

06 NOV -8 P2:36

IN 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 a Comprehensive Plan )  
Amendment from Agriculture/Forestry Large Holding to )  
Agriculture/Forestry Small Holding, a zone change from EF-40 )  
Agriculture/Forestry Use to AF-10 Agriculture/Forestry Small ) Ordinance 793  
Holding, Taking an exception to Goal 3, Docket PAZ-02-05, )  
Tax Lots 5413-1700, -1701, -1900, and -1901, Applicant )  
Dennis Walker, and Declaring an Emergency )

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY, OREGON (the Board) sat for the transaction of county business on Wednesday, November 8, 2006, Commissioners Leslie Lewis, Kathy George. and Mary P. Stern being present.

IT APPEARING TO THE BOARD that Dennis Walker applied for a Comprehensive Plan amendment and zone change from EF-40 Exclusive Farm Use to AF-10 and an exception to Goal 3 for four existing lots.

The Yamhill County Planning Commission held a duly noticed public hearing September 7, 2006 and voted 7-0 to recommend approval. A duly noticed public hearing was held October 4, 2006, before the Yamhill County Board of Commissioners; the applicant and his counsel appeared and testified (there being no opponents) and the Board voted 3-0 to approve the application.

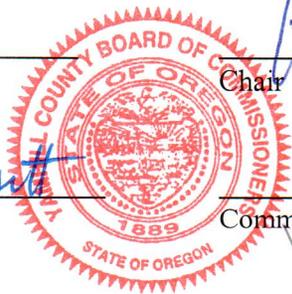
NOW, THEREFORE, IT IS HEREBY ORDAINED BY THE BOARD:

The application is approved as detailed in the Findings for Approval, Exhibit "A", attached and hereby incorporated into this ordinance. 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.

DONE this 8<sup>th</sup> day of November, 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

APPROVED AS TO FORM:

*Rick Sanai*  
Rick Sanai, Assistant County Counsel

*Mary P. Stern*  
Commissioner MARY P. STERN

**EXHIBIT A FINDINGS FOR APPROVAL**

**DOCKET NO:** PAZ-02-05

**REQUEST:** For 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. The application includes a request for an exception from Goal 3 (Agriculture).

**APPLICANT:** Dennis Walker

**TAX LOTS:** 5413-1700, -1701, -1900, and -1901

**LOCATION:** On both sides of Kestrel Heights Road, Amity, Oregon

**CRITERIA:** Sections 402 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 660-004 related to an exception and 660-012-0060 Transportation Planning Rule

**FINDINGS:**

**A. Background Facts:**

Subject area: approximately 19 acres.

Access: Access to the subject parcels is provided by Kestrel Heights Road.

On-site Land Use: The subject parcels are along a hilltop that slopes down to the east. Tax Lot 5413-1701 is predominantly forested and slopes to the east. Similarly, Tax Lot 5413-1900 is predominantly forested and has been almost completely planted to Douglas Fir. Tax Lot 5413-1900 slopes off gently to the east. Tax lots 5413-1700 and -1900 are developed with single-family residences.

Surrounding Land Use: Generally, the surrounding area contains a mixture of farm, forest and rural residential uses on five acre lots. Property to the west is predominantly forested. Land to the east slopes down to the valley floor. The area to the east has larger parcels that grow grass and grain crops. Property to the west is divided into five acre lots, is zoned AF-10, and is generally forested.

Surrounding Zoning: On Tax Lot -1701, property to the north, south and west is EF-40. Zoning to the east is EF-80. On Tax Lot 1900 Zoning to the north and south is EF-40. Zoning to the east is EF-80. Zoning to the west is AF-10 Agriculture/Forestry Small Holding. While land to

the west is AF-10, the majority of the properties are five acre lots with single-family dwellings established on them.

Water: To be provided by on-site wells.

Sewage Disposal: To be provided by on-site septic systems.

Fire Protection: Amity Rural Fire District

Soils: Yamhill County Soil Survey shows that the parcels are composed of Jory and Keki soils that are rated agriculture Class II and III. These soils are classified as high-value farmland.

Taxes: None of the parcels is receiving farm or forestry deferral.

Previous Actions: Docket LOR-29-96 was a lot of record dwelling that was denied on Tax Lot 5413-1900. Docket NFD-08-96 was a nonfarm dwelling approval on tax lot 5413-1700.

Floodplain: FIRM 410249 0320 C, shows that neither property, is within the 100-year flood hazard area.

Fish and Wildlife: The subject area 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 floodplain, as shown on FIRM 410249 0320 C. There are some slopes but there appears to be more than adequate area for construction of residences on each existing parcel. Each property has a site evaluation for an on-site septic system.

*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 Walnut Hill No. 2 subdivision was platted April 6, 1911. The subdivision itself does not commit the area to residential use. However, this subdivision is adjacent to the Hillcrest Walnut Plantings subdivision and the Woodland Heights subdivision. These adjacent subdivisions were excepted from Goal 3 in Exceptions Statement II (ESII), adopted by the

Board of Commissioners April 23, 1980. The subject property was excluded from this rezoning. The property is not near any urban centers. It is adjacent to a large area to the west which is committed to rural residential development.

*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 this zone change would cause little interference with the use of other farm and forest land in the vicinity. The closest farm use appears to be to the east where the property is in grass/grain production. The remainder of the surrounding area has some hobby farm uses. The applicant has shown, and the Board finds, that the property is not economically feasible for farm production but this is not the sole argument for rezoning the property.

3. Regarding criterion (B), the applicant has shown, and the Board finds, 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).

Traditionally, the county has looked at the amount of development in the nearby exception areas. In this case the most recent development numbers we have are from, June 25, 1999. They looked at four study areas. The results are as follows:

Area	Zone	Existing Lots	Developed Lots	Vacant Lots	Potential New Lots
5.10	AF-10	135	99	36	28
5.11	VLDR-5	98	77	21	6
5.12					
5.13					

These numbers are the most recent available. A study of the county's rural address map shows that additional development has occurred since these numbers were last updated.

4. Regarding criterion (C), the proposed change was 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 west are small residential lots. The property to the west was part of code area 5.11 in Exceptions Statement II. In 1992 this area was evaluated as part of study area 64. The purpose of that study was to determine if there was enough development prior to the Statewide Planning Goals (SPG) to justify certain areas as being

built and committed to rural residential use. In the case of area 64 there were only a few lots developed prior to SPG. Therefore, area 64 was not rezoned. Rezoning a portion of area 64 (which is essentially the applicant's request) was not evaluated. In 1993 the Legislature passed House Bill 3661 which established, among other things, the "lot of record" dwelling standards. Many of the adjacent lots have been approved for development through a lot-of-record dwelling approval.

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, and the Board finds, 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, from June of 1999, 36 parcels were available and 28 could potentially be created.
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 applied 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 proposed exception area involves four parcels. The exception area is in an existing subdivision with parcels of predominantly 5 acres. The properties are along the top of a hillside that slopes down to the east. The properties appear to be forested, with two of the four parcels developed with single-family residences.
4. *Characteristics of the adjacent lands:* All but one neighboring property surrounding these parcels is between 3 to 8 acres. The only exception is the southeast corner of 5413-1900 which touches on a 45 acre piece of property. These two properties border each other for a distance of 40 feet. Most of the surrounding area contains rural residential uses. Extensive farm uses exist on the valley floor to the east.
5. *The relationship between the exception area and the lands adjacent to it:* The proposed exception area is similar in character to the adjacent lands that are zoned AF-10. The size of the four parcels is four to five acres. This is similar to the property that is in the AF-10 zone to the west. The majority of the dwellings placed in the Walnut Hill No. 2 subdivision were done through the lot of record dwelling standards. The approval of the dwellings through the lot of record dwelling standards was done soon after the adoption of the Statewide Planning Goals and are considered dwellings not in conjunction with farm use. Since the undeveloped lots are sandwiched between a nonfarm parcel and an exception area, it makes them less likely to be put to farm or forestry use.
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 natural feature is the significant slope down to the east which separates the smaller lots in the existing 5-acre subdivision from the existing farm uses to the east.
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.*

There are a substantial number of small parcels in separate ownerships which are developed and clustered around a road designed to serve these parcels. If the developed parcels were adjacent to the rural residential zone, their affect on potential farm use of the vacant lots would be less than having them sandwiched between nonfarm use and rural residential zoning. The Planning Commission determined, and the Board finds, that the existing development irrevocably commits the property to a rural residential 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), the Public Works Department was sent a referral to determine if they have any concerns related to the use. The average trips per day for a single-family dwelling is 10. Based on an additional 20 vehicle trips per day it appears that the proposed residential use is consistent with the identified function, capacity, and level of service of the local roads.

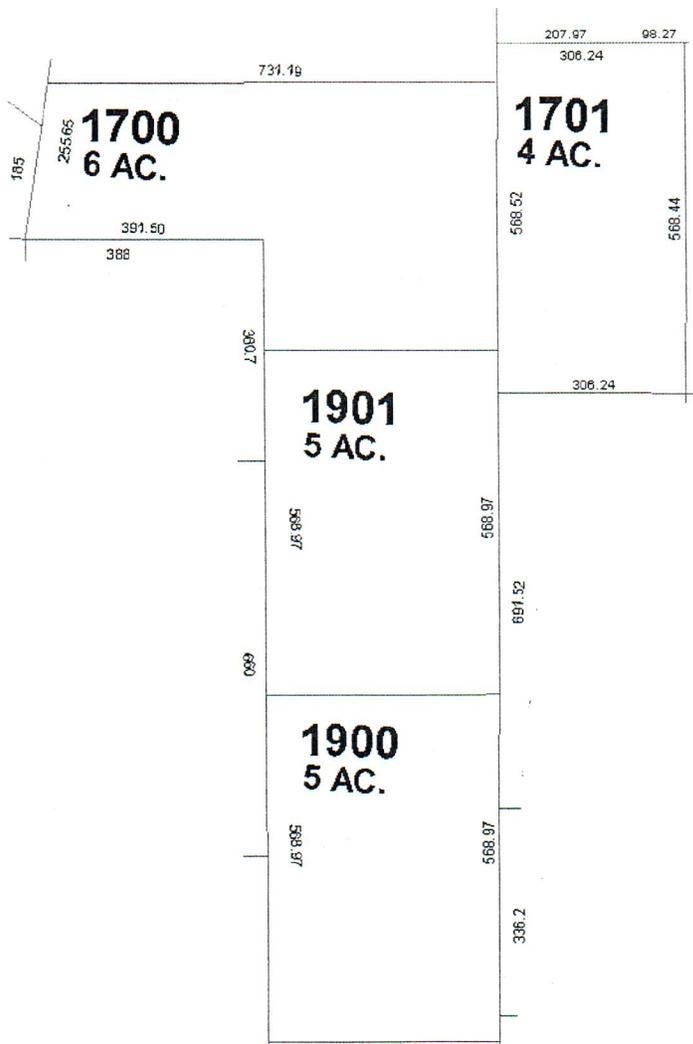
## **CONCLUSION**

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 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 small residential lots, roads, and uses contribute to the area being irrevocably committed to residential use.
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.

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EXHIBIT MAP FOR ORDINANCE NO. 793  
PLAN AMENDMENT AND ZONE CHANGE  
ADOPTED BY THE YAMHILL COUNTY BOARD OF COMMISSIONERS  
November 8, 2006

FOR A COMPREHENSIVE PLAN AMENDMENT FROM  
AGRICULTURE/FORESTRY LARGE HOLDING TO AGRICULTURE/FORESTRY  
SMALL HOLDING AND  
TO CHANGE OFFICIAL ZONING MAP FROM  
*EF-40 AGRICULTURE/FORESTRY USE*  
TO  
*AF-10 AGRICULTURE/FORESTRY SMALL HOLDING*



CHANGE APPLIES TO TAX LOTS 5413-1700, 1701, 1900 and 1901 DESCRIBED ABOVE

APPROXIMATE SCALE - 1 INCH = 300 FEET

30.06-916