

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 zone change from HI Heavy Industrial to LI Light Industrial on a 9.61 acre Parcel Located at 2808 NE Wynooski Road, Newberg, Tax Lot 3228-1800, Planning Docket Z-02-09, Applicant Elizabeth L. Fettig, and Declaring an Emergency ) Ordinance 846

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY, OREGON (the Board) sat for the transaction of county business on November 4, 2009, Commissioners Leslie Lewis, Kathy George and Mary P. Stern being present.

IT APPEARING TO THE BOARD that Elizabeth Fettig applied for a Zone Change from HI Heavy Industrial to LI Light Industrial on a 9.61 acre parcel located at 2808 NE Wynooski Road, Newberg, Yamhill County, and

IT APPEARING TO THE BOARD that the Newberg Urban Area Management Commission heard this matter at a duly noticed public hearing on September 30, 2009 and unanimously voted to recommend approval to the Board, and the Board held a duly noticed public hearing on October 28, 2009, and voted unanimously to approve the application, NOW, THEREFORE,

IT IS HEREBY ORDAINED BY THE BOARD, that the application is approved as detailed in the Findings for Approval, attached as Exhibit "A" and by this reference incorporated herein. 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 upon passage. A map is appended as Exhibit "B".

DONE this 4th day of November, 2009, at McMinnville, Oregon.

ATTEST: YAMHILL COUNTY BOARD OF COMMISSIONERS

REBEKAH STERN DOUGLAS County Clerk [Signature] LESLIE LEWIS

By [Signature] Deputy Anne Britt [Signature] KATHY GEORGE

APPROVED AS TO FORM: [Signature] Commissioner MARY P. STERN

[Signature] Rick Sanai, Assistant County Counsel

**Findings - Exhibit "A"**

**DOCKET NO.:** Z-02-09

**REQUEST:** For a zone change from HI Heavy Industrial to LI Light Industrial on a 9.61 acre parcel. Approval of the request would necessitate some modification of the Limited Use Overlay Zone restrictions (A) thru (H), as applied by Yamhill County Ordinance 638.

**APPLICANT:** Elizabeth Fettig

**TAX LOT:** 3228-1800

**LOCATION:** 2808 NE Wynooski Road, Newberg, Oregon 97132

**COMPREHENSIVE PLAN:** IND Industrial (The parcel is within the City of Newberg Urban Growth Boundary)

**ZONE:** HI Heavy Industrial

**CRITERIA:** Yamhill County Comprehensive Plan Goals and Policies, Newberg Urban Area Management Agreement, Ordinance 638 and Sections 904 and 1208.02 of the Yamhill County Zoning Ordinance

**A. Background Facts:**

1. Property size: 9.61 acres.
2. *Access:* Wynooski Road
3. *On-site Land Use:* The property contains two barns and a homesite. A portion of the southern end of the parcel is within the 100-year floodplain of Hess Creek.
4. *Surrounding Land Use and Zoning:* Property to the west is zoned HI and contains a paper mill One parcel to the northwest is zoned VLDR-2.5, Very Low Density Residential. The property to the east is zoned PWS, Public Works/Safety district and contains Newberg Garbage Service. Property to the south, across Hess Creek, is zoned VLDR-2.5 and EF-40, Exclusive Farm use and contains rural residences and farm uses. To the north, across Wynooski Road, the area is within the city limits of Newberg.
5. *Soils:* The Yamhill County Soil Survey shows approximately 47% of the parcel is composed of Aloha (Ah) and Woodburn (WuB) soils. Approximately 47% of the property is composed of Terrace escarpments (Te) and Wapato (Wc).
6. *Water:* On-site well.
7. *Sewage Disposal:* On-site septic system

8. Fire Protection: Newberg Rural Fire District.
9. Previous Actions: In 1993, the property was designated as future urbanizable land through Docket # PA-02-93. Subsequently, an application was made for annexation and a zone change to a city designation of M-3 Heavy Industrial. This request was approved by the Newberg City Council on December 4, 1995, with a requirement to enter into a development agreement. That development was drawn up and sent to the City Council. The Council needed five affirmative votes to pass the development agreement. The development agreement failed to receive the five votes so the annexation could not be finalized.

After the property failed to be brought into the City in the Heavy Industrial zone, the owner applied to the County. In 1996, the property was approved for a plan amendment and zone change to Heavy Industrial through Docket PAZ-02-96. In that process, a limited use overlay zone was applied to the property which placed eight conditions of approval on the rezoning.

In 2005, a lot-line adjustment was approved through Docket # L-09-05. A similar use was processed in 2008 through Docket SU-01-08/SDR-09-08.

10. Floodplain: FIRM 4102490187C shows the southern portion of the property as being within the 100-year floodplain.
11. Urban Growth Boundary: The property is within the Urban Growth Boundary (UGB) of the City of Newberg. The Newberg Urban Area Management Agreement requires review of the zone change application by the Newberg Urban Area Management Commission.
12. Exceptions: The subject parcel and area to the north, east and west were all granted a "committed" exception from the statewide planning goals protecting farm and forestry uses (Goals 3 and 4). The area was granted an exception and plan designated VLDR Very Low Density Residential by Exceptions Statement I. This document was adopted by the Board of Commissioners on May 3, 1979.

#### **B. Zone Change and Plan Amendment Provisions and Analysis**

1. The zone change portion of the request must comply with the standards and criteria in YCZO Section 1208.02. These provisions are:
  - (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 for exceptions, if applicable.*

2. Regarding criterion (A) above, Comprehensive Plan goals and policies which may be pertinent are:

*Industrial Development Goal Statement I.H.1: To concentrate industries of similar types, service needs, and performance characteristics within designated areas of each of the existing urban centers; to encourage adequate land for new industrial development within urban growth boundaries; to encourage the relocation of existing industries from undesirable locations in order to eliminate land use conflicts; to attract new industries in accordance with the need to achieve a more balanced local property tax and employment base, while maintaining a high standard of environmental quality; and to protect the stability and functional aspect of industrial areas by protecting them from incompatible uses.*

*Policy I.H.1.b: To the greatest extent possible, industrial areas will be located within urban growth boundaries. Those industrial areas located outside urban growth boundaries will be compatible with the industrial development goal and will be located where they can be adequately served by necessary major utility lines, including electric power substations and transmission lines, trunk sewer lines, trunk water lines, and where appropriate, trunk gas lines.*

The above goal and policy encourage the location of industrial uses within existing urban areas and urban growth boundaries. Traditionally, Yamhill County has encouraged applicants to look to industrial property inside the boundary prior to making application for rezoning property outside of the Urban Growth Boundary. The property is within the UGB. The land in the immediate area is zoned Heavy Industrial, Public Works Safety and Very Low Density Residential. The VLDR 2.5 zoned property is owned by the applicant and they have requested that it also be rezoned to Light Industrial. The applicant is proposing to use the property for a few years for light industrial uses that do not require the extension of services. Ultimately, the property would be annexed into the Newberg city limits and developed with some type of appropriate light industrial business. Interim development of the property should be done with the thought in mind that the property will be within the city. The City has requested conditions to be placed on a limited use overlay zone to require the interim development be done to city standards. The majority of these requirements will be included in this County approval.

*Policy I.H.1.b states in part that industrial uses . . . will be located where they can be adequately served by necessary major utility lines, including electric power substations and transmission lines, trunk sewer lines, trunk water lines, and where appropriate, trunk gas lines.*

The purpose of this policy is to assure that industrial users which are expected to utilize large amounts of water or electricity will be located within close proximity to places where those utilities are located. In this case the proposed use is not anticipated to require major utility lines, or major sewer or water lines. The need is only anticipated to be basic power and water services. At this point, no additional public services are needed.

4. Criterion (B) requires a finding that there is an existing, demonstrable need for the uses allowed in a light industrial zone. The applicant has indicated that they wish to develop a light industrial use that would not require the extension of city services. The applicant has submitted a draft report of the "South Industrial Area Master Plan" along with a letter of support from the Newberg Planning Director and a local realtor. The Board finds that the testimony in support of the "South Industrial Area Master Plan" demonstrates that Light Industrial zoning is hard to find in Newberg. The availability and suitability of other Industrial zoned lands will be discussed in Finding D.5.
5. Regarding criterion (C), as discussed earlier in the report, the surrounding land uses are primarily industrial, with light manufacturing businesses on the parcels adjacent to the north and east. The city has an interest in narrowing down some of the uses and they have requested a limited use overlay zone to specify what could occur on the property. Specifically, the Newberg City Council has requested to limit the permitted, conditional or similar uses to those that are allowed in the LI Light Industrial zone (excluding a Refuse Derived Fuel plant).

Regarding the availability of utilities and services, an on-site well and septic system exist on the property. Other utilities likely to be needed are available to the site. Fire service is available and no objection was voiced by the Newberg Rural Fire Department.

6. Criterion (D) requires the consideration of whether there are other available lands in the county that are zoned for light industrial uses. Location, size and suitability are factors that may be considered. The Board finds that the Newberg Planning and Building Department Report 08-09 shows that the current access to available, buildable, industrially zoned property is very low compared to the need for such property.
7. Regarding criterion (E), as noted in Finding A.12, a "committed" exception has already been taken on this property. Resolution No. 2009-2862, identified the area as having a "reasons" exception. The resolution further indicated that the property would need a new "reasons" exception. On page 8 of Ordinance 638 (which changed the property from VLDR 2.5 Very Low Density Residential to HI Heavy Industrial), it stated that:

"Although it may be argued that a new exception is required if there is a change in use, the Board Finds that a new exception is not required on the subject property

because the property was the subject of a “committed exception” to Goals 3 and 4, and the committed exception was taken before the 3/20/86 effective date of the administrative rule, current OAR 660-04-018(2). OAR 660-04-018(4) state that the rule applies to only plan and zoning designations and exceptions adopted following the effective date of the rule. Additionally, even if an exception were required, an exception was taken in 1993 when the property was taken into Newberg’s Urban Growth Boundary. Therefore the request is consistent with YCZO 1208.02(E).

Based on the property having a “committed” exception in 1979, an exception again when it was taken into the UGB, and the fact that the present request is to go to a less intensive use (Heavy Industrial to Light Industrial), an additional reasons exception will not be required.

### **C. Goal 12 (Transportation Rule) Provisions and Analysis**

The provisions of the Transportation Planning Rule, implementing Goal 12, must be addressed. OAR 660-12-060 contains the 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.*

1. The property is already zoned for Heavy Industrial use. The property is served by Wyooski Road. Going from a Heavy Industrial to a Light Industrial zone would not change or amend the functional plan because the Comprehensive Plan designation of the property remains Industrial. Therefore, the Board finds that the proposed use is consistent with the identified function, capacity, and level of service of the local roads.

### **D. Limited Use Overlay Provisions**

The purpose of the Limited Use Overlay District is to limit permitted use(s) and activities in a specific location to only those uses and activities which are justified and approved through a Comprehensive Plan Amendment or a zone change. The application does not exactly specify what uses are being requested. The City has an interest in limiting the uses to those that are appropriate to border the city limits. In addition, the city and County both have an interest in the development being compatible with the neighboring development the property is planned to eventually go into the city limits. There is an existing list of development requirements that were placed on the Limited Use Overlay zone through Ordinance 638 (see attached). The Newberg City Council has requested twelve conditions to be placed on a limited use overlay zone. Conditions (J), (K) and (L) appear to go beyond what can be enforced through the Limited Use Overlay zone. Conditions (J) and (K) are to have the owners sign a consent to annex and file for a zone change respectively. Condition (L) would require that the failure to meet conditions (J) and (K) would “. . . nullify the zone change.” Since zone changes require action by the Yamhill County Board of Commissioners, there is not a mechanism whereby a zone change can be nullified by not fulfilling a condition of approval. The Board chooses to replace conditions (J), (K) and (L) with the following requirement:

*Prior to site design review approval the property owner shall sign and record a waiver of remonstrance against the property being annexed into the city limits.*

**CONCLUSION:**

1. The request is for a zone change from HI Heavy Industrial to LI Light Industrial on a 9.61 acre parcel. Approval of the request requires some modification of the Limited Use Overlay Zone restrictions (A) thru (H), as applied by Yamhill County Ordinance 638.
2. The applicant has demonstrated that the request satisfies the Yamhill County Comprehensive Plan goals and policies for inclusion in the Newberg Urban Growth Boundary.
3. The applicant has demonstrated that the request satisfies the Yamhill County Comprehensive Plan goals and policies related to industrial development.
2. The applicant has demonstrated that the request satisfies the zone change provisions of Section 1208.02 of the Yamhill County Zoning Ordinance.

**DECISION:**

The request by Elizabeth Fettig for a zone change from HI Heavy Industrial to LI Light Industrial on 9.61 acres of land identified as tax lot 3228-1800, is hereby **approved** with a limited use overlay zone with the following conditions:

(A) The Limited Use Overlay shall only allow those permitted, conditional, or similar uses in the Yamhill County Light/General Industrial District (LI).

(B) The (RDF) Refuse Derived Fuel plant, similar use or any use that is accessory or incidental to such use is specifically not permitted.

(C) No city sewer or water facilities shall be authorized for any use permitted outside the City Limit boundary.

(D) One septic system may be authorized for the entire property which is the subject to this application. The septic system shall not exceed a capacity equal to three dwelling units or 15 people. No alternative forms of sewage disposal shall be permitted.

(E) Any application for development shall be referred to and reviewed by the City of Newberg.

(F) In addition to any other conditions of site design review, any development on the site requiring site design review shall be conditioned upon the following:

1. Either construction of half-street improvements on Wynooski Road or making a payment-in-lieu for future street improvements.
2. Either extending sewer lines and other needed utilities along the frontage of the property, or making a payment-in-lieu for sewer extension to the site.

3. Complying with City of Newberg front yard landscaping requirements.
4. Paving the driveway with asphalt or concrete for a minimum distance of 100 feet from Wyooski Road to minimize rocks and gravel carrying onto the street.

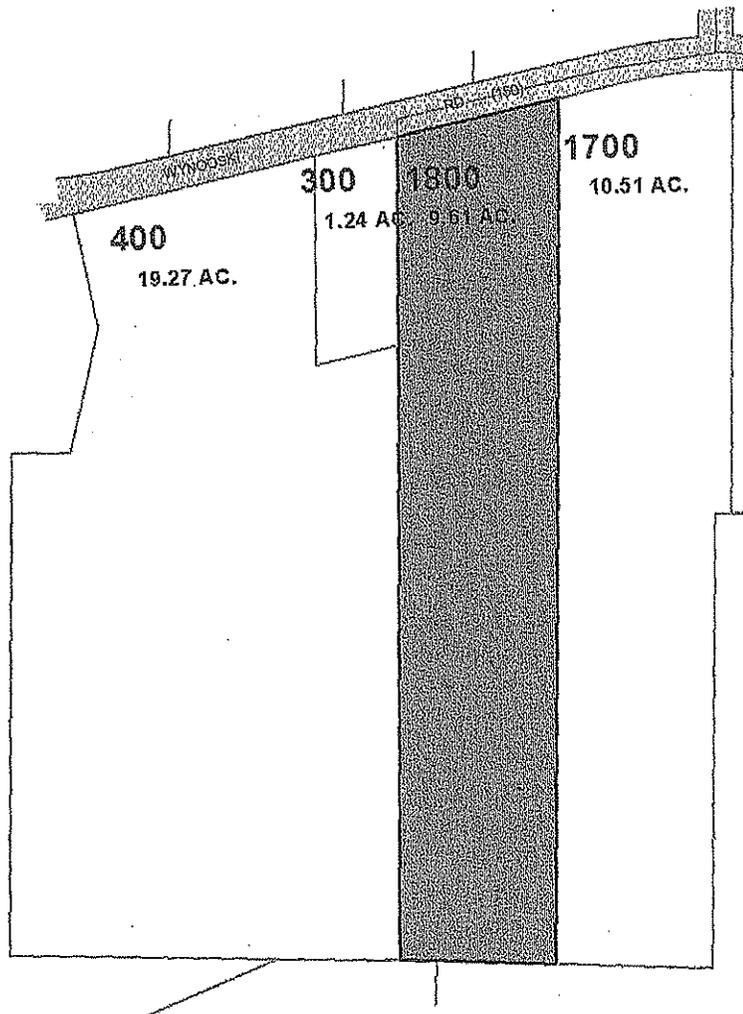
(G) Prior to site design review approval, the owners of the subject property shall sign a consent to annex on forms supplied by the City of Newberg.

(H) No land divisions are permitted.

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B.O.09-768

EXHIBIT MAP FOR ORDINANCE NO. 846  
ZONE CHANGE  
ADOPTED BY THE YAMHILL COUNTY BOARD OF COMMISSIONERS  
November 4, 2009  
TO CHANGE THE OFFICIAL ZONING MAP FROM  
*HI HEAVY INDUSTRIAL*  
TO  
*LI LIGHT INDUSTRIAL*



CHANGE APPLIES TO TAX LOT 3328-1800 AS IDENTIFIED ABOVE.  
APPROXIMATE SCALE - 1 INCH = 300 FEET

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Ordinance 846  
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