

IN THE BOARD OF COMMISSIONERS OF THE STATE OF OREGON

FILED
YAMHILL COUNTY, OREGON

91-725

FOR THE COUNTY OF YAMHILL 1991 OCT 16 PM 12:47

SITTING FOR THE TRANSACTION OF COUNTY BUSINESS

CHARLES STERN
COUNTY CLERK

In the Matter of an Ordinance)
Amending the Zone Map of the)
Yamhill County Zoning Ordinance,)
as amended, to Change the Zone)
Map Designation from AF-10 to)
VLDR 2.5 on 20 acres of Tax)
Lot 3209-1900, Applicant Mark)
F. Bartlett, Docket Z-6-91, and)
Declaring an Emergency)

ORDINANCE 527

DEPUTY

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY, OREGON (the Board), sat for the transaction of county business in special session on October 16, 1991, Commissioners Dennis L. Goecks, Ted Lopuszynski and Debi Owens being present.

WHEREAS, Mark F. Bartlett has applied to the Department of Planning and Development to change the zone map designation on that 20 acre portion of Tax Lot 3209-1900 identified on Exhibit "B" from AF-10 to VLDR 2.5, the property being located west of and adjacent to Springbrook Road approximately one-quarter mile north of the Benjamin Road intersection; and

WHEREAS, the subject parcel has a comprehensive plan map designation of Very Low Density Residential sufficient to allow a zone map designation of VLDR without a comprehensive plan map amendment; and

WHEREAS, on August 1, 1991 the Yamhill County Planning Commission held a public hearing on the application and voted to approve the zone change as requested; and

WHEREAS, the decision of the Planning Commission to approve the zone change was appealed to the Board by John Blankenbiller and Sid Friedman; and

WHEREAS, on September 25, 1991 the Board held a public hearing to consider the appeal, and thereafter continued the proceeding to October 2, 1991 for receipt of additional evidence at the request on the City of Newberg; and

WHEREAS, on October 2, 1991, the Board voted 2-1, Commissioner Owens dissenting, to deny the appeal and uphold the Planning Commission's approval of the zone change; and

ORDINANCE 527

WHEREAS, the Board finds the application should be granted for the reasons contained in the findings attached as Exhibit "A"; NOW, THEREFORE,

THE YAMHILL COUNTY BOARD OF COMMISSIONERS ORDAINS AS FOLLOWS:

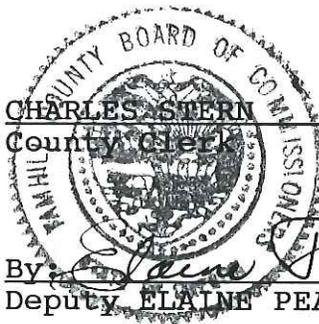
Section 1. Based on the findings for approval set forth in Exhibit "A", which is incorporated into this ordinance by reference, the official zoning map of the Yamhill County Zoning Ordinance, No. 310, as amended, is hereby amended to designate the zoning on that 20 acre portion of Tax Lot 3209-1900 identified on the attached Exhibit "B" as VLDR 2.5.

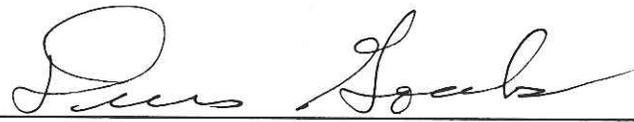
Section 2. This ordinance being necessary for the health, safety and welfare of the citizens of Yamhill County, and an emergency having been declared to exist, shall be effective upon passage.

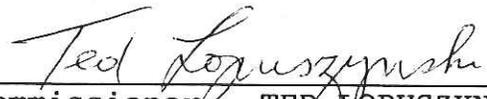
DONE at McMinnville, Oregon this 16th day of October, 1991.

ATTEST

YAMHILL COUNTY BOARD OF COMMISSIONERS

 CHARLES STERN
County Clerk
By: 
Deputy ELAINE PEARCEY


Chairman DENNIS L. GOECKS


Commissioner TED LOPUSZYNSKI

FORM APPROVED BY:


JOHN M. GRAY, JR.
Yamhill County Counsel


Commissioner DEBI OWENS

EXHIBIT "A"
Ordinance No. 527

Findings for Approval

DATE OF PLANNING
COMMISSION APPROVAL: August 1, 1991

DATE OF BOARD OF
COMMISSIONER'S
FINAL HEARING: October 2, 1991

DATE OF BOARD OF
COMMISSIONERS' FINAL
APPROVAL: October 16, 1991

DOCKET NUMBER Z-6-91

APPLICANT: Mark F. Bartlett

REQUEST: Zone change from AF-10 to VLDR-2 1/2 of 20
acres in an area plan-designated Very Low
Density Residential

LOCATION: West of and adjacent to Springbrook Road
approximately one-quarter mile north of the
Benjamin Road intersection.

TAX LOT: 3209-1900

PROPERTY OWNERS: Elvin and Marie Mills

REVIEW CRITERIA: Section 1209.01 of the Yamhill County Zoning
Ordinance and Oregon Administrative Rules
Chapter 660, Division 4.

FINDINGS FOR APPROVAL:

A. Background Facts

1. Parcel Size: The subject tax lot is 29.14 acres. The zone change request applies to only 20 of those acres as identified on the attached Exhibit "B".

EXHIBIT "A", ORDINANCE No. 527

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2. Access: Springbrook Road, a paved county road.
3. On-site Land Use: There is currently one dwelling on the property, but it is not on the subject 20 acres. About 11 acres of the property is in untended filbert and cherry orchard, and eight acres is unmanaged meadow. There is about one acre of trees.
4. Surrounding Land Use: The area to the east, across Springbrook Road, is developed in 2 1/2-acre lots. Other sides are primarily built at a low density (one dwelling per five acres or less), except two small parcels at the northeast corner and one directly south. The applicant indicated there is little farm use in the area, although a 1983 aerial photograph indicates the area at that time had orchards and other farm fields.
5. Surrounding Zoning: East - VLDR-2 1/2; south, west, and north - AF-10. The south property line is the Newberg Urban Growth Boundary.
6. Water: On-site wells. There is no community water system available to serve the site.
7. Sewage Disposal: On-site subsurface systems. There is no sewer service to the site.
8. Other Services: Electric, telephone, fire suppression, law enforcement, and emergency medical services are all available to the site.

B. Ordinance Provisions and Analysis

1. Section 1208.02 of the Yamhill County Zoning Ordinance provides criteria for quasi-judicial review of requests for zone boundary amendments. These criteria are:
 - (a) The proposed change is consistent with the goals, policies, and 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) The 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.

These criteria are addressed in Findings 2 through 6, below.

2. Regarding the Comprehensive Plan, the map designation for the property is Very Low Density Residential, which allows VLDR 2 1/2 zoning. Regarding rural development Plan goals, Goal I.B.1 states:

To provide an adequate amount of land, development areas and sites to accommodate those uses which are customarily found in rural areas or require or are better suited to rural locations, without compromising the basic goal relating to urban containment and orderly urban development.

While two and one-half acre lots could be construed as having a negative effect on urban expansion into and beyond the vicinity of the request, the Board finds that the county's Land Division Ordinance provides adequate protections to insure that orderly urban development will occur if the city of Newberg ever annexes the site. Section 6.010(4) of the Yamhill County Land Division Ordinance stipulates:

If a tract is divided into lots of 20,000 square feet or more, the Director may require an arrangement of lots and streets to permit a later re-division in conformity to the requirements contained in this ordinance. The location of lot lines and other details of the layout shall be such that further division of the parcels may readily take place without interfering with the orderly development of streets. The Director may restrict the placement or location of structures, easements, facilities or other uses that may cause an infringement upon the use or development and

improvement of an existing or anticipated street or roadway.

Consequently, any partitioning of the parcel will be required to be arranged so that orderly future urban development is accommodated. "Shadow platting" can be employed to help insure adequate access for streets and urban services.

The subject site is adjacent to the Newberg Urban Growth Boundary (UGB), and no physical barriers to urban expansion separate the property from the city. The possibility of expansion of the UGB, and later the city limits, to include this land are quite high. The city of Newberg contends that the shadow platting requirement is not sufficient to ensure orderly provision of services at a later date, but rather that owners of 2 1/2-acre lots will resist hooking up to city services when they are available, and that this will impede efficient expansion of water and sewer systems when they are needed in the area. However, the Board finds that sufficient protection exists within the Land Division Ordinance to insure at the time of land partition or subdivision that the interests of the city in orderly development will be protected.

3. Regarding the need for the proposed zone change, the subject property is within the North Newberg Exception Area (code area 1.4), which encompasses over 900 acres of land. A study in 1990 of the county's exception (rural residential) areas indicated that the portion of the North Newberg exception area zoned VLDR-2 1/2 includes 384 acres. If this were to be entirely divided into 2 1/2-acre lots, there would be 153 potential dwelling sites. At the time of the study, there were 95 dwellings in that area. There have been more approved since. The AF-10 zone in code area 1.4 already exceeds one dwelling per 10 acres.

When considering other exception areas around the north and east sides of Newberg (code areas 1.2, 1.3, 1.11, 1.12, and 1.13), there was at the time of the study a theoretical potential for 135 more units, meaning the areas are developed to 66.6 percent of the hypothetical permitted capacity. Other exception areas are in different locations, so were not considered.

However, even though there may be areas in the Newberg area zoned for rural residential uses, including VLDR 2.5, the Board finds that the property is not "available" within the meaning of Section 1208.02(d) because the property is not

available for purchase. (See also finding (5), below.) The Board is persuaded by the applicant's evidence from local real estate professionals that no small buildable parcels are currently available for purchase. Based on similar evidence, the Board also finds that a demonstrable need for the rezoning has been established as required by Section 1208.02(b).

4. Regarding Criterion (c) above, most of the area surrounding the site is currently undeveloped. The zoning to the east is VLDR-2 1/2, and has been subdivided already.

Water and sewage disposal facilities will need to be provided on-site. A letter from the state watermaster indicates groundwater in the area may be in short supply. It is feasible that city water and sewer services will be extended to the area at some point in the future, although that time is not known. Other services are currently available to the site.

5. The findings in Section B.2 of this report are relevant to Criterion (d) as well, and the Board adopts those findings as support for the criterion in addition to the findings in this subsection. If 2 1/2 acre residential lots are considered a distinct type of use, i.e. not the same as one-acre or five-acre lots, the findings in Section B.2 indicate there is a supply of 2 1/2 acre-zoned land, but that study simply divided the total number of acres by the total number of dwelling units. No assessment of availability was made.

The applicant has indicated that the subject site is better suited to alternative sites because of its close proximity to Newberg and its accessibility to the Portland area (Section I of the supplemental questionnaire in Exhibit A). The alternatives were not identified.

6. Regarding Oregon Administrative Rules, Section 660-04-018 applies. That section requires that uses in exception areas justified by physical development and/or irrevocable commitment to nonresource use be limited to the following:
 - (a) Uses which are the same as the existing types of land use on the exception site; or
 - (b) Rural uses which meet the following requirements:
 - (A) The rural uses are consistent with all other applicable Goal requirements; and

- (B) The rural uses will not commit adjacent or nearby resource land to nonresource use as defined in OAR 660-04-028; and
 - (C) The rural uses are compatible with adjacent or nearby resource uses.
- (c) Changes to plan or zone designations are allowed consistently with subsections (a) or (b) of this section, or where the uses or zones are identified and authorized by specific related policies contained in the acknowledged plan.

With respect to (a) above, other land in the exception area is already zoned VLDR-2 1/2, and built to that density, so the change would not be counter to the existing use.

Regarding (b) above, the uses allowed in the requested zone can be considered rural. One dwelling per 2 1/2 acres is not necessarily an urban density, and urban services will not be required to serve the site. The city of Newberg believes the density is urban and the county should therefore justify an exception to statewide Goal 14 (Urbanization) to show why the use should not be contained inside a UGB. There is no definition of "urban" or "rural" use in local ordinances or state statutes or rules. However, the Board specifically rejects the city's contention that 2 1/2 acre zoning is "urban" within the context of this application. The Board finds that 2 1/2 acre zoning in this case is "rural" within the meaning of Goal 14 because the size is large enough to allow for wells and safe subsurface sewage disposal.

The applicant stated (in section F of the supplemental questionnaire) that the property is buffered from any farm use by a woodlot, and that there is little farm use in the area anyway. The property is in the middle of the exception area. The zone change should be compatible with resource uses and not commit nearby resource land to nonresource use.

CONCLUSIONS FOR APPROVAL:

1. The request is consistent with the intent of the goals and policies of the Comprehensive Plan in that approval of the zone change will not compromise urban containment or orderly urban development.

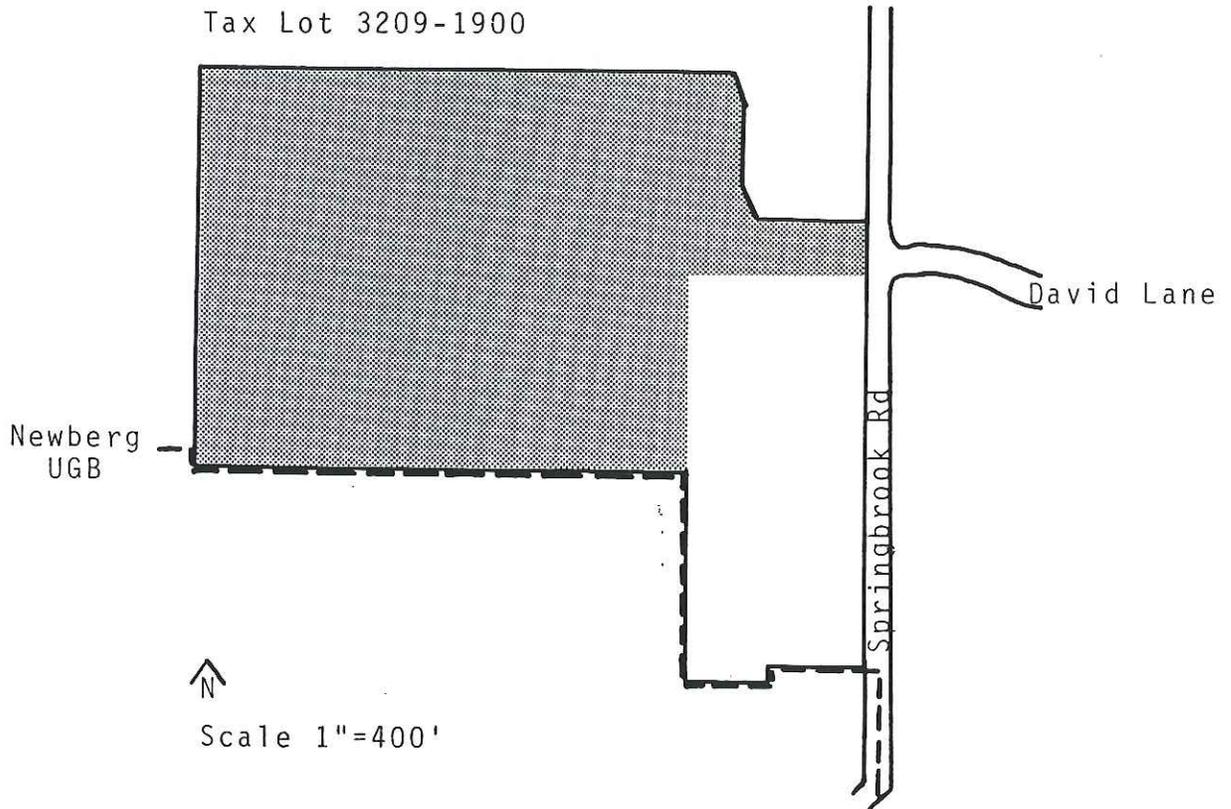
2. The Comprehensive Plan map designation for the property is Very Low Density Residential, and no amendment to the Plan is required for this zone change.
3. Because of low availability of land suitably zoned for rural residences on parcels approximately two and one-half acres, there is a need for more VLDR-2 1/2 zoning in the county.
4. The area in the vicinity of the request is characterized by small-acreage ownerships with rural public services available. The request is appropriate for the area.
5. Other lands in the vicinity of Newberg zoned VLDR-2 1/2 are largely built upon and not available for further rural residential use.
6. The request is consistent with the Oregon Administrative Rules that govern zoning of exception areas.

DECISION: The decision of the Planning Commission to approve the requested zone change is hereby SUSTAINED.

EXHIBIT B FOR ORDINANCE 527

ZONE MAP AMENDMENT
October 16, 1991

TO CHANGE THE OFFICIAL ZONING MAP
FROM AF-10 TO VLDR-2 1/2



The zone change applies to the shaded area only

Map prepared by Yamhill County Planning and Development