

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 and Zone Change )  
from VLDR 2.5 Very Low Density Residential to LI Light Industrial, )  
Amending Newberg's Urban Growth Boundary to include a 1.24 Acre ) Ordinance 845  
Parcel Located at 2716 NE Wynooski Road, Newberg, Tax Lot 3229-300, )  
PAZ-03-09, Applicant Elizabeth L. Fettig, and Declaring an Emergency )

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.

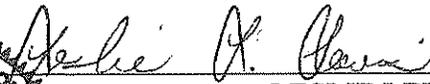
IT APPEARING TO THE BOARD that Elizabeth Fettig applied for a Comprehensive Plan Amendment and Zone Change for a 1.24 Acre parcel from VLDR 2.5 Very Low Density Residential to LI Light Industrial be taken into the into the Newberg UGB, and

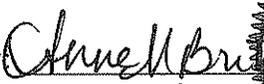
IT APPEARING TO THE BOARD that the Newberg Urban Area Management Commission heard this matter at a duly noticed public hearing on September 30, 2009 and unanimously voted to recommend approval to the Board, and the Board held a duly noticed public hearing on October 28, 2009, and voted unanimously to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

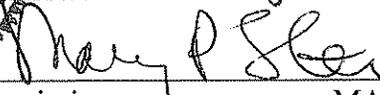
IT IS HEREBY ORDAINED BY THE BOARD, that the application is approved as detailed in the Findings for Approval, attached as Exhibit "A" and by this reference incorporated herein. This ordinance, being necessary for the health, safety, and welfare of the citizens of Yamhill County, and an emergency having 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 DOLAN  \_\_\_\_\_  
County Clerk LESLIE LEWIS

By  \_\_\_\_\_  
Deputy Anne Britt Commissioner KATHY GEORGE

APPROVED AS TO FORM  \_\_\_\_\_  
Commissioner MARY P. STERN

  
Rick Sanai, Assistant County Counsel

**Exhibit "A" - FINDINGS**

**DOCKET NO.:** PAZ-03-09

**REQUEST:** To amend Newberg's Urban Growth Boundary to take in 1.24 acres. Approval of the request would allow eventual inclusion of the property into the city limits. The application includes a request for a comprehensive plan designation from VLDR Very Low Density Residential to the City plan designation of Industrial and a zone change from VLDR 2.5 Very Low Density Residential to LI Light Industrial.

**APPLICANT:** Elizabeth L. Fettig

**TAX LOTS:** 3229-300

**LOCATION:** 2716 NE Wynooski Road, Newberg

**COMPREHENSIVE PLAN:** VLDR Very Low Density Residential/Urban Reserve Area

**ZONE:** VLDR 2.5 Very Low Density Residential

**CRITERIA:** Section 908 of the Yamhill County Zoning Ordinance, Newberg Urban Area Management Agreement, Statewide Planning Goals, Yamhill County Comprehensive Plan Goals and Policies and the Oregon Administrative Rules, including OAR 660-021 and OAR 660-012-0060.

*A. Background Facts*

1. *Size:* Approximately 1.24 acres.
2. *Access:* Wynooski Road
3. *On-site Land Use:* The subject parcel is bordered by trees along the western and southern property lines. The property contains a pump house.
4. *Current Zoning:* VLDR 2.5 Very Low Density Residential. On September 30, 2004 the property was designated as part of the Interchange Overlay District. While this property is within the Interchange Overlay District, it is not within the planned bypass corridor. The Interchange Overlay District is subject to Section 908 of the Yamhill County Zoning Ordinance and the amended provisions of the Yamhill County Comprehensive Plan. On June 17, 2009, the Yamhill County Board of Commissioners amended the overlay district to allow for Urban Growth Boundary expansions, subject to coordination with ODOT and the local jurisdictions.

5. *Surrounding Land Use:* Property to the north, across Wynooski Road, contains industrial uses including a mattress factory. The property adjacent to the south and west is owned by Smurfit Paper Plant. Property to the east is owned by the applicant and is subject to a zone change request to go from HI Heavy Industrial to LI Light Industrial.
6. *Surrounding Zoning:* The surrounding properties to the north are in the city limits of Newberg and are zoned M-2. The other adjacent lots to the south, east and west are zoned HI Heavy Industrial. Property to the south and west is within the Newberg Urban Reserve Area. Land to the east is within Newberg's Urban Growth Boundary and is owned by the applicant.
7. *Water:* The property contains a well and old pump house.
8. *Sewage Disposal:* The property contains a septic system.
9. *Fire Protection:* Newberg Rural Fire District
10. *Soils:* One-third of the parcel is classified as Aloha silt loam, one-third is Dayton silt loam and the remainder is Terrace Escarpment. (Note: While the property does contain soils that are rated as "high-value" agricultural soils, in 1979 the property had an exception to the farm and forest preservation goals.)
11. *Exception:* The subject parcel and area to the north, south, 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 May 3, 1979. In 1995 Yamhill County and the City of Newberg adopted the Urban Reserve Area. Yamhill County adopted Ordinance 596 on July 19, 1995 which identified the subject parcel as part of the Newberg Urban Reserve Area.
12. *Fish and Wildlife:* The property is not identified as being on any county adopted fish and wildlife habitat plan.
13. *Coordinated Population Projection:* Under ORS 195.036 cities are required to coordinate their population projections with the counties. The last coordinated population projection for Newberg is 54,097 citizens for the year 2040.
14. *Urban Reserve Area:* While the property is within the Urban Reserve Area the addendum to the Urban Area Management Agreement states that: "The County shall prohibit zone amendments allowing more intensive uses, including higher residential density, than permitted at the date of this agreement." This requirement is taken from the Oregon Administrative Rule 660-021-0040(3), which governs Urban Reserve Areas. The zone change portion of this application would only be approved subsequent to the urban growth boundary amendment.

B. Interchange Overlay District

1. On June 17, 2009 the Board of Commissioners adopted Ordinance No. 838 which modified the regulations that applied to the Interchange Overlay District as detailed in Section 908 of the Yamhill County Zoning Ordinance. Subsection 908.06(B and C) lists processes for expansion of the Urban Growth Boundary (UGB). It states:

- B. *Proposed amendments to the UGBs are governed by the criteria in Statewide Planning Goal 14 (Urbanization) and acknowledged UGB management agreements between Yamhill County and the respective cities. A decision to expand the UGB must be approved by the Yamhill County*
- C. *The 1999 OHP (Action 1B.3) directs ODOT to avoid expansions of UGBs along Interstate and State Highways and around interchanges unless ODOT and the appropriate local governments agree to an interchange area management plan to protect interchange operation.*

As stated above, Section 908 of the Yamhill County Zoning Ordinance allows UGB expansion within the Interchange Overlay District.

C. Urban Growth Boundary Amendment Criteria

1. Criteria to be addressed in UGB amendment requests include the *Newberg Urban Area Growth Management Agreement*, the statewide planning goals, and the city and county Comprehensive Plans. The review standards from the first three of these are detailed in the city's staff report, which is hereby adopted in its entirety by this reference. The application did consider Newberg's Comprehensive Plan and much of the justification of Newberg's Comprehensive Plan criteria follows similar reasoning for justification of the Yamhill County Comprehensive Plan Criteria. It should be noted that if this property were brought into the Urban Growth Boundary of the City of Newberg, the Comprehensive Plan designation would be the city's IND Industrial plan designation.

Even though the majority of the Yamhill County Goals and Policies are aspirational and not to be mistaken for, or treated as, approval criteria it is required that they be considered. It is a fact that some of the goals and policies conflict with one another. They are simply to be used as a guide to aid decision makers. For example, where goals or policies conflict the decision makers need to weigh the evidence and decide which goal or policy the request satisfies. Therefore, the Board of Commissioners finds the parcel is more appropriate for urban development than to be preserved for rural residential use.

2. The Yamhill County Comprehensive Plan, Section I.A., Goal 1, directs County:

*To encourage the containment of growth within existing urban centers, provide for the orderly, staged, diversified and compatible development of all of the cities of Yamhill County, and assure an efficient transition from rural to urban land use.*

In 1995 the urban reserve area project was completed. The Newberg Urban Reserve Area (URA) land supply was intended to provide adequate land for the City of Newberg needs to 2020.<sup>1</sup> The subject parcel was included in the URA. The urban reserve anticipated to fulfill the need for urban development 10-years beyond the adopted UGB. At that time, the reserve was to fulfill the needed land for urban development until 2020.

3. The Yamhill County Comprehensive Plan, Section I.A., Goal 2, directs Yamhill County:

*To encourage the containment of urban services and facilities and other public capital improvements within existing urbanizing areas in order to achieve an orderly pattern of urban growth.*

The expansion is proposed for property that was designated in 1995 as being part of the Newberg Urban Reserve Area. Recently, the city has undertaken a study to develop the South Industrial Area Master Plan. The preliminary results of that study have identified a portion of this property as being appropriate for some level of industrial development. Based on the available urban improvements to the property, it appears that approval will result in an orderly pattern of urban growth.

4. The Yamhill County Comprehensive Plan, Section I.H., Goal 1, directs Yamhill County:

*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.*

Approval of this request will move the property up the priority list from the Urban Reserve Area to the Urban Growth Boundary. An appropriate amount of land, properly located in the community, will help to assure a long term diversified employment base. The applicant is proposing to sell the property and have the new owners 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 requested conditions to be placed on a limited use overlay zone to require the interim development be done to city standards.

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<sup>1</sup>The city and the County have adopted an expansion to the Urban Reserve Area, however, this expansion is still being reviewed by the Land Conservation and Development Commission.

5. The Yamhill County Comprehensive Plan, Section I.H., Goal 1, Policy h., directs Yamhill County:

*Established industrial areas may be extended and new industrial areas designated by plan amendment where development trends warrant such extension or designation and full urban services are extended into the area, if appropriate, and the extension or designation of land use and services is consistent with all other goals and policies of the comprehensive plan.*

As indicated by the City of Newberg's draft South Industrial Area Master Plan, this area is suitable for industrial development based on the past development trends. Both Heavy Industrial and Light Industrial uses exist on neighboring properties. This is the strongest argument for the urban growth boundary amendment and the zone change - the simple fact that all of the surrounding area is either zoned for, or in, industrial uses. A spot zone of residential in the middle of industrial uses could set up a conflict between neighboring uses. A zone change to light industrial will minimize this possibility.

6. The Yamhill County Comprehensive Plan, Section II, Goal 2, Policy 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.*

The majority of the property is made up of high-value farmland which consists of agricultural Class I-IV soils. However, as noted above an exception to Goal 3, related to the protection of agricultural land was taken in 1980. The exception was based on the subject parcel and surrounding area being irrevocably committed to rural residential use. Therefore the goals and policies related to the protection of farm land do not apply to the subject parcel.

D. Zone Change Review Criteria and Analysis

1. The zone change 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 (OAR's) for exceptions, if applicable.*
2. Regarding criterion (A) above, see Section C above. It should be noted that both Heavy Industrial and Light Industrial uses exist on neighboring properties, both in the County and in the city limits. The simple fact that all of the surrounding area is either zoned for, or in, industrial use is the strongest argument for zoning this property to industrial use. A spot zone of residential in the middle of industrial uses would set up a conflict between neighboring uses. A zone change to light industrial will minimize this possibility.
  3. 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 sell this property to provide capital for their other business and believes the best use would be some type of light industrial use. The availability and suitability of other Industrial zoned lands will be discussed in Finding D.5.
  4. 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 application does not contain any specific development proposal however certain light industrial uses would be compatible with this area. 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 but even the applicant acknowledges that their present condition is unknown. Other utilities likely to be needed are available to the site. Fire service is available and no objection was voiced by the Newberg Fire District.
  5. 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.
  6. Regarding criterion (E), an exception to Goals 3 and 4 is not required. As noted in the above Finding A.11 this area was granted an exception to State Planning Goals 3 and 4.

E. 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 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. The Newberg City Council has requested twelve conditions to be placed on a limited use overlay zone. These are detailed in the attached Resolution No. 2009-2867. Item (E) on this list is “No land divisions are permitted.” The minimum lot size in the County’s Light Industrial zone is 20,000 square feet. Since the property is 1.24 acres, such a limitation will be placed on the property. 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.*

F. Other Ordinance Considerations

Site design review is required for any development in a LI district. Since the applicant is not presently proposing any use it is not possible to do a site design review at this time. Setbacks, landscaping, signs, building size and location, parking, access, and other requirements of the YCZO will be reviewed as part of the site design review. Since the property will be within the City’s UGB, it would be appropriate to apply city development standards.

G. Goal 12 (Transportation Rule) Provisions and Analysis

1. Transportation Planning Rule, implementing Goal 12, as being required to be addressed. OAR 660-12-0060 states:
  - (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. (Underline added)
2. As noted above, amendments to functional plans, comprehensive plans, or land use regulation amendments are required to address OAR 660-12-0060. The Urban Reserve Area is part of both the City and County comprehensive plans. The URA identifies areas for eventual inclusion in the UGB. Therefore, the request to move a property from the

URA to the UGB is consistent with the comprehensive plans of the City and the County.

#### CONCLUSION:

1. The request is to amend Newberg's Urban Growth Boundary to take in an additional 1.24 acres. The application includes a request for a comprehensive plan designation from VLDR Very Low Density Residential to the city plan designation of Industrial and a zone change from VLDR 2.5 Very Low Density Residential to LI Light Industrial.
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.
4. 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 expansion of the Urban Growth Boundary to include 1.24 acres of land identified as Tax Lot 3229-300, and a zone change from VLDR 2.5 to LI Light Industrial 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) Site development shall be restricted in the area of the existing stream corridor and shall comply with the City of Newberg Stream Corridor Sub-District overlay (151.465). The stream corridor boundary is typically defined as being either at the logical top of bank or 50 feet from the edge of the wetland.

(G) The Division of State Lands has identified hydric soils on the site and potential wetland areas. A wetland delineation is required prior to any site development.

(H) 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 Wynooski Road to minimize rocks and gravel carrying onto the street.

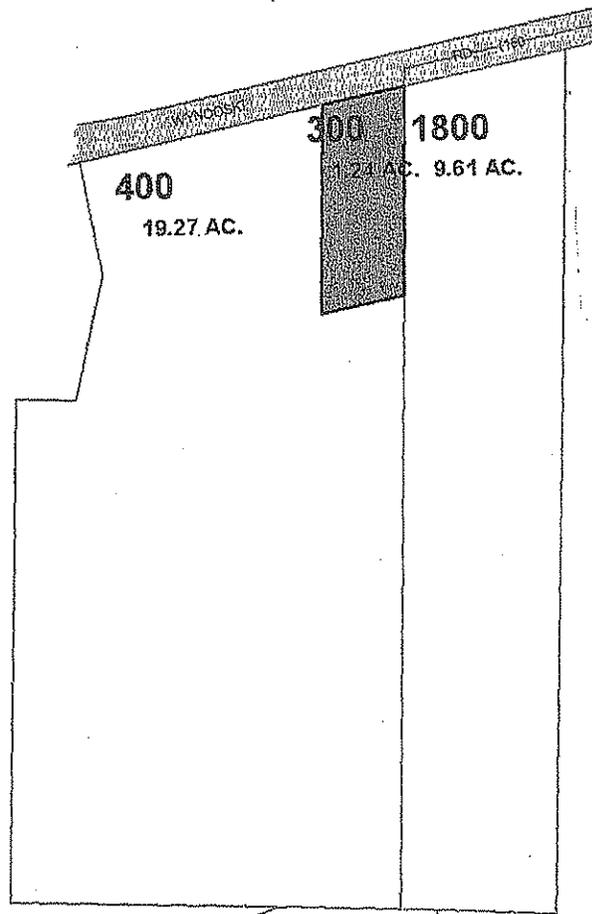
(I) Prior to site design review approval, the owners of the subject property shall sign a consent to annex on forms supplied by the City of Newberg.

(J) No land divisions are permitted.

End

B.O. 09-767

EXHIBIT MAP FOR ORDINANCE NO. 845  
PLAN AMENDMENT AND ZONE CHANGE  
ADOPTED BY THE YAMHILL COUNTY BOARD OF COMMISSIONERS  
November 4, 2009  
FOR A COMPREHENSIVE PLAN AMENDMENT FROM  
VERY LOW DENSITY RESIDENTIAL  
TO  
INDUSTRIAL  
AND TO CHANGE OFFICIAL ZONING MAP FROM  
*VLDR 2.5 VERY LOW DENSITY RESIDENTIAL*  
TO  
*LI LIGHT INDUSTRIAL*



CHANGE APPLIES TO TAX LOT 3229-300 AS IDENTIFIED ABOVE.  
APPROXIMATE SCALE - 1 INCH = 300 FEET

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Ordinance 845  
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