

**ANNOTATED MINUTES**

Monday, February 22, 1993 - 9:30 AM and 1:30 PM  
Multnomah County Courthouse, Room 602

**WORK SESSION**

- WS-1 Review the Budget of the District Attorney. Presented by District Attorney Michael Schrunk and Planning and Budget Manager Dave Warren.

**PRESENTATION AND RESPONSE TO BOARD QUESTIONS AND COMMENTS BY MICHAEL SCHRUNK, TOM SIMPSON, KELLY BACON AND DAVE WARREN. PROGRAM GOALS AND OBJECTIVES TO BE PROVIDED THIS WEEK. MR. SCHRUNK TO PROVIDE INFORMATION REQUESTED FROM CENTRAL CBAC MEMBER ALLEN ARMSTRONG. AFTERNOON SESSION CANCELLED.**

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

**PLANNING ITEMS**

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

- P-1 CS 3-93 Review the February 11, 1993 Planning and Zoning Hearings Officer Decision: APPROVING, SUBJECT TO A CONDITION, Change in Zone Designation from RR to RR, C-S, Community Service Designation, to Allow Installation of a Cellular Telephone Communications Monopole, with Associated Antennas, and to Erect an Electronics Equipment Building, for Property Located at 16300 NW SHELTERED NOOK ROAD.

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

- P-2 HV 22-92 Review the February 1, 1993 Planning and Zoning Hearings Officer Decision: APPROVING, SUBJECT TO CONDITIONS, the Application in Specified Part. Satisfaction of Certain Applicable Code Provisions is Deferred to a Subsequent Planning Director Review Before or in Conjunction with Issuance of a Placement Permit, Subject to Notice and the Opportunity for a Hearing as Indicated, for Property Located at 4425 SE 135TH AVENUE.

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

- P-3 CU 1-93 Review the January 21, 1993 Planning and Zoning Hearings Officer Decision: DENYING Applicant's Conditional Use Request to Allow a Non-Resource Related Single Family Residence for Property Located at 13156 NW MCNAMEE ROAD; and Request for March 23, 1993 Hearing in Connection with a Notice of Review Filed by Applicant James McGrew.

CU 2-93 Review the January 21, 1993 Planning and Zoning Hearings Officer Decision: DENYING Applicant's Conditional Use Request to Allow a Non-Resource Related Single Family Residence for Property Located at 13160 NW McNAMEE ROAD; and Request for March 23, 1993 Hearing in Connection with a Notice of Review Filed by Applicant James McGrew.

DECISION READ. PLANNING DIRECTOR SCOTT PEMBLE ADVISED NOTICE OF REVIEW APPEALS WERE FILED FOR CU 1-93 AND CU 2-93 BY APPLICANT JAMES MCGREW, REQUESTING A MARCH 23, 1993 HEARING. MR. PEMBLE ADVISED THAT APPLICANT'S ATTORNEY JEFF BACHRACH IS HERE TODAY AND OPPONENT ARNOLD ROCHLIN, BUT NOT OPPONENT CHRIS FOSTER, AND DISCUSSED COUNTY CODE 11.15.8270(B) & (E) CONCERNING THE SCOPE OF REVIEW, SUGGESTING THAT THE BOARD SET A DATE FOR A HEARING ON THE SCOPE OF REVIEW OPTIONS WITH ALL PARTIES IN ATTENDANCE, PRIOR TO CONDUCTING THE ACTUAL APPEAL HEARING.

IN RESPONSE TO A QUESTION OF COMMISSIONER SALTZMAN, MR. PEMBLE EXPLAINED THAT UNLESS THE BOARD SETS THE SCOPE OF REVIEW TO ON THE RECORD ONLY, IT MAY BE PREJUDICIAL FOR THE BOARD TO ALLOW APPLICANT'S COUNSEL TO ARGUE THE MERITS OF AN ON THE RECORD, WITH ADDITIONAL TESTIMONY HEARING WITHOUT HAVING GIVEN NOTICE TO THE OPPONENTS IN THIS CASE AND HEARING THEIR TESTIMONY.

COUNTY COUNSEL LAURENCE KRESSEL EXPLAINED THE PHASES OF A LAND USE APPEAL AND THE BOARD'S OPTIONS IN MAKING ITS DETERMINATION AS TO WHETHER TO HEAR THE CASE ON THE RECORD OR ON THE RECORD PLUS ADDITIONAL TESTIMONY.

IN RESPONSE TO A QUESTION OF COMMISSIONER COLLIER, MR. PEMBLE EXPLAINED THE HEARINGS OFFICER DECISION WAS BASED ON HIS INTERPRETATION OF THE COUNTY CODE. MR. PEMBLE ADVISED IT IS HIS OPINION THE INFORMATION PROVIDED BY APPLICANT WAS COMPLETE AND THERE WAS SUFFICIENT EVIDENCE IN WHICH TO MAKE A DECISION. MR. PEMBLE EXPLAINED THAT THE COMPATIBILITY WITH ADJOINING FOREST PRACTICE USES WAS ADDRESSED BY APPLICANT AND DOCUMENTATION WAS SUBMITTED CONCLUDING THE TWO SINGLE FAMILY DWELLINGS WOULD NOT NEGATIVELY IMPACT THE ADJOINING PROPERTY OWNERS' OPERATIONS, HOWEVER IN HIS DECISION, THE HEARINGS OFFICER FELT FUTURE PRACTICES SUCH AS AERIAL SPRAYING WOULD POTENTIALLY IMPACT MANAGEMENT OF THE ADJACENT FOREST.

FOLLOWING BOARD DISCUSSION AND STAFF RESPONSE TO BOARD QUESTIONS, COMMISSIONER KELLEY MOVED, SECONDED BY COMMISSIONER COLLIER, THAT A HEARING BE SCHEDULED FOR 9:30 AM, TUESDAY,

MARCH 23, 1993, ON THE RECORD, WITH TESTIMONY LIMITED TO 10 MINUTES PER SIDE. BOARD COMMENTS AND STAFF RESPONSE.

IN RESPONSE TO VICE-CHAIR HANSEN'S INVITATION, MR. JEFF BACHRACH, ATTORNEY FOR APPLICANT, TESTIFIED IN OPPOSITION TO THE MOTION BEFORE THE BOARD, SUGGESTING THAT 10 MINUTES IS NOT ENOUGH TIME TO PRESENT AN APPEAL. MR. BACHRACH EXPRESSED CONCERN THAT THE RECORD WAS NOT LEFT OPEN IN ORDER FOR APPLICANT TO REBUT THE OPPOSITION TESTIMONY PRESENTED AT THE HEARING BEFORE THE HEARINGS OFFICER AND COMMENTED ON STATEMENTS MADE BY MR. KRESSEL CONCERNING APPEALS HEARD BY OTHER JURISDICTIONS. IN RESPONSE TO A QUESTION OF COMMISSIONER KELLEY, MR. BACHRACH EXPLAINED THAT BASED ON HIS REVIEW OF THE WRITTEN RECORD, THE HEARINGS OFFICER DECISION WAS SWAYED BY THE OPPOSITION TESTIMONY.

MR. ARNOLD ROCHLIN TESTIFIED IN SUPPORT OF THE MOTION TO HEAR THE APPEAL ON THE RECORD ONLY, STATING APPLICANT WANTS TO INTRODUCE NEW EVIDENCE CONCERNING WHETHER OR NOT THE PROPERTY IS A LOT OF RECORD AS DETERMINED BY CODE. MR. ROCHLIN REPORTED THAT FOLLOWING THE HEARING, THE HEARINGS OFFICER KEPT THE RECORD OPEN FOR 7 DAYS FOR ADDITIONAL INFORMATION ON THE ISSUE OF LOT OF RECORD. MR. ROCHLIN STATED THAT THE NOTICE OF REVIEW FORM PROVIDES AN OPPORTUNITY FOR APPLICANT TO EXPLAIN WHY HE WANTS TO SUBMIT ADDITIONAL EVIDENCE AND THAT THE CRITERIA FOR THE BOARD TO CONSIDER IS WHETHER IT IS SATISFIED THAT ADDITIONAL TESTIMONY OR OTHER EVIDENCE COULD NOT REASONABLY HAVE BEEN PRESENTED AT THE PRIOR HEARING.

IN RESPONSE TO A QUESTION OF COMMISSIONER COLLIER, MR. PEMBLE REPORTED THAT SANDY MATTHEWSON ADVISED THE RECORD WAS KEPT OPEN AN ADDITIONAL 7 DAYS AND APPLICANT WAS NOTIFIED OF SAME.

MR. BACHRACH EXPLAINED HIS CLIENT DOES NOT WANT TO ADDRESS THE LOT OF RECORD ISSUE, BUT WISHES TO PRESENT TESTIMONY CONCERNING CLARIFICATION ON THE GENERAL SUITABILITY ISSUES, DISCUSS POSSIBLE CONFUSION ON THE HEARINGS OFFICER'S PART CONCERNING SURROUNDING PROPERTY USES AND PRESENT VISUAL EXHIBITS OF THE PROPERTY. MR. BACHRACH EXPLAINED THAT HIS CLIENT WAS NOT REPRESENTED BY COUNSEL AT THE TIME OF THE HEARING AND DID NOT UNDERSTAND THE PROCESS.

FOLLOWING BOARD COMMENTS, DISCUSSION AND STAFF RESPONSE, BOARD AMENDED THE PREVIOUS MOTION,

AND UPON MOTION OF COMMISSIONER COLLIER, SECONDED BY COMMISSIONER KELLEY, IT WAS UNANIMOUSLY APPROVED THAT A HEARING, ON THE RECORD, PLUS ADDITIONAL TESTIMONY LIMITED TO COMPATIBILITY OF LAND USES, WITH TESTIMONY LIMITED TO 15 MINUTES PER SIDE, BE SCHEDULED FOR 9:30 AM, TUESDAY, MARCH 23, 1993.

AT THE RECOMMENDATION OF MR. PEMBLE AND UPON MOTION OF COMMISSIONER COLLIER, SECONDED BY COMMISSIONER KELLEY, IT WAS UNANIMOUSLY APPROVED THAT PLANNING ITEMS P-3 AND P-4 (CU 1-93 AND CU 2-93) BE COMBINED.

P-5 LR 2-92 Request for Adoption of a FINAL ORDER in the Matter of the Review of the Hearings Officer's Decision Affirming the Planning Director's Approval of a Residential Building Permit Application

MR. PEMBLE REPORTED THAT THERE IS A REQUEST BY A PARTY TO THE PRIOR BOARD HEARING FOR AN OPPORTUNITY TO SPEAK ON THE FINAL ORDER.

MR. KRESSEL EXPLAINED THIS CASE IS AT THE END OF THE APPEAL PHASE, IT WAS DECIDED ON A 3-2 VOTE AND PURSUANT TO CODE REQUIREMENTS, THE BOARD DIRECTED STAFF TO PREPARE FINDINGS OF FACT AND CONCLUSIONS OF LAW, WHICH ARE CONTAINED IN THE FINAL ORDER BEFORE THE BOARD. MR. KRESSEL ADVISED THE DECISION ON WHETHER TO ALLOW ARGUMENT ON THE FINAL ORDER IS WITH THE BOARD.

IN RESPONSE TO A QUESTION OF COMMISSIONER SALTZMAN, MR. PEMBLE EXPLAINED THAT APPLICANT IS THE BENEFACTOR IN THIS CASE AND IF THE BOARD DECIDES NOT TO ADOPT FINDINGS TODAY, THE TIMELINE IS EXTENDED AND WILL DELAY THE PROCESS FOR OPPONENTS TO APPEAL TO A HIGHER COURT. MR. KRESSEL ADDED THAT IF FINDINGS ARE NOT ADOPTED AND AN APPEAL IS FILED WITH THE LAND USE BOARD OF APPEALS, THE CASE WILL BE REMANDED BACK TO THE BOARD.

COMMISSIONER COLLIER MOVED, SECONDED BY COMMISSIONER KELLEY, APPROVAL OF THE FINAL ORDER. FOLLOWING BOARD DISCUSSION AND STAFF RESPONSE, IT WAS DETERMINED THE FINDINGS CORRECTLY REFLECT THE BOARD'S DECISION AND THERE WOULD BE NO TESTIMONY ALLOWED. VOTE ON MOTION TO APPROVE FINAL ORDER 93-54 WAS UNANIMOUSLY APPROVED.

P-6 C 1-93 First Reading of an ORDINANCE Amending Comprehensive Framework Plan Policy 34, Trafficways, and the Accompanying Functional Classification of Trafficways Maps

PROPOSED ORDINANCE READ BY TITLE ONLY. COPIES

AVAILABLE. MR. KRESSEL EXPLAINED THIS IS A LAND USE LEGISLATION ISSUE, ESTABLISHING POLICY AND REQUIRES TWO READINGS.

IN RESPONSE TO A QUESTION OF VICE-CHAIR HANSEN, MR. PEMBLE RECOMMENDED THAT THE SECOND READING BE SCHEDULED FOR MARCH 23, 1993.

TRANSPORTATION DIVISION STAFF ED PICKERING EXPLAINED THE PROPOSED AMENDMENTS TO TRANSPORTATION POLICY 34 OF THE COMPREHENSIVE FRAMEWORK PLAN IN ORDER TO BRING IT UP TO DATE AND ADDRESS THE RURAL ROAD FUNCTIONAL HIERARCHY, FUNCTIONAL CLASSIFICATION PLAN AND ACCOMPANYING TRAFFICWAYS MAP. MR. PICKERING REVIEWED THE PUBLIC INPUT PROCESS USED IN PREPARATION OF THE PROPOSED ORDINANCE AND ADVISED THE PLANNING COMMISSION UNANIMOUSLY RECOMMENDED APPROVAL. MR. PICKERING EXPLAINED THE BOARD WILL BE ASKED TO ADDRESS REVISIONS TO TRANSPORTATION POLICY 34 IN RELATION TO STATE GOAL 12 TRANSPORTATION RULE LATER THIS YEAR.

IN RESPONSE TO QUESTIONS OF COMMISSIONER SALTZMAN, MR. PICKERING EXPLAINED THAT THE SCENIC OVERLAY INCLUDES THE COLUMBIA RIVER HIGHWAY, MARINE DRIVE AND THE COUNTY'S SECTION OF CORNELL ROAD AT THIS TIME, BUT IT IS POSSIBLE THAT CITIZENS MAY COME FORWARD AND REQUEST THAT SKYLINE BOULEVARD BE INCLUDED AT A LATER DATE.

IN RESPONSE TO QUESTIONS OF COMMISSIONER KELLEY, MR. PICKERING ADVISED THAT INPUT HAD BEEN SOLICITED BUT NO RESPONSE RECEIVED FROM PORTLAND, TROUTDALE OR GRESHAM, BUT INPUT WAS RECEIVED FROM THE OREGON DEPARTMENT OF TRANSPORTATION. MR. PICKERING EXPLAINED THAT GRESHAM HAS SOME CONCERNS REGARDING THE DESIGNATION OF 242ND AVENUE AS AN ARTERIAL ROAD. IN RESPONSE TO A REQUEST OF COMMISSIONER KELLEY, MR. PICKERING ADVISED HE WOULD REQUEST INPUT FROM THE CITIES AGAIN PRIOR TO THE SECOND READING.

HEARING HELD, NO ONE WISHED TO TESTIFY. UPON MOTION OF COMMISSIONER SALTZMAN, SECONDED BY COMMISSIONER COLLIER, THE FIRST READING WAS UNANIMOUSLY APPROVED, WITH THE SECOND READING SCHEDULED FOR 9:30 AM, TUESDAY, MARCH 23, 1993.

P-7 Recommendation for Approval of Business Location in the Matter of the Auto Wrecker's License Renewal of Duane S. Shaw, dba 82ND AVENUE AUTO WRECKERS, INC., for Property Located at 8555 SE 82ND AVENUE. (From January 26, 1993).

MR. PEMBLE EXPLAINED THAT ORDINANCE NO. 723 ESTABLISHED THE SHERIFF'S OFFICE AS THE COORDINATING BODY FOR THESE PERMITS AND

SUBSEQUENT REQUESTS WILL BE FORWARDED FROM THEM. UPON MOTION OF COMMISSIONER KELLEY, SECONDED BY COMMISSIONER SALTZMAN, P-7 WAS UNANIMOUSLY APPROVED.

P-8 CU 22-92 PUBLIC HEARING, On the Record, Plus New Information, Testimony Limited to 10 Minutes Per Side, in the Matter of the January 14, 1993 Planning and Zoning Hearings Officer Decision DENYING Conditional Use Request to Allow a Non-Resource Related Single Family Dwelling on a 4.34 Acre Lot of Record in the Multiple Use Forest-19 Zoning District, for Property Located at 22401 NW ST HELENS ROAD

MR. KRESSEL REPORTED THAT THE BOARD WAS GIVEN A LETTER THIS MORNING REQUESTING A CONTINUANCE. IN RESPONSE TO BOARD QUESTIONS AND DISCUSSION, MR. KRESSEL WAS DIRECTED TO PREPARE CLARIFICATION OF THE COUNTY CODE CONCERNING REQUESTS FOR CONTINUANCE.

ARNOLD ROCHLIN TESTIFIED THAT THE DECISION IN THIS CASE WAS FILED WITH THE CLERK OF THE BOARD ON JANUARY 14, 1993 AND PURSUANT TO COUNTY CODE, THE PARTIES HAD 10 DAYS IN WHICH TO FILE AN APPEAL BEFORE THE DECISION BECAME FINAL ON JANUARY 25, 1993, AS JANUARY 24 WAS A SUNDAY, HOWEVER THE APPEAL WAS FILED ON JANUARY 26, 1993.

IN RESPONSE TO A REQUEST FOR BOARD RULING ON THE TIMING ISSUE, MR. KRESSEL EXPLAINED THAT JURISDICTION DEPENDS ON THE TIMELY FILING OF A NOTICE OF APPEAL. MR. KRESSEL SUGGESTED THAT THE BOARD REFER THE MATTER TO STAFF AND IN THE MEANTIME HEAR WHAT APPLICANT HAS TO SAY ABOUT THAT AND ABOUT THE CONTINUANCE.

BRUCE VINCENT ADVISED THAT HIS CONSULTING FIRM WAS RETAINED TO REPRESENT MR. KAPTUR YESTERDAY AND HAS NOT HAD SUFFICIENT TIME TO ASSESS THE CASE. MR. VINCENT REPORTED HIS RECORD SHOWS AN APPEAL WAS FILED BY AN ATTORNEY REPRESENTING THE KAPTUR ESTATE, VIA A CHECK DATED JANUARY 22, 1993. MR. VINCENT EXPLAINED THAT THE APPLICANT LISTED IN THE CASE WAS A MR. ALLISON, A POTENTIAL BUYER OF THE PROPERTY AND BASED UPON THE FINDINGS HE PRODUCED, PLANNING STAFF DENIED THE REQUEST AND THAT THE KAPTURS ARE NOW TAKING OVER THE LAND USE CASE AND REQUEST A 60 DAY CONTINUANCE IN WHICH TO ADDRESS ISSUES NOT BROUGHT UP BY MR. ALLISON, SUCH AS SUBMISSION OF EVIDENCE TO SHOW THAT THE PROPOSED DWELLING WILL BE COMPATIBLE WITH RESOURCE MANAGEMENT ACTIVITIES, SUBMISSION OF WATER AVAILABILITY AND SANITARY SEWER DISPOSAL PLANS, AND RESPONSE TO FIRE MARSHAL AND ZONING CONCERNS.

IN RESPONSE TO A QUESTION OF COMMISSIONER

SALTZMAN, MR. PEMBLE EXPLAINED THE HEARINGS OFFICER DECISION WAS REPORTED TO THE BOARD ON JANUARY 26, 1993, AT WHICH TIME STAFF ADVISED THE BOARD THAT AN APPEAL HAD BEEN FILED AND THE BOARD SET THE DATE FOR HEARING AND SCOPE OF REVIEW. COMMISSIONER SALTZMAN SUGGESTED THAT THE TIMING ISSUE RAISED BY MR. ROCHLIN BE ADDRESSED PRIOR TO GRANTING A CONTINUANCE.

IN RESPONSE TO A QUESTION OF COMMISSIONER KELLEY AS TO WHETHER AN APPEAL HEARING IS THE CORRECT PROCESS IN LIGHT OF CHANGES TO THE ORIGINAL APPLICATION, MR. PEMBLE ADVISED HE FEELS THE APPEAL PROCESS IS THE MOST EXPEDITIOUS WAY TO HANDLE THIS CASE.

MR. ROCHLIN TESTIFIED IN OPPOSITION TO GRANTING A CONTINUANCE, ADVISING HE SPENT A GREAT DEAL OF TIME PREPARING FOR THIS HEARING. MR. ROCHLIN ADVISED THAT MR. KAPTUR WAS GIVEN THE OPPORTUNITY AND TESTIFIED BEFORE THE HEARINGS OFFICER THAT THE PROXIMITY OF THE SUBJECT SITE TO NORTHWEST SAINT HELENS ROAD, TOGETHER WITH THE SETBACKS AND VEGETATION ON THE SUBJECT SITE, ARE SUFFICIENT TO INSURE THE DWELLING WILL BE COMPATIBLE WITH SURROUNDING FARM USES. MR. ROCHLIN URGED THE BOARD IN THE INTEREST OF FAIRNESS, NOT TO GRANT THE REQUESTED CONTINUANCE.

FOLLOWING BOARD AND STAFF DISCUSSION AND UPON MOTION OF COMMISSIONER KELLEY, SECONDED BY COMMISSIONER COLLIER, IT WAS UNANIMOUSLY APPROVED THAT THE HEARING, ON THE RECORD, PLUS NEW INFORMATION, WITH TESTIMONY LIMITED TO 10 MINUTES PER SIDE, BE CONTINUED TO 9:30 AM, TUESDAY, APRIL 27, 1993, AND THAT IN THE INTERVAL, LEGAL COUNSEL PROVIDE THE BOARD WITH AN OPINION AS TO WHETHER THE APPEAL WAS TIMELY FILED.

COMMISSIONER COLLIER ADVISED SHE LOOKS FORWARD TO THE OPPORTUNITY TO WORK WITH COUNTY COUNSEL TO PREPARE ORDINANCE AMENDMENTS ADDRESSING CONTINUANCE ISSUES.

VICE-CHAIR HANSEN COMMENDED STAFF FOR IMPROVEMENTS TO THE PLANNING PACKET SUBMITTALS.

There being no further business, the Planning Items portion of the meeting was adjourned at 11:10 a.m.

OFFICE OF THE BOARD CLERK  
for MULTNOMAH COUNTY, OREGON

By Deborah C. Boquist

Tuesday, February 23, 1993 - 10:45 AM  
Multnomah County Courthouse, Room 602

BOARD BRIEFING

- B-1 Background and Overview of the Metropolitan Interlibrary Exchange (MIX) Agreement. Presented by Ginnie Cooper.

LIBRARY DIRECTOR GINNIE COOPER PRESENTATION, DISCUSSION AND RESPONSE TO BOARD QUESTIONS. BOARD SUGGESTIONS AND POLICY DIRECTION CONCERNING CHARGING APPROPRIATE AMOUNT FOR NET IMBALANCE OF MIX AGREEMENT, CHARGING FOR LIBRARY CARDS FOR NON-COUNTY RESIDENTS AND CHARGING FOR REFERENCE CALLS. MS. COOPER TO PROVIDE BOARD WITH COST ANALYSIS INFORMATION. REFERENCE LINE BRIEFING TO BE SCHEDULED AFTER LIBRARY ENTREPRENEURIAL INITIATIVES TEAM SUBMITS ITS RECOMMENDATIONS.

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Tuesday, February 23, 1993 - 11:30 AM  
Multnomah County Courthouse, Room 602

AGENDA REVIEW

- B-2 Review of Agenda for Regular Meeting of February 25, 1993.

R-5 STAFF REQUESTED ONE WEEK SET OVER.

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Wednesday, February 24, 1993 - 9:30 AM and 1:30 PM  
Multnomah County Courthouse, Room 602

WORK SESSION

- WS-2 Review the Budget of the Sheriff's Office. Presented by Sheriff Robert Skipper and Planning and Budget Manager Dave Warren.

PRESENTATION AND RESPONSE TO BOARD QUESTIONS BY SHERIFF SKIPPER, GARY WALKER, LARRY AAB, LAURA HARRYMAN, DAVE WARREN AND MARK CAMPBELL. POLICE ATHLETIC LEAGUE PRESENTATION BY CITY POLICE BUREAU STAFF DAVE WILLIAMS AND MARA WHITE. COMMENTS FROM CITIZEN BUDGET ADVISORY COMMITTEE MEMBER MARK JONES.

PLANNING AND BUDGET STAFF TO INFORM FUTURE BUDGET PRESENTERS OF UNIFORM FORMAT TO FOLLOW, IE. 1) PROGRAM OVERVIEW; 2) MAJOR ISSUES; 3) ADD AND CUT PACKAGES.

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Thursday, February 25, 1993 - 9:30 AM  
Multnomah County Courthouse, Room 602

REGULAR MEETING

Vice-Chair Gary Hansen convened the meeting at 9:31 a.m., with Commissioners Sharron Kelley and Tanya Collier present, and Chair Gladys McCoy excused.

CONSENT CALENDAR

UPON MOTION OF COMMISSIONER COLLIER, SECONDED BY COMMISSIONER KELLEY, THE CONSENT CALENDAR (ITEMS C-1 THROUGH C-5) WAS UNANIMOUSLY APPROVED.

NON-DEPARTMENTAL

C-1 In the Matter of the Appointments of Gene Ross and Norm Wyers to the MULTNOMAH COUNTY COMMUNITY ACTION COMMISSION

DEPARTMENT OF SOCIAL SERVICES

C-2 Ratification of Amendment No. 2 to Intergovernmental Agreement Contract No. 100113, Between Multnomah County and Portland Public School District No. 1, Providing Additional Juvenile Services Act Carryover Funds to Extend the TLC/TNT Program, for the Period Upon Execution to June 30, 1993

DEPARTMENT OF ENVIRONMENTAL SERVICES

C-3 ORDER in the Matter of the Execution of Quitclaim Deed D930777 to Correct an Historical Error in Title Precipitated by Tax Foreclosure

ORDER 93-55.

C-4 ORDER in the Matter of the Execution of Deed D930847 Upon Complete Performance of a Contract to ELIZABETH R. ROTHERY

ORDER 93-56.

C-5 ORDER in the Matter of the Execution of Quitclaim Deed D930857 to Correct an Historical Error in Title Precipitated by Tax Foreclosure

ORDER 93-57.

REGULAR AGENDA

NON-DEPARTMENTAL

R-1 PUBLIC HEARING and Consideration of a RESOLUTION in the Matter of Accepting the Supplemental 1992-93 Budget and Preparing the Approved Supplemental Budget for Submittal to the Tax Supervising and Conservation Commission

Commissioner Dan Saltzman arrived at 9:33 a.m.

BUDGET MANAGER DAVE WARREN RESPONDED TO BOARD QUESTIONS. COMMISSIONER KELLEY COMMENTED THAT IT IS NOT LIKELY THIS BOARD WILL APPROVE THE EXISTING PROPOSITION CONTAINED IN THE PLAN. HEARING HELD, NO ONE WISHED TO TESTIFY. UPON

**MOTION OF COMMISSIONER SALTZMAN, SECONDED BY COMMISSIONER KELLEY, RESOLUTION 93-58 WAS UNANIMOUSLY APPROVED.**

R-2 In the Matter of a Request for Hiring Freeze Exception to Vacant Position Deletion Policy for Nurse Practitioners and Physicians

**UPON MOTION OF COMMISSIONER KELLEY, SECONDED BY COMMISSIONER COLLIER, R-2 WAS UNANIMOUSLY APPROVED.**

R-3 Second Reading and Possible Adoption of an ORDINANCE to Amend Ordinance 738 Modifying the Membership for the Advisory Committee on Animal Control Policies and Procedures

**PROPOSED ORDINANCE READ BY TITLE ONLY. COPIES AVAILABLE. HEARING HELD, NO ONE WISHED TO TESTIFY. UPON MOTION OF COMMISSIONER KELLEY, SECONDED BY COMMISSIONER COLLIER, ORDINANCE 752 WAS UNANIMOUSLY APPROVED.**

JUSTICE SERVICES

COMMUNITY CORRECTIONS

R-4 Presentation of the 1993-1995 Community Corrections Plan (Draft Version) Approved by the Community Corrections Advisory Committee and Request for Approval of Submission to the State Community Corrections Advisory Board and the State Department of Corrections to Meet the March 1, 1993 Deadline

**PUBLIC TESTIMONY IN SUPPORT OF VARIOUS PROPOSED PROGRAM AND POSITION CUTS AND RESPONSE TO BOARD QUESTIONS BY PAUL FRANK, BILL HOFFSTETTER, TOM CROPPER, RAY ALLEN, DOUG BRAY, SUSAN HUNTER, SANDRA YOUNG, PAM MILLER, NANCY DIETZLER, KATHY PATTEE, MARJORIE PRICE, ADRIANA BLAKE, ANGE KUNZMANN, CYNTHIA MORRIS, DEE DEE KOUNS, BOB KOUNS, CATHERINE CLOUTIER, JULIE HANSEN AND GINA HARMON. COMMUNITY CORRECTIONS DIRECTOR TAMARA HOLDEN RESPONSE TO PUBLIC TESTIMONY AND BOARD QUESTIONS. UPON MOTION OF COMMISSIONER KELLEY, SECONDED BY COMMISSIONER COLLIER, SUBMISSION OF THE DRAFT PLAN (R-4) WAS UNANIMOUSLY APPROVED, WITH THE BOARD RESERVING THE RIGHT TO FINE TUNE THE PLAN PRIOR TO FINAL ADOPTION.**

DEPARTMENT OF SOCIAL SERVICES

R-5 Ratification of Intergovernmental Agreement Contract No. 104043 Between the City of Portland and Multnomah County, Providing Funds to the County Community Development Program for Processing Applications, Intake, Review and Approval Services for a City Loan Program Offered to Residents of the Mid County Sewer Project, for the Period Upon Execution to December 31, 1993

**UPON MOTION OF COMMISSIONER SALTZMAN, SECONDED BY COMMISSIONER KELLEY, R-5 WAS UNANIMOUSLY APPROVED.**

R-6 Request for Approval of the Multnomah County Community Children and Youth Services Commission Biennial COMPREHENSIVE PLAN AMENDMENT, for Services to Begin July 1, 1993

**UPON MOTION OF COMMISSIONER KELLEY, SECONDED BY COMMISSIONER COLLIER, R-6 WAS UNANIMOUSLY APPROVED.**

**UPON MOTION OF COMMISSIONER COLLIER, SECONDED BY COMMISSIONER KELLEY, CONSIDERATION OF THE FOLLOWING ITEM WAS UNANIMOUSLY APPROVED.**

UC-1 Ratification of Amendment #4 to Intergovernmental Agreement Contract 103982 Between Multnomah County and the Oregon Office of Medical Assistance Programs, Providing New Reimbursement Rates and Extending the Agreement Through March 31, 1993

**UPON MOTION OF COMMISSIONER COLLIER, SECONDED BY COMMISSIONER SALTZMAN, ON A ROLL CALL VOTE, THE CAPTIONED ITEM WAS UNANIMOUSLY APPROVED.**

PUBLIC COMMENT

R-7 Opportunity for Public Comment on Non-Agenda Matters. Testimony Limited to Three Minutes Per Person.

**MELINDA ANN WILSON TESTIFIED IN SUPPORT OF CONTINUED FUNDING FOR THE COUNCIL FOR PROSTITUTION ALTERNATIVES.**

There being no further business, the meeting was adjourned at 11:22 a.m.

OFFICE OF THE BOARD CLERK  
for MULTNOMAH COUNTY, OREGON

By Deborah Coogsted

Thursday, February 25, 1993 - 1:30 PM  
Multnomah County Courthouse, Room 602

WORK SESSION

WS-3 Review the Budget of the Sheriff's Office. Presented by Sheriff Robert Skipper and Planning and Budget Manager Dave Warren.

**PRESENTATION, DISCUSSION AND RESPONSE TO BOARD QUESTIONS BY LARRY AAB, GARY WALKER AND LAURA HARRYMAN. SHERIFF'S OFFICE DIRECTED TO PROVIDE COST PER BED ANALYSIS.**

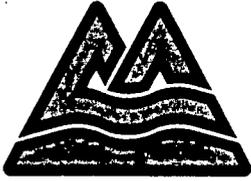
Friday, February 26, 1993 - 9:30 AM and 1:30 PM  
Multnomah County Courthouse, Room 602

**WORK SESSION**

WS-4 Review the Budget of the Department of Community Corrections. Presented by Department Director Tamara Holden and Planning and Budget Manager Dave Warren.

**PRESENTATION AND RESPONSE TO BOARD QUESTIONS AND COMMENTS BY TAMARA HOLDEN, MARK MURRAY, SUSAN KAESER, CARY HARKAWAY AND DAVE WARREN. QUESTIONS AND COMMENTS FROM CITIZEN BUDGET ADVISORY COMMITTEE MEMBER AL ARMSTRONG.**

**STAFF DIRECTED TO PROVIDE BREAKDOWN OF DATA CONCERNING POTENTIAL OFFICE RELOCATION COSTS AND ACTUAL MATERIALS AND SUPPLIES COSTS. STAFF TO PROVIDE COMMISSIONERS COLLIER AND SALTZMAN COPIES OF THE DEPARTMENT'S ANNUAL REPORT. STAFF TO PROVIDE DATA ON ALL PROGRAM EVALUATIONS AND TESTING. STAFF DIRECTED TO LOOK INTO HEALTH DEPARTMENT PROVIDING DRUG TESTING SERVICES FOR DCC CLIENTS. STAFF TO PROVIDE INFORMATION ON THE STATE STANDARDS OF OFFICERS TO OFFENDERS AND POSSIBLE COLLAR ID PILOT PROJECT. BOARD BRIEFING ON THE ORGANIZATIONAL CHANGES OF DCC TO BE SCHEDULED IN THE NEAR FUTURE.**



# MULTNOMAH COUNTY OREGON

OFFICE OF THE BOARD CLERK  
SUITE 1510, PORTLAND BUILDING  
1120 S.W. FIFTH AVENUE  
PORTLAND, OREGON 97204

BOARD OF COUNTY COMMISSIONERS		
GLADYS McCOY •	CHAIR •	248-3308
DAN SALTZMAN •	DISTRICT 1 •	248-5220
GARY HANSEN •	DISTRICT 2 •	248-5219
TANYA COLLIER •	DISTRICT 3 •	248-5217
SHARRON KELLEY •	DISTRICT 4 •	248-5213
CLERK'S OFFICE •	248-3277 •	248-5222

## AGENDA

### MEETINGS OF THE MULTNOMAH COUNTY BOARD OF COMMISSIONERS

FOR THE WEEK OF

FEBRUARY 22 - 26, 1993

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Thursday, February 25, 1993 - 1:30 PM - Work Session . . . .Page 5

Friday, February 26, 1993 - 9:30 & 1:30 - Work Session . . .Page 5

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

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

INDIVIDUALS WITH DISABILITIES MAY CALL THE OFFICE OF THE BOARD CLERK AT 248-3277 OR 248-5222 OR MULTNOMAH COUNTY TDD PHONE 248-5040 FOR INFORMATION ON AVAILABLE SERVICES AND ACCESSIBILITY.

Monday, February 22, 1993 - 9:30 AM and 1:30 PM

Multnomah County Courthouse, Room 602

WORK SESSION

- WS-1 Review the Budget of the District Attorney. Presented by District Attorney Michael Schrunk and Planning and Budget Manager Dave Warren. 9:30 AM AND 1:30 PM STARTING TIMES REQUESTED.
- 

Tuesday, February 23, 1993 - 9:30 AM

Multnomah County Courthouse, Room 602

PLANNING ITEMS

- P-1 CS 3-93 Review the February 11, 1993 Planning and Zoning Hearings Officer Decision: APPROVING, SUBJECT TO A CONDITION, Change in Zone Designation from RR to RR, C-S, Community Service Designation, to Allow Installation of a Cellular Telephone Communications Monopole, with Associated Antennas, and to Erect an Electronics Equipment Building, for Property Located at 16300 NW SHELTERED NOOK ROAD.
- P-2 HV 22-92 Review the February 1, 1993 Planning and Zoning Hearings Officer Decision: APPROVING, SUBJECT TO CONDITIONS, the Application in Specified Part. Satisfaction of Certain Applicable Code Provisions is Deferred to a Subsequent Planning Director Review Before or in Conjunction with Issuance of a Placement Permit, Subject to Notice and the Opportunity for a Hearing as Indicated, for Property Located at 4425 SE 135TH AVENUE.
- P-3 CU 1-93 Review the January 21, 1993 Planning and Zoning Hearings Officer Decision: DENYING Applicant's Conditional Use Request to Allow a Non-Resource Related Single Family Residence for Property Located at 13156 NW McNAMEE ROAD; and Request for March 23, 1993 Hearing in Connection with a Notice of Review Filed by Applicant James McGrew.
- P-4 CU 2-93 Review the January 21, 1993 Planning and Zoning Hearings Officer Decision: DENYING Applicant's Conditional Use Request to Allow a Non-Resource Related Single Family Residence for Property Located at 13160 NW McNAMEE ROAD; and Request for March 23, 1993 Hearing in Connection with a Notice of Review Filed by Applicant James McGrew.
- P-5 LR 2-92 Request for Adoption of a FINAL ORDER in the Matter of the Review of the Hearings Officer's Decision Affirming the Planning Director's Approval of a Residential Building Permit Application
- P-6 C 1-93 First Reading of an ORDINANCE Amending Comprehensive Framework Plan Policy 34, Trafficways, and the Accompanying Functional Classification of Trafficways Maps

P-7 Recommendation for Approval of Business Location in the Matter of the Auto Wrecker's License Renewal of Duane S. Shaw, dba 82ND AVENUE AUTO WRECKERS, INC., for Property Located at 8555 SE 82ND AVENUE. (From January 26, 1993).

P-8 CU 22-92 PUBLIC HEARING, On the Record, Plus New Information, Testimony Limited to 10 Minutes Per Side, in the Matter of the January 14, 1993 Planning and Zoning Hearings Officer Decision DENYING Conditional Use Request to Allow a Non-Resource Related Single Family Dwelling on a 4.34 Acre Lot of Record in the Multiple Use Forest-19 Zoning District, for Property Located at 22401 NW ST HELENS ROAD

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Tuesday, February 23, 1993 - 10:45 AM

Multnomah County Courthouse, Room 602

BOARD BRIEFING

B-1 Background and Overview of the Metropolitan Interlibrary Exchange (MIX) Agreement. Presented by Ginnie Cooper. (45 MINUTES REQUESTED.)

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Tuesday, February 23, 1993 - 11:30 AM

Multnomah County Courthouse, Room 602

AGENDA REVIEW

B-2 Review of Agenda for Regular Meeting of February 25, 1993.

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Wednesday, February 24, 1993 - 9:30 AM and 1:30 PM

Multnomah County Courthouse, Room 602

WORK SESSION

WS-2 Review the Budget of the Sheriff's Office. Presented by Sheriff Robert Skipper and Planning and Budget Manager Dave Warren. 9:30 AM AND 1:30 PM STARTING TIMES REQUESTED.

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Thursday, February 25, 1993 - 9:30 AM

Multnomah County Courthouse, Room 602

REGULAR MEETING

CONSENT CALENDAR

NON-DEPARTMENTAL

C-1 In the Matter of the Appointments of Gene Ross and Norm Wyers to the MULTNOMAH COUNTY COMMUNITY ACTION COMMISSION

DEPARTMENT OF SOCIAL SERVICES

- C-2 Ratification of Amendment No. 2 to Intergovernmental Agreement Contract No. 100113, Between Multnomah County and Portland Public School District No. 1, Providing Additional Juvenile Services Act Carryover Funds to Extend the TLC/TNT Program, for the Period Upon Execution to June 30, 1993

DEPARTMENT OF ENVIRONMENTAL SERVICES

- C-3 ORDER in the Matter of the Execution of Quitclaim Deed D930777 to Correct an Historical Error in Title Precipitated by Tax Foreclosure
- C-4 ORDER in the Matter of the Execution of Deed D930847 Upon Complete Performance of a Contract to ELIZABETH R. ROTHERY
- C-5 ORDER in the Matter of the Execution of Quitclaim Deed D930857 to Correct an Historical Error in Title Precipitated by Tax Foreclosure

REGULAR AGENDA

NON-DEPARTMENTAL

- R-1 PUBLIC HEARING and Consideration of a RESOLUTION in the Matter of Accepting the Supplemental 1992-93 Budget and Preparing the Approved Supplemental Budget for Submittal to the Tax Supervising and Conservation Commission
- R-2 In the Matter of a Request for Hiring Freeze Exception to Vacant Position Deletion Policy for Nurse Practitioners and Physicians
- R-3 Second Reading and Possible Adoption of an ORDINANCE to Amend Ordinance 738 Modifying the Membership for the Advisory Committee on Animal Control Policies and Procedures

JUSTICE SERVICES

COMMUNITY CORRECTIONS

- R-4 Presentation of the 1993-1995 Community Corrections Plan (Draft Version) Approved by the Community Corrections Advisory Committee and Request for Approval of Submission to the State Community Corrections Advisory Board and the State Department of Corrections to Meet the March 1, 1993 Deadline

DEPARTMENT OF SOCIAL SERVICES

- R-5 Ratification of Intergovernmental Agreement Contract No. 104043 Between the City of Portland and Multnomah County, Providing Funds to the County Community Development Program for Processing Applications, Intake, Review and Approval Services for a City Loan Program Offered to Residents of the Mid County Sewer Project, for the Period Upon Execution to December 31, 1993

R-6 Request for Approval of the Multnomah County Community Children and Youth Services Commission Biennial COMPREHENSIVE PLAN AMENDMENT, for Services to Begin July 1, 1993

PUBLIC COMMENT

R-7 Opportunity for Public Comment on Non-Agenda Matters. Testimony Limited to Three Minutes Per Person.

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Thursday, February 25, 1993 - 1:30 PM

Multnomah County Courthouse, Room 602

WORK SESSION

WS-3 Review the Budget of the Sheriff's Office. Presented by Sheriff Robert Skipper and Planning and Budget Manager Dave Warren.

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Friday, February 26, 1993 - 9:30 AM and 1:30 PM

Multnomah County Courthouse, Room 602

WORK SESSION

WS-4 Review the Budget of the Department of Community Corrections. Presented by Department Director Tamara Holden and Planning and Budget Manager Dave Warren. 9:30 AM AND 1:30 PM STARTING TIMES REQUESTED.

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# GLADYS McCOY, Multnomah County Chair

Room 1410, Portland Building  
1120 S.W. Fifth Avenue  
Portland, Oregon 97204  
(503) 248-3308

## M E M O R A N D U M

TO: Commissioner Sharron Kelley  
Commissioner Dan Saltzman  
Commissioner Gary Hansen  
Commissioner Tanya Collier

FROM: Gladys McCoy  
Multnomah County Chair

DATE: February 22, 1993

RE: Absence from the Office

Having completed radiation treatments, I am experiencing some side effects that will require total rest for the next week. I will not be in my office at all this week, but will listen to the Board meetings over the phone.

1993 FEB 22 AM 9:02  
MULTNOMAH COUNTY  
OREGON

GM:ddf  
9913G  
cc: Office of Board Clerk

Meeting Date: February 23, 1993

Agenda No.: P-1

(Above space for Clerk's Office Use)

AGENDA PLACEMENT FORM  
(For Non-Budgetary Items)

SUBJECT: CS 3-93 Decision

BCC Informal \_\_\_\_\_ BCC Formal February 23, 1993  
(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 3-93 Review the Decision of the Hearings Officer of February 11, 1993, approving, subject to a condition, change in zone designation from RR to RR, C-S, community service designation, to allow installation of a cellular telephone communications monopole, with associated antennas, and to erect an electronics equipment building, all for property located at 16300 NW Sheltered Noon Road

(If space is inadequate, please use other side)

SIGNATURES:

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

Or

DEPARTMENT MANAGER BH Willia

(All accompanying documents must have required signatures)

1993 FEB 17 AM 9:04  
MULTNOMAH COUNTY  
OREGON  
CLERK OF COUNTY COMMISSIONERS



MULTNOMAH COUNTY OREGON

DIVISION OF PLANNING & DEVELOPMENT/2115 S.E. MORRISON/PORTLAND, OREGON 97214

DIVISION OF PLANNING AND DEVELOPMENT

Board Planning Packet Check List

File No. CS3-93

BOARD OF COUNTY COMMISSIONERS  
1993 FEB 17 AM 9:04  
MULTNOMAH COUNTY  
OREGON

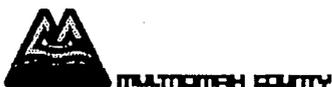
Agenda Placement Sheet No. of Pages 1

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

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

Decision No. of Pages 14  
 (Hearings Officer/Planning Commission)  
 Previously Distributed \_\_\_\_\_

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

CASE NAME: Interstate Mobilephone (dba Cellular One)NUMBER CS 3-93

## 1. Applicant Name/Address

Interstate Mobilephone Co.  
409 SW 9th Avenue  
Portland 97205

## 2. Action Requested by applicant

Community Service designation to allow installation of a cellular telephone communications monopole with associated antennas, and to erect an electronics equipment building

## 3. Planning Staff Recommendation

Approval, subject to a condition

## 4. Hearings Officer Decision:

Approval, subject to a condition

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

surrounding area that should be allowed, notwithstanding the possible impact on the mineral resource.

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

**ISSUES**  
(who raised them?)

a. None (no opponents appeared))

Do any of these issues have policy implications? Explain.

No



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

**Decision**

This Decision consists of Conditions, Findings of Fact and Conclusions

February 11, 1993

**CS 3-93, #46**

**Community Service Expansion  
(Radio Transmission Tower)**

The applicant seeks approval of a Conditional Use in order to install cellular telephone communications monopole, with associated antennas, and to erect an electronics equipment building on the subject property.

**Location:** 16300 NW Sheltered Nook Road

**Legal:** TL '8', Section 19, T2N R1W (1991 Assessor's Map)

**Site Size:** 10 Acres

**Size Requested:** 50' x 50'

**Property Owner:** James Zollner  
16300 NW Sheltered Nook Road  
Portland, Oregon 97231

**Applicant:** Interstate Mobilephone Co. dba Cellular One  
409 S.W. 9th  
Portland, Oregon 97205

**Comprehensive Plan:** Rural Residential

**Present Zoning:** RR

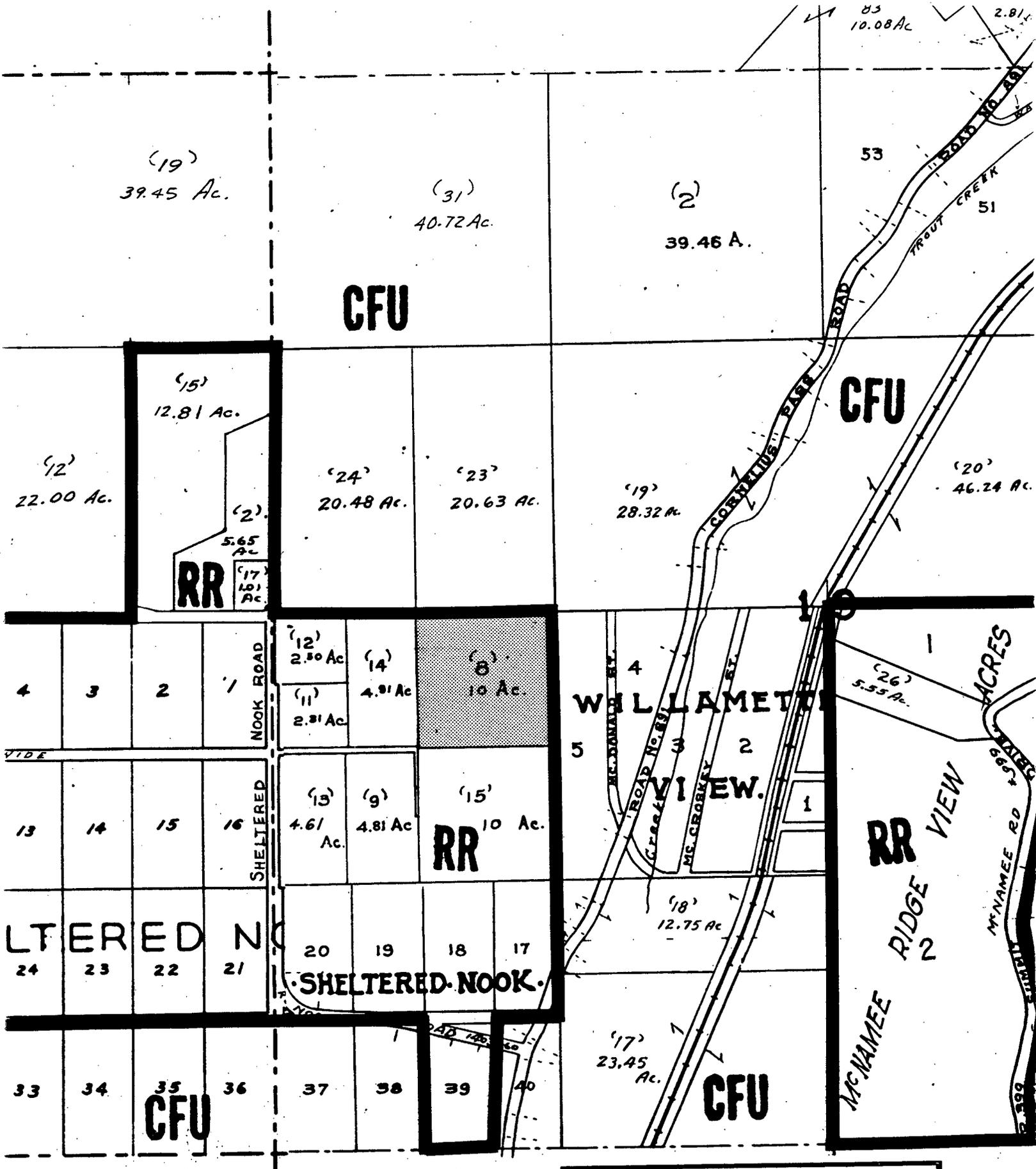
**Sponsor's Proposal:** RR, CS

**Hearings Officer**

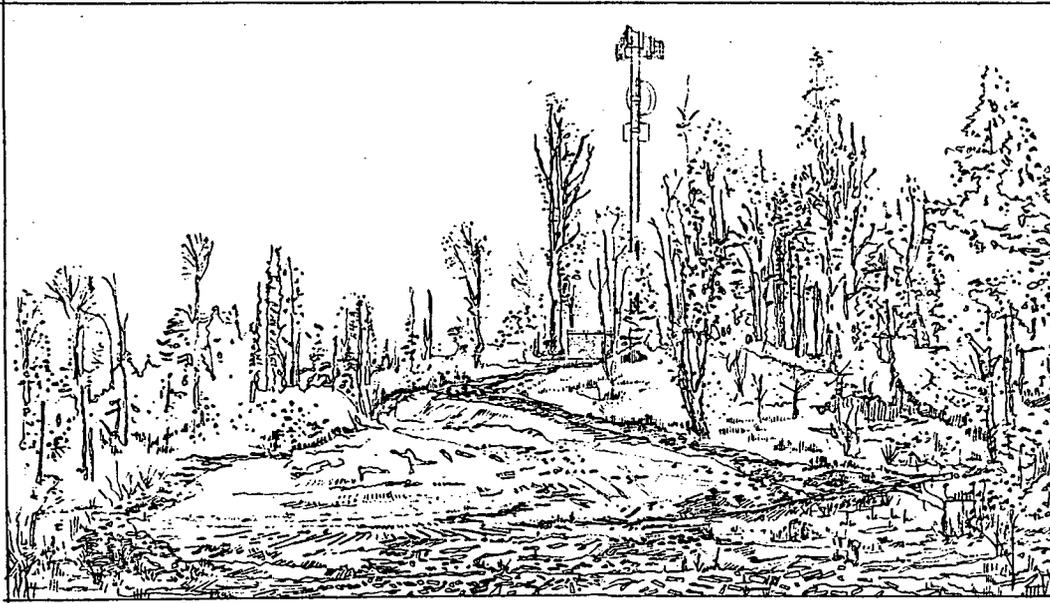
**Decision:**

**APPROVE, subject to a condition, change in zone designation from RR to RR, C-S, community service designation to allow installation of a cellular telephone communications monopole, with associated antennas, and to erect an electronics equipment building on the subject site, based on the Following Findings and Conclusions.**

**CS 3-93**



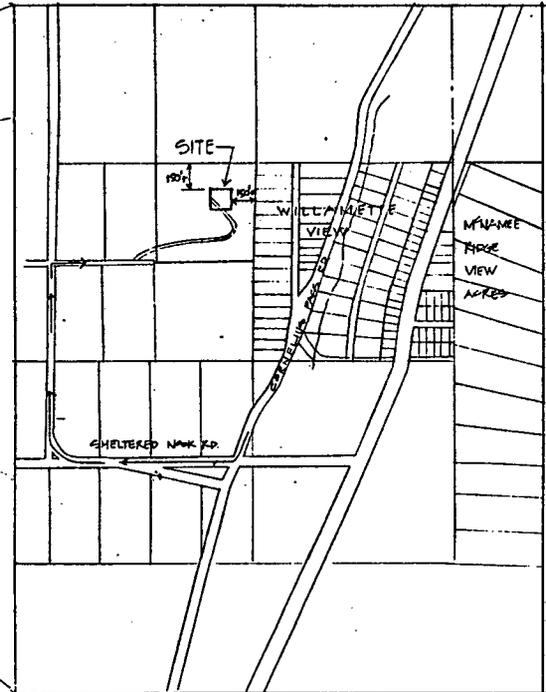
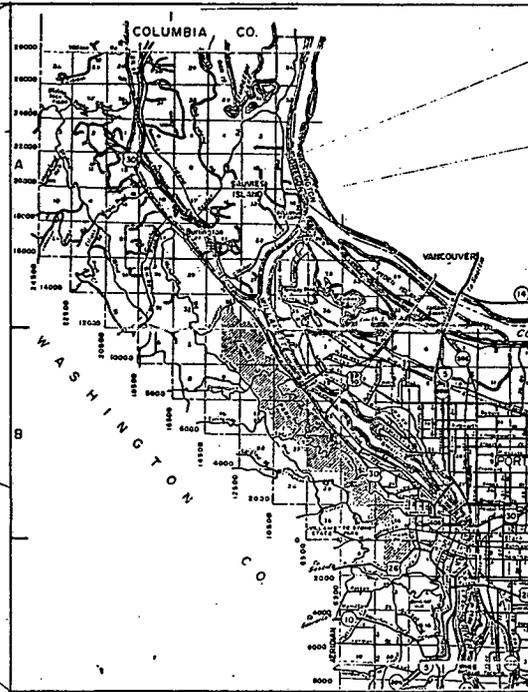
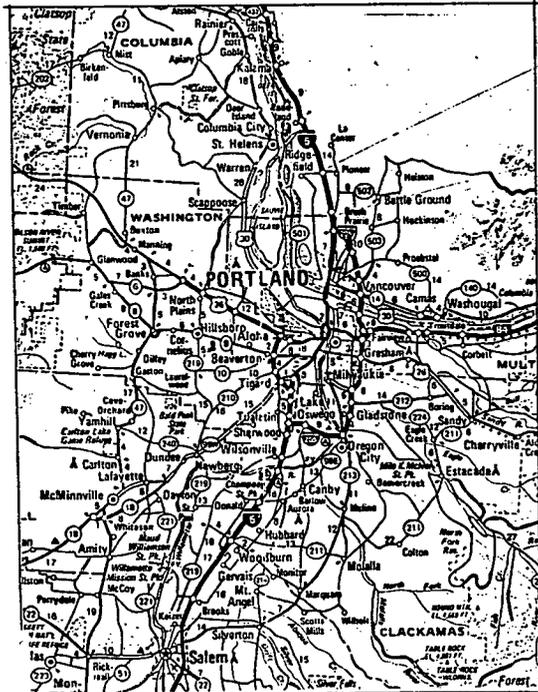
**Zoning Map**  
 Case #: CS 3-93  
 Location: 16300 NW Sheltered Nook Rd.  
 Scale: 1 inch to 600 feet (approximate)  
 Shading indicates subject property  
 SZM 46; Section 19, T.2N., R.1W., WM.



PERSPECTIVE

PROJECT DIRECTORY

PROJECT ADDRESS:	46-20-79N 121-01-45W DEL. CO. PA. AVENUE
PROPERTY OWNED:	
FIELD CONSTRUCTION MANAGER:	
PROJECT MANAGER:	GEORGE ROBERTSON PHONE: 240-74-91
GENERAL CONTRACTOR:	
TOWER/ANTENNA CONTRACTOR:	
ELECTRICAL CONTRACTOR:	
POWER COMPANY:	
TELEPHONE COMPANY:	
TOWER MANUFACTURER:	N/A
SHELTER MANUFACTURER:	N/A
BUILDING DEPARTMENT:	CITY OF BURLINGTON
SURVEYER:	
SOILS ENGINEER:	



REVISIONS BY  
12-2-92 SGA

Stewart Gordon Straus  
ARCHITECT - CONSTRUCTION CONSULTANT  
1832 SW JEFFERSON ST.  
PORTLAND, OREGON 97201  
PHONE 234-7110 FAX 234-7110  
STEWART GORDON STRAUS AND ASSOCIATES, P.C.

CORNELIUS PASS CELL SITE  
CELLULAR ONE COMMUNICATIONS  
BURLINGTON, OREGON

Date 12/2/92  
Scale N/A  
Drawn MPV  
Job  
Sheet 1  
Of 2 Sheets

CS 3-93

EXHIBIT 1



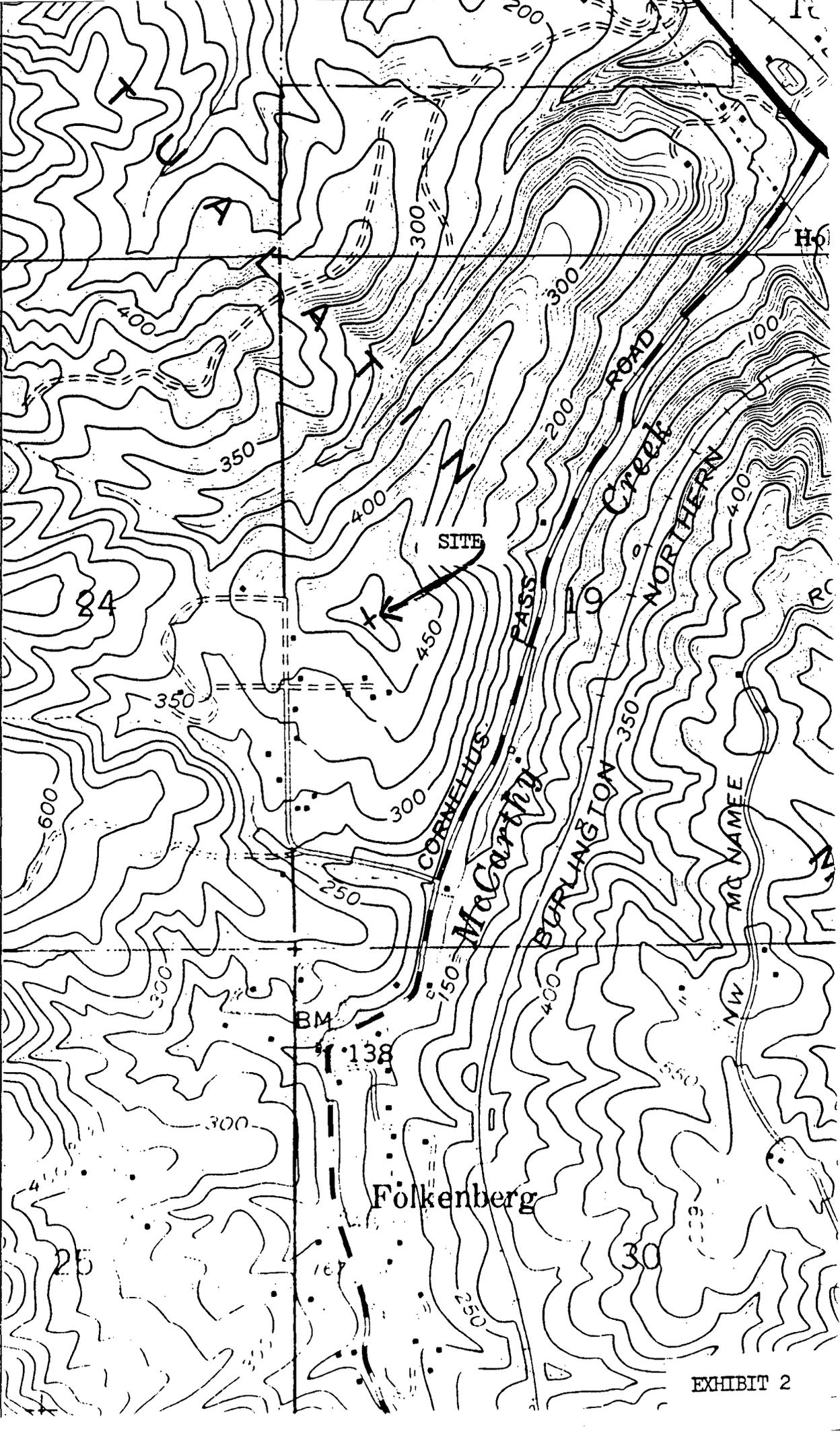
SKYLINE

5055

730 000 FEET  
(OREG.)

5054

5053



## Conditions:

In addition to the normal Design Review requirements, the applicant shall provide documents prepared by a registered engineer indicating that the site does not have a seasonal water table within 24 inches of the surface for three or more weeks per year and does not have a fragipan within 30 inches of the surface

## Findings of Fact:

The applicant provides the following narrative which describes the proposal and compliance with applicable approval criteria:

- A. Applicant's Proposal:** The applicant seeks approval of a Conditional Use in order to install cellular telephone communications monopole, with associated antennas, and to erect an electronics equipment building on the subject property.

The monopole will be a self supporting pole and is 100 feet tall. The antenna will be mounted to the pole and to a triangular platform mounted atop the pole. Total height, including the antenna, is 115 feet. The antenna associated with this facility are as follows:

1. There will be three groups of four directional antenna. These antenna measure about 20" by 40" and are affixed to the triangular platform atop the pole.
2. There will be one point to point communication antenna. This will have a diameter of about 8 feet and is attached to the pole itself at the 85 foot level, more or less.
3. There is one grid antenna mounted to the monopole at approximately the 75 foot level. This type antenna measures approximately 4' by 6'. These would be the maximum number of antenna utilized.

The electronics equipment building measures 12' by 28' and is 10' in height.

The above description depicts a final development at the end of a two year period.

Initial development will not include the equipment building. The necessary electronic equipment will be attached to the base of the monopole. A small enclosure will be build around the base to protect the equipment.

See site plan attached as Exhibits 1a and 1b for a depiction of the above information.

- B. Description of Project:** Cellular telephone communication is one of the most recent concepts in communication technology. The applicant, Cellular One, is one of the two licensees authorized by the FCC (Federal Communications Commission) to provide cellular telephone services in the Portland Metropolitan Area.

To provide this service, Cellular One's technicians have selected several sites in the metropolitan region for the placement of elevated antenna and related equipment. Each such location is called a

## CELL SITE.

The license the applicant has received from the FCC limits each of the cell sites to 100 Watts ERP (Effected Radiated Power) or less.

Cellular One's system operates on the 870 to 880 MHz (MegaHertz) band. The equipment used by the applicant will generate 100 Watts ERP or less and therefore is in compliance with the FCC license requirements.

The area being leased by the applicant for the proposed cell site is a 50' by 50' space in the north-easterly quadrant of the subject lot. The site plan submitted depicts the monopole and equipment building on this site.

The electronics equipment building, which is a single story concrete structure, will be placed in an east-west orientation to the northwest of the proposed monopole.

Access to the cell site will be via an existing driveway serving the property owners home.

An off-street parking area has also been provided. This space will be for the use of the company vehicles providing periodic maintenance. After the cell site is on line, this maintenance, based on a system wide average, will occur about twice a month. No one is at the site on a daily basis as the equipment is operated by remote control from the applicant's main offices in downtown Portland.

- C. Site Description:** The subject site is a 50' by 50' parcel situated in the northeast quadrant a 10 acre site. It is atop a small knoll at the 500 foot elevation. See contour map, Exhibit 2.

The proposed development will occur on a relatively level area and no major cuts or excavations are anticipated.

Access to the site will be over an existing private driveway serving the site. The driveway is entirely on the deed holders' property.

- D. Surrounding Area:** The general area can be characterized as a rural hillside area sparsely developed with single family homes on lots ranging in size from 2.5 acres and up.

Areas around the home sites have been cleared. The remainder contains a mixture of deciduous and evergreen trees.

- E. Zoning Code:** The current zoning on the site is RR, Rural Residential. This is a rural residential district that requires a minimum of 5 acres for residential uses. Other uses allowed are listed in Multnomah County Code (MCC) Section 11.15.2208 through .2216.

Section 11.15.2212 states Community Service Uses may be approved as provided for in MCC .7005 through .7041.

MCC Section 11.15.7020 lists those uses which may be allowed as Community Services in any district when approved at a public hearing through the Conditional Use process. MCC 11.15.7020

(15)(a) indicates that Radio and Television Transmission Towers are such allowable Community Services uses. MCC 11.15.7035(C)(1-8) sets forth the criteria for the approval of new Radio and Transmission Towers in other than urban residential districts.

**F. Compliance With Approval Criteria:**Following is a list of the criteria and the applicant's responses thereto.

(1) "The site is of a size and shape sufficient to provide the following setbacks:

(a) For a tower located on a lot abutting an urban residential district or a public property or street, except a building-mounted tower, the site standards of MCC.7035(B)(4) and (5) are met as to those portions of the property abutting the residential or public uses."

COMMENT: The subject property does not abut an urban residential district nor does it abut public property or public street. This criteria is not applicable to this request.

(b) For all other towers, the site shall be of sufficient size to provide the setback required in the underlying district between the base of the tower, accessory structures and uses, and guy anchors, if any, to all abutting property lines.

COMMENT: The RR zone contains the following setback requirements:

Front Yard	30 ft.
Side Yard	10 ft.
Street Side	30 ft.
Rear Yard	30 ft.

The applicant's proposed facility is set back more than 150 feet from the nearest lot line. This criteria has been satisfied.

STAFF COMMENT: This property is within a rural zoning district; therefore, (b) above applies. The proposed tower location provides for setbacks from abutting property lines in excess of the minimum required by the RR zoning district.

(2) The required setbacks shall be improved to meet the landscaping standards of MCC.7035(B)(11) to the extent possible within the area provided.

COMMENT: This section states that:

"Landscaping at the perimeter of the property which abuts streets, residences, public parks or areas with access to the general public other than the owner of such adjoining property shall be required, as follows:

(a) For towers 200 feet tall or less..."

COMMENT: The applicant will utilize provisions of (c) of this subsection.

- (b) "For towers more than 200 feet tall..."

COMMENT: This section is not applicable to this request.

- (c) "In lieu of these standards, the approval authority may allow the use of an alternate detailed plan and specification for landscaping and screening, including plantings, fences, walls and other features designed to screen and buffer towers and accessory uses."

COMMENT: The area to be leased by the applicant does not abut a public street nor does it abut residences, public parks or other areas with access to the general public. The proposed site is over 1,000' from NW Sheltered Nook Rd.

The amount of native vegetation on the site and the height of the trees near the monopole site provide an excellent buffer for the proposed use. The facility will be visible to the existing houses in the immediate area. Viewed from a distance, however, the site should blend into the landscape and not be readily noticeable on the skyline.

The applicant is proposing no additional screening. The existing vegetation and the color of the equipment building will do much to lessen any perceived visual impacts.

STAFF COMMENT: The leased area does not abut streets, residences, public parks or areas with access to the general public other than the property of the lessor. Therefore, this standard is not applicable.

- (3) The visual impact standard of MCC.7035 (B)(7) is met.

COMMENT: This section states that: "The applicant shall demonstrate that the tower can be expected to have the least visual impact on the environment, taking into consideration technical, engineering, economic and other pertinent factors. Towers clustered at the same site shall be of similar height and design, whenever possible. The tower shall be painted as follows:

- (a) Towers 200 feet or less in height shall have a galvanized finish or be painted silver. If there is heavy vegetation in the immediate area, such towers shall be painted green from the base to the tree line, with the remainder painted silver or given a galvanized finish."

COMMENT: As stated above, the monopole and antenna can be painted any color. The applicant will comply with the color decided during the design review process and/or by the FAA.

- (b) Towers more than 200 feet...

COMMENT: This section is not applicable.

- (c) "Towers shall be illuminated as required by the Oregon State Aeronautics Division. However, no lighting shall be incorporated if not required by the Aeronautics Division or other responsible agency."

**COMMENT:** The State Aeronautics division has indicated that the tower need not be lit or painted. See Exhibit 3.

**STAFF COMMENT:** Considering the rural character of the surrounding area, the tower should be painted green from the base to the tree line of the surrounding area and silver or galvanized above that height, if applicable. Design Review shall determine the tree line height of the surrounding area.

- (d) "Towers shall be the minimum height necessary to provide parity with existing similar tower supported antenna, and shall be freestanding where the negative visual effect is less than would be created by use of a guyed tower."

**COMMENT:** The applicant's proposal is for a self-supporting monopole. It is at a height which is the minimum necessary to satisfy the technical aspects of the proposal.

**STAFF COMMENT:** The applicant indicates that "Each of these cell sites is dependent on the other cell sites in the system with respect to height, terrain, distance from the other cell sites and a myriad of other highly technical factors." Therefore, this tower is the minimum height necessary to provide parity with existing similar tower supported antenna. The tower is not proposed to be guyed and there have been no identified negative visual effects which would result from the tower.

- (4) The parking requirement of MCC.7035 (B)(9) is required in accordance with MCC.6100 to .6148 if the site serves multiple purposes.

**COMMENT:** MCC.7035(B)(9) states that:

"A minimum of two parking spaces shall be provided on each site; an additional parking space for each two employees shall be provided at the facilities which require on-site personnel."

The applicant's site plan indicates two parking spaces. Since the facility is unmanned, no additional spaces are required.

This criteria has been satisfied.

**STAFF COMMENT:** Staff concurs.

- (5) The applicable policies of the Comprehensive Plan are met.

**COMMENT:** Policies No.13 (Air and Water Quality and Noise Level), No.14 (Development Limitations), No.16 (Natural Resources), No. 19 (Community Design), No. 31 (Community Facilities) are deemed to be applicable to this proposal. Following are the applicant's comments:

Policy 13— The proposed facility does not emit noxious materials into the air, does not have any affect on water quality, and is not a noise generator.

**STAFF COMMENT:** There is no agency that regulates air, water or noise quality standards for transmission towers.

Policy 14— There are no known development limitations on this site. The applicant will have a site analysis done prior to placement of the monopole and building to assure that there are no problems in developing the site.

This information will be submitted during the building permit process.

**STAFF COMMENT:** Material prepared by a registered engineer should be included as a part of Design Review that indicates the site does not have a seasonal water table within 24 inches of the surface for three or more weeks per year and does not have a fragipan within 30 inches of the surface. County Slope Hazard maps indicate that the site does not have severe soil erosion potential or is subject to any form of slope movement. FEMA Flood Rate Maps indicate that the property is not within a 100 year floodplain. Exhibit #2 indicates the proposed site is less than 20% slope.

Policy 16— There are no known natural resource areas involved in this proposal.

**STAFF COMMENT:** The county has not identified any Goal 5 sites within the surrounding area. The nearest is Angell Bros. quarry which is in excess of three miles distant.

Policy 19— The applicant's proposal has been designed to have minimal impact. The height of the monopole is the minimum required. The painting of the tower will serve to minimize potential conflicts in the location and development of this proposed use.

The applicant will also go through the Design Review process to ensure compliance with this policy.

**STAFF COMMENT:** Design Review ensures that projects blend with the character of the surrounding area.

Policy 31— This proposed facility does not require water or sewer service. All needed utilities are available at the site. No expenditure of public funds will be required.

**STAFF COMMENT:** This project is designated a Community Service Foundation. As such it must be located on a site with an average slope of 20% or less; not route truck traffic through local neighborhood streets; not cause traffic congestion or dangerous intersections; be of an adequate size and shape to accommodate the use; be evaluated by Design Review; and, provide siting and expansion in accord with other applicable policies of the Plan.

The average slope of the site is less than 20% as identified by Exhibit #2; no truck traffic will result from the proposal, only occasional service vans; Engineering Services has not identified any congestion problems or dangers associated with the proposal; the site is the minimum size necessary to accommodate the use; the project will require Design Review; and, the proposal complies with the applicable Comprehensive Framework Plan policies as identified in this section.

Applicant has not responded to Policy #40 for which required findings are necessary. However, the site is not near any bicycle path, nor is it a commercial, industrial or multiple family project. Therefore, no bicycle path connection or landscaped areas with benches is necessary.

**STAFF COMMENT:** Policies #37 & #38 must also be considered in a quasi-judicial action. This proposal requires no water or sewage disposal; roof runoff will be required to be disposed of in dry wells as a part of building permit approval if gutters are provided and the parking spaces for maintenance vehicles will not be hardsurfaced; electric requirements are comparable to a single family dwelling (*i.e.*, single phase 240 volt on a 200 ampere meter base with approximately 1,500 KW consumption per month) which is available to the site; the tower will not have any impact on local schools; and the facility will be electronically monitored for fire or human intervention.

(6) The NIER standards of (F) are met.

**COMMENT:** Multnomah County adopted what is considered by many to be a model ordinance dealing with radio and television towers and antennas. The ordinance lists the emission levels for the various uses and lists levels of concern of known health hazards.

These emissions are calculated in microwatts per centimeter squared ( $\mu\text{W}/\text{cm}^2$ ). Readings are taken at the lot line and at the closest residential use to determine compliance.

Exhibit 4 shows the calculations prepared by the applicant's engineers which establish the measurement at the nearest lot line to be  $0.051 \mu\text{W}/\text{cm}^2$  and is  $0.026 \mu\text{W}/\text{cm}^2$  at the closest dwelling, 500 feet to the southwest.

These readings are well below any levels of health concern as determined by the tables in the ordinance.

A table comparing cellular telephones to other everyday products is attached as Exhibit 5. This table demonstrates that cellular emissions are very low.

The type of equipment utilized in this facility and the frequencies involved are not known to cause interference with other house-hold electronic equipment.

**STAFF COMMENT:** Exhibit 4 indicates the NEIR standards will be met. The applicant has also provided 47 CFR (Code of Federal Regulations) Part 22, Subpart K "Domestic Radio Telecommunications Service" which demonstrates that the Multnomah County NIER standards are more stringent than those federal regulations by a factor of five; therefore, MCC .7035(F)(1)(a) is satisfied.

(7) The agency coordination standards of MCC.7035.(B)(14) are met.

"Agency Coordination- The applicant shall provide the following information in writing from the appropriate responsible official:"

(a) "A statement from the FAA that the application has not been found to be a hazard to air navigation."

gation under Part 77, Federal Aviation Regulation or a statement that no compliance is required”

COMMENT: The applicant has contacted the FAA and a copy of that agency’s response is attached Exhibit 6.

STAFF COMMENT: Staff concurs.

- (b) “A statement from the Oregon State Aeronautics Division that the application has been found to be in compliance with the applicable regulations of the Division, or a statement that no such compliance is required.”

COMMENT: The applicant has contacted that agency and a copy of their response is attached as Exhibit 3. This response states that the proposal does not exceed any standards of ORS 738-70-110 and would not be a hazard to air navigation. Marking and Lighting of the tower will not be requires.

STAFF COMMENT: Staff concurs.

- (c) “A statement from the FCC that the application complies with the regulations of the Commission or a statement that no such compliance is necessary.”

COMMENT: Attached as Exhibit 7a and 7b is a copy of a portion of the applicant’s FCC license which authorizes the applicant to provide cellular telephone services in the Portland-Vancouver area.

STAFF COMMENT: Staff concurs.

- (8) Accessory Uses- For a proposed tower in the EFU, MUF, CUF, MUA, and UF districts, the restrictions on accessory uses in MCC.7035(B)(12) shall be met.

COMMENT: The applicant’s proposed site is zoned RR – Rural Residential. This section is therefore not applicable.

STAFF COMMENT: Staff concurs.

### Conclusions:

The applicant has demonstrated compliance with all applicable approval criteria of the Zoning Code for a Community Service designation to develop this site with a cellular telephone communications monopole, with associated antennas, and to erect an electronics equipment building. A condition is necessary to ensure all development requirements are satisfied.

**IN THE MATTER OF CS 3-93:**

Signed February 11, 1993



By Robert Liberty, Hearings Officer

**Filed With the Clerk of the Board on February 11, 1993**

**Appeal to the Board of County Commissioners**

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

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

The Hearings Officer Decision on this item is tentatively scheduled for the Board of County Commissioners review at 9:30 a.m. on Tuesday, February 23, 1993 in Room 602 of the Multnomah County Courthouse. To appeal, a "Notice of Review" form and fee must be submitted to the County Planning Director on or before 4:30 p.m., Monday, February 22, 1993. For further information, call the Multnomah County Planning and Development Division at 248-3043.

Meeting Date: February 23, 1993

Agenda No.: P-2

(Above space for Clerk's Office Use)

AGENDA PLACEMENT FORM  
(For Non-Budgetary Items)

SUBJECT: HV 22-92 Decision

BCC Informal \_\_\_\_\_ BCC Formal February 23, 1993  
(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):

HV 22-92 Review the Decision of the Hearings Officer of February 1, 1993, approving, subject to conditions, the application in specified part. Satisfaction of certain applicable Code provisions is deferred to a subsequent Planning Director review before or in conjunction with issuance of a placement permit, subject to notice and the opportunity for a hearing as indicated, for property located at 4425 SE 135th Avenue

(If space is inadequate, please use other side)

SIGNATURES:

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

Or

DEPARTMENT MANAGER BH Willia

(All accompanying documents must have required signatures)

MULTI-COUNTY  
OREGON  
1993 FEB 17 AM 9 04  
COUNTY COMMISSIONER



**MULTNOMAH COUNTY OREGON**

DIVISION OF PLANNING & DEVELOPMENT/2115 S.E. MORRISON/PORTLAND, OREGON 97214

**DIVISION OF PLANNING AND DEVELOPMENT**

**Board Planning Packet Check List**

File No. HD 22-92

BOARD OF  
COUNTY COMMISSIONERS  
1993 FEB 17 AM 9:04  
MULTNOMAH COUNTY  
OREGON

Agenda Placement Sheet

No. of Pages \_\_\_\_\_

Case Summary Sheet

No. of Pages 1

Previously Distributed \_\_\_\_\_

Notice of Review

No. of Pages \_\_\_\_\_

\*(Maybe distributed at Board Meeting)

Previously Distributed \_\_\_\_\_

Decision

No. of Pages 15

(Hearings Officer/Planning Commission)

Previously Distributed \_\_\_\_\_

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



CASE NAME Flood Elevation Variance

NUMBER HV 22-92

1. Applicant Name/Address

Swank, Mercer, Scruggs  
PO Box 33086  
Portland, Oregon 97233

2. Action Requested by applicant

Approval to install a manufactured house with a floor level 4-feet below the 100-year flood elevation and relief from certain flood proofing requirements.

3. Planning Staff Recommendation

APPROVAL, WITH CONDITIONS

4. Hearings Officer Decision:

APPROVE, WITH CONDITIONS

5. If recommendation and decision are different, why? (not applicable)

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

**ISSUES**

*(who raised them?)*

- a. None (no opponents appeared)

Do any of these issues have policy implications? Explain.

This case may effect the way new houses are built in established residential areas which are below the 100-year flood level. It could guide policy regarding whether new houses have to be elevated above surrounding houses which were built below the 100-flood level. Johnson Creek's 100-year flood boundary extends over several neighborhoods in Powellhurst (generally west of Powell Butte and east of Begger's Tick Marsh), and the ease or difficulty - and expense - of building on isolated vacant lots in these residential areas may be effected.



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

FEBRUARY 1, 1993

### HV 22-92, #415 VARIANCE TO FLOOD HAZARD DISTRICT STANDARDS

*(Place a Manufactured Home Below the 100-year Flood Elevation)*

#### I. INTRODUCTION; NATURE OF THE DECISION

This application was presented at a public hearing on November 2, 1992, before Robert Liberty, Hearings Officer. The proposal is to site a manufactured home on a lot within the Flood Hazard District. Applicants request a variance from the requirements in Multnomah County Code (MCC) 11.15.6315. MCC § .6315 requires that the floor of new houses in the Flood Hazard District be "at least one foot above the base flood level." In addition, the Hearings Officer interprets the application to request variances from other flood proofing requirements in MCC § .6315.

**Location:** 4425 SE 135th Avenue  
**Tax Roll Description:** Lot 2, Block 1, Janalee  
**Owner/Applicant:** Swank, Mercer, Scruggs  
PO Box 33086  
Portland, Oregon 97233  
**Comprehensive Plan:** Urban Low Density Residential  
**Zoning:** LR-10/ FF; Low Density Residential District/ Flood Fringe subdistrict

#### HEARINGS OFFICER

#### DECISION::

APPROVE, SUBJECT TO CONDITIONS, the application in specified part. Satisfaction of certain applicable code provisions is deferred to a subsequent Planning Director review before or in conjunction with issuance of a placement permit, subject to notice and the opportunity for a hearing as indicated below.

#### II. PARTIES TO THE PROCEEDING

The only persons who participated in this proceeding were the applicants, Joyce Mercer, her mother, Ms. Lucy Swank and Ms. Mercer's daughter, Dawn Scruggs. As a result, the applicants are the only parties to this proceeding [MCC 11.15.8225(A)(1)].

#### III. PROCEDURAL ISSUES

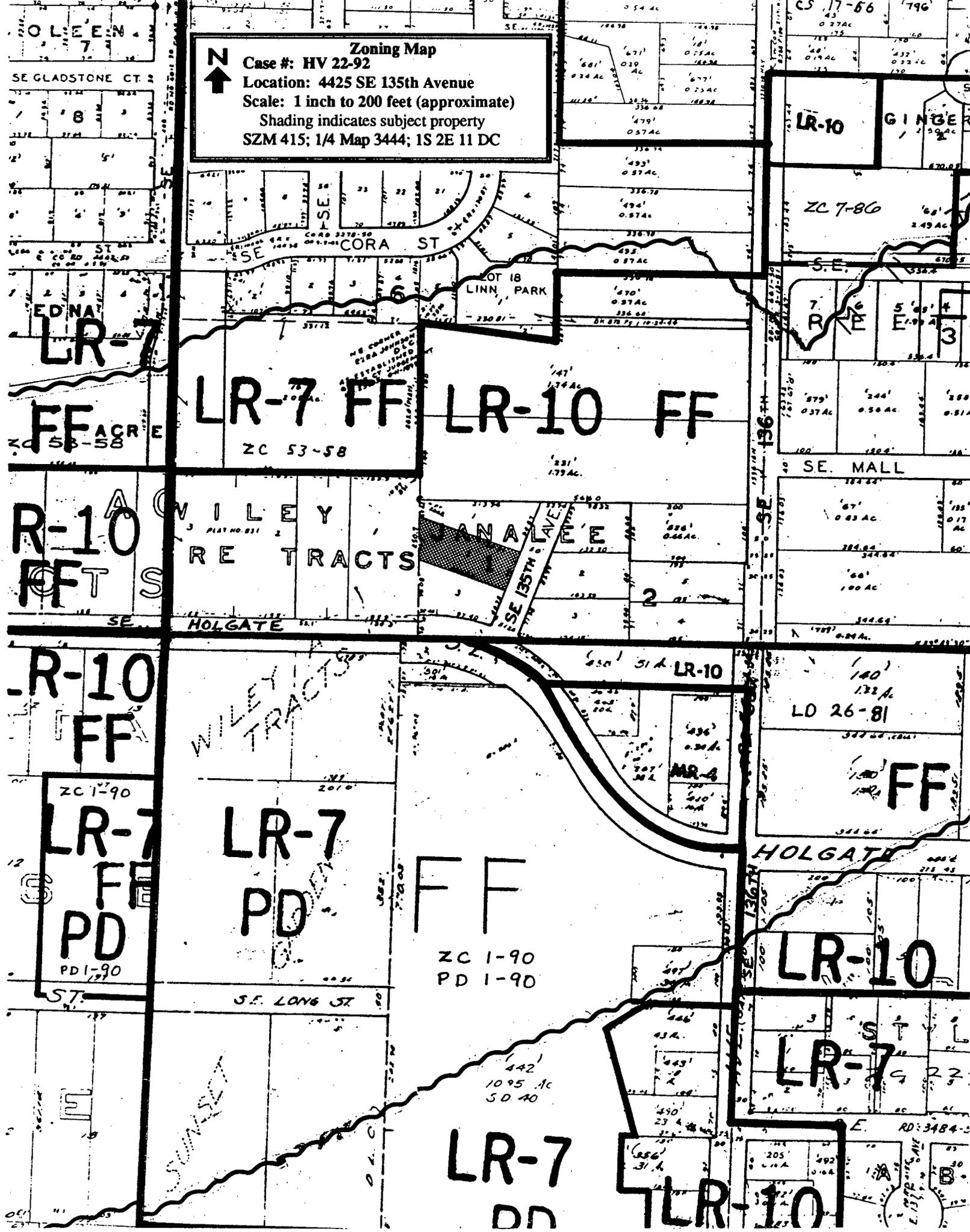
##### A. Impartiality of the Hearings Officer

Prior to the hearing I had no ex parte contacts with any of the applicants.

I have no financial interest in the outcome of this proceeding and have no family or financial relationship with any of the applicants.



**Zoning Map**  
 Case #: HV 22-92  
 Location: 4425 SE 135th Avenue  
 Scale: 1 inch to 200 feet (approximate)  
 Shading indicates subject property  
 SZM 415; 1/4 Map 3444; 1S 2E 11 DC



**LR-7 FF LR-10 FF**  
 ZC 53-58

**R-10**  
**FF**  
**WILEY RE TRACTS**

**R-10**  
**FF**  
**LR-7**  
**PD**  
 ZC 1-90  
 PD 1-90

**LR-7**  
**PD**

**FF**  
**FF**  
 ZC 1-90  
 PD 1-90

**LR-10**  
**FF**  
 LD 26-81

**HOLGATE**  
**LR-10**

**LR-7**  
**TLR-10**

**LR-7**  
**DD**

NE COR EZRA JOHNSON DLC NO. 52 AS ESTABLISHED BY CIRCUIT COURT NO. 23375 6-11-1895

SEE CS 42022

TRACTS  
SEE CS 24251  
E/L

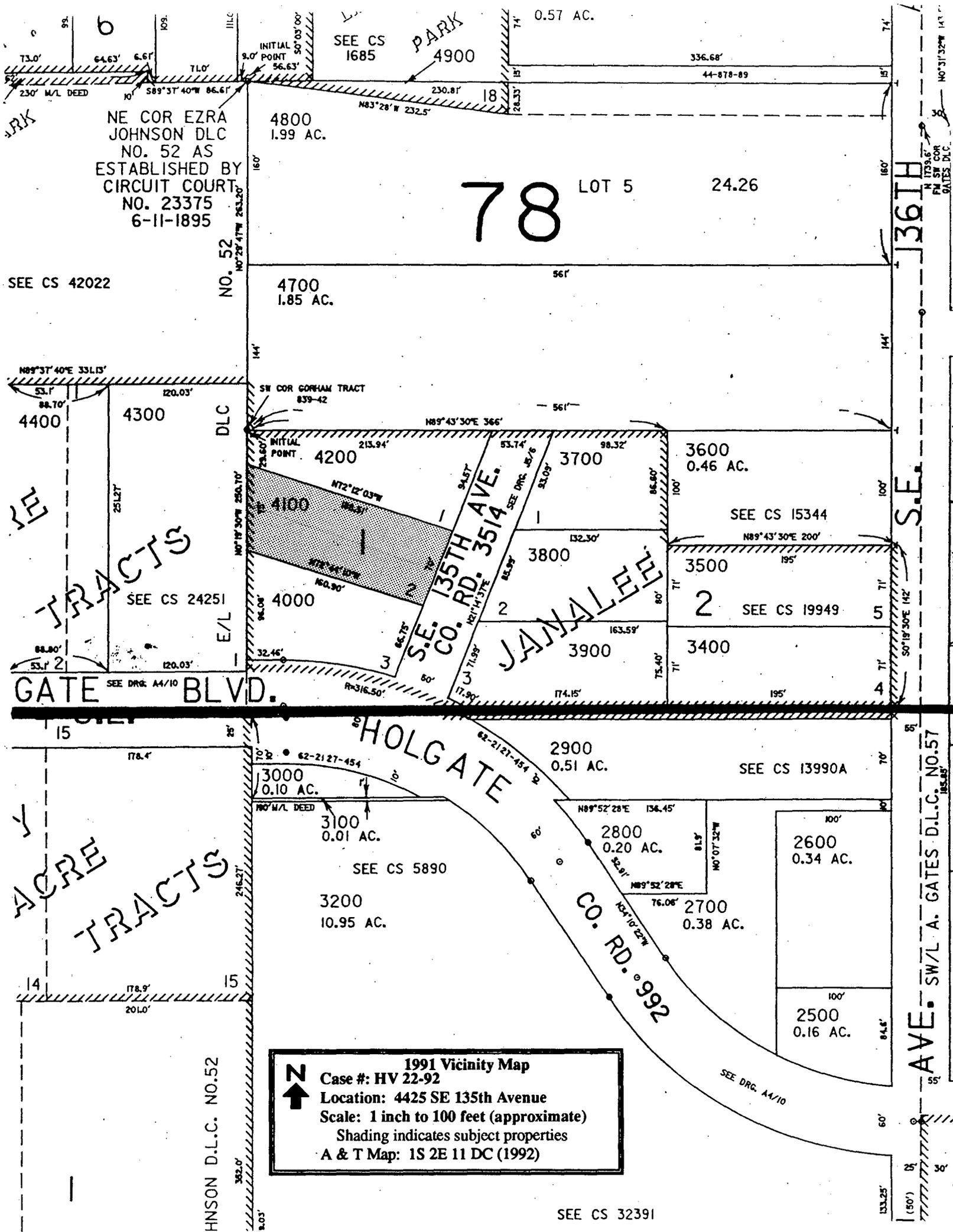
GATE BLVD.

ACRE TRACTS

HINSON D.L.C. NO. 52

**1991 Vicinity Map**  
Case #: HV 22-92  
Location: 4425 SE 135th Avenue  
Scale: 1 inch to 100 feet (approximate)  
Shading indicates subject properties  
A & T Map: 1S 2E 11 DC (1992)

SEE CS 32391



78

LOT 5

24.26

36TH

S.E.

AVE. SW/L A. GATES D.L.C. NO. 57

110° 31' 32" W 141.1'

N 17° 39.6' E 173.6'

FM SW COR GATES D.L.C.

144'

100'

100'

100'

50' 19' 30" E 142'

5'

7'

7'

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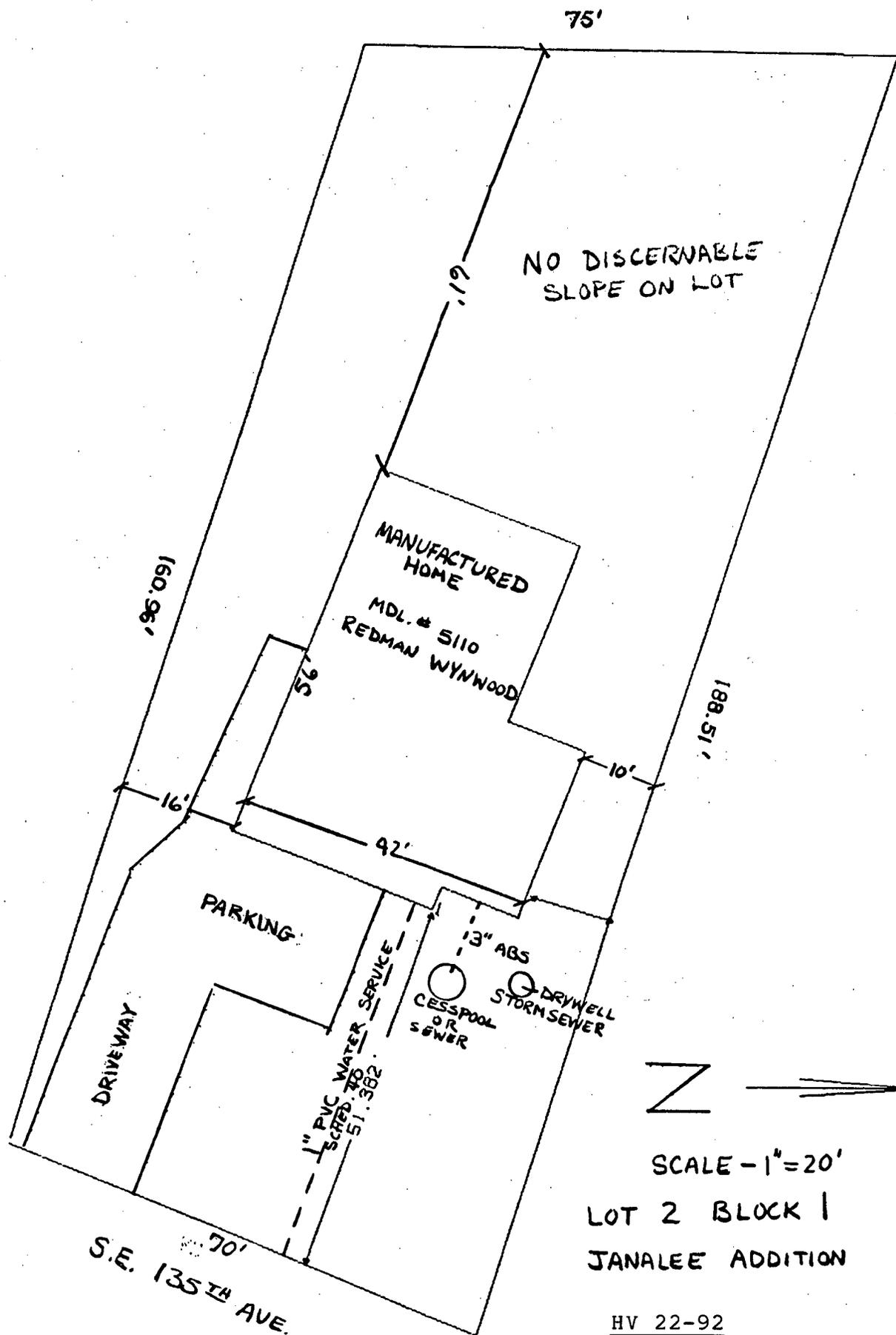
144'

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NO DISCERNABLE  
SLOPE ON LOT

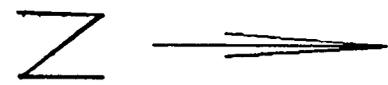
MANUFACTURED  
HOME  
MDL. # 5110  
REDMAN WYNWOOD

PARKING

DRIVEWAY

1" PVC WATER SERVICE  
SCRIPED TO  
51.382

13" ABS  
CESSPOOL  
OR  
SEWER  
DRYWELL  
STORM SEWER

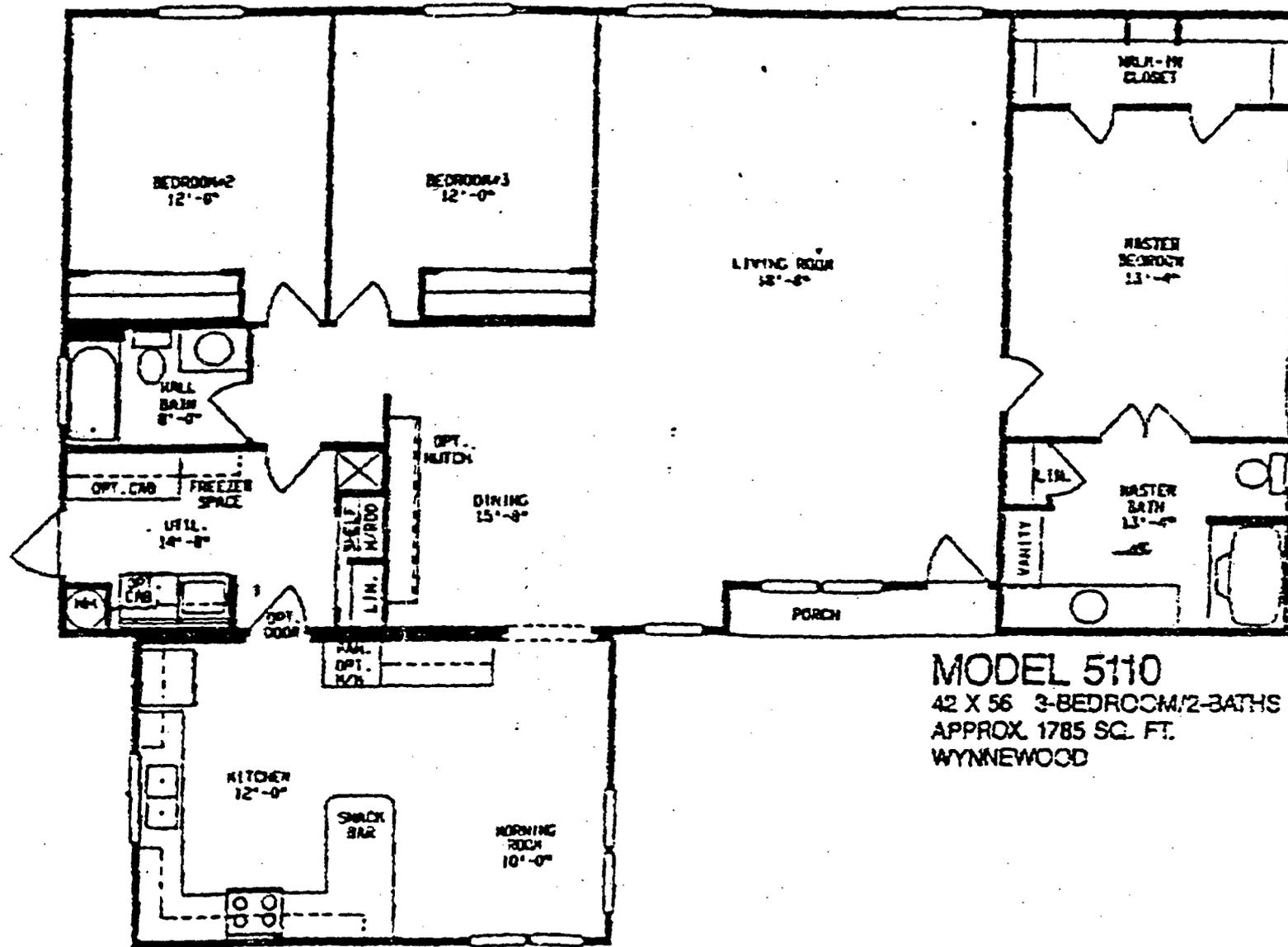


SCALE - 1" = 20'

LOT 2 BLOCK 1  
JANALEE ADDITION

HV 22-92

70'  
S.E. 135<sup>TH</sup> AVE.



**MODEL 5110**  
 42 X 56 3-BEDROOM/2-BATHS  
 APPROX. 1785 SQ. FT.  
 WYNNEWOOD

HV 22-92

**B. Other Procedural Issues**

The parties did not allege any procedural violations by the County, prior to, or during, the hearing.

**IV. BURDEN OF PROOF**

The burden of proof is upon the applicants. MCC 11.15.8230(D)

**V. REVIEW OF THE STANDARDS, ANALYSIS OF EVIDENCE, FINDINGS OF FACT AND CONCLUSIONS OF LAW**

**A. MCC CHAPTER 11.15.6301 *ET. SEQ.*: APPLICABILITY OF THE FLOOD HAZARD DISTRICT REQUIREMENTS IN GENERAL**

MCC Chapter 11.15.6301 *et. seq.*, "Flood Hazard District," is applicable, because the area is within a flood fringe area mapped on Flood Insurance Rate Map; Community Panel Number 410179 0382 B, revised 18 March 1986. The property is not within a floodway. *Id.*

The sections of the Flood Hazard Chapter containing standards applicable to this decision are MCC 11.15.6315, "Development Standards" and MCC 11.15.6323, "Variances." As noted below, I find some subsections of those provisions are inapplicable.

**B. MCC 11.15.6315: FLOOD HAZARD DEVELOPMENT STANDARDS**

**(1) MCC 11.15.6315(A): State Building Code Compliance**

MCC 11.15.6315(A) requires "all new construction and substantial improvement shall be constructed in conformance with Oregon State Building Codes." Compliance with this standard will be determined by the Planning Director before, or in conjunction with, the issuance of a placement permit.

If the County has an intergovernmental agreement by which it relies on certification by another jurisdiction as to the satisfaction of the State Building Code, the submission of an unqualified certification is a decision which does not require the exercise of discretion. ORS 197.015(10)(b)(A), (B). Therefore, no notice or opportunity for a hearing would be required.

**(2) MCC 11.15.6315(B): Flood Elevation Requirement**

MCC 11.15.6315(B) provides, in part:

*New construction and substantial improvement of any residential structure, including manufactured homes, shall have the lowest floor, including basement, elevated to at least one foot above the base flood level. \* \* \* \**

The proposed dwelling cannot satisfy subsection MCC 11.15.6315(B), the flood plain elevation requirement. The applicant is seeking a variance from this requirement, discussed below.

**(3) MCC 11.15.6315(C): Floodproofing Of Nonresidential Structures**

MCC 11.15.6315(C) (floodproofing of structures) is inapplicable because it applies only to "new construction and substantial improvement of any commercial, industrial or other non-residential structure \* \* \* ." This is an application for approval of the siting of a residential structure.

**(4) MCC 11.15.6315(D): Foundation and Anchoring**

MCC 11.15.6315(D) requires all manufactured homes to be "placed on a permanent foundation and shall be anchored to resist flotation, collapse and lateral movement by providing tie downs [etc.] \* \* \* ." Compliance with this standard will be determined by the Planning Director at, or before the time of the issuance of a placement permit when the applicant provides foundation plan details and engineer certifications.

**(5) MCC 11.15.6315(E): Foundations And Drainage In Mobile Home Parks And Subdivisions**

MCC 11.15.6315(E) is inapplicable because it governs foundations and drainage for "new manufactured home parks" and replacement of manufactured homes "in an existing manufactured home park or subdivision \* \* \* ." The application is for a single residence on a single parcel.

**(6) MCC 11.15.6315(F): Prevention Of Infiltration Of Water Into Household Utility Systems**

MCC 11.15.6315(F) requires that in "all new construction:"

*the electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.*

In this proceeding, the applicant is seeking a variance from the flood elevation requirements of MCC 11.15.6315(B). The variance would allow the applicant to site a manufactured house on an 18" foundation, leaving the finished floor approximately 3 feet below the crest of the 100-year flood level. Manufactured houses are not designed with ventilation, wiring, plumbing facilities, air conditioning and other service facilities 3 feet<sup>1</sup> above the floor . Imposing these requirements presumably would bar siting any manufactured home less than 1-foot above the 100-year flood stage, nullifying the variance provisions authorized by MCC 11.15.6323. In addition, that section specifically authorizes variances to the "flood proofing requirements of MCC .6315."

<sup>1</sup> As noted below, the actual height of the interior floor, will be 34 inches above existing grade.

Based on the record before me, I interpret the applicants' materials as an application for a variance from the flood proofing requirements of MCC 11.15.6315(F) as well as the flood elevation requirements of MCC 11.15.6315(B). This variance is discussed below.

**(7) MCC 11.15.6315(G): Standards For Sewage Disposal Systems**

MCC 11.15.6315(G) requires new and replacement water and sewer disposal systems to be designed to:

- (1) Minimize infiltration of flood waters into the system;*
- (2) Minimize discharge from systems into flood waters;*
- (3) Avoid impairment or contamination during flooding.*

The City of Portland's Environmental Soils Specialist, Phil Crawford, determined that the site was suitable for the use of a standard septic tank/drainfield disposal system \* \* \* ." Site Evaluation Report LFS: 276-92 dated November 17, 1992. In the absence of any information on the possibility, or impossibility, of flood proofing the proposed sewage disposal system, I decline to make findings on this criterion, and defer satisfaction of this criterion to the Planning Director's decision on a placement permit.

Because compliance with MCC 11.15.6315(G) may require the exercise of judgment as to facts and interpretation of the policies, notice of this subsequent decision and an opportunity for a hearing should be provided. ORS 197.763(2), 215.416, *Rhyne et al vs. Multnomah County, Swan & Trotter*, Or LUBA (LUBA No. 92-058, slip opinion of 10 July 1992 at 8-9 and cases cited there.)

**(8) MCC 11.15.6315(H): Certification Of Hydrostatic Equalization**

MCC 11.15.6315(H) requires that the portions of the dwelling "below the lowest floor that are subject to flooding [will] automatically equalize the hydrostatic flood forces \* \* \* ." Applicant's engineer (Lee Buckley, P.E.) indicated to staff that certification will be provided by requiring 2 "pet doors" in the exterior doors to the house. The pet doors measure 20-inches by 14-inches, and are installed approximately 3-inches above the threshold. Each is magnetically operated, with a "night latch" for security. Compliance with this standard will be determined by the Planning Director at the time of the placement permitting processing. If the engineer certification of compliance with the hydrostatic equalization requirements is provided without qualification, then the determination of compliance does not require the exercise of discretion and does not require notice and an opportunity for a hearing. ORS 197.015(10)(A),(B).

**(9) MCC 11.15.6315(I): Exemptions For Land Above Flood Level**

MCC 11.15.6315(I) is inapplicable because it authorizes exemptions from the requirements of MCC 11.15.6315 when a surveyor demonstrates the land is 1 foot or more above base flood level. The applicants and staff concur that the property is 6 feet below base flood level.

**(10) MCC 11.15.6315(J): Exemption For Historic Structures**

MCC 11.15.6315(J) is inapplicable because it authorizes an exemption from MCC 11.15.6315 for the reconstruction, rehabilitation or restoration of "structures listed on the National Register of Historic Place or the State Historic Site Inventory." There is no structure on the site and thus it cannot be on the Historic Site registry or Historic Site Inventory.

**C. MCC 11.15.6323: VARIANCE STANDARDS**

**(1) The Applicable Portions Of The Variance Provisions**

As noted above, the applicants are seeking variances from the flood elevation requirements of MCC 11.15.6315(B) and the flood-proofing requirements of MCC 11.15.6315(F).

There are three sections to the variance provisions found at MCC 11.15.6323. The first section 7(A), is introductory and the third section, (C), applies to "non-residential structures." Neither section contains standards which apply to these variances.

The variance standards are set out in the five subsections of MCC 11.15.6323(B). The fifth subsection applies only to structures in "an area identified as the floodway". As found above, the variance is for property in the flood fringe, not the floodway.

**(2) Variance From Flood Elevation Requirements In MCC 11.15.6315(B)**

**(a) MCC 11.15.6323(B)(1): Lot Size And Surrounding Development**

MCC 11.15.6323(B)(1) provides:

- (1) The site of the proposed variance is a lot of one-half acre or less in size and is surrounded by and contiguous to lots with existing structures constructed below the base flood level.*

According to the plot plan map, Tax Lot 4100 is a four-sided parcel, with lot line dimensions of 70 feet on the front, 188.51 feet on the north side, 160.90 feet on the south side, and a rear lot line 75 feet in length. The parcel is approximately 12,500 square feet, and is thus less than 0.5 acre (21,780 square feet.)

The applicants provided a letter from William J. Thomas, Professional Land Surveyor, dated 24 August 1992 and attached maps, showing the location and elevation of structures on surrounding properties. The four houses on SE 135th all have floor elevations of about 206 feet. The pump station structure across the street, to the southeast, has a floor elevation of about 202 feet. The applicants also submitted photographs showing structures on adjoining properties as well as their own lot. Based on the letter from Thomas, the maps appended to the letter and the photographs, I find this standard has been met.

(b) MCC 11.15.6323(B)(2): Exceptional Hardship to the Applicant

MCC 11.15.6323(B)(2) provides:

- (2) *Failure to grant the variance will result in exceptional hardship to the applicant;*

In the application materials and in a memo to me dated December 11, 1992, the applicants detail reasons why denial of the flood elevation requirement would pose a hardship.

First, according to the application statement filed by Joyce Mercer, "Dawn Scruggs, the principal resident is a handicapped person who is unable to climb steps necessary to enter her home if it were to be elevated above the lot level approximately 7 feet."

The second grounds for the variance is the additional expense of raising the house above the flood level. An estimate of the expense of raising a structure, in excess of costs common to siting at any elevation, was provided by Emil Georges from New World Home Builders, dated 30 November, 1992. Mr. Georges estimated excess installation costs of \$15,000 for crane rental, fill and retaining structures. *Id.*

Applicants' December memo also notes:

*these figures do not include the costs of engineering, approximately \$1000.00, which would be required with either fill or concrete foundation \* \* \* \* this would result in our having to abandon the entire project and seek another location \* \* \* \**

There is no question that failure to grant the variance would create an "exceptional hardship" given Ms. Scruggs condition and the additional expenses noted above and in the application. The question is whether or not the need for the flood elevation and flood proofing variance was created by the applicants' decision to purchase property within the Flood Hazard District and to buy a manufactured home in advance of seeking a variance to flood hazard standards.

This hardship standard differs from most common forms of variance standard in two ways. First it omits the common prohibition against granting variances based on "self-created" hardships. Secondly, the hardship;p is described in terms of the circumstances of the applicant, rather than characteristics of the property itself.

While I am troubled by the idea of approving, in part, the siting of a manufactured home at an elevation 5 feet below the base flood level, I conclude the hardship standard has been met given the phrasing of the standard. However, a corollary of this interpretation of the ordinance is that this variance will remain valid only so long as the property is occupied by Dawn Scruggs.

**(c) MCC 11.15.6323(B)(3): Variance Is Minimum Necessary**

MCC 11.15.6323(B)(3) provides:

*(3) The variance is the minimum necessary to afford relief.*

During the course of the hearing, I asked Applicant Mercer whether or not the house could not be raised slightly more than the projected 18 inches, and still be accessible.

Ms. Mercer's post-hearing memo stated that the manufacturer requires 18 inches of clearance under the floor to allow for the connection of plumbing and ducts, which would make the floor "34 inches above ground level \* \* \* It would require about 5 steps to enter the home, compared to about 12 steps should the house be elevated 7'."

Ms. Mercer's memo also states her daughter, Dawn Scruggs suffers from chronic arthritis and a physical disability which makes climbing any steps painful. *Id.*

Based on the record before me, I find that the 18 inches elevation provided by the proposed foundation is the maximum Ms. Scruggs can negotiate.

In addition, raising the house up by the addition of fill would displace more flood waters, possibly increasing flood damages to other properties. (See discussion of MCC 11.15.6323(B)(4), below.)

**(d) MCC 11.15.6323(B)(4): No Additional Threats To Public Safety, Public Nuisance, Fraud Or Conflicts With Existing Laws**

MCC 11.15.6323(B)(4) provides:

*(4) The granting of the variance will not result in additional threats to public safety, extraordinary public expense, create nuisances, cause fraud or victimization of the public or conflict with existing local laws or ordinances.*

The possible additional threats to public safety and sources of extraordinary expense are (1) displacement of floodwaters by the house, (2) possible damage caused by the house if it were to float free during a flood, (3) the public resources which would be expended to rescue residents of the dwelling in the event of a flood.

Floodwater displacement by this property will be negligible, provided the applicants satisfy MCC 11.15.6315(H), which requires hydrostatic equalization "by allowing for the entry and exit of floodwaters" for all parts of the house "subject to flooding."

The house should not float free provided the applicants satisfy MCC 11.15.6315(D), which requires the house to be "anchored to resist flotation."

During the course of the hearing, the applicants recognized their responsibility to evacuate the house in the event of a risk of flooding. Ms. Mercer stated that her daughter's conditions would make her especially sensitive to taking action long before flooding became eminent.

Fraud and victimization of the public would occur if the approval of the variance would lead unwitting purchasers to acquire the property without knowledge of the risk of serious flood damage. In this case, this variance proceeding has left no doubt that all of the applicants are well aware that the bottom of the house is resting 4.5 feet below the 100 year flood level. In addition, adjoining property owners who signed a petition supporting a variance to the flood elevation requirement are also aware that the property lies within the flood fringe. Finally, by making the variance personal to the applicant, subsequent purchasers will be put on notice of the circumstances of the property.

The local laws and ordinances governing this application are expressed in the County Code and Plan. Given a finding that they have been satisfied, there is no "conflict with existing local laws or ordinances."

**(e) Conclusion With Respect To Variance From The Flood Elevation Requirement**

I conclude that the applicant has satisfied the variance standards in MCC 11.15.6323(B)(1) through (4) as applied to their request for a variance from the flood elevation requirement in MCC 11.15.6315(B).

**(3) Variance From Flood-Proofing Requirements In MCC 11.15.6315(F)**

As quoted above, MCC 11.15.6315(F) requires that in "all new construction:"

*the electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.*

Subsections (1), (2) and (4) of the variance standard are satisfied for the reasons given previously with respect to the variance for the flood elevation variance.

Criterion (3), requires that "[t]he variance is the minimum necessary to afford relief." Given that these facilities are already part of the design of the manufactured house, I assume they cannot be redesigned or relocated without substantial cost. However, in the absence of any information on this point, this determination is deferred to the Planning Director's subsequent determination in conjunction with the issuance of a placement permit. The applicants have the responsibility of demonstrating that relocation of the facilities is not possible, or agreeing to the modification of the house to place fill or some of these facilities above the flood level.

Review and action on this point will require the exercise of factual and legal judgment and thus requires notice and an opportunity for a hearing.

## **D. MCC 11.15.7705: MOBILE HOME DEVELOPMENT STANDARDS**

### **(1) Applicability Of The Section In General**

MCC 11.15.7705, "Development Standards for Mobile Homes on Individual Lots Within Urban Districts" are criteria which must be satisfied prior to placement of the dwelling on the parcel.

As noted below, some of those standards have been satisfied. Compliance with the remaining standards in that section will be determined by the Planning Director through the placement permitting process. Because compliance with sections MCC 11.15.7705(B) and (D) may require the exercise of judgement as to facts and interpretation of the code provisions, notice of this subsequent decision and an opportunity for a hearing should be provided. ORS 197.763(2), 215.416, *Rhyne et al vs. Multnomah County, Swan & Trotter*, cited above.

### **(2) MCC 11.15.7705(C): Foundation**

The letter from Emil Georges, dated 30 November 1992, describes the foundation for the building, including concrete runners, concrete footings, excavation and backfill and refers to "skirting." I find this design will satisfy the requirement the house be "place on an excavated and back-filled foundation and enclosed at the perimeter."

### **(3) MCC 11.15.7705(D): Minimum Floor Area**

This subsection requires the manufactured home to have a "minimum floor area of 1,000 square fee." According to the floor plan of the home purchased by the applicant, Redman Homes Inc.'s Model 5110, the approximate floor area is 1,785 square feet. This standard has been satisfied.

### **(4) MCC 11.15.7705(E): Roof Pitch**

The roof of the mobile home must be pitched at least three feet in height for every twelve feet in width. The 3 November 1992 letter from Chuck Gregory of Redman homes notes that "all Redman Homes \* \* \* have a nominal 3/12 roof pitch, or optional 4/12 roof pitch." Applicant Mercer noted in her memo of 11 December, that the model they purchased as the 3/12 pitch. I find this standard satisfied.

## **E. APPLICABLE SECTIONS OF THE COUNTY COMPREHENSIVE PLAN**

### **1. Policy 14; Development Limitations**

Comprehensive Plan Policy 14 is to

***DIRECT DEVELOPMENT AND LAND FORM ALTERATIONS AWAY  
FROM AREAS WITH DEVELOPMENT LIMITATION EXCEPT UPON A  
SHOWING THAT DESIGN AND CONSTRUCTION TECHNIQUES CAN***

MITIGATE ANY PUBLIC HARM OR ASSOCIATED PUBLIC COST, AND MITIGATE ANY ADVERSE EFFECTS TO SURROUNDING PERSONS OR PROPERTIES. DEVELOPMENT LIMITATIONS AREAS ARE THOSE WHICH WILL HAVE ANY OF THE FOLLOWING CHARACTERISTICS:

\* \* \* \*

C. *LAND WITHIN THE 100 YEAR FLOOD PLAIN*

Multnomah Comprehensive Framework Plan at page 58.

Under the terms of Policy 14 and the implementation strategies, *see Multnomah Comprehensive Framework Plan* at 59, I find this policy has been implemented by the Flood Hazard District and has no independent application to this action.

2. **Policies 37 And 38, In General**

Both policy 37, "Utilities" and Policy 38, "Facilities" are prefaced with the statement: "The county's policy is to require a finding prior to approval of a legislative or quasi-judicial action that \* \* \* ." "Action" is defined in MCC 11.15.8205 as:

*a proceeding in which the legal rights, duties or privileges of specific parties are determined only after hearing in which such parties are entitled to appear and be heard, including requests for:*

\* \* \*

*(D) Variances, except as otherwise provided herein;*

\* \* \*

*(F) Other requests for permits and other contested cases determining permissible uses of specific property.*

I find that this proceeding is an "action" and that consequently both of these policies apply.

As noted below, some of the required findings can be made at this stage. A determination concerning satisfaction of the remaining required findings in those policies will be determined by the Planning Director before, or in conjunction with, the placement permitting process. Because compliance with Policies 37 and 38 may require the exercise of judgment as to facts and interpretation of the policies, notice of this subsequent decision and an opportunity for a hearing should be provided. ORS 197.763(2), 215.416, *Rhyne et al vs. Multnomah County, Swan & Trotter*, cited above.

3. **Plan Policy 37: "Utilities"**

Multnomah County Plan Policy 37, "Utilities" provides:

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

**WATER AND DISPOSAL SYSTEM**

- A. THE PROPOSED USE CAN BE CONNECTED TO A PUBLIC SEWER AND WATER SYSTEM, BOTH OF WHICH HAVE ADEQUATE CAPACITY; OR**
- B. THE PROPOSED USE CAN BE CONNECTED TO A PUBLIC WATER SYSTEM, AND THE OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY (DEQ) WILL APPROVE A SUBSURFACE SEWAGE DISPOSAL SYSTEM ON THE SITE; OR**
- C. THERE IS AN ADEQUATE PRIVATE WATER SYSTEM, AND THE OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY (DEQ) WILL APPROVE A SUBSURFACE SEWAGE DISPOSAL SYSTEM ON THE SITE; OR**
- D. THERE IS AN ADEQUATE PRIVATE WATER SYSTEM, AND A PUBLIC SEWER WITH ADEQUATE CAPACITY.**

**Multnomah County Comprehensive Framework Plan: Volume 2: Policies** (September 1983) at 167.

The City of Portland's Environmental Soils Specialist, Phil Crawford, determined that the site was suitable for the use of a standard septic tank/drainfield disposal system \* \* \* " Site Evaluation Report LFS: 276-92 dated November 17, 1992.

On a form completed 25 August 1992, and in a referenced attachment, the Powell Valley Road Water District confirmed that it "is prepared to furnish potable water" in conformance with state rules.

This evidence is sufficient to carry the applicants' burden of proof with respect to this portion of Policy 37.

The remainder of Policy 37 provides:

**DRAINAGE**

- E. THERE IS ADEQUATE CAPACITY IN THE STORM WATER SYSTEM TO HANDLE THE RUN-OFF; OR**
- F. THE WATER RUN-OFF CAN BE HANDLED ON THE SITE OR ADEQUATE PROVISIONS CAN BE MADE; AND**
- G. THE RUN-OFF FROM THE SITE WILL NOT ADVERSELY**

*AFFECT THE WATER QUALITY IN ADJACENT STREAMS, PONDS, LAKES OR ALTER THE DRAINAGE ON ADJOINING LANDS.*

*ENERGY AND COMMUNICATIONS*

- H. THERE IS AN ADEQUATE ENERGY SUPPLY TO HANDLE THE NEEDS OF THE PROPOSAL AND THE DEVELOPMENT LEVEL PROJECTED BY THE PLAN; AND*
- I. COMMUNICATION FACILITIES ARE AVAILABLE. FURTHERMORE, THE COUNTY'S POLICY IS TO CONTINUE COOPERATION WITH THE DEPARTMENT OF ENVIRONMENTAL QUALITY, FOR THE DEVELOPMENT AND IMPLEMENTATION OF A GROUND WATER QUALITY PLAN TO MEET THE NEEDS OF THE COUNTY.*

Multnomah County Comprehensive Framework Plan; Volume 2: Policies (September 1983) at 168.

There is no evidence in the record concerning energy and communications facilities, subsections E, F, G, H and I, although the location of the property within the urbanized portion of the County suggests these facilities are readily available. These matters are deferred for an administrative determination by the Planning Director in conjunction with the placement permitting decision.

The concluding paragraph of Policy 37 is inapplicable to this proceeding.

**4. Plan Policy 38: "Facilities"**

Multnomah County Plan Policy 38, "Facilities" provides:

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

*SCHOOL*

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

*FIRE PROTECTION*

- B. THERE IS ADEQUATE WATER PRESSURE AND FLOW FOR FIRE FIGHTING PURPOSES; AND*
- C. THE APPROPRIATE FIRE DISTRICT HAS HAD AN*

**OPPORTUNITY TO REVIEW AND COMMENTS [sic] ON THE PROPOSAL.**

**POLICE PROTECTION**

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

**Multnomah County Comprehensive Framework Plan; Volume 2: Policies (September 1983) at 169-170.**

There is no evidence in the record addressing Policy 38, although the potential service providers were identified by the applicant on a form provided by the County. Determination of whether the procedural and substantive requirements of Policy 38 have been satisfied is deferred to an administrative determination by the Planning Director in conjunction with the placement permitting decision.

Compliance with subsections (A) and (C) of Policy 38 can be proven by the existence of the appropriate service provider forms. The Planning Director determination of satisfaction of these requirements will require the exercise of judgment as to fact or interpretation of the Code. ORS 197.015(10)(A), (B)

**E. APPLICABLE STATE STATUTES, GOALS AND ADMINISTRATIVE RULES**

The provisions of state law governing county quasi-judicial decisions, found in ORS 197.763 and 215.416 apply to this proceeding. They have been fulfilled through the notice of, and conduct of, the hearing on this matter.

No other provisions in ORS Chapters 197 and 215 are applicable. No statewide planning goals and no Oregon Administrative Rules interpreting those goals apply to this quasi-judicial permitting proceeding.

**VI. ORDER AND CONDITIONS**

**A. SATISFACTION OF RELEVANT PROVISIONS OF MCC 11.15**

The applicants have satisfied the following applicable sections of the County Code and County Plan:

- MCC 11.15.6323(B)(1) — (4), as to flood elevation variance to .6315(B)
- MCC 11.15.6323(B)(1), (2), (4), as to flood-proofing variance to .6315(F)
- MCC 11.15.7705(C)
- MCC 11.15.7705(D)
- MCC 11.15.7705(E)
- MCC 11.15.8230(D)(1) — (4)
- Comprehensive Framework Plan Policy 37, Sections A through D

**B. DETERMINATIONS DEFERRED TO THE PLACEMENT PERMIT PROCEEDING**

The applicants must demonstrate compliance with the several additional standards and criteria from the County Code and Plan prior to siting the manufactured home on the property.

Compliance with the provisions listed below this paragraph, in the manner specified, does not require the exercise of legal or factual judgment and therefore the County's determination on these points does not require notice and opportunity for a hearing. ORS 197.015(10)(b)(A), (B)

**Review Standards Not Requiring Notice And Opportunity For Hearing**

- MCC 11.15.6315(A), if an unqualified certification is provided.
- MCC 11.15.6315(D), if an unqualified certification is provided.
- MCC 11.15.6315(H), if an unqualified certification is provided.
- MCC 11.15.7705(A), assuming unqualified evidence of date and presence of insignia.
- MCC 11.15.7705(F), assuming the terms "multisectional", "tip-out" or "expandable" do not require interpretation.
- MCC 11.15.7705(G), if an unqualified certification is provided.
- Plan Policy 38(A), assuming the existence of notification letters dated at least ten days prior to the hearing.
- Plan Policy 38(C), assuming the existence of notification letters dated at least ten days prior to the hearing.

Satisfaction of the standards listed below may require the exercise of legal or factual judgment. Consequently, the County must provide public notice of its decision on these matters and an opportunity for appeal. ORS 215.402(4), 215.416(1),(3), (11)(b).

**Review Standards Which May Require Notice And Opportunity For Hearing**

- MCC 11.15.6315(G) Minimizing infiltration of flood waters into water and sewage disposal systems.
- MCC 11.15.6323(D)(3) Minimizing the variance need to prevent infiltration of water into household utility facilities.
- Comprehensive Framework Plan Policy 37, Sections E through I.
- Comprehensive Framework Plan Policy 38, Sections B and D.

**C. CONDITIONS**

**1. Floor Elevation Of The House**

The interior floor elevation of the house shall be at least 34 inches above existing grade (i.e. interior floor elevation of approximately 207 feet) on an excavated and backfilled foundation, enclosed at the perimeter, as required by MCC 11.15.7705(C).

**2. Notification By Director Of Increased Insurance Rates And Risks To Life And Property**

The Planning Director shall provide the written notification to the applicants concerning increased insurance rates and increased risks to life and property, required by MCC 11.15.6323(D).

**3. Term Of Validity Of Flood Elevation And Flood-Proofing Variances**

The variance to MCC 11.15.6315(B), and the variance to MCC 11.15.6315(F), should it be finally approved, were granted on the basis of the physical condition of the principal resident, Ms. Dawn Scruggs, and the applicants' financial circumstances. Thus they are valid only during the term of Ms. Scruggs' occupancy.

In order to transfer occupancy to another person, new variances must be secured.

**IN THE MATTER OF HV 22-92:**

Signed: February 10, 1993



By Robert L. Liberty, Hearings Officer

Filed With the Clerk of the Board on February 11, 1993

(A tentative decision to approve was announced at the January 4, 1993 Public Hearing, and confirmed on February 1, 1993)

**Appeal to the Board of County Commissioners**

*Decisions of the Hearings Officer 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 to the record. Appeals must be filed within ten days after the Hearings Officer decision is submitted to the Clerk of the Board [ref. MCC 11.15.8260(A)(1)]. The appeal fee is \$300.00 plus a \$3.50-per-minute charge for a transcript of the initial hearing(s) [ref. MCC 11.15.9020(B)]. "Notice of Review" forms and instructions are available at the 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.*

*The Hearings Officer Decision on this item is tentatively scheduled for the Board of County Commissioners review at 9:30 a.m. on Tuesday, February 23, 1993 in Room 602 of the Multnomah County Courthouse. To appeal, a "Notice of Review" form and fee must be submitted to the County Planning Director on or before 4:30 pm. on Monday, February 22, 1993. For further information call the Multnomah County Planning and Development Division at 248-3043.*

Meeting Date: February 23, 1993

Agenda No.: P-3

(Above space for Clerk's Office Use)

AGENDA PLACEMENT FORM  
(For Non-Budgetary Items)

SUBJECT: CU 1-93 Decision

BCC Informal	<u>(date)</u>	BCC Formal	<u>February 23, 1993</u> (date)
DEPARTMENT	<u>DES</u>	DIVISION	<u>Planning</u>
CONTACT	<u>Sharon Cowley</u>	TELEPHONE	<u>2610</u>
PERSON(S) MAKING PRESENTATION	<u>Planning Staff</u>		

ACTION REQUESTED:

INFORMATIONAL ONLY       POLICY DIRECTION       APPROVAL

ESTIMATED TIME NEEDED ON BOARD AGENDA: 10 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):

CU 1-93 Review the Decision of the Hearings Officer of January 21, 1993, denying applicant's conditional use request to allow a non-resource related single family residence for property located at 13156 NW McNamee Road

*2/23/93 HEARING 3/23/93*

(If space is inadequate, please use other side)

SIGNATURES:

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

Or

DEPARTMENT MANAGER *JC BH Wallia* \_\_\_\_\_

(All accompanying documents must have required signatures)

CLERK OF  
 COUNTY ENGINEER  
 1993 FEB 17 PM 9:05  
 MULTNOMAH COUNTY  
 OREGON

#1

**PLEASE PRINT LEGIBLY!**

MEETING DATE 2/23/93

NAME JEFF BACHRACH

ADDRESS ATTY REPRESENTING APPLICANT

STREET JAMES MCGREW

CITY \_\_\_\_\_ ZIP CODE \_\_\_\_\_

I WISH TO SPEAK ON AGENDA ITEM # CU1-93  
CU2-93

SUPPORT \_\_\_\_\_ OPPOSE \_\_\_\_\_  
SUBMIT TO BOARD CLERK

#2

**PLEASE PRINT LEGIBLY!**

MEETING DATE 2/23/93

NAME Arnold Rochlin

ADDRESS P.O. Box 83645

STREET \_\_\_\_\_

CITY Portland, OR ZIP CODE 97283-0645

I WISH TO SPEAK ON AGENDA ITEM # P3

SUPPORT the denial OPPOSE appeal  
SUBMIT TO BOARD CLERK



**MULTNOMAH COUNTY OREGON**

DIVISION OF PLANNING & DEVELOPMENT / 2115 S.E. MORRISON / PORTLAND, OREGON 97214

**DIVISION OF PLANNING AND DEVELOPMENT**

**Board Planning Packet Check List**

File No. C41-93

BOARD OF  
COUNTY COMMISSIONERS  
1993 FEB 17 AM 9:04  
MULTNOMAH COUNTY  
OREGON

Agenda Placement Sheet      No. of Pages 1

Case Summary Sheet      No. of Pages 2  
 Previously Distributed      \_\_\_\_\_

Notice of Review      No. of Pages 1  
\*(Maybe distributed at Board Meeting)  
 Previously Distributed      \_\_\_\_\_

Decision      No. of Pages 16  
 (Hearings Officer/Planning Commission)  
 Previously Distributed      \_\_\_\_\_

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



## DIVISION OF PLANNING AND DEVELOPMENT

### Board Planning Packet Check List

File No. C 41-93

#### I. Materials Distributed to the Board

- Agenda Placement Sheet ( 1 Pages)
- Case Summary Sheet ( 2 Pages)
- Notice of Review Application ( 1 Pages)
- Decision ( 16 Pages)  
(Hearings Officer/Planning Commission)

#### II. Materials Available Upon Request

- Minutes ( 2 Pages)
- Transcript ( Pages)
- Applicant's Application and Submittals ( 35 Pages)
- Case Correspondence ( Letters)
- Slides ( Slides)
- Exhibits/Maps ( Exhibits)  
( Maps)
- Other Materials ( )



TIME 9:30 am

CASE NAME: McGREW NON-RESOURCE SFR

NUMBER CU 1-93

1. Applicant Name/Address: James McGrew  
3706 SW Nevada Ct.  
Portland, OR 97219

2. Action Requested by applicant:

Conditional Use approval for a non-resource related residence in the MUF-19 district.

3. Staff Report Recommendation (January 4, 1993):

Approve subject to conditions

4. Hearings Officer Decision (January 21, 1993):

Denied

5. If recommendation and decision are different, why?

- (1) Lot of record issue (see issue 2 below) was not raised until public hearing. Initial research by Staff had indicated that the parcel was a legal lot.
- (2) Hearings Officer reached a different conclusion than Staff concerning the compatibility of the proposed dwelling with surrounding resource management activities and the effect on the surrounding land use pattern.

**ISSUES**

*(who raised them?)*

- 1. New dwellings would alter the stability of the land use pattern in the area by being a precedent for approval of other non-resource dwellings in the vicinity *(raised by Chris Foster who testified in opposition of the request)*.
- 2. Parcel may not be a legal Lot of Record *(raised by Arnold Rochlin who testified in opposition to the request)*.
- 3. Parcel has no developed water source so is not in compliance with code requirements and Comprehensive Plan policies *(raised by Arnold Rochlin)*.

Do any of these issues have policy implications? Explain.

Issue 1: The area in question has been rezoned from MUF to CFU. The CFU district includes a requirement that there must be 11 other lots and 5 houses within 160 acres for approval of a non-resource residence. Should

ACTION REQUESTED OF BOARD	
<input type="checkbox"/>	Affirm Plan.Com./Hearings Officer
<input checked="" type="checkbox"/>	Hearing/Rehearing <sup>3/23/93</sup>
<input type="checkbox"/>	Scope of Review
<input type="checkbox"/>	On the record
<input type="checkbox"/>	De Novo
<input checked="" type="checkbox"/>	New Information allowed ?

any consideration be given to whether approval of the present application (being considered under MUF criteria) would affect the ability to develop other parcels in the future (which would be considered under the CFU criteria)?

Issue 2: No policy implication.

Issue 3: The County recognizes that there is a substantial cost involved in drilling a well, and many applicants are unwilling to go to that expense until they have received approval for a dwelling. Policy has been to allow the decision of whether there is an adequate water supply to be delayed, usually until the time of application for building permits.



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

2-21-93  
 filing  
 fee  
 \$ 482  
 Saturday  
 to file  
 notice  
 of Review  
 4:30 pm  
 Tuesday -  
 2-8-93  
 JCS

**NOTICE OF REVIEW**

5706 11 482-33 35  
 2301 0700 2/05/90 482-33 1

1. Name: McGrew, \_\_\_\_\_, James

2. Address: 3706 SW Nevada Ct., Portland, OR 97219

3. Telephone: ( \_\_\_\_\_ ) 246 - 3165

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

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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

CU 1-93, denial of a conditional use for  
a non-resource dwelling

6. The decision was announced by the (Hearings Officer) Planning Commission on 28 Jan, 1993

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

I am the applicant.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

*Please return this original form*

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

The Hearings Officer misapplied applicable code provisions  
and other legal standards in denying the conditional use request.

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 Hearings Officer raised issues and cited lack of evidence  
in his decision to which the applicant could not respond.  
Because the staff recommended approval, the applicant believed  
sufficient evidence had been submitted. Failure to allow the  
applicant to present a full and fair case now would be  
prejudicial against the applicant.

Signed: James M. Grew Date: 8 Feb 93

For Staff Use Only		
Fee:		
Notice of Review =	\$300.00	
Transcription Fee:		
Length of Hearing	<u>52 min</u> x \$3.50/minute =	\$ <u>182.00</u>
Total Fee =	\$ <u>482.00</u>	
Received by:	Date:	Case No. <u>021-93</u>

BEFORE THE LAND USE HEARINGS OFFICER  
FOR MULTNOMAH COUNTY, OREGON

Regarding applications by James McGrew for conditional )  
use permits for a non-resource related dwellings in the )  
MUF-19 zone at 13156 and 13160 NW McNamee Road ) CU 1-93 and CU 2-93  
in unincorporated Multnomah County, Oregon ) (McGrew)

DECISION

CU 1-93 and CU 2-93  
(McGrew)

I. SUMMARY

The applicant requests approval of two conditional use permits that would allow a non-resource related single family detached dwelling to be built on each of two adjoining 6-acre and 4.76-acre "lots of record" in the MUF-19 zone. The lots also are subject to slope hazard regulations because of their steep slope. The applicant will provide access to the two dwellings by partially relocating and extending an existing private road that intersects McNamee Road about 500 feet west of the site. Each dwelling will be served by a private well and sanitation system.

Hearings officer Larry Epstein conducted a public hearing on January 4, 1993 to consider the applications. County staff recommended conditional approval. The applicant accepted the recommended conditions of approval. Two members of the public testified in opposition, arguing the applications fail to maintain the stability of the land use pattern of the area, fail to comply with Comprehensive Plan policy 37 requirements for proof an adequate water system exists, and fail to adequately address certain fire safety issues. Also disputed was whether the properties in question are legal lots of record. The hearings officer held open the public record for seven days to receive additional information about the status of the properties as lots of record.

CASE:	<u>CU 1-93</u>	<u>CU 2-93</u>
ADDRESS:	13156 NW McNamee Road	13160 NW McNamee Road
LEGAL:	Tax lot '52' Both in Section 32, T2N-R1W, WM, Multnomah County	Tax lots '44' and '53'
SITE SIZE:	4.76 acres	6 acres
OWNER:	Elizabeth J. McGrew	James McGrew
APPLICANT:	James McGrew for both applications	

APPLICABLE LAW: Multnomah County Code (MCC) 11.15.2162, *et seq.* (MUF District); Comprehensive Plan policies 12 (Multiple Use Forest), 13 (Air and Water Quality and Noise), 14 (Development limitations), 22 (Energy Conservation), 37 (Utilities), 38 (Facilities) and 40 (Development Requirements)

STAFF RECOMMENDATION: Conditionally approve both conditional uses

HEARINGS OFFICER DECISION: Denied

*Hearings Officer Decision --- CU 1-93 and CU 2-93 (McGrew)*

PARCEL 2  
38.00 Ac.

PARCEL 3  
38.00 Ac.

**Zoning Map**

**Case #: CU 1-93**  
**Location: 13156 NW McNamee Road**  
**Scale: 1 inch to 600 feet (approximate)**  
 Shading indicates subject property  
**SZM 81; Section 32, T.2N., R.1W., WM.**

'11'  
253.85 Ac.

'2'  
20.0 Ac.

**MUF -38**

**MUF -19**  
'3'  
20.0 Ac.

'10'  
3.13 Ac.

'3'  
18.62 Ac.

'47'  
9.00 Ac.

'53'  
3.00 Ac

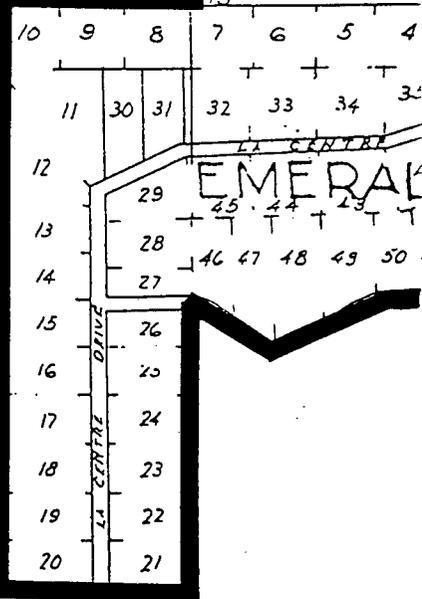
'44'  
3.00 Ac

'52'  
4.76 Ac

'31'  
2.60 Ac.

'40' **MUF -19**  
16.32 Ac

'17'  
19.74 Ac.



'1'  
55 Ac.

'6'  
80.00 Ac.

**MUF -38**

'51'  
5.88 Ac.

'2'  
13.32 Ac.

**MUF -38**

'56'  
7.38 Ac.

'45'  
11.82 Ac.

3

2

'48'  
4.40 Ac.

'9'  
10.00 Ac.

'24'  
4.80 Ac.

'23'  
30.00 Ac.

'19'  
12.76 Ac.

**MUF -19**

'38'  
33.86 Ac.

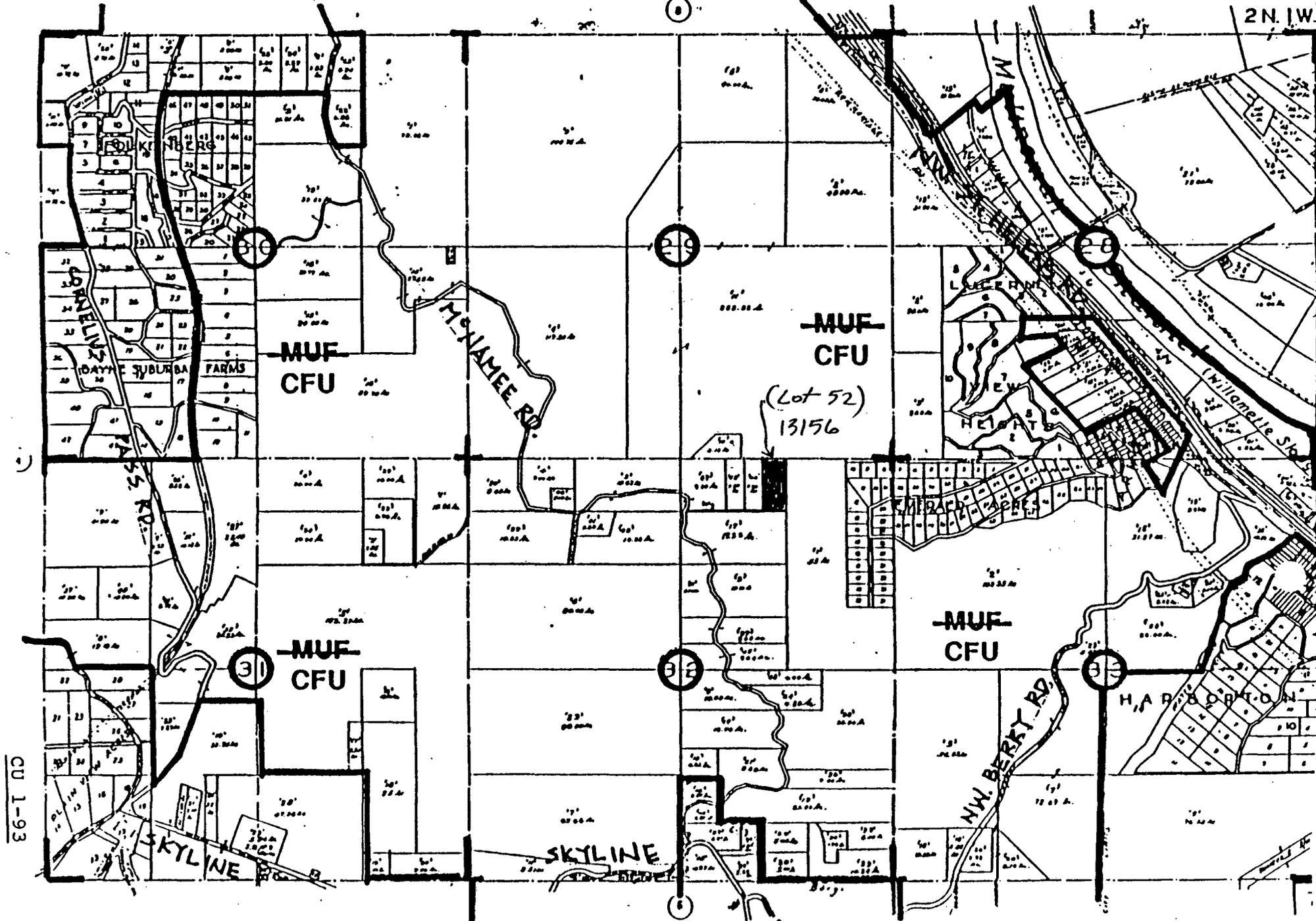
0 2000 FT. 4000 FT. 1 MILE



SECTION 28, 29, 30, 31, 32, 33

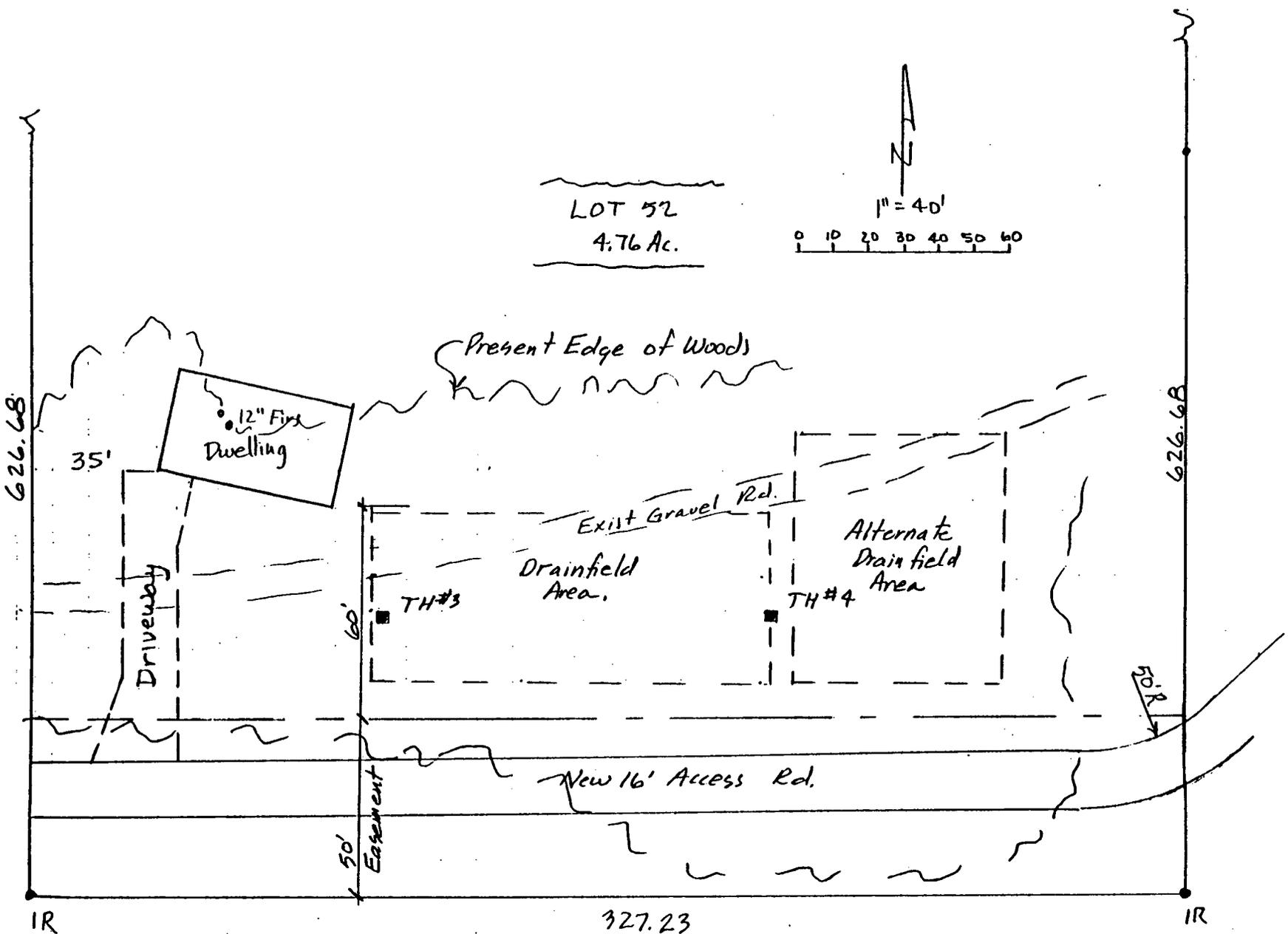
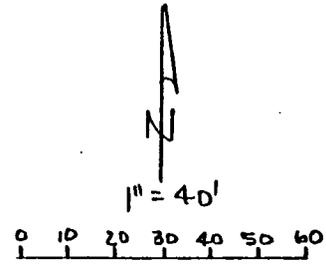
T.2N. R.1W

APPROXIMATE SCALE



CU 1-93

LOT 52  
4.76 Ac.



IR

327.23

IR

CU 1-93

19156 NW McNamee Rd.

SITE PLAN

Elizabeth J. McGrew  
45 Eagle Crest Dr  
Lake Oswego, OR

JRM  
10/23/92

PARCEL 2  
38.00 Ac.

1 2 9 1

**Zoning Map**  
 Case #: CU 2-93  
 Location: 13160 NW McNamee Road  
 Scale: 1 inch to 600 feet (approximate)  
 Shading indicates subject properties  
 SZM 81; Section 32, T.2N., R.1W., WM.

11'  
253.85 Ac.

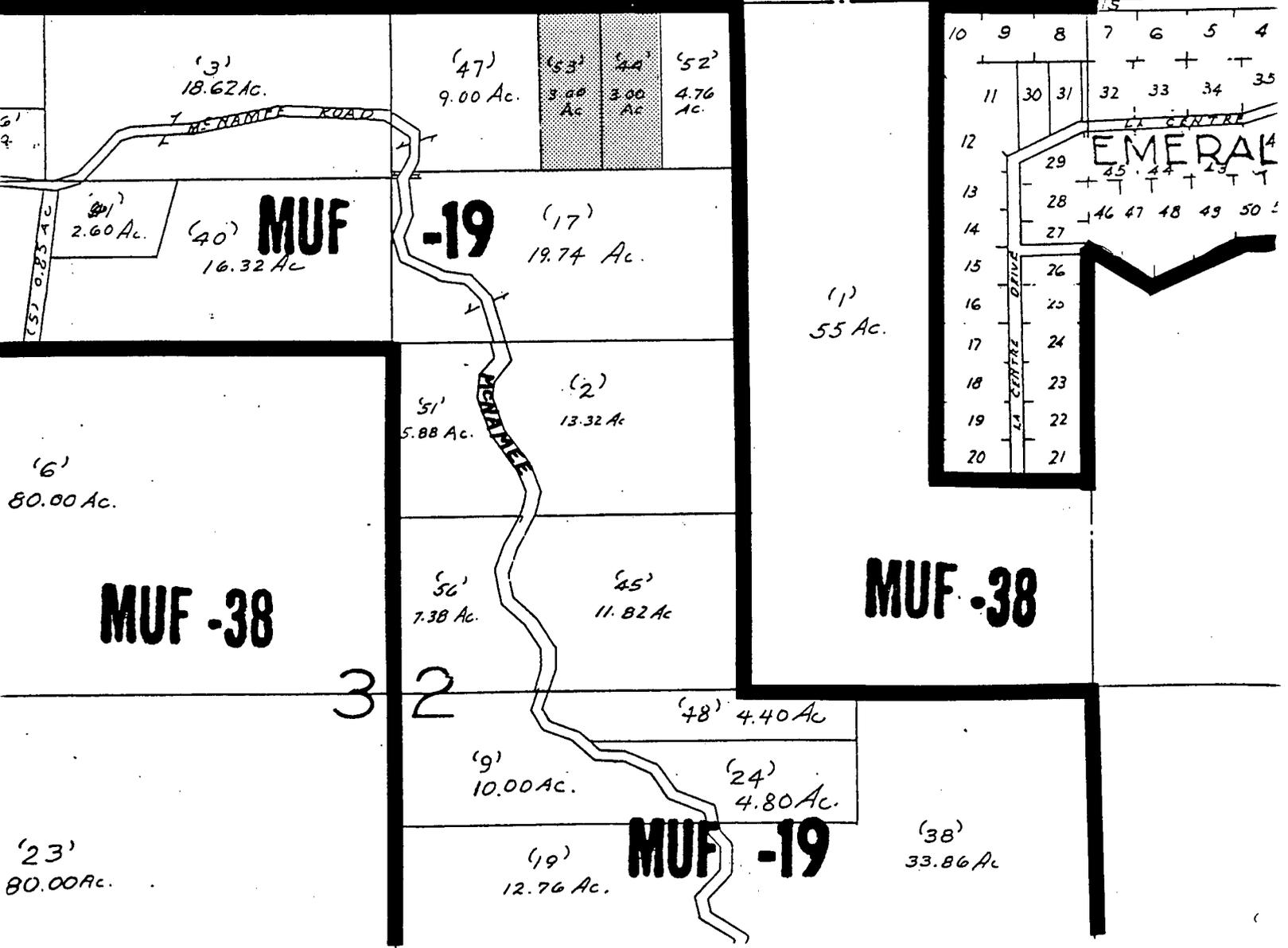
(2)  
20.0 Ac.

PARCEL 3  
38.00 Ac.

1  
**MUF -38**

**MUF -19**  
(3)  
20.0 Ac.

(10)  
3.13 Ac.



(3)  
18.62 Ac.

(47)  
9.00 Ac.

(53)  
3.40 Ac.

(44)  
3.00 Ac.

(52)  
4.76 Ac.

(81)  
2.60 Ac.

(40) **MUF -19**  
16.32 Ac.

(17)  
19.74 Ac.

10	9	8	7	6	5	4
11	30	31	32	33	34	35
12			29	EMERALD		
				45	44	43
13				28		
					46	47
14						48
15						
16						
17						
18						
19						
20						

(1)  
55 Ac.

(6)  
80.00 Ac.

**MUF -38**

(2)  
13.32 Ac.

(56)  
7.38 Ac.

(45)  
11.82 Ac.

**MUF -38**

3 2

(48) 4.40 Ac.

(9)  
10.00 Ac.

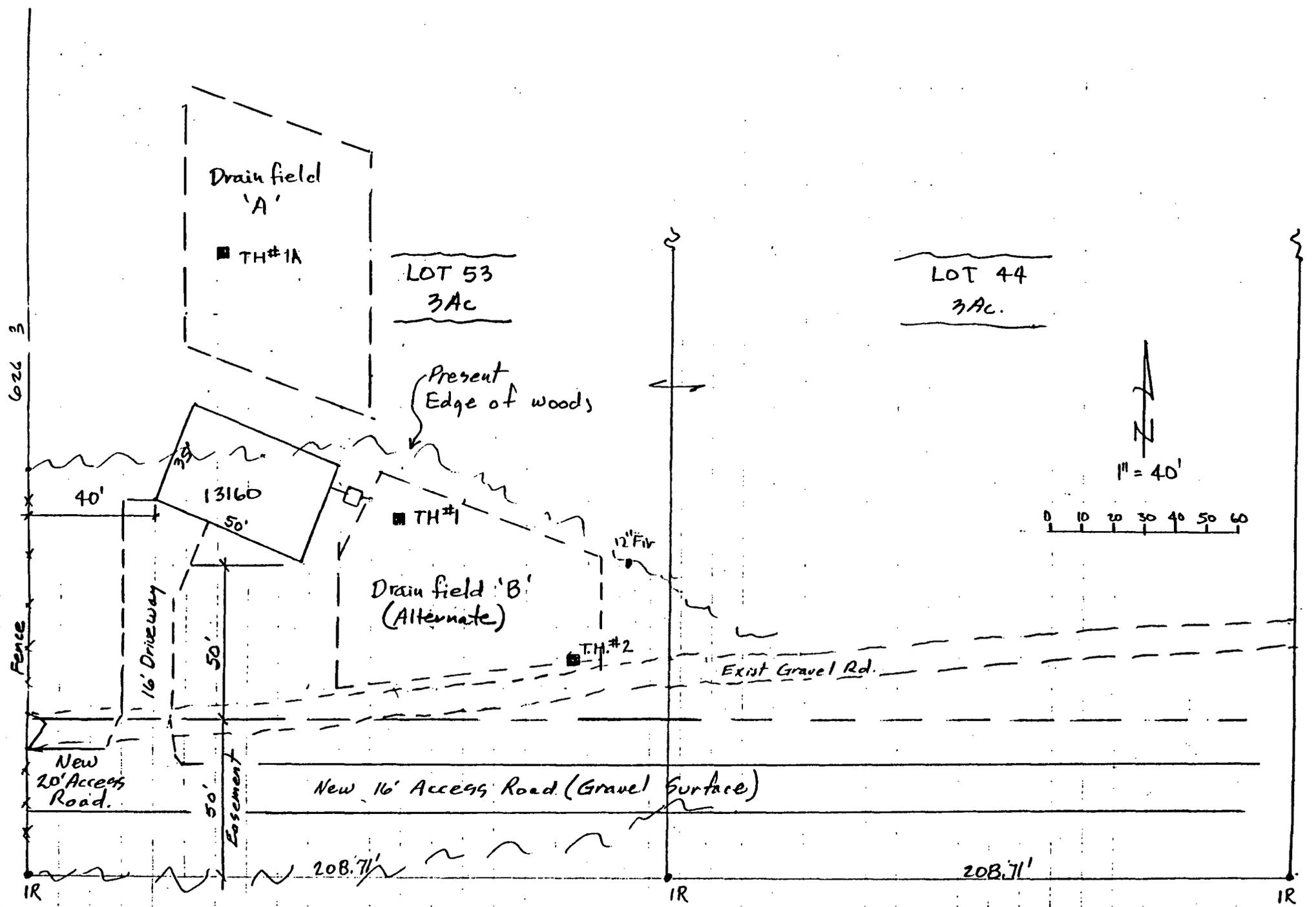
(24)  
4.80 Ac.

(23)  
80.00 Ac.

**MUF -19**

(19)  
12.76 Ac.

(38)  
33.86 Ac.



6022 3

Fence

CU 2-93

Drain field 'A'

TH#1A

LOT 53  
3Ac

LOT 44  
3Ac.

Present Edge of woods

40'

13160

50'

TH#1

12' Fir

Drain field 'B'  
(Alternate)

TH#2

Exist Gravel Rd.

16' Driveway

50'

Easement

New 20' Access Road.

New 16' Access Road (Gravel Surface)

208.71'

208.71'



0 10 20 30 40 50 60

SITE PLAN

13160 NW McNamee Rd

James R & Elizabeth L McGrew  
3706 SW Nevada Ct  
Portland OR 97219

JRM  
10/23/92

## II. FINDINGS ABOUT SITE AND SURROUNDINGS

### A. *Site size and shape :*

Both parcels are rectangular. The parcel for CU 1-93 is 327 feet east-west and 626 feet north-south and contains 4.76 acres. The parcel for CU 2-93 is 417 feet east-west and 626 feet north-south and contains 6 acres.

### B. *Site location :*

The parcel for CU 2-93 adjoins the west side of the parcel for CU 1-93 and is about 500 feet east of NW McNamee Road. The parcel for CU 1-93 is about 950 feet east of NW McNamee Road.

### C. *Existing uses and structures :*

The site is not developed with structures. It consists principally of conifer forest.

### D. *Proposed uses and structures :*

1. The applicant proposes to develop a single family detached dwelling on each lot of record. Each will have a private well and sanitary waste system.
2. The homesite for CU 1-93 is situated about 35 feet from the west lot line or about 985 feet east of NW McNamee Road. It is about 110 feet from the south lot line or about 60 feet from the north edge of a private road easement over the south 50 feet edge of the lot. It is more than 200 feet from east and north lot lines.
3. The homesite for CU 2-93 is situated about 40 feet from the west lot line or about 540 feet east of NW McNamee Road. It is about 100 feet from the south lot line or about 50 feet from the north edge of the private road easement. It is more than 200 feet from east and north lot lines.
4. To provide vehicular access, the applicant will improve a 16- to 20-foot wide private road with a gravel surface in the 50-foot easement from McNamee Road and across the south edges of the two lots of record and the lots between the site and McNamee Road. A narrow gravel road already exists west of the site and crosses the two lots of record north of the road easement. The applicant will relocate the improved section of road so it is roughly centered in the easement.

### E. *Existing and proposed vegetation :*

Most of the site is forested except where the gravel road crosses the site. The applicant will have to remove trees from a relatively small area on the periphery of the treed area for the homesite and septic system drainfield for CU 1-93. More trees will have to be removed from the site for CU 2-93 to accommodate the primary drainfield, because the drainfield area is now entirely forested based on the preliminary site plan. More trees will have to be removed to extend the private road across the site for CU 1-93.

### F. *Geology and soils :*

1. Based on the Geologic and Slope Hazard Maps (September, 1978), the site is subject to geologic or slope hazards. Based on the USDA SCS General Soil Map for Multnomah County (Sheet 6, August, 1974), the site contains two soil types.

a. The majority of the site consists of Goble silt loam with slopes of 30 to 60 percent. The SCS describes this soil as being steep, moderately drained soil on convex side slopes of ridgetops. Permeability is moderate above the fragipan and slow in the fragipan. Runoff is rapid and erosion potential is high. The winter water table is within a depth of 4 feet. The soil has a Douglas fir site index of 145 to 155, indicating it is productive. The main limitations for timber production are the slowly permeable fragipan at a depth of 30 to 45 inches and the resultant perched water table from December through April. Some windthrow is possible because of restricted rooting depth.

b. The remainder of the site consists of Cascade silt loam on slopes of 15 to 30 percent. The SCS describes this soil as being somewhat poorly drained soil on the convex side slopes of broad rolling ridgetops. Permeability is slow. Runoff is medium and erosion hazard is high. The winter water table is at a depth of 18 to 30 inches. The soil has a Douglas fir site index of 150 to 165, indicating it is productive. The main limitations for timber production are the slowly permeable fragipan at a depth of 20 to 30 inches and the resultant perched water table from December through April. Some windthrow is possible because of restricted rooting depth.

2. Based on the site plan accompanying the Land Feasibility Study application, the site slopes from a high of about 980 feet above mean sea level (msl) along the west edge of tax lot '53' and south edge of all three tax lots to a low of about 850 feet msl at the northwest corner of tax lot '52'. The site slopes down to the north-northeast.

*G. Plan designation and zoning :*

The Comprehensive Plan Map designates the site and surrounding property as Multiple Use Forest.<sup>1</sup> The site and land to the south and west is zoned MUF-19 (Multiple Use Forest-19). Land to the east and north is zoned MUF-38 (Multiple Use Forest-38). The site also is subject to the Hillside Development and Erosion Control subdistrict.

*H. Public services and utilities :*

1. The site is not served by public water and sewer systems. The applicant proposes to develop a well and subsurface sanitation system for each dwelling. The applicant argues that a well can be developed, based on the existence of three wells on nearby properties and the logs for those wells. The applicant argues a sand mound sanitation system can be developed on each lot of record, based on Land Feasibility Studies 267-92 and 268-92 and the written comment from Mike Ebeling dated November 6, 1992.

2. The site is in Multnomah County Rural Fire Protection District 20. The District Fire Chief advised the County that there is adequate water pressure and flow at the site for fire fighting purposes. Water for fire fighting is provided by 3000 gallon tank trucks. See the written comment dated November 9, 1992. The State Fire Marshal recommended certain measures regarding fire access if the application is approved. See the Special Inspection report dated October 23, 1992.

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<sup>1</sup> Although a plan amendment enacted after the application was filed changed the designation of the site and surrounding area to Commercial Forest Use, and corresponding zoning changes were enacted to implement the plan designation, the application is subject to the plan designation and zoning that applied when the application was filed, based on ORS 215.428(3).

3. Adequate police service to the site can be provided by the City of Portland, based on the written comment from Sgt. Baxter dated November 6, 1992. Adequate school services can be provided by the Portland School District, based on the written comment from Donald Jeffrey dated November 6, 1992.

4. Underground power and telephone utilities are situated in the private road west of the subject site, based on the site plan accompanying the Land Feasibility Study application.

*I. Streets and access :*

The site is 500 feet east of NW McNamee Road. Access is provided by means of a private road within a 50-foot easement. See also finding II.D.4.

*J. Surrounding land uses :*

1. Within a 160-acre (i.e., 1/4-mile) square centered on the site, there are three single family dwellings. Immediately northwest of the site is a non-resource related single family home on a 3.13-acre parcel. Immediately south of the site is a roughly 20-acre lot of record that is developed with two single family dwellings situated near the McNamee Road frontage. The owner of that parcel filed a written statement dated November 9, 1992 in which she states that she will not be spraying, burning, or blasting on her property; therefore, she concludes the proposed dwellings will not affect her property.

2. There is a forested 55-acre parcel east of the site for CU 1-93. It is owned by James McGrew and others. Further east is a large, mostly undeveloped subdivision known as Emerald Acres.

3. There is a largely forested 253-acre parcel north of the site owned by the Linnton Rock Company. That parcel is part of a 283-acre site, the northeast 114 acres of which is developed as a rock quarry. The president of Angell Brothers, Inc., which operates the quarry, submitted a written statement dated November 18, 1992, in which he states that the unmined portion of the quarry property recently was logged and replanted; that no aerial spraying, large scale burning or chemical applications are planned on that property; and that blasting that occurs occasionally on the mining site is situated far enough away from the proposed CU site so that it is not likely to be a problem for residents of the CU site.

4. There is a forested 9-acre parcel west of the site for CU 2-93. The owner of that parcel filed a written statement dated November 17, 1992 in which she states that she does not anticipate aerial spraying, large slash burns, or application of chemicals to her property; therefore, she concludes forest practices on her property will not affect the proposed dwellings.

5. Land along McNamee Road generally is divided into parcels smaller than 20 acres; there are 14 such parcels within 1/4-mile of the site; four of those are developed with dwellings, including the 3 dwellings noted in finding II.J.1 above.

6. There was testimony that a wildlife easement and management plan applies to 459 acres northwest of the site, but other evidence of such an easement was not offered.

### III. APPLICABLE APPROVAL STANDARDS

#### A. Multnomah County Code (MCC) title 11.15 (Zoning).

1. MCC 11.15.2172(C) allows a non-resource related single family dwelling in the MUF-19 zone if the applicant shows:

a. *The lot size shall meet the standards of MCC 11.15.2178(A), .2180(A) to (C), or .2182(A) to (C).*

(1) MCC 11.15.2182(A)(2) recognizes as a "lot of record" a parcel of land:

(a) *For which a deed or other instrument creating the parcel was recorded with the Department of General Services or was in recordable form prior to February 20, 1990;*

(b) *Which satisfied all applicable laws when the parcel was created;*

(c) *Does not meet the minimum lot size requirements of MCC .2178, (i.e., 19 acres); and*

(d) *Which is not contiguous to another substandard parcel or parcels under the same ownership. See also MCC 11.15.2182(B).*

b. *The land is incapable of sustaining a farm or forest use, because, among other reasons, it is a lot of record under MCC 11.15.2182(A) through (C) and is ten acres or less 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.*

d. *The dwelling will not require public services beyond those existing or programmed for the area.*

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

f. *The residential use development standards of MCC 11.15.2194 will be met.*

2. The residential use development standards of MCC 11.15.2194 require the following:

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

(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 11.15.2178(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 limitation of subpart #3 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 for a public road; or*
  - (2) The location of dwelling(s) of adjacent lot(s) at a lesser distance which allows for the clustering of dwellings or the sharing of access...*
- j. The dwelling shall be located outside a big game winter wildlife habitat area as defined by the Oregon Department of Fish and Wildlife or that agency has certified that the impacts will be acceptable.*

*B. Multnomah County Comprehensive Plan Policies.*

*1. Policy 12 (Multiple Use Forest Area) provides:*

*The County's policy is to designate and maintain as Multiple Use Forest, land areas which are:*

- a. Predominantly 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 predominantly commercial ownerships;*
- c. Provide (sic) 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 use along with non-forest use; such as agriculture, service uses, and cottage industries; provided that such uses are compatible with adjacent forest lands.*

2. Policy 13 (Air and Water Quality and Noise) provides (in relevant part):

*It is the county's policy to require, prior to approval of a legislative or quasi-judicial action, a statement from the appropriate agency that all standards can be met with respect to air quality, water quality and noise levels.*

3. Policy 14 (Development Limitations) provides:

*The County's policy is to direct development and land form alterations away from areas with development limitations except upon a showing that design and construction techniques can mitigate any public harm or associated public cost, and mitigate any adverse effects to surrounding persons or properties. Development limitations areas are those which have any of the following characteristics:*

- a. Slopes exceeding 20%;*
- b. Severe soil erosion potential;*
- c. Land within the 100-year flood plain;*
- d. A high seasonal water table within 0-24 inches of the surface for 3 or more weeks of the year;*
- e. A fragipan less than 30 inches from the surface;*
- f. Land subject to slumping, earth slides or movement.*

4. Policy 22 (Energy Conservation) provides (in relevant part):

*The county shall require a finding prior to approval of a legislative or quasi-judicial action that the following factors have been considered:*

- a. The development of energy-efficient land uses and practices;*
- b. Increased density and intensity of development in urban areas...*
- c. An energy-efficient transportation system linked with increased mass transit, pedestrian and bicycle facilities;*
- d. Street layouts, lotting patterns and designs that utilize natural environmental and climactic conditions to advantage...*

5. Policy 37 (Utilities) requires the county to find, prior to approval of a legislative or quasi-judicial action, that:

- a. The proposed use can be connected to a public sewer and water system, both of which have adequate capacity; or*

*b. The proposed use can be connected to a public water system, and the Oregon Department of Environmental Quality (DEQ) will approve a subsurface sewage disposal system on the site; or*

*c. There is an adequate private water system, and the Oregon DEQ will approve a subsurface sewage disposal system; or*

*d. There is an adequate private water system and a public sewer with adequate capacity.*

*e. There is adequate capacity in the storm water system to handle the run-off; or*

*f. The run-off can be handled on the site or adequate provisions can be made; and*

*g. The run-off from the site will not adversely affect the water quality in adjacent streams, ponds or lakes or alter the drainage on adjoining lands.*

*h. There is an adequate energy supply to handle the needs of the proposal and the development level projected by the plan; and*

*i. Communications facilities are available.*

6. Policy 38 (Facilities) requires the county to find, prior to approval of a legislative or quasi-judicial action, that:

*a. The appropriate school district has had an opportunity to review and comment on the proposal.*

*b. There is adequate water pressure and flow for fire fighting purposes; and*

*c. The appropriate fire district has had an opportunity to review and comment on the proposal.*

*d. The proposal can receive adequate local police protection in accordance with the standards of the jurisdiction providing police protection.*

7. Policy 40 (Development Requirements) requires the county to find, prior to approval of a legislative or quasi-judicial action, that:

*a. Pedestrian and bicycle path connections to parks, recreation area and community facilities will be dedicated where appropriate and where designated in the bicycle corridor capital improvements program and map.*

*b. Landscaped areas benches will be provided in commercial, industrial and multiple family developments, where appropriate.*

*c. Areas for bicycle parking facilities will be required in development proposals, where appropriate.*

## IV. HEARING AND RECORD

### A. Hearing.

Hearings Officer Larry Epstein received testimony at the public hearing about this application on January 4, 1993. The hearings officer held open the public record for seven days to receive additional information about the status of the properties as lots of record. A record of that testimony is included herein as Exhibit A (Parties of Record), Exhibit B (Taped Proceedings), and Exhibit C (Written Testimony). These exhibits are filed at the Multnomah County Department of Environmental Services.

### B. Summary of selected relevant testimony.

1. Sandy Mathewson testified for the County and summarized the staff report and recommendation.

2. James McGrew testified on his own behalf. He accepted the staff report and recommendation without objection. He asked what would be involved in the planning director's review of the adequacy of the proposed water systems. Ms. Mathewson clarified that that review would be limited to the issue of the water system and would not involve other issues relating to the conditional uses. Mr. McGrew testified that there are no perennial water sources on adjoining property.

3. Chris Foster and Arnold Rochlin testified against the conditional use permit.

a. Mr. Foster introduced exhibits into the record for both CU applications, including soils information, a map illustrating dwellings in the vicinity of the site, a portion of the findings by the planning commission regarding PR 7-92 and CU 14-92 (the applications for a plan amendment and conditional use for the Angell Brothers quarry), a May 24, 1991 research report by DLCD, information about a conservation easement allegedly for nearby land, and a copy of *Champion International v. Douglas County* (16 Or LUBA 132 (1987)). He argued that approval of the conditional uses will be a precedent for other non-resource related dwellings in the vicinity, particularly for lots in the western portion of Emerald Acres; therefore, the conditional uses do not maintain the stability of the land use pattern of the area, because they will lead to an increase in non-resource related dwellings in the vicinity. He argued this is particularly important in this case, because the lots involved are distant from such major roads as McNamee Road.

b. Mr. Rochlin argued that the proposed conditional uses violate Comprehensive Plan policy 37, because neither lot of record contains an adequate water system. He also disputed whether the lots in question are lots of record, because the lots did not abut a public street when created and access by means of a private road was not approved; therefore, the lots did not comply with applicable laws when created. He also disputed whether the record contains sufficient evidence to address MCC 11.15.2194(B), because the record does not indicate whether there is a perennial water source on adjoining land. He also argued the proposed dwellings could conflict with a resource use on adjoining land, i.e., quarrying on the property north of the site, if that quarry is allowed to expand. He noted the Board of Commissioners would consider such an application in February.

4. At the request of the hearings officer, Ms. Mathewson provided a memorandum dated January 8, 1993 to address the issue of whether the lots in question qualify as lots of record. That memorandum offers the following information:

a. The site was zoned SR (Suburban Residential) from 1966 until October 6, 1977. The SR district regulations were in section 3.15 of the Multnomah County Zoning Ordinance. The minimum lot size in the district was 10,000 to 40,000 square feet depending on the circumstances (subsection 3.1531). Subsection 3.1536 provided as follows:

*All lots in this district shall abut a street, or shall have such other access held suitable by the Planning Commission.<sup>2</sup>*

Subsection 3.1539 provided as follows:

*These requirements shall apply to lots that abut a future street as indicated on an approved and recorded subdivision plat.*

b. In 1966, the site was part of a 39-acre parcel identified as tax lot '17'. A survey dated September 12, 1971 divided tax lot '17' into one 2-acre and six 3-acre parcels. It is unknown whether deeds or legal descriptions for these lots were recorded at that time. Two of these seven lots later were identified as tax lots '44' and '53' (i.e., the site for CU 2-93). Two others were combined as identified as tax lot '52' (i.e., the site for CU 1-93).

c. The 1971 survey did not create legal lots under the County Subdivision Ordinance in effect at that time, because division of a parcel into four or more lots for transfer or sale within a given calendar year was required to be approved by the planning commission. No such approval was applied for or given. However, because the lots created by this survey were not transferred, the survey may be irrelevant to whether the lots in question are lots of record.

d. A recorded Contract of Sale dated July 24, 1974 conveyed an 11-acre portion of what was tax lot '17' to Elizabeth J. McGrew, Elizabeth L. McGrew and James McGrew. A recorded Assignment of Interests and Division of Property dated October 24, 1975 divided this 11-acre parcel into three parcels. These three parcels are now identified as tax lots '44', '52' and '53'. Because the 1974 and 1975 contract and assignment did not create four or more parcels in a given calendar year, they were not subject to the subdivision ordinance.

e. The easement that provides access to the site was included in the 1974 contract. However, no application was made to the planning commission for approval of that access, and no such approval was granted. Therefore, the issue arises whether the 1974 contract and 1975 assignment complied with subsection 3.1536. Ms. Mathewson suggests that subsection 3.1536 should be read in conjunction with subsection 3.1539, so that the former applies only if the lots abut a future street indicated on an approved and recorded subdivision plat. If that is how section 3.153 is construed, then the lots did not violate subsection 3.1536 when created, because there is no subdivision plat for the land adjoining the site. Ms. Mathewson also suggests 3.1536 should not apply based on the purpose statement for the SR district, which provided:

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<sup>2</sup> Ms. Mathewson did not provide a definition of the term "street" as it existed at that time. The hearings officer takes official notice that the term is defined in the current zoning ordinance to mean "a public way which provides vehicular and pedestrian access to adjacent properties.." (emphasis added) The Subdivision Ordinance in 1974-75 defined "street" to mean "a right of way ..." The hearings officer assumes that the term "street" would have been similarly defined by the Zoning Ordinance in 1974-75, and the easement in question would not have been considered a public way or right of way, because it was a private easement.

*No provision of this section shall regulate lands used for grazing, agriculture, horticulture or for the growing of timber.*

She reasons that, because the site was used for growing of timber, it could be divided without regard for the regulations of the district.

## V. EVALUATION OF REQUEST

### A. Compliance with MCC 11.15 (Zoning).

1. The first issue is whether the lots in question qualify as "lots of record" as defined by MCC 11.15.2182. If they are not, then the applications fail to comply with MCC 11.15.2172(C)(1).

a. The first sub-issue is whether the regulations of the SR district applied to the land division that created the subject lots.

(1) If, as suggested by County staff, the district did not apply because the land in question was used for growing timber, then the fact that the land division did not comply with subsection 3.1536 was irrelevant.

(2) Generally the purpose statement of a zoning district does not limit the application of the district; rather, it describes the legislative intent for the district. Therefore, as a general matter it is not reasonable to construe the SR regulations to be irrelevant to the land division in question.

(3) Even assuming the SR regulations did not apply to use of land used for growing timber, that does not mean it did not apply to the division of that land. Division of the land is not a use issue. Therefore, the hearings officer finds that divisions of land in the SR zone were subject to the regulations of that zone.

b. The second sub-issue is whether the lots in question comply with subsection 3.153.

(1) If, as suggested by County staff, subsection 3.1536 applies only if triggered by subsection 3.1539, then whether the lots created in 1974 and 1975 abutted a street is irrelevant to whether they were legally created.

(2) The hearings officer finds that subsection 3.1536 is ambiguous. It is not clear from the plain meaning of the words whether subsection 3.1536 applies if the lot does not abut a future street as indicated on an approved and recorded subdivision plat. Although County staff offer suggestions, they are unable to "positively conclude that there were any land division requirements in the SR district that had to be met." Therefore, the hearings officer must construe those sections.

(3) If subsection 3.1539 has the meaning suggested by County staff, then other provisions of subsection 3.153 would not apply except where the lot in question abuts a future street on an approved and recorded plat. Those other regulations address site size (subsection 3.1531), yard requirements (subsection 3.1532), accessory buildings, (subsection 3.1533), off-street parking (subsection 3.1534), height restrictions (subsection 3.1535), and sale of portions of a lot (subsection 3.1538).

(4) The hearings officer conceives of no reason why such issues should be waived simply because the lot in question does not abut a future public street. Issues of site size, setbacks, accessory buildings, parking and height are not directly affected by proximity to a future street (although setbacks may be increased as a result). Therefore, it would not be reasonable to construe that subsections 3.1531 through 3.1538 do not apply except where the lot in question abuts a future public street.

(5) The hearings officer concedes this leaves subsection 3.1539 with little if any meaning. Such a result should be avoided. There must have been some reason for adopting that subsection. However, either that subsection has little meaning or the rest of section 3.153 has little meaning. Faced with such a conflict, the hearings officer decides to give the most meaning to the most subsections.

(6) Therefore, the hearings officer finds that subsection 3.1536 did apply to the 1974-75 land divisions. Because the lots in question did not comply with that subsection, the hearings officer concludes they did not satisfy all applicable laws when created. Therefore, the lots in question are not "lots of record" and the applications must be denied for failure to comply with MCC 11.15.2182 and MCC 11.15.2172(C)(1).

Although this determination requires denial of the application, the hearings officer adopts the following findings to provide a complete decision in the event the Board of Commissioners chooses to construe MCC 11.15.2182 and the former SR regulations so that the two "lots of record" are recognized as legal.

2. Each purported lot of record is incapable of sustaining a farm or forest use, because it is smaller than 10 acres. (MCC 11.15.2172(C)(2))

3. The application fails to show that a dwelling on each of the purported lots of record would be compatible with primary uses listed in MCC 11.15.2168 on nearby property and would not materially alter the stability of the overall land use pattern of the area, based on the following. (MCC 11.15.2172(C)(3))

a. Primary uses on nearby land include forestry and private conservation areas. Accepted forest practices could include aerial spraying, application of chemicals and large-scale burning. Those practices could conflict with the peaceful enjoyment of the occupants of the proposed dwellings. The hearings officer accepts for what they worth the statements of owners of adjoining properties that they do not plan to undertake those practices. However, such practices could occur. They may in fact be necessary over time to manage the forest land that surrounds the site. Because the dwellings in this case are situated far more in the forest area and are separated far more from McNamee Road, forest practices on nearby land, if they do occur, would be far more likely to adversely affect residents of the proposed dwellings than if the dwellings were situated near the road, like most other dwellings in the vicinity.

b. The dwelling is not compatible with forest uses in the vicinity just because the applicant records a statement waiving rights to object to such practices. See *Champion International v. Polk County*, 16 Or LUBA 132 (1987).

- c. The land use pattern of the area within a reasonable vicinity of the site is largely resource-oriented. The three dwellings within 1/4-mile of the site do not make the area primarily or significantly residential. Moreover, those and other residences in the area are situated much closer to McNamee Road than the proposed dwellings (except perhaps the home on tax lot '10'). If this application was for dwellings situated along McNamee Road, where significant non-resource residential dwellings exist, a different outcome may be warranted. However, because of the distance of the site from other non-source dwellings and because of the potential for dwellings on these purported lots of record to help justify dwellings on other land to the east, allowing the proposed dwellings would materially alter the land use pattern of the area. It would introduce two non-resource dwellings into the area. That could have a precedential effect contrary to the maintenance of the stability of the land use character of the area. See *Blosser v. Yamhill County*, 18 Or LUBA 253 (1989).
4. Sanitation and water facilities are needed for the dwellings. Public facilities do not exist in the area and are not planned or programmed. The applicant proposes to use private systems. The applicant introduced substantial evidence from which the hearings officer concludes that such systems are feasible and will or are reasonably likely to be approved. The Land Feasibility Study is sufficient to show septic systems can be approved. The evidence of wells on adjoining properties is sufficient to show a water system can be installed on each purported lot of record. If the applications were approved, a condition would be warranted requiring the planning director to find the wells that are drilled are in fact adequate to supply water to the site, subject to appropriate notice and review. (MCC 11.15.2172(C)(4))
5. The applicant has prepared the statement required by MCC 11.15.2172(C)(5), and it can be recorded if the permit is approved.
6. The proposed dwelling will comply with some of the residential use development standards of MCC 11.15.2194 as provided below:
- a. Fire lanes can be provided around the dwelling, consistent with MCC 11.15.2194(A)(1).
  - b. A water supply for fire fighting purposes and fire fighting equipment can be provided by Rural Fire Protection District 20, based on the written statement from the District chief, consistent with MCC 11.15.2194(A)(2).
  - c. There are no perennial water sources on the subject lot or adjacent property, based on the aerial photograph in the record. Therefore, the applicant is not required to provide access to such water.
  - d. The dwellings are proposed to be 985 and 540 feet from McNamee Road, the closest publicly-maintained street. They could be situated 25 to 30 feet closer to that street and still comply with the minimum side yard setback of MCC 11.15.2178(C). However, given the large distances involved between the site and McNamee Road, the hearings officer finds the difference is negligible. Therefore, the dwelling location complies with MCC 11.15.2194(C).
  - e. The driveways to each homesite is less than 500 feet long measured from the private road. Therefore, the proposed dwellings comply with MCC 11.15.2194(D).

f. The application does not include information regarding the productivity characteristics of the site. However, based on the slope map, the south portions of the site are the least sloped. The hearings officer assumes the greatest productivity occurs where the site is least sloped, because that land is easier to plant and manage for resource purposes. The land with the lowest productivity characteristics probably is the land with the most slope, because that land is harder to access for planting or management purposes. Because the dwellings and drainfields are proposed on the land with the least slope, the hearings officer finds the dwellings are not located on that portion of the lot having the lowest productivity characteristics, and the application fails to bear the requisite burden of proof under MCC 11.15.2194(E).

g. The proposed building locations are not at least 200 feet from property lines. Dwellings are to be situated within 40 feet of side lot line and within 110 feet of south lot lines. The dwelling locations are not necessary to provide a setback from a public road or to allow for sharing of access or clustering of homes. Therefore, the location of the proposed homes does not comply with MCC 11.15.2194(F).

h. The dwellings are located outside a big game winter wildlife habitat identified by the Oregon Department of Fish and Wildlife, based on the staff report. Therefore, the dwellings complies with MCC 11.15.2194(J).

*B. Compliance with the Comprehensive Plan.*

1. The proposal complies with Policy 12 (Multiple Use Forest Areas), to the extent the County has designated and is maintaining the site in its Multiple Use Forest zone. However non-forest use of the lots is not compatible with forest uses for the reasons given in finding V.A.3.

2. The proposal complies with Policy 13 (Air and Water Quality and Noise), because the application includes a statement from the applicable agency that all standards can be met with respect to water quality to the extent sanitary sewage is related to water quality. The dwellings will have negligible water quality impacts, because there are no perennial water sources on or adjoining the site. The dwellings will not generate significant noise and is not a noise sensitive use. The dwellings will not generate significant air quality impacts. Therefore, no agency is required to find that the land division will comply with air quality or noise standards.

3. The proposal is subject to Policy 14 (Development Limitations), because it contains slopes in excess of 20 percent and land subject to earth movement. See finding II.F. Development of the site is subject to the Hillside Development regulations and/or UBC Chapter 70, pursuant to which design and construction techniques will be considered to protect against harm due to earth movement or erosion. Therefore, the proposed dwellings can comply with the policy.

4. The proposal does not comply with Policy 22 (Energy Conservation), because it does not increase the energy efficiency of land uses and practices and does not increase density in the urban area. There is not substantial evidence in the record to determine whether the site is served by mass transit. There are no pedestrian facilities in the area. There is not substantial evidence in the record to determine whether the proposed dwellings are sited to use natural environmental and climatic conditions to their advantage.

5. The proposal complies with Policy 37 (Utilities), because there is substantial evidence in the record that the purported lots of record are reasonably likely to be served by private water wells, based on the wells on adjoining property, and to be served by private sanitation facilities, based on the Land Feasibility Studies by Mr. Ebeling. To ensure that private water and sanitation systems are installed consistent with applicable ODEQ standards, conditions of approval would be warranted requiring the applicant to submit appropriate information from which the planning director can determine that actual water and sanitation systems are adequate, subject to the requisite notice and review procedures. The hearings officer finds storm water run-off can be accommodated on the site, because of the relatively small impervious area that will result from the proposed development and the applicability of county regulations regarding drainage and hillside erosion control. The hearings officer also finds that adequate energy supplies and communications facilities exist or can be provided to serve the proposed dwelling, because such facilities exist along the private road west of the site. See finding II.H.

6. The proposal complies with Policy 38 (Facilities), because the applicable school district, fire district and law enforcement agency had an opportunity to review and comment on the proposal. The hearings officer finds there is adequate water pressure and flow for fire fighting purposes, based on the written comment from the fire district. See also findings II.H..

7. The proposal complies with Policy 40 (Development Requirements), because that policy does not require any dedications or improvements to implement the bicycle corridor capital improvements program and map, the site is not a commercial, industrial and multiple family development, and bicycle parking can be provided on the site.

#### VI. SITE VISIT

The hearings officer visited the site. His observations are reflected in Section II of the final order.

#### VII. CONCLUSIONS AND DECISION

##### A. *Conclusions.*

The hearings officer concludes that the proposed conditional use permit does not comply with MCC 11.15.2172(C)(1), (3) and (4) or with MCC 11.15.2194(E) or (F) and does not comply with Comprehensive Plan policies 12 (Multiple Use Forest) and 22 (Energy Conservation).

##### B. *Decision.*

In recognition of the findings and conclusions contained herein, and incorporating the Staff Report and other reports of affected agencies and public testimony and exhibits received in this matter, the hearings officer hereby denies CU 1-93 and CU 2-93.

Dated this 21st day of January, 1993.

  
Larry Epstein, Hearings Officer

**IN THE MATTER OF CU 1-93 and CU 2-93**

Signed by the Hearings Officer: January 21, 1993  
Decision Mailed to Parties: January 25, 1993  
Submitted to Clerk of the Board January 28, 1993

Any appeals of this Decision must be filed within ten days after the Decision is filed with the Clerk of the Board.

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

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

**This Hearings Officer Decision will be reported to the Board of County Commissioners on Tuesday, February 23, 1993 at 9:30 a.m. in Room 602 of the Multnomah County Courthouse.**

For further information, call the Multnomah County Division of Planning and Development at 248-3043.

required transcript fee.  
Failure to comply with this subsection shall be a jurisdictional defect and shall preclude review by the Board.

(D) Notice of Review shall be a condition precedent to judicial review of final orders, except in the case of Board review on its own motion.

**11.15.8265 Board Order for Review**

A Board Order for Review of a decision must be made at the meeting at which the Board's Agenda included a summary of that decision under MCC .8255, unless specifically continued, which continuance shall not be later than the next regular Board meeting on planning and zoning matters.

**11.15.8270 Scope of Review**

(A) The Board, upon receipt of Notice of Review or upon its own motion to grant review, shall, at the appropriate meeting, determine whether review shall be:

- (1) On the record; or
- (2) Under subsection (E) below, *de novo* or by additional testimony and other evidence without full *de novo* review.

(B) Prior to such determination, the Board may conduct a hearing at which the parties shall be afforded an opportunity to appear and present argument On the Scope of Review under subsection (E) below. Notice of such hearing shall be mailed to the parties no less than ten days prior to the hearing.

(C) Unless otherwise provided by the Board under subsection (D) and (E) below, review of the action shall be confined to the record of the proceeding below, which shall include:

- (1) All materials, pleadings, memoranda, stipulations and motions submitted by any party and received or considered by the Planning Commission or Hearings Officer;
- (2) All materials submitted by the Planning Director with respect to the proposal;
- (3) The transcript of the hearing below;

(4) The findings and decision of the Planning Commission or Hearings Officer, and the Notice of Review, when applicable.

(D) When permitted by the Board, review before the Board may include argument by the parties or their authorized representatives.

(E) The Board may hear the entire matter *de novo*; or it may admit additional testimony and other evidence without holding a *de novo* hearing, if it is satisfied that the additional testimony or other evidence could not reasonably have been presented at the prior hearing. The Board shall, in making such decision, consider:

- (1) Prejudice to parties;
- (2) Convenience or availability of evidence at the time of the initial hearing;
- (3) Surprise to opposing parties;
- (4) The competency, relevancy and materiality of the proposed testimony or other evidence.

(F) *De Novo* Hearing means a hearing by the Board as if the action had not been heard by the Planning Commission or Hearings Officer, and as if no decision had been rendered, except that all testimony, evidence and other material received by the Planning Commission or Hearings Officer shall be included in the record.

(G) Review by the Board, if upon Notice of Review by an aggrieved party, shall be limited to the grounds relied upon in the Notice of Review under MCC .8260(B) and any hearing permitted under MCC .8270(B).

(H) At the meeting at which the Scope of Review is determined pursuant to MCC .8270(A) and (B), the Board shall further determine the time and place for the review, which shall not be later than 45 days from the date of the Board determination.

**11.15.8275. Notice of Board Hearing**

(A) Notice of Board hearing shall be given in the same manner as required for hearings by the Planning Commission and Hearings Officer

Meeting Date: February 23, 1993

Agenda No.: P-4

(Above space for Clerk's Office Use)

AGENDA PLACEMENT FORM  
(For Non-Budgetary Items)

SUBJECT: CU 2-93 Decision

BCC Informal \_\_\_\_\_ (date) BCC Formal February 23, 1993 (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: 10 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):

CU 2-93 Review the Decision of the Hearings Officer of January 21, 1993, denying applicant's conditional use request to allow a non-resource related single family residence for property located at 13160 NW McNamee Road

*2/23/93 Hearing 2/23/93*

(If space is inadequate, please use other side)

SIGNATURES:

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

Or

DEPARTMENT MANAGER *pc BH Willis* \_\_\_\_\_

(All accompanying documents must have required signatures)

REGISTERED 1/7 AM 9:05  
MULTI-NOMINATED COUNTY  
OREGON

#2

**PLEASE PRINT LEGIBLY!**

MEETING DATE 2/23/93

NAME Arnold Rochlin

ADDRESS P.O. Box 83645

STREET Portland, OR 97283-0645

CITY Portland ZIP CODE 97283-0645

I WISH TO SPEAK ON AGENDA ITEM # 14

SUPPORT the denial OPPOSE appeal  
SUBMIT TO BOARD CLERK



**MULTNOMAH COUNTY OREGON**

DIVISION OF PLANNING & DEVELOPMENT / 2115 S.E. MORRISON / PORTLAND, OREGON 97214

**DIVISION OF PLANNING AND DEVELOPMENT**

**Board Planning Packet Check List**

File No. C42-93

BOARD OF  
COUNTY COMMISSIONERS  
1993 FEB 17 AM 9:05  
MULTNOMAH COUNTY  
OREGON

Agenda Placement Sheet No. of Pages 1

Case Summary Sheet No. of Pages 2

Previously Distributed \_\_\_\_\_

Notice of Review No. of Pages 1

\*(Maybe distributed at Board Meeting)

Previously Distributed \_\_\_\_\_

Decision No. of Pages 16

(Hearings Officer/Planning Commission)

Previously Distributed \_\_\_\_\_

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



**MULTNOMAH COUNTY OREGON**

DIVISION OF PLANNING & DEVELOPMENT/2115 S.E. MORRISON/PORTLAND, OREGON 97214

**DIVISION OF PLANNING AND DEVELOPMENT**

**Board Planning Packet Check List**

File No. C42-93

**I. Materials Distributed to the Board**

- Agenda Placement Sheet ( 1 Pages)
- Case Summary Sheet ( 2 Pages)
- Notice of Review Application ( 1 Pages)
- Decision ( 16 Pages)  
(Hearings Officer/Planning Commission)

**II. Materials Available Upon Request**

- Minutes ( 2 Pages)
- Transcript ( Pages)
- Applicant's Application and Submittals ( 35 Pages)
- Case Correspondence ( Letters)
- Slides ( Slides)
- Exhibits/Maps ( Exhibits)  
( Maps)
- Other Materials ( )



TIME 9:30 am

NUMBER CU 2-93

CASE NAME: MCGREW NON-RESOURCE SFR

1. Applicant Name/Address: James McGrew  
3706 SW Nevada Ct.  
Portland, OR 97219

2. Action Requested by applicant:

Conditional Use approval for a non-resource related residence in the MUF-19 district.

3. Staff Report Recommendation (January 4, 1993):

Approve subject to conditions

4. Hearings Officer Decision (January 21, 1993):

Denied

5. If recommendation and decision are different, why?

- (1) Lot of record issue (see issue 2 below) was not raised until public hearing. Initial research by Staff had indicated that the parcel was a legal lot.
- (2) Hearings Officer reached a different conclusion than Staff concerning the compatibility of the proposed dwelling with surrounding resource management activities and the effect on the surrounding land use pattern.

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

**ISSUES**

*(who raised them?)*

- 1. New dwellings would alter the stability of the land use pattern in the area by being a precedent for approval of other non-resource dwellings in the vicinity *(raised by Chris Foster who testified in opposition of the request).*
- 2. Parcel may not be a legal Lot of Record *(raised by Arnold Rochlin who testified in opposition to the request).*
- 3. Parcel has no developed water source so is not in compliance with code requirements and Comprehensive Plan policies *(raised by Arnold Rochlin).*

Do any of these issues have policy implications? Explain.

Issue 1: The area in question has been rezoned from MUF to CFU. The CFU district includes a requirement that there must be 11 other lots and 5 houses within 160 acres for approval of a non-resource residence. Should

any consideration be given to whether approval of the present application (being considered under MUF criteria) would affect the ability to develop other parcels in the future (which would be considered under the CFU criteria)?

Issue 2: No policy implication.

Issue 3: The County recognizes that there is a substantial cost involved in drilling a well, and many applicants are unwilling to go to that expense until they have received approval for a dwelling. Policy has been to allow the decision of whether there is an adequate water supply to be delayed, usually until the time of application for building permits.

42-93  
being  
for  
300  
Saturday  
to file  
notice of  
Review  
4:30 pm  
Saturday  
8-93  
pd



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

SPED .11 3.03 180  
SPED .11 252-27 180

**NOTICE OF REVIEW**

1. Name: McGrew, \_\_\_\_\_, James

2. Address: 3706 SW Nevada Ct., Portland, OR 97219

3. Telephone: ( \_\_\_\_\_ ) 246-3165

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

5. What is the decision you wish reviewed (e.g., denial of a zone change, approval of a subdivision, etc.)?  
CU 2-93, denial of a conditional use for  
a non-resource dwelling

6. The decision was announced by the Planning Commission on 28 Jan, 1993  
(Hearings Officer)

7. On what grounds do you claim status as a party pursuant to MCC 11.15.8225?  
I am the applicant.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

*Please return this original form*

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

The Hearings Officer misapplied applicable code provisions and other legal standards in denying the conditional use request.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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 Hearings Officer raised issues and cited lack of evidence in his decision to which the applicant could not respond. Because the staff recommended approval, the applicant believed sufficient evidence had been submitted. Failure to allow the applicant to present a full and fair case now would be prejudicial against the applicant.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Signed: James R. McGrew Date: 8 Feb 93

**For Staff Use Only**

Fee:

Notice of Review = \$300.00 ✓

Transcription Fee:

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

Total Fee = \$ 300.00

Received by: \_\_\_\_\_ Date: \_\_\_\_\_ Case No. 022-93

BEFORE THE LAND USE HEARINGS OFFICER  
FOR MULTNOMAH COUNTY, OREGON

Regarding applications by James McGrew for conditional )  
use permits for a non-resource related dwellings in the )  
MUF-19 zone at 13156 and 13160 NW McNamee Road )  
in unincorporated Multnomah County, Oregon )

DECISION  
CU 1-93 and CU 2-93  
(McGrew)

I. SUMMARY

The applicant requests approval of two conditional use permits that would allow a non-resource related single family detached dwelling to be built on each of two adjoining 6-acre and 4.76-acre "lots of record" in the MUF-19 zone. The lots also are subject to slope hazard regulations because of their steep slope. The applicant will provide access to the two dwellings by partially relocating and extending an existing private road that intersects McNamee Road about 500 feet west of the site. Each dwelling will be served by a private well and sanitation system.

Hearings officer Larry Epstein conducted a public hearing on January 4, 1993 to consider the applications. County staff recommended conditional approval. The applicant accepted the recommended conditions of approval. Two members of the public testified in opposition, arguing the applications fail to maintain the stability of the land use pattern of the area, fail to comply with Comprehensive Plan policy 37 requirements for proof an adequate water system exists, and fail to adequately address certain fire safety issues. Also disputed was whether the properties in question are legal lots of record. The hearings officer held open the public record for seven days to receive additional information about the status of the properties as lots of record.

CASE:	<u>CU 1-93</u>	<u>CU 2-93</u>
ADDRESS:	13156 NW McNamee Road	13160 NW McNamee Road
LEGAL:	Tax lot '52' Both in Section 32, T2N-R1W, WM, Multnomah County	Tax lots '44' and '53'
SITE SIZE:	4.76 acres	6 acres
OWNER:	Elizabeth J. McGrew	James McGrew
APPLICANT:	James McGrew for both applications	

APPLICABLE LAW: Multnomah County Code (MCC) 11.15.2162, *et seq.* (MUF District); Comprehensive Plan policies 12 (Multiple Use Forest), 13 (Air and Water Quality and Noise), 14 (Development limitations), 22 (Energy Conservation), 37 (Utilities), 38 (Facilities) and 40 (Development Requirements)

STAFF RECOMMENDATION: Conditionally approve both conditional uses

HEARINGS OFFICER DECISION: Denied

PARCEL 2  
38.00 Ac.

PARCEL 3  
38.00 Ac.

**Zoning Map**

Case #: CU 1-93  
 Location: 13156 NW McNamee Road  
 Scale: 1 inch to 600 feet (approximate)  
 Shading indicates subject property  
 SZM 81; Section 32, T.2N., R.1W., WM.

'11'  
253.85 Ac.

'2'  
20.0 Ac.

**MUF -38**

**MUF -19**  
'3'  
20.0 Ac.

'10'  
3.13 Ac.

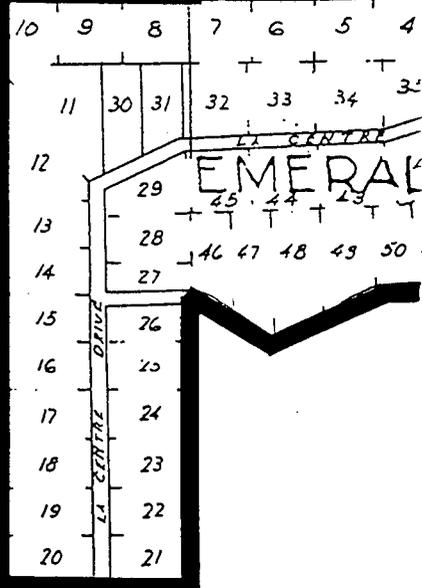
'3'  
18.62 Ac.

'47'  
9.00 Ac.

'53'  
3.00 Ac.

'44'  
3.00 Ac.

'52'  
4.76 Ac.



'41'  
2.60 Ac.  
**MUF -19**  
'40'  
16.32 Ac.

'17'  
19.74 Ac.

'1'  
55 Ac.

'51'  
5.88 Ac.  
**MUF -19**  
'2'  
13.32 Ac.

'6'  
80.00 Ac.  
**MUF -38**

'56'  
7.38 Ac.

'25'  
11.82 Ac.

**MUF -38**

**MUF -38**

3

2

'48'  
4.40 Ac.

'9'  
10.00 Ac.

'24'  
4.80 Ac.

**MUF -19**

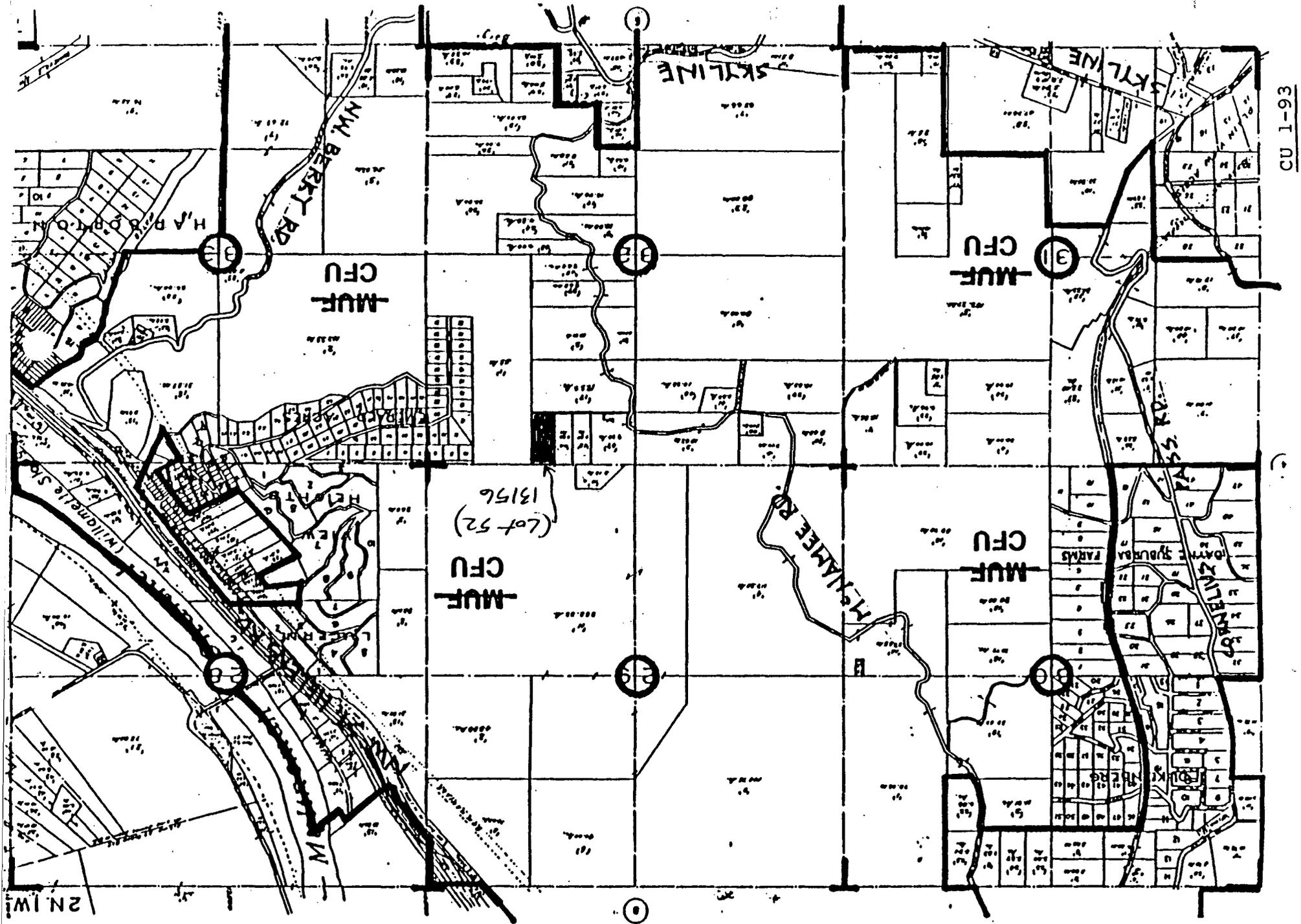
'23'  
80.00 Ac.

'19'  
12.76 Ac.

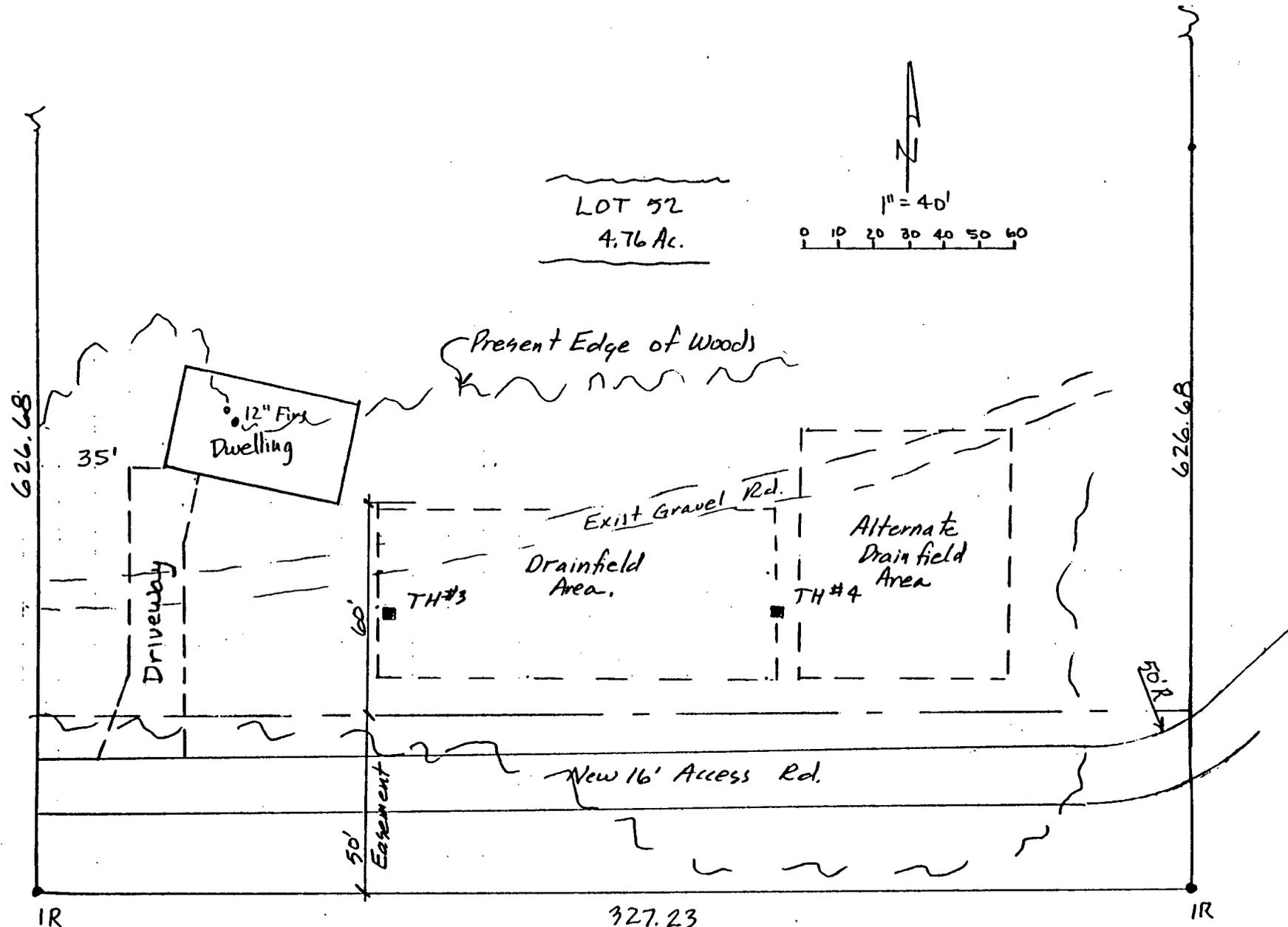
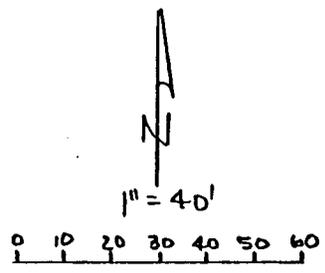
'38'  
33.86 Ac.



APPROXIMATE SCALE



LOT 52  
4.76 Ac.



626.68

35'

Driveway

12" First Dwelling

Present Edge of Woods

Exit Gravel Rd.

Drainfield Area.

TH#3

Alternate Drain field Area

TH#4

New 16' Access Rd.

50' Easement

50' R

626.68

IR

327.23

IR

19156 NW McNamee Rd.

CU 1-93

SITE PLAN

Elizabeth J. McGrew  
45 Eagle Crest Dr  
Lake Oswego, OR

JRM  
10/23/92

PARCEL 2  
38.00 Ac.

PARCEL 3  
38.00 Ac.



**Zoning Map**  
Case #: CU 2-93  
Location: 13160 NW McNamee Road  
Scale: 1 inch to 600 feet (approximate)  
Shading indicates subject properties  
SZM 81; Section 32, T.2N., R.1W., WM.

'11'  
253.85 Ac.

'2'  
20.0 Ac.

**MUF -38**

**MUF -19**

'3'  
20.0 Ac.

'10'  
3.13 Ac.

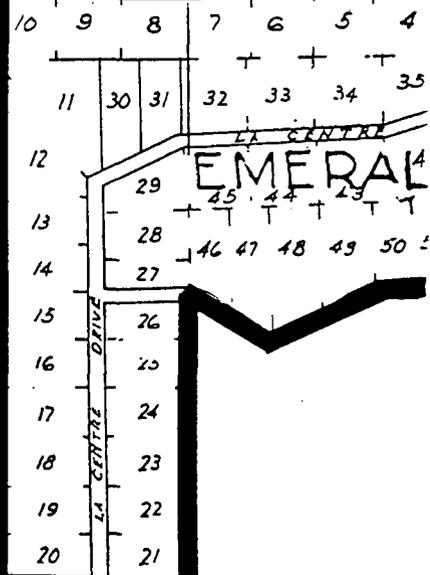
'3'  
18.62 Ac.

'47'  
9.00 Ac.

'53'  
3.00 Ac.

'44'  
3.00 Ac.

'52'  
4.76 Ac.



'41'  
2.60 Ac.

'40' **MUF -19**  
16.32 Ac.

'17'  
19.74 Ac.

'1'  
55 Ac.

'51'  
5.88 Ac.

'2'  
13.32 Ac.

'6'  
80.00 Ac.

**MUF -38**

'56'  
7.38 Ac.

'25'  
11.82 Ac.

**MUF -38**

3 2

'48'  
4.40 Ac.

'9'  
10.00 Ac.

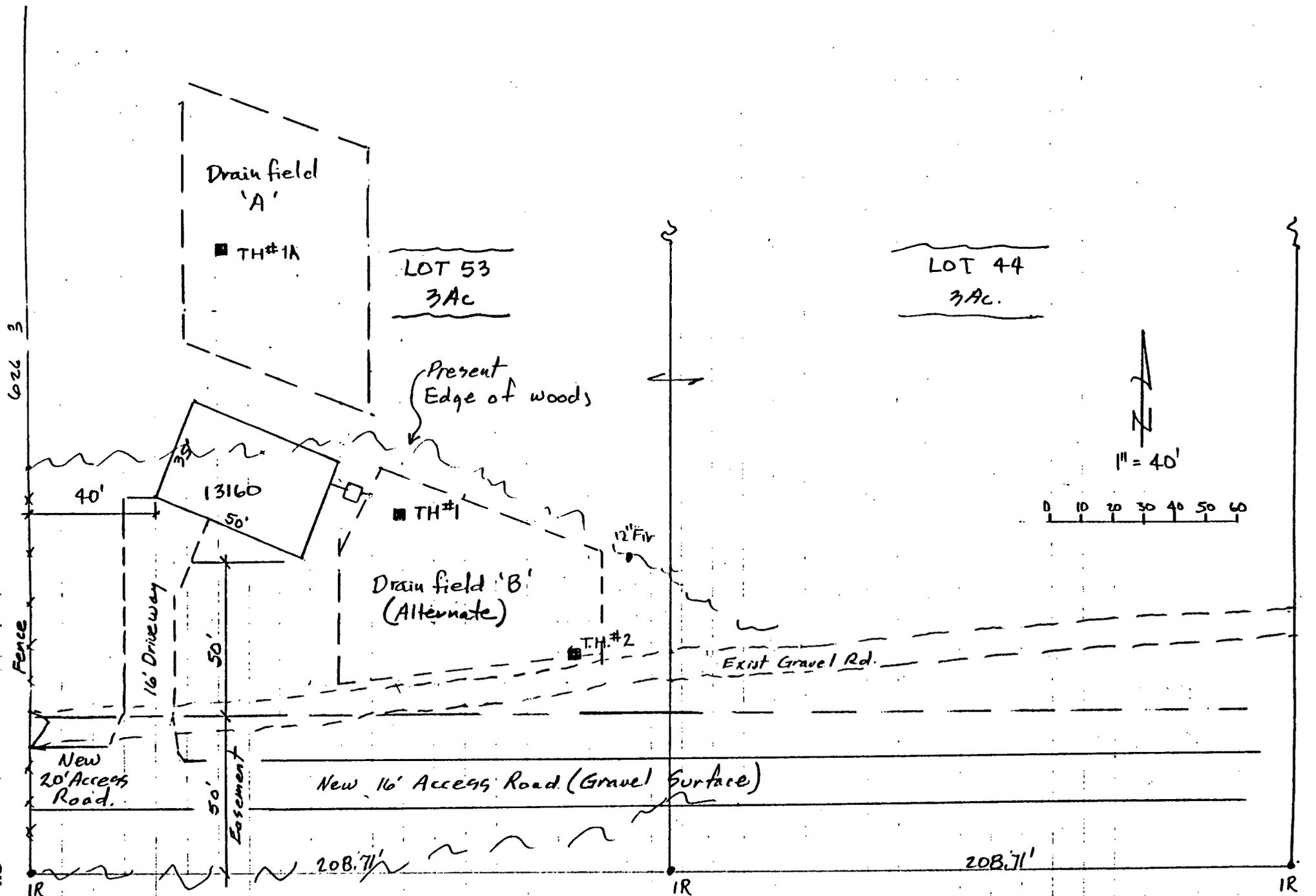
'24'  
4.80 Ac.

'23'  
80.00 Ac.

'19'  
12.76 Ac.

**MUF -19**

'38'  
33.86 Ac.



SITE PLAN

13160 NW McNamee Rd

James R & Elizabeth L McGrew  
3706 SW Nevada Ct  
Portland OR 97219

JRM  
10/23/92

CU 2-93

## II. FINDINGS ABOUT SITE AND SURROUNDINGS

### A. *Site size and shape :*

Both parcels are rectangular. The parcel for CU 1-93 is 327 feet east-west and 626 feet north-south and contains 4.76 acres. The parcel for CU 2-93 is 417 feet east-west and 626 feet north-south and contains 6 acres.

### B. *Site location :*

The parcel for CU 2-93 adjoins the west side of the parcel for CU 1-93 and is about 500 feet east of NW McNamee Road. The parcel for CU 1-93 is about 950 feet east of NW McNamee Road.

### C. *Existing uses and structures :*

The site is not developed with structures. It consists principally of conifer forest.

### D. *Proposed uses and structures :*

1. The applicant proposes to develop a single family detached dwelling on each lot of record. Each will have a private well and sanitary waste system.
2. The homesite for CU 1-93 is situated about 35 feet from the west lot line or about 985 feet east of NW McNamee Road. It is about 110 feet from the south lot line or about 60 feet from the north edge of a private road easement over the south 50 feet edge of the lot. It is more than 200 feet from east and north lot lines.
3. The homesite for CU 2-93 is situated about 40 feet from the west lot line or about 540 feet east of NW McNamee Road. It is about 100 feet from the south lot line or about 50 feet from the north edge of the private road easement. It is more than 200 feet from east and north lot lines.
4. To provide vehicular access, the applicant will improve a 16- to 20-foot wide private road with a gravel surface in the 50-foot easement from McNamee Road and across the south edges of the two lots of record and the lots between the site and McNamee Road. A narrow gravel road already exists west of the site and crosses the two lots of record north of the road easement. The applicant will relocate the improved section of road so it is roughly centered in the easement.

### E. *Existing and proposed vegetation :*

Most of the site is forested except where the gravel road crosses the site. The applicant will have to remove trees from a relatively small area on the periphery of the treed area for the homesite and septic system drainfield for CU 1-93. More trees will have to be removed from the site for CU 2-93 to accommodate the primary drainfield, because the drainfield area is now entirely forested based on the preliminary site plan. More trees will have to be removed to extend the private road across the site for CU 1-93.

### F. *Geology and soils :*

1. Based on the Geologic and Slope Hazard Maps (September, 1978), the site is subject to geologic or slope hazards. Based on the USDA SCS General Soil Map for Multnomah County (Sheet 6, August, 1974), the site contains two soil types.

a. The majority of the site consists of Goble silt loam with slopes of 30 to 60 percent. The SCS describes this soil as being steep, moderately drained soil on convex side slopes of ridgetops. Permeability is moderate above the fragipan and slow in the fragipan. Runoff is rapid and erosion potential is high. The winter water table is within a depth of 4 feet. The soil has a Douglas fir site index of 145 to 155, indicating it is productive. The main limitations for timber production are the slowly permeable fragipan at a depth of 30 to 45 inches and the resultant perched water table from December through April. Some windthrow is possible because of restricted rooting depth.

b. The remainder of the site consists of Cascade silt loam on slopes of 15 to 30 percent. The SCS describes this soil as being somewhat poorly drained soil on the convex side slopes of broad rolling ridgetops. Permeability is slow. Runoff is medium and erosion hazard is high. The winter water table is at a depth of 18 to 30 inches. The soil has a Douglas fir site index of 150 to 165, indicating it is productive. The main limitations for timber production are the slowly permeable fragipan at a depth of 20 to 30 inches and the resultant perched water table from December through April. Some windthrow is possible because of restricted rooting depth.

2. Based on the site plan accompanying the Land Feasibility Study application, the site slopes from a high of about 980 feet above mean sea level (msl) along the west edge of tax lot '53' and south edge of all three tax lots to a low of about 850 feet msl at the northwest corner of tax lot '52'. The site slopes down to the north-northeast.

*G. Plan designation and zoning :*

The Comprehensive Plan Map designates the site and surrounding property as Multiple Use Forest.<sup>1</sup> The site and land to the south and west is zoned MUF-19 (Multiple Use Forest-19). Land to the east and north is zoned MUF-38 (Multiple Use Forest-38). The site also is subject to the Hillside Development and Erosion Control subdistrict.

*H. Public services and utilities :*

1. The site is not served by public water and sewer systems. The applicant proposes to develop a well and subsurface sanitation system for each dwelling. The applicant argues that a well can be developed, based on the existence of three wells on nearby properties and the logs for those wells. The applicant argues a sand mound sanitation system can be developed on each lot of record, based on Land Feasibility Studies 267-92 and 268-92 and the written comment from Mike Ebeling dated November 6, 1992.

2. The site is in Multnomah County Rural Fire Protection District 20. The District Fire Chief advised the County that there is adequate water pressure and flow at the site for fire fighting purposes. Water for fire fighting is provided by 3000 gallon tank trucks. See the written comment dated November 9, 1992. The State Fire Marshal recommended certain measures regarding fire access if the application is approved. See the Special Inspection report dated October 23, 1992.

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<sup>1</sup> Although a plan amendment enacted after the application was filed changed the designation of the site and surrounding area to Commercial Forest Use, and corresponding zoning changes were enacted to implement the plan designation, the application is subject to the plan designation and zoning that applied when the application was filed, based on ORS 215.428(3).

3. Adequate police service to the site can be provided by the City of Portland, based on the written comment from Sgt. Baxter dated November 6, 1992. Adequate school services can be provided by the Portland School District, based on the written comment from Donald Jeffrey dated November 6, 1992.

4. Underground power and telephone utilities are situated in the private road west of the subject site, based on the site plan accompanying the Land Feasibility Study application.

*I. Streets and access :*

The site is 500 feet east of NW McNamee Road. Access is provided by means of a private road within a 50-foot easement. See also finding II.D.4.

*J. Surrounding land uses :*

1. Within a 160-acre (i.e., 1/4-mile) square centered on the site, there are three single family dwellings. Immediately northwest of the site is a non-resource related single family home on a 3.13-acre parcel. Immediately south of the site is a roughly 20-acre lot of record that is developed with two single family dwellings situated near the McNamee Road frontage. The owner of that parcel filed a written statement dated November 9, 1992 in which she states that she will not be spraying, burning, or blasting on her property; therefore, she concludes the proposed dwellings will not affect her property.

2. There is a forested 55-acre parcel east of the site for CU 1-93. It is owned by James McGrew and others. Further east is a large, mostly undeveloped subdivision known as Emerald Acres.

3. There is a largely forested 253-acre parcel north of the site owned by the Linnton Rock Company. That parcel is part of a 283-acre site, the northeast 114 acres of which is developed as a rock quarry. The president of Angell Brothers, Inc., which operates the quarry, submitted a written statement dated November 18, 1992, in which he states that the unmined portion of the quarry property recently was logged and replanted; that no aerial spraying, large scale burning or chemical applications are planned on that property; and that blasting that occurs occasionally on the mining site is situated far enough away from the proposed CU site so that it is not likely to be a problem for residents of the CU site.

4. There is a forested 9-acre parcel west of the site for CU 2-93. The owner of that parcel filed a written statement dated November 17, 1992 in which she states that she does not anticipate aerial spraying, large slash burns, or application of chemicals to her property; therefore, she concludes forest practices on her property will not affect the proposed dwellings.

5. Land along McNamee Road generally is divided into parcels smaller than 20 acres; there are 14 such parcels within 1/4-mile of the site; four of those are developed with dwellings, including the 3 dwellings noted in finding II.J.1 above.

6. There was testimony that a wildlife easement and management plan applies to 459 acres northwest of the site, but other evidence of such an easement was not offered.

### III. APPLICABLE APPROVAL STANDARDS

#### A. Multnomah County Code (MCC) title 11.15 (Zoning).

1. MCC 11.15.2172(C) allows a non-resource related single family dwelling in the MUF-19 zone if the applicant shows:

*a. The lot size shall meet the standards of MCC 11.15.2178(A), .2180(A) to (C), or .2182(A) to (C).*

(1) MCC 11.15.2182(A)(2) recognizes as a "lot of record" a parcel of land:

*(a) For which a deed or other instrument creating the parcel was recorded with the Department of General Services or was in recordable form prior to February 20, 1990;*

*(b) Which satisfied all applicable laws when the parcel was created;*

*(c) Does not meet the minimum lot size requirements of MCC .2178, (i.e., 19 acres); and*

*(d) Which is not contiguous to another substandard parcel or parcels under the same ownership. See also MCC 11.15.2182(B).*

*b. The land is incapable of sustaining a farm or forest use, because, among other reasons, it is a lot of record under MCC 11.15.2182(A) through (C) and is ten acres or less 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.*

*d. The dwelling will not require public services beyond those existing or programmed for the area.*

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

*f. The residential use development standards of MCC 11.15.2194 will be met.*

2. The residential use development standards of MCC 11.15.2194 require the following:

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

*(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 11.15.2178(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 limitation of subpart #3 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 for a public road; or*
  - (2) The location of dwelling(s) of adjacent lot(s) at a lesser distance which allows for the clustering of dwellings or the sharing of access...**
- j. The dwelling shall be located outside a big game winter wildlife habitat area as defined by the Oregon Department of Fish and Wildlife or that agency has certified that the impacts will be acceptable.*

**B. Multnomah County Comprehensive Plan Policies.**

**1. Policy 12 (Multiple Use Forest Area) provides:**

*The County's policy is to designate and maintain as Multiple Use Forest, land areas which are:*

- a. Predominantly 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 predominantly commercial ownerships;*
- c. Provide (sic) 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 use along with non-forest use; such as agriculture, service uses, and cottage industries; provided that such uses are compatible with adjacent forest lands.*

2. Policy 13 (Air and Water Quality and Noise) provides (in relevant part):

*It is the county's policy to require, prior to approval of a legislative or quasi-judicial action, a statement from the appropriate agency that all standards can be met with respect to air quality, water quality and noise levels.*

3. Policy 14 (Development Limitations) provides:

*The County's policy is to direct development and land form alterations away from areas with development limitations except upon a showing that design and construction techniques can mitigate any public harm or associated public cost, and mitigate any adverse effects to surrounding persons or properties. Development limitations areas are those which have any of the following characteristics:*

- a. Slopes exceeding 20%;*
- b. Severe soil erosion potential;*
- c. Land within the 100-year flood plain;*
- d. A high seasonal water table within 0-24 inches of the surface for 3 or more weeks of the year;*
- e. A fragipan less than 30 inches from the surface;*
- f. Land subject to slumping, earth slides or movement.*

4. Policy 22 (Energy Conservation) provides (in relevant part):

*The county shall require a finding prior to approval of a legislative or quasi-judicial action that the following factors have been considered:*

- a. The development of energy-efficient land uses and practices;*
- b. Increased density and intensity of development in urban areas...*
- c. An energy-efficient transportation system linked with increased mass transit, pedestrian and bicycle facilities;*
- d. Street layouts, lotting patterns and designs that utilize natural environmental and climactic conditions to advantage...*

5. Policy 37 (Utilities) requires the county to find, prior to approval of a legislative or quasi-judicial action, that:

- a. The proposed use can be connected to a public sewer and water system, both of which have adequate capacity; or*

- b. The proposed use can be connected to a public water system, and the Oregon Department of Environmental Quality (DEQ) will approve a subsurface sewage disposal system on the site; or*
- c. There is an adequate private water system, and the Oregon DEQ will approve a subsurface sewage disposal system; or*
- d. There is an adequate private water system and a public sewer with adequate capacity.*
- e. There is adequate capacity in the storm water system to handle the run-off; or*
- f. The run-off can be handled on the site or adequate provisions can be made; and*
- g. The run-off from the site will not adversely affect the water quality in adjacent streams, ponds or lakes or alter the drainage on adjoining lands.*
- h. There is an adequate energy supply to handle the needs of the proposal and the development level projected by the plan; and*
- i. Communications facilities are available.*

6. Policy 38 (Facilities) requires the county to find, prior to approval of a legislative or quasi-judicial action, that:

- a. The appropriate school district has had an opportunity to review and comment on the proposal.*
- b. There is adequate water pressure and flow for fire fighting purposes; and*
- c. The appropriate fire district has had an opportunity to review and comment on the proposal.*
- d. The proposal can receive adequate local police protection in accordance with the standards of the jurisdiction providing police protection.*

7. Policy 40 (Development Requirements) requires the county to find, prior to approval of a legislative or quasi-judicial action, that:

- a. Pedestrian and bicycle path connections to parks, recreation area and community facilities will be dedicated where appropriate and where designated in the bicycle corridor capital improvements program and map.*
- b. Landscaped areas benches will be provided in commercial, industrial and multiple family developments, where appropriate.*
- c. Areas for bicycle parking facilities will be required in development proposals, where appropriate.*

## IV. HEARING AND RECORD

### A. *Hearing.*

Hearings Officer Larry Epstein received testimony at the public hearing about this application on January 4, 1993. The hearings officer held open the public record for seven days to receive additional information about the status of the properties as lots of record. A record of that testimony is included herein as Exhibit A (Parties of Record), Exhibit B (Taped Proceedings), and Exhibit C (Written Testimony). These exhibits are filed at the Multnomah County Department of Environmental Services.

### B. *Summary of selected relevant testimony.*

1. Sandy Mathewson testified for the County and summarized the staff report and recommendation.
2. James McGrew testified on his own behalf. He accepted the staff report and recommendation without objection. He asked what would be involved in the planning director's review of the adequacy of the proposed water systems. Ms. Mathewson clarified that that review would be limited to the issue of the water system and would not involve other issues relating to the conditional uses. Mr. McGrew testified that there are no perennial water sources on adjoining property.
3. Chris Foster and Arnold Rochlin testified against the conditional use permit.
  - a. Mr. Foster introduced exhibits into the record for both CU applications, including soils information, a map illustrating dwellings in the vicinity of the site, a portion of the findings by the planning commission regarding PR 7-92 and CU 14-92 (the applications for a plan amendment and conditional use for the Angell Brothers quarry), a May 24, 1991 research report by DLCD, information about a conservation easement allegedly for nearby land, and a copy of *Champion International v. Douglas County* (16 Or LUBA 132 (1987)). He argued that approval of the conditional uses will be a precedent for other non-resource related dwellings in the vicinity, particularly for lots in the western portion of Emerald Acres; therefore, the conditional uses do not maintain the stability of the land use pattern of the area, because they will lead to an increase in non-resource related dwellings in the vicinity. He argued this is particularly important in this case, because the lots involved are distant from such major roads as McNamee Road.
  - b. Mr. Rochlin argued that the proposed conditional uses violate Comprehensive Plan policy 37, because neither lot of record contains an adequate water system. He also disputed whether the lots in question are lots of record, because the lots did not abut a public street when created and access by means of a private road was not approved; therefore, the lots did not comply with applicable laws when created. He also disputed whether the record contains sufficient evidence to address MCC 11.15.2194(B), because the record does not indicate whether there is a perennial water source on adjoining land. He also argued the proposed dwellings could conflict with a resource use on adjoining land, i.e., quarrying on the property north of the site, if that quarry is allowed to expand. He noted the Board of Commissioners would consider such an application in February.
4. At the request of the hearings officer, Ms. Mathewson provided a memorandum dated January 8, 1993 to address the issue of whether the lots in question qualify as lots of record. That memorandum offers the following information:

a. The site was zoned SR (Suburban Residential) from 1966 until October 6, 1977. The SR district regulations were in section 3.15 of the Multnomah County Zoning Ordinance. The minimum lot size in the district was 10,000 to 40,000 square feet depending on the circumstances (subsection 3.1531). Subsection 3.1536 provided as follows:

*All lots in this district shall abut a street, or shall have such other access held suitable by the Planning Commission.<sup>2</sup>*

Subsection 3.1539 provided as follows:

*These requirements shall apply to lots that abut a future street as indicated on an approved and recorded subdivision plat.*

b. In 1966, the site was part of a 39-acre parcel identified as tax lot '17'. A survey dated September 12, 1971 divided tax lot '17' into one 2-acre and six 3-acre parcels. It is unknown whether deeds or legal descriptions for these lots were recorded at that time. Two of these seven lots later were identified as tax lots '44' and '53' (i.e., the site for CU 2-93). Two others were combined as identified as tax lot '52' (i.e., the site for CU 1-93).

c. The 1971 survey did not create legal lots under the County Subdivision Ordinance in effect at that time, because division of a parcel into four or more lots for transfer or sale within a given calendar year was required to be approved by the planning commission. No such approval was applied for or given. However, because the lots created by this survey were not transferred, the survey may be irrelevant to whether the lots in question are lots of record.

d. A recorded Contract of Sale dated July 24, 1974 conveyed an 11-acre portion of what was tax lot '17' to Elizabeth J. McGrew, Elizabeth L. McGrew and James McGrew. A recorded Assignment of Interests and Division of Property dated October 24, 1975 divided this 11-acre parcel into three parcels. These three parcels are now identified as tax lots '44', '52' and '53'. Because the 1974 and 1975 contract and assignment did not create four or more parcels in a given calendar year, they were not subject to the subdivision ordinance.

e. The easement that provides access to the site was included in the 1974 contract. However, no application was made to the planning commission for approval of that access, and no such approval was granted. Therefore, the issue arises whether the 1974 contract and 1975 assignment complied with subsection 3.1536. Ms. Mathewson suggests that subsection 3.1536 should be read in conjunction with subsection 3.1539, so that the former applies only if the lots abut a future street indicated on an approved and recorded subdivision plat. If that is how section 3.153 is construed, then the lots did not violate subsection 3.1536 when created, because there is no subdivision plat for the land adjoining the site. Ms. Mathewson also suggests 3.1536 should not apply based on the purpose statement for the SR district, which provided:

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<sup>2</sup> Ms. Mathewson did not provide a definition of the term "street" as it existed at that time. The hearings officer takes official notice that the term is defined in the current zoning ordinance to mean "a public way which provides vehicular and pedestrian access to adjacent properties.." (emphasis added) The Subdivision Ordinance in 1974-75 defined "street" to mean "a right of way ..." The hearings officer assumes that the term "street" would have been similarly defined by the Zoning Ordinance in 1974-75, and the easement in question would not have been considered a public way or right of way, because it was a private easement.

*No provision of this section shall regulate lands used for grazing, agriculture, horticulture or for the growing of timber.*

She reasons that, because the site was used for growing of timber, it could be divided without regard for the regulations of the district.

## V. EVALUATION OF REQUEST

### A. *Compliance with MCC 11.15 (Zoning).*

1. The first issue is whether the lots in question qualify as "lots of record" as defined by MCC 11.15.2182. If they are not, then the applications fail to comply with MCC 11.15.2172(C)(1).

a. The first sub-issue is whether the regulations of the SR district applied to the land division that created the subject lots.

(1) If, as suggested by County staff, the district did not apply because the land in question was used for growing timber, then the fact that the land division did not comply with subsection 3.1536 was irrelevant.

(2) Generally the purpose statement of a zoning district does not limit the application of the district; rather, it describes the legislative intent for the district. Therefore, as a general matter it is not reasonable to construe the SR regulations to be irrelevant to the land division in question.

(3) Even assuming the SR regulations did not apply to use of land used for growing timber, that does not mean it did not apply to the division of that land. Division of the land is not a use issue. Therefore, the hearings officer finds that divisions of land in the SR zone were subject to the regulations of that zone.

b. The second sub-issue is whether the lots in question comply with subsection 3.153.

(1) If, as suggested by County staff, subsection 3.1536 applies only if triggered by subsection 3.1539, then whether the lots created in 1974 and 1975 abutted a street is irrelevant to whether they were legally created.

(2) The hearings officer finds that subsection 3.1536 is ambiguous. It is not clear from the plain meaning of the words whether subsection 3.1536 applies if the lot does not abut a future street as indicated on an approved and recorded subdivision plat. Although County staff offer suggestions, they are unable to "positively conclude that there were any land division requirements in the SR district that had to be met." Therefore, the hearings officer must construe those sections.

(3) If subsection 3.1539 has the meaning suggested by County staff, then other provisions of subsection 3.153 would not apply except where the lot in question abuts a future street on an approved and recorded plat. Those other regulations address site size (subsection 3.1531), yard requirements (subsection 3.1532), accessory buildings, (subsection 3.1533), off-street parking (subsection 3.1534), height restrictions (subsection 3.1535), and sale of portions of a lot (subsection 3.1538).

(4) The hearings officer conceives of no reason why such issues should be waived simply because the lot in question does not abut a future public street. Issues of site size, setbacks, accessory buildings, parking and height are not directly affected by proximity to a future street (although setbacks may be increased as a result). Therefore, it would not be reasonable to construe that subsections 3.1531 through 3.1538 do not apply except where the lot in question abuts a future public street.

(5) The hearings officer concedes this leaves subsection 3.1539 with little if any meaning. Such a result should be avoided. There must have been some reason for adopting that subsection. However, either that subsection has little meaning or the rest of section 3.153 has little meaning. Faced with such a conflict, the hearings officer decides to give the most meaning to the most subsections.

(6) Therefore, the hearings officer finds that subsection 3.1536 did apply to the 1974-75 land divisions. Because the lots in question did not comply with that subsection, the hearings officer concludes they did not satisfy all applicable laws when created. Therefore, the lots in question are not "lots of record" and the applications must be denied for failure to comply with MCC 11.15.2182 and MCC 11.15.2172(C)(1).

Although this determination requires denial of the application, the hearings officer adopts the following findings to provide a complete decision in the event the Board of Commissioners chooses to construe MCC 11.15.2182 and the former SR regulations so that the two "lots of record" are recognized as legal.

2. Each purported lot of record is incapable of sustaining a farm or forest use, because it is smaller than 10 acres. (MCC 11.15.2172(C)(2))

3. The application fails to show that a dwelling on each of the purported lots of record would be compatible with primary uses listed in MCC 11.15.2168 on nearby property and would not materially alter the stability of the overall land use pattern of the area, based on the following. (MCC 11.15.2172(C)(3))

a. Primary uses on nearby land include forestry and private conservation areas. Accepted forest practices could include aerial spraying, application of chemicals and large-scale burning. Those practices could conflict with the peaceful enjoyment of the occupants of the proposed dwellings. The hearings officer accepts for what they worth the statements of owners of adjoining properties that they do not plan to undertake those practices. However, such practices could occur. They may in fact be necessary over time to manage the forest land that surrounds the site. Because the dwellings in this case are situated far more in the forest area and are separated far more from McNamee Road, forest practices on nearby land, if they do occur, would be far more likely to adversely affect residents of the proposed dwellings than if the dwellings were situated near the road, like most other dwellings in the vicinity.

b. The dwelling is not compatible with forest uses in the vicinity just because the applicant records a statement waiving rights to object to such practices. See *Champion International v. Polk County*, 16 Or LUBA 132 (1987).

c. The land use pattern of the area within a reasonable vicinity of the site is largely resource-oriented. The three dwellings within 1/4-mile of the site do not make the area primarily or significantly residential. Moreover, those and other residences in the area are situated much closer to McNamee Road than the proposed dwellings (except perhaps the home on tax lot '10'). If this application was for dwellings situated along McNamee Road, where significant non-resource residential dwellings exist, a different outcome may be warranted. However, because of the distance of the site from other non-source dwellings and because of the potential for dwellings on these purported lots of record to help justify dwellings on other land to the east, allowing the proposed dwellings would materially alter the land use pattern of the area. It would introduce two non-resource dwellings into the area. That could have a precedential effect contrary to the maintenance of the stability of the land use character of the area. See *Blosser v. Yamhill County*, 18 Or LUBA 253 (1989).

4. Sanitation and water facilities are needed for the dwellings. Public facilities do not exist in the area and are not planned or programmed. The applicant proposes to use private systems. The applicant introduced substantial evidence from which the hearings officer concludes that such systems are feasible and will or are reasonably likely to be approved. The Land Feasibility Study is sufficient to show septic systems can be approved. The evidence of wells on adjoining properties is sufficient to show a water system can be installed on each purported lot of record. If the applications were approved, a condition would be warranted requiring the planning director to find the wells that are drilled are in fact adequate to supply water to the site, subject to appropriate notice and review. (MCC 11.15.2172(C)(4))

5. The applicant has prepared the statement required by MCC 11.15.2172(C)(5), and it can be recorded if the permit is approved.

6. The proposed dwelling will comply with some of the residential use development standards of MCC 11.15.2194 as provided below:

a. Fire lanes can be provided around the dwelling, consistent with MCC 11.15.2194(A)(1).

b. A water supply for fire fighting purposes and fire fighting equipment can be provided by Rural Fire Protection District 20, based on the written statement from the District chief, consistent with MCC 11.15.2194(A)(2).

c. There are no perennial water sources on the subject lot or adjacent property, based on the aerial photograph in the record. Therefore, the applicant is not required to provide access to such water.

d. The dwellings are proposed to be 985 and 540 feet from McNamee Road, the closest publicly-maintained street. They could be situated 25 to 30 feet closer to that street and still comply with the minimum side yard setback of MCC 11.15.2178(C). However, given the large distances involved between the site and McNamee Road, the hearings officer finds the difference is negligible. Therefore, the dwelling location complies with MCC 11.15.2194(C).

e. The driveways to each homesite is less than 500 feet long measured from the private road. Therefore, the proposed dwellings comply with MCC 11.15.2194(D).

f. The application does not include information regarding the productivity characteristics of the site. However, based on the slope map, the south portions of the site are the least sloped. The hearings officer assumes the greatest productivity occurs where the site is least sloped, because that land is easier to plant and manage for resource purposes. The land with the lowest productivity characteristics probably is the land with the most slope, because that land is harder to access for planting or management purposes. Because the dwellings and drainfields are proposed on the land with the least slope, the hearings officer finds the dwellings are not located on that portion of the lot having the lowest productivity characteristics, and the application fails to bear the requisite burden of proof under MCC 11.15.2194(E).

g. The proposed building locations are not at least 200 feet from property lines. Dwellings are to be situated within 40 feet of side lot line and within 110 feet of south lot lines. The dwelling locations are not necessary to provide a setback from a public road or to allow for sharing of access or clustering of homes. Therefore, the location of the proposed homes does not comply with MCC 11.15.2194(F).

h. The dwellings are located outside a big game winter wildlife habitat identified by the Oregon Department of Fish and Wildlife, based on the staff report. Therefore, the dwellings complies with MCC 11.15.2194(J).

*B. Compliance with the Comprehensive Plan.*

1. The proposal complies with Policy 12 (Multiple Use Forest Areas), to the extent the County has designated and is maintaining the site in its Multiple Use Forest zone. However non-forest use of the lots is not compatible with forest uses for the reasons given in finding V.A.3.

2. The proposal complies with Policy 13 (Air and Water Quality and Noise), because the application includes a statement from the applicable agency that all standards can be met with respect to water quality to the extent sanitary sewage is related to water quality. The dwellings will have negligible water quality impacts, because there are no perennial water sources on or adjoining the site. The dwellings will not generate significant noise and is not a noise sensitive use. The dwellings will not generate significant air quality impacts. Therefore, no agency is required to find that the land division will comply with air quality or noise standards.

3. The proposal is subject to Policy 14 (Development Limitations), because it contains slopes in excess of 20 percent and land subject to earth movement. See finding II.F. Development of the site is subject to the Hillside Development regulations and/or UBC Chapter 70, pursuant to which design and construction techniques will be considered to protect against harm due to earth movement or erosion. Therefore, the proposed dwellings can comply with the policy.

4. The proposal does not comply with Policy 22 (Energy Conservation), because it does not increase the energy efficiency of land uses and practices and does not increase density in the urban area. There is not substantial evidence in the record to determine whether the site is served by mass transit. There are no pedestrian facilities in the area. There is not substantial evidence in the record to determine whether the proposed dwellings are sited to use natural environmental and climatic conditions to their advantage.

5. The proposal complies with Policy 37 (Utilities), because there is substantial evidence in the record that the purported lots of record are reasonably likely to be served by private water wells, based on the wells on adjoining property, and to be served by private sanitation facilities, based on the Land Feasibility Studies by Mr. Ebeling. To ensure that private water and sanitation systems are installed consistent with applicable ODEQ standards, conditions of approval would be warranted requiring the applicant to submit appropriate information from which the planning director can determine that actual water and sanitation systems are adequate, subject to the requisite notice and review procedures. The hearings officer finds storm water run-off can be accommodated on the site, because of the relatively small impervious area that will result from the proposed development and the applicability of county regulations regarding drainage and hillside erosion control. The hearings officer also finds that adequate energy supplies and communications facilities exist or can be provided to serve the proposed dwelling, because such facilities exist along the private road west of the site. See finding II.H.

6. The proposal complies with Policy 38 (Facilities), because the applicable school district, fire district and law enforcement agency had an opportunity to review and comment on the proposal. The hearings officer finds there is adequate water pressure and flow for fire fighting purposes, based on the written comment from the fire district. See also findings II.H..

7. The proposal complies with Policy 40 (Development Requirements), because that policy does not require any dedications or improvements to implement the bicycle corridor capital improvements program and map, the site is not a commercial, industrial and multiple family development, and bicycle parking can be provided on the site.

## VI. SITE VISIT

The hearings officer visited the site. His observations are reflected in Section II of the final order.

## VII. CONCLUSIONS AND DECISION

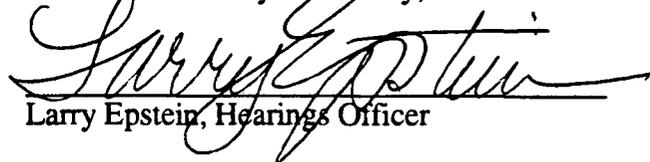
### A. *Conclusions.*

The hearings officer concludes that the proposed conditional use permit does not comply with MCC 11.15.2172(C)(1), (3) and (4) or with MCC 11.15.2194(E) or (F) and does not comply with Comprehensive Plan policies 12 (Multiple Use Forest) and 22 (Energy Conservation).

### B. *Decision.*

In recognition of the findings and conclusions contained herein, and incorporating the Staff Report and other reports of affected agencies and public testimony and exhibits received in this matter, the hearings officer hereby denies CU 1-93 and CU 2-93.

Dated this 21st day of January, 1993.

  
Larry Epstein, Hearings Officer

**IN THE MATTER OF CU 1-93 and CU 2-93**

Signed by the Hearings Officer: January 21, 1993  
Decision Mailed to Parties: January 25, 1993  
Submitted to Clerk of the Board January 28, 1993

Any appeals of this Decision must be filed within ten days after the Decision is filed with the Clerk of the Board.

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

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

**This Hearings Officer Decision will be reported to the Board of County Commissioners on Tuesday, February 23, 1993 at 9:30 a.m. in Room 602 of the Multnomah County Courthouse.**

For further information, call the Multnomah County Division of Planning and Development at 248-3043.

required transcript fee.  
Failure to comply with this subsection shall be a jurisdictional defect and shall preclude review by the Board.

(4) The findings and decision of the Planning Commission or Hearings Officer, and the Notice of Review, when applicable.

(D) Notice of Review shall be a condition precedent to judicial review of final orders, except in the case of Board review on its own motion.

(D) When permitted by the Board, review before the Board may include argument by the parties or their authorized representatives.

**11.15.8265 Board Order for Review**

A Board Order for Review of a decision must be made at the meeting at which the Board's Agenda included a summary of that decision under MCC .8255, unless specifically continued, which continuance shall not be later than the next regular Board meeting on planning and zoning matters.

(E) The Board may hear the entire matter *de novo*; or it may admit additional testimony and other evidence without holding a *de novo* hearing if it is satisfied that the additional testimony or other evidence could not reasonably have been presented at the prior hearing. The Board shall, in making such decision, consider:

**11.15.8270 Scope of Review**

(A) The Board, upon receipt of Notice of Review or upon its own motion to grant review, shall, at the appropriate meeting, determine whether review shall be:

- (1) Prejudice to parties;
- (2) Convenience or availability of evidence at the time of the initial hearing;
- (3) Surprise to opposing parties;
- (4) The competency, relevancy and materiality of the proposed testimony or other evidence.

- (1) On the record; or
- (2) Under subsection (E) below, *de novo* or by additional testimony and other evidence without full *de novo* review.

(B) Prior to such determination, the Board may conduct a hearing at which the parties shall be afforded an opportunity to appear and present argument On the Scope of Review under subsection (E) below. Notice of such hearing shall be mailed to the parties no less than ten days prior to the hearing.

(F) *De Novo* Hearing means a hearing by the Board as if the action had not been heard by the Planning Commission or Hearings Officer, and as if no decision had been rendered, except that all testimony, evidence and other material received by the Planning Commission or Hearings Officer shall be included in the record.

(C) Unless otherwise provided by the Board under subsection (D) and (E) below, review of the action shall be confined to the record of the proceeding below, which shall include:

(G) Review by the Board, if upon Notice of Review by an aggrieved party, shall be limited to the grounds relied upon in the Notice of Review under MCC .8260(B) and any hearing permitted under MCC .8270(B).

(1) All materials, pleadings, memoranda, stipulations and motions submitted by any party and received or considered by the Planning Commission or Hearings Officer;

(H) At the meeting at which the Scope of Review is determined pursuant to MCC .8270(A) and (B), the Board shall further determine the time and place for the review, which shall not be later than 45 days from the date of the Board determination.

(2) All materials submitted by the Planning Director with respect to the proposal;

**11.15.8275. Notice of Board Hearing**

(3) The transcript of the hearing below;

(A) Notice of Board hearing shall be given in the same manner as required for hearings by the Planning Commission and Hearings Officer

Meeting Date: February 23, 1993

Agenda No.: P-5

(Above space for Clerk's Office Use)

AGENDA PLACEMENT FORM  
(For Non-Budgetary Items)

SUBJECT: LR 2-92 Final Order

BCC Informal \_\_\_\_\_ BCC Formal February 23, 1993  
(date) (date)

DEPARTMENT DES DIVISION Planning

CONTACT Sharon Cowley TELEPHONE 2610

PERSON(S) MAKING PRESENTATION Mark Hess

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: xx

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

LR 2-92 Review of the Hearings Officer's Decision affirming the Planning Director's approval of a residential building permit application - adoption of Final Order

*2/23/93 copies to Sharon Cowley & Mark Hess*

BOARD OF CLATY COUNTY COMMISSIONERS  
MULTNOMAH COUNTY OREGON  
1993 FEB 17 AM 9:05

(If space is inadequate, please use other side)

SIGNATURES:

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

Or

DEPARTMENT MANAGER *DC* BH Willia

(All accompanying documents must have required signatures)

NOT ALLOWED TO TESTIFY

**PLEASE PRINT LEGIBLY!**

MEETING DATE 2/23/93

NAME Paul Duden

ADDRESS 333 SW Taylor

STREET Portland

CITY ZIP CODE

I WISH TO SPEAK ON AGENDA ITEM # P-5

SUPPORT \_\_\_\_\_ OPPOSE X  
SUBMIT TO BOARD CLERK



**MULTNOMAH COUNTY OREGON**

DIVISION OF PLANNING & DEVELOPMENT/2115 S.E. MORRISON/PORTLAND, OREGON 97214

**DIVISION OF PLANNING AND DEVELOPMENT**

**Board Planning Packet Check List**

File No. LR 2-92

Agenda Placement Sheet      No. of Pages 1

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

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

Decision (FINAL ORDER)      No. of Pages 9  
(Hearings Officer/Planning Commission)  
 Previously Distributed      \_\_\_\_\_

BOARD OF  
COUNTY COMMISSIONERS  
1993 FEB 17 AM 9:05  
MULTNOMAH COUNTY  
OREGON

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

BEFORE THE BOARD OF COUNTY COMMISSIONERS  
FOR THE COUNTY OF MULTNOMAH

In the Matter of the Review	)	
of the Hearing Officer's	)	FINAL ORDER
Decision Affirming the	)	LR 2-92, #184
Planning Director's Approval	)	93-54
of a Residential Building	)	
Permit Application	)	

I. INTRODUCTION

This matter came before the Board of Commissioners ("Board") for a hearing on January 26, 1993. The Board hereby affirms the decision of the Hearings Officer regarding the approval of a residential building permit application based on the findings and conclusions contained herein.

On November 2, 1992, a hearing was conducted before Robert L. Liberty, Hearings Officer for Multnomah County. Appellants and applicant, James Haldors, were invited by the Hearings Officer to submit supplemental memoranda by November 9 regarding issues that arose during the November 2 hearing. On December 15, 1992, the Hearings Officer issued his Decision which affirmed the Planning Directors' Administrative Approval of the applicant's building permit application to construct a single family residence on a 10,000 square foot property located within the Palatine Hill Addition No. 3 Subdivision, an area zoned single family residential and designated R-20 on the Multnomah County zoning map.

A Notice of Review of the Hearing Officer's decision was filed by Paul Duden on behalf of his clients, William Naito, N. Robert Stoll and Douglas Campbell.

The Notice of Review listed its grounds for reversal of decision as:

1. The land in question was an illegally created lot pursuant to MCC .2854(I);
2. The land in question is not a "lot" subject to the exception to the minimum lot size requirement of MCC .2856(B); and
3. The planning decision of Multnomah County rendered meaningless the R-20 zone in the Dunthorpe area.

The Board heard the matter on January 26, 1993. After considering the evidence, the Hearings Officer's decision, the Planning Director's determination, staff recommendations, arguments from the applicant and appellants and the entire record herein, the Board affirmed the Planning Director's and Hearing Officer's approval of the building permit application. The applicant, as prevailing party, was directed to draft findings and conclusions supporting approval of the building permit application.

## II. HISTORY OF PROPERTY

The property which is the subject of this appeal is made up of two, contiguous 5,000 square foot units of land designated as Lot Nos. 1 and 2 of Block 111 of the Palatine Hill Subdivision No. 3, which was platted in 1890. The lots are bounded on the west by Southwest Tryon, and on the south by Southwest Pomona, as represented on the attached vicinity map.

Each of the 20 lots within Block 111 of the subdivision was platted with 5,000 square feet of area.

In 1948, the residents of the Dunthorpe area incorporated a zoning district. The residential zones adopted by that district established minimum lot sizes of 20,000 and 30,000 square feet. In 1955, Multnomah County assumed zoning authority over the Riverdale/Dunthorpe area. The county applied two zones which incorporated the 20,000 square foot (currently the R-20 district) and 30,000 square foot (the R-30 district) minimum lot sizes. An exception to the minimum lot size requirement was adopted for specified preexisting lots as a means of continuing to recognize the property rights created under the 1890 subdivision plat.

On May 28, 1992, applicant purchased the subject property. On June 2, 1992, the county issued a building permit to the applicant, without notice or an opportunity for a hearing. The appellants appealed that decision to LUBA, and the appeal was dismissed by stipulation of the parties on September 3, 1992 in order to provide the appellants with the opportunity for a hearing before Multnomah County.

On September 17, 1992, the Planning Director of Multnomah County issued a written land use decision granting the applicant's building permit application, and this appeal ensued.

### III. APPLICABLE REVIEW STANDARDS

Pursuant to MCC .8270(G) the scope of review of appeals before the Board of County Commissioners is limited to the grounds relied upon by appellants in their Notice of Review and

any hearing permitted under MCC .8270(B). Because no hearing was held pursuant to MCC .8270(B), the scope of the Board's review is limited to the stated grounds within appellants' Notice of Review.

Under MCC .8260(B)(3), a Notice of Review must contain the specific grounds relied upon for review. Appellants' Notice for Review lists three grounds for reversal, but only the first two contain specific grounds for appeal. Because appellants' third ground for reversal does not specify a statutory or code standard not met, it is excluded from the Board's scope of review.

At the hearing before the Hearings Officer, a question was raised whether County Comprehensive Plan policy numbers 37 and 38 were within the Hearings Officer's scope of review pursuant to MCC .8295. The Board affirms the Hearings Officer's determination that his review was limited to the specific grounds stated in the Notice of Appeal pursuant to MCC .8295(A). Failure to show compliance with the Comprehensive Plan was not asserted as a ground for review before the Hearings Officer, nor on appeal to this Board. Therefore, the issue is not reviewable in this proceeding as provided in MCC .8295(A).

#### IV. REVIEW OF THE ARGUMENTS ON THE MERITS

##### A. The Subject Property Qualifies for the Grandfathering Exception of MCC .2856(B).

The subject property is zoned single family residential, R-20, on the Multnomah County zoning map. Single family dwellings are prescribed, permitted uses in that zoning

district pursuant to MCC .2852(A). As noted in the Planning Director's findings, applicant's Building Permit request adequately demonstrates compliance with all relevant criteria under MCC .2854 except for the lot size requirement under subparts (A) and (I).

MCC .2854(A) states the minimum lot size in the R-20 zone shall be 20,000 square feet. An exception to the 20,000 square foot minimum lot size requirement is provided under MCC .2856(B) which reads:

Where a lot has been a deed of record of less than 80 feet in width, or an area of less than 20,000 square feet, and was held under separate ownership, or was on public record at the time this Chapter became effective, such lot may be occupied by any use permitted in this district. In no case, however, shall a dwelling unit have a lot area of less 3,000 square feet. (Emphasis added.)

The primary question in this appeal is whether Applicant's property qualifies for application of this exception to the 20,000 square foot minimum lot size requirement. The Board concurs with the Hearing Officer's rationale for affirming the Planning Director's determination that the subject property qualifies for this exception.

The text of the Code provision provides two alternative methods for undersize lots of record to qualify for the exception. A lot qualifies if it either: (1) was held under separate ownership; or (2) was on the public record as of November 15, 1962, the date of adoption of the Zoning Chapter of the Multnomah County Code. Because Lots 1 and 2, Block 111, Palatine Hill Addition Number 3 were platted in 1890, they have

been on the public record for seventy-two years prior to the adoption of the zoning chapter. Therefore, the Board finds the Hearings Officer was correct in his first line of analysis for affirming the Planning Director's Determination.

Appellants maintain the county should ignore the literal language of MCC .2856(B) because of the concept of aggregation of contiguous parcels under common ownership found in the text of other jurisdictions' land use regulations. As did the Hearings Officer, the Board is not persuaded that land use laws of other jurisdictions provides any guidance here. The determination whether the applicant qualifies for the lot size exception must be based solely upon the criteria in the Multnomah County Zoning Ordinance and not upon regulations of other jurisdictions. As noted in appellants' hearing memorandum, "the issue is what the ordinance says" (Appellants' Hearing Memorandum at 8).

The Board also rejects appellants' implied claim that the definition of "lot" in the zoning code constitutes an aggregation requirement that precludes transfers of platted subdivision lots. Since MCC .2856(B) includes no aggregation requirement, the Board cannot invoke one in this quasi-judicial proceeding. In some zones the zoning ordinance includes specific aggregation requirements. For example, in the exclusive farm use ("EFU") zoning category contained in MCC .2002-.2030, specific aggregation language can be found within MCC .2018(A)(2)(d) and (A)(3). Similar aggregation provisions are contained within the CFU zoning category. Because lot aggregation provisions are not

applicable within the R-20 zone, the Board cannot apply such criteria here.

Further justification for affirming the Planning Director's and Hearing Officer's decisions is provided by Multnomah County's consistent interpretation for more than 30 years that MCC .2856(B) applies in cases such as this. As noted in applicant's hearing memorandum, Robert Baldwin, the Multnomah County Planning Director for more than 20 years, testified in court that the county consistently interpreted and applied MCC .2856(B) to allow residential construction on lots platted before the ordinance became effective, provided the lots were larger than 3,000 square feet.

The type of development proposed by applicant is identical to a building permit granted in 1967 on two contiguous 5,000 square foot lots in Block 106 of the Palatine Hill No. 3 subdivision. This precedent occurred in the same subdivision as applicant's.

The Board interprets MCC .2856(B) to allow single family dwelling units on lots such as the subject property provided such lots were platted before zoning laws became effective.

B. The Individual Lots Created Under the 1890 Subdivision Must Remain Recognizable Lawful Divisions of Land Under State Law.

Appellants contend the two subject lots plus two contiguous lots owned by the same owner comprise one lot under the zoning code. See, MCC 11.15.0010. According to appellants,

a 1989 conveyance of two of these lots violated the county code and disqualified the lots from development under MCC .2854(I).

ORS 92.010 defines the term "lot" to be "a unit of land that is created by a subdivision of land." As noted by the Hearings Officer, the statutory definition of "lot" is cross-referenced and applied to county zoning and planning provisions pursuant to ORS Chapter 215. Therefore, because the two lots comprising the subject property were lawfully created under the 1890 Subdivision Plat, they constitute discrete tracts of land for conveyance purposes.

The Board affirms the Hearings Officer's determination that ORS 92.017 resolves the issue raised by appellants regarding the legality of the subject property. The testimony of representative Al Young that is included in the Hearings Officer's decision demonstrates that the statute was intended to preempt local ordinances that attempted to reconsolidate contiguous lots and parcels that happened to be under common ownership.

Both the text of ORS 92.017 and its legislative history confirm that the functions of the statute were: (a) to prevent cities and counties from refusing to recognize lawful divisions of land, thus raising concerns about land's alienability; and (b) to establish that the property lines created by such land divisions remain discrete and inviolate, absent the use of legal methods to change or eliminate such property lines. The statute mandates recognition of such parcels as separate and distinct

until some action is taken to erase the lawfully established property lines.

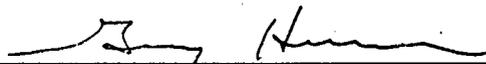
Because the two lots comprising the subject property have not been changed, vacated or further divided, as provided by law, the Board finds that ORS 92.017 operates to require continued recognition of the lots regardless of ownership. As noted by the Hearings Officer, ORS 92.017 does not affect the developability of lots because that determination must be made with reference to planning and zoning standards such as those provided under MCC .2856(B) discussed above.

V. CONCLUSIONS AND DECISIONS

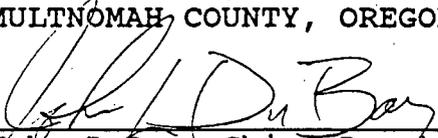
Based on the above findings and evaluation, the Board of Commissioners concludes that the building permit application complies with the applicable standards of the Multnomah County Code. Therefore, the Board of Commissioners hereby affirms the Hearing Officer's and Planning Director's decision in this matter and approves the building permit requested in LR2-92, #184.

DATED this 23rd day of February, 1993.



  
\_\_\_\_\_  
Gary Hansen, Vice-Chair  
Gladys McCoy, Multnomah County Chair

REVIEWED  
LAURENCE KRESSEL, COUNTY COUNSEL  
FOR MULTNOMAH COUNTY, OREGON

By:   
\_\_\_\_\_  
John DuBay, Chief Deputy County Counsel

**TOOZE SHENKER DUDEN CREAMER FRANK & HUTCHISON**

ROBERT E. L. BONAPARTE\*\*\*  
NEALE E. CREAMER\*\*  
PAUL R. DUDEN  
JEROME F. ELLIOTT\*\*  
STEPHEN R. FRANK  
MICHAEL J. GENTRY  
ALISON K. GREENE\*\*  
WILLIAM P. HUTCHISON, JR.  
ERIC J. NEIMAN\*  
JOHN OSTRANDER\*  
ARDEN E. SHENKER  
DAVID R. SIMON

ATTORNEYS AT LAW  
333 S. W. TAYLOR STREET  
PORTLAND, OREGON 97204-2496  
TELEPHONE (503) 223-5181  
FACSIMILE (503) 223-5550

LAMAR TOOZE  
1875-1971  
LAMAR TOOZE, JR.  
1922-1985  
ADMITTED IN OREGON  
WASHINGTON\*  
CALIFORNIA\*\*  
NEW YORK\*\*\*  
WASHINGTON, D. C.\*\*\*

COPY

April 15, 1993

**HAND-DELIVERED**

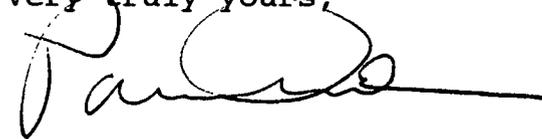
Land Use Board of Appeals  
100 High Street S.E.  
Suite 220  
Salem, OR 97310

Dear Board:

**Re: Douglas Campbell, N. Robert Stoll, and William Naito v.  
Multnomah County  
Land Use Board of Appeals No. 93-032  
Our File No. 890532**

Enclosed are the original and four copies of Petitioners' Petition for Review.

Very truly yours,



PAUL R. DUDEN

PRD/klv

Enclosures

cc: Board of County Commissioners  
of Multnomah County  
John L. DuBay  
Steven W. Abel, Esq.  
(All above w/encl)

BOARD OF  
COUNTY COMMISSIONERS  
1993 APR 19 PM 11:20  
MULTNOMAH COUNTY  
OREGON

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

DOUGLAS CAMPBELL, N. ROBERT )  
STOLL, and WILLIAM NAITO )  
 )  
Petitioners, ) LUBA No. 93-032  
 )  
vs. )  
 )  
MULTNOMAH COUNTY, )  
 )  
Respondent, )  
 )  
and )  
 )  
JAMES HALDORS, )  
 )  
Intervenor/Respondent. )

---

PETITION FOR REVIEW OF  
DOUGLAS CAMPBELL, N. ROBERT STOLL, and WILLIAM NAITO

---

Paul R. Duden, OSB #66035  
TOOZE SHENKER DUDEN  
CREAMER FRANK & HUTCHISON  
333 S.W. Taylor Street  
Portland, OR 97204  
(503) 223-5181  
Attorneys for Petitioners

Steven W. Abel, Esq., OSB #83137  
SCHWABE, WILLIAMSON & WYATT  
1600-1800 Pacwest Center  
1211 S.W. Fifth Avenue  
Portland, OR 97204-3795  
(503) 222-9981  
Attorneys for Intervenor  
James Haldors

John L. DuBay, OSB #60021  
Chief Assistant County Counsel  
1120 S.W. Fifth Avenue  
Suite 1530  
P. O. Box 849  
Portland, Oregon 97204-0849  
(503) 248-3138  
Attorneys for Multnomah County

PETITION FOR REVIEW

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MCZO 11.15.8805 . . . . . 3

MCZO 11.15.8805(A) . . . . . 9

MCZO 11.15.8805(C) . . . . . 9

MCZO 11.15.2856(B) . . . . . 3, 6

PETITION FOR REVIEW

A. Petitioners' Standing

Petitioners, owners of property adjacent to the subject property (R. 112), filed a timely notice of appeal of an administrative decision of the Director of the Department of Environmental Services of Multnomah County (R. 489), a timely notice of review of the decision of the hearing officer (R. 112-13), and a timely notice of intent to appeal the decision of the Board of Commissioners of Multnomah County.

B. Statement of the Case

1. Nature of Land Use Decision and Relief Sought by Petitioners

Multnomah County granted a building permit application following a *quasi-judicial* determination as to the meaning of certain provisions of the Multnomah County Zoning Ordinance. Petitioners seek an order directing that the application for the building permit be denied.

2. Summary of Argument

Multnomah County granted a building permit application by determining in error that an exception to the R-20 zone applied. The genesis of the error is Multnomah County's conclusion that preexisting platted property may not be up-zoned. To the contrary, the zoning ordinance clearly covers preexisting platted property, and gives no exception from lot size requirements in the absence of an existing deed of record at the time the zone was enacted.

\* \* \*

\* \* \*

### 3. Summary of the Material Facts

#### a. Introduction

Petitioners own property in Multnomah County's Riverdale-Dunthorpe neighborhood adjacent to the property in question. The neighborhood is a residential area located in an unincorporated portion of Multnomah County, and bordered by the cities of Portland and Lake Oswego, the Willamette River and Tryon Creek State Park (R. 95, 112). On March 27, 1890, a large portion of the neighborhood was platted into 5,000 square foot lots (R. 57). Historically, most homes were built on parcels consisting of a number of 5,000 square foot lots (R. 349).

In 1948, in order to preserve the character of the neighborhood, pursuant to existing statutes, the residents of this unincorporated area united to form a zoning district by a vote of 152 to 6 (R. 357-67). Insofar as this case is concerned, a zone was established governing previously platted 500 square foot parcels which required a 20,000 square foot minimum lot size for home construction (R. 122). As can be seen from the maps which Multnomah County is submitting, the 20,000 square foot zone in the Riverdale district almost entirely applied to the 5,000 square foot 1890 plats (R. 61). When Multnomah County assumed responsibility for zoning pursuant to a statutory plan adopted in 1955, it tried to maintain the same zoning as had existed under the Riverdale Zoning District (R. 287). Indeed, the County specifically wrote and adopted the R-20 zone, requiring 20,000 square foot minimum lot sizes, to replace those zones in the Riverdale

Zoning District since residential lot requirements of that size did not otherwise exist in Multnomah County (R. 289).

b. The Zone

The R-20 zone is codified as MCZO 11.15.2852-6, and is attached as Appendix B to this brief.

The MCZO defines a 'lot' as (11.15.0010):

"A plot, parcel or area of land owned by or under the lawful control and in the lawful possession of one distinct ownership."

Non-conforming use is defined as:

"A use to which a building or land was put at the time this Chapter became effective and which does not conform with the use regulations of the district in which it is located (11.15.0010)."

The ordinance further provides (11.15.8805):

"(A) A non-conforming structure or use may not be changed or altered in any manner except as provided herein, unless such change or alteration more nearly conforms with the regulation of the district in which it is located.

\* \* \*

"(C) If a non-conforming structure or use is abandoned or discontinued for any reason for more than one year, it shall not be reestablished unless specifically approved by the Hearings Officer."

Finally, 11.15.2854(I) states:

"No sale or conveyance of any portion of a lot, for other than a public purpose, shall leave a structure on the remainder of the lot with less than the minimum lot, yard, or setback requirements of this district."

Multnomah County concluded that the above provisions were not applicable to the building permit in question by reason of MCZO 11.15.2856(B):

"Where a lot has been a deed of record of less than 80 feet in width, or an area of less than 20,000 square feet, and was held under separate ownership, or was on public record at the time this

Chapter became effective, such lot may be occupied by any use permitted in this district. In no case, however, shall a dwelling unit have a lot area of less than 3,000 square feet."

c. The Property at Issue

In 1949, the Johnsons purchased from the Kindleys lots 1, 2, 19 and 20 of Block 111, Palatine Hill, Subdivision No. 3, on which a house had been constructed in 1942 (R. 117, 368). Each lot consists of 5,000 square feet of land platted in 1890 (R. 57, 117). Since 1948, the property had been subject to a zone requiring a minimum lot size of 20,000 square feet, now called the R-20 zone in Multnomah County (R. 117). The house was physically sited on lots 19 and 20, with lots 1 and 2 constituting the back yard (R. 117).

On October 1, 1984, the Johnsons sold this home and property to the Magids for \$122,000 (R. 369). On March 8, 1989, the Magids sold lots 19 and 20, including the house, for \$144,000 (R. 370). On May 28, 1992, Intervenor Mr. Haldors purchased lots 1 and 2 from the Magids, and applied for a building permit to construct a residence on those lots. Multnomah County has concluded that the permit meets its zoning requirements.

C. Jurisdiction

The Land Use Board of Appeals has jurisdiction of this matter under ORS 197.825(1), a final land use decision of Multnomah County. Petitioners have exhausted all remedies by right.

Multnomah County's decision was made under a standard which required interpretation, and the exercise of legal judgment. ORS 197.020(10)(a)(A) and (b)(A).

D. Assignments of Error

Assignment of Error No. 1

Multnomah County erred in concluding "that the building permit application complies with the applicable standards of the Multnomah County Code." (R. 11).

Assignment of Error No. 2

Multnomah County erred in determining that Lots 1, 2, 19 and 20, Block 111, Palatine Hill Subdivision No. 3, did not together constitute a "lot" within the meaning of the Multnomah County zoning ordinance (R. 9-11).

Assignment of Error No. 3

Multnomah County erred in determining that Lots 1 and 2 were a separate deed of record within the exceptions to the R-20 zone:

"The Board interprets MCC.2856(B) to allow single family dwelling units on lots such as the subject property provided such lots were platted before zoning laws became effective (R. 9)."

Assignment of Error No. 4

Multnomah County erred in granting a building permit application on an improperly created lot (R. 11).

Argument on Assignment of Error Nos. 1-4

This matter arises as a result of Multnomah County granting a building permit application. The application required a quasi-judicial determination as to the meaning of certain provisions of the Multnomah County Zoning Ordinance. The interpretation by Multnomah County essentially renders the lot size requirements of the zoning ordinance meaningless.

Most of the lots subject to the R-20 zone in Multnomah County, which applies only to property located in the

neighborhood in question, consist of lots made up of previously platted 5,000 square foot parcels (see Appellant's Exhibit 1A to be submitted by Multnomah County). There was no purpose in adopting zoning lot size requirements if pre-existing smaller sized plats control zoning.

There is no question that the Magids purchased property which had existed as a 20,000 parcel with a home located on it since before any zoning was adopted, and which had existed for 35 years in a R-20 zone. MCZO 11.15.0010 defines a lot as:

"A plot [not plat], parcel or area of land owned by or under the lawful control of and in the lawful possession of one distinct ownership."

The parcel purchased by Magids clearly fits this description. The Magids owned a 20,000 square foot parcel, plot or area of land. The ordinance then specifically states:

"No sale or conveyance of any portion of a lot, for other than a public purpose, shall leave a structure on the remainder of the lot with less than the minimum lot, yard or setback requirements of this district." (MCZO 11.15.2854(I)).

When the Magids sold this 20,000 square foot parcel in two pieces, each now only 10,000 square feet in size, they clearly violated this provision.

Multnomah County justifies granting a building permit on the illegally created lot by relying on MCZO 11.15.2856(B) which states:

"Where a lot has been a deed of record of less than 80 feet in width, or an area of less than 20,000 square feet, and was held under separate ownership, or was on public record at the time this Chapter became effective, such lot may be occupied by any use permitted in this district. In no case, however, shall a dwelling unit have a lot area of less than 3,000 square feet." (Emphasis added).

Multnomah County and intervenor applicant claim that since the 5,000 square foot plats were recorded in 1890, they were "on public record" and thus exempt parcels when zoning went into effect. That interpretation makes no sense.

The clear intent from a reading of the zoning ordinance is that it relates to a lot which has been "a deed of record" of less than 20,000 square feet. In other words, a parcel of land described by deed of less than 20,000 square feet. Here, until Magids divided the property, there was no deed of record of any parcel of property of less than 20,000 square feet. All deeds had been of a 20,000 square foot parcel of property.

The next predicates for the operation of the exception for preexisting "deeds of record" are either (1) the lot was held under separate ownership, or (2) it was on public record at the time zoning became effective. Clearly, the parcel in question was not a deed of record under separate ownership when the zone was enacted. The only deeds of record had conveyed the entire 20,000 square foot parcel under one ownership. Thus, the "separate" ownership exception does not apply.

Also, clearly, there never was a separate deed of record for Lots 1 and 2, the back yard, on public record when zoning became effective. What this predicate requires is that, even under single ownership, an exception exists if the owner acquired or held the parcels by separate recorded deeds when zoning became effective. The clear meaning of the "on public record" exemption is for a single owner of two adjacent parcels, acquired by separate deeds, if the separate deeds were on public record at the time the chapter became

effective. Thus, for example, if the Johnsons had purchased Lots 1 and 2 by separate deed as one parcel, and lots 19 and 20 from another seller by separate deed, there would be two separate lots which were "deeds of record," and "on public record," even though not held under separate ownership. The exception would then recognize two lots.

Multnomah County's interpretation that a plat of record is therefore a deed of record contravenes any reasonable statutory construction. In essence, Multnomah County is ignoring the "deed of record" language, and rewriting the code to state that if a lot is on public record by virtue of being platted, it cannot be up-zoned.

It generally is recognized that undeveloped platted land is not a use which "grandfather clauses" protect. The MCZO "grandfather clause" clearly was designed to protect substandard parcels in isolated deeded ownership at the time zoning was enacted. This is consistent with the requirement of ORS Chapter 215 governing county zoning, particularly ORS 215.130(5):

"The lawful use of any building, structure or land at the time of the enactment of amendment of any zoning ordinance or regulation may be continued. Alteration of any such use may be permitted to reasonably continue the use. Alteration of any such use shall be permitted when necessary to comply with any lawful requirement for alteration in use. A change of ownership or occupancy shall be permitted."

This zoning law requirement is tempered by a subsequent provision, ORS 215.130(7):

"Any use described in subsection (5) of this section may not be resumed after a period after a period of interruption or abandonment unless the resumed use conforms with the requirements of zoning

ordinances or regulations applicable at the time of the proposed resumption."

The MCZO specifically recognizes these requirements (supra page 4, MCZO 11.15.8805(A) and (C)).

Oregon has recognized that owning platted, undeveloped land does not establish a prior non-conforming use. In Parks v. Tillamook County-Spliid, 11 Or App 177, 501 P2d 85 (1972), the court held (11 Or App at 196-7):

"Platted but undeveloped land is not normally regarded as a 'use' in zoning law for purposes of establishing a prior non-conforming use. \* \* \* Rules that restrict the recognizability, continuation, and expansion of non-conforming uses are common. The use must be an existing one when the zone is adopted; one merely contemplated is not protected. \* \* \* A prior non-conforming use which is abandoned is not thereafter protected. Enlargement or extension of non-conforming uses is not permitted. \* \* \* As far as the harmful impact they can have on a comprehensive zoning plan, there is no material difference between non-conforming uses and substandard lots. The same long-recognized policy consideration used to restrict non-conforming uses as much as possible mandate an equally restrictive approach to the substandard lot question."

These pronouncements merely reflect the generally recognized law of zoning in this country. The intent of grandfathering provisions is to provide for the continued use of substandard parcels which existed in that form at the time the zoning regulations were adopted. See Anderson, American Law of Zoning 3rd, § 966-7, 301-312 (1986). As clearly pointed out in Anderson, supra, § 967, pages 307-12, the rule governing the precise issue in this case is as follows:

"The common exception of lots which were recorded prior to the effective date of a restrictive ordinance is limited to lots which were in single and separate ownership on that date. Under such a provision, an owner is entitled to an exception only if his lot is isolated. If the owner of such a lot owns another lot adjacent to it, he is

not entitled to an exception. Rather, he must combine the two lots to form one which will meet, or more closely approximate, the frontage and area requirements of the ordinance.

\* \* \*

"Under most ordinances, an owner of a substandard lot is entitled to an exception only if the lot existed on the effective date of the restrictive ordinance. Status as a single and separate owner may not be acquired after enactment of the restrictive ordinance, by selling a parcel and reducing a remainder below the frontage and area standards. An owner of several contiguous parcels may not combine them so as to leave a substandard lot, and assert a right to an exception of the latter."

In Fina Homes, Inc. v. Young, 14 Misc 2d 576, 177 NYS2d 535 (1958), aff'd 164 NE2d 860, 196 NYS2d 985 (1955), plaintiff's predecessor owned four contiguous lots, on two of which a house was located. At the time the applicable zoning ordinance went into effect, the four contiguous lots met the minimum lot size requirement. Thereafter, plaintiff's predecessor sold the house and two lots to one party, and the two adjacent vacant lots to plaintiff. The court ruled that the ordinance exempting a lot separately owned did not include adjoining lots which conformed to zoning, and which were occupied and used as a single parcel. Once the zone was adopted, the court held (177 NYS2d at 536-7):

"[F]rom that time forward, she was on notice that she no longer had the right to subdivide a plot so as to leave the house with less than the minimum amount of land. \* \* \* The notion that you acquire a vested right in an ordinance, without taking any action in reliance upon it, is unsound. If adopted, it would automatically invalidate all up-zoning."

To the same effect is Dedering v. Johnson, 239 NW2d 913 (Minn 1976) where the court held that a non-conforming undeveloped lot in the same ownership as an adjacent undeveloped lot must be combined, stating (239 NW2d at 918):

"The purpose of exemption clauses in a zoning ordinance is to protect persons who acquire property prior to the adoption of the zoning ordinance from being deprived of the value of their property. \* \* \* Where the owner of a non-conforming undeveloped lot also own adjacent undeveloped property, however, the owner must combine the two undeveloped lots."

Another case closely analogous to the present is West Goshen Township v. Crater, 538 A2d 952 (Pa Commw 1988). Craters bought a single family home on Lots 26, 27 and 28 of a subdivision with the house situated on Lot 27. A zoning ordinance was then adopted establishing minimum lot sizes of 30,000 square feet. Craters then sought a building permit to construct a home on Lot 28, a parcel of less than 30,000 square feet. The zoning ordinance defined a lot as: "A tract or parcel of land held in single and separate ownership." In denying the request for a building permit, the court held (538 A2d at 954-6):

"Where two lots are 'merged' or joined before the adoption of an ordinance containing language such as is present here, such lots are not held in single and separate ownership. \* \* \* Thus, for purposes of the zoning ordinance, Lot 28 was not a separate 'lot' but a portion of a larger residential 'lot' owned by appellees. Because of the integrated use of their land, appellees own no lots which are 'too small to conform with the minimum area requirement,' but instead own a 'lot' which is of sufficient size."

Here, granting a building permit is a clear violation of the R-20 zone. The County's interpretation of the zoning ordinances to allow the creation of substandard lots after the enactment of the ordinance is in error.

\* \* \*  
\* \* \*  
\* \* \*

CONCLUSION

While Multnomah County may be interested in "in-filling" (R. 95), it should not be allowed to ignore the clear language of established zones. The county cannot explain why the zone ever was established, if it did not control the lot size of most of the property it governed. Using the 1890 plats is only an excuse, a legally unsupported one at that, to circumvent the clear language of the zone, and increase by "in-fill" the county's property tax revenues. The decision should be reversed.

E. Challenged Land Use Decision

See Appendix A, pp. 13-21 *infra*.

F. Applicable Zone

See Appendix B, pp. 22-3 *infra*.

DATED this 15th day of April, 1993.

RESPECTFULLY SUBMITTED,

TOOZE SHENKER DUDEN  
CREAMER FRANK & HUTCHISON

By

  
Paul R. Duden, OSB #66035  
Of Attorneys for Petitioners

# APPENDIX A

BEFORE THE BOARD OF COUNTY COMMISSIONERS  
FOR THE COUNTY OF MULTNOMAH

In the Matter of the Review	)	
of the Hearing Officer's	)	FINAL ORDER
Decision Affirming the	)	LR 2-92, #184
Planning Director's Approval	)	93-54
of a Residential Building	)	
Permit Application	)	

I. INTRODUCTION

This matter came before the Board of Commissioners ("Board") for a hearing on January 26, 1993. The Board hereby affirms the decision of the Hearings Officer regarding the approval of a residential building permit application based on the findings and conclusions contained herein.

On November 2, 1992, a hearing was conducted before Robert L. Liberty, Hearings Officer for Multnomah County. Appellants and applicant, James Haldors, were invited by the Hearings Officer to submit supplemental memoranda by November 9 regarding issues that arose during the November 2 hearing. On December 15, 1992, the Hearings Officer issued his Decision which affirmed the Planning Directors' Administrative Approval of the applicant's building permit application to construct a single family residence on a 10,000 square foot property located within the Palatine Hill Addition No. 3 Subdivision, an area zoned single family residential and designated R-20 on the Multnomah County zoning map.

A Notice of Review of the Hearing Officer's decision was filed by Paul Duden on behalf of his clients, William Naito, N. Robert Stoll and Douglas Campbell.

The Notice of Review listed its grounds for reversal of decision as:

1. The land in question was an illegally created lot pursuant to MCC .2854(I);
2. The land in question is not a "lot" subject to the exception to the minimum lot size requirement of MCC .2856(B); and
3. The planning decision of Multnomah County rendered meaningless the R-20 zone in the Dunthorpe area.

The Board heard the matter on January 26, 1993. After considering the evidence, the Hearings Officer's decision, the Planning Director's determination, staff recommendations, arguments from the applicant and appellants and the entire record herein, the Board affirmed the Planning Director's and Hearing Officer's approval of the building permit application. The applicant, as prevailing party, was directed to draft findings and conclusions supporting approval of the building permit application.

## II. HISTORY OF PROPERTY

The property which is the subject of this appeal is made up of two, contiguous 5,000 square foot units of land designated as Lot Nos. 1 and 2 of Block 111 of the Palatine Hill Subdivision No. 3, which was platted in 1890. The lots are bounded on the west by Southwest Tryon, and on the south by Southwest Pomona, as represented on the attached vicinity map.

Each of the 20 lots within Block 111 of the subdivision was platted with 5,000 square feet of area.

In 1948, the residents of the Dunthorpe area incorporated a zoning district. The residential zones adopted by that district established minimum lot sizes of 20,000 and 30,000 square feet. In 1955, Multnomah County assumed zoning authority over the Riverdale/Dunthorpe area. The county applied two zones which incorporated the 20,000 square foot (currently the R-20 district) and 30,000 square foot (the R-30 district) minimum lot sizes. An exception to the minimum lot size requirement was adopted for specified preexisting lots as a means of continuing to recognize the property rights created under the 1890 subdivision plat.

On May 28, 1992, applicant purchased the subject property. On June 2, 1992, the county issued a building permit to the applicant, without notice or an opportunity for a hearing. The appellants appealed that decision to LUBA, and the appeal was dismissed by stipulation of the parties on September 3, 1992 in order to provide the appellants with the opportunity for a hearing before Multnomah County.

On September 17, 1992, the Planning Director of Multnomah County issued a written land use decision granting the applicant's building permit application, and this appeal ensued.

### III. APPLICABLE REVIEW STANDARDS

Pursuant to MCC .8270(G) the scope of review of appeals before the Board of County Commissioners is limited to the grounds relied upon by appellants in their Notice of Review and

any hearing permitted under MCC .8270(B). Because no hearing was held pursuant to MCC .8270(B), the scope of the Board's review is limited to the stated grounds within appellants' Notice of Review.

Under MCC .8260(B)(3), a Notice of Review must contain the specific grounds relied upon for review. Appellants' Notice for Review lists three grounds for reversal, but only the first two contain specific grounds for appeal. Because appellants' third ground for reversal does not specify a statutory or code standard not met, it is excluded from the Board's scope of review.

At the hearing before the Hearings Officer, a question was raised whether County Comprehensive Plan policy numbers 37 and 38 were within the Hearings Officer's scope of review pursuant to MCC .8295. The Board affirms the Hearings Officer's determination that his review was limited to the specific grounds stated in the Notice of Appeal pursuant to MCC .8295(A). Failure to show compliance with the Comprehensive Plan was not asserted as a ground for review before the Hearings Officer, nor on appeal to this Board. Therefore, the issue is not reviewable in this proceeding as provided in MCC .8295(A).

#### IV. REVIEW OF THE ARGUMENTS ON THE MERITS

##### A. The Subject Property Qualifies for the Grandfathering Exception of MCC .2856(B).

The subject property is zoned single family residential, R-20, on the Multnomah County zoning map. Single family dwellings are prescribed, permitted uses in that zoning

district pursuant to MCC .2852(A). As noted in the Planning Director's findings, applicant's Building Permit request adequately demonstrates compliance with all relevant criteria under MCC .2854 except for the lot size requirement under subparts (A) and (I).

MCC .2854(A) states the minimum lot size in the R-20 zone shall be 20,000 square feet. An exception to the 20,000 square foot minimum lot size requirement is provided under MCC .2856(B) which reads:

Where a lot has been a deed of record of less than 80 feet in width, or an area of less than 20,000 square feet, and was held under separate ownership, or was on public record at the time this Chapter became effective, such lot may be occupied by any use permitted in this district. In no case, however, shall a dwelling unit have a lot area of less 3,000 square feet. (Emphasis added.)

The primary question in this appeal is whether Applicant's property qualifies for application of this exception to the 20,000 square foot minimum lot size requirement. The Board concurs with the Hearing Officer's rationale for affirming the Planning Director's determination that the subject property qualifies for this exception.

The text of the Code provision provides two alternative methods for undersize lots of record to qualify for the exception. A lot qualifies if it either: (1) was held under separate ownership; or (2) was on the public record as of November 15, 1962, the date of adoption of the Zoning Chapter of the Multnomah County Code. Because Lots 1 and 2, Block 111, Palatine Hill Addition Number 3 were platted in 1890, they have

been on the public record for seventy-two years prior to the adoption of the zoning chapter. Therefore, the Board finds the Hearings Officer was correct in his first line of analysis for affirming the Planning Director's Determination.

Appellants maintain the county should ignore the literal language of MCC .2856(B) because of the concept of aggregation of contiguous parcels under common ownership found in the text of other jurisdictions' land use regulations. As did the Hearings Officer, the Board is not persuaded that land use laws of other jurisdictions provides any guidance here. The determination whether the applicant qualifies for the lot size exception must be based solely upon the criteria in the Multnomah County Zoning Ordinance and not upon regulations of other jurisdictions. As noted in appellants' hearing memorandum, "the issue is what the ordinance says" (Appellants' Hearing Memorandum at 8).

The Board also rejects appellants' implied claim that the definition of "lot" in the zoning code constitutes an aggregation requirement that precludes transfers of platted subdivision lots. Since MCC .2856(B) includes no aggregation requirement, the Board cannot invoke one in this quasi-judicial proceeding. In some zones the zoning ordinance includes specific aggregation requirements. For example, in the exclusive farm use ("EFU") zoning category contained in MCC .2002-.2030, specific aggregation language can be found within MCC .2018(A)(2)(d) and (A)(3). Similar aggregation provisions are contained within the CFU zoning category. Because lot aggregation provisions are not

applicable within the R-20 zone, the Board cannot apply such criteria here.

Further justification for affirming the Planning Director's and Hearing Officer's decisions is provided by Multnomah County's consistent interpretation for more than 30 years that MCC .2856(B) applies in cases such as this. As noted in applicant's hearing memorandum, Robert Baldwin, the Multnomah County Planning Director for more than 20 years, testified in court that the county consistently interpreted and applied MCC .2856(B) to allow residential construction on lots platted before the ordinance became effective, provided the lots were larger than 3,000 square feet.

The type of development proposed by applicant is identical to a building permit granted in 1967 on two contiguous 5,000 square foot lots in Block 106 of the Palatine Hill No. 3 subdivision. This precedent occurred in the same subdivision as applicant's.

The Board interprets MCC .2856(B) to allow single family dwelling units on lots such as the subject property provided such lots were platted before zoning laws became effective.

B. The Individual Lots Created Under the 1890 Subdivision Must Remain Recognizable Lawful Divisions of Land Under State Law.

Appellants contend the two subject lots plus two contiguous lots owned by the same owner comprise one lot under the zoning code. See, MCC 11.15.0010. According to appellants,

a 1989 conveyance of two of these lots violated the county code and disqualified the lots from development under MCC .2854(I).

ORS 92.010 defines the term "lot" to be "a unit of land that is created by a subdivision of land." As noted by the Hearings Officer, the statutory definition of "lot" is cross-referenced and applied to county zoning and planning provisions pursuant to ORS Chapter 215. Therefore, because the two lots comprising the subject property were lawfully created under the 1890 Subdivision Plat, they constitute discrete tracts of land for conveyance purposes.

The Board affirms the Hearings Officer's determination that ORS 92.017 resolves the issue raised by appellants regarding the legality of the subject property. The testimony of representative Al Young that is included in the Hearings Officer's decision demonstrates that the statute was intended to preempt local ordinances that attempted to reconsolidate contiguous lots and parcels that happened to be under common ownership.

Both the text of ORS 92.017 and its legislative history confirm that the functions of the statute were: (a) to prevent cities and counties from refusing to recognize lawful divisions of land, thus raising concerns about land's alienability; and (b) to establish that the property lines created by such land divisions remain discrete and inviolate, absent the use of legal methods to change or eliminate such property lines. The statute mandates recognition of such parcels as separate and distinct

until some action is taken to erase the lawfully established property lines.

Because the two lots comprising the subject property have not been changed, vacated or further divided, as provided by law, the Board finds that ORS 92.017 operates to require continued recognition of the lots regardless of ownership. As noted by the Hearings Officer, ORS 92.017 does not affect the developability of lots because that determination must be made with reference to planning and zoning standards such as those provided under MCC .2856(B) discussed above.

V. CONCLUSIONS AND DECISIONS

Based on the above findings and evaluation, the Board of Commissioners concludes that the building permit application complies with the applicable standards of the Multnomah County Code. Therefore, the Board of Commissioners hereby affirms the Hearing Officer's and Planning Director's decision in this matter and approves the building permit requested in LR2-92, #184.

DATED this 23rd day of February, 1993.



[Signature]  
Gary Hansen, Vice-Chair  
Gladys McCoy, Multnomah County Chair

REVIEWED  
LAURENCE KRESSEL, COUNTY COUNSEL  
FOR MULTNOMAH COUNTY, OREGON

By: [Signature]  
John DuBay, Chief Deputy County Counsel

# APPENDIX B



MULTNOMAH COUNTY

## Single Family Residential R-20

### 11.15.2852 Use

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

- (A) Single-family dwellings.
- (B) Accessory buildings such as garages, carports, studios, pergolas, private workshops, play-houses, private greenhouses, or other similar structures related to the dwelling in design, whether attached or detached.
- (C) Farming, truck gardening, orchards and nurseries, provided that no retail or wholesale business sales office is maintained on the premises, and provided that no poultry or livestock, other than normal household pets, shall be housed within 100 feet of any residence other than the dwelling on the same lot.
- (D) Special uses, such as parks, playgrounds, or community centers, churches, schools, golf courses and uses of similar nature, as provided in MCC .7005 through .7041, when approved by the Hearings Officer. *(Amended 1982, Ord. 330 § 2)*
- (E) Temporary structures may be allowed in this district if these structures relate to the building or sale of land or homes, provided, however, that a Temporary Permit shall be issued for these structures as provided under MCC .8705 through .8725. This permit shall expire at the end of one year, but may be renewed at the end of that period.
- (F) Where the side of a lot abuts a commercial or industrial district, the following transitional uses are permitted provided they do not extend more than 100 feet into the more restricted (residential) district:
  - (1) Two-family dwellings.
  - (2) Medical offices, dental offices, and clinics.
  - (3) Parking, as required in MCC .6100

through .6148.

- (4) Other uses of a transitional nature as determined by the Planning Commission. These transitional uses shall conform to all other requirements of this Chapter which apply.
- (G) Signs, pursuant to the provisions of MCC 11.15.7902-.7982. *(Amended 1986, Ord. 543 § 2)*
- (H) Uses customarily incident to any of the above uses, including home occupations.

### 11.15.2854 Restrictions

#### (A) Lot Size

The minimum lot size shall be 20,000 square feet. The minimum average lot width shall be 80 feet. The minimum average lot depth shall be 120 feet.

#### (B) Yard Requirements

- (1) Front Yard. There shall be a front yard having a minimum depth of 30 feet, unless a previous building line less than this has been established, in which case the minimum front yard for interior lots shall be the average of the setbacks of the main structures on abutting lots on either side if both lots are occupied; if one lot is occupied and the other vacant, the setback shall be the setback of the occupied lot, plus one-half of the remaining distance to the required 30 foot setback. If neither of the abutting side lots or tracts are occupied by a structure, the setback shall be 30 feet.
- (2) Side Yard. Side yards shall be a minimum of 10 feet.
- (3) Rear Yard. There shall be a rear yard with a minimum depth of 30 feet to any permanent structure.

2854(C)

.2856(C)

**(C) Accessory Buildings**

Accessory buildings may be allowed if they fulfill the front, side, and rear yard requirements of the district.

**(D) Off-Street Parking**

Two automobile spaces on the lot shall be provided for each dwelling unit.

**(E) Height Restrictions**

Maximum height of any structure shall be 35 feet. *(Amended 1984, Ord. 428 § 2)*

**(F) Lot Coverage**

The maximum area that may be covered by the dwelling unit and accessory buildings shall not exceed 30% of the total area of the lot.

**(G)** All lots in this district shall abut a street, or shall have such other access held suitable by the Hearings Officer.

**(H) Half Streets**

The minimum front or side yards or other setbacks as stated herein, shall be increased where such yard or setback abuts a street having insufficient right-of-way width to serve the area. The Planning Director shall determine the necessary right-of-way widths and the additional yard or setback requirements in such cases.

**(I)** No sales or conveyance of any portion of a lot, for other than a public purpose, shall leave a structure on the remainder of the lot with less than the minimum lot, yard or setback requirements of this district.

**11.15.2856 Exceptions****(A) Housing Project**

When a developer of four or more acres of land submits plans for an entire development program, with the objective of providing suitable view, ample yard area, and other aesthetic conditions in harmony with the neighborhood, the Hearings Officer may waive the front, side, or rear yard requirements on a finding that the proposed design

is in the best interest of the public and adequate to provide desirable places in which to live. In this case the lot area, width, and depth requirements shall remain the same as for this residential district.

**(B)** Where a lot has been a deed of record of less than 80 feet in width, or an area of less than 20,000 square feet, and was held under separate ownership, or was on public record at the time this Chapter became effective, such lot may be occupied by any use permitted in this district. In no case, however, shall a dwelling unit have a lot area of less than 3,000 square feet.

**(C)** If topographical or other conditions exist which make these requirements unreasonable, the Hearings Officer may waive the front, side, or rear yard requirements.

CERTIFICATE OF SERVICE

I hereby certify that on April 15, 1993, I served a true and correct copy of this PETITION FOR REVIEW OF DOUGLAS CAMPBELL, N. ROBERT STOLL, and WILLIAM NAITO on the Governing Body and the Applicant by first class mail pursuant to OAR 661-10-068(2) as follows:

Land Use Board of Appeals  
100 High Street SE, Suite 220  
Salem, Oregon 97310

Board of County Commissioners  
of Multnomah County  
1120 S.W. Fifth Avenue  
Suite 1500  
Portland, Oregon 97204

John L. DuBay  
Chief Assistant County Counsel  
1120 S.W. Fifth Avenue  
Suite 1530  
P. O. Box 849  
Portland, Oregon 97204-0849

Steven W. Abel, Esq.  
SCHWABE, WILLIAMSON & WYATT  
1600-1800 Pacwest Center  
1211 S.W. Fifth Avenue  
Portland, OR 97204-3795

TOOZE SHENKER DUDEN  
CREAMER FRANK & HUTCHISON

  
Paul R. Duden, OSB #66035  
of Attorneys for Petitioners

Meeting Date: February 23, 1993

Agenda No.: P-6

(Above space for Clerk's Office Use)

AGENDA PLACEMENT FORM  
(For Non-Budgetary Items)

SUBJECT: Public Hearing - C 1-93

BCC Informal \_\_\_\_\_ (date) BCC Formal February 23, 1993 (date)

DEPARTMENT DES DIVISION Planning

CONTACT Sharon Cowley TELEPHONE 2610

PERSON(S) MAKING PRESENTATION Jane McFarland

ACTION REQUESTED:

INFORMATIONAL ONLY  POLICY DIRECTION  APPROVAL

ESTIMATED TIME NEEDED ON BOARD AGENDA: 10 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):

C 1-93 In the matter of recommending amendments to Comprehensive Framework Plan Policy 34 and the accompanying Functional Classification of Trafficways Maps

2/23/93 SECOND READING 3/23/93

(If space is inadequate, please use other side)

SIGNATURES:

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

Or

DEPARTMENT MANAGER BH Willia

(All accompanying documents must have required signatures)

BOARD OF COUNTY COMMISSIONERS  
MULTI-COUNTY  
OREGON  
1993 FEB 17 AM 9:05



**MULTNOMAH COUNTY OREGON**

DIVISION OF PLANNING & DEVELOPMENT / 2115 S.E. MORRISON / PORTLAND, OREGON 97214

**DIVISION OF PLANNING AND DEVELOPMENT**

**Board Planning Packet Check List**

File No. 01-93

Agenda Placement Sheet      No. of Pages 1

Case Summary Sheet      No. of Pages 1

Previously Distributed      \_\_\_\_\_

Notice of Review      No. of Pages \_\_\_\_\_

\*(Maybe distributed at Board Meeting)

Previously Distributed      \_\_\_\_\_

Decision - *Resolution Ordinance*      No. of Pages 9

(Hearings Officer Planning Commission) - *144 Resolutions*

Previously Distributed      \_\_\_\_\_

BOARD OF  
COUNTY COMMISSIONERS  
MULTNOMAH COUNTY  
OREGON  
1993 FEB 17 AM 9:05

\*Duplicate materials will be provided upon request.

Please call 2610.



CASE NAME Rural Roads Classification Maps

NUMBER C 1-93

1. Applicant Name/Address

Transportation Division  
1620 SE 190th  
Portland, Oregon 97233

2. Action Requested by applicant

Adopt Maps and Ordinance changes to classify rural roads by their function.

3. Planning Staff Recommendation

ADOPTION

4. Planning Commission Action:

RECOMMEND ADOPTION OF PROPOSED ORDINANCE AND MAPS

5. If recommendation and decision are different, why?

The Planning Commission corrected some errors on the maps (see 5a. for the one change resulting from public testimony).

**ISSUES**

*(who raised them?)*

- a. *County road classifications should match to adjoining jurisdictions (A resident on Troutdale Road, who is also a Troutdale City Council member, requested a change from Rural Arterial to Rural Collector from Division to Stark Street. The Planning Commission concurred that the Rural Arterial connection to urban arterial system should be via Troutdale Road to Division, and west to 257th. This change appears on the maps forwarded to the Board).*

Do any of these issues have policy implications? Explain.

This ordinance will update and clarify the 1983 Functional Classification of Trafficways Map which is a part of Plan Policy 34: Trafficways. The 1983 map does not classify most rural area roads. Recent State legislation requires the rural road system to have a functional classification system. The classification of a road in part determines its relative importance within the county's road system. At the time a roadway is either built or reconstructed, the classification becomes the primary determinant for the road design.

ACTION REQUESTED OF BOARD	
<input checked="" type="checkbox"/>	Affirm <u>Plan.Com</u> / Hearings Officer
<input checked="" type="checkbox"/>	Hearing/Rehearing <i>1/24 Reading</i>
<input type="checkbox"/>	Scope of Review
<input type="checkbox"/>	On the record
<input checked="" type="checkbox"/>	De Novo
<input type="checkbox"/>	New Information allowed

**BEFORE THE PLANNING COMMISSION  
FOR MULTNOMAH COUNTY**

In the Matter of Recommending Amend- )  
ments to Comprehensive Framework Plan )  
Policy 34 and the Accompanying Func- )  
tional Classification of Trafficways Map )

**RESOLUTION  
C 1-93**

**WHEREAS,** County Transportation and Planning Divisions propose revisions to Comprehensive Framework Plan Policy 34 to address the road system for rural areas; and

**WHEREAS,** Policy 34 currently classifies most roads in the rural sections of Multnomah County as local streets, yet some rural roads function as collectors or arterials; and

**WHEREAS,** County standards for the design and improvement of local streets do not meet all safety and operational needs on some rural trafficways; and

**WHEREAS,** The existing Scenic Route classification does not represent the functional role of a trafficway as defined in Policy 34. Rather, it denotes roads identified for their visual or landscape qualities, or valued for recreational use; and

**WHEREAS,** The proposed functional classification system for rural Multnomah County roads is consistent with Statewide Planning Goal No. 12, Transportation and the Oregon Transportation Rule directive to develop a Transportation System Plan; and

**WHEREAS,** Proposed policy and trafficway classifications include roads within the Columbia River National Scenic Area; and

**WHEREAS,** The Multnomah County Comprehensive Framework Plan must be consistent with the Columbia River Gorge National Scenic Area Management Plan, and in the event of conflict, the Management Plan supercedes County plans or policies; and

**WHEREAS,** The Planning Commission heard testimony at a public hearing on February 1, 1993 on proposed amendments to Comprehensive Framework Plan Policy 34 and the accompanying Functional Classification of Trafficways Map; and,

**WHEREAS,** The Planning Commission recommended adoption of a proposed ordinance captioned "An Ordinance amending Comprehensive Framework Plan Policy 34, Trafficways, and the accompanying Functional Classification of Trafficways Map".

**NOW, THEREFORE BE IT RESOLVED** that Resolution C 1-93 and the corresponding Ordinance captioned "An Ordinance Amending Multnomah County Comprehensive Framework Plan Policy 34: Trafficways and the companion Functional Classification of Trafficways Map" is hereby recommended for approval by the Board of County Commissioners.

Approved this 1<sup>st</sup> day of February, 1993  
  
Karin Hunt, Vice Chair  
Multnomah County Planning Commission

## 1                   BEFORE THE BOARD OF COUNTY COMMISSIONERS

## 2                                   FOR MULTNOMAH COUNTY, OREGON

3   ORDINANCE NO. \_\_\_\_\_

4  
5           An ordinance amending Comprehensive Framework Plan Policy 34, Trafficways, and  
6 the accompanying Functional Classification of Trafficways Maps.

7           Multnomah County Ordains as follows:

8  
9   Section I. Findings.

10           (A) Comprehensive Framework Plan Policy 34: Trafficways states that a safe and  
11 efficient trafficway system should be developed by various means including establishing a  
12 street classification system; such trafficway classification system is defined and described in  
13 the Policy 34: Trafficways section of the plan.

14  
15           (B) The Comprehensive Framework Plan: Functional Classification of Trafficways Map  
16 relates street classifications as defined and described in Policy 34: Trafficways to the existing  
17 and future county street system.

18  
19           (C) The street classification system as defined and described in Policy 34: Trafficways  
20 section relates street and travel characteristics that are most closely associated with urban land  
21 uses and intensities such that rural road functional classifications are not described in terms of  
22 rural land uses and activities and the rural road functional hierarchy.

23  
24           (D) Resource related development, rural center growth and increased recreational  
25 activities in rural areas of Multnomah County have resulted in increased traffic volumes on  
26 rural county roads since 1983 when the previous Functional Classification of Trafficways Map

1 was adopted.

2

3 (E) State-wide Planning Goal 12: Transportation has been promulgated by the Oregon  
4 Department of Land Conservation and Development (OAR Chapter 660, Division 12, Section  
5 660-12-020) and recommends that local governments, including Multnomah County, adopt  
6 transportation system plans that include functional classifications for both urban and rural areas  
7 so that road facilities and their functional classifications are closely coordinated with existing  
8 and planned land uses.

9

10 (F) To provide for close coordination between the rural land use system and the rural  
11 trafficway system serving areas outside of the regional Urban Growth Boundary, it is necessary  
12 to define rural trafficway functional classifications with descriptions that reflect the operational  
13 purposes and hierarchical organization of the system.

14

15 (G) The Scenic Route classification, as adopted in 1983, is a sub-category of collector  
16 street. However, scenic qualities and scenic recreational uses of county roads may occur on  
17 each functional classification of roads, for which restrictions may need to be imposed to  
18 preserve the unique scenic qualities. Such restrictions can be applied as a Scenic Route  
19 designation overlaying the trafficway functional classification.

20

21 (H) Comprehensive Framework Plan Policy 3: Citizen Involvement specifies that public  
22 involvement, and information distribution of planning issues shall occur, consistent with State-  
23 wide Planning Goal 1: Citizen Involvement. Public meetings were held to review proposed  
24 rural road functional classifications at Corbett Fire Station, Sam Barlow High School and  
25 Linnton Community Center for which meeting notices were published in newspapers of general  
26 circulation and in various organization newsletters, as well as mailed by rural carrier routes to

1 mailing addresses throughout rural Multnomah County.

2

3 (I) Exhibit A, (the Staff Report) and Map Exhibits B and C (Functional Classification of  
4 Trafficways: Rural East and Functional Classification of Trafficways: Rural West, dated  
5 January, 1993), incorporated as part of these Findings, further explain how amendments to  
6 Policy 34: Trafficways comply with other Comprehensive Framework Plan Policies and are  
7 necessary to provide a safe, efficient and economical trafficway system in rural Multnomah  
8 County.

9

10 (J) Comprehensive Framework Plan Policy 41: Columbia River Gorge National  
11 Scenic Area, applies to approximately 33,280 acres in Multnomah County within the  
12 Columbia River Gorge National Scenic Area. All future development, including roads and  
13 other public facilities must be consistent with and support the purposes of the Management  
14 Plan for the Columbia River Gorge National Scenic Area. This management plan and  
15 Framework Policy 41 shall control over any potential conflicting provisions of Policy 34 or its  
16 accompanying Functional Classification of Trafficways Map.

17

18 Section II. Plan Amendments.

19 (A). Proposed amendments would add the following new functional classifications of  
20 rural trafficways, located outside the Urban Growth Boundary: Rural Arterials, and Rural  
21 Collectors; and would change the Scenic Route from a functional classification to an overlay  
22 designation. The Introduction to Policy 34: Trafficways of the Comprehensive Framework  
23 Plan is amended to read as follows; new text is **bolded and underlined**, sections appearing in  
24 [~~brackets~~] are deleted.

25

26

1 **POLICY 34: TRAFFICWAYS**

2

3 **INTRODUCTION**

4 Trafficways are a major part of the transportation system, and include seven general types of streets (local,  
5 collector, transit corridor streets, scenic routes, arterial streets, freeways and transitways) which serve the  
6 land uses in the County and function to move people and goods. The traffic volumes given below serve as  
7 guidelines for the functional classification. Traffic volumes are one aspect, but not the only aspect, of  
8 classification — other factors include the character of the area, future land use, possible or existing traffic  
9 intrusion on neighborhoods, circulation patterns, and topographic constraints.

10

11 1. **Local Streets** provide access to abutting property and do not serve to move through traffic.

12

13 2. **Collectors**: Collector streets gather area traffic and connect it to the arterial system. They serve  
14 properties within a 1/2 mile radius and are not intended to serve through movement. The streets usually  
15 have traffic volumes less than 10,000 vehicles per day **in the urban areas and less than 3,000 vehicles**  
16 **per day in the rural areas.** Urban collectors generally have a continuous length shorter than that for  
17 minor arterials. Collectors are the lowest order streets designed to carry transit vehicles.

18

19 **Major Collectors**: Major collectors have traffic volumes greater than 4,000 vehicles per day. They  
20 are the standard collector for major industrial areas and other locations with high truck and  
21 oversized vehicle volumes.

22

23 **Neighborhood Collectors**: Neighborhood collectors have traffic volumes between 1,000 and 4,000  
24 vehicles per day. Abutting land uses are usually residential in character.

25

26 **Rural Collectors**: **Rural collectors typically have traffic volumes of less than 3,000 vehicles**

1 per day. They are characterized by serving as the connection between local roads and the  
2 arterial(s) serving a rural area of the County.

3  
4 ~~[Scenic Routes: Scenic route denotes a street which offers unique scenic views and is used as a~~  
5 ~~scenic and recreational drive. Restrictions may be imposed to preserve scenic character.]~~

6  
7 3. Transit Corridor Streets: Transit corridor street denotes a street which serves a significant function of  
8 carrying high-grade transit service; its traffic carrying function is secondary to its transit function. Ease of  
9 pedestrian movement and pedestrian safety are main considerations on this type of street.

10  
11 4. Arterial Streets carry higher volumes of traffic, are often four lanes in the urban areas, and are the main  
12 traffic arteries.

13  
14 Principal Arterial streets are generally four lanes or more and can carry a large volume of traffic,  
15 usually in excess of 25,000 vehicles per day. A significant feature of the principal arterial is its  
16 function to carry "through" trips; that is, trips which have not originated in or are not destined for  
17 the County area.

18  
19 Major Arterial streets are generally four lanes which can carry a large volume of traffic, usually in  
20 excess of 20,000 vehicles per day. Their function is to serve intra-county trips, but not through trips;  
21 i.e., trips which do not have at least one trip end within the county area

22  
23 Minor Arterial streets can carry a daily traffic volume up to 14,000 or more. They can be two lane  
24 roads with right and left turn lanes at intersections, and left hand turn lanes where needed, or three  
25 lane roads. Minor arterials are to serve intra-county trips; i.e., trips with at least one trip ending  
26 within the surrounding county area. Minor arterials are streets characterized by their length and

1 their significance in acting as distributors to sizeable surrounding areas. They derive this distributor  
2 significance from the discontinuity of parallel routes, and thus assume more importance in  
3 distributing trips than collector streets.

4  
5 **Rural Arterial roads are generally two lanes which serve inter- and intra-county trips. They**  
6 **are characterized by their significance as traffic distributors between areas in the County,**  
7 **connecting cities and rural centers. They generally carry a daily traffic volume up to 10,000**  
8 **vehicle trips.**

9  
10 5. Freeways are high speed roadways with grade separated interchanges. Their only function is to move  
11 traffic from one area to another, and they can generally carry traffic volumes in excess of 60,000 vehicles  
12 per day. A sizeable portion of freeway trips are "through" trips; i.e., trips which have not originated in or  
13 are not destined for the County area.

14  
15 6. Transitway denotes an exclusive right-of-way for transit use, either bus or rail.

16  
17 **7. Scenic Routes: Scenic route is an overlay designation which denotes a street offering unique**  
18 **scenic views and which is used as a scenic and recreational drive. Restrictions may be imposed to**  
19 **preserve scenic character.**

20  
21 Historically, \* \* \*

22  
23 (B) The 1983 Functional Classification of Trafficways Map accompanying Policy 34: Trafficways  
24 is amended and supplemented by two maps entitled: Multnomah County Rural—East Functional  
25 Classification of Trafficways Map; and, Multnomah County Rural—West Functional Classification of  
26 Trafficways Map - each dated January 22, 1993 and adopted as a component of the the Multnomah County

1 Comprehensive Framework Plan. The Functional Classification of Trafficways Maps adopted by this  
2 ordinance supercede the 1983 Functional Classification of Trafficways Map for those trafficways outside  
3 of the Urban Growth Boundary.

4  
5 (C) The Management Plan for the Columbia River Gorge National Scenic Area and Framework  
6 Policy 41 control over any conflicting provisions of Policy 34 or its accompanying Functional  
7 Classification of Trafficways Maps. Policy 34: Trafficways shall be amended as follows to reflect this  
8 precedence.

9  
10 \* \* \*  
11 H. IMPLEMENTING THE STREET STANDARDS CHAPTER 11.60 AND ORDINANCE 162,  
12 INCLUDING ADHERENCE TO ACCESS CONTROL AND INTERSECTION DESIGN GUIDELINE  
13 CRITERIA, AND ESTABLISHING A PROCEDURE FOR ALLOWING VARIANCES FROM THAT  
14 ORDINANCE.

15  
16 EXCLUDING THAT PORTION OF MULTNOMAH COUNTY INCLUDED IN THE COLUMBIA  
17 RIVER GORGE NATIONAL SCENIC AREA, THIS POLICY AND THE FUNCTIONAL  
18 CLASSIFICATION OF TRAFFICWAYS MAP ACCOMPANYING THIS POLICY SHALL CONTROL  
19 OVER CONFLICTING PROVISIONS OF COMMUNITY PLANS OR OTHER PRE-EXISTING PLANS  
20 IN DETERMINING THE FUNCTIONAL CLASSIFICATION OF TRAFFICWAYS. TRAFFICWAYS  
21 LOCATED WITHIN THE COLUMBIA RIVER GORGE NATIONAL SCENIC AREA ARE  
22 SUBJECT TO AND SUPERCEDED BY PROVISIONS OF THE COLUMBIA RIVER GORGE  
23 SCENIC AREA MANAGEMENT PLAN.

24  
25  
26

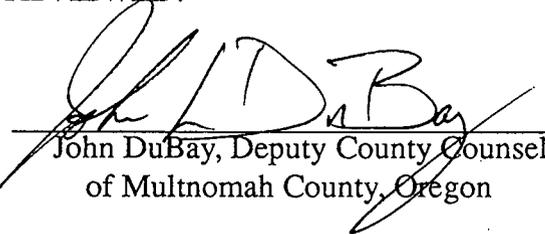
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ADOPTED THIS \_\_\_\_\_ day of \_\_\_\_\_, 1993, being the date of its second reading before the Board of County Commissioners of Multnomah County.

(SEAL)

By \_\_\_\_\_  
Gladys McCoy, County Chair  
MULTNOMAH COUNTY, OREGON

REVIEWED:

  
\_\_\_\_\_  
John DuBay, Deputy County Counsel  
of Multnomah County, Oregon

Meeting Date: ~~January 26, 1993~~ FEB 23 1993

Agenda No.: ~~P-6~~ P-7

(Above space for Clerk's Office Use)

AGENDA PLACEMENT FORM  
(For Non-Budgetary Items)

SUBJECT: Auto Wrecker's License Renewal

BCC Informal \_\_\_\_\_ BCC Formal January 26, 1993  
(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: 1 Minute

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):

82nd Avenue Auto Wreckers, Inc.  
8555 SE 82nd Avenue

*2/23/93 original & copy to Sharon Cowley*

Auto Wrecker's License Renewal - Staff Recommends approval

PLEASE NOTE: FEBRUARY 5, 1993 MEMO FROM SERGEANT KATHY FERRELL REGARDING PERSONAL AND REAL PROPERTY TAXES.

BOARD OF  
COUNTY COMMISSIONERS  
MULTNOMAH COUNTY  
OREGON  
1993 JAN 20 AM 9:28

(If space is inadequate, please use other side)

SIGNATURES:

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

Or

DEPARTMENT MANAGER *PC RSD for DW*

(All accompanying documents must have required signatures)



CASE NAME: Auto Wrecker

1. Applicant Name/Address

82<sup>nd</sup> Avenue Auto Wreckers.  
8555 SE 82<sup>nd</sup>  
Portland 97266

2. Action Requested by applicant

Renewal of auto wrecking license

3. Planning Staff Recommendation

Approval

4. Planning Commission or Hearings Officer Decision:

N/A

5. If recommendation and decision are different, why?

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

**ISSUES**  
(who raised them?)

a. None

Do any of these issues have policy implications? Explain.

N/A



# MULTNOMAH COUNTY OREGON

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

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

January 26, 1993

Honorable Board of County Commissioners  
Room 605, Multnomah County Courthouse  
1021 SW Fourth Avenue  
Portland, Oregon 97204

RE: **Auto Wrecker's License -Renewal**

**Duane S. Shaw**  
**dba 82nd Avenue Auto Wreckers, Inc.**  
**8555 SE 82nd Avenue**

**Recommend: Approval of Business Location**

Dear Commissioners:

The staff of the Division of Planning and Development respectfully recommends that the above license be approved, based upon findings that they satisfy the location requirements for same as contained in ORS 822.10 and .135.

Sincerely,

MULTNOMAH COUNTY DIVISION OF PLANNING AND DEVELOPMENT

*Sharon Cowley*  
Sharon Cowley, Administrative Assistant

sec

Enclosure - Wrecker's Application

BOARD OF  
COUNTY COMMISSIONERS  
1993 JAN 20 AM 9:29  
MULTNOMAH COUNTY  
OREGON



# Multnomah County Sheriff's Office

ROBERT G. SKIPPER  
SHERIFF

12240 N.E. GLISAN ST., PORTLAND, OREGON 97230

(503) 255-3600

## MEMORANDUM

---

TO: SHARON COWLEY  
Administrative Assistant

FROM: SERGEANT KATHY FERRELL, Manager  
Intelligence Unit *KEF*

DATE: December 24, 1992

SUBJECT: WRECKER'S LICENSE RENEWAL

---

Attached is an Application for Business Certificate as a Wrecker of Motor Vehicles for 82nd Auto Wreckers, Inc., 8555 SE 82nd, Portland, Multnomah County. The Sheriff's Office recommends the license be approved as long as zoning requirements have been satisfied.

Thank you for your attention.

KF/jlz/998-AINT

Attachment



# Multnomah County Sheriff's Office

12240 N.E. GLISAN ST., PORTLAND, OREGON 97230

BOB SKIPPER  
SHERIFF

(503) 255-3600

## MEMORANDUM

TO: SHARON COWLEY  
Administrative Assistant

FROM: SERGEANT KATHY FERRELL, Manager *KEF*  
Intelligence Unit

DATE: February 5, 1993

SUBJECT: WRECKER'S LICENSE RENEWAL

Attached is an Application for Business Certificate as a Wrecker of Motor Vehicles for 82nd Auto Wreckers, Inc., located at 8555 SE 82nd, Portland, Oregon. The Sheriff's Office checked with the Department of Assessment and Taxation and found no delinquent personal or real property taxes due or owing. The Sheriff's Office recommends the license be approved as long as zoning requirements have been satisfied.

Thank you for your attention.

KF/lsm/1028-AINT

Attachment

BOARD OF  
COUNTY COMMISSIONERS  
1993 FEB - 9 PM 2:17  
MULTNOMAH COUNTY  
OREGON

BEFORE THE BOARD OF COUNTY COMMISSIONERS  
FOR MULTNOMAH COUNTY, OREGON

ORDINANCE NO. 723

An ordinance amending Multnomah County Code: Title 5 by establishing criteria for County approval for issuance of a Wrecker Certificate as authorized by ORS 822.140.

MULTNOMAH COUNTY ORDAINS AS FOLLOWS:

SECTION 1. FINDINGS

A. ORS 822.140 authorizes the Board of County Commissioners (the Board) to adopt criteria for granting local government approval of a Wrecker Certificate for businesses in unincorporated Multnomah County which carry on or conduct a business, in whole or in part, of buying, selling or dealing in vehicles for the purpose of wrecking, dismantling, disassembling, and offering for sale the used vehicle components thereof.

B. This ordinance is necessary to ensure that all wreckers are certified to meet the high expectations of this community and conduct business in a lawful manner.

C. The recommended criteria for County approval of a Wrecker's Certificate are in the public interest.

SECTION 2. ADOPTION OF CRITERIA FOR ISSUANCE OF A WRECKER CERTIFICATE.

5.10.010 Wrecker Certificate processing fees.

The purposes of this chapter are to establish the principal

05/08/92:1

1 criteria which shall be considered by the board of county  
2 commissioners, and its designee, the Multnomah County Sheriff, in  
3 granting approval of wrecker certificates within unincorporated  
4 Multnomah County and to establish an application and approval  
5 process.

6 A. Application Procedure.

- 7 1. Any applicant for a wrecker certificate who is required  
8 by the Department of Motor Vehicles (DMV) to obtain  
9 approval from a county governing body in which it does  
10 business shall present an application prescribed by DMV  
11 to the Multnomah County Sheriff (the sheriff) for the  
12 purpose of obtaining such an approval.
- 13 2. The sheriff may require information in addition to that  
14 provided on the application in order to conduct an  
15 investigation relevant to the county's approval.
- 16 3. An application shall be accepted only if it is properly  
17 completed and accompanied by a processing fee of \$15.

18 B. Investigation of Application. The sheriff shall  
19 coordinate and conduct an investigation of each application using  
20 the following procedures:

- 21 1. Check for prior arrest records of owners on employees or  
22 violations of state statutes regulating wreckers;
- 23 2. Check for prior community relations problems;
- 24 3. Check with the county zoning department to see that the  
25 requirements of ORS 822.110 are met;
- 26 4. Check with the county zoning department to see if the

05/08/92:1

1 business location violates any prohibitions under ORS  
2 822.135;

3 5. Check with the county zoning department to see that the  
4 location meets zoning regulations of the county; and

5 6. Check with the county department of assessment and  
6 taxation to see that there are no delinquent personal or  
7 real property taxes due and owing.

8 C. Recommendations to the Board. Upon completion of the  
9 investigation procedures by the sheriff's office, the sheriff shall  
10 forward to the board of county commissioners a recommendation of  
11 approval or denial. The clerk of the board then places the matter  
12 on the board's agenda, in order that the board may make a  
13 recommendation of approval or denial to DMV.

4 The sheriff may make a recommendation of denial regarding any  
15 application if:

16 1. The applicant's record reflects a pattern of violations  
17 of state statutes regulating wreckers;

18 2. The record of the applicant shows a violation(s) of  
19 criminal law(s) or ordinance(s) connected in time, place  
20 or manner with an auto wrecker establishment or which  
21 demonstrates a disregard for the law;

22 3. The county zoning department has indicated that the  
23 requirements of ORS 822.110 have not been met;

24 4. The county zoning department has indicated that the  
25 business location violates prohibitions under ORS  
26 822.135;

05/11/92:1

- 1       5. The county zoning department has indicated that the  
2       location does not meet zoning regulations of the County;
- 3       6. The county department of assessment and taxation has  
4       indicated that delinquent personal or real property taxes  
5       are due and owing; or
- 6       7. If there is any other specific reason consistent with the  
7       purposes of this chapter which may, in the opinion of the  
8       Sheriff, warrant an adverse report to the board based  
9       upon public health, safety, welfare, convenience or  
10      necessity.

11      D. Notification of Sheriff's Recommendation. When the  
12      sheriff makes a recommendation for denial of any application, the  
13      clerk of the board shall notify, by certified mail, the applicant  
14      and the sheriff of the hearing date, place and time at least one  
15      week before such hearing takes place.

16      E. Board Hearing Procedures. When the board has scheduled a  
17      hearing on any auto wrecker certificate approval, such applicant  
18      shall be given a reasonable opportunity to be heard and address  
19      concerns raised by the sheriff, the board of county commissioners,  
20      and persons or groups appearing in opposition to such an  
21      application. The board's recommendation of approval or denial of  
22      such application, based upon a determination of what course of  
23      action best serves the interest of the citizens of the county,  
24      shall be final.

25      F. Reconsideration of Applications. After having made a  
26      recommendation of denial on any auto wrecker certificate

05/08/92:1

application, the sheriff and the board of county commissioners shall not consider any new application for the same location by the same or substantially the same applicant for a period of at least six months or while such applicant has pending an appeal in court or in a state administrative agency related to such a certificate approval. Notwithstanding, the sheriff may reconsider and/or resubmit such an application to the board in less than six months if it is reasonably believed that a recommendation of denial has substantially changed, and no court or administrative appeal of such license is pending.

ADOPTED this 4th day of June, 1992.



By Gladys McCoy  
Gladys McCoy, Chair  
Multnomah County, Oregon

REVIEWED:

LAURENCE KRESSEL, COUNTY COUNSEL  
FOR MULTNOMAH COUNTY, OREGON

By Sandra N. Duffy  
Sandra N. Duffy  
Assistant County Counsel

P:\FILES\265SND.ORD\mw

05/08/92:1



# APPLICATION FOR BUSINESS CERTIFICATE

AS A WRECKER OF MOTOR VEHICLES OR  
SALVAGE POOL OPERATOR

▼ CERTIFICATE NUMBER ▼

ORIGINAL  
 RENEWAL

**NOTE:** FAILURE TO ACCURATELY COMPLETE THIS FORM WILL CAUSE UNAVOIDABLE DELAY.  
PLEASE TYPE OR PRINT LEGIBLY WITH INK.  
DO NOT SUBMIT THIS APPLICATION WITHOUT YOUR SURETY BOND AND THE REQUIRED FEE.

1	NAME (CORPORATION AND/OR ASSUMED BUSINESS NAME) 82 <sup>012</sup> Ave Auto Wreckers Inc			BUSINESS TELEPHONE 775-1582
2	MAIN BUSINESS LOCATION (STREET AND NUMBER) 8555 SE 82 <sup>012</sup>	CITY Portland	ZIP CODE 97266	COUNTY Mult
3	MAILING ADDRESS 8705 SE King Rd	CITY Portland	STATE OR	ZIP CODE 97266

**A SEPARATE APPLICATION MUST BE COMPLETED FOR EACH ADDITIONAL LOCATION FROM WHICH YOU OPERATE YOUR BUSINESS.**

4	CHECK ORGANIZATION TYPE: <input type="checkbox"/> INDIVIDUAL <input type="checkbox"/> PARTNERSHIP <input type="checkbox"/> CORPORATION	IF CORPORATION, LIST THE STATE UNDER WHOSE LAW BUSINESS IS INCORPORATED:
---	---	--

**LIST NAME AND RESIDENCE ADDRESS OF THIS OWNER, ALL PARTNERS OR PRINCIPAL CORPORATE OFFICERS:**

5	NAME Dwane S. Shaw	TITLE Pres	DATE OF BIRTH 5/23/40	RESIDENCE TELEPHONE (503) 653-1111
6	RESIDENCE ADDRESS 8705 SE King Rd	CITY Portland	STATE OR	ZIP CODE 97266
7	NAME Jim Moore	TITLE Vice Pres	DATE OF BIRTH 2/16/54	RESIDENCE TELEPHONE (503) 771-0082
8	RESIDENCE ADDRESS 7421 SE Rural	CITY Portland	STATE OR	ZIP CODE 97202
9	NAME	TITLE	DATE OF BIRTH	RESIDENCE TELEPHONE ( )
10	RESIDENCE ADDRESS	CITY	STATE	ZIP CODE

11 THE DIMENSIONS OF THE PROPERTY ON WHICH THE BUSINESS IS LOCATED ARE \_\_\_\_\_ ft. X \_\_\_\_\_ ft.

I CERTIFY THAT I AM THE OWNER, A PARTNER OR A CORPORATE OFFICER OF THIS BUSINESS AND THAT ALL INFORMATION ON THIS APPLICATION IS ACCURATE AND TRUE. I CERTIFY THAT THE RIGHT OF WAY OF ANY HIGHWAY ADJACENT TO THE LOCATION LISTED ABOVE IS USED FOR ACCESS TO THE PREMISES AND PUBLIC PARKING.

12	NAME Dwane S. Shaw	TITLE Pres	RESIDENCE TELEPHONE (503) 653-1111
13	ADDRESS, CITY, STATE, ZIP CODE 8705 SE King Rd Portland OR 97266		

14	SIGNATURE OF OWNER/PARTNER/CORPORATE OFFICER <i>Dwane S. Shaw</i>	DATE 1/14/93
----	--	-----------------

15 **APPROVAL:** I CERTIFY THAT THE GOVERNING BODY OF THE  CITY  COUNTY OF MULTNOMAH HAS:

- A) APPROVED THE APPLICANT AS BEING SUITABLE TO ESTABLISH, MAINTAIN OR OPERATE A WRECKING YARD OR BUSINESS (ORIGINAL APPLICATIONS ONLY).
- B) DETERMINED THAT THE LOCATION OR PROPOSED LOCATION MEETS THE REQUIREMENTS FOR LOCATION UNDER OREGON REVISED STATUTE 822.110.
- C) DETERMINED THAT THE LOCATION DOES NOT VIOLATE ANY PROHIBITION UNDER OREGON REVISED STATUTE 822.135.
- D) APPROVED THE LOCATION AND DETERMINED THAT THE LOCATION COMPLIES WITH ANY REGULATIONS ADOPTED BY THE JURISDICTION UNDER OREGON REVISED STATUTE 822.140.

I ALSO CERTIFY THAT I AM AUTHORIZED TO SIGN THIS APPLICATION AND AS EVIDENCE OF SUCH AUTHORITY DO AFFIX HEREON THE SEAL OR STAMP OF THE CITY OR COUNTY.

**FEE: \$54.00**

▼ PLACE STAMP OR SEAL HERE ▼

SUBMIT APPLICATION AND SURETY BOND, WITH ALL REQUIRED FEES AND SIGNATURES TO:

16	NAME GLADYS McCOY	TITLE COMMISSION CHAIR	PHONE NUMBER 248-3308
17	SIGNATURE <i>Gladys McCoy</i>		DATE 2/23/93

BUSINESS REGULATION SECTION  
1905 LANA AVE., NE  
SALEM, OR 97314-2350

DUPLICATE ORIGINAL

# SURETY BOND

▼ BOND NUMBER ▼

804976

FAILURE TO COMPLETE THIS FORM WILL CAUSE UNAVOIDABLE DELAY.

**LET IT BE KNOWN:**

THAT 82nd Ave Auto Wreckers, Inc.  
(OWNER, PARTNERS, CORPORATION NAME)

DOING BUSINESS AS \_\_\_\_\_  
(ASSUMED BUSINESS NAME, IF ANY)

HAVING PRINCIPAL PLACE OF BUSINESS AT 8555 SE 82nd Portland, OR. 97266  
(ADDRESS, CITY, STATE, ZIP CODE)

WITH ADDITIONAL PLACES OF BUSINESS AT \_\_\_\_\_  
(ADDRESS, CITY, STATE, ZIP CODE)

\_\_\_\_\_ (ADDRESS, CITY, STATE, ZIP CODE)

STATE OF OREGON, AS PRINCIPAL(S), AND CONTRACTORS BONDING AND INSURANCE COMPANY  
(SURETY NAME)

1827 NE 44th Ave, Suite 100 Portland, Or 97213 287-6000  
(ADDRESS, CITY, STATE, ZIP CODE) TELEPHONE NUMBER

A CORPORATION ORGANIZED AND EXISTING UNDER AND BY VIRTUE OF THE LAWS OF THE STATE OF Washington AND AUTHORIZED TO TRANSACT A SURETY BUSINESS IN THE STATE OF OREGON, AS SURETY, ARE HELD AND FIRMLY BOUND UNTO THE STATE OF OREGON IN THE PENAL SUM OF \$2,000 FOR THE PAYMENT OF WHICH WE HEREBY BIND OURSELVES, OUR RESPECTIVE SUCCESSORS AND ASSIGN, JOINTLY AND SEVERALLY, FIRMLY BY THESE PRESENTS.

A CONDITION OF THIS OBLIGATION IS SUCH THAT, WHEN THE ABOVE NAMED PRINCIPAL HAS BEEN ISSUED A CERTIFICATE TO CONDUCT, IN THIS STATE, A BUSINESS WRECKING, DISMANTLING AND SUBSTANTIALLY ALTERING THE FORM OF VEHICLES, SAID PRINCIPAL SHALL CONDUCT SUCH BUSINESS WITHOUT FRAUD OR FRAUDULENT REPRESENTATION, AND WITHOUT VIOLATION OF ANY OF THE PROVISIONS OF THE OREGON VEHICLE CODE SPECIFIED IN ORS 822.120(2) THEN AND IN THAT EVENT THIS OBLIGATION TO BE VOID, OTHERWISE TO REMAIN IN FULL FORCE AND EFFECT UNLESS CANCELED PURSUANT TO ORS 743.755.

THIS BOND IS EFFECTIVE January 1 19 93 AND EXPIRES December 31 19 93 (BOND MUST EXPIRE ON THE LAST DAY OF THE MONTH.)

**-- ANY ALTERATION VOIDS THIS BOND --**

IN WITNESS WHEREOF, THE SAID PRINCIPAL AND SAID SURETY HAVE EACH CAUSED THESE PRESENTS TO BE EXECUTED BY ITS AUTHORIZED REPRESENTATIVE OR REPRESENTATIVES AND THE SURETY CORPORATE SEAL TO BE HEREUNTO AFFIXED THIS 9th DAY OF December 19 92.

SIGNATURE (OWNER/PARTNER/CORPORATE OFFICER) \_\_\_\_\_ TITLE \_\_\_\_\_

X SIGNATURE OF SURETY (AUTHORIZED REPRESENTATIVE) Jane Jensen TITLE Attorney-in-Fact

SURETY'S AGENT OR REPRESENTATIVE MUST COMPLETE THIS SECTION: PLACE SURETY SEAL BELOW

IN THE EVENT A PROBLEM ARISES CONCERNING THIS BOND, CONTACT:  
NAME CBIC TELEPHONE NUMBER 287-6000  
ADDRESS PO Box 12053  
CITY, STATE, ZIP CODE Portland, Or 97212

APPROVED BY ATTORNEY GENERAL'S OFFICE

Meeting Date: February 23, 1993

Agenda No.: P-8

(Above space for Clerk's Office Use)

AGENDA PLACEMENT FORM  
(For Non-Budgetary Items)

SUBJECT: CU 22-92 Public Hearing

BCC Informal \_\_\_\_\_ (date) BCC Formal February 23, 1993 (date)

DEPARTMENT DES DIVISION Planning

CONTACT Sharon Cowley TELEPHONE 2610

PERSON(S) MAKING PRESENTATION Sandy Mathewson

ACTION REQUESTED:

xx DENIAL

INFORMATIONAL ONLY

POLICY DIRECTION

APPROVAL

ESTIMATED TIME NEEDED ON BOARD AGENDA: 30 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):

CU 22-92 Public Hearing - On The Record Plus New Information

Review the Decision of the Hearings Officer of January 14, 1993, denying conditional use request to allow a non-resource related single family dwelling for property located at 22401 NW St. Helens Road.

This item has been appealed by the applicant

*2/23/93 - 3/23/93 continued  
at applicant's Request*

Scope of Review is 10 Minutes per side, with new information  
(If space is inadequate, please use other side)

SIGNATURES:

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

Or

DEPARTMENT MANAGER

*BH Willia*

(All accompanying documents must have required signatures)

BOARD OF  
COUNTY COMMISSIONERS  
1993 FEB 17 AM 9:06  
MULTNOMAH COUNTY  
OREGON



# JIM GRIFFITH & ASSOCIATES, INC.

LAND/BUILDING USE STRATEGIES

1820 S.W. VERMONT STREET  
SUITE K  
PORTLAND, OREGON 97219  
503 293-0805  
FAX 293-2216

February 23, 1993

Multnomah County Board of Commissioners  
1021 SW 4th  
Portland, OR 97204

RE: Request for Continuance of a Public Hearing for CU 22-92  
(Kaptur) at 22401 N.W. St. Helens Road

Dear Ms. McCoy and Commission members,

As the owner's representative in this matter, we are formally requesting a continuance of the hearing on CU 22-92. On February 22nd we were ask to represent Mr. Kaptur, and we respectfully ask a continuance so we may have sufficient time to present findings that will address the issues raised in the Staff Report and Hearings Officer's Report on this case.

Sincerely,



Bruce Vincent  
Associate

encl. n/a

cc. Dwanyne Kaptur, Jim Purcella, Glen Wright

BAV/bav

File: 332.000

February 23, 1993

Arnold Rochlin  
P.O. Box 83645-0645  
Portland, OR 97283  
(503) 289-2657

Multnomah County Board of Commissioners  
1021 SW 4th Ave.  
Portland, OR 97204

Re: CU 22-92 22401 NW St. Helens Rd. - Dwayne & Stephen Kaptur, owner

This testimony is in opposition to the application and in support of the Hearings Officer's denial.

This hearing is closed to new evidence, except concerning compliance with approval criteria MCC 11.15.2172(C)(3) and (4). Those issues aside, based on the record, it is impossible for the applicant to prove compliance with the other approval criteria. MCC .8230 places the burden of proof entirely on the applicant. For most requirements, the applicant has provided no evidence at all. As decided by the Hearings Officers, these include the following:

1. MCC 11.15.2194 Residential Use Development Standards (compliance is a requirement of .2172(C)(6). *Note: Alphabetical designations below correspond to the MCC, not the Hearings Officer's decision.*

(C) The requirement that the dwelling would be located as close as possible to a public street is not met.

(D) The required explanation of the need for a driveway over 500 feet long is absent.

2. While the approval criteria for a conditional residential use in the MUF zone do not explicitly incorporate the Comprehensive Plan, some Plan provisions use express language requiring a finding of compliance in land use decisions. The Hearings Officer found non-compliance with several policies because of an absence of any evidence or of pertinent and credible evidence:

Policy 13, regarding Air, Water Quality and Noise, the policy requires prior to a quasi-judicial decision a statement from "the appropriate agency" that all standards can be met. No statement is in the record or can be added at this time.

Policy 22, regarding energy conservation, requires consideration prior to a quasi-judicial decision, of various energy impact issues, e.g. efficient land use, density of development and efficient transportation. The applicant has provided no evidence and the record is closed to new evidence.

Policy 37, regarding water and sewage disposal, again, a finding is required prior to quasi-judicial decision that there is adequate water and a satisfactory available method of sewage disposal. There is no evidence to show that site characteristics are suitable for on site disposal. Evidence of availability of sufficient water is entirely heresay; i.e., the applicant says neighbors and well drillers, who may or may not have qualifications and familiarity with the site, say there should be no problem. (see discussion of MCC .2172(C)(4) below)

Policy 38, regarding schools, fire and police protection, again requires findings prior to a quasi-judicial decision. It is required that school and police agencies are given an opportunity to review and comment. There is no evidence whatever, and none can now be provided, that the applicant submitted his proposal to those agencies.

If the applicant failed to carry his burden of proof regarding any single one of these, the application must be denied.

The applicant was allowed to submit additional evidence regarding MCC .2172(C)(3), concerning compatibility with forest practices and stability of land use.<sup>1</sup> This is the big one. It's why we're here. Where you have farms and forests, if you let people build houses wherever they want, eventually you don't have productive farms and forests. LCDC, Planning Staff, the Planning Commission, this Board and private citizens labored exhaustively on this issue, and you adopted new regulations to more clearly protect forest land. Fire, not even a Tillamook burn, is as destructive as a dwelling. The forest grows back after a fire, but development is forever.

Large acreage tracts near the applicant's property are devoted to forest use. The applicant submitted a letter from the owner of adjoining property saying there would be "no serious interference to the resource management activities on our property from the construction of a dwelling on this property." This is the only evidence on compliance with the requirement of .2172(C)(3) that the dwelling not interfere with resources or resource management. LUBA has rejected waivers by an owner, or statements of support from neighbors, as evidence that there is no interference with resource management. As the Hearings Officer said, *Champion International v. Polk county*, 16 Or LUBA 132 (1987) establishes that the applicant's waiver of a right to object does not prevent incompatibility, it merely precludes a remedy for injury. We have to consider how the land may be used, the potential of noise, dust, erosion, chemical spraying and other practices incompatible with a dwelling surrounded by such practices on three sides. And, if the land is suitable for forestry, we don't know who will own the adjacent land next year, or what accepted practices will be implemented. The Hearings Officer observed that "the issue is not whether neighbors object", and he found that "The lack of substantial evidence in the record regarding this issue, particularly given the significant commercial timber operations west of the site, makes it impossible for the hearings officer to make the requisite finding about compatibility and non-interference."

MCC .2172(C)(3) also requires that the proposed use not "materially alter the stability of the overall land use pattern of the area". The Hearings Officer found that there is no small parcel housing nearby. Of the two houses within a half-mile, one is resource related, and the other is on a golf course. Approval of this house would justify another and the two justify a few more and then no more forest. There is no reasonable conclusion but that a dwelling on this site would alter the stability of the land use pattern of the area. The applicant's new letter offers no substantial evidence. There is no rebuttal of the facts relied on, that there are only two dwellings within a half-mile, and neither one is on a comparable site. In effect, the applicant has nothing but his opinion that only one more house will not affect the land use pattern. This is how it happens, first one house. *Blosser v. Yamhill*

---

<sup>1</sup> The applicant submitted two undated letters addressed to the Hearings Officer, but received by the Planning Division on January 26, 1993, 12 days after his decision. I believe the applicant intended for them to be new evidence in this proceeding. A letter from Dwayne Kaptur, addresses issues in the Staff Report, rather than the findings of the Hearings Officer. Again, I believe the intent was to address the proper concern of this hearing, the Hearings Officer's decision.

County, 18 Or LUBA 253 (1989) establishes that the precedential and incremental effect of each development can and should be considered to determine the effect on resource use in the area. One little house doesn't hurt anything, but eventually, the destruction of established land use patterns can be traced back to one little house. The land use pattern of the area is clear and the proposed dwelling is clearly not compatible.

The applicant also addresses requirements to prove availability and adequacy of water and sewage disposal facilities implied by MCC 2172(C)(4) and expressly required by Comprehensive Plan Policy 37. The Hearings Officer found that the evidence submitted on water lacked any substantial value and there is no evidence in the record regarding the suitability of the site for sub-surface disposal. All of the applicant's new evidence is the following from his letter:

"An application for a percolation test for septic disposal is currently pending with the city of Portland. In accordance with county staff guidance a form has been enclosed stating that a well will be installed of suitable depth at the time of dwelling construction to provide domestic water source."

This does not constitute evidence of availability of water or of suitability for on site sewage disposal. Even the purported form concerning intent to put in a well, was not in the record on February 22, 1993. There was and remains no evidence of compliance.

The land owners just want one house. You owe them fair consideration. But they are not the only people entitled to your help and protection. All of us in this county have a right to our heritage and to enforcement of the code. On the law, this is an easy one. That we wish the applicant no harm is no reason to break the law.

The Hearings Officer's denial should be affirmed.

Sincerely yours,





# DIVISION OF PLANNING AND DEVELOPMENT

## Board Planning Packet Check List

File No. C422-92

Agenda Placement Sheet No. of Pages 1

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

Notice of Review No. of Pages 3  
\*(Maybe distributed at Board Meeting)  
 Previously Distributed 1-26-93

Decision No. of Pages 10  
(Hearings Officer/Planning Commission)  
 Previously Distributed 1-26-93

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

BOARD OF  
COUNTY COMMISSIONERS  
1993 FEB 17 AM 9:05  
MULTNOMAH COUNTY  
OREGON



# MULTNOMAH COUNTY OREGON

DIVISION OF PLANNING & DEVELOPMENT/2115 S.E. MORRISON/PORTLAND, OREGON 97214

## DIVISION OF PLANNING AND DEVELOPMENT

### Board Planning Packet Check List

File No. C422-92

#### I. Materials Distributed to the Board

- Agenda Placement Sheet ( 1 Pages)
- Case Summary Sheet ( 1 Pages)
- Notice of Review Application ( 3 Pages)
- Decision ( 12 Pages)  
Hearings Officer Planning Commission)

#### II. Materials Available Upon Request

- Minutes ( 2 Pages)
- Transcript ( 10 Pages)
- Applicant's Application and Submittals ( 34 Pages)
- Case Correspondence ( Letters)
- Slides ( Slides)
- Exhibits/Maps ( / Exhibits)  
( Maps)
- Other Materials ( )



CASE NAME: APPEAL HEARING,  
KAPTUR NON-RESOURCE RESIDENCE

TIME 9:30 am  
NUMBER CU 22-92

1. Applicant Name/Address: Dwayne and Stephen Kaptur  
4409 N. Willamette Blvd.  
Portland, OR 97203

2. Action Requested by applicant:

Conditional Use approval for a non-resource  
related residence in the MUF-19 district.

3. Planning Staff Recommendation:

Deny

4. Planning Commission or Hearings Officer Decision:

Denied

5. If recommendation and decision are different, why?

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

**ISSUES**

*(who raised them?)*

1. Compatibility and non-interference of proposed dwelling with surrounding forest resource activities *(issue raised in Staff Report and by Chris Foster and Arnold Rochlin who testified in opposition of the request).*
2. Zoning of property amended from MUF to CFU on 1-6-93. The stated grounds for appeal are that the county considered the CFU requirements rather than the MUF requirements. *Issue raised by James Purcella, representative of Dwayne Kaptur and the estate of Stephen Kaptur.*

Do any of these issues have policy implications? Explain.

Issue #2: County policy and state law require that the ordinance requirements in effect at the time a complete application is submitted are used in considering the application. This policy was followed by Staff and the Hearings Officer.

Meeting Date: January 26, 1993

Agenda No.: P-2

(Above space for Clerk's Office Use)

AGENDA PLACEMENT FORM  
(For Non-Budgetary Items)

SUBJECT: CU 22-92 Decision

BCC Informal \_\_\_\_\_ BCC Formal January 26, 1993  
(date) (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: 1 Minute

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 22-92 Review the Decision of the Hearings Officer of January 14, 1992, denying a conditional use permit for a non-resource related single family dwelling on a 4.34-acre Lot of Record in the MUF-19 zoning district, for property located at 22401 NW St. Helens Road

(If space is inadequate, please use other side)

SIGNATURES:

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

Or

DEPARTMENT MANAGER AC RSP JW BW

(All accompanying documents must have required signatures)

1993 JAN 20 11 09 25  
CLERK OF BOARD OF  
COUNTY COMMISSIONERS  
MULTI-COUNTY  
OREGON



BOARD HEARING OF JANUARY 26, 1993

TIME 9:30 am

NUMBER CU 22-92

CASE NAME: KAPTUR NON-RESOURCE SFR

1. Applicant Name/Address: Dwayne and Stephen Kaptur  
4409 N. Willamette Blvd.  
Portland, OR 97203

2. Action Requested by applicant:

Conditional Use approval for a non-resource  
related residence in the MUF-19 district.

3. Planning Staff Recommendation:

Deny

4. Planning Commission or Hearings Officer Decision:

Denied

5. If recommendation and decision are different, why?

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

**ISSUES**

*(who raised them?)*

1. Compatibility and non-interference of proposed dwelling with surrounding forest resource activities (*issue raised in Staff Report and by Chris Foster and Arnold Rochlin who testified in opposition of the request*).

Do any of these issues have policy implications? Explain.

No.

BEFORE THE LAND USE HEARINGS OFFICER  
FOR MULTNOMAH COUNTY, OREGON

Regarding a request by Dwayne and Stephen Kaptur for a ) FINAL ORDER  
conditional use permit for a non-resource related dwelling )  
in the MUF-19 zone at 22401 NW St. Helens Road ) CU 22-92  
in unincorporated Multnomah County, Oregon ) (Kaptur)

I. SUMMARY

The applicant requests approval of a conditional use permit for a non-resource related single family detached dwelling on a 4.34-acre lot of record in the MUF-19 zone.

LOCATION: 22401 NW St. Helens Road; Tax lot '14', Section 1, T2N-R2W, WM, Multnomah County

APPLICANT AND OWNERS: Dwayne and Stephen Kaptur

SITE AREA: 4.34 acres

APPLICABLE LAW: Multnomah County Code (MCC) 11.15.2162, *et seq.*; Comprehensive Plan policies 13 (Air and Water Quality and Noise), 22 (Energy Conservation), 37 (Utilities), 38 (Facilities) and 40 (Development Requirements)

STAFF RECOMMENDATION: Deny

HEARINGS OFFICER DECISION: Denied

II. FINDINGS ABOUT SITE AND SURROUNDINGS

A. *Site size and shape :*

The size is an irregularly-shaped parcel that is as much as 800 feet north-south and 400 feet east-west. It contains 4.34 acres.

B. *Site location :*

The site is situated on the west side of NW St. Helens Road (US Highway 30) about 1500 feet north of the Wildwood Golf Course.

C. *Existing uses and structures :*

The site is not developed with structures other than those associated with high power electric transmission lines that cross the west portion of the site.

D. *Proposed uses and structures :*

The applicant proposes to develop a single family detached dwelling roughly centered on the site. The homesite is situated about 400 feet from NW St. Helens Road. A roughly 600-foot long driveway is proposed from the homesite to the southeast corner of the site. The driveway will cross a small section of the adjoining property to the south to reach NW St. Helens Road. The applicant proposes to develop a well due north of the homesite and to provide a sanitary waste system on the site.

*E. Existing and proposed vegetation :*

Where the electric transmission lines cross the west portion of the site, substantial vegetation has been removed. The remainder of the site is forested. The applicant will remove vegetation from the homesite and septic system drainfield.

*F. Geology and soils :*

Based on the Geologic and Slope Hazard Maps (September, 1978) and the USDA SCS General Soil Map for Multnomah County (August, 1974), the site is underlain by siltstone and claystone of the Troutdale formation and contains Gable-Cascade soils with moderately steep to steep slopes (down) from west to east. The site is not identified as having geologic or slope hazards.

*G. Plan designation and zoning :*

The Comprehensive Plan Map designates the site as Multiple Use Forest, and it is zoned MUF-19 (Multiple Use Forest-19).

*H. Public services and utilities :*

1. The site is not served by public water and sewer systems. The applicant proposes to develop a well and subsurface sanitation system on the site. The applicant argues that a well can be developed, based on the existence of two wells on nearby properties and opinions of owners of those wells and of two well drilling companies. The applicant argues a sanitation system can be developed, based on soils on the site. The applicant did not provide substantial evidence to support these arguments.

2. The site is in the Scappoose Rural Fire Protection District. The District Fire Chief advised the County that there is not adequate water pressure and flow at the site for fire fighting purposes. Water for fire fighting is provided by a tank truck, supplemented by ponds and creeks if any. The fire chief recommended certain mitigating measures regarding fire access if the application is approved.

*I. Streets and access :*

The site is due west of NW St. Helens Road, although it does not adjoin the road right of way. To gain access to the site, the applicant will have to cross a small portion of the lot to the south or negotiate a lot line adjustment with the Oregon Department of Transportation to provide road frontage.

*J. Surrounding land uses :*

1. Immediately north, west and south of the site is a roughly 59-acre parcel that is designated Commercial Forest Use and is zoned CFU-80 (Commercial Forest Use-80). That parcel contains a single family dwelling and agricultural outbuildings situated about 600 feet south of the site. West of the 59-acre parcel are large tracts used for commercial timber purposes by owner Longview Fiber Company.

2. About 1500 feet south of the site is the Wildwood golf course and associated structures. About 3000 feet south of the site is a relatively small concentration of single family homes; more homes are situated along the highway further south.

3. East of the site is a roughly 6-acre tract owned by the Oregon Department of Transportation (ODOT) Highway Division. That tract is used to facilitate slope stability adjoining the highway; it is not developed with structures. Across St. Helens Road east of the ODOT tract is a roughly 150-acre parcel used principally for pasture.

### III. APPLICABLE APPROVAL STANDARDS

#### A. *Multnomah County Code (MCC) title 11.15 (Zoning).*

1. MCC 11.15.2172(C) allows a non-resource related single family dwelling in the MUF zone if the applicant shows:

a. The lot complies with MCC 11.15.2178(A), .2180(A) to (C), or .2182(A) to (C). MCC 11.15.2182(A)(2) recognizes as a "lot of record" a parcel of land:

(1) For which a deed or other instrument creating the parcel was recorded with the Department of General Services or was in recordable form prior to February 20, 1990;

(2) Which satisfied all applicable laws when the parcel was created;

(3) Does not meet the minimum lot size requirements of MCC .2178, (i.e., 19 acres); and

(4) Which is not contiguous to another substandard parcel or parcels under the same ownership.

MCC 11.15.2182(C) provides that separate lots of record shall be deemed created when a County maintained road or an EFU, CFU, MUA-20, RR or RC zoning district boundary intersects a parcel or aggregated group of contiguous parcels of land.

b. The land is incapable of sustaining a farm or forest use, because, among other reasons, it is a lot of record under MCC 11.15.2182(A) through (C) and is ten acres or less 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.

d. The dwelling will not require public services beyond those existing or programmed for the area.

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

f. The residential use development standards of MCC 11.15.2194 will be met.

2. The residential use development standards of MCC 11.15.2194 require the following:

- a. The fire safety measures outlined in the "Fire Safety Considerations for Development in Forested Areas," published by the Northwest Inter-Agency Fire Prevention Group, including at least the following:
  - (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 11.15.2178(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 limitation of subpart #3 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 for a public road; or
  - (2) The location of dwelling(s) of adjacent lot(s) at a lesser distance which allows for the clustering of dwellings or the sharing of access...
- g. The dwelling shall be located outside a big game winter wildlife habitat area as defined by the Oregon Department of Fish and Wildlife or that agency has certified that the impacts will be acceptable.

*B. Multnomah County Comprehensive Plan Policies.*

1. Policy 13 (Air and Water Quality and Noise) provides (in relevant part):

It is the county's policy to require, prior to approval of a legislative or quasi-judicial action, a statement from the appropriate agency that all standards can be met with respect to air quality, water quality and noise levels.

2. Policy 22 (Energy Conservation) provides (in relevant part):

The county shall require a finding prior to approval of a legislative or quasi-judicial action that the following factors have been considered:

- a. The development of energy-efficient land uses and practices;
- b. Increased density and intensity of development in urban areas...
- c. An energy-efficient transportation system linked with increased mass transit, pedestrian and bicycle facilities;

d. Street layouts, lotting patterns and designs that utilize natural environmental and climactic conditions to advantage...

3. Policy 37 (Utilities) requires the county to find, prior to approval of a legislative or quasi-judicial action, that:

a. The proposed use can be connected to a public sewer and water system, both of which have adequate capacity; or

b. The proposed use can be connected to a public water system, and the Oregon Department of Environmental Quality (DEQ) will approve a subsurface sewage disposal system on the site; or

c. There is an adequate private water system, and the Oregon DEQ will approve a subsurface sewage disposal system; or

d. There is an adequate private water system and a public sewer with adequate capacity.

e. There is adequate capacity in the storm water system to handle the run-off; or

f. The run-off can be handled on the site or adequate provisions can be made; and

g. The run-off from the site will not adversely affect the water quality in adjacent streams, ponds or lakes or alter the drainage on adjoining lands.

h. There is an adequate energy supply to handle the needs of the proposal and the development level projected by the plan; and

i. Communications facilities are available.

4. Policy 38 (Facilities) requires the county to find, prior to approval of a legislative or quasi-judicial action, that:

a. The appropriate school district has had an opportunity to review and comment on the proposal.

b. There is adequate water pressure and flow for fire fighting purposes; and

c. The appropriate fire district has had an opportunity to review and comment on the proposal.

d. The proposal can receive adequate local police protection in accordance with the standards of the jurisdiction providing police protection.

5. Policy 40 (Development Requirements) requires the county to find, prior to approval of a legislative or quasi-judicial action, that:

a. Pedestrian and bicycle path connections to parks, recreation area and community facilities will be dedicated where appropriate and where designated in the bicycle corridor capital improvements program and map.

b. Landscaped areas benches will be provided in commercial, industrial and multiple family developments, where appropriate.

c. Areas for bicycle parking facilities will be required in development proposals, where appropriate.

#### IV. HEARING AND RECORD

##### A. *Hearing.*

Hearings Officer Larry Epstein received testimony at the public hearing about this application on January 4, 1993. A record of that testimony is included herein as Exhibit A (Parties of Record), Exhibit B (Taped Proceedings), and Exhibit C (Written Testimony). These exhibits are filed at the Multnomah County Department of Environmental Services.

##### B. *Summary of selected relevant testimony.*

1. Sandy Mathewson testified for the County and summarized the staff report and recommendation.

2. Dwayne Kaptur testified on his own behalf. He argued that the proximity of the subject site to NW St. Helens Road, together with the setbacks and vegetation on the subject site, are sufficient to ensure the dwelling will be compatible with surrounding farm and forest uses. Realtor Glenn Wright also testified in support of the proposal. He stated that the owners of tax lot '2' (Joseph and Roberta Miller) are in favor of the proposal, and that tax lot '10' is used for erosion control and slope stability. Richard Allison, who plans to purchase the subject the property and build the proposed dwelling, also testified in favor. He noted there are homes north and south of the site along NW St. Helens Road; therefore, the proposed dwelling is consistent with and will not materially alter the land use pattern in the area. He also testified sanitary waste system test holes have been dug on the property. He also noted that tax lot '2' separates the site from the Longview Fiber timberland further west, suggesting that the intervening lot would help prevent forest practices on the commercial timber land from conflicting with the proposed dwelling.

3. Chris Foster and Arnold Rochlin testified against the conditional use permit. Mr. Foster noted that roughly 3000 acres west of the site is used for commercial timber purposes, and he argued the applicant failed to show how the proposed dwelling would be compatible with timber practices. Mr. Rochlin noted that the site does not adjoin NW St. Helens Road except at the southeast tip of the site; the dwelling will not be situated near the road.

#### V. EVALUATION OF REQUEST

##### A. *Compliance with MCC 11.15 (Zoning).*

1. The lot is a lot of record of less than 10 acres, based on the deed at page 2130 of Book 1900 of the Division of Records and Elections. Also, based on County Assessment records, the applicant does not own contiguous properties. (MCC 11.15.2172(C)(1))

2. The land is incapable of sustaining a farm or forest use, because it is a lot of record smaller than 10 acres. (MCC 11.15.2172(C)(2))
3. The applicant did not bear the burden of proof that a dwelling on the subject site would be compatible with farm and forest uses on commercial timber land west of the site and would not materially alter the stability of the overall land use pattern of the area. (MCC 11.15.2172(C)(3))
  - a. The applicant did not describe accepted forest practices on that land and did not show how the proposed dwelling would be compatible with those practices.
  - b. The dwelling is not compatible with forest uses in the vicinity just because the applicant records a statement waiving rights to object to such practices. See *Champion International v. Polk County*, 16 Or LUBA 132 (1987). Hearsay testimony by the applicant and Mr. Allison that neighbors do not object to the proposed dwelling is not responsive to the applicable criterion, because the issue is not whether neighbors object. The issue is what uses occur in the area and whether a dwelling is compatible with them. Such hearsay also has little probative value.
  - c. The lack of substantial evidence in the record regarding this issue, particularly given the significant commercial timber operations west of the site, makes it impossible for the hearings officer to make the requisite finding about compatibility and non-interference. Such accepted forest practices as aerial and other chemical spraying, clear-cutting, and transportation of timber on land west of the site could conflict with residential use of the subject site, due to noise, odor, dust, visual and other impacts, and could be incompatible with a dwelling on the site.
  - d. The land use pattern of the area within a reasonable vicinity of the site is exclusively resource-oriented. The two dwellings within 1/2-mile of the site do not make the area primarily or significantly residential. One of those dwellings is resource-related; the other is related to a golf course, which is at least partially a resource-oriented use in that it is characterized by planting and maintenance of turf. The existence of additional dwellings more than 1/2-mile south of the site is not relevant, because of their distance from the site. Allowing the proposed dwelling would materially alter the land use pattern of the area from one which is exclusively resource-oriented. It would introduce a non-resource dwelling into the area. That could have a precedential effect contrary to the maintenance of the stability of the land use character of the area. See *Blosser v. Yamhill County*, 18 Or LUBA 253 (1989).
4. The applicant did not bear the burden of proof that the dwelling will not require public services beyond those existing or programmed for the area. Sanitation and water facilities are needed for the dwelling. Public facilities do not exist in the area and are not planned or programmed. The applicant proposes to use private systems, but failed to introduce substantial evidence from which the hearings officer could conclude that such systems will or are reasonably likely to be approved. (MCC 11.15.2172(C)(4))
5. The applicant has prepared the statement required by MCC 11.15.2172(C)(5), and it can be recorded if the permit is approved.
6. The proposed dwelling will comply with some of the residential use development standards of MCC 11.15.2194 as provided below:

- a. Fire lanes can be provided around the dwelling, consistent with MCC 11.15.2194(A)(1).
- b. A water supply for fire fighting purposes and fire fighting equipment can be provided by the Scappoose Rural Fire Protection District, based on the written statement from the District chief, consistent with MCC 11.15.2194(A)(2).
- c. There are no perennial water sources on the subject lot or adjacent property, based on the aerial photograph in the record. Therefore, the applicant is not required to provide access to such water.
- d. The dwelling is proposed to be as close to NW St. Helens Road as possible while providing a 200-foot setback from the east property line. However, given that MCC 11.15.2194(F) allows the dwelling to be 30 feet from the road, it could be closer. Therefore, the dwelling location violates MCC 11.15.2194(C).
- e. The driveway to the homesite is more than 500 feet long. The application does not describe physical limitations that warrant such an excessive driveway length. Therefore, the proposed dwelling violates MCC 11.15.2194(D).
- f. The application does not include information regarding the productivity characteristics of the site. Therefore, the hearings officer is unable to determine whether the dwelling is located on that portion of the lot having the lowest productivity characteristics, and the application fails to bear the requisite burden of proof under MCC 11.15.2194(E).
- g. The proposed building location is at least 200 feet from property lines. Therefore, the location complies with MCC 11.15.2194(F).
- h. The dwelling is located outside a big game winter wildlife habitat identified by the Oregon Department of Fish and Wildlife, based on the staff report. Therefore, the dwelling complies with MCC 11.15.2194(J).

*B. Compliance with the Comprehensive Plan.*

1. The proposal does not comply with Policy 13 (Air and Water Quality and Noise), because the application fails to include a statement from the applicable agency that all standards can be met with respect to water quality. The hearings officer assumes the proposed use will have negligible water quality impacts, because there are no perennial water sources on or adjoining the site. The proposed use will not generate significant noise and is not a noise sensitive use. Although traffic on NW St. Helens Road could have high noise levels, there is not substantial evidence in the record from which to conclude that the site is in a noise impacted area.
2. The proposal does not comply with Policy 22 (Energy Conservation), because it does not increase the energy efficiency of land uses and practices and does not increase density in the urban area. There is not substantial evidence in the record to determine whether the site is served by mass transit. There are no pedestrian facilities in the area. Bicycles commonly travel on the shoulders of NW St. Helens Road. There is not substantial evidence in the record to determine whether the proposed dwelling is sited to use natural environmental and climatic conditions to its advantage.

3. The proposal does not comply with Policy 37 (Utilities), because there is not substantial evidence in the record that shows the proposed dwelling is reasonably likely to be served by public or private water and sanitation facilities. The hearings officer assumes storm water run-off can be accommodated on the site, because of the relatively small impervious area that will result from the proposed development and the applicability of county regulations regarding drainage and hillside erosion control. The hearings officer also assumes that adequate energy supplies and communications facilities exist or can be provided to serve the proposed dwelling, because such facilities exist along NW St. Helens Road.

4. The proposal does not comply with Policy 38 (Facilities), because there is no evidence in the record that the applicable school district or the applicable law enforcement agency had an opportunity to review and comment on the proposal. The proposal complies with the policy regarding fire protection and fire district review, based on the written comment from the RFPD chief.

5. The proposal complies with Policy 40 (Development Requirements), because that policy does not require any dedications or improvements to implement the bicycle corridor capital improvements program and map, the site is not a commercial, industrial and multiple family development, and bicycle parking can be provided on the site.

#### VI. SITE VISIT

The hearings officer visited the site. His observations are reflected in Section II of the final order.

#### VII. CONCLUSIONS AND DECISION

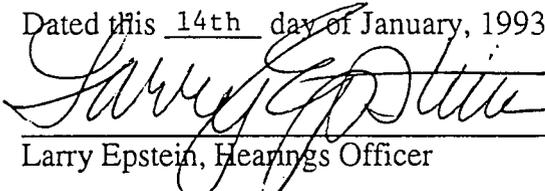
##### A. *Conclusions.*

The hearings officer concludes that the proposed conditional use permit does not comply with MCC 11.15.2172(C)(3) or (4) or with MCC 11.15.2194(C), (D) or (E) and does not comply with Comprehensive Plan policies 13 (Air and Water Quality and Noise), 22 (Energy Conservation), 37 (Utilities) or 38 (Facilities).

##### B. *Decision.*

In recognition of the findings and conclusions contained herein, and incorporating the Staff Report and other reports of affected agencies and public testimony and exhibits received in this matter, the hearings officer hereby denies CU 22-92 (Kaptur).

Dated this 14th day of January, 1993.

  
\_\_\_\_\_  
Larry Epstein, Hearings Officer

## IN THE MATTER OF CU 22-92

Signed by the Hearings Officer: January 14, 1993  
Decision mailed to parties: January 14, 1993  
Submitted to Clerk of the Board: January 14, 1993

**ANY APPEALS OF THIS ACTION MUST BE FILED WITHIN TEN DAYS AFTER THE DECISION IS SUBMITTED TO THE CLERK OF THE BOARD.**

Decisions of the Hearings Officer 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 to the record. A "Notice of Appeal" form and fee must be submitted to the County Planning Director within ten days after the Hearings Officer Decision is submitted to the Clerk of the Board [MCC 11.15.8260(A)(1)]. The appeal fee is **\$300.00 plus a \$3.50 per minute** charge for a transcript of the initial Hearing(s) [MCC 11.15.9020(B)]. "Notice of Appeal" forms and instructions are available at the Planning and Development office at 2115 SE Morrison Street, Portland.

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

**This Hearings Officer Decision will be reported to the Board of County Commissioners on Tuesday, January 26, 1993 at 9:30 a.m. in Room 602 of the Multnomah County Courthouse.**

**For further information call the Multnomah County Division of Planning and Development at 248-3043.**



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

BUCKET #11  
 3875  
 1/24/93

**NOTICE OF REVIEW**

Estate of Stephen N. Kaptur and

1. Name: Kaptur J. Dwayne  
 Individually and as Personal Representative  
Last Middle First
2. Address: 4409 N. Willamette, Portland, Oregon 97203  
Street or Box City State and Zip Code
3. Telephone: ( 503 ) 289 7962
4. If serving as a representative of other persons, list their names and addresses:  
 Estate of Stephen N. Kaptur  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_
5. What is the decision you wish reviewed (e.g., denial of a zone change, approval of a subdivision, etc.)?  
 Conditional use of MUF-19 zoning  
 \_\_\_\_\_  
 \_\_\_\_\_
6. The decision was announced by the Planning Commission on 1-14, 19<sup>93</sup>
7. On what grounds do you claim status as a party pursuant to MCC 11.15.8225?  
 Owner and Personal Representative of Estate of Stephen N. Kaptur  
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*Jim Purcell*  
*Please return original*

Joseph and Roberta Mellor  
22037 NW St Helens Rd.  
Portland, OR  
621-3123

Multnomah County Planning  
2115 SE Morrison St.  
Portland, OR 97214  
Attn: Larry Epstein, Hearings Officer

RE: CU 22-92 Concerning 2N2W Sec. 1 TL 14

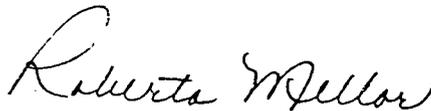
Dear Larry,

We are the owners of Tax Lot 2 in the above described section, which surrounds on three sides the above mentioned Parcel. We understand that one of the concerns of the county is the possibility that a dwelling on tax lot 14 will "be compatible with and not seriously interfere with the resource management activities on adjacent parcels". Since our property surrounds tax lot 14 on all sides for at least 500 feet, excepting those sides bordering land owned by the State Highway Division, we feel that you should take into consideration our approval of a dwelling being placed on tax lot 14.

There will be no serious interference to the resource management activities on our property from the construction of a dwelling on this property.

If you have any questions please feel free to contact us.

Sincerely,



Roberta Mellor

RECEIVED  
JAN 26 1993

Multnomah County  
Zoning Division

Dwayne Kaptur  
4409 N Willamette Blvd.  
Portland, OR 97203  
289-7962

RECEIVED

JAN 26 1993

Multnomah County Planning  
2115 SE Morrison Street  
Portland, Oregon 97214  
Attn: Larry Epstein, Hearings Officer

Multnomah County  
Zoning Division

RE: CU 22-92 concerning 2N2W Sec. 1 TL 14

Dear Larry,

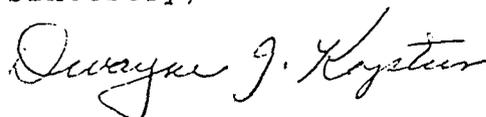
After careful examination of the staff report and their conclusions, we feel there are some points that need to be addressed.

Item #2 of the staff conclusions suggests insufficient evidence has been submitted that the dwelling will be compatible with and not seriously interfere with resource management activities on adjacent parcels. Please find enclosed a letter addressed to your attention from Mr. and Mrs. Joseph Mellor who are the adjacent property owners on three sides of subject property (fourth side of subject property is bordered by property owned by Oregon State Highway Division-Tax Lot 10). We feel that the installation of one dwelling on this parcel will not negatively effect the overall land use pattern of the area, especially considering the close proximity of this parcel to the rural residential zoning and the golf course.

Item #3 of the staff conclusions suggests that insufficient evidence has been submitted to show that water and sewage disposal is available. An application for a percolation test for septic disposal is currently pending with the city of Portland. In accordance with county staff guidance a form has been enclosed stating that a well will be installed of suitable depth at the time of dwelling construction to provide domestic water source. We believe that this form has been previously submitted, however if it wasn't we are submitting it at this time.

We would appreciate your careful consideration of this additional information. We would like to thank you in advance for your courtesies.

Sincerely,



Dwayne J. Kaptur

required transcript fee. Failure to comply with this subsection shall be a jurisdictional defect and shall preclude review by the Board.

- (D) Notice of Review shall be a condition precedent to judicial review of final orders, except in the case of Board review on its own motion.

**11.15.8265 Board Order for Review**

A Board Order for Review of a decision must be made at the meeting at which the Board's Agenda included a summary of that decision under MCC .8255, unless specifically continued, which continuance shall not be later than the next regular Board meeting on planning and zoning matters.

**11.15.8270 Scope of Review**

- (A) The Board, upon receipt of Notice of Review or upon its own motion to grant review, shall, at the appropriate meeting, determine whether review shall be:

- (1) On the record; or
- (2) Under subsection (E) below, *de novo* or by additional testimony and other evidence without full *de novo* review.

- (B) Prior to such determination, the Board may conduct a hearing at which the parties shall be afforded an opportunity to appear and present argument On the Scope of Review under subsection (E) below. Notice of such hearing shall be mailed to the parties no less than ten days prior to the hearing.

- (C) Unless otherwise provided by the Board under subsection (D) and (E) below, review of the action shall be confined to the record of the proceeding below, which shall include:

- (1) All materials, pleadings, memoranda, stipulations and motions submitted by any party and received or considered by the Planning Commission or Hearings Officer;
- (2) All materials submitted by the Planning Director with respect to the proposal;
- (3) The transcript of the hearing below;

- (4) The findings and decision of the Planning Commission or Hearings Officer, and the Notice of Review, when applicable.

- (D) When permitted by the Board, review before the Board may include argument by the parties or their authorized representatives.

- (E) The Board may hear the entire matter *de novo*; or it may admit additional testimony and other evidence without holding a *de novo* hearing if it is satisfied that the additional testimony or other evidence could not reasonably have been presented at the prior hearing. The Board shall, in making such decision, consider:

- (1) Prejudice to parties;
- (2) Convenience or availability of evidence at the time of the initial hearing;
- (3) Surprise to opposing parties;
- (4) The competency, relevancy and materiality of the proposed testimony or other evidence.

- (F) *De Novo* Hearing means a hearing by the Board as if the action had not been heard by the Planning Commission or Hearings Officer, and as if no decision had been rendered, except that all testimony, evidence and other material received by the Planning Commission or Hearings Officer shall be included in the record.

- (G) Review by the Board, if upon Notice of Review by an aggrieved party, shall be limited to the grounds relied upon in the Notice of Review under MCC .8260(B) and any hearing permitted under MCC .8270(B).

- (H) At the meeting at which the Scope of Review is determined pursuant to MCC .8270(A) and (B), the Board shall further determine the time and place for the review, which shall not be later than 45 days from the date of the Board determination.

**11.15.8275. Notice of Board Hearing**

- (A) Notice of Board hearing shall be given in the same manner as required for hearings by the Planning Commission and Hearings Officer