

**YAMHILL COUNTY PLANNING COMMISSION**

Thursday, June 7, 2007 · 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, David Polite, John Abrams. **Staff:** Michael Brandt, Ken Friday, Stephanie Armstrong.

Review of the **minutes** from the Planning Commission Hearing of May 3, 2007. Michael Sherwood moved to approve the minutes as submitted. Seconded by Bernie Diefenderfer. Approved unanimously.

Vice Chair Garrettson announced that the Torri Mor water bottling request, docket item C-15-07, has been withdrawn.

**QUASI-JUDICIAL PUBLIC HEARING:**

**DOCKET NO.:** C-19-07  
**REQUEST:** Conditional use approval to allow small agricultural and manufacturing business to be conducted inside an existing 3456 square foot shop building to be operated as a home occupation.  
**APPLICANT:** Craig K. Lapp  
**TAX LOT:** 4512-2400/3700  
**LOCATION:** 13770 NW Orchard View Road, McMinnville, Oregon 97128  
**ZONE:** VLDR-2.5, Very Low Density Residential  
**CRITERIA:** Sections 502.03(B), 1004.01 and 1202.02 of the Yamhill County Zoning Ordinance

Ken Friday stated a request had been received from Craig Lapp for a continuance. Vice Chair Garrettson announced a request for continuance of docket C-19-07 to the August 2<sup>nd</sup> hearing. Daryl asked if anyone in attendance will be unable to attend that meeting and would like give their testimony this evening. No response from the audience.

Vice Chair Garrettson opened the public hearing and entered into record the letter received from Craig Lapp for a continuance.

**MOTION: David Polite moved to continue C-19-07 to the August 2, 2007 Planning Commission Meeting at 7:00 p.m., Room 32 at the Yamhill County Courthouse. Seconded by Bernie Diefenderfer. Approved unanimously 7 - 0.**

**DOCKET NO.:** PAZ-04-07  
**REQUEST:** Approval of a Comprehensive Plan amendment from Agriculture/Forestry Large Holding to Very Low Density Residential; a zone change from EF-80 Exclusive Farm Use to VLDR 2.5 Very Low Density Residential. An exception to Goals 3 and 14 is also required.  
**APPLICANT:** Jerry Hart, representing Richard D. Kelley  
**TAX LOT:** 5420CA-1100  
**LOCATION:** North of the parcel addressed as 100 First Street, Amity, Oregon  
**CRITERIA:** Sections 402, 502, 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.

Vice Chair Garrettson announced a request for continuance to the August 2<sup>nd</sup> hearing. Daryl asked if anyone in attendance will be unable to attend that meeting and would like give their testimony this evening. No response from the audience.

Vice Chair Garrettson opened the public hearing.

**MOTION: Matt Dunckel moved to continue PAZ-04-07 to the July 19, 2007 Planning Commission Meeting at 7:00 p.m., Room 32 at the Yamhill County Courthouse. Seconded by Marjorie Ehry. Approved unanimously 7 - 0.**

**DOCKET NO.:** V-03-07  
**REQUEST:** A variance to the setback requirement of 30 feet to the property lines as required in the EF-80, Exclusive Farm use zoning district. The request is to construct the dwelling five feet from the side property line to the north and 18 feet from the rear property line on a 0.30 acre parcel.  
**APPLICANT:** Terry and Jody Hall  
**TAX LOTS:** 2331-690  
**LOCATION:** Approximately 1,200 feet northwest of the intersection of Fuerst Lane and Woodland Loop Road, Yamhill, Oregon  
**CRITERIA:** Sections 402.09 (C) and 1203.02 of the Yamhill County Zoning Ordinance

Vice-chair Garrettson opened the public hearing.

**Abstentions, Objections to Jurisdiction, Ex Parte Contact:** None.

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

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

**Proponent’s Case:** Terry & Jody Hall, P.O. Box 143, Yamhill, OR 97148: Terry explained that the house they are planning on building is 1,450 square feet. Because of the size of the lot and the setbacks, they don’t think they can build a small enough house within the setbacks inexpensively enough to turn around a sell it with a profit. Their goal is to build a nice home that fits into the area and they can make a profit from. Jody stated that when the property was purchased, they planned it out according to the dimensions of the property and how the house would fit with the adequate setbacks, but when they went out and staked off the house after the property was purchased, it didn’t fit. The road has moved since 1973 and it doesn’t fit like it’s shown on paper. That is why they are requesting the setbacks. **Questions:** David Polite: How long have you owned the property? Jody: 2 - 3 months. Michael Sherwood: The previous owner installed the well? Jody: No, we commissioned it and installed it before the land was purchased. Michael: You only ran a 4 hour test once? Jody: Correct. Michael: A well can dry up fast. Terry: We got the septic system so we could use as small leach field as possible for the property. David Polite: The septic was done to maximize your room on the lot? Terry: Yes. The type of house we were planning on putting there was a modular home and before we realized it wasn’t going to fit on here, we picked out the plan we wanted and did all the drawings and paid all the money and invested quite a bit into the house just to start over again. Marjorie Ehry: You said the road had changed. How? Jody referred to the map and pointed out the changes. Daryl Garrettson: Then you don’t know one way or the other whether if it’s out of the right-a-way or whether the maps are wrong? Jody: Survey couldn’t tell me. All they said was back in 1973 it probably wasn’t paved and was probably one lane. Now it’s a two lane road that is paved.

**Questions of Proponent’s:** None.

**Opponent’s Case:** Jesse O. Kobs, 18517 NE Woodland Loop Rd., Yamhill, OR 97148: Jesse owns the property to the north. He believes there was initially a 40 foot right-a-way and now a 60 foot right-a- away. In doing his

research he has concluded with the parcel size and the building size, you can fit a reasonable house on the property with the setbacks. Houses in the area are 24 x 30 or similar. **Questions:** Michael: How many square feet is 3 acres? Mike Brandt: A little over 12,000 square feet.

William A. Bowen, 19200 Woodland Loop Rd., Yamhill, OR 97148: : William owns property on the north side of the property where they want the five foot setback. This is farm country and there is no reason to only have 5 feet from his property. He has a field with tall grass in the fall, which is burnable. He is concerned with the property value going down in the future with a home so close to his property. **Questions:** Bernie Diefenderfer: You have grass in the field that's adjacent to that property? William: Yes. Bernie: Do you raise hay there? William: I pasture it in the fall and that's where my cows winter. Bernie: It is a potential fire hazard? William: Yes. David Polite: Did you talk to them about their plans? William: They approached me with a 25 ft. setback and I turned them down at that time.

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

**Public Agency Reports:** Stephanie Armstrong: Referrals were sent out to Public Works, Yamhill Fire District, and Soil & Water Conservation District with no comments received.

**Rebuttal:** Terry Hall: One of the options would be finding a used, and probably free, double-wide mobile home and place it on the property. If Mr. Bowen is concerned with his property value, I don't think a mobile home will help that. **Questions:** David Polite: We heard some evidence here that a reasonable stick built home could be built there. Why a used double-wide? Terry: The plans that we've looked at, that we thought we could fit into that area, by the time you get a house and an entry way and a garage on there, I don't think there is enough room, without going 3 stories higher. The property has a steep elevation. David: With steep elevation, wouldn't that allow you to place a garage under the home? Terry: It's steep enough, but trying to get out of the driveway in the winter would be hard. David: Did you talk to an expert about that? Terry: I am a general contractor and consider myself to be one. Matt Dunckel: There was mention if you could get a variance from the road dept. they could allow them to build closer to the road? Mike Brandt: As the staff report points out, there are fire dangers out there and it is a predominantly agricultural area and placing this house out there, the Agricultural Zone has a 30 foot setback and if they could get the house closer to the road, perhaps they could meet the setbacks. They need to check with Public Works. Terry: We called Public Works and the person we need to speak with will be in tomorrow.

**Staff Recommendation:** Stephanie Armstrong: Due to the facts mentioned in the staff report, staff recommends denial of the request for a variance to the setback requirements to construct the dwelling five feet from the side property line to the north and 18 feet from the rear property line. It appears there are other options.

Vice Chair Garrettson closed the hearing.

### **Deliberation:**

John Abrams: I'll pass for the moment.

Michael Sherwood: If it's a 12,000 square foot lot I'm having a problem with why they have to come that close to the road. Maybe they need to go back and redesign and present it to the Planning Director. Mike: Just for clarification, we've added a provision where someone can go to neighbors and get a sign off on any variance that they want. In this case, the closest neighbor said he wouldn't even sign off on 25 feet. In addition, I can grant up to a 15% Administrative Variance and we think those options are options that would give them enough to build a house on the property. Michael: Did you present that to the applicant? Mike: Yes, it's in the ordinance and Stephanie talked to them about it.

David Polite: It seems to me that the extreme materiality of the variance and the small size of the lot, and importance of the variance and setbacks, there is a little bit of an expectation established. Mike: I won't disagree with you on that and this is one of the things that bothered me when I first read that, but also when we look at these, and I'm the one who signed off on the lot of record, it was clear that you could get a house on there with the requirements. David: I feel for them, but at the same time I'm not convinced that more work couldn't be done to have this home sited properly.

Daryl Garrettson: I agree with David. Five feet is too close and the reason that we're given is that the applicant has purchased plans for this particular design of a house and it can only fit this particular design. I don't like the applicant threatening the neighbors that if I don't get my way, I'll slap a single-wide on there and see if I can find a wino to rent it to. I can appreciate that they invested in plans for a certain design believing it would fit and now they find out it can't. I just can't see plopping a dwelling in a rural area, five feet from the property line.

Marjorie Ehry: I agree with both of you. You need to go back and redesign.

Bernie Diefenderfer: I have a problem with the fire hazard. I know Yamhill Fire District didn't comment, but a grass fire can wipe out their investment real quick. I concur with staff.

Matt Dunckel: I agree with staff also. There are some options here.

John Abrams: I am sympathetic, but there are other options.

**MOTION: David Polite moved to deny docket V-03-07 based on the findings and conclusions found in the staff report. Seconded by Bernie Diefenderfer. Passed unanimously 7 - 0.**

**DOCKET NO.:** NCU-01-07  
**REQUEST:** Nonconforming use approval to recognize a storage business as a nonconforming use.  
**APPLICANT:** David Evers  
**TAX LOT:** 4424-200  
**LOCATION:** 6675 SE Reid Lane, Dayton  
**ZONE:** EF-80 Agriculture/Forestry Small Holding  
**CRITERIA:** Sections 1205.03(C) of the Yamhill County Zoning Ordinance

Vice Chair Garrettson opened the public hearing.

**Abstentions, Objections to Jurisdiction, Ex Parte Contact:** None.

Daryl asked if anyone had not been present to hear the original reading of the "raise it or waive it" statement or to have it repeated.

**Staff Report:** Ken Friday gave a brief review of the staff report and stated that an anonymous complaint was received and in May and June of last year drive-by inspections were conducted by the Enforcement Officer and a letter was sent to the owner in July of last year. A request was made by the owner for time to discontinue the manufacturing and have some of the renters move their items, and that request was granted. In October of 2006 the Planning Office contacted the owner about options for land use application and in January of this year the applicant filed a request to recognize the storage as a non-conforming use. Ken has received two additional items since the mail out was done: A petition signed by Wilmer Andrist which has been distributed to the Planning Commission and a packet in opposition from Steven Pfeiffer that Ken just received tonight. **Questions:** David Polite: Staff was alerted to a complaint about the use.? Ken: That's correct. David: What was the nature of the complaint? Ken: That there were small businesses operating on the property and the applicant did cooperate and filed a request to have the storage portion, which I believe has been scaled down, recognized as a non-conforming use. David: This is an EFU zone and under the current rules do not allow for storage of non-related products? Ken: You can store farm equipment, machinery, but that does not allow a storage business.

**Proponent's Case:** David J. Evers, 15530 NW Orchard View Rd., McMinnville, OR 97128: The property in question is 42 acres that is left of 160 acres that his Grandfather farmed from the 1920's - 1950's. He turned the farming over to David's father and an uncle in the 1950's. The acreage was sold in 1958 so that his father could retire. David and his wife were looking for property out of Portland and wanted to return back where he grew up, purchasing the property in August, 1976. They rented some buildings out for cattle, horses, and pigs. In 1980 they rented the hog building out to a gentlemen under the condition that the building be extended out. After a few years, he went bankrupt and left David with a substantial debt. David has refinanced the farm, cleaned up the barn and rented it out to a Vietnamese family who operated it as a hog farm until 1996. The family paid the rent well, but it was an environmental disaster and the smell was overpowering. Before anything was done to the hog barn, David

went to all the adjoining neighbors and asked if they would mind if they shut down the hog barn and turn the building into storage. No one objected to their request. One of the oldest renters since 1997, a retired mechanic who Mr. Bansen has not only used his services for his own farming operation, but has even paid the monthly rent many times in exchange for his help. A copy was made of the checks before cashing them.

David has tried raising cattle, but has lost all of his investment. They have dealt and operated a hydroponic tomato greenhouse and after 2 failed crops gave up and sold that operation. Now the farm is rented out to David's cousin who grows grass and other crops. David has given up trying to be a traditional farmer. His son now lives in the old farmhouse and operates a landscape business. They are just trying to survive and maintain the land.

**Questions:** Michael Sherwood: You are not living on the farm? David: No, we moved off the farm. Michael: The landscape business is the only business your son has there? David: Yes. Daryl: Have you had a chance to see Mr. Pfeiffer's letter? David: I didn't have a chance to read it, no. Daryl: He says in his conclusion you have the burden of proving the storage business was legal when you started it ten years ago and has continued uninterrupted.

Dennis Goecks, 14325 NW Pheasant Hill Rd., McMinnville, OR 97128: Mr. Goecks is here tonight because two people that he cares about deeply lives on this property; his daughter and his son-in-law. When this first came up, he went through the criteria and this ordinance was really set up for a case like this. A lot of people in this county have home businesses. A dynamic that something like this starts up in a neighborhood can go from bad to worse over a period of time. In many cases if people could get together in mediation there could be an accommodation that would benefit all concerned. From a strictly legal standpoint, it's his hoping that from the information he has seen, it makes sense to allow Mr. Evers to continue this on the property. His hope in all of this is that they figure out a way between neighbors to go through this. He would like to be on record and stand in support of the application. **Questions:** Matt Dunckel: What's happening right now on the property? Dennis: There are the two buildings and frankly, I didn't know there was even a storage business in there. Matt: So right now there are things stored in them? Dennis: As I understand it, there are 6 - 7 folks who store things and then there's another building where 3 - 4 folks store things. My son-in-law has his landscape business. Part of the land is farmed, not by David, and I'm not sure about those arrangements, but David could tell you. It's awfully quiet. I've lived next to a dairy for twenty years up there on Orchard View and one thing I know is neighbors and dairies can either be good neighbors or things can get real wild.

Mr. Evers entered pictures into the record.

Joseph Evers, 6675 SE Reid Ln., Dayton, OR 97114: Joseph has been living on the property since 1976, went away to college and moved back. **Questions:** David Polite: Are any of these buildings suitable for your business? Joseph: They would be suitable but the building I'm currently using is sufficient. David: The buildings were built specifically for storage? Joseph: Behind my house there is the white barn which was a cattle barn. My father put a new face on it and it's divided up into 5 units, and there is the blue building which they refer to as the AG building. There have been several renovations. I have seen my father take buildings that used to be used for agricultural and now have no purpose for and find a use that will benefit us and sustain us on the property. David: Do these units have locks? Joseph: Yes. David: Were any permits pulled? Joseph: I don't know. Michael Sherwood: How long have you had your business there? Joseph: 11 years. Michael: Did you need to apply for a conditional use permit? Mike Brandt: No, he didn't because it's agricultural in nature. Daryl: Is there signage on the property for storage? Joseph: No. Daryl: How do people find out about this? Do you advertise in the yellow pages? Joseph: My father runs an add in a local newspaper. Marjorie Ehry: Do you have actual contracts with the people and what is stored? David Evers: Yes. Vehicles, household furnishings, slabs of wood, etc. Marjorie: I understand you need to do something to recoup your investment. You have not had a conditional use on these at all to this point? David: No. Daryl: Have you made any additions to these buildings for the purpose of the storage business? David: We built out one part of the building on the hog barn, a 20 x 20 area. Michael: On the bottom of page 2 of the staff report it says a request was made by the owner for some time to discontinue the manufacturing and have some renters move their items. Was someone on your property manufacturing? David: There was a cabinet shop in there. Michael: How long ago was that? David: The cabinet shop moved out 2 - 3 years ago, but I think that refers to a gentleman who is still there and he tends to accumulate a lot outside the buildings and he's a mechanic who has done work for Mr. Bansen. John Abrams: Is the access all through one driveway? David: There's the easement through our property to Mr. Bansen's dairy and that easement is for the AG building, as well.

Mack Reid, 10840 SE Clair Ln., Dayton, OR.: Mr. Reid was born on the farm on Reid Road and has seen a lot of changes. Dave's family sold the place and there were two owners before Dave came back and cleaned it up. It's quiet and Dave tore down the grainery and has taken down the buildings that were reasonable to tear down and has found a reasonable use for the buildings remaining.

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

**Opponent's Case:** Steven Pfeiffer, Attorney, 1120 NW Couch, Portland, OR 97204 & Dan Bansen, 5801 SE Bansen Ln., Dayton, OR 97114: Mr. Pfeiffer entered a letter into record. Dan: I have an organic dairy farm which was purchased in 1980, and was an existing dairy of 180 cows and we now milk 1,100 cows, plus calves and heifers on 330 acres. We have a permit through DEQ and State of Oregon. We purchased the dairy and developed it because we thought it was a good site, surrounded by AG zoned property and was at the end of a dead end road. The road we go down does splits through the Ever's property and when the property was purchased in 1980 it was zoned EFU-40 and is now all zoned EFU-80. The problem we see with a nonconforming use and storage units is that over the years we've seen more traffic and problems with what we would call a light industrial situation. In the last several years we have lost several chain saws, tools, and constantly have people drive down our lane looking for the businesses that have been located in these so called storage units. We're concerned about our animal safety, people leaving gates open or people running their cars through fences and the cows getting out and we have had all of those happen. Mr. Evers said in his testimony that he doesn't see some of the people who rent his property for months, but we see them on a daily basis. We've had one person in their that works mainly at night. In these so called storage units, there has been a cabinet shop, one person is a metal fabricator, and a mechanic and some people who have taken in cars at night and then taken them out in parts the next day. I don't know what the rules are in storage units, but I question whether that's accurate or not. Mr. Ever's shows in his evidence a canceled check from our farm. We did pay the rent for Art Isaacson, a mechanic that worked there and I don't know what the problem was with Art, and not sure if he was having a hard time with his rent. In Dave's testimony, or in his letter to Mr. Brandt he says that Art was doing much of my maintenance. Art did a few oil changes for us and worked on a forage harvester and \$330 a month was the rent we paid. I think our maintenance bill runs between \$20,000 - \$ 25,000 a month, so he was not an integral part of our operation. Mr. Evers also stated that he talked to all the neighbors before he put in storage units and to my recollection, I don't recall that happening, but I did go to some of the neighbors and they said they did recall and it did not happen. If Mr. Evers wants to know what the neighbors think, I believe there's a petition that has circulated and is available tonight. I didn't know I had the authority to give a neighbor the approval of a nonconforming use. That's not my responsibility. I'm not in the business to be a regulator, but I will say that we built our business in an AG area intentionally for the protection that the zoning offers an operation that we run. I think there's a lot of AG people and farmers in the county that will look upon whatever decision you make and be very interested, because I think there's a lot of buildings that people would like to turn into storage units, even though they're in AG zoned areas.

Steven: The comments you heard from Dan are those from an active agricultural farmer and are not unique to this situation. While I understand Mr. Ever's testimony and his desire to convert the use, what we unfortunately run into is a collision between two of the most restrictive land use regularity schemes in the Oregon land use program. You, more than anyone else perhaps in the room, know the nature of the land use regulation in Yamhill County. You receive certain mandates from the state and your code reflects those. Some of those direction or mandates from the state give you a lot of digression on how you deal with set backs, etc. Other parts of that mandate are very specific and two of the most specific are Chapter 215 of the County Planning Regulations Statute relating to EFU zones and nonconforming uses. In those cases, you are bound by the language of the statute. The only zone in the entire Oregon land use scheme, which is handed to you as a county, without any ability to modify it, you may delete some of the uses in the EFU zone but you cannot add to that list. A lawfully established use may be allowed to be continued, altered, or even expanded under certain circumstances. Uses that can demonstrate a continued use of the same type that was there when that use began for more then 10 years, may be being non-conforming. It's not a one part test to establish and verify legally a nonconforming use, it's a two part test.

Those storage uses were established in 1996 and 1997. The statute of the state was adopted by the legislatures in 1993. It was incorporated into this code in 1994 and has been amended a number of times. Uses have been added, but none of those additions include the use that's on the table. This is a use that cannot be approved. In response to Commissioner Goecks testimony, I grew up in Yamhill County and I know very well the farming community

and understand how difficult it is to sometimes carry that land. At the same time, I understand his testimony and his point regarding flexibility, but you are sending a message to the agricultural community in this county who have come to abide by, purchase property, and operate under the EFU zone and those very strict regulations. The decision you make send messages to them. I urge you to take that into account along with Commissioner Goecks point about the need for flexibility. **Questions:** Matt Dunckel: Is it the storage that you object to or the other activities that come with it? Dan: I think it's probably both, but bigger than that, it's an encroachment upon an agricultural business. It's more people and more traffic around that creates the problem for me. I can't stand by and allow this to happen and watch a light industrial area build up around my farm. Bernie: Where is your dairy in relationship to this problem? Dan referred to the map and showed where the properties are located and how he accesses his business. Bernie: To access your property you use Reid Rd.? Dan: I come down Loop Rd., which he demonstrated on the map. Bernie: How many semi trucks do you have a day for that number of cattle? Dan: We have a milk truck that comes during the night, every night, but that can change. They can change their schedule according to where the milk is diverted to. We have hay trucks, feed trucks and our own feed trucks that drive to our other two operations, one on Lafayette Hwy. and one on Hwy 99W every day. We have hired men coming in and out moving irrigation. Bernie: Is the added traffic and people going to effect your usage as far as trucks? Dan: Yes, I think the traffic can have an effect on our business. I'm not saying we don't have traffic because we do, but I would say that every piece of traffic that come down to our dairy is AG related. David Polite: In the initial testimony you did allude to some theft that has occurred at your business. Dan: Yes, I did and I'm not accusing anybody directly, but I think that comes with added traffic and we have had people come down to the dairy and ask where the businesses are located in the storage units. David: You have how many employees? Dan: 13 - 14. David: It's conceivable that some of the problems you've experienced could be coming from your own employees? Dan: Like I said, I'm not accusing anyone directly. Michael: You have obviously known about this for quite awhile. Why have you waited so long to take issue, assuming this is the first time you've made issue of this to the county? Dan: Because I got an issue in the mail that said there was going to be a hearing to see if there's a nonconforming use for a permanent storage. But I've have had issues with it for a long time. The one mechanic that Mr. Ever's talked about had a habit of accumulating equipment outside and it's something that we drive by every day. I think there's a question of safety and an issue of compatibility of the cattle next to those type of operations. Michael: Mr. Pfeiffer's statement on control of the nonconforming uses I agree with, but if you knew it was unlawful, would you have come forward earlier? Dan: The first time I ever asked about this was about 6 years ago, and the reason I asked is because I went to the Planning Dept. to get a building permit for an AG building and a lady made me swear up and down that the only thing I would ever use that for was an AG purpose. I thought she carried it a little too far and I said I didn't think that was true and there are other things I can do with it and she said you cannot. I commented that you can do other things with it in our neighborhood. She said, no you can't. I guess I should have filed a formal objection at that time, but I honestly don't have any problems with the Evers. They're good people. All I'm trying to do is protect my business. John Abrams: Is it beyond the point of any mitigation if the commercial activities were stipulated not to exist in any form anymore and simply storage would take place there with limited access? Has there been any conversation to that degree? Dan: We've had no conversation about that. Daryl: The county ordinance itself only has the word, "legally" appear in the first sentence and has three sub-sections, none of which talk about the base point being legally established. I want to understand your position that even though this ordinance went through review and was approved by the Dept. of Land Conservation and Development, it still is modified by the provisions of the law as 215-130 sub. 10? Is that what you're saying? Steven: Is subject to the provisions of 215-130 sub. 5. Daryl: How do you get there when the opening provisions of 215-130 say that a county is to adopt a zoning ordinance conformance with and then the way the goals have been interpreted the DLCD and LCDC approve your zoning ordinance, you don't reference back to the statute. The zoning ordinance criteria governs. Steven: The zoning ordinance is consistent with the statute and your ordinance includes the words, "uses and structures exist which were lawful before the date of adoption of this ordinance." So it incorporates the same concept. It's a two part test. Daryl: Staff does not appear, at least in the recommendations, to agree with that and I'll ask those questions when we get to the staff report. The statute itself however, talks about it being a rebuttable presumption. The applicant has presented evidence that it exists for 10 years. They've created the presumption and your letter seems to indicate that the burden remains on the applicant as opposed to the opponent. Steven: My position is sub-section 10 on the rebuttal which doesn't refer to the second part of the test but the first part of the test. Daryl: I think I understand that the second part of your testimony is that even if the burden falls on you to rebut the presumption that's rebutted in this case, because the dates of 1996 & 1997 take place after the

adoption of the various 215 statutes and we should take judicial notice of the existence of the statutes of our ordinance at that time. Steven: In the letter I also take issue with the lack of quality in the evidence offered.

Robert Harriett, 11105 Claire Ln., Dayton, OR 97114: Robert presented a petition to the Planning Commission regarding the request by David Evers, which is signed by 13 people in the neighborhood. Basically, when he got the notice that there was going to be storage units in the neighborhood, he went out and did an informal survey of the neighbors to find out what they thought and some people commented that it's their property and they can do what they want with it, but enough people were concerned about the light industry coming in, traffic, etc., that he decided to try and make something more formal. Robert developed a petition and took it to the neighbors and 13 people signed it. Robert read the petition. Mr. Evers then sent out a letter to everyone in the neighborhood trying to get a petition for the storage units. Robert responded by calling Mr. Evers and they had an hour conversation on the phone. Mr. Evers explained his position. Robert then went back to everybody that signed the petition and discussed with them if they still wanted to be opposed to this. Everyone on the petition remains opposed to this use in their neighborhood. **Questions:** David Polite: How many people do you think you could have approached in the neighborhood overall? Robert: Just about everybody. It's a small area. Daryl: How long have you lived in the neighborhood? Robert: 3 years. Daryl: Prior to the notice from the county, were you aware that there were storage units there? Robert: I knew there was a cabinet maker, mechanic and other business there.

Marjorie: This petition was submitted a couple of days ago but when did you get the signatures, since I don't see that it's dated? Robert: I believe it was about 2 weeks ago. Bernie: I noticed signatures of a husband and wife in the same location. So in essence, you're close to 6 or 7 complaints. Robert: Yes, I didn't know if I needed to do it per property owner or husband and wife, etc. Bernie: Do you know what the size of your property and their property is? Robert referred to a map that was attached to the notice. His property is 5.67 acres. Marjorie: Are the people on the petition are they actively farming? Robert: Everybody is effected by this for the same zoning. Some are just living there and not farming the land, but it's still under the farm use zone. Our neighbor who signed the petition raises plants for the farmers market.

**Questions of Opponent's:** Joseph Evers: You said there was a misunderstanding when you distributed the petition. What was it? Robert: The notification that I got said nonconforming use approval to recognize the storage business, but that didn't tell us what the storage was. We didn't know how many units it was and that was the main concern. Once Mr. Evers sent out the letter, I wanted to see if it changed any of the neighbors minds, but it didn't.

Dean Klaus, 450 NW 7<sup>th</sup> St., McMinnville, OR 97128: Dean owns storage building in McMinnville and there's a Goal 14 that the land use laws expect. Dean knows of 3 pieces of property where storage businesses could be built in McMinnville. On Loop Rd. there is a storage building that has recently been built and is for sale. As an organization, you're always going to have requests made of you to do things outside the UGB that are appropriate for being inside it. Land in the UGB can be very expensive as opposed to outside of the UGB. The expectations inside the UGB for streets, landscaping, fire hydrants, etc., are high. Looking in the phone book, he found 17 storage facilities inside Yamhill County, all conformed to those requirements. It would be inherently unfair to grant this kind of request. If this was deemed appropriate, there would be many other applicants with similar requests.

**Questions to Staff:** Michael Sherwood: If Mr. Evers had a storage unit on his farm and he only had farm equipment stored there for neighbors, would that avoid the non-conforming use necessity on this? Ken: Good question. To tell you the truth, I don't think so. Mike Brandt: I know quite a few farmers who store equipment somewhere else because that farmer may have a larger barn.

**Public Agency Reports:** Ken Friday: Public Works stated they reviewed the file and found no conflicts with their interests, same with the City of McMinnville, and the McMinnville Fire District asked that they be contacted to discuss required water supplies if new structures are proposed.

**Rebuttal:** Mr. Evers submitted a copy of the letter he sent out to the neighbors. Mr. Evers: I really believe Dan has ulterior motives. I think he's trying to devalue our property so that we won't be able to stay there. He is currently pumping manure onto our ground. As to the theft on the property, I've had one theft in 30 years out there. I left a sledge hammer in my front yard and someone took it. We have one gentleman who is a mechanic out there who has worked on Dan's equipment in the storage unit many times, which he understated. Concerning Bansen Lane, as he calls it, I gave him an opportunity before he paved it to realign the lane, because right now it comes in on an

angle. It's a very awkward corner because people don't stop where they should. He's asked me to trim trees because of the trucks and remove bushes, etc., which I have done. **Questions:** None.

**Questions of Staff:** Daryl: It seems the fundamental question is does 10 years of existence make it a legal non-conforming use or did it have to be legal at the time it was created in order to be a nonconforming use? Rick Sanai: Mr. Pfeiffer has argued well. He's arguing two things: you need to have evidence of the use having existed for 10 years, but also you have to have separate evidence of the legal establishment of the use. That's not what the statute says. The statute says you need to have evidence of the 10 years of continuous use, but it says that creates a rebuttable presumption that the use was lawful at the time.

Daryl: Even if it creates a rebuttable presumption, we obviously have to take notice of our ordinance as it existed in 1996, because that's the evidence we have that this use was created in 1996. As I understand it, in 1996 in the zoning that this property was under, this would not have been a permitted or conditional use. If it's only a rebuttable presumption, it seems our very ordinance itself rebuts the presumption that it was lawfully established.

Rick: I agree with your conclusion ultimately, if the only evidence we have is that the use began in 1996 and no earlier. If this use could not have lawfully been created in 1996, it can't be lawfully created use, therefore the 10 years of continuous operation....

Daryl: Why didn't this come to us as a zone change application?

Mike Brandt: First of all, there was no way we could support a zone change, because we would have to take an exception and secondly, when we have enforcement cases, we try to not go to court under the citation ordinance, but try to get the applicants to either comply with what the ordinance says or make an application. Our interpretation of it, quite frankly, was that it said 10 years or lawfully created, not 10 years and lawfully created because we couldn't figure out a reason to have the 10 year provision in there. I've read what Mr. Pfeiffer submitted and looked at the court case and to be honest with you, I still am reading it that it says if they have evidence to show they were there 10 years that's the rebuttable presumption. We thought this was the only way they would have a chance to do it.

**Staff Recommendation:** Ken Friday: When our office received the complaint we tried to deal with it with a light hand, since we're not interested in citing people in the courts, but interested in getting into compliance and giving time for the applicant to work with neighbors and make the use in compliance with the neighborhood. We also give the applicant the benefit of the doubt, but as you pointed out, we are also bound by the code and state statutes. ORS 215.130 (10) establishes that the legal government may adopt standards to verify the use has been in existence for 10 years. It also states in part that evidence proving the existence, continuity, nature, and extent of the use for the 10 year period preceding application creates a rebuttable presumption that the use, as proven, lawfully existed at the time the applicable zoning ordinance or regulation was adopted and has continued uninterrupted until the date of the application. The legal establishment of the use hasn't been rebutted and the applicant has stated that he cannot show that these uses were legally established and therefore our office recommends denial of the request.

Vice Chair Garrettson closed the hearing.

### **Deliberation:**

Matt Dunckel: I can't see the harm to the neighborhood to have a few things stored in the barns, but maybe there are other activities going on that shouldn't be. I would tend to vote in favor of letting him use the barns as storage as he has for the past 10 years with no other activities.

Bernie Diefenderfer: I agree with Matt.

Marjorie Ehry: What they've been using this for is not just storage but they've had individual businesses going on and that would have to cease.

Ken Friday: It's my understanding that it has ceased.

Marjorie: I have a little experience with storage businesses and usually you cannot run a business within that confine. I would agree with what I've heard so far, because it doesn't sound as though this is impacting neighbors as storage alone. I would be in favor, as long as there is no increase in what's going on.

Daryl Garrettson: I agree with everything you said Marjorie, but it's the wrong application and it's not lawfully established. I would support refunding the filing fee and take a run at a zone change and I recognize there is the exception issue...

Mike B: Not to interrupt you, but when you asked about the zone change, there was actually an application that was very similar to expand a nonconforming use for a storage business just out of town, and Mr. Klaus appealed that, and there was no way to meet the exception criteria on that one and that one was more urban in nature than this one, so there's no reason to have Mr. Evers and the family go through that, since it won't happen.

Daryl: I agree with Dennis on why this can't be mediated and worked out since it's low impact, obviously since no one knew it was there and we get stuck in the middle. I can't vote for the application.

David Polite: I again feel sympathy for the proponent here, but making investments means taking risks, especially when you expand the facility at the time that it's not allowed by the code, you take a risk and are not necessarily entitled to a rate of return on something that's not legal to begin with. I recognize it's low impact, but the other valid point that was brought up by a few people here is that I believe we live in a rural enough state that there are plenty of people out there who have in fact run businesses and done different things that are not appropriate for an EFU zone, and if we approve this could come forward and say they can legitimize the activity. I will vote for denial.

Michael Sherwood: David's words are exactly my sentiments. One of our jobs is to make sure we establish the ground rules and help the future planning commissions by making it easier for them. I will vote no.

John Abrams: This strikes very close to my heart. I do think the applicant's are in a bind in this situation. I understand the law and how it's interpreted and because of my distaste for many of our state rules, I would actually be willing to approve this and let the applicant's take the battle on, although it would be an uphill battle.

Matt: Is an inventory going to be done if this happens so we know he has a certain number of units and remains just a storage business?

Mike B.: We can do that if you make that a condition of this.

**MOTION: John Abrams moved to approve docket NCU-01-07 based on the staff's findings for approval found in the staff report with the condition that there will be no expansion of the nonconforming use allowed and the nonconforming use is limited solely to a storage facility for the rental of storage units. Seconded by Matt Dunkel. Passed 4 - 3 (Daryl Garrettson, Michael Sherwood and David Polite opposing.)**

Vice Chair Garrettson called a 9 minute break until 9:30

**DOCKET NO.:** C-14-07  
**REQUEST:** Conditional use approval to have an auto and truck repair and fabrication business to be operated as a home occupation.  
**APPLICANT:** Theresa A. Jensen  
**TAX LOTS:** 3315-2203  
**LOCATION:** 19275 NE Berry Lane, Newberg  
**CRITERIA:** Sections 501.03(C), 1004.01 and 1202.02 of the Yamhill County Zoning Ordinance

Vice Chair Garrettson opened the public hearing.

**Abstentions, Objections to Jurisdiction, Ex Parte Contact:** None.

Daryl asked if anyone had not been present to hear the original reading of the "**raise it or waive it**" statement or would like to have it re read.

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

**Proponent's Case:** Theresa (Terry) & Randy Jensen, 19275 NE Berry Ln., Newberg, OR 97132: Terry handed out a packet of additional information. They bought the property 5 years ago with a manufactured home on it and they decided to build a home 4 years ago and moved in 2 years ago. Randy also wanted a shop to do auto repair and restoration. They would like to start a small business in hopes to eventually grow larger and move the business to another location. Their intention is to have a one man shop with limited hours of 2 hours a night and then possibly on Saturdays for 8 hours. At this time, they do not have the finances to start a business in another location. There are pictures in the packet that show the surrounding area and their property. Terry did try to address the

neighbors concerns, such as the noise level, stating there will be no other noises other than that of the country. Randy will be working inside the shop only. Terry had asked the neighbors if they had heard him working in the shop and their response was no. Two neighbors are in attendance at this meeting who are in support of this application. Neighbors with concerns are located on the south side of their residence. Included in the packet are two letters of character reference, one from their Pastor and one from Terry's ex-supervisor. Terry addressed the two concerns stated in the staff report: 1) The applicant has not demonstrated that the use will not generate traffic or noise beyond what normally occurs in the zone. Terry went over to Public Works and spoke with them about the traffic survey for their road, but in 2001 a 24 hour count on Williamson Road was 252 cars. In 1997 it was actually more cars. Terry & Randy are looking at adding only an additional 5 - 7 cars per week.

2) The applicant has not demonstrated that the use is or can be made compatible with existing and allowed uses in the surrounding area. That addresses the livestock, waste and noise level. The Jensen's raise cows which are right behind the shed. Randy explained that he has worked at Newberg Garbage for several years and deals with waste products every day. If any of the neighbors are concerned about waste, Randy said to please let him know and he will address the question. He will reuse antifreeze and oil and solvents are easy to dispose of. They have no intention on contaminating the land where they live. Terry explained that every year they, along with the other neighbors, contribute money to put gravel down on the road and once their business is up and running, they may be able to assume the entire expense of the gravel. Currently, Terry & Randy both work full time jobs, so the hours in the shop will be within limits. As far as the recommendations, Terry addressed the fact they did not get a permit on the shop building and she has since contacted an engineer in Sherwood, who will be coming out to look at the shop and will do a drawing and possibly approve it. They have the papers to apply for the permit and she apologized for not taking care of this in a proper fashion. They will build a fence if necessary and the only sign age will be on the shop. **Questions:** David Polite: You said that you want to grow a business and at some point will take the business to a more urban area. Could you explain further? Terry: Our plan is for Randy to work another year at his full time jobs and save some money in order to buy or build in another location. I can't give you a definite deadline. Randy: That's very hard to say. We just want to start with a small client base and then build up the business once we move the location. Bernie Diefenderfer: Referring to dead cars with no licenses, etc., what about people who don't have the money to pay for the repairs? What happens to their cars? Randy: I will have it towed off. Bernie: That should be a condition, since I've seen quite a bit of that. Randy: We lived next to a similar situation for 13 years, and will not object to a condition stating that. Anytime the county wants to come and check is fine.

**Questions of Proponent's:** Sam Justice, P.O. Box 480, McMinnville, OR 97128: The list of equipment in the packet, are you planning to use all these items? Randy: Yes.

Audience member: Will you be doing any work on the garbage trucks or dump trucks and is there adequate space inside the shop for it? Randy: I can't raise a dump bed.

**Opponent's Case:** Sam Justice, PO Box 480, McMinnville, OR 97128: Mr. Justice represents the Herring's who own property to the south of the lot in question. This area is a historic Chehalem Park Subdivision that has parcels of less than one acre and the parcels to the south are 2 ½ acres. These are all building lots and will become more dense with residential development. He Indicated in his memorandum that this application is not consistent with several Comprehensive Plan Goals, including goals for urban development, rural development, no noise barriers, and commercial development in a rural area. Mrs. Jensen referred to fabrication and that includes things like torches, welding, grinding, etc. These tools will make noise that will disturb neighbors and will alter the character of the neighborhood. This neighborhood is going in the direction of rural residential. This use is not a good fit for the neighborhood and not consistent with the residences. Home occupation is a permitted use in the area. If the decision of this commission is to approve this application, Mr. Justice made suggestions for further clarification of the conditions. In regards to condition #6 of the staff recommendation, that the applicant obtain a building permit and asked to be added to that a condition that it be done within the next 90 days and no home occupation occur beforehand, along with a solvent tank of disposal satisfying condition #8 also within 90 days. In regards to hours of business and operations, his clients are objecting to any operation on the weekends. Also, that the hours be limited which will force them to town if it becomes a full time business. With regards to metal fabrication, the staff report addresses this and indicated that the restriction of metal fabrication would be difficult because it would be hard to enforce and Mr. Justice stated that metal fabrication is an industrial application that is totally inappropriate

for this setting and asked for that not to be allowed at all. The applicants indicated they think they will move the business in a year or two and asked for a temporary approval.

**Questions:** None.

Grayson Baker, PO Box 417, Newberg, OR 97132: Mr. Baker stated that he moved into this area 2 years ago and enjoys the peace and quiet, especially on the weekends. He lives southeast of the Jensen's and can hear the noise, which he explained to Terry when he spoke to her previously. The potential use of the environmental impact of a spill or improper use of fluids is huge and needs to be looked at. Everyone draws water out of the wells and the Oregon Dept. of Environmental Resources states that a spill from one oil change will contaminate one million gallons of ground water. There needs to be something in place that will protect that. Mr. Jensen stated his concern about farm equipment repair and the chemicals involved and the course of action that will be taken if there is a spill of some kind. **Questions:** None.

Jerry & Susan Pillar, 19501 NE Herring Ln., Newberg, OR 97132: Susan stated that several of her concerns have been voiced already. They've lived there for 2 ½ years and purchased the property under CC&Rs on purpose, since they wanted to live in an area that did not have excessive noise and pollution. They moved from a parcel in the county that had an auto body shop directly behind them which drove them out. The noise was all hours of the day and night and called the county many times but nothing could be done. Susan stated they don't know the Jensen's, but are concerned with this application. This area is in a valley and noise carries easily and a shop noise will cause even more. There have been some inconsistencies in the two applications the Jensen's put in. One was the type of business and the other is the work hours. Also another discrepancy, on the site plan that was submitted, it states that the shop building is 75 feet off the fence line and on the revised application they stated it's 125 feet off the fence line. She would be surprised if it's 50 feet. When Mrs. Jensen mentioned that she checked with the next door neighbors, she never checked with Jerry or Susan about their concerns. Jerry also talked about the auto body shop they lived near previously and the many problems that came with that and asked about who will enforce this application and monitor this so they're not in the same situation again. This is zoned AF-10 and a business like this belongs in town. The Pillar's are in a farm deferral and raise horses that are all along the fence line. Susan stated they have nothing against the Jensen's and would be here regardless of who was applying for this. **Questions:** Michael Sherwood: Where did you live previously? Jerry: 3 miles from where we are in Dundee. It was an auto body shop. Mark Soderberg could do nothing about it because he couldn't see in the building. We couldn't get a response to the problem. We have animals and we have zoning areas and laws for a reason.

Marjorie Ehry: Any other home businesses in your area? Susan: Just AG farm related. Marjorie: How many head of cattle and horses? Susan: 2 each. Marjorie: Does anyone ever run lawn mowers and tractors on the weekends? Susan: Yes, we do and our neighbors do. Marjorie: The lawyer had eluded to silence in the area on the weekends. Does anyone do any mechanic work themselves on their own? Susan: Yes, everyone does, but not running diesels. It's a very quiet area.

James & Lynda Field, 19691 NE Herring Ln., Newberg, OR 97132: James and Lynda have some concerns about having a business on weekends up to 8 hours a day. Running lawn mowers, tractors, etc., is fine for short periods and is not a problem, especially because of the small acreage. The valley echos and they're worried about spills. Their property is down hill from them and water collects and if chemicals collect in the water it could kill the animals. They own 10 acres and 25 head of lama. This is not an appropriate location for this business. **Questions:** Bernie Diefenderfer: How long have you lived there? James: Since 1994 and its been quiet all of those years.

James Walker, 19155 NW Herring Ln., Newberg, OR 97132: James lives above this property to the southwest and has a 10 acre piece of property. His family left the city to start a farm and is concerned with an industrial type business moving into the area. He concurs about the noise and that it does carry. James builds and sells businesses for a living and he knows the best laid business plans aren't always what you end up with is concerned about the growth and moving into longer hours and controlling the growth. They live out there because they want to live in a farm area. **Questions:** None.

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

**Public Agency Reports:** Stephanie Armstrong: No comments received other than what is in the staff report.

**Rebuttal:** Terry: We understand their concerns and we don't want to have a noisy business. We are responsible and are very respectful. Randy has previously welded some parts in the shop and work on a tractor and no one was even aware of it or complained about it. One of the pictures the lawyer submitted is very confusing and Terry explained that the residence is not theirs, but someone else's. Our shop is painted the same color as our house. Oil changes are done by all farmers, and it will only be done in the shop. We know recycling, my husband does it for a living. I feel like the Pillar's are judging us because of what they went through, but I would feel the same way. If the county wants to come and check things out, our doors will be open any time. Whatever restrictions you give us, we will abide by them. Other noises do exist, like the helicopters that fly over. Randy measured the distance and it is 125 feet, which they showed in picture #5. The Feld's live quite a distance away, which they also referred to in the pictures. **Questions:** John Abrams: Is the floor of the shop concrete? Randy: Yes. David Polite: Why didn't you pull a permit? Randy: When I built the shop I wasn't planning on doing this. I just got carried away on the size of the shop. Marjorie: Has the shop been inspected? Terry: No, but we've made the contact to do so. Daryl: Is your garage attached or detached? Randy: It's detached and was there when we bought it.

**Staff Recommendation:** Stephanie Armstrong: Staff recommends approval with conditions in the staff report. Condition #4: A maximum of three client vehicles of any type may be on the property at one time. Additionally, the applicants may not be permitted to store "dead" or otherwise unlicensed or uninsured vehicles on the property. Condition #6: Add 90 days to that, as well as Condition #8.

Vice Chair Garrettson closed the hearing.

**Deliberation:**

John Abrams: I commend you on the work you've done on this application. I see no reason to do anything different than what staff is recommending.

Michael Sherwood: I have a problem with the permit issue. More important, even if you do this for a year or two, I have a problem with 3 - 6 p.m. and weekends. Clients will want their cars back quickly and how do you get them back to them in a timely manner? I will go negative.

David Polite: I agree with Michael. I know home occupations are allowed but I'm not entirely convinced it won't have an impact. Maybe with a term limit on it as the business grows.

Daryl Garrettson: In the agricultural zones, peace and quiet is not a virtue that we protect. This is a mixed neighborhood, it's a rural residential/agricultural area. At the same time, it's been interpreted in our zoning ordinance that conditional uses are basically permitted uses unless you cannot by condition make them compatible. I think these conditions make it compatible with the neighborhood, but then the question is, will the applicant obey these conditions or not. If someone doesn't take out a permit, that's not a good sign, but at the same time, looking at the photographs and how they've taken care of that area, I'm pretty convinced they'll abide by the conditions. I would add one condition though, that they will allow unannounced inspections and if they don't allow the inspections, the conditional use becomes null and void.

Marjorie Ehry: I believe at one time this was really agricultural and believe now it's mainly residential with some 10 acre lots in the area, but many are smaller. I also am a firm believer in small businesses and people should have a chance to follow their dream. I will vote in favor.

Bernie Diefenderfer: I concur with staff's conditions and will vote yes for it.

Matt Dunckel: I know I share the neighbor's concerns about the noise issue. If everything is done within the shop it should limit that. I will vote for it if the conditions can be followed.

**MOTION: John Abrams moved to approve docket C-14-07 with staff recommendations and the additional condition that they will allow unannounced inspections and if they refuse, the conditional use becomes null and void. Seconded by Bernie Diefenderfer. Passed 6 - 1 (Michael Sherwood opposing.)**

Vice Chair Garrettson called a break until 11:02 PM (5 min)

**DOCKET NO.:** PAZ-02-07  
**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. The applicant is proposing to have the property recognized as nonresource land rather than take an exception to Goal 3.  
**APPLICANT:** The Benkendorf Associates Corp, representing Bradford and Marina Brenner  
**TAX LOT:** 3226-1700  
**LOCATION:** North of the parcel addressed as 32005 NE Wilsonville Road, Newberg Oregon  
**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.

Vice Chair Garrettson opened the public hearing.

**Abstentions, Objections to Jurisdiction, Ex Parte Contact:** Matt Dunckel knows Mr. Benkendorf and has worked with mutual clients in the past, but this will not effect his decision.

Daryl asked if anyone had not been present to hear the original reading of the “**raise it or waive it**” statement or would like it repeated.

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

**Proponent’s Case:** Mr. Benkendorf, 2701 NW Vaughn Suite 461, Portland, OR., Dan Smith, prior property owner, and John Hemstreet. Joel Norgren, Soil Scientist is also available for any questions. Mr. Benkendorf stated that this is the last parcel in this area. He explained the location of the parcel, utilities which are underground, 74,000 gallon reservoir and there are no residents on the property. There are the 3 parcels that were approved last month that were changed from AF-20 to AF-10. The key issues are whether or not this is resource land and he believes it is not. In the handout of the parcel sizes, etc. the non resource soil criteria is listed. Concerning income, there have been limited sales of nursery stock, which Dan Smith will address that issue. There is a need for additional AF-10 parcels. 73% of the soils on the property are non high value and 70% are class 6. He referred to the index and the map showing the stony lands. He wanted to reiterate a point he made to the Board of Commissioners findings on an application filed in 2005 concerning these parcels, which was quoted in the application. One of the issues that was raised in by staff was the compatibility of this with the surrounding land uses, especially the agricultural uses. Wilsonville Road is really a location of change between the area where it starts to slope out and the area to the west, where it is more gently rolling and in fact agricultural land. This site has no relationship to the agricultural uses that occur. There is a need for AF-10 lots and an exhaustive inventory was done and added additional exception area that they did not look at a year ago when there were other applications before the commission. Twenty years ago there were roughly 391 lots that were between 5 and 20 acres that were made available for rural residential development and small holding, and today there are only 11 between 5 and 10 acres and 7 between 10 and 20 acres. There is a large need for lots of this size. There is no opposition to this proposal and Mr. Benkendorf asked for approval of the application.

Dan Smith, 32700 NE Lesley Rd., Newberg, OR 9732: Dan handed out the 4 photos from across the river looking at the south slope. Almost everything on this whole property all faces south and what appears to be blank spots was planted between 10 and 15 years in a row until the year 2005. He just gave up because what happens is the trees will live the first couple of years and the third year, directly facing south, will die then 10 feet on either side will die the next year, and so on. One of the pictures shows one survivor. That’s how tough this ground is. On summer days it’s hotter then normal. The heat comes up the hill and you can see things change right away. \$100,000 was put into that property per year until they pulled out their first sale in 1997. Many of the trees planted were impossible to dig, and because the ground is so rocky, the machine would lift up. The only usable place to

transplant trees was roughly 3 - 3 1/2 acres down next to Wilsonville Road. Dan explained that the dirt is more like heavy clay dirt and he added truck loads of mulch over the whole thing to try and loosen it up, but it didn't work. They put approximately one million dollars into the project and pulled out only \$400,000. After that experience, Dan decided he wasn't going to waste anymore money on the project and sold the operation for \$315,000. **Questions:** Daryl: In 2003 you applied for a dwelling permit for a dwelling in conjunction with agriculture? Dan: Yes. Daryl: You justified it based on your gross receipts off that property? Dan: Yes. Daryl: And you received that permit? Dan: Yes. Daryl: Then you sold the land and now you say it's not agricultural. Dan: You cannot make money on it, let's put it that way. Daryl: You didn't say that when you applied for your permit though, right? Dan: It wasn't a question to be answered. David: Was a home built? Dan: No. David: Was it the same parcel size or a larger parcel? Dan: The same 23 acres.

Ken Friday: Al, you had said that the ability to grow timber was a major issue in the staff report and I just want to concede that it's not a major issue. The question is whether it's resource land for the Goal 3. We're not applying Goal 4 because this is an exclusive farm use zone.

Jon Hemstreet 28880 Thomson Mill Rd., Sheridan, OR: Jon looked at this from the standpoint of whether it's feasible commercial ground or timber and like he said in the last paragraph of his letter that the commission should have a copy of, there are about 3 acres that you can grow trees on, but the logging expense would be so tremendous that he didn't consider it to be commercial timber ground.

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

**Public Agency Reports:** Ken Friday: The Dept. of Land Conservation and Development submitted a letter of opposition date April 13, 2007, which is in the packet, and ODOT reviewed it and found no conflicts.

**Staff Recommendation:** Ken Friday: The request is to have this property recognized as non-resource land and the property has a resource dwelling approved on it and was actually approved twice. You're only required in this zone to show gross sales of \$40,000 and they showed gross sales of double that amount and sometimes triple that amount for 5 years in a row. We don't believe you can conclude that this property is non-resource land and staff recommends denial.

Vice Chair Garrettson closed the public hearing.

**Deliberation:**

Matt Dunckel: I don't think it's really resource land and am in favor of the application.

Bernie Diefenderfer: I agree with Matt

Marjorie Ehry: It looks to me that it's not resource land.

Daryl Garrettson: I'm offended that the applicant would come in 4 years after making a showing of farm use to get a permit for a farm dwelling and claim it's non-resource land. There is no way in hell I would vote for this application.

David Polite: No, I support staff's recommendation.

Michael Sherwood: No, I support staff.

John Abrams: Yes, it's one of the fallacies of our system and the way it's written up. I will vote to approve.

Daryl Garrettson: Before anyone makes a motion, our bylaws require 5 affirmative votes to make a recommendation on a Plan Amendment Zone Change. We obviously don't have 5 affirmed votes, so perhaps the best way to deal with that is, you can either take a vote so our minutes reflect at least where we stand and somebody can make a motion to move it on to the Board of Commissioners without a recommendation or we can just make the vote to move it on to the BOC without a recommendation.

**MOTION: Matt Dunckel moved docket PAZ-02-07 to the Board of Commissioners without a recommendation. Seconded by Bernie Diefenderfer. Passed unanimously 7 - 0.**

**New Business:** None.

**Adjourn:** The meeting adjourned at 11:45 p.m.