

ANNOTATED MINUTES

Tuesday, March 28, 1995 - 1:30 PM
Multnomah County Courthouse, Room 602
1021 SW Fourth, Portland

PLANNING ITEMS

Chair Beverly Stein convened the meeting at 1:41 p.m., with Commissioners Gary Hansen, Tanya Collier and Dan Saltzman present.

- P-1 CU 2-95/HV 2-95 Review the March 3, 1995 Hearings Officer Decision DENYING Conditional Use Approval of a Single-Family Dwelling Not Related to Forest Management and Variances to Two Side Yard Setback Requirements on a 16.43 Acre Existing Parcel in the Commercial Forest Use Zoning District, for Property Located at 16200 NW McNAMEE ROAD

DECISION READ. APPEAL FILED. UPON MOTION OF COMMISSIONER COLLIER, SECONDED BY COMMISSIONER SALTZMAN, IT WAS UNANIMOUSLY APPROVED THAT A DE NOVO HEARING BE SCHEDULED FOR TUESDAY, APRIL 25, 1995, WITH TESTIMONY LIMITED TO 20 MINUTES PER SIDE.

The planning meeting was adjourned at 1:42 p.m. and the work session convened at 1:46 p.m.

Tuesday, March 28, 1995 - 1:35 PM
Multnomah County Courthouse, Room 602
1021 SW Fourth, Portland

WORK SESSION

- WS-1 Stakeholders Work Session to Review and Edit the Technical Advisory Committee Draft Multnomah County Strategic Investment Policy (Tax Abatement Program).

Vice-Chair Sharron Kelley arrived at 1:55 p.m.

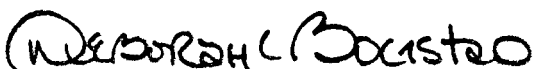
ARTY TROST FACILITATED SESSION ATTENDED BY STAKEHOLDERS BEVERLY STEIN, DON ROBERTSON, PAUL THALHOFER, GUSSIE McROBERT, TANYA COLLIER, GARY HANSEN, SHARRON KELLEY AND DAN SALTZMAN. COUNTY COUNSEL SANDRA DUFFY EXPLANATION OF CONSTITUTIONALITY AND CONFIDENTIALITY ISSUES AND RESPONSE TO

STAKEHOLDERS QUESTIONS, COMMENTS AND DISCUSSION. TECHNICAL COMMITTEE MEMBERS SHARON TIMKO, ROB FUSSELL, MARCY JACOBS, BOB ROBISON AND MICHAEL ODGEN PRESENTATION, EXPLANATION AND SUGGESTIONS IN RESPONSE TO STAKEHOLDERS QUESTIONS AND DISCUSSION CONCERNING PROPOSED OPTIONS A AND B. EXPERTS MARK CLEMONS, LISA NISENFELD, CAROLYN MORRISON AND MIKE SABA EXPLANATION IN RESPONSE TO STAKEHOLDERS QUESTIONS AND DISCUSSION. ECO NORTHWEST CONSULTANT CARL BATTEN EXPLANATION AND SUGGESTIONS IN RESPONSE TO STAKEHOLDERS QUESTIONS AND DISCUSSION. MAYOR McROBERT PRESENTED POLICY SUGGESTIONS AND CONCERNS OF FAIRVIEW MAYOR ROGER VONDERHARR. MR. ROBISON PRESENTED POLICY SUGGESTIONS AND CONCERNS OF PORTLAND COMMISSIONER GRETCHEN KAFOURY. BY MAJORITY CONSENSUS FOLLOWING DISCUSSION AND DELIBERATIONS, STAKEHOLDERS ACCEPTED, REJECTED, AMENDED AND REVISED VARIOUS SECTIONS OF THE 19 PAGE DRAFT POLICY AND DIRECTED TECHNICAL COMMITTEE TO PREPARE THE PROPOSED POLICY TO BE AVAILABLE THROUGH THE OFFICE OF THE BOARD CLERK BY 12:00 PM, THURSDAY, APRIL 6, 1995. CHAIR STEIN ANNOUNCED A PUBLIC HEARING ON THE PROPOSED STRATEGIC INVESTMENT PROGRAM POLICY IS SCHEDULED FOR 6:30 PM, TUESDAY, APRIL 11, 1995, AND A FIRST READING AND POSSIBLE ADOPTION OF THE ORDINANCE ADOPTING THE POLICY BY EMERGENCY CLAUSE IS SCHEDULED FOR 9:30 AM, THURSDAY, APRIL 13, 1995, WITH A POSSIBLE SECOND READING AND ADOPTION SCHEDULED FOR 9:30 AM, THURSDAY, APRIL 20, 1995, ALL TO BE HELD IN COMMISSIONERS' HEARING ROOM 602 OF THE MULTNOMAH COUNTY COURTHOUSE.

Mayor Gussie McRobert was excused at 5:50 p.m.

There being no further business, the meeting was adjourned at 6:00 p.m.

OFFICE OF THE BOARD CLERK
for MULTNOMAH COUNTY, OREGON



Deborah L. Bogstad

Thursday, March 30, 1995 - 9:30 AM
Multnomah County Courthouse, Room 602
1021 SW Fourth, Portland

REGULAR MEETING

Chair Beverly Stein convened the meeting at 9:31 a.m., with Vice-Chair Sharron Kelley, Commissioners Gary Hansen, Tanya Collier and Dan Saltzman present.

CONSENT CALENDAR

**UPON MOTION OF COMMISSIONER KELLEY,
SECONDED BY COMMISSIONER HANSEN, THE
CONSENT CALENDAR (ITEMS C-1 THROUGH C-9) WAS
UNANIMOUSLY APPROVED.**

NON-DEPARTMENTAL

- C-1 In the Matter of the Appointments of Karen Burger-Kimber, Linda Ross and Heidi Soderberg to the MULTNOMAH COUNTY ANIMAL CONTROL ADVISORY COMMITTEE
- C-2 In the Matter of the Appointment of Joe Ferguson to the MULTNOMAH COUNTY CITIZEN INVOLVEMENT COMMITTEE
- C-3 In the Matter of the Appointments of Robert H. Pung, Sr., Cora L. Smith and Stefan Stent to the COMMUNITY CORRECTIONS ADVISORY COMMITTEE
- C-4 In the Matter of the Appointments of Carol Bononno, Michael W. Glass, Ed Jones, Clarence Lankins and Rod Monroe to the DUII COMMUNITY ADVISORY BOARD

DEPARTMENT OF ENVIRONMENTAL SERVICES

- C-5 ORDER in the Matter of the Execution of Deed D951164 for Repurchase of Tax Acquired Property to the Former Owner Randall J. Borho and Joseph Kappers, as Trustees of the Fourbs Trust

ORDER 95-59.

DEPARTMENT OF HEALTH

- C-6 Ratification of Intergovernmental Agreement Contract 201865 Between the City of Portland and Multnomah County, Wherein the County's Bloodborne Pathogen Program Will Provide City Employees the Education, Training and HBV Vaccinations Required by Oregon OSHA, for the Period January 1, 1995 through December 31, 1997

COMMUNITY AND FAMILY SERVICES DIVISION

- C-7 Ratification of Intergovernmental Agreement Contract 104435 Between Multnomah County and the City of Troutdale, for Completion of Improvements to SE 4th Street, SE 2nd Street and SE Dora Street, Using Federal Community Development Block Grant Funds, for the Period August 1, 1994 through July 30, 1995
- C-8 Ratification of Intergovernmental Agreement Contract 104445 Between Multnomah County and the City of Fairview, for Completion of Fairview Avenue Sanitary Sewer Trunk Replacement, Fairview Creek Culvert Replacement (Linglebach and Arnold), Matney Street Culvert and Walnut Lane Culvert Replacement, Using Federal Community Development Block Grant Funds, for the Period October 1, 1994 through December 30, 1995
- C-9 Ratification of Intergovernmental Agreement Contract 104455 Between Multnomah County and Burlington Water District, for Completion of NW Harborton Drive, Branch Waterline Project, Using Federal Community Development Block Grant Funds, for the Period August 1, 1994 through July 30, 1995

REGULAR AGENDA

PUBLIC COMMENT

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

JOHN PRAGGASTIS AND TIM RAMIS DISCUSSED RESPONSE TO REQUEST FOR INFORMATION REGARDING EMS REQUEST FOR PROPOSALS ISSUE. BILL COLLINS, DR. GARY OXMAN AND LAURENCE KRESSEL RESPONSE TO TESTIMONY, BOARD QUESTIONS AND DISCUSSION.

COMMUNITY AND FAMILY SERVICES DIVISION

- R-2 Ratification of Intergovernmental Agreement Contract 104465 Between Multnomah County and Senior Job Center, for Continuation of Home Repairs for Low Income Elderly Using Federal Community Development Block Grant Funds, through June 30, 1996

COMMISSIONER HANSEN MOVED AND COMMISSIONER KELLEY SECONDED, APPROVAL OF R-2. AGREEMENT APPROVED, WITH COMMISSIONERS KELLEY, HANSEN, COLLIER AND STEIN VOTING AYE, AND COMMISSIONER SALTZMAN ABSTAINING DUE TO HIS

**POSITION ON THE PORTLAND COMMUNITY COLLEGE
BOARD.**

DEPARTMENT OF HEALTH

- R-3 PROCLAMATION in the Matter of Proclaiming April 3 through 9, 1995 as PUBLIC HEALTH WEEK in Multnomah County

COMMISSIONER COLLIER MOVED AND COMMISSIONER KELLEY SECONDED, APPROVAL OF R-3. DR. OXMAN PRESENTATION. PROCLAMATION READ. PROCLAMATION 95-60 UNANIMOUSLY APPROVED.

NON-DEPARTMENTAL

- R-4 PROCLAMATION in the Matter of Proclaiming April, 1995 EARTHQUAKE PREPAREDNESS MONTH in Multnomah County

COMMISSIONER KELLEY MOVED AND COMMISSIONER HANSEN SECONDED, APPROVAL OF R-4. JOY TUMBAGA PRESENTATION. PROCLAMATION READ. PROCLAMATION 95-61 UNANIMOUSLY APPROVED.

- R-5 Budget Modification NOND 4 Requesting Authorization to Reclassify an Employee Services Specialist 1 (Training Coordinator) to a Training Administrator and Adding a Half-Time Office Assistant 2 in the Training Section of the Employee Services Division

COMMISSIONER COLLIER MOVED AND COMMISSIONER KELLEY SECONDED, APPROVAL OF R-5. CURTIS SMITH AND CHAIR STEIN EXPLANATION AND RESPONSE TO BOARD QUESTIONS. BUDGET MODIFICATION UNANIMOUSLY APPROVED.

- R-6 Budget Modification NOND 9 Requesting Authorization to Appropriate \$3,500 in Grant Revenue from Portland General Electric Company into the Chair's Office Professional Services/Policy and Legislative Support Budget for Facilitation and Consultation Services Regarding Development of a Strategic Investment (Tax Abatement) Plan and Policy

COMMISSIONER HANSEN MOVED AND COMMISSIONER SALTZMAN SECONDED, APPROVAL OF R-6. SHARON TIMKO EXPLANATION. BUDGET MODIFICATION UNANIMOUSLY APPROVED.

SHERIFF'S OFFICE

- R-7 Budget Modification MCSO 14 Requesting Authorization to Reclassify 23 Warehouse Worker Positions to Equipment/Property Technicians Effective January 23, 1993 and Authorization to Increase Personnel Services Line Items by \$214,815 in the Sheriff's Office Budget and Reduce the General Fund Contingency by \$188,664 and the Inmate Welfare Fund by \$26,151

COMMISSIONER KELLEY MOVED AND COMMISSIONER HANSEN SECONDED, APPROVAL OF R-7. LARRY AAB EXPLANATION AND RESPONSE TO BOARD QUESTIONS AND DISCUSSION. CHAIR STEIN AND DAVE WARREN RESPONSE TO BOARD QUESTIONS AND DISCUSSION CONCERNING PROCESS FOR CONTINGENCY REQUESTS. BOARD COMMENTS AND DISCUSSION. COMMISSIONER COLLIER MOVED AND COMMISSIONER HANSEN SECONDED, TO SET R-7 OVER ONE WEEK WITH BUDGET OFFICE DIRECTION TO PROVIDE FORMAL BUDGET ANALYSIS OF CONTINGENCY REQUEST. MR. AAB COMMENTS. BUDGET MODIFICATION UNANIMOUSLY SET OVER TO THURSDAY, APRIL 6, 1995, WITH SUBMITTAL OF BUDGET OFFICE ANALYSIS OF CONTINGENCY REQUEST.

DEPARTMENT OF COMMUNITY CORRECTIONS

- R-8 Budget Modification DCC 4 Requesting Authorization to Transfer \$3,000 from General Fund Contingency to the DCC Administration Budget to Hire a Facilitator for a System Analysis Phase 1, Working with the Public Safety Jail Task Force

FOLLOWING BOARD DISCUSSION AND UPON MOTION OF COMMISSIONER SALTZMAN, SECONDED BY COMMISSIONER COLLIER, BUDGET MODIFICATION R-8 WAS UNANIMOUSLY SET OVER TO THURSDAY, APRIL 6, 1995, WITH DIRECTION THAT STAFF SUBMIT ADDITIONAL INFORMATION AS WELL AS FORMAL BUDGET OFFICE ANALYSIS OF CONTINGENCY REQUEST.

DEPARTMENT OF ENVIRONMENTAL SERVICES

- R-9 Ratification of Intergovernmental Agreement Contract 301825 Between Multnomah County and the City of Gresham for Maintenance of Vance Park for a Sum Not to Exceed \$7,000 Annually

COMMISSIONER KELLEY MOVED AND COMMISSIONER COLLIER SECONDED, APPROVAL OF R-9. BOB

THOMAS EXPLANATION AND RESPONSE TO BOARD QUESTIONS. AGREEMENT UNANIMOUSLY APPROVED.

- R-10 Second Reading and Possible Adoption of a Proposed ORDINANCE in the Matter of Increasing Cemetery Rates for County Cemeteries, Amending Multnomah County Code 5.10.250

PROPOSED ORDINANCE READ BY TITLE ONLY. COPIES AVAILABLE. COMMISSIONER KELLEY MOVED AND COMMISSIONER HANSEN SECONDED, APPROVAL OF THE SECOND READING AND ADOPTION. NO ONE WISHED TO TESTIFY. ORDINANCE 813 UNANIMOUSLY APPROVED.

- R-11 ORDER in the Matter of a Public Sale of Properties Acquired by Multnomah County through the Foreclosure of Liens for Delinquent Taxes

COMMISSIONER COLLIER MOVED AND COMMISSIONER HANSEN SECONDED, APPROVAL OF R-11. KATHY TUNEBOG AND STEPHEN KELLY EXPLANATION AND RESPONSE TO BOARD QUESTIONS. ORDER 95-62 UNANIMOUSLY APPROVED.

- R-12 ORDER in the Matter of the Grant of a Sewer Easement on County Land at the Juvenile Justice Center Parcel, NW 1/4, Section 32, T1N, R2E, WM, Multnomah County, Oregon

COMMISSIONER KELLEY MOVED AND COMMISSIONER HANSEN SECONDED, APPROVAL OF R-12. BOB OBERST EXPLANATION. ORDER 95-63 UNANIMOUSLY APPROVED.

- R-13 RESOLUTION AND ORDER in the Matter of the Vacation of a Cul-de-Sac Portion of NE 195th Avenue Situated 372 Feet, More or Less, South of NE Irving Court, County Road No. 4304

COMMISSIONER COLLIER MOVED AND COMMISSIONER KELLEY SECONDED, APPROVAL OF R-13. MR. THOMAS EXPLANATION. RESOLUTION AND ORDER 95-64 UNANIMOUSLY APPROVED.

- R-14 Budget Modification DES 7 Requesting Authorization to Reclassify an Office Assistant I to a Warehouse Worker and Increase the Position from .54 FTE to 1.0 FTE, and Delete an Electronic Technician and Add an Electronic Technician Assistant Position Within the Fleet, Records, Electronic and Distribution Services Division Budget

COMMISSIONER COLLIER MOVED AND COMMISSIONER SALTZMAN SECONDED, APPROVAL OF R-14. TOM GUINEY EXPLANATION. BUDGET MODIFICATION UNANIMOUSLY APPROVED.

- R-15 Budget Modification DES 8 Requesting Authorization to Delete a Vacant Office Assistant II Position and Add a Garage Attendant Position Within the Fleet, Records, Electronic and Distribution Services Division Budget**

COMMISSIONER COLLIER MOVED AND COMMISSIONER KELLEY SECONDED, APPROVAL OF R-15. MR. GUINEY EXPLANATION. BUDGET MODIFICATION UNANIMOUSLY APPROVED.

DEPARTMENT OF HEALTH

- R-16 Request Approval of a Notice of Intent to Apply for a \$114,668 Edward Byrne Memorial State and Local Formula Grant for a One Year Project to Increase the Ability of School Based Health Center Staff to Identify Students Who Face Violence in their Homes, Community or School and Provide a Comprehensive Array of Services to Those Students, Including a School-Based Support and Education Group**

COMMISSIONER KELLEY MOVED AND COMMISSIONER HANSEN SECONDED, APPROVAL OF R-16. DR. OXMAN EXPLANATION. NOTICE OF INTENT UNANIMOUSLY APPROVED.

- R-17 Request Approval of a Notice of Intent to Apply for a \$375,000 Per Year, Two Year Substance Abuse and Mental Health Services Administration, Center for Substance Abuse Treatment Grant for a Community Based Comprehensive HIV/STD/TB Outreach Services for High Risk Substance Abusers Demonstration Program to Continue Funding for Outreach, Intervention and Substance Abuse Treatment Referral Services to Homeless High Risk Users and Their Sexual Partners**

COMMISSIONER COLLIER MOVED AND COMMISSIONER KELLEY SECONDED, APPROVAL OF R-17. MARY KAY DUVAL EXPLANATION AND RESPONSE TO BOARD QUESTIONS. NOTICE OF INTENT UNANIMOUSLY APPROVED.

- R-18 Budget Modification MCHD 8 Requesting Authorization to Increase the School Based Administration Program Budget to Reflect Receipt of Funds from the Community and Family Services Division Budget to Pay for a Teen Pregnancy Prevention Demonstration Project Entitled "Postponing Sexual Involvement"**

COMMISSIONER HANSEN MOVED AND COMMISSIONER COLLIER SECONDED, APPROVAL OF R-18. JAN SINCLAIR EXPLANATION. BUDGET MODIFICATION UNANIMOUSLY APPROVED.

- R-19 Budget Modification MCHD 9 Requesting Authorization to Increase the Dental Program to Reflect Increased Estimate of Medicaid Capitation Funds for the Oregon Health Plan**

COMMISSIONER HANSEN MOVED AND COMMISSIONER KELLEY SECONDED, APPROVAL OF R-19. DR. OXMAN EXPLANATION AND RESPONSE TO BOARD QUESTIONS. BUDGET MODIFICATION UNANIMOUSLY APPROVED.

- R-20 First Reading of a Proposed ORDINANCE Repealing MCC Chapter 6.32 and Adopting MCC Chapter 6.33, Emergency Medical Service and Ambulance Code, in Order to Implement the Ambulance Service Plan for Multnomah County**

PROPOSED ORDINANCE READ BY TITLE ONLY. COPIES AVAILABLE. COMMISSIONER COLLIER MOVED AND COMMISSIONER SALTZMAN SECONDED, APPROVAL OF THE FIRST READING. BILL COLLINS EXPLANATION. TED BAIRD REPRESENTING AMERICAN MEDICAL RESPONSE, PRESENTED TESTIMONY EXPRESSING CONCERN WITH VARIOUS PROPOSED PLAN DEFINITIONS AND OTHER LANGUAGE. MR. COLLINS RESPONSE TO MR. BAIRD'S CONCERNS AND RESPONSE TO BOARD QUESTIONS AND DISCUSSION. COMMUNITY AMBULANCE OWNER JUNITA KAUBLE PRESENTED TESTIMONY EXPRESSING CONCERN WITH AND REQUESTING CLARIFICATION OF VARIOUS PROPOSED PLAN DEFINITIONS. MR. COLLINS RESPONSE TO MS. KAUBLE'S CONCERNS AND QUESTIONS AND RESPONSE TO BOARD QUESTIONS AND DISCUSSION. AMERICAN MEDICAL RESPONSE NORTHWEST PRESIDENT TRACE SKEEN REPORTED ON RECENT BOARD OF MEDICAL EXAMINERS CHANGE OF POLICY REGARDING TRANSPORT OF PATIENTS WITH IVS; TESTIFIED IN SUPPORT OF COMMISSIONER KELLEY'S PROPOSAL REGARDING ADMINISTRATIVE RULES AND IN SUPPORT OF EXPEDITING THE PROPOSED PLAN. UPON MOTION OF COMMISSIONER COLLIER, SECONDED BY COMMISSIONER KELLEY, IT WAS UNANIMOUSLY APPROVED THAT PAGE 25, SECTION 6.33.600(A) BE AMENDED TO READ "DISPATCH FOR CONTRACTED AMBULANCES SHALL BE PROVIDED

BY THE CITY OF PORTLAND BUREAU OF EMERGENCY COMMUNICATIONS." MR. COLLINS RESPONSE TO BOARD COMMENTS AND DISCUSSION. COMMISSIONER SALTZMAN MOVED AND COMMISSIONER COLLIER SECONDED, AMENDMENT TO PAGE 14, SECTION 6.33.100(F). BOARD DISCUSSION AND COMMENTS. MR. COLLINS, MR. KRESSEL AND DR. OXMAN COMMENTS AND SUGGESTIONS IN RESPONSE TO BOARD DISCUSSION. FOLLOWING DISCUSSION, AFTER WITHDRAWAL OF PREVIOUS MOTION AND SECOND AND UPON MOTION OF COMMISSIONER SALTZMAN, SECONDED BY COMMISSIONER COLLIER, IT WAS UNANIMOUSLY APPROVED THAT PAGE 14, SECTION 6.33.100(C)(5) BE AMENDED TO READ "PROMULGATION OF STANDARDS OF PATIENT CARE CONSISTENT WITH THE AMBULANCE SERVICE AREA PLAN INCLUDING, BUT NOT LIMITED TO:" FIRST READING OF THE PROPOSED ORDINANCE UNANIMOUSLY APPROVED, AS AMENDED. SECOND READING SCHEDULED FOR THURSDAY, APRIL 6, 1995. FOLLOWING DISCUSSION, CHAIR STEIN INVITED ALL PARTIES WISHING TO PROPOSE ADDITIONAL AMENDMENTS TO SUBMIT SAME TO THE BOARD AND BILL COLLINS BY 12:00 PM, MONDAY, 3, 1995 SO THEY MAY BE REVIEWED PRIOR TO SECOND READING.

NON-DEPARTMENTAL

R-21 First Reading of a Proposed ORDINANCE Repealing Ordinance 590 and Permanently Eliminating the Funders Advisory Committee

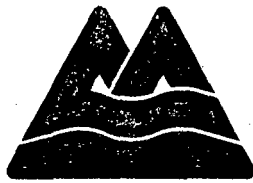
PROPOSED ORDINANCE READ BY TITLE ONLY. COPIES AVAILABLE. COMMISSIONER SALTZMAN MOVED AND COMMISSIONER COLLIER SECONDED, APPROVAL OF THE FIRST READING. COMMISSIONER SALTZMAN EXPLANATION AND RESPONSE TO BOARD QUESTIONS. NO ONE WISHED TO TESTIFY. FIRST READING UNANIMOUSLY APPROVED. SECOND READING SCHEDULED FOR THURSDAY, APRIL 6, 1995.

There being no further business, the meeting was adjourned at 11:50 a.m.

OFFICE OF THE BOARD CLERK
for MULTNOMAH COUNTY, OREGON



Deborah L. Bogstad



MULTNOMAH COUNTY OREGON

OFFICE OF THE BOARD CLERK
SUITE 1510, PORTLAND BUILDING
1120 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

MARCH 27, 1995 - MARCH 31, 1995

Tuesday, March 28, 1995 - 1:30 PM - Planning Items Page 2

Tuesday, March 28, 1995 - 1:35 PM - Work Session Page 2

Thursday, March 30, 1995 - 9:30 AM - Regular Meeting Page 2

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

Thursday, 6:00 PM, Channel 30

Friday, 10:00 PM, Channel 30

Saturday, 12:30 PM, Channel 30

Sunday, 1:00 PM, Channel 30

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, March 28, 1995 - 1:30 PM
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PLANNING ITEMS

- P-1 *CU 2-95/HV 2-95* Review the March 3, 1995 Hearings Officer Decision DENYING Conditional Use Approval of a Single-Family Dwelling Not Related to Forest Management and Variances to Two Side Yard Setback Requirements on a 16.43 Acre Existing Parcel in the Commercial Forest Use Zoning District, for Property Located at 16200 NW McNAMEE ROAD
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WORK SESSION

- WS-1 Stakeholders Work Session to Review and Edit the Technical Advisory Committee Draft Multnomah County Strategic Investment Policy (Tax Abatement Program). 3 1/2 HOURS REQUESTED.
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Thursday, March 30, 1995 - 9:30 AM
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REGULAR MEETING

CONSENT CALENDAR

NON-DEPARTMENTAL

- C-1 In the Matter of the Appointments of Karen Burger-Kimber, Linda Ross and Heidi Soderberg to the MULTNOMAH COUNTY ANIMAL CONTROL ADVISORY COMMITTEE
- C-2 In the Matter of the Appointment of Joe Ferguson to the MULTNOMAH COUNTY CITIZEN INVOLVEMENT COMMITTEE
- C-3 In the Matter of the Appointments of Robert H. Pung, Sr., Cora L. Smith and Stefan Stent to the COMMUNITY CORRECTIONS ADVISORY COMMITTEE
- C-4 In the Matter of the Appointments of Carol Bononno, Michael W. Glass, Ed Jones, Clarence Lankins and Rod Monroe to the DUII COMMUNITY ADVISORY BOARD

DEPARTMENT OF ENVIRONMENTAL SERVICES

- C-5 *ORDER in the Matter of the Execution of Deed D951164 for Repurchase of Tax Acquired Property to the Former Owner Randall J. Borho and Joseph Kappers, as Trustees of the Fourbs Trust*

DEPARTMENT OF HEALTH

- C-6 *Ratification of Intergovernmental Agreement Contract 201865 Between the City of Portland and Multnomah County, Wherein the County's Bloodborne Pathogen Program Will Provide City Employees the Education, Training and HBV Vaccinations Required by Oregon OSHA, for the Period January 1, 1995 through December 31, 1997*

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PUBLIC COMMENT

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

COMMUNITY AND FAMILY SERVICES DIVISION

- R-2 *Ratification of Intergovernmental Agreement Contract 104465 Between Multnomah County and Portland Community College Senior Job Center, for Continuation of Home Repairs for Low Income Elderly Using Federal Community Development Block Grant Funds, through June 30, 1996*

DEPARTMENT OF HEALTH

- R-3 *PROCLAMATION in the Matter of Proclaiming April 3 through 9, 1995 as PUBLIC HEALTH WEEK in Multnomah County*

NON-DEPARTMENTAL

- R-4 *PROCLAMATION in the Matter of Proclaiming April, 1995 EARTHQUAKE PREPAREDNESS MONTH in Multnomah County*
- R-5 *Budget Modification NOND 4 Requesting Authorization to Reclassify an Employee Services Specialist 1 (Training Coordinator) to a Training Administrator and Adding a Half-Time Office Assistant 2 in the Training Section of the Employee Services Division*
- R-6 *Budget Modification NOND 9 Requesting Authorization to Appropriate \$3,500 in Grant Revenue from Portland General Electric Company into the Chair's Office Professional Services/Policy and Legislative Support Budget for Facilitation and Consultation Services Regarding Development of a Strategic Investment (Tax Abatement) Plan and Policy*

SHERIFF'S OFFICE

- R-7 *Budget Modification MCSO 14 Requesting Authorization to Reclassify 23 Warehouse Worker Positions to Equipment/Property Technicians Effective January 23, 1993 and Authorization to Increase Personnel Services Line Items by \$214,815 in the Sheriff's Office Budget and Reduce the General Fund Contingency by \$188,664 and the Inmate Welfare Fund by \$26,151*

DEPARTMENT OF COMMUNITY CORRECTIONS

- R-8 *Budget Modification DCC Requesting Authorization to Transfer \$3,000 from General Fund Contingency to the DCC Administration Budget to Hire a Facilitator for a System Analysis Phase 1, Working with the Public Safety Jail Task Force*

DEPARTMENT OF ENVIRONMENTAL SERVICES

- R-9 *Ratification of Intergovernmental Agreement Contract 301825 Between Multnomah County and the City of Gresham for Maintenance of Vance Park for a Sum Not to Exceed \$7,000 Annually*
- R-10 *Second Reading and Possible Adoption of a Proposed ORDINANCE in the Matter of Increasing Cemetery Rates for County Cemeteries, Amending Multnomah County Code 5.10.250*
- R-11 *ORDER in the Matter of a Public Sale of Properties Acquired by Multnomah County through the Foreclosure of Liens for Delinquent Taxes*

- R-12 *ORDER in the Matter of the Grant of a Sewer Easement on County Land at the Juvenile Justice Center Parcel, NW 1/4, Section 32, T1N, R2E, WM, Multnomah County, Oregon*
- R-13 *RESOLUTION AND ORDER in the Matter of the Vacation of a Cul-de-Sac Portion of NE 195th Avenue Situated 372 Feet, More or Less, South of NE Irving Court, County Road No. 4304*
- R-14 *Budget Modification DES 7 Requesting Authorization to Reclassify an Office Assistant I to a Warehouse Worker and Increase the Position from .54 FTE to 1.0 FTE, and Delete an Electronic Technician and Add an Electronic Technician Assistant Position Within the Fleet, Records, Electronic and Distribution Services Division Budget*
- R-15 *Budget Modification DES 8 Requesting Authorization to Delete a Vacant Office Assistant II Position and Add a Garage Attendant Position Within the Fleet, Records, Electronic and Distribution Services Division Budget*

DEPARTMENT OF HEALTH

- R-16 *Request Approval of a Notice of Intent to Apply for a \$114,668 Edward Byrne Memorial State and Local Formula Grant for a One Year Project to Increase the Ability of School Based Health Center Staff to Identify Students Who Face Violence in their Homes, Community or School and Provide a Comprehensive Array of Services to Those Students, Including a School-Based Support and Education Group*
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- R-18 *Budget Modification MCHD 8 Requesting Authorization to Increase the School Based Administration Program Budget to Reflect Receipt of Funds from the Community and Family Services Division Budget to Pay for a Teen Pregnancy Prevention Demonstration Project Entitled "Postponing Sexual Involvement"*
- R-19 *Budget Modification MCHD 9 Requesting Authorization to Increase the Dental Program to Reflect Increased Estimate of Medicaid Capitation Funds for the Oregon Health Plan*
- R-20 *First Reading of a Proposed ORDINANCE Repealing MCC Chapter 6.32 and Adopting MCC Chapter 6.33, Emergency Medical Service and Ambulance Code, in Order to Implement the Ambulance Service Plan for Multnomah County*



MULTNOMAH COUNTY OREGON

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

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SUPPLEMENTAL AGENDA

*Thursday, March 30, 1995 - 9:30 AM
Multnomah County Courthouse, Room 602
1021 SW Fourth, Portland*

REGULAR MEETING

REGULAR AGENDA

NON-DEPARTMENTAL

***R-21 First Reading of a Proposed ORDINANCE Repealing Ordinance 590 and
Permanently Eliminating the Funders Advisory Committee***

Meeting Date: MAR 28 1995

Agenda No: P-1

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: Reporting of Hearing Officer Decision in the matter of CU 2-95;
HV 2-95.

BOARD BRIEFING Date Requested:

Amount of Time Needed:

REGULAR MEETING Date Requested: March 28, 1995

Amount of Time Needed: 15 minutes

DEPARTMENT: DES

DIVISION: Planning

CONTACT: Sarah Ewing

TELEPHONE: 248-3043
BLDG /ROOM: 412/109

PERSON(S) MAKING PRESENTATION: Gary Clifford

ACTION REQUESTED

☐ Informational Only ☐ Policy Direction ☐ Approval ☒ Other

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

Reporting of a Hearings Officer's decision denying approval of a residence not related to forest use on a 16.43 acre existing parcel in the Commercial Forest Use zoning district and variance to the two required side yard setbacks.

SIGNATURES REQUIRED:

Elected Official: _____

OR

Department Manager: Betsy Williams / wtc Boud

1995 MAR 28 11 08 30
MULTICOUNTY
CLERK
CLERK

CASE NAME: Dwelling Not Related to Forest Use in Forest ZoneNUMBER: CU 2-95; HV 2-95

1. Applicant Name/Address:

George Butler
7222 SE 29th Avenue
Portland, OR 97202

ACTION REQUESTED OF BOARD

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

2. Action Requested by applicant:

Approval of a residence that is not related to forest use on a 16.43 acre existing parcel in the Commercial Forest Use zoning district. Approval of variances to the two required side yard setbacks is also requested.

3. Planning Staff Recommendation:

Approval.

4. Hearings Officer Decision:

Denied, for failure to demonstrate a fulfillment of the "lot of record" provisions in ORS 215.705(1)(a) and OAR 660-06-027(1)(g) – the current owner did not acquire the subject property prior to January 1, 1985. However, the Hearings Officer Decision is written in such a manner that if the point of denial is resolved, the application could otherwise be approved.

5. If recommendation and decision are different, why?

The Hearings Officer took up the difficult task of interpreting how the Oregon Revised Statutes and corresponding Oregon Administrative Rules that resulted from the 1993 Oregon House Bill 3661 apply to this application. The Bill, Statute, and Rules are, in staff's opinion, badly constructed and not readily decipherable. Planning staff has had to contact DLCD staff many times for clarification of similar issues.

The Hearings Officer has taken the Statute and Rule criteria for approving "Lot or Parcel of Record Dwellings" and added those provisions to the County CFU zoning definition describing a "Lot of Record". The two names are similar, but the first is a set of development standards for approval of a dwelling in a specific set of circumstances and the second is a definition of separate ownerships of land that ensures other standards of the zoning code have been met, including applicable minimum lot areas.

Staff's interpretation is the Legislature established "Lot or Parcel of Record Dwellings" (ORS 215.705) as one of three options for property owners to apply for dwellings on forest lands. The other two options are "Large Tract Forest Land Dwellings" (ie. if applicant owns 160 acres, ORS 215.740) and "Alternative Forestland Dwellings" (a template test where 11 other parcels and 3 existing dwellings must be within a 160 acre square centered on the property, 215.750). The three types are found in the Statutes under the main heading of "FARMLAND AND FORESTLAND ZONES" (page 1993-20-110), but are organized with the standards for the "Lot or Parcel of Record Dwellings" under the subheading of the same name in parentheses, and the standards for the "Large Tract Forest Land Dwellings" and "Alternative Forestland Dwellings" under the subheading "(Other Forestland Dwellings)". The OAR citations are 660-06-027(1)(a)&(g) for "Lot or Parcel of Record Dwellings", 660-06-027(c) for "Large Tract Forestland Dwellings", and 660-06-027(d) for "Alternative Forestland (template test) Dwellings".

It is staff's understanding that the "Lot or Parcel of Record Dwellings" option was put into effect by the Legislature to allow dwellings on lots that were "acquired before the owners could reasonably be expected to know of the regulations" (ORS 215.700). The qualifying date for "Lot or Parcel of Record Dwellings" picked by the Legislature was January 1, 1985. This date was roughly when all counties were determined by the Land Conservation and Development Commission to be in compliance with Statewide Planning Goals.

The "Lot or Parcel of Record Dwellings" option allows the approval of one dwelling on a lot or parcel if owned by the applicant prior to January 1, 1985 and meets several other standards. If a property changed hands after that date, then a dwelling in a forest zone could only be approved under one of the other two options provided for in the Statutes and Rules. It is staff's contention that the "Lot or Parcel of Record Dwellings" option was not intended by the Legislature to broaden nor be included in the County's definition of "Lot of Record". We believe the Legislative intent was to provide a specific set of dwelling approval criteria for the special circumstance where vacant property has been in the same ownership since 1985 and that requirement was not meant to be applied to the other two forest dwelling options.

The dwelling application on McNamee Road was applied for and evaluated in the staff report under the "Alternative Forestland Dwellings" (template test) approval criteria as contained in the County's CFU zoning district and as modified by the applicable ORS and OAR provisions not yet adopted into the County Code. The application met all of those approval criteria. However, the application was denied by the Hearings Officer when the "Lot or Parcel of Record Dwelling" Standards were applied and it was found that the property was purchased in 1994.

ISSUES
(who raised them?)

1. The Hearings Officer's interpretation which added the "Lot or Parcel of Record Dwellings" development standards to the "Lot of Record" definition in the CFU zoning district is a significant issue to staff if those criteria are also applied to similar applications in the future. The result would be that no forest lot or parcel could qualify for a dwelling if the property changed hands after January 1, 1985.
2. Owners of a neighboring property submitted written objections that the County failed to comply with the notice requirements of the zoning code and the subject application should be subject to the Significant Environmental Concern (SEC) subdistrict requirements. The Hearings Officer decision found that the objector was mailed notice and received sufficient information regarding the application prior to the hearing. In addition, it was found that the SEC subdistrict does not apply to the property.

Do any of these issues have policy implications? Explain.

If the Hearings Officer's Decision in CU 2-95 stands, the development standards for "Lots or Parcels of Record Dwellings" would, in effect, be added to the "Lot of Record" definition in the CFU zone and would be applied to all future forest dwelling applications. The consequence would be that applications for dwellings which met all other standards for approval would still be denied if the applicant purchased the property after January 1, 1985. This would result in situations where a person meeting the standards for a "Large Tract Forest Land Dwelling" (owning 160 acres of contiguous forestland) or an "Alternative Forestland Dwelling" (ie. a small lot surrounded by eleven other small lots already containing dwellings) would still not qualify for a dwelling if the property was purchased after 1/1/85. This would significantly reduce opportunities for placing a dwelling on forest land properties and, as a result, the value of those properties.

The change would add a restrictive dwelling approval criteria to the County's definition of "Lot of Record". The current version of the "Lot of Record" definition has been in the Code since 1980 and has received a great deal of scrutiny by the Planning Commission and Board of County Commissioners during public hearings on farm and forest lands Code amendments since 1980. To change the definition, if there is uncertainty of the need to, without full public notice and review by the Planning Commission would be counter to citizen participation goals and the advisory and oversight functions of the Planning Commission.



MULTNOMAH COUNTY OREGON

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

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DECISION

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

March 3, 1995

CU 2-95; HV 2-95 #47 Conditional Use Request

Applicant requests condition use approval of a single-family dwelling not related to forest management and variances to the side yard setback requirements on a 16.43-acre lot of record in the CFU zoning district.

Location: 16200 N.W. McNamee Road
Legal: Tax Lot 30, Sec. 10, T2N, R1W, WM
Site Size: 16.43 acres
Applicant: George Butler
7222 S.E. 29th Avenue
Portland, Oregon 97202
Property Owner: Same as applicant
Comprehensive Plan: Commercial Forest
Zoning: CFU (Commercial Forest Use)

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MAR 06 1995

Hearings Officer Decision
March 3, 1995

Multnomah County
Zoning Division

CU 2-95; HV 2-95 #47
Page 1

HEARINGS OFFICER DECISION:

DENIED, for failure to demonstrate a fulfillment of the "lot of record" provisions in ORS 215.705(1)(a) and OAR 660-06-027(1)(g). The "current owner" did not "acquire" the subject property prior to January 1, 1985, nor does the record substantiate a finding that the "current owner" acquired the property via devise or intestate succession from someone who acquired the property prior to January 1, 1985.

However, in the event the applicant appeals this denial, I have considered all of the remaining criteria in order to avoid the necessity of repetitive proceedings. I find that, but for the applicant's failure to demonstrate the fulfillment of the "lot of record" provisions in ORS 215.705(1)(a) and OAR 660-06-027(1)(g), the application would otherwise be:

Approved, subject to the conditions set forth below, the development of the subject property with a single-family dwelling not related to forest management, based on the following Findings and Conclusions.

Approved, subject to the conditions set forth below, the side yard setbacks of 70 feet and 110 feet between the proposed dwelling and the side property lines, which are variances of 130 and 90 feet from the required 200 feet, based on the following Findings and Conclusions.

CONDITIONS OF APPROVAL (If Denial Is Appealed And Remanded/Reversed)

1. Approval of this Conditional Use shall expire two years from the date of the Board's final order unless substantial construction has taken place in accordance with MCC 11.15.7110(C).
2. The dwelling location is restricted to the area near to that proposed on the submitted site plan.
3. Prior to approval of building permits, the property owner shall comply with OAR 660-06-029(5), which provides, among other things, that "[a]pproval of a dwelling" requires that:

- “(c) The property owner shall submit a stocking survey report to the county assessor and the assessor will verify that the minimum stocking requirements have been met by the time required by Department of Forestry Rules. . . .”^[1]
4. Prior to the issuance of a building permit, the property owner shall provide to the Division of Planning and Development a copy of the following:
- A. A site plan showing a proposed log landing area on the high part of the property and the proposed building locations and other improvements. This plan shall be verified as appropriate for standard forestry practices by a forester with experience and expertise.
- B. Upon approval by the Planning Director of the provisions in subparagraph A, above, proof that a deed restriction has been recorded with the property that establishes the landing area as unbuildable as long as the property is zoned for forestry resource use as a primary land use.
5. Prior to the issuance of a building permit, the property owner shall provide to the Division of Planning and Development a copy of the recorded restrictions acknowledging the rights of nearby properties to conduct farm and forest practices.
6. Prior to the issuance of a building permit, the applicant shall complete applicable requirements of the County Engineering Services regarding McNamée Road.
7. Prior to the issuance of a building permit, the applicant shall provide evidence that the domestic water supply is from a source authorized in accordance with the Department of Water Resources Oregon Administrative Rules for the appropriation of ground water (OAR 690, Division 10) or surface water (OAR 690, Division 20) and not from a Class II stream as defined in the

¹ ORS 215.730(1)(a) similarly provides that

“[a] local government *shall require as a condition of approval* of a single-family dwelling allowed under ORS 215.705 on lands zoned forest land that:

“(a) The property owner *submits a stocking survey report* to the assessor and the assessor verifies that the minimum stocking requirements adopted under ORS 527.610 to 527.770 have been met.”

Forest Practices Rules. If the water supply is unavailable from public sources, or sources located entirely on the property, the applicant shall provide evidence that a legal easement has been obtained permitting domestic water lines to cross the properties of affected owners.

8. Prior to the issuance of a building permit, the applicant shall submit a copy of the well report. At that time, persons entitled to notice will again be notified that the water service part of the approval criteria is being reviewed and there is the opportunity for comment and appeal of those particular findings.
9. Prior to the issuance of a building permit, and as long as the property is under forest resource zoning, the applicant shall maintain primary and secondary fire safety zones around all structures, in accordance with MCC 11.15.2074(A)(5).
10. The dwelling shall have a fire retardant roof and all chimneys shall be equipped with spark arresters.
11. Prior to the issuance of a building permit, applicant shall demonstrate that the applicable "private road" criteria in MCC 11.15.2074(D) have been observed and fulfilled.

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I.

A. ANALYSIS OF THE PROPOSAL — PART ONE Request For Conditional Use

1. BACKGROUND / PROPOSAL SUMMARY

Applicant requests approval to develop a 16.43-acre lot in designated forest land with a single-family dwelling that would not be related to forest management. Applicant also requests a related variance from setback requirements that is the subject of Part II of this decision.

For all its external simplicity, the proposal falls squarely within the relatively new parameters and criteria promulgated by the 1993 legislature via HB 3661 that broadly control the extent to which such dwellings can be developed on forestland.

2. SITE AND VICINITY DESCRIPTIONS

The subject property is located on the east side of, and abutting, McNamee Road. The property abuts the Rural Residential zoning district that contains smaller properties and several dwellings to the north and to the west. To the south lies a CFU-zoned lot of 11.79 acres that contains a dwelling. To the east lies a large holding of CFU-zoned property used for industrial timber production, which has recently been clear-cut.

The shortest north-south dimension of the parcel is the 238 feet of frontage on the road. All of the property slopes downward from McNamee Road, with sharply increased steepness about one hundred feet east of the road. The area with the least slope — which will be the proposed building site — is located adjacent to the road.

The proposed building site has been used as a landing area for the clear-cut logging that took place on the property in 1993.

3. COMPREHENSIVE PLAN AND ZONING ORDINANCE CONSIDERATIONS

The subject property is classified as "commercial forest" in the Comprehensive Plan and zoned "CFU," Commercial Forest Use.

B. APPLICABLE CRITERIA — PART ONE
Request For Conditional Use

The following criteria apply to the proposed development: ^[2]

1.

ORS 215.705 – 215.750

ORS 215.705 to 215.750 set forth criteria adopted by the legislature to control dwellings in forest zones. Those criteria appear in detail within the separate discussion in the "Findings" portion of this decision.

2.

OAR 660-06-027, 660-06-029, AND 660-06-035

OAR 660-06-027, 660-06-029, and 660-06-035 set forth criteria adopted by administrative rule by LCDRC to control dwellings in forest zones. Those criteria appear in detail within the separate discussion in the "Findings" portion of this decision.

² Donna Green and Clifford Hamby filed written objections, and also testified at the February 15 hearing, that the County had failed to comply with the notice provisions in MCC 11.15.8220(A)(4) because the hearing notice failed to identify the applicant's variance request. Because, however, Ms. Green and Mr. Hamby did learn of that request in time to prepare and articulate objections, they have not demonstrated any prejudice. Moreover, although the cover page of the public hearing notice does not plainly identify the variance aspect of the application, the notice does mention the variance criteria. The staff report likewise covers the variance criteria in depth, and the staff report is (and was) available prior to the hearing.

Ms. Green and Mr. Hamby also contend that MCC 11.15.6400 *et seq.* apply. However, there is nothing in the record to indicate that the subject property lies within an SEC district as so designated on the Multnomah County Zoning Map.

In evidentiary materials submitted within the one-week period in which the applicant requested that the record remain open, Ms. Green and Mr. Hamby discuss the West Hills Rural Area Plan. However, nothing in that plan — assuming the plan is yet adopted — pertains to this application.

3.
MCC 11.15.2050

MCC 11.15.2050 provides that

“[t]he following uses may be permitted when found by the approval authority to satisfy the applicable standards of this Chapter:

* * * * *

“(B) *A dwelling not related to forest management* pursuant to the provisions of *MCC .2052 and .2074.*”

4.
MCC 11.15.2052^[3]

MCC 11.15.2052 provides that “[a] dwelling not related to forest management may be allowed subject to” the criteria in .2052(A)(1)–(10). Those criteria appear in detail within the separate discussion in the “Findings” portion of this decision.

5.
MCC 11.15.2074

MCC 11.15.2074 — made applicable by MCC 11.15.2052(A)(9) — provides that “. . . all dwellings and structures located in the CFU district after January 7, 1993[,] shall comply” with the provisions in .2074(A)–(D). Those criteria appear in detail within the separate discussion in the “Findings” portion of this decision.

³ MCC 11.15.7120(A) provides, in general, that

“[a] *Conditional Use* shall be governed by the approval criteria listed *in the district under which the conditional use is allowed. . . .*”

Because MCC 11.15.2052 contains specific criteria applicable to uses within the CFU district, the general provisions in MCC 11.15.7120(A) will not apply.

6.

COMPREHENSIVE PLAN PROVISIONS

The County has determined COMPREHENSIVE PLAN policies 13 (Air, Water, and Noise Quality), 14 (Developmental Limitations), 22 (Energy Conservation), 37 (Utilities), 38 (Facilities), and 40 (Development Requirements) to apply. These criteria appear in detail within the separate discussion in the "Findings" portion of this decision.

C. FINDINGS — PART ONE

1. ORS 215.705 – 215.750

ORS 215.705(1) provides, in pertinent part, that "[a] dwelling under this section may be allowed if:

"(a) The lot or parcel on which the dwelling will be sited was lawfully created and was acquired by the present owner:

"(A) Prior to January 1, 1985; or

"(B) By devise or by intestate succession from a person who acquired the lot or parcel prior to January 1, 1985.

"(b) The tract on which the dwelling will be sited does not include a dwelling.

"(c) The proposed dwelling is not prohibited by, and will comply with, the requirements of the acknowledged comprehensive plan and land use regulations and other provisions of the law.

"* * * * *

"(e) The lot or parcel on which the dwelling will be sited, if zoned for forest use, is described in ORS 215.720, 215.740 or 215.750.

The record contains evidentiary submittals directed toward compliance only with MCC 11.15.2052(A)(1) and 11.15.2062(A)(1) and(2). The "lot of record" criteria in both ORS 215.705(1)(a) and OAR 660-06-027(1)(g), on the other hand, implicate somewhat different requirements.

ORS 215.705(1)(a) became effective in November, 1993, as did all of HB 3661 (1993). The mirror-image provisions in OAR 660-06-027(1)(g) became effective in March, 1994. Thus, notwithstanding the fact that applicant does not address either ORS 215.705(1)(a) or OAR 660-06-027(1)(g), I perceive no implied suggestion that either or both do not otherwise apply. The County, however, has not yet incorporated the provisions of ORS 215.705(1)(a) or OAR 660-06-027(1)(g) into its Code.

In evidentiary materials dated February 17, 1995,^[4] applicant mentions an earlier application for conditional use (CU 24-93) filed in August, 1993. At that time, ORS 215.705(1)(a) was not yet effective and OAR 660-06-027(1)(g) did not exist. Thus, the only pertinent "lot of record" criteria as of August, 1993, would have been MCC 11.15.2052 and 11.15.2074. Unfortunately, as noted by the applicant,

"the Portland Sanitarian did not submit the septic feasibility approval report until February 24, 1994, *therefore, missing the deadline required to continue under CU 24-93.*

Had this application been merely a continuation of the earlier one, then neither ORS 215.705(1)(a) nor OAR 660-06-027(1)(g) in their present wording would — or could — apply.

The following columnar comparison highlights the critical differences between the "lot of record" provisions in ORS 215.705(1)(a) and MCC 11.15.2052 and 11.15.2072:

[see chart on next page]

⁴ At applicant's request during the February 15 hearing, the record remained open until February 22; applicant was to submit any additional evidence by 4:30 p.m. on February 21, and any other person could respond with additional evidence by 4:30 p.m. on February 22.

PROVISIONS PRESCRIBING "LOT OF RECORD" REQUIREMENTS

ORS 215.705(1)(a)^[5]

"A dwelling under this section may be allowed if:

"(a) The lot or parcel on which the dwelling will be sited [1] was lawfully *created* and [2] was *acquired by the present owner*:

"(A) *Prior to January 1, 1985*; or

"(B) By devise or by intestate succession from a person who acquired the lot or parcel *prior to January 1, 1985*." (Emphasis and enumeration added.)

MCC 11.15.2052(A)(1)

"The lot *shall* [1] meet the lot of record standards of MCC .2062(A) and (B) *and* [2] have been lawfully *created prior to January 25, 1990* [.] (Emphasis and enumeration added.)

MCC 11.15.2062(A)

"For the purposes of this district, a Lot of Record is:

"(1) A parcel of land:

"(a) For which a deed or other instrument creating the parcel was recorded with the Department of General Services, or was in recordable form *prior to August 14, 1980*;

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

"(c) Which *satisfies the minimum lot size requirements* of MCC .2058; *or*

"(2) A parcel of land:

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

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

"(c) *Does not meet the minimum lot size requirements* of MCC .2058."

⁵ OAR 660-06-027(1)(g) mirrors the provisions in ORS 215.705(1)(a), except that it provides that a dwelling "may be allowed *only if*" it fulfills one of the two criteria.

Unfortunately, the statutory provisions do not squarely align with the County provisions. Most predominately, ORS 215.705(1)(a) focuses primarily on *ownership* as of January 1, 1985; MCC 11.15.2052 and 11.15.2062 do not even mention "ownership."

In addition to having been "lawfully created," ORS 215.705(1)(a) requires that the lot:

- ◆ must have been "acquired by the *present owner*" before January 1, 1985; or
- ◆ "acquired by the *present owner*" at any time as long as that owner acquired it by devise or intestate succession from someone who had acquired the property before January 1, 1985.

The record reflects that the the current owner — who is also the applicant — acquired the property by deed from an Oregon corporation in August, 1994. However, because the "present" owner did not acquire the property until after January 1, 1985, and because nothing in the record suggests that it was acquired by the "present" owner by way of devise or intestate succession from someone who acquired it prior to January 1, 1985, it certainly appears that the subject property does *not* fulfill the requirements of ORS 215.705(1)(a), notwithstanding the fact that the lot itself may have been lawfully created years ago.

MCC 11.15.2052 and 11.15.2062, on the other hand, focus on different criteria — albeit somewhat redundantly in that both provisions require the lot to have been lawfully created, but at different dates. In addition to having been "lawfully created" before January 25, 1990 (MCC 11.15.2052), MCC 11.15.2062 requires that the lot:

- ◆ be lawfully created by an instrument that either was or could have been recorded before August 14, 1980, and be at least 80 acres in size; or
- ◆ be lawfully created by an instrument that either was or could have been recorded before February 20, 1990, and be less than 80 acres in size.^[6]

⁶ Thankfully, this case does not present the question whether MCC 11.15.2052 and 11.15.2062 *together* preclude development on an undersized parcel lawfully created *between* January 25, 1990, and February 19, 1990.

In other words, MCC 11.15.2052 and 11.15.2062 focus primarily on the *date of creation*.

The record reflects, among other things, a 1975 deed from Joseph Johnson to Susan Johnson. Whether that deed "created" the subject property by carving it from a larger parcel, or whether the deed merely transferred ownership of the subject property, is not clear from the record. Nevertheless, it appears from the record that at least as of 1975 the parcel was lawfully created in that it fulfilled the then-existing zoning laws. Thus, the subject property fulfills both MCC 11.15.2052(A)(1) and 11.15.2062(A)(2).

In any event, applicant's evidence does *not* support a finding that ORS 215.705(1)(a) — or OAR 660-06-027(1)(g) for that matter — has been fulfilled.

The question then becomes whether ORS 215.705(1)(a) binds the County, or whether it somehow comprises an option that the County can either embrace or ignore. Nothing in HB 3661 (1993 Or Law, ch. 792) — from whence sprang ORS 215.705(1)(a) — answers that question. Nor does anything about ORS 215.705(1)(a) itself yield any clue; although that provision recites that a "dwelling under this section *may* be allowed," the reference to "may" simply suggests that a county might well impose stricter requirements. See, for instance, ORS 215.705(5), which empowers counties to *deny* approval of a dwelling otherwise "allowed" under ORS 215.705. But the reference to "may" for one purpose does not thereby translate into an implicit option to either abide by the statute or ignore it. As if to underscore that point, in OAR 660-06-027(1)(g) LCDC interpreted the statutory phrase "may be allowed" to mean that a "dwelling . . . may be allowed *only if*" it fulfills one of the two date-oriented criteria.

Unless the legislature specifically grants a local government the option of implementing a particular statute as the local government sees fit, the lesson of cases such as *Seto v. Tri-County Metro. Transportation Dist.*, 311 Or 456, 814 P2d 1060 (1991), *Mid-County Future Alternatives v. City of Portland*, 310 Or 152, 795 P2d 541 (1990), *1000 Friends of Oregon v. LCDC (Tillamook Co.)*, 303 Or 430, 737 P2d 607 (1987), and *LaGrande/Astoria v. PERB*, 281 Or 137, 576 P2d 1204 (1978), is this: local governments retain pervasive (if not exclusive) authority over their "form and structure," but otherwise must abide by all statutes, particularly land use laws.

Because the fulfillment of ORS 215.705(1)(a) is an essential condition precedent to approval, and because nothing in either ORS 215.705 or any other law allows the County to supplant statutory requirements with local land use laws, the application must be **DENIED**. The "current owner" did not "acquire" the subject property prior to January 1, 1985, nor does the record substantiate a finding that the "current owner" acquired the property via devise or intestate succession from someone who acquired the property prior to January 1, 1985.

In the event that the applicant appeals this decision, I will proceed to consider all of the remaining criteria in order to avoid the necessity for further proceedings with respect to applicability or fulfillment of those criteria. Thus, the remainder of the decision simply assumes that the "lot of record" provisions in ORS 215.705(1)(a) and OAR 660-06-027(1)(g) do not otherwise control this application.

The tract on which the dwelling will be sited does not already contain a dwelling, and the proposed dwelling is not prohibited by the comprehensive plan and approval criteria (*see later discussion*). Thus, applicant's evidence supports a finding that ORS 215.705(1)(b) and (c) have been fulfilled.

Whether the subject property is described in ORS 215.720 or 215.750 (ORS 215.740 being inapplicable) — and whether the applicant's evidence supports a finding that ORS 215.705(1)(c) has been fulfilled — is discussed in the next few paragraphs.

ORS 215.720 provides, in pertinent part:

"(1) A dwelling authorized under ORS 215.705 may be allowed on land zoned for forest use under a goal protecting forest land only if:

"(a) The tract on which the dwelling will be sited is in western Oregon, as defined in ORS 321.257, and is composed of soils not capable of producing 5,000 cubic feet per year of commercial tree species and is located within 1,500 feet of a public road as defined under ORS 368.001. . . .

"* * * * *

"(3) No dwelling other than those described in this section and ORS 215.740 and 215.750 may be sited on land zoned for forest use under a land use planning goal protecting forest land."

ORS 215.750 further provides:

"(1) In western Oregon, a governing body of a county or its designate may allow the establishment of a single-family dwelling on a lot or parcel located within a forest zone if the lot or parcel is predominantly composed of soils that are:

"* * * * *

"(c) Capable of producing more than 85 cubic feet per acre per year of wood fiber if:^[7]

"(A) All or part of at least 11 other lots or parcels that existed on January 1, 1993, are within a 160-acre square centered on the center of the subject tract; and

"(B) At least three dwellings existed on January 1, 1993, on the other lots or parcels.

"* * * * *

"(3) Lots or parcels within urban growth boundaries shall not be used to satisfy the eligibility requirements under this subsection.

With one significant exception (addressed in the next paragraph), the County has implemented the criteria in ORS 215.720 and 215.750 via MCC 11.15.2052, discussed later. Because the applicant's evidence supports the finding that the proposed dwelling fulfills the criteria in MCC 11.15.2052 (discussed later), then with the one exception noted in the next paragraph the dwelling concurrently fulfills the criteria in ORS 215.720 and 215.750, and, in turn, fulfills the remaining criterion in ORS 215.705(1)(e).

The exception is the requirement in ORS 215.720(1)(a) that the subject parcel be located "within 1,500 feet of a public road as defined under ORS 368.001." MCC 11.15.2052 does not appear to incorporate that particular criterion. The various maps in the record makes it readily apparent, however, that the distance from the parcel to

⁷ Applicant's evidence reveals that neither subparts (a) nor (b) of ORS 215.750(1) would apply in any event.

McNamee Road is considerably less than 1,500 feet; the property fronts on the road. Applicant has manifestly fulfilled this particular requirement.

ORS 215.730 further provides, in pertinent part:

"(1) A local government shall require as a condition of approval of a single-family dwelling allowed under ORS 215.705 on lands zoned forest land that:

"(a) The property owner submits a stocking survey report to the assessor and the assessor verifies that the minimum stocking requirements adopted under ORS 527.610 to 527.770 have been met.

"(b) The dwelling meets the following requirements:

"(A) The dwelling has a fire retardant roof.

"(B) The dwelling will not be sited on a slope of greater than 40 percent.

"(C) Evidence is provided that the domestic water supply is from a source authorized by the Water Resources Department and not from a Class II stream as designated by the State Board of Forestry.

"(D) The dwelling is located upon a parcel within a fire protection district or is provided with residential fire protection by contract.

"(E) If the dwelling is not within a fire protection district, the applicant provides evidence that the applicant has asked to be included in the nearest such district.

"(F) If the dwelling has a chimney or chimneys, each chimney has a spark arrester.

"(G) The owner provides and maintains primary fuel-free break and secondary break areas."

Because some of these criteria in ORS 215.730(1) represent "conditions" pertaining to the design or construction process itself, they can be superimposed upon an approval for a particular use, rather than functioning as criteria that must necessarily be fulfilled before conditional approval can be granted. Thus, appropriate conditions will fulfill the criteria in ORS 215.730(1)(b)(A), (F), and (G).

However, the County has implemented most of the conditions in ORS 215.730(1) via mandatory approval criteria in MCC 11.15.2074. Because the applicant has demonstrated a fulfillment of ORS 215.730(1)(a) and (b)(B), (C), (D), and (E), as discussed later, the proposed dwelling concurrently fulfills the criterion in ORS 215.730(1)(a) and (b)(B), (C), (D), and (E).

2. OAR 660-06-027, 660-06-029, and 660-06-035

In many respects, the criteria in OAR 660-06-027 mirror the various statutory criteria in ORS 215.705 to 215.750. They nevertheless apply independently.

OAR 660-06-027(1) provides, in pertinent part, that

**"[d]wellings authorized by OAR 660-06-025(1)(d)^[8]
are:**

"(a) A dwelling on a tract in western Oregon that is composed of soil not capable of producing 5,000 cubic feet per year of commercial tree species and is located within 1,500 feet of a public road as defined under ORS 368.001. . . .

"* * * * *

⁸ OAR 660-06-025(1)(d) provides that "[d]wellings authorized by ORS 215.720 to 215.750" comprise one of the "general types of uses" permitted in forest land.

"(d) In western Oregon, a governing body of a county or its designate may allow the establishment of a single-family dwelling on a lot or parcel located within a forest zone if the lot or parcel is predominately composed of soils that are:

"* * * * *

"(C) Capable of producing more than 85 cubic feet per acre per year of wood fiber if:^[9]

"(I) All or part of at least 11 other lots or parcels that existed on January 1, 1993, are within a 160 acre square centered on the center of the subject tract; and

"(ii) At least three dwellings existed on January 1, 1993, on the other lots or parcels.

"* * * * *

"(g) A dwelling authorized under subsections (a) and (b) of this section may be allowed only if the lot or parcel on which the dwelling will be sited was lawfully created and was acquired by the present owner:

"(A) Prior to January 1, 1985; or

"(B) By devise or by intestate succession from a person who acquired the lot or parcel prior to January 1, 1985.

"* * * * *

⁹ Applicant's evidence reveals that neither subparts (A) nor (B) of OAR 660-06-027(1)(d) would apply in any event.

With two exceptions, one of which is noted in the next paragraph, the County has implemented these criteria via the criteria in MCC 11.15.2052. Because the applicant's evidence otherwise supports the finding that the proposed dwelling fulfills the criteria in MCC 11.15.2052 (discussed later), then with the one exception noted in the next paragraph, and assuming for the remainder of this decision that the County's "lot of record" provisions — which constitute the other exception — allow the proposed development, the dwelling concurrently fulfills the criterion in OAR 660-06-027(1)(a) and (d).

One of the two exceptions is the requirement in OAR 660-06-027(1)(a) that the subject parcel be located "within 1,500 feet of a public road as defined under ORS 368.001." MCC 11.15.2052 does not appear to incorporate that particular criterion. The various maps in the record makes it readily apparent, however, that the distance from the parcel to McNamee Road is considerably less than 1,500 feet; the property fronts on the road. Applicant has manifestly fulfilled this particular requirement.

The other exception is, of course, the fact that the County has not yet incorporated the "lot of record" provisions in ORS 215.705(1)(a) and OAR 660-06-027(1)(g) into MCC 11.15.2052(A) or 11.15.2062(A). That issue has been dealt with earlier in detail.

OAR 660-06-027(4) further provides that "[a] proposed dwelling under this rule is not allowed:

"(a) If it is prohibited by or will not comply with the requirements or an acknowledged comprehensive plan or acknowledged land use regulations or other provisions of law;

"(b) Unless it complies with the requirements of OAR 660-06-029 and 660-06-035;

"(c) Unless no dwellings are allowed on other lots or parcels that make up the tract and deed restrictions established under section (6) of this rule for the other lots or parcels that make up the tract are met;

"(d) If the tract on which the dwelling will be sited includes a dwelling.

The proposed dwelling is not prohibited by the comprehensive plan and approval criteria (*see later discussion*). Thus, applicant's evidence supports a finding that OAR 660-06-027(4)(a) has been fulfilled.

Because the proposed dwelling complies with the requirements of OAR 660-06-029 and 660-06-035 (discussed below), it fulfills the requirements of OAR 660-06-027(4)(b).

There are no other "lots or parcels that make up the tract," and no other dwellings will be allowed on the parcel. Thus, applicant's evidence supports a finding either that OAR 660-06-027(4)(c) does not apply or that it has been fulfilled.

There exists no dwelling on the subject property. Thus, applicant's evidence supports a finding that OAR 660-06-027(4)(d) has been fulfilled.

OAR 660-06-029 provides that

"[t]he following siting criteria or their equivalent shall apply to all new dwellings and structures in forest and agricultural/ forest zones. . . .:

"(1) Dwellings and structures shall be sited on the parcel so that:

"(a) They have the least impact on nearby or adjoining forest or agricultural lands;

"(b) The siting ensures that adverse impacts on forest operations and accepted farming practices on the tract will be minimized;

"(c) The amount of forest lands used to site access roads, service corridors, the dwelling and structures is minimized; and

"(d) The risks associated with wildfire are minimized.

"* * * * *

“(3) The applicant shall provide evidence to the governing body that the domestic water supply is from a source authorized in accordance with the Water Resources Department’s administrative rules for the appropriation of ground water or surface water and not from a Class II stream as defined in the Forest Practices rules (OAR Chapter 629). . . .

“(4) As a condition of approval, if road access to the dwelling is by a road owned and maintained by a private party . . . , then the applicant shall provide proof of a long-term road access use permit or agreement. The road use permit may require the applicant to accept responsibility for road maintenance.

“(5) Approval of a dwelling shall be subject to the following requirements:

“(a) Approval of a dwelling requires the owner of the tract to plant a sufficient number of trees on the tract to demonstrate that the tract is reasonably expected to meet Department of Forestry stocking requirements at the time specified in Department of Forestry administrative rules;

“(b) The planning department shall notify the county assessor of the above condition at the time the dwelling is approved;

“(c) The property owner shall submit a stocking survey report to the county assessor and the assessor shall verify that the minimum stocking requirements have been met by the time required by Department of Forestry rules. The assessor shall inform the Department of Forestry in cases where the property owner has not submitted a stocking survey report or where the survey report indicates that minimum stocking requirements have not been met;

“(d) Upon notification by the assessor the Department of Forestry shall determine whether that tract meets minimum stocking requirements of the Forest Practices Act. If the department determines that the tract does not meet those requirements, the department shall notify the owner and the assessor that the land is not being managed as forest land. The assessor shall then remove the forest land designation pursuant to ORS 321.359 and impose the additional tax pursuant to ORS 321.372.”

The County has implemented the various criteria in OAR 660-06-029(1) via the development standards in MCC 11.15.2074. Because the applicant's evidence supports a finding that MCC 11.15.2074 has been fulfilled (as discussed later), the applicant has likewise fulfilled OAR 660-06-029(1).

The County has implemented the criterion in OAR 660-06-029(3) via MCC 11.15.2074(C). Because the applicant's evidence supports a finding that MCC 11.15.2074(C) has been fulfilled (as discussed later), the applicant has likewise fulfilled OAR 660-06-029(3).

The condition in OAR 660-06-029(4) has been implemented by the County via MCC 11.15.2052(A)(7). Because the applicant's evidence supports a finding that MCC 11.15.2052(A)(7) has been fulfilled (as discussed later), the applicant has likewise fulfilled OAR 660-06-029(4).

Although OAR 660-06-029(5) makes the “approval” of a dwelling subject to the criteria specified therein, only part (c) could reasonably comprise a condition of ap-

proval of the proposed dwelling itself; parts (a), (b), and (d) all pertain to post-approval, post-development activities that impact only the property's tax status. The criterion in part (c) can be fulfilled via a condition of approval.

Finally, OAR 660-06-035 implements certain "fire siting standards" that mirror requirements in ORS 215.730(1)(b) and 215.730(2). The County also implemented some of the same criteria in MCC 11.15.2052 and .2074. Because the applicant's evidence supports a finding that MCC 11.15.2052 and .2074 have been fulfilled (as discussed later), the applicant has likewise fulfilled OAR 660-06-035.

3. MCC 11.15.2052

"(1) The lot shall meet the lot of record standards of MCC .2062(A) and (B) and have been lawfully created prior to January 25, 1990 [.]"

MCC 11.15.2062(A) provides that "[f]or the purposes of this district, a Lot of Record is:

"(1) A parcel of land:

"(a) For which a deed or other instrument creating the parcel was recorded with the Department of General Services, or was in recordable form *prior to August 14, 1980;*

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

"(c) *Which satisfies the minimum lot size requirements of MCC .2058; or*

"(2) A parcel of land:

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

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

“(c) Does not meet the minimum lot size requirements of MCC .2058; and

“(d) Which is not contiguous to another sub-standard parcel or parcels under the same ownership [.]”

“* * * * *”

Applicant relies upon .2062(A)(2). The minimum lot size, per MCC 11.15.2058(A), is 80 acres; thus, .2062(A)(1) would not apply.

As discussed in some detail earlier, the record reflects, among other things, a 1975 deed from Joseph Johnson to Susan Johnson. Whether that deed “created” the subject property by carving it from a larger parcel, or whether the deed merely transferred ownership of the subject property, is not clear from the record. Nevertheless, it appears from the record that at least as of 1975 the parcel was lawfully created in that it fulfilled the then-existing zoning laws. It also appears from the record that the property is not contiguous to another substandard parcel owned by the applicant/ owner. The subject property fulfills MCC 11.15.2062(A)(2).

Chris McCurdy of 14250 S.W. McNamee Road filed a written objection reciting, among other things, that the “parcel is so small.” However, the size of the parcel is irrelevant under MCC 11.15.2062(A)(2) as long as the other criteria are fulfilled.

Thus, applicant’s evidence supports the finding that the criterion in MCC 11.15.2052(A)(1) has been fulfilled.

“(2) The lot shall be of sufficient size to accommodate siting the dwelling in accordance with MCC .2074 with minimum yards of 60 feet to the centerline of any adjacent County-maintained road and 200 feet to all other property lines. Variances to this standard shall be pursuant to MCC .8505 through .8525, as applicable [.]”

Although the siting of the proposed dwelling complies with the 60-foot setback requirement with respect to McNamee Road, the physical conditions on the property (*viz*, the slope) necessitates siting the dwelling in a location that will not comply with the 200-foot setback requirement. Thus, the applicant concurrently seeks a variance to the 200-foot setback requirement due to the slope of the lot and the re-

sultant limitation on siting alternatives. The variance is the subject of Part II of this decision.

Because the applicant has successfully demonstrated an entitlement to a variance (as discussed later), the evidence supports a finding that the criterion in MCC 11.15.2052(A)(2) has been fulfilled.

“(3) The lot shall meet the following standards:

“* * * * *

“(c) The lot shall be composed primarily of soils which are capable of producing above 85 cf/ac/yr of Douglas Fir timber;^[10] and

“(I) The lot and at least all or part of 11 other lots exist within a 160-acre square when centered on the center of the subject lot parallel and perpendicular to section lines;^[11] and

“(ii) Five dwellings exist within the 160-acre square.^[12]

“(d) Lots and dwellings within urban growth boundaries shall not be counted to satisfy (a) through (c) above.

“(e) The lot is not capable of producing 5,000 cubic feet of wood fiber per year from commercial tree species recognized by the Forest Practices Rules.”

Applicant's evidence reveals that the subject property is composed primarily of Goble silt loam soil. The potential yield of Douglas Fir for this soil, according to the County's soil survey, ranges from 135 to 145 cubic feet per acre per year. Thus, at

¹⁰ Applicant relies only upon MCC 11.15.2052(A)(3)(c).

¹¹ Both ORS 215.750(1)(c)(A) and OAR 660-06-027(1)(d)(C)(I) further specify that the 11 other lots must have existed as of January 1, 1993.

¹² Both ORS 215.750(1)(c)(B) and OAR 660-06-027(1)(d)(C)(ii) specify “[a]t least *three* dwellings [must have] existed on January 1, 1993, on the other lots or parcels.”

16.43 acres the subject property is capable of producing in excess of 85 cf/ac/yr of Douglas Fir.

Applicant's evidence further reveals that the parcel is not capable of producing 5,000 cubic feet of wood fiber per year; 16.43 acres times 135 to 145 cubic feet per acre per year equals only 2,218 to 2,232 cubic feet per year.

At least 29 other parcels (or parts thereof) and at least 8 dwellings exist within the 160-acre square. None of those parcels or dwellings is located within an urban growth boundary. Although it may be correct, as written objections by Donna Green and Clifford Hamby dated February 12 emphasize (hereafter simply "*Green*"), that some of the surrounding dwellings lie in a Rural Residential zone, that fact does not suggest that they may be treated as if they are located "within an urban growth boundary." To do so would be to rewrite applicable criteria by mere fiat.

Thus, applicant's evidence supports a finding that the criteria in MCC 11.15.2052(A)(3)(c), (d), and (e) have been fulfilled.

"(4) The dwelling will not force a significant change in, significantly increase the costs of, or impede accepted forestry or farming practices on surrounding forest or agricultural lands [.]"

There appears to be a large-scale forestry operation to the east of the subject property. Nothing about the proposed dwelling, however, appears likely to either change, increase the costs of, or otherwise impede that adjacent forestry operation. No other significant forestry operations take place on the small Rural Residential zoned properties in the McNamee Ridge View Subdivision.

The majority of the subject property consists of slopes between 50% and 60%. Those conditions limit the potential for homesite locations. Consequently, the most practical site is near the western-most property line, adjacent to McNamee Road, which has slopes of between 15% and 30%. As so situated, the proposed dwelling will be located as far from the large-scale forestry operation to the east as is possible on the site.

Green contends that the proposed dwelling does not comply with MCC 11.15.2052(A)(4) because the applicant does not adequately explain what, if anything will happen to the preexisting loading station for log trucks that was apparently located in the area where the dwelling is to be sited. If the subject property itself comprises "surrounding" forest land, then obviously MCC 11.15.2052(A)(4) requires the applicant

to explain such things. If, on the other hand, "surrounding" means property *other than* the subject property, then Green's concerns are not pertinent to *this* criterion. MCC 11.15.2074(A)(1) (*discussed later*) tracks the language from OAR 660-06-029(1)(a) that discusses a proposal's impact on "*nearby or adjacent*" forest lands. Because OAR 660-06-029(1)(b) separately mentions "adverse impacts . . . on *the tract*," I construe the terms "nearby or adjacent" in both OAR 660-06-029(1)(a) and MCC 11.15.2074(A)(1) to mean forest lands *other than* the subject property itself. Thus, to construe MCC 11.15.2052(A)(4) to refer to that same category of property would be redundant. Therefore, I conclude that the term "surrounding" can refer to property within the subject property that literally "surrounds" the proposed dwelling.

In materials dated February 17, 1995, applicant mentions a "logging landing" and acknowledges that "[t]here is more than ample room for a logging landing south of the proposed house site which would support both the subject property and the adjoining property to the south." Because there is evidence of preexisting logging operations of some sort on the subject property that might well be adversely impacted by the proposed dwelling if those preexisting operations are not taken into account as MCC 11.15.2052(A)(4) requires, it shall be a condition of approval that the applicant shall, before obtaining a building permit, provide a site plan showing a proposed log landing area on the high part of the property (*viz*, close to McNamee Road), which plan shall be verified by a forester for compliance with appropriate forestry practices.

Green also objects because "[t]he subject property clearly is suitable for commercial forest use." She does not, however, specifically relate that objection to MCC 11.15.2052(A)(4), but this seems to be an appropriate place to address it. Suffice it to say that nothing about any applicable criteria purports to exclude dwellings from property that may well be "suitable for commercial forest use" solely on the basis that the property fits that description. To the contrary, HB 3661, LCDC's administrative rules, and the County's criteria purport to allow just such dwellings on forestland under regulated, prescribed conditions.

There exists no evidence that the proposed dwelling will run afoul of the proscription in MCC 11.15.2052(A)(4); the evidence is to the contrary. Thus, applicant's evidence supports a finding that the criterion in MCC 11.15.2052(A)(4) has been fulfilled.

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- "(5) The dwelling 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 of the additional dwelling, considered with approvals of other dwellings in the area since acknowledgment of the Comprehensive Plan in 1980, will be acceptable."**

The dwelling is not located inside a big game winter habitat area. Although written objections by Chris McCurdy of 14250 N.W. McNamee Road declare that "the proposed homesite is directly in the middle of the wildlife corridor between Forest Park and the Coast Range," Mr. McCurdy does not suggest that that fact — if true — necessarily yields any adverse impact. Moreover, no applicable criterion makes this consideration pertinent.

Thus, applicant's evidence supports a finding that the criterion in MCC 11.15.2052(A)(5) has been fulfilled.

-
- "(6) The proposed dwelling will be located on a lot within a rural fire protection district, or the proposed resident has contracted for residential fire protection [.]"**

The proposed dwelling will be located on a lot within a rural fire protection district. Fire protection in the area is provided by Rural Fire Protection District No. 20.

Thus, applicant's evidence supports a finding that the criterion in MCC 11.15.2052(A)(6) has been fulfilled.

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- "(7) Proof of a long-term road access use permit or agreement shall be provided if road access to the dwelling is by a road owned and maintained by a private party or by the Oregon Department of Forestry, the Bureau of Land Management, or the United States Forest Service. The road use permit may required the applicant to agree to accept responsibility for road maintenance [.]"**

The subject property fronts on McNamee Road, which provides direct access to the property. Thus, applicant's evidence supports a finding that the criterion in MCC 11.15.2052(A)(7) has been fulfilled.

"(8) The parcel on which the dwelling will be located has been disqualified from receiving a farm or forest tax deferral [.]"

This criterion has been superseded by ORS 215.730(1)(a) and OAR 660-06-029(5), discussed above.

As observed earlier, although OAR 660-06-029(5) makes the "approval" of a dwelling subject to the criteria specified therein, only part (c) could reasonably comprise a condition of approval of the development of the dwelling itself; parts (a), (b), and (d) all pertain to post-approval, post-development activities that only impact the property's tax status. The criterion in part (c) can be fulfilled via a condition of approval.

"(9) The dwelling meets the applicable development standards of MCC .2074 [.]"

The criteria in MCC 11.15.2074 are discussed in the next section. Because applicant's evidence supports a finding that the criteria in MCC 11.15.2074 have been fulfilled (*discussed later*), this criterion in MCC 11.15.2052(A)(9) has been fulfilled.

"(10) A statement has been recorded with the Division of Records that the owner and the successors in interest acknowledge the rights of owners of nearby property to conduct forest operations consistent with the Forest Practices Act and Rules, and to conduct accepted farming practices."

The record reflects that the statement has yet to be recorded. The criterion plainly says "*has* been recorded," which unambiguously conveys the requirement that the recordation of the statement must precede approval.

Thus, applicant's compliance with this criterion shall be a condition of approval.

4. MCC 11.15.2074

MCC 11.15.2074 — made operative via MCC 11.15.2052(A)(9), above — provides that

“... [A]ll dwellings and structures located in the CFU district after January 7, 1993[,] shall comply with the following[.]”

“(A) The dwelling or structure shall be located such that:

- “(1) It has the least impact on nearby or adjoining forest or agricultural lands and satisfies the minimum yard and setback requirements of .2058(C) through (G);**
- “(2) Forest operations and accepted farming practices will not be curtailed or impeded;**
- “(3) The amount of forest land used to site the dwelling or other structure, access road, and service corridor is minimized;**
- “(4) Any access road or service corridor in excess of 500 feet in length is demonstrated by the applicant to be necessary due to physical limitations unique to the property and is the minimum length required; and**
- “(5) The risks associated with wildfire are minimized. . . .”**

Maps appear to reflect that the proposed location of the dwelling is situated so as to have the least impact on all nearby or adjoining lands. Applicant cannot, however, fulfill the setback requirements of MCC 11.15.2058(C) through (G), and has requested a variance. The criteria for that request are discussed below. Because applicant has successfully demonstrated an entitlement to the variance (*discussed later*), applicant's evidence supports a finding that the provisions in MCC 11.15.2074(A)(1) have been fulfilled.

MCC 11.15.2074(A)(2) has been supplanted by OAR 660-06-029(1)(b), which requires that "[t]he siting ensures that adverse impacts on forest operations and accepted farming practices on the tract will be minimized [.]". With the exception of some references in the record to logging or forestry practices on the property to the east that may or may not occur "on the tract" in some fashion (perhaps via landing sites), the record contains no evidence that any forest operations or farming practices occur on the site. Thus, no "adverse impacts" will occur, and applicant's evidence supports a finding that the provision in MCC 11.15.2074(A)(2), supplanted and supplemented by OAR 660-06-029(1)(b), has been fulfilled.

Applicant has documented that the homesite, including well, septic, and all outbuildings, will be confined to an approximate one-acre area near McNamee Road. As such, the proximity of the dwelling to the road will result in a minimal amount of property used for driveway and utility easements. Thus, applicant's evidence supports a finding that the provision in MCC 11.15.2074(A)(3) has been fulfilled.

There will be no need for any "access road or service road" beyond a driveway to the proposed dwelling. Thus, applicant's evidence supports a finding that the provision in MCC 11.15.2074(A)(4) has been fulfilled.

Applicant assures that a primary fire safety zone of 130 feet will be maintained around all structures, followed by a secondary fire safety zone of 100 feet. Applicant also ensures that all existing and future ornamental trees shall not have a distance of less than 15 feet between crowns within the primary fire safety zone, that all existing and future trees will be pruned eight feet in height, and, finally, that ornamental shrubs shall not exceed 2 feet in height. The immediate around the proposed dwelling does not have slopes exceeding 40 percent. With applicant's observance of the safety zone conditions as an enduring condition of approval, applicant's evidence supports a finding that the provisions in MCC 11.15.2074(A)(5) have been fulfilled.

"(B) The dwelling shall:

- "(1) Comply with the standards of the Uniform Building Code . . . ;**
- "(2) Be attached to a foundation for which a building permit has been obtained; and**
- "(3) Have a minimum floor area of 600 square feet."**

Because these criteria condition *pre*-construction approval of the proposed use based upon the applicant's compliance with *post*-approval construction requirements, applicant's post-approval compliance with the criteria in MCC 11.15.2074(B)(1) to (3) shall be met during the building permit process.

In addition, ORS 215.730(1)(b)(A) and (F), as well as OAR 660-06-035(4) and (6), require that the proposed dwelling have a fire retardant roof and that any chimney have a spark arrester. Thus, applicant's post-approval compliance with these requirements shall likewise be an enduring condition of approval.

As so conditioned, applicant's evidence supports a finding that MCC 11.15.2074(B) has been fulfilled.

“(C) The applicant shall provide evidence that the domestic water supply is from a source authorized in accordance with the Department of Water Resources Oregon Administrative Rules for the appropriation of ground water (OAR 690, Division 10) or surface water (OAR 690, Division 20) and not from a Class II stream as defined in the Forest Practices Rules. If the water supply is unavailable from public sources, or sources located entirely on the property, the applicant shall provide evidence that a legal easement has been obtained permitting domestic water lines to cross the properties of affected owners.”

Applicant acknowledges that there exists no proven source of water on the site at this time. Thus, applicant's compliance with this criterion shall be a condition of approval. With the observance of that condition, applicant's evidence supports a finding that the provision in MCC 11.15.2074(C) has been fulfilled.

“(D) A private road (including approved easements) accessing two or more dwellings, or a driveway accessing a single dwelling, shall be designed, built, and maintained to:

“(1) Support a minimum gross vehicle weight (GVW) of 52,000 lbs. Written of compliance with the 52,000 lb. GVW standard from an Oregon Professional Engineer shall be provided for all bridges and culverts:

- "(2) Provide an all-weather surface of at least 20 feet in width for a private road and 12 feet in width for a driveway;**
- "(3) Provide minimum curve radii of 48 feet or greater;**
- "(4) Provide an unobstructed vertical clearance of at least 13 feet 6 inches;**
- "(5) Provide grades not exceeding 8 percent, with a maximum of 12 percent on short segments, except as provided below:**
 - "(a) Rural Fire Protection District No. 14 requires approval from the Fire Chief for grades exceeding 6 percent;**
 - "(b) The maximum grade may be exceeded upon written approval from the fire protection service provider having responsibility;**
- "(6) Provide a turnaround with a radius of 48 feet or greater at the end of any access exceeding 150 feet in length;**
- "(7) Provide for the safe and convenient passage of vehicles by the placement of:**
 - "(a) Additional turnarounds at a maximum spacing of 500 feet along a private road; or**
 - "(b) Turnouts measuring 20 feet by 40 feet along a driveway in excess of 200 feet in length at a maximum spacing of ½ the driveway length or 400 feet[,], whichever is less."**

Because these criteria condition *pre*-construction approval of the proposed use on the applicant's *post*-approval compliance with requirements for the construction and maintenance of the required road, applicant's post-approval compliance with the "private road" criteria in MCC 11.15.2074(D) shall be an enduring condition of approval. As so conditioned, applicant's evidence supports a finding that MCC 11.15.2074(D) has been fulfilled.

5. Comprehensive Plan Provisions

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

“ . . . [I]t is the County’s policy to require, prior to approval of a legislative or quasi-judicial action, a statement from the appropriate agency that all standards can be met with respect to air quality, water quality, and noise levels. . . .”

Nothing about applicant’s proposed use gives rise to any suggestion that the dwelling will have any impact on existing air quality, water quality, or noise levels in the area, or that all applicable standards cannot be met.

The subject property is located outside the Tualatin River Basin; all of the surface water originating in or on the property drains to the east toward the Multnomah Channel. Thus, no drainage study, as otherwise required in the Tualatin River Basin, needs to be done.

Although the proposed dwelling will, according to the applicant, have a wood stove, the expected emissions will not produce a significant impact on existing air quality.

Thus, applicant’s evidence supports a finding that the proposed use fulfills Comprehensive Plan Policy 13.

Comprehensive Plan Policy 14 (Developmental Limitations) provides:

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

- “A. Slopes exceeding 20%;**
- “B. Severe soil erosion potential;**
- “C. Land within the 100-year flood plain;**

- "D. A high seasonal water table within 0-24 inches of the surface for 3 or more weeks of the year;
- "E. A fragipan less than 30 inches from the surface;
- "F. Land subject to slumping, earth slides or movement."

The location for the proposed dwelling has a slope of approximately 15% to 20%. It lies outside of the Slope Hazards area. If actual development is to occur on slopes exceeding 20% (but less than 40%), applicant assures that the potential hazards shall be mitigated through engineered design and construction techniques, to be approved by the County.

None of the other considerations apply to the subject property. Thus, applicant's evidence supports a finding that the proposed use fulfills Comprehensive Plan Policy 14.

Comprehensive Plan Policy 22 (Energy Conversation) provides, in pertinent part:

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

- "A. The development of energy-efficient land use practices;**
- "B. Increased density and intensity of development in urban areas, especially in proximity to transit corridors and employment, commercial and recreational centers;**
- "C. An energy-efficient transportation system linked with increased mass transit, pedestrian and bicycle facilities;**
- "D. Street layouts, lotting patterns and designs that utilize natural environmental and climactic conditions to advantage.**

- "E. Finally, the County will allow greater flexibility in the development and use of renewable energy resources."**

The proposed dwelling is manifestly located in a rural area, thus parts B and C have no direct relevance. Also, there is nothing in the record to support the suggestion that the proposed dwelling will not be constructed and designed so as to promote energy-efficient practices. The proposed dwelling has been situated so as to utilize the natural environment to the greatest extent possible. All of the above factors have been considered.

Thus, applicant's evidence supports a finding that the proposed use fulfills Comprehensive Plan Policy 22.

Comprehensive Plan Policy 37 (Utilities) provides:

"The County's Policy is to require a finding prior to approval of a legislative or quasi-judicial action that:

"WATER AND DISPOSAL SYSTEM

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

"* * * * *"

Applicant's evidence reveals that the proposed dwelling will utilize a private water system (*viz*, a well), and that DEQ will approve a subsurface sewage disposal system. Because neither of these eventualities has yet occurred, applicant's demonstration of compliance shall be subject to a condition of approval.

Applicant's evidence reveals that the water run-off can be handled on-site and will not adversely affect the drainage of adjoining lands.

PGE will provide electric power, and Northwest Natural Gas will provide natural gas. U.S. West will provide telephone service.

Thus, applicant's evidence supports a finding that the proposed use fulfills Comprehensive Plan Policy 37.

Comprehensive Plan Policy 38 (Facilities) provides:

"The County's policy is to require a finding prior to approval of a legislative or quasi-judicial action that:

"SCHOOL

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

"FIRE PROTECTION

- "B. There is an adequate water pressure and flow for fire fighting purposes; and**
- "C. The appropriate fire district has had an opportunity to review and comment on the proposal.**

"POLICE PROTECTION

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

The Portland School District No. 1 has had an opportunity to review and comment on the proposal, and it did so. RFPD #20 indicates that adequate service levels can be provided. Multnomah County Sheriff's Office will provide the necessary police protection.

Thus, applicant's evidence supports a finding that the proposed use fulfills Comprehensive Plan Policy 38.

Comprehensive Plan Policy 40 (Development Requirements) provides that:

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

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

"B. Landscaped areas with benches will be provided in commercial, industrial and multiple family developments, where appropriate.

"C. Areas for bicycle parking facilities will be required in development proposals, where appropriate."

Nothing about the proposed dwelling or the location gives rise to a suggestion that pedestrian or bicycle path connections would be appropriate. Neither benches nor bicycle parking facilities would be appropriate.

Thus, applicant's evidence supports a finding that the proposed use fulfills Comprehensive Plan Policy 40.

Green objects that the applicant has not fulfilled **Comprehensive Plan Policy 11** (Commercial Forest Land), but she does not articulate in what manner the applicant runs afoul of that policy. The initial question is whether that policy applies in light of HB 3661 and the corollary LCDC administrative rules. I conclude that, because Policy 11 does not purport to regulate the *development* of forest land, but instead purports by its terms to regulate the *designation* of forest land, it does not apply at this point. If anything, I conclude that Policy 11 purports to regulate the zoning designation applied to the subject property and vicinity; in other words, Green has confused property designations applied to a district or vicinity with development criteria applicable to a particular parcel of property. Moreover, even if Policy 11 did purport to regulate development, Green has not articulated any portion of Policy 11 that is contravened by the application.

D. CONCLUSION — PART ONE

With the exception of the "lot of record" provisions in ORS 215.705(1)(a), Applicant has fulfilled all of the applicable criteria in ORS 215.705–215.750, OAR 660.06.027, .029, and .025, MCC 11.15.2052 and .2074, and the applicable Comprehensive Plan provisions, either by providing evidence that demonstrates pre-approval compliance, or by demonstrating an entitlement to variances from certain criteria.

However, applicant has failed to demonstrate the fulfillment of the "lot of record" provisions in ORS 215.705(1)(a) and OAR 660-06-027(1)(g), which are essential conditions precedent to approval. The "current owner" did not "acquire" the subject property prior to January 1, 1985, nor does the record substantiate a finding that the "current owner" acquired the property via devise or intestate succession from someone who acquired the property prior to January 1, 1985.

II.

A. ANALYSIS OF THE PROPOSAL — PART TWO Request For Variances

1. BACKGROUND / PROPOSAL SUMMARY

Applicant requests approval of variances to the required 200-foot yard setbacks. The slope of the subject property dictates that the proposed dwelling be sited in a corner of the property that does not otherwise allow 200-foot setbacks as required by MCC 11.15.2058(C).

2. SITE AND VICINITY DESCRIPTIONS

This topic has been generally discussed in Section I of this decision.

3. COMPREHENSIVE PLAN AND ZONING ORDINANCE CONSIDERATIONS

This topic has been discussed in Section I of this decision.

B. APPLICABLE CRITERIA — PART TWO Request For Variances

MCC 11.15.8505 contains criteria applicable to requests for a variance from other approval requirements. Those criteria appear in detail within the separate discussion in the "Findings" portion of this decision, below.

C. FINDINGS — PART TWO

MCC 11.15.8505 provides, in pertinent part:

- “(A) The Approval Authority may permit and authorize a variance from the requirements of this Chapter only when there are practical difficulties in the application of the Chapter. A Major Variance shall be granted only when all of the following criteria are met. A Minor Variance shall meet criteria (3) and (4).”**

VARIANCE FROM SETBACK REQUIREMENTS

- “(1) A circumstance or condition applies to the property or to the intended use that does not apply generally to other property in the same vicinity or district. The circumstance or condition may relate to the size, shape, natural features and topography of the property or the location or size of physical improvements on the site or the nature of the use compared to surrounding uses.”**

The shape of the subject parcel is irregular and the terrain is sloped in differing degrees. The slope is approximately 15% to 30% within the first 200 feet or so from the road, increasing after that to between 30% to 60%. The slope requires that the proposed dwelling be sited in the northwest portion of the property, which, in turn, makes it impossible to fulfill a 200-foot setback requirement. The north side setback will be approximately 70 feet and the south side setback will be approximately 110 feet.

The question whether applicant's evidence demonstrates a condition of the property not shared “generally” by other property “in the same vicinity” is a difficult one. Green, for example, contends that applicant's property labors under no burdens that are not also common to other properties in the area, which, if true, would preclude compliance with the above criterion. The answer depends, in part, on the geographic breadth of “the same vicinity.” The record, while factually “thin,” appears to suggest that other dwellings in the vicinity have obtained setback variances, but there is nothing to suggest the reason(s) for the variances. This, in turn, suggests prior findings in those situations that the terrain of the sloped properties indeed comprises a peculiarity not otherwise shared by other properties within the same district.

I interpret the reference to "other property in the same vicinity or district" so as to not restrict its application simply to properties on McNamee that have slopes. Rather, I interpret "vicinity" to a larger area. Otherwise, no property on McNamee with excessively sloped conditions that otherwise preclude placement of a dwelling in conformity with setback requirements would ever be entitled to a variance. The very notion of a "variance" presupposes that not all of the properties by which the request is to be measured share the same problem. Thus, Green's focus on only those properties in the "vicinity" with similar slope concerns proves to be too narrow of a focus.

Green also contends that, because other lots in the vicinity are irregular in shape, that shape alone does not fulfill the criterion in this case. However, applicant has not requested a variance because of shape alone; rather, the dwelling's placement is dictated primarily by an excessive slope to most of the property.

Applicant's evidence thus supports a finding that MCC 11.15.8505(A)(1) has been fulfilled, in that the size and shape of the lot yields a condition that does not apply to other properties in the area.

"(2) The zoning requirement would restrict the use of the subject property to a greater degree than it restricts other properties in the vicinity or district."

The setback requirement would restrict the use of the subject property in a manner that does not restrict other properties in the vicinity or district. Of the nine homes situated within the 160-acre grid, none apparently comply with the 200-foot setback requirement. These other properties have apparently been granted variances for the same reason that the applicant now requests one. Without a variance in this case, it appears that no reasonable dwelling could be built.

Green contends that the setback requirement would not restrict the use of the subject property any more so that it restricts the use of other properties in the vicinity. The setback requirement in this case would, it seems, preclude development altogether. Logic would yield the conclusion that applicant would suffer a greater restriction than other properties that already have approved dwellings on them. Also, because the record suggests that other properties in the vicinity have variances (for one reason or another), it seems logical to conclude that the failure to grant a variance in this case because of the topography of the property would likewise restrict the use of

the property to a greater degree than it has restricted development of other properties in the vicinity.^[13]

Applicant's evidence supports a finding that MCC 11.15.8505(A)(2) has been fulfilled, in that the setback requirement would otherwise prevent the development of the property, and thus restrict the use of the subject property to a greater degree than other properties in the vicinity or district.

"(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."

Nothing about the requested variance suggests that a variance under the circumstances could be materially detrimental to the public welfare or injurious to property in the vicinity or district. The home to the north is approximately 276 feet from the proposed building site; while the home to the south is approximately 400 to 500 feet from the proposed building site.

Green objects because the proposed dwelling will be "detrimental" to her view and to the value of her home.^[14] She provides no specifics, however, other than a complaint that she was led to believe when she purchased her property that no construction would be likely to take place on the subject property. This latter fact does not, unfortunately, provide a reason to conclude that applicant has not fulfilled the current criterion. This criterion serves to assess "material" detriment to the "public welfare" or the propensity to materially "injur[e]" other properties. General complaints such as Ms. Green's do not reach to this level, particularly without more in the way of supportive factual data.

Written objections filed by Chris McCurdy of 14250 N.W. McNamee Road recite that, because of increased development in the area, "the road is substantially

¹³ Green contends that "the question is were they required to meet it [*viz.*, any setback requirement] when they were built?" Because applicant has provided "substantial evidence" of the existence of variances for other homes in the vicinity, I view it as Green's burden to rebut that evidence with evidence that would answer the "question."

¹⁴ Green also objects that the proposed dwelling will interfere with a neighbor's view. It seems to me that, unless the neighbors themselves so attest, Green's objection does not constitute "substantial evidence" to that effect for purposes of these proceedings.

more hazardous than it was. Some of the new residents are chronic speeders." However, not only is there no objective or verifiable data accompanying that opinion, but the objection does not suggest that the *applicant* will either cause or exacerbate such conditions — assuming that they exist.

Applicant's evidence supports a finding that MCC 11.15.8505(A)(3) has been fulfilled.

"(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."

The proposed dwelling complies in all respects with all other applicable approval provisions and Comprehensive Plan policies. Also, the resultant home would not comprise a use *not* listed in the underlying zone.

Applicant's evidence supports a finding that MCC 11.15.8505(A)(4) has been fulfilled.

D. CONCLUSION — PART TWO

Applicant has demonstrated a fulfillment of all of the various criteria in MCC 11.15.8505 that determine whether a variance will be granted under the circumstances to accommodate the setback requirements of the proposed dwelling.

DATED this 3RD day of March, 1995.



BARRY L. ADAMSON, Hearings Officer

ng Map
 Case #: CU 2-95; HV 2-95
 Location: 16200 NW McNamee Road
 Scale: 1 inch to 300 feet (approx)
 Shading indicates subject property
 SZM #47; Sec. 19, T. 2 N., R. 1 W.



CFU

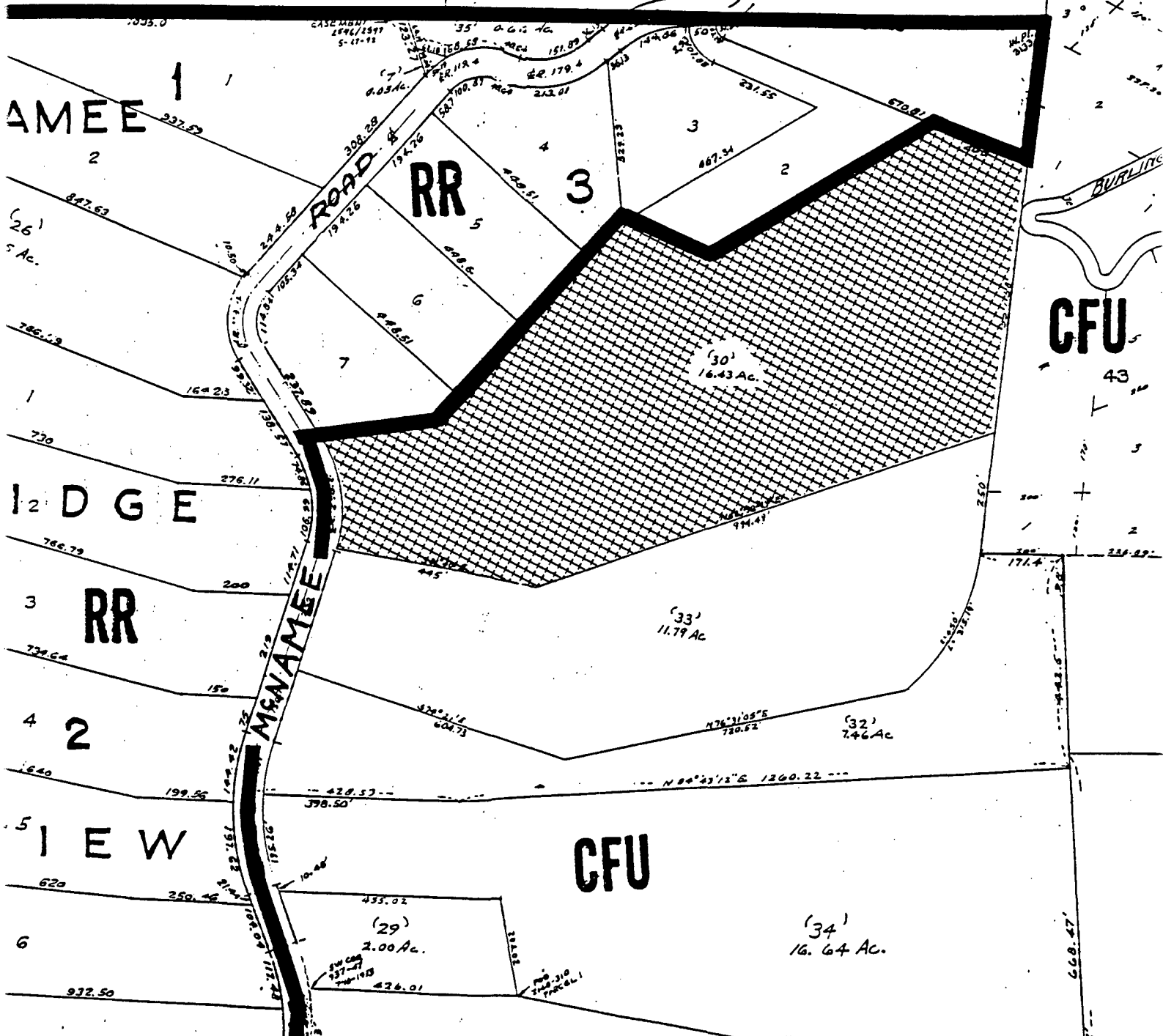
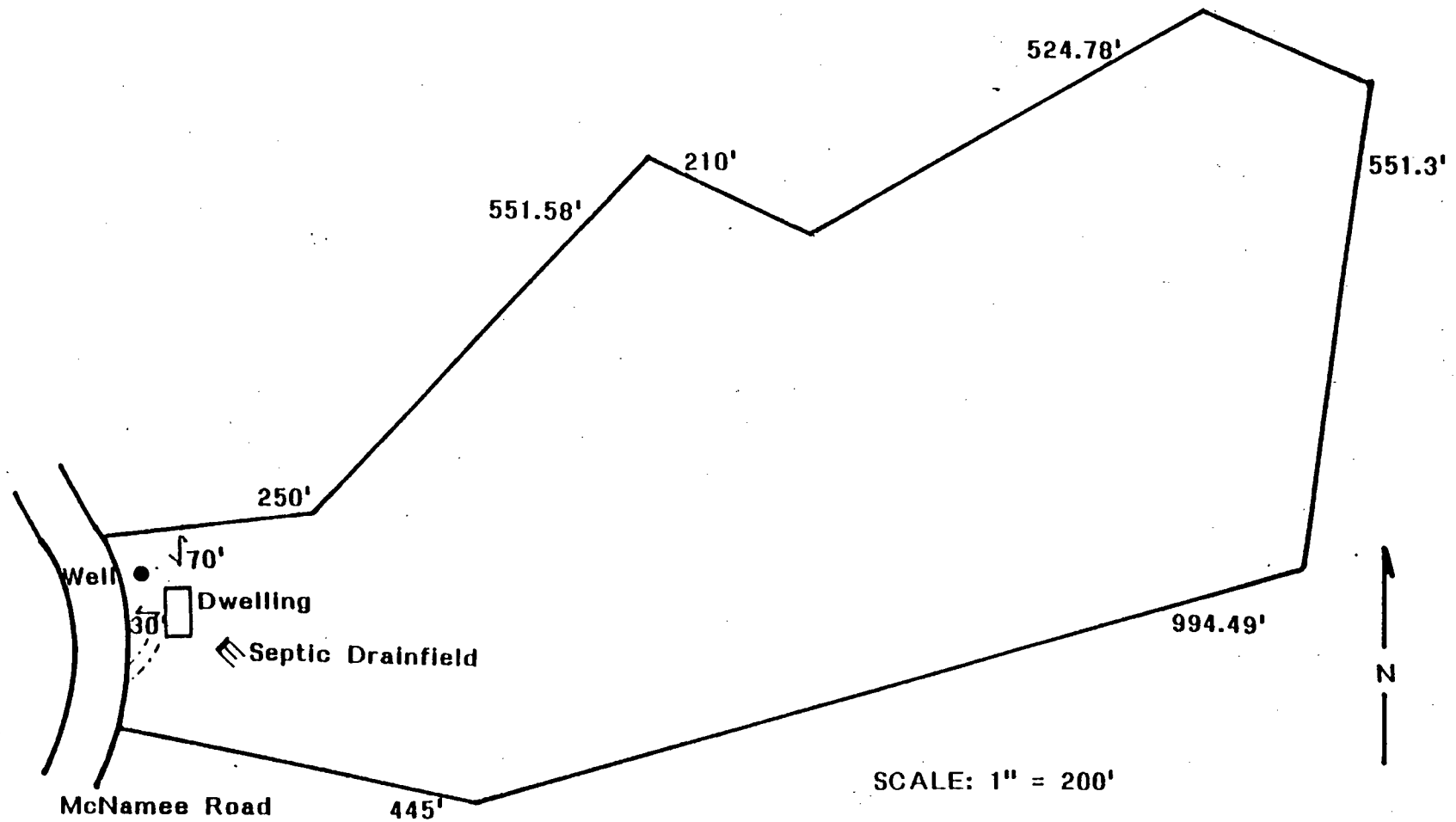


FIGURE 4

PLOT PLAN

T2N, R1W, SEC. 19, TAX LOT 30



CU2-95
HV2-95



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

CU-2-95
HV 2-95

NOTICE OF REVIEW

- 11#
ZONING
TOTAL
0000-001
2168 JOANN
- 300.00
300.00
3/22/95
10:34AM
1. Name: BUTLER, Steve, George
Last Middle First
2. Address: 7222 SE 29th Ave., Portland, Oregon 97202
Street or Box City State and Zip Code
3. Telephone: (503) 777 - 2307
4. If serving as a representative of other persons, list their names and addresses:

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

Denial of conditional use request for
single family dwelling in CFU zone.

6. The decision was announced by the HEARINGS OFFICER Planning Commission on 3/3, 1995

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

I am the applicant.

1995 MAR 30 PM 2:25
MULTNOMAH COUNTY
OREGON
BOARD OF
COUNTY COMMISSIONERS

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

Hearings Officer used the wrong statute and administrative rule, thus denying the request for conditional use for a single family dwelling in a CFU zone which would have been approved based on the correct statute and administrative rule. He denied the request based on ORS 215.705(1)(a) and OAR 660-06-027(1)(g) which state: (see continuation sheets 1 and 2)

9. Scope of Review (Check One):

- (a) ☐ On the Record
(b) ☐ On the Record plus Additional Testimony and Evidence
(c) ☒ De Novo (i.e., Full Rehearing)

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

The Hearings Officer incorrectly used ORS 215.705(1)(a) and OAR 660-06-027(1)(g) which would have applied only if the applicant had applied for a dwelling based on ownership prior to January 1, 1985 and there would have been no need for the applicant to satisfy the 160-acre square/grid test. Since the applicant acquired the property after January 1, 1985, the Hearings Officer should have used ORS 215.750(1)(c)(A)(B) and OAR 660-06-027(1)(c)(C)(i)(ii) which allow the County to allow establishment of a single family dwelling in a forest zone if certain requirements are met. Applicant's application set forth how the parcel met, and exceeded these requirements.

(See continuation sheet 3)

Signed: George S. Butler Date: 3/22/95

For Staff Use Only	
Fee:	
Notice of Review = \$300.00	
Transcription Fee:	
Length of Hearing _____ x \$3.50/minute = \$ _____	
Total Fee = \$ _____	
Received by: _____	Date: _____ Case No. _____

RECEIVED

MAR 22 1995

Multnomah County
Zoning Division

8. (Continued)

ORS 215.705 Dwellings in farm or forest zone; criteria (1) A governing body of a county or its designate may allow the establishment of a single-family dwelling on a lot or parcel located within a farm or forest zone as set forth in this section and ORS 215.710; 215.720, 215.740 and 215.750 after notifying the county assessor that the governing body intends to allow the dwelling. A dwelling under this section may be allowed if:

- (a) The lot or parcel on which the dwelling will be sited was lawfully created and was acquired by the present owner:**
 - (A) Prior to January 1, 1985; or**

Dwellings in Forest Zones

OAR 660-06-027 (1) Dwellings authorized by OAR 660-06-025(1)(d) are:

- (a) A dwelling on a tract in western Oregon that is composed of soils not capable of producing 5,000 cubic feet per year of commercial tree species and is located within 1,500 feet of a public road as defined under ORS 368.001. The road shall not be a United States Forest Service road or Bureau of Land Management road and shall be maintained and either paved or surfaced with rock.**
- (b) A dwelling on a tract in eastern Oregon that is composed of soils not capable of producing 4,000 cubic feet per year of commercial tree species and is located within 1,500 feet of a public road as defined under ORS 368.001. The road shall not be a United States Forest Service road or Bureau of Land Management road and shall be maintained and either paved or surfaced with rock.**
- ...**
- (g) A dwelling authorized under subsections (a) and (b) or this section may be allowed only if the lot or parcel on which the dwelling will be sited was lawfully created and was acquired by the present owner:**
 - (a) Prior to January 1, 1985; or**

If the applicant had owned the property prior to January 1, 1985, he could have requested and would have been granted a single family dwelling permit based on this statute and administrative rule regardless of the number of lots or parcels or the number of dwellings within the 160-acre square. Applicant did not own the parcel prior to January 1, 1985 and therefore was not requesting dwelling permit based on ownership prior to January 1, 1985. Therefore, ORS 215.705(1)(a) was the wrong statute and OAR 660-06-027(1)(g) was the wrong administrative rule for the Hearings Officer to use in making his decision.

The Hearings Officer should have used ORS 215.750(1)(c)(A)(B) and OAR 660-06-027(1)(c)(C)(i)(ii) which state:

215.750 Alternative forestland dwellings; criteria. (1) In Western Oregon, a governing body of a county or its designate may allow the establishment of a single-family dwelling on a lot or parcel located within a forest zone if the lot or parcel is predominantly composed of soils that are:

- (c) Capable of producing more than 85 cubic feet per acre per year of wood fiber if:**
 - (A) All or part of at least 11 other lots or parcels that existed on January 1, 1993, are within a 160-acre square centered on the center of the subject tract; and**
 - (B) At least three dwelling existed on January 1, 1993, on the other lots or parcels.**

Dwellings in Forest Zones

660-06-027(1) Dwellings authorized by OAR 660-06-025(1)(d) are:

- (c) If a dwelling is not allowed pursuant to OAR 660-06-027(1)(a) or (b), a dwelling may be allowed on land zoned for forest use if it complies with other provisions of law and is sited on a tract:**
 - (C) Capable of producing more than 85 cubic feet per acre per year of wood fiber if:**
 - (i) All or part of at least 11 other lots or parcels that that existed on January 1, 1993, are within a 160 acre square centered on the center of the subject tract; and**
 - (ii) At least three dwellings existed on January 1, 1993 on the other lots or parcels;**

10. (continued)

ORS 215.750(1)(c)(A)(B) and OAR 660-06-027(1)(c)(C)(i)(ii) state:

215.750 Alternative forestland dwellings; criteria. (1) In Western Oregon, a governing body of a county or its designate may allow the establishment of a single-family dwelling on a lot or parcel located within a forest zone if the lot or parcel is predominantly composed of soils that are:

- (c) Capable of producing more than 85 cubic feet per acre per year of wood fiber if:**
 - (A) All or part of at least 11 other lots or parcels that existed on January 1, 1993, are within a 160-acre square centered on the center of the subject tract; and**
 - (B) At least three dwellings existed on January 1, 1993, on the other lots or parcels.**

Dwellings in Forest Zones

660-06-027(1) Dwellings authorized by OAR 660-06-025(1)(d) are:

- (c) If a dwelling is not allowed pursuant to OAR 660-06-027(1)(a) or (b), a dwelling may be allowed on land zoned for forest use if it complies with other provisions of law and is sited on a tract:**
 - (C) Capable of producing more than 85 cubic feet per acre per year of wood fiber if:**
 - (i) All or part of at least 11 other lots or parcels that existed on January 1, 1993, are within a 160 acre square centered on the center of the subject tract; and**
 - (ii) At least three dwellings existed on January 1, 1993 on the other lots or parcels;**

MCC 11.15.2052(A)(1)(2)(3)(c)(i)(ii) requires five dwellings to be located within the 160-acre square instead of the three required by the ORS and OAR cited above. Since the Multnomah County Ordinances are more restrictive than the above cited statute and administrative rule, applicant cited the County Ordinance, MCC 11.15.2052, on his application instead of the ORS and OAR.