This often triggers an extensive amount of property research that consumes a lot of time on behalf of both the property owners and Staff as well, and in some cases, there is never really a good resolution because the records for historic structures are difficult to obtain, if at all. The proposal is that if the County modifies the language in the zoning ordinance, and only applies it to more significant levels of development, then it would make an easier path forward for things such as solar panels; especially given that there are comprehensive plan policies as well as issues with climate change that support prioritizing solar and other renewable energy sources.

Chair Ingle inquires if staff have any additional comment on the letter from Kirk and Susan Andrews regarding difficulty in getting enforcement of code violations.

Director Johnson indicates that this is one of the items that is on the work program and it is somewhat related to the agricultural fill amendment that the Commission passed a few years back. The County has since applied that code and has some feedback on how successful the process was that they would like to share with the Commission. They do have some suggestions for improving that code to make it easier for Code Compliance should that arise. Director Johnson further states that this is related to an item that was on last year's program that the County wasn't able to get to, and we would like to move this item up to a higher priority position for next year's plan.

Karol Dietrich, 44401 E Hist Columbia River Hwy Corbett, OR, inquires if Amendments to Multnomah County Chapter 38 Zoning Code and the Multnomah County Comprehensive Plan would be part of the current meeting. Chair Ingle confirms this is the next agenda item.

V. Hearing: Amendments to Multnomah County Chapter 38 Zoning Code and the Multnomah County Comprehensive Plan in response to federally mandated revisions to The Management Plan for the Columbia River Gorge National Scenic Area approved by the Columbia River Gorge Commission and other amendments to Chapter 38 Code and the Comprehensive Plan not related to the Management Plan revisions (PC-2021-14505)

Chair Ingle reads into the record the Legislative Hearing Process for the Planning Commission for a public hearing, and the process to present public testimony. The Commissioners disclose no

actual or potential financial or other interests which would lead to a member's partiality. There are no objections to the Planning Commission hearing the matter.

Deputy Director Barber shares a presentation titled, Planning Commission Hearing Gorge 2020 Project PC-2021-14505. The discussion includes:

1. National Scenic Act – Recognition and Protection - Barber discusses the history of the National Scenic Area (NSA), including the protections of the National Scenic Act passed by Congress in 1986, as well as the included land area.
2. Management Plan for the Columbia River Gorge NSA –Adopted by the Federal government in 1991 to explain how the land should be managed. The County adopted zoning regulations and land use maps that implemented scenic area regulations in 1993. Management plan was revised in 2004 and 2020.
3. Public outreach efforts - Barber shares the history of public outreach efforts in detail, and explains that although the County has been working very hard on this project for the past few months, the project has a longer history that goes back three years.
4. Formatting of text changes – Barber explains how proposed changes are identified in the applicable documents.
5. A. Summary of Proposed Code Amendments
 - Clarifies Ch. 39 rules apply - GDA permits, stormwater, FH (38.0010)
 - Ch. 39 Definitions added - lot area, lot dimensions and yards (38.0015)
 - T2 public comment period from 14 to 21 days (38.0530) - n/a Expedited
 - Removes requirement voiding a decision if applicant fails to sign and record conditions within specified timeframe (38.0670)
 - Fire protection in forest zones - resilience (38.7035)
 - Standpipe hose connection (1-inch) ≤ 50-ft a plumbed building
 - Electrical for well pump ≥ 30-feet from any building
 - Deleting duplicative standards (Home Occupations, B&B Inns)
 - Gender neutral (“man-made” → “human-made”)
- B. Mandated Code Updates - Topic area highlights:
 1. Cideries – treating cider like wine
 2. Overnight accommodation regulations – new T2 permit
 3. Renewable Energy Systems – solar, thermal, photovoltaic, wind, etc. Barber discussed three paths in the code that are essentially a carve out without a formal land use application. The County would just need to look at the plan to make sure setbacks are met
 - Allowed without land use application submittal
 - Expedited Use
 - Review Use
 4. Water sufficiency test
 5. GMA water resource protections
 6. Agricultural dwelling income test (GGA-40)
 7. Fire protection standards in all forest zones – slope setbacks and fuel breaks
 8. Dwelling allowances in GMA forest zones – new dwellings no longer allowed in GGF-40 & GGF-80; dwelling use retained in GGF-20
 - Updated hearing notice sent 9/28/21 to clarify restrictions apply in GGF-80; additionally, staff requests virtual hearing be continued to November 1, 2021.
- C. Summarizing Comprehensive Plan Amendments

- Updating legislative dates (Gorge 2020)
 - Deleting Cluster Development policies
 - Updating names - 4 Columbia River treaty tribes:
 - a. Nez Perce Tribe
 - b. The Confederated Tribes of the Umatilla Indian Reservation
 - c. The Confederated Tribes of the Warm Springs,
 - d. The Confederated Tribes and Bands of the Yakama Nation.
 - Updating references
 - a. Geologic Hazard → Hillside Development
 - b. Comp Plan Policy numbers.
6. Deputy Director Barber concludes his presentation by outlining some potential policy questions that the Planning Commission may wish to consider, with a reminder that revisions must provide equal or better protection of gorge resources.
- 1) Should 50-foot fire protection setback from steep slopes in forest zones apply to all buildings (as drafted), or should dwellings be exempted from setback requirement as allowed by Management Plan?
 - 2) Should a path be provided for an alternative requirement for slope setbacks and fire break requirements in the Forest Zones as proposed?
 - 3) Should the public comment period for Type 2 NSA applications be expanded from 14 to 21 days as proposed?
 - 4) Should the property owner be required to occupy the dwelling during rental of an Overnight Accommodation use?

Director Johnson indicates that the County does have a little flexibility beyond the December 11, 2021 date, so if the Planning Commission feels that more meetings are necessary in order to have a full discussion and allow the County to respond to any questions that may arise during the hearing from the public, we want to make sure to take the time and do it right.

Lisa Estrin, Senior Planner, indicates that she is available to answer any questions about the current code.

Joanna Kaiserman, Senior Land Use Planner Columbia River Gorge Commission, indicates that they are asking for draft ordinances from the counties, the week of December 12th. That starts the 90-day review clock that the Commission has. They plan to bring those to the Gorge Commission for approval in March 2022.

Commissioner Foster asks Joanna Kaiserman if there are any concerns from the Commission regarding the questions that Deputy Director Barber suggested for consideration, such as with the fire restrictions where you might be conflicting with other resources. Kaiserman indicates that the Commission has spoken with Barber about all the policy questions that were posed this evening and is fine with it. As long as the provisions in the County Code are the same or more restrictive than those in the Management Plan, there are no concerns.

Deputy Director Barber adds that his experience with projects this large is that we should expect that there will need to come back and make some changes. If it's found that a certain provisions isn't working, we can always come back and make those changes.

David Mann, 4110 SE Hawthorne Blvd #417 Portland, OR 97214 was pre-registered to provide oral testimony, but was unable to do so due to technical difficulties. Staff will work with Mr.

Mann and either acquire his written testimony or resolve technical issues so that he may provide testimony at a future Planning Commission meeting.

Michael Lang, Conservation Director Friends of the Columbia River Gorge 333 SW 5th Ave Ste 300 Portland, OR 97204 provides public testimony.

- He indicates that, regarding general management area wetlands, the policy went from a no net loss policy to a more stringent policy of no loss of wetlands.
- Regarding overnight accommodations and the issue of owner occupations during rental, the Management Plan language explicitly requires owner occupation during rental and the Gorge Commission voted on October 13, 2021 to adopt this language into the Management Plan. The Secretary of Agriculture reviewed it and concurred that it was consistent with the plan. To vary from that standard would be weaker than the Management Plan and, therefore, is not permissible.
- Also, they request that a savings clause be added to the ordinance that explicitly says that the Management Plan controls in circumstances when it is more restrictive than the County ordinances.
- He further states that the 14-day time limit to file an appeal after a final land use decision is the shortest period in the NSA (except for Clark County, which is the same). It is a burden for members of the public to review the decision and file an appeal in this time frame. They request a minimum of 20 days for appeal.
- The definition of dwelling includes bedrooms as a plural, which would mean that a building could potentially be constructed and approved if it had a bathroom(s), full kitchen, and one bedroom or a large area that didn't have any defined bedrooms. They recommend removing the reference and replace it with sleeping area.
- The definition of suitability has changed in the revised Management Plan, and includes language that defines it to be land not committed to another land use that doesn't allow an agricultural use. They recommend adding language that would say whether the land is committed by development to another land use.

Public Testimony concludes.

Commissioner Foster asks Deputy Director Barber if there is any reason that we cannot lengthen the appeal time for the NSA. Barber indicates that there is no barrier to changing the appeal period. The Plan is not specific on how long an appeal period should be. There are no specific defined dates regarding internal communications to Tribes and how long they have to respond. The one concern the County identified is that the extended appeal period may delay the start date for an applicant's project.

Commissioner Foster asks if the County has any concerns regarding the recommendation by Michael Lang regarding sleeping area versus bedroom. Barber indicates that he will need to look at how the definition reads outside the scenic area and communicate with the Gorge Commission.

Commissioner Foster asks if the County has any concerns regarding the recommendation by Michael Lang for a savings clause. Barber indicates that he had a prior conversation with one of Michael Lang's coworkers and an attorney with Friends of the Columbia River Gorge. It was agreed that this does make sense, and the County needs to determine how to word it in a way that is consistent with the Plan and doesn't cause any confusion or concern.

Commissioner Foster asks Michael Lang if he sees any issues with the alternate path with the fire standards. Michael Lang indicates that he has not had an opportunity to review this point yet, and he requests time to review and get back to the Commission.

Commissioner Nystrom asks Joanna Kaiserman if she feels an owner must occupy the dwelling during a rental, or if there is some leeway there. Kaiserman indicates that, based on conversations had during the plan review process last year, the intent was simply to state owner occupied in the sense that it's the primary residence of the owner, but not necessarily that it be occupied during the rental period. The Gorge Commission added that clarification in the Klickitat County draft land use ordinance, which was approved last month by the Commission but has not been adopted yet. The current language in the revised Management Plan does say occupied during rental, but the Commission has determined this was not the intention.

Commissioner Nystrom asks if the increase in the urban area boundary is 50 acres or 2% per urban area of the different urban areas within the Gorge area. Barber indicates that this is not an issue that Multnomah County has researched in the past. Joanna Kaiserman adds that she understands it be whichever is less of 50 acres or 2%. Nystrom asks if that is Gorge-wide or 50 acres per urban area. Kaiserman indicates that it is within an urban area.

Commissioner Egger states that being on Sauvie Island seems to be really similar to the Gorge as far as special characteristics to where we live. She likes the idea that for overnight accommodation, the owner be present, because guests are not always sensitive to the environment they are in.

Commissioner Egger also adds clarification for the public that this is not retrospective and will only apply to future applications. Barber confirms this.

Commissioner Silodor asks for a condensed recap from Michael Lang regarding his comments on suitability. Lang indicates that the definition was changed so that a parcel is not suitable if it's committed to another land use. Friends believes that was not the intent, and suggests adding in the definition that it would be committed to development, not just a land use.

Commissioner Silodor agrees with Commissioner Egger regarding owners being present when people are in their homes.

Commissioner Purvine also agrees that owners should be present when their dwellings are occupied.

Commissioner Purvine asks about one of the notices under the comments, which states that people who live on non-county maintained roads are impacted by having additional travel. There was a request that people only be allowed to do Airbnb and increase the traffic if they live on a maintained road. She asks if there has been any discussion about this as far as County codes.

Deputy Director Barber indicates this is not something that has been contemplated as part of the land use code revisions. He does not know how the transportation planning regulations might come into play when a development application is submitted.

Lisa Estrin adds that the current code for home occupations does not speak to the requirements of a public or private road that is maintained, or an easement. She does not believe the Transportation

planning code would cover this, since local roads that are not county maintained would be the responsibility of the property owner.

Commissioner Purvine relates her own experience of living on a non-maintained county road and when somebody came in who didn't follow the rules and increased traffic, it had a huge impact on the rest of the group who had to pay to maintain the road.

Barber indicates that he does not expect this to be a provision that would come into play frequently in the future with an overnight accommodations use, but that it is probably an example of an additional regulation that could be added to the land use code that would be better protective of the resources of the scenic area. He indicates that the County would be willing to consider this if there is support from the Planning Commission. Silidor and Nystrom indicate their support.

Commissioner Purvine inquires about the cider provision stating that ciders must come from the local region. She asks if it has been determined what the local region is.

Joanna Kaiserman states that they ended up using the same language for cider that they have for wineries, just saying local region. When speaking with wine producers and cider producers a lot of them said, if we restricted it just to the national scenic area, they wouldn't be able to get the crops that they needed in order to produce their wine or their cider. A lot of them will get it in the surrounding areas outside the NSA boundaries, and so they didn't think that it was necessary or really feasible to try and restrict it to the National Scenic Area.

Barber indicates that he is unable to find this definition in the code.

Commissioner Foster asks about the proposed policy questions by Adam Barber. He believes there is some consensus regarding owner occupation for overnight accommodation, and adds that he agrees. He also thinks that the fire restrictions should be applied to all buildings, not just dwellings. He supports extending the appeal period to 21 days.

Adam Barber reiterates the questions posed, and Chair Ingle instructs the Commission to raise their hand if they feel differently.

- *Should the 50 foot fire protection set back from steep slopes and forest zones apply to all buildings, as drafted, or should dwellings be exempted from this setback requirement if allowed by the management plan?*

Commissioner Egger asks for input from someone who lives in the Gorge. Commissioner Nystrom, who lives in the Gorge, indicates that her entire property is on a slope. She believes the dwellings would be the most important asset to protect, and she is leaning towards not exempting it.

Barber adds that one of the concepts he learned about the setback in speaking to the fire chief in Corbett, is that not only does the 50-foot setback protect the structure from the heat, it also provides access for the fire department to maneuver. He also mentions that planners recommend moving developments away from slopes due to landslides. There are additional benefits not limited to fire protection.

Lisa Estrin adds that the code currently has fire protections in forest zones, and all building shall be surrounded by a maintained fuel break of 50 feet. In current day code, there is standard for properties in the general management area that are in the forest zone. The proposal strengthens or clarifies that code. Barber adds that one difference is the proposed code would require the setback from the slope edge and requires the fire safety zones to be expanded down the slope when the slope steepens.

Commissioner Foster asks for consensus that it apply to all buildings. Commissioners Egger, Nystrom, Silodor, and Wood all signal in the affirmative with a thumbs up. Commissioner Purvine appears that nod in the affirmative.

Chair Ingle indicates that there may be further opportunity to discuss these questions if there is a hearing continuance.

Katherine Thomas clarifies that procedurally, the direction that the Commission gives to Staff will give them an opportunity for review and to bring back amended code for the next meeting. No final decisions will be made at present; the Commission will be voting on the amended code to recommend to the Board.

Barber reiterates the next question: *Should a path be provided for an alternative requirement for slope setbacks and fire break requirements in the Forest Zones as proposed?*

Commissioner Foster indicates that he has not made up his mind and indicates that he would like to hear input from the Friends of the Columbia River Gorge.

Commissioner Purvine states that her understanding of the alternative is that, in case there is no way to meet the requirement, an individual is not unable to build on their property. Barber confirms and adds that it is intended to provide more options so there is no damage to another resource by trying to meet one set of standards. Purvine indicates that she does not want to limit people's ability to build on their property and would like to give them as many options as possible.

Commissioner Foster indicates that it is unclear what the alternatives might be if one cannot meet the standard.

Barber indicates that if the Commission votes to continue the hearing, he will attempt to get a representative from Corbett Fire to speak at the continuance and answer some of the Commission's questions. Barber also adds that the County envisions the standard would work by asking the fire chief or building official, if there is no fire department, for reasonable alternative means and methods to minimize fire risk. The discretionary nature of the standard made it difficult to draft. The County worked with fire department and building officials regarding the coordination process, and has heard support for this type of flexibility.

Commissioner Nystrom indicates she is in favor of providing an alternative. Commissioner Egger indicates that she approves of the flexibility with the bottom line being that the County has the final say. Chair Ingle agrees that there is a set of alternatives to take a look at. He asks that the Commission expedite discussion of the remaining questions as only 20 minutes remain of the current hearing.

Barber reiterates the next question posed: *Should the public comment period for Type 2 NSA applications be expanded from 14 to 21 days as proposed?*

Barber also indicates that there's an opportunity to investigate extending the appeal period from 14 to 21 days as well.

Commissioner Foster indicates that he believes they have agreed the comment period can go to 21 days. He would like to hear the repercussions of extending the appeal period. Chair Ingle agrees that extending the appeal period may have more far-reaching implications.

Beatriz Parga 46650 E Hist Columbia River Hwy indicates that she has input regarding the slope issue. She has been collaborating with neighbors on how to contribute into a fire wise community. She discusses Senate Bill 762, which encourages people in communities to help create a more fire safe environment. Because they live in a forested, scenic special managed area, it's important that their neighborhood stay safe and combats fire. She asks that Staff provide input regarding types of materials used when building in sloped areas, and suggests that be a determining factor in whether a particular lot is buildable. She indicates OHSU has a department that would be a good collaboration resource, that can provide an overview of how things get built in a specialized area, such as the waterfall corridor.

Barber reiterates the final question posed to the Commission: *Should the property owner be required to occupy the dwelling during rental of an Overnight Accommodation use?* Barber adds that he sensed support for the proposal as drafted, and doesn't believe further discussion is needed at present.

Chair Ingle confirms.

Chair Ingle entertains a motion that the hearing be continued to November 1, 2021 at 6:30 p.m. and the record remain open. There is a motion by Commissioner Silodor; seconded by Commissioner Foster.

A roll call vote is conducted and passes unanimously.

Katherine Thomas asks that Staff provide information regarding access to the continued hearing. Barber indicates that the virtual hearing link and meeting materials will be made available online at <https://www.multco.us/landuse/planning-commission>, and that people may call (503) 988-0188 if they need assistance accessing the meeting.

VIII. Director's Comments:

Director Johnson updates the Commission that the Land Use Planning counter is now open on a limited basis on Tuesdays and Wednesdays by appointment only. The appointment system has been well received by the public, since they have a guaranteed time with a planner and don't have to wait. Director Johnson adds that an online appointment scheduler will be available beginning mid-October 2021. The County is still in flux regarding when more dates may be added, but so far, appointments are still available on a weekly basis.

The contract with Tyler Systems has been finalized to provide a permit software upgrade for Land Use. The County anticipates starting the development phase shortly after the New Year.

Land Use Planning is conducting an organizational assessment via consultant John Morgan. He will be speaking with internal and external stakeholders and comparable counties, with the intent of gaining a third-party opinion regarding County reputation amongst the community and a comparison in terms of resources. The study should be finished by the beginning of December, in time for the next fiscal year budget process. The County Budget Office is going to provide an update on the state of county revenue on November 4, 2021. The expectation is that the increased increment of property taxes that the county has been deferring will now be coming into our coffers, and should improve the revenue picture. The hope is that some of this money will be made available to Land Use Planning in order to add some resources to the team.

Meeting adjourned at 8:54 p.m.

The next Planning Commission meeting is scheduled for November 1, 2021.

Recording Secretary,

Heidi Konopnicki