

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY**

**In the Matter of the Review of the
Planning Commission Decision which
denied a non-resource related single
family dwelling in the Multiple Use
Forest zoning district**

FINAL ORDER
Denying CU 15-91
91-177

This matter came before the Board of Commissioners (Board) for a hearing on October 22, 1991. The Board reconsidered the matter *de novo* since there was no transcript of the Planning Commission hearing of August 5, 1991. The applicant, Don H. Joyce, requested Conditional Use approval to construct a non-resource related single family within the Multiple Use Forest (MUF) District. The Board hereby denies this application based on the findings and conclusions contained herein.

The Planning Commission (Commission) opened a public hearing on the Conditional Use (CU) request on August 5, 1991. After receiving testimony, the Commission denied the CU in a 4 – 1 split vote. The Commission adopted Findings supporting the denial at their meeting of September 3, 1991. On September 24, 1991, an appeal of the Planning Commission Decision was filed. On September 24, 1991, the Board scheduled a hearing for October 22, 1991 to review the record of the Planning Commission decision. There being no tape of the Commission hearing, the matter was set to be heard *de novo*. The Board conducted a *de novo* hearing on October 22, 1991. After considering evidence, arguments from the applicant and appellants, and other testimony, the Board, in a 3 – 2 split vote, denied the CU request.

1 **I. APPLICABLE REVIEW STANDARDS**

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3 The MUF-19 District provides for non-resource related dwellings as a

4 Conditional Use in MCC .2172(C). When approving a non-resource residence,

5 the Planning Commission must find that:

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7 (1) The lot size shall meet the standard of MCC 11.15.2178(A) or .2182(A) to

8 (C).

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10 (2) The land is incapable of sustaining a farm or forest use, based upon one of

11 the following:

12

13 (a) A Soil Conservation Service Agriculture Capability Class of IV or

14 greater for at least 75% of the lot area, and physical conditions

15 insufficient to produce 50 cubic feet/acre/year or any commercial

16 trees species for at least 75% of the area;

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18 (b) Certification by the Oregon State University Extension Service, the

19 Oregon Department of Forestry, or a person or group having simi-

20 lar agricultural and forestry expertise, that the land is inadequate

21 for farm and forest uses and stating the basis for the conclusions;

22 or

23

24 (c) The lot is a Lot of Record under MCC 11.15.2182(A) through (C)

25 and is ten acres or less in size.

26

1 (3) A dwelling, as proposed, is compatible with the primary uses as listed in
2 MCC 11.15.2168 on nearby property and will not interfere with the
3 resources or the resource management practices or materially alter the
4 stability of the overall land use pattern of the area.

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6 (4) The dwelling will not require public services beyond those existing or pro-
7 grammed for the area.

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9 (5) The owner shall record with the Division of Records and Elections a
10 statement that the owner and the successors in interest acknowledge the
11 rights of owners of nearby property to conduct accepted forestry or farm-
12 ing practices.

13
14 (6) The dwelling will be located outside a big game winter habitat area as
15 defined by the Oregon Department of Fish and Wildlife, or that agency
16 has certified that the impacts are acceptable.

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18 (7) A residential use located in the MUF district after August 14, 1980 shall
19 comply with the following:

20
21 (1) The fire safety measures outlined in the "Fire Safety Considerations
22 for Development in Forested Areas", published by the Northwest
23 Inter-Agency Fire Prevention Group, including at least the following:

24
25 a) Fire lanes at least 30 feet wide shall be maintained between a resi-
26 dential structure and an adjacent forested area;

1 b) Maintenance of a water supply and of fire fighting equipment suffi-
2 cient to prevent fire from spreading from the dwelling to adjacent
3 forested areas;

4
5 (2) An access drive at least 16 feet wide shall be maintained from the
6 property access road to any perennial water source on the lot or an
7 adjacent lot;

8
9 (3) The dwelling shall be located in as close proximity to a publicly main-
10 tained street as possible, considering the requirements of MCC
11 11.15.2058(B). The physical limitations of the site which require a
12 driveway in excess of 500 feet shall be stated in writing as part of the
13 application for approval;

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15 (4) The dwelling shall be located on that portion of the lot having the low-
16 est productivity characteristics for the proposed primary use, subject
17 to the limitations of subpart #3 above;

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19 (5) Building setbacks of at least 200 feet shall be maintained from all
20 property lines, wherever possible, except:

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22 a) a setback of 30 feet or more may be provided for a public road, or

23
24 b) the location of dwelling(s) of adjacent lots at a lesser distance
25 which allows for clustering of dwellings or sharing of access;

1 (6) The dwelling shall comply with the standards of the Uniform Building
2 Code or as prescribed in ORS 446.002 through 446.200, relating to
3 mobile homes;

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5 (7) The dwelling shall be attached to a foundation for which a building
6 permit has been obtained;

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8 (8) The dwelling shall have a minimum floor area of 600 square feet; and

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10 (9) The dwelling will be located outside a big game winter habitat area as
11 defined by the Oregon Department of Fish and Wildlife or that agency
12 has certified that the impacts will be acceptable.

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14 **II. FINDINGS OF FACT**

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16 The applicant requests approval to develop the property with a non-
17 resource related single family dwelling. The subject property is a 29,000 sq.ft.
18 Lot of Record comprising four lots in the plat of Burlington and located on the
19 west side of McNamee Road approximately ³/₄ mile south of US Highway 30.
20 The site is wooded with a mix of deciduous and evergreen vegetation.

21
22 The surrounding area, with the exception of a 0.93 acre parcel contiguous
23 to the west, is characterized by a mixture of several smaller lots also within the
24 plat of Burlington and large parcels (60 plus acres) all in the ownership of Agen-
25 cy Creek Management Company, which are being used for commercial forestry
26 purposes. Nearly all of the immediate surrounding area was harvested for tim-

ber purposes within the past six to nine months. All of the area harvested was replanted. While there are nine non-resource related residences within a one square mile area of this site, only one is on property zoned MUF-19 and is located along US Highway 30. The remaining residences are on properties zoned Rural Residential.

III. EVALUATION OF THE APPLICATION

After hearing testimony, arguments and weighing the evidence, the Board finds the proposal does not satisfy all approval criteria required by MCC 11.15.2172(C). The Board finds specifically that the proposal is incompatible with the commercial forest uses of the surrounding area. All of the property within the 500 foot notification area, with the exception of the 0.93 acre parcel noted above and a 0.54 acre parcel in the ownership of Portland General Electric, are in one single ownership and managed for commercial forestry purposes. The Board finds that development of this 0.66 acre parcel with a non-resource related single family residence, only 30 feet from commercial forest properties, would alter the stability of the commercial forest land use pattern of the surrounding area.

IV. CONCLUSIONS AND DECISION

Based on the above findings and evaluation, the Board of Commissioners concludes that the proposed Conditional Use does not comply with applicable standards of the Multnomah County Code. Specifically, it does not satisfy MCC 11.15.2172(C)(3). Therefore, the Board of Commissioners hereby upholds the

1 Planning Commission decision in this matter and denies the non-resource relat-
2 ed residence requested in CU 15-91.

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5 DATED this 26th day of November, 1991



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Gladys McCoy
Gladys McCoy, Multnomah County Chair

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

By: *John DuBay*
John DuBay, Chief Deputy County Counsel