

YAMHILL COUNTY PLANNING COMMISSION

Thursday, November 2, 2006 · 7:00 p.m.
Yamhill County Courthouse, Room 32
535 NE 5th St.
McMinnville, Oregon 97128

Roll Call: Matt Dunckel, Bernie Diefenderfer, Marjorie Ehry, Michael Sherwood, Daryl Garrettson, Alan Halstead, Robert Smiley. Staff: Ken Friday, Mike Brandt, Stephanie Armstrong.

Review of the **minutes** from the Planning Commission Hearing of October 5, 2006. Marjorie Ehry moved to approve the minutes as submitted. Seconded by Matt Dunckel. Approved unanimously.

CONTINUATION OF QUASI-JUDICIAL PUBLIC HEARINGS:

DOCKET NO.: S-11-06
REQUEST: Approval of a 12-lot subdivision on a 58.14 acre property. The lot sizes are approximately 3 to 4.5 acres in size. This application is possible due to approval of a Measure 37 claim through Docket M37-115-05 (Board Order 06-119) which allows the development under the land use rules in effect on May 1, 1962.
OWNER: Youngman Family Trust
APPLICANT: Robert and Betty Janzen, representing the Youngman Family Trust
TAX LOT: 2526-1400
LOCATION: On the western boundary of 15345 NW Tupper Road, Yamhill, Oregon
ZONE: AF-40, Agriculture/Forestry Large Holding
CRITERIA: Board Order 06-119, State Claim M121524 and the *Yamhill County Land Division Ordinance*

Chair Smiley opened at the point of Deliberation.

Deliberation:

Alan Halstead: I'd like to pass.

Michael Sherwood: **Question to Staff:** On page 5 & 6 of the DSL Staff Report of October 27th, regarding the Removal Fill Law for Wetlands, I wonder if the loss of fair market value is tied to removal fill on wetlands, and yet the Dept. of State and Lands determination on this land has been made and no permits have been requested. Does that make the claim invalid on the wetlands issue? Ken: I don't believe so because you're only asked to decide whether or not they've satisfied the subdivision standards. In this case, it's a post Measure 37 subdivision so you're limited to health and safety regulations. Daryl: The DSL in the end of their Staff Report determined that the fill law doesn't apply until a building permit is issued.

Daryl: I do have a Measure 37 question. In reviewing the DLCDC Staff Report, it states there are 4 applicants who have an interest in the property. They only waive as to Maude Youngman back to 1962. They waive Betty Janzen back to 1975 and waive Robert Janzen to 1985. Mike: That's correct. Daryl: As I understand the subdivision ordinance, the application has to be in compliance with the state goals as well as Yamhill County's Comprehensive Plan. Measure 37 waives back to the

date of ownership and the State of Oregon appears to be saying that for 2 of the applicants they are not waiving Goal 3 and this subdivision does not comply with Goal 3. I asked Mr. Sanai about this. Mike: This was brought up last time and Ken can explain the answer given to us by John Gray. Ken: John responded to the letter of August 26, 2006 and said it was clear that Maude Youngman was a party to the application and we were within bounds to process the application under the regulations that were in affect in 1962. Daryl: The DLCDC letter doesn't say that. Ken: On the initial public notice the applicant was listed as Robert L. Janzen. On our application it has Robert as the applicant and in the next box over it has as legal owner the Youngman Family Trust. The DLCDC sent a letter saying the County could not approve a subdivision for Robert Janzen because Mr. Janzen's claim does not go back to 1962. We looked on the application and talked to John Gray and he said yes, it's obvious that Maude Youngman is a party to this application. We sent out a subsequent notice listing the Youngman Family Trust as represented by Robert & Betty Janzen. Daryl: Is it the position of County Counsel that when somebody creates a living trust that the dates that people become contingent beneficiaries are not relevant about Measure 37 and that the date that is in issue is then the date of the creator of the trust? Mike: That's right, if it's a revokable living trust.

Daryl Garrettson: Well, I have some serious concerns about County Counsel's legal interpretation on the dates of ownership, since I don't think a trust is the same as say a cooperation where share holders can come and go, but counsel is entitled to make opinions that we are supposed to follow. Based on that, there is no basis under the ordinances in existence in 1962 for us to deny this. I would vote for approval.

Bernie Diefenderfer: I concur with staff's recommendation along with the seven conditions they applied.

Marjorie: I also vote in favor.

Michael Sherwood: Yes.

Alan Halstead: I agree with Daryl.

Robert: As I've studied this over and I know there has been a lot of discussion on whether this is a Measure 37 claim, that's not for us to decide. That ship has sailed. Based on the land use laws in effect in 1962, I would vote for approval.

MOTION: Alan Halstead moved to approve S-11-06 with all the conditions. Seconded by Michael Sherwood. Approved 6-0 with Matt Dunckel abstaining.

Ken Friday explained the appeal process.

DOCKET NO.: S-13-06

REQUEST: For a 12-lot subdivision on an 31.03 acre property. The proposed lot sizes are approximately 2.1 to 3.2 acres each. This application is being made subsequent to the approval of a Measure 37 claim which allows the applicant to apply for development under the land use regulations in effect on February 20, 1965. The details of the Measure 37 approval are found in Board Order 06-153 and State Claim M122329.

APPLICANT: Kroo Family Living Trust

TAX LOT: 2231-3900 and 4100

LOCATION: 18108 NE Bald Peak Road, Newberg, Oregon

ZONE: AF-20 Agriculture/Forestry Use

CRITERIA: Board Order 06-153 and the *Yamhill County Land Division Ordinance*

Chair Smiley opened at the point of Deliberation.

Ken Friday explained one recommended addition in the conditions. Condition #12 states the

applicant shall submit a 5 foot contour map on tax-lot 2231-400 for the area north of the northern boundary of tax-lot 2231-3900. The map shall identify the slope and potential building sites that have less than 40% slope. The parcels that do not have building sites of less than 40% slopes shall not be allowed to be created.

This is in response to the soils map that show 30 - 60% slope on basically the northern end of the property and the description of tax-lot 3900, which Ken showed on the map. This condition is in addition to the other 11 conditions outlined in the Staff Report.

Deliberation:

Marjorie Ehry: I looked at that piece of property and certainly understand the concerns of everyone. I have some real thoughts about building on that property, but I would be interested in hearing some other comments.

Bernie Diefenderfer: I agree with staff.

Daryl Garrettson: I share Marjorie's concerns about water up there, but Measure 37 and the way it's written, coupled with the fact that water under the subdivision ordinance has never been set up as a health and safety requirement, I also concur with staff recommendation.

Robert Smiley: My biggest concern is addressed in Section 8 concerning safe drinking water, though I know we can't regulate it. The spring is a concern, but given Measure 37 parameters and the addition of the twelfth condition, will put in place what limitations we can place on the property.

Michael Sherwood: I drove up to the property and I have several concerns. The property is so steep I can't believe I drove to the top, however I'm sure those slopes are 60%. They are steep and from what I could determine the two lots at the top of Mountain Top Rd., numbers 1 & 2 would probably have to be built at the very top. Numbers 3 & 4 are very dangerous. Traffic at Bald Peak Rd. is dangerous and more cars will make it worse. Of course water supply is a concern but we have nothing to say about that. Erosion is a concern with construction. I've visited the horse facility which is very nice next door and I can understand their concerns with construction. Other than that, we don't have anything to say about it.

MOTION: Daryl Garrettson moved to approve docket item S-13-06 based on the findings and conclusions in the Staff Report with Conditions 1 - 12, including the twelfth condition earlier announced by staff. Seconded by Alan Halstead. Approved 6-0 with Matt Dunckel abstaining.

Ken Friday explained the appeal process.

QUASI-JUDICIAL PUBLIC HEARINGS:

DOCKET NO.: Z-03-06

REQUEST: Zone change from EF-20 Exclusive Farm Use to AF-40 Agriculture Forestry Use.

APPLICANT: Drabkin, Tankersley and Wright representing Vicky A. Tadic

TAX LOTS: 3523-100, 200 and 1500

LOCATION: 11785 NW Old Soldiers Road, Carlton and the two parcels to the south along Soldiers Road.

CRITERIA: Sections 402, 403 and 1208.04 of the Yamhill County Zoning Ordinance; the Yamhill County Comprehensive Plan.

Chair Smiley opened the public hearing.

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

Ken Friday read the “**raise it or waive it**” statement into record.

Staff Report: Stephanie Armstrong gave a brief review of the staff report. **Questions of Staff:**

Daryl: Do we know why the state wanted this AF-20? Mike: We don’t know why. It’s very clear that it should be a forest zone.

Proponent’s Case: Catherine Wright, P.O. Box 625, McMinnville, OR 97128: Catherine represents Vicky Tadic. She passed out copies representing the parcels. This was re-zoned in 1993 from AF to EF and as you’ve noticed really doesn’t make a lot of sense. All of these parcels and much of the property in that area is very much a mixture of forestry use and some farm use, as well. It really does seem most appropriate that this be an AF zone and asked that it be added to the AF-40 adjoining zoning. The criteria has been satisfied and she is in agreement with the Staff Report. **Questions:** Daryl: I’m assuming the reason for this application is to qualify this property for a Forest Template Dwelling? Catherine: Yes.

Questions of Proponent’s: None.

Public Agency Report: Stephanie Armstrong stated no responses received to date from the Carlton Fire District, Soil and Water Conservation District or Public Works.

Staff Recommendation: Stephanie stated staff recommends approval of the request based upon the findings in the Staff Report.

Chair Smiley closed the public hearing.

Deliberation:

Daryl Garrettson: It meets the criteria.

Matt Dunckel: I agree with staff.

Bernie Diefenderfer: I agree with Matt.

Marjorie Ehry: I agree with staff.

Michael Sherwood: I concur with staff.

Alan Halstead: I agree with Daryl.

Robert Smiley: I concur with staff.

MOTION: Alan Halstead moved to approve docket item Z-03-06 based on the staff’s finding and recommendations. Seconded by Bernie Diefenderfer. Approved 7-0.

DOCKET: PAZ-06-06

REQUEST: Approval of a Comprehensive Plan amendment from Agriculture/Forestry Large Holding to Agriculture/Forestry Small Holding; a zone change from EF-40 Exclusive Farm Use to AF-10 Agriculture/Forestry Small Holding on approximately 38.8 acres. The request includes an exception to Goal 3, Agricultural Lands. Although Yamhill County Planning does not believe an exception to Goal 4 is required, the applicant has also requested an exception to Goal 4, Forestry Lands.

APPLICANT: Daryl S. Garrettson

TAX LOT: 4306-300, 301, 4305-1800, 2000, 2100, 2200

LOCATION: The two parcels just to the east and southeast of and including 5370 NE Duniway Road. Also, 5384, 5392, and 5398 NE Duniway Road, Dayton Oregon

CRITERIA: Sections 402, 501, 904 and 1208.02 of the Yamhill County Zoning Ordinance; the Yamhill County Comprehensive Plan. OAR 660-04, Exception Process. OAR 660-12-0060 Transportation Planning Rule.

Chair Smiley opened the public hearing.

Abstentions, Objections of Jurisdiction, Ex Parte Contact: Daryl noted for the record that he abstains. Robert: Obviously Daryl has been a commissioner for a long time. Some of us have known him longer than others, but there has not been no discussion in advance to the application and feels that Daryl's position on the commission will not effect the committees decision. **Question to Staff:** Alan: Has a public hearing in this setting ever been referred to a different jurisdiction? Mike: No, and I don't recall any. Ken: Several years ago Ralph Bunn was part of an application when he was a member of the Planning Commission, but I don't remember if it was Ralph himself who was asking for re-zoning. Mike: But it wasn't referred to another body. I talked to County Counsel about this a couple of weeks ago and they said people should have to state whether they have any financial interest. Otherwise, they have a duty to hear this and make an impartial decision.

Chair Smiley asked if anyone had not been present for the original reading of the "raise it or waive it" statement.

Staff Report: Ken Friday gave a brief review of the staff report.

Proponent's Case: Daryl S. Garrettson, 5370 NE Duniway Rd., Dayton, OR 97114: Daryl: Other than any questions that you may have, the only thing I would add is the staff did note there was no market evidence, but having been on the Planning Commission for a long time, it's my opinion that there is a shortage of AF-10 property within Yamhill County and as a result, there is a market demand. That's not the reason for the application, the reason is to put a house next door so my grandchildren can live next door.

Questions of Proponent's: None.

Public Agency Report: Ken: The City of Lafayette responded that there was no conflicts of interests and noted they would not be extending additional service to the properties. I had a phone conversation with Doug White and the DLCDD who had no objection.

Staff Recommendation: Ken Friday stated that this is very similar to the Dennis Walker application a couple of months ago were there were four lots, and two were developed. In this situation there are six lots and four are developed. Staff recommends approval of the request.

Chair Smiley closed the public hearing.

Ken Friday explained to an audience member who is a neighbor to Daryl Garrettson the reason for the application. The neighbor does not oppose the application.

Deliberation:

Matt Dunkel: **Question of Staff:** Matt asked about the easement situation and Ken explained the requirements. Matt: Any water shortage in this area? Ken: There was no response from the agencies contacted.

Bernie Diefenderfer: I agree.

Marjorie Ehry: I have no questions and probably agree.

Alan Halstead: It's consistent with the surrounding uses and is appropriate.

Michael Sherwood: I agree.

Robert Smiley: I would concur with staff.

MOTION: Michael Sherwood moved to approve docket PAZ-06-06. Seconded by Marjorie Ehry. Approved 5-0 with Alan Halstead opposing and Daryl Garrettson abstaining.

New Business: Ken Friday: Next month we have just one item on the docket and there may be a second item which is a small zone change.

Robert: As we venture through Measure 37, our brothers and sisters to the north are about to make a decision on Initiative 933, and I assure you they have went well beyond Measure 37 which is truly hard to believe. It has torn the state in half, basically. Robert went on to explain some of the issues.

Mike Brandt gave an update on what the Board of Commissioners has done concerning the two proposed Measure 37 subdivisions.

Adjourn: The meeting adjourned at 8:00 p.m.

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