

LAND USE SUBCOMMITTEE MEETING
ROOM 126, MULTNOMAH BUILDING
510 SE HAWTHORNE BLVD, PORTLAND OR
JUNE 17, 2015 6:00-8:00 PM

MEETING SUMMARY

I. Welcome, Introductions and Announcements

In attendance:

CAC members

Kathy Taggart
Tim Larson
Will Rasmussen

Project Team

Matt Hastie
Rich Faith
Kevin Cook
Rithy Khut

Absent

Catherine Dishion

CAC members and two members of the public were also in attendance.

Rich Faith welcomed everyone and briefly explained the items that will on tonight's agenda.

II. Code Compliance Policy

Rithy Khut summarized the main points in his memorandum about the County's code compliance program included in the meeting packet. The subcommittee reviewed each of the five proposed policies related to code compliance with the following outcomes;

Policy #1. There were no comments regarding the first policy statement.

Policy #2. No one had any issues with the second policy statement.

Policy #3. Concern was expressed that flexibility also opens the door to abuse. Another comment was that the policy should be strengthened to set tough fines for those who knowingly and willfully violate the code. Possible policy language would be: "For willful and knowing violations of the code, fines should be objective and substantial."

Policy #4. There were no concerns raised about this policy.

Policy #5. It was agreed that the additional language recommended for policy #3 regarding fines, should be placed at the end of this policy.

During public comment on the policies, the following points were raised:

- Fines should be a proportion of the profit or gain that comes with the violation. If someone reaps a huge financial gain by cutting down trees illegally and selling the timber, then the fine should be all or a portion of what that person profited.
- The penalty should be commensurate with the crime.
- The intent is good but determining profit or gain from a code violation would be extremely difficult to establish and is not practical. There are many non-quantifiable aspects of this – such as improving views by cutting down trees.
- Fines should be set to prevent willful and knowing violators from being unjustly enriched by their actions.
- Policy #1 is ambiguous when it talks about “reported and verifiable code violations.”
- People are reluctant to report code violations by a neighbor because they don’t want to create problems or trigger some kind of retaliation, so many violations go unreported.
- What is required in order for a violation to be “reported”? Are anonymous complaints accepted and acted on or does someone have to give their name in order for the complaint to be valid? Can County staff report violations that they come across, or must it be reported by a citizen.

The consensus of opinion among the subcommittee is that a potential violation case can be opened in a variety of ways: observations by staff; direct and attributable “complaints” by citizens; and through anything brought to staff’s attention whether anonymously (e.g. by mailing of photos and address; or by casual conversation). The subcommittee removed the words “reported and” so that the first policy requires fair and consistent enforcement in all cases of verifiable code violations.

Action: After much discussion, it was decided that reference to “reported” code violations should be stricken from Policy #1 so that this policy requires fair and consistent enforcement in all cases of verifiable code violations. The word “reported” seems limiting and does not reflect the many ways that the County might uncover code violations. Strike the words “reported and” from the policy.

Action: Amend Policy #5 by including language about setting fines so that it prevents willful violators from being unjustly enriched, and also that fines for willful and knowing violations are objective and substantial.

Recommendation:

The subcommittee recommends the policies with the changes as agreed upon.

III. Nonconforming Use Policy

Rich Faith summarized his memorandum on nonconforming uses and nonconforming developments included in the meeting packet. He pointed out that the issue of

nonconforming uses was principally raised by the planning staff who are seeking greater policy direction in how to handle this type of land use applications. The following are major comments regarding this policy issue.

- Nonconforming uses are a very difficult and sensitive aspect of land use regulations. If there is one area of zoning where we need to be show some mercy, it would be nonconforming uses.
- Have nonconforming uses been a big problem and have there been many complaints about their impacts?
- It does not seem necessary to limit the number of times a nonconforming use can expand or to prohibit it from rebuilding is it completely destroyed by fire or other causes.
- There are situations when it would be desirable to have a nonconforming use go away because it does not fit the character of the surrounding area and has negative impacts.
- There are also many situations where a development is nonconforming because of SEC overlay requirement which the development does not meet. An example is the location of a house on property with an SEC-h overlay. If the house were to burn down, rebuilding on the current homesite may actually be better than moving it to another location on the property to comply with the overlay standards.
- Proposed policies 4 and 5 should be deleted.
- Expansion of a nonconforming use should not be limited as proposed in policy 3. The policy should list out various factors that ought to be considered when evaluating applications to alter a nonconforming use.

Action: Amend Policy #1 as follows:

1. The purpose of nonconforming use regulations should be to permit llegal nonconforming uses, structures, or physical improvements will be allowed to continue until they are terminated or significantly damaged.

Action: Rewrite Policy #3 as follows:

3. An addition, expansion, alteration or replacement of a nonconforming use will be allowed when the addition, expansion, alteration or replacement would not create a greater adverse impact on the neighborhood, including but not limited to, noise, dust, lighting, traffic, odor, water use and sewage disposal.

Action: Delete proposed policies 4 and 5.

Recommendation:

The subcommittee recommends the policies with the above changes.

IV. Residential Uses in the Rural Center Zone

Rich explained that this subject was raised by a CAC member at the end of the last CAC meeting and was added to the list of parking lot topics. He wanted to bring it up before this subcommittee for further discussion and to see if there is need for some policy language. The subcommittee members were not sure what the problem is and did not know what to do with it. They agreed to just leave it alone and to ask the CAC member who raised this topic to clarify what the issue is.

Under public comment it was mentioned that the Springdale rural center has lots of residences which makes it quite different from Orient and Burlington which have more commercial uses. Having lots of residential properties may be a deterrent to commercial uses wanting to locate there. Conversely, commercial uses might actually be attracted there because there is a larger customer base of residents.

V. Meeting Wrap up

A final comment from a member of the public was that the meeting summary should include the rationale for taking out the word “reported” in the first code compliance policy. It’s important to communicate that the intent of this policy is that any type of identified code violation will be evaluated; enforcement action should not be limited to only those violations that are reported by citizens

VI. Adjourn

The meeting adjourned at approximately 7:38 pm.