

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 Small Holding to Commercial;)
a zone change from AF-10 Agriculture/Forestry Small Holding) Ordinance 805
to HC Highway Commercial, Tax Lot 3325-600, Docket)
PAZ-06-04, Applicant Willie Owens.)

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 Willie Owens requested approval of a
Comprehensive Plan amendment from Agriculture/Forestry Small Holding to Commercial; a zone
change from AF-10 Agriculture/Forestry Small Holding to HC Highway Commercial.

IT APPEARING TO THE BOARD that the matter was heard and approved 5 to 4 by the
Planning Commission at a duly noticed public hearing on November 3, 2005. A public hearing was
held before the Board on March 7, 2007. After hearing testimony from the applicant (these being no
opponents) the Board voted 2 to 1 (Commissioner Stern voting no) 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.

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
Commissioner MARY P. STERN

Leslie Lewis
Commissioner LESLIE LEWIS

Exhibit "A" FINDINGS

DOCKET NO.: PAZ-06-04

REQUEST: Approval of a Comprehensive Plan amendment from Agriculture/Forestry Small Holding to Commercial; a zone change from AF-10 Agriculture/Forestry Small Holding to HC Highway Commercial. The purpose of the zone change is to expand the existing three acre Highway Commercial Zone over the entire 14 acres of the subject parcel.

APPLICANT: Willie Owens

TAX LOT: 3325-600

LOCATION: 9660 NE Fox Farm Road, Newberg, Oregon

CRITERIA: Sections 501, 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 660-12-0060 Transportation Planning Rule.

A. Background Facts:

1. Property size: 14.66 acres. The southern 3 acres of the property are already zoned HC Highway Commercial. The remaining acreage is the subject of this request. Unless specified otherwise, references to the "subject property" will be the approximately 11.66 acres presently zoned AF-10.
2. Access: Fox Farm Road, a paved county road.
3. On-site Land Use: The property contains a residence, garage, shed, barn, greenhouses and commercial barn. The commercial barn is one that is set up to advertise for barn kits that may be purchased. The land has been used in the past for nursery and bark dust sales. The property is in the immediate vicinity of Highway 99W. It is near the location for the planned interchange to serve the Newberg/Dundee bypass. The existing three acres zoned HC are covered by the boundary of the interchange. The southwest portion of the proposed zone change (approximately 1.4 acres) is also covered by the area of the proposed interchange.
4. Surrounding Zoning and Land Use: Highway 99W borders the property to the southeast. Across Highway 99W is property that is zoned VLDR 2.5 Very Low Density Residential. Land to the south is zoned NC Neighborhood Commercial and contains a towing business. The parcel further to the southwest, across Highway 99W contains a gas station which is within the city limits of Dundee. Land to the north is zoned AF-10 Agriculture/Forestry Small Holding and VLDR 2.5. Much of the AF-10 property is planted to vineyard. Across Fox Farm Road to the west are two acres zoned RI Resource Industrial and the remainder zoned VLDR-1. The RI zone contains a winery. The VLDR-1 property is planted to a vineyard. Another winery exists to the northeast, also on an RI zone. The property is within close proximity to the city of Dundee which contains commercial and residential uses. The commercial uses include restaurants.
5. Water: City of Dundee. (The application indicates there are two water meters.)
6. Sewage Disposal: On-site septic system.

BA.07-280

7. Fire Protection: Dundee Rural Fire District
8. Soils: Sheet 21 of the Yamhill County Soil Survey shows that the parcel is composed of approximately 1/3 Amity (Am) and 2/3 Woodburn soils, (WuB and WuC) with an agricultural capability of Class II and III.
9. Taxes: Tract land.
10. Previous Actions: The property has a number of land use actions that resulted in the present zoning. They include PA-86-80/Z-185-80, Z-218-82/PA-112-82/PUD-16-82. In 1987 Ordinance 443 was adopted to take the entire 14.66 acres into Dundee's Urban Growth Boundary (UGB). However, the City of Dundee decided not to accept the property into their UGB. The property also received conditional use approval and a variance in 1986 to store/sell barkdust. In 1998 the property was granted a conditional use approval to have a barn on the property to advertise for barn kits.
11. Description of Proposal: There is no use specified in the request. The application states that, "Applicants desire to expand their business to allow for additional commercial use permitted in the Highway Commercial Zone, specifically set forth in the Permitted Uses Section 603.02."
12. Exception area: The subject property was part of code area 1.8 adopted on April 23, 1980 as part of Exceptions Statement II. The property was part of an area identified as land "committed" to rural residential use.
13. Ordinance No. 747 was adopted by the Board of Commissioners on September 30, 2004. This ordinance adopted an Interchange Overlay District that would restrict the application of zone changes for three years while an interchange plan was developed. The applicant filed a placeholder application the week prior to the adoption of this overlay district. The application was made complete prior to 180-days from the time the request was filed so it is not subject to Ordinance No. 747 or Section 908 of the Yamhill County Zoning Ordinance.

B. Permitted Use Provisions and Analysis

1. The applicant states that the, "Applicants desire to expand their business to allow for additional commercial use permitted in the Highway Commercial Zone, specifically set forth in the Permitted Uses Section 603.02." The permitted uses in the HC zone are as follows:

603.02 Permitted Uses.

In the HC District, the following uses shall be permitted subject to the standards and limitations set forth in subsection 603.07 and pursuant to Section 1101 for site design review:

- A. Automobile service station;
- B. Drive-in restaurant, restaurant, or refreshment stand;
- C. Food store, maximum floor area of two thousand (2,000) square feet;
- D. Fruit or vegetable stand, commercial;
- E. Gift, souvenir or antique shop;
- F. Motel;
- G. Dwelling in conjunction with a permitted use. Site design review is not required for the dwelling;

- H. *Accessory uses;*
- I. *Temporary structures as may be required during construction of an authorized permanent structure. Such temporary structure shall be removed upon final inspection of the permanent structure by the Building Inspector;*
- J. *Community or municipal water supply system;*
- K. *Community or municipal sewer system; and*
- L. *Signs, pursuant to the sign provisions set forth in Section 1006.*

The HC Highway Commercial zone also has a provision to add other uses to the permitted use section. This is done by following the procedures for a similar use and establishing that the requested use is similar to one that is already permitted within the zone. In addition to the permitted uses, RV Sales have been approved in this zone as a similar use. Since the request is not for any single use, any of the above uses need to be considered to be potentially sited on the subject property. In addition, the Planning Commission and Board of Commissioners considered the fact that approval of this request would result in 14.66 acres of property zoned HC Highway Commercial. The HC zone has the following minimum lot size:

Minimum Parcel Size. The minimum parcel size shall be 20,000 square feet for any use, except the minimum parcel size for a motel shall be one (1) acre and the minimum parcel size for a planned unit development shall be two (2) acres.

Therefore, there is a distinct possibility that the resulting 11.66 acres could be divided into smaller parcels and have a number of uses established on those smaller parcels.

C. 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, since an exception to Statewide Planning Goals 3 and 4 has already been taken for the subject parcel, Comprehensive Plan goals and policies related to agricultural

and forest lands are not applicable. The application makes general statements about how the intended use satisfies the goal and policies of the comprehensive plan. The main focus of the argument appears to be that this will be a mixed use insofar as the residence will remain on the property in conjunction with the commercial use. There are more specific Comprehensive Plan goals and policies which should be considered.

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 application stated, and the Board finds, that the use will not require the extension of costly additional services.

Yamhill County Revised Goals and Policies - Policy I.F.1.b. Yamhill County will encourage economic development projects which do not conflict with the predominant timber and agricultural character of the county.

Although the subject property and neighboring land is not specifically zoned for agricultural uses, there are agricultural uses that exist on adjacent land. To the north and west are parcels that are planted to vineyard. (It should be noted that the property to the west has an application for a 39-lot subdivision to create parcels of approximately two acres.) The application stresses how much commercial use already exists in the surrounding area. The "commercial use" mentioned by the applicant includes the two nearby wineries in the RI Resource Industrial zones. It should be noted that Yamhill County does not consider the uses allowed in the RI zone to be the same or similar to uses allowed in the County's commercial zones. The RI zone is intended to allow the processing and sale of food products grown in the local agricultural area. The uses in the RI zone would be within the agricultural character of the County and should not be used to justify the rezoning of nearby lands for commercial use.

Goal I.G.1. To create an environment for commercial development which will preserve and enhance the vitality of the central business districts, assure safer, more convenient and attractive community and neighborhood commercial centers, and protect prime commercial sites for use in advance of need.

Most of the uses listed in the HC zone are ones that can be found in the downtown central business district. The applicant stated, and the Board finds, that there is substantial evidence in the whole record that there is an insufficient number of suitable HC zoned properties which are available to satisfy the current demand.

Policy I.G.1.b. The county will discourage the expansion of strip commercial and provide for the redevelopment of strip commercial areas.

Due to its close proximity to Highway 99W and the location of other commercial uses, the Board does not consider this location strip development.

Policy I.G.1.d. Yamhill County will adopt landscape and design criteria for all forms of commercial development occurring outside of urban growth boundaries.

At the time of development, the landscaping requirements will be applied to this property.

3. Regarding the availability of other lands already zoned for the proposed use, criterion 1208.02(B) and (D), the applicant's representative stated that she surveyed the *Commercial* zone in a two mile radius. The study submitted listed 12 properties, along with reasons as to why none of these properties would satisfy the need for a nursery. The application demonstrates, and the Board finds, the need related to nursery products satisfies this criterion.
4. Regarding criterion (C), the surrounding lands include commercial and rural residential uses. The commercial uses in the County include motorcycle parts sales, barkdust/nursery business and a towing yard. Nearby resource industrial uses include two wineries. With appropriate landscaping/screening of the use, the request should not be in conflict with the neighboring commercial/industrial uses. The surrounding rural residential uses have a greater chance of conflicting with the proposed use. Notice was mailed to the surrounding property owners. There have been no objections from the neighboring property owners.

C. Goal Exception Provisions and Analysis

1. The request needs an exception to Goal 14. The applicant has chosen to pursue a "reasons exception." Oregon Administrative Rule (OAR) 660-04 contains the requirements for taking a "reasons" exception to Goal 14 for the property going from AF-10 to HC.
2. OAR 660-04-020 contains four factors that must be addressed when taking an exception to a goal. They are:
 - (a) *Reasons justify why the state policy embodied in the applicable goals should not apply.*
 - (b) *Areas which do not require a new exception cannot reasonably accommodate the use.*
 - (c) *The long-term environmental, economic, social and energy consequences resulting from the use at the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located in other areas requiring a Goal exception.*
 - (d) *The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts.*
3. Regarding factor (a), the applicant adequately addressed the Goal 14 factors. This is typically done when property is considered for inclusion in an Urban Growth Boundary (UGB). This property was considered for inclusion in the UGB for Dundee in 1987. At the time there was little in the way of intensive farm use going on in the surrounding area. Since then there have been two vineyards established on adjacent properties and two wineries established.

OAR 660-04-022 states that the reasons justifying why the state policy embodied in the goal should not apply include, but are not limited to, that there is a demonstrated need for the proposed use, and either: 1) a resource upon which the use is dependent can be reasonably obtained only at the exception site and the use must be located near the resource; or 2) the use has special features or qualities that necessitate its location on or near the proposed exception site. The Board finds this has been adequately addressed.

4. Factor (b), is addressed in Finding B.3. One of the questions listed in OAR-660-004-0020(2)(b)(B) is whether the proposed use could reasonably be accommodated in other areas that do not require an exception. This has been adequately addressed by the applicant.
5. Regarding factor (c), the environmental, economic, social and energy (ESEE) analysis needs to be done regarding this request. In response to this standard the application states, "The subject property meets this standard by actually creating a significantly less adverse impact than other areas that may require a Goal 14 exception due to the fact that it is already commercial in character. The use is consistent with the environmental, economic, social, and energy consequences that the surrounding parcels (exhibit) and by rezoning this parcel to Highway Commercial makes its impact less than other areas." This has been adequately addressed by the applicant.
6. Regarding factor (d) the proposed uses need to be compatible with other adjacent uses or be so rendered through measures designed to reduce adverse impacts. The Board finds that the proposed use(s) will be in character with the other commercial uses in the area.
7. At the bottom of page 6 of the request the applicant's representative goes on to present argument that the subject property is already physically developed and irrevocable committed to other uses to the point that it is no longer available for ". . . agricultural or forestry use." The Board agrees with this statement, and finds the property qualifies for an exception to Goal 14.

D. Goal 12 (Transportation Rule) Provisions and Analysis

1. Because of the proximity of the proposed HC Highway Commercial zone to Highway 99W, the provisions of the Transportation Planning Rule, implementing Goal 12, must be addressed. OAR 660-12-060 contains these provisions:
 - (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 (2), the applicant has submitted a transportation report from Tom R. Lancaster P.E., P.T.O.E. and Geoffrey A. Judd, E.I.T. of Lancaster Engineering (hereby incorporated into these findings by this reference) demonstrating compliance with the Transportation Planning Rule and Section 1208.02(C) of the YCZO.

CONCLUSIONS:

1. The request is for approval of a Comprehensive Plan amendment from Agriculture Forestry Small Holding (AFSH) to Commercial (C) and a zone change from AF-10 Agriculture Forestry Small Holding to HC Highway Commercial.
2. The request satisfies Section 1208.02(A) because it would allow development consistent with Policy I.G.1.b.
3. The request satisfies Section 1208.02(B) because the applicant has provided adequate justification to show that there is an existing demonstrable need for uses allowed in the HC Highway Commercial zone.
4. The request satisfies Section 1208.02(D) because it has been demonstrated that other areas already zoned for the proposed use are unavailable or not as well suited for the proposed use.
5. The request has been shown to satisfy the Transportation Planning Rule.
6. The applicant has demonstrated compliance with Goal 14.

APPROVAL:

Willie Owens' request for approval of a Comprehensive Plan amendment from Agriculture/Forestry Small Holding to Commercial and a zone change from AF-10 Agriculture/Forestry Small Holding to HC Highway Commercial is hereby APPROVED, with the following conditions:

The property is subject to a limited use overlay restricting allowed uses to a nursery and accessory uses.

The applicant shall perform any and all traffic infrastructure improvements required by the Oregon Department of Transportation.