

# JEFFERSON COUNTY BOARD OF COUNTY COMMISSIONERS

## INFORMATION PACKET FOR AGENDA REQUEST

**TO:** Board of Commissioners  
Mark McCauley, County Administrator

**FROM:** Brent A. Butler, AICP, Director, Community Development  
Josh D. Peters, AICP, Planning Manager, Community Development  
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**DATE:** September 23, 2022

**RE:** Supplement to September 26, 2022 Agenda Request for Public Hearing re:  
proposed Legal Lot of Record Ordinance

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### **DESCRIPTION:**

The Department of Community Development (DCD) submits this information packet to provide additional information to the Board of County Commissioners (BoCC) and the public concerning the proposed legal lot of record ordinance scheduled for 11:00 AM on Monday, September 26, 2022.

### **CONTENTS:**

Included in this packet is the following information:

1. [Background information](#) on Legal Lot of Record subject
  - a. [Work Plan re: Pre-1971 Lots and Plats Staff Report](#) – 12/1/2021
  - b. [Regulatory Approaches to Legal Lot Determination Staff Report](#) – 1/5/2022
  - c. [Legal Lot of Record Update Staff Report](#) – 8/24/2022
  - d. [Applicability of Ch. 271, Laws of 1969, 1st Ex. Sess., to Certain Previously Platted Areas](#) – WA State Office of the Attorney General (AGO), 1974
  - e. [Effect of 1969 Platting Act on land platted before enactment](#) – AGO, 1996
  - f. [Effect of Growth Management Act on option of counties to require re-subdivision of lands platted before 1937](#) – AGO, 1998
2. [Examples](#) from other counties in Washington State
  - a. Western Washington Jurisdictions – [Code Citations](#)
  - b. King County – [LLOR Checklist](#)
  - c. Skagit County – [LLOR Application](#)
  - d. Whatcom County – [LLOR Application](#)
  - e. Kitsap County – [Code Chapter 16.62](#) – Legal Lot Determination
  - f. Clark County – [Legal Lot Determination factsheet](#)

3. FAQ – select questions posed by the public with staff responses

*Question: The proposed ordinance includes a list of documentation that may be required to prove a lot or parcel is a legal lot of record. This implies that the Code Administrator could require all of the items on this list. Why can't recorded lots prior to 1969 suffice on their own?*

**Answer: The Code Administrator could require all of the documents on the list, but that is unlikely to happen except for in the rarest cases. The list is meant to provide both the customer and DCD flexibility in the review process, which is similar to other application requirements in the development code. Lots platted prior to enactment of the state subdivision statute in 1969 may require more documentation in the determination process than lots platted after that date. As needed, DCD could develop a standard operating procedure (SOP) providing more specific guidance based on different circumstances.**

*Question: Proposed Jefferson County Code (JCC) 18.12.050(4) and related sections (e.g., JCC 18.12.070(2)) seem to address the heart of the matter, and effectively impose a requirement for a single owner of multiple contiguous lots that were platted prior to 1969 and that are too small for current zoning to aggregate those lots to meet current zoning prior to development. This is the procedure that addresses what I understood to be the main concern about large developments based on substandard lots. Why not focus on just this rather than burdening owners of single lots?*

**Answer: Chapter 18.12 JCC should apply to all lots. The county must implement protocol to ensure that permits are issued for lots that were legally created. The legal status of lots both within and outside of historic plats needs to be verified. Therefore, limiting review to lots capable of being aggregated fails to accomplish an essential responsibility to ensure that development is occurring on legally created lots. The chapter's requirement that all lots to go through a form of site evaluation—either through site development review or reasonable economic use processes—ensures that all development of a site is conducted in a way that meets expected health, welfare, and safety outcomes. Limiting land use review to only those lots capable of being aggregated fails to address minimum land area requirements for septic and environmental conditions in a manner that could, over time, generate similar degradation to larger scaled development.**

*Question: The proposed ordinance refers to underlying zoning density as a consideration whether a lot qualifies as a legal lot of record. Proposed new language at JCC 18.12.050(4) says that, "Any contiguous group of parcels of land in a plat created prior to August 11, 1969 that is equivalent in size or larger to the density of the zone in which it is located, and in single ownership as of the effective date of this ordinance, can only be developed as single-family residences under current zoning and subdivision requirements." If substandard lots are grandfathered, does that mean they are not eligible for development if they don't meet current zoning?*

**Answer:** In effect, the ordinance says that, if at the effective date of this ordinance, you are in a five-acre zoning category and you own a contiguous group of parcels that equal five acres, your development potential is one lot. The term “grandfathered” generally refers to legal, nonconforming uses and structures. The Legal Lot of Record ordinance requires multiple, vacant lots in common ownership to be developed at current zoning whenever possible. There is a different Legal Lot of Record determination process in the proposed ordinance for a single lot owned separately (i.e., not multiple lots in common ownership).

*Question: Why is single ownership required? What if three children co-own the lot?*

**Answer:** “Single-ownership” refers to the contiguous lots, not who owns the lots. It applies when one person, one group of people, or entity or group of entities owns a number of lots that in total, equal the zoning density. So, three children could own a group of lots together. If those lots total up to the density in the current zoning, that group of lots would have to be developed as one lot (that meets current zoning).

*Question: Proposed JCC 18.12.090 deals with “testamentary provision or the laws of descent.” Why are inherited lots treated as substandard lots of record? And where is definition of Substandard Lots in JCC 18.12.070? Does this make those lots unbuildable because they are inherited?*

**Answer:** Lots created by testamentary provision are legally created, but that does not mean they are necessarily buildable. See *Dykstra v. Skagit County*, 97 Wn.App. 670, 985 P. 2d 424 (1999). Lots created by testamentary provision are only substandard lots if they don’t meet the current zoning density. Substandard lots are defined in the L definitions, which appear in the ordinance. The fact that they were created by testamentary provision does not make them unbuildable. They need to go through the Legal Lot of Record determination process in JCC 18.12.070, and, if necessary, JCC 18.12.080 Reasonable Economic Use Exception.

*Question: Where does it clearly state that lots created legally prior to 1969 will be given building permits if they conform to health standards such as septic and setbacks?*

**Answer:** As part of the Legal Lot of Record determination, a legally created, yet substandard lot will be evaluated to see if it qualifies for one of the exceptions listed in JCC 18.12.070(4). If it does not qualify for one of those exceptions or does not meet minimum land area requirements for septic as determined by the Department of Public Health, the lot owner may request consideration under the Reasonable Economic Use Exception process outlined in the proposed JCC 18.12.080.

*Question: JCC 18.12.080 addresses the Reasonable Economic Use Exception, for which each*

*of enumerated criteria (a)-(j) must be met. Criteria (e) requires the substandard lot to be adjacent another lot that has already been developed. Why should one person's development rights be determined by an adjacent owner's lot already having been developed? Criterion (f), (g), and (j) seem to be very subjective and would provide fodder for future litigation. Criteria (h) seems to provide neighbors a veto right. Based on discussion at the BoCC meeting, criteria (i) regarding "reasonable economic use" may be much less than actual development. Do residents realize they may be limited to "growing strawberries," for example, rather than constructing a residence?*

**Answer:** Neighbors do not have a veto right of any particular project, rather Type II projects go through noticing procedures and public comment period will be offered and comments considered as a part of the proposal. The reasonable economic use provisions are intended to offer applicants an opportunity to show that their lot(s) can safely support a residence without create health, welfare, and safety issues.

The criteria for adjacent residential development are included to allow higher density development of substandard lots to continue where it already exists and prevent high density development of substandard lots where a domino effect could take place. This allows infill of vacant lots to occur in existing denser communities without promoting conversion of rural lands to high densities.

*Question: JCC 18.12.080(2) regarding the evaluation of an entire plat at once seems to provide a potential loophole for large developments. Is that what was intended?*

**Answer:** The intent of the plat wide assessment is not to create an avenue for large developments but to reduce cost of permitting processes for landowners and community organizations that want to have a determination processed for multiple lots at once. Rather than require a sequence of Type II permit applications for multiple lots under common or separate ownership, the plat-wide assessment allows an applicant to submit one fee rather than paying multiple fees for a piecemeal review. The same review standards are applied in both the single-lot and plat-wide assessments.

*Question: The "Innocent Purchaser Exception" is addressed in proposed JCC section 18.12.100. The ordinance should include references to specific dates, like this section from Clark County's code:*

*The innocent purchaser exception requires the subject parcel to meet minimum zoning requirements currently in effect or in effect at the time the parcel was created. The current owner must have purchased the property in good faith, and did not have knowledge that the property was divided from a larger parcel after the following dates:*

- August 21, 1969, in the case of subdivisions.*
- After July 1, 1976, in the case of short plats.*
- After April 19, 1993, in the case of any segregation resulting in parcels of 5 acres or larger.*

**Answer:** Those dates are based on enactments in Clark County, and therefore are

inapplicable to Jefferson County. Staff recommends keeping the provision in JCC 18.12.100 provision as proposed, as it tracks the language of the subdivision statute. See RCW [58.17.300](#). See also *Nagle v. Snohomish County*, 129 Wn.App. 703 (2005) for discussion of what the terminology in the statute, as reflected in our proposed code, means. Also, the Clark County language does not track the subdivision statute language and would be subject to challenge on that basis.

*Question: The definition of “Development” in amended JCC 18.10.040 D has been expanded to include activities not previously captured, including the removal of vegetation and forest practices activities related to conversion from forestry to non-forestry. This to me seems to impact the ability to make even recreational use of an individual’s property without first obtaining county permission.*

**Answer:** The new ordinance only applies to “development” that *requires a permit from the county*. For example, the vast majority of forest practices permits do not involve a county permit. The intent of the Legal Lot of Record Determination and associated Site Development Review processes is to ask the right questions about a lot/site in the right order. These questions should be asked and answered prior to land-disturbing activity, clearing and grading, etc. Converting forested land to a non-forestry use requires a Class IV-General Forest Practices Application (FPA) issued by the State Department of Natural Resources in conjunction with a stormwater management permit issued by the county after review of the proposal under the State Environmental Policy Act (SEPA), with the county as lead agency. The processes created through this ordinance are appropriately positioned prior to those activities.

*Question: New JCC 18.12.010(2) and (4) require all property to go through a Legal Lot of Record determination prior to submission of any development application for any lot in the county, not just those platted prior to 1969. This requirement adds one more hoop to jump through prior to developing one’s land, adding to what is already a fairly arduous and costly process. Review is estimated by DCD to take only an hour, but I assume that this can still add weeks to the process – and significantly longer if a survey is requested by DCD per JCC 18.12.020. And I do not see the commensurate benefit for lots platted after 1969. Also, when coupled with the definition of “Development,” this process would apply to lots that are already built on for which an owner wants to do reconstruction, conversion, structural alteration, relocation, or enlargement of the existing structure. Even if it was platted prior to 1969, if a lot has already been built upon, the Legal Lot of Record question should be considered settled. It is these sorts of “reach-back” provisions that hamstring people’s ability to modernize and keep habitable their homes.*

**Answer:** The intent of the Legal Lot of Record Determination and associated Site Development Review processes is to ask the right questions about a lot/site in the right order. Land use review of development proposals occurs now, but typically after someone has hired a septic designer/installer and/or home designer/builder to prepare site/construction plans. Applicants have experienced delays in the permit review process

when constraints are identified later in the process. These constraints can include wetlands and other environmentally critical areas. The intent of this ordinance is to move land use review to the beginning. The procedures will be designed to take as little time as possible. Many Legal Lot of Record determinations will be simple and will not take much time. For example, within a recorded plat the review will be simple. Once the questions concerning the lot/site have been answered, the development permit process will be faster because there (typically) won't be lingering land use questions that effectively staff septic and building permit review.

*Question: JCC 18.12.050 provides that to be considered a Legal Lot of Record and potentially developable, a lot must be equivalent in size to the density of the zoning district in which it is located unless the lot meets one of the exceptions set out on JCC 18.12.070(4) or JCC 18.12.080. And once a determination is made that a lot is not a Legal Lot of Record, that determination must be recorded per JCC 18.12.020(2), and shall be considered a final determination per JCC 18.12.020(4). But what if the zoning is later changed to allow for greater density, such as through the creation of additional LAMIRDs (limited areas of more intensive rural development) by amendment of our Comprehensive Plan, as our county so sorely needs? This possibility should be expressly recognized and the determination that a lot is not a Legal Lot of Record should not be binding in view of that or other changed circumstances. This same comment applies to JCC 18.12.070(1).*

**Answer:** LAMIRDs are fixed features that were able to be recognized during implementation of the Growth Management Act (GMA), but cannot be newly created in today's rural areas. There proposed possibility of 'upzoning' in today's rural lands is limited by GMA. If amendments to GMA or new case law alters those possibilities, county policy and practice can adjust accordingly. Where upzoning is possible—within existing LAMIRD boundaries and within the UGA—the exception applies to all lots of record so that Legal Lot of Record status may be granted.

*Question: JCC 18.12.070(4) lists certain exceptions that provide the ability to develop substandard lots. One of these is provided by subsection (h), which provides that a substandard lot that is not in a 100-year floodplain and meets drinking water and septic requirements may be developed if the DCD determines that "the development of the lot is necessary for emergency purposes" and the benefits outweigh the detriments (to whom?). We are in a protracted housing emergency, and this exception ought to apply to every substandard lot that is not in a special flood zone and can meet water and septic requirements. Is that what was intended? If so, why go through this whole process?*

**Answer:** A primary purpose of the Legal Lot of Record ordinance is to ensure that there is no violation of [RCW 58.17.210](#) (the State subdivision code).<sup>1</sup> The process in the new ordinance is intended to create a system by which substandard lots can develop safely

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<sup>1</sup> "No building permit, septic tank permit, or other development permit, shall be issued for any lot, tract, or parcel of land divided in violation of this chapter or local regulations adopted pursuant thereto unless the authority authorized to issue such permit finds that the public interest will not be adversely affected thereby."

and without impacting environmental, natural, and water resources. The intent of this ordinance is to allow development when site conditions demonstrate that it can safely be built, or in certain cases when a property owner demonstrates that development of the lot is required to respond to or avoid emergency situations. For example, a redevelopment proposal that may otherwise be prohibited in a special flood hazard area could move forward if the proposal was to bring the development into compliance with FEMA regulations. This would benefit the property owner and protect neighboring uses from potential damage in the event of a flood hazard event.

*Question: JCC 18.40.450 requires submission of a site development review permit application prior to submission of any development permit application. This appears to apply to all lots and adds yet another hoop through which to jump through. I realize that such a review was already part of the permit review process but by defining it as a separate step the process will be more complicated and lengthy for many.*

**Answer:** [Note – This answer is the same as above.] The intent of the Legal Lot of Record Determination and associated Site Development Review processes is to ask the right questions about a lot/site in the right order. Land use review of development proposals occurs now, but typically after someone has hired a septic designer/installer and/or home designer/builder to prepare site/construction plans. Applicants have experienced delays in the permit review process when constraints are identified later in the process. These constraints can include wetlands and other environmentally critical areas. The intent of this ordinance is to move land use review to the beginning. The procedures will be designed to take as little time as possible. Once the questions concerning the lot/site have been answered, the development permit process will be faster because there (typically) won't be lingering land use questions that effectively stall septic and building permit review.

#### 4. Survey results

DCD distributed a community survey to the general public seeking input on Legal Lot of Record policy. Survey distribution had three methods: attendance of community events with paper and electronic surveys; inclusion of a link to the survey in educational materials; and a postcard mailer sent to owners of vacant and not residentially developed lots in historic plats. DCD received 113 survey responses to approximately 2,000 surveys distributed, for a response rate of about 5.65%. Responses from the general public helped identify a variety of policy priorities, providing DCD with an opportunity to balance interests identified by the public in the policy approach implemented in the legal lot of record ordinance. Survey results can be accessed [here](#), which illustrate the considerations communicated to the DCD by the public.

#### 5. Project ArcGIS [StoryMap](#)

As a part of project [development](#), DCD engaged with stakeholders, an internal advisory team,

and the Planning Commission to develop educational materials on the Legal Lot of Record issue. These groups identified the following objectives that educational outreach should include: explain what subdivisions and Legal Lots of Record are; identify state and local regulations affecting historic plats; illustrate the potential impacts of continued development of historic plats; clarify why the Legal Lot of Record issue was appropriate for regulatory change; and communicate regulatory approaches that other jurisdictions have taken.

DCD developed an interactive website for the public to access using a geographic information systems (GIS) software called *ArcGIS StoryMaps*. The StoryMap for the legal lot of record issue was published on July 29, 2022 and has since been viewed approximately 1,995 times (as of September 23, 2022 at 3:00 PM). The StoryMap contains a variety of background information on the topic of subdivisions and development eligibility, as well as interactive maps that show multivariate geospatial analysis illustrating potential impacts to critical areas, water quality, and land use patterns that may be generated by high density development in the county's rural areas. The StoryMap also linked readers to public participation opportunities and the timeline for adoption of the ordinance.

#### 6. Additions to staff recommendation for BoCC consideration

- Waive pre-application conference requirement for Type II permit application for review of reasonable economic use of a single lot. (Note that this can be done administratively now.)
- Alteration of JCC 18.12.070(4) reference to environmental health policy 97-02.
  - DCD and Environmental Public Health recommend altering this language to refer more generally to environmental health policy on minimum land area requirements for septic systems. State and local regulations affecting minimum land area requirements may change, and referring more generally to these policies will keep the language up to date with policy changes as they occur.
  - The clause at JCC 18.12.070(4) should read: “. . . development permit if it meets minimum land area requirements for septic as determined by the department of public health . . .”
- Alteration of “Legal lot of record” definition of JCC 18.10.120. Remove direct citation to WAC 246-272A-0320(5)(e)(i) and replace with citation of WAC 246-272A-0320. Anticipates change to state regulations and cites the correct and applicable subsection.
- Section 6 of Ordinance: add the word “of” between “Establishment” and “Fees,” resulting in “Establishment of Fees.”
- Section 7 of Ordinance: Adjust the effective date to October 4 (or other date) instead saying effective immediately. This would line the effective date up with the expiration of the moratorium currently in effect. This would be preferred to being effective on Monday, September 26, should the BoCC choose to enact the ordinance following the hearing.