

File

FILED  
YAMHILL COUNTY, OREGON  
1993 DEC -1 PM 2:16  
CHARLES STERN  
COUNTY CLERK

IN THE BOARD OF COMMISSIONERS OF THE STATE OF OREGON

93-861

FOR THE COUNTY OF YAMHILL

SITTING FOR THE TRANSACTION OF COUNTY BUSINESS

In the Matter of an Ordinance )  
Amending the Yamhill County )  
Comprehensive Plan (1974) to )  
Change the Designation of 30 Acres )  
from Agriculture/Forestry Large )  
Holding to Agriculture/Forestry )  
Small Holding and to Amend the )  
Official Zoning Map from AF-20 )  
Agriculture/Forestry to AF-10 )  
Agriculture/Forestry Small Holding )  
and Taking an Exception from )  
Statewide Planning Goals 3 and 4 )  
on Tax Lots 6401-100, 102 and 103, )  
Planning Docket PAZ-4-93, )  
Applicants Leo and Lorna Hammer; )  
and Declaring an Emergency. )

ORDINANCE 564

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY, OREGON (the Board), sat for the transaction of county business in special session on December 1, 1993, Commissioners Debi Owens, Dennis L. Goecks, and Ted Lopuszynski being present.

WHEREAS, on June 9, 1993, Leo and Lorna Hammer ("Applicant") applied to the Department of Planning and Development for a Comprehensive Plan Map amendment from Agriculture/Forestry Large Holding to Agriculture/Forestry Small Holding, a zone change from AF-20 Agriculture/Forestry to AF-10 Agriculture/Forestry Small Holding, and an exception to Statewide Planning Goals 3 and 4, on Tax Lots 6401-100, 102 and 103, Planning Docket PAZ-4-93; and

WHEREAS, on August 5, 1993 the Yamhill County Planning Commission held a public hearing to consider the application and thereafter failed to approve the zone change and did not recommend approval of the comprehensive plan amendment or exception, and referred the matter to the Board of Commissioners; and

WHEREAS, on September 8, 1993, the Board held a public hearing on the application at which testimony and evidence was received, and the matter was continued to September 22, 1993, at which time further testimony was received and that following the close of the hearing and the record, the Board deliberated and a majority of the Board voted to tentatively approve the application for the comprehensive plan amendment, zone change and exception, and directed staff to prepare findings for denial; and on October 27, 1993 the Board directed staff to prepare an ordinance and findings in support of approval; and

93-861

WHEREAS, the findings and conclusions attached hereto as Exhibit "A" and incorporated herein by this reference provide a justification for approval of the application, including the taking of an exception to Statewide Land Use Planning Goal 3; and

WHEREAS, the attached Exhibit "A" demonstrates that the proposed exception and amendment to the Yamhill County Comprehensive Plan, Plan Map, and Official Zoning Map of Yamhill County are 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 and Plan Map (1974) are hereby amended as specified in the attached Exhibit "B", made part of this ordinance by reference, to reflect a plan designation of Agriculture/Forestry Small Holding on Tax Lots 6401-100, 102 and 103.

Section 2. In adopting the plan amendment specified in this ordinance, the county hereby takes an exception to Statewide Planning Goal 3.

Section 3. The Official Zoning Map of Yamhill County is hereby amended as specified in the attached Exhibit "B" to reflect a zoning designation of "AF-10 Agriculture/Forestry Small Holding".

Section 4. The findings attached as Exhibit "A" and incorporated herein by reference are hereby adopted in support of this ordinance.

Section 5. 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 1st day of December, 1993.

ATTEST

CHARLES STERN  
County Clerk

By: Jayne Mitchell  
Deputy JAYNE MITCHELL

FORM APPROVED BY:

John C. Pinestaff  
JOHN C. PINESTAFF  
Assistant County Counsel

YAMHILL COUNTY BOARD OF COMMISSIONERS

Chair

DEBI OWENS

Commissioner

DENNIS L. GOECKS

Commissioner

TED LOPUSZYNSKI

cc\qlu93272.001

ORDINANCE 564

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EXHIBIT "A"

FINDINGS IN SUPPORT OF  
ORDINANCE 564

Preliminary Approval by Board of Commissioners: September 22,  
1993

Final Adoption of Ordinance by Board of Commissioners: December  
1, 1993

DOCKET: PAZ-4-93

REQUEST: Comprehensive Plan Map Amendment from Agriculture/Forestry Large Holding to Agriculture/Forestry Small Holding and Zone Change from AF-20 Agriculture/Forestry to AF-10 Agriculture/Forestry Small Holding, and Exception to Goals 3 and 4.

APPLICANTS: Leo and Lorna Hammer are co-applicants with Alvin and Sharon Phillber, and Paul and Tamara Clemons

TAX LOT: 6401-100, 102 and 103

LOCATION: Approximately two miles southwest of Hopewell at the end of Jerusalem Hill Road.

REVIEW CRITERIA: Section 403, 501, 1204, and 1208 of the Yamhill County Zoning Ordinance.

FINDINGS:

A. Background Facts

1. Lot Size: Three lots that total 30 acres.
2. Access: Jerusalem Hill Road.
3. On-Site Land Use: The majority of the property is forested. There are some clear grass areas but no farm use was evident during the site visit.
4. Surrounding Land Use: Surrounding property is a mixture of farm and forestry use. Land to the north, east, and west is in farm use which includes orchards, pasture and field crops. East of the subject parcel the properties are in small farm and rural residential use.
5. Surrounding Zoning: Adjacent property to the east is an area zoned AF-10 Agriculture/Forestry Small Holding. The remain-

der of the neighboring properties are zoned in a mixture of AF-20 and EF-40 Exclusive Farm Use.

6. Soils: Sheet 56 of the Yamhill County Soil Survey indicates the following soil types:

<u>Soil Name</u>	<u>Symbol</u>	<u>Percentage</u>	<u>Aq Class</u>
Woodburn	WuC	20	II
Woodburn	WuB	20	II
Wapato	Wc	20	III
Jory	JrC	20	III
Jory	JrD	10	III
Jory	JrE	10	IV

7. Water: Lot 102 has an on-site well and lot 100 has a spring. The Watermaster's comments indicated that there are a couple of water rights for domestic use in the area. The new development will require a water right if surface water is used. Ground water is exempt for domestic use up to 15,000 gallons per minute.

8. Sewage Disposal: The existing dwelling has an on-site subsurface system. Future developments would require approval of on-site systems by the County Sanitarian.

The Yamhill County Sanitarian reviewed the file and found that the Jory series soil type has high feasibility (>75%) although some slope problems may occur. E and F slope designations are the most difficult for standard septic approvals. Woodburn soils have a +75% feasibility for standard septic system approvals.

9. Fire Protection: Amity Rural Fire District reviewed the file and found no conflicts with their interests.

10. Taxes: Forest deferral.

11. Previous Actions: When the zoning was first established the area was zoned AF-10 Agriculture/Forestry Small Holding. In 1978 and 1979 these three parcels were created by partition dockets P-828-78, P-990-79, and P-1058-79. In 1980 it was determined that the zoning on these parcels should be changed to AF-20 Agriculture/Forestry.

B. Oregon Administrative Rule Provisions and Analysis.

1. Goals 3 and 4. 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. Part of the subject property is regarded as agricultural land by virtue of its Class II, III and IV soils (see Finding A.6). Since the land is forested and zoned Agriculture/Forestry, it can also reasonably be considered forest land. Goal 4 protects forest uses.

An exception to Goals 3 and 4, the statewide agriculture and forestry goals, is required by Oregon Administrative Rule (OAR) 660-04-010 if the land is to be zone-designated for any use other than exclusive farm or forestry. The AF-10 Agriculture/Forestry Small Holding zone, the requested zoning, is a rural residential zone.

2. Administrative Rules Criteria. OAR 660-04 et seq.

OAR 660-04 sets forth the Interpretation of Goal 2 Exception Process.

2.1 OAR 660-04-000 (Purpose) states in relevant part:

"(2) An exception is a decision to exclude certain land from the requirements of one or more applicable statewide goals. ... The documentation for an exception must be set forth in a local government's comprehensive plan. Such documentation must support a conclusion that the standards for an exception have been met. The conclusion shall be based on findings of fact supported by substantial evidence in the record of the local proceeding and by a statement of reasons which explain why the proposed use not allowed by the applicable goal should be provided for ...".

2.2 OAR 660-04-018 (Planning and Zoning For Exception Areas) provides in pertinent part:

"(2) "Physically Developed" and "Irrevocably Committed" Exceptions to goals other than Goals 11 and 14. Plan and zone designations shall limit uses to:

"(a) Uses which are the same as the existing types of land use on the exception site; or

"(b) Rural uses which meet the following requirements:

"(A) Rural uses are consistent with all other applicable Goal requirements; and

"(B) The rural uses will not commit adjacent or nearby resource land to nonresource use as defined in OAR 660-04-028; and

"(C) The rural uses are compatible with adjacent or nearby uses."

2.3 OAR 660-04-025 (Exception Criteria For Land Physically Developed to Other Uses) provides in pertinent part:

"660-04-025. (Exception Requirements for Land Physically Developed to Other Uses)

"(1) A local government may adopt an exception to a goal when the land subject to the exception is physically developed to the extent that it is not longer available for uses allowed by the applicable goal.

"(2) Whether land has been physically developed with uses not allowed by an applicable Goal, will depend on the situation at the site of the exception. The exact nature and extent of the areas found to be physically developed shall be clearly set forth in the justification for the exception. The specific area(s) must be shown on a map or otherwise described and keyed to the appropriate

findings of fact. The findings of fact shall identify the extent and location of the existing physical development on the land and can include information on structures, roads, sewer and water facilities, and utility facilities. Uses allowed by the applicable goal(s) to which an exception is being taken shall not be used to justify a physically developed exception."

2.4 OAR 660-04-028 (Exception Criteria For Land Irrevocably Committed to Other Uses) provides as follows:

"660-04-028 Exception Requirements for Land Irrevocably Committed To Other Uses.

"(1) A local government may adopt an exception to a goal when the land subject to the exception is irrevocably committed to uses not allowed by the applicable goal because existing adjacent uses and other relevant factors make uses allowed by the applicable goal impracticable:

"(a) A "committed exception" is an exception taken in accordance with ORS 197.732(1)(b), Goal 2 Part II(b), and with the provisions of this rule.

"(b) For the purposes of this rule, and "exception area" is that area of land for which a "committed exception" is taken.

"(c) An "applicable goal", as used in this section, is a state-wide planning goal or goal requirement that would apply to the exception area if an exception were not taken.

"(2) Whether land is irrevocably committed depends on the relationship between the exception area and the lands adjacent to it. The findings for a committed exception therefore must address the following:

"(a) The characteristics of the exception area;

"(b) The characteristics of the adjacent lands;

"(c) The relationship between the exception area and the land adjacent to it;

"(d) The other relevant factors set forth in OAR 660-04-028(6)."

"(3) Whether uses or activities allowed by an applicable goal are impracticable as that term is used in ORS 197.732(1)(b), in Goal 2, Part II(b), and in this rule shall be determined through consideration of factors set forth in this rule. Compliance with this rule shall constitute compliance with the requirements of Goal 2, Part II. It is the purpose of this rule to permit irrevocable committed exceptions where justified so as to provide flexibility in the application of broad resource-protection goals. It shall not be required that local governments demonstrate that every use allowed by the applicable goal is "impossible".

"(4) A conclusion that an exception area is irrevocably committed shall be supported by findings of fact which address all applicable factors of section (6) of this rule and by a statement of reasons explaining why the facts support the conclusion that uses allowed by the applicable goal are impracticable in the exception area.

"(5) Findings of fact and a statement of reasons that land subject to an exception is irrevocably committed need not be

prepared for each individual parcel in the exception area. Lands which are found to be irrevocably committed under this rule may include physically developed lands.

"(6) Findings of fact for a committed exception shall address the following factors:

"(a) Existing adjacent uses;

"(b) Existing public facilities and services (water and sewer lines, etc.);

"(c) Parcel size and ownership patterns of the exception area and adjacent lands;

"(A) Consideration of parcel size and ownership patterns under subsection (6)(c) of this rule shall include an analysis of how the existing development pattern came about and whether findings against the Goals were made at the time of partitioning or subdivision. Past land divisions made without application of the Goals do not in themselves demonstrate irrevocable commitment of the exception area. Only if development (e.g., physical improvements such as roads and underground facilities) on the resulting parcels or other factors make unsuitable their resource use or the resource use of nearby lands can the parcels be considered to be irrevocably committed. Resource and nonresource parcels created pursuant to the applicable goals shall not be used to justify a committed exception for land adjoining those parcels.

"(B) Existing parcel sizes and contiguous ownerships shall be considered together in relation to the land's actual use. For example, several contiguous undeveloped parcels (including parcels separated only by a road or highway) under one ownership shall be considered as one farm or forest operation. The mere fact that small parcels exist does not in itself constitute irrevocable commitment. Small parcels in separate ownerships are more likely to be irrevocably committed if the parcels are developed, clustered in a large group or clustered around a road designed to serve these parcels. Small parcels in separate ownerships are not likely to be irrevocably committed if they stand alone amidst larger farm or forest operations, or are buffered from such operations.

"(d) Neighborhood and regional characteristics;

"(e) Natural or man-made features or other impediments separating the exception area from adjacent resource land. Such features or impediments include but are not limited to roads, watercourses, utility lines, easements, or right-of-way that effectively impede practicable resource use of all or part of the exception area.

"(f) Physical development according to OAR 660-04-025; and

"(g) Other relevant factors.

"(7) The evidence submitted to support any committed exception shall, at a minimum, include a current map, or aerial photograph which shows the exception area and adjoining lands, and any other means needed to convey information about the factors set forth in this rule. For example, a local government may use tables, charts, summaries or narratives to supplement the maps or photos. The applicable factors set forth in section (6) of this rule shall be shown on the map or aerial photograph.

"(8) The requirement for a map or aerial photograph in section (7) of this rule only applies to the following committed exceptions:

"(a) Those adopted or amended as required by a Continuance Order dated after the effective date of section (7) of this rule; and

"(b) Those adopted or amended after the effective date of section (7) of this rule by a jurisdiction with an acknowledged comprehensive plan and land use regulations."

2.5 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.

2.6. OAR 660-04-020 and -022 detail the requirements for reasons exceptions. Section 660-04-022(2) states:

For rural residential development, the reasons cannot be based on market demand for housing, except as provided for in this section of the rule, assumed continuation of past urban and rural population distributions, or housing types and cost characteristics. A county must show why, based on the economic analysis in the plan, there are reasons for the type and density of housing planned which require this particular location on resource lands.

It is possible to justify a residential exception by determining that the housing is needed to satisfy market demand generated by existing or planned rural industrial or commercial activity.

The applicant has stated the request would fill a need for rural housing, but the Yamhill County Comprehensive Plan does not contain an economic analysis that would justify the proposed exception. There are no commercial or industrial uses in the area other than commercial agriculture. Consequently, the Board finds that this request could only be approved if it satisfies the requirements for a "built" or "committed" exception, which are discussed in Findings B.4 to B.6, below.

2.7 The Board finds that the requirements for taking a "developed" exception to Goals 3 and 4 cannot be satisfied, but that the requirements for taking a "committed" exception to Goals 3 and 4 have been satisfied, for the reasons more fully described hereinbelow.

2.8 Regarding the requirements for physically "developed" exceptions, the subject land consists of three parcels that total 30

acres and currently supports one dwelling. This dwelling was constructed in 1980, after adoption of the Statewide Planning Goals. The physically developed standards prevent the county from including parcels that were developed after adoption of the Statewide Planning Goals. Therefore the parcel with the dwelling cannot be considered physically developed.

The applicant stated that Tax Lot 100 used to have a dwelling but it was removed in 1981. Since the dwelling was not replaced within one year of its removal any future use of this parcel comes under the regulation of the AF-20 zoning ordinance. Because the dwelling was removed, this parcel is also not considered to be physically developed.

2.9 The rules for exceptions based on irrevocable "commitment" require an analysis of the surrounding area. An exception area is adjacent to the east. The exception area contains five parcels of less than 12 acres that support four dwellings. The vacant parcel in this exception area is adjacent to the subject parcels. In addition to the exception area there are ten other parcels along Jerusalem Hill Road of less than ten acres. All of these parcels have dwellings existing on them.

While the parcel sizes to the east are of similar size to the subject parcels, the lots to the west are larger. Parcels to the east vary in size from 50 to over 200 acres.

The area was originally zoned for rural residential development.

2.10 Parcelization and ownership in the area can be considered when evaluating an exception area. In this case each of the parcels were approved for creation after adoption of the Statewide Planning Goals but while they were zoned for rural residential development. After the parcels were created the zoning was changed to the more restrictive AF-20 designation. Therefore the parcels were legally created without findings being made against the goals.

Additionally, all three parcels are in separate ownerships. This makes it unlikely that the parcels could be re-combined and managed as part of larger ownerships.

The adjacent exception area to the east, parcel size, and ownership pattern create a situation that irrevocably commit the subject parcels to a nonresource use.

3. The requirements of OAR 660-04 for taking a "committed" exception have been satisfied as follows:

3.1 Exception Area. The exception study area included in this Ordinance includes the property identified as such on Exhibit "B" attached hereto and incorporated herein by this reference. For this exception area:

3.1.1 The Board finds that it has received all information necessary to consider the Planning Commission's recommendation for approval of the study areas for an exception.

3.1.2 The Board finds that proper public notice has been given.

3.1.3 The Board finds that the proposed exception to Statewide Planning Goals 3 (Agricultural Lands) and 4 (Forest Lands) is consistent with OAR 660-04 which contains criteria for an exception.

### 3.2 OAR 660-04-000.

The Board finds that pursuant to OAR 660-04-000(2), there is substantial evidence in the record that the standards for an exception have been met for the exception area. The Board also finds that the reasons why the proposed use not allowed by the applicable goal should be provided are set forth herein.

### 3.3 OAR 660-04-018.

The Board finds pursuant to OAR 660-04-018(2), that based on the findings contained in the staff report, the plan and zone designations will limit uses to the following:

3.3.1 Uses which are the same as the existing types of land use on the exception site: or

3.3.2 Uses which are rural uses which are limited to:

(a) Uses which are consistent with all other applicable goal requirements;

(b) Rural uses which will not commit adjacent or nearby resource land to nonresource use; and

(c) Rural uses which are compatible with adjacent or nearby resource uses.

### 3.4 OAR 660-04-028.

3.4.1 The Board finds pursuant to OAR 660-04-028(1) that the land is irrevocably committed to other uses because existing adjacent uses and other relevant factors make uses allowed by the applicable goal impracticable, based the relationship between exception area and lands adjacent to it, as shown by:

(A) characteristics of the exception area;

(B) characteristics of adjacent lands;

(C) relationship between the exception area and adjacent lands; and

(D) other factors listed in OAR 660-04-028(6).

3.4.2 The Board finds that pursuant to OAR 660-04-028(4) that the uses allowed by the applicable goals are impracticable in the exception study area based on the following factors, as more fully described and herein:

(A) Existing adjacent uses;

(B) Existing public facilities and services (water and sewer lines, etc.);

(C) Parcel size and ownership patterns of the exception area and adjacent lands, including how the pattern came about, whether findings against the goals were made at the time of subdivision, partition, and existing parcel sizes and contiguous ownerships;

(D) Neighborhood and regional characteristics; and

(E) Natural or man-made features or other impediments separating the exception area from adjacent resource land, including but not limited to roads, watercourses, utility lines, easements and rights-of-way that effectively impede practical resource use of all or part of the exception area.

8.5 The Department of Land Conservation and Development submitted a letter dated July 20, 1993, stating that there was a lack of documentation addressing the requirements of OAR 660, Division 4, which is needed to justify an exception. The Board finds that the information contained in the staff report and the exhibits presented at the August 5, 1993 Planning Commission hearing and the hearing before the Board on September 22, 1993, provided adequate documentation to address the applicable requirements of OAR 660 Division 4 as described above.

### C. Ordinance Provisions and Analysis

1. Section 1204 of the Yamhill County Zoning Ordinance (YCZO) states that exceptions to statewide goals are subject only to the requirements of the Oregon Administrative Rules discussed in Section B of this report. The plan amendment portion of this request is not subject to local review criteria.

2. The zone change portion of the subject 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.

These criteria are addressed, respectively, in Findings C.3 through C.7, below.

3. The Board finds that the application satisfies the standards and criteria in YCZO Section 1208.02(a) because it is consistent with the goals, policies, and any other applicable provisions of the Comprehensive Plan.

3.1 Regarding Comprehensive Plan goals and policies, Policy (a) of Goal I.B.2 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 subdivisions, 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."

3.2 The request is in an area that has existing partitioning and does conform to the intent of the first part of this policy. Regarding the second portion of the policy (after the semicolon), the characteristics of the site do not appear to be unique. The property does provide a nice rural location, but it is not necessarily unique, and other locational factors attributable to the site are shared with other properties in the vicinity.

4. The Board finds that the application satisfies the standards and criteria in YCZO Section 1208.02(b) based on the evidence showing 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.

4.1 Regarding the need for the proposed change, the applicant has stated there is a need for rural homesites. There was no additional information submitted by the applicant regarding this criterion. A review of the area shows there are two exception areas within one mile of the subject parcels. Both of these exception sites have five parcels that average ten acres each. Both areas contain one undeveloped lot. Based on this survey of rural development, it is clear that property available for rural residential development is becoming more scarce. Therefore, there is an existing demonstrable need for additional rural residential building sites.

5. The Board finds that the application satisfies the standards and criteria in YCZO Section 1208.02(c) based on the evidence showing 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.

5.1 Regarding the density and pattern of development for criterion (c) above, see also Section B of these findings. It appears that 10-acre zoning in the vicinity is in character with the lot size pattern existing in the area. The applicant stated that there have been homes built on small acreages in the immediate vicinity since 1974. A search of county records indicates this is correct.

5.2 Regarding availability of services, the County Sanitarian indicated the soils in the area appear to be suitable for subsurface sewage disposal. The subject parcels are in an area designated as a "Groundwater Limited Area". This designation limits the availability to obtain water rights for irrigation. The Watermaster stated that domestic use of groundwater is exempt from being required to obtain water rights. This request by itself should not have a significant negative impact on groundwater supply in the area.

6. The Board finds that the application satisfies the standards and criteria in YCZO Section 1208.02(d) based on the evidence 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.

6.1 Finding C.4 sets forth the evidence that satisfies this criteria as well. There is evidence that there is an inadequate supply of land available in the area to meet the demand for rural residences.

7. The Board finds that the application satisfies the standards and criteria in YCZO Section 1208.02(e) based on the evidence showing that the amendment is consistent with the current Oregon Administrative Rules for exceptions, if applicable. The Board finds that the OAR requirements are addressed in Section B of these findings. An exception to Goal 14 has not been addressed because one dwelling per 10-acres indicates that potential uses would not be at an urban scale, and therefore Goal 14 does not apply and no exception to it is required.

8. Based on the foregoing, the Board concludes that the parcel sizes and ownership patterns of the subject parcels are more appropriate for an AF-10 Agriculture/Forestry Small Holding designation.

DECISION:

Based on the findings above, the Board approves the request by Leo and Lorna Hammer for an amendment to the Yamhill County Comprehensive Plan map for Tax Lots 6401-100, 102 and 103 which total 30 acres from Agriculture/Forestry Large Holding to Agriculture/Forestry Small Holding, and a zone change from AF-20 Agriculture/Forestry to AF-10 Agriculture/Forestry Small Holding, and an exception to Goals 3 and 4 for the same property.

qlu93272.002

EXHIBIT "A"

FINDINGS IN SUPPORT OF  
ORDINANCE 564

Preliminary Approval by Board of Commissioners: September 22,  
1993

Final Adoption of Ordinance by Board of Commissioners: December  
1, 1993

DOCKET: PAZ-4-93

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TAX LOT: 6401-100, 102 and 103

LOCATION: Approximately two miles southwest of Hopewell at the end of Jerusalem Hill Road.

REVIEW CRITERIA: Section 403, 501, 1204, and 1208 of the Yamhill County Zoning Ordinance.

FINDINGS:

A. Background Facts

1. Lot Size: Three lots that total 30 acres.
2. Access: Jerusalem Hill Road.
3. On-Site Land Use: The majority of the property is forested. There are some clear grass areas but no farm use was evident during the site visit.
4. Surrounding Land Use: Surrounding property is a mixture of farm and forestry use. Land to the north, east, and west is in farm use which includes orchards, pasture and field crops. East of the subject parcel the properties are in small farm and rural residential use.
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der of the neighboring properties are zoned in a mixture of AF-20 and EF-40 Exclusive Farm Use.

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The Yamhill County Sanitarian reviewed the file and found that the Jory series soil type has high feasibility (>75%) although some slope problems may occur. E and F slope designations are the most difficult for standard septic approvals. Woodburn soils have a +75% feasibility for standard septic system approvals.

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11. Previous Actions: When the zoning was first established the area was zoned AF-10 Agriculture/Forestry Small Holding. In 1978 and 1979 these three parcels were created by partition docket P-828-78, P-990-79, and P-1058-79. In 1980 it was determined that the zoning on these parcels should be changed to AF-20 Agriculture/Forestry.

#### B. Oregon Administrative Rule Provisions and Analysis.

1. Goals 3 and 4. 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. Part of the subject property is regarded as agricultural land by virtue of its Class II, III and IV soils (see Finding A.6). Since the land is forested and zoned Agriculture/Forestry, it can also reasonably be considered forest land. Goal 4 protects forest uses.

An exception to Goals 3 and 4, the statewide agriculture and forestry goals, is required by Oregon Administrative Rule (OAR) 660-04-010 if the land is to be zone-designated for any use other than exclusive farm or forestry. The AF-10 Agriculture/Forestry Small Holding zone, the requested zoning, is a rural residential zone.

2. Administrative Rules Criteria. OAR 660-04 et seq.

OAR 660-04 sets forth the Interpretation of Goal 2 Exception Process.

2.1 OAR 660-04-000 (Purpose) states in relevant part:

"(2) An exception is a decision to exclude certain land from the requirements of one or more applicable statewide goals. ... The documentation for an exception must be set forth in a local government's comprehensive plan. Such documentation must support a conclusion that the standards for an exception have been met. The conclusion shall be based on findings of fact supported by substantial evidence in the record of the local proceeding and by a statement of reasons which explain why the proposed use not allowed by the applicable goal should be provided for ...".

2.2 OAR 660-04-018 (Planning and Zoning For Exception Areas) provides in pertinent part:

"(2) "Physically Developed" and "Irrevocably Committed" Exceptions to goals other than Goals 11 and 14. Plan and zone designations shall limit uses to:

"(a) Uses which are the same as the existing types of land use on the exception site; or

"(b) Rural uses which meet the following requirements:

"(A) Rural uses are consistent with all other applicable Goal requirements; and

"(B) The rural uses will not commit adjacent or nearby resource land to nonresource use as defined in OAR 660-04-028; and

"(C) The rural uses are compatible with adjacent or nearby uses."

2.3 OAR 660-04-025 (Exception Criteria For Land Physically Developed to Other Uses) provides in pertinent part:

"660-04-025. (Exception Requirements for Land Physically Developed to Other Uses)

"(1) A local government may adopt an exception to a goal when the land subject to the exception is physically developed to the extent that it is not longer available for uses allowed by the applicable goal.

"(2) Whether land has been physically developed with uses not allowed by an applicable Goal, will depend on the situation at the site of the exception. The exact nature and extent of the areas found to be physically developed shall be clearly set forth in the justification for the exception. The specific area(s) must be shown on a map or otherwise described and keyed to the appropriate

findings of fact. The findings of fact shall identify the extent and location of the existing physical development on the land and can include information on structures, roads, sewer and water facilities, and utility facilities. Uses allowed by the applicable goal(s) to which an exception is being taken shall not be used to justify a physically developed exception."

2.4 OAR 660-04-028 (Exception Criteria For Land Irrevocably Committed to Other Uses) provides as follows:

"660-04-028 Exception Requirements for Land Irrevocably Committed To Other Uses.

"(1) A local government may adopt an exception to a goal when the land subject to the exception is irrevocably committed to uses not allowed by the applicable goal because existing adjacent uses and other relevant factors make uses allowed by the applicable goal impracticable:

"(a) A "committed exception" is an exception taken in accordance with ORS 197.732(1)(b), Goal 2 Part II(b), and with the provisions of this rule.

"(b) For the purposes of this rule, and "exception area" is that area of land for which a "committed exception" is taken.

"(c) An "applicable goal", as used in this section, is a state-wide planning goal or goal requirement that would apply to the exception area if an exception were not taken.

"(2) Whether land is irrevocably committed depends on the relationship between the exception area and the lands adjacent to it. The findings for a committed exception therefore must address the following:

"(a) The characteristics of the exception area;

"(b) The characteristics of the adjacent lands;

"(c) The relationship between the exception area and the land adjacent to it;

"(d) The other relevant factors set forth in OAR 660-04-028(6)."

"(3) Whether uses or activities allowed by an applicable goal are impracticable as that term is used in ORS 197.732(1)(b), in Goal 2, Part II(b), and in this rule shall be determined through consideration of factors set forth in this rule. Compliance with this rule shall constitute compliance with the requirements of Goal 2, Part II. It is the purpose of this rule to permit irrevocable committed exceptions where justified so as to provide flexibility in the application of broad resource-protection goals. It shall not be required that local governments demonstrate that every use allowed by the applicable goal is "impossible".

"(4) A conclusion that an exception area is irrevocably committed shall be supported by findings of fact which address all applicable factors of section (6) of this rule and by a statement of reasons explaining why the facts support the conclusion that uses allowed by the applicable goal are impracticable in the exception area.

"(5) Findings of fact and a statement of reasons that land subject to an exception is irrevocably committed need not be

prepared for each individual parcel in the exception area. Lands which are found to be irrevocably committed under this rule may include physically developed lands.

"(6) Findings of fact for a committed exception shall address the following factors:

"(a) Existing adjacent uses;

"(b) Existing public facilities and services (water and sewer lines, etc.);

"(c) Parcel size and ownership patterns of the exception area and adjacent lands;

"(A) Consideration of parcel size and ownership patterns under subsection (6)(c) of this rule shall include an analysis of how the existing development pattern came about and whether findings against the Goals were made at the time of partitioning or subdivision. Past land divisions made without application of the Goals do not in themselves demonstrate irrevocable commitment of the exception area. Only if development (e.g., physical improvements such as roads and underground facilities) on the resulting parcels or other factors make unsuitable their resource use or the resource use of nearby lands can the parcels be considered to be irrevocably committed. Resource and nonresource parcels created pursuant to the applicable goals shall not be used to justify a committed exception for land adjoining those parcels.

"(B) Existing parcel sizes and contiguous ownerships shall be considered together in relation to the land's actual use. For example, several contiguous undeveloped parcels (including parcels separated only by a road or highway) under one ownership shall be considered as one farm or forest operation. The mere fact that small parcels exist does not in itself constitute irrevocable commitment. Small parcels in separate ownerships are more likely to be irrevocably committed if the parcels are developed, clustered in a large group or clustered around a road designed to serve these parcels. Small parcels in separate ownerships are not likely to be irrevocably committed if they stand alone amidst larger farm or forest operations, or are buffered from such operations.

"(d) Neighborhood and regional characteristics;

"(e) Natural or man-made features or other impediments separating the exception area from adjacent resource land. Such features or impediments include but are not limited to roads, watercourses, utility lines, easements, or right-of-way that effectively impede practicable resource use of all or part of the exception area.

"(f) Physical development according to OAR 660-04-025; and

"(g) Other relevant factors.

"(7) The evidence submitted to support any committed exception shall, at a minimum, include a current map, or aerial photograph which shows the exception area and adjoining lands, and any other means needed to convey information about the factors set forth in this rule. For example, a local government may use tables, charts, summaries or narratives to supplement the maps or photos. The applicable factors set forth in section (6) of this rule shall be shown on the map or aerial photograph.

"(8) The requirement for a map or aerial photograph in section (7) of this rule only applies to the following committed exceptions:

"(a) Those adopted or amended as required by a Continuance Order dated after the effective date of section (7) of this rule; and

"(b) Those adopted or amended after the effective date of section (7) of this rule by a jurisdiction with an acknowledged comprehensive plan and land use regulations."

2.5 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.

2.6. OAR 660-04-020 and -022 detail the requirements for reasons exceptions. Section 660-04-022(2) states:

For rural residential development, the reasons cannot be based on market demand for housing, except as provided for in this section of the rule, assumed continuation of past urban and rural population distributions, or housing types and cost characteristics. A county must show why, based on the economic analysis in the plan, there are reasons for the type and density of housing planned which require this particular location on resource lands.

It is possible to justify a residential exception by determining that the housing is needed to satisfy market demand generated by existing or planned rural industrial or commercial activity.

The applicant has stated the request would fill a need for rural housing, but the Yamhill County Comprehensive Plan does not contain an economic analysis that would justify the proposed exception. There are no commercial or industrial uses in the area other than commercial agriculture. Consequently, the Board finds that this request could only be approved if it satisfies the requirements for a "built" or "committed" exception, which are discussed in Findings B.4 to B.6, below.

2.7 The Board finds that the requirements for taking a "developed" exception to Goals 3 and 4 cannot be satisfied, but that the requirements for taking a "committed" exception to Goals 3 and 4 have been satisfied, for the reasons more fully described hereinbelow.

2.8 Regarding the requirements for physically "developed" exceptions, the subject land consists of three parcels that total 30

acres and currently supports one dwelling. This dwelling was constructed in 1980, after adoption of the Statewide Planning Goals. The physically developed standards prevent the county from including parcels that were developed after adoption of the Statewide Planning Goals. Therefore the parcel with the dwelling cannot be considered physically developed.

The applicant stated that Tax Lot 100 used to have a dwelling but it was removed in 1981. Since the dwelling was not replaced within one year of its removal any future use of this parcel comes under the regulation of the AF-20 zoning ordinance. Because the dwelling was removed, this parcel is also not considered to be physically developed.

2.9 The rules for exceptions based on irrevocable "commitment" require an analysis of the surrounding area. An exception area is adjacent to the east. The exception area contains five parcels of less than 12 acres that support four dwellings. The vacant parcel in this exception area is adjacent to the subject parcels. In addition to the exception area there are ten other parcels along Jerusalem Hill Road of less than ten acres. All of these parcels have dwellings existing on them.

While the parcel sizes to the east are of similar size to the subject parcels, the lots to the west are larger. Parcels to the east vary in size from 50 to over 200 acres.

The area was originally zoned for rural residential development.

2.10 Parcelization and ownership in the area can be considered when evaluating an exception area. In this case each of the parcels were approved for creation after adoption of the Statewide Planning Goals but while they were zoned for rural residential development. After the parcels were created the zoning was changed to the more restrictive AF-20 designation. Therefore the parcels were legally created without findings being made against the goals.

Additionally, all three parcels are in separate ownerships. This makes it unlikely that the parcels could be re-combined and managed as part of larger ownerships.

The adjacent exception area to the east, parcel size, and ownership pattern create a situation that irrevocably commit the subject parcels to a nonresource use.

3. The requirements of OAR 660-04 for taking a "committed" exception have been satisfied as follows:

3.1 Exception Area. The exception study area included in this Ordinance includes the property identified as such on Exhibit "B" attached hereto and incorporated herein by this reference. For this exception area:

3.1.1 The Board finds that it has received all information necessary to consider the Planning Commission's recommendation for approval of the study areas for an exception.

3.1.2 The Board finds that proper public notice has been given.

3.1.3 The Board finds that the proposed exception to Statewide Planning Goals 3 (Agricultural Lands) and 4 (Forest Lands) is consistent with OAR 660-04 which contains criteria for an exception.

3.2 OAR 660-04-000.

The Board finds that pursuant to OAR 660-04-000(2), there is substantial evidence in the record that the standards for an exception have been met for the exception area. The Board also finds that the reasons why the proposed use not allowed by the applicable goal should be provided are set forth herein.

3.3 OAR 660-04-018.

The Board finds pursuant to OAR 660-04-018(2), that based on the findings contained in the staff report, the plan and zone designations will limit uses to the following:

3.3.1 Uses which are the same as the existing types of land use on the exception site: or

3.3.2 Uses which are rural uses which are limited to:

(a) Uses which are consistent with all other applicable goal requirements;

(b) Rural uses which will not commit adjacent or nearby resource land to nonresource use; and

(c) Rural uses which are compatible with adjacent or nearby resource uses.

3.4 OAR 660-04-028.

3.4.1 The Board finds pursuant to OAR 660-04-028(1) that the land is irrevocably committed to other uses because existing adjacent uses and other relevant factors make uses allowed by the applicable goal impracticable, based the relationship between exception area and lands adjacent to it, as shown by:

(A) characteristics of the exception area;

(B) characteristics of adjacent lands;

(C) relationship between the exception area and adjacent lands; and

(D) other factors listed in OAR 660-04-028(6).

3.4.2 The Board finds that pursuant to OAR 660-04-028(4) that the uses allowed by the applicable goals are impracticable in the exception study area based on the following factors, as more fully described and herein:

(A) Existing adjacent uses;

(B) Existing public facilities and services (water and sewer lines, etc.);

(C) Parcel size and ownership patterns of the exception area and adjacent lands, including how the pattern came about, whether findings against the goals were made at the time of subdivision, partition, and existing parcel sizes and contiguous ownerships;

(D) Neighborhood and regional characteristics; and

(E) Natural or man-made features or other impediments separating the exception area from adjacent resource land, including but not limited to roads, watercourses, utility lines, easements and rights-of-way that effectively impede practical resource use of all or part of the exception area.

8.5 The Department of Land Conservation and Development submitted a letter dated July 20, 1993, stating that there was a lack of documentation addressing the requirements of OAR 660, Division 4, which is needed to justify an exception. The Board finds that the information contained in the staff report and the exhibits presented at the August 5, 1993 Planning Commission hearing and the hearing before the Board on September 22, 1993, provided adequate documentation to address the applicable requirements of OAR 660 Division 4 as described above.

### C. Ordinance Provisions and Analysis

1. Section 1204 of the Yamhill County Zoning Ordinance (YCZO) states that exceptions to statewide goals are subject only to the requirements of the Oregon Administrative Rules discussed in Section B of this report. The plan amendment portion of this request is not subject to local review criteria.

2. The zone change portion of the subject 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.

These criteria are addressed, respectively, in Findings C.3 through C.7, below.

3. The Board finds that the application satisfies the standards and criteria in YCZO Section 1208.02(a) because it is consistent with the goals, policies, and any other applicable provisions of the Comprehensive Plan.

3.1 Regarding Comprehensive Plan goals and policies, Policy (a) of Goal I.B.2 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 subdivisions, 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."

3.2 The request is in an area that has existing partitioning and does conform to the intent of the first part of this policy. Regarding the second portion of the policy (after the semicolon), the characteristics of the site do not appear to be unique. The property does provide a nice rural location, but it is not necessarily unique, and other locational factors attributable to the site are shared with other properties in the vicinity.

4. The Board finds that the application satisfies the standards and criteria in YCZO Section 1208.02(b) based on the evidence showing 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.

4.1 Regarding the need for the proposed change, the applicant has stated there is a need for rural homesites. There was no additional information submitted by the applicant regarding this criterion. A review of the area shows there are two exception areas within one mile of the subject parcels. Both of these exception sites have five parcels that average ten acres each. Both areas contain one undeveloped lot. Based on this survey of rural development, it is clear that property available for rural residential development is becoming more scarce. Therefore, there is an existing demonstrable need for additional rural residential building sites.

5. The Board finds that the application satisfies the standards and criteria in YCZO Section 1208.02(c) based on the evidence showing 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.

5.1 Regarding the density and pattern of development for criterion (c) above, see also Section B of these findings. It appears that 10-acre zoning in the vicinity is in character with the lot size pattern existing in the area. The applicant stated that there have been homes built on small acreages in the immediate vicinity since 1974. A search of county records indicates this is correct.

5.2 Regarding availability of services, the County Sanitarian indicated the soils in the area appear to be suitable for subsurface sewage disposal. The subject parcels are in an area designated as a "Groundwater Limited Area". This designation limits the availability to obtain water rights for irrigation. The Watermaster stated that domestic use of groundwater is exempt from being required to obtain water rights. This request by itself should not have a significant negative impact on groundwater supply in the area.

6. The Board finds that the application satisfies the standards and criteria in YCZO Section 1208.02(d) based on the evidence 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.

6.1 Finding C.4 sets forth the evidence that satisfies this criteria as well. There is evidence that there is an inadequate supply of land available in the area to meet the demand for rural residences.

7. The Board finds that the application satisfies the standards and criteria in YCZO Section 1208.02(e) based on the evidence showing that the amendment is consistent with the current Oregon Administrative Rules for exceptions, if applicable. The Board finds that the OAR requirements are addressed in Section B of these findings. An exception to Goal 14 has not been addressed because one dwelling per 10-acres indicates that potential uses would not be at an urban scale, and therefore Goal 14 does not apply and no exception to it is required.

8. Based on the foregoing, the Board concludes that the parcel sizes and ownership patterns of the subject parcels are more appropriate for an AF-10 Agriculture/Forestry Small Holding designation.

DECISION:

Based on the findings above, the Board approves the request by Leo and Lorna Hammer for an amendment to the Yamhill County Comprehensive Plan map for Tax Lots 6401-100, 102 and 103 which total 30 acres from Agriculture/Forestry Large Holding to Agriculture/Forestry Small Holding, and a zone change from AF-20 Agriculture/Forestry to AF-10 Agriculture/Forestry Small Holding, and an exception to Goals 3 and 4 for the same property.

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