



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

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NOTICE OF ADOPTED AMENDMENT

October 7, 2009



TO: Subscribers to Notice of Adopted Plan or Land Use Regulation Amendments

FROM: Plan Amendment Program Specialist

SUBJECT: Yamhill County Plan Amendment
DLCD 001-09

The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. Copies of the adopted plan amendment are available for review at DLCD offices in Salem, the applicable field office, and at the local government office. This adoption was adopted by the City on September 23, 2009, and passed the 21-day appeal period from the date of the adoption.

Appeal Procedures*

DLCD DEADLINE TO APPEAL: Acknowledged under ORS 197.625 and ORS 197.830 (9)

This amendment was submitted to DLCD for review prior to adoption with less than the required 45-day notice. Pursuant to ORS 197.625 if no notice of intent to appeal is filed within the 21-day period set out in ORS 197.830 (9), the amendment to the acknowledged comprehensive plan or land use regulation or the new land use regulation shall be considered acknowledged upon the expiration of the 21-day period.

Under ORS 197.830 (9) a notice of intent to appeal a land use decision or limited land use decision shall be filed not later than 21 days after the date the decision sought to be reviewed becomes final.

Please call LUBA at 503-373-1265, if you have questions about the appeal procedures.

***NOTE: THE APPEAL DEADLINE IS BASED UPON THE DATE THE DECISION WAS ADOPTED BY LOCAL GOVERNMENT. A DECISION MAY HAVE BEEN MAILED TO YOU ON A DIFFERENT DATE THAN IT WAS MAILED TO DLCD.**

Cc: Jon Jinings, DLCD Community Services Specialist
Gary Fish, DLCD Community Services Specialist

PROF 2

DLCD

Notice of Adoption

THIS FORM **MUST BE MAILED** TO DLCD
WITHIN 5 WORKING DAYS AFTER THE FINAL DECISION
PER ORS 197.610, OAR CHAPTER 660 - DIVISION 18

In person electronic mailed

DEPT OF

SEP 28 2009

LAND CONSERVATION AND DEVELOPMENT

For DLCD Use Only

Jurisdiction: **Yamhill County**

Local file number: **PAZ-0209**

Date of Adoption: **9/23/2009**

Date Mailed: **9/25/09**

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? **Yes** Date: **2/24/09**

- | | |
|--|--|
| <input type="checkbox"/> Comprehensive Plan Text Amendment | <input checked="" type="checkbox"/> Comprehensive Plan Map Amendment |
| <input type="checkbox"/> Land Use Regulation Amendment | <input checked="" type="checkbox"/> Zoning Map Amendment |
| <input type="checkbox"/> New Land Use Regulation | <input type="checkbox"/> Other: |

Summarize the adopted amendment. Do not use technical terms. Do not write "See Attached".

Comprehensive plan amendment from Public to Commercial. Zone change from PRO Parks Recreation and Open Space to RC Recreation Commercial.

Does the Adoption differ from proposal? Yes, Please explain below:

Adopted with limited use overlay zone to limit the property to rural uses.

Plan Map Changed from: **P Public**

to: **C Commercial**

Zone Map Changed from: **PRO Parks/Rec/Open Sp.** to: **RC Recreation Commercial**

Location: **8243 NE Abbey Road, Carlton**

Acres Involved: **22.00**

Specify Density: Previous: **1 dw/ 1 acre**

New: **1 dw/ 2 acres**

Applicable statewide planning goals:

- | | | | | | | | | | | | | | | | | | | |
|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 |
| <input type="checkbox"/> |

Was an Exception Adopted? YES NO

Did DLCD receive a Notice of Proposed Amendment...

45-days prior to first evidentiary hearing? Yes No

If no, do the statewide planning goals apply? Yes No

If no, did Emergency Circumstances require immediate adoption? Yes No

DLCD file # 001-09 (17442) [15730]

Exhibit "A" - FINDINGS:

DOCKET: PAZ-02-09

REQUEST: Approval of a Comprehensive Plan amendment from Public to Commercial and a zone change from PRO Parks, Recreation and Open Space to RC Recreation Commercial. The purpose of the change is to allow the expansion of the existing bed and breakfast to a "Country Inn" and to allow the serving of evening meals to guests.

APPLICANT: Bruce Bandstra

REPRESENTATIVE: Jeff Evans, Attorney at Davis Wright Tremaine.

TAX LOTS: 3331-100

LOCATION: 8243 NE Abbey Road, Carlton, Oregon

CRITERIA: Sections 405, 601, 904, and 1208.02 of the Yamhill County Zoning Ordinance, applicable Comprehensive Plan policies, and OAR 660-12-0060 Transportation Planning Rule.

A. Background Facts:

1. *Property size:* 20.72 acres.
2. *Access:* Abbey Road, a paved County road.
3. *On-site Land Use:* The parcel is approximately a triangle with the hypotenuse along Abbey Road. The northeast section of the parcel contains a pond that is used for trout fishing. The applicant estimates the pond is approximately 4.5 acres in size. Approximately 3/4 of the pond is on the applicant's property. The highest elevation is 300 feet which is at the northwest corner of the lot. The lowest elevation is a little less than 160 feet along the southwest corner of the lot. The property is developed with several structures including the main house, a carriage house, meditation/reading cottage and several outbuildings. There is a small open grass field near the middle of the property with the remainder of the parcel forested.
4. *Surrounding Land Use:* Property in the surrounding area is generally in farm use. Land to the east, across Abbey Road, is owned and farmed by the Trappist Abbey. The entrance to the Trappist Abbey is approximately 1/2 mile north of the subject parcel. The uses in the surrounding area include grass and grain crops, livestock and vineyards.
5. *Surrounding Zoning:* Zoning to the north and east is EF-80, Exclusive Farm Use. Zoning to the west is EF-40. The zoning south of the furthest point of the parcel is MR-1 Mineral Resource.

6. *Water:* The existing dwelling on the subject property is served by an on-site well.
7. *Sewage Disposal:* Provided by an on-site septic system.
8. *Fire Protection:* Carlton Rural Fire District
9. *Soils:* The Yamhill County Soil Survey shows approximately 2/3 of the property is Carlton silt loam, agricultural Class II soils. The remaining third is made up of Willakenzie Class IV soils and Wapato Class III soils.
10. *Taxes:* Classified as open space. One acre is at market value. The remaining acreage is receiving farm deferral.
11. *Previous Actions and History:* On June 20, 1979 the property was identified as part of Ordinance 202. Ordinance 202 listed properties that qualified for an Exception to Statewide planning Goals 3 and 4 based on the property being physically developed or irrevocably committed to nonresource use.¹ In 1994 the property owners were approved for Site Design Review (Docket # SDR-01-94) to operate a retreat facility, which the then owners named "His Hiding Place". The owners at that time were offering lodging accommodations in both the "Main House" and the "Bunk House." In addition to the lodging, the previous owners also hosted weddings throughout the summer and special events for groups and individuals. The current owners of the subject parcel, Bruce and Susan Banstra, requested approval for a similar use approval to allow the retreat center to be used as a bed and breakfast and to host weddings and similar events. This was approved through Docket SU-01-07.
12. *Floodplain:* FIRM 410249 0175 C, shows that the property, is not within the 100-year flood hazard area.
13. *Fish and Wildlife:* Although the property has a stream running through it, and a pond with fish, the property is not identified as critical fish or wildlife habitat. (Approximately 1/4 of a mile downstream (southwest) the stream is identified as resident trout spawning and rearing.)
14. *Groundwater Limited Area:* The property is not identified as being in a Critical or Groundwater Limited Area.
15. *Request:* The applicant desires to establish a "Country Inn." In the pre-application conference Mr. Bandstra described the size of the facility he desired as being approximately 15 rooms. The zoning ordinance does not have a separate classification of "Country Inn." The ordinance allows a "Motel" in the HC Highway Commercial zone. The HC zone did not appear to be appropriate for this area as the property was not adjacent to the highway and the definition in "Motel" did not specify dining or food service. The RC Recreation Commercial zone allows a "Resort" which is defined as: *Any area of land or water used for open-land commercial or private recreation where overnight lodging,*

¹It should be noted that this application is significantly different from previous requests for lodging in the rural area because the subject property has had an exception from Goals 3 and 4 taken based on the property being built and committed to something other than resource use.

meals, and related tourist services are provided in conjunction with such recreational use. The existing recreational use on the property is the fishing pond. While the requested use appears to fall within the definition of "Resort", because there is not a category of "Country Inn", the decision-makers may want to consider adding a new category, either through ordinance amendments or through approval of a similar use application.

B. Zone Change and Plan Amendment Provisions and Analysis

1. Approval of a request for a zone change must be based on compliance with the standards and criteria in YCZO Section 1208.02. These provisions are:
 - (A) *The proposed change is consistent with the goals, policies, and any other applicable provisions of the Comprehensive Plan.*
 - (B) *There is an existing demonstrable need for the particular uses allowed by the requested zone, considering the importance of such uses to the citizenry or the economy of the area, the existing market demand which such uses will satisfy, and the availability and location of other lands so zoned and their suitability for the uses allowed by the zone.*
 - (C) *The proposed change is appropriate considering the surrounding land uses, the density and pattern of development in the area, any changes which may have occurred in the vicinity to support the proposed amendment and the availability of utilities and services likely to be needed by the anticipated uses in the proposed district.*
 - (D) *Other lands in the county already designated for the proposed uses are either unavailable or not as well-suited for the anticipated uses due to location, size, or other factors.*
 - (E) *The amendment is consistent with the current Oregon Administrative Rules for exceptions, if applicable.*
2. Regarding criterion (A) above, the Applicant addressed all of the applicable goals and policies of the Comprehensive Plan on pages 2-6 of the applicant's narrative. Those responses are sufficient to demonstrate compliance with this criterion and are incorporated here by reference.
3. Criterion (B) and (D) are similar so they will be considered together. With Criterion (B), the applicant needs to show there is an existing demonstrable need for the particular uses allowed by the requested zone, considering the importance of such uses to the citizenry or the economy of the area, the existing market demand which such uses will satisfy, and the availability and location of other lands so zoned and their suitability for the uses allowed by the zone. Similar to that is 1208.02(D), which requires showing that those other parcels, already zoned for the proposed use are either unavailable or not as well suited to the proposed use due to location, size or other factors.

To address these factors the applicant submitted anecdotal information about his experience with the Brookside Inn and the desires expressed by his clientele. The guests have requested dinners. Related to that, the applicant has also received numerous requests for dining related to their corporate meetings. The Applicant's narrative response to criterion (B) and (D) are incorporated here as findings. The applicant's concluding paragraph to support 1208.02(B) states:

"The success and growth of the Yamhill County wine industry is dependent upon the ability to attract tourists and visitors with alternatives for traveling to wine country destinations in other parts of the country. To the extent that Yamhill county can offer a variety of dining and lodging accommodations, the more likely it will be that Yamhill County can continue to enhance this sector of its economy. Brookside Inn is uniquely positioned to accommodate a portion of the existing, unmet market demand, and would like to satisfy a portion of that demand through the expansion of dining options and increased capacity."

The statements in the application and the conclusion are directly in line with a draft report on the *Yamhill County Agri-Business Economic and Community Development Plan* related to *The Future for Yamhill County Tourism*. The report states, "The most significant and most promising opportunities to expand Yamhill County tourism appear to include:

...

Lodging: more lodging properties offering more rooms, a various price points - from luxury to affordable, in all parts of the county with convenient access to the wineries. Ancillary facilities; meeting rooms, restaurants, spas, etc."

Near the top of page 6 it lists "Success Factors". The draft report states, "*Key ingredients for success in growing Yamhill County's tourism sector are identified below:*

- 1. Expanding lodging options: The most immediate need is for a variety of additional lodging properties and more hotel rooms to accommodate overnight stays, across the county. Attracting travelers who stay in hotels and related establishments is crucial. From 1991-2007, expenditures of Oregon lodgers increased year-to-year an average of 17% in comparison with a 6% increase in day travelers."*

There appears to be a need for additional accommodations and the ancillary facilities that the applicant proposes to supply. That being said, the next question is whether other lands in the County already designated for the proposed use are either unavailable or not as well suited for the anticipated uses due to location, size or other factors. The RC zone is not an abundant zone in the County. The only RC zone within this area was the Bayou Golf Course, which has approximately 100 acres between two tax lots. Based on the availability of other RC zones, it does not appear that other County zoned property is available for the use.

One of the "other factors" that makes other locations not as well suited for the proposed use is the existence of the small lake on the property. The lake is actually what appeared to have spurred the owner to request the property be designated PRO in the late 1970's.

At that time the location was referred to as "Walden Pond." It would be difficult, if not impossible, to find any other properties in the County that contain a similar arrangement.

4. Regarding criterion (C), public notice was mailed to surrounding property owners. So far no written comments have been received. The existing structures and therefore the focus of the use is located near the middle of the property. During the similar use application that was processed in March of 2007 our office also received no objections from neighboring properties. It appears the existing forest, the topography, and the layout of the property all work together to make the use appropriate and compatible considering the surrounding land uses.

Regarding the availability of utilities and services in the area, an expansion of the number of rooms may need additional septic service. The lot appears to be large enough and have adequate soils to allow for on site septic to serve the use. Other services such as electricity, telephone, sheriff and fire protection already serve the property. No extension of water or sewer service is being relied upon for this request.

4. Regarding criterion (E), exceptions to Goal 3 and 4 were already taken in 1979 the as part of Ordinance 202. DLCD has written in a letter stating that "[u]nless the county and applicant can show that the use will be limited by application of a base zone and/or a limited use overlay zone to allow only a "rural" use consistent with Goal 14, a reasons exception to Goal 14 is required." As DLCD suggested, the Applicant requested that the County utilize Section 904 of the Yamhill County Zoning Ordinance to place a Limited Use Overlay on the rezoned property. This would ensure compliance with Goal 14, and no exception would be necessary. The limited use overlay proposed in the Staff Report is consistent with DLCD's approach to Goal 14 in other jurisdictions, and would result in less dense development potential than what is currently allowed. As displayed in the codes for many surrounding and similarly situated counties in the state, including Polk, Linn, Washington, and Douglas counties, the provisions from the Marion County code cited in the Staff Report (incorporated here by reference) are consistent with DLCD's efforts to ensure compliance with Goal 14. The proposed limitations carried out through the Limited Use Overlay District are consistent with the rural commercial uses DLCD has allowed in other counties throughout the state, including Marion County, and are thus consistent with Goal 14. In addition, as discussed in the Staff Report, the requested Recreation Commercial District has larger minimum lot size than does the existing PRO zone. This further ensures that the rural nature of the property and the surrounding area will be preserved.

C. Goal 12 (Transportation Rule) Provisions and Analysis

1. The provisions of the Transportation Planning Rule, implementing Goal 12, must be addressed. OAR 660-012-0060 contains the provisions that must be met:
 - (1) *Amendments to functional plans, acknowledged comprehensive plans, and land use regulations which significantly affect a transportation facility shall assure that allowed land uses are consistent with the identified function, capacity, and level of service of the facility. This shall be accomplished by either:*
 - (a) *Limiting allowed land uses to be consistent with the planned function, capacity and level of service of the transportation facility;*

- (b) *Amending the TSP [Transportation System Plan] to provide transportation facilities adequate to support the proposed land uses consistent with the requirements of this division; or,*
 - (c) *Altering land use designations, densities, or design requirements to reduce demand for automobile travel and meet travel needs through other modes.*
- (2) *A plan or land use regulation amendment significantly affects a transportation facility if it:*
- (a) *Changes the functional classification of an existing or planned transportation facility;*
 - (b) *Changes standards implementing a functional classification system;*
 - (c) *Allows types or levels of land uses which would result in levels of travel or access which are inconsistent with the functional classification of a transportation facility; or*
 - (d) *Would reduce the level of service of the facility below the minimum acceptable level identified in the TSP.*

2. Regarding (1) and (2), the applicant has not submitted a traffic study. However, much of the use is already established on the property. The applicant desires to increase the number of rooms to rent and allow limited dining opportunities. The applicant maintains that Abbey Road is well under-capacity and it is reasonable to presume that the proposed minimal increase in daily visitors will not have significant affect on the transportation system. While this appears to be true, the Applicant will be required to submit a transportation impact analysis as a condition of approval. Given the limitation on allowed uses pursuant to the Limited Use Overlay and larger minimum lot size of the RC zone, the Board finds that the comprehensive plan amendment and zone change do not significantly affect a transportation facility.

D. Limited Use Overlay Provisions

1. OAR 660-04-18(3)(a) states that when a reasons exception is taken, plan and zone designations must limit uses to only those that are justified in the exception.
2. Section 904.03 of the YCZO contains provisions for limited use overlays. It states:
 - (A) *When the Limited Use Overlay District is applied, the uses permitted in the underlying zone shall be limited to those specifically referenced in the ordinance adopting the Limited Use Overlay District.*
 - (B) *The Limited Use Overlay District may be used to require conditional use approval for uses normally permitted outright.*
 - (C) *Reasonable conditions may be imposed in the Limited Use Overlay District as are necessary to assure compliance with the provisions of the Comprehensive Plan and this ordinance.*
 - (D) *Until the overlay has been removed or amended, the only permitted uses in an LU district shall be those specifically referenced in the adopting ordinance.*

3. Because the RC Recreation Commercial zone allows other commercial uses which have not been evaluated to determine whether they are appropriate to the area, it is appropriate to apply a Limited Use Overlay to allow uses on the rezoned area to a 20-room Country Inn with the following limits on accessory uses:

The property is not approved for a restaurant.²

Lunch or dinner may be served to overnight guests of the Country Inn or an equivalent number equal to the capacity of the Inn.

On-site gatherings, with meal service, are limited to no more than 200 people.

Additional construction on the property is limited to a footprint of no more than 3,500 square feet.

THE BOARD FINDS:

1. The request is for a Comprehensive Plan amendment from Public to Commercial and a zone change from PRO to RC.
2. The proposed zone change is consistent with Comprehensive Plan goals and policies.
3. An exception to Goal 14 is not required because the uses are limited by application of a limited use overlay consistent with the provisions of Section 904.03 of the YCZO.
4. The proposed change is consistent with the zone change criteria of Section 1208.02.
5. The proposed change complies with the Transportation Planning Rule.

DECISION:

The request by Bruce Bandstra for a Comprehensive Plan amendment from Public to Commercial and a zone change from PRO Parks, Recreation and Open Space to RC Recreation Commercial is hereby **approved**, with the following conditions of approval:

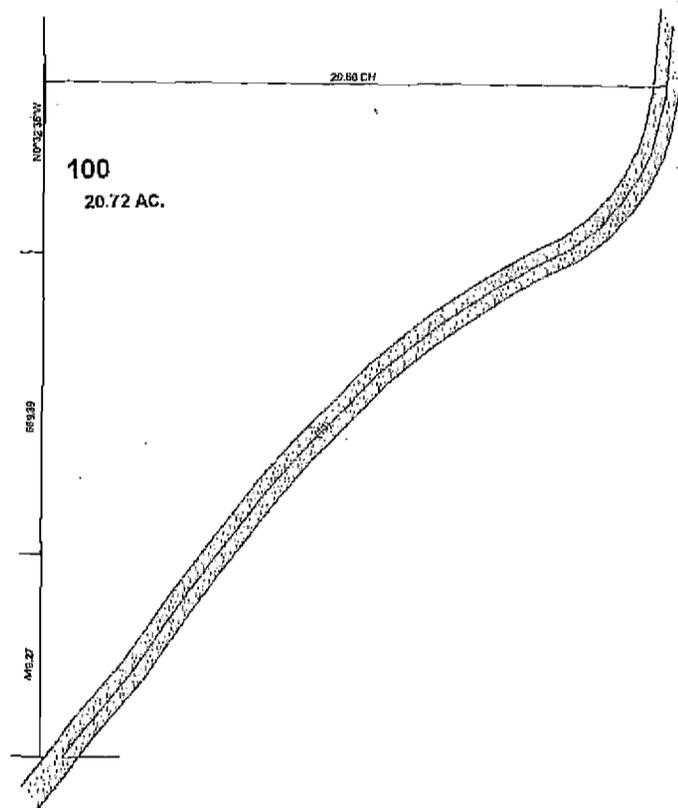
1. The property is not approved for a restaurant, as defined in the findings for the limited use overlay.
2. Lunch or dinner may be served to overnight guests of the Country Inn or an equivalent number based on the capacity of the Inn.
3. On-site gatherings are limited to no more than 200 people.

² For purposes of this Ordinance, a “restaurant” is defined as a facility that derives more than fifty percent of its revenue from the preparation and sale of food and drink to the public in a format that serves walk-in customers without reservations and provides more than a single-seating per meal.

4. Additional construction on the property is limited to a footprint of no more than 3,500 square feet.

~~B.O. 09-560~~
B.O. 09-593

EXHIBIT MAP FOR ORDINANCE NO. 841
PLAN AMENDMENT AND ZONE CHANGE
ADOPTED BY THE YAMHILL COUNTY BOARD OF COMMISSIONERS
FOR A COMPREHENSIVE PLAN AMENDMENT FROM
PUBLIC
TO
COMMERCIAL AND
TO CHANGE OFFICIAL ZONING MAP FROM
PRO PARKS, RECREATION AND OPEN SPACE
TO
RC RECREATION COMMERCIAL



CHANGE APPLIES TO TAX LOTS 3331-100 AS IDENTIFIED ABOVE.
APPROXIMATE SCALE - 1 INCH = 400 FEET

B.O. 09-543
Exhibit "B"
ORDINANCE 842

**Yamhill County Dept
of Planning & Development**
525 NE Fourth St.
McMinnville, OR 97128
<http://www.co.yamhill.or.us/plan/>

DEPT OF
SEP 28 2009
**LAND CONSERVATION
AND DEVELOPMENT**



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DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
635 CAPITOL STREET NE, SUITE 150
SALEM, OREGON 97301-2540

