

'06 DEC 13 P4:13

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-40 Exclusive Farm Use to AF-10)
Agriculture/Forestry Small Holding on approximately 38.8 acres,) Ordinance 800
Taking an Exception to Goals 3 and 4, Tax Lots 4306-300, 301,)
4305-1800, 2000, 2100, 2200, Docket no. PAZ-06-06, Applicant)
Daryl Garrettson, and Declaring an Emergency)

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY, OREGON (the "Board") sat for the transaction of county business on December 13, 2006, Commissioners Leslie Lewis, Kathy George and Mary P. Stern being present.

IT APPEARING TO THE BOARD that Daryl Garrettson applied to the Yamhill County Department of Planning (Planning Docket PAZ-06-06) for a Comprehensive Plan amendment zone change and exceptions to Statewide Planning Goals 3 and 4, and

IT APPEARING TO THE BOARD that the matter was heard by the Yamhill County Planning Commission at a duly noticed public hearing on November 2, 2006, after which the Commission voted to recommend approving the application by a vote of 5-0; the Board held a duly noticed public hearing Nov. 29, 2006. After due consideration of the Application, the Board tentatively voted 3-0 to approve the Application, NOW, THEREFORE,

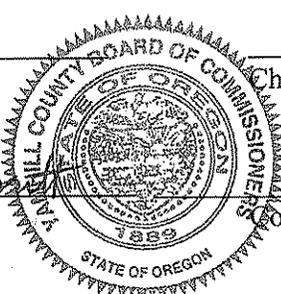
IT IS HEREBY ORDAINED BY THE BOARD, that the application is approved as detailed in the Findings for Approval, attached as Exhibit "A" and by this reference incorporated herein. This ordinance, being necessary for the health, safety, and welfare of the citizens of Yamhill County, and an emergency having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

DONE this 13th day of December, 2006, at McMinnville, Oregon.

ATTEST

YAMHILL COUNTY BOARD OF COMMISSIONERS

JAN COLEMAN
County Clerk



Leslie A. Lewis
Chair
LESLIE LEWIS

By: *Anne Britt*
Deputy Anne Britt

Kathy George
Commissioner
KATHY GEORGE

Unavailable for signature

APPROVED AS TO FORM:

Rick Sanai
Rick Sanai, Assistant County Counsel

Commissioner MARY P. STERN

DOCKET: PAZ-06-06

REQUEST: Approval of a Comprehensive Plan amendment from Agriculture/Forestry Large Holding to Agriculture/Forestry Small Holding; a zone change from EF-40 Exclusive Farm Use to AF-10 Agriculture/Forestry Small Holding on approximately 38.8 acres. The request includes exceptions to Goal 3, Agricultural Lands, and Goal 4, Forestry Lands.

APPLICANT: Daryl S. Garrettson

TAX LOT: 4306-300, 301, 4305-1800, 2000, 2100, 2200

LOCATION: The two parcels just to the east and southeast of and including 5370 NE Duniway Road. Also, 5384, 5392, and 5398 NE Duniway Road, Dayton Oregon

CRITERIA: Sections 402, 501, 904 and 1208.02 of the Yamhill County Zoning Ordinance; the Yamhill County Comprehensive Plan. OAR 660-04, Exception Process. OAR 660-12-0060 Transportation Planning Rule.

A. Background Facts:

1. Property size: The six parcels total 38.8 acres.
2. Access: Via a private easement to Duniway Road. The easement road is along the northern boundary of the subject area.
3. On-site Land Use: The applicant has given a detailed description of the on-site use in the application. The parcels are planted to rye grass with some wooded areas along the boundaries. Four of the parcels are approximately five acres each in size. One lot is 8.4 acres and one is 10 acres. Four of the six parcels are developed with single family dwellings. The two undeveloped parcels are five and 8.4 acres.
4. Surrounding Land Use: The applicant has given a detailed description of the surrounding land use on the bottom of page 2 of the application, the entirety of which is incorporated here by reference.
5. Surrounding Zoning: Zoning to the north and west is EF-40 Exclusive Farm use. Zoning to the south and east is AF-10 Agriculture/Forestry Small Holding.
6. Water: Presently, the existing single-family dwellings are served by the City of Lafayette. Any new development would need to be served by on-site wells.
7. Sewage Disposal: Provided by on-site septic systems.
8. Fire Protection: Dayton Rural Fire District
9. Soils: The Yamhill County Soil Survey shows that all but Tax Lot -2200 is predominantly composed of Woodburn, Willakenzie, and Amity soils (WuB, WeC and Am) that are rated agriculture Class II

and III. All of these parcels are composed of high-value soils. Tax Lot -2200 is composed of a mixture of Woodburn and Terrace Escarpments (Te). The terrace escarpments are not high-value farmland. This parcel is just over 50% high-value farmland as 50.91% is composed of Woodburn with an agricultural rating of Class II.

10. Taxes: Tax Lots 4306-300, 301, 4305-2000 and 2200 are on farm deferral. Tax Lot 4305-1800 is on forest deferral. Tax Lot 4305-2100 is at market value.
11. Floodplain: The property is not within the 100-year flood hazard area.
12. Fish and Wildlife: The property is not identified as critical fish or wildlife habitat.

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, 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 flood plain, as shown on FIRM 410249 0175 C. The eastern end of the property does have a slope of up to 20 percent but the majority of the land is gently sloping. Based on the previous development of five-acre home sites in the surrounding area, there does not appear to be any significant limitation for sub-surface sewage disposal.

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 residents in the area.

Policy I.B.2.a.: Yamhill County will continue to recognize that the appropriate location of very low density residential development is in designated large areas where commitments to such uses have already been made through existing subdivision, partitioning, or development and by virtue of close proximity to existing urban centers; or in small, limited areas having unique scenic, locational and other suitable site qualities where the anticipated magnitude or density of development is not such as to require more than a very basic level of services, such as single local-road access, individual domestic wells and sewage-disposal systems, and possible rural fire protection.

The parcels appear to have all been created prior to adoption of the statewide planning goals. The adjacent parcels to the south and east were designated for rural residential use and excepted from Goal 3 and 4 in Exceptions Statement II (ESII) which was adopted by the Board of Commissioners April 23, 1980. The finding to include study area 4.7 (also known as the Marr Road area) stated the following:

The entire Marr Road study area is committed to rural residential development. The 32 parcels in this study area are predominantly 10 acres or less in size and are largely clustered in a subdivision design pattern. This area can be characterized as having fair or better water availability, mostly fair to good soil suitability for septic systems, and good roads. This area exhibits abrupt topographical changes, mainly steep slopes and large outcroppings of basalt which have hindered agricultural uses. There are three (3) parcels in excess of 10 acres in size - 18 acres, 16 acres and 17 acres. The 18- and 16-acre parcels are completely surrounded by parcels less than 10 acres in size. The 17-acre parcel is bordered on two sides by smaller parcels and contain significant outcroppings of basalts.

The six lots, totaling 38.8 acres, were excluded from this rezoning. There is no logical reason why these lots were excluded since they were adjacent to the study area and did (and still do) exhibit similar characteristics to that of the adopted exception area. These similarities include having parcels that “. . . are predominantly 10 acres or less in size and are largely clustered in a subdivision design pattern.” The magnitude of proposed development would allow two additional home-sites. These, along with the existing residents in the area, would not require more than a very basic level of services such as local access roads and individual septic/water systems.

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 applicant did not state that no farming can be conducted on the property but submitted arguments that the area is irrevocably committed to rural residential uses due to the parcelization and development pattern. The zone the applicant wishes to change the property to is the same as what borders two sides of the subject area. It appears the proposed zone change would cause little interference with the use of other farm land in the vicinity. There have been no objections submitted from adjoining property owners.

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 has submitted maps showing the existing exception areas that are in the vicinity of the City of Lafayette. The number of developed/undeveloped AF-10 zoned lots counted in June of 1999 is noted below:

Areas	Zone	Existing Lots	Developed Lots	Vacant Lots	Potential New Lots
4.6 4.7 4.8	AF-10	51	44	7	0

The applicant notes that none of those lots is available for purchase. The applicant has updated the 1999 study and found that three of the seven parcels have been developed with houses. The number of undeveloped lots has decreased from seven to four, a decrease of 44%. The applicant has given detailed explanations as to how the proposed uses would be similar or identical to the uses proposed by the applicants, and the Board so finds.

4. Regarding criterion (C), 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. Surrounding land uses to the south and east are similar small size residential lots to what is proposed. As noted earlier, the neighboring property to the south and east was part of code area 4.7 adopted in Exceptions Statement II. The application explains in why the subject parcel and use is very similar to that found in this exception area. The Board agrees and finds that the subject property and proposed use is substantially the same as the neighboring rural residential property.

Regarding the availability of utilities and services in the area, the lots in the surrounding area have on-site systems for sewer and water. A few of the lots in the surrounding area have hook-ups to the City of Lafayette. However, the City noted that no additional water hook-ups are available. Other services such as electricity, telephone, sheriff and fire protection already serve the existing residents in the area. No extension of water or sewer service is anticipated to be needed for the proposed level of development.

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 indicated in the updated study, four AF-10 zoned parcels are available and no additional AF-10 lots could potentially be created. While the number of other existing and potential lots is not an overwhelming number, there are a few other similarly zoned lots that exist in the area.

6. Regarding the criterion (E), an exception to Goal 3 is required, as addressed in Section C of these findings below. The applicant also requested an exception to Goal 4.

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 and 4 (although as noted staff believes a Goal 4 exception is not required), findings must be made that farm and forest uses are impracticable on the proposed exception area. The Board so finds.

3. *Characteristics of the exception area:* The applicant’s finding on page 2 of the application is incorporated here by reference.
4. *Characteristics of the adjacent lands:* The applicant’s finding on page 2 of the application is incorporated here by reference.
5. *The relationship between the exception area and the lands adjacent to it:* The applicant’s findings are found on pages 4 and 5 of the request, and are adopted by the Board. The proposed exception area is similar in character to the adjacent lands that are zoned AF-10. Portions of the property have been used for farm use. The applicant is not submitting arguments that the property can not be put to any farm use. The application explains how the dwellings, existing parcelization, and ownership patterns all contribute to the study area being irrevocably committed to rural residential use. The Board agrees, and so finds.

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. Public facilities and services are generally available in the area. The other factors have been addressed elsewhere in these findings. .
7. OAR 660-04-028(6) also contains factors that must be addressed when taking an exception to a goal for land that is irrevocably committed to other uses. OAR 660-04-028(6) states:

6) Findings of fact for a committed exception shall address the following factors:

(a) Existing adjacent uses;

(b) Existing public facilities and services (water and sewer lines, etc.);

(c) Parcel size and ownership patterns of the exception area and adjacent lands:

(A) Consideration of parcel size and ownership patterns under subsection (6)(c) of this rule shall include an analysis of how the existing development pattern came about and whether findings against the Goals were made at the time of partitioning or subdivision. 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. Resource and nonresource parcels created pursuant to the applicable goals shall not be used to justify a committed exception. For example, the presence of several parcels created for nonfarm dwellings or an intensive commercial agricultural operation under the provisions of an exclusive farm use zone cannot be used to justify a committed exception for land adjoining those parcels;

(B) Existing parcel sizes and contiguous ownerships shall be considered together in relation to the land's actual use. For example, several contiguous undeveloped parcels (including parcels separated only by a road or highway) under one ownership shall be considered as one farm or forest operation. 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. Small parcels in separate ownerships are not likely to be irrevocably committed if they stand alone amidst larger farm or forest operations, or are buffered from such operations.

(d) Neighborhood and regional characteristics;

(e) Natural or man-made features or other impediments separating the exception area from adjacent resource land. Such features or impediments include but are not limited to roads, watercourses, utility lines, easements, or rights-of-way that effectively impede practicable resource use of all or part of the exception area;

(f) Physical development according to OAR 660-004-0025; and

(g) Other relevant factors.

8. Regarding OAR 660-04-028(6)(a) the description of the adjacent land is found on page 4 of the applicant's submittal, hereby incorporated by this reference.
9. Regarding OAR 660-04-028(6)(b) the public facilities that are available are the public road and electricity. Water and sewer service would be provided to any new development by on-site systems. Other services such as police and emergency services are generally available.
10. Regarding OAR 660-04-028(2)(c) the description of the adjacent land is found on page 4 of the applicant's submittal. The most significant change in the area is the development of the rural residential property in the surrounding area.
11. Regarding OAR 660-04-028(2)(d) as stated above rezoning the subject parcel to allow AF-10 zone would grant the owner the ability to develop similar to the properties to the south and east.
12. Regarding OAR 660-04-028(2)(e) while there do not appear to be natural or man-made features or other impediments that completely separate the exception area from adjacent resource land, the development pattern and vegetation does provide an impediment. The existing dwellings are located along the easement road, which follows the northern boundary of the study area. The boundary to the south, east and west is bordered by trees.
13. Regarding OAR 660-04-028(2)(f) the physical development in the study area consists of four dwellings on six parcels, all in a line south of the easement road.
14. Regarding OAR 660-04-028(2)(g) no other relevant factors - aside from those described above - were identified by the applicant.

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), the traffic impact of the proposed zone change and two additional single family dwellings would result in approximately 19 vehicle trips per day, which would not significantly affect the existing transportation facility. Therefore, the proposed residential use is consistent with the identified function, capacity, and level of service of the local roads.

CONCLUSION:

- 1. The request is for a Comprehensive Plan amendment and zone change from Exclusive Farm Use, EF-40 to AF-10, including an exception to Goals 3 and 4.
- 2. The proposed zone change is consistent with Comprehensive Plan goals and policies.
- 3. An exception to Goals 3 and 4 are justified because the property is irrevocably committed to rural residential use due to the existing parcelization, ownership pattern, the adjacent small residential lots, roads, and uses
- 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.

Thus the Board ordains that the application by Daryl Garrettson for a Plan Amendment from AFLH Agriculture/Forestry Large Holding to AFSH Agriculture/Forestry Small Holding and a zone change from EF-40 to AF-10 for Tax Lots 4306-300, 301, 4305-1800, 2000, 2100, 2200 is hereby approved.

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