

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 an Ordinance Approving a Plan Amendment )  
 and Zone Change on Tax Lot 3325BD-400 from VLDR-2 ½ )  
 Very Low Density Residential to NC Neighborhood Commer- )  
 cial and Authorizing Similar Use Approval to Recognize a ) **ORDINANCE 694**  
 Towing Business as a Use Allowed in the Neighborhood )  
 Commercial Zone; Applicant Darrell Mount, Planning Docket )  
 PAZ-05-00; Declaring an Emergency. )

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY, OREGON ("the Board") sat for the transaction of county business in formal session on January 25, 2001, commissioners Robert Johnstone, Thomas E.E. Bunn and Leslie Lewis being present.

THE BOARD MAKES THE FOLLOWING FINDINGS:

A. Darrell Mount ("the Applicant") has applied for a Plan Amendment and Zone Change on Tax Lot 3325BD-400 from VLDR-2 ½ Very Low Density Residential to NC Neighborhood Commercial. The Applicant also applied for authorization for Similar Use Approval to recognize a towing business as a use allowed in the Neighborhood Commercial zone. County records in this matter are found in Planning Docket PAZ-05-00.

B. On October 5, 2000 and November 2, 2000 the Planning Commission reviewed the request. On November 2, 2000 the Yamhill County Planning Commission held a public hearing to consider the application and voted 6-3 to recommend the Board deny the application. In accordance with the Yamhill County Zoning Ordinance, the Board set a public hearing for January 11, 2001 to consider the application.

C. On January 11, 2001 the Board held a public hearing in Room 32 of the county courthouse to consider the application. The Board received evidence and testimony at the hearing. At the conclusion the public hearing on January 11, 2001 the chair announced the record of the hearing was closed to the receipt of additional evidence. The Board then deliberated the issue and determined that the applicant had satisfied relevant approval standards and the application should be approved, subject to conditions. The matter was continued until January 25, 2001 for staff to prepare findings in support of the Board's tentative decision of January 11, 2001. NOW, THEREFORE,

THE YAMHILL COUNTY BOARD OF COMMISSIONERS ORDAINS AS FOLLOWS:

Section 1. Application allowed. Subject to the conditions in Section 2, the application for a Plan Amendment and Zone Change in Planning Docket PAZ-05-00 is granted and the Plan Map designation on Tax Lot 3325BD-400 is changed from VLDR Very Low Density Residential to C

Commercial and the Zone Map designation is changed from VLDR 2.5 Very Low Density Residential to NC Neighborhood Commercial.

Section 2. Conditions. The approval provided in Section 1 is subject to the following conditions:

1. With the exception of single vehicle sales, all cars, vehicles and trailers shall be stored behind a sight-obscuring fence. The fence shall be installed prior to the operation of the business. The Arborvitae does not satisfy this requirement.
2. The vehicles shall not be stored along the state highway or the Bienz Road right-of-way.
3. There shall be no more than one vehicle on display for sale at any time.
4. The applicant shall provide a landscape plan along Bienz Road, which shall be reviewed and approved by the Planning Director. The landscaping shall be installed prior to the operation of the business.
5. The applicant shall re-design the access to satisfy ODOT standards.

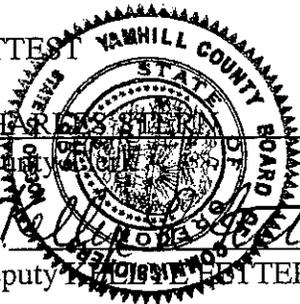
Section 3. Similar Use Approval. For Tax Lot 3325BD-400, the Board hereby grants Similar Use Approval to recognize a towing business as a use allowed in the Neighborhood Commercial Zone

Section 3. Findings in Support. In support of this Ordinance, the Board adopts the Findings attached and incorporated as Exhibit "A."

Section 4. Emergency clause. This ordinance being necessary for the health, safety, and welfare of the citizens of Yamhill County, and an emergency having been unanimously declared to exist, is effective immediately.

DONE at McMinnville, Oregon on January 25, 2001.

ATTEST



CHAIRMAN  
County of Yamhill  
By: *[Signature]*  
Deputy CLERK

YAMHILL COUNTY BOARD OF COMMISSIONERS

*Robert Johnstone*  
\_\_\_\_\_  
Chairman ROBERT JOHNSTONE

*Thomas E. E. Bunn*  
\_\_\_\_\_  
Commissioner THOMAS E. E. BUNN

FORM APPROVED BY:

*John M. Gray, Jr.*  
\_\_\_\_\_  
JOHN M. GRAY, JR.  
Yamhill County Counsel

*Leslie Lewis*  
\_\_\_\_\_  
Commissioner LESLIE LEWIS

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**EXHIBIT "A"**  
**FINDINGS FOR APPROVAL**  
**(Planning Docket PAZ-05-00; Darrell Mount)**

**DATE OF BOARD OF COMMISSIONERS HEARING:** January 11, 2001

**DATE OF BOARD OF COMMISSIONERS FINAL DECISION:** January 25, 2001

**REQUEST:** PAZ-05-00

**REQUEST:** Approval of a Comprehensive Plan amendment from Very Low Density Residential (VLDR) to Commercial (C) and a zone change from VLDR-2 ½ Very Low Density Residential to NC Neighborhood Commercial. A similar use approval to recognize a towing business as a use allowed in the neighborhood commercial zone is also requested.

**APPLICANT:** Darrell Mount

**REPRESENTATIVE:** Michael Gunn

**TAX LOT:** 3325BD-400

**LOCATION:** 205 Bienz Road, Dundee, OR 97115

**REVIEW CRITERIA:** Sections 502, 602 and 1208.02 of the Yamhill County Zoning Ordinance; the Yamhill County Comprehensive Plan. OAR 660-12-0060 Transportation Planning Rule.

**FINDINGS FOR APPROVAL:**

**A      Background Facts**

1. Property size: 0.49 acres.
2. Access: Bienz Road
3. On-site Land Use: The property is level and triangular in shape. The property contains a residence and the applicant has requested a variance to construct a 50' x 60' shop building. Although the property has access to Bienz Road it is in the immediate vicinity of Highway 99W.
4. Surrounding Zoning and Land Use: The property in the immediate vicinity south and east of Highway 99W is zoned VLDR 2.5 Very Low Density Residential. The remainder of the surrounding county property is zoned for residential use, including VLDR-1, VLDR-2.5, AF-10 and city residential zoning. An exception to this is north and northwest of the subject property. Near the intersection of Fox Farm Road and Hwy 99W is a parcel that is zoned HC Highway

Commercial (used for bark dust sales). There are also two areas zoned RI Resource Industrial. One is used for the Dundee Springs Winery and the other contains the Duck Pond Cellars Winery. Both the HC and RI zones are in close proximity to Highway 99W. Also, near the Fox Farm Road intersection is a motorcycle parts sales that is a nonconforming use. Inside the city limits of Dundee there are commercial uses on either side of the highway. On the west side is a used car dealership. On the east side is John's Restaurant (which is in the process of moving to the opposite side of the Highway).

5. Water: City of Dundee.
6. Sewage Disposal: On-site septic system.
7. Fire Protection: Dundee Rural Fire District
8. Soils: Sheet 21 of the Yamhill County Soil Survey shows that the parcel is composed entirely of Woodburn soils, WuB, with an agricultural capability of Class II.
9. Taxes: Market value.
10. Previous Actions: Although this is not yet a "previous action" because a decision has not yet been issued, the applicant has requested a variance to the setback and parcel coverage standards.
11. Description of Proposal: The applicant desires to utilize the property for a vehicle towing facility (which will involve storing towed vehicles at the property for a short period of time). The applicant already parks his tow truck at the residence. The only change will be the storage of towed vehicles on the subject property.
12. Exception area: The subject property was part of code area 1.8 adopted on April 23, 1980 as part of Exceptions Statement II. The property was part of an area identified as land "committed" to rural residential use.
13. Other Issues: The proposed use is in close proximity to Highway 99W. The highway narrows down from four to two lanes immediately outside of Dundee city limits. This creates a bottleneck which causes frequent and heavy traffic jams during peak hours of travel.

**B. Similar Use Provisions and Analysis**

1. The applicant states that the towing business is permitted use as an accessory use (to automobile service station and related uses) in the "Neighborhood Commercial" zone. The definition of Accessory Use is: *A use which is incidental and secondary to the principal use on the same parcel.* A towing business related to a service station would be an accessory use. However, staff does not interpret the proposed towing business as an accessory use because the towing business is the principal use of the parcel. A similar use approval is necessary to have a towing business as the principal use of the property.

The purpose of Section 1206 of the YCZO is to provide for those uses not specifically listed in a particular zoning district but which are similar in character, scale and performance to the permitted uses specified in zoning districts in which a similar use may be authorized.

Subsection 602.04 in the NC Neighborhood Commercial zoning district states that "Any use not specifically listed as a permitted or conditional use in this district that is similar in character, scale and performance to the permitted uses specified in subsection 602.02 may be allowed as a similar use, subject to the provisions of Section 1206, and pursuant to the Type A application procedure set forth in Section 1301."

2. Subsection 1206.02 of the YCZO lists the review criteria which must be met before a similar use may be authorized pursuant to subsection 1206.01 above and subject to the Type A application procedure set forth in Section 1301 and provided that the applicant demonstrates that the proposed use satisfies the following criteria:
  - A. *The use is consistent with the purpose and scope set forth in subsection 1206.01 and with the purpose of the underlying zoning district; and*
  - B. *The use conforms with the applicable standards and limitations of the underlying zoning district.*
3. Regarding criterion 1206.02(A), a similar use must, by definition, demonstrate that the use is similar in character, scale and performance to the permitted uses specified in the zone. The NC zone allows an automobile service station or automobile repair garage as a permitted use. Automotive towing is often found associated with either of these uses. Automotive towing is similar in character, scale and performance to both a service station and repair garage.
14. With approval of this request, the standards and limitations of the NC zone would be applied to the property.

**C. 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 which the Planning Commission and Board may review. Plan goals and policies which staff feels may be pertinent are:

*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 applicant states that this use fits within the character of the surrounding area. There are other commercial uses in the immediate vicinity both inside and outside of the Dundee city limits. This use is one that is not typically found in the downtown central business district and may be more suitable for the edge of town. Since this use is right on the edge of the city, the city's views should be given appropriate weight in making the decision. Referrals were mailed to appropriate jurisdictions. The city of Dundee has not objected to the use but has suggested some conditions. 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.

*Policy I.G.1.b. The county will discourage the expansion of strip commercial and provide for the redevelopment of strip commercial areas.*

Due to its close proximity to Highway 99W and the location of other commercial uses, this location could be interpreted as strip development. However, as noted above the jurisdiction that would be most affected by this development, Dundee, has voiced no objection to the use.

*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 availability of other lands already zoned for the proposed use, criterion 1208.02(B) and (D), the applicant stated that he surveyed approximately 12.5 square miles of the surrounding area and found no other NC Neighborhood Commercial zone in this area of the county. The applicant did survey potential available properties inside the City of Dundee and property in the county zoned Light and Heavy Industrial. This survey is detailed in the Memorandum to the Board of Commissioners, dated January 3, 2001 and was submitted after the Planning Commission's recommendation. Regarding property in the City of Dundee the applicant indicated that a towing business is only allowed as a conditional use, not as a permitted use. The applicant found seventeen other sites within Dundee which are zoned Community Commercial. Of those seventeen properties eleven are already in use or have improvements which would prevent a towing facility. Of the six remaining the applicant submitted individual reasons why these were rejected which include size, access and environmental problems.

Both the light and heavy industrial zones allow uses similar to those requested. The LI zone Section 702.02(B) allows *Farm, industrial or contractors equipment or materials manufacture, storage, sales, repair or service, including automobile repair garage.* The HI zone, Section 703.02(C) allows *Auto wrecking yards.* Both of these zones would allow the towing business as a permitted use. The applicant found that there are 15 other LI and HI zones in the applicant's study area. Of these 15 sites, 14 of them have existing improvements and are in use. The lone site that did not have improvements is owned by Southeast Paper Manufacturing Co. and due to its location is not suitable for a towing facility.

As to the specific need for the particular uses allowed by the requested zone, as required by Section 1208.02(B), the applicant pointed to the benefits of the service provided and the opportunity for additional employment. The applicant stated both of these goals are supported by the comprehensive plan. The applicant also explained the benefits to having a tow facility at this end of Dundee. While it is true that this hauler would not always be called it is true that a tow facility at this location could save 8 to 10 minutes of travel time when clearing a wreck on the Dundee side of the Newberg-Dundee corridor. Due to the traffic tie-ups that often occur within this corridor, 8 to 10 minutes could be a considerable time savings which undoubtedly is important to the citizenry of the county.

4. Regarding criterion (C), the surrounding lands include commercial and rural residential uses. The commercial uses in the county include two wineries, a barkdust/nursery business and motorcycle parts sales. With appropriate landscaping/screening of the use, the request should not be in conflict with the neighboring commercial/industrial 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 east side of the railroad. The railroad 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 towing business are similar to those needed for the existing single family dwelling. The services necessary for the use are already available. The proposed zone change should have no adverse effect upon public services.

5. Exception requirements, criterion (E), are addressed in section C of this report.

### **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 in 1980, based on the number of small subdivision lots and existing rural residential development pattern. The area was zoned VLDR-2.5, which is primarily a residential zone but allows some limited farm uses. 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 winery to Highway 99W, 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 (2), the applicant has submitted a transportation report from Tom R. Lancaster of Lancaster Engineering. The study looked at traffic volumes of Dayton Avenue near Bienz Road. The study stated that the new facility may add an additional 20 trips to Bienz Road and Dayton Avenue. Mr. Lancaster concluded that this amount of traffic would have no significant impact on the capacity of Dayton Avenue. The study did not analyze the additional traffic expected onto Highway 99W. The subject property is within close proximity to the most significant traffic snarls of Yamhill County. While the traffic engineer's estimate is only for an additional 20 trips per day, there will certainly be trips onto Highway 99W. The applicant has worked with ODOT to assure that the use will be compatible with Highway 99W. Representatives from ODOT have visited the site and made suggestions to changing the access. With implementation of these suggested changes the use would not have an adverse affect on traffic in the surrounding area. With conditions the use complies with the Transportation Planning Rule.

## CONCLUSIONS:

1. The request is for approval of a Comprehensive Plan amendment from Very Low Density Residential (VLDR) to Commercial (C) and a zone change from VLDR-2 ½ Very Low Density Residential to NC Neighborhood Commercial. A similar use approval to recognize a towing business as a use allowed in the neighborhood commercial zone is also required.
2. The towing business complies with Section 1206 in that the use is similar in character, scale and performance to other uses allowed in the NC Neighborhood Commercial zone.
3. 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 a towing business. With appropriate landscaping, the use can be made compatible with surrounding uses.
4. The request satisfies the Transportation Planning Rule.

## DECISION:

The application for a Plan Amendment and Zone Change in Planning Docket PAZ-05-00 is approved, subject to the following conditions:

1. With the exception of single vehicle sales, all cars, vehicles and trailers shall be stored behind a sight-obscuring fence. The fence shall be installed prior to the operation of the business. The Arborvitae does not satisfy this requirement.
2. The vehicles shall not be stored along the state highway or the Bienz Road right-of-way.
3. There shall be no more than one vehicle on display for sale at any time.
4. The applicant shall provide a landscape plan along Bienz Road, which shall be reviewed and approved by the Planning Director. The landscaping shall be installed prior to the operation of the business.
5. The applicant shall re-design the access to satisfy ODOT standards.

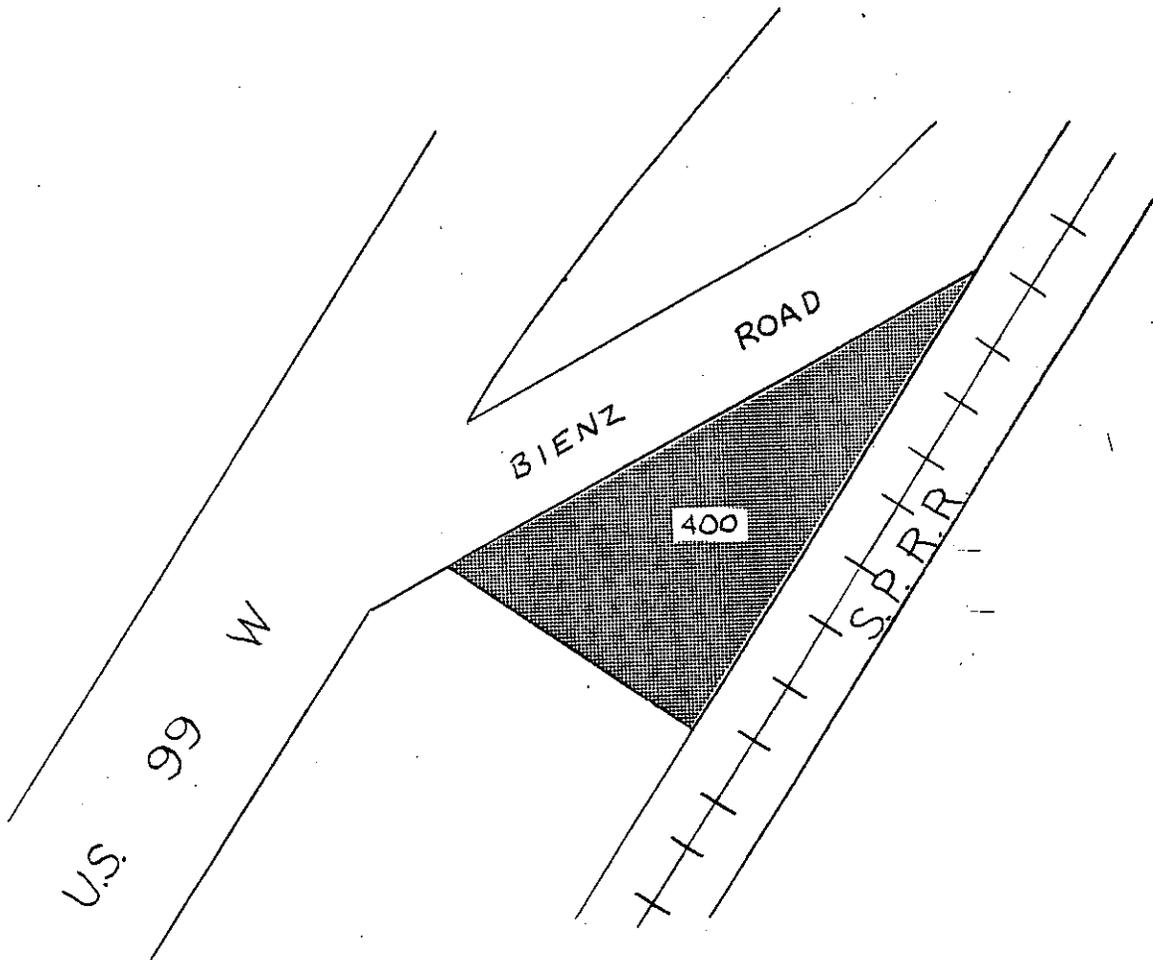
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EXHIBIT MAP FOR ORDINANCE NO. 694

PLAN AMENDMENT/ZONE CHANGE  
ADOPTED BY THE YAMHILL COUNTY BOARD OF COMMISSIONERS

JANUARY 25, 2001

TO CHANGE THE PLAN DESIGNATION  
FROM *VLDR-VERY LOW DENSITY RESIDENTIAL* TO *C - COMMERCIAL*  
AND THE OFFICIAL ZONING MAP  
FROM  
*VLDR 2.5 -VERY LOW DENSITY RESIDENTIAL*  
TO  
*NC - NEIGHBORHOOD COMMERCIAL*



- CHANGE APPLIES TO TAX LOT 3325BD-400 DESCRIBED ABOVE
- MAP PREPARED BY THE YAMHILL COUNTY PLANNING DEPARTMENT