IN THE COUNTY COURT OF THE STATE OF OREGON

IN AND FOR THE COUNTY OF WASCO

FILED
WASCO COUNTY
2003 SEP 12 P 3:15
LAUREN LEGRETON COATS
COUNTY CLERK
By

IN THE MATTER OF THE ADOPTION OF AN AMENDED ORDINANCE PROVIDING PROTECTION FOR GENERALLY ACCEPTED FARMING AND FORESTRY PRACTICES AND ESTABLISHING A COMPLAINT MEDIATION PROCESS.	AMENDED ORDINANCE

RECEIVED
SEP 23 2003
By

THE WASCO COUNTY COURT ORDAINS AS FOLLOWS:

Section 1. SHORT TITLE. This Ordinance may be cited as the Wasco County Farming and Forestry Practices Protection and Complaint Mediation Ordinance.

Section 2. PURPOSE.

(1) Wasco County recognizes that complaints about farming and forestry practices will sometimes occur because these practices create odors, smoke, dust and noise and there is a close proximity of agricultural and forest lands to expanding urban and rural residential development.

(2) Wasco County recognizes that all resource use complaints have the potential of requiring immediate shutdowns or interruptions of farming and forestry practices which could result in significant economic consequences for resource users.

(3) The purpose of this Ordinance is therefore to provide a rapid complaint response and mediation process for resource use complaints by Wasco County residents in order to protect farming and forestry operations to the greatest extent possible from immediate shutdowns or interruptions.

Section 3. DEFINITIONS. As used in this Ordinance:

(1) "FACILITY" means any real or personal property, including appurtenances thereto and fixtures thereon, associated with a given use.

(2) "FARMING PRACTICE" means the cultivation, growing, harvesting, processing or selling of plants or animals of any kind, which lawfully may be grown, possessed and sold, including but not limited to fish, livestock, poultry, grapes, cherries, apples, pears, wheat, barley, Christmas trees and nursery stock.

(3) "FORESTRY PRACTICE" means any operation conducted on or pertaining to forest land, including but not limited to:

(a) Reforestation of forest land;

(b) Road construction and maintenance;

(c) Harvesting of forest tree species;

(d) Application of chemicals; and

(e) Disposal of slash.

(4) "NONRESOURCE USE" means any facility, activity or other use of land which does not constitute a resource use, including but not limited to residential use.

(5) "RESOURCE USE" means any current or future generally accepted farming or forestry practice or facility conducted in compliance with applicable Wasco County Ordinances and Federal and State laws.

(6) "RESOURCE USE NUISANCE" means any current or future generally accepted farming or forestry practice or facility conducted in

compliance with applicable Wasco County Ordinances and Federal and State laws, which may be considered offensive, annoying, or interferes with or otherwise affects the urban and rural residents of Wasco County.

(7) "RESOURCE USE" does not include:

(a) Any unlawful act;

(b) The willful growing of infested, infected or diseased plants or animals;

(c) Trespass which involves actual physical intrusion onto the property of another by a person or by a person's animals;

(8) "DESIGNEE" means a Case Developer, appointed by the Six Rivers Community Mediation Services Director.

(9) "COMPLAINT MEDIATION PROCESS"

(a) Means a procedure established by the Wasco County Court to provide a forum for the mediation of Wasco County residents complaints regarding farming or forestry practices or facilities, including, but not limited to: odors from domestic livestock operations; blowing smoke from heaters, smokers and slash burning; noise from machines, including those devices producing sounds designed for agricultural purposes in order to frighten predacious birds or animals away from agricultural crops; drift or contamination from chemical and fertilizer applications; hours of operation; and littering of County roads; and

(b) Shall consist of at least two (2) mediators, working cooperatively in a co-mediation role. Both mediators shall maintain a neutrality and confidentiality throughout and beyond the process. The Six Rivers Community Mediation Services Director or Designee shall serve as a consultant to the Complaint Mediation Process. Consultation may come prior to, during or after the actual mediation, as appropriate.

(10) "PEER REVIEW BOARD" is a Board appointed, as needed, by the Wasco County Court to advise the Six Rivers Community Mediation Services on whether a disputed resource use activity is a generally accepted farming or forest practice or facility. The Board shall consist of 5 persons who regularly are involved in a resource use within the County, at least 3 of whom are regularly involved in the same type of disputed resource use being heard through the Complaint Mediation Process.

Section 4. PROTECTING RESOURCE USES.

(1) Wasco County shall not support a resource use nuisance complaint or claim for relief by nonresource uses or any persons or property associated therewith unless the resource use complaint response and mediation procedure of Section 5 of this Ordinance has been utilized.

(2) This Section applies regardless of:

(a) The location of the purportedly affected nonresource use;

(b) Whether the nonresource use purportedly affected existed before or after the occurrence of the resource use;

(c) Whether the resource use or nonresource use has undergone any change or interruption; and

(d) Whether the resource use is inside or outside an urban growth boundary to the extent permissible under State law.

Section 5. RESOURCE USE COMPLAINT RESPONSE AND MEDIATION PROCEDURE.

(1) Initial resource use complaints involving farming or forestry practices or facilities shall:

(a) Be referred to the Six Rivers Community Mediation Services during regular operating hours or the Wasco County Sheriff's Office after hours and on weekends; and

(b) Be responded to as soon as possible.

(2) The responding Six Rivers Community Mediation Services Agent or Designee shall:

(a) Use Six Rivers Community Mediation Services' procedures to respond to a complaint;

(b) Notify the Wasco County Court about the documented complaint as soon as possible and report on the effort and/or success in resolving the complaint.

(3) If the initial contact is through the Wasco County Sheriff's Department, or any other law enforcement agency, the responding officer should:

/////

(a) Contact the complainant and document the complaint; and

(b) Encourage the complainant to call or meet with the resource user and attempt a one-on-one resolution of the complaint; and

(c) Provide both complainant and resource user with written documentation of the complaint, including, but not limited to the name and address of complainant, the name and address of the resource user, and a description of the nature of the complaint; and

(d) Inform both parties that the complaint will be referred to Six Rivers Community Mediation Services and that they will be contacted by that agency; and

(e) Deliver a copy of the complaint to the Six Rivers Community Mediation Services as soon as possible.

(4) If the complainant and resource user that are principles in a documented resource use complaint within Wasco County request assistance beyond that provided by the Case Developer, the Case Developer shall implement the Complaint Mediation Process.

(5) The Complaint Mediation Process shall:

(a) Set a date to hear the complaint from both complainant and resource user within a reasonable amount of time; and

(b) Work with both complainant and resource user in an attempt to resolve the complaint.

/////

(6) The Complaint Mediation Process may:

(a) Request the Wasco County Court to set up a Peer Review Board for assistance in determining whether an activity or facility is a generally accepted farming or forestry practice or facility;

(b) Suggest recommendations for Peer Review Board members to the Wasco County Court; and

(c) Meet with the complainant and resource user any number of times if the Mediators determine that progress is being made toward a resolution of the complaint.

(7) If the Complaint Mediation Process is unable to resolve the complaint, the complainant and resource user shall be advised by the Six Rivers Community Mediation Services of their additional options including, but not limited to, seeking advice from private counsel.

Section 6. LAND USE DECISIONS. The fact that Wasco County's Comprehensive Plan, Zoning Ordinances and land use decisions allow the siting, development or support of any particular use does not negate the provisions of this Ordinance intended to protect a resource use.

Section 7. EFFECT ON OTHER REMEDIES. The provisions of this Ordinance shall not impair the right of any Wasco County resident to pursue any remedy authorized by applicable Wasco County Ordinances or Federal and State laws that:

/////

(1) Concerns matters other than a resource use nuisance;

(2) Does not expressly purport to prohibit or regulate a farming or forestry practice as a resource use nuisance; or

(3) Prohibits or regulates the use or physical condition of resource use activities or facilities that adversely affect public health or safety.

Section 8. SEVERABILITY CLAUSE. If any portion of this Ordinance is held invalid by a Court of competent jurisdiction, such decision shall apply only with respect to the specific portion held invalid by the decision. It is the intent of Wasco County that the remaining portions of this Ordinance continue in full force and effect.

Section 9. EMERGENCY CLAUSE. This Ordinance being immediately necessary for the preservation of the public well being, an emergency is declared to exist and this Ordinance shall take effect immediately upon adoption.

Regularly passed and adopted by the unanimous vote of all members of the County Court of the County of Wasco, State of Oregon, present on this day.

/////

/////

/////

/////

/////

/////

DONE AND DATED this 3rd day of September, 2003

WASCO COUNTY COURT

Dan Ericksen, County Judge

Scott McKay, County Commissioner

Sherry Holliday, County Commissioner

APPROVED AS TO FORM:

Eric J. Nisley
Wasco County District Attorney