

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

ORDINANCE NO. 935

An ordinance repealing Multnomah County Ordinance 903 pertaining to expiration periods for certain single family dwellings approved in Exclusive Farm Use Districts.

The Multnomah County Board of Commissioners Finds:

a. Procedure and Procedural History:

1. In the 1980s, several development companies acquired large tracts of farm and forestland in Northwest Multnomah County. They divided the tracts into approximately 20-acre parcels and, for land zoned as farmland, obtained approvals of farm management plans for "dwellings in conjunction with farm use."

2. In 1998, a case came before a prior Board involving such a permit. Opponents requested that the permits be declared invalid because they were nine years old and had never been implemented. The Board was reluctant to declare the permits invalid and requested an ordinance be drafted to void unimplemented pre-1994 farm dwelling permits unless, within two years of adoption, there was a determination of substantial implementation of the first two years of the farm management plans.

3. Ordinance 903 was appealed by opponents to LUBA. LUBA found that the notice provisions of the ordinance were invalid because they did not comply with state law. LUBA remanded the ordinance back to the County. That

LUBA decision was appealed to the Court of Appeals. The Court of Appeals affirmed LUBA.

4. The remand from LUBA of Ordinance 903 coincided with the appeals to the Board of three PRE applications.

5. The preliminary procedural question before the Board on those appeals was what effect the remand of Ordinance 903 would have on the three PRE applications on appeal before the Board.

6. Board options were to sever and apply the substantive provisions of Ordinance 903 to the subject applications; or, to not sever the valid and invalid provisions, treating the entire ordinance as invalid on account of the remand of Ordinance 903.

7. Oregon case law allows severance and application of the valid portions of an ordinance when a part of an ordinance is declared invalid, if the invalid portions are not "inseparably connected." *City of Portland v. Dollarhide*, 300 Or 490, 504 (1986).

8. There are no cases mandating a jurisdiction apply the valid portions of an ordinance where other portions were held by an appellate court to be invalid.

9. The Board determined, as a matter of policy and as a matter of state law, that land use decisions must be based on criteria at least as strict as state law requires.

10. The Board determined that repeal of Ordinance 903 and application of the more strict state criteria to future decisions was appropriate.

Multnomah County Ordains as follows:

Section 1. Repeal

Ordinance 903 is repealed.

FIRST READING: July 29, 1999

SECOND READING AND ADOPTION: August 5, 1999



BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

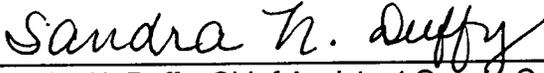


Beverly Stein, Chair

REVIEWED:

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By



Sandra N. Duffy, Chief Assistant County Counsel

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