



POLK COUNTY

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COMMUNITY DEVELOPMENT

AUSTIN M'GUIGAN
Director

MEMORANDUM

TO: Polk County Planning Commission
Committee for Citizen Involvement
Interested Parties

FROM: Sidney Mulder, Planning Supervisor

DATE: December 7, 2018

SUBJECT: Legislative Amendment 18-01; Amendments to the Polk County Subdivision and Partition Ordinance and to the Polk County Zoning Ordinance to be consistent with State law.

ISSUE:

The Polk County Planning Commission and the Polk County Board of Commissioners will hold public hearings to receive testimony and consider text amendments to the Polk County Zoning Ordinance (PCZO) Chapters 136, 138, and 177, and to the Polk County Subdivision and Partition Ordinance (PCSO) Chapter 91. The proposed PCZO amendments would allow an exception to the minimum parcel size in resource zones in order to allow a parcel to be partitioned along an urban growth boundary (UGB), which would implement recent changes in State law. Proposed amendments to the PCSO would provide further clarification to the definition of "Lawfully Created Parcels" to better reflect the application of Oregon Revised Statute (ORS) Chapters 92 and 215.

The Planning Commission will conduct a public hearing on December 18, 2018 at 6:00 P.M. After holding a public hearing, the Planning Commission will make a recommendation to the Polk County Board of Commissioners on what amendments should be made to the PCZO and the PCSO. The Board of Commissioners will hold a public hearing that is yet to be scheduled, and make a final local decision.

RECOMMENDATION:

Staff recommends that the Planning Commission conduct a public hearing and make a recommendation to the Board of Commissioners to adopt the amendments to the PCZO and the PCSO included as Attachments A - D.

STAFF REPORT:

I. BACKGROUND

This legislative amendment was initiated by the Polk County Board of Commissioners in order to consider updates to the PCZO Chapters 136, 138, and 177 and to the PCSO Chapter 91. Updates to PCZO Chapters 136, 138, and 177 are intended to allow an exception to the minimum parcel size in resource zones in order to allow a land partition to occur along an urban growth boundary (UGB). Updates to Chapter 91 are intended to provide clarification to the definition of "Lawfully Created Parcels".

Oregon Revised Statute (ORS) 197.646 (1) and (3) require that when new land use regulations are adopted in ORS, counties must adopt amendments to their local code to implement the changes to

State law. Currently, the Planning Division applies multiple updated sections of ORS directly to land use applications. This situation adds difficulty to filing an application because it requires applicants to address both Polk County criteria and State criteria. In some instances the new requirements of State law are more restrictive than the PCZO or PCSO. In other instances Polk County's requirements are more restrictive than State law. Where Polk County requirements and ORS conflict, the County is required to apply the more restrictive of the two standards.

The amendments proposed by Staff are detailed in Attachments A - D to this memo. Those amendments are summarized as follows:

PCZO Chapter 136; LAND PARTITION STANDARDS:

- ◇ Allows a land partition to occur along an UGB if the parcel is located partially within an UGB and is designated for urban uses, and is partially outside of the UGB and is zoned Exclusive Farm Use (EFU). The resulting EFU zoned parcel would not be required to meet the 80.0 acre minimum parcel size for the EFU zone. These changes would implement recent changes to ORS 215.263.

PCZO Chapter 138; LAND DIVISION REQUIREMENTS:

- ◇ Allows a land partition to occur along an UGB if the parcel is located partially within an UGB and is designated for urban uses, and is partially outside of the UGB and is zoned Farm/Forest (F/F) or Farm Forest Overlay (FFO). Resulting F/F zoned parcels would not have to meet the 40.0 acre minimum parcel size under this exception and resulting FFO zoned parcels would not have to meet the 80.0 acre minimum parcel size under this exception. These changes would implement recent changes to ORS 215.785.

PCZO Chapter 177; LAND DIVISION REQUIREMENTS:

- ◇ Allows a land partition to occur along an UGB if the parcel is located partially within an UGB and is designated for urban uses, and is partially outside of the UGB and is zoned Timber Conservation (TC). The resulting TC zoned parcel would not have to meet the 80.0 acre minimum parcel size for the TC zone. These changes would implement recent changes to ORS 215.785.

PCSO Chapter 91; LAWFULLY CREATED PARCELS:

- ◇ PCSO currently identifies a unit of land that was created as a result of a lien foreclosure as a "Lawfully Created Parcel". Proposed amendments would narrow this broad language in County code to better reflect the application of ORS Chapters 92 and 215, which identifies specific scenarios when units of land created as a result of a foreclosure are considered a lawful parcel.

On January 23, 2018, the Polk County Board of Commissioners directed staff to initiate this legislative amendment process, and determined that amendments to the PCZO and PCSO would be in the public interest and of general public benefit. The intent of the proposed text amendments is to provide consistency and clarification between ORS 92, ORS 215, and Polk County's implementing Ordinances.

Notice of the proposed amendments was submitted to Oregon Department of Land Conservation and Development (DLCD) on November 9, 2018. Planning Division Staff provided notification of the December 18, 2018 Planning Commission public hearing for file LA 18-01 to the Dallas Itemizer-Observer Newspaper for publication on November 14, 2018. On November 9, 2018, Planning Staff provided notice of the Planning Commission public hearing to interested parties, including all Planning Commission members. Notification of this legislative proceeding has been fulfilled pursuant to PCZO Section 111.370. Pursuant to PCZO 115.040, the Planning Commission shall conduct a public hearing and submit a recommendation to the Board of Commissioners. The Board of Commissioners will conduct a separate public hearing on this matter, which has yet to be scheduled.

II. COMMENTS RECEIVED

No comments have been received as of the writing of this staff report.

III. CRITERIA FOR LEGISLATIVE AMENDMENTS

A legislative amendment to the text of the Polk County Zoning Ordinance (PCZO) and the Polk County Subdivision and Partition Ordinance (PCSO) may be approved provided that the request is based on substantive information and factual basis to support the change. In amending the PCZO and PCSO, Polk County shall demonstrate compliance with PCZO 115.060. The applicable review and decision criteria are listed in bold, followed by Staff's analysis and findings.

- (A) **Compliance with Oregon Revised Statutes, and the statewide planning goals and related administrative rules. If an exception to one or more of the goals is necessary, Polk County shall adopt findings which address the exception criteria in Oregon Administrative Rules, Chapter 660, Division 4; [PCZO 115.060(A)]**
1. **A local government shall amend its acknowledged comprehensive plan or acknowledged regional framework plan and land use regulations implementing either plan by a self-initiated post-acknowledgment process under ORS 197.610 to 197.625 to comply with a new requirement in land use statutes, statewide land use planning goals or rules implementing the statutes or the goals. [ORS 197.646(1)]**
 3. **When a local government does not adopt amendments to an acknowledged comprehensive plan, an acknowledged regional framework plan or land use regulations implementing either plan, as required by subsection (1) of this section, the new requirements apply directly to the local government's land use decisions. The failure to adopt amendments to an acknowledged comprehensive plan, an acknowledged regional framework plan or land use regulations implementing either plan required by subsection (1) of this section is a basis for initiation of enforcement action pursuant to ORS 197.319 to 197.335. [ORS 197.646(3)]**

Staff Findings: ORS 197.646 (1) and (3) require that when new land use regulations are adopted in Oregon Revised Statute (ORS), counties must adopt amendments to their local code to implement the changes to State law. Until the county's local code is updated, the county must apply the ORS changes directly to land use applications. In 2015, the Oregon Legislature passed and the Governor signed House Bill 2457, which allows an additional exception to the minimum parcel size in resource zones, and affects the applicable criteria for certain land partition applications. As such, ORS 197.646 (1) requires that certain sections of PCZO Chapters 136, 138, and 177 be updated to reflect the changes to State law. House Bill 2457 (2015) had the effect of amending ORS 215.263(2) and 215.785, and the proposed text amendments to PCZO Chapters 136, 138, and 177 would implement these changes.

Polk County's Exclusive Farm Use (EFU), Farm Forest Overlay (FFO), and Timber Conservation (TC) zones have an 80.0 acre minimum parcel size, and the Farm/Forest (F/F) zone has a 40.0 acre minimum parcel size. These minimum parcel sizes are applied to land partition applications, except under certain circumstances identified in PCZO sections 136.070(B) – (G), 138.130(B) – (K), and 177.060(B) – (F). The proposed amendments would allow for an additional exception to the minimum parcel size in these resource zones to account for parcels that are located partially within an UGB and partially outside of an UGB. The exception to these minimum parcel sizes would still require a land partition application, subject to administrative review. The partition would be required to occur along the UGB and if the parcel contains a dwelling, the applicant would have to demonstrate that the parcel could continue to support residential use (ie. setbacks, septic system, access, etc.). If the parcel does not contain a dwelling, it would not be eligible for a dwelling, except as authorized by ORS 195.120, and may not be considered in approving or denying an application

for siting any other dwelling. This criteria is understood to only apply to the resource zoned parcel, and would not necessarily preclude the establishment of a dwelling on the parcel created within the UGB, assuming the zoning allows for a dwelling and all development standards are met. Additional criteria states that the parcel may not be considered in comprehensive plan amendment or zone change applications for the resource zoned parcel. Lastly, the criteria states that the owner of the parcel not containing a dwelling must sign and record with the County Clerk in irrevocable deed restriction prohibiting the property owner from a cause of action or claim of relief alleging injury from farming or forest practices. From an implementation standpoint, Staff found it peculiar that this requirement was applicable to the parcel *not* containing a dwelling rather than the parcel that does contain a dwelling. Other sections of ORS 215 requiring this same deed restriction apply to parcels approved for residential development. For this reason, Staff contacted the Farm and Forest Lands Specialist with the Oregon Department of Land Conservation (DLCD) to make sure this was not an error in statute. It is in the opinion of DLCD Staff that this language was intentionally included to provide the same protection to non-residential parcels, as it is assumed that the parcel with a dwelling already has a recorded deed restriction as required by ORS 215.293.

While drafting the proposed amendments, Staff identified a discrepancy in ORS 215.263(2)(b)(iii) and OAR 660-033-0100(10)(b)(C). ORS 215.263(2)(b)(iii) uses the term “forestland” while OAR 660-033-0100(10)(b)(C) uses the term “agricultural lands”. Staff confirmed with DLCD’s Farm and Forest Lands Specialist that this is a typographical error and ORS 215.263(2)(b)(iii) should say “agricultural lands”, as this statute applies to lands within the EFU zone. For these reasons, the proposed amendments to PCZO 136.070(H)(3)(c) uses the term “farmlands” rather than “forestlands” to be consistent with OAR 660-033-0100(10)(b)(C).

In regards to the proposed text amendments to the PCSO, it should be noted that county code uses the term “parcel” more broadly than how it is defined in statute today. Historically, it is likely that there was parity between state statute and county code, but since around 2007, the Oregon Legislature has been removing the term “lot or parcel” in ORS 92 when used outside the context of ORS 92.010¹ replacing it with the term “unit of land”. Staff acknowledges that this matter will likely need to be revisited through a separate legislative amendment process to evaluate the term “parcel” throughout all sections of the PCZO and PCSO. For now, the scope of the proposed amendments are much narrower and is focused on the lawful status of parcels created by foreclosures.

PCSO 91.950(1) currently defines “Lawfully Created Parcels” as:

- (1) *A parcel shall be considered lawfully created if:*
 - (a) *The parcel was created by deed instrument or sales contract prior to the May 15, 1974 (the date of adoption of the Polk County Subdivision and Partition Ordinance);*

¹ **92.010 Definitions for ORS 92.010 to 92.192.** As used in ORS 92.010 to 92.192, unless the context requires otherwise:

- (3)(a) “Lawfully established unit of land” means:
 - (A) A lot or parcel created pursuant to ORS 92.010 to 92.192; or
 - (B) Another unit of land created:
 - (i) In compliance with all applicable planning, zoning and subdivision or partition ordinances and regulations; or
 - (ii) By deed or land sales contract, if there were no applicable planning, zoning or subdivision or partition ordinances or regulations.
- (b) “Lawfully established unit of land” does not mean a unit of land created solely to establish a separate tax account.
- (4) “Lot” means a single unit of land that is created by a subdivision of land.
- (5) “Negotiate” means any activity preliminary to the execution of a binding agreement for the sale of land in a subdivision or partition, including but not limited to advertising, solicitation and promotion of the sale of such land.
- (6) “Parcel” means a single unit of land that is created by a partition of land.

- (b) *The parcel was created after May 15, 1974 in accordance with the provisions of the Polk County Subdivision and Partition Ordinance; or*
- (c) *The parcel was created by dividing land as a result of a lien foreclosure or foreclosure of a recorded contract for the sale of real property.*

PCSO 91.950(1)(c) implies blanket compliance with ORS 92.010 for all units of land created by foreclosure. However, in application, ORS 92 limits the applicability of “lawfully established unit of land” status to only units of land that were “lawfully established” prior to foreclosure, or those that were created by foreclosure by way of ORS 215.283(1)(d)². All other units of land created by foreclosure may be validated as lawfully created pursuant to ORS 92.176³. Otherwise, the buyer may be eligible to recover damages or equitable relief pursuant to ORS 92.018⁴. Unless the seller is

² **215.283 Uses permitted in exclusive farm use zones in nonmarginal lands counties; rules.** (1) The following uses may be established in any area zoned for exclusive farm use:

(d) A dwelling on real property used for farm use if the dwelling is occupied by a relative of the farm operator or the farm operator’s spouse, which means a child, parent, stepparent, grandchild, grandparent, stepgrandparent, sibling, stepsibling, niece, nephew or first cousin of either, if the farm operator does or will require the assistance of the relative in the management of the farm use and the dwelling is located on the same lot or parcel as the dwelling of the farm operator. *Notwithstanding ORS 92.010 to 92.192 or the minimum lot or parcel size requirements under ORS 215.780, if the owner of a dwelling described in this paragraph obtains construction financing or other financing secured by the dwelling and the secured party forecloses on the dwelling, the secured party may also foreclose on the homesite, as defined in ORS 308A.250, and the foreclosure shall operate as a partition of the homesite to create a new parcel.* [Emphasis added]

³ **92.176 Validation of unit of land not lawfully established.** (1) A county or city may approve an application to validate a unit of land that was created by a sale that did not comply with the applicable criteria for creation of a unit of land if the unit of land:(a) Is not a lawfully established unit of land; and
(b) Could have complied with the applicable criteria for the creation of a lawfully established unit of land in effect when the unit of land was sold.

(2) Notwithstanding subsection (1)(b) of this section, a county or city may approve an application to validate a unit of land under this section if the county or city approved a permit, as defined in ORS 215.402 or 227.160, respectively, for the construction or placement of a dwelling or other building on the unit of land after the sale. If the permit was approved for a dwelling, the county or city must determine that the dwelling qualifies for replacement under the criteria set forth in ORS 215.755 (1)(a) to (e).

(3) A county or city may approve an application for a permit, as defined in ORS 215.402 or 227.160, respectively, or a permit under the applicable state or local building code for the continued use of a dwelling or other building on a unit of land that was not lawfully established if:

(a) The dwelling or other building was lawfully established prior to January 1, 2007; and

(b) The permit does not change or intensify the use of the dwelling or other building.

(4) An application to validate a unit of land under this section is an application for a permit, as defined in ORS 215.402 or 227.160. An application to a county under this section is not subject to the minimum lot or parcel sizes established by ORS 215.780.

(5) A unit of land becomes a lawfully established parcel when the county or city validates the unit of land under this section if the owner of the unit of land causes a partition plat to be recorded within 90 days after the date the county or city validates the unit of land.

(6) A county or city may not approve an application to validate a unit of land under this section if the unit of land was unlawfully created on or after January 1, 2007.

(7) Development or improvement of a parcel created under subsection (5) of this section must comply with the applicable laws in effect when a complete application for the development or improvement is submitted as described in ORS 215.427 (3)(a) or 227.178 (3)(a). [2007 c.866 §2]

Note: 92.176 was added to and made a part of 92.010 to 92.192 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

⁴ **92.018 Buyer’s remedies for purchase of improperly created unit of land.** (1) If a person buys a unit of land that is not a lawfully established unit of land, the person may bring an individual action against the seller in an appropriate

a county that involuntarily acquired the unit of land by means of foreclosure under ORS chapter 312 of delinquent tax liens. For those buyers, there may be no legal remedy or relief. Therefore, PCSO 91.950(1)(c) should be amended to clearly limit the application of this remedy to units of land created pursuant to ORS 215.283(1)(d).

An action limiting the applicability of PCSO 91.950(1)(c) also requires an evaluation of PCSO 91.950(1)(a) to determine whether or not this definition of “lawfully created parcel” should be expanded to include foreclosed land. This provision recognizes a unit of land created by a recorded contract for the sale of real property prior to the date of adoption of the Polk County Subdivision and Partition Ordinance as “lawfully established”. Therefore, a unit of land created by foreclosure of a recorded contract for the sale of real property prior to the date of adoption of the Polk County Subdivision and Partition Ordinance would also be consistent with the current definition in PCSO 91.950 as the use of a sales contract negates the need to amend the current code in order to provide relief.

The question remains, however, as to whether or not a final judgment or other document that evidences a lien foreclosure executed prior to the date of adoption of the Polk County Subdivision and Partition Ordinance would also be considered a “lawfully established unit of land”. ORS 92.027⁵ permits the creation of a unit of land by way of final judgement or other document that evidences a lien foreclosure as a legitimate way to create land. If such land was created in that manner prior to applicable planning, zoning or subdivision or partition ordinances or regulations it is reasonable to conclude that it was, therefore, lawfully established.

Based on the findings above, staff has conclude that 1) State law permits the creation of a unit of land by way of a lien foreclosure or foreclosure of a recorded contract for the sale of the real property without approval by the governing body responsible for administering the Oregon Land Use Planning Program; 2) that creation of a unit of land in this manner is not automatically afforded the rights associated with a “lawfully established unit of land” as defined by ORS 92; 3) that State law provides remedies for units of land that were improperly formed pursuant to ORS 92; and 4) that State law ultimately provides a remedy where the buyer of a unit of land that was not “lawfully established” can bring an individual action against the seller in an appropriate court to recover damages or to obtain equitable relief, unless the seller is a county that involuntarily acquired the unit of land by means of foreclosure under ORS chapter 312 of delinquent tax liens.

The one exception to these conclusions is ORS 215.283(1)(d) which permits a foreclosure (by the party securing financing) to operate as a partition to create a new parcel. Taken together, ORS 92.018, 92.027 and 92.177 permit the creation of a unit of land by foreclosure. Therefore, a foreclosed unit of land that was created in compliance with ORS 215.283 could then be classified as

court to recover damages or to obtain equitable relief. The court shall award reasonable attorney fees to the prevailing party in an action under this section.

(2) If the seller of a unit of land that was not lawfully established is a county that involuntarily acquired the unit of land by means of foreclosure under ORS chapter 312 of delinquent tax liens, the person who purchases the unit of land is not entitled to damages or equitable relief.

⁵ **92.027 Deed reference to creation of unit of land.** A person who conveys or contracts to convey fee title to a lot or parcel, or another unit of land resulting from a lien foreclosure or foreclosure of a recorded contract for the sale of real property, created or established on or after January 1, 2008, must include in the deed or other instrument conveying or contracting to convey fee title:

- (1) A reference to the recorded subdivision plat or partition plat for the lot or parcel;
- (2) A reference to or exhibit of the final land use decision that approved the subdivision or partition if a subdivision plat or partition plat is not required by law; or
- (3) A reference to or exhibit of a final judgment or other document that evidences a lien foreclosure or a foreclosure of a recorded contract for the sale of the real property. [2007 c.866 §3]

Note: 92.027 was added to and made a part of 92.010 to 92.192 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

a “lawfully established unit of land” pursuant to ORS 92.010(3)(a)(A) as it would be a “parcel” created pursuant to ORS 92.010 to 92.192.

Based on these conclusions, Staff recommends adding Sections 136.070(H), 138.130(L), and 177.060(G) to the PCZO, as included in Attachments A – C of this memo, to allow for an exception to the minimum parcel size in resource zones, as permitted by ORS 215.263(2) and 215.785. Staff also recommends amending PCZO 91.950, as included in Attachment D of this memo, to more clearly reflect the application of ORS Chapters 92 and 215. An exception to the Oregon Statewide Planning Goals is not required to approve these amendments. Staff concludes that the proposed text amendments to the PCZO and PCSO would comply with this criterion.

(B) Conformance with the Comprehensive Plan (PCCP) goals, policies and intent, and any plan map amendment criteria in the plan; [PCZO 115.060(B)]

1. **Polk County will consider areas lying between unincorporated city limits and an adopted urban growth boundary as “urbanizable,” available for annexation and urban development over time. [PCCP, Section 2, Element K. Urban Land Development, Policy 2.1]**
2. **Polk County will support the development of land within existing urban areas before the conversion of urbanizable lands to urban uses. Expansion of urban areas should occur outward from existing development in an orderly, efficient and logical manner. [PCCP, Section 2, Element K. Urban Land Development, Policy 2.2]**
3. **Polk County will encourage the orderly annexation to municipalities of the land within the adopted urban growth boundary. [PCCP, Section 2, Element K. Urban Land Development, Policy 2.8]**
4. **Polk County will maintain the area outside the urban growth boundaries with low-density living areas, open space lands, agricultural uses, and other uses compatible with the intent and purpose of the adopted urban growth policies of the city and County land use plans. [PCCP, Section 2, Element K. Urban Land Development, Policy 2.11]**
5. **Polk County will review all requests for the division of land in agricultural areas and will permit only those which meet the following criteria:**
 - a. **For farm parcels, the minimum parcel size is that acknowledged for Polk County by the Land Conservation and Development Commission (LCDC) on April 22, 1988 (88-ACK-347), consistent with Oregon Revised Statutes, Chapter 215.**
 - b. **For non-farm parcels, the proposed division is consistent with Oregon Revised Statutes Chapter 215 and Oregon Administrative Rules Chapter 660, Division 33 and complies with all applicable requirements of the zoning and partitioning ordinances. [PCCP, Section 2, Element B. Agricultural Lands, Policy 1.8]**
6. **Polk County will review all requests for the division of land in forest land areas and will permit only those which meet the following criteria:**
 - a. **For forest operations and practices, the minimum lot size will be at least 80 acres.**
 - b. **For non-forest parcels, the proposed division is consistent with Oregon Revised Statutes, Chapter 215, and Oregon Administrative Rules, Chapter 660, Division 6 and complies with all applicable requirements of the zoning and partitioning ordinances. [PCCP, Section 2, Element C. Forest Lands, Policy 1.7]**

Staff Findings: The Polk County Comprehensive Plan (PCCP) is implemented by the provisions in the Polk County Zoning Ordinance (PCZO) and Polk County Subdivision and Partition Ordinance

(PCSO). Section 7 of the PCCP, Implementation Techniques, states: “in theory, the zoning ordinance is a legislative expression of the Comprehensive Plan and must satisfy certain standards set out by statute.” The PCCP is implemented within the bounds provided by State law. The PCCP can set goals and policies, which through implementation by the PCZO or PCSO, are more restrictive than State law. However, the provisions of the PCZO or PCSO may not be less restrictive than State law. Where Polk County requirements and ORS conflict, the County is required to apply the more restrictive of the two standards.

As discussed above, ORS 197.646 requires that Polk County update its local code to implement changes to State law. Until such changes are made, the County must implement the new provisions of State law directly. In light of the recent changes to State law, there is an additional exception to the minimum parcel size in resource zones which is not currently included in the PCZO. The amendments included as Attachments A – C would incorporate the criteria for partitioning land along an UGB, which is currently permitted by ORS 215.263(2) and ORS 215.785.

When UGB’s are established, the boundary lines do not always follow property lines, which can result in parcels being located partially within an UGB and partially outside of an UGB. Similarly, the land lying within an UGB and outside of an UGB have different comprehensive plan designations and typically different implementing zones. Land within an UGB has a Comprehensive Plan designation of “Urban Reserve”, while land outside of an UGB is typically designated “Agriculture” or “Forest”. A single parcel comprised of different Comprehensive Plan designations makes it difficult to manage as a single unit of land. Land within an UGB is intended to eventually be annexed into the applicable city for future urban development needs, while land outside of an UGB with an “Agriculture” or “Forest” Plan designation is intended to be maintained for resource management. Allowing a partition to occur along an UGB to create two separate parcels is consistent with the goals and policies of the PCCP because it would allow property lines to follow the UGB, which would allow for more orderly development, annexations, and overall more efficient land management by allowing nonresource uses and resource uses to be located on separate parcels.

Staff has identified that PCSO 91.950 could be interpreted to be less restrictive than certain sections of ORS Chapters 92 and 215. Therefore, PCSO 91.950 should be amended to provide further clarification to the current broad language used to define “Lawfully Created Parcels”. PCSO 91.950 currently implies that a unit of land is considered “lawful” if the unit of land was created by dividing land as a result of a lien foreclosure or foreclosure of a recorded contract for the sale of real property. ORS 91 and 215 clarify that only under certain circumstances does a foreclosure result in a lawfully created parcel. The proposed amendments included in Attachment D would provide better clarification and would be consistent with State law.

Based on the above findings, the proposed amendments to the PCZO and the PCSO would comply with this criterion.

(C) That the proposed change is in the public interest and will be of general public benefit; and [PCZO 115.060(C)]

Staff Findings: The purpose of this legislative amendment is to update the PCZO and the PCSO in order to reflect changes in State law and to provide clarification where certain sections of the PCSO could be interpreted as being less restrictive than State law. The proposed amendments would be in the public interest because they would provide continuity between the requirements of State law and the PCZO and PCSO. Currently, the Planning Division applies certain sections of State law directly to land use applications. This situation makes it difficult for applicants and other property owners to understand what regulations apply to their property. The proposed amendments would resolve this issue by updating Polk County’s regulations so that the PCZO and PCSO are consistent with State law; thereby eliminating the need to apply State law directly. This continuity would benefit both applicants and other property owners seeking to understand their property rights, and avoid confusion as to why State law applies directly only under certain circumstances.

Based on the above findings, Staff concludes that the proposed changes to the PCZO and PCSO are in the public interest and of general public benefit.

(D) Compliance with the provisions of any applicable intergovernmental agreement pertaining to urban growth boundaries and urbanizable land. [PCZO 115.060(D)]

Staff Findings: Polk County has adopted intergovernmental agreements (IGA's) with each of the cities that have an UGB that extend outside of city limits and into Polk County's planning jurisdiction. These cities are Dallas, Independence, Monmouth, Salem, and Willamina. Falls City has an UGB, however, it is entirely located within city limits. Therefore, Polk County does not have jurisdiction of any land within Falls City's UGB. All cities were notified of the Planning Commission public hearing on November 9, 2018. Staff has not received any comments from the cities as of the writing of this staff report.

The proposed amendments to the PCZO and the PCSO are to permit land partitions along UGB's and to clarify the definition of a lawfully created parcel. These changes would affect the criteria for specific land use applications countywide, including within UGBs. The proposed additional exception to the minimum parcel size only applies to the newly created parcel that is resource zoned and located outside of the UGB, and is not an exception to the minimum parcel size defined in each City's applicable IGA. The parcel created within the UGB would still be subject to that partitioning standards identified in each IGA. Staff believes that the proposed amendments would be consistent with all adopted intergovernmental agreements pertinent to land in UGB's. The proposed amendments would not amend any of the requirements of those agreements.

Based on the findings discussed above, the proposed amendments to the PCSO would comply with all applicable IGA's.

IV. CONCLUSION

Based on the findings above, Staff concludes that the proposed amendments to the Polk County Zoning Ordinance and to the Polk County Subdivision Ordinance and to would comply with all of the applicable review and decision criteria for a legislative amendment.

PLANNING COMMISSION ACTION:

After opening the public hearing and receiving testimony, the Planning Commission's options include the following:

- (1) Move to recommend that the Board of Commissioners approve Legislative Amendment 18-01, which consists of:
 - (a) Adopting the PCSO and PCZO amendments presented in Attachments A-D; or
 - (b) As further amended by the Planning Commission (state revisions).
- (2) Continue the public hearing:
 - (a) To a time certain, or
 - (b) Indefinitely, or
- (3) Close the public hearing and take no action on the proposed amendments.

ATTACHMENTS:

- | | | |
|---|---|--|
| A | - | Proposed Amendments to the PCZO Chapter 136 |
| B | - | Proposed Amendments to the PCZO Chapter 138 |
| C | - | Proposed Amendments to the PCZO Chapter 177 |
| D | - | Proposed Amendments to the PCSO Chapter 91 |
| E | - | Applicable ORS Chapters that are the basis for the proposed changes: ORS 92.010(3), 215.283(1), 215.263(2), 215.265, and 215.785 |

Amendments to Polk County Zoning Ordinance Chapter 136

Additions are double underlined

Deletions are in ~~strikethrough~~

136.070. LAND PARTITION STANDARDS [ORS 215.263(1) ORS 215.780 (C)]. No land(s) located within the Exclusive Farm Use Zoning District shall be partitioned without the expressed approval of Polk County under the provisions of Chapter 136 and the Polk County Subdivision and Partition Ordinance. A plat shall be prepared by a registered surveyor to document the land partition. Upon final approval of the plat, the survey shall be recorded by the Polk County Clerk. Parcels resulting from a foreclosure action are exempted from the partitioning process under ORS 92.010(7)(a). A deed or instrument conveying land in lieu of foreclosure shall not constitute a foreclosure action.

In the Exclusive Farm Use Zoning District, the following standards shall apply:

- (A) Except as provided in Sections 136.070(B) through (H), ~~(C), (D), (E) and (F)~~, the minimum parcel size is 80 acres.

(H) Partition along an Urban Growth Boundary [ORS 215.263(2) and ORS 215.265]. A parcel that is located partially within the Exclusive Farm Use zone and partially within an urban growth boundary and is designated for urban uses, may be partitioned subject to the following criteria:

- (1) The partition occurs along the urban growth boundary; and
- (2) If the parcel contains a dwelling, the parcel must be large enough to support continued residential use;
- (3) If the parcel does not contain a dwelling, the parcel:
 - (a) Is not eligible for a dwelling, except as authorized by ORS 195.120;
 - (b) May not be considered in approving or denying an application for siting any other dwelling; and
 - (c) May not be considered in approving or redesignation or rezoning of farmlands under the acknowledged comprehensive plan and land use regulations, except for a redesignation or rezoning to allow a public park, open space or other natural resource use.
- (4) The owner of the parcel not containing a dwelling shall record with the County Clerk an irrevocable deed restriction prohibiting the owner and all successors in interest from pursuing a cause of action or claim of relief alleging injury from farming or forest practices for which a claim or action is not allowed under ORS 30.936 or 30.937.

Amendments to Polk County Zoning Ordinance Chapter 138

Additions are double underlined

Deletions are in ~~strikethrough~~

138.130 LAND DIVISION REQUIREMENTS *[OAR 660-006-055, OAR 660-006-0026, and OAR 660-033-0100]*. No land(s) located within the Farm/Forest Zoning District shall be divided without the expressed approval of Polk County under the provisions of Chapter 138 and the Polk County Subdivision and Partition Ordinance. A plat shall be prepared by a registered surveyor to document the land partition. Upon final approval of the plat, the survey shall be recorded by the Polk County Clerk. A deed or instrument conveying land in lieu of foreclosure shall not constitute a foreclosure action.

(A) Except as provided in Section 138.130(B-~~L~~J), the minimum parcel size within the Farm/Forest Zoning District shall be 40 acres, and the minimum parcel size within the Farm/Forest Overlay Zone shall be 80 acres; or

(L) *Partition along an Urban Growth Boundary [ORS 215.785]* A parcel that is located partially within the F/F or FFO zone and partially within an urban growth boundary and is designated for urban uses, may be partitioned subject to the following criteria:

(1) The partition occurs along the urban growth boundary; and

(2) If the parcel contains a dwelling, the parcel must be large enough to support continued residential use;

(3) If the parcel does not contain a dwelling, the parcel:

(a) Is not eligible for a dwelling, except as authorized by ORS 195.120;

(b) May not be considered in approving or denying an application for siting any other dwelling; and

(c) May not be considered in approving or redesignation or rezoning of forestlands under the acknowledged comprehensive plan and land use regulations, except for a redesignation or rezoning to allow a public park, open space or other natural resource use.

(4) The owner of the parcel not containing a dwelling shall record with the County Clerk an irrevocable deed restriction prohibiting the owner and all successors in interest from pursuing a cause of action or claim of relief alleging injury from farming or forest practices for which a claim or action is not allowed under ORS 30.936 or 30.937.

Amendments to Polk County Zoning Ordinance Chapter 177Additions are double underlinedDeletions are in ~~strike through~~

177.060. LAND DIVISION REQUIREMENTS. In the TC Zoning District, the following standards shall apply:

- (G) *Partition along an Urban Growth Boundary [ORS 215.785]* A parcel that is located partially within the TC zone and partially within an urban growth boundary and is designated for urban uses, may be partitioned subject to the following criteria:
- (1) The partition occurs along the urban growth boundary; and
 - (2) If the parcel contains a dwelling, the parcel must be large enough to support continued residential use;
 - (3) If the parcel does not contain a dwelling, the parcel:
 - (a) Is not eligible for a dwelling, except as authorized by ORS 195.120;
 - (b) May not be considered in approving or denying an application for siting any other dwelling; and
 - (c) May not be considered in approving or redesignation or rezoning of forestlands under the acknowledged comprehensive plan and land use regulations, except for a redesignation or rezoning to allow a public park, open space or other natural resource use.
 - (4) The owner of the parcel not containing a dwelling shall record with the County Clerk an irrevocable deed restriction prohibiting the owner and all successors in interest from pursuing a cause of action or claim of relief alleging injury from farming or forest practices for which a claim or action is not allowed under ORS 30.936 or 30.937.

Amendments to Polk County Subdivision and Partition Ordinance Chapter 91

Additions are double underlined

Deletions are in ~~strike through~~

91.950. LAWFULLY CREATED PARCELS.

- (1) A parcel shall be considered lawfully created if:
 - (a) The parcel was created by deed instrument, ~~or sales contract, or exhibit of a final judgment or other document that evidences a lien foreclosure or a foreclosure of a recorded contract for the sale of the real property~~ prior to the May 15, 1974 (the date of adoption of the Polk County Subdivision and Partition Ordinance);
 - (b) The parcel was created after May 15, 1974 in accordance with the provisions of the Polk County Subdivision and Partition Ordinance; or
 - (c) The parcel was created by dividing land as a result of a lien foreclosure or foreclosure of a recorded contract for the sale of real property pursuant to ORS 215.283(1)(d). [Amended by Ordinance 10-04]
- (2) A parcel created under subsections (1)(a) through (c) of this section shall remain a separate and discrete parcel unless the parcel lines are vacated or the parcel is further divided, as provided by law.
- (3) All development on lawfully created parcels is subject to the standards and requirements of the Polk County Zoning Ordinance.

Applicable Oregon Revised Statute (ORS) Sections that are the basis for the proposed amendments:

ORS 92.010 Definitions for ORS 92.010 to 92.192. As used in ORS 92.010 to 92.192, unless the context requires otherwise:

(3)(a) “Lawfully established unit of land” means:

(A) A lot or parcel created pursuant to ORS 92.010 to 92.192; or

(B) Another unit of land created:

(i) In compliance with all applicable planning, zoning and subdivision or partition ordinances and regulations; or

(ii) By deed or land sales contract, if there were no applicable planning, zoning or subdivision or partition ordinances or regulations.

ORS 215.283(1) Uses permitted in exclusive farm use zones in nonmarginal lands counties; rules.

(1) The following uses may be established in any area zoned for exclusive farm use:

(d) A dwelling on real property used for farm use if the dwelling is occupied by a relative of the farm operator or the farm operator’s spouse, which means a child, parent, stepparent, grandchild, grandparent, stepgrandparent, sibling, stepsibling, niece, nephew or first cousin of either, if the farm operator does or will require the assistance of the relative in the management of the farm use and the dwelling is located on the same lot or parcel as the dwelling of the farm operator. Notwithstanding ORS 92.010 to 92.192 or the minimum lot or parcel size requirements under ORS 215.780, if the owner of a dwelling described in this paragraph obtains construction financing or other financing secured by the dwelling and the secured party forecloses on the dwelling, the secured party may also foreclose on the homesite, as defined in ORS 308A.250, and the foreclosure shall operate as a partition of the homesite to create a new parcel.

ORS 215.263 Land divisions in exclusive farm use zones; criteria for approval; rules.

(1) Any proposed division of land included within an exclusive farm use zone resulting in the creation of one or more parcels of land shall be reviewed and approved or disapproved by the governing body or its designee of the county in which the land is situated. The governing body of a county by ordinance shall require prior review and approval for divisions of land within exclusive farm use zones established within the county.

(2)(a) The governing body of a county or its designee may approve a proposed division of land to create parcels for farm use as defined in ORS 215.203 if it finds that:

(A) The proposed division of land is appropriate for the continuation of the existing commercial agricultural enterprise within the area;

(B) The parcels created by the proposed division are not smaller than the minimum size established under ORS 215.780; or

(C) A portion of a lot or parcel has been included within an urban growth boundary and redesignated for urban uses under the applicable acknowledged comprehensive plan and the portion of the lot or parcel that remains outside the urban growth boundary and zoned

for exclusive farm use is smaller than the minimum lot or parcel size established under ORS 215.780, subject to paragraph (b) of this subsection.

(b) When a parcel for farm use is created in an exclusive farm use zone under paragraph (a) of this subsection, the partition must occur along the urban growth boundary and:

(A) If the parcel contains a dwelling, the parcel must be large enough to support continued residential use.

(B) If the parcel does not contain a dwelling, the parcel:

(i) Is not eligible for siting a dwelling, except as may be authorized under ORS 195.120;

(ii) May not be considered in approving or denying an application for siting any other dwelling; and

(iii) May not be considered in approving a redesignation or rezoning of forestlands under the acknowledged comprehensive plan and land use regulations, except for a redesignation or rezoning to allow a public park, open space or other natural resource use.

ORS 215.265 Land divisions; limiting certain causes of action. In approving a land division under ORS 215.263 (2)(a)(C) or (10), the governing body of a county or its designee shall require as a condition of approval that the owner of any parcel not containing a dwelling sign and record in the deed records for the county where the parcel is located an irrevocable deed restriction prohibiting the owner and the owner's successors in interest from pursuing a cause of action or claim of relief alleging an injury from farming or forest practices for which no claim or action is allowed under ORS 30.936 or 30.937. [1999 c.321 §3; 2001 c.704 §10; 2015 c.104 §5]

ORS 215.785 Exception to minimum lot or parcel sizes.

(1) As used in this section, notwithstanding ORS 215.010, "parcel" has the meaning given that term in ORS 92.010.

(2) Notwithstanding the minimum lot or parcel size established under ORS 215.780 (1), when a portion of a lawfully established unit of land has been included within an urban growth boundary and redesignated for urban uses under the applicable acknowledged comprehensive plan and the portion of the lawfully established unit of land that remains outside the urban growth boundary and zoned for forest uses or mixed farm and forest uses is smaller than the minimum size established under ORS 215.780 (1), the governing body of a county, or its designee, may approve a proposed division by partition of the land, including the land that remains in a forest zone or a mixed farm and forest zone.

(3) The parcel created in the forest zone or mixed farm and forest zone must be partitioned along the urban growth boundary and:

(a) If the parcel contains a dwelling, the parcel must be large enough to support continued residential use.

(b) If the parcel does not contain a dwelling, the parcel:

(A) Is not eligible for siting a dwelling, except as may be authorized under ORS 195.120;

(B) May not be considered in approving or denying an application for siting any other dwelling; and

(C) May not be considered in approving a redesignation or rezoning of forestlands under the acknowledged comprehensive plan and land use regulations, except for a redesignation or rezoning to allow a public park, open space or other natural resource use.

(4) In approving a land division under this section, the governing body of the county or its designee shall require as a condition of approval that the owner of a parcel not containing a dwelling sign and record in the deed records for the county in which the parcel is located an irrevocable deed restriction prohibiting the owner and the owner's successors in interest from pursuing a cause of action or claim of relief alleging an injury from farming or forest practices for which a claim or action is not allowed under ORS 30.936 or 30.937. [2015 c.104 §3]