

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 Request for Comprehensive Plan amendment from Agriculture/Forestry Large Holding to Public; a zone change from EF-40 Exclusive Farm Use to PAI Public Assembly Institutional on approximately 2 acres (including an exception to Goal 3), Tax Lot 3336-400, Docket PAZ-08-06, applicant the City Church of Promise, and Declaring an Emergency.)
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THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY, OREGON (the "Board") sat for the transaction of county business on March 21, 2007, Commissioners Kathy George, Leslie Lewis, and Mary P. Stern being present.

IT APPEARING TO THE BOARD that the City Church of Promise requested a Comprehensive Plan amendment from Agriculture/Forestry Large Holding to Public; a zone change from EF-40 Exclusive Farm Use to PAI Public Assembly Institutional on approximately 2 acres (including an exception to Goal 3) for Tax Lot 3336-400, located at 23330 Fulquartz Landing Road, Dundee, Yamhill County, and

IT APPEARING TO THE BOARD that the matter was heard and unanimously approved by the Planning Commission at a duly noticed public hearing on February 1, 2007. A public hearing was held before the Board on March 7, 2007, the applicant being represented by William C. Cox. After hearing testimony from the applicant (these being no opponents) the Board 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 21st day of March, 2007, at McMinnville, Oregon.

ATTEST

YAMHILL COUNTY BOARD OF COMMISSIONERS

JAN COLEMAN
County Clerk

By: Anne Britt
Deputy Anne Britt

APPROVED AS TO FORM

Rick Sanai
Rick Sanai, Assistant County Counsel



Kathy George
KATHY GEORGE
Mary P Stern
MARY P. STERN
Leslie Lewis
LESLIE LEWIS

Exhibit A - Findings for Approval

DOCKET NO.: PAZ-08-06

REQUEST: Approval of a Comprehensive Plan amendment from Agriculture/Forestry Large Holding to Public; a zone change from EF-40 Exclusive Farm Use to PAI Public Assembly Institutional, on approximately 2 acres. The request includes an exception to Goal 3.

APPLICANT: City Church of Promise

TAX LOT: 3336-400

LOCATION: 23330 Fulquartz Landing Road, Dundee, Oregon

CRITERIA: Sections 402, 801, 904, 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.

SEPTIC: In 2005 a site evaluation was approved for an alternative system to serve a facility for up to 200 persons.

A. Background Facts:

1. Property size: Approximately 2 acres.
2. Access: Access to the subject property is provided by Fulquartz Landing Road.
3. On-site Land Use: The subject property contains a farmhouse built in 1915 and a 36' x 60' metal building. The parcel does not appear to be in farm use.
4. Surrounding Land Use: Land to the east has trees along an intermittent stream. Property to the west, across Fulquartz Landing Road, appears to be cultivated. Property to the north is overgrown with blackberries. Property to the south appears to be cultivated with a grass or grain crop.
5. Surrounding Zoning: Property to the west is zoned EF-40. Land to north, south and east is inside the Dundee City limits and is zone A Agriculture.
6. Water: City of Dundee.
7. Sewage Disposal: To be provided by an on-site septic system.
8. Fire Protection: Dundee Rural Fire District

9. Soils: Yamhill County Soil Survey shows that 85% of the property is Aloha Silt Loam which is rated agriculture Class II, high-value farmland. The remaining 15% is Te Terrace Escarpments which is not high-value farmland.
10. Taxes: The parcel is not receiving farm or forestry deferral.
11. Previous Actions: None.
12. Floodplain: FIRM 410249 0169 C, shows that the property is not within the 100-year flood hazard area.
13. Fish and Wildlife: The property is not identified as critical fish or wildlife habitat.
14. An Oregon Administrative Rule, adopted in the mid 1990's, prohibited churches in the exclusive farm use zone within three miles of an urban growth boundary without taking an exception. Because of this administrative rule the property needs an exception to Goal 3 in order for a church to be constructed on the property.
15. Newberg/Dundee Bypass: The property is not within the Interchange Overlay zone, nor does the proposed bypass corridor extend through the property. However, the bypass corridor passes in close proximity, immediately northwest of the subject lot.

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 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, the applicant has addressed the Comprehensive Plan Goals and Policies in their application, the entirety of which is incorporated into these findings by this reference. Plan goals and policies which may be pertinent are:

Policy I.B.1.c.: All proposed rural area development and facilities: . . .(2) Shall not be located in any natural hazard area, such as a floodplain or area of geologic hazard, steep slope, severe drainage problems or soil limitations for building or sub-surface sewage disposal, if relevant;

The property is not within the 100 year floodplain, as shown on FIRM 410249 0169 C. The property has a site evaluation for an on-site septic system to serve a church for up to 200 patrons and two employees.

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 is already provided by the City of Dundee. Sewer service to serve a facility for up to 200 patrons can be provided by an on-site system. The application details how the City of Dundee sewer-line goes across the property. The application implies that sewer service could be extended to the property. However, Goal 11 states, in part:

Local Governments shall not allow the establishment or extension of sewer systems outside urban growth boundaries or unincorporated community boundaries, or allow extensions of sewer lines from within urban growth boundaries or unincorporated community boundaries to serve land outside those boundaries, except where the new or extended system is the only practicable alternative to mitigate a public health hazard and will not adversely affect farm or forest land.

Due to this, it appears that the use would need to be served by an on-site septic system unless they apply for an exception to Goal 11 or if the City interprets that a sewer hook-up is not the same as an extension of a sewer-line. Other services such as electricity, telephone, sheriff and fire protection already serve the existing residents in the area.

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.

It appears the proposed zone change would cause little interference with the use of other farm and forest land in the vicinity. As detailed in the application, the farm use to the south is inside Dundee's city limits and should not be included in the consideration of neighboring farmland because it has been excepted from the protection of Agricultural Goal 3. The closest farm use appears to be to the west where the property is in grass/grain production. The applicant has submitted that the property is not economically feasible for farm production, has never been in farm use and is surrounded on three sides by property within the city limits of Dundee.

3. Regarding criterion (B), the applicant has shown 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 that 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 Exhibits 1 and 8 showing that there is no other land in the immediate vicinity that is zoned to allow a church. The Planning Department looked at existing PAI zones within three miles of the site. It appears that three other PAI zones exist, all owned by, and used as, cemeteries.

4. Regarding criterion (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. Surrounding land uses to the west contain farm uses. The remainder of the surrounding area is inside Dundee's city limits. While there are farm uses on property in the city limits of Dundee, this land should be considered urban since it has comprehensive plan designation for future urban development. An appropriately sized church on the lot would be compatible with future urban development.

Regarding the availability of utilities and services in the area, the lots in the surrounding area have on-site systems for sewer and water hook-ups. Other services such as electricity, telephone, sheriff and fire protection already serve the existing residents in the area.

5. Regarding criterion (D), the applicant has shown that 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, as required by YCZO 1202.08(D). As stated in Finding B.3, the applicant has submitted two maps showing property in close proximity to the site is not zoned for a church. While this is not an exhaustive study, the Planning Department is unaware of other available PAI zoned property within three miles of the subject site. While the city zoning map shows Dundee's zoning, it is not known what zones in the city limits allow churches.
6. Regarding the criterion (E), an exception to Goal 3 is required, as addressed in Section C of these findings below. Since the property is zoned for exclusive farm use an exception to Goal 4 is not required.

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 should 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:* See pages 22 and 23 of the application.
4. *Characteristics of the adjacent lands:* See pages 24 and 25 of the application
5. *The relationship between the exception area and the lands adjacent to it:* See pages 25 and 26 of the application, incorporated in its entirety into these findings by this reference.
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. The main man-made feature is Fulquartz Landing Road, which separates the parcel from the neighboring farmland to the west.
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 irrevocable committed if the parcels are developed, clustered in a large group or clustered around a road designed to serve these parcels.*

The surrounding area is not irrevocably committed to nonresource use by virtue of present development alone. However, the administrative rule allows “other factors” which make the land unsuitable for resource use. The main “other factor” is the existence of the Dundee city limits that borders the property on three sides. The applicant appropriately described the subject property as a slice or notch excluded from inclusion in the Dundee city limits. It is unknown as to why this property was not included in the city. There appears to be no rational planning reason for keeping this 2-acre property as farmland when it has not been farmed and it is already developed, with a dwelling. The Board finds that the existence of the city limits bordering the property on three sides, taken together with the already-existing level of development, is enough to *irrevocably commit* the property to non-resource use.

D. 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); prior to a church being established on the property the applicants would need to apply for a site design review. At that time any improvements required by the Public Works Director would be applied to the use.

As for the capacity of the road, the last road count for Fulquartz Landing Road was 10 years ago. On January 31, 1997 the count was for 284 cars during a 24 hour period. Fulquartz Landing Road is designated as a local access road with expected traffic to be less than 500 cars per day. While this may seem like a quiet county road, on the weekends during the summer it can get quite busy. On Sundays in the summer large numbers of travelers seek a way around the bottleneck through Dundee. Cars traveling northeast on Highway 99W will turn onto Fulquartz Landing Road and take Edwards Drive up to the light at 5th Street, then back onto 99W.

While the application does not contain numbers, the application for the site evaluation for the septic system had an estimate of 200. The Board considers this to be a level of activity which can be allowed with the existing transportation plan. In this case the Board finds it would be appropriate to limit the use to a church and related facilities for up to 200 persons (i.e. no more than 50 vehicles in the parking lot during peak Sunday service).

CONCLUSION:

1. The request is for a Comprehensive Plan amendment and zone change from Exclusive Farm Use, EF-40 to PAI, including 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 unsuitable for productive farming/forestry, and the adjacent city limits, roads, and uses contribute to the area being irrevocably committed to non-resource use.

4. The proposed change is consistent with the zone change criteria of Section 1208.02.
5. With an appropriate limit on the size of the church, the proposed change complies with the Transportation Planning Rule.

APPROVAL:

The City Church of Promise's application for Comprehensive Plan amendment from Agriculture/Forestry Large Holding to Public; a zone change from EF-40 Exclusive Farm Use to PAI Public Assembly Institutional on approximately 2 acres (including an exception to Goal 3) is hereby APPROVED, with the following condition:

Yamhill County shall not require the City Church of Promise to make any road, access, or other transportation infrastructure improvements unless and until church attendance has increased to the point that the average Sunday service parking lot count exceeds fifty (50) vehicles.

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