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BEFORE THE LAND USE BOARD OF APPEALS  
OF THE STATE OF OREGON

JAMES H. LUDWICK and )  
CLAY W. MOORHEAD )  
 )  
Petitioners, )  
v. )  
 )  
YAMHILL COUNTY, )  
 )  
Respondent, )  
 )  
and )  
 )  
WILLIAM LONG and DOUGLAS )  
INGRAM, )  
 )  
Applicant-Respondent. )

LUBA NOS. 80-154  
AND 80-155

FINAL OPINION  
AND ORDER

Appeal from Yamhill County.

James H. Ludwick, McMinnville, and Clay W. Moorhead, Lafayette, filed a petition for review and each argued the cause on his own behalf.

Daryl Garrettson, McMinnville, filed a brief and argued the cause on behalf of Respondent Yamhill County.

Cox, Referee; Reynolds, Chief Referee; Bagg, Referee; participated in the decision.

Reversed. 8/03/81

You are entitled to judicial review of this Order. Judicial review is governed by the provisions of Oregon Laws 1979, ch 772, sec 6(a).

1 COX, Referee.

2 NATURE OF PROCEEDING

3 Petitioners seek reversal of two Yamhill County Board of  
4 Commissioners' decisions, both of which granted conditional use  
5 permits (CUP) and variances to allow placement of single family  
6 dwellings not in conjunction with farm (or forest) use in an  
7 area designated commercial-forest on the comprehensive plan map  
8 of Yamhill County (acknowledged) and presently zoned F-40  
9 (Forest - 40 acre minimum). Both decisions became final on the  
10 8th day of October, 1980. In Order No. 80-612, Respondent Doug  
11 Ingram was granted a CUP and variance to allow placement of a  
12 single family dwelling on a 4.7 acre parcel. In Order No.  
13 80-613, Respondent William Long was granted a CUP and variance  
14 to allow placement of a single family dwelling on a 5 acre  
15 parcel.

16 STANDING

17 Respondent Yamhill County contested standing of  
18 petitioners. After an evidentiary hearing, this Board decided  
19 in a separate opinion that of an initial group of four  
20 petitioners, James H. Ludwick and Clay W. Moorhead had standing  
21 to bring this appeal before LUBA.

22 ALLEGATIONS OF ERROR

23 Petitioners assert several grounds for reversal of  
24 Respondent Yamhill County's decisions. Their attack on the  
25 decisions focuses on the alleged failure by Yamhill County to  
26 follow applicable procedures and requirements set forth within

1 Yamhill County ordinances and failure to make findings relating  
2 to applicable goals and policies found within the Yamhill  
3 County Comprehensive Plan. This opinion deals only with a  
4 portion of petitioners' arguments concerning Yamhill County  
5 ordinances.

6 FACTS

7 These two decisions, which have been consolidated due to  
8 their similarity and due to the nearly identical set of  
9 findings in support thereof, arise out of a continuing attempt  
10 by Yamhill County Board of Commissioners to find a solution to  
11 a problem which was created initially over a decade ago. To  
12 put it mildly this problem and the solution that the county  
13 must finally develop to solve it can be likened to a basket of  
14 snakes. Both parcels are part of a much larger block of land  
15 which was, according to the record, parcelized by a developer  
16 with little or no concern for the laws governing partitionings  
17 and subdivisions in effect at the time. Circa 1969 and 1970,  
18 the developer parcelized a block of land now known as Eagle  
19 Point Ranch which appears to consist of approximately 335  
20 acres. This figure is arrived at by multiplying the number of  
21 parcels (67) by the average size of the parcels (5 acres). The  
22 developer then began conveying the parcels before the county  
23 had granted either partitioning or subdivision approval.

24 Within the 67 lot Eagle Point Ranch there are 45 different  
25 owners, one with eight lots, one with four or five lots, and  
26 the rest with one or two lots. There are few permanently

1 inhabited dwellings in the "Ranch" area at this time. Both the  
2 Long and Ingram properties, as well as the other properties  
3 contained in the 67 lot "Ranch" are subject to restrictive  
4 covenants which prevent the commercial harvesting of timber.  
5 There is a provision in those covenants which allows the  
6 covenants to be changed if the changes are agreed to by  
7 three-quarter majority vote of the homeowners association. The  
8 "Ranch" is not presently served by adequate roadways and other  
9 urban type services do not seem to be available.

10 Directly to the east of the "Ranch" is the platted  
11 subdivision known as Meadow View Estates which is currently  
12 zoned VLDR-5 (very low density residential 5 acres).  
13 Surrounding the property on other sides is land predominantly  
14 zoned AF-20 (20 acre minimum lot size) and EF-40 (40 acre  
15 minimum lot size). The land in the Eagle Point Ranch area  
16 appears to predominantly consist of forest soils.

#### 17 DECISION

18 The county's decisions to grant the requested conditional  
19 use permits and variances were in error. The county failed to  
20 show by substantial evidence that the applicant's lots were  
21 "existing legal lots of record" as of April, 1980, as required  
22 by County Zoning Ordinance Section 10.330. The county  
23 improperly relied on restrictive covenants between private  
24 parties as the basis for several of its findings. Finally, we  
25 find that the county improperly applied its variance ordinance  
26 standards.

1 The subject property is in an area designated by the  
2 county's zoning code as forestry district (F-40). According to  
3 county ordinance 10.100, the F-40 district is intended to

4 "(1) \* \* \* designate large, generally contiguous  
5 areas identified as commercial forest land in the  
6 Comprehensive Plan, or defined as forest land in the  
7 Statewide Planning Goals and Guidelines, and to  
8 encourage forestry as the dominant use of such lands,  
9 with a view to conserving and managing efficiently the  
10 forest resources of the County.

11 "(2) Uses of land and water not compatible with  
12 forestry shall be prohibited. For the purpose of this  
13 section, uses compatible with forestry shall include  
14 uses which promote a sustained yield of forest  
15 products, uses which provide for grazing areas for  
16 domestic livestock and habitat for wildlife; uses  
17 which promote the protection of forest cover, soils  
18 and water shed and uses which promote the preservation  
19 of recreational opportunities." (Emphasis in the  
20 original).

21 Section 10.330 of the Yamhill County Zoning Code allows the  
22 construction of single-family dwellings on parcels of less than  
23 40 acres, in the F-40 District, provided certain conditions are  
24 met. One condition is that the parcel was an "existing legal  
25 lot of record" at the time the zone was applied to the property  
26 (April, 1980). Section 10.330 states:

27 "In the F-40 District approval of a single-family  
28 dwelling or mobile home on an existing legal  
29 lot-of-record of less than forty (40) acres shall be  
30 subject to the procedures set forth under Section  
31 37.200<sup>1</sup> and shall comply with the provisions of  
32 Section 10.320 of this Ordinance.<sup>2</sup> In addition, the  
33 applicant shall show that the dwelling or mobile  
34 home: (1) Is compatible with farm or forest uses as  
35 provided for in Section 10.100 of this Ordinance;

36 "(2) Will not interfere with accepted forest and farm  
37 practices, including chemical spraying or burning on  
38 adjacent land devoted to farm or forest uses;

1           "(3) Will not materially alter the stability of the  
2 overall land use pattern of the area;

3           "(4) Will be sited on land that is least suitable for  
4 the production of farm and forest products, taking  
5 into consideration terrain, adverse soil and land  
6 conditions, drainage and flooding, vegetation and  
7 location and size of parcel; and

8           "(5) Will be in conjunction with farm or forest uses."  
9 (Emphasis in original).

10           Section 37.200(3)(c) provides that Section 41 (variances)  
11 of the county zoning ordinance shall govern any approval or  
12 grant of a non-conforming lot of record. The "purpose" portion  
13 of Section 41 (41.100) states:

14           "The purpose of a variance is to provide  
15 administrative relief when a strict application of the  
16 zoning requirements for lot width, lot depth, lot  
17 area, building height, setback, access or other  
18 dimensional requirements in any zoning district should  
19 impose unusual practical difficulties or unnecessary  
20 physical hardships on the property owners. \* \* \* No  
21 variance shall be permitted which will have the effect  
22 of rezoning, or granting a special privilege with  
23 regard to use of lot or site not shared by other  
24 property in the same district. No variance shall be  
25 granted if a hardship is commonly shared by adjacent  
26 parcels when rezoning to a more appropriate use is the  
proper remedy." (Emphasis in the original).

          Provision 41.200 of Section 41 sets forth the "findings  
required for the issuance of a variance." Specifically 41.200  
states:

          "Findings Required for the Issuance of a Variance.  
The Commission may authorize a variance from the  
requirements of this Ordinance after making all of the  
following findings: (1) That it will not be contrary  
to the public interest or to the intent and purpose of  
this Section, this Ordinance, and the zoning district  
in which it is located.

          "(2) That, owing to special conditions, a  
literal enforcement of this Ordinance would result in

1 unnecessary hardship to the property owner.

2 "(3) That it shall not permit the establishment  
3 of any use which is not permitted within a particular  
4 zoning district, or any use for which a conditional  
5 use permit is required.

6 "(4) That special conditions and circumstances  
7 exist which are peculiar to the land, building or  
8 structure involved and which are not applicable to  
9 other lands, buildings, or structures in the same  
10 zoning district;

11 "(5) That literal interpretation of the  
12 requirements of this Ordinance would deprive the  
13 applicant of rights commonly enjoyed by owners of  
14 other properties in the same zoning district under the  
15 terms of this Ordinance and would result in an  
16 unnecessary hardship on the owner of the property;

17 "(6) That the special conditions and  
18 circumstances do not result from the actions of an  
19 owner of the property.

20 "(7) That granting the variance requested will  
21 not confer on the applicant any special privilege with  
22 regard to the use of lot or site which is denied by  
23 this Ordinance to other lands, buildings or structures  
24 in the same zoning district.

25 "(8) That no non-conforming use of adjacent  
26 lands, buildings, or structures in the same zoning  
district, and no permitted or non-conforming use of  
lands, buildings or structures in other zoning  
districts shall be considered grounds for the issuance  
of a variance.

"(9) That the reasons set forth in the  
application justify the granting of the variance, and  
that the variance is the minimum variance that will  
make possible the reasonable use of the land,  
building, or structure in harmony with the intent of  
this Ordinance.

"(10) That such variance would result in minimal  
detriment to the neighborhood and would not cause  
substantial adverse effect upon property values or  
environmental conditions in the immediate vicinity or  
in the district in which the property is located."  
(Emphasis in original).

### 23 "Existing Legal Lot of Record"

24 To begin with petitioners attack the decision by pointing  
25 to that portion of the above cited section 10.330 which  
26 requires that there be an "existing legal lot of record" before

1 the section may be applied to a given set of facts.

2 Petitioners contend the county failed to show "that the lots in  
3 question are lots which have been legally created through state  
4 and county land division requirements."

5 As regards the Ingram parcel, the county found as follows:

6 "The Ingram lot was part of a partitioning denied in  
7 1969 for lack of access with recommendation by the  
8 Planning Commission at that time that it be approved  
9 if access was acquired. Subsequent to that event, in  
10 1970 additional property was partitioned with  
11 approval. Pas [sic] policies by the County allowed  
12 lot development in both the 1969 and 1970  
13 partitionings by issuance of permits for both building  
14 and subsurface sewage. To the extent that the County  
15 has approved development permits in the 1969  
16 partitioning, the Board finds that the County action  
17 constitutes an approval. The Board further finds that  
18 the developer, through his acts of incorporation of  
19 the Homeowners Association, treated the 1969 and 1970  
20 partitionings as one, in the same manner that the  
21 County treated them by the issuance of development  
22 permits, and therefore it is the finding of the Board  
23 that the parcel in question is a lawful lot of record  
24 (subject to voiding by some affirmative action by the  
25 County at a future time)."

As regards the Long property, the county found as follows:

17 "The Board finds that the Long property is a lawful  
18 lot of record in that said property was part of a  
19 partition approved in 1970 upon the condition that  
20 provisions be made in the partitioning for the  
21 upgrading of roads. The partitioning map was signed  
22 by Michael Blair, Director of Planning at that time.  
23 Since the approval was made with conditions  
24 subsequent, the Board finds, upon advice of legal  
25 counsel, that the approval is voidable, as opposed to  
26 voided, and therefore the lot constitutes a lawful lot  
of record until the County undertakes some affirmative  
action to revoke said approval."

24 Petitioners argue there is no evidence in the record to  
25 support any finding that either the Ingram or Long parcels  
26 were "existing legal lots of record."

1 Respondent argues that under the law which existed at the  
2 time initial conveyances of the parcels in question were made  
3 (1968-1972), the only prohibition which existed was on the sale  
4 of lots in violation of partitioning and subdivision  
5 requirements.<sup>3</sup> Respondent reasons that because there was not  
6 until 1975 a prohibition on the creation of lots done in  
7 violation of the partitioning and subdivision requirements and  
8 because even under the prior law, no voiding of a sale or  
9 transfer of a parcel created in violation of legal requirements  
10 could be done, the lots created were existing "legal" lots of  
11 record within the meaning of respondent's ordinances. We  
12 disagree.

13 While not defined in the county's ordinances, "legal" has a  
14 rather well understood meaning. Blacks Law Dictionary defines  
15 "legal" as

16 "1. Conforming to the law; according to law;  
17 required or permitted by law; not forbidden or  
discountenanced by law; good and effectual in law.

18 "2. Proper or sufficient to be recognized by the  
19 law; cognizable in the courts; competent or adequate  
to fulfill the requirements of the law.

20 "3. Cognizable in courts of law, as  
21 distinguished from courts of equity; construed or  
governed by the rules and principles of law, in  
22 contradistinction to rules of equity.

23 "4. Posited by the courts as the inference or  
imputation of the law, as a matter of construction  
rather than established by actual proof, e. g., legal  
24 malice. See Lawful.

25 "5. Created by law.

26 "6. Lawful; of or pertaining to law."

1 Houghton Mifflin Company's The American Heritage Dictionary  
2 (1979) defines "legal"

3 "1. Of, relating to, or concerned with law:  
4 legal papers. 2. a. Authorized by or based on law:" a  
5 legal act. b. Established by law; statutory. 3. In  
6 conformity with or permitted by law. 4. Recognized or  
7 enforced by law rather than equity. 5. In terms of  
8 or created by the law: a legal offense. 6.  
9 Applicable to or characteristic of lawyers or their  
10 profession. Securities in which investors such as  
11 trustees or savings banks may invest. Usually used in  
12 the plural."

13 The county's findings as to the legality of both the Ingram  
14 and Long "lots" reveal that neither of these "lots" was created  
15 in accordance with lawful requirements. The Ingram lot was  
16 part of a partitioning which never received approval. The Long  
17 parcel was approved but subject to a condition apparently never  
18 fulfilled. On the basis of this record and the county's  
19 findings, we conclude there has been an inadequate showing that  
20 the lots were "existing legal lots" within the meaning of  
21 Yamhill County's Ordinance.

22 In addition, the findings indicate that the county believes  
23 it can void the legality of the "lots" if it chooses to do so.  
24 If the "lots" were "existing lots of record" at the time the  
25 F-40 zone was imposed on them, they would have met all the  
26 standards then in existence and would not be voidable by the  
27 county at a later date.

#### 28 Variance

29 Petitioners next attack, in numerous manners, the findings  
30 and support thereof required by the variance section of the

1 Yamhill County Zoning Code, supra. We find that the county has  
2 failed to make findings sufficient to meet the terms of its  
3 variance ordinance.

4 As above quoted, Section 41.100 states in pertinent part  
5 "no variance shall be granted if a hardship is commonly shared  
6 by adjacent parcels when rezoning to a more appropriate use is  
7 the proper remedy." The record indicates that the Ingram and  
8 Long parcels are but two of 67 similarly situated parcels which  
9 are adjacent to each other and located in the "Eagle Point  
10 Ranch" parcelization area. The specific hardship that the  
11 county finds to exist on the Ingram and Long parcels is set  
12 forth in finding no. 11 (on both orders) which states:

13 "The Board finds that special conditions exist which  
14 will result in unnecessary hardship to the owners if  
15 this application is denied them. Specifically, the  
16 special conditions consist of a deed restriction which  
17 prevents the applicant from making any productive farm  
18 or forest use of the property, and are designed to  
19 restrict the applicant's use of the property to that  
20 of a dwelling site. If this ordinance was literally  
21 enforced, the applicant would be placed in a situation  
22 of having to pay real property taxes for a rural  
23 residential site while being prevented from making any  
24 use thereof other than to visit and walk upon it. The  
25 parcel while substandard to the F-40 zoning district  
26 was created prior to the adoption of the Yamhill  
County Comprehensive Plan and Zoning Ordinance."

21 The record indicates the "hardship" exists on all the  
22 properties in the Eagle Point Ranch. Furthermore, the  
23 "hardship" is self imposed (contrary to 41.200(6) supra) and  
24 not inherent in the land. See Anderson, American Law of  
25 Zoning, Sec 18.42 et seq. (2 Ed, 1977). The "deed  
26 restrictions" of which the applicants had knowledge at the time

1 of purchase are covenants imposed by the homeowners upon  
2 themselves through the homeowners association. The covenants  
3 can be changed by 3/4 majority vote (each "lot" carries with it  
4 one vote) of the homeowners association.

5 Furthermore, Section 41.200(4) supra requires a finding  
6 that special conditions and circumstances exist which are  
7 peculiar to the land upon which the variance is being granted.  
8 The conditions or circumstances cannot be applicable to other  
9 lands in the same zoning district. As we have said before, the  
10 "special conditions" that are relied on by the county in its  
11 findings (deed restriction) are applicable to at a minimum 65  
12 other parcels within the "Ranch." Therefore, they are not  
13 peculiar to either the Ingram or the Long property.

14 Based on the foregoing, we reverse Yamhill County's  
15 decisions in orders 80-612 and 80-613. We find it unnecessary  
16 to address petitioners' other assignments of error.

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1 FOOTNOTES

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Section 37.200 states:

4 "Non-Conforming Lots of Record. (1) Subject to  
5 subsection (2) of this section, in any zoning district  
6 in which single family dwellings or mobile homes are  
7 permitted or authorized as a conditional use, such  
8 uses and customary accessory buildings may be erected  
9 or placed on any single lot of record at the date of  
10 adoption or amendment of this ordinance,  
11 notwithstanding limitations on minimum lot or site  
12 requirements imposed by other provisions of this  
13 ordinance. Such lots must be in separate ownerships  
14 as provided in Section 37.200, The only provisions or  
15 requirements of this Ordinance being excepted by this  
16 section are the minimum lot or site requirements of  
17 the various zoning districts.

18 "(2) As a condition precedent to the erection or  
19 placement of a single family dwelling or mobile home  
20 on a non-conforming lot of record pursuant to  
21 subsection (1) of this section, a variance shall be  
22 obtained.

23 "(a) on all lots of less than forty (40) acres  
24 in the F-40 district, and

25 "(b) on all lots of less than twenty (20) acres  
26 in the EF-40 district, and

"(c) on all lots of less than twenty (20) acres  
in the AF-20 district, and

"(d) on all lots of less than ten (10) acres in  
the AF-10 district, and

"(e) on all lots of less than one-half (1/2)  
acre in the VLDR districts, and

"(g) on all lots of less than three thousand six  
hundred (3,600) square feet in the MDR districts.

"Such variance shall be applied for and obtained in  
the manner provided in Subsection (3) of this section.

"(3) The procedure for reviewing and granting  
variances pursuant to this Section shall be as follows:

27 "(a) an application shall be made to the  
28 Director on a form prescribed by the Director together  
29 with a \$25.00 filing fee, and shall state the reasons  
30 therefor;

31 "(b) adjacent owners of land shall be notified  
32 of the application in writing as required in ORS  
33 215.223(3) for effecting a zone change. Persons other  
34 than adjacent owners of land who have a substantial  
35 interest affected by the application shall be given  
36 notice of the application by publication, in a

1 newspaper of general circulation in the County. The  
2 appropriate planning advisory committee shall be  
notified in writing of the application.

3 "(c) If the Director determines that notice has  
4 been mailed and published as provided hereinabove, and  
5 that approval would be in compliance with Section 41  
6 of this Ordinance with State laws in such cases made  
7 and provided, the Director shall issue a permit  
8 pursuant to subsection 1 of this Section unless a  
9 request in writing for a public hearing is received by  
10 the Director within fifteen (15) days of the last  
11 notice given pursuant to subparagraph (b) of this  
Section. A request for a hearing may be made by:

8 "(i) an adjoining land owner, or

9 "(ii) a person who has a substantial interest that  
is affected by the application, or

10 "(iii) the Commission, or ,

11 "(iv) the Board, or

12 "(v) the Director, or

13 "(vi) the applicant.

14 "(d) any notice required hereinabove shall  
15 include notice of the right of an adjoining land owner  
16 or any person who has a substantial interest that is  
17 affected by the application to request a public  
18 hearing on or before a date specified in the notice.

19 "(e) if a written request for a public hearing  
20 is received by the Director pursuant to subsection (c)  
21 above, or if the Commission, Board or Director or the  
22 applicant requests a public hearing pursuant to  
23 subsection (c) above, the Director shall collect an  
24 additional \$20.00 filing fee and shall schedule a  
25 public hearing before the Commission, and the  
26 Commission shall hear and decide the application in  
the same manner as provided in Section 41 for  
variances;

27 "(f) any permit issued hereunder shall be null  
28 and void one year after the date it was granted unless  
29 completion or a substantial construction has taken  
30 place.

31 "(g) any permit issued hereunder is not personal  
32 to the applicant and shall be deemed to run with the  
33 land.

34 "(4) If there are more than five (5) contiguous  
35 non-conforming lots of record in a single ownership on  
36 the date the application is made, some or all of which  
37 lots do not meet the minimum lot or site requirements  
38 of the zoning districts involved, the Director, or the  
39 Commission or Board if there is a public hearing,  
40 shall require all but five (5) such lots to be used or  
41 sold in a manner which complies with or diminishes  
42 non-compliance with the minimum lot or site

1 requirements. Further, the Director, in his  
2 discretion, or the Commission or Board where  
3 appropriate, shall designate which particular five (5)  
4 lots shall be exempt from this requirement."  
(Emphasis in original).

5 2

Section 10.320 states:

6 "In the F-40 District, the approval of a single-family  
7 dwelling on a parcel forty (40) acres or more shall be  
8 determined by the process set out in Section 42,  
9 inclusive, of this Ordinance. The applicant shall show  
10 that: (1) the property is now, or will be, used for  
the uses set out in Section 10.100(2) of this  
Ordinance, as demonstrated by a management plan  
submitted by the applicant which includes evidence of  
at least one of the following:

11 "(a) a forest improvement program as defined by  
the Oregon State Department of Forestry;

12 "(b) a fish, wildlife or other conservation  
management program approved by the appropriate state  
agency;

13 "(c) a cooperative or lease agreement with  
another owner of forest or farm land for management of  
14 a principle use on the property;

15 "(d) a private management plan for a principle  
use, as documented by receipts related to the use;

16 "(e) the presence of accessory buildings and  
uses of a permanent nature in conjunction with a  
17 principle use on adjacent property and evidence that  
Section 10.320(2) cannot be met because of the size of  
the subject parcel. In this case, Section 10.320(3)  
18 is not applicable;

19 "(f) a forest or farm tax deferral status,  
together with one of the above criteria, (a) through  
(e).

20 "(2) The property is large enough to be  
economically managed for the uses set out in Section  
21 10.100(2), considering the management requirements for  
forest, farm, fish and wildlife or conservation  
22 management including, but not limited to, cultivation,  
harvesting, irrigation, spraying, fertilizing and  
23 feeding practices;

24 "(3) The dwelling shall be located on the least  
productive portion(s) of the parcel whenever possible  
and shall be located at a maximum distance from any  
25 primary forest processing facility. The dwelling  
shall be located as far as practicable from commercial  
26 forest or agricultural lands not owned by the

1 applicant, except in such circumstances when the  
2 pattern of parcelization, the natural features of a  
3 parcel and the location of access roads would permit  
4 the clustering of dwellings so as to preserve larger  
5 contiguous forested areas and buffering from forestry  
6 or agricultural operations.

7 "(4) Fire protection regulations as outlined in  
8 "Fire Safety Consideration for Developments in  
9 Forested Areas" shall be followed: except that a water  
10 storage tank of 1000 gallons or adequate year-round  
11 alternative source of water with its own pump, hose,  
12 and nozzle shall be provided and maintained for fire  
13 protection;

14 "(5) A natural buffer shall be established or  
15 utilized between adjacent forest or agricultural lands  
16 and the proposed dwelling;

17 "(6) A minimum firebreak of 30 feet cleared of  
18 brush and trees, excluding landscape shrubbery planted  
19 or cultivated as part of a site design plan, shall be  
20 provided between the dwelling and the forest land and  
21 that such firebreaks shall be continually cleared; and

22 "(7) All conditions that may be imposed by the  
23 Planning Commission be recorded in agreement form in  
24 the Deed and Mortgage Record of Yamhill County, and  
25 shall remain in effect so long as the property remains  
26 in its present zoning." (Emphasis in original)

3

Then ORS 92.016 provided

"no person shall sell any lot in any subdivision or  
division of land for which approval is required by an  
ordinance adopted under ORS 92.046 and 92.048, until  
approval is obtained."