

IN THE BOARD OF COMMISSIONERS OF THE STATE OF OREGON

FILED  
YAMHILL COUNTY, OREGON

92-268

FOR THE COUNTY OF YAMHILL

1992 APR 29 PM 3:16

SITTING FOR THE TRANSACTION OF COUNTY BUSINESS

CHARLES STERN  
COUNTY CLERK

DEPUTY

In the Matter of an Ordinance )  
Amending the Yamhill County )  
Comprehensive Plan Map and )  
Zoning Map to Change, on a )  
2 acre portion of Tax Lot )  
3324-6800, the Plan Map )  
Designation From Very Low )  
Density Residential to Industrial, )  
and the Zone Map Designation )  
from AF-10 to Resource Industrial; )  
Imposing a Limited Use Overlay )  
to Restrict Use of the Property )  
to a Winery; Planning Docket )  
PAZ-04-91; Applicant Douglas )  
Fries; and Declaring an Emergency )

ORDINANCE 530

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY, OREGON (the Board), sat for the transaction of county business in special session on April 29, 1992, Commissioners Ted Lopuszynski, Debi Owens, and Dennis L. Goecks being present.

WHEREAS, Douglas Fries ("Applicant") has applied to the Department of Planning and Development for a Comprehensive Plan Map amendment from Very Low Density Residential to Industrial and a zone map amendment from AF-10 to RI (Resource Industrial) on the 2 acre portion of Tax Lot 3324-6800 identified on the attached Exhibit "B"; and

WHEREAS, on February 6, 1992 the Yamhill County Planning Commission held a public hearing to consider the application and thereafter voted unanimously to recommend to the Board that the Comprehensive Plan Map and Official Zoning Map be amended to grant the application; and

WHEREAS, on April 15, 1992 the Board held a public hearing on the application and voted 2-1, Commissioner Goecks dissenting, to grant tentative approval to the application; and

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

WHEREAS, the attached Exhibit "A" demonstrates 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 "Industrial" for the 2 acre portion of Tax Lot 3324-6800 identified on Exhibit "B".

Section 2. In adopting the Plan amendment specified in Section 1, 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 RI on the 2 acre portion of Tax Lot 3324-6800 identified on Exhibit "B".

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

Section 5. A "Limited Use Overlay" is hereby imposed on the 2 acre portion of Tax Lot 3324-6800 identified on Exhibit "B" to limit the use of the property to use for a winery.

Section 6. 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 29th day of April, 1992.



YAMHILL COUNTY BOARD OF COMMISSIONERS

Ted Lopuszynski  
Chairman TED LOPUSZYNSKI

By: Jayne Mitchell  
Deputy JAYNIE MITCHELL

Debi Owens  
Commissioner DEBI OWENS

FORM APPROVED BY:

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

Dennis L. Goecks  
Commissioner DENNIS L. GOECKS

Accepted by Yamhill County  
Board of Commissioners on  
4-29-92 by Board Order  
# 92-268.

Exhibit "A"  
Ordinance No. 530  
Findings for Approval

Date of Final  
Planning Commission  
Hearing:

February 6, 1992

Date of Board of  
Commissioners'  
Hearing

April 15, 1992

Date of Final  
Decision; Adoption  
of Ordinance

April 29, 1992

DOCKET:

PAZ-04-91

APPLICANT:

Douglas Fries

REQUEST:

A Comprehensive Plan map amendment from Very Low Density Residential (VLDR) to Industrial (I), and a zone change from AF-10 Agriculture/Forestry Small Holding to RI Resource Industrial for approximately 2 acres to allow establishment of a winery.

TAX LOT:

3324-6800

LOCATION:

Between Newberg and Dundee on the north side of Highway 99W.

FINDINGS:

A: Background Facts

1. Property size: The property is 19 acres but the requested zone change would affect only two acres.
2. Access: Highway 99W.
3. On-site Land Use: The property is an open field that slopes slightly to the northeast. The only apparent use is a grain or grass crop on the entire parcel.
4. Surrounding Land Use: The surrounding area is characterized by rural residential, small scale agriculture and commercial use. The commercial uses are generally located along Highway 99W. The rural residential uses are found on both sides of the highway and are the predominant use in the area. Agricultural uses are found on neighboring properties but are

generally on parcels of less than ten acres and are in conjunction with the rural residential uses.

5. Surrounding Zoning: Considering only the subject two acres, the surrounding zoning is AF-10 on all sides. Considering the entire tax lot, the surrounding zoning is north, AF-10 and VLDR-2.5; east, VLDR-2.5; south, AF-10; and west, VLDR-2.5.
6. Soils: Sheet 22 of the Yamhill County Soil Survey indicates that the soil type on the two acre portion is Woodburn silt loam with slopes of up to seven percent (WuB). Soil of this type is rated as agricultural Class II.
7. Water: Private well to be drilled.
8. Sewage Disposal: A septic system would need to be provided.
9. Fire Protection: Newberg RFD.
10. Taxes: Farm deferral.
11. Previous Action: Docket Z-6-90, for a zone change on the entire 19 acres to VLDR - 2.5 was denied by the Planning Commission.

#### B. 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.7). In 1980 this area was identified as being built and committed to rural residential use and as such was excepted from Goal 3 and plan-designated Very Low Density Residential (VLDR). The property was subsequently zoned AF-10 Agriculture/Forestry Small Holding. Zoning of this type allows farm and forestry uses of the scale and characteristics commonly found in the exclusive farm use zones, but the primary intent of the zone is for rural residential use. 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. If land is already excepted, but there is a request for a different type of use, a new exception is required.
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. 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 latter path has been taken in this case because the subject property is not physically developed or irrevocably committed to a resource industrial use.
3. OAR 660-04-022(1) deals with reasons exceptions, and states:

For uses not specifically provided for in subsequent sections of this rule or OAR 660, Division 14, the reasons shall justify why the state policy embodied in the applicable goals should not apply.

In essence, the county needs to explain why the property should be zoned for resource industrial, instead of agricultural or rural residential use.

The applicants have indicated that they plan to plant the property to a vineyard in 1992 which would be productive by 1995. The Agriculture/Forestry Small Holding zone and VLDR plan designation allow agricultural use which includes vineyards. Although this zone allows agricultural uses of the size and scale found in exclusive farm use areas, and the exclusive farm use zones allow wineries as a permitted use, the AF-10 zone does not allow wineries as a permitted or conditional use. Resource Industrial zone permits wineries outright.

Statewide Goal 14 requires urban uses to be allowed only within Urban Growth Boundaries unless an exception to that Goal is justified. Although a winery can be established in an urban area, it is not generally considered an urban scale of use. Historically wineries have most commonly been established next to vineyards. This is recognized in state statute. ORS 215.213(2) allows establishment of a winery as defined by ORS 215.452, as a permitted use in the exclusive farm use zone. Therefore, the Board finds that an exception to Goal 14 is not necessary.

4. OAR 660-04-020(2) states that justifications for exceptions based on reasons shall address the following four factors:
  - (a) ...the facts and assumptions used as the basis for determining that a state policy embodied in a goal should not apply to specific properties or situations including the amount of land for the use being planned and why the use requires location on resource land.
  - (b) Areas which do not require a new exception cannot reasonably accommodate the use.
  - (c) The long-term environmental, economic, social, and energy consequences resulting from the use at the proposed site...
  - (d) The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts.

These factors are considered in findings 5 through 8 below.

5. Regarding criterion (a) above, although this area has previously had an exception taken to Goal 3 based on the area being built or committed to rural residential use, any request for a different type of use requires a new exception to the goal. The reasons relied upon to justify the exception assume that Goal 3 is intended to protect agricultural lands for agricultural uses. It is also assumed that wineries can be appropriately located near vineyards. This has advantages with regard to ease of transporting the grapes to be processed. There are also presumed marketing advantages of having a site to sell the product in a scenic setting. In order to accomplish this, locating the winery in a rural area near the vineyard requires the use of some resource land. It is also a fact that if the property was considered resource land, no exception would be required.

Approving a plan amendment to industrial and a zone change to resource industrial would allow establishment of a winery which would be in character with the neighboring uses.

Because uses, other than wineries, permitted by the Resource Industrial zone may be in conflict with existing uses, a Limited Use Overlay would be warranted with any approval.

6. Regarding factor (b) above, the applicant has stated "We have spent a great deal of time trying to answer this question. We purchased the acreage because we feel it is ideal for use as a winery and tasting room. I'm not familiar with the zoning of other properties, but the availability and accessibility of this property in the area is very limited."

Approximately half of the land in Yamhill County is zoned for exclusive agriculture use. This means that over 265,000 acres in the county allows a winery as a permitted use without obtaining an exception to the statewide planning goals. The problem is that not all of these areas are suitable for vineyard production. A 1989 Grape Suitability map produced by INTRA and Yamhill County showed areas that had soil capable of growing grapes. Only about half of the farm acreage in the county had soil suitable for grapes. This does not take into account the other factors that limit grape production on parcels such as elevation, slope, aspect and topography. This coupled with the fact that very few parcels suitable for grape production are close to major traffic arterials, makes other areas less suitable for the proposed use.

7. Regarding criterion (c) above, the long-term environmental, economic, social, and energy consequences of the proposed amendment would be negligible because the result would only be establishment of a winery on two acres. The portion of the land not built upon will convert to vineyard use which is already a permitted use in the existing zone.
8. Regarding criterion (d) above, establishment of a winery in the RI zone requires approval of a site design review, which will mitigate any adverse impacts with neighboring uses.
9. OAR 660-04-018(3) provides rules governing zoning in exception areas justified by "reasons." These provisions state:
  - (a) ...plan and zone designations must limit the uses and activities to only those uses and activities which were justified in the exception.
  - (b) When a local government changes the types or intensities of uses within an exception area approved as a "reasons" exception, a new "reasons" exception is required.

Regarding the first of these requirements, there are uses permitted in the RI zone besides wineries. Consequently there is a need to employ the Limited Use Overlay zone in this request. Said overlay will ensure that the use permitted by the zone change will be limited to that requested by the applicant.

The second requirement above does not apply.

### 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.

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 property is not being considered for urban development. 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. An on-site investigation indicates, however, that the property is surrounded by residential, commercial and small farm development. Approval of the request would allow establishment of a winery while still allowing the planting of 15 acres of vineyard. In light of the suitability of the site for agriculture, as addressed in the second goal above, the Resource Industrial zone designation is appropriate to implement the intent of the Plan.

4. Regarding the need for the proposed change, the county has commissioned studies dealing with tourism and economic development. The studies have emphasized the wine industry as being important to these industries. Approval of the request would allow establishment of a winery that would help to develop this industry.

The availability of other lands so zoned for and their suitability is discussed in Finding B.6 above.

5. Regarding criterion (c), the area surrounding the subject property is in a "built and committed" exception area. The surrounding properties are in subdivisions of five to 10 acre parcels. Other land to the north is zoned for both light and heavy industrial uses. Other commercial uses exist in the surrounding area that have been approved or exist as nonconforming uses. The development allowed by the proposed zone would not be out of character with the surrounding land. Utilities in the area are adequate to serve the potential intensification of use. No significant changes in the area since acknowledgement of the Comprehensive Plan have been identified that would have a bearing on this case.
6. The findings in Finding B.6 and C.4 of this report apply to criterion (d), above, as well.
7. Regarding criterion (e), the OAR requirements are addressed in section B of this report. In addition, an exception to Goal 14 has not been addressed because a winery is not considered an urban use.
8. Section 904.04 of the Yamhill County Zoning Ordinance lists the standards necessary for applying the limited use overlay provisions to any application. These standards are:
  - A. That permitted uses and activities will be limited to those uses and activities justified and approved in the exception, as required by OAR 660-04-018(3)(a).
  - B. That a review had been made of all districts in the ordinance, and it has been determined that none of those districts limit the uses and activities, as required by OAR 660-04-018(3)(a).
  - C. That the location proposed in the underlying district is equally or better-suited than any other possible district.
9. Regarding criterion (a) above, the uses will be limited to a winery and those uses associated with a winery.
10. Regarding criterion (b) above, no other zoning district limits uses to wineries only.
11. Regarding criterion (c) above, the necessity of the location of the proposed use has been discussed in finding B.6 above.

#### CONCLUSIONS:

The Board finds as follows:

1. The request is for an amendment to the Yamhill County Comprehensive Plan map for approximately two acres from Agriculture/Forestry Small Holding, to Industrial and a zone change for the same property from AF-10 Agriculture/Forestry Small Holding to RI Resource Industrial.

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.
4. The long-term environmental, economic, social, and energy consequences of the proposal are negligible.
5. The uses allowed by the proposed change are compatible with other uses in the vicinity.
6. The request is consistent with the goals and policies of the Yamhill County Comprehensive Plan.
7. The uses allowed on the subject property should be limited to a winery.

**DECISION:**

Based on the above findings, analysis, and conclusions, the Board hereby allows the application for comprehensive plan map amendment from Very Low Density Residential to Industrial and zone change from AF-10 to RI for a two acre portion of tax lot 3324-6800. The Board also directs that a limited use overlay be imposed on the property in order that the use of the property is restricted to operation of a winery.

EXHIBIT "B" FOR ORDINANCE NO: 530

PLAN AMENDMENT/ZONE CHANGE

ADOPTED BY THE YAMHILL COUNTY BOARD OF COMMISSIONERS

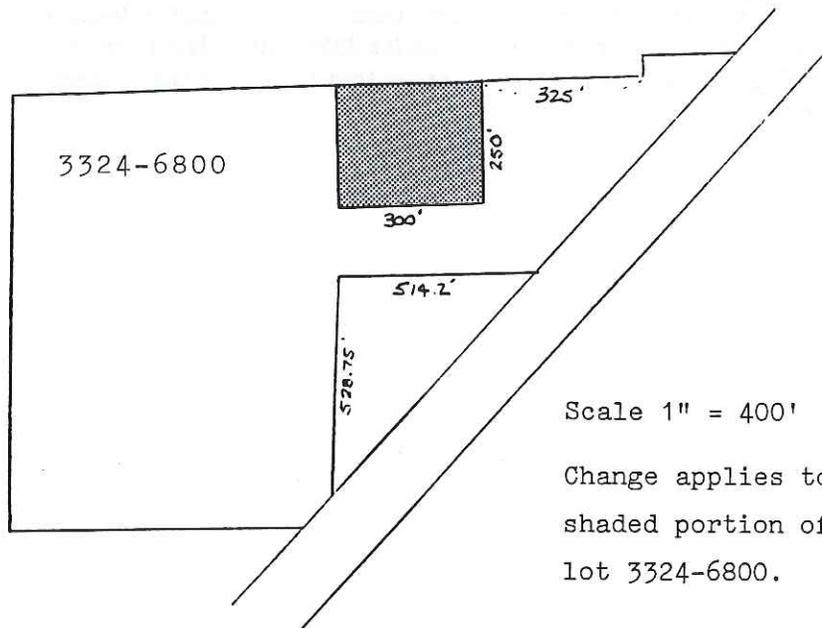
APRIL 29, 1992

TO CHANGE TO OFFICIAL ZONING MAP

FROM AF 10 TO RI

AND THE PLAN DESIGNATION

FROM VLDR TO I



Map prepared by the Department of Planning and Development.