

BEFORE THE BOARD OF COUNTY COMMISSIONERS

FOR MULTNOMAH COUNTY, OREGON

In the Matter of CU 20-93, Review of a )  
Decision of the Hearings Officers )  
Denying a non-resource related )  
single family residence, for property )  
at 31705 SELusted Road )

FINAL ORDER 93-372

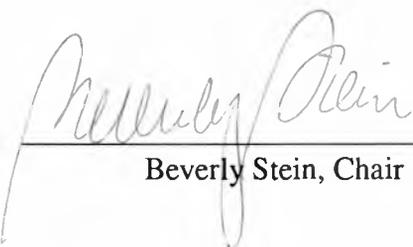
On September 28, 1993, the Board of County Commissioners conducted a public hearing on the record plus additional testimony in the above entitled matter. Based on the evidence and argument of the parties, it is ORDERED:

- 1) The Decision of the Hearings Officer is reversed, and
- 2) The following Findings and Conclusions are adopted and made a part of this order.

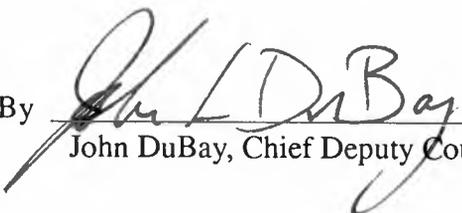


BOARD OF COUNTY COMMISSIONERS  
MULTNOMAH COUNTY, OREGON

November 10<sup>th</sup>, 1993

By   
Beverly Stein, Chair

REVIEWED  
LAURENCE KRESSEL, COUNTY COUNSEL  
FOR MULTNOMAH COUNTY, OREGON

By   
John DuBay, Chief Deputy County Counsel

**Decision of the Board of County Commissioners CU 20-93**

September 28, 1993

**Conditional Use Request  
(Non-Resource Related Single Family Dwelling)**

Applicant requests Conditional Use approval for a non-resource related single family dwelling on a 3acre Lot of Record in the EFU zoning district.

The Hearing Officer denied this request in a decision dated August 5, 1993. The applicant filed a Notice of Review and requested permission to submit new evidence in addition to the record before the Hearings Officer. The Board held a public hearing on the appeal on September 28, 1993.

**Location:** 31705 SE Lusted Road

**Legal:** Tax Lot '32', Section 17, T1S, R4E, 1992 Assessor's Map

**Site Size:** 3 acres

**Size Requested:** Same

**Property Owner:** Betilue Lundbom  
31847 SE Lusted Road  
Gresham, OR 97080

**Applicant:** Same

**Comprehensive Plan:** Agriculture

**Present Zoning:** EFU, Exclusive Farm Use District

**DECISION APPROVE, subject to conditions,** this request for a non-resource related single family dwelling, based on the following Findings and Conclusions.

**FINDINGS OF FACT:**

1. Based on the new evidence and argument from the applicant's representatives at the September 28 hearing, the Board finds there is substantial evidence now in the record to overturn the Hearings Officer's denial on all points.
2. The Board adopts the August 2, 1993 Staff Report, except as noted below, and adds the findings presented below to reflect the new evidence presented by the applicant at the appeal hearing September 28.

3. MCC .2012(B)(3) EFU Approval Criteria.

**MCC 11.15.2012(B): The following uses may be permitted when approved by the Hearings Officer pursuant to the provisions of MCC .7105 to .7140:**

**(3) Residential use not in conjunction with farm use, consisting of a single family dwelling, including a mobile or modular home. The lot shall be a Lot of Record under MCC .2018 or have been created under the provisions of MCC 11.45, Land Divisions. The Hearings Officer shall find that a dwelling on the lot as proposed:**

**MCC .2018(A)(2) Lot of Record**

The Board finds that the subject property is a Lot of Record under this section, for the reasons stated in the Staff Report and because the applicant submitted new evidence that supports this conclusion, including a 1980 letter to the applicant from Larry Epstein of the County Land Development Section addressing the Lot of Record issue. The letter concludes that “each lot you own individually will be treated as a separate lot of record.” The subject property, Lot 32, is listed as being in the ownership of “Betty Lundbom,” the applicant here.

**MCC.2012(B)(3) (a)-(d)**

**(a) Is compatible with farm uses described in paragraph (a) of subsection (2) of ORS 215.203 and is consistent with the intent and purposes set forth in ORS 215.243.**

The Hearings Officer noted a lack of information to determine whether the proposed dwelling would be compatible with existing farm uses. The applicant has submitted a map describing the crops grown in the area. The applicant has also presented letters from an agriculture expert and from neighboring land owners concerning the existing farm use in the area. The letters state that neither existing dwellings nor the proposed dwelling pose compatibility problems for area farmers. The Board finds the letter from Barry Bushue of the Multnomah County Farm Bureau especially informative. The applicant also introduced a set of aerial photographs which show that the historic pattern of dwellings mixed with farm use has not been altered with the addition of five dwellings since 1977. As shown on the aerial photographs, the dwellings tend to cluster near the road system, while the farms continue to occupy the larger areas between the roads. The proposed dwelling would continue that pattern.

Based on this new information, and on the findings under this criterion in the Staff Report, the Board finds that the proposed use is compatible with the farm uses described in paragraph (a) of subsection (2) of ORS 215.203 and is consistent with the intent and purposes set forth in ORS 215.243, as required by MCC .2012(B)(3).

- (b) **Does not seriously interfere with accepted farming practices, as defined in paragraph (c) of subsection (2) of ORS 215.203, on adjacent lands devoted to farm use.**

The applicant has introduced expert testimony on this subject from the Farm Bureau's representative. He stated that he has lived and farmed in the vicinity of the proposed homesite, and 'it is my professional opinion, and that of the Multnomah County Farm Bureau Board of Directors, that a home would be compatible with the existing farming practices and would not cause them to be altered in any manner.'

None of the landowners who submitted letters to the county objected to the proposed dwelling on the subject property. The letter from Glendale Farms stated that "[w]e have houses all around our property and it certainly hasn't kept us from farming."

The Farm Bureau's Bushue stated that he has reviewed the farm crops within a five mile area and is familiar with the farming practices used for each. He identified the farming activities as primarily Christmas trees, nursery stock, berries, pasture and some vegetables. Bushue concluded that "[a] house at the proposed location will not only be compatible but it will cause no serious change in farming practices in my opinion."

For these reasons, including the findings under this criterion in the Staff Report, the Board finds that the proposed dwelling does not seriously interfere with accepted farming practices, as defined in paragraph (c) of subsection (2) of ORS 215.203, on adjacent lands devoted to farm use, in compliance with this section.

- (c) **Does not materially alter the stability of the overall land use pattern of the area**

The two aerial photographs entered into the record illustrate the relationship between the farm use and the dwellings in the area of the subject property. The photographs show that despite the addition of five dwellings between 1977 and the present, the overall pattern of land use has not changed. The Board also adopts the Staff Report findings describing the land use pattern in the area.

The proposed dwelling will be continue the mixed use pattern in the area, with dwellings clustered near the roads, and the farms occupying the larger parcels away from the roads. The fact that the pattern has not changed since 1977 despite the addition of several dwellings indicates a solid stability that will not change with the addition of the proposed dwelling.

For these reasons, the Board finds that the addition of this dwelling will not materially alter the stability of the overall land use pattern of the area.

- (d) **Is situated upon generally unsuitable land for the production of farm crops and livestock, considering the terrain, adverse soil or land conditions, drainage and flooding, vegetation, location and size of the tract.**

The applicant has submitted convincing evidence showing that the subject property is

generally unsuitable for agriculture and livestock, considering adverse soil condition, drainage, location and size of the tract. The Board finds the testimony of the Multnomah County Farm Bureau persuasive. The letter from Bureau President Barry Bushue concludes:

“Without tremendous expenditures for tiling, drain fields and fumigation, the area and parcel proposed for the house is not well suited for production of the typical crops of the area. Pasture use is no longer economically viable since the dairy left the area, and grain in such small acreages is useless for anything other than a cover crop.”

The owners of Glendale Farms testified in writing that they operated a dairy for 50 years in this area “until it became economically not feasible for us to operate any longer.” The Board finds that the closing of the nearby dairy means less potential demand to use the subject property for pasture because of its location.

The evidence shows it is not economically feasible to farm such a small parcel in this location with these soil problems. The Board finds that the parcel is generally unsuitable land for the production of farm crops and livestock, in compliance with this section.

These findings replace the Staff Report findings for this subsection.

#### **MCC.2012(B)(3) (e) -(k)**

The Board adopts the findings contained in the Staff Report for subsections MCC .2012(B)(3)(e)-(k). Plans submitted by the applicant establish that the proposed manufactured house will contain 2056 square feet, thus satisfying MCC .210(A)(3)(c) and .2012(B)(3)(i).

#### **MCC 11.15.2012(B)(3) Conclusion**

For all of the above stated reasons, the Board finds that the proposal satisfies the requirements of MCC 11.15.2012(B)(3), and the proposed non-farm dwelling is permitted.

#### **4. MCC .7122 EFU Conditional Use Approval Criteria**

Except as noted below, the Board replaces the findings of the 8/2/93 Staff Report under this approval standard, and adds the following findings based on the new evidence submitted by the applicant at the hearing.

##### **(A)(1) Will not force a significant change in accepted farm practices on surrounding lands devoted to farm or forest use.**

None of the landowners who submitted letters to the county objected to the proposed dwelling on the subject property. The letter from Glendale Farms stated that “[w]e have houses all around our property and it certainly hasn’t kept us from farming.”

The Farm Bureau president identified the farming activities within five miles of the subject property as primarily Christmas trees, nursery stock, berries, pasture and some vegetables. He said that is familiar with the farming practices used for each. In conclusion he said that:

“[a] house at the proposed location will not only be compatible but it will cause no serious change in farming practices in my opinion.”

For these reasons, the Board finds that addition of one single family dwelling on the subject property will not force a significant change in accepted farm practices on surrounding lands devoted to farm use.

**(A)(2) Will not significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.**

The applicant has introduced expert testimony from the Farm Bureau that a home would be compatible with the existing farming practices and would not cause them to be altered in any manner. The expert who gave us that opinion said that he has lived and farmed in the vicinity of the subject property.

Based on this testimony, the Board finds that the proposed dwelling will not significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm use.

**MCC 11.15.7122 (B) & (C)**

The Board adopts the findings contained in the Staff Report for subsections MCC .7122(B) 8(C).

**MCC 11.15.7122 Conclusion**

For these reasons, the Board finds that the proposal is in compliance with MCC .7122, and therefore grants the conditional use request.

**THEREFORE, THE BOARD ORDERS THAT:**

1. The subject property is a three-acre Lot of Record.
2. The applicant has submitted sufficient evidence to demonstrate compliance with the approval criteria in MCC 1 1.1 5.201 2(B) (3) and .71 Z(A) .
3. The applicant has carried the burden necessary for approval of a non-resource related single family dwelling in the EFU zoning district.
4. The Hearings Officer’s decision, dated August 5, 1993, is reversed and modified as setforth herein.

5. Approval is subject to the following conditions:

- a. The owner shall record with the Division of Records and Elections a statement that the owner and successors in interest acknowledge the rights of nearby property owners to conduct accepted farming and forestry practices.
- b. Prior to application for building permits, submit evidence that all additional taxes and penalties have been paid if the property has been receiving special assessment. Contact the Tax Assessor regarding this matter.
- c. Apply for a Land Feasibility Study and determine that the site is suitable for an on-site septic system prior to issuance of building permits.