

File

IN THE BOARD OF COMMISSIONERS OF THE STATE OF OREGON
FOR THE COUNTY OF YAMHILL

94-226

SITTING FOR THE TRANSACTION OF COUNTY BUSINESS

In the Matter of an Ordinance)	
Amending the Yamhill County)	
Comprehensive Plan Map and)	
Zoning Map to Change, on 1.12)	
acres comprised of Tax Lot 5531-)	
3200 and a Portion of Tax Lot 5531-)	
2800, the Plan Map Designation)	
From Agriculture/Forestry Large)	ORDINANCE 569
Holding to Commercial and the)	
Zone Map Designation from EF-40)	
to HC Highway/Tourist Commercial;)	
Authorizing a Lot Line Adjustment;)	
Applicant Jerry K. Brown for Golden)	
Enterprises, Inc.; and)	
Declaring an Emergency.)	

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY, OREGON ("the Board"), sat for the transaction of county business in special session on April 13, 1994, Commissioners Dennis L. Goecks, Ted Lopuszynski and Debi Owens being present.

THE BOARD MAKES THE FOLLOWING FINDINGS:

A. Jerry K. Brown on behalf of Golden Enterprises, Inc., ("Applicant") has applied to the Department of Planning and Development for a Comprehensive Plan Map amendment from Agriculture/Forestry Large Holding to Commercial and a zone map amendment from EF-40 to HC Highway/Tourist Commercial District on Tax Lot 5531-3200 (0.42 acres) and a 0.7 acre portion of Tax Lot 5531-2800 identified on the attached Exhibit "B." The applicant also seeks permission to adjust the boundary between the two tax lots to add the 0.7 acre portion of Tax Lot 5531-2800 to Tax Lot 5531-3200.

B. On March 3, 1994 the Yamhill County Planning Commission held a public hearing to consider the application. Following the hearing, the Planning Commission voted unanimously to recommend that the Board approve the application but to add a "limited use overlay district" to the approval to assure that future uses on the property were limited to those which had existed on the property in its non-conforming status.

C. On March 30, 1994 the Board held a public hearing on the application and voted unanimously to grant tentative approval to application.

D. The findings and conclusions attached hereto as Exhibit "A" and by this reference incorporated herein provide a justification for the Board's action of March 30, 1994 and demonstrate that the proposed amendment to the Yamhill County Comprehensive Plan Map and the 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 Map is hereby amended as specified in the attached Exhibit "B", made a part of this ordinance by reference, to reflect a plan map designation of "Commercial" for Tax Lot 5531-3200 and that 0.7 acre portion of Tax Lot 5531-2800 identified on Exhibit "B".

Section 2. The Official Zoning Map of Yamhill County is hereby amended as specified in the attached Exhibit "B", to reflect a zoning designation of HC Highway/Tourist Commercial District for Tax Lot 5531-3200 and that 0.7 acre portion of Tax Lot 5531-2800 identified on Exhibit "B".

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

Section 4. In adopting the plan amendment specified in Section 1, the county hereby takes an exception to Statewide Planning Goal 3.

Section 5. To the extent an exception is required by law to be taken to Statewide Planning Goal 14, the county takes exception to Statewide Planning Goals 14 in adopting the plan amendment specified in Section 1. The findings attached as Exhibit "A" incorporated herein by this reference are adopted in support of these exceptions.

Section 6. A "Limited Use Overlay" is hereby imposed on Tax Lot 5531-3200 and the 0.7 acre portion of Tax Lot 5531-2800 identified in Exhibit "B" to limit the use of the property to the following uses: Drive-in restaurant, restaurant, refreshment stand, food store with a maximum floor area of 2,000 square feet, commercial fruit or vegetable stand, gift shop, souvenir shop or antique shop.

Section 7. The application for a lot line adjustment is granted subject to the conditions stated in Exhibit "A."

Section 8. All sections, subsections and paragraphs of this ordinance are severable. If any section, subsection or paragraph is ruled invalid for any reason by the court of last resort, the other portions of this ordinance shall be unaffected.

Section 9. 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 13th day of April, 1994.

ATTEST

YAMHILL COUNTY BOARD OF COMMISSIONERS



By: Jaynie Mitchell
Deputy JAYNIE MITCHELL

Dennis Goecks
Chairman DENNIS GOECKS

Ted Lopuszynski
Commissioner TED LOPUSZYNSKI

FORM APPROVED BY:

John M. Gray, Jr.
JOHN M. GRAY, JR.
Yamhill County Counsel

(Not Available for Signature)
Debi Owens
Commissioner DEBI OWENS

ORDINANCE 569
Exhibit "A"

Findings for Approval

DATE OF FINAL ADOPTION: April 13, 1994
DATE OF BOARD HEARING: March 30, 1994
DATE OF PLANNING COMMISSION HEARING: March 3, 1994
DOCKET: PAZ-1-94 and L-4-94
REQUEST: Comprehensive Plan map amendment from Agriculture/Forestry Large Holding to Commercial and zone change from EF-40 Exclusive Farm Use to HC Highway Commercial, and a lot-line adjustment to allow transfer of 0.7 acres from a 6.54-acre parcel to create a 1.12-acre parcel.
APPLICANT: Jerry K. Brown, Attorney at Law
PROPERTY OWNER: Golden Enterprises, Inc.
TAX LOTS: 5531-3200 and a portion of 5531-2800
LOCATION: Approximately two miles east of the City of Sheridan on the south side of Highway 18, at the intersection of Highway 18 and Gopher Valley Road

FINDINGS:

A. Background Facts

1. **Property size:** Total of 1.12 acres, of which 0.42 acres are existing property (Tax Lot 5531-3200) and 0.70 acres are being added from the neighboring parcel (Tax Lot 5531-2800) to accommodate additional parking.
2. **Access:** Oregon State Highway 18.
3. **On-site Land Use:** The subject parcel contains a 2400 square foot building with paved parking and loading area, with a gravel area occupying the remainder of the parcel. The site has been utilized for various businesses such as a produce store, a convenience store, a fish market, and a pizza parlor since 1959. The applicant has indicated that the parcel is currently under a 20-year lease for continuation of commercial use.
4. **Surrounding Land Use:** The surrounding area is characterized by large-scale agricultural production of grains, hay and orchard crops. Directly east is an established Dairy Queen drive-in restaurant, currently zoned HC. Directly west of the subject property are two mobile homes and a dwelling located on nonfarm parcels. To the south is a steep embankment down to the floodplain of the South Yamhill River. To the southeast and northeast are two additional dwellings.
5. **Surrounding Zoning:** The adjacent zoning to the east is HC Highway/Tourist Commercial. The remaining surrounding area is all zoned EF-40 Exclusive Farm Use.
6. **Soils:** Sheet 49 of the Yamhill County Soil Survey indicates the property is composed entirely of Woodburn silt loam (WuB), which is Class II agricultural soil.

7. Fire Protection: Sheridan Rural Fire Protection District
8. Taxes: Tax Lot 5531-3200 is taxed as a commercial establishment and Tax Lot 5531-2800 is taxed as Tract Land
9. Previous Action: NCU-1-88, application for a nonconforming use to allow operation of a convenience market in a building previously used as a pizza parlor.

B. Background Facts for Lot-Line Adjustment

1. The request involves existing parcels of 6.54 and 0.42 acres.
2. The intent of the adjustment is to transfer 0.7 acres from a 6.54-acre parcel to a 0.42-acre parcel. The result would be a 5.84-acre parcel and a 1.12-acre parcel around an existing commercial building.
3. There is a concern regarding an easement for the existing septic system for the adjacent commercial property (Dairy Queen) on the 1.12-acre parcel to be created.
4. All parcels resulting from the adjustment will continue to have legal access to a public road.
5. The minimum lot size for the HC zone is 20,000 square feet. The minimum lot size for the EF-40 zone is 80 acres. The parcel zoned HC will satisfy the minimum parcel size for that zone. The existing parcel in the EF-40 zone is smaller than the minimum lot size requirement. The adjustment will result in one parcel being much smaller than the minimum lot size and the remainder consolidated into one commercial parcel.
6. The request includes parcels of less than 10 acres, so a survey of the adjustment is required.

C. Oregon Administrative Rule Provisions and Analysis

1. Oregon Administrative Rule (OAR) Chapter 660, Division 4, explains the requirements for taking exceptions to statewide goals. The subject property is considered agricultural land by virtue of its Class II soil (see Finding A.6). The property is not on the county inventory of forest lands, so Goal 3, but not Goal 4, applies. An exception to Goal 3 is required if the land is to be designated for any use other than exclusive farm.
2. OAR 660-04-018 outlines the optional procedures for taking exceptions. The first is to base the exception on "physical development" and/or "irrevocable commitment" of the property to non-agricultural use. This type is intended to recognize and allow existing types of development and was used in the original exception of the neighboring property. The second is a "reasons" exception, which allows a jurisdiction to zone property with a non-agricultural designation if there are grounds for the change. The first procedure was implemented in this case.

OAR 660-04-018 also requires that the county limit uses on exception sites that are physically developed to uses which are the same as the existing types of land uses on the site, or rural uses. Since other permitted uses in the HC zone could be construed as not being "rural uses," staff recommends that if the request is approved that the use of the site be limited to the restaurant.

3. OAR 660-04-025 outlines the requirements for exceptions for land physically developed in nonresource uses. These criteria are:

(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 no 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.

In essence, the applicant needs to explain why the property should be zoned for highway commercial instead of agricultural use.

4. The reasons the applicant has relied upon to justify the exception are based on the fact that the property in question has been used for many years as commercial purposes. This change in zone reflects the existing long term actual use of a property that is already developed and irrevocably committed to a non-farm use. It is also under lease for the continuation of commercial use for the next 20 years. The subject parcel contains a 2400-square-foot building with paved parking and loading area.

The 0.70-acre portion of the 6.54-acre parcel which is being adjusted to the subject property is not in commercial farm use and is currently taxed at its full value. This application does not require any extension of utilities or services. The site is located between a commercial enterprise located on Tax Lots 5531-3000 and 5531-3100 to the east, and two residences located on Tax Lot 5531-2800 to the west. The applicant states the request is consistent with the Agricultural Lands Goals and Policies because it provides for the continued commercial use of a site that is already developed and is irrevocably committed to a non-farm use, which reduces the pressure of converting land actually used for farming to non-farm uses.

5. In addition to the agricultural goal, the applicant suggested the county also consider statewide Goal 9, dealing with Economic Development. This goal states the county is, "To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and property of Oregon's citizens." This is addressed in the application in Exhibit C (pages C-5 and C-9).
6. 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.

The transportation planning rule does not apply to this request because no new uses will be permitted as a result of the change. Staff received a comment from a representative of the Oregon Department of Transportation (see comments section of this report, page 1), and it was indicated that some changes will have to be made to the existing access points. This would be true regardless of the requested zone change, however.

D. 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.

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

3. Regarding Comprehensive Plan goals and policies, Goals II.A.1 and II.A.2 of the Plan text are, respectively:

To conserve Yamhill County's farm lands for the production of crops and livestock and to ensure that the conversion of farm land to urban use where necessary and appropriate occurs in an orderly and economical manner; and

To conserve Yamhill County's soil resources in a manner reflecting their suitability for forestry, agriculture and urban development and their sustained use for the purposes designated on the County plan map.

The soil survey indicates all of the subject portion of the property has class II soil, which is to be preserved for farm use according to Policy A under Goal II.A.2. As further indicated in Findings A.2 and C.4 the subject parcel is built and committed with no suitable agricultural land remaining.

The county comprehensive plan also directs the county to consider the economic consequences of planning actions. Goal I.F.1 states:

To maintain a rate and pattern of economic growth sufficient to prevent recurring high levels of unemployment and underemployment in the county, balance the real property tax base of the various cities, and strengthen local economic bases.

4. Regarding the need for the proposed change as stated in criterion (b), the county commissioned a study dealing with tourism and economic development. The study determined that tourism is an important and growing business in Yamhill County. Approval of the request would give an existing tourist related business a legal permanent status.

The availability of other lands and their suitability is discussed by the applicant as follows:

Although there are other properties designated for the HC zone in Yamhill County, none are available within the immediate vicinity of this site that are not already dedicated to other uses. This property is uniquely suited for this plan amendment/zone change because such action simply recognizes a long-standing non-conforming use with accompanying development of the site, which is already irrevocably committed to commercial use. The site is too small for agricultural use by itself. It is bounded by Highway 18 on the north, a developed commercial (HC) site on the east, a steep embankment down to the flood plain on the south and developed residential sites on the west. This situation makes use of this parcel impractical for farming.

5. Regarding criterion (c), there is no evident change to the neighboring area due to the fact that the business has been in existence since 1959. The only identified change in the area is an increase in the use of Highway 18 as a route from Portland and the surrounding area to the coast. This change increases the need for a tourist-related business along this route.

Other uses in the area include another restaurant which is compatible with the proposed use and large-scale agricultural operations. These latter operations may include practices which may conflict with the

restaurant operation although the planning department has received no complaints regarding this issue.

6. Finding D.4 applies to criterion (d), above, as well.
7. Regarding criterion (e), the OAR requirements are addressed in Section C.

CONCLUSIONS FOR APPROVAL OF PLAN AMENDMENT AND ZONE CHANGE:

1. The request is for an amendment to the Yamhill County Comprehensive Plan map for 1.12-acre parcel from Agriculture/Forestry Large Holding to Commercial, and a zone change for the same property from EF-40 Exclusive Farm Use to HC Highway/Tourist Commercial.
2. The unique circumstances of the subject site are such that reasons exist why the property should not be subject to Goal 3 requirements.
3. Areas that do not require a new exception cannot reasonably accommodate the use because of unavailability of suitable land zoned for an HC Highway/Tourist Commercial District.
4. The uses allowed by the proposed change are or can be made compatible with other uses in the vicinity.
5. The request is consistent with the goals and policies of the Yamhill County Comprehensive Plan.
6. The uses allowed on the subject property must be limited to a restaurant facility and associated uses as stated in the implementing ordinance.

CONCLUSION FOR APPROVAL OF THE LOT LINE ADJUSTMENT:

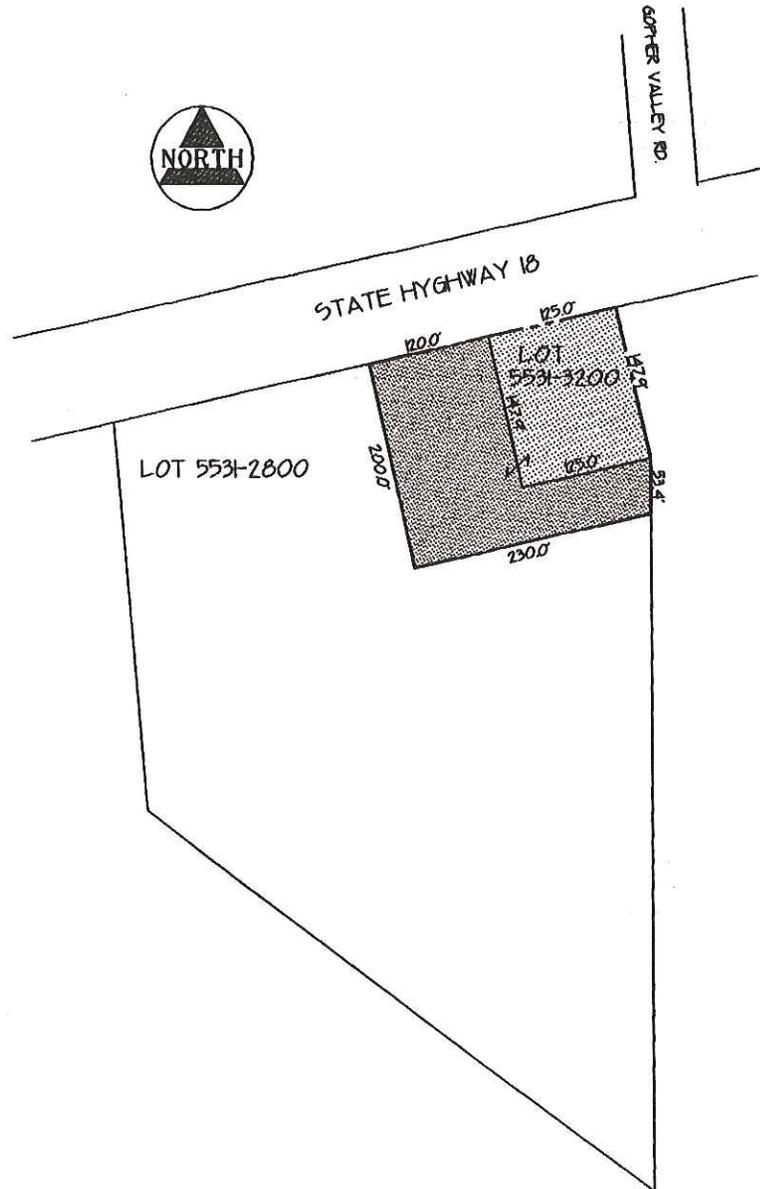
With the imposition of the following conditions, the request complies with the lot-line approval standards in Section 7.020 of the *Yamhill County Land Division Ordinance*:

1. The adjusted lot line shall be surveyed pursuant to Section 6.120 of the *Yamhill County Land Division Ordinance*.
2. A final map of the adjustment, substantially conforming to the preliminary map and the conditions of this approval, shall be submitted to the Planning Director along with a legal description of the property. Said map shall indicate the dwelling satisfies the 30-foot minimum setback requirement.
3. The following statement shall be placed on the instrument conveying the adjusted property:

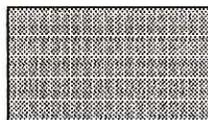
This conveyance is made solely as an adjustment of common boundary between adjoining properties, and does not create a separate parcel that can be conveyed independently of adjacent land.
4. A copy of the instrument conveying the adjusted property shall be submitted to and approved by the Planning Director prior to recording with the County Clerk.
5. All requirements of Oregon Department Transportation (ODOT) shall be satisfied and approvals shall be submitted to the Yamhill County Planning Director.
6. All requirements of Yamhill County Sanitarian shall be satisfied and approvals shall be submitted to the Yamhill County Planning Director.

EXHIBIT "B" FOR ORDINANCE 569

COMPREHENSIVE PLAN AN ZONING MAP AMENDMENT
TO CHANGE THE COMPREHENSIVE PLAN MAP
DESIGNATION FROM
"AGRICULTURE FORESTRY LARGE HOLDING"
TO "COMMERCIAL"
AND THE ZONE FROM "EF-40" EXCLUSIVE FARM
TO "HC" HIGHWAY/TOURIST COMMERCIAL
AND A LOT LINE ADJUSTMENT



AREA SUBJECT TO COMPREHENSIVE
PLAN AND ZONE MAP AMENDMENT



AREA SUBJECT TO COMPREHENSIVE
PLAN & ZONE MAP AMENDMENT AND
LOT LINE ADJUSTMENT