

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 the Subdivision Application and Conditional)
Use Application for Yamhill County Tax Lot 3314-3100)
On Sunnycrest Road and Authorizing Sixteen (16) Lots And) ORDINANCE 839
Dwellings, Applicant Coyote Homes, Inc., representing Property)
Owners Samuel and Mildred Eastman, Docket Nos. S-14-06
And C-20-07, and Declaring an Emergency.

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY, OREGON (the "Board") sat for the transaction of Yamhill County business on July 29, 2009, Commissioners Leslie Lewis and Kathy George being present, and Mary P. Stern being excused.

IT APPEARING TO THE BOARD that Coyote Homes, Inc., representing Samuel and Mildred Eastman initially submitted a Subdivision Application to Yamhill County Department of Planning (Planning Docket Nos. S-14-06 and C-20-07) for a nineteen (19) lot subdivision, which Subdivision Application was later amended to a sixteen (16) lot subdivision and Conditional Use Permit Application for Yamhill County Tax Lot 3314-3100, located on Sunnycrest Road in Yamhill County (the "Subdivision Application"); and

IT APPEARING TO THE BOARD that the sixteen (16) lot Subdivision and Conditional Use Permit Application was approved by the Board on June 20, 2007 as memorialized in Board Order 07-545 and Ordinance No. 811 ("Ordinance 811").

WHEREAS, the Subdivision Application approval contained in Ordinance 811 was appealed to the Land Use Board of Appeals by Marilyn Reeves and Friends of Yamhill County (LUBA Case No. 2007-122) ("Appellants"). Appellants cited five (5) assignments of error in their appeal. LUBA denied three of Appellants' assignments of error, but remanded two (2) assignments of error for further findings. Specifically, LUBA directed Yamhill County to adopt findings regarding the availability of water for the proposed subdivision pursuant to Yamhill County Land Division Ordinance ("LDO") 6.090 and the applicability of Yamhill County's 1959 Subdivision Ordinance; and

WHEREAS, the Board provided due notice and held a public hearing on the remanded issues for the Subdivision Application regarding Yamhill County Land Division Ordinance Section 6.090 and the applicability of the Yamhill County 1959 Subdivision Ordinance on July 15, 2009 and accepted written and oral testimony regarding those limited issues on that date. The Board received written comments and evidence and oral statements in favor of the Subdivision Application from Charles Harrell, attorney for Coyote Homes, Inc., and Samuel and

Mildred Eastman and written comments and evidence and oral statements in opposition to the Application from Merilyn Reeves on behalf of Friends of Yamhill County and Mark Bortnem and Roz Ott, both adjacent property owners. After due consideration of the Subdivision Application and the testimony and evidence presented, the Board tentatively voted 3 to 0 in favor of granting preliminary approval of the Subdivision Application, incorporating by reference the findings in Ordinance 811 and the findings attached hereto as noted in Exhibit A, NOW, THEREFORE,

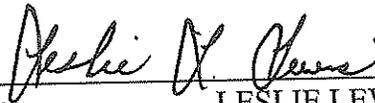
IT IS HEREBY ORDAINED BY THE BOARD, that the Amended Subdivision and Conditional Use Application (Planning Docket Nos. S-14-06 and C-20-07) are approved as detailed in the Findings for Approval contained in Ordinance 811 (incorporated herein by reference) and attached as Exhibit "A" hereto and by this 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 of the affected area is appended as Exhibit "B". A map generally describing the approved subdivision is appended as Exhibit "C".

DONE this 29th day of July, 2009, at McMinnville, Oregon.

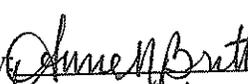
ATTEST:

YAMHILL COUNTY BOARD OF COMMISSIONERS:

REBEKAH STERN DOLL
County Clerk



LESLIE LEWIS

By: 
Deputy Anne Britt





Commissioner:

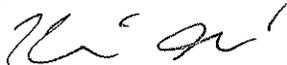
KATHY GEORGE

Unavailable for signature

Commissioner:

MARY P. STERN

APPROVED AS TO FORM:



Rick Sanai
Assistant County Counsel

FINDINGS AND CONCLUSIONS FOR ORDINANCE 839

Exhibit "A"

The following findings of fact and conclusions of law are hereby adopted, and are based on substantial evidence and testimony in the record in this matter:

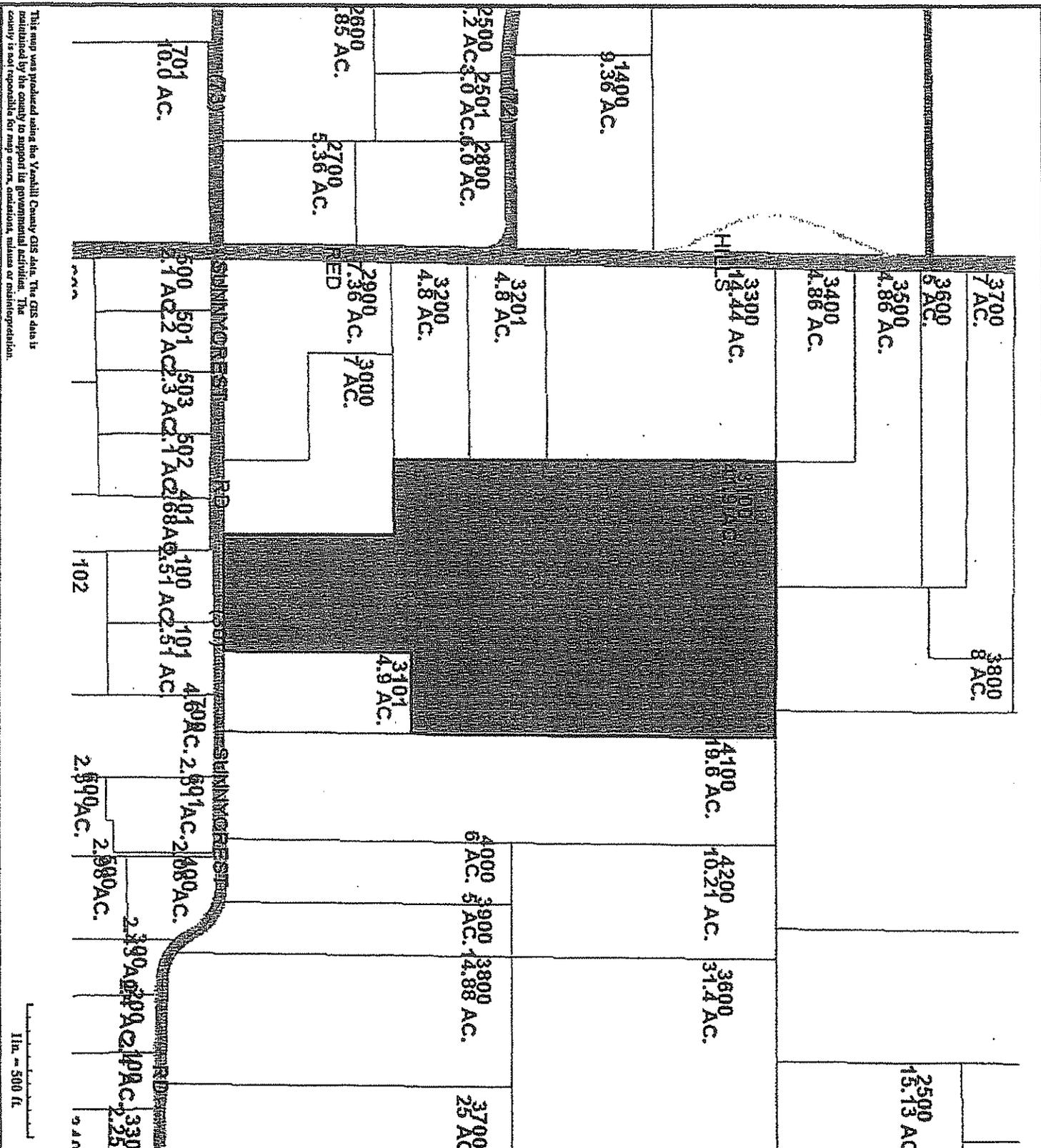
1. The Findings and Conclusions set forth in the Staff Report for the May 23, 2007, Public Hearing are hereby adopted in full, just as if they were set forth verbatim herein, except as specifically provided below. A copy of the said Staff Report is attached hereto as Exhibit "1" and by this reference incorporated herein.
2. The Findings and Conclusions set forth in Yamhill County Board Order 07-545 and Ordinance No. 811 are hereby adopted in full, just as if they were set forth verbatim herein, except as specifically provided below. A copy of the said Board Order and Ordinance is attached hereto as Exhibit "2" and by this reference incorporated herein.
3. The Measure 37 waivers granted in Yamhill County Board Order No. 05-760 and State of Oregon Final Order No. M118505 are vested under Yamhill County Ordinance 824. Specifically, the Board noted and found that Yamhill County Presiding Judge John Collins issued a letter opinion on May 8, 2009 finding that Applicant Samuel Eastman had clearly reached the necessary level for a vesting finding. In fact, instead of remanding the vesting decision to Yamhill County Planning Department for findings consistent with his decision, Judge Collins modified or amended the County's vesting decision by order to find that the Eastman development was vested.
4. Yamhill County Land Division Ordinance ("LDO") 6.090 requires that all "lots within a partition or subdivision shall have an adequate quality and quantity of water to support the proposed use." LDO 6.090 further provides that no "final plat of a subdivision or partition shall be approved unless the Director and engineer have received and accepted" one of three specified certificates of water supply. In lieu of such certificates, when no public or private water supply is available, the final plat must state that "no municipal, public utility, community water supply or private well system will be provided to the purchasers of the lots noted herein." The Board considered the following evidence and testimony in determining that there is an adequate quality and quantity of water to support the proposed use:
 - a) Well logs from the State of Oregon Water Resources Department were provided for the four (4) sections surrounding the subject property dating from 1955 to the present. The well logs revealed that, prior to the 1970s, the average well yield was less than 15 gallons. Starting the 1980s, the average well yield was in excess of 20 gallons, and in the 2000s, the average well yield was in excess of 53 gallons. In fact, the majority wells drilled in the 2000s had yields in excess of 30 gallons. This is substantial

evidence that supports a finding that there is an adequate quality and quantity of water to support the proposed use.

- b) The Applicants submitted written evidence from David Paysinger of Blue Water Drilling dated June 25, 2009 that specifically addressed the water quantity and quality available in the Sunnycrest area. Blue Water Drilling has been drilling wells in Yamhill County for 45 years, and Mr. Paysinger himself has been drilling wells in Yamhill County for 21 years. Mr. Paysinger stated that the deeper wells access the “deeper rock aquifer instead of the shallower alluvial clay aquifer” and that the yields from the deeper rock aquifers usually have better “chemistry and yield.” Further, Mr. Paysinger noted that the deeper wells are “constructed to prevent co-mingling with the shallower aquifer thereby eliminating interference with nearby older and shallower wells.” Mr. Paysinger notes that, in his professional experience and opinion, an adequate quality and quantity of water is available in the Sunnycrest area. The Board found Mr. Paysinger’s evidence and written testimony to be credible and to support a finding that there is an adequate quality and quantity of water to support the proposed use.
 - c) The Applicants submitted written evidence from EnviroLogic Resources, Inc., a water and hydrology firm, that provided that, based upon their research and analysis, the vast majority of wells in the study area (the study area was Sections 13, 14, 23 & 24) yielded water (as measured in gallons per minute) far in excess of the amount that is generally considered adequate for domestic water supply. The report noted that over 90% of the wells in the study area produce over 5 gallons per minute and nearly half of the wells produce greater than 25 gallons per minute. 5 gallons per minute and above is generally considered average to above average for domestic water use. After reviewing the well logs that are on file with the Oregon Department of Water Resources for Township 3 South, Range 3 West, Sections 13 and 14 (the same location as the Eastman property), EnviroLogic determined that “an adequate water supply may be available from wells drilled at the development, either in the form of a community water system or individual wells for each lot.” The Board found EnviroLogic’s evidence and written testimony to be credible and to support a finding that there is an adequate quality and quantity of water to support the proposed use.
5. LUBA directed Yamhill County to review LDO 6.090 and how the County applies LDO 6.090 consistent with statutory requirements for public input, and specifically whether LDO 6.090, particularly its first sentence, applies during preliminary or final plat review. The Board determined that the first sentence of LDO 6.090 (All lots within a partition or subdivision shall have an adequate quantity and quality of water to support the proposed use of the land) applies during preliminary plat review and that, as noted above, Applicants had met the necessary burden of proof for this requirement.

6. The current Land Division Ordinance remains applicable to the Application and some of the current Land Division Ordinance was waived by the Measure 37 claims and the 1959 Subdivision Ordinance is not applicable to the Application. Measure 37 was not a law or even a concept when the current Land Division Ordinance was drafted and amended. Therefore, there was no reason to bifurcate the Land Division Ordinance into two sections: one that deals with health and safety matters and one that deals with design and construction standards; they were both included in the same Land Division Ordinance. However, Measure 37 exempted out health and safety issues, thereby waiving certain portions of the Land Division Ordinance.
7. When the current Land Division Ordinance is compared to 1959 Subdivision Ordinance, it becomes clear that the 1959 Subdivision Ordinance addresses only primarily health and safety issues and was therefore superseded in its entirety by the public health and safety provisions of the current Land Division Ordinance.

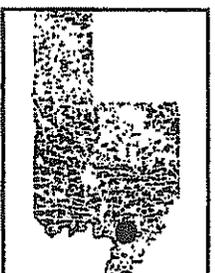
Exhibit "B"



This map was produced using the Yorkhill County GIS data. The GIS data is maintained by the county to support its governmental activities. The county is not responsible for map errors, omissions, updates or misinterpretation.

C-20-07

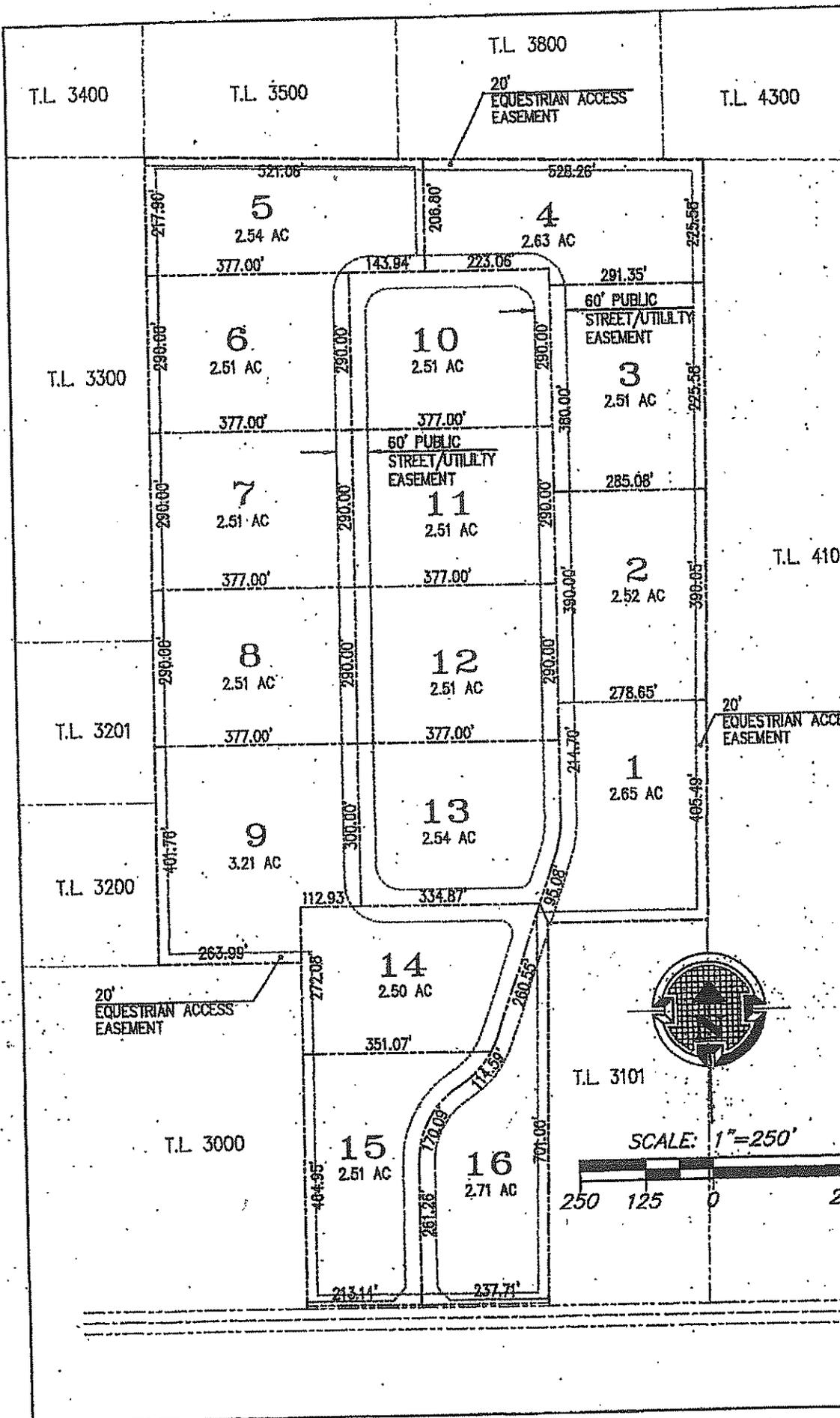
- County Parks
- County Roads
- County Routes
- Public Roads
- Yemassee
- Township
- right of way
- lot lines
- lot polygons
- Township



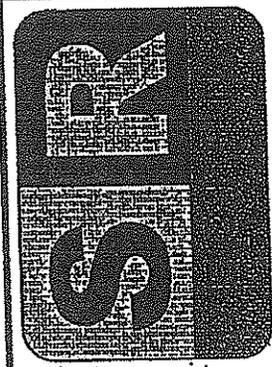
4/1/2007



B.O. 09-455



PROJECT NO. CHI-009
 DATE: 3/27/2007
 BY: S NELSON



8196 SW Hill Boulevard,
 Suite 232
 Beaverton, Oregon 97008
 phone (503) 469-1213
 fax (503) 469-8553
 www.srdc.com

PRELIMINARY PLAT
THE STABLES
AT THE COYOTE RUN
 SUNNYCRESTRD.
 YAMHILL COUNTY, OREGON
 FOR COYOTE HOMES, INC.

SHEET NO.
EX 1

16-Lot Subdivision and Conditional Use Staff Report
Yamhill County Planning Department

DATE: Original: November 22, 2006
Supplemental: January 31, 2007
16-Lot Subdivision/Conditional Use: May 1, 2007

DOCKET NO.: S-14-06/C-20-07

REQUEST: The applicant has requested conditional use approval, under the standards in effect in 1971, to allow the creation of 2.5 acre lots. The applicant has also amended the request from a 19-lot subdivision to a 16-lot subdivision on an 41.9 acre property. The proposed lot sizes are 2.5 acres or greater. This application is being made subsequent to the approval of a Measure 37 claim which allows application for development under the land use regulations in effect on December 4, 1971, when the present owner acquired the property. The details of the Measure 37 approval are found in Board Order 05-760 and State Claim M118505.

APPLICANT: Coyote Homes, Inc. representing Samuel and Mildred Eastman

TAX LOT: 3314-3100

LOCATION: Approximately 1,000 feet east of the intersection of Red Hills Road and Sunnycrest Road, on the north side of Sunnycrest Road, Newberg Oregon

ZONE: EF-20 Exclusive Farm Use

CRITERIA: Board Order 05-760 and the *Yamhill County Land Division Ordinance*

COMMENTS: *Yamhill Co. Public Works* - No comment to date.
City of Newberg - There may not be sufficient groundwater supply for this subdivision. Groundwater testing should be required prior to subdivision. Newberg ordinances prohibit connection to the City water supply outside of City limits. The City water supply should not be looked at as a source of water for this subdivision. - Barton Brierley, Planning and Building Director
SWCD - See letter dated October 2, 2006.
Watermaster - The watermaster gave detailed comments related to water rights.
Newberg Fire District - 1. Driveable surface for roadway must be maintained at 20' minimum width. No parking allowed on 20' wide street. Road must meet all fire dept. standards. 2. Road name must also be approved by Newberg Fire. 3. On site water supply required for firefighting purposes. Alternative to this is fire sprinklers installed in all homes with a recorded covenant running with the property. 4. If gate at entrance is installed, must meet access requirements, see fire marshal for details.

B.O. 09-455

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John & Levina Lawson, 11650 NE Red Hills Rd., Dundee- See comments in opposition to application.

Mark Bortnem, 21650 NE Sunnycrest Rd., Newberg - See comment letter dated October 1, 2006.

FINDINGS:

A. Background Facts

1. *Lot Size:* 41.9 acres.
2. *Access:* Sunnycrest Road borders the southern property line. Yamhill County has designated Sunnycrest Road as a major collector.
3. *On-Site Land Use and Zoning:* Currently, the property is zoned EF-20 Exclusive Farm Use. The property gently slopes down to the east. The property is predominantly cleared with some trees.
4. *Surrounding Zoning and Land Use:* The surrounding area is zoned EF-20 to the east, AF-10 to the north and west, and VLDR 2.5 to the south. The area is characterized by small scale agriculture and rural residential uses.
6. *Soils:* The Yamhill County Soil Survey shows the majority of the soils, approximately 98%, are composed of Amity (Am) and Woodburn (WuB) soils, which are rated as Class II soils, prime farmland.
7. *Water:* To be provided by a well.
8. *Sewage Disposal:* On-site subsurface septic systems are the only option.
9. *Fire Protection:* Newberg Rural Fire Department.
10. *Previous Actions:* Samuel and Mildred Eastman filed an application under Measure 37 (2004) to remove, modify or not apply the land use regulations in effect when they first acquired the property. Their claim was approved as detailed in Board Order 05-760. The Board Order states that:

Claimant is authorized to make application to divide the subject property into twenty lots and, upon the Planning Director's issuance of land division approval, to make applications to establish dwellings on undeveloped lots under land use regulations then

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in effect on December 4, 1971, a use permitted on the subject property at the time the claimant acquired the property.

Similarly, the State of Oregon has processed and approved a claim from Samuel and Mildred Eastman through Claim No. M118505. This claim stated:

In lieu of paying just compensation under ORS 197.352, the State of Oregon will not apply the following laws to Samuel and Mildred Eastman's division of their property into approximately two-acre parcels or to their establishment of dwelling on each parcel: applicable provisions of Statewide Planning Goal 3, ORS 215, and OAR 660, division 33. These land use regulations will not apply to the Eastmans' use of their property only to the extent necessary to allow them to use the property for the use described in this report, to the extent that use was permitted at the time they acquired the property in 1971.

Measure 37 does not allow the local jurisdiction to remove, modify or not apply regulations related to public health and safety. Section 1.(3)(b) of Ordinance 749 defines exempt land use regulations as a regulation that:

(b) Restricts or prohibits activities for the protection of public health and safety, such as fire and building codes, health and sanitation regulations, solid or hazardous waste regulations, and pollution control regulations.

Therefore, Yamhill County health and safety regulations will need to be complied with in evaluating this land division.

11. *Natural Hazards:* No apparent natural hazards.
12. *Taxes:* The property is not receiving farm or forest deferral.
13. On April 2, 2007 the Board of Commissioners met for the purpose of interpreting Ordinance 29. The Board interpreted the "A" Agriculture zone in Board Order 07-289. The Measure 37 claim goes back to a time prior to the adoption of SB 100 (1973) so Subsection J of Board Order 07-289 applies. It states:

Ordinance 29 did not establish minimum lot sizes within an Agricultural Zone A. However, based on the purpose of the zone as stated in Section 3.050, it is reasonable to imply a minimum lot size appropriate for a dwelling in the zone. Thus, the Board finds that the appropriate minimum lot size for a land division allowed by Measure 37 subject to Ordinance 29 before SB 100 became effective is five acres for dwellings allowed as a permitted use and 2.5 acres for dwellings

allowed as a conditional use. In circumstance where division of a parcel is proposed to separate a dwelling from resource use and the size of the lot containing the dwelling is less than 2.5 acres, the Board finds the division may be allowed as a conditional use following a hearing if the division meets the conditional, use standards in Ordinance 29 and the purpose established for an Agricultural Zone A by Ordinance 29.

After the Board passed the above interpretation, the applicant revised the preliminary plat down from 19 lots to 16 lots and applied for a conditional use approval to create the proposed 2.5 acre lots. The conditional use is considered in Section D of this staff report.

B. Zoning Considerations

1. Presently the property is zoned EF-20 Exclusive Farm Use. However, as noted above the property has received approval through Measure 37 for the property to be developed under the land use regulations in effect at the time the property was acquired by the applicant. The Board of Commissioner's approval of the applicant's Measure 37 claim records an ownership date of December 4, 1971. The subject property was designated as zone "A" Agriculture in 1968.
2. The applicant has applied using the present subdivision standards. The planning staff has tried to evaluate the request keeping in mind that many of the standards would not be applied when the owner first acquired the property. Notably, the measure does not allow the local jurisdiction to remove, modify or not apply regulations related to public health and safety. Section 1.(3)(b) of Ordinance 749 defines exempt land use regulations as a regulation that:

(b) Restricts or prohibits activities for the protection of public health and safety, such as fire and building codes, health and sanitation regulations, solid or hazardous waste regulations, and pollution control regulations.

Therefore, health and safety regulations, like the requirement to have the soil evaluated for the safe installation of a sewage disposal system, will need to be complied with in evaluating this land division. Standards unrelated to health and safety issues will not be required. The following staff report is intended to evaluate the request and determine which of the present standards are health and safety standards that need to be addressed. In certain circumstances there are some suggestions that have been submitted that can not be required but may be listed as suggestions for the applicant to consider. These suggestions will not be required but may be something for the applicant to consider.

Lastly, there have been two letters in opposition to this request. There were many concerns expressed but one overriding concern appears to be providing water to the lots within the

subdivision. The applicant has indicated that he intends to establish on-site wells for each proposed lot. The drilling of additional wells to support the development would be regulated by the Water Resources Department.

C. Subdivision Ordinance Provisions and Analysis

1. The Yamhill County Land Division Ordinance (LDO) Chapter 6 contains general design standards for subdivisions. Applicable standards will be addressed in the following findings.
2. Section 6.000 of the LDO requires subdivisions to conform with the requirements of the Comprehensive Plan and other ordinances. As noted in Finding A.10, the subject property was granted state and local approval for a claim under Measure 37. The approval directed that the county remove, modify or not apply certain land use regulations so that the applicant can be allowed to develop the property under the regulations in place when it was purchased. The proposed development does not comply with the local comprehensive plan (i.e. preservation of Class I-IV soils for agriculture). However, the local comprehensive plan will not be applied to this property because the plan was a land use regulation adopted after the property was acquired by the applicant.
3. Section 6.010(1) requires that road improvements be completed or proper security posted as specified in Section 13.000. The Planning Department believes the installation and completion of a safe road system is a matter of public safety. While the Public Works Department did not provide a written response to the initial referral, the Public Works Director did meet with the applicant and did talk with County Planning Staff. The Public Works Director stated the applicant will be required to submit an engineered road design that includes a full plan and profile and construction cost estimate for approval by the County Public Works Department. In addition, the applicant will be required to submit a traffic impact study prepared by a traffic engineer and a report from a traffic engineer demonstrating that the new intersection of Sunnycrest Road and the proposed right-of-way will satisfy AASHTO safety standards. Conditions related to the safe design and function of roads will be required on any approval.

The appellant stated in his appeal:

“a. Some valid concerns and recommendations submitted for review were noted in the Staff Report, but where not made approval conditions in the Preliminary Subdivision Approval letter.

b. The content of some valid comments and recommendations were not even included in the analysis portion of the Staff Report.”

When the appellant was in the office reviewing the application he was asked about what “. . . valid concerns (comments) and recommendations. . .” were absent from the staff report. The

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appellant said he could not recall all of them but said one concern was that our office had required a report from a traffic engineer, but the condition did not specify what road improvements would be required. He also desired to see off-site improvements, like intersection improvements to Highway 240. The difficulty with listing specific road improvement requirements is that there needs to be a basis for those requirements, like a report from a traffic engineer. However, the condition was not intended to only require a report. The report is to be the basis for the requirement for road and intersection improvements. This will be noted in the condition. In addition, the Public Works Director will not sign-off on the final plat without these road improvements being in place or a bond set aside for them to be completed. Even if the condition were absent, certain road improvements can be required based on Ordinance 787, Yamhill County Public Safety and Infrastructure.

As for off-site improvements, our office will recommend off-site improvements recommended by the Public Works Director that have some rough proportionality to the overall effect of the proposed development.

4. Section 6.010(2) requires that the subdivision provide for continuation of the principal streets existing in the area. The road does not need to provide for the continuation of the principal streets since there is no street across from, or close to, alignment with the proposed right-of-way. The Public Works Director did express concern about the proposed intersection with the proposed right-of-way and Sunnycrest Road. This intersection needs to be designed by a registered traffic engineer and the design submitted to the Yamhill County Department of Public Works for review and approval. This will be made a condition of approval.
5. Section 6.010(4) indicates that the Planning Director may require an arrangement of lots and streets that will permit a later re-division of the properties. The property is currently outside the urban growth boundary and Urban Reserve Area. In addition, the Newberg Planning Director did not request a shadow plat. Therefore, a shadow plat will not be required.
6. Subsection 6.010(6) and (7) outlines specific road standards for public dedication and easements. County standards require a 20' wide improved surface. The proposed roadway is to be constructed within 60 foot right-of-way. The County Land Division Ordinance requires a 60-foot wide dedicated right-of-way for what was proposed by the applicant. Road dedication and construction standards will be made as conditions on any approval.
7. Subsection 6.010(8) lists the option of property being served by a private drive or easement. The applicant has not proposed a private easement so this subsection does not apply.
8. Subsection 6.015 requires the dedication of additional right-of-way when requested by the Public Works Director. The Director indicated that he is requesting additional right-of-way along Sunnycrest Road. The subsection indicates that the dedication shall bring the half road up

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to a minimum right-of-way width of 30-feet. The half road is presently 20-feet so an additional 10 feet of right-of-way will be required. This will be made a condition on any approval.

9. Subsection 6.030 requires that all lots should form or approximate conventional shapes, with lot side lines running at right angles to the street as far as practical, except for lots on cul-de-sac streets, where side lot lines shall be radial to the curve. The Planning Director does not believe this is a health and safety issue that can be applied to this request. Nonetheless, the lots proposed on the preliminary plat meet the requirements of subsection 6.030.
10. Section 6.030(6) of the LDO requires lot drainage to be designed to the specifications adopted by the Board of Commissioners. A condition of approval will be made that the applicant be required to submit an engineered drainage plan that maintains the natural drainage to the maximum extent possible.
11. Subsection 6.070 deals with lands subject to hazardous conditions. The property is not in the Flood Hazard Overlay zone and is not designated in any hazard area.
12. Subsection 6.090 gives the options for water supply to lots within a subdivision. There were a number of comments submitted related to water supply. The ordinance gives the following four options:
 1. *A certification by a municipal, public utility or community water supply system, subject to the regulation by the Public Utility Commission of Oregon, that water will be provided to the parcel line of each and every parcel depicted in the final plat; or*
 2. *A bond, contract or other assurance by the subdivider or partitioner to the county that a domestic water supply system will be installed on behalf of the subdivider or partitioner to the parcel line of each and every parcel depicted on the final plat. The amount of any such bond, contract or other assurance by the subdivider or partitioner shall be determined by a registered professional engineer, subject to any change in the amount as determined necessary by the county; or*
 3. *A water well report filed with the State of Oregon Water Resources Department for each well provided within a subdivision or partition. The location of such wells and an appropriate disclosure shall be placed on the face of the final plat. If the subdivider or partitioner intends that domestic water will be provided to the proposed lot or lots by well(s) and no test wells have been drilled, the Director may require that test wells be drilled prior to final approval. The number and location of such wells shall be determined by the director and watermaster having jurisdiction; or*

4. *In lieu of Subsections (1), (2), and (3) of this Section, when a municipal, public utility, community water supply or private well system is not available, then a statement must be placed on the final plat or map which states:*

"No municipal, public utility, community water supply or private well system will be provided to the purchaser of those lots noted hereon."

The applicant has stated that he plans to establish on-site wells for each lot. Permits for wells would need to be obtained from the Water Resources Department. The applicant has indicated that private wells will provide water for the subdivision and their location and number will be determined prior to filing the final plat. If wells are drilled prior to the final plat, then the applicant will need to submit a map showing the location of the wells and the well report for each well. It should also be noted that the applicant also has option #4 above which allows the applicant to place a disclaimer on the face of the final plat which states that no water system is to be provided. The applicant will be required to comply with one of the options listed above.

13. Subsection 6.100 contains options and requirements for sewage disposal. The provision of adequate sewage disposal is a health and safety issue that is exempt from Measure 37 so it will be required on any approval. No public or city sewer services are available, so each lot will be required to be served by an individual on-site subsurface sewage disposal system. Site evaluations will be required for each lot. The site evaluation is required to assure there is adequate area to locate a septic system so that it will not adversely affect the groundwater in the area. In addition to the drainfield location, the site evaluation also identifies a replacement area for the septic system. Because of the lot size it may be difficult to site a septic system on each newly created parcel. Easements or larger lots may be required. If parcels cannot be served by an on-site system, then the subdivision will still be allowed but certain lots may not be able to be created. An existing system evaluation will be required for the existing dwelling to assure that the system is properly functioning. A site evaluation will be required for each lot to assure there is adequate area for the septic tank and drainfield.
14. Section 6.120 contains requirements and standards for surveying subdivisions. Since all lots will be less than 10 acres in size, a survey complying with these standards will be required.

D. Ordinance 29 Conditional Use Standards

1. Subsection 6 of Ordinance 29 governs conditional use requests. Ordinance 29 does not contain criteria for conditional use approvals. However, conditional uses may have conditions applied to them as noted in the conditional use standards. Subsection 6.010 lists the authority to grant or deny conditional uses:

Section 6.010. Authorization to Grant or Deny Conditional Uses.

- (1) *Conditional uses listed in this ordinance may be permitted, enlarged, or otherwise altered upon authorization by the planning commission¹ in accordance with the standards and procedures set forth in ARTICLE 6 of this ordinance.*
 - (2) *In permitting a conditional use or the modification of a conditional use, the planning commission may impose in addition to those standards and requirements expressly specified by the ordinance, any additional conditions which the planning commission considers necessary to protect the best interests of the surrounding property or the county as a whole. These conditions may include prescribing a time limit; increasing the required lot size or yard dimensions; limiting the height of buildings; controlling the location and number of vehicular access points to the property; controlling the location and number of off-street parking and loading spaces required; limiting the number, size, and location of signs; and requiring diking, fencing, screening, landscaping, or other facilities to protect adjacent or nearby property.*
 - (3) *In the case of a use existing prior to the effective date of this ordinance and classified in this ordinance as a conditional use, any change in use or in lot area or an alteration of structure shall conform with the requirements dealing with conditional uses.*
 - (4) *The planning commission may require that the applicant for a conditional use furnish the county with a performance bond of up to the value of the cost of the improvement to be guaranteed by such bond, in order to assure that the conditional use is completed according to the plans as approved by the planning commission.*
2. Subsection 6.010(2) allows the decision maker the ability to impose additional standards and requirements expressly specified by the ordinance and any additional conditions that are determined to be necessary to protect the best interests of the surrounding property or the County as a whole. The health and safety conditions of the zoning ordinance are proposed to be applied to the application and are noted in the above section and in the conditions for approval at the end of this report. The other condition that the Board intends to apply to requests for 2.5 acre lots is noted in the interpretation listed in Board Order 07-289(M) as follows:

M. Where authorized by applicable Oregon tax law, any land divisions allowed by virtue of an order granting Measure 37 relief should be subject to disqualification

¹ The Board of Commissioners is the decision making authority on this land use application because the original request was appealed to the Board.

of special assessment and payment of back taxes if the basis of the disqualification is that the land divisions created non-farm parcels. It is the Board's belief that land divisions subject to Ordinance 29 prior to October 5, 1973 that create lots less than five acres in the Agricultural Zone A are non-farm parcels. Further, it is the Board's belief that land divisions subject to Ordinance 29 on October 5, 1973 through February 11, 1976 that create lots less than 10 acres in the Agricultural Zone A are non-farm parcels. (Underline added)

The property is not receiving farm or forestry deferral. If it had been receiving deferral then a condition would have been placed on any approval requiring the removal of that deferral prior to the creation of the 2.5 acre lots. However, this will not be required as the property is not receiving deferral.

OTHER ISSUES:

One neighbor submitted a nine page letter, with exhibits, outlining issues related to the subdivision. These issues will be discussed below.

Proposed plat design: The neighbor has described in detail what he believes (and what appear) to be dimensional errors on the initial 19-lot preliminary map. The dimensional errors appear to be 20 to 50 feet. These apparent errors have been passed on to the applicant and will need to be fixed prior to the filing of the final plat. The opponent requested that a new plat be required to be submitted with a reduced number of lots. This was submitted by the applicant. It should be remembered though that the preliminary map is just that, preliminary. The first condition on any preliminary approval will state that, "The final plat shall substantially conform to that of the preliminary map." Dimensional adjustments frequently occur at the final plat stage and are allowed as long as the final plat substantially conforms to that of the preliminary map.

Lot size: The operative language in the applicant's Measure 37 claim is as follows:

"Claimant is authorized to make application to divide the subject property into 20 lots and, upon the Planning Director's issuance of land division approval, to make applications to establish dwellings on undeveloped lots under land use regulations then in effect on December 4, 1971, a use permitted on the subject property at the time claimant acquired the property."

Therefore, based on the Measure 37 approval the applicant can apply to divide the property into a maximum of 20 lots. The Board of Commissioners has interpreted the A Agriculture zone of Ordinance 29 to allow 5-acre lots as a permitted use and 2.5 acre lots with conditional use approval. The applicant has amended the request from 19-lots to 16-lots measuring a minimum of 2.5 acres and has submitted a conditional use approval to create the 2.5 acre lots.

STAFF REPORT

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Sewage disposal systems: As noted in Finding B.12 above, a site evaluation will be required for each proposed lot. The opponent detailed concerns about nearby water supplies that may be in close proximity to the proposed septic systems. The location of existing wells and streams are items that are considered with the site evaluation inspection. These will be considered and addressed prior to final plat approval. As noted above, if proposed parcels cannot accommodate the septic system then easements or reconfiguration of the lots will be necessary. If the septic system still can not be accommodated, then the lot will not be allowed to be created.

Groundwater: The opponent submitted a substantial amount of information related to groundwater. He recommended that the applicant be encouraged to work very closely with concerned neighbors, Yamhill County and the Oregon Water Resources Department (OWRD). Our office will pass on this request to the applicant.

Bike improvements: The applicant indicated that they will provide a 6-foot wide bicycle improvement along Sunnycrest Road. The opponent asked if this was to extend out to all of Sunnycrest Road. In a ruling by the U.S. Supreme Court in the Case Dolan v. the City of Tigard it was ruled that any exactions need to have a "rough proportionality" to the proposed development. Requiring a 16 lot subdivision to provide the entire bike lane along the entire two mile length of Sunnycrest Road is not proportional to the use generated by the proposed development. Therefore, any requirement for a bike path would be limited to only the subdivision frontage onto Sunnycrest Road.

Legal issues: The opponent asked if a substantial vested interest has been defined for this subdivision. There has been no definition adopted for this subdivision. In addition, the opponent lists various concerns related to Measure 37 and transferability of the land use approval. The courts are in the (very slow) process of determining the rights of the applicant to transfer the Measure 37 approval to new owners. In the interim, Yamhill County has required that a disclaimer be placed on the face of the final plat which notifies potential owners that the lots were created as part of a successful Measure 37 claim and that Yamhill County makes no representations or warranties as to the transferability of the lots or any development rights related to the lots.

CONCLUSIONS FOR APPROVAL:

1. The applicant is requesting a conditional use and subdivision approval to develop a 16-lot subdivision on a 41.9 acre property.
2. The comprehensive plan designation and zoning are not applied due to the approval of a claim under Measure 37 (2004) as found in Board Order 05-760 and State Claim M118505.
3. With conditions the request can be made consistent with the health and safety standards and criteria of the Land Division Ordinance.

STAFF RECOMMENDATION:

The Yamhill County Planning Director recommends the request by Coyote Homes Inc., representing Sam and Mildred Eastmen, for a conditional use and subdivision approval to allow a 16-lot subdivision on Tax Lot 3314-3100, be granted preliminary approval with the following conditions:

1. A final subdivision plat pursuant to the requirements of the *Yamhill County Land Division Ordinance* shall be prepared and submitted to the Planning Director. All existing and proposed easements shall be shown on the face of the plat. The Yamhill County Planning Docket Number "S-14-06" shall appear on the face of the plat. The subdivision lines shall substantially conform to that of the preliminary map.
2. The applicant shall dedicate the 60-foot right-of-way along the route as shown on the face of the plat. Said right of way shall be brought up to current Public Road Standards. The proposed roadways shall have a minimum unobstructed driving surface width of 20 feet and shall have an all-weather surface that is capable of supporting not less than 12,500 pounds point load (wheel load) and 50,000 pounds live load (gross vehicle weight). The access shall have an unobstructed horizontal clearance of not less than 25 feet and an unobstructed vertical clearance of not less than 14 feet. Average road grade shall not exceed 10% and no grade shall exceed 15%. A maximum of 200 feet at 15% grade may be allowed.
3. For the dedicated road, the applicant shall submit an engineered road design that includes a full plan and profile and construction cost estimate to the County Public Works Department. The improved road surfacing needs to be an all weather hard surfacing provided on the proposed road. All road improvements shall be constructed to county road standards and inspected by the Public Works Department or a private engineer prior to final plat approval, or security shall be posted pursuant to Chapter 13 of the Land Division Ordinance.
4. The applicant shall dedicate an additional 10-foot of road right-of-way along the Sunnycrest Road frontage. In addition, the applicant shall provide a bikeway with a width of 6-feet along the Sunnycrest Road frontage. The design and location of the bikeway shall be reviewed and approved by the Public Works Director.
5. The applicant shall provide a traffic impact study of the proposed subdivision with Sunnycrest Road and an engineered design of the intersection with Sunnycrest Drive subject to the AASHTO intersection standards. The traffic impact study and intersection design shall be done by a registered traffic engineer. The internal road improvements and intersection design shall be completed, or a bond posted, prior to final plat approval.
6. The applicant shall submit a drainage plan showing that no natural drainage is disturbed by any development taking place on any of the proposed lots. The plan shall be prepared by a

registered engineer. The drainage plan shall be submitted to and approved by the County Public Works Director prior to final approval.

7. Prior to final subdivision plat approval, the applicant shall obtain an approval for on-site subsurface sewage disposal for Lots 1 thru 16 pursuant to Section 6.100 of the *Land Division Ordinance*. All septic systems shall be located on the individual lots and maintain the minimum setback requirements of 10 feet from all new property lines. If the 10 foot minimum setbacks from the property lines cannot be maintained, a properly recorded easement will be required, pursuant to Section 6.100 of the *Land Division Ordinance*.
8. The subdivision shall be shown to have adequate quality and quantity of water to support the proposed use. Prior to final plat approval, the applicant shall demonstrate conformance with standard 1, 2, 3 or 4 of Subsection 6.090 of the Land Division Ordinance. Either domestic water shall be provided to each lot by a community water system or an on-site well or wells, with the location of the well(s) indicated on the face of the plat, or the following disclosure shall be placed on the plat:

No municipal, public utility, community water supply or private system will be provided to the purchaser of those lots noted hereon.

Each lot not provided with a well or community service shall be so identified.

9. Prior to final approval, the applicant shall provide a plan for water supply for fire suppression to the Newberg Rural Fire Department for their review and approval.
10. The applicant shall name the proposed right-of-way. Said name shall be reviewed and approved by the Planning Director.
11. The following language shall be placed on the face of the final plat:

Lots shown on this plat were authorized by waivers of land use regulations by Yamhill County and the State of Oregon pursuant to ORS 197.352, 2005 replacement part (Measure 37). The Yamhill County waiver is found in Board Order 05-760, recorded in the Yamhill County Deed & Mortgage Records as Instrument No. 200520679. Yamhill County makes no representations or warranties as to the transferability of the lots or any development rights related to the lots.

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Suggestion:

The following is not a condition of approval because it is not directly related to issues of health and safety. This is considered by the Yamhill County Planning Staff as being worthy of consideration so it is suggested for the applicant to consider when completing this subdivision.

1. Since the development is near farmland, development of the lots should be tied to waivers of the right to complain about farm practices and/or strong CC&Rs stipulating that residents shall not complain about neighboring farm practices.

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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 the Subdivision Application and Conditional)
Use Application for Yamhill County Tax Lot 3314-3100)
on Sunnycrest Road and Authorizing Sixteen (16) Parcels) ORDINANCE 811
And Dwellings, Applicant Coyote Homes, Inc., representing)
Property Owner Samuel and Mildred Eastman, Docket Nos.)
S-14-06 and C-20-07, and Declaring an Emergency)

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY, OREGON (the "Board") sat for the transaction of county business on June 20, 2007, Commissioners Kathy George, Mary P. Stern, and Leslie Lewis and being present.

IT APPEARING TO THE BOARD that Coyote Homes, Inc., representing Samuel and Mildred Eastman applied to the Yamhill County Department of Planning (Planning Docket Nos. S-14-06 and C-20-07) initially applied for a nineteen (19) parcel subdivision, which application was later amended to a sixteen (16) parcel subdivision application and conditional use permit application for Yamhill County Tax Lot 3314-3100, located on Sunnycrest Road in Yamhill County, and

IT APPEARING TO THE BOARD that such applications are authorized pursuant to ORS 197.352, Yamhill County Ordinance 749 and approved by Yamhill County Board Order No. 05-760 and State of Oregon Final Order No. M118505.

IT APPEARING TO THE BOARD that Subdivision Application S-14-06 was considered and approved by the Yamhill County Planning Director as provided in the Yamhill County Ordinances, which approval was appealed to the Yamhill County Board of Commissioners by Mark Bortnem on December 15, 2006, which appeal was considered by the Board of Commissioners at a duly noticed public hearing scheduled for February 7, 2007, which meeting was continued to March 7, 2007, and March 28, 2007, after which the Subdivision Application was amended to request only sixteen (16) parcels and to include a Conditional Use Application, C-20-07 as required by 1968 Ordinance 29, which amended Subdivision Application and Conditional Use Applications were considered by the Board of Commissioners at a duly notice public hearing scheduled for May 9, 2007, meeting was continued to May 23, 2007, at which meetings the Applicant, Property Owners, Opponents and other parties appeared and testified. The Board received oral objections from Mark Bortnem, an adjacent property owner, Marilyn Reeves on behalf of Friends of Yamhill, Sid Freidman on behalf of 1000 Friends of Oregon, and also received written comments and objections to the Subdivision Application and Amended Subdivision Application. After due consideration of the Application and the objections presented, the Board tentatively voted 3 to 0 to grant preliminary approval of the Application with 11 conditions, as noted in Exhibit A, NOW, THEREFORE,

B.O.09-455

IT IS HEREBY ORDAINED BY THE BOARD, that the Amended Subdivision Application and Conditional Use Permit are 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 of the area is appended as Exhibit "B".

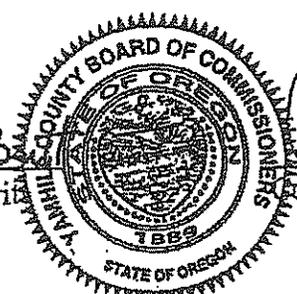
DONE this 20th day of June, 2007, at McMinnville, Oregon.

ATTEST: YAMHILL COUNTY BOARD OF COMMISSIONERS

Jan Coleman
County Clerk

Kathy George
Chair: Kathy George

By Anne Britton
Deputy Anne Britton



Mary P. Stern
Commissioner: Mary Stern

Leslie R. Lewis
Commissioner: Leslie Lewis

APPROVED AS TO FORM:

Rick Sanai
Rick Sanai, Assistant County Counsel

B.O. 09-458
~~B.O. 07-545~~

FINDINGS AND CONCLUSIONS for Ordinance 811
Exhibit "A"

The following findings of fact and conclusions of law are hereby adopted, and are based on substantial evidence in the record in this case:

1. The Findings and Conclusions set forth in the Staff Report for the May 23, 2007, Public Hearing are hereby adopted in full, just as if they were set forth verbatim herein, except as specifically provided below. A copy of said Staff Report is attached hereto and by this reference incorporated herein.
2. The Subject Property area currently consists of one lot of 41.9 acres currently zoned Exclusive Farm Use (EF-20). The Amended Subdivision Application and Conditional Use Permit Application will subdivide the Subject Property in sixteen parcels, with the size of the parcels ranging from 2.50 acres to 3.21 acres in size with an average parcel size of 2.58 acres.
3. The subdivision of the Subject Property into sixteen (16) parcels is permitted, despite the EF-20 zoning, pursuant to Ballot Measure 37, codified at Oregon Revised Statute 197.352, which provides waiver of restrictive land use regulations enacted or adopted after the property owner acquired the Subject Property. Property owners Samuel and Mildred Eastman acquired the Subject Property on December 4, 1971.
4. Property owners Samuel and Mildred Eastman received waiver of the restrictive land use regulations, including the restrictions of the EF-20 zoning, enacted or adopted after December 4, 1971, from the State of Oregon in State of Oregon Measure 37 Final Order No. M118505, and from Yamhill County in Yamhill County Final Board Order No. 05-760, both of which authorized subdivision of the Subject Property into a maximum of twenty (20) parcels.
5. Yamhill County zoning records indicate that the Subject Property was subject to Yamhill County zoning on December 4, 1971. On December 4, 1971, the Subject Property was zoned Agriculture under Yamhill County Zoning Ordinance 29, which was enacted and adopted in 1968.
6. On March 22, 2007 and April 2, 2007, the Yamhill County Board of Commissioners sat in a work session to interpret the requirements of the Ag-A zoning under Ordinance 29. In that work session, and based upon the information available to the Board of Commissioners, determined that the Agriculture zoning permitted outright dwellings on five (5) acre minimum parcels, and that, in 1971, dwellings would be allowed on parcels at least two and half acres (2½) in size subject to a Conditional Use Permit. The Board of Commissioners further determined that the only condition of approval for dwellings on parcels at least two and half acres (2½) in size would be mandatory removal of the property from farm tax deferral of ORS 318.
7. The Board of Commissioners considered Judge John Collins' ruling in the Yamhill County Circuit Court Case Marla Robison v. State of Oregon, by and through its Department of Administrative Services and Department of Land Conservation and Development (Case No. CV05-0305) with regard to Yamhill County property that was zoned Agriculture under

B.O.09-455

Ordinance 29, and determined that the facts and circumstances regarding the Subject Property owned by Samuel and Mildred Eastman was factually distinguishable and therefore not binding on their decision. Specifically, the Board of Commissioners noted that the Robison ruling was based primarily upon the stipulated fact that the Robison property, as well as all other Yamhill County rural property, was automatically placed in farm tax deferral under ORS 318. The Board of Commissioners received written documentation, including a signed affidavit from David Lawson, Yamhill County Assessor, that the Eastman Subject Property, as well as other parcels in rural Yamhill County (including the Robison property), were not automatically placed in farm tax deferral under ORS 318, and that those property owners were required to apply for farm tax deferral. The Board of Commissioners believed that, had this true fact been presented to Judge Collins, his decision in Robison would likely have been different.

The Board of Commissioners determined that the Subject Property is not currently in farm tax deferral under ORS 318, and therefore had satisfied the Conditional Use Permit.

The Board of Commissioners also considered and determined that Judge Collins' correlation between ORS 215 and ORS 318 to be untenable. ORS 215 is land regulation statute and ORS 318 is a taxation statute. The Board of Commissioners determined that the application of one statute (ORS 318) did not automatically incorporate or apply the provisions of another, unrelated land use regulation statute (ORS 215).

The Subject Property is bordered to the south by rural residential properties that are zoned VLDR 2½, to the east by property zoned EF-20, and to the north and west by property zoned AF-10. The VLDR 2½ - zoned areas to the east consist predominantly of parcels that are less than three (3) acres in size, and most of the VLDR 2½ acre parcels are developed.

The Planning Director and the Board of Commissioners determined that the Amended Subdivision Application and Conditional Use Application satisfy the health and safety standards of the Yamhill County Land Division Ordinance ("LDO") Certain provisions of LDO Chapter 6, such as Section 6.000, are not applicable to the Amended Subdivision Application because of the Measure 37 waivers. The subdivision will have to comply with the health and safety requirements of Section 6.010(1), 6.010(2), 6.010(6), 6.010(7), 6.015, 6.030, and 6.090.

The following are the conditions of preliminary approval:

1. A final subdivision plat pursuant to the requirements of the Yamhill County Land Division Ordinance shall be prepared and submitted to the Planning Director. All existing and proposed easements shall be shown on the face of the plat. The Yamhill County Planning Docket Number "S-14-06" shall appear on the face of the plat. The subdivision lines shall substantially conform to that of the preliminary map.
2. The applicant shall dedicate the 60-foot right-of-way along the route as shown on the face of the plat. Said right of way shall be brought up to current Public Road Standards. The proposed roadways shall have a minimum unobstructed driving surface width of 20 feet and shall have an all-weather surface that is capable of supporting not less than 12,500 pounds point load (wheel load) and 50,000 pounds live load (gross vehicle weight). The access shall have an

unobstructed horizontal clearance of not less than 25 feet and an unobstructed vertical clearance of not less than 14 feet. Average road grade shall not exceed 10% and no grade shall exceed 15%. A maximum of 200 feet at 15% grade may be allowed.

3. For the dedicated road, the applicant shall submit an engineered road design that includes a full plan and profile and construction cost estimate to the County Public Works Department. The improved road surfacing needs to be an all weather hard surfacing provided on the proposed road. All road improvements shall be constructed to county road standards and inspected by the Public Works Department or a private engineer prior to final plat approval, or security shall be posted pursuant to Chapter 13 of the Land Division Ordinance.

4. The applicant shall dedicate an additional 10-foot of road right-of-way along the Sunnycrest Road frontage. In addition, the applicant shall provide a bikeway with a width of 6-feet along the Sunnycrest Road frontage. The design and location of the bikeway shall be reviewed and approved by the Public Works Director.

5. The applicant shall provide a traffic report/study, acceptable to the Public Works Director, of the proposed subdivision with Sunnycrest Road and an engineered design of the intersection with Sunnycrest Drive subject to the AASHTO intersection standards. The traffic report/study and intersection design shall be done by a registered traffic engineer. The internal road improvements and intersection design shall be completed, or a bond posted, prior to final plat approval.

6. The applicant shall submit an engineered drainage plan that maintains the natural drainage to the maximum extent possible. The plan shall be prepared by a registered engineer. The drainage plan shall be submitted to and approved by the County Public Works Director prior to final approval.

7. Prior to final subdivision plat approval, the applicant shall obtain an approval for on-site subsurface sewage disposal for Lots 1 thru 16 pursuant to Section 6.100 of the Land Division Ordinance. All septic systems shall be located on the individual lots and maintain the minimum setback requirements of 10 feet from all new property lines. If the 10 foot minimum setbacks from the property lines cannot be maintained, a properly recorded easement will be required, pursuant to Section 6.100 of the Land Division Ordinance.

8. The subdivision shall be shown to have adequate quality and quantity of water to support the proposed use. Prior to final plat approval, the applicant shall demonstrate conformance with standard 1, 2, 3 or 4 of Subsection 6.090 of the Land Division Ordinance. Either domestic water shall be provided to each lot by a community water system or an on-site well or wells, with the location of the well(s) indicated on the face of the plat, or the following disclosure shall be placed on the plat:

No municipal, public utility, community water supply or private system will be provided to the purchaser of those lots noted hereon.

Each lot not provided with a well or community service shall be so identified.

9. Prior to final approval, the applicant shall provide a plan for water supply for fire suppression to the Newberg Rural Fire Department for their review and approval.

10. The applicant shall name the proposed right-of-way. Said name shall be reviewed and approved by the Planning Director.

11. The following language shall be placed on the face of the final plat:

Lots shown on this plat were authorized by waivers of land use regulations by Yamhill County and the State of Oregon pursuant to ORS 197.352, 2005 replacement part (Measure 37). The Yamhill County waiver is found in Board Order 05-760, recorded in the Yamhill County Deed & Mortgage Records as Instrument No. 200520679. Yamhill County makes no representations or warranties as to the transferability of the lots or any development rights related to the lots.

END.