

**BOARD OF COUNTY COMMISSIONERS
WALLA WALLA COUNTY, WASHINGTON**

ORDINANCE NO. 328

APPROVING A REQUEST BY WALLA WALLA COUNTY FOR ZONING CODE TEXT AMENDMENTS RESULTING IN A CHANGE TO WALLA WALLA COUNTY CODE 17.31, "CLUSTERING PROVISIONS," FOR PROPERTY WITHIN THE UNINCORPORATED AREA OF WALLA WALLA COUNTY IN RESPONSE TO THE EASTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD REMAND ORDER AND SUBSEQUENT SETTLEMENT AGREEMENT AND DELETING SECTION 16.44.030.

WHEREAS, application has been made by Walla Walla County to request a Zoning Code Text Amendment to Walla Walla County Code Chapters 17.31, and

WHEREAS, the Planning Commission held a public hearing on January 11, 2006 to consider the request and recommended that the Code Text be amended

WHEREAS, On December 27, 2004, the Board of County Commissioners adopted Resolution No. 04360 and Ordinance No. 308. Resolution No. 04360 adopted amendments to the County's Comprehensive Plan Resource Lands goals and policies that would allow "[c]luster developments that seek to preserve large tracts of resource land while still allowing development on smaller lot sizes" as the "preferred method of residential land development" in Primary Agriculture, General Agriculture and Agriculture Residential zoning districts. Ordinance No. 308 adopted development regulations implementing the clustering policies in Resolution No. 04360.

WHEREAS, On February 25, 2005, Futurewise and Citizens for Good Governance, filed a Petition for Review challenging Resolution No. 04360 and Ordinance No. 308 to the Eastern Washington Growth Management Hearings Board ("Board" or "EWGMHB"), *Citizens for Good Governance v. Walla Walla County*, Case No. 05-1-0001.

WHEREAS, On August 10, 2005, the EWGMHB issued its Final Decision and Order (the "Decision") in *Citizens for Good Governance v. Walla Walla County*. In its Decision, the Board concluded and held that the new policies and developments regulations were non-compliant with the GMA in some respects because they fail to limit the number of clusters in Agricultural Residential-10 parcels, fail to limit or prohibit the location of clusters adjacent to each other, and fail to require the clusters to be located "upon poorer soils or soils unsuited for agriculture." The Board also issued a finding of invalidity as to those portions of Resolution No. 04360 and Ordinance No. 308 that allow clusters to be located on AR-10 zoned lands without a limit to the number of lots. The Board ordered that Walla Walla County bring itself into compliance with the GMA by February 6, 2006.

WHEREAS, On September 7, 2005, Walla Walla County filed a Petition for Review and Complaint for Declaratory Judgment in Walla Walla County Superior Court against the



EWGMHB, Futurewise and Citizens for Good Governance, seeking judicial review and reversal of the Board's Order under the Washington State Administrative Procedures Act ("APA").

WHEREAS, On September 15, 2005, Petitioners in Intervention Byerley Farm, Inc., Alfalfa LLC, Bye-Far II, LLC, Scott E. Byerley filed a motion with the Walla Walla Superior Court seeking leave of Court to intervene in the County's appeal of the Decision of the EWGMHB. On September 14, 2005, Petitioner in Intervention Brent A. Knowles filed a motion with the Walla Walla Superior Court seeking leave of Court to intervene in the County's appeal of the Decision of the EWGMHB.

WHEREAS, On September 26, 2005, the Walla Walla Superior Court granted the motions of the Byerley Intervenors and Intervenor Brent A. Knowles to intervene in the appeal.

WHEREAS, The case, *Walla Walla County v. EWGMHB*, Walla Walla County Superior Court Case No. 05-2-00826-2, is currently pending before Judge Zagelow.

WHEREAS To avoid the risk and expense of further litigation, the County executed a Settlement Agreement effective April 3, 2006.

WHEREAS, as a condition of that Settlement Agreement, the Walla Walla County Director of Community Development was to propose certain amendments to Ordinance No. 308, resulting in changes to Walla Walla County Code Chapter 17.31.

WHEREAS the following findings of fact and conclusions of law are hereby made:

Findings of Fact:

1. On March 23, 2006 a Notice of Public Hearing for the County Commissioners hearing was published in the Waitsburg Times. On March 22, 2006 the hearing notice for the County Commissioners hearing was published in the Walla Walla Union Bulletin.
2. The text of Walla Walla County Code Chapter 17.37 should reflect the change the County made to the Hearing Examiner system.
3. The amendments implement the settlement agreement.
4. The County Planning Commission conducted a hearing on January 11, 2006 and recommended approval to the County Commissioners.
5. The amendment will require clustering of subdivision in the AR-10 zoning district for smaller than 160 acres.
6. The amendment will allow contiguous parcels in the same ownership to be planned as a single unit.

Conclusions of Law:

1. The proposed amendments constitute good planning and development regulations.
2. The proposed amendments are consistent with the comprehensive plan and development regulations.
3. The proposed amendments will not have a significant adverse influence on public welfare and safety.
4. The amendment constitute good zoning and planning practices.



WHEREAS, the Board of County Commissioners held a public hearing on April 3, 2006 for the purpose of receiving testimony for and/or against said request now therefore,

BE IT ORDAINED, by the Walla Walla County Board of County Commissioners that they uphold the Planning Commission recommendation and approve the zoning code text amendment, based on the findings of fact and conclusions of law above. The amendment reads as follows:

Section 1- Amendments to Chapter 17.31:

Chapter 17.31

DEVELOPMENT STANDARDS – CLUSTER DEVELOPMENTS ON RESOURCE LANDS

Sections:

17.31.010	Purpose and intent.
17.31.020	Applicability.
17.31.030	Fees.
17.31.040	Procedure requirements.
17.31.050	Design requirements.
17.31.060	One-time land divisions.

17.31.010 Purpose and intent. Cluster developments will be strictly managed and designed to conserve agricultural lands and encourage the agricultural economy through the following objectives:

- A. Preserve land for long-term farming and minimize reductions in farm productivity;
- B. Generally site homes to minimize negative impacts to the protection of farmland;
- C. Minimize conflicts between working farms and non-farm dwellings;
- D. Buffer the impacts of new lots from farms and farm land;
- E. Provide flexibility to land owners when dividing their property and configure new parcels to be less than the minimum normally required by zoning, without creating a density bonus;
- F. Prevent the division of very large tracts to maximize their development potential;
- G. Prevent the spread of wildfire and damage to property, structures and crops;
- H. Prevent the spread of noxious weeds;
- I. Create lots with safe access to public roads.

17.31.020 Applicability.

- A. The County requires compliance with this chapter for lawfully created parcels of record as of the date of approval of the ordinance approving this chapter. Parcel is

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defined as a lot created by a subdivision, short plat or exempt segregation per RCW 58.17. Assessor's parcels, created for taxation purposes only, are not lawfully created lots of record.

- B. Cluster developments are permitted only in the Primary Agriculture-40, General Agriculture-20 and Agriculture Residential-10 zones subject to approval of an appropriate land division designed in compliance with the provisions of this chapter.
- C. Land divisions on resource lands zoned Agriculture Residential-10 or that are included in the areas identified as being of either "primary significance" or "unique lands", as shown on maps LU-16 and LU-17 of the County's Comprehensive Plan shall comply with the provisions of this chapter.
- D. The creation of parcels that are 160 acres or larger in the AR-10 zoning district are exempt from the requirements of Section 17.31.020 (C).
- E. The creation of parcels through a planned unit development shall be allowed to vary from the minimum lot size requirements provided that the planed unit development is otherwise consistent with all other requirements of Chapter 17.31.

17.31.040 Fees. A fee of \$500 will be charged for a development proposed under the authority of this chapter, in addition to the normal fee required in Title 14 (Development Code Administration).

17.31.050 Procedure requirements. Applications for a cluster development are processed according to the land division procedures prescribed in WWCC Title 14 (Development Code Administration).

17.31.060 Design requirements. Cluster developments shall be designed and approved in accordance with the following requirements:

- A. Cluster developments will be allowed only at the density permitted by the assigned zoning.
- B. The minimum land area needed to implement a cluster development is as follows:
 - 1. Primary Agriculture-40 zone: 80 acres.
 - 2. General Agriculture-20 zone: 40 acres.
 - 3. Agriculture Residential-10 zone: 20 acres.
- C. Cluster developments do not have to comply with minimum lot size requirements specified by the assigned zoning.
- D. All required infrastructure improvements to serve the development, such as potable water, wastewater disposal, and access to public roads shall occur concurrent with development.
- E. Cluster development lot width shall be a minimum of 150 feet.
- F. Cluster developments may occur in phases.



- G. New residential parcels in the forty and twenty acre zones shall not be created in more than two sites in a single development parcel and shall otherwise comply with the requirements of the County's subdivision ordinance in WCCC Title 16 (Subdivisions). New residential parcels on lands in the ten acre zone shall not be created on more than four sites in a single development.
- H. With the exception of developments within the Agricultural Residential-10 zone, at least seventy (70) percent of the overall development site shall be maintained and preserved for a resource use through a recorded instrument approved by the Director. In the Agricultural Residential-10 zone, at least eighty-five (85) percent of the overall development site will be maintained and preserved for a resource use through a recorded instrument approved by the Director. Resource use shall include all permitted and conditional uses and buffer requirements in the Agricultural Residential-10 zone other than residential lots.
- I. Within the Primary Agriculture- 40 acre zone and the General Agriculture-20 acre zone, the maximum number of parcels smaller than the minimum parcel size is specified by the assigned zoning, and shall comply with the following limits:
 - 1. Where there are existing domestic and irrigation water rights, no more than 12 smaller parcels shall be created;
 - 2. Where there are existing irrigation water rights only, no more than 11 smaller parcels shall be created;
 - 3. Where there are no existing water rights (domestic nor irrigation), no more than 4 smaller parcels shall be created;
- J. Within the Agricultural-Residential 10 acre zone the maximum number of lots will be calculated at a rate of one unit per ten acres.
- K. Sufficient water to serve both domestic and residential irrigation needs must in fact be present and shall be required. With regard to provision of domestic water and consistent with the requirements regulating the number of smaller parcels allowed on an overall site, the following requirements shall be met:
 - 1. Where there are sufficient existing domestic and irrigation water rights to serve the development, a community water system shall be implemented for the smaller parcels;
 - 2. Where there are existing irrigation water rights only, or where there are no existing water rights (domestic nor irrigation), an exempt well(s) may be utilized to serve the smaller parcels with domestic water, provided all applicable regulations governing exempt wells are met, as demonstrated by approval from the Washington State Department of Ecology;
- L. Wellhead protection zones shall be overlapped to the extent possible;
- M. Cluster developments shall comply with all applicable County and State health requirements for water and sewage disposal;
- N. A farm center parcel containing farm-related buildings can be up to ten acres in size, and is not to be included in the average lot size calculation, provided the new property line follows the perimeter of the existing farm center footprint ~~this is~~



(grammatical correction) comprised of such structures as a home, outbuildings, equipment storage areas, barns and corrals;

- O. No parcel in the cluster development, except a farm center parcel with existing building or a resource parcel, shall exceed three acres in area;
- P. The average lot size of the smaller parcels shall not exceed two acres in size;
- Q. The buffer space shall be a minimum of 50 feet from the adjacent resource parcel to any dwelling in the cluster development. All required buffers between the resource parcel and the smaller development parcels shall be provided within the new lots, and shall not encumber the resource parcel;
- R. Setbacks
 - 1. For All Non-Farm Related Development Within Agricultural Resource Areas or on Lands Adjacent to or Abutting Agricultural Resource Lands. All structures shall maintain a minimum setback of 50 feet from land designated for agricultural purposes; provided, however, the appropriate authority may reduce the setback through a variance where:
 - a. The owner requesting the administrative variance records an agricultural easement for the benefit of the abutting commercial farm lands of significance, granting a right to all normal and customary agricultural primary or accessory practices in accordance with recommended best management practices in Walla Walla County;
- S. Public access that meets applicable County standards shall be available to the development site that meets applicable County standards;
- T. A right-to-farm covenant shall be recorded with the land division;
- U. Owners of cluster lots created under the provisions of this chapter shall prevent the spread of noxious weeds. All development approvals shall include this requirement on the face of the land division and recorded with the County Auditor and in a covenant enforceable by an adjacent property owner. (See *Washington State Noxious Weed List*);
- V. Prior to issuance of a permit for lots in a cluster development, the property owner(s) shall acknowledge that the site is in or near agricultural lands through a recorded statement filed with the County Auditor that is binding upon future owners, heirs and successors;
- W. Notification of agricultural activities—Conflict mitigation
 - 1. It is important that people choosing to live within or adjacent to agricultural land be aware of the inevitability of agricultural activities and understand the necessary activities that are required to sustain agricultural use of the land. The following language indicating proximity, within 1,320 feet, to designated agricultural land shall be required on all final plats, short plats, large lot subdivisions, and binding site plans or building permits approved by Walla Walla County within the agricultural resource areas;

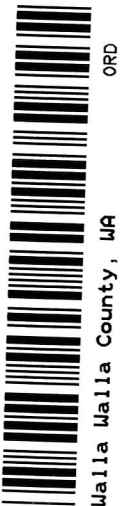


2. In addition, at the time of building permit issuance, applicants shall be required to sign and record with the County Auditor a statement acknowledging that their property is located within 1,320 feet of designated agricultural area and that if consistent with good and materially accepted agricultural and management practices and established prior to surrounding activities, are presume to be reasonable and shall not be found to constitute a nuisance unless the activity has a substantial adverse effect on the public health and safety;
 3. The language required is as follows:
NOTICE AND COVENANT: The subject property is within or near and designated for long-term commercially significant agricultural activities and subject to a variety of activities that may not be compatible with residential development for certain periods extending beyond the normal work day and/or work week. In addition to other activities these may included noise, dust, smoke, visual impacts, and odors resulting from harvesting, planting, application of fertilizers, pesticides, animal husbandry, and associated agricultural activities. When performed in accordance with best management practices, these agricultural activities are to be expected, consented to by the developers of this property, their heirs, successors, and assigns, and shall not be subject to legal action or public nuisance (Refer to the Walla Walla County Right-to-Farm Ordinance);
 4. Where the approval is a plat pursuant to Title 16 (Subdivisions), the notice shall be a covenant running with the land binding all lots within the subdivision;
- X. A land division approved under the authority of this chapter shall include a note on the recorded land division instrument stating that the acreage shall not be used more than once for determining the allowable number of units. The applicant shall denote on the land division instrument the specific acreage used for determining the proposed new lots.
- Y. Cluster lot density can be transferred from contiguous parcels in the same ownership but in different resource lands zoning districts (from Agricultural Resource-40 or Agricultural Resource-20 to Agricultural Resource-10).
- Z. In the AR-10 zone, contiguous parcels in common ownership can be changed through the use of boundary line adjustments to create parcels that can subsequently be divided using the clustering provisions of this Chapter.

17.31.060 One-time land divisions. Property owners of a parcel, that is larger than the minimum parcel size and smaller than twice the minimum parcel size permitted in specific zones, shall be permitted a one-time land division, consistent with all of the following provisions:

- A. This land division process is limited to the Primary Agriculture 40-acre and General Agriculture 20-acre zones;
- B. A lot created via the one-time land division shall be not more than one acre, unless used to divide off an existing farmstead, in which case the new lot can be up to ten acres, provided the new property line follows the existing farm center footprint

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comprised of such structures as a home, outbuildings, equipment storage areas, barns and corrals;

- C. Sufficient surface and/or ground water rights shall be available to the new smaller parcel to permit for domestic use, reasonable irrigation, such as yard, garden, and caring for animals, fire suppression, and to avoid a portion of the smaller lot becoming a nuisance with regard to such concerns as dust, and weed control; and
- D. A one-time land division counts against the maximum number of dwellings in a future clustering proposal.

Section 2- Deletion of Section 16.44.030 (prohibitions)- ~~Short subdivisions are prohibited in "Primary Significance" and "Unique" farmlands as described and delineated in the Walla Walla County comprehensive plan. (Res. 02118, Attach. A (part), 2002)~~

Section 3. Effective Date. This ordinance is effective immediately upon adoption.

Section 4. Savings and Severability. If any section, subsection, paragraph, sentence, clause or phrase of this ordinance is declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining parts of this ordinance.

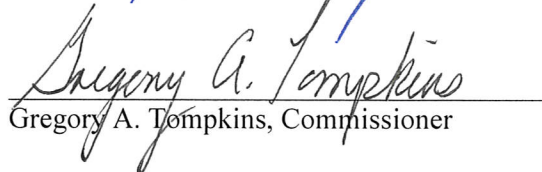
Section 5. Publication. This Ordinance will be published by an approved summary consisting of the title.

PASSED by the Walla Walla County Board of County Commissioners in regular session at Walla Walla, Washington, then signed by its membership and attested by its Clerk in authorization of such passage this 3rd day of April, 2006.

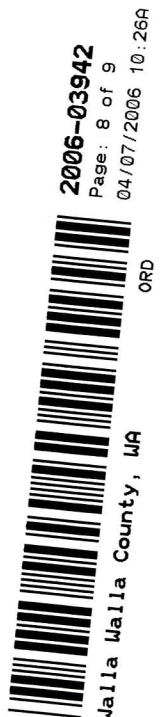


David G. Carey, Chairman

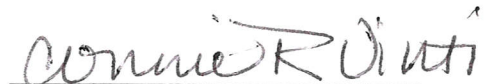

Gregg C. Loney, Commissioner


Gregory A. Tompkins, Commissioner

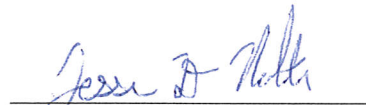
Constituting the Board of County Commissioners of
Walla Walla County, Washington



Attest:


Connie R. Vinti, Clerk of the Board

Approved as to form:


County Prosecuting Attorney/
Deputy Prosecuting Attorney



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