

ANNOTATED MINUTES

Tuesday, April 12, 1994 - 9:30 AM
Multnomah County Courthouse, Room 602

BOARD BRIEFINGS

B-1 Briefing to Discuss Issues Important for Development of the 1994-1995 Budget, as Follows: **FAMILY SUPPORT NETWORK** - 9:30 AM TIME CERTAIN, 60 MINUTES REQUESTED; and **DIVERSION/JUVENILE UNITS** and **SEX OFFENDER PROGRAM** - 10:30 AM TIME CERTAIN, 60 MINUTES REQUESTED; and **BRENTWOOD-DARLINGTON** - 11:30 AM TIME CERTAIN, 30 MINUTES REQUESTED. Presented by Appropriate Department Staff.

LOLENZO POE, HOWARD KLINK, MARY LI, JAMES EDMONDSON, LEE BLOCK, HAL OGBURN, BILL MORRIS, DWAYNE McNANNAY, BILL FOGARTY, SAM GALBREATH, JOHN REDDER, NICK SAUVIE, M'LOU CHRIST, MARY ANN COLRUD, MIKE PETERSON AND MICHAEL HARRIS PRESENTATIONS AND RESPONSE TO BOARD QUESTIONS AND DISCUSSION,

Tuesday, April 12, 1994 - 1:30 PM
Multnomah County Courthouse, Room 602

PLANNING ITEMS

Vice-Chair Tanya Collier convened the meeting at 1:30 p.m., with Commissioners Sharron Kelley and Dan Saltzman present, Commissioner Gary Hansen arriving at 1:33 p.m., and Chair Beverly Stein arriving at 1:35 p.m.

P-1 **ZC 2-94/**
LD 2-94 Review the March 16, 1994 Hearings Officer Decision APPROVING, Subject to Conditions, Amendment of Sectional Zoning Map 426, Changing the Described Property from LR-10, FF to LR-5, FF, Low Density Residential District/Flood Fringe; and APPROVING, Subject to Conditions, the Requested 6-Lot Land Division in Accordance with the Provisions of MCC 11.45.080(D), for Property Located at 13817 SE MALL STREET, PORTLAND.

DECISION READ, NO APPEAL FILED, DECISION STANDS.

P-2 **ZC 3-94/**
LD 3-94 Review the March 16, 1994 Hearings Officer Decision APPROVING, Subject to Conditions, Amendment of Sectional Zoning Map 421, Changing the Described Property from MR-4, FF to LR-7, FF, Medium Density Residential/Flood Fringe to Low Density Residential District/Flood Fringe; and APPROVING, Subject to Conditions, the Requested 3-Lot Land Division in Accordance with the Provisions of MCC 11.45.080(D), for Property Located at 4531 SE 136TH AVENUE, PORTLAND.

DECISION READ, NO APPEAL FILED, DECISION STANDS.

Commissioner Gary Hansen arrived at 1:33 p.m.

- P-3 **CS 1-94/**
HV 6-94 Review the March 16, 1994 Hearings Officer Decision APPROVING, Subject to Conditions, Change in Zone Designation from LR-7 to LR-7, CS, Low Density Residential District, Community Service, to Allow for a 5,100 Square Foot Classroom Addition to Lincoln Elementary School and a Site Size Variance, for Property Located at 13200 SE LINCOLN STREET, PORTLAND.

DECISION READ, NO APPEAL FILED, DECISION STANDS.

Chair Beverly Stein arrived at 1:35 p.m.

- P-4 **FD 1-94** Review the March 1, 1994 Hearings Officer Decision DENYING a Request for Construction of a Single Family Dwelling Below the 100-Year Flood Elevation, for Property Located at 11930 SE LIEBE STREET, PORTLAND. PLEASE NOTE: THIS DECISION HAS BEEN APPEALED. PURSUANT TO RESOLUTION 94-56, THE BOARD SHALL SET A DATE AND TIME FOR THE APPEAL HEARING, (MAY 10, 1994 SUGGESTED) WHICH SHALL BE DE NOVO, PLUS ADDITIONAL EVIDENCE RELEVANT TO THE CASE, WITH TESTIMONY LIMITED TO 20 MINUTES PER SIDE.

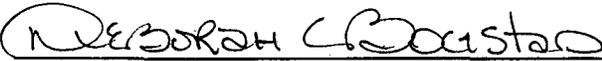
- P-5 **FD 3-94** Review the March 1, 1994 Hearings Officer Decision DENYING a Request for Construction of a Single Family Dwelling Below the 100-Year Flood Elevation, for Property Located at 11950 SE LIEBE STREET, PORTLAND. PLEASE NOTE: THIS DECISION HAS BEEN APPEALED. PURSUANT TO RESOLUTION 94-56, THE BOARD SHALL SET A DATE AND TIME FOR THE APPEAL HEARING, (MAY 10, 1994 SUGGESTED) WHICH SHALL BE DE NOVO, PLUS ADDITIONAL EVIDENCE RELEVANT TO THE CASE, WITH TESTIMONY LIMITED TO 20 MINUTES PER SIDE.

P-4 AND P-5 DECISIONS READ. PLANNER BOB HALL ADVISED NOTICE OF REVIEW APPEALS WERE FILED. UPON MOTION OF COMMISSIONER KELLEY, SECONDED BY COMMISSIONER SALTZMAN, IT WAS UNANIMOUSLY APPROVED THAT HEARINGS ON FD 1-94 AND FD 3-94 BE SCHEDULED FOR 1:30 PM, TUESDAY, MAY 10, 1994, DE NOVO, PLUS ADDITIONAL EVIDENCE RELEVANT TO THE CASE, WITH TESTIMONY LIMITED TO 20 MINUTES PER SIDE.

MR. HALL DELIVERED THE BOARD'S REQUESTED CITIZEN INFORMATION POSTER OUTLINING THE COUNTY'S LAND USE APPEAL HEARING PROCESS, TO BE POSTED IN THE BOARD ROOM DURING LAND USE HEARINGS.

There being no further business, the meeting as adjourned at 1:36 p.m.

OFFICE OF THE BOARD CLERK
for MULTNOMAH COUNTY, OREGON


Deborah L. Bogstad

Thursday, April 14, 1994 - 9:30 AM
Multnomah County Courthouse, Room 602

REGULAR MEETING

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

CONSENT CALENDAR

UPON MOTION OF COMMISSIONER KELLEY, SECONDED BY COMMISSIONER HANSEN, THE CONSENT CALENDAR (ITEMS C-1 THROUGH C-3) WAS UNANIMOUSLY APPROVED.

DEPARTMENT OF ENVIRONMENTAL SERVICES

C-1 *ORDER in the Matter of the Execution of Deed D940980 for Certain Tax Acquired Property to Stanley Goodell and Nancy Goodell*

ORDER 94-64.

SHERIFF'S OFFICE

C-2 *Ratification of Intergovernmental Agreement 800035 Between Multnomah County and the City of Wood Village, for Provision of General Law Enforcement Services and Additional Patrols within the Wood Village Corporate Limits, for the Period July 1, 1994 through June 30, 1995*

C-3 *Ratification of Intergovernmental Agreement 800075 Between Multnomah County and the City of Gresham, Wherein the Sheriff's Office will Conduct Background Checks on Purchasers of Weapons for the City of Gresham, for the Period July 1, 1994 through June 30, 1995*

REGULAR AGENDA

NON-DEPARTMENTAL

R-1 *PROCLAMATION in the Matter of Proclaiming April 1994 as "ALCOHOL AWARENESS MONTH: PREVENTING UNDERAGE DRINKING" in Multnomah County*

COMMISSIONER KELLEY MOVED AND COMMISSIONER HANSEN SECONDED, APPROVAL OF R-1. GARY SMITH

REPORTED ON THE OREGON PARTNERSHIP, A NEWLY FORMED NON-PROFIT AGENCY, PRESENTED COPIES OF THE CORPORATION'S FIRST NEWSLETTER AND INVITED THE BOARD TO THE OREGON PARTNERSHIP OPEN HOUSE AT SUITE 470, CONVENTION PLAZA BUILDING, PORTLAND, ON TUESDAY, APRIL 26, 1994, FROM 5:00-7:00 PM. MR. SMITH READ PROCLAMATION. PROCLAMATION 94-65 UNANIMOUSLY APPROVED.

DEPARTMENT OF LIBRARY SERVICES

R-2 *Budget Modification DLS 4 Requesting Authorization to Transfer \$18,000 from Supplies to Capital for the Purchase of a High Production Copy Machine for the Library Administration Building*

COMMISSIONER COLLIER MOVED AND COMMISSIONER KELLEY SECONDED, APPROVAL OF R-2. GINNIE COOPER EXPLANATION AND RESPONSE TO BOARD QUESTIONS. BUDGET MODIFICATION UNANIMOUSLY APPROVED.

R-3 *Budget Modification DLS 5 Requesting Authorization to Transfer \$12,000 from Supplies to Capital for the Purchase of a Microfilm Reader-Printer, with Coin-Op and Vendacard Unit, for the Central Library*

COMMISSIONER COLLIER MOVED AND COMMISSIONER KELLEY SECONDED, APPROVAL OF R-3. MS. COOPER EXPLANATION. BUDGET MODIFICATION UNANIMOUSLY APPROVED.

JUVENILE JUSTICE DIVISION

R-5 *Request for Approval of a Notice of Intent to Apply for a \$71,238 Grant from The Private Industry Council for a Summer Community Restoration Project*

UPON MOTION OF COMMISSIONER HANSEN, SECONDED BY COMMISSIONER KELLEY, R-5 WAS POSTPONED INDEFINITELY.

DEPARTMENT OF HEALTH

R-4 *Budget Modification MCHD 8 Requesting Authorization to Increase Various Division Appropriations by \$552,751, to Reflect Changes in Several Grants, Including Public Health Support, WIC, Family Planning, TB Outreach, Immunization, School Clinics, STD, SafeNet, AIDS Minority Outreach, and the University of Minnesota*

COMMISSIONER HANSEN MOVED AND COMMISSIONER COLLIER SECONDED, APPROVAL OF R-4. TOM FRONK EXPLANATION. BUDGET MODIFICATION UNANIMOUSLY APPROVED.

UPON MOTION OF COMMISSIONER KELLEY, SECONDED

BY COMMISSIONER SALTZMAN, CONSIDERATION OF THE FOLLOWING ITEM WAS UNANIMOUSLY APPROVED.

SHERIFF'S OFFICE

UC-1 Package Store Liquor License Change of Ownership Application Submitted by Sheriff's Office with Recommendation for Approval, for TEXACO FOOD MART, 3515 SE 122ND, PORTLAND

UPON MOTION OF COMMISSIONER KELLEY, SECONDED BY COMMISSIONER SALTZMAN, UC-1 WAS UNANIMOUSLY APPROVED.

PUBLIC COMMENT

R-6 Opportunity for Public Comment on Non-Agenda Matters. Testimony Limited to Three Minutes Per Person.

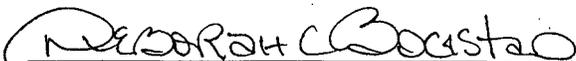
GINNIE COOPER REPORTED ON EVENTS PLANNED FOR MULTNOMAH COUNTY LIBRARY'S THIRD ANNUAL "CHECK IT OUT" WEEK, PRESENTED THE BOARD WITH T-SHIRTS, POSTERS AND EVENTS FLYERS, AND INVITED PARTICIPATION IN ACTIVITIES SCHEDULED AT THE VARIOUS BRANCHES.

JOHN CHRISTENSEN, NANCY WILSON, ARDEN BALLOU, ALBERT KIMBLEY, ROSE EDWIN, KAREN ELLIS, DENISE FUGATE, VERA ROBBINS, LARRY ROBERTS, CAROL WILLIAMS, SUSAN FRANKS AND CASSANDRA CURRY TESTIFIED IN SUPPORT OF INCREASED SHERIFF'S OFFICE FUNDING. THE BOARD EXPRESSED APPRECIATION FOR CITIZEN INPUT AND INVITED PARTICIPATION IN THE COUNTY'S SCHEDULED BUDGET HEARINGS.

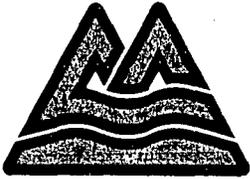
COMMISSIONER HANSEN REPORTED HE WILL ATTEND THE PORTSMOUTH NEIGHBORHOOD ASSOCIATION MEETING ON WEDNESDAY, APRIL 27, 1994, AND INVITED NORTH PORTLAND RESIDENTS TO ATTEND.

There being no further business, the meeting as adjourned at 10:20 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 S.W. FIFTH AVENUE
PORTLAND, OREGON 97204

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
CLERK'S OFFICE •	248-3277	• 248-5222

AGENDA

MEETINGS OF THE MULTNOMAH COUNTY BOARD OF COMMISSIONERS

FOR THE WEEK OF

APRIL 11, 1994 - APRIL 15, 1994

Tuesday, April 12, 1994 - 9:30 AM - Board Briefings Page 2

Tuesday, April 12, 1994 - 1:30 PM - Planning Items Page 2

Thursday, April 14, 1994 - 9:30 AM - Regular Meeting Page 3

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

- Thursday, 10:00 PM, Channel 11 for East and West side subscribers*
- Thursday, 10:00 PM, Channel 49 for Columbia Cable (Vancouver) subscribers*
- Friday, 6:00 PM, Channel 30 for Paragon Cable (Multnomah East) subscribers*
- Saturday 12:00 Noon, Channel 21 for East Portland and East County subscribers*

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

Tuesday, April 12, 1994 - 9:30 AM

Multnomah County Courthouse, Room 602

BOARD BRIEFINGS

- B-1 Briefing to Discuss Issues Important for Development of the 1994-1995 Budget, as Follows: **FAMILY SUPPORT NETWORK** - 9:30 AM TIME CERTAIN, 60 MINUTES REQUESTED; and **DIVERSION/JUVENILE UNITS** - 10:30 AM TIME CERTAIN, 60 MINUTES REQUESTED; and **BRENTWOOD-DARLINGTON** - 11:30 AM TIME CERTAIN, 30 MINUTES REQUESTED. Presented by Appropriate Department Staff.
-

Tuesday, April 12, 1994 - 1:30 PM

Multnomah County Courthouse, Room 602

PLANNING ITEMS

- P-1 **ZC 2-94/**
LD 2-94 Review the March 16, 1994 Hearings Officer Decision APPROVING, Subject to Conditions, Amendment of Sectional Zoning Map 426, Changing the Described Property from LR-10, FF to LR-5, FF, Low Density Residential District/Flood Fringe; and APPROVING, Subject to Conditions, the Requested 6-Lot Land Division in Accordance with the Provisions of MCC 11.45.080(D), for Property Located at 13817 SE MALL STREET, PORTLAND.
- P-2 **ZC 3-94/**
LD 3-94 Review the March 16, 1994 Hearings Officer Decision APPROVING, Subject to Conditions, Amendment of Sectional Zoning Map 421, Changing the Described Property from MR-4, FF to LR-7, FF, Medium Density Residential/Flood Fringe to Low Density Residential District/Flood Fringe; and APPROVING, Subject to Conditions, the Requested 3-Lot Land Division in Accordance with the Provisions of MCC 11.45.080(D), for Property Located at 4531 SE 136TH AVENUE, PORTLAND.
- P-3 **CS 1-94/**
HV 6-94 Review the March 16, 1994 Hearings Officer Decision APPROVING, Subject to Conditions, Change in Zone Designation from LR-7 to LR-7, CS, Low Density Residential District, Community Service, to Allow for a 5,100 Square Foot Classroom Addition to Lincoln Elementary School and a Site Size Variance, for Property Located at 13200 SE LINCOLN STREET, PORTLAND.
- P-4 **FD 1-94** Review the March 1, 1994 Hearings Officer Decision DENYING a Request for Construction of a Single Family Dwelling Below the

100-Year Flood Elevation, for Property Located at 11930 SE LIEBE STREET, PORTLAND. PLEASE NOTE: THIS DECISION HAS BEEN APPEALED. PURSUANT TO RESOLUTION 94-56, THE BOARD SHALL SET A DATE AND TIME FOR THE APPEAL HEARING, (MAY 10, 1994 SUGGESTED) WHICH SHALL BE DE NOVO, PLUS ADDITIONAL EVIDENCE RELEVANT TO THE CASE, WITH TESTIMONY LIMITED TO 20 MINUTES PER SIDE.

P-5 FD 3-94 Review the March 1, 1994 Hearings Officer Decision DENYING a Request for Construction of a Single Family Dwelling Below the 100-Year Flood Elevation, for Property Located at 11950 SE LIEBE STREET, PORTLAND. PLEASE NOTE: THIS DECISION HAS BEEN APPEALED. PURSUANT TO RESOLUTION 94-56, THE BOARD SHALL SET A DATE AND TIME FOR THE APPEAL HEARING, (MAY 10, 1994 SUGGESTED) WHICH SHALL BE DE NOVO, PLUS ADDITIONAL EVIDENCE RELEVANT TO THE CASE, WITH TESTIMONY LIMITED TO 20 MINUTES PER SIDE.

Thursday, April 14, 1994 - 9:30 AM

Multnomah County Courthouse, Room 602

REGULAR MEETING

CONSENT CALENDAR

DEPARTMENT OF ENVIRONMENTAL SERVICES

C-1 ORDER in the Matter of the Execution of Deed D940980 for Certain Tax Acquired Property to Stanley Goodell and Nancy Goodell

SHERIFF'S OFFICE

C-2 Ratification of Intergovernmental Agreement 800035 Between Multnomah County and the City of Wood Village, for Provision of General Law Enforcement Services and Additional Patrols within the Wood Village Corporate Limits, for the Period July 1, 1994 through June 30, 1995

C-3 Ratification of Intergovernmental Agreement 800075 Between Multnomah County and the City of Gresham, Wherein the Sheriff's Office will Conduct Background Checks on Purchasers of Weapons for the City of Gresham, for the Period July 1, 1994 through June 30, 1995

REGULAR AGENDA

NON-DEPARTMENTAL

R-1 PROCLAMATION in the Matter of Proclaiming April 1994 as "ALCOHOL AWARENESS MONTH: PREVENTING UNDERAGE DRINKING" in

Multnomah County

DEPARTMENT OF LIBRARY SERVICES

- R-2 *Budget Modification DLS 4 Requesting Authorization to Transfer \$18,000 from Supplies to Capital for the Purchase of a High Production Copy Machine for the Library Administration Building*
- R-3 *Budget Modification DLS 5 Requesting Authorization to Transfer \$12,000 from Supplies to Capital for the Purchase of a Microfilm Reader-Printer, with Coin-Op and Vendacard Unit, for the Central Library*

DEPARTMENT OF HEALTH

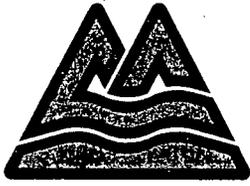
- R-4 *Budget Modification MCHD 8 Requesting Authorization to Increase Various Division Appropriations by \$552,751, to Reflect Changes in Several Grants, Including Public Health Support, WIC, Family Planning, TB Outreach, Immunization, School Clinics, STD, SafeNet, AIDS Minority Outreach, and the University of Minnesota*

JUVENILE JUSTICE DIVISION

- R-5 *Request for Approval of a Notice of Intent to Apply for a \$71,238 Grant from The Private Industry Council for a Summer Community Restoration Project*

PUBLIC COMMENT

- R-6 *Opportunity for Public Comment on Non-Agenda Matters. Testimony Limited to Three Minutes Per Person.*



MULTNOMAH COUNTY OREGON

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

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
CLERK'S OFFICE • 248-3277 • 248-5222

SUPPLEMENTAL AGENDA

Thursday, April 14, 1994 - 9:30 AM

Multnomah County Courthouse, Room 602

REGULAR BOARD MEETING

UNANIMOUS CONSENT ITEM

SHERIFF'S OFFICE

UC-1 Package Store Liquor License Change of Ownership Application Submitted by Sheriff's Office with Recommendation for Approval, for TEXACO FOOD MART, 3515 SE 122ND, PORTLAND.

MEETING DATE: April 12, 1994

AGENDA NO: P-1

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: Hearings Officer Decision

BOARD BRIEFING Date Requested: _____

Amount of Time Needed: _____

REGULAR MEETING: Date Requested: April 12, 1994

Amount of Time Needed: 2 Minutes

DEPARTMENT: DES DIVISION: Planning

CONTACT: R. Scott Pemble TELEPHONE #: 3182

BLDG/ROOM #: 412/103

PERSON(S) MAKING PRESENTATION: Planning Staff

ACTION REQUESTED:

INFORMATIONAL ONLY POLICY DIRECTION APPROVAL OTHER

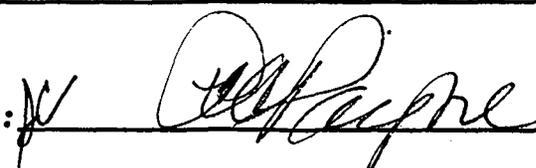
SUMMARY (Statement of rationale for action requested, personnel and fiscal/budgetary impacts, if applicable):

ZC 2-94/LD 2-94 Review the March 16, 1994 Hearings Officer Decision, approving, subject to conditions, amendment of Sectional Zoning Map #426, changing the described property from LR-10, FF to LR-5, FF, and approving, subject to conditions, requested six-lot land division, all for property located at 13817 SE Mall Street.

SIGNATURES REQUIRED:

ELECTED OFFICIAL: _____

OR

DEPARTMENT MANAGER: 

CLERK OF COUNTY BOARD
MULTNOMAH COUNTY
OREGON
1994 APR - 6 AM 8:55

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

Any Questions: Call the Office of the Board Clerk 248-3277/248-5222



MULTNOMAH COUNTY OREGON

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

DIVISION OF PLANNING AND DEVELOPMENT

Board Planning Packet Check List

File No. 2C2-94/8D2-94

Agenda Placement Sheet No. of Pages 1

Case Summary Sheet No. of Pages 1

Previously Distributed _____

Notice of Review No. of Pages _____

*(Maybe distributed at Board Meeting)

Previously Distributed _____

Decision No. of Pages 24

(Hearings Officer/Planning Commission)

Previously Distributed _____

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



CASE NAME Zone Change & Subdivision

NUMBER ZC 2-94/LD 2-94

1. Applicant Name/Address

Dishongh & Palmer, Ltd.
PO Box 347
Oregon City OR 97045

2. Action Requested by applicant Zone Change, LR-10 to LR-5
6-Lot Subdivision

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

3. Planning Staff Recommendation

Approval With Conditions

4. Planning Commission or Hearings Officer Decision:

Approval With Conditions

5. If recommendation and decision are different, why?

Same

ISSUES
(who raised them?)

None were raised. No one appeared except the owner of the subject property..



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

Decision

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

March 16, 1994

ZC 2-94, #426
LD 2-94, #426

LR-5, Urban Low Density Residential District
6-Lot Land Division

Line 1

Applicant requests amendment of Sectional Zoning Map #426, changing the subject site from LR-10/FF, Low Density Residential/Flood Fringe (min. 10,000 sq. ft. per dwelling) to LR-5/FF, Low Density Residential/Flood Fringe (min. 5,000 sq. ft. per dwelling). Applicant also requests Type I land division approval to divide the site into six lots.

Location: 13817 SE Mall Street

Legal: Tax Lot 2600, Map 1S 2E 11DD

Site Size: 1.0 Acre

Property Owners: Ernest Johnson
6504 SE 96th Avrnuce, Portland, OR 97236

Applicant: Dishongh & Palmer, Ltd.
PO Box 347, Oregon City OR 97045

Comprehensive Plan: Low Density Residential

Present Zoning: LR-10/FF, Low Density Residential District/Flood Fringe (min. lot size, 10,000 sq. ft.)

Proposed Zoning: LR-5/FF, Low Density Residential District/Flood Fringe (min. lot size, 5,000 sq. ft.)

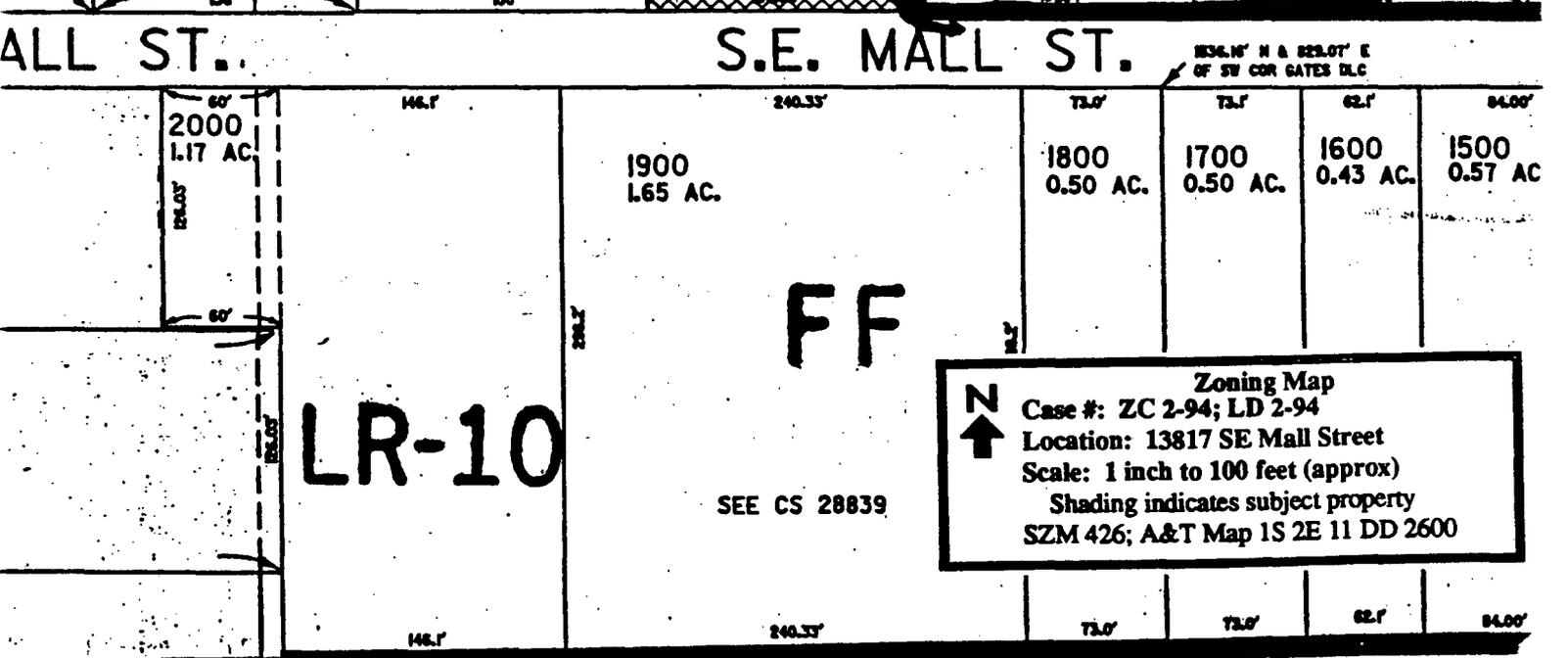
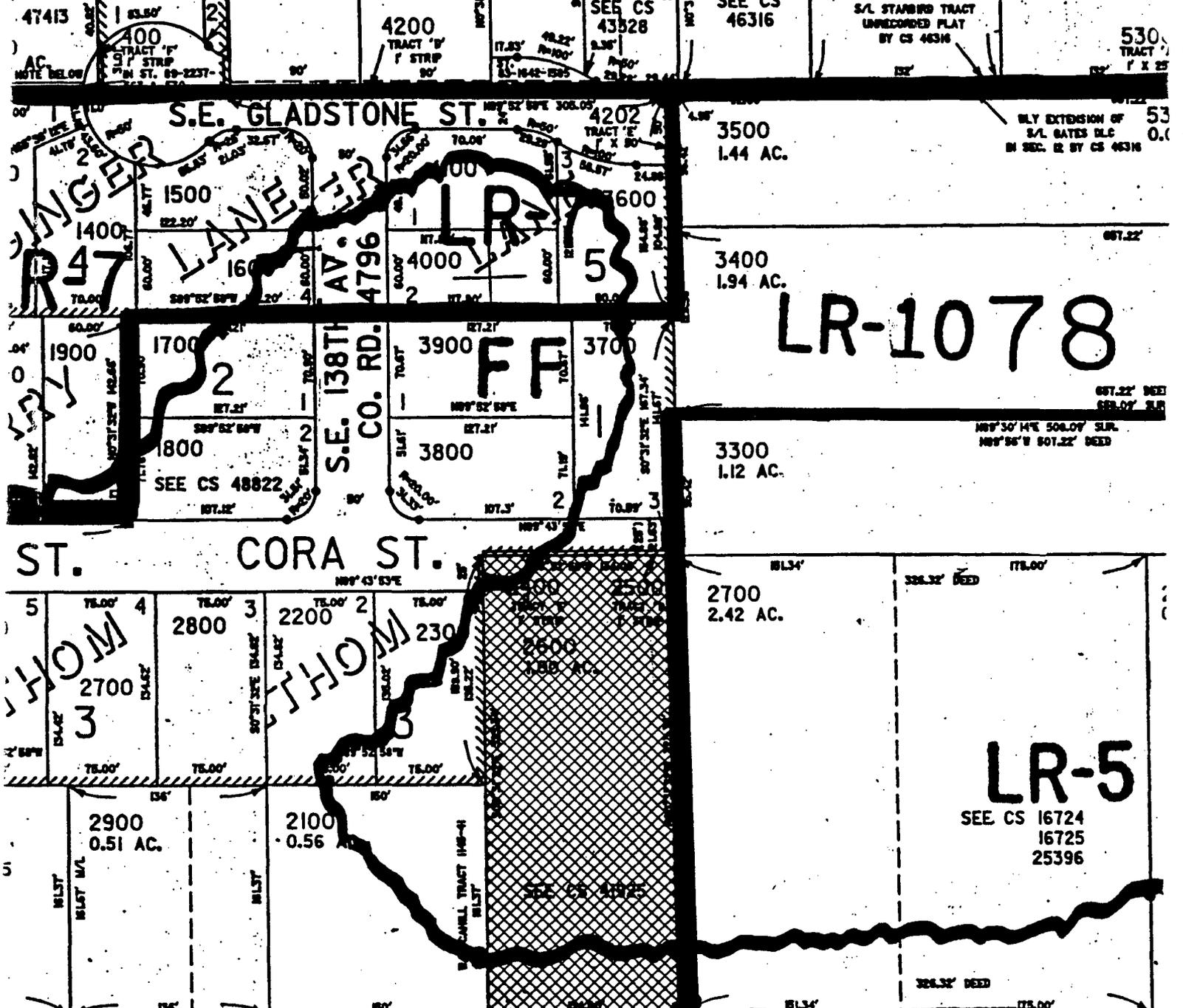
**Recommended
Hearings Officer**

Decision #1: Approve, subject to conditions, amendment of Sectional Zoning Map #426 for the site from LR-10/FF to LR-5/FF, Low Density Residential District/Flood Fringe, based on the following Findings and Conclusions.

Decision #2: Approve, subject to conditions, the requested 6-lot land division in accordance with the provisions of MCC 11.45.080(D), based on the following Findings and Conclusions.

Decision

ZC 2-94 / LD 2-94



Zoning Map

Case #: ZC 2-94; LD 2-94
 Location: 13817 SE Mall Street
 Scale: 1 inch to 100 feet (approx)
 Shading indicates subject property
 SZM 426; A&T Map 1S 2E 11 DD 2600

LR-10

FF

LR-1078

LR-5

SEE CS 28839

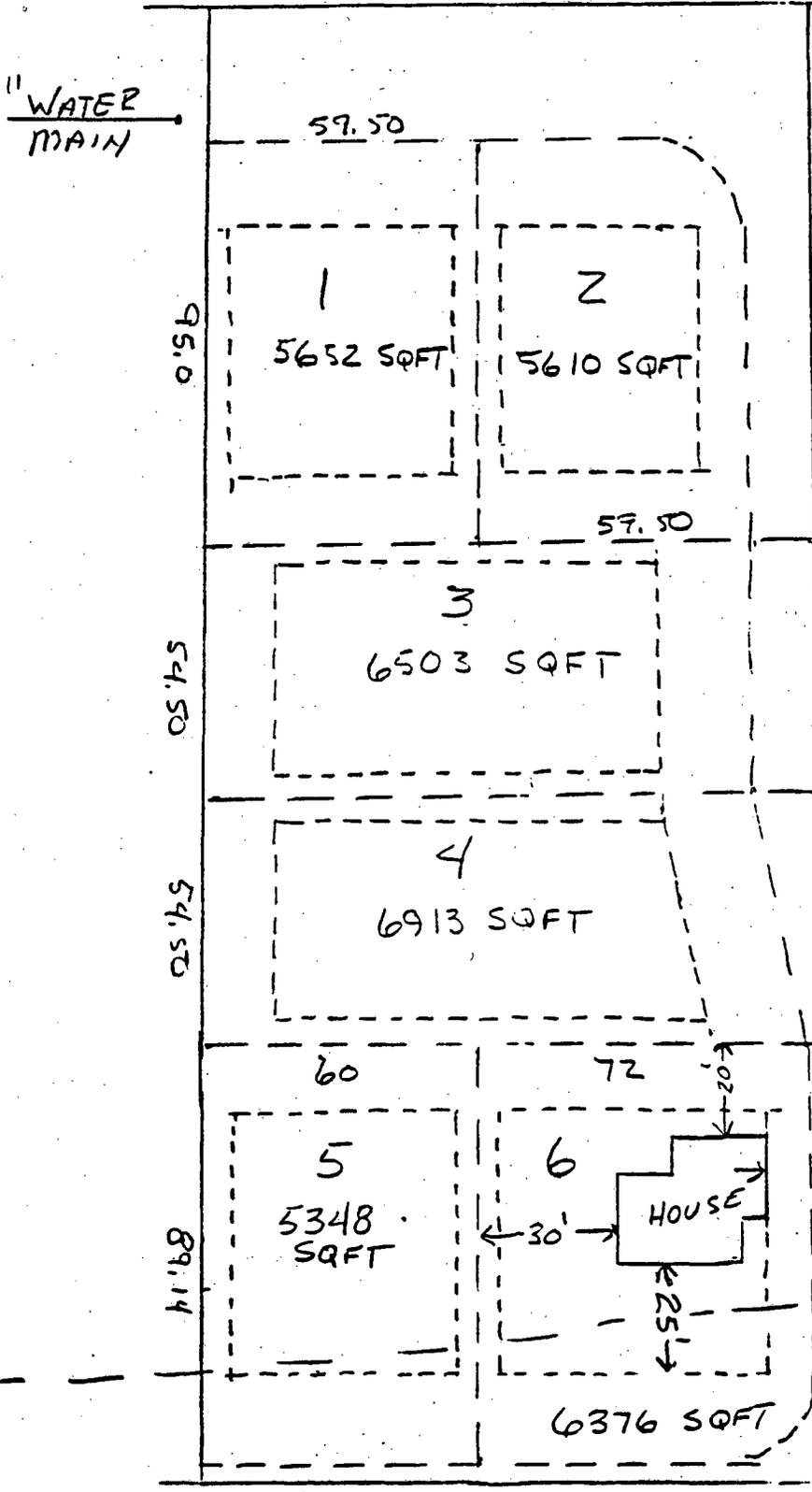
DISHONGKI & PALMER L

JAN 15, 1994

SCALE: 1" = 40'

SEWER MAIN
S.E. CORA ST 50' ROW

11" WATER MAIN



ZC 2-94/LD 2-94



PROPOSED NAME:
CORE PLACE EAST II

210' B-LINE

6" WATER MAIN

SEWER MAIN
S.E. MALL ST 40' ROW

Conditions Of Approval

1. Approval of this Tentative Plan shall expire *either* one year from the effective date of this decision *or* upon annexation of the subject site to the City of Portland, whichever comes first, unless the partition plat and other required attachments are delivered to the Planning and Development Division of the Department of Environmental Services. The partition plat shall comply with ORS Chapter 92 as amended. Please obtain applicant's and surveyor's *Instructions for Finishing a Type 1 Land Division*. Make the following revisions to the partition plat:
 - A. On the final plat, indicate the ground elevation at the southwest and southeast corners of the site, and place a note on the face of the final plat that the site is within the 100-year floodplain of Johnson Creek, as required by MCC 11.45.710(D).
 - B. Place a note on the face of the plat stating that Land Division approval neither guarantees the ability to build dwellings on any lot nor constitutes approval to build a dwelling on any lot. Proof of compliance with all applicable zoning standards is required before a building permit is approved, including but not limited to standards relating to solar access, and flood hazard areas.
2. *Before recording the final partition plat*, comply with the following Transportation Division requirements:
 - A. Dedicate 25 feet of additional right-of-way to extend the south half of SE Cora Street as shown on the Tentative Plan Map.
 - B. Dedicate 5 feet of additional right-of-way in SE Mall Street to provide a total of 25 feet from centerline abutting the subject site.
 - C. Dedicate additional right-of-way for SE 139th Avenue along the east edge of the subject site from SE Mall Street to SE Cora Street as shown on the Tentative Plan Map. The total dedicated right-of-way for 139th Avenue, consisting of that dedicated through the current land division and that dedicated through the land division approved in November of 1993 under Case File #LD 29-93 shall be 50 feet.
3. *Before the Planning Director and County Surveyor sign the final plat*, comply with the Transportation Division requirement to make the following improvements within the public right-of-way of SE Mall Street, SE Cora Street and SE 139th Avenue:

SE Mall Street Adjacent to Subject Site

- Construct a concrete curb 16 feet from centerline along the entire frontage of the subject property.
- Construct a concrete sidewalk 5 feet wide between the curb and the front property line of the subject property.

- Grade, rock and pave for a distance of 20 feet from the new curb.
- Construct storm drainage facilities as required.
- Install street lighting as required.

SE Mall Street From Subject Site To SE 136th Avenue

- Grade, rock and pave a roadway with a width of 20 feet beginning at the west edge of the roadway abutting the site and continuing west to the intersection of SE Mall Street and 136th Avenue..

SE Cora Street

- Construct a concrete curb 16 feet from centerline along the entire frontage of the subject property.
- Construct a concrete sidewalk 5 feet wide between the curb and the front property line of the subject property.
- Grade, rock and pave for a distance of 20 feet from the new curb, unless the north half of Cora Street is constructed at the same time, in which case each developer shall be responsible for paving 16 feet of the total 32-foot width of Cora Street.
- Construct storm drainage facilities as required.
- Install street lighting as required.

SE 139th Avenue:

- Construct a concrete curb 16 feet from centerline along the entire frontage of the subject property.
- Construct a concrete sidewalk 5 feet wide between the curb and the front property line of the subject property.
- Grade, rock and pave for a sufficient distance to provide a total roadway width of 32 feet after taking into account the paving required for 139th Avenue through the land division approved in November of 1993 under Case File #LD 29-93.
- Construct storm drainage facilities as required.
- Install street lighting as required.

4. Prior to issuance of building permits obtain a Floodplain Development Permit, in accordance

with MCC 11.15.6307, for any building site shown on the final plat as being within the 100-year floodplain.

5. ***Before the Planning Director and County Surveyor sign the final plat,*** provide a copy of the final plat that shows the surveyed distances between the existing buildings on Lot 6 and the north, south, west and east lines of Lot 6.
6. ***Before the Planning Director and County Surveyor sign the final plat,*** provide a copy of the final plat that shows the building setback lines (building envelopes) for each new vacant lot.

Decision Format

This Decision addresses two requested actions: first, a request for a Zone Change from LR-10, Low Density Residential District to LR-5, Low Density Residential District. The second request is for approval of a Land Division to subdivide the subject site into six lots. Following immediately below are the Findings of Fact for the Zone Change. The Conclusions for the Zone Change are on Page 16. The Findings of Fact for the Land Division request begin on Page 17. The Conclusions for the Land Division begin on Page 21.

Findings Of Fact (ZC 2-94)

NOTE: Quoted material from the applicant's submittal appears in *Italic* type. Ordinance language appears in ***Bold Italic*** type.

1. Applicant's Proposal

- A. **The Request:** The applicant proposes to subdivide land containing 43,560 square feet into 6 lots as shown on the Tentative Plan Map. The proposed land division includes right-of-way dedication and construction for the southerly one-half of SE Cora Street; right-of-way dedication and construction for the easterly seven-tenths of SE 139th Avenue; and 5 feet of right-of-way dedication and construction of the northerly one-half of SE Mall Street.

The lots range in size from 5,610 square feet to 6,913 square feet. In order to accomplish the proposed land division the applicant also requests a zone change from LR-10, Low Density Residential to LR-5, Low Density Residential District.

- B. **Background:** The site is in a superblock for which the County adopted a Future Street Plan in 1980 when it approved Land Division No. LD 3-80. That approval established SE Cora Street and SE 140th Avenue in the easterly part of the superblock. In 1992, the County approved a zone change from LR-10 to LR-5, and a six-lot subdivision, for land located north and east of the subject site (ZC 2-92/LD 16-92). In 1993, the County approved a zone change from LR-10 to LR-5, and a 19-lot subdivision, for land located immediately east of the subject site (ZC 2-93/LD 29-93). The zone change requested in the current proposal would permit development of the subject site in a manner consistent with development approved in 1992 and 1993 for the properties to the north and east. The applicant for the current zone change and land division has acquired an interest in the two adjacent sites and intends to develop them and the current land division site in 1994

2. Site Conditions and Vicinity Information: Site conditions as shown on the Tentative Plan Map are as follows:

- A. The site abuts the north side of SE Mall Street. The site consists of Tax Lot 2600, owned by Ernest Johnson. Tax Lot 2600 contains a single-family residence.

- B. **Slope:** The site has an overall slope of about 2 percent.
 - C. **Flood Plain:** Part of the site is within the 100-year flood plain of Johnson Creek, according to available topographic information and the Flood Insurance Rate Map of the Federal Emergency Management Agency (Community Panel #410179-0382-B, (revised 3/18/86). Floodplain Development Permits will be required where applicable before building permit issuance.
 - D. **Street Dedication and Improvements: (SE Mall Street):** The site abuts SE Mall Street, which is unimproved and has a total right-of-way width of 40 feet. The County Engineer has determined that in order to comply with the provisions of the Street Standards Ordinance (MCC 11.60) it will be necessary to dedicate 5 feet of additional right-of-way in Mall Street abutting the site, and construct curbs, sidewalks and pave the street to a width of 20 feet abutting the south edge of the subject site. The County Engineer and the Fire Marshal for the City of Portland have determined that it will be necessary to also pave Mall Street to a width of 20 feet from the west edge of the land division site to the intersection of SE 136th Avenue and Mall Street. The dedication and improvements are conditions of approval.
 - E. **Street Dedication and Improvements: (SE Cora Street):** The site abuts a portion of SE Cora Street that has already been improved to County standards as part of the Ginger Lane subdivision. The County Engineer has determined that in order to comply with the provisions of the Street Standards Ordinance (MCC 11.60) it will be necessary for the owner to dedicate 25 feet of right-of-way for the south half of Cora Street abutting the site, and construct curbs, sidewalks and pave the street to a width of 20 feet abutting the north edge of the site. The dedication and improvements are conditions of approval.
 - F. **Street Dedication and Improvements: (SE 139th Avenue):** The November 1993 subdivision approval for land east of the subject site required dedication and improvement of part of SE 139th Avenue between Mall and Cora Street. The County Engineer has determined that in order to comply with the provisions of the Street Standards Ordinance (MCC 11.60) it will be necessary for the owner to dedicate the remaining right-of-way necessary for a total of 50 feet required for a Local Residential Street. Also required will be paving and construction of curbs and sidewalks on the west edge of the right-of-way. The dedication and improvements are conditions of approval.
3. **Zone Change Considerations [MCC 11.15.8230(D)]:**
- A. The existing LR-10 zoning requires a minimum lot area of 10,000 square feet for a residence. The requested LR-5 zoning has a minimum lot size of 5,000 square feet and would make possible the division of the site into the 19 lots shown on the Tentative Plan Map.
 - B. Under MCC 11.15.8230 (D) lists approval criteria for a zone change. The burden of

proof is on the applicant to demonstrate that:

- (1) **Granting the request is in the public interest;** [MCC 11.15.8230 (D)(1)]
- (2) **There is a public need for the requested change and that need will be best served by changing the classification of the property in question as compared with other property;** [MCC 11.15.8230 (D)(2)]
- (3) **The proposed action fully accords with the applicable elements of the Comprehensive Plan.** [MCC 11.15.8230 (D)(1)]

4. Response to Zone Change Approval Criteria

A. Public Interest [MCC 11.15.8230 (D)(1)]

Applicant's Response: *"This subject property seems to be a perfect candidate to rezone to maximum land use and be re-developed under the goals of the community plan or the East County Urban Infill Guideline. The subject site is located in the Powellhurst Community Plan area. The Powellhurst Community Plan map designates the property as low density residential which includes single family development on lots of at least 5,000 square feet in area. The uses and density permitted in the requested LR-5 zone are consistent with the plan designation.*

Powellhurst Community Plan Policy #24 indicates that it is in the public interest to allow LR-5 residential development in this area. The Plan refers to this area as "infill" or "residential development area". Policy #24 also states that "detached dwellings will be allowed as an outright use in residential development areas. The minimum required lot size per unit must be 5,000 square feet." The proposed zone change would allow division of the site into one (1) 6,376 sq. ft., one (1) 5,348 sq. ft., one (1) 6,913 sq. ft., one (1) 6,503 sq. ft., one (1) 5,610 sq. ft. and one (1) 5,652 sq. ft. lots for a total of 6 lots."

Staff Comment: Staff concurs with the applicant's statements. The zone change satisfies MCC 11.15.8230 (D)(1).

B. Public Need [MCC 11.15.8230 (D)(2)]

Applicant's Response: *"This requested zone change would allow more residential lots than the present LR-10 zoning. This will create more affordable housing sites for the public. Policy No. 21/ Housing Choice of the County Comprehensive Framework Plan directs the County to provide for "... an adequate number of housing units at price ranges and rent levels commensurate with the financial capabilities of Oregon and the region's households, and to allow for flexibility in housing location, type and density." The County report, "Housing", as well as recent housing market statistics indicate that there is a substantial unmet demand for affordable housing. The smaller lot size that the LR 5 zone designation provides will help contribute to affordabili-*

ty.

The approval of this zone change and subdivision would allow the dedication of 25' x 134' for SE Cora Street and 25' x 323' for SE 139th street, thereby starting to initiate the future street plan."

Staff Comment: Staff concurs with the applicant's statements. Approval of the proposal will facilitate completion of a significant extension of Cora Street as well as the completion of 139th Avenue and the widening of Mall Street. The proposed zone change satisfies MCC 11.15.8230 (D)(2)

C. Applicable Elements of the Comprehensive Plan

- (1) **Statewide Goals and Regional Plan:** The Multnomah County Comprehensive Plan has been found to be in compliance with Statewide Goals and the Regional Plan by the State Land Conservation and Development Commission. To the extent that the proposal satisfies the applicable policies of the Comprehensive Plan, the proposal is also consistent with statewide goals and the regional plan.
- (2) **Applicable Comprehensive Plan Policies:** The following Comprehensive Plan Policies are applicable to the proposal.

(a) **No. 2 - Off-Site Improvements**

Applicant's Response: *"There is no anticipated negative impact on surrounding properties related to development of these parcels. Erosion is not a significant problem in this relatively flat terrain. Air, noise and water pollution are not likely to be significant factors (see Policy No. 13). Although there will be additional traffic from the addition of these new homes, the lots are of a size that allows off-street parking for at least two vehicles. Furthermore additional streets will be developed to help improve traffic circulation. Aesthetically, new homes in the this area could certainly improve the visual aspect. Unfortunately, visual blight is a problem on the south side of SE Mall st on Tax Lot 1500. No safety hazards are expected to arise as a result of this development."*

Staff Comment: The County Engineer and the Fire Marshal for the Portland Fire Bureau have determined that it will be necessary to provide a 20-foot wide paved roadway for SE Mall Street from the west edge of the subject site to SE 136th Avenue, in addition to the other street improvements on and adjacent to the site. The off-site improvement of Mall Street is a condition of approval and is necessary in to provide adequate circulation for traffic generated by the anticipated

development on the subject site and on adjacent land which have received preliminary plat (tentative plan) approval. Subject to the stated condition, the proposal satisfies Policy 2.

(b) **No. 6A - Growth Management (Powellhurst Plan)**

The site is within the area covered by the Powellhurst Community Plan. The Powellhurst Community Plan is part of the Multnomah County Comprehensive Framework Plan and constitutes an official element of that plan. Powellhurst Community Plan Policy 6A addresses Growth Management and states that:

It is the policy of the County that the area from Boise Street to the Portland Traction Company Line and from S. E. 103rd to S. E. 142nd Avenue will be designated a growth management area in which the following standards will apply:

A. *The adopted Community Plan map is the long term plan for the area.*

B. *The zoning categories will not be changed at this time to implement the plan. Zone changes will be granted only after an individual application and hearing or as a result of a more detailed County study of the area's problems and the development of solutions to those problems.*

C. *In granting zone changes the approval authority shall consider the following:*

1. *Whether a sanitation permit for sub-surface sewage disposal will be approved.*

Applicant's Response: "Subsurface sewage disposal system are not an issue because sewer is installed and in use in SE Mall ST. and SE Cora St. There is ample supply for the subject parcels."

Staff Comment: Staff concurs with the applicant's statement. Mid-County Sewer Project staff has verified that public sewer is available. No subsurface sewage disposal is necessary.

2. *The impact of the development on the flooding problem along Johnson Creek.*

3. *The impact of the development on localized flooding and drainage*

Applicant's Response (Items 2 and 3): None submitted

Staff Comment: Parts of Lots 5 and 6 are in the 100-year flood plain of Johnson Creek as shown on the Flood Insurance Rate Map of the Federal Emergency Management Agency [(Community Panel #410179-0382-B, (rev. 3/18/86)]. That map indicates the base flood elevation as about 210 feet in the vicinity of the site. According to County topographic information, ground elevations on the affected lots range from 206 to 212 feet. The Flood Hazard standards in the County Zoning Ordinance require the finished floor of a residence to be one foot above the base flood elevation [MCC 11.15.6315(B)]. Obtaining of a Floodplain Development Permit is required by MCC 11.15.6307. All runoff created by development of the property will be required to be disposed of on-site without running onto adjacent streets. Subject to these conditions, there will be no impact on either localized flooding, or flooding along Johnson Creek.

(c) **No. 13 - Air and Water Quality and Noise Levels**

Applicant's Response: *"The development of single family homes in an LR-5 configuration should have no significant impact on air pollution. Sewer service is currently available from Mall St. and Cora St. which will adequately serve all 6 lots. Separate drywells would be installed for each lot to handle other (rainwater) drainage. Normal sounds of household activities should not pose a significant noise impact."*

Staff Comment: By virtue of its residential land use designation, the subject site is in a noise-sensitive area, but is not a noise generator. For this reason and those stated by the applicant, the proposal satisfies Policy 13.

(d) **No. 14 - Development Limitations**

Applicant's Response: "The site is outside the 100 year flood zone. A portion of lots #5 and #6 are within the B designation of the Flood Fringe. Lot #6 has a existing home on it. The new home on Lot #5 will have to be constructed a minimum of one foot above the 210 feet above sea level. The site has a slight downhill slope toward the south and is in the "under 8% slope" area on the Powellhurst Community Plan Slope Map. Surface run-off would be handled by appropriate drywells installed with each dwelling unit, commensurate with the square footage of ground covered. Erosion dose not present a problem in this location.

Staff Comment: As previously stated, parts of Lots 5 and 6 are within

the 100-year flood plain of Johnson Creek as shown on Flood Insurance Rate Map of the Federal Emergency Management Agency. Compliance with the floodplain development permit standards in the County Zoning Ordinance will mitigate any adverse impact that might otherwise occur due to the the site's proximity to the floodplain. Subject to compliance with the floodplain development permit standards, the proposal satisfies Policy 14.

(e) **No. 16 - Natural Resources**

Applicant's Response: *"Only a small part of Lot # 5 and Lot #6 of the subject parcel is within B designation of the Flood Fringe of Johnson Creek. There is no standing water, or minable sand or gravel deposits known on the site."*

Staff Comment: Staff concurs with the applicant's statements. The proposal satisfied Policy 16.

(f) **No. 20 - Arrangement of Land Uses:**

Applicant's Response: *"A zone change from LR-10 to LR-5 is consistent with the County's policy to support higher densities of residential dwellings within the urban areas in order to preserve the natural reserves of outlying areas. The proposed subdivision is with 1000 feet of the western edge of Powell Butte County Park with nine miles of hiking, biking and horseback riding trails. It abuts the eastern edge of an established family neighborhood along SE Cora St. and the Ginger Lane tract."*

Staff Comment: Staff concurs with the applicant's statements. The proposal satisfied Policy 20.

(g) **No. 21 - Housing Choice:**

Applicant's Response: *"Development under this proposal directly supports Policy No. 21 in the following ways:*

"A. Rezoning of this parcel from LR 10 to LR 5 would aid in reducing the land cost of a single family dwellings by approximately 40 %, based on selling price of \$22,000 per lot for a LR-5 and \$38,000 per lot for a LR 10. This would allow development of homes in an affordable price range for all income levels.

B. Additional affordable housing would be available for young families, single adults and childless couples in a suburban neighborhood area. This would provide options for those who no longer have

the desire or capacity to maintain larger lots.

C. Some of the lots remain slightly larger in size, thus allowing for some diversity, and provides a mix of housing choicest. This would provide a choice for larger families or those who chooses to grow their own food, or prefer more space.

D. Drainage is proposed that on-site drywells be incorporated for each dwelling consistent with the surface area of ground covered.

E. Energy is supplied by PGE and Northwest Natural Gas and Communication is provided by U.S. West Communications."

Staff Comment: Staff concurs with the applicant's statements. The proposal satisfied Policy 21.

(h) **No. 22 - Energy Conservation:**

Applicant's Response: *"A. This proposal will fully develop a parcel within the county's urban area. Lots # 1, #2, #3 and #4 are oriented in a North-South direction with depths of 90+ feet. Lots #3 and #4 have a East-West orientation that is well within 30 degrees, thus meeting the applicable guidelines for solar efficiency.*

B. The subject parcel is located near mass transit systems such as TRI-MET bus lines on S.E. 136th and S.E. Powell/Highway 26, I-205 and MAX light rail between downtown and Gresham areas."

Staff Comment: Staff concurs with the applicant's statements. The proposal satisfies Policy 22.

(t) **No. 24 - Housing Location**

Applicant's Response: *"A. Scale: The proposed site development at LR-5 would meet the scale standards of a Minor Residential Project, with an expected population increase of 15 at three persons average dwelling unit added. The impact on the surrounding area and its support system is expected to be minimal.*

B. Locational Criteria: The configuration of the lots facing on both SE Cora ST., SE 139th and SE Mall ST. will provide for plenty of off-street parking. The layout of the lot suggests negligible impact on traffic congestion and turning movements. All lots will have direct access to a public street.

C. Site Characteristics: The site is of a size and shape which can rea-

sonably accommodate the proposed and future allowable uses in a manner which is consistent with user convenience and energy conservation. The average site topography is significantly less than 10% grade.

D. Impact On Adjacent Lots: The proposed subdivision is consistent with recent development in the general area. The parcel adjacent to the north and east, which will do the development of SE Cora St extension, both are zoned LR 5. This IS the last remaining parcel on SE. Cora St. from 136th to 140th that IS not developed."

Staff Comment: Staff concurs with the applicant's statements. The proposal satisfied Policy 24.

(j) **No. 35, Public Transportation**

Applicant's Response: *"The proposed development supports the County's transportation criteria by increasing urban density in area already well served by public transportation."*

Staff Comment: Tri-Met Line #17 provides service to downtown Portland on SE 136th Avenue. The proposal satisfies Policy 35.

(k) **No. 36, Transportation System Development Requirements:**

Applicant's Response: *"A. Additional 5 feet of right of way is to be dedicated on SE Mall St. to be consistent with future development. Also an additional 25 feet of right of way is to be dedicated so SE Cora St. can be developed to a full 50 foot right of way. Land on the east boundary will also be dedicated for the development of 139th street to a full 50 foot right of way.*

B. Depth of the proposed lots allows for plenty of offstreet parking on each site. This would be a minimum of two spaces per dwelling in addition to the covered parking.

C. Bus service is located at the intersection of SE 136th and SE Mall and SE Cora Streets. No further changes are indicated.

D. Sidewalk would be provided along the south side of Cora street, also along the north side of Mall street and the east side of 139th from Cora to Mall."

Staff Comment: The County Engineer has determined that right-of-way dedication and improvements for Cora and Mall Streets and 139th Avenue adjacent to the site are necessary in order for the pro-

posal to comply with the provisions of the Street Standards Ordinance (MCC 11.60). The dedications are detailed in Condition 2 above. The improvements are detailed in Condition 3 above, and include curbs, sidewalks, paving, storm drains and street lighting. Additionally, the County Engineer and the Portland Fire Marshall will require pavement of Mall Street to a width of 20 feet between the west edge of the subject site and SE 136th Avenue.

- (1) **No. 37 - Utilities** This policy requires a finding that the water, sanitation, drainage and communication facilities are available as follows:

Water And Disposal System

- A. The proposed use can be connected to a public sewer and water system, both or which have adequate capacity; or**
- B. The proposed use can be connected to a public water system, and the Oregon Department of Environmental Quality (DEQ) will approve a subsurface sewage disposal system on the site; or**
- C. There is an adequate private water system, and the DEQ will approve a subsurface sewage disposal system on the site; or**
- D. There is an adequate private water system, and a public sewer with adequate capacity.**

Drainage

- E. There is adequate capacity in the storm water system to handle the run-off; or**
- F. The water run-off can be handled on the site or adequate provisions can be made; and**
- G. The run-off from the site will not adversely affect the water quality in adjacent streams, ponds, lakes or alter the drainage on adjoining lands.**

Energy and Communications

- H. There is an adequate energy supply to handle the needs of the proposal and the development level projected by the plan; and**
- I. Communications facilities are available.**

Water and Sanitation:

Applicant's Response: *"The subject property can, in entirety, be serviced by the existing main sewer trunk lines in SE Cora and SE Mall street of the Mid-County Sewer Project. Powell Valley Water District provides water service to the subject parcel. An existing 8" water main is located in SE Mall this will serve the homes located on Mall street. A 6" water main is also located in SE Cora street. It ends at the west corner of the property, this will require a extension of the water main to service the proposed LR-5 subdivision."*

Staff Comment: The Powell Valley Road Water District has confirmed that public water service is available to the site. The office of the Mid County Sewer Project has confirmed that public sewer is available to the site. The proposal satisfies Item A of Policy 37.

Drainage:

Applicant's Response: *"There is no storm drainage system in the area. Storm drainage is provided by the use of drywells for street drainage as well as drainage for the homes."*

Staff Comment: The County Engineer will require construction of appropriate storm drainage facilities in conjunction with required street improvements. The proposal satisfies Item E and F.

Energy and Communication: Portland General Electric provides electric power and US West provides telephone service. The proposal satisfies Items *H* and *I* above.

(m) **No. 38 - Facilities**

Staff Comment: The property is located in the David Douglas School District, which has states that there is "some crowding at the elementary level" but not at the middle and high school level. The Portland Fire Bureau provides fire protection and has confirmed that there is adequate water pressure and flow for fire fighting purposes. The Multnomah County Sheriff's Office provides police protection and has stated that there is an adequate level of police service available for the area. The proposal satisfies Policy 38.

(n) **Policy 40 - Development Requirements:** This policy requires a finding that:

A. *Pedestrian and bicycle path connections to parks open space areas and community facilities will be dedicated when 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.***

Staff Comment: The subject site lies outside the Bicycle Corridor Capital Improvements Area. Policy 40 is not applicable.

Conclusions (ZC 2-94)

1. Findings 4.A through 4.C demonstrate that the proposed zone change meets the general zone change Approval Criteria of the Zoning Ordinance as stated in MCC 11.15.8230 (D).
2. Finding 4.C(2)(b) demonstrate that the proposed zone change meets the special Powellhurst Community Plan zone change approval criteria stated in Powellhurst Plan Policy 6.A.

Findings Of Fact (LD 2-94)

1. **Applicant's Proposal:** See Finding 1 for ZC 2-94.
2. **Site Conditions and Vicinity Information:** See Finding 2 for ZC 2-94.
3. **Land Division Ordinance Considerations (MCC 11.45)**
 - A. The proposed land division is classified as a Type 1 because it is "[A]. . . *associated with an application affecting the same property for any action proceeding requiring a public hearing . . .*" [MCC 11.45.080(D)]. The proposed land division is associated with an application to change the zone of the subject site from LR-10 to LR-5. This Decision addresses the zone change application under Decision # 1 (ZC 2-94).
 - B. MCC 11.45.230 lists the approval criteria for a Type 1 Land Division. The approval authority must find that:
 - (1) *The Tentative Plan is in accordance with the applicable elements of the Comprehensive Plan;*
 - (2) *Approval will permit development of the remainder of the property under the same ownership, if any, or of adjoining land or of access thereto, in accordance with this and other applicable ordinances; [MCC 11.45.230(B)]*
 - (3) *The Tentative Plan or Future Street Plan complies with the applicable provisions, including the purposes and intent of this Chapter; [MCC 11.45.230(C)]*
 - (4) *The Tentative Plan or Future Street Plan complies with the Zoning Ordinance or a proposed change thereto associated with the Tentative Plan proposal; [MCC 11.45.230(D)]*
 - (5) *If a subdivision, the proposed name has been approved by the County Surveyor and does not use a word which is the same as, similar to or pronounced the same as a word in the name of any other subdivision in Multnomah County, except for the words "Town", "City", "Place", "Court", "Addition" or similar words, unless the land platted is contiguous to and platted by the same applicant that platted the subdivision bearing that name and the block numbers continue those of the plat of the same name last filed; [MCC 11.45.230(E)]*
 - (6) *The streets are laid out and designed so as to conform, within the limits of MCC 11.45.490 and 11.45.500 and the Street Standards Ordinance, to the plats of subdivisions and maps of major partitions already approved for adjoining property unless the approval authority determines it is in the public interest to modify the street pattern; [MCC 11.45.230(F)] and*

- (7) *Streets held for private use are laid out and designed so as to conform with MCC 11.45.490 and 11.45.500 and the Street Standards Ordinance and are clearly indicated on the Tentative Plan and all reservations or restrictions relating to such private streets, including ownership, are set forth thereon. [MCC 11.45.230(G)]*
- (8) *Approval will permit development to be safe from flooding and known flood hazards. Public utilities and water supply systems shall be designed and located so as to minimize or prevent infiltration of flood water into the systems. Sanitary sewer systems shall be designed and located to minimize or prevent:*
 - (a) *The infiltration of floodwater into the system; and*
 - (b) *The discharge of matter from the system into flood waters [MCC 11.45.230(H)]*

4. **Response to Type 1 Land Division Approval Criteria:** In this section, the applicant's responses to the approval criteria are in *italic type*. Staff discussion of applicant responses appear in paragraphs titled **Staff Comment**.

A. Applicable Elements of the Comprehensive Plan

See Finding 4.C for ZC 2-94.

B. Development of Site or Adjoining Land [MCC 11.45.230(B)]:

Applicant's Response: *"With approval of this zone change and development proposal, this parcel will be developed in its entirety. The adjacent parcel to the north and to the east can be developed fully, but with some lamination to the street improvements, and water without this parcel being rezoned and subdivided, the impact should be definitely positive. The zone change from LR-10 to LR-5 is consistent also with the current zoning of the parcel adjacent to the north and east."*

Staff Comment: Pending approval of the proposed zone change, approval of the land division will increase the opportunity for development of the site in accordance with the Comprehensive Plan and the LR-5 zoning. The proposed land division extends the south half of SE Cora Street across about north edge of the site, improves the north half of Mall Street along the south edge of the site, and completes the improvement of SE 139th Avenue between Cora and Mall Streets (after taking into account the improvement of 139th that was required pursuant to LD 29-93). The Cora Street extension helps carry out the adopted Future Street Plan as does construction of 139th Avenue. For these reasons and for those stated by the applicant, the proposed land division satisfies MCC 11.45.230(B)

C. **Applicable Provisions of Land Division Ordinance [MCC 11.45.230(C)]**

Staff Comment:

- (1) MCC 11.45.015 states that the Land Division Ordinance. . . ***"is adopted for the purposes of protecting property values, furthering the health, safety and general welfare of the people of Multnomah County, implementing the Statewide Planning Goals and the Comprehensive Plan adopted under Oregon Revised Statutes, Chapters 197 and 215, and providing classifications and uniform standards for the division of land and the installation of related improvements in the unincorporated area of Multnomah County."*** The proposed land division satisfies the purpose of the Land Division Ordinance for the following reasons:
- (a) The size and shape of the proposed lots meet the area and dimensional requirements of the requested LR-5 zoning designation. As designed, the lots are adequate to accommodate single-family residences that satisfy yard setback, height, lot coverage and solar access requirements in the LR-5 zone without the need for variances from those setback, height, lot coverage and solar access requirements. Under these circumstances, overcrowding will not occur.
 - (b) The finding for Plan Policies 37 and 38 address water supply and sewage disposal, and education, fire protection and police protection, respectively. For the reasons stated in those findings, the proposal furthers the health, safety, and general welfare of the people of Multnomah County.
 - (c) The proposed land division complies with the applicable elements of the Comprehensive Plan. The State Land Conservation and Development Commission has found the Comprehensive Plan to be in compliance with Statewide Planning Goals.
 - (d) The proposal meets the purpose of ***"providing classifications and uniform standards for the division of land and the installation of related improvements"*** because the proposal is classified as a Type 1 Land Division and meets the approval criteria for Type 1 Land Divisions for the reasons stated in these findings. The conditions of approval assure the installation of appropriate improvements in conjunction with the proposed land division.
- (2) MCC 11.45.020 states that the intent of the Land Division Ordinance is to. . . ***"minimize street congestion, secure safety from fire, flood, geologic hazards, pollution and other dangers, provide for adequate light and air, prevent the overcrowding of land and facilitate adequate provisions for transportation, water supply, sewage disposal, drainage, education, recreation***

and other public services and facilities.”

- (a) The proposal minimizes street congestion by requiring right-of-way dedication and improvements for Cora and Mall Streets and 139th Avenue adjacent to the subject site, and by improving Mall Street from the westerly edge of the site to SE 136th Avenue.
- (b) The findings for Plan Policies 37, 14 and 13 address fire protection, flood and geologic hazards, and pollution, respectively. For the reasons stated in those findings, the proposal would secure safety from fire, flood, geologic hazard, and pollution.
- (c) The proposal meets the area and dimensional standards of the requested LR-5 zoning district as explained in Finding 4.D below. Residential development on all newly created lots will be required to comply with applicable LR-5 setback, height, lot coverage and solar access requirements. In meeting those requirements, new development will provide for adequate light and air and prevents the overcrowding of land.
- (d) The finding for Plan Policies 35 and 36 address streets and public transportation. The finding for Policies 37, 14 and 38 address water supply and sewage disposal, storm drainage, and education, fire protection and police service. For the reasons stated in those findings, the proposed land division facilitates adequate provision for public transportation, water supply, sewage disposal, drainage, education, and other public services and facilities.

D. Zoning Compliance [MCC 11.45.390(D)]:

Staff Comment:

- (1) Subject to approval of ZC 2-94, the site will be zoned LR-5, Urban Low Density Residential District.
- (2) The following area and dimensional standards apply per MCC 11.15.2634:
 - (a) The minimum lot size for a single family dwelling shall be 5,000 square feet. As shown on the Tentative Plan Map, all proposed lots meet or exceed this requirement.
 - (b) The minimum lot width at the building line shall be 45 feet. As shown on the Tentative Plan Map, all proposed lots meet or exceed this requirement.
 - (c) The minimum yard setbacks shall be 20 feet front, 5 feet side, and 15 feet rear. The Tentative Plan Map indicates that the existing house on

Lot 6 meets or exceeds all setback requirements. Residential development on Lots 1-5 will be required to meet all minimum yard setbacks.

- (d) The maximum lot coverage shall be 50 percent. Single-family residential development on Lots 1-5 will be required not to exceed the maximum allowed coverage. The lot coverage for existing house on Lot 6 is less than 50 percent.
- (e) The proposed land division satisfies the solar access provisions of the Zoning Ordinance even though two of the proposed lots do not have north-south dimensions of 90 feet and none of the proposed lots do not have front lot lines that are within 30 degrees of a true east-west orientation as required by MCC 11.15.6815(A). Lots 3 and 4 do not meet the basic design standard of MCC 11.15.6815(A) because the road pattern dictated for the area by the Future Street Plan prevents the lots from being oriented for solar access. Because SE 139th Avenue runs in a north-south orientation, there is no way that Lots 3 and 4 could have front property lines that are within 30 degrees of a true east-west orientation. Therefore, pursuant to MCC 11.15.6815(A)(3), the percentage of lots that must comply with MCC 11.15.6815 is reduced from 80 percent to 67.9 percent.

- E. **Subdivision Name [MCC 11.45.230(E)]:** The County Surveyor will ascertain that the plat name conforms with applicable statutes and ordinances, including MCC 11.45.230(E).
- F. **Street Layout [MCC 11.45.230(F)]:** The construction of south half of SE Cora Street is consistent with the adopted Future Street Plan, as are proposed improvements to Mall Street and 139th Avenue. Therefore, the proposed land division satisfies MCC 11.45.230(F),
- G. **Private Streets [MCC 11.45.230(G)]:** The proposed land division does not include any new private streets. The new lots will be served by driveways connecting to 139th Avenue and Mall and Cora Streets. Therefore, MCC 11.45.230(F) is not applicable.
- H. **Flooding and Flood Hazards [MCC 11.45.230(H)]:** For the reasons stated in Finding 4C(2)(d) and subject to the obtaining of Floodplain Development Permits as needed, the proposed land division satisfies MCC 11.45.230(H).

Conclusions (LD 2-94)

1. The land division satisfies applicable elements of the Comprehensive Plan.
2. The proposed land division satisfies the approval criteria for Type 1 land divisions.
3. Subject to Decision #1, the proposed land division complies with the Zoning Ordinance.

IN THE MATTER OF: ZC 2-94 / LD 2-94

Signed by the Hearings Officer: March 16, 1994
Decision Mailed to Parties: March 22, 1994
Decision Submitted to Board Clerk: March 22, 1994
Last Day to Appeal Decision: 4:30 p.m., April 1, 1994

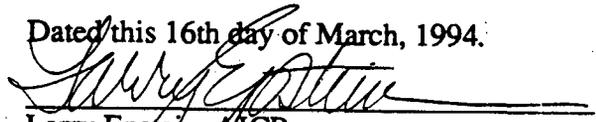
Appeal to Board of County Commissioners:

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

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

Hearings Officer decisions are typically reported to the Board for review on the first Tuesday following the ten day appeal period. The Board meets at 1:30 p.m. in Room 602 of the Multnomah County Courthouse. For further information call the Multnomah County Planning and Development Division at 248-3043.

Dated this 16th day of March, 1994.


Larry Epstein, AICP
Multnomah County Hearings Officer

MEETING DATE: April 12, 1994

AGENDA NO: P-2

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: Hearings Officer Decision

BOARD BRIEFING Date Requested: _____

Amount of Time Needed: _____

REGULAR MEETING: Date Requested: April 12, 1994

Amount of Time Needed: 2 Minutes

DEPARTMENT: DES DIVISION: Planning

CONTACT: R. Scott Pemble TELEPHONE #: 3182

BLDG/ROOM #: 412/103

PERSON(S) MAKING PRESENTATION: Planning Staff

ACTION REQUESTED:

INFORMATIONAL ONLY POLICY DIRECTION APPROVAL OTHER

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

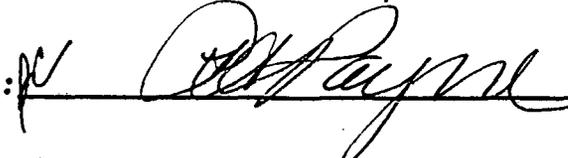
ZC 3-94/LD 3-94 Review the March 16, 1994 Hearings Officer Decision, approving, subject to conditions, amendment of Sectional Zoning Map #421, changing the described property from MR-4, FF to LR-7, and approving, subject to conditions, a three-lot land division all for property located at 4531 SE 136th Avenue,

1994 APR - 6 AM 8:55
MULTIOMAH COUNTY
OREGON
BOARD OF
COUNTY COMMISSIONERS

SIGNATURES REQUIRED:

ELECTED OFFICIAL: _____

OR

DEPARTMENT MANAGER: 

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

Any Questions: Call the Office of the Board Clerk 248-3277/248-5222



MULTNOMAH COUNTY OREGON

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

DIVISION OF PLANNING AND DEVELOPMENT

Board Planning Packet Check List

File No. 223-94/SD3-94

Agenda Placement Sheet No. of Pages 1

Case Summary Sheet No. of Pages 1
 Previously Distributed _____

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

Decision No. of Pages 22
(Hearings Officer/Planning Commission)
 Previously Distributed _____

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



CASE NAME Zone Change & Partition

NUMBER ZC 3-94/LD 3-94

1. Applicant Name/Address

DeNali Engineering, Inc.,
PO Box 22791
Milwaukie OR 97260

2. Action Requested by applicant Zone Change, MR-4 to LR-7
3-Lot Partition

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

3. Planning Staff Recommendation

Approval With Conditions

4. Planning Commission or Hearings Officer Decision:

Approval With Conditions

5. If recommendation and decision are different, why?

Same

ISSUES

(who raised them?)

The applicants were the only persons who appeared at the hearing. Applicants objected to a recommended condition 1 B.that read:

"Place a note on the face of the plat stating that Land Division approval does not guarantee the ability to build a dwelling on any of the approved lots. Proof of compliance with all applicable zoning standards, including, but not limited to floodplain development requirements, will be required prior to building permit approval."

The Hearings Officer modified the condition to read

"Place a note on the face of the plat stating that the lots on the preliminary plat are situated entirely within the 100-year floodplain of Johnson Creek and that structures and development on each lot are subject to additional regulations to prevent them from causing exacerbating or being subject to flooding. Proof of compliance with all applicable zoning standards, including, but not limited to floodplain development requirements, are required before approval of grading and building permits for construction on the lots."

The applicants preferred the wording in the modified condition over the wording in the original condition.



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

Decision

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

March 16, 1994

**ZC 3-94, #421 LR-7, Urban Low Density Residential District
LD 3-94, #421 3-Lot Land Division**

Applicant requests amendment of Sectional Zoning Map #421, changing the subject site from MR-4/FF Urban Medium Density Residential District/Flood Fringe (7.2 to 10.4 dwelling units per acre) to LR-7, Low Density Residential (min. 7,000 sq. ft. per dwelling). Applicant also requests Type I land division approval to divide the site into three parcels.

Location: 4531 SE 136th Avenue

Legal: Tax Lots 2700 and 2800 , Map 1S 2E 14AB

Site Size: .58 Acres

Property Owners: Mt. Hood Industries, Inc.
2229 NE Burnside, Gresham OR 97030

Applicant (LD 3-94): DeNali Engineering, Inc., PO Box Milwaukie OR 97260

Applicant (ZC 3-94): Multnomah Co. Planning Div., 2115 SE Morrison St., Portland, OR 97214

Comprehensive Plan: Low Density Residential

Present Zoning: MR-4 / FF, Urban Medium Density Residential/Flood Fringe

Proposed Zoning: LR-7, Low Density Residential/Flood Fringe (min. lot size, 7,000 sq. ft.)

Hearings Officer

Decision #1: Approve, subject to conditions, amendment of Sectional Zoning Map #421, for the site from MR-4/FF Medium Density Residential/Flood Fringe (7.2 to 10.4 dwelling units per acre) to LR-7/FF, Low Density Residential District (min. 7,000 sq. ft.), based on the following Findings and Conclusions.

Decision #2: Approve, subject to conditions, the requested 3-lot land division in accordance with the provisions of MCC 11.45.080(D), based on the following Findings and Conclusions.

Decision

ZC 3-94 / LD 3-94

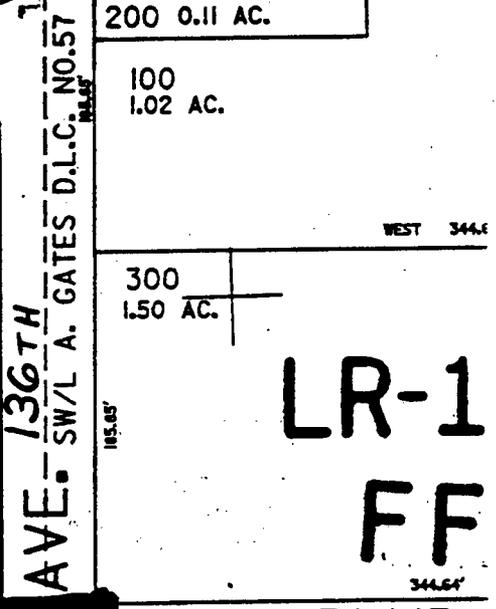
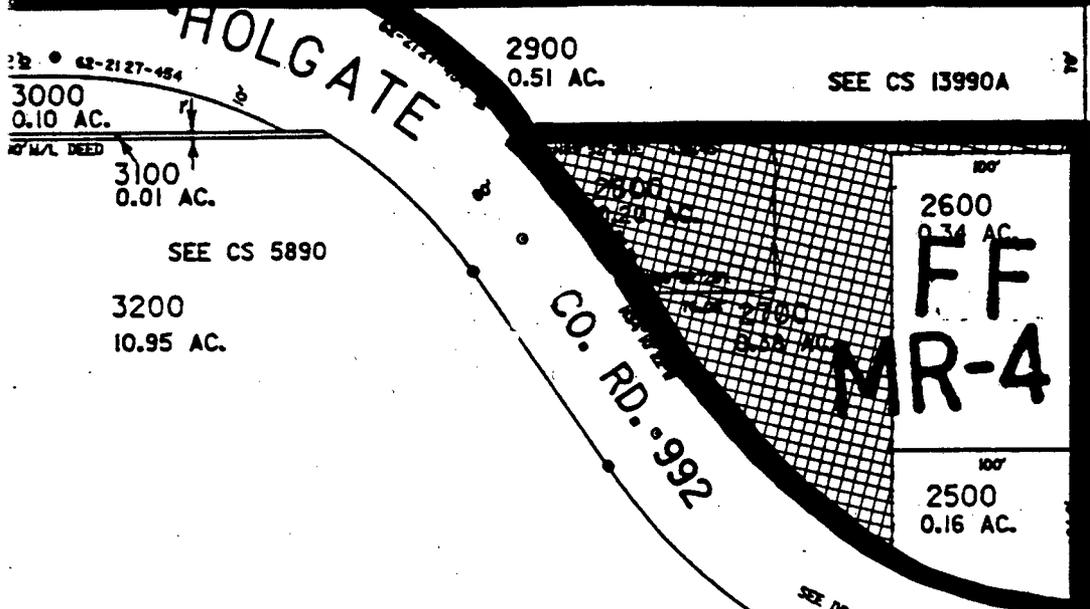
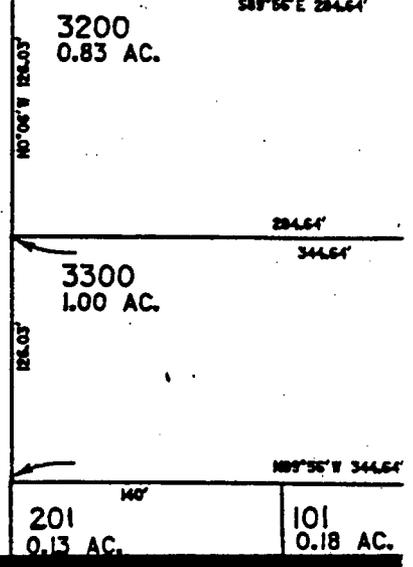
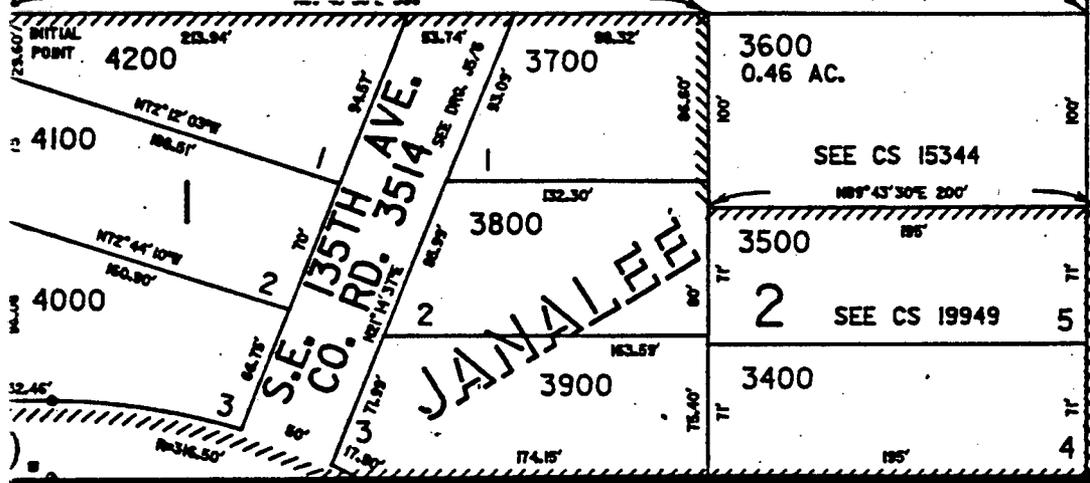
4700
L8



Zoning Map
Case #: ZC 3-94; LD 3-94
Location: 4531 SE 136th Avenue
Scale: 1 inch to 100 feet (approx)
Shading indicates subject property
SZM 421; A&T Map 1S 2E 14AB

**LR-10
FF**

S.E. M.



**FF
MR-4**

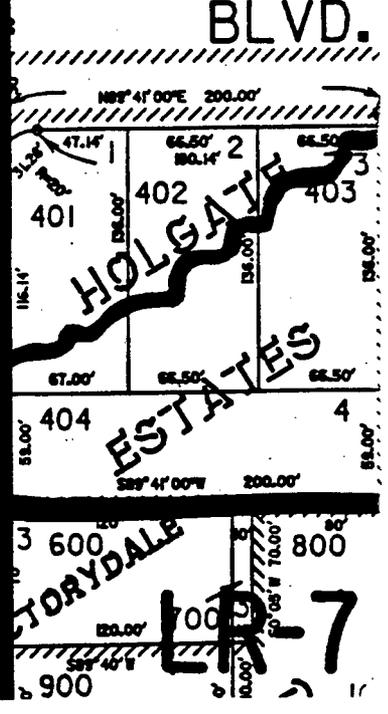
**LR-1
FF**

LR-7 PD

SEE CS 32391

80

FF



LR-10

LR-7

Conditions Of Approval

1. Approval of this Tentative Plan shall expire *either* one year from the effective date of this decision *or* upon annexation of the subject site to the City of Portland, whichever comes first, unless the partition plat and other required attachments are delivered to the Planning and Development Division of the Department of Environmental Services. The partition plat shall comply with ORS Chapter 92 as amended. Please obtain applicant's and surveyor's *Instructions for Finishing a Type 1 Land Division*. Make the following revisions to the partition plat:
 - A. On the partition plat, indicate the ground elevation at the northwest and southeast corners of the site, and place a note on the face of the partition plat that the site is within the 100-year floodplain of Johnson Creek, pursuant to MCC 11.45.710(D).
 - B. Place a note on the face of the plat stating that the lots on the preliminary plat are situated entirely within the 100-year floodplain of Johnson Creek and that structures and development on each lot are subject to additional regulations to prevent them from causing exacerbating or being subject to flooding. Proof of compliance with all applicable zoning standards, including, but not limited to floodplain development requirements, are required before approval of grading and building permits for construction on the lots.
2. *Before recording the final partition plat*, comply with the following Transportation Division requirements:
 - A. Dedicate 10 feet of additional right-of-way in SE Holgate Boulevard abutting the site, and dedicate a 5-foot slope/utility easement.
 - B. Dedicate 5 feet of additional right-of-way in SE 136th Avenue abutting the site, and dedicate a 5-foot slope/utility easement.
3. *Before the Planning Director and County Surveyor sign the final plat*, comply with the Transportation Division requirement to make the following improvements within the public right-of-way of SE 136th Avenue and SE Holgate Boulevard abutting the site:

SE Holgate Boulevard

- Construct a concrete curb 22 feet from centerline along the entire frontage of the subject property.
- Construct a concrete sidewalk 6 feet wide between the curb and the front property line of the subject property.
- Grade, rock and pave from the existing pavement to the new curb.
- Construct storm drainage facilities as required.

- Install street lighting as required.

SE 136th Avenue

- Construct a concrete curb 22 feet from centerline along the entire frontage of the subject property.
 - Construct a concrete sidewalk 5 feet wide between the curb and the front property line of the subject property.
 - Grade, rock and pave from the existing pavement to the new curb.
 - Construct storm drainage facilities as required.
 - Install street lighting as required.
4. Prior to issuance of a building permit for any parcel, obtain a Floodplain Development Permit, in accordance with MCC 11.15.6307.
 5. ***Before the Planning Director and County Surveyor sign the partition plat***, provide a copy of the partition plat that shows the surveyed distances between all existing buildings on any parcel and the property lines of that parcel.
 6. ***Before the Planning Director and County Surveyor sign the partition plat***, provide a copy of the partition plat that shows the building setback lines (building envelopes) for each new vacant lot.

Staff Report Format

This staff report addresses two requested actions: first, a Zone Change from MR-4, Medium Density Residential District to LR-7, Low Density Residential District. The second request is for approval of a Land Division to subdivide the subject site into three parcels. Following immediately below are the Findings of Fact for the Zone Change. The Conclusions for the Zone Change are on Page 15. The Findings of Fact for the Land Division request begin on Page 16. The Conclusions for the Land Division begin on Page 20.

Findings Of Fact (ZC 3-94)

NOTE: Quoted material from the applicant's submittal appears in *Italic* type. Ordinance language appears in ***Bold Italic*** type.

1. Description of Proposal

The applicant proposes to divide vacant land containing .58 acre into 3 parcels as shown on the Tentative Plan Map. The land currently consists of two tax lots. The three parcels are

proposed sites for single-family detached dwellings. Parcels 1, 2 and 3 are proposed to contain areas of 8,250, 7,899 and 7,550 square feet, respectively.

Although the Comprehensive Plan designation for the land division site is Low Density Residential, the current zoning is MR-4, Medium Density Residential. Since the zoning is in conflict with the adopted Comprehensive Plan, Multnomah County proposes a zone change from MR-4 to LR-7, Low Density Residential District.

2. Site Conditions and Vicinity Information: Site conditions as shown on the Tentative Plan Map are as follows:

- A. The site abuts the northeasterly side of SE Holgate Boulevard and the west side of SE 136th Avenue. The site consists of Tax Lots 2700 and 2800, owned by Mt. Hood Industries, Inc.
- B. **Slope:** The site is nearly flat, and has an overall slope of less than 2 percent.
- C. **Flood Plain:** Part of the site is within the 100-year flood plain of Johnson Creek, according to available topographic information and the Flood Insurance Rate Map of the Federal Emergency Management Agency (Community Panel #410179-0382-B, (revised 3/18/86). Floodplain Development Permits will be required where applicable before building permit issuance.
- D. **Street Dedication and Improvements: (SE Holgate Boulevard):** The site abuts SE Holgate Boulevard. The County Engineer has determined that in order to comply with the provisions of the Street Standards Ordinance (MCC 11.60) it will be necessary to dedicate 10 feet of additional right-of-way in Holgate Boulevard abutting the site, and construct curbs, sidewalks and pave from the new curb to the existing pavement abutting the south edge of the subject site. The dedication and improvements are conditions of approval.
- E. **Street Dedication and Improvements: (SE 136th Avenue):** The ten-foot portion of the site abuts SE 136th Avenue. The County Engineer has determined that in order to comply with the provisions of the Street Standards Ordinance (MCC 11.60) it will be necessary to dedicate 5 feet of additional right-of-way in 136th Avenue abutting the site, and construct curbs, sidewalks and pave from the new curb to the existing pavement abutting the south edge of the subject site. The dedication and improvements are conditions of approval.

3. Zone Change Considerations [MCC 11.15).8230(D)]:

- A. The existing MR-4, Medium Density Residential zoning district designation for the subject site does not conform with the adopted Powellhurst Community Plan designation of Low Density Residential. For reasons discussed below, staff is proposing a zone change from MR-4 to LR-7, Low Density Residential to resolve the present conflict between the Zoning Map and the Powellhurst Community Plan Map.

B. Under MCC 11.15.8230 (D) lists approval criteria for a zone change. The burden of proof is on the applicant to demonstrate that:

- (1) ***Granting the request is in the public interest; [MCC 11.15.8230 (D)(1)]***
- (2) ***There is a public need for the requested change and that need will be best served by changing the classification of the property in question as compared with other property; [MCC 11.15.8230 (D)(2)]***
- (3) ***The proposed action fully accords with the applicable elements of the Comprehensive Plan. [MCC 11.15.8230 (D)(3)]***
- (4) ***Proof of change in a neighborhood or community or mistake in the planning or zoning for the property under consideration are additional relevant factors to be considered under subpart (D) above [MCC 11.15.8230 (E)].***

C. The site is within the area covered by the Powellhurst Community Plan. The Powellhurst Community Plan is part of the Multnomah County Comprehensive Framework Plan and constitutes an official element of that plan. Powellhurst Community Plan Policy 6A addresses Growth Management and states that:

It is the policy of the County that the area from Boise Street to the Portland Traction Company Line and from S. E. 103rd to S. E. 142nd Avenue will be designated a growth management area in which the following standards will apply:

- A. ***The adopted Community Plan map is the long term plan for the area.***
- B. ***The zoning categories will not be changed at this time to implement the plan. Zone changes will be granted only after an individual application and hearing or as a result of a more detailed County study of the area's problems and the development of solutions to those problems .***
- C. ***In granting zone changes the approval authority shall consider the following:***
 1. ***Whether a sanitation permit for sub-surface sewage disposal will be approved.***
 2. ***The impact of the development on the flooding problem along Johnson Creek.***
 3. ***The impact of the development on localized flooding and drainage problems.***

4. Response to Zone Change Approval Criteria

A. Public Interest [MCC 11.15.8230 (D)(1)]

(1) On April 17, 1979, the Powellhurst Community Plan was adopted as part of the Multnomah County Comprehensive Framework Plan. The Land Use Map for the Powellhurst Community Plan designates the subject site as Low Density Residential. Staff has found no evidence to suggest that the Low Density Residential land use designation was applied to the subject site as a result of any mistake in the planning process that led to adoption of the Powellhurst Community Plan.

(2) The Powellhurst Community Plan became effective May 17, 1979. At that time, the subject site was zoned R-4, Two Family Residential. On July 26, 1979, a large number of zone changes became effective which were intended to bring zoning in the mid-county area into compliance with newly adopted community plans. Given the Low Density Residential land use designation applied to the subject site in the Powellhurst Community Plan, a Low Density Residential zoning district designation with a prefix of "LR" would have been appropriate. Instead, however, the subject site was changed from R-4 to MR-4. Again, no evidence has been found to suggest that the Powellhurst Community Plan designation of Low Density Residential was applied to the site in error.

(3) Since 1975 case of *Baker v. City of Milwaukie*, Oregon courts have held that, in the case of a conflict between the zoning designation for a site and the adopted comprehensive plan designation for the same site, the comprehensive plan designation prevails. Therefore, changing the zone on the subject site to a Low Density Residential "LR" designation would be consistent with Oregon land use case law. It is in the public interest for County zoning designations to be consistent with the adopted Comprehensive Plan.

(4) Powellhurst Community Plan Policy No. 24 (Housing Location) indicates that it is in the public interest to allow LR-7 residential development in the subject area. The Plan refers to the area as a "Residential Development Area" or "Infill Area" because it is a partially developed area where new development will occur over time (Powellhurst Community Plan, page 212, Finding 8.A). Locational Criteria #5 of Policy 24 (page 215) states: *Detached dwellings will be allowed as an outright use in Residential Development Areas. The minimum required lot size per unit must be 5,000 square feet.* Approval of the proposed zone change would allow division of the site into three lots in a manner consistent with Locational Criteria #5.

For the reasons stated above, granting the proposed zone change is in the public interest pursuant to MCC 11.15.8230 (D)(1).

B. Public Need [MCC 11.15.8230 (D)(2)]

Staff Comment: The requested LR-7 zone change would allow one more residential lot than the two that would be possible if the zone were changed to LR-10. Policy

No. 21, Housing Choice, of the Multnomah County Comprehensive Framework Plan directs the County to provide for “. . . *an adequate number of housing units at price ranges and rent levels commensurate with the financial capabilities of Oregon and the region's households, and to allow for flexibility in housing location, type and density.*” The County's report, “*Housing*”, as well as recent housing market statistics indicate that there is a demand for affordable housing. The smaller lot size that the LR-7 zoning designation permits should help contribute to affordability by reducing land cost as a housing cost factor.

As opposed to other property, changing the zone on the site in question meets the public need “best” because the subject site is presently available for development, and the change will facilitate further implementation of the County's adopted Comprehensive Plan. Furthermore, the subject site is where there is a conflict between the present zoning and the adopted Comprehensive Plan and proposed change would resolve that conflict. For these reasons, the proposed zone change satisfies MCC 11.15.8230 (D)(2)

C. Applicable Elements of the Comprehensive Plan

- (1) **Statewide Goals and Regional Plan:** The Multnomah County Comprehensive Plan has been found to be in compliance with Statewide Goals and the Regional Plan by the State Land Conservation and Development Commission. To the extent that the proposal satisfies the applicable policies of the Comprehensive Plan, the proposal is also consistent with statewide goals and the regional plan.
- (2) **Applicable Comprehensive Plan Policies:** The following Comprehensive Plan Policies are applicable to the proposal.

(a) **No. 6A - Growth Management (Powellhurst Plan)**

The site is within the area covered by the Powellhurst Community Plan. The Powellhurst Community Plan is part of the Multnomah County Comprehensive Framework Plan and constitutes an official element of that plan. Powellhurst Community Plan Policy 6A addresses Growth Management and states that:

It is the policy of the County that the area from Boise Street to the Portland Traction Company Line and from S. E. 103rd to S. E. 142nd Avenue will be designated a growth management area in which the following standards will apply:

- A. *The adopted Community Plan map is the long term plan for the area.*
- B. *The zoning categories will not be changed at this time to*

implement the plan. Zone changes will be granted only after an individual application and hearing or as a result of a more detailed County study of the area's problems and the development of solutions to those problems.

C. In granting zone changes the approval authority shall consider the following:

1. Whether a sanitation permit for sub-surface sewage disposal will be approved.

Staff Comment: . Mid-County Sewer Project staff has stated that each lot will be required to connect to public sewer. No subsurface sewage disposal is necessary.

2. The impact of the development on the flooding problem along Johnson Creek.

3. The impact of the development on localized flooding and drainage

Staff Comment (items 2 & 3): The site is within the 100-year flood plain of Johnson Creek as shown on Flood Insurance Rate Map of the Federal Emergency Management Agency [(Community Panel #410179-0382-B, (revised 3/18/86)]. That map indicates that the base flood elevation is about 210 feet in the vicinity of the site. According to topographic information on the Tentative Plan Map, ground elevations on the affected lots range from 200 to 204 feet. The Flood Hazard standards in the County Zoning Ordinance require the finished floor of a residence to be one foot above the base flood elevation [MCC 11.15.6315(B)]. Obtaining of a Floodplain Development Permit is required by MCC 11.15.6307. All runoff created by development of the property will be required to be disposed of through appropriate storm drainage facilities as determined by the Transportation Division in conjunction with required street improvements. Subject to these conditions, there will be no impact on either localized flooding, or flooding along Johnson Creek.

(b) No. 13 - Air and Water Quality and Noise Levels

Applicant's Response: *"The application for land division supports this policy: First, the Applicant proposes only one more single family residence than could be currently constructed on the site. The residences will be constructed in accordance with County standards for managing storm water run-off in order to maintain water quality.*

Second, the land division will be served by public sewer. This will protect ground water from pollution which might result from an on site disposal system.

Third, storm water generated on site would be channeled into appropriate disposal systems consistent with County requirements.

Fourth, Tri-Met's Route 17 operates in Holgate and 1 36th so public transit is immediately available to the site. This factor should contribute to reduced dependence on the automobile as the primary mode of transportation and therefore reduce air pollution.

Fifth, residential development is normally considered a noise sensitive rather than a noise generating use. One additional residence where two are possible would not be expected to affect adjacent properties. In fact, noise generated from this development should have minimal noise impact owing to the proximity to S.E. Holgate, which is a major street.

In summary, the proposed land division is consistent with this policy."

Staff Comment: For the reasons stated by the applicant, the proposal satisfies Policy 13.

(c) **No. 14 - Development Limitations**

Applicant's Response: *Multnomah County's policy is to direct development and land form alterations away from areas with development limitations except upon a showing that design and construction techniques can mitigate any public harm or associated public cost, and mitigate any adverse effects to surrounding persons or properties. Development limitations includes lands within a 100 year flood plain.*

The site is within a flood plain identified on maps of the Federal Emergency Management Agency (FEMA). The base flood elevation (100 year flood) is 210 feet. The site elevations range from 201.7 feet to 204.1 feet, according to County topographical mapping.

Multnomah County has adopted regulations designed to "...minimize public and private losses due to flood conditions in specific areas (MCC 11.15.6301 Purposes)." This section of the code sets forth detailed standards for construction techniques within a flood plain area. The Applicant will comply with all requirements of this section when new buildings are constructed on the proposed lots.

In addition, residences could be set on top of garages or carports so that finish floor elevations are above the base flood level.

The Applicant notes that a manufactured home PUD has recently been approved south of S.E. Holgate and that substantial fill is occurring on the property. The Applicant believes that creation of 3 new single family lots where 2 already exist can be no more harmful or damaging to the public interest than those already approved.

The Applicant believes that proposed design and construction measures required by MCC 11.15.6301 et seq. will mitigate to the extent possible the potential difficulties associated with development on a site in the 100 year flood plain."

Staff Comment: Staff concurs with the applicant's statements. As staff has previously stated, compliance with the floodplain development permit standards in the County Zoning Ordinance will mitigate any adverse impact that might otherwise occur due to the the site's proximity to the floodplain. Subject to compliance with the floodplain development permit standards, the proposal satisfies Policy 14.

(d) No. 16 - Natural Resources

Applicant's Response: *"The site has not been designated an area of "Significant Environmental Concern" and there are no resources, wildlife habitat, energy sources, or natural areas. This policy does not apply."*

Staff Comment: Staff concurs with the applicant's statements. Policy 16 is not applicable.

(e) No. 22 - Energy Conservation:

Applicant's Response: *"Multnomah County's policy is to promote conservation and use of energy resources in an efficient manner.*

The proposed land division supports this policy as follows: First, the homes eventually built on these lots will meet Oregon State Energy Code requirements. The adoption of these regulations aims to ensure that all new construction will promote efficient use of energy.

Second, the site is located within the urban area, on lands designated for residential development. The increased density and intensity of use in proximity to employment, commercial, and recreation centers will help to promote the use of public transit and alternative trans-

portation modes.

Third, the site is on a bus line which should promote use of public transit with concomitant benefits such as more efficient use of public services, reduced pollution generated by automobiles, etc.

Based on these considerations, the Applicant believes that the proposed land division complies with this policy."

Staff Comment: Staff concurs with the applicant's statements. The proposal satisfies Policy 22.

(f) **No. 24 - Housing Location**

Applicant's Response: *"Multnomah County's policy is to promote conservation and use of energy resources in an efficient manner.*

The proposed land division supports this policy as follows: First, the homes eventually built on these lots will meet Oregon State Energy Code requirements. The adoption of these regulations aims to ensure that all new construction will promote efficient use of energy.

Second, the site is located within the urban area, on lands designated for residential development. The increased density and intensity of use in proximity to employment, commercial, and recreation centers will help to promote the use of public transit and alternative transportation modes.

Third, the site is on a bus line which should promote use of public transit with concomitant benefits such as more efficient use of public services, reduced pollution generated by automobiles, etc.

Based on these considerations, the Applicant believes that the proposed land division complies with this policy."

Staff Comment: Staff concurs with the applicant's statements. The proposal satisfied Policy 24.

(g) **No. 35, Public Transportation**

Staff Comment: Tri-Met Line #17 provides service to downtown Portland on SE 136th Avenue. The proposal satisfies Policy 35.

(h) **No. 36, Transportation System Development Requirements:**

Staff Comment: The County Engineer has determined that right-of-

way dedication and improvements for Holgate Boulevard and 136th Avenue adjacent to the site are necessary in order for the proposal to comply with the provisions of the Street Standards Ordinance (MCC 11.60). The dedications are detailed in Conditions 2 above. The improvements are detailed in Condition 3 above, and include curbs, sidewalks, paving, storm drains and street lighting.

- (i) **No. 37 - Utilities** This policy requires a finding that the water, sanitation, drainage and communication facilities are available as follows:

Water And Disposal System

- A. The proposed use can be connected to a public sewer and water system, both or which have adequate capacity; or**
- B. The proposed use can be connected to a public water system, and the Oregon Department of Environmental Quality (DEQ) will approve a subsurface sewage disposal system on the site; or**
- C. There is an adequate private water system, and the DEQ will approve a subsurface sewage disposal system on the site; or**
- D. There is an adequate private water system, and a public sewer with adequate capacity.**

Drainage

- E. There is adequate capacity in the storm water system to handle the run-off; or**
- F. The water run-off can be handled on the site or adequate provisions can be made; and**
- G. The run-off from the site will not adversely affect the water quality in adjacent streams, ponds, lakes or alter the drainage on adjoining lands.**

Energy and Communications

- H. There is an adequate energy supply to handle the needs of the proposal and the development level projected by the plan; and**
- I. Communications facilities are available.**

Staff Comment: The proposal meets Policy 37 for the following reasons:

Water and Sanitation: The Powell Valley Road Water District has confirmed that public water service is available to the site. The office of the Mid County Sewer Project has confirmed that public sewer is available to the site. The proposal satisfies Item A of Policy 37.

Drainage: The County Engineer will require construction of appropriate storm drainage facilities in conjunction with required street improvements. The proposal satisfies Item E and F.

Energy and Communication: Portland General Electric provides electric power and US West provides telephone service. The proposal satisfies Items *H* and *I* above.

(j) **No. 38 - Facilities**

Staff Comment: The property is located in the David Douglas School District, which signed the School District Review form but made no comment on the proposal. The Portland Fire Bureau provides fire protection and has confirmed that there is adequate water pressure and flow for fire fighting purposes. The Multnomah County Sheriff's Office provides police protection and has stated that there is an adequate level of police service available for the area. The proposal satisfies Policy 38.

(n) **Policy 40 - Development Requirements:** This policy requires a finding that:

- A. *Pedestrian and bicycle path connections to parks open space areas and community facilities will be dedicated when 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.*

Applicant's Response: *"This project will meet the County's reasonable obligations to support this policy by constructing sidewalks along street frontages as required."*

Staff Comment: Staff concurs with the applicant's statement. The proposal satisfies Policy 40.

D. Mistake In Zoning Map [MCC 11.15.8230 (E)]

Staff Comment: For the reasons stated in Finding 4.A(1) and (2), it is staff's conclusion that the MR-4 Medium Density Residential zoning designation on the site was due to a mistake that occurred despite the intent to bring zoning into compliance with adopted Community Plans

Conclusions (ZC 3-94)

1. Findings 4.A through 4.D demonstrate that the proposed zone change meets the general zone change Approval Criteria of the Zoning Ordinance as stated in MCC 11.15.8230 (D) and (E).
2. Finding 4.C(2)(b) demonstrate that the proposed zone change meets the special Powellhurst Community Plan zone change approval criteria stated in Powellhurst Plan Policy 6.A.

Findings Of Fact (LD 3-94)

1. **Applicant's Proposal:** See Finding 1 for ZC 3-94.
2. **Site Conditions and Vicinity Information:** See Finding 2 for ZC 3-94.
3. **Land Division Ordinance Considerations (MCC 11.45)**
 - A. The proposed land division is classified as a Type 1 because it is "[A]. . . *associated with an application affecting the same property for any action proceeding requiring a public hearing . . .*" [MCC 11.45.080(D)]. The proposed land division is associated with an application to change the zone of the subject site from MR-4 to LR-7. This staff report addresses the zone change application under Decision # 1 (ZC 3-94).
 - B. MCC 11.45.230 lists the approval criteria for a Type 1 Land Division. The approval authority must find that:
 - (1) *The Tentative Plan is in accordance with the applicable elements of the Comprehensive Plan;*
 - (2) *Approval will permit development of the remainder of the property under the same ownership, if any, or of adjoining land or of access thereto, in accordance with this and other applicable ordinances; [MCC 11.45.230(B)]*
 - (3) *The Tentative Plan or Future Street Plan complies with the applicable provisions, including the purposes and intent of this Chapter; [MCC 11.45.230(C)]*
 - (4) *The Tentative Plan or Future Street Plan complies with the Zoning Ordinance or a proposed change thereto associated with the Tentative Plan proposal; [MCC 11.45.230(D)]*
 - (5) *If a subdivision, the proposed name has been approved by the County Surveyor and does not use a word which is the same as, similar to or pronounced the same as a word in the name of any other subdivision in Multnomah County, except for the words "Town", "City", "Place", "Court", "Addition" or similar words, unless the land platted is contiguous to and platted by the same applicant that platted the subdivision bearing that name and the block numbers continue those of the plat of the same name last filed; [MCC 11.45.230(E)]*
 - (6) *The streets are laid out and designed so as to conform, within the limits of MCC 11.45.490 and 11.45.500 and the Street Standards Ordinance, to the plats of subdivisions and maps of major partitions already approved for adjoining property unless the approval authority determines it is in the public interest to modify the street pattern; [MCC 11.45.230(F)] and*

(7) *Streets held for private use are laid out and designed so as to conform with MCC 11.45.490 and 11.45.500 and the Street Standards Ordinance and are clearly indicated on the Tentative Plan and all reservations or restrictions relating to such private streets, including ownership, are set forth thereon. [MCC 11.45.230(G)]*

(8) *Approval will permit development to be safe from flooding and known flood hazards. Public utilities and water supply systems shall be designed and located so as to minimize or prevent infiltration of flood water into the systems. Sanitary sewer systems shall be designed and located to minimize or prevent:*

(a) *The infiltration of floodwater into the system; and*

(b) *The discharge of matter from the system into flood waters [MCC 11.45.230(H)]*

4. **Response to Type 1 Land Division Approval Criteria:** In this section, the applicant's responses to the approval criteria are in *italic type*. Staff discussion of applicant responses appear in paragraphs titled **Staff Comment**.

A. Applicable Elements of the Comprehensive Plan

See Finding 4.C for ZC 3-94.

B. Development of Site or Adjoining Land [MCC 11.45.230(B)]:

Applicant's Response: *"The Applicant owns only Tax Lots 2700 and 2800, Section 14, T1 S, R2E. All adjacent lots (2500, 2600, and 2900) have frontage on S.E. Holgate, S.E. 1 36th, or both and do not require access through this site."*

Staff Comment: For the reasons stated by the applicant, the proposed land division satisfies MCC 11.45.230(B)

C. Applicable Provisions of Land Division Ordinance [MCC 11.45.230(C)]

Applicant's Response: *"The analysis in this section of the narrative reflects the application's compliance (please also refer to the discussion of Policy 14)."*

Staff Comment: (1) MCC 11.45.015 states that the Land Division Ordinance. . ."is adopted for the purposes of protecting property values, furthering the health, safety and general welfare of the people of Multnomah County, implementing the Statewide Planning Goals and the Comprehensive Plan adopted under Oregon Revised Statutes, Chapters 197 and 215, and providing classifications and uniform standards for the division of land and the installation of related improve-

ments in the unincorporated area of Multnomah County.” The proposed land division satisfies the purpose of the Land Division Ordinance for the following reasons:

- (a) The size and shape of the proposed lots meet the area and dimensional requirements of the requested LR-7 zoning designation. As designed, the lots are adequate to accommodate single-family residences that satisfy yard setback, height, lot coverage and solar access requirements in the LR-7 zone without the need for variances from those setback, height, lot coverage and solar access requirements. Under these circumstances, overcrowding will not occur.
 - (b) The findings for Plan Policies 37 and 38 address water supply and sewage disposal, and education, fire protection and police protection, respectively. For the reasons stated in those findings, the proposal furthers the health, safety, and general welfare of the people of Multnomah County.
 - (c) The proposed land division complies with the applicable elements of the Comprehensive Plan. The State Land Conservation and Development Commission has found the Comprehensive Plan to be in compliance with Statewide Planning Goals.
 - (d) The proposal meets the purpose of *“providing classifications and uniform standards for the division of land and the installation of related improvements”* because the proposal is classified as a Type 1 Land Division and meets the approval criteria for Type 1 Land Divisions for the reasons stated in these findings. The conditions of approval assure the installation of appropriate improvements in conjunction with the proposed land division.
- (2) MCC 11.45.020 states that the intent of the Land Division Ordinance is to . . . *“minimize street congestion, secure safety from fire, flood, geologic hazards, pollution and other dangers, provide for adequate light and air, prevent the overcrowding of land and facilitate adequate provisions for transportation, water supply, sewage disposal, drainage, education, recreation and other public services and facilities.”*
- (a) The proposal minimizes street congestion by requiring right-of-way dedication and improvements for streets adjacent to the subject site.
 - (b) The findings for Plan Policies 37, 14 and 13 address fire protection, flood and geologic hazards, and pollution, respectively. For the reasons stated in those findings, the proposal would secure safety from fire, flood, geologic hazard, and pollution.

- (c) The proposal meets the area and dimensional standards of the requested LR-7 zoning district as explained in Finding 4.D below. Residential development on all newly created lots will be required to comply with applicable LR-7 setback, height, lot coverage and solar access requirements. In meeting those requirements, new development will provide for adequate light and air and prevents the overcrowding of land.
- (d) The finding for Plan Policies 35 and 36 address streets and public transportation. The finding for Policies 37, 14 and 38 address water supply and sewage disposal, storm drainage, and education, fire protection and police service. For the reasons stated in those findings, the proposed land division facilitates adequate provision for public transportation, water supply, sewage disposal, drainage, education, and other public services and facilities.

D. Zoning Compliance [MCC 11.45.390(D)]:

Staff Comment:

- (1) Subject to approval of ZC 3-94, the site will be zoned LR-7, Urban Low Density Residential District.
- (2) The following area and dimensional standards apply per MCC 11.15.2616:
 - (a) The minimum lot size for a single family dwelling shall be 7,000 square feet. As shown on the Tentative Plan Map, all proposed lots exceed this requirement.
 - (b) The minimum lot width at the building line shall be 60 feet. As shown on the Tentative Plan Map, all proposed all proposed lots exceed this requirement.
 - (c) The minimum yard setbacks shall be 20 feet front, 5 feet side, and 15 feet rear. Residential development will be required to meet all minimum yard setbacks.
 - (d) The maximum lot coverage shall be 50 percent. Single-family residential development will be required not to exceed the maximum allowed coverage.
 - (e) **Solar Access**

Applicant's Response: "Section 1 1.15. 6805. The purposes of the solar access provisions for new development are to ensure that land in the urban portions of Multnomah County is divided so that structures can be oriented to maximize solar access and to minimize shade

on adjoining properties from structures and trees.

Section 1 1. 15. 6815 Design Standard. At least 80 percent of lots in a development subject to this Ordinance shall comply with one or more of the options in this Section.

Three lots are proposed and 80% or all 3 lots must comply with the basic requirement or qualify for an exemption or adjustment to the standard.

A. Basic Requirement. A lot complies with Section . 6815 if it (1) has a northsouth dimension of 90 feet or more and (2) has a front lot line that is oriented within 30 degrees of a true east-west axis.

None of the lots have a front lot line oriented within 30 degrees of a true eastwest axis or a north-south dimension of 90 feet.

"Section 1 1. 15. 6820 Exemptions from Design Standard. A development is exempt from Section . 6815 if... one or more of the following conditions apply to the site...."

No exemptions apply to this proposal.

Section 1 1. 75. 6822 Adjustments to Design Standard. The Planning Director shall reduce the percentage of lots that must comply with Section . 6815 to the minimum extent necessary if it finds that one or more of the following site characteristics apply.

A.4. An existing public right of way prevents given streets or lots in the development from being oriented for solar access

The existing tax lots both have frontage on S.E. Holgate, which takes a nearly 45" turn (northwest to south east) at this point. The existing lots do not comply with solar standards and it is not possible for the new lots proposed for the site to comply with solar requirements, given the existing street orientation.

The Applicant therefore requests adjustment of the required percentage for this site to 0.0% based on the orientation of the existing public right of way."

Staff Comment: The applicant has demonstrated adequate grounds for the requested adjustment in the percentage of lots required to meet the basic design standards.

E. Subdivision Name [MCC 11.45.230(E)]: The provision is not applicable as the

proposed land division is not a subdivision.

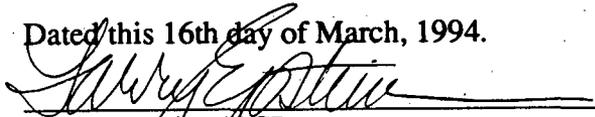
- F. **Street Layout [MCC 11.45.230(F)]:** The provision is not applicable.
- G. **Private Streets [MCC 11.45.230(G)]:** The provision is not applicable.
- H. **Flooding and Flood Hazards [MCC 11.45.230(H)]:** For the reasons stated in Finding 4.C(2)(d) and subject to the obtaining of Floodplain Development Permits as needed, the proposed land division satisfies MCC 11.45.230(H).

Conclusions (LD 3-94)

1. The land division satisfies applicable elements of the Comprehensive Plan.
2. The proposed land division satisfies the approval criteria for Type 1 Land Divisions.
3. Subject to Decision #1, the proposed land division complies with the Zoning Ordinance.

Signed by the Hearings Officer: March 16, 1994
Decision Mailed to Parties: March 22, 1994
Decision Submitted to Board Clerk: March 22, 1994
Last Day to Appeal Decision: 4:30 p.m., April 1, 1994

Dated this 16th day of March, 1994.


Larry Epstein, AICP
Multnomah County Hearings Officer

Appeal to Board of County Commissioners:

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

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

Hearings Officer decisions are typically reported to the Board for review on the first Tuesday following the ten day appeal period. The Board meets at 1:30 p.m. in Room 602 of the Multnomah County Courthouse. For further information call the Multnomah County Planning and Development Division at 248-3043.

Decision
March 16, 1994

MEETING DATE: April 12, 1994

AGENDA NO: P-3

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: Hearings Officer Decision

BOARD BRIEFING Date Requested: _____

Amount of Time Needed: _____

REGULAR MEETING: Date Requested: April 12, 1994

Amount of Time Needed: 2 Minutes

DEPARTMENT: DES DIVISION: Planning

CONTACT: R. Scott Pemble TELEPHONE #: 3182
BLDG/ROOM #: 412/103

PERSON(S) MAKING PRESENTATION: Planning Staff

ACTION REQUESTED:

INFORMATIONAL ONLY POLICY DIRECTION APPROVAL OTHER

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

CS 1-94 Review the March 16, 1994 Hearings Officer Decision, approving,
HV 6-94 subject to conditions, change in zone designation from LR-7 to LR-7, C-S, community service, to allow for a 5,100 square foot classroom addition to Lincoln Elementary School and a site size variance, all for property located at 13200 SE Lincoln Street.

1994 APR - 6 AM 8:55
MULTNOMAH COUNTY
OREGON
COUNTY COMMISSIONER

SIGNATURES REQUIRED:

ELECTED OFFICIAL: _____

OR

DEPARTMENT MANAGER: 

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

Any Questions: Call the Office of the Board Clerk 248-3277/248-5222



MULTNOMAH COUNTY OREGON

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

DIVISION OF PLANNING AND DEVELOPMENT

Board Planning Packet Check List

File No. C51-94 / HD 6-94

Agenda Placement Sheet No. of Pages 1

Case Summary Sheet No. of Pages 1
 Previously Distributed _____

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

Decision No. of Pages 10
(Hearings Officer/Planning Commission)
 Previously Distributed _____

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



BOARD HEARING OF April 12, 1994

CASE NAME: Lincoln School expansion
and variance to lot size requirement

TIME 1:30 pm

NUMBER CS 1-94, HV 6-94

1. Applicant Name/Address:

David Douglas School District #40
1500 SE 130th Ave.
Portland, OR 97233

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

2. Action Requested by applicant:

Community Service Use approval for a 5100 sq. ft. classroom addition to Lincoln Elementary School, and a variance to the minimum site size requirement for elementary schools.

3. Planning Director Recommendation:

Approve, subject to the condition of completing Design Review.

4. Hearings Officer Decision (March 16, 1994):

Approve, subject to the condition of completing Design Review..

5. If recommendation and decision are different, why?

Same.

ISSUES
(who raised them?)

None. No public comment or testimony at hearing.



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

**Decision
March 16, 1994**

This Decision consists of Conditions, Findings of Fact and Conclusions

**CS 1-94
HV 6-94** **Community Service Use Request and
Variance to Minimum Site Size**

Applicant requests Community Service Use approval for expansion of Lincoln School, consisting of a 5100 sq. ft. classroom addition, and a variance to the minimum site size required for elementary schools.

Location: 13200 SE Lincoln Street

Legal: Taylors Subdivision, Lot 12; West 1/2 of S 1/2 of Lot 13,
Exc. East 1/4 - North 1/2 of Lot 13 (see attached map)

Site Size: 8.2 acres

Property Owner: David Douglas School District No. 40
1500 SE 130th Ave.
Portland, OR 97233-1719

Applicant: Rommel Architectural Partnership
1020 SW Taylor St., Suite 360
Portland, OR 97205

Comprehensive Plan: Urban

Present Zoning: LR-7, Urban Low Density Residential

Hearings Officer

Decision: **Approve, subject to conditions, change in zone designation from LR-7 to LR-7, C-S, community service for the subject site to allow for a 5100 sq. ft. classroom addition to Lincoln Elementary School and site size variance, based on the following Findings and Conclusions.**

**CS 1-94
HV 6-94**

Zoning Map
Case #: CS 1-94; HV 6-94
Location: 13200 SE Lincoln Street
Scale: 1 inch to 200 feet (approx)
Shading indicates subject property.
S.Z.M. # 399, A&T Map #3244



JABS

A

CS 26-58

LR-5

LR-7

CS 10-74

SE MILL RD. NO. 2193 ST.

ADD

BEAN

SE STEPHENS F

LR-7

CAMEC

CS 66-60

TAY

13574

HARRISON RD. NO. 12-22

LINCOLN ST.

LR-5

LR-5

DAVID S DOUGLAS
ESTATES

BRUNDRIDGE

PARK

CARL

LATA

AYWO

SE GRANT

SHERMAN ST

HR-2

ZC 115-71

ZC 83-50/D

ZC 22-58/A

Proposed 5100 sq. Ft.
Addition to
Elementary
School

↑
N

336.10'

Proposed
Site Imps.

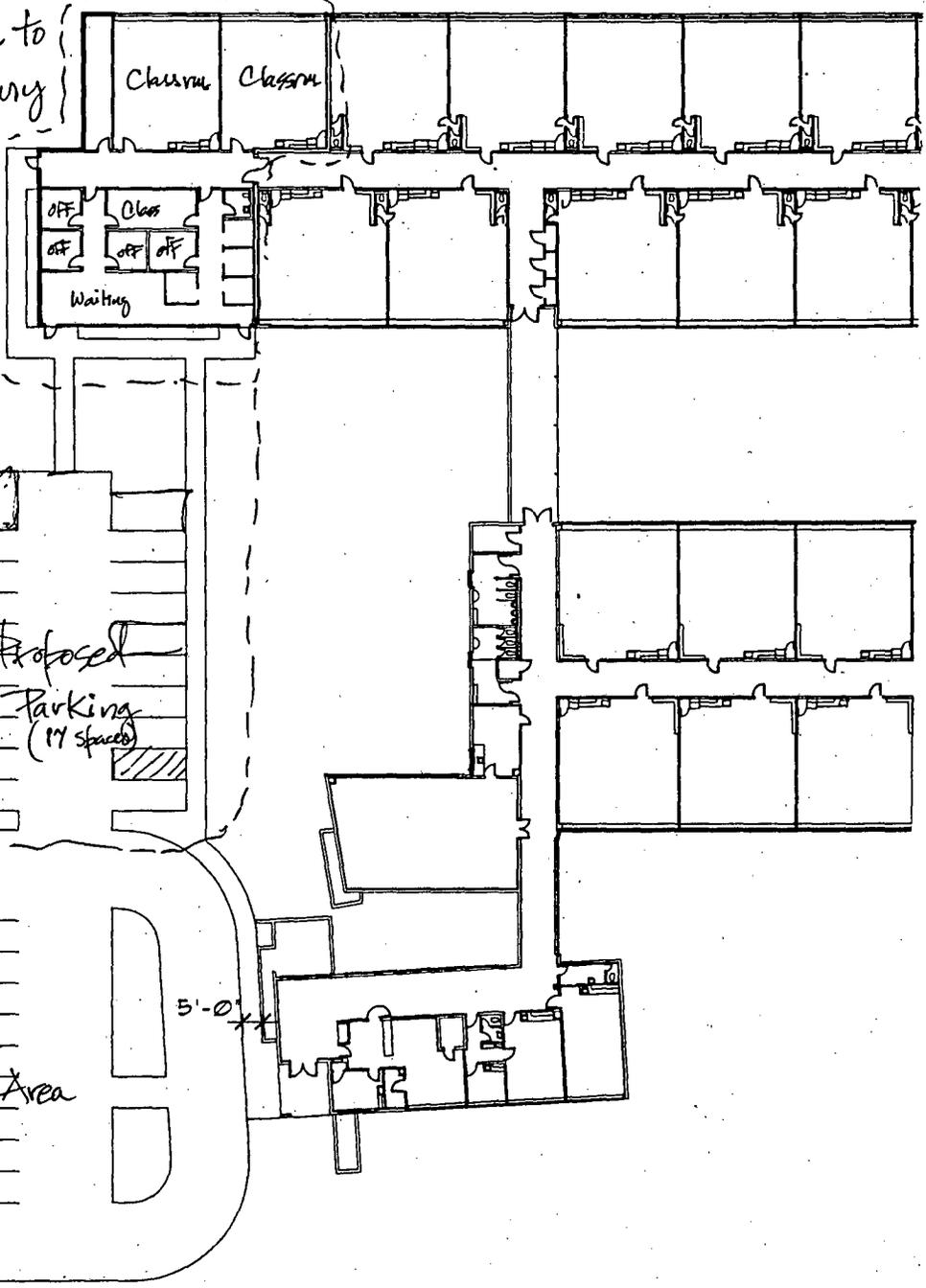
Proposed
Parking
(17 spaces)

Proposed sidewalk

Lincoln
St

Existing
Parking Area

5'-0" **



CS 1-94

BEFORE THE LAND USE HEARINGS OFFICER
FOR MULTNOMAH COUNTY, OREGON

Regarding a request by David Douglas School District)	<u>DECISION</u>
for a community service designation and minor variance)	CS 1-94
for the Lincoln School at 13200 SE Lincoln Street in)	HV 6-94
unincorporated Multnomah County, Oregon)	(Lincoln School)

I. FINDINGS

1. The hearings officer hereby adopts and incorporates by reference the Multnomah County Department of Environmental Services Staff Report in this matter dated March 16, 1994, (the "Staff Report") including the findings, conclusions and conditions of approval, except to the extent expressly provided otherwise in this final order.

2. Hearings Officer Larry Epstein held a duly noticed public hearing at 2115 SE Morrison Street, Portland, Oregon on March 16, 1994 to consider the application. A record of that testimony is included herein as Exhibit A (Minutes and Parties of Record), Exhibit B (Taped Proceedings), and Exhibit C (Written Testimony). These exhibits are filed at the Multnomah County Department of Environmental Services. The following selected, relevant testimony was offered at the hearing:

a. Sandy Mathewson testified for the County, summarized the Staff Report, and showed slides of the site and surrounding property, incorporated herein.

b. Terry Rommel appeared for the applicant. He accepted the Staff Report and recommended condition of approval without objection or correction.

3. The hearings officer finds that the findings in the Staff Report and the substantial evidence in the record referenced or relied on to make those findings are adequate to show that the proposed community service designation and minor variance comply with the applicable approval standards identified in the Staff Report, subject to the condition of approval recommended therein.

II. CONCLUSIONS

Based on the findings and the substantial evidence cited or referenced herein, the hearings officer concludes that the proposed community service designation and minor variance comply with the applicable standards of the Multnomah County Code and should be approved, subject to the condition of approval recommended in the Staff Report.

III. DECISION

In recognition of the findings and conclusions contained herein, and incorporating the Staff Report and other reports of affected agencies and public testimony and exhibits received in this matter, the hearings officer hereby approves CS 1-94 and HV 6-94, subject to the condition of approval recommended in the Multnomah County Department of Environmental Services Staff Report in this matter dated March 16, 1994.

Dated this 16th day of March, 1994.

CONDITIONS OF APPROVAL:

1. Obtain Design Review approval of all proposed site improvements prior to any development or construction at the site.

FINDINGS OF FACT:

1. Applicant's Proposal:

The applicant requests Hearings Officer approval to build an addition to Lincoln Elementary School. The 5100 sq. ft. addition will contain classrooms and office space, and will connect with the existing school building. An additional parking lot is also proposed, which will be located on the western side of the lot, directly north of an existing parking lot. The request also involves a site size variance, since the parcel size of 8.2 acres is less than the CS requirement for elementary schools of one acre for each 2 1/2 classrooms.

2. Site and Vicinity Characteristics:

The school is a single story building located on the northern portion of the parcel. There are small parking areas on the east and west ends of the building. A small playground is located next to SE 135th, and a soccer field and ball field are to the south of the building. Access to the school is from SE 135th, a collector street with sidewalks, and Lincoln Street, which dead ends at the school. The area surrounding the school is completely developed with single family residences, with the exception of Lincoln Park which is directly north of the school. The park is undeveloped.

3. Ordinance Criteria:

MCC 11.15.2610 states that Community Service Uses may be permitted in the LR-7 districts when found to satisfy the applicable Ordinance standards. In 1960, Community Service Use approval was granted for a 24 classroom elementary school at this site. The proposed addition will increase the number of classrooms above 24. MCC 11.15.7010(D) states that "*Community Service approval shall be for the specific use or uses approved....Any change of use or modification of limitations or conditions shall be subject to approval authority approval after a public hearing.*"

Ordinance criteria applicable to this request are in **bold**, followed by relevant portions of the applicant's response in *italics* and staff comments. The applicant's complete written responses to ordinance criteria and supporting exhibits are available in the file and are included in the record by reference.

MCC 11.15.7015 Approval Criteria: 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;

The existing facility is a single story low profile structure adjacent to a wooded park and a single

family residential area. We will maintain existing building forms in the addition to blend with the existing structure. Parking lots will be screened with landscaping and lighting directed away from adjacent residential property.

Staff comment: The surrounding area is single family residential. The existing elementary school is consistent with the neighborhood characteristics, and the proposed addition will not significantly alter the appearance, size, or character of the school.

(B) Will not adversely affect natural resources;

The present site is fully developed as a school and has no natural resources on-site. An adjacent park is undeveloped and will not be affected by our project.

Staff comment: There are no streams, wetlands or other natural features on the site. Lincoln Park, which abutts the school on the north, consists of a grove of fir trees. The proposed addition will be no closer to the park than the existing school building, and will have no adverse affect on the natural features of the park.

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

The site is located in a developed urban neighborhood and not in an area designated for farm or forest land usage.

Staff comment: Staff concurs.

(D) Will not require public services other than those existing or programmed for the area;

This addition does not require any additional services beyond the existing. Police services are provided by Multnomah County. When this property is annexed, the Portland Police Bureau will provide the service. Fire protection is by the City of Portland. Water is provided by Powell Valley Road Water District and the present service is adequate. Storm water is maintained on-site in dry-wells. Sanitary disposal is on-site with septic tank and cesspools. When the sewer is installed, installation will be within one year of activation. The district has budgeted the expense of this connection.

Staff comment: The existing school is adequately served by public facilities and utilities. No additional services will be required by the proposed addition.

(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;

This site is not located within an identified big game winter habitat area.

Staff comment: The site is not identified as being in a habitat area on the Comprehensive Plan Wildlife Habitat Map.

(F) Will not create hazardous conditions; and

This proposal will not create additional traffic to the site. It will however, alleviate the parking in the neighborhood and create a safer condition on Lincoln Street.

Staff comment: The building addition itself will not create hazardous conditions. The applicant has indicated that current parking is inadequate, and that teachers and visitors often park in fire lanes and on Lincoln Street. The proposed new parking lot will alleviate this hazardous condition.

(G) Will satisfy the applicable policies of the Comprehensive Plan.

Staff comment: Plan policies are addressed below.

(H) Will satisfy such other applicable approval criteria as are stated in this Section.

Staff comment: Other criteria applicable to this request are MCC .7010 (F), which requires Design Review approval for all authorized Community Service Uses; MCC .7025 (E) and (F) pertaining to off-street parking requirements and signs; MCC .7025 (B) which requires minimum setbacks of 30' front and 15' side and rear; and MCC .7025 (D) which requires a minimum site size for elementary schools of one acre for each 75 pupils or two and one-half classrooms, whichever is greater. Parking and signs are normally approved during the Design Review process. The site plan submitted by the applicant shows adequate setbacks. Regarding site size, the applicant has not indicated how many pupils will attend the school. There are 24 classrooms in the existing school building. The proposed addition will add 2 classrooms similar in size to the existing classrooms, and a group of small offices and special program classrooms. (Since the code has no definition of what constitutes a classroom, this group of small classrooms will be considered equivalent to one standard classroom since their combined size is no larger than the standard classrooms.) Based on a total of 27 classrooms, a minimum site size of 10.8 acres is required. Since the site is only 8.2 acres, a variance is required.

MCC 11.15.8515 (B) classifies a minor variance as one that is within 25 percent of the applicable dimensional requirement. The variance necessary is 2.6 acres, or 24 percent (site size is 8.2 acres, requirement based on number of classrooms is 10.8 acres).

MCC 11.15.8505 (A) The Approval Authority may permit and authorize a variance from the requirements of this Chapter only when there are cause practical difficulties in the application of the Chapter... A Minor Variance shall meet criteria (3) and (4).

(3) The authorization of the variance will not be materially detrimental to the public welfare or injurious to property in the vicinity or district in which the property is located, or adversely affect the appropriate development of adjoining properties.

The site is an existing elementary school with no possibility for further land acquisition. The proposed 5,100 S.F. four classroom addition is necessary to properly accommodate the existing student enrollment.

Staff Comment: Approval of the variance will be to the public's benefit by providing needed school

facilities within the neighborhood. The proposed addition will add approximately 60 feet to the existing building, and will maintain adequate setbacks from adjacent properties. This location will not effect any properties in the area. Adjoining properties are already developed with single family residences except for the park to the north, whose future development will not be impeded by the addition or variance.

(4) The granting of the variance will not adversely affect the realization of the Comprehensive Plan nor will it establish a use which is not listed in the underlying zone.

No applicant response.

Staff Comment: Comprehensive Plan Policies applicable to the proposed use are discussed below, and schools are allowed as Community Service uses in the LR-7 district.

4. Comprehensive Plan Policies:

Policy 13 Air, Water and Noise Quality

This proposal has no affect on water quality, all run off will be maintained on-site. This proposal will have a minimal affect on air and noise quality. There will be two to three additional automobiles and one or two additional school busses visiting the site each day. The busses will come 135th street and load and unload on the east side of the school. Presently, these busses already travel along 135th when they pick up the kindergarten students to go to Mill Park Elementary School. Parking lots will provide landscaping to minimize noise generation from vehicles.

Staff comment: The Sanitarian has indicated that the existing septic system is adequate to serve the proposed addition, thus protecting water quality. The school will have no adverse effects on air quality, and the site is not in a noise impact area.

Policy 14 Developmental Limitations

The site contains none of the characteristics that require mitigation or special treatment described in this policy.

Staff comment: Soils on the site are Multnomah-Urban land complex with slopes of 0 - 8 percent. The Multnomah County Soil Survey indicates that there are no major limitations for urban development on this type soil. The property is not within a flood hazard area.

Policy 16 Natural Resources

The site is not located within an Area of Significant Environmental Concern described in this policy. The site contains none of the features described in this policy.

Staff comment: There are no significant Goal 5 resources in the area. Lincoln Park is a wooded area of approximately 7 acres directly north of the school. The proposed addition will not affect the

park's natural features.

Policy 18 Community Identity

This school is one of the identifying elements of this community and our proposal reinforces this identity by providing access to the entire community.

Staff comment: The school is within the Hazelwood community. The school provides programs and activity space to meet the needs of the community.

Policy 19 Community Design

No applicant response.

Staff comment: Policy 19 requires a Design Review process to evaluate the compatibility of a proposed development with the surrounding community. The Hazelwood Community Plan contains design guidelines that should be considered during the Design Review process. Since final building, parking and landscaping plans are not complete, requiring Design Review as a condition of approval is suggested.

Policy 22 Energy Conservation:

No applicant response

Staff comment: The current school does not have enough space for all classes and activities. For instance, two kindergarten classes are currently bussed to Mill Park School because of inadequate space. The building addition will provide room for these students, thus saving energy used for transportation. Approval of the requested site size variance complies with the policy of increased density and intensity of development in urban areas by preventing the need for a new school.

Policy 31 Community Facilities and Uses

This school is classified as a minor community facility. The community needs this facility to maintain the education process in the local neighborhood. It reinforces existing patterns of development.

Staff comment: County policy is for minor community facilities to be located with direct access to a collector street and no routing through local neighborhood streets. In this case, 130th is classified as a major collector, with Division Street being a major arterial. Currently, bus access and drop-off is from 135th, which will not be changed. Existing and proposed new parking areas for teachers and visitors is on the western portion of the site, with access from Lincoln Street.

Policy 37 Utilities

Storm water disposal is on-site with an existing system of dry wells. Sanitary disposal is handled with a septic system and cesspools. The school district will connect to the sewer system within a year of operation as required by law. They have budgets these connections during the summer months to avoid conflict with the operation of the school. The present sanitary system has the

capacity to handle the additional flows. If the present dry well system cannot accommodate the additional run off, we propose to install an additional dry well. Communication and energy systems are in place and capable of handling the proposed addition.

Staff comment: The Sanitarian has indicated that the addition can be served by the existing septic system. Water service is provided by Powell Valley Water District. Existing dry wells should handle run-off on-site. PGE and telephone services already serve the school.

Policy 38 Facilities

The present school is unable to meet the needs of the community. This proposal will fulfill the needs of the community. Fire and police protection are in existing and capable of providing service.

Staff comment: Service Provider Forms from the Multnomah County Sheriff and Portland Fire District indicate that service levels are adequate for the proposed addition.

Policy 39 Parks and Recreation Planning

This is a school and does maintain recreational facilities on the site. A county park exists adjacent to the north property line, but is not developed. Our site has play fields and recreational equipment that is used by the community. This proposal will not reduce the existing recreational facilities.

Staff comment: Policy 39 encourages the development of recreational opportunities by other agencies, such as the school. Existing playgrounds at the school will be unaffected by the proposed addition.

Policy 40 Development Requirements

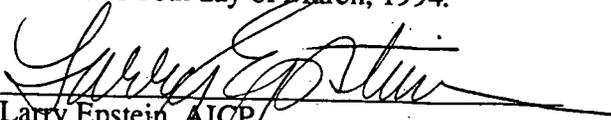
The existing site has pedestrian and bicycle path connections and is fully landscaped. Bicycle parking areas exist on the site.

Staff Comment: Bike paths exist or are proposed along 130th, 135th, Mill Street and Division. Policy 40 also requires dedication of pedestrian and bicycle path connections between parks, recreation areas and community facilities. Access between the school and Lincoln Park is currently available although there are no developed connecting pathways.

CONCLUSIONS:

1. The applicant has provided adequate evidence to show that the requirements for expansion of a Community Service use can be met.
2. Justification has been provided for the granting of a 2.6 acre variance to reduce the required site size for an elementary school.
3. Conditions are necessary to assure compliance with all code requirements.

Dated this 16th day of March, 1994.


Larry Epstein, AICP
Multnomah County Hearings Officer

Signed by the Hearings Officer: March 16, 1994
Decision Mailed to Parties: March 21, 1994
Decision Submitted to Board Clerk: March 21, 1994
Last day to Appeal Decision: 4:30 p.m., April 1, 1994
Reported to Board of County Commissioners: 1:30 p.m., April 12, 1994

Appeal to Board of County Commissioners:

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

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

To appeal the Hearings Officer Decision, a Notice of Review form and fee must be submitted to the Division of Planning and Development. For further information, call 248-3043.

MEETING DATE: April 12, 1994

AGENDA NO: P-4

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: Hearings Officer Decision

BOARD BRIEFING Date Requested: _____

Amount of Time Needed: _____

REGULAR MEETING: Date Requested: April 12, 1994

Amount of Time Needed: 2 Minutes

DEPARTMENT: DES DIVISION: Planning

CONTACT: R. Scott Pemble TELEPHONE #: 3182

BLDG/ROOM #: 412/103

PERSON(S) MAKING PRESENTATION: Planning Staff

ACTION REQUESTED:

INFORMATIONAL ONLY POLICY DIRECTION APPROVAL DENIAL
 OTHER

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

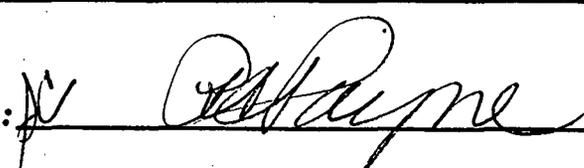
FD 1-94 Review the March 1, 1994 Hearings Officer Decision, denying request for construction of a single family dwelling below the 100-year flood elevation, for property located at 11930 SE Liebe Street.

BOARD OF
COUNTY COMMISSIONERS
MULTNOMAH COUNTY
OREGON
1994 APR - 5 AM 8 55

SIGNATURES REQUIRED:

ELECTED OFFICIAL: _____

OR

DEPARTMENT MANAGER: 

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

Any Questions: Call the Office of the Board Clerk 248-3277/248-5222



MULTNOMAH COUNTY OREGON

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

DIVISION OF PLANNING AND DEVELOPMENT

Board Planning Packet Check List

File No. FDI-94

Agenda Placement Sheet No. of Pages 1

Case Summary Sheet No. of Pages 1
 Previously Distributed _____

Notice of Review No. of Pages 4
*(Maybe distributed at Board Meeting)
 Previously Distributed _____

Decision No. of Pages 18
(Hearings Officer/Planning Commission)
 Previously Distributed _____

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



CASE NAME Flood Hazard Variance

NUMBER

FD 1-94

1. Applicant Name/Address

Gregory J. Frank
P.O. Box 19478
Portland 97280

2. Action Requested by Applicant

Reversal of Hearing Officer's decision in the matter of a request for a 4.5 foot height variance to the finished floor elevation for a proposed single family residence on property within the Flood Hazard district.

ACTION REQUESTED OF BOARD	
<input type="checkbox"/>	Affirm Plan.Com./Hear.Of
<input type="checkbox"/>	Hearing/Rehearing
<input checked="" type="checkbox"/>	Set date of Hearing for Review

3. Planning Staff Recommendation

Approval

4. Hearings Officer Decision:

Denial

5. If recommendation and decision are different, why?

The Hearings Officer found that the applicant had failed to demonstrate compliance with the standards for sewage disposal, certification of hydrostatic equalization, exceptional hardship to the applicant, and that fraud and victimization might occur to future purchasers of the property. He also found that the applicant had not provided information regarding Comprehensive Plan Policy #37 with respect to drainage and energy and communications.

ISSUES
(who raised them?)

- a. The appearance of a house with a foundation five feet higher than that of surrounding residences (neighbor).
- b. The low probability of flooding in the area based on over twenty years of observation (neighbor).

Do any of these issues have policy implications? Explain.

No



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

NOTICE OF REVIEW

1. Name: Frank J. Gregory
Last Middle First
2. Address: P.O. Box 19478 Portland Oregon 97280
Street or Box City State and Zip Code
3. Telephone: (503) 244 - 6811

4. If serving as a representative of other persons, list their names and addresses:
 Representative for:
Joseph Vaughn
5761 SE Harrison Street
Milwaukie, Oregon 97222
, Applicant

5. What is the decision you wish reviewed (e.g., denial of a zone change, approval of a subdivision, etc.)?
FD 1-94, #419
Denial of request for variance to flood hazard standards by Hearings Officer.

6. The decision was signed Hearings Officer on March 1, 19 94
 Submitted to Board Clerk on March 21, 1994

7. On what grounds do you claim status as a party pursuant to MCC 11.15.8225?
Joseph Vaughn
is the owner of the subject property and the applicant in this land use matter.
Pursuant to MCC 11.15.8225 (A)(1) "Those person entitled to notice under MCC
11.15.8220(C) who also make an appearance before the approval authority" are partys.
MCC 11.15.8220 (C)(1) includes the "applicant". Applicant appeared before the Hearings
Officer.

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

See attached additional sheets

9. Scope of Review (Check One):

(a) On the Record

(b) On the Record plus Additional Testimony and Evidence

(c) De Novo (i.e., Full Rehearing) See #10 Below

10. If you checked 9(b) or (c), you must use this space to present the grounds on which you base your request to introduce new evidence (Use additional sheets if necessary). For further explanation, see handout entitled Appeal Procedure.

The Multnomah County Board of Commissioners, on March 22, 1994, adopted Resolution 94-56, which established the Scope of Review for the next five appealed cases.

Accordingly, the Board will consider all evidence submitted to the Hearings Officer and any new relevant evidence submitted by parties.

Signed: Gregory J. Frank Date: April 1, 1994

For Staff Use Only

Fee:

Notice of Review = \$300.00
 Transcription Fee:
 Length of Hearing N/A x \$3.50/minute = \$ N/A
 Total Fee = \$ 300.00

Received by: SM Date: 4-1-94 Case No. FD 1-94

8. Grounds for Reversal of Decision (additional comments to Notice of Review)

The Hearings Officer's decision should be reversed based upon the staff report dated February 16, 1994 (which recommended approval of the requested variance) and for the following reasons::

1. MCC 11.15.6323 (B)(2) *"Failure to grant the variance will result in exceptional hardship to the applicant."*

The Hearings Officer found "no showing of financial hardship" and concluded that the "reasons offered by the applicant are insufficient to justify a variance." The Hearings Officer disregarded the staff's and applicant's interpretation of "hardship."

There is undoubtedly a financial hardship to the applicant. If the variance is not granted then, in order to build a house on the subject property, an eight foot (8') high foundation will be required. Such a home in this neighborhood would be totally out of design character. In fact, according to the application the property might not even be marketable at a reasonable sales price. In addition, construction of an eight foot (8') high foundation would increase construction costs by \$12,500 (12.5%). Increasing the price of the property to reflect the increased cost would price the house out of the neighborhood's market. In essence, such a house might not even sell at a breakeven price. The applicant has clearly demonstrated at least a \$12,500 hardship unless the variance is granted.

2. MCC 11.115.6323 (B)(3) *"The variance is the minimum necessary to afford relief."*

The Hearings Officer stated that the applicant "did not provide any information about the possibility of raising the foundation higher than was proposed..." This is not an entirely accurate statement by the Hearings Officer. The applicant proposed a thirty inch (30") foundation which would be in conformance with the neighborhood and be of a conventional appearance. The applicant, by implication, indicated that above a thirty inch (30") foundation costs would increase (hardship), continuity of the neighborhood would be diminished, and marketability would be decreased. The applicant is not required to demonstrate to mathematical certainty the absolute point of minimum relief. The applicant concurs with the staff's position that the proposed variance does in fact represent the minimum necessary variance to afford relief. The applicant intends to submit additional support regarding this matter to the Board at the de novo hearing.

3. MCC 11.15.6323 (B)(4) *"The granting of the variance will not result in additional threats to public safety, extraordinary public expense, create nuisances, cause fraud or victimization of the public or conflict with existing local laws or ordinances"*

The applicant agrees with the staff's analysis and conclusion regarding MCC 11.15.63223 (B)(4). The applicant disagrees with the Hearings Officer's reasoning and conclusion. There will be no "unwitting victimization in that the applicant is fully aware of the flood hazard. If the Hearings Officer was truly concerned about future purchaser's a simple condition to the granting of the variance would have alleviated any such fears: a required notice in the deed indicating the location of the property within a flood fringe of a flood hazard district. Applicant would agree to record a deed containing such a notice. These types of deed notices are very common in Multnomah County and the City of Portland.

4. MCC 11.15.6315 (F) *"Prevention of infiltration of water into household utility systems"*

The Hearings Officer incorrectly interpreted "the applicant's materials as an application for a variance from flood proofing requirements of MCC 11.15.6315 (F) as well as the flood elevation requirements of MCC 11.15.6315 (B)." The applicant and staff agree that applicant requested a variance from MCC 11.15.6315 (B); but not a variance from MCC 11.15.6315 (F). The applicant and staff agree the correct implementation of MCC 11.15.6315(F) is that construction details will be regulated by building codes and the City of Portland (re State Plumbing, Heating, Ventilation and Air Conditioning Codes). The applicant has satisfied this section of the Code and will be held accountable by the appropriate regulatory agency at the appropriate time.

5. MCC 11.15.6315 (G) *"Standards for Sewage Disposal Systems"*

The Hearings Officer indicted that the applicant did "not address the issue of whether the sewer connection will satisfy the flood infiltration standards in MCC 11.15.6315 (G)." The Hearings Officer is mistaken. First, the application and staff noted that the sewer connection on this property would have to be made in conformance to the Mid-County Sewer District's Rules of Connection. Secondly, the Hearings Officer is again trying to intercede in the building permit process; which he admits on page 4 of his decision, will be determined by others (ie Planning Director, City of Portland, etc.)

6. MCC 11.15.6315 (H) *'Certification of Hydrostatic Equalization'*

The Hearings Officer erred in requiring the applicant to present a "certification by a registered professional engineer..." at the time of the request for the variance. The staff position, which the applicant contends is correct, is that compliance with MCC 11.15.6315 (H) "will be determined by the Planning Director in conjunction with the building permit" (page 4 of staff report). Applicant has agreed, at the appropriate time, to file the required certification.

7. Comprehensive Framework Plan Policy 37, Sections E through I.

The applicant disagrees with the Hearings Officer's application of these sections of the Comprehensive Plan to the subject case. The applicant concurs with the staff position and contends that a proper interpretation of these sections would permit a "determination by the Planning Director in conjunction with the building permit decision" as to whether the appropriate utilities are present (pages 9 & 10 of staff report). Further, applicant intends to present evidence to the Board that in fact utilities are in fact present.

8. MCC 11.15.6315 (B)

The Hearings Officer erred in denying the variance requested under MCC 11.15.6315(B) based upon reasons stated in this notice, the application for variance, the staff report, the staff record, and testimony to be presented to the Board upon the de novo review.



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

DECISION

This Decision consists of Findings of Fact, and Conclusions

MARCH 1, 1994

FD 1-94, #419 VARIANCE TO FLOOD HAZARD DISTRICT STANDARDS
(Construct a Single Family Dwelling Below the 100-year Flood Elevation)

I. INTRODUCTION; NATURE OF THE REQUEST

This application is to construct a single family dwelling on a lot within the Flood Hazard District. Applicant requests a variance from the requirements in Multnomah County Code (MCC) 11.15.6315. MCC § .6315(B) requires that the floor of new houses in the Flood Hazard District be "*at least one foot above the base flood level.*" The ground elevation of this property is 205 feet and the base flood elevation in the surrounding area is 211 feet. Consequently, if constructed without a variance, the finished floor of the new dwelling would need to be seven feet above existing ground level.

Location: 11930 SE Liebe Street

Tax Roll Description: Parcel #1 of Partition Plat 1993-49

Owner/Applicant Joseph Vaughn
5761 SE Harrison Street
Milwaukie, Oregon 97222

Comprehensive Plan: Urban Low Density Residential

Zoning: LR-7/ FF; Low Density Residential District
Flood Fringe subdistrict

DECISION:: **Denied entire application,** based on the following Findings and Conclusions.

Zoning Map
 Case #: FD 1-94
 Location: 11930 SE Liebe Street
 Scale: 1 inch to 100 feet (approx)
 Shading indicates subject property
 SZM 419; A&T Map 1S 2E 15 AA 8901

LR-7

FF

CHOLOMA

LIEBE

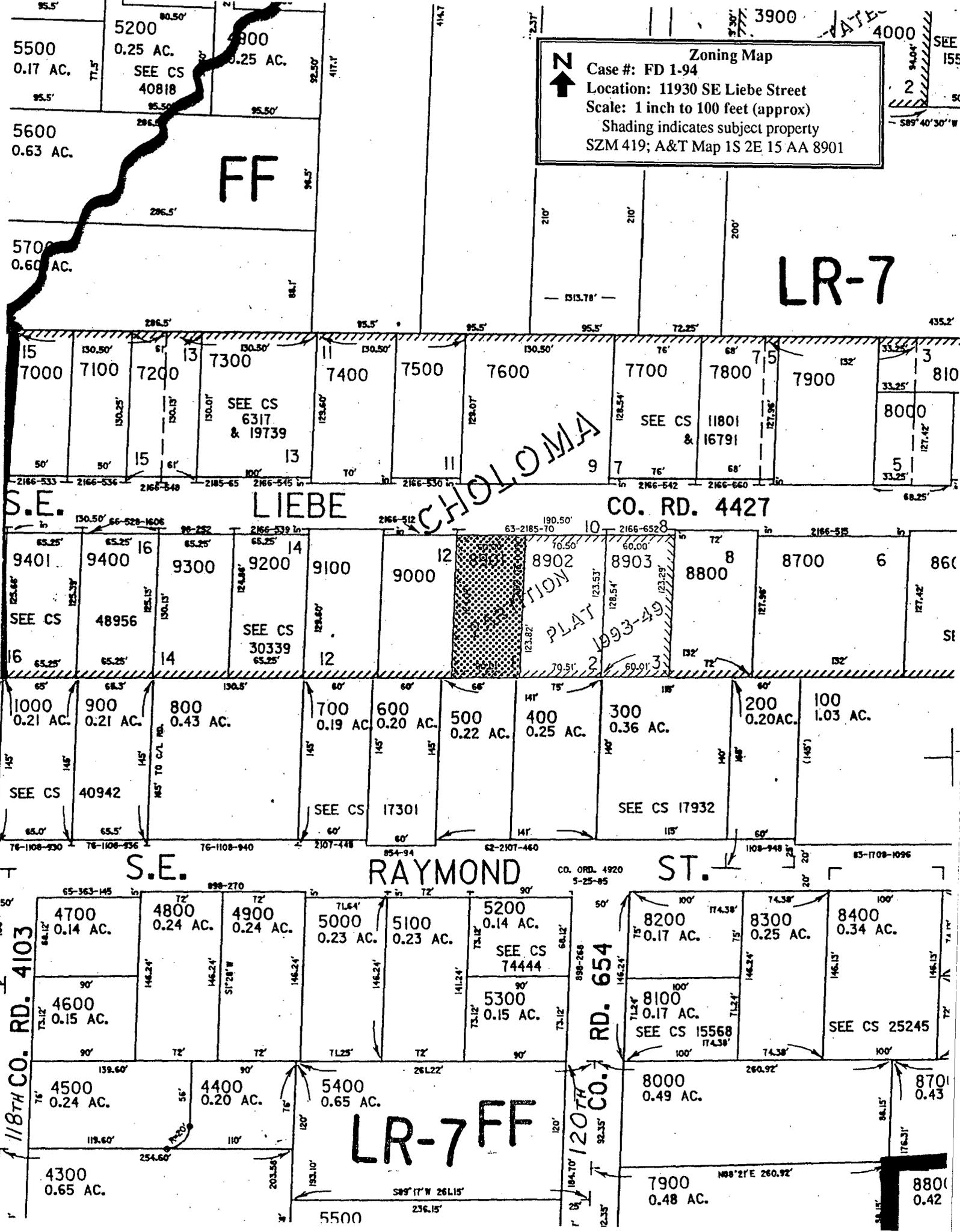
CO. RD. 4427

PLAT 1893-49

S.E.

RAYMOND

ST.



5500
0.17 AC.
SEE CS 40818

5600
0.63 AC.

5700
0.60 AC.

7000

7100

7200

7300

7400

7500

7600

7700

7800

7900

8000

810

9401

9400

9300

9200

9100

9000

8902

8903

8800

8700

8600

1000

900

800

700

600

500

400

300

200

100

4700

4800

4900

5000

5100

5200

8200

8300

8400

4600

5300

8100

8000

8700

8800

8700

8800

4500

4400

5400

7900

8800

8800

8800

8800

4300

5500

7900

8800

8800

8800

8800

8800

8800

8800

8800

8800

8800

8800

8800

8800

II. PARTIES, AGENTS AND WITNESSES TO THE PROCEEDING

A. Parties

The persons, agencies and organizations who submitted written or oral testimony in this proceeding on their own behalf are parties to the proceedings. MCC 11.15.8225(A)(1). These persons were:

1. Applicant and Landowner

Oregon Trail Custom Homes, PO Box 20686, Portland, Oregon 97220 (applicant)

Joseph Vaughn, 5761 SE Harrison St., Milwaukie, Oregon 97222 (landowner)

2. Other Persons Supporting The Application

John Mahaffey, Georgetown Realty, 10000 NE 122nd, Portland, Oregon 97230

Roger Adams, 12022 SE Liebe, Portland, Oregon 97266

Brenda Luma, 12021 SE Liebe, Portland, Oregon 97266

3. Persons Opposed To The Application

None

B. Agents

Persons who submitted written or testimony, but only in the capacity of a representative for one of the parties, and not on their own behalf, are agents, not parties to this proceedings. These persons were:

1. Agents For The Applicant

Robert Totaro, President, Oregon Trail Custom Homes (at applicant's address)

Mike Totaro, Vice President, Oregon Trail Custom Homes (at applicant's address)

C. Witnesses

Persons appearing to provide information on behalf of someone else, and not as parties in their own right, are witnesses. There were no witnesses in this proceeding.

III. PROCEDURAL ISSUES

A. Impartiality Of The Hearings Officer

Prior to the hearing I had no *ex parte* contacts with the applicants or anyone else concerning the merits of this application.

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

B. Other Procedural Issues

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

IV. BURDEN OF PROOF

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

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

A. MCC Chapter 11.15.6301 *Et. Seq.*: The Applicability Of The Flood Hazard District Requirements In General

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

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

B. MCC 11.15.6315: Flood Hazard Development Standards

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

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

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

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

MCC 11.15.6315(B) provides, in part:

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

According to the Flood Insurance Rate Maps, the property is at 205 feet about sea level and the "base flood level" in the surrounding area is 211 feet. The site of the proposed dwelling is shown as being in the "flood fringe," not the "floodway." The applicant proposes to construct the floor at 206.5 feet, 4.5 below the flood level and seeks a variance for this amount, discussed below.

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

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

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

MCC 11.15.6315(D) requires all manufactured homes to be "placed on a permanent foundation and shall be anchored to resist flotation, collapse and lateral movement by providing tie downs [etc.] * * * ." Because this standard applies to manufactured homes, it is inapplicable to this proceeding.

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

MCC 11.15.6315(E) is inapplicable because it governs foundations and drainage for "new manufactured home parks" and replacement of manufactured homes "in an existing manufactured home park or subdivision * * * ." The standard is does not apply to this application.

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

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

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

In this proceeding, the applicant is seeking a variance from the flood elevation requirements of MCC 11.15.6315(B). The variance would allow the applicant to site a house on an 30" foundation, leaving the first floor approximately 4.5 feet below the crest of the 100-year flood level.

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

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

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

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

The Mid-County Sewer district requires the applicants to connect to the existing sewer line in SE Liebe Street. The application does not address the issue of whether the sewer connection will satisfy the flood infiltration standards in MCC 11.15.6315(G).

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

MCC 11.15.6315(H) requires certification by a registered professional engineer or architect that the portions of the dwelling "below the lowest floor that are subject to flooding" are designed to "automatically equalize the hydrostatic flood forces * * * ."

The record does not contain the required certification. This is grounds for denial.¹

(9) MCC 11.15.6315(I): Exemptions For Land Shown To Be Above Flood Level

MCC 11.15.6315(I) authorizes exemptions from the requirements of MCC 11.15.6315 when a surveyor demonstrates the land is 1 foot or more above base flood level.

Testimony by Brenda Luma and Roger Adams challenged the accuracy of the FIRM maps. Mr. Adams stated that he had owned his house since 1968. Although his house has a full basement, it has never flooded.

However, the standard requires a showing that the property is actually 1 foot above the base flood level, as shown on the map. No one testified that the elevation of the property was inaccurate; in fact the request for the variance is based on the assumption that the base flood level is above the floor level.

I conclude that no exemption is warranted under this standard.

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

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

C. MCC 11.15.6323: Variance Standards

(1) The Applicable Portions Of The Variance Provisions

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

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

¹ Since the existence of a certification would be a ministerial decision, the certification can be provided by the Planning Director in conjunction with the issuance of a building permit or in the course of a *de novo* appeal, if this kind of review is granted by the County Commission.

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

(2) Variance From The Flood Elevation Requirement In MCC 11.15.6315(B)

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

MCC 11.15.6323(B)(1) provides:

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

Based (1) on the information on the parcel size in the Staff Report (page 5); (2) the applicant's "windshield survey," which was confirmed by the staff (Staff Report at page 5-6); and (3) the oral testimony presented at the hearing, I conclude that both elements of this standard have been satisfied.

(b) MCC 11.15.6323(B)(2): Exceptional Hardship To The Applicant

MCC 11.15.6323(B)(2) provides:

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

The hardship identified at page 4 of the application is:

First, the cost for the 8 foot high foundation wall is estimated to be \$15,000, an increase of \$12,500 from the \$2,500 for a standard 2-1/2 foot high foundation wall. That cost will be directly reflected in the sale price of the house, which will make it more difficult to sell in the relatively modest neighborhood. The home propose for Parcel 3 is expected to sell for \$98,500. An increase of \$12,500 in costs would push the price over \$100,000 and represent over 12% of the value of the house and land.

Secondly, the finished structure will appear totally out of place, standing one complete story above its neighbors. This factor will also make the house more difficult to sell.

Therefore, the additional expense of the foundation, the resulting appearance of the finished structure, and the likelihood that the house will be difficult to sell given market values in the neighborhood will combine to cause the

Applicant exceptional hardship.

Because I believe local governments have an ethical (even when it is not a legal) responsibility to interpret their standards consistently, I have reviewed my findings on a pair of earlier flood plain variance decisions, HV 22-92 dated February 1, 1993 and HV 23-92 dated December 7, 1992. In that case I reviewed the financial hardship to the applicant, and concluded (emphasis added):

There is no question that failure to grant the variance would create an "exceptional hardship" given Ms. Swank's conditions and these additional charges. The question is whether or not the need for the flood elevation and flood proofing variance was created by the applicants' decision to purchase property within the Flood Hazard District and to buy the manufactured home in advance of seeking the necessary variance.

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

While I am troubled by the idea of approving, in part, the siting of a manufactured home at an elevation 4.5 feet below the base flood level, I conclude the hardship standard has been met given the phrasing of the standard. However, a corollary of this interpretation of the ordinance is that this variance will remain valid only so long as the property is occupied by Lucy Swank.

Findings and Decision in HV 23-92, dated December 7, 1992 at page 7.

In this case, there is no showing of financial hardship to the developer as there was to the individual homeowner/applicant. The grounds for the hardship offered here would apply equally well to all new houses in the floodplain. If all houses qualified for a variance then the purpose of the flood plain protection provisions would be subverted.

For this reason, despite the more permissive (non-traditional) hardship standard in the County Code, I find that the reasons offered by the applicant are insufficient to justify a variance.

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

MCC 11.15.6323(B)(3) provides:

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

The applicant did not provide any information about the possibility of raising the foundation higher than was proposed, albeit less than the height necessary to avoid flooding the ground floor. The applicant has not carried its burden of proof with respect to this criterion.

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

MCC 11.15.6323(B)(4) provides:

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

(i) Threats To Public Safety, Extraordinary Public Expense

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

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

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

(ii) Create a Nuisance

The house, with or without a flood plain variance, would not constitute a "nuisance" as that term is used in planning and tort law. This part of the standard has been satisfied.

(iii) Fraud and Victimization

With regard to the "fraud and victimization" element, in the 1992 Mercer/Swank variance I said:

Fraud and victimization of the public would occur if the approval of the variance would lead unwitting purchasers to acquire the property without knowledge of the risk of serious flood damage. In this case, this variance proceeding has left no doubt that all of the applicants are well aware that the

bottom of the house is resting 4.5 feet below the 100 year flood level. In addition, adjoining property owners who signed a petition supporting a variance to the flood elevation requirement are also aware that the property lies within the flood fringe. Finally, by making the variance personal to the applicant, subsequent purchasers will be put on notice of the circumstances of the property.

The circumstances in this case are quite different; since the applicant is not the prospective resident, there may well be unwitting purchasers who could acquire the house without being aware that it was located within the flood plain.

During the hearing, Mr. John Mahaffey of Georgetown Realty referred to a new statute which would require this disclosure of the fact the property was within the flood plain. He was unable to provide a citation to the Oregon Revised Statutes at the hearing. My review of the statutes revealed ORS 104.465. "Seller's Property Disclosure And Disclaimer Statements." ORS 104.465(2)(b) specifies the contents, ("in substantially the following form") of the seller's disclosure statement. This includes, under section 8, "General": "D. To your knowledge, is the property in a designated flood plain?"

However, ORS 105.470(1) excludes "[t]he first sale of a dwelling never occupied" from the disclosure requirements in ORS 105.465.

After the hearing, Mr. Mahaffey sent the County an undated letter, which stated.

Enclosed is a disclosure form which we will fill out when we sell the homes on S.E. Liebe. We would be happy to accept a directive that the buyers are to receive this form concerning the 100 year flood plain.

Unfortunately, no disclosure form appears in the file. Even if one did, the County has no means of monitoring or enforcing such a disclosure requirement.

Based on this record, I am unable to conclude that fraud or perhaps unwitting victimization would not occur in the event a purchaser acquired the property without knowledge of the location in the flood plain and there lives or property were damaged in a flood.

(iv) Conflicts With Existing Local Laws Or Ordinances

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

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

I conclude that the applicant has satisfied the variance standards in MCC 11.15.6323(B)(1) and not satisfied the standards in MCC 11.15.6323(B)(2), (3) and (4), as applied to its request for a variance from the flood elevation requirement in MCC 11.15.6315(B).

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

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

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

Subsections (2), (3) and (4) of the variance standard are not satisfied for the reasons given previously with respect to the variance for the flood elevation variance.

D. Applicable Sections Of The County Comprehensive Plan

1. Policy 14; Development Limitations

Comprehensive Plan Policy 14 is to

DIRECT DEVELOPMENT AND LAND FORM ALTERATIONS AWAY FROM AREAS WITH DEVELOPMENT LIMITATION EXCEPT UPON A SHOWING THAT DESIGN AND CONSTRUCTION TECHNIQUES CAN MITIGATE ANY PUBLIC HARM OR ASSOCIATED PUBLIC COST, AND MITIGATE ANY ADVERSE EFFECTS TO SURROUNDING PERSONS OR PROPERTIES. DEVELOPMENT LIMITATIONS AREAS ARE THOSE WHICH HAVE ANY OF THE FOLLOWING CHARACTERISTICS:

* * * * *

C. LAND WITHIN THE 100 YEAR FLOOD PLAIN

Multnomah Comprehensive Framework Plan at page 58.

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

2. Policies 37 And 38, In General

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

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

(D) Variances, except as otherwise provided herein;

** * * **

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

Because this is a proceeding on an application for a variance, I find that it is an "action" and that consequently both of these policies apply.

As noted above, satisfaction of standards not addressed by the applicant to date, could be determined by the Planning Director before, or in conjunction with, either an appeal or the issuance of a building permit. Because compliance with Policies 37 and 38 may require the exercise of judgment as to facts and interpretation of the policies, notice of this subsequent decision and an opportunity for a hearing should be provided. ORS 197.763(2), 215.416, *Rhynne et al vs. Multnomah County, Swan & Trotter*, ___ Or LUBA ___ (1992.)

3. Plan Policy 37: "Utilities"

Multnomah County Plan Policy 37, "Utilities" provides:

POLICY 37

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

WATER AND DISPOSAL SYSTEM

A. THE PROPOSED USE CAN BE CONNECTED TO A PUBLIC SEWER AND WATER SYSTEM, BOTH OF WHICH HAVE ADEQUATE CAPACITY; OR

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

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

As noted previously, the applicant would connect the proposed house to the City of Portland's sewer system. The signed Portland Fire District review establishes the existence of a hydrant 70' from the residence with adequate water pressure nearby. From this I conclude the house would also be served by City water. This evidence is sufficient to carry the applicants' burden of proof with respect to this portion of Policy 37.

The remainder of Policy 37 provides:

DRAINAGE

- E. *THERE IS ADEQUATE CAPACITY IN THE STORM WATER SYSTEM TO HANDLE THE RUN-OFF; OR*
- F. *THE WATER RUN-OFF CAN BE HANDLED ON THE SITE OR ADEQUATE PROVISIONS CAN BE MADE; AND*
- G. *THE RUN-OFF FROM THE SITE WILL NOT ADVERSELY AFFECT THE WATER QUALITY IN ADJACENT STREAMS, PONDS, LAKES OR ALTER THE DRAINAGE ON ADJOINING LANDS.*

ENERGY AND COMMUNICATIONS

- H. *THERE IS AN ADEQUATE ENERGY SUPPLY TO HANDLE THE NEEDS OF THE PROPOSAL AND THE DEVELOPMENT LEVEL PROJECTED BY THE PLAN; AND*
- I. *COMMUNICATIONS FACILITIES ARE AVAILABLE*

FURTHERMORE, THE COUNTY'S POLICY IS TO CONTINUE COOPERATION WITH THE DEPARTMENT OF ENVIRONMENTAL QUALITY, FOR THE DEVELOPMENT AND IMPLEMENTATION OF A GROUNDWATER QUALITY PLAN TO MEET THE NEEDS OF THE COUNTY.

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

There is no evidence in the record concerning energy and communications facilities, subsections E, F, G, H and I, although the location of the property within the urbanized portion of the County suggests these facilities are readily available.

The failure to address these standards is grounds for denial. However, the applicant might be able to address them in the event of a *de novo* appeal of this decision.

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

4. Plan Policy 38: "Facilities"

Multnomah County Plan Policy 38, "Facilities" provides:

POLICY 38

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 COMMENTS [sic] ON THE PROPOSAL.

POLICE PROTECTION

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

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

The David Douglas School District returned the "School District Review" form, with the signature of the Dr. Ron Russell, Assistant Superintendent, dated February 8, 1994. (The "no comment" box was checked.) This satisfies the requirement in subsection A of policy 38 that the school district has "an opportunity to review and comment on the proposal."

The completed Portland Fire District Review form, signed by Don Patty (undated), Plans Review provides sufficient evidence satisfying subsection B, ("there is adequate water pressure and flow for fire fighting purposes") and C (the fire district "had an opportunity to review and comment on the proposal.")

Lt. Bill Goss, of the Multnomah County Sheriff's Office returned the "Police Services Review" form, dated February 8, 1994, indicating there would be an "adequate" level of service "available to serve the proposed project."

The applicant has satisfied Policy 38.

E. State Statutes, Goals And Administrative Rules Applicable To The Decision

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

No other provisions in ORS Chapters 197 and 215 are applicable.

No statewide planning goals and no Oregon Administrative Rules interpreting those goals apply to this quasijudicial permitting proceeding.

VI. CONCLUSIONS AND ORDER

A. Standards Which The Applicant Has Not Satisfied

I find that the evidence and argument offered by the applicant is insufficient to satisfy the "hardship" standard in MCC 11.15.6323(B)(2) and the "minimum variance necessary" standard in MCC 11.15.6323(B)(3), with respect to the applicant's request for a variance to the flood elevation standards and its implied request for a variance to the flood-proofing

requirements of MCC 11.15.6315(F).

I also find that the applicant failed to satisfy the "fraud" and "victimization" provisions in MCC 11.15.6323(B)(4), as to the flood elevation variance to MCC 11.15.6315(B) and the flood-proofing variance to MCC 11.15.6315(F).

These are grounds for denial.

B. Standards Which The Applicant Failed To Address

The applicant did not offer evidence addressing compliance with several provisions in the County Code and some of the applicable Plan policies. These standards and policies are:

MCC 11.15.6315(G)
MCC 11.15.6315(H)
Plan Policy 37 §§(E) through (I)
Comprehensive Framework Plan Policy 37, Sections E through I.

The applicant's failure to carry its burden of proof for these standards, is grounds for denial.

C. Standards Which The Applicant Has Satisfied

The applicant has satisfied the following applicable sections of the County Code and County Plan:

MCC 11.15.6323(B)(1), as to flood elevation variance to MCC 11.15.6315(B)
MCC 11.15.6323(B)(1), as to flood-proofing variance to MCC 11.15.6315(F)
MCC 11.15.6323(B)(4), in part, as to flood elevation variance to MCC 11.15.6315(B)
MCC 11.15.6323(B)(4), in part, as to flood-proofing variance to MCC 11.15.6315(F)
Comprehensive Framework Plan Policy 14
Comprehensive Framework Plan Policy 37, Subsections A through D
Comprehensive Framework Plan Policy 38

D. Standards Which Are Inapplicable

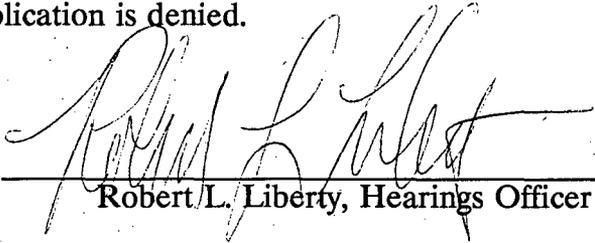
Although the following standards appear in otherwise relevant code sections, I found them inapplicable to this application or this proceeding:

MCC 11.15.6315(A),(B),(C),(D),(E),(I)
MCC 11.15.6323(A),(C),(E)

ORDER

For the foregoing reasons, the application is denied.

March 1994
Date


Robert L. Liberty, Hearings Officer

Signed by the Hearings Officer: March 1, 1994
Decision Mailed to Parties: March 21, 1994
Decision Submitted to Board Clerk: March 21, 1994
Lay day to Appeal Decision: 4:30 p.m., April 1, 1994
Reported to Board of County Commissioners: 1:30 p.m., April 12, 1994

Appeal to the Board of County Commissioners

The Hearings Officer Decision may be appealed to the Board of County Commissioners (Board) by any person or organization who appears and testifies at the hearing, or by those who submit written testimony into the record. An appeal must be filed with the County Planning Division within ten days after the Hearings Officer decision is submitted to the Clerk of the Board. An appeal requires a completed "Notice of Review" form and a fee of \$300.00. Instructions and forms are available at the County Planning and Development Office at 2115 SE Morrison Street, Portland.

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

To appeal the Hearings Officer decision, a "Notice of Review" form and fee must be submitted to the County Planning Director. For further information call the Multnomah County Planning and Development Division at 248-3043.

MEETING DATE: April 12, 1994

AGENDA NO: P-5

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: Hearings Officer Decision

BOARD BRIEFING Date Requested: _____

Amount of Time Needed: _____

REGULAR MEETING: Date Requested: April 12, 1994

Amount of Time Needed: 2 Minutes

DEPARTMENT: DES DIVISION: Planning

CONTACT: R. Scott Pemble TELEPHONE #: 3182

BLDG/ROOM #: 412/103

PERSON(S) MAKING PRESENTATION: Planning Staff

ACTION REQUESTED:

INFORMATIONAL ONLY POLICY DIRECTION APPROVAL DENIAL
 OTHER

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

FD 3-94 Review the March 1, 1994 Hearings Officer Decision, denying request for construction of a single family dwelling below the 100-year flood elevation, for property located at 11950 SE Liebe Street.

SIGNATURES REQUIRED:

ELECTED OFFICIAL: _____

OR

DEPARTMENT MANAGER:  _____

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

Any Questions: Call the Office of the Board Clerk 248-3277/248-5222

1994 APR 13 AM 8:55
MULTNOMAH COUNTY
OREGON
OFFICE OF
COUNTY CLERK



MULTNOMAH COUNTY OREGON

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

DIVISION OF PLANNING AND DEVELOPMENT

Board Planning Packet Check List

File No. FD3-94

Agenda Placement Sheet No. of Pages 1

Case Summary Sheet No. of Pages 1
 Previously Distributed _____

Notice of Review No. of Pages 4
*(Maybe distributed at Board Meeting)
 Previously Distributed _____

Decision No. of Pages 18
(Hearings Officer/Planning Commission)
 Previously Distributed _____

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



CASE NAME Flood Hazard Variance

NUMBER

FD 3-94

1. Applicant Name/Address

Gregory J. Frank
P.O. Box 19478
Portland 97280

2. Action Requested by Applicant

Reversal of Hearing Officer's decision in the matter of a request for a 4.5 foot height variance to the finished floor elevation for a proposed single family residence on property within the Flood Hazard district.

ACTION REQUESTED OF BOARD	
<input type="checkbox"/>	Affirm Plan.Com./Hear.Of
<input type="checkbox"/>	Hearing/Rehearing
<input checked="" type="checkbox"/>	Set date of Hearing for Review

3. Planning Staff Recommendation

Approval

4. Hearings Officer Decision:

Denial

5. If recommendation and decision are different, why?

The Hearings Officer found that the applicant had failed to demonstrate compliance with the standards for sewage disposal, certification of hydrostatic equalization, exceptional hardship to the applicant, and that fraud and victimization might occur to future purchasers of the property. He also found that the applicant had not provided information regarding Comprehensive Plan Policy #37 with respect to drainage and energy and communications.

ISSUES
(who raised them?)

- a. The appearance of a house with a foundation five feet higher than that of surrounding residences (neighbor).
- b. The low probability of flooding in the area based on over twenty years of observation (neighbor).

Do any of these issues have policy implications? Explain.

No



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

NOTICE OF REVIEW

1. Name: Frank J. Gregory
2. Address: P.O. Box 19478 Portland Oregon 97280
3. Telephone: (503) 244 - 6811

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

Representative for:

Mike Totaro

Oregon Trail Custom Homes

P.O. Box 20686

, Applicant

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

FD 3-94, #419

Denial of request for variance to flood hazard standards by Hearings Officer.

6. The decision was signed Hearings Officer on March 1, 19 94
Submitted to Board Clerk on March 21, 1994

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

Mike Totaro is the owner of the subject property and the applicant in this land use matter.

Pursuant to MCC 11.15.8225 (A)(1) "Those person entitled to notice under MCC
11.15.8220(C) who also make an appearance before the approval authority" are partys.

MCC 11.15.8220 (C)(1) includes the "applicant". Applicant appeared before the Hearings
Officer.

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

See attached additional sheets

9. Scope of Review (Check One):

- (a) On the Record
- (b) On the Record plus Additional Testimony and Evidence
- (c) De Novo (i.e., Full Rehearing) See #10 Below

10. If you checked 9(b) or (c), you must use this space to present the grounds on which you base your request to introduce new evidence (Use additional sheets if necessary). For further explanation, see handout entitled Appeal Procedure.

The Multnomah County Board of Commissioners, on March 22, 1994, adopted Resolution 94-56, which established the Scope of Review for the next five appealed cases.

Accordingly, the Board will consider all evidence submitted to the Hearings Officer and any new relevant evidence submitted by parties.

Signed: Gregory J. Frank Date: April 1, 1994

For Staff Use Only			
Fee:			
Notice of Review =	\$300.00		
Transcription Fee:			
Length of Hearing	<u>N/A</u>	x \$3.50/minute = \$	<u>N/A</u>
Total Fee = \$	<u>300.00</u>		
Received by:	<u>SM</u>	Date:	<u>4-1-94</u> Case No. <u>ED 3-94</u>

11H
300.00

8. Grounds for Reversal of Decision (additional comments to Notice of Review)

The Hearings Officer's decision should be reversed based upon the staff report dated February 16, 1994 (which recommended approval of the requested variance) and for the following reasons::

1. MCC 11.15.6323 (B)(2) *"Failure to grant the variance will result in exceptional hardship to the applicant."*

The Hearings Officer found "no showing of financial hardship" and concluded that the "reasons offered by the applicant are insufficient to justify a variance." The Hearings Officer disregarded the staff's and applicant's interpretation of "hardship."

There is undoubtedly a financial hardship to the applicant. If the variance is not granted then, in order to build a house on the subject property, an eight foot (8') high foundation will be required. Such a home in this neighborhood would be totally out of design character. In fact, according to the application the property might not even be marketable at a reasonable sales price. In addition, construction of an eight foot (8') high foundation would increase construction costs by \$12,500 (12.5%). Increasing the price of the property to reflect the increased cost would price the house out of the neighborhood's market. In essence, such a house might not even sell at a breakeven price. The applicant has clearly demonstrated at least a \$12,500 hardship unless the variance is granted.

2. MCC 11.115.6323 (B)(3) *"The variance is the minimum necessary to afford relief."*

The Hearings Officer stated that the applicant "did not provide any information about the possibility of raising the foundation higher than was proposed..." This is not an entirely accurate statement by the Hearings Officer. The applicant proposed a thirty inch (30") foundation which would be in conformance with the neighborhood and be of a conventional appearance. The applicant, by implication, indicated that above a thirty inch (30") foundation costs would increase (hardship), continuity of the neighborhood would be diminished, and marketability would be decreased. The applicant is not required to demonstrate to mathematical certainty the absolute point of minimum relief. The applicant concurs with the staff's position that the proposed variance does in fact represent the minimum necessary variance to afford relief. The applicant intends to submit additional support regarding this matter to the Board at the de novo hearing.

3. MCC 11.15.6323 (B)(4) *"The granting of the variance will not result in additional threats to public safety, extraordinary public expense, create nuisances, cause fraud or victimization of the public or conflict with existing local laws or ordinances"*

The applicant agrees with the staff's analysis and conclusion regarding MCC 11.15.63223 (B)(4). The applicant disagrees with the Hearings Officer's reasoning and conclusion. There will be no "unwitting victimization in that the applicant is fully aware of the flood hazard. If the Hearings Officer was truly concerned about future purchaser's a simple condition to the granting of the variance would have alleviated any such fears: a required notice in the deed indicating the location of the property within a flood fringe of a flood hazard district. Applicant would agree to record a deed containing such a notice. These types of deed notices are very common in Multnomah County and the City of Portland.

4. MCC 11.15.6315 (F) "*Prevention of infiltration of water into household utility systems*"

The Hearings Officer incorrectly interpreted "the applicant's materials as an application for a variance from flood proofing requirements of MCC 11.15.6315 (F) as well as the flood elevation requirements of MCC 11.15.6315 (B)." The applicant and staff agree that applicant requested a variance from MCC 11.15.6315 (B); but not a variance from MCC 11.15.6315 (F). The applicant and staff agree the correct implementation of MCC 11.15.6315(F) is that construction details will be regulated by building codes and the City of Portland (re State Plumbing, Heating, Ventilation and Air Conditioning Codes). The applicant has satisfied this section of the Code and will be held accountable by the appropriate regulatory agency at the appropriate time.

5. MCC 11.15.6315 (G) "*Standards for Sewage Disposal Systems*"

The Hearings Officer indicted that the applicant did "not address the issue of whether the sewer connection will satisfy the flood infiltration standards in MCC 11.15.6315 (G)." The Hearings Officer is mistaken. First, the application and staff noted that the sewer connection on this property would have to be made in conformance to the Mid-County Sewer District's Rules of Connection. Secondly, the Hearings Officer is again trying to intercede in the building permit process; which he admits on page 4 of his decision, will be determined by others (ie Planning Director, City of Portland, etc.)

6. MCC 11.15.6315 (H) "*Certification of Hydrostatic Equalization*"

The Hearings Officer erred in requiring the applicant to present a "certification by a registered professional engineer..." at the time of the request for the variance. The staff position, which the applicant contends is correct, is that compliance with MCC 11.15.6315 (H) "will be determined by the Planning Director in conjunction with the building permit" (page 4 of staff report). Applicant has agreed, at the appropriate time, to file the required certification.

7. Comprehensive Framework Plan Policy 37, Sections E through I.

The applicant disagrees with the Hearings Officer's application of these sections of the Comprehensive Plan to the subject case. The applicant concurs with the staff position and contends that a proper interpretation of these sections would permit a "determination by the Planning Director in conjunction with the building permit decision" as to whether the appropriate utilities are present (pages 9 & 10 of staff report). Further, applicant intends to present evidence to the Board that in fact utilities are in fact present.

8. MCC 11.15.6315 (B)

The Hearings Officer erred in denying the variance requested under MCC 11.15.6315(B) based upon reasons stated in this notice, the application for variance, the staff report, the staff record, and testimony to be presented to the Board upon the de novo review.



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

DECISION

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

MARCH 1, 1994

FD 3-94, #419 VARIANCE TO FLOOD HAZARD DISTRICT STANDARDS
(Construct a Single Family Dwelling Below the 100-year Flood Elevation)

I. INTRODUCTION; NATURE OF THE REQUEST

This application is to construct a single family dwelling on a lot within the Flood Hazard District. Applicant requests a variance from the requirements in Multnomah County Code (MCC) 11.15.6315. MCC § .6315(B) requires that the floor of new houses in the Flood Hazard District be "*at least one foot above the base flood level.*" The ground elevation of this property is 205 feet and the base flood elevation in the surrounding area is 211 feet. Consequently, if constructed without a variance, the finished floor of the new dwelling would need to be seven feet above existing ground level.

Location: 11950 SE Liebe Street

Tax Roll Description: Parcel #3 of Partition Plat 1993-49

Owner Mike Tataro, Oregon Trail Custom Homes
PO Box 20686
Portland, OR 97220

Applicant Same

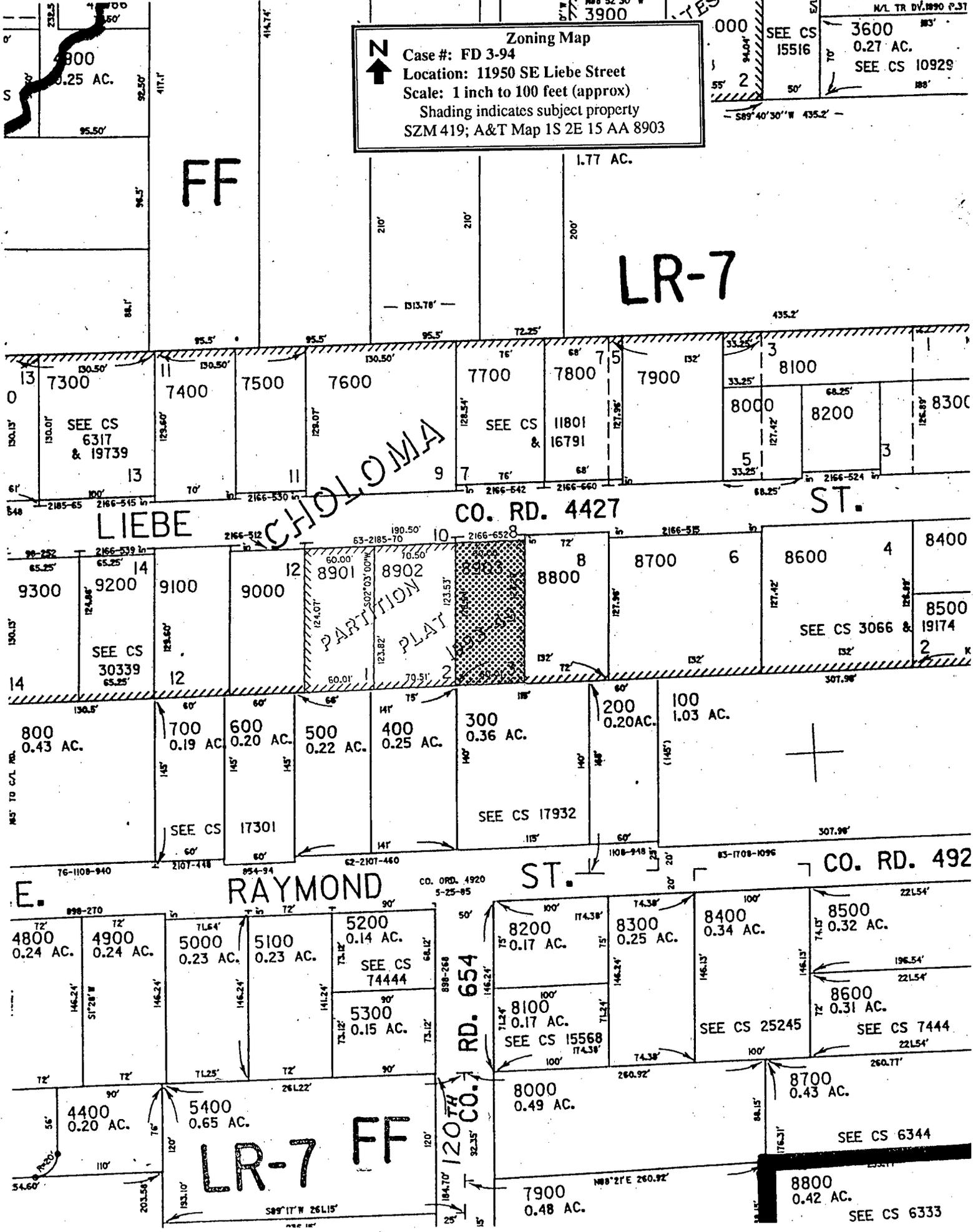
Comprehensive Plan: Urban Low Density Residential

Zoning: LR-7/ FF; Low Density Residential District,
Flood Fringe subdistrict

DECISION:: Denied entire application, based on the following Findings and Conclusions.

Zoning Map
 Case #: FD 3-94
 Location: 11950 SE Liebe Street
 Scale: 1 inch to 100 feet (approx)
 Shading indicates subject property
 SZM 419; A&T Map 1S 2E 15 AA 8903

M/L TR DV. 1890 P. 31
 3600
 0.27 AC.
 SEE CS 10929
 SEE CS 15516
 SEE CS 6317 & 19739
 SEE CS 30339
 SEE CS 17301
 SEE CS 7444
 SEE CS 15568
 SEE CS 25245
 SEE CS 7444
 SEE CS 6344
 SEE CS 6333



II. PARTIES, AGENTS AND WITNESSES TO THE PROCEEDING

A. Parties

The persons, agencies and organizations who submitted written or oral testimony in this proceeding on their own behalf are parties to the proceedings. MCC 11.15.8225(A)(1). These persons were:

1. Applicant and Landowner

Oregon Trail Custom Homes, PO Box 20686, Portland, Oregon 97220 (applicant)

Joseph Vaughn, 5761 SE Harrison St., Milwaukie, Oregon 97222 (landowner)

2. Other Persons Supporting The Application

John Mahaffey, Georgetown Realty, 10000 NE 122nd, Portland, Oregon 97230

Roger Adams, 12022 SE Liebe, Portland, Oregon 97266

Brenda Luma, 12021 SE Liebe, Portland, Oregon 97266

3. Persons Opposed To The Application

None

B. Agents

Persons who submitted written or testimony, but only in the capacity of a representative for one of the parties, and not on their own behalf, are agents, not parties to this proceedings. These persons were:

1. Agents For The Applicant

Robert Totaro, President, Oregon Trail Custom Homes (at applicant's address)

Mike Totaro, Vice President, Oregon Trail Custom Homes (at applicant's address)

C. Witnesses

Persons appearing to provide information on behalf of someone else, and not as parties in their own right, are witnesses. There were no witnesses in this proceeding.

III. PROCEDURAL ISSUES

A. Impartiality Of The Hearings Officer

Prior to the hearing I had no *ex parte* contacts with the applicants or anyone else concerning the merits of this application.

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

B. Other Procedural Issues

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

IV. BURDEN OF PROOF

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

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

A. MCC Chapter 11.15.6301 *Et. Seq.*: The Applicability Of The Flood Hazard District Requirements In General

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

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

B. MCC 11.15.6315: Flood Hazard Development Standards

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

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

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

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

MCC 11.15.6315(B) provides, in part:

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

According to the Flood Insurance Rate Maps, the property is at 205 feet about sea level and the "base flood level" in the surrounding area is 211 feet. The site of the proposed dwelling is shown as being in the "flood fringe," not the "floodway." The applicant proposes to construct the floor at 206.5 feet, 4.5 below the flood level and seeks a variance for this amount, discussed below.

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

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

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

MCC 11.15.6315(D) requires all manufactured homes to be "placed on a permanent foundation and shall be anchored to resist flotation, collapse and lateral movement by providing tie downs [etc.] * * * ." Because this standard applies to manufactured homes, it is inapplicable to this proceeding.

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

MCC 11.15.6315(E) is inapplicable because it governs foundations and drainage for "new manufactured home parks" and replacement of manufactured homes "in an existing manufactured home park or subdivision * * * ." The standard is does not apply to this application.

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

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

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

In this proceeding, the applicant is seeking a variance from the flood elevation requirements of MCC 11.15.6315(B). The variance would allow the applicant to site a house on an 30" foundation, leaving the first floor approximately 4.5 feet below the crest of the 100-year flood level.

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

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

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

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

The Mid-County Sewer district requires the applicants to connect to the existing sewer line in SE Liebe Street. The application does not address the issue of whether the sewer connection will satisfy the flood infiltration standards in MCC 11.15.6315(G).

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

MCC 11.15.6315(H) requires certification by a registered professional engineer or architect that the portions of the dwelling "below the lowest floor that are subject to flooding" are designed to "automatically equalize the hydrostatic flood forces * * * ."

The record does not contain the required certification. This is grounds for denial.¹

(9) MCC 11.15.6315(I): Exemptions For Land Shown To Be Above Flood Level

MCC 11.15.6315(I) authorizes exemptions from the requirements of MCC 11.15.6315 when a surveyor demonstrates the land is 1 foot or more above base flood level.

Testimony by Brenda Luma and Roger Adams challenged the accuracy of the FIRM maps. Mr. Adams stated that he had owned his house since 1968. Although his house has a full basement, it has never flooded.

However, the standard requires a showing that the property is actually 1 foot above the base flood level, as shown on the map. No one testified that the elevation of the property was inaccurate; in fact the request for the variance is based on the assumption that the base flood level is above the floor level.

I conclude that no exemption is warranted under this standard.

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

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

C. MCC 11.15.6323: Variance Standards

(1) The Applicable Portions Of The Variance Provisions

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

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

¹ Since the existence of a certification would be a ministerial decision, the certification can be provided by the Planning Director in conjunction with the issuance of a building permit or in the course of a *de novo* appeal, if this kind of review is granted by the County Commission.

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

(2) Variance From The Flood Elevation Requirement In MCC 11.15.6315(B)

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

MCC 11.15.6323(B)(1) provides:

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

Based (1) on the information on the parcel size in the Staff Report (page 5); (2) the applicant's "windshield survey," which was confirmed by the staff (Staff Report at page 5-6); and (3) the oral testimony presented at the hearing, I conclude that both elements of this standard have been satisfied.

(b) MCC 11.15.6323(B)(2): Exceptional Hardship To The Applicant

MCC 11.15.6323(B)(2) provides:

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

The hardship identified at page 4 of the application is:

First, the cost for the 8 foot high foundation wall is estimated to be \$15,000, an increase of \$12,500 from the \$2,500 for a standard 2-1/2 foot high foundation wall. That cost will be directly reflected in the sale price of the house, which will make it more difficult to sell in the relatively modest neighborhood. The home propose for Parcel 3 is expected to sell for \$98,500. An increase of \$12,500 in costs would push the price over \$100,000 and represent over 12% of the value of the house and land.

Secondly, the finished structure will appear totally out of place, standing one complete story above its neighbors. This factor will also make the house more difficult to sell.

Therefore, the additional expense of the foundation, the resulting appearance of the finished structure, and the likelihood that the house will be difficult to sell given market values in the neighborhood will combine to cause the

Applicant exceptional hardship.

Because I believe local governments have an ethical (even when it is not a legal) responsibility to interpret their standards consistently, I have reviewed my findings on a pair of earlier flood plain variance decisions, HV 22-92 dated February 1, 1993 and HV 23-92 dated December 7, 1992. In that case I reviewed the financial hardship to the applicant, and concluded (emphasis added):

There is no question that failure to grant the variance would create an "exceptional hardship" given Ms. Swank's conditions and these additional charges. The question is whether or not the need for the flood elevation and flood proofing variance was created by the applicants' decision to purchase property within the Flood Hazard District and to buy the manufactured home in advance of seeking the necessary variance.

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

While I am troubled by the idea of approving, in part, the siting of a manufactured home at an elevation 4.5 feet below the base flood level, I conclude the hardship standard has been met given the phrasing of the standard. However, a corollary of this interpretation of the ordinance is that this variance will remain valid only so long as the property is occupied by Lucy Swank.

Findings and Decision in HV 23-92, dated December 7, 1992 at page 7.

In this case, there is no showing of financial hardship to the developer as there was to the individual homeowner/applicant. The grounds for the hardship offered here would apply equally well to all new houses in the floodplain. If all houses qualified for a variance then the purpose of the flood plain protection provisions would be subverted.

For this reason, despite the more permissive (non-traditional) hardship standard in the County Code, I find that the reasons offered by the applicant are insufficient to justify a variance.

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

MCC 11.15.6323(B)(3) provides:

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

The applicant did not provide any information about the possibility of raising the foundation higher than was proposed, albeit less than the height necessary to avoid flooding the ground floor. The applicant has not carried its burden of proof with respect to this criterion.

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

MCC 11.15.6323(B)(4) provides:

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

(i) Threats To Public Safety, Extraordinary Public Expense

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

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

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

(ii) Create a Nuisance

The house, with or without a flood plain variance, would not constitute a "nuisance" as that term is used in planning and tort law. This part of the standard has been satisfied.

(iii) Fraud and Victimization

With regard to the "fraud and victimization" element, in the 1992 Mercer/Swank variance I said:

Fraud and victimization of the public would occur if the approval of the variance would lead unwitting purchasers to acquire the property without knowledge of the risk of serious flood damage. In this case, this variance proceeding has left no doubt that all of the applicants are well aware that the

bottom of the house is resting 4.5 feet below the 100 year flood level. In addition, adjoining property owners who signed a petition supporting a variance to the flood elevation requirement are also aware that the property lies within the flood fringe. Finally, by making the variance personal to the applicant, subsequent purchasers will be put on notice of the circumstances of the property.

The circumstances in this case are quite different; since the applicant is not the prospective resident, there may well be unwitting purchasers who could acquire the house without being aware that it was located within the flood plain.

During the hearing, Mr. John Mahaffey of Georgetown Realty referred to a new statute which would require this disclosure of the fact the property was within the flood plain. He was unable to provide a citation to the Oregon Revised Statutes at the hearing. My review of the statutes revealed ORS 104.465. "Seller's Property Disclosure And Disclaimer Statements." ORS 104.465(2)(b) specifies the contents, ("in substantially the following form") of the seller's disclosure statement. This includes, under section 8, "General": "D. To your knowledge, is the property in a designated flood plain?"

However, ORS 105.470(1) excludes "[t]he first sale of a dwelling never occupied" from the disclosure requirements in ORS 105.465.

After the hearing, Mr. Mahaffey sent the County an undated letter, which stated.

Enclosed is a disclosure form which we will fill out when we sell the homes on S.E. Liebe. We would be happy to accept a directive that the buyers are to receive this form concerning the 100 year flood plain.

Unfortunately, no disclosure form appears in the file. Even if one did, the County has no means of monitoring or enforcing such a disclosure requirement.

Based on this record, I am unable to conclude that fraud or perhaps unwitting victimization would not occur in the event a purchaser acquired the property without knowledge of the location in the flood plain and there lives or property were damaged in a flood.

(iv) Conflicts With Existing Local Laws Or Ordinances

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

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

I conclude that the applicant has satisfied the variance standards in MCC 11.15.6323(B)(1) and not satisfied the standards in MCC 11.15.6323(B)(2), (3) and (4), as applied to its request for a variance from the flood elevation requirement in MCC 11.15.6315(B).

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

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

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

Subsections (2), (3) and (4) of the variance standard are not satisfied for the reasons given previously with respect to the variance for the flood elevation variance.

D. Applicable Sections Of The County Comprehensive Plan

1. Policy 14; Development Limitations

Comprehensive Plan Policy 14 is to

DIRECT DEVELOPMENT AND LAND FORM ALTERATIONS AWAY FROM AREAS WITH DEVELOPMENT LIMITATION EXCEPT UPON A SHOWING THAT DESIGN AND CONSTRUCTION TECHNIQUES CAN MITIGATE ANY PUBLIC HARM OR ASSOCIATED PUBLIC COST, AND MITIGATE ANY ADVERSE EFFECTS TO SURROUNDING PERSONS OR PROPERTIES. DEVELOPMENT LIMITATIONS AREAS ARE THOSE WHICH HAVE ANY OF THE FOLLOWING CHARACTERISTICS:

* * * * *

C. LAND WITHIN THE 100 YEAR FLOOD PLAIN

Multnomah Comprehensive Framework Plan at page 58.

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

2. Policies 37 And 38, In General

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

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

(D) Variances, except as otherwise provided herein;

** * * **

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

Because this is a proceeding on an application for a variance, I find that it is an "action" and that consequently both of these policies apply.

As noted above, satisfaction of standards not addressed by the applicant to date, could be determined by the Planning Director before, or in conjunction with, either an appeal or the issuance of a building permit. Because compliance with Policies 37 and 38 may require the exercise of judgment as to facts and interpretation of the policies, notice of this subsequent decision and an opportunity for a hearing should be provided. ORS 197.763(2), 215.416, *Rhyne et al vs. Multnomah County, Swan & Trotter*, __ Or LUBA __ (1992.)

3. Plan Policy 37: "Utilities"

Multnomah County Plan Policy 37, "Utilities" provides:

POLICY 37

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

WATER AND DISPOSAL SYSTEM

A. THE PROPOSED USE CAN BE CONNECTED TO A PUBLIC SEWER AND WATER SYSTEM, BOTH OF WHICH HAVE ADEQUATE CAPACITY; OR

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

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

As noted previously, the applicant would connect the proposed house to the City of Portland's sewer system. The signed Portland Fire District review establishes the existence of a hydrant 70' from the residence with adequate water pressure nearby. From this I conclude the house would also be served by City water. This evidence is sufficient to carry the applicants' burden of proof with respect to this portion of Policy 37.

The remainder of Policy 37 provides:

DRAINAGE

- E. *THERE IS ADEQUATE CAPACITY IN THE STORM WATER SYSTEM TO HANDLE THE RUN-OFF; OR*
- F. *THE WATER RUN-OFF CAN BE HANDLED ON THE SITE OR ADEQUATE PROVISIONS CAN BE MADE; AND*
- G. *THE RUN-OFF FROM THE SITE WILL NOT ADVERSELY AFFECT THE WATER QUALITY IN ADJACENT STREAMS, PONDS, LAKES OR ALTER THE DRAINAGE ON ADJOINING LANDS.*

ENERGY AND COMMUNICATIONS

- H. *THERE IS AN ADEQUATE ENERGY SUPPLY TO HANDLE THE NEEDS OF THE PROPOSAL AND THE DEVELOPMENT LEVEL PROJECTED BY THE PLAN; AND*
- I. *COMMUNICATIONS FACILITIES ARE AVAILABLE*

FURTHERMORE, THE COUNTY'S POLICY IS TO CONTINUE COOPERATION WITH THE DEPARTMENT OF ENVIRONMENTAL QUALITY, FOR THE DEVELOPMENT AND IMPLEMENTATION OF A GROUNDWATER QUALITY PLAN TO MEET THE NEEDS OF THE COUNTY.

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

There is no evidence in the record concerning energy and communications facilities, subsections E, F, G, H and I, although the location of the property within the urbanized portion of the County suggests these facilities are readily available.

The failure to address these standards is grounds for denial. However, the applicant might be able to address them in the event of a *de novo* appeal of this decision.

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

4. Plan Policy 38: "Facilities"

Multnomah County Plan Policy 38, "Facilities" provides:

POLICY 38

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 COMMENTS [sic] ON THE PROPOSAL.

POLICE PROTECTION

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

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

The David Douglas School District returned the "School District Review" form, with the signature of the Dr. Ron Russell, Assistant Superintendent, dated February 8, 1994. (The "no comment" box was checked.) This satisfies the requirement in subsection A of policy 38 that the school district has "an opportunity to review and comment on the proposal."

The completed Portland Fire District Review form, signed by Don Patty (undated), Plans Review provides sufficient evidence satisfying subsection B, ("there is adequate water pressure and flow for fire fighting purposes") and C (the fire district "had an opportunity to review and comment on the proposal.")

Lt. Bill Goss, of the Multnomah County Sheriff's Office returned the "Police Services Review" form, dated February 8, 1994, indicating there would be an "adequate" level of service "available to serve the proposed project."

The applicant has satisfied Policy 38.

E. State Statutes, Goals And Administrative Rules Applicable To The Decision

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

No other provisions in ORS Chapters 197 and 215 are applicable.

No statewide planning goals and no Oregon Administrative Rules interpreting those goals apply to this quasijudicial permitting proceeding.

VI. CONCLUSIONS AND ORDER

A. Standards Which The Applicant Has Not Satisfied

I find that the evidence and argument offered by the applicant is insufficient to satisfy the "hardship" standard in MCC 11.15.6323(B)(2) and the "minimum variance necessary" standard in MCC 11.15.6323(B)(3), with respect to the applicant's request for a variance to the flood elevation standards and its implied request for a variance to the flood-proofing

requirements of MCC 11.15.6315(F).

I also find that the applicant failed to satisfy the "fraud" and "victimization" provisions in MCC 11.15.6323(B)(4), as to the flood elevation variance to MCC 11.15.6315(B) and the flood-proofing variance to MCC 11.15.6315(F).

These are grounds for denial.

B. Standards Which The Applicant Failed To Address

The applicant did not offer evidence addressing compliance with several provisions in the County Code and some of the applicable Plan policies. These standards and policies are:

MCC 11.15.6315(G)
MCC 11.15.6315(H)
Plan Policy 37 §§(E) through (I)
Comprehensive Framework Plan Policy 37, Sections E through I.

The applicant's failure to carry its burden of proof for these standards, is grounds for denial.

C. Standards Which The Applicant Has Satisfied

The applicant has satisfied the following applicable sections of the County Code and County Plan:

MCC 11.15.6323(B)(1), as to flood elevation variance to MCC 11.15.6315(B)
MCC 11.15.6323(B)(1), as to flood-proofing variance to MCC 11.15.6315(F)
MCC 11.15.6323(B)(4), in part, as to flood elevation variance to MCC 11.15.6315(B)
MCC 11.15.6323(B)(4), in part, as to flood-proofing variance to MCC 11.15.6315(F)
Comprehensive Framework Plan Policy 14
Comprehensive Framework Plan Policy 37, Subsections A through D
Comprehensive Framework Plan Policy 38

D. Standards Which Are Inapplicable

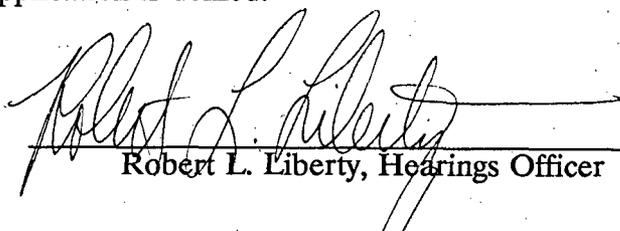
Although the following standards appear in otherwise relevant code sections, I found them inapplicable to this application or this proceeding:

MCC 11.15.6315(A),(B),(C),(D),(E),(I)
MCC 11.15.6323(A),(C),(E)

ORDER

For the foregoing reasons, the application is denied.

March 1994
Date


Robert L. Liberty, Hearings Officer

Signed by the Hearings Officer: March 1, 1994
Decision Mailed to Parties: March 21, 1994
Decision Submitted to Board Clerk: March 21, 1994
Lay day to Appeal Decision: 4:30 p.m., April 1, 1994
Reported to Board of County Commissioners: 1:30 p.m., April 12, 1994

Appeal to the Board of County Commissioners

The Hearings Officer Decision may be appealed to the Board of County Commissioners (Board) by any person or organization who appears and testifies at the hearing, or by those who submit written testimony into the record. An appeal must be filed with the County Planning Division within ten days after the Hearings Officer decision is submitted to the Clerk of the Board. An appeal requires a completed "Notice of Review" form and a fee of \$300.00. Instructions and forms are available at the County Planning and Development Office at 2115 SE Morrison Street, Portland.

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

To appeal the Hearings Officer decision, a "Notice of Review" form and fee must be submitted to the County Planning Director. For further information call the Multnomah County Planning and Development Division at 248-3043.