

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 Approval of a Comprehensive Plan amendment)
 from Agriculture/Forestry Large Holding to Agriculture/Forestry)
 Small Holding; a zone change from EF-80, Exclusive Farm use to)
 AF-10, Agriculture/Forestry, and an exception to Goal 3, as well) Ordinance 837
 as a request to divide the 23 acres into two lots of 11.5 acres each,)
 Applicant Wallace Lien, representing the Maxine D. Noble Family)
 Trust, Property Located at 16201 SE Fairview Road, Dayton, Tax)
 Lot no. 5316-2800, and Declaring an Emergency)

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY, OREGON (the Board) sat for the transaction of county business on June 3, 2009, Commissioners Leslie Lewis, Kathy George and Mary P. Stern being present.

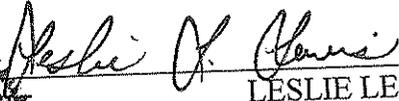
IT APPEARING TO THE BOARD that Wallace Lien, Esq., representing the Maxine D. Noble Family Trust, applied for a Comprehensive Plan amendment from Agriculture/Forestry Large Holding to Agriculture/Forestry Small Holding; a zone change from EF-80, Exclusive Farm use to AF-10, Agriculture/Forestry, and an exception to Goal 3, as well as a request to divide the 23 acres into two lots of 11.5 acres each, and

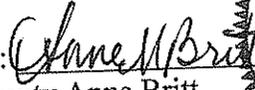
IT APPEARING TO THE BOARD that the Planning Commission heard this matter at a duly noticed public hearing on March 5, 2009 and voted to forward the application to the Board without a recommendation, and the Board held a duly noticed public hearing on May 20, 2009, and, after hearing from the applicants and their supporters (no opponenets being present) voted unanimously to approve the application, NOW, THEREFORE,

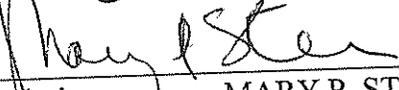
IT IS HEREBY ORDAINED BY THE BOARD, that the application is approved as detailed in the Findings for Approval, attached as Exhibit "A" and by this reference incorporated herein. This ordinance, being necessary for the health, safety, and welfare of the citizens of Yamhill County, and an emergency having been declared to exist, is effective upon passage.

DONE this 3rd day of June, 2009, at McMinnville, Oregon.

ATTEST: YAMHILL COUNTY BOARD OF COMMISSIONERS

REBEKAH STERN DOEN  _____
 County Clerk LESLIE LEWIS

By:  _____
 Deputy Anne Britt Commissioner KATHY GEORGE

APPROVED AS TO FORM:  _____
 Commissioner MARY P. STERN

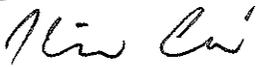
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 Rick Sanai, Assistant County Counsel

Exhibit "A" - FINDINGS:

DOCKET NO.: PAZ-06-08/P-14-08

REQUEST: Approval of a Comprehensive Plan amendment from Agriculture/Forestry Large Holding to Agriculture/Forestry Small Holding; a zone change from EF-80, Exclusive Farm use to AF-10, Agriculture/Forestry. An exception to Goal 3 has also been requested. The application includes a request to divide the 23 acres into two lots of 11.5 acres each.

APPLICANT: Wallace Lien, Attorney representing D. Maxine Noble Family Trust

TAX LOT: 5316-2800

LOCATION: 16201 SE Fairview Road, Dayton

CRITERIA: Sections 402, 501 and 1208.02 of the Yamhill County Zoning Ordinance. Section 904, Limited Use Overlay may also be applied. Comprehensive Plan policies may be applicable. OAR 660-04, Exception Process. OAR 660-12-0060 Transportation Planning Rule. The partition is subject to the Yamhill County Land Division Ordinance.

A. Background Facts:

1. Property size: 23 acres.
2. Access: Access to the subject tract is provided by both Fairview Road and Unionvale Road.
3. On-site Land Use: The property contains one single family residence with a garage and one accessory building. The northern portion of the parcel is leased to a neighbor for farm crops.
4. Surrounding Land Use and Zoning: The surrounding land use and zoning is described in Section B, pages 4-6 in the "Applicant's Statement."
5. Water: On-site wells. The property is located in a Groundwater Limited Area, identified by the Oregon Water Resources Department.
6. Sewage Disposal: To be provided by on-site septic systems.
7. Fire Protection: Dayton Rural Fire District.
8. Soils: According to the Yamhill County Soil Survey, the majority of the property, approximately 92%, is composed of Amity Silt Loam (Am), which is considered Class II high-value farmland. The remaining 8% is composed of Dayton Silt Loam (Dc), Class III, high-value farmland.

9. Taxes: Approximately 22 acres is receiving farm deferral with one acre at market value.
10. Previous Actions: None.
11. Previous Communications: In a letter dated July 17, 2007, Judy Bennett previously wrote to Commissioner Mary Stern asking about dividing this land and building a second home on the property. Commissioner Stern recognized that she could not directly respond since the application may eventually be reviewed by her so she asked Mike Brandt to respond. Mike Brandt wrote a letter in response dated July 23, 2007, where he advised the applicant of the zone change process and suggested the family hire an attorney to assist with the application.

At nearly the same time these letters were being exchanged, Judy Bennett also wrote to the Governor's office asking for any options that could be provided for their situation. Judy Bennett's father, Harlan Noble had died in March of 2007 and had not made application for relief under Measure 37. Therefore, it was too late to make a claim and take advantage of either Measure 37 or Measure 49. The Governor's office passed the request down to Ron Eber, Farm/Forest Lands Specialist with DLCD, who called our office and discussed the possibility of a farm help dwelling or a zone change to AF-10. A farm help dwelling was not possible since the applicants were leasing out the land. During the conversation Mr. Eber made statements to Ken Friday, Planning Division Manager, that an application for rezoing would likely not be opposed by DLCD. From the conversation it appeared that Mr. Eber had also suggested that to the applicant. A follow-up e-mail was sent by Mr. Friday to Mr. Eber expressing some concern over that discussion. Mr. Eber responded. The e-mails are in the record. It appears that partly because of these communications with the State and the County, the applicants were encouraged to make the present applications.

12. Measure 37 (2004) and Measure 49 (2007): Based on what the family members have related to planning staff, due to personal and estate planning reasons Harlan and Maxine Noble did not file a Measure 37 claim. Both of them passed away in March of 2007. With their passing, the potential for a Measure 37 claim went away. Since no Measure 37 claim was filed, no Measure 49 claim to obtain one to three homesites can be filed.¹

B. Zone Change and Plan Amendment Provisions and Analysis

1. Approval of a request for a zone change must be based on compliance 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*

¹Had the family pursued a Measure 37 claim within the first two years of the effective date of the measure, it appears that they would have qualified for relief and could have developed to the intensity of pre-zoning standards. A subsequent Measure 49 claim under the "express route" appears that it would have resulted in two additional homesites on parcels of 2-acres each.

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, Plan goals and policies which may be pertinent are:

Policy I.B.1.d.: No proposed rural area development shall require or substantially influence the extension of costly services and facilities normally associated with urban centers, such as municipal water supply and sanitary sewerage or power, gas and telephone services, nor shall it impose inordinate additional net costs on mobile, centralized public services, such as police and fire protection, school busing or refuse collection.

The proposed zone change would not require the extension of utilities or services to the area. Water and sewer would need to be provided by on-site systems. Other services such as electricity, telephone, Sheriff and fire protection already serve the existing the area.

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

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

According to the Yamhill County Soil Survey Maps, most of the proposed exception area is composed of Amity silt loam soil (Am) Class II, high-value farm land.

The Board finds that the foregoing policies are not independent approval standards, but rather aspirational, and are satisfied through approval of an exception. The goals and policies were created for the purpose of guiding the planning process in the respect of importance of preservation of agricultural soils classed I through IV and soils that support agricultural production. The goals and policies are enacted through the existing zoning, in this case the EF-80 zone. While the soils are capable of being put to resource use, the applicant has submitted substantial and credible evidence in order to support that the continued farm use of the subject property is "impracticable" under OAR 660-004-0028(1).

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

The Board finds, based on substantial evidence in the Record as whole, that operating this parcel as a farm is impracticable and impractical.

3. Regarding criterion (B), the applicant has shown, and the Board finds, that 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, as required by YCZO 1202.08(B). The applicant submitted information related to a land use and parcel inventory ½ of a mile from the applicant's property. None of the land within that study area is zoned AF-10. From a review of the County zoning maps it appears that the closest AF-10 zone is 2.8 miles to the west of the subject lot. This AF-10 enclave is known as "Study Area 5.11" from when the County did their exceptions process. This area is not close to the applicant's property. The parcel development tables from October, 2007 show that the area had 126 lots, 91 of which were developed and 35 have the potential to be developed. The Board finds there is a need for additional AF-10 properties.
4. Regarding criterion (C), the Board finds the proposed change has been shown to be appropriate considering the surrounding land uses, the density and pattern of development in the area, any changes which may have occurred in the vicinity to support the proposed amendment and the availability of utilities and services likely to be needed by the anticipated uses in the proposed district. The surrounding uses include rural residential uses in Code Area 5.6 to the east of the proposed exception area. This exception area was identified in Exceptions Statement I. After Exceptions Statement I, the State objected to many of the areas which necessitated Exceptions Statement II. Code Area 5.6 was adopted again in Exceptions Statement II (adopted April 23, 1980) and was not objected to by the State and was acknowledged as a built and committed exception area. Over the years, this exception area has been further developed. In addition the subject parcel is bordered to the north by an airstrip that had an exception taken through Ordinance 202. While of DLCD staffer Gary Fish is correct that a private airstrip can now be established as a conditional use in the Exclusive Farm use zone, an exception was justified June 20, 1979 when Ordinance 202 was adopted. The proposed change appears to be appropriate considering the existing density and pattern of development. The change which has occurred in the area is mainly the development of the nearby rural residential parcels. Many neighbors appeared in support of the application. Not a single neighbor (or anyone else) appeared to testify against this application at the May 20 public hearing.

The applicant stated that the development will be served by an individual on-site well and septic system. The property is currently served with electrical power by PGE, and is within the Dayton Rural Fire District. Adequate roads are available to the property.

5. Regarding criterion (D), see Finding B.3.
6. Regarding the criterion (E), the OAR requirements for exceptions are addressed below.

No Goal 14 exception is required because the requested 10-acre minimum lot size is considered a rural use under the Goal 14 rules.

C. Goal Exception Provisions and Analysis

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

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

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

3. *Characteristics of the exception area:* The applicant's response to this criterion is on Page 6 of their *Supplemental Applicant's Statement (Exception to Goal 3)*, and is adopted and incorporated herein by this reference.
4. *Characteristics of the adjacent lands:* The applicant's response to this criterion is on Pages 6 and 7 of their *Supplemental Applicant's Statement (Exception to Goal 3)*, and is adopted and incorporated herein by this reference.
5. *The relationship between the exception area and the lands adjacent to it:* The applicant addressed this on pages 7-9 in their *Supplemental Applicant's Statement (Exception to Goal 3)*. Those findings are adopted and incorporated herein by this reference. The best summary of these findings is found on page 7 of the application where it states: "In this case, the primary considerations that render the subject parcel impractical for resource use are the presence of a road on two sides of the site, its small size, its location near a private airfield and the parcelization and development pattern of non-resource dwellings in the immediate vicinity."
6. OAR 660-04-028(6) requires that findings for a committed exception address existing adjacent uses, existing public facilities and services (water and sewer lines, etc.), parcel size and ownership patterns of the exception area and adjacent lands, neighborhood and regional characteristics; natural or man-made features or other impediments separating the exception area from adjacent resource land, physical development; and other relevant factors. The

existing uses are addressed above. Regarding public facilities and services, they are generally available in the area.

7. Regarding the “irrevocably committed” standards, OAR 660-04-028(6)(c)(A) states in part: *Past land divisions made without application of the Goals do not in themselves demonstrate irrevocable commitment of the exception area. Only if development (e.g., physical improvements such as roads and underground facilities) on the resulting parcels or other factors make unsuitable their resource use or the resource use of nearby lands can the parcels be considered to be irrevocably committed.* OAR 660-04-028(6)(c)(B) also states, in part: *The mere fact that small parcels exist does not in itself constitute irrevocable commitment. Small parcels in separate ownerships are more likely to be irrevocably committed if the parcels are developed, clustered in a large group or clustered around a road designed to serve these parcels.*

The findings in the application on pages 4 and 5 of the *Supplemental Applicant’s Statement (Exception to Goal 3)* detail the results of the land use and parcel inventory that the applicant submitted. The applicant has stated this development pattern irrevocably commits the subject property to rural residential use. It is true that this area has an enclave of smaller parcels and the applicant’s property is bordered by roads, an airstrip, powerlines and other development. No doubt this level of development does have some impact on the ability to farm this property.

The Board hereby finds that the subject parcel is irrevocably committed to non-resource use, and that resource use is both impractical and impracticable on this parcel, based on substantial evidence in the Record as a whole.

D. Partition Ordinance Provisions and Analysis

1. The Yamhill County Land Division Ordinance (LDO) Chapter 6 contains general design standards for partitions and subdivisions. Applicable standards will be addressed in the following findings.
2. Section 6.000 of the LDO requires subdivisions and partitions to conform with the requirements of the Comprehensive Plan and other ordinances. The applicant has submitted narrative to address the Comprehensive Plan and zoning ordinance, provided the zone change is approved. Those findings are incorporated herein by this reference.
3. Section 6.020(2) requires that there be direct legal access to and abutting every lot or parcel. Both lots would have direct access onto a dedicated right of way so conditions related to access roads will not be required.
4. Subsection 6.030(1) 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 proposed plat meets the requirements of subsection 6.030.
5. Subsection 6.030(3) prohibits flag lots unless, in the judgement of the Director, the parcel shape, topography, or other factors make such lots unavoidable. The proposed plat meets the requirements of subsection 6.030(3).
6. Section 6.030(6) of the LDO requires lot drainage to be designed to the specifications adopted by the Board of Commissioners. The subject parcel does not appear to exhibit any drainage problems that would need to be addressed by conditions.

7. Subsection 6.070 deals with lands subject to hazardous conditions. The subject property is not identified as being in any identified hazard area.
8. Subsection 6.090 lists certain requirements regarding water availability. A condition of approval shall address this.
9. Subsection 6.100 contains options and requirements for sewage disposal. 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. A site evaluation will be required for the newly created lot. A condition of approval shall address this.

E. Goal 12 (Transportation Rule) Provisions and Analysis

1. 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. This shall be accomplished by either:*
 - (a) *Limiting allowed land uses to be consistent with the planned function, capacity and level of service of the transportation facility;*
 - (b) *Amending the TSP [Transportation System Plan] to provide transportation facilities adequate to support the proposed land uses consistent with the requirements of this division; or,*
 - (c) *Altering land use designations, densities, or design requirements to reduce demand for automobile travel and meet travel needs through other modes.*
 - (2) *A plan or land use regulation amendment significantly affects a transportation facility if it:*
 - (a) *Changes the functional classification of an existing or planned transportation facility;*
 - (b) *Changes standards implementing a functional classification system;*
 - (c) *Allows types or levels of land uses which would result in levels of travel or access which are inconsistent with the functional classification of a transportation facility; or*
 - (d) *Would reduce the level of service of the facility below the minimum acceptable level identified in the TSP.*
2. Regarding (1) and (2), the Public Works Department has been sent a referral to determine if they have any concerns related to the use. They did not voice any concerns related to the application. Approval of the application allows one additional single-family dwelling. The average trips per day for a single-family dwelling is approximately 10. Based on an additional 10 vehicle trips per day the proposed residential use is consistent with the identified function, capacity, and level of service of the local roads.

THE BOARD FINDS:

1. The request is for a Comprehensive Plan amendment and zone change from Exclusive Farm use EF-80 to AF-10. The applicant requested an exception to Goal 3.
2. The proposed zone change is consistent with Comprehensive Plan goals and policies.

3. An exception to Goal 3 is justified because the property is irrevocably committed to nonresource use, and the adjacent lots and uses contribute to the area being suitable for an exception. Farming is both impractical and impracticable on this parcel, based on substantial evidence in the Record as a whole.
4. The proposed change is consistent with the zone change criteria of Section 1208.02.
5. The proposed change complies with the Transportation Planning Rule.

DECISION:

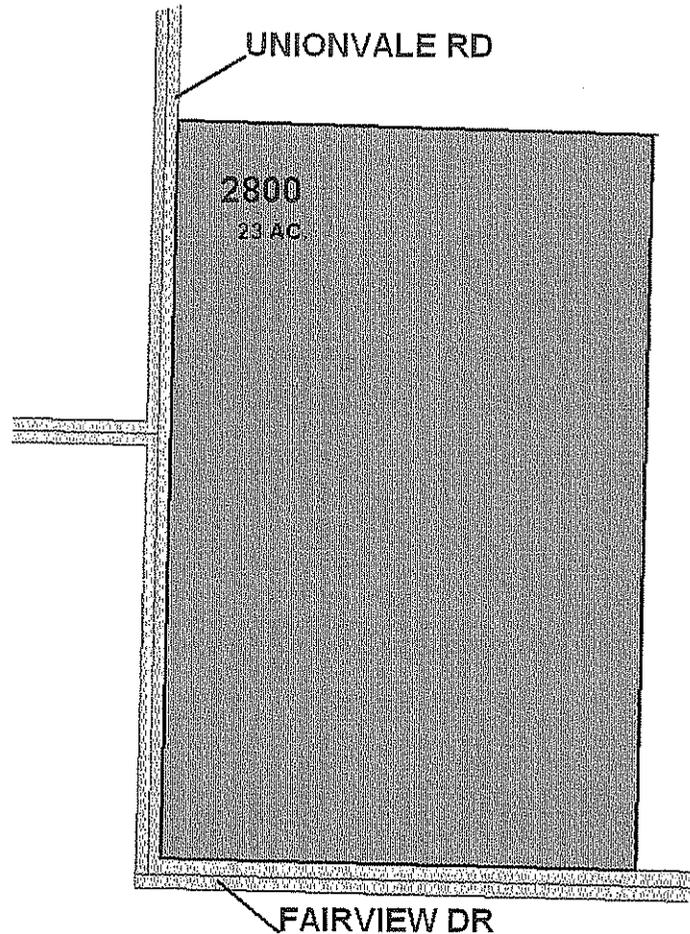
The request by Wallace Lien, Esq., representing the Maxine D. Noble Family Trust, for a Comprehensive Plan amendment from Agriculture/Forestry Large Holding to Agriculture/Forestry Small Holding; a zone change from EF-80, Exclusive Farm use to AF-10, Agriculture/Forestry, and an exception to Goal 3, as well as a request to divide the 23 acres into two lots of 11.5 acres each, is hereby **approved**, with these three conditions of preliminary approval:

1. A final partition plat pursuant to the requirements of the *Yamhill County Land Division Ordinance* shall be prepared and submitted to the Planning Director. The final partition plat shall substantially conform to the preliminary map. The Yamhill County Planning Docket Number "P-14-08" shall appear on the face of the plat.
2. Prior to final partition approval, the applicant shall obtain approval for on-site subsurface sewage disposal for all parcels pursuant to Section 6.100 of the *Land Division Ordinance*.
3. 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 a separate map submitted to the file, 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.

EXHIBIT MAP FOR ORDINANCE NO. 837
PLAN AMENDMENT AND ZONE CHANGE
ADOPTED BY THE YAMHILL COUNTY BOARD OF COMMISSIONERS
June 3, 2009
FOR A COMPREHENSIVE PLAN AMENDMENT FROM
AGRICULTURE/FORESTRY LARGE HOLDING
TO
AGRICULTURE/FORESTRY SMALL HOLDING AND
TO CHANGE OFFICIAL ZONING MAP FROM
EF-80 EXCLUSIVE FARM USE
TO
AF-10 AGRICULTURE/FORESTRY SMALL HOLDING



CHANGE APPLIES TO TAX LOTS 5316-2800 AS IDENTIFIED ABOVE.
APPROXIMATE SCALE - 1 INCH = 300 FEET

B.O. 09-255