



Multnomah County Oregon

# Board of Commissioners & Agenda

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## BOARD OF COMMISSIONERS

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### ANY QUESTIONS? CALL BOARD CLERK DEB BOGSTAD @ 248-3277

Email: [deborah.l.bogstad@co.multnomah.or.us](mailto:deborah.l.bogstad@co.multnomah.or.us)

INDIVIDUALS WITH DISABILITIES  
PLEASE CALL THE BOARD CLERK  
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COUNTY TDD PHONE 248-5040, FOR  
INFORMATION ON AVAILABLE  
SERVICES AND ACCESSIBILITY.

## AUGUST 17 & 19, 1999

## BOARD MEETINGS

### FASTLOOK AGENDA ITEMS OF INTEREST

Pg 2	9:30 a.m. Tuesday De Novo Land Use Appeal Hearing ZC 1-98/PR 1-98
Pg 2	9:00 a.m. Thursday Legislative Agenda Wrap Up Briefing
pg 2	9:30 a.m. Thursday DJACJ RESULTS
Pg 3	9:40 a.m. Thursday IMAX North Light Rail Status Report
Pg 3	10:00 a.m. Thursday Community Response to Youth Violence Plan
Pg 3	11:15 a.m. Thursday Next Step for Living Wage Activities
*	<b><u>The August 26 &amp; September 2, 1999 Board Meetings are cancelled</u></b>
*	<b>Check the County Web Site: <a href="http://www.co.multnomah.or.us/">http://www.co.multnomah.or.us/</a></b>

Thursday meetings of the Multnomah County  
Board of Commissioners are cable-cast live  
and taped and may 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

Tuesday, August 17, 1999 - 9:30 AM  
Multnomah County Courthouse, Boardroom 602  
1021 SW Fourth Avenue, Portland

## **LAND USE PLANNING MEETING**

- P-1 De Novo Hearing Regarding a Denial of ZC 1-98 and PR 1-98; a Request for a Zone Change and Plan Revision to Alter the Existing Zoning of the Subject Tract from Exclusive Farm Use to Rural Residential on Property Located at 4046 SE 302nd AVENUE, TROUTDALE. TESTIMONY LIMITED TO 20 MINUTES PER SIDE.
- 

Thursday, August 19, 1999 - 9:00 AM  
Multnomah County Courthouse, Boardroom 602  
1021 SW Fourth Avenue, Portland

## **BOARD BRIEFING**

- B-1 1999 Legislative Summary Presentation by Gina Mattioda. 30 MINUTES REQUESTED.
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Thursday, August 19, 1999 - 9:30 AM  
Multnomah County Courthouse, Boardroom 602  
1021 SW Fourth Avenue, Portland

## **REGULAR MEETING**

### **CONSENT CALENDAR**

### **NON-DEPARTMENTAL**

- C-1 Appointment of Beverly Stein and Diane Linn to the COMMISSION ON CHILDREN, FAMILIES AND COMMUNITY (CCFC), and Appointment of Beverly Stein as CCFC Vice-Chair

### **REGULAR AGENDA**

### **PUBLIC COMMENT - 9:30 AM**

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

**DEPARTMENT OF JUVENILE AND ADULT COMMUNITY JUSTICE - 9:30 AM**

R-2 Results from RESULTS: Employee Recognition Committee Presentation. 10 MINTUES REQUESTED.

**DEPARTMENT OF ENVIRONMENTAL SERVICES - 9:40 AM**

R-3 RESOLUTION Authorizing Execution of Agreement for Lease of Certain Real Property for the Operation of the District Attorney's Support Enforcement Division

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Thursday, August 19, 1999 - 9:40 AM  
**(OR IMMEDIATELY FOLLOWING REGULAR MEETING)**  
Multnomah County Courthouse, Boardroom 602  
1021 SW Fourth Avenue, Portland

**BOARD BRIEFINGS**

B-2 Interstate Max North Light Rail Status Report Presentation by Metro Staff. 15 MINUTES REQUESTED.

B-3 Community's Response to Youth Violence: An Enforcement, Intervention and Prevention Plan for Greater Portland. Progress Report on Law Enforcement, Intervention and Prevention Goals and Results. Presented by Chair Beverly Stein, Mayor Vera Katz, City Commissioner Jim Francesconi, District Attorney Michael Schrunk, Sheriff Dan Noelle, Department and Bureau Representatives, and Invited Others. 1 HOUR, 15 MINUTES REQUESTED.

B-4 Next Steps for Living Wage Activities Presentation by Rhys Scholes. 30 MINUTES REQUESTED.

SHARRON KELLEY  
Multnomah County Commissioner  
District 4



Portland Building  
1120 S.W. Fifth Avenue, Suite 1500  
Portland, Oregon 97204  
(503) 248-5213  
E-Mail: sharron.e.KELLEY@co.multnomah.or.us

## MEMORANDUM

TO: Chair Beverly Stein  
Commissioner Diane Linn  
Commissioner Serena Cruz  
Commissioner Lisa Naito  
Board Clerk Deb Bogstad

FROM: Debra Erickson  
Staff to Commissioner Sharron Kelley

DATE: June 30, 1999

RE: Board Meeting Absences

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Commissioner Kelley will be taking time off during the month of August. She will not be attending the Board meetings scheduled for August 3, 5, ~~12~~, 17, 19, & 26, 1999. Should an issue arise which merits her participation, the Commissioner may elect to be available for the meeting, either in person or via speakerphone.

BOARD OF  
COUNTY COMMISSIONERS  
99 JUN 30 PM 2:19  
MULTNOMAH COUNTY  
OREGON



LISA H. NAITO  
Multnomah County Commissioner, District 3  
1120 SW Fifth Avenue, Suite 1500  
Portland, Oregon 97204-1914  
Phone (503) 248-5217 Fax (503) 248-5262

## MULTNOMAH COUNTY OREGON

### MEMORANDUM

TO: Chair Beverly Stein  
Commissioner Diane Linn  
Commissioner Serena Cruz  
Commissioner Sharron Kelley  
Board Clerk Deb Bogstad

FROM: Steve March   
Staff to Commissioner Lisa Naito

DATE: August 13, 1999

RE: Board absence

Commissioner Naito will be on absent from the Land Use Planning De Novo Hearing (P-1) on August 17, 1999.

99 AUG 13 PM 5:13  
MULTNOMAH COUNTY  
OREGON  
BOARD OF  
COUNTY COMMISSIONERS





**BOARD HEARING OF: August 17, 1999**

**TIME: 9:30am**

**CASE NAME:** Request for a Zone Change and Plan Revision to change the zoning of a tract from Exclusive Farm Use (EFU) to Rural Residential (RR). **NUMBER:** ZC 1-98 and PR 1-98.

**1. Applicant Name/ Address:**

Frank Walker  
37708 Kings Valley Highway  
Philomath, OR 97370

**2. Property Owner Name/ Address:**

Jack and Marilyn Stafford  
4046 SE 302<sup>nd</sup> Avenue  
Troutdale, OR 97060

**3. Action Requested by Applicant:**

Request for approval of a Zone Change and Plan Revision to change the existing zoning of the subject tract from Exclusive Farm Use (EFU) to Rural Residential (RR).

**3. Planning Staff Recommendation**

Denial of the request for a Zone Change, ZC 1-98, and Plan Revision, PR 1-98, to change the existing zoning of the subject tract from Exclusive Farm Use (EFU) to Rural Residential (RR). The Staff recommended decision was issued by the Planning Commission as a denial on May 3, 1999.

**4. Planning Commission Decision**

The Planning Commissioner's Decision, a denial of the request for a Zone Change and Plan Revision, was signed by John Ingle, Chair, of the Multnomah County Planning Commission on May 3, 1999. The Decision was mailed to the required parties on May 4, 1999. The property owner and the applicant submitted the Notice of Review on May 12, 1999. These cases, ZC 1-98 and PR 1-98, will be reviewed by the Board of County Commissioners at a De Novo hearing on the date and time listed above, August 17, 1999 at 9:30 AM .

**5. If recommendation and decision are different, why?**

The Staff recommendation for the denial of the request to change the zoning of the subject tract was upheld by the Planning Commissioner's Decision on May 3, 1999.

Action Requested of Board	
<input checked="" type="checkbox"/>	Affirm Planning Commission Decision Hearing/Rehearing
<input type="checkbox"/>	Scope of Review On The Record
<input checked="" type="checkbox"/>	De Novo

**6. Issues:**

The Planning Commission adopted by reference the findings contained in the April 26, 1999 Staff Report as its own. The Staff and Planning Commission state that the applicant has not carried the burden of proof required under MCC 11.15.290.

**7. Do any of these issues have policy implications? Explain.**

Staff is required to make findings of compliance with the criteria for Zone Change and Plan Revision under the Multnomah County Code, the Multnomah County Comprehensive Plan, the Oregon Statewide Planning Goals, the Oregon Administrative Rules, and the Oregon Revised Statutes. The Staff and Planning Commission conclude that the applicant has not met the burden of proof of the required criteria.



8. Grounds for Reversal of Decision (use additional sheets if necessary):  
The Planning Commission limited testimony to only 20 minutes for an application that required over 2 years to prepare. The fees for the application were several thousand dollars. The case could not be adequately presented in the time allotted. The Planning Commission imposed a standard requiring that we demonstrate the site was impossible to farm rather than impracticable to farm. The P.C ignored substantial testimony from neighbors and area farmers regarding the lack of suitability of this site for farming.

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 Staff and the Planning Commission insisted that we demonstrate that all uses permitted by Goal 3 be impossible rather than impractical. OAR 660--04-025(3) states "It shall not be required that local government demonstrate every use allowed by the applicable goal is impossible." The Staff listed 38 uses permitted by the goal and expected a "demanding" standard pursuant to the Sandgren Case (LUBA 454 1995). There simply was not adequate time to address these factors and all other criteria. Under "other relevant factors" we introduced the practical difficulty of intent to make profit on a net farmable acreage of 6-7 acres and this was immediately rebutted by Staff by selectively citing OAR 660-05-010(6).  
(CONTINUED ON ATTACHED PAGE)

Signed: *Paul J. Walker* Date: 5/11/99  
*AGENT FOR JACK STAFFORD*

**For Staff Use Only**

Fee:

Notice of Review = \$530.00

Received by: \_\_\_\_\_ Date: \_\_\_\_\_ Case No. \_\_\_\_\_

Jack Stafford Appeal Continued

#10. Continued

This rule has two component parts and the Staff and Planning Commission only focused on the first part which reads as follows:

"Notwithstanding the definition of "farm use" in ORS 215.203(2) (a), profitability or gross farm income shall not be considered in determining whether land is agricultural land or whether Goal 3 "Agricultural Land" is applicable."

This would appear to negate all of the testimony provided that the site could not be profitably farmed.

The second part of 660-05-010 (6) reads as follows:

"However, profitability or gross income is a factor in determining whether a farm operation is part of the commercial agriculture enterprise, as stated in subsection 660-05-015(6) (b). "

This part of the equation was totally ignored by the Staff and Planning Commission but was the foundation of the property owner's argument concerning impracticability of farming. This rule allows local governments to evaluate commercial (intent to make profit) agricultural operations based on types of products produced, value of products sold, farming practices and marketing practices.

The property owner provided factual evidence that the nursery stock operation was not profitable based on the above-referenced factors. This property has many site characteristics that render it impracticable for resource use including but not limited to: steep slopes, odd configuration, poorly drained soils, small field size, geologic hazard areas and soil disease but the factor most relied upon by the property owner is that he could not make a profit raising the crops he had traditionally grown and that are customary for the commercial farm enterprise of the area.

It was suggested that the land be converted to timber but the dominant soils series (Powell silt loam) has no site index rating for timber.

The applicant needs additional time to present testimony regarding the farm enterprise of the area but more importantly the commercial farm enterprise of the area. A comparison of this site with commercial farm enterprises in the area clearly demonstrates that it is impracticable to farm this site and adapt it to other uses allowed by the goal.



DEPARTMENT OF ENVIRONMENTAL SERVICES  
LAND USE PLANNING DIVISION  
1600 SE 190<sup>th</sup> Avenue  
Portland, OR 97233 (503) 248-3043

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## Planning Commissioners' Decision

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This decision concerns a public hearing that considered the land use cases cited and described below.

**Case Files:** ZC 1-98 and PR 1-98

**Scheduled Before:** Multnomah County Planning Commissioners:  
Patrick Brothers, Laurie Craghead, Tim Crail,  
Chris Foster, John Ingle, Daniel Kearns,  
Dave Kunkel, John Rettig, and Nancy Wilson.

**Hearing Date, Time, & Place:** Monday, May 3, 1999; at 6:30 PM, or soon thereafter.  
1600 SE 190<sup>th</sup> Avenue, Columbia Room  
Portland, OR 97233

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**What:** Request for a Zone Change and Plan Revision to change the existing zoning of the subject parcels from Exclusive Farm Use (EFU) to Rural Residential (RR).

**Where:** 4046 SE 302<sup>nd</sup> Avenue.  
Township 1 South, Range 4 East, WM, Section 8,  
Tax Lots 5, 6, 11, 12, and the north half of Tax Lots 7 and 10.  
State ID Map: 1S4E08CC 100 and 300.  
Tax Account R#75170-1340 and R#75170-0570.  
See attached map.

**Who:** *Applicant:* Frank Walker  
37708 Kings Valley Highway  
Philomath, OR 97370

*Property Owner:* Jack and Marilyn Stafford  
4046 SE 302<sup>nd</sup> Avenue  
Troutdale, OR 97060

**Zoning:** The existing zoning of the site is Exclusive Farm Use (EFU).

**DECISION RECOMMENDED BY THE  
PLANNING COMMISSIONERS OF MULTNOMAH COUNTY, OREGON:**

In the matter of the adoption of amendments to the Multnomah County Zoning Ordinance by the Multnomah County Board of Commissioners regarding the request for the Zone Change, ZC 1-98, and Plan Revision, PR 1-98, for the subject tract for the proposed change in zoning from Exclusive Farm Use (EFU) to Rural Residential (RR), the Planning Commission denies the request. The Planning Commission finds the land use applications do not carry the burden of proof to meet the applicable approval criteria.

The Multnomah County Planning Commission finds:

- 1) The applicant has provided an inadequate analysis of adjacent uses occurring on adjacent tracts and of adjacent tracts (as in the land). Staff's analysis demonstrates the subject tract and adjoining tracts include High-Value Farmland. Most of the adjacent tracts are zoned EFU, in Farm Deferral tax accounts, and have average tract sizes exceeding 20 acres. Staff has provided a chart on page 17 of the Staff Report, dated April 26, 1999, that summarizes this information.
- 2) It is the applicant's burden to demonstrate, in accordance with MCC 11.05.290 Burden of Proof, that the subject tract, and not just the area being requested for the Zone Change and Plan Revision, cannot be practicably put to uses authorized under Goal 3. The list under Goal 3 (OAR 660-33-120 Uses on Agricultural Lands) is a demanding and exhaustive list of uses for which the applicant must demonstrate as impracticable uses for the subject tract. It is also the burden of the applicant to demonstrate that no land use conflicts will be created, the land use pattern will not be destabilized, and that public services will be available to those areas [MCC 11.05.290 (A)(3)]. Further, the applicant attempts to show farm use is impracticable while stating that farm uses occur on the subject tract. The subject tract currently includes farm uses and the applicant has indicated that the site could accommodate other crops on the tract. The applicant also stated that nursery stock and livestock were prior uses on the tract.
- 3) The proposed zone change would result in land zoned for Rural Residential use. A primary use allowed in the RR zone is single-family residential development on 5-acre parcels. The area proposed for rezoning from EFU to RR includes lands with slopes in excess of 20%. The applicant narrative submitted April 6, 1999 via fax, describes "steep slopes" and a "Geologic Hazard Zone" for the subject tract. The applicant submitted a map entitled "Figure 4 Detailed Topographic Analysis" that shows areas of the subject tract with slope greater than 20%. Staff used soil maps, the Slope Hazard Map, and the Soil Survey of Multnomah County, OR as resources for slope determinations of the subject tract and adjacent tracts. Multnomah County's Comprehensive Plan Policy #14, Developmental Limitations, states that development shall be directed away from areas with slopes exceeding 20%. Staff has provided a response to Policy #14 in this Staff Report. Staff states that if the subject tract contains geologically limiting factors such as a stream, a ravine, steep slopes, and heavy vegetation ("helps stabilize the steep slopes and should be retained" according to the applicant), then it is illogical to conclude the parcels would be better served by being zoned with a designation that allows a five acre minimum lot size and single-family residential development. It is also worthy to note that even if a portion of the tract were demonstrated to be unfarmable, retention of the land in open space is consistent with Goal 3, and clearly would have no impact on the ability to use the remainder of the parcel for uses allowed under Goal 3.
- 4) The applicant has argued that traffic in the area has resulted in conflicts with farm uses. Staff notes that the applicant argument actually substantiates Staff's reasons for denial. Staff states that additional residential development would exacerbate the traffic problems cited by the applicant and would necessitate additional access across High-Value Farmland. Comprehensive Plan Policy #34, Trafficways, includes an analysis of traffic impacts and concerns.

- 5) Jon Jinings of the Department of Land Conservation and Development submitted a letter of comment on the proposed rezone of the subject tract from EFU to RR. Mr. Jinings states, "In conclusion, it is difficult to envision a situation where nearly twenty acres comprised of productive agricultural soils can not be managed for farm use as described in ORS 215.203, particularly when that property is receiving farm tax deferral and is nearly surrounded by land planned and zoned for exclusive farm use. The applicants' submittal fails to demonstrate that the subject property is 'irrevocably committed' to rural residential uses. We are concerned that approval of the subject proposal would set an erroneous precedent and prompt other property owners to come forward with similar proposals to the detriment of the agricultural land base. We recommend that the Planning Commission uphold staff's recommendation and allow the property to retain its EFU zoning."
- 6) In conclusion, the applicant has not carried the burden of proof required under Section 11.05.290. Subsection (B) of MCC 11.05.300 states, "A quasi-judicial plan revision considered denied under subsection (C) of MCC 11.05.190 shall be transmitted to the board with summary findings stating that the burden under MCC 11.05.290 has not been carried."

It is hereby resolved:

That the Multnomah County Planning Commission hereby denies the proposed Zone Change, ZC 1-98, and Plan Revision, PR 1-98, a request to change the subject tract from the current established zoning of Exclusive Farm Use (EFU) to Rural Residential (RR). The Planning Commission adopts by reference the findings contained in the April 26, 1999 Staff Report as its own. This decision will be put on the next available Consent Agenda of the Multnomah County Board of Commissioners.

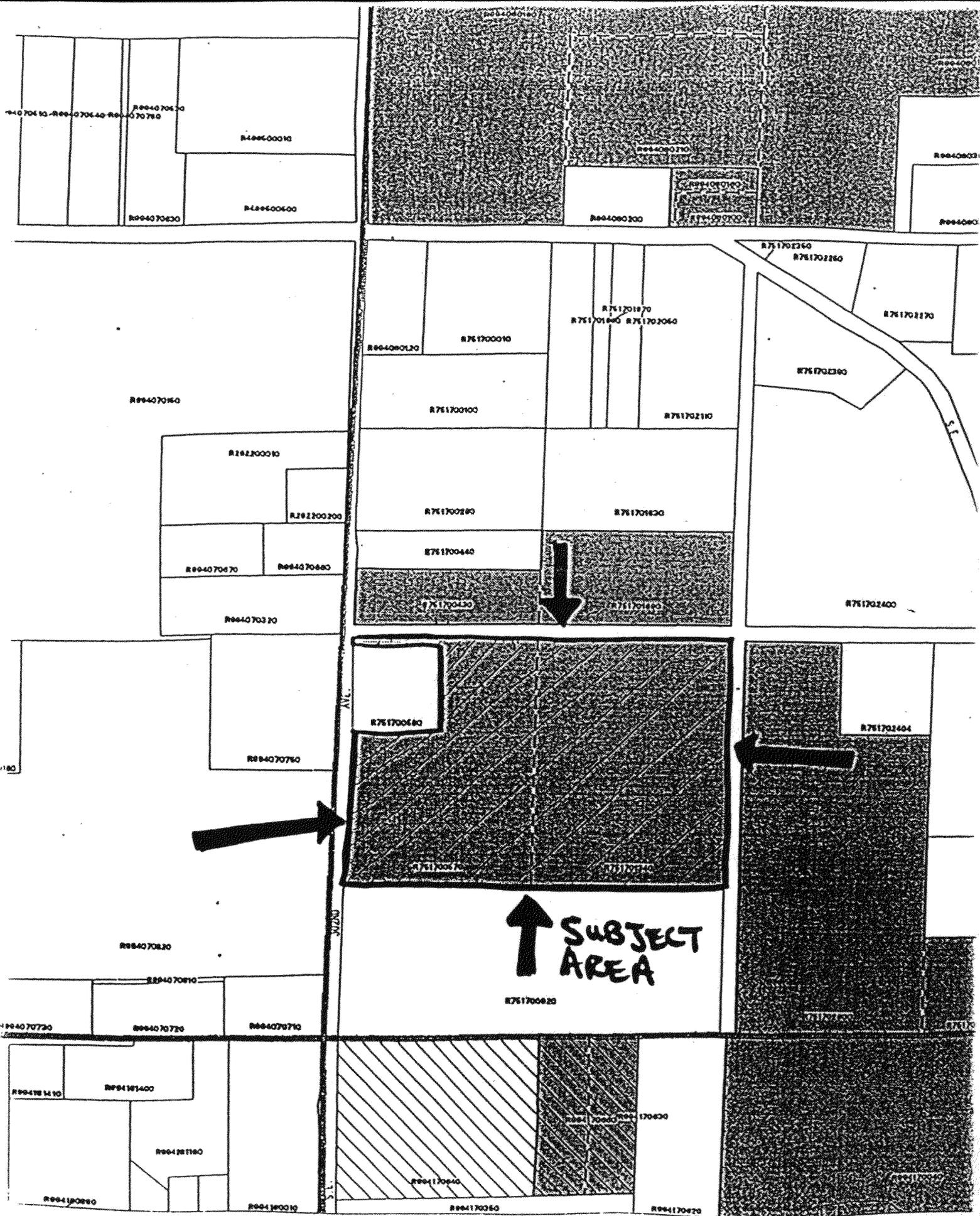
DENIED this 3rd day of May, 1999.

By

  
John Ingle, Chair  
Multnomah County Planning Commission  
Multnomah County, Oregon

Notice

*The Planning Commissioners' Decision detailed above will become final unless an appeal is filed within the 10-day appeal period that starts the day after the notice is mailed. If the 10<sup>th</sup> day falls on a Saturday, Sunday, or a legal holiday, the appeal period extends through the next full business day. If an appeal is filed, a public hearing will be scheduled before the Board of County Commissioner's pursuant to Multnomah County Code Section .8205 and in compliance with ORS 197.763. To file, complete a Notice of Review, and submit it to the Multnomah County Land Use Planning Division Office, together with a \$530.00 fee and supplemental written materials (as needed) stating the specific grounds, approval criteria, or standards on which the appeal is based. To review the applications file(s), obtain appeal forms, or other instructions, call the Multnomah County Land Use Planning Division at (503)-248-3043, or visit our offices at 1600 SE 190<sup>th</sup> Avenue, Portland, OR 97233 (hours: 8 a.m. to 4:30 p.m., Monday through Friday).*



15 4E Section 8

**Chart of Identified Issues for the Zone Change, ZC 1-98, and Plan Revision, PR 1-98  
Scheduled before the BCC on August 17, 1999**

ISSUE	CODE REQUIREMENT	WHO RAISED ISSUE?	STAFF COMMENTS	RECOMMENDATION
1. Burden of proof.	<p><b><u>MCC 11.05.290:</u></b></p> <p><b>The burden of proof is upon the person initiating a quasi-judicial plan revision. That burden shall be to persuade that the revision is:</b></p> <p><b>(A)(2) Evidence that the proposal conforms to the intent of relevant policies in the comprehensive plan or that the plan policies do not apply...</b></p>	<p>Staff:</p> <p>Requires a finding of the applicable Comprehensive Plan Policies have been met.</p> <p align="center">PLANNING COMMISSION DECISION</p> <p>Adopted by reference the findings of the April 26, 1999 Staff Report.</p>	<p>Staff made findings in the April 26, 1999 Staff Report that the applicant had not met Policies 2, 8, 13, 14, 22, 34, and 37.</p> <p>It is the intent of the Comprehensive Plan Policies to preserve and maintain farm and forest lands in Multnomah County.</p> <p>The Planning Commission was unanimous in their decision to deny the request for the Zone Change and Plan Revision.</p>	<p>Staff recommends the BCC adopt the Planning Commission findings.</p>
	Continued on next page.			

**Chart of Identified Issues for the Zone Change, ZC 1-98, and Plan Revision, PR 1-98  
Scheduled before the BCC on August 17, 1999**

ISSUE	CODE REQUIREMENT	WHO RAISED ISSUE?	STAFF COMMENTS	necessary services will be available to the site.
1. Burden of proof.  Continued.	<p><b><u>MCC 11.05.290:</u></b></p> <p><b>The burden of proof is upon the person initiating a quasi-judicial plan revision. That burden shall be to persuade that the revision is:</b></p> <p><b>(A)(3) Evidence that the uses allowed by the proposed changes will (1) not destabilize the land use pattern in the vicinity, (2) not conflict with existing or planned uses on adjacent lands, and (3) that necessary public services are or will be available to serve allowed uses.</b></p>	<p>Staff:</p> <p>Requires a finding that items (1) and (2) will <i>not</i> occur and that (3) is met.</p> <p align="center">PLANNING COMMISSION DECISION</p> <p>Adopted by reference the findings of the April 26, 1999 Staff Report.</p>	<p>Staff made findings in the April 26, 1999 Staff Report that the applicant had not met (A)(3). Under (1), the proposed zone change from EFU to RR may destabilize the land use pattern. The applicant states the intent to create two additional parcels under RR. This action would increase density, increase traffic, and create additional impervious surface area. Under (2), conflicts may occur with existing uses on adjacent lands (farming activities) and planned activities. Under (3), the applicant did not provide a Land Feasibility Study to show that the</p>	<p>The Planning Commission was unanimous in their decision to deny the request for the Zone Change and Plan Revision.</p> <p align="center">RECOMMENDATION</p> <p>Staff recommends the BCC adopt the Planning Commission findings.</p>

**Chart of Identified Issues for the Zone Change, ZC 1-98, and Plan Revision, PR 1-98  
Scheduled before the BCC on August 17, 1999**

ISSUE	CODE REQUIREMENT	WHO RAISED ISSUE?			
2. Irrevocably Committed.	<p><b><u>LCDC Goal 2 Land Use Planning:</u></b></p> <p><b>Part II (b) provides, "A local government may adopt an exception to a goal when: (b) The land subject to the exception is irrevocably committed to uses not allowed by the applicable goal because adjacent uses and other relevant factors make uses allowed by the applicable goal impracticable."</b></p>	<p>Staff &amp; Appellant:</p> <p>The applicant has requested an exception to Goal 2 called "irrevocably committed."</p> <p align="center">PLANNING COMMISSION DECISION</p> <p>Adopted by reference the findings of the April 26, 1999 Staff Report.</p> <p align="center">STAFF COMMENTS</p> <p>Staff made findings in the April 26, 1999 Staff Report the applicant had not met (A)(3) under Burden of Proof (Issue #1).</p> <p>OAR 660-004-0028 refers to a list of</p>	<p>"farm uses" as established in ORS 215.203 and OAR 660-033-0120.</p> <p>Examples include: farm stands, parks, playgrounds, transmission towers, and a living history museum.</p> <p>Staff made findings in the April 26, 1999 Staff Report that the applicant had not carried the burden of proof for the request for an exception to Goal 3 under the "irrevocably committed" provisions (one of three options under Goal 2) and the impracticable use of the property.</p> <p>Staff also made findings the applicant did not meet (a), (b), and (c), of the Exceptions</p>	<p>provisions of Goal 2, Part II. Staff found the land is not "irrevocably committed".</p> <p>Staff analyzed the tracts adjacent to the subject tract. The chart, on pg. 17 of the April 26, 1999 decision and attached to this matrix, provides a summary of the size and zoning of the tracts adjacent to the subject tract. The analysis reveals the average tract size of the four adjacent tracts is 25.11 acres. The subject tract consists of 19.55 acres. Farm or forest deferral is received on 94.54 acres of the 110.24 acres of the adjoining EFU tracts (4 of 6 tracts are zoned EFU), indicating the presence of income from farm or forest production on the surrounding tracts. In contrast, the non-EFU zoned parcels that adjoin the subject tract are</p>	<p>zoned Rural Residential (RR) (5.00 acres) and Multiple Use Agriculture (MUA-20) (4.80 acres).</p> <p>The Planning Commission was unanimous in their decision to deny the request for the Zone Change and Plan Revision.</p> <p align="center">RECOMMENDATION</p> <p>Adopt the Planning Commission findings.</p>

**Chart of Identified Issues for the Zone Change, ZC 1-98, and Plan Revision, PR 1-98  
Scheduled before the BCC on August 17, 1999**

ISSUE	CODE REQUIREMENT	WHO RAISED ISSUE?	PLANNING COMMISSION DECISION	He was given 30 minutes for his presentation.
3. Time.	<u><b>Rules for the Conduct of Hearings by the Planning Commission Acting on Quasi-Judicial and Legislative Action Proceedings of Multnomah County, Oregon.</b></u>	<p>Applicant:</p> <p>The applicant states that PC testimony was limited to only 20 minutes for a case he has worked on for 2 years.</p>	<p>The PC decision does not reference amount of time given for the applicant's presentation as the applicant stated this in the Notice of Review submitted on May 12, 1999.</p>	<p>The relevant criteria were identified at the Pre-Application Meeting held on March 28, 1996. These criteria are the criteria the Staff used to evaluate the case and make findings as established in the April 26, 1999 Staff Report. There have been no surprises, in terms of criteria, during the review of the case.</p>
			STAFF COMMENTS	
			<p>Under Section 6, Order of Procedure, of the Rules of Procedure, subsection (L) states that those testifying in support of an application have ten minutes for testimony.</p>	
			<p>The Planning Commission granted Mr. Walker's request for additional time.</p>	
				RECOMMENDATION
				<p>Staff recommends the BCC adopt the Planning Commission findings.</p>

**Chart of Identified Issues for the Zone Change, ZC 1-98, and Plan Revision, PR 1-98  
Scheduled before the BCC on August 17, 1999**

ISSUE	CODE REQUIREMENT	WHO RAISED ISSUE?	PLANNING COMMISSION DECISION	meet the criteria of OAR 660-004-0025. Staff findings state the applicant did not meet the impracticable standard under Part II of the Goal 2 Exceptions requirements. See also Issue #2. See also, OAR 660-033-0120, Uses Authorized on Agricultural Lands.	all uses allowed by the goals are impracticable, primarily as a result of uses established on adjacent parcels... the impracticability standard is a demanding one."
4. Demonstrating the difficulty of the site to farm.	<p><b><u>OAR 660-04-025:</u></b></p> <p><b>Exception requirements for Land Physically Developed.</b></p> <p><b>Findings of the compliance with this section is required to satisfy the "committed" criteria of OAR 660-04-028 (6)(f).</b></p>	<p><b>Appellant:</b></p> <p>The applicant states that "The Planning Commission imposed a standard requiring that we demonstrate the site was impossible to farm rather than impracticable."</p>	<p>The PC decision issued May 3, 1999, in findings #2 and #5, the PC found the applicant had not demonstrated the site was "irrevocably committed" and that the uses and activities of OAR 660-004-0025 and OAR 660-004-0028 are impracticable for the site.</p>	<p>Neither the Staff Report nor the Planning Commission Decision document includes criteria to show it is impossible to farm the site. The terms used by Staff include "irrevocably committed" and "impracticable" as used in the applicable criteria.</p>	<p>RECOMMENDATION</p> <p>Staff recommends the BCC adopt the Planning Commission findings.</p>
	<p><b><u>OAR 660-04-028:</u></b></p> <p><b>Exception requirements for Land Irrevocably Committed to Other Uses.</b></p>		<p>STAFF COMMENTS</p>	<p>Staff references a LUBA case, <i>Sandgren v. Clackamas County</i> (1995) which found, "to approve an irrevocably committed exception, the county must first find that</p>	

**Chart of Identified Issues for the Zone Change, ZC 1-98, and Plan Revision, PR 1-98  
Scheduled before the BCC on August 17, 1999**

ISSUE	CODE REQUIREMENT	WHO RAISED ISSUE?	PLANNING COMMISSION DECISION	eliminated Division 5 and the provisions of OAR 660-05-010(6).	RECOMMENDATION
5. Profitability of a farm.	<p><b><u>OAR 660-033-0030:</u></b></p> <p><b>OAR 660-033-0030 states, "Notwithstanding the definition of 'farm use' in ORS 215.203(2)(a), profitability or gross farm income shall not be considered in determining whether land is agricultural land or whether Goal 3 'Agricultural Land' is applicable."</b></p>	<p><b>Appellant:</b></p> <p>The applicant states that "Under the 'other relevant factors' we introduced the practical difficulty of intent to make profit on a net farmable acreage of 6-7 acres and this was immediately rebutted by Staff by selectively siting OAR 660-05-010(6)."</p>	<p>The PC decision includes the findings of the Staff Report issued April 26, 1999. The profitability of the site for farm use is not considered a factor under the applicable code provisions for the applicant's request for a rezone.</p>	<p>Therefore, the applicable state statute is OAR 660-033-0030(5). This statute establishes, "profitability or gross farm income shall not be considered in determining whether land is agricultural land or whether Goal 3 'Agricultural Land' is applicable."</p>	<p>Staff recommends the BCC adopt the Planning Commission findings.</p>
			<p align="center">STAFF COMMENTS</p>	<p>In addition, the findings of the Staff Report and the Planning Commission stated the applicant did not meet the criterion of (a) through (f) of subsection (6) under OAR 660-004-0028. Staff notes that even if the criterion of (g) were met (the "Other relevant factors" provision), it is not persuasive enough in making an overall finding of compliance with OAR 660-004-0028(6).</p>	
			<p>The applicant cites a statute that does not exist, OAR 660-05-010(6). On February 18, 1994, the Land Conservation and Development Commission adopted Division 33 of the Oregon Administrative Rules. This action</p>		

Chart of Identified Issues for the Zone Change, ZC 1-98, and Plan Revision, PR 1-98  
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ISSUE	CODE REQUIREMENT	WHO RAISED ISSUE?	STAFF COMMENTS	
6. <i>Impractical</i> versus <i>impracticable</i> .	<p><b><u>Goal 2, Land Use Planning:</u></b></p> <p>A local government may adopt an exception to a goal when: (b) The land subject to the exception is irrevocably committed to uses not allowed by the applicable goal because the adjacent uses and other relevant factors make uses allowed by the applicable goal impracticable.</p>	<p>Appellant:</p> <p>The applicant states that "The Staff and the Planning Commission insisted that we demonstrate that all uses permitted by Goal 3 be impossible rather than impractical."</p>	<p>The definitions of <i>impractical</i> ("unwise to implement or maintain in practice") and <i>impracticable</i> ("not practicable; incapable of being performed or accomplished by the means employed or at command") are distinctly different.</p>	<p>County). See also OAR 660-033-0120. Issues #2 and #4 also relate to this Issue.</p>
		<p align="center">PLANNING COMMISSION DECISION</p>	<p>The threshold for not doing a use on a site is much stronger under the definition of <i>impracticable</i> than under <i>impractical</i> (see pg. 5 of the April 26, 1999 Staff Report).</p>	<p>RECOMMENDATION</p>
		<p>The PC decision states the applicant has not demonstrated the Burden of Proof, including the impracticable use of the site.</p>	<p>The <i>impracticable</i> test must be applied to all "farm uses" allowed under ORS 215.203 (<i>Sandgren v. Clackamas</i></p>	<p>Staff recommends the BCC adopt the Planning Commission findings.</p>

SID	Zoning	Tract Size	Farm/Forest Deferral	Development
West				
1S 4E 07DD 100	MUA 20	4.80 acres	none	Dwelling
1S 4E 07DD 200	EFU	26.12 acres	25.12 acres	Dwelling
South				
1S 4E 08CC 200	EFU	14.00 acres	13.00 acres	Dwelling
East				
1S 4E 08CD 400; 1S 4E 17BA 400	EFU	57.42 acres	56.42 acres	Dwelling
North				
1S 4E 08CB 1200	EFU	2.90 acres	none	Dwelling
1S 4E 08CB 1000	RR	5.00 acres	None	Vacant
Subject Tract				
1S 4E 08CC 100, 300	EFU	21.55 acres	20.55 acres	Dwellings

The tracts identified in the above table as contiguous to the subject tract consist of 110.24 acres. Of this 110.24 acres, 5 acres are zoned Rural Residential, 4.80 acres are zoned MUA-20, and 100.44 acres are zoned EFU.

There are four adjoining tracts zoned EFU for an average tract size of 25.11 acres (100.44 acre/ 4 tracts) while the subject tract consists of 21.55 acres. Farm or forest deferral is received on 94.54 acres of the adjoining EFU tracts, indicating the presence of income from farm or forest production on the surrounding tracts. Only 15.70 acres of all adjacent EFU tracts are not in Farm or Forest deferral. Further, when reviewing soils maps all adjoining tracts were identified as High-Value Farmland with the only exception being the one parcel zoned Rural Residential.

The applicant submits the following as "other relevant factors": geologic hazard zones, steep slopes, slope stabilizing vegetation, inaccessibility to farmable areas, physical development, adverse soils related to hardpans, persistent soil disease, exception areas that are directly contiguous, and dangerous access to property from 302<sup>nd</sup> Avenue."

- (7) The evidence submitted to support any committed exception shall, at a minimum, include a current map, or aerial photograph, which shows the exception area and adjoining lands, and any other means needed to convey information about factors set forth in this rule. For example, a local government may use tables, charts, summaries or narratives to supplement the maps or photos. The applicable factors set forth in Section (6) of this rule shall be shown on the map or aerial photo.

Rebuttal of Multnomah County Planning Commission Findings

1. The staff analysis of adjoining tracts is inconclusive and is not based on any discussions with the property owners who control those lands. Nor did the staff provide any verifiable evidence from the US Department of Agriculture statistics for Multnomah County. The staff analysis consisted only of listing the soils as high value and what property owners receive farm deferrals.

Two letters are in the record from adjacent and nearby long-term commercial farm operators that factually state that only 5-7 acres of land is actually suitable for farming use. The actual figure is closer to 5 acres since the Stafford dwelling compound and accessory structures occupy 2 acres.

The staff also states in finding #1 that most of the adjacent tracts are zoned EFU but what they fail to disclose is that two of those five EFU zoned parcels are 2.19 and 3.0 acres respectively and that they function totally as rural residences. Three parcels are non-resource zoned and are 5.0, 4.8 and 2.83 acres respectively. None of these parcels have any farming activities at all.

The staff also states that the average tracts "have average tract sizes exceeding 20 acres." The correct average for EFU zoned land is 12.86 acres. Table 17 in the staff report is very misleading. They list a 57.42 acre parcel that is split zoned between EFU and CFU. Since finding #1 specifically refers to EFU zoned land they should limit the analysis to the EFU zoned portion of a tract.

The fact remains that the subject property has a substantially greater area that resembles the adjacent exception areas than the adjacent farm area in historical useage, topography and net farmable area.

2. The staff and planning commission finding on this is based on a total misunderstanding of the Sangren case and the preponderance of evidence relating to adjoining uses. A finding must be made that all uses allowed by the goal are impracticable (not impossible as the staff and planning commission connote), "primarily as a result of uses established on adjacent parcels." The adjacent uses exhibit none of the uses listed except three farm parcels used for cabbage pro-

duction and nursery stock.

The property owner has stated repeatedly that everything his grandfather and father raised failed including hay, strawberries and most recently nursery stock. The steep slopes, severe ice storms from the gorge, short growing season, large competitor farmers, soil disease, wet soils and difficulty of moving farm equipment to and from the site have collectively rendered the site impractical for farming. The lack of any large contiguous and relatively level field within the ownership is also a contributing factor to the issue of impracticability.

The staff and planning commission findings state that the applicant attempts to show the farm use is "impracticable" even though farm uses occur on the property now and have so previously. At the present time the owner has a one-acre patch of nursery stock left on a 21.55 acre parcel. Is it fair to find that the site is predominantly suitable for farm use when one to six acres is the most land ever farmed within this site? Never has more than 1/3 of this site ever been farmed and in no instance has the farm enterprise been practicable. All of the farm uses have resulted in significant losses to three generations of the Stafford family.

The property owner has clearly met the burden of proof that no land use conflicts will be created. The oral and written testimony clearly supports a positive finding of non-interference with resource uses.

3. The same physical site characteristics that make this property impracticable for farm uses allowed by the goal do not render the property useless for residential purposes. If this were true, the parcels to the north located on steep terrain would not exist.

The staff and planning commission erroneously conclude that the areas of steep slopes and geologic hazards would be destabilized by residential uses. The area needed to operate farm equipment efficiently, establish economic farm field sizes and maintain buffers are greater than those needed for a standard dwellings. Dwelling compounds can exist in 10,000 square foot areas but farm fields need to be several acres in size in order to operate equipment efficiently and to generate any significant income (refer to Site Characteristics of Multnomah County Farms).

The subject property is already comprised of at least three legal lots and the maximum number of lots and dwellings allowed would be four. Lots 11 and 12 could be improved for dwelling sites without any adverse impacts to the geologic hazard areas because each of these sites have small and relatively level benches that can accommodate a dwelling and supporting infrastructure. It is not illogical as the staff suggests to rezone this property in light of comparative limitations of farming and residential use, particularly with respect to climate, field size and other limitations that have no bearing on residential use.

4. The property owner strongly disagrees with the staff and planning commission findings on this sensitive issue. The property owner has been directly affected by traffic and the staff is in no position to substantiate denial on this issue. The simple fact is that farm equipment is oversized, slow moving and often lacks safety equipment such as lights, blinkers and horns. Farm traffic is also highly concentrated during the summer which coincides with peak traffic loadings that are substantiated statewide by ODOT. Late summer harvesting and trucking also coincide with the start of the school year at Sam Barlow High School.

The potential addition of two dwellings on this site would have an almost imperceptible impact on traffic flow and safety. The current Average Daily Traffic (ADT) on Hayden Road (302nd Avenue) is approximately 1,800 vehicles. The addition of two house would generate another twenty trips according to the best current data available from the Institute of Traffic Engineers. The potential addition of 20 daily trips represents a 1.1% increase in traffic. This impact is small compared to a 20 house subdivision which would create a 15% increase in cut through traffic(as opposed to destination traffic).

In 1983 the ADT on 302nd Avenue was 704 and in 1999 is projected to be 1,800. Farm equipment that could formerly move safely on this road must now contend with more than a thousand more cars than 16 years ago. The growth in Gresham and Troutdale contributes to most of this increase and only a small portion to the few rural and farm residences allowed.

The other factors not considered in the findings are the potential new accesses to the property(which would eliminate blind hills and improve sight distance) and

the fact that cars make safer and faster turning movements than farm machinery.

5. Jon Jinnings has never visited the subject property nor has he lived or farmed the property or surrounding properties. The letter he sent in to the record is the typical letter field representatives for DLCD submit to the record statewide. From an armchair position they provide a response that is not based on any substantial knowledge of the site and surrounding area.

The magnitude of this request is not great considering that the parcel has demonstrated limitations for agriculture that is based on historic records dating to 1904, letters from neighbors and area farmers attesting to this fact, and USDA farm characteristic data that demonstrates irrefutably that the net farmable area on this site is incapable of meeting even the lowest thresholds for practical farm units in Multnomah County. Four failed farm crops also attest to the extreme difficulty of this site for farming.

The property owner respectfully requests that the Multnomah County Board of Commissioners approve this request since it is clearly evident that the subject property unquestionably exhibits the characteristics of the exception areas to the west and north rather than the farm characteristics of lands to the southeast.

**DECISION RECOMMENDED BY THE  
PLANNING COMMISSIONERS OF MULTNOMAH COUNTY, OREGON:**

In the matter of the adoption of amendments to the Multnomah County Zoning Ordinance by the Multnomah County Board of Commissioners regarding the request for the Zone Change, ZC 1-98, and Plan Revision, PR 1-98, for the subject tract for the proposed change in zoning from Exclusive Farm Use (EFU) to Rural Residential (RR), the Planning Commission denies the request. The Planning Commission finds the land use applications do not carry the burden of proof to meet the applicable approval criteria.

The Multnomah County Planning Commission finds:

- 1) The applicant has provided an inadequate analysis of adjacent uses occurring on adjacent tracts and of adjacent tracts (as in the land). Staff's analysis demonstrates the subject tract and adjoining tracts include High-Value Farmland. Most of the adjacent tracts are zoned EFU, in Farm Deferral tax accounts, and have average tract sizes exceeding 20 acres. Staff has provided a chart on page 17 of the Staff Report, dated April 26, 1999, that summarizes this information.
- 2) It is the applicant's burden to demonstrate, in accordance with MCC 11.05.290 Burden of Proof, that the subject tract, and not just the area being requested for the Zone Change and Plan Revision, cannot be practicably put to uses authorized under Goal 3. The list under Goal 3 (OAR 660-33-120 Uses on Agricultural Lands) is a demanding and exhaustive list of uses for which the applicant must demonstrate as impracticable uses for the subject tract. It is also the burden of the applicant to demonstrate that no land use conflicts will be created, the land use pattern will not be destabilized, and that public services will be available to those areas [MCC 11.05.290 (A)(3)]. Further, the applicant attempts to show farm use is impracticable while stating that farm uses occur on the subject tract. The subject tract currently includes farm uses and the applicant has indicated that the site could accommodate other crops on the tract. The applicant also stated that nursery stock and livestock were prior uses on the tract.
- 3) The proposed zone change would result in land zoned for Rural Residential use. A primary use allowed in the RR zone is single-family residential development on 5-acre parcels. The area proposed for rezoning from EFU to RR includes lands with slopes in excess of 20%. The applicant narrative submitted April 6, 1999 via fax, describes "steep slopes" and a "Geologic Hazard Zone" for the subject tract. The applicant submitted a map entitled "Figure 4 Detailed Topographic Analysis" that shows areas of the subject tract with slope greater than 20%. Staff used soil maps, the Slope Hazard Map, and the Soil Survey of Multnomah County, OR as resources for slope determinations of the subject tract and adjacent tracts. Multnomah County's Comprehensive Plan Policy #14, Developmental Limitations, states that development shall be directed away from areas with slopes exceeding 20%. Staff has provided a response to Policy #14 in this Staff Report. Staff states that if the subject tract contains geologically limiting factors such as a stream, a ravine, steep slopes, and heavy vegetation ("helps stabilize the steep slopes and should be retained" according to the applicant), then it is illogical to conclude the parcels would be better served by being zoned with a designation that allows a five acre minimum lot size and single-family residential development. It is also worthy to note that even if a portion of the tract were demonstrated to be unfarmable, retention of the land in open space is consistent with Goal 3, and clearly would have no impact on the ability to use the remainder of the parcel for uses allowed under Goal 3.
- 4) The applicant has argued that traffic in the area has resulted in conflicts with farm uses. Staff notes that the applicant argument actually substantiates Staff's reasons for denial. Staff states that additional residential development would exacerbate the traffic problems cited by the applicant and would necessitate additional access across High-Value Farmland. Comprehensive Plan Policy #34, Trafficways, includes an analysis of traffic impacts and concerns.

- 5) Jon Jinings of the Department of Land Conservation and Development submitted a letter of comment on the proposed rezone of the subject tract from EFU to RR. Mr. Jinings states, "In conclusion, it is difficult to envision a situation where nearly twenty acres comprised of productive agricultural soils can not be managed for farm use as described in ORS 215.203, particularly when that property is receiving farm tax deferral and is nearly surrounded by land planned and zoned for exclusive farm use. The applicants' submittal fails to demonstrate that the subject property is 'irrevocably committed' to rural residential uses. We are concerned that approval of the subject proposal would set an erroneous precedent and prompt other property owners to come forward with similar proposals to the detriment of the agricultural land base. We recommend that the Planning Commission uphold staff's recommendation and allow the property to retain its EFU zoning."
- 6) In conclusion, the applicant has not carried the burden of proof required under Section 11.05.290. Subsection (B) of MCC 11.05.300 states, "A quasi-judicial plan revision considered denied under subsection (C) of MCC 11.05.190 shall be transmitted to the board with summary findings stating that the burden under MCC 11.05.290 has not been carried."

It is hereby resolved:

That the Multnomah County Planning Commission hereby denies the proposed Zone Change, ZC 1-98, and Plan Revision, PR 1-98, a request to change the subject tract from the current established zoning of Exclusive Farm Use (EFU) to Rural Residential (RR). The Planning Commission adopts by reference the findings contained in the April 26, 1999 Staff Report as its own. This decision will be put on the next available Consent Agenda of the Multnomah County Board of Commissioners.

DENIED this 3rd day of May, 1999.

By

  
John Ingle, Chair  
Multnomah County Planning Commission  
Multnomah County, Oregon

Notice

*The Planning Commissioners' Decision detailed above will become final unless an appeal is filed within the 10-day appeal period that starts the day after the notice is mailed. If the 10<sup>th</sup> day falls on a Saturday, Sunday, or a legal holiday, the appeal period extends through the next full business day. If an appeal is filed, a public hearing will be scheduled before the Board of County Commissioner's pursuant to Multnomah County Code Section .8205 and in compliance with ORS 197.763. To file, complete a Notice of Review, and submit it to the Multnomah County Land Use Planning Division Office, together with a \$530.00 fee and supplemental written materials (as needed) stating the specific grounds, approval criteria, or standards on which the appeal is based. To review the applications file(s), obtain appeal forms, or other instructions, call the Multnomah County Land Use Planning Division at (503)-248-3043, or visit our offices at 1600 SE 190<sup>th</sup> Avenue, Portland, OR 97233 (hours: 8 a.m. to 4:30 p.m., Monday through Friday).*