

IN THE BOARD OF COMMISSIONERS OF THE STATE OF OREGON -3 PM 1:40

FOR THE COUNTY OF YAMHILL

CHARLES STERN  
COUNTY CLERK

SITTING FOR THE TRANSACTION OF COUNTY BUSINESS DEPUTY

In the Matter of an Ordinance	)	
Amending sections 401.03, 402.03 and 403.03	)	
of Yamhill County Zoning Ordinance No. 310,	)	
as Amended, regarding clarification of	)	ORDINANCE NO. 615
continuous ownership relating to lot of record	)	
dwellings; Docket G-4-96; 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 October 2, 1996 Commissioners Robert Johnstone, Thomas E. E. Bunn, and Dennis L. Goecks, being present.

WHEREAS, the Yamhill County Zoning Ordinance, No. 310, as amended ("the YCZO"), sets forth approval standards for lot of record dwellings in the Forestry District (F-80), the Exclusive Farm Use District (EF-80, EF-40, #F-20), and the Agriculture/Forestry Large Holding District (AF-80, AF-40, AF-20) as provided in YCZO sections 401, 402 and 403, respectively; and

WHEREAS, one of the eligibility requirements for a lot of record dwellings is that the owner must have acquired the property before January 1, 1985; and

WHEREAS, the Department of Planning and Development received a lot of record dwelling application in which a person who would be ineligible had transferred the parcel back the pre-1985 owner for purposes of making the lot of record dwelling application; and

WHEREAS, the Board of Commissioners believes that it was not the intent of the lot of record laws to allow transfers back of parcels to circumvent this ownership eligibility requirement, and that it is therefore necessary to amend pertinent lot of record provisions in YCZO sections 401, 402 and 403 to require continuous ownership by an eligible owner since prior to January 1, 1985; and

WHEREAS, properly noticed public hearings were held on this ordinance on July 18, 1996 before the Yamhill County Planning Commission, which voted to recommend approval of the ordinance, and subsequently, before the Board on August 21, 1996, and continued to September 25 and October 2, 1996, and the Board unanimously approved the adoption of the ordinance; and

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WHEREAS, the Board has determined that adoption of the ordinance provisions in the attached Exhibit "A" will be in the best interest of the citizens of Yamhill County; Now, Therefore,

THE YAMHILL COUNTY BOARD OF COMMISSIONERS ORDAINS AS FOLLOWS:

Section 1. Sections 401.03(B), 402.03(F), 402.03(G), 402.03(H), 403.03(G), 403.03(H), 403.03(I) and 403.03(L) of the Yamhill County Zoning Ordinance, No. 310, as amended, are hereby amended as provided and specified in the attached Exhibit "A", which is by this reference made a part of this ordinance. Materials and language contained in brackets are hereby deleted from Ordinance 310 as amended, and materials underlined are added to those ordinances.

Section 2. The explanation of the amendments under this ordinance set forth in Exhibit "B", which is attached hereto and incorporated into this ordinance by reference, is hereby adopted to support the Board's determination that this ordinance is necessary and proper.

Section 3. 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 4. 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.

AYES: Commissioners Johnstone and Goecks.

NAYS: Commissioner Bunn

DONE at McMinnville, Oregon this 2 day of October, 1996.

ATTEST  
BOARD OF COMMISSIONERS  
YAMHILL COUNTY  
CHARLES STERN  
County Clerk

YAMHILL COUNTY BOARD OF COMMISSIONERS

Robert Johnstone  
Chairman ROBERT JOHNSTONE

By: for Stanley  
Deputy CAROL ANN WHITE  
Commissioner THOMAS E. E. BUNN

FORM APPROVED BY:  
John C. Pinkstaff  
JOHN C. PINKSTAFF

Dennis L. Goecks  
Commissioner DENNIS L. GOECKS

Assistant County Counsel  
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EXHIBIT "A" of  
ORDINANCE 615

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1. Section 401.03(B) shall be amended as follows:

B. Principal lot of record dwelling, subject to the following standards and criteria:

1. The lot or parcel on which the dwelling will be sited was lawfully created and was acquired by the present owner:
  - (a) and has been owned continuously by such owner since prior to January 1, 1985; or
  - (b) by devise or intestate succession from a person who acquired the lot or parcel and had owned it continuously since prior to January 1, 1985.
  - (c) For purposes of Section 401.03(B)(1) only, "owner" includes the wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent, stepchild, grandparent, or grandchild of the owner or business entity owned by any one or combination of these family members.
2. The tract on which the dwelling is to be sited does not include a dwelling.
3. The tract on which the dwelling is to be sited is composed of soils not capable of producing 5,000 cubic feet per year of commercial tree species.
4. The tract on which the dwelling is to be located is within 1,500 feet of a public road that is maintained and either paved or surfaced with rock. The road shall not be a United States Forest Service road or Bureau of Land Management road.
5. When the lot or parcel on which the dwelling will be sited is part of a tract, the remaining portions of the tract shall be consolidated into a single lot or parcel when the dwelling is allowed.
6. The dwelling is not prohibited by, and complies with the Comprehensive Plan and other provisions of this ordinance and other provisions of law, including but not limited to floodplain, greenway, and airport overlay restrictions.
7. The county assessor shall be notified that the governing body intends to allow the dwelling.

2. **Section 402.03(F) shall be amended as follows:**

F. Principal **lot of record** dwelling **not on high-value farmland** subject to the following standards and criteria (Type A notice):

1. The lot or parcel on which the dwelling will be sited was lawfully created and was acquired by the present owner:
  - (a) and has been owned continuously by such owner since prior to January 1, 1985; or
  - (b) by devise or intestate succession from a person who acquired the lot or parcel and had owned it continuously since prior to January 1, 1985.
2. The tract on which the dwelling is to be sited does not include a dwelling.
3. The lot or parcel is not high-value farmland as defined in Subsection 402.10(E).
4. When the lot or parcel on which the dwelling will be sited is part of a tract, the remaining portions of the tract shall be consolidated into a single lot or parcel when the dwelling is allowed.
5. The dwelling is not prohibited by, and complies with the Comprehensive Plan and other provisions of this ordinance and other provisions of law, including but not limited to floodplain, greenway, and airport overlay restrictions.
6. The County Assessor shall be notified that the county intends to allow the dwelling.
7. For purposes of this section 402.03 F, "owner" includes the wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent, stepchild, grandparent, or grandchild of the owner or business entity owned by any one or combination of these family members.

3. **Section 402.03(G) shall be amended as follows:**

G. Principal **lot of record** dwelling not in conjunction with farm use **on Class III and IV high-value farmland**, subject to the following standards and criteria (Type A notice):

1. The lot or parcel on which the dwelling will be sited was lawfully created and was acquired by the present owner:

- a. and has been owned continuously by such owner since prior to January 1, 1985; or
  - b. By devise or intestate succession from a person who acquired the lot or parcel and had owned it continuously since prior to January 1, 1985.
2. The tract on which the dwelling is to be sited does not include a dwelling.
  3. When the lot or parcel on which the dwelling will be sited is part of a tract, the remaining portions of the tract shall be consolidated into a single lot or parcel when the dwelling is allowed.
  4. The dwelling is not prohibited by, and complies with the Comprehensive Plan and other provisions of this ordinance and other provisions of law, including but not limited to floodplain, greenway, and airport overlay restrictions.
  5. The tract on which the dwelling is to be sited is:
    - a. Composed predominantly of high-value farmland as defined in subsection 402.10(E)(2) or (3); and
    - b. Twenty-one acres or less in size.
  6. The tract on which the dwelling is to be sited is:
    - a. Bordered on at least 67 percent of its perimeter by tracts that are smaller than 21 acres, and at least two such tracts had dwellings on them on January 1, 1993; or
    - b. Bordered on at least 25 percent of its perimeter by tracts that are smaller than 21 acres, and at least four dwellings existed on January 1, 1993, within one-quarter mile of the center of the subject tract. No more than two of the four dwellings may be within an Urban Growth Boundary.
  7. The County Assessor shall be notified that the county intends to allow the dwelling.
  8. For purposes of this section 402.03 G, "owner" includes the wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent, stepchild, grandparent, or grandchild of the owner or business entity owned by any one or combination of these family members.

4. Section 402.03(H) shall be amended as follows:

H. Principal lot of record dwelling not in conjunction with farm use on Class I and II high-value farmland, subject to the following standards and criteria (Type (A) (C) notice):

1. The lot or parcel on which the dwelling will be sited was lawfully created and was acquired by the present owner:
  - a. and has been owned continuously by such owner since prior to January 1, 1985; or
  - b. by devise or intestate succession from a person who acquired the lot or parcel and had owned it continuously since prior to January 1, 1985.
2. The tract on which the dwelling is to be sited does not include a dwelling.
3. When the lot or parcel on which the dwelling will be sited is part of a tract, the remaining portions of the tract shall be consolidated into a single lot or parcel when the dwelling is allowed.
4. The dwelling is not prohibited by, and complies with the Comprehensive Plan and other provisions of this ordinance and other provisions of law, including but not limited to floodplain, greenway, and airport overlay restrictions.
5. The tract on which the dwelling is to be sited is on high-value farmland as defined in subsection 402.10(E)(1).
6. *[A hearings officer of the Oregon Department of Agriculture, under the provisions of ORS 183.413 to 183.497,]* The Planning Commission determines that:
  - a. The lot or parcel cannot practicably be managed for farm use, by itself or in conjunction with other land, due to extraordinary circumstances inherent in the land or its physical setting that do not apply generally to other land in the vicinity;
  - b. The dwelling will comply with the provisions of *[ORS 215.296 (1)]* Section 402.07(A); and
  - c. The dwelling will not materially alter the overall land use pattern of the area.
7. The County Assessor shall be notified that the county intends to allow the dwelling.

8. For purposes of this section 402.03 H, "owner" includes the wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent, stepchild, grandparent, or grandchild of the owner or business entity owned by any one or combination of these family members.
9. The State Department of Agriculture shall be provided notice of the application at least twenty (20) days prior to the public hearing before the Planning Commission.

5. Section 403.03(G) shall be amended as follows:

- G. Principal lot of record dwelling on a lot or parcel which is not high-value farmland and was not predominantly devoted to forest use on January 1, 1993, subject to the following standards and criteria:
1. The lot or parcel on which the dwelling will be sited was lawfully created and was acquired by the present owner:
    - a. and has been owned continuously by such owner since prior to January 1, 1985; or
    - b. by devise or intestate succession from a person who acquired the lot or parcel and had owned it continuously since prior to January 1, 1985.
  2. The tract on which the dwelling is to be sited does not include a dwelling.
  3. The lot or parcel is not high-value farmland as defined in Subsection 403.12 [E] **(H)**.
  4. When the lot or parcel on which the dwelling will be sited is part of a tract, the remaining portions of the tract shall be consolidated into a single lot or parcel when the dwelling is allowed.
  5. The dwelling is not prohibited by, and complies with the Comprehensive Plan and other provisions of this ordinance and other provisions of law, including but not limited to floodplain, greenway, and airport overlay restrictions.
  6. The county assessor shall be notified that the governing body intends to allow the dwelling.
  7. For purposes of this section 403.03 F **(G)**, "owner" includes the wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-

law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent, stepchild, grandparent, or grandchild of the owner or business entity owned by any one or combination of these family members.

**6. Section 403.03(H) shall be amended as follows:**

H. Principal **lot of record** dwelling not in conjunction with farm use on a lot or parcel **which is predominantly Class III and IV high-value farmland and was** not predominantly devoted to forest use on January 1, 1993, subject to the following standards and criteria:

1. The lot or parcel on which the dwelling will be sited was lawfully created and was acquired by the present owner:
  - a. **and has been owned continuously by such owner since** prior to January 1, 1985; or
  - b. By devise or intestate succession from a person who acquired the lot or parcel **and had owned it continuously since** prior to January 1, 1985.
2. The tract on which the dwelling is to be sited does not include a dwelling.
3. When the lot or parcel on which the dwelling will be sited is part of a tract, the remaining portions of the tract shall be consolidated into a single lot or parcel when the dwelling is allowed.
4. The dwelling is not prohibited by, and complies with the Comprehensive Plan and other provisions of this ordinance and other provisions of law, including but not limited to floodplain, greenway, and airport overlay restrictions.
5. The tract on which the dwelling is to be sited is:
  - a. Composed predominantly of high-value farmland defined in Section 403.12[(E)] **(H)** (2) or (3); and
  - b. Twenty-one acres or less in size.
6. The tract on which the dwelling is to be sited is:
  - a. Bordered on at **least** 67 percent of its perimeter by tracts that are smaller than 21 acres, and at least two such tracts had dwellings on them on January 1, 1993; or
  - b. Bordered on at least 25 percent of its perimeter by tracts that are smaller than 21 acres, and at least four dwellings existed on January 1, 1993,

within one-quarter mile of the center of the subject tract. No more than two of the four dwellings may be within an Urban Growth Boundary.

7. The county assessor shall be notified that the governing body intends to allow the dwelling.
8. For purposes of this section 403.03 G (H), "owner" includes the wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent, stepchild, grandparent, or grandchild of the owner or business entity owned by any one or combination of these family members.

7. Section 403.03(I) shall be amended as follows:

I. Principal lot of record dwelling not in conjunction with farm use on land on a lot or parcel which is predominantly Class I and II high-value farmland and was not predominantly devoted to forest use on January 1, 1993, subject to the following standards and criteria:

1. The lot or parcel on which the dwelling will be sited was lawfully created and was acquired by the present owner:
  - a. and has been owned continuously by such owner since prior to January 1, 1985; or
  - b. by devise or intestate succession from a person who acquired the lot or parcel and had owned it continuously since prior to January 1, 1985.
2. The tract on which the dwelling is to be sited does not include a dwelling.
3. When the lot or parcel on which the dwelling will be sited is part of a tract, the remaining portions of the tract shall be consolidated into a single lot or parcel when the dwelling is allowed.
4. The dwelling is not prohibited by, and complies with the Comprehensive Plan and other provisions of this ordinance and other provisions of law, including but not limited to floodplain, greenway, and airport overlay restrictions.
5. The tract on which the dwelling is to be sited is on high-value farmland defined in Section 403.12[(E)] (H) (1).
6. [A hearings officer of the Oregon Department of Agriculture, under the provisions of ORS 183.413 to 183.497,] The Planning Commission determines that:

- a. The lot or parcel cannot practicably be managed for farm use, by itself or in conjunction with other land, due to extraordinary circumstances inherent in the land or its physical setting that do not apply generally to other land in the vicinity;
- b. The dwelling will comply with the provisions of [ORS 215.296 (I)] Section 403.07(A); and
- c. The dwelling will not materially alter the overall land use pattern of the area.

7. The county assessor shall be notified that the governing body intends to allow the dwelling.

8. For purposes of this section 403.03 H (D), "owner" includes the wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent, stepchild, grandparent, or grandchild of the owner or business entity owned by any one or combination of these family members.

9. The State Department of Agriculture shall be provided notice of the application at least twenty (20) days prior to the public hearing before the Planning Commission.

8. Section 403.03(L) shall be amended as follows:

L. Principal lot of record dwelling on a lot or parcel predominantly devoted to forest use on January 1, 1993, subject to the following standards and criteria:

- 1. The lot or parcel on which the dwelling will be sited was lawfully created and was acquired by the present owner:
  - a. and has been owned continuously by such owner since prior to January 1, 1985; or
  - b. by devise or intestate succession from a person who acquired the lot or parcel and had owned it continuously since prior to January 1, 1985.
- 2. The tract on which the dwelling is to be sited does not include a dwelling.
- 3. The tract on which the dwelling is to be sited is composed of soils not capable of producing 5,000 cubic feet per year of commercial tree species.

4. The tract on which the dwelling is to be located is within 1,500 feet of a public road that is maintained and either paved or surfaced with rock.
5. When the lot or parcel on which the dwelling will be sited is part of a tract, the remaining portions of the tract shall be consolidated into a single lot or parcel when the dwelling is allowed.
6. The dwelling is not prohibited by, and complies with the Comprehensive Plan and other provisions of this ordinance and other provisions of law, including but not limited to floodplain, greenway, and airport overlay restrictions.
7. The property owner shall submit a stocking survey report to the County Assessor, and the Assessor shall verify that the minimum stocking requirements adopted under ORS 527.610 to 527.770 have been met.
8. The county assessor shall be notified that the governing body intends to allow the dwelling.
9. For purposes of this section 403.03 L, "owner" includes the wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent, stepchild, grandparent, or grandchild of the owner or business entity owned by any one or combination of these family members.

STAFF REPORT  
YAMHILL COUNTY DEPARTMENT OF PLANNING AND DEVELOPMENT

DATE: July 2, 1996

DOCKET NO.: G-4-96

REQUEST: Amendments to the text of Section 401 Forestry District, Section 402 Exclusive Farm Use District, and Section 403 Agriculture/Forestry District of the Yamhill County Zoning Ordinance to require continuous ownership for lot of record dwellings and to incorporate 1995 legislation.

APPLICANT: Yamhill County

ZONES: F-80, EF-20, EF-40, EF-80, AF-20, AF-40 and AF-80

REVIEW CRITERIA: Section 1207 of the Yamhill County Zoning Ordinance, ORS 215, OAR 660-06 and OAR 660-33.

## FINDINGS:

In 1993 the state legislature passed HB 3661, which contained provisions for dwellings on agricultural and forest lands. HB 3661 included provisions for "lot of record" dwellings, which allow property owners who acquired lots prior to 1985 to receive approval for dwellings. The intent of the legislation is stated in ORS 215.700, as follows:

*Resource land dwelling policy. The Legislative Assembly declares that land use regulations limit residential development on some less productive resource land acquired before the owners could reasonably be expected to know of the regulations. In order to assist these owners while protecting the state's more productive resource land from the detrimental effects of uses not related to agriculture and forestry, it is necessary to:*

- 1. Provide certain owners of less productive land an opportunity to build a dwelling on their land; and*
- 2. Limit the future division of and the siting of dwellings upon the state's more productive resource land. [Emphasis added.]*

ORS 215.705 contains the standards for approval of lot of record dwellings. The primary criterion is that the lot was acquired by the present owner prior to 1985. Applications have been submitted to the county which have attempted to test the limits of this standard. For example, in one instance the present owner had acquired the property prior to 1985 and had re-acquired it prior to submitting the application, but the lot had been owned by other parties in

## STAFF REPORT

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- A. *An amendment to the text of this ordinance shall be based upon a need for such an amendment identified by the Board, the Commission, or the Director.*
  - B. *The amendment shall be consistent with the Comprehensive Plan, and with all other provisions of this ordinance, and with federal, state, or local government statutes, rules and regulations.*
2. Regarding criterion (A), the Board of Commissioners has identified a need to amend the text of the Yamhill County Zoning Ordinance in order to codify the intent of requiring continuous ownership. In addition, the Planning Director has identified a need to make the other minor amendments in order to comply with a change in state law, to correct a mistake, and to make the ordinance easier to use.
  3. Regarding criterion (B), the proposed amendments are consistent with the legislative intent for lot of record dwellings, and are consistent with administrative rules.

**RECOMMENDATION:**

Amend Sections 401, 402 and 403 of the Yamhill County Zoning Ordinance as indicated in Exhibit A.

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