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LEGAL COUNSEL

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Ordinance Amending Chapter 18.16 *
of the Deschutes County Code, Amending *
Standards for Nonfarm Dwellings and *
Divisions of Farm Properties in the *
Exclusive Farm Use (EFU) Zone, and *
Declaring an Emergency. *

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MARY SUE PERHOLLOW
COUNTY CLERK

0135-1675

ORDINANCE NO. 94-026

WHEREAS, the Land Conservation and Development Commission filed new administrative rules OAR 660-33-135 on March 1, 1994, relative to requirements for Agricultural Lands; and

WHEREAS, the newly adopted rules were made effective upon filing; and

WHEREAS, the newly adopted rules are very restrictive for establishing new farm dwellings, but provide the county the ability to relax somewhat approval standards for nonfarm dwellings; and

WHEREAS, the Board finds it is in the public interest to balance the effect of these new rules on rural property owners; and

WHEREAS, public hearings have been held on the proposed amendments consistent with state and county law; and

WHEREAS, the Deschutes County Planning Commission recommended adoption of the amendments as proposed; now therefore,

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

Section 1. ADOPTION OF AMENDMENTS TO SECTION 18.16.050 OF THE DESCHUTES COUNTY CODE. Section 18.16.050 of the Deschutes County Code, as amended, is further amended by the provisions set forth in Exhibit "A", attached hereto and by this reference incorporated herein.

Section 2. ADOPTION OF AMENDMENTS TO SECTION 18.16.055 OF THE DESCHUTES COUNTY CODE. Section 18.16.055 of the Deschutes County Code, as amended, is further amended by the provisions set forth in Exhibit "B", attached hereto and by this reference incorporated herein.

Section 3. SEVERABILITY. The provisions of this ordinance are severable. If any sentence, clause, or phrase of this ordinance is found to be invalid by a court of competent jurisdiction that decision shall not affect the validity of the remaining portions of this ordinance.

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Section 4. CORRECTIONS. This ordinance may be corrected by order of the Board of County Commissioners to cure editorial and clerical errors and to insert appropriate legislative history references.

Section 5. REPEAL OF ORDINANCES AS AFFECTING EXISTING LIABILITIES. The repeal, express or implied, of any ordinance, ordinance provision, code section or any line on any map by this ordinance shall not release or extinguish any duty, condition, penalty, forfeiture, or liability incurred under such ordinance, ordinance provision, code section or map feature unless a provision of this ordinance shall so expressly provide, and such ordinance repealed shall be treated as still remaining in force for the enforcement of such duty, condition, penalty, forfeiture, or liability, and for the purpose of authorizing the prosecution, conviction and punishment of the person or persons who violated the repealed ordinance.


Section 6. 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 11th day of May, 1994.

BOARD OF COUNTY COMMISSIONERS



NANCY POPE SCHLANGEN, Chair



TOM THROOP, Commissioner



BARRY H. SLAUGHTER, Commissioner

ATTEST:



Anita Mutchie
Recording Secretary

18.16.050 Standards for Dwellings in the EFU Zones

A. Farm-Related Dwellings

A dwelling, including a manufactured home in accordance with Section 18.116.070, is considered to be customarily provided in conjunction with farm use and may be permitted when all the following criteria are met:

- a. The dwelling will be located on a legally established parcel that meets the minimum parcel size for the applicable subzone, as described under Section 18.16.065.
- b. The parcel is currently employed in "farm use", as evidenced by a farm management plan showing that the day-to-day activities on the land are principally directed to the farm use of the land.
- c. The dwelling is for the farm operator and there are no other dwellings located on the parcel or parcels covered by the farm management plan.
- d. The dwelling will be located on the least productive part of the parcel.
- e. No further farm related dwellings will be allowed on separate parcels, any portion of which makes up the land area included in the farm management plan, as evidenced by a restrictive covenant.

B. Secondary Accessory Farm Dwelling. A manufactured home as a secondary accessory farm dwelling in accordance with Section 18.116.070 may be permitted subject to the following criteria:

- a. An owner-occupied farm dwelling, consistent with Section 18.16.050(A), must exist on the farm unit.
- b. A secondary accessory farm dwelling is not permitted on a parcel of less than 40 acres unless it is demonstrated to the Planning Director or Hearings Body that a smaller land unit is a commercial agricultural enterprise.
- c. No more than one secondary accessory farm dwelling is permitted for each 40 acres of the farm unit.
- d. The occupant of the manufactured home shall be an employee of the farm owner or an immediate family member engaged in the farm operation.
- e. The manufactured home shall be considered a temporary installation and permits for such shall be renewable on an annual basis.
- f. The manufactured home shall be removed from the property if it is no longer needed for the operation of the farm.

C. A Pre-Existing Dwelling as a Ranch Hand Residence may be permitted subject to the following criteria:

a. The occupant of the dwelling shall be an employee of the farm owner or an immediate family member engaged in the farm operation.

b. The farm unit shall be a minimum of 40 acres unless it is demonstrated to the Planning Director or Hearings Body that a smaller land unit is a commercial agricultural enterprise.

c. No more than one preexisting dwelling may be permitted as a ranch hand residence for each 40 acres of the farm unit.

D. Non-farm Dwelling. One single-family dwelling, including a manufactured home in accordance with Section 8.116.070, not provided in conjunction with farm use may be permitted on an existing lot or parcel subject to the following criteria:

a. The Planning Director or Hearings Body shall make findings that [the proposed non-farm dwelling]:

[1. Is compatible with farm uses described in ORS 215.203(2) and is consistent with the intent and purpose set forth in ORS 215.243.]

1[2]. The dwelling or activities associated with the dwelling will not force a significant change in or significantly increase the cost of accepted farming practices, as defined in ORS 215.203(2)(c), or accepted forest practices on nearby lands devoted to farm or forest use. [Does not interfere seriously with accepted farming practices, as defined in ORS 215.203(2)(c), on adjacent lands devoted to farm uses.]

2[3]. The proposed nonfarm dwelling d[D]oes not materially alter the stability of the overall land use pattern of the area. In determining whether a proposed nonfarm dwelling will alter the stability of the land use pattern in the area, the county shall consider the cumulative impact of nonfarm dwellings on other lots or parcels in the area similarly situated and whether creation of the parcel will lead to creation of other nonfarm parcels, to the detriment of agriculture in the area.

3[4]. The proposed nonfarm dwelling i[I]s situated on an existing lot or parcel, or a portion of a lot or parcel, that is generally unsuitable for the production of farm crops and livestock, or merchantable tree species, considering the terrain, adverse soil or land conditions, drainage and flooding, vegetation, location and size of the tract.

For the purposes of this subsection only, unsuitability shall be determined with reference to the following:

A lot or parcel shall not be considered unsuitable solely because of size or location if it can reasonably be put to farm or forest use in conjunction with other land. If the parcel is under forest assessment, the dwelling shall be situated upon generally unsuitable land for the production of merchantable tree species recognized by the Forest Practices Rules, considering the terrain, adverse soil or land conditions, drainage and flooding, vegetation, location and size of the parcel.

A lot or parcel is not "generally unsuitable" simply because it is too small to be farmed profitably by itself. If a lot or parcel can be sold, leased, rented or otherwise managed as part of a commercial farm or ranch, it is not "generally unsuitable". A lot or parcel is presumed to be suitable if it is composed predominantly of Class I-VI soils. Just because a lot or parcel is unsuitable for one farm use does not mean it is not suitable for another farm use. If the parcel is under forest assessment, the area is not "generally unsuitable" simply because it is too small to be managed for forest production profitably by itself.

If a lot or parcel under forest assessment can be sold, leased, rented or otherwise managed as a part of a forestry operation, it is not "generally unsuitable". If a lot or parcel is under forest assessment, it is presumed suitable if it is composed predominantly of soil capable of producing 20 cubic feet of wood fiber per acre per year. If a lot or parcel is under forest assessment, to be found compatible and not seriously interfere with forest uses on surrounding land it must not force a significant change in forest practices or significantly increase the cost of those practices on the surrounding land.

4[5]. The proposed nonfarm dwelling i[I]s not within one-quarter mile of a dairy farm, feed lot, sales yard, slaughterhouse or poultry, hog or mink farm, unless adequate provisions are made and approved by the Planning Director or Hearings Body for a buffer between such uses. The establishment of a buffer shall be designed based upon consideration of such factors as prevailing winds, drainage, expansion potential of affected agricultural uses, open space and any other factor that may affect the livability of the non-farm dwelling or the agriculture of the area. (Ord. 91-020 ss 1, 1991)

b. Pursuant to ORS 215.236, a non-farm dwelling on a lot or parcel in an Exclusive Farm Use zone that is or has been receiving special assessment may be approved only on the condition that before a building permit is issued the applicant must produce evidence from the County Assessor's Office that the parcel upon which the dwelling is proposed has been disqualified for special assessment at value for farm use under ORS 308.370 or other special assessment under ORS 308.765, 321.352, 321.730 or 321.815 and that any additional tax or penalty imposed by the County Assessor as a result of disqualification has been paid.

c. A parcel that has been disqualified for special assessment at value for farm use pursuant to ORS 215.236(4) shall not requalify for special assessment unless, when combined with another contiguous parcel, it constitutes a qualifying parcel. (Ord. 91-038 ss 2 and 3 1991)

EXHIBIT "B"**18.16.055 Land Divisions**

A. General. Divisions of land in the farm zone shall be identified on the land division application as either a farm division, nonfarm dwelling division, or a nonfarm division.

B. Farm Divisions. Farm divisions shall be subject to the minimum lot size requirements of Section 18.16.060(A) and all applicable requirements of Title 17. **Notwithstanding the provisions of section 18.16.060(B), partitions establishing parcels less than the EFU minimum lot size in EFU areas may be permitted to create one new parcel for a nonfarm dwelling that has been approved under subsection 18.16.050(D), provided that the remaining farm parcel meets the minimum established by the EFU subzone.**

C. Nonfarm Dwelling Divisions.

a. Nonfarm dwelling land divisions shall be subject to the minimum lot size requirements of Section 18.16.060(B) and all applicable requirements of the partition ordinance, including the general partition standards set forth in Chapter 17.28 and the Section 18.16.050(D) standards for nonfarm dwellings. Each nonfarm dwelling land division application shall be accompanied by an application for a dwelling on each parcel to be created.

b. Nonfarm subdivisions are prohibited. No more than three nonfarm parcels may be created from any one parent parcel, existing as of the effective date of Ordinance 92-065.

D. Nonfarm Divisions other than Nonfarm Dwellings. Such divisions shall be subject to the minimum lot size requirements of Section 18.16.060(C) of this Chapter and the applicable partitioning standards, including the general partition standards set forth in Chapter 17.28, the Subdivision and Partition Ordinance.