

IN THE BOARD OF COMMISSIONERS OF THE STATE OF OREGON

FOR THE COUNTY OF YAMHILL

SITTING FOR THE TRANSACTION OF COUNTY BUSINESS

In the Matter of Approval of a)
Comprehensive Plan Amendment)
from Agriculture/Forestry Large Holding)
(AFLH) to Very Low Density Residential)
(VLDR) and a zone change from EF-20) ORDINANCE NO. 684
Exclusive Farm Use to VLDR-2 ½ Very)
Low Density Residential; Applicants)
Lonnie and Vickie Strode; and Declaring)
an Emergency; tax lot 2426-1500; Docket)
PAZ-02-00)

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY, OREGON ("the Board") sat for the transaction of county business in formal session on July 27, 2000, commissioners Ted Lopuszynski, Thomas E.E. Bunn and Robert Johnstone being present.

THE BOARD MAKES THE FOLLOWING FINDINGS:

- A. Applicants Lonnie and Vicki Strode (through representative Bruce A. Vincent) applied April 4, 2000 for a Comprehensive Plan amendment from Agriculture/ Forestry Large Holding (AFLH) to Very Low Density Residential (VLDR) and a zone change from EF-20 Exclusive Farm Use to VLDR-2 ½ Very Low Density Residential for Tax Lot 2426-1500, including lots 207 and 208 of F.C. Grahams Cove Orchard.
- B. At its regular meeting on June 1, 2000, the Yamhill County Planning Commission voted unanimously to forward this application to the Yamhill County Board of Commissioners with the recommendation it be approved.
- C. At its regular formal session on July 13, 2000, the Yamhill County Board of Commissioners held a duly noticed public hearing, heard testimony, deliberated, and voted unanimously to approve the application. NOW, THEREFORE

IT IS HEREBY ORDAINED BY THE BOARD AS FOLLOWS:

- 1. The application by Lonnie and Vicki Strode (through representative Bruce A. Vincent) for a Comprehensive Plan amendment from Agriculture/ Forestry Large Holding (AFLH) to Very Low Density Residential (VLDR) and a zone change from EF-20 Exclusive Farm Use to VLDR-2 ½ Very Low Density Residential for Tax Lot 2426-1500, including lots 207 and 208 of F.C. Grahams Cove Orchard is hereby approved, with this condition: no building or placement permits shall be issued until the applicant has combined parcels 207 and 208 (to make one buildable lot) to the satisfaction of the Planning Department.

B.O. #00-374
Ordinance No. 684

2. An emergency having been declared to exist, the Ordinance takes effect immediately.

DONE at McMinnville, Oregon on July 27, 2000.

ATTEST

YAMHILL COUNTY BOARD OF COMMISSIONERS



Ted Lopuszynski
Chairman TED LOPUSZYNSKI

Thomas E. E. Bunn
Commissioner THOMAS E. E. BUNN

FORM APPROVED BY:

Rick Sanai
Rick Sanai
Assistant County Counsel

Robert Johnstone
Commissioner ROBERT JOHNSTONE

**Exhibit "A" Findings for Approval
PAZ-02-00 Applicants Lonnie and Vickie Strode**

REQUEST: Approval of a Comprehensive Plan amendment from Agriculture/Forestry Large Holding (AFLH) to Very Low Density Residential (VLDR) and a zone change from EF-20 Exclusive Farm Use to VLDR-2 ½ Very Low Density Residential.

APPLICANT: Bruce Vincent, representing Lonnie and Vickie Strode

TAX LOT: 2426-1500, including lots 207 and 208 of F.C. Grahams Cove Orchard. As a condition of approval, lots 207 and 208 shall be combined to make one buildable lot.

LOCATION: In a triangle formed by Grant Street, Graham Avenue and Cove Orchard Roads

CRITERIA: Sections 402, 502 and 1208.02 of the Yamhill County Zoning Ordinance; the Yamhill County Comprehensive Plan. OAR 660-04, Exception Process. OAR 660-12-0060 Transportation Planning Rule.

FINDINGS:

A. BACKGROUND FACTS:

1. Property size: Tax Lot 2426-1500 (Lots 207 - 208), the area of the proposed zone change, is about 1.1 acres in size.
2. On-site Land Use: The parcel is level and was once used as pasture for two horses. The horses are long since gone and the land has been vacant for two years. The property is fenced and has no buildings or improvements.
3. Surrounding Land Use: The Cove Orchard community is located on both sides of Highway 47, in a narrow valley with forested hillsides on both sides. The area surrounding the subject lots is broken up into small lots, part of the original F.C. Grahams Cove Orchard subdivision. To the northwest there are two churches, a store, and a couple dozen residences. The remainder of the surrounding area to the north and east consists of larger parcels, from around 5 to 30 acres in size, which are in forestry use on the hillsides and limited agricultural uses in the valley.
4. Surrounding Zoning: Zoning to the northwest is VLDR-2.5. Zoning to the north is AF-10. Zoning to the south and east is AF-20. Zoning to the southwest is EF-20.
5. Water: The lots are within the boundaries of the Cove Orchard Water Association, which does not have any new hook-ups available. The applicant indicates that an on-site well has been dug that will provide water, and submitted a well log showing the sufficiency of this water supply for domestic purposes (five gallons per minute and water 55' below the surface).
6. Sewage Disposal: Cove Orchard Sewer District. The applicant has filed for one additional hook-up. Due to the moratorium, no additional hook-ups will be issued until at least July 1, 2000.
7. Fire Protection: Yamhill Rural Fire District
8. Soils: Sheet 8 of the Yamhill County Soil Survey shows that the parcel is composed primarily of Chehalem

soils (CeC). This soil is Class III and is high-value farmland.

9. Taxes: Tract land.
10. Previous Actions: None
11. Floodplain: FIRM 410249 0050 C, 0131 C, and 0135 C shows that the property is not within the 100-year flood hazard area.
12. Further consideration: Although the request is to rezone the property with a 2.5 acre minimum lot size the subject property contains two existing subdivision lots. Each lot could potentially receive approval for a dwelling.

B. ZONE CHANGE AND PLAN AMENDMENT PROVISIONS AND ANALYSIS

1. Approval of a request for a zone change must be based on compliance with the standards and criteria in YCZO Section 1208.02. These provisions are:
 - (A) *The proposed change is consistent with the goals, policies, and any 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) *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.*

2. Regarding criterion (A) above, Plan goals and policies which may be pertinent are:

Policy I.B.I.c.: All proposed rural area development and facilities: ... (2) Shall not be located in any natural hazard area, such as a floodplain or area of geologic hazard, steep slope, severe drainage problems or soil limitations for building or sub-surface sewage disposal, if relevant;

The property is not within the 100 year floodplain, as shown on FIRM 410249 0050 C, 0131 C, and 0135 C. There are no steep slopes. The Chehalem soils are described in the Soil Survey as having severe limitations for septic fields. This will not be an issue, as the applicant is next in line for connection to the Cover Orchard Sewer District line.

Policy I.B.I.d.: No proposed rural area development shall require or substantially influence the extension of costly services and facilities normally associated with urban centers, such as municipal water supply and sanitary sewerage or power, gas and telephone services, nor shall it impose inordinate additional net costs on mobile, centralized public services, such as police and fire protection, school busing or refuse collection.

The proposed zone change would not require the extension of utilities, since sewer service is already located in the area. The applicant states they have an on-site well to provide water, and submitted well logs demonstrating sufficient water for domestic purposes. An additional option is the LA Water Co-op. The LA Water Co-op line runs along Cove Orchard Road. If the well did not produce, an application could be made for an extraterritorial connection to the LA Water Co-op. Other services such as electricity, telephone, sheriff and fire protection already serve the area.

Policy I.B.2.a.: Yamhill County will continue to recognize that the appropriate location of very low density residential development is in designated large areas where commitments to such uses have already been made through existing subdivision, partitioning, or development and by virtue of close proximity to existing urban centers; or in small, limited areas having unique scenic, locational and other suitable site qualities where the anticipated magnitude or density of development is not such as to require more than a very basic level of services, such as single local-road access, individual domestic wells and sewage-disposal systems, and possible rural fire protection.

The F.C. Grahams Cove Orchard subdivision was platted March 18, 1909 and covers more than a one square mile area. The subdivision itself does not commit the area to residential use, since the resource zoning on much of the area limits development. The subject lots are adjacent to the developed Cove Orchard area, where the zoning is VLDR 2.5. The applicant argues, and we are persuaded, that the area is committed to residential development insofar as the parcel is included within the Cove Orchard Sewer District and within the Cove Orchard Water Association..

Policy II.A.1.h.: No proposed rural area development shall substantially impair or conflict with the use of farm or forest land, or be justified solely or even primarily on the argument that the land is unsuitable for farming or forestry or, due to ownership, is not currently part of an economic farming or forestry enterprise.

It appears the proposed zone change would cause little interference with the use of other farm and forest land in the vicinity. The property is surrounded by three roads. Agricultural land in the general area to the north of the subject parcel is limited to a small area between the highway and Cove Orchard Road. Farm uses in this area have been limited to grazing in the past due to seasonal flooding.

3. Regarding criterion (B), the applicant needs to show 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, as required by YCZO 1202.08(B).

The applicant stated that their analysis of address maps shows that there are 66 lots in the Cove Orchard area that are currently zoned VLDR, with an additional 19 lots zoned AF-10. Both zones allow single family residences. Of these 85 lots, 47 are undeveloped. Many of the vacant lots are only 25' or 30' wide, so are too small to be developed individually. However, several could be combined into reasonably sized residential lots, resulting in approximately 20 vacant residential lots in the area. The applicant states that approval of the proposed zone change would add 1 additional parcel. However, the subject property is made up of two existing lots. Without the two lots being combined, approval of the zone change would result in the potential for two additional homesites. The Board of Commissioners is satisfied that there is a demonstrable need for an additional residential parcel in the area (e.g. Michael Korpi letter dated May 30, 2000; 40 inquiries from prospective homebuilders since the property was listed in January, 2000).

In addition to the applicant's count of homesites, the Planning Department has kept a count of developable parcels. The last count was completed June 25, 1999. This area includes exception areas 2.2 and 2.3. The information regarding the number of developed lots for the combination of these areas is as follows:

AREA	ZONE	EXISTING LOTS	DEVELOPED LOTS	VACANT LOTS	POTENTIAL NEW LOTS
2.2	AF-10	64	61	3	17
2.3	VLDR 2.5	23	21	2	16

The applicant stated that there is interest in this parcel for development and submitted a May 30, 2000 letter from realtor Michael R. Korpi (Mr. Korpi stated that 40 interested persons have inquired about the property since its listing in January, 2000) . The applicant also surmised that other lots in the area may not have been developed due to the floodplain, lack of water or other public services. The Board finds this information, in the absence of contrary evidence, demonstrates need or market demand for additional development.

- Regarding criterion (C), the proposed change needs to be shown to be 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. Surrounding land uses to the north and northwest in the Cove Orchard community are small residential lots. Larger parcels in farm and forest uses exist to the south and in the surrounding area. The applicant points out that a plan amendment/zone change and goal exception in 1995 designated approximately 6 acres on the east side of Highway 47 as VLDR-2.5. This rezoned area is immediately west of the subject property. The area is made up of small lots under separate ownerships, and almost all of the lots were developed. In that case the exception was based on the area being both physically developed and committed to residential uses. The subject property was not included in this zone change. The applicant states, "It is unclear why the subject property was not included in this zone change request, given that it consists of two smaller platted lots similar to the lots in the current six acre VLDR 2.5 area." It appears that this area was not included because it was not developed and therefore could not be argued that it was "physically developed" to a residential use. The applicant also states that this request would simply take a single lot and "fill in a blank" by moving the zoning slightly to the east. The parcelization pattern also exists in these zones across Graham Avenue and Cove Orchard Road.

Regarding the availability of utilities and services in the area, the lots are within the Cove Orchard Sewer Service District (COSSD, which is a county sewer service district formed pursuant to ORS 451), and the applicant has indicated that the owner has one reserved sewer hook-up. However, the applicant does not presently have an additional hook-up. The applicant has submitted the form and has tendered payment for the hook-up. COSSD has a current maximum service capacity of approximately 50 hookups (with the possibility that COSSD may determine there are more available hookups in the future), and there are currently about 44 properties which have hookups or reserved hookups, leaving 6 additional sewer hook-ups currently available.

The lots are also within the Cove Orchard Water Association (COWA) boundary. The COWA system is currently at full capacity, so it does not have any new water connections available, and there is no set time frame when the system might be expanded to allow new service hook-ups. The applicant has indicated that a well exists on the parcel and will provide water to the property. A copy of the well log was submitted with the application which indicates sufficient water for a residence (e.g. five gallons per minute). Other utilities and services, such as fire protection, power and roads, are available to the site.

- Regarding the criterion (D), the applicant must show 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, as required by YCZO 1202.08(D). As stated in Finding B.3 there are approximately 20 vacant residential parcels in Cove Orchard. A June 25, 1999 survey of Cove Orchard and Wapato exceptions area shows other lots that could be created. The applicant gave testimony and written statements as to why these

lots are unavailable, and submitted a letter from realtor Michael Korpi indicating significant demand. The applicant assumes (and the realtor's letter supports) that lack of water, sewer and/or location of the floodplain has limited marketability of lots in the area.

6. Regarding the criterion (E), an exception to Goal 3 will be required, as addressed in Section (C) of these findings below.

C. GOAL EXCEPTION PROVISIONS AND ANALYSIS

1. Oregon Administrative Rule (OAR) 660-04 contains the requirements for taking an exception to the goals. The applicant is applying for a "committed" exception.
2. OAR 660-04-028 indicates that a committed exception may be taken when land is irrevocably committed to uses not allowed by the applicable goal because existing adjacent uses and other relevant factors make uses allowed by the goal impracticable. A two-part analysis is required. First, whether land is irrevocably committed depends on the relationship between the exception area and the lands adjacent to it. The Board has taken into account the characteristics of the exception area; the characteristics of the adjacent lands; the relationship between the exception area and the lands adjacent to it; and the other relevant factors set forth in OAR 660-04-028(6). Second, for an exception to Goal 3, findings must be made that farm uses are impracticable on the proposed exception area, and the Board so finds, and this 1.1 acre parcel is entirely too small for practical agricultural uses.
3. The proposed exception area is about 1.1-acres in size. The exception area is bounded by Grant Street, Graham Avenue and Cove Orchard Roads. The property is level open field with no significant topographic features. The applicant states that the property was used to pasture two horses but has been unused and vacant for two years.
4. The land surrounding the proposed exception area consists of small lots to the northwest, zoned VLDR-2.5. This area is the Cove Orchard community, which contains two churches, a store, and several dozen residences located on both sides of Highway 47. The area to the east of the proposed exception area consists of larger lots, most about 5 to 30 acres in size, which are used for farming on the valley floor or forestry uses on the hillsides.
5. The proposed exception area is similar in character to the adjacent lands that are zoned VLDR-2.5, because it is only 1.1-acre in size and it is not being farmed. The applicant states the owner used the site to pasture horses two years ago, but it has not been used for pasture for two years.
6. OAR 660-04-028(6) requires that findings for a committed exception address existing adjacent uses; existing public facilities and services (water and sewer lines, etc.); parcel size and ownership patterns of the exception area and adjacent lands; neighborhood and regional characteristics; natural or man-made features or other impediments separating the exception area from adjacent resource land; physical development; and other relevant factors. The existing uses are addressed above. Regarding public facilities and services the application indicates that a sewer hook-up has been granted. As indicated earlier no hook-up has been granted and none may be until after July 1, 2000. There are no natural features separating the proposed exception area from adjacent resource land. Grant Street, Graham Avenue and Cove Orchard Roads may be considered a man-made feature separating the lot from the neighboring farm and forest uses. The other factors have been addressed elsewhere in this report.
7. Regarding the "irrevocably committed" standards, OAR 660-04-028(6)(c)(A) states in part: *Past land divisions made without application of the Goals do not in themselves demonstrate irrevocable commitment of the exception area. Only if development (e.g., physical improvements such as roads and underground facilities) on the resulting parcels or other factors make unsuitable their resource use or the resource use of*

nearby lands can the parcels be considered to be irrevocably committed. OAR 660-04-028(6)(c)(B) also states, in part: The mere fact that small parcels exist does not in itself constitute irrevocable commitment. Small parcels in separate ownerships are more likely to be irrevocable committed if the parcels are developed, clustered in a large group or clustered around a road designed to serve these parcels.

The applicant points out that there are a substantial number of small parcels in separate ownerships which are developed and clustered around a road designed to serve these parcels. The applicant claims, and the Board is persuaded, that existing development irrevocably commits the property to a rural residential use (see, e.g., comments of Planning Commission members at June 1, 2000 meeting). The prior development in this Cove Orchard neighborhood (e.g., physical improvements such as roads and underground sewer and electrical facilities) supports the finding that this parcel is in an area irrevocably committed to rural residential purposes, and agricultural use for a lot this small is wholly impractical.

D. GOAL 12 (TRANSPORTATION RULE) PROVISIONS AND ANALYSIS

1. The provisions of the Transportation Planning Rule, implementing Goal 12, must be addressed. OAR 660-12-060 contains the provisions that must be met:

- (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 the planned function, capacity and level of service of the transportation facility;*
 - (b) *Amending the TSP [Transportation System Plan] 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.*

2. Regarding (1) and (2), the applicant, and planning staff, have been coordinating with the Public Works Department to assure that the proposed facilities would not exceed the capacity of the road. The response from the Public Works Director, William A. Gille, P.E., P.L.S. indicated that he had reviewed the file and found no conflicts with their interests. The applicant submitted justification to these standards which will be incorporated here by reference. The proposed residential use is consistent with the identified function, capacity, and level of service of the local roads.

E. ISSUES RAISED BY OPPONENTS

1. Betty Wodarczak stated (in a letter dated May, 30, 2000) her concern that approval would create two buildable lots. The applicant sought only one buildable lot, and agreed to a condition of approval that the two lots (207 and 208) be combined prior to any construction, so this objection is moot. There were no other objections or opponents.

F. CONCLUSION:

1. The request for a Comprehensive Plan amendment and zone change from Exclusive Farm Use, EF-20 to Very Low Density Residential, VLDR 2.5, including an exception to Goal 3, is hereby approved with the condition that no building or placement permits shall be issued until the two parcels (207 and 208) be combined to make a single buildable lot.
2. The proposed zone change is consistent with Comprehensive Plan goals and policies, and is appropriate because it is adjacent to the developed Cove Orchard community, the area is made up of existing small subdivision lots, and is within the boundaries of the Cove Orchard Sewer District and Cove Orchard Water Association.
3. An exception to Goal 3 is justified because the property is unsuitable for farming, and the adjacent small residential lots, roads, water and sewer contribute to the area being irrevocably committed to residential use.
4. The proposed change is consistent with the zone change criteria of Section 1208.02.