

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

In the Matter of Amending)
Section 1504 of the Columbia)
County Zoning Ordinance)
_____)

ORDINANCE NO. 92-4

(Two or More Existing Dwellings)

The Board of County Commissioners for Columbia County, Oregon ordains as follows:

SECTION 1. AUTHORITY.

This ordinance is adopted pursuant to ORS 203.035, 215.050 and 215.223.

SECTION 2. TITLE.

This ordinance shall be known as Ordinance No. 92-4.

SECTION 3. PURPOSE.

The purpose of this ordinance is to amend the Columbia County Zoning Ordinance to allow the partitioning of lots or parcels with two or more existing dwellings under certain circumstances.

SECTION 4. AMENDMENT.

The Columbia County Zoning Ordinance is amended by the addition of a new Subsection 1504.4 which reads as shown on the attached Exhibit "A" which is incorporated herein by this reference. In addition, Section 1504 (introductory paragraph) is amended to read as shown on the attached Exhibit "B" which is incorporated herein by this reference.

SECTION 5. FINDINGS.

Findings of fact and conclusions of law in support of this amendment are attached hereto, labeled Exhibit "C" and incorporated herein by this reference.

SECTION 6. SEVERABILITY.

If any portion of this ordinance, including Exhibits "A", "B" and "C", is for any reason held invalid by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent portion and such holdings shall not affect the validity of the remaining portion thereof.

SECTION 7. EMERGENCY.

This ordinance being immediately necessary to maintain the public health, safety and welfare, an emergency is declared to exist and this ordinance takes effect immediately upon its adoption.

REGULARLY PASSED AND ADOPTED BY THE BOARD OF COUNTY COMMISSIONERS FOR COLUMBIA COUNTY, OREGON THIS 11th DAY OF MARCH, 1992.

BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

Approved as to form

By: John Kelly
Office of County Counsel

Attest:

By: Jan Sunhalgh
Recording Secretary

First Reading: 2/26/92

Second Reading: 3/11/92

Effective Date: 3/11/92

By:

[Signature]
Chairman

By:

[Signature]
Commissioner

By:

[Signature]
Commissioner

EXHIBIT "A"
AMENDED MARCH 11, 1992

New Section 1504.4:

"TWO OR MORE EXISTING DWELLINGS ON A PARCEL:
NOTWITHSTANDING SUBSECTIONS 1504.1 AND 1504.3 ABOVE, AND
NOTWITHSTANDING THE LOT SIZE PROVISIONS OF THE PA-38, FA-19,
PF-76 AND RR-5 ZONES, THE DIRECTOR MAY APPROVE THE
PARTITIONING OF A LAWFULLY CREATED LOT OR PARCEL IN THESE
ZONES, UPON WHICH TWO OR MORE LAWFULLY ESTABLISHED PERMANENT
DWELLINGS EXIST, INTO A NUMBER OF PARCELS EQUAL TO THE
NUMBER OF DWELLINGS ON THE LOT OR PARCEL, UPON FINDINGS BY
THE DIRECTOR THAT:

A. EACH NEW PARCEL HAS A PRE-EXISTING HABITABLE
DWELLING, AS DEFINED BELOW, WHICH HAS BEEN CONTINUOUSLY
HABITABLE SINCE JULY 25, 1985, NONE OF WHICH WERE
PREVIOUSLY APPROVED AS RESOURCE-RELATED OR AS TEMPORARY
DWELLINGS UNDER SECTION 1505 OF THIS ORDINANCE.

FOR THE PURPOSES OF THIS SECTION, 'HABITABLE
DWELLING' SHALL BE DEFINED AS FOLLOWS:

'A SINGLE FAMILY DWELLING ESTABLISHED BEFORE
JULY 25, 1985 PROVIDING COMPLETE INDEPENDENT LIVING
FACILITIES FOR ONE OR MORE PERSONS INCLUDING PERMANENT
PROVISIONS FOR LIVING, SLEEPING, EATING, COOKING AND
SANITATION. A HABITABLE DWELLING MUST BE STRUCTURALLY
SOUND AND FULLY ENCLOSED, MUST HAVE HEAT AND A HOT AND
COLD RUNNING WATER SUPPLY SYSTEM, AND ALL PLUMBING
FIXTURES MUST BE CONNECTED TO A SANITARY SEWER OR AN
APPROVED PRIVATE SEWAGE DISPOSAL SYSTEM.'

B. THE CREATION OF THE SEPARATE PARCELS WILL HAVE NO
ADVERSE IMPACT ON FARM OR FOREST PRACTICES IN THE AREA
OR ON THE PARCELS.

C. THE CONFIGURATION OF THE PARCELS WILL PERMIT THE
ESTABLISHMENT OF A NEW SEPTIC SYSTEM ON EACH PARCEL,
IN AN AREA APPROVED BY THE COUNTY SANITARIAN, IN CASE
THE EXISTING DRAINFIELD FAILS.

D. THE PROPOSED DIVISION OF THE LAND IS APPROPRIATE
FOR THE CONTINUATION OF THE EXISTING COMMERCIAL FARM OR
FORESTRY ENTERPRISE ON THE PARCELS, AND ANY
NON-RESOURCE PARCELS ARE NO LARGER THAN NECESSARY.

E. ALL THE NEW PARCELS MEET ALL OTHER REQUIREMENTS
(ACCESS, FRONTAGE, SETBACK, LOT WIDTH AND DEPTH, ETC.)
OF THIS ZONE, EXCEPT FOR THE LOT SIZE AS PERMITTED BY
THIS SECTION."

EXHIBIT "B"

Section 1504 as amended (introductory paragraph):

Variations. Except as provided in Section 1504.4 below, there are 2 classes of variations to the standards established in this ordinance. A Minor Variance is defined as a request for a variance of less than 25% from a dimensional requirement such as setbacks, height, lot coverage, lot width, or lot depth, or a request for a variance of less than 10% from a minimum lot size requirement. All other variations are defined as Major Variations. Use variations are not permitted under this ordinance except as permitted under Section 1505.1, Temporary Permits: Use not allowed in district. Major Variations from the lot size requirements of the Primary Agriculture (PA-38), Forest Agriculture (FA-19), Primary Forest (PF-76) and Rural Residential (RR-5) Zones are not permitted under this ordinance.

COLUMBIA COUNTY BOARD OF COMMISSIONERS
Zoning Ordinance Amendments

EXHIBIT "C" - FINDINGS AND CONCLUSIONS

FILE NUMBER: TA 5-91
APPLICANT: Columbia County Planning Commission
REQUEST: To amend Section 1504 of the Columbia
County Zoning Ordinance, and to add
Section 1504.4.

BACKGROUND:

A staff report of the Department of Land Conservation and Development (DLCD) was presented to the Oregon Land Conservation and Development Commission (LCDC) on January 7, 1992. The staff report expressed concerns regarding the use of the Major Variance section of the Columbia County Zoning Ordinance to "...circumvent the acknowledged minimum lot sizes of the county's resource and rural residential zones." In response, LCDC initiated the process of imposing an enforcement order (under ORS 197.320) against the county. A contested case hearing was set for March 13, 1992, at 10:00 a.m. in Salem, Oregon.

As evidence that Columbia County sincerely wished to address the concerns expressed by DLCD and LCDC, and solve the problems, the County eliminated from Section 1504 of the Zoning Ordinance the ability of the Planning Commission to grant Major Variances from the lot size requirements of the PA-38, FA-19, PF-76 and RR-5 zones (Exhibit "B").

At the same time, the county added a new Subsection 1504.4 to the Variance section of the Zoning Ordinance (Exhibit "A"). The new section permits the partitioning of parcels into smaller parcels than the zone allows if there are two or more "lawfully established permanent dwellings" on the property. Five conditions would all need to be met in each case.

HISTORY:

These amendments, among others, were prepared by the planning staff and presented to the Columbia County Planning Commission for study on January 6, 1992. A public hearing was held by the Planning Commission on February 3, 1992, at which time these amendments were detached from the others, approved by the Planning Commission, and passed on to the Board of Commissioners.

In negotiation with the Oregon Department of Land Conservation and Development, and in response to concerns expressed by the Scappoose-Spitzenberg CPAC, the Exhibit "A" amendments were somewhat changed during February and early March, 1992. They were then resubmitted to the Scappoose

CPAC and the Planning Commission for comment and reconsideration. They were re-approved by the Planning Commission on March 2, 1992.

The Columbia County Board of Commissioners held a hearing at 10:30 a.m. on February 26, 1992 and continued it to 10:30 a.m., March 11, 1992, after which the amendments were voted on and approved.

FINDINGS:

This request is being processed under Section 1606, 1607 and 1611 of the Zoning Ordinance, as follows:

"1606 Legislative Hearing: A request to amend the text of the Zoning Ordinance...are legislative hearings. Legislative hearings shall be conducted in accordance with the following procedures:

- .1 A legislative amendment to the Zoning Ordinance Text or Map may be initiated at the request of the Board of Commissioners, a majority of the Commission, or the Director, or any citizen of the County may petition the Commission for such a change."

Finding 1: The proposed ordinance changes have been initiated by the Planning Commission.

Continuing with Zoning Ordinance section 1606:

- ".2 Notice of a Legislative Hearing shall be published at least twice, one week apart in newspapers of general circulation in Columbia County. The last of these notices shall be published no less than ten calendar days prior to the Legislative Hearing. The mailing of notice to individual property owners is not required but shall be done if ordered by the Board of Commissioners."

Finding 2: Legal notice of the Planning Commission hearing of February 6, 1992 was published in the St. Helens Chronicle on January 18 and 22, 1992, and in the Scappoose Spotlight on January 22, 1992.

Legal notice of the Board of Commissioners hearing of February 26, 1992 was published in the St. Helens Chronicle on February 8 and 15, 1992, and in the Scappoose Spotlight on February 12, 1992.

The Board of Commissioners did not order notice to be sent to individual property owners, nor was this done.

Zoning Ordinance section 1607 reads as follows:

"1607: Consistency with the Comprehensive Plan: All amendments to the Zoning Ordinance Text and Map shall be consistent with the Comprehensive Plan Text and Maps."

The ADMINISTRATIVE PROCEDURES section of the Comprehensive Plan contains the following, under POLICIES:

"5. ...Amendments to the Comprehensive Plan and its implementing ordinance(s) shall be in accordance with the following procedures and guidelines:

C. Revisions or amendments will follow the same process as initial adoption - CPAC review, Planning Commission public hearing and recommendation, and Board hearing and adoption of revisions or amendments.

E. For legislative amendment, notice of the public hearing and a copy of the proposed amendment, will be mailed to all Citizen Planning Advisory Committees and interested parties at least ten days prior to the first scheduled public hearing."

Finding 3: All the amendments were mailed to all the members of all the CPACs in Columbia County on January 9, 1992.

The Planning Commission held a public hearing on all the proposed amendments to the Zoning Ordinance on February 3, 1992, and detached and approved the amendments proposed herein. The re-worked amendments were re-approved by the Planning Commission on March 2, 1992.

The Board of Commissioners held a public hearing on the amendments herein on February 26, 1992, at 10:30 a.m. and continued the matter to March 11, 1992, after which the amendments attached hereto were approved.

The requirements of the ADMINISTRATIVE PROCEDURES, POLICIES 5.C and 5.E of the Comprehensive Plan have been met.

Continuing with section 1607 of the Zoning Ordinance:

".1 The Commission shall hold a hearing to consider the proposed amendments and shall make a recommendation to the Board of Commissioners with regard to the proposed amendments. The Board of Commissioners shall hold at least one hearing to consider the proposed amendments. Both the Commission and the Board of Commissioners hearings will require notice in the manner outlined in Section 1611."

Finding 4: The Columbia County Planning Commission held

a hearing on the proposed amendments to the Zoning Ordinance on February 3, 1992, and recommended approval. Legal notice of the Planning Commission hearing was published in the St. Helens Chronicle on January 18 and 22, 1992, and in the Scappoose Spotlight on January 22, 1992.

The Board of Commissioners held a hearing on February 26, 1992. Legal notice of the Board of Commissioners hearing was published in the St. Helens Chronicle on February 8 and 15, 1992, and in the Scappoose Spotlight on February 12, 1992.

"1611 Notice of Legislative Hearing: The notice of a legislative hearing shall contain the following items:

- .1 Date, time and place of the hearing;
- .2 A description of the area to be rezoned or the changes to the text;
- .3 Copies of the statement for the proposed changes are available in the Planning Department. These proposed changes may be amended at the public hearing;
- .4 Interested parties may appear and be heard;
- .5 Hearings will be held in accordance with the provisions of the Zoning Ordinance."

Finding 5: All of the above were included in the Notices of Public Hearing published twice in the St. Helens Chronicle and once in the Scappoose Spotlight for both the Planning Commission and Board of Commissioners hearings.

COMMENTS:

1. The Scappoose-Spitzenberg CPAC reviewed all the amendments on January 8, 1992 and approved a somewhat different version of the revisions to section 1504 of the Ordinance; they wished to retain major variances where truly "unique" conditions existed on the land, or the application could pass the "hardship" test. The final revisions proposed herein were reviewed on February 5, 1992 by the Scappoose-Spitzenberg CPAC. The CPAC approved the change to section 1504 of the Ordinance; they opposed the additions to sections 310, 412, 511 and 607 on the grounds that the changes would perpetuate non-conforming dwellings, would compromise the RR-5 zone, would allow resurrection of abandoned uses, would not help parents to give land to their children, would attract developers to undivided lands, and would permit staff approval without CPAC input.

2. No other comments were received from the public or government agencies.

CONCLUSIONS OF LAW:

1. The procedures required by the Columbia County Zoning Ordinance for an amendment to the text of the Zoning Ordinance have been followed.
2. The provisions of the Comprehensive Plan have been met.
3. The required hearings, with the required notices, have been held by the Columbia County Planning Commission and the Board of Commissioners.
4. All the requirements of the laws of the State of Oregon and Columbia County have been met regarding the proposed changes to the text of the Zoning Ordinance.