

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 zone change from EF-80, Exclusive Farm)
use to LI, Light/General Industrial, Docket Z-05-07, Tax Lot 5405-1202,) Ordinance 821
Applicants Philip and Judith Darling, and Declaring an Emergency)

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

IT APPEARING TO THE BOARD that Philip and Judith Darling, Co-Trustees of the
Darling Living Trust, requested approval of a zone change from EF-80 Exclusive Farm Use to LI
Light/General Industrial, and

IT APPEARING TO THE BOARD that the matter was heard at a duly noticed public
hearing October 4, 2007 before the Planning Commission, which approved the application by a vote
of 5 to 2, and no appeal was filed. 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 20th day of November, 2007, at McMinnville, Oregon.

ATTEST:

YAMHILL COUNTY BOARD OF COMMISSIONERS

JAN COLEMAN
County Clerk



Kathy George
KATHY GEORGE

By: *Anne Britt*
Deputy Anne Britt

Mary P. Stern
Commissioner
MARY P. STERN

APPROVED AS TO FORM
Rick Sanai

Leslie Lewis
Commissioner
LESLIE LEWIS

Rick Sanai, Assistant County Counsel

EXHIBIT "A" FINDINGS:

DOCKET: Z-05-07

REQUEST: Approval of a zone change from EF-80, Exclusive Farm Use district to LI, Light/General Industrial district.

APPLICANT: Catherine Wright representing Philip and Judith Darling, Co-Trustees of the Darling Living Trust

TAX LOT: 5405-1202

LOCATION: Approximately 1,000 feet southeast of the intersection of Old Station Road and Highway 99W, McMinnville

REVIEW CRITERIA: Sections 402, 702 and 1208.02 of the Yamhill County Zoning Ordinance; the Yamhill County Comprehensive Plan Goals and Policies. Section 904, the Limited Use Overlay zone may also be applied.

A. Background Facts:

1. Property size: 9.4 acres
2. Access: The parcel has frontage on Old Station Road and Highway 99W. Any new road approaches onto the state highway will require a permit from ODOT. In addition, any new road approaches onto the county road will require a road approach permit from Yamhill County.
3. On-site Land Use: The property is an undeveloped field that appears to be farmed.
4. Surrounding Land Use and Zoning: To the south and on the west side of Highway 99W the zoning is LI. Uses include farm and tractor equipment sales, mini-storage and RV storage. To the east, west and north the zoning is EF-80. There is a dwelling on the small lot to the north and two dwellings to the east. There is an auto wrecking yard operating as a nonconforming use on the lot to the northwest. The South Yamhill River is 300 - 400 feet to the north.
5. Water: A well would be required.
6. Sewage Disposal: An on-site septic system would be required.
7. Fire Protection: McMinnville Rural Fire District

8. Previous Actions: The property has a Comprehensive Plan designation of Light Industrial, and was excepted from applicable Statewide Planning Goals as part of plan acknowledgment in 1979.

An application for a zone change from EF-40 to LI on 15 acres, including the subject parcel, was submitted in 1978 (Docket Z-156-78). The Planning Commission denied the request, primarily on the basis that no public need was shown and that no willing buyer was available to specify a proposed use. The Board of Commissioners subsequently approved the zone change. The Board's decision was appealed to LCDC, who reversed the county decision. The LCDC decision was upheld by the Court of Appeals. Ultimately, the Supreme Court denied the petition for review, and in 1981 the County repealed its previous approval.

In 1987 a zone change from EF-40 to LI was approved on the southerly four acres of the parcel, now lot 1203 (Docket Z-2-87). This 4+ acres was divided from the original parcel in 1990 (P-17-90). That partition also divided off the 3.7 acres on the north side of Old Station Road (lot 1201), leaving lot 1202 with 9.4 acres.

In 1998 a zone change from EF-80 to LI was applied for on the subject parcel (Docket Z-03-98). The request was denied by the Planning Commission by a vote of 7 to 0. The Planning Commission denied the request, partly because there was no specific use proposed.

9. Description of Proposal: The applicant requests approval for a zone change to Light Industrial. No specific use for the property has been proposed. The application does state that "The types of businesses likely within this development include storage facilities and light manufacturing." As indicated in Finding A.8, there have been two requests filed to rezone this property from Exclusive Farm use to Light Industrial use. Both requests appear to have been denied in large part because the intended use of the property was not specified.

B. 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, in 1979 the property was plan designated Industrial. At that time an exception to Goals 3 (Agriculture) and 4 (Forestry) were taken. Since the property is in an exception area, Comprehensive Plan goals and policies related to agricultural and forest lands are not applicable. Other Plan goals and policies which may be pertinent are:

Policy I.H.1.h. 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.

There is an established industrial area adjacent to the south and across the highway. This area has gradually built up over the years. The four acre parcel to the south was rezoned in 1987, so the development trend is towards adding additional industrial uses to the area. The extension of urban services is not proposed or required.

Policy III.A.1.j. Yamhill county will require new development to:

- 1) *Limit access points on highways designated as arterials when alternative access points are feasible.*
- 2) *Provide a frontage setback requirement of 50 feet from the public right-of-way of all designated arterials within the county for commercial and industrial development; and*
- 3) *Minimize direct access points onto arterial right-of-ways by encouraging the utilization of common driveways.*

Highway 99W south of McMinnville is designated a minor arterial in the Yamhill County Transportation System Plan. Tax Lot 5405-1202 has frontage on Old Station Road as well as the highway. This Plan policy requires access to the highway to be limited in favor of

access from Old Station Road. ODOT had indicated in response to the 1998 attempt to rezone this parcel that no direct access to the highway will be permitted. ODOT has not yet responded to the referral. A condition during any future site design review will require that access to the site be from Old Station Road unless ODOT access approval is granted, and that the required 50 foot setback from the highway right-of-way be provided.

The difficulty with the remainder of the goals and polices addressed in the application is that the applicant does not indicate what uses are planned for the property. It is somewhat understandable as the applicant cannot offer LI zoned property that he does not have and businesses cannot commit since they do not know if the rezoning will occur. However, it is not possible to address the goals and policies without knowing more specifically the uses that will occur on-site. For example, for "*Policy M: The County will encourage industrial development which bases its products on renewable and indigenous raw materials.*" The application contained the following response:

"At this stage, it is not clear exactly the types of uses which will take place on this property, but they are likely to be storage facilities, warehouses and light manufacturing. This policy may be addressed at a future date when development gets under way." (Underline added.)

Unfortunately, in order to have a zone change approved the goals and policies must be addressed before the approval is granted; addressing them in the future is not an option.

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 submitted e-mails from Beaver Pallet LLC and Amity Self Storage, both owned by John Eshleman, who expressed interest in additional light industrial zoned property. In addition the application contains an e-mail from Jeffery A Pomeroy of Team Pomeroy Moving and Storage. He also expressed interest in leasing a 15,000 square foot warehouse for his business, demonstrating a market demand. The availability and suitability of other Industrial zoned lands will be discussed in Finding B.6.
4. Regarding criterion (C), the surrounding land uses are primarily industrial, with mini-storage units and car sales on the parcel adjacent to the south, an auto wrecking yard on the parcel adjacent to the northwest, and various industrial uses, metalworking, RV storage and farm equipment dealers across Highway 99W. There is one vacant parcel that appears to be for sale. The parcel appears to be approximately two acres in size. To address this criterion the application states in part, "The proposed development of this parcel will be compatible with those existing (neighboring) uses." The question is what development proposal? The application does not contain any specific development proposal. Some light industrial development would be compatible with existing uses and some may not be compatible.

There are residential and farm uses to the north and east of the subject parcel. Old Station Road separates the subject parcel from these residences. Rezoning lot 1202 would have little additional impact to these residences than is caused by the industrial uses already occurring on lots 1203 and 1300.

Regarding the availability of utilities and services, an on-site well and septic system is proposed. Other utilities likely to be needed are available to the site. Fire service is available, although the McMinnville Fire District has indicated that an on-site water supply will be required. This may involve construction of a pond or other water storage structure on the parcel.

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. Tax Lot 5405-1202 is 9 acres in size, is adjacent to a highway, and is located between McMinnville and Amity. The applicant has submitted a search of commercial and industrial land for sale in Yamhill County. The information submitted is Exhibit E of the application. The Land Use Board of Appeals has previously ruled that properties on the market for sale at any given time is at best an indirect measure of the need or market demand for such properties and can not be exclusively used to show these other light industrial lots are not "available" to satisfy the need.
6. Regarding criterion (E), an exception to Goals 3 and 4 is not required. The area between Old Station Road, the railroad tracks, and the South Yamhill River was given a Comprehensive Plan designation of Light Industrial in 1979, and was excepted from State Planning Goals 3 and 4 at that time. Gary Fish with the Department of Land Conservation and Development has written a letter, dated September 11, 2007, stating that either an exception to Goal 14 should be required or the industrial uses should be limited to 35,000 square feet. The reasoning behind these comments are found near the bottom of the first page which states:

"The goal states that: "In unincorporated communities outside urban growth boundaries counties may approve uses, public facilities and services more intensive than allowed on rural lands by Goal 11 and 14. . ." Industrial uses in rural unincorporated communities are limited to 40,000 square feet of building floor space.

The department and the Commission have approved rural industrial zones and uses as small scale, low impact in other counties as complying with Goal 14 that apply a 35,000 square foot of floor space maximum building size provision for new industrial uses."

The application does not contain a request for a Goal 14 exception so, based on DLCDD's interpretation, any approval would need to have a 35,000 square foot limitation on building floor area.

Interestingly, the present LI zone allows the minimum parcel size for any new use to be 20,000 square feet and a parcel coverage standard of up to 30 percent. Therefore, with the existing limitations, if the zone change were approved, the applicant could divide the property into smaller lots. A lot of approximately 2.67 acres could be created that would allow the 35,000 square foot building limitation proposed by DLCD. Lots smaller than 2.67 acres would not allow over 35,000 square foot building limitations without a variance.

C. Limited Use Overlay Provisions

The purpose of the Limited Use Overlay District is to limit permitted use(s) and activities in a specific location to only those uses and activities which are justified and approved through a Comprehensive Plan Amendment or a zone change. The application does not exactly specify what uses are being requested. The application does suggest a range of uses. For example, near the bottom of page 2 of the zone change criteria it states, "The types of businesses likely within this development include storage facilities and light manufacturing." The applicant's arguments seem to support these uses but are not aimed at supporting other activities allowed in the zone. For example, the manufacturing of mobile homes is listed as a permitted use in the LI zone but the findings do not describe how this would be compatible. Limiting the uses to RV storage and mini-storage would be appropriate because those are uses permitted in the LI zone. As for the manufacturing uses, these are listed in the LI zone and can be expanded through the similar use process. It is not clear as to whether the applicant's use of the phrase "light manufacturing" is intended to include all of these manufacturing uses. A limited use overlay zone should either be applied to limit the use to what is requested or the applicant should submit justification addressing every permitted and conditional use listed in the LI zone. Similarly, the application should have either an exception to Goal 14 or a 35,000 square foot limitation on buildings located on each parcel created from the subject property.

D. 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.

E. Goal 12 (Transportation Rule) Provisions and Analysis

1. The September 25, 2007 letter from Gary Fish, DLCD identified the provisions of the 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. This application is not for a plan amendment but rather for a zone change. The property was previously plan designated industrial and that designation was acknowledged by the State. Therefore, this administrative rules does not need to be addressed.

CONCLUSIONS:

1. The request complies with Subsection 1208.02(A) because the proposed zone change is consistent with Comprehensive Plan goals and policies related to industrial development, and the existing Comprehensive Plan designation of Light Industrial.
2. The request complies with Subsection 1208.02(B) because the applicant has submitted letters from two separate parties who are interested in establishing uses on the property if the zone change is approved, indicating that there is a market demand for industrial property.
3. The request complies with Subsection 1208.02(C) The proposed zone change is appropriate considering the surrounding industrial uses. The development pattern in the area has seen a gradual increase in the number of businesses on adjacent properties, and there is little vacant industrially-zoned land available.
4. The request complies with Subsection 1208.02(D) because Tax Lot 5405-1202 is better suited to industrial development than other available properties that are zoned for light industrial uses because of parcel size and the proximity of other adjacent industrial uses.
5. The request can be made consistent with Subsection 1208.02(E) because, with application of a limited use overlay zone, a goal exception is not required.

DECISION

This request for a zone change from EF-80, Exclusive Farm use to LI, Light Industrial use was approved by a vote of 5 to 2, and not appealed, and thus the approval is now final. The approval of the zone change is with a limited use overlay zone which contains the following limits and requirements:

1. The access permit from ODOT must be obtained prior to any development of the property.
2. The parcel and every parcel created from Tax Lot 5405-1202 shall be limited to no more than 35,000 square feet of building area per parcel.

3. The traffic generated from the uses on Tax Lot 5405-1202 or parcel created from this tax lot shall be a total of no more than 210 daily trips. Should the trip cap be exceeded, the owner of Tax Lot 5405-1202, or owners of the resulting parcels, shall be required to apply for and obtain an updated approach road permit and install any necessary mitigation measures pursuant to the change of use provisions of OAR 734-051.
4. The uses are limited to the following:
 - A. Light industrial manufacturing of items such as medical and dental equipment, small machine parts, small electronic instruments and pallet manufacturing and repair.
 - B. RV and mini-storage facilities
 - C. Warehousing
 - D. Packaging or processing of locally produced fruits and nuts
 - E. Vehicle restoration
 - F. Parking semi-trucks
5. The new road that crosses Tax Lot 5405-1202 and connects Old Station Road with Highway 99W shall be dedicated to the public and maintained by the owner of Tax Lot 5405-1202, or owners of the resulting parcels.
6. Any additional traffic mitigation measures with the intersection onto Highway 99W shall be the responsibility of the owner of Tax Lot 5405-1202, or owners of the resulting parcels.

End