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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 Approving a Zone )  
Change for that Portion of Property )  
North of the West Fork of Palmer Creek )  
from EF-80 Exclusive Farm Use )  
to VLDR - 2½ Very Low Density )  
Residential, a 4 Lot Subdivision on )  
Approximately Ten Acres on Tax Lot )  
4320-400 and 4320-500; PAZ-05-97; )  
Applicants Brian and Nancy Hayward; )  
and Declaring an Emergency )

ORDINANCE 681

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY, OREGON (the Board) sat for the transaction of county business on March 30, 2000, Commissioners Ted Lopuszynski, Thomas E.E. Bunn, and Robert Johnstone being present.

THE BOARD MAKES THE FOLLOWING FINDINGS:

- A. On August 13<sup>th</sup>, 1997, the applicants Brian and Nancy Hayward filed a land use application with the Planning Department for a Comprehensive Plan amendment and zone change.
- B. On March 9, 1999, the applicants added to their land use application a request for a subdivision and lot line adjustment.
- C. On November 4<sup>th</sup>, 1999 the Yamhill County Planning Commission held a duly noticed public hearing, received evidence and testimony, and voted to leave the record open until November 26<sup>th</sup> and reconvene to deliberate on December 2<sup>nd</sup>, 1999.
- D. On December 2<sup>nd</sup>, 2000 the Yamhill County Planning Commission recommended denial of the request.
- E. On February 24<sup>th</sup>, 2000, the Yamhill County Board of Commissioners held a duly noticed public hearing, received evidence and testimony, and voted to leave the record open until March 14, 2000, and reconvene for deliberation on March 16, 2000.
- F. On March 16, 2000, the Yamhill County Board of Commissioners voted to approve the application for a zone change and subdivision north of the west fork of Palmer Creek but not the zone change, subdivision, or lot-line adjustment south of the west fork of Palmer Creek, and directed staff to prepare findings in support of this decision.

WHEREAS, the Findings in attached Exhibit "A" demonstrate that the proposed change to the

B.O. #00-228

Official Zoning Map of Yamhill County is in the best interests of the citizens of Yamhill County;  
Now Therefore,

THE YAMHILL COUNTY BOARD OF COMMISSIONERS ORDAINS AS FOLLOWS:

Section 1. The Official Zoning Map of Yamhill County is hereby amended as specified in the attached Exhibit "B" to reflect a change in zoning designation from EF-80 Exclusive Farm Use to VLDR - 2½ Very Low Density Residential;

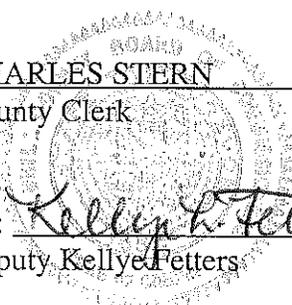
Section 2. The Findings attached as Exhibit "A" and incorporated herein by reference are hereby adopted in support of this ordinance.

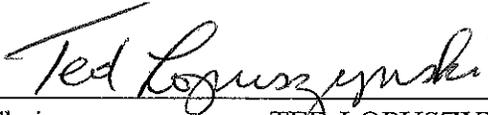
Section 3. This ordinance being necessary for the health, safety, and welfare of the citizens of Yamhill County, and an emergency having been declared to exist, is effective upon passage.

DONE at McMinnville, Oregon this 30<sup>th</sup> day of March, 2000.

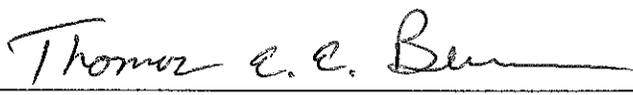
ATTEST

YAMHILL COUNTY BOARD OF COMMISSIONERS

  
\_\_\_\_\_  
CHARLES STERN  
County Clerk

  
\_\_\_\_\_  
Chairman TED LOPUSZYNSKI

By:   
\_\_\_\_\_  
Deputy Kellye Fetters

  
\_\_\_\_\_  
Commissioner THOMAS E.E. BUNN

FORM APPROVED BY:

  
\_\_\_\_\_  
Rick Sanai  
Assistant County Counsel

  
\_\_\_\_\_  
Commissioner ROBERT JOHNSTONE

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Exhibit "A" - Findings for Approval  
Docket PAZ-05-97 (Hayward)  
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**Exhibit "A"**  
**Findings for Approval**

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**HEARING DATE:** March 16, 2000

**DOCKET:** PAZ-05-97 / S-01-99 / L-36-99

**REQUEST:** The request involves approximately 34.4 acres. Approximately 15 acres, located north of the west fork of Palmer Creek, is within Dayton's Urban Growth Boundary and is plan designated by Yamhill County as Future Urbanizable and by the city of Dayton as Residential. The remaining property south of Palmer Creek is designated on the Yamhill County Comprehensive Plan as Agriculture/Forestry Large Holding (AFLH). The request is for approval of a zone change for the entire property from EF-80 Exclusive Farm Use to VLDR-2 ½ Very Low Density Residential. The request also includes a proposal for a 9-lot subdivision for approximately two acres, Tax Lot 4320-400 to Tax Lot 4320-500.

**APPLICANTS:** Brian and Nancy Hayward

**TAX LOTS:** 4320-400, 500

**LOCATION:** Approximately 700 feet south of the intersection of Webfoot Road and Ferry Street on the east side of Webfoot Road.

**CRITERIA:** Sections 402.09(B)(2), 502.06(B) and 1208.02 of the Yamhill County Zoning Ordinance; the Yamhill County Land Division Ordinance.

**FINDINGS:**

**A. Background Facts:**

1. **Property size:** The primary parcel in question is Tax Lot 4320-400 and is 34.4 acres in size.
2. **On-site Land Use:** The property has access to Webfoot Road. The parcel is divided by the west fork of Palmer Creek that runs from the west to the east. For the purposes of this staff report the west fork of Palmer Creek shall just be referred to as Palmer Creek. The parcel contains uneven topography and slopes up to the north and south from Palmer Creek. The parcel is mostly forested with deciduous trees and underbrush. There is a small portion of property on the southern end of the lot that appears to contain an old apple orchard.
3. **Surrounding Land Use:** The property to the north is inside of Dayton's Urban Growth Boundary and appears to contain rural residences. A portion of this parcel contains a berry patch. The rest of the property appears to contain trees and underbrush. Property to the northeast is in the Dayton City limits and contains a residential subdivision. Property to the south, east and west contain a mixture of farm uses which include orchards and berry patches.
4. **Surrounding Zoning:** Property to the north is zoned LDR-9000 Low Density Residential with a 9,000 square foot minimum lot size. Property to the northeast, inside the city of Dayton is zoned for residential use. The remainder of the surrounding property is zoned EF-80 Exclusive Farm Use.

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5. Water: The lots will be served by on-site wells.
6. Sewage Disposal: On-site sewage disposal systems.
7. Fire Protection: Dayton Rural Fire District
8. Soils: Sheet 36 of the Yamhill County Soil Survey shows that a little over half of the parcel is composed of Woodburn (WuB) and Amity (Am) silt loam. These soils are Class II and are both high-value farmland. The remainder of the property is a mixture of Cove (Cs) and terrace escarpments (Te). These soils are Class III and VI respectively, and are not high-value farmland.
9. Taxes: Farm deferral.
10. Further consideration: Flood Insurance Rate Map 410229 0329 C shows that some property on either side of Palmer Creek is within the 100-year flood plain. The floodplain area is uneven but extends approximately 200-300 feet from Palmer Creek.

**B. 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, we find that no Comprehensive Plan goals and policies apply. Some Plan policies which are nonetheless worth discussing include:

*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 flood plain or area of geologic hazard, steep slope, severe drainage problems or soil limitations for building or sub-surface sewage disposal, if relevant;*

A significant portion of the acreage is within the 100 year flood plain, as shown on FIRM 410249 0329 C. There are some steep slopes that need to be taken into consideration if building occurs. We find the

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applicant has re-designed the subdivision to address the slope concerns. All but two of the lots have been evaluated for subsurface sewage disposal so sub-surface sewage disposal does not appear to be a severe limitation.

*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.*

We find the proposed zone change would not require the extension of utilities, since sewer and water service will be provided through on-site systems. The city of Dayton has submitted a public agency report that cautions that water and sewer services will not be extended to this subdivision. Other services such as electricity, telephone, sheriff and fire protection already serve the area.

*Policy I.B.2.a.: 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; or in small, limited areas having unique scenic, locational and other suitable site qualities where the anticipated magnitude or density of development is not such as to require more than a very basic level of services, such as single local-road access, individual domestic wells and sewage-disposal systems, and possible rural fire protection.*

The property to the north of the subject parcel is within Dayton's UGB and is zoned for rural residential development. The portion of the subject property north of Palmer Creek is somewhat influenced by the city and the existing rural residential development. However, we find the property south of Palmer Creek is not as affected by the existing development. The southern portion is bordered by larger farm holdings that vary from 15 to 34 acres. Regarding the anticipated magnitude of development, it does appear to only require a very basic level of services.

*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.*

There are some farm uses in the area which could conflict with rural residential uses. From the testimony provided by the applicant it appears that farm use of the property would have severe limitations. However, as indicated in the above policy, this alone would not justify approval of a plan amendment and zone change for rural residential use.

3. Regarding criterion (B), and (D) the applicant did state that there was a high demand for smaller homesites and submitted evidence from last year of parcels that were for sale. Similar requests have identified the market demand and have cited the lack of property on the market to satisfy the demand. This argument was made in a similar zone-change request (to VLDR-2.5) considered by the county in 1991. This request was appealed to the Land Use Board of Appeals (LUBA). In their opinion on that case, LUBA stated:

"The county explains in its findings that this existing potential for residential development on VLDR-2.5 zoned properties is not 'available' to satisfy need for rural housing on 2.5 acre lots because only a small number of VLDR-2.5 zoned properties are presently for sale. We reject that explanation. The number of VLDR-2.5 zoned properties on the market for sale at any given point

in time is at best an indirect measure of the need or market demand for such properties." Freidman v. Yamhill County, 23 Or LUBA 306, 311 (1992).

Regarding exception land surrounding Dayton, three exception areas exist that have rural residential zoning similar to that requested by the applicant. The exception areas are identified as areas 5.1, 5.2 and 5.3. These figures do not include land inside the Urban Growth Boundary. The following is the combined information on these study areas as of June 1999:

Zone	Existing Lots	Developed Lots	Vacant Lots	Potential New Lots
VLDR-1	4	4	0	4
VLDR 2.5	8	8	0	1
AF-10	19	16	3	0

Based on the above information we find there is presently not a significant amount of land in the Dayton area currently zoned VLDR. The property to the north is zoned for Low Density Residential use and could be divided to provide rural residential lots. We find this evidence and other evidence demonstrates a lack of availability of similarly zoned property.

4. Regarding criterion (C), the applicant has demonstrated 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. The most significant change in the area is the Plamer Creek Addition. It is a subdivision located northeast of the subject property that has been developed during the last several years. The presence of this subdivision can be argued to have some affect on the property north of Palmer Creek but does not appear to have any significant affect south of Palmer Creek. Other than this subdivision, there appears to have been little development in the area for quite some time. Regarding services, we find the proposed development appears to only require a basic level of service.
5. Regarding the criterion (E), an exception to Goal 3 will be required for that area south of Palmer Creek, as addressed in Section (C) of these findings below.

**C. Goal Exception Provisions and Analysis**

1. The portion of the subject property south of the west fork of Palmer Creek is currently protected as agricultural land under Statewide Planning Goal 3. An exception to that Goal must be approved in order to rezone the parcel to VLDR.
2. Oregon Administrative Rule (OAR) 660-04 contains the requirements for taking goal exceptions. 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.*
  - (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.*

- (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 (a), OAR 660-04-022 states that the reasons justifying why the state policy embodied in the goal should not apply include, but are not limited to, that there is a demonstrated need for the proposed use, and either: (1) a resource upon which the use is dependent can be reasonably obtained only at the exception site and the use must be located near the resource; or (2) the use has special features or qualities that necessitate its location on or near the proposed exception site. The request does not comply with (1) because rural residential development is not related to or dependent upon any resource. The applicant argued that the request complies with (2) because the property has special characteristics that would be beneficial to locate rural residences. Specifically, the applicant stated, and we find, that the topography and vegetation on the parcel make it attractive for trespassers who engage in illicit activities. This leads to vandalism, theft and other nuances (like garbage) on the property. The applicant has submitted letters from farmers in the area which indicate that the property is not suitable for farm use. However, we do not find these reasons sufficient to justify an exception to Goal 3 for that portion of the property south of Palmer Creek.
  4. Factor (b) was discussed previously in Finding B.3, which found that there are other areas around Dayton and within the UGB that will allow dwellings. However, we find that the availability of areas zoned for rural residential development is somewhat limited.
  5. Regarding factor (c), there are no specific energy considerations related to development at the proposed location. There do appear to be some environmental consequences from this type of development. Specifically, development could affect the west fork of Palmer Creek. The property does have a flood plain designation so development near the creek would be difficult. Additionally, the applicant's engineer has made suggestions to only build on the upper areas away from the upper bank. Finally, the city of Dayton has requested that there be a public green space dedicated along the creek. Economic considerations center on the applicant's investment and return from developing the site. There would be minimal economic benefit to citizens or to the county regardless of whether the development would occur. The applicant claims there would be great social benefit from allowing the development. He feels that the illegal activities along this area would be greatly reduced by allowing people to live in the area.
  6. The consideration of compatibility required by factor (d), there have been no specific impacts on neighboring uses which could be alleviated through conditions.
  7. The OAR allows consideration of other factors which may make farm use on the lots impracticable. The applicant states that there are limitations to farm use because of the creek and associated high water table in the flood plain. Erosion and soil limitations are also cited by the applicant. We find these limitations make farming impracticable.

**D. VLDR Considerations**

1. Section 502.06(B)(2)(a) of the Yamhill County Zoning Ordinance (YCZO) indicates that the minimum size of any newly-created parcel in the VLDR-2.5 district shall be 2.5 acres, except in the case of parcel-size averaging, when the minimum parcel size shall be one (1) acre. We find the request complies with this standards because the proposed smallest lots may be approximately 1.46 acres, but the average lot size is over 2.5 acres.

2. Section 502.06(E) requires that a parcel abut at least 20 feet on a public road or be served by an easement at least 30 feet in width. We find all lots proposed satisfy this standard. We find the access will be safe and passable. Prior to issuance of building permits, the developers will need to receive approval from the fire district that access to the building sites meets fire access standards. Any necessary road widening or improvements will be the responsibility of the developer.

**E. Subdivision Ordinance Provisions and Analysis**

1. The Yamhill County Land Division Ordinance (LDO) Chapter 6 contains general design standards for subdivisions. All applicable standards must be met prior to final subdivision approval. The following findings will address the more relevant standards.
2. Section 6.000 (4) states that the Planning Director shall require a developer, subdividing or partitioning land within the UGB that will result in less than 10 acre parcels, to submit a plan illustrating how the parcels can be further re-divided to urban densities without interfering with the orderly development of streets. The city of Dayton is required to review and concur on such a plan. Therefore, the developer will be required to submit a drawing of that portion of the parcel within the Dayton UGB showing an arrangement of lots and streets that will permit a later re-division of the area into 7000 square foot lots.
3. Section 6.010(1) requires that road improvements be completed or proper security posted as specified in Section 13.000. The applicant will be required to submit an engineered road design that includes a full plan and profile and construction cost estimate for approval by the county Public Works department.
4. Section 6.010(8) lists the specifications for private easement. The developer has designed the subdivision to be served by private easement. This requires that no more than three parcels are served by said easement and it must be at least 30-feet in width. Lots 4, 5, 6, and 7 are all served by a private easement. That portion of the easement south of Lot 9 needs to be a dedicated 60-foot wide street up to the point that the Lot 7 easement begins. With this change the proposed plan would satisfy these standards.
5. Section 6.070 states that lands which are unsuitable for development due to inadequate drainage or other conditions likely to be harmful to the safety and general health of future residents or the general public shall not be developed for building purposes unless adequate methods for overcoming these conditions are submitted and approved by all appropriate agencies. Section 6.030(6) of the LDO requires lot drainage to be designed to the specifications adopted by the Board of Commissioners. The developer will be required to submit a drainage plan to the County Public Works Department prior to final subdivision approval. The drainage system must be designed to avoid unnecessary concentration of storm drainage water from each lot to other lots or parcels.
6. Subsection 6.090 requires all lots within a subdivision to have an adequate quantity and quality of water to support the proposed use. Since no public or community water system is available to serve the lots, the developer will either need to submit well reports for the lots, as required by subsection (4), place the disclaimer statement on the face of the plat, as required by subsection (5), or receive conditional use approval for establishment of a community water system.
7. Subsection 6.100 contains options and requirements for sewage disposal. No public or city sewer services are available, so each lot will be required to be served by an individual on-site subsurface sewage disposal system. Site evaluations will be required for each lot prior to final plat approval. The ordinance requires the location of the approved drainfield site shown on the face of the final plat along with a statement indicating that placement of drainfields shall require approval and permit by the county sanitarian. However, the County Surveyor has informed the Planning Department that information like drainfield locations, which can be changed administratively, may not be drawn on the face of the final plan. Therefore, we find a map prepared by a surveyor showing the location of the drainfields submitted and

kept on file with the Planning Department will be sufficient. Additionally, those parcels that are denied for standard systems and receive approval for alternative systems will need that noted on the face of the subsurface sewage disposal map.

8. Section 6.120 contains requirements and standards for surveying subdivisions. Since the lots will be less than 10 acres in size, a survey complying with these standards will be required.

#### CONCLUSIONS:

1. The request is for approval of a zone change for the entire property from EF-80 Exclusive Farm Use to VLDR-2 ½ Very Low Density Residential. The request also includes a proposal for a 9-lot subdivision, Tax Lot 4320-400 and Tax Lot 4320-500.
2. We find the proposed zone change for that portion of property within the Urban Growth Boundary is consistent with Comprehensive Plan goals and policies, and is appropriate because it is in close proximity to the city of Dayton.
3. With conditions, the subdivision can comply with the Yamhill County Land Division Ordinance.
4. For that portion of property north of the west fork of palmer creek we find that the request complies with the Yamhill County Comprehensive Plan and the zone change provisions in section 1208.02 of the Yamhill County Zoning Ordinance.
5. An exception to statewide planning goal 3 has not been justified for the property south of the west fork of Palmer Creek.

The Board of Commissioners denies the request by Brian and Nancy Hayward for a Comprehensive Plan amendment of the property south of Palmer Creek from Agriculture/Forestry Large Holding (AFLH) to Very Low Density Residential (VLDR). The Board also denies the zone change, subdivision and lot-line adjustment portion of the request south of Palmer Creek.

The Board of Commissioners approves the zone change for that portion of property north of Palmer Creek to be changed from EF-80 Exclusive Farm Use to VLDR-2 ½ Very Low Density Residential. The Board also grants preliminary approval of the subdivision for that portion north of Palmer Creek subject to the following conditions:

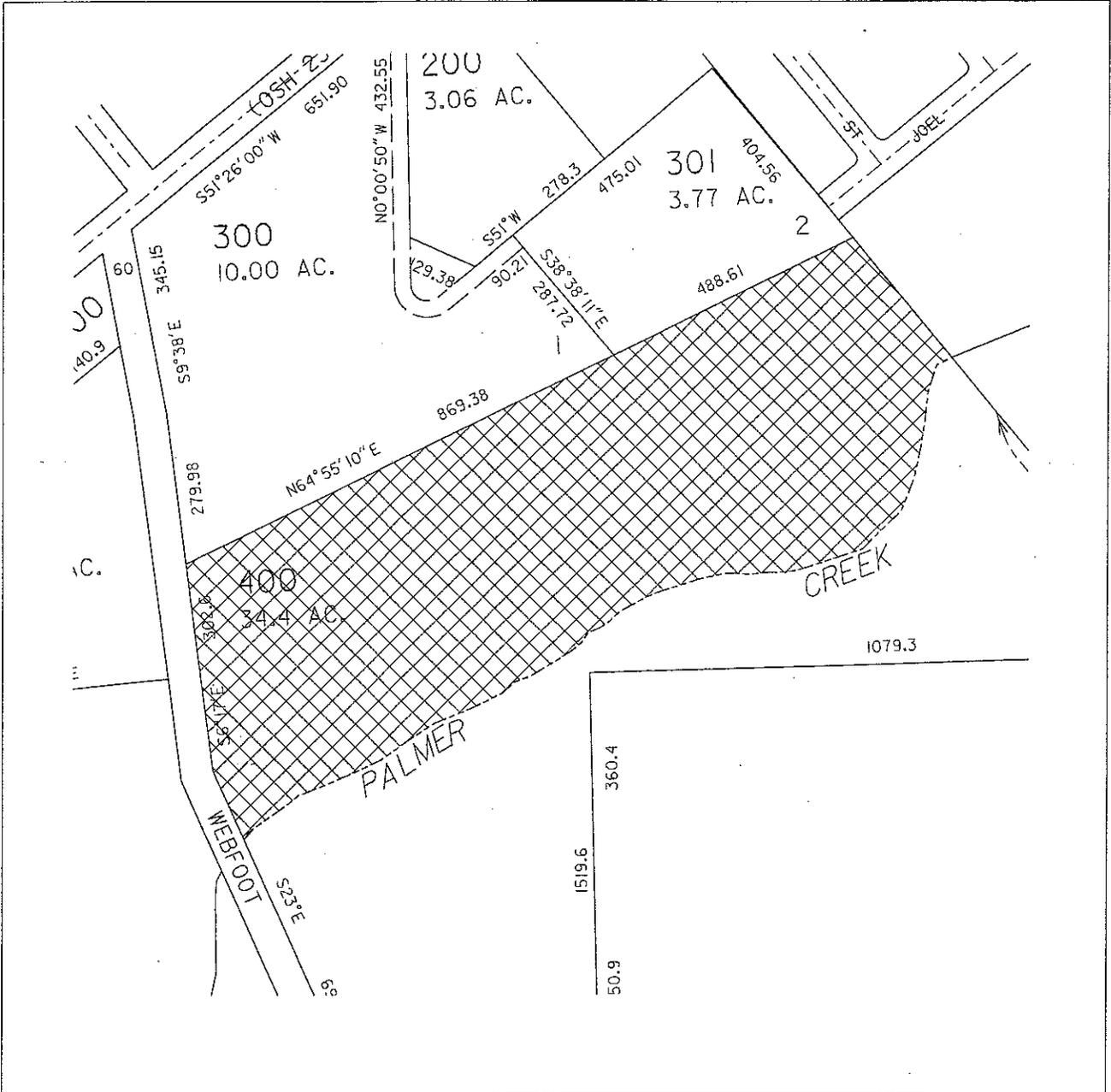
1. Each lot shall be surveyed and a final plat prepared in accordance with Section 6.120 of the Yamhill County Land Division Ordinance No. 497. The final subdivision plat shall only allow the creation of new lots 1, 2, and 3 as shown on the preliminary map.
2. The Yamhill County Planning Docket Number S-1-99 shall be shown on the face of the final plat.
3. A 30-foot wide (minimum) nonexclusive easement for ingress and egress shall be assigned to provide access to Lots 2 and 3, surveyed, and shown on the face of the final plat. This easement shall be granted at the time of conveyance of any of the lots.
4. The road providing access to the lots shall be constructed to county specifications, or a road construction agreement shall be completed and recorded, prior to final plat approval.
5. Road plan and profile drawings shall be submitted to and approved by the County Engineer prior to final plat approval.

6. The applicant shall submit a drainage plan prepared by a registered engineer. The drainage plan shall be submitted to and approved by the County Public Works Director prior to final plat approval.
7. The subdivision shall be shown to have adequate quality and quantity of water to support the proposed use. Prior to final plat approval, the developer shall comply with Subsection 6.090(3) of the Land Division Ordinance by providing wells to each lot. In lieu of this requirement, a statement shall be placed on the face of the final plat which states:

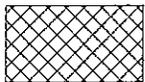
“No municipal, public utility, community water supply or private well system will be provided to the purchaser of those lots noted hereon.”
8. An approved septic drainfield area and replacement area shall be provided for each lot. Their location shall be surveyed and depicted on a map to be submitted to the Director. Parcels that are denied for standard sewage disposal systems and receive approval for alternative systems shall have that noted on the face of the subsurface sewage disposal map.
9. A five-foot easement along property lines adjacent to roads, or a reasonable alternative, shall be provided for utilities and depicted on the face of the final plat.
10. Prior to final plat approval the applicant shall submit to the city of Dayton a shadow plat of that portion of the parcel within the Dayton's urban growth boundary showing an arrangement of lots and streets that will permit a later re-division of the area into 7000 square foot lots. Said shadow plat shall be reviewed and approved by the city of Dayton.

# EXHIBIT "B" FOR ORDINANCE No. 681

ZONING MAP AMENDMENT FROM  
EF-80 (EXCLUSIVE FARM USE) TO  
VLDR-2.5 (VERY LOW DENSITY RESIDENTIAL)



Prepared by Yamhill County Department of Planning and Development



AREA SUBJECT TO AMENDMENT

ORDINANCE No. 681  
EXHIBIT "B"