REQUEST: Amendments to the Coos County Zoning and Land Development Ordinance

STAFF CONTACT: Jill Rolfe, Planning Director

REVIEWING BODY: Coos County Board of Commissioners

SECTION 1.2.100. Amendment of Text Only. An amendment to the text of this ordinance or the comprehensive plan is a legislative act within the authority of the Board of Commissioners. [OR 04 12 013PL 2/09/05]

SECTION 1.2.200 Who May Seek Change. A text amendment may be initiated by the Board of Commissioners, Planning Commission or by application of a property owner or their authorized agent. An application by a property owner shall be accompanied by the required fee. [OR 04 12 013PL 2/09/05] Text amendments initiated by the Board of Commissioners shall comply with ORS 215.110(2). This requires the Planning Commission to make a recommendation to the Board of Commissioners.

SECTION 1.2.300 Alteration of a Recommended Amendment by the Planning Director. The Planning Director may recommend an alteration of a proposed amendment if, in the director's judgment, such an alteration would result in better conformity with any applicable criteria. The Planning Director shall submit such recommendations for an alteration to the Hearings Body prior to the scheduled public hearing for a determination whether the proposed amendment should be so altered.

SECTION 1.2.650 Status of Hearings Body Recommendations to the Board of Commissioners. A Hearings Body recommendation for approval or approval with conditions shall not in itself amend this Ordinance or constitute a final decision.

I. BACKGROUND

These changes are part of a work program that was put together by Staff and initiated by the Board of Commissioners. Staff has been working on needed changes to the ordinances since July of 2013. The first sets of changes were adopted on May 3, 2014. This is the second set of changes in the work program. Grant money was obtained through DLCD to make some of the changes. The changes have been requested from decision makers, public and Staff who are responsible for implementing the ordinances. The goal is to streamline the process (when possible), address readability, include uses that have not been listed, and update outdated language.
The draft language was completed and reviewed through work sessions with the Citizen Advisory Committee, the Planning Commission and the Board of Commissioners; Staff provided a 35-day post acknowledgment plan amendment (PAPA) notice to Department of Land Conservation and Development (DLCD). This notice is required 35 days prior to the first evidentiary hearing.

Staff was required to provide notice to all property owners that may be affected by the change, and this notice is referred to as a Measure 56 notice. In 1998, Oregon voters passed a law known as Ballot Measure 56. It requires that notices be mailed to landowners when a change in land-use laws might limit uses of their property. The law requires certain language to be used in the notices but that wording does not describe the likely effects from the change in land-use laws. Receiving this notice does not mean the changes affect anyone’s property or property value. The changes proposed are not authorizing any type of development or use of anyone's property. This notice was mailed as required by CCZLDO § 5.0.900. Notice was also published in the world. However, the notice did list the wrong publishing date. The notice was published on September 22, 2014 and again on October 6, 2014 (10 days prior to each hearing) in the World Newspaper.

II. PROPOSAL

This amendment only covers chapter 5 which is administration, application requirements and some supplemental provisions that would apply to all:

- Chapter V – Administration
  - § 5.0.150 Application requirements have been changed to require either two paper copies or one paper copy and one electronic copy.
  - § 5.0.175 Application made by transportation agencies, utilities or entities. This section was moved from § 5.2 and has been expanded to include utilities and entities. The section includes an explanation of how it applies to current and future applications.
  - § 5.0.200 Application Completeness has been changed to conform to state law.
  - § 5.0.250 timetable for final decisions has removed the last paragraph to be consistent with state law.
  - § 5.0.600 has been expanded to include the Board’s ability to hire a hearing officer.
  - § 5.0.700 was moved to Article 5.2.
  - Article 5.1 was moved from Article 1.2 to have all procedure concerning amendments.
  - § 5.2.250 was moved to Article 5.0.
  - § 5.2.500 removes the table reference.
  - § 5.2.600 was corrected to be in compliance with state law and to clarify the language.
  - § 5.3.200 Variances subsection 5 was added to clarify applicability of variance standards.
  - § 5.3.360 was included to address expiration and extension of variances.
  - Article 5.4 Vested Right was moved from Chapter I with no change to the language.
  - Article 5.5 Temporary Permits –
    - § 5.5.100 Temporary uses was moved from Chapter III and clarified.
    - § 5.5.200 Temporary events have been added.
    - § 5.5.300 Temporary Structures, Activities or Uses has been added.
  - Article 5.6 Nonconforming uses – This was updated to be in compliance with state law.
  - Article 5.7 Public Hearing Procedures – Modifications to presentations of testimony and representatives.
  - Article 5.8 Appeal Requirements – Modification to procedures.
  - Article 5.9 Compliance Determinations – This section is new and has been created for reviews that have standards that may be appealed. This article has been divided into two sections: (1) balance of County compliance determination; (2) Estuary compliance determinations.
  - Article 5.10 Zoning compliance letters. This was moved from Chapter III with some minor modification to account for the sanitation and what type of structures or structural remodels that do not require a zoning compliance letter.
There have been two comments received in opposition to the changes.

Ms. Lynch
A letter was submitted by Ms. Joan Lynch in regards to § 5.0.175. The changes in this section expand the section to include utility companies and entities. The reason that this provision was put into place for transportation agencies was to allow an approval for the use prior to obtaining property. If they obtained the property and then the use was denied the property would be left vacant. Nothing in this section relieves any transportation agencies, utilities or entities from the obligation of meeting the applicable land use criteria or going through the steps to legally obtain property. I have reviewed the law Ms. Lynch cites and there is nothing in the law that is inconsistent with the changes. Ms. Lynch cites Chapter 195 Just Compensation but fails to explain how this is a violation of that section. Just compensation is a provision that provides for compensation based on the reduction in the fair market value of the property resulting from the land use regulation. This applies to removal or prevention through land use law of a property owner to use the property for residential use or a farming or forest practice. There is a process to go through for this claim and anyone can use this process for any land use law that has come into play after June 28, 2007.

Ms. Lynch also states that there is no provision for what happens if the property owner refuses consent. If consent or ownership is not provided then the project cannot move forward. This wording can be added in if the Planning Commission finds that it makes the provision less confusing.

The county has no ulterior motives with these changes it did not make sense to limit this provision just to transportation companies. Again, the Planning Commission may chose to alter the language in a recommendation to the Board of Commissioners.

Ms. McCaffree
The letter received is from Jody McCaffree and the first issue raised was a request for a 120 day review and comment period concerning proposed Coos County Zoning and Land Development Ordinance Changes.

Staff Response: The notice provided changes and the reason was given that these changes are part of a work program that was put together by Staff and initiated by the Board of Commissioners. Staff has been working on needed changes to the ordinances since July of 2013. The first sets of changes were adopted on May 3, 2014. This is the second set of changes in the work program. Grant money was obtained through DLCD to make some of the changes. The changes have been requested from decision makers, public and Staff who are responsible for implementing the ordinances. The goal is to streamline the process (when possible), address readability, include uses that have not been listed, and update outdated language.

Staff is perplexed by Ms. McCaffree’s statements as some of these changes are a direct result of her objections, such as, the addition of the airport standards. All groups with which we have an agreement to provide notices were provided notices. I have only one citizen request on file for Planning Commission meeting notifications and he was notified. As explained in the last legislative meeting if notice is requested in writing then notice will be provided. Ms. McCaffree was receiving updates and ordinances drafts up until July 18, 2014 because she was part of the Citizen Advisory Committee. She did send notification on May 13, 2014 that she agreed that the ordinance was in need of updates but at that point was finding it harder and harder to stay on top of the changes. She expressed her need to step down from the committee. She also expressed that citizens should be heavily involved in this process even beyond the Citizens Committee. I agree but unfortunately citizen participation is hard to achieve. The fact is that we have been working on these changes for about a year and all the meetings have been open to the
public (Citizen Advisory, Planning Commission and Board of Commission). Measure 56 notice was provided to all property owners within the county using the current assessment records twenty days prior to the hearing. The meetings have been published in the newspaper and all drafts have been available online. We have had several people call or come by to review the changes. The notice provided sets out the changes.

The grant money obtained for the proposal has a deadline of October 30 and the Planning Commission is under no obligation to provide addition time, especially 120 days, for additional review time. She may request an extension from the Board of Commissioners but again there is no obligation to grant it.

The next issues raised by Ms. McCaffree was her request for state wide planning goals, OAR’s and ORS’s supporting and/or driving ordinance changes.

**Staff Response:** The changes to the ordinance are a combination of requirements from the statewide planning goals, OAR’s and ORS’s as well as simplifying process and addressing readability issues. Most of the changes cite an OAR, ORS or Goal. However, the majority of changes are moving provisions and making them clear which is not driven by any law other than the public’s and the decision makes need to understand how to apply the applicable law. Staff has worked with legal counsel to ensure that the provisions are consistent. Ms. McCaffree is welcome to provide examples of which provisions are not consistent and she has been asked to do that throughout the process. She has failed to do so and staff cannot provide answers to her questions when they are not specific enough to address. Making blanket statements is not helpful to the process. She makes allegations that prior changes were not in alignment with State or Federal law but again fails to show what was not in line with state law. She may disagree with changes but that is not a basis for not continuing to update an ordinance that has not gone through a major update since about 1999. Ms. McCaffree should also be aware that failure to provide statements or evidence sufficient to afford the decision makers an opportunity to respond to the issue precludes appeal to the Land Use Board of Appeals based on that issue.

The last issues raised were requesting access to the entire comprehensive plan before the 120 day review period.

**Staff Response:** All planning documents are available to citizens at the Coos County Planning Department copies can be obtained for a fee of $.50 per page. Anyone can view the documents or purchase copies. Copies of any portions of the plan that were involved in the changes were provided to citizen advisory. Staff is not proposing many changes to language at this point most of this is a reconfiguration. The major change is the airport which is consistent with state law and the intent of the ordinance. If Ms. McCaffree or these “other” citizens would like to view the ordinance then but public records law they may come in and view it. There is nothing that substantiates the allegation that she or anyone else has been denied access.

As a side note, Ms. McCaffree may submit her own application to make changes she feels are necessary to the plan and/or ordinance. It requires an application and a fee.

Ms. McCaffree cites ordinance provisions as a basis for her argument but fails again to explain the relevance to any of the proposed changes.

The relationship between the plan and the ordinance is sometimes misunderstood:

- "Zoning" carries out, or "implements" the "plan"
- “The Plan” is the legal basis for “zoning” but does not include specific regulations to implement the plan. The plan sets goals and plans for the future land use needs for the county.

Therefore, specific “zoning” measures must, by law, conform to the general “plan” provisions. Again most of the proposed changes are a reformat of the ordinance and in no way changes the implementation of the plan. The other changes are to reflect areas of the implementing language that was out of compliance with state law such as references that were that were incorrectly cited to state
law, addressing changes to state law or uses that had not be added to the zoning districts that are allowed by state law. The new uses are consistent with the zoning.

The plan is in need of updates and funding has always been an issue. Staff has to apply for grants or alternative funding in order to make necessary updates. Ms. McCaffree sometimes disagrees with the type of updates or questions why one provision is updated and another is not, but most of that is driven by staffing and funding reasons. Again, she is more than welcome to provide an application or provide help in the form of citing specific law but blanket statements and allegations are not productive.

The proposed changes are shown with strike out for removal of language and bold for new language.

COOS COUNTY PLANNING DEPARTMENT

Jill Rolfe, Planning Director

Attachments: “A” Proposed Changes
“B” Comments received

EC: County Counsel
   Dave Perry, DLCD