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YAMHILL COUNTY, OREGON
1987 NOV -5 AM 11:45
CHARLES STERN
COUNTY CLERK
SERVITY

IN THE BOARD OF COMMISSIONERS FOR THE STATE OF OREGON

87-674

FOR THE COUNTY OF YAMHILL

SITTING FOR THE TRANSACTION OF COUNTY BUSINESS

In the Matter of an Ordinance)	
to Amend the Comprehensive Plan)	
Map, Ordinance No. 62, 1974, and)	
and the Yamhill County Zoning)	
Map, Ordinance No. 310, 1982, to)	ORDINANCE NO. 455
Reflect the Correct Designation)	
of Tax Lot 4411--3800 as Light)	
Industrial; Repealing Ordinances)	
430 and 431; 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 the 5th day of November, 1987, Commissioners David E. Bishop, Ted Lopuszynski, and Donald D. Porter being present.

WHEREAS, applicant Ed Hoem in Planning Docket PA-3-86/Z-2-86 has operated a metal fabrication business on Tax Lot 4411-3800, since 1957; and

WHEREAS, on July 6, 1971, the Yamhill County Planning Commission considered Mr. Hoem's application for a plan amendment and zone change and took final action to amend the comprehensive plan to reflect the designation of light industrial on Tax Lot 4411-3800, and took action to recommend to the Board of Commissioners that the zone designation on Tax Lot 4411-3800 be amended to reflect its light industrial use; and

WHEREAS, on October 6, 1971, the Board approved a zone change for Tax Lot 4411-3800 from "Agriculture" to "Light Industrial" by Ordinance No. 39; and

WHEREAS, Ordinance No. 39 is still in effect, having never been amended or repealed by the Board; and

WHEREAS, the comprehensive plan map was never amended to reflect the correct designation of Tax Lot 4411-3800; and

WHEREAS, in 1974 Tax Lot 4411-3800 was incorrectly and inadvertently included in a "Very Low Density Residential" exception area, instead of the "Light Industrial" exception area on which it borders; and

WHEREAS, the action taken by the Planning Commission on July 6, 1971, and the action taken by the Board of Commissioners on October 6, 1971, was never transposed on to the comprehensive plan map or zoning map of Yamhill County, although both actions were at the time and still remain valid actions of Yamhill County; and

WHEREAS, due to the failure of the decisions amending the comprehensive plan map and zoning map to reflect the plan and zone designations on Tax Lot 4411-3800 as "Light Industrial" the county failed to include Tax Lot 4411-3800 on the proper exceptions list as being reserved for light industrial use during the acknowledgment process in 1979 and 1980; and

WHEREAS, on June 18, 1986, the Board held a public hearing concerning this matter and on June 25, 1986, adopted Ordinances 430 and 431 which amended the comprehensive plan map and zoning map to reflect the "Light Industrial" designations and also took an exception to the Yamhill County Resource Goal and Statewide Planning Goal 3, based on the extent of physical development of the subject property; and

WHEREAS, Ordinances 430 and 431 were appealed to the Land Use Board of Appeals, resulting in the remand of Ordinances 430 and 431 to Yamhill County from the Land Use Board of Appeals on October 22, 1986; and

WHEREAS, on June 16, 1987, Senate Bill 365, 1987 Oregon Laws, chapter 330, became law, said bill providing that a local government may enact an ordinance to correct an error or omission on a zone or comprehensive plan map if the ordinance is limited to the correction of a zone or plan map designation for a specific parcel and if the error or omission arose from the failure of a local government to properly record a zone or plan map designation lawfully adopted by the local government prior to November 1, 1971, and if the local government consequently failed to include the property on the appropriate exceptions list; and

WHEREAS, Senate Bill 365, 1987 Oregon Laws, chapter 330, became effective on September 27, 1987; and

WHEREAS, on November 5, 1987, the Board held a public hearing on the question of whether to enact an ordinance pursuant to Senate Bill 365, 1987 Oregon Laws, chapter 330, to correct the error or omission of the county's failure to properly record the action of the county to reflect the proper plan and zone map designation on Tax Lot 4411-3800 as "Light Industrial"; and

WHEREAS, on November 5, 1987, testimony was given which supported the findings of fact attached hereto as Exhibit "A" and incorporated herein by this reference; and

WHEREAS, Exhibit "A" supports a conclusion by the Board that the circumstances of the application filed by Edward Hoem, identified as Docket PA-3-86/Z-2-86 falls squarely within the provisions of Senate Bill 365, 1987 Oregon Law, chapter 330; NOW THEREFORE,

THE YAMHILL COUNTY BOARD OF COMMISSIONERS ORDAINS AS FOLLOWS:

SECTION 1. Based upon the attached Exhibit "A" constituting the findings of fact and conclusionary findings in support of this ordinance, the Yamhill County Comprehensive Plan Map and Yamhill County Zoning Map are amended as follows:

A. The Yamhill County Comprehensive Plan Map, Ordinance No. 62, 1974, is amended to change the designation of Tax Lot 4411-3800 as identified in the attached Exhibit "B" incorporated herein by this reference from "Very Low Density Residential" to "Light Industrial".

B. The official zoning map of the Yamhill County Zoning Ordinance No. 310, 1982, is amended to change the designation of Tax Lot 4411-3800 as identified in the attached Exhibit "B" incorporated herein by this reference from "AF-10" to "LI".

SECTION 2. Ordinances 430 and 431 are hereby repealed and of no further force or effect.

SECTION 3. 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 be effective immediately upon passage.

DONE this 5th day of November, 1987, at McMinnville, Oregon.

ATTEST:

YAMHILL COUNTY BOARD OF COMMISSIONERS

CHARLES STERN
County Clerk

Chairman

DAVID E. BISHOP

Date: Nov. 5, 1987

By: Elaine Pearcey
Deputy ELAINE PEARCEY

Commissioner

TED LOPUSZYNSKI

Date: Nov 5, 1987

APPROVED AS TO FORM BY:

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

Commissioner

DONALD D. PORTER

Date: Nov 5, 1987

EXHIBIT "A"

FINDINGS OF FACT AND CONCLUSIONARY FINDINGS

ORDINANCE 455

1. Mr. and Mrs. Ed Hoem have operated light industrial businesses on a 5.1 acre parcel, Tax Lot 4411-3800, continuously since 1957. (See Attachment 1 for list of light industrial uses made since 1957.)

2. In 1971, Mr. Hoem placed a business identification sign on his property. Because the property was zoned "Agriculture" at the time, the Planning Department informed Mr. Hoem that placement of the sign constituted an expansion of a nonconforming use. In order to remedy the situation, Mr. Hoem was advised by the Planning Department to apply for a comprehensive plan amendment and zone change from "Agriculture" to "Light Industrial".

3. On May 25, 1971, a plan amendment/zone change application was filed by Mr. Hoem with the Yamhill County Planning Department. The application was given the planning department identification of Docket G-12-71/Z-46-71. Notice of the comprehensive plan and the zone change was posted on the property and published in the McMinnville News Register, a newspaper of general circulation, thereby complying with legal requirements then in effect.

4. On July 6, 1971, the Yamhill County Planning Commission held a public hearing on the comprehensive plan amendment and zone change. No opposition was voiced to the application. The Planning Commission approved the requested comprehensive plan amendment and zone change. The Planning Commission's approval on July 6, 1971 was lawful and constituted the final approval for the comprehensive plan amendment under regulations then in effect.

5. On October 6, 1971, the Yamhill County Board of Commissioners considered the zone change. On that date, the Board enacted Ordinance #39 which lawfully changed the zone designation on Tax Lot 4411-3800 from "Agriculture" to "Light Industrial". The ordinance is recorded in film volume 23, pages 392-393 of the Yamhill County Court Records.

6. In 1974 the Board of Commissioners approved Ordinance #62 adopting a countywide comprehensive plan map. Ordinance #62 repealed two other site-specific, previously-adopted county plan

maps. However, Ordinance # 62 did not repeal the light industrial comprehensive plan designation of the Hoem property.

7. In 1976, Yamhill County Zoning Ordinance #83 was adopted. In Section 52.100 of Ordinance #83, Ordinances #36, #42, and #59 were specifically repealed. Ordinance #39 dealing with the rezoning of the Hoem property was not repealed by Ordinance #83.

8. Other properties that were zoned prior to the adoption of Ordinance #83 remain zoned per prior ordinances. Those ordinances dealing with other properties that were rezoned in a manner similar to the Hoem property were never repealed and all of those properties retained the zoning designation which existed prior to 1976.

9. In 1982 the existing county zoning ordinance, Ordinance #310, was adopted. In Section 103.06 of that ordinance, only Zoning Ordinance #83 and amendments thereto were repealed, along with Floodplain Ordinance #69.

10. Subsequent to the adoption of Ordinance #310, several ordinances have been enacted by the Yamhill County Board of Commissioners which related to land use planning and zoning. As of November 5, 1987, Ordinance #39 which rezoned the Hoem property from "Agriculture" to "Light Industrial" has never been repealed, amended, or modified in any form.

11. At the time the first countywide zoning map was prepared, the zone change approved as Ordinance #39 to change the zoning of the Hoem property from "Agriculture" to "Light Industrial" was not properly recorded on the countywide zoning map.

12. Even though Ordinance #39 rezoning the Hoem property from "Agriculture" to "Light Industrial" had never been repealed, zoning maps drawn in 1976 did not properly record the correct designation. The zoning maps instead showed the zone designation on the property as AF-10, even though no action after October 6, 1971 has ever been taken to show the zone designation on Tax Lot 4411-3800 as AF-10.

13. The first countywide comprehensive plan map, adopted through Ordinance #62 in 1974, was intended to be consistent with the then existing zoning. Because of the zone mapping error or omission, the plan map apparently designated the Hoem property as "Rural Residential". However, because of the small scale of the countywide comprehensive plan map, individuals parcels of the size of the Hoem property are not accurately reflected. However, the evidence as reflected by the letter of Craig Greenleaf to Tom Tankersley dated May 22, 1986, establishes that there was no

intent to change the plan map designation on Tax Lot 4411-3800 in 1974.

14. When exceptions to Statewide Planning Goals were taken in 1979 as part of the county comprehensive plan acknowledgment process, the determination as to whether a property should be placed in a certain exception category was made in reliance on existing zoning maps. Therefore, the Hoem property was erroneously included in the rural residential exception area, rather than being listed along with similar light industrial exception properties adjacent to and to the east of the Hoem's parcel.

15. If Ordinance #39 had been accurately recorded on the zone map and plan map of Yamhill County after its enactment on October 6, 1971, an exception would have been taken to Statewide Planning Goal 3, consistent with the property's designation as "Light Industrial". The county's intent in the exceptions process was to include property in a category established by the uses to which the property was committed and to recognize the existing comprehensive plan and zoning designation of such property.

16. In 1985 the Hoems put the property on the market for sale and discovered at that time that zoning maps designated the property as "AF-10" for rural residential uses. In order to rectify the plan/zone problem, the Hoems' again requested a plan amendment and zone change to light industrial. During staff investigation of prior records it was discovered that the property had not been rezoned since it was zoned "Light Industrial" in October, 1971. It was also discovered that the comprehensive plan designation on the property as "Light Industrial" had not been amended or modified since July, 1971.

17. On June 25, 1986, the Board of Commissioners adopted Ordinances 430 and 431 to confirm that the proper plan and zone designations on the property were "Light Industrial." Ordinances 430 and 431 were remanded by the Land Use Board of Appeals on October 22, 1986.

18. On June 15, 1987, the Governor approved Senate Bill 365. 1987 Or Law Chapter 330. According to one of the legislative sponsors of the bill, Senate Bill 365 was passed specifically "to reinstate the light industrial zoning on [the Hoem] property." In its entirety, the bill provided as follows:

"Section 1. Notwithstanding the provisions of ORS chapters 197 and 215, for purposes of ORS 197.015(10), a land use decision does not include an ordinance enacted by a local government to correct an error or omission on a zone or comprehensive plan map if:

(1) The ordinance is limited to the correction of a zone or plan map designation for a specific parcel; and

(2) The error or omission arose from the failure of the local government to properly record a zone or plan map designation lawfully adopted by the local government prior to November 1, 1971, and consequently failing to include the property on the appropriate exceptions list.

Section 2. The provisions of section 1 of this Act do not apply after July 1, 1989."

19. The Board of Commissioners finds that it is necessary to enact this ordinance pursuant to 1987 Or Laws Chapter 330 (Senate Bill 365) to correct an error or an omission on the comprehensive plan map and zone map of Yamhill County because Ordinance #39 enacted on October 6, 1971, relating specifically and solely to Tax Lot 4411-3800 was never properly recorded on the county's comprehensive plan map and zone map. The Board finds that because of the failure to properly record the correct comprehensive plan map designation and zone map designation as "Light Industrial", the county consequently failed to place the property in the light industrial exceptions category, which was the appropriate exceptions category.

The Board of Commissioners further finds that the light industrial comprehensive plan map and zone map designations are appropriate and reflect actual uses on the subject property from 1957 to the present. The Board finds that light industrial uses existed continuously from 1957 to the present on the property, and therefore the light industrial plan and zone designation on the property provides for the continuance of uses which are the same as existing and past uses on the subject property.

Attachment 1

PA-3-86/Z-2-86
Applicant Ed Hoem
Proposed Exhibit 1
June 18, 1986



Hoemkraft Ornamental Iron

April 15, 1986
Dept. of Planning and Development
Yamhill County Courthouse

FILM 45 PAGE 2248

Att: Lynn Steiger and Mike Brandt
Re: PA-3-86/Z-2-86

In answer to the request from your office concerning the kinds of work taken on by the Hoem Steel and Hoemkraft Ornamental Iron Works at St. Joe since 1957, we respectfully submit the following partial list:

FABRICATION

Truck dump beds
Trailers
Dumpsters for City Sanitary
Paper roll hoist for News Register
Trusses for Ford Garage
Bench components for A-Dec, Newberg
Storage units for Evergreen
Spray booms for Evergreen
Work benches, metal racks for Field Emission
Bases for 2 MEV X-Ray Units for both Field Emission and Hewlett-Packard
Basket-ball posts
Support columns for commercial buildings
Fire escapes
Misc. metal work on U. S. Bank building

REPAIR

City Sanitary trucks
Sunshine Dairy misc. repairs
Portable welding, incl. misc. farm machinery repair
Meliarc (aluminum welding), including miles of irrigation pipe
Burch Concrete truck cabs
Logging equipment
Rebuilding of old woolen mill plant
Boats and motors
Trailers and field burners for Mac Gas
Antique repairs, such as rebuilding the frame for "Tom" Jenkins Pop-Corn Wagon

Edw. & Jean Hoem
(503) 472-5240 364-0858



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Exhibit "A" - Ord 455
Page 6 (attachment 1)



Hoemkraft Ornamental Iron

SUB-CONTRACT jobs on Mobeas Ironworker

Material for catch basins
Lightening bars for utility poles

ORNAMENTAL IRON

Apartment railings
Church balcony railings
Church entry-way rails
Porch columns and railings
Misc. home-improvement projects
Security doors and window guards
Metal butterfly steps
Spiral stairways
Misc. furniture, such as chairs, tables, etageres, baker's racks,
plant stands
Mobile home steps
Bird cages
Weather vanes
Christmas tree stands
Decorative wall pieces
Gift items, such as candle stands, book-ends, paper towel holders
Fireplace tools
Fireplace screens
Wood boxes
Shoe scrapers

The particular location of our property - between the railroad and H.W. 99W - has been ideal for our business because of its accessibility to the public. It is our hope that the zoning can be returned to the more appropriate classification, Light Industrial, so that it can continue to be available for a service type of business.

Sincerely,
Edw. Hoem
Jean Hoem

Edw. and Jean Hoem
Hoemkraft Ornamental Iron
1480 Brush College Road N. W.
Salem, Oregon 97304

*P.S. Must Mention
Blacksmithing
Edw. Hoem*



Edw. & Jean Hoem
(503) ~~425-4400~~ 364-0858

ITEM

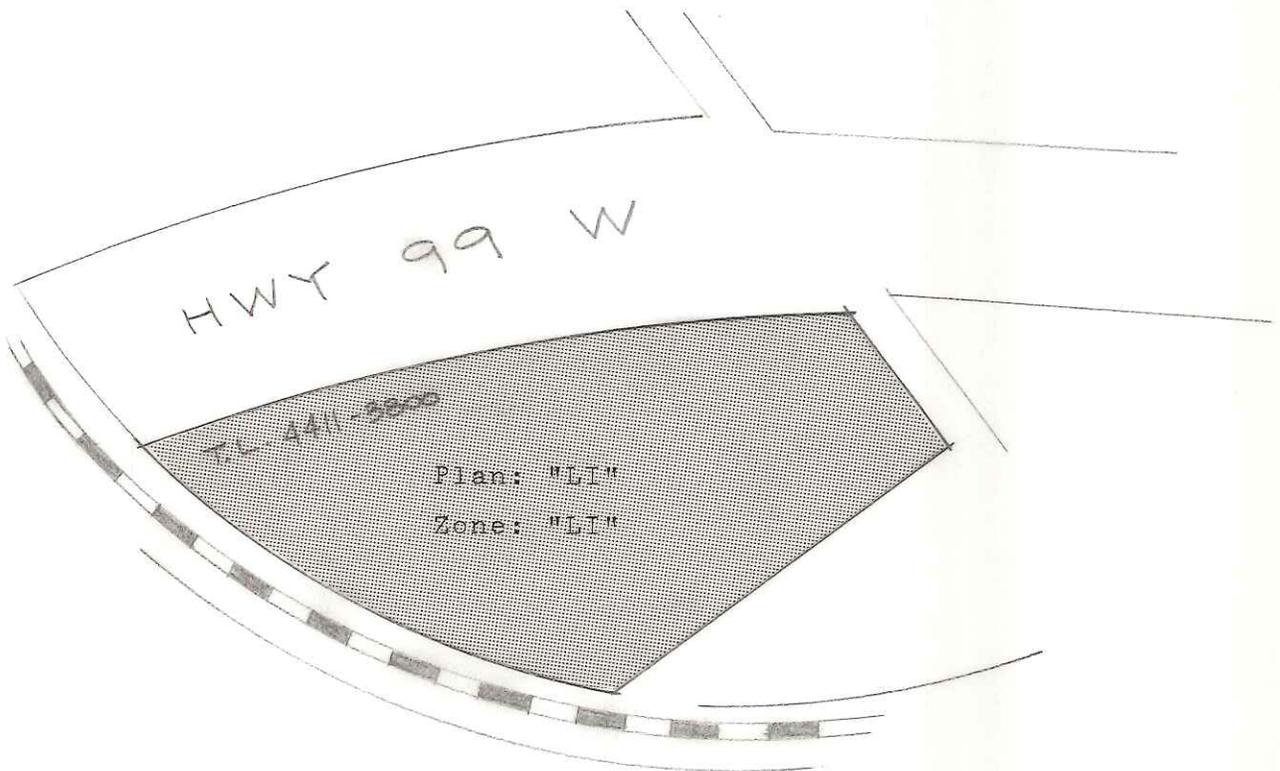
Exhibit "A" - Ord. 455
Page 5 (attachment 1)

SKETCH MAP FOR COMPREHENSIVE PLAN AMENDMENT
EXHIBIT "B" FOR ORDINANCE NO: 455
COMPREHENSIVE PLAN AMENDMENT ADOPTED BY THE
YAMHILL COUNTY BOARD OF COMMISSIONERS
NOVEMBER 5, 1987

FILM 45 PAGE 2250

TO CHANGE THE COMPREHENSIVE PLAN DESIGNATION
FROM "Agriculture/Forestry Small Holding"
TO "Light Industrial"

TO CHANGE THE OFFICIAL ZONING MAP
FROM "AF-10" TO "LI"



Change applies to the entire portion of Tax Lot No: 4411-3800

Sketch prepared by Yamhill County Department of Planning and Development.