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IN THE BOARD OF COMMISSIONERS OF THE STATE OF OREGON

FOR THE COUNTY OF YAMHILL

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SITTING FOR THE TRANSACTION OF COUNTY BUSINESS

In the Matter of Approving a Zone Change from AF-40 Agriculture/Forestry )  
to Very Low Density Residential VLDR 5 for a 28.5 acre Parcel, )  
Located at 10600 NE Red Hills Road, Dundee, Yamhill County, Oregon, ) Ordinance 735  
Tax Lots 3323-2700 and 3323-3101, Taking an Exception to Goal 14, )  
Applicant Debra Webb, Docket Z-01-03, and Declaring an Emergency )

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY, OREGON (the Board) sat for the transaction of county business on February 19, 2004, Commissioners Kathy George, Mary P. Stern and Leslie Lewis being present.

IT APPEARING TO THE BOARD that Ms. Debra Webb applied for a Zone Change from AF-40 Agriculture/Forestry to Very Low Density Residential VLDR 5 for a 28.5 acre Parcel, Located at 10600 NE Red Hills Road, Dundee, Yamhill County, Oregon, Tax Lots 3323-2700 and 3323-3101, Taking an Exception to Goal 14, Docket Z-01-03. A public hearing was held before the Yamhill County Planning Commission December 4, 2003. The Commission took testimony from the applicant (no opponents appearing), deliberated, and voted unanimously to approve the application. No-one has appealed that approval to the Board of Commissioners; 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. 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 19<sup>th</sup> day of February, 2004, at McMinnville, Oregon.

ATTEST

YAMHILL COUNTY BOARD OF COMMISSIONERS

JAN COLEMAN  
County Clerk

*Kathy George*  
Chair KATHY GEORGE

By: *Carol White*  
Deputy Carol White

*Mary P. Stern*  
Commissioner MARY P. STERN

APPROVED AS TO FORM:

*Leslie Lewis*  
Commissioner LESLIE LEWIS

*Rick Sanai*  
Rick Sanai  
Assistant County Counsel

*B.O.04-95*

Findings for Approval  
Docket Z-01-03 (Debra Webb)

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**HEARING DATE:** December 4, 2003

**DOCKET:** Z-01-03

**REQUEST:** Approval of a zone change from AF-40 Agriculture/Forestry to Very Low Density Residential VLDR 5 for a 28.5 acre parcel. The request includes an exception to Goal 14 (Urbanization).

**APPLICANT:** Debra Webb

**TAX LOT:** 3323-2700 and 3101

**LOCATION:** 10600 NE Red Hills Road, Dundee, Oregon

**CRITERIA:** Sections 402, 502 and 1208 of the Yamhill County Zoning Ordinance; the Yamhill County Comprehensive Plan. The exceptions process in OAR 660-04, and the Transportation Planning Rule found in OAR 660-12-0060 also applies

**FINDINGS:**

**A. Background Facts:**

1. Property size: The two tax lots total approximately 28.5 acres. Tax Lot 2700 contains approximately 26.1 acres. Tax Lot 3101 contains approximately 2.4 acres.
2. Access: A dedicated right of way that connects with Red Hill Road. The right of way drops down to the east.
3. On-site Land Use: Tax Lot 2700 contains one single family dwelling that the applicant has identified as being vacant. From the dedicated right-of-way the property drops off to the southeast, levels off near the southeastern boundary of Tax Lot 3101 and then slopes up steeply to the southeast. Most of the property appears to be a forested hillside. The level area contains small ponds. The parcel is not presently in farm use.
4. Surrounding Land Use: Property to the north is divided into lots of approximately 2.5 acres and is in rural residential use. Property to the south, east and west is forested. The only farm use appears to be west of Red Hill Road.
5. Surrounding Zoning: Zoning to the north and east is VLDR 2.5 Very Low Density Residential. Zoning to the south is VLDR-1 Very Low Density Residential. Zoning to the west is AF-40 Agriculture/Forestry.
6. Water: To be provided by on-site wells.

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7. Sewage Disposal: To be provided by on-site septic systems.
8. Fire Protection: Dundee Rural Fire District
9. Soils: Sheet 15 of the Yamhill County Soil Survey shows that approximately 22.7 acres of land is classified as JRF Jory Clay Loam, 30 to 60 percent slopes with an agricultural rating of Class VI. Approximately 5 acres is classified as Willakenzie silty clay loam with 20 to 30 percent slopes and an agricultural rating of Class IV. The remainder of the property is Jory clay loam 20 to 30 percent slopes and an agricultural rating of Class III.
10. Taxes: 27.5 acres of the site is receiving a forest deferral.
11. Previous Actions: A partitioning was approved in 1978 through Docket P-771-77 which approved the present lot configuration.
12. Flood plain: FIRM 410249 0167 C, shows that the property, is not within the 100-year flood hazard area.
13. Fish and Wildlife: The property is not identified as critical fish or wildlife habitat.
14. Exception: The property was found to be a committed exception in Code Area 1.8 adopted by Exception's Statement II, April 23, 1980 and was plan designated VLDR Very Low Density Residential.

**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.*

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(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 Flood plain 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 0167 C. The property has a significant slope on most of the parcel. While this is not a natural hazard area, much of the hillside contains 30 to 60 percent slopes. The Yamhill County Zoning Ordinance does not directly define steep slopes. The only closely related regulation is that the forest zones prohibit the placement of dwellings on slopes of over 40 percent. The Planning Department has come to consider property with over 40% slope to be containing steep slopes.

*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 adjacent land to the west was included in an area designated for rural residential use and was excepted from Goal 3 and 4 in Exceptions Statement II (ESII) which was adopted by the Board of Commissioners April 23, 1980. This lot is adjacent to a large area to the east which is committed to rural residential development. The magnitude of development would allow ten 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.*

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The proposed zone change would cause little interference with the use of other farm land in the vicinity. The closest farm use appears to be to the west, across Red Hills Road. The development of this lot would not interfere with forestry uses as adjacent properties are in forestry production, based on the evidence presented.

3. Regarding criterion (B), the applicant has shown there is an existing demonstrable need for the particular uses allowed by the requested zone, considering the importance of such uses to the citizenry or the economy of the area, the existing market demand 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's consultant provided a substantial amount of population information showing that the county as a whole has seen substantial growth over the past decade and how that trend is expected to continue. Traditionally, the county has looked at the amount of development in the nearby exception areas. The applicant's consultant has updated the most recent development numbers from June 25, 1999. The updated results from this exception area are as follows:

Area	Zone	Existing Lots	Developed Lots	Vacant Lots	Potential New Lots
1.5	AF-10	150	37	16	3
And	VLDR-5	5	5	0	0
1.8	VLDR 2.5	380	357	23	95
	VLDR 1	177	148	29	130*
	LDR-12000	2	2	0	0

*\*The number of potential new lots in the VLDR-1 zone is somewhat misleading as most of these properties will need an exception to Goal 14 to allow creation of parcels less than two acres.*

The consultant pointed out that in the VLDR 2.5 zone the number of available lots from June of 1999 to today has dropped from 45 to 23 (Note: The number of lots developed is 22 of the 45. This results in 23 lots being available. The consultant mistakenly wrote 26 rather than 23 on the supplemental information.) This shows a nearly 50% reduction in the number of vacant VLDR 2.5 lots over the past five years.

4. Regarding criterion (C), the proposed change is appropriate considering the surrounding land uses, the density and pattern of development in the area, any changes which may have occurred in the vicinity to support the proposed amendment and the availability of utilities and services likely to be needed by the anticipated uses in the proposed district. Surrounding land uses to the north contain similar small size rural residential lots. Further to the south are one acre home sites adjacent to the City of Dundee. As noted above, the property to the north, south and east was part of code area 1.8 adopted in Exceptions Statement II. The Exceptions Statement II concluded the following, "Agricultural activity in this study area has been restricted to small family gardens and orchards and, given the extensive subdivision and parcelization of this area and its close proximity to two urban areas, this rural residential settlement pattern will continue to dominate. Thus, this area is committed to rural residential development."

Regarding the availability of utilities and services in the area, the lots in the surrounding area have on-site systems for sewer and water hook-ups. Other services such as electricity, telephone, sheriff and fire protection already serve the existing residents in the area. No extension of water or sewer service is contemplated in this area.

5. Regarding criterion (D), the applicant has shown that other lands in the county already designated for the proposed uses are either unavailable or not as well-suited for the anticipated uses due to location, size, or other factors, as required by YCZO 1202.08(D). The data showing developed lots is noted under Finding B.3 above. As indicated in the study from June of 1999, in Study Code Area 1.6 and 1.8 there were 45 parcels available and 95 additional lots could potentially be created. The combination of these two study areas takes up over five square miles of area. The applicant's consultant found that the number of VLDR lots available has dropped to only 23. While the number of other existing and potential lots is not an overwhelming number, especially considering the amount of area it takes in, there are other similarly zoned lots that exist or could be created in the general area.
6. Regarding the criterion (E), an exception to Goal 3 and 4 were already taken as part of Exceptions Statement II. This exceptions statement gave this property a plan designation of Very Low Density Residential.

**C. Goal Exception Provisions and Analysis**

1. Oregon Administrative Rule (OAR) 660-04-0040(6), effective October 4, 2000, contains the requirements for taking an exception to Goal 14. It states:

*(6) After the effective date of this rule, a local government's requirements for minimum lot or parcel sizes in rural residential areas shall not be amended to allow a smaller minimum for any individual lot or parcel without taking an exception to Goal 14.*

2. Pages 6 and 7 of the application gives the reasons for taking an exception to Goal 14. Instead of repeating them the entire application including all supporting materials are hereby incorporated by this reference.

**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;*

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- (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 stated that this rural residential rezone is of such a small scale on an existing rural road that it would be consistent with the function and capacity of the rural access road (Red Hills Road). The Public Works Department has not disputed this.

**REASONS FOR APPROVAL:**

1. The request is for a Comprehensive Plan amendment and zone change from Agriculture/Forestry Use AF-40 to VLDR 5 including an exception to Goal 14.
2. The proposed zone change is consistent with Comprehensive Plan goals and policies.
3. An exception to Goal 14 is justified because the resulting parcels would not be an urban size, nor would they require urban services.
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.

**CONCLUSION:**

The request by Debra Webb for a zone change from Agriculture/Forestry AF-40 to Very Low Density Residential 5 on Tax Lots 3323-2700 and -3101 is approved.

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