

FILED
YAMHILL COUNTY, OREGON

IN THE BOARD OF COMMISSIONERS OF THE STATE OF OREGON

FOR THE COUNTY OF YAMHILL

CLERK OF COUNTY

SITTING FOR THE TRANSACTION OF COUNTY BUSINESS

In the Matter of an Ordinance Amending the)
Yamhill County Comprehensive Plan (1974))
Map from "AFSH"(Agriculture Forestry)
Small Holding") to "I" (Industrial), Amending)
the Official Zoning Map from "AF-10")
(Agriculture Forestry 10 acre minimum lot size))
to "RI" (Resource Industrial), Taking an)
Exception to Statewide Goal 3 for Establishment)
of a Winery, and Approval of Site Design)
Review on a 1.5 acre portion of a 5 acre parcel)
Known as Tax Lot 5423-506; Applicant Dean)
Sandifer; Docket PAZ 01-97, and Declaring an)
Emergency.)

ORDINANCE NO. 628

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY, OREGON (the Board) sat for the transaction of county business in special session on June 26, 1997 Commissioners Thomas E. E. Bunn, Ted Lopuszynski and Robert Johnstone being present.

WHEREAS, on March 27, 1997, the Department of Planning and Development received an application by Dean Sandifer ("applicant"), Planning Docket PAZ-01-97 to change the Comprehensive Plan (1974) Map from "AFSH"(Agriculture Forestry Small Holding") to "I" (Industrial), to amend the Official Zoning Map from "AF-10" (Agriculture Forestry 10 acre minimum lot size) to "RI" (Resource Industrial), to take an exception to statewide Goal 3 for establishment of a winery, and for Site Design Review approval, all on a 1.5 acre portion of a 5 acre parcel Known as Tax Lot 5423-506; and

WHEREAS, on May 1, 1997 the Yamhill County Planning Commission held a public hearing to consider the application and thereafter voted 7-1 to recommend denial of the application; and

WHEREAS, on May 21, 1997, the Board held a public hearing on the application, and following the close of the hearing, voted unanimously to tentatively approve the application for the plan amendment and zone change, to impose a Limited Use Overlay to limit the use of the property to a winery, to take an exception to statewide Goal 3, and to approve site design review subject to certain conditions; and

B.O. 97-441

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 Yamhill County Comprehensive Plan Map and 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 Map (1974), as amended, is hereby amended to reflect a plan designation of "I" (Industrial) on a 1.5 acre portion of a 5 acre parcel Known as Tax Lot 5423-506.

Section 2. The Official Zoning Map, as amended, is hereby amended as specified in Exhibit "B", attached hereto and incorporated herein, to reflect a zoning designation of "RI" (Resource Industrial) on a 1.5 portion of a 5 acre parcel Known as Tax Lot 5423-506,

Section 3. A "Limited Use Overlay" zone is imposed on the 1.5 acre portion to limit uses of the property to wine making and storage.

Section 4. The application for site design review is hereby approved subject to the conditions set forth below:

1. All necessary building, septic, electrical and plumbing permits shall be obtained prior to beginning construction.
2. The development shall comply with all setback, height, emergency vehicle turnaround and off-street parking requirements of the YCZO.
3. Prior to beginning construction, all necessary right of way on Three Trees Lane shall be dedicated, and all road improvements thereon shall be completed to county road standards to the public.

Section 5. In adopting the plan amendment specified in Section 1, the County hereby takes an exception to Statewide Planning Goal 3.

Section 6. The findings attached as Exhibit "A" and incorporated herein by reference are hereby adopted in support of this ordinance.

Section 7. Emergency Clause. 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.

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DONE at McMinnville, Oregon this 26th day of June, 1997.

ATTEST

YAMHILL COUNTY BOARD OF COMMISSIONERS

CHARLES STERN
County Clerk

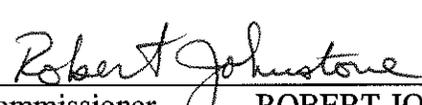
Not Available for Signature
Chairman THOMAS E. E. BUNN

By 
Deputy Carol Ann White


Commissioner TED LOPUSZYNSKI

FORM APPROVED BY:


JOHN C. PINKSTAFF
Assistant County Counsel


Commissioner ROBERT JOHSTONE

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ORDINANCE 628

Findings for Approval

DATE OF PLANNING

COMMISSION RECOMMENDATION OF DENIAL: May 1, 1997

DATE OF PRELIMINARY

BOARD OF COMMISSIONERS APPROVAL: May 21, 1997

DATE OF ADOPTION

OF IMPLEMENTING ORDINANCE: June 26, 1997

DOCKET: PAZ-01-97, SDR-06-97

REQUEST: Approval of a Comprehensive Plan amendment from Agriculture Forestry Small Holding to Industrial; a zone change from AF-10 to RI Resource Industrial; an Exception to Statewide Planning Goals for 1.5 acres of a 5 acre parcel; and site design review in order to allow a winery.

APPLICANT: Dean Sandifer

TAX LOT: 5423-506

LOCATION: On the south side of Three Trees Lane, three lots west of Walnut Hill Road.

REVIEW CRITERIA: Sections 701, 904, 1101 and 1208 of the Yamhill County Zoning Ordinance; OAR 660-04, Exception Process.

FINDINGS:

A. Background Facts:

- 1. Property size: 5 acres, of which the northern 1.5 acres is proposed for the zone change.
- 2. Access: Three Trees Lane

3. On-site Land Use: The property is a south-facing hillside covered with brush. There is no developed access and no buildings on the parcel.
4. Surrounding Land Use: The surrounding area is predominantly devoted to agricultural and residential uses. There are a number of orchards and vineyards on larger tracts, but an increasing number of individual five acre lots from the old subdivision are being developed with residences
5. Surrounding Zoning: All adjacent parcels are zoned AF-10, although the area is a pre-existing subdivision made up of five acre lots, each of which can be developed with a single family residence.
6. Water: No current water supply. The applicant indicates that a well will be drilled.
7. Sewage Disposal: None existing.
8. Fire Protection: Amity Rural Fire District
9. Soils: Sheet 51 of the Yamhill County Soil Survey shows that the 1.5 acres that is proposed for the zone change is made up almost entirely of Jory (JrE) soils, which are agricultural capability Class IV. The remainder of the 5 acres is about evenly split between Nekia (NcD) and Yamhill (YhD), which are also Class IV. The Jory and Yamhill soils are high-value farmland.
10. Taxes: Farm deferral
11. Previous Actions: None.
12. Description of Proposal: The applicant requests approval to build a winery on 1.5 acres of a five acre parcel. He indicates that he will produce 2,000 to 3,000 cases of wine per year from grapes grown on the remainder of the subject parcel, as well as from a five acre vineyard he has planted on Tax Lot 5414-4409, which is approximately 1000' away. The subject parcel is not yet planted - the applicant indicates planting will begin in 1999. The applicant also indicates that he does not plan on having a wine tasting room or plan on conducting on-site marketing events.

B. Zone Change and Plan Amendment Provisions and Analysis

1. The Plan Amendment portion of the request is not subject to local review criteria.
2. The zone change portion of the request must comply 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.*

3. The Board finds that the proposed use complies with YCZO 1208.02(A). A "committed" exception to Statewide Planning Goals 3 and 4 has already been taken for the subject parcel, Comprehensive Plan goals and policies related to agricultural and forest lands are not applicable. (Regardless of whether or not a "reasons" exception is approved, as explained further in section C of this report, the parcel still has an acknowledged "committed" exception to Goals 3 and 4 so is not subject to requirements for protection of farm and forest land.) Other Plan goals and policies which may be pertinent are:

Goal I.B.1. To provide an adequate amount of land, development areas and sites to accommodate those uses which are customarily found in rural areas or require or are better suited to rural locations, without compromising the basic goal relating to urban containment and orderly urban development.

The Board finds that the proposed use is consistent with Goal I.B.1. Wineries with associated vineyards are customarily found in rural agricultural areas. Although some wineries and wine tasting rooms are located in urban centers, with grapes transported to the winery from vineyards outside the urban area, they are not specifically an urban use and do not compromise the goal of urban containment.

Policy I.H.1.g. Agricultural, forestry and mineral resource-oriented industry will be accommodated in areas close to the resources utilized, provided that such industrial uses are compatible with any nearby urban development, city water supply and sewerage are not required, and waste discharges constitute no threat to the environment.

The Board finds that the proposed use is consistent with Policy I.H.1.g. There is no urban scale of development in the vicinity, and no city water or sewer available or required by the winery. DEQ handles permits for waste water discharges from wineries, so will require a system that will not cause a threat to the environment.

Policy I.H.1.m. The county will encourage industrial development which bases its products on renewable and indigenous raw materials.

The Board finds that the proposed use is consistent with Policy I.H.1.m. Grapes are a renewable raw material.

Policy I.H.1.n. The county will recognize and encourage small scale industries as viable alternatives to larger, conventional enterprises.

The Board finds that the proposed use is consistent with Policy I.H.1.n. The proposed winery is small scale.

4. The Board finds that the proposed use complies with YCZO 1208.02 (B). There is an existing demonstrable need for the proposed uses 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. The wine industry is important to both tourism and economic development in the county. The Board finds that there is a need for an additional winery to process the grapes from 5 to 8 acres of vineyard. Some wineries produce wine for other private labels. Some existing wineries may be willing to make and bottle wine for private vineyards. There are two existing wineries - Amity Vineyards and the Byard winery - within less than 3 miles of the subject property, although because of indirect roads the actual driving distances are approximately 8 miles to Amity Vineyards and 4 miles to Byard's. It is unknown whether either of these wineries will produce wine for other private labels. Although it may be argued that grapes could feasibly be transported to one of the other wineries in the county, there is no assurance that other wineries will have the capacity to process grapes now or in the future. The availability and suitability of other RI zoned lands will be discussed in Finding B.6.

5. The Board finds that the proposed use satisfies YCZO 1208.02 (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, as follows. The surrounding land uses are a combination of farm uses and rural residences, with about half of the five-acre lots in the surrounding AF-10 zoned area developed with residences. The production aspect of the winery is compatible with and similar to other farm uses in the vicinity, which may involve noise and dust from harvesting and storing crops. A wine-tasting room or other on-site retail marketing would not be appropriate because of incompatibilities with surrounding residential uses. The primary change that has occurred in the vicinity that would support the proposed amendment is an increased number of acres that has been planted in grapes. Besides the applicant's other five-acre lot that has been planted, there is a 15 acre vineyard directly north of the subject parcel.

The winery, as proposed, would not require any additional utilities and services than already exist in the area or that could be provided by a private well and septic system. However, if at a later date a wine tasting room was opened or on-site marketing events occurred, both of which are permitted under the definition of a winery, the road access would become an issue. Three Trees Lane is a one-lane dirt road with poor sight distance at its intersection with Walnut Hill Road. Based on the recommendations of the County's Director of Public Works set forth in the Engineer's Staff Report dated April 23, 1997, the Board finds that satisfying the requirements of approval condition #3 will assure that Trees Lane will be adequate to handle any increased traffic resulting from retail sales at the site.

6. The Board finds that the proposed use satisfies YCZO 1208.02 (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. There is little, if any, vacant Resource Industrial land in the county where the applicant could locate his winery, and none in a 3 mile radius of the subject parcel. The Light Industrial (LI) district allows wineries as a permitted use. Other land available for use as a winery is located away from the applicant's vineyards. Although there are 10 acres of vacant LI (light industrial) land along Highway 99W just north of Whiteson, approximately a 4 mile drive from the subject parcel, such land is less suitable than the subject site because of its size being greater than is necessary for the proposed use. Although an adjacent highway might make that property more suitable for retail sales and marketing, no such activities are allowed under the Limited Use Overlay that is being imposed. Economic factors which favor the subject parcel include transportation, economy of scale, and shared use of equipment and labor for vineyards and winery operations. There are several grape growers in the county with their own wineries adjacent to their

vineyards, so this arrangement is economically advantageous and acceptable as a resource industrial use.

7. The Board finds that the proposed use satisfies YCZO 1208.02 (E), and that the amendment is consistent with the current Oregon Administrative Rules for exceptions, if applicable. In 1980 this property was the subject of a committed exception to Goals 3 and 4 (see code area 5.11, Exception Statement II, adopted by Yamhill County on April 23, 1980.

Although it may be argued that a new exception is required if there is a change in use, the Board finds that a new exception is not required to allow a winery on the subject property because the property was the subject of a "committed exception" to goals 3 and 4, and the committed exception was taken before the 3/20/86 effective date of the administrative rule, current OAR 660-04-018(2). OAR 660-04-018(4) states that the rule applies only to plan and zoning designations and exceptions adopted following the effective date of the rule.¹ See finding C.1 below. Therefore the request is consistent with YCZO 1208.02 (E).

In the alternative, if a new exception is required, then the Board is taking a reasons exception which is consistent and complies with the current Oregon Administrative Rules for exceptions, and which is in section C below.

C. Oregon Administrative Rule Provisions and Analysis

1. Goal 3. Goal 3 defines agricultural land as that with an agricultural Capability Class I through IV, as well as other lands suitable for farm use or necessary to permit farm practices on adjacent lands. As discussed in finding A.9 above, all of the subject property is regarded as agricultural land (and "resource land") by virtue of its Class IV soils. Under Oregon Administrative Rule, OAR 660-04-010, an exception to Goal 3 "Agricultural Lands" is required if resource land is to be Plan-designated and zone-designated other than exclusive farm use or for any use not permitted in an EFU zone

¹ See *Murray v. Marion County*, 23 Or LUBA 268, note 10 (1992). Former OAR 660-04-018 was interpreted to require a new exception only where the original exception required consideration of impacts on adjacent uses, and since a "committed exception" standards do not require assessment of impacts whereas a "reasons" exception does include a requirement that the proposed uses will be compatible. See *Cook v. Yamhill County*, 14 Or LUBA 78 (1985) (holding that a change in use of property for which a "committed" exception is taken did not require a new exception under former OAR 660-04-018 because the standards for a "committed" exception consider impracticability of compliance, rather than compatibility and impacts.

under ORS Chapter 215. This application is to change the comprehensive plan to Industrial and the zoning to Resource Industrial.

- 1.1 Oregon Administrative Rule (OAR) 660-04 contains the requirements for taking goal exceptions. This area was approved for a "committed" exception to Goals 3 and 4 in 1980, based on the number of small subdivision lots and existing rural residential development pattern (a 600 acre area, consisting of 76 parcels (with 45 parcels of 5 acres or less, 17 parcels of between 5 and 10 acres, 8 parcels of between 10 and 20 acres, two parcels of between 20 and 40 acres and one parcel over 40 acres), with 32 parcels occupied by a house or mobile home. (Exceptions Statement II, April 23, 1980, see Code Area 5.11) The area was zoned AF-10, which allows residential use as well as farming and forestry. The basis for the exception statement was in pertinent part:

"Due to an evenly-distributed small parcelization pattern of individual ownerships on soils with marginal productivity potential due to soil quality and topographical constraints, this Code Area (5.11) is committed to rural residential use . . ."

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

- 1.2 The Board finds that a new exception is not required to allow a winery on the subject property because the property was the subject of a "committed exception" to goals 3 and 4 taken before the effective date of the current OAR 660-04-018(2) which was adopted in 1986. This is so because if the previous "committed" exception was taken before the effective date of the rule (3/20/86), then the new uses are not limited to existing types of uses or certain other rural uses, and a new exception is not required.²
- 1.3. In the alternative, if a new exception is considered to be required for a different type of use, then such a requirement must be based upon current OAR 660-04-018 (1) and (2) which states that a goal exception does not authorize uses other than those justified by the exception - in this case residential, farm and forest uses. Under that current rule, if land is already excepted, but there is a request for a different type of use, a new exception is required. Although wineries are permitted uses on agricultural lands under Goal 3, they are only allowed if there is an on-site or contiguous vineyard that is at least 15 acres in size. Since this is not the case with the subject property, it may then be argued that the use would not be allowed under Goal 3 and a new "reasons"

² See footnote 1.

exception is required. The Board finds that the requirements for taking a "reasons" exception have been satisfied for the reasons discussed hereinbelow.

2. OAR Chapter 660, Division 4. OAR Chapter 660, Division 4, explains the requirements for taking exceptions to statewide goals. OAR 660-04-018 outlines the options for taking exceptions. The first is to base the exception on "physical development" and/or "irrevocable commitment" of the property to nonresource use. This type of exception is intended to recognize and allow existing types of development. The second is a "reasons" exception which allows a jurisdiction to zone property with a non-agricultural designation if there are sufficient grounds for the change. The subject request relies on a "reasons" exception. OAR 660-04-018(3), ORS 197.732(1)(c).

2.1 OAR 660-04-020 and -022 detail the requirements for "reasons" exceptions. Section 660-04-022(1) states:

"...the reasons shall justify why the state policy embodied in the applicable goals should not apply. Such reasons include but are not limited to the following:

"(a) There is a demonstrated need for the proposed use or activity, based on one or more of the requirements of Statewide Goals 3 to 19; and either

"(b) A resource upon which the proposed use or activity is dependent can be reasonably obtained only at the proposed exception site and the use or activity requires a location near the resource. An exception based on this subsection must include an analysis of the market area to be served by the proposed use or activity. That analysis must demonstrate that the proposed exception site is the only one within that market area at which the resource depended upon can reasonably be obtained; or

"(c) The proposed use or activity has special features or qualities that necessitate its location on or near the proposed exception site."

3. OAR 660-04-022(1)(a). The Board finds that the requirements of OAR 660-04-022(1)(a) are satisfied based on substantial evidence that there is a demonstrated need for the proposed use or activity, based on one or more of the requirements of Statewide Goals 3 to 19, as follows:

3.1 The Board finds that there is a demonstrated need for the proposed facility, based on Goal 9(Economic Development) requirement that a local government "provide adequate

opportunities throughout the state for a variety of economic activities vital the health, welfare and prosperity of Oregon's citizens."

- 3.2 The Board finds that there is a demonstrated need for the proposed winery. As the grape industry grows in Yamhill County, and more acres are planted, there has been created a need for greater capacity of its processing facilities (wineries) while maintaining the quality of its product (wines). This facility will be a small winery (2,000 - 3,000 cases per year) on 1.5 acres, and will substantially contribute to the agricultural enterprise in the county.

4. OAR 660-04-022(1)(b) and (c). Applicants submitted evidence to satisfy OAR 660-04-022(c) and therefore it was unnecessary to rely on the alternative requirement in OAR 660-04-022(b). The Board finds that there is substantial evidence that the requirements of OAR 660-04-022(1)(c) are satisfied, for the following reasons:
 - 4.1 The proposed use or activity has special features or qualities that necessitate its location on or near the proposed exception site. To be suitable, wineries need to be in close proximity and with sufficient capacity to provide reasonable assurance that the applicant's grapes will be processed into wine. Applicants searched for parcels within close proximity to their vineyards and recognized that "availability" of land is not limited to whether it is for sale. Applicants found no wineries within three miles of the applicant's vineyards. Applicants personally interviewed several wineries outside three miles to determine if the wineries had adequate capacity, and were suitable and available to process applicant's future harvests, and determined that those wineries could not provide adequate assurance of future capacity and availability, ie., they could not give assurance that they would provide sufficient capacity to assure applicant will have a guaranteed winemaking contract in the future. There are no properties within the three mile area which are zoned resource industrial or available for use as a winery without taking an exception. Applicants found the subject parcel to possess the requisite characteristics for the development and to be better suited than other resource lands in terms of size and closeness to their vineyards.

The Board finds that the scope of the search was reasonable and was not unduly limited. The Board finds that the proposed site is the best suited available parcel within the surrounding area for the proposed use.

 - 4.2 The applicant's search of available parcels showed that this property is the only parcel in the area of the vineyard that is suitable for the use and available. From this it follows that the proposed use has special qualities that necessitate the proposed location.

- 4.3 In addition, the reasons stated in the OAR cited above are not limited to those set forth in OAR 660-04-022(1)(a) and (b) or (c). Another reason why the applicable goals should not apply is the need for the facility location next to established vineyards, together with the difficulty in farming the land profitably due to the small size of the holding.
5. OAR 660-04-020(2) OAR 660-04-020(2) lists four factors that must be addressed when taking a "reasons" exception. These are:
- "(a) Reasons justify why the state policy embodied in the applicable goals should not apply.
 - "(b) Areas which do not require a new exception cannot reasonably accommodate the use.
 - "(c) The long-term environmental, economic, social, and energy consequences resulting from the use at the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located in other areas requiring a goal exception.
 - "(d) The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts."

These factors are addressed below in paragraphs C.6 through C.9.

6. OAR 660-04-020 (2)(a). The Board finds that the requirements of OAR 660-04-020(2)(a) are satisfied based upon a valid justification for not applying the policy embodied in the applicable goals, namely the policy to preserve agricultural lands, as follows:
- 6.1 First, there is a need to site a winery to serve a vineyard in the area. The Board finds that the proposed use satisfies factor (a), that reasons justify why the state policy embodied in the applicable goals should not apply. OAR 660-04-022(3) provides in part that for rural industrial development, appropriate reasons and facts include the following:
- "(c) The use would have a significant comparative advantage due to its location(e.g., ... products available from other rural activities), which would benefit the county economy and cause only minimal loss of productive resource lands. Reasons for such a decision should include a discussion of the lost

resource productivity and values in relation to the county's gain from the industrial use, and the specific transportation, and resource advantages which support the decision."

The Board finds that location of the proposed winery adjacent to the applicant's vineyards will have a significant comparative advantage over use of other wineries in the county and locations within urban areas, based on applicant's testimony that on site winery will provide increased reliability, substantial cost savings and quality assurance, as compared to other wineries which present annual contracting issues, capacity limitations, substantial price fluctuations, and increased transportation costs and varying quality control. By allowing applicants to locate a winery near their vineyards, guaranteed winery to process their harvest this will provide needed convenience and economy, and this will substantially contribute to a more stable, economically viable, grape and wine industry in the county, all for the overall benefit of the county's economic development. 1.5 acres for this RI use constitutes a minimal loss of productive resource lands.

Second, there were no suitable, available sites located within the area. Third, the wineries in the area could not assure the applicant's vineyard that they would be able to provide an adequate capacity to accommodate applicant's grapes in the foreseeable future; thus, approval of this application will not set a precedent for using resource land for wineries where existing wineries have adequate capacity to accommodate vineyard's needs in the foreseeable future. Fourth, it is important for the county, to the maximum extent possible, to accommodate the industries which provide needed services for agricultural uses unless there are overriding reasons against such accommodation. Although the goal 3 does not require that the county approve placement of every proposed industrial use which serves the agricultural uses on resource lands, it does favor not applying the agricultural lands goal and allowing placement of a winery where there is a specific defined need for land to site a winery for vineyards in the area, and where the other exceptions requirements are satisfied. Therefore, the Board finds that there is a reasonable basis for not applying Goal 3 in this situation.

- 6.2 The Board finds that an additional reason for not applying the policy embodied in Goal 3 in this situation is that transport of grapes, to a winery from applicant's and other nearby vineyards, will necessarily be shorter than the transport to existing, more distant wineries, and consequently this will maximize the efficient use of the transportation system, consistent with Goal 8 requirement that local government "plan and develop a timely, orderly, and efficient arrangement of public services to serve as a framework for urban and rural development.

6.3 A further reason for not applying the policy in the goal is that the parcel is not highly productive farm land due to its size, topography and soils. The parcel is not capable of producing sufficient income to cover the property taxes, because of the characteristics of the property.

7. OAR 660-04-020(2)(b). The Board finds that the proposed use complies with the requirements under OAR 660-04-020(2)(b) that the areas which do not require a new exception cannot reasonably accommodate the use. As explained in paragraph B.5, there are no parcels which do not require an exception within the area that are both suitable and available. All suitable land within the area would require an exception for the proposed use.

Although there is other land available for use as a winery which is zoned light industrial near highway 99W north of Whiteson, it is some 4 miles from the applicant's vineyards, and it was not shown that it was available or that it could reasonably accommodate the winery. Economic factors which favor the subject parcel over more distant locations include transportation, economy of scale, and proximity to vineyards. There are several grape growers in the county with their own wineries adjacent to their vineyards, so this arrangement is economically advantageous and acceptable as a resource industrial use.

8. OAR 660-04-020(2)(c). The Board finds that the proposed use satisfies the requirements of OAR 660-04-020(2)(c) that the long-term environmental, economic, social, and energy consequences resulting from the use at the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located in other areas requiring a goal exception, as follows:

8.1 Approval of the goal exception and winery with the limitation on retail sales discussed in Findings B.5 and D.4 would not result in any significant long-term environmental, economic, social or energy consequences to the area.

Applicant searched for other available property in a three mile study area. Applicant limited their search to properties in close proximity to their vineyards because of the advantages of having the winery near their vineyards.

8.2 The typical advantages and disadvantages of using the area for a use not allowed by the goal include:

(a) Advantages: Provides a economically-based use at a location adjacent to an existing grape growing operation to serve applicant's vineyard and provide certainty that there will be wine making capacity for applicant and other vintners in the future.

Close proximity to the vineyards also saves transportation costs and reduces impact of traffic congestion on roads.

(b) Disadvantages: Removes land from agricultural use, although agricultural use has not proven to be profitable given lower crop yields than surrounding lands; potential complaints regarding farming practices on nearby farms; reduction of privacy of neighboring properties; possible problems obtaining sufficient water due to water shortages experienced by nearby residents, and possible adverse impact on the water table.

8.3 The typical positive and negative consequences resulting from the use at the proposed site with measures designed to reduce adverse impacts include:

(a) Positive consequences: The proposed use should not interfere with farming practices given Yamhill County Ordinance No. 541 (the right to farm ordinance); the conditions imposed as part of the Limited Use Overlay ("LUO") will ensure that the use will be limited to a winery.

(b) Negative consequences: The proposed use will remove a parcel of resource land; and could possibly cause a loss of privacy to surrounding landowners.

8.4 The consequences of the use at the chosen site are not significantly more adverse than would typically result from the same proposal being located in areas requiring a goal exception other than the proposed site for the following reasons:

(a) Productive capability of the property site for agricultural use is limited, compared with surrounding property which is more profitable.

(b) There will be no adverse impact on the ability to sustain resource uses near the proposed use. The accepted agricultural practices in the surrounding area are protected from nuisance claims under Ordinance 541, the county's right to farm ordinance.

(c) There will be a substantial economic benefit from use of the land for winery purposes, including the creation of jobs in a rural setting, and the long term economic impact on the general area caused by irreversible removal of the land from the resource base likewise will be minimal.

(d) Other possible impacts include the following:

(1) Although there could possibly be some effect on the water table, testimony from opponents regarding the water table was speculation, not supported by any expert testimony or other documentary evidence. Water use

will be subject to the rules and regulations of the state Water Resources Department. The applicant testified that there is sufficient water for the winery available at the site.

(2) There may be an impact on the costs to special service districts. However, there is no on-site water source for fire fighting and the fire hazard will be minimized because the site design review under the Limited Use Overlay will require applicants to provide adequate fire protection measures and the building will meet fire safety standards.

(3) The costs of improving roads is a possible impact. This property is adjacent to Three Trees Lane, which is a 30 foot wide dedicated road, with 15 foot wide gravel surface, situated north of the site. Pursuant to the recommendations of the Director of Public Works, the Board has imposed a condition that requires applicant to dedicate additional right of way adjacent to the southerly right of way line of Three Trees Lane and improve Three Trees Lane as required by the Director of Public Works. Under site design review factors, traffic safety, internal circulation and parking, and applicants are required to make necessary improvements for safe site access from a traffic engineering standpoint.

- 8.5 Applicants state they intend to have an on-site subsurface sewage disposal system and have no intention of connecting to the city sewer. The County Sanitarian indicated that bathroom waste would be served by septic tank drainfield, and that wine processing would be permitted under DEQ.
- 8.6 Applicants stated there is an adequate water supply available on the property and that they will use a well as the source of water.
- 8.7 Regarding economic consequences, applicants have stressed that this will allow the processing of grapes near the point of harvest, which will improve the product, reduce transportation (trucks) moving grapes to more remote sites. Several grape growers supported the application based on the need for a nearby winery to process their harvest.
- 8.8 Long-term social consequences are difficult to measure but a winery in this area would enhance the wine industry by improving the product and providing more assurance that there will be adequate processing facility capacity for applicant and other grape growers in Yamhill County.

- 8.9 Regarding energy consequences, the applicants indicated that the selection of the site near the harvest would reduce vehicular traffic and the Board finds this will result in fuel conservation.
9. OAR 660-04-020 (2) (d). The Board finds that the proposed uses comply with the requirements of OAR 660-04-020(2)(d) that the proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts.
- 9.1 The Board finds that the proposed use will be situated in such a manner as to be compatible with surrounding uses, including natural resources and resource management or production practices in the surrounding area. First, under YCZO §904.06 the use will require a site design review ("SDR") pursuant to YCZO §1101, and the LUO district requires that special concerns and locational requirements must be addressed in the site plan. Second, the Limited Use Overlay District authorizes the Board to impose reasonable conditions necessary to assure compliance with the plan and the ordinance, and the findings below impose reasonable conditions for that purpose.
- 9.2 The Board finds that the proposed uses and activities are compatible with surrounding agricultural uses and that the site design requires the site plan to address the concerns and locational requirements. Therefore, even if there might be incompatibilities with agriculture, the proposed uses and activities will be rendered compatible with adjacent land uses
- 9.3 The Board finds that the proposed use is compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts. The consideration of compatibility required by factor (d) was discussed in Finding B.5. The harvesting, processing and storage activities that occur at a winery are uses that are compatible with and similar to other agricultural uses occurring in the area. The surrounding area is zoned AF-10, which permits farm use regardless of whether the farm practices are compatible with the residential use which is also permitted in the zone.

D. Limited Use Overlay Provisions

1. OAR 660-04-18(3)(a) states that when a reasons exception is taken, plan and zone designations must limit uses to only those that are justified in the exception.
2. Since the RI zone allows other industrial uses which may not be appropriate to the area, such as fruit, nut and vegetable packing, processing, warehousing and cold storage operations, the Board finds that it is appropriate to apply a Limited Use Overlay to limit uses on the rezoned area to the winery.

3. Section 904.03 of the YCZO contains provisions for limited use overlays. It states:
- (A) *When the Limited Use Overlay District is applied, the uses permitted in the underlying zone shall be limited to those specifically referenced in the ordinance adopting the Limited Use Overlay District.*
 - (B) *The Limited Use Overlay District may be used to require conditional use approval for uses normally permitted outright.*
 - (C) *Reasonable conditions may be imposed in the Limited Use Overlay District as are necessary to assure compliance with the provisions of the Comprehensive Plan and this ordinance.*
 - (D) *Until the overlay has been removed or amended, the only permitted uses in an LU district shall be those specifically referenced in the adopting ordinance.*
4. Because Three Trees Lane is inadequate to handle the traffic that would result from a wine tasting room or other retail sales, and such activities would not be compatible with the residential uses in the area, the Board finds that the use should be limited to just wine-making and storage, and that a conditional use approval would be required prior to the establishment of a wine tasting room or other on-site sales or marketing events.

E. Site Design Review Criteria and Analysis

1. Site design review is required for any development in an RI district. Section 1102.02 of the YCZO governs site design review. Review of a site development plan shall be based upon consideration of the following:
- (1) *Characteristics of adjoining and surrounding uses;*
 - (2) *Economic factors relating to the proposed use;*
 - (3) *Traffic safety, internal circulation and parking;*
 - (4) *Provisions for adequate noise and/or visual buffering from noncompatible uses;*
 - (5) *Retention of existing natural features on site;*
 - (6) *Problems that may arise due to development within potential hazard areas.*
 - (7) *Comments and/or recommendations of adjacent and vicinity property owners whose interests may be affected by the proposed use.*

2. The Board finds with respect to the factor (1), that the surrounding area is primarily agricultural. There are no dwellings on any of the adjacent lots, so there is no particular concern about providing landscape screening or buffering.
3. The Board finds with respect to factor (2), that the proposed location near the road will decrease development costs that would result from installing a lengthy driveway or building on an area of steeper slopes.
4. The Board finds with respect to factor (3), that drawings submitted by the applicant show a 40' x 75' pole-style building with large doors at the south and west ends. The site plan shows that there will be a gravel hard-surfaced area on the west and south sides of the building, which presumably will be available for parking and maneuvering. Parking requirements will be minimal provided that there will be no on-site retail sales. Section 1007 of the YCZO contains parking standards, and indicates that a manufacturing use (the closest category to wine production) should have one parking space per 1,000 square feet of floor area. The winery thus would require only three spaces. (If a wine tasting room is allowed, the standard is one space per 300 square feet, which would be 10 spaces.)
5. The Board finds with respect to factor (4), that there currently are no residences or other incompatible uses on adjacent parcels, however it is likely that the lots will be developed in the future. The drawings submitted by the applicant show that the building will be 20' in height, but due to topography at the site the building will be at an elevation 12 feet below the elevation of Three Trees Lane. A landscaped retaining wall along the northwest end of the building will also serve as partial screening. This design will provide adequate visual buffering from adjacent properties.
6. The Board finds with respect to factors (5) and (6), there are no significant natural features on the site, and there are no known hazards, although the Soil Survey indicates that slopes range up to 30%.
7. The Board finds with respect to factor (7) above, that although a property owner to the north expressed concern about the building blocking the view from their property, as stated in Finding E.5, the proposed site plan has adequate provisions to limit any visual blockage of adjacent properties.

CONCLUSIONS FOR APPROVAL:

1. The request is for a Plan amendment from AFSH Agriculture Forestry Small Holding to I Industrial and a zone change from AF-10 to RI Resource Industrial, including a "reasons" exception. The request also includes site design review to allow a winery.

2. The proposed zone change is consistent with Comprehensive Plan goals and policies. There are no other lands in the surrounding three mile area that would allow a winery. With the limited use overlay and conditions, the proposed use will be compatible with surrounding agricultural and residential uses.
3. Reasons justify why a goal exception should be taken and no adverse environmental, economic, social or energy consequences will result from the winery.
4. A Limited Use overlay is appropriate in order to avoid conflicts with surrounding uses. The approved use should be limited to a winery, and conditional use approval should be required prior to establishment of a wine tasting room or any other on-site sales or marketing events.
5. The site plan and building drawings as submitted comply with standards for site design review.

DECISION:

Based on the above findings, analysis and conclusions, the Board hereby approves the application by Dean Sandifer ("applicant"), Planning Docket PAZ-01-97 and amends the Yamhill County Comprehensive Plan Map (1974) to reflect a comprehensive plan designation of "I" (Industrial), amends the Official Zoning Map to "RI" (Resource Industrial) with a "Limited Use Overlay" zone to limit uses of the property to wine making and storage, takes an exception to Statewide Planning Goal 3 for a winery, and approves the site design review, all on the 1.5 acre portion of a 5 acre parcel Known as Tax Lot 5423-506, subject to the following conditions:

1. All necessary building, septic, electrical and plumbing permits shall be obtained prior to beginning construction.
2. The development shall comply with all setback, height, emergency vehicle turnaround and off-street parking requirements of the YCZO.
3. Prior to beginning construction, all necessary right of way on Three Trees Lane shall be dedicated to the public, and all road improvements thereon shall be completed, in accordance with county road standards.