

BEFORE 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 to Agriculture/)
 Forestry Small Holding & a Zone Change from EF-80 Exclusive)
 Farm Use to AF-10 Agriculture/Forestry Small Holding,) Ordinance 814
 Tax Lot 3226-1700, Docket PAZ-02-07, Applicants)
 Bradford and Marina Brenner, and Declaring an Emergency)

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY, OREGON (the "Board") sat for the transaction of county business on September 5, 2007, Commissioners Mary P. Stern and Leslie Lewis being present, and Commissioner Kathy George being excused.

IT APPEARING TO THE BOARD that Bradford and Marina Brenner requested approval of a Comprehensive Plan amendment from Agriculture/Forestry Large Holding to Agriculture/Forestry Small Holding, and a zone change from EF-80 Exclusive Farm Use to AF-10 Agriculture/Forestry Small Holding.

IT APPEARING TO THE BOARD that the matter was heard at a duly noticed public hearing before the Planning Commission on June 7, 2005. A public hearing was held before the Board on August 1 and 15, 2007. After hearing testimony from the applicant (there being no opponents) the Board voted 2 to 0 to approve the application. NOW, THEREFORE,

IT IS HEREBY ORDAINED BY THE BOARD, that the application is approved as detailed in the Findings for Approval, attached as Exhibit "A" and by this reference incorporated herein. 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.

DONE this 5th day of September, 2007, at McMinnville, Oregon.

ATTEST: YAMHILL COUNTY BOARD OF COMMISSIONERS

JAN COLEMAN
County Clerk



excused

Chair KATHY GEORGE

By: *Anne Britt*
Deputy Anne Britt _____
Commissioner MARY P. STERN

APPROVED AS TO FORM _____
Leslie Lewis
Commissioner LESLIE LEWIS

Rick Sanai

Rick Sanai, Assistant County Counsel

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REQUEST: Approval of a Comprehensive Plan amendment from Agriculture/Forestry Large Holding to Agriculture/Forestry Small Holding; and a zone change from EF-80 Exclusive Farm Use to AF-10 Agriculture/Forestry Small Holding.

APPLICANT: The Benkendorf Associates, representing Bradford and Marina Brenner

TAX LOT: 3226-1700

LOCATION: 32005 NE Wilsonville Road, Newberg Oregon

CRITERIA: Sections 402, 501, 904, and 1208.02 of the Yamhill County Zoning Ordinance. Section 904, Limited Use Overlay may also be applied. Comprehensive Plan policies may be applicable. OAR 660-04, Exception Process. OAR 660-12-0060 Transportation Planning Rule.

FINDINGS:

A. Background Facts:

1. *Property size:* 23.61 acres
2. *Access:* Wilsonville Road.
3. *On-site Land Use:* Presently the property has one small animal shed and the 2005 Yamhill County aerial photo shows the parcel appears to be mostly forested.
4. *Surrounding Land Use:* Property to the north, southeast and east contains parcels of around 5 to 20 acres in size that are predominately forested with single family residences on some of the parcels. Property to the west, across Wilsonville Road, contains much larger lots that appear to be predominantly in farm use.
5. *Surrounding Zoning:* The surrounding zoning is a mixture of EF-20 and EF-80, Exclusive Farm, AF-20 and AF-10 Agriculture/Forestry. The AF-10 property is a rural residential zone for which an exception to Goals 3 (Agriculture goal) and 4 (Forestry goal) have already been taken.
6. *Water:* The new proposed dwellings will likely be served by on-site wells.
7. *Sewage Disposal:* New dwelling sites will be provided by on-site septic systems.
8. *Fire Protection:* Newberg Rural Fire District

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9. *Soils*: The applicant has submitted a soils report by Joel A. Norgren, Ph.D, dated August 11, 2006, (see Appendix A-1 and Exhibit 7 in the application) which details what the Yamhill County Soil Survey shows and what he found from his own soils analysis.
10. *Taxes*: 23.61 acres is on forest deferral.
11. *Plan Designation*: The existing property is zoned Exclusive Farm, EF-80. The Comprehensive Plan designation is Agriculture/Forestry Large Holding. This zone allows farming uses. The applicant is seeking an exception to Goal 3 (Agriculture goal). It appears that much of the evidence provided by the applicant would support consideration that this property is not resource land. If this is the ultimate conclusion, then the property would not need an exception.
12. *Fish and Wildlife*: The property is not identified as critical fish or wildlife habitat or big game winter range area.
13. *Previous Actions*: The subject parcel was created by a partition in 1980 (Docket P-1106-80) and was then further partitioned in 1986 (Docket P-19-86). The parcel was part of many lot-line adjustments between 2002 and 2004. In 2003, Bucks Corporation received approval to reestablish a previously approved (Docket FD-01-00) principal dwelling in conjunction with farm use (Docket FD-06-03). At this time Tax Lot 1700 was approximately 40 acres. The finding related to farm production from this staff report is as follows:

The application includes a copy of schedule F for 1997 and 1998 which shows a gross income of \$145,768 and \$94,808 respectively, from the Smith Family Partnership. The applicant also submitted a letter from William A. Leonard C.P.A., who reported that the corporation had income from nursery stock of conifers for 1997 and 1998 as 97,281 and \$94,000 respectively. Further, as part of this application William A. Leonard C.P.A., stated in his letter that the nursery operation produced income of \$113,463 in 1999, \$108,639 in 2000 and 117,697 in 2001. This is more than a \$40,000 requirement on non-high-value farm land.

The property was granted farm dwelling approval based on the above information. On May 2, 2005 a permit for installation of a septic system was applied for on behalf of Brad Brenner to vest the approval of the dwelling.

B. Resource vs. Nonresource Land

In *Friends of Yamhill County vs. Yamhill County*, LUBA No. 2004-089, the remand order stated:

Where a local government demonstrates that property is not agricultural or forest land; i.e., not resource land, it may plan and zone that property for nonfarm or nonforest use without taking an exception. Niemi v. Clatsop County, 6 Or LUBA

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147, 152 (1982). *That land is not resource land is generally not a reason to take an exception to resource goals; it is generally a reason that an exception is unnecessary. Therefore, if the county is correct in concluding that the subject property is not resource land, an exception would not be required.*

Goal 3 defines "Agricultural Land" - *in western Oregon is land of predominantly Class I, II, III, and IV soils. . . as identified in the Soil Capability Classification system of the United States Soil Conservation Service, and other lands which are suitable for farm use taking into consideration soil fertility, suitability for grazing, climatic conditions, existing and future availability of water for farm irrigation purposes, existing land use patterns, technological and energy inputs required, or accepted farming practices. Lands in other classes which are necessary to permit farm practices to be undertaken on adjacent or nearby lands, shall be included as agricultural land in any event.*

As submitted by the applicant in Appendix A-1, Joel A. Norgren, PhD, soil scientist did an investigation of soils on the subject properties. The report concluded that the majority of the property is composed of non-high value soils. From this report, the property does not satisfy this first test for resource land as the majority of the acreage does not contain Class I-IV soils.

The discussions related to why the property is not forest land as described by Goal 4 are found on pages 18 and 19 of the application. The applicant states that the property cannot support forestry use and goes on to recite the soils capability classes. The applicant supplied additional substantial evidence to this effect, including a letter dated August 8, 2007 from Wallace C. Beck Jr. of Advanced Vineyard Systems Inc. The applicant's entire application, including the August 2007 submittals, are hereby incorporated into these findings by this reference.

C. 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 staff feels may be pertinent are:

Policy I.B.1.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 0195 C. The property does have a significant slope but the area has no formal designation as a natural hazard due to steep slopes or geologic hazard. Since the resulting properties would average ten acres, and the land has soils that are generally good for septic systems, there does not appear to be any significant limitation for sub-surface sewage disposal.

Policy I.B.1.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 or services to the area. Water and sewer would need to be provided by on-site systems. Other services such as electricity, telephone, sheriff and fire protection already serve the existing residents in the area.

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.

The Board finds the zone change would not substantially impair or conflict with the use of farm or forest land.

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Policy II.A.1.a: Yamhill County will continue to preserve those areas for farm use which exhibit Class I through IV soils as identified in the Capability Classification System of the U.S. Soil Conservation Service.

Since the soils report shows the majority of the property is Class VI soils, approval of the request does not appear to conflict with this policy.

3. Criteria (B) and (D) are similar so they will be considered together. With 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 1208.02(B). Similar to that is 1208.02(D), which requires showing that those other parcels, already zoned for the proposed use, are either unavailable or not as well suited to the proposed use due to location, size or other factors.

The information submitted shows that 18 other lots zoned AF-10 are available for development. The applicant has submitted arguments that only lots of greater than 10-acres should be considered in the evaluation since they would be creating 10-acre parcels. This argument was also submitted on previous rezoning requests nearby the subject lot. The result of those zoning requests was the creation of two partitions that created two five and two 15-acre parcels. These parcel sizes are allowed in the AF-10 zone by parcel size averaging. The applicant was informed during the preapplication conference that since the AF-10 zone allows lots of 5-acres, and since the recent partitions that resulted from the consultant's rezoning to AF-10 were lots between 5 to 15 acres, the range of comparable properties should also be 5 to 15 acres. Therefore, 18 other lots within the study area are "available" for rural residential use. The Board finds this is not a sufficient number of lots to satisfy the need for this area.

Related to the question of market demand, the applicant did submit a market study, dated November 21, 2005, which stated there is a high demand for rural residential lots in this area.

4. Regarding criterion (C), the proposed change has been 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. In response to criterion the applicant showed: "The area in which the subject site is located is partially developed with large single-family residences on parcels of 5 - 20 acres." The applicant has shown, and the Board finds, that the change is appropriate considering the surrounding land uses.

Regarding the availability of utilities and services in the area, the lots in the surrounding area have on-site systems for sewer and water hook-ups. Other services such as electricity,

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telephone, sheriff and fire protection already serve the existing residents in the area. No urban extension of water or sewer service is being relied upon for this request.

5. Regarding criterion (E), the applicant supplied arguments for a “reasons” exception to Goals 3 and 4. However, as noted elsewhere, the Board finds this is nonresource land, so an exception is not necessary.

D. Goal Exception Provisions and Analysis

1. Oregon Administrative Rule (OAR) 660-04 contains the requirements for taking an exception to the goals. Pages 19-23 contains the exception criteria and responses.
2. OAR 660-04-020 contains four factors that must be addressed when taking an exception to a goal. They are:
 - (a) *Reasons justify why the state policy embodied in the applicable goals should not apply. The exception shall set forth the facts and assumptions used as the basis for determining that a state policy embodied in a goal should not apply to specific properties or situations including the amount of land for the use being planned and why the use requires a location on resource land;*
 - (b) *Areas which do not require a new exception cannot reasonably accommodate the use.*
 - (c) *The long-term environmental, economic, social and energy consequences resulting from the use at the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located in other areas requiring a Goal exception. The exception shall describe the characteristics of each alternative areas considered by the jurisdiction for which an exception might be taken, the typical advantages and disadvantages of using the area for a use not allowed by the Goal, and the typical positive and negative consequences resulting from the use at the proposed site with measures designed to reduce adverse impacts. A detailed evaluation of specific alternative sites is not required unless such sites are specifically described with facts to support the assertion that the sites have significantly fewer adverse impacts during the local exceptions proceeding. The exception shall include the reasons why the consequences of the use at the chosen site are not significantly more adverse than would typically result from the same proposal being located in areas requiring a goal exception other than the proposed site. Such reasons shall include but are not limited to, the facts used to determine which resource land is least productive; the ability to sustain resource uses near the proposed use; and the long-term economic impact on the general area caused by irreversible removal of the land from the resource base. Other possible impacts include the effects of the proposed use on the water table, on the costs of improving roads and on the costs to special service districts*

- (d) *The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts.*
3. Regarding factor OAR 660-04-020(a), the state policy embodied in the applicable goals is the protection of farm and forest land. The applicant's response to this factor is on pages 20 and 21 of the request. The response essentially describes how the applicant believes the site is not resource use. The Board agrees, and so finds.
 4. In factor OAR 660-04-020(b) it has been shown that the proposed use cannot reasonably be accommodated in areas that do not require an exception. The resulting development would be one single-family dwelling. The applicant submitted a study that identified a total of 18 undeveloped AF-10 properties. The Board finds the proposed use cannot reasonably be accommodated in areas that do not require an exception.
 5. Regarding factor OAR 660-04-020(c), an environmental, economic, social and energy (ESEE) analysis needs to be done regarding this request. The applicant stated, and the Board finds, that the economic, social and energy consequences resulting from the use at the proposed site are not expected to be more adverse than would typically result from the same proposed use being located in other areas requiring a Goal exception.
 6. Regarding factor OAR 660-04-020(d) the proposed use needs to be compatible with other adjacent uses or be so rendered through measures designed to reduce adverse impacts. The response to this is found on the bottom of page 23. The applicant discussed the development on surrounding land. As for the issue of compatibility, the applicant states the site is compatible because it would result in parcel sizes similar to the surrounding area. The Board finds that the proposed use will be compatible with resource use on neighboring land.
 7. OAR 660-004-0025 contains the rules for "Exception Requirements for Lands Physically Developed to Other Uses." In OAR 660-004-0025(2) it states in part that, "Uses allowed by the applicable goal(s) to which an exception is being taken shall not be used to justify a physically developed exception." The homes and accessory uses on-site and on the neighboring parcels were approved after the adoption of the statewide planning goals and can not be used to justify an exception.

E. 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), one additional home would not significantly affect the existing transportation facility. Therefore the proposed residential use is consistent with the identified function, capacity, and level of service of the local roads.

NONRESOURCE LAND DESIGNATION

The applicant has explained in the request why the property is not suitable for farm or forest use. The applicant explained how the properties soils prohibit farm uses and how past attempts at forestry use have failed. The applicant supplied substantial evidence to this effect, including a letter dated August 8, 2007 from Wallace C. Beck Jr. of Advanced Vineyard Systems Inc. The applicant's entire application, including the August 2007 submittals, are hereby incorporated into these findings by this reference. Based on substantial evidence on the record as a whole, the Board finds this property is nonresource land.

CONCLUSIONS:

1. The Board finds there been adequate justification that there is an existing, demonstrable need for the uses allowed by the requested zone considering the availability and location of other lands so zoned and their suitability for the uses allowed by the zone.
2. The Board finds the applicant has demonstrated that the requested use is or can be made compatible with nearby uses as required by YCZO 1208.02(C), the Yamhill County Goals and Policies and OAR 660-04-020(d).
3. The Board finds there has been adequate justification, as required by YCZO 1208.02(D), 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.

4. The Board finds the property is nonresource land. As nonresource land the Board finds that it is appropriate to require permanent loss of farm and forest deferral.

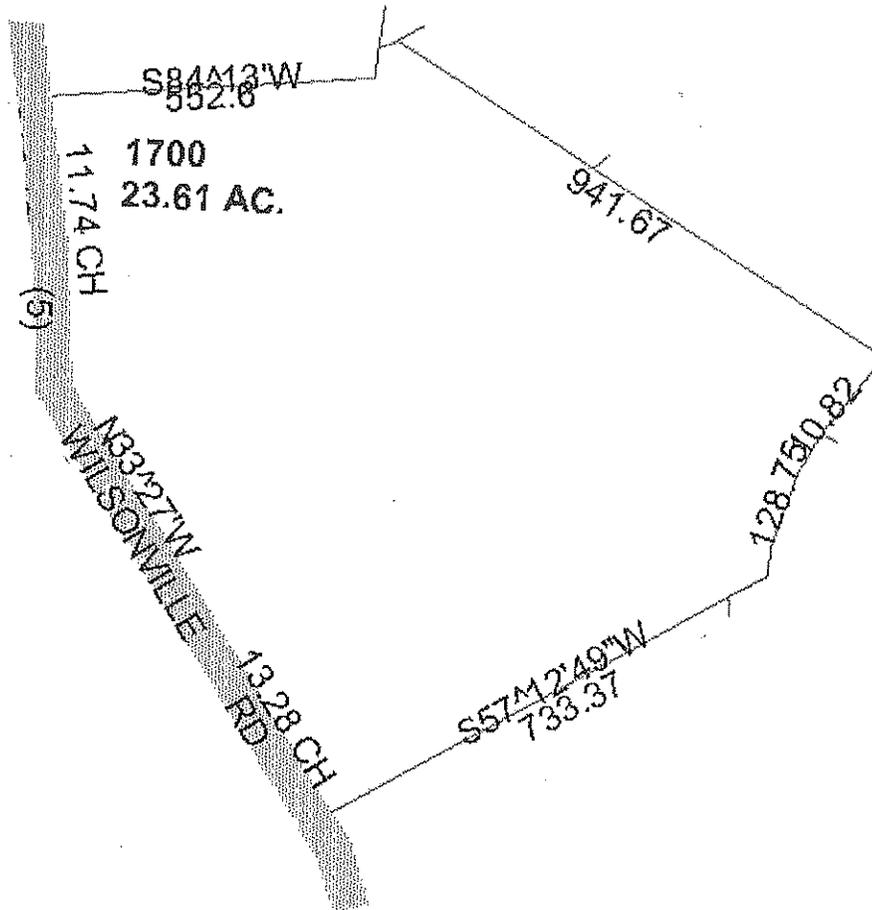
DECISION:

The request for a Comprehensive Plan amendment from Agriculture/Forestry Large Holding to Agriculture/Forestry Small Holding, and a zone change to AF-10 Agriculture/Forestry Small Holding is hereby approved, with this condition: the subject parcel, or resulting lots, are to be disqualified from special assessment and shall not be placed on farm or forest tax deferral in the future.

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EXHIBIT MAP FOR ORDINANCE NO. 814
PLAN AMENDMENT AND ZONE CHANGE
ADOPTED BY THE YAMHILL COUNTY BOARD OF COMMISSIONERS
September 5, 2007

FOR A COMPREHENSIVE PLAN AMENDMENT FROM
AGRICULTURE/FORESTRY LARGE HOLDING TO AGRICULTURE/FORESTRY
SMALL HOLDING AND
TO CHANGE OFFICIAL ZONING MAP FROM
EF-80 EXCLUSIVE FARM USE
TO
AF-10 AGRICULTURE/FORESTRY SMALL HOLDING



CHANGE APPLIES TO TAX LOTS 3226-1700 DESCRIBED ABOVE

APPROXIMATE SCALE - 1 INCH = 300 FEET

Exhibit "B"
Ordinance 814
B.O.07-843