

COPY

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)
Yamhill County Comprehensive Plan Map to)
change from "AFLH" (Agriculture/Forestry)
Large Holding) to "Parks, Recreation and Open)
Space", and Amending the Official Zoning Map)
to change from "F-80" (Forestry District) to)
"PRO" (Parks/Recreation/Open Space), With a)
Limited Use Overlay Zone on a One Acre)
Portion of a 2.3 Acre Tract Known as)
Tax Lot 4508-1000; Applicant Jerald)
E. Smith; Planning Docket PAZ-02-98; and)
Declaring an Emergency.)

ORDINANCE 651

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY, OREGON (the Board) sat for the transaction of county business in special session on July 16, 1998, Commissioners Ted Lopuszynski, Robert Johnstone, and Thomas E.E. Bunn being present.

WHEREAS, on March 24, 1998, the Department of Planning and Development received an application by Jerald E. Smith ("applicant"), Planning, PAZ-02-98 to change the Yamhill County Comprehensive Plan Map (1974), as amended, from "AFLH" (Agriculture/Forestry Large Holding) to "Parks, Recreation and Open Space", and amend the Official Zoning Map from "F-80" (Forestry District) to "PRO" (Parks/Recreation/Open Space) on a one (1) acre portion of a 2.3 acre tract known as Tax Lot 4508-1000; and

WHEREAS, on June 4, 1998, the Yamhill County Planning Commission held a duly noticed public hearing to consider the application and thereafter voted unanimously for approval of the application; and

WHEREAS, on July 2, 1998, the Board held a duly noticed public hearing to consider the matter on the record, and the Board deliberated and voted unanimously in favor of tentative approval of the application for the comprehensive plan amendment to Parks, Recreation and Open Space and the zone change, with a limited use overlay zone on a one (1) acre portion Tax Lot 4508-1000, and directed staff to prepare an ordinance and findings in support thereof; and

WHEREAS, the findings and conclusions attached hereto as Exhibit "A" and incorporated herein by this reference provide justification for approval of the application for

ORDINANCE 651

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the amendment to the Yamhill County Comprehensive Plan and the Official Zoning Map, and that approval thereof is in the best interests of the citizens of Yamhill County; Now Therefore,

THE YAMHILL COUNTY BOARD OF COMMISSIONERS ORDAINS AS FOLLOWS:

Section 1. The Yamhill County Comprehensive Plan (1974), as amended, is hereby amended as specified in the attached Exhibit "B" to reflect a plan designation of "Parks, Recreation and Open Space."

Section 2. The Official Zoning Map of Yamhill County is hereby amended as specified in the attached Exhibit "B" to reflect a zoning designation of "Parks, Recreation and Open Space," with a Limited Use Overlay zone, limiting use of the property to a park, recreation area, or open space, privately owned, operated and maintained and including hunting and fishing preserves.

Section 3. The findings attached as Exhibit "A" and incorporated herein by reference are hereby adopted in support of this ordinance.

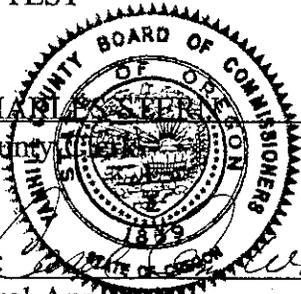
Section 4. This ordinance being necessary for the health, safety, and welfare of the citizens of Yamhill County, and an emergency having been declared to exist, is effective upon passage.

DONE at McMinnville, Oregon, this 16th day of July, 1998.

ATTEST

YAMHILL COUNTY BOARD OF COMMISSIONERS

CHAIRMAN
County of Yamhill
By: Carol Ann White
Carol Ann White



Ted Lopuszynski
Chairman TED LOPUSZYNSKI

Robert Johnstone
Commissioner ROBERT JOHNSTONE

FORM APPROVED BY:
John C. Pinkstaff
JOHN C. PINKSTAFF
Assistant County Counsel

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

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EXHIBIT "A"

ORDINANCE 651

Findings for Approval

PLANNING COMMISSION'S APPROVAL: June 4, 1998

BOARD OF COMMISSIONERS' APPROVAL: July 16, 1998

DOCKET NO.: PAZ-02-98

REQUEST: Approval of a Comprehensive Plan amendment and zone change from AFLH, Agriculture/Forestry Large Holding to Parks, Recreation, and Open Space and from F-80 to PRO. This request is for 1 acre of a 2.3 acre parcel, in order to allow a Private Park.

APPLICANT: Jerald E. Smith

TAX LOT: 4508-1000

LOCATION: 20175 Baker Creek Road, McMinnville

CRITERIA: Sections 403 and 1208 of the Yamhill County Zoning Ordinance.

FINDINGS:

A. Background Facts:

1. **Property size:** The entire parcel is 2.3 acres. The area affected by the proposed zone change is one acre.
2. **Access:** The parcel fronts onto Baker Creek Road, a paved county road.
3. **On-site Land Use:** The subject parcel is predominantly forested and contains the applicant's dwelling constructed in 1992. Baker Creek runs through the parcel from north to south, dividing the property into two equal portions.
4. **Surrounding Land Use:** A large forested parcel, owned by a CGC Tree Farm, Ltd, borders the subject parcel on the north, west and south. Across Baker Creek Road, to the east of the subject property, are nine parcels of approximately 10 acres in size.

5. Surrounding Zoning: Zoning on the west side of Baker Creek Road is F-80 Commercial Forestry district. The properties on the east side of Baker Creek Road are zoned AF-40 Agriculture/Forestry .
6. Water: The applicant indicated that the parcel contains a well. He stated that he also utilizes the creek water for some uses.
7. Sewage Disposal: The applicant indicated that the parcel contains a septic system.
8. Fire Protection: McMinnville Rural Fire District
9. Soils: Sheet 25 of the Yamhill County Soil Survey shows that the parcel is predominantly composed of Hazelair (HcD) class IV soils with minor inclusion of Olyic (OLF) class VI soils. The portion of parcel being considered for the plan amendment and the zone change is entirely composed of Hazelair soil.
10. Taxes: The subject parcel is rated at market value.
11. Previous Actions: A non-farm dwelling was approved in 1990 (Docket C-27-89).

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 The Board finds that approval of the zone change is consistent with the goals, policies and applicable provisions of the Yamhill County Comprehensive Plan, 1979 , as amended ("YCCP"), and thereby satisfies YCZO 1208.02(A) as follows:.

2.1 Plan goals and policies which may be pertinent are:

YCCP Policy II.E.1.b: The inventory will include, but not be limited to the location, quantity and quality of the following resources: fish and wildlife habitats; ecologically and scientifically significant natural areas; outstanding scenic view and sites; water areas; wetlands, watersheds, and groundwater resources; wilderness areas; historic areas, sites, structures and objects; cultural areas; potential and approved Oregon recreation trails; potential parks and recreation sites.

YCCP Policy IV.B.1. To provide adequate recreational opportunities in both the rural and urban environments to meet existing and projected needs.

2.2 The subject request complies with the applicable goals and policies in that through the plan amendment/zone change and the accompanying restrictive covenant, the county is insuring that an existing open space will remain as open space (thereby satisfying the requirements of Goal II E [1]). Approval of the request will insure that the county's inventory will continue to include this water area and parks and recreation site and will continue to provide a recreation opportunity in the rural environment to meet existing and projected needs, thereby satisfying YCCP Policy II E [1][b] and YCCP Goal IV.B.1.

3. The Board finds 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, thereby satisfying YCZO 1208.02(B).

3.1 A limited use overlay zone will be imposed upon the property, limiting use of the property to "a park, recreation area, or open space, privately owned, operated and maintained and including hunting and fishing preserves." Placing a limited use overlay will guarantee that the park site will remain undeveloped for any other use and will remain in open space, which thereby serves a public need without putting any drain on public resources, without implementing the requirement of Statewide Planning Goal

No. 5 (Open Spaces, Scenic and Historic Areas, and Natural Resources).

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, and thereby satisfies YCZO 1208.02(C).

4.1 The applicant stated that no further development of the site would be allowed. The park area has been used as a private park for some 33 years. This would not change. The 1.3 acre home site which is not the subject of this application has been used as a residence since 1992. This, too, would not change. The only change that would result from these amendments may be that of ownership. In a separate application not the subject of this docket item, the applicant has applied for division of the property to allow for the park zoned property to stay in his family's ownership.

He indicated further that the use of the property would not be changed—only the ownership pattern would change—there would be no effect on the use of nearby properties, agricultural activities or mineral resource sites. No new land use issues would result from approval of this application. To help insure that this is the case, the applicant has filed with Yamhill County a restrictive covenant which would prohibit further development from occurring on the site.

Additionally he stated that there would be no effect on surrounding land uses, and surrounding land uses would not be of any consequence to the uses allowed by the changes because the allowed uses already exist and have for many years. No change in the use of the parcel is being requested. The changes would impact only how the subject site is owned.

Regarding the availability of utilities and services in the area, the applicant pointed out that public facilities and services currently provided to the area of the subject property include electricity from McMinnville Water and Light, Yamhill County roads, GTE telephone, and McMinnville School District 40 bus service. Water is provided to the southern portion of the site via an individual well and to the northern portion of the site by Baker Creek. The southern portion is served by a septic system which was approved by the county sanitarian. Fire service is provided by the McMinnville Rural Fire Protection District. However it is likely that none of the services, except maybe electricity and a fire protection, will be needed on this parcel.

5. The Board finds that 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, thereby satisfying YCZO 1208.02(D).

- 5.1 As stated in the application, the applicant is not proposing any "new allowable uses," thus a comparison to other available land in the county which is planned and zoned for those uses cannot be made. In fact, the one acre private park which is the subject of this request has been in park use for some 33 years. The plan amendment/zone change will serve to legitimize that use according to the county codes and amend the county maps to reflect what exists on the ground.
6. The Board finds that the amendment is consistent with the current Oregon Administrative Rules for exceptions, and therefore satisfies YCZO 1208.02(E). Taking an exception will not be required, because the proposed use is already allowed by a conditional use permit [Section 401.04(E)] as defined in Section 401.12 (B).
- 6.1 The applicant requests that approximately 1 acre of an approximately 2.3 acre tract be rezoned from an F-80 to a PRO zoning designation and that the plan map be amended on that one acre from an AFLH designation to a Parks and Recreation designation. The purpose of this request is so that the applicant can plan his estate.
- 6.2 The subject property was purchased by the applicant in 1966. It is bisected by Baker Creek and contains mostly cedar and maple trees with a few white firs and alders. The northern half of the site is relatively flat. The property on the south side of the creek slopes moderately to severely upwards away from the creek.
- 6.3 The applicant developed the northern part of the property some 33 years ago into a private park/picnic area for his own use and that of his family and friends. He constructed his retirement home on the southern portion of the site in 1992 after receiving a conditional use permit (C-27-89) from Yamhill County. The applicant and his wife presently occupy the residence.
- 6.4 In planning his estate, the applicant realizes that he and his wife may wish to sell their home at some future date so that they may move to a smaller, house and lot. It is the applicant's desire to keep the private park in the family ownership, eventually willing the parcel to his children.
- 6.5 The applicant has filed simultaneously with this application a minor partition application which would split the park site from the home site. The two sites are physically separated by Baker Creek. The success of the minor partition application is dependent upon the success of the subject application.
- 6.6 The applicant has also filed with Yamhill County a restrictive covenant which would prevent any future development of the private park which was not parkland related. It expressly prohibits the construction of any additional residences on either the north or south parcel. The plan amendment/zone change is necessary so that the property can be

divided and the private park may remain in the family's ownership if the home site is sold.

7. Other Issues: A letter was received from Yamhill Soil and Water Conservation District, recommending "denial of the partitioning" and stating that this could change the characteristics of an area for farm or forestry use in the county. However, although applicant did file a separate partition request, this comprehensive plan and zone change is not a partition request, and as such the districts objection is not relevant in this proceeding. Also, the Limited Use Overlay will assure that the current existing use will continue, and not change the characteristics of the area for farm and forest use.

CONCLUSIONS FOR APPROVAL:

1. The request is for a plan amendment and zone change from, Commercial Forestry Use, F-80 to Parks, Recreation and Open Space, PRO.
2. The proposed zone change is consistent with Comprehensive Plan goals and policies, and is appropriate because it is surrounded on three sides by a large 697 acre undeveloped parcel.
3. An exception to state goals is not required because the use is already allowed by a conditional use permit in the F-80 zoning designation.
4. Imposition of a limited use overlay will limit the use of the property to a park, recreation area, or open space, privately owned, operated and maintained and including hunting and fishing preserves. The limited use overlay zone will assure that there would not be any detrimental effect to the surrounding area. There is no proposal for a new development on this parcel. This is also guaranteed by a document of covenants and restrictions which restricts the future uses of the property to just the recreational uses of his family. This document has been recorded by the applicant.

DECISION:

Based on the above findings and conclusions, supported by substantial evidence in the record, the Board approves the request by Jerald E. Smith in Planning Docket PAZ-02-98 to change the Yamhill County Comprehensive Plan Map (1974), as amended, from "AFLH" (Agriculture/Forestry Large Holding) to "Parks, Recreation and Open Space", and amend the Official Zoning Map from "F-80" to "PRO", with a limited use overlay zone, on a one (1) acre portion of a 2.3 acre tract known as Tax Lot 4508-1000.

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EXHIBIT "B" FOR ORDINANCE No. 651

COMPREHENSIVE PLAN AMENDMENT FROM
AGRICULTURE/FORESTRY LARGE HOLDING (AFLH)
TO PARKS, RECREATION AND OPEN SPACE

ZONING MAP AMENDMENT FROM
F-80 (FORESTRY DISTRICT) TO
PRO (PARKS, RECREATION AND OPEN SPACE)



Prepared by Yamhill County Department of Planning and Development



AREA SUBJECT TO AMENDMENT

ORDINANCE 651
EXHIBIT "B"