

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 Amending)
 the Official Yamhill County Zoning Map)
 From AF-10 Agriculture Forestry Small)
 Holding to VLDR-2 1/2 Very Low Density)
 Residential on tax lots 3313-3400, 3500, 3300,)
 3100, 3000, 2900, 2800, 2700, and 2400,)
 and from EF-20 to VLDR-2 1/2 on tax lots)
 3313-3600, 2501, 2502, and 2503;)
 Applicants Timothy R. and Lorena K. Mason,)
 Richard Sattler, James Jr. and Jacqueline Fisher,)
 Mark and Colleen Bourassa, and Marilyn Olson;)
 Docket Z-03-97; and Declaring an Emergency.)

ORDINANCE 645

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY, OREGON (the Board) sat for the transaction of county business in special session on May 14, 1998, Commissioners Ted Lopuszynski, Thomas E. E. Bunn, and Robert Johnstone, being present.

THE BOARD MAKES THE FOLLOWING FINDINGS:

A. On November 5, 1997, Timothy R. and Lorena K. Mason et al filed an application to change the zoning designation from AF-10 to VLDR-2 1/2 on tax lot 3313-3400, 3500, 3300 and 3100. Thereafter, the Director of the Department of Planning and Development included a zone change from AF-10 to VLDR-2 1/2 on neighboring parcels tax lots 3313-3000, 2900, 2800, 2700 and 2400, and a zone change from EF-20 to VLDR-2 1/2 on tax lot 3313-3600, 3313-2501, 3313-2502, and 3313-2503 in Docket No. Z-03-97.

B. On February 5, 1998, the Yamhill County Planning Commission held a public hearing on Planning Dockets Z-03-97, and recommended approval of the application.

C. On May 14, 1998, the Board held a public hearing to consider Docket Z-03-97, and at the conclusion of the hearing, the Board voted unanimously to approve the application.

D. The Board has determined that adoption of this ordinance will be in the best interest of the citizens of Yamhill County; Now, Therefore,

THE YAMHILL COUNTY BOARD OF COMMISSIONERS ORDAINS AS FOLLOWS:

3098-336 EFD

Section 1. The Official Yamhill County Zoning Map is hereby amended to change the zoning designation from AF-10 Agriculture Forestry Small Holding to VLDR-2 1/2 Very Low Density Residential on tax lots 3313-3400, 3500, 3300, 3100, 3000, 2900, 2800, 2700, and 2400, and from EF-20 to VLDR-2 1/2 on tax lots 3313-3600, 2501, 2502, and 2503, Applicants Timothy R. and Lorena K. Mason, Richard Sattler, James Jr. and Jacqueline Fisher, Mark and Colleen Bourassa, and Marilyn Olson; Docket Z-03-97, as provided and specified in the attached Exhibit "A", which is by this reference made a part of this ordinance.

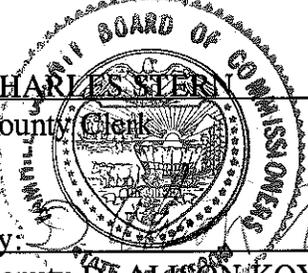
Section 2 Severability Clause. If any section or subsection contained in this ordinance is found to be invalid or unconstitutional by a court of competent jurisdiction, the remainder of this ordinance shall continue in full force and effect unless those parts, standing alone, are incapable of being executed in accordance with legislative intent.

Section 3. 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 14th day of May, 1998

ATTEST

YAMHILL COUNTY BOARD OF COMMISSIONERS

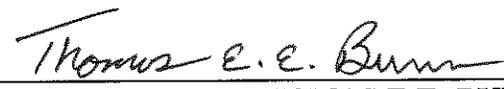

CHARLES SPER
County Clerk
By: 
Deputy D. ALISON KOYAMA


Chairman TED LOPUSZYNSKI


Commissioner ROBERT JOHNSTONE

FORM APPROVED BY:


JOHN C. PINKSTAFF
Assistant County Counsel


Commissioner THOMAS E.E. BUNN

1u\z-3-97.wpd

Accepted by Yamhill County
Board of Commissioners on
5/14/98 by Board Order
#BO 98-336

ORDINANCE 645

EXHIBIT "A"

PLANNING COMMISSION'S APPROVAL: February 5, 1998

BOARD OF COMMISSIONER'S APPROVAL: May 14, 1998

DOCKET NO.: Z-03-97

REQUEST: Zone change from AF-10 Agriculture Forestry Small Holding to VLDR-2 ½ Very Low Density Residential on tax lots 3313-3400, 3500, 3100, 3000, 2900, 2800, 2700, and 2400, and from EF-20 to VLDR-2 ½ on tax lots 3313-3600, 2501, 2502, and 2503. All parcels have a VLDR - Very Low Density Residential Comprehensive Plan designation. The original application was for a zone change from AF-10 to VLDR 2-1/2 on tax lot 3400. The Yamhill County Planning Director added neighboring parcels, Tax Lots 3313-3000, 2900, 2800, 2700 and 2400, and 3600 to this request to eliminate a possible spot zoning situation. Tax Lot 3313-3600 is zoned EF-20,. After being contacted by additional property owners, the Planning Director added Tax Lots 3313-2501, 2502 and 2503, in the zone change from EF-20 to VLDR 2-1/2.

APPLICANTS: Timothy R. and Lorena K. Mason (Tax Lot 3313-3400). Richard Sattler (Tax Lot 3313-3500). James Jr. and Jacqueline Fisher (Tax Lot 3313-3600). Mark and Colleen Bourassa (Tax Lot 3313-3300). Marilyn Olson (Tax Lot 3313-3100).

TAX LOTS: 3313-3400, 3500, 3600, 3300 and 3100. Neighboring parcels to be included by the Planning Director in this request are 3313-3000, 2900, 2800, 2700, 2501, 2502, 2503 and 2400.

LOCATION: An area is bounded by Hwy 240 to the north, Chehalem Creek to the west, Dillon Road to the south and a section line between Section 13, T.3 S.- R.3 W. and Section 18, T.3 S.- R.2 W. approximately ½ mile west of Newberg.

AREA: Approximately 104 acres.

CRITERIA: Sections 501, 502 and 1208.02 of the Yamhill County Zoning Ordinance; the Yamhill County Comprehensive Plan.

FINDINGS:**A. Background Facts**

1. Access: Dillon Road, Larkins Lane and Hwy 240 in Newberg.
2. On-Site Land Use: The area is relatively level and in small scale agricultural use, with a few deciduous trees along the southern boundaries. The subject area contains ten dwellings and number of accessory buildings.
3. Surrounding Land Use: The surrounding area to the north, east and south is primarily rural residential in character, with some small-scale farm uses. The surrounding parcels are similar to the subject area. West of the subject area are small to medium size agricultural uses. Chehalem Creek is the dividing point between the agricultural and rural residential uses. Rural residential parcels to the north, east and south generally range in size from approximately 1.5 to 5 acres. Parcels to the west across Chehalem Creek range in size from 5 to 35 acres.
4. Surrounding Zoning: Land to the northwest, north, east and south is zoned VLDR-2.5 and VLDR-1. Land to the west is zoned EF-20. However, the parcels on the east side of Chehalem Creek have the Comprehensive Plan designation of Very Low Density Residential.
5. Water: The applicants indicated that the parcels are and will be served by well, however, portion of the parcels are in the N.W. Newberg Water Association boundary. The City of Newberg indicated that most of the existing residences are currently on the City water system due to a poor aquifer, but the official also stated that any new parcels would not be considered for City hookups. Water Master indicated that existing wells in the area average 180 feet in depth and the average yield is over 10 gall./min.
6. Sewage Disposal: Septic systems are the only option in this area.
7. Previous Actions: No documentation of previous actions exists.

B. Ordinance Provisions and Analysis

1. The zone change request must comply with the standards and criteria in the *Yamhill County Zoning Ordinance (YCZO)* Section 1208.02. These provisions are:
 - (A) *That the proposed change is consistent with the goals, policies, and any other applicable provisions of the Comprehensive Plan.*

- (B) *That 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) *That 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) *That other lands in the county already designated for the proposed use are either unavailable or not as well-suited for the anticipated uses due to location, size, or other factors.*
- (E) *That the amendment is consistent with the current Oregon Administrative Rules for exceptions, if applicable.*

These criteria are addressed, respectively, in Findings B.2 through B.6, below.

- 2. The Board finds that the request is consistent with the goals, policies, and any other applicable provisions of the Comprehensive Plan and therefor satisfies YCZO Section 1208.02 (A) as follows:
 - 2.1 A zone change to VLDR is consistent with the Comprehensive Plan designation of VLDR. Comprehensive Plan policy (a) of Goal I.B.2 states:

Yamhill County will continue to recognize that the appropriate location of very low density residential development is in designated large areas where commitments to such uses have already been made through existing subdivision, partitioning, or development and by virtue of close proximity to existing urban centers;....

The Board finds that the request complies with this policy because the subject area is part of a large exception area zoned for residential use located west of and in close proximity to Newberg. The area is committed to residential use and there are a number of subdivisions in the close vicinity.

- 3. The Board finds that the proposed designation is appropriate for the existing or intended use of the property, as required by YCZO 1208.03(B) as follows:
 - 3.1 Regarding the need for additional residential lots in the area, the subject parcel is part of an exception area located between Newberg and Dundee (Exception area 1.8). The

following table shows the zoning designation, the total number of lots within the exception area, and the number of lots that were developed and vacant as of December 15, 1997:

Zone	# of lots	built lots	vacant lots
AF-10	62	44	18
VLDR-5	5	4	1
VLDR-2.5	347	303	44
VLDR-1	159	119	40
Total	573	470	103

This analysis shows that 82% of the existing lots within the exception area are already developed and 87% of the lots that are zoned VLDR-2.5 are developed. (However, it should be noted that several lots in the exception area are large enough to be partitioned, so the supply of vacant lots is potentially higher. If the exception area were to be subdivided to maximum density, there would be 233 total additional lots, including 69 zoned VLDR-2.5). 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:

"The number of VLDR-2.5 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.

3.2 Information is also available to show the increase in development since 1981, when only 61% of the lots zoned VLDR-2.5 were developed. There was no change in the percentage of developed lots in 1986. By 1990, 66% of the lots were developed. This information shows that rural residential growth was relatively slow throughout the 1980s, but has increased substantially from 1990 to 1997 (from 66% developed to 87% developed). During the period of 1986 through 1990 there were 17 lots developed in exception area 1.8, in the VLDR 2.5 District (17 developed lots/4 years = 4.25 developed lots per year). In the time period from 1990 to 1997, 84 lots were developed in exception area 1.8, in the VLDR 2.5 District (84 developed lots/7 years = 12 developed lots per year). This indicates that not only have the number of developed lots increased over the last seven years, but the rate at which they have increased has almost tripled.

3.3 The 1990 Census reported the population of Yamhill County at 65,551. On July 1, 1997 the Center for Population Research and Census at Portland State University estimated the

Yamhill County population at 79,200. This is an increase of 13,649 or 20.8% over a seven year period.

- 3.4 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 VLDR zoned lots in this area.
- 3.5 No information has been provided by the applicants to indicate the existing market demand or availability of VLDR-2.5 zoned properties in the area. In order to get an idea of availability of lots, staff reviewed Tax Assessor, Planning and Building office records for Wilderness Canyon, Glen Hollow Estates, Hidden Meadows and Aspen Estates subdivisions which are located on the south side of Dayton Avenue, to the south of the subject parcel and south of Hwy 240, to the east of the property respectively. The following are the statistics for each subdivision:
 1. Hidden Meadows subdivision south of Dayton Avenue. This is a 22 lot subdivision zoned VLDR-2.5. Approved in 1991. All but one parcel has been developed (95%).
 2. Wilderness Canyon subdivision south of Dayton Avenue. This is a 15 lot subdivision zoned VLDR-2.5. Approved in 1993. As of this date a total of 11 parcels were developed (73%).
 3. Glen Hollow Estates subdivision south of Dayton Avenue. This is a 13 lot subdivision zoned VLDR-2.5. Approved 1995. As of this date a total of 7 parcels were developed (53%).
 4. Aspen Estates subdivision south of Hwy 240 on Chehalem Drive. This is a 22 lot subdivision zoned VLDR-1. Approved in 1996. As of this date a total of 15 lots were developed (68%).
- 3.6 The record also shows that 61 (85%) of the 72 subdivision lots have been sold to private parties. (The remaining 11 (15%) lots are owned by development or building companies.) This would tend to indicate that there is a fairly substantial market demand for VLDR lots in the area, as well as illustrating that few lots are available for sale.
- 3.7 If the zone change is approved, 28 additional lots could be created.
- 3.8 The subject area appears to be as well suited for residential development as the other available lots in the area. Issues related to suitability will be discussed further in Finding B.5.
4. The Board finds that 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, as required by YCZO 1208.03(C).

- 4.1 The proposed zone change is appropriate because adjacent zoning is VLDR-2.5 and VLDR-1, and the majority of these lots have already been developed with residences. There are no large scale commercial farm or forest uses in the vicinity that would be impacted by the residential lots that could be created if the zone change is approved.
- 4.2 Changes which have occurred in the vicinity which support the request include the approval, sale and development of the three subdivisions on the south side of Dayton Avenue and one subdivision east of the proposed site on the south side of Hwy 240, as indicated in the previous finding. Usual services such as fire and police protection, schools, telephone and electricity are available to the site. Community water systems serve most of the subdivision lots, and there is water service in the immediate area, but information has been provided that no additional hook-ups would be available to serve the lots that could be created if this zone change is approved, because of a poor aquifer. However, no information was submitted regarding feasibility of individual wells to serve the lots. The 1980 Exception Statement II states that the Code Area 1.8, of which the subject area is part of, "*has fair or better water availability*" and after further conversation with Department of Water Resources, the staff was informed that existing wells in the area average 180 feet in depth and the average yield is over 10 gal./min. The County Sanitarian reported that a review of the soil maps for the subject area indicted high seasonal watertable are common, that if consideration for drainage is given prior to partitioning small parcels, most parcels of 2.5 acres or larger should meet current requirements for septic systems. However, in the event that the water is not available or septic systems are not allowed, the applicants would not be able to get building permits to develop the lots.
5. The Board finds that other lands in the county already designated for the proposed use are either unavailable or not as well-suited for the anticipated uses due to location, size, or other factors, and therefore the request complies with YCZO section 1208.02(D). As indicated in Finding B.3, only 13% of the existing lots in exception area 1.8 which are zoned VLDR-2.5 are currently vacant, the availability of lots appears to be low, and market demand appears to be fairly high. However, as noted in Finding B.3, if the exception area were to be subdivided to the maximum density there would be 233 new lots, including 69 zoned VLDR 2.5. A few of the vacant lots in the vicinity have some limitations on development because of slopes and flood hazards. Other lots, especially along Highway 99W, are somewhat limited for development because there is no local road access. The subject area currently has an access on Dillon Road, Larkins Lane and Hwy 240 which are county and state roads respectively. Except for the question of water and septic, as discussed in Finding B.4, the subject parcel does not appear to be any less suitable for residential development than any of the other lots in the area.
6. The Board finds that YCZO 1208.02 (E) is satisfied. The Board finds that the zone change from AF-10 and EF-20 to VLDR satisfies YCZO 1208.02 (E), and that the

amendment is consistent with the current Oregon Administrative Rules for exceptions, if applicable. The subject area is part of an exception Code Area 1.8 which was the subject of a developed and committed exception on April 23, 1980 as part of Yamhill County Ordinance No.234, therefore, as explained below, no new exception or additional justification is required. The proposed 2.5-acre minimum lot size is not considered to be an urban scale of development, so Goal 14 (Urbanization goal) does not apply. No other Goals apply to this request.

6.1 DLCD submitted a letter in opposition taking the position that although the original tax lot 3313-3400 is 5.22 acres which is plan designated VLDR and zoned AF-10, the zone change to VLDR violated OAR 660-04-018(2) and (3) governing the change in zoning of land which was the subject of a previous exception. DLCD contended that a change in the zoning designation of property which has been the subject of a previous exception, requires additional justification under OAR 660-04-018 (2) and (3)¹. However, as explained below, the Board is not persuaded that DLCD's interpretation is a correct application of the rule because the rule itself states that it only applies to exceptions adopted after the effective date of the rule, which was March 20, 1986, whereas the exception taken by the county was a "physically developed" and "irrevocably committed" exception taken in 1980, before the effective date of the rule. Therefore, no new

¹OAR 660-04-018 provides in part:

"(2) Physically Developed" and "Irrevocably Committed" Exceptions to goals other than Goals 11 and 14. Plan and zone designations shall limit uses to:

"(a) Uses which are the same as the existing types of land uses on the exception site; or

"(b) Rural uses which meet the following requirements:

"(A) The rural uses are consistent with all other applicable Goal requirements; and

"(B) The rural uses will not commit adjacent or nearby resource land to non resource use as defined in OAR 660-04-028; and

"(C) The rural uses are compatible with adjacent or nearby resource uses.

"(c) Changes in plan or zone designations are allowed consistently with subsections (a) or (b) of this section, or where the uses or zones are identified and authorized by specific related policies contained in the acknowledged plan.

"(d) Uses not meeting the above requirements may be approved only under provisions for a reasons exception as outlined in OAR 660-04-020 through 660-04-022.

"(3) "Reasons" Exceptions:

"(a) When a local government takes an exception under the "Reasons" section . . . , plan and zone designations must limit the uses and activities to only those uses and activities which are justified in the exception.

"(b) When a local government changes the types or intensities of uses within an exception area approved as a "Reasons" exception, a new "Reasons" exception is required.

"(4) *Applicability of OAR 660-04-018. This rule applies only to plan and zoning designations and exceptions adopted by local government following the effective date of this rule [March 20, 1986]. (emphasis added)*

justification is required to change the zoning designation of property which was the subject of a previous developed and committed exception taken by the County before 1986.

- 6.2 The total area of about 104 acres is comprised of the 5.22 acre parcel and 57 acres added by the Director, which is plan designated VLDR and zoned AF-10, and 42 acres added by the Director, which is plan designated VLDR and zoned EF-20. The property consists of primarily class II soils. In 1980 this property was the subject of a committed exception to Goals 3 and 4 (see code area 1.8, Exception Statement II, adopted by Yamhill County on April 23, 1980. The basis for the exception statement was in pertinent part:

“The entire Newberg-Dundee study area is committed to rural residential development. Over 50 percent of this area is contained in 14 different subdivisions, with the remaining portion of the study area consisting predominantly of parcels 10 acres or less in size and situated in subdivision-like clusters. The entire area is located in a rural fire district, exhibit good roads, has fair or better water availability, and has mostly fair soil suitability for septic systems.

“This study area is bordered on the west by the City of Dundee and on the east by the City of Newberg. Of the 400 total parcels, 356 are 10 acres or less in size, and 307 contain dwelling units. The 16 parcels in this study area that exceed 20 acres in size are, without exception, surrounded or bordered extensively by developed parcels less than 10 acres in size. Agricultural activity in this study area has been restricted to small family gardens and orchards and, given the extensive subdivision and parcelization of this area and its close proximity to two urban areas, this rural residential settlement pattern will continue to dominate. Thus, this area is committed to rural residential development. (Exceptions Statement II, April 23, 1980, see Code Area 1.18)

Based on this language, the Board finds that the subject parcel was the subject of a "committed exception" which does not limit the future use to any particular use or uses.

- 6.3 The Board finds that the foregoing analysis comports with applicable case law, which has held that a new exception is not required to allow a change in the zoning designation on property which has been the subject of an earlier "committed exception" taken before the 1986 effective date of the current OAR 660-04-018(2) *See, Murray v. Marion County*, 23 Or LUBA 268, note 10 (1992) (former OAR 660-04-018 was interpreted to require a new exception only where the original exception required consideration of impacts on adjacent uses, and since "committed" exception standards do not require assessment of impacts whereas a "reasons" exception does include a requirement that the proposed uses will be compatible); *Also see, Cook v. Yamhill County*, 14 Or LUBA 78 (1985) (a change in use of property for which a "committed" exception is taken did not require a new exception under former OAR 660-04-018 because the standards for a "committed" exception consider impracticability of compliance, rather than compatibility and impacts.)

Consequently, the Board concludes that where the previous "committed" exception was taken before the effective date of the rule (March 20, 1986), then the new uses are not limited to existing types of uses or certain other rural uses, and a new exception is not required. Therefore the request is consistent with YCZO 1208.02 (E).

CONCLUSIONS:

1. The request is for a zone change from AF-10 Agriculture/Forestry Small Holding to VLDR-2.5 Very Low Density Residential for a 104 acre area consisting of 13 tax lots.
2. The request complies with the Comprehensive Plan Goals and Policies and is consistent with the Plan map designation of VLDR.
3. The majority of properties zoned VLDR-2.5 in the area are already developed with residences, and there appears to be a market demand for new lots.
4. There is no information at the time of this writing about whether water and sewage disposal would be available to serve the 28 additional lots that could be created if the zone change is approved. These concerns can be addressed when an application is made to partition the properties.
5. The area has substantially changed in the past six years with the addition of new residential development. The location of this property, next to rural residential zoning and bordered by a Chehalem Creek, does not lend itself to small farm uses. Therefore additional residential development is appropriate for this location.

DECISION:

Based on the above findings, analysis, and conclusions, the request by Timothy R. and Lorena K. Mason, Richard Sattler, James Jr. and Jacqueline Fisher, Mark and Colleen Bourassa, Marilyn Olson and the Yamhill County Planning Director for a zone change from AF-10 Agriculture Forestry Small Holding to VLDR-2 ½ Very Low Density Residential on tax lots 3313-3400, 3500, 3300, 3100, 3000, 2900, 2800, 2700, and 2400, and from EF-20 to VLDR-2 ½ on tax lots 3313-3600, 2501, 2502, and 2503, is approved.

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