

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

ORDER NO. 09-012

Order Affirming In Part and Reversing In Part the Decision of the Hearings Officer Relating to Marina and Marina-Related Uses of Property Located at 12950 NW Marina Way, Multnomah County, Oregon

The Multnomah County Board of Commissioners Finds:

- a. Applicant, Mr. Mark Hess, on behalf of owner Daniel Gulbrandson, is requesting a Conditional Use permit, Community Service permit, an Adjustment permit, Willamette River Greenway permit, and a Design Review permit for a 45-boat marina (20 in-water boat slips and 25 boat spaces on-land) with accessory marine-related construction and repair, and one floating residence. The proposal includes: 1 floating home slip, 2 houseboat parking spaces, 30 automobile parking stalls, a boat ramp and lift, log salvage yard, and construction and repair activities related to the marina and moorage.
- b. In accordance with MCC 37.0510 *et seq.*, the application was processed as and subject to the procedures for a Type III land use decision.
- c. This matter was heard by Liz Fancher, Multnomah County Hearings Officer, on Friday, October 17, 2008, at 1:00 p.m. in Room 103 at the Land Use Planning Division, 1600 SE 190th Avenue, Portland, OR 97233.
- d. Multnomah County Land Use Planning staff prepared a staff report with findings recommending the Hearings Officer approve all permits sought by the applicant.
- e. After reviewing the record, the Hearings Officer issued a Decision denying all permits on December 8, 2008.
- f. As reflected in the Decision, determination of the boundary of the 100-year floodplain on the subject property is critical to approval of the Conditional Use and Community Service permits.
- g. The survey map submitted by the applicant and set forth in exhibit A.25 properly establishes the boundary of the 100-year floodplain on the subject property. Exhibit A.25 derives from the more general Federal Emergency Management Agency's (FEMA) Flood Rate Insurance Map (FIRM) panel 135 of 550 (Community Panel Number 4101790135 B, March 18, 1986), which is FEMA's map for unincorporated Multnomah County covering the subject property (exhibit

A.10). This FIRM is part of the set of maps produced by FEMA for use in the National Flood Insurance Program in which the County participates. Exhibit A.25 is a site specific survey indicating the location of the 100-year floodplain on the subject property.

- h. The 100-year floodplain boundary established by the applicant covers less than half of the upland portions of the subject property whereas the boundary determined by the Hearings Officer covered almost all of the property. The Hearings Officer relied on 2004 maps developed by FEMA for incorporated, rather than unincorporated, portions of Multnomah County (exhibit J.6). These maps use a datum (i.e. starting point) for measuring elevation that is different from the maps submitted by the applicant, which are based upon the 1986 FIRM. This difference renders the differing map sets incomparable. In the alternative, the Hearings Officer found that the applicant's survey was inconsistent with the 1986 FIRM map that similarly shows more of the property inside the floodplain than the applicant's survey. Firm maps show the general location of the floodplain. They are not survey accurate. The applicant's site specific survey, which is based upon the FIRM, best indicates the location of flood boundary on the property. Accordingly, the Decision by the Hearings Officer relying on a different location of the 100-year floodplain boundary than that established by the applicant requires revision.
- i. Pursuant to MCC 37.0640 (B)(1), Karen Schilling, Director of the Multnomah County Division of Transportation and Land Use Planning, timely appealed the Hearings Officer's Decision on December 15, 2008.
- j. With respect to the application for a Conditional Use permit:
 - i. Exhibits A.22 and A.25 show the location of the 100-year floodplain, topography of the site, the project site plan, and establish that the lot may be large enough to meet the needs of the proposed use for purposes of MCC 34.2875 (A) and (B), and MCC 34.6315(A)(2) (site size needs of the proposed use, impact to nearby properties, and impact to natural resources). Site and building plan deficiencies identified by the Hearings Officer can be corrected with new Willamette River Greenway and Design Review permits and through those permits the applicant will have an opportunity to demonstrate that the full density can be achieved on the property. Any concern over the satisfaction of the above criterion is resolved by requiring these permits, along with Grading and Erosion Control and Flood Development permits as a condition of approval. Accordingly, the criteria set forth in MCC 34.2875 (A) and (B), MCC 34.6315(A)(2) have been met.
 - ii. Service provider forms (Exhibit A.13) have been reviewed and submitted for water service (Burlington Water District), on-site sewage disposal system, and fire flow and access demonstrating that services are available that will

not require public services other than those existing or programmed for the area for purposes of MCC 34.6315 (A)(4) and related Comprehensive Framework Plan Policies 2 and 37. Given our findings in paragraphs g–h above, any remaining concern over the satisfaction of the criterion in MCC 34.6315 (A)(4) is resolved by requiring Grading and erosion Control and Flood Development permits as a condition of approval. Accordingly, the criterion set forth in MCC 34.6315 (A)(4) and associated plan policies has been met.

- iii. Given our findings in paragraphs g–h above, any concern over the satisfaction of the criterion in MCC 34.6315(A)(6) (project will not create hazardous conditions) and related Comprehensive Plan Policy 14 is resolved by requiring Grading and Erosion Control and Flood Development permits as a condition of approval. Accordingly, the criterion set forth in MCC 34.6315(A)(6) and Policy 14 has been met.
- k. With respect to the application for a Community Service permit:
 - i. Our findings in paragraph j.ii above apply equally to the criterion set forth in MCC 34.6010 (D) (project will not require public services other than those existing or programmed for the area) for Community Service permits. Accordingly, the criterion set forth in MCC 34.6010 (D) has been met.
 - ii. Given our findings in paragraphs g–h above, any concern over the satisfaction of the criterion in MCC 34.6010 (F) (project will not create hazardous conditions) is resolved by requiring Grading and Erosion Control and Flood Development permits as conditions of approval. Accordingly, the criterion set forth in MCC 34.6010 (F) has been met.
- l. With respect to the application for an Adjustment permit, staff findings pertaining to MCC 34.7611 (A) and (B) are adopted as set forth in the staff report, along with a modified version of staff condition of approval #8. In relevant part, the purpose of the setback standards sought to be adjusted is to provide separation between properties for privacy. As conditioned, the proposed adjustment will preserve privacy through placement of a 5-foot wide landscape strip planted along the north, south and west property lines which will screen and buffer the development. Accordingly, the criteria set forth in MCC 34.7611 (A) and (B) have been met.
- m. Phasing of this approval and the Voluntary Compliance Agreement entered between Mr. Gulbrandson and the County adequately addresses Hearings Officer concerns about the number of violations and timing of corrective actions. The County has verified the removal of most of the scrap material stored on the property and Mr. Gulbrandson will be removing the burned out floating home. Compliance issues related to the in-water structures (i.e. piers, slips, and

walkways) and the pole barn will be addressed with the marina work, as outlined in the phasing plan.

- n. Placing a houseboat on this property is not inconsistent with Comprehensive Plan Policy 13, which seeks to minimize conflicts between noise sensitive and noise generating uses. Marine repair and related uses are commonly found along the Channel, so the related noise is typical to the area. Most noise generating activities will occur in upland areas; whereas the houseboat will be located on the water. This satisfies the policy objective of locating the residence on the portion of the site where noise levels will be minimized.

The Multnomah County Board of Commissioners Orders:

- 1. The Conditional Use, Community Service, and Adjustment permits are approved subject to the following conditions:
 - a. Approval of this Permit is based on the submitted written narrative(s) and plan(s). No work shall occur under this permit other than that which is specified within these documents or within subsequent land use permits. It shall be the responsibility of the property owner to comply with these documents and the limitations of approval described herein.
 - b. Prior to land use sign off of any building permits, a Willamette River Greenway, Design Review, Flood Development and Grading and Erosion Control permits must be applied for and approved.
 - c. A 5-foot landscaping strip shall be planted along the north, south, and west property lines to further screen the pole building from view. Planting details shall be provided with the Willamette River Greenway and Design Review permits. Required landscaping shall be continuously maintained.
 - d. All proposed development shall occur as described in the below Phasing Plan, and all necessary building permits shall be obtained by November 1, 2013.

Year One	Structural/Code Evaluation of pole barn/warehouse
11/01/2009	Remove crane equipment near gangway
	Obtain DSL lease renewal and amendment per plan

Year Two	Remove encroaching portion of pole barn/warehouse
11/01/2010	Install driveway approaches and logs per ODOT permit
	Reconfigure in-water walkways, covered slips per plan
	Install planter islands, landscaping, and parking spaces

Year Three	Remodel pole barn for accessory marina use
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11/01/2011 Install bathroom and new drain field per plan

Year Four Install finger piers and Boat Lift system
11/01/2012

Year Five Construct floating home per plan
11/01/2013

- e. Portions of the pole barn that encroach more than 40% into the required setback shall be removed and completed by year two of the phasing plan (by 11/01/2010). The applicant shall submit building plans for review and approval to the county, and applicable building permits shall be successfully obtained for use of the pole barn as accessory to the marina.
- f. All applicable Federal, State and Local permits shall be obtained as applicable to the project.

2. Except as revised by this Order and the foregoing findings, the Hearing's Officer's Decision is otherwise affirmed.

ADOPTED this 22nd day of January, 2009.



BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON


Ted Wheeler, Chair

REVIEWED:

AGNES SOWLE, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY, OREGON

By 
Sandra N. Duffy, Assistant County Attorney

SUBMITTED BY:

Sandra N. Duffy, Assistant County Attorney

100:FEAR FLOOD AREA

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