

ANNOTATED MINUTES

Tuesday, March 14, 1995 - 1:30 PM
Multnomah County Courthouse, Room 602
1021 SW Fourth, Portland

PLANNING ITEMS

Vice-Chair Sharron Kelley convened the meeting at 1:30 p.m., with Commissioners Gary Hansen and Dan Saltzman present and Commissioner Tanya Collier and Chair Beverly Stein excused.

- P-1 CS 7-94 Review the February 24, 1995 Hearings Officer Decision APPROVING a Requested Modification of the Community Service Designation to Allow Replacement of the Main Transformer, for Property Located at 262 NW MILLER ROAD

DECISION READ, NO APPEAL FILED, DECISION STANDS.

- P-2 CU 1-95/
HV 1-95 Review the February 24, 1995 Hearings Officer Decision APPROVING, With Conditions, Development of a Single Family Dwelling Not Related to Forest Management on a 4.8 Acre Lot of Record in the Commercial Forest Use Zone; APPROVAL of Variances to the Required Side Yard Setbacks; and APPROVAL of Variance for the Improved Width of a Private Road, for Property Located at 37777 NE KNIERIEM ROAD

DECISION READ, NO APPEAL FILED, DECISION STANDS.

- P-3 RESOLUTION in the Matter of Establishing Procedures to Simplify Appeals in Quasi-Judicial Land Use Cases and Evaluating the Effectiveness of the Procedures After a Trial Period

UPON MOTION OF COMMISSIONER HANSEN, SECONDED BY COMMISSIONER SALTZMAN, IT WAS UNANIMOUSLY APPROVED THAT P-3 BE CONTINUED TO THURSDAY, MARCH 15, 1995.

There being no further business, the meeting was adjourned at 1:32 p.m.

OFFICE OF THE BOARD CLERK
for MULTNOMAH COUNTY, OREGON



Deborah L. Bogstad

Thursday, March 16, 1995 - 9:30 AM
Multnomah County Courthouse, Room 602
1021 SW Fourth, Portland

REGULAR MEETING

Vice-Chair Sharron Kelley convened the meeting at 9:32 a.m., with Commissioners Gary Hansen, Tanya Collier and Dan Saltzman present and Chair Beverly Stein excused.

VICE-CHAIR KELLEY ANNOUNCED CHAIR STEIN IS A GUEST OF THE UNIVERSITY OF MILANO, ITALY THIS WEEK TO SPEAK ABOUT OREGON BENCHMARKS. VICE-CHAIR KELLEY ADVISED SHE WILL BE LEAVING AT 10:30 TODAY TO ATTEND A SPEAKING ENGAGEMENT IN SEATTLE, WASHINGTON REGARDING BENCHMARKS.

CONSENT CALENDAR

UPON MOTION OF COMMISSIONER HANSEN, SECONDED BY COMMISSIONER COLLIER, THE CONSENT CALENDAR (ITEMS C-1 THROUGH C-6) WAS UNANIMOUSLY APPROVED.

DEPARTMENT OF ENVIRONMENTAL SERVICES

C-1 ORDER in the Matter of the Execution of Deed D951153 for Repurchase of Tax Acquired Property to Former Owner Estate of Nellie M. Coffelt, Deceased

ORDER 95-46.

C-2 ORDER in the Matter of the Execution of Deed D951162 Upon Complete Performance of a Contract to Wyona Clement and Rand Henrichs

ORDER 95-47.

C-3 ORDER in the Matter of the Execution of Deed D951172 Upon Complete Performance of a Contract to Wyona M. Clement and Randall J. Henrichs

ORDER 95-48.

C-4 ORDER in the Matter of the Execution of Deed D951173 for Repurchase of Tax Acquired Property to Former Owners Stephen E. Powell and Phyllis Powell

ORDER 95-49.

COMMUNITY AND FAMILY SERVICES DIVISION

- C-5 Ratification of Intergovernmental Agreement Contract 104255 Between the City of Portland and Multnomah County, Transferring \$505,680 in Community Development Block Grant Funds to Pay for Emergency Basic Need Services for Homeless People (Glisan Street Shelter and Services, Recovery Inn Shelter, Alcohol/Drug Free Transitional Housing, West Women's Shelter, Emergency Housing Vouchers, Homeless Families Case Management) for the Period July 1, 1994 through June 30, 1995
- C-6 Ratification of Intergovernmental Agreement Contract 104265 Between the City of Portland and Multnomah County, Transferring \$199,580 in Emergency Shelter Grant Funds to Pay for Emergency Basic Need Services for Homeless People (Glisan Street Shelter, Recovery Inn Shelter, Willow Tree Inn Shelter) for the Period July 1, 1994 through June 30, 1995

REGULAR AGENDA

PUBLIC COMMENT

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

THOMAS BUCHHOLZ SUBMITTED WRITTEN INFORMATION AND DISCUSSED AN EMERGENCY ANIMAL RESCUE INCIDENT.

DEPARTMENT OF ENVIRONMENTAL SERVICES

- R-2 ORDER in the Matter of Canceling Uncollectible Personal Property Taxes for Tax Years 1982/83 through 1993/94

PAT FRAHLER EXPLANATION. UPON MOTION OF COMMISSIONER COLLIER, SECONDED BY COMMISSIONER HANSEN, ORDER 95-50 WAS UNANIMOUSLY APPROVED.

- R-3 ORDER in the Matter of the Sale of Surplus County Land at the Multnomah County Farm in Section 26, Township 1 North, Range 3 East, W.M., Multnomah County, Oregon

COMMISSIONER SALTZMAN MOVED AND COMMISSIONER COLLIER SECONDED, THAT R-3 BE POSTPONED INDEFINITELY. WAYNE GEORGE RESPONSE TO BOARD DISCUSSION EXPRESSING CONCERN OVER PROPERTY SALE AT THIS TIME AND REQUEST FOR FURTHER STUDY. ORDER

UNANIMOUSLY POSTPONED INDEFINITELY.

NON-DEPARTMENTAL

- R-4 Budget Modification NOND 5 Requesting Authorization to Increase Office of Emergency Management Funding by \$4,489.53 to Reflect Actual Revenue Funds Allocated by Oregon Emergency Management

COMMISSIONER HANSEN MOVED AND COMMISSIONER COLLIER SECONDED, APPROVAL OF R-4. COMMISSIONER COLLIER EXPLANATION. BUDGET MODIFICATION UNANIMOUSLY APPROVED.

- R-5 Budget Modification NOND 8 Requesting Authorization to Increase Office of Emergency Management Funding by \$4,704.30 to Reflect Actual Revenue Funds Allocated by Oregon Emergency Management

UPON MOTION OF COMMISSIONER HANSEN, SECONDED BY COMMISSIONER COLLIER, BUDGET MODIFICATION R-5 WAS UNANIMOUSLY APPROVED.

- R-6 Budget Modification NOND 7 Requesting Authorization to Move \$7,500 from Personal Services to Capital Outlay and Materials and Supplies for Computers and Related Items within the Commission District 4 Budget

COMMISSIONER SALTZMAN MOVED AND COMMISSIONER COLLIER SECONDED, APPROVAL OF R-6. VICE-CHAIR KELLEY EXPLANATION. BUDGET MODIFICATION UNANIMOUSLY APPROVED.

- R-7 RESOLUTION in the Matter of Reaffirming the County's Support for the South/North Light Rail Project and Committing to Working with Regional Partners and Citizens to Make the Project a Reality

COMMISSIONER COLLIER MOVED AND COMMISSIONER HANSEN SECONDED, APPROVAL OF R-7. COMMISSIONER COLLIER EXPLANATION. KATHY BUSSE PRESENTATION. RESOLUTION 95-51 UNANIMOUSLY APPROVED.

UPON MOTION OF COMMISSIONER COLLIER, SECONDED BY COMMISSIONER SALTZMAN, CONSIDERATION OF THE FOLLOWING WAS UNANIMOUSLY APPROVED.

UC-1 RESOLUTION in the Matter of Affirming the County's Support for the Oregon Transportation Finance Committee's Recommendations to the 1995 Oregon Legislature

COMMISSIONER COLLIER MOVED AND COMMISSIONER SALTZMAN SECONDED, APPROVAL OF UC-1. COMMISSIONER COLLIER EXPLANATION. RESOLUTION 95-52 UNANIMOUSLY APPROVED. COMMISSIONER COLLIER ADVISED SHE WILL SEND COPIES OF RESOLUTION TO THE APPROPRIATE LEGISLATORS.

DEPARTMENT OF HEALTH

R-8 Ratification of an Intergovernmental Revenue Agreement Contract 201765 Between Oregon Department of Human Resources, Children's Services Division and Multnomah County, Providing the Services of a Public Health Nurse to Develop and Implement a Program to the Intervention and Treatment Services Provided to Abused and Neglected Children in Substance Abusing Families, for the Period of October 1, 1994 through June 30, 1995

COMMISSIONER SALTZMAN MOVED AND COMMISSIONER HANSEN SECONDED, APPROVAL OF R-8. IN RESPONSE TO VICE-CHAIR KELLEY, COMMISSIONER SALTZMAN EXPLAINED HIS QUESTIONS LAST WEEK WERE ANSWERED TO HIS SATISFACTION. AGREEMENT UNANIMOUSLY APPROVED.

R-9 First Reading of a Proposed ORDINANCE to Amend the Ambulance Service Area Plan for Multnomah County Adopted by Ordinance No. 789

PROPOSED ORDINANCE READ BY TITLE ONLY. COPIES AVAILABLE. COMMISSIONER COLLIER MOVED AND COMMISSIONER SALTZMAN SECONDED, TO POSTPONE R-9 INDEFINITELY. BILL COLLINS EXPLAINED HE REVIEWED TAPES FROM HEARINGS ON THE AMBULANCE SERVICE PLAN AND FEELS THE LEGISLATIVE INTENT REGARDING SUBCONTRACTING IS CLEAR IN THOSE TAPES AND THE REQUEST FOR PROPOSALS IS BASICALLY CONSISTENT WITH THE INTENT. MR. COLLINS SUBMITTED COPIES OF A PORTION OF THE MAY 19, 1994 TRANSCRIPT AND ADVISED HE PROPOSES TO PLACE A RESOLUTION FOR THE BOARD'S CONSIDERATION ON THE THURSDAY, MARCH 23, 1995 AGENDA TO CLARIFY THE

LANGUAGE IN THE RFP AS TO THE INTENT OF THE PLAN. MR. COLLINS EXPLAINED THIS WOULD NOT BE A SUBSTANTIVE CHANGE IN THE RFP AND WOULD NOT DELAY THE RFP DUE DATE OR IMPLEMENTATION DATE. MR. COLLINS RESPONDED TO QUESTIONS OF COMMISSIONER SALTZMAN. DAVID SMALLWOOD TESTIFIED IN OPPOSITION TO SUBCONTRACTING AMBULANCE SERVICES. TIM RAMIS TESTIFIED ON BEHALF OF AMERICAN MEDICAL RESPONSE, REQUESTING THEY BE ALLOWED TO REVIEW AND COMMENT ON THE PROPOSED RESOLUTION AS SOON AS POSSIBLE. IN RESPONSE TO A REQUEST OF COMMISSIONER COLLIER, MR. COLLINS ADVISED THE DIVISION FEELS THE RFP REFLECTS THE INTENT OF THE ENTIRE PROPOSAL PROCESS. IN RESPONSE TO A REQUEST OF MR. RAMIS, COPIES OF MR. COLLINS' MAY 19, 1994 TRANSCRIPT WERE MADE AVAILABLE TO THOSE WISHING SAME. COMMISSIONER HANSEN ADVISED HE WILL RESERVE COMMENT UNTIL HE SEES THE LANGUAGE OF THE PROPOSED RESOLUTION. MR. COLLINS CONCURRED IN RESPONSE TO COMMISSIONER SALTZMAN'S SUGGESTION THAT THE RESOLUTION CLARIFY THAT EVEN NON-EMERGENCY PROVIDERS WHO ARE SUBCONTRACTORS BE IDENTIFIED IN THE PROPOSALS. ORDINANCE UNANIMOUSLY POSTPONED INDEFINITELY.

JUVENILE JUSTICE DIVISION

R-10 Request for Approval of a Notice of Intent to Apply for Continued Grant Funding for the Children Services Division/Diversion Program

COMMISSIONER SALTZMAN MOVED AND COMMISSIONER HANSEN SECONDED, APPROVAL OF R-10. JIM ANDERSON EXPLANATION. NOTICE OF INTENT UNANIMOUSLY APPROVED.

R-11 RESOLUTION in the Matter of Submitting a 1995-1997 County Diversion Plan in Order to Receive State Funds to Provide Those Services

COMMISSIONER SALTZMAN MOVED AND COMMISSIONER HANSEN SECONDED, APPROVAL OF R-11. MR. ANDERSON EXPLANATION. RESOLUTION 95-53 UNANIMOUSLY APPROVED.

PUBLIC CONTRACT REVIEW BOARD

(Recess as the Board of County Commissioners and convene as the Public Contract Review Board)

- R-12 ORDER in the Matter of a Sole Source Exemption to Contract with Telect, Inc. for the Purchase of Intercom System Components

COMMISSIONER HANSEN MOVED AND COMMISSIONER SALTZMAN SECONDED, APPROVAL OF R-12. FRANNA HATHAWAY EXPLANATION. ORDER 95-54 UNANIMOUSLY APPROVED.

(Recess as the Public Contract Review Board and reconvene as the Board of County Commissioners)

- P-3 RESOLUTION in the Matter of Establishing Procedures to Simplify Appeals in Quasi-Judicial Land Use Cases and Evaluating the Effectiveness of the Procedures After a Trial Period

SCOTT PEMBLE EXPLANATION IN RESPONSE TO QUESTION OF COMMISSIONER COLLIER. UPON MOTION OF COMMISSIONER COLLIER, SECONDED BY COMMISSIONER HANSEN, RESOLUTION 95-55 WAS UNANIMOUSLY APPROVED.

The regular meeting was adjourned at 10:10 a.m. and the briefings convened at 10:25 a.m.

Thursday, March 16, 1995 - 10:30 AM
Multnomah County Courthouse, Room 602
1021 SW Fourth, Portland

BOARD BRIEFINGS

- B-1 Presentation of the Central Citizen Budget Advisory Committee November, 1994 Dedicated Fund Review of the Department of Environmental Services. Presented by Central CBAC Chair Jack Pessia.

JACK PESSIA PRESENTATION. MIKE OSWALD RESPONSE TO BOARD QUESTIONS AND DISCUSSION.

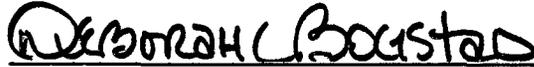
Vice-Chair Kelley left at 10:30 a.m.

B-2 Status Report on the Multnomah County Sheriff's Office Special Investigations Unit. Presented by Sheriff John Bunnell and Sgt. Brian Martinek.

**ROD ENGLERT, DICK BILES AND BRIAN
MARTINEK PRESENTATION AND RESPONSE TO
BOARD QUESTIONS AND DISCUSSION.**

There being no further business, the meeting was adjourned at 11:30 a.m.

OFFICE OF THE BOARD CLERK
for MULTNOMAH COUNTY, OREGON



Deborah L. Bogstad



MULTNOMAH COUNTY OREGON

OFFICE OF THE BOARD CLERK
SUITE 1510, PORTLAND BUILDING
1120 S.W. FIFTH AVENUE
PORTLAND, OREGON 97204

BOARD OF COUNTY COMMISSIONERS

BEVERLY STEIN •	CHAIR	• 248-3308
DAN SALTZMAN •	DISTRICT 1	• 248-5220
GARY HANSEN •	DISTRICT 2	• 248-5219
TANYA COLLIER •	DISTRICT 3	• 248-5217
SHARRON KELLEY •	DISTRICT 4	• 248-5213
CLERK'S OFFICE •	248-3277	• 248-5222

AGENDA

MEETINGS OF THE MULTNOMAH COUNTY BOARD OF COMMISSIONERS

FOR THE WEEK OF

MARCH 13, 1995 - MARCH 17, 1995

- Tuesday, March 14, 1995 - 1:30 PM - Planning Items Page 2*
- Thursday, March 16, 1995 - 9:30 AM - Regular Meeting Page 2*
- Thursday, March 16, 1995 - 10:30 AM - Board Briefings Page 4*
(OR IMMEDIATELY FOLLOWING REGULAR MEETING)

Thursday Meetings of the Multnomah County Board of Commissioners are taped and can be seen by Paragon Cable subscribers at the following times:

- Thursday, 6:00 PM, Channel 30*
- Friday, 10:00 PM, Channel 30*
- Saturday, 12:30 PM, Channel 30*
- Sunday, 1:00 PM, Channel 30*

INDIVIDUALS WITH DISABILITIES MAY CALL THE OFFICE OF THE BOARD CLERK AT 248-3277 OR 248-5222, OR MULTNOMAH COUNTY TDD PHONE 248-5040, FOR INFORMATION ON AVAILABLE SERVICES AND ACCESSIBILITY.

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PLANNING ITEMS

- P-1 CS 7-94 Review the February 24, 1995 Hearings Officer Decision APPROVING a Requested Modification of the Community Service Designation to Allow Replacement of the Main Transformer, for Property Located at 262 NW MILLER ROAD
- P-2 CU 1-95/
HV 1-95 Review the February 24, 1995 Hearings Officer Decision APPROVING, With Conditions, Development of a Single Family Dwelling Not Related to Forest Management on a 4.8 Acre Lot of Record in the Commercial Forest Use Zone; APPROVAL of Variances to the Required Side Yard Setbacks; and APPROVAL of Variance for the Improved Width of a Private Road, for Property Located at 37777 NE KNIERIEM ROAD
- P-3 RESOLUTION in the Matter of Establishing Procedures to Simplify Appeals in Quasi-Judicial Land Use Cases and Evaluating the Effectiveness of the Procedures After a Trial Period
-

Thursday, March 16, 1995 - 9:30 AM
Multnomah County Courthouse, Room 602
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REGULAR MEETING

CONSENT CALENDAR

DEPARTMENT OF ENVIRONMENTAL SERVICES

- C-1 ORDER in the Matter of the Execution of Deed D951153 for Repurchase of Tax Acquired Property to Former Owner Estate of Nellie M. Coffelt, Deceased
- C-2 ORDER in the Matter of the Execution of Deed D951162 Upon Complete Performance of a Contract to Wyona Clement and Rand Henrichs
- C-3 ORDER in the Matter of the Execution of Deed D951172 Upon Complete Performance of a Contract to Wyona M. Clement and Randall J. Henrichs
- C-4 ORDER in the Matter of the Execution of Deed D951173 for Repurchase of Tax Acquired Property to Former Owners Stephen E. Powell and Phyllis Powell

COMMUNITY AND FAMILY SERVICES DIVISION

- C-5 *Ratification of Intergovernmental Agreement Contract 104255 Between the City of Portland and Multnomah County, Transferring \$505,680 in Community Development Block Grant Funds to Pay for Emergency Basic Need Services for Homeless People (Glisan Street Shelter and Services, Recovery Inn Shelter, Alcohol/Drug Free Transitional Housing, West Women's Shelter, Emergency Housing Vouchers, Homeless Families Case Management) for the Period July 1, 1994 through June 30, 1995*
- C-6 *Ratification of Intergovernmental Agreement Contract 104265 Between the City of Portland and Multnomah County, Transferring \$199,580 in Emergency Shelter Grant Funds to Pay for Emergency Basic Need Services for Homeless People (Glisan Street Shelter, Recovery Inn Shelter, Willow Tree Inn Shelter) for the Period July 1, 1994 through June 30, 1995*

REGULAR AGENDA

PUBLIC COMMENT

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

DEPARTMENT OF ENVIRONMENTAL SERVICES

- R-2 *ORDER in the Matter of Canceling Uncollectible Personal Property Taxes for Tax Years 1982/83 through 1993/94*
- R-3 *ORDER in the Matter of the Sale of Surplus County Land at the Multnomah County Farm in Section 26, Township 1 North, Range 3 East, W.M., Multnomah County, Oregon*

NON-DEPARTMENTAL

- R-4 *Budget Modification NOND 5 Requesting Authorization to Increase Office of Emergency Management Funding by \$4,489.53 to Reflect Actual Revenue Funds Allocated by Oregon Emergency Management*
- R-5 *Budget Modification NOND 8 Requesting Authorization to Increase Office of Emergency Management Funding by \$4,704.30 to Reflect Actual Revenue Funds Allocated by Oregon Emergency Management*
- R-6 *Budget Modification NOND 7 Requesting Authorization to Move \$7,500 from Personal Services to Capital Outlay and Materials and Supplies for Computers and Related Items within the Commission District 4 Budget*
- R-7 *RESOLUTION in the Matter of Reaffirming the County's Support for the South/North Light Rail Project and Committing to Working with Regional Partners and Citizens to Make the Project a Reality*

DEPARTMENT OF HEALTH

- R-8 *Ratification of an Intergovernmental Revenue Agreement Contract 201765 Between Oregon Department of Human Resources, Children's Services Division and Multnomah County, Providing the Services of a Public Health Nurse to Develop and Implement a Program to the Intervention and Treatment Services Provided to Abused and Neglected Children in Substance Abusing Families, for the Period of October 1, 1994 through June 30, 1995*
- R-9 *First Reading of a Proposed ORDINANCE to Amend the Ambulance Service Area Plan for Multnomah County Adopted by Ordinance No. 789*

JUVENILE JUSTICE DIVISION

- R-10 *Request for Approval of a Notice of Intent to Apply for Continued Grant Funding for the Children Services Division/Diversion Program*
- R-11 *RESOLUTION in the Matter of Submitting a 1995-1997 County Diversion Plan in Order to Receive State Funds to Provide Those Services*

PUBLIC CONTRACT REVIEW BOARD

(Recess as the Board of County Commissioners and convene as the Public Contract Review Board)

- R-12 *ORDER in the Matter of a Sole Source Exemption to Contract with Telect, Inc. for the Purchase of Intercom System Components*
- (Recess as the Public Contract Review Board and reconvene as the Board of County Commissioners)*

Thursday, March 16, 1995 - 10:30 AM
(OR IMMEDIATELY FOLLOWING REGULAR MEETING)
Multnomah County Courthouse, Room 602
1021 SW Fourth, Portland

BOARD BRIEFINGS

- B-1 *Presentation of the Central Citizen Budget Advisory Committee November, 1994 Dedicated Fund Review of the Department of Environmental Services. Presented by Central CBAC Chair Jack Pessia. 5 MINUTES REQUESTED.*
- B-2 *Status Report on the Multnomah County Sheriff's Office Special Investigations Unit. Presented by Sheriff John Bunnell and Sgt. Brian Martinek. 15 MINUTES REQUESTED.*

TANYA COLLIER
Multnomah County Commissioner
District 3



1120 SW Fifth St., Suite 1500
Portland, OR 97204
(503) 248-5217

M E M O R A N D U M

TO: Board Clerks
Chair, Beverly Stein
Commissioner Gary Hansen
Commissioner Sharron Kelley
Commissioner Dan Saltzman

FROM: Commissioner Tanya Collier

DATE: March 13, 1995

SUBJECT: Absence from March 14, 1995 Planning Meeting

Please excuse me from the March 14th Planning session. I will be in Salem testifying before the Legislature at 1:00 P.M. and therefore will be unable to attend the 1:30 P.M. meeting in Portland.

Thank you.

TC

1995 MAR 13 PM 3:58
MULTNOMAH COUNTY
OREGON

Meeting Date: MAR 14 1995

Agenda No: P-1

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: Reporting of a Hearing Officer's decision in the matter of CS 7-94.

BOARD BRIEFING Date Requested:

Amount of Time Needed:

REGULAR MEETING Date Requested: March 14, 1995

Amount of Time Needed: 5 minutes

DEPARTMENT: DES

DIVISION: Planning

CONTACT: Sarah Ewing

TELEPHONE: 248-3043

BLDG /ROOM: 412/109

PERSON(S) MAKING PRESENTATION: Bob Hall

ACTION REQUESTED

Informational Only Policy Direction Approval Other

Summary (Statement of rationale for action requested, personnel and fiscal/budgetary impacts, if applicable):

Reporting of a Hearings Officer's decision granting a modification of the Community Service Designation of the subject property to allow replace of the main transmitter. The replacement transmitter will result in a slight increase of the amount of non-ionizing electromagnetic radiation emitted by the facility.

SIGNATURES REQUIRED:

Elected Official: _____

OR

Department Manager: *REP Betty Willia*

1995 MAR -6 AM 8 55
MULTNOMAH COUNTY
OREGON
BOARD OF
COUNTY COMMISSIONERS



BOARD HEARING OF March 14, 1995

TIME 1:30pm

CASE NAME Community Service Request

NUMBER

CS 7-94

1. Applicant Name/Address

Cannel Communication L.P.
910 N.E. Martin Luther King Blvd.
Portland 97232

2. Action Requested by Applicant

Modification of the Community Service Designation of the subject property to allow replacement of the main transmitter. That replacement will result in a slight increase of the amount of non-ionizing electromagnetic radiation emitted by the facility.

3. Planning Staff Recommendation

Approval

4. Hearings Officer Decision:

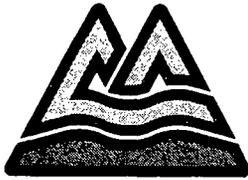
Approval

5. If recommendation and decision are different, why?

ACTION REQUESTED OF BOARD

- Affirm Plan.Com./Hear.Of
- Hearing/Rehearing
 - Scope of Review
 - On the record
 - De Novo
 - New Information allowed

ISSUES
(who raised them?)



MULTNOMAH COUNTY OREGON

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

BOARD OF COUNTY COMMISSIONERS
BEVERLY STEIN • CHAIR OF THE BOARD
DAN SALTZMAN • DISTRICT 1 COMMISSIONER
GARY HANSEN • DISTRICT 2 COMMISSIONER
TANYA COLLIER • DISTRICT 3 COMMISSIONER
SHARRON KELLEY • DISTRICT 4 COMMISSIONER

Multnomah County Hearings Officer Decision

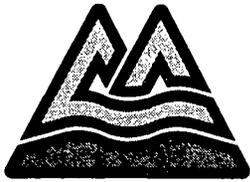
Attached please find a copy of the Hearings Officer's decision in the matter of CS 7-94. A copy of the Hearings Officer's decision is being mailed to those persons entitled to be mailed notice under MCC 11.15.8220(C) and to other persons who have requested the same.

The Hearings Officer Decision may be appealed to the Board of County Commissioners (Board) by any person or organization who appears and testifies at the hearing or by those who submit written testimony into the record. An appeal must be filed with the County Planning Division within ten days after the Hearings Officer decision is submitted to the Clerk of the Board. An appeal requires a completed "Notice of Review" form and a fee of \$300.00 plus a \$3.50 per minute charge not to exceed \$500.00 for a transcript of the initial hearings(s) [ref MCC 11.15.8260(A)(1) and MCC 11.15.9020(B)]. Instructions and forms are available at the County Planning and Development office located at 2115 SE Morrison Street, Portland, Oregon.

Failure to raise an issue by the close of the record at or following the final hearing (in person or by letter) precludes appeal to the Land Use Board of Appeals (LUBA) on that issue. Failure to provide specificity on an issue sufficient for the Board to respond precludes appeal to LUBA on that issue.

To appeal the Hearings Officer decision, a "Notice of Review" form and fee must be submitted to the County Planning Director. For further information call the Multnomah County Planning and Development Division at (503) 248-3043.

Signed by the Hearings Officer	February 24, 1995
Decision mailed to Parties	March 3, 1995
Decision submitted to Board Clerk	March 3, 1995
Last day to appeal decision	4:30 pm, March 13, 1995
Reported to the board of County Commissioners:	1:30 pm, March 14, 1995



MULTNOMAH COUNTY OREGON

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

BOARD OF COUNTY COMMISSIONERS
BEVERLY STEIN • CHAIR OF THE BOARD
DAN SALTZMAN • DISTRICT 1 COMMISSIONER
GARY HANSEN • DISTRICT 2 COMMISSIONER
TANYA COLLIER • DISTRICT 3 COMMISSIONER
SHARRON KELLEY • DISTRICT 4 COMMISSIONER

DECISION

This Decision consists of Findings of Fact and Conclusions

February 24, 1995

CS 7-94

Community Service Request (New Transmitter)

Applicant requests modification of the COMMUNITY SERVICE designation of the subject property to allow replacement of the main transmitter. That replacement will result in a slight increase of the amount of non-ionizing electromagnetic radiation emitted by the facility.

Location: 262 N.W. Miller Road

Legal: Tax Lot 132, Section 36, T1N, R1W

Site Size: 7.02 acres

Applicant: Cannell Communication L.P.
910 N.E. Martin Luther King Blvd.
Portland, Oregon 97232

Property Owner: Martin & Nancy Schmidt
262 N.W. Miller Road
Portland, Oregon 97229

Comprehensive Plan: Residential

Zoning: R-10

RECEIVED

FEB 24 1995

Multnomah County
Zoning Division

Hearings Officer Decision
February 24, 1995

CS 7-94
Page 1

HEARINGS OFFICER DECISION:

Approved the requested modification of the **COMMUNITY SERVICE** designation to allow replacement of the main transformer.

CONDITIONS OF APPROVAL

None.

I. ANALYSIS OF THE PROPOSAL

A. BACKGROUND

Applicant owns and operates KPDX Channel 49 television station in Portland. KPDX is presently operating with a visual TV transmitter on the subject property having a peak output power of 55 kilowatts (kW). Applicant installed the present transmitter in December, 1982.

The communication tower was first approved by the Board of County Commissioners on July 8, 1981 (CS 13-81). That decision found that the proposed communication facility satisfied all applicable standards of MCC 11.15.7035 (Radio and Television Transmission Towers), and limited the tower height to 1,075 feet.

KPDX proposes to replace this transmitter with a system having a peak output power of 120 kW.

B. PROPOSAL SUMMARY

Applicant requests modification of the **COMMUNITY SERVICE** designation of the subject property to allow replacement of the main transmitter. That replacement will result in a slight increase of the amount of non-ionizing electromagnetic radiation (NIER) emitted by the facility.

C. SITE AND VICINITY DESCRIPTIONS

The communication facility is situated on the northerly portion of a 7.02 acre parcel located on the east side of Miller Road between Barnes Road and Cornell in northwest Portland. The south and west portions of the property are used for nursery purposes with associated storage and processing buildings.

The surrounding area is comprised of low density residential uses and nursery operations. The area to the east is developed with several communication towers.

D. COMPREHENSIVE PLAN AND ZONING ORDINANCE CONSIDERATIONS

The subject property is classified as "residential" and is currently zoned R-10.

II. APPLICABLE CRITERIA

The following criteria apply to the proposed development:

A. COMMUNITY SERVICE — USES [MCC 11.15.7020]

MCC 11.15.7020(15) provides that "[r]adio and television transmission towers" constitute permitted uses within "any district when approved at a public hearing by the approval authority."

B. COMMUNITY SERVICE — GENERAL PROVISIONS [MCC 11.15.7010]

MCC 11.15.7010 specifies that

"[a] Community Service approval shall be for the specific use or uses approved together with the limitations or conditions as determined by the approval authority. Any change of use or modification of limitations or conditions shall be subject to approval authority approval after a public hearing."

C. COMMUNITY SERVICE — APPROVAL CRITERIA
[MCC 11.15.7015]

MCC 11.15.7015 provides, in pertinent part, that

“[i]n approving a Community Service use, the approval shall find that the proposal meets the following approval criteria, *except for transmission towers, which shall meet the approval criteria of MCC .7035 . . .*” (Emphasis added.)

D. COMMUNITY SERVICE — RADIO AND TELEVISION TRANSMISSION TOWERS
[MCC 11.15.7035]

Applicant does not propose the construction of a new tower. Therefore, the approval criteria in MCC 11.15.7035(B) do not apply. Similarly, because applicant already has received a COMMUNITY SERVICE designation for the existing use, the criteria in MCC 11.15.7035(D) do not apply.

MCC 11.15.7035(F)(1) provides that

“[n]o source of non-ionizing electromagnetic radiation shall hereinafter be operating, which causes the general population to be exposed to radiation levels exceeding the mean squared electric (E^2) or mean squared magnetic (H^2) field strengths, or their equivalent plan wave free space power density, as specified in Table 1.”

MCC 11.15.7035(F)(3) provides that

“[a]fter the date of enactment of this ordinance, no installation of a new source of non-ionizing electromagnetic radiation or changes in an existing source which in any way causes increases in the NIER or radiation pattern of the NIER source shall occur without first obtaining a Community Service use designation *or modification thereof*, unless otherwise provided herein.” (Emphasis added.)

MCC 11.15.7035(F)(4) requires the applicant to submit or calculate a lengthy list of data. The application material appears to be informational only, in that no portion of MCC 11.15.7035 contains criteria by which an application shall be granted or denied.

MCC 11.15.7035(F)(5) provides that

“[a] Community Service use designation *or modification thereof* may be granted if the levels calculated in (F)(4), including the existing measured background, do not exceed the limits set forth in (F)(1) . . . However, if the calculated levels, including existing measured background at any point specified in (F)(4) exceed one-third of the maximum levels of (F)(1), then, the approval shall be conditional upon measurements made after the new source is installed showing that the maximum levels of (F)(1) are not exceeded. If the calculated levels exceed the maximum level of (F)(1), the application shall be denied.”

III. FINDINGS

At applicant's frequency of 681.24 MHz, Table 1 in MCC 11.15.7035(F)(1) sets limits for “mean squared electric field strength” of $4,000(f/1500)$, for “mean squared magnetic field strength” of $0.025(f/1500)$, and for “equivalent plane-wave power density” of $f/1500$.

A report dated December 1, 1994, authored by McClanathan and Associates, Inc., professional electrical engineers, entitled “*Radio Frequency Power Density Measurements at KPDX TV, Portland, Oregon*” (the “*McClanathan Report*”) recites that

“For uniformity, all radio frequency power density calculations and tabulations used in this report are in microwatts per square centimeter. The American National Standards Institute (ANSI C95.1-1991) maximum permissible exposure for uncontrolled environments, at the Ch. 49 visual carrier frequency of 681.24 MHz, is 454 uW/cm^2 . This maximum exposure level for Non-Ionizing Electromagnetic Radiation (NIER) is identical to limits shown in Table 1 [in MCC] 11.15.7035(F)(1).

“The Holaday measuring instrument measures electric fields and reads directly in mean squared strength V^2/m^2 and may be converted to microwatts per square centimeter ($\mu W/cm^2$) by dividing the measured field strength squared by 3.77.”

The McClanathan Report contains the following data:

PREDICTED AVERAGE NIER POWER DENSITIES RESULTING FROM PROPOSED TRANSMITTER (MICROWATTS PER SQUARE CENTIMETER)					
Location of measurement	Existing Measured	Calculated KPDX from increased ERP	Total NIER	Total allowed @ 681.24 MHz	% of total allowed NIER
Closest point on property	0.8	0.97	1.25	454	0.275
Yard of nearest residence	0.59	0.85	1.44	454	0.317
West boundary of property	0.59	1.64	2.23	454	0.491
South boundary of property	0.37	1.29	1.66	454	0.366
1436' north of tower	0.092	0.52	0.61	454	0.134

According to the McClanathan Report, the column in the table labeled “Total allowed @ 681.24 MHz” corresponds to the maximum levels permitted in Table 1 in MCC 11.15.7035(F)(1). The following column in the table represents the extent to which the proposed modification falls within or under the maximum levels permitted. There exist no other objective, data-oriented criteria applicable to the proposed modification under the circumstances.

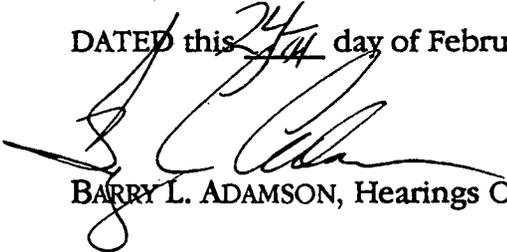
Teufel Holly Farms, Inc., located to the south of the subject property, filed written objections dated February 13, 1995, to protest the “accompanying increase in radiation emissions [*sic*].” However, MCC 11.15.7035(F)(1) does not preclude an increase in emissions, as long as any modification does not exceed the maximum levels in Table 1 in MCC 11.15.7035(F)(1).

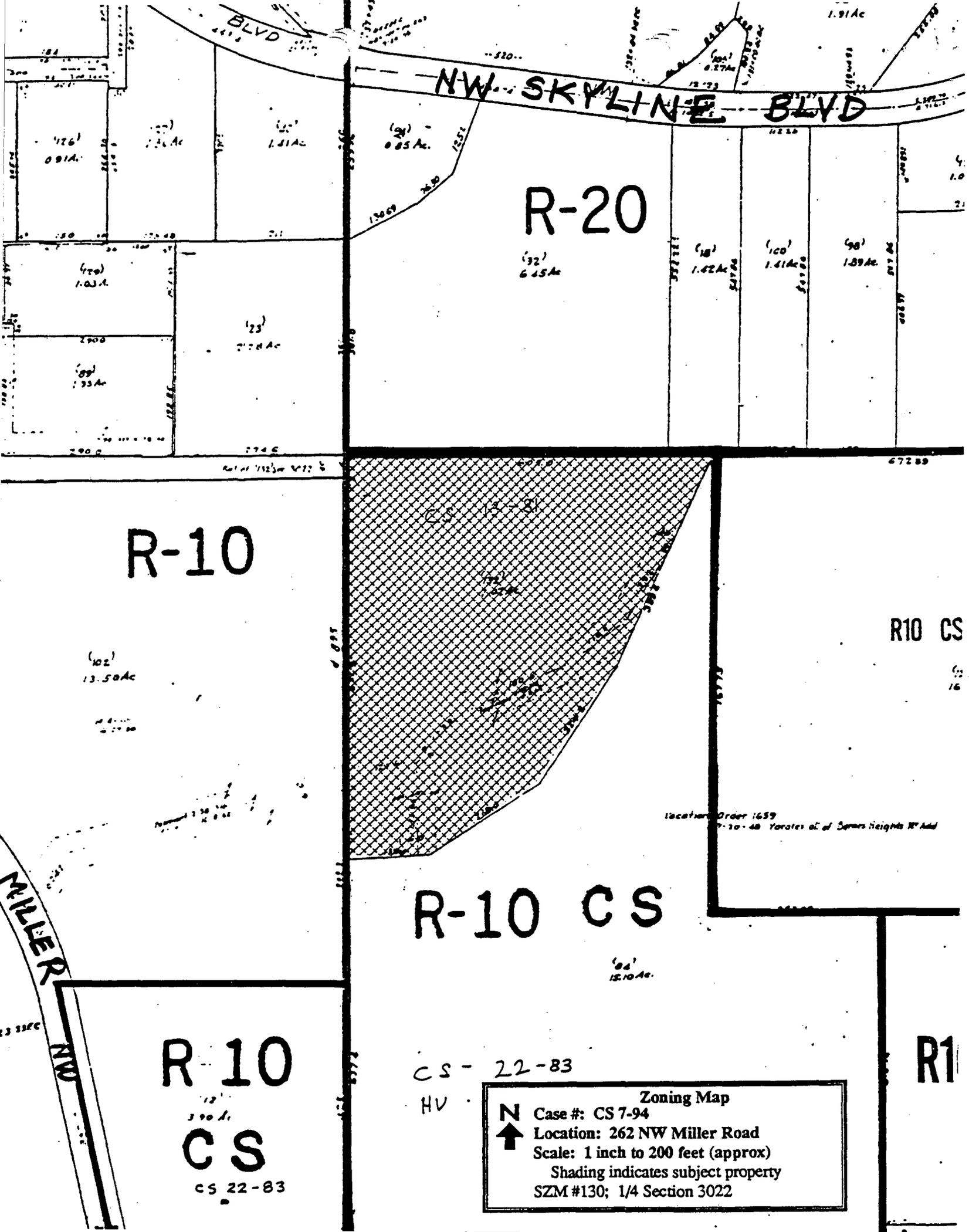
Linda Teufel Delaney, who also lives directly to the south of the tower, filed written objections dated February 14, 1995, to protest the new transmitter. She, too, expresses general concerns about an increase in radiation levels. However, MCC 11.15.7035(F)(1) does not preclude an increase in emissions, as long as any modification does not exceed the maximum levels in Table 1 in MCC 11.15.7035(F)(1).

IV. CONCLUSION

The table in the "Findings" portion of this decision reflects that the proposed modification of the applicant's existing transmitter will not increase the NIER emitted by this facility above that allowed by MCC 11.15.7035(F)(1). Thus, the applicant has fulfilled the criterion in MCC 11.15.7035(F)(5), and has carried the burden necessary for approval of a modification of the COMMUNITY SERVICE designation of the subject property to allow replacement of the existing transmitter.

DATED this ²⁴~~14~~ day of February, 1995.


BARRY L. ADAMSON, Hearings Officer



NW SKYLINE BLVD

R-20

R-10

R-10 CS

R 10

CS

CS 22-83

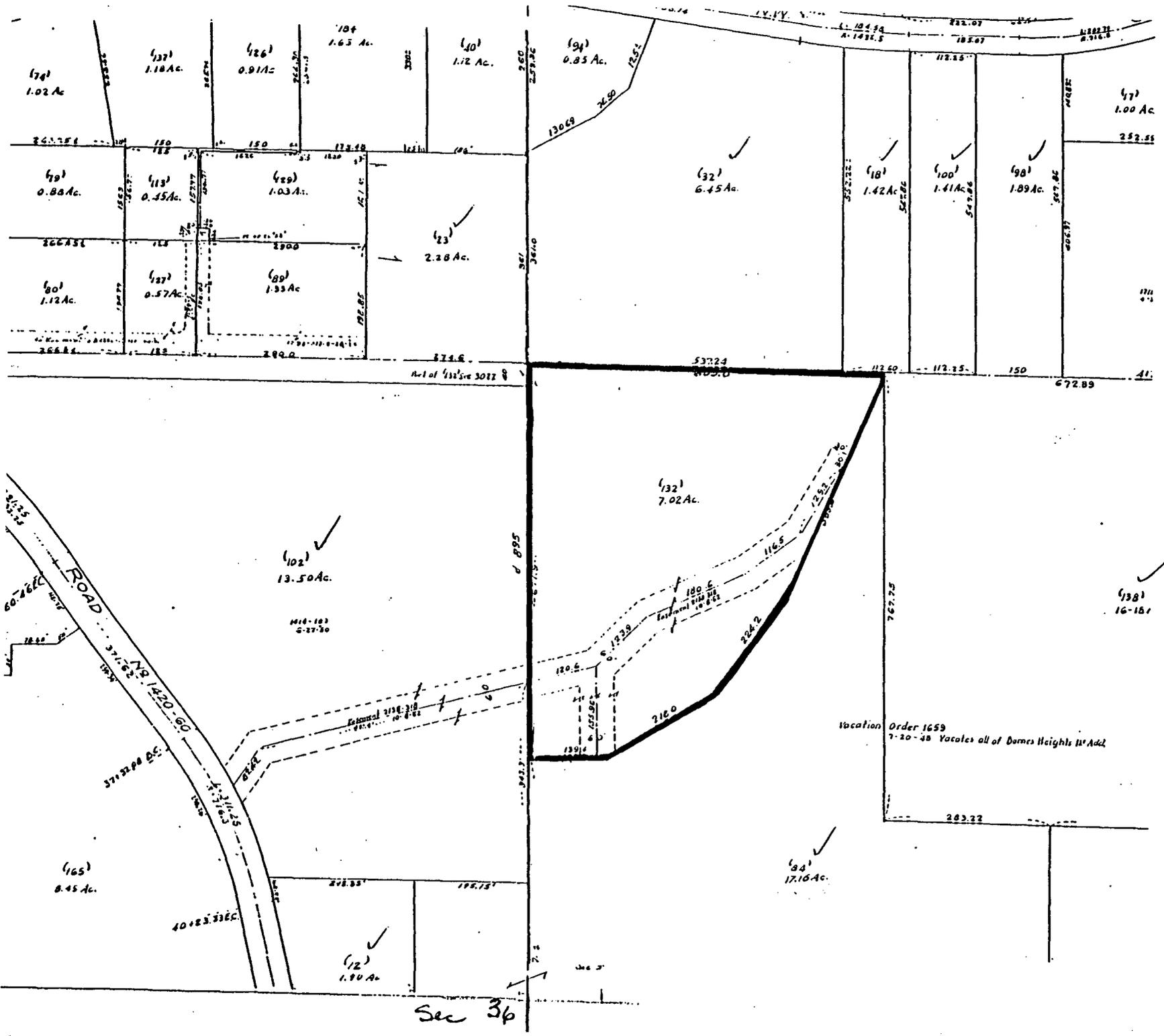
CS - 22-83

HV

Zoning Map

N Case #: CS 7-94
↑ Location: 262 NW Miller Road
 Scale: 1 inch to 200 feet (approx)
 Shading indicates subject property
 SZM #130; 1/4 Section 3022

Location Order 1659
 7-20-48 Yonkers et al versus Heights N Add



REISED NOTIFICATION MAP CS 7-94
 '132' SECTION 36, IN - 1W



BOARD HEARING OF March 14, 1995

TIME: 1:30 pm

CASE NAME: Dwelling Not Related to Forest Use in Forest Zone

NUMBER: CU 1-95; HV 1-95

1. Applicant Name/Address:

Lori Hansen
PO Box 67
Corbett, OR 97019

ACTION REQUESTED OF BOARD

- Affirm Plan.Com./Hearings Officer
- Hearing/Rehearing
 - Scope of Review
 - On the record
 - De Novo
 - New Information allowed

2. Action Requested by applicant:

Approval of a residence that is not related to forest use on a 4.8 acre Lot of Record in the Commercial Forest Use zoning district. Approval of variances to the required side yard setback and the improved width of a private road.

3. Planning Staff Recommendation:

Approval.

4. Hearings Officer Decision:

Approval.

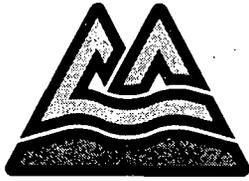
5. If recommendation and decision are different, why?

ISSUES
(who raised them?)

No issues raised.

Do any of these issues have policy implications? Explain.

No.



MULTNOMAH COUNTY OREGON

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

BOARD OF COUNTY COMMISSIONERS
BEVERLY STEIN • CHAIR OF THE BOARD
DAN SALTZMAN • DISTRICT 1 COMMISSIONER
GARY HANSEN • DISTRICT 2 COMMISSIONER
TANYA COLLIER • DISTRICT 3 COMMISSIONER
SHARRON KELLEY • DISTRICT 4 COMMISSIONER

Multnomah County Hearings Officer Decision

Attached please find a copy of the Hearings Officer's decision in the matter of CU 1-95 and HV 1-95. A copy of the Hearings Officer's decision is being mailed to those persons entitled to be mailed notice under MCC 11.15.8220(C) and to other persons who have requested the same.

The Hearings Officer Decision may be appealed to the Board of County Commissioners (Board) by any person or organization who appears and testifies at the hearing or by those who submit written testimony into the record. An appeal must be filed with the County Planning Division within ten days after the Hearings Officer decision is submitted to the Clerk of the Board. An appeal requires a completed "Notice of Review" form and a fee of \$300.00 plus a \$3.50 per minute charge not to exceed \$500.00 for a transcript of the initial hearings(s) [ref MCC 11.15.8260(A)(1) and MCC 11.15.9020(B)]. Instructions and forms are available at the County Planning and Development office located at 2115 SE Morrison Street, Portland, Oregon.

Failure to raise an issue by the close of the record at or following the final hearing (in person or by letter) precludes appeal to the Land Use Board of Appeals (LUBA) on that issue. Failure to provide specificity on an issue sufficient for the Board to respond precludes appeal to LUBA on that issue.

To appeal the Hearings Officer decision, a "Notice of Review" form and fee must be submitted to the County Planning Director. For further information call the Multnomah County Planning and Development Division at (503) 248-3043.

Signed by the Hearings Officer	February 24, 1995
Decision mailed to Parties	March 3, 1995
Decision submitted to Board Clerk	March 3, 1995
Last day to appeal decision	4:30 pm, March 13, 1995
Reported to the board of County Commissioners:	1:30 pm, March 14, 1995



MULTNOMAH COUNTY OREGON

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DIVISION OF PLANNING
AND DEVELOPMENT
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SHARRON KELLEY • DISTRICT 4 COMMISSIONER

DECISION

This Decision consists of Conditions, Findings of Fact, and Conclusions

February 24, 1995

CU 1-95; HV 1-95 #665 **Conditional Use Request**

Applicant requests condition use approval of a single-family dwelling not related to forest management and variances to the side yard setback and improved width of private road dimensional requirements on a 4.8-acre lot of record in the CFU zoning district.

Location: 37777 N.E. Knieriem Road

Legal: Lot 9, Houston Acres

Site Size: 4.8 acres

Applicant: William and Delores Woolford
16015 S.E. Oatfield Road
Milwaukie, Oregon 97267

Property Owner: Lori Hansen
Post Office Box 67
Corbett, Oregon 97019

Comprehensive Plan: Commercial Forest

Zoning: CFU (Commercial Forest Use)

RECEIVED
FEB 24 1995

Multnomah County
Zoning Division

Hearings Officer Decision
February 24, 1995

CU 1-95; HV 1-95 #665
Page 1

HEARINGS OFFICER DECISION:

Approved, subject to the conditions set forth below, the development of the subject property with a single-family dwelling not related to forest management, based on the following Findings and Conclusions.

Approved, subject to the conditions set forth below, the side yard setbacks of approximately 175 and 155 feet between the proposed dwelling and the side property lines, which are variances of 25 and 45 feet from the required 200 feet, based on the following Findings and Conclusions.

Approved, subject to the conditions set forth below, an improved width for the private drive of 12 feet, a variance of 8 feet from the required 20 feet, based on the following Findings and Conclusions.

CONDITIONS OF APPROVAL

1. Approval of this Conditional Use shall expire two years from the date of the Board's final order unless substantial construction has taken place in accordance with MCC 11.15.7110(C).
2. The dwelling location shall be as proposed on the submitted site plan.
3. As a condition precedent to the effectiveness of this approval, the property owner shall comply with OAR 660-06-029(5), which provides as follows, in pertinent part:

"Approval of a dwelling shall be subject to the following requirements:

“(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.
...”^[1]

4. Prior to the issuance of a building permit, the property owner shall provide to the Division of Planning and Development a copy of the recorded restrictions acknowledging the rights of nearby and adjacent properties to conduct farm and forest practices.
5. Prior to the issuance of a building permit for the dwelling, the applicant shall apply for and obtain approval of a grading and erosion control permit. Plans submitted for the permit will incorporate as required the standards of MCC 11.15.2074(D).
6. Prior to the issuance of a building permit, the applicant shall submit confirmation by an Oregon Professional Engineer that the private road to the building site has been constructed to the standards of MCC 11.15.2074(D), except that:
 - (A). The all-weather surface width may be 12 feet in width; and
 - (B). With a final inspection and approval of the fire district, the grades may exceed those listed in MCC 11.15.2074(D)(5).
7. Prior to the issuance of a building permit, and as long as the property is under forest resource zoning, the applicant shall maintain primary and secondary fire safety zones around all structures, in accordance with MCC 11.15.2074(A)(5).

¹ ORS 215.730(1)(a) similarly provides that

“[a] local government *shall require as a condition of approval* of a single-family dwelling allowed under ORS 215.705 on lands zoned forest land that:

“(a) The property owner *submits a stocking survey report* to the assessor and the assessor verifies that the minimum stocking requirements adopted under ORS 527.610 to 527.770 have been met.”

8. The dwelling shall have a fire retardant roof and all chimneys shall be equipped with spark arresters.
9. In accordance with the Rural Fire Protection District #14 letter from Dennis Bryson, Chief, to Lori Hansen on December 6, 1994, "[t]he residence shall be fully sprinkled with an approved system (NFDPD 13-D) and equipped with early warning devices. This is approved upon submission of plans and approval of inspected installation by City of Gresham building inspectors."

TABLE OF CONTENTS

I.

A.	ANALYSIS OF THE PROPOSAL — PART ONE	5
	(Request For Conditional Use)	
	1. Background / Proposal Summary	5
	2. Site and Vicinity Descriptions	5
	3. Comprehensive Plan and Zoning Ordinance Considerations	6
B.	APPLICABLE CRITERIA — PART ONE	7
	1. ORS 215.705 – 215.750	7
	2. OAR 660-06-027, 660-06-029, and 660-06-035	7
	3. MCC 11.15.2050	7
	4. MCC 11.15.2052	8
	5. MCC 11.15.2074	8
	6. Comprehensive Plan Provisions	8
C.	FINDINGS — PART ONE	9
	1. ORS 215.705 – 215.750	9
	2. OAR 660-06-027, 660-06-029, and 660-06-035	13
	3. MCC 11.15.2052	18
	4. MCC 11.15.2074	23
	5. Comprehensive Plan Provisions	28
D.	CONCLUSION — PART ONE	32

II.

A.	ANALYSIS OF THE PROPOSAL — PART TWO	33
	(Request For Variances)	
1.	Background / Proposal Summary	33
2.	Site and Vicinity Descriptions	33
3.	Comprehensive Plan and Zoning Ordinance Considerations	33
B.	APPLICABLE CRITERIA — PART TWO	33
C.	FINDINGS — PART TWO	34
1.	Variance From Setback Requirements	34
2.	Variance From Driveway Width Requirement	36
D.	CONCLUSION — PART TWO	38

I.

A. ANALYSIS OF THE PROPOSAL — PART ONE
Request For Conditional Use

1. BACKGROUND / PROPOSAL SUMMARY

Applicant requests approval to develop a 4.8-acre lot in designated forest land with a single-family dwelling that would not be related to forest management. For all its external simplicity, the proposal falls squarely within the relatively new parameters and criteria promulgated by the 1993 legislature via HB 3661 that broadly control the extent to which such dwellings can be developed on forestland.

2. SITE AND VICINITY DESCRIPTIONS

The subject property is located north of Knieriem Road in the subdivision of Houston Acres, which was platted in 1910. The lot is bounded on the north by a 50-

foot wide unimproved public right-of-way. Actual access to the property is to be gained via an easement to Knieriem Road.

The property is undeveloped and supports only deciduous vegetation. Surrounding properties are used for forest, agricultural, and rural residences. The east and west sites are developed with residences. Approximately one-half of the ownerships in Houston Acres have developed residences.

Properties to the northwest and west are zoned MUA-20, an "exception" zone placed on areas that are not subject to Statewide Planning Goals 3 (agriculture) and 4 (forest). Property to the southwest is zoned Exclusive Farm Use (EFU). All other surrounding property is zoned Commercial Forest Use as of January 7, 1993.

All services necessary for residential development exist along the Knieriem Road frontage. Sewage disposal will be accommodated on-site, with a subsurface sewage disposal system. The residence will be located approximately midpoint of the width of the property.

Access to the property is proposed to be from an extension of an existing private driveway serving the house on property immediately to the east. The extension of the drive is proposed to travel westward from the existing improvements on the south of Lot 10 until it reaches Lot 9. The drive then turns north along the east property line for about one quarter of the lot dimensions before angling northwest to the center of the lot.

A small unnamed creek in the southeast corner of the property is proposed to be contained in a culvert and crossed by the drive. The County has determined that the creek does not constitute a significant Goal 5 resource.

3. COMPREHENSIVE PLAN AND ZONING ORDINANCE CONSIDERATIONS

The subject property is classified as "commercial forest" in the Comprehensive Plan and zoned "CFU," Commercial Forest Use.

B. APPLICABLE CRITERIA — PART ONE
Request For Conditional Use

The following criteria apply to the proposed development:

1.

ORS 215.705 – 215.750

ORS 215.705 to 215.750 set forth criteria adopted by the legislature to control dwellings in forest zones. Those criteria appear in detail within the separate discussion in the "Findings" portion of this decision.

2.

OAR 660-06-027, 660-06-029, AND 660-06-035

OAR 660-06-027, 660-06-029, and 660-06-035 set forth criteria adopted by administrative rule by LCDC to control dwellings in forest zones. Those criteria appear in detail within the separate discussion in the "Findings" portion of this decision.

3.

MCC 11.15.2050

MCC 11.15.2050 provides that

"[t]he following uses may be permitted when found by the approval authority to satisfy the applicable standards of this Chapter:

"* * * * *

"(B) *A dwelling not related to forest management* pursuant to the provisions of *MCC .2052 and .2074.*"

4.

MCC 11.15.2052^[2]

MCC 11.15.2052 provides that “[a] dwelling not related to forest management may be allowed subject to” the criteria in .2052(A)(1)–(10). Those criteria appear in detail within the separate discussion in the “Findings” portion of this decision.

5.

MCC 11.15.2074

MCC 11.15.2074 — made applicable by MCC 11.15.2052(A)(9) — provides that “. . . all dwellings and structures located in the CFU district after January 7, 1993[,] shall comply” with the provisions in .2074(A)–(D). Those criteria appear in detail within the separate discussion in the “Findings” portion of this decision.

6.

COMPREHENSIVE PLAN PROVISIONS

The County has determined COMPREHENSIVE PLAN policies 13 (Air, Water, and Noise Quality), 22 (Energy Conservation), 37 (Utilities), 38 (Facilities), and 40 (Development Requirements) to apply. These criteria appear in detail within the separate discussion in the “Findings” portion of this decision.

² MCC 11.15.7120(A) provides, in general, that

“[a] *Conditional Use* shall be governed by the approval criteria listed *in the district under which the conditional use is allowed. . . .*”

Because MCC 11.15.2052 contains specific criteria applicable to uses within the CFU district, the general provisions in MCC 11.15.7120(A) will not apply.

C. FINDINGS — PART ONE

1. ORS 215.705 – 215.750

ORS 215.705(1) provides, in pertinent part, that “[a] dwelling under this section may be allowed if:

“(a) The lot or parcel on which the dwelling will be sited was lawfully created and was acquired by the present owner:

“(A) Prior to January 1, 1985; or

“(B) By devise or by intestate succession from a person who acquired the lot or parcel prior to January 1, 1985.

“(b) The tract on which the dwelling will be sited does not include a dwelling.

“(c) The proposed dwelling is not prohibited by, and will comply with, the requirements of the acknowledged comprehensive plan and land use regulations and other provisions of the law.

“* * * * *

“(e) The lot or parcel on which the dwelling will be sited, if zoned for forest use, is described in ORS 215.720, 215.740 or 215.750.

“* * * * *

The record suggests that the lot was created by plat in 1910, and that the present owner (Mr. Woolford) acquired his ownership interest in 1984. Thus, applicant's evidence supports a finding that ORS 215.705(1)(a) has been fulfilled.

The tract on which the dwelling will be sited does not already contain a dwelling, and the proposed dwelling is not prohibited by the comprehensive plan and approval criteria (*see later discussion*). Thus, applicant's evidence supports a finding that ORS 215.705(1)(b) and (c) have been fulfilled.

Whether the subject property is described in ORS 215.720 or 215.750 (ORS 215.740 being inapplicable) — and whether the applicant's evidence supports a finding that ORS 215.705(1)(c) has been fulfilled — is discussed in the next few paragraphs.

ORS 215.720 provides, in pertinent part:

“(1) A dwelling authorized under ORS 215.705 may be allowed on land zoned for forest use under a goal protecting forest land only if:

“(a) The tract on which the dwelling will be sited is in western Oregon, as defined in ORS 321.257, and is composed of soils not capable of producing 5,000 cubic feet per year of commercial tree species and is located within 1,500 feet of a public road as defined under ORS 368.001. . . .

“(3) No dwelling other than those described in this section and ORS 215.740 and 215.750 may be sited on land zoned for forest use under a land use planning goal protecting forest land.”

ORS 215.750 further provides:

“(1) In western Oregon, a governing body of a county or its designate may allow the establishment of a single-family dwelling on a lot or parcel located within a forest zone if the lot or parcel is predominantly composed of soils that are:

“(c) Capable of producing more than 85 cubic feet per acre per year of wood fiber if:^[3]

³ Applicant's evidence reveals that neither subparts (a) nor (b) of ORS 215.750(1) would apply in any event.

“(A) All or part of at least 11 other lots or parcels that existed on January 1, 1993, are within a 160-acre square centered on the center of the subject tract; and

“(B) At least three dwellings existed on January 1, 1993, on the other lots or parcels.

**** * * * ***

“(3) Lots or parcels within urban growth boundaries shall not be used to satisfy the eligibility requirements under this subsection.

With one significant exception (addressed in the next paragraph), the County has implemented the criteria in ORS 215.720 and 215.750 via MCC 11.15.2052, discussed later. Because the applicant's evidence supports the finding that the proposed dwelling fulfills the criteria in MCC 11.15.2052 (discussed later), then with the one exception noted in the next paragraph the dwelling concurrently fulfills the criteria in ORS 215.720 and 215.750, and, in turn, fulfills the remaining criterion in ORS 215.705(1)(e).

The exception is the requirement in ORS 215.720(1)(a) that the subject parcel be located “within 1,500 feet of a public road as defined under ORS 368.001.” MCC 11.15.2052 does not appear to incorporate that particular criterion. Applicant's evidence suggests, however, that the total distance from the building site to Knieriem Road is approximately 1,400 feet. Assuming that Knieriem Road constitutes a “public road” as defined,^[4] applicant has fulfilled this particular requirement.

ORS 215.730 further provides, in pertinent part:

“(1) A local government shall require as a condition of approval of a single-family dwelling allowed under ORS 215.705 on lands zoned forest land that:

⁴ ORS 368.001(5) defines “public road” as “a road over which the public has a right of use that is a matter of public record.”

“(a) The property owner submits a stocking survey report to the assessor and the assessor verifies that the minimum stocking requirements adopted under ORS 527.610 to 527.770 have been met.

“(b) The dwelling meets the following requirements:

“(A) The dwelling has a fire retardant roof.

“(B) The dwelling will not be sited on a slope of greater than 40 percent.

“(C) Evidence is provided that the domestic water supply is from a source authorized by the Water Resources Department and not from a Class II stream as designated by the State Board of Forestry.

“(D) The dwelling is located upon a parcel within a fire protection district or is provided with residential fire protection by contract.

“(E) If the dwelling is not within a fire protection district, the applicant provides evidence that the applicant has asked to be included in the nearest such district.

“(F) If the dwelling has a chimney or chimneys, each chimney has a spark arrester.

“(G) The owner provides and maintains primary fuel-free break and secondary break areas.”

Because some of these criteria in ORS 215.730(1) represent “conditions” pertaining to the design or construction process itself, they can be superimposed upon an approval for a particular use, rather than functioning as criteria that must necessarily be

fulfilled before conditional approval can be granted. Thus, appropriate conditions will fulfill the criteria in ORS 215.730(1)(b)(A), (F), and (G).

However, the County has implemented most of the conditions in ORS 215.730(1) via mandatory approval criteria in MCC 11.15.2074. Because the applicant has demonstrated a fulfillment of ORS 215.730(1)(a) and (b)(B), (C), (D), and (E), as discussed later, the proposed dwelling concurrently fulfills the criterion in ORS 215.730(1)(a) and (b)(B), (C), (D), and (E).

2. OAR 660-06-027, 660-06-029, and 660-06-035

In many respects, the criteria in OAR 660-06-027 mirror the various statutory criteria in ORS 215.705 to 215.750. They nevertheless apply independently.

OAR 660-06-027(1) provides, in pertinent part, that

“[d]wellings authorized by OAR 660-06-025(1)(d)⁵ are:

“(a) A dwelling on a tract in western Oregon that is composed of soil not capable of producing 5,000 cubic feet per year of commercial tree species and is located within 1,500 feet of a public road as defined under ORS 368.001. . . .

**** * * * ***

“(d) In western Oregon, a governing body of a county or its designate may allow the establishment of a single-family dwelling on a lot or parcel located within a forest zone if the lot or parcel is predominately composed of soils that are:

**** * * * ***

⁵ OAR 660-06-025(1)(d) provides that “[d]wellings authorized by ORS 215.720 to 215.750” comprise one of the “general types of uses” permitted in forest land.

“(C) Capable of producing more than 85 cubic feet per acre per year of wood fiber if: [6]

“(I) All or part of at least 11 other lots or parcels that existed on January 1, 1993, are within a 160 acre square centered on the center of the subject tract; and

“(ii) At least three dwellings existed on January 1, 1993, on the other lots or parcels.”

With one exception noted in the next paragraph, the County has implemented these criteria via the criteria in MCC 11.15.2052. Because the applicant's evidence supports the finding that the proposed dwelling fulfills the criteria in MCC 11.15.2052 (discussed later), then with the one exception noted in the next paragraph, the dwelling concurrently fulfills the criterion in OAR 660-06-027(1)(a) and (d).

The exception is the requirement in OAR 660-06-027(1)(a) that the subject parcel be located “within 1,500 feet of a public road as defined under ORS 368.001.” MCC 11.15.2052 does not appear to incorporate that particular criterion. Applicant's evidence suggests, however, that the total distance from the building site to Knieriem Road is approximately 1,400 feet. Assuming that Knieriem Road constitutes a “public road” as defined, applicant has fulfilled this particular requirement.

OAR 660-06-027(4) further provides that “[a] proposed dwelling under this rule is not allowed:

“(a) If it is prohibited by or will not comply with the requirements or an acknowledged comprehensive plan or acknowledged land use regulations or other provisions of law;

“(b) Unless it complies with the requirements of OAR 660-06-029 and 660-06-035;

⁶ Applicant's evidence reveals that neither subparts (A) nor (B) of OAR 660-06-027(1)(d) would apply in any event.

“(c) Unless no dwellings are allowed on other lots or parcels that make up the tract and deed restrictions established under section (6) of this rule for the other lots or parcels that make up the tract are met;

“(d) If the tract on which the dwelling will be sited includes a dwelling.

The proposed dwelling is not prohibited by the comprehensive plan and approval criteria (*see later discussion*). Thus, applicant's evidence supports a finding that OAR 660-06-027(4)(a) has been fulfilled.

Because the proposed dwelling complies with the requirements of OAR 660-06-029 and 660-06-035 (discussed below), it fulfills the requirements of OAR 660-06-027(4)(b).

There are no other “lots or parcels that make up the tract,” and no other dwellings will be allowed on the parcel. Thus, applicant's evidence supports a finding either that OAR 660-06-027(4)(c) does not apply or that it has been fulfilled.

There exists no dwelling on the subject property. Thus, applicant's evidence supports a finding that OAR 660-06-027(4)(d) has been fulfilled.

OAR 660-06-029 provides that

“[t]he following siting criteria or their equivalent shall apply to all new dwellings and structures in forest and agricultural/ forest zones. . . .:

“(1) Dwellings and structures shall be sited on the parcel so that:

“(a) They have the least impact on nearby or adjoining forest or agricultural lands;

“(b) The siting ensures that adverse impacts on forest operations and accepted farming practices on the tract will be minimized;

“(c) The amount of forest lands used to site access roads, service corridors, the dwelling and structures is minimized; and

“(d) The risks associated with wildfire are minimized.

“* * * * *

“(3) The applicant shall provide evidence to the governing body that the domestic water supply is from a source authorized in accordance with the Water Resources Department’s administrative rules for the appropriation of ground water or surface water and not from a Class II stream as defined in the Forest Practices rules (OAR Chapter 629). . . .

“(4) As a condition of approval, if road access to the dwelling is by a road owned and maintained by a private party . . . , 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 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 shall verify that the minimum stocking requirements have been met by the time required by Department of Forestry rules. The assessor shall 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 shall determine whether that tract meets minimum stocking requirements of the Forest Practices Act. If the department determines that the tract does not meet those requirements, the department shall notify the owner and the assessor that the land is not being managed as forest land. The assessor shall then remove the forest land designation pursuant to ORS 321.359 and impose the additional tax pursuant to ORS 321.372.”

The County has implemented the various criteria in OAR 660-06-029(1) via the development standards in MCC 11.15.2074. Because the applicant's evidence supports a finding that MCC 11.15.2074 has been fulfilled (as discussed later), the applicant has likewise fulfilled OAR 660-06-029(1).

The County has implemented the criterion in OAR 660-06-029(3) via MCC 11.15.2074(C). Because the applicant's evidence supports a finding that MCC 11.15.2074(C) has been fulfilled (as discussed later), the applicant has likewise fulfilled OAR 660-06-029(3).

The condition in OAR 660-06-029(4) has been implemented by the County via MCC 11.15.2052(A)(7). Because the applicant's evidence supports a finding that MCC 11.15.2052(A)(7) has been fulfilled (as discussed later), the applicant has likewise fulfilled OAR 660-06-029(4).

Although OAR 660-06-029(5) makes the “approval” of a dwelling subject to the criteria specified therein, only part (c) could reasonably comprise a condition of ap-

proval of the proposed dwelling itself; parts (a), (b), and (d) all pertain to post-approval, post-development activities that impact only the property's tax status. The criterion in part (c) can be fulfilled via a condition of approval.

Finally, OAR 660-06-035 implements certain "fire siting standards" that mirror requirements in ORS 215.730(1)(b) and 215.730(2). The County also implemented some of the same criteria in MCC 11.15.2052 and .2074. Because the applicant's evidence supports a finding that MCC 11.15.2052 and .2074 have been fulfilled (as discussed later), the applicant has likewise fulfilled OAR 660-06-035.

3. MCC 11.15.2052

"(1) The lot shall meet the lot of record standards of MCC .2062(A) and (B) and have been lawfully created prior to January 25, 1990 [.]"

MCC 11.15.2062(A) provides that "[f]or the purposes of this district, a Lot of Record is:

"(1) A parcel of land:

"(a) For which a deed or other instrument creating the parcel was recorded with the Department of General Services, or was in recordable form prior to August 14, 1980;

"(b) Which satisfied all applicable laws when the parcel was created; and

"(c) *Which satisfies the minimum lot size requirements of MCC .2058; or*

"(2) A parcel of land:

"(a) For which a deed or other instrument creating the parcel was recorded with the Department of General Services, or was in recordable form prior to February 20, 1990;

"(b) Which satisfied all applicable laws when the parcel was created; and

“(c) Does not meet the minimum lot size requirements of MCC .2058; and

“(d) Which is not contiguous to another sub-standard parcel or parcels under the same ownership [.]”

“* * * * *”

Applicant relies upon .2062(A)(2). The minimum lot size, per MCC 11.15.2058(A), is 80 acres; thus, .2062(A)(1) would not apply.

The parcel appears to have been created by plat recorded in 1910. Also, it does not lie contiguous to another substandard parcel under the same ownership.

Thus, applicant's evidence supports the finding that the criterion in MCC 11.15.2052(A)(1) has been fulfilled.

“(2) The lot shall be of sufficient size to accommodate siting the dwelling in accordance with MCC .2074 with minimum yards of 60 feet to the centerline of any adjacent County-maintained road and 200 feet to all other property lines. Variances to this standard shall be pursuant to MCC .8505 through .8525, as applicable [.]”

There are no county-maintained roads “adjacent” to the site, thus the required setback requirements of 200 feet must be to all property lines.

The proposed house lies more than 200 feet from the front (south) and rear (north) property lines, but less than that distance from the east and west property lines. Thus, the applicant concurrently seeks a variance to the 200 feet setback requirement due to the narrowness of the lot. The variance is the subject of Part II of this decision.

Because the applicant has successfully demonstrated an entitlement to a variance (as discussed later), the evidence supports a finding that the criterion in MCC 11.15.2052(A)(2) has been fulfilled.

"(3) The lot shall meet the following standards:

" * * * * "

"(c) The lot shall be composed primarily of soils which are capable of producing above 85 cf/ac/yr of Douglas Fir timber;^[7] and

"(I) The lot and at least all or part of 11 other lots exist within a 160-acre square when centered on the center of the subject lot parallel and perpendicular to section lines;^[8] and

"(ii) Five dwellings exist within the 160-acre square.^[9]

"(d) Lots and dwellings within urban growth boundaries shall not be counted to satisfy (a) through (c) above.

"(e) The lot is not capable of producing 5,000 cubic feet of wood fiber per year from commercial tree species recognized by the Forest Practices Rules."

Applicant's evidence reveals that the lot is composed primarily of soils which are capable of producing greater than 85 cubic feet per acre per year of Douglas Fir timber. The 4.8 acre lot is composed primarily of Haplumbrepts with a yield of 100 to 125 cubic feet per acre and Merston silt loam also with a yield of 100 to 125 cubic feet per acre.

Applicant's evidence further reveals that the parcel is not capable of producing 5,000 cubic feet of wood fiber per year; 4.8 acres times 125 cubic feet per acre per year equals only 600 cubic feet per year.

⁷ Applicant relies only upon MCC 11.15.2052(A)(3)(c).

⁸ Both ORS 215.750(1)(c)(A) and OAR 660-06-027(1)(d)(C)(I) further specify that the 11 other lots must have existed as of January 1, 1993.

⁹ Both ORS 215.750(1)(c)(B) and OAR 660-06-027(1)(d)(C)(ii) specify "[a]t least *three* dwellings [must have] existed on January 1, 1993, on the other lots or parcels."

At least thirteen dwellings and more than twenty lots exist within the 160-acre square. None of those lots or dwellings is located within an urban growth boundary.

Thus, applicant's evidence supports a finding that the criteria in MCC 11.15.2052(A)(3)(c), (d), and (e) have been fulfilled.

"(4) The dwelling will not force a significant change in, significantly increase the costs of, or impede accepted forestry or farming practices on surrounding forest or agricultural lands [.]"

The east and west sides of the subject property are residential. The property to the north and south of the subject property is unused land consisting of thin and deciduous forest and brush. At least thirteen nearby properties are being used primarily for residential purposes, although some maintain small herds of livestock.

Letters from neighbors show that the surrounding property owners will not be adversely affected, at least to the extent that any of them conduct "accepted forestry or farming practices." Indeed, the adjacent property owners encourage the development of the proposed dwelling.

There exists no evidence that the proposed dwelling will run afoul of the proscription in MCC 11.15.2052(A)(4); the evidence is to the contrary. Thus, applicant's evidence supports a finding that the criterion in MCC 11.15.2052(A)(4) has been fulfilled.

"(5) The dwelling will be located outside a big game winter habitat area as defined by the Oregon Department of Fish and Wildlife, or that agency has certified that the impacts of the additional dwelling, considered with approvals of other dwellings in the area since acknowledgment of the Comprehensive Plan in 1980, will be acceptable."

The dwelling is not located inside a big game winter habitat area. Thus, applicant's evidence supports a finding that the criterion in MCC 11.15.2052(A)(5) has been fulfilled.

“(6) The proposed dwelling will be located on a lot within a rural fire protection district, or the proposed resident has contracted for residential fire protection [.]”

The proposed dwelling will be located on a lot within a rural fire protection district. Fire protection in the area is provided by Rural Fire Protection District No. 14.

Thus, applicant's evidence supports a finding that the criterion in MCC 11.15.2052(A)(6) has been fulfilled.

“(7) Proof of a long-term road access use permit or agreement shall be provided 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 Bureau of Land Management, or the United States Forest Service. The road use permit may required the applicant to agree to accept responsibility for road maintenance [.]”

Nothing in the record suggests that the road access to the subject property off Knieriem Road is a County-maintained road. Nor does anything in the record suggest that road access to the dwelling is or will be maintained by anyone other than a private party or parties. The applicant has provided documentation of long-term easements for roadway access.

Thus, applicant's evidence supports a finding that the criterion in MCC 11.15.2052(A)(7) has been fulfilled.

“(8) The parcel on which the dwelling will be located has been disqualified from receiving a farm or forest tax deferral [.]”

This criterion has been superseded by ORS 215.730(1)(a) and OAR 660-06-029(5), discussed above.

As observed earlier, although OAR 660-06-029(5) makes the “approval” of a dwelling subject to the criteria specified therein, only part (c) could reasonably com-

prise a condition of approval of the development of the dwelling itself; parts (a), (b), and (d) all pertain to post-approval, post-development activities that only impact the property's tax status. The criterion in part (c) can be fulfilled via a condition of approval.

“(9) The dwelling meets the applicable development standards of MCC .2074 [.]”

The criteria in MCC 11.15.2074 are discussed in the next section. Because applicant's evidence supports a finding that the criteria in MCC 11.15.2074 have been fulfilled, this criterion in MCC 11.15.2052(A)(9) has been fulfilled.

“(10) A statement has been recorded with the Division of Records that the owner and the successors in interest acknowledge the rights of owners of nearby property to conduct forest operations consistent with the Forest Practices Act and Rules, and to conduct accepted farming practices.

The applicant has indicated an intention to record a statement, but the record reflects that the statement has yet to be recorded. The criterion plainly says “*has* been recorded,” which unambiguously conveys the requirement that the recordation of the statement must precede approval.

Thus, applicant's compliance with this criterion shall be a condition of approval.

4. MCC 11.15.2074

MCC 11.15.2074 — made operative via MCC 11.15.2052(A)(9), above — provides that

“... [A]ll 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);**
- “(2) Forest operations and accepted farming practices will not be curtailed or impeded;**
- “(3) The amount of forest land used to site the dwelling or other structure, access road, and service corridor is minimized;**
- “(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; and**
- “(5) The risks associated with wildfire are minimized. . . .”**

Maps appear to reflect that the proposed location of the dwelling is situated so as to have the least impact on all nearby or adjoining lands. The dwelling will be located approximately mid-point to all boundaries. Applicant cannot, however, fulfill the setback requirements of MCC 11.15.2058(C) through (G), and has requested a variance. The criteria for that request are discussed below. Because applicant has successfully demonstrated an entitlement to the variance (as discussed later), applicant's evidence supports a finding that the provisions in MCC 11.15.2074(A)(1) have been fulfilled.

MCC 11.15.2074(A)(2) has been supplanted by OAR 660-06-029(1)(b), which requires that “[t]he siting ensures that adverse impacts on forest operations and accepted farming practices on the tract will be minimized [.]” The record contains no evidence that any forest operations or farming practices even occur on the site. Thus, no “adverse impacts” will occur, and applicant's evidence supports a finding that the provision in MCC 11.15.2074(A)(2), as supplanted by OAR 660-06-029(1)(b), has been fulfilled.

Applicant has documented that the terrain, the distance to the small creek, and the present clearing on which the dwelling is to be situated limit the building site to the area as indicated on applicant's map. Areas closer to Knieriem Road are too steep and too close to the creek to be feasible sites. Since the clearing for the pro-

posed dwelling has no trees, this naturally limits the amount of forest land affected by the structure. Thus, applicant's evidence supports a finding that the provision in MCC 11.15.2074(A)(3) has been fulfilled.

The distance of the easement from the property line to Knieriem Road is 1,050 feet, and the total distance from the building site to Knieriem Road is 1,400 feet. A driveway in excess of 500 feet in length is necessary because of the physical limitations of Lot 9. The 50-foot right-of-way on the northern property line is incapable of providing access to the property from Littlepage Road. That road was never completely developed due to the physical limitations of the steep canyon walls and natural occurring springs. Therefore, applicant's documentation reveals that the only property access is the 20-foot easement on the south end of Lot 10 and south through Lot 14 and Lot 22 in Houston Acres. Thus, applicant's evidence supports a finding that the provision in MCC 11.15.2074(A)(4) has been fulfilled.

In addition to RFPD #14's approval of a certified NFPD B-D residential sprinkling system on the dwelling itself, applicant's evidence reveals that the present 200' x 175' clearing where the dwelling will be sited allows for a natural primary 30-foot and a secondary 100-foot fire safety zone. RFPD #14 has approved access for its fire trucks. The drive crossing the small creek allows access by fire equipment to the small amount of flow that is available, which appears to comprise a "perennial" water source on the lot. The dwelling will be located on a slope of less than 20 percent, which means that applicant must maintain a primary fire safety zone down the slope from the dwelling of at least 50 feet, or 20 feet beyond the "natural" 30-foot primary safety zone.

With applicant's observance of the safety zone conditions as an enduring condition of approval, applicant's evidence supports a finding that the provisions in MCC 11.15.2074(A)(5) have been fulfilled.

"(B) The dwelling shall:

- "(1) Comply with the standards of the Uniform Building Code . . . ;**
- "(2) Be attached to a foundation for which a building permit has been obtained; and**
- "(3) Have a minimum floor area of 600 square feet."**

Because these criteria condition *pre*-construction approval of the proposed use based upon the applicant's compliance with *post*-approval construction requirements, applicant's post-approval compliance with the criteria in MCC 11.15.2074(B)(1) to (3) shall be an enduring condition of approval.

In addition, ORS 215.730(1)(b)(A) and (F), as well as OAR 660-06-035(4) and (6), require that the proposed dwelling have a fire retardant roof and that any chimney have a spark arrester. Thus, applicant's post-approval compliance with these requirements shall likewise be an enduring condition of approval.

As so conditioned, applicant's evidence supports a finding that MCC 11.15.2074(B) has been fulfilled.

"(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. 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."

Applicant has a legal easement for water lines, and has an approval from the Corbett Water District for an adequate water supply.

Thus, applicant's evidence supports a finding that the provision in MCC 11.15.2074(C) has been fulfilled.

"(D) A private road (including approved easements) accessing two or more dwellings, or a driveway accessing a single dwelling, shall be designed, built, and maintained to:

- “(1) Support a minimum gross vehicle weight (GVW) of 52,000 lbs. Written of compliance with the 52,000 lb. GVW standard from an Oregon Professional Engineer shall be provided for all bridges and culverts:**
- “(2) Provide an all-weather surface of at least 20 feet in width for a private road and 12 feet in width for a driveway;**
- “(3) Provide minimum curve radii of 48 feet or greater;**
- “(4) Provide an unobstructed vertical clearance of at least 13 feet 6 inches;**
- “(5) Provide grades not exceeding 8 percent, with a maximum of 12 percent on short segments, except as provided below:**
 - “(a) Rural Fire Protection District No. 14 requires approval from the Fire Chief for grades exceeding 6 percent;**
 - “(b) The maximum grade may be exceeded upon written approval from the fire protection service provider having responsibility;**
- “(6) Provide a turnaround with a radius of 48 feet or greater at the end of any access exceeding 150 feet in length;**
- “(7) Provide for the safe and convenient passage of vehicles by the placement of:**
 - “(a) Additional turnarounds at a maximum spacing of 500 feet along a private road; or**
 - “(b) Turnouts measuring 20 feet by 40 feet along a driveway in excess of 200 feet in length at a maximum spacing of ½ the driveway length or 400 feet[,] whichever is less.”**

Because these criteria condition *pre*-construction approval of the proposed use on the applicant's *post*-approval compliance with requirements for the construction and maintenance of the required road, applicant's post-approval compliance with the "private road" criteria in MCC 11.15.2074(D) shall be an enduring condition of approval.

Applicant has represented that a "private road" (including approved easements) accessing two dwellings will be designed, built, and maintained to support a minimum gross vehicle weight of 52,000 lbs. For any bridge or culverts crossed by the road, applicant shall provide a verification of compliance from an Oregon Professional Engineer. Compliance with this criterion shall be an enduring condition of approval.

Applicant has further represented that the road will have an all-weather surface of at least 12 feet in width, but has requested a variance from the 20-foot width requirement. That variance request is discussed below. Compliance with this criterion shall be an enduring condition of approval.

Applicant has also represented that the road will provide minimum curve radii of at least 48 feet, will provide minimum unobstructed vertical clearance of 13 feet 6 inches, and will contain a turnaround with a radius of 48 feet at the end. RFPD #14 has approved any grades in the road greater than 6 percent. Compliance with this criterion shall be an enduring condition of approval.

Applicant has also represented that the road will contain turnouts of 20 feet by 40 feet approximately every 400 feet. Compliance with this criterion shall be an enduring condition of approval.

As so conditioned, applicant's evidence supports a finding that MCC 11.15.2074(D) has been fulfilled.

5. Comprehensive Plan Provisions

Comprehensive Plan Policy 13 (Air, Water, and Noise Quality) provides, in pertinent part:

“. . . [I]t 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. . . .”

Nothing about applicant's proposed use gives rise to any suggestion that the dwelling will have any impact on existing air quality, water quality, or noise levels in the area, or that all applicable standards cannot be met.

Thus, applicant's evidence supports a finding that the proposed use fulfills Comprehensive Plan Policy 13.

part: Comprehensive Plan Policy 22 (Energy Conversation) provides, in pertinent

“ . . . The County shall require a finding prior to the approval of legislative or quasi-judicial action that the following factors have been considered:

- “A. The development of energy-efficient land use 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.”**

The proposed dwelling is manifestly located in a rural area, thus parts B and C have no direct relevance. Also, there is nothing in the record to support the suggestion that the proposed dwelling will not be constructed and designed so as to promote energy-efficient practices. The proposed dwelling has been situated so as to utilize the natural environment to the greatest extent possible. All of the above factors have been considered.

Thus, applicant's evidence supports a finding that the proposed use fulfills Comprehensive Plan Policy 22.

Comprehensive Plan Policy 37 (Utilities) provides:

“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, lares 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.**

“* * * *”

Applicant's evidence reveals that the proposed dwelling can be connected to a public water system (the Corbett Water District). Applicant's evidence also reveals that DEQ will approve a subsurface sewage disposal system.

Applicant's evidence reveals that the water run-off can be handled on-site and will not adversely affect the water quality in the adjacent creek or alter the drainage of adjoining lands. The home and the leach lines from the subsurface sewage disposal system will be placed over 100 feet from the creek.

Lines of the Corbett Water District are available on Knieriem Road, with an approved utility easement to the subject property. Corbett Water District can adequately supply water to the proposed property. The dwelling will be adequately served by an on-site subsurface sewage disposal system and drainfield. The site can be served by PGE and Cascade Utilities.

Thus, applicant's evidence supports a finding that the proposed use fulfills Comprehensive Plan Policy 37.

Comprehensive Plan Policy 38 (Facilities) provides:

"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 an 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."

The Corbett School District has had an opportunity to review and comment on the proposal, and it did so. RFPD #14 indicates that there exists adequate water pressure and flow for firefighting purposes in the vicinity, and that its trucks also carry 10,000 gallons of water. Multnomah County Sheriff's Office will provide the necessary police protection.

Thus, applicant's evidence supports a finding that the proposed use fulfills Comprehensive Plan Policy 38.

Comprehensive Plan Policy 40 (Development Requirements) provides that:

"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."**

Nothing about the proposed dwelling or the location gives rise to a suggestion that pedestrian or bicycle path connections would be appropriate. Neither benches nor bicycle parking facilities would be appropriate.

Thus, applicant's evidence supports a finding that the proposed use fulfills Comprehensive Plan Policy 40.

D. CONCLUSION — PART ONE

Applicant has fulfilled all of the applicable criteria in ORS 215.705-215.750, OAR 660.06.027, .029, and .025, MCC 11.15.2052 and .2074, and the applicable Comprehensive Plan provisions, either by providing evidence that demonstrates pre-ap-

proval compliance, or by demonstrating an entitlement to variances from certain criteria. Those criteria that have not yet been fulfilled shall comprise conditions that must be fulfilled before any construction takes place.

II.

A. ANALYSIS OF THE PROPOSAL — PART TWO Request For Variances

1. BACKGROUND / PROPOSAL SUMMARY

Applicant requests approval of variances to the required side yard setbacks allowing for yards of approximately 175 and 155 feet from the proposed dwelling to the west and east side property lines. Normally, a 200-foot setback would be required.

Applicant also requests approval of a variance to the required 20-foot driveway width, in order to construct a 12-foot driveway.

2. SITE AND VICINITY DESCRIPTIONS

This topic has been generally discussed in Section I of this decision.

3. COMPREHENSIVE PLAN AND ZONING ORDINANCE CONSIDERATIONS

This topic has been discussed in Section I of this decision.

B. APPLICABLE CRITERIA — PART TWO Request For Variances

MCC 11.15.8505 contains criteria applicable to requests for a variance from other approval requirements. Those criteria appear in detail within the separate discussion in the "Findings" portion of this decision.

C. FINDINGS — PART TWO

MCC 11.15.8505 provides, in pertinent part:

“(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. A Minor Variance shall meet criteria (3) and (4).

1. VARIANCE FROM SETBACK REQUIREMENTS

“(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.”

The subject property measures 330 feet by 660 feet. Due to the narrow east-west width of the property, a 200-foot side yard setback is impossible. The proposed dwelling will be sited 175 feet from the west boundary and 155 feet from the east boundary, and mid-point of the length of 660 feet.

The present natural clearing central to the property allows for sufficient distance from the creek and maximum feasible setback from all boundaries to lessen impact on surrounding property.

Although it appears that one or two other lots in the vicinity or district share a similar sizing problem, it nevertheless also appears that the physical limitations in this case do not apply “generally” to other properties.

Applicant’s evidence supports a finding that MCC 11.15.8505(A)(1) has been fulfilled, in that the size and shape of the lot yields a condition that does not apply to other properties in the area.

“(2) 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.”

The setback requirement would restrict the use of the subject property in a manner that does not restrict other properties in the vicinity or district. Other properties either have sufficient lot size that the yard setback requirements have been, or can be, met, or have been granted variances for the same reason that the applicant now requests one. Without a variance in this case, it appears that no reasonable dwelling could be built.

Applicant's evidence supports a finding that MCC 11.15.8505(A)(2) has been fulfilled, in that the setback requirement would otherwise prevent the development of the property, and thus restrict the use of the subject property to a greater degree than other properties in the vicinity or district.

“(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 affect the appropriate development of adjoining properties.”

Nothing about the requested variance even remotely suggests that a variance under the circumstances could be materially detrimental to the public welfare or injurious to property in the vicinity or district; to the contrary, the adjacent property owners have encouraged the proposed development. The nearest house is 250 feet distance, and the proposed variance would not result in, for instance, any interference with an adjacent owner's view.

Applicant's evidence supports a finding that MCC 11.15.8505(A)(3) has been fulfilled.

"(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."

The proposed dwelling complies in all respects with all other applicable approval provisions and Comprehensive Plan policies. Also, the resultant home would not comprise a use not listed in the underlying zone.

Applicant's evidence supports a finding that MCC 11.15.8505(A)(4) has been fulfilled.

2. VARIANCE FROM DRIVEWAY WIDTH REQUIREMENTS

"(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."

"(2) 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."

Other properties in the vicinity have other options for access. Lot 9, however, appears to have no other options due to the physical configuration of the terrain. The public right-of-way on the north was never built due to the steep terrain and the perennial springs. Without the use of the current narrow driveway, the property would otherwise be landlocked.

In order to construct a 20-foot driveway, the terrain and topography would require a 100-foot wide easement, and the cost of access construction alone would be in excess of \$20,000. Moreover, applicant's evidence strongly suggests that a 20-foot wide driveway would ultimately cause substantial adverse impacts on the forested areas of adjacent properties.

It appears that most or all of the adjacent or vicinity properties have 12-foot wide driveways. The 20-foot driveway width requirement would operate in this case to either prevent or severely burden the applicant's development proposal in a manner that would not apply to other properties in the vicinity or district.

Applicant's evidence supports a finding that MCC 11.15.8505(A)(1) and (2) have been fulfilled.

"(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 affect the appropriate development of adjoining properties."

RFPD #14 has reviewed and approved the proposed development; it can provide service to their property via a 12-foot wide access road.

Because other residences in the vicinity use similar driveways, there is nothing inherently detrimental to the proposed use of a 12-foot driveway to service the proposed dwelling, nor will such a driveway adversely affect any adjoining properties by reason of width alone. Moreover, the proposed driveway will add turnouts every 400 feet, a curve radii of 48 feet, and a turnaround of 48-foot radius.

Applicant's evidence supports a finding that MCC 11.15.8505(A)(3) has been fulfilled.

"(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."

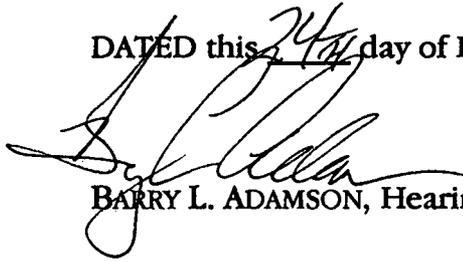
The proposed dwelling complies in all respects with all other applicable approval provisions and Comprehensive Plan policies. Also, the resultant 12-foot wide driveway to service the proposed dwelling would not comprise a use not otherwise listed in the underlying zone.

Applicant's evidence supports a finding that MCC 11.15.8505(A)(4) has been fulfilled.

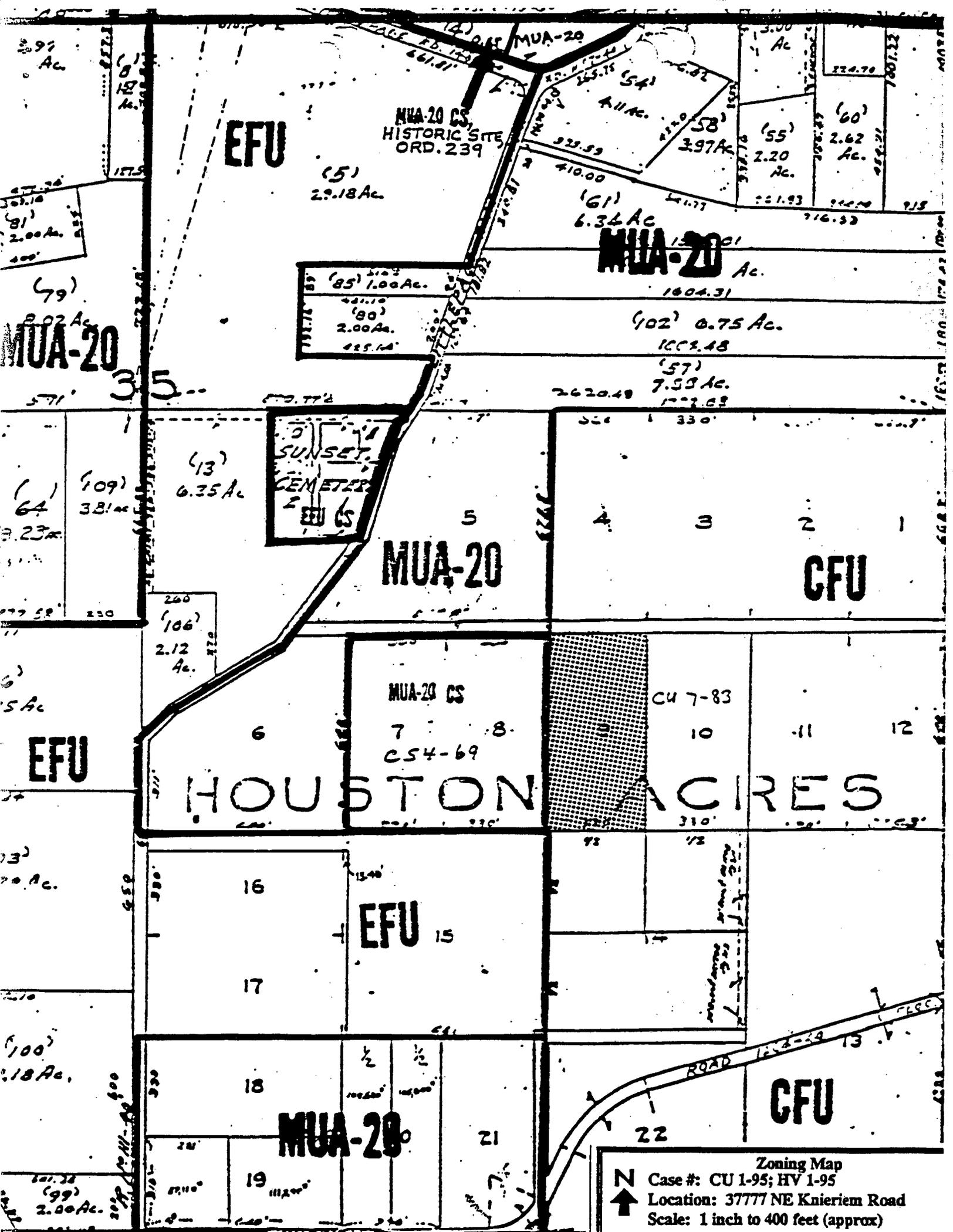
D. CONCLUSION — PART TWO

Applicant has demonstrated a fulfillment of all of the various criteria in MCC 11.15.8505 that determine whether a variance will be granted under the circumstances to accommodate the setback requirements of the proposed dwelling and the 12-foot wide access driveway.

DATED this 24 day of February, 1995.



BARRY L. ADAMSON, Hearings Officer



EFU

MUA-20 CS
HISTORIC SITE
ORD. 239

MUA-20

MUA-20

CFU

EFU

HOUSTON ACRES

EFU

MUA-20

CFU

Zoning Map
 Case #: CU 1-95; HV 1-95
 Location: 37777 NE Knieriem Road
 Scale: 1 inch to 400 feet (approx)

(5)
29.18 Ac.

(85) 1.00 Ac.

(80)
2.00 Ac.

(13)
6.35 Ac.

(106)
2.12 Ac.

MUA-20 CS
7
8
CS4-69

CU 7-83

16

EFU 15

17

18

MUA-20

19

21

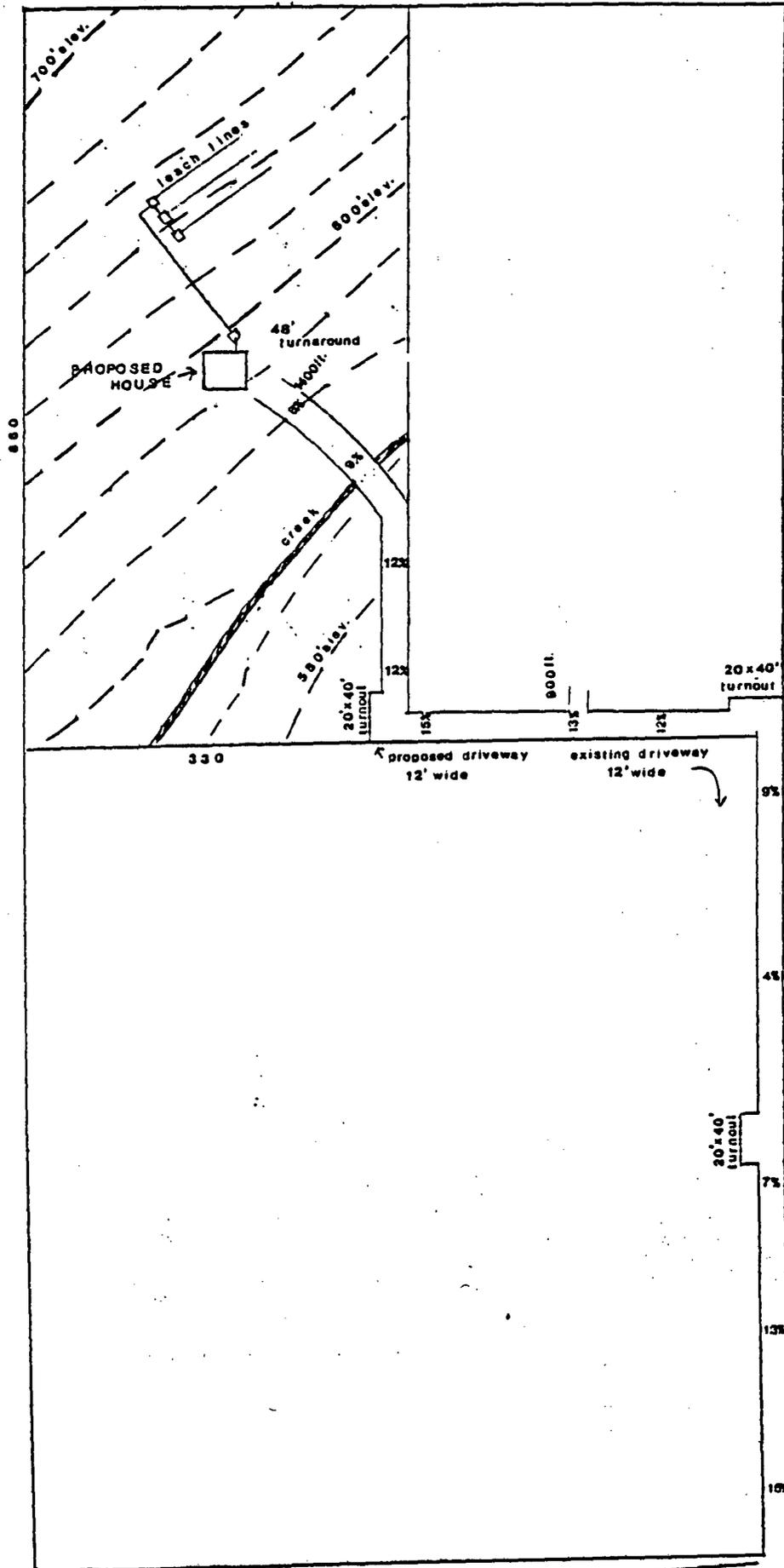
22



N Case #: CU 1-95; HV 1-95
 Location: 37777 NE Knieriem Road
 Scale: 1 inch to 400 feet (approx)

LOT 9

LOT 10



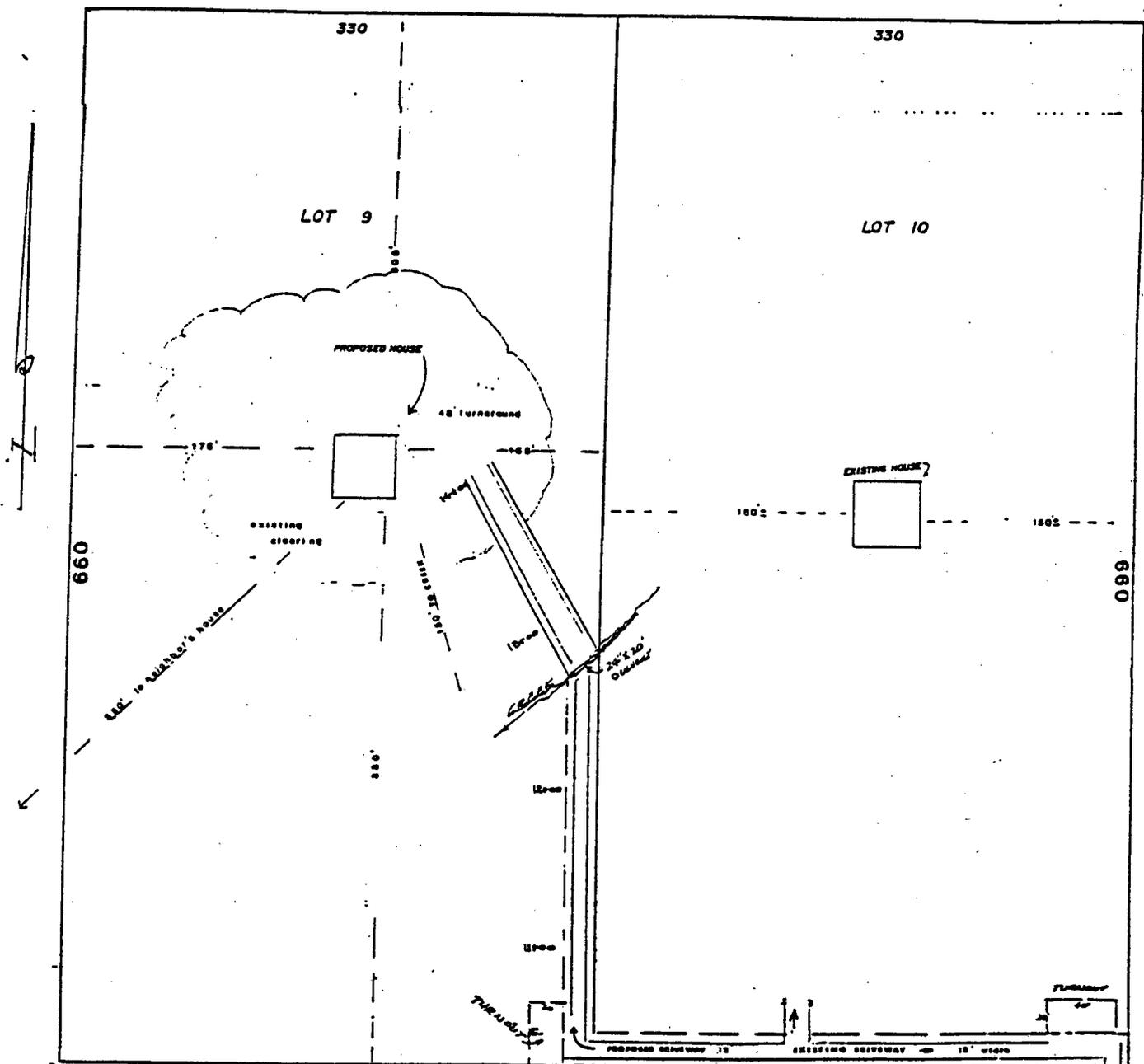
HANSEN

PA 43-94

CU 1-95
HV 1-95

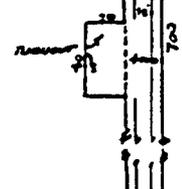
X slope for each 120 ft.





EASEMENT ROAD PLAN

SITE PLAN
 CU 1-95
 HV 1-95



Meeting Date: MAR 14 1995

Agenda No: P-3

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: Board Resolution for Hearing Scope

BOARD BRIEFING Date Requested:

Amount of Time Needed:

REGULAR MEETING Date Requested: March 14, 1995

Amount of Time Needed: 15 minutes

DEPARTMENT: DES

DIVISION: Planning

CONTACT: R. Scott Pemble

TELEPHONE: 248-3182

BLDG /ROOM: 412/103

PERSON(S) MAKING PRESENTATION: R. Scott Pemble

ACTION REQUESTED

Informational Only Policy Direction Approval Other

Summary (Statement of rationale for action requested, personnel and fiscal/budgetary impacts, if applicable):

Resolution for the Board's agreement to extend the trial period for the de novo review of appeal hearing cases to coincide with the Planning Division's quasi-judicial Result project.

The quasi-judicial Results project team anticipates forwarding recommendations to the Board by July 1, 1995. In addition, the Planning Director will prepare and present a Hearing Evaluation Report to the Board at the same time.

1995 MAR 7 AM 8 42
MULTI-NOMAN COUNTY
OREGON
HEARD OF
PLANNING DIVISION

SIGNATURES REQUIRED:

Elected Official: _____

OR

Department Manager: 



MULTNOMAH COUNTY OREGON

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

BOARD OF COUNTY COMMISSIONERS
BEVERLY STEIN • CHAIR OF THE BOARD
DAN SALTZMAN • DISTRICT 1 COMMISSIONER
GARY HANSEN • DISTRICT 2 COMMISSIONER
TANYA COLLIER • DISTRICT 3 COMMISSIONER
SHARRON KELLEY • DISTRICT 4 COMMISSIONER

M E M O R A N D U M

To: Multnomah County Board of Commissioners

FROM: R. Scott Pemble, *Planning Director*

TODAY'S DATE: March 6, 1995

**REQUESTED
PLACEMENT DATE:** March 14, 1995

SUBJECT: DE NOVO HEARING RESOLUTION

I. RECOMMENDATION/ACTION REQUESTED:

Request Board amend Resolution 94-56 to extend the trial period for De Novo hearings to no later than June 30, 1995.

II. BACKGROUND/ANALYSIS:

At the February 14, 1995 Board meeting on Planning items, the Board instructed staff to amend Resolution 94-56 to extend the De Novo hearing trial period to coincide with the conclusion of the Planning Division's work-in-progress Results project (*i.e.*, Quasi-Judicial Redesign Project). Staff explained the Results project is focusing on the entire Quasi-Judicial process of which the Board's appeal hearing is one of many steps. The outcome(s) of the Results project, which will be reported to the Board before the end of the current fiscal year, may in part deal with the Board's appeal hearing process. Consequently, any action taken as the result of the current customer evaluation project may be premature until the Results project is concluded. It was decided it would be more prudent to combine both reports and have the Board consider their conclusions concurrently. Until the Results project was concluded, it was further agreed that any future appeals should be heard De Novo and these appeal hearings also need to be evaluated by hearing customers.

III. FINANCIAL IMPACT:

Some additional cost may be incurred because the Hearings Officer is paid per billable hour. De Novo Hearings tend take longer than hearings on the "Record" and appeal hearings are billable hours per the Hearings Officer contract. The actual increase will not be known until the end of the trial period because of the uniqueness of each case.

IV. LEGAL ISSUES:

The appeal options are delineated within the County's Zoning Ordinance. As per County

Counsel instruction when adopting Resolution 94-56, the Board can choose to implement only one of the three appeal options by adopting a Resolution. The attached Resolution is consistent with existing Zoning Code language and the previous practice.

V. CONTROVERSIAL ISSUES:

Some public consider a De Novo hearing before the Board as being redundant and providing the appellant a second chance to make their case.

VI. LINK TO CURRENT COUNTY POLICIES:

The proposed Resolution is consistent with the "Scope of Review" provisions of the current County Zoning Code.

VII. CITIZEN PARTICIPATION:

When the Board concludes the current trail period, Citizens will be provided opportunity to comment on any proposed amendment to the hearing sections of the Zoning Code. Also, via the appeal hearing customer survey instrument, hearing participants are provided an opportunity to evaluate the hearing process.

VIII. OTHER GOVERNMENT PARTICIPATION:

Local governments must provide an opportunity for local Quasi-Judicial decision to be appealed to LUBA. The means by which this is accomplished, for the most part, is the local governments' option. A number of different models are currently being used.

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

In the Matter of establishing procedures)
to simplify appeals in quasi-judicial) RESOLUTION
land use cases and evaluating the) 95-
effectiveness of the procedures after a)
trial period)

WHEREAS, pursuant to state law and the county code, the Board acts as a quasi-judicial body in certain types of land use cases, applying approval criteria to relevant facts; and

WHEREAS, past Boards have narrowed the scope of appeals by limiting or precluding the introduction of new evidence; and

WHEREAS, the Board finds that some of the more technical procedures used in the past, such as limiting the evidence to the record, are difficult to apply consistently, and distract the participants in the process from the underlying land use planning issues in appeals; and

WHEREAS, in the interest of making land use appeals more user-friendly, the Board wishes to open up the process in accord with attachment A to this Resolution; and

WHEREAS, the Zoning Code permits the Board to specify that appeals will be held on a de novo basis as detailed in Attachment A; and

WHEREAS, the procedures in Attachment A may have positive and negative impacts for users of the system; therefore, they should be implemented on a trial basis and then be evaluated.

NOW, THEREFORE, BE IT RESOLVED

1. Until the Board takes action on a report from the Planning Director, land use appeals reported to the Board after this Resolution is adopted will be conducted in accord with the procedures set forth in Attachment A to this resolution;
2. The Planning Director will notify parties to appeals about this change;
3. Any appeal reported to the Board before adoption of this Resolution, in which the Board has made a ruling as to the appropriate scope of review but has not yet conducted the hearing on the appeal itself, shall be conducted according to the Board's previous scope of review ruling;

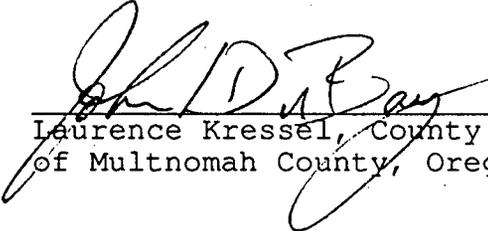
4. The Planning Director shall coordinate an evaluation of the procedures set forth in Attachment A. The evaluation shall be based on input from all user-groups.
5. The Planning Director shall prepare and present a Hearings Evaluation Report to the Board by July 1, 1995.

Adopted this _____ day of _____, 1995.

MULTNOMAH COUNTY, OREGON

By _____
Beverly Stein, Chair
Multnomah County, Oregon

REVIEWED:



Laurence Kressel, County Counsel
of Multnomah County, Oregon

ATTACHMENT A TO RESOLUTION NO. _____

Land Use Appeal Procedures:

1. When an appealed decision is reported to the Board, the Board shall set a date and time for the appeal hearing.
2. The scope of review of each appeal shall be de novo, as that term is used in Section 11.15.8270 of the Zoning Code. The record established at the Hearings Officer level, as well as the Officer's Findings and Conclusions, shall be made available to the Board prior to the appeal hearing. The record shall also be available at the hearing itself. However, the parties shall be permitted to introduce new evidence (i.e. evidence not already in the Record) relevant to the case during the hearing, subject to the time limits set by the Board. Evidence can consist of oral statements, written reports, studies or other documents, photographs, slides and similar material.
3. Order of Presentations: After the presentation by staff and the Hearings Officer (if a Hearings Officer report is requested by the Board), each side shall have 20 minutes to present its case. The appellant shall make the first presentation and may reserve a portion of its time for rebuttal. The Board may extend the time for presentation in appropriate cases.
4. The parties shall be permitted to use their allotted time for any combination of the following:
 - (a) Presentation of relevant evidence;
 - (b) Argument as to whether the Board should affirm, reverse or modify the Hearings Officer's decision, based on the relationship between the evidence and the approval criteria governing the application.