

IN THE BOARD OF COMMISSIONERS OF THE STATE OF OREGON

FOR THE COUNTY OF YAMHILL

000 214

SITTING FOR THE TRANSACTION OF COUNTY BUSINESS

In the Matter of Approving a Zone Change from Agriculture/Forestry)
 Large Holding to Agriculture/Forestry Small Holding, a Zone Change from)
 EF-20 Exclusive Farm Use to AF-10 Agriculture Forestry)
 Small Holding and Taking an Exception to Goal 3 for a 38.71 Acre Parcel) Ordinance 737
 Located on the north side of Chehalem Drive, Yamhill County, Tax Lots Nos.)
 3301-100, -101 and -102, Applicants Matthew and Renee Powell, Docket)
 PAZ-02-03, and Declaring an Emergency)

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY, OREGON (the Board) sat for the transaction of county business on May 13, 2004, Commissioners Kathy George, Mary P. Stern and Leslie Lewis being present.

IT APPEARING TO THE BOARD that Matthew and Renee Powell applied for a Zone Change from Agriculture/Forestry Large Holding to Agriculture/Forestry Small Holding, a Zone Change from EF-20 Exclusive Farm Use to AF-10 Agriculture Forestry Small Holding and Taking an Exception to Goal 3 for a 38.71 Acre Parcel located on the north side of Chehalem Drive, Yamhill County, Tax Lots Nos. 3301-100, -101 and -102, Docket PAZ-02-03.

A public hearing was held before the Yamhill County Planning Commission January 8, 2004. The Commission took testimony and forwarded the application to the Board without a recommendation for approval or denial. The Board heard testimony and considered evidence at several duly noted public hearings, the last on March 18, 2004, and 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, based on the findings of fact and law contained in the applicant's Burden of Proof and the written and oral evidence and testimony contained in the record of the public hearings. 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 13th day of May, 2004, at McMinnville, Oregon.

ATTEST

YAMHILL COUNTY BOARD OF COMMISSIONERS

JAN COLEMAN

County Clerk

Chair

Kathy George

KATHY GEORGE

By:

Deputy Carol White

Commissioner

Mary P. Stern

MARY P. STERN

APPROVED AS TO FORM:

Commissioner

Leslie Lewis

LESLIE LEWIS

Rick Sanai

Assistant County Counsel



Ordinance 737
B.O.04-273

EXHIBIT A

FILM 78 PAGE 1480
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FINDINGS FOR APPROVAL

DOCKET: PAZ-02-03

REQUEST: Approval of a Comprehensive Plan map amendment from Agriculture Forestry Large Holding to Agriculture Forestry Small Holding; a zone change from EF-20 Exclusive Farm Use to AF-10 Agriculture Forestry Small Holding; and an Exception to Goal 3.

APPLICANT: Matthew and Renee Powell

OWNERS: Robert and Judith Travers and the Chehalem Park and Rec. District

ATTORNEY: John A. Rankin, LLC.

TAX LOT: 3301-100, -101 and -102

LOCATION: Approximately ½ of a mile south of the intersection of Bald Peak Road and Chehalem Drive, on the north side of Chehalem Drive.

CRITERIA: Sections 402, 501, 1204 and 1208.02 of the Yamhill County Zoning Ordinance. Section 904, Limited Use Overlay may also be applied. Comprehensive Plan policies may be applicable. ORS 197.732, Goal Exceptions. OAR 660-04, Exception Process. OAR 660-12-0060 Transportation Planning Rule.

FINDINGS:

A. Background Facts:

1. Property size: Tax Lot 100 is 21.27 acres, 101 is 16.86 acres and 102 is 0.58 acres.
2. Access: N.E. Chehalem Drive, a County public road.
3. On-site Land Use: Tax Lots - 100 and 102 are each developed with a single family dwelling. Taken as a whole, the property slopes down to the south and is predominantly forested on the steeper slopes of the northeast. The application indicates that the flatter pastureland of Tax Lot 101 has been grazed but the steeper original pasture/orchard area located on Tax Lot 100 has not been farmed at least since the 1970s or otherwise used for a significant number of years.
4. Surrounding Land Use: The applicant has given a detailed description of the surrounding land use on page 7 and 8 of their application which is incorporated here by reference.
5. Surrounding Zoning: Zoning to the north is EF-20, Exclusive Farm Use. Zoning to the south, east and west is AF-10 Agriculture/Forestry Small Holding.
6. Water: The existing dwellings on the subject properties have access to spring water that serves the City of Newberg. The new proposed dwelling will likely be served by an on-site well.
7. Sewage Disposal: To be provided by an on-site septic system.
8. Fire Protection: Newberg Rural Fire District

*Exhibit "A"
Ordinance 737*

9. Soils: The Yamhill County Soil Survey shows that the subject property parcel is primarily composed of Jory soils that are rated agriculture Classes II, III, IV and VI. Of the existing soils, 76% has a soil capability class IV and above, and only 5% has a soil capability class of II. Approximately 24.2 acres of the property is composed of high-value farmland.

10 Taxes: Tax Lot 100 has 20.27 acres on farm deferral. Tax Lot 101 has 16.45 acres on farm deferral.

11. Previous Actions: In 1978 partition Docket P-818-78 was approved that created Tax Lots 100 and 101. At the time the estimated acreages of these lots was 22.0 for Tax Lot 100 and 20.2 for lot 101. These were later revised by the Assessor's office as 21.27 for Tax Lot 100 and 17.44 for the combination of Tax Lot 101 and 102. (Note: On page 8 of the applicant's submittal, he stated that: "The subject property, including Tax Lots 100, 101 and 102 has existed in its current configuration since the County partition approval created Tax Lots 101 and 102 from 100 in 1979(Casefile No. P-967-79).") As indicated above, our records indicate this was partitioned by a different partition docket, which did not show the creation of Tax Lot 102.

12 Floodplain: FIRM 410249 0159 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.

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 0159 C. The property does have a significant slope on part of the parcel but there appears to be adequate area for construction of a residence on the parcel. Since the resulting properties would be over ten acres, and the land has soils that are generally good for septic systems, 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 county roads, 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 adjacent parcels to the west, south and east of the subject property were included in Code Area 1.2 (Bell Road) designated for rural residential use and excepted from Goal 3 in Exceptions Statement II (ESII) which was adopted by the Board of Commissioners April 23, 1980. The subject property is adjacent to a large exception area which is committed to rural residential development, which exception area was part of the 1980 exception area. At the time of the County's approval of this exception area, the two larger discreet parcels within the subject property, as well as at least four of the exception area parcels, were all approximately 20-acres in size. These four exception area parcels were subsequently partitioned into small parcels in the 1990's. The magnitude of proposed development would allow one additional home-site. This, 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 Board finds that the subject property is non-resource land, based on the reasons stated in the applicants' Burden of Proof (with the exception that the proposed rural residential dwelling would not have access to the City of Newberg's Spring Water System, which the Board finds addresses the concerns raised by the City of Newberg in its January 11, 2004 email letter to Staff), and based on other substantial evidence in the record, which demonstrates that the Board is not justifying the proposed development solely or even primarily on the fact that the subject property is non-resource land. Therefore, the proposed one additional rural residential dwelling will not impair or conflict with the use of farm or forest land. It appears the proposed zone change would cause little interference with the use of other farm land in the vicinity. The subject property is not now and has not been for a number of decades and successive ownerships part of an economic farming or forestry enterprise, and there are no extensive farm or forest operations on lands immediately adjacent to the subject property. The closest commercial forest or farm

operations appear to be approximately one-quarter to one-half mile to the north for forest uses or for farm uses to the west or south beyond the adjacent AF-10 zoned lands.

Policy II.A.1.a: Yamhill County will continue to preserve those areas for farm use which exhibit Class I through IV soils as identified in the Capability Classification System of the U.S. Soil Conservation Service.

A little over half of the site contains soils that are rated as Agricultural Class I-IV and identified as high-value farmland. The predominant soil type, comprising approximately 90% of the total existing soils, is from the Jory series, of which 76% has a soil capability class IV and above, and only 5% has a soil capability class of II. Furthermore, the steep slopes which includes only 10.5% between 5% and 15% slopes and 89.5% between 15% and 60% with an overall average of 22% overall, have provided a real constraint to any viable farming and forest practices consistent with the property's historical uses.

The Board finds that the property is non-resource land, has not been farmed at least since 1970 and that the use of this property for rural residential use is more important than the preservation of the land for agricultural use based on substantial evidence in the record, including but not limited to the January 2, 2004 letter from Yamhill Soil & Water Conservation District, and the applicants' vineyard consultant's February 25, 2004 letter from Stirling Fox, Oregon Grape Management.

The Board finds that the owner of the westerly portion of the subject property is the Chehalem Park and Recreation District, a special services district in the County, and that the granting of this zone change and exception will actually enhance the District's ability to develop a future park less expensively than under the current EF-20 zoning, and the Board finds that the County needs to encourage the development of more rural park lands.

Please see the applicant's Burden of Proof for additional pertinent Plan goals and policies, which are incorporated herein by this reference.

3. Criterion (B) and (D) of YCZO Section 1208.02 are similar, so the Board on recommendation from Staff considered them together. With Criterion (B), the applicant needed to show 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 1208.02(B). Similar to this criteria is YCZO 1208.02(D), which requires a showing that those other parcels, already zoned for the proposed use, are either unavailable or not as well suited to the proposed use due to location, size or other factors.

Traditionally, when looking at these two criteria, the county has looked at the amount of development in the nearby exception areas. The applicant originally submitted Table 5, found on page 11 of their Burden of Proof, which is identified as being compiled from information collected by the County in September 1990 and which shows 1990 levels of developed exception lands zoned AF-10 only in the east Yamhill County area near the City of Newberg UGB. County staff in its Staff Report added updated County figures for these areas from over four years ago, and which were dated June 25, 1999.

At the March 18, 2004 Board hearing, the applicant submitted substantial additional information and analysis updating both their original and the 1999 County Table 5 data to March, 2004. The applicant selected the study area shown in the following table to include all exception lands surrounding the City of Newberg UGB, because they and member of their extended family have lived and worked within the Newberg area for many years, and are well established there. They also have a 10-year autistic son who has been attending Crater Elementary School in the Newberg public school system and who has been doing

so well at Crater Elementary that when the school principal heard that the family have to move out of the greater Newberg area, she expressed concern that they might move out of the Newberg School District and significantly disrupt his special education requirements and his progress. The applicants did investigate available properties that were recently for sale throughout the County but analyzed in detail only those available for-sale and not-for-sale properties within the study area after acknowledging the importance of their personal family needs and the other factors described below.

In addition, the Board found that the provision of additional rural residential land within the study area for the proposed one additional rural residential dwelling is important to the citizens of the County based on the applicant's demonstrated need for additional AF-10 rural residential lands described below. The Board also found that the even though other exception lands are available in other areas of the County, those exception lands are located in areas that would require a significant investment in time and money for the applicants to transport themselves to their established community and their son to the Newberg school system for his special educational needs. The Board finds allowing the applicant to construct one additional rural dwelling on the subject property in the Newberg area rather than existing exception land in other more distant portions of the County complies with the goals and policies of the County Comprehensive Plan regarding economy and transportation which are intended to encourage development to occur in ways that reduce the citizenry's reliance on fossil fuels and County roads,

The Board finds that the applicants' definition of "available" was reasonable and persuasive, which definition was two tiered with the first tier being all existing and potential legal lots of record that are currently undeveloped or vacant, and the second tier being all of the first tier lots that are actually suitable for the building of a rural residential home, by analyzing parcel location, size, topography, natural resources and other factors that effectively preclude rural residential development. The applicant also stated and the Board acknowledged that this definition of availability and their analysis summarized in the Table 5 below did not include a market availability factor, which market factor, if considered, would have meant that in order for a property to be truly available it would also be on the market, and that some percentage of parcels may never come onto the market and never be "available" to purchase. Although no specific documentation was presented confirming the existence of a discernable market availability factor, the Board interprets its own ordinance to find that it is reasonable to believe that a certain percentage of parcels will rarely if ever be available to purchase.

The applicants submitted and the Board accepted substantial and detailed information into the record at the March 18, 2004 hearing that are summarized in the Table 5 below. The properties analyzed by the applicants with summary results shown on the updated table were contained in a Study Area consisting of all exception lands (AF-10) surrounding the City of Newberg UGB.

The results of the applicants' availability analysis adopted in these Board findings are as follows:

TABLE 5 – UPDATED TO MARCH, 2004

Area	Zone	Existing Lots	Developed Lots	Vacant Lots Available	Potential New Lots Available	*Total Suitable of Vacant /New
Bell Road 1.2	AF-10	162	148	14	3	12**
North Newberg 1.4	AF-10	48	46	2	2	4
West Chehalem 1.5 Newberg/Dundee 1.8	AF-10	33	31	2	0	2
Chehalem Richards 1.6	AF-10	140	129	11	6	16**
Fernwood 1.12	AF-10	94	85	9	4	8**
Wilsonville 1.13 Earlwood 1.15	AF-10	48	40	8	6	14
SW Dundee 1.17	AF-10	60	51	9	1	8**
TOTAL	AF-10	585	530	51	22	64

* The Board finds that the total number of all undeveloped vacant and potential new parcels should be adjusted by those of that total number that are unsuitable for rural residential development for reasons that actually make or have the tendency to make those parcels undevelopable. Please see the applicants' summary narrative analysis of each exception code presented at the March 18th hearing as modified by the Board.

** The Board accepts the applicants' analysis that five parcels in the Bell Road area are unsuitable for rural residential development (four are parcels that contain the City of Newberg's Water System springs and facilities and one is the County gravel pit); that one parcel in the Chehalem Richards area is unsuitable due to extreme slopes; that five parcels in the Fernwood area are unsuitable (two are in the Newberg UGB, one is located in a flood hazard zone, and two are too small in size); and finally, that one parcel in the SW Dundee area is unsuitable as having frontage on Highway 99W and being located in a ravine.

The Board finds that approximately 89.1% (based on the above Table 5) of the total AF-10 zoned lands within the Study Area have either been developed and/or are unsuitable for rural residential development, and that therefore there is an existing demonstrable need for more AF-10 rural residential exception land which would be allowed by the requested zone change, after 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 1208.02(B). Similarly, the Board also finds that criteria contained in YCZO 1208.02(D) is satisfied by the applicants demonstrating that those other parcels, already zoned for the proposed use, are either unavailable or not as well suited to the proposed use due to location, size or other factors found in the record.

- Regarding criterion (C), the proposed change needs to be 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, east and west are similar small size residential lots. Larger farm parcels exist, but are 1/8 to 1/4 of a mile away. As noted earlier, the neighboring property to the south, east and west was part of exceptions Code Area 1.2 Bell Road. The applicants' Burden of Proof and additional written materials and documents submitted at the March 18, 2004 Board Hearing (which are hereby incorporated into these findings in its entirety by this reference) explain in detail why the subject property and proposed use are very similar to that found in the Bell Road exception area.

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. No extension of water or sewer service is being relied upon for this request.

5. Regarding the criterion (E), an exception to Goal 3 will be required, as addressed in Section C of these findings below. Since the property is zoned for Exclusive Farm use and not for Agricultural/Forestry 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 applicants are applying for a "reasons" exception to Goal 3.
2. Oregon Administrative Rule (OAR) 660-04 contains the requirements for taking goal exceptions. OAR 660-04-020 contains four factors that must be addressed when taking an exception to a goal. They are:

(2) The four factors in Goal 2 Part II(c) required to be addressed when taking an exception to a Goal are:

(a) "Reasons justify why the state policy embodied in the applicable goals should not apply": The exception shall set forth the facts and assumptions used as the basis for determining that a state policy embodied in a goal should not apply to specific properties or situations including the amount of land for the use being planned and why the use requires a location on resource land;

(b) "Areas which do not require a new exception cannot reasonably accommodate the use":

(A) The exception shall indicate on a map or otherwise describe the location of possible alternative areas considered for the use, which do not require a new exception. The area for which the exception is taken shall be identified;

(B) To show why the particular site is justified, it is necessary to discuss why other areas which do not require a new exception cannot reasonably accommodate the proposed use. Economic factors can be considered along with other relevant factors in determining that the use cannot reasonably be accommodated in other areas. Under the alternative factor the following questions shall be addressed:

(i) Can the proposed use be reasonably accommodated on nonresource land that would not require an exception, including increasing the density of uses on nonresource land? If not, why not?

(ii) Can the proposed use be reasonably accommodated on resource land that is already irrevocably committed to nonresource uses, not allowed by the applicable Goal, including resource land in existing rural centers, or by increasing the density of uses on committed lands? If not, why not?

(iii) Can the proposed use be reasonably accommodated inside an urban growth boundary? If not, why not?

(C) This alternative areas standard can be met by a broad review of similar types of areas rather than a review of specific alternative sites. Initially, a local government adopting an exception need assess only whether those similar types of areas in the vicinity could not reasonably accommodate the proposed use. Site specific comparisons are not required of a local government taking an exception, unless another party to the local proceeding can describe why there are specific sites that can more reasonably accommodate the proposed use. A detailed evaluation of specific alternative sites is thus not required unless such sites are specifically described with facts to support the assertion that the sites are more reasonable by another party during the local exceptions proceeding.

(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. The exception shall describe the characteristics of each alternative areas considered by the jurisdiction for which an exception might be taken, the typical advantages and disadvantages of using the area for a use not allowed by the Goal, and the typical positive and negative consequences resulting from the use at the proposed site with measures designed to reduce adverse impacts. A detailed evaluation of specific alternative sites is not required unless such sites are specifically described with facts to support the assertion that the sites have significantly fewer adverse impacts during the local exceptions proceeding. The exception shall include the reasons why the consequences of the use at the chosen site are not significantly more adverse than would typically result from the same proposal being located in areas requiring a goal exception other than the proposed site. Such reasons shall include but are not limited to, the facts used to determine which resource land is least productive; the ability to sustain resource uses near the proposed use; and the long-term economic impact on the general area caused by irreversible removal of the land from the resource base. Other possible impacts include the effects of the proposed use on the water table, on the costs of improving roads and on the costs to special service districts;

(d) "The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts." The exception shall describe how the proposed use will be rendered compatible with adjacent land uses. The exception shall demonstrate that the proposed use is situated in such a manner as to be compatible with surrounding natural resources and resource management or production practices. "Compatible" is not intended as an absolute term meaning no interference or adverse impacts of any type with adjacent uses.

3. Regarding the first factor of Goal 2, OAR 660-004-0020(2)(a) requires the county to demonstrate that there are reasons why the state policy embodied in the applicable goal should not apply. OAR 660-004-0022 describes the types of reasons that can justify the approval of certain types of uses not otherwise allowed on resource land. OAR 660-004-0022(2) provides the specifically applicable criteria for adopting a reasons exception to allow the proposed rural residential development. The Board finds that OAR 660-04-022 (1) does not apply to this application because (1) applies only to “uses not specifically provided for in subsequent sections of this rule”, and that (2), which is applicable specifically to rural residential development and states that for “rural residential development, the reasons cannot be based on market demand for housing, except as provided for in this section of this rule, assumed continuation of past urban

and rural population distributions, or housing types and cost characteristics. A county must show why, based on the economic analysis in the plan, there are reasons for the type and density of housing planned which require this particular location on resource lands. A jurisdiction could justify an exception to allow residential development on resource land outside an urban growth boundary by determining that the rural location of the proposed residential development is necessary to satisfy the market demand for housing generated by existing or planned rural industrial, commercial, or other economic activity in the area.”

Regarding OAR 660-004-0022(2), the applicants have submitted significant and substantial documentation and information regarding the growth in Yamhill County which are found in their original Burden of Proof of the application materials and found in the additional written and oral testimony presented at the March 18, 2004 Board Public Hearing, which are all incorporated into these findings in its entirety by this reference.

The Economic Development section of the County’s Comprehensive Plan addresses this fact and states that the attraction of new industries in recent years has helped the local economy significantly, and the County’s Overall Economic Development Plan has served as “a guide to the fulfillment of the county’s economic development goals and policies.”

As noted above, the County’s own Exception Land analysis contained in Appendix D of the Yamhill County Transportation System Plan (TSP) Final Report, dated March 1996 demonstrates the impact of this economic growth on rural residential lands by finding in 1996 that at least 78.5% of all rural residential properties were then currently developed. Within the Newberg area, the percentage of developed rural residential properties in 1996 actually increased to at least 84%. This increased market demand in the Newberg area is supported by and results from the continued commercial and industrial development within the Newberg urban growth boundary and city limits, as well as from the continued demand for all residential land, including rural residential properties, given Newberg’s close proximity to the Portland Metro Area.

The Summary of the Economic Development section of the Yamhill County Comprehensive Plan states “[T]he economy of Yamhill County is largely based upon agricultural and forestry related industries....” and that the “County has traditionally been plagued by high levels of unemployment, but the attraction of new industries in recent years has helped to alleviate this condition.”

Another indicator of rural economic development is the increase traffic counts on rural County roads. The Summary of the Development section of the Yamhill County Comprehensive Plan states that “[D]ue primarily to the increasing traffic load and traffic hazards on all county roads, there is a need to control access points for future development....” and “[I]n view of the rapidly increasing cost and decreasing supply of energy, it is imperative that all transportation decisions take into account the conservation of energy.”

The Board finds that the County should provide sufficient rural residential lands in appropriate ways and locations under the law for as diverse an income level of its citizens as possible, so that such lands are not only available to the wealthy, or to those citizens who either owned the property for a significant period of time or inherited it.

The Board finds that based on the evidence in the record, the application complies with the requirements of OAR 660-04-022 (2) because the applicants have demonstrated that the subject property is not resource land; that even though the County has not established a specific percentage threshold for developed land, the existing County AF-10 zoned land within the Study Area has been developed to at least 89.1%; and that there is a need for more AF-10 zoned land within the Study Area to satisfy the market demand for housing and park land generated by existing and planned rural and urban industrial, commercial, and other economic activity in the area.

Regarding OAR 660-004-0020(2)(a), the Board finds that the following reasons, as modified from the applicants' Burden of Proof, justify the requested exception:

- 1) The subject property is not resource land and should have been included in Code Area 1.2 of the County's 1980 exception area decision. The subject property also should have been included because the Brillas/Chehalem Park District portion had been partitioned and developed in 1979, in a manner similar to those other 1980 exception lands to the south, west and east.
- 2) Approval of this requested exception would square up the northern boundary of the AF-10 exception land to the west, south and east in a manner consistent with traditional land use planning policies. Including similarly situated properties in the same AF-10 zone and utilizing existing tax lot lines on both sides of Chehalem Drive (as was clearly done in the selection of AF-10 lands to the south) should have been used as the 1980 boundary between the subject property and the adjacent resource lands to the north.
- 3) The subject property is bordered on the west, south and east by AF-10 exception land and is only bordered by resource lands to the north.
- 4) The subject property has similar topography (i.e. - moderate to steep slopes and elevations changes) to the existing AF-10 exception land to the west and east. Resource lands to the north have predominantly different topography, being significantly more gently sloped and commercially viable.
- 5) The subject property has similar soils (i.e. - the Jory series and related series) to the existing AF-10 exception land to the west, east and south. The Jory complex is described as moderately to severely erodible and severely restricts the farm and forest uses when found with steep slopes, which restriction is evident in the historic uses of the subject property and the adjacent AF-10 zoned land.
- 6) The subject property historically and currently contains land uses (i.e. - rural residential - hobby farm and small scale farm/forest uses of pastureland and small woodlots) that are significantly more similar to the existing AF-10 exception land to the west, south and east, than the resource land uses to the north.
- 7) There are no existing commercial farm or forest operations on lands immediately adjacent to the subject property (including resource lands to the north) which would create conflicts by the addition of the one new proposed rural residential parcel. Based on the above described physical characteristics and location, the subject property can not aggregated with larger and more viable farm and forest uses to the more distant west and southwest.
- 8) The subject property has similar natural resources and existing vegetation (i.e. - seasonal drainage ways and cleared pastureland and natural uncultivated areas of Douglas Fir, deciduous trees, poison oak and native grasses) to the existing AF-10 exception land to the west, south and east. In contrast, the resource lands to the north contain significantly more productive and commercially viable land resources, including predominantly managed woodlots and farm uses.
- 9) The subject property, even after approval of the one additional 10.6 acre parcel for the proposed rural residential hobby farm use, has similar parcelization and development (i.e. - average adjacent parcel size of approximately 10 to 12 acres and rural residential single family homes on hobby farms) to the existing AF-10 exception land to the west, south and east. Recent 1990's partitioning and subsequent development of the exception land directly to the south of the subject property as described above, is more consistent with the proposed parcelization than the larger resource land parcels to the north and west and southwest.

- 10) The existence of the City of Newberg's Spring Water System transmission and distribution lines, and utility easements located on the subject property in the same manner as the System is located on a number of other adjacent 1980 exception lands, further significantly restrict the use of the property for anything other than the proposed low impact rural residential hobby farm/woodlot use. Commercial farm and forest operations, even if they could be viable on the subject property, could have a substantial adverse impact the City's water system, which system the City depends on for up to 10% of its total water needs and which the City intends to continue operating and maintaining into the foreseeable future.
- 11) The subject property has not been used for "farm use" as defined in ORS 215.203 (2)(a) for a significant period of time, at least from before 1974 as can be seen on the 1974 Soil Survey map (Applicant's Exhibit D, Page 2) as well as by comparing that map with the current Yamhill County Scale Map (Applicant's Exhibit A, Page 6), which comparison shows the configuration of the cleared areas of the property remaining substantially the same for years, with the exception of noticeable encroachment of the surrounding native plant species on the latter map.
- 12) Other than the potential for small parcel hobby farm and even smaller woodlot uses which would be allowed to be established and intensified by the approval of this exception, the subject property can not be developed into a commercial agricultural or forest use in the same way that the existing AF-10 exception land to the west, south and east can not be developed and was designated AF-10, for all of the above applicable reasons.
- 13) Along with the other physical factors described herein, the sizes of the existing parcels that are the subject property and the lack of water rights on the subject property make the subject property suitable only to small hobby farm rural residential use. The addition of the one additional homesite would allow the applicant to transform the now fallow non-resource land currently growing native grasses and native plant species into a viable and managed small acreage hobby farm and woodlot.
- 14) The physical configuration and location of the subject property and its access to Chehalem Drive compliment and complete that portion of the Chehalem Drive rural residential "neighborhood". Driving north on Chehalem Drive to and past the subject property demonstrates that the location and orientation of the existing homes and pasture lands, the location of the access driveways as well as the existing topographical and vegetation separation between the subject property and the resource lands to the north, supports the argument that the subject property should be part of the AF-10 rural residential Chehalem Drive "neighborhood", not the upper Chehalem Drive resource land neighborhood near the intersection of Chehalem Drive and Hillside Drive. The future development of a rural park on the westerly portion of the subject property would provide a buffer between the non-resource exception lands to the south and the more resource oriented lands to the north.
- 15) The applicants have shown that the County has a demonstrated need for additional and appropriate new rural residential lands within the greater Newberg/Dundee area.
- 16) Approval of this request would provide an important benefit to the Chehalem Park and Recreation District, a political subdivision of the State of Oregon, and to the County and the public, by providing expanded opportunities and reducing the land use approval process costs for the future development of a rural park on Tax Lots 101 and 102.
- 17) Approval of this application would comply with Oregon's Resource Land Dwelling Policy to provide owners of less productive land the opportunity to create one additional rural residential parcel to enhance the hobby farm/forest capability while preserving the County's more productive resource lands to the north and west.

- 18) Approval of this application would allow the applicant and their family the opportunity to establish one additional viable rural residential dwelling and enhance the farm and forest productivity of the subject property to a greater degree than continuing the current use of the property.
- 19) Approval of this application would encourage a proper and appropriate rural residential use of a parcel of County rural land that is least productive and help defer the need for future expansion of the Newberg UGB onto primary resource land, in a manner consistent with Oregon's land use laws which place special emphasis on the preservation and protection of productive farm and forest lands, while encouraging more intensive farm and forest uses on all rural lands.
- 20) The subject property is isolated and unique in that it is the only property in the area that contains the remaining land, including an original homestead, that was left after a long history of parcelization, where portions of the original property were sold off. With the result that the remainder of the original homestead property (the subject property), which appears to have less potential than the sold off properties to the south for any viable farm and forest uses (due to steeper slopes and worse soils), was incorrectly designated resource land (EF-20) in 1980.

4. Regarding the second factor, (OAR) 660-004-0020(b) and subsection (A) specifically, the Board finds that at the March 18, 2004 hearing, the applicant has appropriately indicated on a map of the county exception lands in the Newberg Dundee areas, and otherwise described, the location of possible alternative areas considered for the proposed use, which alternative sites are predominantly AF-10 exception lands and adjacent UGB and resource lands which do not require a new exception. The Board also accepts the applicants' Study Area, and finds that the area for which the exception is taken has been adequately identified.

5. 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. Economic factors can be considered along with other relevant factors. One of the items to consider is whether a dwelling location could be established on property within the Urban Growth Boundary, on committed resource land or on nonresource property. The applicants submitted general information in their original Burden of Proof stating that rural residential lands within the UGB were eliminated due to lack of availability and that such lands are significantly less affordable. Significant additional written and oral testimony was present by the applicants at the March 18, 2004 Board hearing which is addressed in more detail below.

The Board finds that the criteria of subsection (B) is very similar to the County's availability criteria contained in YCZO 1208.02(D), which requires a showing that those other parcels, already zoned for the proposed use, are either unavailable or not as well suited to the proposed use due to location, size or other factors, and which is discussed in the YCZO findings above.

The Board finds that the applicants submitted a substantial packet of maps and documents at the March 18th hearing and discussed at length their detailed analysis that concluded why other areas, including resource and non-resource areas which do not require a new exception, cannot reasonably accommodate the proposed use. The Board finds that the applicants' analysis of availability and suitability for rural residential development summarized in Section (B) (3) above is reasonable to use to find that the proposed use cannot reasonably be accommodated on such other areas. The Board accepts the applicants' numbers

and analysis regarding availability with the adjustments discussed verbally in the record as summarized on Table 5 above.

The applicants could not find any resource land within the Study Area that was irrevocably committed to nonresource uses and no evidence to the contrary was submitted by the opponents to this application. The Board can therefore conclude that the proposed use can not be reasonably accommodated on resource land that is already irrevocably committed to nonresource uses.

As noted above, the Board finds that the subject property is not resource land and should not have been included in the 1980 exception land approvals. The Board finds that there is a demonstrable need for additional AF-10 zoned land within the applicant's study area. Regarding the question of whether the proposed use could reasonably be accommodated within an UGB, the Board finds that, where appropriate, it is better for the County to provide additional land for rural residential hobby farm/forest uses on non-resource lands such as the subject property, than to not provide such additional rural residential land, which would artificially limit housing options for its citizens and could result in more citizens being forced to live within the County's existing urban growth boundaries, and thereby requiring earlier expansions of those urban growth boundaries onto primary valley floor resource farm land which currently surrounds the City of Newberg and the majority of the cities in the County. The Board finds that the placement of a rural residential use on land within an UGB would not be an efficient and appropriate use of such urban or urbanizable land.

Regarding the criteria of subsection (C), the Board finds that the applicants provided a broad review of similar types of areas in their Burden of Proof as well as a review of specific alternative sites in their written and oral testimony on March 18th. And even though subsection (B) allows the County to adopt an exception by assessing only whether those similar types of areas in the vicinity could not reasonably accommodate the proposed use, the Board did review and adjust the available and suitable site specific comparisons presented by the applicants. The Board did review the applicants' detailed evaluation of specific alternative sites, even though the opponents at the hearing did not specifically describe with facts or make any specific assertion that any of the alternative sites within the study area or the rest of the County could more reasonably accommodate the proposed use than the subject property.

6. Regarding the third factor, OAR-660-004-0020(2)(c), the environmental, economic, social and energy (ESEE) analysis, the applicants have addressed this requirement on pages 24-29 of their original Burden of Proof with additional supplemental written and oral evidence and documentation provided at the March 18th hearing. As noted above, the applicants have submitted detailed information regarding an ESEE analysis of the subject property and to a lesser degree alternative resource and non-resource sites within their Study Area. The Board finds that a detailed evaluation of specific alternative resource sites inside or outside the Study Area is not required because enough information has been placed in the record to confirm that such alternative resource sites are specifically described with sufficient facts to support the assertion that such sites do not have significantly fewer adverse impacts than the subject site.

The Board reasserts the findings stated above regarding the applicants' ESEE analysis on the subject property and the applicants' comparison of the characteristics and impacts of allowing an exception for the proposed use on the subject property generally compared with resources lands in the Study Area. Again, as noted above, the Board finds that the subject property is not resource land and should not have been included in the 1980 exception land approvals, for the reasons stated by the applicants as modified above by the Board. The Board also finds that there exist no significant resource uses adjacent to the proposed use; that the long-term economic impact on the general area caused by irreversible removal of the subject property from the resource base is negligible to non-existent, that the benefits of allowing the proposed use on non-productive land outweighs the adverse impacts of allowing such a use on actual resource lands, that the effects of the proposed use of one additional rural dwelling on the existing water table will be

significantly less than allowing the same use on actual resource land, that there will be no additional costs of improving roads and that impacts on special service districts will actually be enhanced because the one of the owners (Chehalem Park and Recreation District) is a special service district and will be allowed to more easily develop a future park on its property by allowing the exception.

For the reasons stated above, the Board concludes that the long-term environmental, economic, social and energy consequences resulting from the use at the proposed site do not require measures designed to reduce adverse impacts and that the proposed use is not significantly more adverse than would typically result from the same proposed use being located in other areas requiring a Goal exception.

7. Regarding factor OAR-660-004-0020(2)(d) the proposed uses need to be compatible with other adjacent uses or be so rendered through measures designed to reduce adverse impacts. The applicant has submitted reasons on pages 29-31 explaining why the proposed dwelling would be compatible with other adjacent rural residential uses.

The Board reasserts the findings stated by the applicants as modified by the Board above. The Board finds that a significant reason why it approved this proposed application and use at its March 18th hearing was because the characteristics and impacts of the subject property conforms more exactly to and are more compatible with the other adjacent rural residential uses located on adjoining non-resource lands, that there will be no significant adverse impacts and the proposed use will be an appropriate addition to the existing rural residential neighborhood. The applicant has demonstrated that the proposed use is situated in such a manner as to be compatible with surrounding natural resources and resource management or production practices, because there is no significant commercial or natural resource uses in the immediate area of the subject property.

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 applicant submitted evidence (which the Board finds persuasive) showing that the proposed zone change and resulting single family dwelling 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.

E. Other Issues Addressed.

Marilyn Reeves, representing Friends of Yamhill County, spoke at the March 18, 2004 Hearing and provided written and verbal testimony, which in part stated the following concerns with the application, which have been combined with the Board findings stated below:

1. Concern Raised: More analysis of available lands is required to approve this application. Board Finding: A complete and thorough analysis of all available land in the County or even in the Study Area, is not required for granting a quasi-judicial exception which would result in one additional rural residential dwelling to be constructed. *DLCD and Friends of Yamhill County v. Yamhill County*, ___ Or LUBA ___ (LUBA NO. 2002-011)
2. Concern Raised: An exception is not permitted for a rural residential use which is permitted in the existing EF-20 zone. Board Findings: Even though the applicants are requesting approval so they may construct one rural residential primary dwelling which is generally a permitted use in the EF-20 zone, the portion of the subject property (non-park land) planned for the new primary dwelling is 21.27 acres in size and under state and county zoning regulations one additional primary dwelling is not permitted, unless the approval is obtained for the subject application and a subsequent partition application. Regarding the future park land portion of the subject property, under the EF-20, a park is conditional use, not an outright permitted use, whereas it is an outright permitted use in the AF-10 zone. *DLCD and Friends of Yamhill County v. Yamhill County*, ___ Or App ___, (Or App No. 2002-011, September 11, 2002)
3. Concern Raised: The County should determine whether or not it needs more rural residential land by using the legislative not quasi-judicial process. Board Findings: The state land use scheme did not limit the taking of exceptions to the legislative or periodic review process only. The state scheme anticipated that between periodic reviews exceptions could be approved under the quasi-judicial process. The last legislative exception or periodic review process takes years and required a large County financial commitment. If that legislative process were required to approve this exception application, then in the meantime, people will be required to crowd into the existing urban growth boundaries requiring more prime farm land to be used and the subject property would still be unused or under utilized.
4. Concern Raised: The approval of this application would encourage other similar exception applications. Board Findings: Each application is required to be considered on a case by case basis and must satisfy the applicable criteria on its own merits, the subject property is uniquely situated based on the factors of physical characteristics/location/existing uses and other factors, and finally, LUBA in *Friends of Yamhill County v. Yamhill County*, ___ Or LUBA ___ (LUBA NO. 2002-064) addressed that issue consistent with the above Board findings and cited its opinion in *DLCD v. Klamath County*, ___ Or LUBA ___ (LUBA No. 2002-036, July 11, 2002).
5. Concern Raised: Personal reasons expressed by the applicants may be legitimate but do not meet the requirements for an exception, and this exception can not be approved "unless the demand for housing is generated by existing or planned rural industrial, commercial or other economic

development activity in the area.” Board Findings: The personal reasons stated by the applicants were given only as one of the reasons for the establishment of the study area for their availability analysis not for justifying the exception. The Board bases its approval on a number of other reasons and factors discussed above. Furthermore, the portion of OAR 660-004-0022(2) paraphrased by Friends is not mandatory as stated, but is discretionary by stating that “a jurisdiction could justify an exception... (Emphasis added).

6. Concern Raised: There is more available rural residential land and the applicants did not satisfy the availability criteria. Board Findings: The Board found that the alternative lands analysis submitted by the applicants was substantial enough in its detail to justify the availability criteria as discussed above, and that Friends of Yamhill County did not describe or otherwise show any other specific properties that the applicant failed to consider within the Study Area.
7. Concern Raised: This application is not similar to the Mason property which Friends of Yamhill County did not oppose. Board Findings: The Mason property is not being used by the applicants to justify this approval, but it is not a legal error for the Board to do so. *Friends of Eugene v. City of Eugene*, 44Or LUBA 239 (2003). Furthermore, it is the remembrance of the Board that the Mason property was similar to the subject property in that both were never utilized for a commercial farm, both are very steep, and both were bordered on three sides by exception lands.

At the end of the public testimony period on March 18, 2004, Staff raised some concerns that the application may not have satisfied all of the applicable criteria for taking an exception and might be appealed, but that a reasonable person could be persuaded that there is substantial evidence in the record to show compliance with the applicable criteria. Based on the above findings, the Board concluded that the application does satisfy all of the applicable criteria, and that if the only concern with this application is that it might be appealed, that concern is not a part of the criteria for approval of an exception.

Staff summarized the comments and issues received from the local agencies notified of the proposed application, as “no conflicts” were expressed by the County Sanitarian and Public Works Department, the State Water Master (with the caveat that the property is located within a ground-water limited area meaning that a well can be developed for rural residential domestic purposes, but not for irrigation purposes), Newberg Fire Department, and Yamhill County Soil and Water Conservation District (suggesting that land in the area is most appropriate for hobby farm uses).

The Board believes that all other applicable criteria and issues have been addressed in the applicants’ Burden of Proof and the above findings.

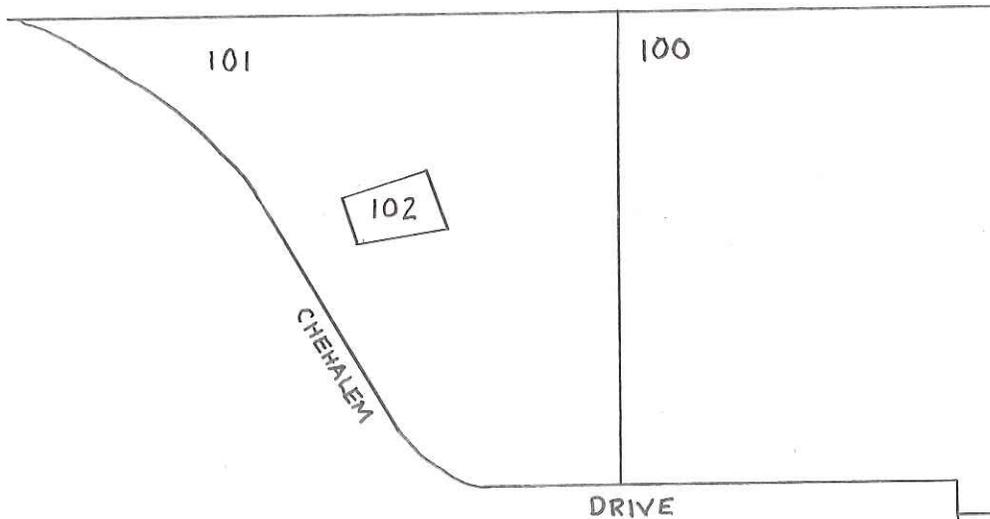
CONCLUSIONS: Based on all of the evidence in the record, the Board finds that:

1. The request is for a Comprehensive Plan amendment and zone change from Exclusive Farm Use, EF-20 to AF-10, including an exception to Goal 3.
2. The proposed Comprehensive Plan amendment and zone change is consistent with Comprehensive Plan goals and policies.
3. An exception to Goal 3 is justified because the property is unsuitable for farming due to soils and slope as well as other factors, and other existing or potential resource and non-resource areas which do not require an exception can not reasonably accommodate the one additional proposed rural residential use or enhance the development of additional park land.
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.

The application is hereby approved.

EXHIBIT "B" MAP FOR ORDINANCE NO. 737
PLAN AMENDMENT AND ZONE CHANGE
ADOPTED BY THE YAMHILL COUNTY BOARD OF COMMISSIONERS
MAY 13, 2004

FOR A COMPREHENSIVE PLAN AMENDMENT FROM
AGRICULTURE/FORESTRY LARGE HOLDING TO AGRICULTURE/FORESTRY
SMALL HOLDING AND
TO CHANGE OFFICIAL ZONING MAP FROM
EF-20 EXCLUSIVE FARM USE
TO
AF-10 AGRICULTURE/FORESTRY SMALL HOLDING



CHANGE APPLIES TO TAX LOTS 3301-100, 101 AND 102 DESCRIBED ABOVE

APPROXIMATE SCALE - 1 INCH = 400 FEET

Exhibit "B"
Ordinance 737