

YAMHILL COUNTY PLANNING COMMISSION

Thursday, March 6, 2008 · 7:00 p.m.
Yamhill County Courthouse, Room 32
535 NE 5th St.
McMinnville, Oregon 97128

Roll Call: Matt Dunckel, Michael Sherwood, Daryl Garrettson, Alan Halstead, John Abrams, Robert Smiley.
Absent: David Polite, Marjorie Ehry. **Staff:** Ken Friday.

Review of the **minutes** from the Planning Commission Hearing of January 3, 2008. Alan Halstead moved to approve as submitted. Seconded by Michael Sherwood. Passed unanimously.

QUASI-JUDICIAL PUBLIC HEARINGS:

DOCKET NO.: PAZ-05-07
REQUEST: Approval of a Comprehensive Plan amendment from Agriculture/Forestry Small Holding to Very Low Density Residential; a zone change from AF-10 Agriculture/Forestry Small Holding to VLDR-5 Very Low Density Residential. The request includes an exception to Goal 14.
APPLICANT: Fred and Barbara Koch
TAX LOT: 3315-3803
LOCATION: South of the intersection of Williamson and Dudley Road, Newberg Oregon
CRITERIA: Sections 501, 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 660-004-0040, especially Sections 6 and 7(i) and 660-004-0018, Exception to Goal 14. OAR 660-12-0060 Transportation Planning Rule.

Chair Smiley opened the public hearing.

Abstentions, Objections to Jurisdiction, Ex Parte Contact: Matt Dunckel stated he's worked for the Koch's and knows several in attendance tonight. This will not effect his decision in this matter.

Ken Friday read the "**raise it or waive it**" into record.

Staff & Committee Report: Ken Friday gave a brief review of the staff report. One letter has been received and passed out for the commissioners to view.

Questions of Staff: Daryl Garrettson: Since County Counsel is not present, have you had the opportunity to talk with County Counsel on the issue of Goal 14 and if it applies? Ken Friday: Not with County Counsel but have spoken with the Planning Director who believes it applies, as well as the DLCDC who submitted a letter stating it does apply.

Daryl: Are you aware of any cases dealing with an issue of a plan amendment re-zone? Ken: I did try to look at the LUBA headnotes but did not see any directly on point to this issue.

Daryl: What does DLCDC deem an urban level of development? Ken: I don't know. He referred to the 1986 Curry County case where the courts determined a half acre lot definitely is "urban"; 1 acre probably could be, 2 ½ - 5 acres probably is not "urban".

Daryl: They seem to have this 10 acre and 2 acre standard and is not clear which applies. If you're going to take an exception, you have to take it on the basis of commitment to urban development. If a 5 acre development is not to

an urban standard, then why do we have a 5 acre zone because no one could qualify for an exception. Ken: I agree. Back in 2000 the DLCD was trying to address the (1986) Curry County case and were trying to make it so the VLDR 5 - 2 ½ zones would all be a 5 or 10 acre minimum. The County Planning Directors were upset over this. The State backed off from restricting most of the present rural residential zones and went down to recognizing existing rural residential zones at a 2 acre base level. So any lot division less than two acres needed an exception to Goal 14. That did affect approximately 100 property owners in the county that were already zoned VLDR 1. Letters were sent to them stating they can't divide down to 1 acre and you now are stuck at 2 acres unless you take an exception to Goal 14. The trade off is that DLCD decided to make it extremely difficult to re-zone property from a 10 acre rural residential zone down to anything smaller. They make it a requirement that an exception be taken to Goal 14 and then set up criteria that are extremely difficult to address. It was purposeful and thought out as a means to stop re-zoning from occurring unless they were next to the city, while at the same time recognizing the existing rural residential zoning. Daryl: Should we, if we decide to agree with the applicant that Goal 14 is not applicable, do we need to take a new goal 3 exception? Ken: No.

Proponent's Case: Michael Robinson, Attorney, 1120 NW Couch St, Tenth Floor, Portland, OR 97209-4128: Mr. Robinson represents Fred & Barbara Koch. The sole issue, as the staff report stated, is not whether it's farmable or appropriately protected, but whether or not Goal 14 applies and if it does, whether the applicant has met the burden of proof. The issue is urbanization, but at the end of the day, this body needs to make decision based on findings.

The application matches the development patterns of the surrounding area. It is urban in nature. There needs to be a site analysis decision in this case and if there is an irrevocable commitment to uses. Since there is a vineyard to the south, a buffer can be offered to protect the vineyard and the farm owners from spray drift or noise. They would not object to the condition of approval that requires additional discretionary review regarding the siting and location of the dwelling, and a clustering requirement can be imposed that would move the dwellings away from the south, closer to the road.

Edwin Sharer, 16500 SE Lafayette, Dayton, OR 97111: Mr. Sharer read over the staff report which he feels is balanced. He stated a response was not received from Public Works. Ken Friday added that a response was received from Public Works which stated: no conflicts of interest. Edwin got a verbal response back from Bill Gille who said if this is approved, they would wait until there was a partition or subdivision application and then they would review whether the access is safe. Mr. Gille also told Mr. Sharer Dudley Road has the capacity of at least 4 - 5 times the current usage.

In regards to water, Mr. Sharer stated he has a battery of well logs that they will turn in as record to show the wells are located on the public site and every well is located within 1 ½ mile of the subject property. The staff reports states there can be no conflict with the uses which they have to demonstrate. There are small forestry tracks and small livestock in the area, but in this case, the only resource land to worry about is to the southeast. Mr. Sharer stated they want to be a good neighbor, keeping conflicts at a minimum.

Questions: Daryl Garrettson: What is your basis that Goal 14 doesn't apply? Michael Robinson: Goal 3 is what applies and we can take an exception to Goal 2. We don't need to show an irrevocable commitment to Goal 14 under the Administrative Rule.

Daryl: I have a fundamental problem if Goal 14 does apply. You're asking for a 5 acre zone. If 5 acres is not an urban use, how can you be irrevocably committed to an urban use?

Michael Robinson: The facts in this case show its' not just 5 acres uses but smaller uses and smaller sized parcels around us which take in to totality and constitute an irrevocable commitment to urban uses. Mr. Robinson read the section of the Administrative Rule he states applies in this case.

John Abrams: I got the impression from what Mr. Fish submitted that anything less than 10 acres is an exception to Goal 14.

Ken Friday: Yes, I believe so.

Daryl: The problem I'm having is the DLCD saying, by rule, anything less than 10 acres you have to take an exception to Goal 14 but it's not an urban use unless it's below 2 acres.

Michael: Ken gave a good explanation of Goal 14 and the Administrative Rule's intent. You still have the ability to make findings of fact.

Questions of Proponent's: Audience Member: How old are the well logs and do you have information on how water flow has changed? Edwin Sharer: The well log itself is the date the well was drilled.. We have a current data base on every well listed in there from Water Resources. I do not have information on how the water has changed.

Ken Friday explained he has copies of the Goal 14 Residential Rule which he passed around to the commissioners to view if they wished in its entirety.

Audience Member: Verbiage in report about the areas around being smaller plots and how they came up with those numbers. Edwin Sharer: Initially, we met at a pre-occupational conference with staff and it was our understanding it was a 2 mile study area. After further conversations, they decided to reach out and do a 5 mile study area. They were looking for other lands similarly situated with the same zoning and types of uses, and what the availability of those properties were. There is a summary in the packet.

Audience Member: I'm curious as to where the information on supply and demand was extracted from and how old is the data. His supply estimates suggest about 4 ½ year supply on similar parcels in our region.

Edwin Sharer: In the packet there is a summary of all the properties listed for sale and have sold. The Assessor's tax information was used as well as neighborhood drive through to find driveways, development, etc.

Robert Smiley: You did this when?

Edwin Sharer: Just prior to first of the year.

Michael Sherwood: Did you qualify a property that's developed just an out building or with a home on it?

Edwin Sharer: No, we go to the records at the Planning Dept. and find out what's on the site. We can identify size and age of homes and then go to the property to see what's on site; also looking at aerial photos, etc.

Audience Member: What will be done with the surplus of lots size?

Michael Robinson: It will be absorbed in the 5 acre lot size.

Audience Member: My property and my neighbors property are not listed on the well logs and we're located directly above this proposed site.

Opponent's Case: Michael Kelley, 18840 Williamson Rd., Newberg, OR 97132: Mr. Kelley prepared a typed letter that was handed out to the commissioners, as well as a neighbor's written testimony. Mr. Kelley owns the vineyard to the south. Mr. Kelley questioned who signed the application, which Ken Friday explained. Mr. Kelly questioned the acreage in the application. Mr. Robinson indicated in his opening that farming is not an applicable issue, but if you're the farmer next door it's very relevant. Mr. Kelley farms grapes organically and over the last few years herbicide/pesticide drift has become a real problem. Anything that goes into that property will cause a problem for him since he is 30 feet from the property. Mr. Kelley talked with Edwin about a buffer but he can't see that taking care of it. Everything to the south is either forest or vineyards. The natural flow of the air channels right down through the middle of his property which helps keep the frost away. Anything sprayed will flow down that channel. If a neighbor wants to spray they give Mr. Kelley a call and he sprays it for them. He can't do that for 5 new homeowners. Also, the staff report mentioned no commercial or industrial uses in the area but he has a licensed winery that qualifies as a commercial use as far as his taxes go. Mr. Kelley asked the commissioners to consider what he put together and presented tonight in testimony and written comments.

Questions: Michael Sherwood: The properties on the east of you all border your property. Are there homes in

there? Mr. Kelley: Yes, they're set back off of Williamson Rd. Michael: You're compatible with all those properties? Mr. Kelley: Yes, I haven't had a problem. A few years ago the neighbors had no objections to the Martin's dividing the property which was their intent at the time that only one home be on that parcel, and that's why we approved it. We can live with one home.

Daryl Garrettson: The Martin's lot sized average created smaller parcels on the other side of Dudley Rd. and this is the remnant parcel? Mr. Kelley: Yes, they did that so they could build a new home on that piece of property.

Bill Koepke, 12218 NE Dudley Rd., Newberg, OR 97132: Mr. Koepke lives west of this parcel and he's in forestry. He's concerned with the water situation. Mr. Koepke has lived there over 40 years and Herring's have water rights for the whole creek. His well is very shallow and he has a spring fed water system. If someone taps into that system he'll be out of water. The neighbors up above him had to drill a new well right next to his. The State has been out to his property many times to check the water; making sure it's running efficiently and not being diverted. Robert Smiley asked Mr. Koepke to show where his property is located which he showed on the map explaining he's up-slope and has an easement on his property, as well.

Ken & Penny Wise, 18755 NW Williamson Rd., Newberg, OR 97132: They own a half an acre and have a well by the creek which they pointed out on the map. Mr. Wise read the letter that they submitted into record. Mr. Wise stated they were blessed to find this property and asked them to deny this application.

Stuart Brown, 12665 NE Dudley Rd., Newberg, OR 97132: Mr. Brown is a neighbor and a Real Estate professional. His property is located 585 feet from the subject property. He has a 32 acre parcel that is almost identical to this like one. Mr. Brown is the President of Valley Mortgage and Western Heritage Design. He stated he's not an activist but develops small parcels that preserve precious resources. This application is all about enterprise and this needs protection. Mr. Brown criticized very specifically problems in the application. The support for these comments comes from Interviews with the Assessor and Planning Staff, City Planners, local and city Appraisers, etc. First is the supply and demand issue which is relevant. There is no shortage in supply and he can supply plenty of data showing 4 ½ years of supply. There are numerous examples of much longer marketing times. Martin Chroust-Masin is working on a study that brings into this analysis the facts about the impact of Measure 49 and Measure 37. Just with those applications that are likely to pass vesting, if you take that data, there will be a 600% increase in supply in this type of property. VLDR is typically located in the transitional zones which are closer to the UGB and are generally smaller. The area we live in is not a residential zone but rural. This area has not been urbanized. This parcel is not only suitable, but exceptional for farming. Mr. Brown stated he believes they're protecting their properties by what we do on these parcels.

Questions: Daryl Garrettson: How did you come to this 4 year supply? Mr. Brown: There are 63 active listings of parcels similar from 2 - 10 acres. Daryl: 63 listings county wide? Mr. Brown: In McMinnville and Newberg and that doesn't include the obvious inventory this week from the Measure 40 vesting claim that was reported in the Newberg Graphic. Ken Friday stated there were 7 vesting claims decided last week and one was an 8 lot subdivision. The Newberg Graphic has several that were reported incorrectly.

Denise Ann Mapes, 12210 NE Dudley Rd., Newberg, OR 97132: Robert asked her to point out her parcel on the map which she and her husband bought 30 years ago. They own 7 ½ acres and stated the prior owner's well ran dry. If this property was divided 4 years ago with the understanding of why that happened and now they're back once again wanting to divide it. Will someone come in again in 4 years wanting to divide this again? It has to stop and the Commissioners need to look at the quality of life for those who have lived there for years. Mrs. Mapes posed the question of how much of the land has been divided into the smaller parcels that have been there for a number of years and how much of that has been divided within the last 10 years. None. It's all about money. The discussion about working with people if the property is divided made her chuckle. How long will it be before the new residents

complain about the noise from the winery and the cannons, etc.

James Sharp, 12675 NE Dudley Rd., Newberg, OR 97132: Mr. & Mrs. Sharp showed their parcel on the map. They own 20 acres and raise Christmas trees and nursery stock. The land in question was plowed 4 - 5 years ago by Mr. Sharp who is sure this is very farmable ground which has 6 - 7 feet of top soil on it. Mrs. Sharp explained their main concern is water since they had a well that went dry about 5 years ago and a new well was drilled. It's very questionable for water in that area. He wondered about the people with acreage in that area, what would happen to that farm ground if there was a zoning change. What would prevent others in that area from doing the same thing in dividing their parcels.

Susan Dillon, 18595 NW Williamson Rd., Newberg, OR 97132: Ms. Dillon explained she has small acreage and loves the property and the country. She too had to put a new well in 7 years ago and is concerned about the water and the traffic on Williamson Rd.

Karen Blanchard, 18775 NE Williamson Rd., Newberg, OR 97132 stated she's in agreement with the testimony that has been given.

Scott Twenge, 18801 NE Williamson Rd., Newberg, OR 97132: Mr. Twenge pointed out his parcel on the map and stated that most of those in attendance agree with each other. This is a tight knit community. One concern he has is when he heard they would move the homes to the north. Dudley Rd. is a dead end road. Most of the traffic will be coming in off of Williamson Rd., due to the sharp bank on Dudley, accessing off of the gravel portion off Williamson. An additional 5 homes will be a huge impact on such a small area. He has two 5 acre parcels on either side of his property raising timber on; behind him are three 10 acre parcels of cherries and across the street is the subject property. The biggest issue for him is the concern about using lot size averaging for that zoning, which is how this 29 acre parcels were created. What stops more zoning of this kind for this area in the future?

Sharon Wildle, 12500 NE Dudley Rd., Newberg, OR 97132: Ms. Wildle showed their property on the map and stated they've lived there for 23 years. She agrees with what Stuart said and others who've testified. She and her husband are concerned with the water supply, They get 4 - 5 gallons per minute but during the summer it pulls the well down. They're on a hill and personally can't afford to have a water problem. They are also concerned with the traffic on Dudley and Williamson Rd.

Kristina Fisher, 12251 NE Dudley Rd., Newberg, OR 97132 submitted written testimony.

Claude Hendricks, PO Box 157, Newberg, OR 97132: Mr. Hendricks lives across from this property to the east. Mr. Hendricks stated there are several Measure 37 & 49 claims in the immediate vicinity; 2 on Dudley Rd., one is a 14.3 acre parcel and the other is a 13.2 acre parcel, both wanting to divide into 3 parcels. There's a Measure 37 claim on Williamson Rd. to divide 51 acres and an application pending to subdivide 41.9 acres at the intersection of Red Hills and Sunny Crest into 16 lots. When this property was created, there was a house built there slowly and almost immediately afterward went up for sale. It's been for sale for over 6 months and has still not sold.

Questions of Opponent's: None

Public Agency Report: Ken Friday stated the only additional Public Agency Report was received from Public Works as stated previously. No conflicts of interest were found.

Rebuttal: Mr. Robinson & Edwin Sharer: Edwin has a copy of the file where the property was changed from EFU to AF-10. They rely heavily on the soil analysis and are not familiar as to the time Mr. Sharp said he plowed it. There

is a letter on file from a gentleman who farmed this property and stated it was not successful. This is not farm land. The heavy criticism on his market analysis is questionable since there was nothing in writing opposing what he said. The market analysis is a snapshot in time when the work was done. It is true the market has slowed but there are not 63 properties similar to this one. Edwin stated he stands by what was submitted.

Mr. Robinson: Mr. Kelley explained his organic vineyard and concerns very well and what he said made perfect sense. Those concerns can be dealt with through appropriate conditions of approval. Mr. Koepke talked about water. The Oregon Water Rights Division won't allow interference with the existing well. The evidence before you, in terms of well logs, shows a good supply of water. Mr. Robinson noted a comment about those who moved to the country and why they moved there. He appreciates the quality of country life but none of those reasons are reflected in our laws. This is not resource land and the questions before the commission is whether it's appropriate for a VLDR designation. Each action is viewed individually and there has been substantial evidence and the burden of proof has been met in this case. This will not set a pattern for future denials or approvals.

Staff Recommendation: Ken Friday stated the following recommendation:

The rural residential rule requires that rezoning land down to anything less than a 10-acre minimum lot size requires an exception to Goal 14. As you can tell from the staff report, the Goal 14 exception standards are set extremely high (in fact they are nearly impossible to satisfy). The standards require that the rural lands are irrevocably committed to urban levels of development. Our office does not interpret that the parcelization pattern is an urban scale of development, nor does it commit this 29 acre parcel to urban development. Therefore, our office recommends denial of the request.

Chair Smiley closed the public hearing.

Deliberation:

Daryl Garrettson: I understand the neighbors concerns. It appears in 2004 the neighborhood consensus was reached and the neighborhood agreed to not oppose the AF-10 re-zone. The passage of 3 ½ years is a breach of truths and causes me concern. My understanding of the goal and the definitions looks to be a Catch-22. If you want a parcel smaller than 10 acres you have to take an exception to Goal 14, but if the parcel size is not below 2 acres it's not urban. Daryl read the applicants response. The applicant cannot take an exception to Goal 14 for a 5 acre zone.

Matt Dunckel: Over this whole discussion I've been looking at this map and the pattern of the lots surrounding it and in my mind it looks like it's committed to smaller lots in that area. No matter who you have for a neighbor, farm or homes, there is a potential for problems.

Michael Sherwood: I think this is an entirely different scenario if it was closer to the UGB. 4 ½ miles is just too far.

Alan Halstead: I agree with Daryl that Goal 14 is a Catch-22. There's no justification for the urbanization of the lots. I'm opposed to this application.

John Abrams: It's troubling to say the least. I'm always sensitive to someone who has a large piece of ground compared to parcels around it. The lots vary from 1 - 10 acres which I'm sure at one time were part of a larger piece of property at one time. I'm also sensitive to the apprehension of change. I don't see where 5 acre parcels are not compatible with the surrounding lots.

Robert Smiley: I agree with the consensus about Goal 14. The concern about the winery is understandable but there are always problems with neighbors. I too am concerned that was reached a few years ago and now someone wants to claim that wasn't valid. That agreement is a matter of public record. I concur with staff.

MOTION: Daryl Garrettson moved to deny docket PAZ-05-07 on the grounds and for the reason that the applicant has failed to substantiate an exception to Goal 14. Seconded by Alan Halstead. (4 Yes/2 No [Matt Dunkel, John Abrams opposing] Motion failed)

MOTION: Daryl Garrettson moved to move docket PAZ-05-07 to the Board of Commissioners with no recommendation. Seconded by Alan Halstead. Passed unanimously 6 - 0

New Business: Changes to the Ethics Law were discussed. Ken reported there are 2 dockets scheduled for April.

Adjourn: The meeting adjourned at 9:10 p.m.

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