

# ANNOTATED MINUTES

Tuesday, March 26, 1996 - 9:30 AM  
Multnomah County Courthouse, Room 602  
1021 SW Fourth, Portland

## PLANNING ITEMS

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

- P-1      PRE 2-95    Hearings Officer Decision DENYING Appeal and AFFIRMING Planning Director's Decision Which Made a Determination of Substantial Development for a Single Family Dwelling on Property Located at 6125 NW THOMPSON ROAD, PORTLAND

***DECISION READ, APPEAL FILED. AT THE REQUEST OF CHAIR STEIN AND UPON MOTION OF COMMISSIONER KELLEY, SECONDED BY COMMISSIONER HANSEN, IT WAS UNANIMOUSLY APPROVED THAT A DE NOVO HEARING BE SCHEDULED FOR 9:30 AM, TUESDAY, APRIL 9, 1996, WITH TESTIMONY LIMITED TO 20 MINUTES PER SIDE.***

- P-2      CS 5-95    DE NOVO HEARING, 20 Minutes Per Side Regarding Appeal of Hearings Officer Decision APPROVING, With Conditions, Community Service Use to Construct New Facilities at the RIVERDALE SCHOOL, 11733 SW BREYMAN AVENUE, PORTLAND

***CHAIR STEIN EXPLAINED QUASI-JUDICIAL PROCESS. AT CHAIR STEIN'S REQUEST FOR DISCLOSURE, COMMISSIONER SALTZMAN REPORTED EX PARTE CONTACT WITH KATHI NOLES. AT CHAIR STEIN'S REQUEST FOR CHALLENGES, NONE WERE OFFERED. PLANNER BARRY MANNING PRESENTED CASE HISTORY, COMMUNITY SERVICE USE CRITERIA, OFF-STREET PARKING PROVISIONS, LANDSCAPE AND SCREENING, DESIGN REVIEW PROCESS, AND RESPONDED TO BOARD QUESTIONS. HEARINGS OFFICER JOAN CHAMBERS PRESENTED CONDITIONS, FINDINGS OF FACT AND***

**CONCLUSIONS APPLIED IN HER DECISION. RIVERDALE SCHOOL DISTRICT ATTORNEY STEVE ABEL INTRODUCED ROY HEMMINGWAY AND BOYD APPEGARTH OF THE DISTRICT, AND PROJECT ARCHITECT HENRY FITZGIBBON. MR. FITZGIBBON PRESENTED EXPLANATION OF PROPOSED RIVERDALE SITE PLAN. MR. HEMMINGWAY TESTIFIED IN SUPPORT OF ALLOWING PROPOSED GYMNASIUM EXPANSION/REMODEL WITHOUT NECESSITY OF ENCROACHING ON TENNIS COURT AND PLAY AREA DUE TO ADDITIONAL PARKING AS REQUIRED IN HEARINGS OFFICER CONDITION OF APPROVAL. MR. ABEL TESTIFIED IN SUPPORT OF REQUEST FOR MODIFICATION OF HEARINGS OFFICER CONDITION 4 BY REDUCING REQUIRED 68 PARKING SPACES TO 50. MR. ABEL AND MR. HEMMINGWAY RESPONSE TO BOARD QUESTIONS. ELLEN EVERSON AND JOSÉ CRUZ TESTIFIED IN SUPPORT OF HEARINGS OFFICER DECISION AS A COMPROMISE TO NEIGHBORS' CONCERNS REGARDING HAZARDOUS TRAFFIC CONDITIONS. MR. HEMMINGWAY AND MR. ABEL REBUTTAL. MR. FITZGIBBON AND MR. MANNING RESPONSE TO BOARD QUESTIONS AND DISCUSSION. IN RESPONSE TO QUESTIONS OF CHAIR STEIN, THERE WAS NO REQUEST FOR CONTINUANCE OR OBJECTION TO HEARING RAISED. CHAIR STEIN ADVISED ALL PARTIES WILL RECEIVE A COPY OF THE BOARD'S WRITTEN DECISION, WHICH MAY BE APPEALED TO LUBA. HEARING CLOSED. COMMISSIONER COLLIER'S MOTION TO OVERTURN THE HEARINGS OFFICER DECISION FAILED FOR LACK OF A SECOND. COUNSEL SANDRA DUFFY AND MR. MANNING RESPONSE TO BOARD QUESTIONS AND DISCUSSION. MS. DUFFY PROVIDED LEGAL OPINION THAT THE DISTRICT DOES NOT HAVE A VESTED RIGHT IN THE PRIOR 30% EXCEPTION, THEREFORE 68 PARKING SPACES IS REQUIRED UNLESS THE DISTRICT COMES FORWARD WITH EVIDENTIARY PROOF JUSTIFYING AN EXCEPTION. WITH THE ASSISTANCE OF MS. DUFFY, COMMISSIONER**

**HANSEN MOVED AND COMMISSIONER SALTZMAN SECONDED, CONTINGENT UPON THE DISTRICT'S REQUEST AND WAIVER OF THE 120 DAY TIME LIMIT, TO CONTINUE THE HEARING TO GIVE SCHOOL DISTRICT THE OPPORTUNITY TO BRING FORWARD EVIDENCE TO JUSTIFY AN EXCEPTION. BOARD DISCUSSED CONCERNS REGARDING CHANGES TO COMMUNITY SERVICE DESIGNATIONS. AFTER DISCUSSION WITH HIS CLIENTS AND THE BOARD, MR. ABEL AGREED TO BRING EVIDENCE AS TO WHY 50 INSTEAD OF 68 PARKING SPACES ARE JUSTIFIED AT THE NEXT REGULAR MEETING OF THE BOARD, 9:30 AM, THURSDAY, APRIL 4, 1996, AND WAIVED THE 120 DAY TIME LIMIT THROUGH APRIL 8, 1996. MS. DUFFY EXPLAINED THAT THE WAIVER WOULD ACTUALLY ADD THAT MANY DAYS TO THE 120 DAY TIME LIMIT. AT THE SUGGESTION OF MS. DUFFY AND UPON MOTION OF COMMISSIONER HANSEN, SECONDED BY COMMISSIONER SALTZMAN, IT WAS UNANIMOUSLY APPROVED THAT THE HEARING BE CONTINUED TO 9:30 AM, THURSDAY, APRIL 4, 1996, AT WHICH TIME SCHOOL DISTRICT WILL COME FORWARD WITH EVIDENCE TO JUSTIFY AN EXCEPTION TO THE PARKING STANDARD UNDER MCC 11.15.6146, AT WHICH TIME THERE WILL BE A DETERMINATION MADE AS TO A GRANTING OF THE COMMUNITY SERVICE DESIGNATION.**

*There being no further business, the meeting was adjourned at 11:20 a.m.*

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Thursday, March 28, 1996 - 9:30 AM  
Multnomah County Courthouse, Room 602  
1021 SW Fourth, Portland

**REGULAR MEETING**

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

**TRAINING MANAGER SHERY STUMP  
PRESENTED INFORMATION REGARDING  
HIGHLIGHTS OF THE APRIL 3, 1996 RESULTS  
CELEBRATION.**

**CONSENT CALENDAR**

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

**NON-DEPARTMENTAL**

- C-1 Appointment of Angel Olsen to the MULTNOMAH COUNTY CITIZEN INVOLVEMENT COMMITTEE
- C-2 Multnomah County Nomination of George Bell to the METROPOLITAN EXPOSITION RECREATION COMMISSION

**SHERIFF'S OFFICE**

- C-3 Dispenser Class A Liquor License Change of Ownership for TIPPY CANOE BAR & GRILL, 28242 CROWN POINT HIGHWAY, TROUTDALE
- C-4 Budget Modification MCSO 7 Reclassifying Two Sheriff's Office Positions to More Accurately Reflect Current Duties
- C-5 Budget Modification MCSO 8 Reclassifying Five Deputy Sheriff Positions to Corrections Deputy Positions in the Sheriff's Court Guards Unit
- C-6 Budget Modification MCSO 11 Reclassifying a Fiscal Assistant to a Senior Fiscal Assistant Position in the Inmate Accounts Unit

**REGULAR AGENDA**

**PUBLIC COMMENT**

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

**BEVERLY WILSON COMMENTED IN SUPPORT OF PAROLE OFFICE IN ST. JOHNS. MIKE FAHEY COMMENTED IN OPPOSITION TO LOCATION OF PAROLE OFFICE IN ST. JOHNS AND RESPONDED TO QUESTION OF COMMISSIONER HANSEN. JIM STEVENS, JOE KENT, JUNE SUNDIN, CAROL KENT, VIRGINIA CREGER, NOLA McDONALD, LOUISE SPEARS, JEFF McMAHON, KEVIN O'SULLIVAN, WILL LUCH, BERNARD VERROUT, JOHN ROBERTS, SHARON GIDDINGS, TED BROOKS, JANE BOGUS, ABBY SEEMANN, GORDON RUDDICK, VIVIAN RUDDICK AND SHERRY DAHLEN COMMENTED IN OPPOSITION TO LOCATION OF PAROLE OFFICE IN ST. JOHNS AREA. ROSE MARIE OPP AND AL CLARK COMMENTED IN SUPPORT OF MAINTAINING OPEN SPACE OF FLOYD LIGHT PARK. TOM CROPPER, THOM CACCAMO, RICHARD OSCAR GORDON, THOMAS WILDE, MELINDA WILDE AND GEORGE P. FOX COMMENTED IN OPPOSITION TO LOCATION OF PAROLE OFFICE IN ST. JOHNS.**

**NON-DEPARTMENTAL**

- R-2 RESOLUTION Supporting City of Portland Application for Redesignation of the N/NE Portland Enterprise Zone by the Oregon Economic Development Department

**COMMISSIONER KELLEY MOVED AND COMMISSIONER COLLIER SECONDED, APPROVAL OF R-2. CHRISTOPHER JUNIPER PRESENTATION AND RESPONSE TO BOARD QUESTIONS. RESOLUTION 96-52 UNANIMOUSLY APPROVED.**

**DEPARTMENT OF SUPPORT SERVICES**

- R-3 Ratification of Amendment to 1992-1995 Agreement Between Multnomah County and Multnomah County Employees Union Local 88, AFSCME AFL-CIO as Amended December 7, 1994 and Extended through June 30, 1998

**COMMISSIONER SALTZMAN MOVED AND COMMISSIONER KELLEY SECONDED, APPROVAL**

**OF R-3. KEN UPTON EXPLANATION.  
AGREEMENT UNANIMOUSLY APPROVED.**

**PUBLIC CONTRACT REVIEW BOARD**

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

- R-4 ORDER Exempting from Public Bidding the Purchase of Construction Services from Jasco Construction Services

**COMMISSIONER KELLEY MOVED AND COMMISSIONER HANSEN SECONDED, APPROVAL OF R-4. JIM EMERSON EXPLANATION AND RESPONSE TO BOARD QUESTIONS AND DISCUSSION. ORDER 96-53 UNANIMOUSLY APPROVED.**

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

**DEPARTMENT OF COMMUNITY AND FAMILY SERVICES**

- R-5 PUBLIC HEARING and Consideration of an ORDER Authorizing Transfer of Tax Foreclosed Property to Sabin Community Development Corporation for Low Income Housing and Social Service Purposes (1484-1486 NE Alberta Street, Portland)

**COMMISSIONER HANSEN MOVED AND COMMISSIONER SECONDED, APPROVAL OF R-5. HC TUPPER EXPLANATION AND RESPONSE TO BOARD QUESTIONS. DIANE MEISENHELTER TESTIMONY IN SUPPORT OF TRANSFER. ORDER 96-54 UNANIMOUSLY APPROVED.**

*Commissioner Collier left at 11:08 a.m.*

**DEPARTMENT OF COMMUNITY CORRECTIONS**

- R-10 Budget Modification DCC 6 Authorizing Addition of Thirteen FTE Corrections Technician Positions to Various Department Programs

**COMMISSIONER KELLEY MOVED AND COMMISSIONER HANSEN SECONDED, APPROVAL**

**OF R-10. TAMARA HOLDEN EXPLANATION. CHAIR STEIN ADVISED COMMISSIONER COLLIER HAD TO LEAVE FOR ANOTHER APPOINTMENT, BUT HAS LONG RANGE QUESTIONS SHE WILL SUBMIT IN WRITING TO THE BOARD AND THE DEPARTMENT. BUDGET MODIFICATION UNANIMOUSLY APPROVED.**

**DEPARTMENT OF COMMUNITY AND FAMILY SERVICES**

R-6 Budget Modification CFS 9 Appropriating \$2,418,321 in Medicaid Revenue to Reflect Implementation of the Children's Capitation Project Beginning April 1, 1996

**COMMISSIONER SALTZMAN MOVED AND COMMISSIONER SECONDED, APPROVAL OF R-6. SUSAN CLARK EXPLANATION. BUDGET MODIFICATION UNANIMOUSLY APPROVED.**

R-7 Budget Modification CFS 10 Transferring \$157,796 from General Fund Contingency to Support Start Up Costs Related to April 1, 1996 Implementation of the Children's Capitation Project

**COMMISSIONER KELLEY MOVED AND COMMISSIONER SALTZMAN SECONDED, APPROVAL OF R-7. MS. CLARK EXPLANATION AND RESPONSE TO BOARD QUESTION. BUDGET MODIFICATION UNANIMOUSLY APPROVED.**

**DEPARTMENT OF ENVIRONMENTAL SERVICES**

R-8 Second Reading and Adoption of an ORDINANCE Amending the Definition of Lot in the R-20 and R-30 Residential Zoning Districts by Providing an Exemption from the Lot Aggregation Requirement for Substandard Sized Lots with Existing Houses

**ORDINANCE READ BY TITLE ONLY. COPIES AVAILABLE. COMMISSIONER KELLEY MOVED AND COMMISSIONER SALTZMAN SECONDED, APPROVAL OF SECOND READING AND ADOPTION. NO ONE WISHED TO TESTIFY. ORDINANCE 848 UNANIMOUSLY APPROVED.**

**DEPARTMENT OF HEALTH**

R-9

RESOLUTION Declaring Intent to Acquire Property for Construction of the North Portland Health Clinic

**COMMISSIONER HANSEN MOVED AND COMMISSIONER KELLEY SECONDED, APPROVAL OF R-9. COMMISSIONER HANSEN, DWAYNE PRATHER AND BOB OBERST EXPLANATION AND RESPONSE TO BOARD QUESTIONS AND DISCUSSION. COUNSEL SANDRA DUFFY EXPLANATION AND SUGGESTED AMENDMENT LANGUAGE. STAFF TO PROVIDE BOARD WITH WRITTEN OUTLINE OF ADVANCE CITIZEN INVOLVEMENT/PUBLIC OUTREACH PROCESS. UPON MOTION OF COMMISSIONER SALTZMAN, SECONDED BY COMMISSIONER KELLEY, IT WAS UNANIMOUSLY APPROVED THAT PAGE ONE, PARAGRAPH TWO BE AMENDED BY ADDING AFTER "LEGAL COUNSEL, WITH BOARD APPROVAL, IS HEREBY AUTHORIZED AND DIRECTED." RESOLUTION 96-55 UNANIMOUSLY APPROVED, AS AMENDED.**

**SHERIFF'S OFFICE**

R-11 Budget Modification MCSO 9 Transferring \$379,416 from General Fund Contingency to Pay for the Unfunded Portion of the Work Crew Annex Operation

**AT THE SHERIFF'S REQUEST VIA CHAIR STEIN AND UPON MOTION OF COMMISSIONER KELLEY, SECONDED BY COMMISSIONER SALTZMAN, R-11 WAS UNANIMOUSLY POSTPONED INDEFINITELY.**

R-12 Budget Modification MCSO 10 Transferring \$67,129 from General Fund Contingency to Fund Operation of the Gresham Temporary Holding Facility

**AT THE SHERIFF'S REQUEST VIA CHAIR STEIN AND UPON MOTION OF COMMISSIONER KELLEY, SECONDED BY COMMISSIONER SALTZMAN, R-12. WAS UNANIMOUSLY CONTINUED TO THURSDAY, APRIL 4, 1996.**

*The regular meeting was adjourned at 11:20 a.m. and the briefing convened at 11:25 a.m.*

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Thursday, March 28, 1996 - 10:30 AM  
(OR IMMEDIATELY FOLLOWING REGULAR MEETING)  
Multnomah County Courthouse, Room 602  
1021 SW Fourth, Portland

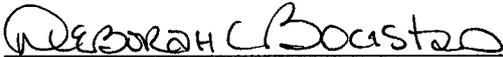
**BOARD BRIEFING**

B-1 Regional Disparity Study to Analyze Past Participation of Minority and Women Owned Business Enterprises in Multnomah County's Procurement Process. Presented by Dave Boyer, Jerry Walker and Madelyn Wessel.

***DAVE BOYER, MADELYN WESSEL, JERRY WALKER AND JEAN KARECKI PRESENTATION AND RESPONSE TO BOARD QUESTIONS AND DISCUSSION.***

*There being no further business, the meeting was adjourned at 12:02 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 SW FIFTH AVENUE  
PORTLAND, OREGON 97204  
CLERK'S OFFICE ▪ 248-3277 ▪ 248-5222  
FAX ▪ (503) 248-5262

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

# AGENDA

## MEETINGS OF THE MULTNOMAH COUNTY BOARD OF COMMISSIONERS

### FOR THE WEEK OF

### MARCH 25, 1996 - MARCH 29, 1996

*Tuesday, March 26, 1996 - 9:30 AM - Planning Items.....Page 2*

*Thursday, March 28, 1996 - 9:30 AM - Regular Meeting.....Page 2*

*Thursday, March 28, 1996 - 10:30 AM - Board Briefing.....Page 4*

*Thursday Meetings of the Multnomah County Board of Commissioners are \*cablecast\* live and taped and can be seen by Cable subscribers in Multnomah County at the following times:*

*Thursday, 9:30 AM, (LIVE) Channel 30*

*Friday, 10:00 PM, Channel 30*

*Sunday, 1:00 PM, Channel 30*

*\*Produced through Multnomah Community Television\**

*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.*

*AN EQUAL OPPORTUNITY EMPLOYER*

*Tuesday, March 26, 1996 - 9:30 AM  
Multnomah County Courthouse, Room 602  
1021 SW Fourth, Portland*

**PLANNING ITEMS**

- P-1      PRE 2-95    Hearings Officer Decision DENYING Appeal and  
AFFIRMING Planning Director's Decision Which Made a  
Determination of Substantial Development for a Single Family Dwelling  
on Property Located at 6125 NW THOMPSON ROAD, PORTLAND*
- P-2      CS 5-95      DE NOVO HEARING, 20 Minutes Per Side Regarding  
Appeal of Hearings Officer Decision APPROVING, With Conditions,  
Community Service Use to Construct New Facilities at the RIVERDALE  
SCHOOL, 11733 SW BREYMAN AVENUE, PORTLAND*
- 

*Thursday, March 28, 1996 - 9:30 AM  
Multnomah County Courthouse, Room 602  
1021 SW Fourth, Portland*

**REGULAR MEETING**

**CONSENT CALENDAR**

**NON-DEPARTMENTAL**

- C-1      Appointment of Angel Olsen to the MULTNOMAH COUNTY CITIZEN  
INVOLVEMENT COMMITTEE*
- C-2      Multnomah County Nomination of George Bell to the METROPOLITAN  
EXPOSITION RECREATION COMMISSION*

**SHERIFF'S OFFICE**

- C-3      Dispenser Class A Liquor License Change of Ownership for TIPPY  
CANOE BAR & GRILL, 28242 CROWN POINT HIGHWAY,  
TROUTDALE*
- C-4      Budget Modification MCSO 7 Reclassifying Two Sheriff's Office  
Positions to More Accurately Reflect Current Duties*
- C-5      Budget Modification MCSO 8 Reclassifying Five Deputy Sheriff Positions  
to Corrections Deputy Positions in the Sheriff's Court Guards Unit*

C-6            *Budget Modification MCSO 11 Reclassifying a Fiscal Assistant to a Senior Fiscal Assistant Position in the Inmate Accounts Unit*

**REGULAR AGENDA**

**PUBLIC COMMENT**

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

**NON-DEPARTMENTAL**

R-2            *RESOLUTION Supporting City of Portland Application for Redesignation of the N/NE Portland Enterprise Zone by the Oregon Economic Development Department*

**DEPARTMENT OF SUPPORT SERVICES**

R-3            *Ratification of Amendment to 1992-1995 Agreement Between Multnomah County and Multnomah County Employees Union Local 88, AFSCME AFL-CIO as Amended December 7, 1994 and Extended through June 30, 1998*

**PUBLIC CONTRACT REVIEW BOARD**

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

R-4            *ORDER Exempting from Public Bidding the Purchase of Construction Services from Jasco Construction Services*

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

**DEPARTMENT OF COMMUNITY AND FAMILY SERVICES**

R-5            *PUBLIC HEARING and Consideration of an ORDER Authorizing Transfer of Tax Foreclosed Property to Sabin Community Development Corporation for Low Income Housing and Social Service Purposes (1484-1486 NE Alberta Street, Portland)*

R-6            *Budget Modification CFS 9 Appropriating \$2,418,321 in Medicaid Revenue to Reflect Implementation of the Children's Capitation Project Beginning April 1, 1996*

- R-7            *Budget Modification CFS 10 Transferring \$157,796 from General Fund Contingency to Support Start Up Costs Related to April 1, 1996 Implementation of the Children's Capitation Project*

**DEPARTMENT OF ENVIRONMENTAL SERVICES**

- R-8            *Second Reading and Adoption of an ORDINANCE Amending the Definition of Lot in the R-20 and R-30 Residential Zoning Districts by Providing an Exemption from the Lot Aggregation Requirement for Substandard Sized Lots with Existing Houses*

**DEPARTMENT OF HEALTH**

- R-9            *RESOLUTION Declaring Intent to Acquire Property for Construction of the North Portland Health Clinic*

**DEPARTMENT OF COMMUNITY CORRECTIONS**

- R-10           *Budget Modification DCC 6 Authorizing Addition of Thirteen FTE Corrections Technician Positions to Various Department Programs*

**SHERIFF'S OFFICE**

- R-11           *Budget Modification MCSO 9 Transferring \$379,416 from General Fund Contingency to Pay for the Unfunded Portion of the Work Crew Annex Operation*
- R-12           *Budget Modification MCSO 10 Transferring \$67,129 from General Fund Contingency to Fund Operation of the Gresham Temporary Holding Facility*

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*Thursday, March 28, 1996 - 10:30 AM*  
**(OR IMMEDIATELY FOLLOWING REGULAR MEETING)**

*Multnomah County Courthouse, Room 602  
1021 SW Fourth, Portland*

**BOARD BRIEFING**

- B-1            *Regional Disparity Study to Analyze Past Participation of Minority and Women Owned Business Enterprises in Multnomah County's Procurement Process. Presented by Dave Boyer, Jerry Walker and Madelyn Wessel. 1 HOUR REQUESTED.*

Meeting Date: MAR 26 1996  
Agenda No: P-1  
Est. Starting Time: 9:30

(Above Space for Board Clerk's Use ONLY)

**AGENDA PLACEMENT FORM**

**SUBJECT:** Reporting of a Hearings Officer's Decision in the matter of PRE 2-95.

**BOARD BRIEFING**      Date Requested:  
Amount of Time Needed:  
Requested By:

**REGULAR MEETING**      Date Requested:      March 26, 1996  
Amount of Time Needed:      5 minutes

**DEPARTMENT:** DES  
**CONTACT:** Barry Manning

**DIVISION:** Planning  
**TELEPHONE:** 248-3043  
**BLDG / ROOM:** 412/Planning

**PERSON(S) MAKING PRESENTATION:** Barry Manning

**ACTION REQUESTED**

Informational Only       Policy Direction       Approval       Other

**SUGGESTED AGENDA TITLE**

Reporting to the Board the Hearings Officer's Decision in the Matter of PRE 2-95, an appeal of an administrative decision which made a determination of substantial development for a single family dwelling.

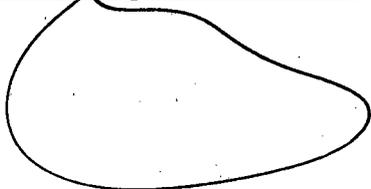
**SIGNATURES REQUIRED:**

**Elected Official:** \_\_\_\_\_

OR

**Department Manager:** KB Louie & Nicholas

BOARD OF  
COUNTY COMMISSIONERS  
MULTNOMAH COUNTY  
OREGON  
96 MAR 18 AM 10:35





MULTNOMAH COUNTY

BOARD HEARING of March 14, 1996

CASE NAME: PRE 2-95: Appeal of Planning Director's Determination of Substantial Development

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

1a. Applicant Name/Address:  
 Dan Mc Kenzie  
 6125 NW Thompson Road  
 Portland, OR 97210

1b. Appellant Name/Address:  
 Arnold Rochlin  
 P.O. Box 83645  
 Portland, OR 97283

2. Action Requested by Applicant:

*Applicant requested Planning Director's Determination of Substantial Development for a single family dwelling and related accessory structures located at 6125 NE Thompson Road. The determination was appealed. Applicant subsequently motioned to dismiss the appeal filed by the appellant.*

3. Planning Director's Decision:

*Planning staff issued an affirmative Determination of Substantial Development on January 4, 1996. This decision was appealed to the Hearings Officer and heard on February 21, 1996.*

4. Hearings Officer Decision:

1. Deny the appeal and affirm the Planning Director's Decision.
2. Deny the applicant's motion to dismiss the appeal.

5. If Director's Decision and Hearings Officer's Decision are different, why?

*They are the same.*

6. Issues:

*MCC .7110(C) states that a Conditional Use expires two years from the date of issuance, or two years from the date of final resolution of subsequent appeals... The Parties may continue to argue the date that all related appeals were resolved and the start of the two-year clock. PRE 2-95 determined that all related appeals were resolved in August/September 1995, because Final Orders were not appealed. Rochlin argued that CU 5-91 expired in 1993.*

7. Implications related to this case: Unknown

*The Decision may impact the way that the Planning Director determines substantial completion.*

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## HEARINGS OFFICER DECISION

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

**March 13, 1996**

**PRE 2-95**

Appeal of an Administrative Decision

Appeal of an administrative decision which made a determination of substantial development for a single family dwelling and related accessory building permitted as a Conditional Use under application CU 5-91. The applicant filed a Motion to Dismiss the appeal.

**Location:** 6125 NW Thompson Road  
Portland, OR 97210

**Map Description:** Tax Lot 1 of lot 37, Mountain View Park Addition 1

**Zoning Designation:** CFU, Commercial Forest Use

**Applicant  
& Owner:** Dan McKenzie  
6125 NW Thompson Road  
Portland, OR 97210

**Appellant:** Arnold Rochlin  
P.O. Box 83645  
Portland, OR 97283

### Hearings Officer Decision:

**Motion to Dismiss Appeal:** Deny Motion to Dismiss appeal

**Appeal of Administrative Decision:** Deny appeal and affirm administrative decision, which made a determination of substantial development for a single family dwelling.

## PROCEDURAL ISSUES

### 1. Impartiality of the Hearings Officer

- A. No ex parte contacts. I did not have any ex parte contacts prior to the hearing of this matter. I did not make a site visit.
- B. No conflicting personal or financial or family interest. I have no financial interest in the outcome of this proceeding. I have no family or financial relationship with any of the parties.

### 2. Jurisdictional Issues

At the commencement of the hearing I asked the participants to indicate if they had any objections to jurisdiction. The participants did not allege any jurisdictional or procedural violations regarding the conduct of the hearing. The applicant, however, did raise two other jurisdictional questions and filed a Motion to Dismiss the appeal on two grounds:

(A) Applicant contended that:

"Pursuant to MCC .8290(a) the decision becomes final in ten days unless the applicant files an appeal. Since the applicant has not filed an appeal, the decision has become final on 1/16/96, and the Hearings Officer lacks jurisdiction."

(B) Applicant further contended that:

"The person who filed the appeal, Arnold Rochlin, does not have standing as a party, was not entitled to notice under MCC .8220(C), and has not demonstrated that he is aggrieved nor adversely affected by the decision."

**A. The right of appeal is not limited to the applicant.**

MCC 11.15.7110(C)(3)(c) provides that notice of a planning director decision of determination of substantial construction or development shall be mailed to all parties as defined in MCC .8225.

Subparagraph d of Section .7110(C)(3) provides that the decision of the planning director shall become final at the close of business on the tenth day following mailed notice unless a party (emphasis added) files a written notice of appeal. Such notice of appeal and decision shall be subject to the provisions

of MCC .8290 and .8295. Accordingly, I find that any party has a right to appeal a decision of substantial development. The reference in the Conditional Use provisions to the notice of appeal being subject to the provisions of MCC .8290 and .8295 relates to the mechanics of filing the appeal and the procedure on appeal. Any limitations on who may file an appeal contained in MCC 11.15.8290 would not be applicable where MCC 11.15.7110(C)(3)(d) specifically gives broader appeal rights. Accordingly, I find that any party to the decision does have the right to appeal.

The applicant also argues that the application of PRE 2-95 is not an application for a "permit" as defined in ORS 215.402(4) and the right of appeal under ORS 215.416 does not apply here. However, this point is irrelevant since I have found that the Multnomah County Code itself provides the right for a party to appeal the Planning Director's decision. The State statutes provide minimum appeal rights. A local jurisdiction may grant more procedural safeguards to participants in the local land use process than those minimum rights mandated by State law. Thus, it is unnecessary to decide whether the provisions of ORS 215.416 would provide a right of appeal in the instant case.

**B. Arnold Rochlin has standing as a party to the decision.**

The applicant contends that Arnold Rochlin does not have standing to appeal a decision of the Planning Director because Mr. Rochlin has not demonstrated that he is aggrieved or adversely effected by the decision. MCC 11.15.8225 (A)(2) provides that persons can become parties by demonstrating at a hearing that they could "be aggrieved or have interests adversely affected by the decision."

The Multnomah County Code does not define the terms "aggrieved" or "adversely affected". These terms are substantially similar to terms found in State statutes. Absent a clear expression of intent to the contrary, where a local government adopts a requirement in terms substantially similar to a statutory provision, the local Code provision must be interpreted in the same fashion as the State statute. Joseph vs. Lane County, 18 Or LUBA 41, 51 (1989), O'Brien vs. City of West Linn, 18 Or LUBA 665 (1990).

The terms aggrieved or adversely affected are substantially similar to terms used in ORS 215.416 and 215.422. In interpreting these terms, Oregon courts have distinguished between adverse affect and aggrievement. In League of Women Voters vs. Coos County, 76 Or App 705 (1985), the Court of Appeals indicated that "the facts that Respondents have no geographic proximity to the area effected by the decision and that they can suffer no economic or non-economic harm are germane to whether or not they were adversely affected, not to whether they were aggrieved by the Planning Commission's decision."

supra at 711. In that instance, the Court found that the Respondents' long-standing interest in the "correct application of land use laws" was sufficient to establish they were aggrieved by the Planning Commission's rejection of the position they asserted.

In the instant case, the appellant, Arnold Rochlin, provided a statement indicating that he would be aggrieved by approval of the request for a determination of substantial development which he believed would be in violation of applicable land use laws and regulations. Accordingly, I do find that the appellant has met the applicable standard in demonstrating that he could be aggrieved by the decision of the Planning Director and that he does have standing to appeal the administrative decision in this matter.

**C. Decision on Motion to Dismiss.**

Accordingly, for the reasons state above, I find that the right to appeal an administrative decision of substantial completion is not limited to the applicant. A party to the proceeding may appeal the decision of the Planning Director. In the instant case, Mr. Rochlin has demonstrated that he could be aggrieved by the decision of the Planning Director and does have standing to appeal that decision. For these reasons, I deny applicant's Motion to Dismiss the appeal.

## **BURDEN OF PROOF**

In this proceeding, the burden of proof is upon the applicant.

## **SCOPE OF APPEAL**

A hearing before the Hearings Officer on a matter appealed under MCC .8290 shall be limited to the specific grounds relied on for reversal or modification of the decision in the Notice of Appeal. The appellant's attachment to the Notice of Appeal stating the grounds for the appeal of the administrative decision is attached hereto as Exhibit "A" and is incorporated by this reference herein. The specific grounds raised by the appellant will be discussed in the body of this decision.

## FACTS

### 1. Applicant's Proposal

Applicant requested that the Planning Director make a determination of a substantial development for a single family dwelling permitted as a conditional use under Conditional Use Application 5-91 in accordance with MCC .7110(C)(3). The Planning Director did determine that substantial construction or development had taken place on the subject property.

### 2. Procedural History

The procedural history of this application was detailed in the Board of Commissioner Findings 95-186, 95-187 and 95-188. This development has been the subject of multiple land use applications, including CU 5-91, CU 5-91a, SEC 6-91, SEC 6-91a, SEC 6-94, HDP 4-91, HDP 4-91a, HDP 56-94, DR 14-93, DR 14-93a. All concern a driveway which crosses the Thompson Fork of Balch Creek. Applicant Dan McKenzie (McKenzie) received three permits in 1991 covering the subject property - (1) CU 5-91, a Conditional Use (CU) permit for a dwelling; (2) HDP 4-91, a Hillside Development (HD) permit authorizing grading and construction associated with the development including an access drive off NW Thompson Road; and (3) SEC 6-91, a Significant Environmental Concern (SEC) permit approving an access drive with a bridge over the creek.

McKenzie later installed a culvert and fill crossing rather than a bridge and requested amendments to HD and SEC permits to allow the culvert and fill crossing (HDP 4-91a, SEC 6-91a). In July, 1993, LUBA issued a decision reversing the county's approval of SEC 6-91a and HDP 4-91a because the Board's motion for a rehearing was one day late.

In 1993 McKenzie sought approval of DR 14-93, a Final Design Review Plan for the non-resource dwelling allowed by Conditional Use permit (CU 5-91). In August, 1993, the Hearings Officer affirmed and modified the Director's decision on for DR 14-93.

A related application, CU 5-91a requested a determination that substantial development had taken place within two years of approval of CU 5-91.

In 1993, McKenzie and Arnold Rochlin (Rochlin) each appealed the Board decisions regarding DR 14-93 and CU 5-91a to the State Land Use Board of Appeals (LUBA). On July 21, 1994, LUBA remanded applications: DR 14-93 and CU 5-91a for reasons detailed in McKenzie v. Multnomah County, 27 Or LUBA 523 (1994). Rochlin and McKenzie challenged the LUBA ruling at the Oregon Court of Appeals. 131 Or App

177 (1994). The Court of Appeals affirmed the LUBA decision in an opinion filed November 2, 1994. The LUBA remand decision was to become effective December 21, 1994. It directed the County to clarify, correct, and complete certain procedures for the DR 14-93 and CU 5-91a applications. The application for CU 5-91a was withdrawn on December 13, 1994.

In May, 1993, before the LUBA decision on SEC 6-91a and HDP 4-91a, the Planning Director approved the "Final Design Review Plan" (DR 14-93). Rochlin appealed that decision to the Hearings Officer (representing a neighborhood association). In September, 1993, Rochlin appealed the HO decision to the Board on behalf of the neighborhood association.

On November 2, 1993, the Board issued Final Order 93-339 approving the Final design Review Plan with a condition that the plan be amended to include a bridge. the Decision stated that "the Final Design Review Plan satisfied applicable criteria only if modified to include a bridge rather than a culvert".

On October 6, 1994, Applicant submitted a joint application for land use permits HDP 56-94 and SEC 6-94. HDP 56-94 is an application for a Hillside Development permit to install a culvert and fill design. SEC 6-94 is a Significant Environmental Concern permit asking the County to vacate prior SEC decisions on the subject property because the subject property is not in an SEC zone. When the County failed to take action on applications HDP 56-94 and SEC 6-94 within 120 days after the applications became final, the applicant filed two petitions for alternate Writs of Mandamus, in Multnomah County Circuit Court. In each matter an Order Allowing a Petition for Alternate Writ of Mandamus was approved by the Circuit Court. In response to McKenzie's application and the Circuit Court Orders Allowing the Petitions for Alternative Writ of Mandamus, the Board of County Commissioners for Multnomah County issued Final Orders 95-186, and 95-187.

In Final Order 95-186, the Board approved McKenzie's application for a culvert fill crossing, finding compliance with all HDP criteria.

In Final Order 95-187, the Board vacated the Hearings Officer and Planning Director decisions with respect to SEC 6-91 and SEC 6-91a, based on the findings that the Thompson Fork of Balch Creek has not been classified as a Class I stream and has not been designated an area of significant environmental concern. Accordingly, the County Code did not require an SEC permit when the SEC 6-91 and SEC 6-91a applications were made. Orders 95-186 and 95-187 were approved on August 22, 1995.

On August 22, 1995, the Board of County Commissioners also approved Order 95-188, which granted approval of DR 14-93a an amended final Design Review plan for

the subject property. Order 95-188 modified the Board's prior Order 93-339 regarding applications DR 14-93 and CU 5-91a and approved a culvert rather than a bridge in the design.

### **3. Site and Vicinity Information**

The subject property is a lot of record of three acres located on the east side of NW Thompson Road approximately 800 feet north of its intersection with NW Cornell Road. It is vegetated with a mixture of conifer and deciduous trees. The Thompson Fork of Balch Creek flows south near the west end of the property, approximately 50 feet from the NW Thompson Road frontage. The property abuts Forest Park to the north and east; the park boundary is about 200 feet to the north and 200 feet to the south of the culvert.

The culvert and fill work approved in Board Order 95-186 is located in a 50 foot wide access strip which connects the property to NW Thompson Road. The grading work is associated with development of vehicular access to the site for forest practices.

### **4. Testimony and Evidence Presented**

A. During and prior to the Hearing and during the course of the Hearing on February 21, 1996, the following exhibits were received by the Hearings Officer:

- (1) General Application Form
- (2) Applicant's Narrative Statement
- (3) MCC 11.15.7110, General Provisions of Conditional Use Code (Applicant's Attachment 1)
- (4) Final Order 95-188: DR 14-93, 14-93a (Applicant's Attachment 2)
- (5) Receipts & Invoices related to development of subject property (Applicant's Attachment 3a-k)
- (6) Permit Receipt 93-8232, Re: erection of new 25x30 detached garage (Applicant's Attachment 4)
- (7) Final Order 95-187: SEC 6-94
- (8) Final Order 95-186: HDP 56-94
- (9) PRE 2-95: Planning Director's Determination of Substantial Development
- (10) Notice of Appeal of Administrative Decision (including one Attachment): PRE 2-95
- (11) Applicant's Motion to Dismiss Appeal
- (12) Applicant's Memorandum
- (13) History of events

- (14) Transcript of Portion of H.O. Meeting of July 19, 1993
  - (15) Planning Director Decision CU 18-90a
  - (16) Letter from Doug Ripley
  - (17) 10/11/93 Petition from Forest Park Neighborhood Association
  - (18) Portion of Hearings Officer's Decision SEC 6-91a, HDP 4-91a
  - (19) 1/17/95 Minutes of Forest Park Neighborhood Association Development Committee
  - (20) 12/27/94 correspondence from McKenzie to Rochlin
  - (21) Letter from Arnold Rochlin to BCC
  - (22) BCC Final Order SEC 6-91a, HDP 4-91a
  - (23) Memo from R. Scott Pemble, 8/17/92
  - (24) Portion of HO Decision SEC 6-91a, HDP 4-91a
  - (25) Letter from Rochlin to Hearings Officer, 2/14/96
  - (26) Applicant's Testimony
  - (101) Letter from Rochlin to Hearings Office, 2/14/96
  - (102) Rochlin: Appendix; 400+ pages
  - (103) LUBA opinion 93-019
  - (104) Rochlin: Basis of Entitlement to Status as a Party; 2/21/96
  - (105) Rochlin: Testimony to Hearings Officer, 2/21/96
- B. Barry Manning testified for the County, summarized the history of the application and the administrative decision and subsequent appeal therefrom.
- C. Mr. McKenzie, the applicant, submitted oral and written testimony and filed a Motion to Dismiss the appeal.
- D. Arnold Rochlin, the appellant, submitted oral and written testimony.

## FINDINGS

The parties to this proceeding have a long and voluminous history in regards to various development applications for this property. Over 500 pages of written materials have been submitted as evidence in this matter (PRE 2-95) alone. In the instant case, the appellant has raised a number of subissues. However, stated in its most basic terms, the ultimate decision that the appellant is asking the Hearings Officer to reach is that CU 5-91 expired prior to the applicant filing an application in PRE 2-95 and that therefore the standards of MCC 11.15.7110(C)(3) have not been met. In the administrative decision under appeal, the Planning Department interpreted the phrase "subsequent appeals" under MCC 11.15.7110(C) to mean "appeals of all land use decisions necessary to construct work under the conditional use permit, including all related and supplemental permits." Appellant contends that CU 5-91 was never

appealed and that other final decisions have previously determined that CU 5-91 would expire in April of 1993. Appellant has also contended that the requirement that final design review approval be received prior to expiration of the CU permit was not met, again arguing that the CU permit expired in 1993. In addition, the appellant contends that evidence in the record did not demonstrate that lawfully allowable and adequately documented expenses, incurred prior to the end of the two-year permit period, equal or exceeded ten percent (10%) of the total project value. The specific issues raised by appellant will be discussed in this opinion within the context of the ordinance criteria.

**1. Did applicant file PRE 2-95 at least thirty days prior to the expiration date of CU 5-91?**

**Appellant's Argument Regarding the Law of the Case**

Appellant contends that McKenzie vs. Multnomah County, 27 Or LUBA 523 made a dispositive determination that the Conditional Use permit expired on 4/26/93. The appellant has submitted substantial oral and written testimony arguing that position.

However, in the referenced case, LUBA succinctly restated what determination was actually made in the challenged decision. LUBA found "the challenged decision determines the previously approved Conditional Use permit for a non-forest building has not expired." 27 Or LUBA 523 at 537. LUBA upheld that decision and denied Rochlin's Assignment of Error. In upholding the decision of the Board, LUBA deferred to the Board's interpretation of MCC 11.15.7110(C) regarding the meaning of "the approval of a conditional use shall expire two years from the date of issuance of the Board of Commissioners' Order in the matter,". Neither the decision under appeal in CU 5-91a or the subsequent LUBA decision construed the section of the Multnomah County Code which we are concerned with herein.

In the matter currently under appeal, PRE 2-95, the County is construing the phrase "two years from the date of the final resolution of subsequent appeals". MCC 11.15.7110(C) provides in relevant part that "the approval of a conditional use shall expire two years from the date of issuance of the Board order in the matter, or two years from the date of resolution of subsequent appeals". There is an "or" separating the two clauses. The LUBA decision referenced above only affirmed and deferred to a Board interpretation of the first clause in this section. The interpretation of the Planning Director that is now in question is the determination that "subsequent appeals" means "appeals of all land use decisions necessary to construct work under the conditional use permit including all related and supplemental permits."

This interpretation of the Planning Director on appeal herein is in fact consistent with the Final Orders in 95-186, 95-187, and 95-188, in which the Board specifically found in each instance that the applications in question under each of those orders was related to a number of other applications in regards to the same property. I cannot accept the appellant's contention that LUBA has made a conclusive determination that CU 5-91 expired on April 26, 1993. Similarly, I find that the LUBA interpretation in question did not construe the portion of the Code language which is relevant to the interpretation that is being challenged in the instant matter. Accordingly, I find that no dispositive determination has been made that the permit for CU 5-91 expired on April 26, 1993.

#### **Subsequent Appeals Extended the Expiration Date of CU 5-91**

Appellant has contended that the appeals of decisions relating to Hillside Development permits and SEC permits did not extend the expiration date of CU 5-91. The appellant further contends that these decisions were not necessary to protect the applicant's legitimate opportunity to use the permit, rather they simply enabled the applicant to submit alternate and cheaper designs. However, I do not concur with the appellant's position.

It is clear that these permits are relevant to this application and the resolution of all issues relative to those permits were necessary for the appropriate implementation of the conditions of CU 5-91. As conditions of approval for CU 5-91, the applicant was required to satisfy the conditions of SEC 6-91 and to obtain a Hillside Development and Erosion Control permit. The County has interpreted "subsequent appeals" to mean appeals of all land use decisions necessary to construct work under the conditional use permit, including all related and supplemental permits. I find this to be a reasonable interpretation. Any other interpretation would be inconsistent with other provisions of the State Land Use Law. To hold otherwise would allow an appellant to "bifurcate" a decision by appealing only other permits mandated by the decision. For example, if a conditional use permit imposed a condition requiring other permits such as a SEC permit, the applicant might not be able to commence work on the property as authorized by the conditional use approval until the SEC permit was obtained. An appeal of an SEC permit could then take longer than the two years originally authorized by the conditional use permit. The conditional use permit would then expire without the applicant ever having had the opportunity to do any work under the conditional use permit. Such an interpretation or holding would be inconsistent with provisions such as ORS 215.416 which require a consolidated procedure for land use applications.

The County's interpretation that appeals of permits related to an application are considered a "subsequent appeal" is a reasonable interpretation. It is clear that the various rulings regarding SEC permits, Hillside Development permits and Design

Review are all clearly related to the Conditional Use permit decision in the instant case. The original Conditional Use permit required compliance with provisions of the SEC sections of the Multnomah County Code. However, as later determined by the Board of Commissioners in Final Order 95-187, an SEC permit was not required by the County Code when the applications were made.

Pursuant to ORS 215.428(3), approval or denial of an application shall be based upon the standards and criteria that were applicable at the time the application was first submitted. The subject property was not in an SEC zone and it should not have been subject to the requirements of an SEC permit or the SEC provisions of MCC. Accordingly, appeals and issues relevant to an SEC permit, which permit was required as a condition of CU 5-91, are relevant subsequent appeals. It was not until August 22, 1995 with the adoption of Final Order 95-187, an Order of the Board of Commissioners which vacated SEC 6-91 and SEC 6-91a on the grounds that those permits were not required, that those issues related to SEC conditions were resolved.

Similarly, CU 5-91 required that the applicant obtain a Hillside Development and Erosion Control permit. Subsequent decisions relating to a Hillside Development permit were appealed. On appeal, a June 16, 1992 Hearings Officer Decision found compliance with all HDP criteria but denied the HDP 4-91a application based upon four SEC permit criteria which were subsequently found to be inapplicable. Accordingly, decisions relating to the SEC provisions of the Ordinance also directly impacted the applicant's ability to comply with the requirement to obtain a Hillside Development permit.

Ultimately, on August 22, 1995, the Board of County Commissioners for Multnomah County entering a Final Order in the matter of 95-186, issuing a Hillside Development Permit to Dan McKenzie and in the matter of 95-187, entered a Final Order vacating SEC 6-91 and SEC 6-91a on the grounds that an SEC permit was not required by the County Code when the applications in question were made. Thus, these were "subsequent appeals" and the two year period limitation on the Conditional Use application which runs from the "final resolution of subsequent appeals" did not begin to run (at the earliest) until these Board Orders became final. Thus, those decisions which were not appealed did not become final until sometime in September, 1995, when the 21 day appeal period passed without an appeal being filed.

Appellant contends that even if appeals of HDP 4-91a and SEC 6-91a were held to have "tolled expiration", it would not help with the timeliness of the application. Appellant contends that the LUBA Order in Rochlin vs. Multnomah County, which dealt with HDP 4-91a and SEC 6-91a, was issued on July 22, 1993 and became final on August 12, 1993. Appellant contends that the two year duration would have ended on August 12, 1995. However, the application for DR 14-93, Design Review, was made on March 25, 1993 and the Planning Director issued a written decision on

May 26, 1993. That decision was appealed. Thus, on August 12, 1993 the time on which the LUBA Order in Rochlin vs. Multnomah County became final, there was also a pending appeal of a decision mandated by the Conditional Use permit. Accordingly, as of July 22, 1993, there had been no final resolution of all subsequent appeals, and the two year time period from "final resolution of all subsequent appeals" had not yet started to run.

For the reasons stated above, I found that the Planning Director's interpretation of subsequent appeals to mean "appeals of all land use decisions necessary to construct work under the conditional use permit including all related and supplemental permits" a reasonable interpretation and one that is consistent with the express words, purpose or policy of this section of the MCC. Accordingly, I find that in the case of CU 5-91 related permits include SEC 6-91, SEC 6-91a, SEC 6-94; HDP 4-91, HDP 4-91a, HDP 56-94; DR 14-93, DR 14-93a and CU-91a. Therefore, the earliest date on which CU 5-91 could expire would be a date two years after the date the Decision in Orders 95-186, 95-187, and 95-188 became final. Accordingly, I do find that the applicant filed a request that the Planning Director make a determination of substantial development on December 19, 1995, which application was made on appropriate forms and filed with the Director at least thirty (30) days prior to the expiration date of the Conditional Use permit in question.

**2. Has the applicant met the criteria set forth in MCC 11.15.7110 (C)(3)(b)?**

**11.15.7110(C)(3)(b)(i) -**

Final Design Review Approval has been granted under MCC .7845 on the total project. On August 22, 1995, the Multnomah County Board of Commissioners issued an order approving DR 14-93a, an amended final Design Review plan for this project. That decision became final 21 days after the Notice of Decision when no appeal was filed. Accordingly, I find that design approval granted in Order 95-188 became final in September of 1995, and that at the time of this application for determination of substantial development final design approval had been granted.

**11.15.7110(C)(3)(b)(ii) -**

At least ten percent (10%) of the dollar cost of the total project value has been expended for construction or development authorized under a sanitation, building or other development permit. Project value shall be as determined by MCC .9025(A) or .9027(A). Appellant has contended that evidence in the record does not show that lawfully allowed or adequately documents expenses incurred prior to the end of the two year permit equal or exceed ten percent (10%) of adequately and lawfully determined total project value. However, appellant further conceded that if the two

year duration of CU 5-91 was tolled by the appeal of the DR 14-93, then the facts and arguments on those issues must fail. However, it is still necessary to review the factual basis for the finding that at least ten percent (10%) of the dollar cost of the total project value has been expended for construction or development authorized under a sanitation, building or other development permit.

Project value shall be determined in accordance with MCC .9025(A) or .9027(A). Apparently .9027(A) has been repealed. Accordingly, Section .9025 would be applicable which section provides that project value shall be determined in accordance with the Uniform Building Code or as otherwise determined by the Director. In the instant case, the Director has determined that it is appropriate to use the Building Code valuations for the portion of the work that has not yet been completed, i.e., the garage, and to use the actual cost to determine the project values for the balance of the project. This approach appears to be reasonable and accordingly, I will use the same system in evaluating whether the development meets the ten percent (10%) test standard.

At the hearing, the applicant testified that in addition to the expenses listed in his memorandum submitted as Exhibit "2", which values were supported by other exhibits in the record, the applicant also incurred the expense of the \$990.00 for skirting in the manufactured home. Accordingly, I am including that amount in the project value.

The appellant contends that the applicant's figures are insufficiently supported and include amounts for development not authorized under a permit, expenditures after April of 1993 and a total project value not adequately demonstrated.

As indicated above, I find the Planning Director's determination of project value to be reasonable under the facts and circumstances of this case. The applicant has submitted written documentation for his figures and has provided direct testimony in regards to items such as the skirting and the cost of the manufactured home. I find his testimony to be credible. The appellant further contends that the cost of materials for the culvert and fill should not be included because the work was done prior to obtaining a valid permit for the work in question. However, the point has little relevance, since even without those particular expenditures, the amount expended to date is far in excess of ten percent (10%) of the total project value. Accordingly, for purposes of making this decision, I will not include those expenditures within the approved expenditure amounts.

<u>Expense Type</u>	<u>Project Value</u>	<u>Approved Expenditures</u>
Septic system	\$ 8,110.00	\$ 8,110.00
Road work	\$ 1,580.00	\$ 1,580.00
Culvert cost	\$ 1,443.20	\$ 0.00
Culvert & road work	\$ 2,854.86	\$ 0.00
Geotechnical	\$ 410.20	\$ 410.20
Site preparation	\$ 2,861.00	\$ 2,861.00
Well	\$ 8,619.00	\$ 8,619.00
Well pump, plumbing, and pressure tank	\$ 4,047.00	\$ 4,047.00
Utility work	\$ 2,248.54	\$ 2,248.54
Landscaping	\$ 300.00	\$ 300.00
Foundation	\$ 2,000.00	\$ 2,000.00
House	\$ 30,971.00	\$ 30,971.00
Garage	\$ 11,580.00	\$ 0.00
Skirting	\$ 990.00	\$ 990.00
<b>Total</b>	<b>\$ 78,014.80</b>	<b>\$ 62,136.74</b>

Accordingly, based on the evidence in the record and the figures cited above, I find that ten percent (10%) of the total project value is \$7,801.48. The total approved expenditures in the amount of \$62,136.74 far exceed the ten percent (10%) project value. Accordingly, I find that the applicant has met the requirements of MCC 11.15.7110 (C)(3)(b)(ii).

### CONCLUSION

Based on the findings and the substantial evidence cited or referenced herein, I conclude that the application for a single family home permitted as a conditional use under application CU 5-91 satisfies all applicable approval criteria. Accordingly, the Planning Director's determination of substantial development is affirmed and the appeal of that decision is denied.

IT IS SO ORDERED, this 12th day of March, 1996.



JOAN M. CHAMBERS, Hearings Officer

HEARINGS OFFICER DECISION  
March 13, 1996

PRE 2-95  
Page 14

ATTACHMENT TO NOTICE OF APPEAL  
ADMINISTRATIVE DECISION

File No.: PRE 2-95 Determination of Substantial Development

7. Describe specific grounds relied on for reversal or modification of the decision:

The Planning Director (Director) wrongly relies in part on DR 14-93, which was never finally approved. (DR 14-93a is not the same.)

The decision wrongly concludes that the timeliness requirement of MCC 11.15.7110(C)(3)(a) was met. It wrongly concludes that CU 5-91 (for a dwelling in a forest zone), did not expire in April, 1993, 2 years after final approval as provided by MCC 11.15.7110(C). The provision of .7110(C) concerning subsequent appeals is wrongly invoked to support a holding that expiration was delayed beyond two years from the final approval. CU 5-91 was never appealed. Whether or not the permit expired in 1993 remains a matter to be finally determined as required by prior final orders concerning DR 14-93 and CU 5-91a, which settled the expiration date, conditional only on resolution of particular issues not addressed in this decision. Issues required to be addressed in this case include, among others, whether or not approval of substantial construction in CU 5-91a could be done before there was final design review approval, and, whether or not it could be based on a design review plan submitted after expiration of the 2 year period of duration of CU 5-91. The decision fails to establish that there is compliance with 11.15.7110(C)(3)(b)(i) which requires "Final Design Review approval" as a pre-requisite of vesting by substantial construction before actual expiration of the CU permit.

Concerning 11.15.7110(C)(3)(b)(ii), the conclusion that total project value is \$76,553.80 is not supported by adequate findings or based on any substantial evidence identified in the decision. The decision wrongly allows expenditures made after the CU permit expired in 1993 as expenses toward the requirement of expenditure of 10% of total project value. Conclusions concerning amount of expenses are not supported by adequate findings based on substantial evidence identified in the decision.

Appellant does not waive the right to challenge compliance with any standards or criteria, or other requirements, not identified in the notice of decision dated January 4, 1996.

*Arnold Kachler*  
*January 14, 1996*

EXHIBIT, A Page, 106 / 1



### NOTICE OF REVIEW

1. Name: Rochlin, \_\_\_\_\_, Arnold
2. Address: PO Box 83645, Portland, OR 97283  
Last Middle First
3. Telephone: (503) 289-2657  
Street or Box City State and Zip Code
4. If serving as a representative of other persons, list their names and addresses:  
not applicable  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
5. What is the decision you wish reviewed (e.g., denial of a zone change, approval of a subdivision, etc.)?  
PRE 2-95 Deny appeal and affirm administrative decision -  
determination of substantial development for a single  
family dwelling
6. The decision was announced by the Hearings Officer on March 14, 1996  
(mailing date) Planning Commission
7. On what grounds do you claim status as a party pursuant to MCC 11.15.8225?  
I appeared and testified (decision page 8)  
I demonstrated that I could be aggrieved (decision pages 3-4)  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

See attachment (2 pages)

9. Scope of Review (Check One):

(a)  On the Record

(b)  On the Record plus Additional Testimony and Evidence

(c)  De Novo (i.e., Full Rehearing)

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

The board has rejected recent requests for other than de novo reviews. The Board has not required transcripts or transcript fees for de novo reviews. (For example, see SEC 8-94.)

Signed: Arnold Kohn

Date: March 15, 1996

**For Staff Use Only**

Fee:

Notice of Review = \$500.00

Transcription Fee:

Length of Hearing \_\_\_\_\_ x \$3.50/minute = \$ \_\_\_\_\_

Total Fee = \$ 500.<sup>00</sup>

Received by: Jane Strim

Date: 3-18-96

Case No. PRE 2-95

## ATTACHMENT TO NOTICE OF REVIEW

File No.: PRE 2-95 Determination of Substantial Development

### 8. *Grounds for Reversal of the decision:*

The decision wrongly fails to address issues required to be addressed by the Land Use Board of Appeals (LUBA) and the Court of Appeals in the remand of the county's earlier determination of substantial construction (CU 5-91a). Those issues are: Can the requirement of final design review approval be satisfied by a design review plan that was, in substantial part, not even submitted to the county until after CU 5-91 would have otherwise expired? Can the requirement be satisfied when the purported "final" design review approval was not finally approved by the county before CU 5-91 would have otherwise expired? How could a design review approval that, by its own terms, required amendment and further design review, be a "final" design review approval? *McKenzie v. Multnomah County*, 27 Or LUBA 523, 541-42, *Aff'd*, 131 Or App 177 (1994). Without addressing the remand issues, the decision wrongly concludes there is compliance with 11.15.7110(C)(3)(b)(i).

The decision implicitly and wrongly decides the county does not have to address the remand issues because the applicant withdrew CU 5-91a and filed a new application for exactly the same determination of substantial development. The decision does not address appellant's relevant claim that substitution of a new application for an old, does not change the law or the facts relevant to determination of substantial development in CU 5-91. It cannot relieve the county of the need to comply with the remand order.

The decision misstates appellant's contention that *McKenzie v. Multnomah County* finally decided "that the 2 year duration of CU 5-91 ended on April 26, 1993, for the purpose of determining timely application for vesting." (Exhibit 25, page 3) That was wrongly changed to "Appellant contends that McKenzie v. Multnomah County ... made a dispositive determination that the Conditional Use permit expired on 4/26/93." (Decision, page 9) Such an assertion would be absurd. LUBA remanded CU 5-91a, it did not reverse. But LUBA made determinations that the county is required to accept as the law of this case. Among them is that the application for determination of substantial construction filed on March 26, 1993 was filed "31 days before the two-year period expired on April 26, 1993." *Id.* at 540. As a matter of law, the PRE 2-95 application, filed on December 19, 1995, is nearly 3 years late.

The decision misinterprets *McKenzie v. Multnomah County* as holding that CU 5-91 had not expired. (Decision, page 9). LUBA decided only that it had not expired for want of timely application for vesting. It held the CU 5-91a application was filed 31 days before CU 5-91 would have expired (2 days before the deadline). The part of the LUBA decision quoted by the Hearings Officer only describes a county determination in a decision that LUBA proceeds to review and remand. Had LUBA decided CU 5-91 had not expired, as the Hearings Officer says, the remand would have been irrational.

The provision of .7110(C) concerning subsequent appeals, is wrongly invoked to support a holding that expiration was delayed beyond two years from the final approval. CU 5-91 and necessary related permits HDP 4-91 and SEC 6-91 were never appealed. No permit necessary for implementing the conditional use, was appealed during the 2 years following finality of approval of CU 5-91. Only approval of optional amendments to the HDP and SEC permits, to allow a culvert instead of a bridge, was appealed during those 2 years. The decision correctly holds that expiration of a CU permit is tolled by appeals only when the appeals are of "land use decisions necessary to construct work under the conditional use permit, including all related and supplemental permits." But the decision does not explain how the decision in HDP 4-91a and SEC 6-91a, to allow the applicant's choice of a culvert instead of a bridge, was necessary to implement the CU permit. After correctly interpreting the regulation, the Hearings Officer wrongly addressed only whether or not the appealed permits were related to the CU permit, not whether they were necessary, and, they were not necessary.

It was wrongly decided that appeal of DR 14-93 tolled expiration. DR 14-93 was a design review decision issued on May 26, 1993, a month after the 2 years. The decision relies on its holding that appeal of HDP 4-91a and SEC 6-91a tolled expiration until August, 1993, to conclude that appeal of the design review in May, 1993 could continue the tolling of expiration. If the conclusion that appeal of HDP 4-91a and SEC 6-91a tolled expiration is wrong, then the decision is also wrong in failing to address appellant's relevant claim that appeal of DR 14-93, after the end of the 2 year CU duration, could not have tolled expiration.

The decision wrongly fails to address appellant's contention that because the applicant and the county did not claim in earlier proceedings on CU 5-91 and CU 5-91a, that expiration was tolled by appeals of other decisions, they are precluded from making that claim now. The issue of date of expiration was squarely before LUBA in *McKenzie v. Multnomah County*. All the appeals the decision now relies on had already been filed. There are no new facts that could not have been brought to LUBA's attention. An attempt to re-litigate a settled issue with a new argument should not be allowed when the argument could have been made in an earlier proceeding that reached a final decision.

The decision does not address appellant's challenge of the erroneous determination in the administrative decision that vesting was achieved by virtue of the development having been completed as approved. As the Hearings Officer characterizes the decision as "affirming administrative decision", it is not clear whether failure to address the issue is endorsement or rejection.

The decision wrongly concludes that the timeliness requirement of MCC 11.15.7110(C)(3)(a), that an application for vesting in the CU permit be filed at least 30 days before expiration, was met. It wrongly concludes that CU 5-91 (for a dwelling in a forest zone), did not expire in April, 1993, 2 years after final approval as provided by MCC 11.15.7110(C).

AR

#1

**PLEASE PRINT LEGIBLY!**

MEETING DATE 3/26/96

**NAME**

Ellen Everson

**ADDRESS**

11505 SW Breyman Ave

**STREET**

Portland OR 97219

**CITY**

**ZIP**

**I WISH TO SPEAK ON AGENDA ITEM NO.**

CS5-95

**SUPPORT**

**OPPOSE**

**SUBMIT TO BOARD CLERK**

#2

**PLEASE PRINT LEGIBLY!**

**MEETING DATE** 03-26-96

**NAME**

Vasec Cruz, Jr.

**ADDRESS**

11330 S.W. Avontine Circle

**STREET**

Portland, Or. 97219

**CITY**

**ZIP**

**I WISH TO SPEAK ON AGENDA ITEM NO.** P-2

**SUPPORT** \_\_\_\_\_

**OPPOSE** \_\_\_\_\_

**SUBMIT TO BOARD CLERK** \_\_\_\_\_

work phone : 280-6373

FAX : 280-6310

home phone : 636-9977

**PLEASE PRINT LEGIBLY!**

**MEETING DATE** 4-4-96

**NAME** Kathi Noles

**ADDRESS** 11744 S.W. Breyman Ave.

**STREET**

Portland

**CITY**

97219

**ZIP CODE**

**I WISH TO SPEAK ON AGENDA ITEM #** \_\_\_\_\_

**SUPPORT** \_\_\_\_\_

**OPPOSE**

**SUBMIT TO BOARD CLERK**





MULTNOMAH COUNTY

BOARD HEARING of March 26, 1996

CASE NAME: CS 5-95 Community Service Use Request

1a. Applicant Name/Address:

Henry Fitzgibbon  
Soderstrom Architects, P.C.  
1200 NW Front #410  
Portland, OR 97236

1b. Appellant Name/Address:

Henry Fitzgibbon  
Soderstrom Architects, P.C.  
1200 NW Front #410  
Portland, OR 97236

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

2. Action Requested:

Appellant requests De Novo review of the Hearings Officer's February 9, 1996 Decision to Approve, with Conditions, construction of new facilities at the Riverdale School. The request includes proposals for construction of new classrooms and library and replacement of the existing gymnasium. The appellant challenges the County's requirement of a Community Service Use review for this proposal, and also challenges the Hearings Officer's parking requirements.

3. Planning Staff Recommendation:

Approve, subject to conditions.

4. Hearings Officer Decision:

Approve, subject to conditions.

5. If recommendation and decision are different, why?

As a Condition of Approval, the Hearings Officer requires the school to provide the full number of on-site parking spaces required by County Code (approximately 68 spaces based on the size of the proposed gymnasium). For elementary/grade schools, the number of spaces is determined by the floor area of the auditorium/gymnasium. Alternatively, the Staff Report required the school to provide the full number of parking spaces for only the incremental change in floor area for the new gymnasium (9 additional spaces for a total of 50). The staff also recommended requiring the appropriate number of spaces for Kindergarten facilities (1 or 2 spaces) plus a continuous "drop off" loop also required for Kindergarten facilities. The primary difference is that the staff report acknowledges, and maintains the validity of, a 30% "exception" to the number of required spaces granted in a 1990 Design Review decision (which permitted 41 spaces as opposed to the full requirement of 59), and requires adding the drop-off loop and the appropriate number of spaces for the Kindergarten facility. The Hearings Officer considers the Kindergarten requirements applicable to "sand-alone" facilities only (not in addition to

elementary school parking req's.), but does not recognize the 30% exception granted in 1990.

6. Issues:

1. Do modification to existing, recognized, but non-reviewed and non-approved Community Service Uses require Hearings Officer review?
2. Can exceptions to standards granted in previous decisions be revisited and subsequently reviewed or altered?

7. Implications related to this case: Unknown

The Decision may impact the way that the Planning Director processes Community Service Uses and reviews exceptions and variances granted under previous decisions.

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## HEARINGS OFFICER DECISION

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

**February 9, 1996**

**CS 5-95**                      Community Service Use Approval Request

Applicant requests Community Service Use approval to construct new facilities at the Riverdale School. The request includes proposals for construction of new classrooms and library and replacement of the existing gymnasium.

**Location:**                      11733 S.W. Breyman Avenue

**Legal Description:**        Lots 22-24, Abernethy Heights

**Site Size:**                      8.6 acres

**Plan Designation:**        Single Family Residential, Community Service

**Zoning Designation:**    R-30, Single Family Rural Residential  
CS, Community Service

**Applicant:**                      Henry Fitzgibbon  
Soderstrom Architects, P.C.  
1200 N.W. Front #410  
Portland, OR 97209

**Owner:**                              Riverdale School District #51  
11733 S.W. Breyman Avenue  
Portland, OR 97219

**Hearings Officer Decision:**

Approve, subject to conditions, Community Service Use to construct new facilities at the Riverdale School, based on the Findings and Conclusions contained herein.

## Conditions of Approval:

1. Approval of this Community Service Use shall expire two (2) years from the date of this Hearings Officer Decision unless substantial development has taken place in accordance with MCC 11.15.7010.
2. The Riverdale School facility shall be limited to serve Kindergarten through eighth (8th) grade students as described in the application. Any change in use, such as expansion of the grade ranges served on the site, either permanent or temporary, will be considered a modification of the use that will require Community Service Use review and approval.
3. Compliance with and approval of the Multnomah County Design Review process shall be required prior to the issuance of any building permits related to this proposal on this site.
4. Prior to the Final Design Review, the Riverdale School shall develop and submit an On-Site Parking and Circulation Plan that complies with County Code and reduces hazardous conditions caused by vehicular/pedestrian conflicts, as part of the design review process. Such a plan will comply with the full level of parking requirements as determined by the size of the auditorium. Under the preliminary plans as submitted for this decision, 68 spaces would be required.
5. Prior to the Final Design Review, the Riverdale School shall develop and submit a plan for fire department access, along with a fire district approved site plan, as part of the Design Review process.
6. The Riverdale School shall comply with other transportation requirements determined appropriate and necessary by the Multnomah County Transportation Division, as part of the Design Review process.
7. Notice of the Design Review Decision should be mailed to all parties who signed the "sign in sheet" for the January 17, 1996 public hearing on Case CS 5-95.
8. Any expansion in enrollment beyond 350 students will be considered a modification of the use that will require Community Service Use review and approval.

## PARTY STATUS

### Parties' Agents and Witnesses to the Proceeding

1. Parties:

The persons, agencies and organizations who submitted written or oral testimony in this proceeding.

A. Applicant: Appearing as applicant was Henry Fitzgibbon, of Soderstrom Architects, P.C., the authorized representative of the property owner. Mr. Fitzgibbon's address is 1200 N.W. Front #410, Portland, OR 97209.

B. Other persons supporting the application:

(1) Neale Creamer, 11657 S.W. Breyman, Portland, OR 97219; and

(2) Boyd Applegarth, Superintendent of Riverdale School District, 16715 S.W. Cambridge Dr., Portland, OR 97224.

C. Persons opposed to the application:

(1) Jose' Cruz, Jr., 11338 S.W. Aventine Circus, Portland, OR 97219;

(2) Frank Wagner, 01520 S.W. Corbett Hill Circle, Portland, OR 97219;

(3) John H. Garren, 01008 S.W. Comus, Portland, OR 97219;

(4) Ellen Everson, 11505 S.W. Breyman Ave., Portland, OR 97219;

(5) Karen Wagner, 01520 S.W. Corbett Hill, Portland, OR 97219;

(6) Kathi Noles, 11744 S.W. Breyman Ave., Portland, OR 97219;

(7) Marjorie Maletzky, 11108 S.W. Collina Ave., Portland, OR 97219

(8) Art Piculell, 02008 S.W. Military Rd., Portland, OR 97219; and

(9) Tom Scarpone, 01510 S.W. Weddington, Portland, OR 97219;

D. Determination of party status:

- (1) The Riverdale School District #51 is the property owner and has appeared through its authorized representatives Henry Fitzgibbon and Boyd Applegarth. The school district has party status.
- (2) Neale Creamer made appearance of record pursuant to 11.15.8225 (B)(1) and has party status pursuant to MCC 11.15.8225(A)(1) as a person entitled to notice under MCC .8220(C)(3). The persons listed above who appeared in opposition to this request are entitled to party status pursuant to MCC 11.15.8225(A)(2) and made an appearance of record either personally or in writing in accordance with MCC 11.15.8225(B).

## PROCEDURAL ISSUES

### 1. Impartiality of the Hearings Officer

- A. No ex parte contacts. I did not have any ex parte contacts prior to the initial hearing of this matter or during the seven day period of time while the record was being held open. I did not make a site visit.
- B. No conflicting personal or financial or family interest. I have no financial interest in the outcome of this proceeding. I have no family or financial relationship with any of the parties.

### 2. Procedural Issues

At the commencement of the hearing I asked the participants to indicate if they had any objections to jurisdiction. The participants did not allege any jurisdictional or procedural violations regarding the conduct of the hearing.

During the course of the hearing, Art Piculell contended that he did not receive notice of the hearing and that he should have received notice. He asked that the hearing be continued to a later time. Mr. Piculell owned property outside of the notice area. He also had an easement over adjoining property within the notice area. He contended that he should have been given notice because of his interest in the easement. However, Section 11.15.8220 of the Multnomah County Code provides that notice shall be provided to "all record owners of property" within the specified number of feet. An easement interest does not constitute record ownership of property. In addition, the failure of a property owner to receive notice shall not invalidate the action if a good faith attempt

was made to notify all persons entitled to mailed notice. 11.15.8220(D). I find that for purposes of the zoning ordinance, Mr. Piculell was not a record owner of property and therefore the County was not required to provide notice to him. In addition, I find the County did make a good faith attempt to notify all persons entitled to mailed notice.

## **BURDEN OF PROOF**

In this proceeding, the burden of proof is upon the applicant.

## **FACTS**

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

Applicant requests Community Service Use approval to construct new facilities at the existing Riverdale School. The request includes proposals for construction of new classrooms and library and replacement and expansion in size of the existing gymnasium.

### **2. Site and Vicinity Information**

- A. The subject parcel is located south of the intersection of S.W. Breyman and S.W. Military Road. It is bordered by S.W. Breyman on the east and by S.W. Military Road on the west. The Riverdale School is located on an 8.6 acre site. Most of the development for the school is located on the northern area of the site. The southern area is relatively undeveloped and used as an athletic field. The western tip of the north portion of the site is densely forested and steeply sloped, while the central and eastern portions where the development is located, slopes gently west to east. A site plan is attached hereto as Exhibit "A" and is incorporated by this reference herein.
- B. The area surrounding the subject site is predominately residential with several large homes in close proximity to the site. Topography in the area varies considerably. The area directly across the street from the school on Breyman Avenue slopes gently downhill toward the east. The area to the north across Military Road, and west at the rear of the site, is much steeper, with hills rising sharply away from the subject property.
- C. Zoning in the vicinity of the site is R-30 Single Family Residential. The zoning map designates this as CS. However, it does not appear that the

subject site has ever received a CS permit. The site has been used for a school for at least 75 to 100 years. Such use pre-dates the earliest Multnomah County Zoning Ordinance. A vicinity map is attached hereto as Exhibit "B" and is incorporated by this reference herein.

### **3. Testimony and Evidence Presented**

A. During the course of the hearing on January 17, 1996, and during the fourteen (14) day period of time thereafter, the seven in which the record remained open, and during the subsequent seven days after the record was closed in which the applicant could submit final written argument, the following exhibits were received by the Hearings Officer:

- (1) Application Narrative and Plans
- (2) Riverdale School Traffic Study, Kittelson and Associates
- (3) DR 90-030-02 Memo from Transportation Division re: improvements
- (4) Staff Report
- (5) Slides (21)
- (6) Documents from DR 90-30-02
- (7) Written testimony of John H. Garren (01008 SW Comus, Portland, Oregon 97219)
- (8) Photographs (3); Road Conditions
- (9) Elementary School Enrollment Bar Graph
- (10) Letter in opposition: Kathi Noles
- (11) Letter in opposition: Marjorie Maletzky
- (12) Map: school and nearby easement
- (13) Photographs (6): site and drainage
- (14) Property Profile/Title Insurance Report

(15) Argument in Support of the Application

- B. Barry Manning testified for the County, summarized the history of the application in his Staff Report, and identified the slides of the site and surrounding property which are listed as Exhibit 5 herein. Except as stated otherwise in this Opinion, the facts stated in the Staff Report are hereby incorporated by this reference herein.
- C. Henry Fitzgibbon, applicant, appeared as the authorized representative of the property owner, the Riverdale School District. Mr. Fitzgibbon of Soderstrom Architects, testified that the Riverdale School facility would not be used for high school grades nine (9) through twelve (12). The school district has developed a master plan for enhancement of the facilities at the Riverdale School. The current facility lacks a cafeteria. The new facility will include three classrooms and a Media Center/-Library. The existing library will be remodeled into two classrooms. The classroom wing adjacent to the Gymnasium will be remodeled into a cafeteria facility. The Gymnasium building will be replaced with a larger building which will provide a regulation size gymnasium. The net result is that the number of classrooms will remain the same and school will have a larger Media Center, and a Cafeteria. The actual student capacity of the facility will not increase.
- D. Neale Creamer testified in support of the application, and indicated that the school was the ultimate community service. The school has been a long time part of the community and was the heart and soul of the Riverdale community.
- E. Jose' Cruz, Jr. testified that the school had existed at that present site for approximately 100 years and did provide a service to the community. He didn't indicate an objection to the continuance of the school facility at the site. He did express concerns about children being bussed in from outside of the district and he had concerns about portions of the application review being determined during Design Review.
- F. Frank Wagner indicated that he supports the concept of a new gym and cafeteria, but is concerned about the existing traffic situation and parking conditions. He was also concerned that there is no opportunity for public input in the Design Review process.
- G. John Garren commented on the application and expressed concerns that the school's practice of accepting non-resident tuition students has increased traffic impacts in the area. He asked that the permit stipulate

that any enrollment exceeding 350 students require a new permit application. He also expressed concerns about the current school's deviation from the traffic standards. He asked that the Hearings Officer resolve all issues relative to parking and traffic at this time rather than later during the subsequent Design Review process.

- H. Ellen Everson testified that the need for the new gym was well documented. She questioned the need for the other buildings and expressed concerns about traffic and illegal parking.
- I. Karen Wagner expressed concerns regarding the extent of the decisions that were to be made as part of the Design Review process. She also was concerned about the potential impact development would have on water run-off patterns in the area.
- J. John Dorst, Multnomah County Department of Transportation, indicated that the water run-off from the proposal would be limited. On-site detention would be required. No net off-site water flow increase would result from the development.
- K. Kathi Noles testified in person and submitted written testimony. She stated that Riverdale School was built in 1920. She was concerned about possible violation of deed restrictions on the property deeds for the school. She was also concerned that the practice of admitting non-resident tuition students was creating a significant increase in parking demand and traffic congestion. She asked that the school population be limited to local resident students. She expressed concerns about past exceptions granted the school on parking requirements.
- L. Marjorie Maletzky submitted testimony expressing concerns about the Riverdale School facility being used to house a temporary high school.
- M. Art Piculell expressed concerns about not receiving notice (he has an easement across property within the notice area). He was concerned about safety and traffic issues. He also wanted to see a copy of the deed to the school district and asked that the County review the restrictions on the property. He requested that the record remain open.
- N. Tom Scarpone testified about school district decisions and policies. He felt that the facility could be better operated as a K through six (6) facility.

- O. Boyd Applegarth, the Superintendent of Riverdale School, indicated that the capacity of the students would not increase beyond 350. He also indicated that the school had about 36 employees. He also stated that the school would be used only for grades K through eight (8). No temporary high school would be located at the facility.

## **STANDARDS AND CRITERIA, ANALYSIS AND FINDINGS OF FACT**

### **1. Applicability of Community Service Use Standards**

The Riverdale School has existed on the subject site for between 75 and 100 years. The use as a school pre-dates the land use planning process in Multnomah County. The school site is zoned R-30. Section 11.15.2842 of the Multnomah County Zoning Ordinance provides:

**"No building, structure, or land shall be used and no building or structure shall be hereafter erected, altered or enlarged in this district except for the following uses:**

- (A) Single family dwellings;**
- \* \* \***
- (D) Special uses, such as parks, playgrounds or community centers, churches, schools, golf courses and uses of similar nature as provided in MCC .7005 through .7041, when approved by the Hearings Officer.**

Only certain limited types of uses are allowed in this zone. A single family dwelling would be allowed without any kind of hearing. A school, however, would come under the provisions of subsection (D) and no building or structure could be erected, altered or enlarged unless the special use is approved by the Hearings Officer.

The manner in which this section of the Code is written makes it unclear as to whether the County intended to require a review by the Hearings Officer each time a building or structure is erected, altered or enlarged for an approved CS use or whether it was just the initial approval of the CS use that required review by the Hearings Officer.

If subparagraph (D) read "special uses, \* \* \* , when approved as proved in MCC .7005 through .7041.", it would be clear that structures constructed pursuant to a previously approved CS use could be altered or enlarged without further review. However, this section talks about erecting, altering or enlarging structures for special uses as provided in "MCC .7005 through .7041, when approved by the Hearings

Officer". This makes it sound like any time a building or structure is erected, altered or enlarged for a special use, review by a Hearings Officer would be required.

For purposes of the instant case, it is not necessary to decide whether in all instances an alteration or enlargement of structures used in a CS use would require Hearings Officer approval. In the instant case, I find that review under the provisions of Section MCC .7006 through .7041 and review by a Hearings Officer is necessary, since the school in question has never been reviewed by a Hearings Officer or received an actual CS permit.

In Exhibit 15, a letter submitted as closing argument after the record was closed, the school district seems to question why it is being required to obtain Community Service approval and raises questions regarding conforming vs. nonconforming uses.

At the present time, the subject site carries a designation of CS on the zoning map, but apparently has never received a Community Service Use approval and has never been subject to Community Service review. The Community Service Use is a special use and not a special district. There are no provisions that I am aware of in the Zoning Ordinance that require Multnomah County to place a CS designation on the Zoning Map once CS approval has been given. Apparently, at some point in time, the County previously recognized that the existing use of the subject site was similar to those uses designated Community Service and placed that designation on the map. That does not mean that it ever obtained a CS permit.

It is questionable whether the subject site complies with all of the present standards for Community Service uses. It appears that the site does not comply with the current parking requirements in the Zoning Ordinance. Even if the subject site does not comply with all current CS standards, it would be allowed to continue unchanged under the nonconforming use sections of the Zoning Ordinance. Pursuant to the definition section, 11.15.010, a nonconforming use is **"a use to which a building or land is put at the time this chapter became effective and which does not conform with the use regulations of the district in which it is located."**

There was substantial evidence which indicated that the use of the subject site as a school has been continual for at least seventy-five (75) years. There is also evidence indicating that the site does not comply with the required parking provisions. Accordingly, it may be that the subject property is in fact a non-conforming use. As such, it could continue unchanged and would not be required to update its parking standards to continue in existence. However, where, as here, the school district contemplates substantive structural changes to the property, including changes which would necessitate provision of additional parking spaces under current ordinance standards, such changes would be considered an alteration of a non-conforming use which would create a change of greater impact to the neighborhood and thus could

not be allowed under the nonconforming use sections of the ordinance. Such improvements could only be constructed in conformance with current ordinance standards. Accordingly, under both the provisions of the R-30 Zone, Section 11.15.2842 and under the provisions of the Nonconforming Use Section of the Zoning Ordinance, if the school district wishes to go forward with the proposed additions and changes in structures at the subject site, it must obtain CS approval to do so.

## **2. Community Service Use Standards**

### **A. MCC 11.15.7015: Community Service Use Approval Criteria**

**In approving a Community Service use, the approval authority shall find that the proposal meets the following approval criteria \* \* \*:**

#### **(A) Is consistent with the character of the area;**

##### **ANALYSIS:**

The Riverdale School is an existing use, one which pre-dates zoning in Multnomah County. The use has been recognized as a Community Service Use for many years. Early versions of the County's Comprehensive Plan and the Zoning Map identify this site as a Community Service Use. The use of the site as a school pre-dates much of the development in the area. The use of the site as a grade school/middle school is consistent with the character of the area. The application does not propose to expand or alter the grade ranges the school uses. Therefore the proposed additions would maintain a use that is already recognized as consistent with the character of the area. Conditions would be imposed on approval to ensure that the grade range is not expanded. Accordingly, I do find that the proposal is consistent with the character of the area.

#### **(B) Will not adversely affect natural resources;**

##### **ANALYSIS:**

The proposed structures will replace existing facilities. A limited number of existing scrub maples will need to be removed to accommodate new structures. This will have little impact on the existing dense Douglas Fir and Oak canopy to the west of the buildings. Excavation will be kept to a minimum. On-site water quality systems will be developed for handling new impervious surface run off. No net increases in surface water run off will occur. The on-site water detention issues will be further addressed in Design Review. Accordingly, I do find that the proposal will not adversely affect natural resources in the area.

**(C) Will not conflict with farm or forest uses in the area;**

**ANALYSIS:**

There are no farm or forest uses in the area. This criteria is met.

**(D) Will not require public services other than those existing or programmed for the area;**

**ANALYSIS:**

The site is already served by water and sewer services, as well as gas, electric, and telecommunications utilities. The road network serving the site is also currently in place. No new public services will be required. Accordingly, I find that this proposal will not require public services other than those existing or programmed for the area.

**(E) Will be located outside a big game winter habitat area as defined by the Oregon Department of Fish and Wildlife or that agency has certified that the impacts will be acceptable;**

**ANALYSIS:**

The subject site is not located in a Big Game Winter Habitat Area. Accordingly, this section is not applicable.

**(F) Will not create hazardous conditions, and**

**ANALYSIS:**

The proposed building additions do not create hazardous conditions. However, some existing conditions related to on-street parking during school start and end times may be hazardous. The existing traffic conditions at the Riverdale school may also be considered somewhat hazardous.

The existing off-site hazards are due to traffic generated by the school at the start and end of the school day. Parents and others waiting to pick-up children in the afternoon park in several places that create hazards. Children have a tendency to weave through parked cars adjacent to the school and can walk into areas where vehicles travel at speed. In addition to parking problems, some vehicles circle or pass-by the site several times while waiting for children, unable to park. Children walking or running into the street to get into cars create conflicts with vehicles, resulting in potentially hazardous situations. Addition of on-site parking spaces will help alleviate some of these hazardous conditions. Further review by the Transportation Division as part of the Design Review process will facilitate the elimination of such hazards.

Circulation and parking plans will not be finalized until the subsequent Design Review process. Accordingly, these issues can most appropriately be resolved during the Design Review phase. It appears feasible to resolve internal parking and circulation hazards by relocating the proposed parking on site or by remodeling to physically separate vehicles and student pedestrians. As a Condition of Approval, the applicant will be required to submit a detailed Parking and Circulation Plan that eliminates hazardous conditions and meets the requirements of the County Transportation Division and County Code as part of the Final Design Review process. Accordingly, I find that this proposal will not create hazardous conditions and that conditions should be imposed that will alleviate the somewhat hazardous existing conditions.

**(G) Will satisfy the applicable policies of the Comprehensive Plan.**

**ANALYSIS:**

Applicable policies of the Comprehensive Plan are addressed in following sections of this Decision.

**(H) Will satisfy other applicable approval criteria as are stated in this section.**

**ANALYSIS:**

The additional approval criteria are the off-street parking provisions and the landscaping and screening requirements which are discussed as follows.

**B. MCC 11.15.6102: Off-Street Parking - General Provisions**

**In the event of the erection of a new building or an addition to an existing building, or any change in the use of an existing building, structure or land which results in an intensified use by customers, occupants, employees or other persons, off-street parking and loading shall be provided according to the requirements of this section.**

**C. MCC 11.15.6116**

**(A) Any alteration of the use of any land or structure under which an increase in the number of parking or loading spaces is required by this section shall be unlawful unless the additional spaces are provided.**

**D. MCC 11.15.6142: Minimum Required Off-Street Parking Spaces**

**(B) Public and semi-public Buildings and Uses**

- (9) **Primary, Elementary or Junior High and equivalent private or parochial schools - One space for 84 square feet of floor area in the auditorium or one space for each twelve seats or 24 feet of bench length, which ever is greater;**

**MCC 11.15.0010 Definitions:**

**"School (Primary, Elementary or High)": Including private or parochial, but not including nursery school, Kindergarten or day nursery, except those operated in conjunction with a school.**

**ANALYSIS:**

For the amount of parking spaces required, staff based its recommendation on the size of the addition to the auditorium and took into consideration the fact that the subject site had previously received an exception from the parking requirements. However, MCC 11.15.6102 provides that in the event of the erection of a new building, or the addition to an existing building, off-street parking and loading shall be provided according to the requirements of this section. This application involves complete replacement of an existing gymnasium/auditorium and the construction of a new larger gymnasium/auditorium. The applicant has not applied for an exception from the standards of the parking ordinance. In view of the extensive public testimony regarding the problems with parking and traffic congestion, it is highly unlikely that the applicant could have met the burden of producing substantial evidence to indicate that the required number of parking spaces is inappropriate or unneeded. However, that question is not before the Hearings Officer since no exception was applied for.

Under the parking provisions, one space for 84 square feet of floor space in the auditorium (gymnasium) is required. In the instant case, the proposed gymnasium will be 5,722 square feet. Accordingly, a total of 68 parking spaces will be required.

In the staff report, Planner Barry Manning also discussed the parking requirements for a Kindergarten. However, I find that the provisions of Section 11.15.6142 (B)(10) are intended to apply to a separate Kindergarten/nursery where such a facility is not operated in conjunction with a primary/elementary school. Accordingly, I do not find the parking provisions which are relative to a Kindergarten applicable in the instant case.

Requirements of the Zoning Ordinance relating to off-street parking do not need to be addressed in final form at this stage of the project. The project will also be subject to Design Review. The actual parking layout and design will be subject to further scrutiny in the Design Review process.

There is a significant amount of open space at the school facility and it appears feasible to provide the needed parking spaces.

If the size of the auditorium (gymnasium) changes, then the number of parking spaces could be adjusted accordingly. However, under the current proposal, 68 parking spaces must be provided. Accordingly, I do find that it is possible to provide off-street parking and loading in accordance with the Zoning Ordinance requirements.

**E. MCC 11.15.6140: Landscape and Screening Requirements**

- (B) **Parking or loading spaces located within 50 feet of a property line of a lot in a residential or other district listed in MCC .2002 through .2966 shall be separated from such property line by a sight-obscuring fence with height and materials suitable to meet the requirements of subsection MCC .7850(A)(7).**

**ANALYSIS:**

The specific landscaping and screening requirements will be addressed in the Design Review phase of the project. Accordingly, I do find that this criteria can be met and that the appropriate level of review is to be provided in Design Review.

**3. Comprehensive Plan Policies:**

**POLICY NO. 2, OFF-SITE EFFECTS.**

**THE COUNTY'S POLICY IS TO APPLY CONDITIONS TO ITS APPROVAL OF LAND USE ACTIONS WHERE IT IS NECESSARY TO:**

- A. PROTECT THE PUBLIC FROM THE POTENTIALLY DELETERIOUS EFFECTS OF THE PROPOSED USE; OR**  
**B. FULFILL THE NEED FOR PUBLIC SERVICE DEMANDS CREATED BY THE PROPOSED USE.**

**ANALYSIS:**

The addition of the proposed facilities do not generate any deleterious effects. The proposal makes it possible to improve Community Service provided by the grade school. The facilities as proposed do not add any capacity to the existing Riverdale School. Parking and internal circulation issues must be further addressed in the Design Review process in order to eliminate existing traffic and parking conditions that are potentially hazardous. Conditions of approval will be applied as appropriate to insure that the public is protected. Accordingly, I do find that this proposal fulfills a need for public service demand for schools

and it is possible to protect the public from potentially deleterious effects of the proposed use.

**POLICY NO. 13, AIR, WATER AND NOISE QUALITY.**

**MULTNOMAH COUNTY, ... SUPPORTS EFFORTS TO IMPROVE AIR AND WATER QUALITY AND TO REDUCE NOISE LEVELS. ... FURTHERMORE, 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.**

**ANALYSIS:**

The addition of these facilities should have no effect on air pollution, water quality or neighborhood noise. The proposal does not increase student capacity at the school. The impacts to air and noise quality in this instance are negligible. The site is served by sewer and storm water discharge will be reviewed by Multnomah County in the Design Review process. Therefore, this proposal is receiving appropriate scrutiny from the applicable agencies in regards to water quality issues. Accordingly, I find that the provisions of Policy 13 have been met.

**POLICY NO. 14, DEVELOPMENT 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 LIMITATION 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.**

**ANALYSIS:**

Both the applicant and staff indicated that none of the development limitations listed above apply to this site. Any issues dealing with storm water run-off will be addressed in the Design Review process and final drainage plans must be approved by the City of Portland Bureau of Buildings, the agency Multnomah County contracts with to address these issues. Since it appears that there are

no specific development limitations applicable to this property, there are no specific measures and mitigation that will be required. General considerations regarding drainage and surface water run-off applicable to all proposals subject to Design Review will be considered at the Design Review process. Accordingly, I find that this proposal is consistent with this Comprehensive Plan policy.

**POLICY NO. 19, COMMUNITY DESIGN:**

**THE COUNTY'S POLICY IS TO MAINTAIN A COMMUNITY DESIGN PROCESS WHICH:**

- A. EVALUATES AND LOCATES DEVELOPMENT PROPOSALS IN TERMS OF SCALE AND RELATED COMMUNITY IMPACTS WITH THE OVERALL PURPOSE BEING A COMPLEMENTARY LAND USE PATTERN.**
- B. EVALUATES INDIVIDUAL PUBLIC AND PRIVATE DEVELOPMENTS FROM A FUNCTIONAL DESIGN PERSPECTIVE, CONSIDERING SUCH FACTORS AS PRIVACY, NOISE, LIGHTS, SIGNING, ACCESS, CIRCULATION, PARKING, PROVISIONS FOR THE HANDICAPPED AND CRIME PREVENTION TECHNIQUES.**
- C. MAINTAINS A DESIGN REVIEW PROCESS AS AN ADMINISTRATIVE PROCEDURE WITH AN APPEAL PROCESS, AND BASED ON PUBLISHED CRITERIA AND GUIDELINES. CRITERIA AND GUIDELINES SHALL BE DEVELOPED SPECIFICALLY FOR COMMERCIAL, INDUSTRIAL AND RESIDENTIAL DEVELOPMENTS.**
- D. ESTABLISHES CRITERIA AND STANDARDS FOR PRE-EXISTING USES, COMMENSURATE WITH THE SCALE OF THE NEW DEVELOPMENT PROPOSED.**
- E. EVALUATES INDIVIDUAL PUBLIC AND PRIVATE DEVELOPMENT ACCORDING TO DESIGN GUIDELINES IN THE APPLICABLE ADOPTED COMMUNITY PLAN.**

**ANALYSIS:**

Policy 19 is a general County policy which has been implemented through the adoption of a Design Review process. Accordingly, this application will be subject to Design Review and compliance with the requirements of Design Review approval will constitute compliance with this Comprehensive Plan provision.

**POLICY NO. 31, COMMUNITY FACILITIES AND USES.**

**THE COUNTY'S POLICY IS TO:**

- A. SUPPORT THE SITING AND DEVELOPMENT OF A FULL RANGE OF COMMUNITY FACILITIES AND SERVICES BY SUPPORTING THE LOCATION AND SCALING OF COMMUNITY FACILITIES AND USES MEETING THE NEEDS OF THE COMMUNITY AND REINFORCING COMMUNITY IDENTITY.**

- B. ENCOURAGE COMMUNITY FACILITIES SITING AND EXPANSION AT LOCATIONS REINFORCING ORDERLY AND TIMELY DEVELOPMENT AND EFFICIENT PROVISION OF ALL PUBLIC SERVICES AND FACILITIES.
- C. ENCOURAGE LAND USE DEVELOPMENT WHICH SUPPORT THE EFFICIENT USE OF EXISTING AND PLANNED COMMUNITY FACILITIES.
- D. SUPPORT THE DEVELOPMENT OF A UNIFIED APPROACH TO LONG RANGE COMMUNITY FACILITIES PLANNING AND CAPITAL INVESTMENT PROGRAMMING IN MULTNOMAH COUNTY.
- E. CLASSIFY COMMUNITY FACILITIES ACCORDING TO THEIR FUNCTION AND SCALE OF OPERATIONS.
- F. LOCATE COMMUNITY FACILITIES ON SITES WITH AVERAGE SITE GRADES CONSISTENT WITH A PROJECT'S SCALE AND IMPACTS. SITE SLOPE REQUIREMENTS BY SCALE ARE:

<u>SCALE</u>	<u>AVERAGE SITE SLOPE STANDARD</u>
MINOR COMMUNITY	10%

FOR SITES WITH AVERAGE SLOPES STEEPER THAN THE STANDARD THE DEVELOPER MUST BE ABLE TO DEMONSTRATE THAT THROUGH ENGINEERING TECHNIQUES ALL LIMITATIONS TO DEVELOPMENT AND THE PROVISION OF SERVICES CAN BE MITIGATED.

- G. SUPPORT THE LOCATION OF COMMUNITY FACILITIES ON EXISTING TRANSPORTATION SYSTEMS WITH VALUE CAPACITIES AND MODAL MIX SPLITS AVAILABLE AND APPROPRIATE TO SERVE PRESENT AND FUTURE SCALES OF OPERATION. VEHICULAR ACCESS REQUIREMENTS BY SCALE OF FACILITY ARE:

<u>SCALE</u>	<u>VEHICULAR ACCESS STANDARDS</u>
MINOR COMMUNITY	DIRECT ACCESS TO A COLLECTOR STREET AND NO ROUTING THROUGH LOCAL NEIGHBORHOOD STREETS. PUBLIC TRANSIT AVAILABLE WITHIN 1/4 MILE

- H. RESTRICT THE SITING OF COMMUNITY FACILITIES IN LOCATIONS WHERE SITE ACCESS WOULD CAUSE DANGEROUS INTERSECTIONS OR TRAFFIC CONGESTION CONSIDERING THE FOLLOWING:
  1. ROADWAY CAPACITIES.
  2. EXISTING AND PROJECTED TRAFFIC COUNTS.
  3. SPEED LIMITS.
  4. NUMBER OF TURNING POINTS.
- I. SUPPORT COMMUNITY FACILITIES SITING AND DEVELOPMENT AT SITES OF A SIZE WHICH CAN ACCOMMODATE THE PRESENT AND FUTURE USES AND IS OF A SHAPE WHICH ALLOWS FOR A SITE LAYOUT IN A MANNER WHICH MAXIMIZES USER CONVENIENCE,

**ENERGY CONSERVATION, AND PEDESTRIAN AND BICYCLE ACCESS TO AND WITHIN THE SITE.**

- J. PROMOTE COMPATIBLE DEVELOPMENT AND MINIMIZE ADVERSE IMPACTS OF SITE DEVELOPMENT ON ADJACENT PROPERTIES AND THE COMMUNITY THROUGH THE APPLICATION OF DESIGN REVIEW STANDARDS CODIFIED IN MCC 11.05.7805-11.05.7865.**
- K. PROVIDE FOR THE SITING AND EXPANSION OF COMMUNITY FACILITIES IN A MANNER WHICH ACCORDS WITH THE OTHER APPLICABLE POLICIES OF THIS PLAN.**

**ANALYSIS:**

- A. The application proposes improvement of an existing grade school facility. The location and size of the facility is scaled to meet the needs of the community. The improvements to the facility will allow the school to better meet the educational needs of the community.
- B. The facility has been in place at its current location for 75 to 100 years. The location is central to the Riverdale community. All public services are currently available at the site.
- C. The proposed development will all occur on the subject site which is currently being used as a school. This approval will legitimize the entire subject site as a Community Service Use. This will enable the school to most efficiently use existing community facilities.
- D. The enhancement of educational opportunities at this existing facility is consistent with the development of the unified approach to long range community facilities planning and capital investment programming in Multnomah County.
- E. This facility is classified as a minor community facility in scale. And as a grade/middle school in type.
- F. It appears that this existing school is located on a site with average grades consistent with the project scale. Site slope requirements by scale do not appear to exceed 10%.
- G. This is an existing facility in a fully developed neighborhood. Transportation to and from the facility is available. The school is not currently located on a collector street. It is located along neighborhood streets. Breyman, however, is located only one block from Macadam Avenue, and Macadam is a State highway. The proposed additions should have little impact on the community at large and are proposed as additions to an existing facility. The Comprehensive Plan further provides that:

"It is intended that (these) locational criteria be construed in a flexible manner, in the interest of accommodating proposal which, though not strictly in conformance with the

applicable criteria, are found to be in the public interest and capable of harmonious integration into the community. The burden of proving conformance of a proposal to the plan should vary with the degree of change and impact on the community: The more drastic the change and the greater the impact, the more strictly the criteria should be construed."

The proposed additions result in no net gain in classroom capacity, and negligible increase in adverse traffic impacts. Accordingly, the siting criteria requiring location of the facility on a "collector street" will be construed in a flexible manner. As the facility is an existing school, the siting considerations with respect to roadway capacities, existing and projected traffic counts, speed limits, and turning points are not directly applicable. However, these issues should be further addressed in the Design Review process to ensure that the proposal does not result in hazardous conditions and that any existing conditions which are potentially hazardous be alleviated to the extent that is reasonably possible.

- H. The capacity of Breyman is adequate for the purpose of the school and neighborhood. Traffic at the school is intermittent and off-peak. The traffic entrances to the site are located away from the intersection of Breyman and Military Road. Since the proposed additions did not increase the capacity of the school, relatively little traffic impact is anticipated.
- I. The school is fully developed and additional expansion is not anticipated. The school is centrally located for the community and therefore provides efficient user convenience. The site currently provides covered bicycle parking facilities.
- J. Design Review standards will be applied. Other applicable provisions of the Comprehensive Plan are addressed elsewhere in this Opinion. Accordingly, I do find that this proposal meets the standards of Comprehensive Plan Policy 13.

**POLICY NO. 33A, TRANSPORTATION SYSTEM:**

**THE COUNTY'S POLICY IS TO IMPLEMENT A BALANCED, SAFE AND EFFICIENT TRANSPORTATION SYSTEM. IN EVALUATING PARTS OF THE SYSTEM, THE COUNTY WILL SUPPORT PROPOSALS WHICH:**

- A. IMPLEMENT THE COMPREHENSIVE PLAN;**
- B. BEST ACHIEVE THE OBJECTIVES OF THE SPECIFIC PROJECT;**
- C. PROTECT OR ENHANCE WATER AND AIR QUALITY AND REDUCE NOISE LEVELS;**

- D. PROTECT SOCIAL VALUES AND THE QUALITY OF NEIGHBORHOODS AND COMMUNITIES;
- E. SUPPORT ECONOMIC GROWTH;
- F. PROVIDE A SAFE, FUNCTIONAL AND CONVENIENT SYSTEM; AND
- G. PROVIDE OPTIMUM EFFICIENCY AND EFFECTIVENESS OF INVESTMENT.
- H. UPDATE AND REFINE THE BICYCLE CORRIDOR CONCEPT PLAN.

**THE COUNTY WILL ALSO CONSIDER:**

- I. EQUALITY OF ACCESS TO URBAN OPPORTUNITIES;
- J. THE DEGREE OF MOBILITY AVAILABLE TO ALL PEOPLE IN TERMS OF ALTERNATIVE TYPES OF TRANSPORTATION;
- K. ENERGY CONSERVATION AND EFFICIENCY;
- L. SYSTEM FLEXIBILITY;
- M. PEDESTRIAN CROSSING AND SAFETY; AND
- N. THE NEED FOR LANDSCAPING AND OTHER DESIGN TECHNIQUES NECESSARY FOR VISUAL ENHANCEMENT.

**ANALYSIS:**

The proposed improvements to the school facility would not result in any increase in student capacity. Accordingly, it is anticipated that the traffic impacts of the proposed development will be minimal. Some additional traffic impacts may be generated by the events to be held at the larger auditorium (gymnasium) facility. Concerns about the existing potential hazards relative to traffic safety and parking are issues that require further attention during the Design Review process.

The objectives of the project are to improve the quality of education at Riverdale School. The proposal will have negligible impact on water, air or noise quality. Riverdale School adds significantly to the social quality of the neighborhood. Good educational opportunities promote economic growth. The proposed improvements are designed to facilitate the educational environment of Riverdale School. This policy is a general policy that has been given appropriate consideration. The actual implementation of the policy in regards to a specific proposal can be accomplished through Design Review. Accordingly, I find that the proposal is generally consistent with this policy and that a condition should be imposed that would require applicant to comply with transportation improvements as required by the Multnomah County Transportation Division during the Design Review process.

**POLICY 35, PUBLIC TRANSPORTATION.**

**THE COUNTY'S POLICY IS TO SUPPORT A SAFE, EFFICIENT AND CONVENIENT PUBLIC TRANSPORTATION SYSTEM BY:**

**\* \* \***

- B. LOCATING POPULATION CONCENTRATIONS, COMMERCIAL CENTERS, EMPLOYMENT CENTERS, AND PUBLIC FACILITIES IN AREAS WHICH CAN BE SERVED BY PUBLIC TRANSPORTATION,**

**ANALYSIS:**

The Riverdale School is not currently located directly on a public transportation (Tri-Met) route. The nearest public transportation stop is located approximately one-quarter mile away on Macadam Avenue. The routes on Macadam include lines 35 and 36. These lines both have fifteen minute a.m. peak hour frequencies and 20 minute and 30 minute p.m. peak hour frequencies respectively. This site is served directly by school buses. This is an existing facility. I find that appropriate consideration has been given to this Comprehensive Plan policy.

**POLICY NO. 36, TRANSPORTATION DEVELOPMENT REQUIREMENTS.**

**THE COUNTY'S POLICY IS TO INCREASE THE EFFICIENCY AND AESTHETIC QUALITY OF THE TRAFFICWAYS AND PUBLIC TRANSPORTATION BY REQUIRING:**

- A. THE DEDICATION OF ADDITIONAL RIGHT-OF-WAY APPROPRIATE TO THE FUNCTIONAL CLASSIFICATION OF THE STREET GIVEN IN POLICY 34 AND CHAPTER 11.60.**
- B. THE NUMBER OF INGRESS AND EGRESS POINTS BE CONSOLIDATED THROUGH JOINT USE AGREEMENTS,**
- C. VEHICULAR AND TRUCK OFF-STREET PARKING AND LOADING AREAS**  
...
- D. OFF-STREET BUS LOADING AREAS AND SHELTERS FOR RIDERS,**
- E. STREET TREES TO BE PLANTED,**
- F. A PEDESTRIAN CIRCULATION SYSTEM AS GIVEN IN THE SIDEWALK PROVISIONS, CHAPTER 11.60,**
- G. IMPLEMENTATION OF THE BICYCLE CORRIDOR CAPITAL IMPROVEMENTS PROGRAM,**
- H. BICYCLE PARKING FACILITIES AT BICYCLE AND PUBLIC TRANSPORTATION SECTIONS IN NEW COMMERCIAL, INDUSTRIAL AND BUSINESS DEVELOPMENT, AND**
- I. NEW STREETS IMPROVED TO COUNTY STANDARDS IN UNINCORPORATED COUNTY MAY BE DESIGNATED PUBLIC ACCESS ROADS AND MAINTAINED BY THE COUNTY UNTIL ANNEXED INTO A CITY, AS STATED IN ORDINANCE 313.**

**ANALYSIS:**

- A. It appears that the adjoining streets have the appropriate functional classification given the residential zoning of the area.
- B. The site has only two points of ingress/egress. These are located away from intersections and between existing buildings. The number of ingress and egress points currently are at a minimum.
- C. The applicant will be required to comply with the off-street requirements of the Zoning Ordinance as indicated earlier in this Opinion.
- D. There is currently no public transportation (Tri-Met) bus service directly to the site. Accordingly, it will not be possible to require the applicant to provide bus loading areas and shelter for riders of the Tri-Met system.
- E. The site is fully landscaped.
- F. The pedestrian circulation system is fully developed and currently in place. The sidewalks border Breyman Avenue.
- G. The site is not located on a bicycle corridor.
- H. This section is not applicable because this is not a commercial, industrial or business development.
- I. This section is not applicable because there are no new streets planned.

The provisions of Policy 36 have been given the appropriate level of consideration for this proceeding. As a condition of approval, the applicant shall be required to comply with any additional transportation improvements required by the Multnomah County Transportation Division in the Design Review process.

**POLICY NO. 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**

- A. **THE PROPOSED USE CAN BE CONNECTED TO A PUBLIC SEWER AND WATER SYSTEM, BOTH OF WHICH HAVE ADEQUATE CAPACITY; OR**

**\* \* \***

**DRAINAGE**

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

## **ENERGY AND COMMUNICATIONS**

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

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

### **ANALYSIS:**

The site is currently served by both public water and sewer. The new buildings will be connected to existing systems. Proof of availability of water and sewer service have been submitted with this application. Accordingly, I find that the proposed use can be connected to a public sewer and water system, both of which are of adequate capacity.

The applicant has indicated that it anticipates dealing with storm water mitigation on site. No impact on adjoining sites due to storm water is anticipated. John Dorst of the Multnomah County Transportation Department indicated that the County would be providing further review of the proposal to make sure that there would be no net increase in the amount of surface water run-off. Accordingly, I find that the water run-off can be handled on site or adequate provisions can be made to handle the run-off and that run-off from the site will not adversely affect or alter the drainage on adjoining lands.

Electrical and telephone utilities are currently available on site. The new buildings will be connected to existing or upgraded systems. Statements of service availability have been submitted with the application. Accordingly, I find that there is an adequate energy supply to handle the needs of the proposal and the development level projected by the plan and communications facilities are available.

### **POLICY NO. 38, FACILITIES.**

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

#### **SCHOOL**

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

**FIRE PROTECTION**

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

**POLICE PROTECTION**

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

**ANALYSIS:**

Service provider forms have been submitted to the County indicating that police and fire protection facilities are adequate to serve the proposed development. The Lake Oswego Fire Marshall has required that all new additions be sprinklered. The school district is the property owner and has strongly endorsed this proposal. As parking is proposed in some areas that are currently striped and marked "fire lane, no parking", a condition of approval will be imposed requiring applicant to provide a detailed plan for fire fighting access. The fire district will have an opportunity to approve said plan prior to final site plan approval during the Design Review process.

Accordingly, I find that the appropriate school district has had an opportunity to review and comment on the proposal. There is adequate water pressure and flow for fire fighting purposes. The appropriate fire district has had an opportunity to review and comment on the proposal. The proposal can receive adequate local police protection in accordance with the standards of the jurisdiction providing police protection.

**POLICY NO. 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:**

- A. PEDESTRIAN AND BICYCLE PATH CONNECTIONS TO PARKS, RECREATION AREAS AND COMMUNITY FACILITIES WILL BE DEDICATED WHERE APPROPRIATE AND WHERE DESIGNATED IN THE BICYCLE CORRIDOR CAPITAL IMPROVEMENTS PROGRAM AND MAP.**

**\* \* \***

- C. AREAS FOR BICYCLE PARKING FACILITIES WILL BE REQUIRED IN DEVELOPMENT PROPOSALS, WHERE APPROPRIATE.**

**ANALYSIS:**

This facility currently provides a community use and bicycle parking is currently available on the site. A thorough analysis of transportation system impacts, including the need for additional pedestrian and/or bicycle facilities will be undertaken in the Design Review process. The applicant, as a condition of approval, will be required to comply with transportation improvements as required by the Multnomah County Transportation Division during Design Review. Accordingly, I find that Section A and C of Policy 40 relating to the park and recreation system has been given the appropriate level of consideration for this stage of the application process. Further consideration will be given to these issues during Design Review.

**CONCLUSION**

Based on the findings and the substantial evidence cited or referenced herein, I conclude that the application for the Community Service Use approval satisfies all applicable approval criteria provided that the conditions of approval are complied with. Accordingly, Community Service Use approval is hereby granted to the entire 8.6 acre subject site, subject to the conditions of approval contained herein.

IT IS SO ORDERED, this 9th day of February, 1996.



JOAN M. CHAMBERS, Hearings Officer







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

## MEMORANDUM

**TO:** DEB BOGSTAD  
**FROM:** BARRY MANNING      **FAX:** 248-3389  
**DATE:** 3/20/96  
**RE:** CS 5-95 DE NOVO HEARING  
**PAGES:** 1

Deb,

This letter was delivered to the planning office on Tuesday, March 19. It relates to the De Novo appeal hearing on the Riverdale School case, CS 5-95, scheduled for Tuesday 3/26. Please distribute a copy to the Board's staff or to Board members as appropriate.

If you or the Board's staff have questions, give me a call at 2709. Thanks.

BOARD OF  
COUNTY COMMISSIONERS  
MULTNOMAH COUNTY  
OREGON  
96 MAR 20 PM 3:46

**BOARD OF COUNTY COMMISSIONERS  
MULTNOMAH COUNTY, STATE OF OREGON**

**MARCH 18, 1996**

**CASE FILE: CS 5-95**

**HEARING DATE: MARCH 26, 1996, AT 9:30 A.M.  
MULTNOMAH COUNTY COURTHOUSE, RM. 602  
1021 SW 4<sup>th</sup> AVENUE, PORTLAND, OREGON, 97204**

**COUNTY COMMISSIONERS:**

**AS A HOME OWNER IN THE RIVERDALE SCHOOL DISTRICT, I HAVE CONCERNS WITH  
THE SAFETY OF THE STUDENTS IN THE SCHOOL.**

**THE APPLICANT CHALLENGES THE FEBRUARY 9, 1996 HEARING OFFICER'S DECISION TO  
APPROVE WITH CONDITIONS, CS 5-95.**

**THE APPLICANT DISAGREES WITH THE COUNTY PLANNING DEPARTMENT AND THE HEARING  
OFFICER THAT THE PROPERTY SHOULD NOT HAVE TO HAVE A REVIEW BY THE COUNTY  
HEARING OFFICER.**

**THE PROPERTY IS ZONED R-30 SINGLE FAMILY, COMMUNITY SERVICE USE.**

**THE PROPERTY HAS NEVER BEEN REVIEWED BY A HEARING OFFICER OR RECEIVED AN ACTUAL CS  
PERMIT.**

**IN 11.15.7005 PURPOSE IT STATES:**

**"MCC .7005 THROUGH .7041 PROVIDES FOR THE REVIEW AND APPROVAL OF THE LOCATION AND  
DEVELOPMENT OF SPECIAL USES WHICH, BY REASON OF THEIR PUBLIC CONVENIENCE, NECESSITY,  
UNUSUAL CHARACTER OR EFFECT ON THE NEIGHBORHOOD, MAY BE APPROPRIATE IN ANY  
DISTRICT, BUT NOT SUITABLE FOR LISTING WITHIN OTHER SECTIONS OF THIS CHAPTER."**

**AS STATED IN THE HEARING OFFICER'S REPORT DATED FEBRUARY 9, 1996, THE PROPERTY HAS  
NEVER BEEN REVIEWED AND APPROVED BY A HEARING OFFICER OR RECEIVED AN ACTUAL CS  
PERMIT. THE COMMUNITY SERVICE USE IS A SPECIAL USE AND NOT A SPECIAL DISTRICT.  
THE PURPOSE OF THE REVIEW AND APPROVAL BY A HEARING OFFICER IS TO HAVE THE SITE  
COMPLY WITH ALL OF THE PRESENT STANDARDS FOR COMMUNITY SERVICE USE AND PUBLIC  
SAFETY. THE EXISTING BUILDINGS DO NOT MEET THE STANDARD ZONING SETBACK  
REQUIREMENTS, (11.15.7025 RESTRICTIONS (A) MINIMUM YARD) LOT COVERAGE (11.15.2844 (F),  
STANDARDS. SINCE THE BUILDINGS WERE BUILT PRIOR TO THESE STANDARDS, THEY CAN BE  
ACCEPTED.(11.15.010 A NON-CONFORMING USE)**

**SINCE THE ZONE IS R-30 FOR THIS SITE, SECTION 11.15.2842 OF THE MULTNOMAH COUNTY ZONING  
ORDINANCE (D) PROVIDES: " SPECIAL USES, SUCH AS PARKS, PLAYGROUNDS, OR COMMUNITY  
CENTERS, CHURCHES, SCHOOLS, GOLF COURSES AND USES OF SIMILAR NATURE, AS PROVIDED IN  
MCC .7005 THROUGH .7041, WHEN APPROVED BY THE HEARING OFFICER."**

**THE SITE IS NOT A PUBLIC APPROVED COMMUNITY SERVICE SITE SINCE IT DID NOT HAVE A PUBLIC  
HEARING OR EVER OBTAINED A CS PERMIT, IT MUST COMPLY WITH SECTION 11.15.2842 OF THE  
MULTNOMAH COUNTY ZONING ORDINANCE.**

**96 MAR 20 PM 4: 25  
MULTNOMAH COUNTY  
OREGON  
BOARD OF  
COUNTY COMMISSIONERS**

**PAGE TWO OF TWO**

**PARKING:**

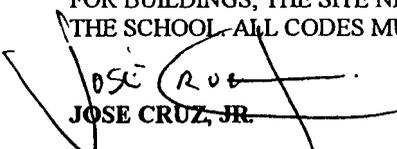
THE APPLICANT HAS SUBMITTED A DESIGN FOR AN ADDITIONAL BUILDING AND A REMODEL OR A REPLACEMENT OF THE EXISTING GYMNASIUM.

IN MARCH 05, 1990 THE SCHOOL APPLIED AND RECEIVED A EXCEPTION (DR 90-030-02) ON JULY 03, 1991 TO REDUCE THE NUMBER OF PARKING SPACES REQUIRED FROM 59 SPACES TO 41 SPACES FOR THE GYMNASIUM WITH CONDITIONS OF THE APPROVAL. ONE OF THE CONDITIONS WAS A PROVISION FOR A GRAVEL SHOULDER FOR PARALLEL PARKING SOUTH OF THE PARKING AREA DRIVEWAY. THIS CONDITION WAS NEVER COMPLETED.

RIVERDALE SCHOOL DISTRICT / DUNTHORPE, IS A COMMUNITY WHERE BUILDABLE HOME SITE ARE VERY LIMITED. SINCE 89/90 THE STUDENT IN THE SCHOOL HAVE BEEN - 231 STUDENTS TO 245 STUDENTS IN 95/96. (RIVERDALE SCHOOL FIVE YEAR OPERATING AND FINANCING PLAN) THE SCHOOL BOARD STARTED TO ALLOWED TUITION STUDENTS TO COME FROM OUTSIDE THE DISTRICT TO ATTEND THE SCHOOL. IN 95/96 THIS AMOUNT HAS INCREASED TO 46 STUDENTS. WITH ADDITIONAL STUDENTS THE NUMBER OF SUPPORT FACULTY HAS INCREASED.

AS STATED IN THE TRAFFIC STUDY COMMISSION BY THE SCHOOL BOARD, AND COMMENTS BY THE COUNTY STAFF, TRAFFIC AROUND THE SCHOOL IS HAZARDOUS. THIS IS DUE TO THE LACK OF PUBLIC TRANSPORTATION TO THE SCHOOL, THE LACK OF SIDEWALKS IN THE NEIGHBORHOOD , NARROW ROADS AND THE ADDITION 46 PLUS TUITION STUDENTS THAT ARE DRIVEN TO THE SCHOOL FROM OUTSIDE THE DISTRICT.  
(AN ADDITIONAL 80 PLUS TRIPS)

SINCE HALF OF THE SITE IS RESTRICTED BY DEED, ONLY HALF OF THE SITE CAN BE DEVELOPED FOR BUILDINGS, THE SITE NEEDS A TOTAL REVIEW TO BRING PUBLIC SAFETY TO THE STUDENTS OF THE SCHOOL - ALL CODES MUST BE REVIEWED TO INSURE COMPLIANCE TO THESE STANDARDS.

  
**JOSE CRUZ, JR.**

BACHELOR OF SCIENCE - OREGON STATE UNIVERSITY  
MASTERS OF URBAN PLANNING - UNIVERSITY OF OREGON  
PAST MEMBER OF PORTLAND HOME BUILDERS ASSOC. (15 YR.)  
PRESENT BOARD OF DIRECTOR OF THE ALUMNI ASSOC. OF OREGON STATE  
PAST MEMBER OF THE STATE OF OREGON HISPANIC COMMISSION  
PAST MEMBER AND CHAIRMEN OF THE STATE OF OREGON PUBLIC LANDS ADVISORY COMMISSION (6 YR)  
PRESENT BOARD MEMBER OF THE OREGON INDOOR TRACK MEET (22 YR)  
PAST HIGH SCHOOL TEACHER AT COTTAGE GROVE HIGH SCHOOL (1 YR)  
SEVEN CHILDREN, SIX GRAND CHILDREN

11338 S.W. AVENTINE CIRCUS  
PORTLAND, OREGON, 97219  
503-635-9879, 635-9877

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BOARD OF  
COUNTY COMMISSIONERS

96 MAR 20 PM 2:33

MULTNOMAH COUNTY  
OREGON

March 19, 1996

Board of County Commissioners  
Multnomah County, Oregon

Case File: CS 5-95

Hearing Date: March 26, 1996, at 9:30 A.M.  
Multnomah County Courthouse, Room 602  
Portland, OR 97204

County Commissioners:

On January 17, 1996, the Riverdale School District applied for a Community Service Use designation at a hearing at Multnomah County's Department of Environmental Services. Community residents at this hearing voiced concerns about traffic and safety problems which are generated by the school. In her decision the Hearings Officer moderated between the concerns of these citizens and the school district's requests.

1. The Riverdale School District's architect, Henry Fitzgibbon, is appealing the ruling of the Hearings Officer decision on a Community Service Use application. He contends that Multnomah County should not have required a Community Service review when the school had already been designated CS. When a music building was added to the grade school in 1991, the district only had to go through a design review process; it did not have to apply for a Community Service designation. However, since the time the music building was built five years ago the County's policy has changed. The policy now is that if you have never formally received a Community Service Use designation, you must go through the review process. Riverdale School is designated as a CS use on County zoning maps, but the district has never formally applied for Community Service designation. Because of the County's new policy, the school district now is required to either apply for a Community Service designation or apply as a non-conforming use. In asking the school district to apply for the Community Service Use designation instead of asking it to apply as a non-conforming use, the Hearings Officer asked for the less stringent of the two possibilities open to the school district.

2. Mr. Fitzgibbon says that the School Board is trying to decide between doing a structural renovation of the existing grade school gymnasium or doing a complete replacement. He contends that the Hearings Officer made the assumption that the building will be a complete replacement and that it was on the basis of this assumption that she revoked the school's variance for parking requirements. In fact, the Hearings Officer assumed nothing. In his application for the hearing Mr. Fitzgibbon states that "it has also

been determined that the existing Gymnasium is not structurally sound and needs to be replaced". In the ballot title summary for the school district's recent March 12 bond proposal Dr. Boyd Applegarth, district superintendent, stated that the district is seeking authority to issue bonds to "replace [the] grade school gymnasium". He also pointed out that "it is prudent to construct a new gymnasium rather than strengthen the current one." At the January 17 hearing, Mr. Fitzgibbon was questioned directly about replacing the gym and he spoke at considerable length about building a new gym and gave the opinion that the school should have a full-sized gymnasium.

3. In the Hearings Officer's decision she lays down several conditions for approving the school's Community Service Use. One of these conditions is that "prior to the Final Design Review, the Riverdale School shall develop and submit an on-Site Parking and Circulation Plan that complies with County Code and reduces hazardous conditions caused by vehicular/pedestrian conflicts, as part of the design review process....Under the preliminary plans as submitted for this decision, 68 spaces would be required".

Based on the size of the proposed new gymnasium, 68 parking places represent the minimum that the County code would indicate. There are features of Riverdale School which would make requiring more than the minimum number of off-street parking places appropriate. These features are

- 1) the staffing policy. There are 38 employees working at the grade school. The lot capacity is 31.
- 2) the number of out-of district students attending the school. Of the 293 students at the grade school 46 come from out-of-the district.
- 3) the high level of parental involvement at the school.

The combination of these three circumstances generates an extremely high number of cars parked around the school both day and night. For the Hearings Officer to have required only the minimum number of parking places based on the size of the proposed gymnasium represents a compromise between what the district wants to provide and community residents want to be provided.

4. The school district is not complying with the parking variance which it received in 1991. When the school went through the design review process in 1991, it agreed to provide 41 off-street parking places. This number represents a 30% reduction from the 59 parking places which the size of the current gymnasium would dictate. There are 31 parking stalls in the parking lot and the remaining ten places were behind the main classroom building. A year later this area behind the main classroom building was painted as a fire lane and could no longer be used for parking. Because of this the school is ten parking places short of the 41 places stipulated in the variance. The 31 parking places in the lot are not adequate for the staff and the numerous parent volunteers. The out-of district parents and many parents from the neighborhood drive their children to school every day and use the parking lot as a turn-around. This puts further pressure on the lot.

The school was also asked to put a gravel shoulder for parallel parking along Breyman Avenue south of the driveway to the parking lot. It has never complied with this requirement.

5. Riverdale School is located on Breyman Avenue, a residential street in the center of the Riverdale/Dunthorpe community. The street is not suitable for the heavy traffic and the parking demands which the school presently generates. These detract from the residential quality of the street and create a dangerous situation for children walking or biking to school and for the cars driving by, particularly when school is starting in the morning and letting out in the afternoon. When the school busses are parked in front of the school, cars have to go out into the opposing lane of traffic in order to get around them. In the morning and afternoon and also oftentimes at night, cars are parked all around the school, in front of the neighbors' mailboxes and in front of the fire hydrant which is by the school. They also park in a traffic triangle at the intersection of Breyman Avenue and Military Road which has "No Parking" painted on it in six places. This creates a particularly dangerous situation for the students who are walking or biking to and from school.

6. The proposed new classroom building is out of character with the neighborhood because it will create a much larger campus than the neighborhood needs. The accompanying graph shows that the resident student population has been stable for many years, but that there has been a large increase in enrollment because of the district's policy to encourage enrollment from students outside of the district. The school already has the capacity for 350 students, based on conservative estimates. The County's Staff Contact for the January 17 hearing said that "current classroom capacity based on a UBC square footage analysis shows that the current maximum occupancy is 835 students." Even if we accept the district's 350 student figure, this is still 40% greater than the current residential enrollment of 250 students. There is plenty of space in the existing school to make any changes appropriate to the needs of the 250 resident students.

A deed restriction makes it impossible to put any structure or even a parking lot on the playground portion of the school property. This deed restriction should be considered as part of the character of the neighborhood. If the school cannot provide adequate parking on the northern portion of the school, then its plans are too expansive to suit the character of the neighborhood.

There is a tennis court in the front of the school right on Breyman Avenue. This tennis court has been enjoyed by generations of neighborhood children who have learned to play tennis there as well as by community residents of all ages. It should also be considered part of the character of the neighborhood and not turned into a parking area.

Please support the findings of the Hearings Officer, whose decision represents a compromise between the position of the school district and the community residents who expressed concerns at the January 17 hearing. In the past few years the school district has made many changes, particularly in the introduction of a large number of students from out of the district. This in turn affects the traffic and parking situation around the school and has had a negative impact on both the residential nature of the community and the safety of the children going to and from school. The district's contention that it should only have to go through a design review process and not have to apply for Community Service Use designation is a concern, because there is no place for citizen input in the

design review process.

Ellen Everson  
11505 SW Breyman Avenue  
Portland, OR 97219  
635-2366

Ph.D. in Classics, Johns Hopkins University, 1971  
Riverdale/Dunthorpe resident since 1977  
3 children who attended Riverdale School

**FIVE-YEAR CAPITAL, OPERATING AND FINANCING PLAN**

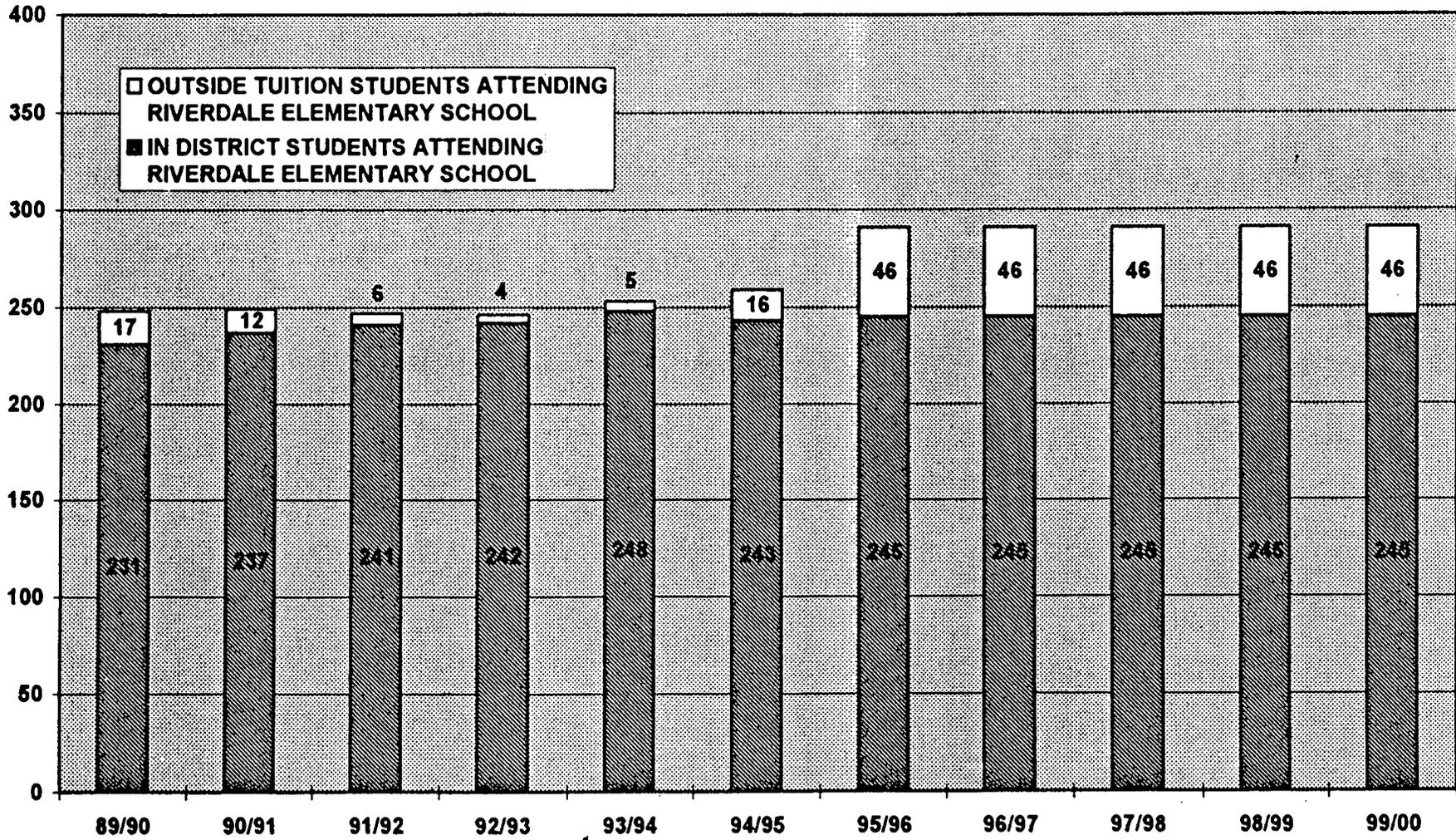


**RIVERDALE SCHOOL BOARD OF DIRECTORS  
OCTOBER, 1995**

#### **CHART 4**

**CHART 4 shows enrollment at the elementary school level, including both in-district and tuition students. As indicated, tuition-student enrollment grew from 5 in 1993-94 to 46 in 1995-96 and is expected to stay near this level. We expect in-district enrollment to remain at approximately 250 and project no expansion of current tuition enrollment levels.**

**CHART 4**  
**ELEMENTARY SCHOOL ENROLLMENT**  
**RIVERDALE DISTRICT**



**ELEMENTARY SCHOOL ENROLLMENT INCLUDING BOTH TUITION AND IN-DISTRICT STUDENTS**

# STOEL RIVES LLP

ATTORNEYS

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900 SW FIFTH AVENUE, SUITE 2300  
PORTLAND, OREGON 97204-1268  
Phone (503) 224-3380 Fax (503) 220-2480  
TDD (503) 221-1045  
Internet: www.stoel.com

March 22, 1996

MICHAEL C. ROBINSON  
*Direct Dial*  
(503) 294-9194

## VIA MESSENGER

Ms. Beverly Stein, Chair  
Multnomah County Board of Commissioners  
1120 SW 5th Ave., Room 1515  
Portland, OR 97204

**Re: Multnomah County Casefile No. CS 5-95, Appeal by the Riverdale School District of the Hearings Officer's Decision**

Dear Ms. Stein:

This law firm represents Riverdale School District No. 51 (the "District"). The District applied to Multnomah County (the "County") for approval of a Community Service ("CS") use to allow the construction of new facilities at the Riverdale Elementary School. The staff report recommended approval of the request subject to conditions. The Hearings Officer issued a decision on February 9, 1996 approving the request but subject to a modified condition of approval no. 4. The District filed a timely appeal of the decision on February 23, 1996 for two reasons:

- (1) A 68 space parking lot is not required because of a prior exception.
- (2) A Community Service use is not required because the Riverdale Elementary School site already has a CS designation.

The District requests that the Board find that a CS permit is not required. If the Board finds that a CS permit is required, the District requests that it affirm the Hearings Officer decision but modify condition of approval no. 4 by deleting the language added by the Hearings Officer.

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# STOEL RIVES I.L.P

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1. The District Received an Exception Allowing a 41-space parking lot and The Exception is Vested.

Condition of approval no. 4 as recommended by staff provided as follows:

"Prior to the Final Design Review, the Riverdale School shall develop and submit an On-site Parking and Circulation Plan that complies with County Code and eliminate hazardous conditions caused by vehicular/pedestrian conflicts, as part of the Design Review process."

The Hearings Officer's modified condition of approval no. 4 provides as follows:

"Prior to the Final Design Review, the Riverdale School shall develop and submit an On-site Parking and Circulation Plan that complies with County Code and eliminate hazardous conditions caused by vehicular/pedestrian conflicts, as part of the Design Review process. Such a plan will comply with the full level of parking requirements as determined by the size of the auditorium. Under the preliminary plans as submitted for this decision, 68 spaces would be required." (Added language underlined.)

The Hearings Officer's decision requires the District to provide a 68 space off-street parking lot whereas the staff report correctly found that a prior exception allowed the District to develop a parking lot containing only 51 off-street parking spaces. See Exhibit 1.

The District applied for Design Review approval for the Riverdale Elementary School in 1990. See Exhibit 2. The purpose of that Design Review application was to allow the District to build a music building and remodel existing buildings. The County issued a notice of Planning Director Decision on March 5, 1991 approving the Design Review application including "a new [41]-space parking area and associated landscape plans (adjacent to the tennis court on SW Breyman Ave.)." See Exhibit 3. The final Design Review decision by the County noted:

"NOTE: The final Design Review planning includes exceptions to required parking area minimums [reference preliminary DR letters dated 5/11/90; 7/18/90; 8/20/90; and exceptions request dated 10/23/90]." See Exhibit 4.

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Page 3

The October 3, 1990 letter from the District requested the 30 percent exception from the required 59 off-street parking spaces. See Exhibit 5.

MCC 11.15.6146, "Exceptions from Required Off-Street Parking or Loading Spaces" provided as follows:

"(A) The Planning Director may grant an exception with or without conditions for up to 30 percent of the required number of off-street parking or loading spaces, upon a finding by the Director that there is substantial evidence that the number of spaces required is inappropriate or unneeded for the particular use, based upon:

"(1) A history of parking or loading use for comparable development;

"(2) The age, physical condition, motor vehicle ownership or use characteristics or other circumstances of residence, users or visitors of the use; or

"(3) The availability of alternative transportation facilities; and

"(4) That there will be no resultant on-street parking or loading or interruptions or hazards to the movement of traffic, pedestrians or transit vehicles."

MCC 11.15.6142(B), "Public and Semi-Public Buildings and Uses," would have required 59 off-street parking spaces. Thirty percent of the 59 required parking spaces is 18 parking spaces. Thus, the exception granted by the Planning Director in 1991 allowed the District to construct a parking lot with 41, instead of 59, off-street parking spaces. Mr. Henry Fitzgibbon, architect for the District, confirms that the parking lot was completed in 1992 based on the approval in DR 90-03-02. Mr. Fitzgibbon has provided two building permits for the improvements authorized by DR 90-03-02. See Exhibit 6.

The Hearings Officer incorrectly disregarded the 1991 exception to the off-street parking space requirements. The 1991 exception is a final land use decision that is still applicable to the Riverdale Elementary School. The Hearings Officer's decision amounts to a collateral attack on the validity of the permit well after the time to challenge it has expired. A prior decision that was not appealed may not be challenged in a collateral attack. Drake v. Polk County, \_\_\_ Or LUBA \_\_\_ (LUBA No. 95-116, November 17, 1995), citing ONRC v.

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City of Seaside, 27 Or LUBA 679, 681 (1984); Corbett/Terwilliger Neighborhood Assoc. v. City of Portland, 16 Or LUBA 49, 52 (1987).

Because no appeal was filed within ten days of issuance of the decision, the decision became final. See MCC 11.15.8290(A) (decision by Planning Director final after 10 days unless notice of appeal is filed). Further, MCC 11.15.6100 contains no time limit for approval of an exception to the required number of off street parking spaces.

MCC 11.15.7870(A) contains an 18 month time limit for Design Review approval. However, where an applicant acts on a permit issuance, that permit approval is "vested." Because the District constructed the facilities authorized by DR 90-03-02, the approval for the parking exception has vested. Clackamas County v. Holmes, 265 Or 193, 508 P2d 190 (1973).

The Board of County Commissioners can find that the final, unappealed 1991 Design Review decision, including the parking exception, has vested because of the District's construction of the authorized improvements, including the 41-space parking lot. Therefore, the Hearings Officer could only have required the District to provide the additional number of parking spaces required by the expanded gymnasium. See page 14 of Hearings Officer's decision discussing validity of 1991 off-street parking space exception; see also Exhibit 1.

The Hearings Officer's citation to MCC 11.15.6102 does not require a contrary result. This section provides as follows:

**"In the event of the erection of a new building or an addition to an existing building, or any change in the use of an existing building, structure or land which resulted in an intensified use by customers, occupants, employees or other persons, off-street parking and loading shall be provided according to the requirements of this Section."**

The School District is replacing the existing gymnasium with a new gymnasium. The existing gymnasium assembly area contains 5,000 square feet. The new gymnasium assembly area will contain 5,722 square feet, an increase of 722 square feet.<sup>1</sup> Pursuant to MCC 11.15.6142(B)(9), one additional parking space per 84 square feet of floor area in the auditorium

---

<sup>1</sup> The entire gymnasium building will contain 8,748 square feet but only 5,722 square feet will be used for assembly. MCC 11.15.6142(B)(a) calculates off-street parking spaces for elementary schools based on auditorium floor area, not the gross floor area of school buildings.

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Ms. Beverly Stein  
March 22, 1996  
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is required, resulting in 9 additional spaces. However, nothing in MCC 11.15.6102 requires the County to disregard the existing number of parking spaces authorized by a valid exception.

The Board of County Commissioners should reverse the Hearings Officer's decision and modify condition of approval no. 4 by deleting the requirement for a 68 off-street parking space parking lot.

## 2. A Community Service Permit Is Not Required.

The Riverdale Elementary School site has had a CS designation for a number of years. See Hearings Officer Decision at p. 10. Shortly after the District submitted its 1989 Application, the Multnomah County Planning Department confirmed that a Community Service approval would not be required. See Exhibit 7. The Planning Department made this interpretation because the proposed addition authorized by the 1991 permit decision was intended to only serve the existing student population and would not allow an increase in the number of students. The current application by the District also will not cause the number of students to increase. See Staff Report at p. 5.

The Hearings Officer cites MCC 11.15.2842(D) (uses authorized in R-30 District) as authority for requiring a Community Service review by the Hearings Officer since the Riverdale Elementary School has never been reviewed by a Hearings Officer or received a CS Permit. See Hearings Officer Decision at pp. 9 and 10.

The Hearings Officer conclusion is incorrect for several reasons. First, MCC 11.15.2842(D) provides that the elementary school use is allowed in the R-30 Zoning District when approved by the Hearings Officer. However, all parties acknowledge that the elementary school has existed on this site for at least 75 years.

Moreover, the provision in MCC 11.15.2842 that "no building, structure, or land shall be used and no building or structure shall be hereafter erected, altered or enlarged in this District except for the following uses" does not apply to an existing use such as the Riverdale Elementary School where a CS designation already exists on the county's official Zoning Map. As all parties acknowledge, the Riverdale Elementary School site has a CS designation. MCC 11.15.2842 is properly read to require a hearing only for a new special use or a site where a CS designation does not already exist.

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March 22, 1996  
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The interpretation of MCC 11.15.2842 has two important policy implications for the Board and the Community Development staff. First, a contrary interpretation will require a public hearing for every modification to a special use. Secondly, a contrary interpretation fails to give proper recognition to the CS designation already on the county's official zoning map. Whether the county was required to place the CS designation on the site is irrelevant because, in fact, the county has placed a CS designation on the site. Once the CS designation has been placed on a site, the use determination has been made by the county.

Review of modifications and design of a CS site can be adequately accomplished through the Design Review chapter, MCC 11.15.7805 et seq. Because Design Review approval is a discretionary permit decision, the public has ample opportunity to appeal the Planning Director's decision and obtain a public hearing before the Hearings Officer and the Board.

Further, MCC 11.15.8240(E) is applicable here. This Section provides as follows:

**"Any change or alternation of conditions attached to conditional approvals shall be processed as a new action, except that the Planning Director may approve a change or alternation which does not: (1) increase density; (2) change boundaries; (3) change any use; or (4) change the location or amount of land devoted to specific land uses."**

The 1991 Design Review approval is a conditional approval. See Exhibit 3. Because the District's application did not increase density, change boundaries, change a use or change the location or the amount of land devoted to specific land uses (i.e., the elementary school), the Planning Director may approve a further design review application without a public hearing. See also MCC 11.15.7815, requiring Planning Director Approval for alteration of final Design Review plan.

MCC 11.15.7010(D) does not require a different result. This section provides as follows:

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

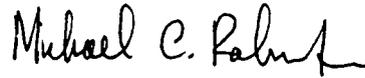
However, where a Community Service approval is not required in the first instance, MCC 11.15.8240(E) should control over MCC 11.15.7010(D). Because the Community Service designation is already on the Riverdale Elementary School site and because a new use is not

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Page 7

requested, the Board can find that a Community Service permit is not required and a public hearing is not initially required to approve the modifications to the school site.

Very truly yours,



Michael C. Robinson

MCR/ipc  
Enclosures

cc (w/encls.): Dr. Lloyd Applegarth  
Mr. Henry Fitzgibbon  
Ms. Sandra N. Duffy (by messenger)  
Mr. Barry Manning (by messenger)  
Mr. Steven W. Abel

## EXHIBITS

- Exhibit 1 - Calculation of off-street parking space requirements
- Exhibit 2 - December 15, 1989 Design Review application
- Exhibit 3 - March 5, 1991 Notice of Planning Director decision
- Exhibit 4 - March 5, 1991 Final Design Review decision
- Exhibit 5 - October 23, 1990 Letter from Riverdale School District requesting 30% exception to required number of off-street parking spaces
- Exhibit 6 - Multnomah County Building Permit Nos. 91-101898 and 91-101902, issued by the City of Portland, Bureau of Buildings
- Exhibit 7 - January 18, 1990 letter from Robert N. Hall, Senior Planner

Exhibit 1

**STAFF CALCULATION**

1)	5000 s.f. existing assembly area x 1 space/84 s.f.	=	59 spaces
2)	Less 30% exception approved in 1991	=	18 spaces
3)	Results in a requirement for	=	<u>41 spaces</u>
4)	722 s.f. additional assembly area	=	9 spaces
5)	Results in a requirement for	=	<u>50 spaces</u>

**HEARINGS OFFICER  
CALCULATION**

1)	5000 s.f. existing assembly area x 1 space/84 s.f.	=	59 spaces
2)	722 s.f. additional assembly area	=	9 spaces
3)	Results in a requirement for	=	<u>68 spaces</u>

# DESIGN REVIEW APPLICATION

Department of Environmental Services  
Division of Planning and Development  
2115 S.E. Morrison St.  
Portland, Oregon 97214

(503) 248-3043



## Property Location & Description

Street Address 11733 SW BREYMAN AVE.  
Legal Description TAX LOT 4, LOT 22 THRU 24, APPROXIMATELY 4 HRS  
Community DULTHORPE  
Zoning R-30/CG  
Site Size 8.6 ACRES

## Property Owner

Name MULTNOMAH CO. SCHOOL DISTRICT SMT.  
Address 11733 SW BREYMAN AVE, PORTLAND 97219  
Phone (503) 636-4511  
Owner's Authorization Michelle A. Howser  
Mike Howser, Superintendent

## Contact Person

Name NORM DOLL / DOLL, OLSON, WHEELER, ARCHITECTS  
Address 115 NW FIRST AVE, SUITE 301, PORTLAND, OR 97201  
Phone (503) 226-6950

## Project Description

Project Title RIVERDALE SCHOOL NEW MUSIC BLEND AND  
ADDITION / RE-MODEL  
Proposed Use EXISTING SCHOOL  
Square Footage Of Landscaping -0-  
Square Footage of Landscaping in Parking Lot(s) -0-

## If Residential

Number of Units \_\_\_\_\_  
Number of Units with Three or more Bedrooms \_\_\_\_\_  
Square Footage of Useable Outdoor Space \_\_\_\_\_  
Square Footage of Private Outdoor Space \_\_\_\_\_

### Staff Use Only

Design Review #  
90-03-02

Fee  
\$1500.00

(\$500,000 Project)

### Accepted

3/26/90  
Date

M. How  
By

### Associated Cases

Plan Ck. 13770

PA 54-89



## RIVERDALE SCHOOL PROJECT NARRATIVE

The construction planned is educationally driven to meet current program needs, upgrade the program, and meet deferred maintenance requirements. It is not intended to increase educational services, but rather to enhance the delivery of existing services: a deteriorating heating system will be replaced; a dilapidated "temporary" modular building currently used for music instruction will be refurbished for other uses; a new permanent music building will be constructed; classroom space for special education, administration and a computer lab will be enhanced; an infirmary (currently none exists) will be constructed; outdated inefficient classroom lighting will be replaced; a hooded vent and safety shower in the 7th/8th grade science class will be provided.

Staffing will remain constant or increase slightly; staffing has been 33 to 34 in recent district history. The improved facilities will allow the staff to handle a growing enrollment more effectively. Student enrollment was 217 in 1987-88; 228 in 1988-89; and is 247 in 1989-90.

The impact on the surrounding area will be minimal as land acquisition is not a part of the project.

The new music building will be approximately 150 feet off the adjacent street and cut into the existing slope. The visual impact will be minimal if the building will be visible at all. The classroom addition to the administration/classroom building will be sited between two existing wings.

The removal of approximately six mature trees will be required to construct the music building primarily as a safety measure to reduce the occurrence of blow-downs resulting from root system damage.

The project has no adverse affect on natural resources, does not conflict with forest uses or impact big game winter habitat areas as the property use is existing.

f:\riv\uar1206.doc





# MULTNOMAH COUNTY OREGON

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

BOARD OF COUNTY COMMISSIONERS  
GLADYS McCOY • CHAIR OF THE BOARD  
PAULINE ANDERSON • DISTRICT 1 COMMISSIONER  
GARY HANSEN • DISTRICT 2 COMMISSIONER  
RICK BAUMAN • DISTRICT 3 COMMISSIONER  
SHARRON KELLEY • DISTRICT 4 COMMISSIONER

## Notice of Planning Director Decision

### **RIVERDALE ELEMENTARY SCHOOL: PROPOSED ADDITIONS AND REMODEL 11733 SW BREYMAN AVENUE**

**DECISION DATE: MARCH 5, 1991**

**DESIGN REVIEW #90-03-02**

The Planning Director has approved the site and building designs for a **new music building, additions to and remodeling of existing school buildings, and development of a new parking lot and associated site improvements, all at Riverdale Elementary School (11733 SW Breyman Avenue).**

You have received notice of this decision because our records indicate you own property near the project site. The approved plans include: the new music building (behind the school buildings), additions to the rear and remodeling of the main classroom building, and a new 31-space parking area and associated landscape plans (adjacent to the tennis court on SW Breyman Ave.).

Conditions of approval have been imposed requiring protection of trees to be saved on the site, replanting of exposed areas, and addressing lighting, maintenance, and signs on the site.

*This decision will become effective ten days from the above date, unless an appeal is filed. An appeal requires a \$150.00 fee and must state the specific legal grounds on which it is based. Contact the County Planning Division at 248-3043 if you have questions regarding the project design or to obtain appeal forms or information.*

EXHIBIT  
EX 3 PAGE 1

18 Notices Mailed  
3-05-91  
M.B.



# MULTNOMAH COUNTY OREGON

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

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SHARRON KELLEY • DISTRICT 4 COMMISSIONER

Norm Dull c/o Dull, Olson, Weekes, Architects  
115 NW First Avenue  
Portland, Oregon 97209

## FINAL DESIGN REVIEW

**Proposed Additions and Remodel: Riverdale Elementary School;  
11733 SW Breyman Avenue**

**Decision Date: March 5, 1991**

**Design Review #90-03-02**

**Reviewer: Mark R. Hess**

**Date Final Plans Received:  
2/22/91 (Parking Area Designs)  
12/15/89 (School Addition Designs)**

The final design plans submitted for Riverdale Elementary School have been reviewed. Based on review of submitted drawings, site visits by staff and analysis of applicable criteria, the Final Design Plans are found generally consistent with Design Review provisions in MCC .7805-.7865. Conditions of approval are necessary to address applicable Design Review standards:

### CONDITIONS OF APPROVAL:

1. Except as modified below, construct site improvements and install landscaping as illustrated and specified on approved plans dated March 5, 1991. [Reference: parking area plans and the "Project Manual for Riverdale School New Music Building and Addition Remodel" (dated March 16, 1990)]. Proposed improvements shall be completed and approved prior to occupancy or final inspection approval of the new and/or remodeled school structures. Landscaping, parking lot and other site improvements illustrated on approved plans shall be continuously maintained.
2. MCC.6132(B) requires a curb or other device at least 4-inches in height to define the outer boundary of a parking area. The curb constructed around and within the new parking area must meet this standard.

EXHIBIT  
EX 4 PAGE 1

3. Complete street and/or sidewalk improvements (as applicable) along abutting right-of-ways prior to final approval or occupancy permits for the new or remodeled structures. Contact Dick Howard at 248-3599 regarding right-of-way requirements for the project.
4. New outdoor lighting on the site shall be shielded to limit "spillage" onto neighboring properties. New light fixture heights shall not exceed 30-feet.
5. Obtain sign permits prior to installation of exterior signs visible from a public street. Identify all compact parking stalls.
6. Implement erosion control and storm-water run-off measures as required for the disturbed and new hard-surface areas on the site. Contact Fred Deis the Portland Building Bureau at 796-7543. to determine recommended erosion control measures. All site clearing or grading must employ erosion control measures to prevent or minimize off-site sedimentation and other down-slope erosion effects during the construction phase of the project. All exposed soils from grading, cuts or fills areas must be replanted prior to final approval of the building additions or remodels.

If drywells are used to handle storm water run-off from new roof and parking areas, the Plumbing Section (Portland Bldg. Bureau) should review and approve the design. If surface water will be directed off-site, provide documentation of applicable approvals (of the drainage plan) by the effected property owner or agency (County Right-of-way, drainage district *etc.*).

**Note:** The Final Design Review plan includes exceptions to required parking area minimums [Reference Preliminary DR letters dated 5/11/90; 7/18/90; 8/20/90; and Exceptions request dated 10/23/90. The dimensional exceptions in the plans are approved based on the following findings and conclusions [reference MCC .6146 and .7860(C)]:

The reduced parking aisle widths result in a more efficient use of the site. Existing buildings and facilities on the school grounds creates difficulties in fulfilling all dimensional standards for the parking area size and dimensions. The exceptions reduce the aisle widths in the parking area to 14-feet, 6-feet below the 20-foot minimum (for angled parking). The dimensional exceptions facilitate development of a one-way loop traffic pattern; this improves both user convenience and emergency access within the parking area (as compared with earlier design submittals).

The size and diversity of plant materials proposed, the retention of most wooded areas on the site, and provision of a new 31-space off-street parking area demonstrates the plan's consistency with purposes of Design Review (Reference MCC 11.15.7805).

DR 90-03-02 Decision  
March 5, 1991  
Page Three

**In the matter of DR 90-03-02; a new music building, additions to and remodeling of existing school buildings, and development of a new parking lot and associated site improvements, all at Riverdale Elementary School.**

**MULTNOMAH COUNTY DIVISION OF PLANNING AND DEVELOPMENT**

  
Mark R. Hess, Planner

*This decision shall become final 10 days from the above date unless an appeal is filed pursuant to MCC 11.15.8290. Appeals are reviewed at a public hearing before the County Planning Commission. An appeal requires a \$150.00 filing fee and must state the specific legal grounds on which it is based. Contact the County Planning Division at 248-3043 for appeal forms or information.*

cc: Fred Deis  
Dick Howard

EXHIBIT  
EX 4 PAGE 3



**RIVERDALE SCHOOL DISTRICT 51JT**  
11733 S.W. BREYMAN AVENUE  
PORTLAND, OREGON 97219  
636-4511

October 23, 1990

Mark Hess  
Multnomah County Environmental Services  
Division of Planning and Development  
2115 S.E. Morrison St.  
Portland, OR 97214

Dear Mr. Hess:

This letter asks the County to relax or make exception to code MCC.6142(B)9 that stipulates the number of parking spaces based on our auditorium size. For Riverdale School, that standard yields a 59 space off-street parking requirement.

I request an exception for up to 30% of this required total be approved for Riverdale School based upon the criteria in MCC.6146. We are prepared to submit plans for a parking lot and current school blacktop to accommodate 41 parking spaces. Please consider this request. If you have questions, call me.

Sincerely,

Mike Howser  
Superintendent

EXHIBIT  
EX 5 PAGE 1

RECEIVED  
OCT 23 1990

Multnomah County  
Zoning Division



CITY OF PORTLAND  
BUREAU OF BUILDINGS



01-2591  
PERMIT RECEIPT

MULTNOMAH COUNTY OREGON

DATE 03/22/90

PERMIT NUMBER 01-10189R  
PLAN CHECK NUMBER 13770

OWNER	SCHOOL DISTRICT NO 51 11733 SW BREYMAN AVE PORTLAND, OREGON 97219
OWNER	Les Anderson BISHOP CONSTRATORS INC 36469 246-7711
APPLICANT	BORION, DAN 115 NW 1ST STE 301 PORT 97209 PHONE 226 6950

JOB ADDRESS	11733 SW BREYMAN AV
	LOT 24 BLOCK TAX LOT
	ADDITION ADERNEITHY HIN
	4231
	1/4 SECT. MAP
	TOWN/RANGE SECT. R001101270
ASSESSORS NUMBER	

ZONE	RS
OCCUPANCY GROUP	Et
CONSTRUCTION TYPE	WN IIII
WORK SQUARE FOOTAGE	2,206 672
BUILDING VALUATION	3500,000

DESCRIPTION RIVERDALE SCHOOL CORRIDOR REMODEL, ETC., AT MAIN BLDG. (SEE "B" FOR NEW MUSIC BLDG, SAME PLANS) (GYM IS IIIIHR, REST IS WN)  
LANDSCAPE AND PARKING REQ'D PRIOR TO FINAL. EROSION CONTROL REQ'D

BUREAU OF BUILDINGS - BY LMA

*Les Anderson*  
APPLICANT/AUTHORIZED AGENT

FOR BUILDING INSPECTIONS CALL 796-7000 BEFORE 8:00 A.M.	SEPARATE PERMITS REQUIRED
	<input checked="" type="checkbox"/> PLUMBING
	<input checked="" type="checkbox"/> ELECTRICAL
	<input type="checkbox"/> MECHANICAL

FEE CODE	DESC.	NO. ITEMS	AMOUNT
0813	CO. BUILDING PERMIT	1	1750.65
0131	MICROFILM FEE	50	50.00
0807	CO. STATE SURCHARGE	1	87.53
0911	CO. ZONING REVIEW FEE	1	262.59
TOTAL			\$2,150.77

CASH \_\_\_\_\_ CHECK \_\_\_\_\_ TF \_\_\_\_\_ BUC \_\_\_\_\_ VALIDATION \_\_\_\_\_



CITY OF PORTLAND  
BUREAU OF BUILDINGS



91-2595  
PERMIT RECT/111'

MULTNOMAH COUNTY OREGON

PERMIT NUMBER 91-101902

DATE 04/26/91

PLAN CHECK NUMBER 13770B

OWNER	SCHOOL DISTRICT NO 51 11733 SW BREYMAN AVE PORTLAND, OREGON 97219
BUILDER	BISHOP CONTRACTORS INC. 36469
APPLICANT	NORM DULL 115 NW 1ST STE 301 PORT 97209 PHONE 226 6950

JOB ADDRESS	11737 SW BREYMAN AV
	LOT 24 BLOCK TAX LOT
	ADDITION ADJUTMENT TIES
	1/4 SECT. MAP 4231
	TOWNSHIP/RANGE SECT.
	ASSESSORS NUMBER R001101270

ZONE	RS
OCCUPANCY GROUP	EI
CONSTRUCTION TYPE	VI
WORK SQUARE FOOTAGE	2,206
BUILDING VALUATION	\$178,000

DESCRIPTION OF WORK: RIVERDALE SCHOOL-NEW MUSIC BLDG (SEE 13770 FOR CORRIDOR REMODEL AT MAIN BLDG-SAME PLANS)  
EROSION CONTROL REQ'D. LANDSCAPE NEEDED PRIOR TO FINAL

BUREAU OF BUILDINGS - BY LMA

*Received via mail*

APPLICANT/AUTHORIZED AGENT

FOR BUILDING INSPECTIONS CALL 798-7000 BEFORE 8:00 A.M.	SEPARATE PERMITS REQUIRED
	<input type="checkbox"/> PLUMBING
	<input type="checkbox"/> MECHANICAL

FEES			
FEE CODE	DESC.	NO ITEMS	AMOUNT
0813	CO. BUILDING PERMIT	1	768.55
0818	CO. BUILDING PLAN REVIEW	1	497.55
0131	MICROFILM FEE	1	1.40
0807	CO. STATE SURCHARGE	1	38.42
0110	FIRE & LIFE SAFETY	1	
TOTAL			\$1,307.92

CASH \_\_\_\_\_ CHECK \_\_\_\_\_ TF \_\_\_\_\_ BUC \_\_\_\_\_ VALIDATION \_\_\_\_\_

EXHIBIT  
EX 6 PAGE 2





# MULTNOMAH COUNTY OREGON

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January 18, 1990

Norman Dull  
Dull-Olson-Weekes Architects  
115 NW 1st Avenue  
Suite 301  
Portland, Oregon 97209

Re: Riverdale School Music Building Addition (PA 54-89)

Dear Mr. Dull:

This is to confirm our conversation of December 21, 1989 concerning the referenced addition. Since the proposed addition is intended only to serve the existing student population and does not result in an increase in that population, we do not consider the proposal an expansion of the existing Community Service designation. Therefore, your request will not require Planning Commission approval. Keep in mind, however, that you will need to obtain Design Review approval and all necessary construction permits.

Sincerely,

Robert N. Hall, *Senior Planner*

EXHIBIT  
EX \_\_\_\_\_ PAGE \_\_\_\_\_



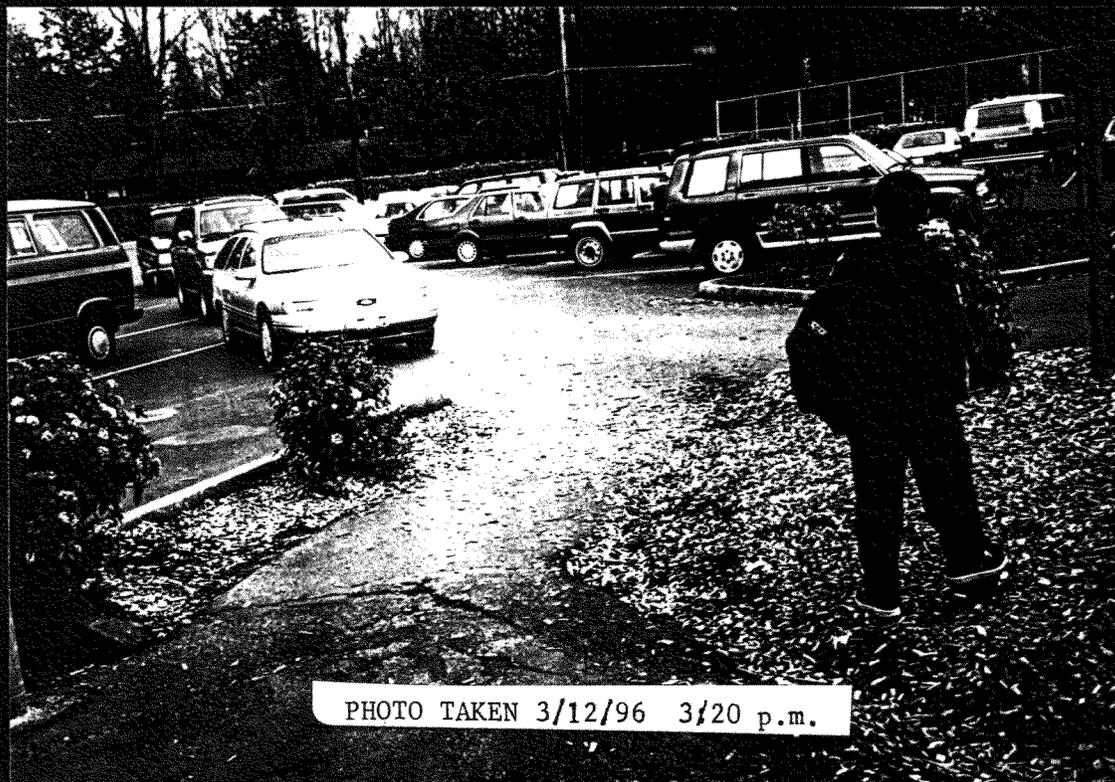


PHOTO TAKEN 3/12/96 3:20 p.m.



PHOTO TAKEN 3/12/96 3:20 p.m.



PHOTO TAKEN 3/13/96 8:20 a.m.



PHOTO TAKEN 3/13/96 11:29 a.m. (PTC meeting)



PHOTO TAKEN 3/13/96 3:20 p.m.



PHOTO TAKEN 3/14/96 8:30 a.m.



PHOTO TAKEN 3/14/96 3:30 p.m.