

IN THE BOARD OF COMMISSIONERS OF THE STATE OF OREGON

FOR THE COUNTY OF YAMHILL

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SITTING FOR THE TRANSACTION OF COUNTY BUSINESS

In the Matter of an Ordinance Amending the)
Official Zoning Map from EF-80 (Exclusive)
Farm Use-80 Acre Minimum Lot Size) to AF-80)
(Agriculture/Forestry-80Acre Minimum Lot Size),)
on a 668 Acre Tract Known as Tax Lots 4534-100)
and 4527-200; Applicant Norman Barnett;)
Planning Docket Z-04-97; and Declaring an)
Emergency.)

ORDINANCE 642

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY, OREGON (the Board) sat for the transaction of county business in special session on March 5, 1998, Commissioners Ted Lopuszynski, Robert Johnstone, and Thomas E.E. Bunn being present.

WHEREAS, on December 4, 1997, the Department of Planning and Development received an application by Norman Barnett ("applicant"), Planning Docket Z-04-97, to change the Official Zoning Map from EF-80 (Exclusive Farm Use-80 Acre Minimum Lot Size) to AF-80 (Agriculture/Forestry-80Acre Minimum Lot Size), on a 619 acre tract known as Tax Lot 4534-100, and, to avoid the creation of spot zoning, the Director of the Department of Planning and Development added a 49 acre tract, known as Tax Lot 4527-200, to the zone change request, resulting in a total of 668 acres for which a zone change from EF-80 to AF-80 would apply; and

WHEREAS, on January 8, 1998, the Yamhill County Planning Commission held a duly noticed public hearing to consider the application and thereafter voted 5-3 to deny the zone change request; and

WHEREAS, on January 23, 1998, the applicant filed a timely appeal to the Board; and

WHEREAS, on February 19, 1998, the Board held a duly noticed public hearing on the appeal, and following the close of the hearing, deliberated and voted unanimously in favor of the appeal, reversed the planning commission, and approved the application for the zone change; and

WHEREAS, the findings and conclusions attached hereto as Exhibit "A" and incorporated herein by this reference provide justification for approval of the application for the amendment to the Official Zoning Map of Yamhill County, and that approval thereof 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 zoning designation of "AF-80".

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 5th day of March, 1998.

ATTEST

YAMHILL COUNTY BOARD OF COMMISSIONERS

CHARLES STERN
County Clerk

Ted Lopuszynski
Chairman TED LOPUSZYNSKI

By: Carol Ann White
Carol Ann White

Robert Johnstone
Commissioner ROBERT JOHNSTONE

FORM APPROVED BY:
John C. Pinkstaff
JOHN C. PINKSTAFF
Assistant County Counsel

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

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ORDINANCE 642

EXHIBIT "A"

PLANNING COMMISSION'S DENIAL: January 8, 1998

BOARD OF COMMISSIONER'S APPROVAL: March 5, 1998

DOCKET: Z-04-97

REQUEST: Zone change from EF-80 Exclusive Farm Use to AF-80 Agriculture Forestry Use. The Yamhill County Planning Director included neighboring parcel, Tax Lot 4527-200 to this request to eliminate a potential spot zoning situation.

APPLICANT: Norman Barnett

TAX LOTS: 4534-100 and 4527-200

LOCATION: 10660 SW Youngberg Hill Road

LOT SIZE: Approximately 668 acres

CRITERIA: Sections 402, 403 and 1208.03 of the Yamhill County Zoning Ordinance; the Yamhill County Comprehensive Plan.

FINDINGS:

A. Background Facts

1. Lot Size: Tax Lot 4534-100, owned by Norman Barnett, is approximately 619.14, and Tax Lot 4527-100, owned by Martin and Peta Wright, is about 49.6 acres, making a total of approximately 668.74 acres which is the subject of this zone change. Unless otherwise indicated, all references to the subject property, tract, parcels or request, refers to both tax lots.

2. Access: Youngberg Hill Road, a paved county road.

3. On-Site Land Use: A 1992 air photo show that the parcel contains a mixture of farm and forest uses. The applicant estimates that approximately 400 acres of the subject property is forested and the remainder is in farm use.

4. Surrounding Zoning: Property to the north and west is zoned F-80 Commercial Forestry and AF-80 Agriculture/Forestry. Property to the east is zoned AF-40 Agriculture/Forestry, EF-40

Exclusive Farm Use, EF-80 Exclusive Farm Use, AF-10 Agriculture/Forestry Small Holding and PAI Public Assembly, Institutional. Property to the south is zoned EF-80 Exclusive Farm Use.

5. Surrounding Land Use: There is a residential care facility for the elderly adjacent to the east. A pre-existing subdivision also exists to the east. The area is characterized by agriculture and forestry uses.
6. Water: On-site well.
7. Sewage Disposal: An on-site subsurface system will be required for any dwelling approval.
8. Soils: Sheet 33 and 34 of the Yamhill County Soil Survey indicates the main soil types on the subject parcels are Steiwer silty clay loam (SuD and SuE). Soil of this type is rated as agriculture class IV and VI. Soil of this type can produce 70 cubic feet per acre per year of commercial tree species. The property also contains Yamhill, Willakenzie, Panther, Hazelair and stoney land.
9. Fire Protection: McMinnville Rural Fire District.
10. Taxes: On Tax Lot 4534-100, 38.7 acres of property is listed as non-tillable. 580.36 acres is on farm deferral. On Tax Lot 4527-200 3.1 acres is nontillable and 45.5 acres is on farm deferral. Neither of these parcels is receiving a forest deferral.
11. Other Factors: The parcel had been zoned AF-20 Agriculture/Forestry. On November 4, 1993, HB 3661 took effect and changed the minimum lot size in western Oregon to 80 acres. Therefore, on that date even if a property was zoned AF-20 the county was enforcing an 80 acre minimum lot size. For several years prior to HB 3661's passage, Yamhill County had been working on justifying its farm and forest zone designations to the Department of Land Conservation and Development. Much of the effort was an attempt to maintain the AF-20 and EF-40 designations in the county.

After the passage of HB 3661, Yamhill County, at the direction of the Department of Land Conservation and Development, adopted new zoning for the county on December 29, 1993. The new zoning for these parcels was designated as EF-80 Exclusive Farm Use. The new zoning for the county was appealed by 1000 Friends of Oregon. The court case dealing with this issue was decided in 1996 in favor of DLCD and the County and against 1000 Friends, and pursuant to the Court case, on February 14, 1997, DLCD issued its final order approving the county's periodic review. Based on the final order establishing that the county had completed periodic review, the county began enforcing the new zoning designation.

B. Ordinance Provisions and Analysis

1. The decision on the requested zone change is subject to the applicable approval criteria found in Section 1208.03 of the Yamhill County Zoning Ordinance, which provides as follows:

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

"A. The proposed amendment shall comply with the goals, policies, and other applicable provisions of the comprehensive plan.

"B. The proposed designation shall be appropriate for the existing or intended use of the property.

"C. The proposed amendment shall result in an area of at least 160 contiguous acres with the requested designation, including adjacent land.

"D. For proposed changes within or to an Exclusive Farm Use designation, the new minimum lot size shall be appropriate to maintain the existing commercial agricultural enterprise in the area.

"E. For proposed changes within or to an Agriculture/Forestry designation, the new minimum lot size shall be shown to assure:

"1. The opportunity for economically efficient forest and agriculture practices typically occurring in the area; and

"2. The opportunity for the continuous growing and harvesting of forest tree species; and

"3. The conservation of other forest values found on forest lands.

"F. Any amendment that would change the zone map designation to reduce the minimum lot size on property within an Exclusive Farm Use or Agriculture/Forestry district shall not be granted final approval by Yamhill County until the amendment has been considered and approved by the Land Conservation and Development Commission pursuant to ORS 215.780(2). The following rules shall apply:

"1. Conditional approval. Following receipt of an application for a zone change as otherwise provided by this ordinance,

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

- "2. *Referral of Order of Conditional Approval. After conditional approval by Yamhill County, the application, county findings, order of conditional approval and a request for Commission action shall be referred to the Department of Land Conservation and Development.*

- "3. *Final Approval. An amendment conditionally approved by Yamhill County shall not take effect until the county adopts an order or ordinance authorizing final approval after receipt of written confirmation of the county's conditional approval by the Land Conservation and Development Commission."*

The above criteria are addressed in Findings B.2 through B.7 below.

2. The Board finds that the request complies with the goals, policies and other applicable provisions of the Yamhill County Comprehensive Plan ("YCCP"), and therefore satisfies YCZO 1208.03 (A) as follows:

2.1 Regarding Comprehensive Plan goals and policies, the land is currently planned and zoned for farm use. YCCP Policy II.A.1.a states:

"Yamhill County will provide for preservation of farm lands through appropriate zoning, recognizing comparative economic returns to agriculture and alternative uses, changing ownership patterns and management practices, changing market conditions for agricultural produce, and various financial incentives."

2.2 YCCP goals and policies regarding forest land contains a summary which in part states:

"Nearly half of the land area in the county is designation on the plan map as Commercial Forestry; other productive forest lands are scattered throughout the land area designated as Agriculture/Forestry Large Holding."

2.3 YCCP Goal II.B.1 directs the county:

"To conserve and to manage efficiently the county's forest and range resources, thereby ensuring a sustained yield of forest products, adequate grazing areas for domestic livestock, habitat for fish and wildlife, protection of forest soils and watershed, and preservation of recreational opportunities."

2.4 YCCP Policy II.B.c states:

"Yamhill County will encourage reforestation of marginal agricultural lands in the county."

2.5 Out of a total of 668 acres, the subject property has over 400 acres of forest land. Therefore, this change would be consistent with the foregoing comprehensive plan provisions because the property consists of predominantly (over 50%) productive forest lands (which produce 70 cubic feet per acre commercial tree species), and the appropriate designation for such lands scattered throughout the county is Agriculture/Forestry Large Holding. The YCCP Plan designation for the property is AFLH Agriculture/Forestry Large Holding. Both the Exclusive Farm Use (EF-80) zoning district and Agriculture/Forestry (AF-80) zoning district have this same plan designation. The AF-80 zone will operate to conserve and manage efficiently the forest resources, ensuring a sustained yield of forest products, and protect and preserve grazing areas, fish and wildlife habitat, forest soils and watershed and recreational activities, all in conformance with YCCP Goal II.B.1. The AF-80 zone will also encourage reforestation of marginal agricultural lands (class IV and VI soils), in conformance with YCCP policy II.B.c.

3. The Board finds that the proposed designation is appropriate for the existing or intended use of the property, as required by YCZO 1208.03(B) as follows:

3.1 The property is presently predominantly forested with Douglas Fir. Applicant indicated that the subject property contains "approximately 1.5 million board feet of Douglas Fir and a lot of white oak." The property also contains some cleared areas that contain pasture and vineyards.

The purpose section of the Agriculture/Forestry District (AF-80, AF-40 and AF-20) zone states in part:

"The purpose of the Agriculture/Forestry District is to identify and protect lands designated as Agriculture/Forestry Large Holding on the Comprehensive Plan, that are a mixture of agricultural and forest management operations, and other uses which are compatible with such operations. Properties in the Agriculture/Forestry District are primarily foothill and ridge top holdings above the flat terrace and valley-floor commercial agriculture areas, . . ."

In contrast, the purpose section of the Exclusive Farm Use District (EF-80, EF-40 and EF-20) zone provides, in part:

" . . . to identify and protect land . . . suitable and desirable for commercial agricultural operations and other uses which are compatible with such operations. Properties in the Exclusive Farm District are primarily large, contiguous relatively flat terrace, valley-floor or low foothill holdings . . . "

3.2 The purpose section of the AF district is a better description of the subject property than the EFU purpose section. The subject property is in the primarily foothill and ridge top area, above the flat terrace and valley-floor commercial agriculture areas. This property is a mixture of agricultural and forest land and the applicant intends to manage the forest land to grow timber to produce forest products, and use the balance of the property for other uses which are compatible with such operations. Due to the mixed nature of the use of the property, and the fact that the applicant is using and intends to use the property for a mixture of farm and forestry uses, the Board finds that the requested change to Agriculture Forestry zoning district is appropriate for the existing or intended use of the property.

4. The Board finds that the proposed amendment will result in an area of at least 160 contiguous acres with the requested designation, including adjacent land, as required by YCZO 1208.03(C). The request involves approximately 668.74 acres to be rezoned to AF-80. The amendment would therefore result in an area of 160 acres with the requested designation.

5. The Board finds that YCZO 1208.03(D) does not apply since the requested zone designation is not Exclusive Farm Use.

6. The Board finds that the new minimum lot size for this zone change is 80 acres and satisfies YCZO 1208.03(E) as follows:

6.1 The new minimum lot size will assure opportunity for economically efficient forest and agriculture practices typically occurring in the area, as required by YCZO 1208.03(E)(1). As noted in Finding A.4, the surrounding zoning includes both mixed farm and forest zones and forestry zones. This demonstrates that a mixed farm and forestry designation would be appropriate. The proposed mixed agriculture and forestry zoning also reflects the type of uses typically found in the area as identified by Finding A.5. The applicant has requested the zoning be changed from EF-80 to an AF-80 Agriculture/Forestry designation. Like the EF-80 zone, the AF-80 zone has a restriction of an 80 acre minimum lot size.

These 80 acre minimum lot size zones are the largest and most restrictive minimum lot size the county has adopted, and have been acknowledged by LCDC to be in compliance with the statewide goals 3 and 4 for preservation of agricultural and forest lands. This minimum lot size has also been shown through various appeals to be appropriate to preserve economically efficient forest and agricultural practices. The existing EF-80 Exclusive Farm zone lists the propagation and harvesting of a forest product as a permitted use. Therefore the existing zone would allow for forest practices. However, the proposed zoning also allows forestry uses. The proposed minimum lot size would remain the same as the current minimum lot size, and would offer the same protection for the continued growing and harvesting of trees and would continue to conserve

forest values. Furthermore, the AF-80 zone allows placement of a dwelling on a tract of not less than 160 contiguous acres that was in forest use on January 1, 1993. Thus, the siting of a dwelling in conjunction with forest use would require more than 80 acres.

6.2 Opponents suggest that the applicant intends to apply for forest template dwellings, as authorized by ORS 215.750, which could result in a house on each of nine parcels of at least 80 acres. However, the applicant indicated he intended to apply for a dwelling in conjunction with forest use on 160 acres, in which case there would only be a dwelling on each of four parcels of at least 160 acres. County staff advised the Board that while there may theoretically the Barnett tract may qualify for forest template dwellings, that nevertheless there appeared to be a road abutting the tract, and as a result it was unlikely that there could be more than one forest template dwelling on the entire Barnett tract because of the requirements applicable where there is a road or perennial stream abutting a tract (YCZO 403.03 M and N). However, the Board finds that regardless of how many forest template or other dwellings could be approved, the availability of a forest template or other dwellings on the subject property is not relevant because it is not one of the approval criteria for this application, and, in addition, the motives of the applicant are not relevant to whether applicant satisfies the applicable approval criteria.

7. The Board finds that YCZO 1208.03(F) does not apply since the approval of the request would not reduce the minimum lot size on the property.

C. Administrative Rule Provisions and Analysis

1. Oregon Administrative Rule provision 660-06-057 states:

"Any rezoning or plan map amendment of lands from an acknowledged zone or plan designation to an agriculture/forestry zone requires a demonstration that each area being rezoned or replanned contains such a mixture of agriculture and forest uses that neither Goal 3 nor Goal 4 can be applied alone."

2. The aerial photo shows cleared areas of property that appear to be in farm use. These cleared areas are uneven in shape and are dispersed throughout the eastern half of the property. Over 400 acres of the subject property is forested. Goal 3 deals with the preservation of agricultural lands. Goal 4 deals with the preservation of forest lands. Presently the property is zoned EF-80. This zoning lists both farm and forest activities as permitted uses. However, the EF-80 designation does not allow the siting of a dwelling in conjunction with forestry use. An AF zoning district may, if other requirements are met, allow the siting of a dwelling in conjunction with forestry uses on the Barnett tract. Such forest dwellings provide an opportunity for the dwelling occupants to engage in forestry activities, including planting, thinning, spraying, and harvesting, all of which makes the use of the property for propagation and harvesting of timber more economical and therefore more profitable than it would be under the existing E zoning designation. An AF designation provides greater protection of the forest use than does an E designation. The dispersal of the farm and forested areas on the property would make it difficult to apply either a completely farm or completely forest zoning designation. Therefore, a mixed

zoning appears to be more appropriate than either an EF zone or F zone. The Board finds that the area to be rezoned is such a mixture of farm and forest uses that neither the farm or forest zones applied alone would protect the use.

CONCLUSIONS FOR APPROVAL:

1. The request is for a zone change from EF-80 Exclusive Farm Use to AF-80 Agriculture Forestry Use. The Yamhill County Planning Director included neighboring parcel, Tax Lot 4527-200 to this request to eliminate a potential spot zoning situation.
2. The zone change is necessary to appropriately reflect the mixed uses on the property.
3. The request complies with the requirements of YCZO 1208.03.

DECISION:

Based on the above findings and conclusions, the Planning Commission's denial is reversed and the zone change from EF-80 Exclusive Farm Use to AF-80 Agriculture Forestry Use on Tax Lots 4534-100 and 4527-200 is hereby approved.

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