



STAFF REPORT

Coos County Planning
60 E. Second
Coquille, OR 97423
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Phone: 541-396-7770

I. MATTER DETAILS – AGENDA ITEM IV. C

FILE NUMBERS: AM-21-006

APPLICANT: Coos County

STAFF CONTACT(S): Amy Dibble, Planner II Jill Rolfe, Planning Director
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SUMMARY PROPOSAL: This is a legislative change to the Coos County Zoning and Land Development Ordinance to comply with 2019 House Bill 2225 for Template Dwelling, Updates Forest Standards, Land Divisions in Forest, Property Line adjustments process and the required number of Planning Commissioners.

PUBLIC HEARING: The time and place for the Coos County Planning Commission to review this matter in a public hearing is December 2, 2021, at 7:00 P.M. in the Owen Building, 201 N. Adams Street, Coquille Oregon

APPLICABLE IDENTIFIED REVIEW CRITERIA:

- a. *Coos County Zoning and Land Development Ordinance (CCZLDO), Article 5.1 Plan Amendments and Rezones*
 - i. *Section 5.1.100 Legislative Amendments to Text Only*
 - ii. *Section 5.1.120 Procedure For Legislative Amendments*
 - iii. *Section 5.1.135 Status of Hearings Body Recommendations to the Board of Commissioners*

HEARING PROCESS AND PROCEDURES: There are four ways to participate in this matter by phone; virtually; in person or in writing.

- i. **Virtual or by phone:** This option is only available during the time and date the hearing is scheduled. To participate there GoToMeeting or by phone please provide an email to planning@co.coos.or.us with your name, address, email and phone number for the record and in case there is any technical difficulty.

Planning Commission Meeting

Planning Commission

Thu, Dec 2, 2021 7:00 PM - 10:00 PM (PST)

Please join my meeting from your computer, tablet or smartphone.

<https://global.gotomeeting.com/join/588742533>

You can also dial in using your phone.

United States: [+1 \(646\) 749-3122](tel:+16467493122)

Access Code: 588-742-533

- ii. **In Person:** The meeting can be attended in person at the time and date scheduled. All participants are required to follow COVID restrictions that are applicable at the time of the hearing. The meeting will be held in the Owen Building Large Conference Room 201 N. Adams Street, Coquille OR 97423. If you require assistance to participate in the meeting, please provide 48 hours' notice to the Planning Staff to accommodate the request. planning@co.coos.or.us or 541-396-7770.

iii. **In Writing: Testimony shall be submitted by the deadline provided at the hearing or the close of the record in the forms described below.**

a. **Submission of Written Testimony:** Written testimony and evidenced provided by participants that will not be attending shall be received no later than 5 pm on the day of the hearing. Although it is encouraged to submit the information well in advance to provide the Hearings Body a chance for an in depth review. Written testimony and evidence shall be mailed to 225 N. Adams, Coquille, OR 97423, dropped off at the planning office at 60 E. Second Street, Coquille or emailed to planning@co.coos.or.us. If the testimony is not received by the 5 pm deadline it will need to be submitted in person at the hearing or it will not be considered. **Please review the additional information regarding submission of written evidence.**

b. **Submission of Written Evidence**

- Petitions: Any party may submit a petition into the record as evidence. The petition shall be considered as written testimony of the party who submitted the petition. A petition shall not be considered to be written testimony of any individual signer. To have standing, a person must participate orally at the hearing or submit other individual written comments. Anonymous petitions or petitions that do not otherwise identify the party submitting the petition shall not be accepted as evidence.
- Required Number of Copies: Submission of written materials for consideration shall be provided in the form one original hard copy and one exact copy or one original hard copy and one electronic copy. The County may, at its sole discretion, reject any materials that do not contain the requisite number of copies. It may be requested that the County make the requisite number of copies subject to the submitter paying the applicable copy charges.
- E-mail testimony may be submitted; however, it is the responsibility of the person submitting the testimony to verify it has been received by Planning Staff by the applicable Deadline.
- All written testimony must contain the name of the person(s) submitting it and current mailing address for mailing of notice.
- The applicant bears the burden of proof that all the applicable criteria have been met; however, in the case of an appeal, the appellant bears the burden of proving the basis for the appeal, such as procedural error or that applicable criteria have not in fact been met. [Amended OR 08-09-009PL 5/13/09]

iv. **General Meeting Procedure:** The Planning Commission will start the meeting at 7:00 pm unless otherwise noticed. There will be introductions of the Commissioners and Staff, Approval of Minutes if available and Request for any comments from the public on matters not related to the formal hearings scheduled or pending land use matters prior to opening the hearing. Upon opening the public hearing portion of the meeting, the Planning Staff or County Counsel will provide the procedural rules.

Once this is complete staff will present the matter and criteria and provide the Planning Commission an opportunity to ask any questions about staff's presentation or material that have been provided.

The Oral testimony will begin:

- a. Applicant's presentation (20 minutes)
- b. Proponents of the application (3 to 5 minutes)
- c. Opponents of the application (3 to 5 minutes)
- d. Rebuttal or closing by the applicant. (3 to 5 minutes)

Tips for providing effective testimony¹

- a. State your name and address for the record.
 - b. Begin by saying you support or oppose a particular agenda item, and briefly explain why.
 - c. Use facts to verify your statements.
 - d. Describe how this issue affects you personally, what you suggest as a solution and then summarize your testimony.
 - e. Be sure to tell the reviewing body exactly what you wish them to do. If you are opposing, your testimony should discuss why the proposal is inconsistent with the controlling law, rules or ordinances.
 - f. Do not repeat yourself or get off-topic; keep your argument concise
- v. **Notice Requirement:** This application is an Ordinance Amendment governed by CCZLDO Section 5.0.900.4. The notice of Post Acknowledge Plan Amendment notice was provided 35 days prior to the Planning Commission meeting to meet the requirements of ORS 197.610. The hearing notice was published in accordance with ORS 197.732.

Notice was mailed to property owners potentially affected by the change under the Measure 56 requirement. In 1998, Oregon voters passed a law known as Ballot Measure 56. It requires that local governments mail notices to landowners when a change in land-use laws might limit uses of property. The law requires certain language to be used in the notices, but that wording doesn't describe the likely effects from the change in land-use laws.

vi. **Comments:**

- a. **Public Agency:** There has been no public agency comment received on this proposal.
- b. **Public Comment:** There have been questions about the change to the "Template Dwelling" criteria but there has been no official comment submitted.

II. STAFF REPORT – WITH RECOMENDATOINS AND PROPOSED FINDINGS

APPLICABLE IDENTIFIED REVIEW CRITERIA:

- i. Article 5.1 100 Legislative Amendments 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]
- ii. Section 5.1.120 Procedure for Legislative Amendments

The Board of Commissioners shall conduct one or more public hearings with 10 days advance published notice of each of the hearings. The public notice shall state the time and place of the hearing and contain a statement describing the general subject matter of the ordinance under consideration. (ORS 215.060 & ORS 215.223). Notice to DLCD shall be provided 35 days prior to the initial hearing per ORS 197.610. Notice of adoption is subject to ORS 197.615. [OR 04 12 013PL 2/09/05]

- iii. Section 5.1.135 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.

¹https://www.co.coos.or.us/sites/default/files/fileattachments/planning/page/13051/tesify_at_land_hearing_brochure.pdf

STAFF FINDINGS: This proposal covers three sections of the Coos County Zoning and Land Development Ordinance.

- **Section 4.6.110 Uses Authorized in Forest Zones**

The first set of changes is to update the “Template Dwelling” criteria to be consistent with legislative changes from 2019 Oregon House Bill 2225. This only applies to Forest and not to other zoning districts. The change in summary: Defines "center of the subject tract" as the mathematical centroid of the tract for siting certain permissible forest dwellings.

Adds the following requirements for a proposed dwelling:

- (1) the lot or parcel on which the dwelling will be sited was lawfully established;
- (2) any property line adjustment complied with property line adjustment provisions in replatting statutes;
- (3) any property line adjustment after January 1, 2019 did not have the effect of qualifying the lot or parcel for a dwelling under this statute; and
- (4) if the lot or parcel on which the dwelling will be sited was part of a tract on January 1, 2019, no dwelling existed on the tract on that date, and no dwelling exists or has been approved on another lot or parcel that was part of the tract.

Authorizes a county, prior to November 1, 2023, to allow establishment of a single-family dwelling on a lot or parcel that was part of a tract on January 1, 2021 if: no more than one other dwelling exists or has been approved on another lot or parcel that was part of the tract and the lot or parcel qualifies for a dwelling, notwithstanding provision prohibiting a proposed dwelling if a dwelling existed on the tract on that date or any other dwelling exists or has been approved on another lot or parcel that is part of the tract.

While making changes to the Forest provisions to comply with the HB 2225 Staff reviewed other Forest Standards based on the statutory and rule requirements to ensure there weren't other requirements. Staff found that duplicated language for Forest and Fire Siting Standards. These were repeated in 4.6.120(9)(C) and 4.6.140 Development and Siting Standards. Land divisions were split in two different areas and this proposal combines them into one section and follows what are related under both statute and rule. The land divisions related to Forestlands can be found in Section 4.6.145 along with necessary clarifications on minimum lot and parcel sizes Section 4.6.150.

Throughout the text staff used color coding to help the reader find their way through the regulations. This is not necessarily a legislative amendment, but staff wanted to make these changes at one time. While going through the Statute and Rule language staff did find the following missing items:

- Section 4.6.120(2)(d) Auxiliary Uses; and
- 4.6.120(6) Compliance with Other Regulations

These have been added in for consistency.

- **Article 6.3 Property Line Adjustment**

Based on the *Bowerman v. Lane County* (LUBA 2016008;A164236)

In this decision the Court of Appeals made a distinction between a single property line adjustment and a multiple line adjustment in which discretion would apply.

The first review the county must have non-discretionary standards. Staff has revamped this section to include the mapping requirements and criteria that creates the two pathways to review property line adjustments. Staff did reference Lane County's Ordinance to ensure compliance with the Court of Appeals decision.

SECTION 6.3.100 PROPERTY LINE ADJUSTMENTS:

As set forth in ORS 92.190(3), the common boundary line between ~~lots or parcels~~ lawfully created units of land may be adjusted in accordance with this section without the replatting procedures in ORS 92.180 and 92.185 or the vacation procedures in ORS Ch. 368. Once a ~~lot or parcel~~ boundary line has been adjusted, the adjusted line shall be the boundary or property line, not the original line. ~~The Director has authority to approve a line adjustment as an Administrative Action, unless the application is required to correct an encroachment. In that circumstance the only applicable criteria is Sections 6.3.125.1, 6.3.150 and 6.3.175. Encroachments do not require notice~~

The criteria for property line adjustments will set when an Administrative or Ministerial Action is required. All notice requirements will follow process in Article 5.0.

Proposed new and rearranged language:

1. General.

- a. No person may relocate all or a portion of a property line without review and approval of a property line adjustment application.*
- b. Tax lot boundaries do not necessarily represent property boundaries. Tax lot boundaries are established by the County Assessment for purposes of assessment and taxation. Tax lots may or may not coincide with legal property boundaries. Only boundaries of lawfully established units of land can be adjusted through the provisions of this chapter.*
- c. A line adjustment is permitted only where an additional unit of land is not created; and*
- d. A property line adjustment involving a parcel authorized by a Measure 49 waiver cannot increase parcels larger than:
 - i. Two acres if on high value farmland, high value forestland, or within a ground water restricted area; or*
 - ii. Five acres if not on high value farm or forest land; unless*
 - iii. The property increasing in size is the remainder parcel and is already larger than the two or five acre maximum parcel size.**

2. Submittal Requirements: An application for a line adjustment or elimination shall be filed by the owners of all units of land affected. The application shall be accompanied by an appropriate fee and contain the following information:

- a. A property line adjustment must include a tentative map drawn on 8 ½" x 11" or 11" x 17" size paper. The map shall contain the following information:
 - i. North arrow and Scale – The property boundaries and any other required detail shall be provided to scale.*
 - ii. Existing and proposed property line dimensions and size in square feet or acres of the lawfully established units of land that are subject of the application. The existing and proposed property configurations will be shown on separate sheets of paper as before and after maps and shall contain acreage before an after adjustments.*
 - iii. Identification, size, and dimensions of the area(s) proposed to be adjusted from one property to the other.*
 - iv. Roads abutting and located within the subject properties, including names and road right-of-way or easement widths, and labeled as either public or private.**

- v. *Location of on-site wastewater treatment systems or name of sanitary sewer district. This includes drain field and repair areas. All on-site wastewater improvements are to remain on the same unit of land as the structure it is serving.*
 - vi. *Easements, shown with dimensions, type, labeled as existing or proposed, and specifically noting to whom they benefit*
 - vii. *Existing structures and the distance from each structure to the existing and proposed property lines. Setbacks for all structures within 50 feet of the proposed property line (130 feet if property is zoned Forest or Forest Mixed Use) must be verified on a site plan prepared and stamped by an Oregon registered professional land surveyor. If no structures exist within the specified area, the surveyor can submit a stamped letter so stating.*
- b. *A preliminary title report or title search for each property, to determine ownership and any recorded deed restrictions.*
 - c. *Evidence to show that the units of land are lawfully created pursuant to Section 6.1 Lawfully Created. If the conformance of the unit of land is unknown, then a Lawfully Created Determination application will be required either prior or in conjunction with a property line adjustment application. If a Lawfully Created Unit of Land Determination is required, then this will be treated as an Administrative Action.*
 - d. *Upon completion of the Property Line Adjustment Review the mapping and filing requirements of Section 6.3.157 shall be followed.*
3. *General Criteria - A Property Line Adjustment requires application pursuant to Ministerial Application (Type I) procedures according to Article 5.0, unless otherwise specified by this section. An application for multiple property line adjustments can be made under one application, so long as the deeds are recorded in the correct sequence. All property line adjustments are subject to the following standards and criteria, unless previously stated in this section:*
- a. *The property line adjustment cannot:*
 - i. *Create an additional unit of land; or*
 - ii. *Violate any applicable specific conditions of previous land use approvals or recorded deed restrictions. An example would be if parcels were required to meet a minimum acreage or have an accessory structure and adjustment would remove the primary use or structure.*
 - b. *All properties affected by the proposed adjustment are legal units of land unless this adjustment is to correct an improperly formed unit of land or to correct an encroachment issue.*
 - c. *A property line adjustment is subject to the minimum lot or parcel size standards of the applicable zoning district, except in the following circumstances:*
 - i. *One or both abutting properties are smaller than the minimum lot or parcel size for the applicable zone before the property line adjustment and, after the adjustment, one is as large or larger than the minimum lot or parcel size for the applicable zone; or*
 - ii. *Both abutting properties are smaller than the minimum lot or parcel size for the applicable zone before and after the property line adjustment.*
 - d. *Split-zoned properties: The adjustment will not create a split-zoned unit of land that does not comply with the standards for creation of a parcel in each zone unless the property owner provides for the recording of a restrictive covenant in the deed records for the subject property that prohibit the property from being partitioned along the zoning boundary until such time as each parcel would comply with the minimum standards for the creation of a unit of land (meeting the criteria for land division) in each zone. If a split-zone unit of land is created, it shall not be used to justify a rezone in the future.*

- e. *All required setback for the applicable zoning districts has been mapped as required and comply. An encroachment of existing or planned structures will not be created within required setbacks as a result of the line adjustment*
4. *Resource Zoned Properties: In addition to the General Criteria in subsection 3 the following additional criteria is required to be addressed.*
- a. *All property line adjustments that are less than 200 acres (before and after the property line adjustment) are subject to an Administrative Action (Type II Review). If there is no structural development on either unit of land and the purpose of the application is not to qualify for a dwelling then it can be reviewed as a Ministerial Action (Type I).*
 - b. *A property line adjustment cannot be used to:*
 - i. *Separate a temporary hardship dwelling, relative farm help dwelling, home occupation, or processing facility from the primary residential or other primary use without land use approval to change the accessory use to a primary use; or*
 - ii. *As prohibited by ORS 92.192(4)(a) through (c), in a manner that would:*
 - 1. *Decrease the size of a lawfully established unit of land that, before the relocation or elimination of the common property line, is smaller than the minimum lot or parcel size for the applicable zone and contains an existing dwelling or is approved for the construction of a dwelling, if another lawfully established unit of land affected by the property line adjustment would be increased to a size as large as or larger than the minimum lot or parcel size required to qualify the other affected lawfully established unit of land for a dwelling;*
 - 2. *Decrease the size of a lawfully established unit of land that contains an existing dwelling or is approved for construction of a dwelling to a size smaller than the minimum lot or parcel size, if another lawfully established unit of land affected by the property line adjustment would be increased to a size as large as or larger than the minimum lot or parcel size required to qualify the other affected lawfully established unit of land for a dwelling.*
 - 3. *Allow an area of land used to qualify a lawfully established unit of land for a dwelling based on an acreage standard to be used to qualify another lawfully established unit of land for a dwelling if the land use approval would be based on an acreage standard. Or*
 - 4. *Allow for change in configuration to qualify for a Forest Template Dwelling. The adjustment may require a template test prior and after any adjustments made after January 1, 2019 at the time a Forest Template Dwelling Application is received.*
5. *Property Line Adjustments that require an Administrative Action are subject to a twelve (12) day appeal period. If appealed, this will be treated as a Planning Director's decision and the procedures in Article 5.8 will be followed. A notice of the decision will be mailed to the applicant and to all neighborhood or community organizations recognized by the County and whose boundaries include the site. Notice of the decision will also be mailed to the owners of record of property on the most recent property tax assessment roll where such property is located:*
- a. *Within 100 feet of the exterior boundaries of the contiguous property ownership which is the subject of the notice if the subject property is wholly or in part within an urban growth boundary;*
 - b. *Within 250 feet of the exterior boundaries of the contiguous property ownership which is the subject of the notice if the subject property is outside an urban growth boundary and not within a farm or forest zone;*
 - c. *Within 750 feet of the exterior boundaries of the contiguous property ownership which is the subject of the notice if the subject property is within a farm or forest zone.*

Sections 6.3.150 and 6.3.175 are not proposed to change.

- Article 1.2 Planning Commission

The Planning Commission is a ~~nine~~ *seven* member board appointed by the Board of Commissioners to actively participate in the County's planning program. The Planning Commission serves as a hearings body on land use matters, as well as reviewing and making recommendations to the Board of Commissioners on new or amended provisions of the Comprehensive Plan or Land Use and Development Ordinance.

Staff is requesting to change the number of Planning Commissioners because staff is having trouble filling vacancies.

The Planning Commission is asked to make recommendations on the language that staff has proposed in this request. The recommendation will be reviewed by the Board of Commissioners at the time they review this proposal and make the final decision.

If there are any questions please contact staff.