

ANNOTATED MINUTES

Monday, May 23, 1994 - 9:00 AM
Multnomah County Courthouse, Room 602

BUDGET WORK SESSION

WS-1 *Citizen Budget Advisory Committee Recommendations, Board and Staff Discussion and Review of the 1994-95 DEPARTMENT OF ENVIRONMENTAL SERVICES Budget.*

BETSY WILLIAMS, MIKE OSWALD, MIKE ZOLLITSCH, JIM MANTHE, DOUG FISCHER, DAVE WARREN, WAYNE GEORGE, KATHY BUSSE, BOB THOMAS, SCOTT PEMBLE, DAVE BOYER, BOB KIETA, DAVE FLAGLER, JANICE DRUIAN, TOM GUINEY AND VICKI ERVIN PRESENTATIONS AND RESPONSE TO BOARD QUESTIONS. STAFF TO RESPOND TO FOLLOW UP INFORMATION REQUESTS.

Monday, May 23, 1994 - 11:30 AM
Multnomah County Courthouse, Room 602

BUDGET HEARING

Chair Beverly Stein convened the hearing at 11:30 a.m., with Vice-Chair Tanya Collier, Commissioners Sharron Kelley, Gary Hansen and Dan Saltzman present.

BH-1 **PUBLIC HEARING on the 1994-95 DEPARTMENT OF ENVIRONMENTAL SERVICES Budget. Testimony Limited to 3 Minutes Per Person.**

JOHN MURPHY TESTIMONY ON BEHALF OF MHRC ADVISORY COMMITTEE FOR THE DISABLED URGING CONTINUED FUNDING FOR ADA COMPLIANCE. BILL PANARETOS TESTIMONY ON BEHALF OF THE BOARD OF EQUALIZATION REGARDING EQUIPMENT NEEDS, SECURITY CONCERNS AND INCREASED STIPEND FROM \$84 TO \$100. MR. PANARETOS RESPONSE TO BOARD AND STAFF QUESTIONS.

There being no further testimony, the hearing was adjourned at 11:37 a.m. and the work session reconvened. There being no further business, the meeting was adjourned at 11:53 a.m.

Monday, May 23, 1994 - 1:30 PM
Multnomah County Courthouse, Room 602

BUDGET WORK SESSION

WS-2 *Citizen Budget Advisory Committee Recommendations, Board and Staff Discussion and Review of the 1994-95 DEPARTMENT OF COMMUNITY CORRECTIONS Budget.*

TAMARA HOLDEN, CARY HARKAWAY, SUSAN KAESER, MICHAEL HAINES, PAT BOZANICH, WILLIAM TRAPPE, JOANNE FULLER AND DAVE WARREN PRESENTATIONS AND RESPONSE TO BOARD QUESTIONS. STAFF TO RESPOND TO FOLLOW UP INFORMATION REQUESTS.

*Monday, May 23, 1994 - 4:30 PM
Multnomah County Courthouse, Room 602*

BUDGET HEARING

Chair Beverly Stein convened the hearing at 4:31 p.m., with Vice-Chair Tanya Collier, Commissioners Sharron Kelley and Dan Saltzman present, and Commissioner Gary Hansen excused.

BH-2 ***PUBLIC HEARING on the 1994-95 DEPARTMENT OF COMMUNITY CORRECTIONS Budget. Testimony Limited to 3 Minutes Per Person.***

WILLIAM HOFFSTETTER TESTIMONY EXPRESSING NEED FOR EVALUATION OF ONGOING DCC PROGRAMS.

There being no further business, the hearing was adjourned at 4:35 p.m.

*Tuesday, May 24, 1994 - 9:00 AM
Multnomah County Courthouse, Room 602*

BUDGET WORK SESSION

WS-3 *Citizen Budget Advisory Committee Recommendations, Board and Staff Discussion and Review of the 1994-95 DEPARTMENT OF ENVIRONMENTAL SERVICES AND MANAGEMENT SUPPORT SERVICES DIVISION Budgets.*

DES WORK SESSION CANCELLED.

BILL FARVER, BRUCE GREEN, KEN UPTON, MELINDA PETERSEN, CURTIS SMITH, DAVE BOYER, DAVE WARREN, CHING HAY, MEGANNE STEELE,

**JEAN MILEY, ROBERT PHILLIPS, MERRIE ZIADY,
LAWRENCE KRESSEL AND PENNY MALMQUIST
PRESENTATIONS AND/OR RESPONSE TO BOARD
QUESTIONS. STAFF TO RESPOND TO FOLLOW UP
INFORMATION REQUESTS.**

*Tuesday, May 24, 1994 - 11:30 AM
Multnomah County Courthouse, Room 602*

BUDGET HEARING

Chair Beverly Stein convened the hearing at 11:30 a.m., with Vice-Chair Tanya Collier, Commissioners Sharron Kelley, Gary Hansen and Dan Saltzman present.

BH-3 PUBLIC HEARING on the 1994-95 DEPARTMENT OF ENVIRONMENTAL SERVICES AND MANAGEMENT SUPPORT SERVICES DIVISION Budgets. Testimony Limited to 3 Minutes Per Person.

NO PUBLIC TESTIMONY OFFERED.

There being no testimony, the hearing was adjourned at 11:30 a.m. and the work session reconvened. There being no further business, the meeting was adjourned at 11:36 a.m.

*Tuesday, May 24, 1994 - 1:30 PM
Multnomah County Courthouse, Room 602*

PLANNING ITEMS

Chair Beverly Stein convened the meeting at 1:35 p.m., with Vice-Chair Tanya Collier, Commissioners Sharron Kelley, Gary Hansen and Dan Saltzman present.

P-1 RESOLUTION in the Matter of Adopting the Regional Strategies Application and Recommending the Application be Submitted to the Oregon Economic Development Commission and the Governor of the State of Oregon for Consideration Under the Regional Strategies Program

COMMISSIONER KELLEY MOVED AND COMMISSIONER HANSEN SECONDED, APPROVAL OF P-1. PATRICIA SCRUGGS EXPLANATION. RESOLUTION 94-94 UNANIMOUSLY APPROVED.

P-2 RESOLUTION in the Matter of Adopting Hearing Rules for the Conduct of a Joint Planning Commission and Board Quasi-Judicial Hearing on June 13, 1994

COMMISSIONER HANSEN MOVED AND COMMISSIONER KELLEY SECONDED, APPROVAL OF P-2. CHAIR STEIN EXPLANATION. JOHN DuBAY RESPONSE TO BOARD QUESTIONS. RESOLUTION 94-95 UNANIMOUSLY APPROVED.

P-3 FD 1-94 PUBLIC HEARING, DE NOVO, 20 MINUTES PER SIDE, in the Matter of an Appeal of the March 1, 1994 Hearings Officer Decision DENYING a Request for a 4.5 Foot Height Variance to the Finished Floor Elevation for a Proposed Single Family Residence on Property within the Flood Hazard District, for Property Located at 11930 SE LIEBE STREET, PORTLAND.

P-4 FD 3-94 PUBLIC HEARING, DE NOVO, 20 MINUTES PER SIDE, in the Matter of an Appeal of the March 1, 1994 Hearings Officer Decision DENYING a Request for a 4.5 Foot Height Variance to the Finished Floor Elevation for a Proposed Single Family Residence on Property within the Flood Hazard District, for Property Located at 11950 SE LIEBE STREET, PORTLAND.

CHAIR STEIN INTRODUCTION AND PROCEDURAL OUTLINE FOR DE NOVO HEARING. FOLLOWING BOARD AND STAFF DISCUSSION, COUNTY COUNSEL JOHN DuBAY ADVISED THE TWO HEARINGS COULD BE COMBINED, BUT THE FINAL DECISIONS SHOULD BE SEPARATE. AT THE REQUEST OF CHAIR STEIN, GREG FRANK, ATTORNEY FOR APPELLANT JOSEPH VAUGHN, REQUESTED THAT THE HEARINGS FOR FD 1-94 AND FD 3-94 BE COMBINED FOR THE PURPOSE OF EXPEDIENCY, AND STATED FOR THE RECORD THAT HIS CLIENT WAIVES HIS RIGHTS TO RAISE ANY CHALLENGES DUE TO THE CONSOLIDATION OF THE HEARINGS.

PLANNER BOB HALL PRESENTED THE STAFF REPORT.

AT THE REQUEST OF CHAIR STEIN, THERE WERE NO BOARD DISCLOSURES OF BIAS, PREJUDGMENT, POTENTIAL OR ACTUAL CONFLICTS OF INTEREST, EX PARTE CONTACTS OR SITE VISITS. MR. FRANK INDICATED THERE WOULD BE NO CHALLENGE ON DISCLOSURE OR PROCEDURAL GROUNDS.

HEARINGS OFFICER ROBERT LIBERTY PRESENTED HIS DECISION AND RESPONDED TO BOARD QUESTIONS.

GREG FRANK PRESENTED TESTIMONY IN SUPPORT OF A REVERSAL OF THE HEARINGS OFFICER DECISION AND REBUTTAL TO MR. LIBERTY'S INTERPRETATION OF CRITERIA COMPLIANCE. MR. FRANK SUBMITTED A WRITTEN SUMMARY OF HIS TESTIMONY; THE CONTRACTOR'S COST ESTIMATES FOR INSTALLING AN 8 FOOT HIGH FOUNDATION AND BRINGING IN FILL TO BUILD A STANDARD POST AND BEAM HOUSE WITH THE FLOOR AREA ONE FOOT ABOVE THE 100 YEAR FLOOD PLANE; AND PHOTOS OF THE SUBJECT SITES AND NEIGHBORING HOMES.

JOHN MAHAFFY OF GEORGETOWN REALTY PRESENTED TESTIMONY REGARDING A REDUCTION OF THE REAL PROPERTY MARKET VALUES OF THE NEIGHBORING HOMES AND THE NEW HOMES IF BUILT WITH AN 8 FOOT HIGH FOUNDATION.

ROGER ADAMS TESTIFIED ON BEHALF OF THE NEIGHBORING HOMEOWNERS IN SUPPORT OF A REVERSAL OF THE HEARINGS OFFICER DECISION.

AT THE REQUEST OF CHAIR STEIN, NO OBJECTIONS WERE RAISED TO THE CONDUCT OF THE HEARING. THERE BEING NO FURTHER TESTIMONY, THE PUBLIC HEARING WAS CLOSED.

COMMISSIONER COLLIER MOVED AND COMMISSIONER HANSEN SECONDED, TO REVERSE THE HEARINGS OFFICER DECISION AND TO MODIFY THE FINDINGS TO INCLUDE A CONDITION OF APPROVAL REQUIRING THE FILING OF A DEED RESTRICTION CONTAINING LANGUAGE INDICATING THE PROPERTY IS LOCATED IN THE FLOOD HAZARD AREA.

COMMISSIONER COLLIER COMMENTED IN SUPPORT OF HER MOTION. COMMISSIONER KELLEY COMMENTED IN OPPOSITION TO THE MOTION. COMMISSIONER HANSEN COMMENTED IN SUPPORT OF THE MOTION.

MR. FRANK EXPLANATION IN RESPONSE TO QUESTIONS CONCERNING COMPLIANCE WITH COMPREHENSIVE PLAN POLICY 37. MR. DuBAY RESPONSE TO QUESTIONS OF CHAIR STEIN.

COMMISSIONER SALTZMAN COMMENTED IN SUPPORT OF THE MOTION.

CHAIR STEIN COMMENTED IN SUPPORT OF THE MOTION, EXPLAINING THE VARIANCE CRITERIA IN MCC 11.15.6323 ARE ALL SATISFIED, IN THAT SHE FINDS THERE IS ADEQUATE EVIDENCE TO SHOW THERE WOULD BE HARDSHIP IN THE FORM OF FINANCIAL HARDSHIP; THAT THE MINIMUM NECESSARY IS COMPLIED WITH; AND THAT WITH THE INCLUSION OF A DEED RESTRICTION NOTICE, THE PUBLIC WOULD BE PROTECTED FROM FRAUD AND VICTIMIZATION. CHAIR STEIN EXPLAINED THAT IN TERMS OF THE STANDARDS, SHE FINDS THAT COMPLIANCE IS POSSIBLE AND SUGGESTED THAT VICE-CHAIR COLLIER AMEND HER MOTION TO INCLUDE LANGUAGE TO INSURE THAT THE STANDARDS ARE DEFERRED TO THE NEXT STAGE AND PROVIDE FOR PROPER NOTIFICATION.

FOLLOWING DISCUSSION WITH MR. DuBAY, COMMISSIONER COLLIER MOVED AND COMMISSIONER SALTZMAN SECONDED, AN AMENDMENT REQUIRING COMPLIANCE WITH THOSE STANDARDS DEFERRED TO THE BUILDING PERMIT OR APPROVAL STAGE; THAT APPROVAL NOT BE GIVEN UNTIL NOTICE OF THE DECISION AND THE OPPORTUNITY TO REQUEST A HEARING IS GIVEN AS REQUIRED BY ORDINANCE FOR THE INITIAL APPLICATION.

IN RESPONSE TO A QUESTION OF MR. HALL, MR. DuBAY ADVISED THAT THE COUNTY WOULD BE RESPONSIBLE FOR NOTIFYING THE PARTIES. MR. DuBAY RESPONSE TO QUESTIONS OF COMMISSIONER KELLEY.

FOLLOWING DISCUSSION AND WITH BOARD CONSENSUS, MR. DuBAY RESTATED THE PREVIOUS AMENDMENT MOVED BY COMMISSIONER COLLIER AND SECONDED BY COMMISSIONER SALTZMAN.

THE AMENDMENT TO ADD A CONDITION THAT SATISFACTION OF COMPLIANCE WITH MCC 11.15.6315 (F), (G) & (H), MAY BE DEFERRED TO THE BUILDING PERMIT APPROVAL STAGE, AND THAT BEFORE THE BUILDING PERMIT IS APPROVED BY

THE COUNTY PLANNING DEPARTMENT, NOTICE OF THE PROPOSED DECISION BE GIVEN TO THOSE PERSONS ENTITLED TO NOTICE UNDER THE CODE, AND THAT THEY BE GIVEN AN OPPORTUNITY TO REQUEST A HEARING BEFORE THE DECISION BECOMES FINAL, WAS UNANIMOUSLY APPROVED.

THE MOTION TO REVERSE THE HEARINGS OFFICER DECISION AND TO MODIFY THE FINDINGS TO INCLUDE A CONDITION OF APPROVAL REQUIRING THE FILING OF A DEED RESTRICTION CONTAINING LANGUAGE INDICATING THE PROPERTY IS LOCATED IN THE FLOOD HAZARD AREA APPROVED, WITH COMMISSIONERS HANSEN, COLLIER, SALTZMAN AND STEIN VOTING AYE, AND COMMISSIONER KELLEY VOTING NO.

MR. HALL ADVISED THESE PROPERTIES WILL BE ANNEXED TO THE CITY OF PORTLAND ON JUNE 29, 1994. FOLLOWING BOARD DISCUSSION, MR. DuBAY WAS DIRECTED TO PREPARE LETTER TO THE CITY OF PORTLAND FOR CHAIR STEIN'S SIGNATURE, ASKING THE CITY TO ABIDE BY BOARD'S DECISION AND RECOGNIZE THE VARIANCES APPROVED PRIOR TO ANNEXATION.

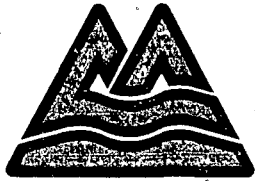
BOARD DISCUSSION AND CRITIQUE OF DE NOVO HEARING PROCESS. BOARD CONSENSUS TO INSURE FUTURE BOARD DECISIONS ARE BASED SOLELY ON CRITERIA ISSUES. VICE-CHAIR COLLIER SUGGESTED THERE BE A REVIEW OF THE HEARINGS OFFICER PRESENTATION FORMAT TO ASSURE THEY ARE DELIVERED IN AN OBJECTIVE, NON-ADVERSARIAL MANNER. COMMISSIONER KELLEY AND CHAIR STEIN DISCUSSION REGARDING THE CREDIBILITY OF WITNESSES AND THE BOARD'S ABILITY TO CROSS-EXAMINE. MR. HALL RESPONSE TO BOARD QUESTIONS. MR. DuBAY COMMENTS REGARDING VARIANCE PROCEDURES.

There being no further business, the meeting was adjourned at 3:04 p.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

MAY 23, 1994 - MAY 27, 1994

<i>Monday, May 23, 1994 - 9:00 AM - DES Budget Work Session</i>	<i>Page 2</i>
<i>Monday, May 23, 1994 - 11:30 AM - DES Budget Hearing</i>	<i>Page 2</i>
<i>Monday, May 23, 1994 - 1:30 PM - DCC Budget Work Session</i>	<i>Page 2</i>
<i>Monday, May 23, 1994 - 4:30 PM - DCC Budget Hearing</i>	<i>Page 2</i>
<i>Tuesday, May 24, 1994 - 9:00 AM - DES/MSS Budget Work Session</i>	<i>Page 2</i>
<i>Tuesday, May 24, 1994 - 11:30 AM - DES/MSS Budget Hearing</i>	<i>Page 3</i>
<i>Tuesday, May 24, 1994 - 1:30 PM - Planning Items</i>	<i>Page 3</i>
<i>Thursday, May 26, 1994 - Regular Meeting - CANCELLED</i>	

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 - East County only
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.

Monday, May 23, 1994 - 9:00 AM
Multnomah County Courthouse, Room 602

BUDGET WORK SESSION

- WS-1 *Citizen Budget Advisory Committee Recommendations, Board and Staff Discussion and Review of the 1994-95 DEPARTMENT OF ENVIRONMENTAL SERVICES Budget.*

Monday, May 23, 1994 - 11:30 AM
Multnomah County Courthouse, Room 602

BUDGET HEARING

- BH-1 *PUBLIC HEARING on the 1994-95 DEPARTMENT OF ENVIRONMENTAL SERVICES Budget. Testimony Limited to 3 Minutes Per Person.*

Monday, May 23, 1994 - 1:30 PM
Multnomah County Courthouse, Room 602

BUDGET WORK SESSION

- WS-2 *Citizen Budget Advisory Committee Recommendations, Board and Staff Discussion and Review of the 1994-95 DEPARTMENT OF COMMUNITY CORRECTIONS Budget.*

Monday, May 23, 1994 - 4:30 PM
Multnomah County Courthouse, Room 602

BUDGET HEARING

- BH-2 *PUBLIC HEARING on the 1994-95 DEPARTMENT OF COMMUNITY CORRECTIONS Budget. Testimony Limited to 3 Minutes Per Person.*

Tuesday, May 24, 1994 - 9:00 AM
Multnomah County Courthouse, Room 602

BUDGET WORK SESSION

- WS-3 *Citizen Budget Advisory Committee Recommendations, Board and Staff Discussion and Review of the 1994-95 DEPARTMENT OF ENVIRONMENTAL SERVICES AND MANAGEMENT SUPPORT SERVICES DIVISION Budgets.*

Tuesday, May 24, 1994 - 11:30 AM
Multnomah County Courthouse, Room 602

BUDGET HEARING

BH-3 PUBLIC HEARING on the 1994-95 DEPARTMENT OF ENVIRONMENTAL SERVICES AND MANAGEMENT SUPPORT SERVICES DIVISION Budgets. Testimony Limited to 3 Minutes Per Person.

Tuesday, May 24, 1994 - 1:30 PM
Multnomah County Courthouse, Room 602

PLANNING ITEMS

- P-1 RESOLUTION in the Matter of Adopting the Regional Strategies Application and Recommending the Application be Submitted to the Oregon Economic Development Commission and the Governor of the State of Oregon for Consideration Under the Regional Strategies Program**
- P-2 RESOLUTION in the Matter of Adopting Hearing Rules for the Conduct of a Joint Planning Commission and Board Quasi-Judicial Hearing on June 13, 1994.**
- P-3 FD 1-94 PUBLIC HEARING, DE NOVO, 20 MINUTES PER SIDE, in the Matter of an Appeal of the March 1, 1994 Hearings Officer Decision DENYING a Request for a 4.5 Foot Height Variance to the Finished Floor Elevation for a Proposed Single Family Residence on Property within the Flood Hazard District, for Property Located at 11930 SE LIEBE STREET, PORTLAND.**
- P-4 FD 3-94 PUBLIC HEARING, DE NOVO, 20 MINUTES PER SIDE, in the Matter of an Appeal of the March 1, 1994 Hearings Officer Decision DENYING a Request for a 4.5 Foot Height Variance to the Finished Floor Elevation for a Proposed Single Family Residence on Property within the Flood Hazard District, for Property Located at 11950 SE LIEBE STREET, PORTLAND.**
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MULTNOMAH COUNTY BUDGET MEETING SCHEDULE

(May 12, 1994 Revision)

Department of Environmental Services (DES) Work Session	5/23/94	9:00-11:30 am - Board Room
<u>DES Public Testimony</u>	<u>5/23/94</u>	<u>11:30-12:00 pm - Board Room</u>
Department of Community Corrections (DCC) Work Session	5/23/94	1:30-4:30 pm - Board Room
<u>DCC Public Testimony</u>	<u>5/23/94</u>	<u>4:30-5:00 pm - Board Room</u>
 DES & Management Support Services (MSS) Work Session	 5/24/94	 9:00-11:30 am - Board Room
<u>DES/MSS Public Testimony</u>	<u>5/24/94</u>	<u>11:30-12:00 pm - Board Room</u>
 Department of Library Services (DLS) Work Session	 5/31/94	 9:00-11:30 am - Board Room
<u>DLS Public Testimony</u>	<u>5/31/94</u>	<u>11:30-12:00 pm - Board Room</u>
<u>*DLS/DES/DCC Public Testimony</u>	<u>5/31/94</u>	<u>1:30-4:30 pm - Board Room</u>
 Independent Agencies & Other Government Support Work Session	 6/1/94	 9:00-11:30 am - Board Room
<u>Ind/Other Public Testimony</u>	<u>6/1/94</u>	<u>11:30-12:00 pm - Board Room</u>
<u>Public Hearing/Budget</u>	<u>6/1/94</u>	<u>7:00-9:00 pm - Council Chambers, Gresham City Hall, 1333 NW Eastman Parkway, Gresham</u>
 General Work Session	 6/7/94	 9:30-12:00 pm - Board Room
<u>Public Hearing/Budget</u>	<u>6/7/94</u>	<u>7:00-9:00 pm - Board Room</u>
 General Work Session	 6/8/94	 9:30-12:00 pm - Board Room
 General Work Session	 6/14/94	 9:30-12:00 pm - Board Room
 General Work Session	 6/15/94	 9:30-12:00 pm - Board Room
<u>Public Hearing/Adopt Budget</u>	<u>6/16/94</u>	<u>9:30-12:00 pm - Board Room</u>

(* Denotes Additional Public Testimony As Needed)

+ Board Room Address:

Multnomah County Courthouse, Room 602
1021 SW Fourth Avenue, Portland, Oregon 97204

Contact the Office of the Board Clerk, 248-3277 or 248-5222
for Further Information



Beverly Stein, Multnomah County Chair

Room 1410, Portland Building
1120 S.W. Fifth Avenue
P.O. Box 14700
Portland, Oregon 97204
(503) 248-3308

MEMORANDUM

TO : Board of County Commissioners
Vice Chair Tanya Collier
Commissioner Dan Saltzman
Commissioner Gary Hansen
Commissioner Sharon Kelley
Office of the Board Clerk

FROM : Beverly Stein

DATE : March 7, 1994

RE : Absence from Board Meeting

From May 25 through May 27, I will be attending the Alliance for Redesigning Government Conference in Denver, Colorado. I will miss the Thursday May 26 Regular Board Meeting.

cc: Chair's Staff

BOARD OF
COUNTY COMMISSIONERS
MULTNOMAH COUNTY
OREGON
1994 MAR - 8 PM 1:35



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 30, 1994

SUBJECT: Absence from May 26, 1994 Board Meeting

I will be attending the AOC Spring Conference from May 25 through May 27 and will be unable to attend the Board Meeting on May 26, 1994.

1994 MAR 30 AM 10:02
MULTNOMAH COUNTY
OREGON
BOARD OF
COUNTY COMMISSIONERS

GARY HANSEN
Multnomah County Commissioner
District 2



1120 S.W. Fifth Avenue, Suite 1500
Portland, Oregon 97204
(503) 248-5219

MEMORANDUM

To: Chair
Commissioners
Clerk of the Board

Fr: Gary Hansen

Date: March 30, 1994

Re: Absence from Office

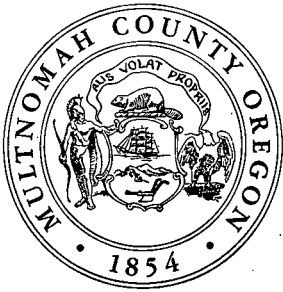
The AOC Spring Conference will be held in Bend (Sunriver), Oregon, Wednesday, May 25 through Friday, May 27. I plan to attend this conference and will miss the work session, Wednesday, May 25 and the Board Meeting, Thursday, May 26.

1994 MAR 30 AM 10:26
MULTNOMAH COUNTY
OREGON

Agenda No.: P-1

AGENDA PLACEMENT FORM

5/18/94



Beverly Stein, Multnomah County Chair

Room 1410, Portland Building
1120 S.W. Fifth Avenue
P.O. Box 14700
Portland, Oregon 97204
(503) 248-3308

MEMORANDUM

TO: Board of County Commissioners

FROM: Sharon Timko, Staff Assistant

DATE: May 18, 1994

PLACEMENT
DATE: May 24, 1994

RE: Regional Strategies

I. Action Requested

Approval of a resolution adopting the Regional Strategies Application and recommending it be submitted to the Oregon Economic Development Commission and the Governor for consideration under the Regional Strategies Program.

II. Background

Regional Strategies is an economic development program under the direction of the Oregon Economic Development Department. The program is funded by state lottery revenue.

The Regional Strategies Board, appointed by Multnomah and Washington Counties, was charged with developing a six to ten year economic development strategy and a two year action plan for the region.

III. Financial Impact

N/A

IV. Legal Issues

N/A



V. Controversial Issues

N/A

VI. Link to Current County Policy

The Regional Strategy Application is consistent with County policy.

VII. Citizen Participation

A public hearing was held in each county.

VIII. Other Government Participation

The cities of Gresham, Hillsboro, Tualatin, Forest Grove and Beaverton participated in the process.

BEFORE THE BOARD OF COUNTY COMMISSIONERS
MULTNOMAH COUNTY, OREGON

In the Matter of Adopting the Regional Strategies)
Application and Recommending the Application be)
Submitted to the Oregon Economic Development)
Commission and the Governor of the State of Oregon)
for Consideration under the Regional Strategies)
Program.)

RESOLUTION NO. 94-94

WHEREAS, the Regional Strategies Program was established by the Governor and the Legislature to strengthen regional economies and retain, increase, or lead to an increase in the number of family wage jobs in the State of Oregon; and

WHEREAS, the Regional Strategies Program requires two or more contiguous counties to join together to form a region; and

WHEREAS, the Regional Strategies Program requires the Region to develop a six-year, economic development Strategy, which focuses on the development of two or three key industries; and

WHEREAS, the Counties of Multnomah and Washington joined together to form the Multnomah-Washington Region for the duration of the economic development Strategy; and

WHEREAS, the Region appointed a Regional Strategies Board with majority representation primarily from the private economic sector; and

WHEREAS, the Region, through its appointed Regional Strategies Board, has developed a six-year, economic development Strategy for the Multnomah-Washington Region; and

WHEREAS, the Region's Strategy focuses on developing the key industries of metals, high technology, and biotechnology;

WHEREAS, the Region's Strategy meets the requirements of the Regional Strategies Program; and

WHEREAS, the Regional Board members have held a public hearing on the Region's Strategy in each county in the Region;

NOW, THEREFORE, BE IT RESOLVED that the governing body of Multnomah County adopts the Regional Strategies Application, attached as Exhibit A, and recommends that the Application be submitted to the Oregon Economic Development Commission and the Governor of the State of Oregon for consideration under the Regional Strategies Program.



for Laurence Kressel, County Counsel
of Multnomah County, Oregon

By Beverly Stein
Beverly Stein, Chair
MULTNOMAH COUNTY, OREGON

Regional Strategies Application

Multnomah and Washington Counties

(5/16/94 - Submission to County Commissions)

**Regional Strategies Application
Multnomah and Washington Counties
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**Regional Strategies Application
Multnomah and Washington Counties
(Draft 4/28/94)**

I. Process Overview and Future Action Plan

In February 1994, a Board of 10 private citizens from Multnomah and Washington Counties was selected by the Metro Region to participate in the Regional Strategies Program as defined by the State of Oregon. This Board conducted the following meetings to facilitate the process of arriving at the regional strategy included in this application:

Date	Time	Meeting Purpose
2/4/94	3:00pm - 5:00pm	Board Orientation, State Vision, Legal Issues, Workplan Development.
2/18/94	12:00pm - 5:00pm	Metro Region Overview, Review of Existing Regional Visions/Activities, Regional Vision & Goals Development, Industry Selection Criteria Development, Selection of Industries to Make Presentations to Board.
2/25/94	2:00pm - 5:00pm	Presentations by Biotechnology and Software Industry Associations and interested parties.
3/4/94	2:00pm - 5:00pm	Presentations by High Technology, Metals, Agriculture, and Aerospace Industries and interested parties.
3/10/94	2:00pm - 5:00pm	Presentations by Environmental Services, Film & Video, and Tourism Industry Associations and interested parties.
3/18/94	2:00pm - 5:00pm	Overview of OEDD Benchmarking/Performance Measurement Information, Board Selection of Biotechnology, High Technology and Metals Industries, Process Discussion to Develop Initial Strategies and Action Plans with Partners.
3/28/94	6:00pm - 9:00pm	Biotechnology Strategy Development with Oregon Biotechnology Association, Industry Firms, Educational Partners and Interested Parties
3/30/94	2:00pm - 5:00pm	High Technology Strategy Development with American Electronic Association, Industry Firms, Educational Partners and Interested Parties
4/4/94	6:00pm - 9:00pm	Metals Industry Strategy Development with Metals Industry Associations, Industry Firms, Educational Partners and Interested Parties
4/8/94	2:00pm - 5:00pm	Board Review of Strategy Development Process, Refinement of Strategic Direction and Funding Allocations for Selected Industries.
4/26/94	2:00pm - 5:00pm	Board Review of Draft Strategy Document, Further Refinement of Strategic Direction and Funding Allocations for Selected Industries.

The following Regional Strategies Application is the result of these activities to date. Meeting minutes and source documentation for statistics used in this application reside at the Portland Development Commission. Public review and adoption by the county commissioners took place during May. It is important to note that the timing of this process has been compressed during this biennium and has resulted in significant time constraints on all parties involved in the development of strategies and action plans identified in the following document.

In order to facilitate the mandated June 1 submission to the State of Oregon, broad based strategies and action plans have been identified and estimated funding levels were allocated. These funding levels are subject to change as projects within the identified action plans are finalized. Throughout this summer, sub-committees will work with partners from each industry to develop final funding allocations and selection of projects targeted for October, when the Strategic Plan is approved.

Regional Strategies Application
Multnomah and Washington Counties
(Draft 4/28/94)

II. Executive Summary

Three key industries were selected by the Metro Regional Strategies Board to participate in the Regional Strategies Program as defined by the State of Oregon. Selected industries are Biotechnology, High Technology and Metals. A Board of 10 private citizens from Multnomah and Washington Counties developed a vision statement and identified program goals and industry selection criteria. The Metro Region's vision is: *To Promote A Diverse and Sustainable Economy*. Strategies for industry development over a six year planning horizon were identified and two year action plans were developed in cooperation with representatives of private industry, educational institutions, industry associations, local government and economic development institutions.

III. Strategy Context

A. Regional Organization

The Metro Region strategy was developed and is being submitted to the State of Oregon as a required exercise of the Regional Strategies Program. Our planning process has been led by a Board comprised of 10 private citizens.

Five Citizens were appointed by Multnomah County:

Name	Telephone	Title/Position	Company
Jim Harper	241-7506	Human Resource Director	Wacker Siltronic
Eva Parsons	274-6175	Director of People Development	Cellular One
Patricia Scruggs	246-6148	Consultant	
Darrell Simms	823-7203	Bureau of Environmental Services	City of Portland
Paul Warr-King	762-3018	Vice President	Key Bank

Five Citizens were appointed by Washington County:

Name	Telephone	Title/Position	Company
Betty Atteberry	645-4410	Executive Director	Sunset Corridor Assn.
Lyle Chadwick	643-5953	Certified Public Accountant	
Joyce Frank	648-2757	Branch Manager	Kelly Temporary Services
Jack Orchard	228-2525	Attorney	Ball, Janik & Novak
Morgan Pope	628-3562	Consultant	MDP Associates

Assisting the Board were individuals from various local governments, economic development agencies and industry associations. These participants have been identified in Appendix A. Considerable time and energy has been invested in making the Metro Regional strategy a dynamic and useful tool for regional economic development. The Board thanks each participant for their valuable contributions to the regional community.

B. Link to the State Strategic Plan and Benchmarks

The Metro Region supports the State's vision, Oregon Benchmarks, by targeting the following:

- A. **Value-Added Products, Global Business:** Economic opportunities are critical for the Metro Region's unemployed, under employed and underrepresented workers. Value added products in biotechnology, high technology and metals production/fabrication offer regional economic growth and development opportunities. Education and training is necessary for regional workforce participants to achieve international standards and achieve global competitiveness in all industry sectors.
- B. **Diverse and Productive Industry:** The Metro Region will concentrate on boosting total payroll, per worker payroll, per worker value-added manufacturing, and percentage employment in value-added manufacturing in selected industries.
- C. **Build a Superior, World Class Workforce:** Workforce development activities will receive particular emphasis in the form of education and training in addition to awareness programs for workforce opportunities in identified industries.
- D. **Public Infrastructure Investment:** Real per capita outlays for facilities.

C. Integration of Other Planning Efforts

A thorough review of all state and regional planning efforts was conducted by the Board and staff in order to assure consistency of strategic direction and avoid duplication of efforts. This review included: Oregon Shines, Oregon Benchmarks, Oregon Values & Beliefs, Portland Future Focus Strategic Plan, Prosperous Portland, Metro 2040, Washington County Economic Development, State and Regional Workforce Quality Committees, and other local government planning efforts.

IV. Regional Economic Assessment

A. Analysis of the Key Industries

The Metro Region has the most diverse economy in the state. All Oregon State key industries participate to some extent in the region's economy:

- | | | |
|-------------------------|------------------|--------------------|
| •Aerospace | •Fisheries | •Plastics |
| •Agriculture | •Forest Products | •Producer Services |
| •Biotechnology | •High Technology | •Software |
| •Environmental Services | •Metals | •Tourism |
| •Film & Video | | |

Employment statistics have been assembled by the State of Oregon Employment Department for 1992 covered employment in the Metro Region :

Metro Region Industry Employment

- 1.3% Agriculture
- 4.0% Construction
- 7.4% Finance, Insurance, Real Estate
- 13.2% Government
- 15.9% Manufacturing
- 26.5% Services
- 25.5% Trade
- 6.3% Transportation

The services industry group accounts for the most jobs in the Metro Region:

Metro Region Employment in Service Industries

24.0%	Business Services
4.6%	Education Services
26.3%	Health Services
8.1%	Hotel/Amusements/Museums
9.0%	Personal/Repair
12.7%	Professional/Legal
8.4%	Social Services
6.9%	Other Services

Employment in the trade sector is dominated by restaurants/bars and wholesaling:

Metro Region Employment in Trade Industries

7.1%	Auto Sales and Service
4.4%	Apparel and Accessories
24.1%	Eating/Drinking
9.2%	Food Stores
8.5%	General Merchandise
13.6%	Miscellaneous & Other Retail
33.0%	Wholesale

The manufacturing sector is the third largest employment group, accounting for approximately 16% of total employment:

Metro Region Manufacturing Employment

8.5%	Food Products
23.8%	Instruments/Electronics
10.5%	Machinery
14.0%	Metals
9.6%	Printing/Publishing
10.7%	Transportation Equipment
11.3%	Other Durables
11.7%	Other Non-Durables

Primary industries employment is different for Multnomah and Washington Counties. Of the top ten industries in Multnomah County, five are service industries and only one is in manufacturing. In Washington County, three of the top ten industries are service, while three are in manufacturing. Multnomah County has a much higher concentration of employment in finance, insurance, real estate, transportation, communication and utilities industries. Additionally, Multnomah County has almost twice the concentration of government employment than Washington County given the presence of several federal governmental agencies.

Washington County has a higher concentration of employment in "goods producing" industries - agriculture, construction, and manufacturing in addition to employment in wholesale firms. Manufacturing related employment accounts for over one-fourth of total Washington County employment as compared to 13% for Multnomah County and 17% for the state. Of particular importance to Washington County is high-technology manufacturing employment. In terms of recent industry growth, Washington County has surpassed both Multnomah County and the state in every sector of the economy.

The Metro Region's employment base has a high proportion of white collar jobs - executive, administrative, managerial, professional and specialty occupations, technicians, sales and administrative support. When compared to state employment statistics, the region is under-represented in its proportion of what has traditionally been considered blue collar employment - operators/fabricators, transportation/material movers, laborers, precision product, craftsman and repair.

Given the region's industrial mix, generally larger sized firms, relatively higher cost of living and concentration of white collar employment, a higher proportion of the work force is employed in more skilled, higher paying industries than the state as a whole:

Metro Region Average Annual Payroll by Business Sector

Business Sector	Average Annual Payroll	Average as a % of Oregon's
Total (all ownership & industry types)	\$26,762	114%
Wholesale Trade	\$33,892	111%
Manufacturing	\$33,595	113%
Transp./Comm./Utilities	\$32,417	107%
Construction	\$31,619	113%
Finance/Insurance/Real Estate	\$30,037	111%
Government	\$29,934	112%
Services	\$23,732	114%
Agriculture	\$20,353	142%
Retail Sales	\$15,200	109%

Within the region, Washington County has higher average salaries in manufacturing, wholesale & retail trade and the service sector. Multnomah County has higher average payrolls in finance, insurance, real estate, government, transportation, communication, utilities and construction.

B. Inventory of Resources

Multnomah and Washington Counties have many resources as a major metropolitan area including:

- **Growing Population and Labor Force**
 - Metro Region population: 963,500 (15% growth by the year 2000)
 - Metro Region civilian labor force: 525,700 (20% growth by the year 2000)
 - The rate of unemployment is lower than in most of the state
- **Diversified and Stable Economy**
 - Broad manufacturing and service sector base
 - Excellent location for worldwide manufacturing
 - The largest economic region in the state
- **Superior Transportation Connections**
 - Integrated highway, rail and marine facilities
 - Terminus of three transcontinental railroads
 - World class seaport - 110 miles inland from Pacific Ocean
 - Expanding national and international air service

- **Regional Financial and Service Center**
 - Portland metro area is the nation's 27th largest metropolitan area
 - The service sector is the fastest growing segment
 - Developed urban area 30 miles in diameter
- **Educated and Productive Workforce**
 - Region's workforce is the largest in the state
 - There are significant training institutions in the region
 - The workforce is the most diverse in Oregon
 - Education levels are higher than the state average
 - Comprehensive training programs
- **Abundant Energy and Water Resources**
 - Diversified supply/stable rates
 - Rates are among the lowest in the nation
 - Resources adequate to meet long-term future needs
 - Quality service providers
- **Excellent Living Environment**
 - Quality of education
 - Affordable living
 - Natural beauty
 - Cultural excellence
 - Superior quality of life

C. Identification of Resource Gaps and Opportunities

The Metro region also has resource gaps and opportunities:

- **Growing Population and Labor Force**
 - From 1980 to 1990, the population of Multnomah County grew 81% (adjusted for annexations) while Washington County grew 27%
 - The numbers and pockets of unemployed are the largest in the state
 - The supply of labor is growing faster than new jobs are being created
 - Unemployment and discouragement is greater in some minority groups and neighborhoods than in the general population
 - Wages continue to decline
 - 85% of workers needed for the new technologies and sophisticated jobs are already working: limited number of **skilled** workers in unemployment pool
- **Educated and Productive Workforce**
 - Employers are concerned about the skill levels of existing workers
 - Training is not widely available for current entry level workers (SCANS report)
 - New workforce entrants have skill levels below what employers need and expect
- **Unsettled Tax Environment**
 - Current Oregon State tax structure viewed as not stable or predictable
 - Employers concerned about future tax burden on business
 - Impact of Measure 5 on infrastructure and education viewed negatively

Disparate Economic Development

- Between 1980 and 1990, the region's per capita income increased by 49% while Portland's per capita income increased by only 27%
- In 1980, Portland's wages were 9%-22% higher than those of the region. By 1990, Portland's wages were 2% higher in manufacturing and 5% lower in the service sector. Higher paying jobs continue to locate outside the city
- In 1980, Portland's unemployment rate was 17% higher than the region's. By 1990, the gap had widened to 32%
- In 1980, Northeast Portland's unemployment rate was 29% higher than the region's. By 1990, the gap had increased to 113%
- The ethnic minority population in North/Northeast Portland is 42.3% as compared to 8% for the Portland/Vancouver metro area
- Unemployment rates are higher for ethnic minority groups:

Unemployment Rates in Metro Region (Region Total: 5.4% March 1993)

	Multnomah County	Washington County
African Americans	12.7%	8.0%
Native Americans	12.2%	11.1%
Hispanics	7.7%	6.5%
Asians/Pacific Islanders	5.8%	3.7%

- Measure 5 impact on public education concerns employers expectations
- The 27% drop-out rate for youth in North/Northeast Portland and high crime rate for the area demand a specific planned approach to stimulate economic development for the area.

V. Industry Selection

A. Selection Rationale

The vision statement selected by Metro Region's Board is: *To Promote A Diverse and Sustainable Economy*. Components of this vision are as follows:

Jobs/Employment

- Equitable Distribution - Geographical/Socio-Economic
- Value Added
- Economically Self-Sufficient (Family Wage)
- Tied to Business Needs/Opportunities
- Attract/Expand/Maintain Jobs

Training/Retraining/Education

- Sustainable/Self Perpetuating
- Available to All People
- Improve K-Career, Community College & Higher Ed
- Impact Existing Residents
- Balance Between Availability & Jobs

Livability

- Environmental Quality Maintained
- Widespread Prosperity
- Support Social & Physical Infrastructure

Economy

- Diverse Based on Knowledge & Skills
- Global
- Attract/Expand/Maintain Business
- Investment
- Stable and Predictable Taxes & Regulatory Environment

Consistent with the region's vision, the Board developed the following list of long-term goals which also served as selection criteria for the Metro Region's three key industries:

- GOAL #1: Create and retains jobs that lead to economic self-sufficiency
- GOAL #2: Continuously develop, educate and train workforce
- GOAL #3: Link jobs to all region residents
- GOAL #4: Build regional public and private wealth and economic capacity
- GOAL #5: Positively affect low income communities
- GOAL #6: Enhance quality of life
- GOAL #7: Provide full-range of job opportunities
- GOAL #8: Link business needs with educational system
- GOAL #9: Create entrepreneurial opportunities
- GOAL #10: Link private, educational, general governmental sector to economic agenda
- GOAL #11: Attract, expand, retain companies and jobs within key industries
- GOAL #12: Equitable distribution of jobs (geographic and socio-economic)

All 13 of Oregon State's key industries were invited to make presentations to the Metro Regional Strategies Board. These presentations were to be made in person and were to address the previously stated selection criteria. The following nine industry groups responded by making presentations to the Board:

- ◆ Aerospace
- ◆ Agriculture
- ◆ Biotechnology
- ◆ Environmental Services
- ◆ Film & Video
- ◆ High Technology
- ◆ Metals
- ◆ Software
- ◆ Tourism

Independent evaluation of each of these industry groups led the Board to select **Biotechnology**, **High Technology** and **Metals** as the targeted industries for this strategy. This assessment was based upon a review of the Board's long-range goals and an evaluation by the Board of the opportunities each industry has to accomplish these stated goals.

The Metro Region has determined that the following economic components are critical to the success of all industries in the region:

- **Education and Training**
- **Business Infrastructure Development**
- **Marketing and Recruitment**
- **Management and Technical Assistance**

B. Barriers to Industry Development

Group discussions with industry businesses, industry associations and regional community representatives revealed the following barriers to industry development within the Metro Region:

- Availability of properly educated and skilled workers
- Improvement in new labor force work habits
- Infrastructure needs: wet labs, new business facilities
- Accessibility of management and technical assistance
- Effective marketing and recruitment programs

C. Link to Regional Vision and Long-Term Goals

Linkage to the Metro Region's vision and long-term goals is accomplished by providing the means to overcome stated barriers to development in the biotechnology, high technology and metals industries. Job creation, workforce education, training and development, economic self-sufficiency, regional wealth and economic capacity, and other regional goals are linked directly to the vision of a diverse and sustainable economy.

From the Metro Regional Strategies Board's discussions with key industries, there are serious concerns regarding skill levels within the available workforce at all levels of employment from entry level to postgraduate scientists and technicians. Required entry level skills are much higher than they have ever been. The linkage between available workforce skills, job creation and economic development is clear. While specific needs are required by different key industry sectors, much of the required skills are similar across the region's selected key industries.

A key concept in the region's strategy for economic development is the need to focus on workforce education, training and development in all selected industries. While this is one of several strategic components, it is considered to be the critical success factor toward sustainable economic development for the region. A core concept is that change needs to occur in workforce education from K-12 through community colleges and four-year colleges and universities. This change has to be driven by the educators themselves and therefore, the education workforce needs to be developed in

order to enact change in the preparation of the labor force.

Work-based learning experiences will be developed through partnerships between education and private industry to introduce a real, functional school-to-work component into the educational system. Work-based learning will tie directly to education reform in the state of Oregon by connecting with CAM (Certificate of Advanced Mastery) development. Standards will be developed and used by education and industry to define what it takes to be successful in school and in the world of work.

Initiatives in this area of workforce education, training and development tie directly to the \$335,000 in Workforce Quality Committee funds dedicated to school-to-work in the Metro Region (Region 2), strengthens the region in its efforts to receive a significant portion of the \$8 million which Oregon may receive from the School To Work Opportunities Act, and strengthens the proposed application to the Federal Government for \$5-800,000 in additional direct funding.

Additionally, the need for change will require the key industries to become more knowledgeable of the education process, the educational delivery systems, and how they can assist that process both in the schools and in the work place. Linking the key industries to schools, work-based learning, skills development and adult retraining are all components of education, training and workforce development embraced by the Metro Region Board for all three selected industries.

Additional linkage to the region's vision and goals is provided by infrastructure development, marketing and recruitment, and management/technical assistance in the biotechnology and high technology industry sectors. These initiatives are industry specific and will be addressed in the biotechnology and high technology industry strategies.

Infrastructure requirements for industry development include business facilities, laboratories and resource/development centers. During the early stages of commercialization, biotechnology facilities and other shared facilities can provide business expertise, access to expensive equipment, and networks of managerial and technical resources often otherwise unobtainable by small start-up companies. Infrastructure needed to support the high technology industry can also assist software development through accessibility to various hardware formats and operating system platforms in a high technology resource/development center.

Marketing and recruitment are components of the region's economic development plan for the biotechnology and high technology industry sectors. Recruitment of out-of-state firms by advancing the Metro Region's reputation as a biotechnology and high technology center strengthens the employment base, builds economic capacity and grows recognized clusters within these industry sectors which create additional growth opportunities.

Management and technical assistance requirements vary by industry sector. The environmental biotechnology industry segment needs assistance developing a contract procurement center. The high technology industry needs funding for an industry benchmarking program and performance measurement system to evaluate competitiveness for long-term growth and development.

D. Industry, Public and Educational Partnerships

Biotechnology Industry Partnerships

- Oregon Biotechnology Association
- Oregon Biotechnology Foundation
- Oregon Environmental Technology Association
- Oregon Health Sciences University
- Oregon Graduate Institute
- Industry Partners (companies within industry)
- Portland State University

High Technology Industry Partnerships

- American Electronics Association
- Lintner Center for Advanced Education
- Oregon Graduate Institute
- Oregon Center for Advanced Technology Education
- Software Association of Oregon
- Industry Partners (companies within industry)
- Portland State University
- Oregon Joint Graduate

Metals Industry Partnerships

- Oregon Metals Industry Council
- Oregon Precision Metal Fabricators Association
- Oregon Advanced Technology Consortium
- Industry Partners (companies within industry)

Educational Partnerships

- Mt. Hood Community College
- Mt. Hood Regional Consortium (Vocational/Technical Education)
- National School to Work Opportunities Act
- Oregon Business Council - Education Subcommittee
- Portland State University
- Portland Community College
- Portland Area Vocational Technical Education Consortium
- Region 2 Workforce Quality Committee
- The Private Industry Council
- Portland State University
- Oregon Joint Graduate Schools of Engineering

E. Analysis of the Foundation of Industry Resources

Biotechnology Industry Resources

- Industry is highly dependent on access to high-level research facilities and programs. Companies usually emerge as an outgrowth of scientific discoveries in academic research labs around the country.
- Technology Transfer Opportunities:
 - Advanced Science & Technology Institute
 - Oregon Health Sciences University
 - Oregon Graduate Institute
 - Oregon Regional Primate Research Center
 - Good Samaritan Hospital's Dow Neurological Sciences Institute
 - Emanuel Hospital
 - Portland State University
 - Veteran's Administration Hospital
- Industry requires highly skilled and technically trained employees
 - Community College/university and specialized training of lab technicians
- Biotechnology Industry is in its infancy but substantial growth is expected
 - The world market for biotechnology derived products is expected to grow at an annual compound rate of 25%, from \$6 billion in 1992 to around \$60 billion by the year 2000.
- Emerging cluster of biotechnology companies in the region aids industry recognition as a center for future industry growth.
- Biotechnology applications are well suited for Oregon:
 - Forest products, agriculture, aquaculture, bioremediation, and environmental services are areas where existing Oregon industries can develop and utilize biotechnology applications. Applying biotechnology to established Oregon industries can provide those industries with a competitive edge in the market.

High Technology Industry Resources

- Industry requires highly skilled and technically trained employees
- Education from K-12, community college, and four year colleges and universities is critical success factor for sustainable high technology industry growth. Additional specialized/technical training needed.
- Trend is away from positions performing tedious jobs and moving toward positions involving higher level tasks that require greater training.
- Large regional high technology industry base is expected to enjoy moderate growth over the next decade.
- Growth opportunities exist in electronic design automation, parallel computing, pen-based and notebook computers, multi-media, networking, color printers/plotters and other output devices, optical scanning, compact disc-read only memory (CD-ROM), and flat panel displays.
- Regional industry success due to geographic location, proximity and penetration of international markets.
- The greater Portland metropolitan area has the second largest concentration of Japanese semiconductor-related companies in the U.S. (after the San

Francisco Bay area).

- Existing regional cluster of high technology companies is large and sustainable. A critical mass of companies (industry food chain):
 - 1,700+ high-technology firms statewide (85% in Portland Metro area)
 - World class companies in many sectors (computers, semiconductors, software, instruments)
 - Enabling the high technology industry, the software industry in Oregon is mostly technical and applications oriented, not consumer-based.

Metals Industry Resources

- Oregon has a critical mass of specialty metals firms with unique technology.
- Precision Castparts (structural investment castings), ESCO (steel castings, plate, bar and coil), TiLine and ORMET (titanium), VARICAST and Teledyne Wah Chang (primary zirconium and hafnium mill products).
 - The Metro Region has a significant share of these firms. Segments of the metals industry producing value-added products are experiencing growth.
- A strong metals industry is essential to other industries (i.e., transportation equipment, aerospace and high technology). The industry outlook for firms that can enter niche markets and add value to its products is excellent.
- Increased skill requirements in the metals industry are due to greater use of computerized and electronic equipment but jobs are readily available to high school graduates who have basic skills in reading, writing, math and comprehension.
- Metal industry participants in the region are beginning to develop effective education and training programs in partnership with local community colleges to meet the need for skill upgrades and entry level training.
- Potential growth in the metals industry requires a skilled and educated work force, ability to comply with tightening environmental laws, low-cost electric power availability, transportation access with favorable rates, and considerable capital investment in modern equipment and facilities.
- Oregon metals firms generate over 90% of sales revenue from outside markets, but are predominantly locally owned.

VI. Biotechnology Industry Strategy

A. Industry Analysis (SWOT)

In conjunction with representatives of private industry, educational institutions, industry associations, local government and economic development institutions, the Board has determined that the following elements are "missing-links" or areas in need of improvement for the biotechnology industry in the Metro Region:

1. Education, training and workforce development initiatives must be supported.
2. Business infrastructure requirements within industry need to be addressed.
3. Marketing and recruitment efforts need to be assisted.
4. Managerial and technical assistance needs to be provided.

B. Long-Term Industry Benchmarks and Indicators

1. An increase in the number of biotechnology companies and jobs within the Metro Region.
2. Strong linkages between the biotechnology and environmental service industries (i.e., environmental biotechnology).
3. Focused educational initiatives in biotechnology and environmental biotechnology.
4. Availability of adequate business infrastructure resources within biotechnology industry to assist start-up companies and growing biotechnology businesses.
5. Managerial and technical assistance programs available to facilitate industry growth and development.
6. Industry recognition of the Metro Region's reputation as a biotechnology center.

C. Prioritized list of activities to be addressed

- Activity #1.** Advance biotechnology/environmental biotechnology training and education programs for students, educators, and workforce participants. Increase the information flow about biotechnology and environmental biotechnology to schools and industry.
- Activity #2.** Create a biotechnology business facility and environmental biotechnology resource and development center within the Metro Region. Provide linkage to available contract procurement resources.
- Activity #3.** Develop effective marketing and recruitment capabilities to attract well regarded out-of-state firms.

- Activity #4.** Create business development and growth programs for emerging biotechnology companies which include information resources and management/financial counseling at critical stages of development.

VII. High Technology Industry Strategy

A. Industry Analysis (SWOT)

In conjunction with representatives of private industry, educational institutions, industry associations, local government and economic development institutions, the Board has determined that the following elements are "missing-links" or areas in need of improvement for the high technology industry in the Metro Region:

1. Education, training and workforce development initiatives must be supported.
2. Business infrastructure requirements within industry need to be addressed.
3. Marketing and recruitment efforts need to be assisted.
4. Managerial assistance needs to be provided to smaller firms and developing segments within the industry.

B. Long-Term Industry Benchmarks and Indicators

1. Strong linkages between the high technology industry and educational system providing integration of industry needs into educational curriculum in K-12, community colleges and four year college and universities.
2. Availability of adequate business infrastructure resources within high technology industry to assist start-up companies and growing high technology businesses.
3. Continued industry recognition of the Metro Region's reputation as a leading high technology center.
4. Management and technical assistance programs available for start-up companies, smaller businesses and industry support initiatives.
5. Sustain existing industry employment levels in the region and attract new job growth through industry development.

C. Prioritized list of activities to be addressed

- Activity #1.** Link educational system curriculum to high technology industry requirements. Provide high technology training and education programs for students, educators, and workforce participants.
- Activity #2.** Fund the development of an industry benchmarking program and performance measurement system.
- Activity #3.** Create a software/hardware laboratory for testing compatibility of software applications with various hardware/operating systems.

- Activity #4.** Fund a Multimedia market study for industry development within the Metro Region.
- Activity #5.** Improve and develop effective marketing and recruitment capabilities to attract well regarded out-of-state firms.
- Activity #6.** Create business development and growth programs for emerging high technology companies which include information resources and management/financial counseling at critical stages of development.

VIII. Metals Industry Strategy

A. Industry Analysis (SWOT)

In conjunction with representatives of private industry, educational institutions, industry associations, local government and economic development institutions, the Board has determined that the following elements are "missing-links" or areas in need of improvement for the metals industry in the Metro Region:

1. Education, training and workforce development initiatives must be supported.
2. Managerial and technical assistance needs to be provided.

B. Long-Term Industry Benchmarks and Indicators

1. Strong linkages between the metals industry and educational system to provide integration of industry needs into educational curriculum in K-12, community colleges and four year college and universities.
2. Increase jobs in the metals industry and attract qualified and motivated workforce participation.
3. Availability of technical and management assistance programs for smaller businesses within the industry.

C. Prioritized list of activities to be addressed

- Activity #1.** Link educational system curriculum to metals industry requirements. Provide metals industry training and education programs for students, educators, and workforce participants.
- Activity #2.** Increase the information flow about opportunities in the metals industry to students in the region's schools.
- Activity #3.** Create business development and growth programs for emerging metals companies which include information resources and management/financial counseling at critical stages of development.
- Activity #4.** Assist metals industry in providing permanent placement of workers within industry companies in the Metro Region.

IX. Link to Regional Vision, Goals and Industry Barriers

Linkages of specific activities to identified industry barriers are made as follows:

Industry Barriers Linkage	Biotechnology Industry Activities*	High Technology Industry Activities*	Metals Industry Activities*
Availability of properly educated and skilled workers	#1	#1	#1, #2, #3
Improvement in labor force work behavior expectations	#1	#1	#1, #2
Infrastructure needs: wet labs, new business facilities	#2	#3	-
Accessibility of management and technical assistance	#4	#2, #4, #6	#3
Effective marketing and recruitment programs	#3	#5	-

* Activities indicated by number - see industry strategies for specific details for each activity.

Linkages of activities to long term economic development goals developed by the Metro Region Board are made in each industry by varying degree as follows:

Regional Strategies Goals Linkage		Biotechnology Industry	High Technology Industry	Metals Industry
Goal #1	Create and retain jobs that lead to economic self-sufficiency.	<i>High Degree</i>	<i>High Degree</i>	<i>High Degree</i>
Goal #2	Continuously develop, educate and train workforce.	<i>High Degree</i>	<i>High Degree</i>	<i>High Degree</i>
Goal #3	Link jobs to all region residents	<i>Moderate Degree</i>	<i>Moderate Degree</i>	<i>High Degree</i>
Goal #4	Build regional public and private wealth and economic capacity.	<i>High Degree</i>	<i>High Degree</i>	<i>High Degree</i>
Goal #5	Positively affect low income communities.	<i>Moderate Degree</i>	<i>Moderate Degree</i>	<i>High Degree</i>
Goal #6	Enhance quality of life.	<i>High Degree</i>	<i>High Degree</i>	<i>High Degree</i>
Goal #7	Provide full-range of job opportunities.	<i>Moderate Degree</i>	<i>Moderate Degree</i>	<i>High Degree</i>
Goal #8	Link business needs with educational system.	<i>High Degree</i>	<i>High Degree</i>	<i>High Degree</i>
Goal #9	Create entrepreneurial opportunities.	<i>High Degree</i>	<i>High Degree</i>	<i>High Degree</i>
Goal #10	Link private, education, government sectors to economic agenda.	<i>High Degree</i>	<i>High Degree</i>	<i>High Degree</i>
Goal #11	Attract, expand, retain companies and jobs within key industries.	<i>High Degree</i>	<i>High Degree</i>	<i>High Degree</i>
Goal #12	Equitable distribution of jobs (geographic and socio-economic).	<i>Moderate Degree</i>	<i>Moderate Degree</i>	<i>High Degree</i>

X. Two Year Action Plan

A. Biotechnology Industry Activities

Activity #1. Link educational system curriculum to industry requirements. Provide biotechnology, environmental biotechnology training and education programs for students, educators, and workforce participants. Increase the information flow about biotechnology and environmental biotechnology industry opportunities to schools and industry.

Timeframe: This project will be implemented starting in December 1995 with measurable results by September 1996.

10/94-12/94	Solicit industry involvement in program development
1/95-12/95	Develop specific training and education programs
12/95-9/96	Implement programs with schools and industry

Estimated Cost: Included in Cross-Industry Strategy Funding

Potential Funding Partners:

Oregon Biotechnology Association
Oregon Biotechnology Association member companies
Oregon Environmental Technology Association
Region 2 Workforce Quality Committee
The Private Industry Council
Public education systems

Link To Oregon Benchmarks:

Build a Superior, World Class Workforce
Value-Added Products, Global Business
Diverse and Productive Industry

Link to Long-term Goals: #2, #3, #5, #6, #8, #10, #12

Performance Measure (by 9/96):

- Involve a minimum of two biotechnology companies and two environmental services companies in the creation of training and education programs for students, educators, and workforce participants
- Employ teachers in biotechnology and environmental biotechnology industry summer internships.

Activity #2. Create a biotechnology business facility and environmental biotechnology resource and development center within the Metro Region. Provide linkage to available contract procurement resources.

Timeframe: This project will be completed by April 1996.

10/94-3/95 Solicit industry involvement in facility design
10/94-3/95 Solicit industry involvement in providing additional funding
4/95-7/95 Identify site location
8/95-3/96 Prepare site for facility start-up
4/96 Facility start-up

Estimated Investment: \$250,000

Potential Funding Partners:

Oregon Biotechnology Association
Oregon Biotechnology Association member companies

Link To Oregon Benchmarks:

Public Infrastructure Investment
Value-Added Products, Global Business
Diverse and Productive Industry

Link to Long-term Goals: #1, #4, #7, #9, #11

Performance Measure:

- Start-up facility on time and within budget
- Attract at least two start-up businesses by 4/96 opening date
- 20 jobs for will be created by companies in facility by 9/96

Activity #3. Develop effective marketing and recruitment capabilities to attract well regarded out-of-state firms.

Timeframe: This project will be completed by July 1995 with measurable results by September 1996.

10/94-6/95 Develop marketing and recruitment tools (i.e., trade show booth, literature, brochures, etc.).
7/95-9/96 Attend industry trade shows, deliver marketing materials to well regarded out-of-state companies.

Estimated Cost: Included in Cross-Industry Strategy Funding

Potential Funding Partners:

Oregon Biotechnology Association and member companies.
Public education systems

Link To Oregon Benchmarks:

Value-Added Products, Global Business
Diverse and Productive Industry

Link to Long-term Goals: #1, #4, #6, #7, #11

Performance Measure (by 9/96):

- Attend one national or regional trade show
- Obtain at least two bona fide leads on well regarded biotechnology companies interested in locating in the Metro Region

Activity #4. Create business development and growth programs for emerging biotechnology companies which include information resources and management/financial counseling at critical stages of development.

Timeframe: This project will be implemented by December 1995 with measurable results by September 1996.

10/94-12/95 Solicit industry involvement in program development
1/95-12/95 Develop specific development and growth programs
12/95-9/96 Implement programs

Estimated Cost: Included in Cross-Industry Strategy Funding
Public education systems

Potential Funding Partners:
Oregon Biotechnology Association and member companies.

Link To Oregon Benchmarks:
Value-Added Products, Global Business
Diverse and Productive Industry

Link to Long-term Goals: #1, #4, #6, #7, #9, #10, #11

Performance Measure:
·Involve a minimum of two biotechnology companies in the creation of business development and growth programs.
·Survey of five companies in this industry will be made to evaluate program by 9/96

B. High Technology Industry Activities

Activity #1. Link educational system curriculum to industry requirements. Provide training and education programs for students, educators, and workforce. Increase the information flow about high technology industry opportunities to schools and industry.

Timeframe: This project will be implemented starting in December 1995 with measurable results by September 1996.

10/94-12/94 Solicit industry involvement in program development
1/95-12/95 Develop specific training and education programs
12/95-9/96 Implement programs with schools and industry

Estimated Cost: Included in Cross-Industry Strategy Funding

Potential Funding Partners:
American Electronics Association
American Electronics Association member companies
Region 2 Workforce Quality Committee
The Private Industry Council
Public education systems

Link To Oregon Benchmarks:
Build a Superior, World Class Workforce
Value-Added Products, Global Business

Diverse and Productive Industry

Link to Long-term Goals: #2, #3, #5, #6, #8, #10, #12

Performance Measure (by 9/96):

- Involve a minimum of two high technology companies in the creation of training and education programs for students, educators, and workforce.
- Employ teachers in high technology industry summer internships.

Activity #2. Fund the development of an industry benchmarking program and performance measurement system.

Timeframe: This is a project in the formative stages. The development of high technology industry benchmarks and performance measurement is a continual process over the two-year action plan period.

Estimated Cost: \$25,000 (see Multi-Regional Opportunities for additional funding)

Potential Funding Partners:

American Electronics Association
American Electronics Association member companies
Software Association of Oregon
Public education systems

Link To Oregon Benchmarks:

Value-Added Products, Global Business
Diverse and Productive Industry

Link to Long-term Goals: #1, #4, #10, #11

Performance Measure (by 9/96):

- Benchmarking to include participating industry companies
- Survey of ten companies will be made to evaluate program

Activity #3. Create software/hardware laboratory for testing compatibility of different software applications with various hardware/operating system platforms.

Timeframe: This project will be completed by April 1996.

10/94-3/95	Solicit industry involvement in design of laboratory
4/95-7/95	Identify site location
8/95-3/96	Prepare site for start-up
4/96	Start-up

Estimated Cost: \$135,000

Potential Funding Partners:

American Electronics Association
American Electronics Association member companies
Software Association of Oregon
Public education systems

Link To Oregon Benchmarks:

Public Infrastructure Investment
Value-Added Products, Global Business
Diverse and Productive Industry

Link to Long-term Goals: #1, #4, #7, #9, #11

Performance Measure:

- Start-up laboratory on time and within budget
- Laboratory to be used by at least ten area companies by 9/96

Activity #4. Fund a Multimedia market study for industry development within the Metro Region.

Timeframe: This project will be completed by September 1996.

10/94-3/95	Solicit industry involvement in design market study
4/95-5/95	Identify research firm to conduct study
6/95-8/96	Conduct market study
9/96	Publish study results and recommend future action

Estimated Cost: \$50,000

Potential Funding Partners:

American Electronics Association
American Electronics Association member companies
Software Association of Oregon
Oregon Film & Video Office
Public education systems

Link To Oregon Benchmarks:

Value-Added Products, Global Business
Diverse and Productive Industry

Link to Long-term Goals: #1, #4, #7, #9, #11

Performance Measure:

- Include representation from high technology, software and film & video industries in the design, implementation, and evaluation of study results.
- Complete market study on time and within budget.

Activity #5. Develop effective marketing and recruitment capabilities to attract viable out-of-state firms.

Timeframe: This project will be completed by July 1995 with measurable results by September 1996.

10/94-6/95	Develop marketing and recruitment tools (i.e., trade show booth, literature, brochures, etc.).
7/95-9/96	Attend industry trade shows, deliver marketing materials to well regarded out-of-state companies.

Estimated Cost: Included in Cross-Industry Strategy Funding

Potential Funding Partners:

Metro Region High Technology Companies
American Electronics Association
Software Association of Oregon
Public education systems

Link To Oregon Benchmarks:

Value-Added Products, Global Business
Diverse and Productive Industry

Link to Long-term Goals: #1, #4, #6, #7, #11

Performance Measure (by 9/96):

- Attend one national or regional trade show
- Obtain at least two bona fide leads on well regarded high technology companies interested in locating in the Metro Region

Activity #6. Create business development and growth programs for emerging high technology companies which include information resources and management/financial counseling at critical stages of development.

Timeframe: This project will be implemented by December 1995 with measurable results by September 1996.

10/94-12/95	Solicit industry involvement in program development
1/95-12/95	Develop specific development and growth programs
12/95-9/96	Implement programs

Estimated Cost: Included in Cross-Industry Strategy Funding

Potential Funding Partners:

Metro Region High Technology Companies
American Electronics Association
Software Association of Oregon
Public education systems

Link To Oregon Benchmarks:

Value-Added Products, Global Business
Diverse and Productive Industry

Link to Long-term Goals: #1, #4, #6, #7, #9, #10, #11

Performance Measure:

- Involve a minimum of two high technology companies in the creation of business development and growth programs.
- Survey of five companies in this industry will be made to evaluate program by 9/96

C. Metals Industry Activities

Activity #1. Link educational system curriculum to metals industry requirements.

Provide metals industry training and education programs for students, educators, and workforce participants.

Timeframe: This project will be implemented starting in December 1995 with measurable results by September 1996.

10/94-12/94	Solicit industry involvement in program development
1/95-12/95	Develop specific training and education programs
12/95-9/96	Implement programs with schools and industry

Estimated Cost: Included in Cross-Industry Strategy Funding

Potential Funding Partners:

Oregon Metals Industry Council
Oregon Precision Metal Fabricators Association
Oregon Advanced Technology Consortium
Region 2 Workforce Quality Committee
Industry Partners (companies within industry)
The Private Industry Council
Public education systems

Link To Oregon Benchmarks:

Build a Superior, World Class Workforce
Value-Added Products, Global Business
Diverse and Productive Industry

Link to Long-term Goals: #2, #3, #5, #6, #8, #10, #12

Performance Measure (by 9/96):

- Involve a minimum of two metals industry companies in the creation of training and education programs for students, educators, and workforce.
- Employ teachers in metals industry summer internships to link curriculum development to industry needs/opportunities, create industry understanding, and bring the message of availability of family wage jobs to students as an acceptable career choice.

Activity #2. Increase the information flow about opportunities in the metals industry to students in the region's schools.

Timeframe: This project will be implemented starting in December 1995 with measurable results by September 1996.

10/94-12/94	Solicit industry involvement in program development
1/95-12/95	Develop specific training and education programs
12/95-9/96	Implement programs with schools and industry

Estimated Cost: \$100,000

Potential Funding Partners:

Oregon Metals Industry Council
Oregon Precision Metal Fabricators Association
Oregon Advanced Technology Consortium

Region 2 Workforce Quality Committee
Industry Partners (companies within industry)
The Private Industry Council
Education Service Districts
Public education systems

Link To Oregon Benchmarks:

Build a Superior, World Class Workforce
Value-Added Products, Global Business
Diverse and Productive Industry

Link to Long-term Goals: #2, #3, #5, #6, #7, #8, #10, #11, #12

Performance Measure:

- Involve a minimum of two metals industry companies in the creation of information programs for students, educators, and workforce.
- Develop coalition of metals industry associations to provide input into educational needs and program development.
- Disseminate information to twelve area schools by 12/96.
- Increase the availability of a sufficiently skilled and interested work force pool from which to hire.

Activity #3. Create business development and growth programs for emerging metals companies which include information resources and management/financial counseling at critical stages of development.

Timeframe: This project will be implemented by December 1995 with measurable results by September 1996.

10/94-12/95	Solicit industry involvement in program development
1/95-12/95	Develop development and growth programs
12/95-9/96	Implement programs

Estimated Cost: Included in Cross-Industry Strategy Funding

Potential Funding Partners:

Oregon Metals Industry Council
Oregon Precision Metal Fabricators Association
Industry Partners (companies within industry)
Public education systems

Link To Oregon Benchmarks:

Value-Added Products, Global Business
Diverse and Productive Industry

Link to Long-term Goals: #1, #4, #6, #7, #9, #10, #11

Performance Measure:

- Involve a minimum of two metals companies in the creation of business development and growth programs.
- Survey of five companies in this industry will be made to evaluate program by 9/96

Activity #4. Assist metals industry in providing permanent placement of workers within

industry companies in the Metro Region.

Timeframe: This project will be implemented by January 1995 with measurable results by June 1995.

10/94-12/94 Solicit industry involvement in program development
1/95 - Implement programs

Estimated Cost: \$30,000

Potential Funding Partners:

Oregon Metals Industry Council
Oregon Precision Metal Fabricators Association
Industry Partners (companies within industry)
Region 2 Workforce Quality Committee
The Private Industry Council
Public education systems

Link To Oregon Benchmarks:

Value-Added Products, Global Business
Diverse and Productive Industry

Link to Long-term Goals: #1, #2, #3, #5, #6, #7, #11, #12

Performance Measure:

- Currently, there are several hundred metals related jobs in the region. Successful implementation of this program should eliminate this large backlog of unfilled jobs.
- Hire minorities and economically disadvantaged workers to fill existing and new positions within the metals industry.

D. Cross-Industry Opportunities

Activity #1. Education and Training Initiatives

Link educational system curriculum to biotechnology, high technology and metals industry requirements. Provide training and education programs, including skill upgrading and retraining, for students, educators, and existing workers. Increase the information flow about biotechnology, high technology, and metals industry opportunities to schools and industry.

Timeframe: This project will be implemented starting in December 1995 with measurable results by September 1996.

10/94-12/94 Solicit industry involvement in program development
1/95-12/95 Develop specific training and education programs
12/95-9/96 Implement programs with schools and industry

Estimated Cost: \$325,000

Potential Funding Partners:

American Electronics Association
Oregon Biotechnology Association

Oregon Environmental Technology Association
Oregon Metals Industry Council
Oregon Precision Metal Fabricators Association
Oregon Advanced Technology Consortium
Region 2 Workforce Quality Committee
The Private Industry Council
Software Association of Oregon
Industry Partners (companies within industries)
Public education systems

Link To Oregon Benchmarks:

Build a Superior, World Class Workforce
Value-Added Products, Global Business
Diverse and Productive Industry

Link to Long-term Goals: #2, #3, #5, #6, #8, #10, #12

Performance Measure (by 9/96):

- Involve a minimum of two industry companies from each industry segment (biotechnology, high technology, metals) in the creation of training and education programs for students, educators, and workforce.
- Employ teachers in each industry (biotechnology, high technology, metals) using summer internships to link curriculum development to industry needs/opportunities, and create industry understanding.

Activity #2. Business Development and Growth Initiatives

Create business development and growth programs for emerging biotechnology, high technology, and metals companies which include information resources and management/financial counseling at critical stages of development.

10/94-12/94	Solicit industry involvement in program development
1/95-12/95	Develop specific development and growth programs
12/95-9/96	Implement programs

Estimated Cost: \$200,000

Potential Funding Partners:

American Electronics Association
Oregon Biotechnology Association
Oregon Environmental Technology Association
Oregon Metals Industry Council
Oregon Precision Metal Fabricators Association
Oregon Advanced Technology Consortium
Region 2 Workforce Quality Committee
Software Association of Oregon
Industry Partners (companies within industries)
Public education systems

Link To Oregon Benchmarks:

Value-Added Products, Global Business
Diverse and Productive Industry

Link to Long-term Goals: #1, #4, #6, #7, #9, #10, #11

Performance Measure:

- ◆ Involve at least two companies from each of the three key industries selected by the Metro Region Board to participate in the development of resources and programs to be included in this project.
- ◆ Survey five companies from each key industry once the program is operational for six months to determine usage characteristics and program effectiveness.

Activity #3. Marketing and Recruitment Initiatives

Improve and develop effective marketing and recruitment capabilities to attract well regarded out-of-state firms.

Timeframe: This project will be completed by July 1995 with measurable results by September 1996.

10/94-6/95	Develop marketing and recruitment tools (i.e., trade show booth, literature, brochures, etc.).
7/95-9/96	Attend industry trade shows, deliver marketing materials to well regarded out-of-state companies.

Estimated Cost: \$200,000

Potential Funding Partners:

Local Industry Partners
Industry Associations
Portland State University

Link To Oregon Benchmarks:

Value-Added Products, Global Business
Diverse and Productive Industry

Link to Long-term Goals: #1, #4, #6, #7, #11

Performance Measure (by 9/96):

- Attend at least one national or regional biotechnology trade show and at least one national or regional high technology trade show
- Obtain at least two bona fide leads on well regarded biotechnology and high technology companies interested in locating in the Metro Region

Activity #4. Electronic Equipment Repair Training Initiative

Biotechnology, high technology and metals industry firms are increasingly reliant on electronic equipment. This initiative will provide training programs for the development of local repair technicians to facilitate the continued operation of this critical equipment on a timely basis.

Timeframe: This project will be completed by December 1995 with measurable results by September 1996.

10/94-12/94	Solicit industry involvement in program development
1/95-12/95	Develop specific training and education programs
12/95-9/96	Implement programs

Estimated Cost: \$70,000

Potential Funding Partners:

Local Industry Partners
Industry Associations
Public education systems

Link To Oregon Benchmarks:

Build a Superior, World Class Workforce
Value-Added Products, Global Business
Diverse and Productive Industry

Link to Long-term Goals: #1, #2, #4, #7, #8, #10, #11

Performance Measure (by 9/96):

·Involve a minimum of two industry companies from each industry segment (biotechnology, high technology, metals) in the creation of these programs.

XI. Multi-Regional Opportunities

In partnership with the Benton, Lane, Lincoln, Linn Region and the Mid-Valley Region, the Metro Region would like to pursue multi-regional funding for continued development of the high technology industry benchmarking program and performance measurement system. Initial seed money for this project is included in High Technology Activity #3.

Timeframe: This is a project in the formative stages. The development of high technology industry benchmarks and performance measurement is a continual process over the two-year action plan period.

Estimated Cost: \$75,000 (see High Technology Industry Activity #2 for additional Metro Region funding for this project)

Potential Funding Partners:

American Electronics Association (and member companies)
Software Association of Oregon (and member companies)

Link To Oregon Benchmarks:

Value-Added Products, Global Business
Diverse and Productive Industry

Link to Long-term Goals: #1, #4, #10, #11

Performance Measure (by 9/96):

·Benchmarking to include participating industry companies
·Survey of ten companies will be made to evaluate program

STRATEGY EVALUATION PLAN

This is the evaluation plan for measuring and monitoring strategy performance as part of the proposed regional strategy, as required by OEDD. It is designed to provide an efficient self-feedback mechanism for the Board and the Implementors of the Key Industry activities. Evaluation activities will include both ongoing and formalized involvement of the Key Industries. It is also designed to provide OEDD/Economic Development Commission with appropriate reports and information regarding the cost-effectiveness of the Region's strategies and activities.

The intent of the Board is to require individualized evaluations of activities which provide quality information with as little administrative expense as possible. To minimize evaluation costs, outside audits of activities are not proposed; instead the Board expects accurate pictures of the results of the activity from each contractor with appropriate verification performed by the strategy staff. Evaluation procedures and criteria will be outlined in the contract for each project. In cases where the staff (PDC) is the project implementor, an appropriate evaluation oversight process involving the Key Industry, the Board or an outside oversight group will be utilized, as approved by the Board.

Regarding timeliness of evaluations, this plan contemplates an evaluation of activities undertaken with Regional Strategy funds at the end of each biennium (process evaluation) and an evaluation of the results of the project on the biennial anniversary of the project's funding or the end of the project, whichever is most appropriate (product evaluation). Additionally, the board will conduct less formal progress reviews with the industry associations at least one or two times each year.

In place of "regional benchmarks" the Metro Board selected a regional vision and key components and twelve long-term goals (see Section V - Industry Selection). The draft performance measures identified for the draft activities are linked with the long-term goals identified by the Board; finalized performance measures will be analyzed by the staff to insure appropriate linkage to the Board's long-term goals and the goals of the Oregon Legislature regarding Regional Strategies funding (e.g., family-wage job development/retention and key industry strengthening/diversification)).

The Board concludes that measuring the effect of the strategies and projects in terms of long-term benchmarks is impractical; factors including global market forces, entrepreneurial competence, luck, federal and state regulations, governmental business climate decisions and other factors will have far greater effect on the macroeconomic statistics than the resources of the regional strategies program. Therefore, the Board will not attempt to measure the effect of the strategy in broad benchmark measures.

Furthermore, long-term benchmarks are not yet established for the Metro region. Multnomah County is presently establishing economic prosperity benchmarks with conclusion of the process expected towards the end of 1994. Washington County has not begun a benchmarking process. As long-term benchmarks are established for the Metro region through official actions, the Board will consider the benchmarks in future strategy work.

The Board will require, through funding contracts with contractors, prudent and professional management of activities. This will include the ability and commitment by the contractor to react quickly to situations when activities are not progressing as expected. Evaluations of the process will likely include simple customer satisfaction surveys when the activity is meeting expectations; if the activity is having difficulty a more stringent evaluation of the process will be required, including focus groups (conducted by outside facilitators if necessary).

To assist contractors in assessing the product and particularly the cost-effectiveness of their products from the various activities undertaken, the staff and board will work with academic and/or private-sector resources

over the summer of 1994 to devise a cost-effectiveness analysis template. The goal of the template will be to provide a tool for self-analysis of activity "product" by contractors of activities while providing some uniformity in product evaluation methodology for the staff and the Board. The cost-effectiveness tool will help the contractors, staff, and Board evaluate the individual activity and the overall industry strategy in both quantitative and qualitative aspects (including unintended consequences). It is expected to include return on investment considerations and an examination of alternatives for achieving the desired results.

CALENDAR OF EVALUATION PLANNING AND IMPLEMENTATION:

June 1, 1994 Strategy application completion.
June 2 - Sept. Strategy refinement including individual performance measures and evaluation plans finalized for each activity. Staff and board develop cost-effectiveness analysis tool.
April 1, 1995 Preliminary evaluations of activity process prepared for Board review.
May 1, 1995 Evaluations of activity process completed by contractors.
May 15, 1995 Review of process evaluations by staff and Board.
May 1, 1996 Mid-course evaluations of activity process completed by contractors.
May 15, 1996 Review of process evaluations by staff and Board in consultation with industry associations.
October, 1996 Evaluations of product completed by contractors.
November, 1996 Review of product evaluations by staff and Board in consultation with industry associations.
May 1, 1997 Evaluations of activity process completed by contractors.
May 15, 1997 Review of process evaluations by staff and Board in consultation with industry associations.

....etc.

Reporting to assist OEDD with legislative reports and other requirements will be provided by the staff in consultation with contractors.

Appendix A - Participants in Metro Region Process

Aerospace Industry Participants

Paul Meyerhoff	Aerospace Industry Association of Oregon
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Agriculture Industry Participants

Eric Azariah	Oregon Department of Agriculture
Cathi McLain	Oregon Department of Agriculture
Ray Steinfeld	Steinfeld Pickles Company

Biotechnology Industry Participants

Barbara Anderman	Oregon Biotechnology Association
David Clark	Perkins Coie
Dean Kruse	Portland Community College
Dr. Nanette Newell	Oregon Biotechnology Association
Richard Polley	Klarquist, Sparkman - Attorneys at Law
Richard Sessions	Vollum Institute, OHSU
Dr. George Weber	Wesman Foods, Inc.

Environmental Services Industry Participants

Bill Snyder	Oregon Environmental Technology Association
Andy Sloop	Metro Regional Services

Film & Video Industry Participants

David Woolson	Oregon Film & Video Office
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High Technology Industry Participants

Mike Bosworth	OrCad, Inc.
Jim Craven	American Electronics Association
Charmagne Ehrenhaus	Lintner Center
Bob French	Intel
Jim Hurd	Planar Systems, Inc.
Ken Maddox	Software Association of Oregon
Bruce Shafer	PC-Kwik, Inc.

Metals Industry Participants

Kathleen Curtis Dotten	Oregon Metals Industry Council
Dan Ten Eyck	Reynolds Metals
Warren Rosenfeld	Calbag Metals
John Seaver	Oregon Precision Metal Fabricators Association

Vicki Tagliafico

Howard Werth

Software Industry Participants

Ken Maddox

Bruce Shafer

Tourism Industry Participants

Court Carrier

Carol Clark

Gene Leo

Cletus Moore

Other Participants

Robert Alexander

Mark Clemmons

Elaine Cogan

Marcia Douglas

Jerry Gillham

Elizabeth Goebel

Steven Goebel

Marcy Jacobs

Christopher Juniper

David Lawrence

Anne Mulroney

Betty Mills

Lisa Nisenfeld

Janet Young

Oregon Steel

Gunderson

Software Association of Oregon

PC-Kwik, Inc.

Mt. Hood Community College

Washington County Visitors Association

Portland Oregon Visitors Association

Urban League

Forest Grove/Cornelius

Portland Development Commission

Cogan, Owens, Cogan Consultants

Portland City Schools

City of Gresham

City of Portland

City of Portland

Oregon Economic Development Department

Portland Development Commission

City of Hillsboro

City of Beaverton

Gresham Chamber of Commerce

Portland Development Commission

Tualatin

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON**

In the Matter of Adopting Hearing Rules)
for the Conduct of a Joint Planning)
Commission and Board Quasi judicial)
Hearing on June 13, 1994)

RESOLUTION
94 -95

WHEREAS, ORS 197 requires the Land Conservation and Development Commission to Review the Multnomah County Comprehensive Framework Plan periodically to determine consistency with the State Land Use Goals; and

WHEREAS, the Land Conservation and Development Commission reviewed in April 1993 the Multnomah County Comprehensive Framework Plan and determined it did not comply with State Land Use Goal 5; and

WHEREAS, the Land Conservation and Development Commission required Multnomah County to complete Goal 5 work by December 31, 1993 and subsequently approved a detailed work Program extending the County's deadline to September 6, 1994; and

WHEREAS, the Land Conservation and Development Commission approved a work program which requires the Multnomah County Planning Commission and Board to conduct a Hearing to consider two "Reconciliation Reports"; and

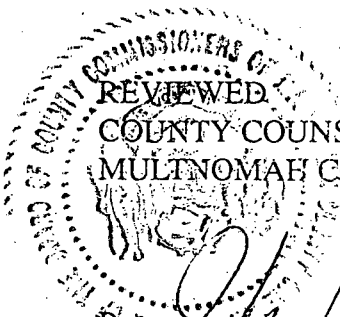
WHEREAS, both the Multnomah County Planning Commission and Board have adopted rules for the conduct of quasi judicial hearings; and

WHEREAS, the Board must amend their rules to hold a hearing with the Planning Commission;

NOW, THEREFORE, IT IS RESOLVED for the June 13, 1994, joint hearing of the Planning Commission and Board of County Commissioners on the two Reconciliation Reports, or any continuation thereof, the RULES FOR THE CONDUCT OF PLANNING COMMISSION AND BOARD OF COUNTY COMMISSIONERS JOINT QUASI-JUDICIAL HEARING as set forth in Exhibit "A" are hereby adopted.

APPROVED this 24th day of May, 1994

MULTNOMAH COUNTY, OREGON



COUNTY COUNSEL FOR
MULTNOMAH COUNTY, OREGON

By John L. Dubay
John L. Dubay, Deputy County Counsel

By

Beverly Stein
Beverly Stein
Multnomah County Chair

Exhibit "A"
**RULES FOR THE CONDUCT OF PLANNING
COMMISSION AND BOARD OF COUNTY
COMMISSIONERS JOINT QUASI-JUDICIAL HEARING**

SECTION 1. NATURE AND CONDUCT OF HEARING

A. Parties are entitled to an opportunity to appear, in person or by a representative or Counsel, to present and rebut testimony and evidence to an impartial approval authority, to have the proceedings recorded and to receive a written decision which includes Findings of Fact and Conclusions based on the record made at the hearing.

B. The following persons are parties and shall be entitled, either themselves or through their representatives or Counsel, to make an appearance of record before the Board of Commissioners and the Planning Commission:

1. All persons entitled to individual mailed notice under the applicable Ordinance; and
2. Other persons who demonstrate an interest in the proposed action.

C. The Board of Commissioners or the Planning Commission may call as a witness a person with technical or specialized knowledge regarding an issue in an action.

D. No person shall testify without:

1. Receiving recognition from the Chair of the County Commissioner;
2. Stating his or her full name and residence address; and
3. If requested, stating the basis on which he or she is entitled to status as a party, pursuant to these Rules or as a witness on behalf of a party pursuant to these Rules.
 - (a) A challenge to the party or witness status of a person, and a ruling thereon by the Chairperson, shall be made at the time the person requests recognition to testify.
 - (b) A challenge to the party or witness status of a person may be made only by a party.

E. There shall be no audience demonstration, such as applause, cheering, display of signs, or other conduct disruptive of the hearing. Disruptive conduct may be cause for expulsion from the hearing, termination of the hearing, or other appropriate action.

F. The term person includes an individual, partnership, corporation, association, governmental unit or public or private organization.

SECTION 2. CONFLICT OF INTEREST: BIAS, EX PARTE CONTACT

A. Any actual or potential conflicts of interest, bias or partiality shall be disclosed at the hearing where the action is considered.

B. Any party may challenge the impartiality of any member before or during the hearing. A challenge must include the facts relied on by the challenging party, relating to the member's alleged bias, prejudgment, or personal interest, or other facts from which the party has concluded that the member cannot participate in a decision in an impartial manner.

C. In the event of a challenge for bias, the challenged member shall respond in a statement which shall be part of the record. The statement shall refer to the challenge and include the reasons why the member has elected to participate or abstain. The statement shall not be subject to cross examination or rebuttal.

D. In the event any member has pre-hearing *ex parte* contact with a party, the member shall publicly disclose the occurrence and the substance of such contact and the persons involved. The statement shall also indicate any interest or independent knowledge of the member. The term independent knowledge refers to facts received by other than public means which are not capable of judicial or official notice, are not in the record of the action and are not a matter of general knowledge. The statement shall be made at the beginning of the hearing on the action or at such time during the course of the hearing that the member becomes aware of the existence of an *ex parte* contact or independent knowledge. The statement regarding *ex parte* contact shall be subject to the same Rules as for a statement of bias in paragraph (C) in this section.

SECTION 3. QUORUM and PRESIDING OFFICER

A. A quorum of the Planning Commission and a quorum of the Board of Commissioners shall constitute a quorum for the joint meeting.

B. The Presiding Officer of a joint meeting shall be the Chair of the County Commission or a person designated by the Chair.

SECTION 4. RULES OF EVIDENCE

A. Evidence received at a hearing shall be of the quality that reasonable persons rely on in the conduct of everyday affairs.

B. Irrelevant, immaterial or repetitious testimony or evidence shall not be admitted.

SECTION 5. ORDER OF PROCEDURE

The order of procedure shall be as follows.

A. Call the session to order.

B. Call for the Staff Report relating to actions previously decided, if appropriate. And list the applicable and substantive criteria governing the action.

C. Summarize the nature and conduct of the hearing as described in these Rules and explain where the public can obtain copies of the Rules of Procedure and the Agenda.

D. Explain the sequence of events to be followed at the hearings as described in Subsections (F) through (O) of this Section.

E. Instruct the audience that only testimony or evidence directed to the approval criteria will be accepted and that failure to raise an issue with sufficient specificity to afford the Commission and the parties an opportunity to respond to the issue precludes appeal to LUBA on that issue.

F. Call the first Agenda item and describe the Action.

G. Request a representative of the Division of Planning and Development to describe the nature of the proposal, explain any graphic or pictorial displays which are to be part of the record and summarize the Staff Report and Recommendation.

H. Call for the presentation by Proponents of the Action.

1. Those testifying in support of an action have three minutes per person, exclusive of time used by the Board and Planning Commission for questions. Additional time shall only be granted if the evidence/testimony is not repetitious, irrelevant, or immaterial.
2. Proponents shall be heard in the following order.

- (a) Representatives of agencies or interested governments,
- (b) Persons receiving notice of the hearing.
- (c) Neighborhood associations, organizations or other groups.
- (d) Persons not entitled to receive notice of the hearing but who demonstrate to the Approval Authority that they have an interest in the action.

I. Call for the presentation by opponents of the Action.

- 1. Those testifying in opposition to an application have three minutes per person, exclusive of time used by the Board and Planning Commission for questions. Additional time shall only be granted if the evidence/testimony is not repetitious, irrelevant, or immaterial.
- 2. Opponents shall be heard in the following order.
 - (a) Representatives of agencies or interested governments,
 - (b) Persons receiving notice of the hearing.
 - (c) Neighborhood associations, organizations or other groups.
 - (d) Persons not entitled to receive notice of the hearing but who demonstrate to the Approval Authority that they have an interest in the action.

J. Provide opportunity for a representative of the Division of Planning and Development to add to or clarify the factual information presented.

K. Close the public portion of the hearing and accept requests for continuances and the opportunity to submit additional evidence as provided in ORS 197.763(4)(b) and (6).

SECTION 6. RECORD OF PROCEEDINGS

A. The proceedings of the Board and Planning Commission shall be electronically or stenographically recorded.

B. In the manner provided by ORS 192.105-192.170, the Division of Planning and Development may dispose of physical and documentary evidence not claimed by the person identified sixty days after notice that the evidence may be claimed has been mailed to such person.

SECTION 7. PUBLICATION OF RULES

These Rules shall be placed on record with the Division of Planning and Development and the Clerk of the Board of County Commissioners and copies shall be made available to the public at all joint hearings of the Board and Planning Commission.

SECTION 8. AMENDMENT AND SUSPENSION OF RULES

A. Any Rule of Procedure not required by law may be amended, suspended, or repealed at any hearing by majority of those present.

B. A procedural rule may be adopted to regulate a situation not provided for in these Rules or in County Ordinances.

SECTION 9. RELATIONSHIP WITH OTHER RULES

These Rules supercede other Board and Planning Commission rules.

SECTION 10. DECISIONS

Following the joint hearing, the Planning Commission and Board of County Commissioners will make their separate decisions in accordance with MCC §11.05.300 through MCC §11.05.400.

MEETING DATE: May 24, 1994

AGENDA NO: P-2

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: Board Hearing Rules for Joint Planning Commission/Board Quasi-Judicial Hearing

BOARD BRIEFING Date Requested:

Amount of Time Needed:

REGULAR MEETING: Date Requested: May 24, 1994 - Planning Item Agenda

Amount of Time Needed: 5 Minutes

DEPARTMENT: DES DIVISION: Planning and Development

CONTACT: R. Scott Pemble TELEPHONE #: 3182
BLDG/ROOM #: 412/103

PERSON(S) MAKING PRESENTATION: John DuBay

ACTION REQUESTED:

[] INFORMATIONAL ONLY [] POLICY DIRECTION [x] APPROVAL [] OTHER

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

Request Board adopt a Resolution establishing Rules for the Conduct of a Joint Board and Planning Commission Hearing on June 13, 1994

5/24/94 copies to Scott Pemble, Sharon Tenko, Sharon Cowley & John DuBay

SIGNATURES REQUIRED:

ELECTED OFFICIAL:

OR

DEPARTMENT MANAGER: Betty Willis

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

Any Questions: Call the Office of the Board Clerk 248-3277/248-5222

0516C/63

6/93

BOARD OF
COUNTY COMMISSIONERS
MULTNOMAH COUNTY
OREGON
1994 MAY 18 PM 1:44



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

TO: BOARD OF COUNTY COMMISSIONERS

FROM: R. SCOTT PEMBLE, PLANNING DIRECTOR

TODAY'S DATE: APRIL 25, 1994

REQUESTED PLACEMENT DATE: MAY 10, 1994 PLANNING ITEMS

RE: BOARD HEARING RULES FOR QUASI JUDICIAL PLANNING ITEMS

I. RECOMMENDATION/ACTION REQUESTED:

Request Board adopt a resolution establishing Rules for the Conduct of a Quasi judicial Hearing on June 13, 1994.

II. BACKGROUND/ANALYSIS:

The Land Conservation and Development Commission (LCDC) when approving the County's revised work program (94-WKPROG-00038) anticipated the need for the Multnomah County Planning Commission and Board to hold a hearing(s) to consider two "Reconciliation Reports". The approved work program includes an innovative approach to satisfy hearing requirements. A joint Board and Planning Commission hearing has been included in the approved work program. This strategy is intended to provide the Planning Commission and Board members opportunity to receive evidence concurrently and eliminate the need for a separate hearing before the Board. This strategy is intended to minimize redundancy while providing all parties an opportunity to comment.

While this strategy is intended to provide the opportunity to reduce the number of redundant hearings, this may not be accomplished. The County Code established a quasi judicial comprehensive plan amendment procedure which allows parties the right to appeal the Planning Commission's decision (*i.e.*, their recommendation to the Board) to the Board. If appeals are filed, the Board will be required to hold a second hearing. Conversely, if no parties appeal the Planning Commission's decision, the Board will not be required to hold an additional hearing.

A joint Board/Planning Commission hearing will require new rules to be established for the conduct of the hearing. Since the hearing will be quasi judicial in nature, all legal requirements of a quasi judicial hearing

must be incorporated into the rules. Also, the rules need to explain the general conduct of the hearing, the order of events and who will be responsible for overseeing the hearing. The public will be notified of these rules well in advance of the hearing.

III. FINANCIAL IMPACTS:

Holding a combined Planning Commission/Board quasi judicial hearing may reduce the cost of public notice by approximately half.

IV. LEGAL ISSUES:

Remand Order work must comply with the LCDC approved work program. Failure to properly complete the process within the specified timeline, and in a manner consistent with the approved work program may result in a challenge when the LCDC reviews the County's Remand Order work.

V. CONTROVERSIAL ISSUES:

Some questions concerning quasi judicial rights may be raised by parties at the hearing. County Counsel has reviewed the proposed rules and determined all quasi judicial safe guards can be accommodated.

Some parties may argue that the three minute limit per person is not enough time to present their comments. Given the number of people that are anticipated to testify, and the opportunity to submit written comments, three minutes appears to be adequate and will afford everyone the opportunity to comment sometime before midnight. If at the joint hearing only a few people indicate an interest in testifying, however, the Board and the Planning Commission will have the opportunity to amend their rules to provide for more time.

VI. LINK TO CURRENT COUNTY POLICIES:

Both the Planning Commission and the Board have their own unique set of rules which govern a quasi judicial hearing process. Both sets of rules allow the respective bodies to amend their hearing rules.

VII. CITIZEN PARTICIPATION:

Parties to the County's Periodic Review hearing, before the LCDC, were given opportunity by the Commission to comment on the DLCD staff proposed work program. In general, comments were made in support of the DLCD staff proposed and subsequently LCDC adopted the revised work program. The Approved LCDC work program included the provision of a joint Planning Commission and Board hearing.

VIII. OTHER GOVERNMENT PARTICIPATION:

Affected state and local agencies were notified when the LCDC considered the County's Remand Order an subsequent revised work program. They continue to be notified of work in progress.

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON**

In the Matter of Adopting Hearing Rules)
for the Conduct of a Joint Planning)
Commission and Board Quasi judicial)
Hearing on June 13, 1994)

RESOLUTION
94 -95

WHEREAS, ORS 197 requires the Land Conservation and Development Commission to Review the Multnomah County Comprehensive Framework Plan periodically to determine consistency with the State Land Use Goals; and

WHEREAS, the Land Conservation and Development Commission reviewed in April 1993 the Multnomah County Comprehensive Framework Plan and determined it did not comply with State Land Use Goal 5; and

WHEREAS, the Land Conservation and Development Commission required Multnomah County to complete Goal 5 work by December 31, 1993 and subsequently approved a detailed work Program extending the County's deadline to September 6, 1994; and

WHEREAS, the Land Conservation and Development Commission approved a work program which requires the Multnomah County Planning Commission and Board to conduct a Hearing to consider two "Reconciliation Reports"; and

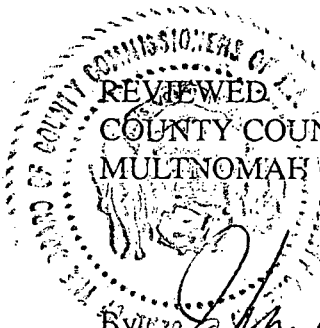
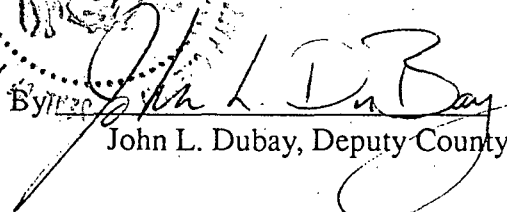
WHEREAS, both the Multnomah County Planning Commission and Board have adopted rules for the conduct of quasi judicial hearings; and

WHEREAS, the Board must amend their rules to hold a hearing with the Planning Commission;

NOW, THEREFORE, IT IS RESOLVED for the June 13, 1994, joint hearing of the Planning Commission and Board of County Commissioners on the two Reconciliation Reports, or any continuation thereof, the RULES FOR THE CONDUCT OF PLANNING COMMISSION AND BOARD OF COUNTY COMMISSIONERS JOINT QUASI-JUDICIAL HEARING as set forth in Exhibit "A" are hereby adopted.

APPROVED this 24th day of May, 1994

MULTNOMAH COUNTY, OREGON


REVIEWED
COUNTY COUNSEL FOR
MULTNOMAH COUNTY, OREGON

By John L. Dubay
John L. Dubay, Deputy County Counsel

By

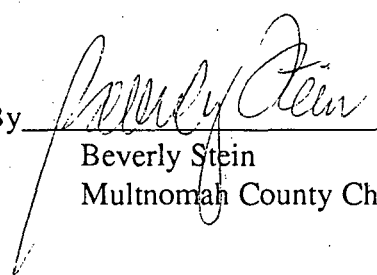

Beverly Stein
Multnomah County Chair

Exhibit "A"
**RULES FOR THE CONDUCT OF PLANNING
COMMISSION AND BOARD OF COUNTY
COMMISSIONERS JOINT QUASI-JUDICIAL HEARING**

SECTION 1. NATURE AND CONDUCT OF HEARING

A. Parties are entitled to an opportunity to appear, in person or by a representative or Counsel, to present and rebut testimony and evidence to an impartial approval authority, to have the proceedings recorded and to receive a written decision which includes Findings of Fact and Conclusions based on the record made at the hearing.

B. The following persons are parties and shall be entitled, either themselves or through their representatives or Counsel, to make an appearance of record before the Board of Commissioners and the Planning Commission:

1. All persons entitled to individual mailed notice under the applicable Ordinance; and
2. Other persons who demonstrate an interest in the proposed action.

C. The Board of Commissioners or the Planning Commission may call as a witness a person with technical or specialized knowledge regarding an issue in an action.

D. No person shall testify without:

1. Receiving recognition from the Chair of the County Commissioner;
2. Stating his or her full name and residence address; and
3. If requested, stating the basis on which he or she is entitled to status as a party, pursuant to these Rules or as a witness on behalf of a party pursuant to these Rules.
 - (a) A challenge to the party or witness status of a person, and a ruling thereon by the Chairperson, shall be made at the time the person requests recognition to testify.
 - (b) A challenge to the party or witness status of a person may be made only by a party.

E. There shall be no audience demonstration, such as applause, cheering, display of signs, or other conduct disruptive of the hearing. Disruptive conduct may be cause for expulsion from the hearing, termination of the hearing, or other appropriate action.

F. The term person includes an individual, partnership, corporation, association, governmental unit or public or private organization.

SECTION 2. CONFLICT OF INTEREST: BIAS, EX PARTE CONTACT

A. Any actual or potential conflicts of interest, bias or partiality shall be disclosed at the hearing where the action is considered.

B. Any party may challenge the impartiality of any member before or during the hearing. A challenge must include the facts relied on by the challenging party, relating to the member's alleged bias, prejudice, or personal interest, or other facts from which the party has concluded that the member cannot participate in a decision in an impartial manner.

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F. Call the first Agenda item and describe the Action.

G. Request a representative of the Division of Planning and Development to describe the nature of the proposal, explain any graphic or pictorial displays which are to be part of the record and summarize the Staff Report and Recommendation.

H. Call for the presentation by Proponents of the Action.

1. Those testifying in support of an action have three minutes per person, exclusive of time used by the Board and Planning Commission for questions. Additional time shall only be granted if the evidence/testimony is not repetitious, irrelevant, or immaterial.

2. Proponents shall be heard in the following order.

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I. Call for the presentation by opponents of the Action.

- 1. Those testifying in opposition to an application have three minutes per person, exclusive of time used by the Board and Planning Commission for questions. Additional time shall only be granted if the evidence/testimony is not repetitious, irrelevant, or immaterial.
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J. Provide opportunity for a representative of the Division of Planning and Development to add to or clarify the factual information presented.

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SECTION 9. RELATIONSHIP WITH OTHER RULES

These Rules supercede other Board and Planning Commission rules.

SECTION 10. DECISIONS

Following the joint hearing, the Planning Commission and Board of County Commissioners will make their separate decisions in accordance with MCC §11.05.300 through MCC §11.05.400.

MEETING DATE: May 10, 1994 **MAY 24 1994**

AGENDA NO: P-3 P-3

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: FD 1-94 Public Hearing - DeNovo

BOARD BRIEFING Date Requested: _____

Amount of Time Needed: _____

REGULAR MEETING: Date Requested: May 10, 1994

Amount of Time Needed: 45 Minutes

DEPARTMENT: DES DIVISION: Planning

CONTACT: R. Scott Pemble TELEPHONE #: 3182
BLDG/ROOM #: 412./103

PERSON(S) MAKING PRESENTATION: Bob Hall

ACTION REQUESTED:

☐ INFORMATIONAL ONLY ☐ POLICY DIRECTION ☐ APPROVAL ☒ DENIAL
☐ OTHER

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

FD 1-94. Public Hearing - DeNovo

Review the Hearings Officer Decision of denial for a variance of 4.5 feet to the finished floor elevation of a proposed single family residence for property located at 11930 SE Liebe Street.

This Decision has been appealed by the applicant.

Time Allowed for Testimony - 20 Minutes

SIGNATURES REQUIRED:

ELECTED OFFICIAL: _____

OR

DEPARTMENT MANAGER: [Signature] [Signature]

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

Any Questions: Call the Office of the Board Clerk 248-3277/248-5222

0516C/63



MULTNOMAH COUNTY OREGON

DIVISION OF PLANNING & DEVELOPMENT/2115 S.E. MORRISON/PORTLAND, OREGON 97214

DIVISION OF PLANNING AND DEVELOPMENT

Board Planning Packet Check List

File No. FDI-94

☒ Agenda Placement Sheet No. of Pages 1

☒ Case Summary Sheet No. of Pages 1

☐ Previously Distributed _____

☒ Notice of Review No. of Pages 4

*(Maybe distributed at Board Meeting)

☐ Previously Distributed _____

☒ Decision No. of Pages 18

(Hearings Officer/Planning Commission)

☐ Previously Distributed _____

*Duplicate materials will be provided upon request.
Please call 2610.

(CL/1)



BOARD HEARING OF May 10, 1994

TIME 2:00pm

CASE NAME Flood Hazard Variance

NUMBER

FD 1-94

1. Applicant Name/Address

Gregory J. Frank
P.O. Box 19478
Portland 97280

2. Action Requested by Applicant

Reversal of Hearing Officer's decision in the matter of a request for a 4.5 foot height variance to the finished floor elevation for a proposed single family residence on property within the Flood Hazard district.

3. Planning Staff Recommendation

Approval

4. Hearings Officer Decision:

Denial

5. If recommendation and decision are different, why?

The Hearings Officer found that the applicant had failed to demonstrate compliance with the standards for sewage disposal, certification of hydrostatic equalization, exceptional hardship to the applicant, and that fraud and victimization might occur to future purchasers of the property. He also found that the applicant had not provided information regarding Comprehensive Plan Policy #37 with respect to drainage and energy and communications.

ISSUES

(who raised them?)

- The appearance of a house with a foundation five feet higher than that of surrounding residences (neighbor).
- The low probability of flooding in the area based on over twenty years of observation (neighbor).

Do any of these issues have policy implications? Explain.

No

ACTION REQUESTED OF BOARD

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



DEPARTMENT OF ENVIRONMENTAL SERVICES
DIVISION OF PLANNING AND DEVELOPMENT
2115 SE Morrison Street
Portland, Oregon 97214 (503) 248-3043

May 10, 1994

NOTICE OF PUBLIC HEARING

This notice concerns a public hearing scheduled to consider the land use cases cited and described below:

Case Files: FD 1-94
Scheduled Before: Board of County Commissioners
Hearing Date, Time, & Place: MAY 10, 1994 at 2:00 p.m.
Multnomah County Courthouse, Room 602
1021 SW 4th Avenue, Portland

Scope of Review: De Novo

Time Allowed for Testimony: 20 minutes per side.

Proposed Actions and Uses: Variance of 4.5 feet to the finished floor elevation of a proposed single family residence

Location of the Proposal: 11930 SE Liebe Street

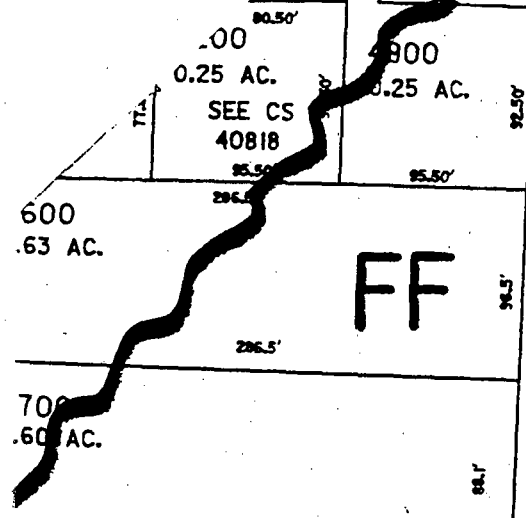
Legal Description of Property: Parcel #1 of Partition Plat 1993-49

Plan Designation: Urban Low Density Residential

Zoning District: LR-7/FF — Urban Low Density Residential District
Flood Fringe overlay district

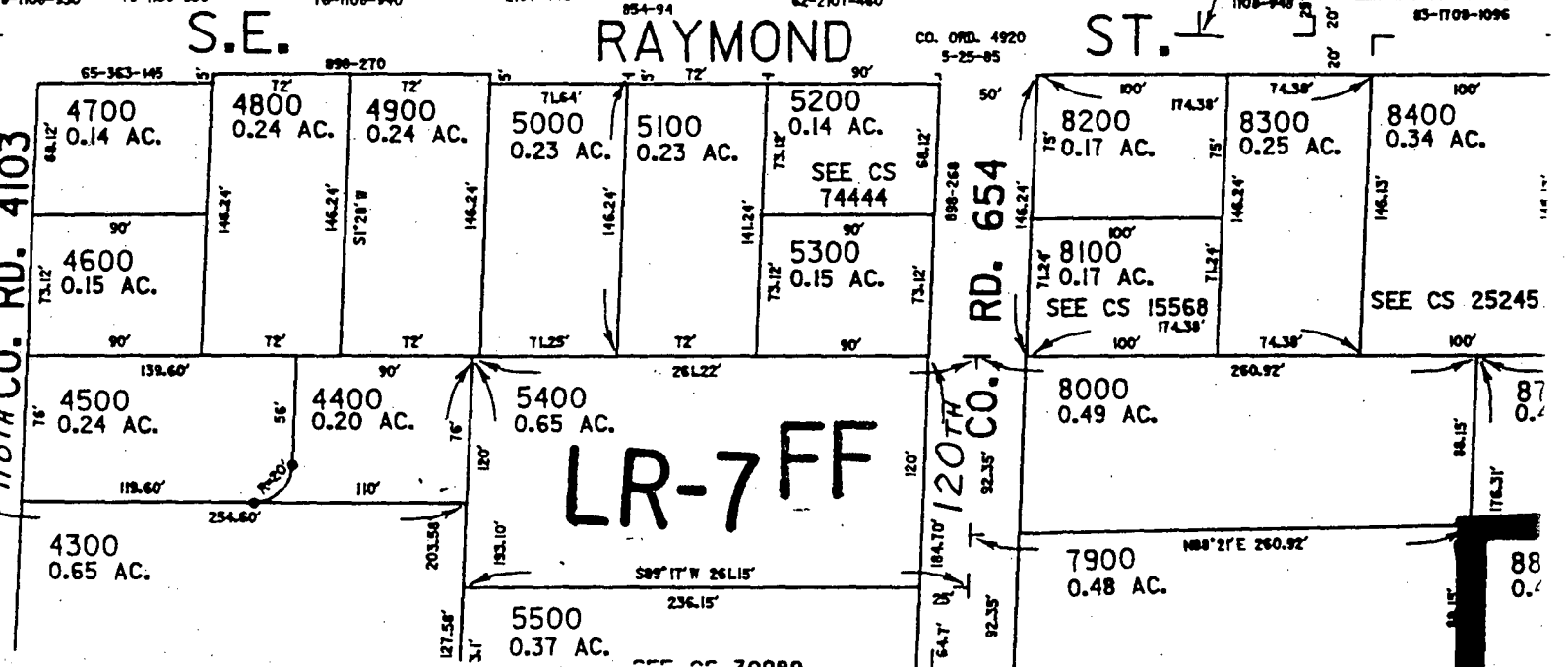
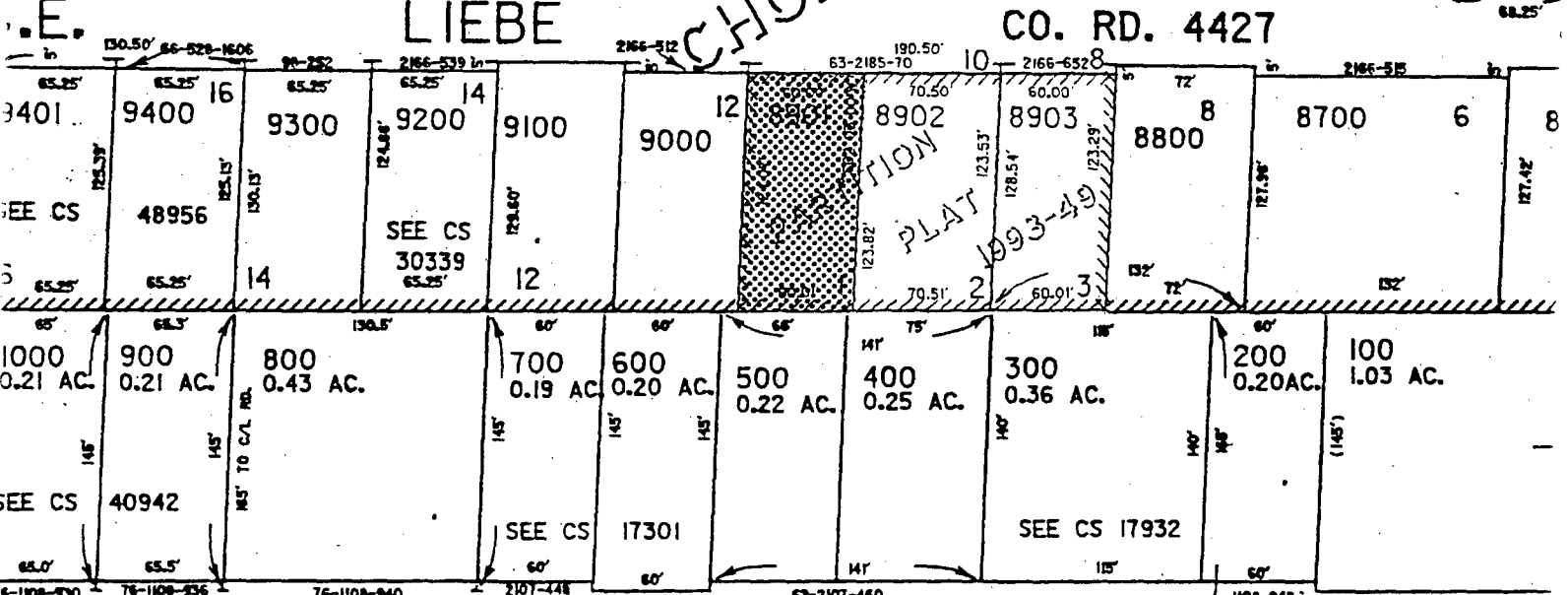
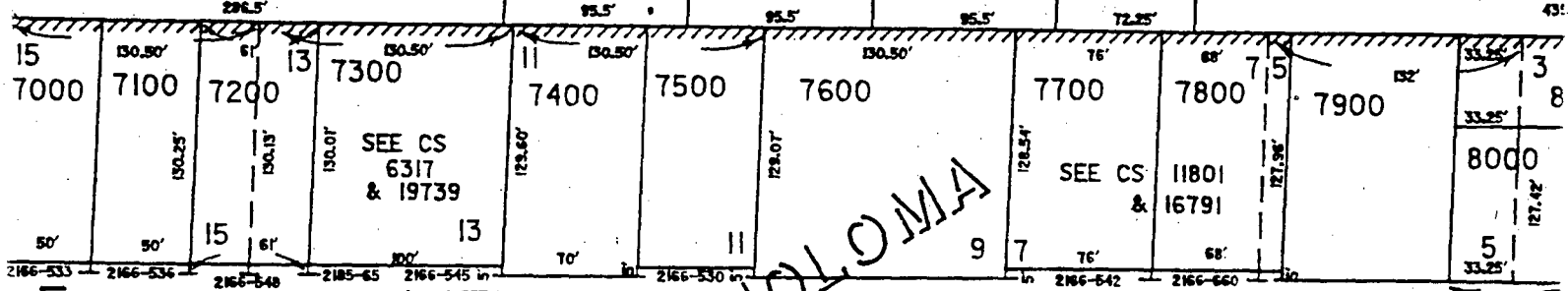
Applicant: Joseph Vaughn
5761 SE Harrison Street
Milwaukie, OR 97222

Property Owner: Same



Zoning Map
Case #: FD 1-94
Location: 11930 SE Liebe Street
Scale: 1 inch to 100 feet (approx)
Shading indicates subject property
SZM 419; A&T Map 1S 2E 15 AA 8901

LR-7



APPEAL SUMMARY: Appellant appeals a February 16, 1994 Hearings Officer decision which denied application FD 1-94 for a 4.5 foot variance to the finished floor elevation of a proposed single family residence for property located at 11930 SE Liebe Street. A *Notice of Review* (appeal) of FD 1-94 was filed on April 1, 1994. On April 12, 1994, the appeal was reported to the Board and the Board acted to hear the appeal de novo. The Board will limit testimony to twenty minutes per side.

PUBLIC PARTICIPATION AND HEARING PROCESS: Application materials and the grounds for appeal are available for inspection at no cost at least 20 days prior to the hearing. Copies may be purchased for 30-cents per page. For further information on this case, call Bob Hall at 248-3043 [M-F, 8:00-4:30].

To comment on the this proposal, you may write to or call the Planning Division or attend and speak at the hearing. **All interested parties may appear and testify or submit written comment to the Board of Commissioners.** All comments should address the approval criteria applicable to the request, **but be limited to the *Scope of Review* listed on the front page of this notice.** The hearing procedure will follow the Board of Commissioner's *Rules of Procedure* (enclosed) and will be explained at the hearing.

The Board's decision on the item may be announced at the close of the hearing, or upon continuance to a time certain. A written decision will be mailed to the participants and filed with the Clerk of the Board of County Commissioners usually within ten days of the announcement. The decision of the Board of County Commissioners may be appealed to State Land Use Board of Appeals (LUBA) by either the applicant or other hearing participants.

Failure to raise an issue in person, or by letter, or failure to provide sufficient specificity to allow the Board of County Commissioners an opportunity to respond to the issue precludes subsequent appeal to LUBA on that issue.

VARIANCE TO THE FLOOD PLAIN ELEVATION APPROVAL CRITERIA
[ref. MCC 11.15.2172(C)]

MCC 11.15.6315: FLOOD HAZARD DEVELOPMENT STANDARDS

(1) MCC 11.15.6315(A): State Building Code Compliance

MCC 11.15.6315(A) requires "all new construction and substantial improvement shall be constructed in conformance with Oregon State Building Codes."

(2) MCC 11.15.6315(B): Flood Elevation Requirement

MCC 11.15.6315(B) provides, in part:

*New construction and substantial improvement of any residential structure, including manufactured homes, shall have the lowest floor, including basement, elevated to at least one foot above the base flood level. * * * **

(3) MCC 11.15.6315(C): Floodproofing Of Nonresidential Structures

MCC 11.15.6315(C) (floodproofing of structures) is inapplicable because it applies only to "new construction and substantial improvement of any commercial, industrial or other non-residential structure * * * ." This is an application for approval of the construction of a residential structure.

(4) MCC 11.15.6315(D): Foundation and Anchoring

MCC 11.15.6315(D) is inapplicable because it applies only to manufactured homes.

(5) MCC 11.15.6315(E): Foundations And Drainage In Mobile Home Parks And Subdivisions

MCC 11.15.6315(E) is inapplicable because it applies only to manufactured homes.

(6) MCC 11.15.6315(F): Prevention Of Infiltration Of Water Into Household Utility Systems

MCC 11.15.6315(F) requires that in "all new construction:"

the electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

(7) MCC 11.15.6315(G): Standards For Sewage Disposal Systems

MCC 11.15.6315(G) requires new and replacement water and sewer disposal systems to be designed to:

- (1) Minimize infiltration of flood waters into the system;*
- (2) Minimize discharge from systems into flood waters;*
- (3) Avoid impairment or contamination during flooding.*

(8) MCC 11.15.6315(H): Certification Of Hydrostatic Equalization

MCC 11.15.6315(H) requires that the portions of the dwelling "below the lowest floor that are subject to flooding [will] automatically equalize the hydrostatic flood forces * * * ."

(9) MCC 11.15.6315(I): Exemptions For Land Above Flood Level

MCC 11.15.6315(I) is inapplicable because it authorizes exemptions from the requirements of MCC 11.15.6315 when a surveyor demonstrates the land is 1 foot or more above base flood level. The applicants and staff concur that the property is 6 feet below base flood level.

(10) MCC 11.15.6315(J): Exemption For Historic Structures

MCC 11.15.6315(J) is inapplicable because it authorizes an exemption from MCC 11.15.6315 for the reconstruction, rehabilitation or restoration of "structures listed on the National Register of Historic Place or the State Historic Site Inventory." There is no structure on the site and thus it cannot be on the Historic Site registry or Historic Site Inventory.

C. MCC 11.15.6323: VARIANCE STANDARDS**(1) The Applicable Portions Of The Variance Provisions**

The variance standards are set out in the five subsections of MCC 11.15.6323(B). The fifth subsection applies only to structures in "an area identified as the floodway". As found above, the variance is for property in the flood fringe, not the floodway.

(2) Variance From Flood Elevation Requirements In MCC 11.15.6315(B)**(a) MCC 11.15.6323(B)(1): Lot Size And Surrounding Development**

MCC 11.15.6323(B)(1) provides:

- (1) *The site of the proposed variance is a lot of one-half acre or less in size and is surrounded by and contiguous to lots with existing structures constructed below the base flood level.*

(b) MCC 11.15.6323(B)(2): Exceptional Hardship to the Applicant

MCC 11.15.6323(B)(2) provides:

- (2) *Failure to grant the variance will result in exceptional hardship to the applicant;*

(c) MCC 11.15.6323(B)(3): Variance Is Minimum Necessary

MCC 11.15.6323(B)(3) provides:

- (3) *The variance is the minimum necessary to afford relief.*

(d) MCC 11.15.6323(B)(4): No Additional Threats To Public Safety, Public Nuisance, Fraud Or Conflicts With Existing Laws

MCC 11.15.6323(B)(4) provides:

- (4) *The granting of the variance will not result in additional threats to public safety, extraordinary public expense, create nuisances, cause fraud or victimization of the public or conflict with existing local laws or ordinances.*

E. APPLICABLE SECTIONS OF THE COUNTY COMPREHENSIVE PLAN

1. Policy 14; Development Limitations

Comprehensive Plan Policy 14 is to

DIRECT DEVELOPMENT AND LAND FORM ALTERATIONS AWAY FROM AREAS WITH DEVELOPMENT LIMITATION EXCEPT UPON A SHOWING THAT DESIGN AND CONSTRUCTION TECHNIQUES CAN MITIGATE ANY PUBLIC HARM OR ASSOCIATED PUBLIC COST, AND MITIGATE ANY ADVERSE EFFECTS TO SURROUNDING PERSONS OR PROPERTIES. DEVELOPMENT LIMITATIONS AREAS ARE THOSE WHICH WILL HAVE ANY OF THE FOLLOWING CHARACTERISTICS:

* * * *

C. LAND WITHIN THE 100 YEAR FLOOD PLAIN

2. Policies 37 And 38, In General

Both policy 37, "Utilities" and Policy 38, "Facilities" are prefaced with the statement: "The county's policy is to require a finding prior to approval of a legislative or quasi-judicial action that * * * "Action" is defined in MCC 11.15.8205 as:

a proceeding in which the legal rights, duties or privileges of specific parties are determined only after hearing in which such parties are entitled to appear and be heard, including requests for:

* * *

(D) Variances, except as otherwise provided herein;

* * *

(F) Other requests for permits and other contested cases determining permissible uses of specific property.

3. Plan Policy 37: "Utilities"

Multnomah County 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 Y (DEQ) WILL APPROVE A SUBSURFACE SEWAGE DISPOSAL SYSTEM ON THE SITE; OR*
- D. *THERE IS AN ADEQUATE PRIVATE WATER SYSTEM, AND A PUBLIC SEWER WITH ADEQUATE CAPACITY.*

The remainder of Policy 37 provides:

DRAINAGE

- E. *THERE IS ADEQUATE CAPACITY IN THE STORM WATER SYSTEM TO HANDLE THE RUN-OFF; OR*
- F. *THE WATER RUN-OFF CAN BE HANDLED ON THE SITE OR ADEQUATE PROVISIONS CAN BE MADE; AND*
- G. *THE RUN-OFF FROM THE SITE WILL NOT ADVERSELY AFFECT THE WATER QUALITY IN ADJACENT STREAMS, PONDS, LAKES OR ALTER THE DRAINAGE ON ADJOINING LANDS.*

ENERGY AND COMMUNICATIONS

- H. *THERE IS AN ADEQUATE ENERGY SUPPLY TO HANDLE THE NEEDS OF THE PROPOSAL AND THE DEVELOPMENT LEVEL PROJECTED BY THE PLAN; AND*
- I. *COMMUNICATION FACILITIES ARE AVAILABLE. FURTHERMORE, THE COUNTY'S POLICY IS TO CONTINUE COOPERATION WITH THE DEPARTMENT OF ENVIRONMENTAL QUALITY Y, FOR THE DEVELOPMENT AND IMPLEMENTATION OF A GROUND WATER QUALITY PLAN TO MEET THE NEEDS OF THE COUNTY.*

The concluding paragraph of Policy 37 is inapplicable.

4. Plan Policy 38: "Facilities"

Multnomah County Plan Policy 38, "Facilities" provides:

THE COUNTY'S POLICY IS TO REQUIRE A FINDING PRIOR TO APPROVAL A LEGISLATIVE OR QUASI-JUDICIAL ACTION THAT:

SCHOOL

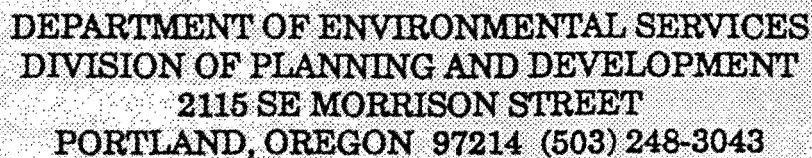
- A. THE APPROPRIATE SCHOOL DISTRICT HAS HAD AN OPPORTUNITY TO REVIEW AND COMMENT ON THE PROPOSAL.

FIRE PROTECTION

- B. THERE IS ADEQUATE WATER PRESSURE AND FLOW FOR FIRE FIGHTING PURPOSES; AND
- C. THE APPROPRIATE FIRE DISTRICT HAS HAD AN OPPORTUNITY TO REVIEW AND COMMENTS [sic] 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.



MCC 11.15.8220 (C)(1) includes the "applicant". Applicant appeared before the Hearings Officer.

8. Grounds for Reversal of Decision (use additional sheets if necessary):

See attached additional sheets

9. Scope of Review (Check One):

(a) ☐ On the Record

(b) ☐ On the Record plus Additional Testimony and Evidence

(c) ☒ De Novo (i.e., Full Rehearing) See #10 Below

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

The Multnomah County Board of Commissioners, on March 22, 1994, adopted Resolution 94-56, which established the Scope of Review for the next five appealed cases.

Accordingly, the Board will consider all evidence submitted to the Hearings Officer and any new relevant evidence submitted by parties.

Signed: Gregory J. Frank

Gregory J. Frank

Date:

April 1, 1994

For Staff Use Only

Fee:

Notice of Review = \$300.00

Transcription Fee:

Length of Hearing N/A x \$3.50/minute = \$ N/A

Total Fee = \$ 300.00

Received by: SM

Date: 4-1-94

Case No. FD 1-94

8. Grounds for Reversal of Decision (additional comments to Notice of Review)

The Hearings Officer's decision should be reversed based upon the staff report dated February 16, 1994 (which recommended approval of the requested variance) and for the following reasons::

1. MCC 11.15.6323 (B)(2) *"Failure to grant the variance will result in exceptional hardship to the applicant."*

The Hearings Officer found "no showing of financial hardship" and concluded that the "reasons offered by the applicant are insufficient to justify a variance." The Hearings Officer disregarded the staff's and applicant's interpretation of "hardship."

There is undoubtedly a financial hardship to the applicant. If the variance is not granted then, in order to build a house on the subject property, an eight foot (8') high foundation will be required. Such a home in this neighborhood would be totally out of design character. In fact, according to the application the property might not even be marketable at a reasonable sales price. In addition, construction of an eight foot (8') high foundation would increase construction costs by \$12,500 (12.5%). Increasing the price of the property to reflect the increased cost would price the house out of the neighborhood's market. In essence, such a house might not even sell at a breakeven price. The applicant has clearly demonstrated at least a \$12,500 hardship unless the variance is granted.

2. MCC 11.15.6323 (B)(3) *"The variance is the minimum necessary to afford relief."*

The Hearings Officer stated that the applicant "did not provide any information about the possibility of raising the foundation higher than was proposed..." This is not an entirely accurate statement by the Hearings Officer. The applicant proposed a thirty inch (30") foundation which would be in conformance with the neighborhood and be of a conventional appearance. The applicant, by implication, indicated that above a thirty inch (30") foundation costs would increase (hardship), continuity of the neighborhood would be diminished, and marketability would be decreased. The applicant is not required to demonstrate to mathematical certainty the absolute point of minimum relief. The applicant concurs with the staff's position that the proposed variance does in fact represent the minimum necessary variance to afford relief. The applicant intends to submit additional support regarding this matter to the Board at the de novo hearing.

3. MCC 11.15.6323 (B)(4) *"The granting of the variance will not result in additional threats to public safety, extraordinary public expense, create nuisances, cause fraud or victimization of the public or conflict with existing local laws or ordinances"*

The applicant agrees with the staff's analysis and conclusion regarding MCC 11.15.63223 (B)(4). The applicant disagrees with the Hearings Officer's reasoning and conclusion. There will be no "unwitting victimization in that the applicant is fully aware of the flood hazard. If the Hearings Officer was truly concerned about future purchaser's a simple condition to the granting of the variance would have alleviated any such fears: a required notice in the deed indicating the location of the property within a flood fringe of a flood hazard district. Applicant would agree to record a deed containing such a notice. These types of deed notices are very common in Multnomah County and the City of Portland.

4. MCC 11.15.6315 (F) *"Prevention of infiltration of water into household utility systems"*

The Hearings Officer incorrectly interpreted "the applicant's materials as an application for a variance from flood proofing requirements of MCC 11.15.6315 (F) as well as the flood elevation requirements of MCC 11.15.6315 (B)." The applicant and staff agree that applicant requested a variance from MCC 11.15.6315 (B); but not a variance from MCC 11.15.6315 (F). The applicant and staff agree the correct implementation of MCC 11.15.6315(F) is that construction details will be regulated by building codes and the City of Portland (re State Plumbing, Heating, Ventilation and Air Conditioning Codes). The applicant has satisfied this section of the Code and will be held accountable by the appropriate regulatory agency at the appropriate time.

5. MCC 11.15.6315 (G) *"Standards for Sewage Disposal Systems"*

The Hearings Officer indicted that the applicant did "not address the issue of whether the sewer connection will satisfy the flood infiltration standards in MCC 11.15.6315 (G)." The Hearings Officer is mistaken. First, the application and staff noted that the sewer connection on this property would have to be made in conformance to the Mid-County Sewer District's Rules of Connection. Secondly, the Hearings Officer is again trying to intercede in the building permit process; which he admits on page 4 of his decision, will be determined by others (ie Planning Director, City of Portland, etc.)

6. MCC 11.15.6315 (H) *"Certification of Hydrostatic Equalization"*

The Hearings Officer erred in requiring the applicant to present a "certification by a registered professional engineer..." at the time of the request for the variance. The staff position, which the applicant contends is correct, is that compliance with MCC 11.15.6315 (H) "will be determined by the Planning Director in conjunction with the building permit" (page 4 of staff report). Applicant has agreed, at the appropriate time, to file the required certification.

7. Comprehensive Framework Plan Policy 37, Sections E through I.

The applicant disagrees with the Hearings Officer's application of these sections of the Comprehensive Plan to the subject case. The applicant concurs with the staff position and contends that a proper interpretation of these sections would permit a "determination by the Planning Director in conjunction with the building permit decision" as to whether the appropriate utilities are present (pages 9 & 10 of staff report). Further, applicant intends to present evidence to the Board that in fact utilities are in fact present.

8. MCC 11.15.6315 (B)

The Hearings Officer erred in denying the variance requested under MCC 11.15.6315(B) based upon reasons stated in this notice, the application for variance, the staff report, the staff record, and testimony to be presented to the Board upon the de novo review.



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

DECISION

This Decision consists of Findings of Fact, and Conclusions

MARCH 1, 1994

FD 1-94, #419 VARIANCE TO FLOOD HAZARD DISTRICT STANDARDS
(Construct a Single Family Dwelling Below the 100-year Flood Elevation)

I. INTRODUCTION; NATURE OF THE REQUEST

This application is to construct a single family dwelling on a lot within the Flood Hazard District. Applicant requests a variance from the requirements in Multnomah County Code (MCC) 11.15.6315. MCC § .6315(B) requires that the floor of new houses in the Flood Hazard District be "*at least one foot above the base flood level.*" The ground elevation of this property is 205 feet and the base flood elevation in the surrounding area is 211 feet. Consequently, if constructed without a variance, the finished floor of the new dwelling would need to be seven feet above existing ground level.

Location: 11930 SE Liebe Street

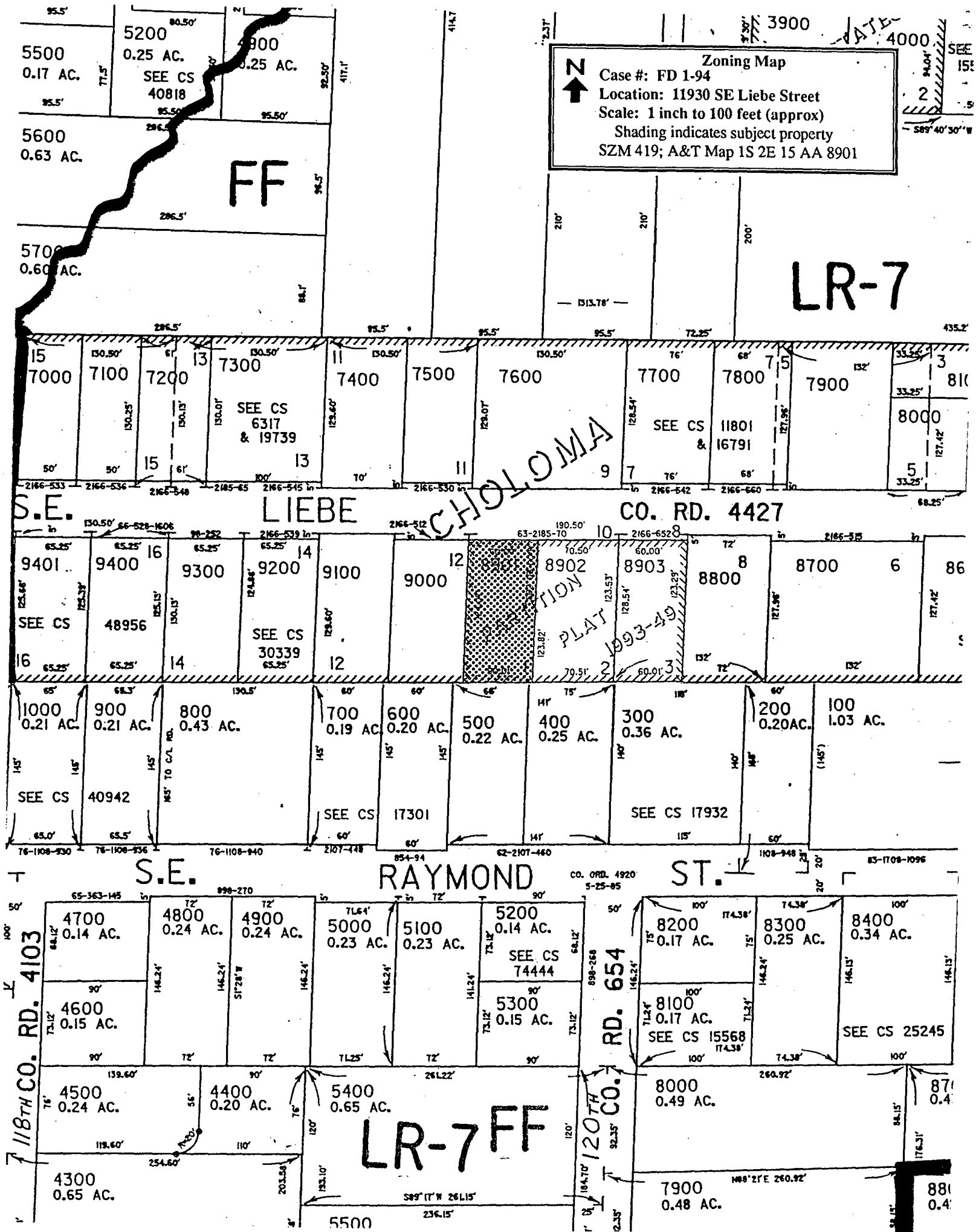
Tax Roll Description: Parcel #1 of Partition Plat 1993-49

Owner/Applicant Joseph Vaughn
5761 SE Harrison Street
Milwaukie, Oregon 97222

Comprehensive Plan: Urban Low Density Residential

Zoning: LR-7/ FF; Low Density Residential District
Flood Fringe subdistrict

DECISION:: Denied entire application, based on the following Findings and Conclusions.



II. PARTIES, AGENTS AND WITNESSES TO THE PROCEEDING

A. Parties

The persons, agencies and organizations who submitted written or oral testimony in this proceeding on their own behalf are parties to the proceedings. MCC 11.15.8225(A)(1). These persons were:

1. Applicant and Landowner

Oregon Trail Custom Homes, PO Box 20686, Portland, Oregon 97220 (applicant)

Joseph Vaughn, 5761 SE Harrison St., Milwaukie, Oregon 97222 (landowner)

2. Other Persons Supporting The Application

John Mahaffey, Georgetown Realty, 10000 NE 122nd, Portland, Oregon 97230

Roger Adams, 12022 SE Liebe, Portland, Oregon 97266

Brenda Luma, 12021 SE Liebe, Portland, Oregon 97266

3. Persons Opposed To The Application

None

B. Agents

Persons who submitted written or testimony, but only in the capacity of a representative for one of the parties, and not on their own behalf, are agents, not parties to this proceedings. These persons were:

1. Agents For The Applicant

Robert Totaro, President, Oregon Trail Custom Homes (at applicant's address)

Mike Totaro, Vice President, Oregon Trail Custom Homes (at applicant's address)

C. Witnesses

Persons appearing to provide information on behalf of someone else, and not as parties in their own right, are witnesses. There were no witnesses in this proceeding.

III. PROCEDURAL ISSUES

A. Impartiality Of The Hearings Officer

Prior to the hearing I had no *ex parte* contacts with the applicants or anyone else concerning the merits of this application.

I have no financial interest in the outcome of this proceeding and have no family or financial relationship with any of the applicants.

B. Other Procedural Issues

The applicants did not allege any procedural violations by the County, prior to, or during, the hearing.

IV. BURDEN OF PROOF

The burden of proof is upon the applicant. MCC 11.15.8230(D)

V. REVIEW OF THE STANDARDS, ANALYSIS OF THE EVIDENCE, FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. MCC Chapter 11.15.6301 *Et. Seq.*: The Applicability Of The Flood Hazard District Requirements In General

MCC Chapter 11.15.6301 *et. seq.*, "Flood Hazard District," is applicable, because the area is within a flood fringe area mapped on Flood Insurance Rate Map; Community Panel Number 410179 0382 B, revised 18 March 1986. The property is not within a floodway. *Id.*

The sections of the Flood Hazard Chapter containing standards applicable to this decision are MCC 11.15.6315, "Development Standards" and MCC 11.15.6323, "Variances." As noted below, I find some subsections of those provisions are inapplicable.

B. MCC 11.15.6315: Flood Hazard Development Standards

(1) MCC 11.15.6315(A): State Building Code Compliance

MCC 11.15.6315(A) requires "all new construction and substantial improvement shall be constructed in conformance with Oregon State Building Codes." If the variance is granted on appeal, compliance with this standard will be determined by the Planning Director before, or in conjunction with, the issuance of a placement permit.

The County has an intergovernmental agreement by which it relies on certification by the City of Portland as to the satisfaction of the State Building Code. The submission of an unqualified certification is a decision which does not require the exercise of discretion. ORS 197.015(10)(b)(A), (B). Therefore, no notice or opportunity for a hearing would be required.

(2) MCC 11.15.6315(B): Flood Elevation Requirement

MCC 11.15.6315(B) provides, in part:

*New construction and substantial improvement of any residential structure, including manufactured homes, shall have the lowest floor, including basement, elevated to at least one foot above the base flood level. * * * **

According to the Flood Insurance Rate Maps, the property is at 205 feet about sea level and the "base flood level" in the surrounding area is 211 feet. The site of the proposed dwelling is shown as being in the "flood fringe," not the "floodway." The applicant proposes to construct the floor at 206.5 feet, 4.5 below the flood level and seeks a variance for this amount, discussed below.

(3) MCC 11.15.6315(C): Floodproofing Of Nonresidential Structures

MCC 11.15.6315(C) (floodproofing of structures) is inapplicable because it applies only to "new construction and substantial improvement of any commercial, industrial or other non-residential structure * * * ." This is an application for the approval of the siting of a residential structure.

(4) MCC 11.15.6315(D): Foundation and Anchoring

MCC 11.15.6315(D) requires all manufactured homes to be "placed on a permanent foundation and shall be anchored to resist flotation, collapse and lateral movement by providing tie downs [etc.] * * * ." Because this standard applies to manufactured homes, it is inapplicable to this proceeding.

(5) MCC 11.15.6315(E): Foundations And Drainage In Mobile Home Parks And Subdivisions

MCC 11.15.6315(E) is inapplicable because it governs foundations and drainage for "new manufactured home parks" and replacement of manufactured homes "in an existing manufactured home park or subdivision * * * ." The standard is does not apply to this application.

(6) MCC 11.15.6315(F): Prevention Of Infiltration Of Water Into Household Utility Systems

MCC 11.15.6315(F) requires that in "all new construction:"

the electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

In this proceeding, the applicant is seeking a variance from the flood elevation requirements of MCC 11.15.6315(B). The variance would allow the applicant to site a house on an 30" foundation, leaving the first floor approximately 4.5 feet below the crest of the 100-year flood level.

Based on the record before me, I interpret the applicants' materials as an application for a variance from the flood proofing requirements of MCC 11.15.6315(F) as well as the flood elevation requirements of MCC 11.15.6315(B). This implied variance is denied for the same reasons discussed below.

(7) MCC 11.15.6315(G): Standards For Sewage Disposal Systems

MCC 11.15.6315(G) requires new and replacement water and sewer disposal systems to be designed to:

- (1) Minimize infiltration of flood waters into the system;*
- (2) Minimize discharge from systems into flood waters;*
- (3) Avoid impairment or contamination during flooding.*

The Mid-County Sewer district requires the applicants to connect to the existing sewer line in SE Liebe Street. The application does not address the issue of whether the sewer connection will satisfy the flood infiltration standards in MCC 11.15.6315(G).

(8) MCC 11.15.6315(H): Certification Of Hydrostatic Equalization

MCC 11.15.6315(H) requires certification by a registered professional engineer or architect that the portions of the dwelling "below the lowest floor that are subject to flooding" are designed to "automatically equalize the hydrostatic flood forces * * * ."

The record does not contain the required certification. This is grounds for denial.¹

(9) MCC 11.15.6315(I): Exemptions For Land Shown To Be Above Flood Level

MCC 11.15.6315(I) authorizes exemptions from the requirements of MCC 11.15.6315 when a surveyor demonstrates the land is 1 foot or more above base flood level.

Testimony by Brenda Luma and Roger Adams challenged the accuracy of the FIRM maps. Mr. Adams stated that he had owned his house since 1968. Although his house has a full basement, it has never flooded.

However, the standard requires a showing that the property is actually 1 foot above the base flood level, as shown on the map. No one testified that the elevation of the property was inaccurate; in fact the request for the variance is based on the assumption that the base flood level is above the floor level.

I conclude that no exemption is warranted under this standard.

(10) MCC 11.15.6315(J): Exemption For Historic Structures

MCC 11.15.6315(J) is inapplicable because it authorizes an exemption from MCC 11.15.6315 for the reconstruction, rehabilitation or restoration of "structures listed on the National Register of Historic Place or the State Historic Site Inventory." There is no structure on the site and thus it cannot be on the Historic Site registry or Historic Site Inventory.

C. MCC 11.15.6323: Variance Standards

(1) The Applicable Portions Of The Variance Provisions

As noted above, the applicants are seeking a variance from the flood elevation requirements of MCC 11.15.6315(B) and, by implication, from the flood-proofing requirements of MCC 11.15.6315(F).

There are three sections to the variance provisions found at MCC 11.15.6323. The first section, (A), is introductory and the third section, (C), applies to "non-residential structures." Neither section contains standards which apply to these variances.

¹ Since the existence of a certification would be a ministerial decision, the certification can be provided by the Planning Director in conjunction with the issuance of a building permit or in the course of a *de novo* appeal, if this kind of review is granted by the County Commission.

The variance standards are set out in the five subsections of MCC 11.15.6323(B). The fifth subsection applies only to structures in "an area identified as the floodway". As found above, the variance is for property in the flood fringe, not the floodway.

(2) Variance From The Flood Elevation Requirement In MCC 11.15.6315(B)

(a) MCC 11.15.6323(B)(1): Lot Size And Surrounding Development

MCC 11.15.6323(B)(1) provides:

- (1) *The site of the proposed variance is a lot of one-half acre or less in size and is surrounded by and contiguous to lots with existing structures constructed below the base flood level.*

Based (1) on the information on the parcel size in the Staff Report (page 5); (2) the applicant's "windshield survey," which was confirmed by the staff (Staff Report at page 5-6); and (3) the oral testimony presented at the hearing, I conclude that both elements of this standard have been satisfied.

(b) MCC 11.15.6323(B)(2): Exceptional Hardship To The Applicant

MCC 11.15.6323(B)(2) provides:

- (2) *Failure to grant the variance will result in exceptional hardship to the applicant;*

The hardship identified at page 4 of the application is:

First, the cost for the 8 foot high foundation wall is estimated to be \$15,000, an increase of \$12,500 from the \$2,500 for a standard 2-1/2 foot high foundation wall. That cost will be directly reflected in the sale price of the house, which will make it more difficult to sell in the relatively modest neighborhood. The home propose for Parcel 3 is expected to sell for \$98,500. An increase of \$12,500 in costs would push the price over \$100,000 and represent over 12% of the value of the house and land.

Secondly, the finished structure will appear totally out of place, standing one complete story above its neighbors. This factor will also make the house more difficult to sell.

Therefore, the additional expense of the foundation, the resulting appearance of the finished structure, and the likelihood that the house will be difficult to sell given market values in the neighborhood will combine to cause the

Applicant exceptional hardship.

Because I believe local governments have an ethical (even when it is not a legal) responsibility to interpret their standards consistently, I have reviewed my findings on a pair of earlier flood plain variance decisions, HV 22-92 dated February 1, 1993 and HV 23-92 dated December 7, 1992. In that case I reviewed the financial hardship to the applicant, and concluded (emphasis added):

There is no question that failure to grant the variance would create an "exceptional hardship" given Ms. Swank's conditions and these additional charges. The question is whether or not the need for the flood elevation and flood proofing variance was created by the applicants' decision to purchase property within the Flood Hazard District and to buy the manufactured home in advance of seeking the necessary variance.

This hardship standard differs from the most common forms of variance standards in two ways. First, it omits the commonly used prohibition against granting variances based on "self-created" hardships. Secondly, the hardship is described in terms of the circumstances of the applicant, rather than characteristics of the property itself.

While I am troubled by the idea of approving, in part, the siting of a manufactured home at an elevation 4.5 feet below the base flood level, I conclude the hardship standard has been met given the phrasing of the standard. However, a corollary of this interpretation of the ordinance is that this variance will remain valid only so long as the property is occupied by Lucy Swank.

Findings and Decision in HV 23-92, dated December 7, 1992 at page 7.

In this case, there is no showing of financial hardship to the developer as there was to the individual homeowner/applicant. The grounds for the hardship offered here would apply equally well to all new houses in the floodplain. If all houses qualified for a variance then the purpose of the flood plain protection provisions would be subverted.

For this reason, despite the more permissive (non-traditional) hardship standard in the County Code, I find that the reasons offered by the applicant are insufficient to justify a variance.

(c) MCC 11.15.6323(B)(3): The Variance Is The Minimum Necessary

MCC 11.15.6323(B)(3) provides:

(3) *The variance is the minimum necessary to afford relief.*

The applicant did not provide any information about the possibility of raising the foundation higher than was proposed, albeit less than the height necessary to avoid flooding the ground floor. The applicant has not carried its burden of proof with respect to this criterion.

(d) MCC 11.15.6323(B)(4): No Additional Threats To Public Safety, Public Nuisance, Fraud Or Conflicts With Existing Laws

MCC 11.15.6323(B)(4) provides:

- (4) The granting of the variance will not result in additional threats to public safety, extraordinary public expense, create nuisances, cause fraud or victimization of the public or conflict with existing local laws or ordinances.*

(i) Threats To Public Safety, Extraordinary Public Expense

The possible additional threats to public safety and sources of extraordinary expense are (1) displacement of floodwaters by the house, (2) possible damage caused by the house if it were to float free during a flood, (3) the public resources which would be expended to rescue residents of the dwelling in the event of a flood.

Floodwater displacement by this property will be negligible, provided the applicants satisfy MCC 11.15.6315(H), which requires hydrostatic equalization "by allowing for the entry and exit of floodwaters" for all parts of the house "subject to flooding."

The house should not float free provided the applicants satisfy MCC 11.15.6315(D), which requires the house to be "anchored to resist flotation."

(ii) Create a Nuisance

The house, with or without a flood plain variance, would not constitute a "nuisance" as that term is used in planning and tort law. This part of the standard has been satisfied.

(iii) Fraud and Victimization

With regard to the "fraud and victimization" element, in the 1992 Mercer/Swank variance I said:

Fraud and victimization of the public would occur if the approval of the variance would lead unwitting purchasers to acquire the property without knowledge of the risk of serious flood damage. In this case, this variance proceeding has left no doubt that all of the applicants are well aware that the

bottom of the house is resting 4.5 feet below the 100 year flood level. In addition, adjoining property owners who signed a petition supporting a variance to the flood elevation requirement are also aware that the property lies within the flood fringe. Finally, by making the variance personal to the applicant, subsequent purchasers will be put on notice of the circumstances of the property.

The circumstances in this case are quite different; since the applicant is not the prospective resident, there may well be unwitting purchasers who could acquire the house without being aware that it was located within the flood plain.

During the hearing, Mr. John Mahaffey of Georgetown Realty referred to a new statute which would require this disclosure of the fact the property was within the flood plain. He was unable to provide a citation to the Oregon Revised Statutes at the hearing. My review of the statutes revealed ORS 104.465. "Seller's Property Disclosure And Disclaimer Statements." ORS 104.465(2)(b) specifies the contents, ("in substantially the following form") of the seller's disclosure statement. This includes, under section 8, "General": "D. To your knowledge, is the property in a designated flood plain?"

However, ORS 105.470(1) excludes "[t]he first sale of a dwelling never occupied" from the disclosure requirements in ORS 105.465.

After the hearing, Mr. Mahaffey sent the County an undated letter, which stated.

Enclosed is a disclosure form which we will fill out when we sell the homes on S.E. Liebe. We would be happy to accept a directive that the buyers are to receive this form concerning the 100 year flood plain.

Unfortunately, no disclosure form appears in the file. Even if one did, the County has no means of monitoring or enforcing such a disclosure requirement.

Based on this record, I am unable to conclude that fraud or perhaps unwitting victimization would not occur in the event a purchaser acquired the property without knowledge of the location in the flood plain and there lives or property were damaged in a flood.

(iv) Conflicts With Existing Local Laws Or Ordinances

The local laws and ordinances governing this application are expressed in the County Code and Plan. Given a finding that they have been satisfied, there is no "conflict with existing local laws or ordinances."

(e) Conclusion With Respect To Variance From The Flood Elevation Requirement

I conclude that the applicant has satisfied the variance standards in MCC 11.15.6323(B)(1) and not satisfied the standards in MCC 11.15.6323(B)(2), (3) and (4), as applied to its request for a variance from the flood elevation requirement in MCC 11.15.6315(B).

(3) Variance From The Flood-Proofing Requirements In MCC 11.15.6315(F)

As quoted above, MCC 11.15.6315(F) requires that in "all new construction:"

the electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

Subsections (2), (3) and (4) of the variance standard are not satisfied for the reasons given previously with respect to the variance for the flood elevation variance.

D. Applicable Sections Of The County Comprehensive Plan

1. Policy 14; Development Limitations

Comprehensive Plan Policy 14 is to

DIRECT DEVELOPMENT AND LAND FORM ALTERATIONS AWAY FROM AREAS WITH DEVELOPMENT LIMITATION EXCEPT UPON A SHOWING THAT DESIGN AND CONSTRUCTION TECHNIQUES CAN MITIGATE ANY PUBLIC HARM OR ASSOCIATED PUBLIC COST, AND MITIGATE ANY ADVERSE EFFECTS TO SURROUNDING PERSONS OR PROPERTIES. DEVELOPMENT LIMITATIONS AREAS ARE THOSE WHICH HAVE ANY OF THE FOLLOWING CHARACTERISTICS:

* * * * *

C. LAND WITHIN THE 100 YEAR FLOOD PLAIN

Multnomah Comprehensive Framework Plan at page 58.

Under the terms of Policy 14 and the implementation strategies, see Multnomah Comprehensive Framework Plan at 59, I find this policy has been implemented by the Flood Hazard District and has no independent application to this action.

2. Policies 37 And 38, In General

Both policy 37, "Utilities" and Policy 38, "Facilities" are prefaced begin with the statement: "The county's policy is to require a finding prior to approval of a legislative or quasi-judicial action that * * * ." "Action" is defined in MCC 11.15.8205 as a

*a proceeding in which the legal rights, duties or privileges of specific parties are determined only after hearing in which such parties are entitled to appear and be heard, including requests for: * * **

(D) Variances, except as otherwise provided herein;

** * * **

(F) Other requests for permits and other contested cases determining permissible uses of specific property.

Because this is a proceeding on an application for a variance, I find that it is an "action" and that consequently both of these policies apply.

As noted above, satisfaction of standards not addressed by the applicant to date, could be determined by the Planning Director before, or in conjunction with, either an appeal or the issuance of a building permit. Because compliance with Policies 37 and 38 may require the exercise of judgment as to facts and interpretation of the policies, notice of this subsequent decision and an opportunity for a hearing should be provided. ORS 197.763(2), 215.416, *Rhyne et al vs. Multnomah County, Swan & Trotter*, __ Or LUBA __ (1992.)

3. Plan Policy 37: "Utilities"

Multnomah County Plan Policy 37, "Utilities" provides:

POLICY 37

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 ON THE SITE; OR*
- D. *THERE IS AN ADEQUATE PRIVATE WATER SYSTEM, AND A PUBLIC SEWER WITH ADEQUATE CAPACITY.*

Multnomah County Comprehensive Framework Plan; Volume 2: Policies (September 1983)
at 167.

As noted previously, the applicant would connect the proposed house to the City of Portland's sewer system. The signed Portland Fire District review establishes the existence of a hydrant 70' from the residence with adequate water pressure nearby. From this I conclude the house would also be served by City water. This evidence is sufficient to carry the applicants' burden of proof with respect to this portion of Policy 37.

The remainder of Policy 37 provides:

DRAINAGE

- E. *THERE IS ADEQUATE CAPACITY IN THE STORM WATER SYSTEM TO HANDLE THE RUN-OFF; OR*
- F. *THE WATER RUN-OFF CAN BE HANDLED ON THE SITE OR ADEQUATE PROVISIONS CAN BE MADE; AND*
- G. *THE RUN-OFF FROM THE SITE WILL NOT ADVERSELY AFFECT THE WATER QUALITY IN ADJACENT STREAMS, PONDS, LAKES OR ALTER THE DRAINAGE ON ADJOINING LANDS.*

ENERGY AND COMMUNICATIONS

- H. *THERE IS AN ADEQUATE ENERGY SUPPLY TO HANDLE THE NEEDS OF THE PROPOSAL AND THE DEVELOPMENT LEVEL PROJECTED BY THE PLAN; AND*
- I. *COMMUNICATIONS FACILITIES ARE AVAILABLE*

FURTHERMORE, THE COUNTY'S POLICY IS TO CONTINUE COOPERATION WITH THE DEPARTMENT OF ENVIRONMENTAL QUALITY, FOR THE DEVELOPMENT AND IMPLEMENTATION OF A GROUNDWATER QUALITY PLAN TO MEET THE NEEDS OF THE COUNTY.

Multnomah County Comprehensive Framework Plan; Volume 2: Policies (September 1983)
at 168.

There is no evidence in the record concerning energy and communications facilities, subsections E, F, G, H and I, although the location of the property within the urbanized portion of the County suggests these facilities are readily available.

The failure to address these standards is grounds for denial. However, the applicant might be able to address them in the event of a *de novo* appeal of this decision.

The concluding paragraph of Policy 37 is inapplicable to this quasijudicial proceeding.

4. Plan Policy 38: "Facilities"

Multnomah County Plan Policy 38, "Facilities" provides:

POLICY 38

THE COUNTY'S POLICY IS TO REQUIRE A FINDING PRIOR TO APPROVAL OF A LEGISLATIVE OR QUASI-JUDICIAL ACTION THAT:

SCHOOL

A. *THE APPROPRIATE SCHOOL DISTRICT HAS HAD AN OPPORTUNITY TO REVIEW AND COMMENT ON THE PROPOSAL.*

FIRE PROTECTION

B. *THERE IS ADEQUATE WATER PRESSURE AND FLOW FOR FIRE FIGHTING PURPOSES; AND*

C. *THE APPROPRIATE FIRE DISTRICT HAS HAD AN OPPORTUNITY TO REVIEW AND COMMENTS [sic] 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.

Multnomah County Comprehensive Framework Plan; Volume 2: Policies (September 1983)
at 169-170.

The David Douglas School District returned the "School District Review" form, with the signature of the Dr. Ron Russell, Assistant Superintendent, dated February 8, 1994. (The "no comment" box was checked.) This satisfies the requirement in subsection A of policy 38 that the school district has "an opportunity to review and comment on the proposal."

The completed Portland Fire District Review form, signed by Don Patty (undated), Plans Review provides sufficient evidence satisfying subsection B, ("there is adequate water pressure and flow for fire fighting purposes") and C (the fire district "had an opportunity to review and comment on the proposal.")

Lt. Bill Goss, of the Multnomah County Sheriff's Office returned the "Police Services Review" form, dated February 8, 1994, indicating there would be an "adequate" level of service "available to serve the proposed project."

The applicant has satisfied Policy 38.

E. State Statutes, Goals And Administrative Rules Applicable To The Decision

The provisions of state law governing county quasijudicial decisions, found in ORS 197.763 and 215.416 apply to this proceeding. They have been fulfilled through the notice of, and conduct of, the hearing on this matter.

No other provisions in ORS Chapters 197 and 215 are applicable.

No statewide planning goals and no Oregon Administrative Rules interpreting those goals apply to this quasijudicial permitting proceeding.

VI. CONCLUSIONS AND ORDER

A. Standards Which The Applicant Has Not Satisfied

I find that the evidence and argument offered by the applicant is insufficient to satisfy the "hardship" standard in MCC 11.15.6323(B)(2) and the "minimum variance necessary" standard in MCC 11.15.6323(B)(3), with respect to the applicant's request for a variance to the flood elevation standards and its implied request for a variance to the flood-proofing

requirements of MCC 11.15.6315(F).

I also find that the applicant failed to satisfy the "fraud" and "victimization" provisions in MCC 11.15.6323(B)(4), as to the flood elevation variance to MCC 11.15.6315(B) and the flood-proofing variance to MCC 11.15.6315(F).

These are grounds for denial.

B. Standards Which The Applicant Failed To Address

The applicant did not offer evidence addressing compliance with several provisions in the County Code and some of the applicable Plan policies. These standards and policies are:

MCC 11.15.6315(G)
MCC 11.15.6315(H)
Plan Policy 37 §§(E) through (I)
Comprehensive Framework Plan Policy 37, Sections E through I.

The applicant's failure to carry its burden of proof for these standards, is grounds for denial.

C. Standards Which The Applicant Has Satisfied

The applicant has satisfied the following applicable sections of the County Code and County Plan:

MCC 11.15.6323(B)(1), as to flood elevation variance to MCC 11.15.6315(B)
MCC 11.15.6323(B)(1), as to flood-proofing variance to MCC 11.15.6315(F)
MCC 11.15.6323(B)(4), in part, as to flood elevation variance to MCC 11.15.6315(B)
MCC 11.15.6323(B)(4), in part, as to flood-proofing variance to MCC 11.15.6315(F)
Comprehensive Framework Plan Policy 14
Comprehensive Framework Plan Policy 37, Subsections A through D
Comprehensive Framework Plan Policy 38

D. Standards Which Are Inapplicable

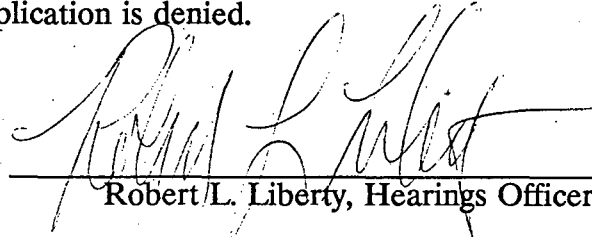
Although the following standards appear in otherwise relevant code sections, I found them inapplicable to this application or this proceeding:

MCC 11.15.6315(A),(B),(C),(D),(E),(I)
MCC 11.15.6323(A),(C),(E)

ORDER

For the foregoing reasons, the application is denied.

March 1994
Date


Robert L. Liberty, Hearings Officer

Signed by the Hearings Officer:	March 1, 1994
Decision Mailed to Parties:	March 21, 1994
Decision Submitted to Board Clerk:	March 21, 1994
Lay day to Appeal Decision:	4:30 p.m., April 1, 1994
Reported to Board of County Commissioners:	1:30 p.m., April 12, 1994

Appeal to the Board of County Commissioners

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. Instructions and forms are available at the County Planning and Development Office at 2115 SE Morrison Street, Portland.

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 248-3043.

**MULTNOMAH COUNTY
PROCESS AND PARTICIPANTS
RESPONSIBILITIES
FOR
HEARING ON AN APPEALED LAND USE
DECISION**

Hearing Process

1. Staff Presentation
2. Hearings Officer Presentation
3. Appellant Presentation (the Party who appealed the Hearings Officer)
 - a) 20 minutes total time to present case
 - b) Appellant may request rebuttal time, however, total presentation time plus rebuttal time shall not exceed 20 minutes.
4. Opponents Presentation
 - a) 20 minutes total time for all opponents to present their case. It is the responsibility of the opponents to work out presentation schedule.
5. Appellant Rebuttal (if time is available)
6. Close Public Hearing
7. Board Deliberation and Decision

Participants Responsibilities

1. Participants must present relevant evidence (evidence that pertains to the applicable approval criteria)
2. Participants may argue to affirm, reverse or modify the Hearings Officer's decision
3. Any Party may request a continuance if new evidence is provided in support of the application.

**Summary of Testimony of Greg Frank, attorney for
Joseph Vaughn
May 24, 1994**

Members of the Board of County Commissioners.

My name is Greg Frank and I am an attorney representing the appellant in the case before you.

This appeal is from a decision of the Multnomah County Hearings Officer in cases FD 1-94, #419 and FD 3-94, #419. Mr. Vaughn is requesting the Board to approve his request to build two residences on property located on SE Liebe Street as provided for under the variance provision of Multnomah County Code 11.15.6323.

HISTORY

The applicant purchased a parcel of property located on SE Liebe, in Multnomah County, Oregon on or about January 1993 with the intent of dividing the property into three separate parcels. Two of the parcels would be building sites for new homes and the remaining property, with an existing single family residence, would be sold. Mr. Vaughn personally visited the Multnomah County Planning office and discussed the partitioning and development of the property with the staff. He was informed that so long as the property was surrounded by existing single-family residences there would be no problem with the applicant's plan. In reliance upon that advice from the planning staff Mr. Vaughn proceeded to purchase the property.

The applicant filed a request to partition the property and the request was approved on January 15, 1993. Subsequently, he proceeded to apply for a building permit to construct a single family dwelling on one of the parcels. A permit was issued and the foundation, the applicant, as required by Multnomah County, purchased a bond for sidewalks and curb cuts, and with the concrete truck onsite and ready to pour the foundation an inspector "red tagged" the project stating the property was in a flood hazard area and the new home, as permitted, would violate the Multnomah County Code related to flood hazard districts. Thereafter, the applicant filed a request for the variance which is subject to this hearing.

Until the project was "red tagged" applicant was not aware that he was not in complete conformance with County regulations. He was not informed of the problem when he met with Multnomah County Planning staff prior to purchasing the property or when he applied to partition the property, which was approved administratively, with no objections, nor was he informed of any problems when he applied for his building permit for the first house. He has exercised good faith throughout this rather long and certainly expensive process.

Mr. Vaughn's application for the variance was reviewed in depth by the Multnomah County Planning Staff. The Staff issued a report on February 16, 1994. The Staff recommended approval of the variance subject to conditions. The Hearings Officer, despite the Staff's approval recommendation, neighbors testifying in favor of the application and absolutely no opposition, denied the application. I am here to request your approval of the variance application.

REASONS FOR APPROVAL

It should be noted that virtually all of the variance criteria have been satisfied by Mr. Vaughn - this according to the staff and the Hearings Officer. Only of a very few of the approval criteria are questioned by the Hearings Officer. In fact, according most of his objections related to a failure of the applicant to present enough information and stated that the applicant could probably meet these criteria by presenting information at this de novo public hearing. That information will be presented at the appropriate time.

Let's look at the Hearings Officers decision. The first is MCC 11.15.6323 (B)(2) which provides:

Failure to grant the variance will result in exceptional hardship to the applicant;

Mr. Vaughn will suffer exceptional hardship. The original application pointed out significant economic hardships related to the additional costs and marketing problems.

Mr. John Mahaffy, a highly respected real estate broker in east Multnomah County for the last 20+ years will testify as to the marketing hardships created by NOT granting the variance. In summary, he will testify that if the variance is NOT granted the land will have virtually no value and be essentially non buildable. His testimony will demonstrate an exceptional hardship.

Additionally, I am submitting with the summary of my written testimony cost data, from an independent general contractor, which demonstrates that if the variance is NOT granted the cost to construct a foundation will be \$13,272 and if the variance is granted the foundation will cost \$2,910. Compounding the problem of the \$10,362 extra costs is the fact that according to Mr. Mahaffy the market will discount the price paid for such a house sitting up on an 8 foot foundation by at least \$20,000. In essence Mr. Vaughn suffers a double whammy - it costs him \$10,362 more and the house will sell for \$20,000 less. Not only is his profit gone but his land investment virtually disappears and the land is condemned to be vacant. The general contractor also calculated the additional costs of filling the property to an elevation satisfying the flood hazard requirements. The additional cost under this option was estimated to be in excess of \$14,000.

The Hearings Officer stated that there was no exceptional hardship relying upon two cases he decided in 1992. However, in those earlier decisions the Hearings Officer made a point of discussing the applicants' economic hardships. In the Swank case he cited the applicant would suffer \$11,000 in additional costs and said "there is no question that failure to

grant the variance would create an 'exceptional hardship' given Ms. Swank's condition and these **additional charges** (emphasis added). The only distinction that I can see between the case the Hearings Officer supported and this case is that in the earlier case the applicant was handicapped. We in this room are certainly aware that handicapped status in not one of the Multhnomah County variance approval criteria and in fact under no circumstances is it a legal basis for making such a decision.

The Hearings Officer also questions MCC 11.15.6323 (B)(3) which provides:

The variance is the minimum necessary to afford relief.

The applicant and staff agree that this criteria has been satisfied. The proposed foundation size is in conformance with the neighborhood. Attached to my written testimony are pictures of homes in the immediate neighborhood. With the exception of the home immediately to the east, which has a daylight basement, all the homes have standard size foundations. To require any higher elevation than proposed by Mr. Vaughn will be out of character for the neighborhood and increase the cost of construction. Keep in mind that every inch of increased foundation height brings with it higher costs. At about four feet the additional cost of the foundation and the associated reduction in value results in an uneconomical project - \$0 land value.

The Hearings Officer was emphatic in his finding that MCC 11.15.6323 (B)(4)(iii) was not satisfied and therefore constituted grounds for denial. The Hearings Officer in the earlier Swank case stated:

"Fraud and victimization of the public would occur if the approval of the variance would lead unwitting purchasers to acquire the property without knowledge of the risk of serious flood damage."

In my opinion the language contained in this section of the Hearings Officer's decision infers strongly a bias against Mr. Vaughn and a predisposition towards this case. The Hearings Officer is an experienced land use and real estate attorney. He is fully aware

that he could condition his approval upon the applicant giving notice to a buyer of the existence of the flooding potential. Simply require Mr. Vaughn to record a deed containing language indicating the property is located in the flood hazard area. This approach is very common in Multnomah County. I recently recorded a deed, which was required by the City of Portland, indicating that the subject property was a landfill site and the fill had not been engineered under City of Portland guidelines. Furthermore, after the initial sale by Mr. Vaughn all subsequent sellers will be required under Oregon law (ORS 105.465) to give notice of the flood hazard problem to potential buyers. This section of the Code is simply not a ground for denial.

The Hearings Officer stated that the application should be denied because applicant did not satisfy MCC 11.6315 (G) & (H). These sections deal with rather technical sewer and engineering problems. And, to that end the staff recommended approval because these matters would be dealt with at the building permit stage. In 1992, during the pendency of the Swank case, the Hearings Officer inquired of the Staff how to deal with approval criteria in MCC 11.15.6315. He was advised by the staff in a memorandum dated November 17, 1992 that the

"historic practice has been to defer determinations on the development standards in MCC .6315 to the 'plan-check' stage, after application for building or placement permits is received. Permit applications can more easily demonstrate compliance with MCC .6315 since they typically contain more specific foundation plans and other structural/electrical/mechanical details, and Building Bureau staff are all involved in the review."

The Hearings Officer did that in the Swank case. In Mr. Vaughn's case the Hearings Officer determined that he should disregard his earlier decision criteria and the Staff Memo and he should decide about technical issues. The Hearings Officer erred in using MCC 11.6315 (G) & (H) as grounds for denial.

The Hearings Officer made similar error in determining that Mr. the application should be denied on the grounds of Comprehensive Plan Policy 37, Sections E through I. For example, he indicated that the application should be denied because Sections (H) and (I) were not adequately addressed by Mr. Vaughn. These sections deal with whether or not electricity and phone service are available to the site. I am testifying today that both electricity and phone service are available. In the earlier Swank case, which the Hearings Officer stresses he is trying to attain consistency with, he did not even discuss these matters and summarily concluded, as he should have, that these criteria were satisfied. The Staff agrees that these criteria are satisfied. Sections (E), (F), and (G) deal with drainage. Staff indicates, and Mr. Vaughn agrees, that these criteria are best dealt with at the building permit stage.

Finally, let me remind the Board that in addition to the legal basis described above in support of granting the application, the Board should also make its decision based upon a standard of reasonableness and fairness. Attached to my testimony I have attached pictures of a properties located immediately to the east of the subject. That house has a daylight basement. Also, I have included a picture of a house just down Liebe street to the west (5 houses west of the property which is subject of this hearing). This home was constructed in 1988. It obviously does not have a 8 foot foundation. This property was subject to the same rules and received its certificate of occupancy in November of 1988.

The neighbors are strongly in favor of this application. The applicant has followed all the rules. Your ordinance provides for variances and Mr. Vaughn has met the approval criteria. There are very few lots in this area left. Most of the property has been developed with single family homes, in an affordable price range. Not one of these houses has an 8 foot high foundation and I have driven the area over and over and cannot find even one. By approving this variance you do not contradict any County goals or policies. By denying this application you disregard the neighbors expressed desires, disregard the Staff's position, and condemn this property to vacant land status.

RALPH BETTES GENERAL CONTRACTOR
8545 S. E. 88TH AVE.
PORTLAND, OREGON 97266

Phone (503) 777-0961

MAY 20, 1994

Mr. Joseph H. Vaughn

In reference to the options of building a new home on the lots adjacent to 11936 S. E. Liebe we make the following estimates. The home being 28 feet by 44 feet for a total of 1232 sq. feet.

First option installing an 8 foot high foundation to place the first floor one foot above the 100 year flood plane.

Normal foundation
with 6" x 12" footing
6" walls 2' high

8 foot walls require
14" x 8" footing
8" walls 8' high

6 yards of concrete in place
@ 135.00 Per yard
\$810.00

38 yards of concrete in place
@ \$175.00 per yard
\$6,650.00

Frame labor single story
1232 Sq Ft @ \$1.50 per foot
\$1848.00

Frame labor 2 story
1232 Sq Ft @ 2.25
\$2772.00

Total cost of foundation
and frame. \$2658.00

Total cost of foundation
and frame. \$9422.00

Concrete Patio 12 X 14=
168 sq ft @ 1.50= \$252.00

Deck off second floor of 12 x
14 on second floor \$3500.00

No stairs needed

Second floor access stairs
Material and labor \$350.00

Total above estimate
\$2910.00

Total above estimate
\$13,272.00

If we can be of any assistance please let us know.

Yours truly,

Ralph Bettis

RALPH BETTES GENERAL CONTRACTOR
8545 S. E. 88TH AVE.
PORTLAND, OREGON 97266

Phone (503) 777-0961

MAY 20, 1994

Mr. Joseph H. Vaughn

In reference to the options of building a new home on the lots adjacent to 11936 S. E. Liebe we make the following estimates. The home being 28 feet by 44 feet for a total of 1232 sq. feet.

Second option. Bring in enough fill material to build a standard post and beam house with the floor area one foot above the 100 year flood plane. It would be necessary to build up the soil level 8 feet above existing level. For a building 28' x 44' we would need to go 4 foot extra around the building with the dirt put at a 45 degree angle. this would make a base 84 feet by 52 feet with the top 52 X 36. This makes a total of aprox 1100 yards of material to be put in place. Our best estimate is \$12.50 per yard in place compacted to be able to place a home on it.

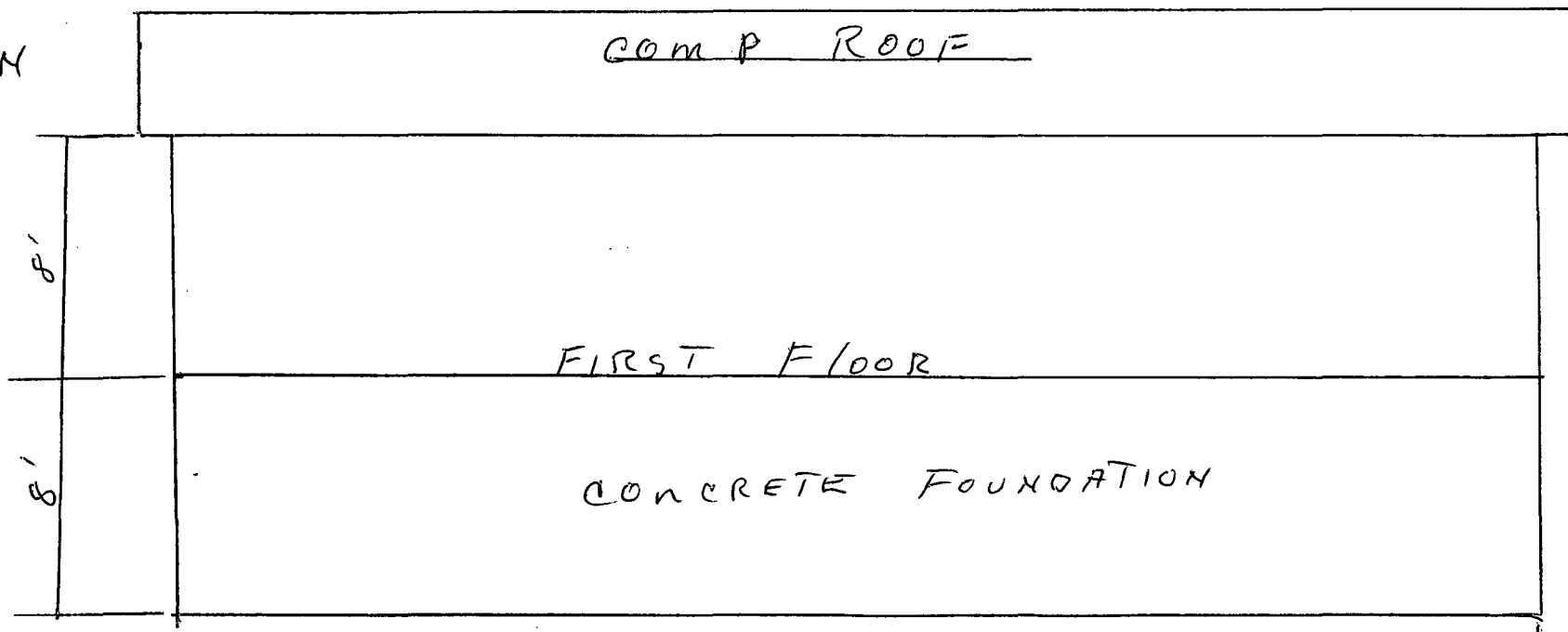
1100 yards @ \$12.50 per yard would come to \$13,750.00

A concrete stairway would be needed to the home aprox 4' wide by 12' would be an additional \$400.00.

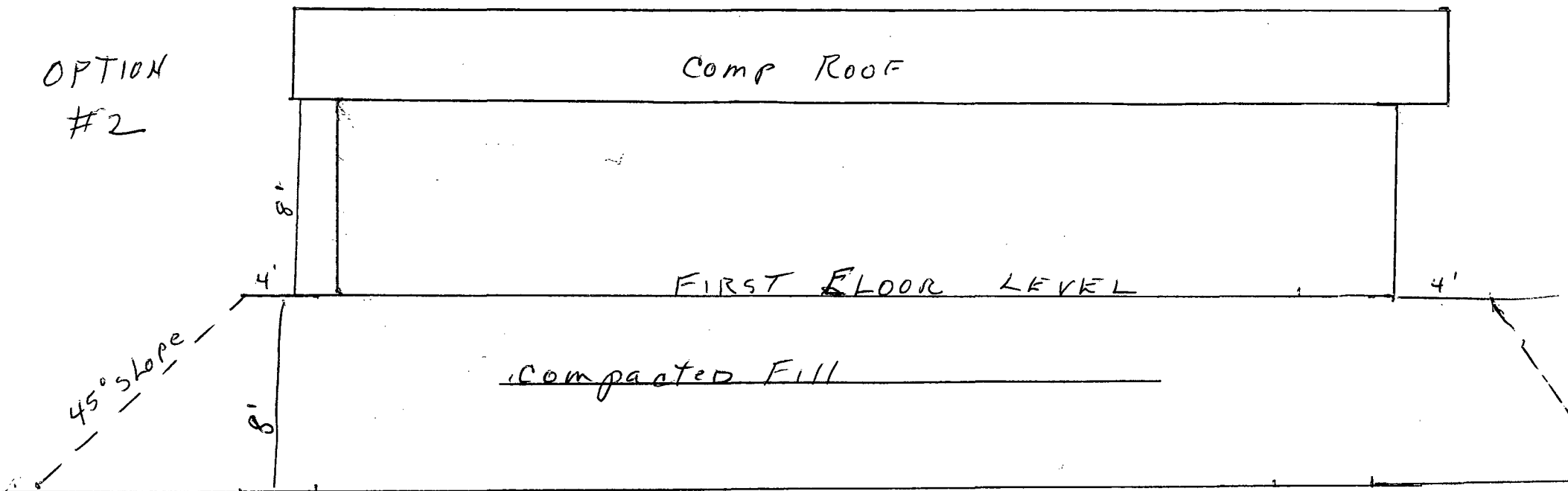
If we can be of any assistance please let us know.
Yours truly,

Ralph Bettis

OPTION
#1



OPTION
#2





HOME CONSTRUCTED 1988
WEST OF SUBJECT APPROXIMATELY 500 FEET
ON LIEBE STEET
CONVENTIONAL FOUNDATION



**HOME LOCATED IMMEDIATELY EAST
DAYLIGHT BASEMENT**



**HOME LOCATED IMMEDIATELY WEST
CONVENTIONAL FOUNDATION SIZE**



**SUBJECT PROPERTY
SHOWING EXCAVATION FOR FOUNDATION**



**SUBJECT PROPERTY
SHOWING EXISTING SINGLE FAMILY DWELLING**



**HOME WEST (100 FEET) OF THE SUBJECT
LIEBE STREET**



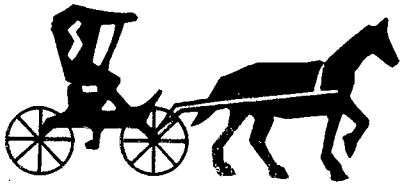
**HOME EAST (100+ FEET) OF THE SUBJECT
LIEBE STREET**



HOME IMMEDIATELY ACCROSS STREET FROM SUBJECT



**BACKYARD SCENE
HOME IMMEDIATELY BEHIND SUBJECT**



Georgetown Realty, Inc.

1000 N.E. 122nd Avenue • Portland, Oregon 97230 • Telephone (503) 256-1112 • Fax (503) 256-2342

May 23, 1994

Multnomah County Commissioners

I am John Mahaffy, and I have been in real estate for 22 years. The last 19 years as broker owner of Georgetown Realty. We have continuously had an emphasis on new construction.

I have bought, developed and sold lots. I have built and sold single family residences, duplexes, apartments and a commercial building. Our company sells at least 100 lots and new homes per year. Builder clients come to us for our input.

Our office, located on N.E. 122nd, is about 4 miles from the subject property which is on Liebe St. just off S.E. 122nd. I have developed property, owned property and sold many customers homes within 1/2 mile of this site. I have been on S.E. Liebe St. many times and on the subject property several times.

Without the County granting a variance to Mr. Vaughn, the home would need to be built with an 8' high foundation. Since the terrain is level and the neighboring homes are on foundations of normal height, this would look like an albatross. It would have a negative valuation impact on the neighborhood. There are no other homes built in the area like that. If the houses were built with an 8' high foundation, exterior steps would be needed to go from ground to the living room, 8' stairs from the garage to the kitchen, etc. This would be very dysfunctional.

It is my opinion that this would reduce the market value of the new house by 15-20%. The market range of these new homes would be from \$100,000 - \$120,000. This would mean a \$15,000 - \$24,000 reduction in valuation. That reduction has to be transferred back to the lot value giving it a value of zero to a few thousand dollars.

This is especially frustrating because the property went through Multnomah County Planning Dept. to obtain the land partition approval. Subsequently, building permits were issued. Now is the time to act quickly so that vacant, unsightly property can be converted into prime housing.


John Mahaffy
Georgetown Realty, Inc.

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

In the Matter of Reversing the Decision)
of the Hearings Officer and Approving a)
Variance to the Finished Floor Elevation for)
a Single Family Residence on Property)
Located at 11930 SE Liebe Street)

FD 1-94 FINAL ORDER
94-106

The Hearings Officer held a public hearing and received testimony on the requested variance on February 16, 1994. The Hearings Officer announced at the hearing that his decision was to deny the request. That decision was rendered to writing and signed on March 1, 1994. A Notice of Review was filed by the applicant's representative on April 1, 1994 and reported to the Board on April 12, 1994. The Board set a date of May 10, 1994 to hear the appeal de novo. The hearing of May 10, 1994 was opened, but continued to May 24, 1994 due to lack of notification of the applicant's representative. After receiving testimony from Robert Liberty, the Hearings Officer, and Greg Frank, attorney for the appellant, and two neighbors, the Board acted to reverse the Hearings Officer decision and conditionally approve the requested variance to the finished floor elevation. That decision is based on the following findings and conclusions.

I. INTRODUCTION; NATURE OF THE REQUEST

This application is to construct a single family dwelling on a lot within the Flood Hazard District. Applicant requests a variance from the requirements in Multnomah County Code (MCC) 11.15.6315. MCC § .6315(B) requires that the floor of new houses in the Flood Hazard District be "*at least one foot above the base flood level.*" The ground elevation of this property is 205 feet and the base flood elevation in the surrounding area is 211 feet. Consequently, if constructed without a variance, the finished floor of the new dwelling would need to be seven feet above existing ground level.

II. BURDEN OF PROOF

The burden of proof is upon the applicant. MCC 11.15.8230(D)

**III. Review of the Standards, Analysis of Evidence, Findings of Fact and
CONCLUSIONS OF LAW**

**A. MCC CHAPTER 11.15.6301 *ET. SEQ.*: APPLICABILITY OF THE FLOOD HAZARD DISTRICT
REQUIREMENTS IN GENERAL**

MCC Chapter 11.15.6301 *et. seq.*, "Flood Hazard District," is applicable, because the area is within a flood fringe area mapped on Flood Insurance Rate Map; Community Panel Number

410179 0381 B, revised 18 March 1986. The property is not within a floodway.

The sections of the Flood Hazard Chapter containing standards applicable to this decision are MCC 11.15.6315, "Development Standards" and MCC 11.15.6323, "Variances." As noted below, some subsections of those provisions are inapplicable.

B. MCC 11.15.6315: FLOOD HAZARD DEVELOPMENT STANDARDS

(1) MCC 11.15.6315(A): State Building Code Compliance

MCC 11.15.6315(A) requires "all new construction and substantial improvement shall be constructed in conformance with Oregon State Building Codes." Compliance with this standard will be determined by the Planning Director in conjunction with the issuance of a building permit.

The County has an intergovernmental agreement by which it relies on certification by the City of Portland as to the satisfaction of the State Building Code.

(2) MCC 11.15.6315(B): Flood Elevation Requirement

MCC 11.15.6315(B) provides, in part:

*New construction and substantial improvement of any residential structure, including manufactured homes, shall have the lowest floor, including basement, elevated to at least one foot above the base flood level. * * * **

The proposed dwelling cannot satisfy subsection MCC 11.15.6315(B), the flood plain elevation requirement. The applicant is seeking a variance from this requirement, discussed below.

(3) MCC 11.15.6315(C): Floodproofing Of Nonresidential Structures

MCC 11.15.6315(C) (floodproofing of structures) is inapplicable because it applies only to "new construction and substantial improvement of any commercial, industrial or other non-residential structure * * * ." This is an application for approval of the construction of a residential structure.

(4) MCC 11.15.6315(D): Foundation and Anchoring

MCC 11.15.6315(D) is inapplicable because it applies only to manufactured homes.

(5) MCC 11.15.6315(E): Foundations And Drainage In Mobile Home Parks And Subdivisions

MCC 11.15.6315(E) is inapplicable because it applies only to manufactured homes.

(6) MCC 11.15.6315(F): Prevention Of Infiltration Of Water Into Household Utility Systems

MCC 11.15.6315(F) requires that in "all new construction:"

the electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

Determination of compliance with this standard is deferred to the building permit approval stage. The Planning Director shall provide notice and an opportunity to appeal that determination of compliance to those entitled to notice under MCC 11.15.8220.

(7) MCC 11.15.6315(G): Standards For Sewage Disposal Systems

MCC 11.15.6315(G) requires new and replacement water and sewer disposal systems to be designed to:

(1) Minimize infiltration of flood waters into the system;

(2) Minimize discharge from systems into flood waters;

(3) Avoid impairment or contamination during flooding.

Determination of compliance with this standard is deferred to the building permit approval stage. The Planning Director shall provide notice and an opportunity to appeal that determination of compliance to those entitled to notice under MCC 11.15.8220.

(8) MCC 11.15.6315(H): Certification Of Hydrostatic Equalization

MCC 11.15.6315(H) requires that the portions of the dwelling "below the lowest floor that are subject to flooding [will] automatically equalize the hydrostatic flood forces * * * ." Compliance with this standard will be determined by the Planning Director in conjunction with the issuance of a building permit.

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(9) MCC 11.15.6315(I): Exemptions For Land Above Flood Level

MCC 11.15.6315(I) is inapplicable because it authorizes exemptions from the requirements of MCC 11.15.6315 when a surveyor demonstrates the land is 1 foot or more above base flood level. The applicants and staff concur that the property is 6 feet below base flood level.

(10) MCC 11.15.6315(J): Exemption For Historic Structures

MCC 11.15.6315(J) is inapplicable because it authorizes an exemption from MCC 11.15.6315 for the reconstruction, rehabilitation or restoration of "structures listed on the National Register of Historic Place or the State Historic Site Inventory." There is no structure on the site and thus it cannot be on the Historic Site registry or Historic Site Inventory.

C. MCC 11.15.6323: VARIANCE STANDARDS

(1) The Applicable Portions Of The Variance Provisions

As noted above, the applicant is seeking a variance from the flood elevation requirements of MCC 11.15.6315(B).

There are three sections to the variance provisions found at MCC 11.15.6323. The first section 7(A), is introductory and the third section, (C), applies to "non-residential structures." Neither section contains standards which apply to this variance.

The variance standards are set out in the five subsections of MCC 11.15.6323(B). The fifth subsection applies only to structures in "an area identified as the floodway". As found above, the variance is for property in the flood fringe, not the floodway.

(2) Variance From Flood Elevation Requirements In MCC 11.15.6315(B)

(a) MCC 11.15.6323(B)(1): Lot Size And Surrounding Development

MCC 11.15.6323(B)(1) provides:

(1) The site of the proposed variance is a lot of one-half acre or less in size and is surrounded by and contiguous to lots with existing structures constructed below the base flood level.

According to the plot plan map, Parcel #3 is a four-sided parcel, with lot line dimensions of 60 feet on the front, 128.54 feet on the west side, 123.29 feet on the east side, and a rear lot line 60.1 feet in length. The parcel is approximately 7,432 square feet, and is thus less than 0.5 acre (21,780 square feet).

The Board finds that the surrounding area of SE Liebe and Raymond Streets consists entirely of existing single family residences that have been constructed on normal foundations of one or two feet. Foundation heights range from virtually none to a maximum of 30 inches.

(b) MCC 11.15.6323(B)(2): Exceptional Hardship to the Applicant

MCC 11.15.6323(B)(2) provides:

(2) Failure to grant the variance will result in exceptional hardship to the applicant;

The Board finds that denial of the flood elevation requirement would pose both a financial and market hardship. The Board is convinced by the applicant's statement that the cost of a normal 30 inch foundation is \$2,500, while the foundation wall necessary to raise the finished floor above the base flood elevation would be \$15,000. That increased expense would result in a sale price 12 percent greater than the market demand in the surrounding area. Secondly, a residence with a first floor elevation seven or eight feet above that of surrounding dwellings would be difficult to sell.

(c) MCC 11.15.6323(B)(3): Variance Is Minimum Necessary

MCC 11.15.6323(B)(3) provides:

(3) The variance is the minimum necessary to afford relief.

The applicant proposes a 30 inch foundation wall. That foundation height would be greater than that of the majority of the existing residences in the surrounding area while still allowing a foundation with a conventional appearance.

(d) MCC 11.15.6323(B)(4): No Additional Threats To Public Safety, Public Nuisance, Fraud Or Conflicts With Existing Laws

MCC 11.15.6323(B)(4) provides:

(4) The granting of the variance will not result in additional threats to public safety, extraordinary public expense, create nuisances, cause fraud or victimization of the public or conflict with existing local laws or ordinances.

The possible additional threats to public safety and sources of extraordinary expense are (1) displacement of floodwaters by the house, (2) possible damage caused by the house if it were to float free during a flood, (3) the public resources which would be expended to rescue residents of the dwelling in the event of a flood.

Floodwater displacement by this property will be negligible, provided the applicants satisfy MCC 11.15.6315(H), which requires hydrostatic equalization "by allowing for the entry and exit of floodwaters" for all parts of the house "subject to flooding."

The house should not float free provided the applicants satisfy MCC 11.15.6315(A), which requires compliance with the Uniform Building Code

Fraud and victimization of the public would occur if the approval of the variance would lead unwitting purchasers to acquire the property without knowledge of the risk of serious flood damage. However, the risk can be eliminated by a condition requiring recordation of a notice that floors can be constructed below flood level.

The local laws and ordinances governing this application are expressed in the County Code and Plan. Given a finding that they have been satisfied, there is no "conflict with existing local laws or ordinances."

(e) Conclusion With Respect To Variance From The Flood Elevation Requirement

The applicant has, or can through conditions, satisfied the variance standards in MCC 11.15.6323(B)(1) through (4) as applied to the request for a variance from the flood elevation requirement in MCC 11.15.6315(B).

D. APPLICABLE SECTIONS OF THE COUNTY COMPREHENSIVE PLAN

1. Policy 14; Development Limitations

Comprehensive Plan Policy 14 is to

DIRECT DEVELOPMENT AND LAND FORM ALTERATIONS AWAY FROM AREAS WITH DEVELOPMENT LIMITATION EXCEPT UPON A SHOWING THAT DESIGN AND CONSTRUCTION TECHNIQUES CAN MITIGATE ANY PUBLIC HARM OR ASSOCIATED PUBLIC COST, AND MITIGATE ANY ADVERSE EFFECTS TO SURROUNDING PERSONS OR PROPERTIES. DEVELOPMENT LIMITATIONS AREAS ARE THOSE WHICH WILL HAVE ANY OF THE FOLLOWING CHARACTERISTICS:

* * * *

C. LAND WITHIN THE 100 YEAR FLOOD PLAIN

Multnomah Comprehensive Framework Plan at page 58.

Under the terms of Policy 14 and the implementation strategies, see Multnomah Comprehensive Framework Plan at 59, the Board finds this policy has been implemented by the Flood Hazard District and has no independent application to this action.

2. Policies 37 And 38, In General

Both policy 37, "Utilities" and Policy 38, "Facilities" are prefaced with the statement: "The county's policy is to require a finding prior to approval of a legislative or quasi-

judicial action that * * * ." "Action" is defined in MCC 11.15.8205 as:

a proceeding in which the legal rights, duties or privileges of specific parties are determined only after hearing in which such parties are entitled to appear and be heard, including requests for:

* * *

(D) Variances, except as otherwise provided herein;

* * *

(F) Other requests for permits and other contested cases determining permissible uses of specific property.

Board finds that this proceeding is an "action" and that consequently both of these policies apply.

3. Plan Policy 37: "Utilities"

Multnomah County 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 ON THE SITE; OR

D. THERE IS AN ADEQUATE PRIVATE WATER SYSTEM, AND A PUBLIC SEWER WITH ADEQUATE CAPACITY.

Multnomah County Comprehensive Framework Plan: Volume 2: Policies (September 1983) at 167.

On a form completed 14 October 1993, Martha Piper of the Mid-County Sewer Project confirmed that public sewer is available to the site.

On a form completed 13 October 1993, the Powell Valley Road Water District confirmed that it "is prepared to furnish potable water" in conformance with state rules.

This evidence is sufficient to carry the applicants' burden of proof with respect to this portion of Policy 37.

The remainder of Policy 37 provides:

DRAINAGE

E. THERE IS ADEQUATE CAPACITY IN THE STORM WATER SYSTEM TO HANDLE THE RUN-OFF; OR

F. THE WATER RUN-OFF CAN BE HANDLED ON THE SITE OR ADEQUATE PROVISIONS CAN BE MADE; AND

G. THE RUN-OFF FROM THE SITE WILL NOT ADVERSELY AFFECT THE WATER QUALITY IN ADJACENT STREAMS, PONDS, LAKES OR ALTER THE DRAINAGE ON ADJOINING LANDS.

ENERGY AND COMMUNICATIONS

H. THERE IS AN ADEQUATE ENERGY SUPPLY TO HANDLE THE NEEDS OF THE PROPOSAL AND THE DEVELOPMENT LEVEL PROJECTED BY THE PLAN; AND

I. COMMUNICATION FACILITIES ARE AVAILABLE. FURTHERMORE, THE COUNTY'S POLICY IS TO CONTINUE COOPERATION WITH THE DEPARTMENT OF ENVIRONMENTAL QUALITY, FOR THE DEVELOPMENT AND IMPLEMENTATION OF A GROUND WATER QUALITY PLAN TO MEET THE NEEDS OF THE COUNTY.

Multnomah County Comprehensive Framework Plan; Volume 2: Policies (September 1983) at 168.

There is no storm water system in this area. The Engineering Section requires that all storm water be disposed of on-site and not run onto adjacent properties or into the public right-of-way. There are no water bodies or drainage systems on adjacent properties; consequently, there will be no adverse affect. The property is within a developed urban area where all energy and communication systems are available within the public right-of-way of S.E. Liebe Street.

The concluding paragraph of Policy 37 is inapplicable.

4. Plan Policy 38: "Facilities"

Multnomah County Plan Policy 38, "Facilities" provides:

*THE COUNTY'S POLICY IS TO REQUIRE A FINDING PRIOR TO APPROVAL
A LEGISLATIVE OR QUASI-JUDICIAL ACTION THAT:*

SCHOOL

- A. *THE APPROPRIATE SCHOOL DISTRICT HAS HAD AN OPPORTUNITY
TO REVIEW AND COMMENT ON THE PROPOSAL.*

FIRE PROTECTION

- B. *THERE IS ADEQUATE WATER PRESSURE AND FLOW FOR FIRE
FIGHTING PURPOSES; AND*
- C. *THE APPROPRIATE FIRE DISTRICT HAS HAD AN OPPORTUNITY TO
REVIEW AND COMMENTS [sic] ON THE PROPOSAL.*

POLICE PROTECTION

- D. *THE PROPOSAL CAN RECEIVE ADEQUATE LOCAL POLICE PROTEC-
TION IN ACCORDANCE WITH THE STANDARDS OF THE JURISDIC-
TION PROVIDING POLICE PROTECTION.*

Multnomah County Comprehensive Framework Plan; Volume 2: Policies (September 1983) at 169-170.

On a form completed 02 February 1994, David Douglas School District indicated that they had no comment on this proposal.

On a form completed 15 February 1994, the Portland Fire Bureau confirmed that there is adequate available water for fire fighting purposes.

On a form completed 15 February 1994, the Multnomah County Sheriff confirmed that there is adequate police service in this area.

This evidence is sufficient to carry the applicants' burden of proof with respect to this portion of Policy 37.

IV. CONCLUSION

The applicant has carried the burden necessary for the granting of a variance to the finished floor elevation requirements of MCC 11.15.6315(B).

V. CONDITION

Determination of compliance with MCC 11.15.6315(F)-(H) is deferred to the building permit approval stage. The Planning Director shall provide notice and an opportunity to appeal those determinations of compliance to those persons entitled to notice under MCC 11.15. 8220(C).

Before construction, the record owner shall record in the Multnomah County Deed Records, a statement in the following form:

"The property described below has received a variance from certain Flood Hazard provisions in the Multnomah County Land Use Ordinance on June 9, 1994, in proceeding No. FD 1-94. The variance allows construction of floors below the base flood elevation as determined by the Federal Emergency Management Agency. The property subject to the variance is described as ..."

Approved this 9th day of June, 1994.

MULTNOMAH COUNTY, OREGON



By Beverly Stein
Beverly Stein
Multnomah County Chair

REVIEWED
LAURENCE KRESSEL, COUNTY COUNSEL
for MULTNOMAH COUNTY, OREGON

By John L. DuBay
John L. DuBay

MEETING DATE: May 10, 1994 **MAY 24 1994**

AGENDA NO: P-4 **P-4**

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: FD 3-94 Public Hearing - DeNovo

BOARD BRIEFING Date Requested: _____

Amount of Time Needed: _____

REGULAR MEETING: Date Requested: May 10, 1994

Amount of Time Needed: 45 Minutes

DEPARTMENT: DES **DIVISION:** Planning

CONTACT: R. Scott Pemble **TELEPHONE #:** 3182

BLDG/ROOM #: 412/103

PERSON(S) MAKING PRESENTATION: Bob Hall

ACTION REQUESTED:

☒ (x) DENIAL

☐ [] INFORMATIONAL ONLY ☐ [] POLICY DIRECTION ☐ [] APPROVAL ☐ [] OTHER

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

FD 3-94 Public Hearing - DeNovo

Review the Hearings Officer Decision of denial for a variance of 4.5 feet to the finished floor elevation of a proposed single family residence for property located at 11950 SE Liebe Street.

This Decision has been appealed by the applicant.

Time Allowed for Testimony - 20 Minutes

SIGNATURES REQUIRED:

ELECTED OFFICIAL: _____

OR

DEPARTMENT MANAGER: [Signature] [Signature]

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

Any Questions: Call the Office of the Board Clerk 248-3277/248-5222

0516C/63

BOARD OF
COUNTY COMMISSIONERS
MULTNOMAH COUNTY
OREGON
1994 MAY -3 AM 8:47



MULTNOMAH COUNTY OREGON

DIVISION OF PLANNING & DEVELOPMENT/2115 S.E. MORRISON/PORTLAND, OREGON 97214

DIVISION OF PLANNING AND DEVELOPMENT

Board Planning Packet Check List

File No. FD3-94

☒ Agenda Placement Sheet

No. of Pages 1

☒ Case Summary Sheet

No. of Pages 1

☐ Previously Distributed

☒ Notice of Review

No. of Pages 4

*(Maybe distributed at Board Meeting)

☐ Previously Distributed

☒ Decision

No. of Pages 18

(Hearings Officer/Planning Commission)

☐ Previously Distributed

*Duplicate materials will be provided upon request.
Please call 2610.

(CL/1)



BOARD HEARING OF May 10, 1994

TIME 2:00pm

CASE NAME Flood Hazard Variance

NUMBER

FD 3-94

1. Applicant Name/Address

Gregory J. Frank
P.O. Box 19478
Portland 97280

2. Action Requested by Applicant

Reversal of Hearing Officer's decision in the matter of a request for a 4.5 foot height variance to the finished floor elevation for a proposed single family residence on property within the Flood Hazard district.

ACTION REQUESTED OF BOARD

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

3. Planning Staff Recommendation

Approval

4. Hearings Officer Decision:

Denial

5. If recommendation and decision are different, why?

The Hearings Officer found that the applicant had failed to demonstrate compliance with the standards for sewage disposal, certification of hydrostatic equalization, exceptional hardship to the applicant, and that fraud and victimization might occur to future purchasers of the property. He also found that the applicant had not provided information regarding Comprehensive Plan Policy #37 with respect to drainage and energy and communications.

ISSUES

(who raised them?)

- a. The appearance of a house with a foundation five feet higher than that of surrounding residences (neighbor).
- b. The low probability of flooding in the area based on over twenty years of observation (neighbor).

Do any of these issues have policy implications? Explain.

No



DEPARTMENT OF ENVIRONMENTAL SERVICES
DIVISION OF PLANNING AND DEVELOPMENT
2115 SE Morrison Street
Portland, Oregon 97214 (503) 248-3043

May 10, 1994

NOTICE OF PUBLIC HEARING

This notice concerns a public hearing scheduled to consider the land use cases cited and described below:

Case Files: FD 3-94
Scheduled Before: Board of County Commissioners
Hearing Date, Time, & Place: MAY 10, 1994 at 2:00 p.m.
Multnomah County Courthouse, Room 602
1021 SW 4th Avenue, Portland

Scope of Review: De Novo

Time Allowed for Testimony: 20 minutes per side.

Proposed Actions and Uses: Variance of 4.5 feet to the finished floor elevation of a proposed single family residence

Location of the Proposal: 11950 SE Liebe Street

Legal Description of Property: Parcel #3 of Partition Plat 1993-49

Plan Designation: Urban Low Density Residential

Zoning District: LR-7/FF — Urban Low Density Residential District
Flood Fringe overlay district

Applicant: Mike Tataro, Oregon Trail Custom Homes
P.O. Box 20686
Portland, OR 97220

Property Owner: Same

27669

APPEAL SUMMARY: Appellant appeals a February 16, 1994 Hearings Officer decision which denied application FD 3-94 for a 4.5 foot variance to the finished floor elevation of a proposed single family residence for property located at 11950 SE Liebe Street. A *Notice of Review* (appeal) of FD 3-94 was filed on April 1, 1994. On April 12, 1994, the appeal was reported to the Board and the Board acted to hear the appeal de novo. The Board will limit testimony to twenty minutes per side.

PUBLIC PARTICIPATION AND HEARING PROCESS: Application materials and the grounds for appeal are available for inspection at no cost at least 20 days prior to the hearing. Copies may be purchased for 30-cents per page. For further information on this case, call Bob Hall at 248-3043 [M-F, 8:00-4:30].

To comment on the this proposal, you may write to or call the Planning Division or attend and speak at the hearing. **All interested parties may appear and testify or submit written comment to the Board of Commissioners.** All comments should address the approval criteria applicable to the request, **but be limited to the *Scope of Review* listed on the front page of this notice.** The hearing procedure will follow the Board of Commissioner's *Rules of Procedure* (enclosed) and will be explained at the hearing.

The Board's decision on the item may be announced at the close of the hearing, or upon continuance to a time certain. A written decision will be mailed to the participants and filed with the Clerk of the Board of County Commissioners usually within ten days of the announcement. The decision of the Board of County Commissioners may be appealed to State Land Use Board of Appeals (LUBA) by either the applicant or other hearing participants.

Failure to raise an issue in person, or by letter, or failure to provide sufficient specificity to allow the Board of County Commissioners an opportunity to respond to the issue precludes subsequent appeal to LUBA on that issue.

VARIANCE TO THE FLOOD PLAIN ELEVATION APPROVAL CRITERIA
[ref. MCC 11.15.2172(C)]

MCC 11.15.6315: FLOOD HAZARD DEVELOPMENT STANDARDS

(1) MCC 11.15.6315(A): State Building Code Compliance

MCC 11.15.6315(A) requires "all new construction and substantial improvement shall be constructed in conformance with Oregon State Building Codes."

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(1) The Applicable Portions Of The Variance Provisions

The variance standards are set out in the five subsections of MCC 11.15.6323(B). The fifth subsection applies only to structures in "an area identified as the floodway". As found above, the variance is for property in the flood fringe, not the floodway.

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(a) MCC 11.15.6323(B)(1): Lot Size And Surrounding Development

MCC 11.15.6323(B)(1) provides:

- (1) The site of the proposed variance is a lot of one-half acre or less in size and is surrounded by and contiguous to lots with existing structures constructed below the base flood level.*

(b) MCC 11.15.6323(B)(2): Exceptional Hardship to the Applicant

MCC 11.15.6323(B)(2) provides:

- (2) Failure to grant the variance will result in exceptional hardship to the applicant;*

(c) MCC 11.15.6323(B)(3): Variance Is Minimum Necessary

MCC 11.15.6323(B)(3) provides:

- (3) The variance is the minimum necessary to afford relief.*

(d) MCC 11.15.6323(B)(4): No Additional Threats To Public Safety, Public Nuisance, Fraud Or Conflicts With Existing Laws

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E. APPLICABLE SECTIONS OF THE COUNTY COMPREHENSIVE PLAN.

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* * * *

C. LAND WITHIN THE 100 YEAR FLOOD PLAIN

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* * *

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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 ON THE SITE; OR*
- D. *THERE IS AN ADEQUATE PRIVATE WATER SYSTEM, AND A PUBLIC SEWER WITH ADEQUATE CAPACITY.*

The remainder of Policy 37 provides:

DRAINAGE

- E. *THERE IS ADEQUATE CAPACITY IN THE STORM WATER SYSTEM TO HANDLE THE RUN-OFF; OR*
- F. *THE WATER RUN-OFF CAN BE HANDLED ON THE SITE OR ADEQUATE PROVISIONS CAN BE MADE; AND*
- G. *THE RUN-OFF FROM THE SITE WILL NOT ADVERSELY AFFECT THE WATER QUALITY IN ADJACENT STREAMS, PONDS, LAKES OR ALTER THE DRAINAGE ON ADJOINING LANDS.*

ENERGY AND COMMUNICATIONS

- H. *THERE IS AN ADEQUATE ENERGY SUPPLY TO HANDLE THE NEEDS OF THE PROPOSAL AND THE DEVELOPMENT LEVEL PROJECTED BY THE PLAN; AND*
- I. *COMMUNICATION FACILITIES ARE AVAILABLE. FURTHERMORE, THE COUNTY'S POLICY IS TO CONTINUE COOPERATION WITH THE DEPARTMENT OF ENVIRONMENTAL QUALITY, FOR THE DEVELOPMENT AND IMPLEMENTATION OF A GROUND WATER QUALITY PLAN TO MEET THE NEEDS OF THE COUNTY.*

The concluding paragraph of Policy 37 is inapplicable.

4. Plan Policy 38: "Facilities"

Multnomah County Plan Policy 38, "Facilities" provides:

THE COUNTY'S POLICY IS TO REQUIRE A FINDING PRIOR TO APPROVAL A LEGISLATIVE OR QUASI-JUDICIAL ACTION THAT:

SCHOOL

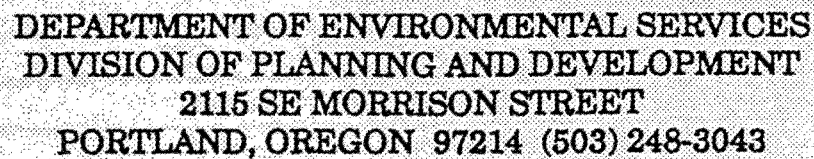
- A. THE APPROPRIATE SCHOOL DISTRICT HAS HAD AN OPPORTUNITY TO REVIEW AND COMMENT ON THE PROPOSAL.

FIRE PROTECTION

- B. THERE IS ADEQUATE WATER PRESSURE AND FLOW FOR FIRE FIGHTING PURPOSES; AND
- C. THE APPROPRIATE FIRE DISTRICT HAS HAD AN OPPORTUNITY TO REVIEW AND COMMENTS [sic] 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.



1. Name: Frank, J., Gregory
 Last *Middle* *First*

2. Address: P.O. Box 19478, Portland, Oregon 97280
 Street or Box *City* *State and Zip Code*

3. Telephone: (503) 244 - 6811

Mike Totaro
Oregon Trail Custom Homes
P.O. Box 20686
_____, Applicant

Mike Totaro is the owner of the subject property and the applicant in this land use matter. Pursuant to MCC 11.15.8225 (A)(1) "Those person entitled to notice under MCC 11.15.8220(C) who also make an appearance before the approval authority" are partys. MCC 11.15.8220 (C)(1) includes the "applicant". Applicant appeared before the Hearings Officer

8. Grounds for Reversal of Decision (use additional sheets if necessary):

See attached additional sheets

9. Scope of Review (Check One):

(a) ☐ On the Record

(b) ☐ On the Record plus Additional Testimony and Evidence

(c) ☒ De Novo (i.e., Full Rehearing) See #10 Below

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

The Multnomah County Board of Commissioners, on March 22, 1994, adopted Resolution 94-56, which established the Scope of Review for the next five appealed cases.

Accordingly, the Board will consider all evidence submitted to the Hearings Officer and any new relevant evidence submitted by parties.

Signed:



Gregory J. Frank

Date: April 1, 1994

For Staff Use Only

Fee:

Notice of Review = \$300.00

Transcription Fee:

Length of Hearing N/A x \$3.50/minute = \$ N/A

Total Fee = \$ 300.00

Received by:



Date:

4-1-94

Case No.

PD 3-94

11#
ZONING
500.00

8. Grounds for Reversal of Decision (additional comments to Notice of Review)

The Hearings Officer's decision should be reversed based upon the staff report dated February 16, 1994 (which recommended approval of the requested variance) and for the following reasons::

1. MCC 11.15.6323 (B)(2) *"Failure to grant the variance will result in exceptional hardship to the applicant."*

The Hearings Officer found "no showing of financial hardship" and concluded that the "reasons offered by the applicant are insufficient to justify a variance." The Hearings Officer disregarded the staff's and applicant's interpretation of "hardship."

There is undoubtedly a financial hardship to the applicant. If the variance is not granted then, in order to build a house on the subject property, an eight foot (8') high foundation will be required. Such a home in this neighborhood would be totally out of design character. In fact, according to the application the property might not even be marketable at a reasonable sales price. In addition, construction of an eight foot (8') high foundation would increase construction costs by \$12,500 (12.5%). Increasing the price of the property to reflect the increased cost would price the house out of the neighborhood's market. In essence, such a house might not even sell at a breakeven price. The applicant has clearly demonstrated at least a \$12,500 hardship unless the variance is granted.

2. MCC 11.15.6323 (B)(3) *"The variance is the minimum necessary to afford relief."*

The Hearings Officer stated that the applicant "did not provide any information about the possibility of raising the foundation higher than was proposed..." This is not an entirely accurate statement by the Hearings Officer. The applicant proposed a thirty inch (30") foundation which would be in conformance with the neighborhood and be of a conventional appearance. The applicant, by implication, indicated that above a thirty inch (30") foundation costs would increase (hardship), continuity of the neighborhood would be diminished, and marketability would be decreased. The applicant is not required to demonstrate to mathematical certainty the absolute point of minimum relief. The applicant concurs with the staff's position that the proposed variance does in fact represent the minimum necessary variance to afford relief. The applicant intends to submit additional support regarding this matter to the Board at the de novo hearing.

3. MCC 11.15.6323 (B)(4) *"The granting of the variance will not result in additional threats to public safety, extraordinary public expense, create nuisances, cause fraud or victimization of the public or conflict with existing local laws or ordinances"*

The applicant agrees with the staff's analysis and conclusion regarding MCC 11.15.6323 (B)(4). The applicant disagrees with the Hearings Officer's reasoning and conclusion. There will be no "unwitting victimization in that the applicant is fully aware of the flood hazard. If the Hearings Officer was truly concerned about future purchaser's a simple condition to the granting of the variance would have alleviated any such fears: a required notice in the deed indicating the location of the property within a flood fringe of a flood hazard district. Applicant would agree to record a deed containing such a notice. These types of deed notices are very common in Multnomah County and the City of Portland.

4. MCC 11.15.6315 (F) *"Prevention of infiltration of water into household utility systems"*

The Hearings Officer incorrectly interpreted "the applicant's materials as an application for a variance from flood proofing requirements of MCC 11.15.6315 (F) as well as the flood elevation requirements of MCC 11.15.6315 (B)." The applicant and staff agree that applicant requested a variance from MCC 11.15.6315 (B); but not a variance from MCC 11.15.6315 (F). The applicant and staff agree the correct implementation of MCC 11.15.6315(F) is that construction details will be regulated by building codes and the City of Portland (re State Plumbing, Heating, Ventilation and Air Conditioning Codes). The applicant has satisfied this section of the Code and will be held accountable by the appropriate regulatory agency at the appropriate time.

5. MCC 11.15.6315 (G) *"Standards for Sewage Disposal Systems"*

The Hearings Officer indicted that the applicant did "not address the issue of whether the sewer connection will satisfy the flood infiltration standards in MCC 11.15.6315 (G)." The Hearings Officer is mistaken. First, the application and staff noted that the sewer connection on this property would have to be made in conformance to the Mid-County Sewer District's Rules of Connection. Secondly, the Hearings Officer is again trying to intercede in the building permit process; which he admits on page 4 of his decision, will be determined by others (ie Planning Director, City of Portland, etc.)

6. MCC 11.15.6315 (H) *"Certification of Hydrostatic Equalization"*

The Hearings Officer erred in requiring the applicant to present a "certification by a registered professional engineer..." at the time of the request for the variance. The staff position, which the applicant contends is correct, is that compliance with MCC 11.15.6315 (H) "will be determined by the Planning Director in conjunction with the building permit" (page 4 of staff report). Applicant has agreed, at the appropriate time, to file the required certification.

7. Comprehensive Framework Plan Policy 37, Sections E through I.

The applicant disagrees with the Hearings Officer's application of these sections of the Comprehensive Plan to the subject case. The applicant concurs with the staff position and contends that a proper interpretation of these sections would permit a "determination by the Planning Director in conjunction with the building permit decision" as to whether the appropriate utilities are present (pages 9 & 10 of staff report). Further, applicant intends to present evidence to the Board that in fact utilities are in fact present.

8. MCC 11.15.6315 (B)

The Hearings Officer erred in denying the variance requested under MCC 11.15.6315(B) based upon reasons stated in this notice, the application for variance, the staff report, the staff record, and testimony to be presented to the Board upon the de novo review.



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

DECISION

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

MARCH 1, 1994

FD 3-94, #419 VARIANCE TO FLOOD HAZARD DISTRICT STANDARDS
(Construct a Single Family Dwelling Below the 100-year Flood Elevation)

I. INTRODUCTION; NATURE OF THE REQUEST

This application is to construct a single family dwelling on a lot within the Flood Hazard District. Applicant requests a variance from the requirements in Multnomah County Code (MCC) 11.15.6315. MCC § .6315(B) requires that the floor of new houses in the Flood Hazard District be "*at least one foot above the base flood level.*" The ground elevation of this property is 205 feet and the base flood elevation in the surrounding area is 211 feet. Consequently, if constructed without a variance, the finished floor of the new dwelling would need to be seven feet above existing ground level.

Location: 11950 SE Liebe Street

Tax Roll Description: Parcel #3 of Partition Plat 1993-49

Owner Mike Tataro, Oregon Trail Custom Homes
PO Box 20686
Portland, OR 97220

Applicant Same

Comprehensive Plan: Urban Low Density Residential

Zoning: LR-7/ FF; Low Density Residential District,
Flood Fringe subdistrict

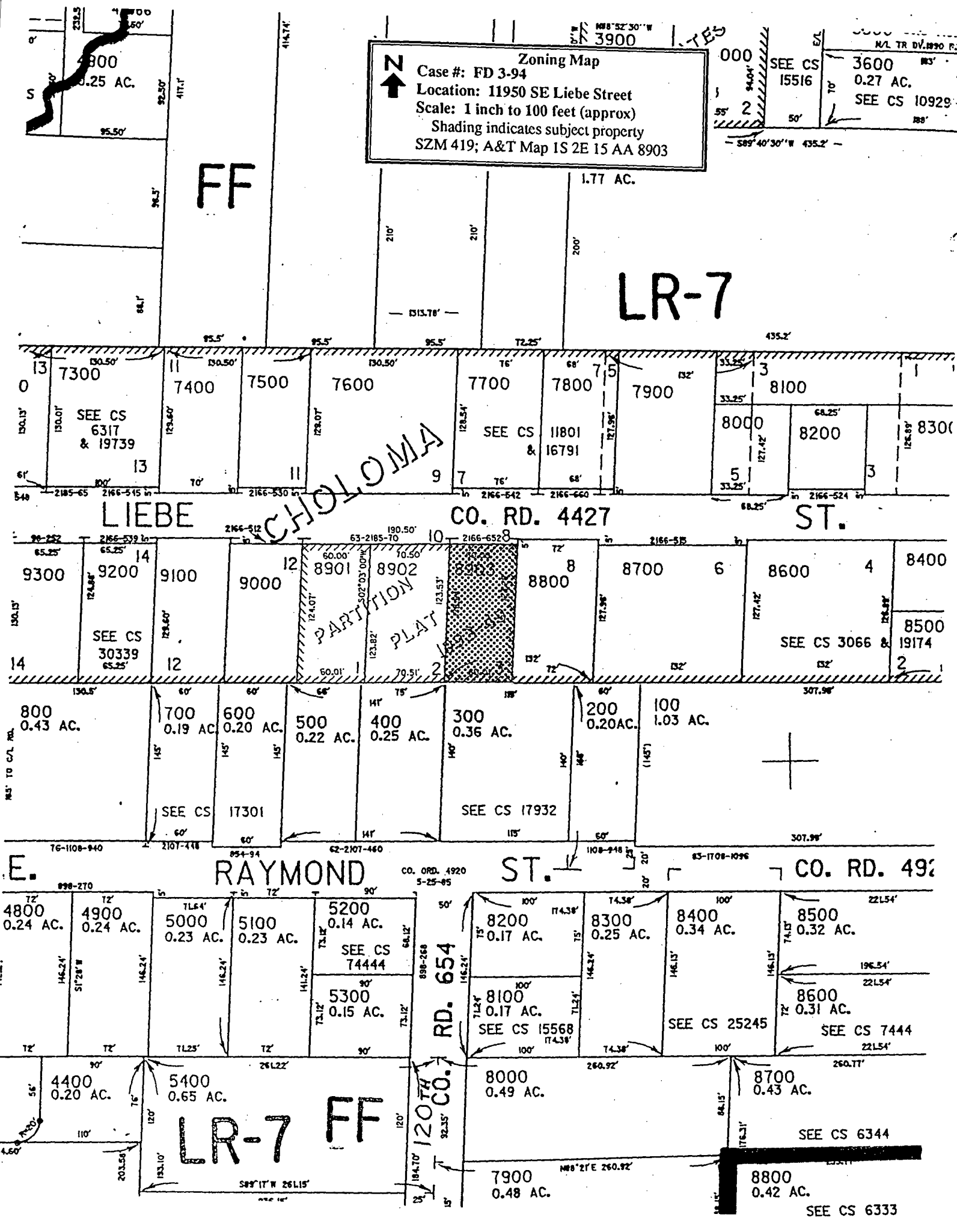
DECISION:: Denied entire application, based on the following Findings and Conclusions.

Zoning Map
 Case #: FD 3-94
 Location: 11950 SE Liebe Street
 Scale: 1 inch to 100 feet (approx)
 Shading indicates subject property
 SZM 419; A&T Map 1S 2E 15 AA 8903

SEE CS 15516
 3600
 0.27 AC.
 SEE CS 10929

FF

LR-7



II. PARTIES, AGENTS AND WITNESSES TO THE PROCEEDING

A. Parties

The persons, agencies and organizations who submitted written or oral testimony in this proceeding on their own behalf are parties to the proceedings. MCC 11.15.8225(A)(1). These persons were:

1. Applicant and Landowner

Oregon Trail Custom Homes, PO Box 20686, Portland, Oregon 97220 (applicant)

Joseph Vaughn, 5761 SE Harrison St., Milwaukie, Oregon 97222 (landowner)

2. Other Persons Supporting The Application

John Mahaffey, Georgetown Realty, 10000 NE 122nd, Portland, Oregon 97230

Roger Adams, 12022 SE Liebe, Portland, Oregon 97266

Brenda Luma, 12021 SE Liebe, Portland, Oregon 97266

3. Persons Opposed To The Application

None

B. Agents

Persons who submitted written or testimony, but only in the capacity of a representative for one of the parties, and not on their own behalf, are agents, not parties to this proceedings. These persons were:

1. Agents For The Applicant

Robert Totaro, President, Oregon Trail Custom Homes (at applicant's address)

Mike Totaro, Vice President, Oregon Trail Custom Homes (at applicant's address)

C. Witnesses

Persons appearing to provide information on behalf of someone else, and not as parties in their own right, are witnesses. There were no witnesses in this proceeding.

III. PROCEDURAL ISSUES

A. Impartiality Of The Hearings Officer

Prior to the hearing I had no *ex parte* contacts with the applicants or anyone else concerning the merits of this application.

I have no financial interest in the outcome of this proceeding and have no family or financial relationship with any of the applicants.

B. Other Procedural Issues

The applicants did not allege any procedural violations by the County, prior to, or during, the hearing.

IV. BURDEN OF PROOF

The burden of proof is upon the applicant. MCC 11.15.8230(D)

V. REVIEW OF THE STANDARDS, ANALYSIS OF THE EVIDENCE, FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. MCC Chapter 11.15.6301 *Et. Seq.*: The Applicability Of The Flood Hazard District Requirements In General

MCC Chapter 11.15.6301 *et. seq.*, "Flood Hazard District," is applicable, because the area is within a flood fringe area mapped on Flood Insurance Rate Map; Community Panel Number 410179 0382 B, revised 18 March 1986. The property is not within a floodway. *Id.*

The sections of the Flood Hazard Chapter containing standards applicable to this decision are MCC 11.15.6315, "Development Standards" and MCC 11.15.6323, "Variances." As noted below, I find some subsections of those provisions are inapplicable.

B. MCC 11.15.6315: Flood Hazard Development Standards

(1) MCC 11.15.6315(A): State Building Code Compliance

MCC 11.15.6315(A) requires "all new construction and substantial improvement shall be constructed in conformance with Oregon State Building Codes." If the permit is approved on appeal, compliance with this standard will be determined by the Planning Director before, or in conjunction with, the issuance of a placement permit.

The County has an intergovernmental agreement by which it relies on certification by the City of Portland as to the satisfaction of the State Building Code. The submission of an unqualified certification is a decision which does not require the exercise of discretion. ORS 197.015(10)(b)(A), (B). Therefore, no notice or opportunity for a hearing would be required.

(2) MCC 11.15.6315(B): Flood Elevation Requirement

MCC 11.15.6315(B) provides, in part:

*New construction and substantial improvement of any residential structure, including manufactured homes, shall have the lowest floor, including basement, elevated to at least one foot above the base flood level. * * * **

According to the Flood Insurance Rate Maps, the property is at 205 feet about sea level and the "base flood level" in the surrounding area is 211 feet. The site of the proposed dwelling is shown as being in the "flood fringe," not the "floodway." The applicant proposes to construct the floor at 206.5 feet, 4.5 below the flood level and seeks a variance for this amount, discussed below.

(3) MCC 11.15.6315(C): Floodproofing Of Nonresidential Structures

MCC 11.15.6315(C) (floodproofing of structures) is inapplicable because it applies only to "new construction and substantial improvement of any commercial, industrial or other non-residential structure * * * ." This is an application for the approval of the siting of a residential structure.

(4) MCC 11.15.6315(D): Foundation and Anchoring

MCC 11.15.6315(D) requires all manufactured homes to be "placed on a permanent foundation and shall be anchored to resist flotation, collapse and lateral movement by providing tie downs [etc.] * * * ." Because this standard applies to manufactured homes, it is inapplicable to this proceeding.

(5) MCC 11.15.6315(E): Foundations And Drainage In Mobile Home Parks And Subdivisions

MCC 11.15.6315(E) is inapplicable because it governs foundations and drainage for "new manufactured home parks" and replacement of manufactured homes "in an existing manufactured home park or subdivision * * * ." The standard is does not apply to this application.

(6) MCC 11.15.6315(F): Prevention Of Infiltration Of Water Into Household Utility Systems

MCC 11.15.6315(F) requires that in "all new construction:"

the electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

In this proceeding, the applicant is seeking a variance from the flood elevation requirements of MCC 11.15.6315(B). The variance would allow the applicant to site a house on an 30" foundation, leaving the first floor approximately 4.5 feet below the crest of the 100-year flood level.

Based on the record before me, I interpret the applicants' materials as an application for a variance from the flood proofing requirements of MCC 11.15.6315(F) as well as the flood elevation requirements of MCC 11.15.6315(B). This implied variance is denied for the same reasons discussed below.

(7) MCC 11.15.6315(G): Standards For Sewage Disposal Systems

MCC 11.15.6315(G) requires new and replacement water and sewer disposal systems to be designed to:

- (1) Minimize infiltration of flood waters into the system;*
- (2) Minimize discharge from systems into flood waters;*
- (3) Avoid impairment or contamination during flooding.*

The Mid-County Sewer district requires the applicants to connect to the existing sewer line in SE Liebe Street. The application does not address the issue of whether the sewer connection will satisfy the flood infiltration standards in MCC 11.15.6315(G).

(8) MCC 11.15.6315(H): Certification Of Hydrostatic Equalization

MCC 11.15.6315(H) requires certification by a registered professional engineer or architect that the portions of the dwelling "below the lowest floor that are subject to flooding" are designed to "automatically equalize the hydrostatic flood forces * * * ."

The record does not contain the required certification. This is grounds for denial.¹

(9) MCC 11.15.6315(I): Exemptions For Land Shown To Be Above Flood Level

MCC 11.15.6315(I) authorizes exemptions from the requirements of MCC 11.15.6315 when a surveyor demonstrates the land is 1 foot or more above base flood level.

Testimony by Brenda Luma and Roger Adams challenged the accuracy of the FIRM maps. Mr. Adams stated that he had owned his house since 1968. Although his house has a full basement, it has never flooded.

However, the standard requires a showing that the property is actually 1 foot above the base flood level, as shown on the map. No one testified that the elevation of the property was inaccurate; in fact the request for the variance is based on the assumption that the base flood level is above the floor level.

I conclude that no exemption is warranted under this standard.

(10) MCC 11.15.6315(J): Exemption For Historic Structures

MCC 11.15.6315(J) is inapplicable because it authorizes an exemption from MCC 11.15.6315 for the reconstruction, rehabilitation or restoration of "structures listed on the National Register of Historic Place or the State Historic Site Inventory." There is no structure on the site and thus it cannot be on the Historic Site registry or Historic Site Inventory.

C. MCC 11.15.6323: Variance Standards

(1) The Applicable Portions Of The Variance Provisions

As noted above, the applicants are seeking a variance from the flood elevation requirements of MCC 11.15.6315(B) and, by implication, from the flood-proofing requirements of MCC 11.15.6315(F).

There are three sections to the variance provisions found at MCC 11.15.6323. The first section, (A), is introductory and the third section, (C), applies to "non-residential structures." Neither section contains standards which apply to these variances.

¹ Since the existence of a certification would be a ministerial decision, the certification can be provided by the Planning Director in conjunction with the issuance of a building permit or in the course of a *de novo* appeal, if this kind of review is granted by the County Commission.

The variance standards are set out in the five subsections of MCC 11.15.6323(B). The fifth subsection applies only to structures in "an area identified as the floodway". As found above, the variance is for property in the flood fringe, not the floodway.

(2) Variance From The Flood Elevation Requirement In MCC 11.15.6315(B)

(a) MCC 11.15.6323(B)(1): Lot Size And Surrounding Development

MCC 11.15.6323(B)(1) provides:

- (1) The site of the proposed variance is a lot of one-half acre or less in size and is surrounded by and contiguous to lots with existing structures constructed below the base flood level.*

Based (1) on the information on the parcel size in the Staff Report (page 5); (2) the applicant's "windshield survey," which was confirmed by the staff (Staff Report at page 5-6); and (3) the oral testimony presented at the hearing, I conclude that both elements of this standard have been satisfied.

(b) MCC 11.15.6323(B)(2): Exceptional Hardship To The Applicant

MCC 11.15.6323(B)(2) provides:

- (2) Failure to grant the variance will result in exceptional hardship to the applicant;*

The hardship identified at page 4 of the application is:

First, the cost for the 8 foot high foundation wall is estimated to be \$15,000, an increase of \$12,500 from the \$2,500 for a standard 2-1/2 foot high foundation wall. That cost will be directly reflected in the sale price of the house, which will make it more difficult to sell in the relatively modest neighborhood. The home propose for Parcel 3 is expected to sell for \$98,500. An increase of \$12,500 in costs would push the price over \$100,000 and represent over 12% of the value of the house and land.

Secondly, the finished structure will appear totally out of place, standing one complete story above its neighbors. This factor will also make the house more difficult to sell.

Therefore, the additional expense of the foundation, the resulting appearance of the finished structure, and the likelihood that the house will be difficult to sell given market values in the neighborhood will combine to cause the

Applicant exceptional hardship.

Because I believe local governments have an ethical (even when it is not a legal) responsibility to interpret their standards consistently, I have reviewed my findings on a pair of earlier flood plain variance decisions, HV 22-92 dated February 1, 1993 and HV 23-92 dated December 7, 1992. In that case I reviewed the financial hardship to the applicant, and concluded (emphasis added):

There is no question that failure to grant the variance would create an "exceptional hardship" given Ms. Swank's conditions and these additional charges. The question is whether or not the need for the flood elevation and flood proofing variance was created by the applicants' decision to purchase property within the Flood Hazard District and to buy the manufactured home in advance of seeking the necessary variance.

This hardship standard differs from the most common forms of variance standards in two ways. First, it omits the commonly used prohibition against granting variances based on "self-created" hardships. Secondly, the hardship is described in terms of the circumstances of the applicant, rather than characteristics of the property itself.

While I am troubled by the idea of approving, in part, the siting of a manufactured home at an elevation 4.5 feet below the base flood level, I conclude the hardship standard has been met given the phrasing of the standard. However, a corollary of this interpretation of the ordinance is that this variance will remain valid only so long as the property is occupied by Lucy Swank.

Findings and Decision in HV 23-92, dated December 7, 1992 at page 7.

In this case, there is no showing of financial hardship to the developer as there was to the individual homeowner/applicant. The grounds for the hardship offered here would apply equally well to all new houses in the floodplain. If all houses qualified for a variance then the purpose of the flood plain protection provisions would be subverted.

For this reason, despite the more permissive (non-traditional) hardship standard in the County Code, I find that the reasons offered by the applicant are insufficient to justify a variance.

(c) MCC 11.15.6323(B)(3): The Variance Is The Minimum Necessary

MCC 11.15.6323(B)(3) provides:

(3) *The variance is the minimum necessary to afford relief.*

The applicant did not provide any information about the possibility of raising the foundation higher than was proposed, albeit less than the height necessary to avoid flooding the ground floor. The applicant has not carried its burden of proof with respect to this criterion.

(d) MCC 11.15.6323(B)(4): No Additional Threats To Public Safety, Public Nuisance, Fraud Or Conflicts With Existing Laws

MCC 11.15.6323(B)(4) provides:

- (4) The granting of the variance will not result in additional threats to public safety, extraordinary public expense, create nuisances, cause fraud or victimization of the public or conflict with existing local laws or ordinances.*

(i) Threats To Public Safety, Extraordinary Public Expense

The possible additional threats to public safety and sources of extraordinary expense are (1) displacement of floodwaters by the house, (2) possible damage caused by the house if it were to float free during a flood, (3) the public resources which would be expended to rescue residents of the dwelling in the event of a flood.

Floodwater displacement by this property will be negligible, provided the applicants satisfy MCC 11.15.6315(H), which requires hydrostatic equalization "by allowing for the entry and exit of floodwaters" for all parts of the house "subject to flooding."

The house should not float free provided the applicants satisfy MCC 11.15.6315(D), which requires the house to be "anchored to resist flotation."

(ii) Create a Nuisance

The house, with or without a flood plain variance, would not constitute a "nuisance" as that term is used in planning and tort law. This part of the standard has been satisfied.

(iii) Fraud and Victimization

With regard to the "fraud and victimization" element, in the 1992 Mercer/Swank variance I said:

Fraud and victimization of the public would occur if the approval of the variance would lead unwitting purchasers to acquire the property without knowledge of the risk of serious flood damage. In this case, this variance proceeding has left no doubt that all of the applicants are well aware that the

bottom of the house is resting 4.5 feet below the 100 year flood level. In addition, adjoining property owners who signed a petition supporting a variance to the flood elevation requirement are also aware that the property lies within the flood fringe. Finally, by making the variance personal to the applicant, subsequent purchasers will be put on notice of the circumstances of the property.

The circumstances in this case are quite different; since the applicant is not the prospective resident, there may well be unwitting purchasers who could acquire the house without being aware that it was located within the flood plain.

During the hearing, Mr. John Mahaffey of Georgetown Realty referred to a new statute which would require this disclosure of the fact the property was within the flood plain. He was unable to provide a citation to the Oregon Revised Statutes at the hearing. My review of the statutes revealed ORS 104.465. "Seller's Property Disclosure And Disclaimer Statements." ORS 104.465(2)(b) specifies the contents, ("in substantially the following form") of the seller's disclosure statement. This includes, under section 8, "General": "D. To your knowledge, is the property in a designated flood plain?"

However, ORS 105.470(1) excludes "[t]he first sale of a dwelling never occupied" from the disclosure requirements in ORS 105.465.

After the hearing, Mr. Mahaffey sent the County an undated letter, which stated.

Enclosed is a disclosure form which we will fill out when we sell the homes on S.E. Liebe. We would be happy to accept a directive that the buyers are to receive this form concerning the 100 year flood plain.

Unfortunately, no disclosure form appears in the file. Even if one did, the County has no means of monitoring or enforcing such a disclosure requirement.

Based on this record, I am unable to conclude that fraud or perhaps unwitting victimization would not occur in the event a purchaser acquired the property without knowledge of the location in the flood plain and there lives or property were damaged in a flood.

(iv) Conflicts With Existing Local Laws Or Ordinances

The local laws and ordinances governing this application are expressed in the County Code and Plan. Given a finding that they have been satisfied, there is no "conflict with existing local laws or ordinances."

(e) Conclusion With Respect To Variance From The Flood Elevation Requirement

I conclude that the applicant has satisfied the variance standards in MCC 11.15.6323(B)(1) and not satisfied the standards in MCC 11.15.6323(B)(2), (3) and (4), as applied to its request for a variance from the flood elevation requirement in MCC 11.15.6315(B).

(3) Variance From The Flood-Proofing Requirements In MCC 11.15.6315(F)

As quoted above, MCC 11.15.6315(F) requires that in "all new construction:"

the electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

Subsections (2), (3) and (4) of the variance standard are not satisfied for the reasons given previously with respect to the variance for the flood elevation variance.

D. Applicable Sections Of The County Comprehensive Plan

1. Policy 14; Development Limitations

Comprehensive Plan Policy 14 is to

DIRECT DEVELOPMENT AND LAND FORM ALTERATIONS AWAY FROM AREAS WITH DEVELOPMENT LIMITATION EXCEPT UPON A SHOWING THAT DESIGN AND CONSTRUCTION TECHNIQUES CAN MITIGATE ANY PUBLIC HARM OR ASSOCIATED PUBLIC COST, AND MITIGATE ANY ADVERSE EFFECTS TO SURROUNDING PERSONS OR PROPERTIES. DEVELOPMENT LIMITATIONS AREAS ARE THOSE WHICH HAVE ANY OF THE FOLLOWING CHARACTERISTICS:

* * * * *

C. LAND WITHIN THE 100 YEAR FLOOD PLAIN

Multnomah Comprehensive Framework Plan at page 58.

Under the terms of Policy 14 and the implementation strategies, see Multnomah Comprehensive Framework Plan at 59, I find this policy has been implemented by the Flood Hazard District and has no independent application to this action.

2. Policies 37 And 38, In General

Both policy 37, "Utilities" and Policy 38, "Facilities" are prefaced begin with the statement: "The county's policy is to require a finding prior to approval of a legislative or quasi-judicial action that * * * ." "Action" is defined in MCC 11.15.8205 as a

*a proceeding in which the legal rights, duties or privileges of specific parties are determined only after hearing in which such parties are entitled to appear and be heard, including requests for: * * **

(D) Variances, except as otherwise provided herein;

** * * **

(F) Other requests for permits and other contested cases determining permissible uses of specific property.

Because this is a proceeding on an application for a variance, I find that it is an "action" and that consequently both of these policies apply.

As noted above, satisfaction of standards not addressed by the applicant to date, could be determined by the Planning Director before, or in conjunction with, either an appeal or the issuance of a building permit. Because compliance with Policies 37 and 38 may require the exercise of judgment as to facts and interpretation of the policies, notice of this subsequent decision and an opportunity for a hearing should be provided. ORS 197.763(2), 215.416, *Rhyne et al vs. Multnomah County, Swan & Trotter*, __ Or LUBA __ (1992.)

3. Plan Policy 37: "Utilities"

Multnomah County Plan Policy 37, "Utilities" provides:

POLICY 37

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 ON THE SITE; OR*
- D. *THERE IS AN ADEQUATE PRIVATE WATER SYSTEM, AND A PUBLIC SEWER WITH ADEQUATE CAPACITY.*

Multnomah County Comprehensive Framework Plan; Volume 2: Policies (September 1983)
at 167.

As noted previously, the applicant would connect the proposed house to the City of Portland's sewer system. The signed Portland Fire District review establishes the existence of a hydrant 70' from the residence with adequate water pressure nearby. From this I conclude the house would also be served by City water. This evidence is sufficient to carry the applicants' burden of proof with respect to this portion of Policy 37.

The remainder of Policy 37 provides:

DRAINAGE

- E. *THERE IS ADEQUATE CAPACITY IN THE STORM WATER SYSTEM TO HANDLE THE RUN-OFF; OR*
- F. *THE WATER RUN-OFF CAN BE HANDLED ON THE SITE OR ADEQUATE PROVISIONS CAN BE MADE; AND*
- G. *THE RUN-OFF FROM THE SITE WILL NOT ADVERSELY AFFECT THE WATER QUALITY IN ADJACENT STREAMS, PONDS, LAKES OR ALTER THE DRAINAGE ON ADJOINING LANDS.*

ENERGY AND COMMUNICATIONS

- H. *THERE IS AN ADEQUATE ENERGY SUPPLY TO HANDLE THE NEEDS OF THE PROPOSAL AND THE DEVELOPMENT LEVEL PROJECTED BY THE PLAN; AND*
- I. *COMMUNICATIONS FACILITIES ARE AVAILABLE*

FURTHERMORE, THE COUNTY'S POLICY IS TO CONTINUE COOPERATION WITH THE DEPARTMENT OF ENVIRONMENTAL QUALITY, FOR THE DEVELOPMENT AND IMPLEMENTATION OF A GROUNDWATER QUALITY PLAN TO MEET THE NEEDS OF THE COUNTY.

Multnomah County Comprehensive Framework Plan; Volume 2: Policies (September 1983)
at 168.

There is no evidence in the record concerning energy and communications facilities, subsections E, F, G, H and I, although the location of the property within the urbanized portion of the County suggests these facilities are readily available.

The failure to address these standards is grounds for denial. However, the applicant might be able to address them in the event of a *de novo* appeal of this decision.

The concluding paragraph of Policy 37 is inapplicable to this quasijudicial proceeding.

4. **Plan Policy 38: "Facilities"**

Multnomah County Plan Policy 38, "Facilities" provides:

POLICY 38

THE COUNTY'S POLICY IS TO REQUIRE A FINDING PRIOR TO APPROVAL OF A LEGISLATIVE OR QUASI-JUDICIAL ACTION THAT:

SCHOOL

- A. *THE APPROPRIATE SCHOOL DISTRICT HAS HAD AN OPPORTUNITY TO REVIEW AND COMMENT ON THE PROPOSAL.*

FIRE PROTECTION

- B. *THERE IS ADEQUATE WATER PRESSURE AND FLOW FOR FIRE FIGHTING PURPOSES; AND*
- C. *THE APPROPRIATE FIRE DISTRICT HAS HAD AN OPPORTUNITY TO REVIEW AND COMMENTS [sic] 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.

Multnomah County Comprehensive Framework Plan; Volume 2: Policies (September 1983)
at 169-170.

The David Douglas School District returned the "School District Review" form, with the signature of the Dr. Ron Russell, Assistant Superintendent, dated February 8, 1994. (The "no comment" box was checked.) This satisfies the requirement in subsection A of policy 38 that the school district has "an opportunity to review and comment on the proposal."

The completed Portland Fire District Review form, signed by Don Patty (undated), Plans Review provides sufficient evidence satisfying subsection B, ("there is adequate water pressure and flow for fire fighting purposes") and C (the fire district "had an opportunity to review and comment on the proposal.")

Lt. Bill Goss, of the Multnomah County Sheriff's Office returned the "Police Services Review" form, dated February 8, 1994, indicating there would be an "adequate" level of service "available to serve the proposed project."

The applicant has satisfied Policy 38.

E. State Statutes, Goals And Administrative Rules Applicable To The Decision

The provisions of state law governing county quasijudicial decisions, found in ORS 197.763 and 215.416 apply to this proceeding. They have been fulfilled through the notice of, and conduct of, the hearing on this matter.

No other provisions in ORS Chapters 197 and 215 are applicable.

No statewide planning goals and no Oregon Administrative Rules interpreting those goals apply to this quasijudicial permitting proceeding.

VI. CONCLUSIONS AND ORDER

A. Standards Which The Applicant Has Not Satisfied

I find that the evidence and argument offered by the applicant is insufficient to satisfy the "hardship" standard in MCC 11.15.6323(B)(2) and the "minimum variance necessary" standard in MCC 11.15.6323(B)(3), with respect to the applicant's request for a variance to the flood elevation standards and its implied request for a variance to the flood-proofing

requirements of MCC 11.15.6315(F).

I also find that the applicant failed to satisfy the "fraud" and "victimization" provisions in MCC 11.15.6323(B)(4), as to the flood elevation variance to MCC 11.15.6315(B) and the flood-proofing variance to MCC 11.15.6315(F).

These are grounds for denial.

B. Standards Which The Applicant Failed To Address

The applicant did not offer evidence addressing compliance with several provisions in the County Code and some of the applicable Plan policies. These standards and policies are:

MCC 11.15.6315(G)
MCC 11.15.6315(H)
Plan Policy 37 §§(E) through (I)
Comprehensive Framework Plan Policy 37, Sections E through I.

The applicant's failure to carry its burden of proof for these standards, is grounds for denial.

C. Standards Which The Applicant Has Satisfied

The applicant has satisfied the following applicable sections of the County Code and County Plan:

MCC 11.15.6323(B)(1), as to flood elevation variance to MCC 11.15.6315(B)
MCC 11.15.6323(B)(1), as to flood-proofing variance to MCC 11.15.6315(F)
MCC 11.15.6323(B)(4), in part, as to flood elevation variance to MCC 11.15.6315(B)
MCC 11.15.6323(B)(4), in part, as to flood-proofing variance to MCC 11.15.6315(F)
Comprehensive Framework Plan Policy 14
Comprehensive Framework Plan Policy 37, Subsections A through D
Comprehensive Framework Plan Policy 38

D. Standards Which Are Inapplicable

Although the following standards appear in otherwise relevant code sections, I found them inapplicable to this application or this proceeding:

MCC 11.15.6315(A),(B),(C),(D),(E),(I)
MCC 11.15.6323(A),(C),(E)

ORDER

For the foregoing reasons, the application is denied.

1 March 1994
Date

Robert L. Liberty
Robert L. Liberty, Hearings Officer

Signed by the Hearings Officer:	March 1, 1994
Decision Mailed to Parties:	March 21, 1994
Decision Submitted to Board Clerk:	March 21, 1994
Lay day to Appeal Decision:	4:30 p.m., April 1, 1994
Reported to Board of County Commissioners:	1:30 p.m., April 12, 1994

Appeal to the Board of County Commissioners

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. Instructions and forms are available at the County Planning and Development Office at 2115 SE Morrison Street, Portland.

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 248-3043.

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

In the Matter of Reversing the Decision)
of the Hearings Officer and Approving a)
Variance to the Finished Floor Elevation for)
a Single Family Residence on Property)
Located at 11950 SE Liebe Street)

FD 3-94 FINAL ORDER
94-107

The Hearings Officer held a public hearing and received testimony on the requested variance on February 16, 1994. The Hearings Officer announced at the hearing that his decision was to deny the request. That decision was rendered to writing and signed on March 1, 1994. A Notice of Review was filed by the applicant's representative on April 1, 1994 and reported to the Board on April 12, 1994. The Board set a date of May 10, 1994 to hear the appeal de novo. The hearing of May 10, 1994 was opened, but continued to May 24, 1994 due to lack of notification of the applicant's representative. At the hearing of May 24, 1994, the Board received testimony from Robert Liberty, the Hearings Officer, and Greg Frank, attorney for the appellant, and two neighbors. Based on that testimony, the Board acted to reverse the Hearings Officer decision and conditionally approve the requested variance to the finished floor elevation. That decision is based on the following findings and conclusions.

I. INTRODUCTION; NATURE OF THE REQUEST

This application is to construct a single family dwelling on a lot within the Flood Hazard District. Applicant requests a variance from the requirements in Multnomah County Code (MCC) 11.15.6315. MCC § .6315(B) requires that the floor of new houses in the Flood Hazard District be "*at least one foot above the base flood level.*" The ground elevation of this property is 205 feet and the base flood elevation in the surrounding area is 211 feet. Consequently, if constructed without a variance, the finished floor of the new dwelling would need to be seven feet above existing ground level.

II. BURDEN OF PROOF

The burden of proof is upon the applicant. MCC 11.15.8230(D)

**III. Review of the Standards, Analysis of Evidence, Findings of Fact and
CONCLUSIONS OF LAW**

**A. MCC CHAPTER 11.15.6301 *ET. SEQ.*: APPLICABILITY OF THE FLOOD HAZARD DISTRICT
REQUIREMENTS IN GENERAL**

MCC Chapter 11.15.6301 *et. seq.*, "Flood Hazard District," is applicable, because the area is

within a flood fringe area mapped on Flood Insurance Rate Map; Community Panel Number 410179 0381 B, revised 18 March 1986. The property is not within a floodway.

The sections of the Flood Hazard Chapter containing standards applicable to this decision are MCC 11.15.6315, "Development Standards" and MCC 11.15.6323, "Variances." As noted below, some subsections of those provisions are inapplicable.

B. MCC 11.15.6315: FLOOD HAZARD DEVELOPMENT STANDARDS

(1) MCC 11.15.6315(A): State Building Code Compliance

MCC 11.15.6315(A) requires "all new construction and substantial improvement shall be constructed in conformance with Oregon State Building Codes." Compliance with this standard will be determined by the Planning Director in conjunction with the issuance of a building permit.

The County has an intergovernmental agreement by which it relies on certification by the City of Portland as to the satisfaction of the State Building Code.

(2) MCC 11.15.6315(B): Flood Elevation Requirement

MCC 11.15.6315(B) provides, in part:

*New construction and substantial improvement of any residential structure, including manufactured homes, shall have the lowest floor, including basement, elevated to at least one foot above the base flood level. * * * **

The proposed dwelling cannot satisfy subsection MCC 11.15.6315(B), the flood plain elevation requirement. The applicant is seeking a variance from this requirement, discussed below.

(3) MCC 11.15.6315(C): Floodproofing Of Nonresidential Structures

MCC 11.15.6315(C) (floodproofing of structures) is inapplicable because it applies only to "new construction and substantial improvement of any commercial, industrial or other non-residential structure * * * ." This is an application for approval of the construction of a residential structure.

(4) MCC 11.15.6315(D): Foundation and Anchoring

MCC 11.15.6315(D) is inapplicable because it applies only to manufactured homes.

(5) MCC 11.15.6315(E): Foundations And Drainage In Mobile Home Parks And Subdivisions

MCC 11.15.6315(E) is inapplicable because it applies only to manufactured homes.

(6) MCC 11.15.6315(F): Prevention Of Infiltration Of Water Into Household Utility Systems

MCC 11.15.6315(F) requires that in "all new construction:"

the electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

Determination of compliance with this standard is deferred to the building permit approval stage. The Planning Director shall provide notice and an opportunity to appeal that determination of compliance to all those entitled to notice under MCC 11.15.8220.

(7) MCC 11.15.6315(G): Standards For Sewage Disposal Systems

MCC 11.15.6315(G) requires new and replacement water and sewer disposal systems to be designed to:

(1) Minimize infiltration of flood waters into the system;

(2) Minimize discharge from systems into flood waters;

(3) Avoid impairment or contamination during flooding.

Determination of compliance with this standard is deferred to the building permit approval stage. The Planning Director shall provide notice and an opportunity to appeal that determination of compliance to those entitled to notice under MCC 11.15.8220.

(8) MCC 11.15.6315(H): Certification Of Hydrostatic Equalization

MCC 11.15.6315(H) requires that the portions of the dwelling "below the lowest floor that are subject to flooding [will] automatically equalize the hydrostatic flood forces * * * ." Compliance with this standard will be determined by the Planning Director in conjunction with the issuance of a building permit.

Determination of compliance with this standard is deferred to the building permit approval stage. The Planning Director shall provide notice and an opportunity to appeal that determination of compliance to those entitled to notice under MCC 11.15.8220.

(9) MCC 11.15.6315(I): Exemptions For Land Above Flood Level

MCC 11.15.6315(I) is inapplicable because it authorizes exemptions from the requirements of MCC 11.15.6315 when a surveyor demonstrates the land is 1 foot or more above base flood level. The applicants and staff concur that the property is 6 feet below base flood level.

(10) MCC 11.15.6315(J): Exemption For Historic Structures

MCC 11.15.6315(J) is inapplicable because it authorizes an exemption from MCC 11.15.6315 for the reconstruction, rehabilitation or restoration of "structures listed on the National Register of Historic Place or the State Historic Site Inventory." There is no structure on the site and thus it cannot be on the Historic Site registry or Historic Site Inventory.

C. MCC 11.15.6323: VARIANCE STANDARDS

(1) The Applicable Portions Of The Variance Provisions

As noted above, the applicant is seeking a variance from the flood elevation requirements of MCC 11.15.6315(B).

There are three sections to the variance provisions found at MCC 11.15.6323. The first section 7(A), is introductory and the third section, (C), applies to "non-residential structures." Neither section contains standards which apply to this variance.

The variance standards are set out in the five subsections of MCC 11.15.6323(B). The fifth subsection applies only to structures in "an area identified as the floodway". As found above, the variance is for property in the flood fringe, not the floodway.

(2) Variance From Flood Elevation Requirements In MCC 11.15.6315(B)

(a) MCC 11.15.6323(B)(1): Lot Size And Surrounding Development

MCC 11.15.6323(B)(1) provides:

(1) The site of the proposed variance is a lot of one-half acre or less in size and is surrounded by and contiguous to lots with existing structures constructed below the base flood level.

According to the plot plan map, Parcel #1 is a four-sided parcel, with lot line dimensions of 60 feet on the front, 124.07 feet on the west side, 123.82 feet on the east side, and a rear lot line 60.1 feet in length. The parcel is approximately 7,432 square feet, and is thus less than 0.5 acre (21,780 square feet).

The Board finds that the surrounding area of SE Liebe and Raymond Streets consists entirely of existing residences that have been constructed on normal foundations of one or two feet. Foundation heights range from virtually none to a maximum of 30 inches.

(b) MCC 11.15.6323(B)(2): Exceptional Hardship to the Applicant

MCC 11.15.6323(B)(2) provides:

(2) Failure to grant the variance will result in exceptional hardship to the applicant;

The Board finds that denial of the flood elevation requirement would pose both a financial and market hardship. The Board is convinced by the applicant's statement that the cost of a normal 30 inch foundation is \$2,500, while the foundation wall necessary to raise the finished floor above the base flood elevation would be \$15,000. That increased expense would result in a sale price 12 percent greater than the market demand in the surrounding area. Secondly, a residence with a first floor elevation seven or eight feet above that of surrounding dwellings would be difficult to sell.

(c) MCC 11.15.6323(B)(3): Variance Is Minimum Necessary

MCC 11.15.6323(B)(3) provides:

(3) The variance is the minimum necessary to afford relief.

The applicant proposes a 30 inch foundation wall. That foundation height would be greater than that of the majority of the existing residences in the surrounding area while still allowing a foundation with a conventional appearance.

(d) MCC 11.15.6323(B)(4): No Additional Threats To Public Safety, Public Nuisance, Fraud Or Conflicts With Existing Laws

MCC 11.15.6323(B)(4) provides:

(4) The granting of the variance will not result in additional threats to public safety, extraordinary public expense, create nuisances, cause fraud or victimization of the public or conflict with existing local laws or ordinances.

The possible additional threats to public safety and sources of extraordinary expense are (1) displacement of floodwaters by the house, (2) possible damage caused by the house if it were to float free during a flood, (3) the public resources which would be expended to rescue residents of the dwelling in the event of a flood.

Floodwater displacement by this property will be negligible, provided the applicants satisfy MCC 11.15.6315(H), which requires hydrostatic equalization "by allowing for the entry and exit of floodwaters" for all parts of the house "subject to flooding."

The house should not float free provided the applicants satisfy MCC 11.15.6315(A), which requires compliance with the Uniform Building Code

Fraud and victimization of the public would occur if the approval of the variance would lead unwitting purchasers to acquire the property without knowledge of the risk of serious flood damage. However, the risk can be eliminated by a condition requiring recordation of a notice that floors can be constructed below flood level.

The local laws and ordinances governing this application are expressed in the County Code and Plan. Given a finding that they have been satisfied, there is no "conflict with existing local laws or ordinances."

(e) Conclusion With Respect To Variance From The Flood Elevation Requirement

The applicant has, or can through conditions, satisfied the variance standards in MCC 11.15.6323(B)(1) through (4) as applied to the request for a variance from the flood elevation requirement in MCC 11.15.6315(B).

D. APPLICABLE SECTIONS OF THE COUNTY COMPREHENSIVE PLAN

1. Policy 14; Development Limitations

Comprehensive Plan Policy 14 is to

DIRECT DEVELOPMENT AND LAND FORM ALTERATIONS AWAY FROM AREAS WITH DEVELOPMENT LIMITATION EXCEPT UPON A SHOWING THAT DESIGN AND CONSTRUCTION TECHNIQUES CAN MITIGATE ANY PUBLIC HARM OR ASSOCIATED PUBLIC COST, AND MITIGATE ANY ADVERSE EFFECTS TO SURROUNDING PERSONS OR PROPERTIES. DEVELOPMENT LIMITATIONS AREAS ARE THOSE WHICH WILL HAVE ANY OF THE FOLLOWING CHARACTERISTICS:

* * * *

C. LAND WITHIN THE 100 YEAR FLOOD PLAIN

Multnomah Comprehensive Framework Plan at page 58.

Under the terms of Policy 14 and the implementation strategies, see Multnomah Comprehensive Framework Plan at 59, the Board finds this policy has been implemented by the Flood Hazard District and has no independent application to this action.

2. Policies 37 And 38, In General

Both policy 37, "Utilities" and Policy 38, "Facilities" are prefaced with the statement:

"The county's policy is to require a finding prior to approval of a legislative or quasi-judicial action that * * * ." "Action" is defined in MCC 11.15.8205 as:

a proceeding in which the legal rights, duties or privileges of specific parties are determined only after hearing in which such parties are entitled to appear and be heard, including requests for:

* * *

(D) Variances, except as otherwise provided herein;

* * *

(F) Other requests for permits and other contested cases determining permissible uses of specific property.

Board finds that this proceeding is an "action" and that consequently both of these policies apply.

3. Plan Policy 37: "Utilities"

Multnomah County 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 ON THE SITE; OR

D. THERE IS AN ADEQUATE PRIVATE WATER SYSTEM, AND A PUBLIC SEWER WITH ADEQUATE CAPACITY.

Multnomah County Comprehensive Framework Plan: Volume 2: Policies (September 1983) at 167.

On a form completed 14 October 1993, Martha Piper of the Mid-County Sewer Project

confirmed that public sewer is available to the site.

On a form completed 13 October 1993, the Powell Valley Road Water District confirmed that it "is prepared to furnish potable water" in conformance with state rules.

This evidence is sufficient to carry the applicants' burden of proof with respect to this portion of Policy 37.

The remainder of Policy 37 provides:

DRAINAGE

E. THERE IS ADEQUATE CAPACITY IN THE STORM WATER SYSTEM TO HANDLE THE RUN-OFF; OR

F. THE WATER RUN-OFF CAN BE HANDLED ON THE SITE OR ADEQUATE PROVISIONS CAN BE MADE; AND

G. THE RUN-OFF FROM THE SITE WILL NOT ADVERSELY AFFECT THE WATER QUALITY IN ADJACENT STREAMS, PONDS, LAKES OR ALTER THE DRAINAGE ON ADJOINING LANDS.

ENERGY AND COMMUNICATIONS

H. THERE IS AN ADEQUATE ENERGY SUPPLY TO HANDLE THE NEEDS OF THE PROPOSAL AND THE DEVELOPMENT LEVEL PROJECTED BY THE PLAN; AND

I. COMMUNICATION FACILITIES ARE AVAILABLE. FURTHERMORE, THE COUNTY'S POLICY IS TO CONTINUE COOPERATION WITH THE DEPARTMENT OF ENVIRONMENTAL QUALITY, FOR THE DEVELOPMENT AND IMPLEMENTATION OF A GROUND WATER QUALITY PLAN TO MEET THE NEEDS OF THE COUNTY.

Multnomah County Comprehensive Framework Plan; Volume 2: Policies (September 1983) at 168.

There is no storm water system in this area. The Engineering Section requires that all storm water be disposed of on-site and not run onto adjacent properties or into the public right-of-way. There are no water bodies or drainage systems on adjacent properties; consequently, there will be no adverse affect. The property is within a developed urban area where all energy and communication systems are available within the public right-of-way of S.E. Liebe Street.

The concluding paragraph of Policy 37 is inapplicable.

4. Plan Policy 38: "Facilities"

Multnomah County Plan Policy 38, "Facilities" provides:

*THE COUNTY'S POLICY IS TO REQUIRE A FINDING PRIOR TO APPROVAL
A LEGISLATIVE OR QUASI-JUDICIAL ACTION THAT:*

SCHOOL

- A. *THE APPROPRIATE SCHOOL DISTRICT HAS HAD AN OPPORTUNITY
TO REVIEW AND COMMENT ON THE PROPOSAL.*

FIRE PROTECTION

- B. *THERE IS ADEQUATE WATER PRESSURE AND FLOW FOR FIRE
FIGHTING PURPOSES; AND*
- C. *THE APPROPRIATE FIRE DISTRICT HAS HAD AN OPPORTUNITY TO
REVIEW AND COMMENTS [sic] ON THE PROPOSAL.*

POLICE PROTECTION

- D. *THE PROPOSAL CAN RECEIVE ADEQUATE LOCAL POLICE PROTEC-
TION IN ACCORDANCE WITH THE STANDARDS OF THE JURISDIC-
TION PROVIDING POLICE PROTECTION.*

Multnomah County Comprehensive Framework Plan; Volume 2: Policies (September 1983) at 169-170.

On a form completed 02 February 1994, David Douglas School District indicated that they had no comment on this proposal.

On a form completed 15 February 1994, the Portland Fire Bureau confirmed that there is adequate available water for fire fighting purposes.

On a form completed 15 February 1994, the Multnomah County Sheriff confirmed that there is adequate police service in this area.

This evidence is sufficient to carry the applicants' burden of proof with respect to this portion of Policy 37.

IV. CONCLUSION

The applicant has carried the burden necessary for the granting of a variance to the finished floor elevation requirements of MCC 11.15.6315(B).

V. CONDITION

Determination of compliance with MCC 11.15.6315(F)–(H) is deferred to the building permit approval stage. The Planning Director shall provide notice and an opportunity to appeal those determinations of compliance to those persons entitled to notice under MCC 11.15. 8220(C).

Before construction, the record owner shall record in the Multnomah County Deed Records, a statement in the following form:

“The property described below has received a variance from certain Flood Hazard provisions in the Multnomah County Land Use Ordinance on June 9, 1994, in proceeding No. FD 3–94. The variance allows construction of floors below the base flood elevation as determined by the Federal Emergency Management Agency. The property subject to the variance is described as ...”

Approved this 9th day of June, 1994.

MULTNOMAH COUNTY, OREGON



By Beverly Stein
Beverly Stein
Multnomah County Chair

REVIEWED
LAURENCE KRESSEL, COUNTY COUNSEL
for MULTNOMAH COUNTY, OREGON

By John L. DuBay
John L. DuBay