

BEFORE THE BOARD OF COUNTY COMMISSIONERS  
FOR COLUMBIA COUNTY, OREGON

In the Matter of Amending Section 605 of )  
the Columbia County Zoning Ordinance )

Ordinance No. 98-02

The Board of County Commissioners ordains as follows:

SECTION 1. TITLE.

This ordinance shall be known as Ordinance No. 98-02.

SECTION 2. AUTHORITY.

This ordinance is adopted pursuant to the authority of ORS 203.035, and 197.610 through 197.625.

SECTION 3. PURPOSE.

The purpose of this amendment is to clarify under what circumstances dwellings may be permitted on pre-existing, substandard lots and parcels.

SECTION 4. FINDINGS.

1. The Board of County Commissioners finds that the amendments attached are consistent with the provisions of the Columbia County Comprehensive Plan.
2. The Board of County Commissioners adopts the findings of fact and conclusions of law found in the staff report dated April 6, 1998, which is attached hereto, labeled Attachment "A" and incorporated herein by this reference.
3. The Board of County Commissioners adopts supplemental findings of fact and conclusions of law in a document labeled Attachment "B" which is attached hereto and incorporated herein by this reference.

SECTION 5. RESCISSION, AMENDMENT, ADOPTION.

The Board of County Commissioners hereby rescinds Columbia County Zoning Ordinance Section 605, as adopted August 1, 1984, and replaces it with the language attached hereto, on a document labeled Attachment "C", and incorporated herein by this reference.

SECTION 6. APPEALS.

Appeals of this ordinance shall be to the Land Use Board of Appeals pursuant to ORS 197.620 and ORS 197.830 through 197.845.

SECTION 7. SEVERABILITY.

The provisions of this ordinance are severable. If any provision of this ordinance is determined to be invalid by a review body of competent jurisdiction, such provision shall be considered a separate, distinct and independent provision and the decision shall not affect the validity of the remaining portions hereof.

SECTION 8. EMERGENCY CLAUSE.

This ordinance being immediately necessary to protect the public health, safety and welfare of the citizens of Columbia County, an emergency is declared to exist and this ordinance shall take effect immediately.

DATED this 6th day of May, 1998.

BOARD OF COUNTY COMMISSIONERS  
FOR COLUMBIA COUNTY, OREGON

Approved as to form:

By: Dee Colcoan Briggs  
Office of County Counsel

By: Not Present  
Chair

By: [Signature]  
Commissioner

Attest:

By: Jan Seenhalgh  
Recording Secretary

By: [Signature]  
Commissioner

First Reading: 5/6/98  
Second Reading: 5/6/98  
Effective Date: 5/6/98  
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COLUMBIA COUNTY BOARD OF COMMISSIONERS  
STAFF REPORT

Zoning Ordinance Text Amendment

FILE NUMBER: TA 98-5

APPLICANT: Director, Land Development Services  
County Courthouse  
St. Helens, OR 97051

REQUEST: To amend Section 605 "Lots or Parcels of Record" of the Columbia County Zoning Ordinance.

APPLIC'N. FILED: 12-17-97                      120 DAY DEADLINE: N/A  
WAIVER SIGNED?: N/A

**BACKGROUND:**

This amendment arose because of an interpretation of Columbia County Zoning Ordinance (CCZO) §605, allowing building permits on aggregated lots of record in the Hillcrest Subdivision. The Planning Director interpreted "lot of record" to include the "aggregation of lots [which] enjoy the same benefit as a single lot of record for development purposes".

When this was presented to the Board on appeal, the Board decided to more broadly interpret the phrase "...subject to all other regulations of this zone." They ruled that the phrase "all other regulations" included the requirements of §604.2, and meant that any lot in an RR-5 zone of 2 acres or less, anywhere in the county, inside or outside a subdivision, must be served by a community or public water system in order to be eligible for a building permit.

This broad interpretation affects many more parcels throughout the county than the lots in the Hillcrest Subdivision which the Board was focusing on.

Land Development Services staff researched parcels and lots in the RR-5 zone that were not within the boundaries of a community or public water system, and which would be buildable except for the Board's ruling, and found:

Undeveloped lots or parcels:

Subdivisions:	1 acre or less	1516
	1 acre to 2 acres	30
Deeded Parcels:	1 acre or less	97
	1 acre to 2 acres	<u>72</u>

1715 - lots or parcels not eligible for development affected by Board's decision.

Staff assumes the actual number of lots and parcels affected would be substantially less than 1715, given irregularly shaped lots, parcels of less than 1/2-acre, and aggregations of lots)

Subsequently (Order No. 256-97), the Board instructed Land Development Services to amend Section 605 to permit a parcel which is not in a subdivision or community water district to be built on, if it could meet all other requirements of state and county laws. The board's request was based on the assumption that many of these stand-alone parcels could be developed, without having public or community water, and not create a health hazard.

The principle planning considerations which should be addressed, in deciding on the requirement of public or community water for lots of record of 2 acres or less, are the public health and safety issues associated with small lot residential development. Concentrating on-site sewage systems on small lots, in subdivisions with individual or shared water wells, creates the possibility of groundwater contamination and added public costs. This is particularly likely when the clustered lots are less than 1 acre. These concerns must be balanced against the expectation of buyers of lots of record in residential zones that their lot would be buildable.

The Planning Commission held a public hearing on March 2, 1998 and recommends that the following changes be adopted, as proposed by Michael Sheehan and the Scappoose-Spitzenberg CPAC (deletions are ~~struck out~~, additions are in **bold**):

605 Lots or parcels of Record: ~~Lots~~ **A lot** or parcels lawfully created by a subdivision plat, or by a deed or sales contract, and of record in the County Clerk's office, shall be eligible to receive a building permit for any use permitted by Section 602, if such permit would have been issued otherwise but for the lot or parcel width, depth, or area, but subject to all other regulations of this zone **with the following exceptions:**

- .1 **Any lot or parcel in the RR-5 zone which is located outside of a recorded subdivision, and a lot or parcel which is located within a recorded subdivision and is 2.3 acres or larger in size (either individually or as aggregated contiguous lots or parcels), is not subject to the Section 604.2A. requirement that the use be served by a public or community water system."**

*Principle Planning Considerations: This proposal permits the aggregation of lots in a subdivision to a minimum of 2.3 acres in order for the parcel to be buildable, avoiding the water system requirement and using a private water well. Any lot or aggregation of lots of less than 2.3 acres in a subdivision would have to be served by a public or community water system to receive a building permit. Outside of a recorded subdivision, any individual parcel of any size would be buildable if the proposal could meet the other standards of the RR-5 zone (setbacks, septic approval, etc.)*

**ALTERNATIVE PROPOSALS:**

**A. First Staff Proposal (1-98):**

"605 Lots or parcels of Record: ~~Lots~~ A lot or parcels lawfully created by a subdivision plat, or by a deed or sales contract, and of record in the County Clerk's office, shall be eligible to receive a building permit for any use permitted by Section 602, if such permit would have been issued otherwise but for the lot or parcel width, depth, or area, but subject to all other regulations of this zone **with the following exceptions:**

- .1 Any lot or parcel in the RR-5 zone which is located outside of a recorded subdivision, or a lot or parcel which is located within a recorded subdivision and is 1 acre or larger in size (either individually or as aggregated contiguous lots or parcels), is not subject to the Section 604.2A requirement that the use be served by a public or community water system." Staff: 1-21-98**

*Principle Planning Considerations: This version would allow concentrations of aggregated lots to be developed at 1 acre densities in some of the old subdivisions (like Hillcrest) with urban lot sizes. The possibility of well water contamination and future public costs may be high, depending on soil conditions.*

**B. Second Staff Proposal (2-98):**

"605 Lots or parcels of Record: ~~Lots~~ A lot or parcels lawfully created by a subdivision plat, or by a deed or sales contract, and of record in the County Clerk's office, shall be eligible to receive a building permit for any use permitted by Section 602, if such permit would have been issued otherwise but for the lot or parcel width, depth, or area, but subject to all other regulations of this zone **with the following exceptions:**

- .1 Any lot or parcel in the RR-5 zone which is located outside of a recorded subdivision, and a lot or parcel which is located within a recorded subdivision and is 1 acre or larger in size (either individually or as aggregated contiguous lots or parcels), is not subject to the Section 604.2A. requirement that the use be served by a public or community water system, except when the Columbia County Comprehensive Plan or a Planning Commission or Board of County Commissioners Order or ruling requires a larger acreage." Staff: 2-6-98**

*Principle Planning Considerations: This is the same as version 1, above, except it takes into account development and density considerations in the original exception statement creating the RR-5 zone for the area in question. It also recognizes earlier and possible future Board and/or Commission Orders. In the*

*case of Hillcrest, the Board has already ordered an average of 2.3 acres and that all dwellings must be connected to a community water system.*

C. Jeff Bennett/City of Scappoose Proposal:

"605 - Lots or parcels of Record: ~~Lots~~ A lot or parcels lawfully created by a subdivision plat, or by a deed or sales contract, and of record in the County Clerk's office, shall be eligible to receive a building permit for any use permitted by Section 602, if such permit would have been issued otherwise but for the lot or parcel width, depth, or area, but subject to all other regulations of this zone **with the following exceptions:**

- .1 **Any pre-existing lot or parcel in the RR-5 zone which is located outside of a recorded subdivision, and a pre-existing lot or parcel which is located within a recorded subdivision and is one acre or larger in size, is not subject to the Section 604.2A requirement that the use be served by a public or community water system. For purposes of this subsection, the term "pre-existing lot or parcel" shall mean a discrete, legally created lot or parcel in existence on January 1, 1998; aggregation of two or more lots or parcels to achieve the one-acre requirement shall not be permitted."**

*Jeff Bennett, (Tarlow Jordan & Schrader, Attnys.), rep. City of Scappoose: 1-27-98*

*Principle Planning Considerations: This would permit development on any substandard parcel in an RR-5 zone **outside** recorded subdivisions, but would mandate that any lot **inside** a recorded subdivision be at least 1 acre in size to be buildable with a private well for the water source.*

*Any lot inside a subdivision and less than 1 acre would **have** to be served by a public or community water system, and lots could **not** be aggregated to attain the 1-acre minimum. Lots of less than one acre would not be buildable.*

**FINDINGS:**

This request is being processed under Sections 1606, 1607 and 1611 of the Zoning Ordinance. The following sections of the ordinance apply:

"1606 Legislative Hearing: Requests 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:** These amendments were initiated by the Director of the Land Development Services Department of Columbia County.

Continuing with Section 1606 of the Zoning Ordinance:

- .2 Notice of a Legislative Hearing shall be published at least twice, 1 week apart in newspapers of general circulation in Columbia County. The last of these notices shall be published no less than 10 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:** A hearing notice was published in the St. Helens Chronicle and Scappoose Spotlight newspapers on January 14 and 21, 1998, both of which are more than 10 days prior to the Planning Commission hearing dates of February 2 and March 2, 1998. Notice to individual property owners was not required by the Board of Commissioners and was not done.

Section 1607 of the Zoning Ordinance provides 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.

- .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 3:** There are no direct references to existing lots of record in the Columbia County Comprehensive Plan. Both the Planning Commission and Board of County Commissioners must hold public hearings on this application.

Section 1611 of the Zoning Ordinance provides as follows:

**"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 4:** All of the above were included in the Board of County Commissioners' Notice of Public Hearing published twice in the Chronicle, Spotlight, Independent, Chief and Columbia County Review newspapers on April 1 and 8, 1998.

#### COMMENTS:

1. Jeff Bennett, Attorney (Tarlow, Jordan & Schrader), representing the City of Scappoose, objected to the staff proposal and commented that the newly proposed amendment would nullify the present 2-acre requirement for RR-5 zoned lands in water districts, and also the County Commissioners order requiring a 2.3-acre average in Hillcrest. He proposed an alternate wording (see 3rd. alternate above).
2. Susan Russell submitted a letter at the February 2, 1998 Planning Commission hearing objecting to the proposed amendment as "...a step backward [which] seems to be an attempt to produce smaller lots in the RR-5 zones without adequate support."
3. Michael Sheehan, member of the Scappoose-Spitzenberg CPAC, submitted a letter at the February 2, 1998 Planning Commission hearing objecting to the proposed amendment as "...a sudden proposal...to force through a one acre rule." He proposed an alternative wording requiring 2.3 acres within recorded subdivisions.

No other comments have been received from property owners or government agencies as of the date of this staff report (April 6, 1998).

#### CONCLUSION AND RECOMMENDATION:

Based upon the above findings, the Planning Commission and planning staff recommend the Michael Sheehan/Scappoose-Spitzenberg proposal, in order to:

1. Permit development on any legal pre-existing parcel of less than 5 acres without it being served by a public or community water system, if the parcel is in an RR-5 zone, is not in a recorded subdivision, and meets all other planning and building requirements.

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2. Permit lots to be aggregated to 2.3 acres inside a recorded subdivision and receive a building permit without the parcel being on a public or community water system.
3. Prohibit the issuance of building permits on individual or aggregated lots of less than 2.3 acres in a recorded subdivision, unless they can be served by a public or community water system.

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ATTACHMENT "B"

Board of County Commissioners' Supplemental Findings

The Board of County Commissioners make the following supplemental findings in support of the amendments to Section 605 of the Columbia County Zoning Ordinance relating to development requirements for lots and parcels of record within the RR-5(Rural Residential) zoning district.

1. The continued development of pre-existing substandard-sized lots of record concentrated within rural residential subdivisions without public or community water systems is likely to exceed the carrying capacity land and water resources of the area and create the following undesirable public health, welfare and safety effects:
  - a. The concentration of substandard lots containing individual on-site sewage systems and individual wells create the potential hazard of the contamination of groundwater which serves as the potable water supply.
  - b. Should contamination of potable groundwater occur, it could result in a premature demand for urban services contrary to State Goal 11. It could also result in unnecessary and excess public costs.
  
2. Development of a large number of lots of less than 2.3 acres in size in subdivisions without public or community water systems pose the greatest public health and safety effects resulting from the concentration of individual well and septic systems in rural residential subdivisions.
  - a. By its acknowledgement of the Columbia County Comprehensive Plan and Zoning Ordinance in 1985, the Oregon Land Conservation and Development Commission approved a rural residential lands exception statement which contained an average rural residential density of 2.3 units per acre for the largest of Columbia County's lot of record subdivisions, Hillcrest.

Hillcrest Subdivision is not served by a public or community water system and is served by individual on-site sewage systems. Therefore, the 2.3 acre lot size is a reasonable basis for a minimum lot size standard for lots or parcels of record in subdivisions without public or community water systems throughout the County.
  - b. The County completed an inventory (Attachment B-1) which shows that there are 20 subdivisions with undeveloped lots of less than 2.3 acres in size. Eighteen (18) of these subdivisions are small to moderately sized, containing from 1 to 32 lots of 2.3 acres or less in size. Two of these subdivisions are very large, containing 292 and 408 lots of 2.3 acres or less in size. The County has a legitimate interest in limiting development of large subdivisions with over 35 lots of record under 2.3 acres due to the degree of public health and safety threat such development poses.
  
3. By establishing a standard relating to the minimum lot size (2.3 acres) at which the

development of lots of record may develop without public or community water systems and the establishment of a maximum subdivision size in terms of the amount of lots under the minimum lot size which will limit the public health and safety threat to 35 lots of less than 2.3 acres within any particular subdivision, the County is able to balance the need to protect health and safety with the legitimate, investment-backed expectations of lot owners for development of their property. Further, by allowing the aggregation of lots of record to achieve the minimum developable lot size without public or community water, the County has provided an incentive to consolidate lots to achieve this objective.

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**Attachment B-1**  
**Lot of Record Subdivisions Without Public/Communtiy Water in RR-5 Zone**  
**(Lots 2.3 Acres or Less)**

EXISTING SUBDIVISION LOTS OF 2.3 ACRES OR LESS:				April 28, 1998		
in RR-5 Zone, not in a Water District				Columbia County		
Lots of 2.3 Acres or Less				Lots betw. 1 & 2.3 Acres		
Subdivision		Devel.	Undev.		Devel.	Undev.
Name	Total	Lots	Lots	Total	Lots	Lots
Bell Crest Tracts	11	9	2	8	7	1
Apple V. Scap. Orchard Tracts	10	9	1	9	8	1
Town of Spitzenberg	32	8	24	5	3	2
Scappoose Acre Tracts §1	17	17	none	13	13	none
Scappoose Acre Tracts §2	7	7	none	6	6	none
Koehler Acres	3	3	none	2	2	none
Scappoose Orchard Tracts #3	1	1	none	1	1	none
1st. Addition to Vernonia	19	none	19	4	none	4
Lone Pine Acres	14	5	9	9	5	4
1st. Subdivision Pittsburg	13	4	9	3	none	3
Mellinger's 1st. Addition	22	1	21	8	1	7
Berndt's Creek Subdivision	28	16	12	3	2	1
Foster Addition - Goble	2	none	2	1	none	1
Beaver Homes - Section 2	14	6	8	9	5	4
Beaver Homes - Section 3	7	4	3	5	4	1
Beaver Homes - Section 1	3	3	none	3	3	none
Pleasant View Acres	12	9	3	8	6	2
Wildwood Acres	7	1	6	7	1	6
McLean Acres	16	11	5	11	7	4
Dellean Acres #1	2	2	none	1	1	none
Cedar Grove Estates	3	1	2	3	1	2
Woldens First Subdivision	1	1	none	1	1	none
Haven Acres	5	5	none	4	4	none
Clatskanie Valley Homes	13	5	8	13	5	8
Clatskanie Valley Homes-Unit II	3	none	3	3	none	3
Green Point Subdivision	7	3	4	none	none	none
<b>Totals without Hillcrest</b>						
<b>and Columbia Acres:</b>	272	131	141	140	86	54
Hillcrest	408	4	404	0	0	0
Columbia Acres	292	60	232	0	0	0
<b>Grand Totals:</b>	972	195	777	140	86	54

ATTACHMENT "C"

605 Lot or Parcel of Record: A lot or parcel lawfully created by a subdivision plat, or by a deed or sales contract, and of record in the Columbia County Clerk's office prior to the adoption of minimum parcel size provisions in the rural residential zone, is not required to meet minimum parcel size requirements, and shall be eligible to receive a building permit for any use permitted by Section 602 without complying with lot or parcel width or depth requirements. In addition, a dwelling may be placed on a lot or parcel of record without connecting to a public or community water system, if the lot or parcel (either individually or as aggregated contiguous lots or parcels):

1. is located outside of a recorded subdivision;
2. is located within a recorded subdivision, where the subdivision has no more than 35 lots which are less than 2.3 acres in size; OR
3. is located within a recorded subdivision and contains 2.3 or more acres.

The uses on a lot or parcel of record must otherwise comply with all other applicable regulations.