

YAMHILL COUNTY PLANNING COMMISSION

Thursday, November 3, 2022 - 7:00 p.m.

Yamhill County Courthouse, Room 32

535 NE Fifth Street

McMinnville, Oregon 97128

Roll Call: Dan Armstrong, Kit Johnston, Mark Gaibler, Paulette Alexandria, Matt Dunckel **Absent:** Brett Veatch, Alan Halstead, John Abrams **Staff:** Ken Friday, Lance Woods, Stephanie Curran

Chair Dan Armstrong opened the public hearing.

Approval of minutes from October 6, 2022 hearing.

Mark motioned, Kit seconded, motion passed 4-0, Dan Armstrong abstained

DOCKET NO.: P-10-22

REQUEST: To partition an approximately 27-acre property into three (3) parcels, two of which will measure approximately 2.4-acres and the third will be approximately 22.44-acres. The Applicant is applying for this partition using parcel size averaging.

APPLICANT: Jonathan Jahnke

OWNER: Cyclops Rising, LLC

OPPONENT: Friends of Yamhill County represented by Kathryn Jernstedt

TAX LOT(S): 4512-01600

LOCATION: The subject parcel does not have a situs address assigned but is located just north of the parcel with an address of 14100 NW Berry Creek Road, and just south of the parcel with an address of 13801 NW Willis Road.

CRITERIA: Section 502 of the *Yamhill County Zoning Ordinance* and the *Yamhill County Land Division Ordinance*.

ZONE: VLDR-2.5, the Very Low Density Residential District

- EXHIBITS:**
- I. Staff Report
 - II. Application
 - III. Request for Hearing
 - IV. Public Notice
 - V. Public Agency Reports
 - VI. Comments Received

Abstentions or objections: Matt Dunckel worked for Jahnke in the past but knows party on both sides and it will not affect his decision. Dan Armstrong worked with Ed Sherer in the past but can remain objective.

Ken Friday read the raise it or waive it statement.

Lance Woods provided the staff report.

Proponent:

Andrew Stamp, 4248 St, Lake Oswego: I submitted letter today that deals with the issue of drainage law in the case Gabarino vs. Van Cleave. It was a suit by lowland owners to enjoin owners of upland farm from using drainage system constructed by them to drain surface water from their lands. A Marion County judge entered a decree in favor of upland owner, which was upheld in appeal by the Supreme Court of Oregon. Upland owners have the right to install and use system to drain surface water from their land into natural channels even though they thereby accelerated flow onto lower lands. When you have 2.5 acre lots, you have plenty of area to manage the run-off from your property. The soil is good for wine grapes, they like well-drained soil. If it is good for grapes, it is good for stormwater drainage. In Oregon, the upper owner basically has an easement right through the lower properties. There are natural drainage channels on the

subject property, and we can add to that drainage. That is not against the law. Culverts are a little of a grey area. In this case we are talking about 2 houses and a remainder lot. I don't see any concern with drainage coming off of two single family residents that cannot be managed on site. Another concern I heard is that the access to this parcel is through an easement. Code says you can only have 3 Single Family Residences on an easement. We got approval from the Planning Commission two years ago to get permission to build a separate road. This is still held up in court, so I thought meanwhile we would partition the land. The owner of one of the properties was concerned if that easement will ever be connected from the north. We do not plan to connect the roads, unless the Fire Marshall makes us. If they do, we will put up a crash gate, so there would be no through traffic. I submitted a letter yesterday where I wanted to discuss some of the proposed conditions. I think this hearing will be left open, so I don't think we will need clarifications tonight.

Dan Armstrong: What sort of improvement will there be at the planned terminus of the easement. Will there be enough room for safety vehicles?

Andrew Stamp: Yes, we will build to Fire Marshall standards.

Dan Armstrong: With 27 acres available why are you asking for 2.4-acre parcels rather than 2.5?

Andrew Stamp: Because of the terrain, we are using parcel size averaging. All the lots have to equal density of 2.5 acres at the end of the day. We received a letter that the opponents think we might make more lots later. Yes, we will, this property is zoned for residential use. We decided to do a partition on these lots because it has separate access. We want to put some wells in as well, because there is concern about water up there.

Dan Armstrong: So, you are going to put some wells in first, then come back for additional partitioning later?

Andrew Stamp: Yes. It is hard to tell the value of a new lot until you get your first check for a lot, but there is a lot of variation. I want to develop a couple of lots, see what they will sell for before we continue building. It doesn't make sense to put the wells in before the preliminary plat, but before the plat is finalized.

Paulette Alexandria: Your intention is to build one well per parcel?

Edwin Sherer: 16500 SE Lafayette Hwy, Dayton: If the weather would have held, we would already have a well in there and we would be talking about the well tonight. Hopefully we can develop some kind of community system, and get a qualified, license professional to run it.

Dan Armstrong: In your future development, will you be into having community water system?

Edwin Sherer: It's possible, but we won't know until we get in there and drill some wells.

Dan Armstrong: In Oregon, per well you can 15,000 gallons for personal use, 5000 gals for agricultural: you wouldn't base your standards on that?

Andrew Stamp: No, the usage will be a lot lower than that. A typical home uses about 400 -500 gallons a day. I think you can live in a rural area on about 300-400 gallons a day. Until we know the volume of the well we drill, we don't know what we're going to get. Frankly, it could be a limiting factor in how many houses we build.

Opponent:

Anne Engen, 13325 NW Willis Rd, McMinnville: Our properties abut the east side of Tax Lot 4512-1600 for 800 feet. On the other end of this property, potentially there will be a road built down a steep incline from Willis Rd over to the 27 acres in question. The substandard size lots should not be approved at this time until the road is built, the 27 acres are plotted, taking into consideration the steep terrain and ground water issues of this parcel. All of you commissioners should walk the 27 acres, with permission of the owners. A flat map does not give you an accurate image of Tax Lot 4512-1600. Just because a land is zoned VLDR-2.5 does not mean it is appropriate for that size of development.

Martin Pfahler, 13540 NW Berry Creek Rd, McMinnville: Our property is downstream of all the Cyclops Rising tax lots. There are a bunch of us downstream that are worried about water runoff. Their attorney said they would be managing

stormwater on their properties, but he isn't a hydrologist. Just because he said that doesn't mean it is true. In a lot of these cases, it can take years for drainage problems to start showing up, and by that time the developers could be long gone. Also, the bigger the house, the more ground gets covered. The more the ground is covered, the more earth gets covered, and this decreases the amount of land left to absorb the water. Over time you can have drainage channels fill up with weeds and silt, all causing loss of functionality. Then it becomes a maintenance issue. If things go south, and these places flood my property in 5 years, who is responsible for this? There should be a contract stating if anything happens in the future, the people who changed the drainage/water flow, should be responsible for correcting the damage. There is already flooding on Berry Creek, Public Works recently had to put in a new culvert. It is not as simple as saying you are going to build something properly.

Alfredo Arguedas: 14100 NW Berry Creek Rd, McMinnville: I am here as a proponent and opponent. I am on the original easement. In 1997 I got a knock on the door from A-1 logging, stating they were going to use our easement to get back and forth to the Jahnke property to log the area. They took several months to do this during a very wet winter and left my new driveway a mess. I went to the owner, and they told me it was A-1 Loggins problem. I called them and they said it was the owner's responsibility. Finally, the logging company fixed it. I was out of the country for a while in 2008, and when I got back, I had to come to the Planning Commission because the neighbor wanted a variance to let 10 houses per easement from 3. I have never been opposed to this proposition, it is their land, and they can do with it what they will. All we want as neighbors and property owners, is a fair shake. I want to be assured that they won't be using and ruining our driveway throughout the duration of the development. The third parcel they are planning to develop in the future, are they going to be using my easement? I would also like some clarification on how many parcels can be served by a private easement. Is it my parcel and two additional, or 3 parcels other than mine? We want to be partners with the Jahnke's, we have not had good relationship with in the past.

Mark Gaibler to Ken Friday: Can you clarify the lots for the easement

Ken Friday: We do not count the parcel on the road.

Dan Armstrong: Could we put road maintenance condition in the language?

Alfredo Arguedas: It would make me happy.

Joyce Marrow: I had a concern about the easement and parcels of land. Mr. Stamp said it is their intention to development. I do not the two roads connected bringing lots of through traffic. 4502-802, 800. The road approval is still at LUBA, we don't even know if it will pass. I had my soil tested and it is mostly Jory soil, which is the best kind of soil. My land is EF-40, on the edge of this VLDR property.

Dan: Do you have a vineyard on your Jory soil?

Joyce: Not yet we just cut the tree and getting ready to plant.

Kathryn Jernstedt for Friends of Yamhill County: this is the largest group of neighbors that have reached out to F of YC for help expressing their concerns, over 20 people. Their concerns are additional use of the easement serving three parcels. The burden of proof statements do not provide facts to support their statements. There are a lot of assertions that conditions have been met or "refer to site plan" The site plan doesn't identify septic systems, wetlands, show the river on the property. It does not adequately represent the property. The parcel on the west side of this parcel has had their road washed out. We request they do a wetlands delineation study. I included an ODFW map shows this parcel is on the edge of the peripheral winter range. Per our comprehensive plan, it states all applications should be submitted to OFW for consideration. They were not listed as one of the agency referrals. I think they need to be informed about this partition and have the chance to weigh in. This a partition application rather than a subdivision application, but there is not any illusion that this is going to become a subdivision. There is an opportunity at this point to address this here and now, instead of further along the development. I would like to leave the record open for 30 days.

Dan: we will leave the record open, but we will hear the applicant rebuttal.

Rebuttal:

Andrew Stamp: I heard a lot of testimony tonight; I will have to go through the written material submitted to consider the suggestions. The comment was made I am not a hydrologist, this is true. I do more drainage law than any other lawyer in the state of Oregon. The 1958 case I cited is still good law and has been applied throughout Oregon. When it comes to the issue of flooding, the question is who pays for the flooding. It gets resolved in the civil courts unless you have flood insurance. You have to prove the upstream neighbor was negligent. This is really hard to prove. It sounds like Mr. Arguedas had a bad relationship with his neighbor, but I will give him my personal cell phone number and make the effort to work with him. With regards to the issue of the soil, I don't think this argument is relative here. The property is already zoned for residential. I think there are some issues we need to talk about, but I think we can do that in writing before the next meeting.

Ken: The record will be open until 5 pm on November 10, 2022 for all parties to submit written testimony or evidence. The record will then be open until 5 pm on November 17, 2022 for all parties rebuttal to the material submitted during the first open record period. The record will then remain open for the applicant only to submit arguments with no new evidence until 5 pm November 28, 2022. The Planning Commission will then reopen the hearing at 7 pm on December 1, 2022.

Mark: So moved, Paulette seconded; motioned passed 5-0

Dan closed the hearing 8:39.

Motion: Mark motioned to approve; Paulette seconded. Motion passed 5-0

QUASI-JUDICIAL PUBLIC HEARINGS:

DOCKET NO.: PAZ-05-21
REQUEST: Approval of a Comprehensive Plan amendment from Agriculture/Forestry Large Holding (AFLH) to Commercial (C) and a zone change from EF-80, Exclusive Farm Use District to NC, Neighborhood Commercial District.

APPLICANT: John Abrams
OWNER: Maralynn Abrams Trust
TAX LOT(S): 4418B-01600
LOCATION: 2150 SW Homer Ross Loop, McMinnville
CRITERIA: Sections 402, 602, and 1208.02 of the *Yamhill County Zoning Ordinance*. Section 904, Limited Use Overlay may also be applied. Comprehensive Plan policies may be applicable. OAR 660-12-0060 Transportation Planning Rule.
ZONE: Currently, the EF-80 zone, the Exclusive Farm Use District

EXHIBITS:

- I. Application
 - a. Letter of Incompleteness
 - b. Applicant's Response to Letter of Incompleteness
- II. Neighborhood Commercial Zoning Ordinance
- III. Public Notice
- IV. Public Agency Reports
- V. Comments Received

Ken Friday: John Abrams is sick and requested this be continued to the 12/1/22 Planning Commission Hearing. Mark motioned to continue, Paulette seconded, motioned passed unanimously.

Other Business:

Ken Friday: Introduced the new planner, Tiffany Willis. Applications for the planning commissioner position have been received, we might have two openings soon. I can bring these to the next meeting, and you can rank them, and we can forward your recommendation to the BOC. BOC is still considering the recommendations on the roads. We had the 9

room B and B appealed to LUBA. Next week there will be a hearing on a denial I did for the extension on a solar request. Dan asked for a report from code enforcement officer and Ken will try to get Mike Kemper to speak to the Planning Commission after the first of the year.

Hearing Adjourned: 8:52