

BOARD OF COMMISSIONERS

MINUTES OF THE BOARD SESSION – Regular Session

Wednesday, July 23, 2014

9:00 a.m.

Senator Hearing Room
555 Court Street NE
Salem, OR 97301

PRESENT: Commissioner Sam Brentano, Commissioner Janet Carlson, and Commissioner Kevin Cameron. Also present were John Lattimer as chief administrative officer, Gloria Roy as county counsel and Kim Hulett as recorder.

PUBLIC COMMENT

None.

CONSENT

BOARD OF COMMISSIONERS

OLCC APPLICATION – Recommend Approval

American Market, Salem

Red Lobster #673, Salem

BUSINESS SERVICES

Approve a professional services agreement for \$175,000 with Cannon Cochran Management Services, Inc. for third party administration of self-funded workers' compensation program.

DISTRICT ATTORNEY

Approve amendment #3 adding \$100,000 to the intergovernmental agreement with the Oregon Department of Human Services for Title IV-E child welfare proceedings.

HEALTH

Approve amendment #7 adding \$6,031,215 to the intergovernmental agreement with Oregon Health Authority to provide public health services.

MOTION: Commissioner Cameron moved approval of the consent calendar. Seconded by Commissioner Carlson; motion carried. A voice vote was unanimous.

ACTION

Video Time (00:02:50)

HEALTH

1. Consider approval of an intergovernmental agreement for \$328,050 with Mid-Valley Behavioral Care Network to provide rental assistance and supportive housing services. – Cary Moller

Summary of presentation

- Contract will provide rental assistance services and supported housing for people 18 or older with a serious mental health condition.
- Consumer must meet one of the following criteria:
 - Transitioning from the Oregon State Hospital or licensed residential setting;
 - At risk of reentering a licensed residential hospital setting without supported housing assistance; or
 - Homeless (as defined in 42 USC 11302) or at risk of being homeless.
- Total of 30 slots in Marion, Polk and Yamhill Counties
 - Marion County is allocated 20 slots
- Maximum funding of \$328,050
 - \$118,050 for case management and administrative overhead
 - \$210,000 consumer rental assistance

Board discussion

- Examples of services provided;
- Referral sources;
- Target population; and
- Length of service provision.

MOTION: Commissioner Carlson moved approval of an intergovernmental agreement for \$328,050 with Mid-Valley Behavioral Care Network to provide rental assistance and supportive housing services. Seconded by Commissioner Cameron; motion carried. A voice vote was unanimous.

Commissioner Brentano recessed the meeting at 9:20 a.m.

Commissioner Brentano reconvened the meeting at 9:30 a.m.

PUBLIC HEARING 9:30 A.M.

Video Time (00:16:58)

PUBLIC WORKS

A. Public hearing to consider floodplain overlay zone amendments. – Brandon Reich

Summary of presentation (Staff Report – Attachment A)

- Board previously discussed definitions of substantial damage and substantial improvement on January 21, 2014 (Work Session) and April 21, 2014 (Management Update).
- Board direction included amending the definition of substantial damage and improvement to 50 percent of the value of the structure.
- Commissioners approved Resolution 14R-16 on June 11, 2014, initiating amendments to the Floodplain Overlay Zone and scheduled today's public hearing.

Board discussion

- Impacts to homeowners;
- Geographic scope of the overlay zone;
- Relationship to insurance coverage; and
- Community Rating System.

TESTIMONY:


None.

MOTION: Commissioner Cameron moved to close the public hearing and approve the amendments to the Marion County Code Floodplain Overlay Zone. Seconded by Commissioner Carlson; motion carried. A voice vote was unanimous.

Commissioner Brentano read the weekly calendar.

Commissioner Brentano adjourned the meeting at 9:55 a.m.

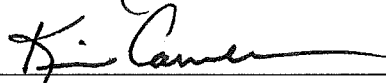
Attachment: (A) – Amendments to the Marion County Code Floodplain Overlay Zones.



CHAIR

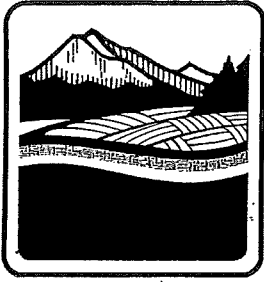


COMMISSIONER



COMMISSIONER

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Marion County OREGON

PUBLIC WORKS

BOARD OF
COMMISSIONERS
Sam Brentano
Janet Carlson
Kevin Cameron

MEMORANDUM

DIRECTOR
Alan Haley

TO: Marion County Board of Commissioners

ADMINISTRATION

FROM: Public Works/Planning – Brandon Reich, Senior Planner

BUILDING
INSPECTION

SUBJECT: Amendments to the Marion County Code Floodplain Overlay Zones –
(Legislative Amendment 14-2)

EMERGENCY
MANAGEMENT

ENGINEERING

DATE: July 23, 2014

ENVIRONMENTAL
SERVICES

BACKGROUND

OPERATIONS

PARKS

Federal law related to the National Flood Insurance Program (NFIP) requires Marion County to define “substantial improvement” and “substantial damage” in its floodplain overlay zones. While the county may be more restrictive than federal law, it may not be less restrictive. Therefore, the county may examine its definition of “substantial improvement” and “substantial damage” consistent with the federal requirements.

PLANNING

SURVEY

Also, the county may exempt certain structures from the requirement of obtaining a floodplain permit. While the county has already exempted certain structures, it may be beneficial to consider exempting additional structures.

Previously the county had amended the Rural Floodplain Overlay Zone to exempt certain types of structures from the requirement to obtain an elevation certificate. This is based on guidance from FEMA. Staff proposes to adopt the same change into the Urban Floodplain Overlay Zone to be consistent with the rural chapter and to ensure requirements are the same for property owners whether they are developing in the urban or the rural area of the county.

On June 11, 2014, the Marion County Board of Commissioners approved Resolution 14R-16 initiating the county’s consideration of amendments to the Marion County Code Floodplain Overlay Zones. The Board scheduled a public hearing for July 23, 2014 to consider the county’s definition of “substantial improvement” and “substantial damage” and structures exempted from the requirement of obtaining a floodplain development permit.

COMMENTS

No comments were received at the time this staff report was prepared.

FACTS AND ANALYSIS

Substantial Improvement/Substantial Damage

Federal law related to the National Flood Insurance Program requires Marion County to define “substantial improvement” and “substantial damage” in its floodplain overlay zones. When the threshold of substantial improvement or substantial damage is met, the existing structure must be brought up to current flood resistant standards (generally, elevating the first floor, installing openings in the foundation and using flood resistant materials) before the dwelling can be occupied.

“Substantial improvement” is currently defined by Marion County Code as:

“Any repair, reconstruction or improvement of a structure, the cost of which equals or exceeds 20 percent of the assessed value of the structure:

1. Before the improvement or repair is started; or
2. If the structure has been damaged and is being restored, before the damage occurred. For purposes of this definition "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor or other structural part of the building commences whether or not that alteration affects the external dimensions of the structures. The term does not include:
 - a. Any project for improvement of a structure to comply with existing state or local health, sanitary or safety code specifications which are solely necessary to assure safe living conditions;
 - b. Any alteration of a structure listed on the National Register of Historic Places or State Inventory of Historic Places.”

This means that when a structure is improved, aside from a project to comply with certain health and safety standards, and the improvement value exceeds 20% of its market value, the dwelling must be brought up to current flood resistance standards before it can be lived in after the improvement is completed.

“Substantial damage” is currently defined by Marion County Code as “flood related damage when the cost of restoring the structure would equal or exceed 20 percent of the market value of the structure before the damage occurred.” This means that when flood damage that occurs to a structure exceeds 20% of its market value, the dwelling must be brought up to current flood resistance standards before it can be reoccupied.

Recent changes to federal law caused the definition of “substantial improvement” and “substantial damage” to change from 50% to 30% and back to 50% again. While the county may be more restrictive than federal law, it may not be less restrictive. Therefore, the county may choose a definition of “substantial improvement” and “substantial damage” where the percentage is 50% or less. In considering how to define “substantial improvement” and “substantial damage,” the Board may find that adopting the federal definition of 50% is consistent with the requirements of federal law while, at the same time, providing the correct balance between requiring homeowners to make existing structures safer from flooding and acknowledging the expense to homeowners of making a dwelling compliant with current floodplain development standards.

In addition, since the county’s definition was adopted, the federal definition of “substantial damage” has changed to mean damage of any origin. In order to comply with federal law related to the NFIP, staff recommends the federal definition of “substantial damage” be adopted in full:

“Substantial damage” means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

Similarly, the federal definition of “substantial improvement” has undergone changes since the county’s adopting of the definition. In order to comply with federal law related to the NFIP, staff recommends the federal definition of “substantial improvement” be adopted in full:

“Substantial improvement” means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the “start of construction” of the improvement. This term includes structures which have incurred “substantial damage,” regardless of the actual repair work performed. The term does not, however, include either:

- (1) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions or**
- (2) Any alteration of a “historic structure,” provided that the alteration will not preclude the structure’s continued designation as a “historic structure.”**

These definitions are also consistent with the definitions used for the flood insurance purposes of the National Flood Insurance Program.

According to the FEMA P-758 *Substantial Improvement/Substantial Damage Desk Reference* (May 2010) and *A Summary of NFIP Policy for Local Officials* (July 2001), certain lateral additions are not considered substantial improvements to the original structure if no structural modifications are made to the common wall or roof of the original building. Staff would continue to apply this policy and certain lateral additions would not require the existing building be considered substantially improved and modified to meet current floodplain development standards.

Development not Requiring a Floodplain Development Permit

According to *A Summary of NFIP Policy for Local Officials* (July 2001), Federal Insurance Act Policy Notice 77-23, dated August 10, 1977 and in effect, allows local jurisdictions to exempt certain activities, uses and structures from the requirement to obtain a floodplain permit. According to *A Summary of NFIP Policy for Local Officials*, in determining what to exempt, "FEMA does not attempt to provide standard thresholds, but does encourage communities to establish their own "triggers" for requiring permits."

Currently, Marion County Code exempts the following activities, uses and structures:

1. Signs, markers, aids, etc., placed by a public agency to serve the public.
2. Streets, driveways, parking lots and other open space use areas where no alteration of topography will occur.
3. Minor repairs or alterations to existing structures provided the alterations do not increase the size or intensify the use of the structure, and do not constitute "substantial improvement" as defined in MCC 17.178.020(FF).
4. Customary dredging associated with channel maintenance consistent with applicable State or Federal law. This exemption does not apply to the dredged materials placed within a floodplain.
5. Placement of utility facilities necessary to serve established and permitted uses within floodplain areas, such as telephone poles. This exemption does not apply to buildings, substations, or other types of utility facilities development in the floodplain.

Staff recommends that flagpoles also be exempted because telephone poles, as similar structures, are already exempted. Flagpoles are not likely to cause water to dam behind them by catching a significant amount of debris during a flood. Therefore, flagpoles are less likely than other structures to be damaged during a flood and also unlikely to cause damage to other structures during a flood.

The State of Oregon Companion Flood Damage Prevention Ordinance exempts certain types of fencing from the requirement of obtaining a floodplain permit because of their low damage potential and the low likelihood, if built according to the standards in the State of Oregon Companion Flood Damage Prevention Ordinance, the fence would dam debris behind it and worsen the effects of flooding. Staff recommends the following be exempted to be consistent with the State of Oregon Companion Flood Damage Prevention Ordinance:

Except in a floodway, open wire fencing (no more than one horizontal strand per foot of height) and open rail fencing (rails occupy less than 10% of the fence area and posts are spaced no closer than 8 feet apart).

Staff recommends that accessory structures smaller than 50 square feet in size be exempted from the requirement of obtaining a floodplain permit due to their relative low market value, the relative ease of repairing them, and the low likelihood of them damaging other structures during a flood. This would save home owners the cost of a floodplain permit when constructing a small structure, such as a well house, on a property, while not appreciably causing more property damage during a flood.

Development Not Requiring an Elevation Certificate

Previously the county had amended the Rural Floodplain Overlay Zone to exempt certain types of structures from the requirement to obtain an elevation certificate. This is based on guidance from FEMA. Staff proposes to adopt the same change in to the Urban Floodplain Overlay Zone to be consistent with the rural chapter and to ensure requirements are the same for property owners whether they are developing in the urban or the rural area of the county.

Unless requested by FEMA, elevation certificates would not be required for the following uses:

1. Water dependent uses, such as boat ramps, docks, wells and well covers.
2. Improvements resulting from cut or fill operations, such as berms, bank improvements, ponds and dams.
3. Small scale facilities necessary to serve other uses, such as kiosks and open picnic shelters.
4. Grading, such as for roadways, even where alteration of topography occurs.

RECOMMENDATION

Staff recommends the Board adopt changes to the definitions “substantial improvement” and “substantial damage,” adopt additional exemptions for structures to the requirement of obtaining a floodplain permit, and amend the urban chapter of the floodplain overlay zone to exempt certain structures from the requirement to obtain an elevation certificate as described in the attached amendments.

Proposed changes to the Marion County Code Chapters 16.19 (Page 1 of 3)

16.19.010 DEFINITIONS. For purposes of this overlay zone the following terms shall mean:

EE. “Substantial damage” means flood related damage when the cost of restoring the structure would equal or exceed 20 percent of the market value of the structure before the damage occurred.

“Substantial damage” means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

FF. “Substantial improvement” means any repair, reconstruction or improvement of a structure, the cost of which equals or exceeds 20 percent of the assessed value of the structure:

1. Before the improvement or repair is started; or
2. If the structure has been damaged and is being restored, before the damage occurred. For purposes of this definition "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor or other structural part of the building commences whether or not that alteration affects the external dimensions of the structures. The term does not include:
 - a. Any project for improvement of a structure to comply with existing state or local health, sanitary or safety code specifications which are solely necessary to assure safe living conditions;
 - b. Any alteration of a structure listed on the National Register of Historic Places or State Inventory of Historic Places.

“Substantial improvement” means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the “start of construction” of the improvement. This term includes structures which have incurred “substantial damage,” regardless of the actual repair work performed. The term does not, however, include either:

- (1) **Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions or**
- (2) **Any alteration of a “historic structure,” provided that the alteration will not preclude the structure’s continued designation as a “historic structure.”**

Proposed changes to the Marion County Code Chapters 16.19 (Page 2 of 3)

16.19.110 USES. Within a FP (Floodplain) overlay zone no uses, structures, recreational vehicles and premises shall be used or established except as provided in the applicable underlying zone and the provisions of this overlay zone. Except as provided herein all uses and floodplain development shall be subject to issuance of a conditional use permit (floodplain development permit) as provided in MCC 16.19.130.

A. The following uses are exempt from the regulations of this overlay zone:

1. Signs, markers, aids, etc., placed by a public agency to serve the public.
2. Streets, driveways, parking lots and other open space use areas where no alteration of topography will occur.
3. Minor repairs or alterations to existing structures provided the alterations do not increase the size or intensify the use of the structure, and do not constitute "substantial improvement" as defined in Section MCC 16.19.010(CC).
4. Customary dredging associated with channel maintenance consistent with applicable State or Federal law. This exemption does not apply to the dredged materials placed within a floodplain.
5. Placement of utility facilities necessary to serve established and permitted uses within floodplain areas, such as telephone poles. This exemption does not apply to buildings, substations, or other types of utility facilities development in the floodplain.
- 6. Flagpoles.**
- 7. Except in a floodway, open wire fencing (no more than one horizontal strand per foot of height) and open rail fencing (rails occupy less than 10% of the fence area and posts are spaced no closer than 8 feet apart).**
- 8. Accessory structures smaller than 50 square feet in size that do not require a building permit.**

Proposed changes to the Marion County Code Chapters 16.19 (Page 3 of 3)

16.19.130 CONDITIONAL USE PROCEDURES AND REQUIREMENTS.

- E. The applicant shall provide an elevation certificate signed by a licensed surveyor or civil engineer certifying that the actual elevations of all new or substantially improved manufactured homes, dwellings and structures meets the requirements of MCC 16.19.140(A), (B) and (C) where applicable, as follows:
1. Prior to construction (based on construction drawings), and
 2. Once the floor elevation can be determined (based on the building under construction), and
 3. Prior to occupancy (based on finished construction).

Unless requested by FEMA, elevation certificates shall not be required for the following uses:

- 1. Water dependent uses, such as boat ramps, docks, wells and well covers.**
- 2. Improvements resulting from cut or fill operations, such as berms, bank improvements, ponds and dams.**
- 3. Small scale facilities necessary to serve other uses, such as kiosks and open picnic shelters.**
- 4. Grading, such as for roadways, even where alteration of topography occurs.**

Proposed changes to the Marion County Code Chapter 17.178 (Page 1 of 2)

17.178.020 **DEFINITIONS.** For purposes of this overlay zone the following terms shall mean:

FF. ~~“Substantial damage” means flood related damage when the cost of restoring the structure would equal or exceed 20 percent of the market value of the structure before the damage occurred.~~

“Substantial damage” means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

GG. ~~“Substantial improvement” means any repair, reconstruction or improvement of a structure, the cost of which equals or exceeds 20 percent of the assessed value of the structure:~~

- ~~1. Before the improvement or repair is started; or~~
- ~~2. If the structure has been damaged and is being restored, before the damage occurred. For purposes of this definition "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor or other structural part of the building commences whether or not that alteration affects the external dimensions of the structures. The term does not include:
 - ~~a. Any project for improvement of a structure to comply with existing state or local health, sanitary or safety code specifications which are solely necessary to assure safe living conditions;~~
 - ~~b. Any alteration of a structure listed on the National Register of Historic Places or State Inventory of Historic Places.~~~~

“Substantial improvement” means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the “start of construction” of the improvement. This term includes structures which have incurred “substantial damage,” regardless of the actual repair work performed. The term does not, however, include either:

- (1) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions or**
- (2) Any alteration of a “historic structure,” provided that the alteration will not preclude the structure’s continued designation as a “historic structure.”**

Proposed changes to the Marion County Code Chapter 17.178 (Page 2 of 2)

17.178.040 USES. Within a FP (floodplain) overlay zone no uses, structures, recreational vehicles and premises shall be used or established except as provided in the applicable underlying zone and the provisions of this overlay zone. Except as provided herein all uses and floodplain development shall be subject to issuance of a conditional use permit (floodplain development permit) as provided in MCC 17.178.050.

A. The following uses are exempt from the regulations of this overlay zone:

1. Signs, markers, aids, etc., placed by a public agency to serve the public.
2. Streets, driveways, parking lots and other open space use areas where no alteration of topography will occur.
3. Minor repairs or alterations to existing structures provided the alterations do not increase the size or intensify the use of the structure, and do not constitute "substantial improvement" as defined in MCC 17.178.020(FF).
4. Customary dredging associated with channel maintenance consistent with applicable State or Federal law. This exemption does not apply to the dredged materials placed within a floodplain.
5. Placement of utility facilities necessary to serve established and permitted uses within floodplain areas, such as telephone poles. This exemption does not apply to buildings, substations, or other types of utility facilities development in the floodplain.
6. **Flagpoles.**
7. **Except in a floodway, open wire fencing (no more than one horizontal strand per foot of height) and open rail fencing (rails occupy less than 10% of the fence area and posts are spaced no closer than 8 feet apart).**
8. **Accessory structures smaller than 50 square feet in size that do not require a building permit.**