

JOINT PUBLIC HEARING
COMMISSIONERS

T.A.

**SUPPLEMENTAL AGENDA COVER MEMO
AGENDA COVER MEMO
SUPPLEMENTAL INFORMATION**

DATE: July 20, 2009 (Date of Memo)
July 7, 2009 (Date of 1st Reading)
July 21, 2009 (Date of 2nd Reading/Hearing)

**TO: LANE COUNTY BOARD OF COMMISSIONERS &
LANE COUNTY PLANNING COMMISSIONERS**

DEPARTMENT: Public Works Department/Land Management Division

PRESENTED BY: Lindsey Eichner, Planner

AGENDA ITEM TITLE: ORDINANCE NO. 2-09. IN THE MATTER OF AMENDING CHAPTER 13 OF LANE CODE TO REVISE AND ADD DEFINITIONS AND PROVISIONS PERTAINING TO LAWFULLY ESTABLISHED UNITS OF LAND, PARTITIONING LAND, PROPERTY LINE ADJUSTMENTS, AND VALIDATION OF UNITS OF LAND (LC 13.010, 13.030, AND 13.450) (Planning File No. PA 09-5350).

I. SUPPLEMENTAL INFORMATION

Staff have received two letters commenting on proposed the Lane Code Chapter 13 Amendments and staff's Agenda Cover Memo. Both parties have asked that I forward them onto you prior to the hearing. I will be prepared at the Public Hearing on Tuesday to answer any questions you might have of me.

II. ATTACHMENTS

1. Comments from Anne Davies, dated July 14, 2009
2. Comments from Jim Just, Goal 1 Coalition, dated July 17, 2009

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EICHNER Lindsey A

From: Anne C. Davies [acdavies@qwest.net]
Sent: Tuesday, July 14, 2009 4:52 PM
To: EICHNER Lindsey A; Dan Terrell; Jim Just
Subject: Chapter 13 amendments

Follow Up Flag: Follow up
Flag Status: Completed

Lindsey--

Please forward these comments to the planning commission and board for next week's hearing.

I have spoken with Dan Terrell briefly in an attempt to come to some level of consensus on the Chapter 13 changes. Because neither of us had spent much focused time on the changes proposed by staff as of Tuesday mid-day, we were unable to prepare anything formal by the deadline set for comments to be included in the Board packet.

Probably the most problematic issue is the addition of a process for approving property line adjustments administratively. Staff proposed LC 13.450(3)(a). While we understand that there are some property line adjustments that are so straightforward that it might make sense to review them administratively, the problem arises in determining which of the property line adjustments would qualify for the administrative review process. Many property line adjustments that, at first blush, appear innocuous or straightforward, turn out to be anything but.

In discussions with Bill Kloos and Dan Terrell, they have expressed a desire to have certain property line adjustments between F-1 zoned properties qualify for administrative review. The rationale is that such property line adjustments would not and could not be intended to qualify a property for a dwelling because dwellings are not allowed on F-1 lands. We would consider a provision that allowed truncated review of such PLA's, but the proposed language allowing administrative review does not address that issue.

Second, the staff changes propose a new section dealing with the definition and application of replat procedures. Staff proposed LC 13.450(3)(c)(i). The first sentence of LC 13.450(3)(c)(i) appears to uniformly prohibit using property line adjustments to reconfigure lines within a platted, recorded partition or subdivision. The issue that we have with this change is that "minor amendments" as defined in the code, are processed administratively. The definition of a "minor amendment" has always been problematic and very likely sets forth a process of reviewing a "land use decision" administratively without providing for public participation. The proposed LC 13.450(3)(c)(i) language introduces a whole myriad of issues that I'm not sure the Planning Commission and Board is ready to tackle at this juncture. I would propose that this language be omitted.

Thank you in advance for your consideration of these comments.

Anne C. Davies

EICHNER Lindsey A

From: Jim Just [jjust@centurytel.net]
Sent: Friday, July 17, 2009 11:04 AM
To: EICHNER Lindsey A
Cc: Lisa Arkin; EMMONS ROBERT (LCOG List); Anne C. Davies; FLEENOR Bill A; DWYER Bill J; HANDY Rob M; SORENSON Pete; STEWART Faye H
Subject: Ch 13 amendments Ord 2-09
Follow Up Flag: Follow up
Flag Status: Completed
Attachments: Response to ch 13 Staff Report final.doc

Lindsey,

Goal One Coalition's letter is attached. Sorry it's so late, but it took me a while to get everything together.

Please see that it is distributed to all interested parties.

Thanks so much for all your help and your thoughtful and thorough work.

Jim Just, Executive Director
Goal One Coalition
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www.goal1.org

Goal One *is* Citizen Involvement

GOAL ONE COALITION



Goal One is Citizen Involvement

Lane County Planning Commission
Lane County Board of Commissioners
c/o Lindsey Eichner, Planner
125 East 8th Avenue
Eugene, OR 97401

July 17, 2009

RE: ORDINANCE NO. 2-09. IN THE MATTER OF AMENDING CHAPTER 13 OF LANE CODE TO REVISE AND ADD DEFINITIONS AND PROVISIONS PERTAINING TO LAWFULLY ESTABLISHED UNITS OF LAND, PARTITIONING LAND, PROPERTY LINE ADJUSTMENTS, AND VALIDATION OF UNITS OF LAND (LC 13.010, 13.030, AND 13.450) (Planning File No. PA 09-5350).

Dear Members of the Planning Commission and County Commissioners:

Goal One Coalition (Goal One) is a nonprofit organization whose mission is to protect and enhance the ability of Oregon citizens to participate effectively in Oregon's land use planning program and to make that program responsive to the twin challenges of energy and climate change.

The purpose of this letter is to respond to issues raised in the Staff Report dated June 22, 2009.

Goal One Coalition and LandWatch Lane County concur with staff's recommendation that the Board adopt Option 2: Adopt the proposed amendments with revisions determined by the Board after necessary additional readings.

Goal One Coalition and LandWatch Lane County greatly appreciate the efforts of staff in reviewing the proposed amendments.

I. Background

We believe a brief review of the background of the proposed amendments is helpful in understanding the context and importance.

Goal One Coalition and LandWatch Lane County participated in the Task Force referenced by staff in the Staff Report. The Task Force failed to reach consensus. After the Task Force completed its work and as a result of that work, Lane County amended LC 13.020. The county action adopting that code amendment was appealed to LUBA by LandWatch Lane County and Goal One Coalition in July, 2004. That LUBA appeal is still pending; the parties agreed to stay the appeal while efforts continue to reach an amicable settlement.

In June 2007, the Court of Appeals released its decision in *Phillips v. Polk County*, 213 Or App 498, 162 P3d 338 (2007). In that decision, the court held that property line adjustments which resulted in units of land smaller than the required minimum size for the applicable zone

violated ORS 215.780 and were unlawfully created. Consequently, most property line adjustments that had previously been done in resource zones in Lane County were not lawfully created and did not result in legal lots or parcels.

The legislature in the 2007 legislative session passed HB 2723, which authorized counties to retroactively ratify illegally created units of land if the units of land could have been lawfully created at the time. Lots or parcels unlawfully created after January 1, 2007 are not eligible for retroactive ratification.

By late 2007 the settlement efforts had stalled. In an effort to provide renewed impetus to the ongoing talks, Goal One Coalition and LandWatch Lane County mounted an “as applied” challenge to the current LC 13.020 by appealing a template dwelling approval raising the issue of LC 13.020 compliance with ORS chapter 92 and with HB 2723, which was enacted during the 2007 legislative session.

In the 2008 session and in response to the *Phillips* decision, the legislature passed HB 3629, which authorized counties to approve property line adjustments resulting in sub-minimum lots or parcels under specified circumstances.

In response to the LUBA appeal filed by Goal One Coalition and LandWatch Lane County, a meeting was convened between county counsel Steve Vorhes; a representative of the Land Management Division; representatives of the development community including attorneys Bill Kloos, Dan Terrell, and planning consultant Mike Evans; and representatives of Goal One Coalition and LandWatch Lane County. At or shortly following that meeting, Dan Terrell drafted amendments to LC chapter 13 that all parties agreed upon. The draft amendments crafted by Terrell also implement HB 2723 and HB 3629, dealing with property line adjustments and retroactive unit of land verifications. Terrell’s proposal is the one now being considered by the county in Ordinance No. 2-09.

In return for all parties reaching agreement on proposed amendments to LC chapter 13 and agreeing to work to get them enacted, the “as applied” LUBA appeal (not the challenge to LC 13.020 itself) was dismissed in April 2008.

Despite all parties having agreed on the proposed amendments to LC chapter 13, settlement efforts stalled once again. In yet another attempt to restart the process, Goal One Coalition and LandWatch Lane County mounted another “as applied” challenge to LC 13.020, again in the context of a template dwelling approval (*Weaver v. Lane County*, LUBA No. 2008-166, NITA filed September 17, 2008). That appeal has been stayed pending the outcome of this process.

II. Response to issues raised by staff

A. Housekeeping and conforming amendments

Goal One Coalition and LandWatch Lane County concur with the housekeeping and conforming amendments to LC 13.010 and LC 16.090 Definitions as proposed by staff.

B. 13.450(1) and (2), General Provisions and Submittal Requirements

Goal One Coalition and LandWatch Lane County do not object to revisions proposed to LC 13.450(1) and (2). However, we do question the reference in LC 13.450(1)(b) to LC 16.450(3) (a typo – staff meant 14.450(3)) and, as explained below, request that the reference be deleted.

C. Administrative review of property line adjustments

Goal One Coalition and LandWatch Lane County do not concur with staff's proposed LC 13.450(3)(a), which would allow for "administrative review" of property line adjustments without notice or opportunity for public hearing.

While we agree that there are some property line adjustments that are so straightforward that they could be reviewed administratively, the difficulty arises in determining which property line adjustments qualify for the administrative review process. A decision can be an "administrative" decision rather than a "land use" decision only if the decision applies standards that require no interpretation and involves no policy or legal judgment. ORS 197.015(10)(b)(A). The determination required under the proposed 13.450(3)(i) & (iv) itself requires interpretation and policy or legal judgment.

We concur with Bill Kloos and Dan Terrell that certain property line adjustments in the F1 zone could qualify for an administrative review process. A property line adjustment could be considered to not require interpretation or policy or legal judgment if all properties involved would begin and remain as large or larger than the minimum acreage specified in OAR 660-006-0027(e)(B) for the siting of a dwelling on a noncontiguous ownership: 200 acres. We would not object to language such as the following:

3. Review Process

(a) Lane County may administratively process a property line adjustment if all units of land involved are in the F1 zone and all units of land involved initially contain and continue to contain a minimum of 200 acres within the F1 zone.

D. Concurrent legal lot verifications

Goal One Coalition and LandWatch Lane County do not concur with staff's proposed LC 13.450(3)(b)(i), which requires legal lot verifications in conjunction with property line adjustments if legal lot verifications have not previously been obtained for all properties involved.

Goal One Coalition and LandWatch Lane County believe the staff proposal needlessly adds complexity and expense to what should be a simple and inexpensive property line adjustment process. One of the primary purposes of the proposed amendments to LC chapter 13 is to *replace* Lane County's legal lot verification process, over time. The need for legal lot verifications arises largely because of Lane County's historic practice of not reviewing and approving property line adjustments. When that situation is corrected, the need for legal lot verifications should largely disappear.

Other Oregon counties have not found a need for and do not routinely do legal lot verifications. Lane County should be phasing out its legal lot verification process, which is

time consuming and expensive. The Board should not further embed that cumbersome and redundant process in Lane Code.

Goal One Coalition and LandWatch Lane County recommend that LC 13.450(3)(b)(i) as proposed by staff be omitted.

E. Requiring replats rather than property line adjustments

Staff proposes a new 13.450(3)(b)(i) that appears to uniformly prohibit using property line adjustments to reconfigure lines within a platted, recorded partition or subdivision or to otherwise reconfigure a plat. Goal One Coalition and LandWatch Lane County do not concur with this proposed revision.

ORS 92.190(3) expressly authorizes local governments to use a process other than the replatting process set forth in ORS 92.185 to adjust property lines, regardless of whether the units of land are within recorded plats. Other Oregon counties routinely adjust property lines within and between recorded plats without difficulty. Lane County should certainly be able to do the same.

Another major objection to staff's proposal is that "minor amendments" as processed pursuant to LC 13.400 are administrative decisions rather than land use decisions. Lane Code Chapter 13 as it stands is less than clear, and the plat amendment process is problematic. The definition of both "minor amendment" and "major amendment" in LC 13.010 both refer to amendments of preliminary plats. The process laid out in LC 13.400 applies to amendments of both preliminary and final plats and is very likely one that reviews a "land use decision" administratively without providing for public participation required by state law.

Clarifying the definitions of minor and major amendments and reviewing and revising the plat amendment process to ensure compliance with state law is something that Goal One Coalition and LandWatch Lane County agree very much needs to be done. We strongly urge LMD to undertake that task.

The proposed LC 13.450(3)(c)(i) language raises a myriad of issues that are beyond the scope of the current effort. Goal One Coalition and LandWatch Lane County propose that this section be omitted.

III. Conclusion

Goal One Coalition and LandWatch Lane County recommend that the Board follow staff Option 2 and adopt the proposed amendments to LC Ch. 13, along with housekeeping and conforming amendments as proposed by staff and the revisions identified below.

13.450(1): adopt as proposed by staff, except delete from subsection (b):

Refer to LC 16.450(3)(e) for exceptions.

13.450(2): adopt as proposed by staff.

13.450(3): revise to read as follows:

3. Review Process

GOAL ONE COALITION

(a) Lane County may administratively process a property line adjustment if all units of land involved are in the F1 zone and all units of land involved initially contain and continue to contain a minimum of 200 acres within the F1 zone.

(b) If the proposed property line adjustment cannot comply with LC 13.450(3)(a), then Lane County shall review property line adjustments as a Director decision, pursuant to Lane Code 14.050 and meet the following criteria:

(i) The proposal complies with LC 13.450(1) and LC 13.450(3)(c); and

(ii) Property Line Adjustments involving lot or parcels of land with nonconforming setbacks shall be granted provided the adjustment does not further reduce the setback and the adjustment satisfies the remaining provisions of this section. Setbacks shall be verified by a registered professional land surveyor prior to final approval of the Property Line Adjustment.

(c) The following shall apply to all property line adjustment proposals:

(i) A property line adjustment shall have no affect on existing easements or roads.

(ii) All adjusted lots or parcels shall be large enough to accommodate a use allowed in the zone where the property is located, including on-site septic system.

(iii) If any of the lots or parcels involved in the lot line adjustment are subject to conditions of approval of a prior land use permit, then the area added to that lot or parcel shall be subject to any applicable conditions imposed under the permit.

(iv) If the property line adjustment creates a split zoned parcel, the zone boundary shall not be used as the sole justification to partition the parcel along that zone boundary in the future. This shall be a condition of approval and stated on the survey map is a survey if required.

Goal One Coalition and LandWatch Lane County again thank staff for her thorough review of the proposed amendments and urge the Board to adopt the amendments with the revisions as proposed by staff and in this letter.

Sincerely,

Jim Just
Executive Director