

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 the Re-approval of a Zone Change)
 and Comprehensive Plan Amendment from AF-10)
 Agriculture/Forestry to VLDR 2½ Very Low)
 Density Residential, Applicants Finis Carter,) ORDINANCE 712
 Thomas W. Edwards and the Bruce Fowler and)
 Beverly Fowler Living Trust, Docket Z-02-00;)
 Tax Lots 3324-7902, 7903, 7904 and 7905;)
 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 May 2, 2002, Commissioners Robert Johnstone, Thomas E.E. Bunn, and Leslie Lewis being present.

THE BOARD MAKES THE FOLLOWING FINDINGS:

A. The applicants - Finis Carter, Thomas W. Edwards and the Bruce Fowler and Beverly Fowler Living Trust - requested a zone change from AF-10 to VLDR 2½ on Tax Lots 3324-7902, 7903, 7904 and 7905. The Planning Commission heard the request on March 1, 2001.

B. A public hearing was held by the Board of Commissioners on May 23, 2001. After hearing from the applicants and opponents, the Board duly deliberated and voted 3-0 to re-approve the application, and affirm the previous approval contained in Ordinance 702, June 28, 2001.

C. The opponents timely appealed this decision to the Land Use Board of Appeals which remanded the decision for further consideration and findings in decision LUBA No. 2001-114 dated January 10, 2002.

D. A duly noticed remand hearing was held by the Board of Commissioners on April 11, 2002. At the request of the applicant's attorney, Michael G. Gunn of Newberg, the hearing was held on the record. The Board duly deliberated and voted unanimously to re-approve the application with the adoption of additional findings, attached to this Ordinance and hereby incorporated as Exhibit "A". NOW THEREFORE:

IT IS HEREBY ORDAINED BY THE BOARD that application Z-02-00 is re-approved for the reasons stated in the Findings for Approval and attached and incorporated into this Ordinance as Exhibit "A". The zoning on Tax Lots 3324-7902, 7903, 7904 and 7905 is hereby changed from AF-10 to VLDR 2½. A map showing the property in question is attached and incorporated into this Ordinance as Exhibit "B". 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 at McMinnville, Oregon this 2nd day of May, 2002.

ATTEST

YAMHILL COUNTY BOARD OF COMMISSIONERS

CHARLES S. STERN
County Clerk

Robert Johnstone
Chairman ROBERT JOHNSTONE

By: Kellye Fetters
Deputy KELLYE FETTERS

Thomas E. E. Bunn
Commissioner THOMAS E. E. BUNN

FORM APPROVED BY:

Rick Sanai
RICK SANAI
Assistant County Counsel

Leslie Lewis
Commissioner LESLIE LEWIS

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**Exhibit "A": ADDITIONAL FINDINGS FOR APPROVAL ON REMAND
REGARDING ZONE CHANGE Z- 02-00**

BACKGROUND FACTS

1. *Lot Size:* A combined total of approximately 24.87 acres.
2. *Access:* The property has three access points, with two developed off of Highway 99W. The third access point is Hyland Drive. The road right-of-way for Hyland Drive is 60 feet in width and abuts the western boundary of the subject parcel. The end of Hyland Drive nearest the subject parcel is undeveloped and gated. Permission for the gate was granted by the Board of Commissioners to the Otter Creek Hyland Drive Road District by Board Order 00-796. The permission for placing this gate was granted with the condition that "...the permission granted by the Board is revocable at any future time." The Otter Creek Hyland Drive Road District has also made a request to the Board of Commissioners asking to vacate the last five feet of Hyland Drive nearest the subject property.
3. *On-Site Land Use:* The property is an odd shape, best described as a triangle with two ends trimmed off. Near the middle of the property is a 2.13 acre parcel, not part of this request, that is zoned for Heavy Industrial use. The subject property contains three existing dwellings. These dwellings are shown on the Assessors' map as Tax Lots 3324-7902, 7903 and 7904. These tax lots are for property identification only and are not recognized as separate parcels. The topography of the property is relatively level with a slight slope to the north. The parcel is generally clear. There are some oak trees along the property lines and scattered through out the parcel.
4. *Surrounding Zoning and Land Use:* With notable exceptions, most of the surrounding area is rural residential in character. Most of the rural residential uses are located on parcels of one to 10 acres in size. Property to the north, northwest and southeast is zoned VLDR 2.5 (Very Low Density Residential). Property adjacent to the northeast is zoned VLDR-1. A little further to the northeast is property that is zone Light Industrial. Land to the southwest is a mixture of VLDR-5 and AF/10 Agricultural/Forestry Small Holding. Further to the southwest is an area zoned RI (Resource Industrial) which has the Duck Pond Cellars winery, As noted above, near the middle of the property is a 2.13 acre parcel, not part of this request, that is zoned for Heavy Industrial use. This parcel had been used as a wrecking yard. Within the last five years, the wrecking yard was closed and replaced by two other uses. These uses are RV storage and a body building gymnasium shop. This Heavy Industrial zone does not have a limited use overlay which limits it to these uses; so, the property could revert back at any time to a more intensive Heavy Industrial use.
5. *Water:* On-site wells appear to be the only option.
6. *Sewage Disposal:* Septic systems are the only option in this area.

7. *Soils:* Sheet 22 of the Yamhill County Soil Survey indicates the majority of the property is a mixture of Woodburn (WuB) and Amity (Am) soils. Both of which are rated Class II for agricultural purposes.
8. *Previous Actions:* Docket P-1243-81 allowed dividing off Tax Lot 3324-7900 in 1981. The 2.13 acres that is zoned HI was divided in 1984 by Docket P-1336-83. A request to change the plan designation and zoning on the subject property to allow for LI (Light Industrial) use was denied in 1985 under Docket PAZ-126-83. An application was made under Docket P-24-98 to divide the property in half but was later withdrawn.

On June 28, 2001, the Yamhill County Commissioners approved a zone change for the subject property from AF-10 (Agriculture/Forestry) to VLDR 2.5 (Very Low Density Residential). Petitioners Friends of Yamhill County appealed the approval to LUBA. On January 10, 2002, LUBA remanded the Commissioners' decision on the four issues discussed below.

9. *Exception:* The property was found to be an irrevocably 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.

On April 23, 1980, Yamhill County adopted an exception area, including the subject property, as a committed exception to Goal 3 (Agricultural Lands) and Goal 4 (Forest Lands). (Yamhill County Ordinance no. 234). At that time the County designated the subject property as VLDR on its comprehensive plan, although it remained zoned AF-10. Consequently, the subject property is not subject to Goal 3 or Goal 4.

ZONE CHANGE PROVISIONS AND ANALYSIS ON REMAND

1. COMPLIANCE WITH AN EXCEPTION TO GOAL 14 (URBANIZATION)
(2nd Assignment of Error)

A. The Proposed Rezoning would not Allow Urban Use of Rural Land

1. A zone change to VLDR is consistent with the Comprehensive Plan designation of Very Low Density Residential (VLDR). The County has previously concluded that a property plan designated VLDR complies with the Comprehensive Plan Goals and Policies for rural residential use. Rec 307-08.

2. The land to the north, east and northwest is zoned VLDR 2.5; the land to the northeast is zoned VLDR-1; other lands to the southwest are zoned VLDR-5 and AF-10; and none of the surrounding land is zoned for resource use. Consequently, the predominant use of the surrounding properties is rural residential. Rec 313.

3. One parcel zoned AF-10 which has an agricultural use in the form of a winery will not be adversely affected by the zone change. The vineyard parcel is located 200 feet to the southwest and is not immediately adjacent to the subject lot. Because this farm use is over 200 feet to the southwest, rezoning of the subject lot should not have any adverse effect on this farm use and should not commit resource land to non-resource use. Rec 313.

4. The subject property would have on-site water and sewer systems.
Rec 313.

5. The minimum lot size will be 2.5 acres and the new Goal 14 rule governing lot size averaging will prevent creation of 1-acre parcels (the smallest permissible lot size would be 2 acres). This will help to ensure that the parcels created will be significantly large enough that they will not appear to be at an urban density. Rec 313.

6. On site constraints and other restrictions will restrict this development to a maximum of seven parcels, which is consistent with the predominant zoning and development in the area and which will ensure that the proposed zone change will extend the existing pattern and provide for infill development in a manner that is consistent with both the plan and the requested zone. Rec 150.

7. Rezoning the subject property will not require the extension of public services beyond what is presently available to the property. Rec 150, 318.

8. Rezoning the subject property will not commit the adjacent or nearby resource land to non-resource use. None of the surrounding properties are zoned for resource use. The subject property is irrevocably committed to rural residential use which is the predominant land use in the immediate vicinity. Rec 150.

9. There are two parcels zoned VLDR 5, both of which are developed as rural residential use. There are five tracts zoned AF/10 in Section 24, with one tract being partially zoned R/I, and one tract zoned AF/10 in Section 25 which is partially zoned Highway Commercial. All of these tracts total 41.96 acres in size with the average parcel size being 6.9 acres, which is much less than the required 10 acres associated with AF/10 zoning. Three of the tracts zoned AF/10 are less than the 10 acre minimum for AF/10 zoning. This pattern appears to be stable given the success of the winery and vineyard and the success and expansion of the highway commercial operation. The rural residential uses in the vicinity, under present zoning, may not be further divided. All of these factors support the position that the predominant use of the surrounding properties is rural residential and the proposed development is consistent with the development pattern of the area. Rec 150.

B. The Density and Number of Residential Units that Would be Allowed Under VLDR 2.5 Zoning Would not Impermissibly Affect the Ability of Nearby UGBs to Perform their Urbanization Function

1. Although the property is between Newberg and Dundee, it is not adjacent to either City's UGB or URA. Rec 313.

2. The rezoning will not require any extension of urban services from either the City of Newberg or the City of Dundee. The subject parcel will rely upon existing services. Rec 150, 318 and 322. The site is currently served with electrical power by PGE. The Hwy 99 access will be retained for emergency services access while future development will be provided over Hyland Drive. The proposed development will include individual wells and sewage disposal systems. The property is within the established Dundee rural fire protection district. Rec 443-44.

2. COMPLIANCE WITH THE YAMHILL COUNTY COMPREHENSIVE PLAN RURAL AREA DEVELOPMENT GOAL I.B.1
(3rd Assignment of Error)

Goal I.B.1 states:

To provide an adequate amount of land, development areas and sites to accommodate those uses which are customarily found in rural areas or require or are better suited to rural locations, without compromising the basic goal relating to urban containment and orderly urban development.

A. The County Adequately Addressed the Comprehensive Plan Goal of Urban Containment and its Implementing Policies.

1. The proposed zone change provides infill within an area designated since 1974 for rural residential use. Rec 442. The subject property has been plan designated for VLDR development from the initial adoption of the County Comprehensive Plan in 1974. Rec 443. The County Staff Report stated that the subject property had been plan designated VLDR for over 20 years, so there was a decision made that it was an appropriate area for rural residential development. Rec 63. The County Staff Report noted that the land is in an area committed to rural residential use. Rec 307-08.

2. It does not compromise urban containment, nor does it rely upon the extension of urban services. Rec 442-44. The proposed use for the property as rural residential development is consistent with the pattern of land use and development of the area and does not rely upon the extension of urban services. The site is currently served with electrical power by PGE. The Hwy 99 access will be retained for emergency services access while future development will be provided over Hyland Drive. The proposed development will include

individual wells and sewage disposal systems. The property is within the established Dundee rural fire protection district. Rec 443-44.

3. The proposed action is consistent with county policy to recognize lands designated on the plan map as VLDR as the appropriate and desired location for rural residential development. Rec 442.

4. The site is not within the urban growth boundary of either Newberg or Dundee and is not designated within the urban reserve area of Newberg. Rec 442. The zone change would not result in an urban scale of use because the property is not located adjacent to the UGB of either Newberg or Dundee. Rec 313.

5. The subject property is appropriate for the proposed uses allowed within the VLDR 2.5 zoned areas and is plan designated for such use. Rec 442.

6. The subject property is within ½ mile of the Newberg UGB. The city completed an urban reserve study and designation in the mid-1990s which did not include this property. Rec 443.

7. The proposed rezoning is consistent with the nature and scale of development in the vicinity and does not encroach or limit agricultural uses in the area. Rec 443-45.

8. Marc Willcuts testified that the existence of an apparent industrial user in the middle of a nearby residential subdivision did not affect demand for, or sales of, the residential properties. Appendix A, pp. 5-6.

9. The County's chief planner noted that the small size of the HI zoned parcel limits the use of that parcel and supports a determination that the zone change is compatible with the HI parcel. Rec 63.

10. Mr. Campbell, a landscape architect/planner performed a site assessment of the HI zoned parcel and described multiple use constraints for the parcel based upon its small size, lack of rail access, proximity to residential development, and existence of wetlands. Rec 52-53. Screening, buffering and berming could effectively screen the HI parcel from the subject property. Rec 10.

11. The current uses for the HI parcel (RV storage facility, masonry office, and gymnasium/health club) are more commercial in nature rather than heavy industrial uses. Rec 10.

12. Thomas Calabrese, a hydro geologist and registered professional geologist, performed a detailed analysis showing that on-site wells would be an adequate water supply for up to nine residences on the property. Rec 32-45. The applicants have demonstrated that the subject property can provide sufficient water * * * to accommodate a total of nine (9) residences

on the subject property without imposing any additional net costs on mobile or other centralized public service.

3. COMPLIANCE WITH YCZO 1208.02(D) REGARDING THE LIMIT OF THE STUDY AREA

(5th Assignment of Error)

YCZO 1208.02(D) states:

(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.

A. The County Properly Limited the Study Area to Property Within the Original Exception Area

1. The Oregon Supreme Court has held that a local government's interpretations should be sustained on appeal, unless clearly contrary to the context and language of the law in question. Clark v. Jackson County, 313 Or 508, 836 P2d 710 (1992). Under Clark, the County retains the right to interpret its own ordinances and to determine their meaning.

2. The County has previously interpreted the phrase "other land in the County" to mean other property located within the County. Under the County's interpretation, a study of other property located within the County is reasonable and a study of every possible property in the County is not required. Studying land in the vicinity of a subject property satisfies the requirement to study other lands in the County already designated for the proposed zoning and/or uses. Rec 432.

3. To determine compliance with the requirements of YCZO 1208.02(D), the County suggested that Bill Campbell, the applicants' land use consultant, consider all of the land already zoned for residential use within the vicinity as represented by the maps for Exception Areas 1.5 and 1.8. Rec 432, 463.

4. Mr. Campbell followed the County's suggestion, and considered the property already zoned for residential use within Exception Areas 1.5 and 1.8. Rec 316-17; 463-64.

5. Michael G. Gunn, attorney for the applicants, testified concerning the size of the area studied, its vicinity to the subject property, and the results of the study.

6. Ken Friday, the County's Planning Manager, testified that the study area encompassed approximately 2,000 acres.

7. Consideration of other lands located within Exception Areas 1.5 and 1.8 was reasonable based upon the following factors:

- a. The subject parcel is located in the center of the study area (Rec 343);
- b. Hundreds of parcels zoned VLDR and/or LDR exist within the study area (Rec 463);
- c. The County designated the Exception Areas for rural residential use (Rec 6, 7). Presumably, the County intended the Exception Areas for residential housing; and
- d. Based upon these factors, the study area considered was reasonable because it contained similar properties in terms of growth, property values and proximity to amenities such as the cities of Newberg and Dundee, shopping and schools.

4. **COMPLIANCE WITH YCZO 1208.02(B) REGARDING THE LIMIT OF THE STUDY AREA** (6th Assignment of Error)

YCZO 1208.02(B) states:

(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.

A. The County Properly Limited the Study Area to Property Within the Original Exception Area

1. The Oregon Supreme Court has held that a local government's interpretations should be sustained on appeal, unless clearly contrary to the context and language of the law in question. Clark v. Jackson County, 313 Or 508, 836 P2d 710 (1992). Under Clark, the County retains the right to interpret its own ordinances and to determine their meaning.

2. The County has previously interpreted the phrase "other land in the County" to mean other property located within the County. Under the County's interpretation, a study of other property located within the County is reasonable and a study of every possible property in the County is not required. Studying land in the vicinity of a subject property satisfies the requirement to study other lands in the County already designated for the proposed zoning and/or uses. Rec 432.

3. To determine compliance with the requirements of YCZO 1208.02(D), the

County directed Bill Campbell, the applicants' land use consultant, to consider all of the land already zoned for residential use within the vicinity as represented by the maps for Exception Areas 1.5 and 1.8. Rec 432, 463.

4. Mr. Campbell followed the County's directive, and considered the property already zoned for residential use within Exception Areas 1.5 and 1.8. Rec 316-17; 463-64.

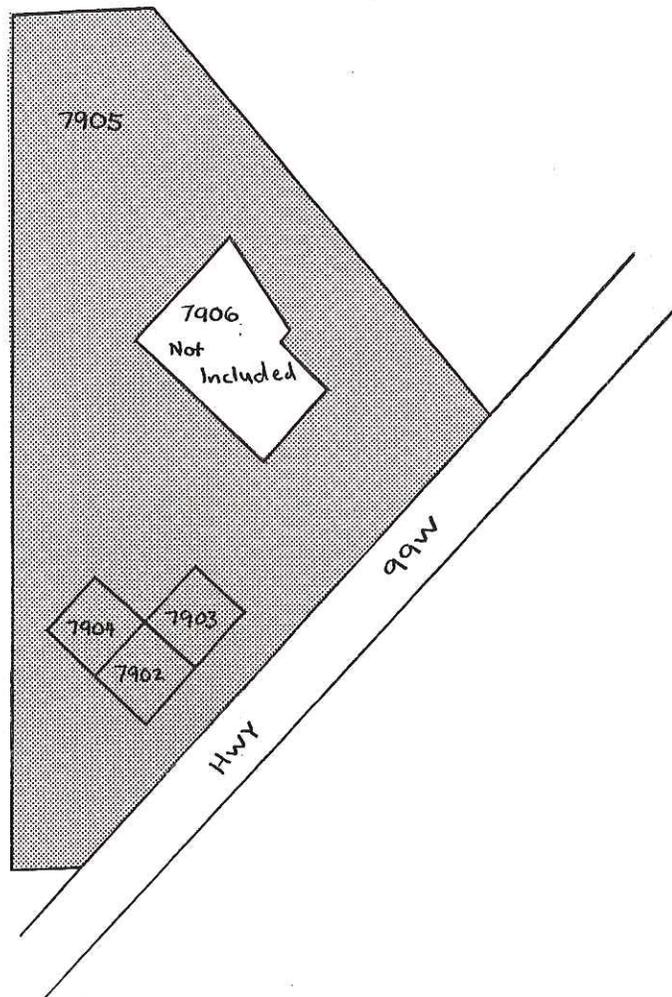
5. Michael G. Gunn, attorney for the applicants, testified concerning the size of the area studied, its vicinity to the subject property, and the results of the study.

6. Ken Friday, the County's Planning Manager, testified that the study area encompassed approximately 2,000 acres.

7. Consideration of other lands located within Exception Areas 1.5 and 1.8 was reasonable based upon the following factors:

- a. The subject parcel is located in the center of the study area (Rec 343);
- b. Exception Area 1.8 is 12 square miles in size (Rec 9);
- c. Hundreds of parcels zoned VLDR and/or LDR exist within the study area (Rec 463);
- d. The County designated the Exception Areas for rural residential use (Rec 6, 7). Presumably, the County intended the Exception Areas for residential housing; and
- e. Based upon these factors, the study area considered was reasonable because it contained similar properties in terms of growth, property values and proximity to amenities such as the cities of Newberg and Dundee, shopping and schools.

EXHIBIT "B" MAP FOR ORDINANCE NO. 712
ZONE CHANGE
ADOPTED BY THE YAMHILL COUNTY BOARD OF COMMISSIONERS
MAY 2, 2002
TO CHANGE OFFICIAL ZONING MAP FROM
AF-10 AGRICULTURE/FORESTRY SMALL HOLDING
TO
VLDR 2.5 VERY LOW DENSITY RESIDENTIAL



CHANGE APPLIES TO TAX LOT 3324-7902, 7903, 7904 AND 7905 AS DESCRIBED ABOVE

APPROXIMATE SCALE - 1 INCH = 400 FEET