

YAMHILL COUNTY PLANNING COMMISSION

Thursday, December 1, 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, Alan Halstead, John Abrams **Absent:** Brett Veatch **Staff:** Ken Friday, Jody Gollehon, Lance Woods, Desire Lundeen, Stephanie Curran

Chair Dan Armstrong opened the public hearing.

Approval of minutes from November 3, 2022 hearing.

Alan Halstead motioned, Paulette Alexandria seconded, motion passed 7-0,

DOCKET NO.: P-10-22—At the point of Staff Recommendation
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 and objections:

John Abrams: I wasn't here last week but read the material and feel confident enough to vote on the matter. I know both the Jahnke's and Ed Sherer but that won't affect his decision.

Alan Halstead: I wasn't here last meeting either but read through the material and will vote. I also know some of the parties, but it will not affect my decision.

Dan Armstrong: Matt knows everybody in the county, and I know Ed Sherer. It will not affect my decision.

Mark Gaibler: One of my companies does business with Edwin and it won't affect my judgement.

Staff recommendation: Lance Woods recommends approval with conditions.

Deliberation:

Paulette Alexandria: I can't see how I can say no based on what Lance says.

Alan Halstead: I agree with staff.

Kit Johnson: I agree with staff.

Mark Gaibler: I go along with staff.

Matt Dunckel: I agree with staff.

John Abrams: I agree with staff and think the conditions should help.

Motion: Alan Halstead motioned to approve; Kit Johnson seconded. Motion passed 7-0

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: Since John Abrams is a member of the Planning Commission, I talked to our legal counsel about this and it is appropriate for the Planning Commission members to decide whether or not they can be objective on this land use matter.

All commissioners stated they can make an unbiased decision

Ken Friday read the raise it or waive it statement.

Lance Woods provided the staff report.

Proponent:

John Abrams: 12475 Baker Creek Rd, McMinnville, 97128: Property has a long history, going back before measure 37 as far as development goes. In 2008 the courts gave the right to continue residential and urban type commercial use. The parcel has always been considered commercially developable. Judge Collins ruled in 2008 that zoning determines the use. There are no non-conforming use commercial developments. I have a common law vested right, not a Measure 49 vested right. I am trying to take a court ordered commercial use and trying to define it and restrict it, in part to protect the Westwind Estates subdivision. Right now, with the vesting, I can develop this lot as commercial, which means as it stands. This is a way to protect the Westwind Estates. It will protect the zoning and the use in conjunction with each other. There has been concern with the exceptions. I believe the common law vested right I have supersedes the exception process. OAR 660 states it is no longer committed rural land since it has been designated for commercial development. I think with current trends in the post covid world listen to tape.

Matt Dunckel: I thought everyone was in agreement until the city of McMinnville submitted their letter.

John Abrams: I think part of the problem is that I checked that they would be using public water. Fox Ridge Water Company will be supplying both the homes and businesses out there. I am not asking for city services. None of these properties have or need/want city service. I have common law vesting from 2008 stating I can continue urban style commercial uses, not a Measure 47 vesting. I know the state has push back on rezoning measure 37 properties, but this is no longer a measure 37 property.

Paulette Alexandria: Are you going to sell these properties, or rent them?

John Abrams: I will sell them as commercial lots. They could then build a house and run a business from there.

Paulette Alexandria: Is there any way you can do this and get along with the city of McMinnville, which is right across the street?

John Abrams: I think so, we are working on it. Sid Friedman didn't want any restrictions on these parcels. There are other ways than the limited use overlay to accomplish this. Then the City chimed in that they wanted restrictions on the property. I did bring into the record a traffic study we did in 2006 and that study was looking through 2025. There are two different versions of the study, one taking into consideration 72 lots and the other is for in 77 lots. We have 52 houses right now. I think I've met the concerns of the city but have been having a difficult time getting feedback. I want to assure them this will not compete with their planned commercial areas around that area.

Dan Armstrong: How many lots are there?

John Abrams: 52

Dan Armstrong: How many are built out?

John Abrams: 42

Dan Armstrong: And how many of those residences know about this?

John Abrams: All of them.

Mark Gaibler: Isn't the city limits the road?

John Abrams: It is.

Mark Gaibler: My question is why does the City of Mac have anything to do with it?

John Abrams: That's Oregon land use. I would argue that they have no standing, but they're allowed. Their concern, that I wanted to use City services was a valid concern, but it was misplaced. I am not asking for the extension of any city services. Their comments are always welcome, but to have a deciding say in this matter, I don't know.

Dan Armstrong: We now have someone who is neither for nor against but wants to testify, Ms. Jernstedt.

Kathryn Jernstedt: Friends of Yamhill County, PO Box 1083, McMinnville, OR: Sid Friedman couldn't be here tonight, so I'm here in his place, but I did not hear what he discussed in an earlier meeting today with the city. One of the issues is M37 created parameters. Judge Collins ruled having to do the number of homesites on the lots, and not all of them are buildable. Our concern is the Limited Use Overlay and tying this to a home occupation, is that will require another residence, which could over time, become another residential development. If it's done as a home occupation, it may or may not be continued by the new owner. If not, it becomes another residential lot. We support the idea of neighborhood commercial zone. We ask whatever be approved it be consistent with the conditions in the original approval. We want it to continue to be commercial and the Limited Use Overlay would be in our opinion inconsistent.

Dan Armstrong: I'm a little confused, you call it consistent use but when you look at the plot map, I see everything around it is a residence, I'm scratching my head figuring out why another residence would be....

Kathryn Jernstedt: Judge Collins ruled on the maximum number of residential lots, and it did not include every lot on the place. Lot 600 is the surface water detention pond, lot 500 was judged unbuildable based on compaction problems and this one was designated commercial.

Ken Friday: If it changes to NC zone and you don't have Limited Use Overlay, it could allow a caretaker's residence. So, it seems it would need an overlay to prevent another residence being in use.

Matt Dunkel: If we approved without the limited overlay, could a restriction be written it in the deed?

Jody Gollehon: From what I know of you could.

Kit Johnson: With the back-and-forth with John and Sid, it seemed like they were coming to an agreement

Katheryn Jernstedt: If there was commercial occupation, not a home occupation that comes and goes. I don't think home occupations ensure the commercial use of the property.

Paulette Alexandria: So, you want a McDonalds to be allowed?

Kathryn Jernstedt: I don't know.

Opponent:

Heather Richardson, Planning Director City of McMinnville: The applicant suggested that our argument was based on connection to city sewer and water, that is not the case. Our argument is that the land-use application for a comprehensive plan map amendment and zone change does not have the appropriate evaluation, analysis, and findings to support the application and we feel that when that evaluation and analysis is done the application may need to be amended in terms of the types of commercial uses allowed and the impact on neighboring properties and facilities. The applicant implied that it is already commercial, but the comprehensive plan designation and the zone are not commercial. The applicant stated that he has met the City's concerns, but that is not true either. In fact, based on the new information provided today, we have more concerns than before. To be clear, we are supportive of the described intent for low impact offices and home occupation type business on this parcel that takes access from Homer Loop Road and not from Hill Road. Also, we are not familiar with the restrictions that Kathryn Jernstedt from Friends of Yamhill County testified to tonight limiting the number of dwelling units to what exists today. That vision of low impact offices and home occupation businesses is not what this application is on paper, and we would be happy to work with the applicant on the necessary language to ensure that it is. The original application and the revised amendments provided today allow much more than that vision. The allowed uses would be Automobile Service Station, Automobile Repair Garage, Drive-In Restaurant, Restaurant, or Refreshment Stand, Food Store, Axle and Hitch Assembly Shop, Beauty Salon, Tavern, Farm Equipment Sales, Furniture Sales, and Lumber Sales, and with today's proposed amendments there would not be limitations on size or impact. What comes to mind is Encore Furnishings and Honda Automobile Sales on 99W. That is impactful and we cannot pretend that it isn't. You have testimony from the applicant that states that he has vested rights for both residential and commercial development on

this lot. You have testimony from the Friends of Yamhill County that states that the applicant only has vested rights for commercial development on the property. And you have testimony from the City of McMinnville's legal counsel that states that the applicant's Measure 37 claim does not guarantee him a default-to commercial rezone for the property without following the evaluation and analysis required by Oregon land use laws. Tonight, the applicant suggested that he could develop a McDonald's, Mini Storage, etc. on the site without a land-use process without any exception or land-use findings because "it is committed to urban development" through his vested rights. I am not a land use attorney and will rely on legal counsel and the court system to determine whether the definition of "committed to urban development" per Oregon statutory law is a common law vested right that exempts any land uses from Oregon land use laws and goals. There are several different opinions about what the Measure 37 court decision allows the applicant for this property and their vested rights, and I believe that still needs to be worked out from a legal perspective with a finding to move forward. What is clear is that no one believes that a comprehensive plan amendment or zone change application can be approved without the appropriate evaluation, analysis and findings required by Oregon land use laws. In his letter dated November 1, 2022, Sid Friedman, representing Friends of Yamhill County states that he does not believe that the applicant has met the "letter of the law in justifying an exception to Goal 3". In the letter that we provided on November 2, 2022, we asserted that there were either no or insufficient findings for compliance with the YC Comprehensive Plan, Oregon Land Use Goal 2 and Goal 14 land use goals for this application, and in the letter from Bill Kabeiseman, legal counsel representing the City of McMinnville, he states that there are either no or insufficient findings for several different YC Comprehensive Plan Goals and Policies And on November 2, 2022, DLCD sent an email to Ken Friday at 2:15 PM, that I did not see in the public record materials, but I will read it here tonight. "Thank you for the opportunity to comment on the comprehensive plan amendment proposal referenced above. It is our understanding that the subject property is about 2.5 acres in size and currently zoned for exclusive farm use. The applicant in this case is pursuing an exception to statewide planning goal 3. If the application is successful, the subject property would be converted to a Commercial designation. It is also our understanding that commercial use of the property would be constrained to a "home occupation" through application of a limited use overlay zone. The materials provided for our review indicate that the applicant's argument in support of the proposal is based on waivers and vested rights determinations granted under Measures 37 and 49. We do not believe that waivers, vested rights determinations, and home site authorizations granted under Measures 37 and 49 may be used as justification for any goal exception. Therefore, the customary provisions of OAR Chapter 660, Division 4 must be found to be satisfied. All other applicable provisions of law, including, but not limited to OAR 660-012-0060 must also be found to be satisfied. Please enter this message into the record of these proceedings and provide us with notice of the decision." The findings for the YC Comprehensive Plan goals and policies relies on the fact that there is no other neighborhood-serving commercial planned or existing on the western side of the City of McMinnville and that this rezone will serve a City of McMinnville need for neighborhood-serving commercial. We pointed out in our letter that assertion is simply not true and that there is actually several planned and existing neighborhood serving commercial developments in close proximity to this parcel that have been approved and acknowledge through extensive analysis, data and findings to meet state laws. Notably these planned developments were adopted as part of the Yamhill County Comprehensive Plan, both in 2003 and most recently in 2020 as part of our UGB work. We have not had time to fully review all of the exhibits that we received this afternoon and believe that they constitute a significant enough change to the application that the public hearing should be continued so that the public has a chance to review the materials and respond. The City of McMinnville does not feel that the burden of proof is adequate to support an approval. It should be denied, or the applicant should provide the appropriate findings for the application prior to a decision being rendered. We would like to formally request that the public record be kept open for at least seven days so that our legal counsel can review all of the exhibits that were presented in the last 36 hours.

No questions from Commissioners.

Public Agency Reports:

Ken Friday: Do you want to postpone this for a month and talk more with the city, or do you want to do the 7,7,7 rule?

John Abrams: Let's do 7, 7, 7.

Ken Friday: The record will remain open until 5 pm on 12/8 for all parties. The record shall then remain open until 5 pm on 12/15 for all parties' written rebuttal. The record shall then be open until 12/22 for rebuttal from applicant only.

Other Business: Two applicants applied for the Planning Commission and there are two spots available. They are here tonight to tell you a little about themselves.

Steve Wick, Gaston, OR: I have been a Yamhill County resident since 1992 and have been farming my land since then. I spent 30 years in the tech industry as a CEO and manager, I have lots of experience with all kinds of people and situations. I want to try to maintain the life we have here in Yamhill County.

Craig Brown: I was born and raised in Yamhill, I'm a 4th generation farmer and live on my family farm. I work for a large lumber corporation. I do HR, invoicing, accts payable/receivable. I have been thinking about getting more involved with the county and Kit Johnson approached me about being on the Planning Commission.

No objections from the Planning Commission, they are going to forward recommended to BOC.

Dan Armstrong to Jody Gollehon: We receive so much testimony last minute, can we change the cutoff date in written testimony our notices to be submitted 48 hours prior to the hearing? This is so staff and commission members can absorb the material.

Jody Gollehon: I will have to research this.

Dan Armstrong: At our hearings, do people who walk in the door who are not from County have standing?

Jody Gollehon: it is more nuanced than that, it is a case-by-case basis.

Dan Armstrong: Would it be better for us to meet at 6 instead of 7? Let's mull it over and discuss next year.

Ken Friday: The BOC considered G-02-22 and they are leaning more toward option 3, instead of 1, and they have voted to send the issue of roads, G-01-22, back to the planning commission.

Hearing Adjourned: 9:10