

IN THE COUNTY COURT OF THE STATE OF OREGON

FILED WASCO CTY
THE DALLES OR.

IN AND FOR THE COUNTY OF WASCO

JAN 12 2 37 PM '00

IN THE MATTER OF LEGISLATIVE AMENDMENTS TO THE)
WASCO COUNTY LAND USE AND DEVELOPMENT)
ORDINANCE TO DELETE THE ROAD STANDARDS IN THE)
R-R(10) RURAL RESIDENTIAL ZONE WITHIN THE)
TRANSITION LANDS STUDY AREA (AMENDING)
ORDINANCE 97-102).)

KAREN R. LEBRETUN
COUNTY CLERK
ORDINANCE
99-108

NOW ON THIS DAY, the above-entitled matter having come on regularly for consideration, said day being one duly set in term for the transaction of public business and a majority of the Court being present; and

IT APPEARING TO THE COURT: That on March 18, 1998, Ordinance No. 97-102 amended the Wasco County Land Use and Development Ordinance to add Section 3.250, Rural Residential R-R(10) zone, and rezone certain parcels within the Transition Lands Study Area from F-F(10) Forest-Farm to the new R-R(10) Rural Residential zone.

IT FURTHER APPEARING TO THE COURT: That Ordinance No. 97-102 changed the administration procedure for permitting dwellings, making a dwelling in the R-R(10) zone "permitted with standards". The standards include road, scenic and fire standards; and

IT FURTHER APPEARING TO THE COURT: That from March 1998 to present, the new R-R(10) zone has been implemented. Problems in administering the new road standards have resulted in this proposed amendment which would delete the road standards for pre-existing sub-standard roads; and

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IT FURTHER APPEARING TO THE COURT: That on August 3, 1999, the Wasco County Planning Commission met to conduct a legally notified public hearing on the above matter. Following receipt and review of all evidence, the Commission deliberated on staff's recommendation to delete the road standards in the R-R(10) zone within TLISA, with the inclusion of the requirement for a liability waiver. The waiver will be an acknowledgement by the property owner that the pre-existing road is not up to county road standards for safety. The Commission did not come to a conclusion and asked staff to explore Commissioner Hoffman's suggestion to modify the road standards based on a proportional requirement for road improvements. They then voted 5-0 to continue the hearing to October 5, 1999, at 3:00 p.m.; and

IT FURTHER APPEARING TO THE COURT: That on October 5, 1999, the Wasco County Planning Commission met to conduct the continuation of the hearing on the above matter. Following review of the material submitted by staff, the Commission voted 5-0 to recommend the deletion of the road standards with the inclusion of a letter to the County Court apprising them of the problems of allowing substandard roads with increased development, and the need for road standards for pre-existing sub-standard roads in the county. They then voted 5-0 to continue the hearing to November 2, 1999, at 3:00 p.m. to review a draft letter; and

IT FURTHER APPEARING TO THE COURT: That on November 2, 1999, the Wasco County Planning Commission met to conduct the continuation of the hearing on the above matter. Following review of the draft letter submitted by the Chair, the Commission voted 5-1 to recommend the deletion of the road standards for pre-existing sub-standard roads in the R-R(10) zone in TLISA, with the inclusion of the requirement for a Road Disclosure Acknowledgement. The Planning Commission also submitted a letter to the County Court expressing the Commission's concerns about not having standards; and

IT FURTHER APPEARING TO THE COURT: That at 10:00 a.m. on Wednesday, December 15, 1999, in the County Courtroom, Room 202, of the Wasco County Courthouse, 511 Washington Street, The Dalles, Oregon, this Court met to conduct a legislative public hearing on the above matter. The members of the Court were determined to be qualified to hear the matter, and

IT FURTHER APPEARING TO THE COURT: That the Court reviewed the record of the Planning Commission and heard the Staff report, then received all testimony. The Court closed the hearing for further input, and then deliberated, resulting in a 3-0 vote to adopt the legislative amendments to delete the road standards for pre-existing substandard roads in the R-R(10) zone in the Transition Lands Study area, with the inclusion of the requirement for a Road Disclosure Acknowledgement. Based upon the full record and evidence and testimony presented, the Court being fully apprised in the premises, did hereby make the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. In making its decision, the County Court recognizes and adopts the findings of fact in the Staff Report presented to them and made a part of this record at the hearing held on December 15, 1999.
2. Proper notice was given and the hearing was held in accordance with procedural rules for legislative hearings and in conformity with said requirements as set forth in the Wasco County Comprehensive Plan.
3. Three (3) members of the County Court were present and were qualified to sit as decision-makers after full disclosure was made and the matter of qualifications was discussed by the Court;
4. In making its decision, the Court recognizes the procedural and legal requirements of the Wasco County Comprehensive Plan and the Wasco County Land Use and Development Ordinance and weighed fully each requirement in arriving at its decision.

CONCLUSIONS OF LAW

1. The amendments are being made to delete the road standards for pre-existing substandard roads within the R-R(10) Rural Residential zone within the Transition Lands Study Area, which were adopted as part of Ordinance 97-102, and which will be amended by this action.

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2. The Court adopts the Conclusions of Law as set forth in the Staff Report presented to them and made a part of this record at the hearing held on December 15, 1999.
3. The request is for an amendment to Section 3.250 of the Wasco County Land Use and Development Ordinance.

NOW, THEREFORE, THE WASCO COUNTY COURT ORDAINS AS FOLLOWS: The Wasco County Land Use and Development Ordinance is hereby amended to delete the road standards for pre-existing substandard roads in the R-R(10) zone in the Transition Lands Study area, with the inclusion of the requirement for a Road Disclosure Acknowledgement. The revised Wasco County Land Use and Development Ordinance text amendments deleting the road standards and implementing the Road Disclosure Acknowledgement for R-R(10) zoned lands within the Transition Lands Study Area is attached as Exhibit "B".

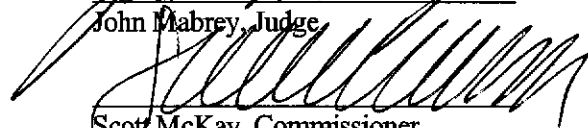

SIGNED this 5th day of January, 2000.

Approved as to Form:



Eric J. Nisley
Wasco County District Attorney

WASCO COUNTY COURT


John Mabrey, Judge
Scott McKay, Commissioner
Dan Ericksen, Commissioner

Attachments: Exhibit B; Ordinance Text Changes

<P:\TLISA 1999\CC Ordinance 99-108 Delete Rd. Stds in RR10.doc>

Crossed out words are deleted. Words in Bold are added.

EXHIBIT "B"

SECTION 3.250 "R-R(10)" RURAL RESIDENTIAL

A. Purpose

The purpose of the Rural Residential (10) zone is to provide for low density residential and small scale, part time agricultural and forest uses in a rural atmosphere which will not conflict with commercial agricultural operations, while preserving open space and other forest uses.

Buildings or structures hereafter erected, structurally altered, enlarged or moved and land hereafter used in the "R-R(10)" Rural Residential zone shall comply with the following regulations.

B. Permitted Uses

In the "R-R(10)" Rural Residential zone, the following uses and activities and their accessory buildings and uses are permitted subject to the general provisions and exceptions set forth by this Ordinance:

1. One single-family dwelling and other buildings and accessory uses subject to the request meeting standards pursuant to subsections (D) and (E) of this section.
2. Farm use, as defined in ORS 215.203(2).
3. Propagation or harvesting of a forest product.
4. Utility facilities necessary for public service.
5. Public and private conservation areas and structures for the retention of water, soil, open space, forest or wildlife resources.
6. The rehabilitation, replacements, minor betterment, repair and improvements and other similar construction activities, not considered to have land use impacts, in public parks, playgrounds and recreational areas.
7. Subdivisions.
8. Energy facilities subject to the provisions of Chapter 19.
9. Agricultural Produce Stand (subject to Chapter 20).

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10. The breeding, boarding and training of horses for profit.
11. Climbing and passing lanes within the right-of-way existing as of July 1, 1987.
12. Reconstruction or modification of public roads and highways, not including the addition of travel lanes, where no removal or displacement of buildings would occur, or no new land parcels result.
13. Temporary public road and highway detours that will be abandoned and restored to original condition or use at such time as no longer needed.
14. Minor betterment of existing public roads and highway related facilities such as maintenance yards, weigh stations and rest areas, within right of way existing as of July 1, 1987, and contiguous public owned property utilized to support the operation and maintenance of public roads and highways.
15. Guest house subject to standards in Section 4.170.

C. Uses Permitted Conditionally

In the "R-R(10)" Rural Residential zone, the following uses and activities and their accessory buildings and uses are permitted when authorized by the Approving Authority upon satisfactory demonstration of compliance with the standards of this Ordinance as required in Chapter 5 and this Section:

1. Commercial activities that are in conjunction with farm use as defined in ORS 215.203(2).
2. Exploration mining and processing of aggregate and other mineral resources or other subsurface resources.
3. Private parks, playgrounds, hunting and fishing preserves and campgrounds.
4. Parks, playgrounds, or community centers owned and operated by a governmental agency or a non-profit community organization.
5. Home occupations, subject to Chapter 20.
6. Energy facilities and commercial energy facilities subject to the provisions of Chapter 19.
7. Personal-use airports for airplanes and helicopter pads, including associate hangar, maintenance and service facilities.
8. Public or private schools.
9. Churches.

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10. The propagation, cultivation, maintenance and harvest of aquatic species.
11. Facilities to manufacture alcohol from farm or timber waste.
12. Kennels.
13. Construction of additional passing and travel lanes requiring the acquisition of right of way but not resulting in the creation of new land parcels.
14. Reconstruction or modification of public roads and highways involving the removal or displacement of buildings but not resulting in the creation of new land parcels.
15. Improvement of public roads and highway related facilities, such as maintenance yards, weigh stations and rest areas, where additional property or right of way is required, but not resulting in the creation of new land parcels.

D. Standards for Establishment of a Dwelling and Accessory Structures

- ~~1. The development is served by an all weather road that is maintained on a year-round basis and which meets County Road Department Standards. (Approval will be generally based upon the existing County Road Department standards listed below.)~~

Local Access Roads

~~The following standards apply for the creation of new roads or improvement of existing roads. All ADT's (average daily trips) are determined by the Wasco County Public Works Department.~~

Average	Under		
Daily Trips	50	50-250	250+

Road Type: 18' gravel 24' gravel 24' paved with 6' shoulder

~~Wasco County Road Standards will be only used as a general guideline for County Road Dept. approval. It does not take into consideration other factors such as type of use, terrain.~~

2.1. Scenic Development Standards including:

- a. Dwellings should be sited and landscaped to blend with their surroundings.
- b. House and roof colors that are non-reflective, preferably earth tone colors, that blend with surrounding vegetation or landscape, should be used on all exterior surfaces.

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- c. Existing vegetation shall normally be retained as much as possible and employed for landscaping and screening.
 - d. Existing landforms will be preserved and utilized for screening where applicable.
 - e. Access and roads shall be designed and located to fit the natural topography with minimum grading and minimal modifications of existing landforms. Crests and ridges are to be avoided where possible. Cuts and fills shall be rounded and reseeded with natural vegetation.
 - f. All buildings and structures shall be set back at least fifty (50) feet from all bluff lines and cliffs.
 - g. Fences should be constructed of non-reflective materials and/or painted with non-reflective colors. Placement and alignment should be done to minimize their visibility.
- 3.2. In areas of parcels characterized by a predominance of oak or oak woodlands, native vegetation shall be retained to the greatest extent possible.

**Referenced publication is "Wildlife on White Oak Woodland", a Woodland Fish and Wildlife Project Publication available from the Wasco County Planning Office and ODFW in The Dalles.*

(Washington Department of Fish and Wildlife has a draft report with additional quantifiable standards for accomplishing the above management goals. The recommendations are as of yet strictly draft recommendations and not to be cited as this time. Staff can follow up with ODFW to confirm if and when their recommendations become final and work with ODFW to verify their applicability to sites in the TLSA. In the meantime Oly Helgerson, OSU Extension Agent operating out of Stevenson, Washington will be able to provide guidance to individuals wishing to manage their oak woodlands.)

E. Property Development Standards

- 1. Property Size - The minimum property size is ten (10) acres with a 330 foot minimum average lot width.
- 2. Lot Coverage - No more than ten percent (10%) of any lot or parcel may be occupied by non-farm or forest dwellings and their accessory buildings allowed by this section.
- 3. Setbacks - In the "R-R (10)" zone no structure other than a fence or sign shall be located closer than twenty-five (25) feet from the right-of-way of a public road (front yard), twenty-five (25) feet from side yard property lines and forty (40) feet from the rear yard property line.

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4. Vision Clearance - Vision clearance on corner properties shall be a minimum of thirty (30) feet.
5. Height - Maximum height for all structures shall be thirtyfive (35) feet. Height is measured from average grade.
6. Stream Setbacks - All structures, or similar permanent fixtures (except hydroelectric facilities) shall be set back from the high water line or mark along all streams or lakes a minimum distance of one hundred (100) feet when measured horizontally at a right angle.
7. Signs - Signs shall not extend over a public right-of-way or project beyond the property line.
 - a. Signs shall not be illuminated or capable of movement.
 - b. Signs shall be limited to twelve (12) square feet in area and shall describe only uses permitted and conducted on the property which the sign is located.
 - c. Signs advertising the sale or rental of the premise and temporary in nature are permitted provided the sign is erected no closer than ten (10) feet from the right-of-way of a public road.
8. Parking - Off street parking shall be provided in accordance with Chapter 4.
9. Fire and Safety Standards - All dwellings, and other structures as specified, shall institute the following fire safety measures for protection of the development and of surrounding areas:
 - a. If the development includes a plumbed water system, at least one standpipe shall be placed a minimum of fifty (50) feet from the dwelling; and
 - b. Separate power service independent of the dwelling shall be provided for the pump utilized in a. above, and shall be provided by a public utility. Any exception to this requirement shall be approved in writing by a state licensed fire engineer; and
 - c. A minimum water flow equal to twenty (20) gallons per minute for fifty (50) minutes, for a total water capacity of one thousand (1,000) gallons shall be provided. This water source shall be available year-round, and must be usable by the rural fire protection provider (if applicable).
 - d. Any chimney or stovepipe on any structure for use with a woodstove or fireplace shall be screened to prevent discharge of sparks or other burning material; and

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- e. Power and telephone should be located underground where practicable. *(Practicable is defined as "feasible in the circumstances" by Blacks Law Dictionary. For the purposes of this section, practicable means whether the power lines can be physically put underground without undue hardship or difficulty because of circumstances in the land that are unique to this development. Cost alone does not allow for a determination that power lines cannot be located underground)* and
- f. If a water supply, such as a swimming pool, pond, stream or lake, exists within one hundred (100) feet of the driveway or road at a reasonable grade, then access to within fifteen (15) feet of the water's edge should be provided for pumping units; and
- g. Exterior roofing shall be of fire-resistant materials; and
- h. The owners of the dwelling and structures shall: maintain a primary fuel-free break area surrounding all structures; clear and maintain a secondary fuel-free break area according to the chart below. This break shall consist of removal of fire fuels from the ground, shrubs from under large trees, and tree limbs within five (5) feet of the ground; and

Size of Fuel Break Safety Zone by Percent Slope

<u>Slope</u>	<u>Feet of Primary Safety Zone</u>	<u>Feet of Additional Down Slope</u>
0%	30	0
10%	30	50
20%	30	75
25%	30	100
40%	30	150

- i. The owners of the dwelling and structures shall: maintain setbacks from ridgetops, cliffs and bluffs. The steeper the slope, the greater the flame length, the hotter the flame front and the faster the rate of fire spread. This is primarily due to preheating of the vegetation upslope from the fire, increased draft of fresh air to the fire from below; and

Setback from Major Slope Changes in Conjunction with Fuel Break Safety Zone (The definition of a major slope change is a change in slope 10% or greater.)

<u>On a slope change Where the downhill slope is</u>	<u>Feet of Setback</u>
10%	50
20%	75
25%	100
40%	150

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- j. ~~Driveways and Private Roads~~ shall be maintained to a level that is passable for fire equipment; and
1. ~~Driveways and private roads~~ shall be built and maintained to provide a minimum of twelve (12) foot width, a minimum curve radius of forty-eight (48) feet and a vertical clearance of thirteen (13) feet, six (6) inches.
 2. Grades shall not exceed an average of 8% with a maximum of 12% on short pitches.
 3. Vehicle Passage Turnouts – Driveways in excess of two hundred (200) feet in length, shall provide twenty (20) foot wide by forty (40) foot long turnouts at a maximum spacing of ½ the driveway length or four hundred (400) feet, whichever is less. Existing driveways may be used as a turnout if they meet the spacing requirements above.
 4. Deadend driveways over one hundred fifty (150) feet in length shall have turnarounds of not less than a forty-eight (48) foot radius.
- k. Public Roads providing access to a driveway or access to the dwelling ~~shall~~ **should** be brought to a level that is passable for fire/emergency equipment ~~and~~.
- ~~l. Roads shall be built and maintained to provide a minimum 18' width, all weather surface, with a minimum curve radius of 48', and a vertical clearance of 13'6".~~

10. Road Disclosure Acknowledgement:

Prior to the issuance of required permits for development, disclosure of the type of road which accesses the development shall be made known to the applicant/owner. If the road is determined to be a public road of local access and which does not meet county road access standards, the applicant shall sign a Road Disclosure Acknowledgement which will be recorded in the deed records of Wasco County and which sets forth the following:

- a. A statement that the property is served by a sub-standard road which does not meet the standards for safe access for emergency vehicles.
- b. A statement that the property owner/applicant is aware of the type and extent of hazards present associated with the development of the subject property; and
- c. A statement acknowledging that the property owner assumes all risks associated with the development of the subject property.

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40.11. Lighting - Outdoor lighting shall be sited, limited in intensity, shielded and hooded in a manner that prevents the lighting from projecting onto adjacent properties, roadways and waterways. The exterior of shielding and hooding materials shall be composed of nonreflective, opaque materials.

44.12. New Driveways – All new driveways which access a public road shall obtain a Road Approach Permit from the Wasco County Public Works Department.

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