

FILED

IN THE BOARD OF COMMISSIONERS OF THE STATE OF OREGON, COUNTY OF YAMHILL, OREGON

INDEXED

92-585

FOR THE COUNTY OF YAMHILL

1992 AUG -6 PM 1:35

SITTING FOR THE TRANSACTION OF COUNTY BUSINESS CHARLES STERN
COUNTY CLERK

In the Matter of an Ordinance)
to Revise the Approval Standards)
for Dwellings Customarily)
Provided in Conjunction with)
Farm Use in the EF-40 Exclusive)
Farm Use and AF-20 Agriculture/)
Forestry Zone, and Declaring an)
Emergency, Docket G-3-92)

ORDINANCE NO. 539

DEPUTY

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY, OREGON ("the Board") sat for the transaction of county business in special session on August 5, 1992, Commissioners Ted Lopuszynski, Debi Owens, and Dennis L. Goecks being present.

WHEREAS, the Yamhill County Zoning Ordinance, No. 310, as amended ("the YCZO"), allows dwellings customarily provided in conjunction with farm use ("farm dwellings") only if the parcel size is appropriate for the continuation of the existing commercial agricultural enterprise in the area, consistent with the requirements of OAR 660-05-015 and 660-05-025 ("commercial farm parcel standard") and only if the parcel size is at least as large as the minimum lot size ("mls") (20 acres in the AF-20 zoning district and 40 acres in the EF-40 zoning district); and

WHEREAS, the YCZO prohibits farm dwellings under all circumstances if the size of the parcel is less than the mls; and

WHEREAS, in February, 1991 the Board adopted Ordinance 519 which, among other things, revised the YCZO to allow, under limited circumstances, establishment of farm dwellings on parcels smaller than the mls when certain performance standards had been met; and

WHEREAS, Ordinance 519 has been stayed by the Land Use Board of Appeals pending the resolution of litigation now pending before the Oregon Court of Appeals; and

WHEREAS, the Board desires to amend the YCZO to establish criteria to allow farm dwellings when certain commodity based performance standards have been met even though the parcel does not meet the mls provided the commercial farm parcel standard has been met; and

WHEREAS, on June 4, 1992 a public hearing was held before the Yamhill County Planning Commission and on July 22, 1992 a public hearing was held before the Board; and

WHEREAS, the attached Exhibit "A" demonstrates that this ordinance complies with Statewide Planning Goal 3 and the Goal 3 rules contained in OAR 660-05-015, 025, and 030; Now, therefore,

THE YAMHILL COUNTY BOARD OF COMMISSIONERS ORDAINS AS FOLLOWS:

Section 1. Notwithstanding any contrary provision in the Yamhill County Zoning Ordinance, No. 310, as amended by Ordinances 331, 408, 412, 426, 444 and 468 and 519, a dwelling customarily provided in conjunction with farm use may be established in an EF-40 zoning district on a parcel smaller than 40 acres if the application satisfies all applicable requirements in Section 402 except the minimum lot size standard, and meets either of the following two tests:

1. The farm is currently employed in at least one of the following farm uses with annual sales of animals as indicated:

- | | | |
|----|---------------|-------------|
| a. | Hogs and pigs | 350 head |
| b. | Chickens | 25,000 head |
| c. | Turkeys | 5,000 head; |

or,

2. The farm has produced for sale, in the previous two years or three of the previous five years, at least the following number of the types of animals indicated:

- | | | |
|----|-------------------|---------|
| a. | Cattle and calves | 44 head |
| b. | Sheep and lambs | 95 head |

Section 2. Notwithstanding any contrary provision in the Yamhill County Zoning Ordinance, No. 310, as amended by Ordinances 331, 408, 412, 426, 444 and 468 and 519, a dwelling customarily provided in conjunction with farm use may be established in an AF-20 zoning district on a parcel smaller than 20 acres if the application satisfies all applicable requirements in Section 403 except the minimum lot size standard, and meets either of the following two tests:

1. The farm is currently employed in at least one of the following farm uses with annual sales of animals as indicated:

- | | | |
|----|---------------|-------------|
| a. | Hogs and pigs | 350 head |
| b. | Chickens | 25,000 head |
| c. | Turkeys | 5,000 head; |

or,

2. The farm has produced for sale, in the previous two years or three of the previous five years, at least the following number of the types of animals indicated:

- a. Cattle and calves 44 head
- b. Sheep and lambs 95 head

Section 3. The "Goal 3 Justification" attached to this ordinance as Exhibit "A" and incorporated into this ordinance by this reference, is hereby adopted to support the Board's determination that this ordinance complies with Statewide Planning Goal 3 and the Goal 3 rules contained in OAR 660-05-015, 025, and 030.

Section 4. Severability Clause. If any section or subsection contained in this ordinance is found to be invalid or unconstitutional by a court of competent jurisdiction, the remainder of this ordinance shall continue in full force and effect unless those parts, standing alone, are incapable of being executed in accordance with legislative intent.

Section 5. Emergency Clause. 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 on August 5, 1992.

DONE at McMinnville, Oregon this 5th day of August, 1992.

ATTEST

YAMHILL COUNTY BOARD OF COMMISSIONERS

CHARLES STEBBIN
County Clerk

By: *Jaynie Mitchell*
Deputy County Clerk
JAYNIE MITCHELL

Ted Lopuszynski
Chairman TED LOPUSZYNSKI

Debi Owens
Commissioner DEBI OWENS

Debi Owens
Commissioner DEBI OWENS

FORM APPROVED BY:
John C. Pinkstaff
JOHN C. PINKSTAFF
Assistant County Counsel

Dennis L. Goecks
Commissioner DENNIS L. GOECKS

Accepted by Yamhill County
Board of Commissioners on
8-5-92 by Board Order
92-585.

EXHIBIT "A" - Ordinance 539

Goal 3 Justification

DOCKET: G-3-92

ISSUE: Amendment to Yamhill County Zoning Ordinance to revise the approval standards for dwellings customarily provided in conjunction with farm use in the EF-40 Exclusive Farm Use and AF-20 Agriculture/Forestry zone.

BACKGROUND:

The currently effective Yamhill County Zoning Ordinance, No. 310, as amended ("YCZO"), contains a minimum lot size standard for farm dwellings in Sections 402.06 and 403.06, which provides as follows:

"The parcel is a minimum of [40 acres in the EF-40 zone, or 20 acres in the AF-20 zone] or that size which is appropriate for the continuation of the existing commercial agricultural enterprise in the area, whichever is greater, consistent with the requirements of OAR 660-05-015 and 660-05-025."

This only allows dwellings customarily provided in conjunction with farm use ("farm dwellings") if the parcel size is appropriate for the continuation of the existing commercial agricultural enterprise in the area, consistent with the requirements of OAR 660-05-015 and 660-05-025("commercial farm parcel standard") and only if the parcel size is at least 20 acres in the AF-20 zoning district and 40 acres in the EF-40 zoning district. The YCZO does not contain any performance standards for approval of farm dwellings upon parcels smaller than the mls. This standard disallows any opportunity for a dwelling customarily provided in conjunction with farm use on smaller parcels, even if the parcel supports a commercial agricultural enterprise.

There has been an ordinance amendment adopted by the county that revises, among other things, the criteria for farm dwelling approval (Ordinance 519). Ordinance 519 would allow farm dwellings on parcels smaller than the mls provided that the applicant met certain performance standards in terms of types of crops and the level of product sales. However, Ordinance 519 was appealed and is currently pending before the Oregon Court of Appeals, and has never been implemented, and therefore, at least until the appeal is resolved, there is a need for a zoning amendment that would allow farm dwellings on lots smaller than 20 or 40 acres

provided that the farm is currently employed for farm use and meets certain performance standards which ensure that the parcel meets the commercial farm parcel standard.

Consequently, the Board of County Commissioners instructed planning staff to introduce an ordinance amendment that would allow farm dwellings on smaller lots. Because of the pending litigation, the Board has directed that the revision is to be narrowly written in order to apply in only limited situations. The proposal was taken before the Planning Commission at a regularly scheduled hearing for review and recommendation.

APPLICABLE CRITERIA AND FINDINGS:

The Oregon Administrative Rules (OAR) regulate farm dwellings, OAR 660 Division 5. OAR 660-05-015 (1) states that the Goal 3 phrase "such minimum lot sizes ("mls") as are utilized for any farm use zones shall be appropriate for the continuation of the existing commercial agricultural enterprise within the area" is the required mls standard to be used to determine appropriate lot sizes in EFU zones, and when approving farm dwellings on pre-existing lots. OAR 660-05-005(2) defines commercial agricultural enterprise as that which will "contribute in a substantial way to the area's existing agricultural economy and help maintain agricultural processors and established farm markets".

OAR 660-05-015(3) provides, among other things, that the county can apply the commercial farm parcel standard in various ways, including but not limited to one specific acre size, different acre sizes, or performance standards.

OAR 660-05-030 states that dwellings in conjunction with farm use can only be authorized on parcels that are (1) currently employed for farm use, and (2) large enough to satisfy the minimum lot size requirement.

Current Employment

The proposal above will ensure that the parcel is currently employed for farm use prior to approval of the dwelling. The definition of farm use in Oregon Revised Statutes (ORS) 215.203 is, in part:

"The current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting and selling crops or the feeding, breeding, management and sale of, or the produce of, livestock, poultry, fur-bearing animals or honeybees ...". (emphasis added)

The commodities are limited to livestock. In one test, the commodities are restricted to confined operations. (Hogs and pigs, chickens and turkeys.) The scale of operation required is intended

to ensure that the size of operation is sufficient to be considered "farm use" under the statutory definition.

In the other test, the production levels are based on the number of head of the respective animals (cattle and calves; sheep and lambs) needed to produce \$40,000 in annual sales. An average commodity price over the previous three years, supplied by the Extension Service, was relied upon for the calculations.

The \$40,000 figure is based on the median level of farm sales in Yamhill County for all farms grossing over \$10,000 annually, according to the 1982 Census of Agriculture special tabulations, the last year for which the special tabulations are available. This is important because of the "intent to make a profit" clause in the definition of farm use. The County does not find that \$40,000 is the only, or even the best, indicator of whether an operation is engaged in "farm use" as defined by the statute. However, in light of the litigation described in the background section of this report, this test is the most expedient method to accomplish the intent of the amendment.

Production levels for the cattle and sheep commodities are based on the average (mean) number of animals sold by the respective type of ranch producing over \$10,000 sales, according to the 1987 Census of Agriculture. This is an appropriate test because it reflects the actual activity taking place in the county. Using the mean for the confined animal operations in the other test is not appropriate because the number of these types of farms in the census is so low that the average is an unsuitable statistic. The requirement that the operation show past sales stems from the nature of the grazing operation, which does not require the scale of investment prior to commencement of the operation. Consequently, the demonstration of past activity will help insure that the farm is a genuine farming enterprise.

Minimum Lot Size

The proposal is to apply to dwellings only, and not partitions. The OAR minimum lot size standard provides for counties to use performance standards in determining whether a parcel is "appropriate for the continuation of the existing commercial agricultural enterprise." The proposal above includes performance standards regarding the scale of the farm operation, and although there is no stated minimum acreage, the required level of activity, combined with environmental regulations in some cases, will in effect limit how small a parcel can be. These performance standards represent a sufficient level for a farm operation to be considered commercial agricultural enterprise which will contribute substantially to the area's existing agricultural economy and will help maintain agricultural processors and established farm markets.

The amendment does not apply to partitions, and current employment of the land for farm use is required, so any dwelling approved will be on a parcel that is already a productive part of the commercial agricultural enterprise. Placing a dwelling on the property will not make the parcel any less "appropriate" to continue the commercial agricultural use.

CONCLUSIONS:

The proposed amendment to the YCZO will satisfy the Oregon Administrative Rule requirements for farm dwellings because it will ensure that any approval will be "customarily provided in conjunction with farm use" and on a parcel that is "appropriate for the continuation of the existing commercial agricultural enterprise in the area." Other existing dwelling approval standards in the ordinance ensure that other aspects of the administrative rule are satisfied.

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