

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 Amending the)
 Comprehensive Plan Map from AF-10 (Agriculture)
 Forestry Small Holding) to PAI (Public Assembly) **ORDINANCE 697**
 Institutional on Tax Lot 3219-2200; Applicant)
 Leonard Attrell; Planning Docket PAZ-08-00;)
 and Declaring an Emergency.)

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY, OREGON (the Board) stat for the transaction of county business on March 8, 2001, Commissioners Robert Johnstone, Thomas E. E. Bunn and Leslie Lewis being present.

WHEREAS, Leonard Attrell (the "applicant") submitted an application to the Department of Planning and Development, Planning Docket PAZ-08-00, requesting a change to the Comprehensive Plan Map from AF-10 (Agriculture/Forestry Small Holding) to PAZ-08-00 for Tax Lot 3219-2200, an approximately 4.6 acre parcel west of the City of Newberg abutting on the west side Valley View Memorial Park; and

WHEREAS, on February 1, 2001, the Yamhill County Planning Commission held a duly noticed public hearing to consider the application and thereafter approved the application; and

WHEREAS, the Board held a duly noticed public hearing on February 22 , 2001 at the Yamhill County Courthouse, hearing testimony from the applicant and his attorney, Michael Gunn, there being no opponents present; and

WHEREAS, on February 5, 2001, after closing the hearing and deliberating, the Board voted to approve the request 3-0 on three of the items and 2-1 on one of the items, Commissioner Thomas Bunn voting no, as described in the Findings; and

WHEREAS, the findings and conclusions attached hereto as Exhibit "A" provide justification for approval of the amendment to the Comprehensive Plan Map of Yamhill County as specified in map Exhibit "B"; Now therefore,

THE YAMHILL COUNTY BOARD OF COMMISSIONERS ORDAINS AS FOLLOWS:

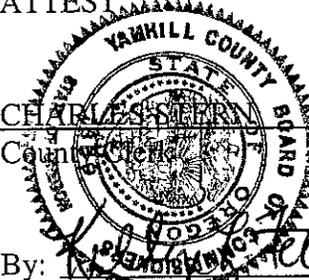
The application of Leonard Attrell, Planning Docket PAZ-08-00, requesting a change to the Comprehensive Plan Map from AF-10 (Agriculture/Forestry Small

Holding) to PAZ-08-00 for Tax Lot 3219-2200, an approximately 4.6 acre parcel west of the City of Newberg, is hereby approved for the reasons and in the manner set forth in Exhibit "A", the Findings for Approval, herein incorporated by reference; and 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 at McMinnville, Oregon, this 8 day of March, 2001.

ATTEST

YAMHILL COUNTY BOARD OF COMMISSIONERS


The seal of Yamhill County, Oregon, is circular with a double border. The outer border contains the text "YAMHILL COUNTY BOARD OF COMMISSIONERS" at the top and "YAMHILL COUNTY OREGON" at the bottom. The inner border contains "STATE OF OREGON" at the top and "1859" at the bottom. In the center is a smaller seal with the text "YAMHILL COUNTY OREGON" and "1859".
By: *Kellye Fetters*
Deputy Kellye Fetters

Robert Johnstone
Chairman ROBERT JOHNSTONE

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

FORM APPROVED BY:

Rick Sanai
RICK SANAI
Assistant County Counsel

Leslie Lewis
Commissioner LESLIE LEWIS

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Exhibit "A"
Findings for Approval

HEARING DATE: February 1, 2001

DOCKET NO.: PAZ-08-00

REQUEST: Approval of a Comprehensive Plan map amendment from *Very Low Density Residential* to *Public Facilities*; a zone change from AF-10 Agriculture/Forestry Small Holding to "PAI" Public Assembly Institutional; and Site Design Review and Similar Use to allow a pet cemetery.

APPLICANT: Leonard Attrell, represented by attorney Michael Gunn

PROPERTY OWNER: SCC, Inc., *d.b.a.* Valley View Memorial Park

TAX LOT: 3219-2200

LOCATION: Approximately 1/3 of a mile west of City of Newberg, north of Dayton Avenue and abutting on the west side to Valley View Memorial Park.

CRITERIA: Sections 802, 1101, 1206 and 1208 of the Yamhill County Zoning Ordinance. Comprehensive Plan policies may be applicable.

FINDINGS:

A. Background Facts:

1. *Property size:* 4.6 acres.
2. *Access:* Dayton Avenue outside City of Newberg
3. *On-site Land Use:* The property is on the southwest side of a small hill and on top of which is the existing cemetery. The parcel is rectangular. Presently, no specific uses are on the parcel. Although the property is between Highway 99W and Dayton Avenue, it has access to Dayton Avenue.
4. *Surrounding Zoning and Land Use:* The property in the immediate vicinity to the east is Valley View Memorial Park Cemetery, which is zoned "PAI" Public Assembly Institutional. The parcels, immediately to the west, south and north, are zoned VLDR 2.5 Very Low Density Residential. Farther out, the surrounding county property is zoned for residential use, including VLDR-2.5, AF-10 and city residential zoning. The property to the southwest of the subject parcel has a nut processing facility.

5. *Water:* Water will be provided from an existing well on the Valley View Memorial Park property to the east.
6. *Sewage Disposal:* On-site septic system will be only option. The applicant indicated that he is not planning to install restrooms on the subject parcel. He also stated that the existing restrooms on the Valley View Memorial Park property will also serve this use.
7. *Fire Protection:* Newberg Rural Fire District
8. *Soils:* Sheet 22 of the Yamhill County Soil Survey shows that the parcel is composed entirely of Woodburn soils (WuC and WuB), with an agricultural capability of Class II and III.
9. *Taxes:* The parcel has a cemetery tax exemption status.
10. *Previous Actions:* No previous action is on file.
11. *Description of Proposal:* The applicant needs to expand the existing cemetery onto the subject parcel and also provide a burial site for pets. The applicant owns and operates the Valley View Memorial Park on the parcel abutting the subject property to the east. The cemetery was established approximately 90 years ago,
12. *Exception area:* The subject property was part of the code area 1.8, adopted on April 23, 1980. It was adopted as a part of Exceptions Statement II. The property was part of an area identified as land "committed" to rural residential use.

B. Zone Change and Plan Amendment Provisions and Analysis

1. The Plan Amendment portion of the request is not subject to local review criteria, but is subject to ORS and OAR criteria.
2. The zone change portion of the request must comply 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, since an exception to Statewide Planning Goals 3 and 4 has already been taken for the subject parcel, Comprehensive Plan goals and policies related to agricultural and forest lands are not applicable. The application addresses most Plan goals and policies, which the Planning Commission and Board may review. Plan goals and policies, which staff feels, may be pertinent are:

Oregon Statewide Planning Goals and Guideline - Goal 9 - Economics, which states "To provide adequate opportunities throughout the State for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens . . . Comprehensive plans and policies will contribute to a stable and healthy economy in all regions of the State."

The applicant states that this application, if approved, will allow for an additional economic activity associated with the expansion of an existing cemetery. Additionally, he states that the establishment of a pet cemetery will enhance the economic base of the community.

Oregon Statewide Planning Goals and Guideline - Goal 10 - Housing, which states "To provide for the housing needs of citizens."

This plan and zone change will have no effect upon surrounding residential area. The AF-10 zone would allow the subject parcel one dwelling. The zone change would also allow one home as a dwelling with a permitted use for a caretaker of the cemetery.

Yamhill County Revised Goals and Policies, G.IV.A.1. To develop a timely, orderly and efficient arrangement of public services and facilities to serve as a framework for urban and rural development, including public lands and buildings, parks and recreation areas and facilities, schools, police and fire protection, domestic water supply, sanitary and storm sewerage and other drainage facilities, and power, gas and telephone services.

(166)

The proposed plan and a zone change will have no adverse effect upon public services as existing facilities are on the site and are adequate. If anything, the applicant is providing a public service by providing a place of interment for deceased persons and is proposing to expand his service to inter deceased pets as well.

3. Regarding criteria 1208.02 (B) and (D), the applicant performed a survey of all properties within a 2-mile radius, covering approximately 20 sq. miles, from the subject property. The applicant determined that there are seven existing "PAI" zoned properties within the surveyed area. Of those seven properties,
- ▶ Two properties contain a church, and thus are not available properties.
 - ▶ One property contains approximately nine acres, which is owned by Chehalem Park and Recreation District. The district is planning to develop the parcel as a park, and thus this is not an available property.
 - ▶ Three properties are existing cemeteries (Dundee and Noble Burial) and, therefore, are not available properties.
 - ▶ One property contains approximately 4.28 acres and is owned by North Valley Friends Church. It is contiguous to an existing church located on N. College St. (at the base of Chehalem Mountain) and is not available. The church plans to use the property for future expansion.

Thus, the applicant has shown that there are no other available "PAI" zoned properties that would be suitable for his needs. Although not required to do so, the applicant also surveyed all available properties within the City of Newberg and the City of Dundee, to determine if there are any available properties in those jurisdictions.

- ▶ The City of Newberg does not have any properties that are zoned for use as a cemetery. Any proposed use would have to be processed as a conditional use application. For that reason, the applicant states there are no available properties that are suitable within the City of Newberg for the proposed use.
- ▶ The City of Dundee has a public zone "P" Public, which allows cemeteries as a conditional use. The applicant has determined that, currently no available properties are zoned "P" for public use, which would be of similar size, in the City of Dundee. The absence of properties coupled with the fact that the City of Dundee allows cemeteries only as a conditional use, indicates that there are no suitable properties available in the City of Dundee.

The intent of this application is to expand the existing cemetery, which has been at the present location for more than 90 years. Trying to open a new cemetery away from his established location would be impractical for the applicant

4. Regarding criterion 1208.02(C), the applicant indicated that the proposed use would not affect the neighboring properties in the area. He indicated that approval of the zone change and comprehensive plan amendment will improve the character of the neighborhood. The applicant will be constructing certain improvements (grave sites, landscaping, etc.) on the subject property, and will be maintaining the subject property pursuant to the same high character maintenance standards as the existing cemetery property. Despite the fact, that the use has been at the same location more than 90 years, the residential growth of the area has not stopped. There has been a rapid growth in the Newberg/Dundee area during the past 10 years. This shows a need for the proposed use and justifies the expansion of the existing cemetery into the subject property. Furthermore, the increased growth has also led to many requests for the creation of a pet cemetery. There are no "pet cemeteries" located in Yamhill County at this time.

The public services, necessary for the future cemetery, are similar to those needed for the existing use. The services, necessary for the use, are already available. The applicant will obtain water from a well on the existing cemetery property immediately to the east. Septic services are also available on the existing cemetery property as the subject property will not need septic service. The proposed zone change should have no adverse effect upon public services.

5. Exception requirements, criterion 1208.02 (E), are addressed in section C of this report.

C. Goal Exception Provisions and Analysis

Oregon Administrative Rule (OAR) 660-04 contains requirements for taking goal exceptions. This area was approved for a "committed" exception in 1980, based on the number of small subdivision lots and existing rural residential development pattern. The area was zoned VLDR-2.5 and AF-10 allowing for rural residential development. The Board of Commissioners has previously found that a new exception is not required because a "committed exception" to Goals 3 and 4, adopted prior to 1986, did not limit the future use of the exception area. This is because the "committed exception" was taken before the effective date of the rule (3/20/86). Therefore, no additional goal exception is required.

D. Site Design Review Criteria and Analysis

1. Site design review is required for any development in a "PAI" district. Section 1102.02 of the YCZO governs site design review. Review of a site development plan shall be based upon consideration of the following:

- (1) *Characteristics of adjoining and surrounding uses;*
- (2) *Economic factors relating to the proposed use;*

- (3) *Traffic safety, internal circulation and parking;*
 - (4) *Provisions for adequate noise and/or visual buffering from non-compatible uses;*
 - (5) *Retention of existing natural features on site;*
 - (6) *Problems that may arise due to development within potential hazard areas.*
 - (7) *Comments and/or recommendations of adjacent and vicinity property owners whose interests may be affected by the proposed use.*
2. Regarding criterion (1), a cemetery is inherently a park-like setting, which will not require on-site screening from neighboring uses.
 3. Regarding criterion (2), the proposal is for expansion of an existing use and it is implied that the applicant has economic means to proceed with the expansion. No other economic factors, related to the site design, were identified.
 4. Regarding criterion (3), the existing cemetery has adequate room for parking and internal circulation. The property has an existing access onto Dayton Avenue. The applicant plans to maintain the existing access as it is and does not anticipate any changes to the design of the access. The Yamhill County Public Works has not yet responded to the referral.
 5. Regarding criterion (4), same argument can be made as in D.2 above. The cemetery is inherently a park-like setting, a place for meditation and quiet repose, which would not require installation of any sound barriers from neighboring uses.
 6. Regarding consideration (5), any natural features, such as trees, will be maintained in their original state.
 7. Regarding consideration (6), the applicant identified no hazard area and none are on the record.
 8. Regarding criterion (7) above, no comments have been received from surrounding property owners. One would expect that if there are any concerns, those would be presented during the public hearing.

E. Similar Use Provisions and Analysis

The purpose of Section 1206 of the YCZO is to provide for those uses not specifically listed in a particular zoning district but are similar in character, scale and performance to the permitted uses specified in zoning districts in which a similar use may be authorized.

A "cemetery" is a permitted use in a "PAI" zone. However, the definition of "cemetery" pursuant to Oregon Health Services (OHS) is that of "human remains," which means that a pet cemetery is not a permitted use in a "PAI" zone.

The applicant states that a pet cemetery is a similar use to a "cemetery" pursuant to YCZO 801.04. He states that a pet cemetery is similar in **character, scale, and performance** to the permitted use of a cemetery. The only difference is that pet remains will be buried in a pet cemetery versus human remains in a standard cemetery.

- ▶ Pursuant to YCZO 1206.02 A, the applicant indicates that the proposed use of a pet cemetery is consistent with the purpose and scope of the "PAI" zone requirement.
- ▶ Pursuant to YCZO 1206.02 B, the applicant indicates that the proposed use conforms with the applicable standards and limitations of the underlying zoning of "PAI," as shown above.
- ▶ Furthermore, the applicant indicates that he does not believe there are any existing pet cemeteries in Yamhill County. He also states that, based on requests from potential clients for a pet cemetery, the creation of a pet cemetery is justified.

F. Limited Use Overlay Provisions

1. OAR 660-04-18(3)(a) states that when a "reasons" exception is taken, plan and zone designations must limit uses to only those that are justified in the exception.

The City of Newberg has requested that approval would include a limited use overlay. Since there is no requirement for an exception to be taken, the county does not have the legal authority to impose a limited use overlay on an approval of this application. Furthermore, county planning staff does not believe that the applicant intends to use the parcel for any other uses except for what is being proposed in the application.

CONCLUSIONS:

1. The request for a Comprehensive Plan amendment from Very Low Density Residential (VLDR) to Public Facilities and a zone change from "AF-10" Agriculture Forestry Small Holding to "PAI" Public Assembly Institutional is approved.
2. The "pet cemetery" complies with Section 1206 of the *Yamhill County Zoning Ordinance* in that the use is similar in character, scale and performance to other uses allowed in the "PAI" Public Assembly Institutional zone (note: this particular finding is adopted by a vote of 2-1, with Commissioner Thomas E.E. Bunn dissenting).
3. The proposed zone change is consistent with Comprehensive Plan goals and policies, and the request satisfies Section 1208.02 of the *Yamhill County Zoning Ordinance*. This

proposal is for an expansion of an existing use on an adjacent parcel and there are no other lands in the immediate vicinity that would allow siting of a cemetery. With appropriate landscaping, the use can be made compatible with surrounding uses.

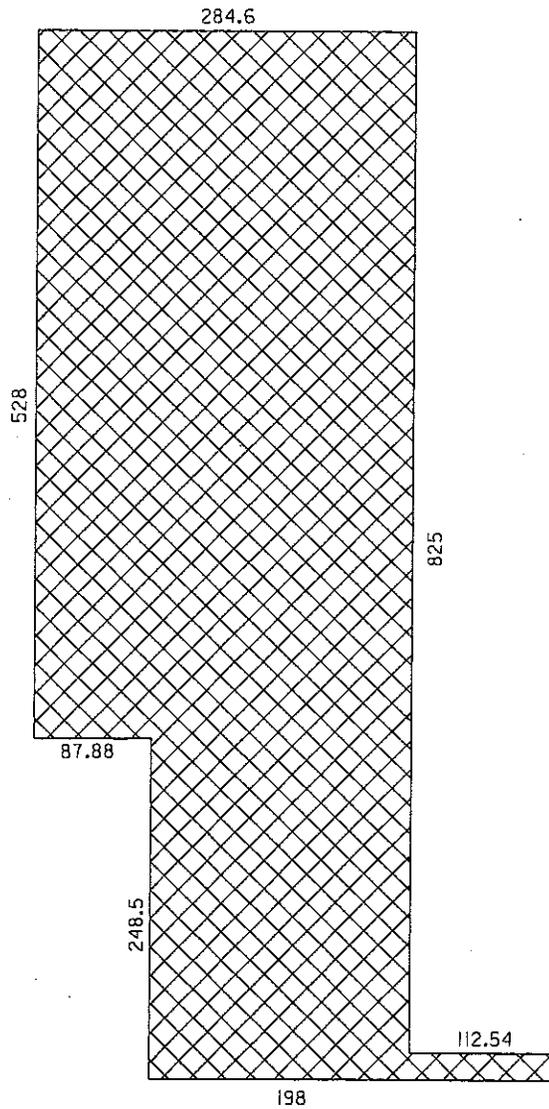
4. The request satisfies the criteria of Section 1101 of the *Yamhill County Zoning Ordinance* for a Site Design Review. This approval be subject to a condition stating that the applicant shall submit to the planning department a site design review map showing all items listed in Section 1101.04 (A, B, and C) of the *Yamhill County Zoning Ordinance*.

EXHIBIT "B" FOR ORDINANCE No. 697

COMPREHENSIVE PLAN AMENDMENT FROM
VERY LOW DENSITY RESIDENTIAL (VLDR)
TO PUBLIC FACILITIES

ZONING MAP AMENDMENT FROM
AF-10 AGRICULTURE/FORESTRY SMALL HOLDING TO
PAI (PUBLIC ASSEMBLY INSTITUTIONAL)

TAX LOT 3219-2200
4.6 AC.



Prepared by Yamhill County Department of Planning and Development



AREA SUBJECT TO AMENDMENT

ORDINANCE No. 976
EXHIBIT "B"