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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 Affirming the Planning)
 Commission's Approval of a Application for a)
 Zone Change from AF-10 Agriculture Forestry) ORDINANCE 710
 Small Holding to Very Low Density Residential)
 VLDR 2.5 for a 13.51 acre parcel, applicants)
 Albert and Ella Kroenig, Tax Lot 5429-1200,)
 Docket Z-01-01, and Declaring an Emergency)

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY, OREGON (the Board) sat for the transaction of county business in formal session on April 18, 2002, Commissioners Robert Johnstone, Thomas E. E. Bunn, and Leslie Lewis being present.

THE BOARD MAKES THE FOLLOWING FINDINGS:

A. The applicants, Albert and Ella Kroenig,, applied for a zone change from AF-10 Agriculture Forestry Small Holding to Very Low Density Residential VLDR 2.5 for a 13.51 acre parcel, tax lot 5429-1200, located at addresses 9155, 9461 and 9600 Laughter Lane, Amity, Oregon.

B. A duly noticed public hearing was held by the Yamhill County Planning Commission on March 7, 2002. The applicants appeared with attorney Michael G. Gunn of Newberg. No opponents appeared, and no letters in opposition were entered into the record. The Commission duly deliberated and voted 7-2 to approve the application for the reasons set forth in Exhibit "A", attached and hereby incorporated by reference. NOW, THEREFORE:

IT IS HEREBY ORDERED BY THE BOARD that the Planning Commission's approval of application Z-01-01 is affirmed for the reasons stated in the Findings for Approval and attached and incorporated into this Board Order as Exhibit "A"; and, this action being necessary for the health, safety, and welfare of the people of Yamhill County, this ordinance takes effect immediately.

DONE at McMinnville, Oregon this 18th day of April, 2002.



By: *[Signature]*
 Deputy, KEPTIN B. FETTERS

YAMHILL COUNTY BOARD OF COMMISSIONERS

[Signature]
 Chairman ROBERT JOHNSTONE

[Signature]
 Commissioner THOMAS E.E. BUNN

FORM APPROVED BY:
[Signature]
RICK SANAI
Assistant County Counsel

[Signature]
 Commissioner LESLIE LEWIS

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Bo #02-224
Ordinance 710-

FINDINGS FOR APPROVAL REGARDING ZONE CHANGE Z-01-01

A. Background Facts

1. *Lot size:* A combined total of approximately 13.51 acres
2. *Access:* The property has one access point, Laughter Lane, a private driveway off of OR State Hwy 99W.
3. *On-site Land Use:* The eastern portion of the property is fairly level and has about seven (7) acres in a grass field. The property contains three (3) existing residences, two (2) barns, and several other outbuildings. One dwelling is located near the eastern property line, and the other two (2) houses are located near the western property line. The grass field is located between the dwellings.
4. *Surrounding Zoning and Land Use:* Land to the south and west is zoned EF-80 ("Exclusive Farm Use"). Properties to the east, across State Hwy 99W, are zoned VLDR 2 1/2 ("Very Low Density Residential"). The property to the north contains two (2) different zones. The western half of the northern property is zoned AF 10 ("Agriculture/Forestry Small Holding"), and the eastern half is zoned VLDR 2 1/2 ("Very Low Density Residential"). This VLDR zone was modified in 1998 at the request of Selleck, the property owner. Subsequent to approval of the said zone change, Selleck has partitioned the property several times. The Amity city limits come as close as 750' to the north of the subject property and 300' to the east of the subject property.
5. *Water:* On-site wells appear to be the only option.
6. *Sewage Disposal:* Septic systems are the only option in this area.
7. *Soils:* Sheet 50 of the Yamhill County Soil Survey indicates the majority of the property consists of Woodburn (WuB) soils which are located on the eastern end of the parcel. This soil is rated as Class II for agricultural purposes. The remaining 1/3 of the parcel consists of a mixture of Cove (Cs and Cn), Woodburn (WuB), and Terrace Escarpments (Te) with an agricultural rating of Class III, IV, and V.
8. *Previous Actions:* Docker SE-19-78, a special exception, was granted to allow creation of a 1.64 acre parcel around an existing residence. Docket P-899-78 approved the separation of the 1.64 acres. A map showing the separation was prepared, but it is not clear if it was ever recorded.
9. *Flood Plain:* FIRM map 410249 0477 C shows that a few acres of the southwestern corner of the property is in the 100-year flood hazard area.
10. *Taxes:* Three (3) acres is taxed at market value; 10.74

acres is taxed at farm deferral.

11. *Exception:* The property was found to be a committed exception in Code Area 5.16, adopted by Exception's Statement II, April 23, 1980 and was plan designated VLDR Very Low Density Residential.

12. *Request:* The request is to allow the property to be rezoned to VLDR 2 1/2. If approved, the new zoning would allow the three (3) existing dwellings to be divided off and the creation of two (2) additional home-sites.

. Zone Change Provisions and Analysis

1. Approval of a request for a zone change must be based on compliance with the standards and criteria in YCZO 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 (OAR's) for exceptions, if applicable.*

2. Regarding criterion (A) above,

A. A zone change to VLDR 2 1/2 is consistent with the Comprehensive Plan designation of Very Low Density Residential (VLDR). The County has previously concluded that a property plan designated VLDR complies with the Comprehensive Plan Goals and Policies for rural residential use.

1). The applicants have satisfied Comprehensive Plan Goal I.B.2 which states:

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 ...

a. The subject property complies with the aforesaid goal, because it is part of an exception area 5.16 zoned for residential use. The County has previously concluded that a property plan designated VLDR complies with the Comprehensive Plan Goals. Furthermore, the subject property satisfies Goal I.B.2 in that it is part of the exception. Rural residential development is located to the north of this property. While the city limits do exist to the north and east of the subject property, they follow Ash Stale and Salt Creek, which provide a significant physical boundary to an extension of the City limits; thus, it is not amenable to integrated neighborhood designs. The subject property is adjacent to an area to the north which is committed to rural residential development. If approved, the zoned change and the resulting magnitude of development would only result in two (2) additional home sites. These two (2) home sites, together with the existing residents in the area, would not require more than a very basic level of services such as single local access roads and individual septic/water systems. Therefore, this is the very kind of property that was anticipated for rural residential development.

The referral from the City of Amity noted that the city will not provide water or sewer to the property. Policy I.B.1.d states:

No proposed rural 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 ...

The property already contains three (3) residences which are served by on-site systems. Approval of the request could result in two (2) additional home-sites which would be expected to install individual water and septic systems. Approval of the request should not result in the extension of water or sewer service.

2). Since the subject property is zoned Agriculture/Forestry Small Holding 10, it has already had an exception taken to Statewide Planning Goal 3, and thus an exception to Goal 3 is not required for approval.

3. Regarding criteria (B) and (D) above, criteria (B) requires showing there is a need for the uses permitted by the zone considering various factors. Criteria (D) requires showing that other lands in the county already designated for the proposed use are either unavailable or not as well-suited for the anticipated

uses due to location, size, or other factors. Since these are closely related criteria, they will be addressed together.

A. The applicant has surveyed all VLDR 2 1/2 zoned properties within a 2 mile radius of the subject property which is an area approximately 13 sq. miles in size which is an extremely large area with the results of the survey showing there are a total of 16 VLDR 2 1/2 zoned parcels, with 11 of them currently containing improvements, and 5 parcels with no improvements (it should be noted that Selleck just obtained partition approval associated with 2 additional parcels on tax lot 4201). The applicant has shown that and the Board concludes, that "other lands in the County" do not require the applicant to survey every available parcel in the County as persons who desire property in the Amity area would not look to other lands in the County, which is the reason of the survey the applicant conducted. Also, two (2) lots in Selleck's subdivision have just obtained building permits. Additionally, Selleck has applied to have the last remaining acreage divided into three (3) parcels, thereby creating two (2) more vacant rural residential lots. With the building and land divisions, the total number of vacant lots will be increased to six (6). It is evident from this study, together with the testimony of Marc Willcuts, a realtor with Coldwell Banker, that there are few residential lots available for development in the immediate area of Amity. Accordingly, approximately 31% of the total number of parcels are not available.

B. The applicant also provided information from Selleck's zone change request that sets forth that in 1981 only 50% of the VLDR 2 1/2 zoned properties were developed; however, in 1986, 75% of the parcels were developed, which remained constant until 1997 when the remaining parcels were developed; now, 69% of the parcels are developed. The reason for the undeveloped parcels is primarily because of Selleck's zone change approval in 1998 and subsequent partitions. The applicant further submits that the Portland State University census states that the population of Yamhill County has increased in excess of 25% over the last ten (10) years. While the population has increased, as well as the demand for VLDR 2 1/2 zoned properties having increased, the supply has not increased accordingly. The applicants submit, which is supported by the testimony of Marc Willcuts, that five (5) available parcels are simply not enough parcels considering the importance of such uses to the citizenry or the economy of the area. The market demand is fairly high, which further buttresses the finding that five (5) available parcels is an insufficient number of available parcels.

4. Regarding criteria (C) set forth above, the subject property contains three (3) dwellings on the 13.5 acres. This development pattern is similar to that north and east of the subject parcel. This development would fit in nicely with the density and pattern of development in the area to the north and east. Regarding utilities and services, the existing dwellings and other rural residential uses in the surrounding area are

served by septic and well. All of them also have readily available services such as fire and police protection, schools, telephone, and electric service to the site.

5. Regarding criterion (E) above,

A. The subject property is part of an exception area 5.16 that was excepted on April 23, 1980 as part of Yamhill County Ordinance #234; therefore, the subject property is not subject to Goal 3 or Goal 4 as an exception has already been taken.

B. Doug White of DLCD has written in a letter clarifying that it is DLCD's interpretation that for a reasons exception there is a need to address OAR 660-14-0040. DLCD does believe that an exception to Goal 14 needs to be taken; however, DLCD does not believe that OAR 660-14-0040 does not need to be addressed. However, in the past, the County has found that an acknowledged exception area (coupled with a plan designation of rural residential) is not required to have an additional exception taken under OAR 660-04-018 (2) and (3). In Ordinance 645, the Board of Commissioners found the following:

However, as explained below, the Board is not persuaded that DLCD's interpretation is a correct application of the rule because the rule itself states that it only applies to exceptions adopted after the effective date of the rule, which was March 20, 1986; whereas, the exception by the County was a "physically developed" and "irrevocably committed" exception taken in 1980, before the effective date of the rule. Therefore, no new justification is required to change the zoning designation of property which was the subject of a previous developed and committed exception taken by the County before 1986. There have been several modifications to OAR 660-004-0018; one of the modifications occurred on July 28, 1998 and eliminated OAR 660-004-0018 (4) which had stated:

Applicability of OAR 660-04-0018. This rule only applies to a plan and zoning designation and exceptions adopted by local government following the effective date of this rule (which was March 20, 1986).

Therefore, there is an argument that an exception to Goal 14 needs to be addressed. OAR 660-004-0025 states:

Exception Requirements for Land Physically Developed to Other Uses

1) A local government may adopt an exception to a goal when the land subject to the exception is physically developed to the extent that it is no longer available for uses allowed by the applicable goal.

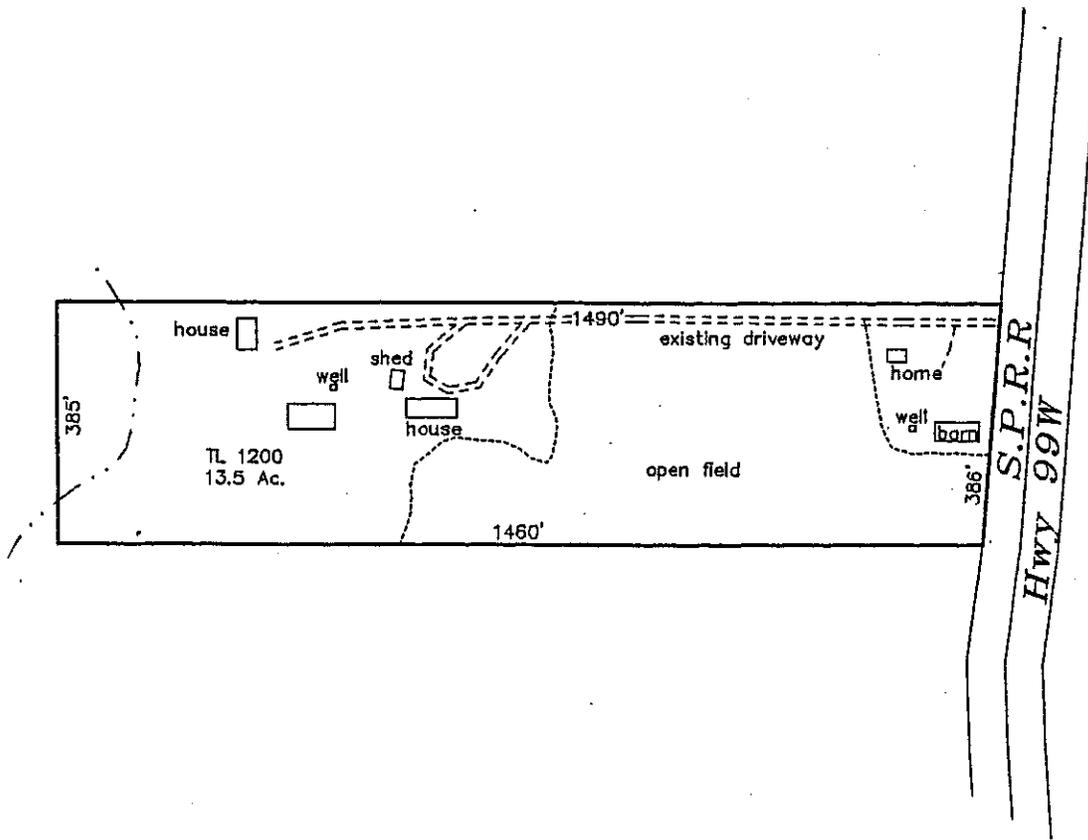
2) Whether land has been physically developed with uses not allowed by an applicable goal, will depend on the situation at the site of the exception. The exact nature and

extent of the areas found to be physically developed shall be clearly set forth in the justification for the exception. The specific area (s) must be shown on a map or otherwise described and keyed to the appropriate findings of fact. The findings of fact shall identify the extent and location of the existing physical development on the land and can include information on structures, roads, sewer, and water facilities, and utility facilities. 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 applicant has provided a description regarding the built and committed exception and a map showing the type of development that exists on the property. There is also an air photo, as the map and air photo are very useful pieces of information. The dwellings are located near the east and west property lines. The open field between the residences is the only area devoted to farm use, and the applicant submitted testimony which states that there are only a few acres of the subject property which are presently in grass use which means that the subject property is no longer functionally available allowed by the applicable goal. Thus, the applicant has satisfied the built and developed exception to Goal 14.

/kroefind

EXHIBIT MAP FOR ORDINANCE NO. 710
ZONE CHANGE
ADOPTED BY THE YAMHILL COUNTY BOARD OF COMMISSIONERS
APRIL 18, 2002
TO CHANGE OFFICIAL ZONING MAP FROM
AF-10 AGRICULTURE/FORESTRY SMALL HOLDING
TO
VLDR 2.5 VERY LOW DENSITY RESIDENTIAL



CHANGE APPLIES TO TAX LOT 5429-1200 DESCRIBED ABOVE

APPROXIMATE SCALE - 1 INCH = 200 FEET

PLANNING DOCKET Z-01-01