

ANNOTATED MINUTES

Tuesday, July 23, 1991 - 9:30 AM
Multnomah County Courthouse, Room 602

PLANNING ITEMS

The Following July 1, 1991 Decisions of the Planning Commission are Reported to the Board for Acceptance and Implementation by Board Order:

- P-1 CS 7-91
 SEC 18-91 APPROVE, SUBJECT TO CONDITIONS, the Requested Community Service Use Request to Add 40 Slips to the Boat Marina, and APPROVE, SUBJECT TO CONDITIONS, the Requested SEC Permit for Alteration of a Use within an Area of Significant Environmental Concern, for Property Located at 18699 NE MARINE DRIVE

ACCEPTED.

- P-2 CU 14-91 DENY the Conditional Use Request for Development of Property with a Non-Resource Related Single Family Residence, for Property Located at 17050 NW SKYLINE BOULEVARD

MOTION TO RETURN CU 14-91 TO THE PLANNING COMMISSION AND RETURN THE FILING FEE WAS APPROVED.

- P-3 PR 5-91
 ZC 5-91 DENY the Requested Amendment of the Comprehensive Plan Map Changing the Plan Designation from Commercial Forest Use to Multiple Use Forest for that Approximately 10 Acre Portion of the Subject Property, and DENY the Requested Amendment of Sectional Zoning Map #26, Changing the Described Property from CFU-80, Commercial Forest Use to MUF-38, Multiple Use Forest, for Property Located at 19100 NW SKYLINE BOULEVARD

ACCEPTED.

-
- P-4 CU 6-91 Request for Board Reconsideration of the Scope of Review for the August 6, 1991 Board Hearing in the Matter of an Appeal of the Decision to APPROVE, SUBJECT TO CONDITIONS, a Requested Conditional Use Permit for a Commercial Activity that is in Conjunction with Farm Uses in the EFU Zoning District, for Property Located at 9833 NW CORNELIUS PASS ROAD

CU 6-91 CONTINUED TO TUESDAY, AUGUST 6, 1991.

P-5 LD 1-91 PUBLIC HEARING/ON THE RECORD/10 MINUTES PER SIDE to Review the Decision of the Planning Commission of May 7, 1991, DENYING REQUESTED APPEAL AND APPROVING, SUBJECT TO CONDITIONS, the Requested Type III Land Division, a Minor Partition Resulting in Two Lots, Including a Flag Lot, Based on the Findings and Conclusions in the Tentative Plan Decision, Dated January 24, 1991, for Property Located at 6075 SW MILL STREET

PUBLIC HEARING HELD. TESTIMONY HEARD. MOTION TO SUSTAIN PLANNING COMMISSION DECISION WAS APPROVED.

P-6 HV 6-91 PUBLIC HEARING/ON THE RECORD PLUS ADDITIONAL TESTIMONY/10 MINUTES PER SIDE to Review the Decision of the Planning Commission of June 3, 1991, APPROVING, SUBJECT TO CONDITIONS, Requested 25 Foot Rear Yard Setback Variance to Allow Construction of an Accessory Building, Located Five Feet from the South Property Line, for Property Located at 17930 NW CHESTNUT LANE

PUBLIC HEARING HELD. TESTIMONY HEARD. MOTION TO SUSTAIN PLANNING COMMISSION DECISION WAS APPROVED.

COMMISSIONER KELLEY REQUESTED THAT PLANNING STAFF PROVIDE THE TESTIMONY TO THE PLANNING COMMISSION AND STAFF REPORTS AS PART OF THE PACKET INFORMATION SUBMITTED WITH ALL PLANNING ITEMS TO COME BEFORE THE BOARD OF COUNTY COMMISSIONERS. THIS WAS ACKNOWLEDGED BY ROBERT HALL OF THE PLANNING OFFICE

Tuesday, July 23, 1991 - 11:00 AM
Multnomah County Courthouse, Room 602

REGULAR MEETING

DEPARTMENT OF ENVIRONMENTAL SERVICES

1. Ratification of an Intergovernmental Agreement Between Multnomah County and Oregon State University Extension Service to Coordinate and Organize 4-H Activities Related to the 1991 Multnomah County Fair, for the Period July 23, 1991 through August 1, 1991

APPROVED.

Tuesday, July 23, 1991 - 11:00 AM
Multnomah County Courthouse, Room 602

AGENDA REVIEW

2. Review of Agenda for Regular Meeting of July 25, 1991

R-5 JOHN DUBAY ADVISED THAT EXHIBIT A FROM

RESOLUTION 91-85 WOULD BE ATTACHED TO THE
AMENDED RESOLUTION BEFORE THE BOARD FOR
CONSIDERATION.

Thursday, July 25, 1991 - 9:30 AM
Multnomah County Courthouse, Room 602

REGULAR MEETING

CONSENT CALENDAR

JUSTICE SERVICES

SHERIFF'S OFFICE

- C-1 Ratification of an Intergovernmental Agreement Between the City of Portland and Multnomah County to Provide Photographic Darkroom Services for Development of Photographs of Crime Scenes and Criminals, for the Period July 1, 1991 through June 30, 1992

APPROVED.

DEPARTMENT OF HUMAN SERVICES

- C-2 Ratification of an Intergovernmental Agreement Between the State Children's Services Division and Multnomah County to Provide Funding for Weekly In-Home Visits by Nurses and/or Trained Volunteers to 50 Teen Mothers and Their Infants Through the Child's First Year, for the Period July 1, 1991 through June 30, 1992

APPROVED.

- C-3 Ratification of an Amendment to the Physicians Care Organization Intergovernmental Agreement Between Multnomah County and the State Office of Medical Assistance Program, Reducing the Net Capitation Fee as a Result of Actions Taken by the Oregon Legislature

APPROVED.

- C-4 Ratification of an Intergovernmental Agreement Between Multnomah County and the Oregon Health Sciences University to a Provide Single Point for Medical Direction, Data Collection and Research as Required by Multnomah County Code and Emergency Medical Services Rules, for the Period July 1, 1991 through June 30, 1992

APPROVED.

- C-5 Ratification of an Amendment to the Intergovernmental Agreement Between Multnomah County and Parkrose School District to Provide Conditions and Procedures for Operation of the Teen Health Clinic at Parkrose High School

APPROVED.

- C-6 Ratification of an Intergovernmental Agreement Between Multnomah County and Portland School District No. 1 to Provide Day Treatment Services for Partners Project Clients of the Mental and Emotional Disabilities Program Office, for the Period July 1, 1991 through June 30, 1992

APPROVED.

- C-7 Ratification of an Intergovernmental Agreement Between Multnomah County and Oregon Health Sciences University to Provide Day Treatment Services for Partners Project Clients and Adult Services for Clients of the Mental and Emotional Disabilities Program Office, for the Period July 1, 1991 through June 30, 1992

APPROVED.

- C-8 Ratification of an Intergovernmental Agreement Between Multnomah County and University Hospital to Provide Outpatient Services for Partners Project Clients of the Mental and Emotional Disabilities Program Office, for the Period July 1, 1991 through June 30, 1992

APPROVED.

REGULAR AGENDA

DEPARTMENT OF HUMAN SERVICES

- R-1 Request for Approval in the Matter of a Notice of Intent to Apply for a Grant from the Centers for Disease Control for Development of a Prevention of HIV in Women and Infants Project

APPROVED.

- R-2 Ratification of an Intergovernmental Agreement Between Multnomah County and Oregon Health Sciences University School of Nursing to Provide Evaluation of Program Changes in the County's Delivery of Prenatal Care to Multnomah County Health Division Clients, for the Period August 1, 1991 through June 30, 1992

APPROVED.

DEPARTMENT OF ENVIRONMENTAL SERVICES

- R-3 ORDER in the Matter of the Quitclaim to the City of Portland of the Interest, if any, of Multnomah County in the Land Underlying that part of S.W. Baird Street Adjacent to Block 26, West Portland and Lots 1 and 2, Woods Parkway (Continued from July 18, 1991)

MOTION TO REMOVE R-3 FROM THE AGENDA AT THE REQUEST OF THE ASH CREEK NEIGHBORHOOD ASSOCIATION THROUGH BOB OBERST OF FACILITIES AND PROPERTY MANAGEMENT WAS APPROVED.

NON-DEPARTMENTAL

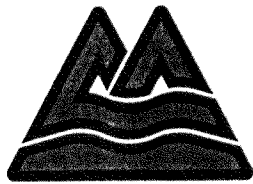
- R-4 Ratification of an Intergovernmental Agreement Between Multnomah County and the City of Portland to Provide Consolidation of Affirmative Action Programs, for the Period July 1, 1991 through June 30, 1992

APPROVED.

- R-5 RESOLUTION in the Matter of Amending Resolution 91-85 to Include Technical Changes Relating to the Transfer of Various Tax Foreclosed Properties to Northeast Community Development Corporation to Aid the Nehemiah Housing Opportunity Program (as Discussed by the Board at its July 18, 1991 Meeting)

RESOLUTION 91-110 APPROVED.

0161C/1-5/cap



MULTNOMAH COUNTY OREGON

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

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

AGENDA

MEETINGS OF THE MULTNOMAH COUNTY BOARD OF COMMISSIONERS

FOR THE WEEK OF

JULY 22 - 26, 1991

Tuesday, July 23, 1991 - 9:30 AM - Planning ItemsPage 2
Tuesday, July 23, 1991 - 11:00 AM - Regular MeetingPage 3
Tuesday, July 23, 1991 - 11:00 AM - Agenda ReviewPage 3
Thursday, July 25 - 9:30 AM - Regular MeetingPage 3

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

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

Tuesday, July 23, 1991 - 9:30 AM

Multnomah County Courthouse, Room 602

PLANNING ITEMS

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App
SEC 18-91 APPROVE, SUBJECT TO CONDITIONS, the Requested Community Service Use Request to Add 40 Slips to the Boat Marina, and APPROVE, SUBJECT TO CONDITIONS, the Requested SEC Permit for Alteration of a Use within an Area of Significant Environmental Concern, for Property Located at 18699 NE MARINE DRIVE

* P-2

App
CU 14-91 DENY the Conditional Use Request for Development of Property with a Non-Resource Related Single Family Residence, for Property Located at 17050 NW SKYLINE BOULEVARD *Continued to 8-6-91 motion to Return to the Planning Commission & Return Hearing fee*

P-3

PR 5-91

App
ZC 5-91 DENY the Requested Amendment of the Comprehensive Plan Map Changing the Plan Designation from Commercial Forest Use to Multiple Use Forest for that Approximately 10 Acre Portion of the Subject Property, and DENY the Requested Amendment of Sectional Zoning Map #26, Changing the Described Property from CFU-80, Commercial Forest Use to MUF-38, Multiple Use Forest, for Property Located at 19100 NW SKYLINE BOULEVARD

* P-4

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* P-5

App. Sustained PC Dec.
LD 1-91 PUBLIC HEARING/ON THE RECORD/10 MINUTES PER SIDE to Review the Decision of the Planning Commission of May 7, 1991, DENYING REQUESTED APPEAL AND APPROVING, SUBJECT TO CONDITIONS, the Requested Type III Land Division, a Minor Partition Resulting in Two Lots, Including a Flag Lot, Based on the Findings and Conclusions in the Tentative Plan Decision, Dated January 24, 1991, for Property Located at 6075 SW MILL STREET

P-6

App Sustained PC Dec.
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Thursday, July 25, 1991 - 9:30 AM

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DEPARTMENT OF HUMAN SERVICES

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- C-3 Ratification of an Amendment to the Physicians Care Organization Intergovernmental Agreement Between Multnomah County and the State Office of Medical Assistance Program, Reducing the Net Capitation Fee as a Result of Actions Taken by the Oregon Legislature

DEPARTMENT OF HUMAN SERVICES - continued

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REGULAR AGENDA

DEPARTMENT OF HUMAN SERVICES

- R-1 Request for Approval in the Matter of a Notice of Intent to Apply for a Grant from the Centers for Disease Control for Development of a Prevention of HIV in Women and Infants Project
- R-2 Ratification of an Intergovernmental Agreement Between Multnomah County and Oregon Health Sciences University School of Nursing to Provide Evaluation of Program Changes in the County's Delivery of Prenatal Care to Multnomah County Health Division Clients, for the Period August 1, 1991 through June 30, 1992

DEPARTMENT OF ENVIRONMENTAL SERVICES

- R-3 ORDER in the Matter of the Quitclaim to the City of Portland of the Interest, if any, of Multnomah County in the Land Underlying that part of S.W. Baird Street Adjacent to Block 26, West Portland and Lots 1 and 2, Woods Parkway (Continued from July 18, 1991)

NON-DEPARTMENTAL

- R-4 Ratification of an Intergovernmental Agreement Between Multnomah County and the City of Portland to Provide Consolidation of Affirmative Action Programs, for the Period July 1, 1991 through June 30, 1992
- R-5 RESOLUTION in the Matter of Amending Resolution 91-85 to Include Technical Changes Relating to the Transfer of Various Tax Foreclosed Properties to Northeast Community Development Corporation to Aid the Nehemiah Housing Opportunity Program (as Discussed by the Board at its July 18, 1991 Meeting)

BOARD OF COUNTY COMMISSIONERS
FORMAL BOARD MEETING
RESULTS

MEETING DATE: 7-23-91 Planning + Reg. Item

Agenda Item #	Motion	Second	APP/NOT APP
* <u>P-1</u>	<u>SK</u>	<u>GH</u>	<u>App</u> ²⁶⁵
<u>P-2</u>	<u>SK</u>	<u>GH</u>	<u>App</u>
* <u>P-3</u>	<u>SK</u>	<u>GH</u>	<u>App</u>
<u>P-4</u>	<u>SK</u>	<u>GH</u>	<u>App</u>
<u>P-5</u>	<u>GH</u>	<u>SK</u>	<u>App</u>
<u>P-6</u>	<u>GH</u>	<u>SK</u>	<u>App</u>
<u>RES #1</u>	<u>SK</u>	<u>GH</u>	<u>App</u>
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Meeting Date: July 23, 1991

Agenda No.: P-1

(Above space for Clerk's Office Use)

AGENDA PLACEMENT FORM
(For Non-Budgetary Items)

SUBJECT: _____

BCC Informal _____ BCC Formal July 23, 1991
(date) (date)

DEPARTMENT DES DIVISION Planning

CONTACT Sharon Cowley TELEPHONE 2610

PERSON(S) MAKING PRESENTATION Planning Staff

ACTION REQUESTED:

☐ INFORMATIONAL ONLY

☐ POLICY DIRECTION

☒ APPROVAL

ESTIMATED TIME NEEDED ON BOARD AGENDA: 2 Minutes

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

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

CS 7-91/SEC 18-91 Decision of the Planning Commission of July 1, 1991 with recommendation to the Board for approval

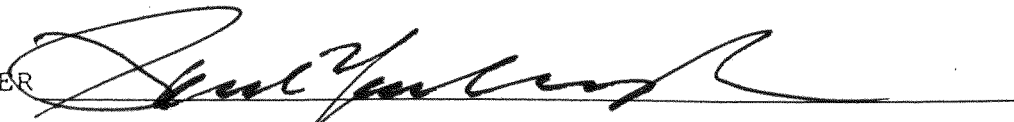
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SIGNATURES:

ELECTED OFFICIAL _____

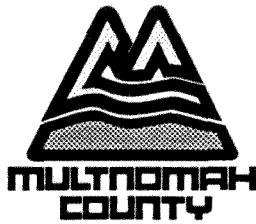
Or

DEPARTMENT MANAGER



(All accompanying documents must have required signatures)

CLERK OF
COUNTY COMMISSIONERS
1991 JUL 16 PM 2:03
MULTNOMAH COUNTY
OREGON



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

Decision

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

July 1, 1991

CS 7-91, #464
SEC 18-91, #464

Community Service Designation
Area of Significant Environmental Concern
(Boat Moorage Expansion for Duck's Marina)

Applicant requests approval to expand Ducks Moorage by adding 40 new boat slips. The zone designation is UF-20, SEC, FW, NI, CS, community service use. The applications are for expansion of a CS Use and an SEC Permit for alteration of a use within an "Area of Significant Environmental Concern". The 40 new boat slips would be accommodated by extending new floating walkways into the river approximately 200-feet (374 feet total) and relocating some existing houseboats within the moorage.

Location: 18699 NE Marine Drive

Legal: Tax Lots '45' and '58', Section 20, 1N-3E, 1990 Assessor's Map

Site Size: 1.36 Acres

Size Requested: Same

Property Owners: Thomas E. Winston
18699 NE Marine Drive, 97230

Applicant: Same

Comprehensive Plan: Urban Future

Zoning: UF-20, Urban Future-20
SEC, Area of Significant Environmental Concern
FW, Flood Way and NI, Noise Impact
CS, Community Service Use

Sponsor's Proposal: UF-20, Urban Future-20
SEC, Area of Significant Environmental Concern
FW, Flood Way and NI, Noise Impact
CS, Community Service Use (expanded 213-feet north into the river)

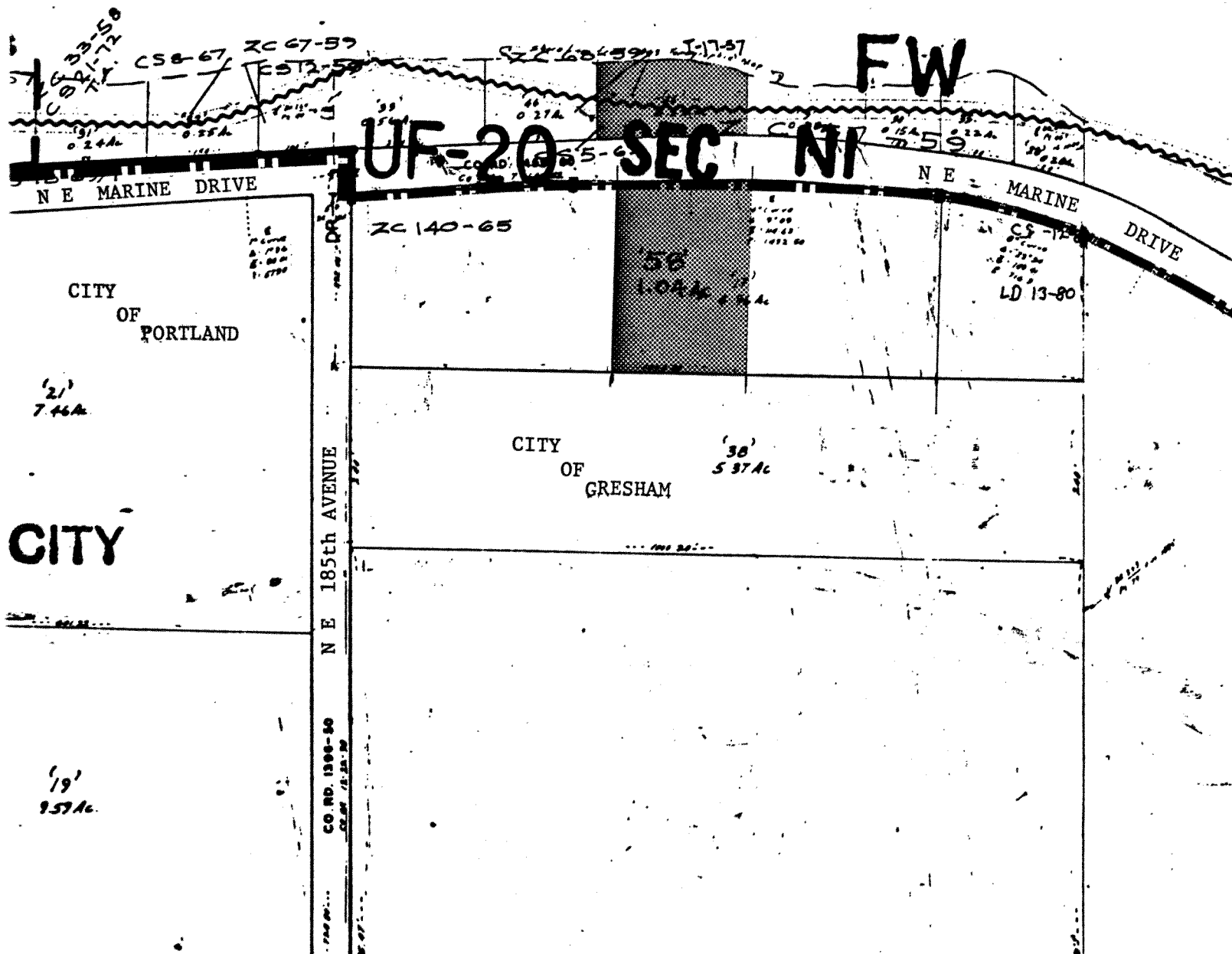
PLANNING COMMISSION DECISIONS

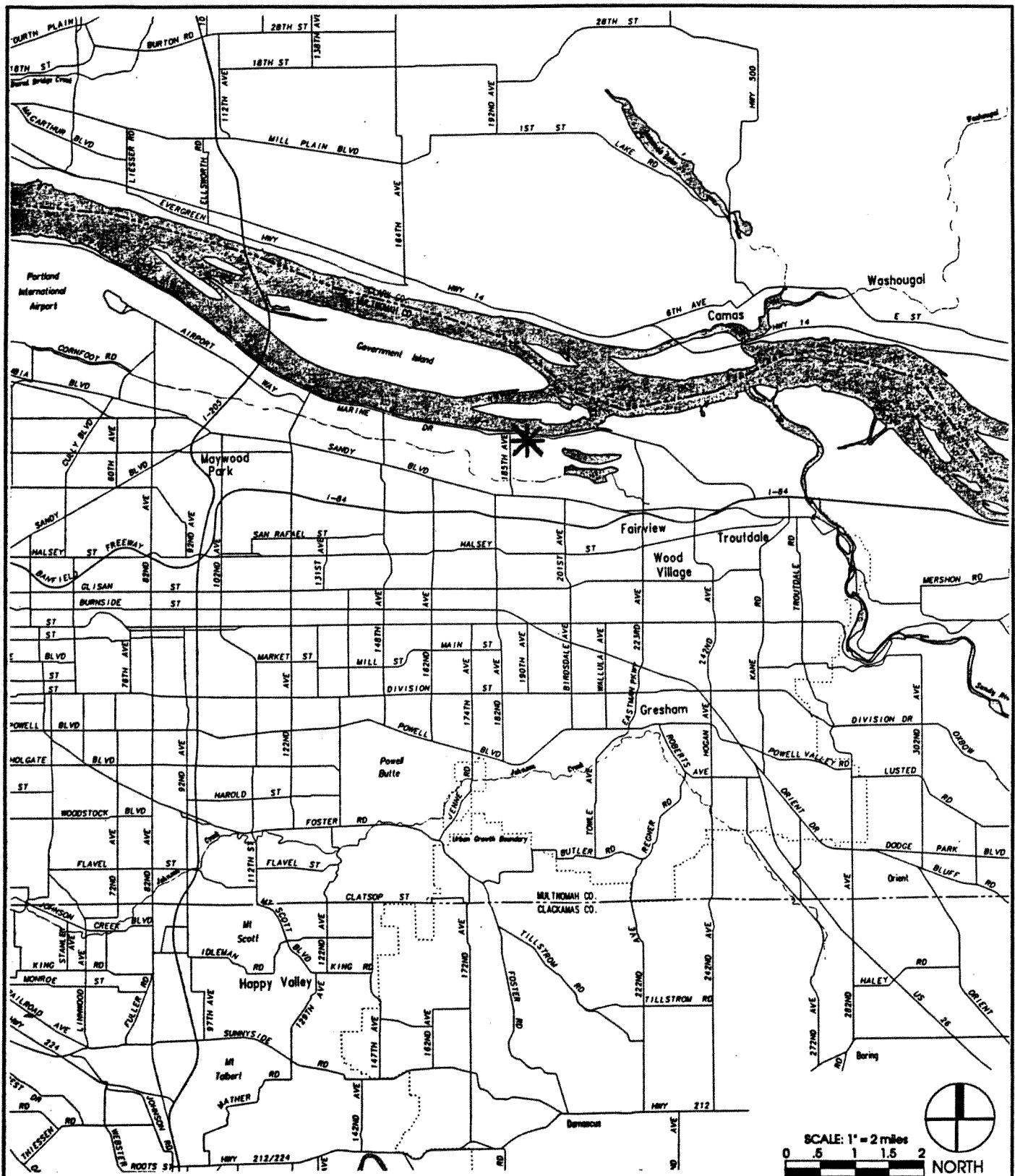
- #1. Approve, subject to conditions the requested Community Service Use request to add 40-slips to the boat marina;
- #2. Approve, subject to conditions the requested SEC Permit for alteration of a use within an Area of Significant Environmental Concern; all based on the following findings and conclusions.

CS 7-91/ SEC 18-91

Zoning Map
Case #: CS 07-91 & SEC 18-91
Location: 18699 N E Marine Drive
Scale: 1 inch to 200 feet
 Shading indicates subject properties

SOUTH CHANNEL
COLUMBIA RIVER





LEGEND

* Site Location

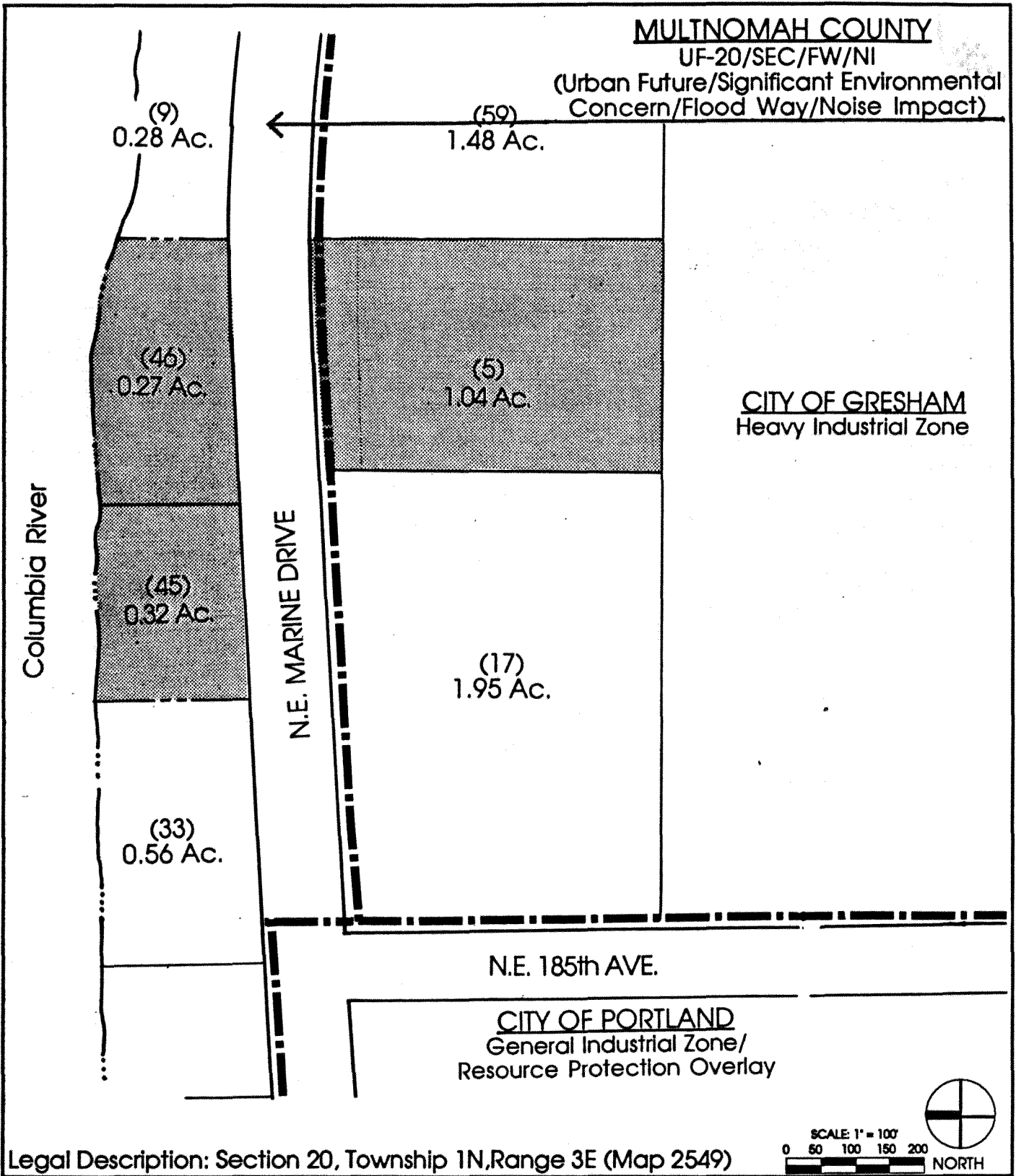
057-91/SEC 18-91

M'KEEVER/MORRIS, INC.

723 S. W. Second Avenue, Suite 400 • Portland, Oregon 97204 • (503) 226-7352 fax (503) 226-7365

Exhibit A Vicinity Map

**DUCKS MOORAGE
CU/SEC Application**



LEGEND

- City Limit Boundary
- (59) Tax Lot Number
- Site Area

057-91/ SEC 18-91

M'KEEVER/MORRIS, INC.
722 S. W. Second Avenue, Suite 400 • Portland, Oregon 97204 • (503) 226-7152 Fax (503) 226-7945

Exhibit B
Tax Lots & Zoning Map


DUCKS MOORAGE
CU/SEC Application



	BOAT SLIPS	HOUSE BOATS
EXISTING MOORAGE	32	22
PROPOSED EXPANSION	40	-
TOTAL MOORAGE	72	22
PARKING REQUIRED	35	44

SCALE: 1" = 120'

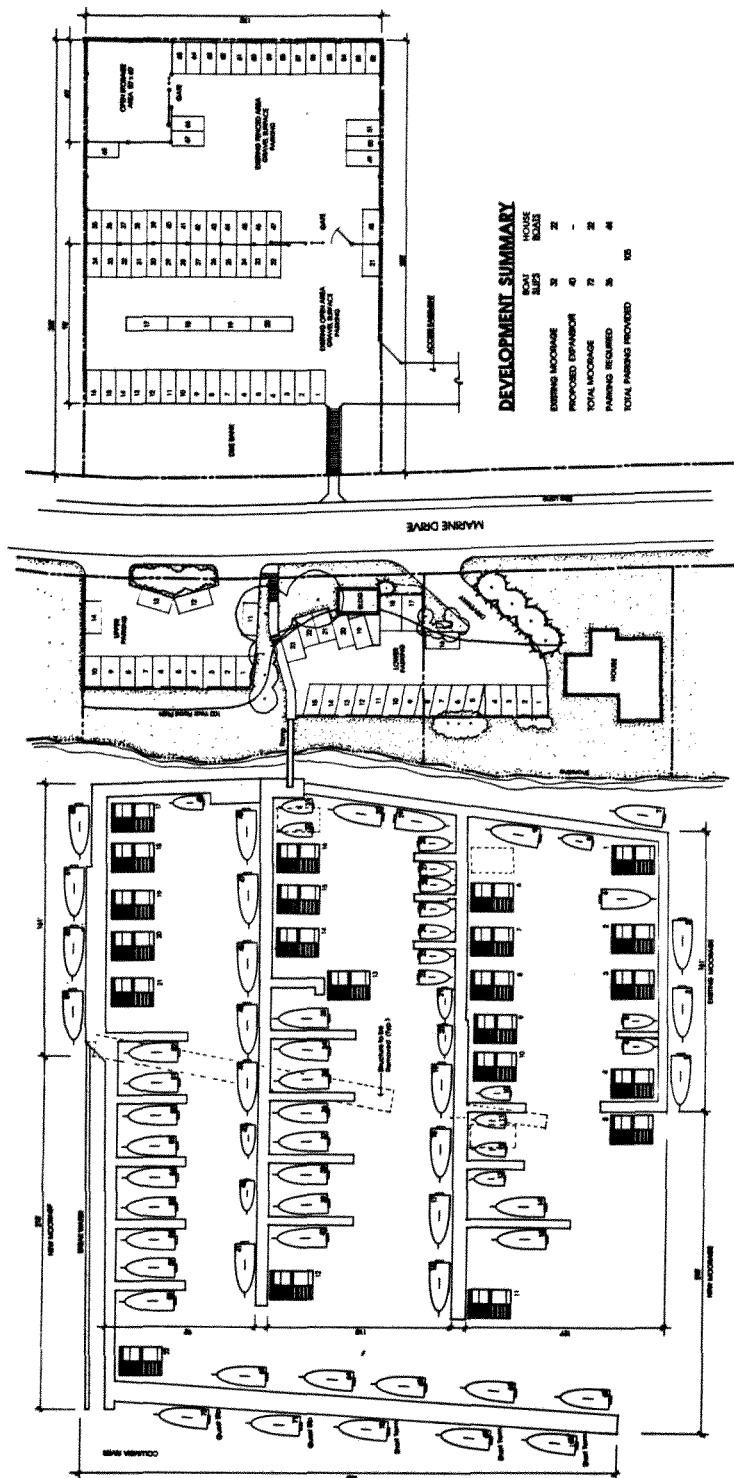
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722 S.W. Second Avenue, Suite 400 • Portland, Oregon 97204 • (503) 228-7352 fax (503) 228-7363

DUCKS MOORAGE

CU/SEC Application



SCALE: 1" = 120'
0 60 120 180 240



LEGEND 057-91/SEC18-91

- Site boundary
- Boat Slips
- House Boats
- Parking stalls
- House Boats to be relocated

M'KEEVER/MORRIS, INC.

722 S.W. Second Avenue, Suite 400 • Portland, Oregon 97204 • (503) 226-7352 fax (503) 226-7365

Exhibit E Proposed Site Plan

DUCKS MOORAGE CU/SEC Application

CONDITIONS OF APPROVAL:

1. This approval applies to that portion of the marina/moorage outside the Gresham city limits, with the specific structures and accessory uses identified in the application. Approval of the CS Use and SEC Permit shall be conditioned upon receipt of corresponding land use approvals for the portions of the facility (i.e. parking south of Marine Drive) within the Gresham city limits.
2. Prior to site development or construction of the proposed facilities, obtain approvals from the U.S. Army Corps of Engineers and the Division of State Lands for the pilings, walkways, and other structures or work proposed within the river.
3. Prior to site development or construction of the proposed facilities, obtain or document approvals from the Oregon Department of Environmental Quality for sanitation facilities.
4. Except as modified by conditions of approval, the land use permits shall be for the specific uses proposed and specified in the application (i.e., 32 existing boat slips and 40 additional boat slips; 2 boathouses). A maximum of 22-houseboats are authorized by prior land use approvals at this moorage. Only those houseboats that will be moored at this site may be constructed at this location, and only in their respective slips. Houseboat manufacturing for placement in other moorages is not authorized at this site.
5. Obtain an SEC Permit for each houseboat to be moved or replaced. The decisions on each permit shall be made by the Planning Director as provided in MCC.6404. Each new or replaced houseboat must comply with the *Floating Structures* standards (Title 28) administered by the Portland Building Bureau.
6. Obtain Design Review approval of all proposed site improvements including, but not limited to, grading, landscaping, fencing, building materials and exterior colors. Design Review submittals shall include a Floodplain Development Permit if required by MCC .6301-.6323. Site work or construction shall not proceed until required Design Review approvals are obtained.
7. Site design changes may be approved as part of Design Review only if they do not increase the number of houseboats (22-maximum), boat slips (72-maximum), boathouses (2-maximum), or vehicle parking spaces (37-maximum north of Marine Drive). If changes are proposed as part of Design Review, the moorage may not encroach into the river beyond that illustrated in the approved CS plans.
8. Unless the project is completed as approved, the Community Service Use approval described herein shall expire two years from the date of approval as specified in MCC .7010(C).

Findings of Fact:

1. Summary of the Proposal:

The applicant requests approval to expand "Ducks Moorage", adding 40 new boat slips. The existing moorage extends approximately 160-feet into a channel of the Columbia River. The moorage is located at 18699 NE Marine Drive. The proposed expansion would add new pilings and floating walkways to the north side of the moorage, extending approximately 215-feet further into the channel (375-feet total). The expansion proposed requires approval of a Community Service (CS) Use, and an SEC Permit. The site is within an area designated Significant Environmental Concern; the overlay is designed to protect natural, scenic and other resources associated with lands in the Columbia River shore/Marine Drive area.

2. Site and Vicinity Information:

Ducks Moorage is located on the south bank of the Columbia River, opposite McGuire Island. There is about 1/2 acre of land north of Marine Drive, and about an acre south of Marine Drive (in Gresham). The moorage has expanded several times since the 1960's. The existing moorage includes the following components (ref. DR 82-02-01; and Application, pg.1):

<u>facility</u>	<u>number</u>
floating homes	22
boathouses	2
open boat slips	32
equipment building	1
parking spaces	105

Most of the parking for the moorage (68-spaces) is located south of Marine Drive, within the Gresham city limits. The applicant is processing a related application with Gresham to authorize the parking area south of Marine Drive.

There are several houseboat and boathouse moorages in the vicinity. As indicated in Exhibit C (Application, pg. 14), moorages with floating structures are developed to the east (upstream) and west (downstream).

3. Zoning and Comprehensive Plan Designations.

The plan designation of the parcel is Urban Future/Significant Environmental Concern. The parcel is zoned UF-20/ SEC/ FF/ FW/ NI (Urban Future; Area of Significant Environmental Concern; Flood Fringe; Floodway; Noise Impact District).

4. Ordinance Considerations:

Conditional uses allowed in UF-20 are specified in MCC 11.15.2390. Subsection (A) specifies "...*Community Service Uses pursuant to...MCC .7005.7041*" MCC .7020(A)(1) specifies "...*Boat moorage, marina or boathouse moorage.*" Such uses may be permitted when found to satisfy *Community Service Use Approval Criteria* in MCC .7015. New or altered uses within an Area of Significant Environmental Concern must meet approval criteria specified in MCC .6420.

The following section presents findings regarding the proposed Conditional Use and SEC Permit; the applicable standard is in ***bold italics***, applicant's responses are reference (by Application page #) or presented in *italics*, followed by staff comments.

A. Community Service Use Criteria (MCC .7015)

A(1) Is consistent with the character of the area;

"The existing moorage is located within a cluster of houseboat and boat moorages. Several of these neighboring moorages extend up to 500 feet from the river bank toward the channel. The proposed expansion of Ducks Moorage will result in a total extension into the river of 374 feet from the shore.

"The proposed expansion will be consistent with the design and scale of the nearby moorages and the overall character of the area. The attached aerial photo (Exhibit 'C') (of the Application) shows the relationship of the Ducks Moorage facility with the surrounding moorages...."

Staff Comment: The area surrounding the subject site is described above under Finding #2. This moorage expansion is essentially an "infill project". It would extend the moorage a similar distance from the bank as existing moorages to the east and west.

A(2) Will not adversely affect natural resources;

"The issue is addressed in the sections regarding Policies 13, 14, 15, and 16 (pp. 3-4)."

Staff Comment: Staff concurs with applicant's finding.

A(3) Will not conflict with farm or forest uses in the area;

"This consideration is addressed under Significant Environmental Concern - Section 11.15.6420(B) (p. 7)."

Staff Comment: Staff concurs that the proposal's effects on farm or forest uses

in the area are negligible.

- A(4) Will not require public services other than those existing or programmed for the area;**

"The property is presently served by Rockwood Water District and sufficient capacity is available as confirmed by the District's signature of the water service form.

"Domestic sewerage is adequate as noted in the Policy 13 section (p.3).

"Fire protection is provided by Fire District No. 10.

"Police protection is provided by the Multnomah County Sheriff. The additional boat slips should not place any further demands on this office.

"The number of houseboats will not be increased and therefore school services will not be affected."

Staff Comments: Staff concurs.

- A(5) 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;**

"The property is well outside of any big game winter habitat areas"

Staff Comment: The site is not identified as a big game habitat area in the Comprehensive Plan or by the Oregon Department of Fish and Wildlife.

- A(6) Will not create hazardous conditions;**

"This issue is addressed under Significant Environmental Concern - Section 11.15.6420 (F) (pp. 7-8)."

Staff Comment: Staff concurs.

- A(7) Will satisfy the applicable policies of the Comprehensive Plan.**

The following policies of the County's Comprehensive Plan are found applicable to this request: Policy 2 (Off-site Effects); Policy 13 (Air, Water and Noise Quality), Policy 14 (Development Limitations); Policy 16 (Natural Resources); Policy 24 (Housing Location); Policy 26 (Houseboats); Policy 31 (Community Uses & Facilities); Policy 37 (Utilities); Policy 38 (Facilities); Policy 39 (Recreation).

a. Policy 2 – Off-site Effects.

[PARAPHRASED]

THE COUNTY'S POLICY IS TO APPLY CONDITIONS TO LAND USE APPROVALS TO PROTECT THE PUBLIC FROM POTENTIAL ADVERSE EFFECTS; OR MEET PUBLIC SERVICE NEEDS CREATED BY THE PROPOSED USE.

Staff Comment: (Application, pg. 3) Conditions of approval provide several means to mitigate or avoid a variety of potential off-site effects from the proposed use.

b. Policy 13 – Air, Water, and Noise Quality.

[PARAPHRASED]

THE COUNTY'S POLICY IS TO SUPPORT CITIZEN AND AGENCY EFFORTS TO MAINTAIN OR IMPROVE AIR AND WATER QUALITY, AND REDUCE NOISE LEVELS. IT IS THE COUNTY POLICY TO PARTICIPATE IN STATE AND REGIONAL PLANS & PROGRAMS TO REDUCE POLLUTION, MAINTAIN HEALTHY AIR & WATER QUALITIES, AND PREVENT OR REDUCE EXCESSIVE NOISE LEVELS. NOISE-GENERATING USES SHOULD BE LOCATED AND DESIGNED TO MINIMIZE EFFECTS TO NOISE-SENSITIVE USES.

Staff Comment: (Application, pg.3) Staff concurs.

c. Policy 14 – Development Limitations.

[PARAPHRASED]

THE COUNTY'S POLICY IS TO DIRECT DEVELOPMENT AWAY FROM AREAS WITH PHYSICAL LIMITATIONS — OR REQUIRE DESIGNS WHICH MITIGATE OR AVOID ADVERSE EFFECTS. THE POLICY APPLIES TO: HILLSIDES IN EXCESS OF 20% SLOPE; AREAS WITHIN THE 100-YEAR FLOOD PLAIN; AND SITES WITH SEVERE EROSION POTENTIAL, ETC.

Staff Comment: (Application, pg. 3) The site is in an identified flood hazard area. It is not identified on the County slope hazards map. The development proposed is consistent with this policy as detailed in applicant's findings.

d. Policy 16 – Natural Resources

THE COUNTY'S POLICY IS TO PROTECT NATURAL RESOURCES, CONSERVE OPEN SPACE, AND TO PROTECT SCENIC AND HISTORIC AREAS AND SITES. THESE RESOURCES ARE ADDRESSED WITHIN SUB-POLICIES 16-A THROUGH 16-L.

Staff Comment: Staff concurs with applicant's findings relative to Policy 16 as detailed on pages 3-4 of the application.

e. Policy 24 – Housing Location

[PARAPHRASED]

THE COUNTY'S POLICY IS TO ACCOMMODATE THE LOCATION OF A BROAD RANGE OF HOUSING TYPES IN ACCORDANCE WITH APPLICABLE PLAN POLICIES AND LOCATIONAL CRITERIA APPLICABLE TO PROJECT SCALE AND STANDARDS.

Staff Comment: The application indicates the site contains approximately 350-feet of water frontage. Policy 24 and MCC .7510 establish a maximum density for houseboats of one for each 50-feet of water frontage; 350-feet divided by 50-feet equals 7. The 22 houseboats moored at the site pre-date adoption of Policy 26 (1983); refer to DR 82-02-01. Condition # 4 limits the number of houseboats to 22.

f. Policy 26 – Houseboats.

[PARAPHRASED & EDITED]

THE COUNTY'S POLICY RECOGNIZES HOUSEBOATS AS A HOUSING OPTION. IT IS POLICY TO PROVIDE FOR THE LOCATION OF HOUSEBOATS IN ACCORD WITH:

APPLICABLE PLAN POLICIES .

OTHER APPLICABLE FEDERAL, STATE OR LOCAL POLICIES REGULATING WATERWAY DEVELOPMENTS.

LOCATIONAL CRITERIA; THE FOLLOWING AREAS ARE DESIGNATED AS SUITABLE FOR HOUSEBOATS:

COLUMBIA RIVER (NEAR 185TH AVENUE).

Staff Comment: (Application, pg. 5) The site is located within an area designated for houseboats by Policy #26. Conditions of approval require verification of applicable approvals from the U.S. Army Corps of Engineers, Division of State Lands, and State DEQ consistent with Policy 26. No additional houseboats are proposed. Existing houseboats will be relocated in the moorage.

g. Policy 31 - Community Facilities and Uses

[PARAPHRASED & EDITED]

THE COUNTY'S POLICY IS TO SUPPORT THE SITING AND DEVELOPMENT OF A FULL RANGE OF COMMUNITY FACILITIES AND SERVICES, SCALED TO MEET

PUBLIC NEEDS AND REINFORCE COMMUNITY IDENTITY.

Staff Comment: (Application, pg. 5) Policy 31 lists marinas as a minor regional facility. The proposed location and facilities are consistent with this policy.

h. Policy 37 - Utilities

[PARAPHRASED]

THE COUNTY'S POLICY IS TO INSURE THAT PROPOSED DEVELOPMENT HAS ADEQUATE AND SAFE PROVISIONS FOR: SEWAGE DISPOSAL, WATER SUPPLY, STORM WATER DRAINAGE, ENERGY, AND COMMUNICATIONS.

Staff Comment: (Application, pg. 6) Conditions of approval require verification of applicable approvals from the U.S. Army Corps of Engineers, Division of State Lands, and State DEQ.

i. Policy 38 Facilities -

[PARAPHRASED]

THE COUNTY'S POLICY IS TO INSURE:

- **THAT EFFECTED SCHOOL AND FIRE DISTRICTS ARE NOTIFIED AND HAVE OPPORTUNITY TO COMMENT ON PROPOSED DEVELOPMENTS; AND,**
- **THAT WATER PRESSURE AND FLOW IS ADEQUATE TO FIGHT FIRES; AND,**
- **THAT POLICE PROTECTION WILL BE AVAILABLE FOR THE DEVELOPMENT.**

Staff Comments: (Application, pg. 6) Staff concurs with applicant's findings.

j. Policy 39 Parks and Recreation Planning

[PARAPHRASED & EDITED]

THE COUNTY'S POLICY IS TO WORK WITH RESIDENTS, GROUPS, AND AGENCIES TO SECURE FUNDS FOR DEVELOPMENT AND ACQUISITION OF PARK SITES AND RECREATION FACILITIES. IT IS POLICY TO ENCOURAGE RECREATION OPPORTUNITIES BY OTHER PUBLIC AGENCIES AND PRIVATE ENTITIES.

"...The benefit of the additional slips for boaters outweighs the loss of a small water area that is of minimal recreational value."

Staff Comment: Staff concurs with applicant's findings.

B. SEC Approval Criteria (MCC .6420)

(a) The maximum possible landscaped area, scenic and aesthetic enhancement, open space or vegetation shall be provided between any use and a river, stream, lake, or floodwater storage area.

"...The existing development along the river bank will not be altered."

Staff Comment: (Application, pg. 7) Staff concurs.

(b) Agricultural land and forest land shall be preserved and maintained for farm and forest use.

Staff Comment: (Application, pg. 7) No farm or forest lands are near the site; they would not be affected by the proposed use

(c) The harvesting of timber on lands designated SEC shall be conducted in a manner which shall insure that the natural, scenic, and watershed qualities will be maintained to the greatest extent practicable or will be restored within a brief period of time.

Staff Comment: There is no timber harvest associated with the request.

(d) A building, structure, or use shall be located on a lot in a manner which will balance functional considerations and costs with the need to preserve and protect areas of environmental significance.

Staff Comment: (Application, pg. 7) Staff concurs with applicant's findings.

(e) Recreational needs shall be satisfied by public and private means in a manner consistent with the carrying capacity of the land and with minimum conflicts with areas of environmental significance.

Staff Comment: (Application, pg. 7) Staff concurs.

(f) The protection of the public safety and protection of public and private property, especially from vandalism and trespass, shall be provided to the maximum extent practicable.

Staff Comment: (Application, pg. 7) Staff concurs.

(g) Significant fish and wildlife habitats shall be protected.

Staff Comment: These issues are addressed on pages 3-4 of the application. Staff concurs that significant fish and wildlife habitat effects will not be effected.

(h) The natural vegetative fringe along rivers, lakes, and streams shall be enhanced and protected to the maximum extent practicable to assure scenic quality, protection from erosion.

Staff Comment: Refer to application pages 3-4 RE Policies 15 and 16.

(i) Buildings, structures and sites of historic significance shall be preserved, protected, enhanced, restored, and maintained in proportion to their importance to the County's history.

Staff Comment: There are no known historic resources effected.

(j) Archeological areas shall be preserved for their historic, scientific, and cultural value and protected from vandalism or unauthorized entry.

Staff Comment: (Application, pg. 8) The site is not known to possess any archaeologic resources. The proposed use would not require excavation.

(k) Extraction of aggregates and minerals, the depositing of dredge spoils, and similar activities permitted pursuant to the provisions of MCC .7105 through .7640, shall be conducted in a manner designed to minimize adverse effects on water quality, fish and wildlife, historical or archeological features, vegetation, erosion, stream flow, visual quality, noise, safety, and to guarantee necessary reclamation.

Staff Comment: No aggregate extraction is proposed.

(l) Areas of annual flooding, flood plains, water areas and wetlands shall be retained in their natural state to the maximum possible extent to preserve water quality and protect water retention, overflow and natural functions.

Staff Comment: (Application, pg. 8) Staff concurs. Refer to Policy 14 findings above.

(m) Areas of erosion or potential erosion shall be protected from loss by appropriate means which are compatible with the environmental character.

Staff Comment: (Application, pg. 8) Staff concurs.

(n) The quality of the air, water and land resources and ambient noise levels in areas classified SEC shall be preserved in the development and use of such areas.

Staff Comment: (Application, pg. 8) Reference findings above under Policy 13.

(o) The design, bulk, construction materials, color and lighting of buildings,

structures and signs shall be compatible with the character and visual quality of the areas of significant environmental concern.

Staff Comment: (Application, pg. 8) Conditions of approval require Design Review of all proposed site alterations and an SEC Permit for any moved or replaced houseboat. These reviews will further assure compliance with this criteria.

(p) An area generally recognized as fragile or endangered plant habitat or which is valued for specific vegetative features, or which has an identified need for protection of the natural vegetation, shall be retained in a natural state to the maximum extent possible.

Staff Comment: (Application, pg. 9) No such areas exist on the subject property.

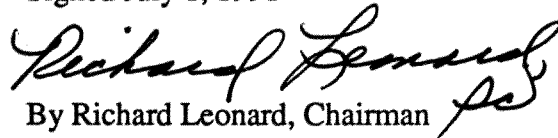
(q) The applicable policies of the Comprehensive Plan shall be satisfied.

Staff Comment: Reference findings above under *Community Service Use* .

Conclusions:

1. The proposal satisfies Community Service Use and Significant Environmental Concern approval criteria as detailed in the application and the findings above.
2. Conditions of approval are necessary to assure the project is developed in compliance with applicable criteria.

Signed July 1, 1991


By Richard Leonard, Chairman

Filed With the Clerk of the Board on July 11, 1991

Appeal to the Board of County Commissioners

Any person who appears and testifies at the Planning Commission hearing, or who submits written testimony in accord with the requirements on the prior Notice, and objects to their recommended decision, may file a Notice of Review with the Planning Director on or before 4:30 PM. on Monday, July 22, 1991 on the required Notice of Review Form which is available at the Planning and Development Office at 2115 SE Morrison Street.

The Decision on this item will be reported to the Board of County Commissioners for review at 9:30 a.m. on Tuesday, July 23, 1991 in Room 602 of the Multnomah County Courthouse. For further information call the Multnomah County Planning and Development Division at 248-3043.

Meeting Date: July 23, 1991

Agenda No.: P-2

(Above space for Clerk's Office Use)

AGENDA PLACEMENT FORM
(For Non-Budgetary Items)

SUBJECT: _____

BCC Informal _____ BCC Formal July 23, 1991
(date) (date)

DEPARTMENT DES DIVISION Planning

CONTACT Sharon Cowley TELEPHONE 2610

PERSON(S) MAKING PRESENTATION Planning Staff

ACTION REQUESTED:

☐ INFORMATIONAL ONLY

☐ POLICY DIRECTION

☒ DENIAL
~~XXXXXXXXXX~~

ESTIMATED TIME NEEDED ON BOARD AGENDA: _____

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

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

CU 14-91 Decision of the Planning Commission of July 1, 1991 with recommendation to the Board for denial

*Motion to Return to the Planning Commission
& Return Hearing Fee.*

BOARD OF
COUNTY COMMISSIONERS
MULTNOMAH COUNTY
OREGON
1991 JUL 16 PM 2:03

(If space is inadequate, please use other side)

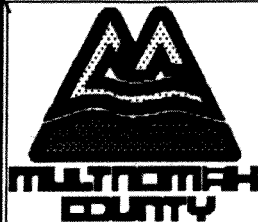
SIGNATURES:

ELECTED OFFICIAL _____

Or

DEPARTMENT MANAGER *[Signature]*

(All accompanying documents must have required signatures)



DEPARTMENT OF ENVIRONMENTAL SERVICES
Division of Planning and Development
2115 SE Morrison Street
Portland, Oregon 97214 (503) 248-3043

Decision

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

July 1, 1991

CU 14-91, #43 A-D Conditional Use Request
(Non-Resource Related Dwelling)

Applicant requests approval for a non-resource related dwelling on a 1.21-acre parcel in the MUF-19 zoning district.

Location: 17050 NW Skyline Blvd
Legal: Tax Lot '61, Section 23, 2N-2W, 1991 Assessor's Map
Site Size: 1.21 acres
Site Requested: Same
Property Owner: Robert Webster
454 Gray Cliff Court, St. Helens, Oregon 97051
Applicant: Frank Walker and Associates
PO Box 299, Monmouth, Oregon 97361
Comprehensive Plan: Multiple Use Forest
Present Zoning: MUF-18, Multiple Use Forest District. Minimum 38 acres

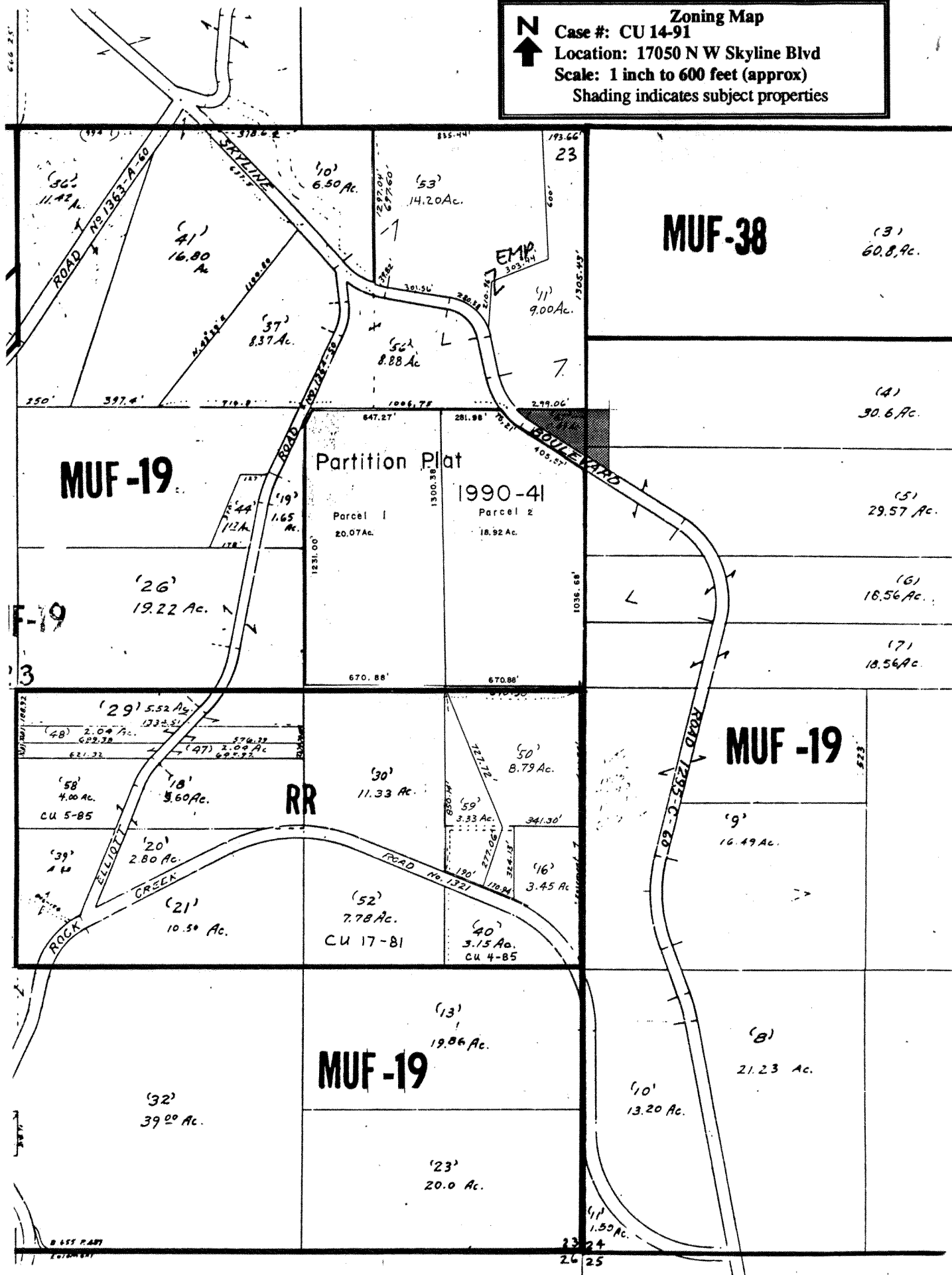
PLANNING COMMISSION
DECISION

Deny conditional use request for development of this property with a non-resource related single family residence.

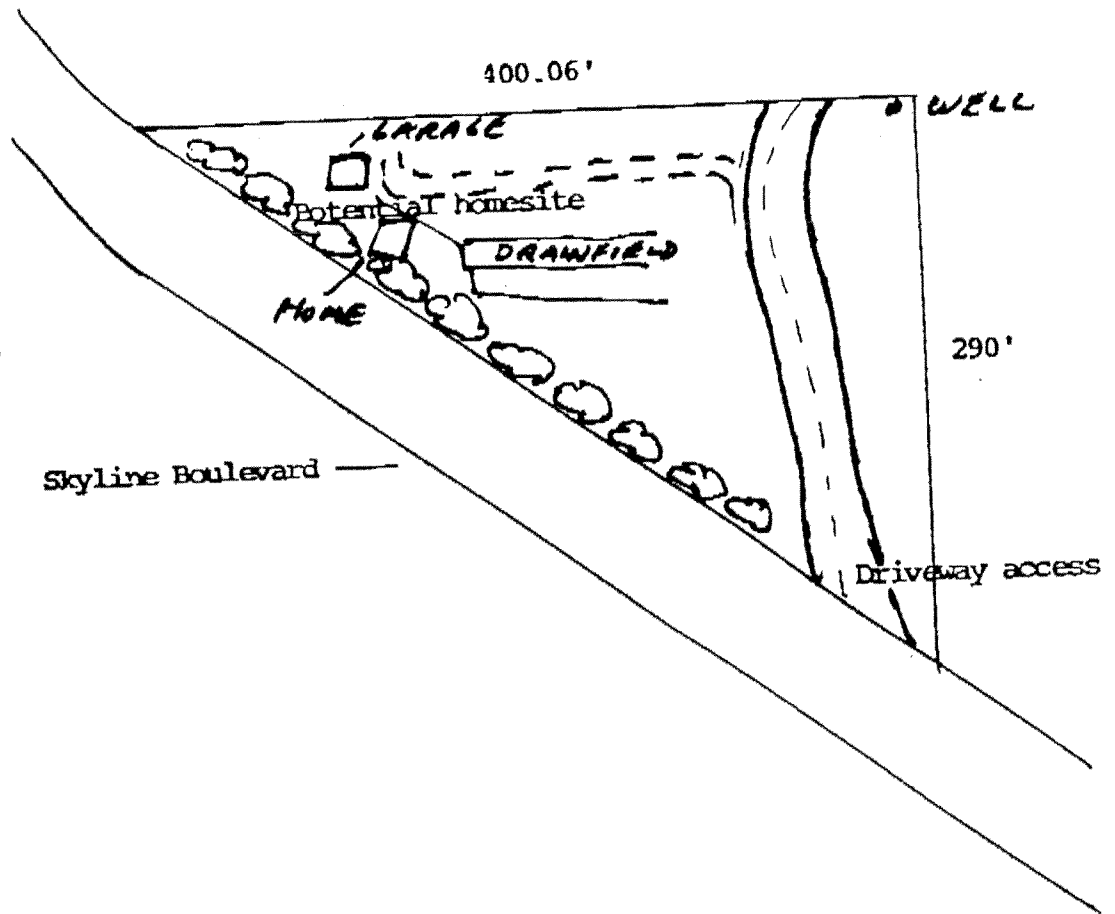
CU 14-91

N
↑

Shading indicates subject properties



Site Plan



Scale 1" = 100'

Findings of Fact

NOTE: The applicant has provided a narrative statement in response to the Conditional Use approval criteria. In this section, quoted portions of the applicant's material are in helvetica type. Staff discussion of applicant responses appear in paragraphs titles **Staff Comment**. Quoted ordinance language appears in ***bold italic type***. The applicant's narrative is attached to this report.

1. Applicant's Proposal:

The applicant requests Planning Commission approval to develop the above described 1.21 acre Lot of Record with a non-resource related single family dwelling.

2. Site Conditions and Vicinity Information:

The site is on the northeasterly side of NW Skyline Boulevard one-quarter mile southeast of NW Elliott Road. This and surrounding properties have a history of being used for forestry purposes.

3. Zoning Ordinance Considerations:

Non-Resource-Related Dwelling Approval Criteria: Under MCC 11.15.2172(C), a non-resource related single family dwelling is permitted in the MUF zoning district as a Conditional Use where it is demonstrated that states that:

- (1) *The lot size shall meet the standard of MCC 11.15.2178(A) or .2182(A) to (C).*
- (2) *The land is incapable of sustaining a farm or forest use, based upon one of the following:*
 - (a) *A Soil Conservation Service Agriculture Capability Class of IV or greater for at least 75% of the lot area, and physical conditions insufficient to produce 50 cubic feet/acre/year or any commercial trees species for at least 75% of the area;*
 - (b) *Certification by the Oregon State University Extension Service, the Oregon Department of Forestry, or a person or group having similar agricultural and forestry expertise, that the land is inadequate for farm and forest uses and stating the basis for the conclusions; or*
 - (c) *The lot is a Lot of Record under MCC 11.15.2182(A) through (C) and is ten acres or less in size.*
- (3) *A dwelling, as proposed, is compatible with the primary uses as listed in MCC 11.15.2168 on nearby property and will not interfere with the resources or the resource management practices or materially alter the stability of the overall land use pattern of the area.*

- (4) *The dwelling will not require public services beyond those existing or programmed for the area.*
- (5) *The owner shall record with the Division of Records and Elections a statement that the owner and the successors in interest acknowledge the rights of owners of nearby property to conduct accepted forestry or farming practices.*
- (6) *The residential use development standards of MCC .2194 will be met.*

Residential Use Development Standards: MCC 11.15.2194 states that A residential use located in the MUF district after August 14, 1980, shall comply with the following:

- (A) *The fire safety measure outlined in the Fire Safety Considerations for Development in Forested Areas, published by the Northwest Interagency Fire Prevention Group, including at least the following:*
 - (1) *Fire lanes at least 30 feet wide shall be maintained between a residential structure and an adjacent forested area; and*
 - (2) *Maintenance of a water supply and of fire fighting equipment sufficient to prevent fire from spreading from the dwelling to adjacent forested areas;*
- (B) *An access drive at least 16 feet wide shall be maintained from the property access road to any perennial water source on the lot or an adjacent lot.*
- (C) *The dwelling shall be located in as close proximity to a publicly maintained street as possible, considering the requirements of MCC .2178(B).*
- (D) *The physical limitations of the site which require a driveway in excess of 500 feet shall be stated in writing as part of the application for approval.*
- (E) *The dwelling shall be located on that portion of the lot having the lowest productivity characteristics for the proposed primary use, subject to the limitations of subsection (C), above.*
- (F) *Building setbacks of at least 200 feet shall be maintained from all property lines, wherever possible, except:*
 - (1) *A setback of 30 feet or more may be provided from a public road, or*

- (2) *The location of dwelling(s) on adjacent lot(s) at a lesser distance will allow for the clustering of dwellings or the sharing of access.*
- (G) *Construction shall comply with the standards of the building code or as prescribed in ORS 446.002 through 446.200 relating to mobile homes.*
- (H) *The dwelling shall be attached to a foundation for which a building permit has been obtained.*
- (I) *The dwelling shall have a minimum floor area of 600 square feet.*
- (J) *The dwelling shall be located outside a big game habitat area as defined by the Oregon Department of Fish and Wildlife or that agency has certified that the impacts will be acceptable.*

4. **Compliance with Non-Resource-Related Dwelling Approval Criteria**

This proposal satisfies the applicable approval criteria as follows:

- A. *The lot size shall meet the standard of MCC 11.15.2178(A) or .2182(A) to (C). [MCC 11.15.2172(C)(1)]*

The site is a Lot of Record under size of the site satisfies MCC11.15.2182(C) because NW Skyline Boulevard, a county-maintained road, separates the site from a parcel having the same owner.

- B. *The land is incapable of sustaining a farm or forest use, . . . [MCC 11.15.2172(C)(2)]*

The site satisfies MCC 11.15.2172(C)(2)(c) because it is a Lot of Record under MCC 11.15.2182(C) and is less than 10 acres in size.

- C. *A dwelling, as proposed, is compatible with the primary uses as listed in MCC 11.15.2168 on nearby property and will not interfere with the resources or the resource management practices or materially alter the stability of the overall land use pattern of the area [MCC 11.15.2172(C)(3)]*

Applicant's Response

The character of the area can best be described as containing a mix of small resource parcels and even smaller non-resource parcels. Directly north of the subject property is a nine-acre non-farm parcel. Slightly to the north and west are two non-resource parcels (8.88 acres and 6.5 acres). Across Skyline Boulevard and slightly to the east is a 10.56-acre resource parcel (no buildings on parcel). Three other parcels directly abut the property to the east and south. The parcels are 30.6, 29.57, and 19.0 acres

respectively. All three parcels were recently clearcut and will continue to be used for timber production. Despite being the smallest parcel in the area, the proposal for a non-resource dwelling is consistent with the overall land use pattern in the west Skyline Boulevard area that is characterized by a mix of resource and non-resource parcels.

Other adjacent and nearby non-resource parcels do not adversely affect natural resources in the area, and there is no apparent reason why the proposed non-resource home-site would be any different.

Staff Comment

For the reasons stated by the applicant, the proposal satisfies MCC 11.15.2172(C)(3).

- D. *The dwelling will not require public services beyond those existing or programmed for the area. [MCC 11.15.2172(C)(3)]*

Applicant's Response

The development of a non-resource home-site will not require public services over those that are existing or programmed. Water will be provided by well, and the site will be evaluated for on-site sewage disposal. Power and telephone are readily available to the site, and no road improvements to Skyline Boulevard will be required.

Staff Comment

For the reasons stated by the applicant, the proposal satisfies MCC 11.15.2172(C)(4).

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

Compliance with this requirement is a condition to be fulfilled prior to issuance of a building permit. For this reasons, the proposal satisfies MCC 11.15.2172(C)(5).

5. Compliance with Residential Use Development Standards

A. Fire Safety Measures

There appears to be adequate room on the site to accommodate adequate fire lanes between the proposed residence and

adjacent forested areas. An on-site well is the intended water supply. Also, the site is in Multnomah County Rural Fire Protection District No. 20. But there is For these reasons a residence on the site appears capable of meeting MCC 11.15.2194(A).

B. **... access drive at least 16 feet wide ...**

As shown on the site plan, the proposal complies with the provisions of MCC 11.15.2194(B).

C. **... proximity to a publicly maintained street ...**

As shown on the site plan, the proposed home site is capable of meeting MCC 11.15.2194(C).

D. **... driveway in excess of 500 feet ...**

The driveway to the proposed residence is less than 500 feet long.

E. **... located on [the least productive] portion of the lot ...**

This criterion is not applicable in that the proposal is for a non-resource-related residence on a 1.21-acre site.

F. **... setbacks of at least 200 feet ... except:**

Given the site's area and dimensions, this criterion will be satisfied to the extent possible

G. [construction to meet either building code or mobile home standards]

Any residence on either parcel must meet either the building code or mobile home code; no other permissible options exist.

H. **The dwelling shall be attached to a foundation for which a building**

Please refer to G above.

I. **The dwelling shall have a minimum floor area of 600 square feet.**

No permit will be approved unless the floor area meets this requirement.

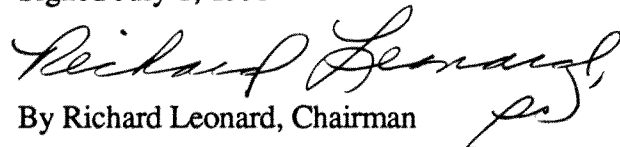
J. . . . located outside a big game habitat area . . .

The site is not inside a big game habitat area as defined by the Oregon Department of Fish and Wildlife.

Conclusion:

1. The proposal does not meet the approval criteria for a non-resource related dwelling in the MUF zoning district.

Signed July 1, 1991


By Richard Leonard, Chairman

Filed With the Clerk of the Board on July 11, 1991

Appeal to the Board of County Commissioners

Any person who appears and testifies at the Planning Commission hearing, or who submits written testimony in accord with the requirements on the prior Notice, and objects to their recommended decision, may file a Notice of Review with the Planning Director on or before 4:30 a.m. on Monday, July 22 on the required Notice of Review Form which is available at the Planning and Development Office at 2115 SE Morrison Street.

The Decision on this item will be reported to the Board of County Commissioners for review at 9:30 a.m. on Tuesday July 23, 1991 in Room 602 of the Multnomah County Courthouse. For further information call the Multnomah County Planning and Development Division at 248-3043.

7-23-91
P-2



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

NOTE: Received
4:00 PM 7-22-91
M. Hesse

NOTICE OF REVIEW

253 0460 7/23/91 475.00 TL

1. Name: WALKER, D., FRANK
2. Address: P.O. BOX 299, MONMOUTH, OR 97361
3. Telephone: (503) 838 - 1846

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

ROBERT WEBSTER
454 GREY CLIFF CT.
ST. HELENS, OR. 97051

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

CONDITIONAL USE CASE 14-91

6. The decision was announced by the Planning Commission on 7/1, 1991

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

MY FIRM REPRESENTED ROBERT WEBSTER AT
THE PLANNING COMMISSION PUBLIC HEARING.

Please file this Original Form
Thank you

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

A DETAILED REPORT WAS SUBMITTED TO THE MULTNOMAH COUNTY PLANNING STAFF AND COMMISSION DESCRIBING HOW THIS PROPOSAL CONFORMS WITH THE CONDITIONAL USE CRITERIA PURSUANT TO M.C.C. 11.15.2172(C). THE STAFF CONCLUDED THAT THIS APPLICATION DOES INDEED CONFORM WITH THE AFOREMENTIONED CRITERIA. THE PLANNING COMMISSION ON A VOTE OF 4-3 DENIED THE REQUEST ON THE ISSUE OF COMPATIBILITY PURSUANT TO 11.15.2172(C) (3). THE APPLICANT BELIEVES THAT WITH SOME ADDITIONAL (CONTINUED ON ADDENDUM)

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 PLANNING COMMISSION FOR MULTNOMAH COUNTY STRUGGLED WITH THE ISSUE OF COMPATIBILITY AND PARCEL SIZE. THE EVIDENCE SUBMITTED REGARDING COMPATIBILITY WAS SATISFACTORY TO THE PLANNING STAFF. THE PLANNING COMMISSION INTIMATED THAT ADDITIONAL EVIDENCE WOULD BE NEEDED TO BE PERSUASIVE ON THE ISSUE. FOR EXAMPLE, "ARE THERE OTHER SMALL NON-PRIMARY USE PARCELS IN THE AREA?" WAS ONE OF THEIR QUESTIONS. THE COMMISSION ALSO WONDERED WHETHER OR NOT THIS LOT WAS BUILDABLE. A DE NOVO HEARING WOULD AFFORD THE APPLICANT AND OWNER TO PRESENT ADDITIONAL (CONT. TO: ADDENDUM)

Signed:

Paul J. Walker

Date:

7/22/91

For Staff Use Only

Fee:

Notice of Review = \$300.00

Transcription Fee:

Length of Hearing 50 min x \$3.50/minute = \$ 175.00

Total Fee = \$ 475.00

Received by:

M. Her

Date:

7/22/91

Case No.

C214-91

ADDENDUM

#8. (continued from "Notice of Review" sheet)

testimony the decision of the Multnomah County Planning Commission could be justifiably reversed. The grounds on which this request is based will be described in greater detail under #10 below.

#10. (continued from "Notice of Review" sheet)

evidence demonstrating conformance with 11.15.2172(c)(3). More graphic and detailed information on the site plan with respect to setbacks and provision of services would be helpful. A map showing parcel sizes and adjacent uses would further clarify the issues brought up by the Planning Commission. The vote of 4-3 was sufficiently close to warrant a re-examination of all the criteria, but criteria (3) in particular. The applicant respectfully requests the opportunity to provide additional evidence to help satisfy the requirements of the ordinance.

Meeting Date: July 23, 1991

Agenda No.: P-3

(Above space for Clerk's Office Use)

AGENDA PLACEMENT FORM
(For Non-Budgetary Items)

SUBJECT: _____

BCC Informal _____ (date) BCC Formal July 23, 1991
(date)

DEPARTMENT DES DIVISION Planning

CONTACT Sharon Cowley TELEPHONE 2610

PERSON(S) MAKING PRESENTATION Planning Staff

ACTION REQUESTED:

☐ INFORMATIONAL ONLY

☐ POLICY DIRECTION

☒ DENIAL
☒ APPROVAL

ESTIMATED TIME NEEDED ON BOARD AGENDA: 2 Minutes

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

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

PR 5-91/ZC 5-91 Decision of the Planning Commission of July 1, 1991 with
recommendation to the Board for denial

(If space is inadequate, please use other side)

SIGNATURES:

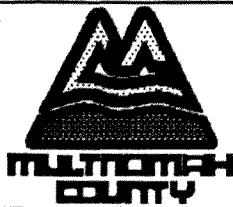
ELECTED OFFICIAL _____

Or

DEPARTMENT MANAGER 

(All accompanying documents must have required signatures)

1991 JUL 16 PM 2:02
MULTNOMAH COUNTY
OREGON
PLANNING
COMMISSION



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

Decision

**This Decision consists of a Recommended Decision, Findings and Conclusions.
July 1, 1991**

PR 5-91, #26

Comprehensive Plan Revision

ZC 5-91, #26

Multiple Use Forest District

Applicant requests a Comprehensive Plan amendment from Commercial Forest Use to Multiple Use Forest, and amendment of Sectional Zoning Map #26, changing the described property from CFU-80, Commercial Forest Use zoning district to MUF-38, Multiple Use Forest zoning district.

Location: 19100 NW Skyline Blvd.

Legal: Southeasterly 250 feet (east of and abutting NW Skyline Blvd.) of Tax Lots '1' and '4', Sec. 11, T. 2 N., R. 2 W., 1990 Assessor's Map

Site Size: 517.6 Acres

Size Requested: Approximately 10 Acres, (250' x 1,725')

Property Owner: Longview Fibre Company
PO Box 639, Longview, Washington 98632

Applicant: Frank Walker and Associates
PO Box 299, Monmouth, Oregon 97316

Comprehensive Plan: Commercial Forest Use

Present Zoning: CFU-80, Commercial Forest Use

Sponsor's Proposal: Multiple Use Forest Plan Designation; MUF-38, Multiple Use Forest Zone

PLANNING COMMISSION

- DECISION No. 1:** Deny, requested amendment of the Comprehensive Plan Map changing the Plan designation from Commercial Forest Use to Multiple Use Forest for that approximately 10 acre portion of the subject property described above;
(PR 5-91)
- DECISION No. 2:** Deny, requested amendment of Sectional Zoning Map #26, changing the described property from CFU-80, Commercial Forest Use to MUF-38, Multiple Use Forest.
(ZC 5-91)

PR 5-91 / ZC 5-91

2'
336 Ac.

566.28 Ac.

CFU-80

3.76 Ac.

5'
80 Ac.

CFU-80 CS
'7'
40 Ac.



Zoning Map
Case #: PR 05-91 & ZC 05-91
Location: 19100 N W Skyline Blvd
Scale: 1 inch to 1000 feet (approx)
Shading indicates subject properties

CFU-80

66 Ac.

CFU-80

18'
55.45 Ac.

10'
20 Ac.

CFU-80

17'
80 Ac.

10 Ac.

2'
40 Ac.

CFU-80

11
'1'
476.97 Ac.

7'
37.77 Ac.

4'
40.63 Ac.

3'
80.0 Ac.

'10' 2.50 Ac.	'14' 5.00 Ac.	'17' 5.00 Ac.	'12' 5.00 Ac.
'15' 2.50 Ac.	RR		'11' 5.00 Ac.
'16' 5.00 Ac.	'13' 5.00 Ac.	'9' 5.00 Ac.	

MUF-19

10'
39.55 Ac.

MUF-19

'33'
9.91 Ac.
'32'
6.39 Ac.
'31'
5.00 Ac.
'30'
5.48 Ac.
'23'
6.86 Ac.
'20'
3.05 Ac.

37.15
Ac. MUF-38

(2')
76.05 Ac.

N W SKYLINE BLVD

MUF-38

27
10.00 Ac.

38'
30.00 Ac.

N W MORGAN ROAD

1'
80 Ac.


MUF-38

144.17

LIMITED R.F.P.D. NO. 20

1" = 880'

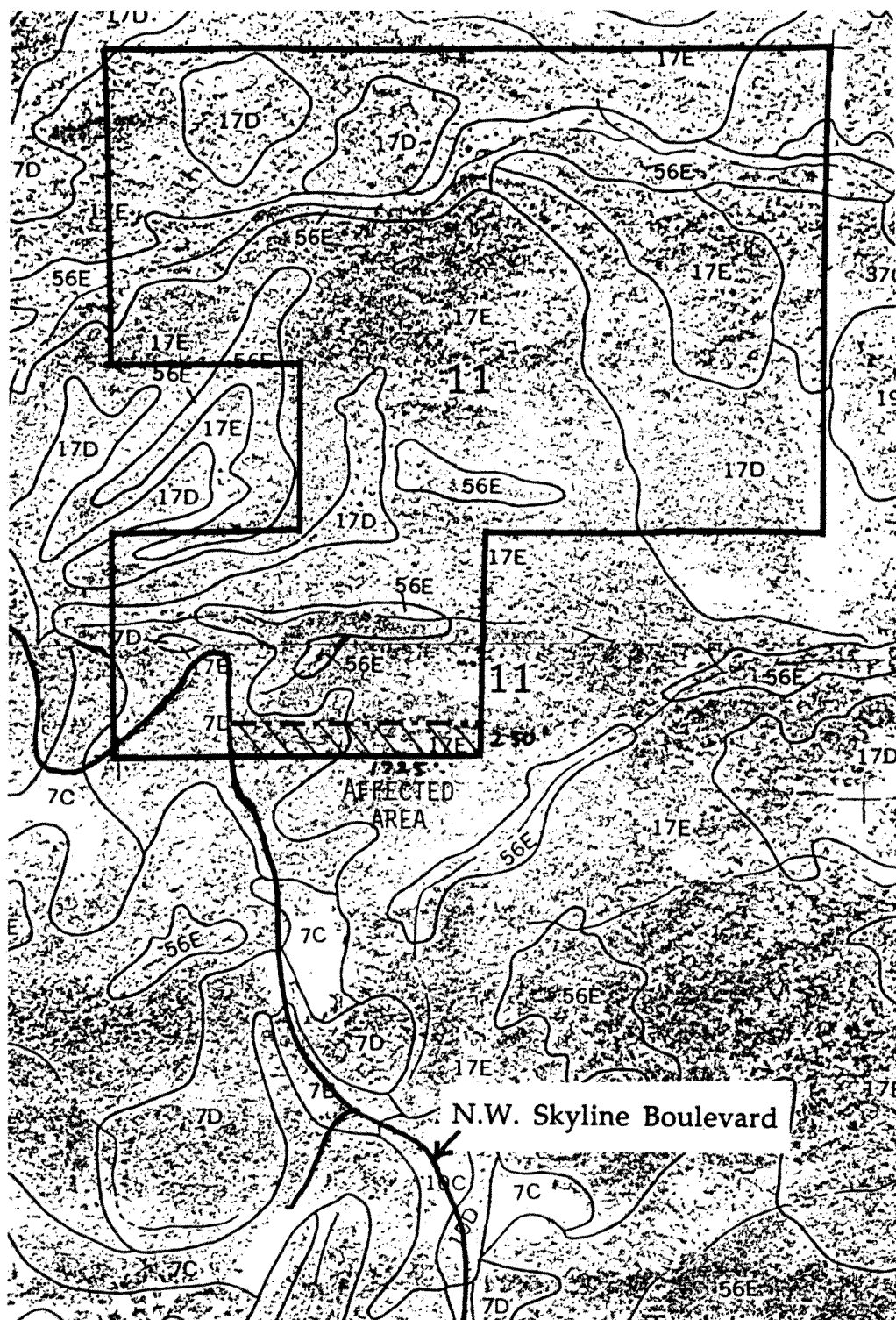
Scale: 1" = 880'



PR 5-91/ZC 5-91

Figure 2

Soils

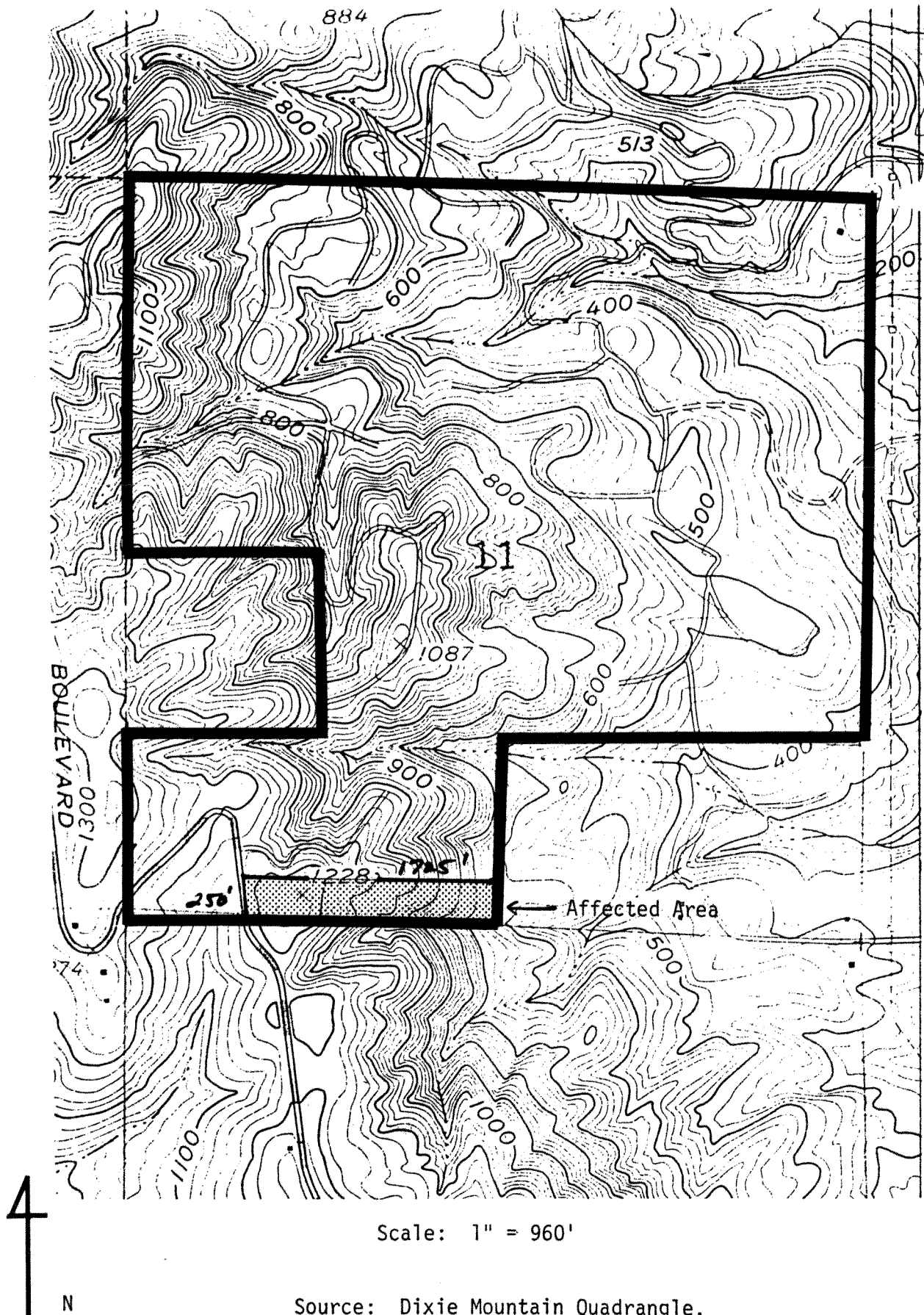


Scale 1" = 550'

4
N

Source: Soil Survey of Multnomah County, Oregon

Figure 3
Topography



Findings of Fact:

Note: Portions of the submitted application narrative are used in the findings section of this report. To distinguish the applicant's submittal from staff comments they will be in *italic type*.

1. Applicant's Proposal:

- A. The applicant requests a plan and zone change from Commercial Forest Use (CFU-80 zone) to Multiple Use Forest (MUF-38 zone) for the southerly 250 feet of Tax Lots '1' and '4', Sec. 11, T. 2 N., R. 2 W. that is easternmost and abutting NW Skyline Blvd. This 250 foot by 1,725 foot area contains approximately 10 acres and is part of a 517.6 acre commercial forest holding owned by Longview Fibre Company.
- B. The purpose of the zone change is to enable a lot line adjustment to take place where the subject 10 acres would be added to tax lot '16' in Sec. 14 immediately to the south and owned by Larry Olson. Tax lot '16' is 66.44 acres in area and is zoned MUF-38. The addition of the subject 10 acres would result in a 76 acre parcel that could be divided into two 38 acre parcels.
- C. The requested plan and zone change is required for such an exchange of property to occur because the MUF code language states "Separate Lots of Record shall be deemed created when a ... CFU ... zoning district boundary intersects a parcel ..." To approve the requested lot line adjustment without a plan and zone change would create a ten acre lot that does not meet the minimum acreage requirement of the CFU zone.
- D. The applicant also states another purpose for the 10 acre transfer as follows:
 - (1) *"The 10-acre transfer will also provide Olson Logging with a level ridgetop area that can be utilized for a log loading staging area and turnaround. The subject property is currently being harvested by the high lead method. Future harvesting would be enhanced if the Olson property could have the whole ridgetop area along Skyline Boulevard that is currently bisected by the existing property line. The high lead tower and log loading area could then be set up at a higher location. Both companies will benefit if the zone change is approved, but Olson Logging would benefit more by gaining the aforementioned level areas and some additional graveled road."*
 - (2) **Staff Response** to (1) above: The higher location referred to is at most 28 feet higher than is the same ridgetop elevation on tax lot '16' near NW Skyline Blvd. This amount is very small in consideration of the 1200 feet to 660 feet range of elevation that exists on the Olson property near the north property line (USGS Dixie Mtn. Quad., Fig. 3). An examination of a 1986 aerial photograph at 1"=200' scale indicates that the graveled road referred to is actually north of the subject 10 acres and would not be involved in the proposed property transfer. Both properties have been recently clearcut. Therefore, there is no need for the landing area for at least 50 or 60 years.

2. Ordinance Considerations:

A. Comprehensive Plan Revisions: [Reference MCC 11.05.120, 11.05.180, & 11.05.290]

Plan Change Code Provisions and Approval Criteria:

MCC 11.05.120

- (A) If the Commission determines that a proposed plan revision or zoning map amendment requested in connection with a required plan revision entails a change in policy, or the application of policy to a broad class of properties in a uniform manner, the proposal shall be considered a legislative plan revision or legislative zoning map amendment.
- (B) Quasi-judicial zoning map amendments shall be considered by the Commission and Board as action proceedings in accordance with MCC 11.15.8206-.8295.

MCC 11.05.180: Standards for plan and revisions.

A plan adopted or revised under this chapter shall comply with ORS 197.175(2)(a), 197.610-.625, and 197.732 if a goal exception is required, including any OAR's adopted pursuant to these statutes.

MCC 11.05.290: The burden of proof is upon the person initiating a quasi-judicial plan revision. That burden shall be to persuade that the revision is:

- (1) Consistent with the procedures of ORS 197.610-.625 and the standards of ORS 197.732 if a goal exception is required, including any OAR's adopted pursuant to these statutes.
- (2) Evidence that the proposal conforms to the intent of relevant policies in the Comprehensive Plan or that the Plan policies do not apply. In the case of a land use Plan map amendment for a commercial, industrial, or public designation, evidence must also be presented that the plan does not provide adequate areas in appropriate locations for the proposed use; and
- (3) Evidence that the uses allowed by the proposed change 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. Zone Change Requests: [Reference MCC 11.15.8230(D)&(E)]

- (1) The Zoning Ordinance specifies criteria for a zone change. The Planning Commission must be persuaded that:
 - (a) Granting the request is in the public interest;
 - (b) There is a public need for the requested change and that need will be best served by changing the classification of the property in question as compared with other property;
 - (c) The proposed action fully accords with the applicable elements of the Comprehensive Plan.
 - (d) Proof of change in a neighborhood or community or mistake in the planning or zoning for the property under consideration are additional relevant factors to be considered ...

3. Site and Vicinity Characteristics:

A. Site Description:

- (1) The ten acres has 250 feet of frontage on NW Skyline Blvd. and is approximately 1,725 feet east to west. It is part of two tax lots: tax lot '1' of 476.97 acres in area and tax lot '4' which is 40.63 acres in area. The subject portion of those properties is 1190 feet in elevation at NW Skyline, rises to 1228 feet in elevation about 400 feet to the east, and then rapidly drops in elevation to 660 feet at the east property line. The site, and the majority of tax lots '1' and '4', have been cleared of timber in recent years. There is a gated access road to the north of the subject site which extends approximately 1,100 feet to the east from NW Skyline Blvd. but which does not cross the subject area.
- (2) The west one-half of the subject property has Cascade Silt Loam soil ("7D," 15 to 30 percent slopes). A USDA-SCS 1987 report indicates that the potential productivity site class index for this soil for Douglas fir is 115 which is productivity class II. The east one-half of the subject ten acres has Goble Silt Loam soil ("17E," 30 to 60 percent slopes). The 1987 SCS site class index for Douglas fir is 120 which is also class II. Comprehensive Plan policy 11 and 12 include the policy to designate as forest land areas which are forest cubic foot site class I, II, and III.

B. Vicinity Description:

The zoning district boundary between the CFU-80 and MUF-38 zones is along the south and east sides of the subject ten acres. Properties to the north and west are zoned CFU-80 and properties to the east and south are zoned MUF-38. One quarter mile to the east is an eighty acre area containing 9 parcels which is zoned Rural Residential. Parcels adjacent to the site are 476, 40, 80, and 66 acres in area.

4. Compliance with Ordinance Criteria:

A. PLAN AMENDMENT ANALYSIS

(1) MCC 11.05.120: Legislative or Quasi-judicial

The subject plan map and zoning map revision is a quasi-judicial amendment to be considered by the Commission as an action proceeding.

(2).MCC 11.05.180: ORS Reference to Statewide Goals and Goal Exception.

A Plan revision shall comply with Statewide Land Use Goals. No goal exception is required. The applicable goal is No. 4 Forest Lands.

"To conserve forest lands by maintaining the forest land base and to protect the state's forest economy by making possible economically efficient forest practices that assure the continuous growing and harvesting of forest tree species as the leading use on forest land consistent with sound management of soil, air, water, and fish and wildlife resources and to provide for recreational opportunities and agriculture."

(a) Applicant's Response:

Statewide Goal 4 established the framework for allowable uses on forest resource lands. The expressly stated Goal is to conserve the forest land base and to protect the forest economy. Sound management of soil, air, water, fish and wildlife and recreational opportunities are also desired objectives of Goal 4.

First and foremost, the basic underlying use of this property for forest use will not change under this proposal. Both the existing and proposed zones are protected under statewide Goal 4. The largest potential for change lies with the silvacultural practices employed. In the CFU zone most parcels are large (over 80 acres), are free from conflicting uses, and are subject to forest management practices such as clearcutting, slash burning, aerial application of herbicides, aerial logging and/or high lead or tower logging. By contrast, most parcels zoned MUF (Multiple Use Forestry) are 80 acres or less, privately owned, are slightly impacted from non-resource uses and are subject to forest management practices such as selective cutting, mechanical brush removal and harvesting by cats or rubber wheeled log skidders. In any event, the management practices and the impacts from logging are different for each respective zone. The proposal to rezone approximately 10 acres from CFU to MUF is not contrary to the stated objectives of Goal 4. In fact, the management practices employed in the MUF zone tend to have a lesser environmental impact than the silvacultural practices utilized in the CFU zone. No conflicts should occur between forest management and harvest practices between the two zones since they were both recently clearcut.

Both zones afford protection for soil, air, water and fish and wildlife resources. The Oregon Forest Management Practices Act requires review of all the aforementioned factors prior to issuing any harvest permit. The MUF zone will likely result in less clearcutting practices and consequently will have a beneficial affect on the Forest Park to Coast wildlife corridor. The majority of forested land left in this vicinity is zoned MUF despite the fact that large areas are clearcut. This proposal satisfies the provisions of Goal 4 to preserve areas for continued timber production while protecting other critical resources such as air, soil, water and wildlife.

(b) Staff Comment:

- (i) Approval of this request, (allowing a ten acre lot line adjustment), would result in the parcelization of the 66 acre lot to the south into two 38 acre parcels; each of which could contain a resource-related dwelling. This action would not serve to maintain the forest land base and protect the forest economy. The basis of that statement is taken from the findings of the *Farm and Forest Land Research Project*, prepared for the Oregon Department of Land Conservation and Development and forwarded to the State Legislature on June 7, 1991. The project results are divided into 3 different reports: *Task One: Status of the Land Resource Base, March 1991*; *Task Two: Analysis of the Relationship of Resource Dwelling and Partition Approvals Between 1985-87 and Resource Management in 1990, May 24, 1991*; and *Task Three: Survey of Farm and Forest Operators, April 1991*.

- Task Two report, page 16:

"2. Operation size appears to positively affect forest management--80.8% of forest approval operations managed by owner that are over 80 acres have received silvicultural treatments since approval date (with a margin of error of plus or minus 15.1%) while only 61.1% of such operations 20 acres and under have managed forests (with a margin of error of plus 22.5%)."

Maintaining a 66 acre parcel is more likely to result in ongoing forest management practices than would occur on two 38 acre parcels.

- Task One report, page 30:

"II.5.A. Harvest Patterns

Summary: Within the private ownership sector, non-industrial owners are less inclined to harvest timber than industrial owners.

Even though industry owners possessed less than two-thirds of the total volume of growing stock on private lands in the mid-'80s, the industry lands were responsible for nearly 90% of the timber harvested off private lands in this time period. ...

Two reasons why non-industrial timberland owners harvest less than industrial owners and far less than their own potential are that some of these owners hold land for non-timber purposes, and many of those who do grow and harvest timber manage their timberlands less intensively than industry owners."

The applicant states that Larry Olson, owner of the 66 acre tax lot '16,' is also owner of Larry Olson Logging who has large holdings of timber lands. Staff is not persuaded that Larry Olson Logging needs the subject 10 acres to continue silvicultural practices. An industrial forest operator would have no need to divide a parcel into two parcels to manage and harvest. Smaller parcels would most likely be transferred to non-industrial owners with reduced production. If the ten acres with its one higher elevation was so essential to efficient logging practices on tax lot '16' the planning staff would be receptive to a plan revision for that tax lot to be designated CFU and then a lot line adjustment would be permitted.

- Task One report, page 34:

"II.6. Forest Residences and Timber Production

Summary: Conversion of forest land to residential use directly withdraws some acreage from timber production, but it also tends to reduce harvests from the forest lands which remain on these parcels and from nearby parcels, too. Reasons include higher timber production costs, lower prices for harvested timber, and opposition to noise, dust, congestion, and loss of scenery."

The addition of one more residence as a result of a land division would most likely reduce timber production on the property contained in the present tax lot '16'. The applicant has not demonstrated that the requested plan and zone change, future lot line adjustment, subsequent land division and additional residence will make possible "... economically efficient forest practices that assure the continuous growing and harvesting of forest tree species as the leading use on forest land ..." (Goal 4).

- (ii) The applicant makes the statement: "The MUF zone will likely result in less clearcutting practices and consequently will have a beneficial affect on the Forest Park to Coast wildlife corridor". The study of the potential wildlife corridor connecting Forest Park and the Coast Range which has been contracted for by Multnomah County is not yet completed. However, at this time there is a valid question as to whether residences on smaller parcels with their fences, lights, noise, and dogs are more likely to be disruptive to animal movement than a clearcut. Until the Study is finished, staff is not convinced that the addition of another residence on the property that comprises tax lot '16' would be less of a conflict with wildlife than normal forest industry harvesting practices.

(3) MCC 11.05.290(1): Notice to Department of Land Conservation and Development Sent and Goal Exception Criteria.

Required notice was sent to DLCD and the Exception criteria do not apply.

(4).MCC 11.05.290(2): The burden of proof is on the applicant to persuade that the revision is based upon evidence that the proposal conforms to the intent of relevant policies in the Comprehensive Plan or that the Plan policies do not apply. (Additional criteria regarding commercial, industrial, or public designation do not apply.)

Applicant's Response:

The existing (CFU) and proposed (MUF) Comprehensive Plan Designations are protected under Goal 4 for Forest Lands. No Goal Exception is required, since the subject 10 acres will remain in Forest Use after the amendment is approved. The MUF designation affords protection for Goal 4 lands but provides for some alternative uses. The minimum parcel size is 38 acres as opposed to 80 in the CFU district.

The magnitude of the plan amendment is not great owing to the small amount of land involved (10 acres) and the similarities of the two forest zones in terms of protecting the resource base.

Staff Comment: The requested action on this "small amount of land" will result in a doubling of the number of residences allowed on the land in tax lot '16' and therefore the "magnitude" of the amendment is significant.

(a) Comprehensive Framework Plan (CFP) Policy 2: Off-Site Effects

The potential for off-site effects is recognized by the current owner and applicant. No change of existing conditions will occur as a result of this action; however, the potential for dwelling units would increase from one to two in the MUF zoned parcel to the south. The owner has no intention of placing any residences among the commercial timber parcels in the area.

Staff Comment: In a document by the State of Oregon Department of Land Conservation and development entitled: "DLCD Analysis and Recommendations of the Results and Conclusions of the Farm and Forest Research Project", May 24, 1991 it was concluded on page 3 that:

"In addition to voluntary decisions by many property owners to no longer manage or harvest private forest lands, alternative forest uses create conflicts with commercial forest operations, cause higher harvest costs and lower harvest levels from adjacent remaining timber lands."

The additional residence which the requested plan revision would result in is likely to

add some conflict with the adjacent commercial forest land to the north.

(b) CFP Policy 5: Economic Development

This application strongly conforms and supports economic development policy by allowing two timber and forest management firms to effect a transaction. Firms need the type of flexibility afforded by the Multnomah County Plan and Zoning Ordinance to operate efficiently.

Staff Comment: On page 1 of the DLCD analysis of the Farm and Forest Research Project are the following major conclusions:

- "1. Strong protection of farm and forest land is vital for Oregon's future economic health and prosperity. ... (T)he forest products industry contributes almost \$4 billion to the state's annual gross product.**
- 2. The cumulative effect of local land use actions is seriously eroding the state's farm and forest resource base. Results from the study confirm that land use patterns in many EFU and forest zones are being changed from commercial resource use to predominantly noncommercial and residential uses."**

It is staff's opinion that the requested plan revision, however small in acreage it may be, is a further erosion of the commercial forest land base into small woodlot, less productive parcels. The applicant has not presented sufficient evidence that the exchange of the ten acres will produce a more economical forest operation that will offset the reduction in production that is associated with additional residences.

(c) CFP Policy 11: Commercial Forest Land Area

THE COUNTY'S POLICY IS TO DESIGNATE AND MAINTAIN AS COMMERCIAL FOREST LAND, AREAS WHICH ARE:

- A. PREDOMINANTLY IN FOREST CUBIC FOOT SITE CLASS I, II, III, FOR DOUGLAS FIR AS CLASSIFIED BY THE U.S. SOIL CONSERVATION SERVICE;
- B. SUITABLE FOR COMMERCIAL FOREST USE;
- C. IN PREDOMINANTLY COMMERCIAL FOREST USE AND PREDOMINANTLY OWNED BY PUBLIC AGENCIES AND PRIVATE TIMBER COMPANIES;
- D. NOT IMPACTED BY URBAN SERVICES; AND
- E. COHESIVE FOREST AREAS WITH LARGE PARCELS; OR

F. OTHER AREAS WHICH ARE:

1. NECESSARY FOR WATERSHED PROTECTION OR ARE SUBJECT TO LANDSLIDES, EROSION OR SLUMPING; OR
2. WILDLIFE AND FISHERY HABITAT AREAS, POTENTIAL RECREATION AREAS OR OF SCENIC SIGNIFICANCE.

THE COUNTY'S POLICY IS TO ALLOW FOREST MANAGEMENT WITH RELATED AND COMPATIBLE USES, BUT TO RESTRICT INCOMPATIBLE USES FROM THE COMMERCIAL FOREST LAND AREA, RECOGNIZING THAT THE INTENT IS TO PRESERVE THE BEST FOREST LANDS FROM INAPPROPRIATE AND INCOMPATIBLE DEVELOPMENT.

(i) Applicant's Response:

This policy and policy 12 are the two most important with respect to this application. The purpose of Policy 11 is "to protect the continued use of lands for renewable commercial forest resource use, water resources protection, recreation, wildlife habitat, and other related or compatible uses." The proposed rezoning of 10 acres should not detract from the objectives of this policy since the land will remain exclusively in forest use when it is rezoned to MUF. The parent parcel owned by Longview Fibre will still comply with all the policies and strategies on pages 49 and 50 of the Framework Plan. The 10 acres will become part of a timber operation that is in excess of 12,500 acres (owned by Olson Logging). Both firms apply very similar silvicultural practices, and the mere shifting of a property line will not alter or affect those practices. Most of the protective provisions of Policy 11 will continue under the MUF zone.

(ii) Staff Comment:

- The subject ten acres is presently part of two tax lots totaling 517.6 acres owned by Longview Fibre Company, a commercial private timber company. In accordance with Plan Policy 11, those two tax lots were designated Commercial Forest Use in the 1980 acknowledged plan for the following reasons:
 - A. The soil types on the property are forest cubic foot site class II for Douglas fir;
 - B. It is in commercial forest use;
 - C. The property is owned by a private timber company;
 - D. The site is not impacted by urban services sufficiently to affect timber production; and
 - E. It is in a cohesive forest area of large parcels.

- The applicant has not presented sufficient evidence that removing the ten acres from a 517 acre commercial operation and adding it to an adjacent tax lot that is just ten acres short of being divided will still continue the ten acres in commercial resource use, no matter how many acres of forest the then divisible tax lot owner may have in addition to that parcel.
- As stated under the Statewide Planning Goal 4 discussion, there will be a loss in timber protection and production in a change from Commercial Forest Use to Multiple Use Forest designations.
- A case can be easily made that the adjacent 66 acre tax lot '16' that is owned by "Olson Logging" should have been designated Commercial Forest land if it is part of a timber operation that is in excess of 12,500 acres. If that was the case, then the addition of the subject 10 acres would be approved without Planning Commission review.

(d) CFP Policy No. 12: Multiple Use Forest Area

THE COUNTY'S POLICY IS TO DESIGNATE AND MAINTAIN AS MULTIPLE USE FOREST, LAND AREAS WHICH ARE:

- A. PREDOMINATELY IN FOREST SITE CLASS I, II, III, FOR DOUGLAS FIR AS CLASSIFIED BY THE U.S. SOIL CONSERVATION SERVICE;
- B. SUITABLE FOR FOREST USE AND SMALL WOOD LOT MANAGEMENT, BUT NOT IN PREDOMINATELY COMMERCIAL OWNERSHIPS;
- C. PROVIDE WITH RURAL SERVICES SUFFICIENT TO SUPPORT THE ALLOWED USES, AND ARE NOT IMPACTED BY URBAN-LEVEL SERVICES; OR
- D. OTHER AREAS WHICH ARE:
 - 1. NECESSARY FOR WATERSHED PROTECTION OR ARE SUBJECT TO LANDSLIDE, EROSION OR SLUMPING; OR
 - 2. POTENTIAL REFORESTATION AREAS, BUT NOT AT THE PRESENT USED FOR COMMERCIAL FORESTRY; OR
 - 3. WILDLIFE AND FISHERY HABITAT AREAS, POTENTIAL RECREATION AREAS, OR OF SCENIC SIGNIFICANCE.

THE COUNTY'S POLICY IS TO ALLOW FOREST USES ALONG WITH NON-FOREST USES; SUCH AS AGRICULTURE, SERVICE USES, AND COTTAGE INDUSTRIES; PROVIDED THAT SUCH USES ARE COMPATIBLE WITH ADJACENT FOREST LANDS.

(i) Applicant's Response:

The MUF designation affords many of the same protections as the CFU designation; however, uses other than forestry and agriculture such as cottage industries, limited rural service commercial use, and tourist commercial uses such as restaurants and gas stations are permitted.

As stated previously, no change of use is anticipated for the 10 acres or the adjoining parcel to the south. A potential exists for a homesite when the 10 acres is lot line adjusted to the parcel on the south. Dwellings are permitted outright on parcels of 38 acres or larger.

The modification of the interface between the two zones should not negatively impact the CFU-zoned area.

(ii) Staff Comment:

- The change in use that the subject 10 acres is likely to undergo with the requested action is a change from industrial silvicultural management practices to a small woodlot owner occupied type of management. An owner occupied smaller MUF parcel is more likely to not be managed as intensively as industry owned timber land. This conclusion is taken from the above referenced May 24, 1991 DLCD Analysis of the Farm and Forest Research Project, page 9:
 - “1. A significant number of private, nonindustrial forest operations are not being managed for timber production.”
 - “2. It appears that receiving approval for a forest dwelling does not cause land owners to engage in some forest management on their lands.”
- A doubling of the permitted number of dwellings on tax lot ‘16’ (after the lot line adjustment takes place) adjacent to the commercial forest land would have negative impacts. Page 3 of the DLCD analysis states: “The presence of dwellings and other incompatible uses on or near forest lands contributes to wildfire losses, complicates fire suppression, and accelerates conversion of adjacent timber lands.”

(e) Policy 14: Development Limitations

No development is planned for the project area. If any development does occur, heed would have to be taken for slopes exceeding 20 percent. The majority of the 10 acres proposed for the plan amendment is excessively steep for development. The natural feature best suited for any potential development is the relatively level ridgetop near Skyline Boulevard.

(5) MCC 11.05.290(3): The burden of proof is on the applicant to persuade that the revision is based upon evidence that the uses allowed by the proposed change will:

(a) Not destabilize the land use pattern in the vicinity;

(i) The applicant did not submit a specific response to this approval criteria. However, on page 3 of the application under the heading of "Area-wide Description" it reads:

The subject property is situated among large timber holdings, although a few scattered residences are located along Skyline Boulevard. A radio facility is located approximately 1/2 mile to the south on the east side of Skyline Boulevard. Section 11 belongs almost entirely to Longview Fibre, while Section 14 to the south is comprised of many ownerships ranging in size from 3 to 80 acres.

The proposed plan/zone amendment is complementary to the use mix in the area and future utilization of the forest resource base.

The major uses by compass direction are as follows:

North - Large tract commercial timber.

South - Medium to small commercial timber tracts of 76, 68, 30, and 10 acres respectively.

East - Medium size commercial timber and scattered residential tracts.

West - Large tract commercial timber and two small residential tracts.

(ii) Staff Comment:

- The requested action would set an undesirable precedent for other locations where acreage would be taken from more restrictive resource designations to be added to less restrictive zoned property in order to enable more development to take place. The primary purpose of the forest and farm resource designations is for resource protection, not rural residential homesites.
- At present, tax lot '16' serves as an intermediate buffer of 66 acres between the existing smaller lots to the south and the 80 acre lot size potential to the north.

(b) Not conflict with existing or planned uses on adjacent lands;

(i) The applicant did not submit a specific response to this approval criteria. However, on page 6 of the application under the Policy 12 discussion it reads:

The modification of the interface between the two zones should not negatively impact the CFU-zoned area.

(ii) Staff Comment:

The forestry practices on smaller 38 acre woodlots should not conflict with the commercial forestry operation. It is the addition of another residence over what would otherwise be permitted adjacent to the Longview Fibre Company holdings that could result in some conflict. The presence of residences in forests complicates fire suppression strategies by diverting those suppression resources away from protecting timber to the priority of saving lives and structures (page 37, *Farm and Forest Land Research Project, Task One: Status of the Land Resource Base*, March 1991, by C. Russell Beaton, PH.D and Thomas H. Hibbard, Ph.D, Willamette University).

(c) Be served by necessary public services, or public services will be available to serve allowed uses.

(i) Applicants Response:

Utilities and Services - The property is typical of rural properties in northwest Multnomah County where only power, phone, and public road access are available. Services include police, fire, and schools. Portland General Electric and U.S. West Communications provide electric power and phone service respectively. Access is via Skyline Boulevard, a paved county highway. Police, fire protection, and schools are provided by Multnomah County Sheriff, Fire Patrol Northwest, and the Portland School District respectively.

C. ZONE CHANGE REQUEST ANALYSIS

(1) MCC 11.15.8230 (D)&(E): The Planning Commission must be persuaded that:

(a) Granting the request is in the public interest;

(i) Applicant's Response:

Public interest in land use is inextricably tied to the balancing of public need with individual initiative and gain. In this particular case the area in question was designated for protection under Statewide Goal 4. The public participated in the designation of this land for forest use during the comprehensive plan process (Citizens Involvement Goal 1). The designation for forest land was carried through a series of advertised public hearings and ultimately the plan was acknowledged by the Land Conservation and Development Commission. The land in question was placed under the protective measures of Goal 4 with the approval of the public and the approval of the landowner.

The public interest is still being maintained because both the CFU and MUF zones afford Goal 4 protections for forest land. Under this proposal the protection of Goal 4 does not change, so how is the public interest compromised?

The only substantive change is the implementing zone. The proposed MUF zone has the stated purpose "to conserve and encourage the use of suitable lands for the growing and harvesting of timber and small wood lot management." This proposal will result in a 78-acre parcel which is still below the 80-acre minimum required for residential use in the CFU zone. The potential to be contrary to the "public interest" is minimal since the existing and proposed zones both conserve and protect forest lands. The public interest might be more affected if this proposal were to afford Goal 3 protection or if a nonresource zone were being sought. The owners believe that the proposal is in the public interest because Goal 4 protection will not change.

(ii) Staff Comment:

- The aforementioned *Farm and Forest Land Research Project, Task One: Status of the Land Resource Base* on page 45 states that forest products as a basic industry may support up to 20% of the Oregon economy.
- The *Task Three: Survey of Farm and Forest Operators on Conflicts and Complaints* study evaluated the direct costs to forest operations by different conflicts. Those conflicts by highest to lowest cost ranking included theft, vandalism, litter, fire, trespass, and animal damage. The report finds on page 30 that:

"In general, respondents with fewer acres experienced higher per acre costs. Operators with 200 or fewer acres made up 75 percent of the sample and registered costs that were up to six times higher than the combined seven county area average. Conflict costs act as a fixed cost, so the cost burden of conflicts fall inordinately on these smaller operations."

While both the CFU and MUF zones are Goal 4 protection districts, the lot area minimums in each zone differs greatly; 80 acre minimum parcel size versus 38 acre minimum parcel size. Taking land out of the commercial industry holdings and creating two smaller lots where only one is now permitted is likely to add conflict costs to forest operation on that land. It is in the public interest to maintain the forest segment of the State economy by reducing potential conflicts with that resource land.

- (b) There is a public need for the requested change and that the need will be best served by changing the classification of the property in question as compared with other available property;**

(i) Applicant's Response:

An important consideration with respect to public need has been the conversion of corporately held timber tracts in Township 2 North and Range 2 West to small woodland operators. In Sections 11, 13, 14, 23, and 24 several corporate own-

erships have been divided and sold to small wood lot operators. Large corporately held parcels south of the subject property have largely been sold to small wood lot operators who utilize much less drastic silvicultural practices. A public need exists for small wood lot operators, as the corporately held lands are being consolidated farther to the north. In the past three years the applicant has divided land or obtained forest dwelling permits for 8 individual clients in the immediate area.

The public need for smaller tract forest parcels employing environmentally safer management and harvesting practices is unarguable between Forest Park and the northern terminus of MUF zoning at the south line of Section 11 (subject property).

The checkerboard pattern of smaller privately held parcels also bodes well for fulfilling the explicit Goal 4 language of protecting wildlife resources. Clearcuts on large corporately held parcels between Forest Park and the subject property have served to interrupt the Coast Range wildlife corridor to Forest Park. Changing the classification of the property in question as compared with other available property best serves the public interest if the broader issues of watershed protection, habitat protection and environmentally more acceptable management and harvesting practices are considered.

(ii) Staff Comment:

- There is no "public need" for additional small woodlots in Goal 4 lands over what was acknowledged as meeting the Statewide Planning Goals in 1980. The MUF zoning was applied to areas which were at the time already in smaller parcels. To take property out of commercial timber production to create smaller lots eligible for residences does not serve to meet any Statewide Housing Goal 10 needs that would not be better met within the rural residential or urban area.
- In order for tax lot '16', Sec. 14 of 66 acres to be divided, there would have to be an additional ten acres of property added. The requested plan and zone change area of ten acres (out of tax lots '1' and '4', Sec 11) is owned by Longview Fibre Company and is being proposed to subsequently be added to tax lot '16'. Abutting tax lot '16' to the east is tax lot '1', Sec. 14, which is an 80 acre parcel zoned MUF-38. This adjacent 80 acres is also owned by Longview Fibre. An exchange of ten acres between these two properties would enable tax lot '16' to be divided, as is the applicant's objective, without a plan and zone change being necessary. In addition, another 80 acre parcel, tax lot '3', Sec. 11, also abuts tax lot '16' to the east. It is zoned MUF-38 and ten acres could also be obtained from this tax lot by only a lot line adjustment. The result of a lot line adjustment with either of those two eastern adjacent lots would be that the parcel losing the acreage could not be divided again. The total number of potential residences at this plan designation boundary would not change with this action.

- The applicant has not shown that smaller woodlots of 38 acres with their accompanying residential land uses employ environmentally safer management and harvesting practices than forest industry operations.

(c) The proposed action accords with the applicable elements of the Comprehensive Plan.

See 4.A.(4) above.

(d) Proof of change in a neighborhood or community or mistake in the planning or zoning for the property under consideration are additional relevant factors to be considered.

(i) Applicant's Response:

The applicant believes a change in the neighborhood, rather than a mistake in planning or zoning for the property is relevant to this proposed zone change. The neighborhood or community in this case is more broadly defined as the area bordered by State Highway 30, McNamee Road, Skyline Boulevard and the south boundary of the subject property. In the past 10 years several large corporate ownerships have been clearcut, divided and sold. The corporate holdings are now largely confined north of the proposed zone change area.

In the past 3 years the applicant has gained approval for thirteen forest management plans in the general vicinity of the subject property. Five other properties within one mile of this property were approved for forest dwellings on parcels of 38 acres or more. The request for forest management plans have come from individual land owners that have purchased properties from corporate timber companies.

The change in circumstance (property ownership) from corporate to private is unmistakably occurring and this proposal is largely an outgrowth of corporate consolidation and small wood lot development.

(ii) Staff Comment:

- The many residences that have been recently approved in the MUF zoned areas to the south were anticipated by the plan and zone and are in compliance with that designation. Adding an additional residence by removing acreage from the CFU zone, however, will serve to further lessen protection of Goal 4 lands by adding to the aforementioned conflicts and reducing forest harvests
- The subject ten acres, as part of the 517 acre industry holdings, was correctly planned and zoned as Commercial Forest, CFU-80.

Conclusion:

- A. The applicant has not demonstrated that the proposed plan amendment and zone change satisfy the applicable approval criteria.

Signed July 1, 1991

By Richard Leonard, Chairman

Filed With the Clerk of the Board on July 11, 1991

Appeal to the Board of County Commissioners

Any person who appears and testifies at the Planning Commission hearing, or who submits written testimony in accord with the requirements on the prior Notice, and objects to their recommended decision, may file a Notice of Review with the Planning Director on or before 4:30 p.m. on Monday, July 22, 1991 on the required Notice of Review Form which is available at the Planning and Development Office at 2115 SE Morrison Street.

The Decision on this item will be reported to the Board of County Commissioners for review at 9:30 a.m. on Tuesday, July 23, 1991 in Room 602 of the Multnomah County Courthouse. For further information call the Multnomah County Planning and Development Division at 248-3043.

Meeting Date: August 6, 1991

JUL 16
JUL 23 1991

Agenda No.: P-4

(Above space for Clerk's Office Use)

AGENDA PLACEMENT FORM
(For Non-Budgetary Items)

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

BCC Informal _____ (date) BCC Formal August 6, 1991 (date)
DEPARTMENT DES DIVISION Planning and Development
CONTACT R. Scott Pemble TELEPHONE 3182
PERSON(S) MAKING PRESENTATION Planning Staff

ACTION REQUESTED:

☐ INFORMATIONAL ONLY ☐ POLICY DIRECTION ☒ APPROVAL

ESTIMATED TIME NEEDED ON BOARD AGENDA: 5 Minutes

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

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

Continued to August 6, 1991.

See Attached Exhibits A and B

(If space is inadequate, please use other side)

SIGNATURES:

ELECTED OFFICIAL _____

Or

DEPARTMENT MANAGER



(All accompanying documents must have required signatures)

CLERK OF
COUNTY COMMISSIONERS
1991 JUL 16 PM 2:01
MULTNOMAH COUNTY
OREGON



EXHIBIT A

MULTNOMAH COUNTY OREGON

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

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

MEMORANDUM

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

FROM: John L. DuBay

DATE: July July 3, 1991

RE: Chauncey Land Use Appeal: Scope of Review

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

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

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

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

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

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

O:\FILES\103JLD.MEM\jld



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

NOTICE OF REVIEW

- See Attached Notice*
1. Name: Jones, Larry, W.
2. Address: 9985 NW Kaiser, Portland, OR 97231
Last Street or Box Middle City State and Zip Code
3. Telephone: () -
4. If serving as a representative of other persons, list their names and addresses:
See attached
5. What is the decision you wish reviewed (e.g., denial of a zone change, approval of a subdivision, etc.)?
approval of conditional use application
6. The decision was announced by the Planning Commission on 6/13, 1991
7. On what grounds do you claim status as a party pursuant to MCC 11.15.8225?
See attached

RECEIVED
JUN 24 1991

Multnomah County
Zoning Division

Please return this original form

NOTICE OF REVIEW

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

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

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

4. The following persons join in this appeal:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

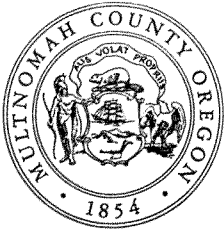
b. The opponents to the application were afforded no opportunity to rebut the testimony of the applicants' experts, nor to evaluate their reports submitted to the Planning Commission.

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

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

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

7/23/91??



GLADYS McCOY, Multnomah County Chair

Room 134, County Courthouse
1021 S.W. Fourth Avenue
Portland, Oregon 97204
(503) 248-3308

M E M O R A N D U M

TO: John DuBay,
Deputy County Counsel

FROM: Judy Boyer,
Staff Assistant

THRU: Gladys McCoy,
Chair

DATE: June 26, 1991

RE: Additional Testimony - Chauncey Planning Hearing

BOARD OF
COUNTY COMMISSIONERS
1991 JUL - 1 AM 8:00
MULTNOMAH COUNTY
OREGON

Please draft memo to BCC for Chair McCoy to review in order for this matter to be re-opened. It appears the first opportunity for the same body to sit will be Tuesday, August 6 at a scheduled planning hearing. The Planning Commission staff should prepare notices.

Chair McCoy wants Ralph Jones and party to have an opportunity to provide additional testimony due to the fact that BCC were not aware anyone had appeared for this purpose. I have attached a copy of Mr. Jones' complaint for your file.

I have had a conversation with Scott Pemble with regard to this matter. Scott felt he was only being courteous in approaching Mr. Jones and advised what the recommendation would be from Planning staff. However, Scott feels if this citizen feels he was slighted in any manner, the BCC should re-open and allow additional testimony.

Please draft memo for Chair and I assume Hank will speak with Paul Yarborough on Monday, July 1.

cc: Hank Miggins
Paul Yarborough
✓ Office of Board Clerk

MEMORANDUM TO GLADYS MCCOY AND PAULINE ANDERSON REGARDING
SCHEDULING OF REVIEW OF CHAUNCEY APPLICATION ON AUGUST 13, 1991.

Pursuant to the request of Ms. Judy Boyer, I am requesting that the review of the Planning Commission Decision filed in this matter be on the record PLUS additional testimony, as originally requested in the Notice of Review filed by myself and Messrs. Thurber and Roy. I appeared at the hearing at 9:30 in Room 602 of the County Courthouse prepared to represent the three of us, plus other interested parties, in the proceeding in the Chauncey matter when it was called. Mr. Scott Pemble, Director of the Planning Commission Staff, approached me and asked whether I was there for the Chauncey matter. I stated that I was there for that matter and also for the hearing on the County's determination to begin imposing fines up to \$500 per day for violations of the zoning ordinances. Mr. Pemble informed me that the Chauncey matter was scheduled for July 23 and that I didn't need to stay for the scheduling hearing. He also informed me that consideration of the fine ordinance was also deferred until July 9. Based on his statements I left the hearing room shortly after the Board of County Commissioners commenced the morning hearings.

I learned this morning that after I left the attorney for the applicants appeared and requested that the hearing be limited to the record, notwithstanding our request that our appeal be on the record plus additional testimony. Given the representations that were made in the original hearing, which formed the basis for the Planning Commission's determination, we are of the opinion that rebuttal comments that are not in the record are necessary. Since I was led to believe that I did not need to stay by the Planning Commission Staff director, as a matter of equity, and in compliance with our review request, we should be permitted the opportunity to fully and accurately air the facts of this case. Given that we have paid the \$517.50 appeal fee and requested the scope of the hearing be enlarged to rebut statements made to secure approval of the conditional use permit, it is only fair to allow the appeal on the record PLUS additional testimony.

*FAX from citizen
Ralph Jones*



MULTNOMAH COUNTY OREGON

FOR 7/23/91
??
AGENDA

GLADYS McCOY
MULTNOMAH COUNTY CHAIR
1021 S.W. 4th, ROOM 134
PORTLAND, OREGON 97204

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

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

C: OBC
MBR

MEMORANDUM

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

FROM: John L. DuBay

DATE: July July 3, 1991

RE: Chauncey Land Use Appeal: Scope of Review

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

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

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

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

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

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

O:\FILES\103JLD.MEM\jld

MULTNOMAH COUNTY BOARD OF COMMISSIONERS
VERBATIM TRANSCRIPT OF 7/23/91 MEETING
IN RE: PLANNING ITEM LD 1-91

GM	- Gladys McCoy	BH	- Bob Hall
SK	- Sharron Kelley	DP	- Dave Prescott
GH	- Gary Hansen	WB	- William Brady
JD	- John Dubay	SS	- Stanley Steinberg
CP	- Carrie Parkerson	BQ	- Bruce Quarter

WB: Mrs. McCoy may I briefly be heard before the presentation?

GM: I think it would make sense to have the staff give us the background first and then you certainly shall be next.

WB: My request, Madam Chairman, is for a postponement. If I could say just a couple of words. My name is Bill Brady, Mrs. McCoy, Mrs. Kelley and Mr. Hansen. My request is that this hearing be postponed until September, 1991. If there ever is a compassionate need request, believe me this is. This change is going to adversely effect one home. This a home that two people, who have this as their dream home, believe very, very strongly in. They are both from Europe. She was born and raised in Austria, came over at an early age with her family, he came over alone from Hungary. She is a secretary in a small school outside of Portland, he manages an auto repair maintenance department. They came here in search of the American dream and by sacrificing and saving, they have bought their dream home. They want to tell you what this would mean to their home. They had a choice of either taking a two-week vacation with their seven and nine year old son and daughter or being at the hearing. They did the right thing, they took the vacation. Please, I ask you to be kind to them and postpone the hearing until they can be here to tell you what it means to them. We are all going to be around in August, but September would be very much appreciated. Thank you for your attention.

GM: Robert, is there any reason why we should not postpone this until September?

JD: If I may interrupt here, we do have the 120 day limitation applying on this case, so unless the applicant applies for an extension, which would act as a waiver of the 120 day rule, the applicant retains the right to go to the court to request that the application be approved, if the matter then goes beyond 120 days from the time that the application is deemed complete.

BH: Madam Chair, can I confer with County Counsel for a moment?

GM: Certainly.

BH: Excuse me. What County Counsel said was totally correct.

GM: What does that mean? When does the 120 day time expire?

BH: The original application in this case for the staff decision was made on January 28 I believe. Which means we have already exceeded the 120 day limit. If that is taken as the day that the clock runs.

WB: What was the date of the decision?

GM: May 7 was the date of the decision of the Planning Commission.

BH: May 7 was the date of the . .

WB: Of the Planning Commission.

BH: But, of the Staff decision . .

WB: The staff decision was January 24th.

BH: So we have exceeded that if the date the application was taken in for administrative decision is the day the clock runs. We have not if the day that the Planning Commission made the decision is the day. And again I will have to refer to County Counsel.

JD: The 120 day has passed because the 120 day clock begins to run when the application is deemed complete, probably sometime back in January or February.

GM: Not when the Planning Commission deals with it?

JD: No. The decision must be made within 120 days after the application is deemed complete. Unless there is some decision by the staff approving the application, the application is always deemed complete within 30 days after it has been filed. So it is no later than sometime in February. The clock began to run on the 120 day period. This means that at any time the applicant could go to court and ask that the application be approved.

GM: How do we in a sense of compassion deal with this?

JD: You can grant the extensions to September. Be aware that the applicant can just go to court and ask that the application be approved at any time. Take it out of your hands.

GM: All right. But since it is the applicant who is asking for the extension it seems unlikely.

JD: No, in this case, it is not the applicants, I believe it is the opponent who is asking for the extension.

GM: Dr. Brady are you willing to take that risk?

WB: Madam Chairman, we certainly are. We rest on the compassion of the people in front of us here.

SS: Can I speak?

GM: Certainly.

SS: I am Stanley Steinberg and I live at 6075 S.W. Mill Street. I am a compassionate person, however, I am not compassionate in this case. The two immigrants that were reported to be really a sad case is General Service Manager, Don Rassmussen, Mercedes Benz, and she is a teacher at Catlin Gable private school. Both perfectly capable of being here or not being here, speaking or not speaking. But in any case, the thing that bothers me is that I was told that two of the opponents of our land division felt that while we were right, and had every right since it is at our 20 zone - that is all we are asking for. They could delay it by appeal after appeal, and I mentioned in the Planning Commission that that is what was happening. Whether it is an attorney that is not here or whether one party is not here, there will be appeals and appeals. I don't think that is fair. It has been 120 days, I ask for 28 more days which would expire today in a letter, which is why we are meeting today instead of last Month. I feel that this has gone on from January. We have already lost one summer that we could have built, and I just hate to see you speaking of compassion. Thank you.

GM: All right Board members how do you feel?

GH: I am concerned about two items. One is if we are already over the 120 day limit, I would hate to see County resources wasted on a hearing and a action that we cannot support if we denied this and there was an automatic appeal in the court. It would be automatically granted because we are already outside the 120 day period.

JD: Well it is not entirely automatic. The statute gives the applicant the right to apply to the court for a order approving the application unless it is shown that the application would violate the County plan or zoning regulations. The staff has already recommended - the staff and the Planning Commission have already found that is not in violation of the zoning regulations. It would not be necessarily automatic but there is a fair chance that the court would grant it in this case because it has already been approved by the staff and the Planning Commission.

GH: My other concern is of compassion. I do not know if a vacation is a significant reason to impose a two month delay to a case that has been going on for this long, and if we are going to hear it, I would prefer to hear it today.

GM: Commissioner Kelley?

SK: I guess I am pretty malleable on trying to figure out a compromise for when everybody can be here to testify. So whatever the two of you wish to do I would be willing to go along with it.

GM: Staff, do you have anything to offer that might shed some light on whether we procede or whether we wait?

BH: I honestly do not. I think County Counsel has clearly outlined the options. You could choose to hear the case and

the decision be finalized today or if they applicant chose to go the route explained by County Counsel, he might get a final decision in the near future through the courts. I do not know how long that takes.

JD: I should advise that if the decision is, since there is not an appearance today by the opponents, that the Board would approve this application, the decision could then be appealed. The real opponents, the immigrants, are not here, of course, to present opposing testimony. Dr. Brady is on their behalf, so it could be appealed. It could not necessarily be a drop dead deadline today because there is a further avenue of appeal.

GM: Explain this business that it has been appealed and appealed and appealed and delayed and delayed. Tell me about that part.

WB: Perhaps David Prescott could better explain the history. He is the one that has dealt with the case.

DP: Morning, Dave Prescott, Planning Department. The case that we are dealing with came to our division as a request for what is known as a type 3 land division, that is a minor partition which results in creation of a flag lot. That particular kind of action is one that the land division code allows to be decided by the Planning director or a delegate of the Planning director, meaning the Planning staff, and that process was followed. The application was filed early January. On January 24 the staff issued a tentative plan decision. That tentative plan under the ordinance becomes effective, meaning that the applicant then has one year to turn in a final partition plat, it becomes effective unless it is appealed to the Planning Commission, in this case, Dr. Brady and others filed a notice of review within 10 days of January 24, and because of that notice of review, the case was sent to the County Planning Commission. The Planning Commission considered the same proposal that the applicants filed in January, and as did the County Planning staff. The Planning Commission found that the land division was appropriate and approved it. In an effect they denied the appeal that was filed by Dr. Brady, and following the Planning Commissions approval of the land division, the notice of review that you now have in front of you was filed again by Dr. Brady and others which is why the Board is hearing it today. In effect, you have a total of two appeals that have been filed to this point.

GM: Let's hear it, and if we decide upon hearing it, we need to delay it for any period of time. We can do that. I think that is the best that we can do.

SK: I think so too.

GM: We are entering then a public hearing on the record, 10 minutes per side, to review the decision of the Planning Commission.

BH: I will make the introductory statement and then turn it over to Dave Prescott for the particulars of the case. All testimony and evidence at this hearing must be directed toward the criteria I will list in a moment, or toward other criteria in the Multnomah County Comprehensive Plan or Zoning Code. Any witness believed should be applied in this matter. If any issue is not presented with sufficient detail to allow the Board or the opposing parties to respond, then that issue may not be raised in an appeal to the Land Use Board of Appeals. This means any issue of fact, procedure of law, not clearly addressed here at the County is not available as a grounds for appeal. The criteria to be addressed are, in this case, the criteria to be addressed are listed in the Land Division Ordinance, as criteria for approval for a Type 3 land division. Those are, to summarize briefly: 1. The tentative plan must be in accord with three things, (a) must be in accord with the implicable elements of the County Comprehensive Plan; (b) must be in accord with the State-wide planning goals; (c) the proposal must be consistent with the regional comprehensive plan. 2. The tentative plan must allow for development or access to the remainder of the property that is under consideration and must not hinder development or access to adjacent properties. 3. The tentative plan must be consistent with the implicable elements of the Land Division Code, including the purpose and intent of the Land Division Code. 4. The proposed land division must be in accord with the County Zoning Ordinance. Going back to the applicable elements of the Comprehensive Plan, there are certain policies in the Comprehensive Plan which are found to be applicable in this case. Those are policy 13, relating to air and water quality; policy 14, relating to development limitations; policy 22, relating to energy conservation; policy 35, relating to public transit; policy 36, relating to transportation system development requirements; policy 37, pertains to public utilities; policy 38, pertains to facilities such as schools and fire service. That is a summary of the actual criteria that were considered in this case and just to briefly summarize the nature of the request. Again the property is at 6075 S.W. Mill Street, this property is a 1.4 acre site, the County Zoning designation is R-20 that requires a minimum square footage of 20,000 square feet for any lot that is created. That zoning has been on the property since the County adopted zoning in 1958. The applicant requests permission to create two lots out of the one that exists right now. The flag lot would have a 16 foot stem shown on the map that is with your proposal. That 16 foot stem runs from Mill Street and goes to the north or back portion of the property which includes the house owned by the applicants. The 20,000 square feet would be on the front porch on the site. The staff report that is included as part of the decision indicates criteria for approval that I mentioned and indicates the staffs' findings of those criteria have been met. The findings contain the evidence in support of compliance with those criteria. I do have slides of the site that we can show you, they were shown at the Planning Commission hearing, if you want to see those . .

GM: Yes, we need everything that we can get.

DP: Okay, the first slide that you are looking at is taken at a point east of the property in question. We are looking west on Southwest Mill street, and the site itself will be off to your right. As you look off into the distance, you will notice that the paving on Mill Street improves as you go to the west, the point where the paving actually becomes wider is actually where the site starts. The width of the pavement on Mill Street in this area, is approximately 18 to 20 feet. In the next slide, you will see a house. We are standing now directly in front of the site. The house that you are looking at is across the street to the south of the property under consideration, that house, I might add, on a lot that is approximately 20,000 square feet, it is a little more than 20,000 square feet. That is one of two lots which also were originally were part of a larger lot. That property was divided in 1987. Again, the house that is on that property is on a lot that is about the same size as the front lot that the applicant is requesting to be created in the present land division. In the next slide, we again are standing in front of the site, and we are looking directly west again on Mill Street and you can see more clearly the condition of the painting and the site itself is off to the right. In the last slide we are now standing . .

GM: Just a minute Dave.

SK: Could you go back to that slide that we just saw please?

DP: Yes.

SK: On the first slide that you showed, you talked about the narrowness of the road but then said that in the application, that the road seemed to widen. And now it seems that with this slide it looks a little different and I am confused. Could you help me out with this?

DP: I'll do the best I can. We had a little bit of a difficulty this morning. We were seeking to arrange the slides, and at the Planning Commission hearing, another member of our staff actually presented those slides and what we were seeking to do was show a view of the street right in front of the property itself. In this site visit that we made and what we sought to show in the slides, was that as you get farther away from 61st Drive and go towards the east, that is towards the site, farther to the east of the site, Mill Street kind of tapers out and gets less improved as you go westward from the property itself you get that 18 to 20 foot pavement width that we referred to earlier.

SK: But what I seem to have heard was that it was 18 feet until it got to the applicant's property, and then you seem to say that it was wider. Do you know how wide the road is in front of the applicant's property?

DP: The right-of-way width itself is 40 feet, but the actual roadway is about 18 to 20 feet. I think that the way that

you just described it is perhaps in reverse of what is actually going on. The farther to the east of the property you get the narrower the road improvement gets and to the west it gets wider.

SK: Okay, so that we all understand the same thing, the road width in front of the applicant's proposed building site is 18 to 20 feet or narrower? Which is it?

DP: It is approximately 18 to 20 feet, but as you keep on going east past the applicant's property it is going to get narrower. I mean we are talking now about the actual improvement width itself.

SK: That is not totally relevant though to this issue, is it?

DP: In our review, the width of the roadway leading to and in front of the property was such that the County Transportation staff found that by imposing conditions requiring right-of-way dedication as well as deed restrictions to commit the property to participate in the financing of any improvement in the future on that road, that those conditions made it adequate and appropriate for the property to be divided in the way that the request is made.

SK: I don't mean to belabor this issue, but I think it is a critical one, to me. I am trying to get a handle on why, given the standards that were already in place in front of the applicant's property, and given what is appearing to be substandard conditions on the other sides of the property, why then did our Transportation Department, and how could these kinds of deed restrictions support the improvements that are not on the applicant's property? That's the piece that is not clear to me.

DP: I am not in a position, or prepared to speak, of course, for the Transportation Division, but what I can tell you is that it is a very common practice of the County, through it's Transportation Division, and through the Transportation Administration of the County Streets Standard Code, it is very common to require in certain circumstances that when there is an existing road that is not fully improved to County standards, that is with, in this case, a 32 foot wide roadway with curbs on both sides, and sidewalks on both sides, it has been the County's practice in cases such as this where two lots are being created out of one, rather than require that piece of property to improve the street up to full County standards right in front of their property and then have the rest of the road remain in its semi-improved state, the County's Transportation Division has found it appropriate to require the owner of that property, through deed restrictions, that when the time comes when it is feasible to fix the road at one time, in one project, that those folks will pay their proportionate share. Otherwise you end up with a somewhat of a checkerboard pattern of improved portions of the road and then unimproved stretches and it results in some safety problems, for folks travel the road and they are traveling on an improved area and then all

of a sudden they are back on an unimproved area or a lesser improvement and again I can't speak directly for Transportation, but that is the kind of rationale that I think they would tell you if they were here, and it is my understanding and experience from the Planning Division that that is the reason why deed restrictions are allowed in lieu of actually physically going out and improving the road.

SK: Even though that this development will only bring a minimum amount of traffic congestion to the existing road. The other question in my mind, since we have to talk about transportation since it was a chief issue of discussion at the Planning Commission level, is the viability of widening that road. I am assuming even at the best 14 additional feet, and I think what we are looking at is the most narrow section, so can we assume that the standards in place would necessitate widening that perhaps even 20 feet from where it is now - am I getting all that right?

DP: Well, it is my understanding that at this time the County has no plans to make additional improvements to Mill Street. It is unlikely that improvements would be made in the future unless a number of property owners got together and requested that the street be improved. The deed restriction requirement that the Transportation Division imposed in this case, is a mechanism to help make it possible to get the financing to make that improvement in the future if that day comes. If nobody else along the road ever decides to subdivide their property or do something else that would require Planning approval, it is conceivable that there may not be any other instances where deed restrictions get required. But typically either a land division or any kind of a zoning action, whether it is a variance, those things result in deed restrictions being imposed. Also building permits result in deed restrictions being imposed. So what we are doing here is something that is kind of nailing down this particular piece of property for something that might happen in the future, but there are not any plans at this point to improve the road beyond what it is now.

SK: Thank you.

GM: Do you want to proceed?

DP: The actual last slide in this case shows the property itself and on this one we are standing at the property on what would be the flag portion of the property and the site of the proposed new lot is approximately where those tall trees are and we are looking here towards Mill Street, and you can see the proposed area that would be the 20,000 square foot lot is right in this particular location. That concludes the slides, and we will be available to answer questions if you have them, otherwise that concludes our report. Thank you.

GM: Dave, what would be helpful for me is for us to look together at the map that is in our packet and for you to explain the map itself.

DP: Sure. The particular questions that you have about the map you might want to raise those or there is more than one map, and we can respond to those.

GM: I am looking at the one that is right behind the hearing notice.

DP: In that particular map you have the property itself has got gray shading on it, and you can see the relationship of Mill Street to 61st Drive. The property that I referred to with the house across the street, is immediately to the south and you will see that it consists of two parcels, they are both under the same ownership but each of those parcels is a discreet lot. One of them is vacant and they both are both just a little over 20,000 square feet. To the east of the property you also have what originally was about the same size as the site under consideration but at sometime in the past, before the present land division regulations, that property also was split into the three parcels that you see and one of those parcels has a resident on it. There may be other questions that you had about that. You also notice that the Portland City limits adjoin the property to the north. I'm sorry, I didn't mention that earlier. To the east, the next, about 150 feet off to the east, the City limits also run.

GM: So, would the subject property be subdivided similarly to the one that is just immediately across the street?

DP: Not exactly in the same manner. The difference would be that the property across the street you see has been split more or less into two lots that run in the north/south manner. The proposal that the applicant has made is for dividing the property so that there would be two lots stacked one on top of the other and the northern of those two lots which has the applicants' house on it, would have a 16 foot wide stem of land running along the west side of the property and connecting with Mill Street, and that is why it is called a flag lot because it has a 16 foot stem that we sometimes refer to a flag pole and then the main portion of the lot is the flag portion.

GM: And the applicant wants to build two houses or one?

DP: The applicant wants to build one house in addition to their house that they now have on what would be the flag lot. The front lot in this proposal would be vacant until a house were built on it.

GM: Okay, so the house is on the northern portion. Let's hear from the applicant and then from the appellant. You have ten minutes on the record, no new evidence can be submitted than what we have before us.

SS: I will try to make this as brief as I can. As I stated before, I am Stanley Steinberg, and I live at 6075 S.W. Mill Street. I am the owner of the 1.4 acres that we are discussing. I am the petitioner for dividing the property.

I have lived there since 1959 and I am the second longest person in the area. Dr. Brady is senior to me in that respect. All the other neighbors, appellants, objectors, have only been there one to five years. Dr. Brady has divided his property three or four times. I am asking to divide mine once. The past records will show that of the six neighboring tax lots, each one has been divided two, three and in one case four times. I won't read them, but tax lot 26 is divided twice, tax lot 25 has been divided four times, tax lot 31 has been divided three times, tax lot 32 has been divided two times, 28 has been divided three times and 27 has been divided three times. There was some objection or question about trees which has not come up today. There are 13 trees on the bottom portion and in order to build a house we would have to remove two to three trees, certainly not an environmental impact. The Comprehensive Plan calls for four dwellings per acre. We are asking for two dwellings per acre and a half. Basically the staff report was dated May 7, it does reflect all my feelings on the property. We are within the zoning, and we are within all the criteria. As I mentioned before, I have been told by two of the neighbors they would keep appealing and I assume this is another one of the appeals, but again, I hope the Commissioners won't allow that to continue to happen. All I want to do is divide an acre and a half into two pieces, both which fall within the zoning. There is one correction - the stem is 20 feet not 16. Commissioner Kelley, to give you a little light on the Mill Street, originally it was a little rocky road when we moved in and we lived there for a number of years with it that way and then the neighbors got together, of which there are only two there now, Dr. Brady and myself and we paid out of our pocket to pave the road, smooth it out, make it as it is today. And it was at that time we were shooting for 40 feet. It looks a lot narrower because the neighbors on both sides have trees and plantings and that's okay, it is still wide enough now for two cars to pass. When anyone has a party, we do park our cars on that street and there has never been a problem and to my knowledge there has never been an accident. In any case, at 50 feet we could have dedicated and gave it to the County and they would have maintained it. But two of the neighbors refused to give up five additional feet on both sides which made it only 40 feet so we do maintain it, there are no pot holes in it. It is nice road. Thank you a lot.

GM: Is that paved? It looked like a dirt road.

SS: No, it is paved. It is asphalt. And on one half of the road there are speed bumps so that cars will race and one half speed bump does not go clearly across, it only goes half so that we, ourselves can go across without ruining our cars. It does stop someone from barrelling through. Are there any other questions?

GM: Question. How much time does he have left if he should want to use it?

CP: He has seven minutes left.

GM: Okay. Dr. Brady, are you going to represent the appellant?

WB: With your permission Chairman, yes. As indicated previously, there are two elements here. And the reason why this is not fed into a computer is because there is a human compassion and I request my previous, I repeat my previous request that Peter and Johanna, who have taken pictures, be here to explain to you what this means to them. Now, the Planning Commission stated that the lot directly south of the petitioner's property is indeed two lots. It is no more two lots than this room is two separate rooms. Peter and Johanna have a single home on a single lot, despite what some little line on the deed may say. Number two, if you had difficulty, Ms. Kelley, the other folk, recognizing this area, I have lived up here since 1946 and from these pictures, I honestly had difficulty recognizing it. You did not see the narrowest part of the road. It is not shown on here. The road to the east is so incredibly narrow that the thought of two cars going through there is simply out of the question. The homes, the pictures of which you saw, were not indeed south of the property, as the Commission indicated, but rather they were southeast and this home is not on a less than an acre, it is on a single acre. And finally in terms of my family and I, we indeed have subdivided this. We have over the years been fortunate enough to have been able to obtain much of this property and we very carefully saved it for one and a half acre sites. And our home is that area; Peter and Johannas have one acre and the others are as I indicated. Now the border plate - and this of course is necessary to go through - not that I am enthused about it, nor that you are enthused about hearing it, but I will certainly entertain questions. Policy 14 of the County's Comprehensive Plan and the MCC 11.15.6710(a) and I will give handouts of these to the people, so that you can have all of it - require identify the entire area on the County slope hazard map, which requires a hillside developer permit before any building permits can be issued. There should be some evidence in the record indicating that the qualifications for this permit can be met by this lot. While Mr. Steinberg does not need to obtain a hillside and we are talking about a hillside, we are not talking about a couple or three trees, although we would love to hold them to the "I will only cut down two or three trees", the number we have heard has been closer to eight to ten or higher. Very big Douglas Firs that are going to disappear. There should be at least some evidence in the record to indicate the Steinbergs have a chance to qualify. In fact, there is no evidence in the record that this condition can be met and you should remand that decision requiring that such evidence be submitted to the Planning Commission. Second, under MCC 1.45.4, the applicants' plan must include a description of the available public facility, such as storm drainage, water, sewage, and the like in the description of how the new lots will be served, however, the Planning Commission approved this application without a drainage plan and instead required that one be submitted later. The Planning Commission did not determine that existing drainage facilities were adequate to service the new lots. The Planning Commission cannot put off by way of

conditions of approval by showing that all mandatory approval standards are met and if the Planning Commission wishes to do so, it then must allow a hearing at the time the drainage plan is submitted. Instead of following the basic rule, the Planning Commission approved the partition but deferred the determination that there were adequate drainage facilities. You should remand the decision for a determination of whether adequate drainage facilities actually exist now and believe me, this hillside lot from more than a few years living there, does have drainage problems. Comprehensive Plan Policies 22, 23 and 36 and MCC, as I mentioned previously, collectively require the County to consider the proposed development in the context of the development of the entire area, especially energy urbanization and transportation. The staff reports note that this parcel is just outside the Portland City limits and will likely be annexed to the City within the year and will then be given a higher density designation. Yet contrary to the policies I read above, the staff report failed to consider the development of the area under the City's Comprehensive Plan. I will hand this to County Counsel so that is part of the record. And finally, the approval of this partition is in direct conflict with the purpose and intent of the County's Land Division Ordinance which calls for protection of property values. I have submitted a number of arguments. We have had an independent appraiser out there and we are talking about a very significant impact on property values and again to repeat that Peter and Johanna, the people that cannot be here, and Mr. Hansen I understand your concern about a vacation perhaps not being a reason not to show. Johanna was going back to visit her sister in Massachusettes with her two kids. This is something that had been scheduled months and months and months ago, so it was an out of state trip, and I would really again appeal to your compassion that this was nothing that they just motored down to Roseburg to be away from this, they wanted to be here. I just hope that you can meet these people because they are really, really neat people and are being adversely affected. Finally, we have tried, all of us on the property, including the Bermeisters, some lovely people that moved up from Medford to make this their dream home - they live to the north and the east. We have worked hard to prevent this reaching the place where it is at. We have offered without success, to buy the property. We want to preserve the character of our neighborhood. Unfortunately, the efforts haven't worked, so we are down here now, talking to our elected officials, asking them to put some compassion beyond the computers and the numbers and the ordinances. And to see some pictures, to see what our problems are. And they are real. Thanks very much for your attention.

GM: Dr. Brady, where do the friends who are on vacation, live in comparison to this lot?

WB: Ms. McCoy, they live directly to the south of the property in question. What we are talking about here is stripped of all the legalities. We are talking about a house that is going to be right across the street from these peoples' home. When

they get up in the morning, there is going to be a house where right now there are trees, where right now there is a relatively small road and these people are going to be hit hard. That is the bottom line. That is their dream home and all of a sudden in comes somebody, there goes my home right across from yours.

GM: Now that seems to be the heart of it. If in fact we left half the trees so that the house could be built and you could not see the house and you would not be looking into their living room and they into yours, is that it?

WB: No, I am sorry Mrs. McCoy, on the trees issue and this is again - I wish I could make it simple - it is a hillside lot with a large number of Douglas Firs, many of which have already been raised up. So, there is not a visual obstruction from the Douglas Firs, but our belief is, and we would be delighted to sit down with the Planning Commissioner or anyone else and mark the trees and mark the house and the roadway, and see how many trees we are talking about - that has been fuzzed.

GM: Yes, is it conceivable that or what you are saying is that this is a hill - so if you cut down any trees you are going to be able to see the house?

WB: Well, even without the trees, the hillside, Mrs. McCoy is visible even though the photos don't exactly show it. The hillside is visible because - Mr. Steinberg raised about the trees - which is fine, no problem at all - but the trees go. I think some of the trees are going to go and the numbers have moved from two or three, which Mr. Steinberg gave this morning, to up at the Planning Commission it got into 10 or 12 and it was a split decision at this Planning Commission on the basis of trees.

GM: Mr. Steinberg, you do have some time left so while this is not supposed to be a rebuttal, I think it might be helpful to clarify . .

SS: First of all, I want to say that I have never heard about an offer to buy my property, but I would entertain that. This is the first I know that anybody has offered to buy my property. And, of course everything is for sale. There are 13 trees, we counted them before and it would take two to three to remove. I don't think trees is really an issue here, because there is no law presently that would prevent me tonight from going home and chopping all 13 trees down. I mean we are not in an environmental impact. There is no spotted owls. I could take the 13 trees down. The trees are not really not an issue. The lot isn't as steep as Dr. Brady said, because the Quarters, which live next me on one side, and the Bermeisters on the other, have offered to sell the lot to me, not the Quarters, but the Cookenburgs before. I was thinking about building a tennis court and the people that owned the property before the Bermeisters actually made an offer to me that I could have bought the bottom piece for \$10,000 and done whatever I wanted with it. Their property

is presently divided into three pieces. Each one smaller than an acre. The property to my north is owned by the City of Portland, is zoned R-10; and the property behind the Thorensens is divided zoned R-5. We do not have a hilly lot with any drainage problems, we have never been told about drainage problems. Again, we drive up everyday in the wintertime. It is not a steep lot. The last thing is that our house will not be across from the entry to the Thorenson's house, it will be to the east and nobody has bothered to see where the house would be. When they open up their blinds in the morning and they happen to be on the other side of the house, they would not see our house, our house would be to the east. I hear all this compassion and everything, how about compassion for the homeowner who wants to divide his property? Everybody has divided, every single person there has divided their property and I apply for one division for a flag lot that falls within and all this appeal and compassion and denial and poor immigrants from out of the country and it is just a big built up case.

GM: But would you really be interested in selling your lot?

SS: I would probably sell the homesite for the right price. I mean nobody has again offered, that I know, but I would either sell the top part or the bottom part or both parts. Of course price determines whether anybody would sell anything. In all respect Commissioner, you might sell your house if the price offered you were high enough.

GM: Right.

SS: Well, maybe not. Buy anyway, I have been there since 1959 and I love it. I picked the area because of the surrounding neighbors and so forth and again only Dr. Brady and I are still there from the original neighbors. And I would like to actually build a house on the lower lot, move into it. I am remarried and any of you who have had a divorce, it is hard for a new wife to live in an old wife's house. So, I thought what I would do probably is build a house on the bottom lot and sell my house that I have been in since 1959, that's my intention. Incidentally, one of the things that was mentioned was all these criteria. They don't apply for a land division, they only apply for a building permit. I am not at this time applying for a building permit. I am only applying for a land division. None of those other things apply for a land division. When it comes time for a building permit I suppose I will have to go through this again, but you know, one step at a time. Thank you.

GM: Given the ten minutes per side, both sides probably have minutes.

CP: One side has two minutes and the other side has three minutes.

GM: Okay, there is really no reason to prolong this. Dr. Brady, do you have anything else to say?

WB: Please I do hope that you will get the human side of this

when Peter and Johanna are able to be here with you. You would like them, they are nice people. They have a nice story to tell.

GM: Actually, I guess that is not really relevant Dr. Brady. Unless the sides have anything else to say in your allotted time, we will close the public hearing and the issue is now before the Board. With Dr. Brady's permission, I assume you are responsible for your ten minutes.

CP: Mr. Brady has 2 minutes and 45 seconds.

BQ: My name is Bruce Quarter, I live at 6135 S.W. Mill. I am a neighbor of Mr. Steinberg, Dr. Brady and the others in the neighborhood. It is very difficult to understand the character of the neighborhood without being there. The photographs do not adequately show it, but it very definitely has a character all its own. With a few exceptions, because there are only about six residences in the area, they are oversize lots. An acre, 1.4 acres, 1.5 acres. As it turns out, it may be that in the property directly to the south of Mr. Steinberg's property, as a division on the plat map, however, there is only one house there. In the case of the property directly to the east, the plat map shows three lots, but there is only one house there. In the case of Mr. Steinberg's property there is one house there as in the other cases. That creates a very unique neighborhood. The property values in that area are reflected as a result of the character of that neighborhood. One of the criteria that is intended to be met is to maintain property values. Each of the properties in the area, my property can be divided into three separate parcels, 20,000 square feet each; Dr. Brady's could be divided into three more separate parcels of 20,000 square feet each, relative to the zoning. It would be absolutely catastrophic to allow for that kind of action to take place. I do not know what will follow from Mr. Steinberg's request, if he does build, I don't want to say there goes the neighborhood, but maybe. It is going to change the character of the neighborhood, and I, as a professional in the business, believe that it is going to change the property values as well. Thank you.

GM: John, want you to clarify this if I am wrong. I think we have been dealing with the wrong end of this. Mr. Steinberg did mention the fact that we are not talking about building, we are talking about the ability to provide a lot. The building comes later, that is another whole issue and that is not before us and so our decision should not be based on if or when or how he should build, is that right?

JD: That is correct. And I think that the references to the drainage plan and the slope plan, those are requirements for the building permit, which is not before you today.

GM: The issue is before the Board. What is your pleasure? Tell us what is the proper motion if we go one way or if we go the other? That will save us some time.

JD: Your authority is to approve the application, which would just be to sustain the Planning Commission decision or to reverse the Planning Commission decision which would deny the application or to modify the decision of the Planning Commission. You have those three options.

GH: Madam Chairman, I would move to sustain the Planning Commission's recommendation.

SK: Second.

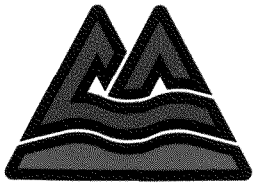
GM: There is a motion and a second to sustain the Planning Commission's recommendation. Any further discussion? Those in favor will vote aye.

GM: Aye.

SK: Aye.

GH: Aye.

GM: Opposed? [NONE] The decision of the Planning Commission is upheld.



MULTNOMAH COUNTY OREGON

OFFICE OF COUNTY COUNSEL
1120 S.W. FIFTH AVENUE, SUITE 1500
P.O. BOX 849
PORTLAND, OREGON 97207-0849
(503) 248-3138
FAX 248-3377

GLADYS McCOY
MULTNOMAH COUNTY CHAIR
1021 S.W. 4th, ROOM 134
PORTLAND, OREGON 97204
8/28/91

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

MEMORANDUM

TO: Delma Farrell (101/134)
Sharon Cowley (412)

FROM: John L. DuBay (106/1530)
Chief Assistant County Counsel

DATE: August 27, 1991

SUBJECT: LUBA appeal, LD 1-91

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

BOARD OF
COUNTY COMMISSIONERS
JUG 28 AM 10:42
MULTNOMAH COUNTY
OREGON

I'm enclosing a copy of a Notice of Intent to Appeal the Board's decision to affirm the Planning Commission's approval of a land partition. I believe the Planning Department's number is LD 1-91. I think the Board hearing was on July 23.

We have 21 days after the Notice of Intent was filed to prepare the record. Assuming the Notice reached LUBA on August 26, the deadline to file the record will be September 16. LUBA will send us a letter confirming the date the Notice of Intent to Appeal was filed.

My recollection is that the appellant did not address any of the partition criteria before the Board. Also, the warnings were given that issues not raised may not be raised in an appeal to LUBA. I believe waiver will be an issue in this appeal. Therefore, a transcript of the Board of Commissioner's hearing will be valuable this record. If there will be any problems with getting the transcript typed by September 12, please let me know.

We need the original and two copies of the record. It must be prepared according to LUBA's rules enclosed. This memo should not be included. I'd like to see the record before the due date in sufficient time to make any corrections before it is sent.

If you have any questions about what should be in the record or about the time limits, please give me a call.

O:\FILES\129JLD.MEM\jld

PRESTON
THORGRIMSON
SHIDLER
GATES & ELLIS

ATTORNEYS AT LAW

3200 U.S. Bancorp Tower
111 S.W. Fifth Avenue
Portland, OR 97204-3688

Telephone: (503) 228-3200
Facsimile: (503) 248-9085

EDWARD J. SULLIVAN

August 23, 1991

LD-1-91

Jan Zwemke
Land Use Board of Appeals
100 High Street S.E., Suite 220
Salem, OR 97310

Re: Brady, et al. v. Multnomah County

Dear Jan:

Enclosed for filing is the original and one copy of the Notice of Intent to Appeal in the above-entitled matter.

Sincerely,


Edward J. Sullivan

EJS:pb
Enclosure(s) - as stated
cc: List ✓
27849-00.001\SYLLUBA.1GK

80211233
COUNTY COUNSEL FOR
MULTNOMAH COUNTY, OR

Anchorage • Bellevue • Seattle • Spokane • Tacoma • Washington, D.C.

A Partnership Including A Professional Corporation

BEFORE THE LAND USE BOARD OF APPEALS
OF THE STATE OF OREGON

WILLIAM J. BRADY, M.D., BRUCE)
J. KORTER and PETER THOERESZ,)

Petitioners,)

v.)

MULTNOMAH COUNTY,)

Respondent.)

LUBA No. _____

NOTICE OF INTENT TO APPEAL

I.

Notice is hereby given that petitioners intend to appeal that land use decision of respondent entitled County Commission Review of Planning Commission of May 7, 1991, denying requested appeal and approving, subject to conditions, the requested Type III land division, a minor partition resulting in two lots, including a flag lot, based on the findings and conclusions in the tentative plan decision, dated January 24, 1991, for property located at 6075 S.W. Mill Street, File No. LD-191, which for purposes of appeal became final on August 5, 1991.

II.

Petitioners are represented by Edward J. Sullivan, Preston Thorgrimson Shidler Gates & Ellis, 111 S.W. Fifth Avenue, Suite 3200, Portland, Oregon, 97204-3635, telephone (503) 228-3200.

Respondent Multnomah County has its mailing address at 1021 S.W. Fourth Avenue, Portland, Oregon, 97204, telephone (503) 248-3511, and has as its legal counsel John L. DuBay, P.O. Box 849, Portland, Oregon, 97207, telephone (503) 248-3138.

III.

Applicant Stanley Steinberg is represented by himself, 6075 S.W. Mill Street, Portland, Oregon, 97221, telephone (503) 292-8000. Other persons mailed written notice of the decision of the County of Multnomah, as indicated by its records in this matter, include:

Michael D. Brown and
Susan Burmeister-Brown
1601 S.W. 60th Avenue
Portland, OR 97221

Henry J. Burmeister
1601 S.W. 60th Avenue
Portland, OR 97221
Attorney for Susan Burmeister

Ira F. and Maxine L. Lowe
1723 S.W. 60th Avenue
Portland, OR 97221

School District No. 1
P.O. Box 3107
Portland, OR 97208

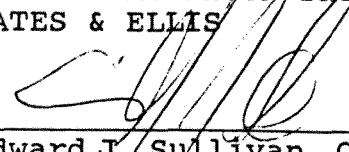
IV.

NOTICE

Anyone designated in paragraph III of this Notice who desires to participate as a party in this case before the Land Use Board of Appeals must file with the Board a Motion to Intervene in this proceeding as required by OAR 661-10-050.

DATED: August 23, 1991.

PRESTON THORGRIMSON SHIDLER
GATES & ELLIS

By: 
Edward J. Sullivan, OSB #69167
Of Attorneys for Petitioners

CERTIFICATE OF SERVICE AND FILING

I certify that on August 23, 1991, I filed the original and one copy of this NOTICE OF INTENT TO APPEAL with the Land Use Board of Appeals, Suite 220, 100 High Street S.E., Salem, Oregon, 97310, by first class mail, and on the same date I served a true and correct copy by first class mail, postage prepaid, on the following persons:

Michael D. Brown and
Susan Burmeister-Brown
1601 S.W. 60th Avenue
Portland, OR 97221

Henry J. Burmeister
1601 S.W. 60th Avenue
Portland, OR 97221
Attorney for Susan Burmeister


Ira F. and Maxine L. Lowe
1723 S.W. 60th Avenue
Portland, OR 97221

School District No. 1
P.O. Box 3107
Portland, OR 97208

John L. DuBay
Multnomah County Counsel
P.O. Box 849
Portland, OR 97207

Stanley Steinberg
6075 S.W. Mill Street
Portland, OR 97221

Dated: August 23, 1991.


Edward J. Sullivan, OSB #69167
Of Attorneys for Petitioners

PRESTON THORGRIMSON SHIDLER GATES & ELLIS

3200 U.S. BANCORP TOWER
111 S.W. FIFTH AVENUE
PORTLAND, OREGON 97204-3635
TELEPHONE: (503) 228-3200

records. The telephone number may be omitted for any such person.

(g) A statement advising all persons, other than the governing body, that in order to participate in the review proceeding a person must file a motion to intervene pursuant to OAR 661-10-050.

(h) Proof of service upon all persons required to be named in the Notice. See Exhibit 1.

(4) Filing Fee and Deposit for Costs: The Notice shall be accompanied by a filing fee of \$50 and a deposit for costs in the amount of \$150 payable to the Land Use Board of Appeals. One check, State of Oregon purchase order or money order for \$200 may be submitted. Cash shall not be accepted.

Record

661-10-025 (1) **Contents of Record:** Unless the Board otherwise orders, or the parties otherwise agree in writing, the record shall include at least the following:

[(a) The final decision including any findings of fact and conclusions of law;

[(b) All written testimony and all exhibits, maps, documents or other written materials included as part of the record during the course of the governing body's proceeding.

[(c) Minutes of the meetings conducted by the governing body as required by law. A verbatim transcript of audiotape recordings shall not be required, but if a transcript has been

prepared, it shall be included.

(2) Transmittal of Record: The governing body shall, within 21 days after service of the Notice on the governing body, transmit to the Board the original or a certified copy of the record of the proceeding under review. The governing body may, however, retain any large maps or documents which are difficult to duplicate, until the date of oral argument.

(3) Service of Record: Contemporaneously with transmittal, the governing body shall serve a copy of the record, exclusive of large maps and other documents which are difficult to duplicate, on the petitioner or the lead petitioner, if one is designated. The governing body shall also serve a copy of the record on any other party requesting a copy provided such other party reimburses the governing body for the reasonable expense incurred in copying the record.

(4) Specifications of Record:

(a) The record shall:

(A) Be filed in a suitable folder; the cover shall bear the title of the case as it appears in the Notice, and the Board's numerical designation for the case, and shall indicate the numerical designation given the land use decision by the governing body;

(B) Begin with a table of contents, listing each item contained therein, and the page of the record where the item begins (see Exhibit 2), and listing each large map or document retained by the governing body under subsection (2) of this

rule;

(C) Be securely fastened;

(D) Have pages numbered consecutively, with the page number at the bottom right-hand corner of each page;

(E) Be arranged in inverse chronological order, with the most recent item on top.

(b) A record which does not conform to the preceding requirements shall not be accepted by the Board.

Objections to the Record

661-10-026 (1) Before filing an objection to the record, a party shall attempt to resolve the matter with the governing body's legal counsel. If the governing body amends the record in response to an objection, the date the amendment is received by the Board shall be considered the date the record is received for the purpose of computing time limits as required by these rules.

(2) An objection to the record shall be filed with the Board within 10 days following service of the record on the person filing the objection. Objections may be made on the following grounds:

(a) The record does not include all materials included as part of the record during the proceedings before the governing body. The omitted item(s) shall be specified, as well as the basis for the claim that the item(s) are part of the record.

(b) The record contains material not included as part of

the record during the proceedings before the governing body. The item(s) not included as part of the record during the proceedings before the governing body shall be specified, as well as the bases for the claim that the item(s) are not part of the record.

(c) The minutes or transcripts of meetings or hearings are incomplete or do not accurately reflect the proceedings.

(3) An objection on grounds that the minutes or transcripts are incomplete or inaccurate shall demonstrate with particularity how the minutes or transcripts are defective and shall explain with particularity why the defect is material. Upon such demonstration, the Board shall require the governing body to produce additional evidence to prove the accuracy of the contested minutes or transcripts. If the evidence regarding contested minutes is in an audiotape recording, a transcript of the relevant portion shall be submitted.

(4) The Board may conduct a telephone conference with the parties to consider any objections to the record.

(5) If an objection to the record is filed, the time limits for all further procedures under these rules shall be suspended. When the objection is resolved, the Board shall issue a letter or order declaring the record settled and setting forth the schedule for subsequent events. Unless otherwise provided by the Board, the date of the Board's letter or order shall be deemed the date of receipt of the record for purposes of computing subsequent time limits.

DATE 7/22

NAME

Bill Brady

ADDRESS

6140 SW Mill

STREET

Portland

97221

CITY

ZIP CODE

I WISH TO SPEAK ON AGENDA ITEM #

P-5

SUBJECT

Land Division permit

FOR

AGAINST

PLEASE PRINT LEGIBLY!

Meeting Date: July 23, 1991

Agenda No.: P-5

(Above space for Clerk's Office Use)

AGENDA PLACEMENT FORM
(For Non-Budgetary Items)

SUBJECT: _____

BCC Informal _____ (date) BCC Formal July 23, 1991 (date)

DEPARTMENT DES DIVISION Planning

CONTACT Sharon Cowley TELEPHONE 2610

PERSON(S) MAKING PRESENTATION Planning Staff

ACTION REQUESTED:

☐ INFORMATIONAL ONLY

☐ POLICY DIRECTION

xx DENIAL and

☒ APPROVAL

ESTIMATED TIME NEEDED ON BOARD AGENDA: 30 Minutes

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

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

LD 1-91 Decision of the Planning Commission of May 7, 1991 and appealed by the opposition, with recommendation to the Board for denial of appeal and approval of request, subject to conditions

* From 6/25/91

(If space is inadequate, please use other side)

SIGNATURES:

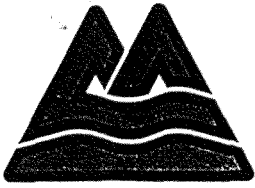
ELECTED OFFICIAL _____

Or

DEPARTMENT MANAGER 

(All accompanying documents must have required signatures)

BOARD OF
COUNTY COMMISSIONERS
MULTIPLAHA COUNTY
OREGON
1991 JUL 16 PM 2:03



MULTNOMAH COUNTY OREGON

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

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

Date: 07/23/91 Time: 9:30 a.m. Place: Room 602, Multnomah County Courthouse

LD 1-91 Public Hearing - On The Record

Review the Decision of the Planning Commission of May 7, 1991, **denying** requested appeal and **approving, subject to conditions**, the requested Type III land division, a minor partition resulting in two lots, including a flag lot, based on the Findings and Conclusions in the Tentative Plan Decision, dated January 24, 1991, for property located at **6075 SW Mill Street**.

Scope of Review.

On the Record

Oral Argument.

Each side will have **ten minutes** to present oral argument before the Board.

Zoning Map
Case #: LD 01-91
Location: 6075 SW Mill Street
Scale: 1 inch to 200 feet
Shading indicates subject property

R20

city

CS-19-65

S.W. MILL ST.

city

R20

CS

CS-16-60

CS-15-60

R20

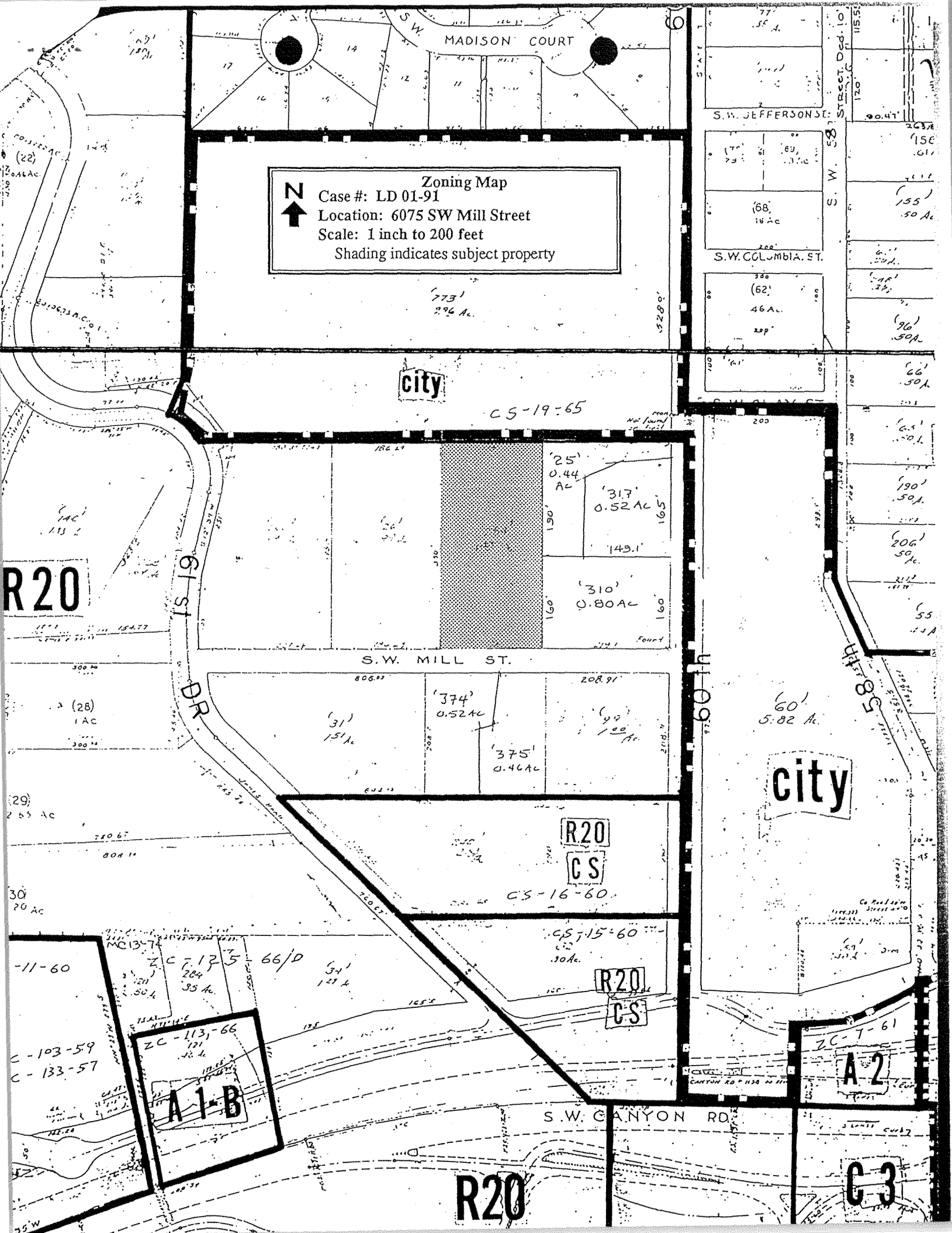
CS

A2

R20

C3

A1-B



A PORTION OF THE PLANNING COMMISSION MEETING
OF MAY 7, 1991
LD 1-91

Commission Members Present:...Leonard, Yoon, Fritz, Fry, Al-Sofi, Douglas, Atwill

Staff Present: S. Cowley, S. Pemble, D. Prescott, I. Ewen, M. Hess

Leonard: The first case this evening is LD 1-91 at 6075 S.W. Mill Street. Before we begin I'll briefly review our procedures for those of you who may not be familiar with our Planning Commission.

We hold quasi-judicial hearings on each case with a presentation of an oral Staff Report with supplements of a written Staff Report; there are copies of the written Staff Report on the table by the door. They are available for your use. Following the oral Staff Report we will have an opportunity for the applicant to present their testimony. That will be followed by all those who would like to support the proposed application. This will be followed by an opportunity for everyone in opposition to give testimony. When you give testimony, before you begin speaking, please give your name and address for the record and fill out one of the witness cards that are available on the podium so we can keep track of who has testified and this has a bearing on who would have a right to appeal a decision.

When you give testimony in either support or opposition its important you identify the policy or approval criteria in our code that you're basing your testimony on. If there are reasons to be for or against a case which are not mentioned in either your written testimony or oral testimony, those criteria cannot be used in any further appeals that might arise out of the case.

With that brief introduction of our procedures, we will begin first with the Staff Report.

Prescott: Thank you. Members of the Commission, my name is Dave Prescott. I'm a Planner with the Multnomah County Planning Division, and the case you're considering right

now is a Minor Partition; its a partition of a 1.4-acre parcel of land in a R-20, Single Family Residential zone. R-20 means 20,000 square feet is the minimum lot size. This came to the county as what is known as a Type III Land Division and that is a kind of land division in which a minor partition happens and a flag lot is created. And, in this particular case, a flag lot is proposed for the parcel that has a house on it right now. The applicantS intend to divide the property and create a 20,000 square foot, a little bit over that, parcel that actually has the rest of the frontage on S.W. Mill Street.

A couple of comments: we approved this land division at the Staff level in late January of this year. Subsequent to that time a Notice of Review was filed and your Staff Report has a copy of that Notice of Review attached to it. You also will find attached to your Staff Report a copy of Planning Staff's original decision on the tentative plan and our Staff Report makes reference to different points in those documents.

On page 5 of the Staff Report, please note that the approval criteria for a Type III Land Division are set out for your convenience. And those are the standards against which our Land Division Ordinance says a Type III Land Division is to be evaluated.

The Notice of Review contains three grounds for reversal followed by a number of requests for introducing additional evidence. In the Staff Report in front of you you'll see that what we have done is take each of the grounds of reversal; we've put that into the Staff Report in italics and then the Staff Comment following the applicant's, or the appellant's, comment explains the Staff's position. Again, we reviewed the statements made by the appellant in their Notice of Review. In terms of the approval criteria in the Land Division Ordinance and its the Staff's position that the land division that was requested is appropriate. The recommendation is that you reject the appeal and that you affirm the Staff's decision in the initial Tentative Plan Approval.

A few highlights: The appellants raise an issue of the site as a ground for reversal, the fact that the approval does not require commitment to future street improvement for both parcels. Our response is that the reference in the findings to the requirements of the County Transportation Division apply to the entire property

meaning both Parcel 1 and Parcel 2 but beyond that we find no evidence provided by the appellants that the approval standards are not met in that regard.

The next grounds for reversal pertains to an allegation...

Fritz: Excuse me.

Prescott: I'm sorry.

Fritz: Is that the condition, there is a separate Tentative Plan Decision?

Prescott: Yes. You have a Tentative Plan Decision at the back of your Staff Report and that's the one...

Fritz: Condition 2."B" which was deed restriction?

Prescott: Yes. And that....

Fritz: Is there a commitment to participate in the future improvements of S.W. Mill?

Prescott: Presently, no. If the, once the division, if the division is approved, if you decide tonight to approve the land division as the Staff did, one of the requirements that the Transportation Division for the County will impose is that, they will actually prepare a deed restriction for the property owner to execute and that deed restriction will apply both to Parcel 1 and another one will be drawn up for Parcel 2, so that before the County Engineer releases the plat, those deed restrictions will be signed by the owners.

Fritz: Thank you.

Prescott: The Staff decision cites a finding relating the purposes and intent of the Land Division Ordinance with respect to, among other things, protecting property values. The applicant's, or excuse me, the appellants do not present any evidence in our view that refutes the finding that the Staff prepared concerning the purpose and intent of the Land Division Ordinance.

Finally, the appellants raise as a grounds for reversal increase in traffic congestion; our findings indicate that based on measurements made that are used by the Institute of Traffic Engineers given the number of houses

on S.W. Mill Street and the condition of the road and the number of trips generated by those houses and added to that the trips generated by new house, the street would function at Service Level "A" and the Institute of Transportation Engineers considers service levels "B" or better as not being congested, and based on that its the Staff's conclusion that the street is not congested now, its not going to be congested by the increased number of trips generated by the additional house.

In their request for introduction of new evidence, appellants list, among other things, statement that notice was not provided in advance of the decision. Our response is that State law and county ordinances do not require notice in advance of a Staff decision of the type that was made here. The property owners within 100 feet did receive notice when the decision was made, as is required by law.

Also, appellants raise issues concerning annexation and application of City of Portland standards to certain aspects of development. Annexation to the City is not required in order for the property to develop. It may be applied for but it is not a requirement.

That concludes our report. We do have some slides that I can show you that will explain, or give you an idea what the property looks like; show you what the road looks like, and, Mark Hess and I toured the property and Mark took some pictures and has offered to present them at this time.

Leonard: Before we begin with the slides, note that Commissioner Hunt has joined the Commission now so....

Hess: I just have four slides to show you so it won't take very long.

This is S.W. Mill Street, immediately to beyond the subject site. The subject site is at the end of the slide where you can see the pavement begins to improve at the very where the sunlight is hitting the crest there; that's where the subject site begins. So, at this location I'm east of the subject property. The property is on the right hand side of the road.

This is a house that's located on the south side of S.W. Mill, opposite the subject property.

And this is, the subject property is on the right hand side of the slide; this is S.W. Mill Street. Its a paved road approximately 18 to 20 feet wide in this section, and you can see the driveway taking-off there at the left hand side of the slide.

And, now this is standing on the subject property; looking to the south the lot that is proposed, the front lot of the two parcels is on the left where the tall fir trees stand. The driveway that's on the right hand of the slide in the foreground is where the pole of the flag lot would be. And the existing house that sits on the property is outside of the camera shot here on the left hand side of the slide.

Prescott: Thanks Mark. Just a couple of comments before you open it up to testimony. I didn't go into detail on all of the findings; I'll be glad to answer any questions you may have about them. You may hear testimony which you have questions of us, and we'll be glad to comment on that. Basically, the zoning in the area has been in place since 1958; the lot that was approved to be created meets those zoning standards and is very similar to lots directly across the street to the south, as well as a couple of lots immediately joining the site on the east, and so in terms of what's going on the area, there are other lots out there that size, or thereabouts. Thank you.

Leonard: Any questions of Staff?

Commissioner Fritz?

Fritz: Thank you. Dave, the lot immediately to the east that has been subdivided into three smaller. Are all three of those small lots developed?

Prescott: Two of them are I believe and one of them is vacant.

Fritz: And one of them is what?

Leonard: Vacant.

Fritz: And the lot immediately across the Mill Street, are both of those smaller lots are developed?

Prescott: One of them has a house on it and the other does not.

Fritz: Alright.

Leonard: Yes, Commissioner Hunt.

Hunt: Its concerning City of Portland water. Is there, the appellant mentions that they can't get City of Portland water unless they are annexed. Is that a fact or false?

Prescott: My understanding is that City of Portland water is available now. It may be a requirement that they annex to Portland in order to actually obtain water service. And that is something that occasionally happens, and my understanding in this particular location is that the City of Portland is basically the water provider or has the ultimate control over water service.

Hunt: And I have one other question. Where they mentioned that if it did have to be annexed, since the building would go in would they still have to get building permits from the City of Portland and at that point, even though we approved the zoning change would they go through City of Portland for building permits?

Prescott: If they annex to the City of Portland before they apply for building permits they would meet the City's requirement for building. It would depend on whether annexation took place or not.

Hunt: Well, okay. Would they have to show that they had water before you supplied them with a building permit?

Prescott: Actually, in order for the County Planning Staff to sign-off on a building permit application what our office looks at is a site plan that shows where the building is going to go; we look at for setbacks, we look at it to make the sure that the lot on which the building is going meets the requirements of the zoning code and in this case meets the requirements of the land division, and, those are the things we look at. Water and connection of it, or connection of the water to property, is not something that our office is responsible for making sure happens.

Hunt: So somebody could build a house and not have water for it?

Prescott: Well, I think if they want to get a loan for the house or sell it they're going to have to have water. Its going to take care of itself.

Leonard: I think I can shed a little light on the water service question here. The building permit would not be issued if there was not water available for the house. The owner would have to demonstrate that they would either have water from the water district or the City. I believe in this situation the area that this lot is in was formerly in the Sylvan Water District.

Prescott: Yes.

Leonard: Sylvan Water District transferred all their lines and reservoirs and pumps to the City of Portland and went out of business essentially, and part of that agreement to transfer the system to the City had a provision that the City would not require annexation of any properties to obtain water services from what was formerly the Sylvan Water District area. I think that provision would apply in this situation.

Any other questions of Staff?

Douglas: Yes. On this down here that has the dark line around it, R-20, CS, those areas have dark lines, does that indicate different zoning?

Prescott: The CS after R-20 stands for Community Service, and that's a designation that goes on property that has such things as churches or schools or semi-public or public uses and in many cases you'll see this designation where there is already a facility that was there before the zoning was adopted and the CS simply indicates that that building is there. Or facility. It could be a park or a number of things.

Douglas: I notice also that above the city line here there's another dark line _____; there's no CS in that area. What does that indicate?

Prescott: Immediately north of this site are the city limits of Portland, so you are looking at a piece of property that ...I'm sorry.

Douglas: Excuse me, but I mean above that, above the City of Portland. I understand that, there's a little narrow neck there and then the rest of that is in the City of Portland but then above the City of Portland there is another _____. Is that by any chance the Urban Growth

Boundary? On the top of it, right up at the very top.
Madison Court.

8

Prescott: Okay. I see what you mean.

Douglas: I'm trying to get this thing in perspective if I can.

Prescott: Yes. I believe that the area where it says Madison Court, if I look at the boundaries and follow them, if I'm following them correctly it appears that Madison Court is unincorporated. The map doesn't go far enough to.....

Leonard: Okay. Looking at the topographic map, which was part of the original Staff decision on the subdivision, that shows an existing subdivision development there in the area of Madison Court and it appears from the zoning map that that would have the R-20 zoning. County zoning on it. The Urban Growth Boundary is well to the north of this area.

Prescott Right.

Douglas: What I was looking at was ----- We got an area in here that -----; what is it? Do you know what I mean?

Leonard: Its planned and zoned for urban density residential development.

Prescott: Yes.

Douglas: No other, the City of Portland comes in here and has a very narrow neck yet has a square out of here. And I was just wondering why.

Mixed voices and laughter.

Leonard: Any other questions of Staff? Thank you. Is the appellant or the appellant's representative here?

Brady: Mr. Chairman, members of the Commission. My name is Bill Brady. I'm a resident adjacent to the property in issue with my address being 6140 S.W. Mill.

The discussion by the Staff fails to cover three areas that I think are of critical importance here and I'll cover these briefly.

Number one is the historical context of the area. Number two is the actual situation of the ownership of the apparently subdivided properties and our intentions, and Number three is a three-dimensional issue, which I would ask that the Staff would carefully reconsider and ask that you perhaps consider it at your next meeting, and this is the loss of the, the apparent loss, of some extraordinarily beautiful and large and old Douglas Fir trees. I've lived in the property that I presently reside in since 1946, so I have somewhat of a historical context for the area.

Leonard: Excuse me, Mr. Brady, could you identify your residence on the drawing that we have, in relation to the subject property?

Brady: Certainly. The property that we own is the 1.51 acre plot to the south of Mill Street, and its actually to the southwest of the property site in question.

Leonard: Thank you.

Brady: And as I said, I grew up there and I've been blessed enough to raise my family there and we have roots. I've been there at the time that Mr. and Mrs. Steinberg built their home in 1962, and the Staff picture, again, does not show their home; its extraordinarily beautiful. Its one of the more lovely homes on the west side.

At this particular time I would like to give to the Clerk the names of the persons in opposition to this proposed development. Each of these families have received a personal notice of the appeal; each of them live within sight and sound of the proposed development.

I've handed the Clerk the names of the people and the people, the neighbors, who are in opposition are located in the second row there from the back, Mary Lou and Joanne, if you would stand up. And Mr. Corder will be up here shortly and present a letter with some written issues.

As you know, the Staff Report has already been mentioned. On page 5 it sets forth the criteria you must consider and we consider that these issues are important for tonights discussion and for the basis for all future appeals; that they will be filed in this particular issue.

And I would ask that the Staff would go up and take a look again at the trees that are on this particular property. They don't show up in the picture; the picture doesn't really identify it. And our understanding of this development is that not only would we lose an extraordinarily beautiful long-standing Douglas Firs, but there would be a very significant effect on large, long-standing and beautiful Douglas Firs in the property immediately to the east of this proposed development. And I believe it goes without saying that the people to the east, Mr. and Mrs. Burmeister, are in active opposition of course to this proposed change.

The next issue is the apparent drawing that you have in front of you showing the subdivisions of the property, and may I take these in order. The property directly to the south of the site at issue, which is divided into on the map a 0.52 and a 0.56-acre pieces, the property is in reality a single piece. It has been always a single piece and the present owners, Mr. and Mrs. Peter Thoeresz are developing it as a single piece and are willing, as are all of us in this area are, to complete deed restrictions restricting it to a single piece. In other words, we have a 1.5-acre piece of property, the Thoeresz's have a 1-acre piece of property, the people immediately to the west, Mr. and Mrs. Corder, Bruce will be up shortly, have a 1.5-acre piece, the house which is our is located so as to preclude any future development or subdivision. The final site, which is immediately to the east of the property in question, is on paper divided into three parcels. In reality it is a single parcel with a single home and the owners of that join the other neighbors in being willing to put a deed restriction so that the property's size will remain as they are today.

Briefly we believe that this proposed change would have a significantly adverse affect on our property values. We believe that the nature of the neighborhood, the narrowness of the road, the present construction of the road, would unquestionably create significant congestion. All of the adjacent neighbors are willing to complete deed restrictions maintaining this site as it is at the present time, which quite frankly is a lovely, lovely area. And we believe that the proposed services, several of which have already been discussed here, would be significantly affected. But I believe, in closing, I do appreciate your time, that I would ask that Staff review the issue of the

trees on the property and return to you at perhaps the next meeting or some future meeting with some discussion of the effect of these trees and the restrictions that you would appropriately place on the apparent removal of some lovely, lovely trees that should not stay, that should stay and not be removed.

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If you have questions I'll be glad to take them at this time.

Leonard: Commissioner Fry.

Fry: On the Staff Report, the yellow report, the last map, called a "Tentative Map Plan", I don't ask you to respond now but the map does identify trees and I would like your opinion as to whether these are in fact the trees that you consider significant.

Brady: Well, Commissioner Fry, I have not matched the map that you and I are holding in front of us with the individual trees. I would certainly be delighted to have the Staff go with us to identify these individual trees and answer your questions.

Fry: Okay, so at this point you cannot say whether in fact these trees are the trees you are speaking to?

Brady: To the best of my expectation they are, sir, but I can't say because I have not matched them tree for tree, circle for circle. I think that's something you might well want to do.

Fry: The other question I have, since you've been there for a long time, is about the zoning; its as you know R-20, which is really an issue of density, do you remember, were you involved in that decision to make this R-20? Can you just give us a little history on that?

Brady: Golly, I could spend a good deal of your evening Commissioner Fry in giving you the history of the area, which I would be delighted to do, however, I'll try to condense it. Yes, I do recall it specifically and yes, there was uniform opposition to move from R-40 down to R-20. In fact, interestingly enough, the property, and this is somewhat of an interesting story, the property to the north of what is outlined as the City of Portland, Madison Court, received its zoning, down-zoning, over the violent of opposition of the folk around. And what does not

show, again, on the map sir that you have in front of you 12
is the property to west of 61st. And, again, there sir, we
are talking about I am the owner of a 3-acre parcel
across the way that, God willing, some of my children will
be blessed to have one-and-a-half acre homes in. The
Phillipees have a beautiful, large, several acre site and I
could go on. This is an area of large lots. Not down-
zoned, shoved-in flag lots. This is not what our
neighborhood is about.

Leonard: Commissioner Atwill.

Atwill: Mr. Brady, do you have any data or do you have any
examples you could offer as far as the decrease in
property values that you think will result from this
application?

Brady: Commissioner Atwill, I do not. However, the speaker that
is going to follow me, Mr. Bruce Corder, does maam, yes.

Atwill: Thank you.

Leonard: Thank you Mr. Brady.

Brady: Thank you Mr. Leonard.

Leonard: Is there anyone else who would like to speak in favor of
the appeal request?

Corder: My name is Bruce Corder, I reside at 6135 S.W. Mill,
directly to the west of the property in question. In order
to keep my appearance here brief, I've provided some
written material for your review at your leisure which
includes my thoughts and the thoughts of an appraiser
well known in the area and respected in the City, who
addresses the thought of Commissioner Atwill regarding
the property values. I believe you will find that to be
helpful.

Atwill: It will be.

Leonard: Were there any questions for Mr. Corder?

We may have questions later. Is there anyone else who
would like to speak in support of the appeal?

Okay. is there anyone here who would like to speak in opposition to the appeal, in other words, in support of the partitioning of the parcel?

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Steinberg:

I'm Stanley Steinberg and I live at 6075 S.W. Mill Street and I'm the petitioner for dividing the property. I own that property. I've lived there since 1959, not '61, but in any case the second oldest person in the area. Dr. Brady did live there before I came in but the other three appellants moved in within the last three to five years. The property has been, the history of the property, his division, in fact, Dr. Brady has divided his property, sold off three to four lots, and the lot Mr. Corder is on was Brady property; the lot, the end property that Dr. Galen, Mr. Galen owns was divided by Mr. Brady. The property Mr. Thoeresz is on was I believe was divided by Dr. Brady and the property immediately to the west of Dr. Brady's property he just sold to a Mr. Gilbert; that was his property and was divided off and however, here I am dividing one piece of property and suddenly there's an uproar.

As far as the trees are concerned, there is no law against our cutting the trees today, or tomorrow. They are on our property and the division would have nothing to do with it. As a matter of fact, of the eight trees that are on there, there is only a possibility of two being cut down in any event because the others are on the periphery of the proposed flag lot.

Basically, the Staff Report that was dated May 7th does reflect all of my feelings on the property. We are within the zoning and we are within all the criteria; we have done all the criteria for dividing the lot and so I've been told by one or two of the neighbors that they would keep appealing this to delay it even if they didn't win the appeal. In fact the remark was "I don't see any way that we can stop you from doing it since you are within the division, the zoning but it would be possible for us to appeal and appeal and appeal and delay this so you couldn't build on it. I would hate to see that happen, in all fairness. Thank you very much.

Leonard:

Are there questions for Mr. Steinberg?

Commissioner Hunt.

Hunt:

How many large trees are there?

- Steinberg: Large trees? I believe there's eight as best as I can see on this circle, three of which, two have already blown down in wind storms.
- Hunt: Okay. If we look on your tentative plan, page, that was approved, second to the last page I think it is...
- Steinberg: With a little circle? Was it Parcel 2 with a circle?
- Hunt: This one here.
- Steinberg: Tentative Map Plan?
- Hunt: Right. The one that has the trees drawn on it. Its at the very end, the second to the last page of the tentative plan.
- Steinberg: Well, I was looking at this one. It says Tentative Map Plan.
- Hunt: Right. Okay.
- Leonard: She's referring to the topographic survey that shows contours and elevations and houses. It doesn't have a label on it.
- Steinberg: Oh. Okay.
- Hunt: Yes. That's why the confusion. Can you, two of these trees would have to be removed to put the house site?
- Steinberg: Yes, but not on that plan. Could you look at the one marked Tentative...
- Hunt: Oh, this one here?
- Steinberg: Map Plan. It shows little circles which represent the trees to the best....
- Hunt: Okay. So these two sort of in the center would be the ones that you would remove?
- Steinberg: Well, yes. There's only, the three on the edge probably would not and the three on the bottom, obviously I couldn't build a house with those two in the center. But, that's the best I can recollect where the trees are, and

they are pictured on here, but there probably would be only two trees taken down.

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Hunt: I'm curious. Sometime we will you know, for site or etc. you will have somebody put a fence up or agree to a fence as a condition, would you be willing to agree to a condition that you only remove the trees in the center there? And leave the other trees?

Steinberg: Would I be agreeable to a condition that I only remove which trees?

Hunt: The ones in the center where you say the house is going to be.

Steinberg: Well, first, we would have an architect. The house I live in now we had VanBaily design it and _____ build it; we would have an architecturally design home for about \$400,000 or \$500,000 so it wouldn't be a little shack that would bring down the property value, and, so I can't tell you about the trees because obviously the architect would say well, lets do it this way, that way, I'd hate to make a promise that would later hurt me in building a house. You would say well, you promised you wouldn't take this tree then. I can't tell you that my wife is a senior residential real estate appraiser for the State of Oregon and she says there would be no, its her opinion there would be no depreciation of the value of the property. Now, we have the question would there, wouldn't there? Obviously I wouldn't want there to be because I still own the property up above, but, again, that's the best of my knowledge.

Hunt: Okay.

Leonard: Any other questions for Mr.Steinberg?

Thank you Mr. Steinberg.

Is there anyone else who would like to testify in support of the division, in opposition to the appeal?

Okay. Before we close the public testimony....There's a letter from Mr. Corder which has been circulating among the Commission here and there's a letter from Donald R. Palmer, Palmer _____, real estate appraisers.

Fry: Can I ask Staff a question?

- Leonard: Yes. Commissioner Fry has a question for Staff.
- Fry: Not to resurrect the past too much, but, what zoning was available when they look at this? Is there an R-40?
- Prescott: The county does have an R-40. It is my understanding, I may be incorrect, but I understood that the zoning that's on the property now is what was there when the county first adopted zoning. I will stand corrected if there's something different but I understood it had been R-20 from the onset.
- Fry: And what's the minimum lot size for an RR, residential?
- Prescott: RR is five acres.
- Fry: So essentially it would only be three choices are RR, R-40 and R-20; is that right?
- Prescott: Well, actually its only two choices. Well, it is three. There's a R-30 as well as a R-40 but RR is not available in this area because its a rural zone that only applies outside the Urban Growth Boundary. This is inside the Urban Growth Boundary.
- Fry: So the largest zone available here is a R-40?
- Prescott: Yes.
- Fry: There's no R-60 or anything like that/
- Prescott: No there's not.
- Fry: Thanks.
- Leonard: Yes, Commissioner Hunt.
- Hunt: Dave. I think it was Mr. Brady mentioned that some of the neighboring trees might be damaged from the development. I'm assuming these are Douglas Fir and you can't change the elevation level around the root system. Is that probable, or could that be in the Design Review plan that the elevation would not change near somebody else's neighboring trees or the root structure?
- Prescott: Well, you raise a couple of questions. One, the county does not apply its Design Review process to single family

houses and as such, there would be no Design Review process imposed by the county in this particular case when the house is constructed. The only other comment I could make is that the county does in fact not have any ordinances which restrict the removal of trees and I really, I know, I can't speak one way or the other whether the removal of trees from this site would have an effect on the ones on adjacent property.

Hunt: Well, I'm thinking of the trees on the neighbor's property so they won't be damaged.

Prescott: Yes, I know. I understand.

Hunt: In other words, could we put some kind of condition that there wouldn't be excavation or soil burden added to an area near the property line which could damage some of the neighbor's trees? You've seen the site; I haven't.

Prescott: Yes. My response is that it doesn't appear to me that that is a possibility because the Planning Division doesn't really have a mechanism for going out and doing on-site reviews for single family houses in this kind of a setting. No Design Review or anything that would trigger a way for doing that.

Hunt: Okay. Thank you.

Leonard: Any other questions?

CHANGE OF TAPE.

The Report said that there were roughly two, roughly half-acre lots there, and Mr. Brady said that there is in fact one owner who intends not to treat those as separate lots and there are three smaller lots shown to the east of the applicant's, or the subject property, and again, Mr. Brady stated that there is only one house on those and they would like to combine those.

Prescott: Okay. Well, with respect to the one across the street to the south, our review of the ownership information is they are in fact owned, that the two lots in question do both have the same owner, however, they are discreet, separate tax lots and as such one of them, if one of them were sold tomorrow, which there's nothing in the county code to prevent, someone could come in tomorrow and

apply for a building permit and obtain one on the vacant two lots.

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Leonard: So they were properly partitioned?

Prescott: Properly partitioned and legal. In fact the partition took place, yes, 1987 actually was when that property was partitioned.

You asked about the property to the east. Our information is again reflecting the Assessment and Taxation Division print-outs, again indicates all three of those lots have the same owner. That information shows a residence on two of the lots; the one that actually has the frontage on Mill Street is listed as vacant property. But, again, they are three separate tax lots and our records indicate they were legal when they were created.

Leonard: Let the record show that there is a residential improvement on two of those lots.

Prescott: Yes. I mean, that's looking strictly at the computer print-outs from the Assessment and Taxation Division. They indicate that there is a residence on the two northernmost of those three lots.

Leonard: Okay. Mr. Corder raised a couple of questions relating to criteria for development, or partitioning, relating to the hillside development code and erosion control and noted that this area is steep slope. Are those criteria appropriately applied to this partitioning?

Prescott: The area is in the Tualatin River Basin. That area automatically is subject to the county's Hillside Development and Erosion Control regulations. One of the things that triggers that requirement is anytime when a building site has a slope in excess of 25%, it appears just looking at it this site does not have that kind of a slope. The ordinance does apply....

MIXED CONVERSATION

Leonard: Dave, my question really is whether the hillside development criteria are appropriately applied to decide whether this should be partitioned or, we understand that the building construction would have to comply with those requirements?

- Prescott: Building construction would have to comply with those requirements.
- Leonard: But are the hillside development and erosion control criteria appropriately applied to the partitioning decision?
- Prescott: Well, they don't actually affect, they affect more the building or development of the property rather than, you know, the act of dividing it into parcels in this case.
- Hess: This is Mark Hess. I just wanted to add to David's comments on that question, the Hillside Development Permit and the Erosion Control Permits are triggered by land-disturbing activities, and the drawing of lines on a map is not considered a land-disturbing activity, and, so, its the building permit application or driveway construction or some land-disturbing activity that triggers those requirements, not the partition itself.
- Leonard: In your opinion, having worked with the Hillside Development and Erosion Control Ordinance for some time now, and other Design Review processes, could the 20,000 acre parcel that's proposed be developed with a single family house and meet the requirements of the erosion control and hillside development code?
- Hess: Yes.
- Leonard: Any further questions of Staff? Any further questions of the appellant or Mr. Steinberg?
- Mr. Brady.
- Brady: The owner of the property in question and on the computer print-out as undivided is here. I'd appreciate it if he would at least answer the questions if this is one piece of property or two pieces of property.
- Leonard: Yes, please, if he could.
- Yes, please come to the podium. State your name and address for the record.
- Thoeresz: My name is Johanna Thoeresz, 6060 S.W. Mill Street.
- Fritz: Excuse me. Could you move a little closer to the microphone or speak up?

Thoeresz: Sure. We live directly south of the property in question. When we bought our home in 1987 we had the option of purchasing the house on one-half acre, with one-half acre parcel or to purchase a half-acre parcel. We opted to purchase the house with both parcels so we could keep the integrity of the area intact. We did not buy our home for the home but for the surroundings and for all those sort of non-computerized aspects of it. You know, yes, there are two pieces of property. Yes, we could sell half of it but it was not our intent when we bought it to do that nor is it our intent in the future to ever sell half of it.

Leonard: Okay. Any further questions?

Thank you.

I have a question for Mr. Brady. Mr. Brady, in regards to the properties to the east of Mr. Steinberg's property there are three parcels there and the Staff indicated that two of those parcels on the tax records show that there are homes on the property. Are you familiar with those parcels and

Brady: I have one house there....MIXED VOICES>

Fritz: There is a single home.

Leonard: There is one home. Is there some other improvement that might be the reason that two of the parcels show some improvement?

Brady: No. I'm just a little puzzled. There's just a single home. Mr. and Mrs. Henry Burmeister, who are listed with the names that I turned in in opposition to this, are very significantly affected by the trees. They have one home there. A single piece of property has one home.

Leonard: Okay. Thank you sir.

Is there anyone else who would like to testify either for or against this appeal? Seeing none we will close the public testimony portion of the hearing. Discussion from the Commission.

Fritz: Mr. Chairman, I move adoption of the Staff Report.

Douglas: I'll second it.

- Leonard: Is there discussion on the motion?
- Atwill: I think that there is evidence that the property values will be affected here and that that is a relevant concern.
- Al-Sofi: I also want to point out that I think the Staff Report, at least it leaves open the question of whether that's relevant, the property values. But, it is relevant if you look at the approval criteria. Even aside from density.
- Fritz: My only comment is that I could paint my house purple and pink and it would have a negative impact on the property around me; I assume it would be a less desirable street to live on but I would certainly be within my right. As long as I didn't make a sign out of it then....
- Douglas: That's the way I feel, that they've actually asked for something that is their right to do so. They're within the Urban Growth Boundary which, conceivably, could be lower down in smaller sizes than what they're asking. It also leaves a parcel of approximately one acre left on the other one so they're only asking for one smaller lot so the rest of it is a pretty good size lot too. But it is what they are asking for here is legal and I can't see any, if he builds a house like he says on there it'll actually improve the property instead of....
- Hunt: I agree. I can't see where he's not within the law. I would hope that when he does the design that he does take the trees into consideration. But, legally there's nothing we can do about that but please take it into consideration.
- Fry: Basically I'm not persuaded on the property value issue but and I don't think that the evidence that was presented persuades me that property values will drop. I think the reality here is that we have R-20 zoning and the reality of that is about 20 more houses into this neighborhood and I think neighborhoods better address that reality. In fact, in their testimony they pointed out that this site could be divided into three different lots and by putting in only one house they've tried to build arguments that you shouldn't do that because in the future you'd want to have three houses there to serve Portland's density, which kind of gets to the property value argument I believe. If you follow that logic then two houses here if you're making the logic that property

is more valuable by having less houses on it, actually by stabilizing this property with two houses it stabilizes the value and so, I guess, I'm persuaded, I believe we have no choice and I think the neighborhoods that don't like the future that they're facing better get their act together as far as dealing with that future. The future is there and its been there all along.

Leonard: Commissioner Fry, you had an opportunity to read Mr. Palmer's letter about the property value?

Fry: Right. And I felt it was, it really addressed in my opinion issues that were put upon the property by their impression in terms of siting the house and the relationship of the house to the street and I'd have to review the letter but I wasn't struck that it really addressed the issue of subdividing the house. It spoke to things such as man's right to privacy, taking advantage of existing territorial views, mitigate potential noise, these are all design issues that can be addressed in a development properly, and, theoretically if someone were to build a \$1,000,000,000 house on this lot and I certainly have seen house of great value on much smaller lots, all of the Street of Dreams, so that's how I feel for what its worth.

Leonard: Commissioner Atwill.

Atwill: Yes, I can appreciate it if we're not persuaded by the evidence but I just want to clarify that my understanding of the approval criteria is that property value is relevant and the Land Division Ordinance begins by stating that its purpose is to protect property value so, as long as we're clear on that.

Leonard: Commissioner Yoon, do you have commentary?

Yoon: I'm not persuaded (INAUDIBLE).

Leonard: Call for the question. All those in favor of the, get this right, affirmative vote would be granting the appeal. Excuse me, denial of the appeal. Affirmative vote will uphold the partitioning and deny the appeal. All those in favor of the motion.

Vote.

Leonard: Opposed.

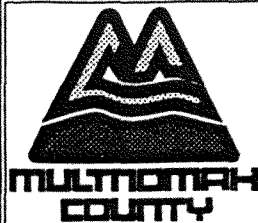
Vote.

Leonard: Okay. Two "No". Al-Sofi and Atwill.

MIXED VOICES.

Leonard: Okay. So the appeal, requested appeal is denied.

END.



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

P-5
7-23-91

NOTICE OF REVIEW

1. Name: Brady , J. , William
Last Middle First
2. Address: 6140 S.W. Mill Street , Portland , OR 97221
Street or Box City State and Zip Code
3. Telephone: (503) 292 - 6834

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

Representative of:

Bruce J. Korter	6135 S.W. Mill Street
Peter Thoeresz	6060 S.W. Mill Street
Henry J. Burmeister, Attorney in fact for	
Susan Burmeister	1601 S.W. 60th Avenue

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

Decision to be reviewed:

LD 1-91, #138 - Two-Lot Land Division

6. The decision was announced by the Planning Commission on May 7 , 1991
(Written decision was filed with the Clerk of the Board of Commissioners on May 15, 1991.)

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

All named parties in this appeal have interests which could be adversely affected by the decision and were entitled to notice pursuant to MCC 11.15.8220 (C) and made an appearance of record before the approval authority.

RECEIVED

MAY 8 1991

4:24 PM

Multnomah County
Zoning Division

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

See attached Exhibit A.

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*.

Signed: William J. Brady

Date: 5/24/91

For Staff Use Only

Fee:

Notice of Review = \$150.00

Transcription Fee:

Length of Hearing _____ x \$1.75/minute = \$ _____

Total Fee = \$ _____

Received by: _____

Date: _____

Case No. _____

Exhibit A

8. Grounds for Reversal:

a. The Applicant failed to produce any evidence that the requirements of a hillside development permit can be met.

Under "Applicable Comprehensive Plan Policies," Policy 14, relating to development limitations, the staff report indicates that the site is identified on the County's slope hazard map and requires the adoption of a hillside development permit before a building permit may be issued. If that is the case, there should be some evidence that this requirement can be met. There is none.

The purpose of the Development Limitation policy is to ensure that development does not create an "on site" or "off site" public harm and can prohibit development where design and construction techniques cannot provide for a safe development. The applicant has not provided any evidence that design and construction techniques can safely accommodate development in the slope hazard area.

The Board should note that preventing geological hazards is part of the intent for adoption of land division regulations under MCC 11.45.020 and applicable under MCC 11.45.230 (C). This provision is obviously not met on the basis of the record now before the Board.

b. The Applicant failed to produce any evidence that the proposed division can accommodate required drainage facilities.

MCC 11.45.400 (B) (5) requires that the applicant's plan include a description of the water supply, methods of sewage disposal and storm water disposal, and the availability of other utilities. This requirement is not satisfied by a condition requiring future approval of water retention and control facilities by the County Engineer. There are no plans before the Commission in this application and no basis upon which the Commission, or an engineer can say that the drainage facilities are adequate.

The County may not, through conditions, defer consideration of compliance with mandatory criterion to a later stage of approval process unless its regulations or decision require the full opportunity for public involvement that is allowed in the initial hearing. The applicant has not included a plan describing proposed water retention and control facilities. Therefore, this mandatory approval standard is not met.

c. The Applicant has failed to consider the ultimate urban use of the property in light of the imminent annexation of the property to the City of Portland.

Under Comprehensive Plan Policies 22, 23 and 36 and under MCC 11.45.230 (B), the staff must look not only at the immediate division of this land, but its ultimate urban use. Even under the R-20 zoning, the land may be divided into three parcels. If this land is annexed, it is likely that higher densities will be required.

This eventuality has not been addressed. In the event of annexation, urban sprawl (likely to raise energy consumption), access management for traffic safety, and the ability to redevelop the property for three or more parcels, are at issue. No redevelopment plan is provided to meet these concerns.

d. The County misconstrued the applicable law by finding compliance with the intent and purpose of the Land Division Ordinance to protect property values in light of uncontroverted evidence that the proposed division will reduce property values in the area.

MCC 11.45.230 (C) applicable to Type III Land Divisions through MCC 11.45.390 requires, inter alia, that the proposed division comply with the purpose and intent of the land division ordinance. The first listed purpose of the ordinance is to protect property values. See MCC 11.45.015. The applicant has failed to show how the proposed land division will protect property values. The opponents submitted expert testimony by a qualified appraiser of a diminution in value of surrounding properties if the application is approved. Consequently, the proposed land division is inconsistent with the purpose and intent of the ordinance.

7-23-91

P-6 AD 6-91

7-23-91

P-6 HU 6-91

Submitted BY
DAVID BENNETT - ATTY FOR DAVID WEICH

Meeting Date: July 23, 1991

Agenda No.: P-60

(Above space for Clerk's Office Use)

AGENDA PLACEMENT FORM
(For Non-Budgetary Items)

SUBJECT: _____

BCC Informal _____ (date) BCC Formal July 23, 1991 (date)

DEPARTMENT DES DIVISION Planning

CONTACT Sharon Cowley TELEPHONE 2610

PERSON(S) MAKING PRESENTATION Planning Staff

ACTION REQUESTED:

☐ INFORMATIONAL ONLY ☐ POLICY DIRECTION ☒ APPROVAL

ESTIMATED TIME NEEDED ON BOARD AGENDA: 30 Minutes

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

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

HV 6-91 Decision of the Planning Commission of June 3, 1991, and appealed by an adjoining property owner, with recommendation to the Board for approval

* from 6/25/91

(If space is inadequate, please use other side)

SIGNATURES:

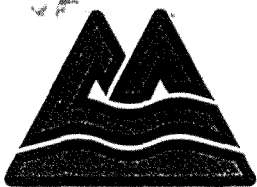
ELECTED OFFICIAL _____

Or

DEPARTMENT MANAGER 

(All accompanying documents must have required signatures)

BOARD OF
COUNTY COMMISSIONERS
1991 JUL 16 PM 2:03
MULTNOMAH COUNTY
OREGON



MULTNOMAH COUNTY OREGON

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

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

Date: 07/23/91 Time: 9:30 a.m. Place: Room 602, Multnomah County Courthouse

HV 6-91 Public Hearing - On The Record Plus Additional Testimony

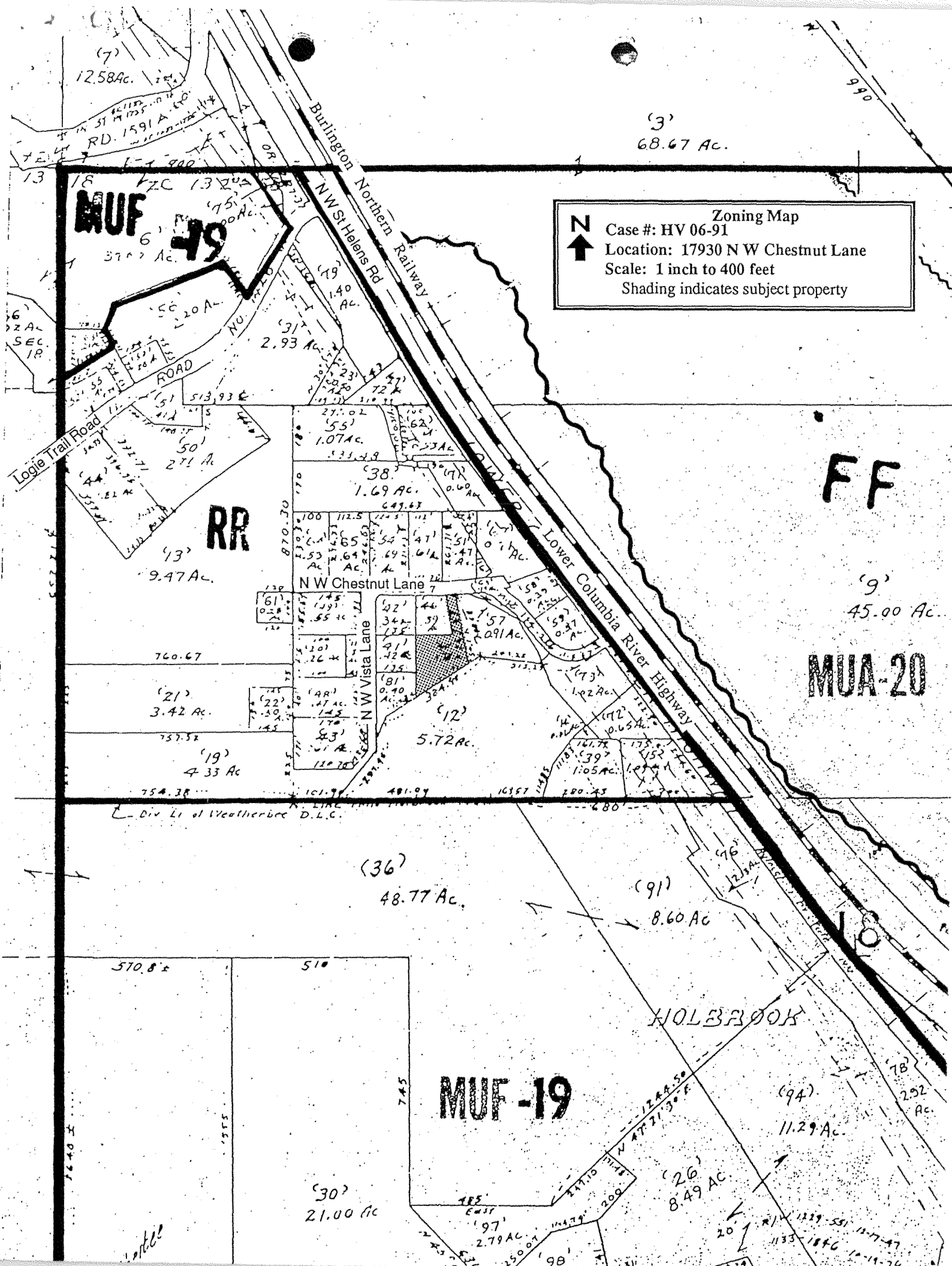
Review the Decision of the Planning Commission of June 3, 1991, **approving, subject to conditions**, 25-foot rear yard setback variance to allow construction of an accessory building, located five feet from the south property line, for property located at **17930 NW Chestnut Lane**.

Scope of Review.

On the Record Plus Additional Testimony

Oral Argument.

Each side will have **ten minutes** to present oral argument before the Board.



Zoning Map
Case #: HV 06-91
Location: 17930 N W Chestnut Lane
Scale: 1 inch to 400 feet
Shading indicates subject property

FF

MUA-20

MUF-19

MUF-49

RR

Logie Trail Road

Burlington Northern Railway

Lower Columbia River Highway

HOLBROOK

Div. 21 of Weatherbee D.L.C.

(7)
12.58 Ac.

(3)
68.67 Ac.

(9)
45.00 Ac.

(36)
48.77 Ac.

(91)
8.60 Ac.

570.8 ±

510

(30)
21.00 Ac

(97)
2.79 Ac.

(26)
8.49 Ac.

(94)
11.29 Ac.

(78)
2.92 Ac.

10000

1133-1846 12-14-70
1133-551 12-17-47

**A PORTION OF THE PLANNING COMMISSION MEETING
OF JUNE 03, 1991
HU 6-91**

Planning Commission Members Present: Chairman Leonard, G. Douglas, P. Fry, J. Al-Sofi, L. Yoon

Staff Present: S. Cowley, S. Pemble, G. Clifford, D. Prescott, I. Ewen, M. Hess

Leonard: Next item on the agenda tonight is Line 6, HU 6-91, 17930 N.W. Chestnut Lane. The applicant I can see is still here. Staff is still here with the oral Staff Report.

Ewen: I'll make it fairly short. The applicant wants to build an accessory building on his property and the only level place is encroaches into what would be the rear yard setback. He's asking for a 5-foot yard setback instead of the required 30 feet.

I have slides if you want to take time to see them, otherwise we'll go on. The Staff Report speaks fairly well. And, if you have questions I'll be glad to answer them.

Al-Sofi: Why wasn't' there a garage built when the house built?

Ewen: There is a two-car garage built. This is an accessory building although he calls it a garage.

Al-Sofi: I see.

Leonard: Would you characterize this as a shop or a...

Ewen: Hobby-type building. I can ask the applicant for a more specific

Leonard: We'll ask the applicant.

Any questions for Staff? Anybody want to see the slides?

Ewen: I might add that we've had two letters, one in opposition from the neighbor to the east of the

property. And a letter of concern from the property to the west, which is at a higher elevation. They're concerned about the view, but the houses in the front have a high enough elevation that they would look over the top of this proposed accessory building.

Yoon: I have three letters here, actually. Two in...actually, all three are in support except that one of them has conditions for their support.

Leonard: We have first three items here ... one is a note from 180115...

Leonard: Can you read the signature?

Yoon: Mary _____ in support, Jodi Fisher is in support, Jane Butz and is conditionally in support.

Ewen: Basically its the only spot on the property. If you look at your sight plan on the third page here, the other area that's significantly large is where his drainfield is for the sewage disposal system.

The southeast corner of the property is sloping quite a bit, which would have shown on the slides if you wanted to see them but...

The area I think is appropriate in that its basically the only level spot left on the property.

Leonard: Okay. Questions for Staff? Applicant?

Sawyer: Jason Sawyer, owner of the opposed; owner of the favored. I have another letter that people was going to send but it probably would have been too late so I just brought that in.

Leonard: Okay. Mr. Sawyer, could you state your address for the record please.

Sawyer: 17930 NW Chestnut Lane.

And, the Staff has covered it, real well. I understand all the regulations, and the only thing I've got to add is a personal grudge against one neighbor that I can't get along with.

INAUDIBLE QUESTIONS FROM COMMISSION.

Sawyer: No, he isn't here tonight for some reason.

Yoon: I have a letter here from Jane and David Butz. They said they're not opposed to it if....

Sawyer: The height.

Yoon: Its a single story structure, not to extend three feet above the existing garage.

Sawyer: Right. They wanted to know what the height was.

Yoon: Do you have any problem with that?

Sawyer: No.

Yoon: "The exterior walls and the roof will be furnished in an earth tone color."

Sawyer: Yes, I told them I'd paint...

Yoon: "No antennae or other obstructions that extend above the roof of the garage."

Sawyer: Right.

Yoon: "Once started, the exterior of the garage will be finished in a reasonable period of time." I'm sure you want to get it done while its dry.

Sawyer: Well, you guys sent me a letter and in this form it says 18 months anyway.

Yoon: Inaudible.

Douglas: I move we adopt the Staff Report.

Yoon: I second it.

Leonard: Well, lets close the hearing before we get on with it. Any other questions for Staff or Mr. Sawyer? Okay. Thank you. Anyone else wish to testify in this case?

Seeing no one ..would you like to, you're here, would you like to support it? State your name please.

Seimears: My name is Wayne L. Seimears and I live at 18005 NW Chestnut Lane and its going to be, its going to help his property a lot to have it there. Its not going to bother nobody. 4

Leonard: Okay. Any questions? Okay. Anyone else like to testify? Seeing nobody here we'll close the public testimony portion of the hearing.

Douglas: Now I'll move to adopt the Staff Report.

Yoon: I'll second it.

Leonard: Okay. Discussion of the motion.

Al-Sofi INAUBIBLE.

Douglas: That's Rural Residential.

Leonard: Staff made the recommendation on percentages, based on percentages of impervious site coverage limits on five acres.

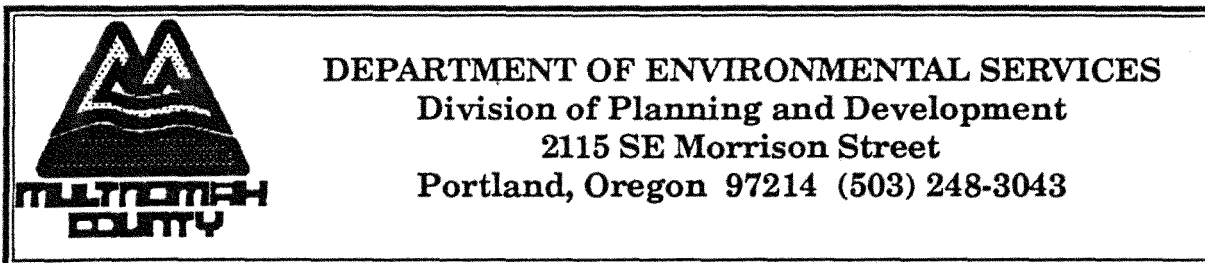
Further discussion on the motion. Call for the question. All those in favor? Any opposed? MOTION CARRIES.

Commissioner Yoon.

Yoon: Thank you. You're approved. Your application has been approved.

Sawyer: Okay.

7-23-91
P6



STAFF REPORT

This Report consists of a recommended Decision, Conditions of Approval, Findings of Fact, and Conclusions

3 June 1991

HV 06-91, #36 Rear Yard Setback Variance Line 6.
(Residential Garage Structure)

Applicants request approval of a major variance to a yard setback requirement to construct an accessory building (residential garage structure) that will encroach into the required 30 foot rear yard by 25 feet, leaving 5 feet between the building and south (rear) property line..

Site Address	17930 N W Chestnut Lane
Tax Roll Descr	Tax Lot 40, situated in the N W quarter of Section 18, T 2 N, R 1 W, W M.
Site Area	0.78 Acre
Legal Owners	Jason A Jr, & Loretta Sawyer 17930 N W Chestnut Lane Portland, Oregon - - 97231
Applicant	Jason A Sawyer, Jr
Comprehensive Plan	Rural Residential
Zoning District	RR, "Rural Residential"

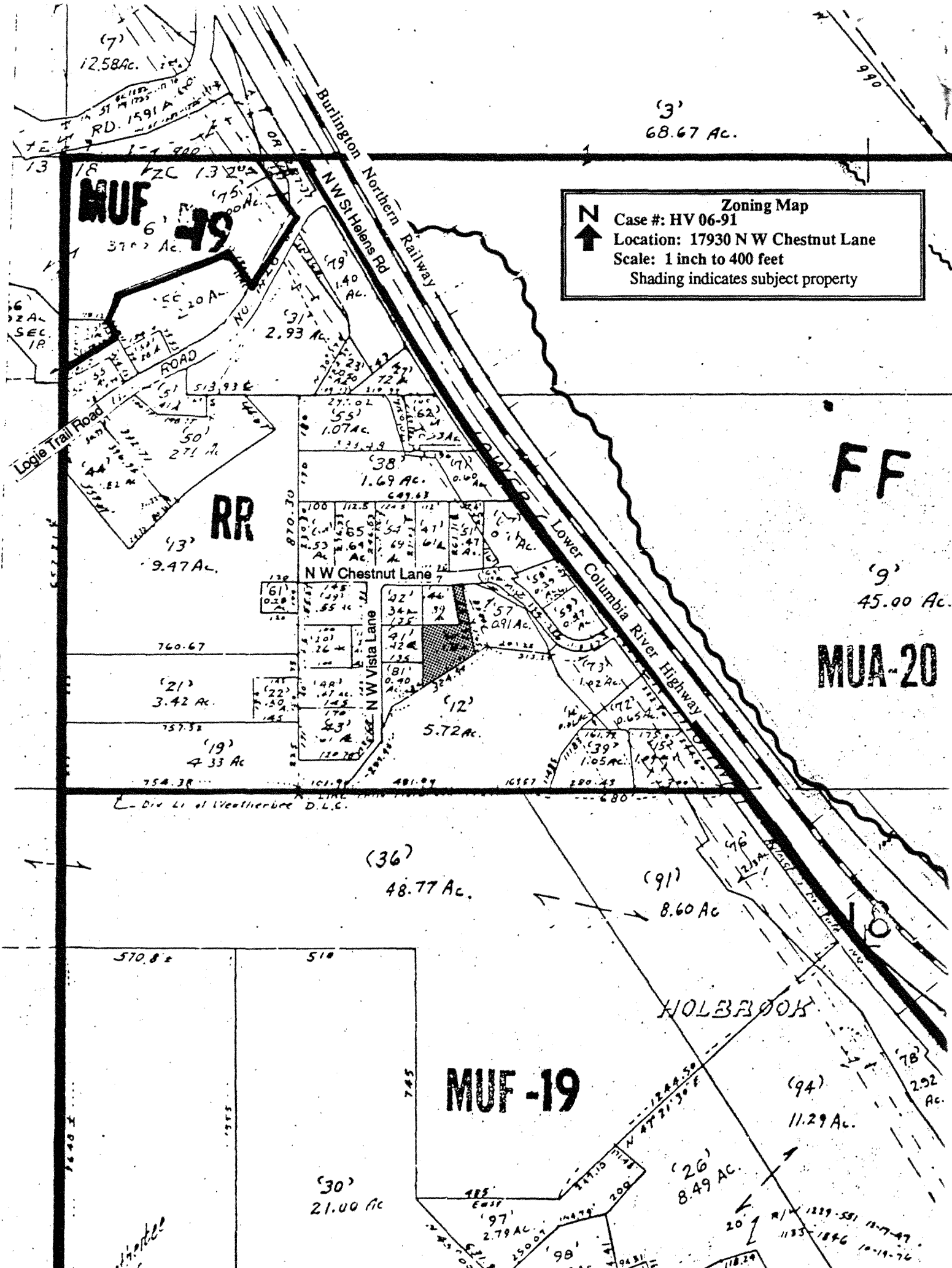
*Available 5-23
1 mailed
M.B*

RECOMMENDED PLANNING COMMISSION DECISION:

The request for a twenty five foot rear yard setback variance to allow construction of an accessory building (ie residential garage) five feet from the south property line is hereby approved.

Staff Contact Person:
Irv Ewen (248-3043)

HV 06-91



Zoning Map
Case #: HV 06-91
Location: 17930 NW Chestnut Lane
Scale: 1 inch to 400 feet
Shading indicates subject property

MUF-19

FF

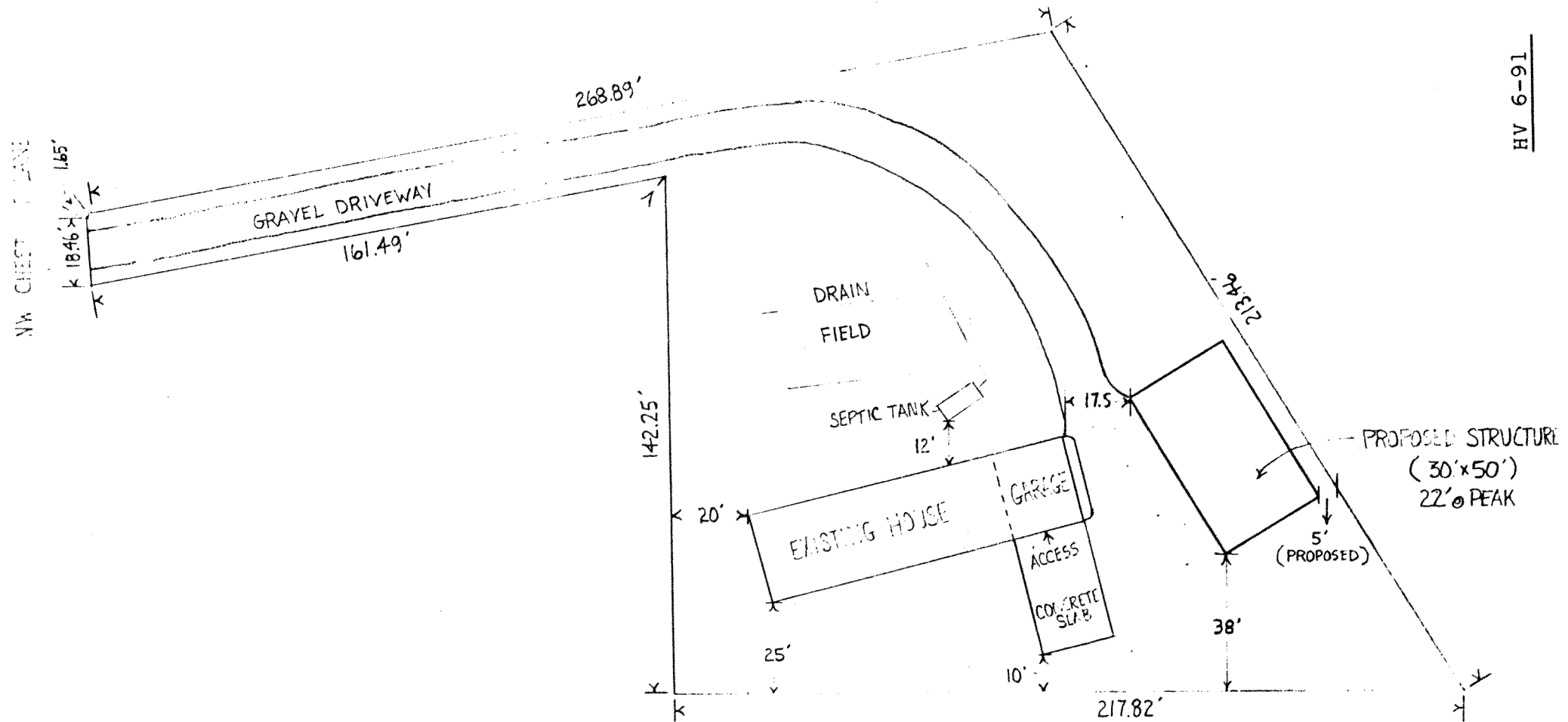
MUA-20

MUF-49

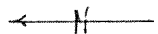
RR

HOLBROOK

17330 NW CHESTNUT LANE PORTLAND OREGON 97231
 ADD NO R-97113-0400 MAY 13 1991



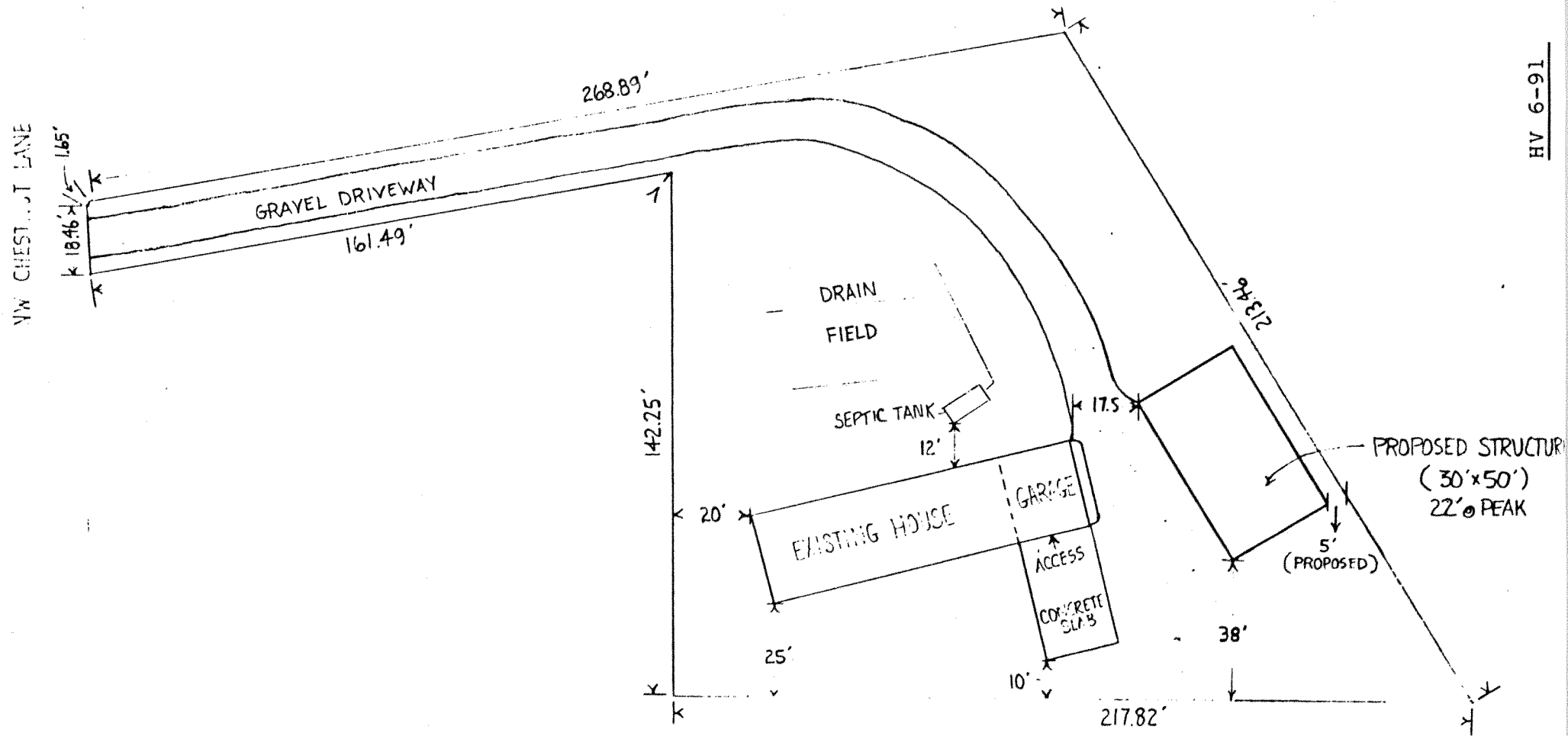
HV 6-91



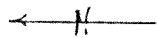
1" = 40' SCALE

APRIL 21, 1991

17330 NW CHESTNUT LANE PORTLAND OREGON 97231
ACCT. NO R-97118-0400 MAP 182N1W

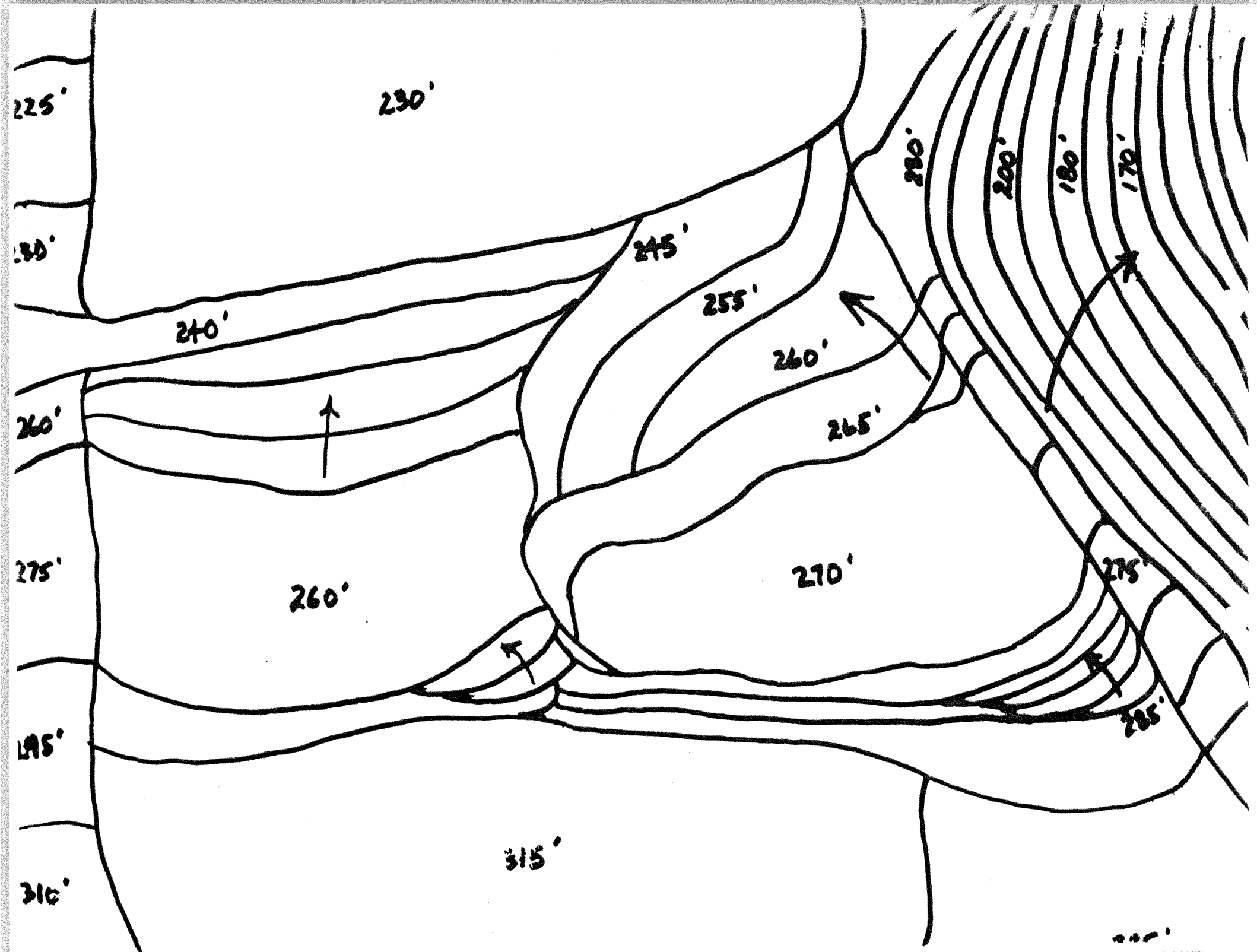


HV 6-91



1" = 40' SCALE

APRIL 21, 1991



CONDITIONS OF APPROVAL :

1. That no additional variances be requested.
2. Applicant must wait until after the Board of County Commissioners has acted on this matter before applying for a building permit for the accessory building (ie residential garage).
3. The variance approval shall expire at the end of 18 (eighteen) months if no substantial construction or expenditure of funds has occurred on the subject property.
 - A. Application for extension can be made, but must be filed with the Planning Director at least 30 (thirty) days prior to the expiration date.
 - B. The Planning Director will issue a written decision on the application for extension and mail notice as appropriate.

VARIANCE REQUESTED

A rear yard setback variance of 25 feet to allow construction of an accessory building which will be 5 feet from the south property line instead of the required 30 feet, a percentage difference of 83.33 percent.

SUMMARY OF THE PROPOSAL

Under "General Description of Application", Applicant states the following:

"We are requesting a major variance of 25 feet due to size, shape, natural sloping and topography of our property. This is the only place on the property we could put a building (.garage)"

SITE AND VICINITY INFORMATION

1. The property is located in the northwest part of the County which is rural in character.
 - C. The site has an existing residence with an attached garage..
 - D. The site is a flag parcel which obtains its access from N W Chestnut Lane, a narrow street connected to N W St Helen's Road (AKA "Lower Columbia River Highway) to the east.

2. Except for the southerly edge of the subject property (where construction of the accessory building is proposed):
 - A. The site is surrounded on three sides (front and both sides) by parcels similar in size (ie less than one acre in area).
 - B. Parcel to the south (abutting the rear property line) is considerably larger in area (5.72 acres) than subject property and its adjacent neighbors.
 - B. There are no buildings near the subject property along its southerly (or "rear") property line.
3. Applicant has submitted a site plan at a scale of one inch to forty feet (dated April 21, 1991) which shows the following:
 - A. Existing house with a 20 ft front yard (from north property line), and 25 ft side yard (from west property line).
 - B. Proposed 30 ft by 50 ft accessory building along southwesterly edge of property, 5 feet from line.
 - C. Topography of site, using various "contour intervals".
 - (1). Adjacent 5.72 acre parcel to the south slopes steeply downhill away from subject property.
 - (2). Relatively flat portion of site contains existing house and proposed accessory building.
 - (3). Septic tank and drainfield occupying sloping area east of house.
 - (4). Gravel driveway from public street (N W Chestnut Lane) along flag pole portion of site to existing garage. Same driveway will provide access to proposed accessory building.
 - D. Buildings on adjacent properties are not shown.

COMPREHENSIVE PLAN & ZONING DESIGNATIONS

1. The Comprehensive Plan shows the site to be located in an area designated as Rural Residential.
2. The site is zoned RR, "Rural Residential"

ORDINANCE CONSIDERATIONS :

1. Multnomah County Code, Chapter 11.15 (aka the "Zoning Ordinance") requires the following with respect to yard setbacks in the RR, "Rural Residential" Zoning District.

MCC 11.15.2218 "Dimensional Requirements":

"C" Minimum Yard Dimensions - Feet

Front	Side	Rear
30	10	30

2. Variance Approval Criteria (MCC 11.15.8505 "A" (1), (2), (3) and (4):
 - A. *The Approval Authority may permit and authorize a variance from the requirements of this Chapter only when they cause practical difficulties in the application of the Chapter. A Major Variance shall meet criteria (1), (2), (3) ,and (4).:*
2. Variance Classification (MCC 11.15.8515 "A"):
 - A. *A major variance is one that is in excess of 25 percent of an applicable dimensional requirement. A Major Variance must be found to comp;ly with MCC 11.15.8505 "A".*

FINDINGS OF FACT

NOTE: Findings will be shown as follows:

Applicable Zoning standards will appear in *bold italics*
Applicant's response, if provided, will be in *italics*.
Staff comment will follow in plain type.

1. Variance Classification (MCC 11.15.8515 "A"):

A major variance is one that is in excess of 25 percent of an applicable dimensional requirement.

Variance requested is to reduce the rear yard from 30 feet to five feet, a percentage reduction of 83.33 percent, which exceeds 25 percent of the required rear yard in the RR Zoning District, and therefore must be classed as major.

2. Variance Approval Criteria (MCC 11.15.8505 "A", (1), (2), (3) and (4):

- (1). *A circumstance or condition applies to the property or to the intended use that does not apply generally to other property in the same vicinity or district. The circumstance or condition may relate to size, shape, natural features and topography of the property or the location or size of physical improvements on the site or the nature of the use compared to surrounding uses.*

The topography of the subject property differs greatly from the topography of other parcels in the same vicinity. The topography of other parcels is generally flat with some gradual slope. An exception would be the unimproved parcel to the south which has very steep terrain. The subject property has a limited area of flat terrain with the majority sloping east.

The topographic map of the property submitted with the application verifies the above.

- (2). *The zoning requirement would restrict the use of the subject property to a greater degree than it restricts other properties in the vicinity or district.*

Section 11.15.2218 (c) requires a minimum setback of 30'. This requirement is more restrictive to the subject property because of the subject properties limited area of buildable terrain. Other parcels in the vicinity have the majority, if not all, of their area in buildable terrain thereby enabling them to comply with the setback requirement. The proposed location is the only location capable of accommodating the structure without considerably altering the terrain.

The only remaining buildable area that is flat-lying is as shown on the applicant's site plan

- (3). *The authorization of the variance will not be materially detrimental to the public welfare or injurious to property in the vicinity or district in which the property is located, or adversely affects the appropriate development of adjoining properties.*

Careful consideration was given to the location of the proposed structure. The proposed location will require minimal excavation because the terrain is generally flat. No unstable soil conditions will be created. The natural slope of the terrain surrounding the structure will provide more than adequate drainage. Consideration was also given to the height of the proposed structure. Adjacent parcels to the west sit above the subject property at an elevation that their view could not be affected by the structure. Mature trees along the westerly property line will provide a natural screen. The parcel to the south is unimproved and will probably remain that way due to the extreme slope of the terrain. Parcels to the north and east would not be adversely affected because there is substantial distance and natural barriers between them and the proposed structure. The structure will be built in the manner prescribed by the building code and will not be detrimental to the public welfare. The structure will not injure but will enhance other properties in the vicinity.

- A. Authorization of the rear yard setback variance will not be materially detrimental to the public welfare. No adverse effect is foreseen by allowing the construction of an accessory building (garage) five feet from the southerly property line.
- B. Constructing the accessory building closer to the property line than normally allowed, is not seen as being injurious to other property in the vicinity.
 - (1). The adjacent property is seven times greater in area than the subject property (5.72 acres vs 0.78 ac), and
 - (2). There are no buildings on the adjacent property in close proximity to the subject property and the location of the proposed accessory building.
- C. Granting of the 25 foot rear yard setback variance will not adversely affect development of adjoining properties.
 - (1). The adjacent properties of similar size (ie less than one acre in area) will not be near the proposed structure.
 - (2). As noted earlier, the proposed accessory building will be adjacent to a large (5.72 acre) parcel that slopes steeply downhill away from the subject property.

- a. The adjacent Tax Lot 12 (ie the 5.72 acre parcel) to the south could, by zoning definition, have buildings constructed as close as ten feet from the subject property's line. This common property line is considered to be a side lot line for the larger parcel which fronts on the Lower Columbia River Highway.
- b. However, no new buildings on this adjacent property (to the south) would be anticipated in the future because of the steep slope.

(4). *The granting of the variance will not adversely affect the realization of the Comprehensive Plan nor will it establish a use which is not listed in the underlying zone.*

The Comprehensive Plan does not prohibit the construction of accessory buildings for the purpose of storing vehicles and equipment, therefor, granting this variance will not affect the realization of the plan nor will it establish a use which is not listed in the underlying zone.

- A. Staff concurs that the authorization of the variance will not adversely affect the realization of the Comprehensive Plan.
 - a. The Comprehensive Plan shows the property to be suitable for rural residential development.
 - b. Construction of an accessory building (garage) is an allowed use in the RR, "Rural Residential" Zoning District.
 - c. Constructing the accessory building 25 feet closer to the southerly property line than the zoning allows (a rear yard setback reduction of 83.33 percent), will not adversely affect the realization of the Comprehensive Plan.
 - d. Authorization of the variance will not establish a use which is not listed in the underlying zone.
- (1). The underlying zone for this area is RR, "Rural Residential" (as shown on Sectional Zoning Map # 36 in the Northwest Zoning Map Book).

- (2). The construction of an accessory building (garage) to an existing single-family residence qualifies as an an allowed use in the RR District.
 - (3). Authorization of a major variance to construct an accessory building closer to the rear (or southerly) property line than normally allowed by zoning will not establish a use not listed in the underlying zone.
3. Major Variances can be administratively approved as a Planning Director's Decision if the request has the approval of all property owners within 100 feet of the subject property [per MCC 11.15.8515 "A", (1)].

"(1)"A Major Variance must be approved by the Hearing Authority at a public hearing except when:

"(a)"All owners of record of property within 100 feet of the subject property grant their consent to the variance according to the procedures of MCC 11.15.8515 (B), (1), and (2).

- A. The applicant was not able to obtain the required number of affirmative signatures to permit the variance request to be considered administratively.
- B. The variance request must now be considered at a public hearing by the Planning Commission.

CONCLUSIONS

1. Requiring the new structure to conform to the 30 ft minimum rear yard setback restriction, would restrict the use of the property because there is limited flat terrain. .
2. The Major Variance request does not qualify as being administratively approvable because not all of the required affirmative signatures were obtainable on the petition.
3. Allowing the use of a reduced rear yard setback (from 30 ft to 5 ft), would not permit development of the property in a manner that would be more hazardous or detrimental to the public safety than development with the required yard.

4. The proposed construction project is approvable because the proposal meets the applicable "Criteria for a Major Variance".
5. The proposed accessory building (garage) meets all other yard setback requirements.
6. Development of surrounding properties will not be affected because:
 - A. The proposed structure is not adjacent to any of the four smaller surrounding properties (along the subject property's front or side property lines) which are developed (each of which is less than one acre in area).
 - B. The proposed structure will be adjacent (along the southerly or "rear" property line) to a very large (5.72 acre) parcel which has no existing buildings in close proximity. Also, the steep slope on the adjacent property (along the subject property's common lot line) would preclude construction of any buildings in the future.

Signed 03 June 1991

By _____
Richard Leonard, Chairman

Filed with the Clerk of the Board of County Commissioners on June 13, 1991.

APPEAL TO THE BOARD OF COUNTY COMMISSIONERS:

Any person who appears and testifies at the Planning Commission hearing on Monday, 03 June 1991, or who submits written testimony in accord with the requirements on the prior Notice, and objects to their recommended decision, may file a Notice of Review with the Planning Director on or before 4:30 PM on Monday, 24 June 1991 on the required Notice of Review Form which is available at the Planning and Development Office at 2115 S E Morrison Street.

The Decision on this item will be reported to the Board of County Commissioners for review at 9:30 A M on Tuesday, 25 June 1991 in Room 602 of the Multnomah County Courthouse (1021 S W 4th Avenue). For further information 'phone the Multnomah County Planning and Development Office at 248-3043.

17925 North West Chestnut Lane
Portland, OR 97231

July 19, 1991

Multnomah County Board of Commissioners
Room 606, County Courthouse
1021 South West Fourth Avenue
Portland, OR 97204

Re: HV 6-91

Gentlemen:

We are neighbors of both David Weich and Jason A. Sawyer, JR. Mr. Sawyer has asked for a variance of the 30 foot setback from Mr. Weich's property. We support Mr. Weich's objection.

Mr. Sawyer's lot is little different from any other lot in the neighborhood and his desire to construct a 30 x 50 foot building within seven feet of Mr. Weich's property line is simply out of character with the rest of the neighborhood development. Mr. Sawyer already has a two-car garage attached to his home. The 30 x 50 foot building is really too large for the site but if he attached it to his home rather than next to the fence line, it probably would be within the 30 foot setback requirement.

The proposed site of the building within seven feet of Mr. Weich's land is next to the only real buildable site on the approximately 5-acre parcel owned by Mr. Weich which lies adjacent to the one-acre parcel on which Mr. Weich lives.

We don't believe Mr. Sawyer's request or any other request for the reduction of the setback should be allowed in our neighborhood.

Sincerely,
Cliff Martin Austin

Cliff Austin

Clara Austin
Clara Austin

17910 North West Chestnut Lane
Portland, OR 97231

July 19, 1991

Multnomah County Board of Commissioners
Room 606, County Courthouse
1021 South West Fourth Avenue
Portland, OR 97204

Re: HV 6-91

Gentlemen:

We are daughters of David Weich and live with him at the above address. We are two of four brothers and sisters and will be inheriting the property from our father unless he chooses to sell it or make a gift of it to us before his death. We are opposed to the reduction of the 30 foot setback from the five-acre parcel owned by our father adjacent to Mr. Jason Sawyer's land. This five-acre parcel is rather deeply ravined but at its upper edge bordering Mr. Sawyer's property exists the only homesite on the property. We look forward someday to the possibility of building a home there or allowing our father to sell the property to someone to build a home in this beautiful location.

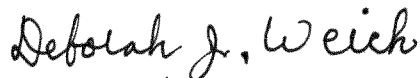
The encroachment of the setback proposed by Mr. Sawyer substantially impacts this building site. We respectfully request that the Planning Commission's decision be reversed and the full setback be required.

Sincerely,



Virginia M. Weich

Deborah J. Weich



17910 North West Chestnut Lane
Portland, OR 97231

July 19, 1991


Multnomah County Board of Commissioners
Room 606, County Courthouse
1021 South West Fourth Avenue
Portland, OR 97204

Re: HV 6-91

Gentlemen:

I had previously written to you but I am unsure whether that letter was received and made a part of the file. Due to my health, it is difficult for me to attend Planning Commission or County Commission proceedings. I am enclosing a copy of my previous letter.

I do want to re-state my objection to the reduction of the setback on Mr. Jason Sawyer's property for the construction of a 30 x 50 foot building. The proposed location is adjacent to the only reasonable building site on the five-acre parcel which I own and which adjoins my home lot. For this reason and others stated in my earlier letter, I respectfully request the Planning Commission's approval of the setback variance be reversed and the full 30 foot setback be required.

Sincerely,


David F. Weich

DAVID F. WEICH, SR.
17910 N.W. CHESTNUT LANE
PORTLAND, OR 97231-1903

Negatives # V 6 = 91
Hearing Date 6-3-91
H.V. 6-91-36th

(ATTENTION-IRV)

To Multnomah Co Planning Commission May 21 - 1991
Dear Ladies & Gentlemen,

I strongly say no to Urge Request By
Jason Sawyer and Wife Loretta, 17930 N.W. Chestnut
Lane. For the following reasons

Lot size too small
Building to Closest forest Land if building catches
fire, will set Forest afire and I doubt he
has money enough to pay damage, under
federal Law as I understand it

He already has a Burning Barrel which he
periodically uses 2 ft from fence line

This man has already excavated Soil on S.W.
Corner approximately 4 ft Deep at its Deepest
Point, he should be Required to put in Concrete
Retaining Walls on South east line & North East
line as they have been Peeling & Digging Soil
away & adding on other ^{N.E.} line for the past
year & half (ever since they came there)

The Lot size doesn't accomodate any more
buildings, due to sanitary Reasons for Septic field
He should be required to get a future Septic
Drain field approval, as his family is growing and he will
need it in the near future

He first wanted a Cabinet Shop now he has
Changed to a Two Car garage, I Believe the first
 zoning is Rural Residential,
Not Manufacturing Cabinets

Cabinets do not grow in the ground as Agricultural
products do (over) so you can't agrant the two

OFF you people, grant variance Request
& if he sets my front Land offine, I shall
due Both of you, Multnomah County Planning
Commission & Senger Family, if granted,
Very sincere
No Commestlation out here

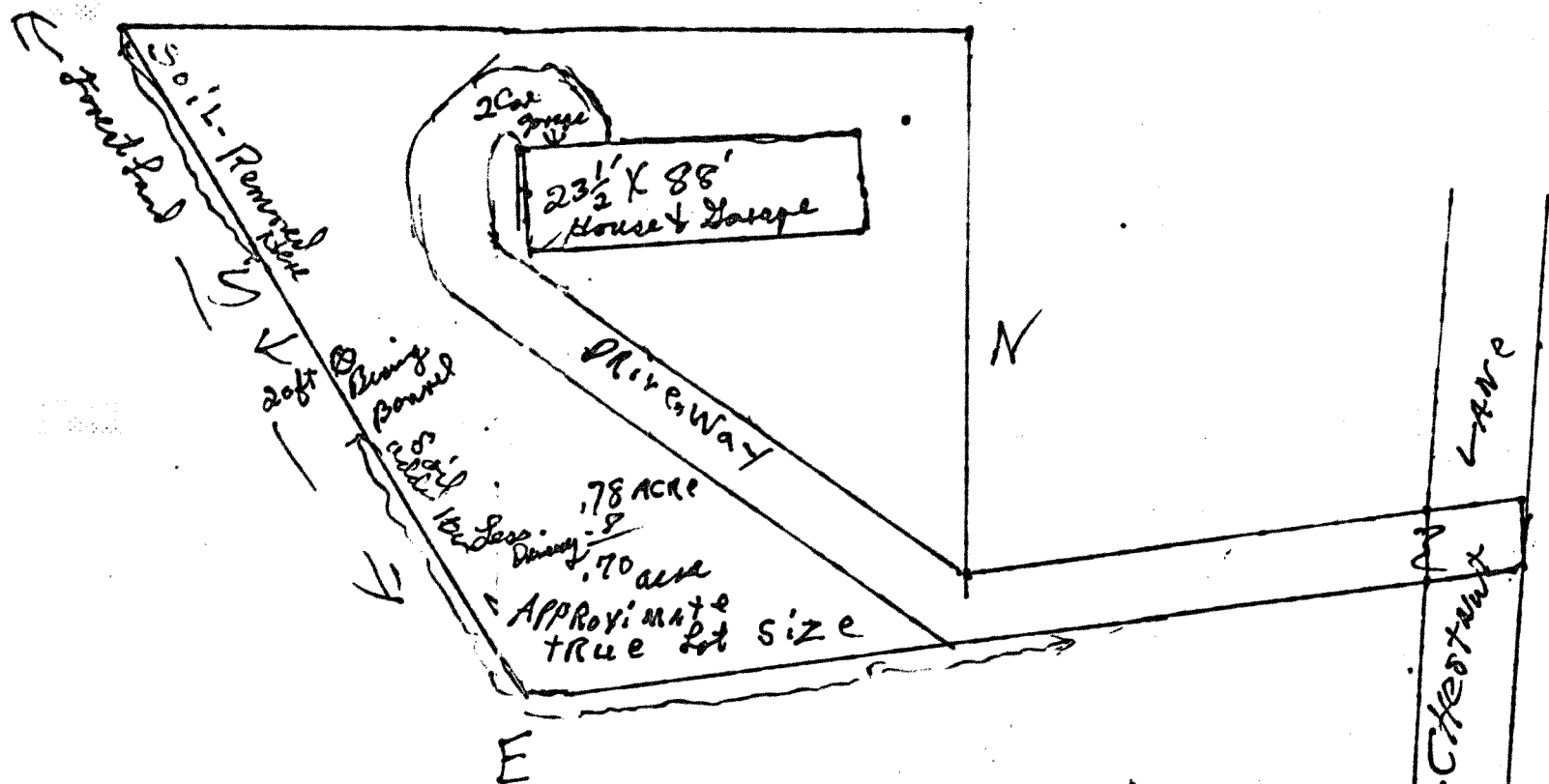
(These are flag Lots)

DAVID F. WEICH, SR.
17910 N.W. CHESTNUT LANE
PORTLAND, OR 97231-1903
David F. Weich, Sr.

Besides he already has a cat garage, with a full
Basement under his house nobody knows about!

(Enclosed Plot maps as I see it)

Tyson & Loretta Sargent's PLACE
 TAX - Lot. 40 section 2N-R1W
 W



Definitely needs to put in
 Concrete Retaining wall this area in Red

2" = 100.ft. APPROXIMATE
 DRAWING

Meeting Date: JUL 23 1991

Agenda No.: # 1

(Above space for Clerk's Office Use)

AGENDA PLACEMENT FORM
(For Non-Budgetary Items)

SUBJECT: Intergovernmental Agreement - 4-H participation in the 1991 Fair

BCC Informal _____ (date) BCC Formal _____ (date)

DEPARTMENT Environmental Services DIVISION Fair-Expo

CONTACT William V. McKinley TELEPHONE 285-7756

PERSON(S) MAKING PRESENTATION William V. McKinley

ACTION REQUESTED:

☐ INFORMATIONAL ONLY ☐ POLICY DIRECTION ☒ APPROVAL

ESTIMATED TIME NEEDED ON BOARD AGENDA: 15 minutes

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

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

Contract # 301841 is an intergovernmental agreement between Multnomah County (Fair) and Oregon State University Extension Service, Multnomah County 4-H Division. An appearance before the BCC is mandated by Administrative Procedure #2106 - Class III contracting section.

Beth from DCS/Expo Center to pick up BIA + Contract on 7-24-91.

(If space is inadequate, please use other side)

SIGNATURES:

ELECTED OFFICIAL _____

Or

DEPARTMENT MANAGER 

(All accompanying documents must have required signatures)

**CONTRACT APPROVAL FORM**

(See Administrative Procedure #2106)

MULTNOMAH COUNTY OREGON

Contract # 301841

Amendment #

CLASS I <input type="checkbox"/> Professional Services under \$10,000	CLASS II <input checked="" type="checkbox"/> Professional Services over \$10,000 (RFP, Exemption) <input type="checkbox"/> PCRB Contract <input type="checkbox"/> Maintenance Agreement <input type="checkbox"/> Licensing Agreement <input type="checkbox"/> Construction <input type="checkbox"/> Grant <input type="checkbox"/> Revenue	CLASS III <input checked="" type="checkbox"/> Intergovernmental Agreement <div style="text-align: center;">RATIFIED</div> <div style="text-align: center;">Multnomah County Board of Commissioners</div> <div style="text-align: center;">#1 July 23, 1991</div>
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Contact Person William V. McKinley Phone 285-7756 Date 4/16/91Department Environmental Services Division Fair-Expo Bldg/Room 375Description of Contract Contractor will coordinate and organize all 4-H activities related to the 1991 Multnomah County Fair - Fair dates July 23-28, 1991RFP/BID # _____ Date of RFP/BID _____ Exemption Exp. Date August 1, 1995ORS/AR # _____ Contractor is ☐ MBE ☐ WBE ☐ QRFContractor Name Oregon State University Extension Service-Multnomah County 4-H DivisionMailing Address 211 SE 80th AvenuePortland OR 97215Phone 254-1500

Employer ID # or SS # _____

Effective Date Upon executionTermination Date August 1, 1991 (4 renewals)Original Contract Amount \$ 12,346.13

Amount of Amendment \$ _____

Total Amount of Agreement \$ 12,346.13**Payment Term**☒ Lump Sum \$ 12,346.13 Payable prior to July 23rd, 1991.☐ Monthly \$ _____☐ Other \$ _____☐ Requirements contract - Requisition required.

Purchase Order No. _____

☐ Requirements Not to Exceed \$ _____**REQUIRED SIGNATURES:**Department Manager [Signature]Date 7-10-91Purchasing Director
(Class II Contracts Only) [Signature]

Date _____

County Counsel [Signature]Date 7/16/91County Chair/Sheriff [Signature]Date 7/23/91

VENDOR CODE			VENDOR NAME						TOTAL AMOUNT		
			Multnomah County 4-H						\$		
LINE NO.	FUND	AGENCY	ORGANIZATION	SUB ORG	ACTIVITY	OBJECT	SUB OBJ	REPT CATEG	LGFS DESCRIPTION	AMOUNT	INC/ DEC IND
01.	164	030	5110			6610			4-H	12,346.13	
02.											
03.											

INSTRUCTIONS ON REVERSE SIDE

WHITE - PURCHASING

CANARY - INITIATOR

PINK - CLERK OF THE BOARD

GREEN - FINANCE

PERSONAL SERVICES CONTRACT

THIS CONTRACT is between **MULTNOMAH COUNTY** acting by and through its Department of Environmental Services, hereafter called **COUNTY**, and **OREGON STATE UNIVERSITY EXTENSION SERVICE**, hereafter called **CONTRACTOR**.

THE PARTIES AGREE:

1. DESCRIPTION OF SERVICES. CONTRACTOR will provide the following services:

CONTRACTOR agrees to participate in the 1991 Multnomah County Fair - July 23-28, 1991. CONTRACTOR will coordinate and organize all 4-H activities related to this participation in the Fair.

2. COMPENSATION.

CONTRACTOR will receive the sum of \$12,346.13 prior to the first day of the Fair.

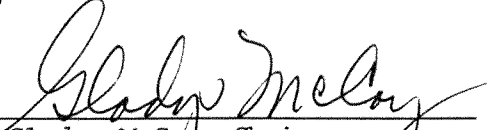
3. TERM. The CONTRACTOR's services will begin upon execution of this contract and terminate when completed but no later than August 1, 1991.

4. CONTRACT DOCUMENTS. This Contract consists of this contract document, the attached Conditions of Contract, and Exhibits A, B & C.

DATED this 23rd day of July, 1991.

MULTNOMAH COUNTY
Department of Environmental Services

By


Gladys McCoy, Chair
Multnomah County Board of Commissioners

CONTRACTOR

Oregon State University Extension
Service

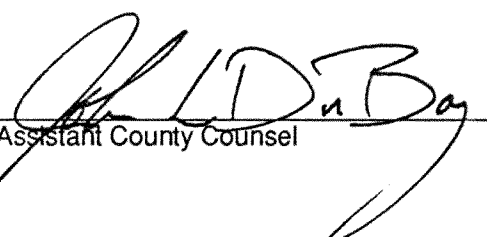
By



REVIEWED:

LAURENCE KRESSEL, COUNTY COUNSEL
FOR MULTNOMAH COUNTY

By


Assistant County Counsel

Contractor's ID No. 93-6001786

Paul Sandeland 7/3/91
Chair - Mult. Co. programs

RATIFIED

**Multnomah County Board
of Commissioners**

#1 July 23, 1991.

Multnomah County Contract No.301841

CONDITIONS OF PERSONAL SERVICES CONTRACT

The attached contract for services between Multnomah County, County herein, and Oregon State University Extension Service, Contractor herein, is subject to the following:

GENERAL CONDITIONS

1. Independent Contractor Status - Contractor is an independent contractor, and neither Contractor, Contractor's subcontractors nor employees are employees of the County. Contractor is responsible for all federal, state and local taxes and fees applicable to payments for services under this agreement.
2. Subcontracts and Assignment - Contractor may subcontract with others for services prescribed herein. Contractor shall not assign any of Contractor's rights acquired hereunder without the prior written consent of County. The County is not liable to any third person for payment of any compensation payable to third person as provided in this agreement.
3. Access to Records - The County's authorized representatives shall have access at reasonable times to the books, documents, papers and records of Contractor which are directly pertinent to this contract for the purpose of making audit, examination, excerpts and transcripts.
4. Ownership of Work Product - All work products of the Contractor which result from this contract are the exclusive property of the Contractor, including the right of copyright of any published work.
5. Workers' Compensation Insurance -

Contractor is a State of Oregon agency and as such maintains workers' compensation insurance coverage for all non-exempt workers, employed by Contractor in the performance of the work, either as a carrier or insured employer as provided in Chapter 656 of Oregon Revised Statutes.
6. Indemnification -

Contractor shall defend, indemnify and save harmless the County, its officers, agents and employees from all claims, suits or actions of whatsoever nature resulting or arising out of the activities of the Contractor or Contractor's subcontractors, agents or employees under this agreement, as provided and limited by the limitations and conditions of the Oregon Tort Claims Act and ORS 30.260 through ORS 30.300 and the Oregon Constitution, Article XT, Section 7.
7. Early Termination -
 - A. This contract may be terminated by mutual consent of both parties, or by either party upon thirty (30) days notice, in writing, and delivered by certified mail or in person.
 - B. The County, by written notice of default, may terminate this agreement if Contractor fails to provide any part of the services described herein within the time specified for completion of that part or any extension thereof.
 - C. Upon termination before completion of the services, payment to Contractor shall be prorated to and include the day of termination and shall be in full satisfaction of all claims by Contractor against County under this agreement.

- D. Termination under any provision of this paragraph shall not affect any right, obligation or liability of Contractor or liability of Contractor or County which accrued prior to termination.
- 8. Adherence to Law - The Contractor shall comply with all federal, state and local laws and ordinances applicable to the work to be done under this contract. The Certificate of Compliance with Oregon Tax Laws is attached to this agreement as Exhibit A .
- 9. Non-Discrimination - Contractor agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes.

EXHIBIT A

CERTIFICATE OF COMPLIANCE WITH OREGON TAX LAWS

I, the undersigned, hereby swear or affirm under penalty of perjury:

(check one)

_____ that I am, to the best of my knowledge, not in violation of any Oregon Tax Laws.

✓ that I am authorized to act in behalf of OSU Ext. Service; that I have authority and knowledge regarding the payment of taxes, and that OSU Ext. Service - Mult. Co. is, to the best of my knowledge, not in violation of any Oregon tax laws.

For purposes of this certificate, "Oregon tax laws" means the state inheritance tax, personal income tax, withholding tax, corporation income and excise taxes, amusement device tax, the homeowners and renters property tax relief program and local taxes administered by the Department of Revenue (Multnomah County Business Income Tax, Tri-Metropolitan Transit District Employer Payroll Tax and Tri-Metropolitan Transit District Self-Employment Tax).

Signature: Paul Sunderland

Date: 7-3-91

Printed Name: Paul Sunderland

Title: Chair - Multnomah Co. program



MULTNOMAH COUNTY OREGON

DEPARTMENT OF GENERAL SERVICES
PURCHASING SECTION
2505 S.E. 11TH AVENUE
PORTLAND, OREGON 97202
(503) 248-5111

GLADYS McCOY
COUNTY CHAIR

MEMORANDUM

TO: Gladys McCoy
County Chair

FROM: *Lillie Walker*
Lillie Walker
Purchasing Section

DATE: January 25, 1991

SUBJECT: REQUEST FOR A SOLE EXEMPTION TO CONTRACT WITH THE
4-H DIVISION FOR MULTNOMAH COUNTY FAIR EXHIBIT AND
PARTICIPATION

The attached memorandum for the DES, Portland Exposition Center (Expo), requests a sole source exemption to contract with the 4-H Division for an exhibit, contests and other activities during the Fair periods. The exemption period requested is to cover a 5 year period from approximately July 23 to August 1 of each fair period. The contract amount for each fair period will be approximately \$13,000.

The sole source exemption is requested because there are no known services of this type available. The 4-H Division's participation and contests are traditional and expected by fair goers each year and enhances revenues and success of the fair.

The Purchasing Section recommends approval of the sole source exemption.

APPROVED:

DENIED:

Gladys McCoy
Gladys McCoy, County Chair

Gladys McCoy, County Chair

LW:595Pur:jl



MULTNOMAH COUNTY FAIR



2060 N. MARINE DRIVE
PORTLAND, OREGON 97217
(503) 285-7756
FAX # (503) 285-7759

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

MEMORANDUM

TO: Lillie Walker, Purchasing Director
FROM: William V. McKinley, Expo *WVM*
DATE: January 17, 1991
SUBJECT: Exemption Request - 4-H Involvement - 1991 Multnomah County Fair

Date Action is Required:

March 1, 1991

This memorandum hereby requests that the Multnomah County 4-H program be granted an exemption from the regular purchasing process insofar as they are a sole source for their activities and participation relating to the Multnomah County Fair. The cost for 4-H will not exceed \$13,000.00 for the 1991 Multnomah County Fair. This money will be due and payable prior to the Fair's opening day of July 23, 1991.

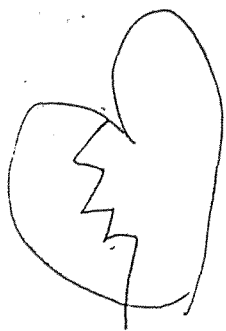
We propose the period of this exemption to be as follows:

Effective Date: March 1, 1991

Termination Date: August 1, 1991

Contract Amount & Payment Terms: Should not exceed \$13,000.00. Full amount due and payable prior to July 23, 1991.

The enclosed copy of 4-H's mission statement, which is excerpted from the Multnomah County Fair Exhibitors Handbook, will clarify 4-H's stance on participation with the Fair.



Fair Budget Breakdown

Item	1989 (actual)	1990 (proposed)	1990 (actual)	1991 (proposed)
Judges	\$3,100.77	\$3,740.00	\$3,086.24	3,086.24
Premiums (1991 +10%)	6,000.00	6,000.00	6,000.00	\$6,600.00
Personnel (Supt.)	1,100.00	1,350.00	1,075.00	1,075.00
Horse Show	500.00	500.00	700.00 800.00	700.00 900.00
Secretarial Help	385.00	400.00	400.00	300.00
Livestock Trophy	20.00	20.00	25.00	25.00
Supplies:				
Printing	355.25	400.00		
Misc Supplies (posters, ribbons, judges supplies)	480.66	535.00	559.89 753.54 (we picked up \$193.65 ribbon order)	559.89
Floral Contest Supplies	25.00	25.00	75.00	00.00
Pre-fair Potluck for volunteers		125.00	136.71	
Night Watchman	135.20	*	*	*

*Night watchman provided by Expo Center

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\$12,101.88	\$13,095.00	\$12,276.49	12346.13
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Check Received for 1990 Fair=\$12,177.07

Printing

\$224.38

Fair insert	\$ 47.19	
Fair forms	27.50	
Passes	23.00	(Not doing in 1991)
Food Judging	22.00	
Fashion Review	23.39	
programs	13.45	
state fair	39.80	
horse class		
sheets	26.05	

With our new printing capabilities at office can reduce printing costs by 40% or approximately \$90.00

Misc.

Envelopes	\$15.00	off
clip boards	11.00	off
staples	15.00	
poster board	35.00	
name tags	5.00	off
floral foam	75.00	off
meat judging	70.00	off
vegie judging	25.00	
additional ribbons	193.65	<i>- In main order</i>
expressive arts		
supplies	54.08	off