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WASCO COUNTY

2009 JUN 18 P 2:14

KAREN LEBRETON COATS
COUNTY CLERK

IN THE COUNTY COURT OF THE STATE OF OREGON

IN AND FOR THE COUNTY OF WASCO

IN THE MATTER OF THE WASCO COUNTY PLANNING AND DEVELOPMENT DEPARTMENT'S REQUEST TO APPROVE THE PROPOSED POST-ACKNOWLEDGEMENT LEGISLATIVE AMENDMENTS TO CHAPTER 13, NONCONFORMING USES BUILDINGS AND LOTS AND RELATED SECTIONS AND CHAPTERS OF THE WASCO COUNTY LAND USE AND DEVELOPMENT ORDINANCE. (FILE NUMBER PLALEG-08-08-0001)	)	ORDINANCE No. 09-005

NOW ON THIS DAY, the above-entitled matter having come on regularly for consideration, said day being one duly set in term for the transaction of public business and a majority of the Court being present; and

IT APPEARING TO THE COURT: That the Wasco County Planning Department has requested a Post-Acknowledgement Plan Amendment for legislative amendments to Chapter 13, Nonconforming Uses Building and Lots and related sections and chapters of the Wasco County Land Use and Development Ordinance; and pursuant to Measure 56, Wasco County sent notification to all affected landowners on September 2, 2008; and

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IT APPEARING TO THE COURT: That on August 5, 2008, the Wasco County Planning Department held a legally notified public workshop with the Wasco County Planning Commission and the Wasco County Court, at the Gorge Discovery Center, to review back ground information and options for staff recommendations for the purpose of identifying preferred options and any potential needs for additional information prior to hearing; and

IT FURTHER APPEARING TO THE COURT: That on September 2, 2008, the Wasco County Planning Commission met to conduct a legally notified public hearing on the above matter. Following receipt and review of evidence, the Commission deliberated and, on a vote of 5 to 0 (2 Commissioners Absent) voted to elevate the request for a Post-Acknowledgement Plan Amendment for legislative amendments to Chapter 13, Nonconforming Uses Building and Lots and related sections and chapters of the Wasco County Land Use and Development Ordinance with a recommendation of approval; and

IT FURTHER APPEARING TO THE COURT: That the Wasco County Court met at the hour of 10:00 a.m. on Wednesday, October 15, 2008, in the Wasco County Courtroom, Room 202, of the Wasco County Courthouse, in The Dalles, Oregon, for a legally notified review of the Wasco County Planning Department's request for a Post-Acknowledgement Plan Amendment for legislative amendments to the Chapter 13, Nonconforming Uses Building and Lots and related sections and chapters of the Wasco County Land Use and Development Ordinance. The Court reviewed the record, heard the Staff recommendation and all relevant testimony from the parties, then voted 3 - 0 to approve the recommendation by the Wasco County Planning Commission to amend

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Chapter 13, Nonconforming Uses Building and Lots and related sections and chapters of the Wasco County Land Use and Development Ordinance with additional amendments recommended by staff and made by the County Court, as laid out in **Attachment A**, at the next scheduled County Court meeting, 29 October 2008; and

IT FURTHER APPEARING TO THE COURT: That on 19 November 2008 Mr. Ken Thomas filed a notice of intent to appeal the decision of the Wasco County Court to amend Chapter 13, Nonconforming Uses Building and Lots and related sections and Chapters of the Wasco County Land Use and Development Ordinance to the Oregon Land Use Board of Appeals (LUBA).

IT FURTHER APPEARING TO THE COURT: That on 5 February 2009 LUBA held a hearing and sustained in part the single assignment of error which was the basis for appeal by Mr. Ken Thomas and remanded the decision back to Wasco County for additional review.

IT FURTHER APPEARING TO THE COURT: That the Wasco County Court met at the hour of 11:00 a.m. on Wednesday, June 3, 2009, in the Wasco County Courtroom, Room 202, of the Wasco County Courthouse, in The Dalles, Oregon, for a legally notified remand review of the Wasco County Planning Department's request for a Post-Acknowledgement Plan Amendment for legislative amendments to the Chapter 13, Nonconforming Uses Building and Lots and related sections and chapters of the Wasco County Land Use and Development Ordinance. The Court reviewed the record, heard the Staff recommendation and all relevant testimony from the parties, then voted 3 - 0 to approve the recommendation by the Wasco County Planning Director to amend Chapter 13, Nonconforming Uses Building and Lots and related sections and chapters

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of the Wasco County Land Use and Development Ordinance, as laid out in **Attachment A**, at the next scheduled County Court meeting, 17 June 2009; and

NOW THEREFORE IT IS HEREBY ORDERED: That the request by the Wasco County Planning Department for a Post-Acknowledgement Plan Amendment for legislative amendments to Chapter 13, Nonconforming Uses Building and Lots and related sections and chapters of the Wasco County Land Use and Development Ordinance is approved.

SIGNED this 17th day of June, 2009.

Approved as to Form:

Eric J. Nisley
Wasco County District Attorney

WASCO COUNTY COURT

Dan Ericksen, Judge

Sherry Holliday, Commissioner

Bill Lennox, Commissioner

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ATTACHMENT A
PLALEG-08-08-0001

Final Updated Versions of the Following Chapters of the Land Use and Development Ordinance

Title Page: This has been updated to reflect a new amendment date for the ordinance.

Chapter 1: This is a summary version which includes only the proposed amendments.

Chapter 2: This is a summary version which includes only the proposed amendments.

Chapter 13: This includes all of the Chapter 13 amendments.

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WASCO COUNTY

LAND USE AND DEVELOPMENT ORDINANCE

ADOPTED
June, 1985

AMENDED
July, 1989
January, 1992
May, 1993
September, 1993
January, 1995
April, 1995
December, 1996
September, 1997
June, 1998
September, 1999
November 16, 1999
January 19, 2000
February 1, 2000
February 2, 2004
January 17, 2006
November 22, 2006
February 5, 2007
July 8, 2009

PREPARED BY THE
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CHAPTER 1 INTRODUCTORY PROVISIONS

(Summary Version)

SECTION 1.090 Definitions

For the purpose of this Ordinance, certain words and terms are defined as follows: Words used in the present tense include the future; words in the singular number include the plural, and words in the plural include the singular; the word "Building" includes the word "Structure"; the word "Shall" is mandatory and not directory.

Floor Area - The sum of the horizontal areas of each floor of a building, measured from the interior faces of the exterior walls.

Neighborhood - In relation to Nonconforming Uses a neighborhood shall include the surrounding areas whose use and enjoyment of their property would be materially impacted as a result of the proposed alteration.

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CHAPTER 2 DEVELOPMENT APPROVAL PROCEDURES

(Summary Version)

SECTION 2.060 Application
Application for development approval shall be made pursuant to applicable sections of this Ordinance on forms provided by the Planning Director.

...

9. Nonconforming Use Verification, Restoration, or Alteration (Chapter 13)

SECTION 2.080 Notice

...

B. Notice of Administrative Action for the use listed in Sections 2.060(A) (1) and (9), shall be given as prescribed by subsection (A) (1) – (7) of this Section, with the exception that notice be given at least ten (10) days prior to a decision. (Revised 1-92, 5-93, 9-99))

SECTION 2.100 Administrative Action Procedure of the Director

A. After accepting an application for Administrative Action pursuant to Section 2.060(A) (1) - (9) of this Ordinance, the Director shall act on or cause a hearing to be held on the application within the time requirements of O.R.S. 215.428(1). (Revised 2-89, 5-93)

SECTION 2.120 Notice of a Decision by the Director

A. Notice of a decision by the Director pursuant to Section 2.060 (A) (1) - (9) shall be filed in the records of the Director and also mailed to the applicant, the owner(s) or contract purchasers of the subject property, and all parties within the required notification areas, as described by Section 2.080. (Revised 1-92)

...

C. The decision of the Director pursuant to Section 2.060 (A)(1) - (9) shall be final unless an appeal from an aggrieved person is received by the Director within ten (10) days after the filing of a decision on an Administrative Action or unless the Commission or County Court on its own motion, orders review within ten (10) days after the filing of the proposed decision. (revised 2-89, 5-93, 9-99)

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CHAPTER 13 NONCONFORMING USES, BUILDINGS AND LOTS

SECTION 13.010 Purpose

It is necessary and consistent with the establishment of this Ordinance that all uses and structures incompatible with permitted uses or structures in each zone be strictly regulated and permitted to exist only under rigid controls. The purpose of such regulation and control is to discontinue a nonconforming use or structure, change a nonconforming use or structure to a conforming status, or allow alterations to a nonconforming use or structure that do not increase the level of adverse impact on the neighborhood, or are required for the use or structure to comply with state or local health or safety requirements.

SECTION 13.020 Continuation of Nonconforming Use

Except as is hereinafter provided in this Ordinance, the lawful use of a building or structure or of any land or premises lawfully existing at the time of the effective date of this Ordinance or at the time of a change in the official zoning maps may be continued, although such use does not conform with the provisions of this Ordinance. Alterations to nonconforming structures may only be made consistent with Section 13.060.

SECTION 13.030 Conveyance of Nonconforming Use

Nothing in this Ordinance shall be construed to limit the sale, transfer, or conveyance of property on which exists a nonconforming building, structure or use, so long as such sale, transfer, or other conveyance does not otherwise violate the provisions of this Ordinance.

SECTION 13.040 Construction on and Conveyance of Nonconforming Legal Parcels

Nothing in this Ordinance shall be deemed to prohibit construction or reconstruction of conforming uses or structures on nonconforming legal parcels or limit the sale, transfer or conveyance of said legal parcels, so long as the construction, reconstruction, sale, transfer or conveyance is consistent with all applicable provisions of this ordinance.

SECTION 13.050 Verification of Nonconforming Use

Must meet lawfully established and discontinuance or abandonment criteria below.

A. Lawfully Established: For a nonconforming use to be verified as lawfully established it shall be consistent with all of the following:

1. The nonconforming use has not been expanded in size or area or changed in purpose or use beyond what was lawfully established;

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2. The property on which the nonconforming use is located meets the definition of legal parcel in Chapter 1 of this ordinance;

3. The nonconforming use was lawfully established on or before the effective date of the provisions of this ordinance prohibiting the use verified by either a or b below. No unlawful use of property existing at the time of the effective date of the provisions of this ordinance shall be deemed a nonconforming use.

   a. Type I Verification: Lawfully established is verified by non-discretionary evidence including but not limited to zoning approval or County Assessor records verifying the date of establishment. This type of verification is not subject to any review process because it does not involve the exercise of any discretion or judgment. If the applicant wishes documentation of this it shall be done as a Land Use Verification Letter.

   b. Type II Verification: Lacking non-discretionary evidence, lawfully established is verified by a discretionary process consistent with Section 2.060(A)(9).

      It is the burden of the applicant to provide a preponderance of evidence which will allow the Planning Director to conclude the nonconforming use was lawfully established. Such evidence includes but is not limited to:

      -Utility Bills and Records (phone, power, sewer, water)
      -Aerial Photographs
      -Dated Photos
      -Notarized Letters or Affidavits affirming the date of establishment

B. Discontinuance or Abandonment: For a nonconforming use to be verified as lawfully established it must not have been discontinued or abandoned according to the following criteria. Based on the circumstances, the Director shall determine whether discontinuance or abandonment shall be reviewed as a Type I or Type II process as described in A above.

   1. The reference period for determining whether an abandonment or interruption of a nonconforming use or an aspect thereof has occurred shall be twelve (12) consecutive months in any of the ten (10) years preceding the date of the application. Proof of intent to abandon is not required to determine that a nonconforming use has been discontinued or abandoned.

   2. An abandonment or interruption of a use may arise from the complete cessation of the actual use for a twelve (12) month period even if improvements to support the use remain in place.

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3. An interruption or abandonment for a twelve (12) month period that constitutes less than full cessation of the use or a portion thereof may result in a declaration of a continuing use, but of a lesser intensity or scope than what would have been allowable if the nature and extent of the use as of the date it became nonconforming had continued, even if improvements to support the full use remain in place.

4. A change in the nature of the use may result in a determination that the use has been abandoned or has ceased for a twelve (12) month period if there are no common elements between the activities of the previous use and the current use.

   Factors to be considered in determining whether there has been a change in the nature of a use shall include, but are not limited to, consideration of the type of activities being conducted, the operating characteristics of the activities associated with the use (including off-site impacts of those activities), changes in structures associated with the use and changes in the degree to which the activities associated with the use occupy the site.

5. A surface mining use shall not be deemed to be interrupted or abandoned for any period after July 1, 1972, provided:

   a. The owner or operator was issued and continuously renewed a state or local surface mining permit, or received and maintained a state or local exemption from surface mining regulation; and

   b. The surface mining use was not inactive for a period of 12 consecutive years or more. For purposes of this subsection, "inactive" means no aggregate materials were excavated, crushed, removed, stockpiled or sold by the owner or operator of the surface mine.

SECTION 13.060 Restoration or Alteration of Nonconforming Use

Restoration or alteration of a nonconforming use or structure shall be reviewed according to Section 2.060(A)(9) and limited to the applicable criteria below and Verification of Nonconforming Use in Section 13.050 above. Any other restorations or alterations shall conform to all of the criteria of this ordinance.

Maintenance, repair, alteration, restoration or replacement of a lawfully implemented or established dwelling in the Exclusive Farm Use or Forest Zone shall be governed by those zones and not be subject to the alteration language in Chapter 13. However, these dwellings will be subject to a Chapter 6 or 7 Variance Review if they cannot meet all of the provisions of the Wasco County Land Use and Development Ordinance, and must comply with all current health and safety ordinances including but not limited to Geologic Hazard Overlay (Section 3.750) Fire Safety Standards (Chapter 10) and Flood Damage

Prevention (Chapter 22).

A. Restoration or Replacement of a Nonconforming Structure Destroyed by Fire, Other Casualty or Disaster: If a nonconforming structure or a structure containing a nonconforming use is destroyed by fire, other casualty or natural disaster, restoration or replacement shall be permitted subject to the following criteria:

1. Time Limitation: An application is received within twelve (12) months from the occurrence of the fire, casualty or natural disaster. The application shall include official documentation establishing the date of the fire, casualty, or natural disaster. If an application is not received within twelve (12) months from the occurrence, the nonconforming use shall be considered discontinued.

2. Size: The restoration of a nonconforming building or structure may not increase the floor area or create a greater nonconformance than existed at the time of damage or destruction. Any changes in height, additions of attics basements, decks or elements that were not part of the original structure beyond what is necessary to comply with current building code or building industry standards shall be considered an alteration.

3. Location: The restoration shall be sited on the same footprint as the original structure. However, if the applicant wishes to change the location to better comply with current setback, buffer or health and safety standards, the restoration will be allowed to be relocated the minimum distance necessary to achieve this goal. Any relocation beyond the minimum distance necessary shall be considered an alteration.

4. Health & Safety: The restoration shall comply with all current health and safety ordinances including but not limited to Geologic Hazard Overlay (Section 3.750) Fire Safety Standards (Chapter 10) and Flood Damage Prevention (Chapter 22).

B. Alteration of a nonconforming use to Comply with State or Local Health or Safety Requirements: No conditions shall be placed upon the continuation or alteration of a nonconforming use when necessary to comply with state or local health or safety requirements, or to maintain in good repair the existing structures associated with the use.

Proof of compliance with health or safety requirements or the necessity to maintain in good repair existing structures associated with the use shall be submitted with the application.

C. Alteration of a nonconforming use including but not limited to any combination of the following:

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-Replacing a structure not damaged or destroyed by fire, other casualty or disaster;

-Expanding a structure beyond its current size;

-Relocating a structure to a different location on the same legal parcel;

1. Alteration will result in no greater adverse impact on the neighborhood or shall result in less of an adverse impact on the neighborhood considering the criteria listed below.

   a. Residential Uses Only

      (1) The nonconforming use is in compliance with all conditions or limitations associated with its creation or approval;

      (2) The comparative visual appearance between the existing nonconforming use and the proposed alteration;

      (3) The alteration shall not change the manner or purpose of the use;

      (4) The proposed alteration shall not result in greater nonconformity to property line setbacks or resource buffer requirements unless the alteration will extend a structure further away from and perpendicular to the property line or resource. Any proposal that would extend an existing structure further toward the property line or resource, or expand an existing structure parallel into a setback or buffer shall also be subject to Chapters 6 & 7, Variances and any other applicable review criteria;

      (5) Relocation shall result in conformity with all property line setbacks and resource buffer requirements unless there is no other location on the property that could comply with all setback and buffer requirements and the relocation would remove the structure from an undesirable location according to the Wasco County Land Use and Development Ordinance such as a water buffer or floodplain. If the relocation cannot conform to all setback and buffer requirements the application shall also be subject to Chapters 6 & 7, Variances and any other applicable review criteria;

      (6) The alteration must be consistent with Health and Safety Regulations including but not limited to Geologic Hazard Overlay (Section 3.750) Fire Safety Standards (Chapter 10) and Flood Damage Prevention (Chapter 22);

      (7) Other factors which impact the character or needs of the neighborhood;

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b. Non-Residential Nonconforming Uses Only

(1) Criteria (1) – (7) in subsection a. above;

(2) The alteration will result in an overall reduction in adverse impacts to the neighborhood. Each application for alteration will include an analysis of the current adverse impacts to the neighborhood utilizing a – b below, and how the alteration reduces the total of the adverse impacts. An increase in one individual adverse impact may be offset by reductions in others as to effect a total reduction in adverse impacts;

(a) An evaluation of the character and history of the use, its relationship to development in the neighborhood and how the alteration would affect this;

(b) The comparable degree of noise, light, vibration, dust, odor, fumes, glare or smoke detectable within the neighborhood between the existing nonconforming use and the proposed alteration;

(c) The comparative impact to public facilities and services including but not limited to: roads, fire and police protection, sewer and water facilities, telephone and electrical service, or solid waste disposal facilities between the existing nonconforming use and the proposed alteration;

(d) The comparative amount and nature of outside storage, loading and parking between the existing nonconforming use and the proposed alteration;

(e) The comparative hours of operation between the existing nonconforming use and the proposed alteration;

(f) The comparative effect on identified natural resources between the existing nonconforming use and the proposed alteration; and

(g) The comparative effect on water quality, quantity or drainage in the neighborhood between the existing nonconforming use and the proposed alteration.

2. The Planning Director may impose conditions of approval on any alteration of a nonconforming use, structure(s) or other physical improvements permitted under this section when deemed necessary to ensure the mitigation of any adverse impacts. Such conditions could include but are not limited to:

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a. Special yards and spaces.

b. Fences and walls.

c. Special parking and/or loading provisions.

d. Street dedication and improvements.

e. Control of points of vehicular ingress and egress.

f. Special provisions for signs.

g. Landscaping and maintenance of grounds.

h. Control of noise, light, vibration, dust, odor, fumes, glare, smoke, or other similar nuisances.

i. Limitation of time for certain activities.

j. A time period in which a proposed use shall be developed.

k. A limit of total duration of use.

SECTION 13.070 Vested Right

Pursuant to ORS 215.427, if an application was complete when first submitted or the applicant submits additional information, as described in ORS 215.427(2), within 180 days of the date the application was first submitted, approval or denial of the application shall be based upon the standards and criteria that were applicable at the time the application was first submitted.

SECTION 13.080 Consolidation of Undeveloped Subdivisions

A. A unit of land shall be consolidated with adjacent lands in the same ownership if the subdivision within which the unit of land is located is undeveloped pursuant to ORS chapter 92, Undeveloped Subdivisions.

B. No portion of a consolidated plat shall be considered a separate parcel solely because an existing property overlays, and possibly fragments, that consolidated subdivision.

C. Criterion A shall not be applied to consolidate two or more units of land where each unit of land is developed with a dwelling that qualifies as an existing use. One or

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more undeveloped units of land shall be consolidated with one or more developed units of land.

D. Lots shall be consolidated through the process outlined in ORS Chapter 92, Undeveloped Subdivisions, or through a Replat process as outlined in Chapter 21.

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