

YAMHILL COUNTY PLANNING COMMISSION

Thursday, January 5, 2006 @7:00 p.m.
Yamhill County Courthouse, Room 32
535 E 5th St.
McMinnville, Oregon 97128

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

Alan Halstead moved to approve the November 3, 2005 **minutes** as submitted. Seconded by Michael Sherwood. Approved unanimously.

Chair Smiley opened the public hearing.

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.

Abstentions, Objections of Jurisdiction, Ex Parte Contact: None.

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. This request is subject to the criteria found in sections 403, 501 and 1208.02 of the Yamhill County Zoning Ordinance and to the exceptions process in OAR 660-04 of the Transportation Planning Rule and 660-12-0060. Ken also passed out letters from the Soil and Water Conservation District and Helen Alexander.

Proponent’s Case: Al Benkendorf, of The Benkendorf Associates, 522 SW 5th, Suite 703, Portland, OR 97204 and Joel A. Norgren, Soil Scientist, 3655 NW Van Buren, Corvallis, OR 97330: Mr. Benkendorf stated he submitted a 2 page memo dated 12/23/05, which further explains the steep slopes on the parcel. This application is about only one residence on a 10 acre parcel. In the immediate area, 39 of the surrounding sites are 5 acres or less and 20% are less than 10 acres. The site has various steep slopes. The site is accessed by a driveway easement, which is designed to serve one residence. Mr. Norgren has been mapping soils since 1954 and in Oregon since 1959. He looks at soils as they relate to land uses. He examined 47 locations on the 24 acres, which consisted of a grid which he laid out for the distribution of the slopes. He always questions the accuracy of the soil maps. In this case, they didn’t offer any difference in capability ratings. Both were deep red clay soils at various slope intervals and were rated the same. Logging would not be practical on such a small piece. The other consideration is the instability, either for erosion or landsliding on slopes that steep, which the chances of failure are always increased after clear cutting and logging. Mr. Benkendorf commented on the staff report, page 7, item C-3 that relates to the adequate supply for AF-10 properties and asked for broader zoning. He stated that this site is unique compared to the surrounding area because of the steepness. In terms of looking at the availability of AF-10 lots, there are the adjacent exception areas, but only 27 remain undeveloped and do not compare to this proposed site. Relative to the Transportation Planning Rule, he quoted

a portion written by Bill Gille. Addressing the letters that were received, the Grant's stated they would not permit any additional uses on the easement of this parcel, which is not a problem, and in regards to the letter from Mrs. Alexander, the development of a SFR on this lot will comply with building requirements. Mr. Benkendorf also stressed the need for additional AF-10 land in the county. **Questions:** Daryl Garrettson: What is the production of the spring for the existing dwelling? Mr. Vincent: The spring and cistern is used year round and the production has not been measured. Matt Duncel: There are two issues; soil classification and soil capability? Mr. Norgren: The name is usually just a way to make it easier to remember. Class 1 were level soils and easiest to farm with no potential erosion, not stating productivity. Marjorie Ehry: My concern is water in that area. Will the well hold up over a period of time? Mr. Benkendorf: Domestic water use is limited to 15,000 gallons a day. Marjorie: Is that good quality water in that area? Mr. Vincent: I have one filter system for the entire house. David Polite: The Soil and Water Conservation District are not allowing new wells? Daryl: When they adopt a critical water ground area, they exempt domestic wells. David: Do you feel these are productive soils for growing new trees, should logging be done? Mr. Norgren: Yes, but it takes a while to grow, due to the root system. David: Will the easement allow logging? Mr. Vincent: No, because there are large trees along the driveway. Mr. Benkendorf: The easement will not permit that kind of use. There is no access for logging. Brad Myers: You are going to clear a pad for the house. What is the square footage that you will clear? Mr. Benkendorf: A quarter of an acre at the most. Brad: What is the current height of the fir? Mr. Norgren: 150 feet. Michael Sherwood: How long have you owned the property? Mr. Vincent: 27 years. Michael: Has any logging been done in that area? Mr. Vincent: I had a friend who did some about 15 years ago when he was trying to get a business started. I was away in Europe during the cutting. There were no big rigs and the cutting was done on an area that was not steep and not much was cut down. Alan Halstead: What guarantee is there that a future homeowner won't clear cut the land? Mr. Benkendorf: We would be open to a CC&R if needed. Robert Smiley: Has there been a recent evaluation of the value of the timber on the property as it stands? Mr. Benkendorf: No. Robert: Given the depth of the soil and slope, would this be suitable for wine grapes? Mr. Norgren: I don't remember seeing wine grapes on north face slopes that steep.

Questions of Proponent's: None.

Chair Smiley called a 10 minute break.
Meeting resumed at 8:15 p.m.

Chair Smiley announced that an error had been made in not taking testimony from Paul Kerkar.

Proponent's Case: Paul Kerkar, Independent Real Estate Broker working for ReMax in the Parrott Mountain area: Mr. Kerkar is not currently aware of any 10 acre lots on Parrott Mountain that are able to be developed. Looking at the topographical map, the majority of the land reaches on the south side of the house, which is extremely steep. There is a small part on the map that has a clearing which would be beautiful to build a home. In regards to cutting trees, if the home is built there is a natural clearing and cutting would be minimal. Additionally, if and when the home is able to be built, the home below could not see it, since it is so dense. This could be additional income for the county, without interfering with the natural beauty. **Questions:** Michael to Staff: What happens when you begin breaking these parcels down? Ken: It gets you a step closer to going to the VLDR zones because you've already taken that an exception to Goals 3 & 4.

Opponent's Case: Marilyn Reeves, Friends of Yamhill County, P.O. Box 1083, McMinnville, OR 97128: After reviewing the docket and being familiar with the area, this is a re-zoning for almost 25 acres. Friends of Yamhill County do not believe there are legal reasons for approval. Mrs. Reeves submitted to Ken information relating the number of board feet taken out of that area. This is resource land and these soils are producing anywhere from 160 to 155 cubic feet per acre per year of commercial tree species, which is a lot of timber. The Oregon Forestry Practices Act considers that forestry is commercially viable. One argument could be that it was not originally zoned correctly, but it has produced timber. We ask that you please recommend denial of this application. **Questions:** Brad: Would Friends recommend clearing the land? Mrs. Reeves: We have no position on how the property is harvested.

Richard Koehler, 33260 NE Haugen Rd. Parrott Mtn. (P.O. Box 7, Sherwood, OR 97120): Mr. Koehler pointed out his residence on the aerial map and argued that 10 acre parcels are abundant and just because they are not presently

for sale, does not mean they do not exist. He owns contiguous tax lots and the slopes and soil types are comparable to the Vincent's property. The timber is beautiful and some of it is in excess of 3 feet in diameter. The same is true for our neighboring tax lot to the south. There is an overgrown logging road that runs through these properties and this area was recently logged in the 1960's - 1970's. In 1994, Mr. Vincent logged his property and at that time, a permit was issued for 130,000 board feet (approximately 26 truck loads of timber). In 1997, it was thinned again and a permit was issued for 40,000 board feet (approximately 8 truck loads). It was not reforested and has natural growth. Mr. Koehler will provide a copy of his notes and findings at the finish of his testimony, along with confirmation substantiating his statements. An additional home will impact the road and add to congestion on HWY 99W. This will change the quality of life that they chose when they moved there. The Vincent's accepted the zoning restrictions when they moved there and now that they are ready to sell, they wish to change things, leaving us who remain with the consequences. **Questions:** Daryl: If we accept the applicant's justification for this permanent zone change, could you make the same justification? Mr. Koehler: Certainly.

Claire Rolfs, 33260 NE Haugen Rd. (P.O. Box 7, Sherwood, OR 97120): If Mr. Vincent is allowed to do this, what will happen if we come to you with our 40 acres down the road? In July of 2005, we were approached about re-zoning, as well, but we are not interested in seeing this change. **Questions:** Daryl: Are you on a well? Ms. Rolfs: Yes. Our second well is at 435 feet at 18 gallons per minute. The first well came out empty at 800 feet. Brad: How much more footage of lumber have you harvested? Ms. Rolfs: We have opted to not harvest. We will not clear cut, but would not rule out selective harvesting. Bernie Diefenderfer: Would your property be impacted by mud slides if there is a clear cut? Ms. Rolfs: Yes, it could be.

Questions of Opponent's: None.

Public Agency Report: Ken stated that the Newberg Fire District found no conflicts with their interests; Bill Gille, Public Works Director, stated no conflicts, but noted prior to final plat approval, the applicant will have to provide an access road that meets emergency vehicle access requirements. The County Sanitarian noted that tax lot 2200 has record of a septic system, which was installed in 1978 and there are no records for tax lot 2201. There was no comment from the Water Resources Dept.

Rebuttal: Dennis Vincent: They reminded me of the dates, the first one was correct, but there was no logging on the second permit. We did not do it twice and never touched the steeper portion located behind my house, since it could increase the risk of sliding. It was adjacent to Claire's property and it was done on the less steeper portion. Brad: Do you know approximately how much board footage you harvested? Mr. Vincent: I don't know and I accept Claire's number. David: Did you approach them on this application? Mr. Vincent: Yes, we did and they almost offered to purchase my property back in 2000. He told them he was going to go through this process and asked if they would like to be involved. David: Is their property anything like your own? Mr. Vincent: I don't believe they have any slopes as steep as my own. Michael: You're moving? Mr. Vincent: It's been for sale since 2004. This is a lovely building site and we have been there for 26 years. Daryl: In looking at the second permit, it says cutting was going to occur on slopes 35% - 65%. It would appear you took out a permit to log up on the hill. Mr. Vincent: My testimony will be that I'll never, in my ownership of that property, cut on that slope. It's too steep. Marjorie: Is the little piece of property where the new house would go below the steep part? Mr. Vincent: No, it is above it. Mr. Benkendorf pointed it out on the map and stated that there has been enough evidence submitted to support the exception.

Staff Recommendation: Ken asked everyone to turn in the applicant's exhibit 5 on page 8 and explained how difficult the goal is to justify. This forestry exception is based on the argument that steep slopes prevent logging and that this is a unique situation with the area. In looking at Exhibit 5 on page 8, it does show steep slopes on the applicant's property, but if you look on the property to the east and 2 parcels east of the applicant's property, it also has some very steep slopes. There are also steep slopes a couple of parcels to the northeast, and just in the general area there are slopes that are similar to that of the applicant's property. The property is also in Forest Deferral and it has been logged in the past. The evidence does not support a reasons exception and a reasons exception has not been justified. Staff recommends denial of the request. **Questions:** Matt: Is water availability a criteria for us to consider? Ken: No.

Brad: When you make the determination as far as the slope and the ability to harvest, do you take into consideration the expense of the logging? Ken: Do I factor in all the expense of logging on this parcel? No. Invariably, the topic of the economic use of the property comes up and I don't recall any application where the applicant believed it was "cost effective" to do any resource use on any property. It is day-to-day as far as the economics of harvesting, farming, etc. Does it factor into this recommendation? No. David: How concerned is staff about a snowball effect? Ken: I would be very concerned about it. Almost every year we get questions about splitting these properties down in this area, and believe if it is approved, we will see more applications. David: Do you think this property back in the late 70's, early 80's. Could have just as easily been an AF designation or do you feel it was properly designated at that time? Daryl: When the zoning was being done, the AF-20 zone was designed to deal with 2 things: 1. The small wood lot owners were very active in zoning, and promoting the AF-20 zone is the appropriate zone to protect the small wood lot owners. At that time, Publisher's Paper was going around contracting a lot of small timber land owners to cut their timber. 2. Protecting the vineyard land. When Parrott Mountain was looked at, those areas that were heavily parcelized were put into the exception areas. Areas in the 10 - 40 acre range were put in the AF-20 and it was designed to foster small wood lot forestry in that area. This area was not overlooked.

Chair Smiley closed the public hearing.

Deliberation:

Alan Halstead: I can't overcome the argument that the steep slopes are a justification for an exception.

Michael Sherwood: I'm concerned if we move in favor of this application that we would be nurturing more of these kind of applications. I'm against it.

Brad Myers: I think what it boils down to is giving people the right to split their properties while maintaining the current status of what they have up there. I would vote for approval.

David Polite: Based on the facts, I can see a snowball effect being created. I would deny.

Marjorie Ehry: I have only been here for 43 years and have seen a real change on Parrott Mountain in that amount of time. I am not adverse to building a house, but I don't think this is a good time for this application. The water was a large question up there as well as the quality. I am also not against logging and replanting within 2 years. I will withhold my decision for a moment.

Bernie Diefenderfer: I don't see how one home will change the timber productivity on that hillside. I'm in favor.

Matt Dunkel: It is not resource land and not a viable piece of land. If there is no water, there will be no home. There are no large impacts on transportation or utilities. I am in favor.

Daryl Garrettson: I disagree with Matt. Can you justify it under the criteria? It is good resource land and it may be difficult to get them out, but it's not impracticable. Why should we grant you an economic benefit that is not available to your neighbors? The applicant got what he bought. If you look at marketability, this house has been on the market for almost 2 years. If the demand does exist, what bothers me the most, (referring to the map), is sticking a large rural residential zone into the middle of the resource zone. If we buy this argument, we've re-zoned the whole hill. It is a critical water area, and one house will probably not make it worse, but 20 houses will. I cannot find justification for approval.

Discussion occurred concerning logging and water in that area.

MOTION: Alan Halstead moved to approve docket PAZ-04-05. Seconded by Brad Myers. Motion was denied with a vote of 6 - 3. (Opposed by Marjorie Ehry, Daryl Garrettson, Alan Halstead, Michael Sherwood, David Polite, Robert Smiley.)

MOTION: Daryl moved to deny docket item PAZ-04-05 based on the findings and conclusions found in the staff report. Seconded by Michael Sherwood. Motion passed 6 - 3. (Opposed by Bernie Diefenderfer, Matt Dunkel, Brad Myers.)

New Business: Ken stated no items on the docket for a February meeting.

Adjourn: The meeting adjourned at 10:00 p.m.

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