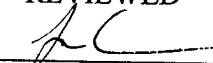



REVIEWED  LEGAL COUNSEL
REVIEWED  CODE REVIEW COMMITTEE

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Ordinance Amending Sections 18.120.040, *
Building Height Exceptions, and 18.04.030, *
Definition – Agricultural Structure, of Title 18, *
Zoning Ordinance, of the Deschutes County *
Code. *

ORDINANCE NO. 2001-033

WHEREAS, currently, in most of Deschutes County, a structure cannot be higher than 30 feet in height. An exception process allows structures up to 36 feet in height subject to a land use permit applying certain criteria including view protection. However, certain agricultural structures that are exempt from building permits have an exemption from certain height restrictions and there is currently no limit on their height; and

WHEREAS, concerns were brought forward by citizens who were interested in protecting scenic views within Deschutes County; and

WHEREAS, in 1995 Deschutes County enacted a “right to farm” ordinance (95-024) to protect farm and forest-based activities and practices and define what are generally accepted, reasonable and prudent farm practices/uses within the agricultural community.

WHEREAS, in July 2000 the Deschutes County Planning Commission and the Board of County Commissioners (Board) held a joint meeting to discuss the Deschutes County Zoning Ordinance, Section 18.120.040, Building Height Exceptions. After numerous work sessions and public hearings, the Board determined that additional information was needed to make a final decision; and

WHEREAS, the Planning Commission held a public hearing on July 12, 2001, continued on August 9, 2001, to obtain additional information and after considering testimony from the public and interested parties, agreed to forward a recommendation to the Board to reduce the allowable height for certain agricultural structures; and

WHEREAS, after a notice was given and a public hearing was conducted on September 25, 2001, before the Board in accordance with applicable law, the Board has considered the Planning Commission’s recommendation; and

WHEREAS, the attached proposed amendments to 18.120.040 provide protection for the right to farm while addressing the need for height restrictions; now, therefore,

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

Section 1. AMENDMENT. Section 18.120.040, Building height exceptions, of the Deschutes County Code, is amended to read as shown in Exhibit “A,” attached hereto and by this

reference incorporated herein, with new language underlined and deleted language shown in ~~strikethrough~~.

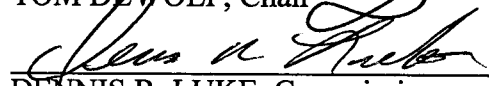
Section 2. AMENDMENT. Section 18.04.030, Definitions, of the Deschutes County Code, is amended to read as shown in Exhibit "B," attached hereto and by this reference incorporated herein, with new language underlined.

DATED this 10th day of October ~~September~~, 2001.

BOARD OF COUNTY COMMISSIONERS OF
DESCHUTES COUNTY, OREGON



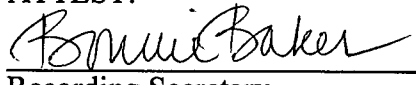
TOM DEWOLF, Chair



DENNIS R. LUKE, Commissioner

-no- vote

MICHAEL M. DALY, Commissioner

ATTEST:


Bonnie Baker
Recording Secretary

EXHIBIT "A"

18.120.040. Building height exceptions.

- A. The following structures or structural parts are not subject to the building height limitations of DCC Title 18: chimneys not more than three feet six inches (3'6") above the highest point of the roof, vertical support structures for telephone and power transmission lines in utility easements or public rights-of-way, not requiring a site plan review as defined in the—DCC 18.124.060, flagpoles not exceeding forty (40) feet, and agricultural structures as defined in this ordinance—DCC 18.04.030 not exceeding thirty-six (36) feet. This exception does not apply to an Airport Development Zone, or Landscape Management Combining Zone.
- B. The following structures or structural parts may receive exceptions to the building height limitations of Title 18 if approved as part of a Site Plan Review, as defined in the DCC 18.124.060 and subject to the criteria contained therein, public schools, vertical support structures for telephone and power transmission lines requiring a site plan, structures that are necessary for public safety and flagpoles. This exception does not supercede the more restrictive requirements that are found in the Airport Safety Combining Zone or Landscape Management Combining Zone.
- C. An exception (up to 36 feet) to the building height limitations for structures not otherwise exempted by DCC 18.120.040(A) may be approved upon findings that:
1. The structure is not located in a Landscape Management Zone, except when the structure is a single-family dwelling with an attached hangar located in an unincorporated community and the

- structure has a maximum height of 35 feet including chimneys, antennas, flagpoles or other projections from the roof of the structure;
2. The structure is not located within 100 feet of any rim rock, as defined in DCC 18.04.030;
 3. After consultation with the applicable fire department, the proposed height does not exceed the height limitation of the department's fire fighting equipment, considering the evacuation of the building's occupants and the fire fighting requirements of the Department; and
 4. The proposed additional height will not adversely impact scenic views from existing nearby residences.
 5. The proposed structure shall relate harmoniously to the natural environment and existing development, minimizing visual impacts and preserving natural features including views and topographical features.

D. An exception to building height limitations for agricultural structures may be approved upon findings that the applicant meets the criteria listed in DCC 18.120.040(C)(1) through (3) and demonstrates that the proposed structure is:

1. an agricultural structure as defined in DCC 18.04.030
2. located in an EFU or Forest zone; and
3. necessary to conduct generally accepted farming practices that are typical or customary of Deschutes County farmers who are regularly involved in the proposed type of agriculture. The applicant shall document satisfaction of this criterion by submitting evidence or testimony from an authorized

representative of the Deschutes
County Farm Bureau.

(Ord. 2001-033 §1, 2001; Ord 2001-004 §1,
2001; Ord. 2001-016 § 2, 2001; Ord. 98- 035 §
1, 1998; Ord. 96-035 § 1, 1996; Ord. 93-043 §
20C, 1993; Ord. 92- 055 § 10, 1992; Ord. 92-
036 § 1, 1992)

EXHIBIT "B"

Section 18.04.030

"Agricultural structure" means any structure considered to be an "agricultural structure building" under the State Building Code (Section 326) as referenced in DCC 15.04.010; and is (1) located on a parcel that is at least 20 acres in size and contains at least 8.5 irrigated acres, or (2) a parcel that is at least 80 acres in size, regardless of irrigation.

(Ord. 2001-033 § 2, 2001; Ord. 2001-016 § 2, 2001; Ord. 92-034 § 1, 1992)

ATTACHMENT A

AGRICULTURAL EXEMPTIONS - HEIGHT

2001	2000	1999	1998		1997
18.6	28.0	14	20.0	23.0	14.6
12.0	12.0	23	10.0	25.0	14.6
17.0	22.0	24.5	30.0	21.0	38.0
27.0	23.0	23	14.8	22.0	17.0
8.0	12.0	14	26.0	16.0	8.0
14.0	28.0	17.6	18.0	14.8	28.0
23.6	15.0	13	18.0	28.0	21.0
12.0	12.0	16	18.0	15.0	24.0
12.0	16.0	16	26.0	15.0	10.0
36.0	18.0	48	14.0	22	16.0
12.2	22.0	23	14.0		15.0
13.0	12.0	14	12.0		26.0
17.0	13.0	27.6	12.0		10.0
12.8	20.0	21	12.0		20.0
10.0	20.0	16	19.0		18.0
20.0	13.0	16	19.0		17.0
8.0	19.0	19	26.0		28.0
15.3	19.6	16	21.0		18.0
	23.0	15	15.0		16.0
	30.0	26.5	14.6		24.0
	19.0	25	16.0		14.0
	27.0	18	15.0		15.0
	16.0	23	19.0		16.0
	27.0	16	18.0		16.0
	13.0	16	30.0		16.0
	18.0	22.8	12.0		14.0
	21.0	10	23.0		17.5
	27.0	10	24.0		10.0
	26.0	11	18.0		20.0
	16.0	8	20.0		16.0
	12.0	9	18.00		10.0
	23.6	10	25.0		21.6
	11.0	17.6	16.0		23.0
	15.0	12	36.0		18.0
	18.0	24	18.0		21.0
	22.0	18	20.6		21.0
	18.0	16	16.0		48.0
		28	28.0		14.0
			24.0		20.0
			22.0		10.0
			11.6		14.0
			11.6		12.0
			11.6		36.0
			20.0		

STAFF REPORT
File Number TA-00-010
Ordinance No. 2001-033

HEARING DATE: September 25, 2001 at 3:00 p.m.
Board of County Commissioners Hearing Room
Administration Building – 1130 NW Harriman Street
Bend, Oregon 97701-1947

APPLICANT: Deschutes County

SUBJECT: Text Amendment to the Deschutes County Code Title 18, Building Height exceptions (Section 18.120.040 of the zoning ordinance) to consider changes to the allowable height of some agricultural barns/ structures and windmills used to generate power for non-farm uses.

Staff Planners: George Read, Director
Christy Morgan, Assistant Planner

Currently, in most of Deschutes County, a structure cannot be higher than 30 feet in height. An exception process allows structures up to 36 feet in height subject to public notice. However certain agricultural structures that are located on a "farm" are exempt from building permits and all height restrictions. Attachment A is a representative list of agricultural exemptions that have been issued by Deschutes County from 1997-2001.

The County Building Official has adopted a definition of "farm" to include all parcels of 80 acres in size and parcels of 20 acres in size with at least 8.5 acres of irrigation. Agricultural structures on farms of this size or larger are entitled to an outright exemption from height restrictions and can therefore be any height.

In addition, Deschutes County enacted a "right to farm" ordinance in 1995, to protect farm and forest-based economically productive activities in the County in order to assure the continued health, safety, and prosperity of its residents (See Chapter 9.12 Right to Farm, attached). This ordinance defines and protects farm activities and practices that are generally accepted, reasonable and prudent within the agricultural community. In determining whether any particular farming or forest practice is a generally accepted, reasonable and prudent practice, the "right to farm" ordinance states that County staff may seek the advice of an expert or experts in the particular practice involved from a list of experts provided by the Deschutes County Farm Bureau for each commodity or practices area.

In July 2000, the Deschutes County Planning Commission and Board of County Commissioners held a joint meeting to discuss the Deschutes County Zoning Ordinance, Section 18.120.040, Building Height Exceptions. This meeting was held in response to concerns brought forward by citizens who were interested in protecting scenic views within the County. After numerous work sessions and public hearings, the Board of

Commissioners determined that additional information was needed to make a final decision specifically on the following two issues:

- 1) Should a height restriction be placed on certain agricultural barns/structures?
- 2) Should the allowable height be increased for windmills used to generate power for non-farm uses?

The Deschutes County Planning Commission conducted an additional public hearing on July 12, 2001, that was continued on August 9, 2001. Based on the testimony presented at these hearings, the Planning Commission voted on August 9, 2001, to forward the following recommendations to the Board of County Commissioners:

1. Allow agricultural structures up to 36' outright.
2. Allow agricultural structures above 36' if the applicant meets certain criteria to demonstrate that the structure will be located in an EFU/Forest zone, is an "agricultural structure" as defined in proposed DCC Section 18.04.060 (Exhibit B), will be using the structure for an accepted farm use as defined in DCC Section 18.04.030, and will be using generally accepted farming practices as defined in DCC Sections 9.12.045 and 9.12.060. Planning staff recommends that the burden of proof fall on the applicant to document that the agricultural structure will be used for an accepted farm use, using generally accepted farming practices by submitting evidence or testimony from an authorized representative of the Deschutes County Farm Bureau.
3. Do not allow windmills for non-agricultural uses to be taller than 30', or 36' with an exception. Windmills for agricultural uses would be allowed as defined recommendations in 1 and 2 above.
4. Require public hearing for agricultural structure exceptions.

STAFF RECOMMENDATION

Staff recommends the Board of County Commissioners take the following actions:

1. **Conduct a public hearing** on September 25, 2001, on the proposed Ordinance 2001-033.
2. **Consider testimony** received on this proposal submitted at the hearing and before the close of the record.
3. **Adopt the proposed ordinance with revisions based on issues raised or changes proposed through public testimony.**

Attachments:

1. Attachment A – Agricultural Height Exemptions
2. Right to Farm Ordinance
3. Ordinance 2001-033
4. Exhibit A to Ordinance 2001-033
5. Exhibit B to Ordinance 2001-033

Chapter 9.12. RIGHT TO FARM

- 9.12.010. Short title.**
- 9.12.020. Purpose.**
- 9.12.030. Definitions.**
- 9.12.035. Definition-Facility.**
- 9.12.040. Definition-Farming.**
- 9.12.045. Definition-Farming practice.**
- 9.12.050. Definition-Forest practice.**
- 9.12.055. Definition-Nonresource use.**
- 9.12.060. Definition-Generally accepted.**
- 9.12.065. Definition-Farming and forest practices exclusions.**
- 9.12.070. Definition-Nuisance or trespass.**
- 9.12.075. Definition-Pesticide.**
- 9.12.080. Prohibition on enactments that make farm and forest uses a nuisance or trespass.**
- 9.12.090. Protection of farm and forest uses on lands zoned for resource use.**
- 9.12.100. Protection of allowed farm and forest uses in zones other than EFU and forest zones.**
- 9.12.110. Protection of nonconforming farm and forest uses.**
- 9.12.120. Land use ordinances and decisions.**
- 9.12.130. Complaints by nonresource users.**
- 9.12.140. Farm practices advisory list.**
- 9.12.150. Affect on livestock control districts.**

9.12.010. Short title.
This ordinance may be cited as the Deschutes County Right To Farm Ordinance.
(Ord. 2001-016 § 2, 2001; Ord. 95-024 § 1, 1995)

9.12.020. Purpose.

A. It is the purpose of DCC 9.12 to protect farm and forest-based economically productive activities of Deschutes County in order to assure the continued health, safety and prosperity of its residents. Farm and forest uses sometimes offend, annoy, interfere with or otherwise affect others located on or near farm and forest lands. Deschutes County has concluded in conformance with ORS chapter 30 that persons located on or near farm and

forest lands must accept resource uses and management practices.

B. DCC 9.12 is intended to limit the availability of remedies based on nuisance or trespass, rights of action and claims for relief and issuance of citations for infractions over which Deschutes County has jurisdiction, when they otherwise would either have an adverse impact on farm and forest uses that Deschutes County seeks to protect, or would impair full use of the farm and forest resource base within Deschutes County.
(Ord. 2001-016 § 2, 2001; Ord. 95-024 § 2, 1995)

9.12.030. Definitions.

For the purposes of DCC 9.12, unless otherwise apparent from the context, certain words and phrases used in DCC 9.12 are defined as set forth in DCC 9.12.035-075.
(Ord. 2001-016 § 2, 2001; Ord. 95-033 § 1, 1995; Ord. 95-024 § 3, 1995)

9.12.035. Definition-Facility.

"Facility" means any real or personal property, including appurtenances thereto and fixtures thereon, associated with a given use.
(Ord. 2001-016 § 2, 2001; Ord. 95-024 § 3, 1995)

9.12.040. Definition-Farming.

"Farming" means the cultivation, growing, harvesting, processing or selling of plants or animals of any kind that lawfully may be grown, possessed and sold, including but not limited to forage, row crops, grapes, Christmas trees and nursery stock, fish, livestock, poultry and ratites. Except as otherwise set forth herein, farming may be at either a commercial or a noncommercial scale.
(Ord. 2001-016 § 2, 2001; Ord. 95-024 § 3, 1995)

9.12.045. Definition-Farming practice.

"Farming practice" means a mode of farming, including use of pesticides, that:

1. Is or may be used in a farming operation of a similar nature;
2. Is consistent with generally accepted, reasonable and prudent methods;

3. Is or may become a generally accepted, reasonable and prudent method in conjunction with farm use;
4. Complies with applicable laws; and
5. Is done in a reasonable and prudent manner.

(Ord. 2001-016 § 2, 2001; Ord. 95-024 § 3, 1995)

9.12.050. Definition-Forest practice.

"Forest practice" means a mode of operation, including the use of pesticides, on forestland that:

1. Is or may be used on forestland of a similar nature;
2. Is a generally accepted, reasonable and prudent method of complying with ORS 527.610 to 527.770 and the rules adopted pursuant thereto;
3. Is or may become a generally accepted, reasonable and prudent method in conjunction with forestland;
4. Complies with applicable laws;
5. Is done in a reasonable and prudent manner; and
6. May include, but is not limited to, site preparation, timber harvest, slash disposal, road construction and maintenance, tree planting, precommercial thinning, release, fertilization, animal damage control and insect and disease control.

(Ord. 2001-016 § 2, 2001; Ord. 95-024 § 3, 1995)

9.12.055. Definition-Nonresource use.

"Nonresource use" means any facility, activity or other use of land that does not constitute a farm or forest use, as defined herein, including but not limited to residential use.

(Ord. 2001-016 § 2, 2001; Ord. 95-024 § 3, 1995)

9.12.060. Definition-Generally accepted.

"Generally accepted" means a practice that an average person in Deschutes County who is regularly involved in the same type of resource use would reasonably expect to occur or exist in a rural setting.

(Ord. 2001-016 § 2, 2001; Ord. 95-024 § 3, 1995)

9.12.065. Definition-Farming and forest practices exclusions.

"Farming and forest practices" do not include:

1. The willful growing of unlawful, infested, infected or diseased plants or animals; or
2. Trespass which involves actual physical intrusion onto the property of another by a person or, within a livestock control district, by a person's animals.

(Ord. 2001-016 § 2, 2001; Ord. 95-024 § 3, 1995)

9.12.070. Definition-Nuisance or trespass.

"Nuisance" or "trespass" includes but is not limited to actions or claims based on noise, vibration, odors, smoke, pesticide spray, dust and mist from irrigation. Nuisance also includes actions or claims based on otherwise approved practices performed during non-daylight hours.

(Ord. 2001-016 § 2, 2001; Ord. 95-024 § 3, 1995)

9.12.075. Definition-Pesticide.

"Pesticide" includes defoliants, desiccants, fungicides, herbicides, insecticides, nematocides, and other substances included and defined in ORS 634.006(8).

(Ord. 2001-016 § 2, 2001; Ord. 95-024 § 3, 1995)

9.12.080. Prohibition on enactments that make farm and forest uses a nuisance or trespass.

The Board of County Commissioners shall enact no resolution or ordinance that makes a farm or forest practice covered by DCC 9.12.090 through 9.12.110 a nuisance or trespass or provides for the abatement of such practices as a nuisance or trespass.

(Ord. 2001-016 § 2, 2001; Ord. 95-024 § 4, 1995)

9.12.090. Protection of farm and forest uses on lands zoned for resource use.

- A. No farm or forest practice occurring on lands zoned for resource use shall be declared to be a public or private nuisance or trespass, or support any complaint procedure, or give rise to a claim for relief in favor of, or to protect the interests of, nonresource uses or any persons or property associated therewith, to the extent that such controversy, proceeding or claim would arise under an ordinance or the inherent authority of Deschutes County.

- B. DCC 912.090 applies regardless of:

1. The location of the purportedly affected nonresource use;
2. Whether the nonresource use purportedly affected existed before or after the occurrence of the farm or forest use;
3. Whether the farm or forest practice or nonresource use has undergone any change or interruption; or
4. Whether the resource use or nonresource use is located inside or outside an area designated as other than high value resource lands.

C. Lands zoned for resource use include lands in EFU zones, forest zones, surface mining zones, and flood plain or open space & conservation zones where the underlying comprehensive plan designation is "agriculture" or "forest."

D. If zoning is changed in such a way to place a farming or forest practice within a resource zone as defined herein, DCC 9.12.090 will apply to that farming or forest practice after the date the zone change becomes effective.

(Ord. 2001-016 § 2, 2001; Ord. 95-024 § 5, 1995)

9.12.100. Protection of allowed farm and forest uses in zones other than EFU and forest zones.

A. On lands other than those zoned for farm or forest use, no farm or forest use allowed in a zone shall be declared to be a public or private nuisance or trespass, or support any complaint procedure, or give rise to a claim for relief in favor of, or to protect the interests of, nonresource uses or any persons or property associated therewith, to the extent that such controversy, proceeding or claim would arise under an ordinance or the inherent authority of Deschutes County.

B. DCC 9.12.110 shall apply:

1. To farming practices on commercial farms only, notwithstanding the definition of farming in DCC 9.12.
2. Whether or not the farm practice occurs within the applicable urban growth boundary.
3. Where the commercial farming or forest practice existed before the conflicting

nonfarm or nonforest use of real property that gave rise to the complaint.

(Ord. 2001-016 § 2, 2001; Ord. 95-024 § 6, 1995)

9.12.110. Protection of nonconforming farm and forest uses.

A. On lands where farming or forest practices occur as a pre-existing nonconforming use in a zone not otherwise allowing farm or forest practices, no such practices shall be declared to be a public or private nuisance or trespass, or support any complaint procedure, or give rise to a claim for relief in favor of, or to protect the interests of, nonresource uses or any persons or property associated therewith, to the extent that such controversy, proceeding or claim would arise under an ordinance or the inherent authority of Deschutes County.

B. DCC 9.12.110 shall apply:

1. To farming practices on commercial farms only, notwithstanding the definition of farming in DCC 9.12.
2. Whether or not the farm practice occurs within the applicable urban growth boundary.
3. Where a farming or forest practice existed before the conflicting nonfarm or nonforest use of real property that gave rise to the complaint.
4. Where a farming or forest practice has not significantly increased in size or intensity from November 4, 1993 or the date on which the zoning is changed to make the use a nonconforming one, whichever is later.

(Ord. 2001-016 § 2, 2001; Ord. 95-024 § 7, 1995)

9.12.120. Land use ordinances and decisions.

The fact that Deschutes County's comprehensive plan and zoning ordinances and that individual land use decisions issued by the County may allow the siting, development or support of any particular use does not negate the provisions of DCC 9.12 intended to protect a farm or forest resource use.

(Ord. 2001-016 § 2, 2001; Ord. 95-024 § 8, 1995)

9.12.130. Complaints by nonresource users.

Any persons not engaged in a farm or forest use are deemed on notice that Deschutes County will not issue a citation involving a farm or forest practice protected under DCC 9.12, so long as such resource use complies with applicable provisions of federal and state laws and DCC 9.12. In order to protect a farming or forest practice from shutdown upon receipt of a complaint of nuisance, there shall be a presumption of acceptability of the practice in the absence of compelling evidence that continuation of the practice would result in an immediate threat to health and/or safety to the public, and the County shall not take action to cause cessation of such practice. If the practice shall not have been previously adjudged to be an acceptable practice, the County shall, subject to DCC 9.12.140, make a timely determination of whether a citation should issue.

(Ord. 2001-016 § 2, 2001; Ord. 95-024 § 9, 1995)

9.12.140. Farm practices advisory list.

In determining whether any particular farming or forest practice is a generally accepted, reasonable and prudent practice, County staff may prior to issuing a citation, seek the advice of an expert or experts in the particular practice involved from a list of experts provided by the Deschutes County Farm Bureau for each commodity or practices area.

(Ord. 2001-016 § 2, 2001; Ord. 95-024 § 10, 1995)

9.12.150. Affect on livestock control districts.

Nothing in DCC 9.12 shall apply to or restrict any action taken under DCC 6.08 with respect to livestock at large.

(Ord. 2001-016 § 2, 2001; Ord. 95-024 § 11, 1995)