

## ANNOTATED MINUTES

Tuesday, November 23, 1993 - 9:30 AM  
Multnomah County Courthouse, Room 602

### REGULAR MEETING

Chair Beverly Stein convened the meeting at 9:35 a.m., with Vice-Chair Gary Hansen and Commissioner Tanya Collier present, and Commissioners Sharron Kelley and Dan Saltzman excused.

### CONSENT CALENDAR

**UPON MOTION OF COMMISSIONER HANSEN, SECONDED BY COMMISSIONER COLLIER, THE CONSENT CALENDAR, (ITEMS C-1 THROUGH C-32) WAS UNANIMOUSLY APPROVED.**

### SHERIFF'S OFFICE

- C-1 Wrecker Business Certificate Renewal Application Submitted by Sheriff's Office with Recommendation for Approval, for DESBIENS CLASSIC AUTO WRECKING, 28901 SE DODGE PARK BOULEVARD, GRESHAM.
- C-2 Dispenser Class A Liquor License Renewal Application Submitted by Sheriff's Office with Recommendation for Approval, for the CHINA HUT RESTAURANT, 16721 SE DIVISION, PORTLAND.
- C-3 Dispenser Class A Liquor License Renewal Application Submitted by Sheriff's Office with Recommendation for Approval, for ROYAL CHINOOK INN, 2609 NE CORBETT HILL ROAD, CORBETT.
- C-4 Dispenser Class A Liquor License Renewal Application Submitted by Sheriff's Office with Recommendation for Approval, for TIPPY CANOE INN, 28242 CROWN POINT HIGHWAY, TROUTDALE.
- C-5 Package Store Liquor License Renewal Application Submitted by Sheriff's Office with Recommendation for Approval, for BIG BEARS CROWN POINT MARKET, 31715 E. CROWN POINT HIGHWAY, TROUTDALE.
- C-6 Package Store Liquor License Renewal Application Submitted by Sheriff's Office with Recommendation for Approval, for BOB & ANN'S GROCERY, 11811 SE HAROLD, PORTLAND.
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- C-9      Package Store Liquor License Renewal Application Submitted by Sheriff's Office with Recommendation for Approval, for CRACKER BARREL GROCERY, 15005 NW SAUVIE ISLAND ROAD, PORTLAND.
- C-10     Package Store Liquor License Renewal Application Submitted by Sheriff's Office with Recommendation for Approval, for DIVISION STREET FOOD CONNECTION, 16409 SE DIVISION, PORTLAND.
- C-11     Package Store Liquor License Renewal Application Submitted by Sheriff's Office with Recommendation for Approval, for FOSTER FOOD MART, 12918 SE FOSTER ROAD, PORTLAND.
- C-12     Package Store Liquor License Renewal Application Submitted by Sheriff's Office with Recommendation for Approval, for FRED'S MARINA, 12800 NW MARINA WAY, PORTLAND.
- C-13     Package Store Liquor License Renewal Application Submitted by Sheriff's Office with Recommendation for Approval, for PLAID PANTRY MARKET #45, 4504 SE 122ND AVENUE, PORTLAND.
- C-14     Package Store Liquor License Renewal Application Submitted by Sheriff's Office with Recommendation for Approval, for PLAID PANTRY MARKET #113, 13521 SE POWELL, PORTLAND.
- C-15     Package Store Liquor License Renewal Application Submitted by Sheriff's Office with Recommendation for Approval, for PLAID PANTRY MARKET #154, 16216 SE DIVISION, PORTLAND.
- C-16     Package Store Liquor License Renewal Application Submitted by Sheriff's Office with Recommendation for Approval, for PLEASANT VALLEY MARKET, 16880 SE FOSTER, PORTLAND.
- C-17     Package Store Liquor License Renewal Application Submitted by Sheriff's Office with Recommendation for Approval, for QUICK STOP MARKET, 15400 SE POWELL, PORTLAND.
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PORTLAND.

- C-22 Restaurant Liquor License Renewal Application Submitted by Sheriff's Office with Recommendation for Approval, for SKIPPERS SEAFOOD N CHOWDER HOUSE #140, 1740 NE 122ND AVENUE, PORTLAND.
- C-23 Retail Malt Beverage Liquor License Renewal Application Submitted by Sheriff's Office with Recommendation for Approval, for DOUBLE DRIBBLE TAVERN, 13550 SE POWELL, PORTLAND.
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- C-27 Retail Malt Beverage Liquor License Renewal Application Submitted by Sheriff's Office with Recommendation for Approval, for WILDWOOD GOLF COURSE, 21881 NW ST. HELENS ROAD, PORTLAND.
- C-28 Ratification of Intergovernmental Agreement Contract 800454 Between Multnomah County Sheriff's Office and USPFO of Oregon, for the Rent of Firing Ranges Located on the Oregon National Guard Base at Camp Withycombe, for the Period October 1, 1993 through September 30, 1994

DEPARTMENT OF ENVIRONMENTAL SERVICES

- C-29 ORDER in the Matter of the Execution of Deed D940931 for Certain Tax Acquired Property to Douglas W. Hinkle and Dona K. Hinkle and Merrill Carpenter

**ORDER 93-373.**

- C-30 ORDER in the Matter of the Execution of Deed D940968 Upon Complete Performance of a Contract to Randall P. Girdner and Reta F. Girdner

**ORDER 93-374.**

NON-DEPARTMENTAL

- C-31 Ratification of Intergovernmental Agreement Contract 400142 Between Multnomah County and the City of Portland, Providing Printing and Duplicating Services, for the Period October 1, 1993 through September 30, 1994

DEPARTMENT OF SOCIAL SERVICES

- C-32      *Ratification of Intergovernmental Agreement Contract 103924 Between Multnomah County, Housing and Community Services Division and Portland State University, Regional Research Institute, Providing Evaluation Services to the SAFAH Homeless Families Program in Accordance with the HUD Grant Award, for the Period Upon Execution through September 30, 1994*

REGULAR AGENDA

NON-DEPARTMENTAL

- R-1      *RESOLUTION in the Matter of the Adoption of a Supplemental Budget for Multnomah County, Oregon, for the Fiscal Year July 1, 1993 to June 30, 1994, and Making the Appropriations Thereunder, Pursuant to ORS 294.435*

**COMMISSIONER HANSEN MOVED AND COMMISSIONER COLLIER SECONDED, APPROVAL OF R-1. DAVE WARREN AND JOHN SCHWEITZER EXPLANATION AND RESPONSE TO BOARD QUESTIONS. RESOLUTION 93-375 UNANIMOUSLY APPROVED.**

SHERIFF'S OFFICE

- R-2      *Budget Modification MCSO #10 Requesting Authorization to Reclassify a Senior Fiscal Assistant Position to a Fiscal Specialist I Position in the Sheriff's Management and Fiscal Services Program*

**COMMISSIONER HANSEN MOVED AND COMMISSIONER COLLIER SECONDED, APPROVAL OF R-2. JOHN SCHWEITZER EXPLANATION. BUDGET MODIFICATION UNANIMOUSLY APPROVED.**

**CHAIR STEIN REPORTED THAT HOWARD KLINK WAS PRESENTED WITH AN AWARD AT THE ASSOCIATION OF OREGON COUNTIES MEETING LAST WEEK.**

DEPARTMENT OF ENVIRONMENTAL SERVICES

- R-3      *Ratification of Intergovernmental Agreement Contract 300934 Between Multnomah County and the Port of Portland, Providing County Record Administrator and Associated Staff Record Management Services on a Consulting Basis as Needed and Available*

**COMMISSIONER HANSEN MOVED AND COMMISSIONER COLLIER SECONDED, APPROVAL OF R-3. TOM GUINEY EXPLANATION. AGREEMENT UNANIMOUSLY APPROVED.**

- R-4      *Budget Modification DES #7 Requesting Authorization to Provide \$10,000 to the Records Section for Temporary Help and Supplies, to be Reimbursed by the Port of Portland for Record Management Services*

**UPON MOTION OF COMMISSIONER HANSEN, SECONDED BY**

**COMMISSIONER COLLIER, R-4 WAS UNANIMOUSLY APPROVED.**

DEPARTMENT OF SOCIAL SERVICES

R-5 PUBLIC HEARING of the 1993 Affordable Housing Development Program Recommendations and Consideration of an ORDER in the Matter of the Transfer of Tax-Foreclosed Properties to the Housing Authority of Portland, Habitat for Humanity, ROSE CDC, LIHNAPO/SUN, and Reach Community Development for Low-Income Housing Purposes

**COMMISSIONER COLLIER MOVED AND COMMISSIONER HANSEN SECONDED, APPROVAL OF R-5. CECILE PITTS EXPLANATION. UPON MOTION OF COMMISSIONER COLLIER, SECONDED BY COMMISSIONER HANSEN, IT WAS UNANIMOUSLY APPROVED THAT THE SE ALDER STREET PROPERTY BE EXCLUDED FROM THIS TRANSFER ORDER. MS. PITTS PRESENTATION AND RESPONSE TO BOARD QUESTIONS.**

**NICK SAUVIE TESTIMONY IN SUPPORT OF TRANSFER TO ROSE CDC.**

**LEE POE TESTIMONY IN SUPPORT OF TRANSFER TO REACH COMMUNITY DEVELOPMENT. COMMISSIONER HANSEN MOVED AND COMMISSIONER COLLIER SECONDED, TO REFER REACH COMMUNITY DEVELOPMENT APPLICATION BACK TO TECHNICAL REVIEW COMMITTEE. MR. POE COMMENTS. MOTION UNANIMOUSLY APPROVED.**

**JEFF MERKLEY TESTIMONY IN SUPPORT OF TRANSFER TO HABITAT FOR HUMANITY AND RESPONSE TO BOARD QUESTIONS.**

**JEANETTE SANDER TESTIMONY IN SUPPORT OF TRANSFER TO HOUSING AUTHORITY OF PORTLAND.**

**RENALDO MINJAREZ TESTIMONY IN SUPPORT OF TRANSFER TO LIHNAPO/SUN. ORDER 93-376 UNANIMOUSLY APPROVED AS AMENDED.**

PUBLIC COMMENT

R-6 Opportunity for Public Comment on Non-Agenda Matters. Testimony Limited to Three Minutes Per Person.

*There being no further business, the meeting was adjourned at 10:15 a.m.*

OFFICE OF THE BOARD CLERK  
for MULTNOMAH COUNTY, OREGON

Deborah L. Bogstad  
Deborah L. Bogstad

Tuesday, November 23, 1993 - 1:30 PM  
Multnomah County Courthouse, Room 602

**PLANNING ITEMS**

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

- P-1      ZC 2-93/LD 29-93    Review the November 5, 1993 Planning and Zoning Hearings Officer Decision Approving, Subject to Conditions, Amendment of Sectional Zoning Map #415, Changing Described Property from LR-10 to LR-5, Low Density Residential District; Plus a Type I Land Division for a 19-Lot Subdivision; Plus Amendment of a Future Street Plan (Approved in 1980 and Amended in 1993), All for Property Located at 13933 SE MALL STREET.

**DECISION READ, NO APPEAL FILED, DECISION STANDS.**

- P-2      CU 8-93    Review the November 8, 1993 Planning and Zoning Hearings Officer Decision Approving, Subject to Conditions, Conditional Use Request for a Non-Resource Related Single Family Dwelling in the MUF-19, Multiple Use Forest Zoning District, for Property Located at 14950 NW McNAMEE ROAD.

**DECISION READ, NO APPEAL FILED, DECISION STANDS.**

Vice-Chair Gary Hansen arrived at 1:35 p.m.

- P-3      CU 9-93    Review the November 12, 1993 Planning and Zoning Hearings Officer Decision Approving, Subject to Conditions, Conditional Use Request for a Non-Resource Related Single Family Residence in the MUF-19, Multiple Use Forest Zoning District, for Property Located at 18038 NW JOHNSON ROAD.

**DECISION READ, NO APPEAL FILED, DECISION STANDS.**

There being no further business, the meeting was adjourned at 1:35 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

NOVEMBER 22 - 26, 1993

- Tuesday, November 23, 1993 - 9:30 AM - Regular Meeting . . .Page 2
- Tuesday, November 23, 1993 - 1:30 PM - Planning Items. . . .Page 5
- Thursday, November 25, 1993 - HOLIDAY - OFFICES CLOSED . . . . .

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

- Thursday, 10:00 PM, Channel 11 for East and West side subscribers
- Thursday, 10:00 PM, Channel 49 for Columbia Cable (Vancouver) subscribers
- Friday, 6:00 PM, Channel 22 for Paragon Cable (Multnomah East) subscribers
- Saturday 12:00 PM, Channel 21 for East Portland and East County subscribers

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.

Tuesday, November 23, 1993 - 9:30 AM

Multnomah County Courthouse, Room 602

REGULAR MEETING

CONSENT CALENDAR

SHERIFF'S OFFICE

- C-1      Wrecker Business Certificate Renewal Application Submitted by Sheriff's Office with Recommendation for Approval, for DESBIENS CLASSIC AUTO WRECKING, 28901 SE DODGE PARK BOULEVARD, GRESHAM.
  
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REGULAR AGENDA

NON-DEPARTMENTAL

- R-1 RESOLUTION in the Matter of the Adoption of a Supplemental Budget for Multnomah County, Oregon, for the Fiscal Year July 1, 1993 to June 30, 1994, and Making the Appropriations Thereunder, Pursuant to ORS 294.435

SHERIFF'S OFFICE

- R-2 Budget Modification MCSO #10 Requesting Authorization to Reclassify a Senior Fiscal Assistant Position to a Fiscal Specialist I Position in the Sheriff's Management and Fiscal Services Program

DEPARTMENT OF ENVIRONMENTAL SERVICES

- R-3 Ratification of Intergovernmental Agreement Contract 300934 Between Multnomah County and the Port of Portland, Providing County Record Administrator and Associated Staff Record Management Services on a Consulting Basis as Needed and Available

- R-4 Budget Modification DES #7 Requesting Authorization to Provide \$10,000 to the Records Section for Temporary Help and Supplies, to be Reimbursed by the Port of Portland for Record Management Services

DEPARTMENT OF SOCIAL SERVICES

- R-5 PUBLIC HEARING of the 1993 Affordable Housing Development Program Recommendations and Consideration of an ORDER in the Matter of the Transfer of Tax-Foreclosed Properties to the Housing Authority of Portland, Habitat for Humanity, ROSE CDC, LIHNAPO/SUN, and Reach Community Development for Low-Income Housing Purposes (30 MINUTES REQUESTED)

PUBLIC COMMENT

- R-6 Opportunity for Public Comment on Non-Agenda Matters. Testimony Limited to Three Minutes Per Person.

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Tuesday, November 23, 1993 - 1:30 PM

Multnomah County Courthouse, Room 602

PLANNING ITEMS

- P-1 ZC 2-93/LD 29-93 Review the November 5, 1993 Planning and Zoning Hearings Officer Decision Approving, Subject to Conditions, Amendment of Sectional Zoning Map #415, Changing Described Property from LR-10 to LR-5, Low Density Residential District; Plus a Type I Land Division for a 19-Lot Subdivision; Plus Amendment of a Future

Street Plan (Approved in 1980 and Amended in 1993), All for Property Located at 13933 SE MALL STREET.

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MEETING DATE: November 23, 1993

AGENDA NO: P-1

(Above Space for Board Clerk's Use ONLY)

**AGENDA PLACEMENT FORM**

SUBJECT: ZC 2-93/LD 29-93 Hearings Officer Decision

BOARD BRIEFING Date Requested: \_\_\_\_\_

Amount of Time Needed: \_\_\_\_\_

REGULAR MEETING: Date Requested: November 23, 1993

Amount of Time Needed: 2 Minutes

DEPARTMENT: DES DIVISION: Planning

CONTACT: R. Scott Pemble TELEPHONE #: 248-3182

BLDG/ROOM #: 412/103

PERSON(S) MAKING PRESENTATION: Planning Staff

**ACTION REQUESTED:**

INFORMATIONAL ONLY     POLICY DIRECTION     APPROVAL     OTHER

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

ZC 2-93/LD 29-93 Review of Hearings Officer Decision of November 5, 1993, approving, subject to conditions, amendment of Sectional Zoning Map #415, changing described property from LR-10 to LR-5, low density residential district plus a Type I land division for a 19-lot subdivision, plus amendment of a Future Street Plan, originally approved in 1980 and amended in 1993, all for property located at 13933 SE Mall Street

**SIGNATURES REQUIRED:**

ELECTED OFFICIAL: \_\_\_\_\_

OR

DEPARTMENT MANAGER: *[Signature]* *Betsy Willis*

CLERK OF BOARD OF COUNTY COMMISSIONERS  
MULTNOMAH COUNTY  
OREGON  
1993 NOV 15 PM 3:09

**ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES**

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



**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. 2C2-93  
SD29-93

Agenda Placement Sheet                      No. of Pages   1  

Case Summary Sheet                      No. of Pages   1    
 Previously Distributed                      \_\_\_\_\_

Notice of Review                      No. of Pages \_\_\_\_\_  
\*(Maybe distributed at Board Meeting)  
 Previously Distributed                      \_\_\_\_\_

Decision                      No. of Pages  28   
(Hearings Officer/Planning Commission)  
 Previously Distributed                      \_\_\_\_\_

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



CASE NAME Zone Change, Subdivision & Future Street Plan Change

NUMBER ZC 2-93/LD29-93

1. Applicant Name/Address

Joyce D. McClure  
13933 SE Mall Street  
Portland, OR 97236

2. Action Requested by applicant      Zone Change, LR-10 to LR-5  
19-Lot Subdivision  
Future Street Plan Revision

ACTION REQUESTED OF BOARD	
<input checked="" type="checkbox"/>	Affirm Plan.Com./Hearings Officer
<input type="checkbox"/>	Hearing/Rehearing
<input type="checkbox"/>	Scope of Review
<input type="checkbox"/>	<input type="checkbox"/> On the record
<input type="checkbox"/>	<input type="checkbox"/> De Novo
<input type="checkbox"/>	<input type="checkbox"/> New Information allowed

3. Planning Staff Recommendation

Approva With Conditions

4. Planning Commission or Hearings Officer Decision:

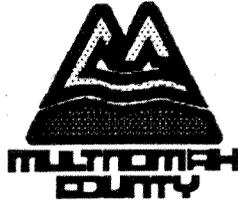
Approva With Conditions

5. If recommendation and decision are different, why?

Same

**ISSUES**  
*(who raised them?)*

None were raised. No one appeared except the applicant..



**Department of Environmental Services  
Division of Planning and Development  
2115 S.E. Morrison Street  
Portland, Oregon 97214 (503) 248-3043**

## **Decision**

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

**November 5, 1993**

**ZC 2-93, #415  
LD 29-93, #415**

**LR-5, Urban Low Density Residential District  
19-Lot Land Division**

Applicant requests amendment of Sectional Zoning Map #415, changing the subject site from LR-10, Low Density Residential (min.10,000 sq. ft. per dwelling) to LR-5, Low Density Residential (min.5,000 sq. ft. per dwelling). Applicant also requests Type I land division approval to subdivide the site into 19 lots and construct parts of SE Mall and Cora Street pursuant to a Future Street Plan previously adopted for the block that contains the site. Applicant also proposes to modify the Future Street Plan by shifting the location of SE 139th Avenue to the west edge of the subject site.

**Location:** 13933 SE Mall Street

**Legal:** Tax Lots 2700 & 2800, Map 1S 2E 11DD (see attached map)

**Site Size:** 3.01 Acres

**Property Owners:** Joyce D. McClure (Tax Lot 2700)  
13933 SE Mall Street, Portland, OR 97236

John L. Ross (Tax Lot 2800)  
13945 SE Mall Street, Portland, OR 97236

**Applicant:** Joyce D. McClure

**Comprehensive Plan:** Low Density Residential

**Present Zoning:** LR-10 FH, Low Density Residential (part of site is in Flood Hazard Area)

**Proposed Zoning:** LR-5 FH, Low Density Residential (part of site is in Flood Hazard Area)

**Hearings Officer**

**Decision #1:** **Approve**, subject to conditions, amendment of Sectional Zoning Map #415, from LR-10 (min. 10,000 sq. ft.) to LR-5, Low Density Residential District (min. 5,000 sq. ft.), based on the following Findings and Conclusions.

**Decision #2:** **Approve**, subject to conditions, the requested 19-lot land division in accordance with the provisions of MCC 11.45.080(D), based on the following Findings and Conclusions.

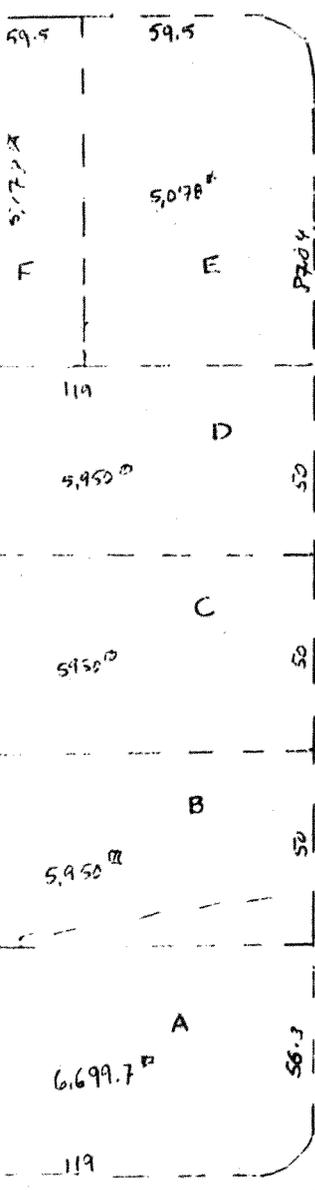
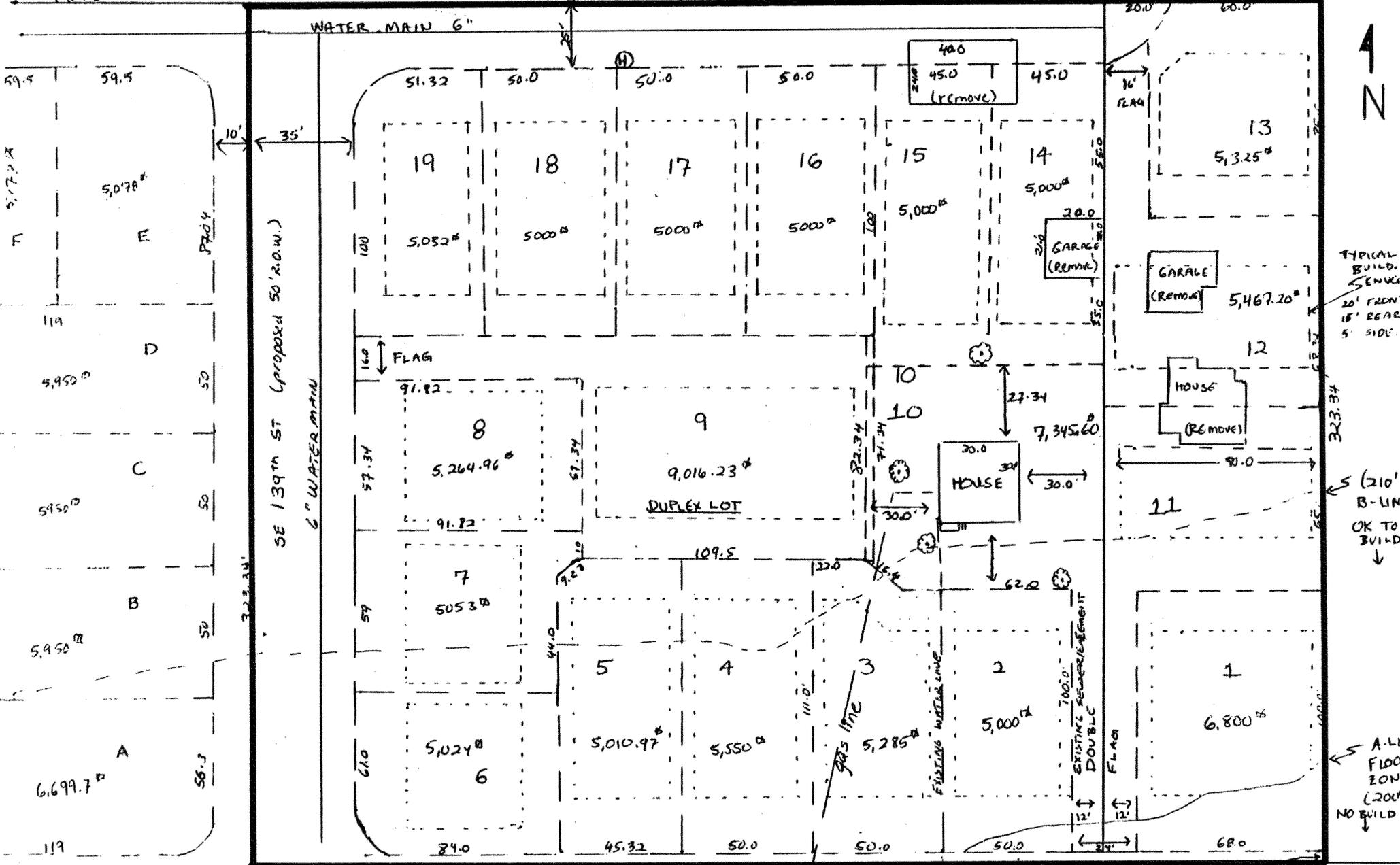
**Decision #3:** **Approve**, subject to conditions, modification of Future Street Plan (adopted with LD 3-80 and amended with LD 16-93) as shown on applicant's map dated September 24, 1993, based on the following Findings and Conclusions.

**ZC 2-93 / LD 29-93**



S.E. CORA ST (50' R.O.W.)

PROPOSED PLAT  
TAX LOTS 3700 + 2800  
SEPTEMBER 22, 1993  
SCALE: 1" = 50'



SE 139th ST (proposed 50' R.O.W.)

6" WATER MAIN

WATER MAIN 6"

EXISTING WATER LINE

GAS LINE

EXISTING SEWER/ELEMENT DOUBLE

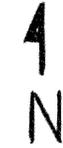
EXISTING GAS LINE TO BE REMOVED & REROUTED

5' R.O.W. dedicat. 40' R.O.W. exist

TYPICAL BUILD. SEWER. 20' FRONT 15' REAR 5' SIDE

(210') B-LINE OK TO BUILD

A-LINE FLOOD ZONE (200') NO BUILD



134.0'

226.32'

119

134.0'

S.E. MALL ST 40' R.O.W.

80.0'

(H)

(M)



## Conditions Of Approval

1. Approval of this Tentative Plan shall expire **one year** of the effective date of this decision unless either the final plat and other required attachments are delivered to the Planning and Development Division of the Department of Environmental Services or an extension is obtained from the Planning Director pursuant to MCC 11.45.420 .The final plat shall comply with ORS Chapter 92 as amended .Please obtain applicant's and surveyor's ***Instructions for Finishing a Type I Land Division.*** Make the following revision to the final plat:
  - A. On the final plat, indicate the 100-year floodplain line on the subdivision site, and place a note on the face of the final plat stating that the site is within the 100-year floodplain of Johnson Creek, as required by MCC 11.45.710(D). The note shall further state that, absent a variance, residential construction shall have the lowest floor, including basement, elevated to at least 1 foot above the base flood level.
  - B. Show a 1-foot street plug, identified as "Tract A" (to be deeded to Multnomah County) along the westerly edge of the the right-of-way for SE 139th Avenue.
2. Prior to recording the final partition plat, comply with the following Transportation Division requirements:
  - A. Dedicate 25 feet of additional right-of-way to extend the south half of SE Cora Street as shown on the Tentative Plan Map.
  - B. Dedicate 5 feet of additional right-of-way in SE Mall Street to provide a total of 25 feet from centerline abutting the subject site.
  - C. Dedicate 35 feet of right-of-way for SE 139th Avenue along the west edge of the subject site from SE Mall Street to SE Cora Street as shown on the Tentative Plan Map.
3. Before the Planning Director signs the final plat, comply with the Transportation Division requirement to make the following improvements within the public right-of-way of SE Mall Street, SE Cora Street and SE 139th Avenue:

### **SE Mall Street**

- Construct a concrete curb 16 feet from centerline along the entire frontage of the subject property.
- Construct a concrete sidewalk 5 feet wide between the curb and the front property line of the subject property.
- Grade, rock and pave for a distance of 20 feet from the new curb.
- Construct storm drainage facilities as required.
- Install street lighting as required.

### **SE Cora Street**

- Construct a concrete curb 16 feet from centerline along the entire frontage of the subject property.
- Construct a concrete sidewalk 5 feet wide between the curb and the front property line of the subject property.
- Grade, rock and pave for a distance of 20 feet from the new curb, unless the north half of Cora Street is constructed at the same time, in which case each developer shall be responsible for paving 16 feet of the total 32-foot width of Cora Street.
- Construct storm drainage facilities as required.
- Install street lighting as required.

**SE 139th Avenue:**

- Construct a concrete curb 16 feet from centerline along the entire frontage of the subject property.
  - Construct a concrete sidewalk 5 feet wide between the curb and the front property line of the subject property.
  - Grade, rock and pave for a distance of 28 feet from the new curb.
  - Construct storm drainage facilities as required.
  - Install street lighting as required.
4. Before the Planning Director signs the final plat, obtain demolition or move permits for the metal building on Lots 14 and 15, the detached garages on Lots 12 and 14, and the residence on Lots 11 and 12. Provide written confirmation from the Bureau of Buildings that the work authorized by the permits has been completed.
  5. Prior to issuance of building permits obtain a Floodplain Development Permit, in accordance with MCC 11.15.6307, for any building site shown on the final plat as being within the 100-year floodplain.
  6. In conjunction with issuance of building permits, improve the 16-foot wide flagpole portion of Lots 9 and 12 to the following standards:
    - A. **Paving:** Twelve (12) feet in width to provide a durable, all-weather surface, which can be either (a) a two-inch thickness of asphaltic concrete paving on a four to six inch base or (b) the equivalent to (a) above in Portland cement on a suitably prepared base.
    - B. The above improvements shall be installed between the front property line of abutting the street and the garage of the residence the lot in question..
    - C. The remaining width of the panhandle shall be landscaped and maintained.
    - D. The above improvements shall be installed in such a manner as to insure that the existing chestnut trees are not damaged (such as by having their roots cut) during construction of the improvements.

7. In conjunction with issuance of building permits, improve the combined 12-foot wide flagpole portions of Lots 10 and 11 to the following standards:
  - A. **Paving:** Twenty (20) feet in width to provide a durable, all-weather surface, which can be either (a) a two-inch thickness of asphaltic concrete paving on a four to six inch base or (b) the equivalent to (a) above in Portland cement on a suitably prepared base. The pavement shall be placed on the easterly 10 feet of the flagpole portion of Lot 10 and on the westerly 10 feet of the flagpole portion of Lot 11.
  - B. The above improvements shall be installed between the front property line of Lots 10 and 11 abutting SE Mall Street and the garage of the residence on Lot 11.
  - C. The remaining width of the panhandle shall be landscaped and maintained.
  - D. The above improvements shall be installed in such a manner as to insure that the existing chestnut trees are not damaged (such as by having their roots cut) during construction of the improvements.
8. Before the Planning Director signs the final plat, amend the face of the plat to state that approval of this land division neither guarantees the ability to build dwellings on any lot nor constitutes approval to build a dwelling on any lot. Compliance with all applicable zoning standards is required before a building permit is approved, including but not limited to standards relating to solar access, and flood hazard areas. The applicant understands and will communicate to purchasers of the parcels that protection of adjacent properties' solar access is of special importance to the neighbors.
9. On a copy of the final plat, show the building envelopes for all vacant lots after allowing for all required yard setbacks.

#### Decision Format

This Decision addresses two requested actions: first, a request for a Zone Change from LR-10, Low Density Residential District to LR-5, Low Density Residential District. The second request is for approval of a Land Division to subdivide the subject site into 19 lots. Incorporated in the land division is a request to change an adopted Future Street Plan for the block in which the subject site is located. Following immediately below are the Findings of Fact for the Zone Change. The Conclusions for the Zone Change are on Page 21. The Findings of Fact for the Land Division request (including the Future Street Plan modification) begin on Page 22. The Conclusions for the Land Division begin on Page 27.

#### **Findings Of Fact (ZC 2-93)**

NOTE: Unless otherwise indicated, findings refer to both the Land Division and the Future Street Plan. Quoted material from the applicant's submittal appears in *Italic* type. Ordinance language appears in ***Bold Italic*** type.

- A. **The Request:** The applicant proposes to subdivide land containing 131,116 square feet into 19 lots as shown on the Tentative Plan Map. The proposed land division includes right-of-way dedication and construction for the southerly one-half of SE Cora Street; right-of-way dedication and construction for the easterly seven-tenths of SE 139th Avenue; and 5 feet of right-of-way dedication and construction of the northerly one-half of SE Mall Street.

The lots range in size from 5,000 square feet to 9,010 square feet. In order to accomplish the proposed land division the applicant also requests a zone change from LR-10, Low Density Residential to LR-5, Low Density Residential District.

- B. **Background:** The site is in a superblock for which the County adopted a Future Street Plan in 1980 when it approved Land Division No. LD 3-80. That approval established SE Cora Street and SE 140th Avenue in the easterly part of the superblock. In 1992, the County approved a zone change from LR-10 to LR-5 for the parcel immediately north of the subject site (ZC 2-92/LD 16-92). The zone change requested in the current proposal would permit development of the subject site in a manner consistent with development approved in 1992 for the property to the north.
- C. **Changes to Future Street Plan:** The proposed land division would change the adopted Future Street Plan by shifting the location of 139th Avenue about 153 feet to the west edge of the subject site. The proposed change in the Future Street Plan would mean that 15 feet of the right-of-way for 139th Avenue would eventually be dedicated from Tax Lot 2600, which adjoins the subject site on the west, particularly if a a zone change and/or land division were proposed for Tax Lot 2600 at some future point.

2. **Site Conditions and Vicinity Information:** Site conditions as shown on the Tentative Plan Map are as follows:

- A. The site abuts the north side of SE Mall Street. The site consists of Tax Lot 2700, owned by applicant Joyce McClure, and Tax Lot 2800, owned by John Ross. Mr. Ross consented to inclusion of his property in the proposed zone change and land division in a letter dated August 13, 1993. The easterly edge of the site is about 250 feet west of SE 141st Avenue. Tax Lot 2700 contains a single-family residence, a detracted garage and a 24 x 40 foot metal building. Tax Lot 2800 contains a single-family residence and a detached garage. The Tentative Plan Map indicates that the house and garage on Tax Lot 2800 will be removed, as well as the garage and metal building on Tax Lot 2700.
- B. **Slope:** The site has slope ranging between 3 and 8 percent.
- C. **Flood Plain:** Parts of Lots 1-6 and 10 and 11 are within the 100-year flood plain of Johnson Creek, according to available topographic information and the Flood Insurance Rate Map of the Federal Emergency Management Agency (Community Panel #410179-0382-B, (revised 3/18/86). Floodplain Development Permits will be required where applicable before building permit issuance.
- D. **Street Dedication and Improvements: (SE Mall Street):** The site abuts SE Mall Street, which is unimproved and has a total right-of-way width of 40 feet. The County Engineer has determined that in order to comply with the provisions of the Street Standards Ordinance (MCC 11.60) it will be necessary to dedicate 5 feet of additional right-of-way in Mall Street abutting the site, and construct curbs, sidewalks and pave the street to a width of 20 feet abutting the south edge of the subject site. The dedication and improvements are conditions of approval.
- E. **Street Dedication and Improvements: (SE Cora Street):** The site abuts a portion of SE Cora Street where the northerly 25 feet of right-of-way for the street

has been proposed for dedication pursuant to the land division approved in 1992 (Case # ZC 2-92 / LD 16-92). The County Engineer has determined that in order to comply with the provisions of the Street Standards Ordinance (MCC 11.60) it will be necessary for the owner to dedicate 25 feet of right-of-way for the south half of Cora Street abutting the site, and construct curbs, sidewalks and pave the street to a width of 20 feet abutting the north edge of the site. The dedication and improvements are conditions of approval.

- F. **Street Dedication and Improvements: (SE 139th Avenue):** Under the proposed revision to the Future Street Plan, the west edge of the site would abut SE 139th Avenue. The County Engineer has determined that in order to comply with the provisions of the Street Standards Ordinance (MCC 11.60) it will be necessary for the owner to dedicate 35 feet of right-of-way for seven-tenths of the total right-of-way required for a Local Residential Street. Also required will be 28 feet of paving and construction of curbs and sidewalks on the east edge of the right-of-way. The dedication and improvements are conditions of approval.

3. **Zone Change Considerations [MCC 11.15.8230(D)]:**

- A. The existing LR-10 zoning requires a minimum lot area of 10,000 square feet for a residence. The requested LR-5 zoning has a minimum lot size of 5,000 square feet and would make possible the division of the site into the 19 lots shown on the Tentative Plan Map.
- B. Under MCC 11.15.8230 (D) lists approval criteria for a zone change. The burden of proof is on the applicant to demonstrate that:
- (1) *Granting the request is in the public interest;* [MCC 11.15.8230 (D)(1)]
  - (2) *There is a public need for the requested change and that need will be best served by changing the classification of the property in question as compared with other property;* [MCC 11.15.8230 (D)(2)]
  - (3) *The proposed action fully accords with the applicable elements of the Comprehensive Plan.* [MCC 11.15.8230 (D)(1)]

4. **Response to Zone Change Approval Criteria**

A. **Public Interest [MCC 11.15.8230 (D)(1)]**

**Applicant's Response:** *"The subject property is in an area defined by the Powellhurst Community Plan as a 'Residential Development Area' or 'Infill Area' because it is a partially developed area where new development will occur over time. (Powellhurst Community Plan, page 212, Finding 8.A) Location Criteria #5 of Policy 24 (page 215) states: 'Detached dwellings will be allowed as an outright use in Residential Development Areas. The minimum lot size per unit must be 5,000 square feet.' Further, Location Criteria #4C of this same Policy (page 214) states 'attached two unit dwellings shall be allowed [where] the minimum lot size must be 9000 square feet' and 'attached two unit dwellings will be allowed in the 'backlot' areas of accessway-type development'. The proposed subdivision provides for 18 lots at single family 5000 square feet or more, and one duplex flag*

*lot with over 9000 square feet. This meets the public interest as established in the aforementioned County Framework and Powellhurst Community Plan.*

*The proposed density would be 6.6 units per acre, which is within the recommended 6-10 units/acre for low density residential infill (Locational Criterion #4, Policy 24, Powellhurst Community Plan, p. 214). This includes the duplex lot. It is obvious that increasing the number of units per lineal foot of road improvement will decrease the per lot cost of such services/improvements. Lower development costs mean more affordable housing prices.*

*In summary, this zone change would be in the public interest because it enables the development of the properties in better conformity to the Powellhurst Community Plan and provides more, and more affordable, housing within that framework than would the development under the existing zoning on these particular parcels"*

**Staff Comment:** Staff concurs with the applicant's statements. The zone change satisfies MCC 11.15.8230 (D)(1).

**B. Public Need [MCC 11.15.8230 (D)(2)]**

**Applicant's Response:** *"The requested zone change would allow twice the number of residential lots than the present LR-10 zoning. Policy No. 21, Housing Choice, of the Multnomah County Comprehensive Framework Plan directs the County to provide for "... an adequate number of housing units at price ranges and rent levels commensurate with the financial capabilities of Oregon and the region's households, and to allow for flexibility in housing location, type and density." The smaller lot size which LR-5 permits should help contribute to affordability by reducing land cost as a housing cost factor."*

*Because a large number of road improvements are required for traffic circulation reasons, development of this property under the current LR-10 zoning is unlikely to happen in the foreseeable future. The cost per lot simply would be too high for the local area market. To develop at the existing LR-10 zoning would cost \$10,000-\$12,000 more per lot than at LR-5 (1980 LD#-80). Clearly, a change in the current zoning from LR-10 to LR-5 is consistent with the County's goal of supporting more affordable housing, and thus also serves the public need.*

*The Powellhurst Community Plan recognized the exponential growth of Portland through the year 2000. "Using a fair share approach based on projected housing need and vacant buildable land, Powellhurst should provide about 4,390 new dwelling units by the year 2000....There is about 487.8 acres of vacant land in the community that can be developed for residential use."(pp 39-40). When multiplied out, this results in approximately 4,840 square feet per dwelling. Clearly, then, the rezoning of these two parcels from LR-10 to LR-5 matches the forecasted demands precisely and therefore serves the public need.*

*As opposed to other property, changing the zone on the sites in question meets the public need "best" because:*

*1. The subject sites are presently available for sale and development.*

2. The land is contiguous with other property to the north (tax lot 234) which is awaiting development, (LD 16-92, #415; ZC 2-92, #415) and indeed will be much more easily and less expensively developed in conjunction with these parcels.

3. Development of these sites furthers the development of the County's Future Street Plan under LD-#80. Without the zone change, the existing Adopted Future Street Plan is too expensive for Southeast Portland land markets.

4. Sewer is available to all the lots on these parcels from Southeast Mall Street's 12" trunk line, thus sub-surface sewage disposal is not of concern. Sewer is also scheduled to be available on SE Cora Street within the year, so the north-facing lots will very shortly have access from their north side as well."

**Staff Comment:** Staff concurs with the applicant's statements. The proposed zone change satisfies MCC 11.15.8230 (D)(2)

### C. Applicable Elements of the Comprehensive Plan

(1) **Statewide Goals and Regional Plan:** The Multnomah County Comprehensive Plan has been found to be in compliance with Statewide Goals and the Regional Plan by the State Land Conservation and Development Commission. To the extent that the proposal satisfies the applicable policies of the Comprehensive Plan, the proposal is also consistent with statewide goals and the regional plan.

(2) **Applicable Comprehensive Plan Policies:** The following Comprehensive Plan Policies are applicable to the proposal.

(a) **No. 2 - Off-Site Improvements**

**Applicant's Response:** "There is no anticipated negative impact on surrounding properties related to development of these parcels. Erosion is not a significant problem in this relatively flat terrain. Although a small portion of the southeast corner of the parcel is within the A Flood Zone, this should have no impact on neighboring properties. This will limit the placement of the building site on this one lot, however. Air, noise and water pollution are not likely to be significant factors (see Policy No. 13). Although there will be additional traffic from the addition of these new homes, the lots are of a size that allows off-street parking for at least two vehicles. Furthermore, additional streets will be developed to help improve traffic circulation. Aesthetically, new homes in this area could certainly improve the visual aspect. Unfortunately, visual blight is a problem on the south side of SE Mall Street on Tax Lot 1500. No safety hazards are expected to arise as a result of this development..

**Staff Comment:** Staff concurs with the applicant's statements. The proposal satisfies Policy 2.

(b) **No. 6A - Growth Management (Powellhurst Plan)**

The site is within the area covered by the Powellhurst Community Plan. The Powellhurst Community Plan is part of the Multnomah

County Comprehensive Framework Plan and constitutes an official element of Comprehensive Framework Plan. The Powellhurst Community Plan is a guide to decision making with regard to capital improvements, land use, and the physical development of the community.

Powellhurst Community Plan Policy 6A addresses Growth Management and states that:

*It is the policy of the County that the area from Boise Street to the Portland Traction Company Line and from S. E. 103rd to S. E. 142nd Avenue will be designated a growth management area in which the following standards will apply:*

*A. The adopted Community Plan map is the long term plan for the area.*

*B. The zoning categories will not be changed at this time to implement the plan. Zone changes will be granted only after an individual application and hearing or as a result of a more detailed County study of the area's problems and the development of solutions to those problems .*

*C. In granting zone changes the approval authority shall consider the following:*

*1. Whether a sanitation permit for sub-surface sewage disposal will be approved.*

*Applicant's Response: "Subsurface sewage disposal systems are not an issue because sewer is installed and in use in SE Mall St. There is ample supply for the subject parcels directly from Mall St alone, and Cora St is slated for sewer development this year as well."*

*Staff Comment: Staff concurs with the applicant's statement. Mid-County Sewer Project staff has verified that public sewer is available. No subsurface sewage disposal is necessary.*

*2. The impact of the development on the flooding problem along Johnson Creek.*

*3. The impact of the development on localized flooding and drainage*

*Applicant's Response (Items 2 and 3): "The subject parcels are located near a local drainage basin (141st and Mall). Fortunately, these parcels are north of Johnson Creek where soil permeability conditions favor soil infiltration of precipitation as opposed to runoff, and thus water travels more slowly back to Johnson Creek. This makes flooding less of an issue. Crushed rock surfaces were recommended for driveways. As a compromise, it might be*

*appropriate to forego concrete sidewalks and curbs in favor of porous soft shoulders along SE Mall and 139th Streets. Several large trees remain on the property. As many of these as possible should be preserved around the new construction in order to enhance water transpiration."*

**Staff Comment:** Parts of Lots 1-6 and 10 and 11 are within the 100-year flood plain of Johnson Creek as shown on Flood Insurance Rate Map of the Federal Emergency Management Agency [Community Panel #410179-0382-B, (revised 3/18/86)]. That map indicates that the base flood elevation is about 210 feet in the vicinity of the site. According to County topographic information, ground elevations on the affected lots range from 200 to 212 feet. The Flood Hazard standards in the County Zoning Ordinance require the finished floor of a residence to be one foot above the base flood elevation [MCC 11.15.6315(B)]. Obtaining of a Floodplain Development Permit is required by MCC 11.15.6307. All runoff created by development of the property will be required to be disposed of on-site without running onto adjacent streets. Subject to these conditions, there will be no impact on either localized flooding, or flooding along Johnson Creek.

(c) **No. 13 - Air and Water Quality and Noise Levels**

**Applicant's Response:** *"The development of single family homes in an LR-5 configuration should have no significant impact on air pollution. Sewer service is currently available from Mall St. which will adequately serve all 16 lots. Sewer is also scheduled for construction along Cora Street this year. Depending upon the timing of development, Mall St. alone or both streets would be able to deliver sewer service to these lots. Septic or other on-site sanitary systems therefore are unnecessary. Separate drywells would be installed for each lot to handle other (rainwater) drainage. Normal sounds of household activities should not pose a significant noise impact.."*

**Staff Comment:** By virtue of its residential land use designation, the subject site is a noise-sensitive area, but is not a noise generator. For this reason and those stated by the applicant, the proposal satisfies Policy 13.

(d) **No. 14 - Development Limitations**

**Applicant's Response:** *"The majority of the site is outside the 100 year flood zone. The southeast corner of the parcel, (lots 1 and 2), has an edge in the A designation. This is minimal, however, and is well removed from the likely homesites. Furthermore, sewer has been installed, and is available for the entire subdivision of these parcels. Septic tank dysfunction is therefore not an issue. . ."*

*Lots 1-6 contain a significant portion of Flood Fringe (B designation). These homes would need to be constructed with higher stem walls to allow the living space to be a minimum of one*

foot above 210 feet above sea level. By placing the homes deep on the lots, the amount of height required should be only about 3 or 4 feet.

The parcel is not in an earth movement area. There is a slight downhill slope toward the south; at the greatest it is less than 10% (southeast corner.) This parcel is in the "under 8% slope" area on the Powellhurst Community Plan slope map. Surface runoff would be handled by appropriate drywells installed with each dwelling unit, commensurate with the square footage of ground covered. Erosion does not present a problem in this location.

The subject parcels are not shown to lie within the area of concern for water table height. the water table height does not exceed six feet below the surface for more than three weeks of the year. This is far below the 24" minimum required for special development consideration.

The fragipan is too far below the surface to interfere with normal construction."

**Staff Comment:** Compliance with the floodplain development permit standards in the County Zoning Ordinance will mitigate any adverse impact that might otherwise occur due to the the site's proximity to the floodplain .The proposal satisfies Policy 14.

(e) **No. 16 - Natural Resources**

**Applicant's Response:** "The subject parcel is only minimally within the designated 100 year flood plain, and partially within the flood fringe of Johnson Creek. There are no mineable sand/gravel deposits known on this site.

**Staff Comment:** Staff concurs with the applicant's statements. The proposal satisfied Policy 16.

(f) **No. 17 - Community Development Framework:**

**Applicant's Response:** "B. Preservation of existing larger trees on the parcels will help maintain the aesthetic value of the property. Some trees are older and decaying and should be removed to prevent future hazard. The property is not located on the slope of Powell Butte.

D. Energy conservation will be encouraged by orienting the majority of the homes for solar access.

E. Somewhat smaller lots will allow individual homeowners the opportunity to maintain their property in a pleasant manner without undue hardship. Smaller lots allow lower land cost per dwelling, thus allowing better quality construction for a lower overall price.

F. This plan is consistent with the Community Development Plan which is to "encourage medium and high density housing that will be both livable and a good neighbor to adjacent development."

*O. As storm sewers are not developed in this area, the natural method of individual drywells for each dwelling unit has been proposed to handle rainwater runoff. Allowing optional pervious driveway and flag toppings may also help diversify percolation."*

**Staff Comment:** Staff concurs with the applicant's statements. The proposal satisfied Policy 17.

(g) **No. 19 - Community Design:**

**Applicant's Response:** *"1. The proposed development is not on a significant collector nor arterial street.*

*2. Vehicular traffic will be limited to standard right of ways except for single flag access to a duplex off 139th Street, one flag to a single family dwelling off Cora street and a double flag access for two parallel homes off Mall Street.*

*3. Clustered housing does not apply to this type of single family residential development. Only one duplex unit is proposed on a flag lot.*

*4. The road patterns proposed are simple and straight forward.*

*5. Preservation of some of the larger trees on the property will help integrate natural areas into the landscaping. Views of Powell Butte will be attainable from those lots fronting Mall Street.*

*6. No unusual topography exists.*

*7. No significant change in the very slight slope that exists on part of the property is expected.*

*8. Optional crushed rock/asphalt grindings surfaces for driveways or sidewalks could enhance percolation and allow more efficient land drainage as suggested in Policy 6A.*

*9. Graded shoulders along SE Mall Street might apply depending upon the determination relative to #8 above.*

*10. Maximum infiltration of storm waters can be achieved by allowing more use of pervious surface toppings as well as location of appropriate street drywells and homesite drywells commensurate with covered areas. Because the east end of SE Mall Street has a natural flood basin, it is important that drainage from development be as diversified as possible to allow storm waters to be handled most efficiently. Limiting the required impervious surfaces is a way to promote the dispersal of rainwater.*

*11. No natural waterways exist on the property.*

12. No area-wide systems for drainage are in existence. Drywells on each lot were the recommended method of control for this area (Ken Carlson, Portland Plumbing/Plans Examiner.)

13. Erosion is not considered to be a problem on these parcels. 14. Continuous pathways are not indicated.

15. Natural views are not concentrated in a small area. Pathways and roadways constructed to accentuate these are not indicated."

**Staff Comment:** Staff concurs with the applicant's statements. The proposal satisfied Policy 19

(h) **No. 20 - Arrangement of Land Uses:**

**Applicant's Response:** "A zone change from LR-10 to LR-5 is consistent with the County's policy to support higher densities of residential dwellings within the urban areas in order to preserve the natural reserves of outlying areas. The proposed subdivision is within 500 feet of the western edge of Powell Butte County Park with nine miles of hiking, biking and horseback riding trails. It abuts the eastern edge of an established family neighborhood along Cora St. and the Ginger Lane tract."

**Staff Comment:** Staff concurs with the applicant's statements. The proposal satisfied Policy 20.

(i) **No. 21 - Housing Choice:**

**Applicant's Response:** "Development under this proposal directly supports Policy No. 21 in the following ways:

A. Rezoning this parcel from LR-10 to LR-5 would aid in reducing the land cost of single family dwellings by approximately 40%(based on selling price of \$22,000 per lot at LR-5 and \$38,000 per lot at LR-10. LR-7 would sell at \$30-32,000.) This would allow development of slightly better quality homes in an affordable price range for all income levels.

C. Additional affordable housing would be available for young families, single adults and childless couples in a suburban neighborhood area. This also would provide options for those who no longer have the desire or capacity to maintain larger lots.

D. Some of the lots remain slightly larger in size, thus allowing for some diversity, and provides a mix of housing choices. This would provide a choice for larger families or those who choose to grow their own food, or prefer more space. Again, the smaller parcels may be better suited for elderly persons with reduced living space requirements. Two duplex units also offer another option.

F. The change in the 1980 proposed street plan showing a 50 foot right of way through the middle of this parcel in favor of relocating

*on the west border of this parcel and the adjacent parcel will more evenly distribute development costs, and decrease to three the number of flags required on all three parcels discussed. More economical lots will result.*

*G. The preservation and extensive rehabilitation already performed on the existing Gates Farmhouse is consistent with the County's policy to conserve existing housing stock. The dwelling on parcels 11 and 12 is not of historical note or style. It is also quite small with only one bedroom, and would not meet the needs of the average homebuyer.*

*I. The proposed subdivision would allow improved supply of housing affordable to families of modest means."*

**Staff Comment:** Staff concurs with the applicant's statements. The proposal satisfied Policy 21.

(j) **No. 22 - Energy Conservation:**

*Applicant's Response: "A. This proposal will fully develop a parcel within the County's urban area. This will help reduce "urban sprawl" which is high in energy use. Lots 1-6,9 and 11-18 are oriented in a North-South direction with depths of 100 or more feet. Southeast Cora Street has an East-West orientation that is well within 30 degrees, thus meeting the applicable guidelines for solar efficiency. Lots 7 and 10 are somewhat larger or more square so that a significant amount of living area in these future homes may be exposed to the winter sun for passive solar heating. Lot 9 has an existing home with good southern exposure. The lots facing SE Mall St will probably require garage entry below the ground floor living area, thus also allowing good southern solar exposure.*

*B, C. The subject parcel is located near local mass transit systems such as TRI-MET buslines on S.E. 136th and S.E. Powell/Highway 26, I-205 and MAX lightrail between the downtown and Gresham areas. Specifically, local bus stops are located at SE 136th St and SE Mall and SE Cora Streets. There are well-developed routes to the I-205 interchanges at SE Foster Rd, SE Powell Rd and SE Division St. MAX lightrail is available by bus or by car with a Park and Ride facility at SE 122nd St and Burnside Rd.*

*D. The existing lot pattern allows a slight slope advantage for sewer hookup in SE Mall St. Slightly staggered homesites along the frontage of SE Mall St would allow views of the west side of Powell Butte Park."*

**Staff Comment:** Staff concurs with the applicant's statements. The proposal satisfies Policy 22.

(k) **No. 24 - Housing Location**

**Applicant's Response:"SCALE:**

*The proposed site development at LR-5 would meet the scale standards of a Minor Residential Project, with an expected population increase of 45 at 2.25 persons average per dwelling unit added.(p. 41, Powellhurst Community Plan) The impact on the surrounding area and its support system is expected to be minimal.*

**LOCATION CRITERIA:**

*A. Access: The configuration of the lots facing both SE Cora St and SE Mall St, as well as the three proposed flag lots provide for plenty of offstreet parking. The relative simplicity of the layout suggests negligible impact on traffic congestion and turning movements. There is, from all lots direct access to a public street.*

*B. Site Characteristics: The site is of a size and shape which can reasonably accommodate the proposed and future allowable uses in a manner which is consistent with user convenience and energy conservation. The average site topography is significantly less than a 20~ grade.*

*C. Impact On Adjacent Lands: The proposed scale is consistent with recent developments in the general area. The parcel adjacent to the north, which will develop the north half of the SE Cora St extension, is zoned LR-5. The one acre parcel adjacent on the west was recently sold under an advertised "potential 6 lots". A parcel at the east end of SE Mall St is for sale with advertised three lot potential. It has flood plain considerations. Thus, it appears that development of these parcels is consistent with the trend in this neighborhood."*

**Staff Comment:** Staff concurs with the applicant's statements. The proposal satisfied Policy 24.

(l) **No. 35, Public Transportation**

**Applicant's Response:** *The proposed development supports the County's transportation criteria by increasing urban density in areas already well served by public transport. Tri-Met Bus line Holgate #17 connects with Powell #9 from the cross street of SE 136th at both SE Mall and SE Cora Streets. The parcel is conveniently located between SE Foster Rd and SE Powell Blvd-US 26 /SE Division St for easy access to I-205. A Park and Ride is located at the 122nd St stop of MAX lightrail..*

**Staff Comment:** Staff concurs with the applicant's statement. The proposal satisfies Policy 35.

(m) **No. 36, Transportation System Development Requirements:**

**Applicant's Response:"A. Additional right of way is dedicated on SE Mall St to be consistent with future development from 40 foot width to 50 foot width.**

*B. Consolidation of two flag entrances to a single 24 foot wide double flag is consistent with this policy.*

*C. Depth of the proposed lots allows for plenty of offstreet parking on each site. This would be a minimum of two spaces per dwelling in addition to covered parking.*

*D. Bus service is located at the intersections of SE 136th and SE Mall and SE Cora Streets. No further changes are indicated.*

*E. Mature maple trees exist along the north edge of SE Mall St. It is proposed that these be preserved for their aesthetic value. Trees could be planted along the extension of SE Cora St.*

*F. Sidewalks would be provided along the south edge of SE Cora St, the east edge of SE 139th St and the north edge of SE Mall St. Alternatively, a graded gravel/porous surface along the east edge of SE 139th St and SE Mall St could be maintained for pedestrian use.*

*I. The south half of the SE Cora Street extension would be improved to County standards with a dedicated 25 foot right of way. This would be required also if the property was developed in accordance with the existing LR-10 designation. The east half of 139th Street also would be improved to County standards with a dedicated 35 foot right of way."*

**Staff Comment:** The County Engineer has determined that right-of-way dedication and improvements for Cora and Mall Streets and 139th Avenue adjacent to the site are necessary in order for the proposal to comply with the provisions of the Street Standards Ordinance (MCC 11.60). The dedications are detailed in Condition 2 above. The improvements are detailed in Condition 3 above, and include curbs, sidewalks, paving, storm drains and street lighting.

(n) **No. 37 - Utilities** This policy requires a finding that the water, sanitation, drainage and communication facilities are available as follows:

**Water And Disposal System**

*A. The proposed use can be connected to a public sewer and water system, both or 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 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.*

**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.*

The proposal meets Policy 37 for the following reasons:

**Water and Sanitation:**

**Applicant's Response:** *"The subject property can, in entirety, be serviced by the existing main sewer trunk line in SE Mall St. The Mid-County Sewer Project anticipates construction of sewer lines in SE Cora St within the coming year. Powell Valley Road Water District provides water service to the subject parcel. An existing 8" water main in SE Mall Street provides adequate capacity to serve the proposed development. It is proposed by the Portland Fire Department and also Powell Valley Road Water District that a 6" water line be added in the extension of SE Cora and also SE 139th streets to service the proposed LR-5 subdivision. This would supply residential water as well as fire hydrant needs."*

**Staff Comment:** The Powell Valley Road Water District has confirmed that public water service is available to the site. The office of the Mid County Sewer Project has confirmed that public sewer is available to the site. The proposal complies with Item A of Policy 37.

**Drainage:**

**Applicant's Response:** *"It is proposed that on-site drywells be incorporated for each dwelling consistent with the surface area of ground covered."*

**Staff Comment:** The County Engineer will require construction of appropriate storm drainage facilities in conjunction with required street improvements. The proposal satisfies Item of Policy 37.

**Energy and Communication:** Portland General Electric provides electric power and US West provides telephone service. The proposal satisfies Items *H* and *I* above.

(o) **No. 38 - Facilities**

**Staff Comment:** The property is located in the David Douglas School District, which has states that there is "some crowding at the elementary level" but not at the middle and high school level. The Portland Fire Bureau provides fire protection and has confirmed that there is adequate water pressure and flow for fire fighting purposes. The Multnomah County Sheriff's Office provides police protection and has stated that there is an adequate level of police service available for the area. The proposal satisfies Policy 38.

(p) **Policy 40 - Development Requirements:** This policy requires a finding that:

- A. *Pedestrian and bicycle path connections to parks open space areas and community facilities will be dedicated when appropriate and where designated in the Bicycle Corridor Capital Improvements Program and Map.*
- B. *Landscaped areas with benches will be provided in commercial, industrial and multiple family developments, where appropriate.*
- C. *Areas for bicycle parking facilities will be required in development proposals, where appropriate.*

**Applicant's Response:** *"The subject parcels lie outside the Bicycle Corridor Capital Improvements Area, and this is basically single family residential development. Consequently, provisions of this policy do not apply to this subdivision proposal.*

**Staff Comment:** Staff concurs with the applicant's statements. Policy 40 is not applicable.

**Conclusions: (ZC 2-93)**

1. Findings 4.A through 4.C demonstrate that the proposed zone change meets the general zone change Approval Criteria of the Zoning Ordinance as stated in MCC 11.15.8230 (D).
3. Finding 4.C(2)(b) demonstrate that the proposed zone change meets the special Powellhurst Community Plan zone change approval criteria stated in Powellhurst Plan Policy 6.A.

## Findings Of Fact (LD 29-93)

1. **Applicant's Proposal:** See Finding 1 for ZC 2-93.
2. **Site Conditions and Vicinity Information:** See Finding 2 for ZC 2-93.
3. **Land Division Ordinance Considerations (MCC 11.45)**
  - A. The proposed land division is classified as a Type I because it is "[A] . . . *partition associated with an application affecting the same property for any action proceeding requiring a public hearing . . .*" [MCC 11.45.080(D)]. The proposed land division is associated with an application to change the zone of the subject site from LR-10 to LR-5 .This Decision addresses the zone change application under Decision # 1 (ZC 2-93. The proposal is also a Type I because it is an Urban Area subdivision of more than ten lots [MCC 11.45.080(A)].
  - B. MCC 11.45.150 requires that the Future street Plan "*show the proposed continuation of streets in the Type I Land Division in sufficient detail to demonstrate that future division of the adjacent area in compliance with the provisions of [the Land Division Ordinance] is reasonably possible.*"
  - C. MCC 11.45.230 lists the approval criteria for a Type I Land Division .The approval authority must find that:
    - (1) *The Tentative Plan is in accordance with:*
      - a) *the applicable elements of the Comprehensive Plan;*
      - b) *the applicable Statewide Planning Goals adopted by the Land Conservation and Development Commission, until the Comprehensive Plan is acknowledged to be in compliance with said Goals under ORS Chapter 197; and*
      - c) *the applicable elements of the Regional Plan adopted under ORS Chapter 197. [MCC 11.45.230(A)]*
    - (2) *Approval will permit development of the remainder of the property under the same ownership, if any, or of adjoining land or of access thereto, in accordance with this and other applicable ordinances; [MCC 11.45.230(B)]*
    - (3) *The Tentative Plan or Future Street Plan complies with the applicable provisions, including the purposes and intent of this Chapter; [MCC 11.45.230(C)]*
    - (4) *The Tentative Plan or Future Street Plan complies with the Zoning Ordinance or a proposed change thereto associated with the Tentative Plan proposal; [MCC 11.45.230(D)]*
    - (5) *If a subdivision, the proposed name has been approved by the Division of Assessment and Taxation and does not use a word*

*which is the same as, similar to or pronounced the same as a word in the name of any other subdivision in Multnomah County, except for the words "Town", "City", "Place", "Court", "Addition" or similar words, unless the land platted is contiguous to and platted by the same applicant that platted the subdivision bearing that name and the block numbers continue those of the plat of the same name last filed; [MCC 11.45.230(E)]*

- (6) *The streets are laid out so as to conform, within the limits of the Street Standards Ordinance, to the plats of subdivisions and maps of major partitions already approved for adjoining property unless the approval authority determines it is in the public interest to modify the street pattern; [MCC 11.45.230(F)] and*
- (7) *Streets held for private use are clearly indicated on the Tentative Plan and all reservations or restrictions relating to such private streets are set forth thereon. [MCC 11.45.230(G)]*
- (8) *Approval will permit development to be safe from flooding and known flood hazards .Public utilities and water supply systems shall be designed and located so as to minimize or prevent infiltration of flood water into the systems .Sanitary sewer systems shall be designed and located to minimize or prevent:*
  - (a) *The infiltration of floodwater into the system; and*
  - (b) *The discharge of matter from the system into flood waters [MCC 11.45.230(H)]*

4. **Response to Type I Land Division Approval Criteria:** In this section, the applicant's responses to the approval criteria are in *italic type* .Staff discussion of applicant responses appear in paragraphs titles **Staff Comment**. A copy of the applicant's written responses to the land division approval criteria (along with other written information submitted by the applicant) is attached as Exhibit A.

A. **Applicable Elements of the Comprehensive Plan**

See Finding 4.C for ZC 2-93.

B. **Development of Property [MCC 11.45.230(B)]:**

**Applicant's Response:** *"With approval of this zone change and development proposal, this parcel will be developed in its entirety.*

*As the parcel to the north cannot be developed cost effectively until this parcel is rezoned and subdivided, the impact should be definitely positive. The zone change from LR-10 to LR-5 is consistent also with the current zoning of the parcel adjacent to the north.*

*The surrounding neighborhood is mostly low-to-medium density residential. The adjacent properties on either side are zoned LR-10. However, as mentioned above, the property adjacent to the west is currently*

*in escrow, and is also proposing a 6-lot subdivision which would require LR-5 designation. The lot adjacent to the north is zoned LR-5 (ZC 2-92/LD 16-92). Cora street, the continuation of which would serve these parcels, contains LR-7 development. In the preceeding two years, new developments one block to the north on Center Street have been completed at LR-5 densities.*

*The parcels directly to the east are a .35 acres and .99 acres. The smaller one is owner occupied. A modest, well-maintained home with garage exists on this lot. The larger parcel is currently rented, and the owner appears to be grading along the adjacent border, for unknown purposes.*

*On the south side of SE Mall St there are a mixed assortment: Tax lot 1400 has been steadily upgraded since the owner took possession a few years ago. It is also for sale. The adjacent tax lot 1500 is, frankly, a disaster! It is filled with debris and also has a single family dwelling. Tax lot 1600 is .43 acres with a very small single family rental unit. Tax lots 1700 and 1800 contain identical pre-fab type houses which look to be standard 2 or 3 bedroom, 1 bath. Tax lot 1700 is owner occupied. Tax lot 1800 appears to be a rental(?). Tax lot 1900 is a 1.65 acre parcel currently occupied by the owner who maintains a modest home with a separate structure in an apparent state of disrepair. The owner is retired and does some farming.*

*It is expected, therefore, that the impact on the surrounding area will be one of upgrade of services on Mall street and continuation of the same or similar construction on Cora street. The improvement of proposed 139th street will facilitate ingress and egress from both tax lots 2600 and 2700, rendering both more easily developable within the Multnomah County Framework and the Powellhurst Community Plan. Southeast 139th street will also allow residents of existing Cora street easier access to Powell Butte Park via Mall street."*

**Staff Comment:** Pending approval of the proposed zone change, approval of the land division will increase the opportunity for development of the site in accordance with the Comprehensive Plan and the LR-5 zoning .The proposed land division extends the south half of SE Cora Street across about north edge of the site, improves the north half of Mall Street along the south edge of the site, and creates the east seven-tenths of SE 139th Avenue between Cora and Mall Streets .The Cora Street extension helps carry out the present Future Street Plan, and construction of 139th Avenue as proposed modifies the Future Street Plan by making 139th accessible to Tax Lot 2600. The shifting of 139th Avenue to the west enhances the development potential for Tax Lot 2600 if a zone change to LR-5 is obtained for Tax Lot 2600. For these reasons and for those stated by the applicant, the proposed land division satisfies MCC 11.45.230(B)

**C. Applicable Provisions of Land Division Ordinance [MCC 11.45.230(C)]**

**Staff Comment:**

- (1) MCC 11.45.015 states that the Land Division Ordinance. . ."is adopted for the purposes of protecting property values, furthering the health, safety and general welfare of the people of Multnomah

**County, implementing the Statewide Planning Goals and the Comprehensive Plan adopted under Oregon Revised Statutes, Chapters 197 and 215, and providing classifications and uniform standards for the division of land and the installation of related improvements in the unincorporated area of Multnomah County." The proposed land division satisfies the purpose of the Land Division Ordinance for the following reasons:**

- (a) The size and shape of the proposed parcels meet the area and dimensional requirements of the requested LR-5 zoning designation .As designed, the lots are adequate to accommodate single-family residences that satisfy yard setback, height, lot coverage and solar access requirements in the LR-5 zone without the need for variances from those setback, height, lot coverage and solar access requirements .Under these circumstances, overcrowding will not occur.
  - (b) The finding for Plan Policies 37 and 38 address water supply and sewage disposal, and education, fire protection and police protection, respectively .For the reasons stated in those findings, the proposal furthers the health, safety, and general welfare of the people of Multnomah County.
  - (c) The proposed land division complies with the applicable elements of the Comprehensive Plan .The State Land Conservation and Development Commission has found the Comprehensive Plan to be in compliance with Statewide Planning Goals.
  - (d) The proposal meets the purpose of "*providing classifications and uniform standards for the division of land and the installation of related improvements*" because the proposal is classified as a Type I Land Division and meets the approval criteria for Type I Land Divisions for the reasons stated in these findings .The conditions of approval assure the installation of appropriate improvements in conjunction with the proposed land division.
- (2) MCC 11.45.020 states that the intent of the Land Division Ordinance is to . . ."*minimize street congestion, secure safety from fire, flood, geologic hazards, pollution and other dangers, provide for adequate light and air, prevent the overcrowding of land and facilitate adequate provisions for transportation, water supply, sewage disposal, drainage, education, recreation and other public services and facilities.*"
- (a) The proposal minimizes street congestion by requiring right-of-way dedication and improvements for Cora and Mall Streets and 139th Avenue adjacent to the subject site.
  - (b) The findings for Plan Policies 37, 14 and 13 address fire protection, flood and geologic hazards, and pollution, respectively .For the reasons stated in those findings, the proposal would secure safety from fire, flood, geologic hazard, and pollution.

- (c) The proposal meets the area and dimensional standards of the requested LR-5 zoning district as explained in Finding 4.D below .Residential development on all newly created lots will be required to comply with applicable LR-5 setback, height, lot coverage and solar access requirements .In meeting those requirements, new development will provide for adequate light and air and prevents the overcrowding of land.
- (d) The finding for Plan Policies 35 and 36 address streets and public transportation .The finding for Policies 37, 14 and 38 address water supply and sewage disposal, storm drainage, and education, fire protection and police service .For the reasons stated in those findings, the proposed land division facilitates adequate provision for public transportation, water supply, sewage disposal, drainage, education, and other public services and facilities.

**D. Zoning Compliance [MCC 11.45.390(D)]:**

**Staff Comment:**

- (1) Subject to approval of ZC 2-93, the site will be zoned LR-5, Urban Low Density Residential District.
- (2) The following area and dimensional standards apply per MCC 11.15.2634:
  - (a) The minimum lot size for a single family dwelling shall be 5,000 square feet .As shown on the Tentative Plan Map, all proposed lots meet or exceed this requirement.
  - (b) The minimum lot width at the building line shall be 45 feet .As shown on the Tentative Plan Map, all proposed lots meet or exceed this requirement.
  - (c) The minimum yard setbacks shall be 20 feet front, 5 feet side, and 15 feet rear. The Tentative Plan Map indicates that the existing house on Lot 10 exceeds all setback requirements. The existing garage and metal building on Tax Lot 2700 and the existing house and detached garage on Tax Lot 2800 are all planned for removal. A condition of approval requires removal of these structures because they would violate yard setback requirements for Lots 11, 12, 14 and 15. Residential development on Lots 1-9 and 11-19 will be required to meet all minimum yard setbacks.
  - (d) The maximum lot coverage shall be 50 percent .Single-family residential development on Lots 1-9 and 11-19 will be required not to exceed the maximum allowed coverage .The lot coverage for existing house on Lot 10 is just over 12 percent.
  - (e) The proposed land division satisfies the solar access provisions of the Zoning Ordinance even though four of the proposed parcels do not have north-south dimensions of 90 feet and none of the proposed parcels do not have front lot lines that are within 30 degrees of a true east-west orientation as required by MCC

11.15.6815(A). Lots 6-9 do not meet the basic design standard of MCC 11.15.6815(A) because the road pattern dictated for the area by the Future Street Plan prevents the parcels from being oriented for solar access. Because SE 139th Avenue runs in a north-south orientation, there is no way that Lots 6-8 could have front property lines that are within 30 degrees of a true east-west orientation. Therefore, pursuant to MCC 11.15.6815(A)(3), the percentage of lots that must comply with MCC 11.15.6815 is reduced from 80 percent to 78.9 percent.

- E. **Subdivision Name [MCC 11.45.230(E)]:** The Assessment and Taxation Division has ascertained that the proposed plat name, McClure, conforms with applicable statutes and ordinances, including MCC 11.45.230(E).
- F. **Street Layout [MCC 11.45.230(F)]:** The construction of south half of SE Cora Street is consistent with the adopted Future Street Plan. As explained in Finding 4.B above, the construction of SE 139th Avenue in its proposed new location is an appropriate modification of the Future Street Plan. Therefore, the proposed land division satisfies MCC 11.45.230(F),
- G. **Private Streets [MCC 11.45.230(G)]:** The proposed land division does not include any new private streets. The new lots will be served by driveways connecting to 139th Avenue and Mall and Cora Streets. Therefore, MCC 11.45.230(F) is not applicable.
- H. **Flooding and Flood Hazards [MCC 11.45.230(H)]:** Sewer lines serving the site must meet Mid-County Sewer Project specifications, and connections between sewer lines and individual residences must meet applicable plumbing codes. For these reasons and those stated in Finding 4C(2)(d), and subject to the obtaining of Floodplain Development Permits as needed, the proposed land division satisfies MCC 11.45.230(H).

### **Conclusions (LD 29-93)**

- 1. The land division and revised Future Street Plan satisfy applicable elements of the Comprehensive Plan.
- 2. The proposed land division and revised Future Street Plan satisfy the approval criteria for Type I land divisions.
- 3. Subject to Decision #1, the proposed land division and revised Future Street Plan comply with the Zoning Ordinance.

In the matter of ZC 2-93 / LD 29-93

Signed by the Hearings Officer: November 5, 1993  
Decision mailed to parties: November 10, 1993  
Submitted to Clerk of the Board: November 12, 1993  
Last day to Appeal to the Board: November 22, 1993

The Hearings Officer Decision may be appealed to the Board of County Commissioners by any person or organization who appears and testifies at the hearing, or by those who submit written testimony into the record. An appeal must be filed with the County Planning Division within ten days after the Hearings Officer Decision is submitted to the Clerk of the Board. An appeal requires a completed "Notice of Review" form and a fee of \$300.00 plus a \$3.50-per-minute charge for a transcript of the initial hearing(s) [ref. MCC 11.15.9020(A)(1) and MCC 11.15.9020(B)]. 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.

By Robert Liberty, Jr.  
Robert Liberty, Hearings Officer

MEETING DATE: November 23, 1993

AGENDA NO: P-2

(Above Space for Board Clerk's Use ONLY)

**AGENDA PLACEMENT FORM**

SUBJECT: CU 8-93 Hearings Officer Decision

BOARD BRIEFING Date Requested: \_\_\_\_\_

Amount of Time Needed: \_\_\_\_\_

REGULAR MEETING: Date Requested: November 23, 1993

Amount of Time Needed: 2 Minutes

DEPARTMENT: DES DIVISION: Planning

CONTACT: R. Scott Pemble TELEPHONE #: 248-3182

BLDG/ROOM #: 412/103

PERSON(S) MAKING PRESENTATION: Planning Staff

**ACTION REQUESTED:**

INFORMATIONAL ONLY  POLICY DIRECTION  APPROVAL  OTHER

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

CU 8-83 Review of Hearings Officer Decision of November 8, 1993, approving, subject to conditions, conditional use request for a non-resource related single family dwelling in the MUF-19, multiple use forest zoning district, for property located at 14950 NW McNamee Road

BOARD OF  
COUNTY COMMISSIONERS  
1993 NOV 15 PM 3:09  
MULTNOMAH COUNTY  
OREGON

**SIGNATURES REQUIRED:**

ELECTED OFFICIAL: \_\_\_\_\_

OR

DEPARTMENT MANAGER: *[Signature]* Betty Willia

**ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES**

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



## DIVISION OF PLANNING AND DEVELOPMENT

### Board Planning Packet Check List

File No. C48-93

Agenda Placement Sheet      No. of Pages   1  

Case Summary Sheet      No. of Pages   1    
 Previously Distributed      \_\_\_\_\_

Notice of Review      No. of Pages \_\_\_\_\_  
\*(Maybe distributed at Board Meeting)  
 Previously Distributed      \_\_\_\_\_

Decision      No. of Pages   21    
(Hearings Officer/Planning Commission)  
 Previously Distributed      \_\_\_\_\_

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



CASE NAME: Charles Walters  
Conditional Use Approval

TIME: 1:30 pm  
NUMBER: CU 8-93

1. Applicant Name/Address:

Charles Walters  
14901 NW McNamee Rd.  
Portland, OR 97231

ACTION REQUESTED OF BOARD	
<input checked="" type="checkbox"/>	Affirm Hearings Officer
<input type="checkbox"/>	Hearing
<input type="checkbox"/>	Scope of Review
<input type="checkbox"/>	On the record
<input type="checkbox"/>	De Novo
<input type="checkbox"/>	New Information allowed

2. Action Requested by applicant:

Approve a non-resource related single family residence in the MUF district.

3. Staff Report Recommendation (October 1, 1993):

Approve, subject to conditions

4. Hearings Officer Decision (November 8, 1993):

Approved, subject to conditions

5. If recommendation and decision are different, why?

Same.

**ISSUES**

*(who raised them?)*

1. Does the county code provision which states that separate Lots of Record are created when a parcel is divided by a County maintained road comply with State Statute? *(issue raised by Arnold Rochlin)* The Hearings Officer concluded that the property met the code definition for a Lot of Record and that consideration of whether the code met state statute was not part of the current application.
2. The site has development limitations, including steep slopes and erosion hazards which could cause runoff and erosion problems on the adjacent, downslope property. *(issue raised by Candice Staples, an adjacent property owner)* The applicant subsequently submitted engineering and geotechnical reports indicating that development of the site with a single family residence could be accomplished without causing hazardous conditions, provided certain site development and drainage standards were met.
3. The feasibility of obtaining water supply and sewage disposal from an adjacent property. *(issue raised by Arnold Rochlin)* The applicant submitted additional information indicating that a Land Feasibility Study had been approved for a septic drainfield on the adjacent parcel, provided information that the well on the adjacent property had sufficient capacity to supply the proposed residence, and provided a letter from the County Right-of-Way department stating that a permit could be obtained to place utility lines under McNamee Road. However, to date no evidence has been submitted that an easement has been obtained or recorded.



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

**HEARINGS OFFICER DECISION**

November 8, 1993

CU 8-93, #60 Conditional Use Request (Non-Related Single Family Dwelling)

**Location:** 14950 NW McNamee Road

**Legal:** Tax Lot '33', Section 30, 2N, 1W, 1991 Assessor's Map

**Site Size:** 1.39 acres

**Property Owner:** Charles Walters  
14901 NW McNamee Road  
Portland, OR 97231

**Applicant:** Land Development Consultants, Inc.  
233 SE Washington St.  
Hillsboro, OR 97123

**Comprehensive Plan:** Multiple Use Forest

**Present Zoning:** MUF-19, Multiple Use Forest District

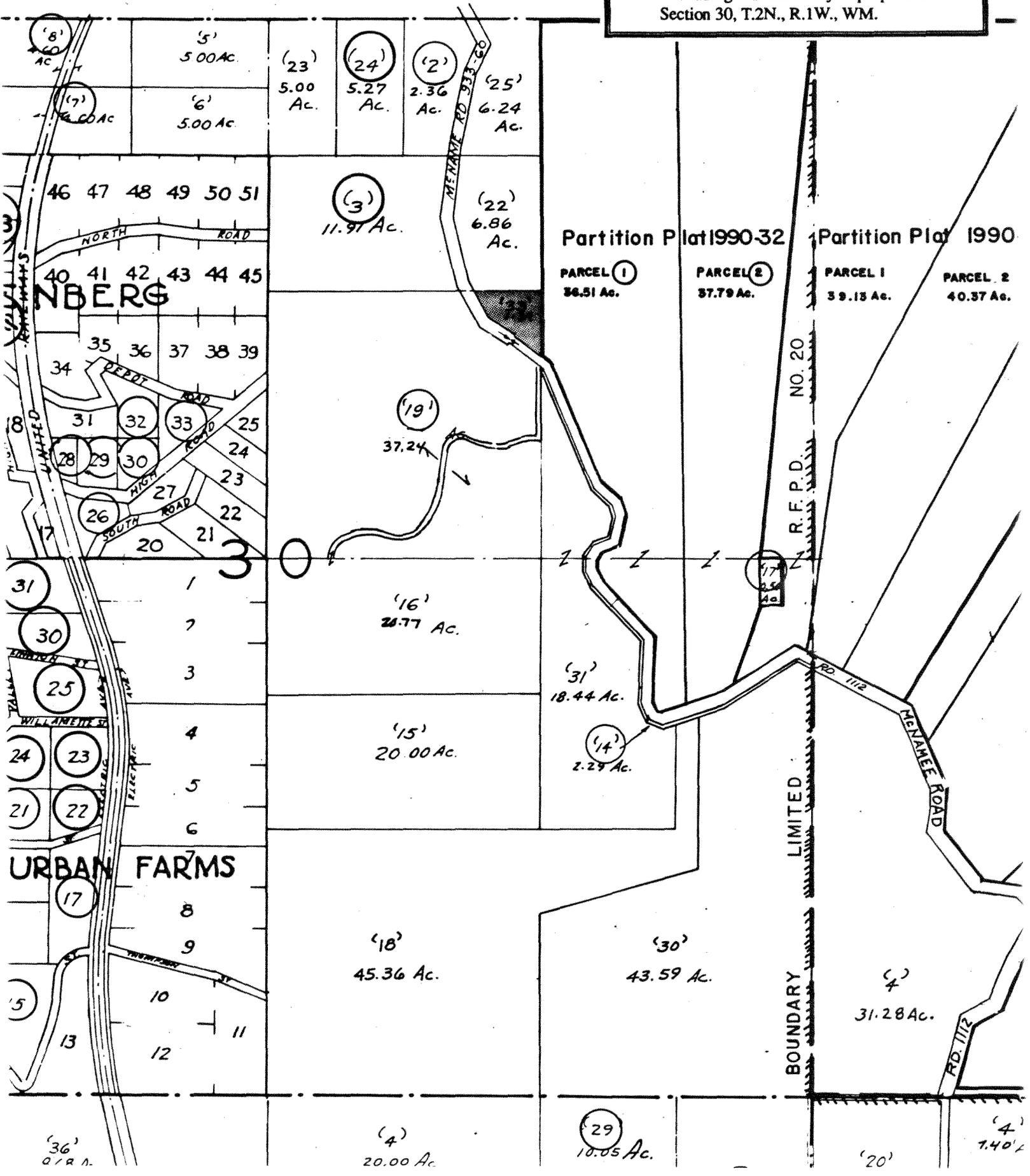
**Hearings Officer Decision:** Approval, Subject to the following conditions:

**CONDITIONS OF APPROVAL:**

1. Prior to any site clearing, removal, fill or grading work, obtain a Hillside Development Permit.
2. Prior to obtaining building permits, submit evidence that a legal easement to obtain water and to place a septic drainfield off-site has been obtained and recorded by deed.
3. Obtain a Right-of -Way permit to place the drainfield and water lines under McNamee Road.
4. Comply with the site development recommendations set forth in the RZA AGRA report dated September 7, 1993, attached; unless such recommendations are modified or deleted as part of the Hillside Development Permit decision.
5. Required fire breaks shall be shown on the final site plan.
6. Obtain approval of a Land Feasibility Study, prior to any site clearing, removal, fill or grading work.



**N**  
**↑** Case #: CU 8-93  
 Location: 14901 NW McNamee Road  
 Scale: 1 inch to 600 feet (approximate)  
 Shading indicates subject properties  
 Section 30, T.2N., R.1W., WM.



EXISTING SFR HOUSE

SITE

PROPOSED HOUSE

EXISTING SINGLE FAMILY HOUSE

PROPOSED DRAIN FIELD

EXISTING WELL

EXISTING MOBILE HOME

(19)  
38.63 Ac

PORTION OF TL '19'

2N-1W-SEC 30

SW 1/4

NE 1/4

RD. 1112-40

RD. 1112-40

ROAD

TITLE 2116 5/18/62

20' Easement 1682 8/1/83

(16)  
20.77 Ac.

NORTH  
1" = 200'

5

39

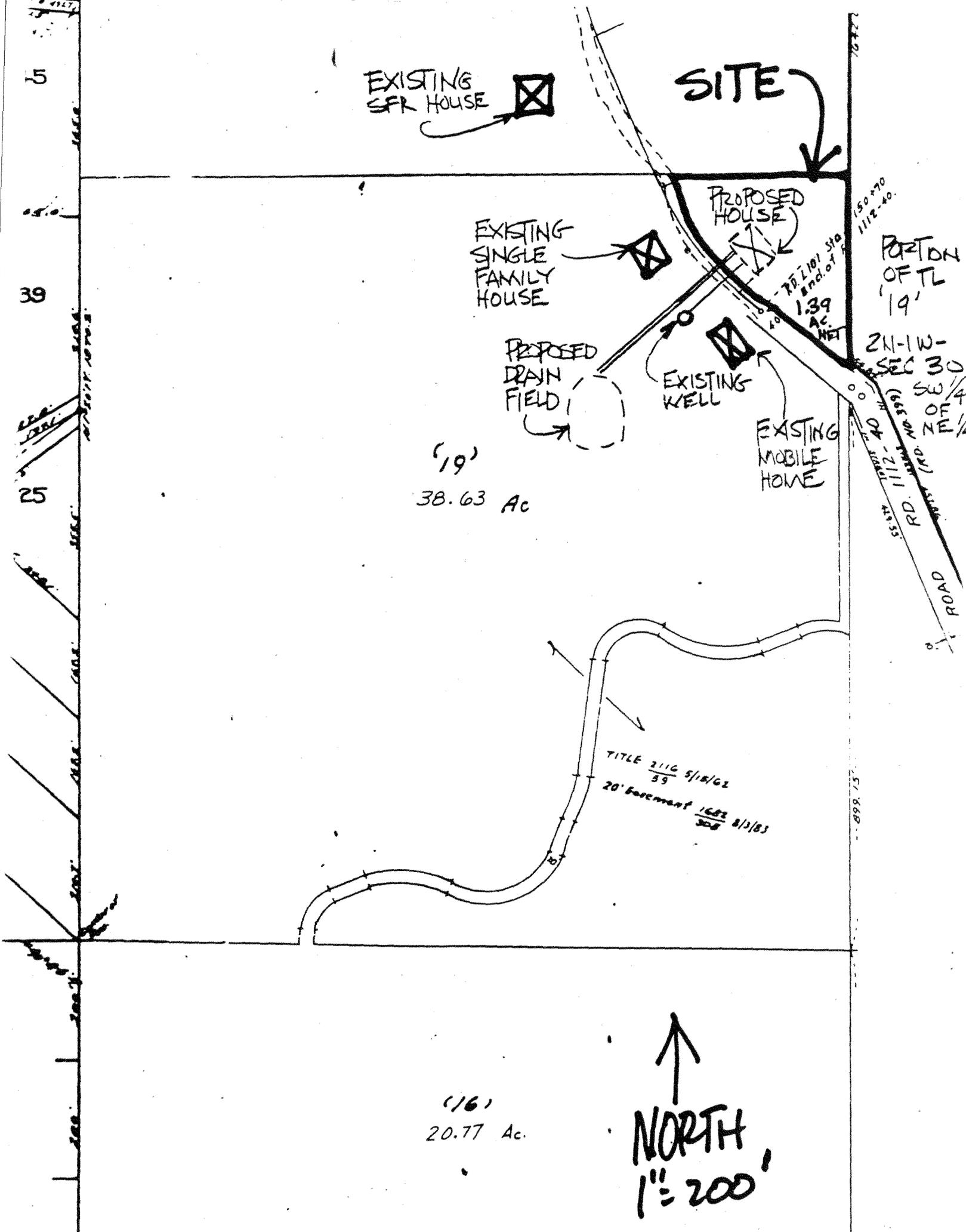
25

899.75

1042.2

150.70  
1112-40

RD. 1101 SW  
end of R.  
1.39  
Ac. NET



# MULTNOMAH COUNTY

# BURLINGTON

# FOLKENBERG

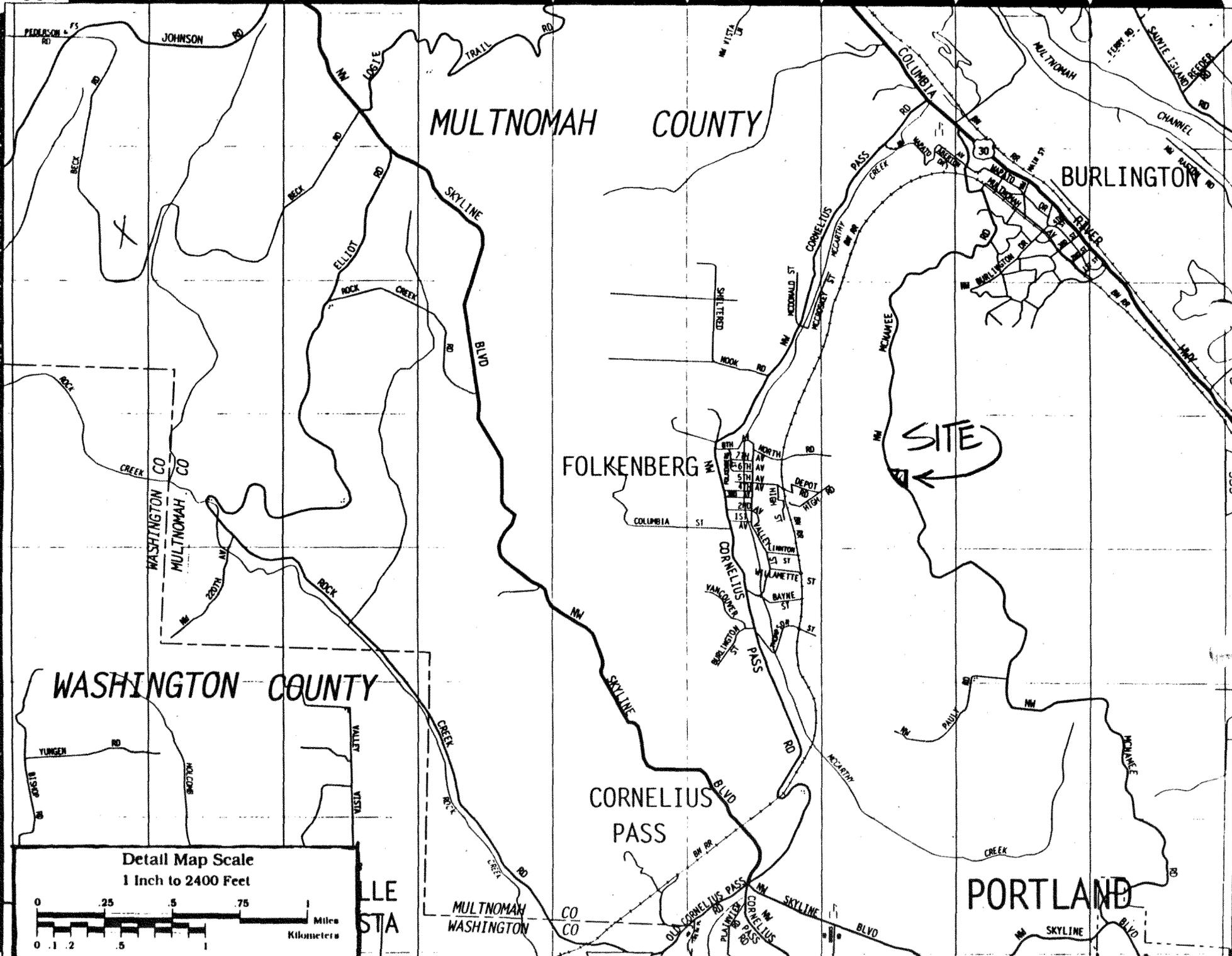
**SITE** ←

# CORNELIUS PASS

# PORTLAND

# WASHINGTON COUNTY

Detail Map Scale  
1 Inch to 2400 Feet



## PRELIMINARY ISSUE:

Mr. Arnold Rochlin, an opponent to this application, has asserted that the application at issue in this case was not complete when it was first submitted and that it was not made complete within 180 days of when it was first submitted. Mr. Rochlin argues that if the application was not complete when it was first submitted, or if it was not made complete within 180 days after it was first submitted, then approval or denial of the application must be based on the county's new CFU standards.

Mr. Rochlin's position is based on the provisions of ORS 215.428 (2) and (3) which provides that:

"(2) If an application for a permit, limited land use decision or zone change is incomplete, the governing body or its designate shall notify the applicant of exactly what information is missing within 30 days of receipt of the application and allow the applicant to submit the missing information. The application shall be deemed complete for the purpose of subsection (1) of this section upon receipt by the governing body or its designate of the missing information. If the applicant refuses to submit the missing information, the application shall be deemed complete for the purpose of subsection (1) of this section on the 31st day after the governing body first received the application.

(3) If the application was complete when first submitted or the applicant submits the requested additional information within 180 days of the date the application was first submitted and the county has a comprehensive plan and land use regulations acknowledged under ORS 197.251, approval or denial of the application shall be based upon the standards and criteria that were applicable at the time the application was first submitted."

In this case, the applicant had a pre-application conference on December 17, 1992. Mr. Rochlin relies on staff's pre application conference notes as a basis for concluding that the applicant's application was incomplete in a number of respects. The hearing officer rejects this assertion because the applicant did not submit an application for a permit until December 30, 1992. In Multnomah County, a request for a non-resource related dwelling constitutes an "action" for purposes of 11.15.8205. Accordingly, a property owner cannot legally initiate an action (i.e. apply for a permit), unless the property owner or the owner's agent confers with the Planning Director (or his delegate) in what the code refers to in 11.15.8215 as a "Pre-Initiation Conference" (commonly referred to as a pre-application conference).

Mr. Rochlin has not pointed to any evidence in the record indicating that the county notified the applicant within 30 days after December 30th, that Mr. Walter's application was incomplete in any way. Therefore, for purposes of ORS 215.428, the application will be deemed complete when it was submitted on December 30, 1992. The hearing officer notes that as a matter of law, the materials submitted by the applicant on December 4, 1992, do not and could not constitute a lawful application, because the applicant could not "initiate an action" until after the pre-application conference occurred. This conclusion comports with the way in which land use applications are generally processed. Because of the increasing complexity and diversity of land use regulations, applicants are typically required to produce a preliminary development plan, which is submitted to the local government and

serves as a basis for discussions at the pre-application conference. In this case, even though the pre-application conference notes reflect the need for particular items of information, there is no evidence in the record that the staff notified the applicant that its subsequent application was incomplete. Therefore, under the particular facts present in this case, the application was deemed complete on December 30, 1992, because staff did not notify the applicant that its December 30th application was incomplete within the period of time set forth in ORS 215.428 (2). The pre-application notes of December 17th are irrelevant for purposes of the statute, because these notes were not made in reference to the December 30th application--they were made in response to the materials reviewed at the December 17th meeting.

Since the application was deemed complete on December 30, 1992, the applicant is entitled to have his application reviewed based upon the standards and criteria that were applicable on December 30, 1992--namely, the criteria set forth below.

## **FINDINGS OF FACT:**

### **1. Applicant's Proposal:**

The applicant requests Hearings Officer approval to develop the above described 1.39 acre lot with a non-resource related single family dwelling.

### **2. Site and Vicinity Characteristics:**

The subject parcel is roughly triangular in shape and fronts on McNamee Road. The property slopes steeply down to the northeast, away from the road. A small area near the road has been recently cleared of vegetation, and some grading work has occurred. The surrounding area is primarily forested, with agricultural use occurring on the 38 acre parcel across McNamee Road.

### **3. Ordinance Criteria:**

Ordinance criteria are in **bold**, followed by the hearings officer's findings.

**A non-resource related single family dwelling is permitted in the MUF zoning district as a Conditional Use [MCC .2172(C)] where it is demonstrated that:**

- (1) **The lot size shall meet the standard of MCC 11.15.2178(A) or .2182(A) to (C).**

**Findings:** Pursuant to MCC .2182 (C) the property is a Lot of Record since McNamee Road, a county maintained road, intersects and separates the 1.39 acres from tax lot '19', the parent parcel.

Mr. Rochlin has argued that .2182 (C) conflicts with .2182(B) which generally indicates that contiguous parcels include parcels separated by a street. He also argues that the subject parcel did not satisfy applicable laws when it was created because its was less than 19 acres when it was divided from the parent parcel and because it was not divided in accordance with ORS 92.010 to 92.190. Finally, he argues that the case of McKay Creek Valley Association v. Washington County, applies and prevents the county from recognizing the parcel as a lot of record. Each of these issues is examined below.

A. Does .2182 (C) conflict with .2182 (B) ?

In general, for purposes of determining a lot of record under .2182, contiguous parcels include parcels separated by a street. However, subsection .2182 (C) creates a more specific exception to the general rule established under .2182 (B) (1). Therefore, the hearing officer finds that .2182 (C) is more specific and controls over the general definition found in .2182(B) (1). Subsection (C) specifically indicates that separate lots of record shall be deemed created when a County maintained road intersects a parcel or aggregated group of contiguous parcels. There is no conflict between .2182 (C) and .2182 (B) (1).

**B. Does the code require Tax Lot 33 (the subject parcel) to comply with all applicable laws when it was created, in order to be considered a lot of record ?**

Subsection (C) of .2182 does not include criteria requiring the applicant to demonstrate that all applicable laws were complied with when the parcel was created. Mr. Rochlin raises a concern in this case that questions whether subsection (C) violates ORS 92.012, which requires that land may not be subdivided or partitioned except in accordance with ORS .010 to ORS 92.190. Mr. Cox, on behalf of the applicant points out that such a challenge should have been raised at the time the parcel was created, which in this case, was at the time the ordinance was enacted in 1990, amending the lot of record provisions. This case does not involve the subdivision or partitioning of land. That event occurred by operation of law in 1990, when Ordinance 643 Section 2 amended the county's lot of record provisions, deeming parcels intersected by a county maintained road to be separate lots of record.

**C. Does McKay Creek Valley Association v. Washington County, 118 Or App 543 (1993) require a different result ?**

McKay Creek held that the prior action of a county creating a lot or parcel are not subject to collateral attack in a subsequent land use proceeding. Rather, that case and other prior cases cited by the court simply stand for the proposition that, at the time the lots or parcels were created, it must be established that all local government approval required at that time were given. Therefore, McKay Creek, supports the conclusion of the hearing officer, and does not change the analysis set out above.

- (2) **The land is incapable of sustaining a farm or forest use, based upon one of the following:**
- a) **A Soil Conservation Service Agriculture Capability Class of IV or greater for at least 75% of the lot area, and physical conditions insufficient to produce 50 cubic feet/acre/year or any commercial trees species for at least 75% of the area;**
  - b) **Certification by the Oregon State University Extension Service, the Oregon Department of Forestry, or a person or group having similar agricultural and forestry expertise, that the land is inadequate for farm and forest uses and stating the basis for the conclusions; or**
  - c) **The lot is a Lot of Record under MCC 11.15.2182(A) through (C) and is ten acres or less in size.**

**Findings:** The lot is a lot of record and therefore meets the criteria in subsection (c) above.

- (3) **A dwelling, as proposed, is compatible with the primary uses as listed in MCC 11.15.2168 on nearby property and will not interfere with the resources or the resource management practices or materially alter the stability of the overall land use pattern of the area.**

**Findings:** The surrounding area is predominantly forested, with the exception of a holly farm on tax lot 19, across McNamee Road. Recent logging activity in the area, as outlined by the applicant, indicates that the area is being used for commercial forestry. Preparation of the land in the form of clearing and possible burning of debris, replanting (as required by the State Forest Practices Act) and application of fertilizers or chemicals will likely occur. Mr. Rochlin correctly points out that forest practices as described above may conflict with residential development, and could therefore alter the stability of the overall land use pattern in the area. In this particular case, the hearings officer finds that due to the location of other residences in the immediate area, and the small size of this particular parcel, the proposed dwelling is reasonably compatible with nearby primary uses and it will not interfere with nearby resources or resource management practices nor will it materially alter the stability of the overall land use pattern in the area. There will no doubt be some impact from the dwelling on the surrounding resources, but the evidence in the record tends to demonstrate that this impact from this dwelling, in this location, will be minimal.

For instance, within 1/4 mile of the proposed residence there are 5 parcels averaging 5 acres in size and zoned Rural Residential. Three of the five parcels contain residences, and there are no restrictions to developing the other lots. There are an additional 4 parcels within the 1/4 mile vicinity, one approximately 12 acres in size and the others 36+ acres each. Resource management dwellings are located on all of these parcels, including a second dwelling for farm help on tax lot '19'. While the proposed dwelling would be the only non-resource dwelling in the MUF zoned area, the property is adjacent to a non-resource zone (RR). Overall this criteria is met.

- (4) The dwelling will not require public services beyond those existing or programmed for the area.**

**Findings:** The site can be served by PGE, NW Natural Gas, and Pacific NW Bell telephone. The Portland Public School District and Multnomah County Sheriff have indicated that they can adequately serve the proposed dwelling. The Fire District review indicates that adequate water and equipment exists to respond to this site. The residence will be located close to the road and should not present any fire access problems. A Land Feasibility Study has been submitted which demonstrates that the site is suitable for the use of an ALTERNATIVE CAPPING FILL SYSTEM. There is substantial evidence in the record that water is available at adequate volumes. Water and septic will be obtained from tax lot '19', across McNamee Road. Sufficient evidence has been provided which demonstrates that easements to obtain these services and approval from the county Right-of-way Division to place utility lines under the road would likely be granted. Therefore, as long as the conditions of approval are met, this criteria will be satisfied.

- (5) The owner shall record with the Division of Records and Elections a statement that the owner and the successors in interest acknowledge the rights of owners of nearby property to conduct accepted forestry or farming practices.**

**Findings:** A copy of the deed restriction has been submitted showing that the document was recorded in Book 2632 page 1769. This criteria is met.

- (6) The residential use development standards of MCC.2194 will be met.**

**B. A residential use located in the MUF district after August 14, 1980 shall comply with the following (MCC.2194):**

**(1) The fire safety measures outlined in the "Fire Safety Considerations for Development in Forested Areas", published by the Northwest Inter-Agency Fire Prevention Group, including at least the following:**

**a) Fire lanes at least 30 feet wide shall be maintained between a residential structure and an adjacent forested area; and**

**b) Maintenance of a water supply and of fire fighting equipment sufficient to prevent fire from spreading from the dwelling to adjacent forested areas;**

**Findings:** There is no indication of fire lanes on the proposed site plan. Due to the steep topography of the parcel, additional secondary fire breaks should also be provided. These will be required as a condition of approval.

**(2) An access drive at least 16 feet wide shall be maintained from the property access road to any perennial water source on the lot or an adjacent lot;**

**Findings:** There does not appear to be any perennial water source on this or adjacent properties. Therefore, this criteria does not apply.

**(3) The dwelling shall be located in as close proximity to a publicly maintained street as possible, considering the requirements of MCC 11.15.2178(B).**

**Findings:** The dwelling will be sited as close to McNamee Road as is possible and practical, considering yard requirements and topographic constraints on the subject parcel. This criteria will be met.

**(4) The physical limitations of the site which require a driveway in excess of 500 feet shall be stated in writing as part of the application for approval;**

**Findings:** The driveway will not be in excess of 500 feet, therefore, this criteria does not apply.

**(5) The dwelling shall be located on that portion of the lot having the lowest productivity characteristics for the proposed primary use, subject to the limitations of subpart #3 above;**

**Findings:** There is no evidence in the record suggesting that any part of the site is more productive than another part. Therefore, since the applicant is locating the dwelling as close to the road as possible, such a location will protect the surrounding resources better than if the dwelling was located at a different location, farther from the road.

**(6) Building setbacks of at least 200 feet shall be maintained from all property lines, wherever possible, except:**

**a) A setback of 30 feet or more may be provided for a public road, or**

**b) The location of dwelling(s) of adjacent lot(s) at a lesser distance which allows for the clustering of dwellings or the sharing of access;**

**Findings:** Due to the small size and the shape of the lot, 200 foot setbacks are not possible. There is no shared access. A 30 foot setback from the road will be required. These criteria are met.

- (7) Construction shall comply with the standards of the building code or as prescribed in ORS 446.002 through 446.200 relating to mobile homes;

**Findings:** Building code compliance will be reviewed prior to issuance of building permits. This criteria will be met.

- (8) The dwelling shall be attached to a foundation for which a building permit has been obtained;

**Findings:** Building permits and a foundation would be requirements prior to construction or placement of a manufactured home.

- (9) The dwelling shall have a minimum floor area of 600 square feet; and

**Findings:** The "footprint" of the dwelling will be more than 600 sq. ft. and less than 4,000 sq. ft.

- (10) The dwelling shall be located outside a big game winter habitat area as defined by the Oregon Department of Fish and Wildlife or that agency has certified that the impacts will be acceptable.

**Findings:** The site is not within a big game habitat area.

#### 4. Comprehensive Plan Policies:

**Policy 13 Air, Water and Noise Quality:** It is the county's policy to require, prior to approval of a legislative or quasi-judicial action, a statement from the appropriate agency that all standards can be met with respect to air quality, water quality, and noise levels. If the proposal is a noise sensitive use and is located in a noise impacted area, or if the proposed use is a noise generator, the following shall be incorporated into the site plan:

- (1) Building placement on the site in an area having minimal noise level disruptions.
- (2) Landscaping or other techniques to lessen noise generation to levels compatible with surrounding land uses.
- (3) Insulation or other construction techniques to lower interior noise levels in noise-impacted areas.

**Findings:** A single family residence normally does not affect air quality standards. The use is not a noise generator and the area is not noise impacted. The main factual issue with regard to this proposal is the ability of the site to handle septic and storm system needs without impacting water quality. Based upon all the evidence in the record, the hearings officer finds that it is reasonable to conclude that the site is suitable for a subsurface sewage system and that storm water can be adequately handled on site. Conditions of approval will help insure that these criteria will be met.

**Policy 14 Developmental Limitations:** The county's policy is to direct development and land form alterations away from areas with development limitations 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:

- A. Slopes exceeding 20%;
- B. Severe soil erosion potential;
- C. Land within the 100 year flood plain;
- D. A high seasonal water table within 0-24 inches of the surface for 3 or more weeks of the year;
- E. A fragipan less than 30 inches from the surface;
- F. Land subject to slumping, earth slides or movement.

**Findings:** Slopes on the majority of the parcel exceed 20 percent. The property is in a slope hazard area, indicating erosion hazards, earth slide and slumping potential. The property is not within a flood hazard area. Soils on the property are Goble silt loam (17E) on the steeper slopes and Cascade silt loam (7C) near the road. The Multnomah County Soil Survey indicates that the Goble soil has a high erosion hazard, slopes of 30 to 60 percent, seasonal high water table within 4 feet of the surface from December through April and a slowly permeable fragipan at a depth of 30 to 45 inches. Slumping is also possible in areas of cut and fill. The Cascade soil has a moderate erosion hazard, slopes of 8 to 15 percent, a water table at a depth of 18 to 30 inches from December through April and a slowly permeable fragipan at a depth of 20 to 30 inches.

The applicant has submitted a geotechnical analysis which tends to show that design and construction techniques could mitigate the possibility of public harm or adverse effects based on the developmental limitations of the property. This criteria will be met so long as the technical recommendations set forth in the RZA AGRA, Inc. report are followed during subsequent stages of developing the site. The applicant will be required to comply with RZA's site development recommendations, to the extent they do not conflict with other specific conditions of approval set out above.

**Policy 22 Energy Conservation:** The county's policy is to promote the conservation of energy and to use energy resources in a more efficient manner. In addition, it is the policy of Multnomah County to reduce dependency on non-renewable energy resources and to support greater utilization of renewable energy resources. The county shall require a finding prior to the approval of legislative or quasi-judicial action that the following factors have been considered:

- (1) The development of energy-efficient land uses and practices;
- (2) Increased density and intensity of development in urban areas, especially in proximity to transit corridors and employment, commercial and recreational centers;
- (3) An energy-efficient transportation system linked with increased mass transit, pedestrian and bicycle facilities;
- (4) Street layouts, lotting patterns and designs that utilize natural environmental and climactic conditions to advantage.
- (5) Finally, the county will allow greater flexibility in the development and use of renewable energy resources.

**Findings:**

In general, non resource related residential development in rural areas such as this do not conserve energy because of the increased commuting distances required for the residents of the dwelling. However, the county has recognized through its acknowledged comprehensive zoning ordinance, that non resource related dwellings can be allowed if the relevant criteria are met. The hearings officer has considered that above referenced "factors" prior to approval of this action, and finds that although the proposed development does not promote energy conservation, it otherwise complies with the applicable criteria and should be approved.

**Policy 37 Utilities:** The county's policy is to require a finding prior to approval of a legislative or quasi-judicial action that:

**Water and Disposal System**

- (1) The proposed use can be connected to a public sewer and water system, both of which have adequate capacity; or
- (2) 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
- (3) There is an adequate private water system, and the Oregon Department of Environmental Quality (DEQ) will approve a subsurface sewage disposal system; or
- (4) There is an adequate private water system, and a public sewer with adequate capacity.

**Drainage**

- (1) There is adequate capacity in the storm water system to handle the run-off; or
- (2) The water run-off can be handled on the site or adequate provisions can be made; and
- (3) 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**

- (1) There is an adequate energy supply to handle the needs of the proposal and the development level projected by the plan; and
- (2) Communications facilities are available.

**Findings:** Electricity and telephone services are available at McNamee Road. Water, Disposal systems and Drainage have been discussed previously and these systems will be required to obtain DEQ approval, as required by law. There is evidence in the record that this criteria can be met.

**Policy 38 Facilities:** The county's policy is to require a finding prior to approval of a legislative or quasi-judicial action that:

### School

- (1) The appropriate school district has had an opportunity to review and comment on the proposal.

### Fire Protection

- (1) There is adequate water pressure and flow for fire fighting purposes; and
- (2) The appropriate fire district has had an opportunity to review and comment on the proposal.

### Police Protection

- (1) The proposal can receive adequate local police protection in accordance with the standards of the jurisdiction providing police protection.

**Findings:** The applicant has submitted forms signed by the Multnomah County Sheriff and Portland Public Schools verifying that their service levels are adequate to serve the proposed residence. The fire district review form has also been submitted. Based upon all the evidence in the record, this criteria can met so long as the conditions of approval are met.

**Policy 40 Development Requirements:** The county's policy is to encourage a connected park and recreation system and to provide for small private recreation areas by requiring a finding prior to approval of legislative or quasi-judicial action that:

- (1) Pedestrian and bicycle path connections to parks, recreation areas and community facilities will be dedicated where appropriate and where designated in the bicycle corridor capital improvements program and map.
- (2) Landscaped areas with benches will be provided in commercial, industrial and multiple family developments, where appropriate.
- (3) Areas for bicycle parking facilities will be required in development proposals, where appropriate.

**Findings:** Pedestrian and bicycle facilities are not required on McNamee Road. The other portions of this policy do not apply to the proposed rural development

### **CONCLUSIONS:**

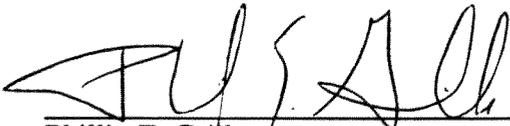
1. The subject property is a Lot of Record less than ten acres in size, thereby incapable of sustaining a farm or forest use.
2. The proposed dwelling would not interfere with resource management practices in the area, and would not materially alter the overall land use pattern in the area.
3. Provided that the Land Feasibility Study is approved, the request complies with the applicable criteria regarding water, sewage disposal and fire protection.

4. The geotechnical report by RZA points out the site's development limitations and the site development recommendations must be considered during future development of the site.

**DECISION:**

**Approval of the applicant's request for a non-resource related single family dwelling, subject to the conditions set forth above.**

It is so Ordered this 8<sup>th</sup> day of November, 1993.

  
\_\_\_\_\_  
Phillip E. Grillo  
Hearings Officer

Signed by the Hearings Officer:	<u>November 8</u> , 1993
	[date]
Decision mailed to parties:	<u>November 10</u> , 1993
	[date]
Submitted to Clerk of the Board:	<u>November 12</u> , 1993
	[date]
Last day to Appeal to the Board:	<u>November 22</u> , 1993
	[date]
Decision Reported to Board	<u>November 23</u> , 1993

**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 plus a \$3.50-per-minute charge for a transcript of the initial hearing(s). [ref. MCC 11.15.8260(A)(1) and MCC 11.15.9020(B)] Instructions and forms are available at the County Planning and Development Office at 2115 SE Morrison Street (in 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.*

**RZA AGRA, Inc.**

(Formerly: Rittenhouse-Zeman & Associates, Inc.)  
Engineering & Environmental Services

7477 SW Tech Center Drive  
Portland, Oregon 97223-8024  
(503) 639-3400  
FAX (503) 620-7892

September 7, 1993

21-7153

Craig Walters c/o Land Development Consultants  
233 SE Washington St.  
Hillsboro, OR 97123

Attn: Ryan O'Brien

**SUBJECT: GEOTECHNICAL RECONNAISSANCE  
WALTERS LOT ON MCNAMEE ROAD  
MULTNOMAH COUNTY, OREGON**

Dear Ryan:

As per our discussions we have completed our geotechnical reconnaissance of the subject lot. We have found the lot suitable for the proposed development subject to the recommendations herein. Our scope of work included a review of geologic maps, site reconnaissance to evaluate slope stability, and this letter summarizing our findings and recommendations for site development. This report has been prepared for the exclusive use of Craig Walters and Land Development Consultants, Inc., and their agents, for specific application to this project in accordance with generally accepted geotechnical engineering practices.

#### **Introduction**

The site is located at 14901 N.W. McNamee Road in the northwestern portion of Multnomah County, Oregon. Approximately 1.39 acres in size, the parcel generally covers a small ridge and the accompanying moderate slopes to the north and east. We have reviewed the proposed plan detailing the house footprint relative to surveyed topography which shows the house to be located along the ridge, and while on-site also observed the survey flagging indicating property boundaries.

#### **Slope Stability**

Our reconnaissance included a complete site walkover to identify any site features of geotechnical concern, particularly relating to slope stability. This included observations of site vegetation, slopes, topographic features, and soil exposures. The site has been logged previously, and our observation of overcorrected tree growth was limited to the trees remaining which were primarily alder and cedar.

Along the slopes we took clinometer readings which indicated slopes of 40 to 50% (2.5 to 2H:1V), and along the ridge crest we observed slopes near 20 to 25% (5H to 4H:1V). These observed slopes are consistent with the topographic map we subsequently received. In this area both of these ranges of inclination are typically globally stable, with a typical factor of safety of 2 or more for slopes of 2H:1V or flatter. We also observed the larger trees on-site for signs of overcorrected growth which can indicate slope movement. Along the steeper slopes a few trees showed signs of overcorrection, but under close observation it was apparent that these areas were localized to less than ten feet in diameter, and were associated with near surface soil creep. A few areas where slopes were locally oversteepened were also noted, and they were associated with removal of large rootballs of windfallen or logged trees, or with water downcutting in the small drainage to the south.



**AGRA**

Earth & Environmental Group

### **Review of Vicinity Subsurface Conditions**

Based on geologic maps published for the vicinity, the site soils are Portland Hills Silts. A review of our geotechnical laboratory testing in the vicinity typically show this Portland Hills Silt to have moderate strength and compressibility properties, with low plasticity. Much of the strength for these soils *in situ* is derived from seasonal desiccation and mechanical aging, and their remolded strength can be fairly low. Portland Hills Silt is also moisture sensitive and very difficult to work with in wet weather, particularly on sloping sites. This material is typically suitable for residential developments on moderate slopes, and is best graded in dry weather. An old logging road cut is present off-site to the east and downslope, and reveals a steep 6 to 10 foot cut in Portland Hills Silt which appears to have been present for decades, and which was observed to be relatively stable.

### **Site Development Recommendations**

Care should be taken to minimize slope disturbance particularly in the areas where slopes near 2H:1V were noted. In areas where slopes are near 2H:1V, larger trees on lots should remain in place where possible as their roots can help prevent near surface soil creep. If it is necessary to expose native soils in these areas we recommend it be done in dry summer weather with appropriate erosion control immediately installed over the surface. Designed slopes greater than 10 feet in height should not exceed 2H:1V. If this infringes on lot layout we would recommend drained retaining walls/structures designed to resist the soil forces provided in a full geotechnical exploration and report. Foundation step stemwalls should also be structurally designed. As the house layout stands, we would recommend that footings located below the 83 foot contour (on the topographic plan provided to us) be embedded a minimum of three feet into native silts in order to minimize potential influence of soil creep.

Once cuts are made to install retaining walls, wall construction should begin immediately to prevent excessive mobilization of soil creep up-slope. Designed slopes less than 10 feet in height may approach 1.5H:1V, although if groundwater seepage is encountered flatter slopes and/or special drainage may be required.

Fills should be minimized in steeper areas to prevent adding load to existing slopes. Slope fills will need to be adequately benched and keyed into existing non-organic native soils, and we recommend compaction to 92% relative to ASTM D-1557 for native fine grained soils. Moisture contents of native soils appear in the range of 20%-25%. This will need to be reduced near 15% in order to achieve adequate compaction, which typically requires a half day or more of drying in dry summer weather with soils spread in thin lifts. As working areas may be limited on this site it may be simpler and more economical to import crushed or angular pit run rock for structural fills. Granular fill should be compacted to 95% relative to ASTM D-1557, and should contain less than 5% passing a # 200 sieve for use in wet weather. We do not recommend use of sand or sand screenings as fill for this site due to erosion concerns.

Surface drainage should be routed to either side of the ridge away from behind the house, and where feasible utility trenches should be aligned perpendicular to slope elevation contours. Wherever possible, existing vegetation should remain in place. If new landscaping is planned downslope from pavements and foundations the existing plants should be removed during dry weather with approved erosion control products quickly installed over slope faces.

Although we observed no groundwater in our exploration, it is possible that the fine grained nature of the soils may result in perched groundwater within the silts during the wet season. Based on this we recommend perimeter drainage for foundations based in cuts, and behind all retaining structures, including stepped foundation and interior stemwalls.



**Closing**

We appreciate the opportunity to provide this service and look forward to continued involvement on this project. If you have any question regarding our report or would like to discuss methods of site development which will best address geotechnical concerns, please feel free to give us a call.

Respectfully submitted,

**RZA AGRA, INC.**



Don Rondema, P.E., Geotechnical Engineer



Expires 12/31/93



Richard W. Rinne, C.E.G., Principal Engineering Geologist



STATE OF OREGON  
WATER WELL REPORT  
(as required by ORS 537.765)

RECEIVED

MULT

22/10-3000

APR 22 1985 USE TYPE or PRINT IN INK

001747

(for official use only)

WATER RESOURCES DEPT  
SALEM, OREGON

(1) OWNER:

Name Craig Walters  
Address 14901 N. W. McNamee Rd.  
City Portland, Oregon 97231 State \_\_\_\_\_

(2) TYPE OF WORK (check):

New Well  Deepening  Reconditioning  Abandon

If abandonment, describe material and procedure in Item 12.

(3) TYPE OF WELL: (4) PROPOSED USE (check):

Rotary Air  Driven  Domestic  Industrial  Municipal   
Rotary Mud  Dug  Irrigation  Thermal  Withdrawal  ReInjection   
Cable  Bored  Other: Piezometric  Grounding  Test

(b) CASING INSTALLED: Steel  Plastic   
Threaded  Welded   
6" Diam. from +1 ft. to 125 ft. Gauge 250  
" Diam. from \_\_\_\_\_ ft. to \_\_\_\_\_ ft. Gauge \_\_\_\_\_

LINER INSTALLED: Steel  Plastic   
Threaded  Welded   
4" Diam. from 0 ft. to 695 ft. Gauge SDR21

(6) PERFORATIONS: Perforated?  Yes  No  
Size of perforations 1/2" in. by diameter in.  
50 perforations from 670 ft. to 690 ft.  
perforations from \_\_\_\_\_ ft. to \_\_\_\_\_ ft.  
perforations from \_\_\_\_\_ ft. to \_\_\_\_\_ ft.

(7) SCREENS: Well screen installed?  Yes  No  
Manufacturer's Name \_\_\_\_\_  
Type \_\_\_\_\_ Model No. \_\_\_\_\_  
Diam. \_\_\_\_\_ Slot Size \_\_\_\_\_ Set from \_\_\_\_\_ ft. to \_\_\_\_\_ ft.  
Diam. \_\_\_\_\_ Slot Size \_\_\_\_\_ Set from \_\_\_\_\_ ft. to \_\_\_\_\_ ft.

(8) WELL TESTS: Drawdown is amount water level is lowered below static level  
Was a pump test made?  Yes  No If yes, by whom?  
t 20 gal./min. with 190 ft. drawdown after 2 hrs.  
Air test gal./min. with drill stem at \_\_\_\_\_ ft. hrs.  
Bailer test gal./min. with \_\_\_\_\_ ft. drawdown after \_\_\_\_\_ hrs.  
Artesian flow g.p.m. \_\_\_\_\_

Temperature of water \_\_\_\_\_ Depth artesian flow encountered \_\_\_\_\_ ft.

(9) CONSTRUCTION: Special standards: Yes  No   
Well seal—Material used Cement plus 5% gel  
Well sealed from land surface to 125 ft.  
Diameter of well bore to bottom of seal 10 in.  
Diameter of well bore below seal 6 in.  
Amount of sealing material 20 sacks  pounds   
How was cement grout placed? 20 sacks tremmed into annular @ 125' back to surface

Was pump installed? no Type \_\_\_\_\_ HP \_\_\_\_\_ Depth \_\_\_\_\_ ft.  
Was a drive shoe used?  Yes  No Plugs \_\_\_\_\_ Size: location \_\_\_\_\_ ft.  
Did any strata contain unusable water?  Yes  No  
Type of Water? \_\_\_\_\_ depth of strata \_\_\_\_\_  
Method of sealing strata off \_\_\_\_\_  
Was well gravel packed?  Yes  No Size of gravel: \_\_\_\_\_  
Gravel placed from \_\_\_\_\_ ft. to \_\_\_\_\_ ft.

(10) LOCATION OF WELL by legal description:

County Multnomah SW NE W of Section 30 of  
Township 2 N Range 1 W WM.  
(Township is North or South) (Range is East or West)  
Tax Lot \_\_\_\_\_ Lot \_\_\_\_\_ Block \_\_\_\_\_ Subdivision \_\_\_\_\_  
MAILING ADDRESS OF WELL (or nearest address) \_\_\_\_\_

(11) WATER LEVEL of COMPLETED WELL:

Depth at which water was first found 660 ft.  
Static level 500 ft. below land surface. Date 3/28/85  
Artesian pressure \_\_\_\_\_ lbs. per square inch. Date \_\_\_\_\_

(12) WELL LOG: Diameter of well below casing 6-1/8 to 480  
Depth drilled 695 ft. Depth of completed well 695 ft.

Formation: Describe color, texture, grain size and structure of materials; and show thickness and nature of each stratum and aquifer penetrated, with at least one entry for each change of formation. Report each change in position of Static Water Level and indicate principal water-bearing strata.

MATERIAL	From	To	SWL
Topsoil	0	1	
Dark brown clay	1	4	
Light brown clay	4	48	
Red-brown clay	48	65	
Decomposed brown basalt	65	110	
Gray-brown basalt	110	165	
Gray basalt	165	180	
Brown basalt	180	198	
Red-brown basalt	198	220	
Brown basalt	220	265	
Gray-black basalt	265	295	
Hard gray basalt	295	307	
Soft brown basalt	307	366	
Firm gray-brown basalt	366	402	
Hard gray basalt	402	407	
Soft brown basalt	407	412	
Firm gray-brown basalt	412	465	
Hard gray basalt, creviced	465	536	
Firm gray-brown basalt	536	546	
Hard gray basalt	546	567	
Soft black basalt	567	598	
Date work started <u>3/23/85</u> /completed <u>3/28/85</u>			
Date well drilling machine moved off of well <u>3/28/85</u> 19			

(unbonded) Water Well Constructor Certification (if applicable):

This well was constructed under my direct supervision. Materials used and information reported above are true to my best knowledge and belief.

[Signed] \_\_\_\_\_ Date \_\_\_\_\_, 19 \_\_\_\_\_

(bonded) Water Well Constructor Certification:

Bond 390-1672 Issued by: Great American Insurance  
(number) (Surety Company Name)

On behalf of A. M. Janssen Well Drilling Co., Inc.  
(type or print name of Water Well Constructor)

This well was drilled under my jurisdiction and this report is true to the best of my knowledge and belief.

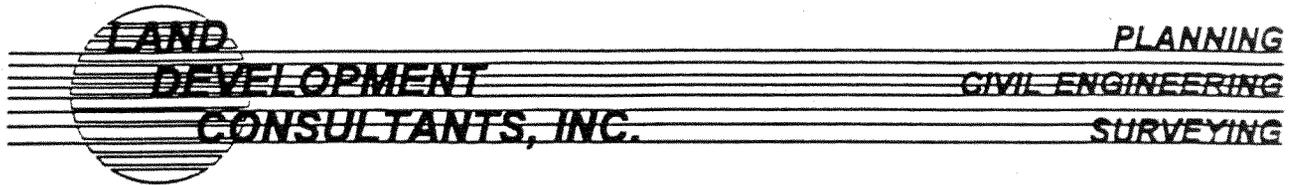
(Signed) [Signature]  
(Water Well Constructor)

(Dated) April 2, 1985









233 S.E. WASHINGTON STREET, HILLSBORO, OREGON 97123

PHONE: (503) 648-4061 FAX: (503) 681-7646

## MEMO

September 15, 1993

From: HARRIS HYMAN PE/PLS

To: WASHINGTON COUNTY DLUT

Subject: CHARLES WALTERS' SITE, FILE C4-8-93#60

The attached sketch is for a proposed stormwater diffuser, sometimes referred to as a 'bubbler'. The purpose of the diffuser is to eliminate the possibility of erosion on the site and on the neighboring properties. This structure is a level trench where the site surface water runoff is collected, and leaked out at a slow rate as sheet flow; it replicates the pre-developpmet site condition.

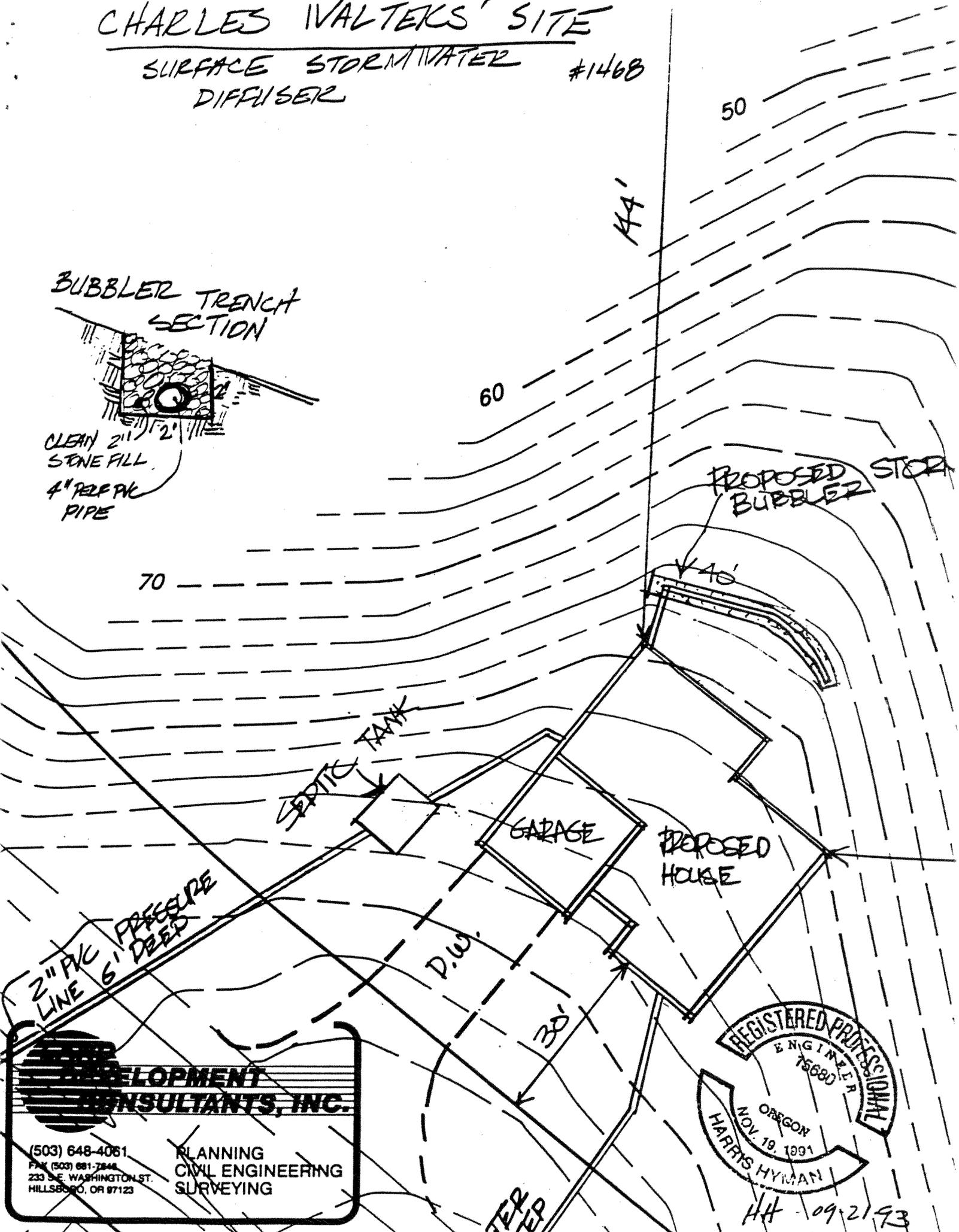
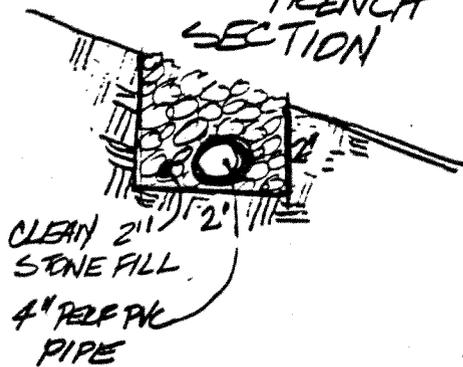
[1468A]



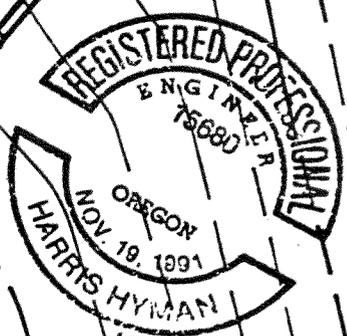
# CHARLES VALTEKS' SITE

SURFACE STORMWATER  
DIFFUSER #1468

## BUBBLER TRENCH SECTION



**DEVELOPMENT CONSULTANTS, INC.**  
(503) 648-4061  
PLANNING  
CIVIL ENGINEERING  
SURVEYING  
FAX (503) 681-7846  
233 S.E. WASHINGTON ST.  
HILLSBORO, OR 97123



HH 09.21.93

MEETING DATE: November 23, 1993

AGENDA NO: P-3

(Above Space for Board Clerk's Use ONLY)

**AGENDA PLACEMENT FORM**

SUBJECT: CU 9-93 Hearings Officer Decision

BOARD BRIEFING Date Requested: \_\_\_\_\_

Amount of Time Needed: \_\_\_\_\_

REGULAR MEETING: Date Requested: November 23, 1993

Amount of Time Needed: 2 Minutes

DEPARTMENT: DES DIVISION: Planning

CONTACT: R. Scott Pemble TELEPHONE #: 248-3182

BLDG/ROOM #: 412/103

PERSON(S) MAKING PRESENTATION: Planning Staff

**ACTION REQUESTED:**

INFORMATIONAL ONLY     POLICY DIRECTION     APPROVAL     OTHER

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

CU 9-93 Review of Hearings Officer Decision of November 12, 1993, approving, subject to conditions, conditional use request for a non-resource related single family residence in the MUF-19 zoning district, for property located at 18038 NW Johnson Road.

1993 NOV 17 AM 8:39  
CLERK OF COUNTY COMMISSIONERS  
MULTNOMAH COUNTY  
OREGON

**SIGNATURES REQUIRED:**

ELECTED OFFICIAL: \_\_\_\_\_

OR

DEPARTMENT MANAGER: *Betsy Williams*

**ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES**

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



**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. CU9-93

Agenda Placement Sheet      No. of Pages   1  

Case Summary Sheet      No. of Pages   1    
 Previously Distributed      \_\_\_\_\_

Notice of Review      No. of Pages \_\_\_\_\_  
\*(Maybe distributed at Board Meeting)  
 Previously Distributed      \_\_\_\_\_

Decision      No. of Pages   10    
(Hearings Officer/Planning Commission)  
 Previously Distributed      \_\_\_\_\_

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



CASE NAME: John Gochenour  
Conditional Use Approval

TIME: 1:30 pm  
NUMBER: CU 9-93

1. Applicant Name/Address:

John Gochenour  
13038 NW Johnson Rd.  
Portland, OR 97231

2. Action Requested by applicant:

Approve a non-resource related single family residence in the MUF district.

3. Staff Report Recommendation (September 7, 1993):

Deny

4. Hearings Officer Decision (November 12, 1993):

Approved, subject to conditions

5. If recommendation and decision are different, why?

Additional information submitted at the hearing addressed the reasons for denial stated in the Staff Report.

ACTION REQUESTED OF BOARD	
<input checked="" type="checkbox"/>	Affirm Hearings Officer
<input type="checkbox"/>	Hearing
<input type="checkbox"/>	Scope of Review
<input type="checkbox"/>	On the record
<input type="checkbox"/>	De Novo
<input type="checkbox"/>	New Information allowed

**ISSUES**

*(who raised them?)*

- The proposed location of the dwelling was a major issue (*raised by Staff*). The applicant proposed that the dwelling be located 275 feet from Johnson Road. Staff maintained that the proposed location would not comply with the residential use development standards of MCC .2194, would alter the residential pattern found in the area, would be more likely to interfere with forest management activities on adjacent properties, and would be contrary to recommendations made by the Oregon Department of Forestry. The Hearings Officer consequently placed a condition on the approval requiring that the dwelling be located as close to Johnson Road and the eastern property line as practicable.



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

HEARINGS OFFICER DECISION  
NOVEMBER 12, 1993

CU 9-93

CONCERNING A PROPOSED CONDITIONAL USE  
(Non-resource Related Dwelling in Multiple Use Forest Zone)

**Location:** 18038 NW Johnson Road

**Property Description:** Tax Lot '22', Section 14, T2N, R2W, 1991 Assessor's Map

**Plan Designation:** Multiple Use Forest

**Zoning District:** MUF-19, Multiple Use Forest District

**Owner/Applicant:** John Gochenour  
13038 NW Johnson Road  
Portland, OR 97231

**DECISION:** APPROVE this request for a non-resource related single family dwelling; subject to the following conditions of approval:

CONDITIONS OF APPROVAL

1. Required fire breaks shall be shown on the final site plan.
2. The proposed dwelling shall be located as close to the eastern property line, and Johnson Rd. as practicable, provided that the required fire breaks and setbacks are maintained. The applicant shall work with planning staff to identify an approved building envelope that will satisfy this condition. The approved building envelope shall be shown on the final site plan
3. The applicant shall submit a letter from the Fire Chief indicating that adequate water supplies and fire fighting equipment will be maintained to prevent fire from spreading from the dwelling to adjacent forested areas.
4. The applicant shall obtain DEQ approval for the proposed subsurface sewage disposal system.
5. All applicable residential use development standards shall be met.

CFU

MUF -38

'10'  
32 Ac.

'23'  
5.67 Ac.

'24'  
8.29 Ac.

'19'  
322 Ac.

'20'  
314 Ac.

'26'  
445 Ac.

'30'  
72 Ac.

JOHNSON

LOGIE TRAIL ROAD

'12'  
5.52 Ac.

'15'  
.41 Ac.

MUF -19

MUF -38

'11'  
40.06 Ac.

'22'  
7.05 Ac.

'25'  
6.61 Ac.

'33'  
7.25 Ac.

'34'  
7.55 Ac.

'35'  
18.76 Ac.

'37'  
13.0

15

22

1324.59  
Survey

MUF -38

'1'  
40.30 Ac.

MUF -38

'5'  
40.00 Ac.

'4'



Zoning Map

Case #: CU 9-93

Location: 18038 NW Johnson Road

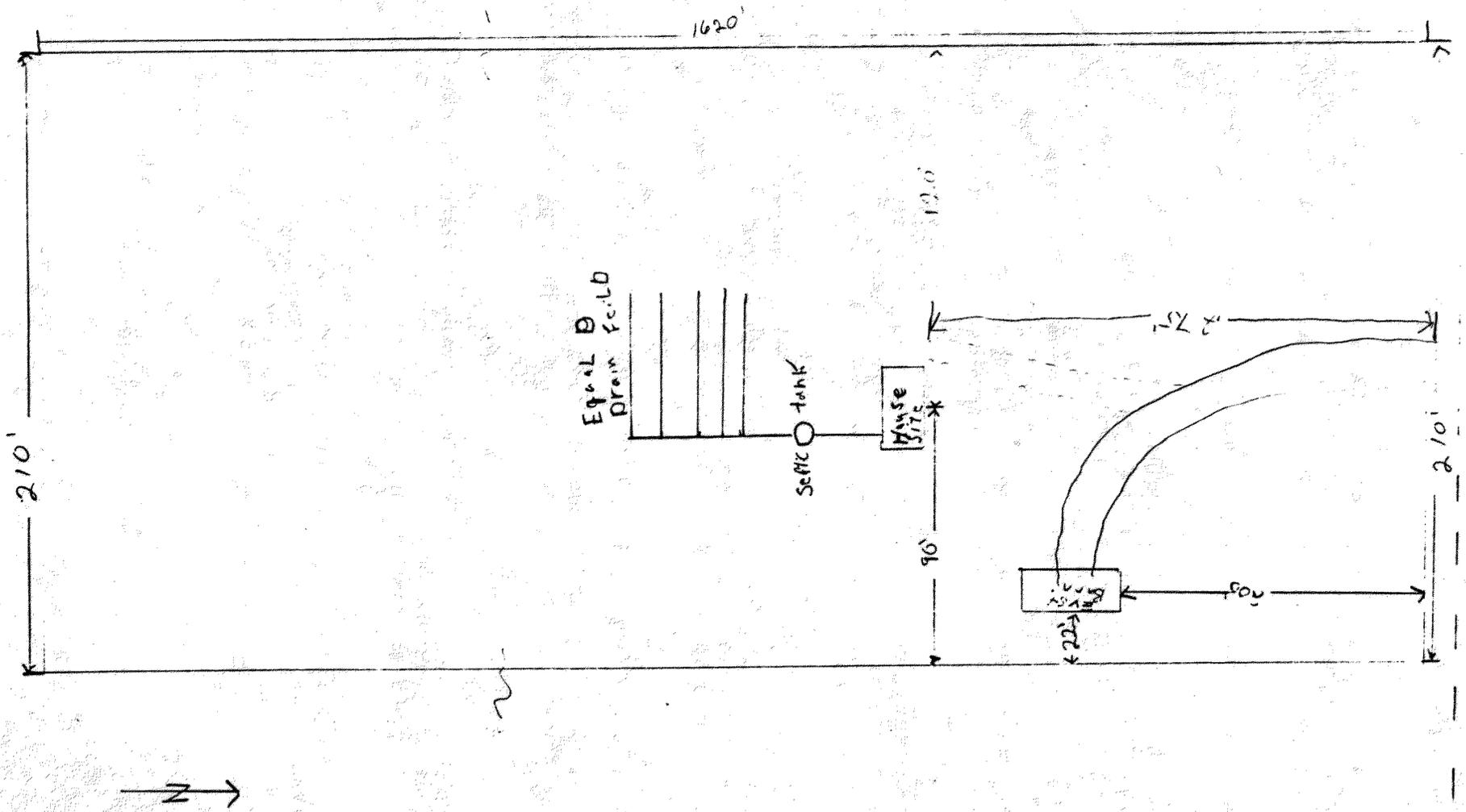
Scale: 1 inch to 400 feet (approximate)

Shading indicates subject properties

SZM 34; Section 14, T.2N., R.2W., WM.

250

18039 NW Johnson Rd Twp Lot 22 Matt Co 2-N 2-W acc # R-9724-0220  
7.05 Ac John Gochenour 643-2000



Johnson Road

## FINDINGS OF FACT

### **1. Applicant's Proposal:**

The applicant requests Hearings Officer approval to develop the above described 7.05 acre lot with a non-resource related single family dwelling.

### **2. Site and Vicinity Characteristics:**

The property is long and narrow, extending south from NW Johnson Road. A pole barn and manufactured home are located on the property. (A temporary permit was issued in 1990 to store a mobile home on the property. The permit was valid until Jan. 2, 1991, after which time the mobile home was to be removed. The temporary permit did not allow occupancy of the mobile home.) The property has not received approval for residential use.

Properties to the north and east are similar in size, and most contain residences located near the road. To the west is a 40 acre parcel which has been recently logged. To the south are two 40 acre parcels which are forested. The overall vegetation pattern in the area is forested.

### **3. Ordinance Criteria:**

**A non-resource related single family dwelling is permitted in the MUF zoning district as a Conditional Use [MCC .2172(C)] where it is demonstrated that:**

- (1) **The lot size shall meet the standard of MCC 11.15.2178(A) or .2182(A) to (C).**

**Findings:** There is no evidence in the record which indicates when tax lot 22 was created. In the absence of such evidence, the planning staff has testified that their review of old zoning maps shows that the subject parcel did not exist in 1962, when the zoning was F-2. Staff indicates that the lot first appears on maps from 1966. Staff therefore concludes that the lot was created prior to 1966, when the zone had no requirements for divisions or lot line adjustments.

The applicant submitted information on October 15, 1993, including a title report and four attached instruments. None of the instruments submitted demonstrate when tax lot 22 was created. The only evidence in the record concerning when the parcel was created is the testimony of staff which is based upon evidence (or lack thereof) of the parcels existence on zoning maps.

The applicable criteria requires that in order for the parcel to be considered a Lot of Record, there must be substantial evidence in the record that a deed or other instrument creating the parcel was recorded with the Department of General Services, or was in recordable form prior to August 14, 1980. The fact that the parcel showed up on the county's zoning map in 1966 suggests that a deed or other instrument was recorded prior to August 14, 1980. There is no contrary evidence which would tend to discount this circumstantial evidence. Therefore, even though there is a lack of any direct evidence, the circumstantial evidence submitted by staff concerning the fact that the parcel first appeared on the county's zoning maps in 1966, and the fact that no contrary evidence was submitted, tends to prove that this lot is a Lot of Record.

- (2) **The land is incapable of sustaining a farm or forest use, based upon one of the following:**
  - a) **A Soil Conservation Service Agriculture Capability Class of IV or greater for at least 75% of the lot area, and physical conditions insufficient to produce 50 cubic feet/acre/year or any commercial trees species for at least 75% of the area;**

- b) Certification by the Oregon State University Extension Service, the Oregon Department of Forestry, or a person or group having similar agricultural and forestry expertise, that the land is inadequate for farm and forest uses and stating the basis for the conclusions; or
- c) The lot is a Lot of Record under MCC 11.15.2182(A) through (C) and is ten acres or less in size.

**Findings:** As noted above, this lot is a Lot of Record. Therefore, criteria (2) (c) is met.

- (3) A dwelling, as proposed, is compatible with the primary uses as listed in MCC 11.15.2168 on nearby property and will not interfere with the resources or the resource management practices or materially alter the stability of the overall land use pattern of the area.

**Findings:** The 40 acre parcel immediately to the west has been logged recently. The two 40 acre parcels to the south are still forested. The southwest quarter of section 14 contains parcels less than 20 acres in size, most of which are developed with residences located near Johnson Road or Skyline Boulevard. However, to the west and south of the subject parcel, the lot size is much larger and there are few dwellings.

The hearings officer finds that a dwelling on this parcel would be compatible with the primary uses listed in this MCC 11.15.2168 only if the proposed dwelling is located near Johnson Road, where it will not materially alter the overall land use pattern or contribute to the justification for further non-resource dwellings in the area. Therefore, the dwelling must be located as specified in the conditions of approval, in order for this criteria to be met.

- (4) The dwelling will not require public services beyond those existing or programmed for the area.

**Findings:** The general application form indicates that electricity and telephone services are available to the site. The Multnomah County Sheriff and Skyline RFPD #20 have indicated that they can adequately serve the proposed dwelling. The applicant has indicated that a cistern will be used for water, and there is evidence in the record that adequate amounts of water will be available for the proposed development. Evidence of suitability of the site for a septic system was submitted which demonstrates that the site can be served by such a system. The school district has also responded, indicating that all relevant schools have adequate capacity to serve this single family residence. Based upon the evidence in the record, this criteria is met.

- (5) The owner shall record with the Division of Records and Elections a statement that the owner and the successors in interest acknowledge the rights of owners of nearby property to conduct accepted forestry or farming practices.

**Findings:** A note attached to the file indicates that the deed restrictions were recorded in Book 2633 page 314. This criteria has been met.

- (6) The residential use development standards of MCC.2194 will be met.

**Findings:** These standards will be met as a condition of approval.

**B. A residential use located in the MUF district after August 14, 1980 shall comply with the following (MCC.2194):**

**(1) The fire safety measures outlined in the "Fire Safety Considerations for Development in Forested Areas", published by the Northwest Inter-Agency Fire Prevention Group, including at least the following:**

**a) Fire lanes at least 30 feet wide shall be maintained between a residential structure and an adjacent forested area; and**

**b) Maintenance of a water supply and of fire fighting equipment sufficient to prevent fire from spreading from the dwelling to adjacent forested areas;**

**Findings:** The safety measures described above must be met prior to the issuance of building or occupancy permits for the proposed dwelling. Because the dwelling will be required to be located closer to the northeast corner of the site than originally proposed, satisfaction of subpart (a) must be reviewed as a ministerial action when the final location of the dwelling is reviewed for approval. The applicant will be required to submit a letter from the Fire Chief that ensures that adequate water supplies and fire fighting equipment will be maintained to prevent fire from spreading from the dwelling to adjacent forested areas. Under these conditions, this criteria will be met.

**(2) An access drive at least 16 feet wide shall be maintained from the property access road to any perennial water source on the lot or an adjacent lot;**

**Findings:** There does not appear to be any perennial water source on this or adjacent properties. Therefore, this criteria does not apply.

**(3) The dwelling shall be located in as close proximity to a publicly maintained street as possible, considering the requirements of MCC 11.15.2178(B).**

**Findings:** There do not appear to be any physical limitations to the site that would prevent the dwelling from being located closer to Johnson Road. A letter on file from the Oregon Department of Forestry recommends that the dwelling be located close to the road in order to take less land out of forest production for service corridors and roads, to minimize access difficulty for fire fighting equipment, and to group the dwelling with existing structures to help avoid potential conflicts with commercial forest activities on neighboring parcels.

The applicant has agreed to locate the mobile home 150 feet from Johnson Road. However, the alternative location proposed by the applicant is on the west side of the lot, close to an extensive forestry operation. This is an inappropriate location given the proximity of the forest resources on the adjacent lot. The better location is in the north east corner of the lot, near the road and adjacent to a dwelling located on tax lot 25. There appears to be sufficient area for a dwelling north of the present barn, in the area currently used as pasture. This is the area identified by staff as their preferred location for the dwelling, and the hearings officer agrees with the position of staff in this regard. The hearings officer realizes that this is not the location preferred by the applicant. However, the primary consideration for the location of non resource related dwellings in the MUF zone is the protection of the forest and other resource values. In this situation, the protection of the resources surrounding the dwelling outweigh the personal preferences of the property owner, particularly since the manufactured home is currently located on the site without the benefit of a valid permit.

**(4) The physical limitations of the site which require a driveway in excess of 500 feet shall be stated in writing as part of the application for approval;**

**Findings:** There are no physical limitations on the property which would require a 500 foot driveway, and the applicant is not requesting a driveway of that length. This criteria does not apply.

- (5) The dwelling shall be located on that portion of the lot having the lowest productivity characteristics for the proposed primary use, subject to the limitations of subpart #3 above;**

**Findings:** Most of the site contains Class IV soils. A pole barn and manufactured home are located approximately 170 feet and 250 south of Johnson Rd, respectively. The site probably does not have any significant physical characteristics that would differentiate it into different productivity areas. However, because of the proximity of existing residences along Johnson Rd., forest operations and other resource uses have tended to concentrate on the southern portion of the lot. In addition, a small woodlot is located on the northwestern portion of the site, adjacent to the neighboring 40 acre forest tract to the west.

Under the circumstances, the least productive area for resource related uses is the area along the northern side of the property, along Johnson Rd. Given the nature of existing development in the area, the dwelling should be located in the northeastern portion of the site, as close to Johnson Rd. as practical, in order to cluster the dwelling with the dwelling located on tax lot 25, adjacent to the east.

- (6) Building setbacks of at least 200 feet shall be maintained from all property lines, wherever possible, except:**
- a) A setback of 30 feet or more may be provided for a public road, or**
  - b) The location of dwelling(s) of adjacent lot(s) at a lesser distance which allows for the clustering of dwellings or the sharing of access;**

**Findings:** Due to the narrow shape of the lot, 200 foot setbacks are not possible from the east and west property lines. A 30 foot setback from Johnson Road appears to be feasible, which would be similar to other dwellings in the vicinity, would increase fire protection, and would cause less interference with forest management activities on properties to the west and south. To the extent possible, these criteria will be met.

- (7) Construction shall comply with the standards of the building code or as prescribed in ORS 446.002 through 446.200 relating to mobile homes;**

**Findings:** The proposed home will be required to comply with building code standards as ascertained by the Portland Building Bureau. This criteria will be met.

- (8) The dwelling shall be attached to a foundation for which a building permit has been obtained;**

**Findings:** A foundation will be a requirement for obtaining building permits. This criteria will be met.

- (9) The dwelling shall have a minimum floor area of 600 square feet; and**

**Findings:** This will be required prior to approval of building permits.

- (10) The dwelling shall be located outside a big game winter habitat area as defined by the Oregon Department of Fish and Wildlife or that agency has certified that the impacts will be acceptable.**

**Findings:** The property is not shown as being within a big game winter habitat area on the Comprehensive Plan Wildlife Habitat map.

#### **4. Comprehensive Plan Policies:**

**Policy 13 Air, Water and Noise Quality:** It is the county's policy to require, prior to approval of a legislative or quasi-judicial action, a statement from the appropriate agency that all standards can be met with respect to air quality, water quality, and noise levels. If the proposal is a noise sensitive use and is located in a noise impacted area, or if the proposed use is a noise generator, the following shall be incorporated into the site plan:

- (1) Building placement on the site in an area having minimal noise level disruptions.
- (2) Landscaping or other techniques to lessen noise generation to levels compatible with surrounding land uses.
- (3) Insulation or other construction techniques to lower interior noise levels in noise-impacted areas.

**Findings:** Policy 13 is satisfied because the applicant's Land Feasibility Study indicates that the parcel is suitable for a standard septic system. Water quality standards will be maintained through final review of the technical aspects of the septic system. The use is not a noise generator and the dwelling will not generally effect air quality standards.

**Policy 14 Developmental Limitations:** The county's policy is to direct development and land form alterations away from areas with development limitations 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:

- A. Slopes exceeding 20%;
- B. Severe soil erosion potential;
- C. Land within the 100 year flood plain;
- D. A high seasonal water table within 0-24 inches of the surface for 3 or more weeks of the year;
- E. A fragipan less than 30 inches from the surface;
- F. Land subject to slumping, earth slides or movement.

**Findings:** Based upon the evidence in the record, it does not appear that slopes on the parcel exceed 20 percent. The property is not in a slope hazard area or within a flood hazard area. Soils on the property are Cascade silt loam and Helvetia silt loam. The Cascade soil has a water table at a depth of 18-30 inches from December to April and a slowly permeable fragipan at 20-30 inches. Slumping is possible in areas of cut and fill. The planning staff indicates that septic tank absorption fields may not function properly during rainy periods, given the general soil characteristics of the site.

The applicant submitted a Land Feasibility Study which concluded that the site is suitable for a standard septic system. This study was based upon on-site soil analysis performed by a qualified expert. Based upon this more specific expert opinion, the hearings officer finds that this criteria can be met.

**Policy 22 Energy Conservation:** The county's policy is to promote the conservation of energy and to use energy resources in a more efficient manner. In addition, it is the policy of Multnomah County to reduce dependency on non-renewable energy resources and to support greater utilization of renewable energy resources. The county shall require a finding prior to the approval of legislative or quasi-judicial action that the following factors have been considered:

- (1) The development of energy-efficient land uses and practices;
- (2) Increased density and intensity of development in urban areas, especially in proximity to transit corridors and employment, commercial and recreational centers;
- (3) An energy-efficient transportation system linked with increased mass transit, pedestrian and bicycle facilities;
- (4) Street layouts, lotting patterns and designs that utilize natural environmental and climactic conditions to advantage.
- (5) Finally, the county will allow greater flexibility in the development and use of renewable energy resources.

**Findings:** In general, development in rural areas such as this one, does not support the county's energy conservation policy. However, in this case, a dwelling has been located on the site and approval of this non resource related dwelling will not materially alter the dependence on non-renewable energy resources. Therefore, in this case, Policy 22 will be met.

**Policy 37 Utilities:** The county's policy is to require a finding prior to approval of a legislative or quasi-judicial action that:

**Water and Disposal System**

- (1) The proposed use can be connected to a public sewer and water system, both of which have adequate capacity; or
- (2) 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
- (3) There is an adequate private water system, and the Oregon Department of Environmental Quality (DEQ) will approve a subsurface sewage disposal system; or
- (4) There is an adequate private water system, and a public sewer with adequate capacity.

### Drainage

- (1) There is adequate capacity in the storm water system to handle the run-off;  
or
- (2) The water run-off can be handled on the site or adequate provisions can be made; and
- (3) 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

- (1) There is an adequate energy supply to handle the needs of the proposal and the development level projected by the plan; and
- (2) Communications facilities are available.

**Findings:** At the hearing, the applicant orally testified that the proposed cistern could provide an adequate water supply. The well logs submitted for surrounding properties tend to support the applicant's testimony. The property has been determined to be suitable for a septic system. Electricity and telephone services are available. Storm water runoff from the proposed dwelling has not been analyzed in any of the evidence submitted in the record. However, given the fact that only one dwelling is proposed and the fact that one dwelling has existed on the site for the past few years without creating any apparent storm water problems, the hearings officer finds that there is circumstantial evidence in the record that run off from the site will not adversely affect water quality in the area. This criteria is met.

**Policy 38 Facilities:** The county's policy is to require a finding prior to approval of a legislative or quasi-judicial action that:

### School

- (1) The appropriate school district has had an opportunity to review and comment on the proposal.

### Fire Protection

- (1) There is adequate water pressure and flow for fire fighting purposes; and
- (2) The appropriate fire district has had an opportunity to review and comment on the proposal.

### Police Protection

- (1) The proposal can receive adequate local police protection in accordance with the standards of the jurisdiction providing police protection.

**Findings:** The applicant has submitted forms signed by the Multnomah County Sheriff and Multnomah County RFPD verifying that their service levels are adequate to serve the proposed residence. The school district review form has also been submitted. This evidence demonstrates that adequate facilities exist to support the proposal.

**Policy 40 Development Requirements:** The county's policy is to encourage a connected park and recreation system and to provide for small private recreation areas by requiring a finding prior to approval of legislative or quasi-judicial action that:

- (1) Pedestrian and bicycle path connections to parks, recreation areas and community facilities will be dedicated where appropriate and where designated in the bicycle corridor capital improvements program and map.
- (2) Landscaped areas with benches will be provided in commercial, industrial and multiple family developments, where appropriate.
- (3) Areas for bicycle parking facilities will be required in development proposals, where appropriate.

**Findings:** Pedestrian and bicycle paths are not appropriate for and are not required on Johnson Road.

**CONCLUSIONS:**

1. The subject property is a Lot of Record less than ten acres in size, thereby incapable of sustaining a farm or forest use.
2. The proposed dwelling will not significantly interfere with the resource management practices in the area, provided that the dwelling is located in the northeastern corner of the lot, as close to the eastern property line and Johnson road as possible, while maintaining an appropriate buffer between the dwelling and the parcel to the east. This location for the dwelling will provide the maximum possible separation between the dwelling and the resource uses to the west and south.
3. All other relevant criteria have been or will be met, so long as the conditions of approval set out above are complied with.

It is so Ordered this 12th day of November, 1993



Phillip E. Grillo  
Hearings Officer

In the matter of CU 9-93

Signed by the Hearings Officer: November 12, 1993  
[date]

Decision mailed to parties: November 12, 1993  
[date]

Submitted to Clerk of the Board: November 12, 1993  
[date]

Last day to Appeal to the Board: November 22, 1993  
[date]

### **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 plus a \$3.50-per-minute charge for a transcript of the initial hearing(s). [ref. MCC 11.15.8260(A)(1) and MCC 11.15.9020(B)] Instructions and forms are available at the County Planning and Development Office at 2115 SE Morrison Street (in 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.*