

ANNOTATED MINUTES

*Tuesday, January 23, 1996 - 9:30 AM
Multnomah County Courthouse, Room 602
1021 SW Fourth, Portland*

DE NOVO HEARING

Chair Beverly Stein convened the meeting at 9:36 a.m., with Vice-Chair Dan Saltzman, Commissioners Sharron Kelley, Gary Hansen and Tanya Collier present.

P-1 CS 3-95 De Novo Hearing. 20 Minutes Per Side, Regarding Appeal of December 8, 1995 Hearings Officer Decision on Proposed Elimination or Modification of an Existing Community Service Condition of Approval - from CS 18-61a (1981) - that Restricts Off-Site Horse Riding on Property Located at 5989 SE JENNE LANE, PORTLAND.

CHAIR STEIN EXPLAINED QUASI-JUDICIAL PROCESS. AT CHAIR STEIN'S REQUEST FOR DISCLOSURE OF EX PARTE CONTACTS, COMMISSIONER KELLEY DECLARED SHE HAS BEEN INVOLVED IN MEDIATION WITH THE APPLICANT AND NEIGHBORS FOR APPROXIMATELY TWO YEARS, BUT FEELS NO BIAS TOWARD EITHER SIDE. COMMISSIONER COLLIER DECLARED A STAFF MEMBER HAD VISITED THE AREA. AT CHAIR STEIN REQUEST FOR CHALLENGES AND/OR OBJECTIONS, NONE WERE OFFERED. PLANNER BARRY MANNING PRESENTED CASE HISTORY. HEARINGS OFFICER BARRY ADAMSON EXPLAINED INTERPRETATION OF CRITERIA USED IN HIS DETERMINATION TO DENY APPLICATION. APPLICANT'S ATTORNEY VERN COOK SUBMITTED MEMORANDUM AND EXHIBITS AND TESTIFIED IN SUPPORT OF ELIMINATION OR MODIFICATION OF OFF-SITE HORSE RIDING RESTRICTION. STABLE OPERATOR MARK HAMMERSMITH, STABLE WORKER AND BOARDER LARRY JACOBS AND BOARDER PAT BROWN TESTIFIED IN SUPPORT OF APPLICANT'S REQUEST FOR ELIMINATION OR MODIFICATION OF OFF-SITE HORSE RIDING RESTRICTION. MRS. BROWN READ PORTION OF A LETTER FROM

SENATOR RANDY LEONARD SUPPORTING APPLICANT'S REQUEST. OPPOSING NEIGHBORS' REPRESENTATIVE MARK LOZIER PRESENTED EXHIBITS AND TESTIFIED IN OPPOSITION TO APPLICANT'S REQUEST AND IN SUPPORT OF HEARINGS OFFICER DECISION. IN RESPONSE TO QUESTION OF COUNSEL JOHN DuBAY, MR. LOZIER ADVISED THE ITEMS HE SUBMITTED AND DISCUSSED TODAY HAD BEEN SUBMITTED AND DISCUSSED AT THE HEARING BEFORE THE HEARINGS OFFICER. MR. MANNING DISCUSSED PLANNING STAFF FINDINGS AND CONCLUSIONS AND RECOMMENDATIONS AS OUTLINED IN HIS JANUARY 17, 1996 MEMORANDUM, AND RESPONDED TO BOARD QUESTIONS. TRANSPORTATION STAFF JOHN DORST DISCUSSED LOCAL ACCESS ROAD JENNE LANE MAINTAINED BY THE RESIDENTS AND UNIMPROVED CIRCLE AVENUE, ADVISING UNLESS CERTAIN IMPROVEMENTS WERE MADE TO MEET THE BASIC FIRE AND LIFE SAFETY ISSUES, TRANSPORTATION STAFF WOULD RECOMMEND DENIAL OF EXPANSION OF A COMMERCIAL BOARDING FACILITY. MR. DORST RESPONSE TO BOARD QUESTIONS AND DISCUSSION CONCERNING PROPOSALS INCLUDING CONSTRUCTION OF A BRIDGE OVER WETLAND AREA, RESTRICTING ACCESS DURING WINTER MONTHS, VACATING THE RIGHT OF WAY ON CIRCLE AVENUE, AND ANNEXING THE AREA TO THE CITY OF PORTLAND. MR. HAMMERSMITH RESPONSE TO BOARD QUESTIONS. MARK LOZIER AND HERB BROWN COMMENTS REGARDING NUMBER OF HORSES. IN RESPONSE TO INQUIRIES OF CHAIR STEIN, THERE WAS NO REQUEST FOR CONTINUANCE OR OBJECTION TO HEARING RAISED. HEARING CLOSED. FOLLOWING DISCUSSION WITH CHAIR STEIN AND MR. DuBAY, COMMISSIONER COLLIER MOVED AND COMMISSIONER KELLEY SECONDED, APPROVAL THAT APPLICANT HAS MET THE BURDEN OF PROOF. FOLLOWING DISCUSSION AND AT THE SUGGESTION OF CHAIR STEIN, COMMISSIONER COLLIER MOVED, SECONDED BY COMMISSIONER KELLEY, TO

AMEND PRIOR MOTION TO APPROVE THAT APPLICANT HAS MET THE BURDEN OF PROOF, AND THAT THE HEARINGS OFFICER DECISION ANALYSIS BE SUBSTITUTED WITH THE PLANNING STAFF ANALYSIS. MOTION ADOPTING THE PLANNING STAFF ANALYSIS IN TERMS OF MEETING THE BURDEN OF PROOF UNANIMOUSLY APPROVED. FOLLOWING MR. MANNING, MR. ADAMSON, MR. HAMMERSMITH AND MR. LOZIER RESPONSE TO BOARD DISCUSSION CONCERNING MERITS OF WALKING HORSE VERSUS RIDING HORSE AT A WALK, COMMISSIONER KELLEY MOVED AND COMMISSIONER COLLIER SECONDED, APPROVAL OF THE CONDITION THAT HORSES EITHER NEED TO BE RIDDEN AT A WALK OR WALKED ON JENNE LANE AND CIRCLE AVENUE. IN RESPONSE TO A QUESTION OF CHAIR STEIN, MR. DuBAY SUGGESTED THAT THE BOARD'S PRIOR ACTION TO SUBSTITUTE STAFF FINDINGS FOR THE HEARINGS OFFICER FINDINGS SHOULD BE CLARIFIED TO STATE THAT CRITERIA CAN BE MET IF CERTAIN CONDITIONS HAVE BEEN IMPOSED. CONDITION UNANIMOUSLY APPROVED. FOLLOWING DISCUSSION, COMMISSIONER COLLIER MOVED AND COMMISSIONER KELLEY SECONDED, APPROVAL OF THE CONDITION THAT APPLICANT'S CUSTOMERS SHALL NOT RIDE ON CIRCLE AVENUE WHEN IT IS VISIBLY WET. BOARD DISCUSSION. COMMISSIONER COLLIER'S MOTION DIED FOR LACK OF SUPPORT. COMMISSIONER HANSEN MOVED AND COMMISSIONER SALTZMAN SECONDED, APPROVAL OF THE CONDITION THAT NONE OF APPLICANT'S CUSTOMERS SHALL RIDE ON CIRCLE AVENUE BETWEEN OCTOBER 15 AND APRIL 15. AT THE CLARIFICATION AND SUGGESTION OF MR. MANNING, COMMISSIONER HANSEN MOVED AND COMMISSIONER SALTZMAN SECONDED APPROVAL TO AMEND COMMISSIONER HANSEN'S PREVIOUS MOTION TO APPROVE CONDITION THAT NONE OF APPLICANT'S CUSTOMERS SHALL RIDE ON CIRCLE AVENUE BETWEEN OCTOBER 15 TO

APRIL 15 OR UNTIL SUCH TIME AS A BRIDGE BUILT. CONDITION UNANIMOUSLY APPROVED. FOLLOWING DISCUSSION, COMMISSIONER COLLIER MOVED AND COMMISSIONER HANSEN SECONDED, APPROVAL OF CONDITION THAT, NONE OF APPLICANT'S CUSTOMERS SHALL TRESPASS ON ADJACENT PRIVATE PROPERTY. BOARD DISCUSSION. MR. MANNING AND MR. DuBAY EXPLANATION. CONDITION UNANIMOUSLY APPROVED. FOLLOWING MR. MANNING, MR. DORST AND MR. DuBAY RESPONSE TO BOARD QUESTIONS AND DISCUSSION, AND UPON MOTION OF COMMISSIONER COLLIER, SECONDED BY COMMISSIONER KELLEY, REMOVAL OF CONDITION #3 OF CS 18-61a WAS UNANIMOUSLY APPROVED. UPON MOTION OF COMMISSIONER HANSEN, SECONDED BY COMMISSIONER KELLEY, THE CONDITION THAT "APPLICANT'S ENDURING FULFILLMENT OF CONDITIONS SHALL BE A CONDITION SUBSEQUENT TO THIS APPROVAL. ANY VIOLATION MAY BE BROUGHT TO THE ATTENTION OF THE PLANNING DIRECTOR. PROVEN VIOLATION(S) SHALL TERMINATE THE APPROVAL." WAS UNANIMOUSLY APPROVED. FOLLOWING DISCUSSION AND UPON MOTION OF COMMISSIONER KELLEY, SECONDED BY COMMISSIONER HANSEN, IT WAS UNANIMOUSLY APPROVED THAT OFFSIDE RIDING BE PROHIBITED ONE HALF HOUR BEFORE DUSK AND ONE HALF HOUR BEFORE DAWN. FOLLOWING BOARD DISCUSSION AND EXPLANATION OF MR. DuBAY AND MR. DORST, COMMISSIONER HANSEN MOVED AND COMMISSIONER KELLEY SECONDED, APPROVAL OF A CONDITION REQUIRING 20 FOOT WIDENING OF THE ROAD AND DRAINAGE TO ACCOMMODATE SAME. BOARD COMMENTS. MR. HAMMERSMITH AND MR. LOZIER COMMENTS. COMMISSIONER COLLIER CALLED FOR THE QUESTION. MOTION FAILED, WITH COMMISSIONERS KELLEY AND HANSEN VOTING AYE, AND COMMISSIONERS COLLIER, SALTZMAN AND STEIN VOTING NO. FOLLOWING

DISCUSSION AND UPON MOTION OF COMMISSIONER KELLEY, SECONDED BY COMMISSIONER HANSEN, CONDITION TO LIMIT STABLE CAPACITY TO 45 HORSE OCCUPANTS APPROVED, WITH COMMISSIONERS KELLEY, HANSEN AND STEIN VOTING AYE AND COMMISSIONERS COLLIER AND SALTZMAN VOTING NO. COMMISSIONER SALTZMAN'S MOTION TO APPROVE CONDITION REGARDING HORSE MANURE DIED FOR LACK OF A SECOND. COMMISSIONER HANSEN MOVED AND COMMISSIONER SALTZMAN SECONDED, APPROVAL OF CONDITION THAT APPROVAL EXPIRES IN THE EVENT OF LAND DIVISIONS OR RESIDENTIAL DEVELOPMENT. FOLLOWING MR. DuBAY AND MR. MANNING RESPONSE TO BOARD QUESTIONS, COMMISSIONER SALTZMAN MOVED AND COMMISSIONER HANSEN SECONDED, APPROVAL OF CONDITION THAT RIDING OFF PREMISES IS SUBJECT TO USE OF THE PROPERTY AS A BOARDING STABLE ONLY. BOARD DISCUSSION. MR. MANNING AND MR. DuBAY SUGGESTIONS. BOARD COMMENTS AND DISCUSSION. CONDITION THAT APPROVAL EXPIRES IN THE EVENT OF LAND DIVISIONS OR RESIDENTIAL DEVELOPMENT UNANIMOUSLY APPROVED. COMMISSIONER SALTZMAN RESTATED HIS MOTION REGARDING USE OF PROPERTY AS A BOARDING STABLE ONLY. MR. MANNING SUGGESTED ALTERNATE AMENDMENT. BOARD COMMENTS AND DISCUSSION. MR. DuBAY RESPONSE TO BOARD QUESTIONS. CONDITION THAT OFF SITE RIDING LIMITATION APPLY TO BOARDING STABLE PURPOSES ONLY APPROVED, WITH COMMISSIONERS HANSEN, SALTZMAN AND STEIN VOTING AYE, AND COMMISSIONERS KELLEY AND COLLIER VOTING NO. COMMISSIONER SALTZMAN MOVED AND COMMISSIONER COLLIER SECONDED, TO APPROVE CONDITION THAT APPLICANT SHALL INCLUDE TERMS AND CONDITIONS OF THIS APPROVAL IN ALL WRITTEN BOARDING AGREEMENTS AND THAT APPLICANT SHALL ALSO PROMINENTLY POST THESE CONDITIONS

AT THE ENTRANCE/EXIT TO THE STABLE FACILITIES. AT THE SUGGESTION OF COMMISSIONER HANSEN, COMMISSIONER SALTZMAN MOVED AND COMMISSIONER COLLIER SECONDED, THAT THE PREVIOUS MOTION BE AMENDED TO INCLUDE THAT A MAP BE POSTED TO SHOW THE IMPACT OF THE RELEVANT CONDITIONS. MOTIONS UNANIMOUSLY APPROVED. FOLLOWING DISCUSSION AND UPON MOTION OF COMMISSIONER COLLIER, SECONDED BY COMMISSIONER KELLEY, IT WAS UNANIMOUSLY APPROVED THAT THE HEARINGS OFFICER DECISION BE OVERTURNED AND THE CRITERIA ARE REPLACED WITH THOSE OF PLANNING STAFF, WITH THE CONDITIONS DECIDED AT THIS HEARING, TO BE CONFORMED BY STAFF. AT THE REQUEST OF MR. DuBAY, MR. COOK AGREED TO A TWO WEEK WAIVER OF THE 120 DAY TIME LIMIT TO ALLOW STAFF SUFFICIENT TIME FOR PREPARATION OF THE FINAL ORDER. MR. LOZIER ADVISED HE PLANS TO APPEAL THIS DECISION TO LUBA. CHAIR STEIN ADVISED ALL PARTIES WILL RECEIVE A COPY OF THE BOARD'S WRITTEN DECISION, WHICH MAY BE APPEALED TO LUBA.

There being no further business, the meeting was adjourned at 12:20 p.m.

*Thursday, January 25, 1996 - 9:30 AM
Multnomah County Courthouse, Room 602
1021 SW Fourth, Portland*

REGULAR MEETING

Vice-Chair Dan Saltzman convened the meeting at 9:30 a.m., with Commissioners Sharron Kelley, Gary Hansen and Tanya Collier present, and Chair Beverly Stein excused.

CONSENT CALENDAR

**UPON MOTION OF COMMISSIONER KELLEY,
SECONDED BY COMMISSIONER HANSEN, THE**

**CONSENT CALENDAR (ITEMS C-1 THROUGH C-8)
WAS UNANIMOUSLY APPROVED.**

SHERIFF'S OFFICE

- C-1 *Transfer of Found/Unclaimed Property to the Department of Environmental Services for Sale or Disposal as Provided in Multnomah County Code 7.70 (List 96-1, 15 Assorted Bikes)*

DEPARTMENT OF ENVIRONMENTAL SERVICES

- C-2 *ORDER Approving Execution of Contract 15802 for Repurchase of Tax Foreclosed Property to Former Owners Jerry T. Spiegel, Sandra S. Spiegel, Robert Thomas Spiegel and David Lee Spiegel*

ORDER 96-7.

- C-3 *ORDER Approving Execution of Contract 15803 for Repurchase of Tax Foreclosed Property to Former Owner Norman P. Horne*

ORDER 96-8.

- C-4 *ORDER Approving Execution of Deed D961286 for Repurchase of Tax Foreclosed Property to Former Owner SCS Company*

ORDER 96-9.

- C-5 *ORDER Approving Execution of Deed D961287 for Repurchase of Tax Foreclosed Property to Former Owner Carole Kralej*

ORDER 96-10.

- C-6 *ORDER Approving Execution of Deed D961288 Upon Complete Performance of a Contract to Arnold L. Mecham and Faye A. Mecham*

ORDER 96-11.

DEPARTMENT OF JUVENILE JUSTICE SERVICES

- C-7 *Intergovernmental Revenue Agreement 700236 with Metro Providing Stipend for Payback Program Youth Work Crews for Litter Pick-Up Services Done at Metro's Central Transfer Station for Browning-Ferris Industries*

- C-8 *Budget Modification DJJS 6 Adding \$20,900 Metro Revenue to the Payback Program to Fund Youth Work Crews for Litter Pick-Up Services*

REGULAR AGENDA

PUBLIC COMMENT

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

NO ONE WISHED TO COMMENT.

DEPARTMENT OF SUPPORT SERVICES

- R-2 *Presentation of Employee Service Awards Honoring 31 Multnomah County Employees with 5 to 25 Years of Service*

WITH THE ASSISTANCE OF SHERY STUMP AND GAIL FOSTER, THE BOARD GREETED, ACKNOWLEDGED AND PRESENTED 5 YEAR AWARDS TO RENEE BOVE-JOHNSON, DEBORAH ANN THORSEN AND DOROTHY WHITE OF ASD; JULIE BURBACH, LISA DAVIS, NORMAN MILLER AND CURTIS STEPHENS OF CFS; SHADMAN AFZAL, TOMMY CHILDERS, HARRY FIELD, JASMINE FOX AND LOIS ZIMMERMAN OF DCC; ROBERT STEEVES OF JJD; WILLIAM SNODGRASS OF DLS; PAM ARDEN, MICHAEL DELMAN AND ELIZABETH KATZ OF NOND; AND KRISTY SCHNABEL AND CURTIS SMITH OF MSS; 10 YEAR AWARDS TO JEAN BUCCIARELLI OF CFS AND JOYCE LEWIS OF DCC; 15 YEAR AWARDS TO NEDRA BAGLEY OF DCC; DALE CAWLEY AND JOHN DORST OF DES; LUTHER STRONG OF JJD AND JEAN MILEY OF MSS; 20 YEAR AWARDS TO MILDRED TITUS OF CFS AND LANA DEATON OF DCC; 25 YEAR AWARDS TO CHRISTOPHER HAVELKA OF DCC; JOHN BJORK AND AMANCIO DIZON OF DES AND JANET IRWIN OF DLS.

- R-3 *Budget Modification NOND 9 Authorizing Return of Overpaid Cable Revenues to the Mt. Hood Cable Regulatory Commission for Distribution to Other Franchise Jurisdictions*

MULTNOMAH COUNTY'S CABLE COMMISSION REPRESENTATIVE ERNIE BONNER TESTIFIED IN SUPPORT. COMMISSIONER COLLIER MOVED AND COMMISSIONER HANSEN SECONDED, APPROVAL OF R-3. DAVE WARREN EXPLANATION AND RESPONSE TO BOARD QUESTIONS. BUDGET MODIFICATION UNANIMOUSLY APPROVED.

NON-DEPARTMENTAL

R-4 *RESOLUTION Setting February 29, 1996 for a Hearing to Consider Approving a Request for Removal of a Dedication to Cemetery Purposes for a Portion of Skyline Memorial Gardens Not Used for the Interment of Human Remains or Any Other Cemetery Purpose*

COMMISSIONER KELLEY MOVED AND COMMISSIONER HANSEN SECONDED, APPROVAL OF R-4. SCI OREGON FUNERAL SERVICES REPRESENTATIVE ANDREW BOWMAN EXPLANATION AND RESPONSE TO BOARD QUESTIONS. BOARD DIRECTED MR. BOWMAN TO PROVIDE INFORMATION RELATING TO WHY PROPERTY IS BEING SOLD AND FOR WHAT PURPOSE, AND INFORMATION REGARDING ITS TAX EXEMPT STATUS AT THE FEBRUARY 29, 1996 PUBLIC HEARING. RESOLUTION 96-12 UNANIMOUSLY APPROVED. COUNSELS JOHN DuBAY AND MATTHEW RYAN AND MR. BOWMAN RESPONSE TO COMMISSIONER COLLIER QUESTIONS REGARDING FUTURE ZONING IMPLICATIONS OF PROPERTY.

SHERIFF'S OFFICE

R-5 *RESOLUTION Transferring Title of a Sheriff's Office River Patrol Boat to the Oregon State Marine Board for Law Enforcement Use*

COMMISSIONER KELLEY MOVED AND COMMISSIONER HANSEN SECONDED, APPROVAL OF R-5. LARRY AAB AND TERRY JONES EXPLANATION AND RESPONSE TO BOARD QUESTIONS. RESOLUTION 96-13 UNANIMOUSLY APPROVED.

DEPARTMENT OF ENVIRONMENTAL SERVICES

- R-6 *ORDER Authorizing Execution of Intergovernmental Agreement 301066 with the City of Gresham for the Sublease of Space in the 501 Building for Use as a Multnomah County Aging Services Field Office*

COMMISSIONER KELLEY MOVED AND COMMISSIONER COLLIER SECONDED, APPROVAL OF R-6. BOB OBERST EXPLANATION. ORDER 96-14 UNANIMOUSLY APPROVED.

- R-7 *ORDER Authorizing Public Sale of Properties Acquired by Multnomah County through Foreclosure of Liens for Delinquent Taxes*

COMMISSIONER COLLIER MOVED AND COMMISSIONER HANSEN SECONDED, APPROVAL OF R-7. KATHY TUNEBOG EXPLANATION AND RESPONSE TO BOARD QUESTIONS AND COMMENTS IN SUPPORT OF FINE STAFF WORK. ORDER 96-15 UNANIMOUSLY APPROVED.

DEPARTMENT OF COMMUNITY AND FAMILY SERVICES

- R-8 *Budget Modification CFS 5 Adding New Revenue from Enterprise Community Social Service Block Grant; Adjusting Criminal Justice Services Division Gang Influenced Female Team (GIFT) Grant Revenue; Moving Salary Savings from Personnel to Materials and Services; and Authorizing Position Reclassifications and Changes within the Contracts and Evaluation Unit*

COMMISSIONER COLLIER MOVED AND COMMISSIONER KELLEY SECONDED, APPROVAL OF R-8. SUSAN CLARK EXPLANATION. BUDGET MODIFICATION UNANIMOUSLY APPROVED.

- R-9 *Budget Modification CFS 8 Increasing the Adult Mental Health Program Budget by \$1,872,102 to Reflect Changes in the State Mental Health Developmental Disabilities Service Division Agreement; and Moving Appropriations from Pass Through to Personnel, Material and Services to Fund a Full-time Mental Health Consultant Position for the STOP Demonstration Project and Additional Services for STOP Clients*

COMMISSIONER COLLIER MOVED AND COMMISSIONER KELLEY SECONDED, APPROVAL OF R-9. MS. CLARK EXPLANATION AND

**RESPONSE TO QUESTION OF COMMISSIONER
KELLEY. BUDGET MODIFICATION
UNANIMOUSLY APPROVED.**

R-10 *Intergovernmental Agreement 104566 with Oregon Department of Employment for Employment Related Services for Target City Project Clients*

COMMISSIONER KELLEY MOVED AND COMMISSIONER HANSEN SECONDED, APPROVAL OF R-10. NORMA JAEGER EXPLANATION AND RESPONSE TO BOARD QUESTIONS. AGREEMENT UNANIMOUSLY APPROVED.

R-11 *Children's Capitation Project Briefing and Request for Approval of Intergovernmental Agreement 104586 with Oregon Mental Health and Developmental Disability Services Division, Funding Mental Health Services on a Capitated Basis for Medicaid Eligible Children.*

LOLENZO POE, HOWARD KLINK AND JUDY ROBISON OF DCFS; MADELINE OLSON AND RALPH SUMMERS OF OREGON MENTAL HEALTH SERVICES; LINDA REILLY, CHILDREN'S ADVISORY BOARD MEMBER; KRISTIN ANGELL OF MENTAL HEALTH SERVICES WEST; JAY BLOOM OF MORRISON CENTER; LEE COLEMAN OF SERVICES TO CHILDREN AND FAMILIES; PHYLLIS PAULSON OF GARLINGTON CENTER AND MIKE MASELLE OF ALBERTINA KERR PRESENTATION, DISCUSSION AND RESPONSE TO BOARD QUESTIONS AND COMMENTS. UPON MOTION OF COMMISSIONER COLLIER, SECONDED BY COMMISSIONER HANSEN, THE AGREEMENT WAS UNANIMOUSLY APPROVED. BOARD COMMENDED STAFF AND PROVIDERS FOR THEIR COOPERATIVE EFFORTS.

BOARD RECOGNIZED CONTRIBUTIONS OF RETIRING COUNSEL JOHN DuBAY.

The regular meeting was adjourned at 10:50 a.m. and the briefing convened at 10:55 a.m.

Thursday, January 25, 1996 - 10:30 AM
(OR IMMEDIATELY FOLLOWING REGULAR MEETING)
Multnomah County Courthouse, Room 602
1021 SW Fourth, Portland

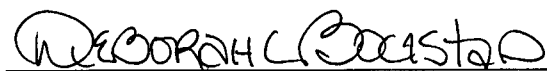
BOARD BRIEFINGS

- B-1 *Review of the Proposed 1996-1999 Library Serial Levy Budget and Ballot Language. Presented by Ginnie Cooper and Dave Warren.*
- B-2 *Review of Proposals to Issue General Obligation Bonds for Capital Enhancements to the Library System Including Technology Improvements and Equipment, Furniture, Building Improvements, and Major Branch Improvements. Presented by Ginnie Cooper.*

DAVE WARREN, GINNIE COOPER AND CINDY GIBBON PRESENTATION AND RESPONSE TO BOARD QUESTIONS AND DISCUSSION. DAVE BOYER AND JEANNE GOODRICH RESPONSE TO BOARD QUESTIONS. MR. WARREN ADVISED PUBLIC HEARINGS ON LIBRARY AND JAIL LEVY PROPOSALS ARE SCHEDULED FOR 7:00 PM, MONDAY, FEBRUARY 26, 1996 AT THE COUNTY COURTHOUSE AND 7:00 PM, TUESDAY, FEBRUARY 27, 1996 AT GRESHAM CITY HALL; PUBLIC HEARINGS ON LIBRARY AND JAIL BONDS AND PROPOSED BOARD APPROVAL ARE SCHEDULED FOR THURSDAY, MARCH 7, 1996; AND ADDITIONAL PUBLIC HEARINGS ON LIBRARY AND JAIL LEVY PROPOSALS AND PROPOSED BOARD APPROVAL ARE SCHEDULED FOR THURSDAY, MARCH 14, 1996.

There being no further business, the meeting was adjourned at 10:50 a.m.

OFFICE OF THE BOARD CLERK
FOR MULTNOMAH COUNTY, OREGON



Deborah L. Bogstad



MULTNOMAH COUNTY OREGON

OFFICE OF THE BOARD CLERK
SUITE 1510, PORTLAND BUILDING
1120 SW FIFTH AVENUE
PORTLAND, OREGON 97204
CLERK'S OFFICE • 248-3277 • 248-5222
FAX • (503) 248-5262

BOARD OF COUNTY COMMISSIONERS		
BEVERLY STEIN	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

AGENDA

MEETINGS OF THE MULTNOMAH COUNTY BOARD OF COMMISSIONERS

FOR THE WEEK OF

JANUARY 22, 1996 - JANUARY 26, 1996

Tuesday, January 23, 1996 - 9:30 AM - De Novo Hearing.....Page 2

Thursday, January 25, 1996 - 9:30 AM - Regular Meeting.....Page 2

Thursday, January 25, 1996 - 10:30 AM - Board Briefings.....Page 5

*Thursday Meetings of the Multnomah County Board of Commissioners are *cablecast* live and taped and can be seen by Cable subscribers in Multnomah County at the following times:*

Thursday, 9:30 AM, (LIVE) Channel 30

Friday, 10:00 PM, Channel 30

Sunday, 1:00 PM, Channel 30

Produced through Multnomah Community Television

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.

AN EQUAL OPPORTUNITY EMPLOYER

*Tuesday, January 23, 1996 - 9:30 AM
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1021 SW Fourth, Portland*

DE NOVO HEARING

- P-1 CS 3-95 De Novo Hearing. 20 Minutes Per Side, Regarding Appeal of December 8, 1995 Hearings Officer Decision on Proposed Elimination or Modification of an Existing Community Service Condition of Approval - from CS 18-61a (1981) - that Restricts Off-Site Horse Riding on Property Located at 5989 SE JENNE LANE, PORTLAND. 1.5 HOURS REQUESTED.*
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- C-2 ORDER Approving Execution of Contract 15802 for Repurchase of Tax Foreclosed Property to Former Owners Jerry T. Spiegel, Sandra S. Spiegel, Robert Thomas Spiegel and David Lee Spiegel*
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NON-DEPARTMENTAL

- R-4 *RESOLUTION Setting February 29, 1996 for a Hearing to Consider Approving a Request for Removal of a Dedication to Cemetery Purposes for a Portion of Skyline Memorial Gardens Not Used for the Interment of Human Remains or Any Other Cemetery Purpose*

SHERIFF'S OFFICE

- R-5 *RESOLUTION Transferring Title of a Sheriff's Office River Patrol Boat to the Oregon State Marine Board for Law Enforcement Use*

DEPARTMENT OF ENVIRONMENTAL SERVICES

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DEPARTMENT OF COMMUNITY AND FAMILY SERVICES

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- R-10 *Intergovernmental Agreement 104566 with Oregon Department of Employment for Employment Related Services for Target City Project Clients*
- R-11 *Children's Capitation Project Briefing and Request for Approval of Intergovernmental Agreement 104586 with Oregon Mental Health and Developmental Disability Services Division, Funding Mental Health Services on a Capitated Basis for Medicaid Eligible Children. 10:00 AM TIME CERTAIN, 30 MINUTES REQUESTED.*

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PLEASE PRINT LEGIBLY!

MEETING DATE 1-23-96

NAME

Pat Browne

ADDRESS

1546 SE 128th Ave

STREET

Port

CITY

97033

ZIP

I WISH TO SPEAK ON AGENDA ITEM NO. CSD 95

SUPPORT _____

OPPOSE _____

SUBMIT TO BOARD CLERK

PLEASE PRINT LEGIBLY!

MEETING DATE

1/23/96

NAME

ADDRESS

STREET

CITY

ZIP

I WISH TO SPEAK ON AGENDA ITEM NO.

SUPPORT

OPPOSE

SUBMIT TO BOARD CLERK

Herb Brown
1546 SE 138 Ave
Portland 97233

CS-3-95

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Meeting Date: JAN 23 1996

Agenda No: P-1

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: De Novo Hearing in the matter of CS 3-95.

BOARD BRIEFING Date Requested:

Amount of Time Needed:

REGULAR MEETING Date Requested: January 23, 1996

Amount of Time Needed: 1.5 Hours

DEPARTMENT: DES

DIVISION: Planning

CONTACT: Barry Manning

TELEPHONE: 248-3043

BLDG /ROOM: 412/Plan

PERSON(S) MAKING PRESENTATION: Barry Adamson & Barry Manning

ACTION REQUESTED

☐ Informational Only ☐ Policy Direction ☐ Approval ☒ Other

Summary (Statement of rationale for action requested, personnel and fiscal/budgetary impacts, if applicable):

De Novo Hearing in the matter of CS 3-95. A Proposed elimination or modification of an existing Community Service condition of approval - from CS 18-61a (1981) - that restricts off-site horse riding.

SIGNATURES REQUIRED:

Elected Official:

Leah E. Nicholas

OR

Department Manager:

KB

BOARD OF
COUNTY COMMISSIONERS
96 JAN 17 AM 8:30
MULTNOMAH COUNTY
OREGON



MULTNOMAH COUNTY

BOARD HEARING of January 23, 1996

CASE NAME: Conditional Use Request: CS 3-95

1. Applicant Name/Address:

George E. Hammersmith
5989 SE Jenne Lane
Portland, OR 97236

2. Action Requested by Applicant:

Modification or removal of Condition of Approval #3 from
Case CS 18-61a which states:

"3. The applicant shall prominently post so it is apparent to all riders a sign which states that all riding is to occur on the subject property and that no riding shall occur off-premises[,] neither on other private property nor on public streets. The applicant shall enforce this notice."

3. Planning Staff Recommendation:

CS 3-95: Approval, subject to conditions. Planning Staff found that the off-site riding prohibition of CS 18-61a was offered as a mitigation measure for an "expansion" of the use from a 4-H facility to a commercial horse boarding facility. Staff found that conditions had changed near the subject site, including an expansion of nearby equestrian-related facilities (Springwater Corridor and Powell Butte Park), and that the proposal would be consistent with the character of the area. Planning Staff concluded that the off premises riding prohibition could be removed if conditions designed to mitigate anticipated effects were applied to the approval.

4. Hearings Officer Decision:

CS 3-95: Denial, for the reasons stated in #5, below. The Hearings Officer also offered an "alternative" decision in the event someone appeals the decision and the Board of Commissioners or other appellate tribunal reverses [the] findings and conclusions with respect to to criteria stated in the Hearings Officer's decision. The "alternative" Decision is to approve the applicant's request to modify or eliminate the existing off-site riding prohibition contained in CS 18-61a, subject to conditions (attachment 1).

5. If recommendation and decision are different, why?

Planning Staff recommendation was based on the underlying position that equestrian traffic should not be restricted from public rights-of-way and that the impacts of allowing such travel are minimal and can be mitigated. Staff also took the position that removing the off-site riding prohibition amounted to a further expansion of the use, and that the recommended conditions of approval (attachment 2) should be imposed to mitigate impacts due to the expansion. Note: Staff's recommended conditions differ from the Hearings Officer's "alternative decision" conditions.

ACTION REQUESTED OF BOARD

- ☐ Affirm Plan.Com./Hear.Of
- ☒ Hearing/Rehearing
- ☐ Scope of Review
 - ☐ On the record
 - ☒ De Novo
 - ☐ New Information allowed

The Hearings Officer found that the request did not satisfy the applicable approval criteria and concluded that:

1. If he were to remove the off-site riding prohibition, "substantial off-site riding on Jenne Lane and Circle Avenue by the customers of a commercial, single-source, 54-stable/45-horse facility would not be "consistent with the character of the area", as otherwise required by the Community Service approval criterion in MCC 11.15.7015(A);
 2. The allowance of large scale, single-source off-site riding from commercial stables within this particular rural residential environment will not "assure a complimentary blend of uses" or "maintain or create neighborhood long term stability," as otherwise required by Policy 20 of the County's comprehensive Plan, as well as MCC 11.15.7015(G);
 3. Notwithstanding the fact that the Springwater Corridor and Powell Butte Park may comprise significant community resources, and notwithstanding the fact that within the surrounding area the casual riding of horses by the residential populace seems to represent a type of community use, the type of large-scale, single-source, off-site riding that could be generated by the applicant's commercial facilities does not override or outweigh the needs and concerns of the surrounding neighbors, and that the modification or removal of the existing off-site riding prohibition would not meet the needs of the "community" as otherwise required by Policy 31 of the County's Comprehensive Plan, as well as MCC 11.15.7015(G)', and
 4. The Applicant's proposal to utilize an existing public right-of-way for the benefit of a purely commercial, large-scale, single-source stable facility does not squarely fulfill Policy 39 of the County's Comprehensive Plan (or MCC 11.15.7015(G)), which otherwise requires requires or presumes some degree of private development by those persons wishing to more fully develop or utilize recreational facilities.
6. The following issues were raised:
1. Opponents of the request maintained that the would-be route for horses destined for the Springwater Corridor, Circle Avenue, traverses a wetland, and that horses should be restricted in this area. Multnomah County Transportation Division staff does not concur with this position.
 2. Off-site riding has occurred for years in violation of the Community Service condition of approval (CS 18-61a). Until recently, Multnomah County had not enforced this condition.
 3. The Fire Marshall has determined that the Jenne Lane does not meet the standards for roads accessing a commercial facility, and requires the road to be improved to the minimum standard (gravel).
7. Implications related to this case:

This decision is likely to be appealed by the applicant. The Hearings Officer's decision implies that certain travel modes can be restricted from the public right-of-way. The implications of the Hearings Officer's "Alternative Decision" are unknown.



DEPARTMENT OF ENVIRONMENTAL SERVICES
DIVISION OF PLANNING AND DEVELOPMENT
2115 S.E. Morrison Street
Portland, Oregon 97214 (503) 248-3043

HEARINGS OFFICER DECISION

December 8, 1995

CS 3-95

Proposed elimination or modification of an existing Community Service condition of approval — from CS 18-61a (1981) — that restricts off-site horse riding

Location: 5989 S.E. Jenne Lane

Legal: Tax Lot 46, Section 18, T 1S, R 3E
Tax Lot 5 & 6 of lots 30, 33-41, Jennelynd Acres

Site Size: 23.50 acres

Applicant: George E. Hammersmith
5989 S.E. Jenne Lane
Portland, Oregon 97236

Property Owner: Ruth F. Kaiser, et al.
1280 N.E. Kane Road, Apt. 22
Gresham, Oregon 97030

Comprehensive Plan: Rural Residential

Zoning: RR (Rural Residential), FF (Flood Fringe), FW (Floodway), and CS (Community Service)

HEARINGS OFFICER DECISION:

Denied, for the following reasons:

- ◆ I find and conclude that, if I were to modify or eliminate the existing off-site riding prohibition, substantial off-site riding on Jenne Lane and Circle Avenue by the customers of a commercial, single-source, 54-stable/45-horse facility would *not* be "consistent with the character of the area", as otherwise required by the Community Service approval criterion in MCC 11.15.7015(A).
- ◆ I find and conclude that the allowance of large-scale, single-source off-site riding from commercial stables within this particular rural residential environment will *not* "assure a complementary blend of uses" or "maintain or create neighborhood long term stability," as otherwise required by Policy 20 of the County's Comprehensive Plan, as well as MCC 11.15.7015(G).
- ◆ Notwithstanding the fact that the Springwater Corridor and Powell Butte Park may comprise significant community resources, and notwithstanding the fact that within the surrounding area the casual riding of horses by the residential populace seems to represent a type of community use, I nevertheless find and conclude that the type of large-scale, single-source, off-site riding that could be generated by APPLICANT's commercial facilities does not override or outweigh the needs and concerns of the surrounding neighbors, and that the modification or removal of the existing off-site riding prohibition would not meet the needs of the "community" as otherwise required by Policy 31 of the County's Comprehensive Plan, as well as MCC 11.15.7015(G).
- ◆ I find and conclude that APPLICANT's proposal to utilize an existing public right-of-way for the benefit of a purely commercial, large-scale, single-source stable facility does not squarely fulfill Policy 39 of the County's Comprehensive Plan (or MCC 11.15.7015(G)), which otherwise requires or presumes some degree of private development by those persons wishing to more fully develop or utilize recreational facilities.

ALTERNATE HEARINGS OFFICER DECISION:

However, in the event someone appeals this decision and the Board of County Commissioners or other appellate tribunal reverses my findings and conclusions with respect to the above criteria, I have considered all applicable criteria and rendered alternative findings and conclusions. Thus, alternatively, and only in the event the Board or other appellate tribunal reverses my decision, I render the following alternative decision:

Approved, Applicant's request to modify or eliminate the existing off-site riding prohibition contained in CS 18-61a, with the following conditions of approval.

CONDITIONS OF APPROVAL:

(for alternate decision)

1. None of Applicant's customers shall ride any horses on the public right-of-way comprising the entirety of Jenne Lane. Similarly, none of Applicant's customers shall ride any horses on the public right-of-way comprising Circle Avenue between the intersection with Jenne Lane and the low-lying swale or "wetlands" area in the Circle Avenue right-of-way. All horses shall be walked in these areas. Applicant shall (1) include this condition in all written boarding agreements, and (2) prominently post this condition at the entrance/exit to his stable facilities.
2. Until such time as the County or other entity constructs an all-weather crossing over the low-lying swale or "wetlands" area in the Circle Avenue right-of-way, none of Applicant's customers shall ride within the public right-of-way comprising Circle Avenue between Jenne Lane and the Springwater Corridor (1) from October 15 to April 15 of each year, *and* (2) whenever there exists any visibly wet or muddy conditions in the low-lying swale or "wetlands" area. Applicant shall (1) include this condition in all written boarding agreements, and (2) prominently post this condition at the entrance/exit to his stable facilities.

3. None of Applicant's customers shall trespass on adjacent private properties, damage or destroy personal property situated on adjacent private properties, or otherwise obstruct or interfere with neighbors' use and enjoyment of adjacent residential properties for any purpose or reason whatsoever. Applicant shall (1) include this condition in all written boarding agreements, and (2) prominently post this condition at the entrance/exit to his stable facilities.
4. Applicant's stable facilities shall not exceed 45 horses belonging to customers, and Applicant shall not accept more than 45 horses for boarding at the stable facilities.
5. With the exception of Condition "3," all other terms and conditions in the hearings officer's May 4, 1981, decision in CS 18-61a shall remain in effect.
6. Applicant's enduring fulfillment of the above conditions shall be a condition subsequent to this approval. Any violations may be brought to the attention of the Planning Director, who shall commence a contested case land use proceeding under appropriate Zoning Ordinance provisions to adjudicate allegations of violations. Any proven violation(s) shall terminate this approval.

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I. ANALYSIS OF THE PROPOSAL

A. BACKGROUND

The subject property comprises a 54-stable / 45-horse commercial stable facility, which the record portrays as the largest of several area stables. Stable usage began in 1961 as a 4-H facility. At that time, users accessed the stables via Jenne Road instead of Jenne Lane, in order to reduce traffic conflicts with the single-family residences along Jenne Lane. In 1964, the stable owners sought — and obtained — County approval of access via Jenne Lane. Access via Jenne Lane has endured since then.

In 1981, the owners sought a modification of the original approval in order to allow commercial boarding as a Community Service use. (See CS 18-61a.) At the time, the owners represented that all riding would occur on-site. During the hearings process, neighbors voiced concerns about off-site riding. Thus, when the County approved the change of use to allow commercial boarding, it imposed the following condition:

- “3. The applicant shall prominently post so it is apparent to all riders a sign which states that all riding is to occur on the subject property and that ***no riding shall occur off-premises[,] neither on other private property nor on public streets.*** The applicant shall enforce this notice.”
(May 4, 1981, decision in CS 18-61a [emphasis added].)

The staff report characterizes the condition as reflective of an agreement among the various parties in the 1981 proceedings, whose purpose served to mitigate anticipated impacts to the residential environment by a change to commercial stable operations. The off-site riding prohibition in other words, comprised a *quid pro quo* for approval to operate a large, commercial stable facility.

No one appealed the imposition of that condition, and it has been a final, enduring condition of usage since 1981.^[1]

The current owner (George Hammersmith) and stable operator (Mark Hammersmith — whom I will collectively describe in this decision as the “APPLICANT” — maintain that APPLICANT purchased the property some time after the imposition of that condition in 1981, and that the former owners did not reveal or disclose the existence of the quoted condition. I infer from the record that APPLICANT’s stable operations began about the same time as the transfer of ownership in 1981.

Thus, from 1981 until 1994 APPLICANT allowed his customers to ride their horses off-site; horses and riders moved freely on Jenne Lane, unimpeded by the above condition. APPLICANT does not dispute the fact that, at least until recent months, stable customers have routinely ridden off-site in violation of the above condition.

In approximately 1992, a regional recreational trail known as the “Springwater Corridor” came into existence as part of the County’s rails-to-trails program. The Springwater Corridor, which serves equestrian and other uses, lies just to the west and north of the subject property. The Springwater Corridor, however, lies on the other side of Johnson Creek. Thus, access to the Corridor became a focal point.

Some time in 1994 APPLICANT apparently discovered the existence of a public right-of-way comprising the unimproved portion of Circle Avenue that intersects Jenne Lane between lots 22 and 24. Apparently, the adjacent owners of lots 22 and 24 had been unaware of the existence of the Circle Avenue right-of-way, and had built fences upon

¹ In these proceedings, APPLICANT challenges that condition as (1) in excess of County authority and (2) “ambiguous” because APPLICANT cannot determine its scope. I reject both challenges, for three reasons. First, the time to challenge the imposition of the condition comes too late. Second, APPLICANT cited no authority for the proposition that the off-site riding prohibition exceeded County authority to regulate the usage of the stable facilities, and I will not presume the absence of authority. Third, I conclude that context makes it reasonably apparent, from any objective perspective, that the condition precludes off-site riding on Jenne Lane or adjacent private property, as opposed to the world (as APPLICANT interprets it).

that right-of-way. APPLICANT thereafter sought to relocate those fences in order to open the right-of-way, which would in turn provide APPLICANT and his customers with access to the Springwater Corridor.

The owners of lot 24 then discovered the existence of the condition that I have quoted above, which forbade any off-site horse riding by customers of APPLICANT's stables. Because APPLICANT had never observed that condition, and in fact persisted in allowing stable customers to ride off-site, the County thereafter successfully pursued a claim of zoning violation against APPLICANT based upon the condition from the 1981 approval in CS 18-61a.

B. PROPOSAL SUMMARY

APPLICANT proposes to either eliminate the above condition that currently precludes off-site riding, or modify the condition so that riding would be permitted off-site only on Jenne Lane "south of the northerly line of Circle Avenue so as to permit access to the Springwater Trail by use of Circle Avenue."

The record reflects a number of residences along Jenne Lane that would or might be impacted by any off-site riding on Jenne Lane. APPLICANT's proposal to restrict off-site riding to that portion of Jenne Lane between the stables and Circle Avenue would still impact one or more residences.

C. SITE AND VICINITY DESCRIPTIONS

APPLICANT's property lies in the southeast portion of unincorporated Multnomah County, just outside the urban growth boundary. The site comprises several stables, a barn, and two residences located on 23.5 acres that have historically (at least since 1961) been dedicated to stable uses.

The surrounding area comprises rural, large-lot, unincorporated properties predominately residential in character. Rural land use patterns persist to the south and east. Johnson Creek lies immediately west of the property, forming a natural barrier that otherwise prevents ready access to the Springwater Corridor.

Stable customers access APPLICANT's stables via Jenne Lane, a narrow, unimproved public right-of-way that serves a handful of single-family residences and dead-ends at APPLICANT's property. Only three residences exist south of Jenne Lane's intersection with Circle Avenue, two of which belong to APPLICANT; the third belongs to Mr. and Mrs. Lozier. At least one other adjoining residence apparently exists to the north and west of APPLICANT's stables, accessed via Circle Avenue from the west (*viz*, the developed portion of Circle Avenue).

There exist four other stable facilities within a mile or so of the subject property, with capacities ranging from 50 to 12 stalls. All exist within residential zones, two within the City of Portland and two within unincorporated Multnomah County. None apparently have any ingress or egress restrictions, nor do they apparently have any off-site riding prohibitions. However, the record contains a dearth of comparative information about other matters (such as access to the Springwater Corridor and use of particular public rights-of-way) that might otherwise allow me to draw any comparisons between and among these other stables and that of APPLICANT. For instance, although other riders appear to access Powell Butte, the record does not describe whether those riders transport their horses to Powell Butte directly or ride there via public rights-of-way. The record also fails to reveal whether riders from other stables ride on public rights-of-way, and, if they do, whether they do so within a residential environment.

D. COMPREHENSIVE PLAN AND ZONING ORDINANCE CONSIDERATIONS

The subject property bears a comprehensive plan designation of "Rural Residential" and zoning designation of "Rural Residential," "Flood Fringe," and "Floodway," with a "Community Service" overlay.

II. APPLICABLE CRITERIA ^[2]

The following criteria apply to the proposed request:

A. RURAL RESIDENTIAL – CONDITIONAL USES [MCC 11.15.2212]

MCC 11.15.2212 provides, in pertinent part:

“The following uses may be permitted when found by the Hearings Officer to satisfy the applicable Ordinance standards:

- “(A) *Community Service Uses* under the provisions of MCC [11.15].7005 through [11.15].7041.” (Emphasis added.)

B. COMMUNITY SERVICE – “USES” [MCC 11.15.7020]

MCC 11.15.7020 (made applicable via MCC 11.15.2212, above) provides, in pertinent part:

- “(A) . . . “[T]he following Community Service Uses and those of a similar nature may be permitted in any district when approved at a public hearing by the approval authority.

“* * * * *

² As I explain in more detail in the section that identifies the approval criteria for Community Service uses (*see* page 10), APPLICANT *already* has an approval, existing Community Service “use.” Thus, he need not again demonstrate an entitlement to that “use.” However, he nevertheless must fulfill the applicable criteria with respect to any *modification* of that use. I have, therefore, set forth all of the applicable criteria, notwithstanding the fact that the criteria discuss the “use” itself.

“(19) Riding academy or *the boarding of horses for profit.*” (Emphasis added.)

C. COMMUNITY SERVICE – APPROVAL CRITERIA
[MCC 11.15.7015]

Although APPLICANT already has an existing, approved “Community Service” use, MCC 11.15.7010(D) provides that

“... [a]ny ... *modification of limitations or conditions* shall be subject to approval authority approval after a public hearing.” (Emphasis added.)

Unfortunately, nothing in the Community Service provisions prescribes any particular criteria that control *modifications* to existing uses, as opposed to the establishment of the use in the first place. I therefore interpret the general “approval” criteria in MCC 11.15.7015 to apply to the requested modification — tempered by the fact that APPLICANT need only address the relationship of the proposed off-site riding to the approval criteria.

MCC 11.15.7015 provides, in pertinent part:

“In approving a Community Service use, the approval authority shall find that the proposal meets the following approval criteria ...

- “(A) Is consistent with the character of the area;
- “(B) Will not adversely affect natural resources;
- “(C) Will not conflict with farm or forest uses in the area;
- “(D) Will not require public services other than those existing or programmed for the area;

- “(E) Will be located outside a big game winter habitat area as defined by the Oregon Department of Fish and Wildlife or that agency has certified that the impacts will be acceptable;
- “(F) Will not create hazardous conditions; and
- “(G) Will satisfy the applicable policies of the Comprehensive Plan.”

D. COMPREHENSIVE PLAN PROVISIONS

Staff has identified the following Comprehensive Plan provisions as applicable. As I discuss *infra*, I do not believe that all of the cited Plan provisions apply in this instance.

1. POLICY 2: “OFF-SITE EFFECTS”

Policy 2 (“Off-Site Effects”) provides:

- “The County’s policy is to apply conditions to its approval of land use actions where it is necessary to:
- “A. Protect the public from the potentially deleterious effects of the proposed use; or
 - “B. Fulfill the need for public service demands created by the proposed use.”

2. POLICY 13: "AIR, WATER AND NOISE QUALITY"

Policy 13 ("Air, Water and Noise Quality") provides, in pertinent part:

"... [I]t is Multnomah County's policy to:

"A. Cooperate with private citizens, businesses, utilities and public agencies . . . to reduce noise pollution in Multnomah County.

"* * * * *

"C. . . . [P]revent or reduce excessive sound levels while balancing social and economic needs in Multnomah County.

"D. Discourage the development of noise-sensitive uses in areas of high noise impact."

"Furthermore, it is the County's policy to require, prior to approval of a . . . quasi-judicial action, a statement from the appropriate agency that all standards can be met with respect to . . . noise levels. . . ."

3. POLICY 14: "DEVELOPMENTAL LIMITATIONS"

Policy 14 ("Developmental Limitations") provides, in pertinent part:

"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 adverse effects to surrounding persons or properties. Development limitations areas are those which have any of the following characteristics:

"* * * * *

- "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;

"* * * * *

- "F. Land subject to slumping, earth slides or movement."

4. POLICY 16: "NATURAL RESOURCES"

Policy 16 ("Natural Resources") provides, in pertinent part:

"The County's policy is to protect natural resources [and] conserve open space [. . . .] These resources are addressed within sub-policies 16-A through 16-L."

Sub-policy 16-G ("Water Resources and Wetlands") provides, in pertinent part:

"It is the County's policy to protect and, where appropriate, designate as areas of significant environmental concern, those water areas, streams, wetlands, watersheds, and groundwater resources having special public value in terms of the following:

"* * * * *

- "D. Public safety (. . . flood water storage areas, vegetation necessary to stabilize river banks and slopes) [.]"

Sub-policy 16-K ("Recreation Trails") provides, in pertinent part:

"It is the County's policy to recognize the following trails as potential state recreation trails:

"Columbia Gorge Trail
"Sandy River Trail
"Portland to the Coast Trail
"Northwest Oregon Loop Bicycle Route"

5. POLICY 20: "ARRANGEMENT OF LAND USES"

Policy 20 ("Arrangement of Land Uses") provides:

"The County's policy is to support higher densities and mixed land uses within the framework of scale, location and design standards which:

- "A. Assure a complementary blend of uses;
 - "B. Reinforce community identity;
 - "C. Create a sense of pride and belonging; and
 - "D. Maintain or create neighborhood long term stability."
-

6. POLICY 31: "COMMUNITY FACILITIES AND USES"

Policy 31 ("Community Facilities and Uses") provides, in pertinent part:

"The County's policy is to:

- "A. Support the siting and development of a full range of community facilities and services by supporting the location and scaling of community facilities and uses meeting the needs of the community and reinforcing community identity.

- "B. Encourage community facilities siting and expansion at locations reinforcing orderly and timely development and efficient provision of all public services and facilities.
- "C. Encourage land use development which support[s] the efficient use of existing and planned community facilities.

"* * * * *"

7. POLICY 38: "FACILITIES"

Policy 38 ("Facilities") provides:

"The County's policy is to require a finding prior to approval of 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 comment[] 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."

8. POLICY 39: "PARKS AND RECREATION PLANNING"

Policy 39 ("Parks and Recreation Planning") provides, in pertinent part:

"The County's policy is to operate its established parks and recreation program to the degree fiscal resources permit, and to:

"A. Work with residents [and] community groups . . . to identify recreation needs [.]

"* * * * *

"C. Encourage the development of recreation opportunities by . . . private entities [.]"

9. POLICY 40: "DEVELOPMENT REQUIREMENTS"

Policy 40 ("Development Requirements") provides:

"The County's policy is to encourage a connected park and recreation system and to provide for small private recreation areas by requiring a finding prior to approval of legislative or quasi-judicial action that:

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

"B. Landscaped areas with 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."

III. FINDINGS

MCC 11.15.2212(A) allows "community service" uses within the Rural Residential zone. In turn, MCC 11.15.7020(A)(19) defines "the boarding of horses for profit" as a community service "use." Finally, MCC 11.15.7015 prescribe criteria to be applied in "approving" a community service use.

However, APPLICANT already *has* an approved community service "use." The lone question for decision, therefore, becomes whether APPLICANT's request for modification or elimination of the off-site riding prohibition will cause the otherwise-approved "use" to run afoul of the approval criteria. If so, then I can either deny any change to the off-site riding prohibition, or I can attach mitigating conditions that derive solely from, and directly affect, any implementation of off-site riding approval. But I cannot purport to alter or restrict the underlying stable use in ways unassociated with, or unrelated to, the debate over the off-site riding prohibition.

Thus, my findings will only address the extent to which APPLICANT's requested modification or elimination of the off-site riding prohibition will fulfill the criteria in MCC 11.15.7015, as well as the pertinent policies in the Comprehensive Plan.

A. COMMUNITY SERVICE USE APPROVAL CRITERIA

1. "Is consistent with the character of the area"

A pivotal determination under this criterion comprises working definitions of both the "area" and that area's "character." Another determinative issue comprises the question whether I can consider any heretofore-illegal off-site riding on a public right-of-way, *viz*, Jenne Lane, by APPLICANT's customers as being "consistent" with the character of the area.

In this case, I find the subject "area" to comprise not just the Jenne Road/Jenne Lane vicinity, but the area within which all of the other horse stable facilities lie. I do so because it readily appears from the evidence that there exists a significant degree of horse

riding within the surrounding area, by both area residents (who maintain their own horses) and by stable customers.

I also find the "character" of the area to be predominately residential but certainly not what I would describe as "urban." I find that the "character" of the area includes the presence of horses and stables as an adjunct, albeit not necessarily major, part of residential life within the unincorporated area within which APPLICANT's property lies.

However, notwithstanding the apparent proliferation of horse-riding in the "area" that I have defined, I have determined the ultimate question to be whether off-site riding by *large numbers of customers from the area's largest stable facility on public rights-of-way* would be "consistent" with the surrounding area, *not* simply whether the riding of horses or the presence of other stables in general would be "consistent." Obviously, other stables exist in the surrounding area, and areas such as the Springwater Corridor and Powell Butte incur substantial usage by riders (whether from the other stables or otherwise), but that usage does not correlate with the question whether off-site riding on Jenne Lane by a large, commercial stable facility would be "consistent" with the area.

The question would appear at first glance to be simplified by the fact that APPLICANT's customers rode off-site from 1981 until approximately 1994, albeit in violation of a land use condition. However, because all of the off-site riding from 1981 forward occurred in violation of a valid, enduring land use condition, I will not allow APPLICANT to rely upon any favorable inferences to be drawn from any evidence derived from that off-site riding. I will *not*, therefore, consider any prior off-site riding by APPLICANT's customers as supportive of any finding that such off-site riding might be "consistent" with the character of the area. Any contrary result would allow APPLICANT the benefit of evidence derived solely from the use of the subject property in violation of the 1981 off-site riding prohibition.

APPLICANT alone bears the evidentiary burden of demonstrating that a 54-stable commercial facility that currently houses 45 horses would comprise a use that would be "consistent with the character of the area" if I were to allow off-site riding. Unfortunately, the record contains barely any evidence of any legal off-site riding in the "area" *except* by neighbors in the Jenne Lane area. Although other stables exist in the "area" that I have defined for purposes of this criteria, I find no credible evidence of any substantial degree of off-site riding on Jenne Lane by riders from these other stables such that I can find the probable degree of off-site riding by APPLICANT's customers to be "consistent" with the character of the surrounding area.

Indeed, I find that the record contains no evidence of any usage of Jenne Lane from 1981 to date by any one *other than* APPLICANT's customers. The fact that some of the neighbors apparently use the Circle Avenue right-of-way to access the Springwater Corridor has no bearing here; the record suggests that these users access Circle Avenue directly from their own property, and do not use Jenne Lane.

Moreover, even if adjacent neighbors did use Jenne Lane, the question still remains one of degree; usage that would be "consistent" with the character of the surrounding area would *not* comprise commercial usage by up to 45 horses originating from a single 54-stable facility. I cannot forget or disregard the fact that the 1981 off-site riding prohibition comprised an integral component of the approval for the operation of such a large commercial stable facility in the first place.

Because I find insufficient evidence to allow me to conclude that substantial off-site riding on Jenne Lane and Circle Avenue by the customers of a commercial, single-source, 54-stable / 45-horse facility would be "consistent with the character of the area," I accordingly find that APPLICANT has failed to demonstrate that this criteria would be fulfilled if I were to modify or eliminate the off-site riding prohibition.

Although I have found that APPLICANT has failed to carry his evidentiary burden with respect to the above criterion, and that I must reject his approval request on that basis, I will nevertheless proceed to examine, and make findings on, the other applicable criteria. I do so in order to fully decide all issues before me in the event of any appeal.

2. "Will not adversely affect natural resources"

A number of persons voiced concerns about possible damage to a low-lying area on the Circle Avenue right-of-way that lies between the intersection with Jenne Lane and the Springwater Corridor access. It comprises an overflow creek channel that can also be described as a "backwater swale," or "oxbow," of Johnson Creek.

Apparently, the federal government has identified some undefined and undescribed portion of the area as "wetlands," and I find nothing in the record to suggest any-

thing to the contrary. The state apparently takes no position, while the County urges that the Circle Avenue right-of-way remain open as long as there exist adequate travel restrictions to prevent damage to the right-of-way or injury to persons using it.

Everyone seems to agree that the area has an historical propensity to become wet and muddy at times during the fall, winter, and spring months, but opinions diverge with respect to whether those conditions endure continuously even, for instance, during winter months.

I find that the low-lying area on the Circle Avenue right-of-way that lies between the intersection with Jenne Lane and the Springwater Corridor access constitutes a "wetland" that deserves protection from damage, alteration, or destruction. Conditions or limitations on traversing that area during wet conditions would, if followed, conceivably alleviate possible adverse effects to the low-lying area caused by riding horses through the area.

However, the tougher question becomes whether I can compel APPLICANT to enforce conditions or restrictions with respect to property that he does not own, and with respect to which he does not necessarily use (as opposed to the stable customers). First of all, it appears from the record that the wetlands area lies directly within the Circle Avenue right-of-way, *viz*, a public area. Second, the potential for damage originates with APPLICANT's *customers*, not with APPLICANT. Finally, any conditions specifically confined to APPLICANT (and APPLICANT's customers) would not prevent damage by other riders or users using the Circle Avenue access to the Springwater Corridor and traversing the low-lying swale in the process.

Thus, I fail to discern the requisite nexus between (1) the probability of third-party damage to a "wetlands" area that lies within a public right-of-way and (2) APPLICANT's responsibility for ameliorating that probability. It seems to me that the better solution would be for the County to simply post the area with necessary notices, or perhaps restrict it altogether during months that the County deems advisable.

I therefore find that any modification or elimination of the off-site riding prohibition would not necessarily "adversely affect natural resources" in a manner that I can, on this record, directly and singularly connect with APPLICANT.

APPLICANT, however, does not object to the imposition of conditions designed to mitigate adverse effects upon the low-lying area on the Circle Avenue right-of-way. Thus, I find that APPLICANT has waived the absence of any impediment to imposition of

protective conditions. I therefore will impose the following condition to accompany an alternative approval:

Until such time as the County or other entity constructs an all-weather crossing over the low-lying swale or "wetlands" area in the Circle Avenue right-of-way, none of Applicant's customers shall ride within the public right-of-way comprising Circle Avenue between Jenne Lane and the Springwater Corridor (1) from October 15 to April 15 of each year, *and* (2) whenever there exists any visibly wet or muddy conditions in the low-lying swale or "wetlands" area. Applicant shall (1) include this condition in all written boarding agreements, and (2) prominently post this condition at the entrance / exit to his stable facilities.

3. "Will not conflict with farm or forest uses in the area"

No farm or forest uses exist in the surrounding area. I find, therefore, that any modification or elimination of the off-site riding prohibition would not conflict with any such uses.

4. "Will not require public services other than those existing or programmed for the area"

With the exception of the Portland Fire Bureau's concerns about the suitability of Jenne Lane for fire vehicle access, nothing in the record suggests the need or any additional public services.

Via a letter of November 7, 1995, the Portland Fire Bureau suggests upgrading Jenne Lane in some fashion in order to accommodate firefighting equipment. The County's Transportation Division also suggests in a November 6, 1995, memorandum that Jenne Lane needs to be widened and upgraded.

However, nothing in the record suggests that APPLICANT's request for modification or elimination of the off-site riding prohibition will exacerbate the substandard nature of existing road conditions. If the record contained any hint that a modification or elimination of the off-site riding prohibition would necessarily result in increased usage by APPLICANT's customers, then I could readily discern some logical, rational connection between the Fire Bureau's request for a road upgrade and APPLICANT's request for approval.

But I find nothing in the record to support the conclusion that the removal of the off-site riding prohibition bears any direct relationship to the condition of the road. Although the record suggests that the traffic generated by APPLICANT's stable customers over the years has degraded Jenne Lane significantly more than if Jenne Lane had been used solely by *residents* of Jenne Lane, the stables have nevertheless existed as an approved use since 1961. Indeed, in the 1981 decision in CS 18-61a, the hearings officer declined to require any improvement to Jenne Lane as the result of the stable use; rather, the hearings officer required the then-owner to record a deed restriction providing that, "in the event that improvement to S.E. Jenne Lane is authorized" *in the future*, the owner would be required to participate in that improvement on a proportionate basis.

If APPLICANT had not requested the modification or elimination of the off-site riding prohibition, it seems to me that the County would lack any basis for compelling a long-time user to upgrade Jenne Lane. Thus, I find an overly-tenuous connection between the Fire Bureau's and Transportation Division's requests. I can scarcely compel APPLICANT — or any other resident of Jenne Lane — to shoulder the burden of upgrading a County road whose condition has endured for years in its present state, and whose condition will not necessarily worsen because of any modification or elimination of an off-site riding prohibition.

I find, therefore, that a modification or elimination of the off-site riding prohibition will not "require public services other than those existing or programmed for the area."

5. "Will be located outside a big game winter habitat area"

There exists no big game winter habitat area in the vicinity of the subject property.

6. "Will not create hazardous conditions"

The record identifies but one potentially "hazardous" condition if I modify or eliminate the off-site riding prohibition: the presence of horses and riders on Jenne Road, as opposed to Jenne Lane. Without access to the Springwater Corridor via Circle Avenue, the record suggests that off-site riding — if permitted — might occur on Jenne Road in order to access the Springwater Corridor. Everyone who commented on that eventuality seems to agree that horses on Jenne Road yield a "hazardous" condition.

Thus, allowing off-site riding *and* confining that off-site riding to the Circle Avenue access to the Springwater Corridor will eliminate, rather than create, a "hazardous" condition. I find, therefore, that the imposition of geographical restrictions on any off-site riding — if otherwise allowed — will "not create hazardous conditions."

7. "Will satisfy the applicable policies of the Comprehensive Plan"

I discuss the Comprehensive Plan policies in the next section.

B. COMPREHENSIVE PLAN POLICIES

MCC 11.15.7015(G) further requires that any Community Service "use" — and any modification thereof — satisfy applicable Comprehensive Plan policies.

1. POLICY 2: "OFF-SITE EFFECTS"

Independent of the approval criteria in MCC 11.15.7015(A) to (F) (discussed in the previous section), Policy 2 allows the imposition of conditions in order to "protect the public from the potentially deleterious effects of the proposed use [.]"

The record reveals that neighbor complaints about stable-generated traffic and noise have endured for roughly 30 years. The record also contains a rather substantial population of persons opposed to any off-site usage by APPLICANT under any circumstances. However, many of the objectors make no differentiation between (1) objections arising solely from traffic and other vehicular-related incidents attributable to APPLICANT's customers, (2) objections arising from non-riding trespasses or other interference with neighbors' properties, and (3) objections arising solely from off-site riding incidents attributable to APPLICANT's customers. Only the latter would be pertinent at this point.

APPLICANT's stables comprise a "24-hour" facility that allows users access at any time in order to care for the horses. As a result, stable traffic can occur — and has apparently occurred — even during the late night and early morning hours within an otherwise residential environment. APPLICANT not only concedes as much, but maintains that 24-hour access must be maintained in order to allow the customers access to the horses when and as needed. I find that to be true.

The record reveals — and APPLICANT did not really contest — that, at least in recent months, stable customers have displayed what might best be described as a callous, sometimes intentional, disregard for the residential environment, particularly with respect to the Lozier residence. Evidence abounds of both vehicular-related and rider-related incidents that no resident should have to tolerate, notwithstanding the fact that the stables have been a long-standing commercial fixture in the area. To some extent, APPLICANT has no direct control over the behavior and conduct of its customers. Policy 2 nevertheless authorizes me to fashion whatever mitigating conditions I deem necessary to protect the residential environment from intrusive and disruptive interference from APPLICANT's stable facilities.

However, I again confront the reality that many — although certainly not all — of the neighbors' complaints bear no relationship to off-site riding. Rather, many of the complaints derive from vehicular traffic going to and from the stables or trespassory invasions by APPLICANT's customers for purposes not specifically related to riding, all of which comprise incidents that might occur (and continue to occur) whether or not the stables offered only on-site riding facilities. To the extent that the incidents of which neighbors complain bear no relationship to off-site riding, this particular proceeding would not appear to be the appropriate format within which to try to alleviate traffic-related or trespassory incidents.

I also must take into account the dearth of evidence that any modification or elimination of the off-site riding prohibition will result in any increase in traffic beyond that level that has historically existed. If there existed any such evidence, I would then have an evidentiary basis upon which to connect any modification or elimination of the off-site riding prohibition with the need for mitigating conditions related to vehicular traffic. However, the record reflects that APPLICANT's customers fully utilize the existing stable facilities, and that no increase in customers would be anticipated if I were to permit off-site riding.

I therefore find that, with respect to *vehicular-related incidents* and trespassory problems attributable to *traffic* generated by, and the sometimes-inappropriate conduct of, APPLICANT's customers, there exists no perceptible evidentiary relationship between those incidents and any modification or elimination of the off-site riding prohibition that would allow me to impose ameliorating and mitigating conditions pursuant to Policy 2.

However, the record does contain a number of neighbor complaints that derive directly and solely from off-site riding by APPLICANT's customers. I see no need to detail the underlying facts of the many complaints, but I can roughly characterize the complaints as comprising incidents of harassment in which APPLICANT's customers have demonstrated poor judgment and an unacceptable disregard — sometimes intentional, sometimes simply thoughtless — for the neighbors' property rights and the residential environment through which they traverse in order to access the Springwater Corridor via Circle Avenue. The fact that it appears from the record that most of these incidents have occurred in the past couple of years does not, in my opinion, minimize their negative attributes.

I therefore find that, with respect to rider-related incidents directly attributable to APPLICANT's customers, there exists an unavoidable evidentiary relationship between such incidents and any modification or elimination of the off-site riding prohibition, such that I can impose ameliorating and mitigating conditions in order to minimize or eliminate off-site impacts. APPLICANT's own historical violations of the off-site riding prohibition has necessarily resulted in my finding; were it not for the fact that APPLICANT and APPLICANT's customers consistently violated the off-site riding prohibition since 1981, I would otherwise lack any evidentiary basis upon which to impose such conditions.

I find the following conditions to be necessary under Policy 2 (in the event of any eventual approval) in order to eliminate or minimize off-site impacts attributable to any proposed elimination or modification of the off-site riding prohibition:

None of Applicant's customers shall ride any horses on the public right-of-way comprising the entirety of Jenne Lane. Similarly, none of Applicant's customers shall ride any horses on the public right-of-way comprising Circle Avenue between the intersection with Jenne Lane and the westerly side of the low-lying swale or "wetlands" area in the Circle Avenue right-of-way. All horses shall be walked in these areas. Applicant shall (1) include this condition in all written boarding agreements, and (2) prominently post this condition at the entrance / exit to his stable facilities.

None of Applicant's customers shall trespass on adjacent private properties, damage or destroy personal property situated on adjacent private properties, or otherwise obstruct or interfere with neighbors' use and enjoyment of adjacent residential properties for any purpose or reason whatsoever. Applicant shall (1) include this condition in all written boarding agreements, and (2) prominently post this condition at the entrance / exit to his stable facilities.

Applicant's stable facilities shall not exceed 45 horses belonging to customers, and Applicant shall not accept more than 45 horses for boarding at the stable facilities.

2. POLICY 13: "AIR, WATER AND NOISE QUALITY"

I find no evidence that APPLICANT's request would adversely impact air and water quality.

Furthermore, because there exists no evidence that the modification or elimination of the off-site riding prohibition would generate increased levels of traffic and would generate noise levels in excess of those levels that *already* exist, I am unable to find that APPLICANT's request would exacerbate existing incidents of traffic-related noise. No one testified that off-site riding itself generates, or can be expected to generate, any adverse noise impacts.

Because the *existing* level of use — and the level of traffic that the use historically generates — comprises a legal use that the County approved in 1981, I cannot undertake, within the confines of this modification proceeding, to alter the existing level of use if APPLICANT's request for off-site riding would not otherwise increase traffic and noise impacts but would, instead, merely perpetuate existing conditions.

3. POLICY 14: "DEVELOPMENTAL LIMITATIONS"

Because APPLICANT's request for modification or elimination of the off-site riding prohibition will not result in any additional "development" of the subject property, I find no evidence that the considerations in Policy 14 apply.

4. POLICY 16: "NATURAL RESOURCES"

I find that the only pertinent portions of Policy 16 comprise portions of sub-policies 16-G and 16-K.

Sub-policy 16-G addresses protection of, *inter alia*, wetlands. Thus, to the extent that I have already addressed the wetlands issue in the context of the "Community Service" approval criteria, *supra*, I will incorporate those findings here. I find that, given

APPLICANT's acquiescence in conditions that require APPLICANT to post signs and to otherwise restrict access in the low-lying area of Circle Avenue during wet times, APPLICANT will, to the extent within his control, help alleviate damage to that wetlands area.

Sub-policy 16-K recognizes four designated trails. However, the record lacks sufficient detail to allow me to conclude that the Springwater Corridor comprises a part of any of the designated trails. Even if it did, however, I find that nothing about sub-policy 16-K preempts or supplants other approval criteria.

5. POLICY 20: "ARRANGEMENT OF LAND USES"

I find that, based upon the absence of evidence that the modification or elimination of the off-site riding prohibition will result in a use that remains "consistent with the character of the area" (see the "Community Service" approval criteria, *supra*), APPLICANT's request will not "assure a complementary blend of uses" as Policy 20 otherwise requires. To the contrary, the record suggests that the allowance of off-site riding will only exacerbate a conflict between APPLICANT's commercial stable facilities and surrounding residential uses. The historical behavior of some of APPLICANT's own customers bears this out.

I also find that the evidence points to the conclusion that the allowance of large-scale, single-source off-site riding from commercial stables within this particular rural residential environment will not "maintain or create neighborhood long term stability," but will, in fact, achieve precisely the opposite.

I find, therefore, that APPLICANT has not fulfilled his evidentiary burden with respect to Policy 20.

Although I have found that APPLICANT has failed to carry his evidentiary burden with respect to the above criterion, and that I must reject his approval request on that basis, I will nevertheless proceed to examine, and make findings on, the other applicable criteria. I do so in order to fully decide all issues before me in the event of any appeal.

6. POLICY 31: "COMMUNITY FACILITIES AND USES"

The question seems to be whether the modification or elimination of the off-site riding condition will necessarily result in a significant community resource for purposes of Policy 31, such that I can find that the allowance of off-site riding will fulfill *community* needs.

Notwithstanding the fact that the Springwater Corridor and Powell Butte Park may comprise significant community resources, and notwithstanding the fact that within the surrounding area the casual riding of horses by the residential populace seems to represent a type of community use, I nevertheless find that the type of large-scale, single-source off-site riding that could be generated by APPLICANT's commercial facilities does not override or outweigh the needs and concerns of the surrounding neighbors, and does not fulfill "community" needs. The need for access to recreational resources does not supplant the priority to be accorded the existing residential environment.

I find, therefore, that APPLICANT has not fulfilled his evidentiary burden with respect to Policy 31.

Although I have found that APPLICANT has failed to carry his evidentiary burden with respect to the above criterion, and that I must reject his approval request on that basis, I will nevertheless proceed to examine, and make findings on, the other applicable criteria. I do so in order to fully decide all issues before me in the event of any appeal.

7. POLICY 38: "FACILITIES"

The Centennial School District, Multnomah County Sheriff, and Portland Fire Bureau have each commented on APPLICANT's proposed elimination of the off-site riding prohibition, and each concludes that no changes in required or existing service will result. The Fire Bureau concludes that there exists adequate water pressure and flow for fire fight-

ing purposes. The Sheriff concludes that APPLICANT's facilities can receive adequate police protection.

I find, therefore, that APPLICANT otherwise fulfills the approval criteria in Policy 38.

8. POLICY 39: "PARKS AND RECREATION PLANNING"

To the extent that Policy 39 applies at all, I find that the County's policy to, *inter alia*, "work with residents [and] community groups . . . to identify recreation needs" and to "[e]ncourage the development of recreation opportunities by . . . private entities" has no discernible relationship to APPLICANT's request to use a public right-of-way. Nothing currently prevents APPLICANT's customers from reaching or utilizing either the Springwater Corridor or Powell Butte for recreational purposes. If Circle Avenue provided the sole access to those recreational facilities, the question and analysis obviously would be much different.

Fulfillment of the County's policy would be better achieved by a requirement that APPLICANT construct a bridge or other direct access to the Springwater Corridor. Indeed, that prospect more literally fulfills the County's policy of "[e]ncourag[ing] the *development* of recreation opportunities by . . . *private* entities [.]" However, I do not read Policy 39 as enabling me to *require* as much. I observe with some irony, though, that a denial of APPLICANT's request to ride off-site will presumably "encourage" APPLICANT himself to fulfill Policy 39 by providing such direct access.

I find, therefore, that APPLICANT's proposal to utilize an existing public right-of-way for a purely commercial, large-scale, single-source use by APPLICANT's customers does not squarely fulfill Policy 39. I read Policy 39 to presume some degree of private development by those persons wishing to more fully develop or utilize recreational facilities.

Although I have found that APPLICANT has failed to carry his evidentiary burden with respect to the above criterion, and that I must reject his approval request on that basis, I will nevertheless proceed to examine, and make findings on, the other applicable criteria. I do so in order to fully decide all issues before me in the event of any appeal.

9. POLICY 40: "DEVELOPMENT REQUIREMENTS"

I find that nothing in Policy 40 applies to APPLICANT's request, even if I were to approve it.

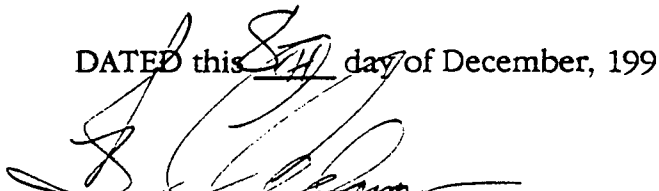
IV. CONCLUSIONS

I conclude that APPLICANT has failed to demonstrate a fulfillment of:

- ♦ MCC 11.15.7015(A);
- ♦ Policy 20 of the Comprehensive Plan, and thus MCC 11.15.7015(G) as well;
- ♦ Policy 31 of the Comprehensive Plan, and thus MCC 11.15.7015(G) as well; and
- ♦ Policy 39 of the Comprehensive Plan, and thus MCC 11.15.7015(G) as well.

Alternatively, and solely in the event that my findings and conclusions with respect to above criteria might be reversed on appeal, I conclude that APPLICANT has otherwise demonstrated a fulfillment of the other applicable approval criteria, as long as the approval contains those conditions that I have set forth in the findings.

DATED this 8th day of December, 1995.


BARRY L. ADAMSON, Hearings Officer



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

Memorandum

To: Multnomah County Board of Commissioners
From: Barry Manning/Planning
Date: January 17, 1996
Re: Appeal of CS 3-95/Mark's Stables

I have prepared a summary of issues and decision points related to Case CS 3-95 (Mark's Stables on Jenne Lane) which the Board will hear at a De Novo appeal hearing on January 23, 1996. If you have any further questions about the Case or this memo, please call me at extension 2709.

The applicant requested removal or modification of a condition from an earlier land use decision (Condition #3 of CS 18-61a) that prohibits stable patrons from riding off the 23.5 acre stable site. The applicant wishes to have the condition removed so that stable patrons can access the nearby Springwater Corridor and Powell Butte Park. The Hearings Officer (HO) denied the request, hence the appeal by the applicant. Opposition to removing the restricting condition comes from surrounding neighbors, particularly a few property owners on the dead-end Jenne Lane. The HO decision differs from the staff recommendation to approve with conditions. In addition to the denial, the Hearings Officer offered an "alternative decision" to approve the request, with conditions, if an appellant body (e.g., the Board) reverses his findings with respect to certain criteria.

Below, I have listed some of the issues in this case. On Attachment 1, I've included the points where the HO found that the applicant failed to meet the burden of proof for approval. The HO's findings are compared to staff findings. Attachment 2 is a matrix of the Conditions of Approval recommended by the HO in his "alternative" decision and by staff in the Staff Report. This matrix includes an indication of the type of finding the Board must make if it wishes to reverse the HO decision (approve the request) and adopt a particular condition. Finally, Attachment 3 is a decision analysis that shows the two possible actions the Board may take (affirm or reverse). It also offers possible implications of some conditions the Board could impose.

ISSUES:

- State law requires a final local land use decision within 120 days of a complete application. The Board of County Commissioners appeal hearing is on day 119. A decision must be made by the Board in order to avoid a possible writ of mandamus claim;
- Original Community Service approval was granted on this site in 1961 for operation of a 4-H stable. In 1981 the former owner requested approval to operate the stable commercially. Approval was granted, and the Condition prohibiting off-site riding was imposed;

- This is a commercial facility operating in a rural residential area on a dead-end street;
- This case has a considerable history, including a zoning violation for riding horses off site in violation of the earlier land use decision (CS 18-61a). Horses had been ridden off the premises since 1981. A judge ruled in November 1995 that the stables had been violating the Condition of Approval #3 (restricting off-site riding) from CS 18-61a;
- Staff recommended approval with several conditions, including a condition that the stable improve Jenne Lane to minimum fire marshal standards (gravel) and limit their daily hours of operation. These conditions were placed, in part, to mitigate impacts of the stable on neighboring residences. The applicant will likely appeal to LUBA if the road improvement condition is included;
- The Hearings Officer offered an "alternative decision" to approve with conditions if an appellate board reversed his findings on certain issues. These conditions differ from the staff recommendation and do not include road improvements or restricted hours;
- Neighbors do not feel the stable has been a "good neighbor" - i.e, it generates most of the traffic on Jenne Lane, yet it is felt that the stable owners do not maintain road adequately. The stable also generates traffic at all hours - day and night. Neighbors might compromise on the off-site riding prohibition if the stable is required to make improvements to the road, and/or somehow otherwise demonstrate that they will be "good neighbors";
- The Circle Avenue right-of-way (unimproved) is the proposed access route to the Springwater Corridor for stable patrons. This route is environmentally sensitive as it is steep and crosses a oxbow swale of Johnson Creek. It is often wet during winter and spring;
- Staff recommended conditions limiting hours of operation and restricting riding times due to neighbors' concerns about late-night traffic and gatherings.

ATTACHMENT 1: Comparison of specific H.O. Decision/Staff Report findings on CS 3-95

Hearings Officer did not find that the applicant carried the burden of proof with respect to the criteria below:	H.O. Decision analysis	Staff Report analysis
MCC .7015(A), Community Service Criterion: "The proposal is consistent with the character of the area"	Substantial off-site riding by the customers of a commercial, single source, 54 stable/45-horse facility is not consistent with the character of the area.	The area is predominately rural residential, but other horse stables and horse-related recreation opportunities exist in the vicinity. Conditions can mitigate conflicts with adjacent residences.
Policy 5: Arrangement of Land Uses	Granting applicant's request will not "assure a complimentary blend of uses," nor will it "maintain or create long term neighborhood stability." Rather, it may do the opposite.	Horse stable use in proximity to Springwater Corridor and Powell Butte is complimentary. However, this use in a residential neighborhood requires mitigating conditions to create neighborhood stability.
Policy 31: Community Facilities and Uses	The off site riding that could be generated by granting the request does not outweigh needs and concerns of the surrounding neighbors, and does not fulfill "community" needs.	Staff found that the siting of stables in proximity to the Springwater Corridor is appropriate and meets the intent of the policy. (Impacts of off-site riding can be mitigated as noted previously).
Policy 39: Parks and Recreation Planning	Applicant's request to utilize an existing public R-O-W for a commercial use does not squarely fulfill Policy 39, which presumes some degree of private development by those wishing to utilize recreational facilities.	Staff concurred with the applicant that granting the request would enhance the use of existing recreational facilities.

Other issues where Hearings Officer did not substantially agree with staff	H.O. Decision analysis	Staff Report analysis
MCC .7015(D), Community Service Criterion: "Will not require public services other than those existing or programmed for the area"	Found no connection between the applicant's request and Fire Bureau's suggestion to upgrade Jenne Lane - the record does not contain "any hint" that approval would increase usage. Road improvements not a Condition of Approval in the Alternative Decision.	Transportation staff made assumption that traffic might increase due to permit approval (expanded use), and also considered lack of improvements over life of facility to impose condition requiring road improvements.

ATTACHMENT 2: Comparison of H.O. Decision/Staff Report Conditions on CS 3-95

No.	H.O. Condition	Staff Equivalent?	Necessary Board Finding
1	States that none of applicant's customers may ride horses on Jenne Lane or Circle Ave., but all horses shall be walked in these areas.	Yes	Board must reverse H.O. findings on all criteria noted in Attachment 1.
2	None of applicants customers shall ride in Circle Ave. right-of-way between October 15 and April 15 each year.	Yes	Board must reverse H.O. findings on all criteria noted in Attachment 1.
3	None of applicant's customers shall trespass on adjacent private property, damage personal property or otherwise interfere with neighbors' use and enjoyment of property.	No	Board must reverse H.O. findings on all criteria noted in Attachment 1.
4	Applicant's stables shall not exceed 45 horse occupancy.	No	Board must reverse H.O. findings on all criteria noted in Attachment 1.
5	Except Condition #3, all terms and conditions of CS 18-61a remain in effect.	No	Board must reverse H.O. findings on all criteria noted in Attachment 1.
6	Applicant's enduring fulfillment of conditions shall be a condition subsequent to this approval. Any violation may be brought to the attention of the Planning Director. Any proven violation(s) shall terminate the approval.	Similar to staff Condition # 8	Board must reverse H.O. findings on all criteria noted in Attachment 1.

No.	Staff Condition	H.O. Equivalent?	Necessary Board Finding
3	Off-site riding prohibited between dusk and dawn.	No	Board must reverse H.O. findings on all criteria noted in Attachment 1 and make a finding that riding during evening hours would be inconsistent with character of area and/or create off-site impacts.
4	Limit hours of operation (Staff originally suggested 6am to 8pm in winter and 6am to 10pm in summer - this could be revised as necessary).	No	Board must reverse H.O. findings on all criteria noted in Attachment 1 and make a finding that approving request would result in more evening impacts which would be inconsistent with character of area and/or create off-site impacts.
5	Construct road improvements.	No	Board must reverse H.O. findings on all criteria noted in Attachment 1 and make a finding that approving request would result in more vehicular traffic to warrant improvements.
6	Applicant shall remove and dispose horse manure on Jenne Lane and Circle Avenue.	No	Board must reverse H.O. findings on all criteria noted in Attachment 1 and make a finding that horse manure is an off site impact.
7	CS approval expires in the event of land divisions or residential development.	No	Board must reverse H.O. findings on all criteria noted in Attachment 1 and make a finding that land division or residential development on this site is a change in use substantial enough to warrant review of the CS permit.
8	Calls for applicant to request Hearings Officer review to determine compliance with conditions.	Similar to H.O. Condition # 6	Staff recommends adopting Hearings Officer Condition #6 in lieu of this condition.

ATTACHMENT 3: Decision Analysis

ACTION: Board Affirms H.O. Decision (denies request)

CONDITIONS	ACTION NEEDED	POSSIBLE RESULT
None	Board agrees with Hearings Officer's findings.	Applicant will likely appeal to LUBA.

ACTION: Board Reverses H.O. Decision (approves request)

H.O. CONDITIONS	ACTION NEEDED	POSSIBLE RESULT
All horses must be walked (not ridden) on Jenne Lane and Circle Avenue	Board must reverse H.O. findings on all criteria noted in Attachment 1.	Unknown
None of applicant's customers shall ride in Circle Ave between Oct 15 and April 15	Board must reverse H.O. findings on all criteria noted in Attachment 1.	Unknown
None of applicant's customers shall trespass on adjacent private property, damage personal property or otherwise interfere with neighbors' use and enjoyment of property.	Board must reverse H.O. findings on all criteria noted in Attachment 1.	Unknown
Applicant's stables shall not exceed 45 horse occupancy.	Board must reverse H.O. findings on all criteria noted in Attachment 1.	Applicant may appeal to LUBA
Except Condition #3, all terms and conditions of CS 18-61a remain in effect.	Board must reverse H.O. findings on all criteria noted in Attachment 1.	Unknown
Applicant's enduring fulfillment of conditions shall be a condition subsequent to this approval. Any violation may be brought to the attention of the Planning Director. Proven violation(s) shall terminate the approval.	Board must reverse H.O. findings on all criteria noted in Attachment 1.	Unknown
STAFF CONDITIONS	ACTION NEEDED	POSSIBLE RESULT
Off-site riding prohibited between dusk and dawn.	Board must reverse H.O. findings on all criteria noted in Attachment 1 and make a finding that riding during evening hours would be inconsistent with character of area and/or create off-site impacts.	Unknown
Limit hours of operation (Staff originally suggested 6am to 8pm in winter and 6am to 10pm in summer - this could be revised as necessary).	Board must reverse H.O. findings on all criteria noted in Attachment 1 and make a finding that approving request would result in more evening impacts which would be inconsistent with character of area and/or create off-site impacts.	Possible appeal to LUBA.
Construct road improvements as per Staff Report.	Board must reverse H.O. findings on all criteria noted in Attachment 1 and make a finding that approving request would result in more vehicular traffic to warrant improvements.	Applicant will likely appeal to LUBA.
Applicant shall remove and dispose horse manure on Jenne Lane and Circle Avenue.	Board must reverse H.O. findings on all criteria noted in Attachment 1 and make a finding that horse manure is an off site impact.	Staff does not recommend inclusion of this condition.
CS approval expires in the event of land divisions or residential development.	Board must reverse H.O. findings on all criteria noted in Attachment 1 and make a finding that land division or residential development on this site is a change in use substantial enough to warrant review of the CS permit.	Unknown
Calls for applicant to request Hearings Officer review in one year to determine compliance with conditions.	Staff recommends adopting Hearings Officer Condition #6 in lieu of this condition.	Staff recommends adopting H. O. Condition #6 in lieu of this condition.

1/23/96 Submitted
By VeenCook

MULTNOMAH COUNTY OREGON
DEPARTMENT OF ENVIRONMENTAL SERVICES
DIVISION OF PLANNING AND DEVELOPMENT

In The Matter of the Application of)
George E. Hammersmith) CS 3-95

MEMORANDUM IN SUPPORT OF APPLICANT'S APPEAL

This is an appeal from the order of Hearings Officer Barry L. Adamson signed December 8, 1995 and submitted to the Board Clerk December 13, 1995.

Preliminary Matters

The genesis of this application was a law suit filed by Multnomah County against applicant in the Circuit Court in March of 1995 in Case No. 9503-1791. Judgment was entered for the county after a motion for summary judgment was allowed to the county shortly after the judge signed the judgment on October 23, 1995. Applicant has filed a Notice of Appeal to the Oregon Court of Appeals and that appeal is currently pending.

The ultimate issue in that case is substantially the same as the first issue in this proceedings. Those issues are (1) whether Multnomah County had the authority to attach Condition 3 of the May 26, 1981 Order to said order as a condition for the use of the subject property and (2) -here only, whether, if valid, that condition should be modified in view of changed circumstances. That condition reads as follows:

3. The applicant shall prominently post so it is apparent to all riders a sign which states that all riding is to occur on the subject property and that no riding shall occur off-premises neither on other private property nor on public streets. The applicant shall enforce this policy.

This first objection was raised in the hearing below. See footnote on page 6. Attached hereto, marked exhibit 'A' find a copy of pages 10 through 16 of George Hammersmith's Response to the county's Motion For Summary Judgment which sets forth the basis for our challenge. We now raise the same objection in this proceedings, cite the same authorities and request that said condition be determined to be invalid and remove it for the reasons stated therein.

Should the county, acting by and through this Board of Commissioners refuse to do so then as a fall back position, without the intention of waiving our first objection, applicant requests the relief suggested by the hearings officer as his 'Alternate Hearings Officer Decision' which is contained on pages 3 and 4 of his decision with the following minor amendments to his condition number 1 which we suggest should read as follows:

(Bracketed language is deleted from his proposal and underlined language would be added.)

[None of Applicant's customers shall ride any horses] All horses should be ridden at a walk on the public right-of-way comprising the entirety of Jenne Lane. Similarly [none] all of Applicant's customers shall ride [any] their horses at a walk on the public right-of-way comprising Circle Avenue between the intersection with Jenne Lane and the low-lying swale or "westlands" area in the Circle Avenue right-of-way. [All horses shall be walked in these areas.] Applicant shall (1) include this condition in all written boarding agreements, and (2) prominently post this condition at the entrance/exit to his

stable facilities.

Applicant submits that it is easier to control a horse if you are riding it than to control a horse when you are leading it. Riding the horse at a walk would be safer for everyone.

REASONS FOR REVERSAL OF HEARINGS OFFICER'S DECISION

The hearings officer's decision is wrong for the following reasons. We refer to his points sequentially.

Point One. Modification of the 1981 Order to allow the horses from Mark's Stable to be ridden at a walk to Circle Avenue and across it to the Springwater Corridor would be consistent with of the character of the area for the following reasons.

The current zoning restrictions in the subject area are that each residential tract must be, except under exceptional circumstances, a five acre tract. This is an area large enough to accomodate some agricultural use, such as the raising and keeping of horses. Some of the residents of the area do keep horses.

At least since 1981 up to October of 1995 horses have been ridden up and down Jenne Lane from Mark's Stables to and past Circle Avenue without causing any damage to the environment generally or to the road between Mark's Stables and Jenne Road. Evidence offered by Mark Hammersmith, which has not been significantly challenged, is that over the past 14 years horses have been ridden off of the stable property on the average of not more than 13 times a week. Based upon that history there is no reason to believe that continued horse riding between the stables and Circle Avenue will cause any damage to either the environment or the road.

The fact that there was a condition prohibiting that riding

during that period of time is irrelevant to the factual determination. The testimony of the applicant and his son Mark is that until June 13, 1994 they were ignorant of such restriction. In fact that condition did not become effective until May 26, 1981, a week after George Hammersmith purchased the subject property so there is no reason to believe that he knew of it at the time of his purchase.

While there is a provision in the planning and zoning code for a fine for violating a zoning order there is nothing in either the zoning code, county ordinances generally or in state law that says that facts evidencing conduct prohibited by the order are, under any circumstance, inadmissible in any forum. We are not dealing here with either intentional misconduct, an unlawful contract or anything of a similiar nature that would cause a court to reject such evidence. Also the evidence is not offered for the purpose of justifying the conduct as in a case where cars consistently violated the designated speed at a particular intersection but rather to establish a collateral fact, i.e. that such use caused no damage to the road and did not constitute any interference with the neighborhood environment. There is no reason why this body should not consider such evidence.

Point Two. In his second specification for denying applicant's requested relief from the restrictions of the condition, the hearings officer exaggerates the consequences of permitting the clientele of Mark's Stable to ride the short distance between the stable and Circle Avenue. He describes it as

'large-scale, single-source off-site riding from commercial stables'. That makes it sound very awesome.

This conclusion ignores the fact that the most significant effect of having a stable which provides 24 hour self service care for 45 horses, probably involves 30 round trips daily of trucks or automobiles to and from the stable. This activity was approved of almost 15 years ago and is not at issue here. That would not be affected by this requested modification unless the request for removal or modification of the condition is denied. In that case the stable might be closed because that denial might make it's further operation unprofitable.

Thirteen horses ridden off and back on to the premises an average of once a week is hardly a stampede! That is an average of less than two round trips per day and then only during the spring and summer months. As Staff observes in their Report for the November 15, 1995 hearing, page 12,

'In view of the fact that only one residence, that of Mark Lozier and his wife, would be passed by the horses, combined with the fact that Jenne Lane dead ends at the Hammersmith property, the impact would be extremely small. There would be minimal hazard because all traffic would be travelling slowly because of the rough road. Almost all of that traffic would be from people travelling to and from Mark's Stables. One would expect those travellers to be very aware of the nature of horses and that they would be suitably careful in their driving.'

Considering the minimal nature of the impact there is no reason to believe that there would not be a 'complementary blend of uses' nor any reason to believe that such use would affect in any way the 'neighborhood['s] long term stability.'

Point Three. As demonstrated by the photographs submitted by applicant, attached here and marked as Exhibit 'B", there are

only three neighbors and two residences that would in any way be affected by the removal of the condition as requested, were the 'Alternate Hearings Officer Decision' accepted. These are Loziers, whose house is located on the SW corner of Jenne Lane and Circle Avenue, Mrs. Brunkow whose house is located on east Circle Avenue west of the old Johnson Creek bed and the Bradleys, whose house is located north of Circle Avenue but whose property is adjacent to Circle Avenue. The effect of this proposed change upon these neighbors would be very slight.

Contrasted with that would be the effect upon the value of the premises owned by the applicant and the owners of the 45 horses that could continue to be stabled upon applicant's premises.

Were this condition not removed or modified the profitability of the stabling operation would be greatly reduced with the possibility that it might have to be closed. Easy access to the Springwater Corridor and Powell Butte Park by horse owners would be significantly interfered with.

As stated on page 17 of the Staff Report prepared for the November 15, 1995 hearing,

'Applicant's Response: The removal of the condition is consistent with the purposes of this policy. [POLICY 31. COMMUNITY FACILITIES AND USES, COMPREHENSIVE FRAMEWORK PLAN] There are hundreds, if not thousands of horses in the Portland Metropolitan Area. The ownership and use of horses for recreational purposes is an important source of income for many persons. The Springwater Corridor is a significant recreational resource. The community of horse stables near it maximizes its use. This is a community benefit.

'Staff Comment/Analysis: Staff concurs with the applicant that the Springwater Corridor is a significant recreational resource and that the siting of stables in proximity to this resource is appropriate and meets the intent of this policy.'

Point Four: The hearings officer's fourth point seems to be especially erroneous. Nothing in Policy 39 supports his statement that Policy 39, 'requires or presumes some degree of private development by those persons wishing to more fully develop or utilize recreational facilities.'

The hearings officer's 'suggestion' contained on page 30 of his Decision that applicant 'should construct a bridge or other direct access to the Springwater Corridor.' is unreasonable and impractical for several reasons.

First of all, the expense would be virtually prohibitive. Secondly, given the fact that the subject property is now adjacent to the Urban Growth Boundry and is currently in the Urban Reserve Study Area the applicant has no assurance that the present operation could be continued long enough for him to amortize the cost of such a development.

All this seems especially unreasonable when one recognizes the truly minimal effect that removal of the condition would have upon the only house and its residents that would be affected.

As stated on page 5 of Applicant's Narrative Statement attached to his General Application,

'Policy 39, PARKS AND RECREATIONAL PLANNING: Removal of the condition would enhance the use of existing recreational facilities.

'Policy 40, DEVELOPMENT REQUIREMENTS: Removal of the condition is entirely consistent with encouraging a connecting park and recreational system.

...

'Removal of the current condition would permit the maximum utilization of existing equestrian recreational resources in Eastern Multnomah County. No harm or damage would be done to anyone as a result of that use. Its maximum utilization would be of great benefit both to the community and to petitioner.'

CONCLUSION

We respectfully request the removal of Condition 3 from the current planning order; alternatively, we request approval of the hearings officer's Alternate Decision with the modifications which we have suggested.

Respectfully Submitted,



Vernon Cook, OSB #52014
Attorney for Applicant

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AFFIRMATIVE AUTHORITY OF COUNTY TO ADOPT CONDITION

At the time it was adopted, the condition attached to the May 4, 1981 decision of the Hearings Officer, set forth below, was not authorized either by statute or ordinance.

CONDITION REFERRED TO IN ORDER

That condition reads as follows:

The applicant shall prominently post so it is apparent to all riders a sign which states that all riding is to occur on the subject property and that no riding shall occur off-premises neither on other private property nor on public streets. The applicant shall enforce this policy.

ORS 215.050 provides that,

'(1)..., the county governing body shall adopt and may from time to time revise a comprehensive plan and zoning, subdivision and other ordinances applicable to all of the land in the county. The plan and related ordinances may be adopted and revised part by part or by geographic area.

(2) Zoning, subdivision or other ordinances or regulations and any revisions or amendments thereof shall be designed to implement the adopted county comprehensive plan.'

ORS 215.416 (4) provides,

'The application shall not be approved if the proposed use of land is found to be in conflict with the comprehensive plan of the county and other applicable land use regulation or ordinance provisions. The approval may include such conditions as are authorized by statute or county legislation.

1 Multnomah County Ordinance 11.15.7010 provides as follows:

2 (D) A Community Service approval shall be for the
3 specific use or uses approved together with the limitations
4 or conditions as determined by the approval authority. Any
5 change of use or modification of limitations or conditions
6 shall be subject to approval authority [authority approval
7 (sic)] after a public hearing.

8 (E) In granting approval of a Community Service Use,
9 the approval authority may attach limitations to the
10 development, operation or maintenance of such use including
11 but not limited to setbacks, screening and landscaping, off-
12 street parking and loading, access, performance bonds, noise
13 or illumination controls, structure height and location
14 limits, construction standards, periods of operation and
15 expiration dates of approval.

16 'Including' as used in the ordinance probably does not
17 expand or contract the meaning beyond the meaning of the words
18 highlighted above.

19 Arnold v. Arnold, 193 Or 490, 237 P2d 963, 969, (1951)

20 Premier Products Co. v. Cameron, 240 Or 123, 400 P.2d 227,
21 228, (1965)

22 Lent v. Towery, 271 Or 41, 530 P.2d 77, 78, (1975)

23 Neither the statutes nor the the county ordinances
24 regulating land use define the word 'operation'.

25 The only definition that is even close that we could find
26 in the Planning and Zoning Code is found in MCC Chapter 33.910-
27 16 where 'operator' is defined as follows:

Operator: A person undertaking a development, the proprietor
of a use or development, or the owner of the land underlying
a development.

28 'Operate' or operation as used in the ordinance was
29 defined in Layman v. State Unemployment Compensation Com'n, 167
30 Or 379, 117 P2d 974, 979, (1941) by a dictionary definition
31 as,

1 "To direct the working of, to manage, conduct, work (a
2 railway, business, etc.); to carry out, direct to an end (an
undertaking, etc.); chiefly U.S. 1880.'

3 This was followed by the court in *Naumes of Oregon, Inc.*
4 v. Employment Division, 23 Or App 57, 541 P2d 141, 144, (1975),
5 where the court said,

6 'The word operator is not defined in the Employment Division
7 Law. Where a statute or ordinance fails to define a term used
8 therein, the term will be construed in accordance with its
9 ordinary meaning....'

10 The *Naumes* case has been followed by *Fletcher v. State*
11 Accident Ins Fund, 48 Or App 777, 617 P2d 945, 947, (1980),
12 *Nicolai-Morgan Products v Employment Division*, 102 Or App 578,
13 795 P2d 598, 600, (1990) and *Benson v. City of Portland*, 119 Or
14 App 406, 850 P2d 416, 422, (1993).

15 Webster's New World Edition, Second College Edition, 1976,
16 defines the word 'operation' as 1. "the act, process, or method
17 of operating ... 3. a process or action that is part of a
18 series in some work..."

19 Black's Law Dictionary, Third Edition, (1933) defines
20 'operation' as 'the process of operating or mode of action'

21 Whether or not the county had the authority to order the
22 posting of the sign which is described in the planning
23 commission order of May 4, 1981, as set forth above, in a
24 facility which is described alternatively as 'a riding stable
25 and horse boarding facility' or as 'a horse boarding operation'
26 is the issue to be determined here.

27 See plaintiff's Exhibit 4, page 1, the May 4, 1981
28 decision of the Multnomah County Hearings Officer.

1 The HEARINGS OFFICER DECISION read as follows:

2 Approve modification of the 1961 Community Service approval
3 for this property, allowing expansion of that approval to
4 include the boarding of horses in general, subject to
5 conditions, and adopt the Findings and Conclusions.

6 Statutes in derogation of the common law are strictly
7 construed. A zoning law or ordinance is legislation in
8 derogation of an owners common law right in the use of his
9 property.

10 It is stated in Lane County v. R. A. Heintz Construction
11 Co, 228 Or 152, 364 P2d 627, (1961), as follows:

12 'We also observe that statutes in derogation of the
13 common law are strictly construed. One of our earliest
14 statements embracing that rule is found in Morton v.
15 Wessinger, 1911, 58 Or. 80, at page 85, 113 P. 7, at page 8
16 and where we said:

17 "'* * * All Statutes which encroach on the personal or
18 property rights of the individual, are to be construed
19 strictly, and in the absence of express words or necessary
20 intendment or implication, it will be presumed that a
21 statute is not intended to interfere with or prejudice a
22 private right or title. 26 A. & E. Eney. [Law] (2 ed.)
23 661."

24 'In 1957 this was repeated by the court in Moore v.
25 Schermerhorn, 210 Or. 23, 39, 307 P. 2d 483, 308 P. 2d 180,
26 65 A.L.R. 2d 715. See, also, Marsh v. McLaughlin, 210 Or.
27 84, 89, 309 P. 2d 188.

28 'A zoning law or ordinance is legislation in derogation
of an owner's commonlaw right in the use of his property.
It, therefore, falls within the ambit of the foregoing rule
of strict construction. 1 Rathkopf, The Law of Zoning and
Planning (1960), ch. 8, p. 8-1; 8 McQuillin, Municipal
Corporations, supra, 160, Section 25.72; 1 Yokley, Zoning
Law and Practice (2d Ed.) 4, Section 3; 101 C.J.S. Zoning
Section 129, page 884.

'This doctrine of strict construction according to
Rathkopf, supra, has two applications:

"* * * first, that in interpreting the language of the
ordinance to determine the extent of the restriction upon
use of the property, the language must be interpreted, where
doubt exists as to the intention of the legislative body, in
favor of the property owner, and against any implied

1 extension of the restriction, and secondly, that in acting
2 pursuant either to the enabling act or the ordinance
3 promulgated under its authority, the procedural requirements
of the statute or ordinance in question must have been
strictly complied with." p. 8-1.

4 'It has been held to be particularly essential that
5 statutes should be clear and explicit where the abrogation of
a rule of common law is involved, as here. Jarvis v. Town
of Claremont, 83 N.H. 176, 139 A. 747, 749.'

6 The Lane County case was followed by County of Clatsop v.
7 Rock Island Constructors, Inc., 5 Or App 15, 482 P2d 541, 543,
8 (1971) where the court stated,

9 'This is the only interpretation of the pertinent provision
10 of the interim zoning ordinance consistent with the rule
11 that zoning ordinances, being in derogation of common law
and operating to deprive an owner of property of a use
12 thereof which would otherwise be lawful are to be strictly
construed in favor of the property owner.'

13 It has also been followed in two more recent cases, City
14 of Portland v Carriage Inn, 67 Or App 44, 676 P2d 943, 944
15 (1984) and Scanlon v. Jensen, 102 Or App 631, 634, 796 P2d 371,
16 372, (1990).

17 APPLIED TO THIS CASE

18 The mandate and authority for the county to adopt planning
19 and zoning orders comes from ORS 215.050 which provides that,
20 'the county governing body shall adopt and may from time to
21 time revise 'ordinances applicable to all of the land in the
22 county.'

23 ORS 215.416 (4) provides that 'The approval may include such
24 conditions as are authorized by statute or county legislation.'

25 DISCUSSION

26 MCC 11.15.7010 (E) says that 'the approval authority may
27 attach limitations or conditions to the development, operation
28 or maintenance of such use...'

1 The issue is whether or not that language authorized the
2 county to attach the condition relating to the sign which was
3 included in the Hearings Officer's Order.

4 Section 11.15.7010 (E) does not include a provision
5 similiar to Clackamas County's Ordinance ZDO 1303.12 which in
6 1992 provided as follows:

7 "Approval of any administrative action request may be
8 granted subject to conditions. The following limitations shall
9 be applicable to conditional approvals:

10 "A. Conditions shall be fulfilled within the time
11 limitations set forth in the approval, or, if no time
12 is set forth, within a reasonable time.

13 "B. Such conditions shall be reasonably calculated to
14 fulfill public needs; emanating from the proposed land
15 uses as set forth in the application in the following
16 respects:

17 "1. Protection of the public from the potentially
18 deleterious effects of the proposed use; or

19 "2. Fulfillment of the need for public service demands
20 created by the proposed use."

21 If it did, setting aside constitutional considerations,
22 perhaps the condition would be valid. See Skydive Oregon, Inc.
23 v. Clackamas County, 122 Or App 342, 857 P2d 879, 883, (1993).

24 The text of the Clackamas County ordinance may be found on
25 page 306 of 25 Or LUBA 294 (1993).

26 Applying the strict construction test set forth in Lane
27 County v. R.A. Construction Co on page 630, absent an ordinance
28 similiar to the Clackamas County ordinance, the Multnomah

1 County Commission did not have the authority to attach such a
2 condition. (The order of the Hearings Officer did not become
3 effective until May 26, 1981 when it was reported to the Board
4 of County Commissioners.) The condition relates to neither the
5 development, operation nor the maintenance of the use of the
6 land used by the facility owners.

7 The question may then be asked, 'Well, if that is the
8 case, why does the mandatory posting of the sign concern the
9 owners?'

10 The only means available to the owners of the facility to
11 enforce that 'off premises' condition would be for the owner of
12 the facility to require those who stable their horses with him
13 to leave the horses on the premises continuously, so long as
14 the horse owner expected to have a continuous agreement with
15 the stable owner to have their horses stabled with him. With
16 that restriction few, if any, horse owners would stable their
17 horses at the facility. This would be particularly true since
18 there are three similiar facilities nearby which are not
19 required to operate with such restrictions. The value of the
20 land for the purpose of use as a horse boarding facility would
21 be reduced to nothing. The overall value of the land would also
22 be reduced.

23 The attached condition is therefore invalid because it was
24 not authorized by either a state statute or a county ordinance.

25

26

27

1/23/96
Submitted
BY VERN COOK

MULTNOMAH COUNTY OREGON
DEPARTMENT OF ENVIRONMENTAL SERVICES
DIVISION OF PLANNING AND DEVELOPMENT

In The Matter of the Application of)
George E. Hammersmith) CS 3-95
AFFIDAVIT

STATE OF OREGON; County of Multnomah, ss:

Being duly sworn, I do hereby depose and say that:

I am the son of George E. Hammersmith. I own and operate Mark's Stables, which is located on the subject property which belongs to George E. Hammersmith. I have been authorized by George E. Hammersmith to represent him as his agent in connection with this application for a change in the condition attached to the present land Zoning.

I am familiar with the contents of the General Application Form filed in this matter. The facts asserted therein, including the exhibits attached to it are true as I verily believe.

Background and History.

The subject property, consisting of 23.5 acres, was originally zoned in 1961 as a riding stable and horse boarding facility. Its zoning remained unchanged until 1981 when the then owners, Ben Kaiser and Ruth Kaiser asked for a modification or clarification of what the property could be used for. On May 4, 1981 a modified order was entered which became final May 26, 1981.

Included within the 1981 order was a condition which provided as follows:

3. The applicant shall prominently post so it is apparent to all riders a sign which states that all riding is to occur on the subject property and that no riding shall occur off-premises

neither on other private property nor on public streets. The applicant shall enforce this policy.

My father, George E. Hammersmith, entered into a contract with Ben Kaiser and Ruth Kaiser to purchase said property on May 19, 1981, which was to be effective May 21, 1981 and which was recorded on May 26, 1981.

Neither George E. Hammersmith nor the real estate broker handling the sale were aware of said condition's tentative approval at the time of the sale nor were they ever provided with a copy of the modified zoning order by the sellers and were not aware of the restriction. Since May 21, 1981 George E. Hammersmith has had the exclusive right to the possession of the premises described in the attached copy of his contract of purchase from Ben and Ruth Kaiser. Neither Ben nor Ruth Kaiser have attempted to exercise any control over said premises since the sale of said property to George E. Hammersmith.

George E. Hammersmith did not become aware of said zoning order until a copy of the letter to Ruth F. Kaiser of June 13, 1994 was made available to him. No equivalent letter has ever been directed to him personally.

During 13 years of operation of the stable and until being informed of the contents of that letter dated June 13, 1994, George E. Hammersmith and I, the vendee-owners of the land and stable were unaware of that condition. Horses and their riders had moved freely up and down Jenne Lane and Jenne Road with full knowledge of County personnel. They were both transported to 'off premises' by motor vehicles and ridden off and back on. In fact, for many years road signs have been posted on Jenne Road by the

County Road Department near the entry to Jenne Lane, warning both north and south bound traffic that they should be on the lookout for horses. Neither George E. Hammersmith nor I are aware of any problems caused by horses we stable being ridden off premises.

OTHER HORSE STABLES IN AREA

The subject property almost touches the Springwater Corridor, one of whose primary uses is equestrian. See the article attached to the application from 'Flying Changes' published in February, 1993. Access to the Springwater Corridor is available by the use of Circle Avenue which is only 567 feet north of the northeast corner of the subject property and by other nearby streets.

There are four other horse stable facilities within about two miles of the subject property.

One of these, Rainbow Acres Equestrian Center, is located at 6729 S.E. 162nd, a short distance south of Foster Road. It has 50 stalls and is located on 2 to 3 acres. It is located about 1/2 mile from the corridor and just over mile from Mark's Stables. There are no equestrian access, egress or horse use location restrictions placed upon it by Multnomah County or any other public agency. Access to the Corridor is on public roads, including Foster Road.

The second, owned by Mark Herenki, is located near 158th at 15534 S. E. Martin, Portland and is owned by Mark Herincki. It has 20 stalls. It is located just across the street from the corridor, two miles from Mark's Stables. It has no equestrian access, egress or horse use location restrictions placed upon it by Multnomah County or any other public agency. Access to the

Corridor is accomplished by going across the road in front of the facility.

The third, Kathy Howe Training Center, is located at 5265 S. E. Circle Avenue, has 12 stalls plus turn out pens. It is located on 4 acres. It is a mile from the corridor and a mile or less from Mark's Stables. It has no equestrian access, egress or horse use location restrictions placed upon it by Multnomah County or any other public agency. Access to the Corridor is by way of using the north east end of Circle Avenue for a distance of about one half mile. See photo B 8 (a).

The fourth facility is operated by the Multnomah county Sheriff's Reserve. We have little information on the operation of that facility. Access, if used, would be by way of the northeast end of Circle Avenue. Access to the Corridor is by way of using the north east end of Circle Avenue for a distance of about one half mile. See photo B 8 (a).

All four of these facilities are close, that is, within two miles, of the Springwater Corridor but all require the use of public streets to access it. Two are within the Portland City Limits and two are in the unincorporated area.

In addition, some of the residents of the area also keep horses which would have unrestricted access to the corridor by the use of Circle Avenue or otherwise.

The subject property has very limited facilities for horse riding. This is restricted by ditches, ponds, wetlands and trees. The stable tenants have month to month rental agreements with the stable. As is customary with all such stables, the horses are

stabled at the facility with the continuing intentions of the users that the horses will be ridden elsewhere, 'off-premises' or 'on other private property' or 'on public streets' such as the Springwater Corridor.

Mark's Stables is a 24 hour a day, 7 days a week self care horse facility. Alternative uses are very limited as it is an area where there is a five acre building limitation. I have been advised that the subject property is now in the Metro Urban Reserve Study Area. While applicant's property is adjacent to the corridor there is no access to it except by the bridge on Circle Avenue.

Relatively few of the stable tenants egress the subject property while riding the horses stabled there. Over the past 14 years I estimate that not more than one of four stable renters have ridden their horses off premises and then probably not more than once a week. I estimate that this would not exceed 13 on and off trips per week and then only in the spring and summer.

If the hearings referee's Alternate Decision were adopted only three residences could be affected. The first, the Lozier's, is on the corner of Jenne Lane and Circle Avenue. The second, the Bradley's, is from 50 to 100 feet north of Circle Avenue on Jenne Lane. The third, the Brunkow's is located on Circle Avenue, west of the old bed of Johnson Creek and adjacent to the corridor.

Access to the Powell Butte Equestrian Park is only about a mile away on the corridor from the junction of the corridor with Circle Avenue.

The photos and descriptions contained in Exhibit B show conditions as they now exist and the typed descriptions adjacent

to each photo are accurate.

Exhibit C is an aerial photograph taken on July 8, 1994 showing the affected area. The existing stables are located and it shows the Corridor and Powell Butte Park. There have been few changes in that area since the date of the photo.

Exhibit D is a zoning map which also shows the stables, the Corridor and Powell Butte Equestrian Park.

In Witness Whereof I have hereunto set my hand this
19 day of January, 1996.

Mark E. Hammersmith
Mark E. Hammersmith

Subscribed and sworn to before me this 18th day of January,
1996.

Robt. Vernon Cook
Notary Public for Oregon

Prepared by:
Vernon Cook, Attorney
519 NE Fourth Street
Gresham, OR 97030
(503) 665-8143



B-1

1/23/96
Submitted
By VERN COOK



Looking S on Jenne Lane
from SE corner of Lozier
property shows Mark's
Stable in background

(a)



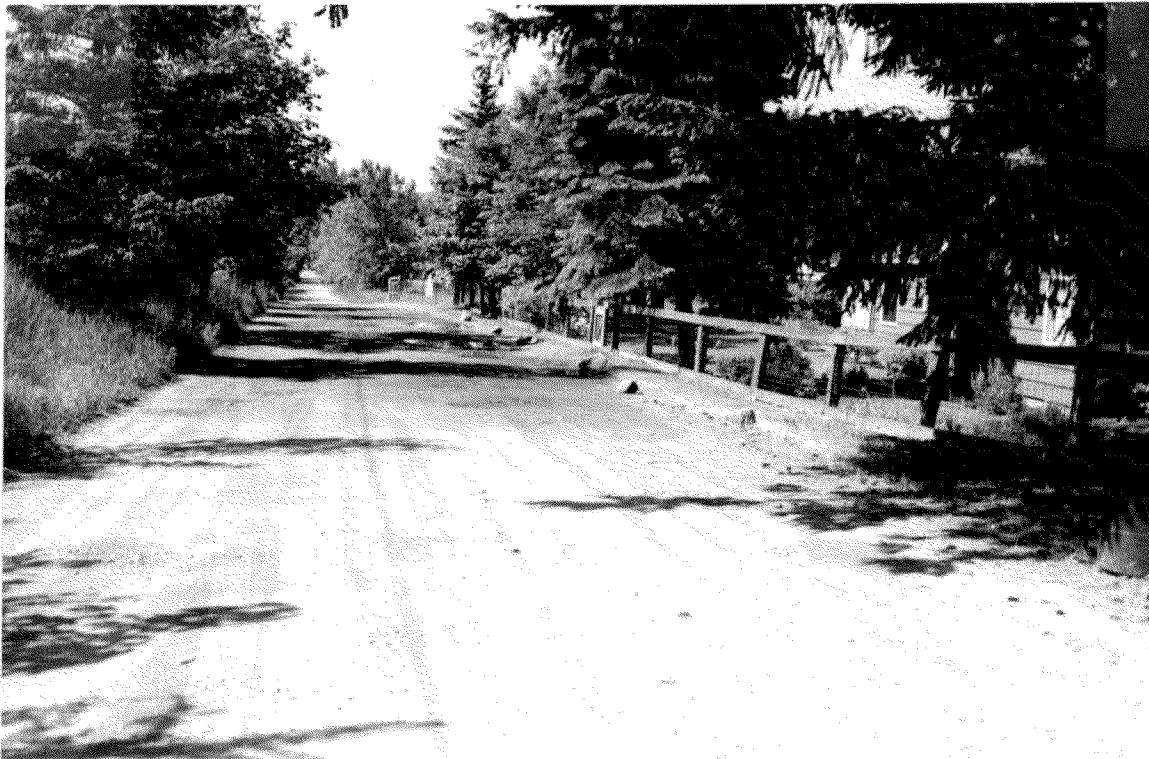
Looking SW from Jenne
Lane. Shows structures
on Hammersmith property.

(b)



Looking SW from Jenne Lane,
looking across NE corner
of Lozier property,
showing Lozier house and
extent of east property
line to building shown in
B-1.

(a)



Looking S on Jenne Lane
from point near NE corner
of Lozier property to
where road reaches
Hammersmith property.

(b)



Looking S on Jenne Lane.
"X" shows entry point to
Circle Ave. Shows NE
corner of Lozier property
and Lozier house

(a)



Looking E from Circle
Ave. into Jenne Lane.

(b)

B-4



Looking S on Jenne Lane
to NE corner of Lozier
property to "X" which is
entrance to Circle Ave.
Shows Joyce Bradley
property N or Circle Ave.

(a)



Looking N on Jenne Lane,
shows Joyce Bradley
property.

(b)

B-5

Looking S on Jenne Lane.
Shows entry into Circle
Ave.



(a)



Looking E from Circle Ave.
Shows entrance from
Jenne Lane

(b)



Looking W on Circle Ave.
Shows Lozier car parked
on S 1/2 of Circle Ave.
and fence on N side of
Jenne Lane.

(a)



Looking E on Circle Ave
down into old bed of
Johnson Creek.

(b)

B-7



Looking E on Circle Ave
into and across old bed
of Johnson Creek. Shows
Lozier car on circle in
background.

(a)



Looking W on Circle Ave.
from point W of old
Johnson Creek bed.

(b)

B-8

Circle Ave. NW of bridge
across Johnson Creek.
Provides access to
Corridor from N.
Access for Kathy Howe
and Sheriff's Posse to
Corridor.



(a)

From Corridor, looking E
on Circle Ave.



(b)

B-9

Corridor, looking E from
juncture w/Circle Ave.



(a)

Corridor, looking SW from
juncture w/Circle Ave.



(b)

B-10



Looking up stream on
Johnson Creek from
Circle Ave. bridge
across Johnson Creek.

(a)



Looking E from Corridor
Bridge across Johnson
Creek. Shows Bradley
property which is N of
Lozier property.

(b)

BONNY ON LOFT
JOHNSON CREEK
looking S across
BRIDGE

Joyce Bradley & from
the bridge

B-11

Looking W from Jenne Lane
at Mark's Stables.



(a)



Looking east from the
Corridor, SW of Corridor
Bridge. Shows Mark's
Stables.

(b)

RECEIVED
JAN 09 1996

RANDY LEONARD
STATE SENATOR
DISTRICT 9

REPLY TO ADDRESS INDICATED:

- ☐ State Capitol, S-305
Salem, OR 97310
(503) 986-1709
- ☒ 4530 SE 67th Avenue
Portland, OR 97206
(503) 771-8256



OREGON STATE SENATE
SALEM, OREGON
97310

COMMITTEES
Member:
Health and Human Services
Labor & Government Operations

1/23/96 LETTER
READ INTO
RECORD BY
PAT BROWN

January 19, 1996

Dear Commissioner Collier,

I have been asked by a constituent of mine to express to you my position regarding a land use appeal at 5805 SE Jenne Lane that the Multnomah County Board of Commissioners is going to be considering later this month. First, please allow me to explain to you how I became involved in this issue.

I was asked to be a guest speaker at the Centennial Neighborhood Association meeting that occurred on Monday January 8, 1996. At that meeting the issue of this appeal was raised. Both sides of this issue were well represented at that meeting and they both presented their sides. However, it was clear from others in attendance that the issue was so complicated there was little chance that any resolution would be achieved at that meeting. A person not involved in the dispute, in attendance at the Centennial Neighborhood meeting, asked me if I would meet with both sides to try and resolve the dispute. I agreed to do what I could to help.

On Saturday January 13, 1996 I spent approximately two hours touring the site in question at Mark's Stables located at 5805 SE Jenne Lane, the recently surveyed Multnomah County right of way known as Circle Avenue, and met some of the horse owners at Mark's Stables and one of the residents along Circle Avenue.

I was scheduled to meet with two other property owners along Jenne Lane on January 18, 1996 but the City was socked with a snow storm, and forecasts for much more severe weather unfortunately caused that meeting to be canceled.

It quickly became apparent to me after visiting the site and talking with some of the people involved that there are strong feelings on both sides of the issue at appeal before you. I am extremely sensitive to the rights of homeowners with respect to maintaining the quality of their neighborhood through thoughtful and responsible land use decisions. However, I am also very persuaded by those who want to enjoy Portland and Multnomah County's abundant and beautiful natural resources that we as citizens and elected officials have fought so hard for, so that all our citizens could enjoy our communities resources.

That is why I am asking you to favorably consider the appeal by Mr. Mark Hammersmith to allow the horse owners that board at his stable to use Jenne Lane as an access to Powell Buttes equestrian trails via Circle Avenue.

As you are aware, this dispute is related to Multnomah County ordering private property owners along Circle Avenue to remove obstructions that were erected in that forty foot wide right-of-way that connects Jenne Lane to Powell Butte via the Springwater Corridor, an established equestrian trail. After visiting that site, I believe that the issue of whether or not horses should use Circle Avenue to gain access to Powell Butte should be treated as a separate and distinct issue from the decision to allow Mr. Hammersmith's boarded horses to use Jenne Lane. I was convinced that it is difficult to understand why some property owners along Jenne Lane have horses that are allowed to ride on Jenne Lane while Mr. Hammersmith's boarders are not allowed that same privilege.

As a person who uses the Springwater Corridor on the south side of Powell Butte a lot, I very much appreciate the work my local government has done to allow me to enjoy this beautiful and natural sanctuary. I believe we should encourage our citizens in general and our youths in particular to become involved in programs like the 4-H program at Mr. Hammersmith's stables that allow city residents to become involved with the caring and riding of horses. It is my belief that allowing Mr. Hammersmith to gain access to Jenne Lane with his boarded horses is a positive action for our communities adults and their children who want to enjoy the benefits of the country without leaving our city.

Thank-you for taking the time to consider my position on this appeal.

Sincerely,



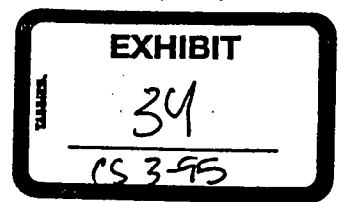
Randy Leonard
State Senator

RL:sg

cc: Herb Brown
1546 SE 138th
Portland, Oregon 97233

Mark Hammersmith
5805 SE Jenne Lane
Portland, Oregon 97236

1/23/96
Submitted by
PAT BROWN



RECEIVED

NOV 29 1995

Multnomah County
Zoning Division

Pat Brown
1546 SE 138th Ave.
Portland, OR 97233
Nov. 28, 1995
case file CS 3-95

re #5 & #6 Recommended Conditions of Approval

I have worked at a Kaiser Permanente Hospital for over 18 years as a Ward Clerk. Documentation of events as they happen is second nature to me in my line of work. Here is an account of some of the problems we have experienced while stabling 2 horses at Mark Hammersmiths, 5805 SE Jenne Ln.

On January 23, 1995, Mark Lozier, 5615 SE Jenne Ln. threw a rock at our vehicle as we drove past his house.

On January 25, 1995 Mark Lozier made an obscene gesture at me as we drove past his house.

On February 5, 1995 Diane Lozier took a picture of my 15-year-old daughter, Rachel Brown as she exercised her horse.

On April 13, 1995 @ 1830 we drove past the Lozier house to load up my daughter's horse for her 4-H meeting and Mark Lozier made faces at us as we drove by. He had dug a hole in the road (see County staff report Slide # 26) and made a dam at the side of the road, and had thrown thorned twigs into the road. After we had driven to the barn, the preacher's wife, Kathy, and I walked back to the damaged part of the road and we asked

Mark and Diane Lozier, why they had done that to the road. Diane Lozier stated that they did not want the water to run off the road onto their property, therefore, they made the dam. Diane Lozier became abusive in language and called Mark Hammersmith a wimp and Kathy crazy. Paif, from the Hammersmith property, heard the commotion and came riding over on his horse. This is the only time I have ever seen a horse going faster than a walk on that road.

On April 26, 1995 there was a meeting at Mark and Diane Lozier's house. For this meeting they rolled the seven large rocks they had placed in the road over beside their fence.

On May 13, 1995 at approximately 1030, Rachel, a woman from the barn named Leslie, her daughter Christine, and her friend, went on horseback through the right-of-way. My husband, Herb, parked his car on the right-of-way and followed them on foot to make sure they got past the Lozier house safely. Mark Lozier came to the car yelling to Herb, calling him a damned idiot, moron, and demanded that he move the vehicle "immediately". "Get down here and move it out of here now!" Herb told him it was a public right-of-way. Mark Lozier said, "This street is dedicated for my

driveway," and if Herb ever pulled in there again he would trash his pick-up. He would come out and knock all the windows out of it, and if he irritated him at all he'd start up his chain saw next time our daughter come down on her horse and go after them with the chain saw. After Herb moved the pickup he came over and said if Herb ever trimmed any trees in the roadway he would take the pruning shears away from him and cut off his fingers with them. This incident was reported to the Multnomah County Sheriff's Office to Officer De Mare.

On May 29, 1995 as we drove past his house, Mark Lozier made another obscene gesture at me.

On June 1, 1995 Mark Hammersmith had his weed eater in the road south of the Lozier house, trimming some of the berry vines in the road. Mark Lozier tried to run him over, then turned around and headed back toward him. This incident was reported to the Sheriff's Dept.

On November 19, 1995 at 12:10 p.m., Ed, who has two horses at Mark's Barn, parked his pick up on Jenne Ln (in the road) and Diane Lozier brought her horse out on the road. Ed trimmed the horse's hooves. Diane Lozier did not pick up the hoof trimmings - just left them in the road.

In summary, the road surface of Jenne Ln. has been hard to maintain due to the interference from 3 of the property owners between the end of the existing pavement to the entrance of the stables. Two of the property owners have purposefully removed dirt and gravel from the road to build up the west side of the road in an effort to keep the water from draining onto their properties. Fran Hyson, on the other hand, is convinced that the berry vines growing 8 feet out into Jenne Ln are her property, and the picture she submitted to show damage to her "property" was taken after the people who installed the "Circle Ave" street sign had cut the berry bushes back to the fence line to locate the dividing fence between the Hyson property and Joyce Bradley's property, so that they could set the sign correctly.

The white lid that she submitted a picture of was uncovered when the berry vines were trimmed. I don't know who removed it from under the berry vines where I had seen it and put it in the roadway.

Mark Hammersmith has been threatened by some of these people and I fear for his safety if he is told to maintain this road or the Circle Avenue right-of-way.

Pat Brown

case file CS 3-95

re #2 Recommended Conditions of Approval

This modification of the existing Community Service Condition of Approval would not be applicable to all the other horse boarding establishments in the area, and I feel it should be eliminated. There are presently people riding horses along the Springwater Trail and they will continue to be free to ride along the Trail any time of the year and through the Circle Ave right-of-way whenever they deem it is safe for their horses. In fact, some of these people are on the Multnomah County Sheriff's mounted posse - starting this November (see The Oregonian article dated Nov. 21, 1995 "~~Multnomah mounted posse hits Springwater Trail~~"). On Nov. 16, 1995, my husband, Hal Brown, spoke to the man working on the property just behind Mark Logier's, and was told that there was drug activity along the Circle Ave right-of-way between his house and the Logier's. I'm sure he will welcome the posse's presence.

Rick Dailey, 666-5341, told me that he boarded his horse at Lakeside Stables (now Rainbow Acres) 30 years ago. The teenagers from Lakeside would ride over to meet their friends at Mark's (it was then the Kaiser property) and go up on Powell Butte. They even rode from Damascus to Lentz Park

and back.

Susan Trubachik (then Susan Shepard) has submitted a statement that she rode her horse along Jennie Ln in the 1970's. She rode there on her horse (to the Kauser property) for their 4-H meetings.

I am submitting a copy of a bulletin from the City of Portland telling of horseback riding opportunities on Powell Butte. There are no limitations to access - the Butte is there for year 'round enjoyment.

I am also submitting some pages from the Metro 4-H Happenings newsletter. Please note that events usually begin at 7 p.m. This is because 4-H leaders are usually people who work for a living and donate their nights to these events.

Whenever an event starts at 7 p.m., arrival back at the barn is going to be after 8 p.m..

Winter months (with fewer daylight hours) are the months we work the horses to get them ready for County Fair and State Fair in the Spring and Summer. 4-H is a valued experience for our youth, and I think all the hard work (training, feeding, stall cleaning), helps to build strong future adults. This barn has always been available for 4-H - please don't restrict our ability to participate fully.

Please note that there was no traffic on Jennie Ln when the county staff pictures

1
were taken. The children were in school and the adults were at work. I do not believe the estimate of trips presented by Mark Logier was accurate, and I feel a traffic counting device in the road would show a different count.

One of the doctors I work with, Dr. Jenkins, is on the Sheriff's Posse. All last winter they trained at Rainbow Acres at night, because they all work days. Horse training at night is not noisy. Noise "spooks" horses and causes accidents. 4-H participants are held to high standards. My 16-year-old daughter, Rachel, is a state ambassador for 4-H, a member of the National Junior Honor Society, and has received academic achievement awards from President Bush and President Clinton. The pictures submitted by Mark Logier show a single file line of horses walking through the Circle Ave right-of-way ridden by responsible youth and adults.

I am including a series of pictures taken along Circle Ave.

My husband and I have been active in community affairs for years and are currently Commissioners on the Rockwood Water District Board.

- ~~1/23/94 Submittal
By Mark [redacted]~~


UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
OREGON OPERATIONS OFFICE

 811 S.W. 6th Avenue
 Portland, Oregon 97204

 1/23/96
 Submitted By
 Mark Losier

Reply to

Attn of: 000

June 5, 1995

 Ms. Bonnie Scheeland
 Multnomah County
 Department of Transportation
 1620 S.E. 190th.
 Portland, Oregon 97233

OPTIONAL FORM 10 (7-90)

FAX TRANSMITTAL

of pages 2

To: DIANE LOSIER	From: R.T. ROGERS
Dept./Agency	Phone: 326-2676
Fax #: 236-9794	Fax #: 326-3399
NSN 7540-01-317-7368	5099-101 GENERAL SERVICES ADMINISTRATION

RE: Wetland Delineation Along Circle Avenue Right-of-Way

Dear Ms. Scheeland:

In accordance with your request during our phone conversation of May 30, I am providing my wetland delineation and site assessment of the above referenced area.

On May 28, 1995 I met with Mark Losier (local property owner) and Steve McGettigan (president of Friends of Powell Butte) to inspect the area where the county right-of way crosses a backwater swale or oxbow of Johnson Creek.

Based on my findings the area where the right-of-way crosses the swale (approximately 15 feet wide at that location) is classified as a wetland according to the state and federal regulatory definition. The three parameters that define an area as wetland are the presence of hydric soils, dominance of hydrophytic vegetation, and the presence of surface saturation or inundation for 7 consecutive days during the growing season. The following is a summary of the field data supporting the finding that the area is a wetland:

a. Soils - According to the Multnomah County Soil Survey (dated August 1983) the subject area is mapped as Wapato Soil Series which is listed as a hydric soil according to "Hydric Soils of the United States" (USDA, SCS Miscellaneous Publication Number 1491, June 1991). A sample taken during the site visit confirmed that the soil is hydric with a matrix of 10YR3/1 (Munsell Soil Color Charts - 1975 Edition) and prominent orange mottling throughout.

b. Vegetation - Although the subject area had been heavily trampled and denuded by horse traffic, the plant communities of adjacent areas at the same elevation were still intact. The dominant plant species and their wetland indicator status are as follows:

- spotted jewelweed (Impatiens noli-tangere) - FACW
- creeping buttercup (Ranunculus repens) - FACW
- small-fruited bulrush (Scirpus microcarpus) - OBL
- bitter nightshade (Solanum dulcamara) - FAC

- American speedwell (Veronica americana) - OBL
- reed canarygrass (Phalaris arundinacea) - FACW
- creeping bentgrass (Agrostis alba) - FAC

C. Hydrology - There are several indicators that surface inundation and saturation persist throughout several weeks during the spring growing season. Local landowners provided eye witness accounts of annual flooding of the back water channel from Johnson Creek overflow. Further evidence of prolonged inundation is supported by the presence of sparsely vegetated areas where standing water has prevented the growth of emergent plants until well into the growing season. Finally, the soil sample taken during the site visit was saturated within several inches of the surface and adjacent, untrampled areas had saturation to the surface.

Aside from the fact that a portion of the right-of-way is classified as wetland, consideration needs to be given to the existing and potential long-term impacts of allowing equestrian use of the area. Both the trampled and denuded wetland and the steep, eroding embankment immediately to the south of the wetland are sources of sediment that could be carried by seasonal Johnson Creek overflow and be deposited in adjacent downstream wetlands and ultimately to the Johnson Creek channel. Additionally, the right-of-way wetland probably provided habitat for breeding amphibians (e.g. Pacific tree frogs) prior to the trampling effects of horse traffic. That habitat value could be easily restored by preventing horse traffic (and bicycle traffic) through the area and perhaps with some selective planting with native species of vegetation.

Currently, there is significant public interest in the restoration and protection of Johnson Creek water quality and habitat values, including associated wetlands. That public interest is reflected in the goals and objectives statement of the Johnson Creek Corridor Committee (JCCC) whose members include representatives from several local agencies (including Multnomah County Dept. of Transportation) and neighborhood groups. Protection of the right-of-way wetland and steep, eroding slopes by preventing equestrian and bicycle use of the right-of-way appears to be consistent with the JCCC's goals and objectives for the protection and restoration of Johnson Creek corridor. Lesser environmentally impacting alternatives for providing equestrian and bicycle access to the Springwater Trail should be identified and pursued.

If I can be of further assistance, please contact me at the above address or call (503) 326-2676.

Sincerely,

Ralph Thomas Rogers
Ralph Thomas Rogers
Wetland Ecologist

cc: Mark Losier
Eric Machorro-BES

Steve Fegi-NRCS
Steve McGettigan

United States
Department of
Agriculture

Natural Resources
Conservation
Service

2115 S. E. Morrison
Portland, Oregon 97214
Phone (503) 231-2270

1/23/96 Submitted
By Mark Lozier

June 1, 1995

Bonnie Scheeland
1620 SE 190th Avenue
Portland, OR 97233

RE: Mark Lozier Access Concern

Dear Ms. Scheeland:

I met with Mr. Lozier on 31 May 1995 to visit the site where access to a wetland is a concern.

Access by livestock, vehicles or pedestrians to the wetland below the steep bank without soil erosion protection will impact the aquatic system(s) below that bank.

The idea was presented by Mr. Lozier to reclaim the channel of Johnson Creek and enhance the wildlife and hydraulic values of that channel. This would be optimum from a watershed health perspective and I would recommend excluding livestock, vehicles or pedestrians from the channel by all three landowners and the public. Our office is available for any technical assistance or planning help that may be needed for this site.

Alternative routes to the Johnson Creek corridor and/or bridges may be acceptable mitigation to the present right of way.

I am available for any questions or comments you may have regarding this matter -- call 231-2271.

Sincerely,

Steven Fedge
Soil Conservationist

cc: Mark Lozier



CITY OF PORTLAND ENVIRONMENTAL SERVICES



1120 SW Fifth Avenue, Room 400, Portland, Oregon 97204-1972

(503) 823-7740, FAX (503) 823-6995

Dean Marriott, Director

June 23, 1995

1/23/96 Submitted
By Mark Lozier

Bonnie Scheeland
Multnomah County
Department of Transportation
1620 SE 190th
Portland, Oregon 97233

Re: Resource value of abandoned Johnson Creek low-flow channel at Circle Ave.

Dear Bonnie,

I recently spoke with Ralph Rogers of the US EPA after he had the opportunity to inspect a segment of County right-of-way that crosses a backwater oxbow of Johnson Creek. He reported that the area had exceptional habitat value. This seems to confirm the findings of many others.

We recognize the communities' legitimate need for access to the Springwater Trail in that area. We are also of the opinion that access shouldn't compromise the existing natural resources. Since using the existing ROW to provide this access may threaten the resource value there.

I would like to offer BES' support in your efforts to manage and protect the resources in that area. This would be great chance to showcase the spirit of cooperation that has gone into the formulation of the Johnson Creek Resources Management Plan (JCRMP).

It would be an excellent opportunity especially in light of Multnomah County's long standing involvement on the Johnson Creek Corridor Committee and the work that you have done in participating in the JCRMP planning process.

I realize some of County's limitations on the use of transportation funds for managing resources in their right-of-way. So, since un-managed equestrian use of that right-of-way would be deleterious to the resources there, I would urge you to look into some of the low-cost ideas mentioned by a several of the concerned residents and agencies.

Towards a well-balanced solution, we could offer to you some of the following resources:

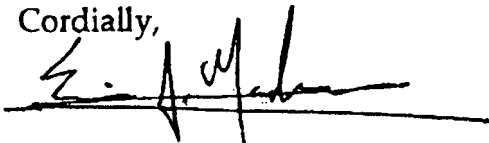
- Youth Environmental Action Team labor;
- Any needed hand equipment;
- Erosion control materials;
- Bioengineering materials (i.e. coir and/or jute fabrics); and

- Native plants and willow materials.

Additional support may also be able to be leveraged from other sources. There may be a potential for a small, inexpensive bridge a little further downstream to completely alleviate any major resource impacts. Maybe together with the property owners, we could approach City of Portland Parks and Recreation with this idea.

Together, I'm confident that we can be effective advocates for all concerns and creatively resolve. If you are at all interested, please call me at 823-7044.

Cordially,



Eric A. Machorro
Johnson Creek Watershed Manager

c: Mark Lozier George Hudson Steve Fedge
Ralph Rogers

1/23/96 Submitted
By Mark Lozier

June 15, 1995

To: Multnomah County Transportation

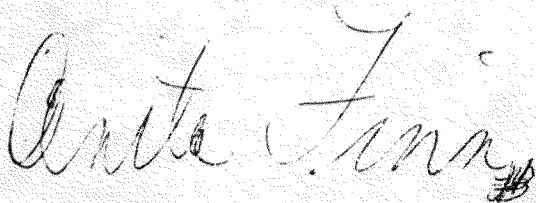
From: Pleasant Valley Neighborhood Association

Gentlemen:

At the June 14, 1995 meeting of the Pleasant Valley Neighborhood Association a motion was made to write a letter to Multnomah County Transportation asking that the unimproved right-of-way, that in the future might connect Jenne Lane to Circle Avenue, be closed to horses, bicycles, and pedestrians (all traffic) until such time as a bridge can be built that would protect the wetlands in that area.

The vote was unanimous and 44 people were present.

Sincerely,

A handwritten signature in cursive script, appearing to read "Anita Finn". The signature is written in dark ink and is positioned above the typed name.

Anita Finn, President

Pleasant Valley Neighborhood Association

1/23/96 Submitted
BY MARK LOZIER

Centennial Community Assoc'n
3441 S.E. 174 Avenue
Portland Oregon 97236-1234
June 15, 1995

Multnomah County
Transportation Division
Portland Oregon 97204

Attention:

Centennial Community Association at the general meeting on June 12 1995 voted unanimously to seek protection to the wetlands, in the unimproved right of way which may connect Jenne Lane to Circle Avenue, from horse, bicycle and pedestrian traffic. Presently the area is being severely eroded from activity in such an unstable area and needs a bridge connecting these two streets to allow traffic movement without severe erosion.

Sincerely,

Bob Luce

Bob Luce, Chair

Centennial Community Assn.

c.c. Commissioner Kelley

1/23/96 Submitted
By Mark Losier

Friends of Powell Butte Nature Park
16160 SE Powell Boulevard
Portland, OR 97236

June 7, 1995

Ms. Bonnie Scheeland
Multnomah County
Department of Transportation
1620 S.E. 190th
Portland, OR 97233

Dear Ms. Scheeland,

Within the last two weeks, the Friends became aware of an area along Johnson Creek off the southeast corner of the park that is the center of contention over a possible wetlands status. This area, close to the junction of the Springwater Trail and Circle Avenue, is currently established by the county as a right of way for local residents. A local stable (Mark Stables) has begun riding in this area, resulting in serious erosion to this environmentally sensitive location.

Approximately three months ago, local neighbors attempted to negotiate (with the aid of a local mediator) with the stable to have their horses enter the Springwater Trail at another location. According to Mark Losier, a neighbor adjoining the area in question, a reasonable alternative to the right of way was reached with the stables - with the stable agreeing to it. This took the form of a bridge crossing the creek to join their property with the Springwater Trail. From what Mark has informed us, the stables later decided not to pursue this, despite offers of assistance from neighbors in implementing this.

On the Memorial Day weekend, Ralph Rogers - a Director-at-Large for the Friends, Mark Losier, and I examined the area to determine the state of the grounds there. Ralph determined the area to be a wetlands according to three criterion for wetlands: a) hydric soil type, b) hydrology, and c) hydrophytic vegetation. It must be pointed out that a wetlands area is extremely vulnerable to damage from use by horses and bicycles, this we have learned the hard way at our park.

As a result of this examination, along with the fact that an acceptable alternate Springwater Trail access point for the stable apparently exists, the Friends of Powell Butte strongly urges that Multnomah County immediately act to restrict horse and bicycle traffic through this right of way. We hope that your department can quickly provide a solution to this situation once you have been officially informed of the nature of the area by BES, the Federal Natural Resources Service, and by Ralph Rogers. If we can be of further assistance, please contact us by way of the address above or call me at (503) 667-0232.

Sincerely,



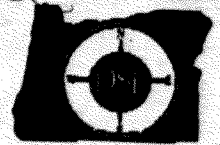
Stephen McGettigan
President, Friends of Powell Butte Nature Park

cc: Bonnie Scheeland - M.C. DOT
Ralph Rogers - U.S. EPA
Mark Losier
Pleasant Valley Neighborhood Association
Friends of Johnson Creek ✓

August 25, 1995

1/23/96 Submitted
BY MARK LOZIER

Oregon



DIVISION OF
STATE LANDS

STATE LAND BOARD

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775 Summer Street NE
Salem, OR 97310-1337
(503) 378-3805
FAX (503) 378-4844
TTY (503) 378-4615

Mark & Diano Lozier
5615 SE Jenne Lane
Portland, Oregon 97236

Dear Mr. & Mrs. Lozier:

This past week you have provided me with information regarding the effects of allowing access along the Circle Avenue Right-of-Way. At the time I talked to Bonnie Scheeland in June, I did not have all of the available information on this land use issue. However, I believe it is still correct to say that the wetlands are not going to be abolished if a trail for equestrian, bicycle and pedestrian use is approved. The letters you have provided do indicate that these uses will have a degree of negative effects to the wetlands by trampling, compaction and possible soil erosion.

* Those impacts are not within the jurisdictional authority of the Division of State Lands. Those impacts are not from filling or removal of material as defined by ORS 196.800. What this leaves us with is that the County has to make a decision that weighs the balance of public safety and resource protection. At this site, these issues are in conflict with each other.

I hope this letter makes clear that the Division just does not have a role to play on whether this access point is opened or closed. Please call me if you would like to discuss further.

Very truly yours,

Jerry Hedrick
Resource Coordinator
Multnomah and Hood River Counties

cc: Larry Nicholas, Multnomah County

1/23/96 Submitted
by MARK WIER

CIRCUIT COURT OF OREGON

MULTNOMAH COUNTY

MULTNOMAH COUNTY, a home rule
subdivision of the State of
Oregon,

Plaintiff,

v.

GEORGE HAMMERSMITH dba JENNE
LANE STABLES aka MARK'S
STABLES and RUTH F. KAISER and
BEN KAISER,

Defendants.

No. 9503-01791

FINAL JUDGMENT
(INJUNCTIVE RELIEF)

The Court having previously granted plaintiff's Motion for
Summary Judgment and having denied the defendants' affirmative
defenses and counterclaims, the Court enters the following final
judgment:

////

1 - FINAL JUDGMENT

MULTNOMAH COUNTY COUNSEL
1120 S.W. Fifth Avenue, Suite 1530
P.O. Box 849
Portland, Oregon 97207-0849
(503) 248-3138

1 1. Defendants' use of the property located at 5805 and/or
2 5807 SE Jenne Lane, Portland, Multnomah County, Oregon, more
3 particularly described as Tax Lot 6, Lots 30, 33, 34, and 37
4 situated in the southwest quarter of Section 18, Township 1 South,
5 range 3 East, WM, which is zoned Rural Residential and the modified
6 conditions of approval of their use of said property has been
7 unlawful.

8 2. Defendants shall immediately and permanently cease and
9 desist from such unlawful use, to wit permitting their
10 tenants/users to ride their horses off premises or otherwise
11 violate the condition "all riding is to be done on applicant's
12 site." However, tenants/users may transport horses by proper ^{horse} ~~house~~ *horse*
13 trailer off the subject premises. No riding, however, is to occur
14 on Jenne Lane or Circle Avenue where there are public rights of
15 way. However, either party may petition for this paragraph to be
16 modified upon the final decision in Multnomah County Zoning Case
17 No. CS3-95.

18 3. Further, defendants shall immediately arrange for and
19 have erected a conspicuous sign to comply with "condition number 3"
20 of the Conditions of Approval which shall inform all tenants/users
21 of the defendants' property of the above restrictions. The
22 defendants shall, within 30 days, establish by photographic proof
23 satisfactory to the plaintiffs that this sign requirement has been
24 complied with.

25 4. The defendants shall notify each of their current
26 tenants/users of the policy in writing. Thereafter, all new

2 - FINAL JUDGMENT

1 tenants or users shall be notified of the requirement in
2 writing. The defendants shall provide evidence satisfactory to
3 the County that all current tenants/users have been so
4 notified. Such evidence shall be provided to the plaintiffs
5 within 30 days of the date hereof.

6 5. Pursuant to the above "condition number 3," the
7 defendants shall take all necessary steps to enforce the
8 policy. Defendants shall immediately make it their policy and
9 incorporate in their contracts with all tenants/users a
10 specific clause requiring compliance with "condition number 3"
11 and further providing that a violation of "condition number 3"
12 shall result in termination of the tenant/user's tenancy/use.
13 Defendants shall enforce this condition strictly.

14 6. The parties have agreed that the costs plaintiff, as
15 the prevailing party, is entitled to claim from the defendants
16 is in the sum of \$500.00.

17 SO ORDERED THIS nunc pro tunc to the 3rd day of November,
18 1995.

November 8, 1995

Jeffrey M. Batchelor
Honorable Jeffrey M. Batchelor,
Circuit Court Judge Pro Tem

22 Submitted by:

23 Gerald H. Itkin
24 OSB No. 88232
25 Multnomah County Counsel
1120 SW Fifth Avenue, Suite 1530
26 P. O. Box 849
Portland, Oregon 97207-0849
(503) 248-3138

CERTIFICATE OF MAILING

I hereby certify that on the 6th day of November, 1995, I served the within JUDGMENT by depositing in the United States Post Office at Portland, Oregon, a full, true, and correct copy thereof, by first class mail, with postage prepaid, addressed to the following:

Vern Cook
Attorney at Law
519 NE 4th
Gresham OR 97030



Gerald H. Itkin

F:\DATA\COUNSEL\WPDATA\ZONING\STABLES\JUDGMENT.PLD\DD

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1120 S.W. Fifth Avenue, Suite 1530
P.O. Box 849
Portland, Oregon 97207-0849
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2 - FINAL JUDGMENT

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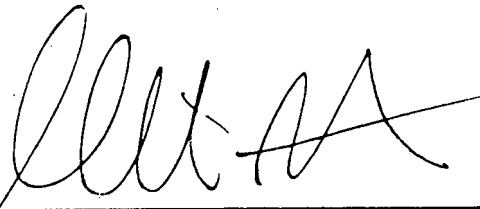
22 Submitted by:

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25 Multnomah County Counsel
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Vern Cook
Attorney at Law
519 NE 4th
Gresham OR 97030



Gerald H. Itkin

F:\DATA\COUNSEL\WPDATA\ZONING\STABLES\JUDGMENT.PLD\DD

CERTIFICATE OF MAILING

MULTNOMAH COUNTY COUNSEL
1120 S.W. Fifth Avenue, Suite 1530
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CIRCUIT COURT OF OREGON

MULTNOMAH COUNTY

MULTNOMAH COUNTY, a home rule
subdivision of the State of
Oregon,

Plaintiff,

v.

GEORGE HAMMERSMITH dba JENNE
LANE STABLES aka MARK'S
STABLES and RUTH F. KAISER and
BEN KAISER,

Defendants.

No. 9503-01791

FINAL JUDGMENT
(INJUNCTIVE RELIEF)
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The Court having previously granted plaintiff's Motion for
Summary Judgment and having denied the defendants' affirmative
defenses and counterclaims, the Court enters the following final
judgment:

////

1 - FINAL JUDGMENT

MULTNOMAH COUNTY COUNSEL
1120 S.W. Fifth Avenue, Suite 1530
P.O. Box 849
Portland, Oregon 97207-0849
(503) 248-3138



MULTNOMAH COUNTY OREGON

1/23/96 Submitted
BY MARK LOZIER

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

BOARD OF COUNTY COMMISSIONERS
BEVERLY STEIN • CHAIR OF THE BOARD
DAN SALTZMAN • DISTRICT 1 COMMISSIONER
GARY HANSEN • DISTRICT 2 COMMISSIONER
TANYA COLLIER • DISTRICT 3 COMMISSIONER
SHARRON KELLEY • DISTRICT 4 COMMISSIONER

13 June 1994

Ruth F Kaiser,
% George Hammersmith
5989 S E Jenne Lane
Portland
Oregon - - 97236

Regarding: **Notice of Zoning Violation (Certificate # P 226 797 023)**

Property located at 5807 S E Jenne Lane

**Also addressed as 5805 S E Jenne Lane
(phone book listing for "Mark's Stables")**

Dear Ms Kaiser:

It has been brought to our attention that certain conditions relevant to land use on your property are in violation of the County's Zoning Ordinance. Specifically it concerns a violation of conditions of approval of a Multnomah County Hearings Officer action regarding horse boarding at your site. The activity reported was:

Allowing horse owners to ride in the dedicated public right-of-way of S E Jenne Lane.

Also observed was the storage of horse manure within the public right-of-way of S E Jenne Lane along the frontage of your property. The manure pile extended into the drainage ditch along the westerly side of Jenne Lane.

Site statistics for the property referenced above are:

1. Legal Descr Jennelynd Acres, Tax Lot 6 of Lots 30, 33, 34. & 37.
2. Location Southwest quarter of Section 18, Township 1 South, Range 3 East.
3. Owner Ruth F Kaiser, et al
Mail to: George Hammersmith
5989 S E Jenne Lane
Portland
Oregon - - 97236
4. Tax Acct Number R-42850-4250
5. State ID Number 1S3E18C 3000
6. Site Size 7.41 acres

The present base zone for the property is RR, "Rural Residential" as shown on Sectional Zoning Map number 528 in the East Zoning Map Book. Other portions of the Zoning Ordinance that apply to the above-described property (and activity) are CS, "Community Service", FH, "Flood Hazard" and SEC, "Significant Environmental Concern".

The "base zone" for the property prior to 1979 was R-20, "Single-Family Residential". The property at that time already had the CS, "Community Service" overlay classification.

The CS overlay classification was originally placed on the property to allow a "Riding Academy / Horse Boarding" use. The most recent zoning action taken was on May 4, 1981 under case number CS 18-61a which was for a modification of the previous 1961 approval (under CS 18-61). The 1961 approval was granted for a 4-H related riding stable and horse boarding facility.

The modification requested by the applicants, Ben & Ruth Kaiser was to provide boarding and riding facilities for a maximum of 54 horses. They also stipulated in their request that: **"All riding will be done on applicant's site."**

One of the conditions of approval was:

3. **"The applicant shall prominently post so it is apparent to all riders a sign which states that all riding is to occur on the subject property and that no riding shall occur off-premises neither on private property nor on public streets. The applicant shall enforce this policy."**

Allowing horses to be ridden off of your premises on any public street, including Jenne Lane, is in violation of this condition of approval.

Conditions of approval run with the land, regardless of the succession of ownerships of the land or the business activity being conducted thereon.

Failure to comply with this requirement (ie: that all riding must be done on premises) will result in revocation of the approval granted under CS 18-61a by the Hearings Officer Lawrence R Derr on 04 May 1981.

Portions of Chapter 11.15 of the Multnomah County Code (aka: "The Zoning Ordinance" applicable to your property are:

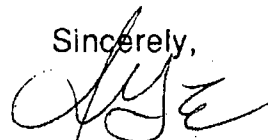
MCC 11.15.2202 thru .2230	RR, "Rural Residential"
MCC 11.15.6301 thru .6323	FH, "Flood Hazard"
MCC 11.15.6400 thru .6422	SEC, "Significant Environmental Concern"
MCC 11.15.7005 thru .7041	CS, "Community Service"

It is hoped that this matter can be resolved in a voluntary, cooperative manner. If the violation continues, however, the matter will be referred to Multnomah County Counsel with a request for legal action.

If you have any questions regarding the conditions of approval for Community Service case number CS 18-61a please contact this office ('phone 248-3043). Our office is open to serve the public from 12:30 P M to 4:30 P M weekdays.

If you desire to have the conditions of approval modified, you must make application for a public hearing (and receive approval for the change to allow off-site horseback riding). Until approval is granted to change the conditions referenced, you must abide by those in effect (ie: all horse riding must be done on your property only).

Sincerely,



Irving G Ewen

Zoning Code Enforcement Office

Encl: MCC 11.15.2202 thru .2230	RR, "Rural Residential"
MCC 11.15.6301 thru .6323	FH, "Flood Hazard"
MCC 11.15.6400 thru .6422	SEC, "Significant Environmental Concern"
MCC 11.15.7005 thru .7041	CS, "Community Service"

This notice is issued in accordance with Chapter 11.15 of the Multnomah County Code. Pursuant to MCC 11.15.9053 (Penalties), failure to remedy violation will result in a fine of up to \$500.00 for each day the violation continues beyond this 30 day notice period.

**MULT****OUNTY OREGON**

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

FOR
DIANE LOZIER
FROM
IRV EWEN

BOARD OF COUNTY COMMISSIONERS
BEVERLY STEIN • CHAIR OF THE BOARD
DAN SALTZMAN • DISTRICT 1 COMMISSIONER
GARY HANSEN • DISTRICT 2 COMMISSIONER
TANYA COLLIER • DISTRICT 3 COMMISSIONER
SHARRON KELLEY • DISTRICT 4 COMMISSIONER

1/23/96 Submitted
BY MARK LOZIER

ZONING VIOLATION SUMMARY**ZV 23-94**

18 August 1994

MEMO

To Gerald Itkin, Assistant County Counsel
Office of County Counsel
Bldg 106 (Portland Building), Suite 1530

From Irv Ewen
Zoning Code Enforcement Office
County Planning Department
Bldg 412 (DES Building), Rm 110

REGARDING ZONING VIOLATION CASE REFERENCED ABOVE:

Site Address	5807 S E Jenne Lane and/or 5805 S E Jenne Lane (phone book listing for "Mark's Stables")
Tax Roll Descr	Jennelynd Acres, Tax Lot 6 of Lots 30, 33, 34, & 37
Location	Situated in the southwest quarter of Section 18, Township 1 South, Range 3 East, W M.
Site Size	7.41 Acres
Tax Roll Acct #'s	R-42850-4250
State ID Numbers	1S3E18C 3000
Owner of Record	Ruth F Kaiser, et al
Tax Stmt's mailed to:	George Hammersmith 5989 S E Jenne Lane Portland, Oregon - - 97236
Zoning District	RR, "Rural Residential" (MCC 11.15.2202 thru .2230)
Effective date of Code	
Map References	Assessor's 400 Scale Full-Section Map, Section 35, T 2 N, R 6 E. WM Sectional Zoning Map # 732 (in the "Gorge" Zoning Map book)

CHRONOLOGY OF CASE

PRIOR HISTORY

1. Before 1979, the property was zoned R-20, "Single Family Residential" which permitted homes on half-acre lots (approximately).
2. Also in place before 1979 was an "overlay" classification of CS, "Community Service". The CS Classification was granted by the Planning Commission in 1961, under case number CS 18-61 to allow a 4H related "Riding Academy / Horse Boarding" use.
3. After 1979, the property was included in an area designated for rural zoning. The zoning was changed to RR, "Rural Residential" with a five acre minimum parcel area.
4. On 04 May 1981, under case number CS 18-61a, a zoning action was taken to modify the earlier approval (under CS 18-61).
 - A. Applicants Ben and Ruth Kaiser, in their application requested:
 - (1). Boarding and riding facilities for a maximum of 54 horses.
 - (2). "All riding will be done on applicant's site."
 - B. Condition "3." of the approval stated:

"The applicant shall prominently post so it is apparent to all riders a sign which states that all riding is to occur on the subject property and that no riding will occur off-premises neither on private p[roperty] nor on public streets. The applicant shall enforce this policy."

RECENT
CHRONOLOGY

- Spring 94 "Phone calls to Planning Office regarding horses from subject property being ridden on Jenne Lane in violation of conditions of approval of CS 18-61a.
- 28 MAR 94 Formal complaint lodged by nearby residents regarding operation of Mark's Stables by Mark Hammersmith in violation of conditions of CS 18-61a. Petition contained signatures and addresses (plus phone numbers) of 14 nearby neighbors. Petition was accompanied by:
1. Copy of "Decision" of Multnomah County Hearings Officer for Meeting of May 4, 1981.
 2. Three photos, one each of three different riders on horseback on Jenne Lane. Photos dated April 10, 1994 (which was a Sunday).
- Spring 94 Several site inspections made by staff person during regular business hours on weekdays:
- No riders on horseback observed. Also, no evidence found on roadway (ie: "road apples").
- 10 JUN 94 Copies of portions of relevant maps placed in file:
- A. Assessor's "100 Scale" quarter-section map number 3647 (which is the southwest quarter of Section 18, Township 1 South, Range 3 East) showing subject property.
 - B. Sectional Zoning Map number 528 showing subject property.
- 13 JUN 94 Notice of Zoning Violation letter sent to Ruth F Kaiser (owner of record), in care of Mark Hammersmith via Certified Mail (P 226 797 023) to address shown on Tax Rolls (5989 S E Jenne Lane).
- Violation case number assigned was ZV 23-94.
- Letter outlined observations noted in Field Inspections
- Applicable portions of Conditions of approval for CS 18-61a were quoted.
- The property owner was advised to:
1. Comply with the Conditions of approval for CS 18-61a, or
 2. Apply for a public hearing to seek approval of modifying the conditions (to allow his customers to use Jenne Lane for horseback riding).

Summer '94 'Phone -in complaints by neighbors regarding the continuing of the customers from Mark's Stables riding in the roadway of Jenne Lane.

18 AUG 94 Copies of other basic information placed in file:

1. Standard A & T printout ("Qname" and "Qchar") for property dated 08/18/94, RE: Acct for real property # R-42850-4250.
2. Standard A & T printout for business account, # P-08-13410-00 (94), doing business as "Jenne Lane Stables".

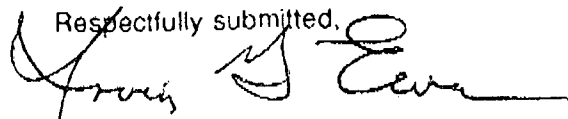
18 AUG 94 "Zoning Violation Summary", for case number ZV 23-94 prepared for County Counsel. Copy to be placed in file.

19 AUG 94 Copy of Zoning Violation Case File # ZV 23 -94 prepared for forwarding to Gerald Itkin, Assistant County Counsel .

19 AUG 94 Explanatory cover letter, including request to initiate legal action against Mark Hammersmith, dba as "Mark's Stables" on property owned by Ruth Kaiser sent to Gerald Itkin of Counsel. Copy placed in ZV 23-94 file.

Operator of Mark's Stables, Mark Hammersmith, apparently has elected not to pursue a modification of the conditions of approval by applying for a public hearing.

Respectfully submitted,



Irving G Ewen



MULTNOMAH COUNTY OREGON

1/23/96 Submitted
BY MARK LOZIER

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

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TANYA COLLIER • DISTRICT 3 COMMISSIONER
SHARRON KELLEY • DISTRICT 4 COMMISSIONER

January 26, 1995

Ruth F. Kaiser
c/o George Hammersmith
5989 SE Jenne Lane
Portland, Oregon 97236

Regarding property located at:
5807 SE Jenne Lane
(Also addressed as 5805 SE Jenne Lane)
Tax Lot. '6' of Lots 30, 33, 34, and 37,
Jennelynd Acres
Ruth F. Kaiser, et al, property owners
Mult. Co. Zoning Violation Case ZV 23-94

Dear Ms. Kaiser:

As you are aware, the attempt to resolve your zoning violation issues by means of a mediation process has been concluded without resolution. You have also not proceeded to submit an application to modify the "Community Service 18-61a" decision that all horse back riding by your clients be exclusively on your site.

Therefore, this letter is to inform you, again, that any of your horse boarders riding off your property will constitute a zoning code violation. Upon notification to this office of the next such occurrence, the matter will be directed to County Counsel to proceed with litigation. /

If you have an interest in making an application to our office, please come in any weekday 12:30 / to 4:30 pm and talk to a planner at the public counter. /

Sincerely,

MULTNOMAH COUNTY, DIV. OF
PLANNING AND DEVELOPMENT

Gary Clifford
Acting Zoning Code Enforcement Officer

cc: Gerald Itkin (106/1530)

1/23/96 submitted
By MARK LOZIER

November 26, 1995

Barry Adamson, Hearings Officer

Dear Mr. Adamson,

From the time I moved in in 1991, we've had nothing but problems with Mark Hammersmith & his boarders. From padlocking our gate shut, to them loitering in front of our house on horseback yelling obscenities & threats at us.

We've pleaded with Mark Hammersmith to please control his boarders with the only result being Mark Hammersmith himself harassing us. In desperation we contacted the police in hopes that we could get a restraining order against them, but we were told that no restraining order could be issued because Jenne Ln. is the only access to the stables. So we turned to the county for help. As a result we went into mediation with Mark's Stables. During mediation we made every effort to resolve the issue of the stables' harassment by offering labor & supplies to build a bridge behind Mark's Stables in hopes of keeping the boarders from intruding on our privacy with the only outcome being that the county ended mediation because Mark Hammersmith would not cooperate with the neighbors or the mediator.

Meanwhile the harassment continued with the boarders spinning their tires at all hours of the day and night. We also had a lot of flat tires from someone throwing nails in our driveway. I witnessed them purposely trying to hit our animals with their vehicles.

In the 4 years we have lived here the only maintenance done to the road has been done by the neighbors. We asked Mark Hammersmith if he would please help maintain the road and his response was that the condition of the road was not his concern and he had no intention of helping to maintain the road.

Because of their constant intimidation and harassment, we along with some of the other neighbors were afraid to go to the hearing against the stables. Even after the hearing they have refused to change their behavior. It is obvious to us that Mark Hammersmith and the boarders will not change their actions or behavior and by removing this restriction the county would be rewarding them for disobeying the county and harassing the neighbors.

JASON WICK

Jason Will
5557 SE Jenne Ln.
Portland, OR 97236
(work) 295-4554

15 typed pages of complaints

1/23/96 Submitted
BY TNAK WZIER

Other letters in official Record
w/ Mult Co. Planning & Zoning

DAVE Swartz → cut fence 10' wide
had approx 40 sheep in pasture

Mrs. AUGER → opposed to M.S riding off property
Roy Miller
Roy & Diane Hamer

1/23/96 Submitted
BY MARK LOZIER

Name Bonnie Brunkov

Address 5509 SE Circle Avenue Portland, OR 97236

Phone No. (day) 761-9503 (evening) 661-0894

How long have you lived in the area? 16½ years (Sept. 1978)

Briefly explain any incidents that you have witnessed or experienced concerning Mark's Stables' owners and/or boarders.

Date ? ^(sorry - I don't have exact date) Summer 1992 My property borders Mark's Stables on north.

Ted (Withen is last name I believe, Fire Fighter at Multnomah Dist 10 fire station on 1344 Foster) was blazing a trail through s end of my property & across Johnson Creek. ^{to springwater line} He told me he was not going to ^{when told he was trespassing,} to springwater line. He told me he was not going to risk the life of his daughter ^{who now} to ^{get to} ~~take onto~~ the trail via Jenne Road, and ^{continue to} ~~would use the trail~~ through my property.

Date ? ^{spring} 1993 (don't have exact date) Told my pasture renter, Kim Schopp who also boards at ^{Mark's} stable, that I didn't want people ~~not trespassing~~ using that trail crossing s end of property to get up to springwater line. Asked her to pass word around. It became obvious by condition of trail it was used.

Date Summer 1993 ~~saw~~ I was walking Springwater line when I met a woman on horseback coming up trail blazed from ~~my~~ s. end of my property to Springwater corridor. I told her she was trespassing and I didn't want her using trail. She said it was first time she had used it.

Date 15. August 94 ^{with dog} bearded male was blazing trail through s end of my property to springwater corridor. Told him he was trespassing. He said he didn't know that. Called Mark Hammersmith and told him about incident. He claimed he didn't know anything about it. Said maybe it was one of his new renters, ~~that all his~~ boarders.

Date 12th August 1994

Mounted no trespassing sign on ~~sign~~ fence post
In middle of trail blaze on s. end of property. Sign repeatedly ripped off
and tossed ~~into blaze~~ Trail used some, not heavily

Date 28 August 94 Sunday About 10 AM was roused by yelling occurring on

Circle Avenue easement which borders n. end of my property. Man named Shelman (?)
was involved in shouting match with neighbor Mark Lozier. Somebody on Springwater bridge (at Circle)
was hooting ^{them on} (chicken noises) ~~and~~ met Shelman to see what was going on. He said ~~he was trying~~
~~to antagonize~~ his wife had horse at Mark's stable. He didn't want her riding on
Jenae to get to Springwater line. He was tired of slowness of easement issue resolution.
would bring a bulldozer down if necessary to clear easement. Was trying to antagonize
Mark Lozier to shoot him ^{or into violence} So he ~~etc~~ could get media out. Said he didn't care

Date What happened to himself - he has cancer. E. Police officer who came out told
me this might be a repeat performance following Sunday according to his conversation with
Shelman I

Date _____

Date _____

19.August.1995

Barry Manning
Multnomah County Planning Office
2115 SE Morrison Street, Room 111
Portland, OR 97214

RECEIVED

AUG 22 1995

Multnomah County
Permits Section

Dear Mr. Manning,

Re: Case File PA 15-95

I would like to call to your attention a couple items that need to be addressed as you consider the modification of existing Condition of Approval that restricts all horse riding on premises at Mark's Stables.

I am the property owner adjacent to ^{and live on the next adjacent lot 25} the north boundary of the stables, Lot 29 Jennelynd Acres. My property has been affected by several things that have occurred at the stable including:

1) a drainage ditch has been dug from the area north and east of the arena (a parking area I presume) to my property to drain into a low spot on my property bringing manure laden/muddy water onto my property;

2) manure has been mounded out the back of the west barn for years, spilling out onto my property over the roots of trees and now appears to be killing a cedar on my side of the line (other cedars in the valley seem fine so I'm pretty sure it's not disease. One additional one to the south of the stable on stable property is also dying which may be impacted by drainage changes or ???). Manure has also has been dumped over the edge of my property into a seasonal creek channel which is just a few feet away from the main year around channel of Johnson Creek;

3) manure has been mounded in front of the arena along Jenne Lane over a drainage ditch which could be contributing to flooding on the east end of my lot 29 (it's

hard to tell if this is the only reason, but this seems a very poor practice;

4) for the past 3 years I have been subjected to trespass by stable riders across the sw corner of my property to get to the Springwater line (has not occurred this current summer since stable riders are using the Circle Avenue easement - but I am wary)

5) very noisy late night parties and traffic noises at all times of the early morning and late night (can there be some regulation of times?)

I find all of these practices a case of ^{poor} ~~bad~~ management and cannot support the change of this Condition unless I can be assured that these will be addressed. Several of these items fit the Community Service Use Approval Criteria and Applicable Comprehensive Plan Policies noted in the Pre-Application Meeting Notice.

I cannot attend this meeting due to supervisory responsibilities at work. Please keep me informed of the outcome.

Sincerely,

Bonnie Brunkow
Bonnie Brunkow

Portland, Oregon
May 1, 1995

1/23/96 Submitted
By MARK LOZIER

To Whom It Concerns;

I Frances Hyson, property owner of 5505 S.E. Jenne Lane, Portland, Oregon 97236 since Sept. 1976.

I was informed of the agreement stipulated in the contract when the property 5805 and 5807 S.E. Jenne Lane was sold to Mr. Hammersmith, it was stated "no riding permitted off the premises, to be posted and the lane maintained for additional traffic."

I OPPOSE ANY CHANGE, AND THE AGREEMENT BE UPHELD AS AGREED AT THE TIME OF PURCHASE, 1981.

I don't want to deal with anymore incidents than what I already have from Mr. Hammersmith and his customers.

(1) Destroying the abutting land extending in front of my lot/lane by widening, elevating, digging trenches to drain into my lot, damaging and tearing my fence.

(2) Spraying berry bushes adjoining my lot (would not reveal chemicals used) the dead bushes presented a fire hazard, (no fire hydrant in the area) my well (water supply) my daughter and family reside in the area he committed these acts.

(3) Damaged and tore down my fences by speeding cars that could not negotiate the curve, I caught a stable customer cutting limbs off my trees.

(4) Constantly find garbage, tires, cans, xmas trees, etc., strewn along the front of my lot and driveway, this needs to be stopped and I would like to see the lane restored to it's natural and original state, that the county of Multnomah enforce this request.

THANK YOU,



Frances Hyson
16507 S.E. Mill St.
Portland, Oregon
97233

Portland, Oregon

Nov. 25, 1995

CASE FILE CS 3-95

BARRY ADAMSON, HEARING OFFICER

Dear Mr. Adamson,

I Frances Hyson, one of the property owners involved in the decision of approving the restriction would like to more clearly give the reasons.

RESTRICTION-To apply for a special zone permit to operate a business in a residential zoned area, the buyer/seller purposed this restriction to the affected adjoining property owners for their approval that would resolve their concerns.

CONCERNS- Being subjected to, Privacy, livability, business-hours, road conditions of extra traffic, off premisis riding, discretion of riders of disturbance, abuse verbal or physical, property damage, vandalism and county to act and enforce any violations.

APPROVAL- ALL involved was aware of this agreement and May, 1981 was signed with the understanding this would be binding the duration of said business operating.

OBJECTIONS- The Hammersmiths have for years violated some of these agreements and the county has not enforced or acted upon complaints of the adjoining property owners. Now they want to REMOVE a restriction without concern for those that live there, this I feel is violating the agreement and should be DENIED.

I would like to add, for years I have been subjected to the abuse of this business and their renters, they need to be stopped, I was **shocked** when the Loziers testified of the abuse and endured continued harrassment by riders choosing to knowingly violate a restriction and impose their negative attitude, rudeness and acts upon others. This behavior no one should have to tolerate.

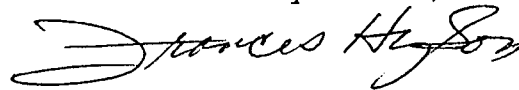
I have known the Loziers for some time and they are very good neighbors, quiet, friendly, courteous and know of no incidents or problems involving them.

The renters can choose to come and go, we owners don't they need to understnad the reason for these agreements established at the time the stables was purchased.

I want to thank you for your time and consideration to my information.

Frances Hyson
5505 S.E. Jenne Lane
Portland, Oregon
97236

Sincerely Yours,



Portland, OR
August 24, 1995

Frances Hyson
5505 SE Jenne Ln
Portland, OR 97236

To Whom It May Concern:

I am opposed to opening up Circle Avenue for the following reasons; I purchased two lots on Jenne Ln. in September of 1976 knowing the area was in the boundary of a bird refuge, and the lane would be of little traffic use. It would be perfect to retire and maintain the area for the purpose it was dedicated for.

The information in the transportation letter is not entirely correct, "155 people are in favor and 18 are opposed". Pleasant Valley group 50 people opposed opening the avenue. Centennial group 40 people also opposed the opening. I attended those meetings and Powell Butte also favors in opposing the opening of Circle Ave.

I was not contacted for any information and as an owner of two lots I feel that this would have a major impact on livability in the area. My concerns are these issues: Traffic, parking, speed signs, toilet facilities, and garbage disposal.

The stables have restriction agreements that are not being enforced by the County or the adjoining lot owners complaints including maintaining the Lane, eroding the lane onto adjacent lots by grading and destroying foliage in front of lots other

than their property. I feel that the rights of the lot owners in the area are abused by George and Mark Hammersmith, they cut and sprayed chemicals on the foliage in front of my lots.

Since the County states this is a dedicated lane, and the landowners must maintain its' maintenance. If they decide to open the lane, then my rights need to be addressed, that Jenne Lane, south, as described on the map be open to the public all the way through to Jenne Rd. I feel the renters of the stables have no say in this matter. They are entitled **only** to use the agreed 30 acres of trails and private paths of the premises of Mark stables.

I believe that when Mr. Jenne dedicated this lane to the County, he did not envision that there would be a business established in this rural area, and place the burden upon the lot owners to maintain the maintenance of the lane, and that the County would neglect to enforce the law and rights of all the property owners involved.

Thank you
Dorcas Hyson

1/23/96 Submitted
BY MARK LOZIER

chained my

JULY 31ST RAIF LOCKED GATE

AUG. 1ST COUNTY SHERIFF CAME KEVIN FERRELL

AUG. 4TH ^{6:00-7:00 P.M.} JAMES + MARK + ONE OTHER PERSON TRESPASSED ON PROPERTY

AUG. 26 SHERIFF CAME BRENT RICHIE

AUG. 28 SHERMAN TRESPASSED ON PROPERTY
SHERIFF CALLED BRENT RICHIE

Ⓜ AUG. 13 3 TRUCKS PEELLED OUT

AUG. 14 4 CARLOADS SPEEDING RAISED CLOUDS OF DUST

Joyce Bradley 661-3157

1/23/96 Submitted
By Mark Lozier

Diane Lozier
5615 SE Jenne Ln.
Portland, OR 97236
home 661-6409, work 236-1183

Lived at this location 6 years, 9 months.

- July 31, 1994 While riding on Powell Butte, boarders of Mark's Stables (7 - 10 riders) saw Joyce Bradley & myself riding & tried to excite our horses by racing their horses behind us. (Later that day 2 women from the stables drove by yelling "yee-ha").
- Upon returning from that ride, we discovered the gate to her property chained & locked. We were told later by boarders of Mark's Stables that other boarders had done it out of frustration because we were able to ride off of our property & they were not.
- August 19, 1994 When Mark Lozier asked Kathy Warren to remove some old tires/she had left on our property, she spun out her tires while we were within 2 feet of her. She also threatened to sue us if we removed them.
- August 1994 Mark & I found numerous firecrackers[?] in the front yard of our property, some had not gone off. We also found a profane note[?] at the side of our house.
- August 24, 1994 Raif rode his horse back & forth in front of our property staring in our windows with a very threatening look on his face while "whipping" our trees with his rope. /
- Completely unprovoked Shellman yelled at Mark Lozier while Mark was on our property.
- Later Shellman parked his car in front of our house & stared into our windows for a long time.
- August 27, 1994 Woman in blue Toyota pickup stared in my kitchen window & flipped me off.
- August 28, 1994 Shellman parked in front of our house again. We called the police & he was told by the officer not to park in front of our home again.
- November 1994 Several of Mark's Stables boarders (Mark Hammersmith, Kathy Warren, Anna Warren, Bev and others) trespassed onto Bonnie Brunkow's property which connects to the south of our property and dug a trench from the Brunkow property to ours to flood out our property (Bonnie Brunkow's property has standing water all winter long). When I told them to stop they continued to dig. Bev told Mark Lozier that she was going to "take the shovel to your head", Anna Warren threw mud in my face and Kathy Warren & Bev said "you thought that we messed with you before, just wait, we're really going to get you now".

STALKING

March, April 1995 Boarders dug a trench from Jenne Lane to our property, again trying to flood our property, my husband had to keep filling it in because they kept digging it out.

Raif & Herb Brown's wife started walking towards my property with a shovel, when I asked what he was doing he said he intended to dig out the trench again. After talking with him he finally left without digging.

Later that day Raif galloped his horse up to our property (rope in hand) and wanted to fight my husband, my husband told him he had no intention of fighting him.

From last summer to this day, we have constantly been harassed by these people. They constantly speed by our house leaving us in a cloud of dust, they have yelled at us while we were in our yard, they have stared into our windows, they have spun out their tires between midnight & 2:30 am in front of our house & Joyce Bradley's house several times, they have tried to provoked my husband into fighting them all because we oppose them riding off of their property. Other than protecting my property by telling them not to dig trenches to my property, I have never done anything to these people.

1/23/96 Submitted
BY MARK LOZIER

12604 SE Knapp
Portland, OR 97236
June 8, 1995

Mr. Larry Nicholas
Multnomah County
Department of Transportation
1620 SE 190th
Portland, OR 97233

RE: Protection of Johnson Creek wetland
& access to Springwater Trail

Dear Mr. Nicholas,

At the June 7 meeting of the Pleasant Valley Neighborhood Association, I learned that the wetland close to the junction of the Springwater Corridor trail between Circle Avenue and Jenny Lane (on the southeast side of Powell Butte) is being endangered by horse, bicycle and pedestrian traffic.

Instead of allowing access to the trail via the existing right of way which crosses the swale of Johnson Creek, I am requesting that you do all in your power to facilitate the construction of a bridge to eliminate the damage from increased usage.

I have driven the Jenne Road corridor regularly for the past 12 years, and am also concerned for the safety of riders and horses who use this narrow, busy road to access or leave the trail. This safety issue, as well as concern for preservation of Johnson Creek wetlands, should be addressed as soon as possible.

Apparently, the property owners in the area are in agreement that a properly constructed bridge would alleviate the damage to this sensitive area and provide safe, easy access to the Springwater Corridor trail. I respectfully urge your prompt attention to this request for County action in this matter.

Sincerely,

E. Ann Kracke

cc: Mark Lozier
Stephen McGettigan

1/23/96 Submitted by
MARK WOZIER

March 28, 1994

Irv Ewen
Multnomah County Zoning Code Enforcement Office
2115 SE Morrison
Portland, OR 97214

RECEIVED
APR 15 1994
Multnomah County
Zoning Division

Dear Mr. Ewen,

This letter is a formal complaint regarding the conditions to the expansion of the horse boarding facility named Mark's Stables located at the south end of SE Jenne Lane in Portland.

The owners of the stable are allowing boarders to ride off their property and onto Jenne Lane which violates the conditions to which they were allowed to expand their business from a 4-H facility to a horse boarding facility.

As proof of this violation we are including pictures that were taken March 27, 1994 and thereafter. We are also including a copy of the decision regarding their expansion dated May 4, 1981.

We are requesting that you take immediate action to stop them from riding off of their property.

Sincerely,

39 Neighbors

Name	Address	Phone No.
Joyce Bradley	5557 S.E. JENNE LANE	661-3157
JASON WILL	5557 SE JENNE LANE	661-3157
Diane (Lazier)	51615 SE Jenne Ln - 97236	661-6409
Daniel Schurter	16021 SE Martin	761-1598
Roy V. Miller Jr.	5465 SE Circle Ave	661-5409
Clarence S. Augur	5635 SE Jenne Rd	665-4414
Margie Lazier	5615 S.E. JENNE LN.	661-6409
Ray R. Schurter	5305 S.E. Jenne Ln.	661-4111
Mark R. Shind	5505 S.E. Jenne Ln.	661-4111
Marjorie L. Reese	5720 S.E. Jenne Rd.	665-4258
Caen Miller	5465 S.E. Circle Ave	661-5409

DATE	NAME	ADDRESS	PHONE NO.
6/11	Ruth August	5635 SE Jenne Rd	665-4414
	M. M. M.	5842 SE Jenne Rd	661-3065
	L. Peck	5830 SE Jenne Rd	661-4555
6/11	M. M. M.	5830 SE Jenne Rd.	661-4555
6/11	R. M. M.	5445 SE Jenne Rd.	661-6343
6/11	Cherie Corkrane	5415 SE Jenne Rd.	667-7974
6-11	Carolyn M. M.	5516 SE Jenne Rd	665-0520
6-11	L. M. M.	5515 SE Jenne Rd.	666-2382
6-11	Frank E. M.	5515 SE Jenne Rd	666-2382
6-11	Teri Howland	5349 SE Jenne Rd	661-3636
6-11	E. J. M.	5140 SE Jenne Rd.	665-7329
6/11	Eric Jon Andrade	" " "	" "
6-11	Polly Janis	5105 SE. Jenne Rd	667-6678
6-11	Theresa M. M.	5031 SE 174th	492-2383
6-11	S. M. M.	5006 SE 174th	665-6428
6-11	Gene Harrison	5006 SE 174th	665-6428
6-11	Darlene Pothan	4955 SE 174th	661-3521
6-11	Charles T. M.	4950 SE 174th	666-5112
6/11	L. M. M.	5140 SE Circle Ave	666-3311
6/11	Matthew D. M.	5335 SE. CIRCLE AVE.	661-4163
6/11	DAE Pinheiro	5436 SE Jenne Rd	492-2380
6/11	Janette Pinheiro	5436 SE Jenne Rd	492-2380
6/12	Janet Burgester	5926 SE Jenne Rd.	666-9674
6/12	Bruce Burgester	5926 SE Jenne Rd	666-9674
6/12	Lori Walters	6122 S.E. Jenne Rd.	665-7291

[illegible]

1/23/96 Submitted
BY MARK LOZIER

