

ANNOTATED MINUTES

Tuesday, August 6, 1991 - 9:30 AM
Multnomah County Courthouse, Room 602

PLANNING ITEM

- P-1 CU 6-91 Request for Board Reconsideration of the Scope of Review for the August 13, 1991 Board Hearing in the Matter of an Appeal of the Decision to APPROVE, SUBJECT TO CONDITIONS, a Requested Conditional Use Permit for a Commercial Activity that is in Conjunction with Farm Uses in the EFU Zoning District, for Property Located at 9833 NW CORNELIUS PASS ROAD

APPELLANT ALLOWED 15 MINUTES FOR NEW TESTIMONY ON SCOPE OF FARM USE AND IMPACTS; TIME LIMIT OF 45 MINUTES PER SIDE; TOTAL TIME OF HEARING TO BE 1-1/2 HOURS.

Tuesday, August 6, 1991 - 9:35 AM
Multnomah County Courthouse, Room 602

REGULAR MEETING

NON-DEPARTMENTAL

- R-1 PROCLAMATION in the Matter of Honoring Dr. Hideo Hashimoto for his Contribution to the National and Local Peace Movement on the Occasion of the 46th Anniversary of the Bombing of Hiroshima

PROCLAMATION 91-111 APPROVED.

- R-2 First Reading of an ORDINANCE Creating the County Peace Task Force and the Thousand Crane Award to Recognize Citizens who are Leading Multnomah County Toward a Peaceful Non-Nuclear Future

FIRST READING APPROVED. SECOND READING SCHEDULED FOR THURSDAY, AUGUST 15, 1991.

Tuesday, August 6, 1991 - 10:00 AM
Multnomah County Courthouse, Room 602

BOARD BRIEFING

- B-1 Briefing on Albina Community Plan Discussion Draft. Presented by Colleen Ackers and Michael Harrison, Portland Bureau of Planning

ALBINA COMMUNITY PLAN DRAFT WAS PRESENTED AND EXPLAINED TO THE BOARD BY MICHAEL HARRISON, DISTRICT PLANNING MANAGER FOR THE CITY OF PORTLAND; WITH BARBARA SACK, CITY PLANNER; JEAN HESTER, CITY PLANNER; MIKE HAYAKAWA, CITY

COMMUNITY LIAISON; JULIA GISLER, CITY PLANNER;
KIMBERLY MORELAND, CITY PLANNER; MARGARET BAX,
STAFF TO CITY COMMISSIONER GRETCHEN KAFOURY;
AND NORM MONROE, STAFF TO CHAIR GLADYS McCOY.

Tuesday, August 6, 1991 - 10:30 AM
Multnomah County Courthouse, Room 602

AGENDA REVIEW

B-2 Review of Agenda for Regular Meeting of August 8, 1991

Thursday, August 8, 1991 - 9:30 AM
Multnomah County Courthouse, Room 602

REGULAR MEETING

NON-DEPARTMENTAL

1. Formal Recognition of Fifteen and Twenty Year Multnomah County Employees. 9:30 AM Time Certain

COUNTY EMPLOYEES JOHN B. BJORK, 20 YEARS;
WILLIAM BODINE, 20 YEARS; GARY BROWN, 20 YEARS;
MICHAEL BUFTON, 15 YEARS; EUNICE BUTLER, 15
YEARS; JANETTE CANTRELL, 15 YEARS; VIRGINIA
CHADLY, 15 YEARS; JAMES CZMOWSKI, 20 YEARS;
MARILYN DIRKSEN, 20 YEARS; AMANCIO DIZON, 20
YEARS; WILLIAM DORETY, 20 YEARS; HENRY HOW, 15
YEARS; JANET IRWIN, 20 YEARS; MARJORIE OLSON,
15 YEARS; JAMES PEEBLES, 20 YEARS; SHARILEEN
REED, 15 YEARS; RALPH SCHAFFER, JR., 15 YEARS;
WILMA SMITH, 15 YEARS; MILDRED TITUS, 15 YEARS;
ANNIE ILENE VETSCH 20 YEARS; AND JOAN
VIELHAUER, 20 YEARS; WERE HONORED FOR SERVICE.

CHAIR McCOY REQUESTED STAFF TO INCLUDE
DEPARTMENT AND DIVISION LISTED FOR WHICH
EMPLOYEE WORKS WHEN NEXT SERVICE AWARDS ARE
PRESENTED.

LIBRARY SERVICES

2. Presentation of John Cotton Dana Library Public Relations Award. 9:50 AM Time Certain

GINNIE COOPER, DIRECTOR OF LIBRARIES,
ACKNOWLEDGED THE RECEIPT OF THE JOHN COTTON
DANA LIBRARY PUBLIC RELATIONS AWARD AND
EXPLAINED TO THE BOARD WHAT A HONOR IT WAS FOR
MULTNOMAH COUNTY TO RECEIVE THIS AWARD.
LIBRARY STAFF AND THE COMMUNITY WERE COMMENDED
FOR MAKING THIS AWARD POSSIBLE.

CONSENT CALENDAR

DEPARTMENT OF HUMAN SERVICES

- C-1 Ratification of an Intergovernmental Agreement Between the City of Portland and Multnomah County Providing Funds for the Emergency Shelter for Homeless Youth Program for the Period July 1, 1991 to June 30, 1992

APPROVED.

REGULAR AGENDA

NON-DEPARTMENTAL

- R-1 RESOLUTION in the Matter of Revising the Amount of Ad Valorem Property Taxes for Multnomah County for Fiscal Year 1991-92

RESOLUTION 91-112 APPROVED.

- R-2 First Reading of an ORDINANCE Relating to the Business Income Tax; Amending MCC 5.70.045 (From June 27, 1991)

TESTIMONY HEARD. RECONSIDERATION OF A MOTION TO APPROVE THE FIRST READING OF ORDINANCE WAS APPROVED. SECOND READING SCHEDULED FOR THURSDAY, AUGUST 22, 1991.

Friday, August 9, 1991 - 8:00 AM - 4:30 PM

Willamette Center, River Room
121 SW Salmon, Mezzanine Level

STRATEGIC PLANNING SESSION

1. The Multnomah County Board of Commissioners Will Meet to Consider Long-Range Policy Directions for Multnomah County.

STRATEGIC PLANNING SESSION CONVENED AT 8:30 AM FACILITATED BY CYNTHIA GUYER AND ATTENDED BY CHAIR GLADYS McCOY, VICE-CHAIR RICK BAUMAN AND COMMISSIONERS PAULINE ANDERSON, SHARRON KELLEY AND GARY HANSEN. SESSION ADJOURNED AT 4:30 PM.

0163C-1-3
cap

1

Did not speak

DATE

8-6-91

NAME

TONY STARBUCK

ADDRESS

9964 N.W. KAISER RD

STREET

PORTLAND, OR 97231

CITY

ZIP CODE

I WISH TO SPEAK ON AGENDA ITEM #

P-1

SUBJECT

CONDITIONAL USE PERMIT IN
EFU ZONING DISTRICT

FOR

X

AGAINST

PLEASE PRINT LEGIBLY!

#

2Did No Speak

DATE

8-6-91

NAME

MARK BATES

ADDRESS

RRT 1 BOX 994

STREET

HILLSBORO OR 97124

CITY

ZIP CODE

I WISH TO SPEAK ON AGENDA ITEM #

P-1

SUBJECT _____

FOR _____

AGAINST _____

PLEASE PRINT LEGIBLY!



MULTNOMAH COUNTY OREGON

BOARD OF COUNTY COMMISSIONERS
ROOM 606, COUNTY COURTHOUSE
1021 S.W. FOURTH AVENUE
PORTLAND, OREGON 97204

GLADYS McCOY • CHAIR • 248-3308
PAULINE ANDERSON • DISTRICT 1 • 248-5220
GARY HANSEN • DISTRICT 2 • 248-5219
RICK BAUMAN • DISTRICT 3 • 248-5217
SHARRON KELLEY • DISTRICT 4 • 248-5213
CLERK'S OFFICE • 248-3277

AGENDA

MEETINGS OF THE MULTNOMAH COUNTY BOARD OF COMMISSIONERS

FOR THE WEEK OF

AUGUST 5 - 9, 1991

- Tuesday, August 6, 1991 - 9:30 AM - Planning Item. . . . Page 2
- Tuesday, August 6, 1991 - 9:35 AM - Regular Meeting. . . . Page 2
- Tuesday, August 6, 1991 - 10:00 AM - Board Briefing. . . . Page 2
- Tuesday, August 6, 1991 - 10:30 AM - Agenda Review Page 2
- Thursday, August 8, 1991 - 9:30 AM - Regular Meeting . . . Page 3
- Friday, August 9, 1991 - 8:00 AM - 4:30 PM Page 3
 Strategic Planning Session
 Willamette Center, River Room
 121 SW Salmon - Mezzanine Level

Thursday Meetings of the Multnomah County Board of Commissioners are recorded and can be seen at the following times:

- Thursday, 10:00 PM, Channel 11 for East and West side subscribers
- Friday, 6:00 PM, Channel 27 for Paragon Cable (Multnomah East) subscribers
- Saturday 12:00 PM, Channel 21 for East Portland and East County subscribers

Tuesday, August 6, 1991 - 9:30 AM

Multnomah County Courthouse, Room 602

PLANNING ITEM

- P-1 CU 6-91 Request for Board Reconsideration of the Scope of Review for the August 13, 1991 Board Hearing in the Matter of an Appeal of the Decision to APPROVE, SUBJECT TO CONDITIONS, a Requested Conditional Use Permit for a Commercial Activity that is in Conjunction with Farm Uses in the EFU Zoning District, for Property Located at 9833 NW CORNELIUS PASS ROAD *Appellants granted 15 min. for Rev. info. w/ scope of Farm Use & Impacts. motion to set 1 1/2 hr. time limit w/ 45 min. per. side*
-

Tuesday, August 6, 1991 - 9:35 AM

Multnomah County Courthouse, Room 602

REGULAR MEETING

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CONSENT CALENDAR

DEPARTMENT OF HUMAN SERVICES

- C-1 Ratification of an Intergovernmental Agreement Between the City of Portland and Multnomah County Providing Funds for the Emergency Shelter for Homeless Youth Program for the Period July 1, 1991 to June 30, 1992

REGULAR AGENDA

NON-DEPARTMENTAL

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Willamette Center, River Room
121 SW Salmon, Mezzanine Level

STRATEGIC PLANNING SESSION

1. The Multnomah County Board of Commissioners Will Meet to Consider Long-Range Policy Directions for Multnomah County.

0104C/18-20/cap

Meeting Date: August 6, 1991

Agenda No.: P-1

(Above space for Clerk's Office Use)

AGENDA PLACEMENT FORM
(For Non-Budgetary Items)

SUBJECT: CU 6-91 Consider amending Scope of Review for an Appeal

BCC Informal _____ (date) BCC Formal August 6, 1991 (date)

DEPARTMENT DES DIVISION Planning and Development

CONTACT R. Scott Pemble TELEPHONE 3182

PERSON(S) MAKING PRESENTATION Planning Staff

ACTION REQUESTED:

INFORMATIONAL ONLY POLICY DIRECTION APPROVAL

ESTIMATED TIME NEEDED ON BOARD AGENDA: 5 Minutes

CHECK IF YOU REQUIRE OFFICIAL WRITTEN NOTICE OF ACTION TAKEN: xxx

BRIEF SUMMARY (include statement of rationale for action requested, as well as personnel and fiscal/budgetary impacts, if applicable):

See Attached Exhibits A and B

BOARD OF
COUNTY COMMISSIONERS
MULTNOMAH COUNTY
OREGON
1991 JUL 17 AM 11:06

(If space is inadequate, please use other side)

SIGNATURES:

ELECTED OFFICIAL _____

Or

DEPARTMENT MANAGER 

(All accompanying documents must have required signatures)

**MULTNOMAH COUNTY OREGON**

OFFICE OF COUNTY COUNSEL
1120 S.W. FIFTH AVENUE, SUITE 1530
P.O. BOX 849
PORTLAND, OREGON 97207-0849
(503) 248-3138
FAX 248-3377

BOARD OF COUNTY COMMISSIONERS
GLADYS MCCOY, CHAIR
PAULINE ANDERSON
RICK BAUMAN
GARY HANSEN
SHARRON KELLEY

M E M O R A N D U M

TO: Board of County Commissioners
Gladys McCoy, Chair
Pauline Anderson
Rick Bauman
Gary Hansen
Sharron Kelley

FROM: John L. DuBay

DATE: July July 3, 1991

RE: Chauncey Land Use Appeal: Scope of Review

COUNTY COUNSEL
LAURENCE KRESSEL
CHIEF ASSISTANT
JOHN L. DUBAY
ASSISTANTS
SANDRA N. DUFFY
J. MICHAEL DOYLE
GERALD H. ITKIN
H.H. LAZENBY, JR.
MATTHEW O. RYAN
JACQUELINE A. WEBER
MARK B. WILLIAMS

On June 25, the Board decided that the hearing on this appeal would be limited to the record. The appellants would like the Board to revisit that procedural decision.

One of the appellants, Ralph Jones, was in the Board Room before the Board convened on June 25. He was prepared to present reasons for asking for the right to present additional testimony. Scott Pemble told Mr. Jones the staff would recommend granting that request.

Neither Scott nor Mr. Jones were aware the applicant's attorney would oppose granting the right to present additional testimony. Mr. Jones left before the Board considered the request. See, Mr. Jones' memo, attached.

Although the Board's action of the 25th was technically lawful, Mr. Jones has grounds to feel deprived of a chance to make his case for allowance of additional testimony. To bring the matter back to the Board in order to give both sides a hearing on the issue, any member can put on the agenda a notice of intent to change the prior ruling. If that is done, three votes are required to amend the prior decision.

I understand August 6 is the next available date to take up this issue by the full five member Board. The matter should be decided before the August 13 scheduled hearing in order to give the parties an opportunity to prepare for the hearing.

O:\FILES\103JLD.MEM\jld



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

*please
see
5/17/91
last
copy to
file
office
Review
Monday
June
24, 1991
3:30 pm*

NOTICE OF REVIEW

See Attached Notice

1. Name: Jones, Ralph, W.
2. Address: 9985 ^{Last} NW Kaiser, Portland, OR ^{First} 97231
Street or Box City State and Zip Code

3. Telephone: () -

4. If serving as a representative of other persons, list their names and addresses:

See attached

5. What is the decision you wish reviewed (e.g., denial of a zone change, approval of a subdivision, etc.)?
approval of conditional use application

6. The decision was announced by the Planning Commission on 6/13, 1991

7. On what grounds do you claim status as a party pursuant to MCC 11.15.8225?

See attached

RECEIVED
JUN 24 1991

Multnomah County
Zoning Division

Please return this original form

NOTICE OF REVIEW

1. - 3. RALPH W. JONES
9985 N.W. Kaiser Road
Portland, Oregon 97231
Tel. (503) 645-6581

1. - 3. KENT B. THURBER
9825 N.W. Kaiser Road
Portland, Oregon 97231
Tel. (503) 645-3724

1. - 3. David P. Roy
9949 N.W. Kaiser Road
Portland, Oregon
Tel. (503) 629-5464

4. The following persons join in this appeal:

The Board of the Citizens for the Preservation
of Skyline Ridge
George Sowder, President
16618 N.W. Skyline Boulevard
Portland, Oregon 97231

Ray DeSilva
10030 N.W. Cornelius Pass Road
Portland, Oregon 97231

Harold and Lorraine Mason
9980 N.W. Kaiser Road
Portland, Oregon 97231

5. The Decision to be reviewed is the approval, subject to conditions, of the Conditional Use Application of:

Bowlus and Lynne D. Chauncey
9825 N.W. Kaiser Road
Portland, Oregon 97231

for the property located 9833 N.W. Cornelius Pass Road, Portland, Oregon, being Tax Lot 58, Section 5, 1N-1W, 1990 Assessor's Map, consisting of 4.24 acres, which property is currently agricultural land zoned for Exclusive Farm Use.

6. The Decision was announced by the Planning Commission and filed with the Clerk of the Board on June 13, 1991.

7. Ralph W. Jones claims status as a party pursuant to MCC 11.15.8225 as a result of his filing of written Responses to the Narrative and Supplemental Narrative of the applicants and as a

result of his testimony in opposition to the application given during the public hearing June 3, 1991. Kent B. Thurber and David P. Roy claim status as parties as a result of their testimony in opposition to the application given during the public hearing on June 3, 1991.

8. The GROUNDS FOR REVERSAL of the Decision of the Planning Commission are as more fully stated in the Statement of Ralph W. Jones in Appeal of the Planning Commission Decision, CU 6-91, #90. In summary, those grounds are:

a. The applicants' bark dust business is not, and will not be, conducted in conjunction with farm uses.

b. Approval of the conditional use application will afford an unfair competitive advantage to applicants over other bark dust vendors who obey state and county land use and zoning laws.

c. The Planning Commission failed to give proper consideration to, or erroneously considered that the applicants satisfied, conditional use criteria stated in MCC .7120, in that:

1. The Planning Commission erroneously determined the bark dust manufacturing and distribution business was consistent with the area;

2. The Planning Commission did not properly consider all the ramifications of the adverse impact of applicants' bark dust manufacturing business on water quality in the Rock Creek drainage basin, which drains into the Tualatin River. In addition, the Commission erred in determining that there would be no adverse impact on air quality and wildlife resources;

3. The Planning Commission erroneously determined the bark dust manufacturing and distribution business would not conflict with local farm uses;

4. The Planning Commission erroneously determined the bark dust manufacturing and distribution business will not require additional services;

5. The Planning Commission erroneously determined the bark dust manufacturing and distribution business will not create hazardous conditions in the area;

6. The Planning Commission erroneously determined that the bark dust manufacturing and distribution business will not violate County land use policies, or that limiting conditions on use of the site will mitigate adverse effects on the local environment, specifically with regard to the following policies:

a. Policy 2 - off-site effects are not properly considered or are misstated;

b. Policy 9 - agricultural land will be eliminated from potential production forever and the proposed use

will accelerate strictly commercial, non-agricultural pressures on surrounding agricultural land in the area;

c. Policy 13 - the proposed business will have a substantial negative impact on air, water and noise quality in the area;

d. Policy 14 - significant and stringent limitations will have to be imposed to prevent local environmental damage;

e. Policy 16 - the business will have a negative impact on natural resources in the area;

f. Policy 37 - the business will impact on local utility services if other limitations on use are enforced; and,

g. Policy 38 - the business will potentially have a substantial impact on facilities, including increasing stress on fire, police and emergency services in the area.

9.(b) The desired scope of review is on the RECORD PLUS ADDITIONAL TESTIMONY AND EVIDENCE.

10. The grounds on which the request to introduce new evidence is submitted are as follows:

a. The Planning Commission did not afford the opponents of the application commensurate opportunity to discuss the negative implications of the proposed bark dust business. The applicants, their attorney and experts were allowed unlimited opportunity to present their testimony in support of the application. Those individuals who offered testimony in opposition to the application were limited in time and forced to rush their presentations.

b. The opponents to the application were afforded no opportunity to rebut the testimony of the applicants' experts, nor to evaluate their reports submitted to the Planning Commission.

c. The applicants' testimony in support of the application contained statements that induced the Planning Commission to erroneously approve the application for conditional use. Specifically, those statements were with regard to the nature, substance and geographic scope of the applicants' business.

Appellants, Messrs. Jones, Thurber and Roy request the Commissioners permit them one hour in which to provide supplemental testimony. In addition, appellants request additional time to review the videotape of applicants' business activities at their current Kaiser Road location, which videotape evidences: the pollution of applicants' environment (in terms of dust, noise, diesel fuel exhaust from machinery and vehicles); the inconsistency of their commercial activity with the environment at the proposed Cornelius Pass Road site; and, the course of Cornelius Pass Road from the summit at the intersection with Skyline Boulevard on the north to the intersection with Cornell Road on the south. Additional perspectives of the site,

the effects of pollution caused by a similar bark dust business and the relationship to other industrial activities of another similar bark dust business are contained in slides that are also part of the record that appellants request time to display for the Commissioners. To the extent that the Commissioners have the opportunity to pre-review the videotape and slides, guided by the Slide and Videotape Indices that are also part of the record, the amount of time required to view the exhibits and respond to questions will be lessened. Appellants are of the opinion that the time requested for their presentation will materially aid the Commissioners in reaching their opinion while overall also materially conserving the time of the Commissioners. To the extent necessary, appellants also request rebuttal time as necessary to respond to further assertions by the applicants.

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY

BOARD OF
COUNTY COMMISSIONERS
1991 AUG -6 AM 9:36
MULTNOMAH COUNTY
OREGON

In the Matter of the Application)
of Bowlus Chauncey and Lynne D.) APPLICANTS' MEMORANDUM
Chauncey for a Conditional Use Permit) IN OPPOSITION TO
Allowing a Commercial Activity) APPELLANTS' REQUESTED
in Conjunction with Farm Use) SCOPE OF REVIEW
in the Exclusive Farm Use Zone)

I. Introduction:

Bowlus Chauncey and Lynne D. Chauncey ("Applicants") object to Appellants' request to submit additional testimony and evidence. Limiting review to the existing record will not result in prejudice to either party; the Appellants have not alleged the existence of any new evidence which was unavailable at the time of the initial hearing, nor have they alleged surprise or demonstrated competency, relevancy and materiality of the proposed additional testimony. Furthermore, Appellants failed to request a continuance or that the record be kept open to submit additional evidence to the Planning Commission prior to its final decision in this case.

Applicants will respond to Appellants' alleged grounds for the introduction of new evidence in the order presented by Appellants.

II. Argument:

(a) Commensurate Opportunity

Appellants allege that the Planning Commission failed to afford the opponents commensurate opportunity to discuss the negative implications of the proposed bark dust business, claiming they were limited in time and had to rush their presentations.

Applicants presented 50 minutes of testimony in support of the

application, including expert testimony on the issues of traffic, noise, and environmental impacts. (TR. 12-44). Appellants responded to this presentation with 90 minutes of testimony in opposition to the proposed use. (TR. 45-69; and 70). After Appellants' presentation, Applicants spent an additional 10 minutes in rebuttal (TR. 70-75). Appellants' presentation took one and a half times as long as the Applicants' presentation.

Clearly, Appellants were given commensurate opportunity to address the relevant issues raised by this application. In addition to Appellant Jones' 26-page written submittal, he spoke for at least 20 minutes prior to responding to questions from the Planning Commission (TR. 49-62). Applicants offered evidence in support of their application, but did not raise any new issues or present any surprise evidence.

(b) Expert Testimony

Applicants appeared with experts to offer testimony in support of their application. Applicants' experts presented evidence on the issues of traffic, noise, and environmental impacts, all of which were addressed in the original application. Appellants, two of whom are attorneys, had the opportunity to hire their own experts to support their allegations of adverse impacts. Furthermore, Appellants could have requested that the hearing be continued or that the record remain open, pursuant to ORS 197.763 in order to respond to Applicants' expert testimony.

In order to allow additional testimony, the Board must be satisfied that it could not reasonably have been presented at the

prior hearing. Appellants knew that Applicants had hired experts. Applicants' experts spoke with Appellant Jones in conducting their studies of the site. Appellants did not choose to appear with experts, nor did they request a continuance. Therefore, the scope of review should be limited to the record created before the Planning Commission.

(c) Applicants' Statements Regarding Nature, Substance, and Geographic Scope of Proposed Operation

Appellants appear to allege that they should be allowed to offer additional testimony because the Planning Commission reached the "wrong" decision after considering Applicants' evidence. Again, Appellants are requesting the opportunity to present additional evidence without demonstrating why it could not have reasonably been presented at the prior hearing.

III. Conclusion:

Because Appellants have failed to show that their proposed additional testimony could not have been presented at the prior hearing, and because Appellants failed to request a continuance of the Planning Commission hearing pursuant to ORS 197.763, Applicants respectfully request that the scope of review on appeal be limited to the record before the Planning Commission.

Dated this 6th day of August, 1991.

Respectfully submitted,



Peggy Hennessy
Attorney for the Applicants

required transcript fee. Failure to comply with this subsection shall be a jurisdictional defect and shall preclude review by the Board.

- (D) Notice of Review shall be a condition precedent to judicial review of final orders, except in the case of Board review on its own motion.

11.15.8265 Board Order for Review

A Board Order for Review of a decision must be made at the meeting at which the Board's Agenda included a summary of that decision under MCC .8255, unless specifically continued, which continuance shall not be later than the next regular Board meeting on planning and zoning matters.

11.15.8270 Scope of Review

- (A) The Board, upon receipt of Notice of Review or upon its own motion to grant review, shall, at the appropriate meeting, determine whether review shall be:

- (1) On the record; or
- (2) Under subsection (E) below, *de novo* or by additional testimony and other evidence without full *de novo* review.

- (B) Prior to such determination, the Board may conduct a hearing at which the parties shall be afforded an opportunity to appear and present argument On the Scope of Review under subsection (E) below. Notice of such hearing shall be mailed to the parties no less than ten days prior to the hearing.

- (C) Unless otherwise provided by the Board under subsection (D) and (E) below, review of the action shall be confined to the record of the proceeding below, which shall include:

- (1) All materials, pleadings, memoranda, stipulations and motions submitted by any party and received or considered by the Planning Commission or Hearings Officer;
- (2) All materials submitted by the Planning Director with respect to the proposal;
- (3) The transcript of the hearing below;

- (4) The findings and decision of the Planning Commission or Hearings Officer, and the Notice of Review, when applicable.

- (D) When permitted by the Board, review before the Board may include argument by the parties or their authorized representatives.

- (E) The Board may hear the entire matter *de novo*; or it may admit additional testimony and other evidence without holding a *de novo* hearing if it is satisfied that the additional testimony or other evidence could not reasonably have been presented at the prior hearing. The Board shall, in making such decision, consider:

- (1) Prejudice to parties;
- (2) Convenience or availability of evidence at the time of the initial hearing;
- (3) Surprise to opposing parties;
- (4) The competency, relevancy and materiality of the proposed testimony or other evidence.

- (F) *De Novo* Hearing means a hearing by the Board as if the action had not been heard by the Planning Commission or Hearings Officer, and as if no decision had been rendered, except that all testimony, evidence and other material received by the Planning Commission or Hearings Officer shall be included in the record.

- (G) Review by the Board, if upon Notice of Review by an aggrieved party, shall be limited to the grounds relied upon in the Notice of Review under MCC .8260(B) and any hearing permitted under MCC .8270(B).

- (H) At the meeting at which the Scope of Review is determined pursuant to MCC .8270(A) and (B), the Board shall further determine the time and place for the review, which shall not be later than 45 days from the date of the Board determination.

11.15.8275. Notice of Board Hearing

- (A) Notice of Board hearing shall be given in the same manner as required for hearings by the Planning Commission and Hearings Officer