

BEFORE THE BOARD OF COMMISSIONERS OF THE STATE OF OREGON

FOR THE COUNTY OF YAMHILL

SITTING FOR THE TRANSACTION OF COUNTY BUSINESS

In the Matter of a Comprehensive Plan Amendment From)
Agriculture/Forestry Large Holding to Agriculture/Forestry Small)
Holding, and a Zoning Map Amendment from AF-20 Agriculture/) Ordinance 890
Forestry to AF-10 Agriculture/Forestry Small Holding,)
(Applicants James and Joyce Miller, Planning Docket PAZ-01-13),)
and Declaring an Emergency)

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY, OREGON (the Board) sat for the transaction of county business on September 18, 2014, Commissioners Allen Springer, Kathy George and Mary Starrett being present.

IT APPEARING TO THE BOARD that James and Joyce Miller have requested a plan amendment and zone change for an approximately 20-acre property located at 17371 NE Slope Lane, Newberg (Tax Lot 3205-304); and

IT APPEARING TO THE BOARD that this matter came before the Planning Commission for public hearing on June 5, 2014 and that the Planning Commission voted 6-1 to recommend approval of the application by the Board of Commissioners; and

IT APPEARING TO THE BOARD that this matter came before the Board on August 7, 2014 for public hearing and that, following the hearing and deliberation, the Board voted unanimously to tentatively approve the application pending the receipt of draft findings for approval from the applicants; NOW, THEREFORE

THE BOARD ORDAINS AS FOLLOWS:

Section 1. The findings attached as Exhibit "A" and incorporated herein by reference are hereby adopted in support of this ordinance.

Section 2. The Comprehensive Plan and Zoning Maps of Yamhill County are hereby amended as specified in the attached Exhibit "B," incorporated herein by this reference, to reflect a plan designation of "Agriculture/Forestry Small Holding," and a zoning designation of "AF-10, Agriculture/Forestry Small Holding" for Tax Lot 3205-304.

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Section 3. This Ordinance being necessary for the health, safety and welfare of the citizens of Yamhill County, and an emergency having been declared to exist, is effective immediately.

DONE this 18th day of September, 2014, at McMinnville, Oregon.

ATTEST: YAMHILL COUNTY BOARD OF COMMISSIONERS

BRIAN VAN BERGEN

County Clerk

Chair

Allen Springer

ALLEN SPRINGER

By:

Deputy Lucy Flores Mendez

Vice Chair

Kathy George

KATHY GEORGE

APPROVED AS TO FORM:

Commissioner

Mary Starrett

MARY STARRETT

Timothy S. Sadlo

Assistant County Counsel

Accepted by Yamhill County
Board of Commissioners on

9.18.14 by Board Order

14-569

ORDINANCE 890

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Ordinance No. 890
Exhibit "A"

Findings for Approval:

DOCKET NO.: PAZ-01-13

REQUEST: For approval of a comprehensive plan amendment from Agriculture/Forestry Large Holding to Agriculture/Forestry Small Holding; and a zone change from AF-20 Agriculture/Forestry use to AF-10 Agriculture/Forestry Small Holding. The request includes arguments for an exception to Goals 3 and 4.

APPLICANT/OWNER: James and Joyce Miller, represented by Jessica Cain

TAX LOT: 3205-304

LOCATION: 17371 NE Slope Lane, Newberg

ZONE: AF-20 Agriculture/Forestry use

CRITERIA: Sections 403, 501, 904 and 1208.02 of the Yamhill County Zoning Ordinance; Comprehensive plan policies are applicable; OAR 660 Division 04, Exceptions process for Goals 3 (Agriculture) and 4 (Forestry); and the request is subject to the Transportation Planning Rule, OAR 660-012-0060.

A. Background Facts

1. *Lot Size:* The parcel is approximately 20 acres and has access to Mountain Top Road through "Slope Lane"
2. *Access:* Mountain Top Road.
3. *On-site Land Use:* The property contains a single-family dwelling, a large shop building and smaller accessory structures. The property is forested along the northern boundary and has an area of Christmas trees.
4. *Surrounding Land Use and Zoning:* The area contains a mixture of small farm, forestry and rural residential uses on parcels of approximately 5 to 35 acres. The smaller parcels are generally within the existing exception areas and the larger parcels are within the resource zones. Property to the north, south and east is all zoned AF-10 Ag/Forestry Small Holding, a rural residential zone. The parcel to the west is zoned AF-20 Ag/Forestry use.
5. *Water:* Provided by an on-site well.
6. *Sewage Disposal:* Provided by an on-site septic system.
7. *Fire Protection:* Newberg Rural Fire Department.

8. *Previous Actions:* Partitioning of the property was granted in, 1972, 79' and 86' which created the existing parcel (Docket P-179-72, P-980-79 and P-05-86). In 1988, a farm dwelling was approved through Docket FD-15-88. In 2001, a home occupation approval was granted for a machine shop (Docket C-17-00). The most recent action was a Measure 37 approval (M37-113-05) which sought to allow the rezoning and development of the property under the land use requirements in effect on November 1, 1986, when James Miller acquired the property. Specifically, the request was, "To be able to apply for a plan amendment/zone change to VLDR 2.5 and subsequently subdivide the property accordingly." In 2000, a new administrative rule was put in place which requires an "Exception" to Goal 14 whenever a property is rezoned to less than a 10 acre average lot size. The Exception to Goal 14 is extremely difficult to obtain. The application was intended to waive this requirement. It appears that since there was no direct request for a dwelling that there was no subsequent Measure 49 application.
9. *Groundwater Limited Area:* The property is located in a Groundwater Limited Area, identified by the Oregon Water Resources Department
10. *Taxes:* Tax Lot 3205-304 has 18.95 acres in forest deferral and the remaining acre at market value.
11. *Overlay Districts:* Flood Insurance Rate Maps 41071C0221D, effective March 2, 2010 shows none of the property as being within the 100-year flood hazard area.
12. *Fish and Wildlife:* The property is not located in identified fish or wildlife habitat. The property is not located in the big game winter range.
13. *Soils:* The applicant hired Joel Norgren, a certified soil scientist, to have the soils on the subject property reviewed. Mr. Norgren's report, dated August 26, 2008 is included in the application as Exhibit A. This soils report was reviewed and approved by the Department of Land Conservation and Development. The original NRCS soils rating for the property indicated that 90.3% of the soils fell into Class I-IV. Mr. Norgren's report concluded that 77.9% fell into Class I-IV.

B. Zone Change Provisions and Analysis

1. A quasi-judicial change to a zoning map may be authorized, pursuant to Subsection 1208.01, provided that the request satisfies all applicable requirements of this ordinance, and also provided that the applicant demonstrates compliance with the following criteria, except as provided in Subsection 1208.02:
 - A. *The proposed change is consistent with the goals, policies and any other applicable provisions of the Comprehensive Plan.*
 - B. *There is an existing, demonstrable need for the particular uses allowed by the requested zone, considering the importance of such uses to the citizenry or the*

economy of the area, the existing market demand which such uses will satisfy, and the availability and location of other lands so zoned and their suitability for the uses allowed by the zone.

- C. *The proposed change is appropriate considering the surrounding land uses, the density and pattern of development in the area, any changes which may have occurred in the vicinity to support the proposed amendment and the availability of utilities and services likely to be needed by the anticipated uses in the proposed district.*
- D. *Other lands in the County already designated for the proposed uses are either unavailable or not as well-suited for the anticipated uses due to location, size or other factors.*
- E. *The amendment is consistent with the current Oregon Administrative Rules (OAR's) for exceptions, if applicable.*

2. Regarding criterion 1208.02(A), Plan goals and policies considered by the county include:

Goal II.A.2 directs the county: To conserve Yamhill County's soil resources in a manner reflecting their suitability for forestry, agriculture and urban development and their sustained use for the purposes designated on the county plan map.

The county accepts evidence presented by the applicant establishing that commercial and non-commercial scale farming is impractical on the site due to the slope of the property. Class 1-4 soils comprise 77.9 % of the property but 41.4% of those soil classes are at 20-30% slope which is moderately sloped and makes larger farming practices and bigger equipment uses impracticable. This occurs on 60.1% of the entire parcel (slopes 20% sloped or above and including class 6 soils). Further, the existing level of rural residential development in the area is consistent with the proposed use.

Additionally, *Policy II.A.2.a states: Yamhill County will continue to preserve those areas for farm use which exhibit Class I through IV soils as identified in the Capability Classification System of the U.S. Soil Conservation Service.*

As noted above, the property is predominantly rated as having Class III and IV soils.

Policy II.A.1.h.: No proposed rural area development shall substantially impair or conflict with the use of farm or forest land, or be justified solely or even primarily on the argument that the land is unsuitable for farming or forestry or, due to ownership, is not currently part of an economic farming or forestry enterprise.

The applicant presented evidence acceptable to the county establishing that the subject property is unsuitable for farming and forestry use and is not currently part of an economic farming or forestry enterprise. The application, supplement and accompanying

materials and testimony are hereby incorporated into these findings by reference. None of these policies, or any other Comprehensive Plan policy, is interpreted by the county as preventing or discouraging use of the subject property, located adjacent to other residential 10-acre properties, from being plan and zone designated as 10-acre residential property. Under the new designation, limited farm and forest uses can continue as they do under the current plan and zone designations. Criterion 1208.02(A) is met.

3. Regarding criterion 1208.02(B): a survey of parcels submitted by the applicant demonstrates that there are 52 privately held, vacant undeveloped AF-10 parcels and 32 privately held AF-20 parcels in a 15 square mile radius of the subject property. Uncontested testimony from a local realtor established that there is a large demand for AF-10 parcels near Newberg that is not currently met and that the request satisfies this criterion. This demand is based upon a variety of factors including the fact that due to households primarily sustaining two professions outside of the home, the level of commitment to farming practices becomes impracticable on parcels larger than 10 acres. The applicant established that there is an existing demonstrable need for the particular uses allowed by the requested zone (a single additional 10-acre homesite), considering the importance of such uses to the citizenry and the economy of the area, the existing market demand which said uses will satisfy, and the availability and location of other lands so zoned and their suitability for the uses allowed by the zone.
4. Regarding criterion 1208.02(C): the applicant established that the proposed change is appropriate considering the surrounding land uses, the density and pattern of development in the area, any changes which may have occurred in the vicinity to support the proposed amendment and the availability of utilities and services likely to be needed by the anticipated uses in the proposed district. The parcel is resource land and an "irrevocably committed" exception to Goals 3 and 4 is justified. The parcel is surrounded by AF-10 (residential) parcels on three sides and is bordered by one AF-20 parcel. In addition, the parcels beyond the immediately adjacent parcels are primarily AF-10 (residential) parcels with surrounding land uses being the same or similar to the proposed use. Residential and utility services are available to surrounding properties and to the subject property, which is currently developed with one residence and could be developed with one additional residential lot and dwelling under the requested plan and zone change. The surrounding area and the subject property are most appropriate for residential uses and for the small-scale farm and forest uses that are currently taking place and can continue to take place under the new plan and zone designations.

Regarding the availability of utilities and services in the area: the lots in the surrounding area have on-site systems for sewer and water hook-ups, as does the existing dwelling on the subject property. Other services such as electricity, telephone, police and fire protection, are currently available to the subject property and surrounding residences and residential properties.

5. Criterion 1208.02(D): regarding the availability of other lands, is addressed by findings addressing criterion (B), above, and by findings below establishing that an exception to Goals 3 and 4 is warranted in this case. The subject parcel is resource land and an

“irrevocable committed” exception to Goals 3 and 4 is justified, as established by the applicant and discussed in these findings. The applicant established through testimony and evidence that the subject property is well-suited for the anticipated uses—a single additional dwelling on an approximately 10-acre parcel that is currently suitable for small scale-farm and forest uses and will remain suitable for those uses under the requested plan and zone changes.

6. Regarding criterion 1208.02(E): Goals 3 and 4 are applicable; the subject parcel is resource land; and an “irrevocably committed” exception to Goals 3 and 4 is justified based on these findings.

C. **Goal Exception Provisions and Analysis**

1. Oregon Administrative Rule (OAR) 660 Division 04 contains the requirements for taking an exception to the goals. The applicant submitted arguments and evidence for an “irrevocably committed” exception.
2. OAR 660-04-028 indicates that a committed exception may be taken when land is irrevocably committed to uses not allowed by the applicable goal because existing adjacent uses and other relevant factors make uses allowed by the goal impracticable. OAR 660-04-028(3) states in part that: *“It is the purpose of this rule to permit irrevocably committed exceptions where justified so as to provide flexibility in the application of broad resource protection goals. It shall not be required that local governments demonstrate that every use allowed by the applicable goal is “impossible.” For exceptions to Goals 3 or 4, local governments are required to demonstrate that only the following uses or activities are impracticable:*

- (a) Farm use as defined in ORS 215.203;*
- (b) Propagation or harvesting of a forest product as specified in OAR 660-033-0120; and*
- (c) Forest operations or forest practices as specified in OAR 660-006-0025(2)(a).”*

A two-part analysis is required. First, whether land is irrevocably committed depends on the relationship between the exception area and the lands adjacent to it. Findings must address the characteristics of the exception area; the characteristics of the adjacent lands; the relationship between the exception area and the lands adjacent to it; and the other relevant factors set forth in OAR 660-04-028(6). Second, for an exception to Goals 3 and 4, findings must be made that farm and forest uses are impracticable on the proposed exception area.

3. *Characteristics of the exception area:* The proposed exception area is approximately 20 acres in size. It involves one parcel. The majority of the property is bordered by land zoned AF-10, Agriculture/Forestry Small Holding. The property has been used as a rural residence and for some small timber production, all of which can continue to take place if an exception is taken to Goals 3 and 4.

4. *Characteristics of the adjacent lands:* The subject land is bordered by parcels of 7 to 33 acres which contain rural residential, farm and forestry uses.
5. *The relationship between the exception area and the lands adjacent to it:* The proposed exception area is similar in character to the adjacent farm and forest lands that are zoned AF-10. The neighboring substandard parcels irrevocably commit the subject parcel to rural residential use. The level and type of development in the area supports the county's conclusion that the subject property is irrevocably committed to residential, non-farm and non-forest use.
6. OAR 660-04-028(6) requires that findings for a committed exception address existing adjacent uses; existing public facilities and services (water and sewer lines, etc.); parcel size and ownership patterns of the exception area and adjacent lands; neighborhood and regional characteristics; natural or man-made features or other impediments separating the exception area from adjacent resource land; physical development; and other relevant factors. The existing uses are addressed above. As stated, public facilities and services supporting residential uses are generally available in the area.
7. Regarding the "irrevocably committed" standards, OAR 660-04-028(6)(c)(A) states in part: *Past land divisions made without application of the Goals do not in themselves demonstrate irrevocable commitment of the exception area. Only if development (e.g., physical improvements such as roads and underground facilities) on the resulting parcels or other factors make unsuitable their resource use or the resource use of nearby lands can the parcels be considered to be irrevocably committed.* OAR 660-04-028(6)(c)(B) also states, in part: *The mere fact that small parcels exist does not in itself constitute irrevocable commitment. Small parcels in separate ownerships are more likely to be irrevocably committed if the parcels are developed, clustered in a large group or clustered around a road designed to serve these parcels.*

The Board finds that this parcel is resource land and an "irrevocably committed" exception to Goals 3 and 4 is justified. The subject parcel is surrounded by AF-10 parcels on three sides and is bordered by one AF-20 parcel. The applicant has also demonstrated that the parcels beyond the immediately adjacent parcels are primarily AF-10 parcels with surrounding land uses being the same or similar to the proposed use. Evidence in the record supports the county's conclusion that the subject property is appropriate for a single additional 10-acre rural residential parcel, given the characteristics of the existing (similar) development and uses in the area.

D. Goal 12 (Transportation Planning Rule) Provisions and Analysis

1. The provisions of the Transportation Planning Rule, implementing Goal 12, must be addressed. OAR 660-012-0060 contains the relevant provisions that must be met:
 - (1) *Amendments to functional plans, acknowledged comprehensive plans, and land use regulations which significantly affect a transportation facility shall assure*

that allowed land uses are consistent with the identified function, capacity, and level of service of the facility. This shall be accomplished by either:

- (a) Limiting allowed land uses to be consistent with the planned function, capacity and level of service of the transportation facility;*
- (b) Amending the TSP [Transportation System Plan] to provide transportation facilities adequate to support the proposed land uses consistent with the requirements of this division; or,*
- (c) Altering land use designations, densities, or design requirements to reduce demand for automobile travel and meet travel needs through other modes.*

(2) A plan or land use regulation amendment significantly affects a transportation facility if it:

- (a) Changes the functional classification of an existing or planned transportation facility;*
- (b) Changes standards implementing a functional classification system;*
- (c) Allows types or levels of land uses which would result in levels of travel or access which are inconsistent with the functional classification of a transportation facility; or*
- (d) Would reduce the level of service of the facility below the minimum acceptable level identified in the TSP.*

2. Regarding the Transportation Planning Rule: the Institute of Transportation Engineers estimates that a single-family dwelling generates an average of 10 trips per day. Only one additional residence can result from approval of this application, and the additional trips that could be generated will not significantly affect the existing transportation facility. The Public Works Department did not report concerns regarding the proposed use. Based on these factors, the county concludes that the proposed residential use is consistent with the identified function, capacity, and level of service of the local roads.

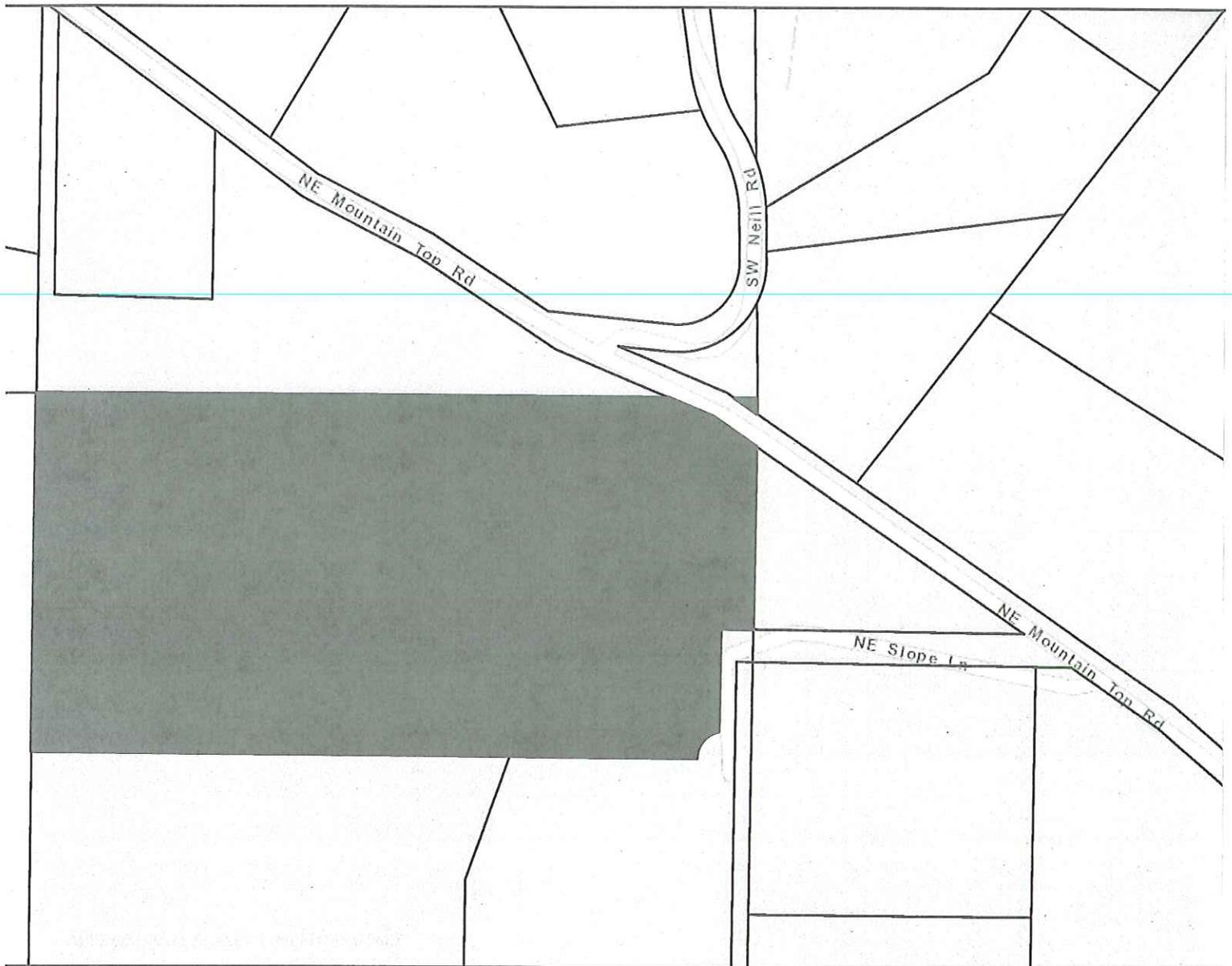
The county has considered all of the testimony and evidence submitted in this case, and has concluded that, weighing supporting and opposing testimony, the applicants have carried their burden to demonstrate compliance with all applicable standards.

EXHIBIT -B- MAP FOR ORDINANCE NO. 890
ADOPTED BY THE YAMHILL COUNTY BOARD OF COMMISSIONERS

September 18, 2014

DOCKET PAZ-01-13

APPROVAL OF A COMPREHENSIVE PLAN AMENDMENT FROM
AGRICULTURE/FORESTRY LARGE HOLDING (AFLH) TO
AGRICULTURE/FORESTRY SMALL HOLDING (AFSH) AND
A ZONE CHANGE FROM AF-20 AGRICULTURE/FORESTRY DISTRICT TO
AF-10 AGRICULTURE/FORESTRY SMALL HOLDING



CHANGE APPLIES TO TAX LOT 3205-304, AS IDENTIFIED ABOVE.

ORDINANCE 890

B.O. 14-569