

FILED

91-552

FOR THE COUNTY OF YAMHILL

1991 AUG -8 AM 11:08

SITTING FOR THE TRANSACTION OF COUNTY BUSINESS CHARLES STERN
COUNTY CLERK

In the Matter of an Ordinance)
Amending the Zone Map of the)
Yamhill County Zoning Ordinance,)
No. 310, as Amended, to Change)
the Zone Map Designation from)
AF-10 to VLDR 2.5 on Approximately)
37.28 Acres Identified as Tax Lot)
3230-1110, Located About One Half)
Mile Southwest of the City of)
Newberg, as Requested by Powell)
Industrial Building, Inc., and)
Declaring an Emergency)

ORDINANCE 524

DEPUTY

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY, OREGON (the Board), sat for the transaction of county business in regular session on August 7, 1991, Commissioners Dennis L. Goecks, Ted Lopuszynski and Debi Owens being present.

WHEREAS, Powell Industrial Builders, Inc. has applied to the Department of Planning and Development in order to change the zone map designation from AF-10 to VLDR-2.5 on Tax Lot 3230-1110; and

WHEREAS, the area subject to the application constitutes approximately 37.28 acres and is located about one-half mile southwest of the City of Newberg, and is more particularly identified on the map attached as Exhibit "B", which is incorporated into this ordinance by reference; and

WHEREAS, the comprehensive plan map designation on the property subject to the application is "very low density residential" and was part of Exception Code Area 1.8 which excepted "lands committed to rural residential use" from the application of the statewide resource planning goals as described in the conclusionary findings attached hereto as Exhibit "A"; and

WHEREAS, on June 6, 1991 the Yamhill County Planning Commission held a public hearing on the application and voted unanimously to approve the application; and

WHEREAS, the matter was appealed by the City of Newberg to the Board, and that a hearing was held before the Board on July 24, 1991 at which time further testimony and evidence was received; and that following the close of the hearing and close of the record, the Board deliberated and voted unanimously to approve the zone change with a shadow plat to assure that any houses or septic

ORDINANCE 524

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fields that are constructed do not interfere with the eventual urbanization of the property, and the Board hereby directs the planning director to impose shadow platting at the time of subdivision or partitioning; and

WHEREAS, on August 7, 1991 the Board held a public hearing to consider adopting an ordinance to implement the Board's decision of July 24 1991; and

WHEREAS, based upon the findings of fact and conclusionary findings attached hereto as Exhibit "A" and incorporated herein by this reference, the Board finds that the amendment as requested should be made; NOW THEREFORE,

THE YAMHILL COUNTY BOARD OF COMMISSIONERS ORDAINS as follows:

Section 1. Based upon the findings of fact and conclusionary findings attached hereto as Exhibit "A" and by this reference incorporated herein, the official zone map of the Yamhill County Zoning Ordinance, No. 310, 1982, as amended, is hereby amended to change the zone map designation from AF-10 to VLDR-2.5 on approximately 37.28 acres identified as Tax Lots 3230-1110, as more particularly identified on the map attached as Exhibit "B". Exhibits "A" and "B" are hereby incorporated into this ordinance by this reference.

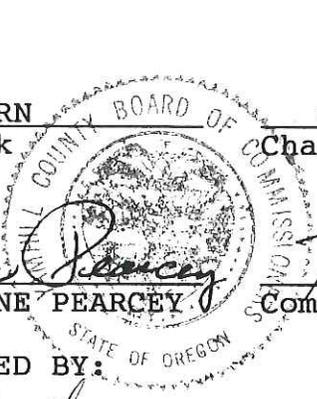
Section 2. This ordinance being necessary for the health, safety, and welfare of the citizens of Yamhill County, and an emergency having been declared to exist, shall become effective upon passage.

DONE at McMinnville, Oregon this 7th day of August, 1991.

ATTEST

YAMHILL COUNTY BOARD OF COMMISSIONERS

CHARLES STERN
County Clerk



Dennis Goecks
Chairman

DENNIS L. GOECKS
Date: 8-7-91

By: Elaine Pearcy
Deputy ELAINE PEARCEY

Ted Lopuszynski
Commissioner

TED LOPUSZYNSKI
Date: 8-7-91

FORM APPROVED BY:

John C. Pinkstaff
JOHN C. PINKSTAFF
Assistant County Counsel

Debi Owens
Commissioner

DEBI OWENS
Date: 8-7-91

EXHIBIT "A"
ORDINANCE NO. 524

Planning Commission Approval: June 6, 1991
Board of Commissioners Approval: July 24, 1991

DOCKET: Z-4-91

APPLICANT: Powell Industrial Building, Inc.

REQUEST: A zone change from AF-10 to VLDR-2½ in an area plan-designated VLDR.

LOCATION: Approximately 1/2 mile southwest of the City of Newberg on the south side of Dayton Avenue.

TAX LOT: 3230-1100

OWNER: Herman J. McIntosh

FINDINGS

A. BACKGROUND FACTS

1. The applicant has requested a zone change from AF-10 (a rural residential zone designation) to VLDR-2.5 on Tax Lot 3230-1100, consisting of 37.28 acres, plan designated VLDR.
2. The subject property is located approximately 1/2 mile southwest of Newberg's Urban Growth Boundary and 1/2 mile southwest of the city limits.
3. The property is adjacent to and south of Dayton Avenue, a paved county road. Presently there are three houses on the site, all of them located on the south side of Dayton Avenue.
4. The impact of the proposed zone change would be a potential increase of up to 15 single family dwellings.
5. The property is wooded. There is a burned mobile home and associated outbuildings at the north end, near Dayton Avenue.
6. The subject parcel and area adjoining the parcel on the south, west, and northwest, was included in Exceptions Code Area 1.8 (Newberg-Dundee). According to Exceptions Statement II, adopted April 23, 1980 as supplementary findings for the taking of an exception to statewide goals:

"The entire Newberg-Dundee study area is committed to rural residential development. The entire area is located in a rural fire district, exhibits good roads,

has fair or better water availability, and has mostly fair soil suitability for septic systems."

In addition:

"Agricultural activity in this study area has been restricted to small family gardens and orchards and, given the extensive subdivision and parcelization of this area and its close proximity to two urban areas, this rural residential settlement pattern will continue to dominate. Thus, this area is committed to rural residential development."

7. Surrounding land uses are characterized by orchards, small scale farming, and rural residential use. The area to the south and east are wooded. There are other small-scale agricultural uses to the west, and a nut processing facility across Dayton Avenue to the north.

8. Land adjacent to the west and east of the subject parcel is zoned VLDR-2.5. The remaining land surrounding the site (to the south and north) is zoned AF-10 with the exception of Ramsey Hill Cemetery, zoned Public Assembly/Institutional District (PAI).

9. The soils on the subject property are a mixture of Woodburn silt loam, Amity silt loam, and Aloha silt loam with slopes of up to 12 percent. Soils of this type are rated as Class II and III agricultural soils.

10. None of the subject property is within the 100 year floodplain.

11. Presently there are 810 acres of land zoned VLDR-2.5 included in this study area. A 1986 and a 1990 study of this area showed that over 65 percent of the available VLDR-2.5 land had dwellings placed on them.

12. Electric, telephone, fire suppression, law enforcement, and emergency medical services are all available to the site. The area is served by Yamhill County Sheriff and Public Works Departments, Newberg Rural Fire Department, Newberg School District, GTE and PGE.

13. Water: On-site wells. There is currently one water well on the site. There is no water district currently serving the site.

14. Sewage Disposal for the site will be on-site subsurface systems. There is presently one septic tank on the site.

15. Notice of the request was sent to surrounding property owners and published in a newspaper of general circulation. During the

period of public notice, no objection was received except from the City of Newberg.

The City of Dundee indicated that it had reviewed the file and found no conflicts with its interests.

B. DECISION-MAKING CRITERIA

The Board's decision must be based upon consideration of the zone change criteria set forth in Section 1208 of the Zoning Ordinance. The specific review criteria is listed below.

1208.02 Review Criteria.

A quasi-judicial change to a zoning map may be authorized, pursuant to Subsection 1209.01, provided that the request satisfies all applicable requirements of this ordinance, and also provided that the applicant demonstrates the following:

- 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 uses 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 (OAR's) for exceptions, if applicable.

C. CONCLUSIONARY FINDINGS FOR APPROVAL

The following conclusionary findings for approval of the application are hereby adopted by the Board.

1. The Board finds that Section 1208.02(A) is satisfied in that the zone change is consistent with applicable goals, policies, and plan provisions as follows.

1.1 The zone change request to amend the zoning on the subject property from AF-10 to VLDR-2.5 is consistent with the Comprehensive Plan in that the property is plan designated "very low density residential" (VLDR) which provides for residential development of up to one dwelling per acre. Further, the property was included in the Exceptions Code Area 1.8 during the 1979-80 Exceptions process. Code Area 1.8 was excepted from the application of the statewide planning resource goals as "lands committed to rural residential use". The VLDR plan designation was found to be appropriate for the subject property and surrounding area, and was acknowledged by LCDC as in compliance with the statewide planning goals.

As noted in Finding of Fact 5, the subject property was plan designated VLDR under the exceptions criteria due to the parcelization and proximity to the two urban areas of Newberg and Dundee. Therefore, the area is consistent with rural area development goals and policies in that the county recognizes such lands as the appropriate and desired location for rural residential development.

1.2 Regarding the Comprehensive Plan, the map designation for the property is Very Low Density Residential, which allows VLDR-2½ zoning. Regarding rural development plan goals, Goal I.B.1 states:

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

1.3 The opponents argue that two and one-half acre lots would have a negative effect on urban expansion into the Dayton Avenue area on the west side of Chehalem Creek. However, Section 6.010(4) of the Yamhill County Land Division Ordinance stipulates:

"If a tract is divided into lots of 20,000 square feet or more the Director may require an arrangement of lots and streets to permit a later re-division in conformity to the requirements contained in this ordinance. The location of lot lines and other details of the layout shall be such that further division of the parcels may readily take place without interfering with the orderly

development of streets. The Director may restrict the placement or location of structures, easements, facilities or other uses that may cause an infringement upon the use or development and improvement of an existing or anticipated street or roadway."

Consequently, any partitioning of the parcel will be required to be arranged so that orderly future urban development is accommodated. "Shadow platting" will be employed to insure adequate access for streets and urban services, so later development costs should not be significantly affected.

2. The Board finds that Section 1208.02(B) is satisfied as follows.

2.1 As indicated in Finding of Fact 10, over 65 percent of the VLDR-2.5 land available in this area has been developed. Recent testimony presented to the Planning Commission in 1990 in Docket Z-3-89 was that there was a high market demand for parcels of that size. Only four to five parcels of a similar size were listed in the county's Multiple Listings Schedule of real estate for sale in Newberg-Dundee area.

2.2. Testimony from qualified realtors indicated there is a greater demand than supply of rural residential lots, and there is a substantial need in the real estate market for additional small rural residential acreage in the county. The subject property is within the Newberg-Dundee Exception Area, which encompasses 810 acres of land. A study in 1990 of the county's exception (rural residential) areas indicated that the portion of the Newberg-Dundee exception area zoned VLDR-2½ was at 66 percent of the maximum number of dwellings allowed, considering density. When considering all the exception areas around Newberg and Dundee with VLDR-2½ zoning (code areas 1.3, 1.4, and 1.10), the zone was over 60 percent full. Other exception areas are in substantially different locations, so were not considered.

3. The Board finds that Section 1208(C) is satisfied as follows.

3.1 Approval of the request is appropriate in that it will allow for increased development of an area which was deemed to be committed to rural residential development through the exceptions process, thereby providing for efficient utilization of land adjacent to the City of Newberg and the City of Dundee.

3.2 The area surrounding the site is currently used for small-acreage agricultural operations, a nut processing facility and rural residences. The zoning to the east is VLDR-2½, but the neighboring parcel has not yet been partitioned, so it is still approximately 29 acres. Most of the area around the property, but not adjacent to it, is in parcels five acres or larger, except to

the west along Hagey Road where properties are typically two to five acres. This neighborhood is within one-quarter mile of the subject property.

3.3 The proposed zone change can also be considered appropriate for the area considering that existing dwellings on adjacent lands are served by on-site septic systems and wells. Through the exceptions process it was determined that the area exhibited reasonable water availability and generally fair soil suitability for septic systems. As such, development of the subject property will not require the costly extension of urban facilities or services, but instead water and sewage disposal facilities will need to be provided on-site, and can be accommodated on an individual parcel basis.

There is no reasonable expectation that city water or sewer services will be extended to the area in the near future. There is some concern about the soil suitability for on-site sewage disposal, but each potential lot would be required to have a favorable evaluation by the county sanitarian prior to partitioning, so this concern is addressed through normal channels. Other services area currently available to the site.

3.4 It has been county practice in the past to grant those requests which bring zoning into conformance with the Comprehensive Plan map designation, particularly in VLDR areas. In that the subject property is plan designated VLDR, approval of the zone change to VLDR-2.5 will be consistent with previous county actions.

4. The Board finds that Section 1208.02(D) is satisfied as follows.

4.1 Although other VLDR-2.5 zoned land exists in the county, availability of such lands for development is limited. Further, the subject property is suitable for VLDR-2.5 zoning considering the existing development availability, the existing public services, the proximity to other lands zoned VLDR-2.5 and the compatibility of the proposed development with adjacent rural residential uses.

4.2 As indicated in paragraph 2, there was testimony that need exceeds supply for $2\frac{1}{2}$ acre parcels and the studies indicated that the $2\frac{1}{2}$ acre zone was 66% full which means 34% was vacant). However, if $2\frac{1}{2}$ acre residential lots are considered a distinct type of use, i.e., not the same as one-acre or five-acre lots, the study simply divided the total number of acres by the total number of dwelling units, which means there would be even fewer building sites on a parcel-by-parcel basis, due to uneven acreage amounts and topographical and other site limitations on particular parcels.

5. The Board finds that Section 1208.02(E) is satisfied as follows:

5.1 Regarding Oregon Administrative Rules, Section 660-04-018 applies. That section requires that uses in exception areas justified by physical development and/or irrevocable commitment to nonresource use be limited to the following:

(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) The 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 resource uses.

(c) Changes to plan or zone designations are allowed consistently with subsections (a) or (b) of this section, or where the uses or zones are identified and authorized by specific related policies contained in the acknowledged plan.

5.2 The requested zone change satisfies OAR 660-04-018(a). The area is currently plan designated "Very Low Density Residential" (VLDR). This plan designation would allow a residential density greater than one dwelling per 2½ acres. There is currently little productive use of the land. Additional residences will not cause a significant change in the use of the majority of the parcel. Exception Code Areas 1.8 (Newberg-Dundee) of which the subject property is a part, was approved as a "committed" exception. The proposed use is for acreage homesites, which is a rural use, and the density proposed is a rural density. Although community water may ultimately be provided to the subject property, community water is provided to rural homes and farms throughout the county, and is a typical rural amenity in the county. Community sewer is a more urban application, and it is not anticipated that the subject property will be served by community sewer. As shown by the findings, the ability to obtain partitioning approval and development permits for a maximum density of one dwelling per 2½ acres may be further limited by suitability for subsurface sewage disposal. This limitation further insures that housing densities on the subject property will remain rural as long as the property remains outside of the city limits and urban growth boundary of the City of Newberg.

5.3 The zone change satisfies OAR 660-04-018(b). The uses allowed in the requested zone are rural. All adjacent and nearby land is either included in VLDR exception areas, is currently planned and zoned for rural residential uses (AF-10 and VLDR-2½) or is in other nonresource zoning and use (Ramsey Hill Cemetery). To the extent any of the adjacent land could be considered resource land, such land would not be committed to nonresource use as a result of the proposed rural residential use on this property. One dwelling per 2½ acres is not an urban density, and an urban level of services is not available to the site. Because the access for the parcel is constrained to Dayton Avenue, and because of topographical barriers from adjacent farmland, the requested zone change will not commit farmland to nonfarm use. As shown by the record and these findings, the uses proposed for the subject property will not commit adjacent or nearby resource land to non-resource use. No incompatibilities with farm use have been identified. The rural residential land use will be compatible with nearby residential use.

5.4 The zone change satisfies OAR 660-04-018(c). None of the statewide land use planning goals apply to this approval. The rural use proposed is consistent with the comprehensive plan and with all goal requirements to which exception has not been taken, and in particular Goal 14, as explained in these findings.

6. The City of Newberg claimed that this approval allows urban-type uses and requires a Goal 14 exception. The Board is persuaded that a Goal 14 exception is not required for the following reasons.

6.1 The Board finds that the subject property is rural land and that the proposed VLDR-2.5 use (2.5 acre Very Low Density Rural Residential Use) is a "rural use" as those terms are defined OAR Definition of Rural Land, Planning Goals at 24:

"Rural land are those which are outside the urban growth boundary and are
(a) Non-urban agricultural, forest or open space lands
or,
(b) Other lands suitable for *sparse settlement, small farms, or acreage homesites with no or hardly any public services, and which are not suitable, necessary, or intended for urban use.*" (Emphasis added.)

Also see 1000 Friends of Oregon vs. LCDC (Curry Co.), 301 Or 447 (1986).

The Board finds that the proposed 2.5 acre zone permits "sparse settlement, small farms, and acreage homesites", with few, if any, public services. Such use is rural in scale and intensity. The level of services required indicates the use is rural rather than "urban" or "urbanizable", as those terms are defined. Water

wells and on-site septic tanks will be provided on an individual parcel basis. The county, not the city, is required to provide law enforcement services from a nearby location. A paved county road serves the site. A rural fire protection district provides services to the site.

6.2 The Board finds that orderly urban development, under the Newberg Urban Growth Boundary and the Dundee Urban Growth Boundary, would not be adversely affected by the approval. The City of Dundee indicated there would be no conflicts with its interests.

The City of Newberg claimed this development would create political and technical problems with its long-term urban expansion, such as more expensive services. However, the City of Newberg conceded that it had no plans to expand its city limits or UGB in the direction of this site. Thus, there is no evidence of a likelihood of leapfrogging or urban sprawl from Newberg to this site. The City of Newberg presented no evidence that extension of service to this area would be needed, was possible, or planned in the foreseeable future.

Even if the Newberg UGB expanded in the direction of this site, the possible adverse effects would be minimized by the condition of "shadow platting". The City of Newberg conceded that "shadow platting" may work from a technical standpoint, but claims that "political realities of getting numerous property owners to coordinate for future redevelopment at high density is unrealistic". The Board finds that "future political realities" are too speculative and cannot be used as a basis for its decision in this case.

The City of Newberg claims that there is no need for additional 2.5 acre zone property and that there was no evidence of lack of available or equally suited property. The City pointed to a study that listed 325 acres vacant in the 2.5 acre zone in Exceptions Area 1.1 to 1.17. However, the Board is not persuaded that this means that there is no need for the zone change in this area which would create the possibility of 11 or 15 more 2.5 acre parcels for the following reasons:

(1) The 325 acres is not all subdivided or necessarily capable of actually being subdivided into 2.5 acre parcels. Rather, 325 is only a total acreage number.

Second, even if theoretically ever acre of the 325 are total could be built out to a density of one dwelling per 2.5 acres, the Board is not persuaded that all such land is available. The Board is satisfied that there is a need for 15 more 2.5 acre parcels to be added to the existing supply. The Board received expert testimony from realtors in the area indicating that there is a need for more 2.5 acre zoned property to be made available. The Board

there is a need for more 2.5 acre zone property to be made available. The Board believes such testimony is entitled to considerable weight and that there was substantial evidence to rebut the claims by the City in this regard.

The City of Newberg also claimed the needs analysis was incomplete and suggested there were adequate alternative sites in the City of Newberg. However, the Board is persuaded that in the Newberg city limits there is no supply of 2.5 acre rural acreage homesites. The LDR (Low Density Residential) zoning in Newberg allows an overall density of up to 4.4 units per acre, which is not the same or compatible with a density of one dwelling per 2½ acres, which would leave space for barns, small agricultural activities, and would not require urban services.

6.3 The Board also finds that the zone change would not cause any other harmful effects upon orderly urban development as follows:

(1) The proposed rural use would not impair the ability of urban service providers inside the UGB to finance the urban infrastructure needed to accommodate growth. The 2½ acre rural homesites would not require urban services.

(2) There would be no constraint on UGB expansion. The shadow plat requirements would help assure that the development on the site would accommodate the type of development allowed in any future UGB expansion.

(3) There would be no conflicts between the type of rural use and farms. The site has been included in a larger "committed exception" area.

(4) There would not be additional urban water, police, or fire protection required. There may be expansion of schools, which draw from rural areas, but there was no evidence that such expansion (14-15 homesites) has not been anticipated or cannot be accommodated by the rural school districts.

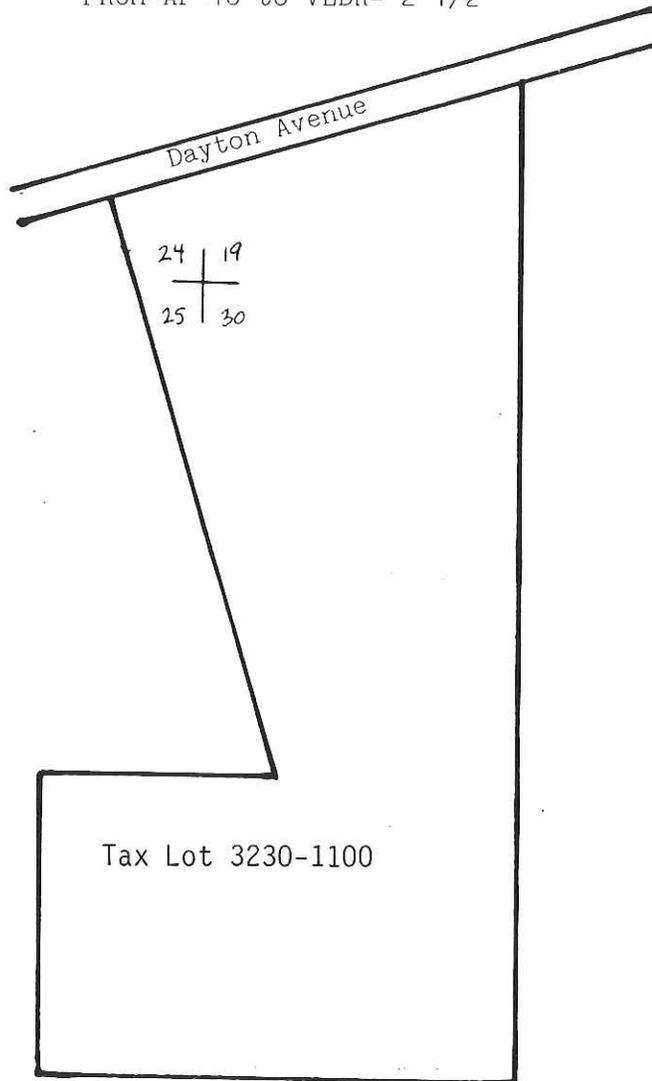
6.4 There would be no substantial reduction in the serviceability of suburban and urban street systems. Dayton Avenue is a paved county road capable of handling any increased traffic. There is a nearby intersection with State Highway 99W to the southwest toward McMinnville.

bppowell.qod

EXHIBIT B - ORDINANCE 524

ZONE CHANGE

FROM AF-10 to VLDR- 2 1/2



ADOPTED BY THE YAMHILL COUNTY BOARD OF COMMISSIONERS

AUGUST 7, 1991

Scale 1" = 400'

Map prepared by the Planning Department

