

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 an Ordinance Responding to)
LCDC Review Order 94-REMAND-931,)
Amending the Yamhill County Zoning Ordin-)
ance, No. 310, as amended, and certain Plan)
Policies of the Yamhill County Comprehensive)
Plan, as amended, to Make Textual Amend-)
ments to Revise Criteria for Lot Line Adjust-)
ments in Agricultural/Forestry Zones and to)
Require Authorization from the Land Conser-)
vation and Development Commission Prior to)
Final Approval of Applications Seeking a Re-)
duction of Minimum Lot Size in EFU or AF)
Zones; Planning Docket G-5-94; Declaring)
an Emergency.)

ORDINANCE 618

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY, OREGON ("the Board") sat for the transaction of county business in formal session on December 30, 1996 commissioners Robert Johnstone, Thomas E. E. Bunn and Dennis L. Goecks being present.

THE BOARD MAKES THE FOLLOWING FINDINGS:

A. Since December 26, 1985, the Department of Land Conservation and Development (DLCD) and the Land Conservation and Development Commission (LCDC) have been engaged in the periodic review of Yamhill County's comprehensive land use plan and land use regulations under former ORS 197.640 to 197.647. In the periodic review process, DLCD and LCDC are responsible for determining whether a local jurisdiction's comprehensive land use plan and land use regulations meet requirements of state statutes, administrative rules and the statewide planning goals. Yamhill County is one of two Oregon jurisdictions still undergoing review under the former process.

B. From 1986 through 1990, the Board adopted a series of ordinances and orders to respond to various requirements of DLCD and LCDC in periodic review. By early 1991, the county was found to be in compliance with all statewide goals except for portions of goals 3, 4 and 5. In the course of the next three years, the county was determined to have complied with the entirety of Goal 5.

C. On February 27, 1991 the Board adopted Ordinance 519 to respond to LCDC Remand Order 89-RA-556 in an effort to complete remaining periodic review requirements regarding statewide planning goals 3 and 4. Among other things, Ordinance 519 sought to justify the county's existing 20 and 40 acre minimum lot sizes in exclusive farm use zones.

D. On December 23, 1991 LCDC issued Remand Order 91-RA-809 which rejected Ordinance 519 and imposed four principal requirements on the county to satisfy periodic review as it related to goals 3 and 4. First, it required the county to adopt 80, 40 and 20 acre minimum lot size EFU zones for specific subareas of the county identified on a map prepared by DLCD staff. This map was known as "the Exhibit B map". The county was directed to hold public hearings and adopt the Exhibit B map in substantially the same form as produced by DLCD staff, allowing for adjustment of the boundaries based on public involvement and further analysis by county staff. Second, it required the county to adopt DLCD language for text amendments to the zoning ordinance for the establishment of farm dwellings on parcels smaller than the minimum lot size (the "go below" provisions). Third, it required the county to adopt an interim mixed agriculture/forest plan and zone designations on certain specified lands. The county was to review the affected land under the Goal 4 rules and to apply a case-by-case review for land divisions. Fourth, it required the county to adopt plan policies restricting future changes from one minimum lot size to another.

E. On February 19, 1992 the county petitioned the Oregon Court of Appeals to review LCDC Remand Order 91-RA-809, the case later being entitled Oregonians in Action v. LCDC, Appellate Number CA A73503.

F. On December 22, 1992 LCDC issued administrative rules on small scale resource land that incorporated certain commercial scale requirements for the establishment of farm dwelling, with the new rules to become effective August 7, 1993. On February 22, 1993 Oregonians in Action v. LCDC was argued to the Oregon Court of Appeals.

G. On July 7, 1993 the Oregon Court of Appeals issued its decision in Oregonians in Action v. LCDC, 121 Or App 497 (1993). The decision affirmed LCDC Remand Order 91-RA-809 in its entirety, rejecting the petition of Yamhill County and the cross-petition of 1000 Friends of Oregon.

H. On July 31, 1993 the Oregon legislature passed the B-engrossed version of HB 3661 which contained numerous provisions, including the limited right to establish a dwelling on certain lots of record established before January 1, 1985. HB 3661 also affected minimum lot sizes in exclusive farm use zones by establishing a new minimum lot size of 80 acres for all land zoned EFU that is not designated rangeland. Exceptions to the new statutory minimum lot size of 80 acres was allowed under two subsections of Section 7 of HB 3661, codified as ORS 215.780 as follows:

"(2) A county may adopt a lower minimum lot or parcel size than [80 acres] by demonstrating to the commission that it can do so while continuing to meet the requirements of ORS 215.243 and 527.630 and the land use planning goals adopted under ORS 197.230.

"(3) A county with a minimum lot or parcel size acknowledged by the commission pursuant to ORS 197.251 after January 1, 1987, or acknowledged pursuant to periodic review requirements under ORS 197.628 to 197.636 that is smaller than [80 acres] need not comply with subsection (2) of this section."

The governor signed HB 3661 (1993 Oregon Laws Chapter 792) into law on September 7, 1993 with an effective date of November 4, 1993. Although subsection (2) was modified by the legislature in 1995, subsection (3) remains operative.

I. On August 10, 1993 the county petitioned the Oregon Supreme Court to review the decision of the Court of Appeals in Oregonians in Action v. LCDC, and on December 8, 1993 the Oregon Supreme Court issued its Order Denying Review, operating to exhaust all of the county's legal challenges to LCDC Remand Order 91-RA-809.

J. On December 29, 1995 the Board adopted Ordinance 565 and Board Order 93-910 in an attempt to comply fully with LCDC Remand Order 91-RA-809, including the adoption of the DLCD zoning map, except as otherwise required or allowed by changes in statutes or administrative rules adopted after December 23, 1991.

K. On January 26, 1994 1000 Friends filed formal periodic review objections with DLCD to Board Order 93-910 and Ordinance 565. On March 1, 1994 new LCDC administrative rules on Goal 3 went into effect.

L. On April 21, 1994 the Director of DLCD issued his "Director's Report," recommending that LCDC sustain all of Board Order 93-910 and Ordinance 565 except for two issues, the first of which was a scrivener's error relating to criteria for lot line adjustments in agricultural/forestry zones. As to the second issue, the Director recommended giving the county two alternatives for deciding applications where property is sought to be changed from an 80 acre district to a 40 or 20 acre district or from 40 to 20: Option 1 was to attempt to establish new standards for review. Option 2 was to amend the zoning ordinance and plan policies to require LCDC concurrence on those types of applications following conditional approval by the Board. This option was generally referred to as the "LCDC concurrence option."

M. On May 2, 1994 1000 Friends of Oregon issued its Exceptions to Director's Report contesting many provisions of Ordinance 565 which were sustained in the Director's Report.

N. On May 27, 1994 LCDC held a public hearing to consider Ordinance 565, Board Order 93-910, the Director's Report and 1000 Friends of Oregon's Exceptions to Director's Report. Without committing to Option 1 or Option 2 relating to changes in minimum lot sizes, the county acquiesced in the remainder of the Director's recommendations.

O. On June 20, 1994 LCDC issued Commission's Review Order 94-REMAND-931 which adopted the Director's Report finding that the county has satisfied all periodic review requirements except for the two matters specified in the Director's Report. The Order stated if the county adopted the "LCDC concurrence option," the Director was authorized to terminate the Yamhill County periodic review process which began December 26, 1985. On the other hand, if the county adopted additional standards with no concurrence requirement, the order required additional periodic review proceedings before LCDC. Because of HB 3661, Section 7, the 80 minimum lot size established by the legislature would continue to remain in effect until the 20, 40 and 80 acre zoning adopted by

Ordinance 565 and conditionally accepted by LCDC was approved in final form through periodic review.

P. On July 18, 1994, the Board held a duly noticed public hearing to determine whether to adopt Option 1 or Option 2 (the LCDC concurrence option) from Commission's Review Order 94-REMAND-931. After taking testimony, the final hearing was continued to August 10, 1994

Q. On August 10, 1994 the Board continue the public hearing on county action in response to Commission's Review Order 94-REMAND-931. Commissioners Goecks, Owens and Lopuszynski were all in agreement that Option 2 (the LCDC concurrence option) was the appropriate response to the Review Order under circumstances because of the need to conclude the periodic review process which began December 26, 1985. Disagreement arose with respect to language in the enabling ordinance. A motion to approve the LCDC concurrence option passed 2-1, Commissioner Goecks dissenting. Staff was directed to draft an ordinance for adoption on August 31, 1994.

R. On August 19, 1994 1000 Friends of Oregon filed a petition for judicial review asking the Oregon Court of Appeals to overturn Commission's Review Order 94-REMAND-931. Thereafter, Yamhill County intervened on the side of DLCD. The case was entitled 1000 Friends of Oregon v. LCDC and Yamhill County.

S. Between August 31 and September 28, 1994, the Board considered whether to go forward with the ordinance implementing the county's response to Commission's Review Order 94-REMAND-931, including adoption of the LCDC concurrence option. On September 28, 1994 the Board tabled the proposed ordinance while the appellate courts considered 1000 Friends of Oregon's challenge to Commission's Review Order 94-REMAND-931.

T. On July 25, 1995 1000 Friends of Oregon v. LCDC and Yamhill County was argued to the Oregon Court of Appeals. On March 6, 1996 the Oregon Court of Appeals affirmed Commission's Review Order 94-REMAND-931, holding that LCDC was entitled to judicial deference in interpreting its own rule, and that it properly followed the "maintenance" approach it used in approving the 20, 40 and 80 acre zoning. 1000 Friends of Oregon v. LCDC and Yamhill County, 126 Or App 485 (1996).

U. On April 10, 1996 1000 Friends of Oregon filed a petition with Oregon Supreme Court seeking review of the decision of Court of Appeals in 1000 Friends of Oregon v. LCDC and Yamhill County. On May 1, 1996 the county filed a response arguing against further court review. On May 7, 1996 the Oregon Supreme Court denied review, effectively ending the final legal challenges to Commission's Review Order 94-REMAND-931.

V. On October 17, 1996 the county gave notice of its intent to hold a public hearing to consider adoption of the amendments required by Commission's Review Order 94-REMAND-931, including the LCDC concurrence option. The hearing was set for December 11, 1996.

W. On December 11, 1996 the Board held a duly noticed public hearing in Room 32 of the courthouse to consider adoption of the zoning ordinance and plan policy revisions required by Commission's Review Order 94-REMAND-931, including the LCDC concurrence option. Thereafter, a motion passed unanimously to adopt the revisions, including the LCDC concurrence option. Staff was directed to prepare the implementing ordinance.

X. This ordinance implements the Board's tentative decision of December 11, 1996. In adopting the LCDC concurrence option, the Board recognizes that final decision-making authority for those land use applications seeking a reduction of minimum lot size in EFU and AF zones has been delegated to the state. While the Board finds that other options are preferable, the Board recognizes that both LCDC and Oregon appellate courts have rejected those options. In adopting this ordinance, the Board finds that it has no other practical alternative in order to conclude the periodic review process which began December 26, 1985 and, as importantly, to enable the 20, 40 and 80 acre zoning authorized by Ordinance 565 and thereafter conditionally approved by LCDC to become effective. NOW, THEREFORE

THE YAMHILL COUNTY BOARD OF COMMISSIONERS ORDAINS AS FOLLOWS:

Section 1. Additional Criteria for Lot-line Adjustments.

Subsection 403.11(B)(2)(c) of the Yamhill County Zoning Ordinance, as amended, is hereby amended to include the language underlined in the attached Exhibit "A" which is by this reference hereby made a part of this ordinance.

Section 2. LCDC Concurrence for Certain Zone Changes.

Subsection 1208.03 of the Yamhill County Zoning Ordinance, as amended, is hereby amended to add a new subsection (F). The language for new subsection (F) is underlined in the attached Exhibit "B" which is by this reference hereby made a part of this ordinance.

Section 3. Amendment of Revised Goals and Policies of Comprehensive Plan.

Subsection "A" of Section II of the Revised Goals and Policies of the Yamhill County Comprehensive Plan is amended to add a new policy (k). The language for new policy (k) is underlined in the attached Exhibit "C" which is by this reference hereby made a part of this ordinance.

Section 4. Justification Statement.

As justification for this ordinance, the Board hereby adopts, by reference, the findings and conclusions set forth in an order of the Land Conservation and Development Commission entitled "Commission's Review Order 94-REMAND-931."

Section 5. Severability Clause.

This ordinance is severable. If any section or subsection contained in this ordinance or any of its exhibits is found to be invalid or unconstitutional by a court of last resort, that section of subsection shall be severed from this ordinance and the remainder of this ordinance shall remain valid.

Section 6. Effective Date and Declaration of Emergency.

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 upon passage.

DONE at McMinnville, Oregon on December 30, 1996.



CHARLES STERN
County Clerk

By: Jayne Mitchell
Deputy JAYNIE MITCHELL

YAMHILL COUNTY BOARD OF COMMISSIONERS

Robert Johnstone
ROBERT JOHNSTONE, Chairman

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

FORM APPROVED BY:

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

Dennis L. Goecks
DENNIS L. GOECKS, Commissioner

**EXHIBIT "A" TO ORDINANCE 618
(Additional Criteria for Lot-line Adjustments)**

403.11 Standards and Limitations.

In the Agriculture/Forestry District, the following standards and limitations shall apply:

...

B. Parcel Size and Dimension.

1. a. Newly-Created Parcels. Any new farm/forest parcel proposed to be created shall be a minimum of 20 acres in the AF-20 district, 40 acres in the AF-40 district and 80 acres in the AF-80 district.
- b. Any new nonfarm/nonforest parcel created to support a dwelling shall comply with Subsection 403.03(F).
- c. Any new nonfarm/nonforest parcel proposed to be created for nonfarm/nonforest uses other than dwellings shall be no larger than the minimum size necessary for its use.
2. Lot-line adjustments.
 - a. Any parcel principally devoted to farm use subject to alteration in size through a lot-line adjustment shall be shown to be of a size at least as appropriate for the continuation of the existing commercial agricultural enterprise in the area as were the parcels prior to adjustment.
 - b. Any parcel principally devoted to forest use subject to alteration in size through a lot-line adjustment shall be shown to be at least as economically efficient for forest practices, provide for continuous growing and harvesting of forest tree species at least as well as, and conserve other forest values at least as well as did the parcel prior to adjustment.
 - c. When one or more parcels subject to a proposed adjustment are larger than the minimum lot size in the zone, the same number of parcels shall be as large or larger than the minimum lot size after the adjustment. When all parcels subject to the proposed adjustment are as large or larger than the minimum lot size in the zone, no parcel shall be reduced below the applicable minimum lot size.

**EXHIBIT "B" TO ORDINANCE 618
(LCDC Concurrence for Certain Zone Changes)**

1208.03 Review Criteria for Amendments To or Within Exclusive Farm Use and Agriculture/Forestry Zones.

A quasi-judicial zone change to (1) amend the designation of land from Exclusive Farm Use, Agriculture/Forestry, or Forest to another of these zones, or (2) change the minimum lot size of land designated Exclusive Farm Use or Agriculture/Forestry, may be authorized, pursuant to Subsection 1208.01, provided that the request satisfies all applicable requirements of this ordinance, and also provided that the applicant demonstrates compliance with the following criteria:

- A. The proposed amendment shall comply with the goals, policies, and other applicable provisions of the comprehensive plan.
- B. The proposed designation shall be appropriate for the existing or intended use of the property.
- C. The proposed amendment shall result in an area of at least 160 contiguous acres with the requested designation, including adjacent land.
- D. For proposed changes within or to an Exclusive Farm Use designation, the new minimum lot size shall be appropriate to maintain the existing commercial agricultural enterprise in the area.
- E. For proposed changes within or to an Agriculture/Forestry designation, the new minimum lot size shall be shown to assure:
 - 1. The opportunity for economically efficient forest and agriculture practices typically occurring in the area; and
 - 2. The opportunity for the continuous growing and harvesting of forest tree species; and
 - 3. The conservation of other forest values found on forest lands.
- F. Any amendment that would change the zone map designation to reduce the minimum lot size on property within an Exclusive Farm Use or Agriculture/Forestry district shall not be granted final approval by Yamhill County until the amendment has been considered and approved by the Land Conservation and Development Commission pursuant to ORS 215.780(2). The following rules shall apply:
 - 1. Conditional approval. Following receipt of an application for a zone change as otherwise provided by this ordinance, the county shall

determine whether to grant or deny the application in accordance with criteria established in this section 1208.03. If the application is granted, the county shall enter an order of conditional approval, subject to final approval by the Land Conservation and Development Commission.

2. Referral of Order of Conditional Approval. After conditional approval by Yamhill County, the application, county findings, order of conditional approval and a request for Commission action shall be referred to the Department of Land Conservation and Development.
3. Final Approval. An amendment conditionally approved by Yamhill County shall not take effect until the county adopts an order or ordinance authorizing final approval after receipt of written confirmation of the county's conditional approval by the Land Conservation and Development Commission.

**EXHIBIT "C" TO ORDINANCE 618
(Amendment of Revised Goals and Policies of Comprehensive Plan)**

FROM THE YAMHILL COUNTY COMPREHENSIVE PLAN GOALS AND POLICIES

SECTION II

THE LAND AND WATER

A. AGRICULTURAL LANDS

...

GOAL STATEMENT

1. To conserve Yamhill County's farmlands for the production of crops and livestock and to ensure that the conversion of farmland to urban use where necessary and appropriate occurs in an orderly and economical manner. (104) R

POLICIES

- a. Yamhill County will provide for the preservation of farmlands through appropriate zoning, recognizing comparative economic returns to agriculture and alternative uses, changing ownership patterns and management practices, changing market conditions for agricultural produce, and various public financial incentives. (105)
- b. Yamhill County shall provide for the protection of farmland in large blocks through minimum lot sizes of 20, 40, and 80 acres, as appropriate, on the Comprehensive Plan and official zoning maps. Any proposal to reduce the minimum lot size on a farm or farm/forest parcel shall be shown to be appropriate to maintain the existing commercial agricultural enterprise in the area. (Ord. 565)
- c. Yamhill County recognizes that certain areas of the county are characterized by such a mixture of farm and forest use that the agricultural lands and forest lands goals of this Plan are both applicable. Farm and forest resources within these areas shall be protected through mixed-use zoning that recognizes both types of use. Any proposal to change the zoning designation of a parcel from a farm or forest classification to a mixed-use zone shall include a demonstration that the use of the parcel is such a mixture that neither the farm nor forest land goals can be exclusively applied. (Ord. 565)

d. Yamhill County will provide for the conservation of farmlands through various plan implementation measures and the review of any public or private land use determinations subject to county jurisdiction, including urban development activity and the location and construction of highways and utility transmission lines which disturb the soil cover and natural drainage pattern, and increase storm runoff, erosion and sedimentation. (106)

e. Yamhill County will recognize and support watershed storage projects in the Yamhill River basin for their irrigation and flood control benefits. (106) R

f. Yamhill County will continue to support State special assessment incentives relative to farmlands which are subject to ORS statutes or other farm management programs in order to preserve such lands for farm use and production. (106) R

g. Yamhill County will not permit subdivision on lands designated by the county comprehensive plan as Exclusive Farm Use or Agriculture/Forestry Large Holding in order to preserve such lands for forest and farm uses and production. (Ord. 233, 565)

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.

i. In order to conserve energy in the production and delivery of food and other agricultural products, Yamhill County will encourage the creation of farmer's markets and will encourage the use of less petroleum-intensive farming methods while providing related technical assistance.

j. Yamhill County shall adopt provisions in the zoning ordinance that will be used as standards for review of requests to change the minimum lot size within the areas designated Exclusive Farm Use or Agriculture/Forestry Large Holding on the Comprehensive Plan map, or from a farm, forest, or agriculture/forestry designation to a different resource classification. (Ord 565)

k. Any Comprehensive Plan or zone map amendment that would reduce the minimum lot size on property within an Exclusive Farm Use or Agriculture/Forestry designation shall not be granted final approval by Yamhill County until the amendment has been considered and approved by the Land Conservation and Development Commission pursuant to ORS 215.780(2). The zoning ordinance shall provide a process for conditional approval by Yamhill County, concurrence by the Land Conservation and Development Commission and final approval by Yamhill County in applications subject to this subsection (Ord 618)