DEPARTMENT OF COMMUNITY SERVICES
LAND USE PLANNING DIVISION
MULTNOMAH COUNTY PLANNING COMMISSION

MINUTES OF JUNE 7, 2021

I. Call to Order: Chair Ingle called the virtual Zoom meeting to order at 6:36 p.m. on Monday, June 7, 2021.

II. Roll Call:
Present - John Ingle, Alicia Denney, Kari Egger, Chris Foster, Bill Kabeiseman, Stephanie Nystrom, Victoria Purvine
Absent - Susan Silodor, Tim Wood

III. Approval of Minutes: January 4, 2021.
Motion by Kabeiseman; seconded by Nystrom.
Motion passed unanimously.

IV. Opportunity to Comment on Non-Agenda Items:

Peter Fry, former commissioner, introduces a zoning issue that he has encountered. He is interested in purchasing an adjacent property and extending a restoration project that he has already done on his property. He plans to complete a lot line adjustment to incorporate the new property, but requirements under Multnomah County's equal area provision would result in an undesirable lot layout. Mr. Fry states that no other counties within Oregon have this specific provision. He intends to submit a formal report to the Planning Commission within the next year.

V. Land Acknowledgement:
Kevin Cook, Senior Planner, introduces the Multnomah County Department of Community Services Land Acknowledgement to the Planning Commission.

Chair Ingle inquires if the Land Acknowledgement will be an ongoing agenda item for future Planning Commission sessions; Cook indicates the Land Acknowledgement will be introduced on an ongoing basis, as appropriate.

VI. Hearing: Multnomah County Planning Commission Hearing to Consider Housekeeping Amendments to the Multnomah County Zoning Code Re-establishing Home Occupation Standards in Certain Urban Base Zones and Deleting an Optional Customary Farm Dwelling Qualification Provision in the EFU Base Zone (MCC 39.4265(B)(3)) (PC-2021-14207).

Chair Ingle reads into the record the Legislative Hearing Process for the Planning Commission for a public hearing, and the process to present public testimony. Chair Ingle asks the Planning Commission to declare any actual or potential financial or other interests which would lead to a member's partiality. Commissioner Foster discloses a contribution to the Black Sovereignty Coalition in December 2020, and acknowledges that written testimony was received from that organization. Katherine Thomas, Assistant County Attorney, indicates that the disclosure does not qualify as a conflict. There are no objections to the Planning Commission hearing the matter.

Adam Barber, Deputy Planning Director, summarizes the Staff Report on the proposed ordinance, which involves two main areas.

A. **Re-establishing Home Occupation Standards in Urban Base Zones:** Barber states that the intent of the proposal is to correct two legislative oversights between 2013 and 2018 that resulted in a loss of correlation of home occupation standards to six urban zones (MUF, UF-20, LR-5, LR-7, LR10, and MR-4). The proposed ordinance will reestablish home occupations standards in these zones. Direct mail notice was sent to all of the relevant urban base zone property owners, with no questions or comments submitted prior to this hearing. No questions were introduced by the Planning Commission in relation to this topic.

B. **Deleting Optional EFU Customary Farm Dwelling Qualification Provision MCC 39.4265(B)(3) – Not High Value Farmland Soils, Median Annual Gross Sales Income Test:** Barber outlines the seven provisions available for siting a new single-family dwelling in the Exclusive Farm Use (EFU) zone. MCC 39.4265(B)(3), which is proposed for deletion, addresses a scenario where a farm tract is not primarily composed of high value farmland soils and is not actively being farmed, but is proven capable of producing at least the median level of annual gross sales of indicator crops specific to Multnomah County. A county must conduct a study to determine the estimated potential gross sales per acre for properties within one mile of the subject property, through analysis of data collected and reported by OSU or the USDA. Neither entity is currently producing the data necessary to make this determination; therefore, Multnomah County does not have access to the information required by State law to conduct the capability study. In addition, this is an optional provision that is not required by state law to be provided by the counties. The DLCD has recommended that the few counties who have adopted this provision consider amending their codes. Finally, Multnomah County has only received one application since the adoption of this provision in the county code in the late 1990s, nor does it appear to be a common application based on the 2018 and 2019 Farm and Forestry report from the DLCD. Therefore, staff recommend deletion of this provision based on the lack of requisite data. If deleted as proposed, the county would have six remaining customary farm dwelling paths; five would be available for EFU tracts that are not high value farmland soils. The goals of the proposal is to better align county code to articulate development options that are available to land owners.

Procedurally, Multnomah County published a Notice of Hearing on the Land Use Planning webpage and the Oregonian newspaper. Multnomah County also sent a direct mail "Ballot Measure 56" notice of the public hearing to all affected property owners as required by state law.

Barber introduces into the record all public testimony received on the proposal up to the point that the hearing was opened.

Exhibit H.1 is a joint letter, dated June 4, 2021 from the Oregon Farm Bureau Federation and the Multnomah County Farm Bureau. This letter raises concern about the removal of the customary farm dwelling provision, related to introducing limitations to future farmer housing opportunities.

Exhibit H.2, is a letter, dated June 4, 2021 from Garrett Stephenson, Schwabe, Williamson & Wyatt, representing Scott Reed. The letter opposes removal of the farm dwelling provision.

Exhibit H.3 is the 2018 to 2019 Farm and Forestry Report from the DLCD.

Exhibit H.4 is an email dated June 7, 2021 from Edward Hill with Black Food Sovereignty Coalition. The email opposes the deletion of the EFU farm dwelling provision.

Exhibit H.5.a, introduced by staff, is a map that shows western Multnomah County with EFU zoning and high value soils.

Exhibit H.5.b, introduced by staff, is a map that shows eastern Multnomah County with EFU zoning and high value soils.

Exhibit H.5.c, introduced by staff, is a list of high value soils in Multnomah County provided by DLCD.

Carol Johnson, Multnomah County Planning Director, reiterates the inability of the county to obtain the requisite data for the study as prescribed in the Administrative Rules. She indicates that the DLCD approval of the study is only good for a two-year period. Farm Report 790 prepared by OSU Extension was last released in 2012. The regional statistician with the USDA informed Johnson that county-level and unique crop data are no longer being collected by the USDA. Due to the fact that the county has only received one application that uses this provision, it became a strain on resources. There are six other options to pursue the path of obtaining approval for a dwelling in conjunction with a farm use. As a result, the county proposes that the provision be eliminated. The county remains open to considering other data sources.

Commissioner Foster asks for confirmation of the number of permits issued for this dwelling type per the 2018-2019 Farm and Forestry Report. Barber indicates that he recalls from the report two permits being reported to have been issued statewide for this dwelling type in 2018, and one in 2019. Foster also states that the map that depicts EFU parcels, high value and non-high value, there is no way to tell which are vacant and which are occupied. Foster also asks for confirmation that the most recent OSU report from 2012 covers data collected from 2008 to 2012. Johnson confirmed.

Commissioner Egger asks that, after reading the letter from Garrett Stephenson and listening to the staff report, if there is an alternate path that Scott Reed could take, beside the path proposed for deletion. Barber indicates that he is not in a position to advise permitting paths for any particular landowner in the context of this hearing.

Commissioner Purvine indicates that she has the same question regarding alternate pathways available to Mr. Reed for a dwelling. Barber indicates that he can only speak to the general pathways in the code that he outlined. Planning staff can work with an individual property owner that has questions about their property.

Commissioner Egger asks for clarification of the total number of applications successfully completed in the past for this type. Barber confirms that statewide, from 2018-2019, three were completed

Chair Ingle opens the hearing to Public Testimony, beginning with those individuals who had registered to testify. Each individual was granted five minutes to provide testimony.

Susan Andrews 13410 NW Springville Rd Portland OR 97229 provides testimony in support of deleting the provision. She feels it's important to protect the farmland in this area, and notes there is pressure for development.

Carol Chesarek 13300 NW Germantown Rd Portland OR 97231 provides testimony in support of deleting the provision. There has only been one use of this provision in more than 20 years in Multnomah County. The requisite data is no longer being provided. She finds the provision confusing and complicated. See

foresees ongoing legal challenges about every term and provision. She advocates for standards that are clear and objective, that people can use. An individual seeking this type of permit would have difficulty getting it approved without legal assistance.

Jerry Grossnickle 13510 NW Old Germantown Rd Portland OR 97231 provides testimony in support of deleting the provision. He indicates that part of the language is unworkable. If the county accepts a dwelling allowed on marginalized farmland, they have no means of enforcing limitations.

Gregory Malinowski 13450 NW Springville LN Portland OR 97229 provides testimony in support of deleting the provision. He indicates that the prerequisites for the provision are outdated. He believes that it encourages people to reach out beyond what is needed to run a successful farm. He discusses the farming activities of one of his neighbors.

Adam Barber reminds the Commission that this is a legislative hearing that will affect all EFU zoning in the county, and is not specific to any property.

Commissioner Foster asks for Gregory Malinowski's opinion of the use of data from 2008-2012, and whether it is reliable. Malinowski indicates that things changed quite a bit over 10 years, as far as what is economical.

Joseph Rossi, Board Director Multnomah County Farm Bureau, 3839 NE 122nd Ave
Portland OR 97230 provides testimony in opposition of deleting the provision. He indicates that removal of this provision would hurt up and coming farmers and those people who want to acquire property in order to farm. He indicates that living on the property is one of the biggest keys to success. The cost of a farm is a barrier to many farmers, and when the house is included, it can be included in the mortgage of the property. He indicates that the provision was added because a lot of people put a lot of thought into it. He argues that this is not a housekeeping amendment. He reports that there is a lot of vacant farmland that used to be farmed. One of the adverse consequences of saving farmland has been hurting people's abilities to farm.

Commissioner Nystrom asks Joseph Rossi for confirmation of who he is speaking for. He confirms that he is speaking personally, for the Farm Bureau, and for his neighbors.

Jay Udelhoven, Executive Director Multnomah County Farm Bureau 8400 SE Buford LN
Portland OR 97236 provides testimony in opposition of deleting the provision. This is a complicated code to implement, and there are people on both sides of the issue. This is not a housekeeping issue; it is a substantive change that can affect existing and future farmland owners. Interested parties should have an opportunity to understand this tool better, and assess its virtues, its obstacles to implementation and whether there are ways to overcome those obstacles. The issue deserves proper assessment and deliberation. They are willing to engage with county staff and other stakeholders to understand this issue and this tool better and see if it can be useful for new farms who want to get into farming. He indicates of the two people he has tried to help start new farms in the county in the past few years, one decided to go elsewhere and it took the other 1.5 years to get a farm. They recommend that this proposal not go forward or be adopted, and that they be given time to work with county staff to look at this further.

Garrett Stephenson Schwabe Williamson & Wyatt 1211 SW 5th Ave, Ste 1900 Portland OR 97204 provides testimony in opposition of deleting the provision. He represents Scott and Stacy Reed in opposition to the repeal of the median farm income test. He indicates that this is not a housekeeping amendment. He understands that this proposal was not vetted by the Farm Bureau or its local chapter.

Besides sending notice to those whose property might be affected, he does not feel like there was a thoughtful planning process behind removing the provision. He states the intention of the provision is to allow people with lower value soils to establish new farms. He disputes staff representation that this is a burdensome regulation that takes a lot of time and effort. There have not been a lot of applications under this standard; for that reason he finds it hard to believe that this is extremely burdensome for staff. He can understand the desire for clarity. This is very personal to someone who wants to be a farmer. The county is entrusted to allow people to develop dwellings on their farmland and to use that house to help them become farmers, and that is exactly what this standard does. He reads an excerpt from the Comprehensive Plan, section 3.10. He is concerned that some of the testimony in favor, is about one single project. He encourages the Commission to think about the broader policy aspects. He requests that the Commission continue the hearing to the next meeting.

Scott Reed 12424 NW Springville Rd Portland OR 97229 provides testimony in opposition of deleting the provision. Of the provisions that Adam Barber listed, there is only one that allows new farmers to be able to purchase a piece of land and build a house on it right away. He is sensitive to the datasets not being updated, but doesn't find that requirement in the code. He indicates that in his own application, the calculation of whether the farm can produce the median income level of other farms within a one mile radius was a lot easier than the narrative reads. He indicates that the code section may not be used much because people are unable to navigate the obstacles of getting the application processed. He recommends working with the Oregon and Multnomah County Farm Bureau and others to improve this, so that the path is easier for new and young farmers and more straightforward than it is now.

Michael Anderson 37049 SE Louden Rd Corbett OR 97019 provides testimony in opposition to deleting the provision. He thinks that rather than eliminating the code, it should be made more accessible. He inquires as to how many applications were attempted over the years, but were unsuccessful. The data only reports the three that were successful.

Chair Ingle indicates that public testimony has concluded.

Commissioner Purvine asked if Multnomah County Planning Staff had any further comments or clarifying points based on public testimony.

Adam Barber highlights comments that this is a question of broad policy intent and not any particular property. He outlines the option to continue the hearing if the Commission sees value in staff researching any of the questions, then reporting back to the Commission.

Carol Johnson adds that County language derives from the Oregon Administrative Rules promulgated by the Land Conservation and Development Commission. It is on the table to consider amendments and deletions and that would involve a continuation to a date certain so the County could accomplish some working sessions with representatives of the Farm Bureau and other interested individuals. Any amendments would need to be reviewed by DLCD to confirm that they remain consistent with the Administrative Rules, or those rules would also need to be amended.

Commissioner Egger inquires if the County has considered any other path for answers needed for this application process besides the OSU and USDA information. Director Johnson indicates that the primary source for interpreting the Administrative Rules is DLCD staff, specifically their Farm and Forest Specialist, who provided contact for the USDA statistician. The Administrative Rules only make reference to two potential data sources: the report 790 from OSU that is no longer produced and the USDA. The USDA statistician informed Director Johnson that due to effective budget cuts at the Federal

level, they have disregarded the data that is important to collect locally in Oregon, so the county-level data for certain crops that would likely be indicator crops because they are the most frequently grown, including berries and sometimes nursery stock, is not being collected by the USDA. The changes made since the Administrative Rules were written have not been taken under account. If there were a broader statement in the Administrative Rules, that said "or similar" or "subject to DLCD approval", then the County would have more flexibility. However, if the County receives input from hearing attendees and it's of interest to the Commission to pursue, then the County can have a conversation with DLCD. She indicates that it would likely be more productive if alternative sources can be identified and provided to the DLCD and shorten the time frame for making those amendments to the Administrative Rules.

Chair Ingles introduces a motion to deliberate further.

Commissioner Foster votes to move to adopt changes proposed by County Staff; seconded by Commissioner Purvine.

Commissioner Foster does not feel that using the old data set is appropriate. He speaks to other criteria in the language, including the principally-engaged standard; he summarizes a LUBA ruling indicating that one must be full time on the farm to be principally engaged, which is a tough standard. Weighing the fact that there has been only one application out of 390 in 2019, he feels the provision should be suspended. If the data becomes available, then further discussion about reinstatement may be had. He further adds that as a small farmer with gross income in the top 20 percentile of the county, he doesn't believe that he would meet the standard for principally engaged. The income path would be much easier to accomplish.

Commissioner Denney surmises that a reason the standard has not been used is when people try to get it approved, it been sat on. It is unclear how many attempts have been made but not approved.

Commissioner Egger indicates that DLCD table 12 covering the past 25 years, only 72 farm dwelling have been approved; 41 are just replacement dwellings; leaving only 29 new farm dwellings (her dwelling being one of these). This is not enough based on the number of farmers in the area. The average age of a farmer is 57.9. She personally knows of three families in the EFU with children who want to farm, but they are unsure where their adult-age children will live. It is costly and difficult to apply for a dwelling on farmland, and she does not feel it is appropriate to remove any of the tools currently available; instead the provision should be made usable and fixable. She concurs with Joe Rossi, in that one cannot farm principally without living on the property. She does not agree that the provision should be removed.

Commissioner Kabeiseman speaks to the proposal to reestablish home occupation standards in the urban base zone. When it was introduced, there was talk of a couple oversights. There was a significant reordering of the code in order to make it easier, which was a complex process and it was known there may be some things that didn't connect. He conveys that there is a reason that this is being corrected now, not due to negligence or haphazard revision of the code. The current code is better than the previous version.

Speaking to the proposed deletion of optional EFU customary farm dwelling qualification. He agrees that there is a need to find a solution to housing for new or young farmers; however, he does not feel this provision is the solution. The application process is difficult, there has been only one application, and the DLCD has recommended its elimination. He encourages Staff to identify housing solutions. He suggests that this be added to the commission's Work Program. He indicates that he will be supporting the motion.

Commissioner Nystrom seconds Kabeiseman. There is no data to keep this in the code. She does have sympathy for people who want to farm that are finding it difficult, and understands the challenges. She indicates that she will be supporting the motion, but strongly suggests that the County look for solutions to this problem.

Chair Ingle indicates that this is a farm issue, but he agrees with Kabeiseman that this might not be the tool to make it or break it. He likes the concept of adding this to the Planning Commission agenda and directing Staff to have further discussion with the DLCD regarding housing opportunities for up and coming farmers. In terms of expediency and tools available, this was good at one time, but since the statistical information is no longer available, it is much more burdensome to make one's point. The DLCD has also suggested that it be removed. He will be voting to support the motion.

Commissioner Foster also voices support for Kabeiseman's opinion.

Commissioner Foster amends the motion on the table to close the record; seconded by Purvine.

Chair Ingle calls for a vote to adopt the staff report.

The motion passes five to two; Commissioners Egger and Denney opposing.

VII. Annual Election of Planning Commission Officers.

Katherine Thomas indicates that those commissioners whose terms are expiring are not disqualified from holding an officer position.

Commissioner Ingle indicates willingness to continue as Chair.
Commissioner Purvine indicates willingness to continue as vice Chair.

Kabeiseman moves to approve both appointments; seconded by Foster.

Passed unanimously.

VIII. Director's Comments:
Director Johnson indicates that the Board has adopted the budget for the fiscal year. They have restored a position for the Code compliance team; resulting in two full time positions. She reports the passing of long-time code enforcement officer, Bill Gotzinger, in spring 2021.

She indicates that Land Use Planning is taking a new look at code compliance and our procedural rules. Also laying the groundwork around issues of capacity to respond to policy issues. In the January meeting, the Work Plan was presented to the Commission. The proposed additions from this hearing, while important, will require potential legislation and coordination with DLCD and LCDC. The contract for new permitting software vendor is nearing completion. The biggest benefit of this software will be the self-service dashboard that will allow the public to search and find answers, check on status of permits, etc.

Chair Ingle inquires if there is an estimated date to return to in-person Planning Commission meetings. Director Johnson states that Land Use Planning is beginning a planning process for reopening the counter by appointment only, with an estimated implementation in August. Since the County facilities are subject

to OSHA guidelines regarding occupancy we are waiting for further updates to know when we may do larger in-person gatherings.

Chair Ingle makes a motion to indefinitely table item 7. Work Session – Annual Election of Planning Commission Officers pursuant to Multnomah County Code 39.1620; seconded by Purvine.

Passed unanimously.

Meeting adjourned at 9:01 p.m.

The next Planning Commission meeting is tentatively scheduled for July 12, 2021.

Recording Secretary,

Heidi Konopnicki