

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 an Application for a)
 Comprehensive Plan Amendment and Zone Change)
 From PAI Public Facilities to NC Neighborhood) Ordinance 715
 Commercial for a One Acre Parcel, Tax Lot)
 5332BB- 00301, applicants Tony and Tonya)
 Zindel, PAZ-04-01, 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 July 11, 2002, Commissioners Robert Johnstone, Thomas E. E. Bunn, and Leslie Lewis being present.

THE BOARD MAKES THE FOLLOWING FINDINGS:

- A. Tony and Tonya Zindel applied for a Comprehensive Plan map amendment and zone change from PAI Public Facilities to NC Neighborhood Commercial on Tax Lot 5332BB-00301.
- B. A duly noticed public hearing was held by the Yamhill County Planning Commission on June 6, 2002. The applicants appeared and testified. No opponents appeared. The Commission duly deliberated and voted unanimously to recommend approval of the application.
- C. The matter went to the Board, who held a duly noticed public hearing on June 27, 2002. The applicant appeared and testified. No opponents appeared. The Board duly deliberated and voted unanimously to approve the application for the reasons set forth in Exhibit "A", the findings, attached and hereby incorporated by reference. NOW, THEREFORE:

IT IS HEREBY ORDAINED BY THE BOARD that the request by Tony and Tonya Zindel for a Comprehensive Plan map amendment and zone change from PAI Public Facilities to NC Neighborhood Commercial on Tax Lot 5332BB-00301 is approved with conditions as given in the Findings for Approval, attached to this ordinance as Exhibit "A" and hereby incorporated by this reference. A map is attached as Exhibit "B." This action being necessary for the health, safety, and welfare of the people of Yamhill County, this ordinance takes effect immediately.

DONE at McMinnville, Oregon this 11th day of July, 2002.

ATTEST:

CHARLES
County

By: 
Deputy KELSEY PETERS

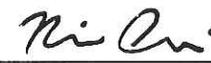


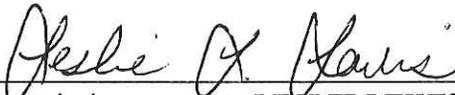
YAMHILL COUNTY BOARD OF COMMISSIONERS


Chairman ROBERT JOHNSTONE


Commissioner THOMAS E.E. BUNN

FORM APPROVED BY:


RICK SANAI
Assistant County Counsel


Commissioner LESLIE LEWIS

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B.O.# 02-508
Ordinance 715

FINDINGS FOR APPROVAL PAZ-04-01

HEARING DATE: June 27, 2002

DOCKET: PAZ-04-01

REQUEST: Approval of a Comprehensive Plan amendment from Public Facilities to Commercial; a zone change from PAI Public Assembly/Institutional to NC Neighborhood Commercial for a 1-acre parcel. Approval of the request would allow a drive-through espresso stand. The request also includes site design review for the espresso stand.

APPLICANT: Tony and Tonya Zindel

TAX LOT: 5332BB-301

LOCATION: 22355 Hopewell Road NW, Salem, Oregon 97304

CRITERIA: Sections 602, 801 and 1208 of the Yamhill County Zoning Ordinance; the Yamhill County Comprehensive Plan, OAR 660-12-0060 Transportation Planning Rule.

FINDINGS:

A. Background Facts:

1. Property size: The subject parcel is one (1) acre.
2. Access: Hopewell Road and Old Wheatland Road.
3. On-site Land Use: The property is level and almost rectangular in shape. The property contains an old schoolhouse which was converted into a residence. The applicants constructed a mobile espresso stand which they are using to sell coffee to the traveling public. They are also planning to sell locally grown produce and make fruit drinks from local produce. Although the property is in the close vicinity of Lafayette Highway it does not have a direct access onto the highway.
4. Surrounding Zoning and Land Use: Hopewell is a small non-incorporated community which supports a small neighborhood convenience store, an automobile repair business, an automobile sales lot and a small volunteer fire station. These businesses serve the immediate residential community as well as the larger farming community that surrounds Hopewell. At one point, Hopewell also had a schoolhouse until the larger school district absorbed the students into other schools in the area. Since then the schoolhouse has been converted into a residence, now

owned by the applicants. The properties in the immediate vicinity to the east and southeast share the same PAI Public Assembly Institutional zoning as the subject parcel. The parcels to the southwest of the subject parcel are zoned VLDR-2.5 Very Low Density residential, LI Light Industrial, PWS Public Works Safety Zone and NC Neighborhood Commercial zone. The Parcel zoned VLDR-2.5 and directly to the west of the subject parcel, across Hopewell Road, contains Mike Walsh Auto Sales used automobile sales lot. It is considered a legal nonconforming use. The parcel zoned LI contains Fenton Garage auto repair shop. The parcel zoned PWS contains Dayton's volunteer fire station. The parcel zoned NC contains Hopewell Store, a small neighborhood convenience store. Remaining parcels to the southwest are zoned VLDR-2.5 and contain rural residential uses. Remaining parcels to the north, east and southeast are zoned EF-80 Exclusive Farm Use and contain large agricultural operations.

5. Water: The parcel is on a Hopewell Water Company water system.
6. Sewage Disposal: Existing on-site septic system.
7. Fire Protection: Dayton Rural Fire District
8. Taxes: Market value.
9. Previous Actions: There are no other actions on file.
10. Description of Proposal: The applicants desire to utilize the property for a drive through espresso stand which would include selling local produce and making fruit drinks from local produce. The applicants already have a mobile structure that will lend itself to the operation of the business.
11. Exception area: The subject property was part of Code Area 5.8 adopted on April 23, 1980 as part of Exceptions Statement II. The property was part of an area identified as land "committed" to public use.
12. Other Issues: The proposed use is in close proximity to Lafayette Highway. However, the entrance onto the parcel is not directly from the highway. The highway is a two lane all weather paved surface road. There do not seem to be any limitations to the roadway at this time. The Oregon Department of Transportation stated that at this time ODOT does not have concerns with the request, however, they did have a concern regarding placement of an offsite sign.

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, since an exception to Statewide Planning Goals 3 and 4 has already been taken for the subject parcel, Comprehensive Plan goals and policies related to agricultural and forest lands are not applicable. The application addresses a number of Plan goals and policies. Plan goals and policies which may be pertinent are:

Yamhill County Revised Goals and Policies - Goal I.F.1. To maintain a rate and pattern of economic growth sufficient to prevent recurring high levels of unemployment and under-employment in the county...

The applicants state that this application will allow for an additional economic activity associated with marketing a product (coffee) to the traveling public and produce grown locally and fruit drinks also produced locally to the Hopewell Community. Additionally, the establishment of a new retail facility will enhance the economic base of the County and the Hopewell community.

Yamhill County Revised Goals and Policies - Goal I.G.1. To create an environment for commercial development which will preserve and enhance the vitality of the central business districts, assure safer, more convenient and attractive community and

neighborhood commercial centers, and protect prime commercial sites for use in advance of need.

The community of Hopewell has a small business center with a number of businesses. The proposed commercial activity is one of those businesses located in that center. The business is in harmony with the surrounding business activity and does not interfere with the commercial farm activities in the area. On the contrary, it provides an outlet for the farmers to be able to sell their produce in the community. The use fits within the character of the surrounding area. There are other commercial uses in the immediate vicinity. Referrals were mailed to appropriate jurisdictions. The referral sheets state that if no response is received, the decision-making authority will assume that there is no conflict between the request and the interests of the referred agency.

Yamhill County Revised Goals and Policies - Policy IV.A.1.g. Close cooperation will be encouraged among the cities, the school districts, and the county in respect to matters of school site selection, acquisition, planning, servicing, and joint use in keeping with the anticipated direction and pattern of urbanization within the urban growth boundary.

The subject parcel was used in the past as a school facility. However, since the schoolhouse is no longer in the service of the school district, the change of the Comprehensive Plan and the zone change will not have a negative effect on the property and its surrounding area.

Policy I.G.1.d. Yamhill County will adopt landscape and design criteria for all forms of commercial development occurring outside of urban growth boundaries.

At the time of development, the landscaping requirements will be applied to this property.

3. Regarding the need for the proposed use, criterion (B), the proposed espresso kiosk with sales of local produce is important to tourism, agricultural community and economic development in the county. The applicants indicated that they are providing service to the traveling public and are providing an outlet for local farmers. There are no other espresso retail kiosks in the vicinity of the applicants' property or along Lafayette Highway. Further, the applicants stated that they have approached the other business owners in Hopewell in hopes of locating the kiosk on their existing commercial properties and that none of the businesses in Hopewell have adequate space to accommodate another business. Hopewell Store encourages Old School Espresso, however there is not adequate traffic visibility, parking space, or room for another business, because of a blind corner. The blind corner at the store poses additional traffic hazard that is not encountered at the present location. Mike Walsh Auto Sales encourages Old School Espresso; however, due to having only one entrance with a deep ditch on each side, it is not compatible to have an additional business on this property. Fenton's Garage encourages Old

School Espresso, however due to the limitation of parking there is not enough room to accommodate auto repair and espresso combined.

4. Regarding criterion (C), the surrounding lands include commercial and rural residential uses. The commercial uses in the county are listed in Section A(4) above. With appropriate landscaping/screening of the use, the request should not be in conflict with the neighboring commercial uses. The surrounding rural residential uses have a greater chance of conflicting with the proposed use. Notice was mailed to approximately two dozen surrounding property owners. There were no objections received. The majority of the rural residential uses that are within close proximity of the subject property are on the west side of Hopewell Road. The road would provide some buffer from the adjoining residential uses. Based on the information received, the use is compatible with surrounding uses.
The public services necessary for the proposed business are similar to those needed for the existing residence. The services necessary for the use are already available. The proposed zone change should have no adverse effect upon public services. The property is on Hopewell Water Co. distribution line and is a part of a larger water system. The water association was notified and did not respond.
5. Regarding the availability of other lands already zoned for the proposed use, criterion 1208.02(D), consideration of the need for additional commercial land, the applicants submitted reasons why the land already zoned for commercial use can not be utilized for their business. The existing need for this particular zone change is demonstrated by the fact that there is no other similar establishment along Lafayette highway where travelers can refresh themselves and where they can purchase locally grown produce. The local community of Hopewell will also benefit by being able to purchase fresh produce from local farms. The market demand, and importance to the economy and citizens of this community, has been demonstrated by the positive responses from the community in form of questionnaires, and the existing patronage of the business. As to for availability of land, none of the businesses in Hopewell have adequate space to accommodate another business. There is no adequate traffic visibility, parking space, or room for another business at other locations and because of a blind corners, deep ditches, and poor visibility, other locations would pose traffic hazards. Additionally, the applicants' residence is located on the same parcel as the business. This will eliminate the need for commuting to their place of business.
6. Exception requirements, criterion (E), are addressed in section C of these findings.

C. Goal Exception Provisions and Analysis

1. Oregon Administrative Rule (OAR) 660-04 contains the requirements for taking goal exceptions. This area was approved for a “committed” exception as part of Code Area 5.8 adopted on April 23, 1980 as part of Exceptions Statement II, based on the number of small subdivision lots and existing rural residential, public, commercial and industrial development pattern. The area was zoned PAI, which is primarily a public facility zone. The Board of Commissioners has previously found that a new exceptions is not required because a “committed exception” to Goals 3 and 4 adopted prior to 1986 did not limit the future use of the exception area. This is because the “committed exception” was taken before the effective date of the rule (3/20/86). Therefore, no additional goal exception is required.

D. Goal 12 (Transportation Rule) Provisions and Analysis

1. Because of the proximity of the proposed espresso kiosk to Lafayette Highway, the provisions of the Transportation Planning Rule, implementing Goal 12, should be addressed. OAR 660-12-060 contains these provisions:

(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.*

The applicant provided a 24 hour Traffic Study Report dated 12/21 to 12/22/01. The AM peak volume was 111 cars per hour, PM peak volume was 244 cars per hour. The proposed business will not attract additional traffic or noise to the community, it will serve persons already going through the community and will add to the appeal of the community. Because the espresso stand does not enter or exit onto Lafayette Highway, the provisions of the Transportation Planning Rule, implementing Goal 12, are not relevant. A notification was sent to Oregon Department of Transportation which indicated that in recent discussion with the Region 2 Planner, at this time ODOT does not have concerns with the request for approval of a Comprehensive Plan amendment from Public Facilities to Commercial and the zone change from PAI, Public Assembly/Institutional to NC, Neighborhood Commercial Zone for 1-acre parcel. Therefore, ODOT is also agreeing that this proposal does not implicate the Transportation Rule. However, the Transportation Department has concerns with any placement of business signs located away from the business property and visible to/from the highway. If the business/property owner desires to install an off-premise sign away from the business property and visible to the highway, the individual should contact Jim Odom, ODOT Outdoor Advertising, at telephone (503)986-3546, to ensure compliance with current State and Federal laws. The condition of approval of the Site-Design Review application which is a part of this request will address the sign issue.

E. Site Design Review Provisions and Analysis

1. Site design review is required for any development in an NC district. Section 1102.02 of the YCZO governs site design review. Review of a site development plan shall be based upon consideration of the following:
 - (1) *Characteristics of adjoining and surrounding uses;*
 - (2) *Economic factors relating to the proposed use;*
 - (3) *Traffic safety, internal circulation and parking;*
 - (4) *Provisions for adequate noise and/or visual buffering from non-compatible uses;*
 - (5) *Retention of existing natural features on site;*

- (6) *Problems that may arise due to development within potential hazard areas.*
- (7) *Comments and/or recommendations of adjacent and vicinity property owners whose interests may be affected by the proposed use.*

2. Regarding criterion (1), these have been discussed in Section A(4) above.
3. Regarding criterion (2), the applicant stated that the business will add to the community in a very beneficial way. People traveling through this area will be inclined to stop and get a cup of coffee, this will raise the awareness of the other businesses in the community, and are likely to stop and visit them. The Espresso Stand will be selling local produce and making fruit drinks from local produce, thus adding to local economy of this community. The business is not in direct competition with any other local businesses, therefore adding to the community an additional resource. Further, the applicant stated that providing a place for people to stop and take a break while traveling will help lower the fatigue factor of those people traveling, thus lowering the accidents that occur when people get tired. The resulting economic benefit from this is that, if just one accident is prevented in a year, tens of thousands of dollars could be saved. Then the applicant stated that the benefit for his family is the ability to work from their home and be able to supervise their children, and guide them to grow up into being responsible adults. The economic factors of children left to their own devices, is proven negative by all that we know of what direction some of those children take, getting into drugs, theft, and furtive sexual activity, causing undue hardship on the community and public weal.

All neighbors were being notified of this action. No one appeared in opposition at the two public hearings.

4. Regarding criterion (3), the applicant stated that traffic safety is very good, as the driveways to this property are in a 35 mph zone, and not located off the main highway. There are two entrance and exits so that traffic can easily enter and exit this property from 2 different streets. There is adequate parking, with room for up to 15 cars. There is more than sufficient room for cars to turn around and return from the driveway they came in or continue out the direction they were going. A 24 hour Traffic Study Report is attached, dated 12/21 to 12/22/01, AM peak volume was 111 cars per hour, PM peak volume was 244 cars per hour. This business does not attract additional traffic or noise to the community and it will serve persons already going through the community. By providing a place for tired drivers to stop, relax and get a cup of coffee, the establishment adds to the safety of all travelers through this area.
5. Regarding criterion (4), the applicant stated that there are no non-compatibility issues. Noise is not an issue as this is on the outside edge of the community and cars stopping to buy a cup of coffee do not create extra noise over and above the normal traffic passing by. People relaxing in the parking area do not create more noise than children playing in the yard. The visual aspect

of this business will enhance the community, not detract. Also, the natural vegetation growing on the parcel will help to screen the activity from other properties.

6. Regarding criterion (5), the applicant indicated that the oak tree's on the property are not being altered to accommodate this business. All existing trees and natural landscape will stay intact. The existing features will be enhanced as added landscaping and beautification are in place, by added flowers and shrubs. Using the existing driveways for access will allow for no modifications needed to the existing landscape.
7. Regarding criterion (6), the western 1/5 of the subject parcel is in the 100-year floodplain of Palmer Creek. According to the applicants' map and photos, the mobile kiosk is at the eastern edge of that floodplain. The applicant stated that since the flood of 1996, the County had modified and increased the size and capacity of the drainage run off ditches, which divert water from and around the subject property. Since then there has not been any flooding on this property. Because the floor of espresso kiosk is 25 inches above the ground and because it is mobile it does not create any problems that may be caused by a flood. Therefore, there are no problems due to potential hazard.
8. Regarding criterion (7) above, the applicants have attached copies of the signed comments of local property owners: Mike Walsh, owner, Mike Walsh Auto, who stated that "it is great idea, no problem, Hopewell needs more businesses." Yvette Carranza, owner of the Hopewell Store, said that "it is a nice looking espresso and it adds to our small neighborhood, I see no problems with it." Hoy Gales, owner of Fenton Garage, stated that he likes it, and he has no problems with the business. The applicant further stated that in the evaluation of all the other possible locations for this business in the community, both commercial and residential properties, this property makes the most sense as no modifications are needed to accommodate it. There were no objections, and no one appeared in opposition at the two public hearings.

CONCLUSION:

1. The request is for approval of a Comprehensive Plan amendment from Public Facilities (P) to Commercial (C) and a zone change from PAI Public Assembly/Institutional to NC Neighborhood Commercial. A site design review approval to allow a drive-through espresso stand.
2. The proposed zone change is consistent with Comprehensive Plan goals and policies, and the request satisfies Section 1208.02 of the Yamhill County Zoning Ordinance. There are no other lands in the immediate vicinity that would allow an espresso stand. With appropriate landscaping, the use can be made compatible with surrounding uses.

Findings

Docket PAZ-04-01(Zindel)

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- 3 The request satisfies the Transportation Planning Rule.

- 4 The request satisfies the Site Design criteria of Section 1102 of the Yamhill County Zoning Ordinance.

The application is approved, with the following conditions of approval:

- 1 There will not be an off-premise business sign along Lafayette Highway except that which is allowed by Oregon Department of Transportation. The applicant will have to contact ODOT if they wish to post a directional sign in the right-of-way of Lafayette Highway.

- 2 The site shall be landscaped and maintain in orderly manner. The applicants shall provide a landscape plan along Hopewell and Old Wheatland Roads, which shall be reviewed and approved by the Planning Director

3. There shall be no food preparation on site.

4. The existing septic tank shall be inspected by the county sanitarian.

5. All necessary building, electrical and plumbing permits shall be obtained from the County Building Department and appropriate state agencies.

Yamhill County Scale Map

EXHIBIT "B"

PAZ-04-01

ZINDEL

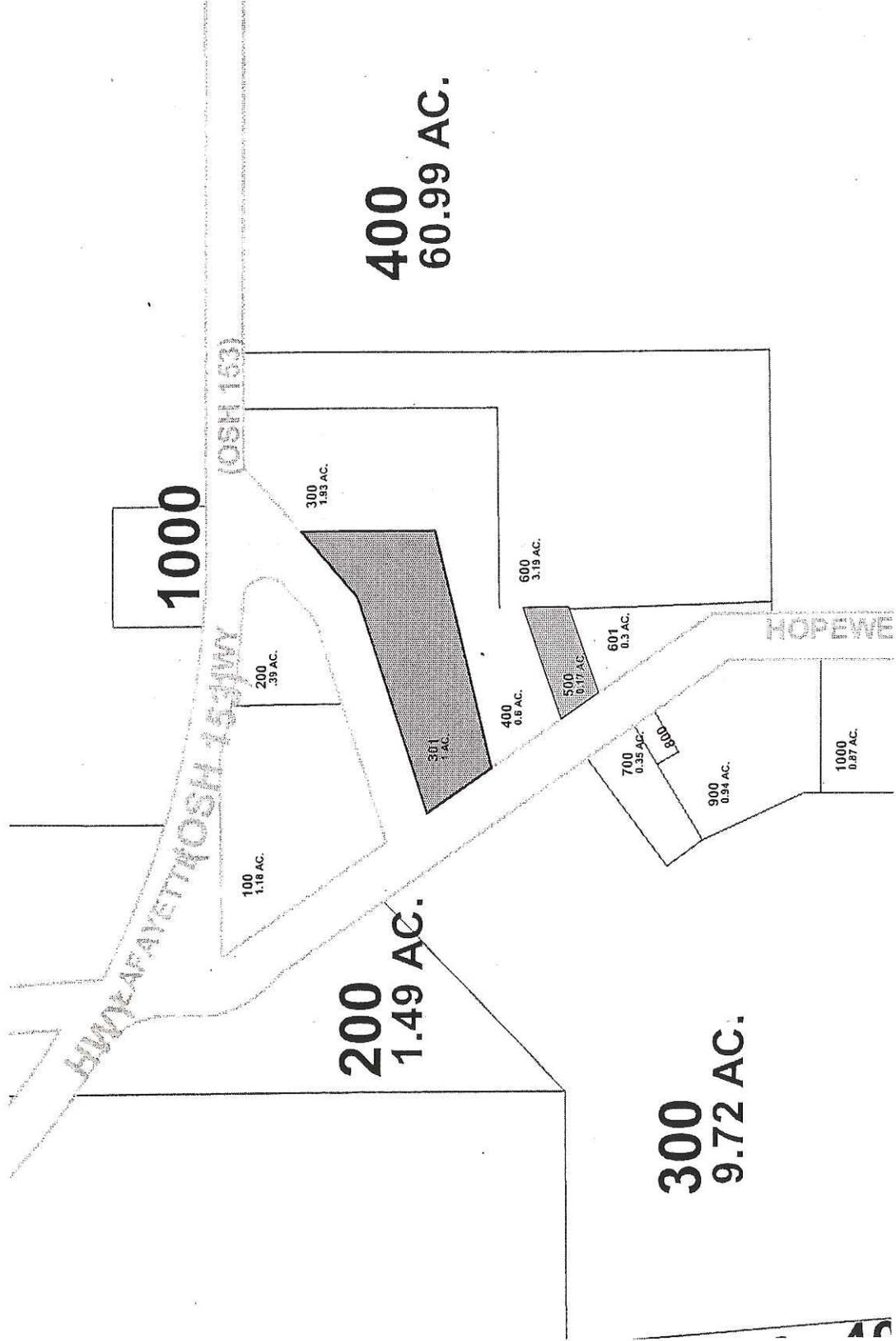
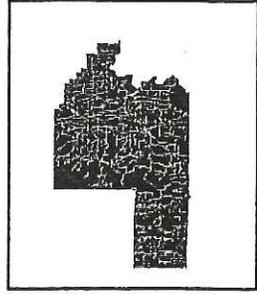
Identify

Taxlot
R5332BB 00301
Tax Account
001481259
Square Feet
0
Acres
0.17
Owner/Agent
ZINDEL TONY



1 in. = 201ft.

Vicinity



5/3/2002

This map was produced using the Yamhill County GIS data. The GIS data is maintained by the county to support its governmental activities. The county is not responsible for map errors, omissions, misuse or misinterpretation.

Yamhill County Scale Map

Identify

Taxlot
R5332BB 00301
Tax Account
001481259
Square Feet
0
Acres
0.17
Owner/Agent
ZINDEL TONY



1 in. = 1612 ft.

Vicinity

