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Via Electronic Mail
Yamhill County Planning Commission
525 NE 4th St.
McMinnville, OR 97128

RE: Docket G-01-22: Proposal to Amend YCZO

Dear Chair Armstrong and Members of the Planning Commission:

This firm represents Yamhill County citizens who have had concerns about the proposed amendments to the YCZO in Docket G-01-22 and who have offered alternatives for the County to consider. Please include this letter in the record.

Planning's Original Proposal

The code amendments were originally proposed by the planning department to make "Roads, highways and other transportation facilities and improvements" permitted outright uses in eight (8) County zones (Mineral Resource (MR); Parks, Recreation, Open Space District, (PRO); Commercial Districts (RC, NC and HC); Industrial Districts (RI, LI and HI); Public Assembly Institutional District (PAI); Public Works/Safety District (PWS); and Public Airports/Landing Field District" (PALF)). There was a lot of public concern about planning's proposal.

PC's Recommendation to the BOC

You did not accept planning's recommendation. Instead, you recommended that "Roads, highways and other transportation facilities and improvements" be allowed as permitted uses in the PRO, VLDR, LDR and PAI zones; but for the rest of the zones that they would be allowed only as conditional uses.

Board of Commissioners Consideration of your Recommendation

Planning's Problem Statement to Justify the Proposed Amendments

Planning explained the problem statement driving the proposed amendments to the Board of Commissioners at their hearing. Planning's first problem statement was that the most important thing was to respond to ODOT's request that Newberg-Dundee Bypass transportation related uses be allowed uses in three (3) County zoning districts that currently do not allow them (AF-10, PWS and VLDR-5). Planning also said that amendments outside of the Bypass area

were needed because of LUBA decisions. Specifically, planning explained that in the Yamhelas trail decisions, LUBA had observed that the County code expressly says that if a use is not listed as being permitted, that it is prohibited. And that LUBA had observed that since “roads, highways and other transportation facilities and improvements” are allowed in some zones, but they were not listed as being allowed in the AF-10 and industrial zones, that that plainly meant that the Yamhelas trail was prohibited in those zones. Planning said that was a problem to solve outside of the Yamhelas Trail - for subdivisions, industrial parks and stores that are allowed in their zone - because Planning interpreted LUBA’s opinion to mean that without the proposed code amendments, subdivisions, industrial parks, and stores can’t have new driveways and roads that are needed to serve those allowed uses.

Citizen Suggestions to Solve Identified Problems

At the Board of Commissioners’ hearing on the proposed code amendments, several citizens and this firm testified that planning’s problem statement can be solved by targeted amendments, that do not have the sweeping force of the amendments being presented to the BOC. We proposed targeted amendments of two types:

1. First to solve ODOT’s concern: We pointed out to the BOC that the Bypass entirely exists within a County “Interchange Overlay District” (“IOD”), which is all about making the Bypass a reality. We explained that the County should just amend the existing IOD to say that “roads, highways and other transportation facilities and improvements” are allowed conditional uses in the IOD, even if the base zone prohibits them. The Board agreed with that approach. Thus, the BOC approved a motion that says:

“B.O. 22-353 – Motion 1:

1. **Modify bypass overlay district to allow for roads, highways, and expressways. (YCZO 908)**
2. **“Make sure the underlying zoning conforms to the overlay district (i.e., ensure ordinances allow as necessary.) [Motion passed 2:1]”**

The redline changes to the IOD (YCZO 908) that we proposed to achieve this are attached.

However, later after the BOC hearing, and the BOC’s consideration of the matter and their adopted motion, on December 14, 2022, the planning director issued an interpretation that the IOD actually *already allows* the Bypass and roads supporting the Bypass as a permitted use, regardless of what the underlying zones might say. We are unclear whether this resolves ODOT’s (and the Board’s) concern. If it does not, then you could recommend that the County adopt the amendments we proposed to the IOD (to YCZO 908). We do not understand planning to disagree that this will solve ODOT’s concern.

2. Second, we offered modest proposed amendments that, if truly necessary, that would get to the County’s concern that private property owners should be allowed to have roads that

are a part of another use that is expressly allowed in the zone – like to support a partition or subdivision where they are allowed or an industrial park in an industrial zone or a store in a commercial zone. Thus, we attach example language for code changes (shown in red lines) for 2 of the 14-zoning districts (for the AF-10 and Industrial zones) –that could easily be carried over to all 14 of the zones.

- a. Our proposal makes “roads, highways and other transportation facilities and improvements” allowable as conditional uses but only when they are proposed in conjunction with an application (that is ultimately approved) for *another* use that *is allowed in the zone*. The red lines on the attached are our proposed changes. The yellow highlight is what the County proposed before we made changes.

We pointed out that for alterations to existing roads (straighten out a curve, this sort of thing) that are nonconforming uses in their zone (*i.e.* roads that are not abandoned, but are actually being used), there is no need to change the County code. Rather, existing roads that are “nonconforming uses” because they are not otherwise allowed in the zone, can be altered under the existing County rules about alterations of nonconforming uses (subject to the no adverse impacts standard). Nonconforming uses go through a process and ensures public participation. Roads that are allowed in their zone (*i.e.* the IOD), can be modified under existing rules. No need for changes.

However, after hearing all this, the BOC was unconvinced that *any* of these code changes outside of the IOD for the Bypass, were necessary. Making their unease worse, no one could tell them exactly what would be allowed by authorizing “other transportation facilities and improvements” where they are not now allowed. The BOC wanted to have a better idea of what they were being asked to do and the effect of planning’s ask to amend the County Code. Hence their second approved Motion asked you to do two things, as follows:

“B.O. 22-354 – Motion 2:

1. **Provide justification as to why amendments are needed in each zone for roads and highways.**

Presumably, planning will provide you some information on this topic. We, like the BOC, are not convinced that the amendments, including the ones we offer as alternatives, are necessary. But if you are inclined to change the code, it should be narrow using our amendments, and not the broad authorization planning suggests.

2. **Define “other transportation facility and improvements”. [Motion passed 2:1]”**

The first answer to the BOC is that “**other transportation facility and improvements**” is not defined in state or county law. We all know that without a clarifying amendment, that it at least refers to paths/trails, which by now everyone

also understands are uses that are not universally compatible with other uses and can be incredibly divisive. As a result, the county is free to define what the “**other transportation facility and improvements**” means. For example, the county is free to say it does not include standalone trails and trailheads; to simply prohibit trails or trailheads on high value farmland and wherever else the County finds is appropriate. The BOC was interested in how you would define “other transportation facility and improvements,” and to do so in particular in the context of the code amendments that planning asks you to consider. If you consider that question as the BOC requested, we urge you to adopt a definition that at the least excludes stand-alone trails and trailheads that are not a part of an otherwise allowed use in the zone, on high value farmland, industrially zoned land and on land that is zoned AF-10. Thank you for your time and consideration.

Very truly yours,



Wendie L. Kellington

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CC: Clients

Attachments:

- Att 1 – Proposed amendments to Interchange Overlay District (YCZO 908)
- Att 2 – Proposed amendments to AF-10 District (YCZO 501)
- Att 3 – Proposed amendments to Industrial Districts (YCZO 700)
- Att 4 – Newberg-Dundee Bypass Overlay Map