

FILED
YAMHILL COUNTY, OREGON

IN THE BOARD OF COMMISSIONERS OF THE STATE OF OREGON

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FOR THE COUNTY OF YAMHILL

CHARLES STERN
COUNTY CLERK

SITTING FOR THE TRANSACTION OF COUNTY BUSINESS

In the Matter of an Ordinance Amending the)
Yamhill County Comprehensive Plan (1974))
Map from "VLDR" (Very Low Density)
Residential) to "I" (Industrial) and Amending)
the Official Zoning Map from VLDR-2.5)
(Very Low Density Residential/2.5 acre)
minimum) to HI (Heavy Industrial) on a 10 acre)
Parcel Known as Tax Lot 3228-1800; Applicant)
Marvin Schneider; Docket PAZ 02-96, Effective)
September 18, 1997.)

ORDINANCE NO. 631

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY, OREGON (the Board) sat for the transaction of county business in special session on June 19, 1997 Commissioners Thomas E. E. Bunn, Ted Lopuszynski and Robert Johnstone being present.

WHEREAS, on April 10, 1996, the Department of Planning and Development received an application by Marvin Schneider ("applicant"), Planning Docket PAZ-02-96, to change the Comprehensive Plan (1974) Map from "VLDR" (Very Low Density Residential) to "I" (Industrial) and the Official Zoning Map from "VLDR 2.5" (Very Low Density Residential/2.5 acre minimum lot size) to "HI" (Heavy Industrial) on a 10 acre parcel known as Tax Lot 3228-1800; and

WHEREAS, the parcel is within the Urban Growth Boundary of Newberg, and on March 20, 1997, the Newberg Urban Area Management Commission (NUMAC) held a public hearing to consider the application and thereafter voted 3-2 to recommend approval of the request for the zone change; and

WHEREAS, on May 14, 1997, the Board held a public hearing on the application, and following the close of the hearing, voted 2 to 1 (Commissioner Lopuszynski voting no) to tentatively approve the application for the plan amendment and zone change, subject to a limited use overlay zone; 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 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,

B.O. 91-396

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 Tax Lot 3228-1800.

Section 2. The Official Zoning Map, as amended, is hereby amended as specified in the attached Exhibit "B" to reflect a zoning designation of "HI" (Heavy Industrial), with a Limited Use Overlay zone limiting the use of the property to waste reduction and fuel processing.

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

Section 4. Effective Date. In accordance with ORS 203.045(9), this ordinance, approved by a vote of 2:1, will become effective September 18, 1997.

DONE at McMinnville, Oregon this 19th day of June, 1997.

ATTEST

YAMHILL COUNTY BOARD OF COMMISSIONERS

CHARLES STERN
County Clerk

Not Available for Signature
Chairman THOMAS E. E. BUNN

By: *Carol Ann White*
Depty Carol Ann White

Ted Lopuszynski
Commissioner TED LOPUSZYNSKI

FORM APPROVED BY:

John C. Pinkstaff
JOHN C. PINKSTAFF
Assistant County Counsel

Robert Johstone
Commissioner ROBERT JOHSTONE

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B.O. 97-396

ORDINANCE 631

Findings for Approval

DATE OF NEWBERG URBAN AREA
MANAGEMENT COMMISSION
RECOMMENDATION OF APPROVAL:

March 20, 1997

DATE OF PRELIMINARY
BOARD OF COMMISSIONERS APPROVAL:

May 14, 1997

DATE OF ADOPTION
OF IMPLEMENTING ORDINANCE:

June 2, 1997

DOCKET: PAZ-02-96

REQUEST: Plan amendment from VLDR Very Low Density Residential to I Industrial and a zone change from VLDR-2.5 Very Low Density Residential to HI Heavy Industrial. The request is to allow eventual establishment of a Refuse Derived Fuel Facility.

PLAN DESIGNATION: VLDR Very Low Density Residential

APPLICANT: Marvin Schneider

TAX LOT: 3228-1800

LOCATION: 2808 Wynooski Road, Newberg

CRITERIA: Sections 502, 801, and 1208 of the Yamhill County Zoning Ordinance; Statewide Planning Goals. The application will be processed using the Newberg Urban Area Management Agreement

FINDINGS:

A. Background Facts

1. Lot Size: Approximately 10 acres.

2. Access: Wynooski Road.
3. On-Site Land Use: The northern half of the parcel contains a level area. The southern end of the property slopes down to a creek. This portion contains mature trees and riparian vegetation. Approximately six of the ten acres is suitable for development.
4. Surrounding Land Use and Zoning: Property to the north is inside the city limits and zoned M2. Property to the south is zoned EF-40 Exclusive Farm Use. Property to the east contains the Newberg Transfer Station and is zoned PWS Public Works Safety. One adjacent parcel to the west and properties to the southwest are zoned VLDR 2.5 Very Low Density Residential. These properties contains rural residential and small farm/forestry uses. The majority of the adjacent land to the west is zoned HI Heavy Industrial. The City's Waste Water Transfer Plant and Smurfit pulp and paper mill are in the vicinity of this parcel.
5. Urban Reserve Area: Property to the east and west of the subject parcel is designated as an Urban Reserve Area.
6. Water and Sewage Disposal: City representative's have stated that sewer and water will not be available if the use is developed in the county.
7. Fire Protection: Newberg Rural Fire District.
8. Taxes: The property is not receiving a farm or forestry deferral.
9. Soils: Sheet 22 of the Soil Survey shows that the northern 1/3 of the property contains Woodburn (WuB) and Aloha (Ah) soils. These are rated as Agricultural Class II. The southern 2/3 of the property contains Terrace Escarpments (Class VI) and Wapato (Wc - Class III).
10. Previous Actions: In 1993 there was a request to have this property included in the Newberg Urban Growth Boundary (UGB). The application was assigned county Docket PA-2-93 and city Docket UGB-2-93. On September 14, 1993 the Newberg Urban Area Management Commission (NUAMC) reviewed the request and unanimously recommended approval. Their recommendation was adopted by each jurisdiction. Subsequently there was an application made for annexation and a zone change to a city designation of M-3 Heavy Industrial. This request was approved by the Newberg City Council on December 4, 1995. Part of the approval required completion of a Development Agreement between the city and the applicant in accordance with the requirements of the previously approved Urban Growth Boundary Amendment. An agreement was drawn up and was sent to the City Council. The

Council needed five affirmative votes to pass the Development Agreement. The agreement failed to receive the five affirmative votes so the annexation could not be finalized.

11. Other Factors: FIRM map 410249 0187 shows the southern half of the property is within the 100-year floodplain.
12. Exceptions: The subject parcel and area to the north, south, east and west were all granted a "committed" exception from the statewide planning goals protecting farm and forestry uses (goals 3 and 4). The area was granted an exception and plan designated VLDR Very Low Density Residential by Exceptions Statement I. This document was adopted by the Board of Commissioners May 3, 1979.

B . Transportation Planning Rule

1. OAR 660, Division 12, is the "Transportation Planning Rule." Certain land-use actions are subject to provisions of the rule. OAR 660-12-060 states:
 - (1) Amendments to functional plans, acknowledged comprehensive plans, and land use regulations which significantly affect a transportation facility shall assure that allowed land uses are consistent with the identified function, capacity, and level of service of the facility. This shall be accomplished by either:
 - (a) Limiting allowed land uses to be consistent with planned function, capacity and level of service of the transportation facility;
 - (b) Amending the TSP to provide transportation facilities adequate to support the proposed land uses consistent with the requirements of this division; or,
 - (c) Altering land use designations, densities, or design requirements to reduce demand for automobile travel and meet travel needs through other modes.
 - (2) A plan or land use regulation amendment significantly affects a transportation facility if it:
 - (a) Changes the functional classification of an existing or planned transportation facility;

- (b) Changes standards implementing a functional classification system;
 - (c) Allows types or levels of land uses which would result in levels of travel or access which are inconsistent with the functional classification of a transportation facility; or
 - (d) Would reduce the level of service of the facility below the minimum acceptable level identified in the TSP.
- (3) Determinations under subsection (1) and (2) of this section shall be coordinated with affected transportation facility and service providers and other affected local or state governments.
2. The applicant has provided a study prepared by Kittelson and Associates, dated February 1995 and updated traffic impact analysis dated December 21, 1995 to address concerns regarding potential traffic impacts to Highway 219 (Villa Road)/Highway 99W, Springbrook Street/Highway 99W and Highway 219/Wilsonville Road intersections and Wyooski Road ("Kittelson traffic impact analysis"). The study examines the level of service on nearby roads and concludes that the facility will not significantly impact the level-of-service on the road system. The Kittelson traffic impact analysis was sent to the Oregon Department of Transportation and the Yamhill County Public Works Department for referral. The Kittelson traffic impact analysis was reviewed by the Director of Yamhill County Public Works Department, Bill Gille, who testified that he concurs with the analysis. Therefore, the Board adopts and incorporates herein the Kettelson traffic impact analysis as part of these findings. The analysis is based on the property being used for the limited purpose of waste reduction and fuel processing facilities, and the use will be so restricted by limited use overlay zone. For this and the other reasons contained in the Kittelson traffic impact analysis, the Board finds that the proposed amendment to the comprehensive plan and zoning district will not "significantly affect any transportation facility" as defined in OAR 660-12-060.

C. Zone Change and Plan Amendment Provisions and Analysis

- 1. This request is for a zone change from VLDR 2.5 Very Low Density Residential to HI Heavy Industrial and a Plan amendment from VLDR to I Industrial for 10 acres, in order to allow establishment of a Refuse Derived Fuel Facility.
- 2. The zone change portion of the request must comply with the standards and criteria in 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.*

The findings regarding these criteria are provided in subsections C.3 through C.7 below.

3. The Board finds that the proposed change is consistent with the goals, policies, and any other applicable provisions of the Comprehensive Plan, as required by YCZO 1208.02
(a). There are several references in the *Yamhill County Comprehensive Plan* to solid waste and recycling facilities. *Yamhill County Comprehensive Plan ("YCCP")* Section IV.A. Public Facilities and Services notes in the summary that, "Recycling of solid waste materials conserves natural resources and energy." Goal Statement 1 of this section directs the county:

To develop a timely, orderly and efficient arrangement of public services and facilities to serve as a framework for urban and rural development, including public lands and buildings, parks and recreation areas and facilities, schools, police and fire protection, domestic water supply, sanitary and storm sewerage and other drainage facilities, and power, gas and telephone services.

Policy statement 1 of this goal states:

Yamhill County will encourage and cooperate with regional solid waste management programs in scale with the county's needs and subject to equitable cost sharing arrangements for each of the services and facilities developed on a regional basis.

YCCP Section V A. Air, Water and land Resource Quality, Policy e of Goal 1 is:

In order to maintain and improve the quality of the county's air, water and land resources, Yamhill County will seek to minimize irreversible and other long-term impacts in its development of energy resource; support efforts, where feasible, for the appropriate and efficient recovery of energy as a means to reduce waste problems; and encourage a program to recover and recycle used motor oil.

YCCP Section VI Energy Conservation Policy k states:

Yamhill county will encourage programs for resource recovery and recycling of solid wastes.

The Goals and Policies cited above direct the county to encourage the type of use proposed by the applicant. In accomplishing these goals, the county must also be sensitive to the concerns of Newberg. YCCP Section V Goal Statement 2 directs the county to:

To preserve and enhance the charm and amenity values of the county, while accommodating change, through ensuring harmony between urban development and the natural environment, at the same time cultivating more attractive urban environments in which to live, work and play.

To assure that the development satisfies this Goal, a Site Design Review and Similar Use approval will be required.

The Board finds that the proposed zone change is also consistent with the following additional YCCP provisions:

"h. Established industrial areas may be extended and new industrial areas designated by plan amendment where development trends warrant such extension or designation..." (YCCP I. H. 1. h)

The Board finds that zoning and industrial uses on Wynooski Road has established a trend that this area is appropriate for heavy industrial use. There is an established trend on Wynooski to locate industries in the businesses of collecting,

recycling, and transferring of waste products (Smurfit, Newberg Garbage and Transfer Services, and Newberg's waste water treatment facility)

"l. the county will encourage industry that is energy conserving and energy efficient. Energy efficient and conservation measures that will be promoted include . . . Cogeneration systems including the burning of wastes; and . . . Utilization of new and alternative systems." (YCCP I.H.1.1)

The Board finds that management of waste will be by means of sorting it into categories that are useable as fuel for cogeneration system which will burn the waste (at another location), and that cogeneration is a viable resource to meet the goal.

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

The Board finds that recycling waste into a fuel source creates a product based on renewable materials.

4. 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)

The Board finds that the facility will provide a much needed option to landfilling solid waste and will have the added benefit of providing an untapped energy source. The Board finds that waste reduction and fuel processing are important to the citizenry and the economy of the area, and that there is an existing market demand which this facility will satisfy. As the applicant stated:

"The demonstrable need for this particular use is answered in the policy statements of the County. Yamhill County is dedicated to recycling and the preservation of its agricultural and forest lands. In addition, the County is dedicated to preserving clean water ways. By diminishing the need for a Landfill and reusing that which has been discarded, this facility will increase the viability of Yamhill County. It is the applicant's belief that the proposed zoning is the most appropriate designation for this type of facility."

"Currently, there is a lack of available fuel for particular types of commercial use. There is a tremendous need for a renewable fuel source, a source that will not disappear and be dependable. This facility will be economically viable and

profitable within a very short time from the date of start-up. There are power plants around the nation that are closing because of a lack of dependable fuel source. This plant can and will produce a dependable fuel source. The fuel produced is of a caliber that allows it to be the sole fuel for operating, for example, a power plant.”

Applicant also stated that if this parcel were used pursuant to the existing Comprehensive Plan we would see single family residences and families living: (1) next door to a garbage collection and transfer site, (2) across the street from heavy industrial property, (3) down the street from Smurfit Pulp and Paper Mill, and (4) near Newberg's waste water transfer plant.

The Board is persuaded by the applicant's statement of need. The Board also finds that a need exists for the proposed zone change given the availability and location of other lands so zoned and their suitability for the uses allowed by the zone. Although there are other sites within the Newberg city limits zoned industrial, none of those properties are as suitable as this property because of the proximity of this property to other heavy industrial uses in the area, including the property inside the city limits to the north which is zoned M2, the city waste water treatment plant adjacent to the site within 0.3 mile, Smurfit paper plant within 0.4 mile, within 1600 feet of the Smurfit sewer lagoons, the vehicular access from Wyooski Road which was improved for industrial traffic by the County in 1989/90, and the PWS zoned Newberg Transfer Station property to the east. The Smurfit properties are planned and zoned for heavy industrial use to the west are planned and zoned industrial property

5. 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).

The applicant stated:

“As mentioned above, the surrounding land use designation is all industrial, heavy industrial is next door and down the street. The road has been improved to accommodate industrial traffic. Because all the surrounding land use designation is industrial, this facility fits into the current pattern of development.
..”

As described in Finding A.4 above, the surrounding land uses, the density and pattern of development in the surrounding area contains industrial or industrial types of uses.

The city of Newberg has expressed approval of the location of this facility. On December 4, 1995 the Newberg City Council adopted Ordinance 95-2423. Exhibit A to Ordinance 95-242 contains reference to a comprehensive plan policy which states:

“Heavy industrial uses should be located in the area near Smurfit Newsprint, an existing pulp and paper mill. Other designated areas should be developed to light industrial or industrial park type areas.”

The staff response to this plan policy stated:

“By zoning the proposed property M-3 (Heavy Industrial) and allowing the proposed facility to operate as planned will further this very specific goal. The proposed area is situated within 4/10 of a mile from Smurfit, within 3/10 of a mile from the Waste Water Treatment Plant, within 1600 feet of the Smurfit sewer lagoons and next door to the Newberg Transfer Station. . . . There is no better location for M-3 (Heavy Industrial) zoning than the proposed site.”

The request for a zone change to a County designation of HI Heavy Industrial is very similar to Newberg’s M-3 Heavy Industrial designation. The city of Newberg did have some concerns about design standards of the use, rather than the location of the use. The design and conditions of approval for the site will be evaluated at the time an application is made for a Site Design Review and Similar Use approval.

The Board finds that utilities and services likely to be needed by the anticipated uses in the proposed district are available. The road system is adequate to handle the anticipated traffic. Water will be an on-site well and on-site sewage disposal system will be required. Electricity can be extended to the property. Fire protection will be furnished by the Newberg Rural Fire District.

6. 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 discussed in finding C.4 above, location of this property is better suited for the proposed use than other industrial property in the county. Proximity to Newberg adjacent to Newberg Transfer Station also has advantages in terms of convenience and transportation costs for product coming from the Portland Metro area..
7. The Board finds that the amendment is consistent with the current Oregon Administrative Rules for exceptions, if applicable. A discussed in Finding A.12

above, this property was part of Exception Statement I which was adopted by Yamhill County in 1979, in which a "committed" exception was taken.

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 for refuse derived fuel facility or a waste reduction and fuel processing facility 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 Additionally, even if an exception were required, an exception was taken in 1993 when the property was taken into Newberg's Urban Growth Boundary. Therefore the request is consistent with YCZO 1208.02 (e).

D. Limited Use Overlay District

Section 904.03 of the *Yamhill County Zoning Ordinance* allows the placement of a limited use overlay to be placed on plan amendments. Section 904.03 states:

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.

An exception was taken at the time the UGB amendment was completed. However, the Department of Land Conservation and Development requested that the City include a plan policy that indicates the use of this property is limited to the described "waste reduction and fuel processing." This limitation does not appear to have been placed on the property by the City. The County Planning Department would recommend such a limitation be placed. Therefore, if the request is approved, a limited use overlay will be placed to limit the use of the property to "waste reduction and fuel processing."

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.

Any other use allowed by the HI zone will require amendment to the overlay zone and taking of an exception pursuant to OAR 660-04.

CONCLUSIONS FOR APPROVAL:

1. The request is for a plan amendment from VLDR Very Low Density Residential to I Industrial and a zone change from VLDR-2.5 Very Low Density Residential to HI Heavy Industrial. The request is to allow eventual establishment of a Refuse Derived Fuel Facility.
2. The request complies with Section 1208.02(a) of the YCZO because the proposal appears to be consistent with the goals and policies of the Yamhill County Comprehensive Plan concerning rural residential zoning.
3. The request complies with Section 1208.02(b) of the YCZO because it would provide a much needed option to landfilling solid waste and would have the added benefit of providing an untapped energy source.
4. The request complies with Section 1208.02(c) of the YCZO because the proposal would be appropriate, considering surrounding zoning.
5. The request complies with Section 1208.02(d) because the NUAMC previously determined in a related UGB amendment that there was a demonstrated lack of other nearby locations that could accommodate this use.
6. The request complies with Section 1208.02(e) of the YCZO because a new exception is not required to be taken for a committed exception was taken in 1979, and even if a new exception were required, an exception for the proposed use was taken in 1993 which satisfied the requirements of OAR 660-04 for taking an exception to Statewide Planning Goals 3 and 4.
7. With an approved Site Design Review and Similar Use, the request will be made compatible with existing urban and rural uses.

DECISION:

Based on the above findings, analysis and conclusions, the Board hereby approves the request by Marvin Schneider, Planning Docket PAZ 02-96 to change the Comprehensive Plan (1974)

Map from "VLDR" (Very Low Density Residential) to "I" (Industrial) and the Official Zoning Map from "VLDR 2.5" (Very Low Density Residential/ 2.5 acre minimum lot size) to "HI" (Heavy Industrial) on Tax lot 3228-1800, subject to the following condition:

1. Uses shall be limited by a Limited Use Overlay zone to limit the use to waste reduction and fuel processing.

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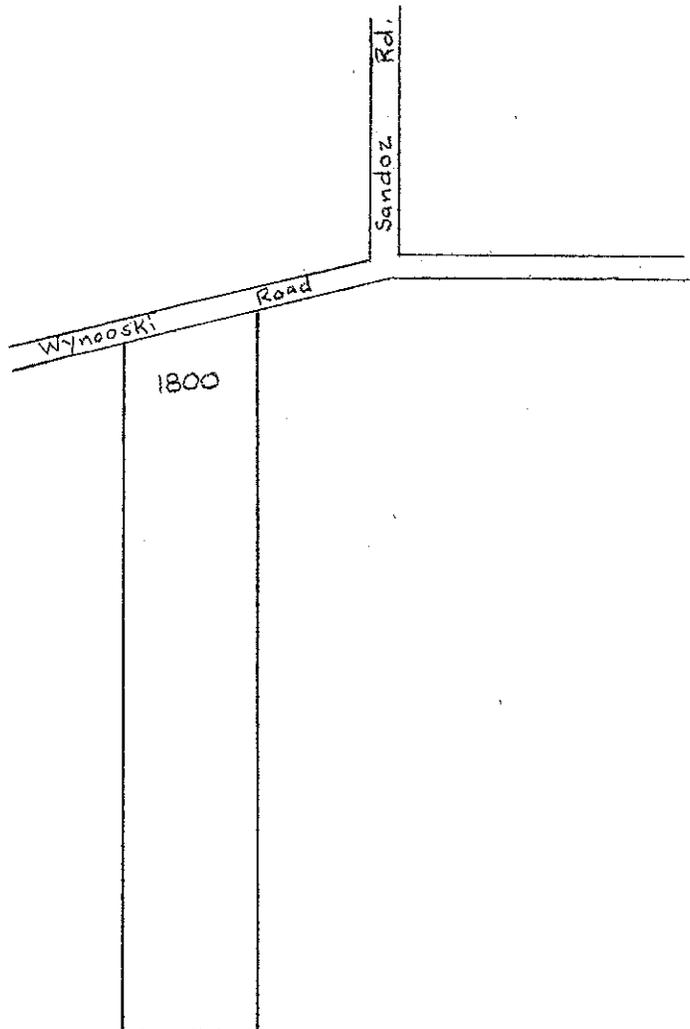
EXHIBIT "B" FOR ORDINANCE NO. 631

PLAN AMENDMENT/ZONE CHANGE

ADOPTED BY THE YAMHILL COUNTY BOARD OF COMMISSIONERS

JUNE 19, 1997

TO CHANGE THE PLAN DESIGNATION
FROM VLDR TO I (INDUSTRIAL)
AND THE OFFICIAL ZONING MAP
FROM VLDR 2.5 TO HI (HEAVY INDUSTRIAL)



- SCALE 1" = 400'
- CHANGE APPLIES TO TAX LOT 3228-1800, DESCRIBED ABOVE
- MAP PREPARED BY THE YAMHILL COUNTY PLANNING DEPARTMENT