



# ***Marion County***

## **OREGON**

### **PLANNING COMMISSION MINUTES**

#### **PLANNING COMMISSION**

George Grabenhorst – Chair  
Carla Mikkelson – Vice Chair  
Scott Anderson  
Stanley Birch  
Mike Long  
Rick Massey  
Gary Monders  
Dennis Person  
(vacant)

**DATE: February 16, 2016**

**TIME: 6:30 p.m.**

**PLACE: Senator Hearing Room  
555 Court St. NE, Salem**

Present: Stanley Birch, George Grabenhorst, Dennis Person, Carla Mikkelson, Mike Long, and Gary Monders

Absent: Scott Anderson Rick Massey

Chair Grabenhorst called the meeting to order:

1. **Work Session:**

Review and discuss proposed amendments to the Marion County Zone Code. Amendments are being proposed to comply with recent changes in state law, as well as other amendments proposed by staff. These amendments to the Urban and Rural Zone Code include changes to the state model code for resource zones, amendments pertaining to mobile food vendors, home offices, and paving standards in urban unincorporated communities.

Brandon Reich, Senior Planner, explained changes to the Zone Code are made on a regular basis and needed to keep up to date. Some of the proposed changes are mandatory due to changes in state law while some are optional and one request is from a citizen. He indicated the packet included a summary sheet and draft timeline. The purpose of meeting tonight is to go over, briefly, the proposed changes and then, possibly schedule a hearing for March 16.

Brandon continued that some of the changes are “no-brainers” and some are optional ones the PC can talk about and decide. No decision will be made at this meeting but the PC can use it to discuss, request more information, etc. Chair Grabenhorst asked if staff could make mandatory changes in one color and option in another or some way to differentiate for ease of reading. Brandon indicated he would look into that. The PC then went through the packet:

Rooftop Solar – the staff recommendation is to include the use in the Urban Zone Code where, now it is only allowed in the Rural Code, which is now allowed based on recent changes to state law. The PC discussed the parallel requirement (N.) and Brandon indicated the language listed was taken directly from the house bill.

Replacement Dwellings – Brandon explained the state attempted to simplify the process that allows a homeowner to request to replace an existing or previously existing dwelling with a new dwelling. The “old” process used by staff would look at the assessed value (percent good) of a dwelling. At a certain percent “good” a replacement dwelling would be possible. But if the percent good was below 40%, the dwelling could not be replaced as it was no longer really a dwelling. However, staff has found in the last few years this low threshold was not triggered anymore as most homes being replaced are now from the 60’s and 70;’s. The intent of the proposed change is to look more at if it is legally established and being assessed as a home and if it is, that is sufficient.

The other issue with replacement dwellings is regarding people who remove, voluntarily, their home years before and do they have evidence it was a home. The portion covering this issue is from the state and is mandatory. The goal is to make the process more straightforward for those that obviously qualify but the county must follow the state-set process for homes that have been removed. Brief back-and-forth discussion followed. Chair Grabenhorst stated he has been through this process several times and doesn’t see a problem, but wants to make sure if a homeowner meets the criteria the house can be replaced. PC members discussed how the process works and the problem with owners that try to use a shed or other building to qualify for a replacement dwelling.

Division Property Along UGB – Brandon explained a bill was passed that allows the dividing a portion of a rural property that has been included within an urban growth boundary. Previously, divisions of such land were supposed to follow tax lots but in some instances it won’t work. Standards were included in the house bill and staff doesn’t see this as an issue. There was no discussion or comment.

Seasonal Farmworker Housing Reference – Brandon explained the state is proposing these changes because the previous standards for this housing referenced an ORS. Because it referenced a very old statute, it was difficult for property owners to address. The new law simply takes that reference out. There was no discussion or comment.

Property Line Adjustment Standards – Brandon explained in a past zone code update, some regulations were inadvertently left out. The intent of the regulations that were omitted were to allow adjustments of less than 10% without land use approval and the other was to deed numbers on plats. He indicated this requirement won’t be an issue.

FEMA Amendments Reference – Brandon explained when FEMA issues flood map changes, which are constantly happening, these can be minor and some major. Minor changes can affect only a portion of a property and major changes can affect a much larger area. FEMA requires counties to approve these changes. Other jurisdictions reference this in their code by indicating anything amended is automatically included in any zone code. Adopting this process will allow Marion County to include the minor changes without the requirement for a hearing. Staff is recommending that change be adopted but the major FEMA map changes, that might affect many properties, still go through a hearing process. There was brief discussion on past flood events.

Food Carts – Brandon explained current regulations that apply just to the Salem and Woodburn urban growth boundary areas, have standards that are very hard to track and only a few have ever been approved. The intent of the proposed changes is to make our regulations similar to those of Salem and Woodburn. This is the larger food carts and not the small ones. Brandon indicated the packet included the current standards and the proposed. These are very similar to Salem’s regulations, allowed where restaurants are allowed, only on hard surface, on street or right-of-way, screened, garbage pick-up, etc. The intent is if you can meet the proposed standards you can do it anywhere where restaurants are allowed. Brandon asked the PC to look at the standards to see if they are ok,

cover everything, etc. Chair Grabenhorst asked about being licensed and asked that that requirement be included and include who issues the license. The PC briefly discussed which types of carts would fall under these regulations. Brandon indicated these regulations would now cover all of the County and not just Woodburn and Salem, as they do now. He explained nothing can be attached to these carts but can be adjacent to them. Mr. Person indicated this requirement should be taken out. Chair Grabenhorst asked that some reference be included that they may operate only where restaurants are allowed. The PC briefly discussed whether to take out the reference to not being allowed in residential zones and the consensus was to keep that in so everyone understands.

Home Office Regulations – Brandon explained in rural resource zones there are some home occupations allowed and in non-resource zones there are only two types (with employees, no employees maximum size, etc.) allowed after review and approval of a permit. No zone allows retail sales as rural roads can't handle that type of traffic. Staff would like to allow, outright, home occupations that have no impact to surrounding properties such as an Avon dealer, bookkeeper, real estate agent, etc. The goal is to create standards to hand out at the counter and if the owner can meet those standards no other permit or approval is required. Mr. Person asked about doing business outside of the residence and referenced a photographer. Brandon indicated they could possibly create a process where something like that would be allowed with a permit issued over the counter.

Paving Lots in Urban Unincorporated Communities – Brandon explained the proposed requirement is to pave commercial and industrial lots in Brooks because of the dust and dirt coming onto the roads. This would apply a sort of urban standard and could be beneficial to a property owner as paved surface is easier to maintain for stormwater detention, access in and out and parking, etc. The goal is to meet stormwater standards and will also benefit the surrounding area with less dust and dirt. Chair Grabenhorst asked if this would kick in required offsite improvements such as having to put in sidewalks and Brandon did not think so. Brandon reiterated this is just for Brooks. Mr. Monders cautioned that asphalt can get very expensive and only lasts 15-20 years. He understands having to pave an access area but not an entire lot, especially with the cost. Mr. Person asked about uses in the area and members indicated it is quite commercial. He feels gravel is acceptable with dust control, which could be required. After clarification, Chair Grabenhorst and Mr. Monders agreed if it is limited to just Brooks it is ok but Mr. Monders still has concerns with the expense.

Legal Lot Status – Brandon explained with all of the past changes as to when division of land was required. With all of those changes, it is getting hard to determine if a parcel was legally created, requires a lot of deed and ownership research, and has become very complicated. The state previously grandfathered any parcels created up to 1973 and staff is recommending using 1977, as that is when the county started requiring all divisions of land receive county approval. The PC briefly discussed types of land divisions.

Nonconforming Use Criteria – Brandon explained this change will take out a reference in the zone code that created unwarranted difficulty as it mentions "economic market demands". This criteria is very complicated and hard to determine and usually required for a land use action similar to a zone change. Staff is suggesting taking that out and using criteria that was referred in the Variance chapter of the zone code but now would be written right in this section. Joe Fennimore, Principal Planner, suggested adding a requirement that the expansion must be wholly on that or contiguous property but could not expand onto other properties. There was no discussion or comment.

RVs in Floodplains – Brandon explained there is a bit of a disconnect in the rural zone code. The current code allows a property owner, if they don't have a house on their property for whatever reason, to put an rv on the property to allow for some use of the property for part of the year. This is usually for timber or farm parcels, but is currently not allowed in the EFU zone but is allowed in the

Floodplain chapter of the zone. Other sections of the rural zone code also allow an RV on property for part of the year when it is not a flood season. This would allow for some use of a property during the non-flood season. There was no discussion or comment.

Purpose Statement – Brandon explained this is part of the state’s new model resource zone code jurisdictions can use. Staff is recommending to adopt some of the model code language for the EFU zone as it mentions other uses that are allowed, and not just agriculture. He added adopting this additional language will make the EFU zone purpose statement more complete. There was no discussion or comment.

Agri-tourism Definition- Brandon stated the new term “agri-tourism” was not defined when adopted by the legislature. It will be helpful to have that definition included in the zone code as it shows interested parties what that means and what is included. Joe added Marion County can change this definition at any time as it is not mandatory. Ms. Mikkelson referenced a horse racing event in her area where there was really no connection to the farming. She wondered about the definition being changed down the road to add in more allowed uses. The PC briefly discussed that issue. Brandon stated it won’t prevent some abuse of these kinds of permits but it might help. Ms. Mikkelson added the definition should be more specific as to how an event is subordinate to the farming on the property. Joe offered to look at other possible comments that could be included. Mr. Person asked about farm stands and Brandon indicated state law has those as separate uses.

Net Metering Power Generation – Brandon explained this is non-commercial use where a property owner uses it to offset the cost of their own electricity and excess goes to the power company. The model code has included similar wording but now has newer wording that staff would like to use. He added there aren’t any major changes – just up to date wording. There was no discussion or comment.

Farm Stands – Brandon indicated the county had regulations in the zone code on farm stands but also additional regulations in a farm stand policy. The new state model code has come up with a better set of regulations that staff would like to incorporate into the county code and not have regulations in a policy. He reiterated the intent is to delete existing code language and the Planning policy and use what the state has created in the model code, #1-13 in the packet. Joe added it will be easier to follow and more up front. Brandon briefly went through a few of the requirements and most are consistent with existing regulations. The PC briefly discussed a few farm stands in the county that do significant business similar to a grocery store.

Composting – Brandon explained the state has gotten more involved in composting regulating. Some farm composting is part of the farm operation but at a certain point, if compost is being sold to others there has to be regulations on odor. The proposed changes add some standards for composting that doesn’t fall under farm activity allowed outright. Discussion followed on when permits are required and DEQ regulations.

500 Year Fill Permits – Brandon explained after floods in ‘96 and’ 97 Marion County did a flood study on areas that could be flooded again in 100 and 500 years. If developing in these areas, owners must get approval. Since then, all requests have been approved that weren’t in the 100 floodplain. As a result, staff deleted those requirements but kept the requirements for work in the 500 year floodplain. If you put fill out in those areas, you must get a permit. Unfortunately, there isn’t a set list of criteria – a property owner must demonstrate any fill won’t increase or shift potential flooding to other areas. But there is no way to determine that shift won’t occur and cost to try to prove that is very expensive. Joe added the owner must certify they won’t affect the 100 year floodplain but the property isn’t in a 100 year floodplain so it becomes a condition they can’t ever meet. As a result,

staff would like to eliminate that requirement for a permit. There was no discussion or comment.

Goats—Brandon stated a citizen has requested to amend the county code to allow goats in residential zones. Salem had a similar request to allow goats to eat weeds on park lands and came up with allowing up to 5 goats on a property. Mr. Monders stated they aren't chickens and not something you keep in your backyard. Staff indicated this is not something they are recommending but bringing it forward as it was requested from a citizen. Chair Grabenhorst commented his neighbor has goats and they are noisy and he can hear them even though they are set back from the roadway. Ms. Mikkelson added folks desiring a rural setting should be living in a rural setting. Chair Grabenhorst added once you introduce that type of "food item" into a neighborhood, you will attract animals further up the food chain. He said farm animals should not be allowed in rural residential zones. Discussion followed on cougars and coyotes in areas of the county.

Brandon indicated his intent is to have a public hearing on March 15<sup>th</sup>. The PC discussed having another work meeting prior to that date, if anyone was interested. Chair Grabenhorst indicated the PC could have another meeting on March 8<sup>th</sup> if needed if the group comes up with a lot of questions. Chair Grabenhorst asked staff to send out the discussed changes and let the members review. If there are questions or concerns and the group need to have a meeting before March 15<sup>th</sup>, let him know. Otherwise, the next meeting will be the public hearing on March 15<sup>th</sup>. Brandon suggested notice be sent out for the hearing to meet notice requirements and Chair Grabenhorst replied that was fine. Brandon indicated he will send out just the changes discussed at this meeting and not an entirely new packet.

## 2. Miscellaneous Updates

Joe briefed the PC on possible review by the PC of changes to the zone code that will allow recreational marijuana businesses if the vote in November is to overturn the current prohibition. Businesses would be producing recreational marijuana, medical marijuana dispensaries and retail shops, wholesale dealers for recreational marijuana, and processors for either. He added the Board wants the PC to look at the zone code for needed changes, what zones would be appropriate, etc. so the zone code changes are ready to be implemented if the vote is to overturn. Joe will send the PC information from the state and what Clackamas County is doing. As outlined by state law, the county is allowed to only regulate time, place and manner but not in a way to preclude such businesses from operating. Any regulations must be reasonable. He added growing marijuana is considered farm use. In the farm zones it has to be allowed without regulation. In the AR zone, for example, farm use is allowed and the county could change it to preclude growing of marijuana in that type of residential zone. He added the Board does not want those businesses in any residential zones. There are some issues with farming for odor, excessive lights, and water and the issue is that they can't be regulated as farm use. Joe added zone code amendments will be prepared that might not be used, depending on the vote. Another issue is small processing that is allowed, now, for farm operations up to a certain point that may also apply to marijuana growers. A brief discussion followed on real estate ads, what other jurisdictions are allowing, and whether to allow it in industrial zones. Joe stated these are the issues the PC will discuss at future meetings. The intent is to have something ready for the Board to adopt if necessary.

## 3. Adjournment.

There being no further business, the meeting was adjourned.