

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 Zoning Map of )  
 Yamhill County to Change the Zoning )  
 Designation on a 44.4 Acre Parcel )  
 Known as Tax Lot 3418-1600 and )  
 on an 80 acre Parcel Known as Tax Lot )  
 3513-1300, From "EF-40" to "AF-80" )  
 (Planning Docket Z-02-96); and )  
 Approving a Request For a Forest )  
 Template Dwelling on Tax Lot )  
 3418-1600 (Planning Docket FT-05-96); )  
 Applicants David C. Polite and Allen )  
 Sitton; Effective February 4, 1997. )

ORDINANCE 617

FILED  
 COUNTY CLERK  
 96 NOV 13 AM 8:40  
 YAMHILL COUNTY, OREGON

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY, OREGON (the Board), sat for the transaction of county business in formal session on November 6, 1996 Commissioners Robert Johnstone, Thomas E. E. Bunn and Dennis L. Goecks, being present.

WHEREAS, on April 30, 1996, David C. Polite and Allen Sitton ("Applicants") applied to the Department of Planning and Development for a Zone Map amendment to change the zoning designation from "EF-40" to "AF-40" on a 44.4 acre parcel known as Tax Lot 3418-1600 and on an 80 acre Parcel known as Tax Lot 3513-1300, identified on the attached Exhibit "B" (Docket Z-2-96) and also applied for approval of a forest template dwelling on Tax Lot 3418-1600 (Docket FT-05-96); and

WHEREAS, on July 18, 1996, the Yamhill County Planning Commission held a public hearing to consider the application and thereafter voted 3 to 2 to deny the zone change from "EF-40" to "AF-40" and the application for a forest template dwelling; and

WHEREAS, on August 5, 1996 the decision of the Planning Commission was timely appealed by applicants; and

WHEREAS, on September 11, 1996, the Board held a public hearing on the appeal, heard testimony and received evidence, left the record open until September 18, 1996 for submission of additional testimony and evidence, until September 23, 1996 for rebuttal to new evidence submitted during the period ending September 18, 1996, and until October 2, 1996 for final written argument in support of the application, and the Board continued the hearing until October 2, 1996; and

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WHEREAS, on October 2, 1996 the Board reopened the hearing, deliberated, and voted 2 to 1 (Commissioner Bunn dissenting) to reverse the Planning Commission and to grant tentative approval to a modified zone change, from "EF-40" to "AF-80", and tentative approval to the forest template dwelling application, and directed staff to prepare findings supported by substantial evidence in the record in support of the decision; and

WHEREAS, the findings and conclusions attached hereto as Exhibit "A" and by this reference incorporated herein provide a justification for the approval of the modified zone change and the application for the forest template dwelling; and

WHEREAS, on October 23, 1996 the Board held the first reading and putative second reading of this ordinance and thereafter voted to invoke this ordinance with an emergency clause, with Commissioners Johnstone and Goecks voting "aye" and Commissioner Bunn abstaining, all with concurrence of counsel; and

WHEREAS, on October 30, 1996, based on counsel's advice that invocation of an emergency clause under ORS 203.045 was arguably invalid where a commissioner was present at a vote but abstained from voting, the Board voted 3-0 to reconsider its adoption of this Ordinance on October 23, 1996; and

WHEREAS, on November 6, 1996 the Board held the second reading of this ordinance and voted 2-1 for adoption based on the findings attached to this ordinance as Exhibit "A";

WHEREAS, the attached Exhibit "A" demonstrates that the proposed amendment to the Official Zoning Map of Yamhill County, and the approval of the forest template dwelling are in the best interests of the citizens of Yamhill County; NOW THEREFORE,

**THE YAMHILL COUNTY BOARD OF COMMISSIONERS ORDAINS AS FOLLOWS:**

**Section 1. ZONE MAP CHANGE.**

The Official Zoning Map of Yamhill County is hereby amended as specified in the attached Exhibit "B", to reflect a zoning designation of AF-80 on the 44.4 acre parcel known as tax lot 3418-1600 and on the 80 acre parcel known as Tax Lot 3513-1300.

**Section 2. FOREST TEMPLATE DWELLING APPROVAL**

The application for a forest template dwelling by David C. Polite and Allen Sitton on tax lot 3418-1600 is hereby approved with the following conditions:

1. The dwelling shall have a fire-retardant roof.
2. The applicant shall obtain an address from the county, and shall display that number in a location on the property that is clearly visible from the road used as the basis for numbering as well as locations along the private drive to distinguish the appropriate

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driveway from other driveways in the area, if necessary. The numbers shall not be less than three inches in height, shall be painted in a contrasting or visible color and shall comply with all other applicable standards for signs.

3. The entire access road from the nearest public road to the structure shall meet the road design standards described in Section 403.11(E).
4. If the dwelling has a chimney or chimneys, each chimney shall be provided with a spark arrester.
5. The applicant shall submit a detailed site map illustrating the dwelling satisfies the following requirements prior to building permit approval, and the requirements shall be implemented upon construction or placement of the dwelling:
  - a. A primary fire break shall be constructed, no less than 30 feet wide. The primary firebreak could include a lawn, ornamental shrubbery or individual or groups of trees separated by a distance equal to the diameter of the crowns adjacent to each other, or 15 feet, whichever is greater. All trees shall be pruned to at least eight feet in height. Dead fuels shall be removed.
  - b. A secondary firebreak of not less than 50 feet outside the primary firebreak shall also be constructed. Dead fuels shall be removed. The secondary fire break shall be increased if the dwelling or structure is located on a slope or other fire hazards exist.
  - c. No portion of a tree or any other vegetation shall extend to within 15 feet of the outlet of a stovepipe or chimney.
  - d. A setback of at least 80' is required between the dwelling and forested areas on adjacent properties.
6. The property owner shall submit a stocking survey report to the County Assessor and the Assessor shall verify that the minimum stocking and survival requirements of ORS 527.610 to 527.770 have been met for the parcel prior to building permit approval.
7. This approval is valid for two years, and will expire on October 16, 1998 unless substantial construction has occurred prior to that date.

Section 3.     **FINDINGS IN SUPPORT OF APPROVAL.**

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

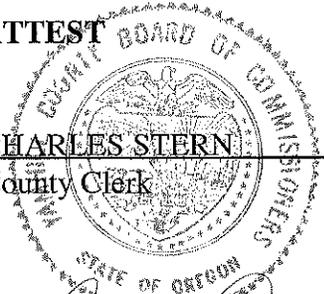
Section 4. SEVERABILITY.

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 5. EFFECTIVE DATE.

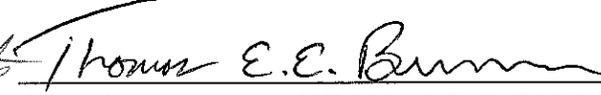
The first reading of this ordinance was made October 23, 1996. The second reading of this ordinance was made November 6, 1996. The ordinance was adopted on November 6, 1996 without an emergency clause. This ordinance shall become effective on February 4, 1997, a date at least 90 days after adoption.

DONE at McMinnville, Oregon this 6th day of November, 1996.

ATTEST  
  
CHARLES STERN  
County Clerk

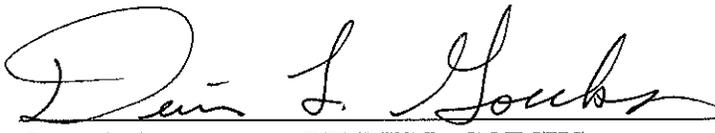
YAMHILL COUNTY BOARD OF COMMISSIONERS

  
Chairman ROBERT JOHNSTONE

By:  Deputy CAROL ANN WHITE  
 Commissioner THOMAS E. E. BUNN

FORM APPROVED BY:

  
JOHN C. PINKSTAFF  
Assistant County Counsel

  
Commissioner DENNIS L. GOECKS

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Accepted by Yamhill County  
Board of Commissioners on  
11-6-96 by Board Order  
# 96-749.

96-749

BOARD ORDER 96-

PLANNING COMMISSION'S DECISION:

July 19, 1996

BOARD OF COMMISSIONER'S DECISION  
REVERSING PLANNING COMMISSION'S DECISION:

October 23, 1996

DOCKET NO.: Z-02-96/FT-05-96

REQUEST: Zone change from EF-40 Exclusive Farm Use to AF-40 Agriculture/Forestry Use and a request for a forest template dwelling on tax lot 3418-1600.

APPLICANTS: David C. Polite (representing Daniel Polite) and Allen Sitton

TAX LOTS: 3418-1600 and 3513-1300

LOCATION: South of the west end of Cummins Road

ZONE: EF-40 Exclusive Farm Use

REVIEW CRITERIA: Sections 402, 403 and 1208 of the Yamhill County Zoning Ordinance (YCZO); Oregon Administrative Rules 660-

FINDINGS:

**A. Background Facts**

1. Lot Sizes: Parcels of 44.4 and 80 acres.
2. Access: Cummins Road
3. On-Site Land Use: A 1992 air photo and a site visit revealed that the majority of the subject parcel is forested.
4. Surrounding Zoning: EF-40 Exclusive Farm Use to the east and west. A mixture of EF-40 and AF-20, Agriculture/Forestry District to the north and south.

5. Surrounding Land Use: Property in the surrounding area contains a mixture of farm and forest uses. The farm uses include pasture and hay crops. The forest uses generally exist on parcels or portion of parcels that contain steep slopes.
6. Water: On-site well.
7. Sewage Disposal: An on-site subsurface system will be required for any dwelling approval.
8. Soils: Sheet 13 of the Yamhill County Soil Survey indicates the following soil types:

NAME	% OF PARCEL	SLOPE %	WOOD PRODUCTION Cu/Ft PER ACRE	AGRICULTURAL CLASS
Peavine (PeD)	50	7-20	160	IV
Willakenzie (WkD)	20	7-20	145	IV
Hazelair (HcD)	10	7-20	40	IV
Peavine (PcE)	10	20-30	160	IV
Other Soils	10		-	-

Note: Information from the Yamhill County Soil and Water Conservation District states some of the property contains Agricultural Class III soils. The Board finds there are no significant amount of Class III soils located on the subject property.

9. Fire Protection: The subject property is served by the Carlton Rural Fire District.
10. Taxes: The properties are currently receiving a farm tax deferral with a total of 39.5 acres listed as nontillable land.

***B. Ordinance Provisions and Analysis For Zone Change Request:***

1. The zone change request is governed by Section 1208.02 of the YCZO, which contains the following provisions:

*A quasi-judicial zone change to (1) amend the designation of land from Exclusive Farm Use, Agriculture/Forestry, or Forest to another of these zones, or (2) change the minimum lot size of land designated Exclusive Farm Use or Agriculture/Forestry, may be authorized, pursuant to Subsection 1208.01, provided that the request satisfies all applicable requirements of this ordinance, and also provided that the applicant demonstrates compliance with the following criteria:*

- A. *The proposed amendment shall comply with the goals, policies, and other applicable provisions of the comprehensive plan.*
- B. *The proposed designation shall be appropriate for the existing or intended use of the property.*
- C. *The proposed amendment shall result in an area of at least 160 contiguous acres with the requested designation, including adjacent land.*
- D. *For proposed changes within or to an Exclusive Farm Use designation, the new minimum lot size shall be appropriate to maintain the existing commercial agricultural enterprise in the area.*
- E. *For proposed changes within or to an Agriculture/Forestry designation, the new minimum lot size shall be shown to assure:*
  - 1. *The opportunity for economically efficient forest and agriculture practices typically occurring in the area; and*
  - 2. *The opportunity for the continuous growing and harvesting of forest tree species; and*
  - 3. *The conservation of other forest values found on forest lands.*

The applicants conformance with the above criteria are addressed in Findings B - 2 through B - 6 below.

- 2. Regarding criterion A, *conformance with Comprehensive Plan goals and policies*, the Plan designation for the property is AFLH Agriculture/Forestry Large Holding. Both the Exclusive Farm Use and Agriculture/Forestry zones have this same plan designation, therefore the change will be consistent with the comprehensive plan designation for the property.

With respect to specific goals and policies of the Plan, the Board finds there is no Comprehensive Plan language which could be interpreted to apply to

this application as mandatory approval criteria. Any Comprehensive Plan language which arguably could be interpreted to apply to this application is to be aspirational only and is not to be applied as mandatory approval criteria.

3. Regarding criterion B, *the proposed designation shall be appropriate for the existing or intended use of the property*, the Board finds the existing and intended use of both tax lots is the commercial growing of Douglas Fir trees. The Board finds that 35 acres (or 79%) of tax lot 3418-1600 is planted in Douglas Fir trees ranging between 10 years to 24 years old. Likewise, 50 acres (or 63%) of tax lot 3513-1300 is planted in Douglas Fir trees that are 10 years old. The Board finds that both tax lots, like the other AF zoned property in the surrounding area, are currently devoted to the commercial production of wood fiber.

Opponents have suggested the applicants are proposing to plant a vineyard on the subject property. After taking testimony on this matter, the Board finds that one of the applicants intends to plant a vineyard on a portion of an adjoining parcel which is not a part of this request.

Opponents have suggested that under the EF-40 zoning designation, forestry is a compatible use. This is true. The propagation and harvesting of a forest product is listed as a permitted use in the EF-40 zone.

However, when viewed as a whole, the subject property is more appropriately designated as AF-80 than EF-40. First of all, in the late 1970's the county assigned the original zoning designations. On properties in the valley and foothills they assigned the zoning by aerial photographs. If a property appeared to be cleared and cultivated the county assigned an EF-40 designation. If the property was forested or had a mixture of farm and forestry uses, the county assigned an AF-20 Agriculture/Forestry Designation. At the time the aerial photographs were taken, the trees on the subject property were not large enough to be seen on the photograph.

Therefore the county assigned an EF-40 Exclusive Farm Use designation. If the trees had been observed on the property prior to adoption of the zoning, the county would have adopted the AF-20 zoning designation for the subject property.

Second, the Board finds the subject property is located on the ridge top holdings outside of the Carlton area with steep hillsides on both sides leading down to the more milder slopes on the valley floor. The majority of the ridge top areas, and the steeper hillsides in the immediate area are zoned AF-20, with most parcels being used for a mixture of forest and farm uses. The

majority of agricultural uses are found on the more milder slopes and the valley floor at the base of the foothills.

It is important to note that the purpose section (403.01) of the AF District describes the subject property as AF designated land. This section states in relevant part:

"The purpose of the Agriculture/Forestry District is to identify and protect lands designated as Agriculture/Forestry Large Holding on the Comprehensive Plan, that are a mixture of agriculture and forest management operations, and other uses which are compatible with such operations. Properties in the Agriculture/Forestry District are primarily foothill and ridgetop holdings above the flat terrace and valley-floor commercial agricultural areas, . . . "

Third, the soils on both tax lots consist primarily of Peavine soils, which has a wood production site class of 160 CU/FT per acre. The Board finds the Peavine soils are better suited for forest uses, than farm uses, due to the high site class for the production of wood fiber.

4. Regarding criterion C, *the proposed amendment shall result in an area of at least 160 contiguous acres with the requested designation, including adjacent land*, this request originally involved changing approximately 124.4 acres to be rezoned to AF-40. The Board finds that there is no AF-40 zoned land in the immediate area. However, the Board finds that immediately adjacent to the west and further to the northwest of the subject property lies more than 300 acres of land that will be designated as AF-80 zoned land.

In order to meet this criteria the property would need to be changed to AF-80. During the appeal on this request, the applicant formally requested that their request be changed from AF-40 to AF-80. The Board finds that the applicants amended request will satisfy this criterion.

5. Regarding criterion D, *for proposed changes within or to an Exclusive Farm Use designation, the new minimum lot size shall be appropriate to maintain the existing commercial agricultural enterprise in the area*. The Board finds that this criterion does not apply since the requested zone designation is not Exclusive Farm Use. However, even if this provision could arguably be interpreted to apply to this request, this Board finds the minimum lot size for the subject area will be 80 acres in size, and that this minimum lot size shall be appropriate to maintain the existing agricultural enterprises occurring in the area.

6. Regarding criterion E, *For proposed changes within or to an Agriculture/Forestry designation, the new minimum lot size shall be shown to assure:*

1. *The opportunity for economically efficient forest and agriculture practices typically occurring in the area; and*
2. *The opportunity for the continuous growing and harvesting of forest tree species; and*
3. *The conservation of other forest values found on forest lands.*

The Board finds that the new minimum lot size designation for the subject property will be 80 acres. This is the most restrictive minimum lot size the county has adopted. Through various appeals this minimum lot size has been shown to be appropriate to preserve economically efficient forest and agricultural practices. This zoning reflects the type of uses found in the area as identified by Finding A.5.

The proposed zoning will clearly allow for the continuous growing and harvesting of forest tree species. The proposed zone would offer no less protection for the continued growing and harvesting of trees and would continue to conserve forest values.

The Board finds that there is substantial evidence in the record to show that the applicants request fully complies with YCZO 1208.02, for the rezoning of the subject property from EF-40 to AF-80.

***C. Forest Template Dwelling Provisions and Analysis***

1. Section 403.03 of the YCZO lists residential uses allowed in the Agriculture/Forestry District subject to the standards and limitations set forth in Section 403.09 (Dwelling siting standards), 403.10 (Fire siting standards), and 403.11 (general standards and limitations). In addition, residential uses must satisfy the criteria specified for each use.
2. Section 403.03(M) of the YCZO permits dwellings to be placed on a lot or parcel predominantly devoted to forest use on January 1, 1993, subject to the following criteria:
  - (1) *There are no other dwellings on the subject tract; and*
  - (2) *The remainder of the subject tract shall be consolidated into one parcel, which shall not be eligible for an additional dwelling; and*

- (3) *The lot or parcel is predominantly composed of soils are capable of producing 0 to 49 cubic feet per acre of wood fiber; and*
  - a. *All or part of at least three other lots or parcels that existed on January 1, 1993, are within a 160-acre square centered on the center of the subject tract; and*
  - b. *At least three dwellings not inside an Urban Growth Boundary existed on January 1, 1993, on the other lots or parcels; or*
- (4) *The lot or parcel is predominantly composed of soils that are capable of producing 50 to 85 cubic feet per acre of wood fiber; and*
  - a. *All or part of at least seven other lots or parcels that existed on January 1, 1993, are within a 160-acre square centered on the center of the subject tract; and*
  - b. *At least three dwellings not inside an Urban Growth Boundary existed on January 1, 1993, on the other lots or parcels; or*
- (5) *The lot or parcel is predominantly composed of soils that are capable of producing more than 85 cubic feet per acre of wood fiber; and*
  - a. *All or part of at least 11 other lots or parcels that existed on January 1, 1993, are within a 160-acre square centered on the center of the subject tract; and*
  - b. *At least three dwellings not inside an Urban Growth Boundary existed on January 1, 1993, on the other lots or parcels.*
- (6) *If the tract on which the dwelling will be sited is abuts a public road that existed on January 1, 1993, the measurement under subsections 3.a, 4.a, or 5.a may be made by creating a 160-acre rectangle that is one mile long and one-fourth mile wide centered on the center of the subject tract and that is, to the maximum extent possible, aligned with the road.*

The applicants conformance with the above criteria are addressed in Findings C - 3 through C - 6 below. These findings only apply to Tax Lot 3418-1600.

- 3. Based on a 1992 aerial photo and site visit, the Board finds Tax Lot 3418-1600 is predominantly devoted to forest use.

4. Regarding criterion (1), *no other dwelling on subject tract*, the subject tract consists only of one tax lot, 3418-1600. This tax lot is owned by David and Daniel Polite as tenants in common. The applicants evidence and the county tax records indicate there are no dwellings located on the subject tract.

Opponents suggest that the subject tract actually consists of tax lot 3418-1600 and an adjoining parcel owned individually by David Polite, tax lot 500. The Board rejects this interpretation. Rather, the Board interprets "tract" to be those parcels under the same ownership, YCZO 403.12K. The Board interprets "same ownership" to mean having identical names.

Based on this interpretation, the Board finds that the subject parcel consists of just one tax lot, 3418-1600. The subject parcel is owned by two parties as tenants in common, which is substantially different than how the adjoining parcel is held, by one party as an individual. The difference is found in the legal ownership of the properties and those rights, obligations, and duties that flow from owning land as an individual as compared to owning land as a tenant in common with another.

Opponents also suggest that the parcel must have existed and been in separate ownership in 1993, the date when the forest template dwelling law was passed. This is incorrect. The template dwelling law was adopted as part of House Bill 3661 in 1993. The template dwelling criteria are found in ORS 215.750 and do not contain a date of creation or existence requirement for the subject template parcel. [Compare: there is a date of creation and existence requirement for under the lot of record dwelling criteria found in ORS 215.705(1); and there is an existence requirement for surrounding parcels which are within the template under ORS 215.750 (1)] Therefore, the Board rejects the opponents suggestion that the parcel must have been in existence in 1993.

Even if there were such a requirement, the subject parcel (tax lot 1600) was in existence and acquired by David Polite on June 25, 1991, before the enactment of the template dwelling law, HB 3661. The adjoining parcel (tax lot 500) which has a dwelling, was acquired by David Polite and Daniel Polite, on June 26, 1991, and as explained above, since 1991 these two parcels (tax lots 1600 and tax lot 500) have not been in the same ownership and are not considered part of the same tract.

5. Regarding criterion (2), *consolidation of remainder of tract*, this criterion is satisfied since the "tract" consists of just one parcel, tax lot 3418-1600.
6. Regarding criterion (3), *predominant soils composition and wood fiber capability*, As indicated in Finding A.8 above, the parcel is predominantly

composed of soils capable of producing more than 85 cubic feet per acre of wood fiber per year. The request is therefore subject to the requirements of criterion (5) above, while (3) and (4) do not apply.

The Board finds that when placing a 160-acre square on the center of the subject tract and turning the square diagonally, so one corner touches Tax Lot 3418-501, the assessor's maps show portions of at least 11 other parcels are included within the 160-acre square and that these parcels existed prior to January 1, 1993. The assessor's records further indicate that at least three of these parcels had dwellings established prior to January 1, 1993 (Tax Lots 3418-500, 501 and 1500).

The Board finds that there is substantial evidence in the record to show that the applicants request fully complies with YCZO 403.03(M), for the placement of a forest template dwelling on tax lot 3418-1600.

**D. Dwelling Siting Standards**

1. Section 403.09 of the YCZO requires that all new dwellings in the AF-80 zone be required to comply with the following fire siting standards:
  - (a) *Relevant physical and locational factors including, but not limited to, topography, prevailing winds, access, surrounding land use and source of domestic water shall be used to identify a site which:*
    - (1) *Has the least impact on nearby or adjacent lands zoned for forest or agricultural use;*
    - (2) *Ensures that adverse impacts on forest operations and accepted farming practices on the tract will be minimized;*
    - (3) *Minimizes the amount of forest lands used for the building sites, road access and service corridors; and*
    - (4) *Minimizes the risk associated with wildfire.*
  - (b) *The applicant shall provide evidence that the domestic water supply, if any, is from a source authorized in accordance with the Department of Water Resources Oregon Administrative Rules for the appropriation of ground water (OAR 690, Division 10) or surface water (OAR 690, Division 20) and not from a Class II stream as defined in the Forest Practices Rule (OAR 629-24-101(3)). If the water supply is*

*unavailable from public sources or sources located entirely on the subject property, then the applicant shall provide evidence that a legal easement has been obtained permitting domestic water lines to cross the properties of affected owners.*

- (c) *As a condition of approval for a dwelling under subsections 403.03(L) through (N), the county shall require that the tract that is the site of the dwelling meets the stocking and survival requirements of ORS 527.610 to 527.770. The property owner shall submit a stocking survey report to the County Assessor and the Assessor shall verify that the minimum stocking requirements have been met.*

The applicants conformance with these standards are addressed in findings D - 2 through D - 4, below. These findings only apply to Tax Lot 3418-1600.

2. Regarding standard (a) above, *relevant physical and locational factors*, the Board finds the applicant did not provide a specific plot plan identifying the location of the forest dwelling, but that during the public hearing on this matter the applicant testified as to the location of the dwelling and identified the proposed location to be on the east facing sloped portion of the property in the northwest area. This area is currently served by an existing access road, and is not planted in commercial timber.

The Board finds that the dwelling will be set back over 80 feet from adjoining parcels. Further, that the proposed area where the dwelling will be located is an area of the property which will have the least impact on nearby lands zoned for forest and agricultural uses due to its physical location near the ridgetop area, the existing access roadway, outside of the commercially planted areas on the subject property, and away from adjoining timber lands.

The Board further finds the location of the proposed dwelling will minimize impacts on the existing forest operations and accepted farming practices that could occur on the tract. The Board also finds that the applicant's proposal minimizes the amount of forest lands to be used for the building sites, and that risks associated with wildfire will be minimized as the Board will require as a condition of approval (#5) that the applicant comply with accepted fire siting standards as contained in section 403.10 of the YCZO.

3. Regarding standard (b), *evidence that domestic water is from an authorized source*, the Board finds this standard will be satisfied through condition of approval (#7) and will be verified at the time of application for building permits.

4. Regarding standard (c), *a stocking survey satisfying the minimum stocking requirements*, the Board finds this standard will be satisfied through condition of approval (#6) and will be verified at the time of application for building permits.

The Board finds all of the siting standards for the proposed dwelling contained in section 403.09 of the YCZO have been satisfied by this request or will be satisfied through standard conditions of approval.

**E. Fire Siting Standards**

1. Section 403.10 of the YCZO requires the following fire siting standards for all new dwellings or permanent structures in the AF zones:
  - (a) *The dwelling shall have a fire-retardant roof;*
  - (b) *The dwelling shall not be sited on a slope of greater than 40 percent;*
  - (c) *The dwelling is located upon a parcel within a fire protection district, or:*
    1. *The applicant provides evidence that the applicant has asked to be included in the nearest such district; or*
    2. *Is provided with residential fire protection by contract; or*
    3. *Is provided with a water supply consisting of a swimming pool, pond, lake, or similar body of water that at all times contains at least 4,000 gallons, or a stream that has a minimum year-round flow of at least one cubic foot per second. Road access shall be provided to within 15 feet of the water's edge for fire-fighting pumping units, and the road access shall accommodate a turnaround for fire-fighting equipment.*
  - (d) *Road access to the structure shall meet the road design standards described in Section 403.11(D).*
  - (e) *If the dwelling has a chimney or chimneys, each chimney shall be provided with a spark arrester.*
  - (f) *A primary fire break shall be constructed, no less than 30 feet wide. The primary firebreak could include a lawn, ornamental shrubbery or individual or groups of trees separated by a distance equal to the diameter of the crowns adjacent to each other, or 15 feet, whichever*

*is greater. All trees shall be pruned to at least eight feet in height. Dead fuels shall be removed.*

- (g) *A secondary firebreak of not less than 50 feet outside the primary firebreak shall also be constructed. Dead fuels shall be removed. The secondary fire break shall be increased if the dwelling or structure is located on a slope or other fire hazards exist.*
- (h) *No portion of a tree or any other vegetation shall extend to within 15 feet of the outlet of a stovepipe or chimney.*
- (i) *The applicant shall obtain an address from the County, and shall display that number in a location on the property that is clearly visible from the road used as the basis for numbering. The numbers shall not be less than three inches in height, shall be painted in a contrasting or visible color and shall comply with all other applicable standards for signs.*

The applicants conformance with these standards are addressed in findings E - 2 through E - 6, below. These findings only apply to Tax Lot 3418-1600.

2. Regarding standard (a), *the requirement for a fire-retardant roof, spark arresters on chimneys*, standard (e), and *addressing requirements* of standard (i), The Board finds all of these standards will be satisfied through conditions of approval (#1), (#4) and (#2) and will be verified at the time of application for building permits.
3. Regarding standard (b), *dwelling located on slopes less than 40%*, the Soil Survey indicates that slopes on the property range from 7-30%, therefore this standard is satisfied.
4. Regarding standard (c), *dwelling to be located on a parcel within a fire district*, the property is within the Carlton Rural Fire District service area, therefore this standard is satisfied.
5. Regarding standard (d), *road design standards*, the existing access road serving the subject property will be required to comply with the road design standards of section 403.11(E) of the YCZO. The Board finds that these standards will be met through condition of approval (#3) and verified at the time of application for building permits.
6. Regarding standards (f) *primary fuel break*, (g) *secondary fuel break*, and (h) *no vegetation or tree over dwelling*, the Board finds that these standards will

be met through condition of approval (#5) and will be verified at the time of application for building permits.

The Board finds all of the fire siting standards for the proposed dwelling contained in section 403.10 of the YCZO have been satisfied by this request or will be satisfied through standard conditions of approval.

**F. General Standards and Limitations.**

1. Section 403.11 of the YCZO sets forth nine different general standards and limitations for all new dwellings or permanent structures in the AF zones. These general standards are broken down into the following sections:
  - (a) *Dwelling Density;*
  - (b) *Parcel Size and Dimension;*
  - (c) *Setbacks;*
  - (d) *Parcel Coverage;*
  - (e) *Access;*
  - (f) *Clear Vision Areas;*
  - (g) *Height;*
  - (h) *Accessory Use Standards and Requirements; and*
  - (i) *Off-Street Parking.*

The Board finds that some of these standards directly apply to this request and others do not. Specific findings will only be made with respect to those particular standards which directly apply to this request.

2. Regarding standard (a), *dwelling density*, the Board finds there currently are no other dwellings on the subject parcel, therefore the subject dwelling will be the only principal dwelling on the property.
3. Regarding standard (b), *parcel size and dimension*, the Board finds this standard is not applicable to this request as it does not involve the creation of any new parcels.

4. Regarding standard (c), *setbacks*, the minimum setback for a dwelling from forest land on an adjacent parcel is 80 feet. The Board finds the location of the proposed dwelling will be setback more than 100 feet from all property lines. Further, as a condition of approval, the Board has required that the dwelling be setback at least 80 feet from forested areas (see condition #5d).
5. Regarding standard (d), *parcel coverage*, this standard is not applicable because the parcel is larger than one acre.
6. Regarding standard (e), *access*, the Board finds that these standards will be met through condition of approval (#3) and will be verified at the time of application for building permits.
7. Regarding standard (f), *clear-vision areas*, the Board finds that this standard will be met through condition of approval (#3) and will be verified at the time of application for building permits.
8. Regarding standard (g), *height limitations*, the Board finds that this standard will be met and verified at the time of application for building permits for the proposed dwelling unit and any accessory structures.
9. Regarding standard (h), *accessory use standards*, the Board finds that this standard does not apply to this request. However, if somehow this standard is determined to be applicable, the Board finds that it can be met and verified at the time of application for building permits for any future accessory structures.
10. Regarding standard (i), *off-street parking*, the Board finds that this standard will be met through condition of approval (#5e) and will be verified at the time of application for building permits.

The Board finds all of the general standards and limitations found in section 403.11 of the YCZO have been satisfied by this request or will be satisfied through standard conditions of approval.

11. Other issues raised by Opponents

- 11.1 Opponents claim that the approval violates ORS 215.720. However, the Board finds that ORS 215.720 is inapplicable to this application because the property is land in a zone that allows both farm and forest uses, which is governed by ORS 215.705 (4), and OAR 660-06-050(2) and (3), whereas ORS 215.720 applies only to lot of record dwellings on forest land, which is governed by YCZO 403.03(L), which does contain the less than 5,000 cubic feet per year commercial tree species requirement. See YCZO 403.03(L)(3).

- 11.2 Opponents claim that the approval violate OAR 660-06-025. However, the Board rejects that claim because OAR 660-06-025 (1) recognizes that types of uses allowed on forest lands include "(d) Dwellings authorized by ORS 215.720 to 215.750" which includes the template dwelling.
- 11.3 Opponents claim that a template dwelling cannot be approved on a parcel which is zoned EF-40. The Board agrees, but this parcel is being rezoned to AF-80, which is a mixed agriculture/forestry zone, in which the application of the template dwelling rules, OAR 660-06, are applied as provided in OAR 660-06-050. Therefore, the Board rejects this objection by opponents.

#### CONCLUSIONS:

1. The request was originally for a zone change from EF-40 to AF-40 and for placement of a dwelling on a parcel predominantly in forest use on January 1, 1993.
2. Based on factors discussed in the findings, the parcels are suitable to have a zone change to AF-80, and all mandatory approval criteria for a zone change from EF-40 to AF-80 are satisfied by this request.
3. The proposal complies with the requirements of Section 403.03(M) of the Yamhill County Zoning Ordinance (YCZO) for a "template test" dwelling because there are no other dwellings on the tract, and there are at least 11 other lots within a 160 acre template, and at least three of these lots had dwellings prior to January 1, 1993.
4. All other standards found in sections 403 of the YCZO are satisfied by the template dwelling request, or conditions of approval have been added to assure full compliance with certain siting and fire safety standards of sections 403 of the YCZO.

#### DECISION:

Based on the above findings and conclusions, the Board affirms that part of the Planning Commission in Docket No. Z-02-96 **denying** a zone change from EF-40 to AF-40, and **reverses** the decision of the Planning Commission in Docket No. Z-02-96 and approves a zone change from EF-40 to AF-80 on Tax lots 3418-1600 and 3513-1300.

Further, the Board **reverses** the decision of the Planning Commission in Docket No. FT-05-96 and approves the forest template dwelling for Tax Lot 3418-1600 subject to the following **conditions**:

1. The dwelling shall have a fire-retardant roof.
2. The applicant shall obtain an address from the county, and shall display that number in a location on the property that is clearly visible from the road used as the basis for numbering as well as locations along the private drive to distinguish the appropriate driveway from other driveways in the area, if necessary. The numbers shall not be less than three inches in height, shall be painted in a contrasting or visible color and shall comply with all other applicable standards for signs.
3. The entire access road from the nearest public road to the structure shall meet the road design standards described in Section 403.11(E). The access road across the applicant's property shall meet the clear-vision standards in section 403.11(F).
4. If the dwelling has a chimney or chimneys, each chimney shall be provided with a spark arrester.
5. The applicant shall submit a detailed site map illustrating the dwelling satisfies the following requirements prior to building permit approval, and the requirements shall be implemented upon construction or placement of the dwelling:
  - a. A primary fire break shall be constructed, no less than 30 feet wide. The primary firebreak could include a lawn, ornamental shrubbery or individual or groups of trees separated by a distance equal to the diameter of the crowns adjacent to each other, or 15 feet, whichever is greater. All trees shall be pruned to at least eight feet in height. Dead fuels shall be removed.
  - b. A secondary firebreak of not less than 50 feet outside the primary firebreak shall also be constructed. Dead fuels shall be removed. The secondary fire break shall be increased if the dwelling or structure is located on a slope or other fire hazards exist.
  - c. No portion of a tree or any other vegetation shall extend to within 15 feet of the outlet of a stovepipe or chimney.
  - d. A setback of at least 80' is required between the dwelling and forested areas on adjacent properties.

- e. An emergency vehicle turnaround area shall be provided near the dwelling site to provide sufficient room for at least one emergency vehicle to turnaround.
6. The property owner shall submit a stocking survey report to the County Assessor and the Assessor shall verify that the minimum stocking and survival requirements of ORS 527.610 to 527.770 have been met for the parcel prior to building permit approval.
7. Prior to the issuance of building permits, the applicant shall provide evidence that the domestic water supply, if any, is from a source authorized in accordance with the Department of Water Resources Oregon Administrative Rules for the appropriation of ground water (OAR 690, Division 10) or surface water (OAR 690, Division 20) and not from a Class II stream as defined in the Forest Practices Rule (OAR 629-24-101(3)). If the water supply is unavailable from public sources or sources located entirely on the subject property, then the applicant shall provide evidence that a legal easement has been obtained permitting domestic water lines to cross the properties of affected owners.
8. This approval is valid for two years, and will expire on October 23, 1998 unless substantial construction has occurred prior to that date.

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