

FILM 50 PAGE 1067  
YAMHILL COUNTY, OREGON  
FILED  
1990 MAY -9 PM 4:36  
CHARLES STEWART  
COUNTY CLERK

INDEXED IN THE BOARD OF COMMISSIONERS OF THE STATE OF OREGON

90-291

FOR THE COUNTY OF YAMHILL

SITTING FOR THE TRANSACTION OF COUNTY BUSINESS

In the Matter of an Ordinance )  
Amending the Zone Map of the )  
Yamhill County Zoning Ordinance, )  
No. 310, 1982, as Amended, to )  
Change the Zone Map Designation )  
From EF-40 to AF-10 for an Approxi-) ORDINANCE 506  
mately 20 Acre Portion of Tax Lot )  
3314-1000, North of and Adjacent )  
to Herring Lane, Approximately 1/2 )  
Mile West of Red Hills Road, Plan-) )  
ning Docket Z-2-90, as Requested by) )  
Fred and Bland Herring, and Declar-) )  
ing an Emergency )

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY, OREGON (the Board), sat for the transaction of county business in special session on May 9, 1990, Commissioners David E. Bishop, Dennis L. Goecks, and Ted Lopuszynski being present.

WHEREAS, Fred and Bland Herring have made application to the Department of Planning and Development for a change in the zone map designation on a 33 acre portion of Tax Lot 3314-1000 from EF-40, Exclusive Farm Use, to AF-10, Agriculture-Forestry/Small Holding; and

WHEREAS, on April 19, 1990, the Yamhill County Planning Commission held a public hearing on the application; and

WHEREAS, the Planning Commission determined that only the westernmost 20 acres of the subject area (approximately) is plan designated for Rural Residential uses and would accommodate an AF-10 zone designation, which is considered a rural residential zone; and

WHEREAS, the Planning Commission voted unanimously to approve the zone change request from EF-40 to AF-10 for only that portion of the subject area contained within the Chehalem Richland-Sunnycrest Exception Area and plan designated for rural residential uses; and

WHEREAS, no appeal has been taken from the decision of the Planning Commission; and

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WHEREAS, on May 9, 1990, the Board held a public hearing to consider adopting an ordinance to implement the Planning Commission's decision of April 19, 1990; and

WHEREAS, based upon the findings of fact and conclusions attached hereto as Exhibit "A" and incorporated herein by reference, the Board finds that the zone map amendment should be made as determined by the Planning Commission; NOW, THEREFORE,

THE YAMHILL COUNTY BOARD OF COMMISSIONERS ORDAINS as follows:

Section 1. Based upon the findings of fact and conclusions attached hereto as Exhibit "A" and by this reference incorporated herein, the official zoning map of the Yamhill County Zoning Ordinance, No. 310, 1982, as amended, is hereby amended to change the zone map designation on an approximately 20 acre portion of Tax Lot 3314-1000 from EF-40 to AF-10, as more particularly described on the attached map identified as Exhibit "B", and incorporated herein 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 9th day of May, 1990.

ATTEST

YAMHILL COUNTY BOARD OF COMMISSIONERS

CHARLES STERN  
County Clerk

Chairman

DAVID E. BISHOP

By: ELAINE BEARCE  
Deputy

Commissioner

DENNIS L. GOECKS

FORM APPROVED BY:

TIMOTHY S. SADLO  
Assistant County Counsel

Commissioner TED LOPUSZYNSKI

DOCKET: Z-2-90

APPLICANT: Fred and Bland Herring

REQUEST: To change the zone designation of 33 acres from EF-40 Exclusive Farm Use to AF-10 Agriculture/Forestry Small Holding.

TAX LOT: 3314-1000

LOCATION: North of and adjacent to Herring Lane approximately one-half mile west of Red Hills Road.

FINDINGS:

A. Background Facts

1. Lot Size: The subject property is composed of two tax lots under the same ownership that total 133.36 acres. The request pertains to only the western 33 acres of Tax Lot 3314-1000 (see attached maps).

2. Access: The 133.36 acres is located northwest of the intersection of Herring Lane and Red Hills Road. The portion subject to the zone change request fronts only Herring Lane.

3. On-site Land Use: Mixed agriculture and two dwellings. The subject 33 acres contains one dwelling and is otherwise devoted to livestock grazing.

4. Surrounding Land Use: Agriculture and rural residential.

5. Surrounding Zoning: North, AF-20 and AF-10; east, AF-20; south, EF-40 and AF-10; west, AF-10.

6. Comprehensive Plan Map Designation: A majority of the property is designated Agriculture/Forestry Large Holding (AFLH). The westernmost 20 acres (approximately) of the property is within the Chehalem Richland/Sunnycrest exception area and is designated Agriculture/Forestry Small Holding (AFSH).

7. Soils: According to the Soil Survey of Yamhill County, the soils on the property are primarily a mix of Woodburn, Willakenzie, and Chehalem. The subject 33 acres are predominantly Willakenzie, which are agricultural capability Class III or VI, depending on slope steepness. There are smaller areas of Jory and Nekia soils, which are Class III. (See soils map, attached)

8. Water: Private well.

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

10. Fire Protection: Newberg RFD.

11. Taxes: Farm deferral.

B. Ordinance Provisions and Analysis

1. Section 1208.02 of the Yamhill County Zoning Ordinance provides criteria for quasi-judicial review of requests for zone boundary amendments. These criteria are:

(a) The proposed change is consistent with the goals, policies, and other applicable provisions of the Comprehensive Plan;

(b) 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) 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) The 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) The amendment is consistent with the current Oregon Administrative Rules for exceptions, if applicable.

The "current Oregon Administrative Rules for exceptions" are contained in OAR 660-04-018. Those rules state, in relevant part:

"Planning and Zoning for Exception Areas

660-04-018 (1) Purpose. This rule explains the requirements for adoption of plan and zone designations for exception areas. Exceptions to one goal or portion of one goal do not relieve a jurisdiction from remaining goal requirements and do not authorize uses or activities other than those recognized or justified by the applicable exception. Physically developed and irrevocably committed exceptions under OAR 660-04-025 and 660-04-028 are intended to recognize and allow continuation of existing types of development in the exception area. Adoption of plan and zoning provisions which would allow changes in existing types of uses requires application of standards outlined in this rule.

(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) 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.

(d) Uses not meeting the above requirements may be approved only under provisions for a reasons exception as outlined in OAR 660-04-020 through 660-04-022.

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(4) Applicability of OAR 660-04-018. This rule applies only to plan and zoning designations and exceptions adopted by local governments following the effective date of this rule."

2. Regarding criterion (a) above, the proposal to rezone the entire 33 acres referenced in the application to AF-10 would not be consistent with the county's comprehensive plan. As demonstrated by the attached exception area map, the area has two separate plan designations. The easternmost 13 acres are plan designated "Agriculture/Forestry Large Holding" (AFLH). The AF-10 zone designation is a "Rural Residential" district, and is inconsistent with the AFLH plan designation. Because of this, the county cannot approve the zone change application as submitted, without amending the plan and adopting a new exception.

3. With the applicant's tacit approval, the county has proceeded to consider the applicant's request for a zone change to include only that area within the boundaries of the Chehalem Richland/Sunnycrest rural residential exception area. Plan policy I.B.1.a. of the Revised Goals and Policies, Yamhill County Comprehensive Plan (Ord. 206, 1979) states that areas designated Agriculture/Forestry Small Holding (AFSH), are "the appropriate and desired location for rural residential development". A zone designation change to AF-10 for that portion of applicant's property within the AFSH plan designated area would promote that policy.

4. Regarding criterion (b) above, the applicant has indicated there is a demand for small acreage tracts that allow dwellings and small-scale farm use. It is implied that the demand for such land exceeds the current supply, and that zoning accounts for the lack of supply.

The westernmost 20 acres of the property is within the Chehalem Richland/Sunnycrest exception area. The Newberg-Dundee exception area is adjacent, and both areas include AF-10 zoning. According to the Exceptions Study Areas Dwelling Intensification Analysis (9-86), the two exception areas contain 1531 acres of AF-10 zoning, which would allow 153 dwellings. At the time of the

study in 1985, the areas contained 144 units, or 94 percent of the allowed density. Other AFSH-designated exception areas around Newberg are Bell Road, North Newberg, West Chehalem Drive, and Fernwood. Combined, these exception areas were already built to a density greater than the allowed one dwelling per ten acres due to pre-existing substandard lots, which retain development rights in the AF-10 zone. The number of pre-existing undeveloped lots in these areas has not been established.

5. Regarding criterion (c) above, the land surrounding the area under consideration is predominantly divided into parcels smaller than ten acres (see attached maps). The zone change would allow partitioning into ten acre lots. The area is characterized by small-acreage agricultural use. The proposed zoning designation would not preclude agricultural use of the property.

Public facilities necessary for residential development are available to the site. The Willakenzie soils on the property are considered generally suitable for on-site sewage disposal systems, according to the County Sanitarian (oral communication, 2-90).

6. The findings in Section B.4 of this report apply to criterion (d) as well. Only the AFSH areas around Newberg were considered, so the location aspect of criterion (d) has been addressed. Areas designated Very Low Density Residential on the Comprehensive Plan map were not considered because they are planned as purely rural residential with agriculture as an incidental use, so they are of a different character than that planned for AFSH areas.

7. The portion of the area subject to the requested zone change within the existing exception area does not require a new exception because the uses allowed by the requested zone have been incorporated into the exception justification.

8. Regarding criterion (e) above, the Chehalem Richland/Sunnycrest exception area was established under a "committed" exception to statewide planning goal 3 (agricultural lands). The exception allows rural residential (and agricultural) uses of the type contemplated by the AF-10 zone designation. Existing types of development in the exception area include rural residential and agricultural uses. The uses allowed under the AF-10 zone designation are therefore the same as existing types of development in the exception area.

9. Also regarding criterion (e), and in addition to (8) above, the uses contemplated by the AF-10 zone designation are rural uses. The intensity of development allowed in the AF-10 zone

(one dwelling per 10 acres) is a rural density and does not implicate Goal 14 (urbanization). Goal 4 (forest lands) is not relevant to this application, because the subject property is not on the county's forest lands inventory. No other statewide planning goals are relevant to this decision.

10. Also regarding criterion (e), the uses allowed in the AF-10 zone will not commit adjacent lands to nonresource use. Because of its low density, and agricultural orientation, the AF-10 zone designation will not contribute to the unsuitability of nearby lands for resource uses. Low density residential, and agricultural uses allowed in the AF-10 zone are almost identical to, and therefore are compatible with adjacent and nearby agricultural and residential uses. Finally, as set forth in findings B.2. and 3. above, the uses allowed in the AF-10 district are identified and authorized in AFSH plan-designated areas by specific related policies in the county's acknowledged comprehensive plan.

CONCLUSIONS:

1. The request to change the zone designation to AF-10 for that portion of applicant's parcel that is plan designated "Agriculture/Forestry Large Holding" is not consistent with the county's comprehensive plan.

2. The request to change the zone designation to AF-10 for that portion of applicant's parcel that is plan designated "Agriculture/Forestry Small Holding" and within the Chehalem Richland/Sunnycrest rural residential exception area is consistent with the county's comprehensive plan.

3. There is a lack of developable land in AF-10 zoned areas, so there is a need for additional land with that designation.

4. The proposed change is appropriate for the area because uses and densities allowed in the AF-10 zone are in character with the surrounding area, and necessary public services and utilities are available.

5. There is a lack of other land in the county available with the AF-10 zoning designation.

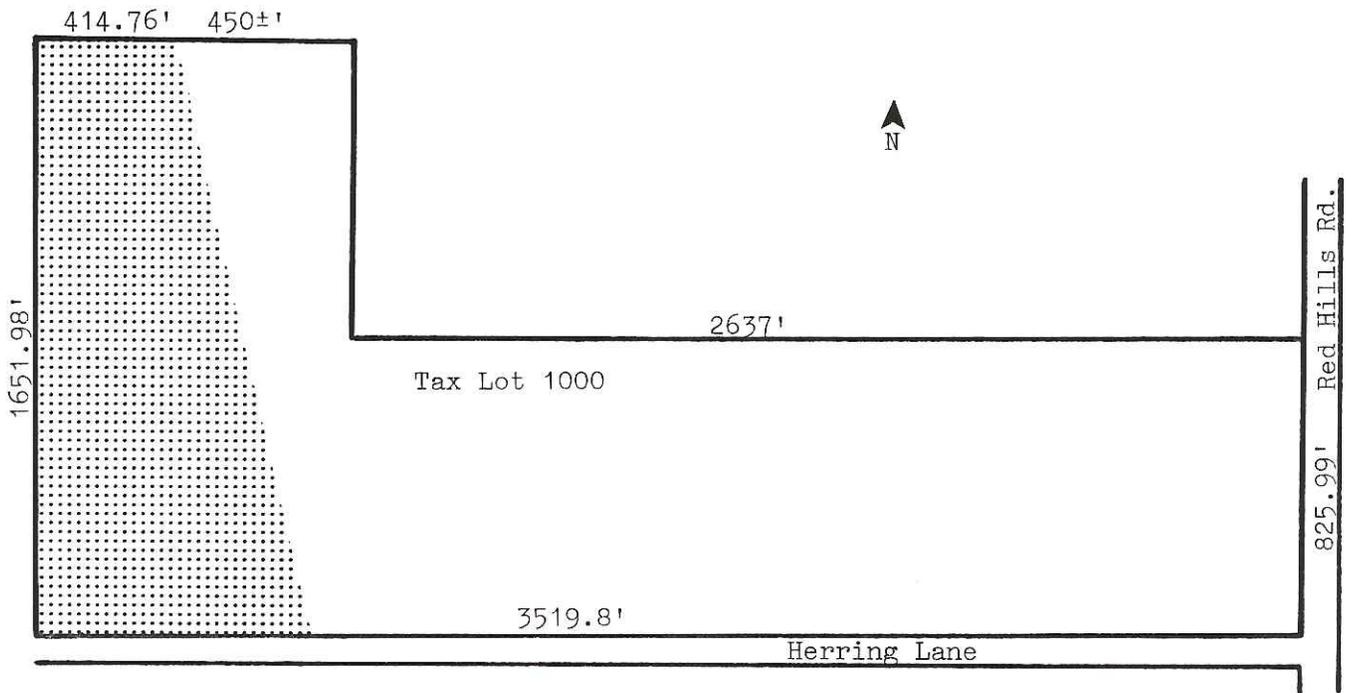
6. The approval granted is consistent with OAR 660-04-018.

EXHIBIT B FOR ORDINANCE 506

ZONE MAP AMENDMENT  
May 9, 1990

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TO CHANGE THE OFFICIAL ZONING MAP  
FROM EF-40 TO AF-10



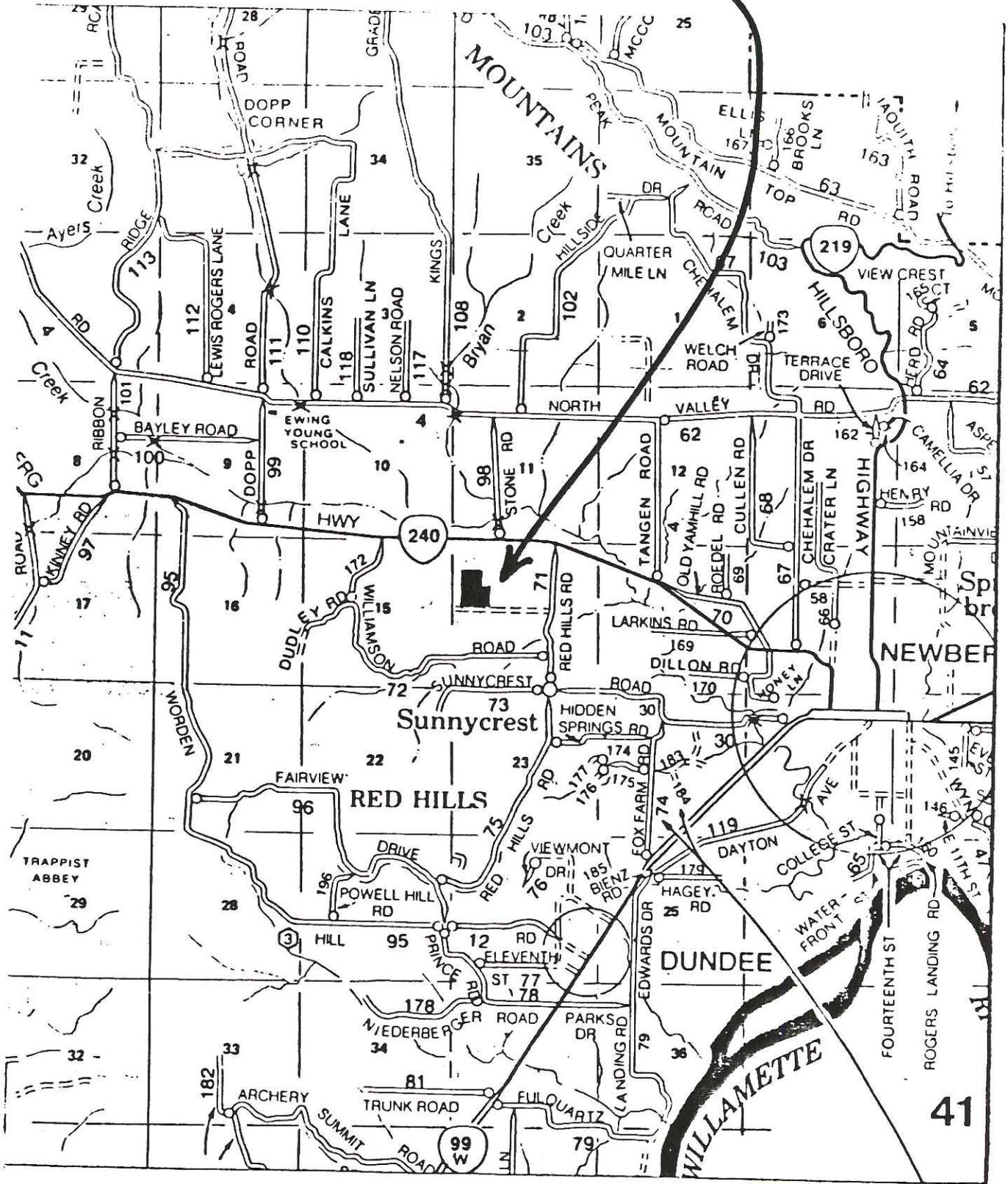
The zone change applies to the shaded area only

Map prepared by Yamhill County Department of Planning and Development

# VICINITY MAP

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## LOCATION OF PROPERTY



B-3

Tract No: Z-2-90

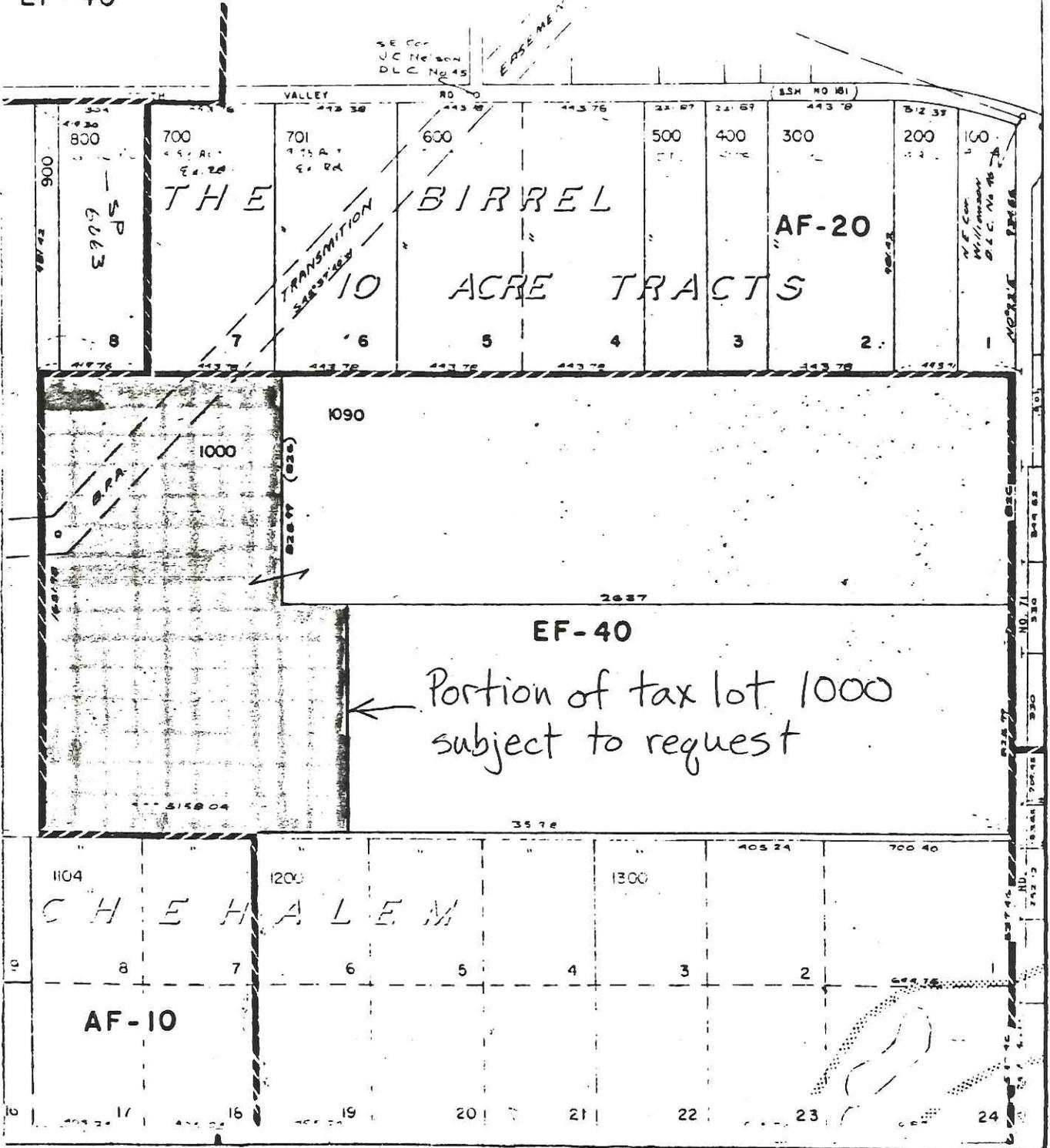
Applicant: Herring

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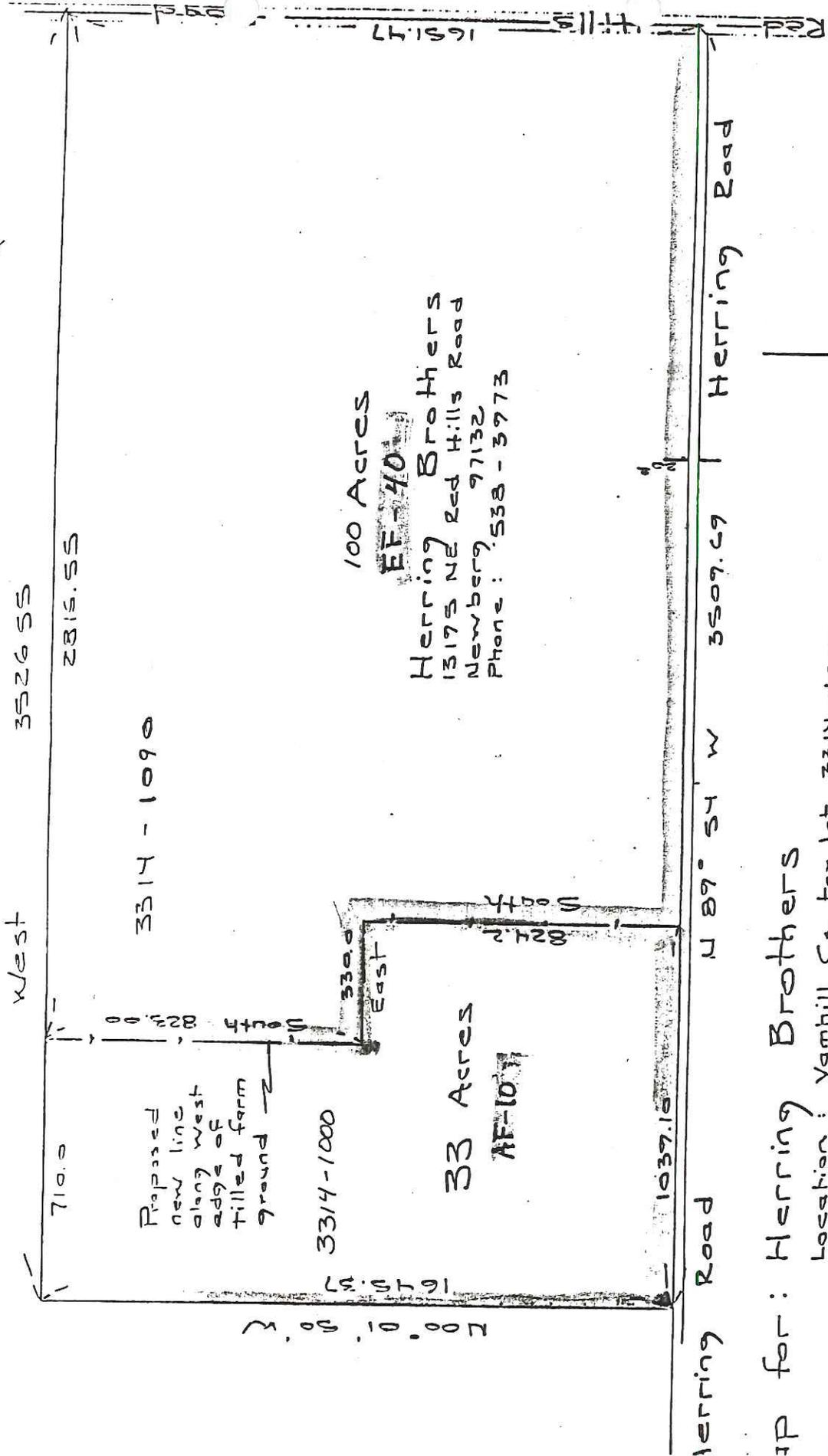
Tax Lot No: 3314-1000

EF-40

SEE MAP 3 3 11



B-2



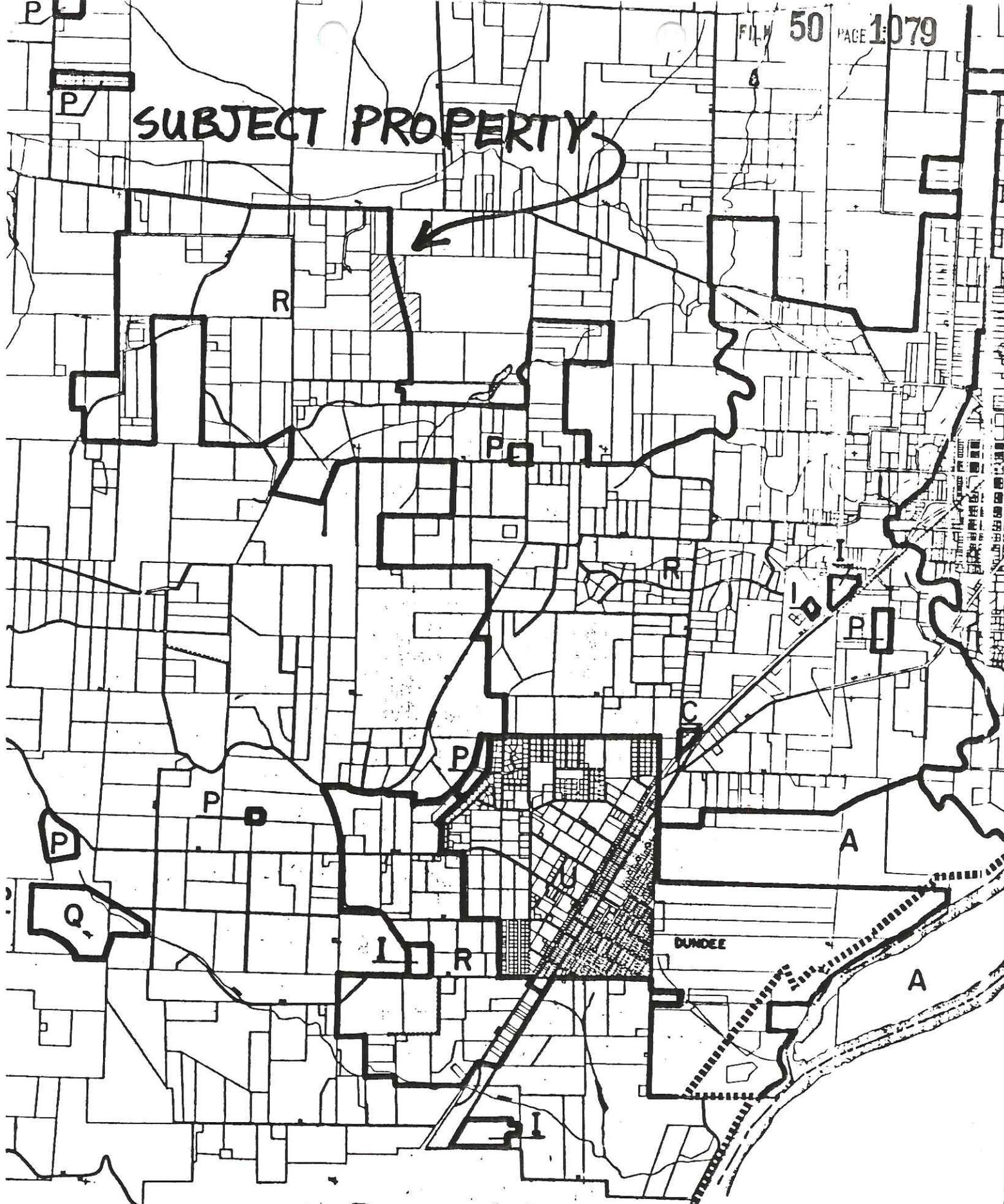
Map for: Herring Brothers

Location: Yamhill Co. for lot 3314-1000

Date: 10 Jan '90 Scale: 1"=30'

By: Matt Dunkel

SUBJECT PROPERTY



T.S.S. A.S.W.

R - EXCEPTION AREA

EXHIBIT C



Attachment 5

NEWBERG (U.S. 99W) 1:6 MI. (NEWBERG) 1474 IV SW

