

BEFORE THE BOARD OF COUNTY COMMISSIONERS

FOR COLUMBIA COUNTY, OREGON

In the Matter of Amending the)
Columbia County Zoning Ordinance)
and the Columbia County Sub-) Ordinance 97-3
division and Partitioning Ordinance)
Regarding Standards for Replats)
and Right of Way Dedications)

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

SECTION 1. TITLE.

This ordinance shall be known as Ordinance No. 97-3.

SECTION 2. AUTHORITY.

This ordinance is adopted pursuant to the authority of ORS 203.035 and ORS 197.160, and ORS 197.610 through 197.625.

SECTION 3. PURPOSE.

The purpose of these amendments is to amend the zoning ordinance and subdivision and partitioning ordinance to clarify the process to amend and vacate all or portions of subdivisions and partitions. Amendments are also proposed to provide consistency among the zoning ordinance, the subdivision and partitioning ordinance, and the Columbia County Road Standards.

SECTION 4. FINDINGS.

1. The Board of County Commissioners reviewed following Comprehensive Plan policies to ensure that the proposed amendments conform to the acknowledged Plan provisions:
 - a. Administrative Procedures Goal 2: "To provide review and revision procedures which include provisions for participation by citizens and affected interest groups." This Goal is implemented by Comprehensive Plan Administrative Procedures Policies 5E. and 7, Citizen Involvement Policy 4 and CCZO Sections 1606, 1607 and 1611.
 - b. Urbanization Policies 1, 5, 6, 8, and 20. These policies are implemented through

the Rural Residential zoning designations, and through the provisions of the Subdivision and Partitioning Ordinance.

- c. Public Facilities Goal and Public Facilities Policies: 1, 2, 3, 4, and 9. These policies are implemented through the provisions of the Zoning Ordinance and the Subdivision and Partitioning Ordinance.

2. The Board of County Commissioners makes the following findings of fact:

- a. These amendments have been subject to hearings before the Planning Commission, and three hearings and three work sessions before the Board of County Commissioners. The Planning Commission reviewed draft proposals and took testimony regarding them on June 16, 1996, July 15, 1996, November 18, 1996, December 2, 1996 and January 6, 1996. Notices of Proposed Amendments were mailed to DLCD on May 3, 1996. Notice of amendments have been advertised in the St. Helens' *Chronicle*, the *Vernonia Independent* and in the *South County Spotlight*. The notice of the initial hearings followed the process described in Section 1608 of the Zoning Ordinance. Opportunity was given for comment and input by the public during all hearings and work sessions before the Board of County Commissioners. This satisfies the requirements of the Comprehensive Plan Administrative Policy and the implementing procedures in the Plan and Zoning Ordinance.
- b. The proposed amendments create a framework to implement the County's acknowledged Comprehensive Plan, specifically the Public Facilities, Rural Residential and Urbanization policies. As no amendments to the acknowledged Comprehensive Plan are proposed and the proposed amendments are consistent with the Comprehensive Plan, the Statewide Land Use Goals do not apply.
- c. One person commented that the combination of lots or parcels through the vacation/replatting provisions may adversely affect entities which hold a financial interest in a portion of the property subject to the vacation/replat. The Board of County Commissioners finds that the applicant bears the responsibility to notify lenders of proposed actions which may affect security interests in the realty. The forms which will be created by the Land Development Services Department will remind applicants of this responsibility.
- d. The proposed amended language to Section 209 clarifies that the process for road vacations is through ORS 368. The statutory road vacation process will eliminate the situation where persons who are located in subdivisions and partitions are prevented from vacating all or portions of a road without replatting the entire subdivision or partition. In addition, the linkage to ORS 368 will clarify that road vacations are clearly under the purview of the Road Department and the Board of

County Commissioners, and therefore is not a land use decision subject to appeal to LUBA. It may be subject to a writ of review in circuit court. A road vacation may be initiated by the county or by landowners located adjacent to the road. The vacation cannot eliminate utility rights without notification to the utility, and cannot eliminate access entirely without the permission of the property owner whose access would be cut off. The Road Master is required to report to the Board of County Commissioners whether, in the Road Master's opinion, the road is necessary for public access. Notice to adjacent property owners, and an open hearing is required prior to a decision to vacate. Since the ORS 368 process includes the same types of safeguards for residents as does the land use process, and is consistent with the process to vacate roads found in other counties of the state, the statutory process is preferred to a locally crafted one.

- e. A property line adjustment is a process by which two lots or parcels may be reconfigured by the relocation of a common boundary. Property line adjustments do not create new lots or parcels, and therefore are non-discretionary decisions which are not subject to appeal. The Board of County Commissioners believes it is in the best interests of the County to allow property line adjustments outside of recorded subdivision and partition plats. The attached document retains the replatting requirement to make changes to property lines within recorded subdivisions and partitions so that the resulting configurations comply with minimum parcel sizes, setback requirements and other development requirements in the ordinance. The Board of Commissioners further finds that current language in Section 207A is to be interpreted to allow the use of the partition plat, reviewed according to provisions of the Subdivision and Partitioning Ordinance, to make changes to portions of recorded subdivisions and to recorded partition plats. Use of the partition plat instead of property line adjustment procedure for changes to recorded subdivision and partition plats both simplifies the process for making changes and assures that such changes fully comply with applicable zoning and subdivision regulations. Therefore, the text is amended only to allow road vacations in accordance with ORS 368.

The Board heard testimony regarding situations in resource zones where the property line adjustment process has been used to decrease parcel size so as to allow a property owner to sell property to an adjacent owner and retire. The Board considers this to be an isolated circumstance, where no new parcels are to be created, and the overall density of the area has not changed. Property line adjustments may be made in this circumstance, even though the parcels are not conforming, so long as the use of the property is consistent with the applicable resource goal, rules and local ordinance provisions.

- f. The Boards finds that it is in the best interests of its citizens to allow persons to add in right of way required to be dedicated as part of a development for

determining the minimum parcel size area. The Board feels that the addition of the area dedicated is a responsible compromise to support dedication for public use. In other circumstances, the Board finds that adjacent right of way should not be included in minimum parcel size calculations because more urban densities will result overall.

- g. Definitional changes proposed are intended to mirror similar provisions in state statute. This will eliminate confusion, and will ensure that common parlance is used to describe certain development activities. For example, the current definition of “replat” in the ordinance is broader than the statutory definition. The proposed definition of replat is the same definition as found in ORS 92.010.
- h. The Board of County Commissioners finds that it is in the best interests of the county to retain the requirement for 50" frontage on a public right of way in the rural residential zones. The Board deems it necessary to assure orderly and efficient transportation access and circulations to support existing and future development. This requirement is consistent with Columbia County Comprehensive Plan Transportation Policy 2, which requires the dedication of adequate rights of way to support subdivisions and partitions.
- i. The proposed changes to Section 905 which change the standards for dedications of road rights of way are made to better conform to the “rough proportionality test” established by the U.S. Supreme Court as part of its takings analysis in Dolan v. City of Tigard.
- j. The Board of County Commissioners finds the proposed amendments are primarily housekeeping changes. The changes will create workable procedures to institute orderly development in platted areas. The changes will allow persons located in platted areas the same abilities to modify parcels as exist in the unplatted areas.

SECTION 5. RESCISSION, AMENDMENT, ADOPTION.

- 1. Those provisions of the ordinance which are in conflict with the provisions as stated in this ordinance are rescinded.
- 2. The amendments as stated in Attachment “A” which is attached hereto and incorporated herein by the reference, are adopted.

SECTION 6. SEVERABILITY.

The provisions of this ordinance are severable. If any provision of this ordinance is determined to be invalid by a court 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 7. EMERGENCY.

This ordinance being immediately necessary for the public health, safety and welfare of the citizens of Columbia County, an emergency is declared to exist and this ordinance shall take effect on April 9, 1997.

ADOPTED THIS 9th day of April, 1997.

Approved as to form:

By: Alice Cocoran Briggs
Office of County Counsel

Attest:

By: Jan Sundalgh
Recording Secretary

First Reading: 4/9/97
Second Reading: 4/9/97
Effective Date: 4/9/97

BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

By: John R. Peterson
Chair

By: [Signature]
Commissioner

By: Joe E. Yant
Commissioner

ATTACHMENT "A"

[Note: Additions are in bold; deletions are in ~~strikeout~~ (~~strikeout~~).]

I. ZONING ORDINANCE AMENDMENTS:

A. AMEND ARTICLE I, SECTION 100, "DEFINITIONS" as follows. The references will be repaginated and renumbered as needed:

- 1. Section 100.43. ~~Lot.~~ A plot, parcel, or area of land owned by or under the lawful control of one distinct ownership. A unit of land that is created by a subdivision of land. Lots are created from and are located in subdivision plats. Parcels are created from partitioning and are located in partition plats.
- 2. Section 100.44. Lot or Parcel Area. The total horizontal area enclosed within the ~~lot~~ **property** lines of a lot or parcel. (Lot or Parcel Size).
- 3. Section 100.45. Lot or Parcel Coverage. The area covered by primary and accessory buildings. Lot or **parcel** coverage shall be expressed as a percentage of the total lot or parcel area.
- 4. Section 100.46. Lot or Parcel Depth, Average. The average distance from the narrowest frontage to the ~~lot~~ **property** line opposite.
- 5. Section 100.47. ~~Lot Line, Front.~~ For an interior lot, a line separating the lot from the street, and for a corner lot, a line separating either (but not both) frontage of the lot from the street. Property Line, Front. That line separating a lot or parcel from the street. For a corner lot or parcel, that line separating the side of the lot or parcel with the lesser amount of frontage from the street. For a flag lot or parcel, that line nearest the street, excluding the pole portion of the flag.

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6. Section 100.48. ~~Lot Line.~~ The line bounding a lot. Property line. A common boundary line between two properties.
 7. Section 100.49. ~~Lot Line, Rear.~~ The line dividing one lot from another on the opposite side of the lot from the front lot line; and in the case of an irregular or triangular shaped lot, a line 10 feet in length within the lot parallel to and at the maximum distance from the front lot line. Property Line, Rear. That property line of a four-sided lot or parcel, opposite the front property line. For a triangular or more than four-sided (irregular) lot or parcel, a line within the lot or parcel, not less than ten feet in length and running parallel to, and at a maximum distance from, the front property line.
 8. Section 100.50. ~~Lot Line, Side.~~ In the case of an interior lot line, a line separating one lot from the abutting lot or lots fronting on the same street; and in the case of a corner lot, a line separating the greatest frontage of the lot from the street. Property Line, Side. Any property line not designated a front or rear property line.
 9. Section 100.86. Yard. An open space on a lot or parcel with a building and bounded on 1 or more sides by such building, such space being unoccupied and unobstructed from 30 inches above the ground upward.
 10. Section 100.89. Yard, Side. A yard between any building and the side lot or parcel line; the width of the required side yard shall be measured horizontally from the nearest point of the side lot or parcel line toward the nearest part of the building.
 11. Add the following new definitions, place alphabetically and renumber:

Parcel. A unit of land created by a partitioning of land. Parcel is also used generically to describe a unit of land.

2 Setbacks. The minimum distance allowed between the
3 property line of a lot or parcel and the building line
4 of a permitted structure. Unless otherwise specified,
5 the front, side, and rear yard setbacks are given for
6 each of the zoning districts within the zoning
7 ordinance.

8 B. AMEND ARTICLE II, "GENERAL PROVISIONS" as follows:

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10 1. Amend Subsection 213.4, "Public Dedications" as
11 follows.

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13 Section 213.4 Public Dedications. Setback
14 ~~restrictions requirements of described in this~~
15 ordinance ~~or in other land use regulations~~ shall not
16 apply to existing structures ~~whose~~ when a setback is
17 reduced by a **later** public dedication. Additions to such
18 structures shall be allowed subject to Subsection
19 213.3. That portion of a lot **or parcel** adjacent to an
20 existing public roadway, which is required to be
21 dedicated for ~~read purposes~~ **right of way as a part of**
22 **development approval**, shall be ~~included in density~~
23 ~~calculations~~ **considered part of the lot or parcel area**
24 **for minimum parcel size calculations.**

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26 C. AMEND ALL REFERENCES TO "LOT", "LOT LINE", AND "LOT LINE
27 ADJUSTMENT" IN THE ZONING ORDINANCE AS FOLLOWS:

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29 1. References to "lot" shall be changed to "lot **or**
30 **parcel.**"

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32 2. References to "lot line" shall be changed to "**property**
33 line."

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35 3. References to "lot line adjustment" shall be changed
36 to "**property** line adjustment."

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38 4. Repaginate and renumber as needed.

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40 **II. SUBDIVISION AND PARTITIONING ORDINANCE AMENDMENTS**

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42 A. Amend Section 103 C, "DEFINITIONS" as follows:

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1. Section 103 C(23). Lot or Parcel Area. The total horizontal net area within the lot or parcel lines to mean that square footage of a lot that is free from public and private road rights of way or easements. That portion of a lot or parcel adjacent to a public roadway, which is required to be dedicated for right of way as part of a development approval, shall be considered part of the lot area for minimum parcel size calculations.

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2. Section 103 C(42). Replat. ~~Includes a final map of the reconfiguration of lots and easements of a recorded subdivision or partition plat and other writings containing all the descriptions, location, specifications, dedications and provisions and information concerning a recorded subdivision.~~ The act of platting the lots, parcels and easements in a recorded subdivision or partition plat to achieve a reconfiguration of the existing subdivision or partition plat or to increase or decrease the number of lots in the subdivision. "Replat" does not include road vacations as provided by Section 209 of the Columbia County Subdivision and Partitioning Ordinance.

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3. Amend Section 207(A), "RE-SUBDIVISION OR RE-PARTITION OF LAND" as follows:

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SECTION 207. RE-PLATS

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A. Changes in Approved Partitions and Subdivisions. Except for road vacations reviewed pursuant to Section 209, ~~For~~ any change in a map of an approved or recorded subdivision or partition, if such change affects any street layout shown on such map, or area reserved thereon for public use, or any lot line, or if it affects any map or plan legally reached prior to the adoption of any regulations controlling subdivisions or partitions, such parcel change shall be reviewed by the Commission or Planning Department under the same procedure, rules and regulations as for a subdivision or partition.

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4. Amend Section 209, "VACATIONS OF PLATS" as follows:

SECTION 209

- A. Any plat or any part of any plat may be vacated by the owner of the premises at any time before the sale of any lot therein, by A written instrument, to which A copy of such plat shall be attached, declaring the same to be vacated.
- B. Such an instrument shall be reviewed by the Commission. The Commission may reject any such instrument which abridges or destroys any public rights in any of its public uses, improvement, streets, or alleys.
- C. Such an instrument shall be executed, acknowledged or approved, and recorded or in like manner as plats; and being duly recorded or filed shall operate to destroy the force and effect of the recording of the plat so vacated, and to divest all public rights in the streets, alleys and public grounds, and all dedications laid out or described in such plat.
- D. When lots have been sold, the plat may be vacated in the manner herein provided by all the owners of lots in such plat joining in the execution of such writing.
- E. **Roads dedicated for public use may be vacated by the Board of County Commissioners in accordance with the process described in ORS 368.**

5. Amend Section 905, "STREETS" as follows.

SECTION 905. STREETS.

- A. General Requirements. **Except for private streets within Planned Unit Developments approved pursuant to Section 1200 of the Columbia County Zoning Ordinance, no subdivision or partition shall be approved unless**

2 the development has at least fifty (50) feet of
3 frontage on ~~or approved access to~~ an existing public
4 street and otherwise complies with County Road
5 Standards and Specifications In addition, all streets
6 and accesses shall be in conformance with the
7 County's construction standards and specifications in
8 effect at the time of development or with a more
9 restrictive provision of an applicable Urban Growth
10 Area Management Agreement.

11 B. Existing Streets. Whenever ~~existing streets~~
12 adjacent to or within A tract are of inadequate
13 width, ~~one half the additional right of way~~
14 necessary to meet the standards set forth in
15 this ordinance shall be dedicated by each
16 property owner on each side of the street.

17 Additional street right of way shall be dedicated as
18 per the County Road Standards at the time of
19 subdivision or partition when the following conditions
20 exist:

- 21 (1) The subject property is located within an
22 urban growth boundary and fronts on a
23 County road; or
24 (2) The subject property is subdivided or
25 partitioned to lots or parcels containing
26 2 acres or less.
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