BEFORE THE BOARD OF COMMISSIONERS OF THE STATE OF OREGON

FOR THE COUNTY OF YAMHILL

SITTING FOR THE TRANSACTION OF COUNTY BUSINESS

In the Matter of a Comprehensive Plan Amendment from Very Low Density Residential to Industrial and a Zone Change From VLDR-2.5, Very Low Density Residential to LI, Light Industrial; Planning Docket PAZ-01-21; Tax Lot 3325BD-200; Applicant: Thomas Henry Stewart; and Declaring an Emergency	))))))))	Ordinance 915

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY, OREGON (the Board) sat for the transaction of county business on July 22, 2021, Commissioners Mary Starrett, Lindsay Berschauer and Casey Kulla being present.

IT APPEARING TO THE BOARD as follows:

A. Thomas Henry Stewart requested a plan amendment (from Very Low Density Residential to Industrial) and zone change (from Very Low Density Residential-2.5 to Light Industrial) for an approximately 0.53-acre parcel, Tax Lot 3325BD-200, located at 209 State Highway 99W, Dundee; and

B. This matter came before the Planning Commision for public hearing on March 4, 2021. Following the hearing and deliberation, the Planning Commission voted 5-1, with one abstention, to recommend approval of the application by the Board of Commissioners; and

C. Following a hearing on this matter on April 22, 2021, the Board voted 3-0 to deny the application. Following reconsideration of that decision the following week, a subsequent hearing was held on June 24, 2021. Following that hearing, and receipt of additional testimony and evidence, the Board voted unanimously to approve the application. NOW, THEREFORE

THE BOARD ORDAINS AS FOLLOWS:

Section 1. The findings attached as Exhibit "A" and incorporated herein by reference are hereby adopted in support of this ordinance.

Section 2. The Comprehensive Plan Map and Zoning Map of Yamhill County are hereby amended to reflect a Plan Map designation of "Industrial" and a Zoning Map designation

of "LI-Light Industrial" for the approximately 0.53-acre Tax Lot 3325BD-200 identified on the attached Exhibit "B" map, incorporated herein by reference.

Section 3. This Ordinance being necessary for the health, safety and welfare of the citizens of Yamhill County, and an emergency having been declared to exist, is effective immediately.

DONE this 22nd day of July, 2021, at McMinnville, Oregon.

ATTEST:

BRIAN VAN BERGEN
County Clerk

By: Carolina Rook
Deputy Carolina Rook

FORM APPROVED BY:

Timothy S. Sadlo
Office of County Counsel

YAMHILL COUNTY BOARD OF COMMISSIONERS

Chair MARY STARRETT

Commissioner LINDSAY BERSCHAUER

Commissioner CASEY KULLA

Exhibit A
Ordinance 915
Findings of Fact and
Conditions of Approval
Planning Docket PAZ-01-21

I. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Board adopts the following findings of fact and conclusions of law, which incorporate by reference the county Staff report dated February 19, 2021, and the arguments and evidence presented in the June 22, 2021 letter from Mr. Garrett Stephenson (the applicant's legal counsel) and its attachments. These attachments include, but are not limited to, a land need and alternative site analysis prepared by Johnson Economics dated June 14, 2021, a transportation impact analysis prepared by Mr. Chris Clemow dated June 15, 2021, supplemental alternative site analysis prepared by Mr. Daniel Danicic and June 18, 2021, and a landscaping plan. The Board finds that, in addition to the original application, these materials as well as others appended to the June 22, 2021 letter provide additional substantial evidence supporting the Board's decision.

A. Background Findings

The applicant is Mr. Thomas Henry Stewart, owner of Oregon Paving Company. The subject property (the "property") is Tax Lot 3325BD-200, located at 209 Highway 99W, Dundee. It consists of approximately 0.53 acres and is developed with an existing 1,180 sq. ft. pole building. The applicant proposes to use the Property as a business office, outdoor storage area, and parking area (the "proposed use").

The property is bound by Highway 99W to the west and a small public access road to the east, which road is known interchangeably as "Edwards Dr.," "Dayton Ave," or "NE Bienz Road." The property does not have direct access to Highway 99W; its sole access is through the afore-mentioned public access road, which in turn connects the property to the Highway 99W/Fox Farm Road intersection. The February 19 staff report explained the land use context of the Property as follows:

> "The parcel to the south is zoned NC, Neighborhood Commercial and currently operates a tow company. Further to the south and east is a large area zoned VLDR-2.5, Very Low Density Residential and contains residential parcels of approximately 2.5-acres. North, across Highway 99W, is a parcel zoned NC and contains a motorcycle parts store and a parcel zoned LDR-12,000, Low Density Residential, that is currently vacant. Further northeast, across Highway 99W, are two properties zoned RI, Resource Industrial, and contains The Four Graces Winery. Just east of the winery, across NE Fox Farm Road, is a parcel zoned HC, Highway Commercial, and is approved for wine tasting and an RV park/cabins."

The property is located outside of the Dundee City Limits and outside of Dundee's Urban Growth Boundary ("UGB"). The property was the subject of committed exceptions to Goals 3

(Agricultural) and 4 (Forestry) in Code Area 1.8 adopted by Exception's Statement II, April 23, 1980. The exception area is not within an "unincorporated community" as that term is defined by OAR 660-022-0010(10).

B. Procedural History

The application was submitted on January 6, 2021. On February 5, 2021, public notice of the Planning Commission hearing scheduled for March 4, 2021 was sent to the owners of all property within 250 feet of the subject property (the "Property"). County Planning staff issued its staff report on February 19, 2021.

On March 4, 2021, the Planning Commission held a public hearing on the application. After closing the public hearing, the Planning Commission deliberated and voted 5 to 1 to recommend approval of the application to the Board of Commissioners.

On April 22, 2021, the Board held a duly-notice public hearing to consider the Planning Commission's recommendations. After closing the public hearing, the Board voted 3 to 0 to deny the application. Following reconsideration the following week, the Board continued the hearing to allow the applicant an additional opportunity to provide sufficient evidence to support approval of the application.

The applicant submitted additional evidence and written testimony on June 16 and June 22, 2021. On June 24, 2021, the Board held a new public hearing on the application. The Board closed the hearing and, following deliberation, voted unanimously to approve the application.

C. Substantive Findings And Conclusions Of Law

1. Applicable Criteria

The applicable criteria are found in Yamhill County Zoning Ordinance ("YCZO") section 1208.02 "Plan Amendment and Zone Change," and Oregon Administrative Rule ("OAR") section 660-012-0060, and are stated below:

YCZO 1208.02

(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.

OAR 660-012-0060

(1) If an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation (including a zoning map) would significantly affect an existing or planned transportation facility, then the local government must put in place measures as provided in section (2) of this rule, unless the amendment is allowed under section (3), (9) or (10) of this rule.

A plan or land use regulation amendment significantly affects a transportation facility if it would: (a) Change the functional classification of an existing or planned transportation facility (exclusive of correction of map errors in an adopted plan);

(b) Change standards implementing a functional classification system; or

(c) Result in any of the effects listed in paragraphs (A) through (C) of this subsection based on projected conditions measured at the end of the planning period identified in the adopted TSP. [...]

(A) Types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;

(B) Degrade the performance of an existing or planned transportation facility such that it would not meet the performance standards identified in the TSP or comprehensive plan, · or

(C) Degrade the performance of an existing or planned transportation facility that is otherwise projected to not meet the performance standards identified in the TSP or comprehensive plan.

2. Findings Regarding the Applicable Criteria

The Board adopts and incorporates the February 19, 2019 Staff Report, which identifies the applicable criteria and explains how those criteria are met. In addition, the Board makes the following additional findings:

First, the Board finds that criterion B above is met because the applicant submitted an analysis by Johnson Economics demonstrating a need for additional Light Industrial land within the county. The Board specifically finds that there have been two separate studies, both by Johnson Economics, which supports this conclusion. The first study was conducted for the recent AAA

Group, LLC application, which the county approved in April, 2021 (PAZ 01-20). There, Johnson Economics concluded that the county had only 31.5 acres of vacant LI land and projected a substantial amount of growth in light industrial sectors in the near future. The applicant's study, dated June 14, 2021, concludes that vacant LI lands in the county had been reduced to 25.6 acres, with 85% of all LI lands being already developed.

Second, the Board finds that criterion D, above, is met. As an initial matter, the Board finds that criterion B considers not just the existence of other vacant sites within the LI zone, but also requires consideration of those sites' "suitability" and "availability," and whether they are "well-suited for the anticipated uses due to location, size or other factors." In other words, criterion B can be satisfied by demonstrating that existing vacant LI-zoned sites are not suitable or available for the applicant's proposed use. The Board also finds that criterion D does not specifically require an analysis of available urban sites.

In finding that criterion D is met, the Board relies on an alternative site analysis in the Johnson Economics' study June 14 study. This study evaluated each vacant LI site in terms of Size, Market Area, Neighboring Uses, Access, and Visibility. It specifically considered the applicant's need for reasonably direct access to a high-capacity transportation facility (Hwy 99W), its relatively modest land need, and the practical need to be compatible with surrounding uses. It also considered the distance of potential alternative sites to Oregon Paving Company's market area, which is largely outside of Yamhill County and closer to the Portland Metropolitan area. This market area analysis demonstrates that the property is more suitable than other vacant LI-zoned properties because it is closest to the applicant's market area, which reduces the travel distance of paving trucks and equipment on county roads. The Board also finds that there is no evidence that any of the identified vacant LI-zoned sites are available for sale.

The Board also relies on a supplemental alternative site analysis conducted by Mr. Daniel Danicic that reviewed potential alternative sites within the city limits of Dundee and Newberg. Specifically, the Board finds that a paving business of the kind proposed in the application is not allowed as an outright permitted use in any Dundee zoning district and that the two parcels with adequate zoning in Newberg are unsuitable for the reasons stated in Mr. Stephenson's June 22, 2021 letter and its attachments.

Finally, the Board finds that the Property is more suitable for Light Industrial than the residential uses allowed in the VLDR 2.5 zone due to the Property's proximity to Highway 99W, its unusual shape, its proximity to the railroad tracks to the east, its isolation from other residential areas, and its proximity to other commercial and industrial areas.

Third, the Board finds that the application satisfies OAR 660-012-0060 for the reasons stated in Mr. Clemow's transportation impact analysis and Mr. Stephenson's June 22, 2021 letter. In particular, the Board finds that the proposed use is anticipated to generate 5.95 average daily trips ("ADT"), with 1.0 of those trips during the AM peak hour and 0.99 of those trips during the PM peak hour. If developed with a single-family residential use under its current zoning, the Project would generate 9.44 ADT, and 0.76 AM peak hour and 1.00 PM peak hour trips. The Board also finds that crash data obtained from ODOT demonstrates that the proposed use will not

cause a safety hazard. Finally, the Board finds that the proposed use will not create a significant amount of heavy vehicle (truck) traffic, based on Mr. Clemow's June 21 email appended to Mr. Stephenson's June 22 letter and the applicant's testimony regarding the vehicles used by his business.

D. Response To Public Comments

Three interested parties submitted written comments raising objections to the Application. The Board rejects those objections for the reasons below.

1. Response to comments submitted by Mr. Patrick Davenport on behalf of the City of Dundee, dated February 22, 2021.

Mr. Davenport raised concerns regarding water supply, wastewater disposal, traffic impacts and transportation planning rule ("TPR") analysis, and argued that the County should discourage rezoning to industrial areas in unincorporated areas close to the City limits.

With regard to water supply, the Board finds that the Property is adequately served by City water as stated in the staff report.

With regard to wastewater disposal, the Board finds that wastewater generated by the proposed use can be accommodated by a tank system, as explained in the September 1, 2020 email from Suzanne Richardson, County Environmental Health Specialist, who explained that "this is exactly the type of parcel and project where a holding tank would be appropriate."

With regard to transportation impacts and the required TPR analysis, the Board finds that the application satisfies the TPR based on Mr. Clemow's June 15 transportation impact analysis. The Board finds that the same analysis explains that the application does not present a traffic safety risk. The Board also finds that the anticipated truck traffic will be minimal as stated in Mr. Clemow's June 21 email.

With regard to the prospects of annexation, the Board finds that the property is unlikely to be annexed within the foreseeable future for the reasons stated in Mr. Stephenson's June 22 letter; namely, that the property is outside the UGB and does not abut the city limits.

2. Response to Mr. Darrell Mount's February 24, 2021 letter.

Mr. Mount is the owner of a parcel which abuts the property to the south. He argued in his written testimony that the proposed use is incompatible with his business and nearby residential uses. The Board considered these arguments but finds that the application will not adversely affect Mr. Mount's property or business. First, as explained by the applicant's legal counsel at the June 24 hearing, Mr. Mount's property has direct access onto Highway 99. There is no substantial evidence in the record that supports a conclusion that the applicant's use of the property will conflict with Mr. Mount's business. There is also an open question as to the extent of Mr. Mount's business raised in his email to County staff dated June 23, 2021, in which he asserted: "I do not,

and never have run, an automotive repair shop for the public. It's my personal shop, where I work on personal projects and store my personal vehicles."

With regard to nearby residential development, the Board finds that the property is isolated from abutting residential development by existing roadways and the nearby railroad tracks.

The Board rejects Mr. Mount's argument regarding vacant LI-zoned properties on the west side of Dundee on Fulquartz Road for the reasons stated in the June 14 Johnson Economics study and June 21 supplement alternative site analysis provided by Mr. Danicic. The Board finds that Mr. Mount's claims as to the alternative sites' availability are unsupported by evidence.

3. Response to Mr. Jeff Coffman's February 25, 2021 letter.

Mr. Coffman raised objections to the application based on his concerns that the physical appearance of the proposed use could conflict with the entrance to the City of Dundee and generate excessive commercial traffic. In so doing, Mr. Coffman did not identify an approval criterion that he believed the application failed to meet, and the Board rejects Mr. Coffman's arguments for that reason. Assuming that Mr. Coffman's arguments did address an approval criterion, the Board would also reject them because the applicant submitted a landscaping plan showing how the proposed use will be adequately screened from views from Highway 99W and the Applicant submitted a transportation impact analysis which demonstrates that the Application will have no significant effect on the County's transportation system. All development on the site is subject to Site Design Review, which has yet to be approved at the time of these findings.

II. DECISION

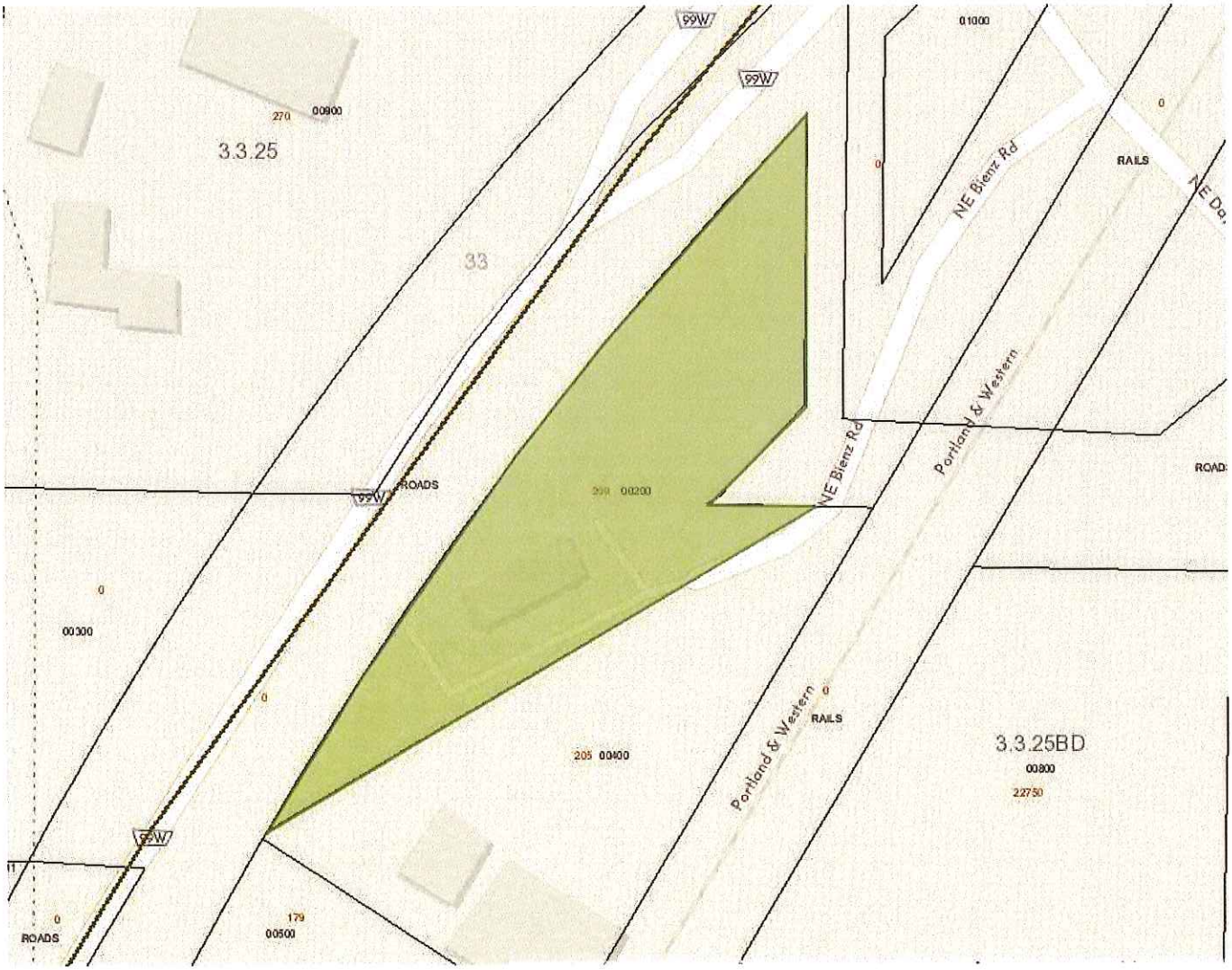
The Board accepts the Planning Commission's recommendation to approve a comprehensive plan amendment from Very Low Density Residential to Industrial and zone change from VLDR-2.5, Very Low Density Residential to LI, Light Industrial. The Board is also imposing a Limited Use Overlay on the property to limit the use to those described by the applicant—operation of an asphalt paving and trucking business. For the above reasons, the Board finds that the application satisfies all applicable criteria, and hereby approves the application subject to the conditions stated below.

III. CONDITIONS OF APPROVAL

1. An application for site design review shall be submitted by the applicant and approved by the county prior to establishment of the proposed use, and (in the future) prior to any new development or change in use. For any "Similar Use" listed in YCZO Section 702.02, applicant shall demonstrate in the site design review how the proposed use is consistent with Goal 14.

2. The applicant shall install landscaping consistent with Section 1010 of the Yamhill County Zoning Ordinance and the proposed landscaping plan, submitted June 16, 2021. Said landscaping shall be installed prior to operation of the business or a surety bond shall be posted by the applicant and approved by the Director. *END*

EXHIBIT B - MAP FOR ORDINANCE 915
ADOPTED BY THE YAMHILL COUNTY BOARD OF COMMISSIONERS
JULY 22, 2021
FOR A PLAN AMENDMENT FROM
VERY LOW DENSITY RESIDENTIAL
TO
INDUSTRIAL
AND
ZONE CHANGE FROM
VLDR-2.5, VERY LOW DENSITY RESIDENTIAL
TO
LI, LIGHT INDUSTRIAL



CHANGE APPLIES TO TAX LOT 3325BD-200 AS HIGHLIGHTED ABOVE. APPROXIMATE SCALE - 1 INCH = 100 FEET