



Deschutes County Board of Commissioners
1300 NW Wall St, Bend, OR 97703
(541) 388-6570 – Fax (541) 385-3202 – <https://www.deschutes.org/>

AGENDA REQUEST & STAFF REPORT

For Board of Commissioners Work Session of October 24, 2016

DATE:

FROM: Bonnie Baker, Administrative Services, 541-388-6572

TITLE OF AGENDA ITEM:

Discussion of Text Amendment - Ordinance 026 - Lot of Record Clarification

PUBLIC HEARING ON THIS DATE?: No

See attached staff memo and supporting documents.



Community Development Department

Planning, Building Safety, Environmental Soils, Code Enforcement
PO Box 6005, Bend, Oregon 97708-6005
117 NW Lafayette Avenue
www.deschutes.org/cd

TO: Deschutes County Board of Commissioners

FROM: Matthew Martin, Associate Planner

DATE: October 17, 2016

SUBJECT: Text Amendment modifying definition of "lot of record" in Deschutes County Code Title 18, County Zoning. County Land Use File Nos. 247-16-000609-TA.

I. SUMMARY

The Planning Division is bringing a text amendment of the definition of "lot of record" in Deschutes County Code Title 18, County Zoning, to the Board of Commissioners (Board) for a work session on October 24, 2016.

II. BACKGROUND

Determining if a property is a lawfully created, legal lot of record is the initial step in allowing the development of the property. Along with those methods outlined in the definition of "lot of record" in Deschutes County Code Title 18, County Zoning, the County Planning Division has traditionally utilized an internal policy of recognizing those parcels where a building permit has been issued as a legal lot of record. However, the recent decision of Land Use Board of Appeal (LUBA) in the case of *Grimstad vs. Deschutes County*, __Or LUBA__, (LUBA No. 2016-035, September 29, 2016) found the local decision does not explain how a building permit approval can be recognized as the creation of a legal lot of record.

In response, this County initiated text amendment incorporates provisions of State law ORS 92.176(3) which recognizes that the county may approve an application for a permit, or a permit under the applicable state or local building code for the continued use of a dwelling or other building on a unit of land that was not lawfully established if:

- a. The dwelling or other building was lawfully established prior to January 1, 2007; and
- b. The permit does not change or intensify the use of the dwelling or other building.

On October 13, 2016, the Planning Commission reviewed the proposed amendment and was supportive of the changes.

III. SCHEDULE

A work session is scheduled for October 24, 2016, and the public hearing before the Board is scheduled for October 31, 2016.

REVIEWED

LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Ordinance Amending Deschutes County Code *
Title 18 to Revise the Definition of "Lot of Record," * ORDINANCE NO. 2016-026
and Declaring an Emergency. *

WHEREAS, the Deschutes County Community Development Department (CDD) initiated an amendment (Planning Division File No. 247-16-000609-TA) to the Deschutes County Code (DCC) Title 18, Chapter 18.04, Title, Purpose and Definitions; and

WHEREAS, the Deschutes County Planning Commission reviewed this ordinance at a work session on October 13, 2016 and, on that same date, forwarded to the Deschutes County Board of County Commissioners ("Board"), a recommendation to adopt Ordinance No. 2016-026; and

WHEREAS, the Board considered this matter after a duly noticed public hearing on October 31, 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 ~~strike through~~.

Section 2. FINDINGS. The Board adopts as its findings Exhibit "B", and incorporated by reference herein.

///

Section 3. EMERGENCY. This Ordinance being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this Ordinance takes effect on its passage.

Dated this _____ of _____, 2016

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

ALAN UNGER, Chair

TAMMY BANEY, Vice Chair

ATTEST:

Recording Secretary

ANTHONY DeBONE, Commissioner

Date of 1st Reading: _____ day of _____, 2016.

Date of 2nd Reading: _____ day of _____, 2016.

Record of Adoption Vote

Commissioner	Yes	No	Abstained	Excused
Alan Unger	_____	_____	_____	_____
Tammy Baney	_____	_____	_____	_____
Anthony DeBone	_____	_____	_____	_____

Effective date: _____ day of _____, 2016.

ATTEST:

Recording Secretary

Chapter 18.04. TITLE, PURPOSE AND DEFINITIONS

18.04.030. Definitions.

...

"Lot of Record" means:

- A. A lot or parcel at least 5,000 square feet in area and at least 50 feet wide, which conformed to all zoning and subdivision or partition requirements, if any, in effect on the date the lot or parcel was created, and which was created by any of the following means:
 - 1. By partitioning land as defined in ORS 92;
 - 2. By a subdivision plat, as defined in ORS 92, filed with the Deschutes County Surveyor and recorded with the Deschutes County Clerk;
 - 3. By deed or contract, dated and signed by the parties to the transaction, containing a separate legal description of the lot or parcel, and recorded in Deschutes County if recording of the instrument was required on the date of the conveyance. If such instrument contains more than one legal description, only one lot of record shall be recognized unless the legal descriptions describe lots subject to a recorded subdivision or town plat;
 - 4. By a town plat filed with the Deschutes County Clerk and recorded in the Deschutes County Record of Plats; or
 - 5. By the subdividing or partitioning of adjacent or surrounding land, leaving a remainder lot or parcel.

B. A unit of land validated in accordance with ORS 92.176.

~~BC.~~ The following shall not be deemed to be a lot of record:

- 1. A lot or parcel created solely by a tax lot segregation because of an assessor's roll change or for the convenience of the assessor.
- 2. A lot or parcel created by an intervening section or township line or right of way.
- 3. A lot or parcel created by an unrecorded subdivision, unless the lot or parcel was conveyed subject to DCC 18.04.030(B).
- 4. A parcel created by the foreclosure of a security interest.

For the purposes of DCC Title 18, "lot" or "parcel" means a lot of record as defined DCC 18.04.030.

...

(Ord. 2016-026§1, 2016; Ord. 2016-015§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. Chapter 18.04 35 (04/2015) 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)

FINDINGS

I. APPLICABLE CRITERIA:

Title 22, Deschutes County Development Procedures Ordinance

II. BASIC FINDINGS:

Proposal: The definition of “lot of record” is being amended to incorporate ORS 92.176, which grants a county the ability to acknowledge the validation of a unit of land not lawfully established where a building permit has been issued.

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 Board of County Commissioners on October 31, 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: This criterion is met because notice was published in the Bend Bulletin newspaper on October 16, 2016 describing the proposal.

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 is met because notice was 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 amendment in question does not apply to any specific property, no individual notices were sent. This criterion has been met.

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: This Planning Commission held a work session on October 13, 2016 to review the text amendment. The Board held a public hearing on October 31, 2016. The criterion is met

5. Section 22.12.050 Final Decision

All legislative changes shall be adopted by ordinance

FINDING: 247-16-000609-TA will be implemented by an ordinance upon approval and adoption by the Board; this criterion will be met.

IV. PROPOSED TEXT AMENDMENTS:

The proposed text amendment IS detailed in the ordinance exhibit with additional text identified by underline and deleted text identified by ~~strikethrough~~. Below are explanations of the proposed changes.

Title 18 of the Deschutes County Code Amendments
Chapter 18.04. TITLE, PURPOSE AND DEFINITIONS
Section 18.04.030, Definitions.

"Lot of Record" means:

- A. A lot or parcel at least 5,000 square feet in area and at least 50 feet wide, which conformed to all zoning and subdivision or partition requirements, if any, in effect on the date the lot or parcel was created, and which was created by any of the following means:
1. By partitioning land as defined in ORS 92;
 2. By a subdivision plat, as defined in ORS 92, filed with the Deschutes County Surveyor and recorded with the Deschutes County Clerk;
 3. By deed or contract, dated and signed by the parties to the transaction, containing a separate legal description of the lot or parcel, and recorded in Deschutes County if recording of the instrument was required on the date of the conveyance. If such instrument contains more than one legal description, only one lot of record shall be recognized unless the legal descriptions describe lots subject to a recorded subdivision or town plat;
 4. By a town plat filed with the Deschutes County Clerk and recorded in the Deschutes County Record of Plats; or
 5. By the subdividing or partitioning of adjacent or surrounding land, leaving a remainder lot or parcel.

B. A unit of land validated in accordance with ORS 92.176.

~~BC.~~ The following shall not be deemed to be a lot of record:

1. A lot or parcel created solely by a tax lot segregation because of an assessor's roll change or for the convenience of the assessor.
2. A lot or parcel created by an intervening section or township line or right of way.
3. A lot or parcel created by an unrecorded subdivision, unless the lot or parcel was conveyed subject to DCC 18.04.030(B).
4. A parcel created by the foreclosure of a security interest.

For the purposes of DCC Title 18, "lot" or "parcel" means a lot of record as defined DCC 18.04.030.

V. REVIEW CRITERIA:

FINDING: This County initiated text amendment incorporates provisions of State law, ORS 92.176 that grants a county the ability to acknowledge the validation of a unit of land not lawfully established, where a building permit has been issued.

The definition of "lot of record" is amended to incorporate ORS 92.176, which addresses the validation of a unit of land not lawfully established, where a building permit has been issued. Based on ORS 92.176(2), a county may approve an application to validate a unit of land under this section if the county or city approved a permit, as defined in ORS 215.402 (Definitions for ORS 215.402 to 215.438 and 215.700 to 215.780) or 227.160 (Definitions for ORS 227.160 to 227.186), respectively, for the construction or placement of a dwelling or other building on the unit of land after the sale.

ORS 92.176(3) recognizes that a county or city may approve an application for a permit, as defined in ORS 215.402 (Definitions for ORS 215.402 to 215.438 and 215.700 to 215.780) or 227.160 (Definitions for ORS 227.160 to 227.186), respectively, or a permit under the applicable state or local building code for the continued use of a dwelling or other building on a unit of land that was not lawfully established if:

- a. The dwelling or other building was lawfully established prior to January 1, 2007;
and,
- b. The permit does not change or intensify the use of the dwelling or other building.

Statewide Planning Goals

FINDING: Only two Statewide Planning Goals apply to this amendment, Goals 1 and 2, which are discussed below.

- **Goal 1, Citizen Involvement** is met through this adoption process because this amendment received a work session before the County Planning Commission, the County's citizen review board for land use matters, and a hearing before the Board.
- **Goal 2, Land Use Planning** is met because ORS 197.610 allows local governments to initiate post acknowledgments amendments. An Oregon Land Conservation and Development Department 35-day notice was initiated on October 7, 2016.¹

Comprehensive Plan

The text amendment is consistent with Deschutes County Comprehensive Plan. Section 1.3, Land Use Planning states:

- Goal 1 – Maintain an open and public land use process in which decisions are based on the objective evaluation of facts.
- Policy 1.33 – Involve the public when amending County Code

FINDING: This goal and policy is met because this amendment received a work session before the County Planning Commission, the County's citizen review board for land use matters, and a hearing before the Board. As noted above, the amendment incorporates provisions of State law, ORS 92.176 that grants a county the ability to acknowledge the validation of a unit of land not lawfully established, where a building permit has been issued.

¹ Staff alerted Scott Edelman, DLCD Central Oregon Regional Representative on October 7, 2016 of the amendment recognizing that the 35-day notice is a few days short of the first evidentiary hearing with the Board, scheduled on October 31.



LEGAL LOT VERIFICATION

Please complete the following form and provide the required information. If you have questions about filling out this form, please contact staff at the Permit and Information Center, 99 West 10th Avenue, Eugene, OR 97401, phone (541) 682-5377.

Site Location: _____

Map and Tax Lot Number: _____

Staff time will be calculated at \$35.00 per hour and will be pro-rated at 30 minute increments. The applicant may also be charged for copies made by City staff during research. Copy fees are based off the current Copies and Research Fees form, available upon request.

Legal Lot Definition

A lot of record that has boundary lines that were established:

(A) through a partition or subdivision procedure or

(B) by a deed that was signed before April 2, 1962 or

(C) through approval of an application to validate a unit of land consistent with ORS 92.176

Materials to submit with your request:

- ☐ The property description card(s) for the property (available at Lane County Assessment & Taxation).
- ☐ All deeds listed on the property description card(s) (deeds are available at the Lane County Deeds & Records Office).
- ☐ The Assessor's map for the subject property (available at Lane County Assessment and Taxation).

Contact Information:

Name (print): _____

Company/Organization: _____

Address: _____

City/State/Zip: _____

E-mail: _____

Phone: _____

Fax: _____

I understand that staff time will be charged in 30 minute increments according to staff costs required to perform the work. Please contact me if the fee reaches \$_____.

Signature: _____

Date: _____

www.eugene-or.gov/planning

Planning & Development

Planning Division

99 W. 10th Avenue, Eugene, OR 97401

Phone: 541.682.5377 or E-mail: eugeneplanning@ci.eugene.or.us

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