BEFORE THE BOARD OF COUNTY COMMISSIONERS

FOR MULTNOMAH COUNTY

In the Matter of the Review of the Hearings Officer decision which approved DR 14-93, a Final Design Review Plan; and CU 5-91a, a Determination of Substantial Development of a Conditional Use permit for a dwelling	**FINAL ORDER 93-339**

This matter concerns an appeal to the Board of Commissioners (Board) filed by Arnold Rochlin on behalf of the Forest Park Neighborhood Association. The appeal challenges the August 20, 1993 decisions of the Hearings Officer for land use applications DR 14-93 and CU 5-91a concerning property located at 6125 NW Thompson Road and owned by Dan McKenzie (applicant). The Hearings Officer decisions approved a Final Design Review Plan and found that sufficient site development was performed within 2-years of the Conditional Use decision which authorized a dwelling on the subject site [file: CU 5-91]. The Board hereby affirms and modifies the decisions of the Hearings Officer regarding applications DR 14-93 and CU 5-91a based on the findings and conclusions contained in this Order and in the August 20, 1993 Hearings Officer decision.

I. Procedural History

The *Notice of Review* (appeal) was filed on September 7, 1993. On September 14, 1993, the Board limited the Scope of Review to the record of the prior proceedings, with 15 minutes oral argument allowed for the parties. The Board held a public hearing to consider the appeal on October 12, 1993. After considering the evidence, the Hearings Officer decision, staff recommendations,

and arguments from the parties, the Board, in a 4 – 0 unanimous vote, affirmed the Hearings Officer, and modified the condition attached to DR 14-93.

II. Findings and Evaluation

After hearing testimony, arguments and weighing the evidence, the Board concurs with the Hearings Officer's decisions but finds the Final Design Review Plan satisfies applicable criteria only if modified to include a bridge rather than a culvert/fill crossing over the Thompson Fork of Balch Creek. The Board finds the condition of approval as set out in Section III below should be substituted for the condition in the decision on appeal. Except as modified herein, the Hearings Officer's findings and conclusions are incorporated herein.

III. Condition of Approval

1. The applicant shall amend the Final Design Review Plan for DR 14-93 to include a bridge for the driveway crossing over the Thompson Fork of Balch Creek. Construction plans and grading details for the bridge shall be consistent with related permits HDP 4-91 and SEC 6-91. The amended Final Design Review Plan required herein shall be reviewed by the Planning Director pursuant to 11.15.7840-.7845. Public notice of the Planning Director's decision on the amended plan shall be provided to the parties, with an opportunity for a public hearing as provided in ORS 215.416(11).

IV. CONCLUSION AND DECISION

Based on the above findings and evaluation, the Board hereby denies the appeal, affirms the Hearings Officer decision, approves DR 14-93, subject to a modified condition, and approves CU 5-91a.

DATED this 2nd day of November, 1993.

(SEAL)

Beverly Stein, Multnomah County Chair

REVIEWED AS TO FORM:
LAURENCE KRESSEL, COUNTY COUNSEL
FOR MULTNOMAH COUNTY, OREGON

By: _____
John DuBay, Chief Deputy County Counsel

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

HEARINGS OFFICER DECISIONS
AUGUST 20, 1993

DR 14-93 **Appeal of a *Final Design Review Plan***
CU 5-91a **Appeal of a *Determination of Substantial Development***

I. SUMMARY

Location: 6125 NW Thompson Road **Site Size** 3.00 Acres

Tax Roll Description: Tax Lot '1' of Lot 37, Mountain View Park Addition #1

Owner/Applicant: Dan McKenzie (represented by Steven Abel)
6125 NW Thompson Road Portland, Oregon 97210

Appellant: Forest Park Neighborhood Association
(represented by Arnold Rochlin)

Zoning District: **CFU** (formerly MUF-19; Multiple Use Forest District)

HEARINGS OFFICER DECISIONS:

DR 14-93: **AFFIRM, SUBJECT TO A CONDITION,** the *Final Design Review Plan*;

CU 5-91a: **AFFIRM,** the *Determination of Substantial Development* of a non-resource dwelling authorized by CU 5-91, and all based on the following Findings and Conclusions.

These decisions concern an appeal to the Hearings Officer of two administrative decisions by the Planning Director. The decision in DR 14-93 approved a Final Design Review Plan for a non-resource dwelling allowed by conditional use permit (CU 5-91) in a forest zone. See Multnomah County Code 11.15.7800, *et sec.* [1] for the design review regulations. The The decision in CU 5-91a determined that the applicant had undertaken substantial construction and development within two years from approval of the conditional use (CU) permit. See MCC 11.15.7110(C). This allows the applicant to complete the dwelling on the site.

The case is complicated by prior county decisions for a Hillside Development Permit (HDP 4-91 and 4-91a) and a Significant Environmental Concern permit (SEC 6-91 and 6-91a) for a driveway crossing of Balch Creek near the Thompson Road frontage of the property and by a recent LUBA opinion reversing SEC 6-91a and HDP 4-91a.

In the written appeal regarding DR 14-93, the appellant alleged principally: (1) that the Final Design Review Plan did not contain required information; (2) that the decision approving the

---

[1] A section in Multnomah County Code Chapter 11.15 is hereafter abbreviated as MCC .xxxx consistent with the citation format in the chapter.

plan was inadequate and consisted of mere assertions; and (3) that the design review plan violates an earlier county decision, because it does not use a bridge to cross Balch Creek.

In the written appeal regarding the determination of substantial development for CU 5-91, the appellant alleged principally: (1) that the application was not timely filed and, therefore, cannot be approved; (2) that findings necessary for approval of the application could not be made; and (3) that the determination is not supported by substantial evidence in the record.

Hearings Officer Larry Epstein held a public hearing to receive testimony and evidence regarding the appeals on July 19, 1993 and held open the public record until August 2, 1993 to receive additional written testimony and evidence. The appellant and applicant presented additional written arguments after the hearing before the record closed.

The hearings officer also held open the record to receive a copy of a final order by the Land Use Board of Appeals (LUBA) in the matter of an appeal of a Board of Commissioners decision allowing the applicant to use a culvert and fill to cross Balch Creek (SEC 6-91a and HDP 4-91a). LUBA reversed the Board on procedural grounds. The LUBA decision reinstated prior county decisions (SEC 6-91 and HDP 4-91) requiring the applicant to use a bridge to cross the creek.

The appeal raises the following major procedural issues: (1) whether design review applies to the application; (2) whether a party other than the applicant has a right to appeal a design review decision; (3) whether the standard of review for the appeal is substantial evidence or *de novo*; (4) the scope of appeal (what issues can be raised in the appeal); (5) the effect of a LUBA decision about related county decisions rendered after the public hearing in this case; and (6) the impact of the timing of the planning director decision and decision notices.

The appeal raises the following substantive issues regarding design review: (1) whether a design review application can be approved if it does not contain all the information required for such a plan; (2) whether the site plan offered by the applicant complies with applicable design review approval criteria; and (3) whether the design review decision is consistent with other county actions.

The appeal raises the following substantive issues regarding the determination of substantial construction and development for the conditional use permit: (1) whether the request for the determination was timely filed; (2) whether there was a final design review decision before (or when) the request was approved; and (3) whether the evidence supports a conclusion that the applicant undertook substantial construction and development.

The hearings officer finds the final design review plan does not provide for a bridge. That is inconsistent with the conditions of approval of the prior county decisions regarding SEC 6-91 and HDP 4-91 which were reinstated by the LUBA decision. The design review plan should be affirmed subject to a condition that requires amendment of the design review plan to conform to SEC 6-91 and HDP 4-91 or their amendments. The hearings officer also finds that the applicant undertook substantial construction and development in conjunction with the conditional use permit before the permit expired consistent with MCC .7110(C). Therefore, the hearings officer affirms that determination by the planning director.

II. PROCEDURAL ISSUES

A. Applicability of design review.

1. County planner Mark Hess briefly argued at the hearing on July 19 that the conditional use permit in question should not be subject to the requirements of MCC .7800, *et seq.* (Design Review), based on comprehensive plan policies 12 and 19. He drew a distinction between two kinds of conditional uses: those specified as such in a given zone and those allowed in any district. He argued that where a conditional use is listed as such in a given zone subject to specific design standards, then design review should not apply, because the more use-specific design standards supplant the more general design review standards. Based on that rationale, he argued the conditional use permit in question would not be subject to design review.

2. The hearings officer recognizes that it has been the county's general practice not to subject to design review non-forest dwellings allowed as conditional uses. Although the hearings officer finds merit in the practice as a matter of policy, the hearings officer also finds MCC .7820 clear on its face. It provides that design review "shall apply to all conditional ... uses in any district" (emphasis added). Therefore, despite the merits of not applying design review to a conditional use that already is subject to use-specific design standards in the zone, the hearings officer finds that CU 5-91 is subject to design review by the plain meaning of the code and by the lack of any conflict or ambiguity in the code that warrants a conclusion to the contrary, notwithstanding county practice. If the county wants to waive design review for certain conditional uses, then it should amend MCC 11.15 to say so clearly.

B. Appellant's standing to appeal design review decision.

1. The applicant alleged that the appellant cannot appeal a design review decision, because MCC .8290(A) does not authorize anyone but the applicant for a design review decision to appeal that decision.[2] See pp. 6-7 of Exhibit 22. The appellant addressed the issue of standing at pp. 5-6 of Exhibit 25.

2. The hearings officer finds that MCC .7865 authorizes a decision in a final design review plan to be appealed to the hearings officer.[3] It does not restrict who may file the appeal. Therefore, the design review decision is a "matter made appealable by this Section" of the code. The appellant in both cases is the Forest Park Neighborhood Association, based on the Notice of Appeal. Mr. Rochlin is the representative of that organization and has standing as a "party" as defined by MCC .8225.

---

[2] MCC 11.15.8290(A) provides:

> *A decision made by the Planning Director on an administrative matter made appealable under this Section by ordinance provision, shall be final at the close of business on the tenth calendar day following the filing of the written Decision, Findings and Conclusions with the Director of the Department of Environmental Services, unless prior thereto, the applicant files a Notice of Appeal with the Department, under subsections (B) and (C).*

[3] MCC 11.15.7865 provides:

> *A decision on a final design review plan may be appealed to the Hearings Officer in the manner provided in MCC .8290 and .8295.*

C. Standard of review.

1. The applicant argues the standard for review in this case is whether the planning director's decision is supported by substantial evidence in the record. See p. 7 of Exhibit 22. However the argument is not based on any reference to the code or other law.

2. The hearings officer notes that MCC .8295 provides that, generally, appeals to the hearings officer or to the Board of Commissioners are to be conducted according to the provisions of MCC .8239 through .8290. Scope of review is addressed in MCC .8270. It provides for *de novo* review if "additional testimony or evidence could not reasonably have been presented" in the action that preceded the appeal, in addition to other considerations.[4] See MCC .8270(E).

3. The hearings officer finds that the appeal of the decisions under review should be *de novo*, because the appellant had no opportunity to present any testimony or evidence regarding the two applications in this case before the planning director made his decisions; that lack of opportunity substantially prejudiced the appellant by impeding his participation; and the evidence offered by the appellant is generally competent, relevant and material (whether or not the hearings officer finds it is sufficient to prevail). Therefore, the hearings officer will except new evidence into the record and will conduct a *de novo* review.

4. MCC .8295(B) provides that MCC .8290(D) and (E) do not apply to an appeal filed under MCC .8230(A). MCC .8230(D) states that the burden of proof is on the person initiating the action. If MCC .8230(D) does not apply to the appeal, pursuant to MCC .8295(B), then it could be construed to waive the burden of proof regarding the decisions that are the subject of the appeal. However, the hearings officer finds that such a result is not consistent with the *de novo* character of the appeal hearing. MCC .8295(B) should not be construed to waive the burden of proof.

a. The burden of proof is to show that the applications comply with the applicable standards in the county code based on the evidence in the whole record to the extent the appellant has raised compliance with those standards as issues in the Notice of Appeal. See "Scope of Appeal."

b. It is not enough to show simply that the planning director's decision is supported by substantial evidence in the record before the appeal, because the planning director was not able to consider the evidence offered by the appellant. The "burden of coming forward" may shift from one party to another as first the applicant and then the appellant make a *prima facie* case about an issue, but the applicant bears the "burden of proof" throughout. The appeal hearing is the first opportunity the appellant has to address the challenged applications. Until a final decision has been rendered and appeals of that decision have been resolved in the applicant's favor, the burden of proof has not been met.

c. The hearings officer finds that MCC .8295(B) is ambiguous. It is not clear whether the Board intended to shift or waive the burden of proof on an appeal of an administrative decision to the hearings officer. The situation may be different in an appeal

---

[4] MCC 11.15.8270(F) defines "de novo" hearing as follows:

> *[A] hearing by the [approval authority] as if the action had not been heard by the [inferior approval authority], and as if no decision has been rendered, except that all testimony, evidence and other material received by the [inferior approval authority] shall be included in the record.*

to the Board of Commissioners after a duly noticed public hearing on the merits before an inferior approval authority, because evidence on both sides of an issue could be presented before the decision by the inferior approval authority. However, given the procedural posture of this case, the hearings officer construes MCC .8295(B) to waive MCC .8230(D) and (E), but not to waive the burden of proof.

5. The appellant argues that the appeal is being brought under Oregon statutes (ORS 215.416(11)) in addition to county law, and argues that, where the county code and state law differ about such issues as the standard of review and scope of appeal, the hearings officer should resolve that difference by reference to state law. See, e.g., pp. 1-2 of Exhibit 19. However, the hearings officer does not have jurisdiction to construe or apply state statutes. The hearings officer cannot bend the county code to comply with his understanding of state law even if the hearings officer agrees with the appellant about what the county and state laws say. If the county code violates state law, the Board of Commissioners is the authority responsible for changing it. If the appellant believes provisions of the county code violate state law, then he will have to pursue that appeal in another forum.

D. Scope of appeal.

1. The applicant argues the issues subject to the appeal are limited to the issues cited specifically in the written appeal. The applicant argues a blanket objection, such as a challenge to compliance with all requirements and criteria, is not sufficiently specific to raise anything on appeal. See p. 1 of Exhibit 22.

2. The hearings officer finds that MCC 11.15.8295(A) limits the appeal to the grounds relied on for the appeal in the Notice of Appeal.[5] General objections are not sufficient to raise an issue on appeal. However, given the *de novo* character of the hearing, additional evidence could be introduced to make the grounds stated in the Notice of Appeal more specific. Such evidence was introduced. See, e.g., pp. 5-6 of Exhibit 19.

E. Impact of the LUBA decision.

1. The record includes a final order by the Land Use Board of Appeals ("LUBA") in the matter of *Rochlin v. Multnomah County, et al*, LUBA No. 93-019 (July 22, 1993). In its final order, LUBA reversed two decisions by the Board of Commissioners ("BCC").

a. In one decision, the BCC found that a Significant Environmental Concern ("SEC") permit was not necessary to allow a driveway to cross Balch Creek (SEC 6-91). In a second decision, the BCC approved a modification to a Hillside Development permit ("HDP") to allow a culvert instead of a bridge to cross Balch Creek (HDP 4-91a).

b. The BCC's decisions were made after rehearing by the BCC pursuant to MCC .8280(D), which allows a rehearing if granted within 10 days after the BCC files its final order. LUBA found the BCC did not grant the rehearing within the 10-day period. Therefore, LUBA concluded the BCC never had jurisdiction to rehear the case and reversed the decisions made after the rehearing. LUBA did not otherwise address the merits of the appealed decisions.

---

[5] MCC 11.15.8295(A) provides:

> *A hearing before the Hearings Officer on a matter appealed under MCC .8290(A) shall be limited to the specific grounds relied on for reversal or modification of the decision in the Notice of Appeal.*

2. The hearings officer finds that the LUBA decision effectively reinstates the administrative decision approving HDP 4-91, (see pp. 537-543 of Exhibit 1), SEC 6-91, (see pp. 528-534 of Exhibit 1), and the conditions of approval of those decisions requiring the applicant to use a bridge to cross Balch Creek. Although the hearings officer assumes the applicant could apply to modify those permits, the hearings officer must make his decision based on the facts in the record. The design review plan does not provide for the bridge. It violates the decisions noted above.

3. The appellant argued that the LUBA decision requires the hearings officer to conclude that the applicant could not have complied with the approval criteria for a determination of substantial construction and development, because one of those criteria (MCC .7110(C)(3)(b)(i)) requires that a final design review plan has been approved for the total project, and the final design review plan in this case did not include a bridge that is necessary for the project following the LUBA decision. See Exhibit 25.

a. The hearings officer finds that MCC .7110(C)(3)(b)(i) does not contemplate the circumstances of this case, i.e., that a final design review plan is approved based on the permits issued for development shown on the plan, but those permits are voided by a LUBA decision while the final design review plan decision is under appeal.

b. The hearings officer assumes county officials are obligated to act on the basis of the decisions of the governing body of the county. At the time the planning director approved the design review plan, it complied with applicable permits as determined by the BCC.[6] The hearings officer finds there was a Final Design Review approval under MCC .7845 when the planning director made his decision that the applicant complied with MCC .7110(C)(3)(b)(i), assuming such decisions can be made concurrently. The parties agreed the decisions could be made concurrently.

c. That leaves the question of whether the LUBA decision requires the hearings officer to find the application cannot comply with MCC .7110(C)(3)(b)(i), because, <u>now</u>, a final decision review plan cannot be approved if it does not show the bridge required by CU 5-91 and SEC 6-91.

(i) Because the county code is ambiguous, the hearings officer must construe it. The hearings officer is guided by the purpose of the provision in question (i.e., MCC .7110(C)). That provision allows completion of development authorized by a conditional use permit without limiting the time for completion if the permittee has undertaken substantial construction and development within two years after the permit is approved. To find that substantial construction and development has occurred, the planning director must find (1) that the county has approved a final design review plan for the total project and (2) the applicant has spent a certain percentage of funds for the project.

(ii) The hearings officer finds that the purpose of requiring a conditional use permit to be implemented within two years is to ensure that conditions have not changed sufficient to warrant a new review. The purpose of requiring a final design review plan to be approved before recognizing an applicant has undertaken substantial construction and development is to ensure that development authorized by the permit can proceed. Submission of an approved design review plan and expenditure of funds to develop the site consistent with that plan or other permits is evidence of a diligent effort to implement the conditional use permit. The BCC determined as a mater of policy that, as

---

[6] The appellant also argues that the design review plan violated a condition of approval of the decision in the matter of CU 5-91. That issue is addressed in finding III.C. It does not involve the LUBA decision.

long as such an effort is made, then, even though conditions could change subsequently, the applicant has made a sufficient effort to vest his rights to complete a project. The plan submitted by the applicant was consistent with the applicable permits as determined by the county at the time. The hearings officer finds that fulfilled MCC .7110(3)(b)(i).

(iii) The hearings officer concludes that the fact that the LUBA decision requires the plan to be changed should not change the fact that the applicant applied for and received approval of a final design review plan. Negating approval of the determination of significant construction and development because of the LUBA decision would not serve the purpose of MCC .7110(3). It would disregard the diligent effort the applicant made to implement the conditional use permit, and, thereby, it would derogate the purpose of MCC .7110(3) to allow completion of a conditional use permit if a diligent effort is made to implement the conditional use in a timely manner.

F. Timing of notice and decision.

1. The applicant filed the design review application with the county on March 25, 1993. The applicant filed the application for a determination of substantial construction and development with the county on March 26, 1993. The planning director mailed notice of the administrative decision on May 7. The date of the administrative decision was May 26.

2. The appellant argues the planning director violated MCC .7110(C)(3)(b), because the director did not issue a decision regarding the determination of substantial construction and development within 20 days. See pp. 8-9 of Exhibit 19 and p. 2 of Exhibit 21. The appellant is correct. Coincidentally, the hearings officer notes the planning director also violated MCC .7845(C), because the director did not issue a final design review decision within 10 days after the design review application. However, neither of these violations gives rise to an action by the appellant. Neither is a land use decision; rather, they are land use indecisions. Neither of these violations prejudiced the appellant; they may have prejudiced the applicant.

3. The appellant argues the planning director considered evidence that it cannot be shown was in the record when the May 7 notice was mailed or when the May 26 decision was filed. Whether or not that claim is correct, the hearings officer finds that any prejudice created thereby is remedied by the *de novo* nature of this appeal proceeding. Any evidence relevant to the matter and in the record was available to all parties during the course of the proceedings and could be challenged by competent evidence to the contrary.

III. MERITS OF THE APPEAL OF DR 14-93

A. Contents of the design review plan.

1. The appellant argues the design review plan does not include all of the information listed by MCC .7830(D)-(G), and, therefore, the plan cannot be approved. See, e.g., pp. 3-5 of Exhibit 19 and pp. 1-2 of Exhibit 24. The applicant argues that all of the information listed in MCC .7830(D)-(G) is not required, and that adequate evidence is available regarding issues that are relevant to the design review standards and criteria.

2. The hearings officer agrees with the applicant. Although MCC .7830(D)-(G) require certain information to be provided in or with a design review plan, those sections do not constitute approval criteria or standards; they list information requirements. Failure to submit required information is not fatal to an application if the information that is submitted is sufficient to show that the plan complies with the applicable approval criteria and standards in the code.

B. Compliance with design review plan approval criteria and standards.

1. In the written appeal, the appellant challenges the adequacy of the findings for the design review decision generally, but does not cite any specific standard that the design review plan violates. More specific citations are provided at pp. 5-6 of Exhibit 19. The appellant also argues the findings are mere assertions and information in the record is insufficient to substantiate findings of compliance with the design review standards.

2. The hearings officer finds that, in general, the findings adopted by the planning director in support of DR 14-93 are not mere assertions and are supported in the record. Many of the design review standards are ambiguous, highly subjective and conceptual in nature. Reasonable people can disagree about compliance with these standards, and no amount of evidence may be available to resolve such disputes with certainty. Substantial evidence to support findings addressing these standards consists generally of the design review plan application (which includes proposed development on the site and structures on adjoining property and topography); the aerial photograph and photographs of the site by county staff; the records in the matter of HDP 4-91 and 4-91a, SEC 6-91 and 6-91a, and CU 5-91; the model of the site; permits issued by other agencies; and architectural drawings, a foundation plan, and building elevations. The design review criteria are in MCC .7850. The hearings officer incorporates and adopts by reference the findings of the planning director in the May 26 administrative decision regarding DR 14-93 in response to those criteria. The hearings officer also adopts the following findings.

3. Regarding the relation of the design review plan to the environment (MCC .7850(A)(1)(a)),[7] the appellant argued there is no plan for the structures other than siting, and the director's decision is not justified. See p. 5 of Exhibit 19.

a. The hearings officer disagrees. The record includes sample home plans, a foundation plan and elevations. See Exhibits 15 and 28. The information about the size and shape of a dwelling, its location on the site, the distance to other dwellings, and the topography and forest cover is sufficient to warrant a finding that the design review plan relates harmoniously to the natural environment, e.g., by minimizing removal of trees, subsequent grading, and views of the proposed building. The lack of a specific house design is not fatal to the application where, as here, the general nature of the kind of home that will be placed on the site is described. Whether the home is a colonial or a tudor style in appearance will not affect the harmony in the relationship between the home and the site given the size of the site, its topography and vegetation, and the setbacks proposed given existing building locations in the area.

b. The appellant argued that window and door locations are needed to make a necessary finding under this criterion. The hearings officer disagrees. The size of the site and surrounding lots and the distance between existing and proposed structures in this case are such that the locations of doors and windows in the proposed home will not make an appreciable difference in the relationship of the home to the environment.

---

[7] MCC .7850(A)(1)(a) provides:

> *The elements of the design review plan shall relate harmoniously to the natural environment and existing buildings and structures having a visual relationship with the site.*

4. Regarding MCC .7850(A)(1)(b),[8] there is little energy conservation or climatic information in the design review plan. But the applicant proposes to install a manufactured home that would be subject to energy conservation requirements. That promotes energy conservation. A home is not a significant noise producer, and the evidence about land uses in the vicinity (including the aerial photo) is sufficient to show that there are not significant noise sources in the vicinity. A home will not have a significant air quality impact, and the area is not subject to extraordinary air quality problems, based on the site inspection. The location of the home on the site minimizes exposure to adverse climatic conditions by using existing vegetation and topography to shield the homesite from at least two directions, based on the model of the site introduced at the hearing.

5. Regarding MCC .7850(A)(1)(c),[9] the appellant argued the planning director is wrong, and "the absence of required design elements is conclusive evidence the standard was not met." See p. 5 of Exhibit 19. However, the hearings officer finds the design review plan, the model of the site, and the photos of the site show proposed structures and other development and existing conditions sufficient to address this standard.

a. The proposed dwelling and accessory structure will be effective and efficient as such based on compliance with applicable building codes. The proposed access road provides access to the structures by a direct route, so that it, too, is efficient and effective given its intended purpose. The non-structural nature of the drive makes it of negligible visual impact. The placement of the structures within vegetated areas and preservation of vegetation outside of areas to be developed minimizes their impact on views and warrants a conclusion that the site will be attractive.

b. The drive and structures are inter-related and the development is orderly in that the drive leads to the structures and vice versa without meandering unnecessarily. There is spatial variety on the site, consisting of structures, forest and understory vegetation, and a drive that winds through them. From one area of the site to another, the relationship of structures, forest and earth varies. At all times, the major visual feature is the forested topography which dwarfs the road, structures and humans. The proposed development has a human scale in the forested topography, because the proposed structures are one story in height and are not crowded into substantial bulk or mass.

6. Regarding MCC .7850(2),[10] the appellant argues appropriate opportunities for privacy are not provided, because 200-foot setbacks are not provided. The appellant argues the plan does not promote safety, because there is no evidence the applicant will provide 30-foot fire breaks, maintain a water supply for fire fighting, or be as close as possible to Thompson Road.

---

[8] MCC .7850(A)(1)(b) provides:

> *The elements of the design review plan should promote energy conservation and provide protection from adverse climatic conditions, noise, and air pollution.*

[9] MCC .7850(A)(1)(c) provides:

> *Each element of the design review plan shall effectively, efficiently, and attractively serve its function. the elements shall be on a human scale, inter-related, and shall provide spatial variety and order.*

[10] MCC .7850(2) provides:

> *The design review plan shall be designed to provide a safe environment, while offering appropriate opportunities for privacy and transitions from public to private spaces.*

a. The hearings officer finds the design review plan provides appropriate opportunities for privacy, because the proposed dwelling is not visible from other dwellings in the vicinity due to the forested topography of the site and surrounding area. Because the dwelling is not visible from off-site, it provides privacy to the residents of the site and protects the privacy of residents of homes in the vicinity. The failure of the applicant to provide 200-foot setbacks does not necessarily mean the plan does not provide for privacy. Planting vegetation between the existing home to the south and the proposed home on the site will protect privacy. See condition of approval 5.

b. The hearings officer finds the design review plan provides for a safe environment by for providing 30-foot fire breaks. The fire breaks are identified in sufficient detail on the plan to count as such. Ultimate compliance with the fire break standard can be verified as part of the building permit inspection process. The environment also is safe in that the applicant will provide a driveway improved to the extent required by the law. This ensures emergency vehicle access can be provided to the dwelling and to the area between the dwelling and Thompson Road, including the well in that area. By providing access to the well, the applicant provides access to a water supply system for fire fighting purposes. The fact that the dwelling is situated more than 30 feet from Thompson Road does not make the dwelling unsafe, because adequate vehicular access is provided to the dwelling. Additional safety is provided by condition of approval 4.

7. MCC .7850(3) is not relevant to the application, because the dwelling is not proposed to be used for handicapped housing. There is no dispute about this issue.

8. Regarding MCC .7850(4),[11] the appellant argues the planning director failed to make the requisite finding, and the application does not contain sufficient information to warrant that finding.

a. The hearings officer finds that the design review plan and conditions of approval 1 through 4 are sufficient to show that the applicant will preserve existing vegetation and grades to the maximum practical extent, because less than 10 percent of the site will be affected by the proposed development, and the remainder of the grades and vegetation on the site will be preserved in its existing condition. Development constraints on the site include its topography and vegetation and limits on where a septic drainfield and alternative drainfield are approved. The applicant proposes to place the structures to minimize grading and removal of trees, although the relatively even tree-cover on most of the developable area of the site necessitates removal of some trees. It is not practical to preserve more of the existing vegetation and grades, because it would preclude development of the site as otherwise permitted by the conditional use permit (CU 5-91).

9. Regarding MCC .7850(5), the hearings officer finds the planning director's finding adequacy addresses this issue. The appellant did not dispute the finding regarding this issue.

---

[11] MCC .7850(4) provides:

> *The landscape and existing grade shall be preserved to the maximum practical degree, considering development constraints and suitability of the landscape or grade to serve their functions...*

10. Regarding MCC .7850(6),[12] the appellant argues the applicant's drainage plan is inadequate. However, the hearings officer finds that the applicant's proposed surface drainage plan will not adversely affect neighboring properties or streets, because:

a. The applicant will collect storm water and direct it to existing storm water drainageways using rip rap to prevent erosion at discharge points. By using existing drainage channels, the applicant prevents adverse storm water effects in areas where such effects do not already occur. By protecting discharge points, the applicant prevents adverse effects due to erosion and sedimentation. By using a detention system recommended by the planning director, (see conditions of approval 6 of the planning director's decision), the potential for erosion and adverse off-site effects is further reduced.

b. The impervious area of the site will be very small compared to the remaining permeable area. Therefore, the volume of storm water run-off will be so small that its off-site effects, if any, will be insignificant.

c. Compliance with this criterion can be assured during the building permit inspection process through implementation of condition of approval 6 of the planning director's decision.

11. Regarding MCC .7850(7),[13] the appellant argues the planning director failed to address the impact of the dwelling on Forest Park. However the hearings officer finds the site development is buffered and screened by existing vegetation and topography to minimize adverse impacts on the site and neighboring properties, including Forest Park. The location of the structures on the west side of a ridge that climbs to the east helps isolate the structures from the park by topography. The preservation of a roughly 60-foot forested area east of the garage as a buffer helps minimize the adverse impacts on the park.

12. Regarding MCC .7850(8),[14] the appellant argues the planning director failed to make the requisite finding. The hearings officer finds that the design review plan does not identify proposed utilities. However, during the hearing in this matter, the applicant testified that utilities will be installed underground in or adjoining the proposed driveway. Therefore, MCC .7850(8) does not apply. To the extent it does apply, the hearings officer finds that installation of utilities below ground in or adjoining the driveway will minimize adverse impacts on the site and neighboring properties, because the utilities will not be visible, and grading and excavation for the utilities can be combined with grading and excavation of the driveway, thereby minimizing effects on the land.

---

[12] MCC .7850(6) provides:

> *Surface drainage systems shall be designed so as not to adversely affect neighboring properties or streets.*

[13] MCC .7850(7) provides:

> *Areas, structures and facilities for storage, machinery, equipment, services (mail, refuse, utility wires, and the like), loading and parking and similar accessory areas and structures shall be designed, located, buffered or screened to minimize adverse impacts on the site and neighboring properties.*

[14] MCC .7850(8) provides:

> *All utility installation above ground shall be located so as to minimize adverse impacts on the site and neighboring properties.*

13. Regarding compliance with the minimum design standards of MCC .7855, the appellant argues the planning director's findings are wrong. But, other than disputing the reference in the planning director's decision to SEC 6-91a and HDP 4-91a, the appellant does not show in any specific way how the planning director's findings regarding this issue are wrong as a matter of fact. The hearings officer finds the design review plan complies with MCC .7855, because:

a. A condition of approval of the planning director's decision requires a deck, porch or patio containing at least 48 square feet to comply with the private area standard, and there is ample area on the site to provide this space.

b. The proposed detached garage provides convenient areas for storage of bulky items. The garage is fully enclosed.

c. More than 15 percent of the site consists of native vegetation. That vegetation will be retained. See condition of approval 1 of the planning director's decision. It fulfills the requirements for on-site landscaping. All areas of the site that are not being developed or retained in existing vegetation will be landscaped, based on proposed revegetation plans and condition of approval 2 of the planning director's decision.

d. The remaining findings of the planning director's decision are sufficient to address this criterion. MCC .7855(6) does not apply, because no overhead lines are proposed or exist that would be affected by the proposed development.

C. Compliance with conditions of approval.

1. The appellant argued that CU 5-91 continues to require a bridge to be used regardless of HDP 4-91a and SEC 6-91a, because CU 5-91 incorporates by reference SEC 6-91, which required a bridge. CU 5-91 was not amended to refer to SEC 6-91a. Therefore, the final design review plan approved by the planning director violates that decision. See particularly pp. 2-4 of Exhibit 19. Although the LUBA opinion regarding SEC 6-91a and HDP 4-91a may make the issue moot, to provide as complete a decision as possible, the hearings officer addresses this issue based on the circumstances when the planning director made his decision.

2. The hearings officer finds the result urged by the appellant would be inconsistent with and conflict with the BCC's action. The hearings officer construes the BCC's decisions in SEC 6-91a and HDP 4-91a to allow the applicant to use a culvert and fill to cross the creek rather than a bridge. The conditions of approval of CU 5-91 do not provide to the contrary.

a. The only mention of a bridge <u>in the conditions of approval</u> of the final order regarding CU 5-91 reads as follows:

> *Any activity within 100 feet of the creek, including but not limited to the bridge and/or driveway, which exposes soil or disturbs the ground surface on the site between October 1 and June 14 is prohibited --- unless required for emergency repairs.*

b. That condition does not require the applicant to use a bridge to reach the house authorized by the permit. The condition is intended to address potential soil erosion by limiting when soil can be disturbed near the creek. The condition uses the term "and/or" to refer to the activity that could be associated with such disturbance, but does not purport to limit the means of crossing the creek. That issue is addressed by SEC 6-91 and HDP 4-

91. The decision in CU 5-91 authorizes a non-forest dwelling. The creek crossing is not the subject of that decision per se and is not material to the approval criteria for a non-forest dwelling as a conditional use. It is material to the SEC and HDP decisions only.

c. The hearings officer acknowledges that condition of approval 3 of the decision in CU 5-91 requires compliance with SEC 6-91. However, the hearings officer finds that amending SEC 6-91 does not violate or require amendment of the condition of approval of CU 5-91. The condition of approval does not purport to prohibit such an amendment. It reflects an intention to coordinate permits for the development on the site. SEC 6-91a amended SEC 6-91. They deal with the same property. The subscript "a" simply reflects another administrative action regarding the same permit. Given the purpose for which SEC 6-91 is referenced in CU 5-91, it is consistent with CU 5-91 to require the conditional use to comply with whatever version of SEC 6-91 is effective when application is made for development authorized by the conditional use permit.

3. The design review decision is inconsistent with the permits reinstated by the LUBA decision, because it does not provide for a bridge to cross the creek. A condition of approval is warranted requiring the design review plan to be amended to be consistent with those permits (or their subsequent amendments) before the design review plan is approved in final form to conform the design review plan to the now-applicable permits (SEC 6-91 and HDP 4-91). This is effectively a remand of the design review decision to the planning director for a limited purpose. MCC .8280(A) does not provide for a remand per se; it does authorize conditions of approval to be imposed on appeal. The result is the same.

IV. MERITS OF THE APPEAL OF CU 5-91a

A. Applicable standard.

1. MCC .7110(C) provides as follows in relevant part:

[T]he approval of a Conditional Use shall expire two years from the date of issuance of the Board Order in the matter, or two years from the date of final resolution of subsequent appeals, unless...

(3) The Planning Director determines that substantial construction or development has taken place. That determination shall be processed as follows:

(a) Application shall be made on appropriate forms and filed with the Director at least 30 days prior to the expiration date.

(b) The Director shall issue a written decision on the application within 20 days of filing. That decision shall be based on findings that:

(i) Final Design review approval has been granted under MCC .7845 on the total project; and

(ii) At least ten percent of the dollar cost of the total project value has been expended for construction or development authorized under a sanitation, building or other

development permit. Project value shall be as determined by MCC .9025(A) or .9027(A)...

B. Timing of the application: compliance with MCC .7110(C)(3)(a).

1. There is a dispute about how to construe MCC .7110(C)(3). The dispute follows from the fact that the Board of Commissioners did not issue a "Board Order" in the matter of CU 5-91. Therefore there is no date of issuance of such an order from which to measure the expiration of the permit. The BCC does not issue a written order when acknowledging a decision that has not been appealed. Therefore, the use of the term "Board Order" in MCC .7110(C)(3) is ambiguous and must be construed. Part of the appeal of CU 5-91a turns on how the term is construed.

2. The appellant argues a Board Order was issued on April 23, 1991, when the BCC orally acknowledged the planning commission decision regarding CU 5-91. Therefore, the permit would expire April 23, 1993, and the applicant must have applied for the determination under MCC .7110(C) by March 24, 1993 to comply with MCC .7110(C)(3)(a). He did not do so; therefore, the application should have been denied. See pp. 6-7 of Exhibit 19, the annotated minutes of the BCC meeting of April 23, 1991 attached to Exhibit 19, and pp. 3-4 of Exhibit 24.

3. The applicant argues that a decision by the BCC is not final for 10 days after the decision, findings and conclusions have been filed with the Clerk of the Board. Therefore, assuming the oral acknowledgment of the BCC of April 23 was a Board Order, then it would not be a final order until May 3, 1991. Therefore, the permit would not expire until May 3, 1993 and the application for a determination could be filed before April 3, 1993. Alternatively, the applicant argues in support of the county staff interpretation. See pp. 2-5 of Exhibit 18.

4. County staff take a different approach. They focus on the issue of when the planning commission decision in CU 5-91 became a final order, reasoning that the purpose for referencing a "Board Order" in MCC .7011(C)(3) is to ensure that the expiration date for a permit reflects the final possible action by the county regarding the permit, i.e., a decision on appeal to the BCC. See pp. 9-10 of Exhibit 13.

a. Where no appeal is filed, the final county action is the decision of the planning commission. (The hearings officer notes that MCC .8255 requires notice of decisions to be included on the next BCC agenda for zoning matters, but does not require any specific action by the BCC regarding decisions that are not appealed.)

b. The planning commission decision in CU 5-91 is final at the close of business on the tenth day following submittal of the written decision to the Clerk of the Board unless an appeal is filed or the BCC issues an order for review. Staff note further that the planning commission decision was signed April 1, 1991, bears a statement that the decision was filed with Clerk on April 11, 1991, and was date-stamped as received by the Clerk of the Board on April 16, 1991.

c. Staff note that the term "submittal" is not defined by the code and is ambiguous. It is not clear from the plain meaning of the term whether it is intended to mean mailed or received. County staff conclude it should be construed to mean received, because only after receipt can the Clerk do anything with the decision. The applicant also argues for this construction of "submittal" noting the date stamp makes receipt a reliable date, and that the county uses the term "mailed notice" elsewhere in the code when it wants

to have mailing be sufficient to fulfill procedural requirements. Assuming this interpretation is adopted, then:

(i) The planning commission decision became final on April 26, ten days after the Clerk received it.

(ii) The permit expires on April 27, 1993.

(iii) To comply with MCC .7110(C)(3)(a), an application for a determination would have to be filed by March 27, 1993.

5. Given the ambiguity regarding MCC .7110(C)(3)(a), the hearings officer is swayed by the arguments of county staff and the applicant that the term "Board Order" should be construed to mean "the final order of the most superior county approval authority to address the merits of a proposed conditional use permit." This best reflects the legislative intent that a permit expire two years after it is approved. It is not approved until the county issues a final order. The most superior county approval authority to issue a final order in CU 5-91 was the planning commission. Their decision was final 10 days after submitted to the Clerk.

6. Given the ambiguity regarding the term "submittal", the hearings officer finds that it should be construed to mean "received", because:

a. The code does not expressly provide that mailing is sufficient for submittal in this context, as it does in other instances where that is the case.

b. It is more consistent with the purpose for submitting the decision to the Clerk than "mailed". The hearings officer finds that the purpose for providing a 10-day period between the date the decision is submitted and the date it becomes final is to ensure that all interested parties have an adequate opportunity to receive and review the decision and to determine whether to file a Notice of Appeal, and to ensure that the BCC members have ample time to determine whether to file a Board Order for Review. Until the Clerk actually receives the decision, the Clerk cannot distribute it. Therefore, the 10-day time should not begin to run until the Clerk actually receives the decision.

7. The hearings officer finds that the oral BCC acknowledgment on April 23 is not a Board Order, because it was not memorialized in any written form. All contested case decisions are required to be in writing and signed by the approval authority to protect all parties to a case and facilitate judicial review. Nowhere does MCC 11.15 provide for a decision to be made without a written decision containing findings and conclusions. In the absence of a written decision or an appeal of that decision by a party or BCC member, the reporting of a decision to the BCC and their subsequent acknowledgment of the decision is just that --- a report and acknowledgment of that report. It does not affect the permit decision. BCC acknowledgment of an unappealed decision is not required by MCC .8255 nor given any weight or meaning by another provision of MCC 11.15.

C. Adequacy of findings.

1. The appellant argued the planning director could not find that the application complied with MCC .7110(C)(3)(b)(i), because the design review decision did not comply with conditions of approval of SEC 6-91 and CU 5-91. See pp. 7-8 of Exhibit 19 and pp. 4-5 of Exhibit 24.

a. The hearings officer largely addressed this issue in findings II.E.3 and III.D. In summary, the hearings officer found that the BCC decisions in SEC 6-91a and HDP 4-91a authorized the applicant to cross the creek using a culvert and fill instead of a bridge, and that action was consistent with the final order in CU 5-91. The hearings officer also found that the relevant date for determining whether the planning director's decision was correct is the date that decision was made: May 26. As of that date, SEC 6-91a and HDP 4-91a applied, notwithstanding their appeal to LUBA by the appellant in this case. There was no stay of the BCC decisions.

b. The hearings officer finds that final design review approval was granted under MCC .7845 on the total project as it existed and was approved at that time. LUBA's opinion has since effectively reinstated the decisions in SEC 6-91 and HDP 4-91. Therefore, the design review plan is no longer consistent with the applicable permits, and should be remanded for proceedings consistent with this decision. However, when the planning director made the determination, there was a final design review plan that complied with applicable permits and standards. That is the appropriate reference time for compliance with MCC .7110(C)(3)(b)(i), because that is when the decision being appealed was made. The subsequent LUBA decision should not void the design review decision for purposes of compliance with MCC .7110(C)(3)(b)(i), because it is not clearly required by the Code, and it would conflict with the purpose of MCC .7110(C)(3) generally.

2. The appellant argued the evidence is insufficient to sustain a finding that the applicant complied with MCC .7110(C)(3)(b)(ii). See p. 8 of Exhibit 19 and p. 2 of Exhibit 21.

a. The appellant argues there is no substantial evidence of the total cost of the project from which the 10% could be calculated, because the applicant has not purchased or contracted to purchase a specific home model of manufactured home.

(i) County staff concede at p. 10 of Exhibit 13 that the application does not include such evidence. However, the staff have computed a cost for the project based on MCC .9025(A), which requires cost to be determined in accordance with the Uniform Building Code or as otherwise determined by the Director.

(ii) The UBC does not have a value for manufactured dwellings, so the county staff considered the cost per square foot of typical manufactured homes based on reported sales costs and on sample manufactured homes displayed at the Manufactured Home Show. The planning director determined that the manufactured home for the site would cost about $50,000, reflecting a "high-end" 1200 square foot manufactured home.

(iii) The hearings officer finds there is substantial evidence in the record to support that part of the determination, and the planning director was reasonable and rational in arriving at that figure. It is not necessary for the applicant to have purchased or contracted to purchase the dwelling in question, provided there is sufficient information in the record from which the planning director can determine what such a home is reasonably likely to cost.

(b) The planning director used this $50,000 figure as the total cost for the project. The appellant argues that the total project includes costs for things other than the manufactured home, including the garage, well, septic system, driveway, and bridge, and that the planning director's decision did not consider these costs. The hearings officer agrees. The planning director erred by failing to consider costs for improvements other than the manufactured home when determining the total value of the project.

(i) The application for the determination includes the following receipts for work regarding the proposed project.

Building permit application	$ 29.25
Work by Oleson & Oleson re: sanitation permit	$ 8110.00
Road & culvert work by Medoff under HDP 4-91a	$ 2844.20
Cost of culvert	$ 1443.20
Road work by Frank Stone	$ 1580.00
Boundary survey work by G & L Surveying	$ 1500.00
Geotechnical services	$ 410.20
Total expenditures	$ 15,916.85

(ii) These expenses are part of the cost of the total project. They should be added to the $50,000 building cost figure, raising the cost of the project to about $66,000.

(iii) Also added to the cost of the project should be the value of the garage, the well, utilities, building site preparation, and the driveway from the home to Thompson Road. There is not substantial evidence in the record about the cost of these features of the project, but reasonable estimates of expenses can be drawn from the proposal. The hearings officer estimates the garage would cost about $20,000 (864 square feet x $25/sq. ft); the well would cost not more than $4000; and utility, site preparation and road work would cost not more than $10,000, bringing the total project cost to about $100,000.

(iv) If the total project cost is less than about $160,000, then the applicant has spent more than 10% of the total project cost, based on the expenditures listed above. Therefore, based on those estimates and expenditures, the applicant complies with MCC .7110(C)(3)(b)(ii). Even if the estimates in the preceding paragraph are off by as much as 60%, the applicant complies with MCC .7110(C)(3)(b)(ii). Given such a large margin for error, the hearings officer concludes that the planning director's determination regarding this section was correct, notwithstanding the error identified above.

(c) The appellant also argues the expenses associated with the culvert and fill work under HDP 4-91a should not be counted, because that development was not consistent with CU 5-91 and SEC 6-91. However, the hearings officer concludes the appellant's argument is in error. That development was consistent with the BCC decision in HDP 4-91a and SEC 6-91a. When the planning director made his decision about substantial construction and development, those were the relevant permits for evaluating the expenses in question. If the expenses counted then, they count now notwithstanding the subsequent LUBA decision. See findings II.E.3, III.D, and IV.C.

(d) The appellant also argues the expenditures are not sufficiently documented, but the hearings officer finds that the receipts on their face reflect a sufficient relationship to permits and/or development on the site to be sufficiently documented except the receipt from Mr. Stone, which bears no relationship to the project on its face. Given the unrebutted representation by the applicant, the substantial grading that has occurred for the road on the site, and the lack of attribution of costs for that work to another contractor, the hearings officer finds it is reasonable to conclude that the expenses claimed by Mr. Stone are related to the development of the driveway.

(e) The appellant argues the expenditures do not count toward MCC .7110(C)(3)(b)(ii), because they were made before approval of the design review plan, and MCC .7815 prohibits development before approval of the plan.

(i) The hearings officer finds MCC .7110(C)(3)(b)(ii) and .MCC .7815 conflict. The former anticipates that certain development can occur before a final design review plan is approved. The later does not. Therefore, the hearings officer must construe them.

(ii) The hearings officer finds that MCC .7110(C)(3)(b)(ii) is the more specific provision as it relates to the issue at hand. The cost of development consistent with that section should count toward the ten percent figure notwithstanding such development might not be permitted under MCC .7815 until a final design review plan is approved. The hearings officer finds such a result is more consistent with the scheme in MCC .7110(C) and recognizes that other permits have authorized development on the site (HDP 4-91 and 4-91a, SEC 6-91 and 6-91a, and sanitation permits) notwithstanding the lack of design review approval.

V. CONCLUSIONS AND DECISION

A. Conclusions.

1. The hearings officer concludes the application in question is subject to design review; the appellant has standing to appeal the design review decision in this case; the standard of review is *de novo*; the scope of appeal is limited to the issues cited specifically in the written appeal; the LUBA decision effectively reinstates HDP 4-91 and SEC 6-91 but does not void the prior design review approval or determination of substantial construction and development; and that errors regarding the timing of notice and the decision are remedied by the *de novo* character of the appeal proceeding, based on finding III.

2. The hearings officer concludes the final design review plan should be approved, based on finding III, because it complies with the applicable provisions of MCC .7850 and .7855, subject to a condition of approval that requires the plan to be amended to be consistent with HDP 4-91 and SEC 6-91 or their subsequent amendment.

3. The hearings officer concludes the determination of substantial construction and development should be approved, based on finding IV, because it complies with the applicable provisions of MCC .7110(C).

B. Decision.

In recognition of the findings and conclusions contained herein, and incorporating the public testimony and exhibits received in this matter, the hearings officer hereby denies the appeal and approves DR 14-93a, subject to a condition that the applicant amend the plan to conform with SEC 6-91 and HDP 4-91 or with their subsequent amendment (or with reinstatement of SEC 6-91a and HDP 4-91a by appellate courts), and denies the appeal and approves the planning director's determination in the matter of CU 5-91a.

Dated this 20th day of August, 1993.

Larry Epstein, AICP
Multnomah County Hearings Officer

CONTENTS OF EXHIBIT C
WRITTEN EVIDENCE IN THE RECORD
FOR DR 14-93a/CU 5-91a

Exhibit	*Description*
1	Final Order and record in the matter of LUBA File No. 93-019 (2 bound volumes for HDP 4-91a and 2 bound volumes for SEC 6-91a); particularly pp. 35-37, 497-515, 528-534, 537-543, 672-682, and 732-737 of the record cited by the applicant
2	Road approach permit application dated April 9, 1991 with notations
3	Building permit computer printout dated October 5, 1992 with letter dated October 2, 1992 from Dan McKenzie to Mark Hess with site plan
4	Seven receipts for expenses incurred by applicant in conjunction with dwelling
5	Building permit application and inspection record
6	Application by Dan McKenzie received March 25, 1993 for design review approval
7	Application by Dan McKenzie received March 26, 1993 for determination that substantial development occurred
8	Letter dated April 6, 1993 from Arnold Rochlin to R. Scott Pemble
9	Letter dated April 19, 1993 from Michael Ebling to Dan McKenzie
10	Letter dated May 5, 1993 from Dan McKenzie to R. Scott Pemble
11	Notice of administrative decision with certification of mailing dated May 7, 1993
12	Notice of appeal of DR 14-93 and CU 5-91 by Arnold Rochlin for Forest Park Neighborhood Association received May 17, 1993
13	Administrative decision and certification of mailing dated May 26, 1993
14	Building permit computer printout dated May 25, 1993
15	Sample plans and costs for manufactured homes and Vol. 29, No. 2 of "Manufactured Homes" magazine
16	Copy of published notice for July 19, 1993 hearing
17	Notice of July 19 hearing and certification of mailing dated June 29, 1993
18	Memorandum dated July 12, 1993 from Mark Hess to hearings officer
19	Letter dated July 12, 1993 from Arnold Rochlin to hearings officer with exhibits
20	Letter dated July 16, 1993 from Margaret Mahoney to Arnold Rochlin
21	Letter dated July 19, 1993 from Arnold Rochlin to hearings officer
22	Applicant's hearing memorandum dated July 19, 1993 from Steven Abel
23	Letter dated July 26, 1993 from Steven Abel to hearings officer
24	Letter dated July 26, 1993 from Arnold Rochlin to hearings officer
25	Letter dated August 2, 1993 from Arnold Rochlin to hearings officer
26	Three-dimensional model of the site by the applicant
27	Photographic slides of the site by the planning division
28	Zoning approval map, architectural drawings, foundation plan and elevations

In the matter of DR 14-93 and CU 5-91a, an appeal of administrative decisions:

Signed by the Hearings Officer: **August 20, 1993**
[date]

Decision mailed to parties: **August 25, 1993**
[date]

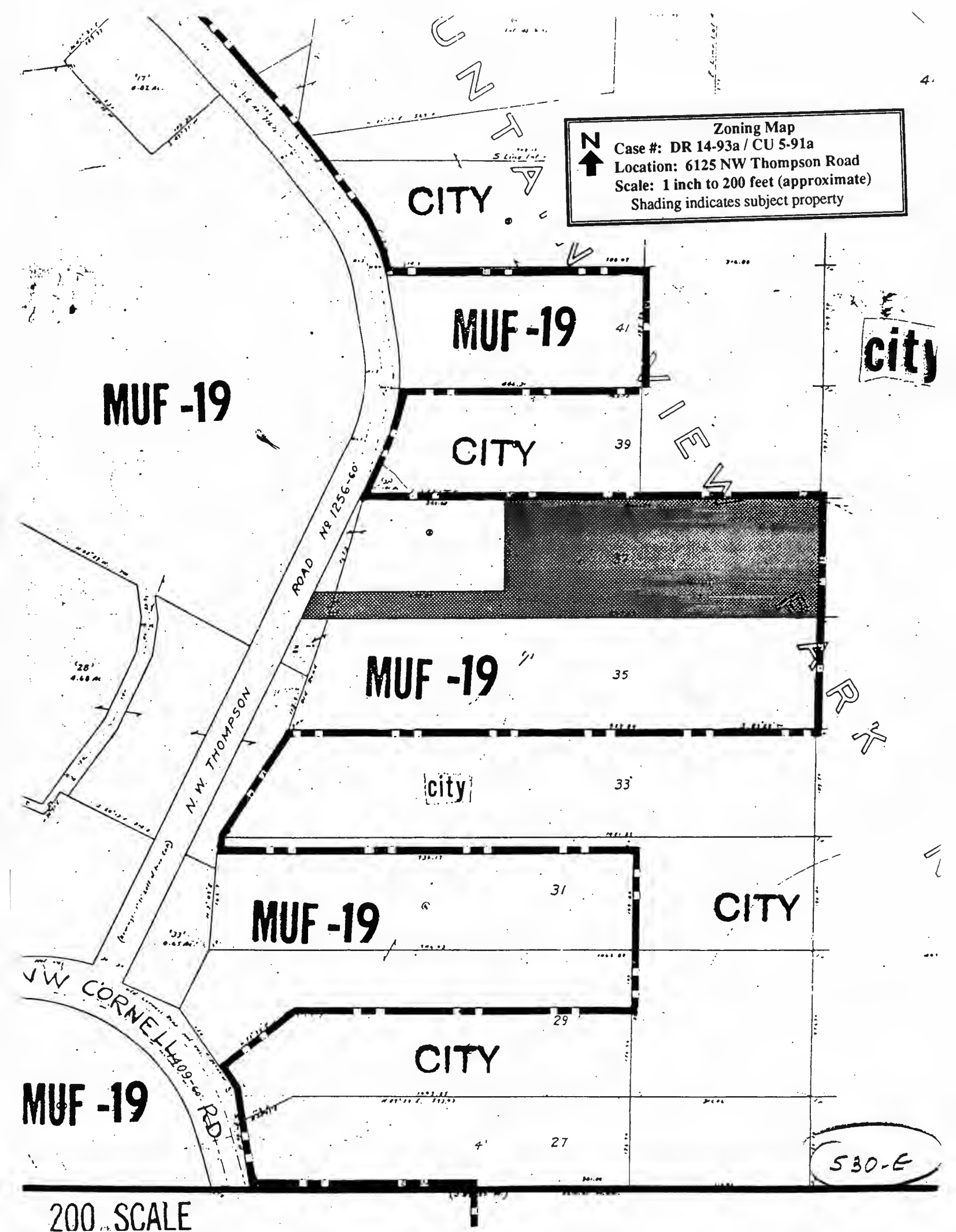
Submitted to Clerk of the Board: **August 26, 1993**
[date]

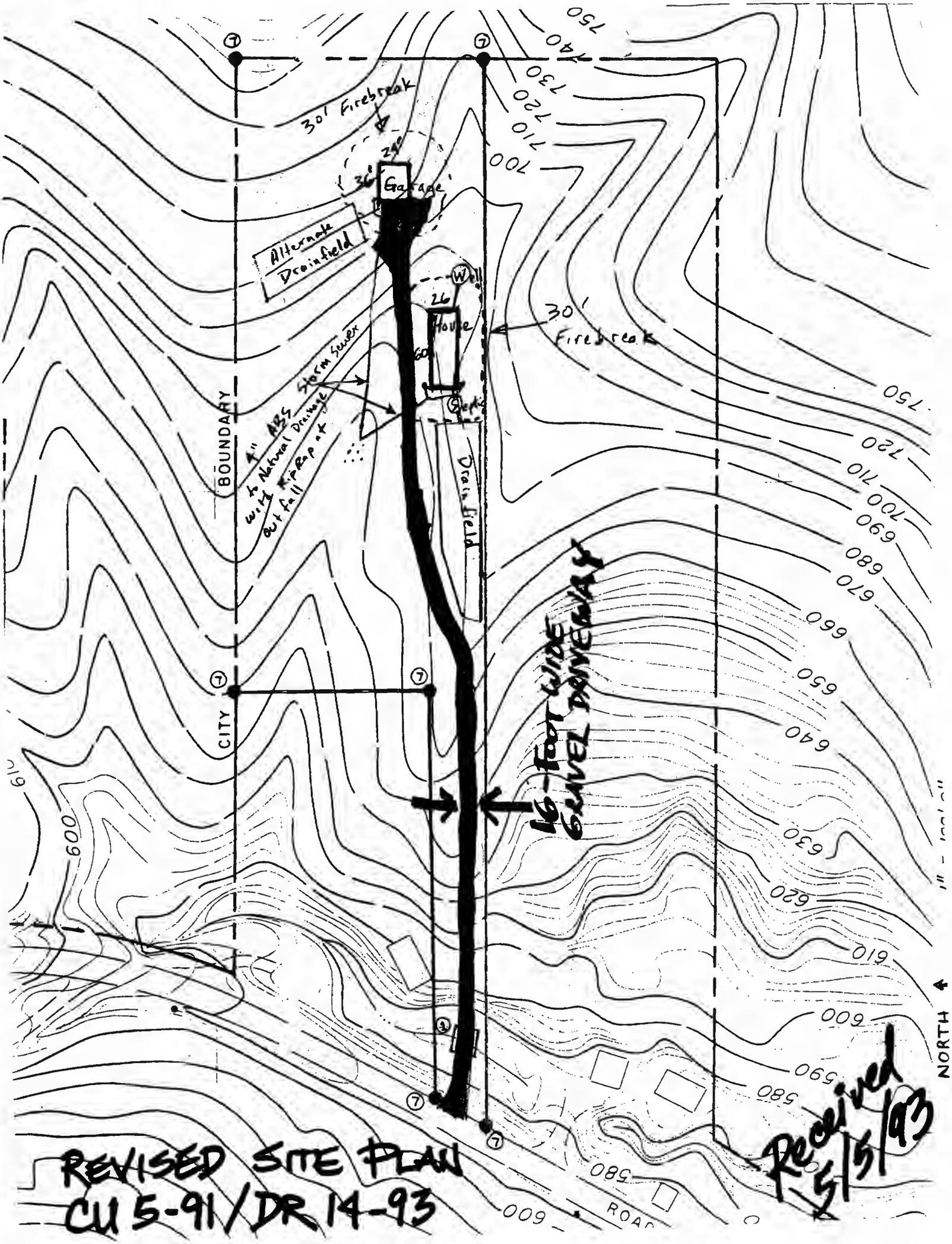
Last day to Appeal to the Board: **September 7, 1993**
[date]

Appeal to the Board of County Commissioners

The Hearings Officer Decision may be appealed to the Board of County Commissioners (Board) by any person or organization who appears and testifies at the hearing, or by those who submit written testimony into the record. An appeal must be filed with the County Planning Division within ten days after the Hearings Officer decision is submitted to the Clerk of the Board. An appeal requires a completed "Notice of Review" form and a fee of $300.00 plus a $3.50-per-minute charge for a transcript of the initial hearing(s). [ref. MCC 11.15.8260(A)(1) and MCC 11.15.9020(B)] Instructions and forms are available at the County Planning and Development Office at 2115 SE Morrison Street (in Portland).

Failure to raise an issue by the close of the record at or following the final hearing, (in person or by letter), precludes appeal to the Land Use Board of Appeals (LUBA) on that issue. Failure to provide specificity on an issue sufficient for the Board to respond, precludes appeal to LUBA on that issue.


Zoning Map
Case #: DR 14-93a / CU 5-91a
Location: 6125 NW Thompson Road
Scale: 1 inch to 200 feet (approximate)
Shading indicates subject property
N
CITY
MUF -19
41
39
37
35
33
31
29
27
CITY
city
MUF -19
MUF -19
MUF -19
CITY
CITY
city
N.W. THOMPSON ROAD NO 1256-60'
NW CORNELL 409-60' RD
530-E
200 SCALE



REVISED SITE PLAN
CU 5-91/DR 14-93

Received
5/5/93