

INDEXED

IN THE BOARD OF COMMISSIONERS OF THE STATE OF OREGON

90-512

FOR THE COUNTY OF YAMHILL

SITTING FOR THE TRANSACTION OF COUNTY BUSINESS

FILED  
YAMHILL COUNTY, OREGON  
1990 JUL 27 AM 11:26  
CHARLES STERN  
COUNTY CLERK  
DEPUTY

In the Matter of an Ordinance )  
Amending the Yamhill County )  
Comprehensive Plan and Plan )  
Map (1974) to Change the )  
Designation of Thirteen Acres )  
of Tax Lot 3314-1000 From )  
Agriculture/Forestry Large )  
Holding to Agriculture/ )  
Forestry Small Holding, and to )  
Amend the Official Zoning Map )  
From EF-40 Exclusive Farm Use )  
to AF-10 Agriculture/Forestry )  
Small Holding for the Same )  
Parcel, Planning Docket )  
PAZ-1-90, as Requested by the )  
Yamhill County Planning Com- )  
mission and Fred and Bland )  
Herring, and Declaring an )  
Emergency )

ORDINANCE 510

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY, OREGON (the Board), sat for the transaction of county business in special session on July 25, 1990, Commissioners David E. Bishop, Dennis L. Goecks, and Ted Lopuszynski being present.

WHEREAS, for reasons set forth in Finding A.1. of the attached Exhibit "A", the Yamhill County Planning Commission initiated an application for a plan amendment and zone change for a thirteen acre portion of Tax Lot 3314-1000; and

WHEREAS, a hearing was held on this matter before the Planning Commission on May 30, 1990 to consider the application and thereafter voted unanimously to recommend to the Board that the comprehensive plan and plan map, and official zoning map be amended as requested; and

WHEREAS, on July 11, 1990, the Board held a public hearing on the application; and

WHEREAS, the findings and conclusions attached hereto as Exhibit "A" and by this reference incorporated herein provide a justification for approval of the application, including the taking of an exception to Statewide Land Use Planning Goal 3; and

WHEREAS, the attached Exhibit "A" demonstrates that the proposed amendment to the Yamhill County Comprehensive Plan and Plan Map and the Official Zoning Map of Yamhill County are in the best interests of the citizens of Yamhill County; Now Therefore,

THE YAMHILL COUNTY BOARD OF COMMISSIONERS ORDAINS AS FOLLOWS:

Section 1. The Yamhill County Comprehensive Plan and Plan Map (1974) are hereby amended as specified in the attached Exhibit "B", made part of this ordinance by reference, to reflect a plan designation of "Agriculture\Forestry Small Holding" for the shaded area of Tax Lot 3314-1000.

Section 2. In adopting the plan amendment specified in this ordinance, the county hereby takes an exception to Statewide Planning Goal 3.

Section 3. The Official Zoning Map of Yamhill County is hereby amended as specified in the attached Exhibit "B", to reflect a zoning designation of "Agriculture-Forestry, 10 Acres" for the shaded area of Tax Lot 3314-1000.

Section 4. The findings attached as Exhibit "A" and incorporated herein by reference are hereby adopted in support of this ordinance.

Section 5. 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 Newberg, Oregon this 25th day of July, 1990.

ATTEST

YAMHILL COUNTY BOARD OF COMMISSIONERS

CHARLES STERN  
County Clerk

DAVID E. BISHOP  
Chairman DAVID E. BISHOP

By: Elaine Pearcy  
Deputy ELAINE PEARCEY

Dennis L. Goecks  
Commissioner DENNIS L. GOECKS

FORM APPROVED BY:  
Timothy S. Sadlo  
TIMOTHY S. SADLO  
Assistant County Counsel

Ted Lopuszynski  
Commissioner TED LOPUSZYNSKI

EXHIBIT "A"  
Ordinance 510

DOCKET: PAZ-1-90

APPLICANT: The Yamhill County Planning Commission initiated this application at the request of Fred and Bland Herring, the property owners.

REQUEST: A Comprehensive Plan map amendment to change the designation from Agriculture/Forestry Large Holding (AFLH) to Agriculture/Forestry Small Holding (AFSH), and a zone change from EF-40 Exclusive Farm Use to AF-10 Agriculture/Forestry Small Holding for approximately 13 acres.

TAX LOT: 3314-1000

LOCATION: North of and adjacent to Herring Lane, approximately one-half mile west of Red Hills Road.

## FINDINGS:

A: Background Facts

1. The Yamhill County Planning Commission approved a zone change from EF-40 to AF-10 for approximately the westernmost 20 acres of the subject tax lot on April 5, 1990. The westernmost 20 acres was within an existing exception area, plan designated AFSH, and the AF-10 zone was consistent with the Plan for that portion of the subject parcel. The exception area boundary runs through tax lot 3314-1000, and the applicants desired a zone change for an additional 13 acres of the parcel that were outside the exception area and therefore could not be zoned AF-10 without a plan amendment. The Planning Commission initiated this action to amend the comprehensive plan, at the request of the applicants.
2. Property size: The subject parcel is composed of two tax lots under common ownership (3314-1000 and 1090) that total 133.36 acres. The request pertains only to approximately 13 acres in the western portion of tax lot 3314-1000 (Exhibit B).
3. Access: Herring Lane
4. On-site Land Use: The subject 13 acres is used for livestock grazing, and it contains one dwelling and associated residential uses. The remainder of the subject parcel is devoted to cultivated crops, except one additional homesite.

5. Surrounding Land Use: Agriculture and rural residential.
6. Surrounding Zoning: Considering only the subject 13 acres, the surrounding zoning is north, AF-20; east, EF-40; south, AF-10 and EF-40; and west, AF-10.
7. Soils: According to the Soil Survey of Yamhill County, the subject 13 acres is composed of Willakenzie soil, which has an agricultural capability class of III or VI, depending on slope steepness. A majority of the area is class III.
8. Water: Private well
9. Sewage Disposal: The existing dwelling has an on-site subsurface system. Future developments would require approval of on-site systems by the County Sanitarian.
10. Fire Protection: Newberg RFD
11. Taxes: Farm deferral

#### B. Oregon Administrative Rule Provisions and Analysis

1. Oregon Administrative Rule (OAR) Chapter 660, Division 4, explains the requirements for taking exceptions to statewide goals. The subject property is considered agricultural land by virtue of its Class III soil (see Finding A.7) and use of the land for grazing (Finding A.4). The property is not on the county inventory of forestlands, so Goal 3, but not Goal 4, applies. An exception to Goal 3 is required if the land is to be designated for any use other than exclusive farm. The AF-10 zone, the requested designation, is not an exclusive farm use zone.
2. OAR 660-04-018 outlines the optional procedures for taking exceptions. The first is to base the exception on "physical development" and/or "irrevocable commitment" of the property to non-agricultural use. This type is intended to recognize and allow existing types of development. The second is a "reasons" exception, which allows a jurisdiction to zone property with a non-agricultural designation if there are grounds for the change. The latter path has been taken because the subject property is not physically developed or irrevocably committed to a nonfarm use.
3. OAR 660-04-022(1) deals with reasons exceptions, and states: For uses not specifically provided for in subsequent sections of this rule or OAR 660, Division 14, the reasons shall justify why the state policy embodied in the applicable goals should not apply.

3.1 In essence, the county needs to explain why the property should not be zoned EF-40.

3.2 The grounds relied upon by the property owners is that the westernmost 33 acres of the subject parcel is not cultivated, as is the remainder of the property, and it is too steep and rocky to be valuable for agricultural production. The character of the land, with thin rocky soils and steep slopes, resembles the exception area to the west more than the cultivated farm area to the east.

3.3 The boundary of an exception area is the western line of this proposed amendment (Exhibit B). The entire exception area boundary follows tax lot lines except where it runs through the subject tax lot. The border connects two property corners on the north and south sides of the subject property. The boundary should have instead followed along the line between the cultivated and uncultivated portions of tax lot 3314-1000.

3.4 If the change is approved, the land will still be able to support farm activities at a level similar to what exists. This is because the AFSH Comprehensive Plan and AF-10 zoning designations recognize agriculture as a primary use, with a presumption that it is less productive ground and at a smaller scale.

3.5 The subsequent sections of OAR 660-04-022 do not apply because they do not address uses in non-exclusive farm use zones.

4. OAR 660-04-020(2) states that justifications for exceptions based on reasons shall address the following four factors:

(a) ...the facts and assumptions used as the basis for determining that a state policy embodied in a goal should not apply to specific properties or situations including the amount of land for the use being planned and why the use requires location on resource land.

(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...

(d) The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts.

These factors are considered in findings 5 through 8 below.

5. The reasons relied upon to justify the exception assume that Goal 3 is intended to protect agricultural lands, and that those lands are defined in such a way in the goals that a quantity of land fits the

definition that is not truly useful for farm production. Because of specific location, inaccuracies due to the scale of soil survey maps, or unique adjacent uses, some areas that meet the definition of farmland neither contribute substantially to the agricultural economy nor are necessary for efficient use of adjacent agricultural land.

5.1 In the case of the subject request, much of the property ostensibly has Willakenzie soil with 12 to 20 percent slopes, which is Class III land, but the Soil Survey does not describe this soil type as being rocky unless it has slopes of greater than 20 percent. Most of the property considered in this request is in fact quite rocky and the soils are very thin. This, combined with unusual alignment of the existing exception area boundary, results in land not suitable for agricultural production on a scale that is economically viable.

6. Regarding factor (b) above, according to a study of exception areas in the county conducted in 1986, the density of development in lands zoned AF-10 was nearly one dwelling per ten acres. This does not mean that there are no buildable parcels remaining, due to pre-existing substandard parcels that have development rights, but the supply of land suitable for small, part-time, labor intensive farm operations with a residence is extremely limited. See also finding C.4 of this report regarding alternative areas.

7. The long-term environmental, economic, social, and energy consequences of the proposed amendment would be negligible because the result would only be one additional dwelling in the area. The requested zone has a ten acre minimum lot size and the area affected is only about 13 acres. The portion of the land not built upon will almost certainly remain in a use similar to what currently exists.

8. Regarding factor (d), the uses permitted in the AF-10 zone are substantially similar to the existing uses in the area. Adjacent (abutting) parcels are currently in farm use, and uses are therefore not anticipated to change under the new designation. The density of housing allowed in the area will increase. However, the impact of allowing what amounts to one additional dwelling on the subject parcel will not cause a significant adverse impact on adjacent uses. The area in question is separated from neighboring farm uses and borders an existing AF-10, AFSH area.

9. OAR 660-04-018(3) provides rules governing zoning in exception areas justified by "reasons." These provisions state:

(a) ...plan and zone designations must limit the uses and activities to only those uses and activities which were justified in the exception.

(b) When a local government changes the types or intensities of uses within an exception area approved as a "reasons" exception, a new "reasons" exception is required.

9.1 Regarding the first of these requirements, permitted uses in the AF-10 zone are nearly identical to those in the EF-40 Exclusive Farm Use zone, the current designation on the property. The only substantive differences are the minimum parcel size and the status of dwelling approvals. Dwellings do not need to be justified as customarily provided in conjunction with farm use in the AF-10 zone. Because the uses are the same, there is no need to employ the Limited Use overlay zone to the site.

9.2 Regarding the second requirement above, this request is a first-time exception, so the provision does not apply.

### C. Ordinance Provisions and Analysis

1. Section 1204 of the Yamhill County Zoning Ordinance (YCZO) states that exceptions to statewide goals are subject to the requirements of the Oregon Administrative Rules discussed in Section B of this report. There are no local review criteria applicable to the plan amendment portion of this request.

2. The zone change portion of the subject request must comply with the standards and criteria in YCZO Section 1208.02. These provisions are:

- (a) That the proposed change is consistent with the goals, policies, and any other applicable provisions of the Comprehensive Plan.
- (b) That 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) That 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) 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.
- (e) That the amendment is consistent with the current Oregon Administrative Rules for exceptions, if applicable.

The findings regarding these criteria are provided in subsections 3 through 7 below.

3. Regarding Comprehensive Plan goals and policies, Goals II.A.1 and II.A.2 of the Plan text are, respectively:

To conserve Yamhill County's farm lands for the production of crops and livestock and to ensure that the conversion of farm land to urban use where necessary and appropriate occurs in an orderly and economical manner; and

To conserve Yamhill County's soil resources in a manner reflecting their suitability for forestry, agriculture and urban development and their sustained use for the purposes designated on the County plan map.

3.1 The property is not being considered for urban development. The soil survey indicates a sizable portion of the property has class III soil, which is to be preserved for farm use according to Policy A under Goal II.A.2. An on-site investigation indicates, however, that most of the property is more rocky and steep than indicated by the survey. The property will still be able to support livestock as it now is, and even greater production is possible because smaller operations can manage the herd more intensively. In light of the suitability of the site for agriculture, as addressed in the second goal above, the small holding zone designation is appropriate to implement the intent of the Plan.

4. Regarding the need for the proposed change, examination of data gathered in 1986 by the county is useful. The subject site is adjacent to the Chehalem Richland/Sunnycrest exception area, and the Newberg-Dundee exception area is next to that. According to the "Exceptions Study Areas Dwelling Intensification Analysis" (9-86), the two exception areas contain 1531 acres of AF-10 zoning, which would permit 153 dwellings at buildout. At the time of the study, the areas contained 144 units, or 94 percent of the allowed density. Other AFSH-designated exception areas around Newberg are already built up to a density greater than one dwelling per 10 acres due to pre-existing substandard lots.

5. Regarding criterion (c), the area to the west of the subject property is in a "built and committed" exception area. Properties to the north and south are in subdivisions of five to 10 acre parcels, although to the south many of the lots are in contiguous ownerships. The density of development allowed by the proposed zone would not be out of character with the lands to the north and west. Utilities in the area are adequate to serve the potential intensification of use. No significant changes in the area since acknowledgement of the Comprehensive Plan have been identified that would have a bearing on this case.

6. The findings in section C.4 of this report apply to criterion (d), above, as well. Only the AFSH-designated areas around Newberg were considered, so the location aspect of the requirement has been addressed. Other exception areas around Newberg are mostly unavailable because they are already built to near the maximum density permitted.

7. Regarding criterion (e), the OAR requirements are addressed in section B of this report. In addition, an exception to Goal 14 has not been addressed because one dwelling per ten acres and the AF-10 zone's encouragement of farm use indicate that potential uses will be rural.

#### CONCLUSIONS:

1. The request is for an amendment to the Yamhill County Comprehensive Plan map for approximately 13 acres from Agriculture/Forestry Large Holding to Agriculture/forestry Small Holding, and a zone change for the same property from EF-40 Exclusive Farm Use to AF-10 Agriculture/ Forestry Small Holding.

2. The unique circumstances of the subject site and zone boundaries are such that reasons exist why the property should not be subject to Goal 3 requirements.

3. Areas that do not require a new exception cannot reasonably accommodate the use because of unavailability of land zoned appropriately.

4. The long-term environmental, economic, social, and energy consequences of the proposal are negligible.

5. The uses allowed by the proposed change are compatible with other uses in the vicinity.

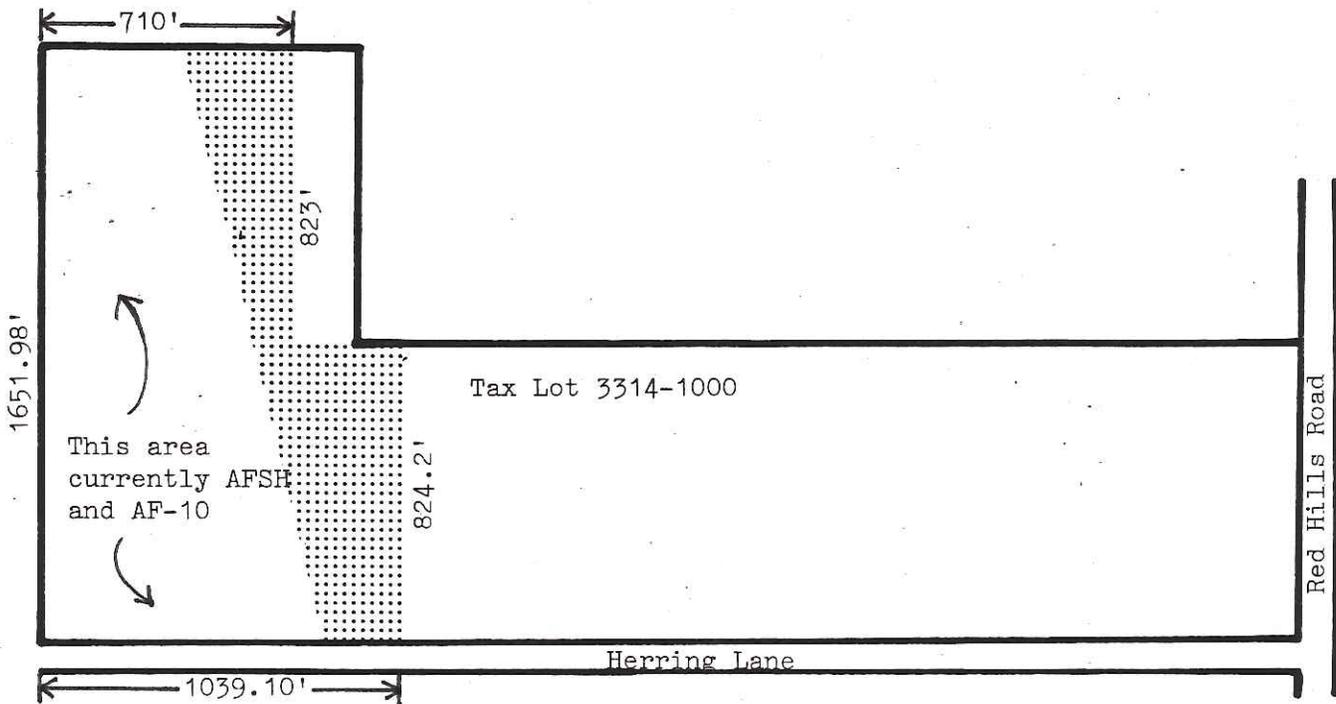
6. The request is consistent with the goals and policies of the Yamhill County Comprehensive Plan.

EXHIBIT B FOR ORDINANCE 510

COMPREHENSIVE PLAN AND  
ZONE MAP AMENDMENT

TO CHANGE THE OFFICIAL MAPS:  
Comprehensive Plan designation from AFLH to AFSH  
Zone from EF-40 to AF-10

July 25, 1990



The map amendments apply to the shaded area only

Map prepared by Yamhill County Department of Planning and Development