



BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Ordinance Amending Deschutes County Code *
Title 18 to Provide a Definition of Agricultural * ORDINANCE NO. 2016-006
Exempt Buildings and Reducing Setbacks in the *
Forest Use 2 ("F2") Zone for the Haner Park *
Subdivision.

WHEREAS, the Deschutes County Community Development Department (CDD) initiated amendments (Planning Division File No. 247-16-00021-TA) to the Deschutes County Code (DCC) Title 18, Chapter 18.04, Definitions; and Chapter 18.40, Forest Use Zone (F-2) to provide a definition of agricultural exempt buildings and reduce setbacks in the F-2 Zone for Haner Park Subdivision; and

WHEREAS, the Deschutes County Planning Commission reviewed the proposed changes on March 10, 2016 and forwarded to the Deschutes County Board of County Commissioners ("Board"), a recommendation of approval; and

WHEREAS, the Board considered this matter after a duly noticed public hearing on October 24, 2016, and concluded that the public will benefit from the proposed changes to Deschutes County Code ("DCC") Title 18; now, therefore,

THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON, ORDAINS as follows:

Section 1. AMENDMENT. DCC 18.04.030, Definitions, is amended to read as described in Exhibit "A," attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~striketrough~~.

Section 2. AMENDMENT. DCC 18.40.100, Yards and Setbacks, is amended to read as described in Exhibit "B," attached hereto and by this referenced incorporated herein, with new language underlined and language to be deleted in ~~striketrough~~.

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Section 3. FINDINGS. The Board adopts as its findings Exhibit "C", attached and incorporated by reference herein.

Dated this 28th of Nov., 2016

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

Alan Unger

ALAN UNGER, Chair

Tammy Baney

TAMMY BANEY, Vice Chair

ATTEST:

Bonnie Baker

Recording Secretary

- absent -

ANTHONY DEBONE, Commissioner

Date of 1st Reading: 9th day of Nov., 2016.

Date of 2nd Reading: 28th day of Nov., 2016.

Record of Adoption Vote:

Commissioner	Yes	No	Abstained	Excused
Anthony DeBone	—	—	—	— ✓
Alan Unger	✓	—	—	—
Tammy Baney	✓	—	—	—

Effective date: 27th day of February ~~2016~~, 2017.

“****” Denotes portions of this Section not amended by Ordinance 2016-006.

Section 18.04.030. Definitions.

Agricultural building or equine facility" means buildings and structures that are exempt from the State of Oregon Structural Specialty Code as agricultural buildings and equine facilities as described in ORS 455.315. A structural building permit is not required for agricultural buildings or equine facilities located on the same lot or parcel receiving special assessment for farm use.

(Ord. 2016-006 §1, 2016; Ord. 2015-004 §1, 2015; Ord. 2014-009 §1, 2014; Ord. 2013-008 §1, 2013; Ord. 2012-007 §1, 2012; Ord. 2012-004 §1, 2012; Ord. 2011-009 §1, 2011; Ord. 2010-022 §1, 2010; Ord. 2010-018 §3, 2010; Ord. 2008-007 §1, 2008; Ord. 2008-015 §1, 2008; Ord. 2007-005 §1, 2007; Ord. 2007-020 §1, 2007; Ord. 2007-019 §1, 2007; Ord. 2006-008 §1, 2006; Ord. 2005-041 §1, 2005; Ord. 2004-024 §1, 2004; Ord. 2004-001 §1, 2004; Ord. 2003-028 §1, 2003; Ord. 2001-048 §1, 2001; Ord. 2001-044 §2, 2001; Ord. 2001-037 §1, 2001; Ord. 2001-033 §2, 2001; Ord. 97-078 §5, 1997; Ord. 97-017 §1, 1997; Ord. 97-003 §1, 1997; Ord. 96-082 §1, 1996; Ord. 96-003 §2, 1996; Ord. 95-077 §2, 1995; Ord. 95-075 §1, 1975; Ord. 95-007 §1, 1995; Ord. 95-001 §1, 1995; Ord. 94-053 §1, 1994; Ord. 94-041 §§2 and 3, 1994; Ord. 94-038 §3, 1994; Ord. 94-008 §§1, 2, 3, 4, 5, 6, 7 and 8, 1994; Ord. 94-001 §§1, 2, and 3, 1994; Ord. 93-043 §§1, 1A and 1B, 1993; Ord. 93-038 §1, 1993; Ord. 93-005 §§1 and 2, 1993; Ord. 93-002 §§1, 2 and 3, 1993; Ord. 92-066 §1, 1992; Ord. 92-065 §§1 and 2, 1992; Ord. 92-034 §1, 1992; Ord. 92-025 §1, 1992; Ord. 92-004 §§1 and 2, 1992; Ord. 91-038 §§3 and 4, 1991; Ord. 91-020 §1, 1991; Ord. 91-005 §1, 1991; Ord. 91-002 §11, 1991; Ord. 90-014 §2, 1990; Ord. 89-009 §2, 1989; Ord. 89-004 §1, 1989; Ord. 88-050 §3, 1988; Ord. 88-030 §3, 1988; Ord. 88-009 §1, 1988; Ord. 87-015 §1, 1987; Ord. 86-056 §2, 1986; Ord. 86-054 §1, 1986; Ord. 86-032 §1, 1986; Ord. 86-018 §1, 1986; Ord. 85-002 §2, 1985; Ord. 84-023 §1, 1984; Ord. 83-037 §2, 1983; Ord. 83-033 §1, 1983; Ord. 82-013 §1, 1982)

18.40.100. Yards and Setbacks.

- A. The front yard setback shall be 40 feet from a property line fronting on a local street, 60 feet from a property line fronting on a collector and 100 feet from a property line fronting on an arterial.
- B. Each side yard setback shall be a minimum of 25 feet except:
 - 1. All parcels or lots with a side yard adjacent to zoned forest land shall have a minimum side yard of 100 feet; and
 - 2. Tracts 1-58 -located in Haner Park, located in Township 22, Range 09, Section 09BB and Section 04CC, and Tax Lot 2209000000600 shall have a minimum side yard of 25 feet as long as the side yard abuts the Forest Use 2 zone.
- C. Rear yards shall be a minimum of 25 feet, except:
 - 1. All parcels or lots with rear yards adjacent to zoned forest land shall have a minimum rear yard of 100 feet; and
 - 2. Tracts 1-58 located in Haner Park, located in Township 22, Range 09, Section 09BB and Section 04CC, and Tax Lot 2209000000600 shall have a minimum rear yard of 25 feet as long as the rear yard abuts the Forest Use 2 zone.
- D. The setback from the north lot line shall meet the solar setback requirements in DCC 18.116.180.
- E. In addition to the setbacks set forth herein, any greater setbacks required by applicable building or structural codes adopted by the State of Oregon and/or the County under DCC 15.04 shall be met.
(Ord. 2016-006 §2, 2016; Ord. 95-075 §1, 1995; Ord. 94-008 §19, 1994; Ord. 92-025 §3, 1992; Ord. 91-020 §1, 1991; Ord. 83-037 §11, 1983)

FINDINGS

I. APPLICABLE CRITERIA:

Title 22, Deschutes County Development Procedures Ordinance

II. BASIC FINDINGS:

- A. **PROPOSAL:** 1) Text amendment to Comprehensive Plan, Chapter 2, Section 2.2 and Chapter 3, Section 3.3, recognizing non-resource lands process allowed under State law to change Exclusive Farm Use zoning; 2) Text amendment to zoning code providing a definition of agricultural-exempt and equine buildings; and, 3) Reducing setbacks in Forest Use (F-2 zone), for Haner Park Subdivision and an adjoining three acre tax lot.

III. CONCLUSIONARY FINDINGS:

A. CHAPTER 22.12, LEGISLATIVE PROCEDURES

1. Section 22.12.010.

Hearing Required

FINDING: The applicant meets this criterion because a public hearing will be held before the Deschutes County Board of County Commissioners (Board) on October 24, 2016.

2. Section 22.12.020, Notice

Notice

A. Published Notice

1. *Notice of a legislative change shall be published in a newspaper of general circulation in the county at least 10 days prior to each public hearing.*
2. *The notice shall state the time and place of the hearing and contain a statement describing the general subject matter of the ordinance under consideration.*

FINDING: Notice is published in the Bend Bulletin newspaper on October 14, 2016 and contained the information described in DCC 22.12.020(A)(2).

B. Posted Notice. Notice shall be posted at the discretion of the Planning Director and where necessary to comply with ORS 203.045.

FINDING: This criterion will be met with notice posted in the bulletin board in the lobby of the Deschutes County Community Development Department, 117 NW Lafayette, Bend.

C. Individual notice. Individual notice to property owners, as defined in DCC 22.08.010(A), shall be provided at the discretion of the Planning Director, except as required by ORS 215.503.

FINDING: Given the proposed amendments in question do not apply to any specific property, no individual notices were sent or required.

D. Media notice. Copies of the notice of hearing shall be transmitted to other newspapers published in Deschutes County.

FINDING: Notice will be provided to the County public information official for wider media distribution. This criterion has been met.

3. Section 22.12.030 Initiation of Legislative Changes.

A legislative change may be initiated by application of individuals upon payment of required fees as well as by the Board of County Commissioners.

FINDING: The application was initiated by the Deschutes County Planning Division, which received a fee waiver. This criterion has been met.

4. Section 22.12.040. Hearings Body

A. The following shall serve as hearings or review body for legislative changes in this order:

- 1. The Planning Commission.**
- 2. The Board of County Commissioners.**

FINDING: This criterion will be met.

B. Any legislative change initiated by the Board of County Commissioners shall be reviewed by the Planning Commission prior to action being taken by the Board of Commissioners.

FINDING: The Planning Commission held a public hearing on March 10, 2016, and reviewed the proposed changes. That same day, the Planning Commission voted in support of the proposed definitions of agricultural/equine exempt buildings and setback standard for Haner Park. Deliberations were continued to March 24 and the Planning Commission voted to not support the proposed comprehensive plan amendments relating to the non-resource lands process allowed under State law to change EFU zoning.

5. Section 22.12.050 Final Decision

All legislative changes shall be adopted by ordinance

FINDING: If approved, the proposed legislative changes included in file nos. 247-16-000021-TA/247-16-000022-PA will be implemented by ordinances upon approval and adoption by the Board; this criterion will be met.

IV. PROPOSED TEXT AMENDMENTS:

The proposed text amendments are detailed in the Exhibits A-D attached hereto with additional text identified by underline and deleted text by ~~strikethrough~~. Below are explanations of the proposed changes.

A. Text Amendment To Comprehensive Plan, Chapter 2, Section 2.2 And Chapter 3, Section 3.3, Recognizing Non-Resource Lands Process Allowed Under State Law To Change Exclusive Farm Use Zoning.

In designating farm lands in the late 1970s, the County was hampered by the limited availability of soil maps. Where soil maps from the NRCS existed those were consulted, but the County also included irrigated lands and lands receiving farm deferrals for the previous five years and site visits. In general, non-urban, non-forest, undeveloped and uncommitted lands were determined to be farm lands. This designation by default resulted in some areas being designation agricultural based on best available information.

In previous decisions on proposed plan amendments, county hearings officers and the Board have determined that land use planning, implemented through Deschutes County Comprehensive Plan policies and zoning, enables rural property owners with EFU zoning to demonstrate in a quasi-judicial process, with evidence supporting findings that a subject property does not constitute "agricultural lands" as defined in Goal 3 and Oregon Administrative Rule (OAR) 660-033-0020(1). Further, if the property does not meet the definition of agricultural lands then an exception to Goal 3 is not required which is the typical path for redesignation. The Land Use Board of Appeals affirmed this approach in *Wetherell v. Douglas County*, __Or LUBA__, (LUBA No. 2006-122, October 9, 2006).

Oregon Administrative Rules (OAR) Division 4 interprets the requirements of Goal 2 (Land Use Planning) and ORS 197.732 regarding exceptions. The definition for nonresource lands is described in OAR 660-004-0005(3):

- "Land not subject to any of the statewide goals listed in OAR 660-004-0010(1)(a) through (g) except subsections (c) and (d). Nothing in these definitions is meant to imply that other goals, particularly Goal 5, do not apply to nonresource land." ¹

Policy 2.2.3 directs Deschutes County to:

¹ OAR 660-004-0010:

(1) The exceptions process is not applicable to Statewide Goal 1 "Citizen Involvement" and Goal 2 "Land Use Planning." The exceptions process is generally applicable to all or part of those statewide goals that prescribe or restrict certain uses of resource land, restrict urban uses on rural land, or limit the provision of certain public facilities and services. These statewide goals include but are not limited to:

(a) Goal 3 "Agricultural Lands"; however, an exception to Goal 3 "Agricultural Lands" is not required for any of the farm or nonfarm uses allowed in an exclusive farm use (EFU) zone under ORS chapter 215 and OAR chapter 660, division 33, "Agricultural Lands", except as provided under OAR 660-004-0022 regarding a use authorized by a statewide planning goal that cannot comply with the approval standards for that type of use;

...

http://arcweb.sos.state.or.us/pages/rules/oars_600/oar_660/660_004.html

Allow comprehensive plan and zoning map amendment for individual EFU parcels as allowed by State Statute, Oregon Administrative Rules and this Comprehensive plan.

A Hearings Officer in a decision in NNP (PA-13-1, ZC-13-1) held any failure on the county's part to adopt comprehensive plan policies and code provisions describing the circumstances under which EFU-zone land may be converted to a non-resource designation and zoning codes does not preclude the county from considering quasi-judicial plan amendment and zone change applications to remove EFU zoning. This plan amendment further clarifies that the County intends to allow the non-resource lands process allowed under State law to change EFU zoning.

The proposed amendment acknowledges this existing path to change land currently designated resource to a non-resource designation as allowed by state law.

On March 24, the Planning Commission voted to not recommend approval the proposed amendments.

B. Text Amendment To Zoning Code Providing A Definition Of Agricultural-Exempt and Equine Buildings.

State law (ORS 455.315)² allows exemption from the requirement for a building permit and inspections under Oregon State Structural Specialty Code (electrical, plumbing, and mechanical permits are always required). Since 2001, the authority to approve an agricultural exempt building resides with the Building Official. A formal application requires the County Planning Division to provide input on whether the property is a farm. Deschutes County's zoning ordinances do not define "farm" or provide a basis for making a determination on whether a property constitutes a farm.

Until the late 1990s, the Oregon Uniform Building Code (UBC) defined farm as "farm use" – the same as in ORS 215.203 (the EFU Zone). However, when the state changed to the International Building Code (IBC), "farm" was not defined. "Farm use" is defined in Deschutes County Code and ORS 215.203 as:

"Farm use" means the current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting and selling crops or by the feeding, breeding, management and sale of, or the produce of, livestock, poultry, fur-bearing animals or honeybees or for dairying and the sale of dairy products or any other agricultural or horticultural use or animal husbandry or any combination thereof. "Farm use" includes the preparation, storage and disposal by marketing or otherwise of the products or by-products raised on such land for human or animal use. "Farm Use" also includes the current employment of the land for the primary purpose of obtaining a profit in money by stabling or training equines, including but not limited to, providing riding lessons, training clinics and schooling shows. "Farm use" also includes the propagation, cultivation, maintenance and harvesting of aquatic species and bird and animal species to the extent allowed by the rules adopted by the State Fish and Wildlife Commission. "Farm use" includes the on-site construction and maintenance of equipment and facilities

² ORS 455: https://www.oregonlegislature.gov/bills_laws/ors/ors455.html

used for the activities described above. "Farm use" does not include the use of land subject to the provisions of ORS chapter 321, except land used exclusively for growing cultured Christmas trees as defined in ORS 215.203(3). Current employment of the land for farm use also includes those uses listed under ORS 215.203(2)(b).

CDD's internal policy is a property must be receiving farm deferral and zoned EFU to qualify. Below are approaches used by other central, eastern and western Oregon counties. Most provide clear and objective standards to determine what constitutes a farm for the purposes of making decisions on agricultural exempt buildings.

- Crook County

Agricultural Exempt Building: Property must qualify for "farm use" (land must be currently employed for the primary purpose of obtaining profit in money). The property must also either be at least 80 acres in size or currently employed in a farm use and that such use has produced at least \$40,000 in gross annual income in at least 2 of the previous 5 years.

Equine Exempt Building: Same as above but the structure must only be used for stabling or training equines including but not limited to providing riding lessons, training clinics and schooling shows; storage of hay; and property owners must own at least one equine or have the applicable land use approval for an equine facility (such as riding lessons, training, schooling, boarding) in the zone.

- Jackson County

Agricultural Exempt Building: Property must be receiving farm deferral.

Equine Exempt Building: Same as above and it must be located on a farm. Structure must only be used for stabling or training equines including but not limited to providing riding lessons, training clinics.

- Jefferson County

Agricultural Exempt and Equine Building: Property automatically qualifies if it is located in the EFU zone and in farm deferral.

- Klamath County

Agricultural and Equine Exempt Building: Property automatically qualifies if it is either located in the EFU zone or if not, in farm deferral.

- Lake County

Agricultural Exempt Building: Property must qualify for "farm use" (land must be currently employed for the primary purpose of obtaining profit in money).

Equine Exempt Building: Same as above and it must be located on a farm. Structure must only be used for stabling or training equines including but not limited to providing riding lessons, training clinics.

Staff is proposing a definition for agricultural and equine exempt building that applies to property receiving farm deferral, regardless of the underlying zone. According to the Oregon Department of Revenue, if land is in an EFU zone and is used primarily to make a profit by farming, it qualifies for special farm-use assessment. If land is not in an EFU zone but is used as farmland, it may receive the same assessment given to all qualifying EFU farmland.

This text amendment is consistent with Agricultural Lands, Policy 2.28, which states:

Support a variety of methods to preserve agricultural lands, such as:

- a. Support the use of grant funds and other resources to assist local farmers;*
- b. Work cooperatively with irrigation districts, public agencies and representatives and land owners;*
- c. Encourage conservation easements, or purchase or transfer of development rights programs;*
- d. Control noxious weeds;*
- e. Encourage a food council or 'buy local' program.*

Allowing property owners with farm deferral status to receive agricultural exempt buildings helps preserve agricultural lands and promote farm uses by preserving time and expense that would otherwise go towards obtaining a building permit.

On March 10 the Planning Commission voted to recommend approval of the proposed amendment with the staff recommended additional text that specifies the agricultural building or equine facility is located on the property (lot or parcel) receiving special assessment for farm use as implemented by the County Assessor's Office.

In addition, internal discussions between Planning and Building Division since the Planning Commission deliberations have resulted in a recommendation to add a citation of the applicable state statute (ORS 455.315) to the proposed definition. This provides clarity through reference to the applicable statewide standards for agricultural buildings and equine facilities but does not change the substance of the definition.

With both the recommendations of the Planning Commission and the additional reference offered by staff, the proposed definition for consideration reads:

"Agricultural building or equine facility" means buildings and structures that are exempt from the State of Oregon Structural Specialty Code as agricultural buildings and equine facilities as described in ORS 455.315. A structural building permit is not required for agricultural buildings or equine facilities located on the same lot or parcel receiving special assessment for farm use."

C. Reducing Setbacks In Forest Use (F-2 Zone), For Haner Park Subdivision And An Adjoining Three Acre Tax Lot.

Haner park subdivision and the remnant parcel are located in the southwestern portion of Deschutes County. These properties were platted prior to State enabling land use legislation. This island of F-2 zoned property is surrounded by land zoned Forest Use (F-1) and owned by the federal government as part of the Deschutes National Forest. Deschutes County is proposing text amendments reducing the setbacks in Haner Park subdivision and an adjoining three-acre tax lot to the standard 25 feet setback instead of the currently required 100 foot setback. The lot sizes in the Haner Park are of a relative small size requiring a variance to the 100 foot setback to develop any structures on the vast majority lots. No other changes to the F-2 zone are proposed.

This text amendment is consistent with Forest Lands, Section 2.3 and its goals and policies. The emphasis of this section is on forest management and conservation. Policy 2.3.5 is the only policy remotely related to the text amendment:

Uses allowed in Forest zones shall comply with State Statute and Oregon Administrative Rule.

Any proposed use must still comply with the F-2 zone development standards, which are consistent with State Statute and administrative rules.

On March 10th, the Planning Commission voted to recommend approval of the proposed amendment.