

**YAMHILL COUNTY PLANNING COMMISSION**

Thursday, November 3, 2005 @7:00 p.m.  
Yamhill County Courthouse, Room 32  
535 E 5th St.  
McMinnville, Oregon 97128

**Roll Call:** Michael Sherwood, David Polite, Bernie Diefenderfer, Matt Dunkel, Marjorie Ehry, Alan Halstead, Robert Smiley, Daryl Garrettson, Brad Myers. Staff: Mike Brandt, Ken Friday, Rick Sanai.

Alan Halstead moved to approve the October 6, 2005 **minutes** as submitted. Seconded by David Polite. Approved unanimously.

**QUASI-JUDICIAL PUBLIC HEARINGS:**

**DOCKET:** PAZ-04-05  
**REQUEST:** Approval of a Comprehensive Plan amendment from Agriculture/Forestry Large Holding to Agriculture/Forestry Small Holding; a zone change from AF-20 Agriculture/Forestry to AF-10 Agriculture/Forestry Small Holding; and an Exception to Goals 3 and 4.  
**APPLICANT:** The Benkendorf Associates  
**OWNER:** Dennis Vincent  
**TAX LOT:** 3214-2200 and 2201  
**LOCATION:** 33430 NE Haugen Road, Newberg, Oregon  
**CRITERIA:** Sections 403, 501 and 1208 of the Yamhill County Zoning Ordinance; the Yamhill County Comprehensive Plan. OAR 660-04, Exception Process. OAR 660-12-0060 Transportation Planning Rule. A limited use overlay zone may also be applied.

Chair Smiley stated that a request had been received from the applicant’s representative for a continuance to the January 5, 2006 Planning Commission meeting. Chair Smiley questioned those in attendance if they were unable to return for the January 5, 2006 hearing. No objections were voiced.

**MOTION: Marjorie Ehry moved to continue PAZ-04-05 to the January 5, 2006 Planning Commission Meeting at 7:00 p.m., Room 32 at the Yamhill County Courthouse. Seconded by Alan Halstead. Approved unanimously.**

**DOCKET:** PAZ-03-05  
**REQUEST:** Approval of a Comprehensive Plan amendment from Agriculture/Forestry Large Holding to Agriculture/Forestry Small Holding; a zone change from EF-80 Exclusive Farm Use to AF-10 Agriculture/Forestry Small Holding on 30 acres of a 67.8-acre parcel.  
**APPLICANT:** Wade and Patricia Miller represented by Jessica Cain, P.C.  
**TAX LOT:** 4513-200  
**LOCATION:** 13945 and 13949 NW Pheasant Hill Road, McMinnville, Oregon 97128  
**CRITERIA:** Sections 402, 501, 904, 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 660-04, Exception Process. OAR 660-12-0060 Transportation Planning Rule.

**Deliberation:**

Daryl Garrettson: We need to look at the parcel as a whole and part of this parcel is suitable for farm use. I find no basis to take an exception. I don’t believe the applicant has presented sufficient evidence to justify the taking of an exception. I will be voting no.  
Bernie Diefenderfer: I agree with Daryl. I don’t see how an exception has been justified.  
Marjorie Ehry: I agree with Daryl and Bernie, unless there is something we haven’t been presented.  
Brad Myers: Brad abstained because he was not present at the October hearing.

Michael Sherwood: In reading the testimonies presented, it bothers me that this parcel of land is farmable land. I'm not an expert, but I saw some contradictions concerning the land. I'm on the fence in this issue.

Alan Halstead: I can see no justification for the Goal 3 exception when you look at the entire property.

Robert Smiley: Many productive farms are on steeper slopes than this one, and this parcel has to be considered as a whole. I am not in favor of the application.

**MOTION: Daryl Garrettson moved to deny PAZ-03-05 based on the findings and conclusions contained in the staff report. Seconded by Alan Halstead. Vote passed for denial 5 - 1. (Opposed by Michael Sherwood.) (Matt Dunckel, Brad Myers and David Polite abstaining.)**

Chair Smiley opened the public hearing.

**DOCKET:** PAZ-06-04  
**REQUEST:** Approval of a Comprehensive Plan amendment from Agriculture/Forestry Small Holding to Commercial; a zone change from AF-10 Agriculture/Forestry Small Holding to HC Highway Commercial. The purpose of the zone change is to expand the existing three acre Highway Commercial Zone over the entire 14 acres of the subject parcel.  
**APPLICANT:** Willie Owens  
**REPRESENTATIVE:** Jessica Cain, Attorney at Law  
**TAX LOT:** 3325-600  
**LOCATION:** 9660 NE Fox Farm Road, Newberg, Oregon  
**CRITERIA:** Sections 501, 904, 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.

**Abstentions, Objections of Jurisdiction, Ex Parte Contact:** David Polite stated that any conflicts have been resolved and he will be able to vote objectively on the docket. Daryl Garrettson was on the Planning Commission when there was a joint hearing in 1987 with the city of Dundee on an application for this property. He stated it would not affect his ability to consider this matter. Matt Dunckel stated he provided the attorney with a map, but he does not know Willie Owens and it will not effect his decision on this matter. Marjorie Ehry knows Willie well, but it will not effect her decision. She noted that when she was running for county office, she received donations from him. Robert Smiley works for one of the tenants, but this issue has not been discussed and will not effect his decision. Alan Halstead received a political donation about 6 years ago from Willie Owens, but it will not bias his opinion in this case.

Rick Sanai read the “**raise it or waive it**” statement into the record.

**Staff Report:** Ken Friday gave a brief review of the staff report and handed out some Public Agency Reports received several months ago, as well as information regarding a case in 1975 that was a Court of Appeals case that was also heard by the Supreme Court. There is only one section that applies and he highlighted that on the back page of the Supreme Court case. Ken also handed out copies of a case regarding traffic.

**Proponent's Case:** Jessica Cain, Gunn & Cain Attorneys at Law, P.O. Box 1046, Newberg, OR 97132: Jessica described the property and how it has been utilized. Because of the size of the acreage, there is not enough space within the 3 acres to continue the business as he had. It is currently zoned AF-10 and the applicant would be willing to have a Limited Use Overlay. There was an issue raised in the staff report where this parcel could be broken up into 2-acre lots, but that is not the applicant's intent. There is an issue of transportation on Hwy 99. The increase in traffic could be mitigated with a right turn lane to help with the increase in traffic. With respect to the zoning criteria, the expansion of his operation would not be allowed on the AF-10 land. The property is currently serviced by city water by Dundee; septic and sanitary sewer lines, and a chipped sealed pavement, which Jessica referred to on the map. There are some residential and commercial uses in the surrounding areas. It has parking already developed on the property. The property is committed to a commercial use. Services are available to support the development of the permitted uses. The septic can be served with a drain field and traffic can be mitigated with a right turn lane on Fox

Farm Road. **Questions:** Michael: Has ODOT dumped concrete on the AF-10 property? Jessica: Yes they have. Willie: Several companies have dumped there. Daryl: In reading the rule, it would appear that one of the ways you mitigate it is to amend your plan and we just completed the process to provide for an alternative route for that road. It doesn't look like a right turn lane is an acceptable means of mitigation. How much of his existing footprint will get wiped out when the bypass is built? Ken pointed out the portion on the map. Jessica: It will take out the structures, leaving the outdoor storage units. David to Staff: Based on his expansion plans, could future Conditional Use Applications satisfy this need? Mike Brandt: Yes. The property that the bypass would take up would be the commercial property. Jessica to Staff: Where under the conditional uses is it permitted to have commercial activity? Mike: Home occupations. Jessica: I'm not sure he would meet the Conditional Use Permit requirements. Bernie: The Limited Use Overlay would be acceptable, but what would it be on? Jessica: It would limit it to one permitted use, any of the permitted uses. Mike: It limits the use. Alan: Is there a right away for access onto 99W? Is the only access on Fox Farm Road? Jessica: Yes. David: On the land itself, what percentage of the land is covered in asphalt? Willie: All of it, except for the commercial property. Marjorie: Did Willie lease property this year and for what? Willie: Yes, for plants and sales. Robert to Staff: During the bypass hearings, there was a request by ODOT for each city to sign an agreement not to allow commercial development on these off ramps. Is the property affected by that? Mike: No, because they made the application before that went into effect. Mike stated that just to be clear, the nursery itself is an outright permitted use on the property.

**Questions of Proponent's:** None.

**Opponent's Case:** None.

**Public Agency Report:** Ken stated there are no additional reports.

**Rebuttal:** Jessica again encouraged the approval of the application.

**Staff Recommendation:** The application is relatively modest. I don't believe they've shown that there's a need to re-zone all of the 11.6 acres of the property, and there are some problems with the arguments that it will be irrevocably committed because some of those uses were uses, like the bark-dust sales and the barn display and those are uses allowed as part of the goals. He quoted the last sentence of OAR 660.04 025. We don't believe all of it is physically developed. The bypass overlay and the bypass interchange would be there and would take out his 3 acres of highway commercial. We propose to allow re-zoning the NW corner of a corresponding 3 acres of Highway Commercial Zone. We will work with the applicant to identify the 3 acres that would be outside of the bypass overlay. **Questions:** David: Would the re-zoning to a different 3 acres for commercial use become effective under your recommendation? Ken: Yes.

Chair Smiley closed the public hearing.

**Deliberation:**

Alan Halstead: I can support the Limited Use Overlay for nursery and landscaping supplies, but I'm reluctant to do an additional 3 acres. If we do it, it needs to be done with the whole parcel.

Michael Sherwood: I agree with that. I'm in favor of a Limited Use Overlay, expanding 3 to 6 acres and restricting the building to 3500 square feet.

Brad Myers: With the current traffic scenario, if you enlarge it at all, it will be worse. For the request to be considered, the utilization of the property is not being done. If they could readjust the parking and commercial use, and growth pattern out into the other parts of the property, there would be plenty of room to accommodate parking. I would vote to deny it.

David Polite: I will support the Limited Use Overlay with the 6 acre commercial zone.

Robert Smiley: The land is not irrevocably changed. If anyone has been to a nursery they understand that the ground is highly compacted with rock and that is a requirement, so I don't agree with that at all. It can be used for nursery stock. Clear out the parking area on the commercial. I don't see Mr. Owens be limited by what he has there. I will not vote for approval.

Marjorie Ehry: I believe he has commercial property now and I would be in favor of the 6 acre commercial. Knowing the property and what ODOT has done, I believe most who will have the bypass going through their property will not know what they can do in the years to come. I will vote for the 6 acre commercial.

Matt Dunckel: I don't feel the highway problem is created by Willie Owens. I would like to see Willie clean it up and store plants, bark dust, and have a parking lot. I am in favor of re-zoning the whole property into a Highway Commercial Zone.

Bernie Diefenderfer: I concur with staff.

Daryl Garrettson: The transportation plan needs to be discussed. I'm inclined to adopt the interpretation that the approval of the bypass and the amendment of the transportation plan is our mitigation for approving applications along Hwy 99. I don't do that easily, since the next application that comes in may add more traffic significantly. I will vote for the 3 acre addition and for the whole parcel.

**MOTION: Brad Myers moved to deny PAZ-06-04. Seconded by Robert Smiley. Motion opposed 7 - 2 for denial. (Brad Myers and Robert Smiley in favor of denial.)**

**MOTION: Daryl Garrettson moved to approve docket item PAZ-06-04 with the Limited Use Overlay, (by approving the docket item it means the entire acreage), limiting the use to nursery, landscaping materials with the additional condition requested by the city of Dundee that there be non-remonstrance against annexation. Seconded by Alan Halstead. Motion passed for approval 5 - 4. (Opposed by Brad Myers, Michael Sherwood, David Polite, and Robert Smiley.)**

**New Business:** Daryl Garrettson asked if the Nominating Elections of New Officers needed to be done now, since there will be no December meeting.

**MOTION: Brad Myers moved to continue the officers as they are for another year term. Seconded by Marjorie Ehry. Approved unanimously. (Bernie Diefenderfer and Michael Sherwood were not present for this vote.)**

Chair Smiley called a 5 minute break.

Meeting resumed at 8:55 p.m. Mike Brandt explained Yamhill County's position on Measure 37 claims with discussion.

**Adjourn:** The meeting adjourned at 9:12 p.m.

F:\Share\PC\11-03-05\_min.wpd