

IN THE BOARD OF COMMISSIONERS OF THE STATE OF OREGON

FILED
YAMHILL COUNTY, OREGON

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FOR THE COUNTY OF YAMHILL

CHARLES STEVENS
COUNTY CLERK

SITTING FOR THE TRANSACTION OF COUNTY BUSINESS

In the Matter of an Ordinance Amending the)
 Official Zoning Map from AF-10 (Agriculture)
 Forestry Small Holding to VLDR 2.5 (Very Low)
 Density Residential, 2.5 acre minimum lot size)
 on a 7.9 acre parcel known as Tax lot 3324-7800;)
 Applicant James E. McIntosh; Planning Docket)
 Z-05-96; and Declaring an Emergency.)

ORDINANCE 620

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY, OREGON (the Board) sat for the transaction of county business in special session on February 12, 1997 Commissioners Thomas E. E. Bunn, Robert Johnstone, and Ted Lopuszynski, being present.

WHEREAS, on November 14, 1996, the Department of Planning and Development received an application by James E. McIntosh ("applicant"), Planning Docket Z-05-96 to change the Official Zoning Map from AF-10 (Agriculture Forestry Small Holding to VLDR 2.5 (Very Low Density Residential, 2.5 acre minimum lot size) on a 7.9 acre parcel known as Tax lot 3324-7800; and

WHEREAS, on January 2, 1997, the Yamhill County Planning Commission held a public hearing to consider the application and thereafter voted 7-2 to approve the zone change; and

WHEREAS, on February 5, 1997, the Board held a public hearing on the application, and that following the close of the hearing, and continued the matter to February 12, 1997, on which date the Board deliberated and voted unanimously to approve the ordinance approving the application for the zone change; 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 the amendment to the Official Zoning Map of Yamhill County, 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 Official Zoning Map of Yamhill County is hereby amended as specified in the attached Exhibit "B" to reflect a zoning designation of "VLDR 2.5".

Section 2. The findings attached as Exhibit "A" and incorporated herein by reference are hereby adopted in support of this ordinance.

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 12th day of February, 1997.

ATTEST

YAMHILL COUNTY BOARD OF COMMISSIONERS

CHARLES STERN
County Clerk

Thomas E. E. Bunn
Chairman THOMAS E. E. BUNN

By: Carol White
Carol White

Ted Lopuszynski
Commissioner TED LOPUSZYNSKI

FORM APPROVED BY:

(Not available for signature)

JOHN C. PINKSTAFF
Assistant County Counsel

Commissioner ROBERT JOHSTONE

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EXHIBIT "A"
Ordinance 620

PLANNING COMMISSION APPROVAL:

January 2, 1997

**APPROVAL AND ADOPTION OF ORDINANCE
BY BOARD OF COMMISSIONERS:**

February 12, 1997

DOCKET: Z-05-96

REQUEST: Zone change from AF-10, Agriculture Forestry Small Holding to VLDR-2.5, Very Low Density Residential, 2.5 acres minimum lot size.

APPLICANT: James E. McIntosh

TAX LOT: 3324-7800

LOCATION: 23600 N. Hwy 99W, between Newberg and Dundee, abutting south on Highway 99W.

LOT SIZE: 7.9 acres

**COMPREHENSIVE
PLAN DESIGNATION:** VLDR, Very Low Density Residential

FINDINGS:

A. Background Facts

1. Access: Highway 99W.
2. On-Site Land Use: The parcel is level and primarily in pasture or grass, with a few deciduous trees. There are three buildings on-site, a mobile home, garage, and barn.
3. Surrounding Land Use: The surrounding area is primarily residential in character, with some small-scale farm uses. There area houses on the adjacent lots to the east and south. North and west of the subject parcel is Highway (HWY.) 99W and the Southern Pacific Railroad line. Parcels on the same side of HWY. 99W as the subject property

generally range in size from approximately 1.5 to 10 acres. Parcels to the north and west across HWY. 99W from the subject parcel range in size from 2 to 25 acres.

4. Surrounding Zoning: Land to the south, north, and northeast is predominantly zoned VLDR-2.5 and with some LI (Light Industrial). Land to the north and west is zoned AF-10, VLDR 2.5, and VLDR 5.
5. Water: The subject parcel is served by a well.
6. Sewage Disposal: Septic systems are the only option in this area (see sanitarian's comments).
7. Previous Actions: No documentation of previous actions exists.

B. Ordinance Provisions and Analysis

1. The 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.8, below.

2. The Board finds that the proposed change is consistent with the following goals, policies, and any other applicable provisions of the Comprehensive Plan as required by YCZO 1208.02 (A). The Board interprets this provision, requiring the zone change to be "consistent with" plan provisions, to mean "in harmony with", or "free from contradiction" with the plan. See, Webster's 9th New Collegiate Dictionary, 1984 ed. The Board finds that the comprehensive plan provisions relevant to this application do not contain independent approval criteria, but rather are aspirational in nature, and are implemented through the zoning ordinance.

2.1 The Board finds that the zone change is consistent with Comprehensive Plan policy I.B.2 (a), which 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 zone change is consistent with this provision because the subject property is part of a large exception area (Exception area 1.8) zoned for residential use located between, and in close proximity to, Newberg and Dundee. The area is committed to residential use and there are a number of subdivisions in the immediate vicinity (including Wilderness Canyon, Hollow Estates, and Hidden Meadows to the east, and numerous 1-2 acre parcels south and west of the property). Therefore, this location of VLDR development will be in a designated large area 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.

2.2 The Board finds that the zone change is consistent with other provisions of the Comprehensive Plan raised by opponent Sid Friedman, who contends that the zone change violates certain plan provisions. As stated above, the Board interprets YCZO 1208.02(A) to require the zone change to be harmonious, and not contradictory, with comprehensive plan provisions, but not to require that comprehensive plan provision constitutes a separate independent approval criteria which can be "satisfied" or "violated". Therefore, claims that the zone change "violates" or "fails to comply" with plan provisions mischaracterize the nature of the "consistent with" requirement. In any event, the Board finds that the zone change is following provisions are consistent with

As a result, the Board interprets YCZO 1208.02(A) to require the zone change to be harmonious, and not contradictory, with comprehensive plan provisions, but not to require that comprehensive plan provision constitutes a separate independent approval criteria which can be "satisfied" or "violated". Therefore, claims that the zone change

"violates" or "fails to comply" with plan provisions mischaracterize the nature of the "consistent with" the following plan provisions.

Section 1.A. Urban Area Development, Goal Statement 1. *"to encourage the containment of growth within existing urban centers"*

The Board finds that VLDR 2.5 zoning is considered a "rural", rather than "urban", for the reasons explained more fully below, and therefore this zone change to VLDR 2.5 will allow a rural use outside an urban growth boundary, and this is not inconsistent with this urban area containment goal statement..

Section 1.A. Urban Area Development Summary. *"An established urban growth boundary for each city of Yamhill county will assist in the orderly and efficient transition from rural to urban land use."*

The Board finds that VLDR 2.5 zoning is considered a "rural", rather than "urban", for the reasons explained more fully below, and therefore this zone change to VLDR 2.5 will allow a rural use outside an urban growth boundary, and this is not inconsistent with this urban area development policy.

Section 1.B. Rural Area Development, Policy 1.d: *"No proposed rural area development shall require or substantially influence the extension of costly services and facilities normally associated with urban centers . . . "*

The Board finds that the requested zone change is consistent with this rural area development policy because it will not require or substantially influence the extension of costly services and facilities associated with urban areas (ie., Newberg or Dundee).

The property will be served by individual domestic water wells and individual subsurface sewage disposal systems, and will not require extension of or connection with any existing water and sewer services and facilities associated with Newberg or Dundee.

Section 1.B. Rural Area Development, Policy 1c.2: *"All proposed rural area development ... shall not be located in anyarea of severe drainage problems or soil limitations. for subsurface sewage disposal."* The Board finds that the requested zone change is consistent with this rural area development policy because this is not an area of severe drainage problems or soil limitations. There have been septic sites approved in this area, and alternative septic systems are in use on other property in this area. Individual septic site suitability is determined prior to partitioning of the property.

Section 1.B. Rural Area Development. Policy 1. c.3: "All proposed rural area development ... shall be furnished with adequate access." The Board finds that the requested zone change is consistent with this rural area development policy because there will be access to either a county road or a state highway pursuant to a county or state ODOT permit, and permit conditions will assure that access improvements will be adequate for the safety of the travelling public. The property is located adjacent to state highway 99W. However, the plan for the development of the property shows that access will be to Dayton Avenue, which is a county road. In order to access the county road, a county permit will be required, which will address width sight distance, drainage, and other improvements needed for protection of the travelling public. Even if the access were to highway 99W it would be necessary to obtain an approach road permit from the Oregon Department of Transportation (ODOT). State statute (see ORS 374) and administrative rules (OAR 634-50) govern ODOT permits for approach roads to state highways, and improvements which will be required (eg. width, signs, turn lanes, barricades, and other improvements needed to protection of the travelling public).

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, as required by YCZO 1208.02(B).
 - 3.1 *Importance of uses to the citizenry or the economy of the area.* The comprehensive plan recognizes the importance of rural residential development, and very low density residential zoning, to the citizens of the county. See YCCP sections I. B.1., I.B.1.a., I. B. 2., and I.B.2.a. Moreover, the zoning ordinance recognizes the need to accommodate rural residential development requiring only a basic level of services, such as single local road access, individual domestic wells and sewage disposal systems and rural fire protection, and the importance of encouraging opportunities for small scale or intensive farm and forestry activities, and as transitional zones between F-40, EF-40, AF-20 and AF-10 zoning districts and higher density LDR districts or urban districts identified in city comprehensive plans. See YCZO 502.01.
 - 3.2 *Existing market demand.* 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 31, 1995:

Zone	# of lots	built lots	vacant lots
AF-10	64	44	20
VLDR-5	5	4	1
VLDR-2.5	341	274	67
VLDR-1	138	105	33
Total	548	427	121

*This analysis shows that 78% of the existing lots within the exception area are already developed. 80% of the lots that are zoned VLDR-2.5 are developed.

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 1980's, but has increased substantially from 1990 to 1995 (from 66% developed to 80% 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 1995, 47 lots were developed in exception area 1.8, in the VLDR 2.5 District (47 developed lots/5 years = 9.4 developed lots per year). This indicates that not only have the number of developed lots increased over the last five years, but the rate at which they have increased has almost doubled.

The 1990 Census reported the population of Yamhill County at 65,551. On July 1, 1996 the Center for Population Research and Census at Portland State University estimated the Yamhill County population at 77,500. This is an increase of 11,949 or 18.2% over a six year period.

The increase in the rate and amount of development, combined with the relatively small number of existing vacant lots and an increasing population indicates a demand and need for additional VLDR zoned lots in this area.

Although market availability alone is not a basis for a determination of need, existing market demand is one factor to be considered in determining compliance with YCZO 1208.02(B). Information regarding the existing market demand or availability of VLDR-2.5 zoned properties in the area is available from Tax Assessor records for the

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Wilderness Canyon, Glen Hollow Estates, and Hidden Meadows subdivisions (which are located on the south side of Dayton Avenue, to the south of the subject parcel). Tax records show that 53 of the 57 subdivision lots have been sold to private parties. (The remaining 4 lots are owned by development or building companies.) Two of the subdivisions were approved in 1991, the third, Glen Hollow Estates, did not receive final approval until June, 1995. Eleven of the 13 lots in Glen Hollow Estates have already been sold to private parties. This would tend to indicate that there is a substantial market demand for VLDR lots in the area, as well as illustrating that few lots are available for sale.

It may be noted that that the above figures do take into account possible or potential future partitions within the Exceptions Area 1.8. Opponents claim that the amount of future partitions would add a potential 260 lots if all property within this exception area were divided into its maximum density. However, the existence of potential or possible additional lots is not required to be considered because it is too speculative. Potential or possible lots cannot be accurately estimated and cannot provide a reliable basis for analysis under this criterion because the number of lots which may be developed cannot be determined unless and until there is a partition application, at which time it can be determined whether there are terrain, wetlands, or other site conditions which prevent full build out. Moreover, even if it one were to speculate and assume a full build out of a possible 260 undeveloped lots, this would still mean that 47% of the possible lots in the area are developed. This rezoning would add a possible 3 additional lots to the supply of VLDR2.5 zoned property in Exception area 1.8. Given that sales in this area during the period 1990 to 1995 doubled over the prior 5-year period, it is reasonable to conclude that the need for more VLDR 2.5 zoned property is substantial irregardless of whether one uses a 80% of actual lots vacancy rate, or a 47% of possible lots vacancy rate.

- 3.3 *Availability and location of other lands so zoned and their suitability for uses allowed by the zone.* As discussed above, 67, or 20% of the lots are not built upon in this area. And, with additional partitioning, a possible 53% (260 out of 581 lots) of the total possible lots are not built in this exception area if all property within this exception area were divided into its maximum density.

Analysis of other lands does not occur in a vacuum, but instead must take into account market areas. For purposes of this analysis of other lands so zoned, the Board, the Board finds that it is not appropriate to consider other VLDR 2.5 zoned property in other parts of the county in this needs assessment because need is local in nature, centering on the need for VLDR 2.5 zoned property near one particular city, and excluding VLDR zoned property in a distant city. The Board interprets this requirement to mean that it should consider other lands near the particular area, which here are VLDR zoned

property between Newberg and Dundee, but that it need not consider other VLDR zoned lands in distant parts of the County, because such land is not likely to be considered by persons who are looking for rural residential property within the northern (Newberg-Dundee) area of the county. (Similarly, persons looking for rural residential property in the southern end of Yamhill County would be unlikely to consider VLDR zoned land distant from Sheridan.)

The Board finds that the subject parcel appears to be as well suited for residential development as the other available lots in the area between Newberg and Dundee. 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 property currently has an access driveway across the Southern Pacific Railroad line to HWY. 99W. See discussion of suitability in Finding B.5.

The Board therefore concludes that there is an existing demonstrable need for the particular uses allowed by the requested zone, considering the foregoing factors as required by YCZO 1208.02 (B).

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 1208.02 (C).
- 4.1 *Density and pattern of development in the area.* The proposed zone change is appropriate because adjacent zoning is VLDR-2.5, and 80% of the existing lots (and 47% of the potential lots) have already been developed with residences. There are no 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.* 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, as indicated in the previous finding. Also an adjacent parcel, Tax Lot # 3219-2300, located southeast of the subject property was approved for a zone change from AF-10 to VLDR 2.5 in June of 1996. The Board finds that this 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 railroad line and Highway 99W, does not lend itself to small farm uses. Therefore additional residential development is appropriate for this location.

- 4.3 *Services and utilities likely to be needed.* Services such as rural fire protection, and police protection from the Yamhill County Sheriff and local police, schools, telephone and electricity are available to the site. Community water systems serve most of the subdivision lots, and there is water service along Dayton Avenue, but no information has been provided concerning whether additional hook-ups would be available to serve the lots that could be created if this zone change is approved, or the feasibility of individual wells to serve the lots. Septic systems have been approved in the area, and a number of alternative above ground sand filters are in use in this area. If septic system approval is not possible, then 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, as required by YCZO 1208.02 (D).

As shown in Finding B.3, some other VLDR 2.5 designated land located in the area between Newberg and Dundee but there is not an adequate supply of such land to meet the need. As indicated in Finding B.3, only 19% 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. If the exception area were to be subdivided to the maximum density there would be 260 new lots, including 75 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 property currently has an access driveway across the Southern Pacific Railroad line to HWY. 99W, as well as an easement to the county road. The Board therefore concludes that such other land is unavailable in sufficient quantities and is not as well suited for residential development as the subject parcel.

6. The Board finds that the amendment is consistent with the current Oregon Administrative Rules for exceptions, if applicable, as required by YCZO 1208.02 (E).

The subject area is part of an exception Code Area 1.8 which was excepted on April 23, 1980 as part of Yamhill County Ordinance No.234, therefore, the area is not subject to Goals 3 and 4. The proposed 2.5-acre minimum lot size is not considered to be an urban scale of development, so Goal 14 does not apply. No other Goals apply to this request, and no exception is required.

6.1 The opponents contended that the zone change violates Statewide Land Use Planning Goal 14 (Urbanization). LCDC has not adopted goal amendments or administrative rules defining the terms "urban use " or "rural use" or providing standards for determining whether a specific use is "urban" or "rural." Therefore, review of whether a specific use is "urban" or "rural" proceeds on a case by case basis, under relevant LUBA and appellate court opinions. Under the Supreme Court's decision in *1000 Friends v. LCDC (Curry County)*, 301 Or at 507(1986), it has been held in *Shaeffer v. Jackson County*, 17 Or LUBA 922 (1089), that there are four relevant factors to be considered: (1) parcel size; (2) intensity of use; (3) necessity for urban facilities; and (4) proximity to UGB(citing *Hammock & Associates, Inc. v. Washington County*, 16 Or LUBA at 100 n. 6. The Board finds that the proposed use is a rural use, rather than an urban use, and that Goal 14 is not violated based on those factors as follows:

6.2 Land Use Goal 14 is intended to provide for the orderly and efficient transition from rural to urban land use. A rural residential use on 2.5 acres as allowed by the VLDR 2.5 zone is a rural use, not an urban use, and is consistent with the requirements of Goal 14, as demonstrated by the provisions of YCZO section 502.01, which sets forth the purpose of the VLDR-2.5 zone as follows:

"The purpose of the VLDR Districts is to provide for medium to high density rural residential development on selected lands, to accommodate rural residential development at an anticipated magnitude or density level that does not require more than a very basic level of services, such as single local-road access, individual domestic wells and sewage-disposal systems, and rural fire protection. Ultimate density limitations in VLDR Districts shall be determined in part by prevailing lot sizes, and limitations of domestic water sources or soil conditions for subsurface sewage disposal. Opportunities for small-scale or intensive farm and forestry activities compatible with rural residential uses shall be encouraged in the VLDR Districts. In areas immediately adjacent to urban centers, the VLDR Districts are intended as transitional zones between F-40, EF-40, AF-20 and AF-10 Districts and higher-density LDR Districts or urban districts identified in city comprehensive plans."

6.3 *Parcel Size.* Under YCZO 502.06 (B).2., the minimum parcel size in the VLDR 2.5 zone is 2.5 acres, except that for newly created parcels, except that in the case of parcel size averaging, the minimum parcel size shall be one (1) acre; and in case of a duplex, the minimum parcel shall be 5 acres.

6.4 *Intensity of use.* Under YCZO 502.02, principal residence (including mobile home) use is the most intense use that can be made of the property in this VLDR 2.5 zone. Other, less intense, permitted uses allowed in the VLDR 2.5 zone (without meeting additional PUD overlay requirements) include farm uses, Christmas trees, accessory uses,

temporary structures, mobile home storage and temporary sales offices for permitted uses; and signs.. Other uses which could potentially be allowed and which may be more intense (such as duplex or multi-family dwelling and PADS) are all subject to planned unit development requirements of a PUD overlay district under YCZO section 903, and, as such, would require further land use approvals for PUD overlay zone before they would be allowed (if, they are not considered to be allowed without further amendment to the zoning map) in this zoning district.

- 6.5 *Necessity for urban services.* Urban services will not be required for this property. The property will be served by a private well and individual septic (subsurface sewage) systems. The property will be served by Dundee Rural Fire Protection District.
- 6.6 *Proximity to Urban Growth Boundaries (UGB's).* The property is located approximately 0.8 miles east of the city of Dundee UGB and about one half mile west of the City of Newberg UGB. The City of Dundee's UGB is the same as its city limits, and uses at the perimeter of the Dundee UGB are residential and commercial in nature. The Newberg UGB runs along Chahalem Creek, and uses within the perimeter of the Newberg UGB are residential with low density residential zoning. The property is also outside the Urban Reserve Area (URA) (See OAR Chapter 660, Division 21) for the City of Newberg. There is no property between Newberg and Dundee which has been included in the Newberg URA . There was no opposition to this rezoning by either the City of Newberg or the City of Dundee.
- 6.7 Rural residential development is appropriate in areas that to not have an expectation or history of subsurface sewage problems, water problems or other natural limitations. It is also appropriate for rural land that has been designated as an Exceptions Area, such as this property, and as such, this property is within a rural area that has been developed consistent with Exceptions process.
- 6.8 This property is physically separated and buffered from resource uses in the general area. The property is surrounded on the south by VLDR 2.5 zoned property. To the north, across highway 99 W, is property zoned AF-10, and the site of Duck Pond Vineyards.
- 6.9 The area has a history of appropriate development of private on-site septic and water systems.
- 6.10 The nearby subdivisions demonstrate that this area and the subject property do not require urban level services such as community water and sewer systems, but can be developed successfully with rural level services. Those services which the county deems important or necessary for rural development are already existing in the area of

the subject property and are of adequate size to accommodate the level of services and demands for services that the development of this property will add.

- 6.11 The large size of these lots will further enhance the ability of the land to accommodate rural residential development and demonstrates that the density of the development on this land is not at urban levels. The development of this property at that level will not result in the conversion of rural land to an urban use.
- 6.12 The Comprehensive Plan already designates the property as Very Low Density Residential. VLDR plan designation allows a zoning district of VLDR 2.5. By changing the zoning from AF-10 to VLDR 2.5, the county is applying a zone designation to the subject property which best fits the characteristics of the property.
- 6.13 In addition to the purpose clause of the VLDR zone, various portions of the plan establish that the rural plan designation, as well as the VLDR zoning designation, authorize only "rural" uses and therefore, Goal 14 is not implicated by rezoning to this designation.
- 6.14 The Board finds that this zone change will permit rural, rather than urban, level of use, in light of YCCP Section 1.B. 1.a and YCCP section 1.B. 2, which provide:

YCCP Section 1.B. 1.a ..Yamhill county will recognize that lands designated on the plan map as Agriculture/Forestry Small Holding (AFSH), Very Low Density Residential (VLDR) and Low Density Residential (LDR) as the appropriate and desired location for rural residential development, while at the same time encouraging opportunities for small scale or intensive agricultural and forestry activities within these plan-designated areas.

YCCP Section 1.B. 2.a.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; or in small limited areas having unique scenic, locational and other suitable site qualities where the anticipated magnitude or density of development is not such as to require more than a very basic level of services, such as single local-road access, individual domestic wells and sewage-disposal systems, and possible rural fire protection.

These comprehensive plan provisions, read as a whole, demonstrate a distinction between development densities for which "urban" level services are appropriate, and those development densities for which "rural" level services are appropriate.

- Based on the parcel size, intensity of use, lack of need for urban services, proximity to UGB's and other factors, the VLDR 2.5 zone will allow only "rural uses", and will not allow "urban uses", and Goal 14 and Goal 11 are not violated by the zone change and no exception to these goals is required.
7. *Goal 11.* Opponents contend this is an urban use and therefore violates Goal 11 (Public Facilities and Services). As shown above, VLDR 2.5 will not authorize urban level uses or urban level development within the meaning of Goal 11. The decision authorizes only rural level uses and a Goal 11 exception is not required.
 8. *Other Issues Raised by Opponents.*
 - 8.1 *Physical and visual buffer between Newberg and Dundee.* The opponent does not cite any provision of the comprehensive plan or zoning ordinance. This is not an approval standard for this application. Even if it were, this property will be zoned the same as all of the other property adjacent to Highway 99W on the south side of Highway 99W all the way from Newberg to Dundee. On the north side of Hwy 99W there is AF-10 zoning all the way from Newberg to Dundee, except on parcel zoned Highway Commercial at the edge of Dundee. Thus, this zoning will be consistent with the existing "buffer".
 - 8.2 *Future expansion of UGB's.* The opponent contends that this rezoning will cause conflicts or "preclude options for future development" with future UGB expansions or a future Dundee URA. This is similar to the argument that the use should be considered urban because of proximity to a UGB. But as discussed above, the Dundee and Newberg UGB's are one half mile away and 0.8 mile away, respectively, and neither city commented or opposed on this rezoning. Moreover, it is mere speculation whether Dundee or Newberg will expand their UGB's in the future. In fact, it is unlikely with Newberg, because Newberg's URA currently does not include any between Newberg and Dundee. Dundee has shown no interest in expanding east of its existing city limits.
 - 8.3 *Traffic studies.* Opponent suggests that the traffic will cause congestion on state Highway 99W. This is not an approval criteria for a zone change. As discussed above, access to accommodate additional dwellings is planned for Dayton Avenue, a county road, and require a county approach road permit. In the alternative, access to Highway 99W would require an ODOT road approach permit. In either case, The appropriate time to address traffic concerns will be at the approach road permit stage.

- 8.4 *Septic systems.* Opponent claims that septic systems will fail and pressure will be placed on Newberg and Dundee to provide services, and that this will violate a comprehensive plan policy that "all proposed rural area development ... shall not be located in any ...area of severe drainage problems or soil limitations. for subsurface sewage disposal." Septic suitability is not an approval criteria. However, there are some septic sites which have already obtained approval. Moreover, septic suitability will be required to develop this property for rural residential use, and evaluated of septic suitability occurs prior to the partitioning process. Many septic systems in this area are alternative type systems due to high water tables. The Board finds that this is not an area of severe drainage problems or soil limitations. for subsurface sewage disposal.
- 8.5 *Water.* Opponent claims adequacy of water is an issue. However, this is not an approval criteria. There is a well which produces over 50 gpm which will provide water to the property, and will be adequate for the additional hookups.

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 7.9 acre parcel.
2. The request complies the requirements of YCZO 1208.02

DECISION:

Based on the above findings, analysis, and conclusions, the Board hereby approves the request by James E. McIntosh for a zone change from AF-10 to VLDR-2.5 on Tax Lot 3324-7800.

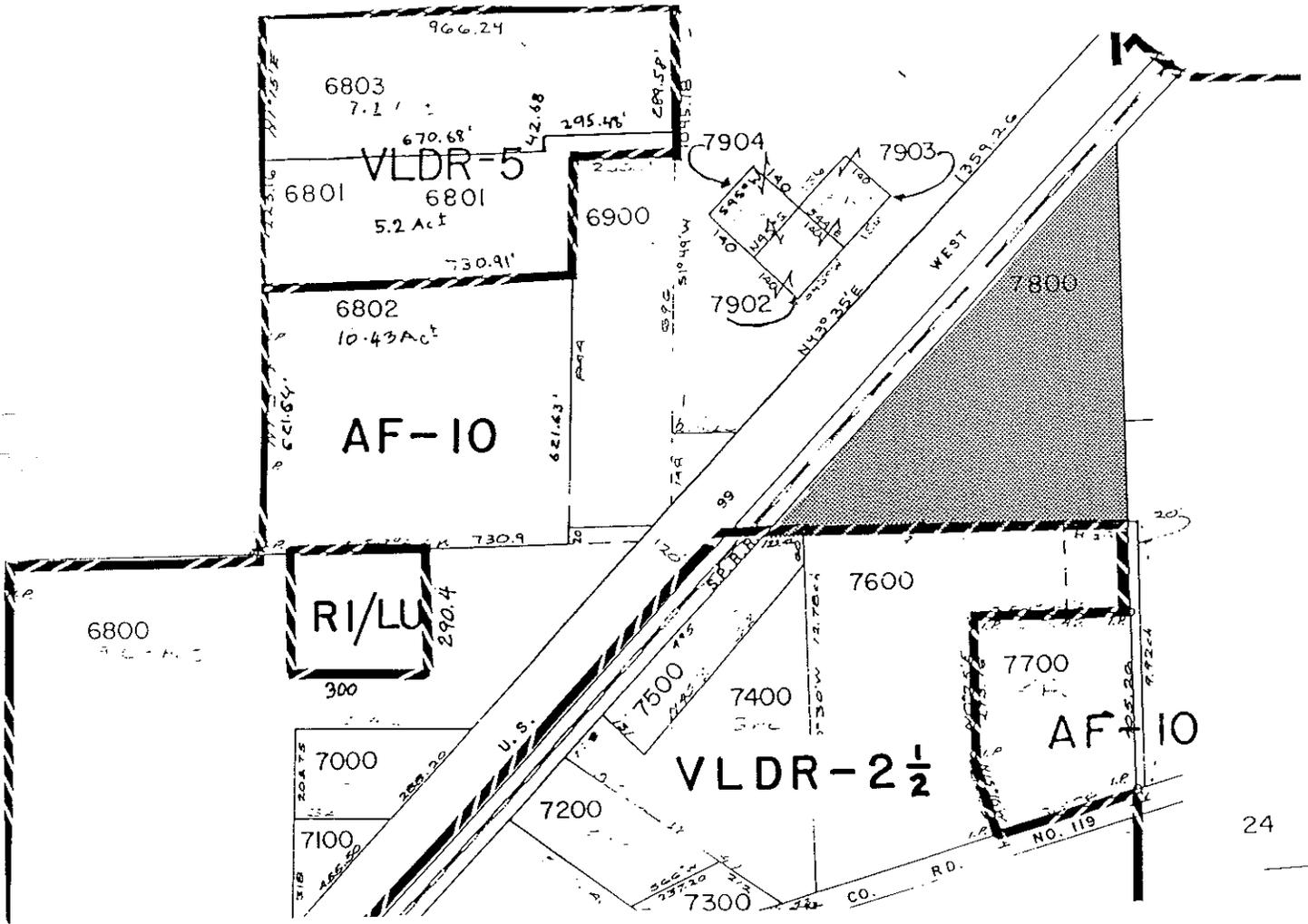
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ZONE CHANGE

ADOPTED BY THE YAMHILL COUNTY BOARD OF COMMISSIONERS

February 12, 1997

THE OFFICIAL ZONING MAP FROM AF-10 TO VLDR 2.5



- SCALE 1" = 400'
- CHANGE APPLIES TO TAX LOT 3324-7800, DESCRIBED ABOVE
- MAP PREPARED BY THE YAMHILL COUNTY PLANNING DEPARTMENT