ANNOTATED MINUTES

Tuesday, February 3, 1998 - 9:30 AM
Portland Building, Second Floor Hearing Room
1120 SW Fifth Avenue, Portland

LAND USE PLANNING MEETING

Chair Beverly Stein convened the meeting at 9:31 a.m., with Vice-Chair Sharron Kelley and Commissioners Gary Hansen present, and Commission District 1 and 3 positions vacant.

P-1 HV 13-97/SEC 23-97 DE NOVO HEARING WITH TESTIMONY LIMITED TO 20 MINUTES PER SIDE and Consideration of FINAL ORDER on the Appeal of the Hearings Officer Decision Regarding Denial of a Request for a Major Variance from the Minimum Yard Setback Requirement of the Commercial Forest Use Zone and Significant Environmental Concern Permit for an Accessory Building and Arena on Property Located at 11272 NW SKYLINE BOULEVARD, PORTLAND.

CHAIR STEIN EXPLAINED QUASI-JUDICIAL PROCESS. AT CHAIR STEIN'S REQUEST FOR DISCLOSURE, NO EX PARTE CONTACTS WERE REPORTED. AT CHAIR STEIN'S REQUEST FOR CHALLENGES AND/OR OBJECTIONS, NONE WERE OFFERED. PLANNER PHIL BOURQUIN PRESENTED CASE HISTORY. HEARINGS OFFICER DENIECE WON PRESENTED CONDITIONS, FINDINGS OF FACT AND CRITERIA USED IN DETERMINATION TO DENY APPLICATION AND RESPONDED TO BOARD QUESTIONS. APPELLANT'S ATTORNEY CHRISTOPHER BRAND AND CLIENTS FLORENCE SHIELDS AND LES SHIELDS TESTIFIED IN SUPPORT OF REVERSAL OF HEARINGS OFFICER DECISION. ATTORNEY PAUL NORR AND CLIENT KAREN ANDERSON TESTIFIED IN OPPOSITION TO REVERSAL. BRIAN LIGHTCAP TESTIFIED IN OPPOSITION TO ALLOWING BARN TO REMAIN AT PRESENT SITE. MR. BRAND PRESENTED REBUTTAL AND REQUESTED THAT RECORD BE KEPT OPEN TO

ALLOW HIM TO RESPOND TO LETTER FROM DEBORAH WALTERS REGARDING DEED AND EASEMENT FOR ACCESS TO TAX LOT 29 SUBMITTED BY MR. NORR. MR. BRAND RESPONSE TO BOARD QUESTIONS. COUNTY COUNSEL SANDRA DUFFY RESPONSE TO QUESTIONS OF CHAIR STEIN CONCERING 120 DAY RULE AND APPROVAL CRITERIA. HEARING CLOSED. COMMISSIONER KELLEY MOVED, SECONDED BY COMMISSIONER HANSEN, TO AFFIRM THE HEARINGS OFFICER DECISION. BOARD COMMENTS. CHAIR STEIN DENIED MR. BRAND'S REQUEST FOR A CONTINUANCE. MOTION TO AFFIRM HEARINGS OFFICER DECISION UNANIMOUSLY APPROVED (FINAL ORDER 98-11). CHAIR STEIN ADVISED ALL PARTIES WILL RECEIVE A COPY OF THE BOARD'S WRITTEN DECISION, WHICH MAY BE APPEALED TO LUBA.

The meeting was recessed at 10:39 a.m. and reconvened at 10:40 a.m.

P-2 CS 1-97 DE NOVO HEARING WITH TESTIMONY LIMITED TO 20 MINUTES PER SIDE on the Appeal of the Hearings Officer Decision Regarding Approval of a Community Service Use, Subject to Conditions, to Construct a Communications Monopole and Electronics Building on Sauvie Island Property Located at 14443 NW CHARLTON ROAD, PORTLAND.

CHAIR STEIN EXPLAINED QUASI-JUDICIAL PROCESS. AT CHAIR STEIN'S REQUEST FOR DISCLOSURE, COMMISSIONERS HANSEN, KELLEY AND CHAIR STEIN DISCLOSED EX PARTE CONTACTS IN THE FORM OF FAX AND MAIL COMMUNICATIONS AND BEING APPROACHED BY A SAUVIE ISLAND RESIDENT, AND ADVISED SAID COMMUNICATIONS WILL NOT AFFECT THEIR DECISION. AT CHAIR STEIN'S REQUEST FOR CHALLENGES AND/OR OBJECTIONS, NONE WERE OFFERED. IN RESPONSE TO COMMISSIONER HANSEN'S QUESTION CONCERNING A MANDAMUS SUIT FILED IN CIRCUIT COURT, COUNTY COUNSEL SANDRA DUFFY ADVISED THE BOARD SHOULD

PROCEED WITH TODAY'S HEARING. PLANNER ROBERT HALL PRESENTED CASE HISTORY. HEARINGS OFFICER JOAN CHAMBERS PRESENTED CONDITIONS, FINDINGS OF FACT AND CRITERIA USED IN DETERMINATION TO APPROVE APPLICATION. APPELLANT'S ATTORNEY JEFF KLEINMAN AND URSULA DAVIS AND CITIZENS UNITED FOR SAUVIE ISLAND PLANNING CLIENTS ADRIENNE KEITH AND DONNA MATRAZZO TESTIFIED IN SUPPORT OF PROPOSED FINAL ORDER SUBMITTED BY MR. KLEINMAN, AND IN OPPOSITION TO PROPOSED SITE. ATTORNEYS TIM RAMIS AND DAN CHANDLER AND CLIENT REPRESENTATIVES SPENCER VAIL AND CAROL FRIZ TESTIFIED IN SUPPORT OF HEARINGS OFFICER DECISION, AND PROPOSED SITE. MR. VAIL AND MR. RAMIS RESPONSE TO BOARD QUESTIONS. MR. KLEINMAN REBUTAL AND RESPONSE TO BOARD QUESTIONS. IN RESPONSE TO CHAIR STEIN'S REQUEST FOR CONTINUANCE OR OBJECTION TO HEARING, NONE WERE OFFERED. HEARING CLOSED. MR. HALL RESPONSE TO BOARD QUESTIONS. FOLLOWING DISCUSSION, COMMISSIONER HANSEN MOVED, SECONDED BY COMMISSIONER KELLEY, TO AFFIRM THE HEARINGS OFFICER DECISION. BOARD COMMENTS IN SUPPORT. MOTION UNANIMOUSLY APPROVED (FINAL ORDER 98-12). CHAIR STEIN ADVISED ALL PARTIES WILL RECEIVE A COPY OF THE BOARD'S WRITTEN DECISION, WHICH MAY BE APPEALED TO LUBA.

There being no further business, the meeting was adjourned at 11:47 a.m.

Thursday, February 5, 1998 - 9:30 AM
Portland Building, Second Floor Hearing Room
1120 SW Fifth Avenue, Portland

REGULAR MEETING

Chair Beverly Stein convened the meeting at 9:34 a.m., with Vice-Chair Sharron Kelley and Commissioner Gary Hansen present, and Commission Districts 1 and 3 positions vacant.

CONSENT CALENDAR

AT THE REQUEST OF CHAIR STEIN AND UPON MOTION OF COMMISSIONER KELLEY, SECONDED BY COMMISSIONER HANSEN, CONSENT CALENDAR ITEMS C-1 THROUGH C-3 AND C-5 THROUGH C- 16 WERE UNANIMOUSLY APPROVED.

NON-DEPARTMENTAL

C-1 Appointment of Muriel Goldman to the DEPARTMENT OF COMMUNITY AND FAMILY SERVICES CITIZEN BUDGET ADVISORY COMMITTEE

C-2 Appointment of Gordon Euler to the DEPARTMENT OF ENVIRONMENTAL SERVICES CITIZEN BUDGET ADVISORY COMMITTEE

C-3 Appointments of Helen Ellison and Winzel Hamilton to the NON-DEPARTMENTAL CITIZEN BUDGET ADVISORY COMMITTEE

C-5 Appointments of Cindi Cushing, Steven Novick, Donald Dumont and Wade Price to the DEPARTMENT OF SUPPORT SERVICES CITIZEN BUDGET ADVISORY COMMITTEE

C-6 Appointment of Frank Shields to the DUII COMMUNITY ADVISORY BOARD

C-7 Intergovernmental Agreement 500948 with Washington County and Portland Development Commission for Portland Development Commission to Act as the Administering Agency for Regional Strategies Funding through August 31, 1998

DEPARTMENT OF COMMUNITY AND FAMILY SERVICES

C-8 ORDER Authorizing Designees of the Mental Health Program Director to Direct a Peace Officer to Take an Allegedly Mentally Ill Person into Custody

ORDER 98-13.

C-9 Intergovernmental Agreement 101888 with Oregon Survey Research Laboratory Purchasing Follow-up Interviews and Related Data Services for the Target Cities Evaluation

C-10 Intergovernmental Revenue Agreement 103208 with Oregon Health Science University, Funding Out-patient Psychiatric Services for Children and Adult CAAPCare Members

DEPARTMENT OF ENVIRONMENTAL SERVICES

C-11 Findings of Fact, Conclusions of Law and FINAL ORDER Regarding an Application by Tim and Angela Schillereff for the Alteration of an Existing Nonconforming Dog Kennel Use to Allow up to 75 Dogs

ORDER 98-14.

C-12 ORDER Authorizing Execution of Deed D981537 Upon Complete Performance of a Contract with Jeffrey Paul Fish

ORDER 98-15.

C-13 Amendment 1 to Intergovernmental Agreement 301267 with the Oregon Department of Transportation for Phase II of the Westside Transportation System Plan

DEPARTMENT OF HEALTH

C-14 Budget Modification HD 14 Approving Increase of $358,000 and 1.3 FTE in the Tobacco Cessation Program Funded with Increased State Grant Funds

C-15 Renewal of Intergovernmental Agreement 201168 with the Oregon Health Division for Research and Evaluation Services Required for the Health Department's Various Grants

DISTRICT ATTORNEY'S OFFICE

C-16 Amendment 4 to Intergovernmental Agreement 500447 with the State Office for Services to Children and Families Funding the CAMI Child Abuse Program for 1998

REGULAR AGENDA

NON-DEPARTMENTAL

C-4 Appointment of Shannon Gustafson to the DEPARTMENT OF SOCIAL SERVICES CITIZEN BUDGET ADVISORY COMMITTEE

AT THE REQUEST OF CHAIR STEIN AND UPON MOTION OF COMMISSIONER KELLEY, SECONDED BY COMMISSIONER HANSEN, C-4 WAS UNANIMOUSLY POSTPONED INDEFINITELY.

AT THE REQUEST OF CHAIR STEIN AND UPON MOTION OF COMMISSIONER KELLEY, SECONDED BY COMMISSIONER HANSEN, CONSIDERATION OF THE FOLLOWING ITEM WAS UNANIMOUSLY APPROVED.

SHERIFF'S OFFICE

UC-1 Package Store with Pumps Liquor License Renewal for LARSON'S MARINA, 144444 NW LARSON ROAD, PORTLAND

UPON MOTION OF COMMISSIONER KELLEY, SECONDED BY COMMISSIONER HANSEN, THE LICENSE RENEWAL WAS UNANIMOUSLY APPROVED.

PUBLIC COMMENT

R-1 Opportunity for Public Comment on Non-Agenda Matters. Testimony Limited to Three Minutes Per Person.

NO ONE WISHED TO COMMENT.

AGING AND DISABILITY SERVICES DEPARTMENT

R-2 RESULTS in the Public Guardian Office Presentation by Public Guardian Staff.

SUE LONGAKER, MARK SANFORD, PHILIP BOSS AND PHYLLIS NASH PRESENTATION AND RESPONSE TO BOARD QUESTIONS. BOARD COMMENTS IN APPRECIATION OF STAFF IMPROVEMENTS AND EFFICIENCIES.

DEPARTMENT OF ENVIRONMENTAL SERVICES

R-3 First Reading of an ORDINANCE Amending the Multnomah County Comprehensive Framework Plan and the Multnomah County Zoning Ordinance Regarding the Provisions for Home Occupations

ORDINANCE READ BY TITLE ONLY. COPIES AVAILABLE. COMMISSIONER KELLEY MOVED AND COMMISSIONER HANSEN SECONDED, APPROVAL OF FIRST READING. SUSAN MUIR EXPLANATION AND RESPONSE TO BOARD QUESTIONS. SETH TANE WRITTEN AND ORAL TESTIMONY IN OPPOSITION AND SUGGESTED AMENDMENTS. CHRIS FOSTER TESTIMONY IN SUPPORT AND RESPONSE TO QUESTIONS OF COMMISSIONER HANSEN. AT THE DIRECTION OF CHAIR STEIN, MS. MUIR RESPONDED TO CONCERNS OF MR. TANE REGARDING DEFINITIONS, SIGN OFF FROM ZONING OFFICE AND FEE DEPOSIT. FOLLOWING BOARD DISCUSSION WITH COUNTY COUNSEL SANDRA DUFFY, BOARD CONSENSUS TO DROP FEE AS PART OF ORDINANCE. STAFF DIRECTED TO PREPARE OPTIONS FOR BOARD CONSIDERATION. FIRST READING UNANIMOUSLY APPROVED. SECOND READING THURSDAY, FEBRUARY 12, 1998.

NON-DEPARTMENTAL

R-4 Community Power Buying Group Briefing. Presented by Serena Cruz, Staff to Portland City Commissioner Erik Sten, and Phil Welker of the Portland Energy Office.

SERENA CRUZ, PHIL WELKER AND AMY JOSLIN PRESENTATION AND RESPONSE TO BOARD QUESTIONS, COMMENTS AND DISCUSSION.

R-6 Briefing on Issues Addressed During the Term of Out-going Columbia River Gorge Commissioner Blair Batson and Discussion of Issues to be Addressed During the Next Four Years.

BLAIR BATSON INTRODUCED GORGE COMMISSIONERS IN AUDIENCE, AND

PRESENTED GORGE COMMISSION UPDATE AND RESPONDED TO BOARD QUESTIONS AND DISCUSSION. BOARD COMMENTS IN APPRECIATION OF MS. BATSON'S EFFORTS.

R-5 Appointment of Anne W. Squier to the COLUMBIA RIVER GORGE COMMISSION

COMMISSIONER KELLEY MOVED AND COMMISSIONER HANSEN SECONDED, APPROVAL OF R-5. ANNE SQUIER COMMENTS IN APPRECIATION OF APPOINTMENT. CHAIR STEIN COMMENTS IN RESPONSE. APPOINTMENT UNANIMOUSLY APPROVED.

There being no further business, the meeting was adjourned at 11:39 a.m.

OFFICE OF THE BOARD CLERK
FOR MULTNOMAH COUNTY, OREGON

Deborah L. Bogstad

Deborah L. Bogstad

MULTNOMAH COUNTY OREGON

DEBORAH BOGSTAD, BOARD CLERK
OFFICE OF BEVERLY STEIN, COUNTY CHAIR
1120 SW FIFTH AVENUE, SUITE 1515
PORTLAND, OREGON 97204-1914
TELEPHONE ▪ (503) 248-3277
FAX ▪ (503) 248-3013

BOARD OF COUNTY COMMISSIONERS

BEVERLY STEIN▪	CHAIR	▪248-3308
VACANT▪	DISTRICT 1	▪248-5220
GARY HANSEN▪	DISTRICT 2	▪248-5219
VACANT▪	DISTRICT 3	▪248-5217
SHARRON KELLEY▪	DISTRICT 4	▪248-5213

MEETINGS OF THE MULTNOMAH COUNTY BOARD OF COMMISSIONERS

AGENDA

FOR THE WEEK OF
FEBRUARY 2, 1998 - FEBRUARY 6, 1998

Thursday meetings of the Multnomah County Board of Commissioners are *cable-cast* live and taped and can be seen by Cable subscribers in Multnomah County at the following times:

Thursday, 9:30 AM, (LIVE) Channel 30
Friday, 10:00 PM, Channel 30
Sunday, 1:00 PM, Channel 30
Produced through Multnomah Community Television

INDIVIDUALS WITH DISABILITIES MAY CALL THE BOARD CLERK AT (503) 248-3277, OR MULTNOMAH COUNTY TDD PHONE (503) 248-5040, FOR INFORMATION ON AVAILABLE SERVICES AND ACCESSIBILITY.

AN EQUAL OPPORTUNITY EMPLOYER

Tuesday, February 3, 1998 - 9:30 AM
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LAND USE PLANNING MEETING

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DEPARTMENT OF ENVIRONMENTAL SERVICES

R-3 First Reading of an ORDINANCE Amending the Multnomah County Comprehensive Framework Plan and the Multnomah County Zoning Ordinance Regarding the Provisions for Home Occupations. 30 MINUTES REQUESTED.

NON-DEPARTMENTAL

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R-5 Appointment of Anne W. Squier to the COLUMBIA RIVER GORGE COMMISSION

R-6 Briefing on Issues Addressed During the Term of Out-going Columbia River Gorge Commissioner Blair Batson and Discussion of Issues to be Addressed During the Next Four Years. 30-45 MINUTES REQUESTED.

SPEAKER SIGN UP CARDS

DATE 2/3/98

NAME BRIAN LIGHTCAP

ADDRESS 13342 NW Newberry Rd

PHONE 286-5273

SPEAKING ON AGENDA ITEM NUMBER OR TOPIC Eldon Fields

GIVE TO BOARD CLERK

Meeting Date: FEB 03 1998
Agenda No: P-1
Est. Start Time: 9:30 AM

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: A DeNovo Hearing before the Board of County Commissioners regarding the Hearings Officer's decision on HV 13-97 & SEC 23-97

BOARD BRIEFING Date Requested:
Amt. of Time Needed:
Requested By:

REGULAR MEETING Date Requested: February 3, 1998
Amt. of Time Needed: 1 hour

DEPARTMENT: DES **DIVISION:** Transportation & Land Use Planning
CONTACT: Phillip Bourquin **TELEPHONE:** 248-3043
BLDG/ROOM: 412 / 109

PERSON(S) MAKING PRESENTATION: Phil Bourquin / Deniece Won

ACTION REQUESTED

[ ] Informational Only [ ] Policy Direction [ ] Approval [x] Other

SUGGESTED AGENDA TITLE

DeNovo hearing before the Board of County Commissioners regarding the Hearing Officer's decision of **Denial** on HV 13-97 & SEC 23-97, a request for a major variance for an accessory building and an arena.

2/3/98 copies of FINAL ORDER to Stuart Farmer, Phillip Bourquin & Sandra Ruffy

98 JAN 27 AM 11 24
BOARD OF COUNTY COMMISSIONERS
MULTNOMAH COUNTY OREGON

SIGNATURES REQUIRED

Elected Official: _____

or

Department Manager: KB Lonnie E. Nicholas

MULTNOMAH COUNTY

BOARD HEARING OF FEBRUARY 3, 1997

TIME 9:30am

CASE NAME Les and Florence Shields **NUMBER** HV13-97

Action Requested of Board

- ☐ Affirm Hearings Officer Dec.
- ☐ Hearing/Rehearing

Scope of Review

- ☑ De Novo
- New information allowed

1. **Applicant Name/Address**

   Les and Florence Shields
   11272 NW Skyline Blvd
   Portland, OR 97231-2633

2. **Action Requested by Applicant**

   Overturn the Hearings Officer decision to deny a Major Variance to the minimum yard requirement (setbacks) of the Commercial Forest Use zone to provide for a 96' X 120' Barn/Arena which was constructed without required approvals.

3. **Planning Staff Recommendation**

   Denial of a Major Variance.

4. **Hearings Officer Decision**

   Denial of a Major Variance.

5. **If recommendation and decision are different, why?**

   They were the same.

6. **Issues:**

   See attached.

7. **Do any of these issues have policy implications? Explain.**

   Question whether or not the lot of record applies to accessory structures? If it does it will effect the siting of future accessory buildings.

ISSUE	CODE REQUIREMENT	WHO RAISED ISSUE?	HEARINGS OFFICER DECISION	STAFF CONCERNS/ COMMENTS	RECOMMENDATION
1. 120 Day Rule	**MCC .8280(E) :** **The Board shall render a decision within 120 days from the time the application for that action is accepted as being complete ...**	Staff: The record to date has included continuances, waivers of time, the record left open, etc.. The clock is on day 118, however, the applicant has agreed in writing to extend the clock through February 26, 1998. In order to ensure a decision within this time frame the Board would have to consent and sign an Order by February 16, 1998.		Staff has drafted a Board Order which effectively adopts the Hearings Officer Decision and would result in a signed decision within the 120 day requirement. The HO determined the applicant has failed to meet no less than 11 approval criteria. It would be difficult for Staff to prepare in a timely manner an order substantially different from the HO decision It is the opinion of Staff that issuing an expeditious decision now would be better than getting a writ.	Sign the attached Board Order adopting the findings and conclusions included in the Hearings Officer Decision dated October 20, 1997.

ISSUE	CODE REQUIREMENT	WHO RAISED ISSUE?	HEARINGS OFFICER DECISION	STAFF CONCERNS/ COMMENTS	RECOMMENDATION
2. Least impact on adjoining forest or agricultural lands	**MCC .2074(A)(1) :** **The dwelling or structure shall be located such that:** **It has the least impact on nearby or adjoining forest or agricultural lands and satisfies the minimum yard and setback requirements of .2058 (C) through (G);**	Neighbors/Staff/Hearings Officer: Requires a finding of "Least Impact" on "nearby or adjoining forest" or agricultura lands. The required setback is 200 feet. The building was constructed at 64 feet from a property line. Neighbor concerned with the spread of fire, the noise, smell and activity going on in this 64 feet.	Reducing the required side yard and secondary fire safety break by more than 50% on this hillside site places the neighboring Anderson property in jeopardy. The applicants have failed to demonstrate that the proposed location has the least impact on adjoining forest or agricultural lands when compared to other possible locations on their own property and different building sizes and construction methods.	Staff agrees with the HO.	Adopt the Hearings Officers findings

ISSUE	CODE REQUIREMENT	WHO RAISED ISSUE?	HEARINGS OFFICER DECISION	STAFF CONCERNS/ COMMENTS	RECOMMENDATION
3. Risks associated with wildfire are minimized.	**MCC .2074(A)(5)** **The risks associated with wildfire are minimized. Provisions for reducing such risk include:** **A primary safety zone extending a minimum of 30 feet in all directions around the dwelling or structure ... and a secondary fire safety zone extending a minimum of 100 feet in all directions around the primary safety zone.**	Neighbors/Staff/Hearings Officer: Requires a finding of "Least Impact" on "nearby or adjoining forest" or agricultura lands. The required setback is 200 feet. The building was constructed at 64 feet from a property line. Neighbor concerned with the spread of fire, the noise, smell and activity going on in this 64 feet.	The proposed building is located within 64 feet of the east property line, providing a 30 foot fire zone and a secondary fire zone of 34 feet, less than 50% of the required 100 feet. The applicants do not meet the fire safety requirements as submitted. Between the neighbors home (Anderson) and the barn is a relatively dense stand of trees, many of which are on the Andersen property and which the applicants do not control The applicants cannot meet the fire standard ... and cannot require Karen Anderson to trim out or thin out her trees. These material indicate that on hillside sits the fire zone should be increased not decreased.	Staff agrees with the HO. Additionally, Sixteen neighbors have submitted testimony opposing the variance request and siting the danger of wildfire a major concern.	Adopt the Hearings Officers findings

ISSUE **VARIANCE CRITERIA**	CODE REQUIREMENT	WHO RAISED ISSUE?	HEARINGS OFFICER DECISION	STAFF CONCERNS/ COMMENTS	RECOMMENDATION
4. Circumstance or condition applies to use that does not apply generally to other property in the same zone or vicinity	**MCC .8505 (A)(1)** **A circumstance or condition applies to the property or to the intended use that does not apply generally to other property in the same vicinity or district. The circumstance or condition may relate to the size, shape, natural features and topography of the property or the location or size of physical improvements on the site or the nature of the use compared to surrounding uses.**	Neighbor/Staff/Hearings Officer: 4 pgs of the HO decision address this specific criteria in detail and evaluate all of the applicants submitted evidence. (pgs 20-24)	"The applicants burden is to prove the yard (setback)requirement is the maximum possible, not simply that the selected site is the most cost effective, convenient, or easiest place to locate the structure" "The application fails to demonstrate a circumstance or condition related to parcel size or shape, topography or natural features apply to the property or to the Farm Structure that does not apply generally to other property in the same vicinity or district.	Staff agrees with the HO. The applicant submitted extensive material but fails to demonstrate that a Farm building could not be located further from the property line.	Adopt the Hearings Officers findings

ISSUE **VARIANCE CRITERIA**	CODE REQUIREMENT	WHO RAISED ISSUE?	HEARINGS OFFICER DECISION	STAFF CONCERNS/ COMMENTS	RECOMMENDATION
5. The zoning requirement would restrict use of the property	**MCC .8505 (A)(2)** **The zoning requirement would restrict use of the subject property to greater degree than it restricts other properties in the vicinity or district.**	Neighbor/Staff/Hearings Officer:	Other lands in the CFU zone are subject to the 200-foot setback requirement and subject to the variance criteria. Therefore, the zoning requirement is not restricting this property any more than it would restrict other property in the vicinity or zone. The applicant has not proved that denial of the structure at this location would result in denial of the structure on the site altogether.	Staff agrees with the HO. The applicant has not proved that the structure could not be located elsewhere on the site in greater compliance with the yard (setback) requirements and fire zone requirements and with less impact on adjoining forest land. The applicant could at a later date apply for the same use at a location more in compliance with code.	Adopt the Hearings Officers findings and deny the variance request.

MULTNOMAH COUNTY, OREGON
HEARINGS OFFICER DECISION

Case File:	HV 13-97 and SEC 23-97
WHAT:	Request for a Significant Environmental Concern Permit and Major Variance to the minimum yard (setback) requirement of the Commercial Forest Use zone to allow a 96' X 120' Barn/Arena which was constructed without necessary approval.
PROPERTY LOCATION:	Approximate address: 11272 NW Skyline Boulevard T2N, R1W, Section 32, Tax lot '29' Tax Acct. R9713200290
APPLICANT PROPERTY OWNER:	Les & Florence Shields 11272 NW Skyline Blvd. Portland, OR 97231-2633
Site Size:	5.04 acres
Plan Designation:	Commercial Forest Use
Zoning District:	Commercial Forest Use (CFU)
Hearings Officer:	Deniece B. Won

I. Decision

The Hearings Officer hereby **DENIES** the applicant's request for a major variance from the minimum yard requirement (setback) of the commercial forest use zone and significant environmental concern permit to provide for a 96' X 120' Barn/Arena which was constructed without necessary approval, as outlined in the applicant's application, based on the findings and conclusions contained in this decision.

II. Summary of the Request

The Shields' property is located just below the ridge-line of the Tualatin Mountains, east of Skyline Blvd. and McNamee Road, and north of Newberry Road. The applicants own two (2) contiguous parcels of approximately five (5) acres each (Tax Lots 29 and 30). The applicants have a residence on Tax Lot 30 which was approved approximately twelve (12) years ago, when the property was zoned Multiple Use Farm-19 (MUF-19). The applicants have erected a 96'x120' barn/arena ("farm structure") on Tax Lot 29, which is the subject of this application. The applicants intend, after this application is approved, to use Tax Lot 29 and the barn constructed on it for the primary purpose of obtaining a profit in money by stabling, breeding and training equines, including but not limited to providing riding lessons, training clinics and schooling shows.

The Shields' residence is located close to the property line between Tax Lots 29 and 30. The barn is located approximately 120 feet from the Shields' residence. The barn is located slightly diagonally so that it is setback 64-feet from the east property line; 132-feet from the north property line; 500-feet from the west property line; and 74-feet from the property line between Tax Lots 29 and 30 and 423- to 440-feet from the south property line of the Shields' ownership. The front lot line, the line separating this interior lot from the access-way is the south property line. The Hearings Officer concludes in this decision that the entire ownership is the lot of record subject to the requirements of the Code. Therefore, the front lot line is the south property line of the Shields' ownership. The structure intrudes 136-feet into the east side yard and 68-feet into the rear yard setback requirements. The opponent, Karen Anderson, owns the adjacent parcel to the east in the CFU zone.

III. Hearing and Testimony

A. Testimony

1. Phil Bourquin, County planner, summarized the staff report and recommendation. He said that after the staff report was issued, the staff determined that the SEC requirements do not apply because the structure is a farm use permitted outright and the SEC section of the Code says that farm uses are exempt from the SEC requirements.

The variance is a major variance because the deviation from the Code's yard requirements is greater than 25 percent. The variance is from the 200-foot setback requirement. He said the building is 64 feet from the east property line and 74 feet from the south property line.

He said the main applicable Plan policy concerns development limitations. He said there is a flat area below the structure that would minimize the yard variance. The structure was placed on a fill. There has been no demonstration that they have minimized the variance from the front, side or rear yard setbacks, the impact on adjoining forest lands, the amount of land used on the tract for the structures or access, or the fire zone requirements.

2. Christopher Brand, Attorney, representing the applicant, testified in favor of the variance request. He said both of the properties owned by the Shields are similar. The City of Portland borders Tax Lot 30 on the south and both tax lots on the west. The area is zoned CFU. It was earlier zoned MUF-19 and may have been in a less restrictive zone before that, because the parcel sizes are so small.

Mr. Brand said a pole-barn is anchored by inserting it's vertical support structures into the soil. Therefore, the compaction characteristics of the soil its placed on are important. The applicant agrees with the staff that this is a farm use and a farm structure. This is a use permitted outright and therefore the SEC criteria do not apply to the application.

Mr. Brand said there are two issues, (1) the interpretation of the variance criteria, and (2) whether the variance criteria are met.

3. Les Shields, applicant, testified that he owns two adjacent lots. The Shields obtained Tax Lot 30 in 1985 and built their home on it in 1986. They acquired Tax Lot 29, where the arena is sited, in 1993. He said that this area has residential uses mixed with farm and agricultural uses. The lot sizes in the area range from one to 80 acres. Both of their 5-acre lots are approximately 350 feet in width and 625 feet in length. Tax Lot 30, that their house sits on, slopes to the south with varying degrees of steepness. The house sits in the northern third of the lot. In siting the house they had to stay as high on the lot, far in the northern part, because of the water runoff in the lower part of the lot. They built a small barn, 30 by 40 feet in 1986 for the two horses that they then owned, downhill from the house. He said that area is marginal for use because it is inundated in the winter from runoff. The bottom half of the site is flatter but is subject to flooding in the rainy months from hillside runoff and is a hazard to their horses because of the muddy conditions created by the runoff.

He said Tax Lot 29, where the arena is sited, has the same runoff characteristics. The bottom half of it is subject to seasonal flooding. The upper third of the lot levels off to a shelf and is the only area that allows them to ride and work their horses, when the weather permits. The rest of the property is used for pasture. He and his wife, Florence, have always ridden horses. It has always been their dream to own enough property to own an arena adequate to train, board horses, give lessons as a business for profit. It is necessary to cover an arena in this area because nine months out of the year it is raining and riders are not able to ride outside. He said Florence hopes to work fewer hours at her job and to devote more time to ride, train and give lessons at the stables.

In 1996 the Shields decided to build the arena, they contacted the builder who had built their small barn. The builder went to the property and discussed possible locations and building types with the Shields. They decided that the upper portion, where the arena is sited was the best area to build because of the drainage and availability of access from their existing driveway to the Shields' home. That access was extended when the site was excavated for the arena.

Mr. shields said the builder and the grader were concerned that the farther they went down the hill the harder it would be to provide access for horse trailers and a turn around area. In addition they had concerns about compaction. He said two excavators visited the site and they agreed this was the best site because of erosion and compaction.

He testified that the minimum area to work larger horses is 60 feet by 120 feet. He said a barn of that size typically has a row of stalls along one or both sides which provides 12-foot by 12 foot stalls, bathrooms, viewing areas, etc. He said a 12 feet by 12 foot stall is the minimum recommended for horses. They decided to build two rows of stalls separated by a walkway. They did that for cost reasons, but also because it would eliminate the need for an additional 12 foot walkway on the other side of the barn, allowing a smaller building. He testified that the total cost of the facility was more than $60,000.

His builder gave him a letter saying that the barn was permit exempt because it was used for agricultural purposes. He said he called Multnomah County about building permits and was directed to the City of Portland because they handle that function for the county. The City of Portland told him that no building permit was needed. He said he was not told to ask about the zoning regulations or permits. With that confirmation from the City and the builder they had the property graded. The building was completed in November of 1996.

On January 11, 1997 he received a notice from Lisa Estrin of Multnomah County noting the zoning violations. He then contacted Christopher Brand, his attorney, to help with the permit process. Mr. Shields said he and his wife have had good relationships with their neighbors over the last eleven years. Only one neighbor is concerned and the other neighbors are supportive of the use. Even the owners who have their land in forest practices felt that the arena wouldn't have any impact on their land.

4. Florence Shields, applicant, testified that after talking with the builder, the excavator, the County and the City of Portland, who all said it was exempt from permit requirements, they proceeded to build the barn. She said they would never have built the barn if they knew that these requirements existed. She said that the arena is at elevation 975 feet and that Karen Anderson is at approximately 1,000 feet. Everything slopes down to the west. She submitted a map showing the land uses within ½ mile of the site.

5. Don Rondeman, Geotechnical Engineer, addressed four points: 1) slope stability, 2) earth work, which involves cutting, filling and compaction, 3) drainage and erosion control and 4) foundation and settlement. He testified that the location of the barn is the best location for it with respect to geotechnical issues.

6. Paul Norr, attorney representing Karen Anderson, an adjacent property owner directly to the east, testified that the owner is Les and Florence Shields and not Eldon Shields as indicated in the staff report. That is important because he disagrees that the property is a separate lot from Tax lot 30. He said the Shields have not one but two lots -- one parcel that is 625 feet by 700 feet. He argued that the definition of a "lot" and of a "Lot of Record" in the Code indicate that this should be viewed as one parcel. He

argued that a setback of 200 feet on all sides of the parcel leaves them with an area of 225 feet by 300 feet in the center of the property which can be used to site a building of the size that is proposed. He noted that this structure has to be viewed by the Hearings Officer as though it had never been built. He said one of the key issues is the secondary fire zone.

Mr. Norr noted that there are limitations on the use of conditions of approval to satisfy code requirements. Providing letters later to show that the applicants can meet the fire zone requirements or imposing conditions to somehow deal with not meeting the fire zone requirements can't substitute for the findings of fact that are required. He appreciates that the Shields may have been mislead by their contractor, or that there may have been some misunderstanding as to the requirements for permits. Nonetheless, he argued that no matter what City or County officials may have told somebody, there is a 200-foot setback requirement in the Code. He argued that Ms. Anderson is entitled to have that requirement complied with. If the Shields want some recourse, he would suggest the contractor. But, Ms. Anderson, shouldn't be forced to live with this structure just because somebody didn't read the code.

7. Karen Anderson, owner of the adjoining property to the east, testified that she is not opposed to the building but she is opposed to the location of the building. A major concern she has is the fire zone standards. She said the house that she lives in is built on the foundation of a house that in 1985 burned to the ground. She understands that the former house was a total loss because when the fire truck arrived, the firefighters had to put the fire in the field out to prevent a forest fire, before they would start on the house fire. She submitted a picture showing the area is heavily forested and why fire is such a concern. Exhibit H10. She understands that a fire hydrant is located on Newberry Road and the fire district would like structures to be within 1,000 feet of a hydrant if possible. If firefighters brought a hose up from Newberry Road that would be more than 1,000 feet. She said it wouldn't be practical for firefighters to extend a fire hose across a field to get to the barn. She feels that the location of this barn has an injurious affect on her property value because her land can no longer be used for what is zoned for if the barn remains at 64 feet from her property line and 154 feet from the front door of her house. She said the barn has 20 stalls and it is designed for commercial use.

8. Christopher Brand, in rebuttal, asked that the record be held open. With respect to the secondary fire zone issue, he said that the applicant will provide evidence that they have complied with the requirements to the greatest extent possible. He said the secondary fire break involves pruning and clearing so that underlying brush and low branches that can catch fire are removed. He believes the applicant has demonstrated that this property's size shape, topography, etc., renders it different from properties generally occurring in the area. He said there is evidence both from the rural area plan and from the title officer that this is not a typical lot in the CFU district. While there may be some lots like it, its characteristics do not generally occur in the district. With respect to the view impacts, he said there is no applicable criteria. He said the arena was not sited with any intent to stay away from the Shield's residence or to be closer to Ms. Anderson's, or to

direct activity to Ms. Anderson's property. It was sited there because it is the best location to site the arena on that property, looking at all the factors and circumstances. With respect to access, there was an existing access to the residence from Skyline. The only thing that the development of the arena necessitated was an extension of the access which is less than 500 feet.

9. Mr. Norr responded that he did not oppose the record being kept open for specific purposes because new evidence was submitted. But he objected to the record being kept open for the submission of any new evidence. This application was originally filed in June. All of the applicant's supportive evidence should have been filed with the original application. The applicant has already set the hearing over twice to provide additional evidence. Their request to keep the record open has to be limited to specific evidence that was submitted in opposition that they want to address.

B. Open Record.

Hearings Officer Won said the open record would be limited to receiving evidence and argument on the application's compliance with the variance criteria, information on fire response, compliance with fire zone standards, and information on consolidating the lots. The record was held open for seven days for the proponents, followed by seven days for the opponents, and followed by seven days for proponent argument. During the periods for response, the applicant submitted a September 24, 1997 letter with attachments, Mr. Norr submitted a letter dated September 30, 1997, and the applicant submitted arguments in a letter dated October 7, 1997.

IV. Approval Criteria, Findings and Conclusions

The Hearings Officer must find that the proposal meets the approval criteria of the following Zoning Code, and Comprehensive Plan Policies:

A. Commercial Forest Use (CFU) Zone Considerations:

1. 11.15.2062 Lot of Record

(A) For purposes of this district, a Lot of Record is:

(3) A group of contiguous parcels of land:

(a) For which deeds or other instruments creating the parcels were recorded with the Department of General Services, or were in recordable form prior to February 20, 1990;

(b) Which satisfied all applicable laws when the parcels were created;

(c) Which individually do not meet the minimum lot size requirements of MCC .2058, but, when considered in combination, comply as nearly as possible with a minimum lot size of nineteen acres, without creating any new lot line; and

(d) Which are held under the same ownership.

Finding. The opponent's attorney, Mr Norr, argued that the County should view Tax Lots 29 and 30 as one parcel with dimensions of 625 feet by 700 feet. Mr. Norr bases his arguments on the definition of a "lot" as found in MCC 11.15.0010 and "lot of record" in MCC 11.15.2062(A)(3). Mr. Norr first argues that a "lot" is defined in Multnomah County Code as a 'plot, parcel, or area of land owned by or under the lawful control and in the lawful possession of one distinct ownership." Mr. Norr believes the Hearings Officer should, based on this authority, consider the two distinct parcels as one lot because the two lots constitute "an area of land" under the control and possession of one distinct ownership. The applicant argues, and the Hearings Officer agrees, that this interpretation of "lot" would lead to the illogical conclusion that the subdivider of lots pursuant to ORS 92 would not be able to sell the lots.

Mr. Norr next argues that the "lot of record" provisions in the Multnomah County Code dictate that the lots be viewed as a single area for land use purposes. The applicant argues that the lot of record provisions in the Multnomah County Code do not apply because the building under review is a farm structure and not a dwelling.

Unless there are contrary provisions in a zoning code, a legally created lot or parcel is the land area that zoning use regulations apply to. The CFU section of the zoning Code first provides in MCC 11.15.2046 that "no building or structure shall be hereinafter erected. . . in this district except for the uses listed" in the section. The uses permitted and allowed are listed in MCC .2048 through .2056. The use at issue here, farm use, is listed in MCC 11.15.2048. This section provides that farm uses are permitted in Forest zones but it does not specify what land area it applies to. MCC 11.15.2058 contains lot dimensional requirements in the CFU zone. Subsection A provides that:

> "Except as provided in MCC .2060, .2061, .2062, and 2064, the minimum lot size shall be 80 acres.

MCC .2060 allows the creation of smaller lots and MCC .2061 allows the adjustment of lot lines, in certain circumstances. The MCC .2064 exception applies to certain conditional uses. None of these exceptions to the minimum parcel size apply to this application. The MCC .2062 exception is the only place in the CFU section that addresses the land area on which the permitted farm use is authorized. That is, the use is authorized on a lot meeting the minimum 80 acre parcel size, or it is authorized on a "Lot of Record." There are three

types of "lots of record" set out in the Code: 1) legally created lots containing 80 acres or more, 2) legally created lots that contain less than 80 acres, and 3) groups of legally created lots where individual lots contain less than 80 acres held in the same ownership. The shields' two parcels meet the conditions described in 11.15.2062(A)(3). They are contiguous parcels of land that: a) were created before February 20, 1990; b) were legally created; c) which individually do not meet the minimum lot size requirement, but together would comply as nearly as possible; and d) are held under the same ownership.

The purpose of the Commercial Forest Use zoning district is to conserve and protect designated lands for continued commercial growing and harvesting of timber. The Lot of Record provisions more protect the purpose of the zoning district than the recognition of all legally created lots regardless of shared ownership.

The West Hills Rural Area Plan discusses the background in amending the plan designations and designating former MUF 19 lands CFU. Page 9 of the West Hills Rural Area Plan states:

> "Under review, the Commercial Forest Use areas of the West Hills can clearly be divided into two general subareas. The first, which shall be designated COMMERCIAL FOREST - 1, constitutes about three-fifths of the Commercial Forest Use - zoned areas in the West Hills. Primary forest lands are defined as areas where the primary lot pattern consists of lots of record (as defined by the Multnomah County zoning code for Commercial Forest Use-zoned areas) in excess of 40 acres and where there are few existing residences. Primary forest lands may include smaller lots of record which do not by themselves meet the definition, but which are isolated from other smaller lots of record by lands which do meet the definition of primary forest lands. The second, which shall be designated as COMMERCIAL FOREST - 2, consists of the remainder of the Commercial forest use-zoned areas. Secondary forest lands are defined as areas consisting of contiguous lots of record less than 40 acres, many of which have existing residences. Secondary forest lands may include larger lots of record which by themselves do not meet the definition, but which are isolated from other larger lots of record by lands which do meet the definition of secondary forest lands."

Thus, under the West Hills Rural Area Plan Lots of Record are the significant definition of land area for Commercial Forest Land uses. The West Hills rural Area Plan does not discuss "tax lots," nor does it discuss "lots" or "parcels."

The Hearings Officer concludes that for purposes of applying the CFU Code requirements, the only land area recognized by the Code in this application is a "lot of record," the entire contiguous area owned by Les and Florence Shields. By operation of the County Code provisions where contiguous substandard parcels are acquired by a single ownership in the CFU zone, they are treated as a single "lot of record." This conclusion is verified by the fact that

11.15.2046.

No land shall be used and no building or structure shall be hereafter erected . . . in this district except for the uses listed in MCC 2048 through .2056.

MCC 11.15.2058 - Uses Permitted Outright.

(C): Farm use, as defined in ORS 215.203.

215.203(2) Zoning ordinances establishing exclusive farm use zones; definitions.

(a): As used in this section, "farm use" means the current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting and selling crops or the feeding, breeding, management and sale of, or the produce of, livestock . . . "Farm use" also includes the current employment of land for the primary purpose of obtaining a profit in money by stabling or training equines including but not limited to providing riding lessons, training clinics and schooling shows.

(b): "Current employment" of land for farm use includes:

(F) Land under buildings supporting accepted farm practices;

Finding. The "current employment" requirement for a use to qualify as a "farm use" is not applicable to land use decisions. In *Newcomer v. Clackamas County*, 758 p. 2d 369, 94 Or App 174, (1988) the Appeals Court stated:

> ORS 215.203 was originally enacted as part of a statutory scheme which had the 'primary purpose of * * * [providing] property tax relief to farm land and thus protect[ing] such land from being diverted to other uses." (Citations omitted.)
>
> Although [ORS 215.203] also has land use regulatory features, and it is referred to in some of the other agricultural lands statutes as well as Goal 3, the 'current employment' requirement was designed only as a qualification for favorable tax treatment." (Citations omitted. Emphasis added.)

The proposed use falls within the definition of farm use under ORS 215.203 (2)(a). A commercial stable is permitted outright in the CFU zone. The use itself is not under consideration. What is under review is its location within the County's setback requirements.

B. MCC 11.15.2058 - Dimensional Requirements

(A) **Minimum Yard Dimensions - Feet:**

- **60 feet from centerline of County Maintained Road**
- **200 feet - Other front**
- **200 feet - Side**
- **200 feet - Rear**

These yard dimensions and height limits shall not be applied to the extent they would have the effect of prohibiting a use permitted outright. Variances to dimensional standards shall be pursuant to MCC .8505 through .8525, as applicable.

Finding. MCC .2058 says that the dimensional criteria need to be met. Those requirements say that front and side yard setbacks need to be 200 feet. There is some savings language that says "these yard requirements shall not be applied to the extent that they would have the effect of prohibiting a use permitted outright." The Hearings Officer agrees that the use here is permitted outright. There is conflicting evidence in the record about which lot lines are the front of the property. The Code defines the front lot line of an interior lot such as this lot, as the line separating the lot from the street or access way. The closest street, Newberry Road is south of the tract. The access to the arena is the driveway serving the dwelling on Tax Lot 30 from the south. The Hearings Officer concludes that the front lot line is the south property line. Therefore, the side lot lines are the east and west property lines and the rear lot line is the north property line.

The applicant argues that strict application of the setback requirements of MCC.2058 would have the effect of prohibiting the farm structure altogether when the required setbacks are subtracted from Tax Lot 29's dimensions. His argument is based on considering Tax Lot 29 alone. Considering the Lot of Record owned by the Shields, there is an area 235-feet by 300-feet within which a structure can be located within the yard requirements. The applicant argues that there are practical difficulties in meeting the setback requirements which cannot be applied to the extent of prohibiting the use anywhere on the parcel. The applicant correctly argues that a structure may deviate from the yard dimension requirements if the variance criteria are met.

Conclusion. The Code says that yard dimension requirements "shall not be applied to the extent they would have the effect of prohibiting a use permitted outright." This does not mean that the county must approve the use somewhere on the property. It means that if all of the Code's criteria are met except the yard dimension requirements, the yard dimension requirements shall not be applied to the extent of prohibiting a permitted use. The issue here is whether the variance criteria are met for the location where the applicants built the barn, or whether there are other places the barn could be accommodated instead, in full or greater compliance with the side yard setback requirements. The second issue is

whether the applicant meets the Code standards which are not subject to the variance application. These issues are addressed below.

C. MCC 11.15.2074 - **Development Standards for Dwellings and Structures:**

Except as provided for the replacement or restoration of dwellings under MCC .2048 (E) and .2049 (B), all dwellings and structures located in the CFU district after January 7, 1993 shall comply with the following:

(A): The dwelling or structure shall be located such that:

(1) It has the least impact on nearby or adjoining forest or agricultural lands and satisfies the minimum yard and setback requirements of .2058 (C) through (G);

Finding. This application involves the siting of a structure, not a dwelling. The subject parcel abuts lands to the north, south and east designated Commercial Forest Use and protected for forest uses. The territory to the west is within the regional urban growth boundary and the City of Portland. Although some of the CFU designated parcels are currently used for residential purposes, they are forest lands, not residential lands.

This criteria requires a finding of "least impact" on "nearby or adjoining forest" or agricultural lands. The controlling factor is the adjoining lands' land use designation as Commercial Forest land. This standard also requires the setback requirements to be satisfied unless a variance from the setbacks is approved. The practical difficulties standard in the variance criteria deals only with the setback requirements. The variance criteria's practical difficulties standard doesn't allow the hearings officer to vary the least impact standard or any other development standards. The development standards, including the least impact standard, are applicable even if the variance criteria are met.

Mr. Norr argued, and the Hearings Officer finds, that there are substantial impacts from having the building located where it is. Fire protection is one. The general activities associated with this facility, even though it may be a structure that is allowed in the CFU zone, are not allowed this close to a neighbor's property. There are more reasons for the setback than just fire protection. One is concern for the impact on the neighbor. The impact of the noise and the activities associated with the use that will take place within this building. The open side of the building that will attract the most activity, is the side that faces Ms. Anderson's property. The hub of the activity associated with the building is on the side of the structure facing the Anderson's property. That is where the vehicles and horse trailers will have to come in and where deliveries will be made. There is no information in the record about the impacts from the manure pile, the smell from the horses, the general activity, and the noise, all within 64 feet from Ms. Anderson's property.

The applicants have not provided basic information regarding the intensity of the proposed commercial operation, such as the hours of operation, the days of operation, the number of horses and people that will be using the facility at any one time, where the manure piles would be stored, how the dust will be controlled, the number of vehicle trips per day, the anticipated level of noise and smell, etc. The Hearings Officer cannot determine what the impact is, let alone how the impact at this location compares to other locations on the applicants' property.

Mr. Norr argues that view is an issue because protection of views is one of the purposes of the Code's setback requirement, which is to prevent overcrowding, to prevent the appearance of overcrowding, to prevent the impact of one property on the other. Based on a drawing to general scale, Exhibit H14, showing the impact from the perspective of a person five feet tall standing at the Anderson property line looking at the building, the building would have to be 55 feet tall to have the same impact that it has at its existing location, while the maximum structure height in the CFU zone is 35 feet. The proximity of the building has a substantial impact on adjoining property even though there is no specified view corridor. He argues that the view affect should be taken into account on the impacts caused on the neighboring property by violating the setback requirement.

The applicants presented evidence showing that the proposed location of the building is the best location for themselves. They have not, however, presented any evidence proving that the proposed structure cannot physically be placed at least 200 feet from Karen Anderson's property or at some other location having the least impact on adjoining forest land. The evidence shows that the 200 foot setback requirement can be observed without placing the structure within 200 feet of any other property.

The applicants in their September 24, 1997, letter state under paragraph 2 on page 4:

> "The Shields propose a farm use, a use permitted as right in the district inherently compatible with the existing farm and forest practices on adjoining lands. (Emphasis added in original).

The fact that the use is permitted outright is not evidence that this arena was sited so that it has the least impact on nearby and adjoining farm and forest lands. The proposed use could be inherently compatible only if the Code required minimum yard setback requirements of MCC .2058 are met.

The east side yard has been reduced to 32% of the required 200 feet. The County in adopting the 200 foot yard requirements made the policy choice that 200 feet was the separation between structures and property lines that provides the minimum protection from impact on adjoining forest lands. Reducing the required side yard and secondary fire safety break by more than 50% on this hillside site places the Anderson property in jeopardy. The applicants have not demonstrated this location has the "least impact" on the Anderson property.

In his October 7, 1997 letter Christopher Brand responded that from a construction, grading, and erosion control standpoint, the current location of the farm structure is the best location on the property. The written and oral testimony of Mr. Rondema, Mr. Koroch, Mr. Naussbaum, and Mr. Wood, all indicate that the current location minimizes the possibility of future erosion problems and future subsidence problems. Those conclusions are based on considering only a portion of the Shields' ownership and without considering alternate building construction or structure size.

In minimizing the potential for erosion and subsidence problems, the current site of the farm structure minimizes potential adverse impacts on downhill adjoining lands. Erosion problems and/or a land slide on the property could adversely impact downhill lands, including the applicants' dwelling. Earth movement could also affect the uphill property, including the Anderson's, by removing support. Nonetheless, the applicants have not shown that different building could not be built so that it was safe and has less impact on the adjoining properties.

The applicant contends that the Property Owner Consent to Variance Request form signed by all neighbors, except Ms. Anderson, shows that the existing barn location has the least impact on nearby or adjoining forest or agricultural lands and satisfies the minimum yard and setback requirements. The fact that all but one of the adjoining property owners consented to the variance request is not proof that the structure is sited at a location that has the least impact on nearby and adjoining farm and forest lands. It is no proof at all that the yard requirements are met.

The Shields have not shown that the arena's location has the least impact on neighboring and adjacent farm and forest uses. Mr. Norr and Ms. Anderson's testimony that Ms. Anderson's views may be impaired, wildfire spread may be increased, as well as other arguments of alleged adverse impacts, are relevant and uncontroverted.

The applicants have failed to demonstrate that the proposed location has the least impact on adjoining forest or agricultural lands when compared to other possible locations on their own property and considering different building sizes and construction methods.

(2) Adverse impacts on forest operations and accepted farming practices on the tract will be minimized;

Finding. This criteria requires the structure to be sited such that it will minimize adverse impacts on the tract. The arena is a farm use. The applicants considered the circumstances of the site as a whole concerning the best place to locate this building. The steeper the area the more fill that will be required. This is the best location on the property for this type of structure from the Shields' point of view. The location of the arena, by intruding into the yard setbacks, leaves the maximum remaining area for pasture and the riding and training of horses. The applicant has located the structure where the impacts on the tract are minimized, at the expense of noncompliance with other Code criteria.

(3) The amount of forest land used to site the dwelling or other structure, access road, and service corridor is minimized.

Finding. Mr. Norr argued that the access road is longer than necessary and therefore, consumes more forest land tan necessary. The applicant responded that the access road could not be shortened by locating the structure closer to the existing house on Tax Lot 29 and closer to SW Skyline Boulevard. The applicant testified that the sloping topography of the land, the amount of cut and fill required to site the structure closer to the existing house, the condition of the soils on the west end of the property, make locating the building closer to the house and the existing drive less feasible than where it was built. However, the applicant did not demonstrate that the building could not have been at a location that had a shorter access. This is particularly true because the applicant's evidence was based on the dimensions and characteristics of Tax Lot 29 alone and not on the Lot of Record, which the Hearings Officer has determined is the basis for application of the Code's criteria.

(4) Any access road or service corridor in excess of 500 feet in length is demonstrated by the applicant to be necessary due to physical limitations unique to the property and is the minimum length required;

Finding. An extension of the existing access was built to serve the farm structure. Mr. Norr argues that the access is far in excess of 500 feet from Skyline Road and there is an absolute requirement that the minimum be used. If the barn had been located further down the hill, closer to the house it would not have required extension of the access. The applicant contends the access does not exceed 500 feet in length. The applicant argues that this criteria applies only to the access which must be created in order to facilitate the farm structure, which is the subject of the variance. He argues the driveway which was created to access the farm structure does not exceed 500 feet. The Hearings Officer disagrees, the length of the access should consider the entire access to the structure, not just the length of the extension of an access to get from the end of an existing access to a new structure. The entire length of the access should be considered because a purpose of the requirement is to minimize the distance from a public road to a structure for emergency response vehicles.

The record shows that access to the site is provided from Skyline Blvd. The record does not show the total length of the access. The Tax Assessors map shows the access is on an easement. The record does not contain any information about the width, surface conditions, signage, etc., of the access. The applicant has not demonstrated that the amount of land for the access is minimized.

The applicant argued that this particular provision does not apply at all to the Shields' driveway extension. Specifically, MCC 11.15.2074 refers to "access road or service corridor." While the Multnomah Code does not define service corridor, roads are defined as:

"Every public way, thoroughfare, road, street or easement within the County used or intended for use by the general public for vehicular travel, but excluding private driveways."

The applicant argues that the driveway extension accessing Lot No. 20 is not intended for use by the general public for vehicular travel, it will be used only by the Shields and invited guests. The driveway extension is more properly termed a "private driveway," not subject to this development standard.

The Code defines an "access way" in MCC 11.15.0010 as:

"A private street which is not a part of a lot or parcel and which provides access to more than one lot or parcel."

The subject access is not an access way because it is an easement, a part of a lot or parcel.

The Code defines a "road" in MCC 11.15.0010 as:

"Every public way, thoroughfare, road, street or easement within the County used or intended for use by the general public for vehicular travel, but excluding private driveways."

The subject access is an easement. However, the easement is not intended for use by the general public. In addition, the definition excludes private driveways from roads. The access to the arena is a private driveway. Therefore, the access is not a road.

Under MCC 11.15.2074(D) the access requirements apply to:

"A private road (including approved easements) accessing two or more dwellings, or a driveway accessing a single dwelling. . . "

The access is an easement. The access provides access to a dwelling on Tax Lot 30 (the Shields residence) and on Tax Lot 33 (Ms. Anderson). Thus it meets the definition of "a private road (including approved easements) access two dwellings. The Hearings Officer concludes that the access requirements of 11.15.2074(D) apply and that the applicant needs to prove that the MCC 11.15.2074(A)(4) requirement that any access road in excess of 500 feet in length is necessary due to physical limitations unique to the property and is the minimum length required. The applicant has not proved that the access is the minimum necessary.

(5) The risks associated with wildfire are minimized. Provisions for reducing such risk include:

(b) Access for a pumping fire truck to within 15 feet of any perennial water source on the lot. The access shall meet the

driveway standards of MCC .2074 (D) with permanent signs posted along the access route to indicate the location of the emergency water source.

Finding. There is no perennial water source on the site. The applicant submitted a letter dated September 19, 1997, from Arthur E. Thurber, Deputy Fire Marshall for the Tualatin Valley Fire and Rescue District. Mr. Thurber stated that:

"* Fire Department access to all structures on [the] property is adequate for fire suppression operations.

* * *

"* [The p]roperty is located approximately 1-1/2 miles from Tualatin Valley Fire and Rescue Station 198. Equipment housed at that station are:

Brush Rig 198	90 gpm - 300 gallons of water
Engine 198	750 gpm - 500 gallons of water
Water Tender 198	750 gpm - 3000 gallons of water

"* Fire hydrants are located at Skyline Blvd. and Newberry Road, and Skyline Blvd. and McNamee road.

The firefighters in the closest station to the site, not being accustomed to relying on perennial water sources, provide tank truck service. The closest station's equipment can carry a total of 3,800 gallons of water. The equipment can be refilled at existing fire hydrants in the vicinity of the Shields' residence.

Staff has found no evidence that access to the site was previously approved. Under MCC .2074 (4) the applicant state, "An extension of the existing road was installed to serve the Farm Structure." Compliance with the driveway standards of MCC .2074 is required.

This development standard could be satisfied by compliance with a condition requiring compliance with the driveway standards in MCC .2074(D).

(c) Maintenance of a primary and secondary fire safety zone on the subject tract.

(i) A primary fire safety zone is a fire break extending a minimum of 30 feet in all directions around a dwelling or structure. Trees within this safety zone shall be spaced with greater than 15 feet between the crowns. The trees shall also be pruned to remove low branches within 8 feet of the ground as the maturity of the tree and accepted silviculture practices may allow. All other vegetation should be kept less than 2 feet in height.

(ii) **On lands with 10 percent or greater slope the primary fire safety zone shall be extended down the slope from the dwelling or structure as follows:**

Percent Slope	Distance in Feet
Less than 10	Not Required
Less than 20	50
Less than 30	75
Less than 40	100

(Iii) **A secondary fire safety zone is a fire break extending a minimum of 100 feet in all directions around the primary safety zone... .**

(iv) **No requirement in (i), (ii) , or (iii) above may restrict or contradict a forest management plan approved by the state of Oregon Department of Forestry pursuant to the state Forest Practices Rules; and**

(V) **Maintenance of a primary and a secondary fire safety zone is required only to the extent possible within the area of an approved side yard (setback to property line).**

Finding. The fire zone requirements require a primary fire safety zone of a minimum of 30 feet in all directions from a structure, plus a secondary fire safety zone extending a minimum of 100 feet in all directions around the primary safety zone. Thus, there is a total fire safety zone of 130 feet required by MCC .2074(5)(b).

The proposed building is located within 64 feet of the east property line, providing a 30-foot primary fire zone and a secondary fire zone of 34 feet, less than 50% of the required 100 feet. The applicants do meet the fire zone set out in MCC .2074(5) at the existing building site. If the structure were located 66-feet further west of the existing structure site the fire zone requirements would be met.

The primary and secondary fire safety zone is critical in this area. This is demonstrated by the materials submitted by the applicants with their September 24, 1997 letter discussing wildfire in the Tri-County area, with the comment that making your home fire defensible includes the following:

> "4. SLOPE. Wildfires 'run' up slopes and gullies. Increase the size of defensible space on your property as the steepness of slopes increase. Woodpiles and combustibles should not be located down slope... [remainder illegible]."

Page No. 11, which discusses the need for fuel breaks ("wider fuel breaks are needed around buildings located on steep slopes or ones built in areas of dense forest"), and the requirement of trimming trees ("Remove branches from trees to a height of 15 feet to prevent ground fire from spreading to the tops of trees.").

A sheet relating to fuel treatment zones, discussing the first priority zone of 30 feet and the secondary priority zone extending an additional 100 feet "or more", depending on circumstances states:

> "The combination of a moderate to steep slope and hazardous vegetation requires additional hazard reduction, often beyond the 100 foot minimum. In many western states, modification of the vegetation on slopes may be necessary for several hundred feet in order to provide the desired level of safety."

Between Karen Anderson's home and the barn is a relatively dense stand of trees, many of which are on the Anderson property and which the applicants do not control. The applicants cannot meet the standard fire zone requirements and cannot require Karen Anderson to trim or thin out her trees, as advised in these basic summary fire protection materials provided by the applicants. These materials indicate that on hillside sites the fire zone should be increased not decreased.

A letter from Les Shields to Christopher Brand dated September 23, 1997, Exhibit B, says that Mr. Thurber said that the location of the building in relation to the property line was not a significant problem as it related to secondary fire zones. Of more importance to him was the elimination of any fuel in the space between the arena and the property line. This is evidence that the required fire zones may be excessive, it is not evidence that the requirements are or will be met.

After the hearing was closed, but while the record was open, the applicants requested to amend their application to also approve a variance from the fire safety zone standards.

Multnomah County Staff has interpreted the Code to provide that a variance from the setback requirement can have the effect of concurrently allowing a variance from the fire zone requirements. The applicants concede that the initial application for a major variance did not contain a request for a variance to the secondary firebreak setback. The applicant said it was not until after the staff report was issued that the applicants identified the secondary fire zone development standard as a potential subject for a variance request.

Mr. Norr argues that the Hearings Officer does not have the authority, under either the county Code or State law, to allow initiation of a new variance request at this stage of the case. He believes that introducing a new variance request at this stage violates the application, notice and hearings requirements of both State law and the County Code.

Because the Hearings Officer has concluded this application fails to meet the "least impact" criteria and the variance criteria, there is no need to consider a variance from the fire safety standards.

The applicant has not demonstrated that the structure was located to comply with secondary fire safety zone requirements. The application fails to comply with the required secondary fire zone.

> **(C) The applicant shall provide evidence that the domestic water supply is from a source authorized in accordance with the Department of Water Resources Oregon Administrative Rules for the appropriation of groundwater (OAR 690, Division 10) or surface water (OAR 690, Division 20) and not from a Class II stream as defined in the Forest Practices Rules.**

Finding. The applicant does not propose to provide water at the arena. However, the Hearings Officer notes that it is likely that water will be required at the arena, both for the horses and for the public who will be attending events at the arena. The applicant has not provided evidence that the domestic water supply is from a source authorized in accordance with the Department of Water Resources Oregon Administrative rues for the appropriation of groundwater. This criterion is not met. A condition of approval could be imposed to require that evidence of adequate water is available if water were to be provided at the arena. This criterion could be met.

V. Variance Approval Criteria.

A. **MCC 11.15.8505 (A): The Approval Authority may permit and authorize a variance from the requirements of this Chapter only when there are practical difficulties in the application of the Chapter. A Major Variance shall be granted only when all of the following criteria are met . . .**

> **(1) A circumstance or condition applies to the property or to the intended use that does not apply generally to other property in the same vicinity or district. The circumstance or condition may relate to the size, shape, natural features and topography of the property or the location or size of physical improvements on the site or the nature of the use compared to surrounding uses.**

Finding. The applicant contends that the site has constraints limiting the location of the structure elsewhere on the site. The constraints are alleged to relate to the size, shape, natural features and topography of the property and the location of the applicant's dwelling on the adjacent parcel. The applicant believes that because of these constraints, the present location of the farm structure is the only site "reasonably feasible" on Tax Lot 29.

Under the Code's variance criteria, the 'approval authority' may approve a variance from the Code's requirements only when there are "practical difficulties in the application of the chapter." On page 11 of the staff report, in the second paragraph, the staff has said that the County has a very restrictive interpretation of this provision. The applicant believes that the Staff interprets the Code to require the applicants to demonstrate that the current location of the farm structure is the only place on the property to site it to obtain a variance from the setback requirements. If the structure could be moved to the west to more closely comply with the yard requirements, the application could be denied. The applicant argues that the staff's interpretation is wrong. The applicant argues the staff is adding a variance criteria to the adopted list of four in requiring that it is the applicant's burden to demonstrate that denial of the farm structure at this location would result in denial of the use of the farm structure on the parcel. The applicant argues that the Code requires only that they demonstrate "practical difficulties" in application of the requirements of the Code, that they comply to the maximum extent possible.

The "practical difficulties" term is not itself a review criteria but rather a categorical term that is refined in the four variance criteria. It is the standards in the four criteria that must be complied with. The Hearings Officer does believe that the staff applies these standards stringently. The issue the Hearings Officer believes the applicant raises is related to the provision in the dimensional standards that the yard dimension requirement cannot be applied to the extent of prohibiting a sue prohibited outright. With respect to the yard requirements, the arena must be allowed somewhere on the site, which is not to say that it could not be denied for failure to meet other Code criteria. The Hearings Officer agrees with the staff that qualifying for a variance does not enable the property owner to infringe on the yard requirements as much as he likes. The objective is that properties should comply as nearly as possible with the Code's requirements.

The structure fails to meet the east side yard requirement by 68% and the north rear yard by 33%. Thus, the variance request is a major variance.

Tax Lot 29 slopes from east to west and from north to south, with original slopes ranging from approximately 7% grade to approximately 40% grade. The average slope of Tax Lot 29 is about 12 percent. The building was located on slopes that were about 7.5 percent. According to the record, both Tax Lots 29 and 30, the Lot of Record, are similar.

The Soils Survey of Multnomah County, USDA, Soil Conservation Service map identifies the soils on the subject parcel and in the vicinity as including &C - Cascade Silt Loam, 8 to 15 percent slopes and 7D - Cascade Silt Loam, 15 to 30 percent slopes. Based on the SCS map, the 7C soils appear to encompass the larger area of the site. Both 7C and 7D soils are described (pages 24 and 25 Soils Survey) as used for farming, timber production, urban development, and wildlife habitat.

The SCS survey doesn't indicate that the slopes on this property are any different from other properties in the vicinity. The soil types are the same throughout the property.

Slopes in the 20% range require special considerations on the Code. Multnomah County has received more than 10 applications for Hillside Development permits in the West Hills this year. Hillside Development Permits are generally required for all development on slopes exceeding 25% or on lands designated as located within a slope hazard area based on the Multnomah County Slope Hazard Maps. Based on these maps, the subject parcel is not located within a slope hazard area.

There is nothing inherent in this property that is different from other properties in the vicinity. All properties in the area slope down from the knoll. Properties along Skyline area all hilly. There are some flat spots and there are some hillsides. There's nothing in the record that shows that this property has a unique circumstance or condition that neighboring properties, immediately adjacent properties, or properties in the vicinity don't have.

Construction of the building on the steeper slopes would require deeper cuts and fills. The applicant argues that locating the farm structure further west of the current position was not feasible because the required cut and fill would have resulted in 'sub-optimal compaction,' which in turn would have provided inadequate support for this farm structure. Siting the structure down hill, where slopes are steeper has cost implications, it also has an impact on slope stability. The deeper the cut, the less stable the slopes above and below. The Karl Korich, P.E. letter of April 15, 1997 states, "The location of the building is the best place based on site grading. The building pad required approximately 15 feet of cut at the east side and 6-12 feet of fill at the west side. All other locations on the Lot of Record would have required at least twice that amount of cut and fill." The site evaluated was Tax Lot 29, not the Lot of Record composed of Tax Lots 29 and 30. No geological, geotechnical, or topographical studies have been submitted to clearly indicate that no other location on the tract could or could not accommodate the structure. Reducing the size and scale of the building could increase the yard setback to the east, reduce the amount of grading and fill that was necessary in establishing the structure, while providing for the use.

Concerning erosion control, the more earth moving that the Shields have to do, the more open ground there is, the more the potential for erosion. The geotechnical engineer testified that the best location for the arena with regard to erosion control is the area that requires the least earthwork, which is where it is located. The geotechnical engineer testified that the steeper portions of the site would require deeper fills which are susceptible to settling under their own weight but also weigh a great deal more than even the barn and can induce settlement of the underlying soils because they are so heavy. He said that especially where there are cuts and fills, weight is taken off on the uphill side and added on the down slope side. That tends to cause some settlement difficulties. The greater the cut and fill required, the greater the settlement difficulties.

According to the SCS the hazard of erosion appears to be moderate throughout the site. Again, the soil types are the same throughout the site. Therefore the hazard of erosion appears to be the same throughout the site.

According to the SCS survey, the soil types on the site have a water table at a depth of 18-30 inches from December to April. According to the criteria under policy 14, a seasonably high water table for more than three to four weeks of the year is considered a development limitation. These soil types create some development limitations, but the soil type occurs throughout the site. Thus the soil type does not show that this building site is preferable to other possible building sites.

Mr. Shields testified that the two tax lots have similar characteristics. The bottom half is flatter and subject to seasonal inundation from hillside runoff. The applicant's engineer testified that there are significant areas of saturation of the ground surface as well as seasonal groundwater fluctuations west of the site. There are water loving plants, deep hoof-printing and mottled soils in the lower parts of the site indicating that the water level is at the ground surface during the wet season, December to April. The winter saturation creates some practical difficulties in siting the barn on the steeper portions of the site. To locate the structure elsewhere, the Shields would have to do some extensive measures to divert the groundwater away from the area to an extent that is not necessary in the upper portions of the site.

The applicant argues that the drainage of Tax Lot 29 and the entire hill above Tax Lot 29 results in periodic inundation and saturation of the western portion of Tax Lot 29, to the extent that it is unbuildable.

The size of neighboring lots zoned CFU are as follows:

Tax Lot #	Parcel Size	Could 200' Setback Be Met From a 96' x 120' Farm Bldg?
TL 30[1]	5.00 acres	No
TL 33	10.24 acres	No
TL 34	1.99 acres	No
TL 13	21.00 acres	No

Mr. Shields testified that parcels in the area range from one to 80 acres in size. The applicant argued that this information on the neighboring lots in the staff report focuses only on the "vicinity." The last two criteria contain a disjunction, vicinity or district. The applicant argues that this property is different from what generally occurs in the "district." He submitted a map from page 11 of the West Hills area Plan, Exhibit H1 which he believes shows that the Shields' property is not similar to other property. It is much smaller and it has a different shape. He entered a table of Section 32 in which this property is located, which he said represents the north portion of the "district." Exhibit H2. In Section 32 there are 47 properties, the average parcel size is 12.96 acres; the total properties with 5 acres or more is 30; there are 17 parcels that are less than 5 acres, consisting of 36 percent of the properties in Section 32. The applicant argues that these

[1]Also owned by the Shields, part of the Lot of Record.

facts show that the Shields' property has a condition that generally other properties in the district do not have.

The Hearings Officer does not agree with the applicant's conclusion that the size and shape of this property makes it different from other properties in the vicinity. The fact that 36 percent of the parcels are of a similar size shows that the size of the parcel is a condition that generally applies in the vicinity. The Hearings Officer has concluded that the area subject to this application is the Lot of Record, not the Tax Lot. The Lot of Record contains 10 acres, close to the average lot size in the Section. Also, the Hearings Officer finds that the term "district" means the CFU zone. Although the applicant claims to compare the Shields' property to other properties in the "district," their evidence relates to the single section in which the site is located, which is the vicinity, not the entire CFU district. Tax Lot 20 is rectangular in shape, which is the most common shape for lots or parcels.

One of the adjacent properties is almost identical in size and shape. It is under the same ownership as the subject property. There are sixteen other properties in the Section that re 5 acres or less. For the most part none of the adjacent properties could place the same size structure for the same use without a variance. The size conditions of this property do apply to other properties. Therefore, the criteria would apply to other properties in the vicinity.

The applicant has failed to demonstrate that this property has natural features or topography that other parcels in the vicinity or district don't have or why the structure could not be located further west, thus maximizing the required yard. The applicants' burden is to prove the yard requirement is the maximum possible, not simply that the selected site is the most cost effective, convenient, or easiest place to locate the structure.

Considering Tax Lot 29 alone, with respect to the side yards, there is a 225 foot section in the center of the parcel where a structure could meet the yard requirements. The total 400 foot front and rear yards cannot be met on Tax Lot 29 which is 350 feet deep. However, considering Tax Lot 29 alone, the center of the parcel would be the location where the setbacks would be met to the maximum extent possible. Orienting the building so that its shortest dimension is aligned north/south, would leave a front and rear yard of 127 feet, the front and rear yard could be increased by making the building longer and narrower. From the perspective of the Lot of Record there is a 225 foot by 300 foot area within which a building could be located and meet the yard requirements.

The applicant has not addressed the possibility of siting the structure at its most ideal location from the perspective of minimizing the yard variance needed. The applicant discussed the effects of moving the site 20 feet west and to the far west but not the center of the site.

The geotechnical engineer did not say this is the only location on the property could be built. Form a technical point of view could a building could be built almost anywhere on the site. There may other consequences of moving it, it may be more expensive, take

more cut and fill, require some drainage work, or other things, but it can be done. This conclusion is verified by an affidavit submitted by Mr. Norr of John A. Schrag, a builder, familiar with the property, horse barns and pole buildings. Mr. Schrag stated:

"8. Based on my site visit, my review of the topographical map, and my experience with horse barns and the construction of pole buildings, and absent an engineering report prohibiting such construction, I see no reason why, as a construction project, a structure similar to the existing horse barn could not be placed elsewhere on the lots.

"9 Construction of the horse barn at another location on the property might cost more money, might involve more cut and fill, might require different foundation or drainage work, and might require carefully following property engineering requirements, but unless an engineering report prohibits such construction, it can physically be done.

"10. A critical consideration in all construction projects is compliance with applicable zoning setback regulations. Standard practice requires a licensed contractor to receive proper zoning and building permit approvals before commencing construction on any project.

"11. In my opinion, construction of a pole building is relatively simple construction compared to other forms of construction of a similarly sized building."

Conclusion. The application fails to demonstrate a circumstance or condition related to parcel size or shape, topographical or natural features apply to the property or to the Farm Structure that does not apply generally to other property in the same vicinity or district. The applicant has other remedies to pursue if they were mislead about their ability to build the building at this location.

(2) The zoning requirement would restrict the use of the subject property to greater degree than it restricts other properties in the vicinity or district.

Finding. The applicant is requesting a variance to the 200 foot minimum yard requirement of MCC .2058. The applicant argues that strict application of the yard requirements of MCC.2058 would restrict the use of the subject property to a greater degree than it restricts other properties in the vicinity or district. Application of the MCC.2058 setbacks to Parcel 29 would render Parcel 29 undevelopable because it is only 350 feet in width and accordingly could not afford a structure with 200 foot setbacks on each side.

The 200 foot side and rear yard requirements apply to all parcels within the CFU zone. Other parcels in the immediate area with CFU zoning would require approval of a variance for a structure of the same size as the structure under this permit. Other lands in the CFU zone are subject to the 200-foot setback requirement and subject to the variance criteria. Therefore, the zoning requirement is not restricting this property any more than it would

restrict other property in the vicinity or zone. The applicant has not proved that denial of the structure at this location would result in denial of structure on the site altogether. The applicant has not proved that the structure could not be located elsewhere on the site in greater compliance with the yard and fire zone requirements and with less impact on adjoining forest land. The application fails to demonstrate the zoning requirement would restrict use of the subject parcel to a greater degree than it restricts other properties in the zone or vicinity.

(3) The authorization of the variance will not be materially detrimental to the public welfare or injurious to property in the vicinity or district in which the property is located, or adversely affects [sic] appropriate development of adjoining properties.

Finding. The maintenance of the secondary fire zones is an issue about whether this variance would be materially detrimental to the public welfare or injurious to property in the vicinity or district. The Shields' own 64 feet between the barn and the east side lot line, which includes the 30 foot primary fire zone and 34 feet of the 100-foot secondary fire zone. The area between the barn and east lot line is a gravel and grassy area. The fire safety issue is both relevant to whether the location would be materially detrimental to the public welfare and to whether the location would be injurious to property in the vicinity.

The property owner did not build the structure under an erosion and grading permit. Therefore, it is unknown what the erosion and earth movement impacts of the structure are. The Shields stated that they would accept a condition of approval that would require them to take any measures advised by a fire safety expert that would maximize fire safety. Also, they would accept a condition of approval to require them will submit a Grading and Erosion Control ("GEC") permit application.

The opponent to the applicants' farm structure is a homeowner residing to the east of Tax Lots 29 and 30, Karen Anderson. Ms. Anderson is concerned about fires, complains that her view was impacted due to the construction of the farm structure and she is concerned about the impact of activities at the arena so close to her property.

The fire zone requirements are addressed above. The applicant argues that the farm structure was built on an area that contained sparse tall trees, which obscured the view of the valley below from Ms. Anderson's home. Therefore, they contend, the building does not obstruct a view of the valley that she never had. The Shields testified that they would accept a condition of approval that requires them to plant vegetation to buffer the Farm Structure from Ms. Anderson's view. Finally the applicant argues that Ms. Anderson appears to be disturbed by the appearance of a barn, an agricultural structure. The CFU district expressly allows such structures, but not this close to the property line.

The applicant has failed to demonstrate how the structure will maintain a secondary fire break on adjoining land or how the proximity of the property owner may affect the ability of tax lot 33 to develop in a manner consistent with the code. Fire is the greatest risk for forest lands. That is why there are large yard requirements and why the fire zones were

adopted. Additionally, certain pesticides and other chemical are commonly applied to agricultural crops and timber stands. Many of these chemicals preclude spraying within proximity of people.

There is no competent professional[al] evaluation of the impacts of the structure on the allowed farm and forest practices as they could be implemented on the Anderson property, nor any analysis of the impact of the building at the proposed location on such uses. The applicants have provided some conclusory statements and nothing more. The applicant has not clearly demonstrated the siting of the farm structure will not adversely affect the appropriate development of adjoining parcels.

(4) The granting of the variance will not adversely affect the realization of the Comprehensive Plan nor will it establish a use which is not listed in the underlying zone.

Finding. The Comprehensive Plan Policies are addressed under section IV of this decision. The granting of the variance will not establish a use that is listed in the underlying zone.

VI. Significant Environmental Concern (SEC) Zone Considerations:

A. MCC 11.15.6404 - Uses - SEC Permit Required: (A) All uses permitted under the provisions of the underlying district are permitted on lands designated SEC; provided, however, that the location and design of any use, or change or alteration of a use, except as provided in MCC .6406, shall be subject to an SEC permit.

B. MCC 11.15.6406 - Exceptions: An SEC permit shall not be required for the following: (A) Farm use, as defined in ORS 215.203(a), including buildings and structures accessory thereto on "converted wetlands" as defined by ORS 541.695 (9) or on upland areas;

Finding. As determined earlier in this decision, the structure and proposed use are consistent with ORS 215.203 (2)(a). Additionally, the subject parcel is entirely within an upland area. Therefore, the proposed structure is not subject to the SEC requirements or required to obtain an SEC Permit.

VII. MULTNOMAH COUNTY COMPREHENSIVE PLAN POLICIES:

C. Policies in the Comprehensive Plan which are applicable to this Quasi-judicial Decision are addressed as follows:

1. Policy No. 13, Air, Water and Noise Quality: Multnomah County, ... Supports efforts to improve air and water quality and to reduce noise

levels. ... Furthermore, it is the County's policy to require, prior to approval of a legislative or quasi-judicial action, a statement from the appropriate agency that all standards can be met with respect to Air Quality, Water Quality, and Noise Levels.

Finding. This application has been reviewed through a quasi-judicial process and therefore applicable comprehensive plan policy findings are necessary. A statement from the Sheriffs Office (noise) and County Sanitarian (water quality) are required.

The applicant submitted a Police Services Review Form executed by the Multnomah County Sheriff's Office. Christopher Brand testified that he spoke to Sargent John Ingram of the Multnomah County Sheriff's Office who indicated that, in his opinion, the project as proposed will create no adverse noise impacts.

The applicants contacted Jason Abraham of the Multnomah County Sanitarian Office who indicated storm water discharge from the subject property requirements would be addressed when the County processes a Grading and Erosion Control ("GEC") permit for the farm structure, as a condition of approval. Mr. Abraham stated that if the applicant applies for and secures a GEC permit, the applicant will be able to meet all standards with respect to water quality. Mr. Abraham added that if the applicant intends to install a bathroom, or pipe water to the farm structure, the applicant will have to apply for a plumbing permit. At this point in time, the applicant has no plans for running water or bathroom facilities to the farm structure. In the event these uses are proposed, the applicant could be required by conditions of approval to apply for relevant permits. The Policy 13 and could be satisfied.

2. **Policy No. 14, Development Limitations. The County's Policy is to direct development and land form alterations away from areas with development limitations except upon a showing that design and construction techniques can mitigate any public harm or associated public cost, and mitigate any adverse effects [sic] to surrounding persons or properties. Development limitations areas are those which have any of the following characteristics:**

   A. Slopes exceeding 20%;

Finding. The USGS quadangle map of this area shows that the Shields' property is located immediately below the ridge, on the west slope of the Tualatin Mountains, between elevations of approximately 1,000 feet on the east to 900 feet on the southwest. Koroch, Woods, and Naussbaumer, consultants and contractors for the applicants, have indicated that the present site of the farm structure on the Tax Lot is the only place to feasiblely site the structure on the Tax Lot because slopes on the site reach 40%. Specifically, Vern Naussbaumer indicates that the arena location had approximately a 7% grade and moving it any further west would have put the building on a 40% slope (Mr. Naussbaumer mistakenly indicates that the slope increases to the south of the current site. It increases to the west, not the south, of the current site).

Karl Koroch, P.E., stated in his April 15, 1997 letter that the building pad at its current location required approximately 15 feet of cut on the east side and 6-12 feet of fill on the west side. He said that all other locations on the site (addressing Tax Lot 29 only) would have required at least twice that amount of cut and fill. Vern Nussbaumber, the excavator, stated in his March 18, 1997, letter that the existing slope at the barn site was 7 % and moving the barn any further south would have put it on 40% slope. He said that would have required a 50 foot cut on the north and a 50-foot fill on the south. He said that "even though this was compacted it could not be guaranteed that this site would not slide in wet weather. Mr. Koroch said that this additional fill "would have made it very difficult if not impossible to appropriately restrain the support posts which provide one component of the lateral structural system." Karl Koroch stated that relocating the building to comply with the 200 foot setback would result in siting it 15-20 feet from the Shields' residence.

The builder stated that the cuts and fills required on other parts of the Tax Lot "would make it impossible to erect the building. The fill would be to[o] great to set poles and get enough immersion to prevent settling and provide proper wind loads. It would not be possible to provide proper drainage and keep the cut from sliding away in heavy rains. Just moving the site 20' to the southwest would involve another 25' drop in grades."

By siting the structure on a slope of approximately 7%, the applicants meet this criteria. The Hearings Officer has concluded that the Lot of Record is the area the Code requirements apply to. The applicant has not shown that the structure could not be built elsewhere on the Lot of Record.

The application lacks technical data in the form of a topographic survey to support a finding that there is no potential building area west of the existing location which includes slopes of less than 20%. Based on the *Soil Survey of Multnomah County, Oregon*, the majority of the parcel is Cascade silt loam (7C) with slopes of 8-15%, including areas west of the existing location. The fact that the site is the best site considering slopes does not alone justify its location there. Other factors also are required to be considered, specifically the yard and fire zone requirements. In addition, the applicant's evidence addresses only a pole barn structure. The applicant has not shown that a different construction type could not have been located elsewhere on the Lot of Record.

B Severe soil erosion potential;

Finding. The *Soils Survey of Multnomah County* at pages 24 (2nd column) and 25 (2nd column) identify the hazard of erosion as "moderate" on 7C soils and "high" on 7D soils. Because the farm structure appears to be on 7C soils, the hazard of erosion appears to be moderate. However, 7C soils extend to the west of the existing building. The site is composed or Portland Hills silts which are, according to the SCS are moderate for erosion. The site is not on particularly steep slopes, averaging 12 percent. There is relative instability comparing the top flat area, where the building is located, and the lower area which is 5-6 percent steeper. The site where the barn is located is the most stable area on the site. The earthwork aspects, referring to the cuts made on the upper portion of the site and the fills that were made on native ground to provide a bench to contain the smallest

arena possible for the proposed use, are important with respect to slope stability. The existing site may be the most stable site on the Tax Lot and be the best location from a soil erosion standpoint. The potential for erosion is only one of many criteria that applies to the location of the structure. The fact that there may be greater erosion potential if the structure were located elsewhere does not alone lead to the conclusion that the structure has to be located there regardless of other criteria, such as yard requirements, fire safety zone requirements and impact considerations on adjoining lands.

C. Land within the 100 year flood plain;

Finding. There is no land on the site that is within a 100-year flood plain. The subject parcel is not designated as a Flood Hazard area on the Multnomah County Zoning Maps based on Maps prepared by the Federal Emergency Management Agency (FEMA).

D. A high seasonal water table within 0-24 inches of the surface for more than 3 or more weeks of the year;

Finding. The applicant states the western portion of the site has a high seasonal water table within 0-24 inches of the surface for more than three or four weeks of the year and that the lower flatter area of the site downhill is inundated by runoff in the winter. The applicant states that the periodic high-water table and inundation renders that portion of the site unbuildable. That is another reason why Messrs. Koroch, Woods and Naussbaumer indicated that the current location of the Farm Structure is the best site reasonably feasible to locate the structure. The *Soils Survey of Multnomah County* at pages 24 (2nd column) and 25 (2nd column) states, "[a] water table is at a depth of 18-30 inches from December through April", in regards to all soils on the parcel; the high seasonal water table is the same throughout the site. The applicant has not address methods of draining the runoff to allow development elsewhere on the site. The applicant concedes that some measures could be taken to diver groundwater away from a structure located to the west. The applicant has not proved that this is the only location on the Lot of Record, or on the Tax Lot, that a structure could be built.

A. A fragipan less than 30 inches from the surface; and

Finding. The soils on the parcel consist of Cascade Silt Loam 7C & 7D. Based on the *Soils Survey of Multnomah County* at pages 25 (middle of 1st column) and page 26 (2nd column) these soils have a fragipan at a depth of 20 to 30 inches. Because the entire site appears to include a fragipan, this development limitation does not support locating the structure at its existing site over other locations on the parcel.

F. Lands subject to slumping, earth slides or movement.

Finding. The subject parcel does not contain any lands subject to slumping, earth slides or movement. Relocating the structure would likely require the farm structure to be built on more fill than at the existing site. Messrs. Koroch, Woods and Naussbaumer indicated that locating the farm structure further west could result in sub-optimal compaction and thus

could render the site subject to slumping, earth slides or movement. For this reason, Messrs. Koroch, Woods and Naussbaumer have concluded that the current site is the only location reasonably feasible for the farm structure. The applicant's representatives state that this farm structure at a location further west "could" result in "sub-optimal compaction" They do not state that it would and they do not analyze compaction techniques that would be adequate to support a pole barn or some alternate building type. The existing location of the structure involved grading and fill without benefit of the required Grading and Erosion Control Permit and no compaction tests have been entered into the record for this location. The applicant has not met the requirements of this Plan Policy.

3. **Policy No. 22, Energy Conservation: The County's policy is to promote the conservation of energy and to use energy resources in a more efficient manner. ... The County shall require a finding prior to approval of a legislative or quasi-judicial action that the following factors have been considered:**

   A. The development of energy-efficient land uses and practices;
   B. Increased density and intensity of development in urban areas, especially in proximity to transit corridors and employment, commercial and recreation centers;
   C. An energy-efficient transportation system linked with increased mass transit, pedestrian and bicycle facilities;
   D. Street layouts, lotting patterns and designs that utilize natural environmental and climactic conditions to advantage.
   E. Finally, the County will allow greater flexibility in the development and use of renewable energy resources.

4. **Policy No. 37, Utilities: The County's policy is to require a finding prior to approval of a legislative hearing or quasi-judicial action that:**

WATER DISPOSAL SYSTEM:

   F. The proposed use can be connected to a public sewer and water system, both of which have adequate capacity; or
   G. The proposed use can be connected to a public water system, and the Oregon Department of Environmental Quality (DEQ) will approve a subsurface sewage disposal system on the site; or
   H. There is an adequate private water system, and the Oregon Department of Environmental Quality (DEQ) will approve a subsurface sewage disposal system; or
   I. There is an adequate private water system, and a public sewer with adequate capacity.

Finding. The use is a farm use allowed outright and not subject to this policy.

DRAINAGE:

A. There is adequate capacity in the storm water system to handle the increased run-off; or

A. The water run-off can be handled on the site or adequate provisions can be made; and

B. The run-off from the site will not adversely affect the water quality in adjacent streams, ponds, lakes or alter the drainage on adjacent lands.

Finding. The application has not addressed this policy. The existing structure was constructed without the required Grading and Erosion Control Permit. The Grading and Erosion Control Permit process addresses this policy and, if approved, should be required as a condition of approval.

5. **Policy No. 38, Facilities: The County's Policy is to require a finding prior to approval of a legislative or quasi-judicial action that:**

   A. The appropriate School District has had an opportunity to review and comment on the proposal.

   B. There is adequate water pressure and flow for fire fighting purposes; and

   C. The appropriate fire district has had an opportunity to review and comment on the proposal.

   D. The proposal can receive adequate local police protection with the standards of the jurisdiction providing police protection.

Finding. The availability and accessibility of fire fighting equipment and emergency vehicles to access the proposed structure is applicable for the public welfare. The applicant has obtained a statement from the appropriate fire district that service is available and access is acceptable for necessary emergency vehicles. As noted above, there fire district has provided a favorable response to the request. The District responds to fires in this area with equipment carrying 3,800 gallons of water and the equipment can be refilled at fire hydrants near the site on Newberry Road. The Sheriff's Office has responded that the use can receive adequate police protection. The proposed use does not have any school-related impact and therefore school district review and approval is not required.

6. **Policy No. 40, Development Requirements: The County's policy is to encourage a connected park and recreation system and to provide for small private recreation areas by requiring a finding prior to approval of legislative or quasi-judicial action that:**

   C. Pedestrian and bicycle path connections to parks, recreation areas and community facilities will be dedicated where appropriate and where designated in the bicycle corridor capital improvements program and map.

D. **Landscaped areas with benches will be provided in commercial, industrial and multiple family developments, where appropriate.**

E. **Areas for bicycle parking facilities will be required in development proposals, where appropriate.**

Finding. There are no existing public recreational plans in the immediate area which involve the subject parcel.

Dated this 20th day of October, 1997

Deniece B. Won

Deniece B. Won
Hearings Officer

MULTNOMAH COUNTY

DEPARTMENT OF ENVIRONMENTAL SERVICES
DIVISION OF PLANNING AND DEVELOPMENT
2115 SE MORRISON STREET
PORTLAND, OREGON 97214 (503) 248-3043

11# ZONING 500.00
TOTAL 500.00
0000-00 10/31/97
6966 ST ART 4:24PM

NOTICE OF REVIEW

1. Name: Shields (*Last*), _____ (*Middle*), Les and Florence (*First*)
2. Address: 11272 N.W. Skyline Blvd. (*Street or Box*), Portland (*City*), OR 97231-2633 (*State and Zip Code*)
3. Telephone: (503) 285 - 4131
4. If serving as a representative of other persons, list their names and addresses:
   Eldon Shields, 693 T Street, Springfield, Oregon 97477
   Appellants represented by: Christopher C. Brand, Davis Wright Tremaine, 1300 S.W. Fifth Avenue, Suite 2300, Portland, Oregon 97201
5. What is the decision you wish reviewed (*e.g.*, denial of a zone change, approval of a subdivision, *etc.*)?
   Hearings Officer Decision Denying Application for Variance in CFU District (Case Files: HV 13-97 and SEC 23-97)
6. The decision was announced by the Hearing Officer on October 21, 19 97
7. On what grounds do you claim status as a party pursuant to MCC 11.15.8225?
   As applicants below.

RECEIVED
97 OCT 31 PM 3:20
MULTNOMAH COUNTY
PLANNING SECTION

8. Grounds for Reversal of Decision (*use additional sheets if necessary*):
Please refer to attached Narrative Notice of Review.

9. Scope of Review *(Check One)*:

(a) [ ] On the Record

(b) [ ] On the Record plus Additional Testimony and Evidence

(c) [X] *De Novo* (*i.e.*, Full Rehearing)

10. **If you checked 9(b) or (c), you must use this space to present the grounds on which you base your request to introduce new evidence** (Use additional sheets if necessary). For further explanation, see handout entitled *Appeal Procedure*.

Pursuant to Multnomah County Board of Commissioners Resolution 95-55, this matter is to be heard de novo.

Signed: Eleanora A. Skeels Date: 10-31-97

For Staff Use Only

Fee:

Notice of Review = $500.00

Received by: _____ Date: _____ Case No. _____

BEFORE THE BOARD OF COUNTY COMMISSIONERS

OF MULTNOMAH COUNTY, OREGON

IN THE MATTER OF REQUEST FOR A MAJOR VARIANCE TO THE MINIMUM YARD REQUIREMENT (SETBACK) OF THE COMMERCIAL FOREST USE ZONE TO PROVIDE FOR A 96' X 120' BARN/ARENA	))))))	Case Files: HV 13-97 and SEC 23-97 NOTICE OF REVIEW NARRATIVE

I.

MATTER SOUGHT TO BE REVIEWED

The matter sought to be reviewed is the decision of Multnomah County Hearings Officer Deniece B. Won, who denied Applicants' request for a major variance from the minimum yard requirement (setback) of the Commercial Forest Use ("CFU") district to provide for a 96' X 120' Barn/Arena. The Notice of Decision was signed by the Hearings Officer on October 20, 1997 and was filed with the Planning Director, submitted to the Board of Commissioners' Clerk and mailed on October 21, 1997.

II.

NAME OF PETITIONERS

The petitioners in this appeal are Les and Florence Shields and Mr. Eldon Shields, who is represented in the appeal by Les and Florence Shields (collectively "Petitioners" or "Applicants"). Petitioners are represented in this appeal by Christopher C. Brand, of the law firm of Davis Wright Tremaine, 2300 First Interstate Tower, 1300 S.W. Fifth Avenue, Portland, Oregon 97201; telephone number (503) 241-2300.

III.

STATEMENT OF INTEREST OF PETITIONERS

Petitioners are interested in this matter because they are the Applicants who requested the major variance from the minimum yard requirement (setback) of the CFU district to provide for a 96' X 120' Barn/Arena.

IV.

SPECIFIC GROUNDS ON APPEAL

The Hearings Officer erred in denying Applicants' application in the following respects:

1. The Hearings Officer erred in finding and concluding that the two contiguous parcels owned by the Petitioners, 2N 1W 32, Tax Lot 29 and 30, constitute a "Lot of Record" for purposes of applying the relevant variance, dimensional and development standards of the Multnomah County Code ("MCC"). There is no basis in law or in fact for this finding and conclusion.

The Hearings Officer's conclusion that the two separate and distinct tax lots constitute a single "Lot of Record" served as the basis for the Hearings Officer's denial of the application in several instances. Petitioners assign error to each instance in which the Hearings Officer relied on this conclusion to reach a conclusion of non-compliance with relevant standards or criteria.

2. The Hearings Officer erred in finding or concluding that:

> "Reducing the required side yard and secondary safety break by more than 50% on this hillside site places the Anderson property in jeopardy. The applicants have not demonstrated this location has the 'least impact' on the Anderson property."

There is no evidence that the Anderson property is placed "in jeopardy" by the proposed setback. There is substantial evidence in the record that the proposed setback will not place the Anderson property "in jeopardy" and the Multnomah County Code allows decreased secondary firebreaks. See MCC 11.15.2074(5)(c)(v).

3. The Hearings Officer erred in finding or concluding that:

> "The fact that all but one of the adjoining property owners consented to the variance request does not prove that the structure is sited at a location that has the least impact on nearby adjoining farm and forest lands."

The fact that all but one of the adjoining property owners consented to the variance request is substantial evidence that the structure is sited at a location that has the least impact on nearby or adjoining farm and forest lands.

4. The Hearings Officer erred in finding or concluding that:

> "The Shields have not shown that the Arena's location has the least impact on neighboring adjacent farm and forest uses. Mr. Norr and Ms. Anderson's testimony that Ms. Anderson's views may be impaired, wildfires spread may be

increased, as well as other arguments of alleged impacts, are relevant and uncontroverted."

There is substantial evidence in the record that the proposed location of the barn will have the least impact on neighboring farm and forest uses. The testimony of Mr. Norr and Ms. Anderson referenced above may be relevant but has been controverted by Applicants' evidence.

5. The Hearings Officer erred in finding or concluding that: "The Applicants have failed to demonstrate that the proposed location has the least impact on adjoining forest or agricultural lands when compared with other possible locations on their own property in considering different building sizes and construction methods." (emphasis in original)

There is substantial evidence in the record that the size and type of structure are necessary for the farm use proposed. There is substantial evidence that based on the size of the building and type of structure, the current site is the best location on the site. On these bases, there is substantial evidence that the current site has the least impact on adjoining forest or agricultural lands.

6. The Hearings Officer erred in finding or concluding that:

"The entire length of the access should be considered because the purpose of the requirement [MCC 11.15.2074(A)(4)] is to minimize the distance from a public road to a structure for emergency response vehicles."

There is no bases for finding that "the purpose of" MCC 11.15.2074(A)(4) is to minimize the distance from a public road to a structure for emergency response vehicles. In any event, there is substantial evidence that the existing access road has been approved by emergency service providers.

7. The Hearings Officer erred in finding or concluding that:

> "The access is an easement. The access provides access to a dwelling on Tax Lot 30 (the Shields residence) and on Tax Lot 33 (Ms. Anderson), thus it meets the definition of 'a private road [1]' (including approved easements) access [sic] to dwellings. The Hearings Officer concludes that the access requirements of MCC 11.15.2074(D) apply and that Applicants need to prove that the MCC 11.15.2074(A)(4) requirements that any access road in excess of the 500 feet in length is necessary due to physical limitations unique to the property and is the minimum length required. Applicants have not proved that the access is the minimum necessary."

There is no reasonable basis for applying MCC 11.15.2074(D) to this application because that section deals with the new construction of private roads accessing two or more dwellings. The application deals with the access to an accessory farm structure. On its face, MCC 11.15.2074(D), does not apply in this instance. There is substantial evidence in the record that the driveway extension proposed is neither an "access road" or "service corridor." There is also substantial evidence that the driveway extension proposal does not exceed 500 feet. Therefore, the requirements of MCC 11.15.2074(4) cannot serve as a basis for denying the application.

8. The Hearings Officer erred in finding or concluding that:

> "The applicant has not demonstrated that the structure was located to comply with the secondary fire safety zone requirements. The application fails to comply with the required secondary fire zone."

There is substantial evidence that the purpose and intent of the secondary fire break has been met by the Applicants. MCC 11.15.2074(5)(c)(v) allows the secondary fire break to be less than the dimensions set forth in MCC 11.15.2074. There is substantial evidence in the record that the secondary firebreak requirements have been met.

9. The Hearings Officer erred in finding or concluding that:

> "The applicant's burden is to prove the yard requirement is the maximum possible, not simply that the selected site is the most cost effective, convenient, or easiest place to locate the structure."

There is no legal basis for this conclusion. MCC 11.15.8505 makes clear that an applicant's burden is to demonstrate that there are "practical difficulties" in application of the MCC and that an applicant's proposal meets the requirements of MCC 11.15.8505. There is substantial evidence in the record that Applicants have complied with MCC 11.15.8505.

10. The Hearings Officer erred in finding or concluding that:

> "The application fails to demonstrate a circumstance or condition related to the parcel's size or shape, topographical or natural features

apply to the property or to the Farm Structure that does not apply generally to other properties in the same vicinity or district..."

The Applicants, through the application and written and oral testimony on the record, have demonstrated that a circumstance or condition related to the parcel's size or shape, topographical or natural features applies to the property or to the use which does not apply generally to other properties or uses in the same or vicinity or district.

11. The Hearings Officer erred in finding or concluding that:

"The application fails to demonstrate the zoning requirement would restrict use of the subject parcel to a greater degree than it restricts other properties in the zone or vicinity."

The Applicants, through the application and written and oral testimony on the record, have demonstrated that the zoning requirement would restrict the use of the subject property to a greater degree than it restricts other properties in the vicinity or district.

12. The Hearings Officer erred in finding or concluding that:

"The applicant has not clearly demonstrated the siting of the farm structure will not adversely affect the appropriate development of adjoining parcels."

The Applicants, through the application and written and oral testimony on the record, have demonstrated that the siting of the structure will not adversely affect the appropriate development of adjoining parcels.

V.

APPEAL FEE

Attached to this Petition for Review is the filing fee in the amount of Five Hundred Dollars ($500.00) as set forth in the Multnomah County Hearings Officer's Decision Packet dated October 21, 1997. This Petition for Review consists of 8 pages and all pages are present.

VI.

REQUESTED ACTION

Based upon the MCC, arguments posed by Applicants to the Hearings Officer, and substantial evidence in the record, Petitioners respectfully request that the Board of County Commissioners reverse the Hearings Officer's decision and grant Petitioners' request for a major variance from the minimum yard requirement (setback) of the CFU zone to provide for a 96' X 120' Barn/Arena.

DATED this 31 day of October, 1997.

Respectfully submitted,

DAVIS WRIGHT TREMAINE

By: _____

Christopher C. Brand, OSB #93501
Of Attorneys for Petitioners, Les and Florence Shields and Eldon Shields

Davis Wright Tremaine LLP
LAW OFFICES

1300 S.W. Fifth Avenue · Suite 2300 · Portland, Oregon 97201-5682
(503) 241-2300 · FAX: (503) 778-5299
Website: http://www.dwt.com

CHRISTOPHER C. BRAND
DIRECT DIAL: (503) 778-5219

October 31, 1997

VIA HAND DELIVERY

Ms. Kathy Busse
Planning Director
Multnomah County
Department of Environmental Services
Transportation & Land Use Planning Division
2115 S.E. Morrison Street
Portland, Oregon 97214

Re: Notice of Review
Case Files: HV 13-97 and SEC 23-97

Dear Ms. Busse:

Please find enclosed the following for submittal to the Multnomah County Board of Commissioners:

1. Notice of Review Form;
2. Notice of Review Narrative; and,
3. Check in the amount of $500 representing Petitioners' filing fee.

Please do not hesitate to call me if you should have any questions regarding any of the enclosures.

Thank you.

Sincerely,

DAVIS WRIGHT TREMAINE LLP

Christopher C. Brand

CCB:bcd
Enclosures
cc: Les and Florence Shields
f:\78\785141\busse.ltr

PAUL NORR
ATTORNEY AND COUNSELOR AT LAW
1020 S.W. TAYLOR STREET, SUITE 530
PORTLAND, OREGON 97205-2550

OF COUNSEL
DENISE FRISBEE

TELEPHONE (503) 228-3862
FAX (503) 224-1123

February 2, 1998

Chair Beverly Stein
Multnomah County Board of Commissioners
1120 S.W. Fifth, Room 1515
Portland, OR 97204

Commissioner Gary Hansen
Multnomah County Board of Commissioners
1120 S.W. Fifth, Room 1500
Portland, OR 97204

Commissioner Sharron Kelley
Multnomah County Board of Commissioners
1120 S.W. Fifth, Room 1500
Portland, OR 97204

Clerk of the Board
Multnomah County Board of Commissioners
1120 S.W. Fifth, Room 1515
Portland, OR 97204

Re: Opposition to Shields' Application for a New Commercial Horse Barn and Arena in Applicant's Appeal of HV 13-97

Hearing Scheduled for: 9:30 a.m., February 3, 1998

Dear Chair Stein and Commissioners Kelley and Hansen:

I represent Karen Anderson, one of the opponents to the Application for a new commercial horse barn and arena proposed to be located at 11272 S.W. Skyline Boulevard. Karen owns the property at 11276 N.W. Skyline Boulevard (designated as Tax Lot 33). Karen's property is immediately east of the Applicants' Tax Lots 29 and 30, and is the property closest to the new barn and arena.

I. THE PLANNING STAFF AND HEARINGS OFFICER FIND AT LEAST 10 APPROVAL CRITERIA ARE NOT MET.

The Planning Staff and the Hearings Officer have each found more than ten (10) separate and distinct criteria which cannot be met by this Application. This is not a close case.

The Applicants originally filed an application dated April 25, 1997. After an informal negative response from the Planning Staff, the Applicants requested a postponement of the Hearings Officer hearing to allow themselves more time to prepare and submit more materials. After the formal Staff Report recommended denial, the Applicants submitted more information and materials at the Hearings Officer hearing, and then requested still more time after the hearing to submit still more materials.

After all this the Applicants have not been able to demonstrate compliance with the approval criteria because they can't. The required facts simply are not there.

II. KAREN ANDERSON'S OBJECTIONS

In the case file they are copies of letters from me to the Hearings Officer dated September 16, 1997, and September 30, 1997, which outline Karen's objections in this case. On behalf of Karen Anderson, I raise all of those same objections before the Board.

A brief summary of the objections is:

A. THE APPLICANTS HAVE FAILED TO ADDRESS IN ANY MEANINGFUL WAY HOW ANY CLAIMED "CIRCUMSTANCE OR CONDITION" DOES NOT GENERALLY APPLY TO OTHER PROPERTIES IN THE SAME VICINITY OR DISTRICT. THIS IS NOT A UNIQUE SITE.

B. THE APPLICANTS HAVE FAILED TO ADDRESS IN ANY MEANINGFUL WAY HOW THE ZONING REQUIREMENTS REGARDING THE 200 FOOT SIDE AND REAR YARD SETBACKS WOULD RESTRICT THE USE OF THE SUBJECT PROPERTY TO A GREATER DEGREE THAN IT RESTRICTS OTHER PROPERTIES IN THE VICINITY OR DISTRICT.

C. THE MANDATORY REQUIREMENTS OF MCC 11.15.2074 ARE NOT MET.

1. The Applicants have failed to show that the proposed location has the least impact on nearby or adjoining forest or agricultural lands as required by the approval criteria.

2. The Applicants have failed to show the impact of their proposed building on neighboring forest operations or accepted farming practices.

3. The Applicants failed to demonstrate that the risks associated with wildfire are minimized. The firebreak provisions require a primary fire safety zone of a minimum of 30 feet in all directions from a structure, combined with a secondary fire safety zone extending a minimum of 100 feet in all directions around the primary safety zone. Thus, there is a total fire safety zone of 130 feet required by MCC .2074(5)(b).

   The proposed building is located within 64 feet of the Anderson property, providing a firebreak of less than 50% of the required 130 feet. The Applicants cannot possibly meet the firebreak requirements at this location. The Applicants obviously cannot require Karen Anderson to trim or thin out her trees. The Applicant's materials themselves indicate that on hillside sites the firebreak should be <u>increased</u> not decreased.

D. THE APPLICANTS ORIGINALLY FILED AN APPLICATION SEEKING ONLY A VARIANCE FROM THE 200 FOOT REAR/SIDE YARD SETBACK REQUIREMENTS OF MCC 11.15.2058. THEY HAVE NEVER FILED AN APPLICATION TO REDUCE THE 100 FOOT SECONDARY FIREBREAK REQUIREMENT OF 11.15.2074(A)(5)(b)(iii). THE BOARD CANNOT APPROVE A VARIANCE WHEN THE APPLICANTS HAVE NOT FILED THE REQUIRED APPLICATION.

III. SUMMARY

The Applicants have failed to provide any substantial evidence regarding a number of the approval criteria. The building was placed on the site illegally, and the Applicants are now apparently attempting to justify their own preferred location, by claiming that they can't figure out how to build this same pole barn farther down the hill.

In a number of instances the Applicants claim that the justification for locating so close to the Anderson property is to keep the proposed commercial horse barn, the associated commercial activity, and the fire danger farther away from their own home.

Enclosed is a copy of a letter dated January 26, 1998, from Chris Olson of Skyline Realty indicating that prior to the construction of the horse barn he would have valued the Anderson property "approximately $50,000.00 higher". As required to qualify for a variance, the Applicants cannot prove that this location 64 feet rather than 200 feet from the Anderson property line has the least impact on nearby property.

Please include this letter in the record of this case and provide me with a copy of the Board's written decision.

Respectfully,

Paul Norr

PN:srs
Enclosure

January 26, 1998

Karen Anderson
11276 NW Skyline Blvd.
Portland, OR 97231

Dear Karen,

Thank you for you interest in having Skyline Realty issue an opinion of value.

After my examination and study, I have placed the market range of your property in its existing state between $310,000 and $330,000. Prior to the construction of the commercial arena below I would have placed the range approximately $50,000 higher. There are several reasons for the difference. First, the effect on your view and the aesthetics of the parcel. Secondly, the proximity of the arena to your property line, and thirdly, the net effect of traffic considering this is a commercial endeavor. There are other less impacting reasons for the difference such as evening lighting, hours of operation, noise, etc.

My opinion is based on several criteria. Not only do I look at the overall condition of the property, but I analyze the real estate activity and trends of the particular area. In this case the Skyline Ridge area and surrounding view properties. In the analyzing process a comparison of like properties is made. I look at where they are, what they sold for, what they listed for, and what they may currently be on the market for. When we speak of like properties we mean those which are of like acreage and somewhat similar home and/or other improvements. We also put stock in the general condition of the parcel, and the condition of the surrounding neighbors. We next study the tax information and adjust those numbers to more accurately reflect market value. Finally, as in this case, we skew our numbers upward or downward to reflect a

valuation for the aesthetics or effect on aesthetics of the piece. Once completed we average all the information to come to our opinion of value. Because of the uniqueness of your property strict comparables are difficult to identify, so we must rely partially on subjective data. That's where our experience in the area is helpful.

Please note however, this is only an opinion of value not an appraisal. If an appraisal becomes necessary you will need to contact a licensed appraiser.

The data involved in this compilation comes from the Realtors Multiple Listing Service, PRC computer systems, RMLS quarterly comparables, Multnomah County Metroscan, and the Portland Metropolitan Association of Realtors.

If you wish I can supply you with some of the raw data used, you may find it interesting reading.

Thank you for your confidence in Skyline Realty, and don't hesitate to contact me with any questions regarding this valuation, its concepts, or real estate needs in general.

Sincerely,

Chris Olson

PAUL NORR
ATTORNEY AND COUNSELOR AT LAW
1020 S.W. TAYLOR STREET, SUITE 530
PORTLAND, OREGON 97205-2550

OF COUNSEL
DENISE FRISBEE

TELEPHONE (503) 228-3862
FAX (503) 224-1123

HAND DELIVERED

September 30, 1997

Deniece Won,
Hearings Officer
Department of Environmental Services
Transportation and Land Use Planning Division
Multnomah County
2115 S.E. Morrison Street
Portland, OR 97214

Re: Case File Nos. HV13-97 and SEC 23-97
(Les and Florence Shields)

Dear Hearings Officer:

I represent Karen Anderson, the owner of the property at 11276 N.W. Skyline Boulevard, which is located adjacent to Tax Lots 29 and 30 which are owned by the Applicants Les and Florence Shields.

This letter is in response to the new materials and arguments submitted by Christopher Brand on behalf of the Applicants via Mr. Brand's letter dated September 24, 1997. Pursuant to the schedule set forth by the Hearings Officer, the record is now closed to the Applicants for the submission of any additional evidence, although Applicants may submit their final written argument.

On behalf of Ms. Anderson, I incorporate herein all issues raised in my letter of September 16, 1997, and at the public hearing.

A. THE APPLICANTS ARE NOW, AFTER THE CONCLUSION OF THE HEARING, ATTEMPTING TO PIGGYBACK A NEW VARIANCE APPLICATION (SEEKING TO ALTER THE 100 FOOT SECONDARY FIREBREAK REQUIREMENT OF MCC 11.15.2074(A)(5)(b)(iii)) ONTO THE ORIGINAL VARIANCE APPLICATION (SEEKING TO ALTER THE 200 FOOT REAR/SIDE YARD SETBACK REQUIREMENTS OF MCC 11.15.2058).

The Applicants claim in the September 24, 1997, letter that their original variance request was intended to encompass a variance to the 100 foot secondary firebreak requirement of MCC 11.15.2074. (See September 24, 1997, letter, page 3, paragraph 3).

In light of the following, it can not reasonably be concluded that the Applicants had at any time prior to the hearing requested a variance to the MCC 11.15.2074 secondary firebreak requirements:

1. The Applicants' own materials themselves specially state on page 10, under the heading for MCC 11.15.2074(A)(5)(b) regarding *"Maintenance of a primary and a secondary fire safety zone"*:

> "Response: The primary and secondary fire breaks required by this code section have been complied with. The Farm Structure and dwelling are separated by approximately eighty five (85) feet of open space, and the pruning, etc. called for by the secondary firebreak provisions have been effected."

Contrary to requesting a variance, the Applicants were claiming that no variance was necessary and that they had complied with the applicable secondary firebreak standard. Now realizing that they were wrong in their claim that these secondary firebreak requirements "have been complied with", and they seek to piggyback in a new variance request.

2. The Application states on page 7 of the application:

> "This application requests a variance from the minimum setback requirements in MCC .2058 but otherwise complies with the development standards in MCC .2074, as demonstrated below."

The minimum setbacks in MCC .2058 are the 200 foot rear and side yard requirements, also required through MCC .2074(A)(1). The Applicants claim that except for these specific .2058 setback requirements, they will comply with all the other requirements of .2074, which include the 100 foot secondary firebreak requirements in .2074(A)(5)(b). Again, contrary to requesting a variance, the Applicants stated that no variance was required.

3. The application materials never ask for or even address a variance to MCC 11.15.2074(A)(5)(b).

4. The application materials repeatedly address the 200 foot setback variance to MCC .2058 (see Application, p. 1, 3, 5, 6), but not the alleged variance for MCC .2074.

5. The public notice for the August 20, 1997, hearing states "Major Variance to the minimum yard requirements (setback) of the Commercial Forest Use." The minimum yard requirements are set out in MCC .2058, entitled "Dimensional Requirements", in subsection(C), entitled "Minimum Yard Dimensions". Yard setbacks and fire safety zones are two independent concepts.

Once again, the Applicants are asking post-hearing that they be granted an additional variance to a standard they have heretofore claimed they were going to meet.

The Hearings Officer does not have the authority, under either the County Code or under state law, to allow initiation of a new variance request at this stage of the case. Introducing the new variance request at this stage violates the application, notice and hearings requirements of both state law and the County Code.

B. THE APPLICANTS HAVE STILL FAILED TO ADDRESS IN ANY MEANINGFUL WAY HOW ANY CLAIMED "CIRCUMSTANCE OR CONDITION" DOES NOT GENERALLY APPLY TO OTHER PROPERTIES IN THE SAME VICINITY OR DISTRICT.

Regarding the standard of MCC 11.15.8505(A)(1), the Applicants seem to be taking the general approach of saying that if the vicinity or district is made big enough, then percentage-wise not enough of the other properties in such a large vicinity or district will generally have the same attributes as the properties in the smaller vicinity or district. In other words, if you define the vicinity or district big enough to make it heterogeneous enough, then overall the properties will generally be different from each other.

MCC does not define "vicinity" or "district". Webster's Ninth New Collegiate Dictionary, Merriam-Webster, Inc., 1985, gives as its primary definitions of "vicinity":

> "1: The quality or state of being near: PROXIMITY
> 2: A surrounding area or district: NEIGHBORHOOD"

These primary definitions, tying together the concepts of "vicinity" and "surrounding district", demonstrate the importance of proximity or nearness to these definitions. This is contrary to the Applicants' larger-area view.

One fact is indisputable: There is no substantial evidence in the record in this case proving that Tax Lot 29 has some unique circumstance or condition that is not generally shared by every other adjacent property. Further, there is no such evidence that Tax Lot 29 is unique when compared to the other properties on the same hill and in the proximate neighborhood.

Certain characteristics of Tax Lot 29 were discussed, but not in any meaningful way in relationship to the other properties in the immediate or proximate or surrounding neighborhood.

C. **THE APPLICANTS HAVE FAILED TO ADDRESS IN ANY MEANINGFUL WAY HOW THE ZONING REQUIREMENTS REGARDING THE 200 FOOT SIDE AND REAR YARD SETBACKS WOULD RESTRICT THE USE OF THE SUBJECT PROPERTY TO A GREATER DEGREE THAN IT RESTRICTS OTHER PROPERTIES IN THE VICINITY OR DISTRICT.**

Regarding the standard of MCC 11.15.8505(A)(2), the Applicants have failed to address this standard in the same manner in which is discussed under Section B above. There is no meaningful evidence that the code standards restrict use of the subject property to a greater degree than other properties in the immediate or proximate or surrounding neighborhood.

D. **THE APPLICANTS HAVE FAILED TO ADDRESS THE IMPACTS OF THE REQUESTED 200 FOOT SETBACK VARIANCE ON KAREN ANDERSON'S ADJOINING PROPERTY.**

Regarding the standard of MCC 11.15.8505(A)(3), the Applicants have failed to address the impact of the proposed building on the appropriate development of Karen Anderson's CFU property.

There is no competent profession evaluation of the allowed farm and forest practices as they could be implemented on the Anderson property, nor any analysis of the impact of the building at the proposed location. The Applicants have provided some conclusory statements and nothing more.

The Applicants seem to be relying heavily on the claim that the failure of other neighbors to voice objections to the Hearings Officer is somehow proof that there is no impact on Karen Anderson's property. This is faulty reasoning for at least three reasons:

(1) the fact that others might not complain doesn't mean that the code criteria are satisfied, and Karen Anderson has the right to have the code enforced;

(2) the major impact is now directly toward Karen Anderson's property, with relatively little impact directly on the others; and

(3) if the other neighbors object and the Applicants are required to comply with the code, then the building will have to be moved closer to someone else's property, thus there is a self-interest in not objecting regardless of the impact on Karen Anderson's property.

E. THE OTHER MANDATORY REQUIREMENTS OF MCC 11.15.2074, THOSE NOT REFERRING TO MCC .2058(C) THROUGH (G), ARE NOT MET.

1. MCC .2074(A)(1). The Applicants have failed to provide substantial evidence that the proposed location "has the least impact on nearby or adjoining forest or agricultural lands" as required by MCC 11.15.2074(A)(1). Please see the discussion in Section D above.

I acknowledge that the Applicants have presented evidence claiming that based on certain of their own criteria the proposed location of the building is the best location for themselves. They have not, however, presented any credible evidence, professional or otherwise, stating that the proposed structure cannot physically be placed at least 200 feet from Karen Anderson's property. Further, the evidence shows that the 200 foot setback from the Anderson property can be observed without placing the structure within 200 feet of any other property, other than the Applicants' own Tax Lot 30.

(NOTE: The Applicants misunderstand the arguments previously made on behalf of Karen Anderson with regard to looking at Tax Lots 29 and 30 as one lot for purposes of applying the zoning setback requirements and variance standards. Whether consolidation is mandatory is not the issue, because at a minimum the Applicants should not be allowed to use the "separate lots" argument as a way to protect their own property at the expense of their neighbor. The combined Tax Lots 29 and 30 provide more than enough area to site the proposed structure more than 200 feet from anyone else's adjoining forest or agricultural property. If the applicant's want to waive the setback requirement from their own property that is their business, but they can't waive it for someone else just by simply saying, in effect, "we don't see the problem".)

At the hearing, on behalf of Ms. Anderson, I discussed a number of impacts on the Anderson property. In response, Applicants' attorney included the following sentence on page 7 of his letter of September 24, 1997:

> "Christopher Brand also had the opportunity to present the facts of this application to Sergeant John Ingram of the Multnomah County Sheriff's office who indicates that, in his opinion, the project as proposed will create no adverse noise impacts."

The above recitation can hardly be considered substantial evidence in the record with regard to the various impacts (only one of which is noise) of this proposed commercial horse facility on Ms. Anderson.

It is worthy of note that the Applicants have not provided basic information regarding the the intensity of the proposed commercial operation, such as the hours of operation, the days of operation, the number of horses and people that will be using the facility at any one time, where the manure piles would be stored, how the dust will be controlled, the number of vehicle trips per day, the anticipated level of noise and smell, etc. The Hearings Officer cannot reasonably even determine what the impact is, let alone how the impact at this location compares to other locations on the Applicants' property.

The Applicants have failed to demonstrate that the proposed location has the least impact on adjoining forest or agricultural lands when compared to other possible locations on their own property.

2. MCC 11.15.2074(2). Once again, the Applicants have failed to provide any credible or substantial evidence regarding the impact of their proposed building on neighboring forest operations or accepted farming practices. The use may be permitted outright, but only if the development standards are met. The Applicants have failed to demonstrate that the forest operations and accepted farming practices will not be curtailed or impeded.

3. MCC 11.15.2074(5). The Applicants failed to demonstrate that the risks associated with wildfire are minimized. The firebreak provisions require a primary fire safety zone of a minimum of 30 feet in all directions from a structure, combined with a secondary fire safety zone extending a minimum of 100 feet in all directions around the primary safety zone. Thus, there is a total fire safety zone of 130 feet required by MCC .2074(5)(b).

As demonstrated by the Applicants' site plan, the proposed building is located within 64 feet of the Anderson property, providing a firebreak of less than 50% of the required 130 feet. Simply put, the Applicants cannot meet the firebreak requirements set out in MCC .2074(5).

One of the Applicants' primary arguments seems to be that they cannot move the structure farther from the Anderson property without encroaching on the firebreak required for their own house located on Tax Lot 30. Once again, the Applicants are claiming the right to encroach on Karen Anderson's safety and the safety of her property, while at the same time claiming that the structure cannot be any closer to themselves without infringing on the same firebreak regulations.

Further, if the structure were to be located 200 feet from all neighboring property owners, and in closer proximity to the Applicants' house, then a firebreak of the required distance could be provided around the combined barn and house area.

The primary and secondary fire safety zone (firebreak) is critical in this area. This is amply demonstrated by the materials submitted by the Applicants with their September 24, 1997, letter. Attached hereto are three pages from the Applicants' materials, the first generally discussing wildfire in the Tri-County area, with the comment that making your home fire defensible includes the following:

> "4. SLOPE. Wildfires 'run' up slopes and gulleys. Increase the size of defensible space on your property as the steepness of slopes increase. Woodpiles and combustibles should not be located down slope . . . [remainder illegible]."

Enclosed is a copy of page No. 11, which discusses the need for fuel breaks ("wider fuel breaks are needed around buildings located on steep slopes or ones built in areas of dense forest"), and the requirement of trimming trees ("Remove branches from trees to a height of 15 feet to prevent ground fire from spreading to the tops of trees.").

Enclosed is a sheet relating to fuel treatment zones, discussing the first priority zone of 30 feet and the second priority zone extending an additional 100 feet "or more", depending on circumstances. The sheet states:

> "The combination of a moderate to steep slope and hazardous vegetation requires additional hazard reduction, often beyond the 100 foot minimum. In many western states, modification of the vegetation on slopes may be necessary for several hundred feet in order to provide the desired level of safety."

Enclosed is an additional photograph of the barn in its proposed location. Please note that Karen Anderson's home is visible on the far left-hand edge of the photograph. Between her home and the barn is a relatively dense stand of trees, many of which are on the Anderson property and which the Applicants do not control. In addition, this photograph reflects the proximity of the field on the Anderson property, which is 64 feet from the proposed structure.

The Applicants cannot meet the standard firebreak requirements and obviously cannot require Karen Anderson to trim or thin out her trees, as advised in these basic summary fire protection materials provided by the Applicants. These materials themselves indicate that on hillside sites the firebreak should be <u>increased</u> not decreased.

F. SUMMARY

As set out above, the Applicants have failed to provide any substantial evidence regarding many of the approval criteria. The building was placed on the site illegally, and the Applicants are now apparently attempting to justify their own preferred

location. In a number of instances the Applicants claim that the justification for locating so close to the Anderson property is to keep the proposed commercial horse barn and the associated activity more distant from their own home.

The Applicants in their September 24, 1997, letter, state under paragraph 2 on page 4:

> "The Shields propose a farm use, a use permitted as a right in the district inherently compatible with existing farm and forest practices on adjoining lands." (Emphasis added).

The Applicants' premise seems to be that since a barn is allowed in the CFU zone, it can be placed wherever they choose. This is clearly faulty reasoning. The proposed use can be claimed to be inherently compatible only if the Code required minimum yard setback requirements of MCC .2058 are met. All of the approval criteria for this case come into play specifically because the use within the setback area is not inherently compatible, and is not a permitted use within the 200 foot side and rear yard setback area.

Reducing the minimum yard setback to 32% of the required 200 feet places all of the impacts of the structure itself, and all of the impacts of its use as a commercial horse facility, unacceptably close to the Anderson property. Reducing the required primary and secondary fire safety break by more than 50% on this hillside site places the Anderson property in jeopardy, and cannot reasonably be deemed to be the location of "least impact" on the Anderson property.

The variance application should be denied.

Respectfully,

Paul Norr

Enclosures
cc: Karen Anderson
Phil Bourquin, County Planning

WILDFIRE Will Your Home Be Safe This Summer?

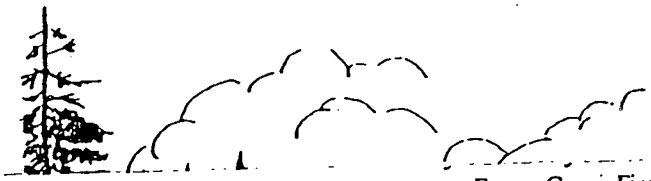
The Tri-County area is growing at a phenomenal rate. The population growth rate in Washington County alone - now 13% each year - is expected to increase to over 250,000 by the year 2000. Homes are now being built in rural areas on the edges of towns and on heavily forested hillsides with narrow, steep and winding roads. **These areas are called the *Urban Wildland Interface* and could be in danger this summer!**

Those who live in interface areas are rarely prepared for the inferno that can sweep through brush and trees, destroying homes, property and lives! Tualatin Valley Fire & Rescue urges you to protect your home and property this season, by creating a defensible home and taking fire safety precautions during dry weather conditions. What you have done BEFORE fire strikes will determine whether firefighters are able to save your home.

Making Your Home Fire Defensible

FIREPROOF YOUR ROOF

Untreated wood shake roofs, which can catch wind-blown sparks, are the #1 cause of home losses in wildland areas. Consider improving your home's defense by replacing wood shakes or shingles with non-combustible or fire-resistant materials. In addition, remove



SLOPE

Wildfires "run" up slopes and gullies. Increase the size of defensible space on your property as the steepness of slopes increase. Wood piles and combustibles should not be located down slope

TUALATIN VALLEY FIRE & RESCUE

Cornelius Fire Dept.: 357-3840
Gaston Fire Dept.: 985-7575
Tri-Cities Fire Dept.: 324-6262
Washington Co. Fire Dist. No. 1: 681-6200

Forest Grove Fire Dept.: 359-3240
Hillsboro Fire Dept.: 681-6173
Tualatin Valley Fire & Rescue: 649-8577

WASHINGTON COUNTY Consolidated Emergency Management RESPONSE • RECOVERY OREGON

The Ground

① Clearance

The clearance of flammable vegetation around buildings has proven to be one of the most important factors in wildfire survival by:

- Providing a defensible space
- Enabling firefighters or residents to safely lay hoselines
- Reducing the chance of flame contact
- Reducing the intensity of radiated heat

② Fuel Break

A fuel break should be maintained around all structures. Wider fuel breaks are needed around buildings located on steep slopes or ones built in areas of dense forest.

Fire Resistant Vegetation

Replace weeded areas with fire resistant plants
(see flame resistant vegetation section for more detail)

Contact local County Exension Agent and Farm Advisors' Office for a listing of other fire resistant plants.

③ Landscaping

Landscaping should be free of dead and dying vegetation.

④ Trimming

Remove branches from trees to height of 15 feet to prevent ground fire from spreading to the tops of trees.

⑤ Spacing

Shrubs should be at least 15 feet apart.

Fuel Treatment Zones

First Priority (Zone I)

Homeowners should clear all flammable vegetation away from the structure or dwelling for a minimum of 30 feet.

Homeowners should clear fuels, leaving 20 feet or more between individual specimen trees and large shrubs. Trees in poor or declining condition should be removed first. If remaining trees and shrubs touch, they should be thinned to create openings between the tops of trees. Young healthy trees and shrubs should be retained over older more mature plants whenever possible. Dead material on both trees and shrubs must be removed. Tall, dry grass species should be mowed, cleared by hand, or grazed to insure fire safety.

Slope Consideration

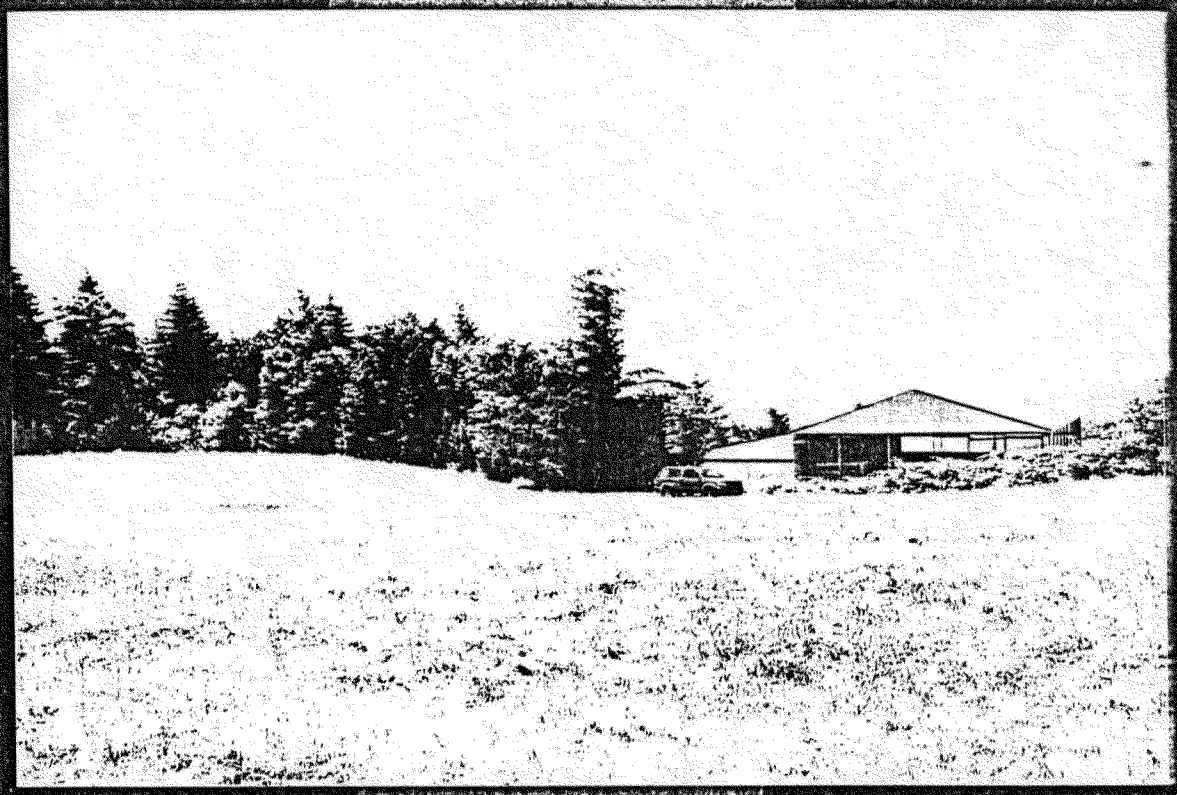
Additional fuel reduction, type conversion and maintenance should be considered when a slope exists.

Second Priority (Zone II)

From the edge of the first priority zone, fire service professionals recommend creating a second zone for additional protection. This second zone begins at the edge of the 30 foot envelope and extends 100 feet or more from the structure depending upon the vegetation and typography. Generally, this second zone is necessary only where the landscape contains significant fire hazards.

The combination of a moderate to steep slope and hazardous vegetation requires additional hazard reduction, often beyond the 100-foot minimum. In many western states, modification of the vegetation on slopes may be necessary for several hundred feet in order to provide the desired level of safety.

The main objective in this zone is to reduce or remove flammable plants. If the area does burn, the fire would be less intense and produce lower flame heights and a slower rate of fire spread. Pruning the lower branches 1/3 to 1/2 of the tree height or 16 feet above the ground (which ever is lower) will remove the ladder fuels.



View of the proposed Commercial Horse Barn from the Anderson property showing the Anderson house on the far left and the forested area between the proposed structure and the Anderson property. These trees are partially on the Applicant's property and partially on the Anderson property.

PAUL NORR
ATTORNEY AND COUNSELOR AT LAW
1020 S.W. TAYLOR STREET, SUITE 530
PORTLAND, OREGON 97205-2550

OF COUNSEL
DENISE FRISBEE

TELEPHONE (503) 228-3862
FAX (503) 224-1123

September 16, 1997

Hearings Officer,
Department of Environmental Services
Transportation and Land Use Planning Division
Multnomah County
2115 S.E. Morrison Street
Portland, OR 97214

Re: Case File Nos. HV13-97 and SEC 23-97
(Les and Florence Shields)

Dear Hearings Officer:

I represent Karen Anderson, the owner of the property at 11276 N.W. Skyline Boulevard, which is located adjacent to Tax Lots 29 and 30 which are owned by the Applicants Les and Florence Shields. Karen's approximately 10.24-acre property is known as Tax Lot 33, and is located directly east of the Shields' property. Karen uses a portion of the same access road as do the Shields.

On behalf of Karen Anderson, I agree with all of the deficiencies with this Application as noted in the Planning Division Staff Report mailed August 13, 1997. In addition, I offer the following objections to this application:

1. The applicant has not requested any variances to the development standards found in MCC 11.15.2074 other than the setback requirements of MCC 11.15.2074(A)(1). The standards of .2074 are absolute, mandatory standards which must be applied. (See, DLCD v. Tillamook County, LUBA No. 96-181 (April 21, 1997)).

2. With regard to MCC 11.15.2074(A)(1), the visual impact of the new structure is a material and substantial impact on Karen Anderson and her property. The approximately 25 foot high structure should be 200 feet rather than approximately 60 feet from her property. The enjoyableness and value of

her property are impacted. The applicant is wrong is stating that the visual impact is not grounds for denial simply because the use itself may be permitted somewhere on the property. The applicant has failed to demonstrate that the proposed location "has the least impact on ... adjoining forest or agricultural lands...".

There is no evidence in the application regarding the amount of use, time of use, number or people, or types of vehicles that will use this new facility. The entrance to the structure is on the side of the building closest to Ms. Anderson's property, creating a flow of people, horses and vehicles in the protected setback area.

3. With regard to MCC 11.15.2074(A)(3), the amount of forest land used to site the structure and access road is not minimized because the access road is longer than necessary. The access road could be shortened by locating the structure closer to the existing house on the Shields property and closer to SW Skyline Blvd.

4. With regard to MCC 11.15.2074(A)(4), the access road is in excess of 500 feet in length from Skyline Boulevard. The Applicants have not demonstrated that this is the minimum length access required. Also, we disagree with the staff that an access road has been pre-approved for this particular commercial use. The is no evidence regarding the frequency of use, type of vehicles, quantity of use or impact on the access to the other properties sharing the private access.

5. With regard to MCC 11.15.2074(A)(5), a driveway access has not been approved for this proposed commercial use, and the Applicants have not identified any perennial water source for fire fighting purposes at this site. Fire protection is critical in this forest zone. The Applicants have not demonstrated that they can meet the appropriate standards.

6. With regard to subsection B of this section, the Applicants have failed to demonstrate the ability to provide the required primary and secondary fire breaks without encroaching on Karen Anderson's property.

7. With regard to MCC 11.15.8505(A)(1), I object to any consideration of Parcel 29 as being under separate ownership from Parcel 30. The Application materials clearly state that Les and Florence Shields own both Tax Lot 29 and Tax Lot 30. Under definitions contained in the County Code, these two parcels must be considered as one 625 foot by 700 foot lot. The definition of "lot" in MCC 11.15.0010 is:

> "A plot, parcel or area of land owned by or under the lawful control and in the lawful possession of one distinct ownership."

This area of land owned by the Shields is one lot. Also, the definition of a "lot of record" in MCC 11.15.2062(A)(3), with regard to a group of contiguous parcels of land, requires that these two parcels be considered as one lot.

Further, even if the Hearings Officer is to consider Parcel 29 and Parcel 30 as separate lots, it is not appropriate to justify the requested impositions on Karen Anderson simply because the Applicants are not willing to accept the same impositions on themselves, such as siting their horse arena adjacent to their own house on their own "other" property.

8. With regard to Comprehensive Plan Policy No. 38, Facilities, the required finding must be made by the Hearings Officer prior to an approval, not as a condition of approval.

9. With regard to MCC 11.15.8505(A)(1), the applicants have failed to demonstrate how their alleged "circumstance or condition", whatever it is, does not generally apply to other property in the same vicinity.

Once again, please note that the above comments are in addition to all of the objections and deficiencies identified in the staff report.

This Application must be evaluated as if the structure had never been built. There can be no preferences given to the Applicants based on the fact that they already constructed a building, when the building was constructed illegally.

Please add my name and address to the distribution list for any notices or decisions relating to this case.

Respectfully,

Paul Norr

PN:srs
cc: Karen Anderson
Phil Bourquin, Planning Staff

Deborah Walters
11270 NW Skyline Blvd.
Portland, Oregon 97231

27 January 98

Multnomah County Board of Commissioners
c/o Clerk of the Board
1120 S. W. Fifth Avenue, Room 1510
Portland, OR 97205

Re: Appeal of HV 13-97 (Shields Commercial Horse Arena)

Dear Members of the Board:

I am writing to object to the proposed horse barn to be located on Tax Lot 29, also known as 11272 N.W. Skyline Blvd.

I am writing to specifically object to the Shields' proposed use of my property as their access to the proposed commercial horse arena. My property is Tax Lot 28, located at 11270 N.W. Skyline Blvd. Attached is a map showing the location of my Tax Lot 28, and Tax Lots 29 and 30 owned by the Shields. Their home is located on Tax Lot 30 and the proposed horse barn is located on tax lot 29.

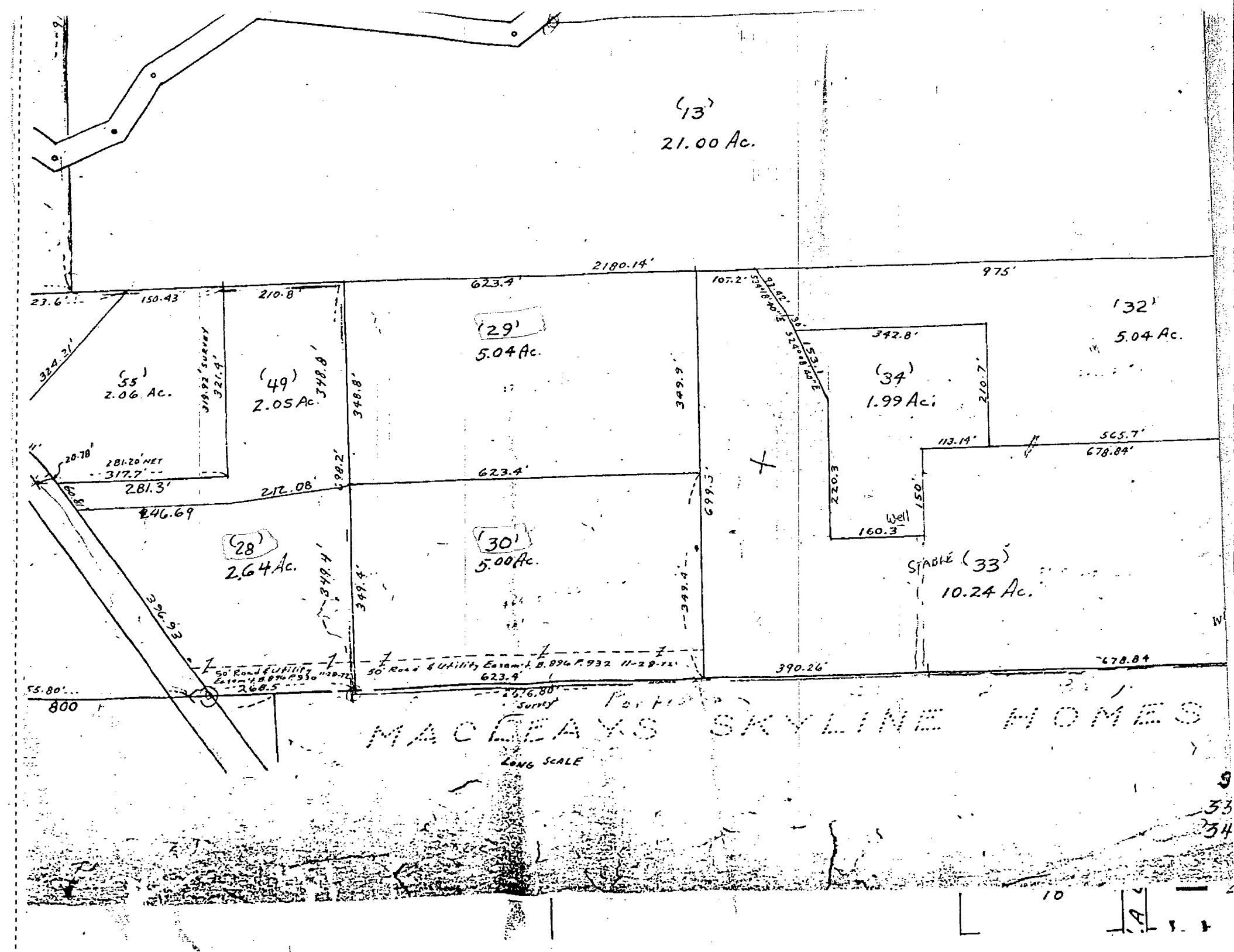
There is an easement existing for Tax Lot 30 to cross my property in a 50 foot area as shown on the attached map at the southern edge of my property. I believe these easement rights were never granted to Tax Lot 29 and I object to the users of a commercial horse barn crossing my property to gain access to Tax Lot 29.

This application should be denied unless the Shields can demonstrate that they have proper legal access to Tax Lot 29.

Also enclosed is a copy of the statutory Warranty Deed by which Mr. Shields father, Eldon Shields, took title to Tax Lot 29. This deed specifically says, where highlighted in yellow, that there is "no apparent means of record ingress or egress to or from the property." It is obvious that the Shields knew that they did not have legal access when they purchased the property.

Sincerely,

Deborah Walters


(13)
21.00 Ac.
2180.14'
975'
623.4'
107.2'
S39°18'40"E
93.42'
S24°08'40"E
153.1'
342.8'
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(29)
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(34)
1.99 Ac.
(55)
2.06 Ac.
(49)
2.05 Ac.
348.8'
349.9'
210.7'
565.7'
678.84'
113.14'
150'
220.3'
160.3'
Well
STABLE
(33)
10.24 Ac.
(28)
2.64 Ac.
(30)
5.00 Ac.
699.3'
623.4'
212.08'
246.69
281.3'
281.20' NET
317.7'
20.78'
396.93
50' Road & Utility Easement B.896 P.930 11-30-72
50' Road & Utility Easement B.896 P.932 11-29-72
390.26'
678.84
55.80'
800
MACLEAYS SKYLINE HOMES
LONG SCALE

BOOK 2669 PAGE 1831

STATUTORY WARRANTY DEED

Barbara Alice Weich, who acquired title as Alice M. Laney, Grantor,

conveys and warrants to Eldon Bernard Shields, Grantee,

the following described real property free of liens and encumbrances, except as specifically set forth herein:

A tract of land in Section 32, Township 2 North, Range 1 West, in the County of Multnomah and State of Oregon, described as follows:

Beginning at an iron rod on the North line of a tract of land conveyed to Edward H. Weich by Deed recorded in Book 107, page 330, Multnomah County, Oregon, Deed Records, South 89°59' East 934.4 feet from the Northwest corner thereof, which point is also the Northeast corner of a five acre tract of land being conveyed to Eunice Hannigan; thence South 0°03'50" West along the East line of said Eunice Hannigan Tract, 348.8 feet to the Northwest corner of a five acre tract of land being conveyed to Myrna McShirley; thence South 89°52'44" East 623.4 feet to the Northeast corner of said Myrna McShirley Tract; thence North 0°03'50" East 349.9 feet to an iron rod on the North line of said Edward H. Weich Tract; thence North 89°59' West 623.4 feet to the place of beginning.

This property is free of liens and encumbrances, EXCEPT: No apparent means of record ingress or egress to or from the property.

THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES.

The true consideration for this conveyance is $ 62,600.00 (Here comply with the requirements of ORS 93.030)

Dated this 31ST day of MARCH 19 93.

Barbara Alice Weich

Barbara Alice Weich

STATE OF OREGON
County of Washington } ss.

BE IT REMEMBERED, That on this 31st *day of* MARCH, 1993, *before me, the undersigned, a Notary Public in and for said County and State, personally appeared the within named* Barbara Alice Weich

known to me to be the identical individual described in and who executed the within instrument and acknowledged to me that SHE *executed the same freely and voluntarily.*

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

OFFICIAL SEAL
MARILEE COHEN
NOTARY PUBLIC-OREGON
COMMISSION NO. 010055
MY COMMISSION EXPIRES OCT. 8, 1995

Marilee Cohen
Notary Public for Oregon.

My Commission expires 10-08-95

Recorded By First American Title Insurance Company of Oregon
No. 041543

Title Order No. 732237
Escrow No. 93040487

After recording return to:
Leslie O. Shields
11272 NW Skyline Blvd.
Portland, OR 97231
Name, Address, Zip

Until a change is requested all tax statements shall be sent to the following address.
Leslie O. Shields
11272 NW Skyline Blvd.
Portland, OR 97231
Name, Address, Zip

SPACE RESERVED FOR RECORDER'S USE

STATE OF OREGON, Multnomah County } ss.

I, Deputy for the Recorder of Conveyances, in and for said County, do hereby certify that the within instrument of writing was received for record and recorded in the record of said County.

93 APR -2 AM 10:55

In Book 2669 Page 1831

Witness my hand and seal of office affixed

Recorder of Conveyances

C. Swick Deputy

APR - 2 1993

LAWYERS

Davis Wright Tremaine LLP

ANCHORAGE BELLEVUE BOISE CHARLOTTE HONOLULU LOS ANGELES PORTLAND RICHLAND SAN FRANCISCO SEATTLE WASHINGTON, D.C. SHANGHAI, CHINA

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PORTLAND, OR 97201-5682

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FAX (503) 778-5299
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CHRISTOPHER C. BRAND
Direct (503) 778-5219
chrisbrand@dwt.com

February 2, 1998

VIA HAND DELIVERY

Multnomah County Board of Commissioners
Ms. Beverly Stein, Chair of the Board
Mr. Dan Saltzman
Mr. Gary Hansen
Ms. Sharron Kelley
c/o Ms. Deb Bogstad, Clerk of the Board
Portland Building, Suite 1515
1120 S.W. Fifth Avenue
Portland, Oregon 97204

Re: Les and Florence Shields
11272 NW Skyline Boulevard
Multnomah County Case File HV13-97 and SEC23-97

Dear Board of County Commissioners:

This law firm represents Les and Florence Shields, the Appellants in the above-referenced casefiles, and the Applicants below. The purpose of this letter and attachments is to provide a summary of the Shields' position below, outline the Hearings Officer's error and respond to letters received by the Division of Planning and Development in opposition to the application.

Summary of Attachments.

Attached to this letter please find the following:

1. A copy of the Notice of Review for the above-entitled casefiles;

2. A copy of the Applicants' Final Written Statement, dated October 7, 1997, outlining the Applicants' position below;

3. A copy of the Property Owner Consent to Variance Request indicating that several residents in the vicinity of the Shields property supported the application for variance;

4. A copy of Multnomah County Code ("MCC") 11.15.2074(A)(5)(c)(v) indicating that, among other things, maintenance of a secondary fire safety zone is required only to the extent possible within the area of an approved setback; and,

5. A copy of a letter from Mr. Arthur E. Thurber, Deputy Fire Marshall for Tualatin Valley Fire & Rescue, to Les and Florence Shields dated September 19, 1997, indicating that emergency fire services to all structures on the Shields' property is available and that the building as situated meets the purpose and intent of the primary and secondary fire break requirements of the MCC.

Response to Letters of Opposition.

We have received copies of a form letter submitted by various individuals to the Board of County Commissioners regarding the appeal of the above-referenced casefiles. We would like to take this opportunity to respond to these letters. The text of the letters of opposition is set out in italics.

"1. The horse arena is approximately 120 feet long, 96 feet wide and 25 feet tall. The rolling hills make a structure this large seem even larger by exposing it to view from downhill. If the building were placed where it should be, it would not have such an imposing presence."

Response: The horse barn and arena constitutes a farm use which is specifically permitted in the Commercial Forest Use ("CFU") zoning district. The size of the barn, as it currently exists, complies with applicable MCC provisions. The only issue in this case is whether the proposal otherwise meets the development standards of the MCC and the applicable variance criteria. As demonstrated in the attached Closing Statement and Notice of Review Narrative, the proposal complies with the applicable development criteria and there is substantial evidence in the record that the proposal satisfies relevant variance standards and criteria.

"2. Such a large commercial structure so close to the property line (64 feet rather than the required 200 feet) is a major imposition on the neighboring property owner."

Response: As indicated in the attached Closing Statement and Notice of Review narrative, there is no evidence that the current location of the barn and arena will be a "major imposition" on the neighboring property owner. In fact, there is evidence in the record and evidence will be presented that there will be little if no impact arising from the current location of the barn/arena.

"3. The county should enforce its code regulations. This horse arena was built illegally in two ways:

"A. It was built illegally without the required permits and approvals.

"B. It was built illegally by putting the building in the wrong place, in violation of the setback requirements and in violation of the fire break requirements."

Response: The Shields had no intent of building the barn without required permits or approvals. The Shields hired a contractor, licensed and registered in the State of Oregon to construct the barn/arena. This contractor indicated unequivocally that no permit was required to construct the barn/arena and did not indicate that the structure would have to comply with prescribed setbacks. This conclusion was confirmed by a phone call made by Mr. Shields to a representative of Multnomah County who indicated that no permits were required for the structure as it was an exempt agricultural building. The Shields believed they were complying with applicable law and did not intend in any way to contravene the applicable law.

"4. The fire break requirements are critical in this heavy wooded, CFU zoned area. Wildfire is always a threat, particularly in dry seasons."

Response: As demonstrated by the attached provision of MCC 11.15.2074(A)(5)(c)(v), this Board has the authority to modify the secondary firebreak criteria to coincide with the approved setback, as requested in the variance request. Furthermore, the responsible agency, Tualatin Valley Fire & Rescue, indicates that:

> "Urban wild land interface primary and secondary defensible spaces are adequate. Completion and maintenance of defensible spaces is the responsibility of the property owner."

Letter of Arthur E. Thurber, Deputy Fire Marshall, Tualatin Valley Fire & Rescue, dated September 19, 1997, attached.

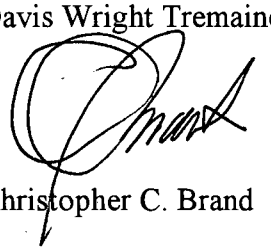
"5. The County should not reward people who build first and then ask for special variances only when they get caught. This encourages the wrong kind of behavior, at the expense of the rest of the community. The Board needs to send the message that property owners must comply with the County regulations before building wherever they like."

Response: This comment appears to imply that the Shields have somehow attempted to avoid the application of relevant law. As indicated above in response to item number 3, the Shields never intended to violate any provision of law.

In conclusion, the Shields respectfully request that the Board of County Commissioners reject the Hearings Officer's decision and approve the variance requests.

Sincerely,

Davis Wright Tremaine LLP



Christopher C. Brand

CCB:bcd
Attachments
cc: Les and Florence Shields (w/o attachments)
Phil Bourquin (w/o attachments, via facsimile)

BEFORE THE BOARD OF COUNTY COMMISSIONERS

OF MULTNOMAH COUNTY, OREGON

IN THE MATTER OF REQUEST FOR A MAJOR VARIANCE TO THE MINIMUM YARD REQUIREMENT (SETBACK) OF THE COMMERCIAL FOREST USE ZONE TO PROVIDE FOR A 96' X 120' BARN/ARENA	Case Files: HV 13-97 and SEC 23-97 NOTICE OF REVIEW NARRATIVE

I.

MATTER SOUGHT TO BE REVIEWED

The matter sought to be reviewed is the decision of Multnomah County Hearings Officer Deniece B. Won, who denied Applicants' request for a major variance from the minimum yard requirement (setback) of the Commercial Forest Use ("CFU") district to provide for a 96' X 120' Barn/Arena. The Notice of Decision was signed by the Hearings Officer on October 20, 1997 and was filed with the Planning Director, submitted to the Board of Commissioners' Clerk and mailed on October 21, 1997.

II.

NAME OF PETITIONERS

The petitioners in this appeal are Les and Florence Shields and Mr. Eldon Shields, who is represented in the appeal by Les and Florence Shields (collectively "Petitioners" or "Applicants"). Petitioners are represented in this appeal by Christopher C. Brand, of the law firm of Davis Wright Tremaine, 2300 First Interstate Tower, 1300 S.W. Fifth Avenue, Portland, Oregon 97201; telephone number (503) 241-2300.

III.

STATEMENT OF INTEREST OF PETITIONERS

Petitioners are interested in this matter because they are the Applicants who requested the major variance from the minimum yard requirement (setback) of the CFU district to provide for a 96' X 120' Barn/Arena.

IV.

SPECIFIC GROUNDS ON APPEAL

The Hearings Officer erred in denying Applicants' application in the following respects:

1. The Hearings Officer erred in finding and concluding that the two contiguous parcels owned by the Petitioners, 2N 1W 32, Tax Lot 29 and 30, constitute a "Lot of Record" for purposes of applying the relevant variance, dimensional and development standards of the Multnomah County Code ("MCC"). There is no basis in law or in fact for this finding and conclusion.

The Hearings Officer's conclusion that the two separate and distinct tax lots constitute a single "Lot of Record" served as the basis for the Hearings Officer's denial of the application in several instances. Petitioners assign error to each instance in which the Hearings Officer relied on this conclusion to reach a conclusion of non-compliance with relevant standards or criteria.

2. The Hearings Officer erred in finding or concluding that:

> "Reducing the required side yard and secondary safety break by more than 50% on this hillside site places the Anderson property in jeopardy. The applicants have not demonstrated this location has the 'least impact' on the Anderson property."

There is no evidence that the Anderson property is placed "in jeopardy" by the proposed setback. There is substantial evidence in the record that the proposed setback will not place the Anderson property "in jeopardy" and the Multnomah County Code allows decreased secondary firebreaks. See MCC 11.15.2074(5)(c)(v).

3. The Hearings Officer erred in finding or concluding that:

> "The fact that all but one of the adjoining property owners consented to the variance request does not prove that the structure is sited at a location that has the least impact on nearby adjoining farm and forest lands."

The fact that all but one of the adjoining property owners consented to the variance request is substantial evidence that the structure is sited at a location that has the least impact on nearby or adjoining farm and forest lands.

4. The Hearings Officer erred in finding or concluding that:

> "The Shields have not shown that the Arena's location has the least impact on neighboring adjacent farm and forest uses. Mr. Norr and Ms. Anderson's testimony that Ms. Anderson's views may be impaired, wildfires spread may be

increased, as well as other arguments of alleged impacts, are relevant and uncontroverted."

There is substantial evidence in the record that the proposed location of the barn will have the least impact on neighboring farm and forest uses. The testimony of Mr. Norr and Ms. Anderson referenced above may be relevant but has been controverted by Applicants' evidence.

5. The Hearings Officer erred in finding or concluding that: "The Applicants have failed to demonstrate that the proposed location has the least impact on adjoining forest or agricultural lands when compared with other possible locations on their own property in considering different building sizes and construction methods." (emphasis in original)

There is substantial evidence in the record that the size and type of structure are necessary for the farm use proposed. There is substantial evidence that based on the size of the building and type of structure, the current site is the best location on the site. On these bases, there is substantial evidence that the current site has the least impact on adjoining forest or agricultural lands.

6. The Hearings Officer erred in finding or concluding that:

"The entire length of the access should be considered because the purpose of the requirement [MCC 11.15.2074(A)(4)] is to minimize the distance from a public road to a structure for emergency response vehicles."

There is no bases for finding that "the purpose of" MCC 11.15.2074(A)(4) is to minimize the distance from a public road to a structure for emergency response vehicles. In any event, there is substantial evidence that the existing access road has been approved by emergency service providers.

7. The Hearings Officer erred in finding or concluding that:

> "The access is an easement. The access provides access to a dwelling on Tax Lot 30 (the Shields residence) and on Tax Lot 33 (Ms. Anderson), thus it meets the definition of 'a private road [1]' (including approved easements) access [sic] to dwellings. The Hearings Officer concludes that the access requirements of MCC 11.15.2074(D) apply and that Applicants need to prove that the MCC 11.15.2074(A)(4) requirements that any access road in excess of the 500 feet in length is necessary due to physical limitations unique to the property and is the minimum length required. Applicants have not proved that the access is the minimum necessary."

There is no reasonable basis for applying MCC 11.15.2074(D) to this application because that section deals with the new construction of private roads accessing two or more dwellings. The application deals with the access to an accessory farm structure. On its face, MCC 11.15.2074(D), does not apply in this instance. There is substantial evidence in the record that the driveway extension proposed is neither an "access road" or "service corridor." There is also substantial evidence that the driveway extension proposal does not exceed 500 feet. Therefore, the requirements of MCC 11.15.2074(4) cannot serve as a basis for denying the application.

8. The Hearings Officer erred in finding or concluding that:

> "The applicant has not demonstrated that the structure was located to comply with the secondary fire safety zone requirements. The application fails to comply with the required secondary fire zone."

There is substantial evidence that the purpose and intent of the secondary fire break has been met by the Applicants. MCC 11.15.2074(5)(c)(v) allows the secondary fire break to be less than the dimensions set forth in MCC 11.15.2074. There is substantial evidence in the record that the secondary firebreak requirements have been met.

9. The Hearings Officer erred in finding or concluding that:

> "The applicant's burden is to prove the yard requirement is the maximum possible, not simply that the selected site is the most cost effective, convenient, or easiest place to locate the structure."

There is no legal basis for this conclusion. MCC 11.15.8505 makes clear that an applicant's burden is to demonstrate that there are "practical difficulties" in application of the MCC and that an applicant's proposal meets the requirements of MCC 11.15.8505. There is substantial evidence in the record that Applicants have complied with MCC 11.15.8505.

10. The Hearings Officer erred in finding or concluding that:

> "The application fails to demonstrate a circumstance or condition related to the parcel's size or shape, topographical or natural features

V.

APPEAL FEE

Attached to this Petition for Review is the filing fee in the amount of Five Hundred Dollars ($500.00) as set forth in the Multnomah County Hearings Officer's Decision Packet dated October 21, 1997. This Petition for Review consists of 8 pages and all pages are present.

VI.

REQUESTED ACTION

Based upon the MCC, arguments posed by Applicants to the Hearings Officer, and substantial evidence in the record, Petitioners respectfully request that the Board of County Commissioners reverse the Hearings Officer's decision and grant Petitioners' request for a major variance from the minimum yard requirement (setback) of the CFU zone to provide for a 96' X 120' Barn/Arena.

DATED this 31 day of October, 1997.

Respectfully submitted,

DAVIS WRIGHT TREMAINE

By: _____

Christopher C. Brand, OSB #93501
Of Attorneys for Petitioners, Les and Florence Shields and Eldon Shields

Davis Wright Tremaine LLP
LAW OFFICES
1300 S.W. Fifth Avenue · Suite 2300 · Portland, Oregon 97201-5682
(503) 241-2300 · Fax: (503) 778-5299

CHRISTOPHER C. BRAND
(503) 778-5219
E-MAIL: christopherbrand@dwt.com

October 7, 1997

Ms. Deniece Won
Hearings Officer for the
Multnomah County Department of
Environmental Services
Transportation and Land Use Planning Division
2115 S.E. Morrison
Portland, Oregon 97214

Re: **APPLICANTS' FINAL WRITTEN STATEMENT**
Les and Florence Shields
11272 NW Skyline Boulevard
Multnomah County Case File HV13-97 and SEC23-97
Our File No. 785141\2

Dear Hearings Officer Won:

This letter serves as the final written statement of applicants Les and Florence Shields ("Applicants"). The Applicants respectfully request that the Hearings Officer approve the Variance Application.

REQUEST FOR SITE VISIT

The Applicants respectfully request that the Hearings Officer conduct a site visit prior to rendering a decision in this matter. It is Applicants' opinion that a site visit will enable the Hearings Officer to better evaluate the evidence and testimony in this matter. Applicants request that the site visit be conducted with all parties present.

INTRODUCTION

The Applicants, Les and Florence Shields own[1] two parcels of land in Multnomah County consisting of approximately five acres each which are currently zoned Commercial Forest Use

[1] While Les and Florence Shields own both Parcel 29 and Parcel 30 of Map 2N 1W 32 in fee, the deed for Parcel 29, conveying the parcel from Mr. Eldon Shields, Mr. Les Shields' father, has not yet been recorded.

("CFU"). Parcel 30 of Tax Map 2N 1W 32 currently contains a dwelling, previously approved approximately twelve years ago when both parcels were zoned Multiple Use Farm-19 ("MUF-19"). During the spring and summer of 1996, the Shields determined to construct a barn/arena for the storage, breeding, training and exercising of horses. Mr. Shields contacted Multnomah County and the City of Portland to determine whether building permits were needed to construct the contemplated structure. Mr. Shields was told by City and County officials that the proposed structure was exempt from permitting as it is an agricultural building. With this information, Mr. Shields hired a contractor to construct a barn/arena on Tax Lot 29 (the "Property"). Construction commenced and ended (except for finish work) in the end of 1996. The resulting structure is a 96' x 120' barn/arena (the "Farm Structure").

The Shields were notified in January of 1997 by the Multnomah County Department of Environmental Services that the structure was potentially in violation of the setback requirements imposed by the CFU district and that the Shields needed to apply for Significant Environmental Concern ("SEC") and Grading and Erosion Control ("GEC") permits.

This Application seeks a variance from the setback requirements and the secondary firebreak development standards imposed by the CFU district. Staff has determined that because the proposed use is a "farm use," and is permitted outright, Multnomah County Code ("MCC") 11.15.2048(C), the SEC approval criteria do not apply. Staff has indicated that a GEC permit should be required as a condition of approval, and the Applicants consent to such a condition of approval.

This written statement summarizes the evidence produced at the hearing and in the post-hearing evidence submittals. This written statement does not purport to address every relevant standard or criteria, as many items have been satisfactorily addressed in previous written and oral testimony. Rather, this written statement focuses on the main issues discussed at the hearing and in post-hearing submittals of the parties.

There are several reasons why this application for variance should be approved.

1. Strict application of the setbacks will result in the prohibition of a structure expressly permitted in the district, a result not sanctioned by the Multnomah County Code.

2. Circumstances and conditions, including, but not limited to, the size, shape, natural features and topography of the property apply to this Property, which do not apply generally to other properties in the same district.

3. The zoning requirement would restrict the use of the Property to a greater degree than it restricts other properties in the district because strict application of the required setbacks would render the Property undevelopable solely due to the size, configuration, natural features and topography of the Property.

4. Authorization of the variance will not be materially detrimental to the public welfare, be injurious to property in the vicinity or district or adversely affect appropriate development of adjoining properties.

5. Granting the variance will not adversely affect the realization of the Comprehensive Plan nor will it establish a use not listed in the underlying zone.

6. Granting the variance to the secondary firebreak setbacks will not adversely affect or be injurious to property in the vicinity because the purpose and intent of this development standard have been met to the satisfaction of the responsible agency.

7. There is substantial evidence in the record that the current site of the Farm Structure has the least impact on nearby or adjoining forest or agricultural lands.

8. There is substantial evidence in the record that forest operations and accepted farming practices will not be curtailed or impeded.

By this reference, Applicants incorporate all written and oral testimony produced at the hearing and in subsequent filings with the Hearings Officer.

DISCUSSION

1. Strict application of the setbacks will result in the prohibition of a structure expressly permitted in the district, a result not sanctioned by Multnomah County Code.

MCC.2058 states that in the CFU district side and front yard setbacks are 200 feet. Importantly, the County added savings language to these dimensional requirements, namely that:

> "These yard dimensions... shall not be applied to the extent they would have the effect of prohibiting a use permitted outright." (emphasis added)

In the present case, Staff has recommended what this provision sanctions against – Staff has recommended denying the variance for the Farm Structure, a use permitted outright. MCC.2058 then directs the reader to the variance criteria found in MCC.8505 - .8525. MCC.8505(A) provides:

> "The approval authority may permit and authorize a variance from the requirements of this chapter only where there are practical difficulties in application of the Chapter." (emphasis added)

Staff has indicated orally and in the Staff Report, at page 11, among other places, that in order for Applicants to secure a Variance to the setback criteria, Applicants must demonstrate that the current location of the Farm Structure is the only place on the Property to site the Farm Structure and that evidence that the Farm Structure could be moved to the west is sufficient evidence to deny the Application.

Staff has indicated no source for this interpretation nor has Staff indicated that this is the official County interpretation of the variance provision. Such a Staff interpretation is not binding on the Hearings Officer. See DLCD v. Lincoln City, 144 OrApp 9, 14 n4 (1996). The proper standard to be applied in this case is whether the Applicants have demonstrated "practical difficulties" in applying specific code provisions and have demonstrated compliance with applicable variance and development criteria.

As demonstrated below, at the hearing and through post-hearing submittals, Applicants have produced substantial evidence to meet this burden. In the alternative, Applicants have demonstrated compliance with applicable criteria sufficient to meet the burden alleged by Staff in the Staff Report.

2. Circumstances and conditions, including, but not limited to, the size, shape, natural features and topography of the property apply to this Property, which do not apply generally to other properties in the same district.

The Applicants produced substantial evidence in the record that circumstances and conditions, mainly related to the size, shape and natural features and topography of the property, apply to this Property which do not generally apply to other properties in the same district.

The Staff Report focused its discussion on a comparison of the Property with other properties in the same vicinity. Multnomah County Code variance provisions clearly indicate that other properties in the "district" may be compared to the subject Property.

In his letter dated September 30, 1997 to the Hearings Officer, Mr. Norr, attorney for Ms. Karen Anderson, states that the comparison should be with properties lying in the immediate vicinity, or properties which are proximate and near to the subject Property. There is absolutely no indication in the Multnomah County Code that the inquiry is to be so narrowed. This intent is demonstrated by the provision's use of the disjunctive, "or."

Mr. Norr also attempts to narrow the definition of district to denote "surrounding district." A quick look at the table of contents of Multnomah County Code makes clear that the term "district" is tantamount to the term "zone." There is no indication that the comparison required by the variance criteria must be limited to properties in the vicinity. Accordingly, the Applicants may properly compare their Property with those in the CFU district generally in applying for a variance to the dimensional and development standards imposed by the CFU district.

The Applicants offered into the record title information prepared by Fidelity Title and excerpts from the Multnomah County West Hills Rural Area Plan, dated October, 1996, both of which demonstrate that the Applicants' Property is not characteristic of other properties in the district. Specifically, the Applicants' Property is much smaller from a net acreage standpoint, has much smaller dimensions, and is bordered on two sides by the City of Portland. These circumstances and conditions apply to the Applicants' Property and do not apply generally to other properties in the same district.

These circumstances and conditions also limit the flexibility in the development of the parcel for the proposed use and pose practical difficulties in the application of the dimensional and development standards imposed by the CFU district. The evidence offered by Mr. Rondema, Mr. Koroch, Mr. Naussbaum and Mr. Wood at the hearing and in the Application further buttresses this conclusion.

3. The zoning requirement would restrict the use of the property to a greater degree than it restricts other properties in the vicinity or district because strict application of the required setbacks would render this property undevelopable solely due to the size, configuration, natural features and topography of the property.

The Applicants rely on the same evidence produced and arguments set forth to demonstrate satisfaction of Item No. 2 above to satisfy this variance criteria. The circumstances and conditions which distinguish the Property from the others in the district result in restricting the use of Property to a greater degree than other properties in the same district.

4. Authorization of the variance will not be materially detrimental to the public welfare, be injurious to property in the vicinity or district or adversely affect appropriate development of adjoining properties.

There is substantial evidence in the record that there will be no impacts of the Farm Structure which will be materially detrimental to the public welfare. The Staff has proposed that a condition of approval be imposed to require the Applicants to submit an application for a GEC permit which will further assure that there will be no impacts which are materially detrimental to the public welfare. Specifically, such a permit will ensure that erosion control and other measures are required such that erosion and subsidence will be mitigated or eliminated, with the effect being a minimization of those potential impacts on adjacent lands.

Nor will authorization of the variance be injurious to property in the vicinity or district, or adversely affect appropriate development of adjoining properties. Substantial evidence supporting this contention is contained in the Applicants' letter of September 24, 1997, including attached exhibits related to access for fire suppression water, access for fire suppression vehicles, and satisfaction of the purpose and intent of the secondary fire break development standards, as well as other testimony in the record. Specifically the testimony of Mrs. Shields, related to the nature of the existing uses in the vicinity and Mr. Shields' testimony with respect to the support of the predominant number of neighbors in the vicinity for the Applicants' proposal. This fact is

further supported by the Property Owner Consent of Variance Request attached under Tab 12 of the original Application.

The Shields have produced substantial evidence that the farm uses proposed will be compatible with the surrounding rural residential and farm/forest uses. Mr. Norr and Ms. Anderson's testimony that Ms. Anderson's views may be impaired, wildfire spread may be increased, as well as other arguments of alleged adverse impacts, are either irrelevant, have been controverted, or are not sufficient to undermine the Applicants' evidence on this matter.

5. Granting the variance will not adversely affect the realization of the Comprehensive Plan nor will it establish a use not listed in the underlying zone.

Substantial evidence offered in the form of the Application, testimony at the Hearing and the Applicants' post-hearing record submittal on September 24, 1997, with included attachments, demonstrate conclusively that granting the requested variance will not adversely affect the realization of the Comprehensive Plan, nor will it establish a use not listed in the underlying zone.

6. Granting the variance to the secondary firebreak standards will not adversely affect or be injurious to property in the vicinity because the purpose and intent of this development standard have been met to the satisfaction of the responsible agency.

In their letter dated September 24, 1997, the Applicants indicated their understanding, derived from discussions with Multnomah County Staff, related to the scope of the variance application. The Applicants concede that the initial Application for Variance did not contain a request for a variance to the secondary firebreak setback. Accordingly, excerpts of that Application cited by Mr. Norr, reflect that fact. It was not until after the Staff Report was issued that the Applicants identified secondary firebreak development standard as a potential subject for a variance request.

The Applicants' counsel discussed this matter with Mr. Phil Borquin, who indicated that it would be possible to review two issues under one application for the dimensional setback variance. Mr. Borquin indicated that the due process components of the Application related to notice and opportunity for a hearing were met, as the secondary firebreak criteria were specifically listed in the hearing notice. In fact, Ms. Anderson and her counsel have had ample opportunity for a hearing on this issue.

Accordingly, Ms. Anderson and her counsel cannot now claim that they are prejudiced on the basis of lack of notice and opportunity for a hearing. They have been afforded both.

With respect to substantial evidence on this matter, the Applicants post-hearing submittal, dated September 24, 1997, and the attached documentation, clearly demonstrate that the purpose and intent and the secondary firebreak are met in this instance. This evidence, coupled with the

evidence and arguments set forth on the dimensional criteria setback request, provide substantial evidence in the record for the Hearings Officer to approve this request.

7. There is substantial evidence in the record that the current site of the Farm Structure has the least impact on nearby or adjoining agricultural lands.

There is substantial evidence in the record that from a construction, grading, and erosion control standpoint, the current location of the Farm Structure is the best location on the Property. The testimony of Mr. Rondema, both written and oral, and the written testimony of Mr. Koroch, Mr. Naussbaum, and Mr. Wood, all found as attachments to the Application, all indicate that the current location minimizes the possibility of future erosion problems and future subsidence problems, as well as for the overall integrity of the Farm Structure.

It is reasonable to conclude that in minimizing the potential for erosion and subsidence problems, the current siting of the Farm Structure minimizes potential adverse impacts on adjoining lands. For instance, erosion problems and/or a land slide on the Property could adversely impact adjoining lands, as well as the Applicants' Property.

It should also be noted that this provision does not require that there be a showing of absolutely no impact, but rather that there be a showing of the least impact on adjoining forest or agricultural lands. It is the Applicants' position that the evidence offered by the above-referenced persons, as well as that offered by Mr. and Mrs. Shields, and the evidence set forth in Applicants' post-hearing submittal dated September 24, 1997, including evidence from the Sheriff's Office, provides substantial evidence that the current location, being the best site on the Property for the Farm Structure, has the least impact on adjoining agricultural and forest lands.

This fact is further supported by the Property Owner Consent to Variance Request form attached to the original Application. In the event that the Hearings Officer finds it necessary, the Applicants are amenable to reasonable conditions of approval related to potential impacts such as noise, hours of operation, frequency of visits and the like, but does not concede that such impacts will exist.

8. There is substantial evidence in the record that forest operations and accepted farming practices will not be curtailed or impeded.

The West Hills Rural Area Plan, dated October, 1996, on pages 8 through 11, indicates that the nature of farming and forest operations in the vicinity of the Property is not of an industrial nature and the use of the property zoned CFU in that vicinity are of a rural residential character. This evidence is supported by the testimony of Mr. and Mrs. Shields. The testimony of Mr. and Mrs. Shields related to the nature of the use and lack of potential adverse impacts supports the conclusion that the proposed use will not curtail or impede forest operations or accepted farming practices. This evidence, coupled with the Property Owner Consent to Variance Request, attached as Tab 12 to the original Application, demonstrate that accepted farming practices or forest operations will not be curtailed or impeded.

CONCLUSION

For the foregoing reasons, the Applicants request that their Application for Variance be granted.

Sincerely,

Davis Wright Tremaine LLP

Christopher C. Brand

CCB:bcd
cc: Les and Florence Shields
F:\78\785141-wonfinalstatement.doc

Owners within 100 feet

SHIELDS

Department of Environmental Services
Division of Planning and Development
2115 S.E. Morrison St.
Portland, Oregon 97214
(503) 248-3043

PROPERTY OWNER CONSENT OF VARIANCE REQUEST

We, owners of property adjacent to, or in the vicinity of, _____ (Address)
acknowledge that we have been informed of a variance request regarding property described as TAX LOT 29 2N 1W 32 (Legal Description)
and that we have reviewed a site plan which shows the development as proposed.
By signing this document, we hereby give our consent for approval of the requested variance.

Name / Signature	Address / Legal description of ownership
Joseph and Lu-Ann Burbon Lu-Ann Burbon Joseph A Burbon	11264 NW Skyline Blvd, Portland, OR 9723 Lot 6 McCray Skyline Home
Craig J Cotthoff Craig J Cotthoff	15125 NW Newberry Rd Lot 7 McClay Skyline Hom
James E. Rollock James E Rollock	14951 NW NEWBERRY Rd Lot 5 McClay Skyline Home
Kenneth Wiegel Ken Wiegel	15305 N W Newberry _____
K Nolan Tarrant K Nolan Tarrant	11808 NW Nannee Rd TL 63 5 32 2N 1W
_____ _____	_____ _____
_____ _____	_____ _____
_____ _____	_____ _____
_____ _____	_____ _____
_____ _____	_____ _____

TUALATIN VALLEY FIRE & RESCUE

20665 S.W. Blanton St. • Aloha, OR 97007 • 503/649-8577 • FAX 642-4814

September 19, 1997

Les and Florence Shields
11272 N.W. Skyline Blvd.
Portland, Oregon 97231

Dear Mr. and Mrs. Shields:

On September 19, 1997, an urban wild land interface survey was conducted of your residence at 11272 N.W. Skyline Blvd. The following are the results of that survey.

- Fire department access to all structures on property is adequate for fire suppression operations.

- Urban wild land interface primary and secondary defensible spaces are adequate. Completion and maintenance of defensible spaces is the responsibility of the property owner.

- Property is located approximately 1-1/2 miles from Tualatin Valley Fire and Rescue Station 198. Equipment housed at the station are:

Brush Rig 198	90 gpm -	300 gallons of water
Engine 198	750 gpm -	500 gallons of water
Water Tender 198	750 gpm -	3000 gallons of water

- Fire hydrants are located at Skyline Blvd. and Newberry Road, and Skyline Blvd. and McNamee Road.

If you have questions or need additional information, please contact me at 526-2469.

Sincerely,

Arthur E. Thurber
Deputy Fire Marshal

AET:kw

Percent Slope	Distance In Feet
Less than 10	Not required
Less than 20	50
Less than 25	75
Less than 40	100

(iii) A secondary fire safety zone is a fire break extending a minimum of 100 feet in all directions around the primary safety zone. The goal of this safety zone is to reduce fuels so that the overall intensity of any wildfire is lessened. Vegetation should be pruned and spaced so that fire will not spread between crowns of trees. Small trees and brush growing underneath larger trees should be removed to prevent the spread of fire up into the crowns of the larger trees. Assistance with planning forestry practices which meet these objectives may be obtained from the State of Oregon - Department of Forestry or the local Rural Fire Protection District.

(iv) No requirement in (i), (ii), or (iii) above may restrict or contradict a forest management plan approved by the State of Oregon Department of Forestry pursuant to the State Forest Practice Rules; and

(v) Maintenance of a primary and a secondary fire safety zone is required only to the extent possible within the area of an approved yard (setback to property line).

[Added 1996, Ord. 859 § II]

(d) The building site must have a slope less than 40 percent.

[Renumbered 1996, Ord. 859 § II]

(B) The dwelling shall:

(1) Comply with the standards of the Uniform Building Code or as prescribed in ORS 446.002 through 446.200 relating to mobile homes;

(2) Be attached to a foundation for which a building permit has been obtained;

(3) Have a minimum floor area of 600 square feet;

(4) Have a fire retardant roof; and

[Added 1996, Ord. 859 § II]

(5) Have a spark arrester on each chimney.

[Added 1996, Ord. 859 § II]

(C) The applicant shall provide evidence that the domestic water supply is from a source authorized in accordance with the Department of Water Resources Oregon Administrative Rules for the appropriation of ground water (OAR 690, Division 10) or surface water (OAR 690, Division 20) and not from a Class II stream as defined in the Forest Practices Rules.

(1) If the water supply is unavailable from public sources, or sources located entirely on the property, the applicant shall provide evidence that a legal easement has been obtained permitting domestic water lines to cross the properties of affected owners.

[Renumbered 1996, Ord. 859 § II]

(2) Evidence of a domestic water supply means:

(a) Verification from a water purveyor that the use described in the application will be served by the purveyor under the purveyor's rights to appropriate water; or

(b) A water use permit issued by the Water Resources Department for the use described in the application; or

(c) Verification from the Water Resources Department that a water use permit is not required for the use described in the application. If the proposed

Board of County Commissioners
c/o Clerk of the Board
Multnomah County
1120 SW Fifth Avenue, Room 1510
Portland, Oregon 97204

Re: Appeal of HV 13-97 (Shields Commercial Horse Arena)

Dear Members of the Board:

I object to the granting of a variance reducing the yard setback requirement from 200 feet to only 64 feet for the commercial horse arena on the Shields property at 11272 NW Skyline Blvd.

I object for the following reasons:

1. The horse arena is approximately 120 feet long, 96 feet wide and 25 feet tall. The rolling hills make a structure this large seem even larger by exposing it to view from downhill. If the building were placed where it should be, it would not have such an imposing presence.

2. Such a large commercial structure so close to the property line (64 feet rather than the required 200 feet) is a major imposition on the neighboring property owner.

3. The county should enforce its code regulations. This horse arena was built illegally in two ways:

   A. It was built illegally without the required permits and approvals.

   B. It was built illegally by putting the building in the wrong place, in violation of the setback requirements and in violation of the fire break requirements.

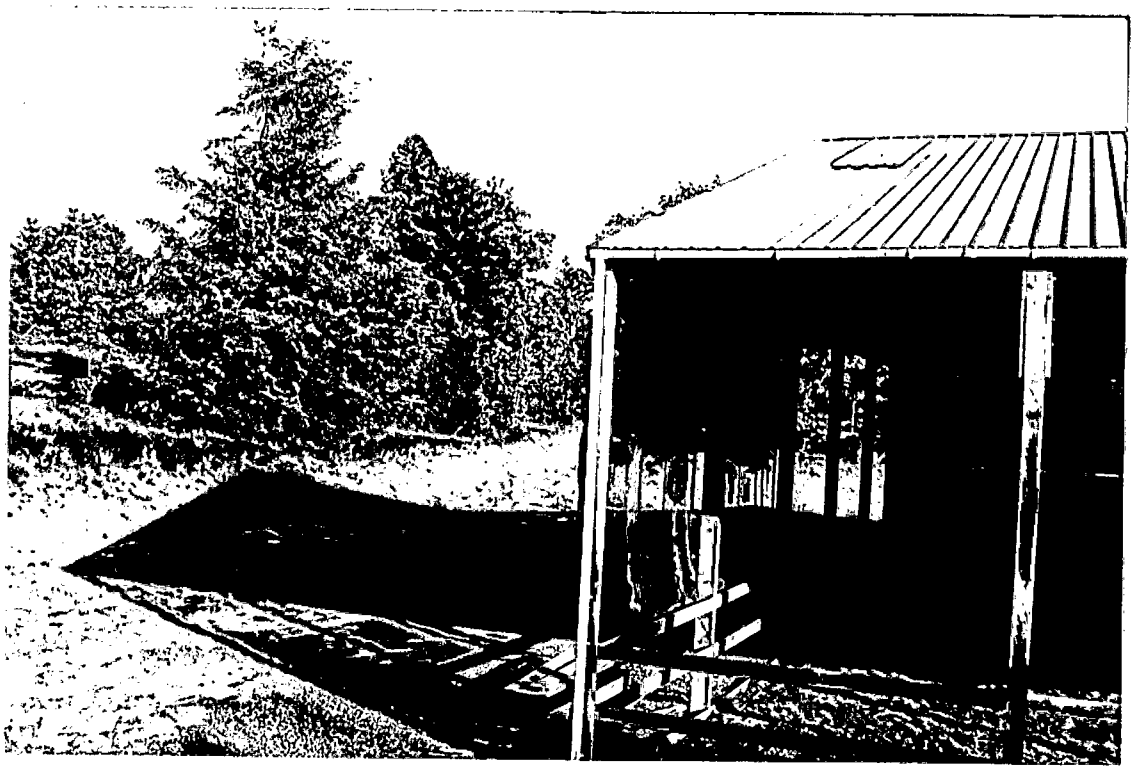
4. The fire break requirements are critical in this heavy wooded, CFU zoned area. Wildfire is always a threat, particularly in the dry seasons.

5. The County should not reward people who build first and then ask for special variances only when they get caught. This encourages the wrong kind of behavior, at the expense of the rest of the community. The Board needs to send the message that property owners must comply with the County regulations before building wherever they like.

Name: Deborah Watters

Address: 11270 NW Skyline

1



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LES & FLORENCE SHIELDS
11272 NW Skyline Blvd.
Portland, OR 97231

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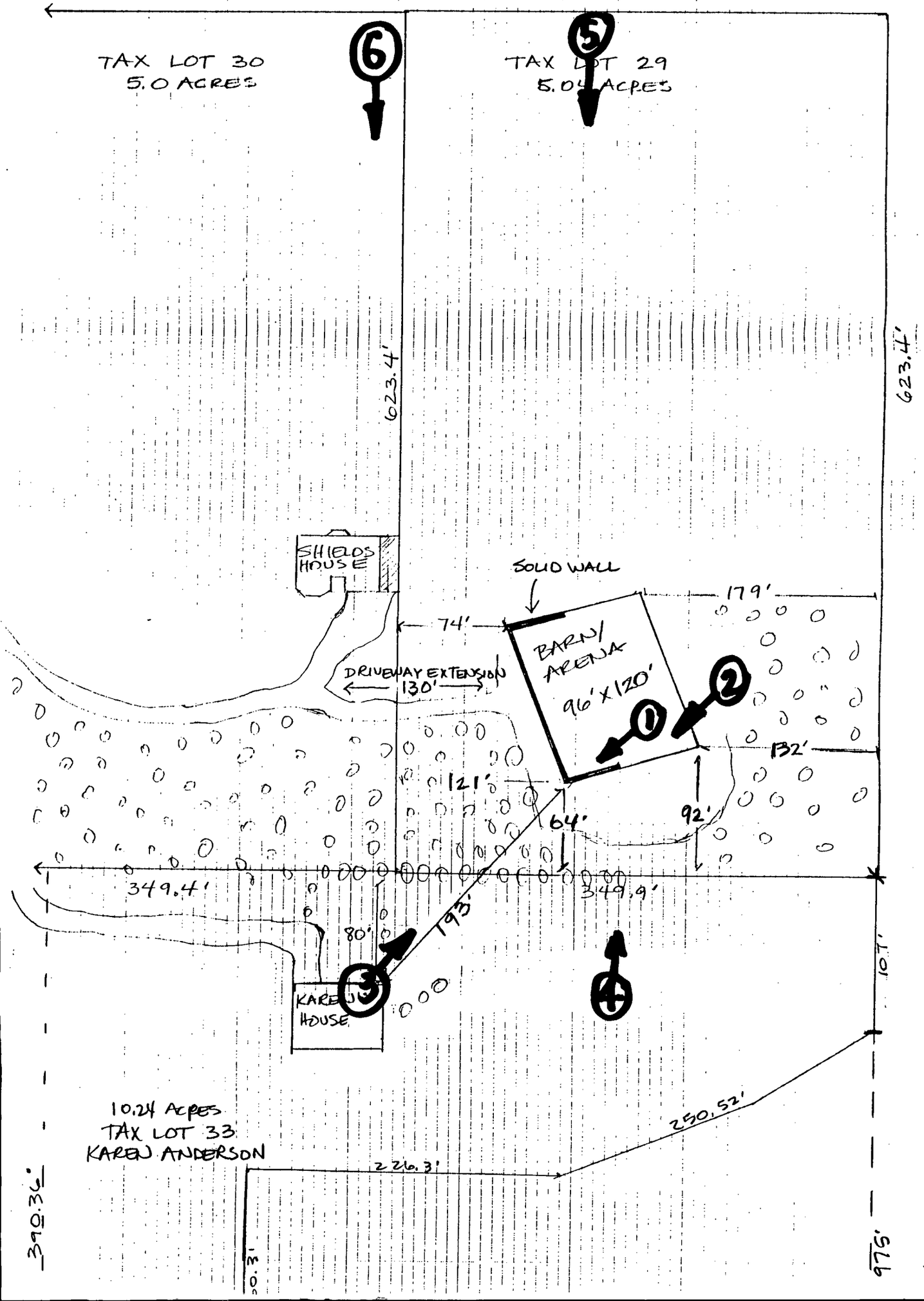
SCALE 1/8" = 10'



MULTNOMAH COUNTY OREGON

DEPARTMENT OF ENVIRONMENTAL SERVICES
TRANSPORTATION & LAND USE PLANNING DIVISION
2115 S.E. MORRISON STREET
PORTLAND, OREGON 97214
(503) 248-3043

PLANNING COMMISSION AGENDA

DATE: **February 2, 1998**
TIME: **6:00 PM**
PLACE: **Multnomah County Planning Office, Room 111**
2115 SE Morrison St., Portland Oregon 97214

I. Call to Order

II. Roll Call

III. Approval of Minutes from January 5, 1998

IV. Opportunity for Public Comment on Non-Agenda

V. **Hearing**: Proposed amendment to the Action Proceeding section of MCC 11.15.8205 - .8295 to comply with State regulations. C 7-97

VI. **Work Session**: Proposed amendment to the Commercial Forest Use district setback standard of MCC 11.15.2042.

VII. Next Planning Commission meeting will be on February 9, 1998

VIII. Adjournment

MULTNOMAH COUNTY OREGON

DEPARTMENT OF ENVIRONMENTAL SERVICES
TRANSPORTATION & LAND USE PLANNING DIVISION
2115 S.E. MORRISON STREET
PORTLAND, OREGON 97214
(503) 248-3043

February 2, 1998

MEMO

TO: Planning Commission

FROM: Bob Hall, Senior planner of Mult. Co.

RE: CFU Setbacks

I recently had a conversation with Jon Jinings, the Farm/Forest Coordinator for LCDC, in which he indicated that the fire siting standards for dwellings and structures of OAR 660–06–035 are mandatory standards which can only be varied on a case by case basis where it is demonstrated that equivalent fire suppression measures are provided (confirming letter attached). OAR 660–06–035 requires as follows:

660-006-035 FIRE SITING STANDARDS FOR DWELLINGS AND STRUCTURES

6:10P

The **following fire siting standards or their equivalent *shall* apply** to new dwelling or structures in a forest or agriculture/forest zone:

(1) The dwelling shall be located upon a parcel within a fire protection district or shall be provided with residential fire protection by contract. If the dwelling is not within a fire protection district, the applicant shall provide evidence that the applicant has asked to be included within the nearest such district. If the governing body determines that inclusion within a fire protection district or contracting for residential fire protection is impracticable, the governing body may provide an alternative means for protecting the dwelling from fire hazards. The means selected may include a fire sprinkling system, onsite equipment and water storage or other methods that are reasonable, given the site conditions. If a water supply is required for fire protection, it shall be a swimming pool, pond, lake, or similar body of water that at all times contains at least 4,000 gallons or a stream that has a continuous year round flow of at least one cubic foot per second. The applicant shall provide verification from the Water Resources Department that any permits or registrations required for water diversion or storage have been obtained or that permits or registrations are not required for the use. Road access shall be provided to within 15 feet of the water's edge for firefighting pumping units. The road access shall accommo-

date the turnaround of firefighting equipment during the fires season. Permanent signs shall be posted along the access route to indicate the location of the emergency water source.

(2) Road access to the dwelling shall meet road design standards described in OAR 660-006-0040.

(3) The owners of the dwellings and structures shall maintain a primary fuel-free break area surrounding all structures and clear and maintain a secondary fuel-free break area in accordance with the provisions in ***Recommended Fire Siting Standards for Dwellings and Structures and Fire Safety Design Standards for Roads*** dated March 1, 1991 and published by the Oregon Department of Forestry.

(4) The dwelling shall have a fire retardant roof.

(5) The dwelling shall not be sited on a slope of greater than 40 percent.

(6) If the dwelling has a chimney or chimneys, each chimney shall have a spark arrester.

I have attached a copy of the ***Recommended Fire Siting Standards for Dwellings and Structures and Fire Safety Design Standards for Roads.*** The requirements on page 3 of those standards require a minimum of a 30 foot primary fire safety zone and a minimum of 100 feet of a secondary fire safety zone. Using the LCDC interpretation of OAR 660-006-0040, the only way either of those setbacks can be reduced is through the provision of equivalent fire siting measures. We currently have no way in which equivalent fire siting measures can be evaluated.

We recommend that this item be tabled at this time to give staff an opportunity to work with DLCD and the Oregon Department of Forestry to develop a list of equivalent standards and recommended Code provisions under which individual proposals for reduced setbacks could be evaluated. We would report the results of that effort to you at your March meeting.

Oregon

DEPARTMENT OF
LAND
CONSERVATION
AND
DEVELOPMENT

January 30, 1998

Bob Hall
Division of Transportation and Land Use Planning
2115 SE Morrison
Portland, OR 97214

Dear Bob:

This is in response to our recent telephone conversations regarding application of the fire siting standards required by OAR 660-006-035. Please find enclosed a letter written by my predecessor, James W. Johnson, dated April 10, 1996.

Mr. Johnson's letter specifically addresses the fuel break requirements and includes a discussion of the "equivalent" standard. Specifically:

> "The rules provide the flexibility for a county to apply "equivalent" standards. The intent of the LCDC was to allow a county to vary the standards when other equivalent measures could be used to accomplish the intent of the fire safety provisions."[1]

The remainder of the letter goes on to discuss examples of when it may be more appropriate to use an "equivalent" standard, as well as, what types of measures may be acceptable.

I trust this information will be found helpful. If you have any further questions, feel free to call me at 373-0082.

Respectfully,

Jon Jinings
Farm/Forest Coordinator *and*
Field Representative

<p:\multnoma\firestan.wpd>

[1] Page 2, Paragraph 2, James W. Johnson letter to Will Selzer, April 10, 1996

John A. Kitzhaber
Governor

1175 Court Street NE
Salem, OR 97310-0590
(503) 373-0050
FAX (503) 362-6705

Oregon

DEPARTMENT OF
LAND
CONSERVATION
AND
DEVELOPMENT

April 10, 1996

Will Selzer
O'Donnell Ramis Crew Corrigan and Bachrach
1727 N.W. Hoyt St.
Portland, Oregon 97209

Dear Will:

This letter is in regard to our recent telephone discussions regarding the application of the fire siting standards in OAR 660-06-035. In particular, we discussed the requirement in OAR 660-06-035(3) pertaining to the establishment of primary and secondary fuel breaks. The rule requires that fuel breaks be maintained in accordance with the provisions in *Recommended Fire Siting Standards for Dwellings and Structures and Fire Safety Design Standards for Roads* (Oregon Department of Forestry, March 1, 1991). This publication recommends a primary fire break of 30 feet and a secondary fire break of at least 100 feet around a dwelling.

Recently, some jurisdictions have interpreted these fuel break standards as absolute minimum requirements which must be met in order for a dwelling to be approved. Such a narrow interpretation of the rule presents a problem particularly when it is impossible to meet the established distances. For example under this interpretation, a parcel that is only 150 feet wide is not eligible for a dwelling, even if it meets the "template" test, because the subject parcel is not wide enough for a secondary fuel break of 100 feet in all directions.

The Land Conservation and Development Commission (LCDC) established fire siting standards, first, in 1990 and then again in 1994 to respond to the fire siting standards established in HB 3661 by the 1993 Legislature. The rule provisions in OAR 660-06-035 interpret ORS 215.730(G) which requires that a dwelling have primary and secondary fire breaks. The statute does not establish numerical standards. The LCDC, in consultation with the Department of Forestry, established the rule which requires application of the listed fire siting standards (such as the 100 foot radius secondary fuel break) or their "equivalent." The commission did not intend for these "siting" standards to be used as "approval" standards to deny a

John A. Kitzhaber
Governor

1175 Court Street NE
Salem, OR 97310-0590
(503) 373-0050
FAX (503) 362-6705

dwelling solely based on the fact that it was physically impossible to meet the fuel break requirements.

The rules provide the flexibility for a county to apply "equivalent" standards. The intent of the LCDC was to allow a county to vary the standards when other equivalent measures could be used to accomplish the intent of the fire safety provisions.

For example, if limitations exist which prevent the construction of a 100 foot secondary buffer in all directions, then, establishing a larger primary fuel buffer may suffice or establishing an underground sprinkling system for fire suppression purposes within a reduced secondary buffer may suffice. We believe the LCDC established these fire safety standards with the understanding that a flexible approach, applied locally, was the preferable method of implementation.

Of course, this does not mean that the fuel break standards are to be ignored. In circumstances where an "equivalent" standard is more appropriate, we would urge the county to consult with both the local rural fire protection district and the Oregon Department of Forestry to assist in creating an "equivalent" fire safety solution.

I hope this letter helps to clarify our understanding of these rules. If you have further questions, please feel free to contact me at (503) 373-0082.

Sincerely,

James W. Johnson
Farm/Forest Coordinator

<i\forest\fuelbrk.ltr>

c: Kevin Birch. ODF
Jim Knight, DLCD
Mike Rupp, DLCD
DLCD Field Representatives
Phil Bourquin, Multnomah County Planning

LAND USE PLANNING NOTES

"STEWARDSHIP IN FORESTRY"

NUMBER 1 • MARCH 1991

Recommended Fire Siting Standards for Dwellings and Structures *and* Fire Safety Design Standards for Roads

PURPOSE: This technical bulletin has been developed jointly by the Department of Forestry and structural fire protection agencies in Oregon as technical guidance and recommended minimum standards to meet the requirements of new administrative rules, OAR 660-06-035 (fire siting standards for dwellings and structures) and OAR 66006-040 (fire safety design standards for roads) adopted by the Land Conservation and Development Commission for forest land zones (Goal 4 lands). Counties are encouraged to adopt stricter rules in forest zones where these recommendations might not adequately address a particular hazard or risk.

RULE REQUIREMENTS:

OAR 660-06-035 (Fire Siting Standards for Dwellings and Structures) requires that:

"[T]he following fire siting standards or their equivalent apply to new dwelling or structures in a forest or agriculture/forest zone:

"(l) If a water supply is available and suitable for fire protection, such as a swimming pool, pond, stream, or lake, then road access to within 15 feet of the water's edge shall be provided for pumping units. The road access shall accommodate the turnaround of fire fighting equipment during the fire season. Permanent signs shall be posted along the access route to indicate the location of the emergency water source.

"(2) Road access to the dwelling shall meet road design standards described in OAR 660-06-040.

"(3) The owners of the dwellings and structures shall: maintain a primary fuel-free break area surrounding all structures; clear and maintain a secondary fuel-free break area; and maintain adequate access to the dwelling for fire fighting

Published by:

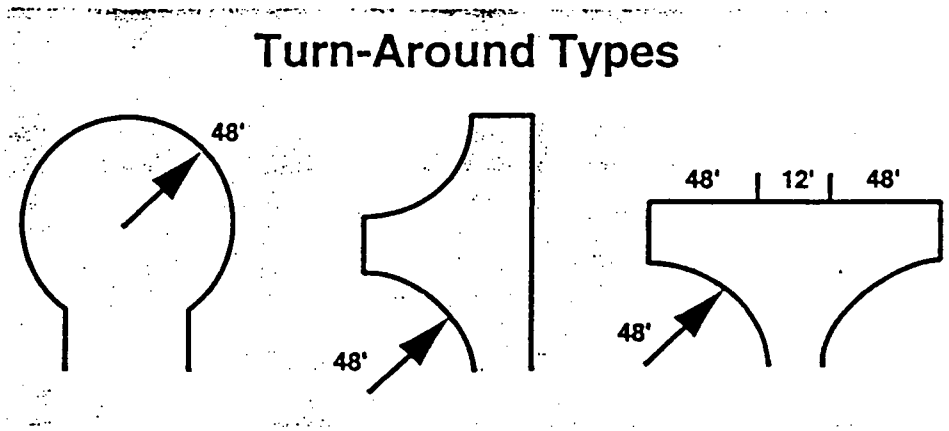
Oregon Department of Forestry
Resource Planning Office
2600 State Street
Salem, OR 97310

equipment vehicles in accordance with the provisions in *Protecting Your home from Wildfire* (National Fire Protection Association)."

OAR 660-06-040 (Fire Safety Design Standards for Roads) requires that:

"[T]he governing body shall establish road design standards, except for private roads and bridges accessing only commercial forest uses, which ensure that public roads, bridges, private roads and driveways are constructed so as to provide adequate access for fire fighting equipment. Such standards shall address maximum grade, road width, turning radius, road surface, bridge design, culverts, and road access taking into consideration seasonal weather conditions. The governing body shall consult with the appropriate Rural Fire Protection District and Forest Protection District in establishing these standards."

Though there are no similar rule requirements to be met in rural residential zones in forested areas, the Department of Forestry encourages the adoption by local government of these recommended fire safety standards in these zones as well.



Though some of the recommendations are strictly to accommodate structural fire protection apparatus and needs, it is recommended that the standards be applied to all lands within forest zones, regardless of the presence or absence of a rural (structural) fire protection district. The standards should be applied in anticipation of structural fire protection eventually becoming present.

RECOMMENDED FIRE SITING STANDARDS FOR DWELLINGS AND STRUCTURES:

A. Water Supply Standards:

1. Access— If a water supply—such as a swimming pool, pond, stream, or lake—of 4,000 gallons or more exists within 100 feet of the driveway or road at a reasonable grade (12%) an all-weather approach to a point within 15 feet of the water's edge should be provided. The all-weather approach should provide a turn-around with a **48**-foot radius of one of the types shown in the illustration below.

2. Identification— Emergency water supplies should be clearly marked along the access route with a county approved sign.

B. Fuel Break Standards:

1. Primary Safety Zone— The primary safety zone is a fire break extending a minimum of **30** feet in all directions around structures. The goal within the primary safety zone is to remove fuels that will produce flame lengths in excess of one foot. Vegetation within the primary safety zone could include green lawns and low shrubs (less than 24 inches in height). Trees should be spaced with greater than 15 feet between the crowns and pruned to remove dead and low (less than 8 feet) branches. Accumulated leaves, needles, limbs and other dead vegetation should be removed from beneath trees. Nonflammable materials (i.e., rock) instead of flammable materials (i.e., bark mulch) should be placed next to the house.

As slope increases, the primary safety zone should increase away from the house, parallel to the slope and down the slope, as shown in the table and illustration on the next page.

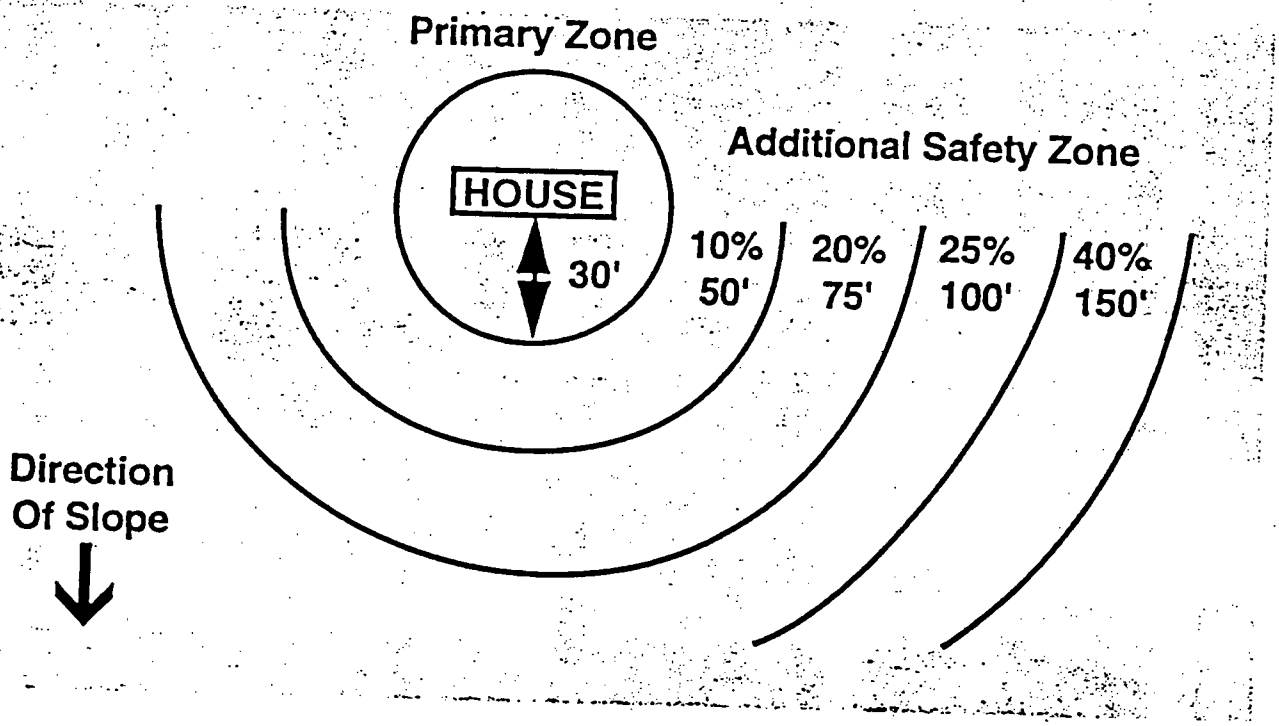
2. Secondary Fuel Break— The secondary fuel break is a fuel break extending a mini-

Size of Primary Safety Zone by Percent Slope

Slope	Feet of Primary Safety Zone	Feet of Additional Safety Zone Down Slope
0%	30	0
10%	30	50
20%	30	75
25%	30	100
40%	30	150

Buildings should be restricted to slopes of less than 40 percent.

EXAMPLE OF SAFETY ZONE SHAPE



mum of **100** feet in all directions around the primary safety zone. The goal of the secondary fuel break should be to reduce fuels so that the overall intensity of any wildfire would be lessened and the likelihood of crown fires and crowning is reduced. Vegetation within the secondary fuel break should be pruned and spaced so that fire will not spread between crowns of trees. Small trees and brush growing underneath larger trees should be removed to prevent spread of fire up into the crowns of the larger trees. Dead fuels should be removed.

RECOMMENDED FIRE SAFETY DESIGN STANDARDS FOR ROADS:

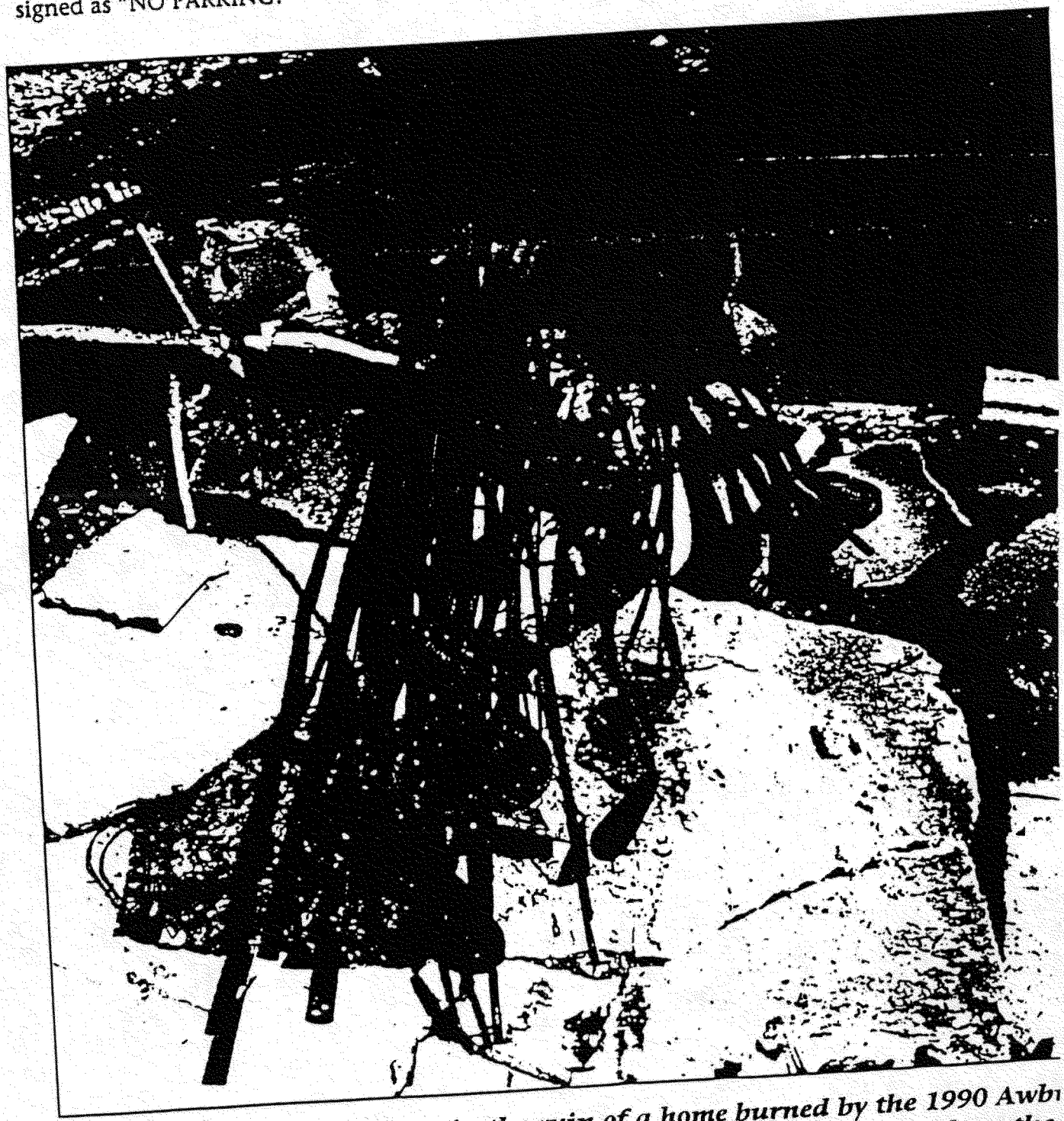
A. Road Standards (public roads and private roads accessing 2 or more residences):

1. Right-of-ways— Roads should be built and maintained to provide a minimum **20** foot width of all-weather surface capable of supporting gross vehicle weights of **50,000** pounds, a minimum curve radius of **48** feet and a vertical clearance of **13'6"**.

2. Cul-de-Sacs— Cul-de-sacs should be defined as dead-end roads over **150** feet in length. Cul-de-sacs should have turn-arounds of not less than **48** feet radius at a maximum spacing of **500** feet between turn-a-rounds. All turn-a-rounds should be marked and signed as "NO PARKING."

3. Bridges and Culverts— Bridges, culv and other structures in the road bed should constructed and maintained to support gross vehicle weights of 50,000 pounds.

4. Road Grades— Road grades should not exceed an average of 8 percent, with a maxi-



A set of burned golf clubs lay in the ruin of a home burned by the 1990 Awbi Hall Fire. Twenty-two homes burned during this fire, which raced along the outskirts of Bend, Oregon. Most of the burned homes had insufficient fuel breaks surrounding them.

Photograph courtesy of The Bulletin, *Bend*

mum of **12** percent on short pitches. Variances could be granted by the fire service having responsibility for the area when topographic conditions make these standards impractical.

5. Identification— Roads should be uniquely named or numbered and visibly signed at each road intersection. Letters or numbers should be a minimum of three inches in height and constructed of reflectorized material.

B. Driveway Standards (private roads accessing a single residence):

1. Driveways— Driveways should be built and maintained to provide a minimum **12**-foot width of all-weather surface capable of supporting gross vehicle weights of **50,000** pounds, a minimum curve radius of **48** feet and a vertical clearance of **13'6"**.

2. Vehicle Passage Turnouts— Driveways in excess of **200** feet should provide **20**-foot wide by **40**-foot long passage space (turnouts) at a maximum spacing of 1/2 the driveway length or **400** feet, whichever is less. Wherever visibility is limited, these distances should be reduced appropriately.

3. Dead-end-driveways— Dead-end-driveways are defined as dead-end roads over **150** feet in length serving a single residence. Dead-end-driveways should have turn-a-rounds of not less than **48** feet radius.

4. Bridges and Culverts— Bridges, culverts, and other structures in the road bed should be constructed and maintained to support gross vehicle weights of 50,000 pounds.

5. Driveway Grades— Driveway grades should not exceed an average of **8** percent, with a maximum of **12** percent on short pitches. Variances could be granted by the fire service having responsibility for the area when topographic conditions make these standards impractical.

6. Identification— Driveways should be marked with the residence's address unless the residence is visible from the roadway and the address is clearly visible on the residence. Letters or numbers should be a minimum of three inches in height and constructed of reflectorized material.

C. Certification:

1. If bridges or culverts are involved in the construction of a road or driveway, written verification of compliance with the 50,000 gross vehicle weight standard should be provided from an Oregon Registered Professional Engineer. Otherwise, written verification of compliance should be provided by the applicant.

BASIS FOR RECOMMENDATIONS:

A. Water Supply

Water is a critical tool in fire suppression. Hydrants are generally not available in forested areas. Therefore, fire suppression in forested areas is dependent upon the water carried in the responding fire equipment and water sources available for refill or that can be pumped from an engine. Water available for refilling an engine can mean the difference between saving or losing a structure, or preventing a wildfire from escaping initial attack. When a fire engine or tanker runs out of water, turn around time to a refill site may be quite lengthy. A 4,000 gallon water supply is large enough to refill a large tanker or several smaller fire engines. Requiring construction of an all weather approach to within 15 feet of 4,000 gallon or larger water sources within 100 feet or less of a driveway or road will greatly help fire protection agencies.

B. Fuel Breaks

The steeper the slope, the greater the flame length, the hotter the flame front, and the faster the rate of fire spread. This greater fire activity is primarily due to preheating of the vegetation upslope from the fire, increased draft of fresh air to the fire from below, and more flame contact with upslope fuels. On steeper slopes, failure to provide for larger safety zones downslope from a residence will make it more difficult for fire personnel to protect the structure. The

firefighter is also in a more tenuous safety position.

On the last page are two graphs showing the relationships of flame length and dozer line construction speeds to slope for two fuel types. Flame lengths increase with slope and dozer fire line construction rates decrease. Other fire fighting methods such as water attack and hand line construction are also hampered by steep slopes. Generally, hand lines are useless when flame lengths reach 4 feet; dozer lines fail with 8-foot flame lengths.

C. Road & Driveway Specifications

Fire fighting apparatus (fire engines, tankers, dozer and lowboy, etc.) are much larger and heavier than personal vehicles. These vehicles require greater road width and clearance for passage, wider road curves for turning, and level or at most moderate road grades for maintaining vehicle engine performance and driver safety.

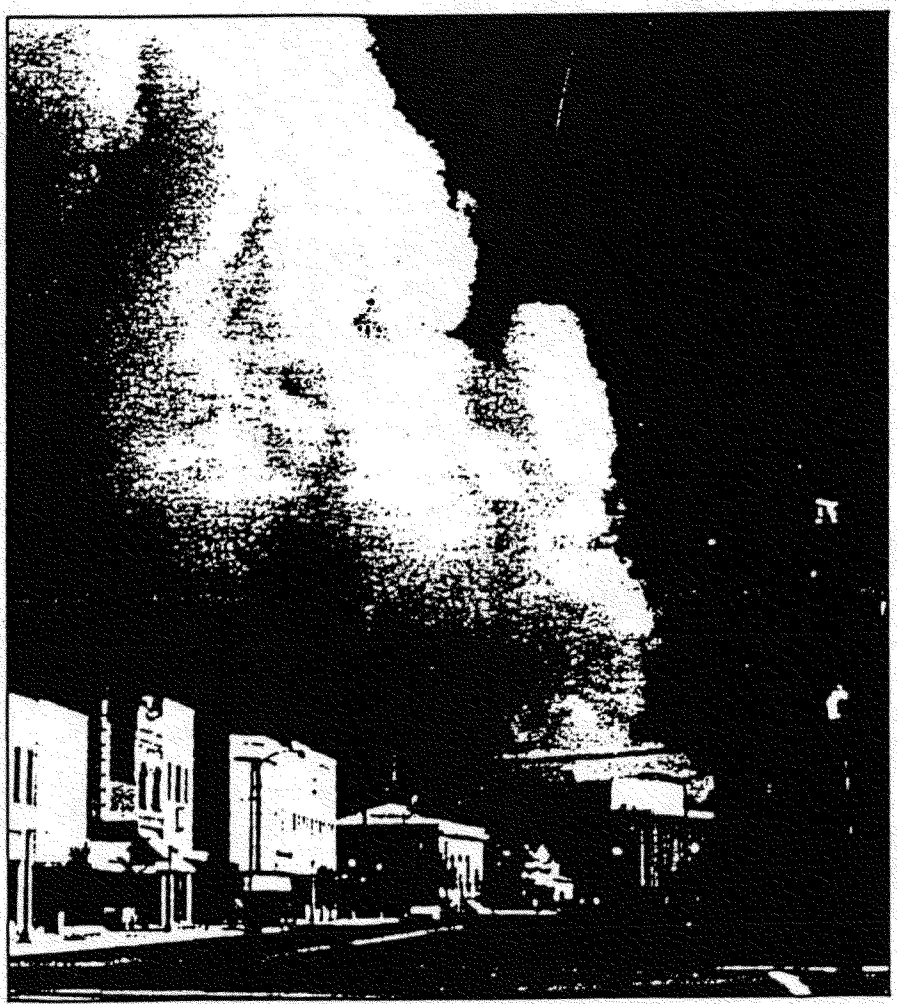
- The 1988 Oregon Uniform Fire Codes, Chapter 10.207 specifies that all roads shall be all weather surfaced, minimum 20 feet width, and have a vertical clearance of 13' 6".

- A filled, fully equipped 3,000 gallon tanker weighs around 40,000-45,000 pounds. Many rural fire departments utilize this size tanker as a water source for the small fire engines. A minimum road surface load limit of 50,000 pounds provides for this load plus an appropriate safety margin.

- Large, heavy vehicles have difficulty driving up and down steep road grades. Additionally, most rural fire departments are principally staffed by volunteers and most forest fire agency employees are seasonal. While these people are capable drivers, very few are professional truck drivers and they may have a more difficult time maneuvering a truck up a steep winding road than would the professional driver.

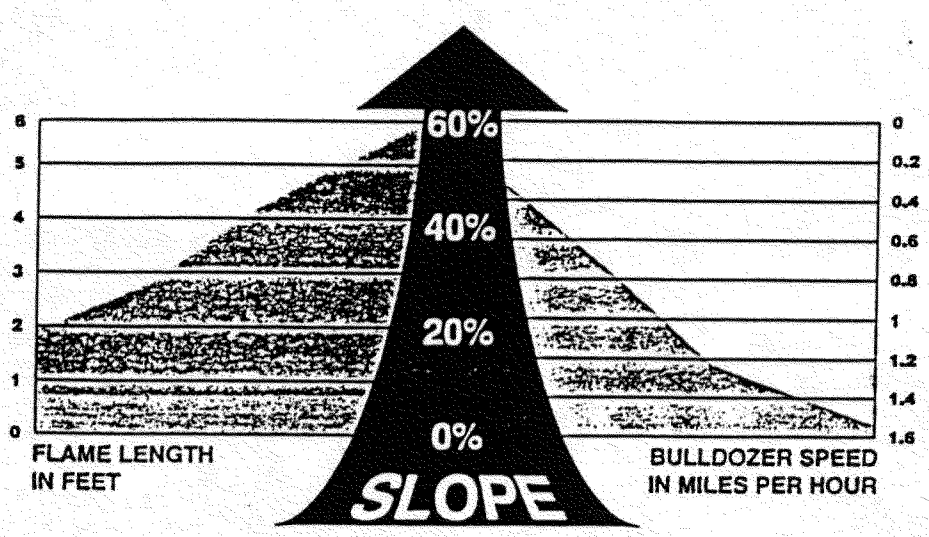
- Rural address identification is extremely important. While the local resident may be familiar with the localized road or driveway system, emergency responders generally will not. Proper signing of roads and driveways with 3" or larger reflectorized letters or numbers will assist fire fighters in locating threatened residences, especially when visibility is impaired by darkness or smoky conditions.

- It is very difficult to back up long distances in large fire apparatus, and this difficulty can be compounded if driveway grade is not level. Therefore, turnouts and turnarounds are very important.

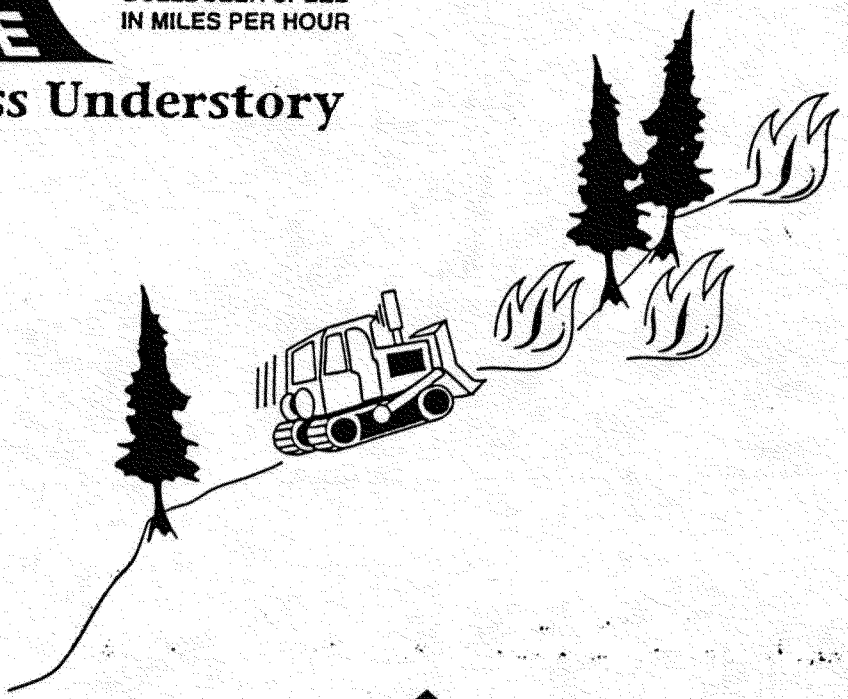


The 1989 Dooley Mountain Fire threatened the residents of Baker City.
Photograph courtesy of the Democrat-Herald, *Albany*

The Relationship of Flame Length to Fuel Type and Slope: Two Situations



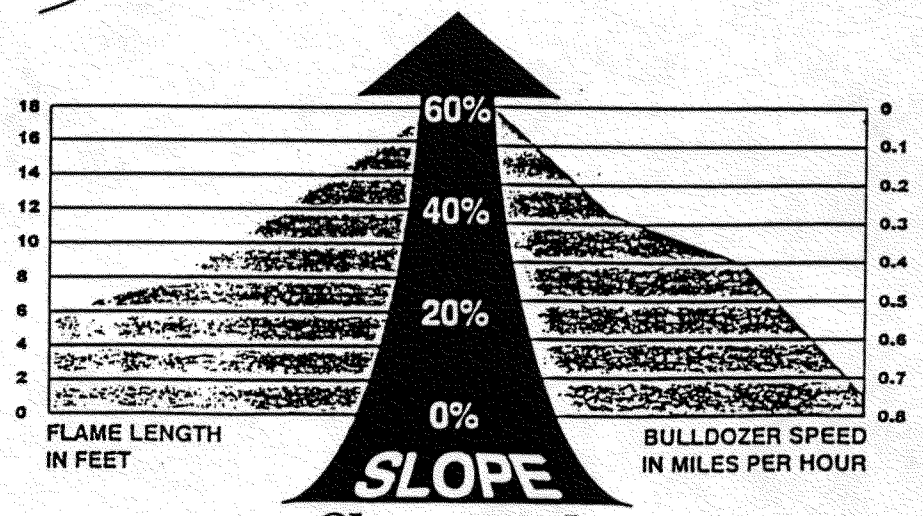
Timber with Grass Understory



These two graphs illustrate the effect of slope on flame length and bulldozer speed in two common fuel types.

In open timber with grass, flames traveling up a 20% slope can reach 3-4 feet in length. Chaparral, on the same slope, will generate flame lengths of 6-8 feet. Hand-constructed fire lines usually fail to stop fires having 4-foot or longer flame lengths. . Bulldozer-constructed fire lines usually fail to stop fires having 8-foot or longer flame lengths.

Fire lines become less effective as slope increases and as fuel loads increase.



Chaparral

MULTNOMAH COUNTY PLANNING COMMISSION
AGENDA ITEM BRIEFING
STAFF REPORT

To: Planning Commission

From: Planning Staff

Today's Date: December 29, 1997

Work Session Date: January 5, 1998

RE: Planning Commission work session on an ordinance amending the Action Proceedings Section of the zoning code to address three specific timing related procedural requirements. (Planning File C 7-97)

I. Recommendation/ Action Requested:

Phil Borgman

Recommend adoption of an ordinance amending the Action Proceedings section of the zoning code by: 1) repealing the 120 day requirement of code and relying on statutory 150 requirements; 2) amending the public hearing notice requirement from 20 days to 10 days prior to a hearing; and 3) amending the date a staff report is made available prior to a hearing from 5 days to 7 days as required by statute. = accepted

II. Background/ Analysis:

The Action Proceedings section of the zoning code lays out the process by which land use decisions are made. Through time the procedural requirements of the County have been and are increasingly affected by new and/or revised state requirements. The effect of these changes has and will result in the Action Proceedings provisions becoming increasingly antiquated. The need for major revisions to procedural sections of the zoning code are evident and have been scheduled into the Planning Commission work program in June 1998.

In advance of the major work element, the following three minor changes are necessary to either satisfy statutory requirements or provide clarification within the zoning ordinance of the procedural choices of the County.

A. <u>120 Day Rule:</u> In general, the 120 day rule refers to the amount of time the county has to issue a final decision on a land use application. With the complexity of procedural requirements affecting land use applications including notice requirement, staff reports, scheduling hearings, continuances, keeping the record open, etc., the County has found it difficult in many cases to complete all the requirements within 120 days, particularly if the case is complex.

The current ordinance (MCC 11.15.8280(E)) requires the County to render a final decision within 120 days from the time the application is accepted as being complete.

The 1997 Oregon Legislature passed House Bill 2006 B-Engrossed which revises the time period in which the county must take final action (ORS 215.428) on an application for permit, limited land use decision or zone change. The Bill specifies that final action must be taken within 120 days for land within urban growth boundary or on applications for mineral aggregate extraction. It also specifies **150-day deadline** for all other applications (ie. all land use applications for property outside the UGB). This amendment has a termination date of September 30, 1999.

House Bill 2006 was adopted by the Legislature in response to the difficulty several jurisdictions are having in completing complex land use permit applications within 120 days. Multnomah County is no exception and has had to utilize resources in defending itself against legal challenges based on the 120 day rule. The 150 day deadline provides an alternative deadline for Counties which appears to be reasonable, however, is subject to change in September, 1999.

Options:

a) Leave the existing 120 day language of MCC .8280 (E) in tact.

b) Adopt an amendment to .8280 (E) replicating the 120/150 day language of House Bill 2006 B-Engrossed.

c) Repeal MCC 11.15.8280 (E) and default to statute.

d) Other options determined by the Planning Commission.

Recommendation: c) repeal MCC 11.15.8280 (E) and default to statute. This option will provide consistency with current County practices and allow for flexibility as statutory language evolves.

Staff recognizes the 150 day rule language is subject to change in September, 1999 and that the existing 120 day language of code does not conflict with the 150 days provided by the bill. However, the 150 days would be more consistent with practice, as the 120 day language of code has not been feasible to meet in several instances.

B. <u>Twenty Day Notice of Hearing:</u> All land use hearings require notice to affected parties. The 20-day language of MCC .8220 (C) requires notice to be sent 10 days earlier than that provided by statute[1] when two or more evidentiary hearings are provided.

With just one HO hearing date per month, the 20 day notice requirement has resulted in hearings being pushed back an additional month to meet the notice requirement resulting in conflicts with the 120 day clock. A ten day notification would facilitate the applicants ability to be heard by HO in a more timely manner while enhancing the County's ability to issue a final decision within the statutory timeline.

Options:

a) Leave the existing notification language of MCC .8220 (C) in tact.

b) Amend .8220 (C) by replacing the 20 day notification language with 10 days.

c) Repeal MCC 11.15.8220 (C).

d) Other options determined by the Planning Commission.

Recommendation: b) Amend .8220 (C) by replacing the 20 day notification language to 10 days. This option would provide a clear understanding of process in code while ensuring applicants can get to a hearing quicker.

C. <u>Availability of Staff Report:</u> MCC 11.15.8230 (C) requires a Staff Report be completed and available at the office of the Planning Director at least **five days** prior to the date fixed for hearing. ORS 197.763 (4)(b) requires that a copy of the staff report will be available for inspection at no cost at **least seven** days prior to the hearings. The current 5-day language of MCC .8230(C) violates the 7-day requirement of statute and therefore should be amended to be consistent with the 7-day statutory language.

Options:

a) Repeal MCC 11.15.8230 (C) and rely on statutory requirements.

b) Amend .8230 (C) by replacing the 5 day language with 7 days.

Recommendation: b) Amend .8230 (C) by replacing the 5 day language with 7 days.

---

[1] MCC 11.15.8220 (C) requires the County to mail notice of a quasi-judicial hearing at least twenty days prior to the hearing, to certain persons. ORS 197.763 (3)(f) requires notice be mailed twenty days before the evidentiary hearing; or if two or more evidentiary hearings are allowed, 10 days before the first evidentiary hearing. All land use applications in Multnomah County have an opportunity for at least two public hearings as a decision of either the Hearings Officer or Planning Commission is appealable to the Board.

III. Financial Impact:

Under II. A. - violations of the existing 120 day code requirement has and could result in a Writ being issued with legal costs being picked up by the County. The recommended option would increase the time frame by which the County must make a decision to that provided by statute, thus minimizing the potential for future Writs.

IV. Legal Issues:

The recommended amendments would correct existing procedural inconsistencies and distinguish County choices from those provided under state law.

V. Controversial Issues:

None anticipated.

VI. Link to Current County Policies:

Policy requires a citizen involvement program offering opportunities for citizens to be involved in all phases of the land planning process. The procedures recommended for amendment would continue to provide notice to neighboring properties of upcoming hearings and assure Staff reports are available for review by citizens in a timely manner prior to hearing.

VII. Citizen Participation:

Notice of Planning Commission hearing(s)on the proposed ordinance will be published in the *Orgonian* newspaper. At the Planning Commission hearing(s) public testimony will be accepted.

VIII. Other Government Participation:

A notice of proposed amendment will be mail to the Department of Land Conservation and Development a minimum of 45 days prior to adoption.

IX. PROPOSED CODE AMENDMENTS

Proposed amendments are shown within the following text of the Action Proceedings Section with new wording **bold and underlined** and ~~strikethrough sections are deleted.~~

* * *

11.15.8280 Board Decision

(A) The Board may affirm, reverse or modify the decision of the Planning Commission or Hearings Officer and may grant approval subject to such modifications or conditions as may be necessary to carry out the Comprehensive Plan or to achieve the objectives of MCC .8240 (D).

(B) The Board shall state all decisions upon the close of its hearing or upon continuance of the matter to a time certain.

(C) Written findings of fact and conclusions, based upon the record, shall be signed by the Presiding Officer of the Board and filed with the Clerk of the Board with a decision within five business days following announcement of the decision under subsection (B) above.

(D) The Boards decision shall be final at the close of business on the tenth day after the Decision, Findings of Fact and Conclusions have been filed under subsection (C) above, unless the Board on its own motion grants a rehearing under MCC .8285(A).

~~(E) The Board shall render a decision within 120 days from the time the application for that action is accepted as being complete, except when: Except as provided in MCC .7330, the approval of a Conditional Use shall expire two years from the date of issuance of the Board Order in the matter, or two years from the final resolution of all appeals, unless:~~

~~(1) A participant requests an extension before the conclusion of the initial evidentiary hearing, in which case the extension shall not be subject to the 120 day limitation, or~~

~~(2) Additional documents or evidence is provided in support of the application less than 20 days prior to or at the initial evidentiary hearing and a party requests a continuance of the hearing, in which case the continuance shall not be subject to the 120 day limitation.~~

* * *

11.15.8220 Notice of Hearing - Contents

(A) Notice of hearing before the Planning Commission or Hearings Officer shall contain the following:

(1) The date, time and place of the hearing;

(2) A legal description of the subject property;

(3) A street address or other easily understood geographical reference to the subject property;

(4) The nature of the proposed action and the proposed use or uses that could be authorized;

(5) A listing of the applicable Zoning Code and comprehensive plan policies that apply to the application;

(6) A statement that all interested parties may appear and be heard;

(7) A statement that failure to raise an issue, either in person or by letter, or failure to provide sufficient specificity to afford the decision maker an opportunity to respond to the issue precludes appeal to LUBA based on that issue;

(8) A statement that the hearing shall be held pursuant to the adopted Rules of Procedure;

(9) In the case of a hearing by the Planning Commission, the names of the members of the Commission and, in the case of a hearing by the Hearings Officer, the name of the Officer and the name of the staff representative to contact and the telephone number where addition information may be obtained;

(10) A statement that a copy of the application, all documents and evidence relied upon by the applicant and applicable criteria are available for inspection at no cost and will be provided at reasonable cost;

(11) A statement that a copy of the staff report will be available for inspection at no cost at least seven days prior to the hearing and will be provided at reasonable cost; and

(12) A copy of the Planning Commission's Rules of Procedure.

(B) When the proposed action is a change of zone classification, the Planning Director may include in the notice of hearing a statement that the approval authority may consider classifications other than that for which the action is initiated.

(C) In addition to the notice required by MCC .8120(B) and any other notice required by law, notice shall be mailed at least **ten** ~~twenty~~ days prior to the hearing to the following persons:

(1) The applicant;

(2) All record owners of property within:

(a) 100 feet of the subject property on matters listed under MCC .8205(D) and (E), and on all other matters within the Urban Growth Boundary.

(b) 250 feet of the subject property where the subject property is outside the Urban Growth Boundary and not within a farm or forest zone;

(c) 500 feet of the subject property where the subject property is within a farm or forest zone.

* * *

MCC 11.15.8230 Hearings

(A) The Hearings Officer or a quorum of at least three members of the Planning Commission, as is appropriate, shall conduct a hearing on the application within 90 days of the initiation thereof, under MCC .8210(B), unless such time is extended with the written consent of the one initiating the action.

(B) Three members of the Planning Commission shall constitute a quorum in acting on applications under MCC .8115(B).

(C) No action shall be heard unless a Staff Report is completed and available at the office of the Planning Director at least **seven** ~~five~~ days prior to the date fixed for hearing. A copy of the Report shall be mailed, upon completion, to the one initiating the action and to the Planning Commission or Hearings Officer, as appropriate. In addition, a copy shall be furnished to other persons who request the same upon payment of the fee provided for under MCC .9020. The Staff Report may be supplemented only at the hearing.

* * *

McNamee Neighbors

McNamee Neighbors
14310 N.W. McNamee Road
Portland, OR 97231-2152
503-621-1234
Fax 503-621-3390
dking@teleport.com

February 2, 1998

Leonard Yon, Chairman
Multnomah County Planning Commission
2115 S.E. Morrison
Portland, Oregon 97214

1993 built

Dear Mr. Yon:

McNamee Neighbors is a neighborhood association serving the residents and property owners who live on McNamee Road, which is in northern Multnomah County. At our recent regular board meeting, McNamee Neighbors asked that I write you a note explaining our concern regarding the CFU setback standard currently under discussion.

While many properties along McNamee Road are adversely affected by this ruling, a group of 12 properties are more severely impacted. Attached are Plot Plans for my property, which is one of the twelve. These properties are special in that they carry Environmental Easements that preclude building for all area outside an "approved building site." As the maps show, the entire approved building site is within 200 feet of the property line. For some property owners, plans for garages cannot now be completed. For other property owners, plans for agricultural outbuildings are blocked.

We would like to see the setback ordinance for these properties reset to its original dimension, 30 ft. I understand from talking with Bob Hall that this result is unlikely, due to state requirements. As you know, Bob believes that there may be a way to meet the objective of the setback - fire safety - by other means. We encourage you to explore this option and to find a way forward for these property owners.

We do not have a specific proposal to make at this time. We would, however, like to participate when possible in constructing a solution to this problem. We would hope that the solution can be found that strikes a balance between the goals that the planning commission and planning department aim to achieve and the freedom of Multnomah County residents to build structures appropriately on their property.

Yours truly,

David R. King + Susan
President
McNamee Neighbors

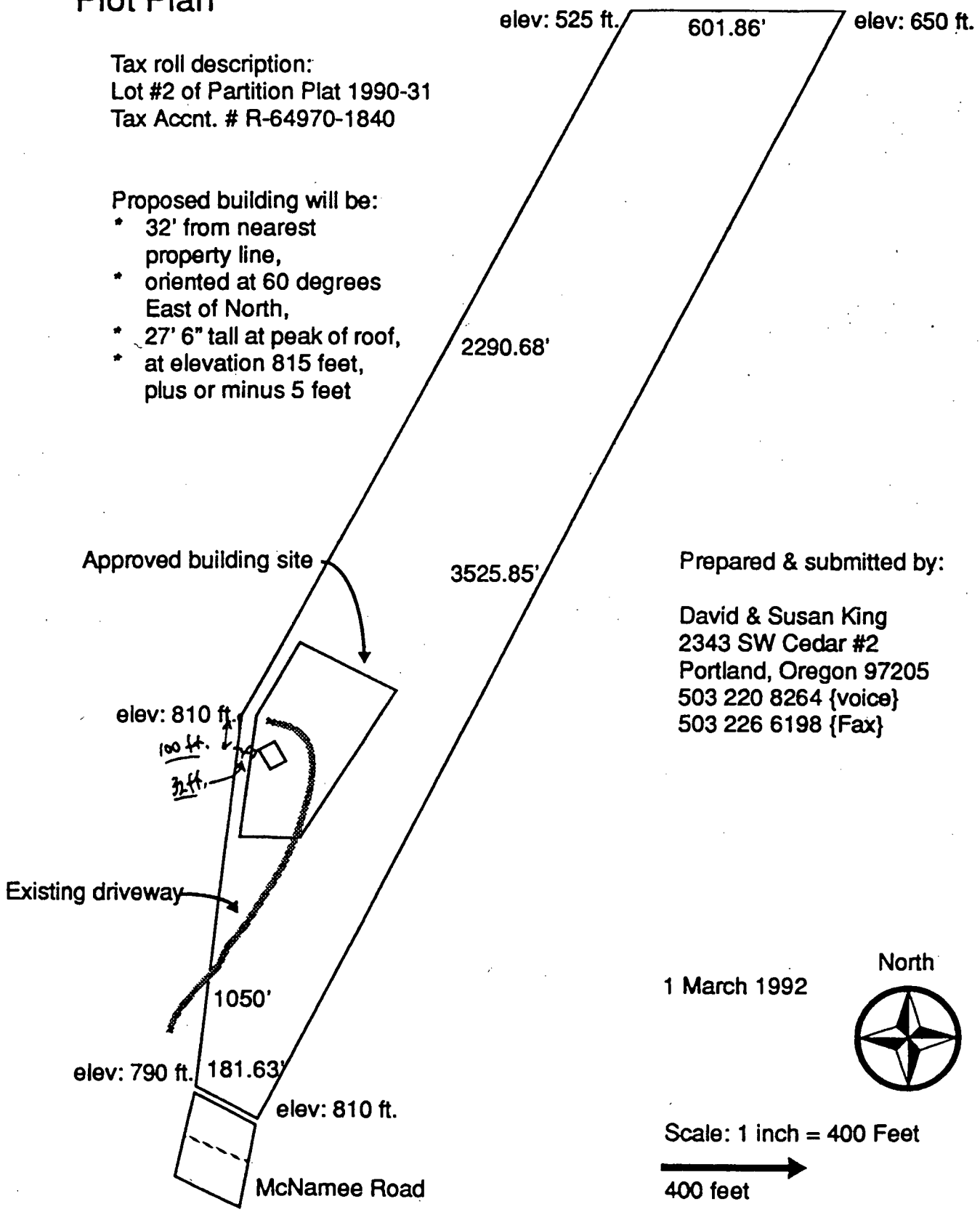
Cc: McNamee Neighbors Board of Directors
Bob Hall, Multnomah County Land Use Planning
Bev Stein, Chair, Board of County Commissioners
Jon Jennings, DLCD

Encl: Two Plot Plans for 14310 NW McNamee Road

Plot Plan

Tax roll description:
Lot #2 of Partition Plat 1990-31
Tax Accnt. # R-64970-1840

Proposed building will be:
* 32' from nearest property line,
* oriented at 60 degrees East of North,
* 27' 6" tall at peak of roof,
* at elevation 815 feet, plus or minus 5 feet



Prepared & submitted by:

David & Susan King
2343 SW Cedar #2
Portland, Oregon 97205
503 220 8264 {voice}
503 226 6198 {Fax}

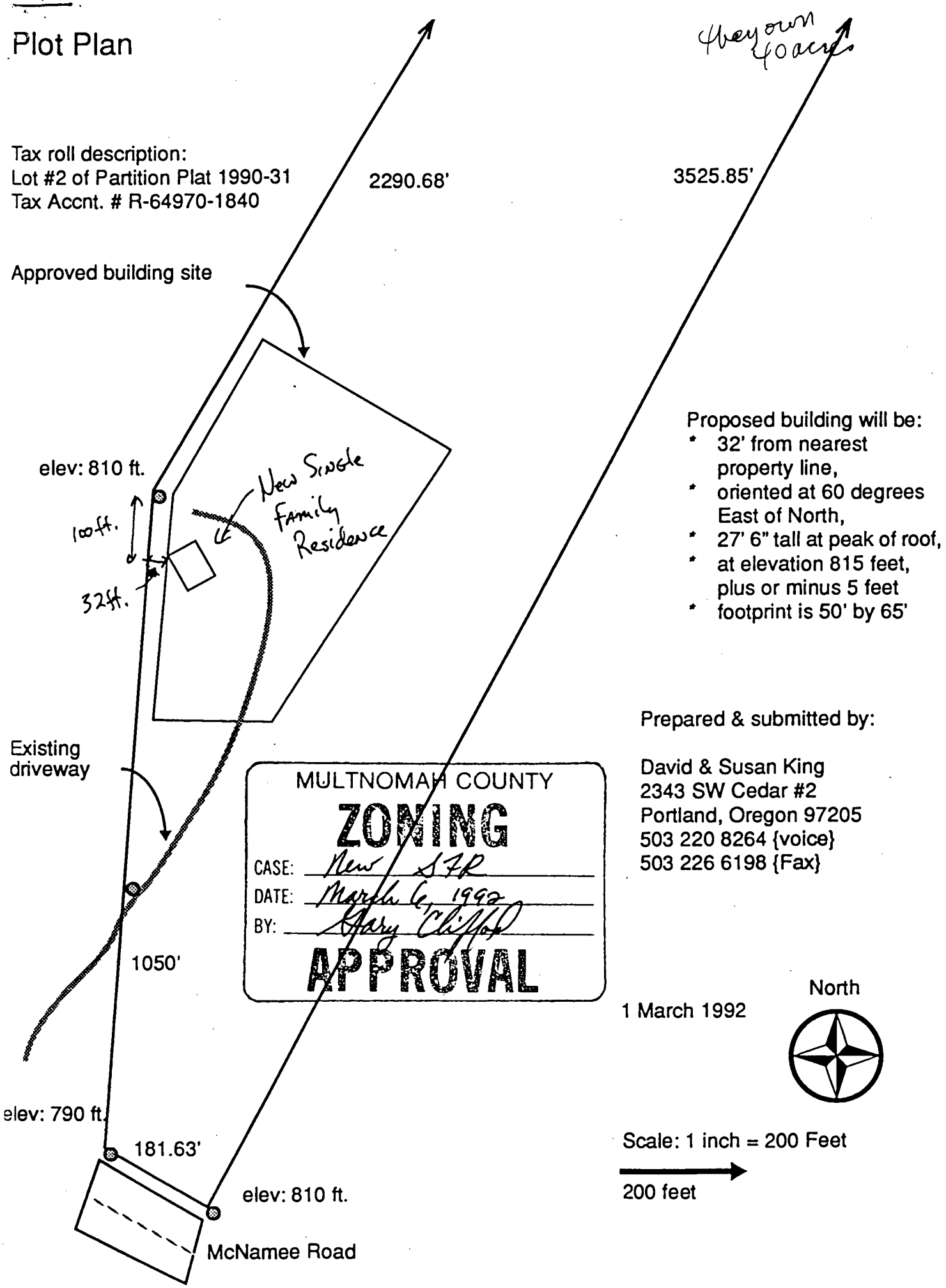
1 March 1992

North

Scale: 1 inch = 400 Feet

400 feet

Plot Plan


Tax roll description:
Lot #2 of Partition Plat 1990-31
Tax Accnt. # R-64970-1840
2290.68'
3525.85'
Approved building site
elev: 810 ft.
100ft.
32ft.
New Single Family Residence
Existing driveway
1050'
elev: 790 ft.
181.63'
elev: 810 ft.
McNamee Road
MULTNOMAH COUNTY
ZONING
CASE: New SFR
DATE: March 6, 1992
BY: Gary Clifford
APPROVAL
Proposed building will be:
* 32' from nearest property line,
* oriented at 60 degrees East of North,
* 27' 6" tall at peak of roof,
* at elevation 815 feet, plus or minus 5 feet
* footprint is 50' by 65'
Prepared & submitted by:
David & Susan King
2343 SW Cedar #2
Portland, Oregon 97205
503 220 8264 {voice}
503 226 6198 {Fax}
1 March 1992
North
Scale: 1 inch = 200 Feet
200 feet

ROBERT HALL

MULTNOMAH COUNTY OREGON

SENIOR PLANNER
TRANSPORTATION & LAND USE PLANNING
2115 S.E. MORRISON
PORTLAND, OREGON 97214
(503) 248-3043
FAX: (503) 248-3389
ROBERT.N.HALL@CO.MULTNOMAH.OR.US

LAND USE PLANNING NOTES

STEWARDSHIP IN FORESTRY

NUMBER 1 • MARCH 1991

Recommended Fire Siting Standards for Dwellings and Structures *and* Fire Safety Design Standards for Roads

PURPOSE: This technical bulletin has been developed jointly by the Department of Forestry and structural fire protection agencies in Oregon as technical guidance and recommended minimum standards to meet the requirements of new administrative rules, OAR 660-06-035 (fire siting standards for dwellings and structures) and OAR 66006-040 (fire safety design standards for roads) adopted by the Land Conservation and Development Commission for forest land zones (Goal 4 lands). Counties are encouraged to adopt stricter rules in forest zones where these recommendations might not adequately address a particular hazard or risk.

RULE REQUIREMENTS:

OAR 660-06-035 (Fire Siting Standards for Dwellings and Structures) requires that:

"[T]he following fire siting standards or their equivalent apply to new dwelling or structures in a forest or agriculture/forest zone:

"(1) If a water supply is available and suitable for fire protection, such as a swimming pool, pond, stream, or lake, then road access to within 15 feet of the water's edge shall be provided for pumping units. The road access shall accommodate the turnaround of fire fighting equipment during the fire season. Permanent signs shall be posted along the access route to indicate the location of the emergency water source.

"(2) Road access to the dwelling shall meet road design standards described in OAR 660-06-040.

"(3) The owners of the dwellings and structures shall: maintain a primary fuel-free break area surrounding all structures; clear and maintain a secondary fuel-free break area; and maintain adequate access to the dwelling for fire fighting

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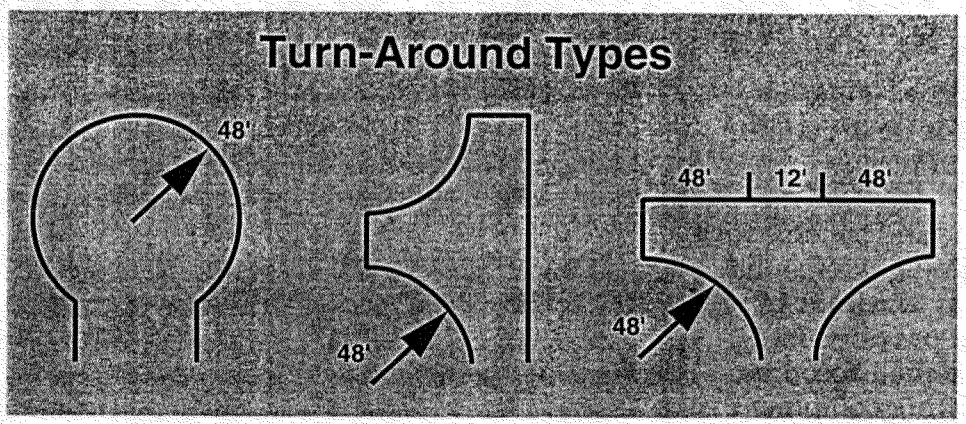
Oregon Department of Forestry
Resource Planning Office
2600 State Street
Salem, OR 97310

equipment vehicles in accordance with the provisions in *Protecting Your home from Wildfire* (National Fire Protection Association)."

OAR 660-06-040 (Fire Safety Design Standards for Roads) requires that:

"[T]he governing body shall establish road design standards, except for private roads and bridges accessing only commercial forest uses, which ensure that public roads, bridges, private roads and driveways are constructed so as to provide adequate access for fire fighting equipment. Such standards shall address maximum grade, road width, turning radius, road surface, bridge design, culverts, and road access taking into consideration seasonal weather conditions. The governing body shall consult with the appropriate Rural Fire Protection District and Forest Protection District in establishing these standards."

Though there are no similar rule requirements to be met in rural residential zones in forested areas, the Department of Forestry encourages the adoption by local government of these recommended fire safety standards in these zones as well.



Though some of the recommendations are strictly to accommodate structural fire protection apparatus and needs, it is recommended that the standards be applied to all lands within forest zones, regardless of the presence or absence of a rural (structural) fire protection district. The standards should be applied in anticipation of structural fire protection eventually becoming present.

RECOMMENDED FIRE SITING STANDARDS FOR DWELLINGS AND STRUCTURES:

A. Water Supply Standards:

1. Access— If a water supply—such as a swimming pool, pond, stream, or lake—of 4,000 gallons or more exists within 100 feet of the driveway or road at a reasonable grade (12%) an all-weather approach to a point within 15 feet of the water's edge should be provided. The all-weather approach should provide a turn-around with a **48**-foot radius of one of the types shown in the illustration below.

2. Identification— Emergency water supplies should be clearly marked along the access route with a county approved sign.

B. Fuel Break Standards:

1. Primary Safety Zone— The primary safety zone is a fire break extending a minimum of **30** feet in all directions around structures. The goal within the primary safety zone is to remove fuels that will produce flame lengths in excess of one foot. Vegetation within the primary safety zone could include green lawns and low shrubs (less than 24 inches in height). Trees should be spaced with greater than 15 feet between the crowns and pruned to remove dead and low (less than 8 feet) branches. Accumulated leaves, needles, limbs and other dead vegetation should be removed from beneath trees. Nonflammable materials (i.e., rock) instead of flammable materials (i.e., bark mulch) should be placed next to the house.

As slope increases, the primary safety zone should increase away from the house, parallel to the slope and down the slope, as shown in the table and illustration on the next page.

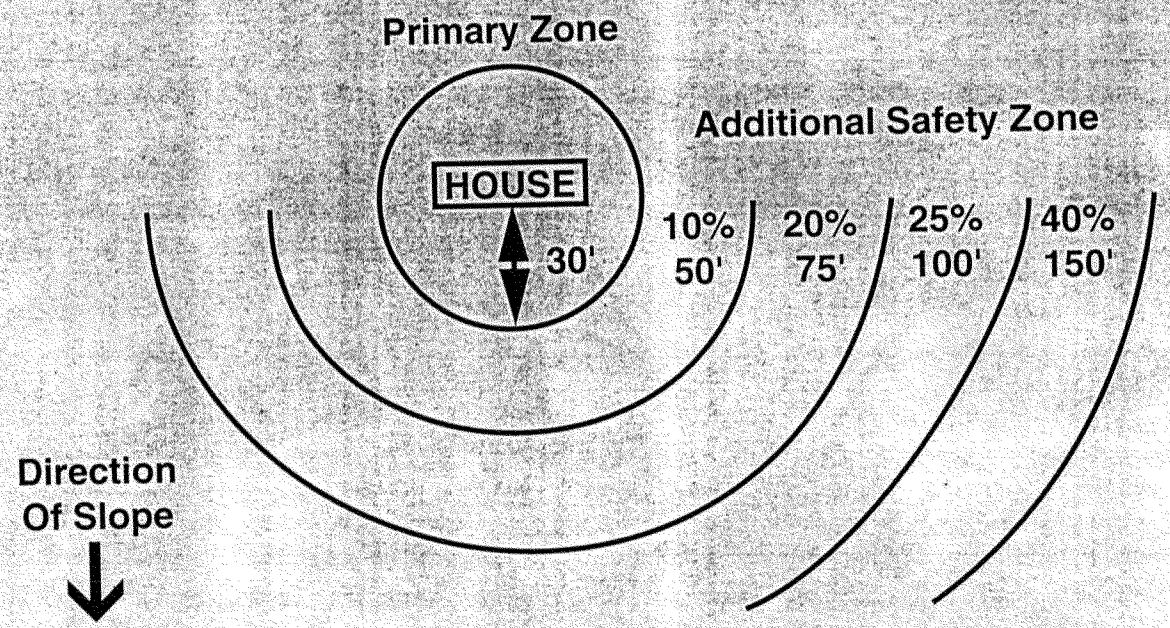
2. Secondary Fuel Break— The secondary fuel break is a fuel break extending a mini-

Size of Primary Safety Zone by Percent Slope

Slope	Feet of Primary Safety Zone	Feet of Additional Safety Zone Down Slope
0%	30	0
10%	30	50
20%	30	75
25%	30	100
40%	30	150

Buildings should be restricted to slopes of less than 40 percent.

EXAMPLE OF SAFETY ZONE SHAPE



mum of **100** feet in all directions around the primary safety zone. The goal of the secondary fuel break should be to reduce fuels so that the overall intensity of any wildfire would be lessened and the likelihood of crown fires and crowning is reduced. Vegetation within the secondary fuel break should be pruned and spaced so that fire will not spread between crowns of trees. Small trees and brush growing underneath larger trees should be removed to prevent spread of fire up into the crowns of the larger trees. Dead fuels should be removed.

RECOMMENDED FIRE SAFETY DESIGN STANDARDS FOR ROADS:

A. Road Standards (public roads and private roads accessing 2 or more residences):

1. Right-of-ways— Roads should be built and maintained to provide a minimum **20** foot width of all-weather surface capable of supporting gross vehicle weights of **50,000** pounds, a minimum curve radius of **48** feet and a vertical clearance of **13'6"**.

2. Cul-de-Sacs— Cul-de-sacs should be defined as dead-end roads over **150** feet in length. Cul-de-sacs should have turn-arounds of not less than **48** feet radius at a maximum spacing of **500** feet between turn-a-rounds. All turn-a-rounds should be marked and signed as "NO PARKING."

3. Bridges and Culverts— Bridges, culverts, and other structures in the road bed should be constructed and maintained to support gross vehicle weights of 50,000 pounds.

4. Road Grades— Road grades should not exceed an average of **8** percent, with a maxi-

A set of burned golf clubs lay in the ruin of a home burned by the 1990 Awbrey Hall Fire. Twenty-two homes burned during this fire, which raced along the outskirts of Bend, Oregon. Most of the burned homes had insufficient fuel breaks surrounding them.

Photograph courtesy of The Bulletin, *Bend*

mum of **12** percent on short pitches. Variances could be granted by the fire service having responsibility for the area when topographic conditions make these standards impractical.

5. Identification— Roads should be uniquely named or numbered and visibly signed at each road intersection. Letters or numbers should be a minimum of three inches in height and constructed of reflectorized material.

B. Driveway Standards (private roads accessing a single residence):

1. Driveways— Driveways should be built and maintained to provide a minimum **12**-foot width of all-weather surface capable of supporting gross vehicle weights of **50,000** pounds, a minimum curve radius of **48** feet and a vertical clearance of **13'6"**.

2. Vehicle Passage Turnouts— Driveways in excess of **200** feet should provide **20**-foot wide by **40**-foot long passage space (turnouts) at a maximum spacing of 1/2 the driveway length or **400** feet, whichever is less. Wherever visibility is limited, these distances should be reduced appropriately.

3. Dead-end-driveways— Dead-end-driveways are defined as dead-end roads over **150** feet in length serving a single residence. Dead-end-driveways should have turn-a-rounds of not less than **48** feet radius.

4. Bridges and Culverts— Bridges, culverts, and other structures in the road bed should be constructed and maintained to support gross vehicle weights of 50,000 pounds.

5. Driveway Grades— Driveway grades should not exceed an average of **8** percent, with a maximum of **12** percent on short pitches. Variances could be granted by the fire service having responsibility for the area when topographic conditions make these standards impractical.

6. Identification— Driveways should be marked with the residence's address unless the residence is visible from the roadway and the address is clearly visible on the residence. Letters or numbers should be a minimum of three inches in height and constructed of reflectorized material.

C. Certification:

1. If bridges or culverts are involved in the construction of a road or driveway, written verification of compliance with the 50,000 gross vehicle weight standard should be provided from an Oregon Registered Professional Engineer. Otherwise, written verification of compliance should be provided by the applicant.

BASIS FOR RECOMMENDATIONS:

A. Water Supply

Water is a critical tool in fire suppression. Hydrants are generally not available in forested areas. Therefore, fire suppression in forested areas is dependent upon the water carried in the responding fire equipment and water sources available for refill or that can be pumped from an engine. Water available for refilling an engine can mean the difference between saving or losing a structure, or preventing a wildfire from escaping initial attack. When a fire engine or tanker runs out of water, turn around time to a refill site may be quite lengthy. A 4,000 gallon water supply is large enough to refill a large tanker or several smaller fire engines. Requiring construction of an all weather approach to within 15 feet of 4,000 gallon or larger water sources within 100 feet or less of a driveway or road will greatly help fire protection agencies.

B. Fuel Breaks

The steeper the slope, the greater the flame length, the hotter the flame front, and the faster the rate of fire spread. This greater fire activity is primarily due to preheating of the vegetation upslope from the fire, increased draft of fresh air to the fire from below, and more flame contact with upslope fuels. On steeper slopes, failure to provide for larger safety zones downslope from a residence will make it more difficult for fire personnel to protect the structure. The

firefighter is also in a more tenuous safety position.

On the last page are two graphs showing the relationships of flame length and dozer line construction speeds to slope for two fuel types. Flame lengths increase with slope and dozer fire line construction rates decrease. Other fire fighting methods such as water attack and hand line construction are also hampered by steep slopes. Generally, hand lines are useless when flame lengths reach 4 feet; dozer lines fail with 8-foot flame lengths.

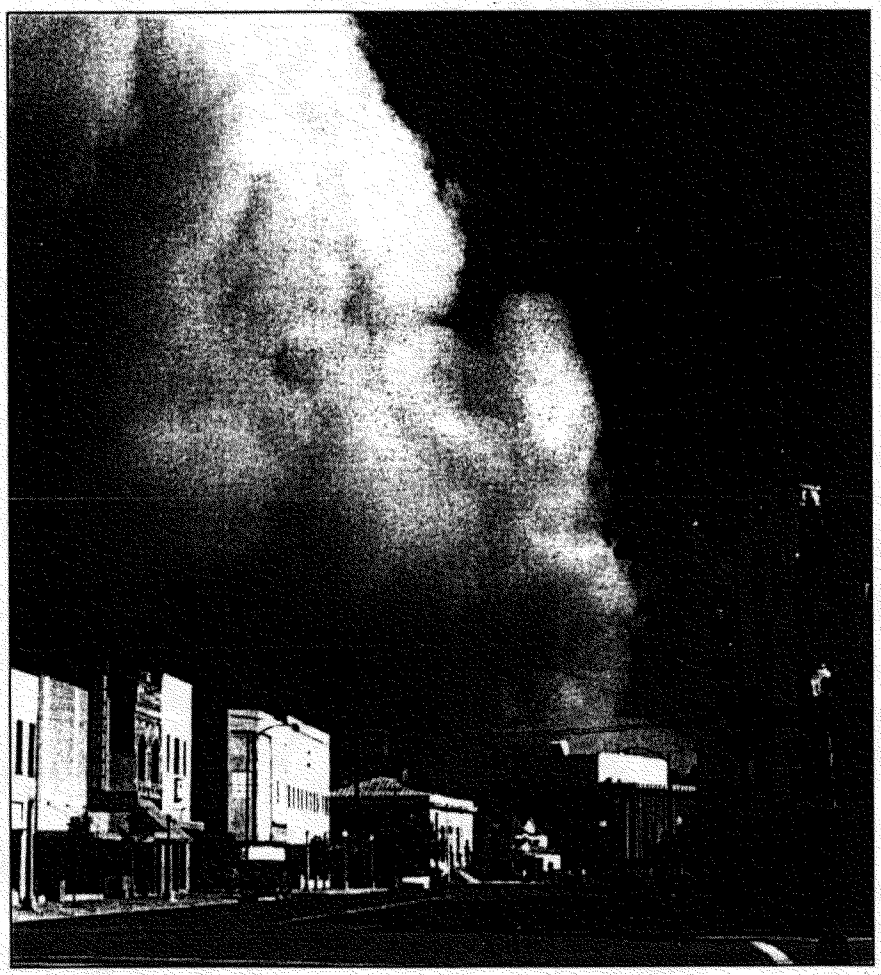
C. Road & Driveway Specifications

Fire fighting apparatus (fire engines, tankers, dozer and lowboy, etc.) are much larger and heavier than personal vehicles. These vehicles require greater road width and clearance for passage, wider road curves for turning, and level or at most moderate road grades for maintaining vehicle engine performance and driver safety.

- The 1988 Oregon Uniform Fire Codes, Chapter 10.207 specifies that all roads shall be all weather surfaced, minimum 20 feet width, and have a vertical clearance of 13' 6".

- A filled, fully equipped 3,000 gallon tanker weighs around 40,000-45,000 pounds. Many rural fire departments utilize this size tanker as a water source for the small fire engines. A minimum road surface load limit of 50,000 pounds provides for this load plus an appropriate safety margin.

- Large, heavy vehicles have difficulty driving up and down steep road grades. Additionally, most rural fire departments are principally staffed by volunteers and most forest fire agency employees are seasonal. While these people are capable drivers, very few are professional truck drivers and they may have a more difficult time maneuvering a truck up a steep winding road than would the professional driver.

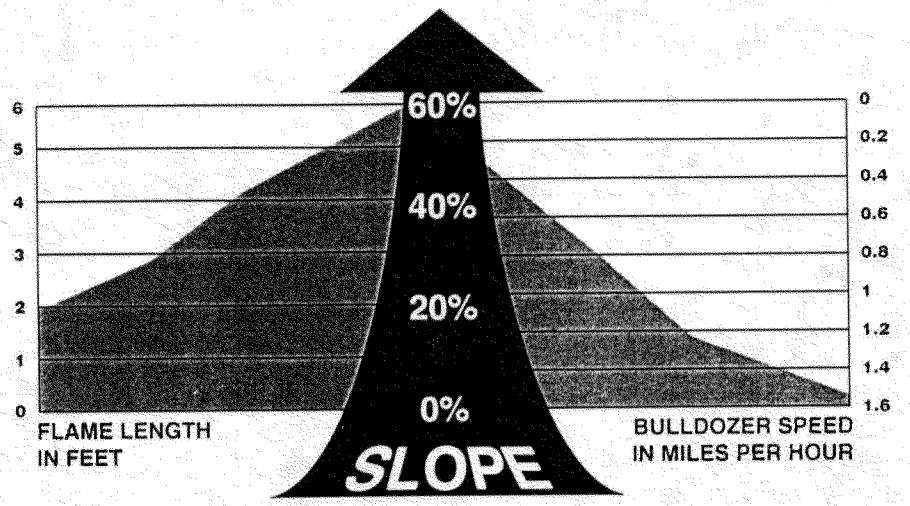


The 1989 Dooley Mountain Fire threatened the residents of Baker City.
Photograph courtesy of the Democrat-Herald, *Albany*

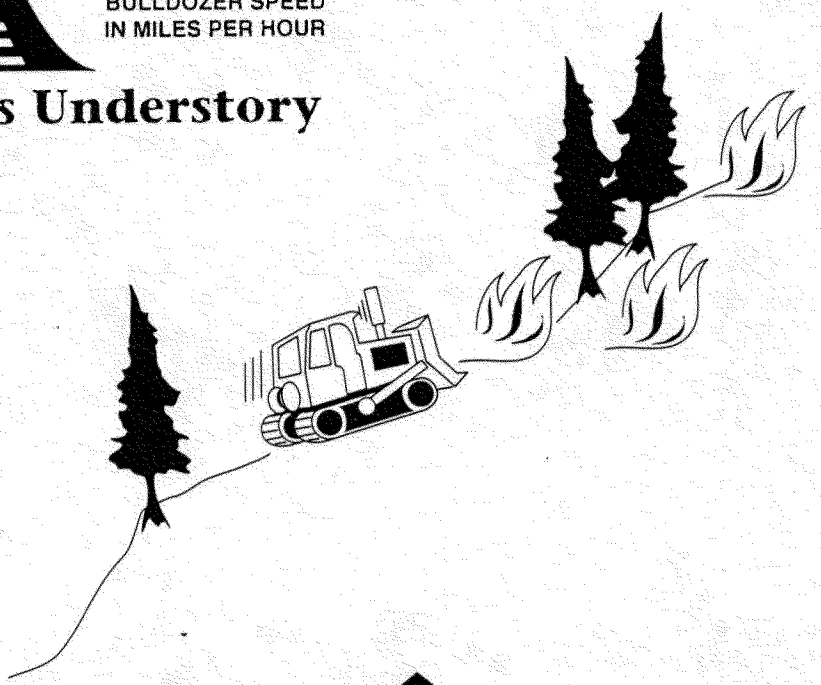
- Rural address identification is extremely important. While the local resident may be familiar with the localized road or driveway system, emergency responders generally will not. Proper signing of roads and driveways with 3" or larger reflectorized letters or numbers will assist fire fighters in locating threatened residences, especially when visibility is impaired by darkness or smoky conditions.

- It is very difficult to back up long distances in large fire apparatus, and this difficulty can be compounded if driveway grade is not level. Therefore, turnouts and turnarounds are very important.

The Relationship of Flame Length to Fuel Type and Slope: Two Situations



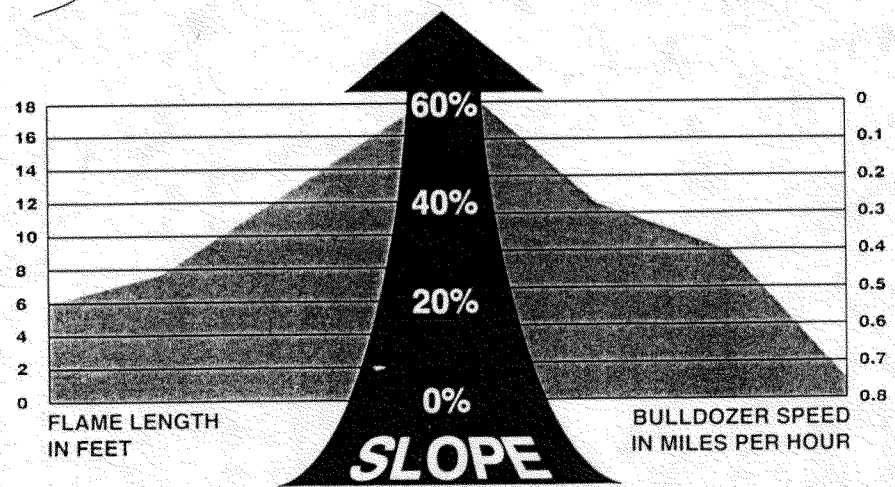
Timber with Grass Understory



These two graphs illustrate the effect of slope on flame length and bulldozer speed in two common fuel types.

In open timber with grass, flames traveling up a 20% slope can reach 3-4 feet in length. Chaparral, on the same slope, will generate flame lengths of 6-8 feet. Hand-constructed fire lines usually fail to stop fires having 4-foot or longer flame lengths. Bulldozer-constructed fire lines usually fail to stop fires having 8-foot or longer flame lengths.

Fire lines become less effective as slope increases and as fuel loads increase.



Chaparral

Information Provided By:

Oregon Department of Forestry
Resource Planning Office

Land Conservation and
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Resource Planning Office
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"STEWARDSHIP IN FORESTRY"

Rev. 3/91 1.5 M

(OAR Chapter 629). For purposes of this section, evidence of a domestic water supply means:

(a) Verification from a water purveyor that the use described in the application will be served by the purveyor under the purveyor's rights to appropriate water; or

(b) A water use permit issued by the Water Resources Department for the use described in the application; or

(c) Verification from the Water Resources Department that a water use permit is not required for the use described in the application. If the proposed water supply is from a well and is exempt from permitting requirements under ORS 537.545, the applicant shall submit the well constructor's report to the county upon completion of the well.

(4) As a condition of approval, if road access to the dwelling is by a road owned and maintained by a private party or by the Oregon Department of Forestry, the U.S. Bureau of Land Management, or the U.S. Forest Service, then the applicant shall provide proof of a long-term road access use permit or agreement. The road use permit may require the applicant to agree to accept responsibility for road maintenance.

(5) Approval of a dwelling shall be subject to the following requirements:

(a) Approval of a dwelling requires the owner of the tract to plant a sufficient number of trees on the tract to demonstrate that the tract is reasonably expected to meet Department of Forestry stocking requirements at the time specified in Department of Forestry administrative rules;

(b) The planning department shall notify the county assessor of the above condition at the time the dwelling is approved;

(c) The property owner shall submit a stocking survey report to the county assessor and the assessor will verify that the minimum stocking requirements have been met by the time required by Department of Forestry rules. The assessor will inform the Department of Forestry in cases where the property owner has not submitted a stocking survey report or where the survey report indicates that minimum stocking requirements have not been met;

(d) Upon notification by the assessor the Department of Forestry will determine whether the tract meets minimum stocking requirements of the Forest Practices Act. If the department determines that the tract does not meet those requirements, the department will notify the owner and the assessor that the land is not being managed as forest land. The assessor will then remove the forest land designation pursuant to ORS 321.359 and impose the additional tax pursuant to ORS 321.372.

Stat. Auth.: ORS 197.040, 197.245 & 1215.730
Stats. Implemented: ORS 197.040, 230, 245, 215.700, 705, 720, 740, 750, 780 & Ch. 792, 1993 Oregon Laws
Hist.: LCDC 1-1990, f. & cert. ef. 2-5-90; LCDC 1-1994, f. & cert. ef. 3-1-94; LCDC 7-1994, f. & cert. ef. 9-21-94

660-006-0030 [Renumbered to 660-006-0060]

660-006-0035
Fire Siting Standards for Dwellings and Structures

The following fire siting standards or their equivalent shall apply to new dwelling or structures in a forest or agriculture/forest zone:

(1) The dwelling shall be located upon a parcel within a fire protection district or shall be provided with residential fire protection by contract. If the dwelling is not within a fire protection district, the applicant shall provide evidence that the applicant has asked to be included within the nearest such district. If the governing body determines that inclusion within a fire protection district or contracting for residential fire protection is impracticable, the governing body may provide an alternative means for protecting the dwelling from fire hazards. The means selected may include a fire sprinkling system, onsite equipment and water storage or other methods that are reasonable, given the site conditions. If a water supply is required for fire protection, it shall be a swimming pool, pond, lake, or similar body of water that at all times contains at least 4,000 gallons or a stream that has a continuous year round flow of at least one cubic foot per second. The applicant shall provide verification from the Water Resources Department that any permits or registrations required for water diversion or storage have been obtained or that permits or registrations are not required for the use. Road access shall be provided to within 15 feet of the water's edge for firefighting pumping units. The road access shall accommodate the turnaround of firefighting equipment during the fires season. Permanent signs shall be posted along the access route to indicate the location of the emergency water source.

(2) Road access to the dwelling shall meet road design standards described in OAR 660-006-0040.

(3) The owners of the dwellings and structures shall maintain a primary fuel-free break area surrounding all structures and clear and maintain a secondary fuel-free break area in accordance with the provisions in **"Recommended Fire Siting Standards for Dwellings and Structures and Fire Safety Design Standards for Roads" dated March 1, 1991** and published by the Oregon Department of Forestry.

(4) The dwelling shall have a fire retardant roof.

(5) The dwelling shall not be sited on a slope of greater than 40 percent.

(6) If the dwelling has a chimney or chimneys, each chimney shall have a spark arrester.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Land Conservation and Development Commission.]

Stat. Auth.: ORS Ch. 183, 197.040, 197.230 & 197.245
Stats. Implemented: ORS 197.040, 230, 245, 215.700, 705, 720, 740, 750, 780 & Ch. 792, 1993 Oregon Laws
Hist.: LCDC 1-1990, f. & cert. ef. 2-5-90; LCDC 1-1994, f. & cert. ef. 3-1-94

660-006-0040
Fire Safety Design Standards for Roads

The governing body shall establish road design standards, except for private roads and bridges accessing only commercial forest uses, which ensure that public roads, bridges, private roads and driveways are constructed so as to provide adequate access for fire fighting equipment. Such standards shall address maximum grade, road width, turning radius, road surface, bridge design, culverts, and road access taking into consideration seasonal weather conditions. The governing body shall consult with the appropriate Rural Fire Protection District and Forest Protection District in establishing these standards.

Stat. Auth.: ORS Ch. 183 & 197
Stats. Implemented: ORS 197.040, 230, 245, 215.700, 705, 720, 740, 750, 780 & Ch. 792, 1993 Oregon Laws
Hist.: LCDC 1-1990, f. & cert. ef. 2-5-90

660-006-0050
Uses Authorized in Agriculture/Forest Zones

(1) Governing bodies may establish agriculture/forest zones in accordance with both Goals 3 and 4, and OAR Chapter 660, Divisions 6 and 33.

(2) Uses authorized in Exclusive Farm Use Zones in ORS Chapter 215, and in OAR 660-006-0025 and 660-006-0027, subject to the requirements of the applicable section, may be allowed in any agricultural/forest zone. The county shall apply either OAR Chapter 660, Division 6 or 33 standards for siting a dwelling in an agriculture/forest zone based on the predominant use of the tract on January 1, 1993.

(3) Dwellings and related structures authorized under section (2), where the predominant use is forestry, shall be subject to the requirements of OAR 660-006-0029 and 660-006-0035.

Stat. Auth.: ORS Ch. 183, 197.040, 197.230 & 197.245
Stats. Implemented: ORS 197.040, 230, 245, 215.213, 283, 700, 705, 720, 740, 750, 780 & Ch. 792, 1993 Oregon Laws
Hist.: LCDC 1-1990, f. & cert. ef. 2-5-90; LCDC 1-1994, f. & cert. ef. 3-1-94

660-006-0055
New Land Division Requirements in Agricul-ture/Forest Zones

A governing body shall apply the standards of OAR 660-006-0026 and 660-033-0100 to determine the proper minimum lot or parcel size for a mixed agriculture/forest zone. These standards

BEFORE THE BOARD OF COUNTY COMMISSIONERS

FOR MULTNOMAH COUNTY, OREGON

Land Use Planning Case HV 13-97	)	
Affirming the Hearings Officer Decision	)	FINAL ORDER
Dated October 20,1997	)	98-11

WHEREAS, this matter is before the Multnomah County Board of Commissioners as an appeal, filed by Les and Florence Shields of the Hearing Officer's decision in land use cases HV 13-97; and

WHEREAS, after proper notice of a public hearing, the Board of County Commissioners accepted testimony and evidence presented at a de novo hearing on February 3, 1998, and the Board being fully advised; now, therefore,

IT IS HEREBY ORDERED that the Hearing Officer's decision dated October 20, 1997 in the matter of HV 13-97 is AFFIRMED, and that the Planning staff reports are incorporated herein by this reference.

Dated this 3rd day of February, 1998.

BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

Beverly Stein, Chair

REVIEWED:

THOMAS SPONSLER, COUNTY COUSEL
FOR MULTNOMAH COUNTY, OR

By Sandra N. Duffy
Sandra N. Duffy, Chief Assistant County Counsel

MULTNOMAH COUNTY, OREGON
HEARINGS OFFICER DECISION

Case File:	HV 13-97 and SEC 23-97
WHAT:	Request for a Significant Environmental Concern Permit and Major Variance to the minimum yard (setback) requirement of the Commercial Forest Use zone to allow a 96' X 120' Barn/Arena which was constructed without necessary approval.
PROPERTY LOCATION:	Approximate address: 11272 NW Skyline Boulevard T2N, R1W, Section 32, Tax lot '29' Tax Acct. R9713200290
APPLICANT PROPERTY OWNER:	Les & Florence Shields 11272 NW Skyline Blvd. Portland, OR 97231-2633
Site Size:	5.04 acres
Plan Designation:	Commercial Forest Use
Zoning District:	Commercial Forest Use (CFU)
Hearings Officer:	Deniece B. Won

I. Decision

The Hearings Officer hereby **DENIES** the applicant's request for a major variance from the minimum yard requirement (setback) of the commercial forest use zone and significant environmental concern permit to provide for a 96' X 120' Barn/Arena which was constructed without necessary approval, as outlined in the applicant's application, based on the findings and conclusions contained in this decision.

II. Summary of the Request

The Shields' property is located just below the ridge-line of the Tualatin Mountains, east of Skyline Blvd. and McNamee Road, and north of Newberry Road. The applicants own two (2) contiguous parcels of approximately five (5) acres each (Tax Lots 29 and 30). The applicants have a residence on Tax Lot 30 which was approved approximately twelve (12) years ago, when the property was zoned Multiple Use Farm-19 (MUF-19). The applicants have erected a 96'x120' barn/arena ("farm structure") on Tax Lot 29, which is the subject of this application. The applicants intend, after this application is approved, to use Tax Lot 29 and the barn constructed on it for the primary purpose of obtaining a profit in money by stabling, breeding and training equines, including but not limited to providing riding lessons, training clinics and schooling shows.

The Shields' residence is located close to the property line between Tax Lots 29 and 30. The barn is located approximately 120 feet from the Shields' residence. The barn is located slightly diagonally so that it is setback 64-feet from the east property line; 132-feet from the north property line; 500-feet from the west property line; and 74-feet from the property line between Tax Lots 29 and 30 and 423- to 440-feet from the south property line of the Shields' ownership. The front lot line, the line separating this interior lot from the access-way is the south property line. The Hearings Officer concludes in this decision that the entire ownership is the lot of record subject to the requirements of the Code. Therefore, the front lot line is the south property line of the Shields' ownership. The structure intrudes 136-feet into the east side yard and 68-feet into the rear yard setback requirements. The opponent, Karen Anderson, owns the adjacent parcel to the east in the CFU zone.

III. Hearing and Testimony

A. Testimony

1. Phil Bourquin, County planner, summarized the staff report and recommendation. He said that after the staff report was issued, the staff determined that the SEC requirements do not apply because the structure is a farm use permitted outright and the SEC section of the Code says that farm uses are exempt from the SEC requirements.

The variance is a major variance because the deviation from the Code's yard requirements is greater than 25 percent. The variance is from the 200-foot setback requirement. He said the building is 64 feet from the east property line and 74 feet from the south property line.

He said the main applicable Plan policy concerns development limitations. He said there is a flat area below the structure that would minimize the yard variance. The structure was placed on a fill. There has been no demonstration that they have minimized the variance from the front, side or rear yard setbacks, the impact on adjoining forest lands, the amount of land used on the tract for the structures or access, or the fire zone requirements.

2. Christopher Brand, Attorney, representing the applicant, testified in favor of the variance request. He said both of the properties owned by the Shields are similar. The City of Portland borders Tax Lot 30 on the south and both tax lots on the west. The area is zoned CFU. It was earlier zoned MUF-19 and may have been in a less restrictive zone before that, because the parcel sizes are so small.

Mr. Brand said a pole-barn is anchored by inserting it's vertical support structures into the soil. Therefore, the compaction characteristics of the soil its placed on are important. The applicant agrees with the staff that this is a farm use and a farm structure. This is a use permitted outright and therefore the SEC criteria do not apply to the application.

Mr. Brand said there are two issues, (1) the interpretation of the variance criteria, and (2) whether the variance criteria are met.

3. Les Shields, applicant, testified that he owns two adjacent lots. The Shields obtained Tax Lot 30 in 1985 and built their home on it in 1986. They acquired Tax Lot 29, where the arena is sited, in 1993. He said that this area has residential uses mixed with farm and agricultural uses. The lot sizes in the area range from one to 80 acres. Both of their 5-acre lots are approximately 350 feet in width and 625 feet in length. Tax Lot 30, that their house sits on, slopes to the south with varying degrees of steepness. The house sits in the northern third of the lot. In siting the house they had to stay as high on the lot, far in the northern part, because of the water runoff in the lower part of the lot. They built a small barn, 30 by 40 feet in 1986 for the two horses that they then owned, downhill from the house. He said that area is marginal for use because it is inundated in the winter from runoff. The bottom half of the site is flatter but is subject to flooding in the rainy months from hillside runoff and is a hazard to their horses because of the muddy conditions created by the runoff.

He said Tax Lot 29, where the arena is sited, has the same runoff characteristics. The bottom half of it is subject to seasonal flooding. The upper third of the lot levels off to a shelf and is the only area that allows them to ride and work their horses, when the weather permits. The rest of the property is used for pasture. He and his wife, Florence, have always ridden horses. It has always been their dream to own enough property to own an arena adequate to train, board horses, give lessons as a business for profit. It is necessary to cover an arena in this area because nine months out of the year it is raining and riders are not able to ride outside. He said Florence hopes to work fewer hours at her job and to devote more time to ride, train and give lessons at the stables.

In 1996 the Shields decided to build the arena, they contacted the builder who had built their small barn. The builder went to the property and discussed possible locations and building types with the Shields. They decided that the upper portion, where the arena is sited was the best area to build because of the drainage and availability of access from their existing driveway to the Shields' home. That access was extended when the site was excavated for the arena.

Mr. shields said the builder and the grader were concerned that the farther they went down the hill the harder it would be to provide access for horse trailers and a turn around area. In addition they had concerns about compaction. He said two excavators visited the site and they agreed this was the best site because of erosion and compaction.

He testified that the minimum area to work larger horses is 60 feet by 120 feet. He said a barn of that size typically has a row of stalls along one or both sides which provides 12-foot by 12 foot stalls, bathrooms, viewing areas, etc. He said a 12 feet by 12 foot stall is the minimum recommended for horses. They decided to build two rows of stalls separated by a walkway. They did that for cost reasons, but also because it would eliminate the need for an additional 12 foot walkway on the other side of the barn, allowing a smaller building. He testified that the total cost of the facility was more than $60,000.

His builder gave him a letter saying that the barn was permit exempt because it was used for agricultural purposes. He said he called Multnomah County about building permits and was directed to the City of Portland because they handle that function for the county. The City of Portland told him that no building permit was needed. He said he was not told to ask about the zoning regulations or permits. With that confirmation from the City and the builder they had the property graded. The building was completed in November of 1996.

On January 11, 1997 he received a notice from Lisa Estrin of Multnomah County noting the zoning violations. He then contacted Christopher Brand, his attorney, to help with the permit process. Mr. Shields said he and his wife have had good relationships with their neighbors over the last eleven years. Only one neighbor is concerned and the other neighbors are supportive of the use. Even the owners who have their land in forest practices felt that the arena wouldn't have any impact on their land.

4. Florence Shields, applicant, testified that after talking with the builder, the excavator, the County and the City of Portland, who all said it was exempt from permit requirements, they proceeded to build the barn. She said they would never have built the barn if they knew that these requirements existed. She said that the arena is at elevation 975 feet and that Karen Anderson is at approximately 1,000 feet. Everything slopes down to the west. She submitted a map showing the land uses within ½ mile of the site.

5. Don Rondeman, Geotechnical Engineer, addressed four points: 1) slope stability, 2) earth work, which involves cutting, filling and compaction, 3) drainage and erosion control and 4) foundation and settlement. He testified that the location of the barn is the best location for it with respect to geotechnical issues.

6. Paul Norr, attorney representing Karen Anderson, an adjacent property owner directly to the east, testified that the owner is Les and Florence Shields and not Eldon Shields as indicated in the staff report. That is important because he disagrees that the property is a separate lot from Tax lot 30. He said the Shields have not one but two lots -- one parcel that is 625 feet by 700 feet. He argued that the definition of a "lot" and of a "Lot of Record" in the Code indicate that this should be viewed as one parcel. He

argued that a setback of 200 feet on all sides of the parcel leaves them with an area of 225 feet by 300 feet in the center of the property which can be used to site a building of the size that is proposed. He noted that this structure has to be viewed by the Hearings Officer as though it had never been built. He said one of the key issues is the secondary fire zone.

Mr. Norr noted that there are limitations on the use of conditions of approval to satisfy code requirements. Providing letters later to show that the applicants can meet the fire zone requirements or imposing conditions to somehow deal with not meeting the fire zone requirements can't substitute for the findings of fact that are required. He appreciates that the Shields may have been mislead by their contractor, or that there may have been some misunderstanding as to the requirements for permits. Nonetheless, he argued that no matter what City or County officials may have told somebody, there is a 200-foot setback requirement in the Code. He argued that Ms. Anderson is entitled to have that requirement complied with. If the Shields want some recourse, he would suggest the contractor. But, Ms. Anderson, shouldn't be forced to live with this structure just because somebody didn't read the code.

7. Karen Anderson, owner of the adjoining property to the east, testified that she is not opposed to the building but she is opposed to the location of the building. A major concern she has is the fire zone standards. She said the house that she lives in is built on the foundation of a house that in 1985 burned to the ground. She understands that the former house was a total loss because when the fire truck arrived, the firefighters had to put the fire in the field out to prevent a forest fire, before they would start on the house fire. She submitted a picture showing the area is heavily forested and why fire is such a concern. Exhibit H10. She understands that a fire hydrant is located on Newberry Road and the fire district would like structures to be within 1,000 feet of a hydrant if possible. If firefighters brought a hose up from Newberry Road that would be more than 1,000 feet. She said it wouldn't be practical for firefighters to extend a fire hose across a field to get to the barn. She feels that the location of this barn has an injurious affect on her property value because her land can no longer be used for what is zoned for if the barn remains at 64 feet from her property line and 154 feet from the front door of her house. She said the barn has 20 stalls and it is designed for commercial use.

8. Christopher Brand, in rebuttal, asked that the record be held open. With respect to the secondary fire zone issue, he said that the applicant will provide evidence that they have complied with the requirements to the greatest extent possible. He said the secondary fire break involves pruning and clearing so that underlying brush and low branches that can catch fire are removed. He believes the applicant has demonstrated that this property's size shape, topography, etc., renders it different from properties generally occurring in the area. He said there is evidence both from the rural area plan and from the title officer that this is not a typical lot in the CFU district. While there may be some lots like it, its characteristics do not generally occur in the district. With respect to the view impacts, he said there is no applicable criteria. He said the arena was not sited with any intent to stay away from the Shield's residence or to be closer to Ms. Anderson's, or to

direct activity to Ms. Anderson's property. It was sited there because it is the best location to site the arena on that property, looking at all the factors and circumstances. With respect to access, there was an existing access to the residence from Skyline. The only thing that the development of the arena necessitated was an extension of the access which is less than 500 feet.

9. Mr. Norr responded that he did not oppose the record being kept open for specific purposes because new evidence was submitted. But he objected to the record being kept open for the submission of any new evidence. This application was originally filed in June. All of the applicant's supportive evidence should have been filed with the original application. The applicant has already set the hearing over twice to provide additional evidence. Their request to keep the record open has to be limited to specific evidence that was submitted in opposition that they want to address.

B. Open Record.

Hearings Officer Won said the open record would be limited to receiving evidence and argument on the application's compliance with the variance criteria, information on fire response, compliance with fire zone standards, and information on consolidating the lots. The record was held open for seven days for the proponents, followed by seven days for the opponents, and followed by seven days for proponent argument. During the periods for response, the applicant submitted a September 24, 1997 letter with attachments, Mr. Norr submitted a letter dated September 30, 1997, and the applicant submitted arguments in a letter dated October 7, 1997.

IV. Approval Criteria, Findings and Conclusions

The Hearings Officer must find that the proposal meets the approval criteria of the following Zoning Code, and Comprehensive Plan Policies:

A. Commercial Forest Use (CFU) Zone Considerations:

1. 11.15.2062 Lot of Record

(A) For purposes of this district, a Lot of Record is:

(3) A group of contiguous parcels of land:

(a) For which deeds or other instruments creating the parcels were recorded with the Department of General Services, or were in recordable form prior to February 20, 1990;

(b) Which satisfied all applicable laws when the parcels were created;

(c) Which individually do not meet the minimum lot size requirements of MCC .2058, but, when considered in combination, comply as nearly as possible with a minimum lot size of nineteen acres, without creating any new lot line; and

(d) Which are held under the same ownership.

Finding. The opponent's attorney, Mr Norr, argued that the County should view Tax Lots 29 and 30 as one parcel with dimensions of 625 feet by 700 feet. Mr. Norr bases his arguments on the definition of a "lot" as found in MCC 11.15.0010 and "lot of record" in MCC 11.15.2062(A)(3). Mr. Norr first argues that a "lot" is defined in Multnomah County Code as a 'plot, parcel, or area of land owned by or under the lawful control and in the lawful possession of one distinct ownership." Mr. Norr believes the Hearings Officer should, based on this authority, consider the two distinct parcels as one lot because the two lots constitute "an area of land" under the control and possession of one distinct ownership. The applicant argues, and the Hearings Officer agrees, that this interpretation of "lot" would lead to the illogical conclusion that the subdivider of lots pursuant to ORS 92 would not be able to sell the lots.

Mr. Norr next argues that the "lot of record" provisions in the Multnomah County Code dictate that the lots be viewed as a single area for land use purposes. The applicant argues that the lot of record provisions in the Multnomah County Code do not apply because the building under review is a farm structure and not a dwelling.

Unless there are contrary provisions in a zoning code, a legally created lot or parcel is the land area that zoning use regulations apply to. The CFU section of the zoning Code first provides in MCC 11.15.2046 that "no building or structure shall be hereinafter erected. . . in this district except for the uses listed" in the section. The uses permitted and allowed are listed in MCC .2048 through .2056. The use at issue here, farm use, is listed in MCC 11.15.2048. This section provides that farm uses are permitted in Forest zones but it does not specify what land area it applies to. MCC 11.15.2058 contains lot dimensional requirements in the CFU zone. Subsection A provides that:

> "Except as provided in MCC .2060, .2061, .2062, and 2064, the minimum lot size shall be 80 acres.

MCC .2060 allows the creation of smaller lots and MCC .2061 allows the adjustment of lot lines, in certain circumstances. The MCC .2064 exception applies to certain conditional uses. None of these exceptions to the minimum parcel size apply to this application. The MCC .2062 exception is the only place in the CFU section that addresses the land area on which the permitted farm use is authorized. That is, the use is authorized on a lot meeting the minimum 80 acre parcel size, or it is authorized on a "Lot of Record." There are three

types of "lots of record" set out in the Code: 1) legally created lots containing 80 acres or more, 2) legally created lots that contain less than 80 acres, and 3) groups of legally created lots where individual lots contain less than 80 acres held in the same ownership. The shields' two parcels meet the conditions described in 11.15.2062(A)(3). They are contiguous parcels of land that: a) were created before February 20, 1990; b) were legally created; c) which individually do not meet the minimum lot size requirement, but together would comply as nearly as possible; and d) are held under the same ownership.

The purpose of the Commercial Forest Use zoning district is to conserve and protect designated lands for continued commercial growing and harvesting of timber. The Lot of Record provisions more protect the purpose of the zoning district than the recognition of all legally created lots regardless of shared ownership.

The West Hills Rural Area Plan discusses the background in amending the plan designations and designating former MUF 19 lands CFU. Page 9 of the West Hills Rural Area Plan states:

> "Under review, the Commercial Forest Use areas of the West Hills can clearly be divided into two general subareas. The first, which shall be designated COMMERCIAL FOREST - 1, constitutes about three-fifths of the Commercial Forest Use - zoned areas in the West Hills. Primary forest lands are defined as areas where the primary lot pattern consists of lots of record (as defined by the Multnomah County zoning code for Commercial Forest Use-zoned areas) in excess of 40 acres and where there are few existing residences. Primary forest lands may include smaller lots of record which do not by themselves meet the definition, but which are isolated from other smaller lots of record by lands which do meet the definition of primary forest lands. The second, which shall be designated as COMMERCIAL FOREST - 2, consists of the remainder of the Commercial forest use-zoned areas. Secondary forest lands are defined as areas consisting of contiguous lots of record less than 40 acres, many of which have existing residences. Secondary forest lands may include larger lots of record which by themselves do not meet the definition, but which are isolated from other larger lots of record by lands which do meet the definition of secondary forest lands."

Thus, under the West Hills Rural Area Plan Lots of Record are the significant definition of land area for Commercial Forest Land uses. The West Hills rural Area Plan does not discuss "tax lots," nor does it discuss "lots" or "parcels."

The Hearings Officer concludes that for purposes of applying the CFU Code requirements, the only land area recognized by the Code in this application is a "lot of record," the entire contiguous area owned by Les and Florence Shields. By operation of the County Code provisions where contiguous substandard parcels are acquired by a single ownership in the CFU zone, they are treated as a single "lot of record." This conclusion is verified by the fact that

No land shall be used and no building or structure shall be hereafter erected . . . in this district except for the uses listed in MCC 2048 through .2056.

MCC 11.15.2058 - Uses Permitted Outright.

(C): Farm use, as defined in ORS 215.203.

215.203(2) Zoning ordinances establishing exclusive farm use zones; definitions.

(a): As used in this section, "farm use" means the current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting and selling crops or the feeding, breeding, management and sale of, or the produce of, livestock . . . "Farm use" also includes the current employment of land for the primary purpose of obtaining a profit in money by stabling or training equines including but not limited to providing riding lessons, training clinics and schooling shows.

(b): "Current employment" of land for farm use includes:

(F) Land under buildings supporting accepted farm practices;

Finding. The "current employment" requirement for a use to qualify as a "farm use" is not applicable to land use decisions. In *Newcomer v. Clackamas County*, 758 p. 2d 369, 94 Or App 174, (1988) the Appeals Court stated:

> ORS 215.203 was originally enacted as part of a statutory scheme which had the 'primary purpose of * * * [providing] property tax relief to farm land and thus protect[ing] such land from being diverted to other uses." (Citations omitted.)
>
> Although [ORS 215.203] also has land use regulatory features, and it is referred to in some of the other agricultural lands statutes as well as Goal 3, the 'current employment' requirement was designed only as a qualification for favorable tax treatment." (Citations omitted. Emphasis added.)

The proposed use falls within the definition of farm use under ORS 215.203 (2)(a). A commercial stable is permitted outright in the CFU zone. The use itself is not under consideration. What is under review is its location within the County's setback requirements.

B. MCC 11.15.2058 - Dimensional Requirements

(A) **Minimum Yard Dimensions - Feet:**

- **60 feet from centerline of County Maintained Road**
- **200 feet - Other front**
- **200 feet - Side**
- **200 feet - Rear**

These yard dimensions and height limits shall not be applied to the extent they would have the effect of prohibiting a use permitted outright. Variances to dimensional standards shall be pursuant to MCC .8505 through .8525, as applicable.

Finding. MCC .2058 says that the dimensional criteria need to be met. Those requirements say that front and side yard setbacks need to be 200 feet. There is some savings language that says "these yard requirements shall not be applied to the extent that they would have the effect of prohibiting a use permitted outright." The Hearings Officer agrees that the use here is permitted outright. There is conflicting evidence in the record about which lot lines are the front of the property. The Code defines the front lot line of an interior lot such as this lot, as the line separating the lot from the street or access way. The closest street, Newberry Road is south of the tract. The access to the arena is the driveway serving the dwelling on Tax Lot 30 from the south. The Hearings Officer concludes that the front lot line is the south property line. Therefore, the side lot lines are the east and west property lines and the rear lot line is the north property line.

The applicant argues that strict application of the setback requirements of MCC.2058 would have the effect of prohibiting the farm structure altogether when the required setbacks are subtracted from Tax Lot 29's dimensions. His argument is based on considering Tax Lot 29 alone. Considering the Lot of Record owned by the Shields, there is an area 235-feet by 300-feet within which a structure can be located within the yard requirements. The applicant argues that there are practical difficulties in meeting the setback requirements which cannot be applied to the extent of prohibiting the use anywhere on the parcel. The applicant correctly argues that a structure may deviate from the yard dimension requirements if the variance criteria are met.

Conclusion. The Code says that yard dimension requirements "shall not be applied to the extent they would have the effect of prohibiting a use permitted outright." This does not mean that the county must approve the use somewhere on the property. It means that if all of the Code's criteria are met except the yard dimension requirements, the yard dimension requirements shall not be applied to the extent of prohibiting a permitted use. The issue here is whether the variance criteria are met for the location where the applicants built the barn, or whether there are other places the barn could be accommodated instead, in full or greater compliance with the side yard setback requirements. The second issue is

whether the applicant meets the Code standards which are not subject to the variance application. These issues are addressed below.

C. MCC 11.15.2074 - **Development Standards for Dwellings and Structures:**

Except as provided for the replacement or restoration of dwellings under MCC .2048 (E) and .2049 (B), all dwellings and structures located in the CFU district after January 7, 1993 shall comply with the following:

(A): The dwelling or structure shall be located such that:

(1) It has the least impact on nearby or adjoining forest or agricultural lands and satisfies the minimum yard and setback requirements of .2058 (C) through (G);

Finding. This application involves the siting of a structure, not a dwelling. The subject parcel abuts lands to the north, south and east designated Commercial Forest Use and protected for forest uses. The territory to the west is within the regional urban growth boundary and the City of Portland. Although some of the CFU designated parcels are currently used for residential purposes, they are forest lands, not residential lands.

This criteria requires a finding of "least impact" on "nearby or adjoining forest" or agricultural lands. The controlling factor is the adjoining lands' land use designation as Commercial Forest land. This standard also requires the setback requirements to be satisfied unless a variance from the setbacks is approved. The practical difficulties standard in the variance criteria deals only with the setback requirements. The variance criteria's practical difficulties standard doesn't allow the hearings officer to vary the least impact standard or any other development standards. The development standards, including the least impact standard, are applicable even if the variance criteria are met.

Mr. Norr argued, and the Hearings Officer finds, that there are substantial impacts from having the building located where it is. Fire protection is one. The general activities associated with this facility, even though it may be a structure that is allowed in the CFU zone, are not allowed this close to a neighbor's property. There are more reasons for the setback than just fire protection. One is concern for the impact on the neighbor. The impact of the noise and the activities associated with the use that will take place within this building. The open side of the building that will attract the most activity, is the side that faces Ms. Anderson's property. The hub of the activity associated with the building is on the side of the structure facing the Anderson's property. That is where the vehicles and horse trailers will have to come in and where deliveries will be made. There is no information in the record about the impacts from the manure pile, the smell from the horses, the general activity, and the noise, all within 64 feet from Ms. Anderson's property.

The applicants have not provided basic information regarding the intensity of the proposed commercial operation, such as the hours of operation, the days of operation, the number of horses and people that will be using the facility at any one time, where the manure piles would be stored, how the dust will be controlled, the number of vehicle trips per day, the anticipated level of noise and smell, etc. The Hearings Officer cannot determine what the impact is, let alone how the impact at this location compares to other locations on the applicants' property.

Mr. Norr argues that view is an issue because protection of views is one of the purposes of the Code's setback requirement, which is to prevent overcrowding, to prevent the appearance of overcrowding, to prevent the impact of one property on the other. Based on a drawing to general scale, Exhibit H14, showing the impact from the perspective of a person five feet tall standing at the Anderson property line looking at the building, the building would have to be 55 feet tall to have the same impact that it has at its existing location, while the maximum structure height in the CFU zone is 35 feet. The proximity of the building has a substantial impact on adjoining property even though there is no specified view corridor. He argues that the view affect should be taken into account on the impacts caused on the neighboring property by violating the setback requirement.

The applicants presented evidence showing that the proposed location of the building is the best location for themselves. They have not, however, presented any evidence proving that the proposed structure cannot physically be placed at least 200 feet from Karen Anderson's property or at some other location having the least impact on adjoining forest land. The evidence shows that the 200 foot setback requirement can be observed without placing the structure within 200 feet of any other property.

The applicants in their September 24, 1997, letter state under paragraph 2 on page 4:

> "The Shields propose a farm use, a use permitted as right in the district inherently compatible with the existing farm and forest practices on adjoining lands. (Emphasis added in original).

The fact that the use is permitted outright is not evidence that this arena was sited so that it has the least impact on nearby and adjoining farm and forest lands. The proposed use could be inherently compatible only if the Code required minimum yard setback requirements of MCC .2058 are met.

The east side yard has been reduced to 32% of the required 200 feet. The County in adopting the 200 foot yard requirements made the policy choice that 200 feet was the separation between structures and property lines that provides the minimum protection from impact on adjoining forest lands. Reducing the required side yard and secondary fire safety break by more than 50% on this hillside site places the Anderson property in jeopardy. The applicants have not demonstrated this location has the "least impact" on the Anderson property.

In his October 7, 1997 letter Christopher Brand responded that from a construction, grading, and erosion control standpoint, the current location of the farm structure is the best location on the property. The written and oral testimony of Mr. Rondema, Mr. Koroch, Mr. Naussbaum, and Mr. Wood, all indicate that the current location minimizes the possibility of future erosion problems and future subsidence problems. Those conclusions are based on considering only a portion of the Shields' ownership and without considering alternate building construction or structure size.

In minimizing the potential for erosion and subsidence problems, the current site of the farm structure minimizes potential adverse impacts on downhill adjoining lands. Erosion problems and/or a land slide on the property could adversely impact downhill lands, including the applicants' dwelling. Earth movement could also affect the uphill property, including the Anderson's, by removing support. Nonetheless, the applicants have not shown that different building could not be built so that it was safe and has less impact on the adjoining properties.

The applicant contends that the Property Owner Consent to Variance Request form signed by all neighbors, except Ms. Anderson, shows that the existing barn location has the least impact on nearby or adjoining forest or agricultural lands and satisfies the minimum yard and setback requirements. The fact that all but one of the adjoining property owners consented to the variance request is not proof that the structure is sited at a location that has the least impact on nearby and adjoining farm and forest lands. It is no proof at all that the yard requirements are met.

The Shields have not shown that the arena's location has the least impact on neighboring and adjacent farm and forest uses. Mr. Norr and Ms. Anderson's testimony that Ms. Anderson's views may be impaired, wildfire spread may be increased, as well as other arguments of alleged adverse impacts, are relevant and uncontroverted.

The applicants have failed to demonstrate that the proposed location has the least impact on adjoining forest or agricultural lands when compared to other possible locations on their own property and considering different building sizes and construction methods.

(2) Adverse impacts on forest operations and accepted farming practices on the tract will be minimized;

Finding. This criteria requires the structure to be sited such that it will minimize adverse impacts on the tract. The arena is a farm use. The applicants considered the circumstances of the site as a whole concerning the best place to locate this building. The steeper the area the more fill that will be required. This is the best location on the property for this type of structure from the Shields' point of view. The location of the arena, by intruding into the yard setbacks, leaves the maximum remaining area for pasture and the riding and training of horses. The applicant has located the structure where the impacts on the tract are minimized, at the expense of noncompliance with other Code criteria.

(3) The amount of forest land used to site the dwelling or other structure, access road, and service corridor is minimized.

Finding. Mr. Norr argued that the access road is longer than necessary and therefore, consumes more forest land tan necessary. The applicant responded that the access road could not be shortened by locating the structure closer to the existing house on Tax Lot 29 and closer to SW Skyline Boulevard. The applicant testified that the sloping topography of the land, the amount of cut and fill required to site the structure closer to the existing house, the condition of the soils on the west end of the property, make locating the building closer to the house and the existing drive less feasible than where it was built. However, the applicant did not demonstrate that the building could not have been at a location that had a shorter access. This is particularly true because the applicant's evidence was based on the dimensions and characteristics of Tax Lot 29 alone and not on the Lot of Record, which the Hearings Officer has determined is the basis for application of the Code's criteria.

(4) Any access road or service corridor in excess of 500 feet in length is demonstrated by the applicant to be necessary due to physical limitations unique to the property and is the minimum length required;

Finding. An extension of the existing access was built to serve the farm structure. Mr. Norr argues that the access is far in excess of 500 feet from Skyline Road and there is an absolute requirement that the minimum be used. If the barn had been located further down the hill, closer to the house it would not have required extension of the access. The applicant contends the access does not exceed 500 feet in length. The applicant argues that this criteria applies only to the access which must be created in order to facilitate the farm structure, which is the subject of the variance. He argues the driveway which was created to access the farm structure does not exceed 500 feet. The Hearings Officer disagrees, the length of the access should consider the entire access to the structure, not just the length of the extension of an access to get from the end of an existing access to a new structure. The entire length of the access should be considered because a purpose of the requirement is to minimize the distance from a public road to a structure for emergency response vehicles.

The record shows that access to the site is provided from Skyline Blvd. The record does not show the total length of the access. The Tax Assessors map shows the access is on an easement. The record does not contain any information about the width, surface conditions, signage, etc., of the access. The applicant has not demonstrated that the amount of land for the access is minimized.

The applicant argued that this particular provision does not apply at all to the Shields' driveway extension. Specifically, MCC 11.15.2074 refers to "access road or service corridor." While the Multnomah Code does not define service corridor, roads are defined as:

"Every public way, thoroughfare, road, street or easement within the County used or intended for use by the general public for vehicular travel, but excluding private driveways."

The applicant argues that the driveway extension accessing Lot No. 20 is not intended for use by the general public for vehicular travel, it will be used only by the Shields and invited guests. The driveway extension is more properly termed a "private driveway," not subject to this development standard.

The Code defines an "access way" in MCC 11.15.0010 as:

"A private street which is not a part of a lot or parcel and which provides access to more than one lot or parcel."

The subject access is not an access way because it is an easement, a part of a lot or parcel.

The Code defines a "road" in MCC 11.15.0010 as:

"Every public way, thoroughfare, road, street or easement within the County used or intended for use by the general public for vehicular travel, but excluding private driveways."

The subject access is an easement. However, the easement is not intended for use by the general public. In addition, the definition excludes private driveways from roads. The access to the arena is a private driveway. Therefore, the access is not a road.

Under MCC 11.15.2074(D) the access requirements apply to:

"A private road (including approved easements) accessing two or more dwellings, or a driveway accessing a single dwelling. . . "

The access is an easement. The access provides access to a dwelling on Tax Lot 30 (the Shields residence) and on Tax Lot 33 (Ms. Anderson). Thus it meets the definition of "a private road (including approved easements) access two dwellings. The Hearings Officer concludes that the access requirements of 11.15.2074(D) apply and that the applicant needs to prove that the MCC 11.15.2074(A)(4) requirement that any access road in excess of 500 feet in length is necessary due to physical limitations unique to the property and is the minimum length required. The applicant has not proved that the access is the minimum necessary.

(5) The risks associated with wildfire are minimized. Provisions for reducing such risk include:

(b) Access for a pumping fire truck to within 15 feet of any perennial water source on the lot. The access shall meet the

driveway standards of MCC .2074 (D) with permanent signs posted along the access route to indicate the location of the emergency water source.

Finding. There is no perennial water source on the site. The applicant submitted a letter dated September 19, 1997, from Arthur E. Thurber, Deputy Fire Marshall for the Tualatin Valley Fire and Rescue District. Mr. Thurber stated that:

"* Fire Department access to all structures on [the] property is adequate for fire suppression operations.

* * *

"* [The p]roperty is located approximately 1-1/2 miles from Tualatin Valley Fire and Rescue Station 198. Equipment housed at that station are:

Brush Rig 198	90 gpm - 300 gallons of water
Engine 198	750 gpm - 500 gallons of water
Water Tender 198	750 gpm - 3000 gallons of water

"* Fire hydrants are located at Skyline Blvd. and Newberry Road, and Skyline Blvd. and McNamee road.

The firefighters in the closest station to the site, not being accustomed to relying on perennial water sources, provide tank truck service. The closest station's equipment can carry a total of 3,800 gallons of water. The equipment can be refilled at existing fire hydrants in the vicinity of the Shields' residence.

Staff has found no evidence that access to the site was previously approved. Under MCC .2074 (4) the applicant state, "An extension of the existing road was installed to serve the Farm Structure." Compliance with the driveway standards of MCC .2074 is required.

This development standard could be satisfied by compliance with a condition requiring compliance with the driveway standards in MCC .2074(D).

(c) Maintenance of a primary and secondary fire safety zone on the subject tract.

(i) A primary fire safety zone is a fire break extending a minimum of 30 feet in all directions around a dwelling or structure. Trees within this safety zone shall be spaced with greater than 15 feet between the crowns. The trees shall also be pruned to remove low branches within 8 feet of the ground as the maturity of the tree and accepted silviculture practices may allow. All other vegetation should be kept less than 2 feet in height.

(ii) **On lands with 10 percent or greater slope the primary fire safety zone shall be extended down the slope from the dwelling or structure as follows:**

Percent Slope	Distance in Feet
Less than 10	Not Required
Less than 20	50
Less than 30	75
Less than 40	100

(iii) **A secondary fire safety zone is a fire break extending a minimum of 100 feet in all directions around the primary safety zone... .**

(iv) **No requirement in (i), (ii) , or (iii) above may restrict or contradict a forest management plan approved by the state of Oregon Department of Forestry pursuant to the state Forest Practices Rules; and**

(V) **Maintenance of a primary and a secondary fire safety zone is required only to the extent possible within the area of an approved side yard (setback to property line).**

Finding. The fire zone requirements require a primary fire safety zone of a minimum of 30 feet in all directions from a structure, plus a secondary fire safety zone extending a minimum of 100 feet in all directions around the primary safety zone. Thus, there is a total fire safety zone of 130 feet required by MCC .2074(5)(b).

The proposed building is located within 64 feet of the east property line, providing a 30-foot primary fire zone and a secondary fire zone of 34 feet, less than 50% of the required 100 feet. The applicants do meet the fire zone set out in MCC .2074(5) at the existing building site. If the structure were located 66-feet further west of the existing structure site the fire zone requirements would be met.

The primary and secondary fire safety zone is critical in this area. This is demonstrated by the materials submitted by the applicants with their September 24, 1997 letter discussing wildfire in the Tri-County area, with the comment that making your home fire defensible includes the following:

> "4. SLOPE. Wildfires 'run' up slopes and gullies. Increase the size of defensible space on your property as the steepness of slopes increase. Woodpiles and combustibles should not be located down slope... [remainder illegible]."

Page No. 11, which discusses the need for fuel breaks ("wider fuel breaks are needed around buildings located on steep slopes or ones built in areas of dense forest"), and the requirement of trimming trees ("Remove branches from trees to a height of 15 feet to prevent ground fire from spreading to the tops of trees.").

A sheet relating to fuel treatment zones, discussing the first priority zone of 30 feet and the secondary priority zone extending an additional 100 feet "or more", depending on circumstances states:

> "The combination of a moderate to steep slope and hazardous vegetation requires additional hazard reduction, often beyond the 100 foot minimum. In many western states, modification of the vegetation on slopes may be necessary for several hundred feet in order to provide the desired level of safety."

Between Karen Anderson's home and the barn is a relatively dense stand of trees, many of which are on the Anderson property and which the applicants do not control. The applicants cannot meet the standard fire zone requirements and cannot require Karen Anderson to trim or thin out her trees, as advised in these basic summary fire protection materials provided by the applicants. These materials indicate that on hillside sites the fire zone should be increased not decreased.

A letter from Les Shields to Christopher Brand dated September 23, 1997, Exhibit B, says that Mr. Thurber said that the location of the building in relation to the property line was not a significant problem as it related to secondary fire zones. Of more importance to him was the elimination of any fuel in the space between the arena and the property line. This is evidence that the required fire zones may be excessive, it is not evidence that the requirements are or will be met.

After the hearing was closed, but while the record was open, the applicants requested to amend their application to also approve a variance from the fire safety zone standards.

Multnomah County Staff has interpreted the Code to provide that a variance from the setback requirement can have the effect of concurrently allowing a variance from the fire zone requirements. The applicants concede that the initial application for a major variance did not contain a request for a variance to the secondary firebreak setback. The applicant said it was not until after the staff report was issued that the applicants identified the secondary fire zone development standard as a potential subject for a variance request.

Mr. Norr argues that the Hearings Officer does not have the authority, under either the county Code or State law, to allow initiation of a new variance request at this stage of the case. He believes that introducing a new variance request at this stage violates the application, notice and hearings requirements of both State law and the County Code.

Because the Hearings Officer has concluded this application fails to meet the "least impact" criteria and the variance criteria, there is no need to consider a variance from the fire safety standards.

The applicant has not demonstrated that the structure was located to comply with secondary fire safety zone requirements. The application fails to comply with the required secondary fire zone.

> **(C) The applicant shall provide evidence that the domestic water supply is from a source authorized in accordance with the Department of Water Resources Oregon Administrative Rules for the appropriation of groundwater (OAR 690, Division 10) or surface water (OAR 690, Division 20) and not from a Class II stream as defined in the Forest Practices Rules.**

Finding. The applicant does not propose to provide water at the arena. However, the Hearings Officer notes that it is likely that water will be required at the arena, both for the horses and for the public who will be attending events at the arena. The applicant has not provided evidence that the domestic water supply is from a source authorized in accordance with the Department of Water Resources Oregon Administrative rues for the appropriation of groundwater. This criterion is not met. A condition of approval could be imposed to require that evidence of adequate water is available if water were to be provided at the arena. This criterion could be met.

V. Variance Approval Criteria.

A. **MCC 11.15.8505 (A): The Approval Authority may permit and authorize a variance from the requirements of this Chapter only when there are practical difficulties in the application of the Chapter. A Major Variance shall be granted only when all of the following criteria are met . . .**

> **(1) A circumstance or condition applies to the property or to the intended use that does not apply generally to other property in the same vicinity or district. The circumstance or condition may relate to the size, shape, natural features and topography of the property or the location or size of physical improvements on the site or the nature of the use compared to surrounding uses.**

Finding. The applicant contends that the site has constraints limiting the location of the structure elsewhere on the site. The constraints are alleged to relate to the size, shape, natural features and topography of the property and the location of the applicant's dwelling on the adjacent parcel. The applicant believes that because of these constraints, the present location of the farm structure is the only site "reasonably feasible" on Tax Lot 29.

Under the Code's variance criteria, the 'approval authority' may approve a variance from the Code's requirements only when there are "practical difficulties in the application of the chapter." On page 11 of the staff report, in the second paragraph, the staff has said that the County has a very restrictive interpretation of this provision. The applicant believes that the Staff interprets the Code to require the applicants to demonstrate that the current location of the farm structure is the only place on the property to site it to obtain a variance from the setback requirements. If the structure could be moved to the west to more closely comply with the yard requirements, the application could be denied. The applicant argues that the staff's interpretation is wrong. The applicant argues the staff is adding a variance criteria to the adopted list of four in requiring that it is the applicant's burden to demonstrate that denial of the farm structure at this location would result in denial of the use of the farm structure on the parcel. The applicant argues that the Code requires only that they demonstrate "practical difficulties" in application of the requirements of the Code, that they comply to the maximum extent possible.

The "practical difficulties" term is not itself a review criteria but rather a categorical term that is refined in the four variance criteria. It is the standards in the four criteria that must be complied with. The Hearings Officer does believe that the staff applies these standards stringently. The issue the Hearings Officer believes the applicant raises is related to the provision in the dimensional standards that the yard dimension requirement cannot be applied to the extent of prohibiting a sue prohibited outright. With respect to the yard requirements, the arena must be allowed somewhere on the site, which is not to say that it could not be denied for failure to meet other Code criteria. The Hearings Officer agrees with the staff that qualifying for a variance does not enable the property owner to infringe on the yard requirements as much as he likes. The objective is that properties should comply as nearly as possible with the Code's requirements.

The structure fails to meet the east side yard requirement by 68% and the north rear yard by 33%. Thus, the variance request is a major variance.

Tax Lot 29 slopes from east to west and from north to south, with original slopes ranging from approximately 7% grade to approximately 40% grade. The average slope of Tax Lot 29 is about 12 percent. The building was located on slopes that were about 7.5 percent. According to the record, both Tax Lots 29 and 30, the Lot of Record, are similar.

The Soils Survey of Multnomah County, USDA, Soil Conservation Service map identifies the soils on the subject parcel and in the vicinity as including &C - Cascade Silt Loam, 8 to 15 percent slopes and 7D - Cascade Silt Loam, 15 to 30 percent slopes. Based on the SCS map, the 7C soils appear to encompass the larger area of the site. Both 7C and 7D soils are described (pages 24 and 25 Soils Survey) as used for farming, timber production, urban development, and wildlife habitat.

The SCS survey doesn't indicate that the slopes on this property are any different from other properties in the vicinity. The soil types are the same throughout the property.

Slopes in the 20% range require special considerations on the Code. Multnomah County has received more than 10 applications for Hillside Development permits in the West Hills this year. Hillside Development Permits are generally required for all development on slopes exceeding 25% or on lands designated as located within a slope hazard area based on the Multnomah County Slope Hazard Maps. Based on these maps, the subject parcel is not located within a slope hazard area.

There is nothing inherent in this property that is different from other properties in the vicinity. All properties in the area slope down from the knoll. Properties along Skyline area all hilly. There are some flat spots and there are some hillsides. There's nothing in the record that shows that this property has a unique circumstance or condition that neighboring properties, immediately adjacent properties, or properties in the vicinity don't have.

Construction of the building on the steeper slopes would require deeper cuts and fills. The applicant argues that locating the farm structure further west of the current position was not feasible because the required cut and fill would have resulted in 'sub-optimal compaction,' which in turn would have provided inadequate support for this farm structure. Siting the structure down hill, where slopes are steeper has cost implications, it also has an impact on slope stability. The deeper the cut, the less stable the slopes above and below. The Karl Korich, P.E. letter of April 15, 1997 states, "The location of the building is the best place based on site grading. The building pad required approximately 15 feet of cut at the east side and 6-12 feet of fill at the west side. All other locations on the Lot of Record would have required at least twice that amount of cut and fill." The site evaluated was Tax Lot 29, not the Lot of Record composed of Tax Lots 29 and 30. No geological, geotechnical, or topographical studies have been submitted to clearly indicate that no other location on the tract could or could not accommodate the structure. Reducing the size and scale of the building could increase the yard setback to the east, reduce the amount of grading and fill that was necessary in establishing the structure, while providing for the use.

Concerning erosion control, the more earth moving that the Shields have to do, the more open ground there is, the more the potential for erosion. The geotechnical engineer testified that the best location for the arena with regard to erosion control is the area that requires the least earthwork, which is where it is located. The geotechnical engineer testified that the steeper portions of the site would require deeper fills which are susceptible to settling under their own weight but also weigh a great deal more than even the barn and can induce settlement of the underlying soils because they are so heavy. He said that especially where there are cuts and fills, weight is taken off on the uphill side and added on the down slope side. That tends to cause some settlement difficulties. The greater the cut and fill required, the greater the settlement difficulties.

According to the SCS the hazard of erosion appears to be moderate throughout the site. Again, the soil types are the same throughout the site. Therefore the hazard of erosion appears to be the same throughout the site.

According to the SCS survey, the soil types on the site have a water table at a depth of 18-30 inches from December to April. According to the criteria under policy 14, a seasonably high water table for more than three to four weeks of the year is considered a development limitation. These soil types create some development limitations, but the soil type occurs throughout the site. Thus the soil type does not show that this building site is preferable to other possible building sites.

Mr. Shields testified that the two tax lots have similar characteristics. The bottom half is flatter and subject to seasonal inundation from hillside runoff. The applicant's engineer testified that there are significant areas of saturation of the ground surface as well as seasonal groundwater fluctuations west of the site. There are water loving plants, deep hoof-printing and mottled soils in the lower parts of the site indicating that the water level is at the ground surface during the wet season, December to April. The winter saturation creates some practical difficulties in siting the barn on the steeper portions of the site. To locate the structure elsewhere, the Shields would have to do some extensive measures to divert the groundwater away from the area to an extent that is not necessary in the upper portions of the site.

The applicant argues that the drainage of Tax Lot 29 and the entire hill above Tax Lot 29 results in periodic inundation and saturation of the western portion of Tax Lot 29, to the extent that it is unbuildable.

The size of neighboring lots zoned CFU are as follows:

Tax Lot #	Parcel Size	Could 200' Setback Be Met From a 96' x 120' Farm Bldg?
TL 30[1]	5.00 acres	No
TL 33	10.24 acres	No
TL 34	1.99 acres	No
TL 13	21.00 acres	No

Mr. Shields testified that parcels in the area range from one to 80 acres in size. The applicant argued that this information on the neighboring lots in the staff report focuses only on the "vicinity." The last two criteria contain a disjunction, vicinity or district. The applicant argues that this property is different from what generally occurs in the "district." He submitted a map from page 11 of the West Hills area Plan, Exhibit H1 which he believes shows that the Shields' property is not similar to other property. It is much smaller and it has a different shape. He entered a table of Section 32 in which this property is located, which he said represents the north portion of the "district." Exhibit H2. In Section 32 there are 47 properties, the average parcel size is 12.96 acres; the total properties with 5 acres or more is 30; there are 17 parcels that are less than 5 acres, consisting of 36 percent of the properties in Section 32. The applicant argues that these

[1]Also owned by the Shields, part of the Lot of Record.

facts show that the Shields' property has a condition that generally other properties in the district do not have.

The Hearings Officer does not agree with the applicant's conclusion that the size and shape of this property makes it different from other properties in the vicinity. The fact that 36 percent of the parcels are of a similar size shows that the size of the parcel is a condition that generally applies in the vicinity. The Hearings Officer has concluded that the area subject to this application is the Lot of Record, not the Tax Lot. The Lot of Record contains 10 acres, close to the average lot size in the Section. Also, the Hearings Officer finds that the term "district" means the CFU zone. Although the applicant claims to compare the Shields' property to other properties in the "district," their evidence relates to the single section in which the site is located, which is the vicinity, not the entire CFU district. Tax Lot 20 is rectangular in shape, which is the most common shape for lots or parcels.

One of the adjacent properties is almost identical in size and shape. It is under the same ownership as the subject property. There are sixteen other properties in the Section that re 5 acres or less. For the most part none of the adjacent properties could place the same size structure for the same use without a variance. The size conditions of this property do apply to other properties. Therefore, the criteria would apply to other properties in the vicinity.

The applicant has failed to demonstrate that this property has natural features or topography that other parcels in the vicinity or district don't have or why the structure could not be located further west, thus maximizing the required yard. The applicants' burden is to prove the yard requirement is the maximum possible, not simply that the selected site is the most cost effective, convenient, or easiest place to locate the structure.

Considering Tax Lot 29 alone, with respect to the side yards, there is a 225 foot section in the center of the parcel where a structure could meet the yard requirements. The total 400 foot front and rear yards cannot be met on Tax Lot 29 which is 350 feet deep. However, considering Tax Lot 29 alone, the center of the parcel would be the location where the setbacks would be met to the maximum extent possible. Orienting the building so that its shortest dimension is aligned north/south, would leave a front and rear yard of 127 feet, the front and rear yard could be increased by making the building longer and narrower. From the perspective of the Lot of Record there is a 225 foot by 300 foot area within which a building could be located and meet the yard requirements.

The applicant has not addressed the possibility of siting the structure at its most ideal location from the perspective of minimizing the yard variance needed. The applicant discussed the effects of moving the site 20 feet west and to the far west but not the center of the site.

The geotechnical engineer did not say this is the only location on the property could be built. Form a technical point of view could a building could be built almost anywhere on the site. There may other consequences of moving it, it may be more expensive, take

more cut and fill, require some drainage work, or other things, but it can be done. This conclusion is verified by an affidavit submitted by Mr. Norr of John A. Schrag, a builder, familiar with the property, horse barns and pole buildings. Mr. Schrag stated:

"8. Based on my site visit, my review of the topographical map, and my experience with horse barns and the construction of pole buildings, and absent an engineering report prohibiting such construction, I see no reason why, as a construction project, a structure similar to the existing horse barn could not be placed elsewhere on the lots.

"9 Construction of the horse barn at another location on the property might cost more money, might involve more cut and fill, might require different foundation or drainage work, and might require carefully following property engineering requirements, but unless an engineering report prohibits such construction, it can physically be done.

"10. A critical consideration in all construction projects is compliance with applicable zoning setback regulations. Standard practice requires a licensed contractor to receive proper zoning and building permit approvals before commencing construction on any project.

"11. In my opinion, construction of a pole building is relatively simple construction compared to other forms of construction of a similarly sized building."

Conclusion. The application fails to demonstrate a circumstance or condition related to parcel size or shape, topographical or natural features apply to the property or to the Farm Structure that does not apply generally to other property in the same vicinity or district. The applicant has other remedies to pursue if they were mislead about their ability to build the building at this location.

(2) The zoning requirement would restrict the use of the subject property to greater degree than it restricts other properties in the vicinity or district.

Finding. The applicant is requesting a variance to the 200 foot minimum yard requirement of MCC .2058. The applicant argues that strict application of the yard requirements of MCC.2058 would restrict the use of the subject property to a greater degree than it restricts other properties in the vicinity or district. Application of the MCC.2058 setbacks to Parcel 29 would render Parcel 29 undevelopable because it is only 350 feet in width and accordingly could not afford a structure with 200 foot setbacks on each side.

The 200 foot side and rear yard requirements apply to all parcels within the CFU zone. Other parcels in the immediate area with CFU zoning would require approval of a variance for a structure of the same size as the structure under this permit. Other lands in the CFU zone are subject to the 200-foot setback requirement and subject to the variance criteria. Therefore, the zoning requirement is not restricting this property any more than it would

restrict other property in the vicinity or zone. The applicant has not proved that denial of the structure at this location would result in denial of structure on the site altogether. The applicant has not proved that the structure could not be located elsewhere on the site in greater compliance with the yard and fire zone requirements and with less impact on adjoining forest land. The application fails to demonstrate the zoning requirement would restrict use of the subject parcel to a greater degree than it restricts other properties in the zone or vicinity.

(3) The authorization of the variance will not be materially detrimental to the public welfare or injurious to property in the vicinity or district in which the property is located, or adversely affects [sic] appropriate development of adjoining properties.

Finding. The maintenance of the secondary fire zones is an issue about whether this variance would be materially detrimental to the public welfare or injurious to property in the vicinity or district. The Shields' own 64 feet between the barn and the east side lot line, which includes the 30 foot primary fire zone and 34 feet of the 100-foot secondary fire zone. The area between the barn and east lot line is a gravel and grassy area. The fire safety issue is both relevant to whether the location would be materially detrimental to the public welfare and to whether the location would be injurious to property in the vicinity.

The property owner did not build the structure under an erosion and grading permit. Therefore, it is unknown what the erosion and earth movement impacts of the structure are. The Shields stated that they would accept a condition of approval that would require them to take any measures advised by a fire safety expert that would maximize fire safety. Also, they would accept a condition of approval to require them will submit a Grading and Erosion Control ("GEC") permit application.

The opponent to the applicants' farm structure is a homeowner residing to the east of Tax Lots 29 and 30, Karen Anderson. Ms. Anderson is concerned about fires, complains that her view was impacted due to the construction of the farm structure and she is concerned about the impact of activities at the arena so close to her property.

The fire zone requirements are addressed above. The applicant argues that the farm structure was built on an area that contained sparse tall trees, which obscured the view of the valley below from Ms. Anderson's home. Therefore, they contend, the building does not obstruct a view of the valley that she never had. The Shields testified that they would accept a condition of approval that requires them to plant vegetation to buffer the Farm Structure from Ms. Anderson's view. Finally the applicant argues that Ms. Anderson appears to be disturbed by the appearance of a barn, an agricultural structure. The CFU district expressly allows such structures, but not this close to the property line.

The applicant has failed to demonstrate how the structure will maintain a secondary fire break on adjoining land or how the proximity of the property owner may affect the ability of tax lot 33 to develop in a manner consistent with the code. Fire is the greatest risk for forest lands. That is why there are large yard requirements and why the fire zones were

adopted. Additionally, certain pesticides and other chemical are commonly applied to agricultural crops and timber stands. Many of these chemicals preclude spraying within proximity of people.

There is no competent professional[al] evaluation of the impacts of the structure on the allowed farm and forest practices as they could be implemented on the Anderson property, nor any analysis of the impact of the building at the proposed location on such uses. The applicants have provided some conclusory statements and nothing more. The applicant has not clearly demonstrated the siting of the farm structure will not adversely affect the appropriate development of adjoining parcels.

(4) The granting of the variance will not adversely affect the realization of the Comprehensive Plan nor will it establish a use which is not listed in the underlying zone.

Finding. The Comprehensive Plan Policies are addressed under section IV of this decision. The granting of the variance will not establish a use that is listed in the underlying zone.

VI. Significant Environmental Concern (SEC) Zone Considerations:

A. MCC 11.15.6404 - Uses - SEC Permit Required: (A) All uses permitted under the provisions of the underlying district are permitted on lands designated SEC; provided, however, that the location and design of any use, or change or alteration of a use, except as provided in MCC .6406, shall be subject to an SEC permit.

B. MCC 11.15.6406 - Exceptions: An SEC permit shall not be required for the following: (A) Farm use, as defined in ORS 215.203(a), including buildings and structures accessory thereto on "converted wetlands" as defined by ORS 541.695 (9) or on upland areas;

Finding. As determined earlier in this decision, the structure and proposed use are consistent with ORS 215.203 (2)(a). Additionally, the subject parcel is entirely within an upland area. Therefore, the proposed structure is not subject to the SEC requirements or required to obtain an SEC Permit.

VII. MULTNOMAH COUNTY COMPREHENSIVE PLAN POLICIES:

C. Policies in the Comprehensive Plan which are applicable to this Quasi-judicial Decision are addressed as follows:

1. Policy No. 13, Air, Water and Noise Quality: Multnomah County, ... Supports efforts to improve air and water quality and to reduce noise

levels. ... Furthermore, it is the County's policy to require, prior to approval of a legislative or quasi-judicial action, a statement from the appropriate agency that all standards can be met with respect to Air Quality, Water Quality, and Noise Levels.

Finding. This application has been reviewed through a quasi-judicial process and therefore applicable comprehensive plan policy findings are necessary. A statement from the Sheriffs Office (noise) and County Sanitarian (water quality) are required.

The applicant submitted a Police Services Review Form executed by the Multnomah County Sheriff's Office. Christopher Brand testified that he spoke to Sargent John Ingram of the Multnomah County Sheriff's Office who indicated that, in his opinion, the project as proposed will create no adverse noise impacts.

The applicants contacted Jason Abraham of the Multnomah County Sanitarian Office who indicated storm water discharge from the subject property requirements would be addressed when the County processes a Grading and Erosion Control ("GEC") permit for the farm structure, as a condition of approval. Mr. Abraham stated that if the applicant applies for and secures a GEC permit, the applicant will be able to meet all standards with respect to water quality. Mr. Abraham added that if the applicant intends to install a bathroom, or pipe water to the farm structure, the applicant will have to apply for a plumbing permit. At this point in time, the applicant has no plans for running water or bathroom facilities to the farm structure. In the event these uses are proposed, the applicant could be required by conditions of approval to apply for relevant permits. The Policy 13 and could be satisfied.

2. **Policy No. 14, Development Limitations. The County's Policy is to direct development and land form alterations away from areas with development limitations except upon a showing that design and construction techniques can mitigate any public harm or associated public cost, and mitigate any adverse effects [sic] to surrounding persons or properties. Development limitations areas are those which have any of the following characteristics:**

   A. Slopes exceeding 20%;

Finding. The USGS quadangle map of this area shows that the Shields' property is located immediately below the ridge, on the west slope of the Tualatin Mountains, between elevations of approximately 1,000 feet on the east to 900 feet on the southwest. Koroch, Woods, and Naussbaumer, consultants and contractors for the applicants, have indicated that the present site of the farm structure on the Tax Lot is the only place to feasiblely site the structure on the Tax Lot because slopes on the site reach 40%. Specifically, Vern Naussbaumer indicates that the arena location had approximately a 7% grade and moving it any further west would have put the building on a 40% slope (Mr. Naussbaumer mistakenly indicates that the slope increases to the south of the current site. It increases to the west, not the south, of the current site).

Karl Koroch, P.E., stated in his April 15, 1997 letter that the building pad at its current location required approximately 15 feet of cut on the east side and 6-12 feet of fill on the west side. He said that all other locations on the site (addressing Tax Lot 29 only) would have required at least twice that amount of cut and fill. Vern Nussbaumber, the excavator, stated in his March 18, 1997, letter that the existing slope at the barn site was 7 % and moving the barn any further south would have put it on 40% slope. He said that would have required a 50 foot cut on the north and a 50-foot fill on the south. He said that "even though this was compacted it could not be guaranteed that this site would not slide in wet weather. Mr. Koroch said that this additional fill "would have made it very difficult if not impossible to appropriately restrain the support posts which provide one component of the lateral structural system." Karl Koroch stated that relocating the building to comply with the 200 foot setback would result in siting it 15-20 feet from the Shields' residence.

The builder stated that the cuts and fills required on other parts of the Tax Lot "would make it impossible to erect the building. The fill would be to[o] great to set poles and get enough immersion to prevent settling and provide proper wind loads. It would not be possible to provide proper drainage and keep the cut from sliding away in heavy rains. Just moving the site 20' to the southwest would involve another 25' drop in grades."

By siting the structure on a slope of approximately 7%, the applicants meet this criteria. The Hearings Officer has concluded that the Lot of Record is the area the Code requirements apply to. The applicant has not shown that the structure could not be built elsewhere on the Lot of Record.

The application lacks technical data in the form of a topographic survey to support a finding that there is no potential building area west of the existing location which includes slopes of less than 20%. Based on the *Soil Survey of Multnomah County, Oregon*, the majority of the parcel is Cascade silt loam (7C) with slopes of 8-15%, including areas west of the existing location. The fact that the site is the best site considering slopes does not alone justify its location there. Other factors also are required to be considered, specifically the yard and fire zone requirements. In addition, the applicant's evidence addresses only a pole barn structure. The applicant has not shown that a different construction type could not have been located elsewhere on the Lot of Record.

B Severe soil erosion potential;

Finding. The *Soils Survey of Multnomah County* at pages 24 (2nd column) and 25 (2nd column) identify the hazard of erosion as "moderate" on 7C soils and "high" on 7D soils. Because the farm structure appears to be on 7C soils, the hazard of erosion appears to be moderate. However, 7C soils extend to the west of the existing building. The site is composed or Portland Hills silts which are, according to the SCS are moderate for erosion. The site is not on particularly steep slopes, averaging 12/percent. There is relative instability comparing the top flat area, where the building is located, and the lower area which is 5-6 percent steeper. The site where the barn is located is the most stable area on the site. The earthwork aspects, referring to the cuts made on the upper portion of the site and the fills that were made on native ground to provide a bench to contain the smallest

arena possible for the proposed use, are important with respect to slope stability. The existing site may be the most stable site on the Tax Lot and be the best location from a soil erosion standpoint. The potential for erosion is only one of many criteria that applies to the location of the structure. The fact that there may be greater erosion potential if the structure were located elsewhere does not alone lead to the conclusion that the structure has to be located there regardless of other criteria, such as yard requirements, fire safety zone requirements and impact considerations on adjoining lands.

C. Land within the 100 year flood plain;

Finding. There is no land on the site that is within a 100-year flood plain. The subject parcel is not designated as a Flood Hazard area on the Multnomah County Zoning Maps based on Maps prepared by the Federal Emergency Management Agency (FEMA).

D. A high seasonal water table within 0-24 inches of the surface for more than 3 or more weeks of the year;

Finding. The applicant states the western portion of the site has a high seasonal water table within 0-24 inches of the surface for more than three or four weeks of the year and that the lower flatter area of the site downhill is inundated by runoff in the winter. The applicant states that the periodic high-water table and inundation renders that portion of the site unbuildable. That is another reason why Messrs. Koroch, Woods and Naussbaumer indicated that the current location of the Farm Structure is the best site reasonably feasible to locate the structure. The *Soils Survey of Multnomah County* at pages 24 (2nd column) and 25 (2nd column) states, "[a] water table is at a depth of 18-30 inches from December through April", in regards to all soils on the parcel; the high seasonal water table is the same throughout the site. The applicant has not address methods of draining the runoff to allow development elsewhere on the site. The applicant concedes that some measures could be taken to diver groundwater away from a structure located to the west. The applicant has not proved that this is the only location on the Lot of Record, or on the Tax Lot, that a structure could be built.

A. A fragipan less than 30 inches from the surface; and

Finding. The soils on the parcel consist of Cascade Silt Loam 7C & 7D. Based on the *Soils Survey of Multnomah County* at pages 25 (middle of 1st column) and page 26 (2nd column) these soils have a fragipan at a depth of 20 to 30 inches. Because the entire site appears to include a fragipan, this development limitation does not support locating the structure at its existing site over other locations on the parcel.

F. Lands subject to slumping, earth slides or movement.

Finding. The subject parcel does not contain any lands subject to slumping, earth slides or movement. Relocating the structure would likely require the farm structure to be built on more fill than at the existing site. Messrs. Koroch, Woods and Naussbaumer indicated that locating the farm structure further west could result in sub-optimal compaction and thus

could render the site subject to slumping, earth slides or movement. For this reason, Messrs. Koroch, Woods and Naussbaumer have concluded that the current site is the only location reasonably feasible for the farm structure. The applicant's representatives state that this farm structure at a location further west "could" result in "sub-optimal compaction" They do not state that it would and they do not analyze compaction techniques that would be adequate to support a pole barn or some alternate building type. The existing location of the structure involved grading and fill without benefit of the required Grading and Erosion Control Permit and no compaction tests have been entered into the record for this location. The applicant has not met the requirements of this Plan Policy.

3. Policy No. 22, Energy Conservation: **The County's policy is to promote the conservation of energy and to use energy resources in a more efficient manner. ... The County shall require a finding prior to approval of a legislative or quasi-judicial action that the following factors have been considered:**

   A. The development of energy-efficient land uses and practices;
   B. Increased density and intensity of development in urban areas, especially in proximity to transit corridors and employment, commercial and recreation centers;
   C. An energy-efficient transportation system linked with increased mass transit, pedestrian and bicycle facilities;
   D. Street layouts, lotting patterns and designs that utilize natural environmental and climactic conditions to advantage.
   E. Finally, the County will allow greater flexibility in the development and use of renewable energy resources.

4. Policy No. 37, Utilities: **The County's policy is to require a finding prior to approval of a legislative hearing or quasi-judicial action that:**

WATER DISPOSAL SYSTEM:

   F. The proposed use can be connected to a public sewer and water system, both of which have adequate capacity; or
   G. The proposed use can be connected to a public water system, and the Oregon Department of Environmental Quality (DEQ) will approve a subsurface sewage disposal system on the site; or
   H. There is an adequate private water system, and the Oregon Department of Environmental Quality (DEQ) will approve a subsurface sewage disposal system; or
   I. There is an adequate private water system, and a public sewer with adequate capacity.

Finding. The use is a farm use allowed outright and not subject to this policy.

DRAINAGE:

A. There is adequate capacity in the storm water system to handle the increased run-off; or

A. The water run-off can be handled on the site or adequate provisions can be made; and

B. The run-off from the site will not adversely affect the water quality in adjacent streams, ponds, lakes or alter the drainage on adjacent lands.

Finding. The application has not addressed this policy. The existing structure was constructed without the required Grading and Erosion Control Permit. The Grading and Erosion Control Permit process addresses this policy and, if approved, should be required as a condition of approval.

5. Policy No. 38, Facilities: The County's Policy is to require a finding prior to approval of a legislative or quasi-judicial action that:

A. The appropriate School District has had an opportunity to review and comment on the proposal.

B. There is adequate water pressure and flow for fire fighting purposes; and

C. The appropriate fire district has had an opportunity to review and comment on the proposal.

D. The proposal can receive adequate local police protection with the standards of the jurisdiction providing police protection.

Finding. The availability and accessibility of fire fighting equipment and emergency vehicles to access the proposed structure is applicable for the public welfare. The applicant has obtained a statement from the appropriate fire district that service is available and access is acceptable for necessary emergency vehicles. As noted above, there fire district has provided a favorable response to the request. The District responds to fires in this area with equipment carrying 3,800 gallons of water and the equipment can be refilled at fire hydrants near the site on Newberry Road. The Sheriff's Office has responded that the use can receive adequate police protection. The proposed use does not have any school-related impact and therefore school district review and approval is not required.

6. Policy No. 40, Development Requirements: The County's policy is to encourage a connected park and recreation system and to provide for small private recreation areas by requiring a finding prior to approval of legislative or quasi-judicial action that:

C. Pedestrian and bicycle path connections to parks, recreation areas and community facilities will be dedicated where appropriate and where designated in the bicycle corridor capital improvements program and map.

D. **Landscaped areas with benches will be provided in commercial, industrial and multiple family developments, where appropriate.**

E. **Areas for bicycle parking facilities will be required in development proposals, where appropriate.**

Finding. There are no existing public recreational plans in the immediate area which involve the subject parcel.

Dated this 20th day of October, 1997

Deniece B. Won

Deniece B. Won
Hearings Officer

#1

SPEAKER SIGN UP CARDS

DATE 2/3/98

NAME Jeff Kleinman

ADDRESS 1207 SW 6th

Ptld, OR. 97204

PHONE 248-0808

SPEAKING ON AGENDA ITEM NUMBER OR TOPIC CS 1-97

GIVE TO BOARD CLERK

#2

Adrienne Keith

14139 NW Charlton Rd.

Ptld. 97229

#3

SPEAKER SIGN UP CARDS

DATE 2/3/98

NAME DONNA MATRAZZO

ADDRESS 19300 NW SAUVIE IS RD
PORTLAND 97231

PHONE 621-3049

SPEAKING ON AGENDA ITEM NUMBER OR TOPIC CS 1-97

GIVE TO BOARD CLERK

#1

SPEAKER SIGN UP CARDS

DATE 2/3/88

NAME Tim Ramis

ADDRESS 1727 N.W. Hoyt

Portland 97209

PHONE 222.9902

SPEAKING ON AGENDA ITEM NUMBER OR TOPIC ATT / Service Fee - Applicant

GIVE TO BOARD CLERK

#2

SPEAKER SIGN UP CARDS

DATE 2/3/95

NAME Spencer Vail

ADDRESS 4505 NE 24

PDX 97211

PHONE 281-8245

SPEAKING ON AGENDA ITEM NUMBER OR TOPIC Applicant Staff

GIVE TO BOARD CLERK

#3

SPEAKER SIGN UP CARDS

DATE 2-3-98

NAME Carol Friz

ADDRESS 1600 SW 4th Ave

Portland OR 97201

PHONE 503-306-6163

SPEAKING ON AGENDA ITEM NUMBER OR TOPIC ATWS

GIVE TO BOARD CLERK

#24

SPEAKER SIGN UP CARDS

DATE 2-2-98

NAME Dan Chandler

ADDRESS 1727 N.W. Hoyt

Portland 97209

PHONE 222-4402

SPEAKING ON AGENDA ITEM NUMBER OR TOPIC Cell Tower

GIVE TO BOARD CLERK

MEETING DATE: February 3, 1998
AGENDA NO: P-2
ESTIMATED START TIME: 10:30 AM

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: De Novo Hearing for Land Use Case CS 1-97

BOARD BRIEFING: DATE REQUESTED:
REQUESTED BY:
AMOUNT OF TIME NEEDED:

REGULAR MEETING: DATE REQUESTED: Tuesday, February 3, 1998

AMOUNT OF TIME NEEDED: 1 Hour

DEPARTMENT: Environmental Services DIVISION: Land Use Planning

CONTACT: Robert N. Hall TELEPHONE #: 248-3043, ext. 26797
BLDG/ROOM #: 412/109

PERSON(S) MAKING PRESENTATION: Robert Hall, Joan Chambers, Parties

ACTION REQUESTED:

[ ] INFORMATIONAL ONLY [ ] POLICY DIRECTION [ ] APPROVAL [X] OTHER

SUGGESTED AGENDA TITLE:

CS 1-97 De Novo Hearing with Testimony Limited to 20 Minutes Per Side on the Appeal of the Hearings Officer Decision Regarding Approval of a Community Service Use, Subject to Conditions, to Construct a Communications Monopole and Electronics Building on Sauvie Island Property Located at 14443 NW CHARLTON ROAD, PORTLAND

2/3/98 Copies of final order to Stuart Farmer, Bob Hall & Sandra Duffy

SIGNATURES REQUIRED:

ELECTED OFFICIAL:
(OR)

DEPARTMENT MANAGER: Larry Nicholas

98 JAN 28 PM 3:29
BOARD OF COUNTY COMMISSIONERS
MULTNOMAH COUNTY OREGON

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

Any Questions: Call the Board Clerk @ 248-3277

2/97

MULTNOMAH COUNTY

BOARD HEARING OF FEBRUARY 3, 1998
TIME 10:30AM

CASE NAME: CELL TOWER NUMBER: CS 1-97

Action Requested of Board

- ☐ Affirm Hearings Officer Decision
- ☐ Hearing/Rehearing

Scope of Review

- ☐ On The Record
- ■ De Novo
- ☐ New information allowed

1. Applicant Name/Address

AT&T Wireless Service
PO Box 1119
Portland, OR, 97207

Property Address:
14443 Charlton Road
Tax Lot 7, Section 16, T2N, R1W, W.M.
3.54 acre Lot of Record

2. Action Requested by Applicant

Approval to construct a self supporting 150 foot tall cellular telephone communications monopole, with associated antenna, and to erect an electronics building on the subject property. The antennas are proposed to be mounted to the pole and to a tringular platform atop the pole. The proposed total height, including antenna, is 160 feet.

3. Planning Staff Recommendation

Denial

4. Hearings Officer Decision:

Approval with conditions

5. If recommendation and decision are different, why?

Evidence submitted at the hearing, not available at the time of the writing of the staff recommendation, that demonstrated compliance with approval criteria.

6. The following issues were raised at the hearing *(who raised them?)*

a. Visual impact. (opposing neighbors).
b. Need for additional cellular service on Sauvie Island (Sauvie Island residents in support and opposition).
c. Safety and noise problems (adjacent neighbor).

7. Do any of these issues have policy implications? Explain.

No, all concern compliance with applicable approval criteria of the Zoning Code.

BEFORE THE HEARINGS OFFICER
FOR MULTNOMAH COUNTY, OREGON
FINAL ORDER

This Decision consists of Conditions, Findings of Fact and Conclusions.

December 31, 1997

CS 1-97 Conditional Use Request for Cellular Radio Communication Facility

Applicant seeks approval of a Conditional Use (CS) to construct a self supporting 150 foot tall cellular telephone communications monopole, with associated antennas, and to erect an electronics equipment building on the subject property.

The antennas are proposed to be mounted to the pole and to a triangular platform mounted atop the pole. The proposed total height, including the antenna, is 160 feet.

Location: 14443 N.W. Charlton Road

Description of Property: Tax Lot 7, Section 16, T2N R1W

Parcel Size: 3.54 acres

Site Size Requested: 50' x 50'

Property Owner: Sauvie Island Grange No. 840
18143 NW Reeder Road
Portland, Oregon 97231

Applicant: AT&T Wireless Services
Attn: Real Estate Mgr.
PO Box 1119
Portland, Oregon 97207

Comprehensive Plan: Multiple Use Agriculture

Present Zoning: MUA-20

PROCEDURAL ISSUES

1. Impartiality of the Hearings Officer

A. No ex parte contacts. I did not have any ex parte contacts prior to the hearing of this matter. I did not make a site visit.

B. No conflicting personal or financial or family interest. I have no financial interest in the outcome of this proceeding. I have no family or financial relationship with any of the parties.

2. Jurisdiction

At the commencement of the hearing I asked the participants to indicate if they had any objections to jurisdiction. The participants did not allege any jurisdictional or procedural violations regarding the conduct of the hearing. The applicant did however contend that the Federal Telecommunications Act limited the County's ability to regulate cell towers. The effect of the Federal Telecommunications Act will be discussed in the following section, of this order.

3. Federal Communications Act

The applicant has raised questions regarding Multnomah County's ability to regulate cell towers because of the Federal Telecommunications Act of 1996. Mr. Hammond, an attorney for AT&T Wireless Services, has submitted a memorandum of points and authorities in regards to the Telecommunications Act. Mr. Kleinman, an attorney for opponents, Citizens United for Sauvie Island Planning, has submitted a post-hearing memorandum that also discusses some issues raised by the Telecommunications Act of 1996 (the Act).

The Act did place some limitations on local regulation of cell towers. However, the Act did not pre-empt local zoning authority in regards to regulations of cell towers.

The Act contains four broad categories of standards in regards to local regulation of the placement of cellular phone towers and related equipment. The first set of provisions prohibits local authorities from using the zoning process to unreasonably discriminate against competing service providers. The Act also tries to stop local authorities from keeping wireless providers tied up in the hearing process. The Act requires local authorities to support their decisions with substantial evidence and written findings, and the Act also contains provisions directed at the health concerns associated with the radio emissions from wireless transmitters. The Act prohibits a local authority from considering possible effects of these emissions in its decision making. As long as the proposed facility meets Federal

Communications Commission Standards, the local authority may not consider any claim that an authorized wireless communications facility might cause local health problems. Westel-Milwaukee vs. Walworth County, 556 NW 2d 107 (1996).

As to the subject application, the Federal Telecommunications Act does not prevent the County from reviewing this application or asserting its local zoning authority.

The Act does specifically prohibit the County from considering possible effects of the emissions, provided that the facility meets the Federal Communications Commission Standards. Since the evidence clearly indicated that the facility met both the County and Federal emission standards, this may be a moot point. However, to the extent the opponents presented testimony on the issues concerning harmful emissions, that portion of the testimony will be disregarded.

There is "substantial evidence" in this matter. The Final Order and Findings of Fact document will provide specific written findings which will comply with the Federal standards set forth in the Act.

Another provision of the Act requires that local authorities make a decision on the application within a reasonable period of time. The applicant in this matter originally submitted an application in December of 1996. The following section of this opinion discusses the applicable time limitations. It is clear from the record, however, that the County has not "tied the applicant up in the hearings process". The delays have occurred as a result of the applicant revising the application twice. The applicant has also on the record, requesting continuances and stipulated to waivers of the applicable time limitations. Accordingly, I find that the County has acted within a reasonable period of time. I also find that the County's action in this matter does not in any way discriminate against competing service providers.

4. Application Timeline

This application has a fairly involved procedural history in terms of its various incarnations and submittals. Originally, an application was submitted in December of 1996. A revised application was submitted as Case No. CS 1-97 on March 13, 1997. Originally the Planning Department determined that application was complete on April 11, 1997. A hearing was originally scheduled for May 21, 1997. However, on May 13, 1997 the applicant's representative, Spencer Vale, Planning Consultant, contacted the Multnomah County Planning Department and asked the County to reschedule the public hearing on this conditional use application until the June public hearing date. Mr. Vale specifically agreed to stay the running of the 120-day time period. Although Mr. Vale, in his letter which is referenced in the file as Exhibit "A-9", did not quote the applicable ORS statute, I find that the

applicant did knowingly and intentionally agree to extend the 120-day timeline as provided in ORS 215.428. The stated reason for requesting the continuance was so that the applicant could have additional time to try and resolve many of the concerns raised in the staff report.

The hearing was rescheduled for June 18, 1997. On June 12, 1997, the applicant's representative, Spencer Vale, submitted a revised site plan to the County. A second revised application was also submitted. The revision completely relocated the proposed cell site. Planning Staff did not have sufficient time to prepare a new staff report or review the revision prior to the scheduled hearing date of June 18, 1997. On June 18, 1997, the public hearing was opened. The applicant was given the opportunity to withdraw the application submitted March 13, 1997 and proceed with a new application, or proceed with the application as submitted on March 13, 1997, or ask for a continuance and amend the application to reflect the new proposed site. The applicant chose to amend the application and stipulated during the course of the hearing that the 120-day period of time would be stayed until a hearing could be reset.

Since a substantial number of interested parties had signed up to testify at the hearing, those individuals were given the opportunity to testify or wait until they had an opportunity to review the amended application. Individuals who had signed the sign-up sheet chose to reserve their testimony until the matter could be rescheduled.

The applicant stipulated that the 120-day "clock" would not run during the period of the continuance. The matter was rescheduled for August 20, 1997.

On July 15, 1997, the County Planning Department received a revised application narrative relating to the relocated cell site.

Although the County originally determined that the application was complete as of April 11, 1997, I find that the change in the application on July 15, 1997 was so substantial that the determination previously made that the application was complete as of April 11, 1997 must be withdrawn. I find that the application was not complete until July 15, 1997. On June 18, 1997 the running of the clock was again stayed until the next hearing could be scheduled, which hearing was scheduled and held on August 20, 1997. Accordingly, as of July 15, 1997, when the application became complete, a stay of the 120-day clock was already in place. At the hearing on August 20, 1997, both the applicant's attorneys and the attorneys for the opponents, Citizens United for Sauvie Island Planning, stipulated that the 120-day period was again stayed and extended while the attorneys prepared post-hearing memorandums and submittals. The applicant's reply memorandum was received at 3:20 p.m. on October 17, 1997. Accordingly, I find that as of that time the 120-day clock started to run. As of this point in time, the

clock has 14 days in October, 30 days in November, and 31 days in December on it. As of this date, the clock has 75 days on it.

BURDEN OF PROOF

In this proceeding, the burden of proof is upon the applicant.

FACTS

1. Applicant's Proposal

The applicant seeks approval to site a 150 foot tall cellular telephone communications monopole with associated antennas, direct an electronic equipment building on the subject property in the MUA-20 zone. A cellular telephone tower is a community service use, pursuant to Section 11.15.7020(A)(15)(a) of the Multnomah County Zoning Ordinance. Pursuant to Section 11.15.2132 of the Multnomah County Zoning Ordinance relating to the MUA-20 zone, community service uses can be cited or sited as a conditional use pursuant to the provisions of MCC .7005 through .7041.

The proposal involves the construction of a monopole with a triangular platform mounted atop the pole. Antennas will be attached to the triangular platform. The total height, including antennas, is 160 feet. The antenna associated with the facility are as follows:

(1) There will be three groups of four directional antenna. these antenna measure about 18" by 48" and are affixed to the triangular platform atop the pole.

(2) There will be 3 whip antenna. This type of antenna is approximately 2.6" in diameter and 10' in length.

The area being leased by the applicant for the proposed cell site is a 50' x 50' space approximately 225 feet west of NW Charlton Road and 80 feet from the north lot line. It is situated within a stand of trees.

The electronics equipment building, which is a 12' by 28' single story concrete aggregate (10' tall) structure, is placed approximately 100 feet from and parallel to the northerly lot line. The monopole is situated at the northerly end of the equipment shelter and is approximately 90 feet from the north lot line.

Access to the cell site will be via an existing driveway servicing the fire station. The roadway, with turn around, will extend to the cell site. Two code required off-street spaces are provided in this existing parking area. These spaces will be for

the use of the company vehicle providing periodic maintenance. After the cell site is on line, this maintenance, based on a system wide average, will occur about twice a month.

No one is at the site on a daily basis as the equipment is operated by remote control from the applicant's main offices in downtown Portland.

The site plan submitted depicts the monopole and equipment building on this site as well as other features. The site plan is attached hereto as Exhibit "A" and is incorporated by this reference herein.

2. Site and Vicinity Information

The site is a 50' x 50' portion of a parcel 3.54 acres in size located at 14443 NW Charlton Road on Sauvie Island. The comprehensive plan designation for the subject parcel is Multiple Use Agriculture. The present zoning is MUA-20.

To the south and on the same parcel is a fire station. To the south of that is Sauvie Island School.

To the north and east also within the MUA-20 zone area are residential uses. The nearest dwelling is about 275 feet to the north. To the west is a church and residential use.

This small MUA-20 zoned area is surrounded by a large EFU zoned area dedicated to a variety of agricultural activities.

3. Testimony and Evidence Presented

A. The exhibits listed in Exhibit List CU 1-97, which is attached hereto as Exhibit "B" were reviewed by the Hearings Officer and received in reference to this application. Exhibit "B" contains materials submitted up to and including the date of the hearing. Subsequently, within the initial seven day period following the hearing, while the record was still open, four letters were received from opponents. Those letters are listed as exhibits on the attached Exhibit "C".

In addition, the attorneys for the applicant and the opponents submitted post-hearing memorandum, which are also listed as exhibits on the attached Exhibit "C".

At the August 20, 1997 hearing, Bob Hall testified for the County, summarized the history of the application and his staff report, and described the site and surrounding property.

B. The applicant was represented by Frank Hammond, a partner in O'Donnell, Ramis, Crew, Corrigan and Bachrach, LLP, attorneys for the applicant. Mr. Hammond discussed some of the legal issues relating to the Federal Telecommunications Act and applicable legal precedents in regards to the imposition of conditions in land use actions.

C. Spencer Vail, Planning Consultant, addressed the applicable ordinance criteria on behalf of applicant.

D. Lynn Trupp, the Master of the Sauvie Island Grange, spoke in support of the application. The applicant proposes to site the cell tower on property it is leasing from the Sauvie Island Grange.

E. Betty Franklin, another member of the Grange, also spoke in support of the application.

F. Jean Fears spoke in support of the application, indicating that the proposed cellular tower provided a needed community service.

G. Yvonne Cieloha also spoke in support of the application, indicating that the availability of cellular service provides a needed service when the Sauvie Island is isolated by flood or emergency.

H. Shirley Larson suggested that the cellular tower was needed as a matter of public safety.

I. Mary Anne Wolfe appeared and submitted written materials indicating that cellular towers were safe and are needed in case of emergency to provide cellular phone service.

J. Jeffrey Kleinman, attorney, appeared in opposition to the application, on behalf of Citizens United for Sauvie Island Planning. Mr. Kleinman addressed evidentiary and factual issues and the applicable criteria in the matter.

K. Donna Matrazzo testified in opposition to the application, indicating that the island's rural character should be protected and the application denied.

L. Bill Reid spoke in opposition to the application and submitted a letter and photographs.

M. Adrienne Keith, whose property is in close proximity to the proposed tower site, spoke in opposition to the application. Ms. Keith indicated that there

were more appropriate locations for a cellular tower site and that there are currently no problems with AT&T reception on the island.

N. Ursula Davis owns property to the west of the cellular tower site. She spoke in opposition to the property cellular tower, indicating that it did not meet safety, noise and visual impact standards.

O. Greg Sprando appeared in opposition to the proposed site and raised questions regarding potential soil liquefaction during an earthquake and questioned the safety of the tower siting. Mr. Sprando also raised a number of other questions and concerns.

P. Craig Hull also spoke in opposition to the application reaffirming points raised by earlier opponents.

Q. Tom Givens also spoke in regards to the application and suggested that AT&T could more appropriately piggy back its cellular antennas with other sited cellular towers in other locations.

R. Cherie Sprando also spoke in opposition to the application and inquired as to why AT&T was proposing to incur the expense of siting a cellular tower with the proposed location when there were only approximately 800 homes on Sauvie Island. She also indicated that the current cellular service received from AT&T on Sauvie Island is adequate.

S. Jeff Hook also spoke in opposition to the application.

T. On September 10, 1997, the applicant submitted the first supplemental submittal.

U. On October 1, 1997, Jeff Kleinman submitted a post-hearing memorandum on behalf of Citizens United for Sauvie Island Planning.

V. On October 17, 1997, Frank Hammond of attorney for applicant AT&T Wireless Services, submitted the applicant's reply memorandum.

W. In addition to the testimony presented at the hearing, significant amounts of written and photographic evidence was also submitted.

STANDARDS AND CRITERIA. ANALYSIS AND FINDINGS OF FACT

A. Community Service Approval Criteria:

The following approval criteria of MCC 11.15.7035(C) apply to applications for radio and transmission towers in districts other than urban residential districts (Transmission towers are exempted from the general approval criteria of MCC 11.15.7015):

(1) The site is of a size and shape sufficient to provide the following setbacks:

(a) For a tower located on a lot abutting an urban residential district or a public property or street, except a building-mounted tower, the site size standards of MCC .7035(B)(4) and (5) are met as to those portions of the property abutting the residential or public uses.

ANALYSIS:
The area leased for the Cell Site itself does not abut a public street. The parent parcel, however, does abut NW Charlton, a public street. The parcel does not abut an urban residential district. Therefore the code provisions of (B)(4) and (5) are deemed to apply:

(4) Site Size and Tower Setbacks.

(a) The site shall be of a size and shape sufficient to provide an adequate setback from the base of the tower to any property line abutting an urban residential district, public property or public street. Such setback shall be sufficient to:

(i) Provide for an adequate vegetative, topographic or other buffer as provided for in MCC.7035(B)(7) and (11).

(7) Visual impact - The applicant shall demonstrate that the tower can be expected to have the least visual impact on the environment, taking into consideration technical, engineering, economic and other pertinent factors. Towers clustered at the same site shall be of similar height and design, whenever possible. Towers shall be painted and lighted as follows:

(a) Towers 200 feet or less in height shall have a galvanized finish or be painted silver. If there is heavy vegetation in the immediate area, such towers shall be painted green from base to treeline, with the remainder painted silver or given a galvanized finish.

(b) [Note: This standard applies only to towers over 200 feet in height].

(c) Towers shall be illuminated as required by the Oregon State Aeronautics Division. However, no lighting shall be incorporated if not required by the Aeronautics Division or other responsible agency.

(d) Towers shall be the minimum height necessary to provide parity with existing similar tower supported antenna, and shall be freestanding where the negative visual effect is less than would be created by use of a guyed tower.

ANALYSIS:

Prior to discussing the specific requirements set forth above, it would be appropriate to review the organization of the Multnomah County Code in relation to the regulation of cell towers. Section 11.15.7035(B) sets forth the standards for the siting of new cellular transmission towers in urban residential districts. The Code is designed to discourage siting towers in urban residential districts. Section 11.15.7035 (C) sets forth the regulations and approval criteria for new transmission towers in districts other than urban residential districts. Where a transmission tower is sited in a district that is adjacent to an urban residential district or public property, or a street, some provisions of the urban residential district approval criteria become applicable. For example, .7035(C)(1)(a) utilizes provisions in the urban residential district standards as approval criteria where a tower in a district other than an urban residential district abuts an urban residential district or public property or street.

It is important to note that the standard set forth in MCC .7035(B)(4)(a) as incorporated by .7035(C)(1)(a) specifically provides that the reference point for the setback is the property line abutting an urban residential district, public property or public street. The proposed site and parcel in question do not abut an urban residential district. One of the property lines of the parent parcel abuts a public street. Accordingly, the standards in paragraph .7035(A)(i) through (iv) are only applicable to the property line that abuts the public street. There are no property lines that abut an urban residential district.

In construing Section MCC .7035(B)(7), which is made applicable by MCC .7035(B)(4)(a)(i), it is necessary to review the visual impact from the property line in question, which is the Charlton Road property line. Four subcriteria under Section MCC .7035(B)(7) all contain lighting or illumination standards that affect the possible visual impact of the tower. The least visual impact standard is a qualified one. The Code provision reviews visual impact subject to technical, engineering, economic and other pertinent factors.

The opponents submitted a great deal of testimony about the location of the parcel for the proposed site, arguing that more suitable locations existed. The standard in question speaks to tower design and location on applicant's parcel. It does not call for a comparison of alternative sites. Such a requirement can not be imposed by a hearings officer. In choosing an MUA site over an urban residential district, the applicant has

already given deference to the Code preference for locating towers outside of urban residential districts.

The applicant has already agreed to relocate the tower on the parcel in order to place it in close proximity to a grove of trees, thereby minimizing the visual impact. The applicant has also presented technical evidence indicating the need for a tower of the proposed height.

The tower will improve cellular service on the island. Cellular service involves a line of sight technology. The tower must be high enough to "see other towers". By placing the tower on higher ground, as AT&T Wireless Services proposes, it avoids having to request approval for an even taller pole. The proposed location also places the base ground equipment on high ground, above potential flood waters.

In viewing this site from the applicable property line, the one on Charlton, a finding can be made that the applicant has demonstrated that the tower can be expected to have the least visual impact on the environment, taking into consideration technical, engineering, economic and other pertinent factors. The applicant has also indicated an ability to comply with the standards for painting and lighting of the tower. For towers of less than 200 feet the Code requires the tower be painted green from the base to the tree line. The applicant has indicated a willingness to paint the tower any color the County desires.

In other similarly situated facilities, i.e., within a stand of trees, brown rather than green is a color that blends well with the trees. The applicant will work with the County during Design Review to select the most appropriate paint for the facility as both the pole and antenna can be painted any color without affecting the operation of the facility.

Staff has suggested that the tower should be disguised to appear as a natural tree. However, the Code requires that a portion of the tower be painted silver or be given a galvanized finish. It is questionable whether a "galvanized" artificial tree is going to look more realistic than the proposed design for the cellular tower.

Compliance with the colors set forth in the Code, green within the tree line and silver above, will be adhered to by the applicant, unless alternative colors are approved in design review.

The letter from the Oregon Aeronautics Division (OAB), states that the monopole "should" have a steady burning red light. This is a comment only and is not based on a regulation requiring such lighting. It is not mandatory that the suggested lighting be made a condition of approval. The Code language clearly states that no lighting shall be incorporated if not required by the OAB.

The FAA indicates that no lighting or hazard markings are required and that the proposal meets all regulations imposed by that agency.

A steady red burning light could be intrusive to the surrounding area. Accordingly, no condition requiring such lighting will be attached to the approval.

The applicant has presented significant evidence indicating that the cellular tower is needed to provide service to the area and to rectify service problems. Several of the opponents testified that there were no problems with service in the area. Testimony was also submitted indicating that the enhanced service would be of benefit to the emergency service providers in the area, such as the fire department. Although there was significant testimony on each side, I do find that the applicant submitted substantial evidence that the monopole is the minimum height necessary to provide service to the area, and the applicant further complies with the standard that the tower be freestanding. Accordingly, a finding can be made that the applicant has met the approval criteria set forth in Section MCC .7035(B)(7).

MCC.7035(B)(11) Landscaping - Landscaping at the perimeter of the property which abuts streets, residences, public parks or areas with access to the general public other than the owner of such adjoining property shall be required, as follows:

(a) For towers 200 feet tall or less, a buffer area no less than 25 feet wide shall commence at the property line. At least one row of evergreen shrubs shall be spaced not more than five feet apart. Materials should be of a variety which can be expected to grow to form a continuous hedge at least five feet in height within two years of planting. At least one row of evergreen trees or shrubs, not less than four feet height at the time of planting, and spaced not more than 15 feet apart, also shall be provided. Trees and shrubs in the vicinity of guy wires shall be of a kind that would not exceed 20 feet in height or would not affect the stability of the guys, should they be uprooted, and shall not obscure visibility of the anchor from the transmission building or security facilities and staff.

(b) For towers more than 200 feet tall, a buffer area not less than 40 feet wide shall be provided at the property line with at least one row of evergreen shrubs spaced not more than five feet apart which will grow to form a continuous hedge at least five feet in height within two years of planting; one row of deciduous trees, not less than 1 ½ inch caliper measured three feet from the ground at the time of planting, and spaced not more than 20 feet apart; and at least one row of evergreen trees, not less than four feet at the time of planting, and spaced not more than 15 feet apart. Trees and shrubs in the vicinity of guy wires

shall be of a kind that would not exceed 20 feet in height or would not affect the stability of the guys, should they be uprooted, and shall not obscure visibility of the anchor from the transmission building or security facilities and staff.

(c) In lieu of these standards, the approval authority may allow use of an alternate detailed plan and specifications for landscape and screening, including plantings, fences, walls and other features designed to screen and buffer towers and accessory uses. The plan shall accomplish the same degree of screening achieved in (a) and (b) above, except as lesser requirements are desirable for adequate visibility for security purposes and for continued operation of existing bona fide agricultural or forest uses, including but not limited to produce farms, nurseries, and tree farms.

ANALYSIS:
Code Section MCC 7035(B)(11) relating to landscaping is applicable only to that portion of the "property" which abuts streets. Subparagraph (a) relating to landscaping appears to contemplate a relatively small site in that it discusses trees and shrubs in the vicinity of guy wires. However, the criteria itself refers to the "property line", not the boundaries of the "site". Accordingly, this criteria will be viewed as being applicable to the parent parcel.

Subparagraph (b), by its terms, is not applicable to the subject application since (b) is only applicable to towers more than 200 feet tall.

Subparagraph (c) is an alternative standard, in lieu of (a) or (b). The applicant would have the option of providing a detailed landscaping plan that could be approved, provided that the plan accomplished the same degree of screening achieved in subparagraph (a).

Originally the applicant proposed to address criteria (c) and to propose a buffer area only upon the subject site.

The amount of native vegetation on the site and adjacent parcels plus the height of the trees near the monopole site provide a buffer for the proposed use. The applicant submitted enhanced photos showing how the monopole would utilize these existing features to mask the visual impact of the monopole.

The applicant contended that there does not appear to be a benefit in planting a 25' wide buffer strip along Charlton as required by the Code. The site is over 225' from the public roadway and is already screened by existing vegetation. Staff did discuss the benefit of such a planting.

MCC 11.15.7035(B)(11)(a) would require a 25 foot wide area of vegetation capable of achieving a height of five feet within two years of planting along the entire Charlton Road frontage of the parcel. The applicant has indicated that in fact the Sauvie Island Grange is an "applicant", as the Multnomah County Code defines the term. It is clear that the Grange has consented to and does approve of the application. Furthermore, the applicant AT&T Wireless Services has submitted evidence indicating that the Grange has agreed to the provision of buffer landscaping and retention of trees in the grove and the stipulation to a 32 foot setback between the tower and any future structures. Accordingly, conditions will be imposed requiring landscaping in accordance with subparagraph (a) of Section MCC .7035(B)(11). Accordingly, a finding can be made that the applicant has met this approval criteria, and it is unnecessary to discuss alternative proposals under MCC .7035(B)(11)(c).

(ii) Preserve the privacy of adjoining residential property.

ANALYSIS:
The second subcriteria under Section MCC .7035(B)(4)(a) is designed to preserve the privacy of adjoining residential property in urban residential districts. Again, it is important to note that the standard of paragraph 4(a) specifically refers to urban residential districts. The proposed site and parcel in question do not abut an urban residential district. The residences in the area are located in the MUA zone, not in an urban residential district. It is questionable whether this criteria applies at all to residences in an MUA zone. The MUA zone allows residential uses, but it is not an urban residential district. The intent of Section 4(a) is to protect residences in an urban residential district.

The evidence indicates that the existing trees and additional landscaping to be installed on the cell site will preserve the privacy of the nearby residences. In addition, this will be an unmanned facility. Maintenance personnel will only visit the site about twice a month. The landscaping, secluded location of the site, and lack of personnel will protect the privacy of residential property to the extent required by the Code.

(iii) Protect adjoining property from the potential impact of tower failure and ice falling by being large enough to accommodate such failure and ice on the site, based on the engineer's analysis required by MCC.7035(D)(3)(d) and (e).

MCC.7035(D)(3)(d) and (e) read as follows:

(d) Failure characteristics of the tower and demonstration that site and setbacks are of adequate size to contain debris.

(e) Ice hazards and mitigation measures which have been employed, including increased setbacks and/or deicing equipment.

ANALYSIS:
The applicant has submitted substantial credible evidence from professional engineers, using conservative standards, indicating that the likelihood of a structural failure is highly improbable. The design of the structure is such that if there is a structural failure, the tower will fold and buckle, rather than topple over.

The engineering design information also indicates that ice fall will be confined to a 20 foot radius around the base of the monopole. The amount of falling ice would be no more than experienced on power poles and telephone lines. The applicant has further provided evidence that there is no evidence or history of monopole failure from natural causes.

Staff contended that residential property, consisting of the parent parcel, must also be protected from potential monopole failure. However, I do not agree. The standard applies to adjoining property, not the subject property. The applicant is AT&T Wireless Services, and has made application with the consent and agreement of the Sauvie Island Grange No. 840. The subject parcel size is 3.54 acres.

The MUA property adjoining the subject parcel is adequately protected. The applicant has thoroughly addressed these approval criteria and a finding can be made that adjoining property is protected from the potential impact of tower failure and ice falling.

(iv) Protect the public from NIER in excess of the standards of MCC.7035 (F)(1)

ANALYSIS:
Multnomah County adopted what is considered by many to be a model ordinance dealing with radio and television towers and antennas. The ordinance lists the emission levels for the various uses and lists levels of concern of known health hazards.

These emissions are calculated in microwatts per centimeter squared (mW/cm2). Readings are taken at the lot line and at the closest residential use to determine compliance.

Exhibit 16 shows the calculations prepared and certified by the applicant's RF engineers which establish the measurement at the nearest lot line, 90 feet to the north, to be 0.151 mW/cm2. The reading at the closest dwelling, 275 feet to the north, is 0.063 mW/cm2 .

These readings are well below any levels of health concern as determined by the Code.

In addition, the Federal Telecommunications Act of 1996, amongst other things, required the FCC to adopt standards for radio frequency emissions from wireless communication facilities. In a rule making procedure, the FCC adopted standards effective August 1,

1996. These standards are virtually the same as those reflected in the County Code. This indicates the proposed use is also in compliance with the new Federal standards.

There is no interference with household electronic equipment caused by proximity to cellular towers. The applicant has been providing cellular service in the Portland area for over 10 years.

Carol A. Friz, a licensed professional engineer in electrical engineering, has certified Exhibit 16 to be true. That exhibit indicates the measured levels to be 0.151 mW/cm2 at the nearest property line and 0.063 mW/cm2 at the closest dwelling. Both of those measurements are below the 0.50 mW/cm2 and 0.5867 mW/cm2 maximums allowed by Table 1 in MCC .7035 (F). Therefore, the proposal would satisfy the NIER standards of MCC .7035(F)(1).

There is evidence in the file indicating that some of the citizens opposed the cellular tower because of health concerns relating to electromagnetic emissions. However, the Telecommunications Act of 1996 specifically prohibits the County from considering possible effects of the emissions provided that the facility meets the Federal Communication Commission Standards. Since the evidence clearly indicates that the facility meets both the County and Federal emissions standards, this may be a moot point. However, the testimony submitted in opposition to the tower based on emissions standards will be disregarded.

A finding can be made that the applicant has met the standards of MCC 11.15.7035(B)(4)(iv).

(b) MCC .7035(B)(4)(b) Site Size and Tower Setbacks: A site is presumed to be of sufficient size when it:

(i) Meets the requirements of (a) (iii) and (iv) above,

ANALYSIS:
As indicated above, I have found that the proposed tower complies with the criteria of (a)(iii) and (iv) above.

(ii) Provides a setback equal to 20 percent of the height of the tower to any property line abutting an urban residential district, public property, or public street, and

ANALYSIS:
The Cell Site does not abut an urban residential district. The access drive does abut a public street, NW Charlton, some 225 feet to the southeast.

The proposed monopole is 150 feet in height; 160 feet if the antennas are included. 20% of the maximum height is 32'. This minimum setback requirement has been met.

(iii) Provides a setback equal to or exceeding the rear yard setback required for the adjoining property where the adjoining property is not in an urban residential district nor a public property or a public street.

ANALYSIS:
The adjoining property is not in an urban residential district.

MCC .7025(A) establishes the minimum yards for Conditional Uses. The applicable yards for the proposed use are:

1. Front 30 feet
2. Side 20 feet
3. Rear as required in the district;

   in the MUA-20 zone the rear yard is 30 feet

In reviewing the standards of this criteria, I find that the setbacks must be measured from the property line. The reference to adjoining property is to surrounding property, not to the parent parcel. The "site" is not being partitioned off from the parent parcel, it remains an integral part of the larger property. These approval criteria are clearly designed to protect adjacent properties, not the parent parcel. It is clear that the proposed location of the tower meets the required setback standards.

(c) Placement of more than one tower on a lot shall be permitted, provided all setback, design and landscape requirements are met as to each tower. Structures may be located as close to each other as technically feasible, provided tower failure characteristics of the towers on the site described in MCC .7035(D)(3)(d) will not lead to multiple failures in the event that one fails.

ANALYSIS:
This subsection is not applicable to this request.

(d) Structures and uses associated with the transmission use other than the transmission tower shall be located to meet the setbacks required in MCC .7025.

ANALYSIS:
The electronics equipment building is situated outside of the required yards which are set forth above. This criteria is met.

(5) MCC .7035(B)(5) Guy Setback

ANALYSIS:
There are no guys associated with this proposal. The applicant's tower is a self-supporting monopole.

(2) The required setbacks shall be improved to meet the landscaping standard of MCC .7035(B)(11) to the extent possible within the area provided.

ANALYSIS:
The applicant has indicated that it can provide the required landscaping. Conditions will be attached to the approval to ensure that it does so.

(3) The visual impact standard of MCC .7035(B)(7) is met.

ANALYSIS:
A finding has been made earlier that the applicant meets this standard, and that discussion is incorporated by this reference herein.

(4) The parking requirement of MCC .7035(B)(9) is met, provided additional parking may be required in accordance with MCC .6100 to .6148 if the site serves multiple purposes.

ANALYSIS:
MCC .7035(B)(9) requires a minimum of two parking spaces shall be provided on each site; an additional parking space for each two employees shall be provided at the facilities which require on-site personnel.

The applicant has an agreement with the Grange for two parking spaces adjacent to the Cell Site and to continue to provide such space if and when the Grange site is developed.

Historically, only one van is used by the maintenance technician during the periodic maintenance. The parking standard is met.

(5) The applicable policies of the Comprehensive Plan are met.

Comprehensive Plan Policies:

The following policies, which were discussed in the Staff Report, will be reviewed in this Opinion. Comprehensive Plan Policies 10, 13, 14, and 16 were briefly reviewed in the

Staff Report and found inapplicable, not relevant at this stage of the process, or not review criteria. I concur.

"POLICY NO. 19: COMMUNITY DESIGN

THE COUNTY'S POLICY IS TO MAINTAIN A COMMUNITY DESIGN PROCESS WHICH:

A. EVALUATES AND LOCATES DEVELOPMENT PROPOSALS IN TERMS OF SCALE AND RELATED COMMUNITY IMPACTS WITH THE OVERALL PURPOSE BEING A COMPLEMENTARY LAND USE PATTERN.

B. EVALUATES INDIVIDUAL PUBLIC AND PRIVATE DEVELOPMENTS FROM A FUNCTIONAL DESIGN PERSPECTIVE, CONSIDERING SUCH FACTORS AS PRIVACY, NOISE, LIGHTS, SIGNING, ACCESS, CIRCULATION, PARKING, PROVISIONS FOR THE HANDICAPPED AND CRIME PREVENTION TECHNIQUES.

C. MAINTAINS A DESIGN REVIEW PROCESS AS AN ADMINISTRATIVE PROCEDURE WITH AN APPEAL PROCESS, AND BASED ON PUBLISHED CRITERIA AND GUIDELINES. CRITERIA AND GUIDELINES SHALL BE DEVELOPED SPECIFICALLY FOR COMMERCIAL, INDUSTRIAL AND RESIDENTIAL DEVELOPMENTS.

D. ESTABLISHES CRITERIA AND STANDARDS FOR PRE-EXISTING USES, COMMENSURATE WITH THE SCALE OF THE NEW DEVELOPMENT PROPOSED.

E. EVALUATES INDIVIDUAL PUBLIC AND PRIVATE DEVELOPMENT ACCORDING TO DESIGN GUIDELINES IN THE APPLICABLE ADOPTED COMMUNITY PLAN."

ANALYSIS:

Policy 19 is a general County Comprehensive Plan policy which has previously been implemented through the use of a design review process. The policy is written strictly in terms of "process" that requires the County to develop a community design standard, evaluate it, and establish standards and criteria. Compliance with the standards and criteria adopted by the County in accordance with the requirements of Policy 19 will constitute compliance with this Comprehensive Plan provision by the applicant.

"POLICY NO. 20: ARRANGEMENT OF LAND USES

THE COUNTY'S POLICY IS TO SUPPORT HIGHER DENSITIES AND MIXED LAND USES WITHIN THE FRAMEWORK OF SCALE, LOCATION AND DESIGN STANDARDS WHICH:

A. ASSURE A COMPLEMENTARY BLEND OF USES;

B. REINFORCE COMMUNITY IDENTITY;

C. CREATE A SENSE OF PRIDE AND BELONGING; AND

D. MAINTAIN OR CREATE NEIGHBORHOOD LONG TERM STABILITY."

ANALYSIS:
Multnomah County Comprehensive Plan Policy No. 20 is a general plan policy which utilizes policy as opposed to approval criteria wording. The policy specifically requires the County to support higher densities and mixed land uses. The County has done so by allowing community service uses such as the cellular tower, in the MUA zone. Compliance by the applicant with the Multnomah County Zoning Ordinance provisions will constitute compliance with this plan policy.

Plan policies which are approval criteria are clearly worded as such. For example, the following policy, number 22, specifically indicates that "The County shall require a finding prior to the approval of legislative or quasi-judicial action that the following factors have been considered: . . .". Such wording is consistently used in the Multnomah County Comprehensive Plan to distinguish policies which are to be considered as approval criteria and those policies which are to be considered general principles utilized to guide implementing land use regulations such as the Multnomah County Zoning Ordinance. I find that Policy No. 20 is not an approval criteria.

"POLICY NO. 22, ENERGY CONSERVATION.

THE COUNTY'S POLICY IS TO PROMOTE THE CONSERVATION OF ENERGY AND TO USE ENERGY RESOURCES IN A MORE EFFICIENT MANNER. IN ADDITION, IT IS THE POLICY OF MULTNOMAH COUNTY TO REDUCE DEPENDENCY ON NON-RENEWABLE ENERGY RESOURCES. THE COUNTY SHALL REQUIRE A FINDING PRIOR TO THE APPROVAL OF LEGISLATIVE OR QUASIJUDICIAL ACTION THAT THE FOLLOWING FACTORS HAVE BEEN CONSIDERED:

A. THE DEVELOPMENT OF ENERGY-EFFICIENT LAND USES AND PRACTICES;
B. INCREASED DENSITY AND INTENSITY OF DEVELOPMENT IN URBAN AREAS, ESPECIALLY IN PROXIMITY TO TRANSIT CORRIDORS AND EMPLOYMENT, COMMERCIAL AND RECREATIONAL CENTERS;
C. AN ENERGY-EFFICIENT TRANSPORTATION SYSTEM LINKED WITH INCREASED MASS TRANSIT, PEDESTRIAN AND BICYCLE FACILITIES;
D. STREET LAYOUTS, LOTTING PATTERNS AND DESIGNS THAT UTILIZE NATURAL ENVIRONMENTAL AND CLIMACTIC CONDITIONS TO ADVANTAGE.
E. FINALLY, THE COUNTY WILL ALLOW GREATER FLEXIBILITY IN THE DEVELOPMENT AND USE OF RENEWABLE ENERGY RESOURCES."

ANALYSIS:
The proposed facility is an unmanned facility. There will be no water or sanitary sewer requirements. Electric and telephone services are already available at the site. No extension of service is required. Energy consumption will be minimal. The typical cell site uses about 1500 kw per month, which is similar to that used by a single family home.

The proposed use will not be a traffic generator. After the initial construction period, only periodic checks by a technician will be required, approximately once or twice a month.

A finding can be made that the applicant's proposal is energy efficient. Subparagraphs B, C and D of the approval criteria set forth above are not applicable to this community service use in that the use does not impose traffic or development impacts, create streets, and is not in an urban area. A finding can be made that the factors set forth in Policy No. 22 have been given the appropriate consideration, given the nature of the proposed use.

"POLICY NO. 31: COMMUNITY FACILITIES AND USES

THE COUNTY'S POLICY IS TO:

A. SUPPORT THE SITING AND DEVELOPMENT OF A FULL RANGE OF COMMUNITY FACILITIES AND SERVICES BY SUPPORTING THE LOCATION AND SCALING OF COMMUNITY FACILITIES AND USES MEETING THE NEEDS OF THE COMMUNITY AND REINFORCING COMMUNITY IDENTITY.

B. ENCOURAGE COMMUNITY FACILITIES SITING AND EXPANSION AT LOCATIONS REINFORCING ORDERLY AND TIMELY DEVELOPMENT AND EFFICIENT PROVISION OF ALL PUBLIC SERVICES AND FACILITIES.

C. ENCOURAGE LAND USE DEVELOPMENT WHICH SUPPORT THE EFFICIENT USE OF EXISTING AND PLANNED COMMUNITY FACILITIES.

D. SUPPORT THE DEVELOPMENT OF A UNIFIED APPROACH TO LONG RANGE COMMUNITY FACILITIES PLANNING AND CAPITAL INVESTMENT PROGRAMMING IN MULTNOMAH COUNTY.

E. CLASSIFY COMMUNITY FACILITIES ACCORDING TO THEIR FUNCTION AND SCALE OF OPERATIONS.

SCALE	TYPE OF FACILITIES
MAJOR REGIONAL	COMMUNITY COLLEGE
	PRIVATE COLLEGE
	UNIVERSITY
	LIVE-IN TRAINING FACILITIES
	AIRPORT
	GOVERNMENT SERVICES
	ADMINISTRATIVE
	HUMAN
	JUSTICE
	HOSPITAL
MINOR REGIONAL	CEMETERIES
	REGIONAL PARKS
	BOAT LAUNCHES
	MARINAS
	RECYCLING CENTER

SCALE	TYPE OF FACILITIES
	HALF-WAY HOUSES
	GENERAL AVIATION AIRPORTS
MAJOR COMMUNITY	FIRE STATION
	PRECINCT STATIONS
	LODGES
	AMBULANCE SERVICES
	HIGH SCHOOL
	MUSEUM
	TRANSIT STATIONS
	GOVERNMENT SERVICES
	ADMINISTRATIVE
	HUMAN
	JUSTICE
	COMMUNITY RECREATION CENTER
	RECREATION CENTER
MINOR COMMUNITY	LIBRARY
	GRADE SCHOOL
	MIDDLE SCHOOL
	PARKS
	NEIGHBORHOOD MEETING ROOMS
	RESIDENTIAL CARE FACILITY
	CLINICS
	CONVALESCENT HOMES
	CHURCHES
	NEIGHBORHOOD RECREATION CENTER
COMMUNITY SERVICE FOUNDATIONS	ELECTRICAL GENERATION, DISTRIBUTION AND TRANSMISSION
	NATURAL GAS STORAGE
	SEWAGE TREATMENT PLANTS
	TELEPHONE, COMMUNICATION STATION AND SWITCHING
	WATER STORAGE
	RADION & TELEVISION TRANSMITTERS"

SOLID WASTE MANAGEMENT

Solid waste is a regional concern requiring regional solutions. Multnomah County recognizes METRO's responsibility and authority to prepare and implement a solid waste management plan and the METRO's procedures for siting a Sanitary Landfill and will participate in the procedures as appropriate.

The County recognizes that METRO may find a public need for a Regional Sanitary Landfill and that such a Landfill, wherever located, will entail some adverse impacts. The County further recognizes that environmental impacts are also within the review authority of other agencies, such as the Department of Environmental Quality.

The County shall provide for approval Criteria which emphasize site suitability, protection through mitigation of impacts, and reclamation. The Zoning Code shall contain appropriate and detailed implementing language for this Policy. This Policy and all applicable Plan Policies are implemented through Section 11.15.7045 to .7070 of the Zoning Code.

F. LOCATE COMMUNITY FACILITIES ON SITES WITH AVERAGE SITE GRADES CONSISTENT WITH A PROJECT'S SCALE AND IMPACTS. SIT SLOPE REQUIREMENTS BY SCALE ARE:

SCALE	AVERAGE SITE SLOPE STANDARD
MAJOR REGIONAL	6%
MINOR REGIONAL	6%
MAJOR COMMUNITY	10%
MINOR COMMUNITY	10%
COMMUNITY SERVICE FOUNDATION	20%

FOR SITES WITH AVERAGE SLOPES STEEPER THAN THE STANDARD THE DEVELOPER MUST BE ABLE TO DEMONSTRATE THAT THROUGH ENGINEERING TECHNIQUES ALL LIMITATIONS TO DEVELOPMENT AND THE PROVISION OF SERVICES CAN BE MITIGATED.

G. SUPPORT THE LOCATION OF COMMUNITY FACILITIES ON EXISTING TRANSPORTATION SYSTEMS WITH VOLUME CAPACITIES AND MODAL MIX SPLITS AVAILABLE AND APPROPRIATE TO SERVE PRESENT AND FUTURE SCALES OF OPERATION. VEHICULAR ACCESS REQUIREMENTS BY SCALE OF FACILITY ARE:

SCALE	VEHICULAR ACCESS STANDARDS
MAJOR REGIONAL	ACCESS TO A FREEWAY INTERCHANGE DIRECT ACCESS TO A COUNTY MAJOR ARTERIAL. PUBLIC TRANSIT AVAILABLE WITHIN 1/4 MILE.
MINOR REGIONAL	DIRECT ACCESS TO A COLLECTOR STREET AND NO ROUTING OF TRAFFIC THROUGH LOCAL NEIGHBORHOOD STREETS PUBLIC TRANSIT AVAILABLE WITHIN 1/4 MILE

SCALE	VEHICULAR ACCESS STANDARDS
MAJOR COMMUNITY	DIRECT ACCESS TO A COLLECTOR STREET AND NO ROUTING OF TRAFFIC THROUGH LOCAL NEIGHBORHOOD STREETS
	PUBLIC TRANSIT AVAILABLE WITHIN 1/4 MILE
MINOR COMMUNITY	DIRECT ACCESS TO A COLLECTOR STREET AND NO ROUTING THROUGH LOCAL NEIGHBORHOOD STREETS
	PUBLIC TRANSIT AVAILABLE WITHIN 1/4 MILE
COMMUNITY SERVICE FOUNDATIONS	TRUCK TRAFFIC WILL NOT BE ROUTED THROUGH LOCAL NEIGHBORHOOD STREETS

H. RESTRICT THE SITING OF COMMUNITY FACILITIES IN LOCATIONS WHERE SITE ACCESS WOULD CAUSE DANGEROUS INTERSECTIONS OR TRAFFIC CONGESTION CONSIDERING THE FOLLOWING:
   1. ROADWAY CAPACITIES.
   2. EXISTING AND PROJECTED TRAFFIC COUNTS.
   3. SPEED LIMITS.
   4. NUMBER OF TURNING POINTS.

I. SUPPORT COMMUNITY FACILITIES SITING AND DEVELOPMENT AT SITES OF A SIZE WHICH CAN ACCOMMODATE THE PRESENT AND FUTURE USES AND IS OF A SHAPE WHICH ALLOWS FOR A SITE LAYOUT IN A MANNER WHICH MAXIMIZES USER CONVENIENCE, ENERGY CONSERVATION, AND PEDESTRIAN AND BICYCLE ACCESS TO AND WITHIN THE SITE.

J. PROMOTE COMPATIBLE DEVELOPMENT AND MINIMIZE ADVERSE IMPACTS OF SITE DEVELOPMENT ON ADJACENT PROPERTIES AND THE COMMUNITY THROUGH THE APPLICATION OF DESIGN REVIEW STANDARDS CODIFIED IN MCC 11.05.7805-11.05.7865.

K. PROVIDE FOR THE SITING AND EXPANSION OF COMMUNITY FACILITIES IN A MANNER WHICH ACCORDS WITH THE OTHER APPLICABLE POLICIES OF THIS PLAN."

ANALYSIS:

A. The proposed cell site will provide for enhanced cellular telephone service in the area. It will allow the location of a community service use on Sauvie Island.

The opponents to the proposed use contend that the proposed structure will not reinforce "community identity". However, a significant portion of the opponents' testimony dealt with aesthetic issues. One component of the Sauvie Island identity is the fact that it is an island. Testimony was submitted by proponents of the application that during a flood or other emergency, residents of Sauvie Island rely on cellular communications. Enhanced emergency services and safety issues seem to be factors that would support such a community service use as consistent with community identity.

Paragraph A of Comprehensive Policy No. 31 is a general policy statement. It does not state that the County will prohibit uses that are not needed by the community and do not reinforce community identity. Rather, the policy is a simple statement in support of community facilities meeting the needs of the community and reinforcing community identity. Accordingly, a finding can be made that the applicant's proposal adequately addresses and is consistent with Paragraph A of the Multnomah County Comprehensive Plan Policy No. 31.

B. The applicant points out that all public services and facilities necessary for the operation of the proposed cell site are already available at the site. Accordingly, this community facility is proposed to be sited at a location which reinforces the orderly and timely development and efficient provision of public services and facilities.

C. This facility does not require water or sewer services and is not a traffic generator. Accordingly, a finding can be made that the proposed application supports the efficient use of existing and planned community facilities.

D. No expenditure of County funds is proposed for the subject application. Approval of the application would allow AT&T Wireless Services to implement its long range plans for the provision of cellular service to Sauvie Island.

E. This paragraph requires the County to classify community facilities according to their function and scale of operations and the scale and list of facilities is actually included within Paragraph E of this plan policy. A cellular tower would fall within the classification of Community Service Foundations.

F. The proposed site does not exceed the maximum slope allowed of 20%.

G. The location of community facilities and appropriate vehicular traffic access standards that for Community Service Foundations, truck traffic will not be routed through local neighborhood streets. The proposal is consistent with the at requirement.

H. The traffic impact of the proposed development is so minor as to create no impact. Access will be taken from an existing driveway. The site access will not cause a dangerous intersection. Accordingly, a finding can be made that the applicant meets this criteria.

I. The facility is sited on the parent parcel in a manner that will not curtail future development of the site or of the balance of the parent parcel. There will be no need for pedestrian or bicycle access to the facility, since it is in fact an unmanned facility.

J. This subsection of the Comprehensive Plan Policy No. 31 is met through the implementation of the design review process.

K. The proposed cell site has been sited in a manner that complies with other applicable policies of the Comprehensive Plan. It makes appropriate use of the existing terrain and physical characteristics of the site. It incorporates buffers and screening, utilizing landscaping and tree cover.

A finding can be made that the Comprehensive Plan Policy 31 has been met by the proposed application.

"POLICY 34: TRAFFICWAYS

INTRODUCTION

Trafficways are a major part of the transportation system, and include seven general types of streets (local, collector transit corridor streets, scenic routes, arterial streets, freeways and transitways) which serve the land uses in the County and function to move people and goods. The traffic volumes given below serve as guidelines for the functional classification. Traffic volumes are one aspect, but not the only aspect, of classification - other facts include the character of the area, future land use, possible or existing traffic intrusion on neighborhoods, circulation patterns, and topographic constraints. . . ."

ANALYSIS:

This Comprehensive Plan policy deals primarily with the County's need to develop an efficient trafficway system, and strategies for system design. This section does not provide approval criteria for the subject application.

"POLICY NO. 36, TRANSPORTATION DEVELOPMENT REQUIREMENTS.

THE COUNTY'S POLICY IS TO INCREASE THE EFFICIENCY AND AESTHETIC QUALITY OF THE TRAFFICWAYS AND PUBLIC TRANSPORTATION BY REQUIRING:

A. THE DEDICATION OF ADDITIONAL RIGHT-OF-WAY APPROPRIATE TO THE FUNCTIONAL CLASSIFICATION OF THE STREET GIVEN IN POLICY 34 AND CHAPTER 11.60.

B. THE NUMBER OF INGRESS AND EGRESS POINTS BE CONSOLIDATED THROUGH JOINT USE AGREEMENTS,
C. VEHICULAR AND TRUCK OFF-STREET PARKING AND LOADING AREAS,
D. OFF-STREET BUS LOADING AREAS AND SHELTERS FOR RIDERS,
E. STREET TREES TO BE PLANTED,
F. A PEDESTRIAN CIRCULATION SYSTEM AS GIVEN IN THE SIDEWALK PROVISIONS, CHAPTER 11.60,
G. IMPLEMENTATION OF THE BICYCLE CORRIDOR CAPITAL IMPROVEMENTS PROGRAM,
H. BICYCLE PARKING FACILITIES AT BICYCLE AND PUBLIC TRANSPORTATION SECTIONS IN NEW COMMERCIAL, INDUSTRIAL AND BUSINESS DEVELOPMENT, AND
I. NEW STREETS IMPROVED TO COUNTY STANDARDS IN UNINCORPORATED COUNTY MAY BE DESIGNATED PUBLIC ACCESS ROADS AND MAINTAINED BY THE COUNTY UNTIL ANNEXED INTO A CITY, AS STATED IN ORDINANCE 313."

ANALYSIS:
Staff has indicated that engineering services would require a five-foot dedication along the entire frontage of the parent parcel with Charlton Road. Pursuant to Policy No. 36(B), the County has a policy of requiring dedication of additional right of way appropriate to the functional classification of the street given in Policy 34 and Chapter 11.60. The staff report does not indicate the functional classification of Charlton Road. However, given the very limited extent of traffic to be generated by the proposed use, I do not find that the County has demonstrated that the impact of the proposed use would be proportionate to the exaction requested. Accordingly, I would find that any dedication of right of way along Charlton Road could be deferred to such time as the balance of the parent parcel develops.

"POLICY NO. 37, UTILITIES.

THE COUNTY'S POLICY IS TO REQUIRE A FINDING PRIOR TO APPROVAL OF A LEGISLATIVE OR QUASI-JUDICIAL ACTION THAT:

WATER AND DISPOSAL SYSTEM

A. THE PROPOSED USE CAN BE CONNECTED TO A PUBLIC SEWER AND WATER SYSTEM, BOTH OF WHICH HAVE ADEQUATE CAPACITY; OR
B. THE PROPOSED USE CAN BE CONNECTED TO A PUBLIC WATER SYSTEM, AND THE OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY (DEQ) WILL APPROVE A SUBSURFACE SEWAGE DISPOSAL SYSTEM ON THE SITE; OR
C. THERE IS AN ADEQUATE PRIVATE WATER SYSTEM, AND THE OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY (DEQ) WILL APPROVE A SUBSURFACE SEWAGE DISPOSAL SYSTEM; OR

D. THERE IS AN ADEQUATE PRIVATE WATER SYSTEM, AND A PUBLIC SEWER WITH ADEQUATE CAPACITY.

DRAINAGE

E. THERE IS ADEQUATE CAPACITY IN THE STORM WATER SYSTEM TO HANDLE THE RUN-OFF; OR

F. THE WATER RUN-OFF CAN BE HANDLED ON THE SITE OR ADEQUATE PROVISIONS CAN BE MADE; AND

G. THE RUN-OFF FROM THE SITE WILL NOT ADVERSELY AFFECT THE WATER QUALITY IN ADJACENT STREAMS, PONDS, LAKES OR ALTER THE DRAINAGE ON ADJOINING LANDS.

ENERGY AND COMMUNICATIONS

H. THERE IS AN ADEQUATE ENERGY SUPPLY TO HANDLE THE NEEDS OF THE PROPOSAL AND THE DEVELOPMENT LEVEL PROJECTED BY THE PLAN; AND

I. COMMUNICATIONS FACILITIES ARE AVAILABLE.

ANALYSIS:

The facility will not require water or sewer connections. It is an unmanned facility, containing electronic equipment. Appropriate service providers have indicated the availability of service. Accordingly, a finding can be made that the applicant meets the criteria set forth in Utilities Policy No. 37.

"POLICY NO. 38, FACILITIES.

THE COUNTY'S POLICY IS TO REQUIRE A FINDING PRIOR TO APPROVAL OF A LEGISLATIVE OR QUASI-JUDICIAL ACTION THAT:

SCHOOL

A. THE APPROPRIATE SCHOOL DISTRICT HAS HAD AN OPPORTUNITY TO REVIEW AND COMMENT ON THE PROPOSAL.

FIRE PROTECTION

B. THERE IS ADEQUATE WATER PRESSURE AND FLOW FOR FIRE FIGHTING PURPOSES; AND

C. THE APPROPRIATE FIRE DISTRICT HAS HAD AN OPPORTUNITY TO REVIEW AND COMMENT ON THE PROPOSAL.

POLICE PROTECTION

D. THE PROPOSAL CAN RECEIVE ADEQUATE LOCAL POLICE PROTECTION IN ACCORDANCE WITH THE STANDARDS OF THE JURISDICTION PROVIDING POLICE PROTECTION.

ANALYSIS:

A finding can be made that the appropriate school district has had an opportunity to review and comment on the proposal. The Sauvie Island Fire District has adequate pressure and flow for fire fighting purposes, and the subject parcel can receive adequate police protection from the Multnomah County Sheriff. Accordingly, the applicant has met this criteria.

"POLICY NO. 40, DEVELOPMENT REQUIREMENTS.

THE COUNTY'S POLICY IS TO ENCOURAGE A CONNECTED PARK AND RECREATION SYSTEM AND TO PROVIDE FOR SMALL PRIVATE RECREATION AREAS BY REQUIRING A FINDING PRIOR TO APPROVAL OF LEGISLATIVE OR QUASI-JUDICIAL ACTION THAT:

A. PEDESTRIAN AND BICYCLE PATH CONNECTIONS TO PARKS, RECREATION AREAS AND COMMUNITY FACILITIES WILL BE DEDICATED WHERE APPROPRIATE AND WHERE DESIGNATED IN THE BICYCLE CORRIDOR CAPITAL IMPROVEMENTS PROGRAM AND MAP.

B. LANDSCAPED AREAS WITH BENCHES WILL BE PROVIDED IN COMMERCIAL, INDUSTRIAL AND MULTIPLE FAMILY DEVELOPMENTS, WHERE APPROPRIATE.

C. AREAS FOR BICYCLE PARKING FACILITIES WILL BE REQUIRED IN DEVELOPMENT PROPOSALS, WHERE APPROPRIATE."

ANALYSIS:

As set forth in the approval criteria, there are no pedestrian or bicycle paths that would require dedication of property for connection purposes, no bicycle parking is provided or needed, since the only visitors to the site will be the technicians in a small van or service truck. Accordingly, a finding can be made that the appropriate level of consideration has been given to Multnomah County Comprehensive Plan Policy No. 40 and that no pedestrian or bike paths, benches or bicycle parking facilities would be appropriate.

(6) The NIER standards of (F) are met.

ANALYSIS:

As indicated earlier in this Opinion, the NIER standards are met. Accordingly, a finding can be made that this approval criteria has been complied with.

(7) The agency coordination standards of MCC .7035(B)(14) are met.

(a) A statement form the FAA that the application has not been found to be a hazard to air navigation under Part 77, Federal Aviation Regulation or a statement that no compliance is required.

ANALYSIS:

Attached to the staff report on file in this matter is the FAA form 7450, stating that no lighting or hazard markings are required.

(b) A statement from the Oregon State Aeronautics Division that the application has been found to be in compliance with the applicable regulations of the Division, or a statement that no such compliance is required.

ANALYSIS:
Attached to the staff report on file in this matter is a copy of the Oregon State Aeronautics Division response recommending that a steady red light be attached to the top of the tower.

(c) A statement from the FCC that the application complies with the regulations of the Commission or a statement that no such compliance is necessary.

ANALYSIS:
Attached to the staff report on file in this matter is a copy of a portion of the applicant's FCC license which authorizes the applicant to provide cellular telephone services in the Portland-Vancouver area.

(8) Accessory uses - For a proposed tower in the EFU, MUF, CFU, MUA, and UF districts, the restrictions on accessory uses in MCC .7035(B)(12) shall be met.

MCC .7035(B)(12) stipulates: **Accessory uses shall include only such buildings and facilities necessary for transmission function and satellite ground stations associated with them, but shall not include broadcast studios, offices, vehicle storage areas, nor other similar uses not necessary for the transmission function.**

Accessory uses may include studio facilities for emergency broadcast purposes or for other special, limited purposes found by the approval authority not to create significant additional impacts nor to require construction of additional buildings or facilities exceeding 25 percent of the floor area of other permitted buildings.

ANALYSIS:
The applicant's proposal includes only the monopole and a building to house the electronic equipment. No other uses of concern in this section will be involved at this site.

Hearings Officer Decision:

Based on the findings stated above, and the substantial evidence presented, the request by Applicant to site a cellular radio communication facility as a Community Service Conditional Use in the MUA-20 zone is hereby approved subject to the following conditions:

Conditions of Approval:

1. Pursuant to MCC 11.15.7035(B)(11)(a), prior to obtaining a building permit, the applicant shall provide a 25-foot wide area of evergreen vegetation capable of achieving a height of five feet within two years of planting along the entire Charlton Road frontage of the parcel.

2. No buildings or structures shall be placed within 32 feet of the tower, other than an electronics equipment building to be located within the area currently leased from the Sauvie Island Grange.

3. The applicant shall retain all healthy Douglas fir trees within 32 feet of the tower, other than those trees marked for removal in Exhibit 2 of the application. This condition does require the applicant to replace any trees which fall, and allows the applicant to remove any trees reasonably determined by an arborist to present a health or safety risk, provided that such trees are replaced with healthy trees. Prior to removal of trees, other than those marked for removal in the application, the applicant will submit an arborist's report to the County Planning Department for review and approval.

4. Applicant shall comply with all applicable Oregon Department of Environmental Quality noise standards in the operation of any emergency electrical generating equipment or other equipment at the tower site.

5. The height of the tower with antenna, shall not exceed 160 feet.

6. No approved or required landscaping shall be removed in order to locate the accessory building or equipment or at any time the cellular tower is being utilized pursuant to this conditional use approval other than that allowed in condition 3. If any such landscaping is removed, the applicant shall be required to replace it with an equal quantity and type of landscaping on the site in a manner to achieve the original intent or to achieve sufficient screening of the facilities.

7. In the event that the use of the wireless communication facility is discontinued for a period of six (6) consecutive months or longer, it will be deemed abandoned. The applicant or property owner is hereby required to remove all abandoned facilities within ninety (90) days from the date of the abandonment. In addition to any remedies available under the Multnomah County Zoning Ordinance for violating a condition of a Conditional Use approval, the failure to remove an abandoned facility will be deemed a public nuisance subject to the applicable penalties therefor.

8. The approval of this Community Service Use shall expire two years from the date of the issuance of the Board Order in the matter, or two years from the date of the final resolution of subsequent appeals, whichever date is later, unless the project is completed as approved or the Planning Director determines that substantial construction or development has taken place.

9. This approval shall be for the specific use or uses approved, together with the limitations and conditions set forth herein. Any change of use or modification shall be subject to approval at a public hearing.

10. The applicant shall be required to provide two parking spaces on the site.

11. The applicant shall be required to comply with the design review approval process or such other process that Multnomah County may utilize in lieu of design review.

12. The applicant shall hold harmless and indemnify Multnomah County, its Board of Commissioners, its other officers and employees, from claims of any nature arising or resulting from any claims for damage or injury to property or persons arising by reason of work on the subject property, or operation of the cellular communications tower, or any work done pursuant to this order.

13. The maintenance of the landscaping and screening trees is a continuing requirement of this order. If the trees required on the parent parcel or site which have been planted or currently exist as landscaping or screening are removed in violation of the provisions of this order, it will be grounds for rescission of this Community Service Conditional Use approval.

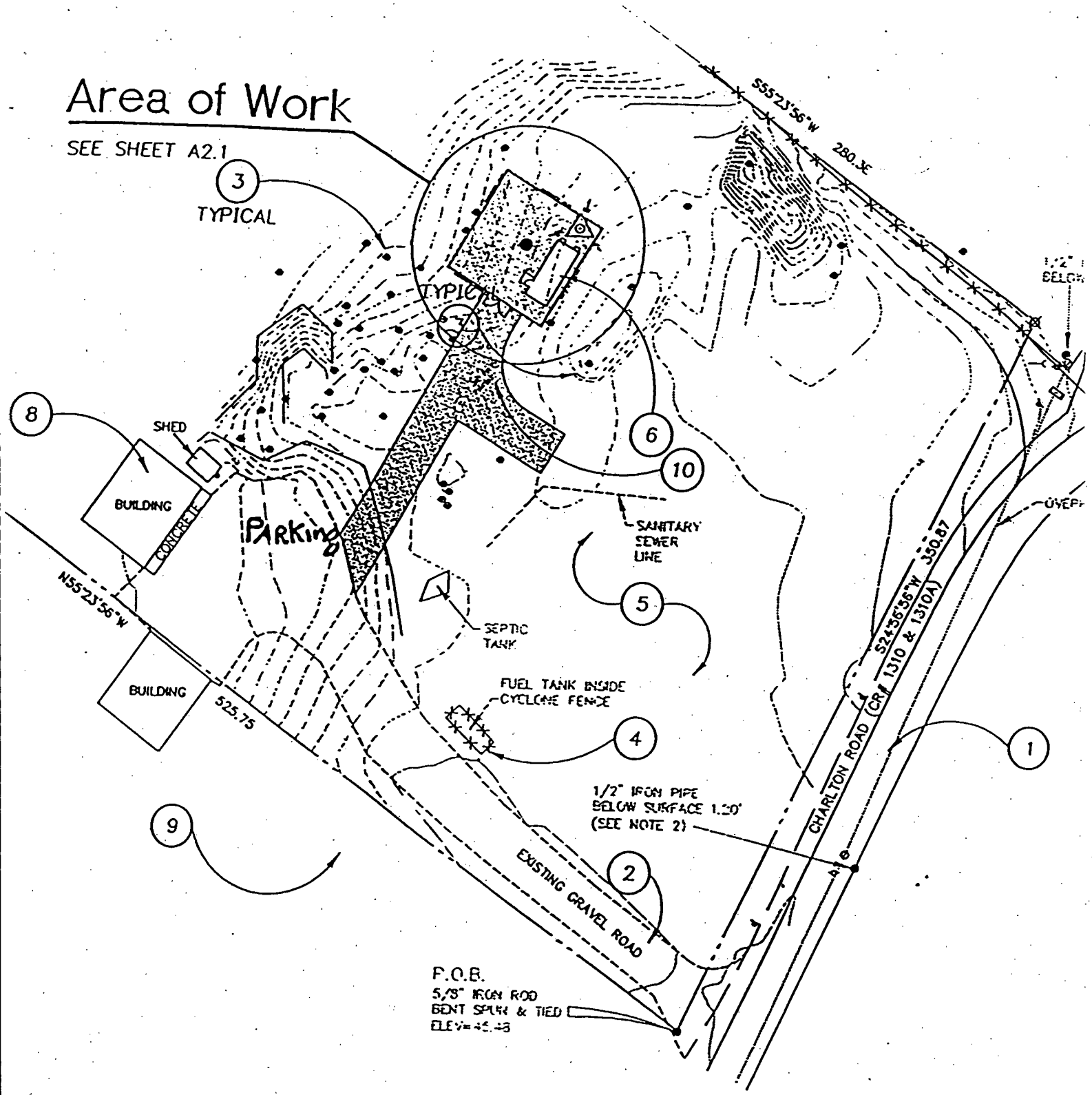
14. The applicant will comply with the standards of MCC .7035(B)(7)(a) regarding painting of the tower.

CONCLUSION

Based on the findings and the substantial evidence cited or referenced herein, I conclude that the application for the Community Service Use to site a cellular tower satisfies all applicable approval criteria provided that the Conditions of Approval are complied with. Accordingly, Community Service Use approval is hereby granted to the area designated on the site plan which is attached hereto as Exhibit "A", subject to the Conditions of Approval contained herein.

IT IS SO ORDERED, this 31st day of December, 1997.

JOAN M. CHAMBERS, Hearings Officer



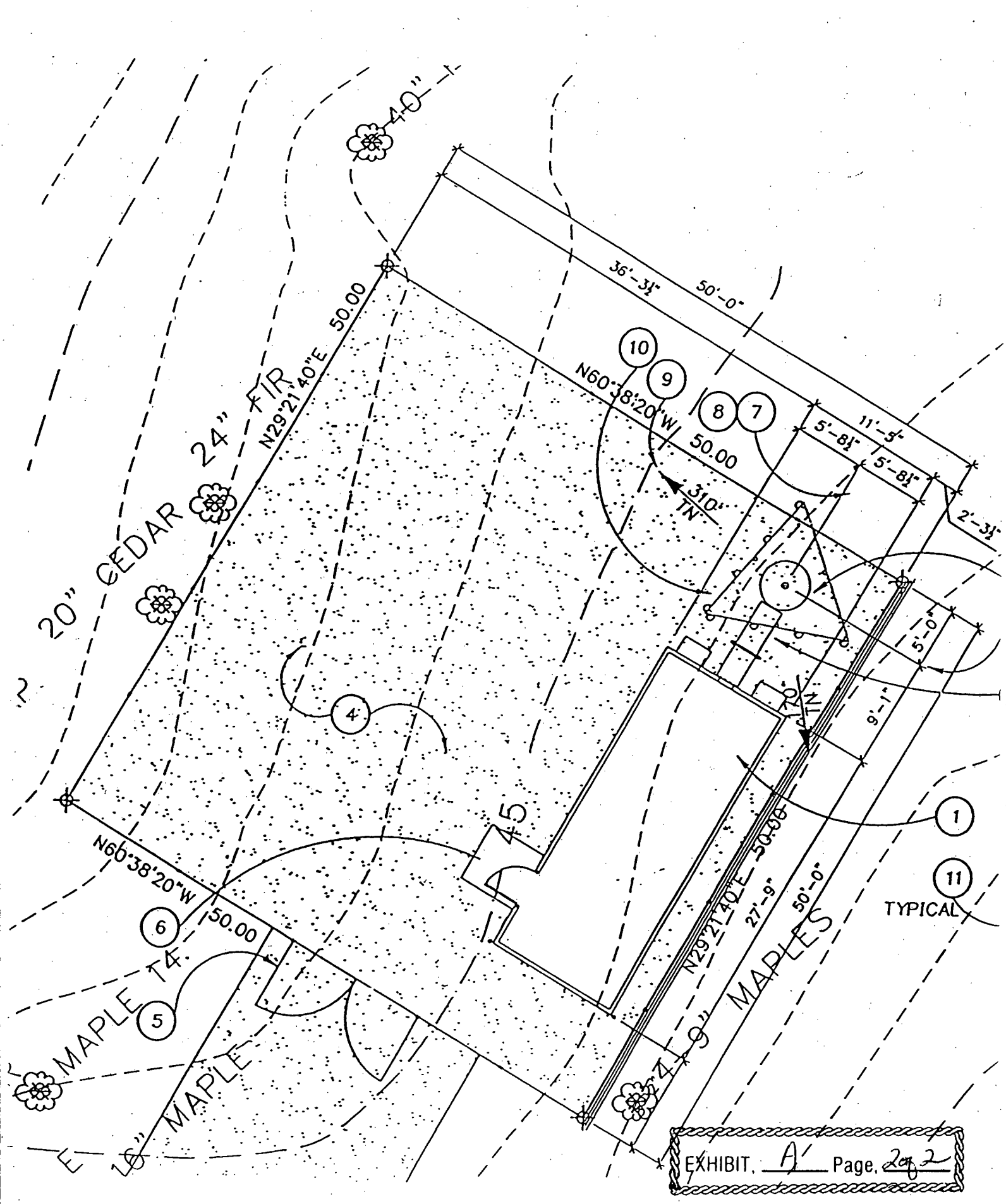
Area Plan

1"=60.0'

EXHIBIT A Page 1 of 2

AT&T Wi

Project:	Sheet Title:	Revisions:	Date:
Sauvie Island Cell Site Site II	Area Plan and Site Plan		Drawn by: Checked



AT&T Wireless Sc

Project:	Sheet Title:	Revisions:	Date:	
uvie Island Cell Site te II	Site and Shelter Plan		Drawn by: TJK	Checked by:

List of Exhibits
CU 1-97

"A" Applicant's Submittals

- A1 General Application form and service provider forms (2 pages)
- A2 Applicant's 11/22/96 narrative
- A3 A & T printout and ownership map
- A4 Lease agreement between AT&T and Sauvie Island Grange No. 840
- A5 Site and vicinity plans
- A6 Aerial photograph and overlay
- A7 Revised application and general application form (39 pages)
- A8 Revised site plans (4 pages)
- A9 Letter from Spencer Vail requesting rescheduled hearing
- A10 Affidavit of Posting
- A11 Letter from Spencer Vail revising tower location and responses to selected Code criteria (5 pages, one aerial photograph, plus 4 maps)
- A12 Second revised application
- A13 Revised site plans

"B" Notification Information

- B1 Pre-Application Notice (3 pages)
- B2 Notice of Public Hearing (4 pages)
- B3 Notice of rescheduled hearing
- B4 Notice of second rescheduled hearing

"C" Multnomah County Items

- C1 Pre-Application meeting notes
- C2 Memo from John Dorst regarding dedication requirements (4 pages)
- C3 Staff Report
- C4 Larson Utility brochure

"D" Public Comment

- D1 Letter from Molly Hill
- D2 Letter from Cherie Sprando
- D3 Letter from Thomas E. Ruhl (2 pages)
- D4 Letter from Carolyn Rubenstein
- D5 Letter from Lori & Jason Sawyer
- D6 Letter from Jean Fears
- D7 Letter from Stuart Sandler
- D8 Letter from Ursla R. Davis
- D9 22 postcards from Island residents
- D10 Letter from Sauvie Island School Board (2 pages)
- D11 Letter from Jeanne Charlton O'Mara
- D12 Letter from David Ruud, MD (2 pages)

EXHIBIT, B Page, 1 of 2

D13 Letter from Bill Reid (12 pages)
D14 Letter from Craig Hill (2 pages)
D15 Letter from Jim Charlton
D16 Letter from Tom Gibbons (2 pages)
D17 Letter from Cherie Sprando (6 pages)
D18 Letter from Arlene Dick (11 pages)
D19 Letter from Ursula Davis (9 pages)
D20 Letter from Dave Sprando (5 pages)
D21 Letter from Adrienne Keith (7 pages)
D22 Letter from Peter Davis DVM
D23 Letter from Mary Hollabaugh
D24 Letter from Mary Anne Wolfe (2 attachments)
D25 Fax from Sheilah Toomey
D26 Letter from Lori Sawyer

"E" **Documents Submitted at 8/20/97 Public Hearing**

E-1 letter
E-2 memo from Hammond

E-3 Property value vs cell tower report.
E-4 Aerial of Island
E-5 Map of Sanibel etc.
E-6 Letter from Jean Tears.
E-7 Klinman memo
E-8 Letter from Rachl of SI school.
E-9 SI Conservancy letter
E-10 " " ~~Aerial~~ photo with tower impact
E-11&12 Bill Reid photos
F-1,2... Letters submitted by Klinman
G-1,2... Book of photos.
E-13 Adria Keith photo
E-14 Greg Sprando photo
E-15 Hull presentation of letter (Tom)
~~E-16 Aerial~~ Charlton photo

EXHIBIT B Page 2 of 2

EXHIBIT "C"

1. Letter of August 26, 1997 from Jeffrey L. Kleinman, enclosing:
2. Letter of Jim Charlton bearing a fax transmittal date of August 25, 1997
3. Letter of Adrienne Keith dated August 23, 1997;
4. Letter of Ursula R. Davis dated August 22, 1997; and
5. Letter of Cherie Sprando dated August 25, 1997;
6. Applicant's First Supplemental Submittal;
7. Post-Hearing Memorandum of Citizens United for Sauvie Island Planning dated October 1, 1997;
8. Applicant's Reply dated October 17, 1997.

DEPARTMENT OF ENVIRONMENTAL SERVICES
DIVISION OF PLANNING AND DEVELOPMENT
2115 SE MORRISON STREET
PORTLAND, OREGON 97214 (503) 248-3043

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NOTICE OF REVIEW

1. Name: DAVIS (Last), URSULA (First), and CITIZENS UNITED FOR SAUVIE ISLAND PLANNING (Middle) (and additional appellants on attached list)
2. Address: 14213 NW Charlton Rd. (Street or Box), Portland (City), OR 97231 (State and Zip Code)
3. Telephone: (503) 621 - 3883
4. If serving as a representative of other persons, list their names and addresses:

   See attached list.

5. What is the decision you wish reviewed (*e.g.*, denial of a zone change, approval of a subdivision, *etc.*)?

   Hearings officer's decision in CS 1-97, approving Conditional Use (CS) for Cellular Radio Communication Facility on Sauvie Island

6. The decision was announced by the Hearing Officer on January 7, 1998
7. On what grounds do you claim status as a party pursuant to MCC 11.15.8225?

   All the appellants were entitled to notice and made an appearance of record before the approval authority, both individually and through counsel.

8. Grounds for Reversal of Decision (*use additional sheets if necessary*):
See attached Grounds for Reversal of Decision.

9. Scope of Review *(Check One)*:

(a) [x] On the Record

(b) [ ] On the Record plus Additional Testimony and Evidence

(c) [ ] *De Novo* (*i.e.*, Full Rehearing)

10. **If you checked 9(b) or (c), you must use this space to present the grounds on which you base your request to introduce new evidence** (Use additional sheets if necessary). For further explanation, see handout entitled *Appeal Procedure*.

Signed: Judith R. Davis Date: 1-20-98
for Mary L. Alexander, attorney for appellants 1-20-98

1207 SW Si
Portland
248-0808

For Staff Use Only

Fee:

Notice of Review = $500.00 $530.00 CK# 2892

Received by: JF Date: 1/20/98 Case No. CS 1-97

ADDITIONAL APPELLANTS

Donna Matrazzo – Sauvie Island Conservancy – 19300 NW Sauvie Island Rd., Pld. 97231
Jim & Eleanor Charlton – 13825 NW Charlton Rd., Pld. 97231
Bill Reid – Project Agape Institute – 27400 Ladd Hill, Sherwood, Oregon 97140
Craig & Molly Hull – 14115 NW Charlton Rd., Pld. 97231
Dave & Teri Sprando – 13847 NW Charlton Rd., Pld. 97231
Betsy Charlton Powell – 1621 Main St., Forest Grove, Oregon 97116
Adrienne Keith & David Ruud – 14139 NW Charlton Rd., Pld. 97231
Jeanne O'Mara – 13829 NW Charlton Rd., Pld. 97231
Tom Gibbons – 14312 NW Charlton Rd., Pld. 97231
Peter Davis, D.V.M. – 4818 N. Lombard, Portland, Oregon 97203
Greg & Cherie Sprando – 14025 NW Charlton Rd., Pld. 97231

GROUNDS FOR REVERSAL OF DECISION

I. Introduction

This notice of review is submitted on behalf of Citizens United for Sauvie Island Planning and the listed, individual appellants. Appellants opposed the within application to site a 160-foot structure consisting of a cellular telephone communications monopole and antennas, in the MUA-20 zone on Sauvie Island. The antennas, looming between 150 and 160 feet over the surrounding residential community and visible from large parts of Sauvie Island, include three groups of four directional antennas, each 18 inches by 48 inches, and three 10-foot whip antennas.

The applicant submitted an initial application and a revised application. Staff recommended denial in both instances. Nonetheless, in a decision dated December 31, 1997, the hearings officer approved the applicant's proposal.

As a preliminary matter, we would like to address the hearings officer's discussion of the "120-day clock" at pages 4-5 of the decision. Our recollection of the applicant's waiver is that it was more open-ended than the hearings officer states, and ran to the date of the decision and not just to the date of filing of the last memorandum by counsel.

The hearings officer indicates that she took 75 days from the latter date to issue the decision. The decision was not mailed until one week later. We believe that under House Bill 2006, adopted by the legislature as chapter 414 Oregon Laws 1997, the correct "clock" for a final decision by a county on an

application for a site outside the urban growth boundary is 150 days; this was a procedural change in the law, and is effective as to this application.

The grounds for reversal by the Board are discussed in detail below. However, we would like to make a few general points about the impact and importance of the decision before you, if it is allowed to stand:

1. The hearings officer gave the narrowest possible reading to the code and comprehensive plan provisions in question, to favor the "needs" of the applicant over the interests of neighbors and the Sauvie Island community protected by the code and plan.

2. The decision establishes a binding precedent for siting any and all requested cellular communications towers in the MUA zone on Sauvie Island, so long as the applicant states: "Our company doesn't have a tower on the island yet. We need one." The result would be to turn the Island into the county's antenna farm. This is not the crop contemplated by Multiple Use Agriculture zoning.

3. Where a tower is proposed to be sited on a leased portion of a much larger property, the decision establishes a binding precedent for disregarding safety and other impacts upon the balance of the "parent" property.

Sauvie Island has long been recognized as a unique resource for all the citizens of Multnomah County. It is characterized by the utter absence of tall structures, and retains a pastoral

environment within its surrounding levees. The character and identity of the affected rural residential community are especially clear from the photographic evidence in the record as Exhibits G (compiled notebook of photographs), E-10 through E-14, and E-16. This proposal adversely affects one of the largest concentrations of private homes on the Island.

For all the reasons we set out in the record, the proposed 16-story tower will completely change the character of its surroundings, and damage the plans and policies through which the county and its Board of Commissioners have consistently acted to preserve the Island's unique identity.

The hearings officer specifically erred as to the following applicable criteria.

II. Comprehensive Plan Policies

MCC 11.15.7035 sets out the community service criteria for siting radio and television transmission towers. Section .7035(C)(5) requires that the "applicable policies of the Comprehensive Plan are met." The applicant did not meet its burden of proof to show compliance with the applicable plan policies discussed below. The hearings officer generally accepted the interpretation proposed by the applicant, that these provisions do not apply in this case. This was error on the part of the hearings officer, and sets a dangerous precedent for future cases.

/ / /

Policies 18 and 19

Comprehensive Plan Policy 18, "Community Identity," states that the county's policy "is to create, maintain or enhance community identity." (Emphasis added.) The applicant did not demonstrate in any way that its structure will maintain or enhance the identity of this rural community. The evidence shows that, instead, it will irrevocably alter and diminish it. Although we raised this issue orally and in writing before the hearings officer, she did not address it in her decision.

Policy 19, "Community Design," provides in material part as follows:

> "The County's Policy is to maintain a community design process which:
>
> "A. Evaluates and locates development proposals in terms of scale and related community impacts with the overall purpose being a complementary land use pattern. * * *" (Emphasis added.)

The hearings officer disregarded the criteria of Policy 19, stating that this is a general policy previously implemented through the design review process. However, the first paragraph of the policy refers to "maintaining" a community design process, not establishing one. Based upon the evidence in the record, it is applicable here. The evidence conclusively shows that this proposal is out of scale with the surrounding community in this portion of the Island; has an extremely adverse impact upon the community; and is disruptive of, not complementary to, the land use pattern which the county and its citizens have worked so hard to preserve.

Policy 20

Policy 20, "Arrangement of Land Uses," provides as follows:

"The county's policy is to support higher densities and mixed land uses within the framework of scale, location and design standards which:

"A. Assure a complementary blend of uses;

"B. Reinforce community identity;

"C. Create a sense of pride and belonging; and

"D. Maintain or create neighborhood long term stability."

Policy 20 applies directly here. As it governs the "arrangement of land uses" in the county, it is critically important in a case in which the applicant proposes to introduce a 16-story structure into a long-established rural residential community.

The hearings officer stated that this is merely a general plan policy, and at the same time "specifically requires the County to support higher densities and mixed land uses" as achieved through the community service citing ordinance. (Decision, p. 20) The hearings officer overlooked three key points:

1. The applicable community service siting criteria require compliance with the policies of the comprehensive plan. MCC 11.15.7035(C)(5).

2. There is nothing in the language of Policy 20 which confines its application to the development of legislation.

3. Policy 20 supports the development of higher densities and mixed land uses only "within the framework of scale, location and design standards which * * * assure a complementary blend of

uses; * * * reinforce community identity; * * * create a sense of pride and belonging; and * * * maintain or create neighborhood long term stability." The record shows that the scale and location of the proposed tower will be destructive of each of these characteristics.

If the county deems Policy 20 irrelevant in this case, it will lose for all time the benefits of a key component of its comprehensive plan.

/ / /

Policy 31

Policy 31, "Community Facilities and Uses," provides in part:

> "The county's policy is to:
>
> "A. Support the siting and development of a full range of community facilities and services by supporting the location and scaling of community facilities and uses meeting the needs of the community and reinforcing community identity." (Emphasis added.)

The applicant conceded that Policy 31 applies specifically to quasi-judicial decisions. Hence, the applicant conceded that "reinforcing community identity" is an approval standard with which the applicant must demonstrate compliance herein. For all the many reasons set out by opponents in the record, the proposed structure will not reinforce, but will harshly impact, the long-established identity of this community, recognized by the county in the comprehensive plan and in the consistent history of county land use decisions with respect to Sauvie Island.

The hearings officer again sought harbor in the notion that Policy 31A is only a general policy statement, not to be applied here. Again, the hearings officer's proposed interpretation would serve to render the Multnomah County Comprehensive Plan a nullity.

Policy 31A also requires the proposal to meet the "needs of the community." The hearings officer found compliance with this supposedly inapplicable requirement. However, the persuasive evidence in the record is that Sauvie Island has adequate cellular service already. The applicant's own advertising

materials, which we introduced into the record, show full-service coverage of the Island. Moreover, the memorandum from Carol Friz placed in the record by the applicant as Exhibit 1 to its Supplemental Submittal demonstrates the insufficiency of the applicant's analysis of alternative sites. Ms. Friz states:

> "Other sites near the Sauvie Island bridge were considered but rejected as this area already receives coverage from a site further to the south."

The fact that said alternative sites already have coverage does not preclude their usefulness in providing coverage to the balance of Sauvie Island. Hence, the applicant appears to concede that alternative sites are available to satisfy the purported need.

Witnesses testified that they use cellular telephones on the Island without any problem; this includes phones with AT&T service. Greg Sprando, a Portland firefighter, member of the Sauvie Island Fire Department Board of Directors, and former chief of that department, wrote as follows:

> "Our fire, police and emergency medical services do not rely on cellular telephone communication for any emergency service on Sauvie Island. Our emergency communications take place over a countywide 800 mHz radio system. To the best of my knowledge, the communication system has never failed, as long as I have been involved with the fire department. Proof that this tower is not necessary for primary communication services is the fact that the Island went through the flood of 1996 and 1997 without communication breakdown. Another example that cell phones are not relied on for emergency purposes is the fact that they have been removed from the majority of the Portland Police vehicles."

Again, it is important to note that the proposed tower would serve only AT&T customers. It would set a precedent for any number of additional towers on Sauvie Island based upon the

service provider's mere statement that their service on the Island is inadequate.

Finally, Policy 31K requires the county to

> "Provide for the Siting and Expansion of Community Facilities in a Manner Which Accords with the Other Applicable Policies of this Plan."

For all the reasons set forth above, the decision before you does not comply with those "applicable policies."

III. Community Service Criteria under MCC 11.15.7035

A. Visual Impact upon the Environment

Section .7035(C)(3) requires compliance with the visual impact standard of .7035(B)(7), which provides in material part as follows:

> "(7) Visual impact - The applicant shall demonstrate that the tower can be expected to have the least visual impact on the environment, taking into consideration technical, engineering, economic and other pertinent factors. * * *" (Emphasis added.)

The applicant simply failed to meet its burden of proof to demonstrate that the 160-foot tower in question would have the "least visual impact on the environment." In particular, it failed to submit adequate evidence concerning the visual impact which would occur at acceptable alternate sites.

The applicant conceded that other portions of the island are in the MUA zone, as well, and, like the proposed site, do not present the bar to tower location to which EFU lands are subject. The applicant stated that it "looked to sites zoned MUA," and [t]o limit the visual impact, AWS focused its efforts on sites which had tree cover sufficient to buffer the visual impact of

the tower." The applicant did not specifically identify or discuss the other MUA sites in terms of whether they also provide ostensible tree cover.

More importantly, the applicant failed to compare the proposed site to the other MUA sites on Sauvie Island vis-a-vis several other key characteristics. This issue is discussed in letters from Donna Matrazzo, Cherie Sprando, and Adrienne Keith, listed in Exhibit C to the appeal.

Ms. Matrazzo wrote on behalf of the Sauvie Island Conservancy. She emphasized that the selected site is the highest point on the island, maximizing its negative visual impact. The tower's visual impact is further compounded by the fact that it is located within the most densely populated MUA site on Sauvie Island.

Ms. Sprando is a realtor and island resident, residing on Charlton Road. She also pointed out that the Charlton Road MUA site is the most densely populated on the island. She stated that the Sauvie Island school and a church are also within this densely populated area. She observed that the trees above which the tower and antennas will protrude are visible from distant locations, including the Multnomah Channel, Portland's West Hills, and vehicles crossing the Sauvie Island Bridge.

Ms. Keith pointed out that there are 15 residences on Charlton Road, alone, around this site, and several more homes on gravel roads nearby. She emphasized the fact that there will be a significant visual impact upon those visiting the island on

both of its major roadways, Sauvie Island Road and Reeder Road. There will also be an impact upon those using the Multnomah Channel, or visiting the Sauvie Island Market or Bybee Howell Territorial Park. These facilities, together with the school and church, are frequently used for many community events on the island.

It is also critically important to realize that, as Ms. Keith pointed out, that the crowning glory of the applicant's proposal is the 10-foot antenna structure which will bloom out in all directions from the top of the applicant's monopole, above the tops of all of the trees on the site.

In light of the above evidence, it appears that the applicant elected in effect to maximize the visual impact of this supposedly necessary project, to accommodate the fact that it has found a willing lessor in the form of the Sauvie Island Grange, which apparently needs the agreed rent for the construction of a new grange hall. This may produce a new grange hall, but it also <u>maximizes</u> visual impact on the environment in contravention of Section .7035(B)(7).

In reviewing the code requirement discussed above, the hearings officer again suggests the narrowest possible reading of the code. In this instance, there is no support whatsoever in the code language for the hearings officer's determination that visual impact is only to be assessed on the side of the site adjoining the public street. Moreover, the record shows that two homes face the tower site, directly across Charlton Road.

The hearings officer refused to consider any of the above-described evidence we entered into the record, on the grounds that it is supposedly irrelevant to the provisions of Section .7035(B)(7). The hearings officer simply failed to recognize that the required analysis of "least visual impact on the environment" under this section is also to take into account "other pertinent factors." The hearings officer closed her eyes to the most pertinent of those factors. For the sake of the public interests which this code provision is intended to protect, this Board should not limit itself in the same manner.

Finally, the hearings officer's finding of compliance depends in large part upon the retention by the applicant and the property owner of several "healthy" fir trees sheltering portions of the site. The applicant will decide which trees are healthy and which are unhealthy, and may remove the latter in its sole discretion. (The record shows that many of the trees on the property are already flagged for removal by the owner.) This is the equivalent of no protection, or assurance of compliance, whatsoever.

B. Privacy, Setback and Parcel Size Requirements

1. The Proposed Site will not Preserve the Privacy of Adjoining Residences on Charlton Road.

Section .7035(C)(1) regulates siting of towers in districts other than urban residential districts. It requires the proposed tower to comply with the standards of Sections .7035(B)(4) and (5), with respect to abutting residential or public uses,

including streets. Section .7035(B)(4)(a)(ii) requires an adequate setback to:

> "(ii) Preserve the privacy of adjoining residential property."

The hearings officer erred in finding compliance with this requirement. The revised site plan approved by the hearings officer benefits one neighbor, Ursula Davis, by moving the tower further from her property; the hearings officer implied that this property is <u>not</u> protected by this code provision because it is not within an urban residential district and is not public property or a public street. However, the applicant moved the tower closer to two neighbors <u>protected</u> by this provision, Gibbons and Martins, who reside on Charlton Road facing the site. Neighbors presented detailed evidence to the hearings officer concerning the extraordinarily adverse impact the proposed tower would have upon these and other nearby properties.

2. The Proposed Site is Inadequate to Contain a Tower Failure or Ice Fall.

Section .7035(B)(4)(a)(iii) requires siting which will:

> "(iii) Protect adjoining property from the potential impact of tower failure and ice falling from the tower by being large enough to accommodate such failure and ice on the site, based on the engineer's analysis required in MCC .7035 (D)(3)(d) and (e) * * *."

Sections .7035(D)(3)(d) and (e) require the following:

> "(d) Failure characteristics of the tower and demonstration that site and setbacks are of adequate size to contain debris.
>
> "(e) Ice hazards and mitigation measures which have been employed, including increased setbacks and/or deicing equipment."

Please note that the site the applicant will lease from the grange for its 160-foot structure is only a 50 foot x 50 foot portion of a much larger parcel, located in a residential district. The greatest source of danger here would not be the monopole itself, but the antenna-bearing structure spreading out at the top, which will be ten feet high and of unknown circumference. Ice falling from or blowing off the antennas, and windblown antenna components, pose a significant danger to the remainder of the grange property and adjoining residential properties.

Nonetheless, the hearings officer interpreted these provisions as requiring no protection of the remainder of the grange property, but only of the small leased site! This interpretation is clearly wrong, and violates public policy as to the safety of residential properties. Further, the applicant's evidence that even windblown ice from the antenna structure will be contained within the leased 2500 square feet is neither credible nor persuasive.

C. <u>Landscape Standards</u>

Section .7035(B)(11)(a) sets out the landscaping requirements applicable to this proposal, including 25-foot wide buffers with evergreen plantings along the property boundaries adjoining streets and residences. In finding compliance, the hearings officer erred in two particulars:

1. In interpreting this section to apply only to residences in an <u>urban</u> residential district. There is no such language in

this provision. At the very least, a planted buffer must be established along Ms. Davis's property line.

2. As previously discussed, in allowing the applicant to determine in its sole discretion whether existing fir trees are "unhealthy" and can be removed. This provides no assurance of compliance, and promotes the opposite result.

IV. Conclusion

For the reasons set forth above, the hearings officer erred in reaching the appealed decision; the applicant did not meet its burden of proof as to the applicable criteria; and the application should be denied.

18325 N.W. Reeder Road
Portland, Oregon 97231
January 26, 1998

Beverly Stein, Chair of the Board
Gary Hansen, District 2 Commissioner
Sharron Kelley, District 4 Commissioner
Multnomah County Commission
Portland Building
1120 S.W. Fifth Avenue
Portland, Oregon 97204

My husband and I have lived on Sauvie Island a couple years short of 50 years. Communication on the Island has always been a problem. Those that live along the road where cable TV is available still have to buy a dish for reception.

We live one driveway down from Charlton Road, looking directly at the school and Grange property. During the February 1996 flood, we had no phone service for almost 2 weeks. My son-in-law brought us out his cell phone to use, however, there was no reception in our area and we could not use it. This was an AT&T phone.

We were told to stay off the roads except in an emergency. They were having nightly briefing meetings at the school all week. We did not know until Friday - the last meeting. How extremely frustrating and dangerous!!

I volunteer at the Safety Action Team office every Sunday morning. Believe me, both Columbia and Multnomah County Deputies have problems with communications. It is not unusual for the Safety Action Team to have to relay messages for them.

My neighbors behind us, Frank & Betty Newton, have an AT&T cell phone. Their service is very poor also. When we get the cell tower, I will invest in a cell phone. I do hope you will support us on this since we no longer have representation on the Multnomah County Board of Commissioners. It is very frightening. My husband is 82 and has a heart pacer.

Sincerely,

Shirley C. Larson

Shirley Larson

18143 N.W. Reeder Road
Portland, Oregon 97231
January 26, 1998

Beverly Stein, Chair of the Board
Gary Hansen, District 2 Commissioner
Sharron Kelley, District 4 Commissioner
Multnomah County Commission
Portland Building
1120 S.W. Fifth Avenue
Portland, Oregon 97204

We have lived on Sauvie Island since 1964. I would like to state that I believe that our Island needs this community service. Due to our low elevation, reception for the cell phone is very spotty and, as this proposed location is one of the highest points on the Island, this will provide for this reception need.

During the flood in 1996, it was televised not only in the local area but over the nation conveying to the "outside world" that Sauvie Island was practically destroyed. At least this was the impression our friends and relatives were led to believe and they were frantic when they could not reach us as we did not have a phone for 12 days. Due to the cell phone, however, we were able to reach them and put their fears to rest.

It, also, is personally a very needed service for me to have as my husband is blind and when I am away from home he is able to reach me and I am able to keep in contact with him. It is pretty scary to be blind and alone but it is a necessity at times.

However, we do need to have this pole so that the reception is dependable. My neighbor called me on his cell phone to see if we had regained our power and the reception was so broken that we could hardly communicate with one another. That is also a problem that plagues my husband and me.

I am willing to wager that three fourths of Sauvie Islanders possess a cell phone. Therefore, I would like to encourage you to allow this <u>needed</u> Community Service to be installed on this proposed location and uphold the Hearing Officer decision.

Sincerely,

Jean Fears

Jean Fears

18319 N.W. Reeder Road
Portland, Oregon 97231
January 26, 1998

Beverly Stein, Chair of the Board
Gary Hansen, District 2 Commissioner
Sharron Kelley, District 4 Commissioner
Multnomah County Commission
Portland Building
1120 S.W. Fifth Avenue
Portland, Oregon 97204

Dear Chair Stein,

I am writing in regard to the proposed cell tower on Sauvie Island Grange property.

This is something we <u>really</u> need. We have a cell phone and we cannot use it here at home. I am a cancer patient and currently recovering from surgery. A heart patient also lives here and it is necessary to have help periodically. If it's high water or wires down we would be out-of-luck.

My oncologist, Dr. Nitta, at Seventh Day Adventist Hospital assures me there is no harm from these towers - people are just "un-informed". The proposed sight is on an inconspicuous knoll surrounded by trees and native shrubs etc.

They all laughed when Henry Ford invented the Model T but you don't see many horses on the road these days.

Let's get with the program and greet the new century with all the modern conveniences and knowledge available.

Sincerely,

Dorothy J. Rick

Dorothy Rick

Yvonne Cieloha
18620 NW Gillihan Road
Portland, Or
97231
621 3457

Multnomah County Commissioner
Portland Building
1120 SW 5th Av
Portland, Or 97204

Commissioner:

I have been reading the "Notice of Review", from Ursula Davis and Ciitzens United For Sauvie Island Planning.
We have lived here on the island for 24 years. We loose our power a lot and our telephone just as much. During the flood of 96 we were without our phone for 28 days and had it not been for our cellular phone we would have been in deep trouble. Our relatives across the country had seen about Portland and Sauvie Island on the TV and tried to get through to us. They were able to go through the cellular phone to get to us. We live off of Gillihan road and the fire department was trying to tell the people to evacuate by use of their loud speakers. We couldn't hear them. We were called on our cellular phone by people in Portland who had heard it on the TV that we should evacuate. My husband had stayed in the house until the water came over the bank and cut off our road. He was able to call me in Portland by cellular phone at 2:30 in the morning that he was out of the house and safe. So many people do not realize what it is to have a cellular phone to rely on. The electricity was out for about a week.

I read in the Notice of Review the statement that Portland Police no longer use cellular phones in their cars. The news informed the people the reason for that. Miss use of the phones. To make a statement that they didn't need them was way off.

We also read about the noise from the tower. These same people live in amongst the Charlton Kennels for animals on the Charlton Road. The howling at times is more than you would want to live by.

It was mentioned that you would see this tower as you come across the bridge. I will be very surprised if you can see it. You probably wouldn't know it from all of the planes that pass over the island.

Please help us for our emergency needs.

Thank You
Yvonne Cieloha

Yvonne Cieloha

CC: Beverly Stein Chairman of the Board
Gary Hansen District 2 Commissioner
Sharon Kelley District 4 Commissioner

Sauvie Island Grange

Number 840

98 JAN 29 PM 3:43
BOARD OF
COUNTY COMMISSIONERS
MULTNOMAH COUNTY
OREGON

27662 N.W. Sauvie Island Road
Portland, Oregon 97231
January 27, 1998

Beverly Stein, Chair of the Board
Gary Hansen, District 2 Commissioner
Sharron Kelley, District 4 Commissioner
Multnomah County Commission
1120 S.W. Fifth Avenue
Portland, Oregon 97204

I believe that Hearings Officer, Joan Chambers, was very fair and thorough in making her decision to allow a cell tower on Grange property on Sauvie Island.

The Sauvie Island Grange has over 250 members, one of the largest granges in the state of Oregon. During the decision making process to ask AT&T to use our land, all of our members were notified by mail that a vote to approve a lease would be taken at the next regular monthly meeting. The vote was taken with the following results: 77 in favor, 24 opposed and 2 abstentions. This was well over a two thirds majority. I know that the decision on the county level is not based on a popularity contest, but the majority of people on the Island are not opposed to a cell tower on Grange property.

The Grange property is zoned Multiple Use Agriculture and is an excellent location to service the Island and surrounding areas.

Yes, the Grange will receive rent for the tower. The Grange is a Community Service organization and contributes each year for college scholarships, scouts, 4-H, Dogs for the Deaf, Salvation Army, Ronald McDonald House, Portland Rescue Mission etc. We feel that a cell tower would also be a community service.

I hope that you will deny the appeal and vote to support your hearings officer decision.

Sincerely,

Lynn D Trupp

Sauvie Island Grange #840
Lynn Trupp, Master

Sauvie Island Safety Action Team

A cooperative partnership to protect the community and preserve wildlife

18330 N.W. Sauvie Island Road
Portland, Oregon 97231
January 27, 1998

Beverly Stein, Chair of the Board
Gary Hansen, District 2 Commissioner
Sharron Kelley, District 4 Commissioner
Multnomah County Commission
1120 S.W. Fifth Avenue, Suite 1515
Portland, Oregon 97204

The Sauvie Island Safety Action Team (SAT) is a cooperative effort among the Columbia County Sheriff's Office (CCSO) and Columbia County Emergency Management; The Multnomah County Sheriff's Office (MCSO); Multnomah County Emergency Management, Oregon State Police (OSP); Oregon Department of Fish and Wildlife (ODF&W), the Sauvie Island Fire Department, the Sauvie Island Drainage Improvement Company, The Westside Citizen's Advisory Board, and the residents of Sauvie Island.

The goals of this coalition are to: protect the community, provide information, preserve the wildlife, and enhance the livability of the community. The SAT is an officially recognized volunteer unit of the Multnomah County Sheriff's Office, and operates from a contact office located at 18330 N.W. Sauvie Island Road. SAT volunteers are used to staff the SAT office on weekends and holidays, primarily between the hours of 10 A.M. and 6 P.M. Volunteers greet Island visitors, answer questions regarding access to and use of recreational areas.

We have been looking forward to the erection of this cell-tower as an important tool in our efforts. Both Multnomah and Columbia County Deputies carry cell phones and we have their numbers to use when needed. The Multnomah County Deputies not only operate on Sauvie Island but all of the west side. Many times when they are needed, they are away from the Island and we are able to reach them quicker through this method.

Therefore, we request that you uphold the hearing officer decision and do not honor this appeal.

Sincerely,
SAUVIE ISLAND SAFETY ACTION TEAM

Julie Cieloha

Julie Cieloha, Secretary

REEDER BEACH RESORT
R.V. PARK
26048 N.W. REEDER RD.
PORTLAND, OR 97231
(503) 621-3970

January 29, 1998

Multnomah County Board of Commissioners
1120 SW Fifth Ave. Suite 1515
Portland, OR 97204-1914

RE: A T & T Cellular Tower

Dear Commissioner Stein,

I would like to speak in favor of and for the necessity of the proposed cellular tower on Charlton Road.

Cell phones were necessary for emergency communication during the flood of February 1996, and for several weeks afterward, because all of the telephones outside of the dike were out of service for up to one month .

Greg Sprando, on page 8 of the appeal, states with authority that the island went without communication breakdown during the flood emergency. If Mr. Sprando had not spent most of his time in the central command post, and had been out and about the island, he would have been aware that all telephones outside the dike were out of service, a few for as long as six weeks.

Our telephones were out, and as we were one of the several families stranded in our homes for seven days by the flood, our cellular phone was our only means of communication. We did have need to call a physician and a pharmacy to get medicine for a man who had a large abcess on his leg, and then one of the employees of the Oregon Department of Fish and Wildlife delivered the medicine to us.

Our business phone was out of service for 18 days, and it was the first phone reconnected. Our personal phone was out of service for 24 days, and my 91 year old mother-in-law's phone was out 31 days. I could give you a list nearly a page long of other neighbors whose phones were out about one month, and some even longer.

Cellular phones are very important to us. There are many areas on the island where the cell phone signal is poor or where there is no signal at all.

We do need the tower.

Sincerely,

Janice K. Reeder

Janice K. Reeder

Yvonne Cieloha
18620 NW Gillihan Road
Portland, Or
97231
621 3457

Multnomah County Commissioner
Portland Building
1120 SW 5th Av
Portland, Or 97204

Commissioner:

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I read in the Notice of Review the statement that Portland Police no longer use cellular phones in their cars. The news informed the people the reason for that. Miss use of the phones. To make a statement that they didn't need them was way off.

We also read about the noise from the tower. These same people live in amongst the Charlton Kennels for animals on the Charlton Road. The howling at times is more than you would want to live by.

It was mentioned that you would see this tower as you come across the bridge. I will be very surprised if you can see it. You probably wouldn't know it from all of the planes that pass over the island.

Please help us for our emergency needs.

Thank You

Yvonne Cieloha

CC: Beverly Stein Chairman of the Board
Gary Hansen District 2 Commissioner
Sharon Kelley District 4 Commissioner ✓

18319 N.W. Reeder Road
Portland, Oregon 97231
January 26, 1998

Beverly Stein, Chair of the Board
Gary Hansen, District 2 Commissioner
Sharron Kelley, District 4 Commissioner
Multnomah County Commission
Portland Building
1120 S.W. Fifth Avenue
Portland, Oregon 97204

Dear Commissioner Kelley,

I am writing in regard to the proposed cell tower on Sauvie Island Grange property.

This is something we <u>really</u> need. We have a cell phone and we cannot use it here at home. I am a cancer patient and currently recovering from surgery. A heart patient also lives here and it is necessary to have help periodically. If it's high water or wires down we would be out-of-luck.

My oncologist, Dr. Nitta, at Seventh Day Adventist Hospital assures me there is no harm from these towers - people are just "un-informed". The proposed sight is on an inconspicuous knoll surrounded by trees and native shrubs etc.

They all laughed when Henry Ford invented the Model T but you don't see many horses on the road these days.

Let's get with the program and greet the new century with all the modern conveniences and knowledge available.

Sincerely,

Dorothy J. Rick

Dorothy Rick

18143 N.W. Reeder Road
Portland, Oregon 97231
January 26, 1998

Beverly Stein, Chair of the Board
Gary Hansen, District 2 Commissioner
Sharron Kelley, District 4 Commissioner
Multnomah County Commission
Portland Building
1120 S.W. Fifth Avenue
Portland, Oregon 97204

We have lived on Sauvie Island since 1964. I would like to state that I believe that our Island needs this community service. Due to our low elevation, reception for the cell phone is very spotty and, as this proposed location is one of the highest points on the Island, this will provide for this reception need.

During the flood in 1996, it was televised not only in the local area but over the nation conveying to the "outside world" that Sauvie Island was practically destroyed. At least this was the impression our friends and relatives were led to believe and they were frantic when they could not reach us as we did not have a phone for 12 days. Due to the cell phone, however, we were able to reach them and put their fears to rest.

It, also, is personally a very needed service for me to have as my husband is blind and when I am away from home he is able to reach me and I am able to keep in contact with him. It is pretty scary to be blind and alone but it is a necessity at times.

However, we do need to have this pole so that the reception is dependable. My neighbor called me on his cell phone to see if we had regained our power and the reception was so broken that we could hardly communicate with one another. That is also a problem that plagues my husband and me.

I am willing to wager that three fourths of Sauvie Islanders possess a cell phone. Therefore, I would like to encourage you to allow this <u>needed</u> Community Service to be installed on this proposed location and uphold the Hearing Officer decision.

Sincerely,

Jean Fears

Jean Fears

18325 N.W. Reeder Road
Portland, Oregon 97231
January 26, 1998

Beverly Stein, Chair of the Board
Gary Hansen, District 2 Commissioner
Sharron Kelley, District 4 Commissioner
Multnomah County Commission
Portland Building
1120 S.W. Fifth Avenue
Portland, Oregon 97204

My husband and I have lived on Sauvie Island a couple years short of 50 years. Communication on the Island has always been a problem. Those that live along the road where cable TV is available still have to buy a dish for reception.

We live one driveway down from Charlton Road, looking directly at the school and Grange property. During the February 1996 flood, we had no phone service for almost 2 weeks. My son-in-law brought us out his cell phone to use, however, there was no reception in our area and we could not use it. This was an AT&T phone.

We were told to stay off the roads except in an emergency. They were having nightly briefing meetings at the school all week. We did not know until Friday - the last meeting. How extremely frustrating and dangerous!!

I volunteer at the Safety Action Team office every Sunday morning. Believe me, both Columbia and Multnomah County Deputies have problems with communications. It is not unusual for the Safety Action Team to have to relay messages for them.

My neighbors behind us, Frank & Betty Newton, have an AT&T cell phone. Their service is very poor also. When we get the cell tower, I will invest in a cell phone. I do hope you will support us on this since we no longer have representation on the Multnomah County Board of Commissioners. It is very frightening. My husband is 82 and has a heart pacer.

Sincerely,

Shirley C. Larson

Shirley Larson

MULTNOMAH COUNTY OREGON

DEPARTMENT OF ENVIRONMENTAL SERVICES
TRANSPORTATION & LAND USE PLANNING DIVISION
2115 S.E. MORRISON STREET
PORTLAND, OREGON 97214
(503) 248-3043

February 3, 1998

To: Bev Stein, Chair Multnomah County Commissioners

From: Kathy Busse, Planning Director

Re: Cellular Telephone Tower Zoning Standards

You requested we research Code standards to more specifically regulate cell towers in rural areas of the county with emphasis on visual impact and location. We have alerted the Planning Commission that this is a priority item and are researching code language of other jurisdictions. We anticipate developing proposed code language within the next ninety days. Those proposed changes will be presented to the Planning Commission in June or July and forwarded on to you for your consideration.

cc. Board of County Commissioners
Larry Nicholas, Director DES
Sandy Duffy, County Counsel

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY

Land Use Planning Case CS 1-97 Reversing the December 31, 1997 Hearings Officer Decision Granting a Conditional Use Request for Cellular Radio Communication Facility	)))))	FINAL ORDER ORDER 98-____

WHEREAS, this matter is before the Multnomah County Board of Commissioners as an appeal filed by Citizens United for Sauvie Island Planning, Ursula Davis, Donna Matrazzo, Jim and Eleanor Charlton, Bill Reid, Craig and Molly Hull, Dave and Teri Sprando, Betsy Charlton Powell, Adrienne Keith, David Ruud, Jeanne O'Mara, Tom Gibbons, Peter Davis, and Greg and Cherie Sprando, all represented by Jeffrey L. Kleinman, of the Hearings Officer's Decision in land use case CS 1-97; and

WHEREAS, after proper notice of a public hearing, the Board of County Commissioners accepted argument on the existing record presented at a hearing on February 3, 1998, and the Board of County Commissioners being fully advised; now, therefore,

IT IS HEREBY ORDERED, that the Hearings Officer's decision dated December 31, 1997, approving the requested conditional use for cellular radio communication facility is REVERSED, and the permit is DENIED based on the findings set out or incorporated by reference below:

A) Pages 1 through 8 of the Hearings Officer's decision dated December 31, 1997, containing a summary of the request, together with discussion of Procedural Issues, Burden of Proof, and Facts, are adopted as findings and explanation herein, with the exception of the paragraph on page 3 which states:

> "There is 'substantial evidence' in this matter. The Final Order and Findings of Fact document will provide specific written findings which will comply with the federal standards set forth in the Act."

B) The Board finds that the applicant did not meet its burden of proof with respect to the approval criteria identified below:

I. Comprehensive Plan Policies

MCC 11.15.7035 sets out the community service criteria for siting radio and television transmission towers. Section .7035(C)(5) requires that the "applicable policies of the Comprehensive Plan are met." Based upon the interpretations set

forth here, the Board finds that the applicant did not meet its burden of proof to show compliance with the following, applicable plan policies:

Policy 19

Policy 19, "Community Design," provides in material part as follows:

> "The County's Policy is to maintain a community design process which:
>
> "A. Evaluates and locates development proposals in terms of scale and related community impacts with the overall purpose being a complementary land use pattern. * * *" (Emphasis added.)

The first paragraph of the policy refers to "maintaining" a community design process, not establishing one. The Board therefore interprets this policy as neither merely aspirational, nor directed only at the development of land use regulations. Based upon the evidence in the record, the Board finds that the community in question here is a rural residential area in the MUA zone. It is characterized by the most dense concentration of residences on Sauvie Island, together with other low-rise uses. The proposed site is the highest point on the Island. It is visible from the immediately surrounding community, and from other parts of Multnomah County which overlook the Island.

The application is for a 16-story structure, including at its top three groups of four directional antennas, each 18 inches by 48 inches, and three 10-foot whip antennas. The evidence conclusively shows that this proposal is out of scale with the surrounding community in this portion of the Island; has an extremely adverse impact upon the community; and is disruptive of, not complementary to, the land use pattern which the county and its citizens have worked so hard to preserve. The Board therefore finds that the applicant has failed to meet its burden of proof as to this approval standard.

Policy 20

Policy 20, "Arrangement of Land Uses," provides as follows:

> "The county's policy is to support higher densities and mixed land uses within the framework of scale, location and design standards which:
>
> "A. Assure a complementary blend of uses;
>
> "B. Reinforce community identity;
>
> "C. Create a sense of pride and belonging; and

"D. Maintain or create neighborhood long term stability."

We interpret Policy 20 to apply directly here. It governs the "arrangement of land uses" in the county, a critical issue in this case. MCC .7035(C)(5) requires a showing that the "applicable policies of the Comprehensive Plan are met." There is nothing in the language of Policy 20 which renders it merely aspirational, or confines its application to the development of legislation. Further, Policy 20 supports the development of higher densities and mixed land uses only "within the framework of scale, location and design standards which * * * assure a complementary blend of uses; * * * reinforce community identity; * * * create a sense of pride and belonging; and * * * maintain or create neighborhood long term stability."

This policy is especially relevant in a case in which the applicant proposes to introduce a 16-story structure into a long-established rural residential community. We find that there is persuasive evidence in the whole record, adduced by neighbors and the Sauvie Island Conservancy, to show that the scale and location of the proposed tower will be destructive of the existing, complementary blend of uses; community identity; the sense of pride and belonging described in written and oral testimony by opponents; and the long term stability of what, until now, has been a very stable rural neighborhood.

Policy 31

Policy 31, "Community Facilities and Uses," provides in part:

> "The county's policy is to:
>
> "A. Support the siting and development of a full range of community facilities and services by supporting the location and scaling of community facilities and uses meeting the needs of the community and reinforcing community identity." (Emphasis added.)

The applicant conceded that Policy 31 applies specifically to quasi-judicial decisions. Hence, the applicant conceded that "reinforcing community identity" is an approval standard with which the applicant must demonstrate compliance herein. For all the many reasons set out by opponents (including the Sauvie Island Conservancy) in the record, we find that the proposed structure will not reinforce, but will harshly impact, the long-established identity of this community, recognized by the county in the comprehensive plan and in the consistent history of county land use decisions with respect to Sauvie Island.

Policy 31A also requires the proposal to meet the "needs of the community." We find that the persuasive evidence in the record is that Sauvie Island has adequate cellular service already. The applicant's own advertising materials, which were introduced into the record, show full-service coverage of the Island. Moreover, the memorandum from Carol Friz placed in the record by the applicant as Exhibit 1 to its Supplemental Submittal demonstrates the insufficiency of the applicant's analysis of alternative sites. Ms. Friz stated:

> "Other sites near the Sauvie Island bridge were considered but rejected as this area already receives coverage from a site further to the south."

The fact that said alternative sites already have coverage does not preclude their usefulness in providing coverage to the balance of Sauvie Island. Hence, the applicant appears to have conceded that alternative sites are available to satisfy the purported need.

Witnesses testified that they use cellular telephones on the Island without any problem; this includes phones with AT&T service. Greg Sprando, a Portland firefighter, member of the Sauvie Island Fire Department Board of Directors, and former chief of that department, wrote:

/ / /

"Our fire, police and emergency medical services do not rely on cellular telephone communication for any emergency service on Sauvie Island. Our emergency communications take place over a countywide 800 mHz radio system. To the best of my knowledge, the communication system has never failed, as long as I have been involved with the fire department. Proof that this tower is not necessary for primary communication services is the fact that the Island went through the flood of 1996 and 1997 without communication breakdown. Another example that cell phones are not relied on for emergency purposes is the fact that they have been removed from the majority of the Portland Police vehicles."

The Board finds it important to note that the proposed tower would serve only AT&T customers. It could set a precedent for any number of additional towers on Sauvie Island based upon the service provider's mere statement that its service on the Island is inadequate.

Finally, Policy 31K requires the county to:

"Provide for the Siting and Expansion of Community Facilities in a Manner Which Accords with the Other Applicable Policies of this Plan."

For all the reasons set forth above as to Policies 19 and 20, we find that the applicant's proposal does not comply with those "applicable policies."

II. Community Service Criteria under MCC 11.15.7035

A. Visual Impact upon the Environment

Section .7035(C)(3) requires compliance with the visual impact standard of .7035(B)(7), which provides in material part as follows:

"(7) Visual impact - The applicant shall demonstrate that the tower can be expected to have the least visual impact on the environment, taking into consideration technical, engineering, economic and other pertinent factors. * * *" (Emphasis added.)

As expressly set forth in .7035(B)(7), the required analysis of "least visual impact on the environment" is also to take into account "other pertinent factors." The Board interprets the "other pertinent factors" to depend upon the proposed location of the tower. We find that we have consistently recognized Sauvie Island as a unique scenic resource, and have consistently tried to preserve its visual features. In the case of this Sauvie Island site, "other pertinent factors" would thus include a reasonable analysis of other feasible locations, where the visual

impact on the residential community and on viewers elsewhere on and off the Island would be less. On the other hand, in industrial and commercial areas, such an analysis might not be necessary.

We find that the applicant failed to meet its burden of proof to demonstrate that the 160-foot tower in question would have the "least visual impact on the environment." In particular, it failed to submit adequate evidence concerning the visual impact which would occur at acceptable alternate sites.

The applicant conceded that other portions of the island are in the MUA zone, as well, and, like the proposed site, do not present the bar to tower location to which EFU lands are subject. The applicant stated that it "looked to sites zoned MUA," and [t]o limit the visual impact, AWS focused its efforts on sites which had tree cover sufficient to buffer the visual impact of the tower." The applicant did not specifically identify or discuss the other MUA sites in terms of whether they also provide ostensible tree cover.

More importantly, the Board finds that the applicant failed to compare the proposed site to the other MUA sites on Sauvie Island as to several other key characteristics. This issue was discussed in letters from Donna Matrazzo of the Sauvie Island Conservancy, Cherie Sprando, and Adrienne Keith, attached to the opponents' Post-Hearing Memorandum of October 1, 1997.

Ms. Matrazzo wrote on behalf of the Sauvie Island Conservancy. She emphasized that the selected site is the highest point on the island, maximizing its negative visual impact. The tower's visual impact is further compounded by the fact that it is located within the most densely populated MUA site on Sauvie Island.

Ms. Sprando is a realtor and island resident, residing on Charlton Road. She also pointed out that the Charlton Road MUA site is the most densely populated on the island. She stated that the Sauvie Island school and a church are also within this densely populated area. She observed that the trees above which the tower and antennas will protrude are visible from distant locations, including the Multnomah Channel, Portland's West Hills, and vehicles crossing the Sauvie Island Bridge.

Ms. Keith pointed out that there are 15 residences on Charlton Road, alone, around this site, and several more homes on gravel roads nearby. She emphasized the fact that there will be a significant visual impact upon those visiting the island on both of its major roadways, Sauvie Island Road and Reeder Road. There will also be an impact upon those using the Multnomah Channel, or visiting the Sauvie Island Market or Bybee Howell Territorial Park. These facilities, together with the school and

church, are frequently used for many community events on the island.

The Board also finds it noteworthy, as Ms. Keith pointed out, that the applicant's proposed tower would be crowned by a 10-foot antenna structure which would bloom out in all directions from the top of the applicant's monopole, above the tops of all of the trees on the site.

We find the above evidence to be persuasive in showing that the proposed tower will not have the least visual impact on the environment, but something closer to the most such impact. This violates the requirements of Section .7035(B)(7).

Finally, the Hearings Officer's finding of compliance with this section depended in large part upon the retention by the applicant and the property owner of several "healthy" fir trees sheltering portions of the site. The applicant would decide which trees are healthy and which are unhealthy, and could remove the latter in its sole discretion. (The record shows that many of the trees on the property were already flagged for removal by the owner.) We find that this condition of approval would be inadequate to assure the least visual impact on the environment.

B. Privacy, Setback and Parcel Size Requirements

1. The Proposed Site will not Preserve the Privacy of Adjoining Residences on Charlton Road.

Section .7035(C)(1) regulates siting of towers in districts other than urban residential districts. It requires the proposed tower to comply with the standards of Sections .7035(B)(4) and (5), with respect to abutting residential or public uses, including streets. Section .7035(B)(4)(a)(ii) requires an adequate setback to:

> "(ii) Preserve the privacy of adjoining residential property."

We find that the applicant did not meet its burden of proof as to this requirement. The revised site plan approved by the Hearings Officer moved the tower closer to, not further from, two neighbors protected by this provision. These are Gibbons and Martins, who reside on Charlton Road facing the site. Neighbors presented detailed evidence concerning the adverse impact the proposed tower would have upon these and other nearby properties. We find this evidence to be persuasive on this issue.

/ / /

/ / /

2. The Proposed Site is Inadequate to Contain a Tower Failure or Ice Fall.

Section .7035(B)(4)(a)(iii) requires siting which will:

> "(iii) Protect adjoining property from the potential impact of tower failure and ice falling from the tower by being large enough to accommodate such failure and ice on the site, based on the engineer's analysis required in MCC .7035 (D)(3)(d) and (e) * * *."

Sections .7035(D)(3)(d) and (e) require the following:

> "(d) Failure characteristics of the tower and demonstration that site and setbacks are of adequate size to contain debris.
>
> "(e) Ice hazards and mitigation measures which have been employed, including increased setbacks and/or deicing equipment."

The Hearings Officer interpreted these provisions as requiring no protection of the remainder of the grange property, but only of the small leased site. This interpretation would violate public policy as to the safety of residential properties, and we respectfully reject it.

We find that the site the applicant will lease from the grange for its 160-foot structure is only a 50 foot x 50 foot portion of a much larger parcel, located in a residential district. The greatest source of danger here would not be the monopole itself, but the antenna-bearing structure spreading out at the top, which will be ten feet high and of unknown circumference. Ice falling from or blowing off the antennas, and windblown antenna components, could pose a significant danger to the remainder of the grange property and adjoining residential properties. We do not find the applicant's "experts" to be credible or persuasive in this regard. We are simply not persuaded, for example, that even windblown ice from the antenna structure will be contained within the leased area of 2500 square feet.

C. Landscape Standards

Section .7035(B)(11)(a) sets out the landscaping requirements applicable to this proposal, including 25-foot wide buffers with evergreen plantings along the property boundaries adjoining streets and residences. We respectfully disagree with the Hearings Officer' finding of compliance in two particulars:

/ / /

1. In interpreting this section to apply only to residences in an urban residential district. There is no such language in this provision. At the very least, the evidence shows that a planted buffer would have to be established along Ursula Davis's property line adjoining the site. No such condition was imposed.

2. As previously discussed, in allowing the applicant to determine in its sole discretion whether existing fir trees are "unhealthy" and can be removed. This provides no assurance of compliance, and could promote the opposite result.

The Board thus finds that the applicant failed to meet its burden of proof as to this approval standard.

Dated this 3rd day of February, 1998.

By _____
Beverly Stein
Multnomah County Chair

Reviewed:SANDRA N. DUFFY
CHIEF ASSISTANT County Counsel
for Multnomah County, Oregon

By _____
Thomas Sponsler, County Counsel

BEFORE THE BOARD OF COUNTY COMMISSIONERS

FOR MULTNOMAH COUNTY, OREGON

Land Use Planning Case CS 1-97	)	
Affirming the Hearings Officer Decision	)	FINAL ORDER
Dated December 31,1997	)	98-12

WHEREAS, this matter is before the Multnomah County Board of Commissioners as an appeal, filed by Ursla Davis and Citizens United for Sauvie Island, of the Hearing Officer's decision in land use case CS 1-97; and

WHEREAS, after proper notice of a public hearing, the Board of County Commissioners accepted testimony and evidence presented at a de novo hearing on February 3, 1998, and the Board being fully advised; now, therefore,

IT IS HEREBY ORDERED that the Hearing Officer's decision dated December 31, 1997 in the matter of CS 1-97 is AFFIRMED.

Dated this 3rd day of February, 1998.

BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

Beverly Stein, Chair

REVIEWED:

THOMAS SPONSLER, COUNTY COUSEL
FOR MULTNOMAH COUNTY, OR

By _____
Sandra N. Duffy, Chief Assistant County Counsel

BEFORE THE HEARINGS OFFICER
FOR MULTNOMAH COUNTY, OREGON
FINAL ORDER

This Decision consists of Conditions, Findings of Fact and Conclusions.

December 31, 1997

CS 1-97 Conditional Use Request for Cellular Radio Communication Facility

Applicant seeks approval of a Conditional Use (CS) to construct a self supporting 150 foot tall cellular telephone communications monopole, with associated antennas, and to erect an electronics equipment building on the subject property.

The antennas are proposed to be mounted to the pole and to a triangular platform mounted atop the pole. The proposed total height, including the antenna, is 160 feet.

Location: 14443 N.W. Charlton Road

Description of Property: Tax Lot 7, Section 16, T2N R1W

Parcel Size: 3.54 acres

Site Size Requested: 50' x 50'

Property Owner: Sauvie Island Grange No. 840
18143 NW Reeder Road
Portland, Oregon 97231

Applicant: AT&T Wireless Services
Attn: Real Estate Mgr.
PO Box 1119
Portland, Oregon 97207

Comprehensive Plan: Multiple Use Agriculture

Present Zoning: MUA-20

PROCEDURAL ISSUES

1. Impartiality of the Hearings Officer

A. No ex parte contacts. I did not have any ex parte contacts prior to the hearing of this matter. I did not make a site visit.

B. No conflicting personal or financial or family interest. I have no financial interest in the outcome of this proceeding. I have no family or financial relationship with any of the parties.

2. Jurisdiction

At the commencement of the hearing I asked the participants to indicate if they had any objections to jurisdiction. The participants did not allege any jurisdictional or procedural violations regarding the conduct of the hearing. The applicant did however contend that the Federal Telecommunications Act limited the County's ability to regulate cell towers. The effect of the Federal Telecommunications Act will be discussed in the following section, of this order.

3. Federal Communications Act

The applicant has raised questions regarding Multnomah County's ability to regulate cell towers because of the Federal Telecommunications Act of 1996. Mr. Hammond, an attorney for AT&T Wireless Services, has submitted a memorandum of points and authorities in regards to the Telecommunications Act. Mr. Kleinman, an attorney for opponents, Citizens United for Sauvie Island Planning, has submitted a post-hearing memorandum that also discusses some issues raised by the Telecommunications Act of 1996 (the Act).

The Act did place some limitations on local regulation of cell towers. However, the Act did not pre-empt local zoning authority in regards to regulations of cell towers.

The Act contains four broad categories of standards in regards to local regulation of the placement of cellular phone towers and related equipment. The first set of provisions prohibits local authorities from using the zoning process to unreasonably discriminate against competing service providers. The Act also tries to stop local authorities from keeping wireless providers tied up in the hearing process. The Act requires local authorities to support their decisions with substantial evidence and written findings, and the Act also contains provisions directed at the health concerns associated with the radio emissions from wireless transmitters. The Act prohibits a local authority from considering possible effects of these emissions in its decision making. As long as the proposed facility meets Federal

Communications Commission Standards, the local authority may not consider any claim that an authorized wireless communications facility might cause local health problems. Westel-Milwaukee vs. Walworth County, 556 NW 2d 107 (1996).

As to the subject application, the Federal Telecommunications Act does not prevent the County from reviewing this application or asserting its local zoning authority.

The Act does specifically prohibit the County from considering possible effects of the emissions, provided that the facility meets the Federal Communications Commission Standards. Since the evidence clearly indicated that the facility met both the County and Federal emission standards, this may be a moot point. However, to the extent the opponents presented testimony on the issues concerning harmful emissions, that portion of the testimony will be disregarded.

There is "substantial evidence" in this matter. The Final Order and Findings of Fact document will provide specific written findings which will comply with the Federal standards set forth in the Act.

Another provision of the Act requires that local authorities make a decision on the application within a reasonable period of time. The applicant in this matter originally submitted an application in December of 1996. The following section of this opinion discusses the applicable time limitations. It is clear from the record, however, that the County has not "tied the applicant up in the hearings process". The delays have occurred as a result of the applicant revising the application twice. The applicant has also on the record, requesting continuances and stipulated to waivers of the applicable time limitations. Accordingly, I find that the County has acted within a reasonable period of time. I also find that the County's action in this matter does not in any way discriminate against competing service providers.

4. Application Timeline

This application has a fairly involved procedural history in terms of its various incarnations and submittals. Originally, an application was submitted in December of 1996. A revised application was submitted as Case No. CS 1-97 on March 13, 1997. Originally the Planning Department determined that application was complete on April 11, 1997. A hearing was originally scheduled for May 21, 1997. However, on May 13, 1997 the applicant's representative, Spencer Vale, Planning Consultant, contacted the Multnomah County Planning Department and asked the County to reschedule the public hearing on this conditional use application until the June public hearing date. Mr. Vale specifically agreed to stay the running of the 120-day time period. Although Mr. Vale, in his letter which is referenced in the file as Exhibit "A-9", did not quote the applicable ORS statute, I find that the

applicant did knowingly and intentionally agree to extend the 120-day timeline as provided in ORS 215.428. The stated reason for requesting the continuance was so that the applicant could have additional time to try and resolve many of the concerns raised in the staff report.

The hearing was rescheduled for June 18, 1997. On June 12, 1997, the applicant's representative, Spencer Vale, submitted a revised site plan to the County. A second revised application was also submitted. The revision completely relocated the proposed cell site. Planning Staff did not have sufficient time to prepare a new staff report or review the revision prior to the scheduled hearing date of June 18, 1997. On June 18, 1997, the public hearing was opened. The applicant was given the opportunity to withdraw the application submitted March 13, 1997 and proceed with a new application, or proceed with the application as submitted on March 13, 1997, or ask for a continuance and amend the application to reflect the new proposed site. The applicant chose to amend the application and stipulated during the course of the hearing that the 120-day period of time would be stayed until a hearing could be reset.

Since a substantial number of interested parties had signed up to testify at the hearing, those individuals were given the opportunity to testify or wait until they had an opportunity to review the amended application. Individuals who had signed the sign-up sheet chose to reserve their testimony until the matter could be rescheduled.

The applicant stipulated that the 120-day "clock" would not run during the period of the continuance. The matter was rescheduled for August 20, 1997.

On July 15, 1997, the County Planning Department received a revised application narrative relating to the relocated cell site.

Although the County originally determined that the application was complete as of April 11, 1997, I find that the change in the application on July 15, 1997 was so substantial that the determination previously made that the application was complete as of April 11, 1997 must be withdrawn. I find that the application was not complete until July 15, 1997. On June 18, 1997 the running of the clock was again stayed until the next hearing could be scheduled, which hearing was scheduled and held on August 20, 1997. Accordingly, as of July 15, 1997, when the application became complete, a stay of the 120-day clock was already in place. At the hearing on August 20, 1997, both the applicant's attorneys and the attorneys for the opponents, Citizens United for Sauvie Island Planning, stipulated that the 120-day period was again stayed and extended while the attorneys prepared post-hearing memorandums and submittals. The applicant's reply memorandum was received at 3:20 p.m. on October 17, 1997. Accordingly, I find that as of that time the 120-day clock started to run. As of this point in time, the

clock has 14 days in October, 30 days in November, and 31 days in December on it. As of this date, the clock has 75 days on it.

BURDEN OF PROOF

In this proceeding, the burden of proof is upon the applicant.

FACTS

1. Applicant's Proposal

The applicant seeks approval to site a 150 foot tall cellular telephone communications monopole with associated antennas, direct an electronic equipment building on the subject property in the MUA-20 zone. A cellular telephone tower is a community service use, pursuant to Section 11.15.7020(A)(15)(a) of the Multnomah County Zoning Ordinance. Pursuant to Section 11.15.2132 of the Multnomah County Zoning Ordinance relating to the MUA-20 zone, community service uses can be cited or sited as a conditional use pursuant to the provisions of MCC .7005 through .7041.

The proposal involves the construction of a monopole with a triangular platform mounted atop the pole. Antennas will be attached to the triangular platform. The total height, including antennas, is 160 feet. The antenna associated with the facility are as follows:

(1) There will be three groups of four directional antenna. these antenna measure about 18" by 48" and are affixed to the triangular platform atop the pole.

(2) There will be 3 whip antenna. This type of antenna is approximately 2.6" in diameter and 10' in length.

The area being leased by the applicant for the proposed cell site is a 50' x 50' space approximately 225 feet west of NW Charlton Road and 80 feet from the north lot line. It is situated within a stand of trees.

The electronics equipment building, which is a 12' by 28' single story concrete aggregate (10' tall) structure, is placed approximately 100 feet from and parallel to the northerly lot line. The monopole is situated at the northerly end of the equipment shelter and is approximately 90 feet from the north lot line.

Access to the cell site will be via an existing driveway servicing the fire station. The roadway, with turn around, will extend to the cell site. Two code required off-street spaces are provided in this existing parking area. These spaces will be for

the use of the company vehicle providing periodic maintenance. After the cell site is on line, this maintenance, based on a system wide average, will occur about twice a month.

No one is at the site on a daily basis as the equipment is operated by remote control from the applicant's main offices in downtown Portland.

The site plan submitted depicts the monopole and equipment building on this site as well as other features. The site plan is attached hereto as Exhibit "A" and is incorporated by this reference herein.

2. Site and Vicinity Information

The site is a 50' x 50' portion of a parcel 3.54 acres in size located at 14443 NW Charlton Road on Sauvie Island. The comprehensive plan designation for the subject parcel is Multiple Use Agriculture. The present zoning is MUA-20.

To the south and on the same parcel is a fire station. To the south of that is Sauvie Island School.

To the north and east also within the MUA-20 zone area are residential uses. The nearest dwelling is about 275 feet to the north. To the west is a church and residential use.

This small MUA-20 zoned area is surrounded by a large EFU zoned area dedicated to a variety of agricultural activities.

3. Testimony and Evidence Presented

A. The exhibits listed in Exhibit List CU 1-97, which is attached hereto as Exhibit "B" were reviewed by the Hearings Officer and received in reference to this application. Exhibit "B" contains materials submitted up to and including the date of the hearing. Subsequently, within the initial seven day period following the hearing, while the record was still open, four letters were received from opponents. Those letters are listed as exhibits on the attached Exhibit "C".

In addition, the attorneys for the applicant and the opponents submitted post-hearing memorandum, which are also listed as exhibits on the attached Exhibit "C".

At the August 20, 1997 hearing, Bob Hall testified for the County, summarized the history of the application and his staff report, and described the site and surrounding property.

B. The applicant was represented by Frank Hammond, a partner in O'Donnell, Ramis, Crew, Corrigan and Bachrach, LLP, attorneys for the applicant. Mr. Hammond discussed some of the legal issues relating to the Federal Telecommunications Act and applicable legal precedents in regards to the imposition of conditions in land use actions.

C. Spencer Vail, Planning Consultant, addressed the applicable ordinance criteria on behalf of applicant.

D. Lynn Trupp, the Master of the Sauvie Island Grange, spoke in support of the application. The applicant proposes to site the cell tower on property it is leasing from the Sauvie Island Grange.

E. Betty Franklin, another member of the Grange, also spoke in support of the application.

F. Jean Fears spoke in support of the application, indicating that the proposed cellular tower provided a needed community service.

G. Yvonne Cieloha also spoke in support of the application, indicating that the availability of cellular service provides a needed service when the Sauvie Island is isolated by flood or emergency.

H. Shirley Larson suggested that the cellular tower was needed as a matter of public safety.

I. Mary Anne Wolfe appeared and submitted written materials indicating that cellular towers were safe and are needed in case of emergency to provide cellular phone service.

J. Jeffrey Kleinman, attorney, appeared in opposition to the application, on behalf of Citizens United for Sauvie Island Planning. Mr. Kleinman addressed evidentiary and factual issues and the applicable criteria in the matter.

K. Donna Matrazzo testified in opposition to the application, indicating that the island's rural character should be protected and the application denied.

L. Bill Reid spoke in opposition to the application and submitted a letter and photographs.

M. Adrienne Keith, whose property is in close proximity to the proposed tower site, spoke in opposition to the application. Ms. Keith indicated that there

were more appropriate locations for a cellular tower site and that there are currently no problems with AT&T reception on the island.

N. Ursula Davis owns property to the west of the cellular tower site. She spoke in opposition to the property cellular tower, indicating that it did not meet safety, noise and visual impact standards.

O. Greg Sprando appeared in opposition to the proposed site and raised questions regarding potential soil liquefaction during an earthquake and questioned the safety of the tower siting. Mr. Sprando also raised a number of other questions and concerns.

P. Craig Hull also spoke in opposition to the application reaffirming points raised by earlier opponents.

Q. Tom Givens also spoke in regards to the application and suggested that AT&T could more appropriately piggy back its cellular antennas with other sited cellular towers in other locations.

R. Cherie Sprando also spoke in opposition to the application and inquired as to why AT&T was proposing to incur the expense of siting a cellular tower with the proposed location when there were only approximately 800 homes on Sauvie Island. She also indicated that the current cellular service received from AT&T on Sauvie Island is adequate.

S. Jeff Hook also spoke in opposition to the application.

T. On September 10, 1997, the applicant submitted the first supplemental submittal.

U. On October 1, 1997, Jeff Kleinman submitted a post-hearing memorandum on behalf of Citizens United for Sauvie Island Planning.

V. On October 17, 1997, Frank Hammond of attorney for applicant AT&T Wireless Services, submitted the applicant's reply memorandum.

W. In addition to the testimony presented at the hearing, significant amounts of written and photographic evidence was also submitted.

STANDARDS AND CRITERIA. ANALYSIS AND FINDINGS OF FACT

A. Community Service Approval Criteria:

The following approval criteria of MCC 11.15.7035(C) apply to applications for radio and transmission towers in districts other than urban residential districts (Transmission towers are exempted from the general approval criteria of MCC 11.15.7015):

(1) The site is of a size and shape sufficient to provide the following setbacks:

(a) For a tower located on a lot abutting an urban residential district or a public property or street, except a building-mounted tower, the site size standards of MCC .7035(B)(4) and (5) are met as to those portions of the property abutting the residential or public uses.

ANALYSIS:
The area leased for the Cell Site itself does not abut a public street. The parent parcel, however, does abut NW Charlton, a public street. The parcel does not abut an urban residential district. Therefore the code provisions of (B)(4) and (5) are deemed to apply:

(4) Site Size and Tower Setbacks.

(a) The site shall be of a size and shape sufficient to provide an adequate setback from the base of the tower to any property line abutting an urban residential district, public property or public street. Such setback shall be sufficient to:

(i) Provide for an adequate vegetative, topographic or other buffer as provided for in MCC.7035(B)(7) and (11).

(7) Visual impact - The applicant shall demonstrate that the tower can be expected to have the least visual impact on the environment, taking into consideration technical, engineering, economic and other pertinent factors. Towers clustered at the same site shall be of similar height and design, whenever possible. Towers shall be painted and lighted as follows:

(a) Towers 200 feet or less in height shall have a galvanized finish or be painted silver. If there is heavy vegetation in the immediate area, such towers shall be painted green from base to treeline, with the remainder painted silver or given a galvanized finish.

(b) [Note: This standard applies only to towers over 200 feet in height].

(c) Towers shall be illuminated as required by the Oregon State Aeronautics Division. However, no lighting shall be incorporated if not required by the Aeronautics Division or other responsible agency.

(d) Towers shall be the minimum height necessary to provide parity with existing similar tower supported antenna, and shall be freestanding where the negative visual effect is less than would be created by use of a guyed tower.

ANALYSIS:

Prior to discussing the specific requirements set forth above, it would be appropriate to review the organization of the Multnomah County Code in relation to the regulation of cell towers. Section 11.15.7035(B) sets forth the standards for the siting of new cellular transmission towers in urban residential districts. The Code is designed to discourage siting towers in urban residential districts. Section 11.15.7035 (C) sets forth the regulations and approval criteria for new transmission towers in districts other than urban residential districts. Where a transmission tower is sited in a district that is adjacent to an urban residential district or public property, or a street, some provisions of the urban residential district approval criteria become applicable. For example, .7035(C)(1)(a) utilizes provisions in the urban residential district standards as approval criteria where a tower in a district other than an urban residential district abuts an urban residential district or public property or street.

It is important to note that the standard set forth in MCC .7035(B)(4)(a) as incorporated by .7035(C)(1)(a) specifically provides that the reference point for the setback is the property line abutting an urban residential district, public property or public street. The proposed site and parcel in question do not abut an urban residential district. One of the property lines of the parent parcel abuts a public street. Accordingly, the standards in paragraph .7035(A)(i) through (iv) are only applicable to the property line that abuts the public street. There are no property lines that abut an urban residential district.

In construing Section MCC .7035(B)(7), which is made applicable by MCC .7035(B)(4)(a)(i), it is necessary to review the visual impact from the property line in question, which is the Charlton Road property line. Four subcriteria under Section MCC .7035(B)(7) all contain lighting or illumination standards that affect the possible visual impact of the tower. The least visual impact standard is a qualified one. The Code provision reviews visual impact subject to technical, engineering, economic and other pertinent factors.

The opponents submitted a great deal of testimony about the location of the parcel for the proposed site, arguing that more suitable locations existed. The standard in question speaks to tower design and location on applicant's parcel. It does not call for a comparison of alternative sites. Such a requirement can not be imposed by a hearings officer. In choosing an MUA site over an urban residential district, the applicant has

already given deference to the Code preference for locating towers outside of urban residential districts.

The applicant has already agreed to relocate the tower on the parcel in order to place it in close proximity to a grove of trees, thereby minimizing the visual impact. The applicant has also presented technical evidence indicating the need for a tower of the proposed height.

The tower will improve cellular service on the island. Cellular service involves a line of sight technology. The tower must be high enough to "see other towers". By placing the tower on higher ground, as AT&T Wireless Services proposes, it avoids having to request approval for an even taller pole. The proposed location also places the base ground equipment on high ground, above potential flood waters.

In viewing this site from the applicable property line, the one on Charlton, a finding can be made that the applicant has demonstrated that the tower can be expected to have the least visual impact on the environment, taking into consideration technical, engineering, economic and other pertinent factors. The applicant has also indicated an ability to comply with the standards for painting and lighting of the tower. For towers of less than 200 feet the Code requires the tower be painted green from the base to the tree line. The applicant has indicated a willingness to paint the tower any color the County desires.

In other similarly situated facilities, i.e., within a stand of trees, brown rather than green is a color that blends well with the trees. The applicant will work with the County during Design Review to select the most appropriate paint for the facility as both the pole and antenna can be painted any color without affecting the operation of the facility.

Staff has suggested that the tower should be disguised to appear as a natural tree. However, the Code requires that a portion of the tower be painted silver or be given a galvanized finish. It is questionable whether a "galvanized" artificial tree is going to look more realistic than the proposed design for the cellular tower.

Compliance with the colors set forth in the Code, green within the tree line and silver above, will be adhered to by the applicant, unless alternative colors are approved in design review.

The letter from the Oregon Aeronautics Division (OAB), states that the monopole "should" have a steady burning red light. This is a comment only and is not based on a regulation requiring such lighting. It is not mandatory that the suggested lighting be made a condition of approval. The Code language clearly states that no lighting shall be incorporated if not required by the OAB.

The FAA indicates that no lighting or hazard markings are required and that the proposal meets all regulations imposed by that agency.

A steady red burning light could be intrusive to the surrounding area. Accordingly, no condition requiring such lighting will be attached to the approval.

The applicant has presented significant evidence indicating that the cellular tower is needed to provide service to the area and to rectify service problems. Several of the opponents testified that there were no problems with service in the area. Testimony was also submitted indicating that the enhanced service would be of benefit to the emergency service providers in the area, such as the fire department. Although there was significant testimony on each side, I do find that the applicant submitted substantial evidence that the monopole is the minimum height necessary to provide service to the area, and the applicant further complies with the standard that the tower be freestanding. Accordingly, a finding can be made that the applicant has met the approval criteria set forth in Section MCC .7035(B)(7).

MCC.7035(B)(11) Landscaping - Landscaping at the perimeter of the property which abuts streets, residences, public parks or areas with access to the general public other than the owner of such adjoining property shall be required, as follows:

(a) For towers 200 feet tall or less, a buffer area no less than 25 feet wide shall commence at the property line. At least one row of evergreen shrubs shall be spaced not more than five feet apart. Materials should be of a variety which can be expected to grow to form a continuous hedge at least five feet in height within two years of planting. At least one row of evergreen trees or shrubs, not less than four feet height at the time of planting, and spaced not more than 15 feet apart, also shall be provided. Trees and shrubs in the vicinity of guy wires shall be of a kind that would not exceed 20 feet in height or would not affect the stability of the guys, should they be uprooted, and shall not obscure visibility of the anchor from the transmission building or security facilities and staff.

(b) For towers more than 200 feet tall, a buffer area not less than 40 feet wide shall be provided at the property line with at least one row of evergreen shrubs spaced not more than five feet apart which will grow to form a continuous hedge at least five feet in height within two years of planting; one row of deciduous trees, not less than 1 ½ inch caliper measured three feet from the ground at the time of planting, and spaced not more than 20 feet apart; and at least one row of evergreen trees, not less than four feet at the time of planting, and spaced not more than 15 feet apart. Trees and shrubs in the vicinity of guy wires

shall be of a kind that would not exceed 20 feet in height or would not affect the stability of the guys, should they be uprooted, and shall not obscure visibility of the anchor from the transmission building or security facilities and staff.

(c) In lieu of these standards, the approval authority may allow use of an alternate detailed plan and specifications for landscape and screening, including plantings, fences, walls and other features designed to screen and buffer towers and accessory uses. The plan shall accomplish the same degree of screening achieved in (a) and (b) above, except as lesser requirements are desirable for adequate visibility for security purposes and for continued operation of existing bona fide agricultural or forest uses, including but not limited to produce farms, nurseries, and tree farms.

ANALYSIS:

Code Section MCC 7035(B)(11) relating to landscaping is applicable only to that portion of the "property" which abuts streets. Subparagraph (a) relating to landscaping appears to contemplate a relatively small site in that it discusses trees and shrubs in the vicinity of guy wires. However, the criteria itself refers to the "property line", not the boundaries of the "site". Accordingly, this criteria will be viewed as being applicable to the parent parcel.

Subparagraph (b), by its terms, is not applicable to the subject application since (b) is only applicable to towers more than 200 feet tall.

Subparagraph (c) is an alternative standard, in lieu of (a) or (b). The applicant would have the option of providing a detailed landscaping plan that could be approved, provided that the plan accomplished the same degree of screening achieved in subparagraph (a).

Originally the applicant proposed to address criteria (c) and to propose a buffer area only upon the subject site.

The amount of native vegetation on the site and adjacent parcels plus the height of the trees near the monopole site provide a buffer for the proposed use. The applicant submitted enhanced photos showing how the monopole would utilize these existing features to mask the visual impact of the monopole.

The applicant contended that there does not appear to be a benefit in planting a 25' wide buffer strip along Charlton as required by the Code. The site is over 225' from the public roadway and is already screened by existing vegetation. Staff did discuss the benefit of such a planting.

MCC 11.15.7035(B)(11)(a) would require a 25 foot wide area of vegetation capable of achieving a height of five feet within two years of planting along the entire Charlton Road frontage of the parcel. The applicant has indicated that in fact the Sauvie Island Grange is an "applicant", as the Multnomah County Code defines the term. It is clear that the Grange has consented to and does approve of the application. Furthermore, the applicant AT&T Wireless Services has submitted evidence indicating that the Grange has agreed to the provision of buffer landscaping and retention of trees in the grove and the stipulation to a 32 foot setback between the tower and any future structures. Accordingly, conditions will be imposed requiring landscaping in accordance with subparagraph (a) of Section MCC .7035(B)(11). Accordingly, a finding can be made that the applicant has met this approval criteria, and it is unnecessary to discuss alternative proposals under MCC .7035(B)(11)(c).

(ii) Preserve the privacy of adjoining residential property.

ANALYSIS:
The second subcriteria under Section MCC .7035(B)(4)(a) is designed to preserve the privacy of adjoining residential property in urban residential districts. Again, it is important to note that the standard of paragraph 4(a) specifically refers to urban residential districts. The proposed site and parcel in question do not abut an urban residential district. The residences in the area are located in the MUA zone, not in an urban residential district. It is questionable whether this criteria applies at all to residences in an MUA zone. The MUA zone allows residential uses, but it is not an urban residential district. The intent of Section 4(a) is to protect residences in an urban residential district.

The evidence indicates that the existing trees and additional landscaping to be installed on the cell site will preserve the privacy of the nearby residences. In addition, this will be an unmanned facility. Maintenance personnel will only visit the site about twice a month. The landscaping, secluded location of the site, and lack of personnel will protect the privacy of residential property to the extent required by the Code.

(iii) Protect adjoining property from the potential impact of tower failure and ice falling by being large enough to accommodate such failure and ice on the site, based on the engineer's analysis required by MCC.7035(D)(3)(d) and (e).

MCC.7035(D)(3)(d) and (e) read as follows:

(d) Failure characteristics of the tower and demonstration that site and setbacks are of adequate size to contain debris.

(e) Ice hazards and mitigation measures which have been employed, including increased setbacks and/or deicing equipment.

ANALYSIS:
The applicant has submitted substantial credible evidence from professional engineers, using conservative standards, indicating that the likelihood of a structural failure is highly improbable. The design of the structure is such that if there is a structural failure, the tower will fold and buckle, rather than topple over.

The engineering design information also indicates that ice fall will be confined to a 20 foot radius around the base of the monopole. The amount of falling ice would be no more than experienced on power poles and telephone lines. The applicant has further provided evidence that there is no evidence or history of monopole failure from natural causes.

Staff contended that residential property, consisting of the parent parcel, must also be protected from potential monopole failure. However, I do not agree. The standard applies to adjoining property, not the subject property. The applicant is AT&T Wireless Services, and has made application with the consent and agreement of the Sauvie Island Grange No. 840. The subject parcel size is 3.54 acres.

The MUA property adjoining the subject parcel is adequately protected. The applicant has thoroughly addressed these approval criteria and a finding can be made that adjoining property is protected from the potential impact of tower failure and ice falling.

(iv) Protect the public from NIER in excess of the standards of MCC.7035 (F)(1)

ANALYSIS:
Multnomah County adopted what is considered by many to be a model ordinance dealing with radio and television towers and antennas. The ordinance lists the emission levels for the various uses and lists levels of concern of known health hazards.

These emissions are calculated in microwatts per centimeter squared (mW/cm2). Readings are taken at the lot line and at the closest residential use to determine compliance.

Exhibit 16 shows the calculations prepared and certified by the applicant's RF engineers which establish the measurement at the nearest lot line, 90 feet to the north, to be 0.151 mW/cm2. The reading at the closest dwelling, 275 feet to the north, is 0.063 mW/cm2 .

These readings are well below any levels of health concern as determined by the Code.

In addition, the Federal Telecommunications Act of 1996, amongst other things, required the FCC to adopt standards for radio frequency emissions from wireless communication facilities. In a rule making procedure, the FCC adopted standards effective August 1,

1996. These standards are virtually the same as those reflected in the County Code. This indicates the proposed use is also in compliance with the new Federal standards.

There is no interference with household electronic equipment caused by proximity to cellular towers. The applicant has been providing cellular service in the Portland area for over 10 years.

Carol A. Friz, a licensed professional engineer in electrical engineering, has certified Exhibit 16 to be true. That exhibit indicates the measured levels to be 0.151 mW/cm2 at the nearest property line and 0.063 mW/cm2 at the closest dwelling. Both of those measurements are below the 0.50 mW/cm2 and 0.5867 mW/cm2 maximums allowed by Table 1 in MCC .7035 (F). Therefore, the proposal would satisfy the NIER standards of MCC .7035(F)(1).

There is evidence in the file indicating that some of the citizens opposed the cellular tower because of health concerns relating to electromagnetic emissions. However, the Telecommunications Act of 1996 specifically prohibits the County from considering possible effects of the emissions provided that the facility meets the Federal Communication Commission Standards. Since the evidence clearly indicates that the facility meets both the County and Federal emissions standards, this may be a moot point. However, the testimony submitted in opposition to the tower based on emissions standards will be disregarded.

A finding can be made that the applicant has met the standards of MCC 11.15.7035(B)(4)(iv).

(b) MCC .7035(B)(4)(b) Site Size and Tower Setbacks: A site is presumed to be of sufficient size when it:

(i) Meets the requirements of (a) (iii) and (iv) above,

ANALYSIS:
As indicated above, I have found that the proposed tower complies with the criteria of (a)(iii) and (iv) above.

(ii) Provides a setback equal to 20 percent of the height of the tower to any property line abutting an urban residential district, public property, or public street, and

ANALYSIS:
The Cell Site does not abut an urban residential district. The access drive does abut a public street, NW Charlton, some 225 feet to the southeast.

The proposed monopole is 150 feet in height; 160 feet if the antennas are included. 20% of the maximum height is 32'. This minimum setback requirement has been met.

(iii) Provides a setback equal to or exceeding the rear yard setback required for the adjoining property where the adjoining property is not in an urban residential district nor a public property or a public street.

ANALYSIS:
The adjoining property is not in an urban residential district.

MCC .7025(A) establishes the minimum yards for Conditional Uses. The applicable yards for the proposed use are:

1. Front 30 feet
2. Side 20 feet
3. Rear as required in the district;

   in the MUA-20 zone the rear yard is 30 feet

In reviewing the standards of this criteria, I find that the setbacks must be measured from the property line. The reference to adjoining property is to surrounding property, not to the parent parcel. The "site" is not being partitioned off from the parent parcel, it remains an integral part of the larger property. These approval criteria are clearly designed to protect adjacent properties, not the parent parcel. It is clear that the proposed location of the tower meets the required setback standards.

(c) Placement of more than one tower on a lot shall be permitted, provided all setback, design and landscape requirements are met as to each tower. Structures may be located as close to each other as technically feasible, provided tower failure characteristics of the towers on the site described in MCC .7035(D)(3)(d) will not lead to multiple failures in the event that one fails.

ANALYSIS:
This subsection is not applicable to this request.

(d) Structures and uses associated with the transmission use other than the transmission tower shall be located to meet the setbacks required in MCC .7025.

ANALYSIS:
The electronics equipment building is situated outside of the required yards which are set forth above. This criteria is met.

(5) MCC .7035(B)(5) Guy Setback

ANALYSIS:
There are no guys associated with this proposal. The applicant's tower is a self-supporting monopole.

(2) The required setbacks shall be improved to meet the landscaping standard of MCC .7035(B)(11) to the extent possible within the area provided.

ANALYSIS:
The applicant has indicated that it can provide the required landscaping. Conditions will be attached to the approval to ensure that it does so.

(3) The visual impact standard of MCC .7035(B)(7) is met.

ANALYSIS:
A finding has been made earlier that the applicant meets this standard, and that discussion is incorporated by this reference herein.

(4) The parking requirement of MCC .7035(B)(9) is met, provided additional parking may be required in accordance with MCC .6100 to .6148 if the site serves multiple purposes.

ANALYSIS:
MCC .7035(B)(9) requires a minimum of two parking spaces shall be provided on each site; an additional parking space for each two employees shall be provided at the facilities which require on-site personnel.

The applicant has an agreement with the Grange for two parking spaces adjacent to the Cell Site and to continue to provide such space if and when the Grange site is developed.

Historically, only one van is used by the maintenance technician during the periodic maintenance. The parking standard is met.

(5) The applicable policies of the Comprehensive Plan are met.

Comprehensive Plan Policies:

The following policies, which were discussed in the Staff Report, will be reviewed in this Opinion. Comprehensive Plan Policies 10, 13, 14, and 16 were briefly reviewed in the

Staff Report and found inapplicable, not relevant at this stage of the process, or not review criteria. I concur.

"POLICY NO. 19: COMMUNITY DESIGN

THE COUNTY'S POLICY IS TO MAINTAIN A COMMUNITY DESIGN PROCESS WHICH:

A. EVALUATES AND LOCATES DEVELOPMENT PROPOSALS IN TERMS OF SCALE AND RELATED COMMUNITY IMPACTS WITH THE OVERALL PURPOSE BEING A COMPLEMENTARY LAND USE PATTERN.

B. EVALUATES INDIVIDUAL PUBLIC AND PRIVATE DEVELOPMENTS FROM A FUNCTIONAL DESIGN PERSPECTIVE, CONSIDERING SUCH FACTORS AS PRIVACY, NOISE, LIGHTS, SIGNING, ACCESS, CIRCULATION, PARKING, PROVISIONS FOR THE HANDICAPPED AND CRIME PREVENTION TECHNIQUES.

C. MAINTAINS A DESIGN REVIEW PROCESS AS AN ADMINISTRATIVE PROCEDURE WITH AN APPEAL PROCESS, AND BASED ON PUBLISHED CRITERIA AND GUIDELINES. CRITERIA AND GUIDELINES SHALL BE DEVELOPED SPECIFICALLY FOR COMMERCIAL, INDUSTRIAL AND RESIDENTIAL DEVELOPMENTS.

D. ESTABLISHES CRITERIA AND STANDARDS FOR PRE-EXISTING USES, COMMENSURATE WITH THE SCALE OF THE NEW DEVELOPMENT PROPOSED.

E. EVALUATES INDIVIDUAL PUBLIC AND PRIVATE DEVELOPMENT ACCORDING TO DESIGN GUIDELINES IN THE APPLICABLE ADOPTED COMMUNITY PLAN."

ANALYSIS:

Policy 19 is a general County Comprehensive Plan policy which has previously been implemented through the use of a design review process. The policy is written strictly in terms of "process" that requires the County to develop a community design standard, evaluate it, and establish standards and criteria. Compliance with the standards and criteria adopted by the County in accordance with the requirements of Policy 19 will constitute compliance with this Comprehensive Plan provision by the applicant.

"POLICY NO. 20: ARRANGEMENT OF LAND USES

THE COUNTY'S POLICY IS TO SUPPORT HIGHER DENSITIES AND MIXED LAND USES WITHIN THE FRAMEWORK OF SCALE, LOCATION AND DESIGN STANDARDS WHICH:

A. ASSURE A COMPLEMENTARY BLEND OF USES;

B. REINFORCE COMMUNITY IDENTITY;

C. CREATE A SENSE OF PRIDE AND BELONGING; AND

D. MAINTAIN OR CREATE NEIGHBORHOOD LONG TERM STABILITY."

ANALYSIS:
Multnomah County Comprehensive Plan Policy No. 20 is a general plan policy which utilizes policy as opposed to approval criteria wording. The policy specifically requires the County to support higher densities and mixed land uses. The County has done so by allowing community service uses such as the cellular tower, in the MUA zone. Compliance by the applicant with the Multnomah County Zoning Ordinance provisions will constitute compliance with this plan policy.

Plan policies which are approval criteria are clearly worded as such. For example, the following policy, number 22, specifically indicates that "The County shall require a finding prior to the approval of legislative or quasi-judicial action that the following factors have been considered: . . .". Such wording is consistently used in the Multnomah County Comprehensive Plan to distinguish policies which are to be considered as approval criteria and those policies which are to be considered general principles utilized to guide implementing land use regulations such as the Multnomah County Zoning Ordinance. I find that Policy No. 20 is not an approval criteria.

"POLICY NO. 22, ENERGY CONSERVATION.

THE COUNTY'S POLICY IS TO PROMOTE THE CONSERVATION OF ENERGY AND TO USE ENERGY RESOURCES IN A MORE EFFICIENT MANNER. IN ADDITION, IT IS THE POLICY OF MULTNOMAH COUNTY TO REDUCE DEPENDENCY ON NON-RENEWABLE ENERGY RESOURCES. THE COUNTY SHALL REQUIRE A FINDING PRIOR TO THE APPROVAL OF LEGISLATIVE OR QUASIJUDICIAL ACTION THAT THE FOLLOWING FACTORS HAVE BEEN CONSIDERED:

A. THE DEVELOPMENT OF ENERGY-EFFICIENT LAND USES AND PRACTICES;
B. INCREASED DENSITY AND INTENSITY OF DEVELOPMENT IN URBAN AREAS, ESPECIALLY IN PROXIMITY TO TRANSIT CORRIDORS AND EMPLOYMENT, COMMERCIAL AND RECREATIONAL CENTERS;
C. AN ENERGY-EFFICIENT TRANSPORTATION SYSTEM LINKED WITH INCREASED MASS TRANSIT, PEDESTRIAN AND BICYCLE FACILITIES;
D. STREET LAYOUTS, LOTTING PATTERNS AND DESIGNS THAT UTILIZE NATURAL ENVIRONMENTAL AND CLIMACTIC CONDITIONS TO ADVANTAGE.
E. FINALLY, THE COUNTY WILL ALLOW GREATER FLEXIBILITY IN THE DEVELOPMENT AND USE OF RENEWABLE ENERGY RESOURCES."

ANALYSIS:
The proposed facility is an unmanned facility. There will be no water or sanitary sewer requirements. Electric and telephone services are already available at the site. No extension of service is required. Energy consumption will be minimal. The typical cell site uses about 1500 kw per month, which is similar to that used by a single family home.

The proposed use will not be a traffic generator. After the initial construction period, only periodic checks by a technician will be required, approximately once or twice a month.

A finding can be made that the applicant's proposal is energy efficient. Subparagraphs B, C and D of the approval criteria set forth above are not applicable to this community service use in that the use does not impose traffic or development impacts, create streets, and is not in an urban area. A finding can be made that the factors set forth in Policy No. 22 have been given the appropriate consideration, given the nature of the proposed use.

"POLICY NO. 31: COMMUNITY FACILITIES AND USES

THE COUNTY'S POLICY IS TO:

A. SUPPORT THE SITING AND DEVELOPMENT OF A FULL RANGE OF COMMUNITY FACILITIES AND SERVICES BY SUPPORTING THE LOCATION AND SCALING OF COMMUNITY FACILITIES AND USES MEETING THE NEEDS OF THE COMMUNITY AND REINFORCING COMMUNITY IDENTITY.

B. ENCOURAGE COMMUNITY FACILITIES SITING AND EXPANSION AT LOCATIONS REINFORCING ORDERLY AND TIMELY DEVELOPMENT AND EFFICIENT PROVISION OF ALL PUBLIC SERVICES AND FACILITIES.

C. ENCOURAGE LAND USE DEVELOPMENT WHICH SUPPORT THE EFFICIENT USE OF EXISTING AND PLANNED COMMUNITY FACILITIES.

D. SUPPORT THE DEVELOPMENT OF A UNIFIED APPROACH TO LONG RANGE COMMUNITY FACILITIES PLANNING AND CAPITAL INVESTMENT PROGRAMMING IN MULTNOMAH COUNTY.

E. CLASSIFY COMMUNITY FACILITIES ACCORDING TO THEIR FUNCTION AND SCALE OF OPERATIONS.

SCALE	TYPE OF FACILITIES
MAJOR REGIONAL	COMMUNITY COLLEGE
	PRIVATE COLLEGE
	UNIVERSITY
	LIVE-IN TRAINING FACILITIES
	AIRPORT
	GOVERNMENT SERVICES
	ADMINISTRATIVE
	HUMAN
	JUSTICE
	HOSPITAL
MINOR REGIONAL	CEMETERIES
	REGIONAL PARKS
	BOAT LAUNCHES
	MARINAS
	RECYCLING CENTER

SCALE	TYPE OF FACILITIES
	HALF-WAY HOUSES
	GENERAL AVIATION AIRPORTS
MAJOR COMMUNITY	FIRE STATION
	PRECINCT STATIONS
	LODGES
	AMBULANCE SERVICES
	HIGH SCHOOL
	MUSEUM
	TRANSIT STATIONS
	GOVERNMENT SERVICES
	ADMINISTRATIVE
	HUMAN
	JUSTICE
	COMMUNITY RECREATION CENTER
	RECREATION CENTER
MINOR COMMUNITY	LIBRARY
	GRADE SCHOOL
	MIDDLE SCHOOL
	PARKS
	NEIGHBORHOOD MEETING ROOMS
	RESIDENTIAL CARE FACILITY
	CLINICS
	CONVALESCENT HOMES
	CHURCHES
	NEIGHBORHOOD RECREATION CENTER
COMMUNITY SERVICE FOUNDATIONS	ELECTRICAL GENERATION, DISTRIBUTION AND TRANSMISSION
	NATURAL GAS STORAGE
	SEWAGE TREATMENT PLANTS
	TELEPHONE, COMMUNICATION STATION AND SWITCHING
	WATER STORAGE
	RADION & TELEVISION TRANSMITTERS"

SOLID WASTE MANAGEMENT

Solid waste is a regional concern requiring regional solutions. Multnomah County recognizes METRO's responsibility and authority to prepare and implement a solid waste management plan and the METRO's procedures for siting a Sanitary Landfill and will participate in the procedures as appropriate.

The County recognizes that METRO may find a public need for a Regional Sanitary Landfill and that such a Landfill, wherever located, will entail some adverse impacts. The County further recognizes that environmental impacts are also within the review authority of other agencies, such as the Department of Environmental Quality.

The County shall provide for approval Criteria which emphasize site suitability, protection through mitigation of impacts, and reclamation. The Zoning Code shall contain appropriate and detailed implementing language for this Policy. This Policy and all applicable Plan Policies are implemented through Section 11.15.7045 to .7070 of the Zoning Code.

F. **LOCATE COMMUNITY FACILITIES ON SITES WITH AVERAGE SITE GRADES CONSISTENT WITH A PROJECT'S SCALE AND IMPACTS. SIT SLOPE REQUIREMENTS BY SCALE ARE:**

SCALE	AVERAGE SITE SLOPE STANDARD
MAJOR REGIONAL	6%
MINOR REGIONAL	6%
MAJOR COMMUNITY	10%
MINOR COMMUNITY	10%
COMMUNITY SERVICE FOUNDATION	20%

FOR SITES WITH AVERAGE SLOPES STEEPER THAN THE STANDARD THE DEVELOPER MUST BE ABLE TO DEMONSTRATE THAT THROUGH ENGINEERING TECHNIQUES ALL LIMITATIONS TO DEVELOPMENT AND THE PROVISION OF SERVICES CAN BE MITIGATED.

G. **SUPPORT THE LOCATION OF COMMUNITY FACILITIES ON EXISTING TRANSPORTATION SYSTEMS WITH VOLUME CAPACITIES AND MODAL MIX SPLITS AVAILABLE AND APPROPRIATE TO SERVE PRESENT AND FUTURE SCALES OF OPERATION. VEHICULAR ACCESS REQUIREMENTS BY SCALE OF FACILITY ARE:**

SCALE	VEHICULAR ACCESS STANDARDS
MAJOR REGIONAL	ACCESS TO A FREEWAY INTERCHANGE DIRECT ACCESS TO A COUNTY MAJOR ARTERIAL. PUBLIC TRANSIT AVAILABLE WITHIN 1/4 MILE.
MINOR REGIONAL	DIRECT ACCESS TO A COLLECTOR STREET AND NO ROUTING OF TRAFFIC THROUGH LOCAL NEIGHBORHOOD STREETS PUBLIC TRANSIT AVAILABLE WITHIN 1/4 MILE

SCALE	VEHICULAR ACCESS STANDARDS
MAJOR COMMUNITY	DIRECT ACCESS TO A COLLECTOR STREET AND NO ROUTING OF TRAFFIC THROUGH LOCAL NEIGHBORHOOD STREETS
	PUBLIC TRANSIT AVAILABLE WITHIN 1/4 MILE
MINOR COMMUNITY	DIRECT ACCESS TO A COLLECTOR STREET AND NO ROUTING THROUGH LOCAL NEIGHBORHOOD STREETS
	PUBLIC TRANSIT AVAILABLE WITHIN 1/4 MILE
COMMUNITY SERVICE FOUNDATIONS	TRUCK TRAFFIC WILL NOT BE ROUTED THROUGH LOCAL NEIGHBORHOOD STREETS

H. RESTRICT THE SITING OF COMMUNITY FACILITIES IN LOCATIONS WHERE SITE ACCESS WOULD CAUSE DANGEROUS INTERSECTIONS OR TRAFFIC CONGESTION CONSIDERING THE FOLLOWING:
   1. ROADWAY CAPACITIES.
   2. EXISTING AND PROJECTED TRAFFIC COUNTS.
   3. SPEED LIMITS.
   4. NUMBER OF TURNING POINTS.

I. SUPPORT COMMUNITY FACILITIES SITING AND DEVELOPMENT AT SITES OF A SIZE WHICH CAN ACCOMMODATE THE PRESENT AND FUTURE USES AND IS OF A SHAPE WHICH ALLOWS FOR A SITE LAYOUT IN A MANNER WHICH MAXIMIZES USER CONVENIENCE, ENERGY CONSERVATION, AND PEDESTRIAN AND BICYCLE ACCESS TO AND WITHIN THE SITE.

J. PROMOTE COMPATIBLE DEVELOPMENT AND MINIMIZE ADVERSE IMPACTS OF SITE DEVELOPMENT ON ADJACENT PROPERTIES AND THE COMMUNITY THROUGH THE APPLICATION OF DESIGN REVIEW STANDARDS CODIFIED IN MCC 11.05.7805-11.05.7865.

K. PROVIDE FOR THE SITING AND EXPANSION OF COMMUNITY FACILITIES IN A MANNER WHICH ACCORDS WITH THE OTHER APPLICABLE POLICIES OF THIS PLAN."

ANALYSIS:

A. The proposed cell site will provide for enhanced cellular telephone service in the area. It will allow the location of a community service use on Sauvie Island.

The opponents to the proposed use contend that the proposed structure will not reinforce "community identity". However, a significant portion of the opponents' testimony dealt with aesthetic issues. One component of the Sauvie Island identity is the fact that it is an island. Testimony was submitted by proponents of the application that during a flood or other emergency, residents of Sauvie Island rely on cellular communications. Enhanced emergency services and safety issues seem to be factors that would support such a community service use as consistent with community identity.

Paragraph A of Comprehensive Policy No. 31 is a general policy statement. It does not state that the County will prohibit uses that are not needed by the community and do not reinforce community identity. Rather, the policy is a simple statement in support of community facilities meeting the needs of the community and reinforcing community identity. Accordingly, a finding can be made that the applicant's proposal adequately addresses and is consistent with Paragraph A of the Multnomah County Comprehensive Plan Policy No. 31.

B. The applicant points out that all public services and facilities necessary for the operation of the proposed cell site are already available at the site. Accordingly, this community facility is proposed to be sited at a location which reinforces the orderly and timely development and efficient provision of public services and facilities.

C. This facility does not require water or sewer services and is not a traffic generator. Accordingly, a finding can be made that the proposed application supports the efficient use of existing and planned community facilities.

D. No expenditure of County funds is proposed for the subject application. Approval of the application would allow AT&T Wireless Services to implement its long range plans for the provision of cellular service to Sauvie Island.

E. This paragraph requires the County to classify community facilities according to their function and scale of operations and the scale and list of facilities is actually included within Paragraph E of this plan policy. A cellular tower would fall within the classification of Community Service Foundations.

F. The proposed site does not exceed the maximum slope allowed of 20%.

G. The location of community facilities and appropriate vehicular traffic access standards that for Community Service Foundations, truck traffic will not be routed through local neighborhood streets. The proposal is consistent with the at requirement.

H. The traffic impact of the proposed development is so minor as to create no impact. Access will be taken from an existing driveway. The site access will not cause a dangerous intersection. Accordingly, a finding can be made that the applicant meets this criteria.

I. The facility is sited on the parent parcel in a manner that will not curtail future development of the site or of the balance of the parent parcel. There will be no need for pedestrian or bicycle access to the facility, since it is in fact an unmanned facility.

J. This subsection of the Comprehensive Plan Policy No. 31 is met through the implementation of the design review process.

K. The proposed cell site has been sited in a manner that complies with other applicable policies of the Comprehensive Plan. It makes appropriate use of the existing terrain and physical characteristics of the site. It incorporates buffers and screening, utilizing landscaping and tree cover.

A finding can be made that the Comprehensive Plan Policy 31 has been met by the proposed application.

"POLICY 34: TRAFFICWAYS
INTRODUCTION
Trafficways are a major part of the transportation system, and include seven general types of streets (local, collector transit corridor streets, scenic routes, arterial streets, freeways and transitways) which serve the land uses in the County and function to move people and goods. The traffic volumes given below serve as guidelines for the functional classification. Traffic volumes are one aspect, but not the only aspect, of classification - other facts include the character of the area, future land use, possible or existing traffic intrusion on neighborhoods, circulation patterns, and topographic constraints. . . ."

ANALYSIS:
This Comprehensive Plan policy deals primarily with the County's need to develop an efficient trafficway system, and strategies for system design. This section does not provide approval criteria for the subject application.

"POLICY NO. 36, TRANSPORTATION DEVELOPMENT REQUIREMENTS.
THE COUNTY'S POLICY IS TO INCREASE THE EFFICIENCY AND AESTHETIC QUALITY OF THE TRAFFICWAYS AND PUBLIC TRANSPORTATION BY REQUIRING:
A. THE DEDICATION OF ADDITIONAL RIGHT-OF-WAY APPROPRIATE TO THE FUNCTIONAL CLASSIFICATION OF THE STREET GIVEN IN POLICY 34 AND CHAPTER 11.60.

B. THE NUMBER OF INGRESS AND EGRESS POINTS BE CONSOLIDATED THROUGH JOINT USE AGREEMENTS,
C. VEHICULAR AND TRUCK OFF-STREET PARKING AND LOADING AREAS,
D. OFF-STREET BUS LOADING AREAS AND SHELTERS FOR RIDERS,
E. STREET TREES TO BE PLANTED,
F. A PEDESTRIAN CIRCULATION SYSTEM AS GIVEN IN THE SIDEWALK PROVISIONS, CHAPTER 11.60,
G. IMPLEMENTATION OF THE BICYCLE CORRIDOR CAPITAL IMPROVEMENTS PROGRAM,
H. BICYCLE PARKING FACILITIES AT BICYCLE AND PUBLIC TRANSPORTATION SECTIONS IN NEW COMMERCIAL, INDUSTRIAL AND BUSINESS DEVELOPMENT, AND
I. NEW STREETS IMPROVED TO COUNTY STANDARDS IN UNINCORPORATED COUNTY MAY BE DESIGNATED PUBLIC ACCESS ROADS AND MAINTAINED BY THE COUNTY UNTIL ANNEXED INTO A CITY, AS STATED IN ORDINANCE 313."

ANALYSIS:

Staff has indicated that engineering services would require a five-foot dedication along the entire frontage of the parent parcel with Charlton Road. Pursuant to Policy No. 36(B), the County has a policy of requiring dedication of additional right of way appropriate to the functional classification of the street given in Policy 34 and Chapter 11.60. The staff report does not indicate the functional classification of Charlton Road. However, given the very limited extent of traffic to be generated by the proposed use, I do not find that the County has demonstrated that the impact of the proposed use would be proportionate to the exaction requested. Accordingly, I would find that any dedication of right of way along Charlton Road could be deferred to such time as the balance of the parent parcel develops.

"POLICY NO. 37, UTILITIES.

THE COUNTY'S POLICY IS TO REQUIRE A FINDING PRIOR TO APPROVAL OF A LEGISLATIVE OR QUASI-JUDICIAL ACTION THAT:

WATER AND DISPOSAL SYSTEM

A. THE PROPOSED USE CAN BE CONNECTED TO A PUBLIC SEWER AND WATER SYSTEM, BOTH OF WHICH HAVE ADEQUATE CAPACITY; OR
B. THE PROPOSED USE CAN BE CONNECTED TO A PUBLIC WATER SYSTEM, AND THE OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY (DEQ) WILL APPROVE A SUBSURFACE SEWAGE DISPOSAL SYSTEM ON THE SITE; OR
C. THERE IS AN ADEQUATE PRIVATE WATER SYSTEM, AND THE OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY (DEQ) WILL APPROVE A SUBSURFACE SEWAGE DISPOSAL SYSTEM; OR

D. THERE IS AN ADEQUATE PRIVATE WATER SYSTEM, AND A PUBLIC SEWER WITH ADEQUATE CAPACITY.

DRAINAGE

E. THERE IS ADEQUATE CAPACITY IN THE STORM WATER SYSTEM TO HANDLE THE RUN-OFF; OR

F. THE WATER RUN-OFF CAN BE HANDLED ON THE SITE OR ADEQUATE PROVISIONS CAN BE MADE; AND

G. THE RUN-OFF FROM THE SITE WILL NOT ADVERSELY AFFECT THE WATER QUALITY IN ADJACENT STREAMS, PONDS, LAKES OR ALTER THE DRAINAGE ON ADJOINING LANDS.

ENERGY AND COMMUNICATIONS

H. THERE IS AN ADEQUATE ENERGY SUPPLY TO HANDLE THE NEEDS OF THE PROPOSAL AND THE DEVELOPMENT LEVEL PROJECTED BY THE PLAN; AND

I. COMMUNICATIONS FACILITIES ARE AVAILABLE.

ANALYSIS:

The facility will not require water or sewer connections. It is an unmanned facility, containing electronic equipment. Appropriate service providers have indicated the availability of service. Accordingly, a finding can be made that the applicant meets the criteria set forth in Utilities Policy No. 37.

"POLICY NO. 38, FACILITIES.

THE COUNTY'S POLICY IS TO REQUIRE A FINDING PRIOR TO APPROVAL OF A LEGISLATIVE OR QUASI-JUDICIAL ACTION THAT:

SCHOOL

A. THE APPROPRIATE SCHOOL DISTRICT HAS HAD AN OPPORTUNITY TO REVIEW AND COMMENT ON THE PROPOSAL.

FIRE PROTECTION

B. THERE IS ADEQUATE WATER PRESSURE AND FLOW FOR FIRE FIGHTING PURPOSES; AND

C. THE APPROPRIATE FIRE DISTRICT HAS HAD AN OPPORTUNITY TO REVIEW AND COMMENT ON THE PROPOSAL.

POLICE PROTECTION

D. THE PROPOSAL CAN RECEIVE ADEQUATE LOCAL POLICE PROTECTION IN ACCORDANCE WITH THE STANDARDS OF THE JURISDICTION PROVIDING POLICE PROTECTION.

ANALYSIS:

A finding can be made that the appropriate school district has had an opportunity to review and comment on the proposal. The Sauvie Island Fire District has adequate pressure and flow for fire fighting purposes, and the subject parcel can receive adequate police protection from the Multnomah County Sheriff. Accordingly, the applicant has met this criteria.

"POLICY NO. 40, DEVELOPMENT REQUIREMENTS.

THE COUNTY'S POLICY IS TO ENCOURAGE A CONNECTED PARK AND RECREATION SYSTEM AND TO PROVIDE FOR SMALL PRIVATE RECREATION AREAS BY REQUIRING A FINDING PRIOR TO APPROVAL OF LEGISLATIVE OR QUASI-JUDICIAL ACTION THAT:

A. PEDESTRIAN AND BICYCLE PATH CONNECTIONS TO PARKS, RECREATION AREAS AND COMMUNITY FACILITIES WILL BE DEDICATED WHERE APPROPRIATE AND WHERE DESIGNATED IN THE BICYCLE CORRIDOR CAPITAL IMPROVEMENTS PROGRAM AND MAP.

B. LANDSCAPED AREAS WITH BENCHES WILL BE PROVIDED IN COMMERCIAL, INDUSTRIAL AND MULTIPLE FAMILY DEVELOPMENTS, WHERE APPROPRIATE.

C. AREAS FOR BICYCLE PARKING FACILITIES WILL BE REQUIRED IN DEVELOPMENT PROPOSALS, WHERE APPROPRIATE."

ANALYSIS:
As set forth in the approval criteria, there are no pedestrian or bicycle paths that would require dedication of property for connection purposes, no bicycle parking is provided or needed, since the only visitors to the site will be the technicians in a small van or service truck. Accordingly, a finding can be made that the appropriate level of consideration has been given to Multnomah County Comprehensive Plan Policy No. 40 and that no pedestrian or bike paths, benches or bicycle parking facilities would be appropriate.

(6) The NIER standards of (F) are met.

ANALYSIS:
As indicated earlier in this Opinion, the NIER standards are met. Accordingly, a finding can be made that this approval criteria has been complied with.

(7) The agency coordination standards of MCC .7035(B)(14) are met.

(a) A statement form the FAA that the application has not been found to be a hazard to air navigation under Part 77, Federal Aviation Regulation or a statement that no compliance is required.

ANALYSIS:
Attached to the staff report on file in this matter is the FAA form 7450, stating that no lighting or hazard markings are required.

(b) A statement from the Oregon State Aeronautics Division that the application has been found to be in compliance with the applicable regulations of the Division, or a statement that no such compliance is required.

ANALYSIS:
Attached to the staff report on file in this matter is a copy of the Oregon State Aeronautics Division response recommending that a steady red light be attached to the top of the tower.

(c) A statement from the FCC that the application complies with the regulations of the Commission or a statement that no such compliance is necessary.

ANALYSIS:
Attached to the staff report on file in this matter is a copy of a portion of the applicant's FCC license which authorizes the applicant to provide cellular telephone services in the Portland-Vancouver area.

(8) Accessory uses - For a proposed tower in the EFU, MUF, CFU, MUA, and UF districts, the restrictions on accessory uses in MCC .7035(B)(12) shall be met.

MCC .7035(B)(12) stipulates: **Accessory uses shall include only such buildings and facilities necessary for transmission function and satellite ground stations associated with them, but shall not include broadcast studios, offices, vehicle storage areas, nor other similar uses not necessary for the transmission function.**

Accessory uses may include studio facilities for emergency broadcast purposes or for other special, limited purposes found by the approval authority not to create significant additional impacts nor to require construction of additional buildings or facilities exceeding 25 percent of the floor area of other permitted buildings.

ANALYSIS:
The applicant's proposal includes only the monopole and a building to house the electronic equipment. No other uses of concern in this section will be involved at this site.

Hearings Officer Decision:

Based on the findings stated above, and the substantial evidence presented, the request by Applicant to site a cellular radio communication facility as a Community Service Conditional Use in the MUA-20 zone is hereby approved subject to the following conditions:

Conditions of Approval:

1. Pursuant to MCC 11.15.7035(B)(11)(a), prior to obtaining a building permit, the applicant shall provide a 25-foot wide area of evergreen vegetation capable of achieving a height of five feet within two years of planting along the entire Charlton Road frontage of the parcel.

2. No buildings or structures shall be placed within 32 feet of the tower, other than an electronics equipment building to be located within the area currently leased from the Sauvie Island Grange.

3. The applicant shall retain all healthy Douglas fir trees within 32 feet of the tower, other than those trees marked for removal in Exhibit 2 of the application. This condition does require the applicant to replace any trees which fall, and allows the applicant to remove any trees reasonably determined by an arborist to present a health or safety risk, provided that such trees are replaced with healthy trees. Prior to removal of trees, other than those marked for removal in the application, the applicant will submit an arborist's report to the County Planning Department for review and approval.

4. Applicant shall comply with all applicable Oregon Department of Environmental Quality noise standards in the operation of any emergency electrical generating equipment or other equipment at the tower site.

5. The height of the tower with antenna, shall not exceed 160 feet.

6. No approved or required landscaping shall be removed in order to locate the accessory building or equipment or at any time the cellular tower is being utilized pursuant to this conditional use approval other than that allowed in condition 3. If any such landscaping is removed, the applicant shall be required to replace it with an equal quantity and type of landscaping on the site in a manner to achieve the original intent or to achieve sufficient screening of the facilities.

7. In the event that the use of the wireless communication facility is discontinued for a period of six (6) consecutive months or longer, it will be deemed abandoned. The applicant or property owner is hereby required to remove all abandoned facilities within ninety (90) days from the date of the abandonment. In addition to any remedies available under the Multnomah County Zoning Ordinance for violating a condition of a Conditional Use approval, the failure to remove an abandoned facility will be deemed a public nuisance subject to the applicable penalties therefor.

8. The approval of this Community Service Use shall expire two years from the date of the issuance of the Board Order in the matter, or two years from the date of the final resolution of subsequent appeals, whichever date is later, unless the project is completed as approved or the Planning Director determines that substantial construction or development has taken place.

9. This approval shall be for the specific use or uses approved, together with the limitations and conditions set forth herein. Any change of use or modification shall be subject to approval at a public hearing.

10. The applicant shall be required to provide two parking spaces on the site.

11. The applicant shall be required to comply with the design review approval process or such other process that Multnomah County may utilize in lieu of design review.

12. The applicant shall hold harmless and indemnify Multnomah County, its Board of Commissioners, its other officers and employees, from claims of any nature arising or resulting from any claims for damage or injury to property or persons arising by reason of work on the subject property, or operation of the cellular communications tower, or any work done pursuant to this order.

13. The maintenance of the landscaping and screening trees is a continuing requirement of this order. If the trees required on the parent parcel or site which have been planted or currently exist as landscaping or screening are removed in violation of the provisions of this order, it will be grounds for rescission of this Community Service Conditional Use approval.

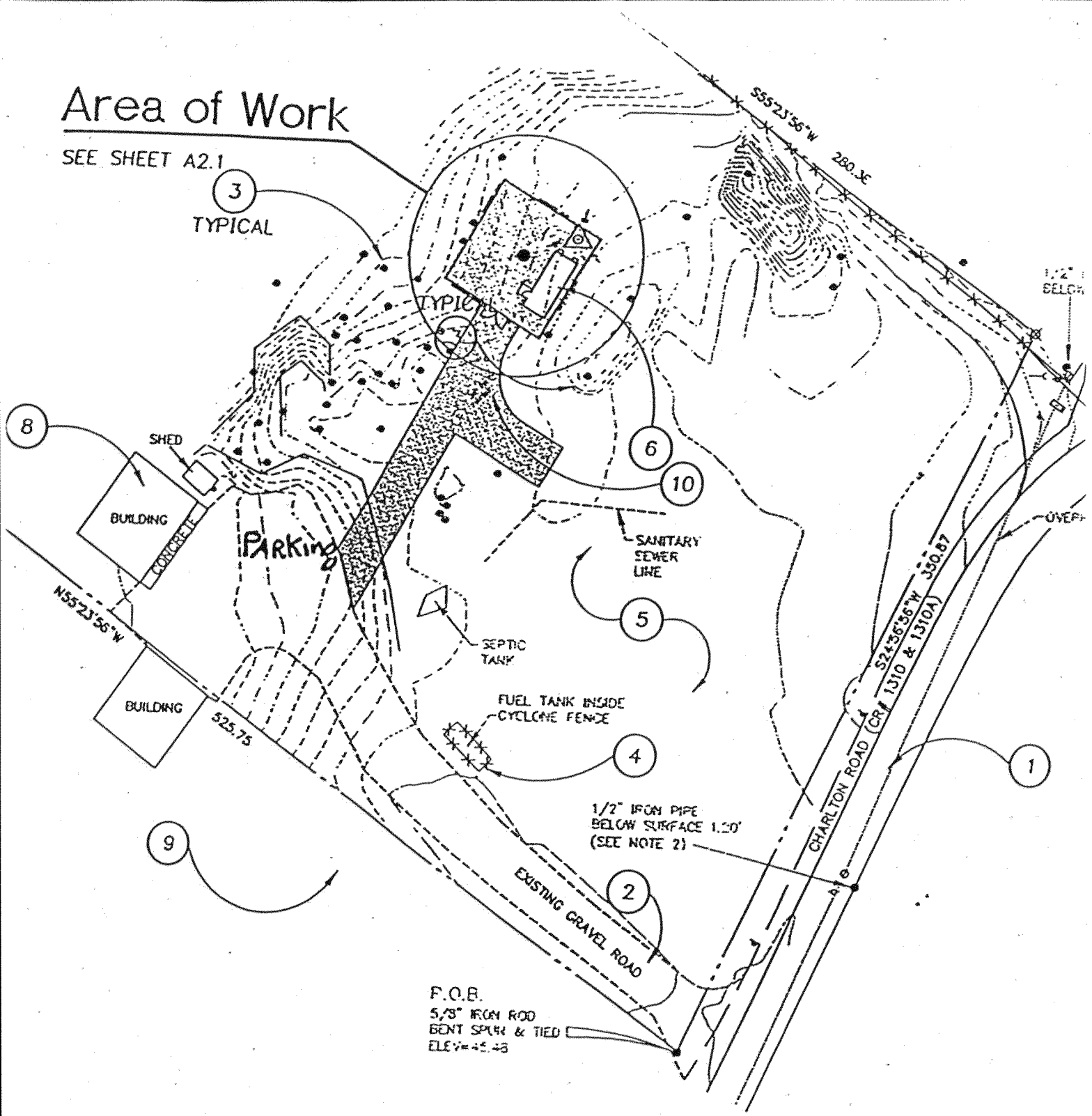
14. The applicant will comply with the standards of MCC .7035(B)(7)(a) regarding painting of the tower.

CONCLUSION

Based on the findings and the substantial evidence cited or referenced herein, I conclude that the application for the Community Service Use to site a cellular tower satisfies all applicable approval criteria provided that the Conditions of Approval are complied with. Accordingly, Community Service Use approval is hereby granted to the area designated on the site plan which is attached hereto as Exhibit "A", subject to the Conditions of Approval contained herein.

IT IS SO ORDERED, this 31st day of December, 1997.

JOAN M. CHAMBERS, Hearings Officer



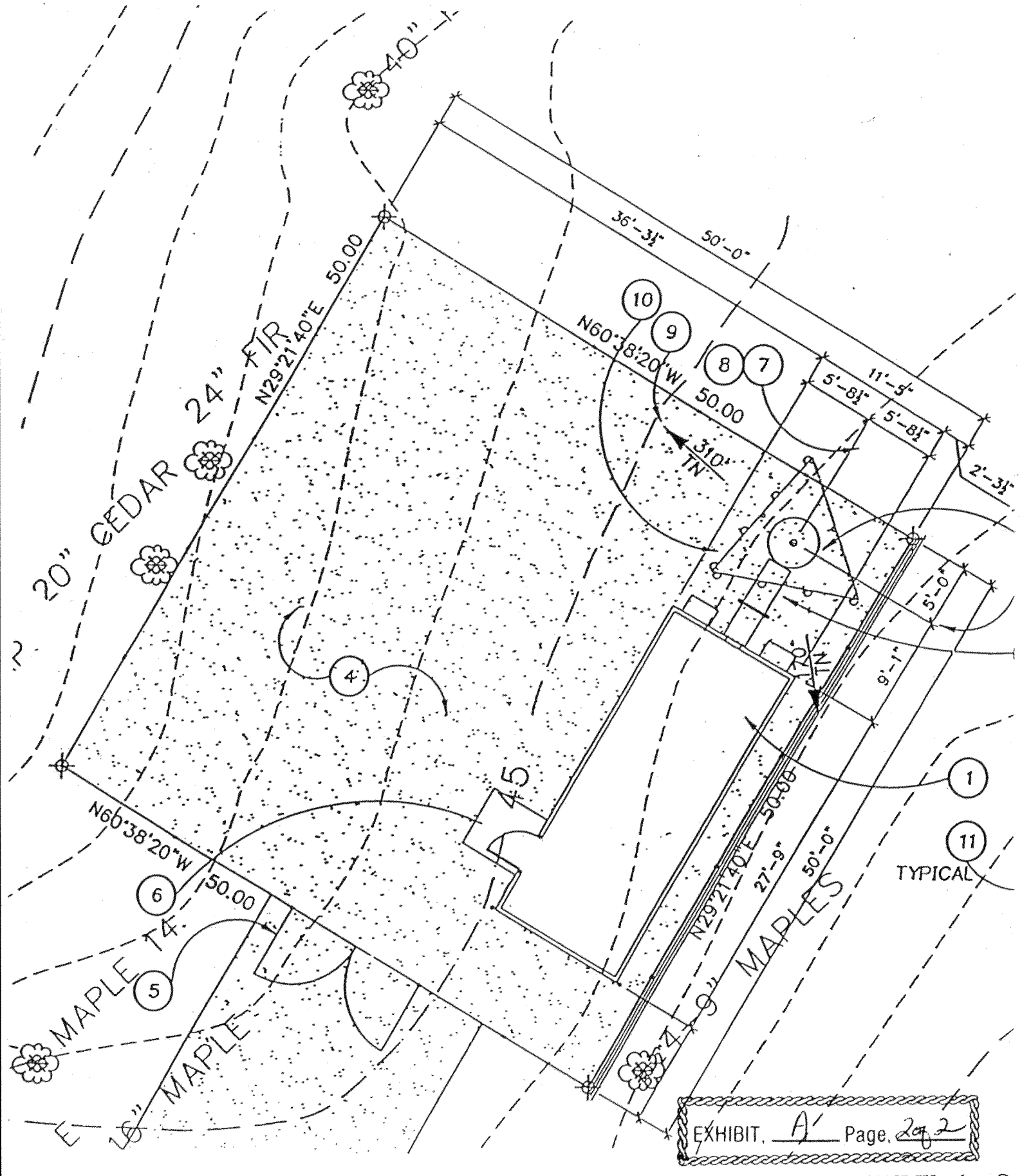
Area Plan

1"=60.0'

EXHIBIT A Page 1 of 2

AT&T W

Project:	Sheet Title:	Revisions:	Date:
Sauvie Island Cell Site Site II	Area Plan and Site Plan		Drawn by: Checked



AT&T Wireless S

Project:	Sheet Title:	Revisions:	Date:	
uvie Island Cell Site	Site and		Drawn by:	Checked by:
e II	Shelter Plan		T.K.	

List of Exhibits
CU 1-97

"A" Applicant's Submittals

- A1 General Application form and service provider forms (2 pages)
- A2 Applicant's 11/22/96 narrative
- A3 A & T printout and ownership map
- A4 Lease agreement between AT&T and Sauvie Island Grange No. 840
- A5 Site and vicinity plans
- A6 Aerial photograph and overlay
- A7 Revised application and general application form (39 pages)
- A8 Revised site plans (4 pages)
- A9 Letter from Spencer Vail requesting rescheduled hearing
- A10 Affidavit of Posting
- A11 Letter from Spencer Vail revising tower location and responses to selected Code criteria (5 pages, one aerial photograph, plus 4 maps)
- A12 Second revised application
- A13 Revised site plans

"B" Notification Information

- B1 Pre-Application Notice (3 pages)
- B2 Notice of Public Hearing (4 pages)
- B3 Notice of rescheduled hearing
- B4 Notice of second rescheduled hearing

"C" Multnomah County Items

- C1 Pre-Application meeting notes
- C2 Memo from John Dorst regarding dedication requirements (4 pages)
- C3 Staff Report
- C4 Larson Utility brochure

"D" Public Comment

- D1 Letter from Molly Hill
- D2 Letter from Cherie Sprando
- D3 Letter from Thomas E. Ruhl (2 pages)
- D4 Letter from Carolyn Rubenstein
- D5 Letter from Lori & Jason Sawyer
- D6 Letter from Jean Fears
- D7 Letter from Stuart Sandler
- D8 Letter from Ursla R. Davis
- D9 22 postcards from Island residents
- D10 Letter from Sauvie Island School Board (2 pages)
- D11 Letter from Jeanne Charlton O'Mara
- D12 Letter from David Ruud, MD (2 pages)

EXHIBIT B Page 1 of 2

D13 Letter from Bill Reid (12 pages)
D14 Letter from Craig Hill (2 pages)
D15 Letter from Jim Charlton
D16 Letter from Tom Gibbons (2 pages)
D17 Letter from Cherie Sprando (6 pages)
D18 Letter from Arlene Dick (11 pages)
D19 Letter from Ursula Davis (9 pages)
D20 Letter from Dave Sprando (5 pages)
D21 Letter from Adrienne Keith (7 pages)
D22 Letter from Peter Davis DVM
D23 Letter from Mary Hollabaugh
D24 Letter from Mary Anne Wolfe (2 attachments)
D25 Fax from Sheilah Toomey
D26 Letter from Lori Sawyer

"E" **Documents Submitted at 8/20/97 Public Hearing**

E-1 letter
E-2 memo from Hammond

E-3 Property value vs cell tower report.
E-4 Aerial of Island
E-5 Map of Sanibel etc.
E-6 Letter from Jean Fears.
E-7 Kleinman memo
E-8 Letter from Rickl of SI school.
E-9 SI Conservancy letter
E-10 " " ~~Aerial~~ photo with tower impact
E-11&12 Bill Reid photos
F-1,2.. Letters submitted by Kleinman
G-1,2... Book of photos.
E-13 Adria Keith photo
E-14 Greg Sprando photo
E-15 Hull presentation of letter (Tom)
E-16 ~~Atty~~ Charlton photo

EXHIBIT B Page 2 of 2

EXHIBIT "C"

1. Letter of August 26, 1997 from Jeffrey L. Kleinman, enclosing:
2. Letter of Jim Charlton bearing a fax transmittal date of August 25, 1997
3. Letter of Adrienne Keith dated August 23, 1997;
4. Letter of Ursula R. Davis dated August 22, 1997; and
5. Letter of Cherie Sprando dated August 25, 1997;
6. Applicant's First Supplemental Submittal;
7. Post-Hearing Memorandum of Citizens United for Sauvie Island Planning dated October 1, 1997;
8. Applicant's Reply dated October 17, 1997.