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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 Affirming the Planning)
 Commission's Approval of a Application for a)
 Comprehensive Plan Amendment from Agriculture)
 Forestry Large Holding to Agriculture Forestry)
 Small Holding, a Zone Change from EF-80) ORDINANCE 711
 Exclusive Farm Use to AF-10 Agriculture Forestry)
 Small Holding, and Taking an Exception to Goals 3)
 and 4, Tax Lot 4513-1000, applicant Ward Eason,)
 Docket PAZ-06-01, and Declaring an Emergency)

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY, OREGON (the Board) sat for the transaction of county business in formal session on April 18, 2002, Commissioners Robert Johnstone, Thomas E. E. Bunn, and Leslie Lewis being present.

THE BOARD MAKES THE FOLLOWING FINDINGS:

- A. Mr. Ward Easton applied for a Comprehensive Plan map amendment from Agriculture Forestry Large Holding to Agriculture Forestry Small Holding; a zone change from EF-80 Exclusive Farm use to AF-10 Agriculture Forestry Small Holding; and an Exception to Goal 3 and 4 on Tax Lot 4513-1000.
- B. A duly noticed public hearing was held by the Yamhill County Planning Commission on March 7, 2002. The applicants appeared and testified. The Commission duly deliberated and voted 9-0 to recommend approval of the application.
- C. The matter went to the Board, who held a duly noticed public hearing on March 28, 2000. The applicant appeared, and no opponents appeared. The Board duly deliberated and voted unanimously to approve the application for the reasons set forth in Exhibit "A", attached and hereby incorporated by reference. NOW, THEREFORE:

IT IS HEREBY ORDAINED BY THE BOARD that the request by Ward Easton for a Comprehensive Plan map amendment from Agriculture Forestry Large Holding to Agriculture Forestry Small Holding; a zone change from EF-80 Exclusive Farm use to AF-10 Agriculture Forestry Small Holding; and an Exception to Goal 3 and 4 on Tax Lot 4513-1000 is approved with a limited use overlay which contains the following conditions:

- (1) Tax lot 4513-1000 shall not be divided or developed with more than one principal dwelling unless the zoning is changed to allow a higher density of development; and
- (2) The dwelling to be constructed shall not be located within the existing forested area. as Exhibit "A".

This action being necessary for the health, safety, and welfare of the people of Yamhill County, this ordinance takes effect immediately.

B.O. #02-227
Ordinance 711

DONE at McMinnville, Oregon this 18th day of April, 2002.

ATTEST
CHARLES STERN
County Clerk
By: *[Signature]*
Deputy KELLYE FEETERS



YAMHILL COUNTY BOARD OF COMMISSIONERS

Robert Johnstone
Chairman ROBERT JOHNSTONE
Thomas E.E. Bunn
Commissioner THOMAS E.E. BUNN

FORM APPROVED BY:

[Signature]
RICK SANAI
Assistant County Counsel

Leslie Lewis
Commissioner LESLIE LEWIS

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Exhibit "A" Findings for Approval

HEARING DATE: March 7, 2002 (Planning Commission) March 28, 2002 (Board)

DOCKET: PAZ-06-01

REQUEST: Approval of a Comprehensive Plan map amendment from Agriculture Forestry Large Holding to Agriculture Forestry Small Holding; a zone change from EF-80 Exclusive Farm use to AF-10 Agriculture Forestry Small Holding; and an Exception to Goal 3 and 4.

APPLICANT: Ward R. Eason

OWNER: Billy Beasley, Shannon Beasley and Christopher Beasley

TAX LOT: 4513-1000

LOCATION: Approximately 3/4 of a mile west of the intersection of Fox Ridge and North Hill Road on the north side of Fox Ridge Road, McMinnville, Oregon

CRITERIA: Sections 402, 501 and 1208 of the Yamhill County Zoning Ordinance; the Yamhill County Comprehensive Plan. OAR 660-04, Exception Process. OAR 660-12-0060 Transportation Planning Rule. A limited use overlay zone may also be applied.

FINDINGS:**A. Background Facts:**

1. Property size: Approximately 24.1 acres.
2. Access: Access to the subject parcels is provided by Fox Ridge Road, a paved County road.
3. On-site Land Use: The property slopes to the north and east. The eastern 2/3 of the property is fenced pastureland. During the site visit six head of cattle were observed within this fenced area. There is a barn constructed near the northeastern portion of the property, close to the tree-line before the parcel slopes off steeply to the north. The western third of the property is forested and contains the desired home-site.

- 4.. Surrounding Land Use: Those properties along Fox Ridge Road, to the south, east and west, contain small farm uses which include Christmas trees and vineyards. The primary exception to this is the parcel immediately to the east of the subject parcel which contains a water storage reservoir for the city of McMinnville. Property north of the subject lot is an area of larger farm parcels which are in farm uses that include grass and grain crops.
5. Surrounding Zoning: Zoning to the north, south and west is EF-80 Exclusive Farm use. Zoning to the east is PWS Public Works, Safety. On the eastern side of the PWS zone and immediately southeast of the subject lot the land is zone VLDR 2.5 Very Low Density Residential. McMinnville's city limits and urban growth boundary (UGB) is located approximately 800 feet south of the subject parcel.
6. Water: To be provided by an on-site well.
7. Sewage Disposal: To be provided by an on-site septic system.
8. Fire Protection: McMinnville Rural Fire District
9. Soils: Sheet 26 of the Yamhill County Soil Survey shows that the subject property parcel is composed primarily of Yamhill (YaC, YaD, YhB, YhD and YaE), soils that are rated agriculture Class II, III and IV (predominantly Class III). All of these soils are rated as high-value farmland.
10. Taxes: The entire property is receiving farm deferral.
11. Previous Actions: The parcel was created by the Foxridge Subdivision, Docket S-36-78 and through partitions approved by Docket P-694-77 and P-555-76. Two lot line adjustments were approved through Dockets L-36-93 and L-25-97.
12. Floodplain: FIRM 410249 0300 and 301 C, shows that the property is not within the 100-year flood hazard area.
13. Fish and Wildlife: The property is not identified on any county adopted map as being in any 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.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 zone change does 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. A referral was sent to the City of McMinnville and their planning staff reviewed the file and found no conflicts with their interests. They apparently do not feel that the approval would result in the extension of services.

Goal II.A.2 directs the county: To conserve Yamhill County's soil resources in a manner reflecting their suitability for forestry, agriculture and urban development and their sustained use for the purposes designated on the county plan map.

Additionally, Policy II.A.2.a states: 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.

As noted above, the property is predominantly rated as having agricultural Class III soils which are designated as high-value farmland. The property is also noted as being used as pasture for livestock.

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 the zone change would cause little interference with the use of other farm and forest land in the vicinity. There certainly are farm uses which exist in the vicinity. For instance Christmas trees are grown and actively sold off site on property to the west, near the end of Fox Ridge Road. To the south, across Fox Ridge Road is the Fox Ridge vineyard. In fact, the subject parcel itself contains a farm use, that of raising cattle. However, the farm use of the property appears to be severely limited. It would be very difficult to combine the property with the farm uses to the north due to the topography. Property to the east contains McMinnville's reservoir. Property to the south is planted to vineyard on a slope that is different than the subject parcel. Property to the west is forested but does not appear to have any farm use. Each of the lots in the Foxridge Subdivision has a dwelling constructed on it. Based on the land use pattern and existing uses, approval to allow a single home-site would be in character with the area and would not substantially impair or conflict with the use of farm or forest land.

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).

One other factor that can be evaluated is the population growth. The Census information indicates that the county rural population growth was relatively slow throughout the 1980s, but has increased from 1990 to 2000. The 1990 Census reported that the rural population of Yamhill County on April 1, 1990 was 21,063. On April 1, 2000, the Census reported the Yamhill County rural population at 23,926. This is an increase of

2,863 or 13.6% over a period of 10 years. The increase in the rate and amount of development, combined with the relatively small number of existing vacant lots and an increasing population might indicate a demand and need for additional rural residential zoned lots in this area. Approving this zone change means, one (1) dwelling will be added to the existing inventory. The subject area appears to be as well suited for residential development as the other available lots in the area of the Foxridge Subdivision.

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 nearly three years ago, 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
4.1	AF-10	16	14	2	0
4.2	VLDR-	274	207	67	178
4.3	2.5				
4.4					

These number are the most recent available. Examination of the county's rural address map shows that additional development has occurred since these numbers were last updated. The applicant has done a more focused analysis by just looking at those parcels which were comparable in size or larger than the subject parcel. In short, no property owner with a comparable size parcel was willing to sell or create a new lot. However, the county has tried in the past to use market availability as a measure of need for the property to be rezoned. In a similar land use request LUBA previously ruled that:

"The number of VLDR zoned properties on the market for sale at any given point in time is at best an indirect measure of the need or market demand for such properties."
(LUBA No. 91-200)

Therefore, the county cannot use market availability *alone* as a basis for a determination of need.

While availability of property for sale is not the determinative factor, it is important. What is most important, though, is the number of other similarly zoned properties. As illustrated by the above table there are other rural residential lots in the identified study areas. However, the vast majority of these lots are contained in the VLDR 2.5 zone, a designation much different than that requested by the applicant. The VLDR 2.5 zone allows properties to be divided down to an average of 2.5 acres. In the past the County has consistently taken the position that the applicant need only to compare the requested zone with those areas that contain similar zoning. In other words the applicant does not need to compare his requested AF-10 zone with properties zoned VLDR 2.5. Therefore,

the focus is on parcels zoned AF-10. As indicated above, the latest numbers only show two other properties zoned AF-10 in the identified study areas surrounding McMinnville.

4. Regarding criterion (C), the zone 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 amendment and the availability of utilities and services likely to be needed by the anticipated uses in the district. Surrounding land uses to the south, east (excluding the reservoir) and west are small farm uses on parcels of around 20 acres in size. Larger farm parcels exist down the hill to the north. County planning staff agreed that the subject property and its use is substantially the same as the neighboring property in the Foxridge Subdivision.

The main change which has occurred in the area over the past 30 years is the development of the parcels within the Foxridge Subdivision. All of the parcels within this subdivision are developed with dwellings with the exception of the subject parcel.

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), see Finding B.3.
6. Regarding the criterion (E), an exception to Goal 3 and 4 will be required, as addressed in Section C of these findings below.

C. Goal Exception Provisions and Analysis

1. Oregon Administrative Rule (OAR) 660-04 contains the requirements for taking an exception to the goals. The applicant is applying for a “reasons” exception to Goal 3 and 4.
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:
 - (a) *Reasons justify why the state policy embodied in the applicable goals should not apply.*
 - (b) *Areas which do not require a new exception cannot reasonably accommodate the use.*
 - (c) *The long-term environmental, economic, social and energy consequences resulting from the use at the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located in other areas requiring a Goal exception.*
 - (d) *The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts.*
3. Regarding factor (a), OAR 660-04-022 states that the reasons justifying why the state policy embodied in the goal should not apply include, but are not limited to: there is a demonstrated need for the use, and either: 1) a resource upon which the use is dependent can be reasonably obtained only at the exception site and the use must be located near the resource; or 2) the use has special features or qualities that necessitate its location on or near the proposed exception site. The Board finds the request complies with 2) based on reasons given on page 13 and 15 of the application, which is hereby incorporated into these Findings by this reference.
5. Factor (b), is addressed in Finding B.3. One of the questions listed in OAR-660-004-0020(2)(b)(B) is whether the 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 a 24 acres piece of property within the Urban Growth Boundary or on property zoned VLDR 2.5. The applicant submitted information showing other lots of a size similar to that of the request. None of the property owners wished to sell. Since economic factors can be considered one should also consider the cost of a 24 acre piece of property within either of these zones. From this county planning staff inferred that the

price would be substantially higher, due to its development potential, than property which is limited to only one homesite on the 24 acres.

6. Regarding factor (c), the environmental, economic, social and energy (ESEE) analysis needs to be done regarding this request. First the environmental consequences. The resulting development would be a single family dwelling on 24 acres, similar to that of the surrounding area. The ODF&W wrote in a referral which stated: *The Department of Fish and Wildlife does not oppose the proposed action. The site includes pasture areas and mixed evergreen/deciduous forested areas. The forested areas extend off-site and include oak uplands. Oak upland habitat has been identified as one of the most diminished, rapidly disappearing, limited, and important habitat for many species of wildlife in western Oregon, including the Willamette Valley. If approved, construction on this site should avoid/minimize impacts to the existing forested areas.* The applicant desires to place the dwelling on the western portion of the lot. Presently there is a driveway that appears to go to the intended dwelling location. Thus the Board shall add a condition to the overlay zone which restricts the dwelling location to the existing field.

Regarding the economic consequences, the SWCD expressed a concern regarding whether approval of this request would set a precedence to having other property rezoned to Agriculture/Forestry Small Holding. This is highly unlikely for the following reasons. First, this is the last undeveloped parcel within the Foxridge Subdivision. It is unlikely that others within this subdivision would be interested in pursuing a zone change for a single family residence when they already have the right to maintain their residences on their property. Secondly, this area is not similar to other farmland further to the north. The residents and development along Fox Ridge has a neighborhood like feel. The topography and tree-line separate this area from the larger farms to the north. This is likely why the subdivision was laid out in this configuration in the first place.

Also regarding economic consequences one should consider the economic consequences related to the owner. For some reason this has, over the years, become virtually taboo and seldom analyzed in Oregon land use decisions but it does deserve mention. The owners maintain that the family acquired the property at a time when a building permit would have been issued. They support this assertion by showing that other permits were issued on all the other parcels within the subdivision. The applicant would receive an economic benefit from the approval. However, they would likely argue that this is simply a return on the investment that they originally made in the property. To show in good faith that they only want returned to them what was taken away, they have proposed a limitation on themselves to limit the development to one dwelling. By doing this the owners feel that the development rights that were taken away through regulation would be returned to them.

There are no social or energy impacts that have been identified.

7. Regarding factor (d) the uses need to be compatible with other adjacent uses or be so rendered through measures designed to reduce adverse impacts. The applicant has proposed (and the Board agrees) to have a restriction placed on their property limiting the development potential to one principal dwelling until and unless the property is rezoned in the future. Since the other parcels within the Foxridge Subdivision each have a home a limitation of this type would help to assure that the use is compatible with other adjacent uses.

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, and the Planning Department, have coordinated with the Public Works Department to assure that the proposed dwellings would not exceed the capacity of the road. The response from the Public Works Director, William A. Gille, P.E., P.L.S. concluded that, "Fox Ridge Road currently has a traffic volume of approximately 300 vehicles per day. The capacity of a two lane local paved road is about 7,500 vehicles per day. Your proposed development is well below any level of capacity concerns for this road."

D. Limited Use Overlay Provisions

1. OAR 660-04-18(3)(a) states that when a reasons exception is taken, plan and zone designations must limit uses to only those that are justified in the exception.
2. Section 904.03 of the YCZO contains provisions for limited use overlays. It states:
 - (A) *When the Limited Use Overlay District is applied, the uses permitted in the underlying zone shall be limited to those specifically referenced in the ordinance adopting the Limited Use Overlay District.*
 - (B) *The Limited Use Overlay District may be used to require conditional use approval for uses normally permitted outright.*
 - (C) *Reasonable conditions may be imposed in the Limited Use Overlay District as are necessary to assure compliance with the provisions of the Comprehensive Plan and this ordinance.*
 - (D) *Until the overlay has been removed or amended, the only permitted uses in an LU district shall be those specifically referenced in the adopting ordinance.*
3. The applicant is proposing to restrict the use of the property to one homesite unless the property is rezoned by Yamhill County or McMinnville. The Board agrees, this requirement will be placed as a restriction in the limited use overlay zone. In addition, the overlay zone will be recommended to have a condition limiting development to the existing grass field.

CONCLUSIONS:

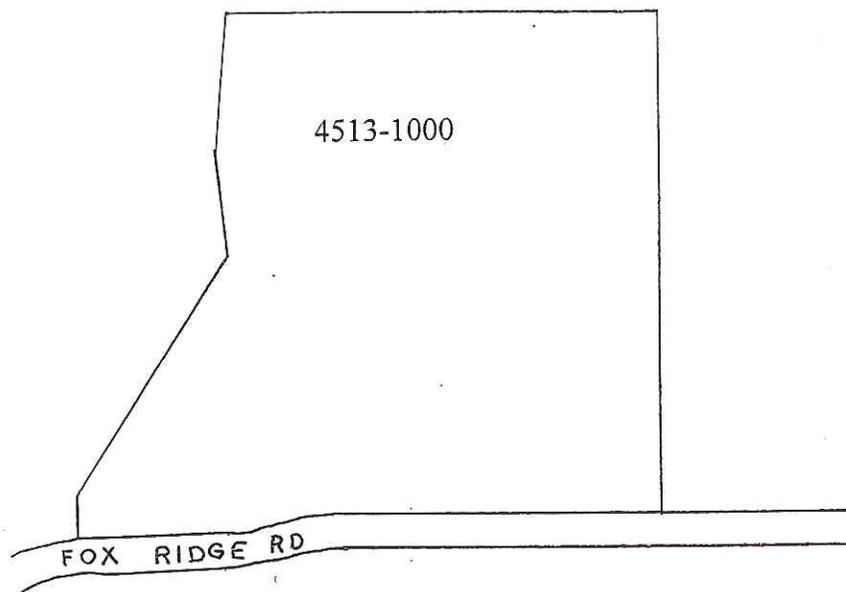
1. The request is for a Comprehensive Plan amendment and zone change from Exclusive Farm Use, EF-80 to AF-10, including an exception to Goal 3 and 4.
2. This zone change is consistent with Comprehensive Plan goals and policies.
3. An exception to Goal 3 and 4 is justified because the property is unsuitable for productive farming/forestry, and the adjacent lots, roads, and uses contribute to the area being suitable for a "reasons" exception.
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.

DECISION:

Based on the above findings, analysis, and conclusions, the request by Ward Easton for a Comprehensive Plan map amendment from Agriculture Forestry Large Holding to Agriculture Forestry Small Holding; a zone change from EF-80 Exclusive Farm use to AF-10 Agriculture Forestry Small Holding; and an Exception to Goal 3 and 4 on Tax Lot 4513-1000 is approved by the Board of Commissioners with a limited use overlay which contains the following conditions:

1. Tax lot 4513-1000 shall not be divided or developed with more than one principal dwelling unless the zoning is changed to allow a higher density of development.
2. The dwelling to be constructed shall not be located within the existing forested area.

EXHIBIT MAP FOR ORDINANCE NO. 711
A PLAN AMENDMENT FROM
AGRICULTURE/FORESTRY LARGE HOLDING
TO
AGRICULTURE/FORESTRY SMALL HOLDING
AND A ZONE CHANGE
TO CHANGE OFFICIAL ZONING MAP FROM
EF-80 EXCLUSIVE FARM USE
TO
AF-10 AGRICULTURE/FORESTRY SMALL HOLDING
ADOPTED BY THE YAMHILL COUNTY BOARD OF COMMISSIONERS
APRIL 18, 2002



CHANGE APPLIES TO TAX LOT 4513-1000 DESCRIBED ABOVE

THE CHANGE INCLUDES A LIMITED USE OVERLAY

APPROXIMATE SCALE - 1 INCH = 400 FEET

PLANNING DOCKET PAZ-06-01