

ANNOTATED MINUTES

Tuesday, February 8, 1994 - 9:30 AM
Multnomah County Courthouse, Room 602

BOARD BRIEFINGS

- B-1 *Request for Board Direction on a Strategy for the Processing of Appeals of Hearings Officer/Planning Commission Decisions on Quasi-Judicial Land Use Applications. Continued from December 14, 1993. Presented by Scott Pemble and Laurence Kressel.*

LAURENCE KRESSEL AND SCOTT PEMBLE PRESENTATION AND RESPONSE TO BOARD QUESTIONS. BOARD TO HEAR NEXT FIVE LAND USE APPEAL CASES DE NOVO, WITH POLICY DIRECTION TO STAFF TO MAKE SURE HEARINGS OFFICER CLEARLY PRESENTS CRITERIA USED AND IDENTIFIES POLICY ISSUES; FIGURE OUT HOW TO GET MORE LEAD TIME FOR BOARD REVIEW OF MATERIALS; ATTEND MONDAY BOARD STAFF BRIEFINGS; AND REVIEW HEARINGS OFFICER REPORT FORMAT PERTAINING TO POLICY ISSUES AND CRITERIA. STAFF ALSO DIRECTED TO POST LAND USE RULES OF PROCEDURE IN BOARD ROOM; LOOK INTO IMPLEMENTING A PRE-APPLICATION CONFERENCE WHICH INCLUDES OTHER PARTIES AND TO SEE IF THERE IS ANY WAY TO INCORPORATE MEDIATION INTO THAT PROCESS; STAFF TO LOOK INTO CONDUCTING FINAL ANALYSIS OF APPLICATION PRIOR TO BEGINNING TIME CLOCK. STAFF DIRECTED TO ORGANIZE CASES, IDENTIFY CRITICAL ISSUES, AND SUBMIT CLEAR RECOMMENDATIONS FROM STAFF AND/OR HEARINGS OFFICER; AND TO CLEARLY DEFINE ROLE OF HEARINGS OFFICER. STAFF DIRECTED TO INCLUDE CRITICAL ISSUES AND/OR POLICY IMPLICATIONS TO THE COVER SHEET SUBMITTED WITH AGENDA PLACEMENT MATERIALS. COUNTY COUNSEL TO PREPARE RESOLUTION CONCERNING TEMPORARY DE NOVO HEARINGS. PLANNING STAFF DIRECTED TO REPORT BACK TO BOARD IN TWO WEEKS.

- B-2 *Description of the Process Leading to Recent Changes in How Services Are Being Delivered to Teens in Multnomah County and Information on Building a System to Fill Gaps in Services to Teens. Presented by Karen Lamica and Carol Wire.*

CAROL WIRE, KAREN LAMICA, FRANCINE GOTEINER, RIKKI BROWN, AMBER BARTON, JOAN MIGGINS, DIANE TURNER, BOB DONOUGH AND BILLI ODEGAARD PRESENTATION AND RESPONSE TO BOARD QUESTIONS.

Tuesday, February 8, 1994 - 1:30 PM
Multnomah County Courthouse, Room 602

PLANNING ITEMS

Chair Beverly Stein convened the meeting at 1:31 p.m., with Vice-Chair Tanya Collier, Commissioners Gary Hansen and Dan Saltzman present.

- P-1 CU 1-94 Review the January 13, 1994 Hearings Officer Decision APPROVING, Subject to Conditions, A Conditional Use Request for a Single Family Residence Not in Conjunction With a Farm Use, on an 8.46-Acre Lot of Record in the EFU Zoning District, for Property Located at 31115 SE WOODARD ROAD, TROUTDALE.

DECISION READ, NO APPEAL FILED, DECISION STANDS.

- P-2 LD 36-93 Review the January 21, 1994 Hearings Officer Decision APPROVING, Subject to Conditions, A Requested 14-Lot Land Division, for Property Located at 500 NW MILLER ROAD, PORTLAND.

DECISION READ, NO APPEAL FILED, DECISION STANDS.

Commissioner Sharron Kelley arrived at 1:33 p.m.

- P-3 HV 23-93 Review the January 18, 1994 Hearings Officer Decision Granting the Appeal of a Hillside Variance in the Rural Residential Zoning District, Reversing the Planning Director's Decision and DENYING HV 23-93, for Property Located at 1875 NW RAMSEY DRIVE, PORTLAND.

DECISION READ, NO APPEAL FILED, DECISION STANDS.

- P-4 TP 6-93 Review the January 18, 1994 Hearings Officer Decision DENYING Applicant's Appeal and DENYING Applicant's Request for a Temporary Permit to Place a 10' x 42' Trailer on the Subject Site to be Used as a Temporary Home Office for the Start-Up of a Business, for Property Located at 18015 NW SAUVIE ISLAND ROAD, PORTLAND.

DECISION READ, NO APPEAL FILED, DECISION STANDS.

- P-5 C 12-93 Second Reading and Possible Adoption of a Proposed ORDINANCE Amending the R-20 and R-30 Residential Zoning Districts by Adding a Definition of Lot

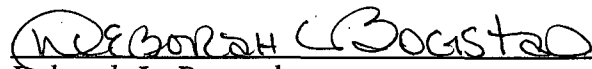
PROPOSED ORDINANCE READ BY TITLE ONLY. COPIES AVAILABLE. COMMISSIONER SALTZMAN MOVED AND COMMISSIONER KELLEY SECONDED, APPROVAL OF THE SECOND READING AND ADOPTION. NO ONE WISHED TO TESTIFY. ORDINANCE 786 UNANIMOUSLY APPROVED.

SCOTT PEMBLE DISCUSSED PLAT ISSUES, EXPLAINING

THE COUNTY IS IN COMPLIANCE WITH STATE LAW CONCERNING THE SIGNING OF FINAL PLATS BY THE CHAIR OR HER DESIGNEE INSTEAD OF AT LEAST THREE COMMISSIONERS; AND ADVISED THAT COUNTY COUNSEL AND PLANNING STAFF ARE REVIEWING WHETHER THE SIX OTHER COUNTY JURISDICTIONS HAVE CHANGED THEIR ORDINANCES. MR. PEMBLE ADVISED THAT STAFF WILL NOTIFY THE JURISDICTIONS OF THE COUNTY'S PREFERRED METHOD OF HAVING ONLY THE CHAIR SIGN FINAL PLATS AND REQUEST THAT THEY AMEND THEIR ORDINANCES ACCORDINGLY.

There being no further business, the meeting was adjourned at 1:44 p.m.

**OFFICE OF THE BOARD CLERK
for MULTNOMAH COUNTY, OREGON**


Deborah L. Bogstad

*Thursday, February 10, 1994 - 9:30 AM
Multnomah County Courthouse, Room 602*

REGULAR MEETING

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

CONSENT CALENDAR

UPON MOTION OF COMMISSIONER KELLEY, SECONDED BY COMMISSIONER SALTZMAN, THE CONSENT CALENDAR WAS UNANIMOUSLY APPROVED.

CHILDREN AND FAMILIES SERVICES DIVISION

- C-1 *Ratification of Amendment No. 1 to Intergovernmental Agreement Contract 100234 Between Multnomah County and Tri-Met, Providing Transportation Services for Certain Clients of the Developmental Disabilities Program Office, for the Period January 1, 1994 through June 30, 1994*

REGULAR AGENDA

DEPARTMENT OF HEALTH

- R-1 *Presentation of Awards to the Insights Teen Parent Program for Their Service to the Teen Community. Presented by Billi Odegaard.*

Vice-Chair Tanya Collier arrived at 9:32 a.m.

BILLI ODEGAARD EXPLANATION AND PRESENTATION OF PLAQUE ACKNOWLEDGING CONTRIBUTIONS OF INSIGHTS TEEN PARENT PROGRAM. DIANE TURNER COMMENTS, STAFF AND ASSISTING AGENCY ACKNOWLEDGEMENTS.

- R-2 *Ratification of Intergovernmental Agreement Contract 201964 Between Oregon Office of Medical Assistance Programs and Multnomah County, Wherein the State Will Provide Initial Managed Care Training to County, Provide Application Forms, Managed Care Booklets, Comparison Charts, Provider Listings, et cetera, and the County Will Conduct Outreach, Informational and Counseling Sessions to State Clients About the Oregon Health Plan and Allow Clients to Apply for Oregon Health Plan Services at County Locations, for the Period January 20, 1994 through September 30, 1994*

MS. ODEGAARD AND MARY LOU HENNRICH EXPLANATION AND PROGRAM UPDATE. MS. HENNRICH RESPONSE TO BOARD QUESTIONS AND ACKNOWLEDGEMENT OF STAFF CONTRIBUTIONS. UPON MOTION OF COMMISSIONER SALTZMAN, SECONDED BY COMMISSIONER COLLIER, R-2 WAS UNANIMOUSLY APPROVED.

- R-3 *Second Reading and Possible Adoption of a Proposed ORDINANCE Amending MCC 5.10.350 by Revising the Emergency Medical Services (EMS) User Fees to be Paid by Licensees for Fiscal Year 1993-1994*

PROPOSED ORDINANCE READ BY TITLE ONLY. COPIES AVAILABLE. COMMISSIONER COLLIER MOVED AND COMMISSIONER KELLEY SECONDED, APPROVAL OF THE SECOND READING AND ADOPTION. NO ONE WISHED TO TESTIFY. ORDINANCE 787 UNANIMOUSLY APPROVED.

NON-DEPARTMENTAL

- R-4 *A RESOLUTION of the Board of County Commissioners of Multnomah County, Oregon Authorizing the Issuance and Negotiated Sale of \$22,000,000 General Obligation Library Bonds, Series 1994; Authorizing a Special Ad Valorem Tax Levy; Designating an Authorized Representative, Underwriters, Paying Agent and Bond Registrar, Financial Advisor and Bond Counsel; and Authorizing the Negotiated Sale of the Bonds*

COMMISSIONER COLLIER MOVED AND COMMISSIONER SECONDED HANSEN, APPROVAL OF R-4. DAVE BOYER EXPLANATION AND RESPONSE TO BOARD QUESTIONS. MR. BOYER TO CHECK WITH UNDERWRITERS CONCERNING POSSIBLE ISSUANCE OF \$1,000 BONDS. RESOLUTION 94-22 UNANIMOUSLY APPROVED.

- R-5 *RESOLUTION in the Matter of Renaming the Multnomah County Multidisciplinary*

**COMMISSIONER SALTZMAN MOVED AND
COMMISSIONER HANSEN SECONDED, APPROVAL OF R-5.
COMMISSIONER SALTZMAN EXPLANATION.
RESOLUTION 94-23 UNANIMOUSLY APPROVED.**

DEPARTMENT OF ENVIRONMENTAL SERVICES

- R-6 *Budget Modification DES 9 Requesting Authorization to Reclassify Two Construction Project Specialist Positions to Construction Project Specialist/Senior Positions and Creating Two New Construction Project Specialist Positions, for the Period through June, 1994*

**COMMISSIONER COLLIER MOVED AND COMMISSIONER
KELLEY SECONDED, APPROVAL OF R-6. JIM EMERSON
EXPLANATION AND RESPONSE TO BOARD QUESTIONS.
CHAIR STEIN TO REPORT BACK TO BOARD WITHIN
WEEK OR SO. BUDGET MODIFICATION UNANIMOUSLY
APPROVED.**

PUBLIC CONTRACT REVIEW BOARD

(Recess as the Board of County Commissioners and convene as the Public Contract Review Board)

- R-7 *ORDER in the Matter of Exempting from Public Bidding a Contract with Gateway Technologies for the Provision of Inmate Telephone Services*

**COMMISSIONER KELLEY MOVED AND COMMISSIONER
HANSEN SECONDED, APPROVAL OF R-7. ROGER BRUNO
EXPLANATION AND RESPONSE TO BOARD QUESTIONS.
ORDER 94-24 UNANIMOUSLY APPROVED.**

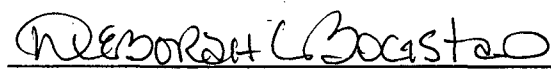
(Recess as the Public Contract Review Board and reconvene as the Board of County Commissioners)

PUBLIC COMMENT

- R-8 *Opportunity for Public Comment on Non-Agenda Matters. Testimony Limited to Three Minutes Per Person.*

There being no further business, the meeting was adjourned at 10:29 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

FEBRUARY 7, 1994 - FEBRUARY 11, 1994

Tuesday, February 8, 1994 - 9:30 AM - Board Briefings.Page 2

Tuesday, February 8, 1994 - 1:30 PM - Planning Items.Page 2

Thursday, February 10, 1994 - 9:30 AM - Regular Meeting.Page 3

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

Thursday, 10:00 PM, Channel 11 for East and West side subscribers

Thursday, 10:00 PM, Channel 49 for Columbia Cable (Vancouver) subscribers

Friday, 6:00 PM, Channel 22 for Paragon Cable (Multnomah East) subscribers

Saturday 12:00 Noon, Channel 21 for East Portland and East County subscribers

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

Tuesday, February 8, 1994 - 9:30 AM

Multnomah County Courthouse, Room 602

BOARD BRIEFINGS

- B-1 *Request for Board Direction on a Strategy for the Processing of Appeals of Hearings Officer/Planning Commission Decisions on Quasi-Judicial Land Use Applications. Continued from December 14, 1993. Presented by Scott Pemble and Laurence Kressel. 9:30 AM TIME CERTAIN, 1-1/2 HOURS REQUESTED.*
- B-2 *Description of the Process Leading to Recent Changes in How Services Are Being Delivered to Teens in Multnomah County and Information on Building a System to Fill Gaps in Services to Teens. Presented by Karen Lamica and Carol Wire. 11:00 AM TIME CERTAIN, 30 MINUTES REQUESTED.*
-

Tuesday, February 8, 1994 - 1:30 PM

Multnomah County Courthouse, Room 602

PLANNING ITEMS

- P-1 CU 1-94 *Review the January 13, 1994 Hearings Officer Decision APPROVING, Subject to Conditions, A Conditional Use Request for a Single Family Residence Not in Conjunction With a Farm Use, on an 8.46-Acre Lot of Record in the EFU Zoning District, for Property Located at 31115 SE WOODARD ROAD, TROUTDALE.*
- P-2 LD 36-93 *Review the January 21, 1994 Hearings Officer Decision APPROVING, Subject to Conditions, A Requested 14-Lot Land Division, for Property Located at 500 NW MILLER ROAD, PORTLAND.*
- P-3 HV 23-93 *Review the January 18, 1994 Hearings Officer Decision Granting the Appeal of a Hillside Variance in the Rural Residential Zoning District, Reversing the Planning Director's Decision and DENYING HV 23-93, for Property Located at 1875 NW RAMSEY DRIVE, PORTLAND.*
- P-4 TP 6-93 *Review the January 18, 1994 Hearings Officer Decision DENYING Applicant's Appeal and DENYING Applicant's Request for a Temporary Permit to Place a 10' x 42' Trailer on the Subject Site to be Used as a Temporary Home Office for the Start-Up of a Business, for Property Located at 18015 NW SAUVIE ISLAND ROAD, PORTLAND.*
- P-5 C 12-93 *Second Reading and Possible Adoption of a Proposed ORDINANCE Amending the R-20 and R-30 Residential Zoning Districts by Adding a Definition*
-

Thursday, February 10, 1994 - 9:30 AM

Multnomah County Courthouse, Room 602

REGULAR MEETING

CONSENT CALENDAR

CHILDREN AND FAMILIES SERVICES DIVISION

- C-1 *Ratification of Amendment No. 1 to Intergovernmental Agreement Contract 100234 Between Multnomah County and Tri-Met, Providing Transportation Services for Certain Clients of the Developmental Disabilities Program Office, for the Period January 1, 1994 through June 30, 1994*

REGULAR AGENDA

DEPARTMENT OF HEALTH

- R-1 *Presentation of Awards to the Insights Teen Parent Program for Their Service to the Teen Community. Presented by Billi Odegaard. 9:30 AM TIME CERTAIN, 15 MINUTES REQUESTED.*
- R-2 *Ratification of Intergovernmental Agreement Contract 201964 Between Oregon Office of Medical Assistance Programs and Multnomah County, Wherein the State Will Provide Initial Managed Care Training to County, Provide Application Forms, Managed Care Booklets, Comparison Charts, Provider Listings, et cetera, and the County Will Conduct Outreach, Informational and Counseling Sessions to State Clients About the Oregon Health Plan and Allow Clients to Apply for Oregon Health Plan Services at County Locations, for the Period January 20, 1994 through September 30, 1994*
- R-3 *Second Reading and Possible Adoption of a Proposed ORDINANCE Amending MCC 5,10.350 by Revising the Emergency Medical Services (EMS) User Fees to be Paid by Licensees for Fiscal Year 1993-1994*

NON-DEPARTMENTAL

- R-4 *A RESOLUTION of the Board of County Commissioners of Multnomah County, Oregon Authorizing the Issuance and Negotiated Sale of \$22,000,000 General Obligation Library Bonds, Series 1994; Authorizing a Special Ad Valorem Tax Levy; Designating an Authorized Representative, Underwriters, Paying Agent and Bond Registrar, Financial Advisor and Bond Counsel; and Authorizing the Negotiated Sale of the Bonds*
- R-5 *RESOLUTION in the Matter of Renaming the Multnomah County Multidisciplinary Team the Multnomah County Child Abuse Team*

DEPARTMENT OF ENVIRONMENTAL SERVICES

- R-6 *Budget Modification DES 9 Requesting Authorization to Reclassify Two Construction Project Specialist Positions to Construction Project Specialist/Senior Positions and Creating Two New Construction Project Specialist Positions, for the Period through June, 1994*

PUBLIC CONTRACT REVIEW BOARD

(Recess as the Board of County Commissioners and convene as the Public Contract Review Board)

- R-7 *ORDER in the Matter of Exempting from Public Bidding a Contract with Gateway Technologies for the Provision of Inmate Telephone Services*

(Recess as the Public Contract Review Board and reconvene as the Board of County Commissioners)

PUBLIC COMMENT

- R-8 *Opportunity for Public Comment on Non-Agenda Matters. Testimony Limited to Three Minutes Per Person.*

MEETING DATE: February 8, 1994

AGENDA NO: P-1

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: CU 1-94 Decision

BOARD BRIEFING Date Requested:

Amount of Time Needed:

REGULAR MEETING: Date Requested: February 8, 1994

Amount of Time Needed: 2 Minutes

DEPARTMENT: DES DIVISION: Planning

CONTACT: R. Scott Pemble TELEPHONE #: 3182

BLDG/ROOM #: 412/103

PERSON(S) MAKING PRESENTATION: Planning Staff

ACTION REQUESTED:

[] INFORMATIONAL ONLY [] POLICY DIRECTION [x] APPROVAL [] OTHER

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

CU 1-94 Review the January 13, 1994 Hearings Officer Decision , approving a conditional use request for a single family residence not in conjunction with a farm use on an 8.46-acre Lot of Record in the EFU zoning district, for property located at 31115 SE Woodard Road

SIGNATURES REQUIRED:

ELECTED OFFICIAL:

OR

DEPARTMENT MANAGER: *pc Betty H. Wells*

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

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

BOARD OF
COUNTY COMMISSIONERS
1994 FEB - 1 AM 9:46
MULTNOMAH COUNTY
OREGON



MULTNOMAH COUNTY OREGON

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

DIVISION OF PLANNING AND DEVELOPMENT

Board Planning Packet Check List

File No. CU 1-94

☒ Agenda Placement Sheet

No. of Pages 1

☒ Case Summary Sheet

No. of Pages 1

☐ Previously Distributed

☐ Notice of Review

No. of Pages _____

*(Maybe distributed at Board Meeting)

☐ Previously Distributed

☒ Decision

No. of Pages 19

(Hearings Officer/Planning Commission)

☐ Previously Distributed

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

(CL/1)



CASE NAME: Non-Resource Related Residence (Farm)

NUMBER: CU 1-94

1. Applicant Name/Address:

Margaret and G. Joseph Gorciak
31105 SE Woodard Road
Troutdale, OR 97060

2. Action Requested by applicant:

Approval of a residence that is not in conjunction with a farm
use on an 8.46 acre Lot of Record.

ACTION REQUESTED OF BOARD

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

3. Planning Staff Recommendation:

Approval.

4. Hearings Officer Decision:

Approval.

5. If recommendation and decision are different, why?

ISSUES
(who raised them?)

a. None.

Do any of these issues have policy implications? Explain.

No.



DEPARTMENT OF ENVIRONMENTAL SERVICES
Division of Planning and Development
2115 S.E. Morrison Street
Portland, Oregon 97214 (503) 248-3043

Decision

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

CU 1-94, #655

Conditional Use Request

Single Family Residence Not In Conjunction With A Farm Use

Applicant requests conditional use approval of a single family residence not in conjunction with a farm use on an 8.46 acre Lot of Record in the EFU zoning district.

Location: 31115 SE Woodard Road

Legal: East 200 feet of Lot 46; Tax Lot 2 of Lot 65; North 674.67 feet of Lot 65, all in Banner Acres Subdivision (1992 Assessor's Map)

Site Size: 8.46 Acres

Size Requested: Same

Property Owner: G. Joseph Gorciak III et al
P.O. Box 183, Corbett, 97019

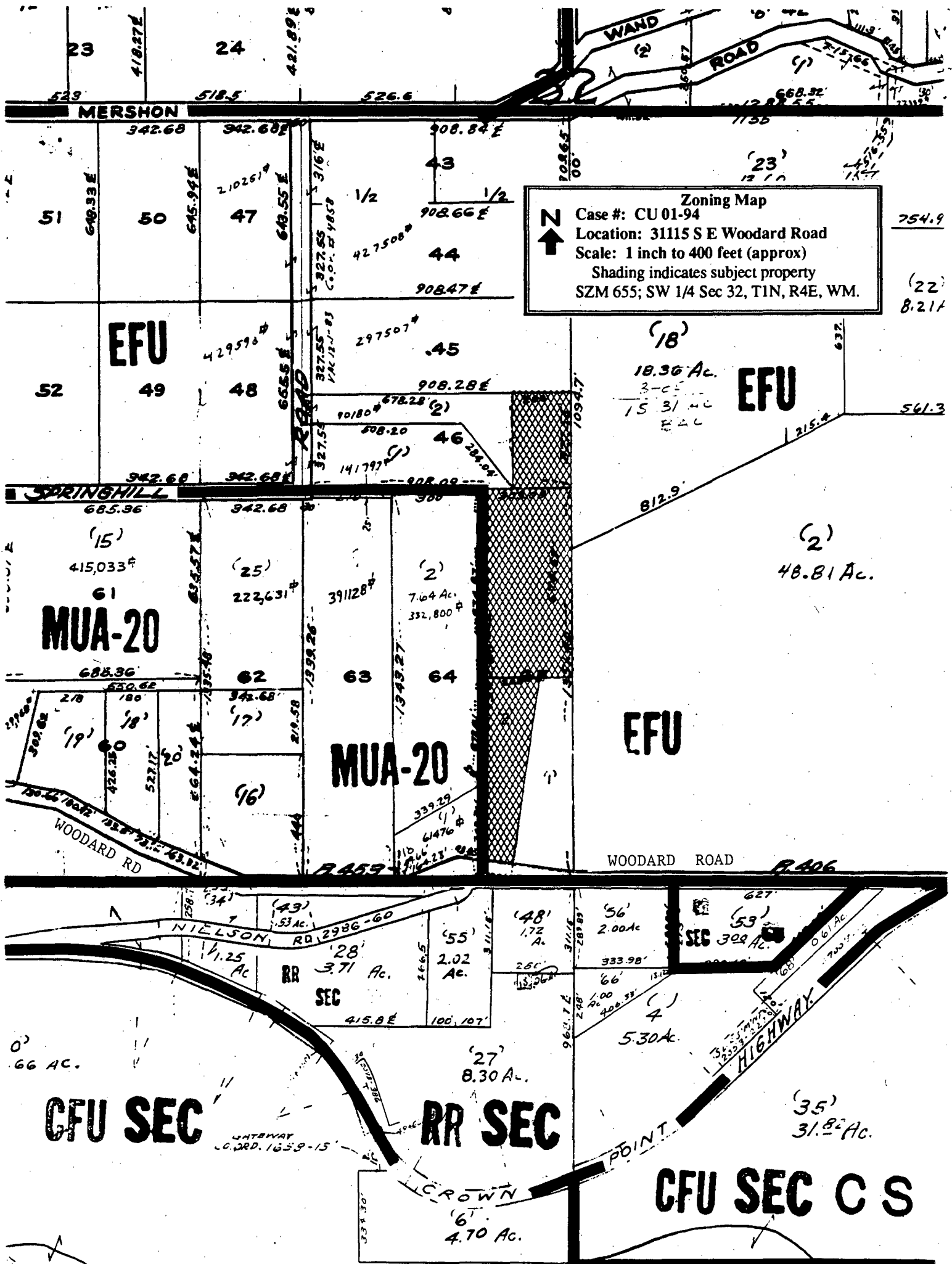
Applicant(s): Margaret and G. Joseph Gorciak
31105 SE Woodard Road
Troutdale, OR 97060

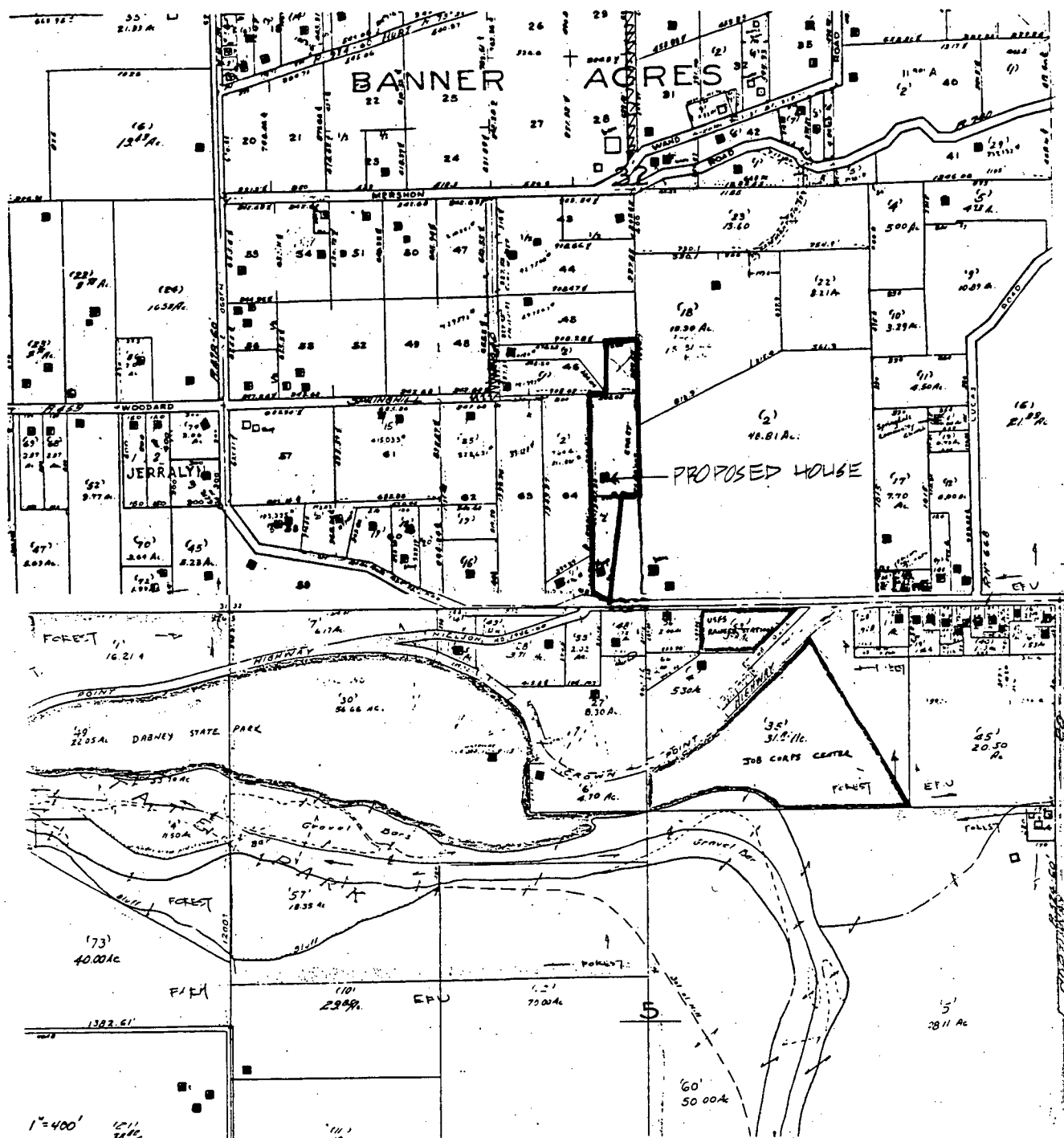
Comprehensive Plan: Exclusive Farm Use (Agriculture)

Present Zoning: EFU (Application was submitted on July 22, 1993 and is not subject to the standards for "important farmland" in OAR 660, Division 33 which became effective on August 7, 1993. Nor is the application subject to any statute amendments passed by the 1993 State Legislature.)

Hearings Officer

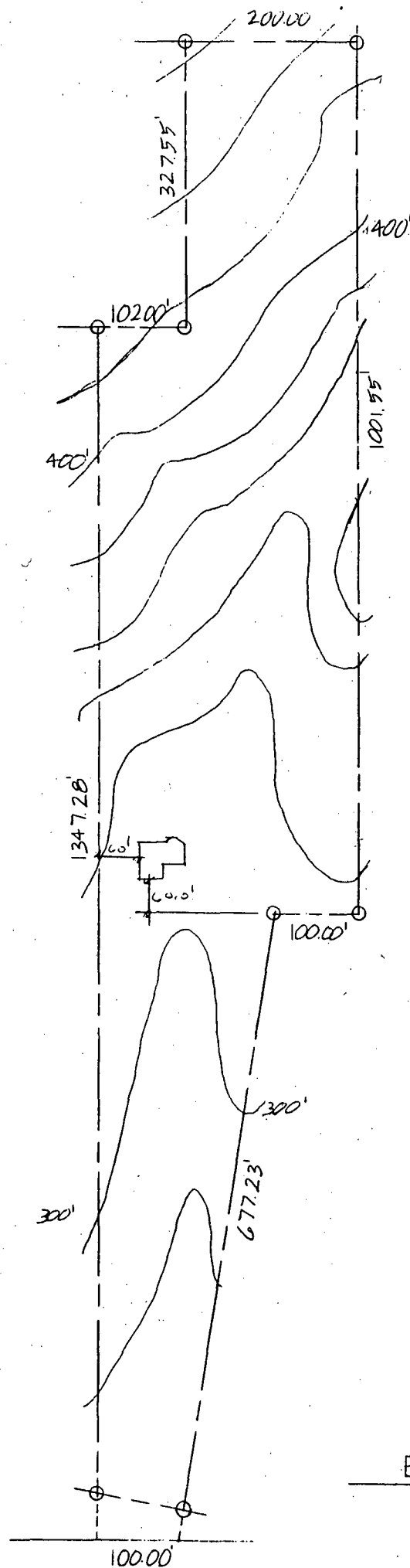
Decision: See Page 6 of 19.





VICINITY MAP nts

TROXEL'S HOME DESIGN
1217 E. BURNSIDE SUITE 502
GRESHAM, OR 97030
(503) 665-2684



TROXEL'S HOME DESIGN
 1217 E. BURNSIDE SUITE 502
 GRESHAM, OR 97030
 (503) 665-2684

ELEVATION PLAN

1"=150.00'

BEFORE THE LAND USE HEARINGS OFFICER
FOR MULTNOMAH COUNTY, OREGON

Regarding a request by G. Joseph Gorciak, <i>et al.</i> , for a conditional use permit for a non-resource dwelling at 31115 SE Woodard Road, Troutdale, in unincorporated Multnomah County, Oregon)	FINAL ORDER CU 1-94 (Gorciak)
--	---	---

I. FINDINGS

1. The hearings officer hereby adopts and incorporates by reference the Multnomah County Department of Environmental Services Staff Report in this matter dated January 3, 1994, (the "Staff Report") including the findings, conclusions and conditions of approval, except to the extent expressly provided otherwise in this final order.

2. Hearings Officer Larry Epstein held a duly noticed public hearing at 2115 SE Morrison Street, Portland, Oregon on January 3, 1993 to consider the application. A record of that testimony is included herein as Exhibit A (Minutes and Parties of Record), Exhibit B (Taped Proceedings), and Exhibit C (Written Testimony). These exhibits are filed at the Multnomah County Department of Environmental Services. The following selected, relevant testimony was offered at the hearing:

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

b. Attorney Frank Josselson, planner Greg Winterowd and applicant/owner Joseph Gorciak testified in favor of the application. Mr. Winterowd introduced new evidence, including a report identifying and describing farm uses and practices and the land use pattern in the vicinity and evaluating the potential impact of the conditional use permit on them, and a letter from the operator of the farm to the east. He testified much of the site would erode if vegetation is removed from it, due the soil and slope conditions, except the one-quarter acre where the home is proposed to be sited and the three-quarter acre where the existing shed is sited. He testified about topographic features that isolate the homesite from the farm to the east and about steep forest lands that isolate it from the north and west. He testified about road, land use and other conditions that make agricultural use of the site in combination with other properties infeasible. Mr. Gorciak testified that the proposed access drive will be situated at least 100 feet from the creek east of the site, and well away from the face of the steep slopes adjoining the creek.

3. The hearings officer finds that the findings in the Staff Report and the substantial evidence in the record referenced or relied on to make those findings generally are adequate to show that the proposed conditional use permit does or will comply with the applicable approval standards identified in the Staff Report, except findings regarding MCC 11.15.2172(C)(3),¹ which requires the approval authority to find:

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

¹ A section in Multnomah County Code Chapter 11.15 is hereafter abbreviated as MCC .xxxx consistent with the citation format in the chapter.

4. The evidence introduced by Mr. Winterowd at the hearing defines and justifies the basis for a study area for purposes of analyzing compliance with MCC .2172(C)(3). Within that area, the report describes resource uses and resource management practices and the resulting land use pattern and potential for resource use of the subject property in combination with other properties. The written and oral testimony by Mr. Winterowd and Mr. Gorciak describes why the proposed conditional use is compatible with and will not interfere with the resources or resource management practices in the area or materially alter the stability of the overall land use pattern. The hearings officer adopts and relies on that testimony and evidence, in addition to the findings and evidence cited in the Staff Report, to find that the conditional use permit complies with MCC .2172(C)(3).

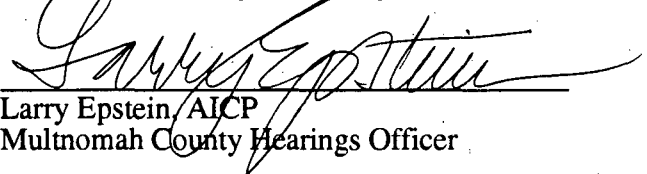
II. CONCLUSIONS

Based on the findings and the substantial evidence cited or referenced herein, the hearings officer concludes that the proposed conditional use permit does or will comply with MCC .2172(C), and therefore the conditional use permit should be approved, subject to the conditions of approval recommended in the Staff Report.

III. DECISION

In recognition of the findings and conclusions contained herein, and incorporating the Staff Report and other reports of affected agencies and public testimony and exhibits received in this matter, the hearings officer hereby approves CU 1-94, subject to the conditions of approval recommended in the Multnomah County Department of Environmental Services Staff Report in this matter dated January 3, 1994.

Dated this 13th day of January, 1994.


Larry Epstein, AICP
Multnomah County Hearings Officer

CONDITIONS OF APPROVAL:

1. 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 required under MCC .2012(B)(3)(j). A prepared form is available at the Planning Offices.
2. Prior to the issuance of a building permit, complete applicable requirements of the County Engineering Services regarding SE Woodard Road.
3. Prior to the issuance of a building permit, provide confirmation from the Division of Assessment and Taxation that the subject property (comprised of three tax accounts) has been disqualified for the special tax assessment it has been receiving and that all additional tax imposed as the result of the disqualification has been paid [ORS 215.236(2)].

FINDINGS OF FACT:

1. Applicant's Proposal:

The applicant requests approval to develop the above described 8.46 acre "Lot of Record" with a single family dwelling that would not be in conjunction with farm uses on the property.

2. Ordinance Considerations:

- A. ORS 215.428 (3): If the application was complete when first submitted or the applicant submits the requested additional information within 180 days of the date the application was first submitted and the county has a comprehensive plan and land use regulations acknowledged under ORS 197.251, approval or denial of the application shall be based upon the standards and criteria that were applicable at the time the application was first submitted.
- B. Conditional Use Approval for residential use not in conjunction with farm use.
 - (1) MCC 11.15.2012(B)(3): Residential use not in conjunction with farm use, consisting of a single family dwelling, including a mobile or modular home. The lot shall be a Lot of Record under MCC .2018 or have been created under the applicable provisions of MCC 11.45, Land Divisions. The Hearings Officer shall find that a dwelling on the lot as proposed:
 - (a) Is compatible with farm uses described in paragraph (A) of subsection (2) of ORS 215.203 and is consistent with the intent and purposes set forth in ORS 215.243;
 - (b) Does not interfere seriously with accepted farming practices, as defined in paragraph (c) of subsection (2) of ORS 215.203, on adjacent lands devoted to farm use;
 - (c) Does not materially alter the stability of the overall land use pattern of the area;

- (d) Is situated upon generally unsuitable land for the production of farm crops and livestock, considering the terrain, adverse soil or land conditions, drainage and flooding, vegetation, location and size of the tract;
 - (e) Complies with subparts (1), (2) and (3) of MCC .2010(A) if constructed off-site;
 - (f) Complies with such other conditions as the Hearings Officer considers necessary to satisfy the purposes of MCC .2002;
 - (g) Construction shall comply with the standards to the Building Code or as prescribed under ORS 446.002 through 446.200, relating to mobile homes;
 - (h) The dwelling shall be attached to a foundation for which a building permit has been obtained; and
 - (i) The dwelling shall have a minimum floor area of 600 square feet.
 - (j) The owner shall record with the Division of Records and Elections a statement that the owner and successors in interest acknowledge the rights of nearby property owners to conduct accepted farming and forestry practices.
 - (k) The applicant shall provide evidence that all additional taxes and penalties, if any, have been paid if the property has been receiving special assessment as described in ORS 215.236(2). In the alternative, the Approval Authority may attach conditions to any approval to insure compliance with this provision.
- C. MCC 11.15.7120 Conditional Use Approval Criteria (General): “(A) A Conditional Use shall be governed by the approval criteria listed in the district under which the conditional use is allowed. If no such criteria are provided, the approval criteria listed in this section shall apply.” The approval criteria listed under B above are listed in the district; therefore, the general criteria in this subsection **do not apply**.
- D. MCC 11.15.7122 Exclusive Farm Use Conditional Use Approval Criteria. (A) ... an applicant for a Conditional Use listed in MCC .2012(B) must demonstrate that the use:
- (1) Will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; and
 - (2) Will not significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.
 - (3) [.7122(B)] For the purposes of this subsection surrounding lands devoted to farm or forest use shall not include:
 - (1) Parcels with a single family residence approved under MCC .2012(B)(3);

(2) Exception areas; or

(3) Lands within the Urban Growth Boundary.

E. Applicable Comprehensive Framework Plan Policies (including those Policies requiring a Finding prior to a quasi-judicial decision):

(1) **POLICY NO. 9, AGRICULTURAL LAND.** ... THE COUNTY'S POLICY IS TO RESTRICT THE USE OF THESE LANDS TO EXCLUSIVE AGRICULTURE AND OTHER USES, CONSISTENT WITH STATE LAW, RECOGNIZING THAT THE INTENT IS TO PRESERVE THE BEST AGRICULTURAL LAND FROM INAPPROPRIATE AND INCOMPATIBLE DEVELOPMENT.

(2) **POLICY NO. 13, AIR, WATER AND NOISE QUALITY.** MULTNOMAH COUNTY, ... SUPPORTS EFFORTS TO IMPROVE AIR AND WATER QUALITY AND TO REDUCE NOISE LEVELS. ... FURTHERMORE, IT 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.

(3) **POLICY NO. 22, ENERGY CONSERVATION.** THE COUNTY'S POLICY IS TO PROMOTE THE CONSERVATION OF ENERGY AND TO USE ENERGY RESOURCES IN A MORE EFFICIENT MANNER. ... 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 USES AND 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 CLIMATIC CONDITIONS TO ADVANTAGE.
- E. FINALLY, THE COUNTY WILL ALLOW GREATER FLEXIBILITY IN THE DEVELOPMENT AND USE OF RENEWABLE ENERGY RESOURCES.

(4) **POLICY NO. 37, UTILITIES.** 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 SYS-

TEM, 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, LAKES OR ALTER THE DRAINAGE ON ADJOINING LANDS.

ENERGY AND COMMUNICATIONS

H. THERE IS AN ADEQUATE ENERGY SUPPLY TO HANDLE THE NEEDS OF THE PROPOSAL AND THE DEVELOPMENT LEVEL PROJECTED BY THE PLAN; AND

I. COMMUNICATIONS FACILITIES ARE AVAILABLE.

(5) **POLICY NO. 38, FACILITIES.** THE COUNTY'S POLICY IS TO REQUIRE A FINDING PRIOR TO APPROVAL OF A LEGISLATIVE OR QUASI-JUDICIAL ACTION THAT:

SCHOOL

A. THE APPROPRIATE SCHOOL DISTRICT HAS HAD AN OPPORTUNITY TO REVIEW AND COMMENT ON THE PROPOSAL.

FIRE PROTECTION

B. THERE IS ADEQUATE WATER PRESSURE AND FLOW FOR FIRE FIGHTING PURPOSES; AND

C. THE APPROPRIATE FIRE DISTRICT HAS HAD AN OPPORTUNITY TO REVIEW AND COMMENT ON THE PROPOSAL.

POLICE PROTECTION

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

(6) **POLICY NO. 40, DEVELOPMENT REQUIREMENTS.** 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.

3. Site and Vicinity Characteristics:

- A. The subject property abuts SE Woodard Road across from the point where SE Nielson Road connects at an angle with SE Woodard. The right-of-way at that location is wider than the standard 60 feet to accommodate the intersection and steep terrain on the south side.
- B. The property is a Lot of Record which is comprised of three tax accounts totaling approximately 8.46 acres. The site has 100 feet of street frontage which widens to about 300 feet in the center and then narrows to 200 feet. There is a substantial (over 1000 square foot) accessory building or "shop" about 50 feet from the south property line.
- C. The applicant also owns Tax Lot '1' of Lot 64, Banner Acres, (1.4 acres), to the west. This adjacent lot contains a house and is in the MUA-20 zoning district. The driveway to the existing house, which also serves the shop, is proposed to be used for the new dwelling by further improving the driveway northward to the new building location. Large base rock has already been placed in a driveway between the shop and the proposed house site.
- D. The U.S.G.S. map shows elevations on the property ranging from 260 feet above sea level on the south to 440 feet on the north. The property is close to mapped "Slope Hazard" areas on the south and west but the new portion of the driveway and the proposed house location are not in the hazard area. Along the east property line from the road frontage north for about 1200 feet is a gully containing a seasonal small stream.
- E. The northerly two thirds of the property contains a mixture of Douglas fir, maple, cedar, and alder with the southerly one-third of the property being mostly cleared of trees. The soil is Powell silt loam. The soil survey map shows three subgroupings of the soil on the property being differentiated by slopes of 0 to 8 percent (34B), 8 to 15 percent (34C), and 15 to 30 percent (34D). Areas of 34B&C have an agricultural capability rating of Class III and the area of 34D is Class IV.
- F. The subject property is bordered on the west by the MUA-20 zone and on the south by the RR zone. The MUA-20 and RR "Goal 3 and 4 Exception Areas" are characterized by small lots of mostly 1 to 5 acres but also 3 lots of about 8 acres. Each of the lots is eligible for a house.
- G. To the east, on the other side of the gully is a 48 acre tax lot containing a house, a large barn, and a cattle raising operation. The tax lot to the northeast is 18 acres with a house and a mixture of cleared grass raising and forests.

4. Compliance With Ordinance Considerations. NOTE: THE APPLICANT'S RESPONSE TO AN APPROVAL CRITERIA WILL BE INDICATED BY THE BEGINNING NOTATION "Applicant:". (Additional Planning Staff comments begin with the word "Staff:" and are added only where supplemental information is needed or where staff may not concur with the applicant's statements.)

- A. ORS 215.428 (3): If the application was complete when first submitted or the applicant submits the requested additional information within 180 days of the date the application was first submitted and the county has a comprehensive plan and land use regulations acknowledged under ORS 197.251, approval or denial of the application shall be based upon the standards and criteria that were applicable at the time the application was first submitted.

Staff: The application was submitted with full fees on July 22, 1993. The application was determined to be complete on November 26, 1993, 127 days after it was first submitted. Therefore, this proposal is subject only to the applicable EFU approval criteria in MCC 11.15 (last amended in February, 1990).

The timing of these dates is important to this request because more restrictive provisions on development in the EFU zone became effective on August 7, 1993 [OAR 660-33-150(3)]. Those provisions are a part of the Oregon Administrative Rules 660, Division 33 which were adopted by the Land Conservation and Development Commission (LCDC) on December 3, 1992. Different portions of the Rule were to become effective on different dates. LCDC is currently revising the Rules to conform with the Legislative mandates of HB 3661B which will also result in additional restrictions on new dwellings in the EFU zone.

- B. Conditional Use Approval for residential use not in conjunction with farm use.

- (1) MCC 11.15.2012(B)(3): ... The lot shall be a Lot of Record under MCC .2018 or have been created under the applicable provisions of MCC 11.45, Land Divisions. The Hearings Officer shall find that a dwelling on the lot as proposed:

Staff: Since 1980, the EFU zone has contained a requirement that small adjacent properties under the same ownership be considered to be combined in determining a lot of record. The subject three tax accounts are all owned by Joseph Gorciak III and together comprise one lot of record [MCC 11.15.2018(A)(3)]. The same ownership in the MUA-20 zone is not required to be added to the subject lot of record.

- (a) Is compatible with farm uses ... ;

Applicant:

Residential use of this lot will not change or influence existing uses elsewhere. The only farm use in area is lot adjacent to eastern boundary and another approximately one-half mile northwest. Subject lot is not currently in farm use, nor are any other adjacent parcels. Surrounding parcels are 2-10 acre generally with single family

residences.

Staff: The proposed house location is more than 500 feet from the barn on the adjacent property and is more than 200 away from the fields. The house would also be more than 20 feet higher in elevation than the adjacent cattle operation. Most importantly, the steepness of the gully and the seasonal presence of a creek both prevents the possibility of the subject lot of record being effectively combined with the agricultural land to the east and is also a significant separation of the existing farm uses and proposed non-farm dwelling.

- (b) Does not interfere seriously with accepted farming practices ... on adjacent lands devoted to farm use;

Applicant:

Adjacent lot due east is in hobby farm-cattle use, but no other adjacent lots are, or have been, in farm use; i.e.- all adjacent lots to west are MUA and with two single family residences; land adjacent to north is EFU with single family residences not in farm use; land to south is Woodard Road; south of Woodard Road are small lots (2-4 acre) with 2 single family residences not in farm use.

Lot immediately west of building site is vacant with nonmanaged timber.

Hobby farm to east is separated from lot of record by fence, creek, dense forest, vegetation and general terrain. (Land slopes down into deep draw where creek is located, then upward to building site location. Home not likely to be visible at all to farm owners.

Staff: Topographic differences and the linear distance between the proposed house and the cattle raising on the adjacent property prevent interference with the farming practices.

- (c) Does not materially alter the stability of the overall land use pattern of the area;

Applicant:

Land use pattern is generally of single family, no-farm dwellings on parcels ranging from 2 acres to 10 acres

Subject lot and one adjacent lot in MUA appear to be the only small lots not with residences and therefore there will be no dramatic or even significant change in land use pattern based on existing uses.

(See Applicant's Vicinity Map Attached)

Staff: The gully between this lot and the large lot to the east is a good line of separation between the smaller lots with homes and operating farms.

- (d) Is situated upon generally unsuitable land for the production of farm crops and livestock, considering the terrain, adverse soil or land conditions, drainage and flooding, vegetation, location and size of the tract;

Applicant:

Terrain = Uneven, sloping with four seasonal creeks in draws 20-25 feet deep (see Topographical map).

Adverse Soil/Land = Most of lot is rated 3E, Powell Silt loam 3-8% slopes and part rated (7E)- not rated for agricultural use, but for timber and wildlife. Subject lot currently not in farm use; but has approximately one acre of level or slightly sloped ground. 3E is land type with increased housing development in area and subject to erosion.

Drainage/Flooding = poor drainage for farming purposes, (although perk test passed), seasonal high waters in creeks, but no flooding problems.

Vegetation = Currently a mixture of primarily alder trees, with some maple, Douglas fir, cedar and extensive dense and wild blackberries.

Location = Approximately .4 miles west of Springdale Commercial District, approximately 3.5 miles east of residential development in Troutdale/Gresham.

Size = 8.6 Acres - Limits farming options to only a few livestock, with substantial clearing of trees and vegetation. Lot is long and narrow without a road from end to end.

Staff: As noted in Finding 3.E. on the preceding page 9, the soil is 34B, 34C, and 34D as shown on maps in the Soil Survey of Multnomah County, Soil Conservation Service, August, 1983. The best of the soils for agriculture, 34B, occurs only on the narrowest portion of the lot which also slopes toward the gully. The remainder of the property is in timber and has steeper slopes than are being farmed on other lands in the vicinity.

- (e) Complies with subparts (1), (2) and (3) of MCC .2010(A) if constructed off-site;

Applicant: N/A - won't be constructed off-site.

- (f) Complies with such other conditions as the Hearings Officer considers necessary to satisfy the purposes of MCC .2002;

Staff: There are three conditions of approval.

- (g) Construction shall comply with the standards to the Building Code or as prescribed under ORS 446.002 through 446.200, relating to mobile homes;

Staff: The applicant is anticipating an on-site built home for which a building permit will be required. Compliance with the standards of the Building Code will be verified by the City of Gresham inspectors.

- (h) The dwelling shall be attached to a foundation for which a building permit has been obtained; and

Applicant: Dwelling will be attached to foundation for which building permit has been obtained.

- (i) The dwelling shall have a minimum floor area of 600 square feet.

Applicant: Dwelling will have approximately 3200 square foot floor area.

- (j) The owner shall record with the Division of Records and Elections a statement that the owner and successors in interest acknowledge the rights of nearby property owners to conduct accepted farming and forestry practices.

Applicant: Owners acknowledge for themselves and successors in interest, the rights of nearby property owners to conduct accepted farming and forestry practices.

Staff: Recordation of a deed restriction is condition of approval number one.

- (k) The applicant shall provide evidence that all additional taxes and penalties, if any, have been paid if the property has been receiving special assessment as described in ORS 215.236(2). In the alternative, the Approval Authority may attach conditions to any approval to insure compliance with this provision.

Applicant: Applicants are unaware of any additional taxes due. However, in the event that taxes are due applicants agree to comply with all conditions regarding tax payment.

Staff: The subject property has been receiving special tax assessment. Condition of approval number three requires that confirmation be obtained from the Division of Assessment and Taxation that requirements of ORS 215.236(2) have been met.

C. MCC 11.15.7122 Exclusive Farm Use Conditional Use Approval Criteria. (A) ... an applicant for a Conditional Use listed in MCC .2012(B) must demonstrate that the use:

- (1) Will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; and

Applicant:

-One dwelling will not force any change in accepted farm and forest uses nearby. The cattle farm to the east can continue in all ways currently in use. That parcel is 48 Acres, is separated by forest trees, a creek in a steep draw and is at significantly lower elevation than subject lot. The only other farming practice is a lot with nursery stock on Springhill Road, approximately one-half mile northwest of the subject lot which is accessed by Woodard Road.

Staff: Also see 4.B.(1)(a)&(b) above.

- (2) Will not significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.

Applicant:

- Construction process will not touch, interfere or impact any other parcels nearby.
- No economic affect on surrounding farm uses.

Staff: Also see 4.B.(1)(a)&(b) above.

D. Applicable Comprehensive Framework Plan Policies (including those Policies requiring a Finding prior to a quasi-judicial decision):

(1) Policy No. 9, Agricultural Land

Applicant:

- Predominantly agricultural soil capability I, II, II, and IV, as defined by U.S. Soil Conservation Service: The land consists of class 3E soil, prime code symbol 34B Powell silt loam and 7E soil, prime code symbol 20F, Haplumbrepts soil, some of which is not likely rated for any agricultural use. At least half of the subject parcel is in forest use with wildlife. Slopes in some areas are three to eight percent, in other areas thirty to forty percent. The vegetation found near the proposed building site consists of Douglas fir, western red cedar, maple, alder and blackberry. Parcel is not in, and has not been in, agricultural use.
- Of Parcel Sizes suitable For Commercial Agriculture: Lot of record is comprised of three tax lots for a total of 8.6 acres more or less. Parcels are narrow and too small for agricultural use. Land on the lot of record and adjacent land is highly sloped with draws and seasonal creeks.
- In Predominantly Commercial Agriculture Use: The lot of record and adjacent land is not predominantly in commercial agricultural use. The only land nearby in agricultural use is to the east and it is currently in use as a hobby cattle farm. Approximately one quarter mile northwest is a parcel recently planted with nurs-

ery stock. There are no other commercial agricultural uses in the area.

- **Not Impacted By Urban Service:** The lot of record is located outside urban service delivery areas.

Staff: From a very small scale aerial photo in the SCS soil survey, the specific soils appear to be 34B, 34C, and 34D.

(2) Policy No. 13, Air, Water and Noise Quality.

Applicant:

- **Cooperate with private citizens, businesses, utilities and public agencies to maintain and improve the quality of air and water, and to reduce noise pollution in Multnomah County:** Applicants merely seek a single family residence approximately 3200 square feet in size which is expected to have little, if any, measurable impact on air, water and noise quality in the area. Applicants are private citizens and intend to install a wood burning stove pursuant to all applicable codes and regulations.
- **Maintain Healthful Air Quality Levels In The Regional Airshed; To Maintain Healthful Ground And Surface Water Resources; And To Prevent Or Reduce Excessive Sound Levels While Balancing Social And Economic Needs In Multnomah County:** The proposed single family residence use will not have a measurable impact on air quality in the regional airshed. Proper vegetation and septic plans will maintain healthful ground and surface water resources. There are no uses proposed which would increase sound levels in the area.

Staff: The proposed single family dwelling will not violate air and noise quality standards; there is no agency that reviews those standards for a single dwelling proposal. Philip Crawford, Environmental Soils Specialist, has confirmed the site can accommodate an on-site sewage disposal system that will be in conformance with State environmental quality standards (LFS 71-91).

(3) Policy No. 22, Energy Conservation.

Applicant:

- **The Development Of Energy-Efficient Land Uses And Practices:** Applicants intend to install highly efficient wood stove and highly efficient alternative heat such as forced air oil.
- **An Energy-Efficient Transportation System Linked With Increased Mass Transit, Pedestrian And Bicycle Facilities:** The lot of record is situated on southeast Woodard Road which is a road contained within the Multnomah County master plan for bike paths which will lead directly to a Tri-Met bus stop in downtown Troutdale approximately three miles northwest of site.

- **Street Layouts, Lotting Patterns And Designs That Utilize Natural Environmental And Climactic Conditions To Advantage:** Applicants proposed residence will utilize passive solar features with high use of windows on the south side.
- **The County Will Allow Greater Flexibility In The Development And Use Of Renewable Energy Resources:** Lot of record contains considerable amount of timber, some of which will be used as firewood. Lot also sits in the pathway of high winds from the east, and these are renewable energy resources.

Staff: SE Woodard Road is on the Multnomah County Bicycle Master Plan. There is sufficient right-of-way width adjacent to this property to accommodate all projected bike path needs and the proposed development will not interfere with such future improvements.

(4) Policy No. 37, Utilities.

Applicant:

The proposed single family residence can be connected to the Corbett Water District public water system and Corbett Water District has already officially approved this use and application. The site evaluation report of May 1, 1991 by Phillip Crawford, R.S., environmental soils specialist, indicates the site is considered suitable for the use of a standard septic tank/drain field disposal system. That report is already submitted in this matter.

The water run-off can be absorbed on the broad high terraces adjacent to the building site and absorbed by the considerable vegetation surrounding the building site. Adjacent streams which run part of the year will be unaffected.

The proposed single family residence will be served by Portland General Electric for electrical needs. Cascade Utilities will provide telephone services. Paragon Cable may provide cable television services.

Staff: Drainage: As part of the building permit approval and inspection process, the builder is required to construct on-site water retention and/or control facilities adequate to ensure that surface runoff volume after development is no greater than before development. The relatively large acreage of the lot relative to the small amount of impervious area created from coverage of the dwelling should easily accommodate surface water drainage and not affect water quality or alter drainage on adjoining lands.

(5) Policy No. 38, Facilities.

Applicant: School, fire and police information has previously been submitted.

(6) Policy No. 40, Development Requirements.

Applicant: Addressing this policy does not appear appropriate given the request for a single family residence and no further development.

Staff: Pedestrian and bicycle path connections to parks, recreation areas and community facilities where appropriate and where designated on the Bicycle Plan Map: SE Woodard Road is a designated Bikeway route which connects to such other County Bikeway roads as Ogden and Hurlburt. There is of course connection to Crown Point Highway, but it is not on the County Bikeway Master Plan because the road is a State highway.

CONCLUSIONS:

1. The property is a Lot of Record as defined in MCC .2018.
2. Conditions are necessary to insure compliance with all Code provisions.
3. The applicant has carried the burden necessary for the approval of a dwelling not in conjunction with farm use in the EFU zoning district.

Signed by the Hearings Officer: January 13, 1994 (See page 6 of 19.)

Decision Mailed to Parties: January 28, 1994

Decision Submitted to Board Clerk: January 28, 1994

Last day to Appeal Decision: February 7, 1994

Reported to Board of County Commissioners: February 8, 1994

APPEAL TO THE BOARD OF COUNTY COMMISSIONERS

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

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

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

MEETING DATE: February 8, 1994
AGENDA NO: P-2

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: LD 36-93 Decision

BOARD BRIEFING Date Requested:

Amount of Time Needed:

REGULAR MEETING: Date Requested: February 8, 1994

Amount of Time Needed: 2 Minutes

DEPARTMENT: DES DIVISION: Planning

CONTACT: R. Scott Pemble TELEPHONE #: 318213
BLDG/ROOM #: 412/103

PERSON(S) MAKING PRESENTATION: Planning Staff

ACTION REQUESTED:

☐ INFORMATIONAL ONLY ☐ POLICY DIRECTION ☒ APPROVAL ☐ OTHER

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

LD 36-93 Review the January 21, 1994 Hearings Officer Decision, approving, subject to conditions, requested 14-lot land division, for property located at 500 NW Miller Road.

RECEIVED - 11 AM 9-15-94
CLERK OF BOARD OF SUPERVISORS
MULTIPLA COUNTY
OREGON

SIGNATURES REQUIRED:

ELECTED OFFICIAL:

OR

DEPARTMENT MANAGER: *RAP* *Betsy H. Wells*

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

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



MULTNOMAH COUNTY OREGON

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

DIVISION OF PLANNING AND DEVELOPMENT

Board Planning Packet Check List

File No. LD36-93

☒ Agenda Placement Sheet

No. of Pages 1

☒ Case Summary Sheet

No. of Pages 1

☐ Previously Distributed

☐ Notice of Review

No. of Pages _____

*(Maybe distributed at Board Meeting)

☐ Previously Distributed

☒ Decision

No. of Pages 33

(Hearings Officer/Planning Commission)

☐ Previously Distributed

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

(CL/1)



CASE NAME 14-Lot Land Division

NUMBER LD 36-93

1. Applicant Name/Address

500 NW Miller Road Limited Partnership
1200 NW Front Ave.
Portland, OR 97209

2. Action Requested by applicant 14-Lot Land Division
Future Street Plan Approval
Front Setback Exceptions

ACTION REQUESTED OF BOARD

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

3. Planning Staff Recommendation

Approval With Conditions

4. Hearings Officer Decision:

Approved With Conditions

5. If recommendation and decision are different, why?

The recommendation and decision are the same

ISSUES

(who raised them?)

1. One neighboring property owner was concerned with trespassing on his property by developers and contractors of the subdivision. The Hearings Officer added a condition of approval requiring the neighbor's written consent from the neighbor for use of his property by the developers and contractors.
2. Another neighboring property owner was concerned with impact of the subdivision on a drainage channel that crosses the north portion of the site. The Hearings Officer added a condition of approval requiring the developer to prepare and submit an appropriate conservation easement for review and approval by the Planning Director.
3. The Hearings Officer was concerned that the front yard setback exception requested by the applicant was too broad and too open-ended. He added a condition of approval requiring a minimum setback of 20 feet between any garage and the back of the sidewalk or curb adjacent to the front property line of any lot.



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

Decision

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

January 21, 1994

LD 36-93 ,#129

14-Lot Land Division and Future Street Plan

Applicant requests approval of a 14-lot subdivision for a site containing 6.78 acres. The proposal includes a Future Street Plan to provide for street access and future development on adjacent land to the east of the land division site. Also requested are front setback exceptions for the proposed lots.

Location: 500 NW Miller Road

Legal: Tax Lots '101' Section 36, T 1N, R 1W, WM

Site Size: 6.78 Acres

Property Owners: 500 NW Miller Road Limited Partnership
1200 NW Front Avenue, Portland, OR 97209

Applicant: 500 NW Miller Road Limited Partnership
1200 NW Front Avenue, Portland, OR 97209

Comprehensive Plan: Residential

Present Zoning: R-10, Single-Family Residential District (min. lot size, 10,000 sq. ft.)

Proposed Zoning: same

Hearings Officer

Decision: **Approved, subject to conditions, requested 14-lot land division, all based on the following Findings and Conclusions.**
See pages 13-14.

I. FINDINGS

1. The hearings officer hereby adopts and incorporates by reference the Multnomah County Department of Environmental Services Staff Report in this matter dated January 3, 1994 (the "Staff Report"), including the findings, conclusions and conditions of approval, except to the extent expressly provided otherwise in this final order.

2. Hearings Officer Larry Epstein held a duly noticed public hearing at 2115 SE Morrison Street, Portland, Oregon on January 3, 1993 to consider the application. A record of that testimony is included herein as Exhibit A (Minutes and Parties of Record), Exhibit B (Taped Proceedings), and Exhibit C (Written Testimony). These exhibits are filed at the Multnomah County Department of Environmental Services. The hearings officer understood the testimony at the hearing to include the following, in relevant part:

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

b. Planner Leslie Ann Hauer, attorney Steve Abel, engineer David Poulson, and general partner Rick Holt testified in favor of the application.

(1) Ms. Hauer accepted the Staff Report, including the recommended conditions of approval, with the following exceptions. She also clarified the status of the future street plan.

(a) She testified that the front yard setback exception is needed to minimize required grading for homesites and to avoid the need for a separate exception request on a lot-by-lot basis as each lot develops.

(b) She expressed concern about the open-ended nature of proposed conditions of approval 2 and 3, which require the applicant to comply with requirements of the County Transportation Division before the planning director approves the final plat. She said the Transportation Division has approved streets as shown on the tentative plan; therefore, the recommended conditions are unnecessary or too broad.

(c) She objected to condition of approval 8, which requires the applicant to amend the face of the plat to state that approval of the plat does not ensure each lot can be developed with a dwelling. She argued that note implies lots may not be buildable, contrary to expectations, and should be deleted.

(d) In response to public testimony, she stated that development will be prohibited in the conservation easement and that the south edge of the easement is the top of the bank of the drainage channel that crosses the north part of the site. She reiterated and expanded on arguments about why the front setback exception should be granted. She noted that the applicant will widen Miller Road and will cut back

309 Ac

(21)
11.45 Ac.

'(20'
4.57Ac.

4.30 Ac.

1992 ZoningMap
Case #: LD 36-93
Location: 500 N W Miller Road
Scale: 1 inch to 200 feet (approx)
 Shading indicates subject property
SZM # 129, 1/4 Sec Map # 3021

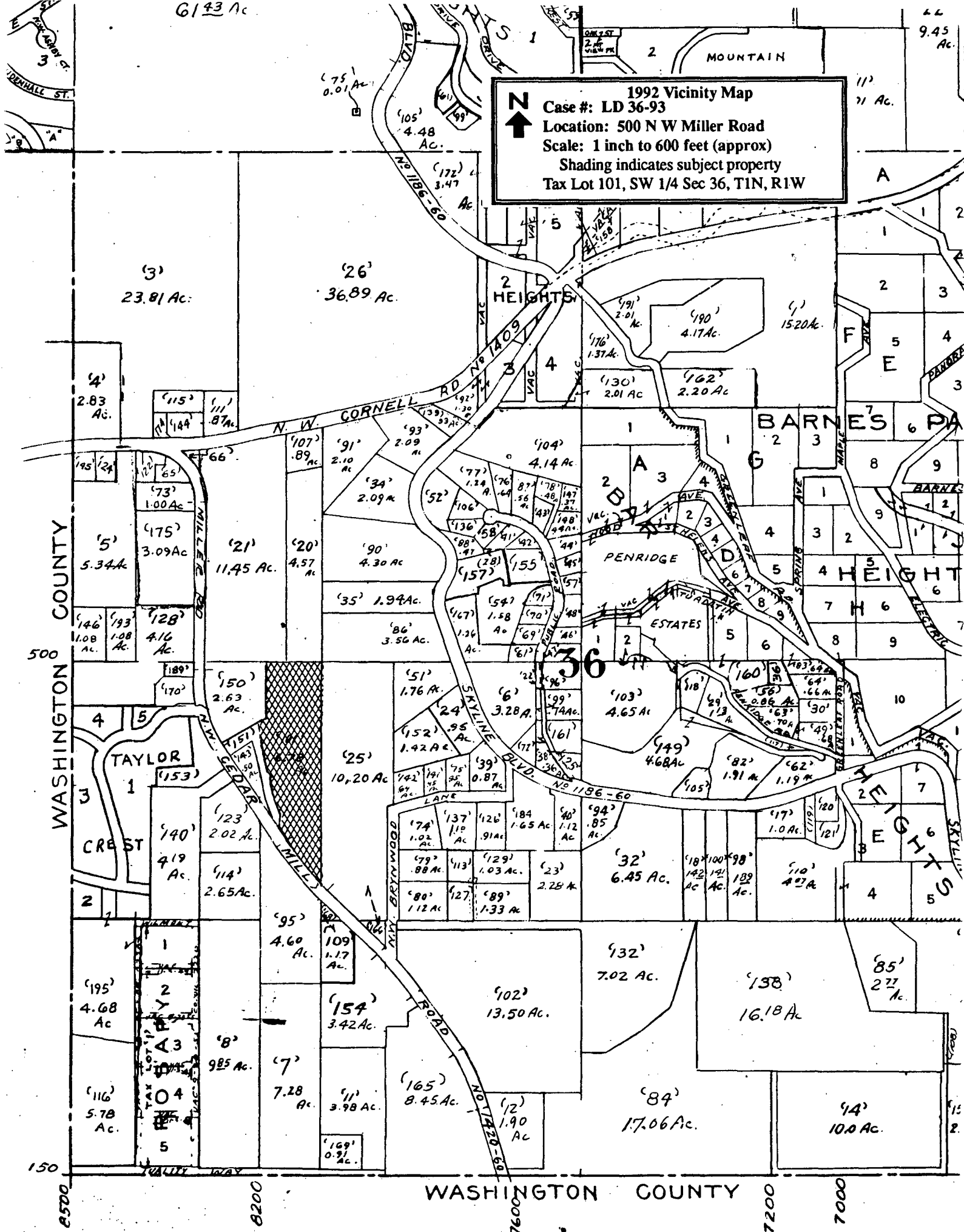
450'
2.63 Ac.

45.7269

450'
2.63 Ac.

R-10

R-10



TENTATIVE PLAN MAP OF 500 MILLER ROAD

PROJECT NO: 482 - 101
FILE: C:\482\101\JNR-BM

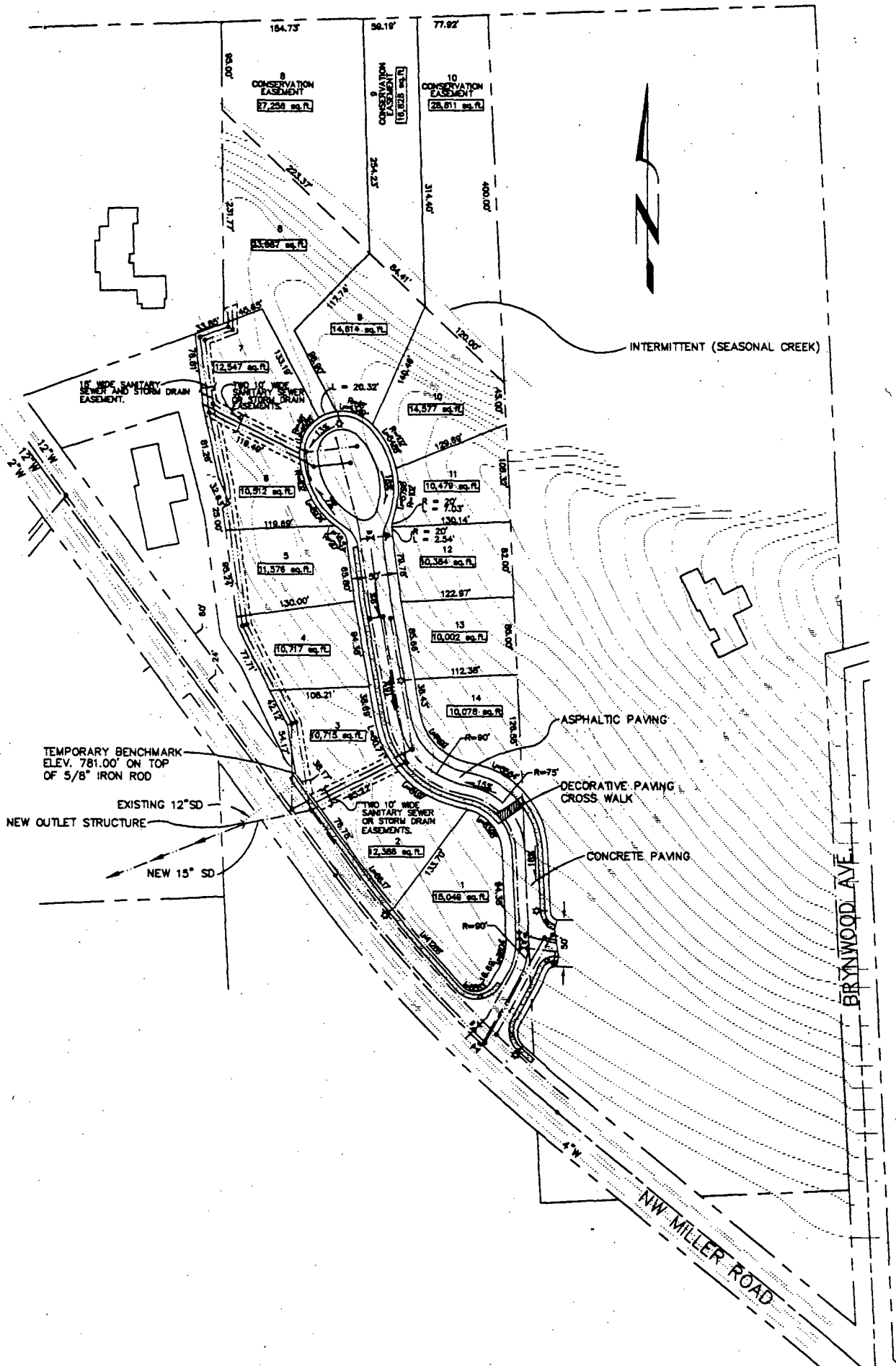
SHEET 1

DESIGNED BY:	D. POULSON
DRAWN BY:	G. BROWN
CHECKED BY:	
DATE:	NOVEMBER 5, 1993
SCALE:	1" = 100'

DAVID J. NEWTON ASSOCIATES, INC.
CIVIL & GEOLOGICAL ENGINEERING SERVICES
1201 S.W. 12TH AVENUE, SUITE 400
PORTLAND, OREGON 97205
(503) 228-7716 FAX (503) 228-7781



NO.	DATE	BY	REVISIONS



LD 36-93



NO.	DATE	BY	REVISIONS



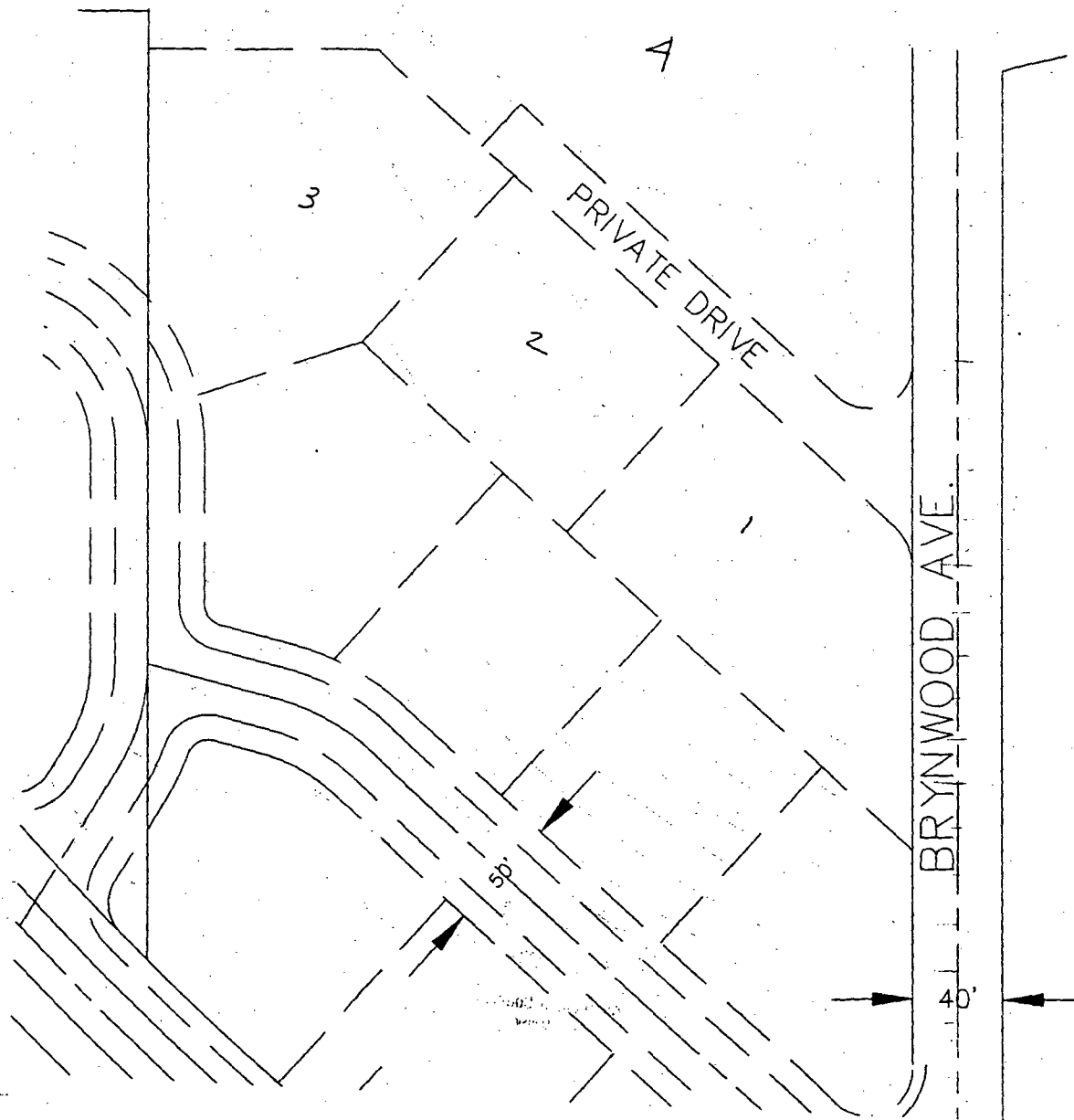
DAVID J. NEWTON ASSOCIATES, INC.
 CIVIL & GEOLOGICAL ENGINEERING SERVICES
 1201 S.W. 12TH AVENUE, SUITE 400
 PORTLAND, OREGON 97205
 (503) 228-7718 FAX (503) 228-7781

DESIGNED BY:	D. POULSON
DRAWN BY:	G. BROWN
CHECKED BY:	
DATE:	OCTOBER 1993
SCALE:	1" = 100'

500 MILLER ROAD FUTURE STREET PLAN MAP	
MULTNOMAH COUNTY	OREGON
PROJECT NO: 482 - 101	SHEET 1
FILE: G:\482\101\MR-FSP	

POSSIBLE 4 LOT DEVELOPMENT
OFF BRYNWOOD AVE

11-23-93



the slopes along NW 81st Place and Miller Road and at their intersection, providing more than the requisite sight distance from the proposed access point.

(2) Mr. Abel testified in support of the front setback exception, noting that there will be eleven feet between the curb and front lot lines. He discussed options, such as a 10-foot setback from the front property line or a 20-foot setback from the curb for the garage only. He testified that development will be prohibited where the conservation easement applies, based on the draft of the easement language he prepared.

(3) Mr. Poulson, in response to public testimony about storm water drainage concerns, noted the applicant will install a public storm sewer in the public road on the site and along the west edge of the site and will direct all storm water from the east half of the right of way and all roof drains to that storm sewer. As a result, Mr. Poulson opined that the volume of storm water that moves across the subject site to the neighboring property to the west will be less after its development than before its development. The storm sewer extends across Miller Road through an existing 12-inch culvert. The applicant will improve the outfall from the culvert to carry the increased flow without increasing erosion. Mr. Poulson also testified in response to public testimony about sight distance along Miller Road that there is unlimited southbound sight distance and several hundred feet of northbound sight distance along Miller Road from proposed NW 81st Place.

(4) Mr. Holt, speaking in response to public testimony about trespass on adjoining property, stated that he had written a letter to his contractors advising them not to trespass on the driveway west of the site. He opined that, because the property line adjoins the driveway, some trespass is inevitable. He testified that he plans to build a wall at the toe of the slope along the west edge of the site to help stabilize the slope, which would help deter trespass. He testified that the storm sewer will be built and accepted by the county before the final plat is approved or lots are sold or developed. He testified that he has not undertaken significant tree removal or grading on the site. He described the work he has done on the site to-date as "grubbing", i.e., removal of underbrush, blackberries, and diseased, damaged or hazardous trees. A permit has not been issued pursuant to the Oregon Forest Practices Act for timber harvesting on the site. Regarding sight distance, Mr. Holt noted that county transportation division staff did not raise a concern about sight distance during the staff visits to the property or follow-up contacts.

c. Michael Esler and Dean Kyriakos testified with objections and concerns. Both own property adjoining the west side of the site.

(1) Mr. Esler owns the land west of the north end of the site and resides in a home there. He raised particular concern with the impact of the subdivision on the drainage channel that crosses the north portion of the site and with sight distance along Miller Road.

(2) Mr. Kyriakos owns the land west of most of the site and resides in a home there. A private drive serving his home adjoins the majority of the west edge of the subject site. He raised particular concerns with the impact of the subdivision on storm water drainage onto and across his driveway and property, with preservation of existing vegetation, and with the frequency with which the developers and contractors of the subdivision have trespassed and continue to trespass on his property.

(a) Mr. Kyriakos submitted a letter dated January 11, 1994 to the County. The hearings officer excludes that letter from the record and did not consider it, because the public record closed on January 3.

3. The hearings officer finds that the findings in the Staff Report and the substantial evidence in the record referenced or relied on to make those findings generally are adequate to show that the proposed subdivision, future street plan, and front setback exception comply with the applicable standards of the Multnomah County Code, and the hearings officer adopts them as his own. In addition the hearings officer adopts the following findings to address issues raised at the hearing in this matter.

4. Regarding the front yard setback exception, the hearings officer notes the applicable standard and the applicant's and staff's responses are at pages 22-23 of the Staff Report. The hearings officer agrees with those findings that compliance with the 30-foot setback standard would require removal of substantially more vegetation and would require substantially more grading to provide homesites at least 30 feet from the front property line. Such widespread vegetation removal and grading would be contrary to the intent of the Hillside Development and Erosion Control district that applies to the site and inconsistent with the decision of the transportation division to allow a lesser standard of improvement for the road on the site due to topographic constraints. Based on those findings, the hearings officer concludes it is unreasonable to require compliance with the 30-foot front yard setback standard.

a. There is no standard for how much of an exception should be granted. The hearings officer finds that the greater the exception, the less grading will be needed to site a given house design on one of the lots, and the less the resulting potential environmental impact. To that extent, the greater the exception, the better.¹ Given that homes will be situated at least 11 feet from the curb (and 6 feet from the sidewalk on one side), an ersatz setback is provided between the street and the homes, even if no setback is provided between the front lot line and a home on a lot.

b. However the exception should not be so great that the result is contrary to the public safety. In particular, it would create a safety hazard if the garage portion of a home is situated with so little setback that vehicles necessarily extend over the sidewalk or beyond the curb and into the street. A safety hazard can be avoided by requiring the garages for homes on the site to be situated at least 20 feet from the curb (if there is no sidewalk adjoining the lot in question) or from the sidewalk (if there is a sidewalk adjoining the lot in question), so that there is ample space to park at least one vehicle in the driveway without extending into the sidewalk or street. The hearings officer finds that a condition of approval is warranted requiring a note on the face of the plat and/or a covenant filed with the deeds to the property requiring homes to be sited consistent with this discussion.

5. Regarding recommended conditions of approval 2 and 3 in the Staff Report, the hearings officer notes that applicable standards regarding streets and the applicant's and staff's response to those standards is provided at pages 20-21 of the Staff Report. Although street layout, design, and dedication are relevant issues under MCC 11.45.490, .500, and .540, the hearings officer understands that the County Engineer is responsible for deciding what street dedications and improvements to require, based on MCC 11.60 and the Rules for Street Standards.

a. Because final improvement plans for the streets on and adjoining the site have not been approved by the County Engineer, there is not substantial evidence based on which the hearings officer can find that the proposed road dedications and improvements

¹ The applicant also should be aware that building and fire codes may require a setback; this final order does not affect applicability of those codes.

will comply with the applicable road standards. Such compliance is reasonably likely to occur, based on the preliminary road plans provided with the preliminary plat. Conditions of approval 2 and 3 are an appropriate means to ensure that final dedications and improvements do comply with those standards as administered by the County Engineer.

b. The applicant can take solace from the knowledge that the transportation division staff have approved conceptual plans and a road standard modification for the proposed road. That reduces the chance road dedication and improvement requirements will deviate substantially from what the applicant proposes. The hearings officer cannot constrain administration of the County Engineer's duty without the statutory authority to do so. The applicant did not cite and the hearings officer is not aware of any such authority.

c. Based on the preliminary plat and the response to that plat from the transportation division, including the road standard modification, the hearings officer finds the preliminary plat will comply with MCC 11.45.490, .500 and .540. Conditions of approval 2 and 3 are warranted to ensure it does comply.

6. Condition of approval 8 requires the applicant to include a note on the face of the plat to the effect that a lot on the final plat might not be able to be developed, and compliance with all applicable zoning standards is required. The Staff Report does not discuss the condition, and it is not specifically required by MCC 11.45.

a. The hearings officer understands the purpose of the condition is to inform prospective lot purchasers that zoning regulations restrict the use of the lots so that those purchasers can consider those regulations before buying or developing a lot. There is a public interest in providing such notice to reduce the conflicts that would be likely to follow if people buy a lot without knowledge that zoning regulations restrict its use.

b. The hearings officer also understands that it might not be possible for development on a lot to comply with applicable zoning standards. However, the hearings officer finds that such a result is not reasonably likely to follow from approval of the subdivision in this case. Ample room exists on all proposed lots so that a home can be built on each lot, particularly with the front yard setback exception approved herein.

c. The hearings officer finds that the first sentence of recommended condition of approval 8 implies that a lot might not be able to be developed. The hearings officer finds that sentence is inaccurate and should be deleted. The substance of the second sentence of that condition should be noted on the face of the plat to provide notice to prospective purchasers of the applicability of zoning regulations.

d. The substance of the notice could vary from the language in the recommended condition to be more specific, such as but not necessarily as follows: "Before non-exempt development or grading occurs on a lot or a building permit is issued, an application for that development, grading or permit must be approved by the County Department of Environmental Services consistent with applicable base and overlay zones or variations thereto permitted by law." Reference also could be made to the front yard setback exception in this statement.

7. To reflect the testimony by Mr. Hauer and Mr. Abel, the conservation easement should prohibit removal of vegetation, excavation, filling, structures or other development within its boundaries, subject to exceptions approved by the planning director for reasons of public safety or environmental protection, and the easement or preliminary plat should state that the south edge of the conservation easement is the top of the bank of the creek or

some distance south of that point, so that prospective purchasers can readily identify the boundary of the easement on the ground. A condition to this effect should be added.

8. Regarding sight distance, the hearings officer notes that conditions of approval 2 and 3 require the applicant to improve NW 81st Place and Miller Road to the satisfaction of the transportation division. The hearings officer notes that the record does not reflect whether the County has adopted a sight distance standard. In the hearings officer's copy of the Rules for Street Standards, there is no sight distance standard for a neighborhood collector street such as Miller Road, and there is no general speed limit-based standard.

a. MCC 11.45.490(A)(8) requires the hearings officer to find that streets are laid out to provide safe and convenient access. That requires consideration of sight distance at street intersections as part of the land division process.

b. The testimony about sight distance conflicts. The hearings officer chooses to accept the testimony of Ms. Hauer, Mr. Poulson and Mr. Holt that the sight distance at the proposed intersection is or will be safe. In part the hearings officer relies on the fact that the transportation division did not raise the issue in its review of the proposal. In part the hearings officer relies on the substantive character of the testimony, e.g., Mr. Poulson identified a specific object that he could observe from the intersection to estimate sight distance. In part the hearings officer relies on the future evaluation of the final plan and work in progress by county engineering staff to ensure that sight distance from the intersection will be safe. The hearings officer finds conditions on and adjoining the site are such that vegetation can be removed and slopes can be graded to provide safe sight distance in both directions from NW 81st Place.

9. Regarding drainage, the hearings officer finds that consideration of drainage is relevant to compliance with Comprehensive Plan Policies 14 (Development Limitations) and 37E-G (Utilities) and MCC 11.45.600 and .660. Because the applicant will install a public storm sewer, and at least half the paved area of the site and all roof drains will discharge to that system, the hearings officer finds that storm water from the site will be collected, treated and discharged in a manner that complies with the applicable standards. Because most storm water will be diverted into the storm sewer, the volume of surface water that flows from the site onto the neighboring property to the west is reasonably likely to be less after development than before development. Applicable standards do not require more. Temporary storm water and erosion control measures are required as part of any non-exempt development in the Hillside Development and Erosion Control overlay district. The hearings officer finds that the proposed storm drainage system and required erosion control measures will prevent the development from violating applicable standards.

10. Regarding the issue of trespass, the hearings officer notes that his jurisdiction is limited. Trespass is a tort; it is not a violation of land use regulations. To that extent it is not within the jurisdiction of the hearings officer. However, it is relevant to whether the development has a deleterious effect. The hearings officer finds that trespass is a deleterious effect if it is more than *de minimis*. Comprehensive Plan Policy 2 (Off-Site Effects) provides, in relevant part, that "the County's policy is to apply conditions to its approval of land use actions where it is necessary to ... protect the public from potentially deleterious effects of the proposed use..." Trespass also is relevant under Policy 24 (Housing Location - Minor Residential Project) which provides, in relevant part, that a proposed development shall protect the privacy of adjacent residential development. The Staff Report does not address the issue.

a. The hearings officer finds that new single family detached residential development on 10,000 square foot lots is not inherently deleterious to existing single family detached residential development on similar size or larger adjoining tracts, because of the similarity of the land uses involved and the distance, topography and vegetation that mitigates the impact of the new development. That is, the hearings officer recognizes that the new development will increase the level of activity on the site, including lights, noise, vehicles, children, pets, etc. It will result in loss of significant existing vegetation and trees that helped screen the adjoining land. It is likely to result in a loss of perceived privacy, because, in fact, there will be more people and activity nearby than before the development. However, all of these impacts are or should be reasonably anticipated in a residential zone in the urban area, and the impact of each proposed home is not reasonably likely to be significantly different than the impact of each existing home.

b. Post-construction residents of the subdivision who want to walk north along Miller Road could be tempted to walk west across the Kyriakos property to reach the road. However, the hearings officer finds that the propensity for post-construction residents to trespass on the adjoining land to the west is not sufficiently great to require the applicant to build a fence to prevent the chance that such an impact will occur. Because the subdivision will contain an improved, grade-separated sidewalk, the hearings officer assumes most post-construction foot traffic will use that sidewalk and will not trespass on the Kyriakos property.

c. However the record reflects that incidents of construction-related trespass have occurred. The testimony and circumstances suggest that the convenience afforded by the existence of the Kyriakos driveway has proven to be irresistible to people employed in the development of the subject site, and that it has risen to a level that is more than *de minimis*. This repetitive trespass is a deleterious effect and denies the residents' reasonable expectations of privacy and security.

(1) The hearings officer does not agree with Mr. Holt's statement that some trespass is inevitable. It is neither inevitable or excusable. Access to the site and storage of site-related vehicles and supplies should be provided on-site, unless the owner of adjoining property consents to the use of the adjoining property for those purposes.

(2) The hearings officer recognizes the applicant's effort to stop the trespassing, but those efforts have not eliminated the trespass behavior. To achieve a greater likelihood of success, the hearings officer finds the applicant should be required to establish a barrier to convenient pedestrian access between the site and the Kyriakos property. That barrier should consist of a minimum 6-foot high fence or equivalent height wall and fence combination to discourage through foot traffic. The barrier should be established on the subject site, so that it is not necessary to trespass on the Kyriakos property to install or maintain it. It should be kept in place and in good repair at least until after NW 81st Place has been built and accepted by the county for maintenance purposes. The barrier could be of a temporary character and need not be sight-obscuring, but should not be so flimsy that it does not deter through foot traffic.

(3) Because the construction-related trespass is occurring, mitigating measures to address it should be installed in a timely manner. The applicant should be required to submit to the planning director a plan for the barrier and applications for any necessary permits for review and approval within 30 calendar days of the effective date of this final order and to complete installation of the barrier within 30 calendar days after the planning director approves that plan and any necessary permits for the barrier.

(4) A condition of approval should be added consistent with the foregoing discussion.

II. CONCLUSION

Based on the findings and the substantial evidence cited or referenced herein, the hearings officer concludes that the proposed preliminary plat, future street plan and front yard setback exception do or will comply with the applicable approval standards in MCC 11.45 and 11.15, and should be approved, subject to the conditions of approval recommended in the Staff Report, with modifications noted herein.

III. DECISION

In recognition of the findings and conclusions contained herein, and incorporating the Staff Report and other reports of affected agencies and public testimony and exhibits received in this matter, the hearings officer hereby approves LD 36-93, subject to the conditions of approval recommended in the Multnomah County Department of Environmental Services Staff Report in this matter dated January 3, 1994, with the following changes:

1. Condition of approval 8 is hereby amended to read as follows:

8. Before non-exempt development or grading occurs on a lot or a building permit is issued, an application for that development, grading or permit must be approved by the County Department of Environmental Services consistent with applicable base and overlay zones or variations thereto permitted by law. A garage or carport on a given lot shall be setback at least twenty (20) feet from the inside of the sidewalk adjoining the front property line of that lot or, if there is no sidewalk, from the inside of the curb adjoining the front property line of that lot. The face of the plat shall be amended to include the substance of this condition.

2. Condition of approval 12 is hereby added to read as follows:

12. Before the Planning Director signs the final plat, submit and receive approval of the text of a conservation easement. The Planning Director shall approve the text if:

a. It prohibits removal of vegetation, excavation, filling, structures or other development within the easement, subject to exceptions approved by the Planning Director for reasons of public safety or environmental protection; and

b. The easement and/or the face of the plat identifies the south edge of the easement as the top of the bank of the creek or some distance south of that point.

3. Condition of approval 13 is hereby added to read as follows:

13. Within 30 calendar days of the effective date of this final order, the applicant shall submit to the planning director:

a. Written evidence that Mr. Kyriakos has authorized use of his property for access to the site and/or storage of site-related vehicles and supplies; or

b. A plan for a barrier where the site abuts the Kyriakos property and applications for any necessary permits for that barrier. The barrier should consist of a minimum 6-foot high fence or wall or combination of the two. The barrier should be established on the subject site, so that it is not necessary to trespass on the Kyriakos property to install or maintain it. It should be kept in place and in good repair at least until after NW 81st Place has been built and accepted by the county for maintenance purposes. The barrier can be of a temporary character and need not be sight-obscuring, but should not be so flimsy that it does not deter through foot traffic. The applicant shall complete installation of the barrier within 30 calendar days after the planning director approves that plan and any necessary permits for the barrier except for reasons the planning director finds are beyond the control of the applicant (e.g., adverse weather).

Dated this 21st day of January, 1994.

A handwritten signature in dark ink, appearing to read "Larry Epstein", written over a horizontal line.

Larry Epstein, AICP
Multnomah County Hearings Officer

Conditions of Approval:

1. Approval of this Tentative Plan shall expire **one year** from the effective date of this decision unless either the final plat and other required attachments are delivered to the Planning and Development Division of the Department of Environmental Services or an extension is obtained from the Planning Director pursuant to MCC 11.45.420. The final plat shall comply with ORS Chapter 92 as amended. **Please refer to the enclosed applicant's and surveyor's Instructions for Finishing a Type II Land Division.** Include the following revisions on the final plat:
 - A. The new road serving Lots 1-14 shall be named "NW 81st Place."
2. **Before the Planning Director signs the final plat,** comply with Transportation Division requirements for dedication and improvement of NW 81st Place, the street that will serve all 14 lots in the land division.
3. **Before the Planning Director signs the final plat,** comply with the Transportation Division requirements for improvement within the public right-of-way of NW Miller Road abutting the site.
4. On a **copy** of the final plat, show the building envelopes for Lots 1-14 after allowing for all approved yard setbacks.
5. **Before any site clearing or grading ,** obtain a Hillside Development or Grading and Erosion Control Permit pursuant to MCC 11.15.6700-.6730 if applicable. Compliance with the hillside development/grading and erosion control requirements shall be determined by the Planning Director. The decision by the Director shall include notice and opportunity for a hearing before a Hearings Officer as provided in ORS 215.416(11). Contact the Planning Division at 248-3043 for information.
6. **Before the Planning Director signs the final plat,** provide written evidence of an agreement between the Portland Water Bureau, Tualatin Valley Water District and Tualatin Valley Fire & Rescue authorizing the applicant to use water lines (owned by the Tualatin Valley Water District) in NW Miller Road for domestic and fire-fighting purposes.
7. **Before the Planning Director signs the final plat,** provide written confirmation from Tualatin Valley Fire and Rescue of compliance with that district's requirements concerning road design, grades and fire hydrant locations.
8. Land Division approval does not guarantee the ability to build a dwelling on any of the approved lots. Proof of compliance with all applicable zoning standards will be required prior to building permit approval. **The face of the plat shall be amended to include the substance of this condition.**
9. **Before the County Surveyor signs the final plat,** secure the right-of-way dedication from the owner of the adjacent property to the east for purposes associated with establishment and construction of NW 81st Place.
10. **Before the Planning Director signs the final plat,** submit the Future Street Plan to the Planning and Development Division for final review and approval. Incorporation of the map titled "Possible 4-Lot Development Off Brynwood Ave.," dated November 22, 1993, into the Future Street Plan Map.

11. On the face of the Future Street Plan map allow a blank area 2" x 3" for the County approval signature block.

Findings Of Fact

NOTE: Unless otherwise indicated, findings refer to both the Land Division and the Future Street Plan. Quoted material from the applicant's submittal appears in *Italic* type. Ordinance language appears in ***Bold Italic*** type.

1. Applicant's Proposal:

- A. **Land Division:** The applicant proposes to subdivide a 6.78 Acre parcel north and east of N.W. Miller Road, between NW Cornell and NW Brynwood, into 14 lots for single family development.

The site is heavily wooded with a steady southwestern slope. The applicant plans to save as much native vegetation as possible, generally removing only those trees along the routing of the road and on the home footprints. The routing of the entrance road will encroach upon the eastern neighbor's property in order to save a large stand of fir trees (the adjacent property owner has agreed to dedicate the right of way; a small remainder tract on the east side of the proposed right of way will be transferred to the adjacent landowner). The road is proposed to be the minimum width allowed under County standards in order to minimize its impact on the natural wooded hillside. It is anticipated that modifications to setback requirements may be beneficial for the siting of individual homes in order to improve the aesthetics of the neighborhood and to preserve significant stands of trees. The applicant will create a conservation easement at the north part of the property to preserve a beautiful wooded ravine.

Adjacent to the east is a 10-acre lot with one single family house and frontage on NW Brynwood. Adjacent to the west are two smaller lots on NW Miller Road with single family houses. The property to the north is vacant.

In consideration of site constraints including slopes, preservation of mature trees, and view potential, the applicant has proposed to limit density on the site to 14 lots, although 28 lots are theoretically possible in the R-10 District. Lots will range in size from 10,000 to 25,000 square feet (excluding area in the conservation easement). The subdivision has been designed with attention to placing lot lines to retain trees around potential building sites.

All lots will have frontage on a new public street, which will intersect NW Miller Road. The new street will have 28 feet of pavement and 50 feet of right of way. To minimize disturbance of the slope, the new street is proposed to terminate with a split cul de sac, a 15 foot pavement width with 41 foot radius. The location of the intersection with NW Miller Road was selected to enhance sight distance for safety and minimize tree removal along the street frontage.

- B. **Future Street Plan:** As required by the Land Division Ordinance (see Finding 3C) the applicant has proposed a Future Street Plan to serve as a guide for how the adjacent property to the east might be divided into single-family lots at some future time under the present R-10 zoning.

2. **Site Conditions and Vicinity Information:** Site conditions as shown on the Tentative Plan Map are as follows:
 - A. The site abut the northeasterly side of NW Miller Road, and is located south of Cornell Road and north of Brynwood.
 - B. **Slope:** Portions of site contain slopes of between 20 and 30 percent. Slopes and other issues are addressed in a geotechnical report dated November 4, 1993 prepared for the applicant by David J. Newton & Associates..
3. **Land Division Ordinance Considerations (MCC 11.45)**
 - A. The proposed land division is classified as a Type I because it is a land division which ***"will have a substantial impact on the use or development of nearby property such that determination at a public hearing is required, considering . . . plans or programs for the extension of the street or utility systems on or near the proposed division"*** [MCC 11.45 .080(E)(2)]. The proposal includes both a land division and a Future Street Plan. The Future Street Plan shows a way to provide needed street access to potential future lots in the plan area. A public hearing on the Future Street Plan is appropriate because the number of potential future lots in the plan, area creation of streets to support those lots, represent a substantial impact on that area.
 - B. MCC 11.45.150 requires that the Future street Plan ***"show the proposed continuation of streets in the Type I Land Division in sufficient detail to demonstrate that future division of the adjacent area in compliance with the provisions of [the Land Division Ordinance] is reasonably possible."***
 - C. MCC 11.45.230 lists the approval criteria for a Type I Land Division. The approval authority must find that:
 - (1) ***The Tentative Plan is in accordance with:***
 - a) ***the applicable elements of the Comprehensive Plan;***
 - b) ***the applicable Statewide Planning Goals adopted by the Land Conservation and Development Commission, until the Comprehensive Plan is acknowledged to be in compliance with said Goals under ORS Chapter 197; and***
 - c) ***the applicable elements of the Regional Plan adopted under ORS Chapter 197. [MCC 11.45.230(A)]***
 - (2) ***Approval will permit development of the remainder of the property under the same ownership, if any, or of adjoining land or of access thereto, in accordance with this and other applicable ordinances; [MCC 11.45.230(B)]***
 - (3) ***The Tentative Plan or Future Street Plan complies with the applicable provisions, including the purposes and intent of this Chapter; [MCC 11.45.230(C)]***

- (4) *The Tentative Plan or Future Street Plan complies with the Zoning Ordinance or a proposed change thereto associated with the Tentative Plan proposal; [MCC 11.45.230(D)]*
- (5) *If a subdivision, the proposed name has been approved by the Division of Assessment and Taxation and does not use a word which is the same as, similar to or pronounced the same as a word in the name of any other subdivision in Multnomah County, except for the words "Town", "City", "Place", "Court", "Addition" or similar words, unless the land platted is contiguous to and platted by the same applicant that platted the subdivision bearing that name and the block numbers continue those of the plat of the same name last filed; [MCC 11.45.230(E)]*
- (6) *The streets are laid out so as to conform, within the limits of the Street Standards Ordinance, to the plats of subdivisions and maps of major partitions already approved for adjoining property unless the approval authority determines it is in the public interest to modify the street pattern; [MCC 11.45.230(F)] and*
- (7) *Streets held for private use are clearly indicated on the Tentative Plan and all reservations or restrictions relating to such private streets are set forth thereon. [MCC 11.45.230(G)]*
- (8) *Approval will permit development to be safe from flooding and known flood hazards. Public utilities and water supply systems shall be designed and located so as to minimize or prevent infiltration of flood water into the systems. Sanitary sewer systems shall be designed and located to minimize or prevent:*
 - (a) *The infiltration of floodwater into the system; and*
 - (b) *The discharge of matter from the system into flood waters [MCC 11.45.230(H)]*

4. **Response to Type I Land Division Approval Criteria:** In this section, the applicant's responses to the approval criteria are in *italic type*. Staff discussion of applicant responses appear in paragraphs titled **Staff Comment**. A copy of the applicant's written responses to the land division approval criteria (along with other written information submitted by the applicant) is attached as Exhibit A.

A. Applicable Elements of the Comprehensive Plan

- (1) **Statewide Goals and Regional Plan:** The Multnomah County Comprehensive Plan has been found to be in compliance with Statewide Goals and the Regional Plan by the State Land Conservation and Development Commission. To the extent that the proposal satisfies the applicable policies of the Comprehensive Plan, the proposal is also consistent with statewide goals and the regional plan.
 - (a) **Policy No. 13, Air, Water, and Noise Quality:**

Applicant's Response: *"The application for land division supports this policy: First, the Applicant proposes to limit the density for the site and reduce street width to the minimum allowable in order to preserve existing trees and minimize overall disturbance of the land. These efforts should contribute to reduction of run off from the site which might otherwise reduce water quality.*

The application for land division supports this policy: First, the Applicant proposes to limit the density for the site and reduce street width to the minimum allowable in order to preserve existing trees and minimize overall disturbance of the land. These efforts should contribute to reduction of run off from the site which might otherwise reduce water quality.

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

Third, a public storm drain line is located in N.W. Miller Road. The Applicant proposes to pipe on site storm water from the public street and from roof and foundation drains to this public line. Catch basins in the streets will be designed to intercept oily waste and sediments.

Fourth, the proposed land division is close to employment centers in downtown Portland and the west side industrial campuses. Though N.W. Miller Road is not served by Tri-Met, buses do run on West Burnside/Barnes Road, which is within three quarters of a mile. The development will also be served by the west side light rail line at the intersection of Highways 217 and 26, when it is completed. These factors should contribute to reduced dependence on the automobile as the primary mode of transportation and therefore reduce air pollution.

Fifth, residential development is normally considered a noise sensitive rather than a noise generating use. The proposed new lots would not be expected to affect adjacent properties to any greater degree than existing residences. In fact, noise generated from this development should have minimal noise impact owing to the limited density compared with what might be permitted and retention of on site vegetation which could serve as sound buffers.

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

Staff Comment: No significant impact on air pollution will result from the additional houses allowed by the proposed land division. The Unified Sewerage Agency has verified that public sewer is available to the site. For these reasons and those stated by the applicant, the proposal satisfies Policy 13.

- (b) **Policy No. 14, Development Limitations:** This policy is concerned with mitigating or limiting the impacts of developing areas that have any of the following characteristics: slopes

exceeding 20%; severe soil erosion potential; land within the 100 year floodplain; a high seasonal water table within 0-24 inches of the surface for 3 or more weeks of the year; a fragipan less than 30 inches from the surface; and land subject to slumping, earthslides or movement.

Applicant's Response: *"The site is sloped in excess of 20% and therefore must be developed in a manner consistent with the requirements of this policy.*

The site has slopes ranging from 20% to 30%, with a ravine running across the north part of the property with slopes approaching 50%. The ravine is a major feature which affects properties both east and west of this site. There is a particularly steep "road cut" bank along the east side of N.W. Miller Road.

The Applicant has addressed the development limitations of the site in several ways: First, the Applicant has retained an engineering firm to conduct a geotechnical survey of the site (Preliminary Geotechnical Reconnaissance). The engineering firm has considered the specific site limitations and developed a design which includes mitigating measures following civil and geotechnical engineering practices.

Second, the number of lots has been dramatically limited to 14, compared to 28 which would be permitted in the R-10 District if the site was not sloped. Limiting the number of lots has the effect of minimizing potential disturbance of the slope and maximizing retention of existing trees.

Third, the width of the public street is proposed to be the minimum allowed under County standards, with a sidewalk on one side of the street, and at a grade which approaches the upper limits of County standards, further reducing the extent of site disturbance.

Fourth, the intersection with N.W. Miller Road has been located at the "least steep" section of the frontage, at the east property boundary. The proposed street rises across, then more or less follows, contour lines for most of its length. The proposed street will also provide a street stub for access to the adjoining property to the east. The future street would run roughly parallel to N.W. Miller Road, following contour lines across the site to connect to N.W. Brynwood. These measures will minimize the grading, cut and fill work, and tree removal required to construct public facilities.

Finally, the Applicant will apply for a Hillside Development Permit and will comply with any requirements of this review.

The Applicant proposes to respect limitations imposed by the County as well as by the site. The Applicant believes that proposed design and construction measures will mitigate to the extent possible the potential difficulties associated with development on a sloped site."

Staff Comment: Surface run-off will be handled by storm drain facilities to be approved by the County Engineer. The site is in the Tualatin Drainage Basin. Parts of the site also appear to be in hazard areas as identified on the County's Slope Hazard Map. Both of these factors automatically require compliance with the Hillside Development and Grading and Erosion Control requirements in MCC 11.15.6700. For these reasons and those stated by the applicant, the proposal satisfies Policy 14.

(c) **Policy No. 16, Natural Resources:**

Applicant's Response: *"There are no resource issues identified for this site. The property is not designated "Significant Environmental Concern." The site does not have mineral or aggregate resources and is not a significant habitat, wilderness, natural area, or wetland. The site is not designated as a historic or cultural resource. The small seasonal creek in the ravine on the north part of the site has not been listed as a wild and scenic waterway."*

The Applicant concludes that Policy 16 of the Multnomah County Comprehensive Plan does not apply to this site.

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

(d) **Policy No. 22, Energy Conservation:** This policy requires a finding that the following factors have been considered:

- (1) *The development of energy-efficient land uses and practices;*
- (2) *Increased density and intensity of development in urban areas, especially in proximity to transit corridors and employment, commercial and recreational centers.*
- (3) *An energy-efficient transportation system linked with increased mass transit, pedestrian and bicycle facilities;*
- (4) *Street layouts, lotting patterns and designs that utilize natural environmental and climate conditions to advantage.*
- (5) *Finally, the county will allow greater flexibility in the development and use of renewable energy resources.*

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

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

Third, the proposal for a street as narrow as permitted by County standards with lots on both sides is an efficient design which maximizes the number of residences using a single street while minimizing the construction effort and materials and the disturbance of the natural condition of the site.

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

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

- (e) **Policy No. 24, Housing Location:** Multnomah County's policy is to accommodate the location of a broad range of housing types

Applicant's Response: *"The proposed land division is a "Minor Residential Project" as it is anticipated to have a minimal impact on the surrounding area and on the support system and probably will increase the population by less than 50 (36 persons, based on 2 persons per each of the 14 residences plus the school district estimate of 8 children for the development; Beaverton School District Residential Impact Statement).*

The locational criteria address the following:

A. Access. All new lots will have direct access to a public street. The new public street serving the development will connect to N.W. Miller Road, an existing public street designated as a Neighborhood Collector. The intersection of the proposed street with N. W. Miller Road has been located to maximize sight distance. The number of trips generated by fourteen residences is not expected to affect the capacity of N.W. Miller Road and the Applicant will comply with the reasonable street frontage improvements which may be required by the County to mitigate the specific impacts of this development.

B. Site Characteristics. The site is sufficiently wide to accommodate a public street with lots on both sides. The proposed design provides convenient access to the regional transportation system and minimizes the total amount of new paved surface needed within the development. The slope of the site has been accommodated in the design by reducing the width and increasing the grade of the street, by limiting the number of lots which could be created on the site, and by restricting development in the steepest part of the site where a conservation easement is proposed (ravine on the northern part of the site). In addition, the Applicant has retained an engineering firm which has reviewed potential difficulties which might be associated

with development of a sloped site and considered appropriate civil and geotechnical design solutions and mitigating measures.

C. Impact of the Proposed Change on Adjacent Lands. The site is designated for residential development and no change is proposed to the R-10 designation. The proposed land division is similar to others in the vicinity, such as Taylor Crest. Urban services are available to the site. Retention of existing trees and larger lots will help to ensure privacy for adjacent properties as well as residents of this development.

Based on these considerations, the Applicant believes that this project is consistent with the Housing Location Policy and locational criteria for a minor residential project."

Staff Comment: For the reasons stated by the applicant, the proposal satisfies Policy 24.

(f) Policy No. 35, Public Transportation:

Applicant's Response: *"The proposed subdivision is within three quarters of a mile of a bus line located in W. Burnside/Barnes Road. Eventually, connections will be possible to the west side light rail line at the intersection of Highways 217 and 26.*

The project supports the goal of providing residences within the urban area with convenient access to employment and commercial centers. The density proposed is consistent with the County's land use designation and site constraints."

Staff Comment: Staff concurs with the applicant's statement. The proposal satisfies Policy 35.

(g) Policy No. 36, Transportation System Development Requirements

Staff Comment: The County Engineer has determined that right-of-way dedications and improvements for NW 81st Place are necessary in order for the proposed land division to comply with the provisions of the Street Standards Ordinance. Improvements to Miller Road are also necessary. Conditions 2 and 3 reference those dedication and improvement requirements. Subject to these conditions, the proposal satisfies Policy 36.

(h) Policy No. 37, Utilities: This policy requires a finding that water, sanitation, drainage and communication facilities are available:

Water And Disposal System

A . *The proposed use can be connected to a public sewer and water system, both or which have adequate capacity; or*

B. The proposed use can be connected to a public water system, and the Oregon Department of Environmental Quality (DEQ) will approve a subsurface sewage disposal system on the site; or

C. There is an adequate private water system, and the DEQ will approve a subsurface sewage disposal system on the site; or

D. There is an adequate private water system, and a public sewer with adequate capacity.

Drainage

E. There is adequate capacity in the storm water system to handle the run-off; or

F. The water run-off can be handled on the site or adequate provisions can be made; and

G. The run-off from the site will not adversely affect the water quality in adjacent streams, ponds, lakes or alter the drainage on adjoining lands.

Energy and Communications

H. There is an adequate energy supply to handle the needs of the proposal and the development level projected by the plan; and

I. Communications facilities are available.

The proposal satisfies Policy 37 for the following reasons:

Water and Sanitation: The Portland Water Bureau has verified that water service is be available to the property from a 12-inch main in NW Miller Road. The Water Bureau will provide service in cooperation with the Tualatin Valley Water District, which owns the line. Public sewer is available to the site which was annexed to the Unified Sewerage Agency of Washington County by the Portland Metropolitan Area Local Government Boundary Commission on September 23, 1993 (Final Order #3236). The annexation became final November 10, 1993. The proposal complies with Item A above.

Drainage:

The applicant proposes a storm drainage system that will parallel the sanitary sewer system, with roof drain connections piped directly into main storm drains. Retention facilities will be designed and constructed to maintain pre-development flows for off site runoff. The applicant will perform a limited hydrology study to consider how the retention system will affect peak runoff for the immediate watershed. The applicant plans to provide storm water quality by the

installing sump style storm water inlets and manholes to allow for settling of suspended material. The applicant will design the facilities to capture oily wastes. The proposal is consistent with Items *E* through *G* above

Energy and Communication: Portland General Electric provides electric power, Northwest Natural Gas Co. provides gas service and US WEST Communications provides telephone service. The applicant plans to place existing overhead power lines along the Miller Road right of way underground as part of the street improvements. The proposal satisfies Items *H* and *I* above.

- (i) **Policy No. 38, Facilities:** The property is located in the Beaverton School District, which has indicated that it is able to accommodate student enrollment from houses located on the subject property. Tualatin Valley Fire and Rescue provides fire protection. The district will require the applicant to provide written evidence of authorization to use one of the 12-inch water lines in Miller Road for fire-fighting purposes. The Tualatin Valley Water District owns the 12-inch lines, and the lines provide adequate fire flow and pressure. The fire district will also require engineered drawings and related information to assure compliance with the districts requirements for fire flow, road design, grades and hydrant location. The Multnomah County Sheriff's Office provides police protection and has stated that there is an adequate level of police service available for the area

- (j) **Policy No. 40, Development Requirements:**

Applicant's Response: *"The Applicant proposes to construct a sidewalk on one side of the new street which will connect to N.W. Miller Road. The Applicant expects to comply with the County's street frontage requirements, which could include construction, or commitment to construct, half street improvements, including a public sidewalk. At present, this will be the only sidewalk on N.W. Miller Road. Potential residents will not find bicycle or pedestrian travel convenient until additional improvements are made to N.W. Miller Road. However, this project will meet the County's reasonable obligations to support this policy."*

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

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

Applicant's Response: *"This proposal includes a Future Street Plan [FSP] which demonstrates how access can be provided to adjacent properties."*

The FSP shows extension of a street from the proposed subdivision street to connect with N.W. Brynwood. The future street would be roughly parallel to N.W. Miller Road. The future street would provide access to a double row of lots and would follow contour lines across the property to minimize steep grades. The east-west orientation of the future street would maximize solar potential for future lots. The north part of the property to the east has frontage on and access to N.W.

Brynwood. Extending a street north from the proposed future street would not be practical due to the slope.

The steeply sided ravine on the north part of this site limits access to the north. Adjacent properties to the north cannot be served by the proposed subdivision street without heroic cut and fill or bridging efforts.

Access to the west is also limited by slope considerations. These properties have frontage and access on N.W. Miller Road. The existing homes of Tax Lots 150 and 143 are presently served by a private driveway located approximately 350 feet west of the proposed public street intersection for access to the subdivision.

Most of the area west of N.W. Miller Road is subject to a Future Street Plan adopted with Taylor Crest Subdivision. The intersection location for the proposed street will not conflict with future streets to the west of N.W. Miller Road as the land falls away sharply to the west and access would most likely come from streets to the west or would intersect where the land is not as steep."

Staff Comment: Staff concurs with the reasons for the applicant's determination that extension of streets from the subdivision site to serve land to the north and west would be impractical due to topographic considerations. As a supplement to the Future Street Plan Map the applicant has submitted a map titled "Possible 4-Lot Development Off Brynwood Ave." dated November 22, 1993. The map depicts a concept for how a portion of the adjoining Tax Lot '25' to the east of the land division site could be further divided through use of a private accessway running off Brynwood Avenue. Incorporation of the supplemental map into the Future Street Plan Map is a condition of approval. For the reasons stated by the applicant and subject to the conditions of approval, the proposed land division satisfies MCC 11.45.230(B).

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

- (1) MCC 11.45.015 states that the Land Division Ordinance. . . ***"is adopted for the purposes of protecting property values, furthering the health, safety and general welfare of the people of Multnomah County, implementing the Statewide Planning Goals and the Comprehensive Plan adopted under Oregon Revised Statutes, Chapters 197 and 215, and providing classifications and uniform standards for the division of land and the installation of related improvements in the unincorporated area of Multnomah County."*** The proposed land division satisfies the purpose of the Land Division Ordinance for the following reasons:
 - (a) The size and shape of the proposed lots will accommodate proposed residential development that satisfies yard requirements in the Zoning Ordinance without overcrowding, and will thereby protect property values.
 - (b) The finding for Plan Policies 37 and 38 address water supply and sewage disposal, and education, fire protection and police protection, respectively. For the reasons stated in those findings, the proposal furthers the health, safety, and general welfare of the people of Multnomah County:

- (c) The proposed land division complies with the applicable elements of the Comprehensive Plan. The State Land Conservation and Development Commission has found the Comprehensive Plan to be in compliance with Statewide Planning Goals.
 - (d) The proposal meets the purpose of *"providing classifications and uniform standards for the division of land and the installation of related improvements"* because the proposal is classified as a Type I Land Division and meets the approval criteria for Type I Land Divisions for the reasons stated in these findings. The conditions of approval assure the installation of appropriate improvements in conjunction with the proposed land division.
- (2) MCC 11.45.020 states that the intent of the Land Division Ordinance is to . . . *"minimize street congestion, secure safety from fire, flood, geologic hazards, pollution and other dangers, provide for adequate light and air, prevent the overcrowding of land and facilitate adequate provisions for transportation, water supply, sewage disposal, drainage, education, recreation and other public services and facilities."* The proposal complies with the intent of the Land Division Ordinance for the following reasons:
- (a) The proposal minimizes street congestion by providing additional right-of-way and appropriate improvement for public streets.
 - (b) The finding for Plan Policies 38, 14 and 13 address fire protection, flood and geologic hazards, and pollution, respectively. For the reasons stated in those findings, the proposal secures safety from fire, flood, geologic hazard, and pollution.
 - (c) The proposal meets the area and dimensional standards of the R-10 zoning district as explained in Finding 4.E and thereby provides for adequate light and air and prevents the overcrowding of land.
 - (d) The finding for Plan Policies 35 and 36 address street and public transportation. The finding for Policies 37, 14 and 38 address water supply and sewage disposal, storm drainage, and education, fire protection and police service. For the reasons stated in those findings, the proposed land division facilitates adequate provision for transportation, water supply, sewage disposal, drainage, education, and other public services and facilities.
- (3) **Land Suitability [MCC 11.45.460]**
- Applicant's Response:** *"Although the site has slopes exceeding 20%, geotechnical and engineering investigation has found no hazard which makes the site unsuitable, or incapable of being suitable, for the intended use. In fact, the site design, narrow public street, and designation of a conservation easement for the most severe slopes in the ravine area, among other things, reflect the Applicant and Engineer's response to challenges of a project in a sloped area. Please also refer to the Geotechnical Analysis and request for Exception."*

Staff Comment: For the reasons stated by the applicant, the proposal satisfies MCC 11.45.460

(4) **Lots and Parcels [MCC 11.45.470]**

Applicant's Response:

"A.

Dimensional requirements specified in the MCC are met. However, owing to concerns for maintaining vegetative cover and limiting grading, the Applicant has requested a waiver of the minimum front yard setback for all lots."

B.

Side lot line are generally perpendicular to the front lot lines and radial to street curves. This is not the case at the end of the cul de sac, where angles of lot lines are placed to accommodate sufficient buildable areas and respond to the limited size of the cul de sac.

C.

Lots 1 and 2 are "double frontage lots" located between NW Miller Road and the proposed new street. The County Engineer has stated that access is restricted to Miller Road, so additional lots with frontage on that street could not be created. Also, owing to the steep bank adjacent to NW Miller Road, there is no practical access to that street without creating tunnel-like cuts; NW Miller Road's elevation is approximately 785 feet; the upper elevation for the lots at the proposed new street is 815 feet for Lot 1 and 810 feet for Lot 2."

Staff Comment: For the reasons stated by the applicant, the proposal satisfies MCC 11.45.470

(5) **Street Layout [MCC 11.45.490]**

Applicant's Response: *"The street layout for this site has been discussed with the County's Transportation staff and the adjacent property owner to the east. The results of these efforts are reflected in the design of the proposed street and the Future Street Plan, which is submitted as part of this application and discussed in a preceding section."*

Staff Comment: The Planning and Transportation Division staff have review the proposed street layout and have determined that it is appropriate for the site. The proposal satisfies MCC 11.45.490

(6) **Street Design [MCC 11.45.500]**

Staff Comment: The applicant has stated that street design will be prepared in accordance with County standards, and will thereby satisfy MCC 11.45.500.

(7) **Street Names [MCC 11.45.530]**

Applicant's Response: *"No street name has yet been proposed for the new street but will be confirmed to be satisfactory to Multnomah County before final plat."*

Staff Comment: The new street will be named NW 81st Place, in conformance with the County's practice of naming north-south dead-end streets as "places" with numbers consistent with the street grid system used in the Portland metro area.

(8) **Sidewalks, Etc. [MCC 11.45.540]**

Applicant's Response: *"A sidewalk is proposed for one side of the new street. This will connect to NW Miller Road, where there are at present no public sidewalks. A single sidewalk will provide pedestrian access sufficient for a total of 14 dwellings and is consistent with the goal of minimizing construction work that would disturb the site."*

Staff Comment: The Transportation Division has given preliminary approval to the applicant's plan for sidewalks. The proposal satisfies MCC 11.45.540.

(9) **Easements [MCC 11.45.550]**

Applicant's Response: *"Easements for utilities and slope easements, if required for the new street and N.W. Miller Road, will be shown on the final plat."*

Staff Comment: For the reasons stated by the applicant, the proposal satisfies MCC 11.45.500.

(10) **Street Trees [MCC 11.45.560]**

Staff Comment: The applicant has stated that street trees will be installed with construction of new homes.

(11) **Utilities [MCC 11.45.570]**

Staff Comment: The applicant has stated that utilities will be designed and provided to the standards of Multnomah County or the appropriate provider. This practice will assure compliance with MCC 11.45.570.

D. **Zoning Ordinance Considerations [MCC 11.45.230(D):** The applicable Zoning Ordinance criteria are as follows:

- (1). The site is zoned R-10, Single-Family Residential District.
- (2). The following area and dimensional standards apply per MCC 11.15.2864:
 - (a) The minimum lot size for a single-family dwelling shall be 10,000 square feet. As shown on the Tentative Plan Map, all 14 lots exceed this requirement.
 - (b) The minimum average lot width shall be 80 feet. As shown on the Tentative Plan Map, all 14 lots exceed this requirement.

- (c) The maximum lot coverage shall be 30 percent. Compliance with this requirement will be checked for the remaining lots during the zoning review process before building permit issuance.
- (d) The minimum yard setbacks shall be 30 feet front, 10 feet side, and 25 feet rear. Pursuant to MCC 11.15.2866(C) the applicant has requested approval of a waiver from the minimum 30-foot front yard setback requirement for all 14 lots. 11.15.2866(C) provides as follows:

If topographical or other conditions exist which make these requirements unreasonable, the Hearings Officer may waive the front, side or rear yard requirement.

Applicant's Response: *"The Applicant has submitted an application for subdivision of a 6.78 Acre property into 14 single family lots. The site has slopes ranging from 20% to 30%, with a ravine running across the north part of the property with slopes approaching 50%.*

The subdivision layout has been planned with sensitivity to constraints of topography and existing vegetation. The number of lots has been limited to 14; the north part of the site will be protected from development with a conservation easement. The width of the paved road will be 28 feet in a 50 foot right of way; this is the minimum possible pavement permitted by County standards and was proposed to minimize grading, vegetation removal, and disruption of the natural slopes.

With these measures already taken, it seems reasonable to confine construction activities on the lots as close to the proposed street as possible, with the aim of minimizing the total area of the site subject to grading and removal of existing trees.

The Applicant requests approval of a waiver for the minimum front yard requirement for the entire project, to permit maximum flexibility in the siting of each home on each lot.

The Exception could be granted because MCC 11.1 5.2866.C specifically authorizes the Hearings Officer to waive yard requirements "If topographical... conditions exist which make these requirements unreasonable...."

The Applicant believes that it would be unreasonable to treat the site as if it were flat and insist on the standard 30 foot front yard setback. It would be unreasonable to require that more area of vegetation be removed than necessary to construct homes on these sites, from the standpoint of aesthetics and maintaining the stability of the slopes. The Applicant has taken great care to prepare a plan that is sensitive to the constraints of the site, including existing vegetation and the slopes. It would be unreasonable to require an invasion of an additional 30 feet when such intrusion is unnecessary.

The right of way width of 50 feet for a 28 foot wide pavement will create a sense of space regardless of the actual home setbacks. With 28 feet of pavement, 11 feet from the edge of curb on the east side of the street and 6 feet from the edge of sidewalk on the west side of the street, 11 feet from the edge of curb, will always remain public property and undeveloped.

The homes in this subdivision will all be on a cul de sac and will become part of a community of similarly built residences. The exception to the front yard requirement would not have an effect on adjacent properties, as it would only apply within this plat. The Applicant may not set all 14 homes at the front property line, but requests the setback requirement be waived to permit the most flexibility in locating each home on each lot to retain the maximum number of trees and preserve view corridors.

Staff Comment: Staff concurs with the applicant's justification for waiving the front yard setback requirement, especially in light of the fact that the County Transportation Division has indicated that the reduced 28-foot street width is acceptable in this case.

- (e) *The proposed land division satisfies the solar access provisions of the Zoning Ordinance even though only four of the five proposed lots have north-south dimensions of 90 feet and do not have front lot lines that are within 30 degrees of a true east-west orientation as required by MCC 11.15.6815(A). The applicant has submitted information in support of Exemptions from the above solar design standard under MCC 11.15.6820, and in support of Adjustments under MCC 11.15.6822.*

Applicant's Response: *"The entire site is sloped in excess of 20%. The direction of slope is more westerly than southerly, exceeding 45 degrees west of true south according to the Engineer.*

The entire site is heavily wooded, with a mixture of deciduous and evergreen trees. In order to preserve the natural character of the site and minimize potential for erosion and land movement, the Applicant proposes to retain as many trees as possible. In fact, deed restrictions proposed to be recorded with the subdivision will limit tree removal in the development.

The orientation of the site to the existing location of N.W. Miller Road and topography of the area prevents an alternative street location for the site which would be better suited for solar access. The only way to build a street for this property is in a north-south orientation. This precludes compliance with the "Basic Requirement" as only lots with frontage on the cul de sac portion of the street can have a front lot line oriented within 30 degrees of a true east-west axis.

Based on the considerations of slope orientation, existing and future tree cover, and the necessity that the new street be constructed in a north-south direction, the Applicant requests exemption from solar

access provisions for 7 of the proposed lots and adjustment of the required percentage for this site to 28.6%.

Note that the proposed future street will be oriented nearly east-west and lots created on that frontage will probably all comply with the Basic Requirement for solar access."

Staff Comment: Staff concurs with the applicant's analysis. Therefore, pursuant to MCC 11.15.6815(A)(3), the percentage of lots that must comply with MCC 11.15.6815 is reduced from 80 percent to 28.6 percent.

- E. **Subdivision Name** [MCC 11.45.230(E)]: The County Surveyor will ascertain that the proposed plat name conforms with applicable statutes and ordinances, including MCC 11.45.230(E).
- F. **Street Layout** [MCC 11.45.230(F)]: No plats have been approved for adjacent properties which affect this proposal. Therefore, MCC 11.45.230(F) is not applicable.
- G. **Private Streets** [MCC 11.45.230(G)]: The proposed land division does not include any new private streets. Therefore, MCC 11.45.230(F) is not applicable.
- H. **Flooding and Flood Hazards** [MCC 11.45.230(H)]: The criterion is not applicable because the site is not in any flood plain.

Conclusions:

- 1. The proposed land division and Future Street Plan satisfy the applicable elements of the Comprehensive Plan.
- 2. The proposed land division and Future Street Plan satisfy the approval criteria for Type I land divisions.
- 3. The proposed land division and Future Street Plan comply with the zoning ordinance.

IN THE MATTER OF: LD 36-93

Signed by the Hearings Officer:	January 21, 1994 (see page 14)
Decision Mailed to Parties	January 28, 1994
Decision Submitted to Board Clerk:	January 28, 1994
Last day to Appeal Decision	February 7, 1994
Reported to Board of County Commissioners	February 8, 1994

Appeal to the Board of County Commissioners.

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

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

To appeal the Hearings Officer Decision, a "Notice of Review" form and fee must be submitted to the Multnomah County Planning Director. For further information, call the Multnomah County Planning and Development Division at 248-23043.

MEETING DATE: February 8, 1994.

AGENDA NO: P-3

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: HV 23-93 Decision

BOARD BRIEFING Date Requested:

Amount of Time Needed:

REGULAR MEETING: Date Requested: February 8, 1994

Amount of Time Needed: 2 Minutes

DEPARTMENT: DES

DIVISION: Planning

CONTACT: R. Scott Pemble

TELEPHONE #: 3182

BLDG/ROOM #: 412/103

PERSON(S) MAKING PRESENTATION: Planning Staff

ACTION REQUESTED:

(x) Denial

[] INFORMATIONAL ONLY [] POLICY DIRECTION [] APPROVAL [] OTHER

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

HV. 23-93 Review the January 18, 1994 Hearings Officer Decision, granting the appeal of a hillside variance in the RR, rural residential zoning district, reversing the Planning Director's Decision and deny HV 23-93, all for property at 1875 NW Ramsey Drive

SIGNATURES REQUIRED:

ELECTED OFFICIAL:

OR

DEPARTMENT MANAGER: 

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

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

0516C/63

6/93

BOARD OF
COUNTY COMMISSIONERS
1994 FEB - 1 AM 9:47
MULTNOMAH COUNTY
OREGON



MULTNOMAH COUNTY OREGON

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

DIVISION OF PLANNING AND DEVELOPMENT

Board Planning Packet Check List

File No. 402393

☒ Agenda Placement Sheet No. of Pages 1

☒ Case Summary Sheet No. of Pages 1

☐ Previously Distributed _____

☐ Notice of Review No. of Pages _____

*(Maybe distributed at Board Meeting)

☐ Previously Distributed _____

☒ Decision No. of Pages 6

(Hearings Officer/Planning Commission)

☐ Previously Distributed _____

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

(CL/1)



BOARD HEARING OF February 8, 1994

TIME 1:30pm

CASE NAME Paasch Hillside Variance

NUMBER

HV 23-93

1. Applicant Name/Address

Philip Paasch

8695 Shawn Place, 97223

2. Action Requested by applicant

Approval of a 25 foot front yard residential hillside variance to allow construction of a new single family residence five feet from the public right-of-way.

ACTION REQUESTED OF BOARD

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

3. Planning Staff Recommendation

Approval

4. Hearings Officer Decision:

Denial

5. If recommendation and decision are different, why?

The Hearings Officer determined that the applicant had not demonstrated that the proposed location of the dwelling would result in less cutting and filling or development of the property in a manner that would be less hazardous or detrimental to the public safety than development within the required 30 foot setback.

ISSUES

(who raised them?)

- a. Cutting and filling required by the proposed location of the dwelling (appellant)
- b. Hazardous conditions resulting from view obstruction of proposed dwelling (appellant)
- c. Septic tank and drainfield location (applicant)

Do any of these issues have policy implications? Explain.

No



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

Decision

This Decision Consists of a Findings and Conclusions
January 18, 1994

HV 23-93 (Appeal)	Appeal of Hillside Variance	Sectional Zoning Map # 123
----------------------	--------------------------------	-------------------------------

I. SUMMARY

Location: 1875 NW Ramsey Drive

Legal: Lot 10 (except the north 30 feet) and Lot 11 (except the south 40 feet), Block 3, Skyline Heights subdivision

Site size: 12,859 square feet

Owner/Applicant: Philip Paasch

Appellants: Luther Barker III, *et al.*, represented by Daniel Kearns

Comp Plan/Zone: Rural Residential and RR

Decision: Appeal granted; planning director decision reversed; variance denied

On October 6, 1993, Mr. Paasch (the "applicant") submitted an application for a what is known as a "hillside" variance pursuant to MCC 11.15.8525.¹ The RR district requires structures to be set back at least 30 feet from the front property line unless a variance is granted. The applicant proposed a 25-foot front yard setback variance, stating that extreme cutting and filling of the property would have to occur for a home on the site to have a 30-foot front yard setback. The planning director issued a written decision dated October 21, 1993 approving the requested variance. Mr. Barker filed the written appeal on November 2. Appellants and their counsel argue the application does not comply with MCC .8525 among other things.

Hearings Officer Larry Epstein held two hearings regarding the appeal. Between hearings the parties met to consider settlement of the dispute, but settlement was not reached.

The hearings officer finds that the record does not show that compliance with the required setback will require extraordinary cutting or filling or will result in unstable slopes. Therefore, the hearings officer concludes that the planning director's decision is not supported by substantial evidence in the record and should be reversed.

¹ A section in Multnomah County Code Chapter 11.15 is hereafter abbreviated as MCC .xxxx consistent with the citation format in the chapter.

CITY



Zoning Map

Case #: HV 23-93

Location: 1875 N W Ramsey Drive

Scale: 1 inch to 200 feet (approx)

Shading indicates subject property.

SZM # 123, SW 1/4 Sec 25, TIN, R1W

CITY OF
PORTLAND

(83')
5.00 Ac.

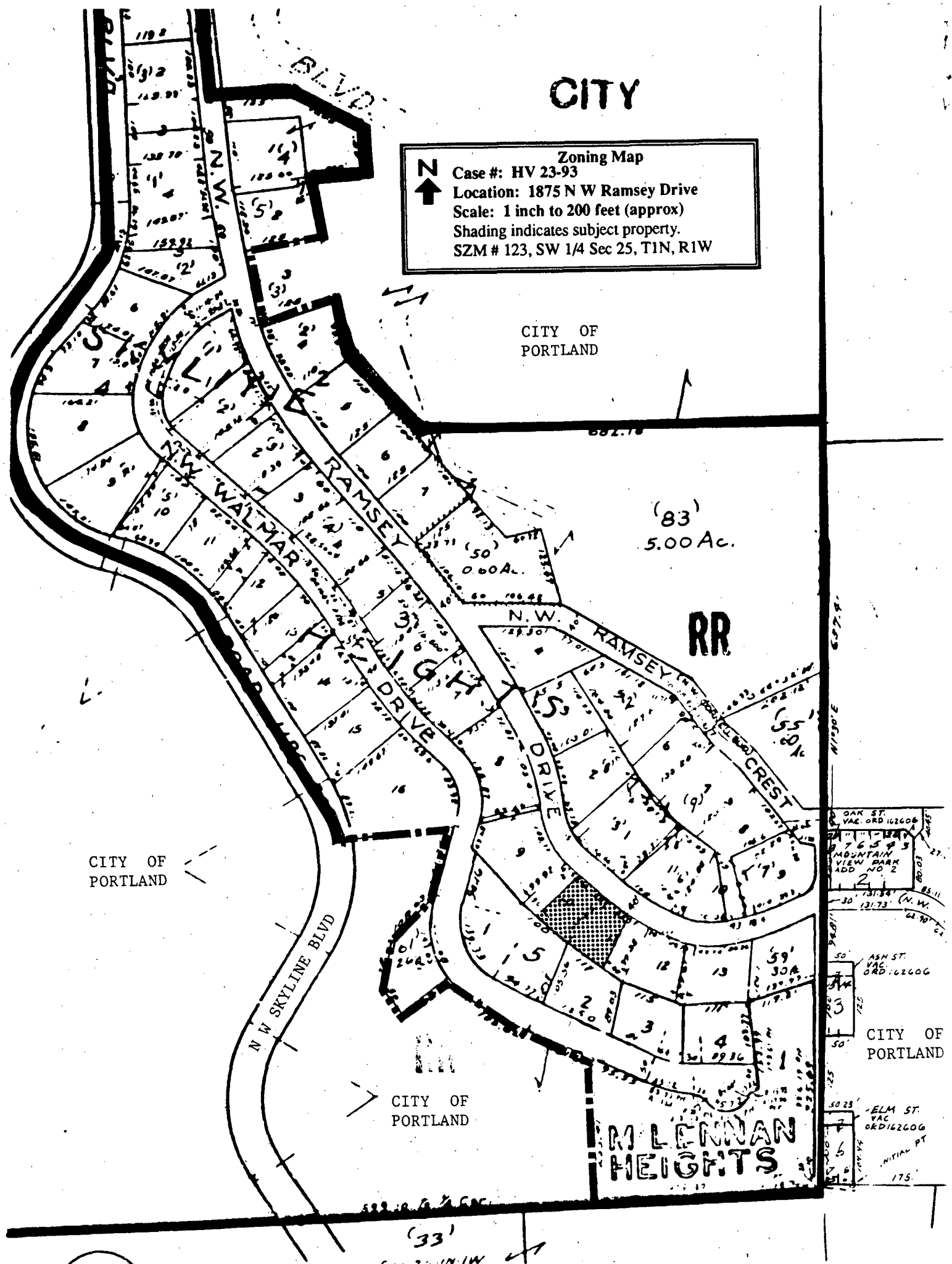
RR

CITY OF
PORTLAND

CITY OF
PORTLAND

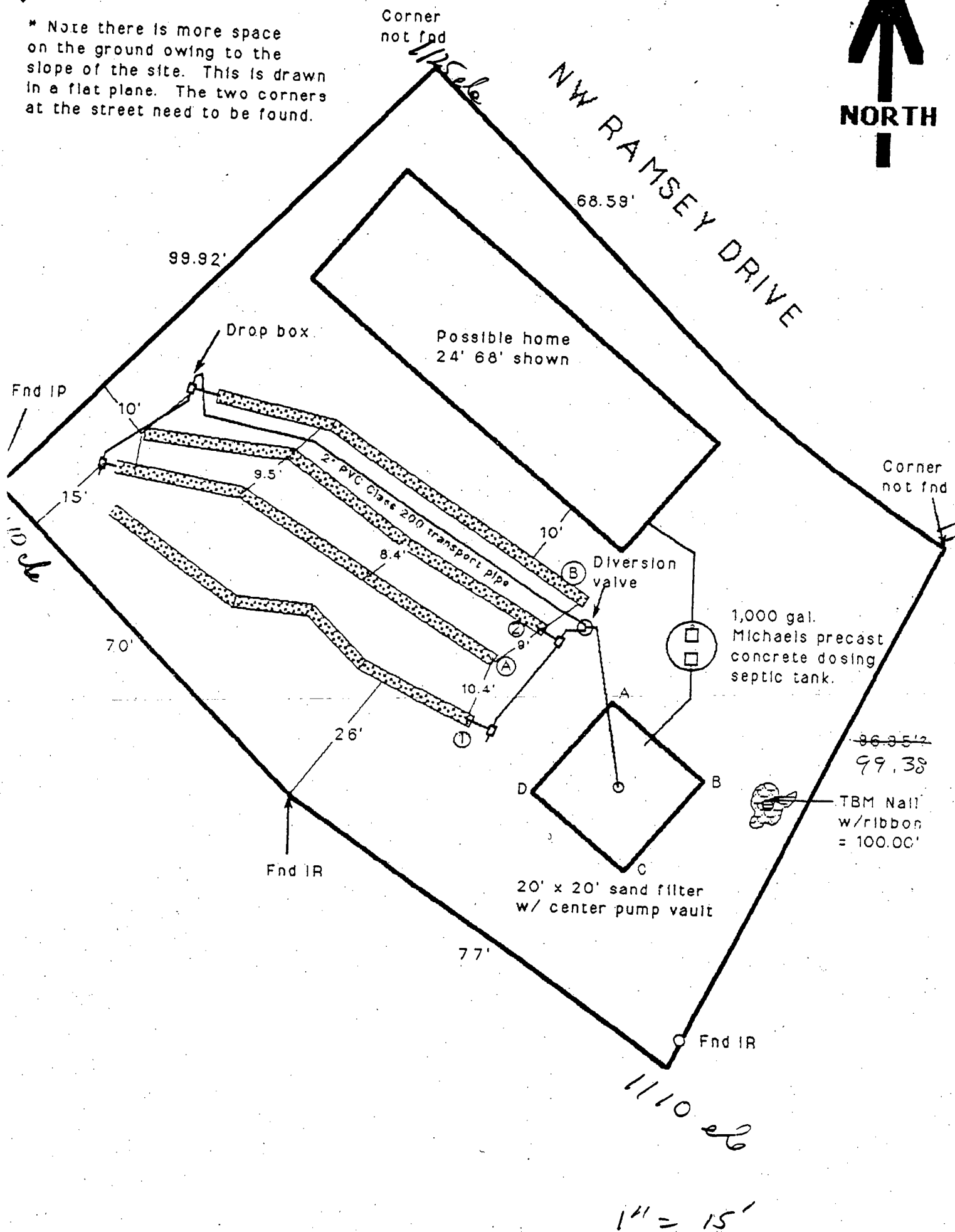
CITY OF
PORTLAND

M LENNAN
HEIGHTS



(33')
SEC 30 1N-1W

* Note there is more space on the ground owing to the slope of the site. This is drawn in a flat plane. The two corners at the street need to be found.



II. BASIC FACTS

1. The subject site is situated on the southwest side of NW Ramsey Drive in the Skyline Heights subdivision, which is built on the south and west-facing slope of a small ridge of the Tualatin Mountains. The subdivision plat shows that it contains about 50 lots that are roughly 10,000 to 20,000 square feet apiece. The subdivision is designated and zoned Rural Residential and RR. It is surrounded by land that has been annexed into the City of Portland. Lots in the subdivision have vehicular access to Skyline Boulevard from NE Ramsey Drive, a roughly 20-foot wide paved public street without curbs or sidewalks. The site visit and aerial photograph show most of the lots are developed with single family detached homes. The appellant's hearing memorandum includes a table showing all but 2 of 16 existing homes in the subdivision comply with the 30-foot front yard setback, although the applicant disputed the accuracy of information in that table. The record does not attempt to resolve the dispute.

2. The applicant's site contains about 12,860 square feet. It is roughly 100 feet deep (southwest to northeast). It is about 70 feet wide along the NW Ramsey Drive frontage and about 147 feet wide along the southwest edge. See the survey by Al Hertel in the record for specifics.

3. The assumed northwest and northeast corners of the site (i.e., the ends of the NW Ramsey Drive frontage) are at an elevation of about 1125 feet above mean sea level ("msl"), based on the testimony and evidence by Mr. Smits. The southwest and southeast corners of the site (i.e., the ends of the southwest edge) are at an elevation of about 1110 feet msl.

4. Based on the letter from HG Schlicker and Associates, Inc. dated January 3, 1994, the topographic map, slides, testimony and site visit, the site slopes down to the southwest at a slope of 27 percent. The majority of that difference in elevation occurs along the Ramsey Drive frontage of the site where grading for construction of Ramsey Drive heightened the slope to 34 percent. The rest of the site is sloped about 20 percent. The site is not in a geologic hazard area, based on the County's map of such areas. The site does not show evidence of earth movement or other hazardous geologic condition.

5. Lots northwest and southeast of the site (i.e., abutting the southwest side of Ramsey Drive) have about the same topography as the site. Lots across Ramsey Drive to the northeast are at a higher elevation; the applicant testified Mr. Barker's lot is 20 feet higher. Lots southwest of the site are at a lower elevation; the applicant testified the adjoining lot to the southwest is 12 feet lower.

6. The applicant wants to develop the site with a single family detached home. The applicant did not offer a home design as part of the record. He testified that a specific design has not been prepared, but he plans a 2 1/2- to 3-story home containing more than 3000 square feet.

7. The applicant argued that the soils and slopes on the site are such that a proposed sanitary waste disposal system large enough to serve the proposed home dictates that the home can only occupy a building envelope as narrow as 24 feet that extends to within ten feet of the existing edge of the Ramsey Drive right of way. After dedication of additional right of way as required by the County, the proposed building envelope will be as little as five feet from the right of way. The applicant requested a hillside variance to the front yard setback to allow the home to be setback as little as five feet.

8. The record reflects that an environmental soil specialist for the Portland Bureau of Buildings ("PBOB"), responsible for approving a subsurface sanitary waste system on the site, found the site was unsuitable for a "standard septic tank/drainfield and alternative sewage disposal system" in a letter dated December 18, 1989. The letter notes that a sand filter system would be approved if it and a home can be sited consistent with applicable setbacks and if at least 100 linear feet of drainfield and replacement drainfield area are provided per bedroom. An undated, unsigned statement from the PBOB states that a subsurface sewage system has been approved, contingent on approval of a permit; but it is not clear from the record what the statement refers to. Mr. Smits, who designed the applicant's system, testified that PBOB staff verbally approved use of the proposed septic tank/sand filter/drainfield system but did not issue anything in writing. The hearings officer finds the system designed by Mr. Smits appears to comply with the requirements of the December 18, 1989 letter from the PBOB.

III. HEARINGS AND RECORD

1. Hearings Officer Larry Epstein visited the site on December 31, 1993 and held a duly noticed public hearing at 2115 SE Morrison Street, Portland, Oregon on January 3, 1994 to consider the appeal. With the agreement of the parties, that hearing was continued to January 13. A record of the testimony received at the hearings is included herein as Exhibit A (Minutes and Parties of Record), Exhibit B (Taped Proceedings), and Exhibit C (Written Testimony). These exhibits are filed at the Multnomah County Department of Environmental Services.

2. At the January 3 hearing, the following testimony was offered in relevant part.

a. County planner Bob Hall summarized the planning director's decision and showed photographic slides.

b. Attorney Daniel Kearns and Luther Barker appeared for the appellants. Mr. Kearns introduced the appellant's hearing memorandum and summarized the arguments in and attachments to the memorandum. Mr. Barker argued the proposed home location would be hazardous, because it would obstruct views along the road. Mr. Barker introduced and showed a portion of a videotape of the site and adjoining area.

c. The applicant and Charles Cash testified against the appeal. The applicant argued that, to comply with the setback, a cut will have to be made in the bank to provide for a driveway to a garage on the ground level.

d. The hearings officer discussed with the parties and staff the adequacy of the record and the potential for an amicable resolution of the conflict. The parties agreed to attempt to negotiate a settlement aided by County staff. The hearing was continued ten days for that purpose.

3. At the January 13 hearing, the following testimony was offered in relevant part.

a. County planner Mark Hess summarized his meeting with the parties at the site and introduced a slope hazard map and blow-up of the topographic map for the site.

b. Mr. Kearns and Mr. Barker testified about their involvement in the effort to reach a settlement, and reiterated the issues they raised at the first hearing. Mr. Kearns also argued that a house can be designed to fit on the lot in compliance with setbacks by slightly relocating the septic tank and sand filter. He also argued a house within five feet of the front lot line will require more cutting than a house that complies with the setback.

c. The applicant testified about his involvement in the effort to reach a settlement, and explained why he did not feel he could accept a height/setback limit with which the appellants would agree. He reiterated the argument that the lot cannot be developed without the front yard variance due to the soil conditions on the property. He explained his goals for views from the house and pointed out that structures that exist or could be built downhill from his lot could obstruct those views.

d. Mr. Smits testified about his involvement in the design of the septic system and consequent limitations on where a house could be built on the site.

IV. APPLICABLE LAW AND RESPONSIVE FINDINGS

1. The relevant approval standard in this case is MCC .8525 (Hillside Residential Variances by Administrative Action), which provides:

Notwithstanding the limitation of MCC .8515(B), the Planning Director may approve reductions in the required front setback for hillside residential properties when the following conditions exist:

(1) Application of the required setback will necessitate extraordinary cutting or filling of the land, resulting in potentially unsafe banks; and

(2) The reduction of the required setback would not permit the development of the property in a manner that would be more hazardous or detrimental to the public safety than development within the required setback.

2. Mr. Kearns argues that a Hillside Variance can be approved for no more than 25 percent of a dimensional standard. He reads the phrase "[n]otwithstanding the limitation of MCC .8515(B)" to mean that only a variance permitted under MCC .8515(B) can be approved as a Hillside Variance. A variance of no more than 25 percent of a dimensional standard can be granted under MCC .8515(B).

a. The hearings officer finds that a Hillside Variance is not limited to the 25 percent standard in MCC .8515(B), because MCC .8525 does not clearly say it is so limited. There is no ambiguity or conflict in MCC .8525 that warrants an interpretation like that suggested by the appellant. MCC .8525 authorizes the planning director to reduce the front yard setback. It does not limit the amount of the reduction the planning director can grant. No such limitation should be created by interpretation. The appellant reads far more into the introductory phrase to that section than is warranted by the plain meaning of the words. If the County wanted to limit Hillside Variances to the 25 percent standard in MCC .8515(B), it would have said so directly.

3. The application contains no evidence about cutting and filling necessary to comply with the 30-foot setback and no information about the hazards or detriments to the public safety that will result from such compliance. Therefore the hearings officer finds the applicant failed to carry the burden of proof for the Hillside Variance.

4. Based on the report by HG Schlicker & Associates, Inc., the topographic map, and the site visit, a dwelling on the site can comply with the 30-foot setback without requiring extraordinary cutting or filling. Only common cuts and fills will be needed. In fact, compliance with the 30-foot setback will reduce the amount of cutting necessary along the Ramsey Drive frontage as compared to a five-foot setback.

5. The hearings officer recognizes that compliance with the 30-foot setback may preclude the owner from constructing a standard septic system or a septic system that will accommodate as large a house as planned. The hearings officer also recognizes that a house that complies with the 30-foot setback may be at a lower elevation than a house with a five-foot setback; views may be less desirable in the former than the latter. However none of these issues is relevant to the Hillside Variance.

6. It is possible that a house with a five-foot setback would be more hazardous to the public safety than a house with a 30-foot setback, because the house would be more likely to block views of pedestrians and vehicles on and along the street, as argued by the appellant. Because the evidence about this issue is in dispute and is not clearly resolved by the record, and because the appeal should be granted on other grounds, the hearings officer declines to rule on this aspect of the appeal.

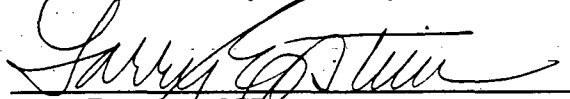
7. Mr. Kearns argues the site is not a lot of record. The hearings officer finds it is a lot of record, based on MCC .2222(A) and the plat and corresponding deeds of record for the Ramsey Heights subdivision, of which the hearings officer takes official notice.

V. CONCLUSIONS AND DECISION

1. The hearings officer concludes that the applicant failed to bear the burden of proving that the proposed Hillside Variance complies with MCC 11.15.8525(A).

2. In recognition of the findings and conclusions contained herein, and incorporating the public testimony and exhibits received in this matter, the hearings officer hereby grants the appeal, reverses the planning director's decision, and denies HV 23-93.

Dated this ____ day of January, 1994.


Larry Epstein, AICP
Multnomah County Hearings Officer

Signed January 18, 1994



Larry Epstein, Hearings Officer

Signed by the Hearings Officer:	January 18, 1994
Decision Mailed to Parties:	January 28, 1994
Decision Submitted to Board Clerk:	January 28, 1994
Last day to Appeal Decision:	February 7, 1994
Reported to Board of County Commissioners:	February 8, 1994

Appeal to the Board of County Commissioners

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

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

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

MEETING DATE: February 8, 1994

AGENDA NO: P-4

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: TP 6-93 Decision

BOARD BRIEFING Date Requested:

Amount of Time Needed:

REGULAR MEETING: Date Requested: February 8, 1994

Amount of Time Needed: 2 Minutes

DEPARTMENT: DES DIVISION: Planning

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

PERSON(S) MAKING PRESENTATION: Planning Staff

ACTION REQUESTED:

(x) Denial

[] INFORMATIONAL ONLY [] POLICY DIRECTION [] APPROVAL [] OTHER

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

TP 6-93 Review the January 18, 1994 Hearings Officer Decision, denying applicant's appeal and denial of applicant's request for a temporary permit to place a trailer on the subject site to be used as a temporary home office for the start-up of a business, all for property located at 18015 NW Sauvie Island Road.

SIGNATURES REQUIRED:

ELECTED OFFICIAL:

OR

DEPARTMENT MANAGER:

R. Scott Pemble

BOARD OF
COUNTY COMMISSIONERS
1994 FEB - 1 AM 9:47
MULTNOMAH COUNTY
OREGON

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

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

0516C/63

6/93



DIVISION OF PLANNING AND DEVELOPMENT

Board Planning Packet Check List

File No. TP 6-93

☒ Agenda Placement Sheet

No. of Pages 1

☒ Case Summary Sheet

No. of Pages 1

☐ Previously Distributed

☐ Notice of Review

No. of Pages _____

*(Maybe distributed at Board Meeting)

☐ Previously Distributed

☒ Decision

No. of Pages 3

(Hearings Officer/Planning Commission)

☐ Previously Distributed

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



BOARD HEARING OF February 8, 1994

CASE NAME: Hawley Appeal
Temporary Permit Denial

TIME 1:30 pm
NUMBER TP 6-93

1. Applicant Name/Address: Victoria Hawley
18037 NW Sauvie Island Rd.
Portland, OR 97231

2. Action Requested by applicant:

Approve a temporary permit to allow placement of a trailer to be used as a business office in the MUA, FF, WRG zone.

3. Planning Director Decision (October 8, 1993):

Denied because businesses are not allowed in the MUA district, the use is not similar to uses listed in MCC .8705 for which a temporary permit may be granted, and flood hazard and Willamette River Greenway issues were not addressed.

4. Hearings Officer Decision (January 18, 1994):

Upheld Planning Director decision and denied the request.

5. If recommendation and decision are different, why?

Same.

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

ISSUES
(who raised them?)

Flood Plain Development and Willamette River Greenway (WRG) permits: The location of the trailer is within the 100 year flood hazard area and the Willamette River Greenway. Consequently, additional permits are required to assure public safety in the event of a flood, and to protect the natural and scenic value of the river. The applicant had not addressed these issues as part of the original application. The Hearings Officer subsequently continued the hearing for one month to allow the applicant to submit the required applications and/or provide other evidence to show that the requirements for these permits could be met. No additional evidence was submitted, and the applicant did not attend the continued hearing, so the Hearings Officer denied the appeal.



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

Decision

This Decision Consists of a Findings and Conclusions

TP 6-93

Temporary Permit

Appeal of Planning Director Decision denying a temporary permit for use of a trailer as a business office

Property Location: 18015 NW Sauvie Island Road

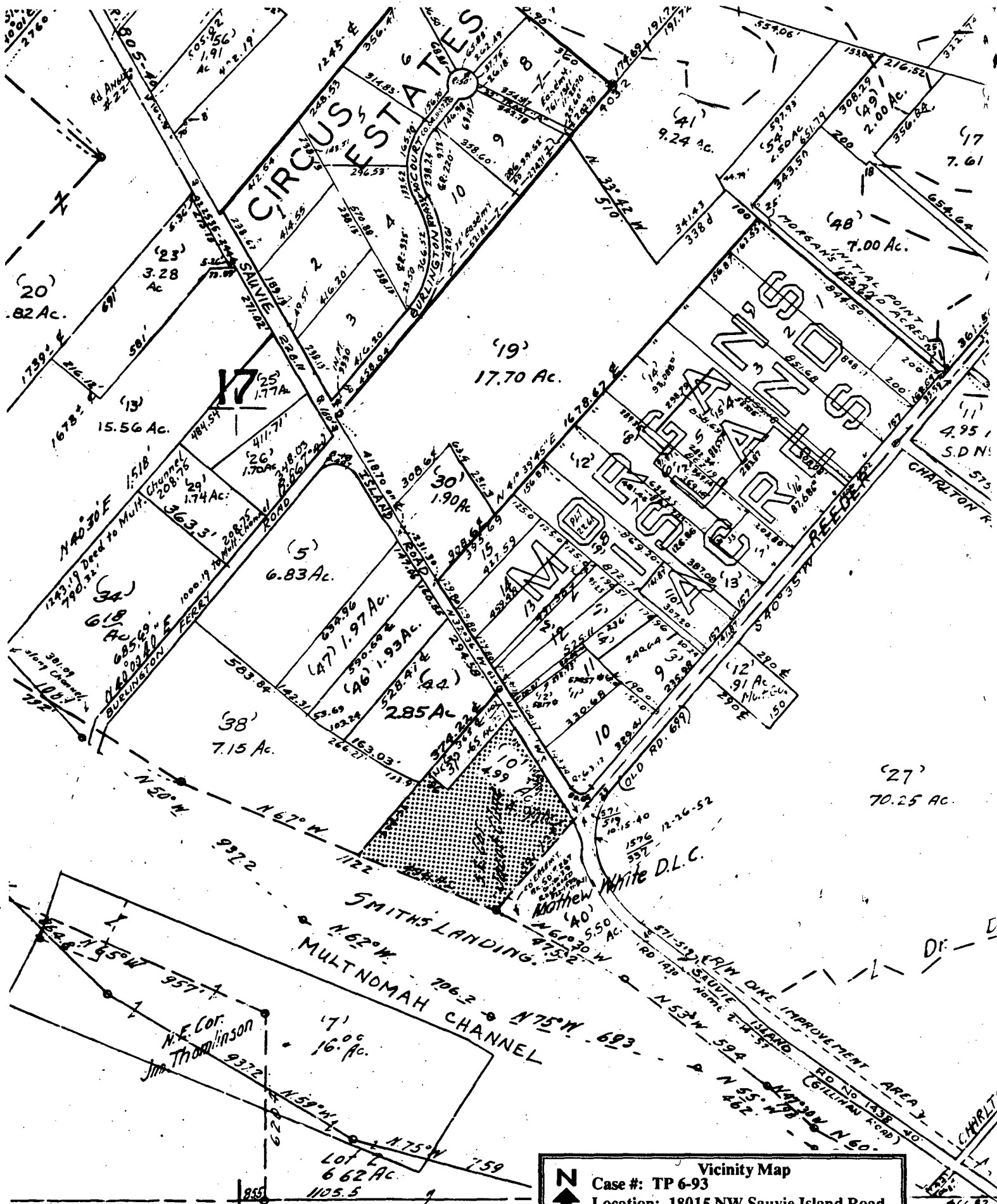
Legal: Tax Lot '22', Section 14, T2N, R2W

Applicant: Victoria Hawley
18037 NW Sauvie Island Rd.
Portland, OR 97231

Property Owner: Harold and June Parker
18015 NW Sauvie Island Rd.
Portland, OR 97231

Present Zoning: MUA-20, Multiple Use Agricultural District
Minimum size of 20 acres

Decision: Denial of the applicant's appeal and denial of the applicant's permit to place a 10' x 42' trailer on the subject site to be used as a temporary home office for the start up of a business.



N
 ↑

Vicinity Map
 Case #: TP 6-93
 Location: 18015 NW Sauvie Island Road
 Scale: 1 inch to 400 feet (approximate)
 Shading indicates subject property
 Section 17, T.2N., R.1W., WM.

MUA-20

CIRCULATING

MUA-20 CS

'19'
17.70 Ac.

MUA-20

MUA-20 WRG CS

WRG

MUA-20

EFU CS

'27'
70.25 A

EFU

MUA-20 WRG CS



Zoning Map

Case #: TP 6-93

Location: 18015 NW Sauvie Island Road

Scale: 1 inch to 400 feet (approximate)

Shading indicates subject properties

SZM 37; Section 17, T.2N., R.1W., WM.

EFU

Case Summary

On October 8, 1993, the Planning Director denied the applicant's request for a temporary permit which would have allowed a trailer to be used as a business office on the subject site. The reasons for denial were that a business office is not allowed in the MUA zoning district; the use is not similar to other listed uses under MCC .8705 for which a temporary permit may be granted; and flood hazard and Willamette River Greenway issues were not addressed. On October 18, 1993, the Planning Director's Decision was appealed by the applicant.

This matter initially came before the Hearings Officer on December 6, 1993. At that time, the Hearings Officer received testimony from the applicant concerning this matter. The matter was reset to January 7, 1994 at 9:00 a.m., to allow the applicant time to meet with the Planning staff to determine whether or not it is possible for the Staff to issue a Flood Plain Development Permit and a Willamette River Greenway Permit, both of which would be required in order for the applicant to locate the structure in the floodplain. Planning Staff indicated that it did not appear likely that a Flood Plain Development Permit could be issued.

Findings

The Hearings Officer adopts by reference the November 22, 1993 Staff Report, prepared for the December 6, 1993 public hearing, and incorporates its Finding and Conclusions, with the following additions:

In this case there is uncontroverted evidence in the record which indicates that the applicant has unlawfully located a trailer which is being used as a temporary business office in a portion of the property which is located both in the Flood Plain and within the Willamette Greenway. The approval criteria for a temporary permit, as set forth under MCC 11.15.8705, are highly discretionary. The Hearings Officer finds that although the applicant is proposing a temporary office, business offices are not allowed in the MUA zoning district. Furthermore, if temporary offices could be located in the MUA zoning district, such development must also comply with requirements of the Willamette River Greenway provisions of MCC 11.15.6350 thru .6323. The applicant has not demonstrated that it is reasonably likely for the applicant to comply with either the requirements of the Flood Hazard Area or of the Willamette River Greenway Sections of the Code.

A temporary permit would be of no value to the applicant in this case unless the applicant is also able to obtain a Willamette River Greenway Permit and a Flood Plain Development Permit. Because the applicant has not demonstrated that it is reasonably likely that both these additional permits would be granted, and because there is evidence in the record from the Staff Planner indicating that it is unlikely the Flood Plain Development Permit would not be issued, the Hearings Officer concludes that a temporary permit for a trailer to house a home office at this location should not be granted because there is not sufficient evidence in the record that the proposed location of the trailer can comply with the Flood Hazard and Willamette River Greenway requirements.

Conclusion

The proposed temporary office use is not appropriate for a temporary permit in the MUA zoning district because a business office is not an allowed use in the MUA zoning district and the proposed location of the office trailer does not comply with Flood Hazard and Willamette River Greenway requirements.

Signed January 18, 1994



Phillip E. Grillo, Hearings Officer

Signed by the Hearings Officer:	January 18, 1994
Decision Mailed to Parties	January 28, 1994
Decision Submitted to Board Clerk:	January 28, 1994
Last day to Appeal Decision	February 7, 1994
Reported to Board of County Commissioners	February 8, 1994

Appeal to the Board of County Commissioners.

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

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

To appeal the Hearings Officer Decision, a "Notice of Review" form and fee must be submitted to the Multnomah County Planning Director. For further information, call the Multnomah County Planning and Development Division at 248-23043.

MEETING DATE: January 25, 1994 **FEB 08 1994**

AGENDA NO: P-4 P-5

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: C 12-93 First Reading - Proposed Ordinance

BOARD BRIEFING Date Requested: _____

Amount of Time Needed: _____

REGULAR MEETING: Date Requested: January 25, 1994

Amount of Time Needed: 30 Minutes

DEPARTMENT: DES DIVISION: Planning

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

PERSON(S) MAKING PRESENTATION: Bob Hall

ACTION REQUESTED:

☐ INFORMATIONAL ONLY ☐ POLICY DIRECTION ☐ APPROVAL ☐ OTHER

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

C 12-93 A proposed Ordinance amending the R-20 and R-30 zoning districts by adding a definition of lot.

2/8/94 copies to Scott Pemble, Bob Hall and Ordinance Distribution list

SIGNATURES REQUIRED:

ELECTED OFFICIAL: _____

OR

DEPARTMENT MANAGER: Betsy H. Williams

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

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

0516C/63

6/93

BOARD OF
COUNTY COMMISSIONERS
MULTNOMAH COUNTY
OREGON
1994 JAN 18 AM 10:07



MULTNOMAH COUNTY OREGON

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

DIVISION OF PLANNING AND DEVELOPMENT

Board Planning Packet Check List

File No. C/12-93

☒ Agenda Placement Sheet No. of Pages 1

☒ *Audience Fast Sketch*
Case Summary Sheet No. of Pages 1

☐ Previously Distributed _____

☐ Notice of Review No. of Pages _____

*(Maybe distributed at Board Meeting)

☐ Previously Distributed _____

☒ *Audience*
~~Decision~~ No. of Pages 6

(Hearings Officer/Planning Commission)

☐ Previously Distributed _____

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

(CL/1)

**BEFORE THE PLANNING COMMISSION
FOR MULTNOMAH COUNTY**

In the Matter of Recommending Addition of)
Definitions of Lot in the R-20 and R-30)
Zoning Districts)

**RESOLUTION
C 12-93**

WHEREAS, The County has historically interpreted a lot in the R-20 and R-30 residential zoning districts to be each of the individual lots over 3,000 square feet in area, irrespective of ownership, within subdivisions platted prior to the adoption of zoning laws by the County in 1956;

WHEREAS, At the same time, the County has required all new land divisions within the R-20 and R-30 zoning districts to have minimum lot sizes of 20,000 and 30,000 square feet, respectively;

WHEREAS, The Board of County Commissioners considered such interpretation of a lot as inconsistent with the intent of the original zoning designation of the residential areas regulated by the R-20 and R-30 districts;

WHEREAS, On October 28, 1993, the Multnomah County Board of County Commissioners instructed the Planning Commission to consider a proposed amendment to the Zoning Code clarifying the intent of the minimum lot size provisions of the R-20 and R-30 zoning districts;

WHEREAS, The Planning Commission held hearings on December 6, 1993 and January 3, 1994 to receive public comment on the proposed amendments; and

WHEREAS, The Planning Commission found the proposed amendments equalize the manner in which lots created prior to and after enactment of MCC 11.15 are allowed to develop,

NOW, THEREFORE BE IT RESOLVED that the Ordinance entitled "An Ordinance amending the R-20 and R-30 residential zoning districts by adding a definition of lot," is hereby recommended for adoption, by the Board of County Commissioners.

Approved this 3rd day of January, 1994



Leonard Yoon, Chair
Multnomah County Planning Commission

ORDINANCE FACT SHEET

Ordinance Title: Definition of a Lot for the R-20 and R-30 Residential Zoning Districts

Give a brief statement of the purpose of the ordinance (include the rationale for adoption of ordinance, description of persons benefited, other alternatives explored):

The Board asked the Planning Commission to consider an amendment of the R-20 and R-30 residential zoning districts clarifying the definition of a lot. The purpose was to remove the discrepancy between the amount of property required to build a house on newly subdivided lots (20,000 or 30,000 square feet) versus that allowed for pre-1956 subdivided lots (3,000 square feet) when an individual owns enough pre-1956 subdivided contiguous lots to more closely conform with the modern 20,000 or 30,000 square feet area minimums. 993 property owners were notified of the proposed amendment, only one of which indicated that they felt adversely effected by the change.

What other local jurisdictions in the metropolitan area have enacted similar legislation?

The City of Portland has provisions very similar to the ones being proposed by this amendment.

What has been the experience in other areas with this type of legislation?

The County requires aggregation in many other zoning districts and has had no problems with enforcement.

What is the fiscal impact, if any?

This will neither create, nor consume revenue beyond that realized by the existing planning program.

(If space is inadequate, please use other side)

SIGNATURES

Person Filling Out Form: _____

Bob Hall, Jr.

Planning & Budget Division (if fiscal impact): _____

Department Manager/Elected Official: _____

Betsy H. Will

1 BEFORE THE BOARD OF COUNTY COMMISSIONERS

2 FOR MULTNOMAH COUNTY, OREGON

3 ORDINANCE NO. _____

4

5 An Ordinance amending the R-20 and R-30 residential zoning districts by adding a definition
6 of lot.

7

8 Multnomah County Ordains as follows:

9

10 Section I. Findings.

11

12 (A) The County has historically interpreted a lot in the R-20 and R-30 residential zoning dis-
13 tricts to be each of the individual lots over 3,000 square feet in area, irrespective of ownership, within
14 subdivisions platted prior to the adoption of zoning laws by the County in 1956.

15

16 (B) At the same time, the County has required all new land divisions within the R-20 and
17 R-30 zoning districts to have minimum lot sizes of 20,000 and 30,000 square feet, respectively.

18

19 (C) The Board of County Commissioners considered such interpretation of a lot as inconsis-
20 tent with the intent of the original zoning designation of the residential areas regulated by the R-20
21 and R-30 districts.

22

23 (D) On October 28, 1993, the Multnomah County Board of County Commissioners instructed
24 the Planning Commission to consider a proposed amendment to the Zoning Code clarifying the intent
25 of the minimum lot size provisions of the R-20 and R-30 zoning districts.

26

1 (E) The Planning Commission held hearings on December 6, 1993 and January 3, 1994 to
2 receive public comment on the proposed amendments.

3

4 (F) The Planning Commission found the proposed amendments equalize the manner in which
5 lots created prior to and after enactment of MCC 11.15 are allowed to develop.

6

7 Section II. Amendment of R-30 District

8

9 MCC 11.15 is amended by adding:

10

11 **11.15.2848 Definition of Lot**

12

13 (A) For the purposes of this district, a lot is:

14

15 (1) A parcel of land:

16

17 (a) For which a deed or other instrument creating the parcel was recorded with the Recording
18 Section of the public office responsible for public records, or was in recordable form, prior
19 to (Effective date), 1994;

20

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

22

23 (c) Which satisfies the minimum lot size requirements of MCC .2844 ; and

24

25 (d) Which was not, on (Effective date), 1994 or later, contiguous to a substandard parcel or
26 substandard parcels under the same ownership, or

1 (2) A parcel of land:

- 2
- 3 (a) For which a deed or other instrument creating the parcel was recorded with the Recording
- 4 Section of the public office responsible for public records, or was in recordable form, prior
- 5 to (Effective date), 1994;
- 6
- 7 (b) Which satisfied all applicable laws when the parcel was created;
- 8
- 9 (c) Which does not meet the minimum lot size requirements of MCC .2844;
- 10
- 11 (d) Which satisfies the standards of MCC .2846(B) ; and
- 12
- 13 (e) Which was not, on (Effective date), 1994 or later, contiguous to a substandard parcel or
- 14 substandard parcels under the same ownership, or
- 15

16 (3) A group of contiguous parcels of land:

- 17
- 18 (a) For which a deed or deeds or other instruments creating the parcels were recorded with the
- 19 Recording Section of the public office responsible for public records, or were in record-
- 20 able form, prior to (Effective date), 1994;
- 21
- 22 (b) Which satisfied all applicable laws when the parcels were created;
- 23
- 24 (c) Any one of which individually does not meet the minimum lot size requirements of MCC
- 25 .2844, but, when considered in combination, complies as nearly as possible, or exceeds,
- 26 the minimum lot size requirements of MCC .2844, without creating any new lot line; and

(d) Which were, on (Effective date), 1994 or later, held under the same ownership.

(B) For the purposes of this subsection, *Same Ownership* refers to parcels in which greater than possessory interests are held by the same person or persons, spouse, minor age child, single partnership or business entity, separately or in tenancy in common.

Section III. Amendment of R-20 District

11.15.2858 Definition of Lot

(A) For the purposes of this district, a lot is:

(1) A parcel of land:

(a) For which a deed or other instrument creating the parcel was recorded with the Recording Section of the public office responsible for public records, or was in recordable form, prior to (Effective date), 1994;

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

(c) Which satisfies the minimum lot size requirements of MCC .2854; and

(d) Which was not, on (Effective date), 1994 or later, contiguous to a substandard parcel or substandard parcels under the same ownership, or

1 (2) A parcel of land:

2
3 (a) For which a deed or other instrument creating the parcel was recorded with the Recording
4 Section of the public office responsible for public records, or was in recordable form, prior
5 to (Effective date), 1994;

6
7 (b) Which satisfied all applicable laws when the parcel was created;

8
9 (c) Which does not meet the minimum lot size requirements of MCC .2854;

10
11 (d) Which satisfies the standards of MCC .2856(B); and

12
13 (e) Which was not, on (Effective date), 1994 or later, contiguous to a substandard parcel or
14 substandard parcels under the same ownership, or

15
16 (3) A group of contiguous parcels of land:

17
18 (a) For which a deed or deeds or other instruments creating the parcels were recorded with the
19 Recording Section of the public office responsible for public records, or were in record-
20 able form, prior to (Effective date), 1994;

21
22 (b) Which satisfied all applicable laws when the parcels were created;

23
24 (c) Any one of which individually does not meet the minimum lot size requirements of MCC
25 .2854, but, when considered in combination, complies as nearly as possible, or exceeds,
26 the minimum lot size requirements of MCC .2854, without creating any new lot line; and

1 (d) Which were, on (Effective date), 1994 or later, held under the same ownership.

2
3 (B) For the purposes of this subsection, *Same Ownership* refers to parcels in which greater than
4 possessory interests are held by the same person or persons, spouse, minor age child, single
5 partnership or business entity, separately or in tenancy in common.
6

7
8 ADOPTED THIS _____ day of _____, 1994, being the date of its
9 _____ reading before the Board of County Commissioners of Multnomah County.
10

11
12
13 (SEAL)
14

15
16 By _____

17 Beverly Stein, County Chair

18 MULTNOMAH COUNTY, OREGON

19 REVIEWED:

20 John L. DuBay
21 John DuBay, Chief Assistant County Counsel

22 for Multnomah County, Oregon
23
24
25
26

BEFORE THE BOARD OF COUNTY COMMISSIONERS

FOR MULTNOMAH COUNTY, OREGON

ORDINANCE NO. 786

An Ordinance amending the R-20 and R-30 residential zoning districts by adding a definition of lot.

Multnomah County Ordains as follows:

Section I. Findings.

(A) The County has historically interpreted a lot in the R-20 and R-30 residential zoning districts to be each of the individual lots over 3,000 square feet in area, irrespective of ownership, within subdivisions platted prior to the adoption of zoning laws by the County in 1956.

(B) At the same time, the County has required all new land divisions within the R-20 and R-30 zoning districts to have minimum lot sizes of 20,000 and 30,000 square feet, respectively.

(C) The Board of County Commissioners considered such interpretation of a lot as inconsistent with the intent of the original zoning designation of the residential areas regulated by the R-20 and R-30 districts.

(D) On October 28, 1993, the Multnomah County Board of County Commissioners instructed the Planning Commission to consider a proposed amendment to the Zoning Code clarifying the intent of the minimum lot size provisions of the R-20 and R-30 zoning districts.

1 (E) The Planning Commission held hearings on December 6, 1993 and January 3, 1994 to
2 receive public comment on the proposed amendments.

3
4 (F) The Planning Commission found the proposed amendments equalize the manner in which
5 lots created prior to and after enactment of MCC 11.15 are allowed to develop.

6
7 Section II. Amendment of R-30 District

8
9 MCC 11.15 is amended by adding:

10
11 **11.15.2848 Definition of Lot**

12
13 (A) For the purposes of this district, a lot is:

14
15 (1) A parcel of land:

16
17 (a) For which a deed or other instrument creating the parcel was recorded with the Recording
18 Section of the public office responsible for public records, or was in recordable form, prior
19 to March 10, 1994;

20
21 (b) Which satisfied all applicable laws when the parcel was created;

22
23 (c) Which satisfies the minimum lot size requirements of MCC .2844 ; and

24
25 (d) Which was not, on March 10, 1994 or later, contiguous to a substandard parcel or substan-
26 dard parcels under the same ownership, or

1 (2) A parcel of land:

2
3 (a) For which a deed or other instrument creating the parcel was recorded with the Recording
4 Section of the public office responsible for public records, or was in recordable form, prior
5 to March 10, 1994;

6
7 (b) Which satisfied all applicable laws when the parcel was created;

8
9 (c) Which does not meet the minimum lot size requirements of MCC .2844;

10
11 (d) Which satisfies the standards of MCC .2846(B) ; and

12
13 (e) Which was not, on March 10, 1994 or later, contiguous to a substandard parcel or substan-
14 dard parcels under the same ownership, or

15
16 (3) A group of contiguous parcels of land:

17
18 (a) For which a deed or deeds or other instruments creating the parcels were recorded with the
19 Recording Section of the public office responsible for public records, or were in record-
20 able form, prior to March 10, 1994;

21
22 (b) Which satisfied all applicable laws when the parcels were created;

23
24 (c) Any one of which individually does not meet the minimum lot size requirements of MCC
25 .2844, but, when considered in combination, complies as nearly as possible, or exceeds,
26 the minimum lot size requirements of MCC .2844, without creating any new lot line; and

(d) Which were, on March 10, 1994 or later, held under the same ownership.

(B) For the purposes of this subsection, *Same Ownership* refers to parcels in which greater than possessory interests are held by the same person or persons, spouse, minor age child, single partnership or business entity, separately or in tenancy in common.

Section III. Amendment of R-20 District

11.15.2858 Definition of Lot

(A) For the purposes of this district, a lot is:

(1) A parcel of land:

(a) For which a deed or other instrument creating the parcel was recorded with the Recording Section of the public office responsible for public records, or was in recordable form, prior to March 10, 1994;

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

(c) Which satisfies the minimum lot size requirements of MCC .2854; and

(d) Which was not, on March 10, 1994 or later, contiguous to a substandard parcel or substandard parcels under the same ownership, or

1 (2) A parcel of land:

2
3 (a) For which a deed or other instrument creating the parcel was recorded with the Recording
4 Section of the public office responsible for public records, or was in recordable form, prior
5 to March 10, 1994;

6
7 (b) Which satisfied all applicable laws when the parcel was created;

8
9 (c) Which does not meet the minimum lot size requirements of MCC .2854;

10
11 (d) Which satisfies the standards of MCC .2856(B); and

12
13 (e) Which was not, on March 10, 1994 or later, contiguous to a substandard parcel or substan-
14 dard parcels under the same ownership, or

15
16 (3) A group of contiguous parcels of land:

17
18 (a) For which a deed or deeds or other instruments creating the parcels were recorded with the
19 Recording Section of the public office responsible for public records, or were in record-
20 able form, prior to March 10, 1994;

21
22 (b) Which satisfied all applicable laws when the parcels were created;

23
24 (c) Any one of which individually does not meet the minimum lot size requirements of MCC
25 .2854, but, when considered in combination, complies as nearly as possible, or exceeds,
26 the minimum lot size requirements of MCC .2854, without creating any new lot line; and

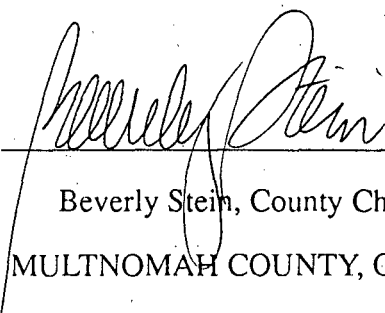
(d) Which were, on March 10, 1994 or later, held under the same ownership.

(B) For the purposes of this subsection, *Same Ownership* refers to parcels in which greater than possessory interests are held by the same person or persons, spouse, minor age child, single partnership or business entity, separately or in tenancy in common.

ADOPTED THIS 8th day of February, 1994, being the date of its 2nd reading before the Board of County Commissioners of Multnomah County.



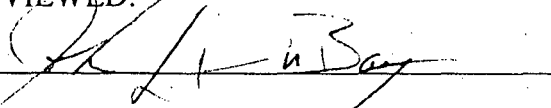
By



Beverly Stein, County Chair

MULTNOMAH COUNTY, OREGON

REVIEWED:



John DuBay, Chief Assistant County Counsel

for Multnomah County, Oregon

67th OREGON LEGISLATIVE ASSEMBLY-1993 Regular Session

B-Engrossed House Bill 3490

RECEIVED

JUL 14 1993

Ordered by the Senate July 12
Including House Amendments dated June 7 and Senate Amendments
dated July 12

ENGINEERING SERVICES
LAND USE & TRANSPORTATION

Introduced and printed pursuant to House Rule 13.01 (at the request of Multnomah County)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

[Requires] Allows county to provide by ordinance for subdivision plats to be approved by chairperson or vice chairperson of county governing body instead of by majority of members of governing body.

A BILL FOR AN ACT

1 Relating to plat approval; amending ORS 92.100.

2 Be It Enacted by the People of the State of Oregon:

3 **SECTION 1.** ORS 92.100 is amended to read:

4 92.100. (1) Before any subdivision or partition plat can be recorded, covering land within the
5 corporate limits of any city, it must be approved by the county surveyor. However, for the purposes
6 of this chapter, the governing body of the city may, by resolution or order, designate the city sur-
7 veyor to serve in lieu of the county surveyor. Except as provided in subsection (4) of this section,
8 if the land is outside the corporate limits of any city, the subdivision or partition plat shall be ap-
9 proved by the county surveyor before it is recorded. All subdivision plats must also be approved by
10 the county assessor and the governing body of the county in which the property is located before
11 recording. ~~However, a county may provide by ordinance for the approval of subdivision plats~~
12 ~~by the county assessor and the chairperson or vice chairperson of the governing body of the~~
13 ~~county.~~ Unless provided for by ordinance of the governing body, partition plats shall be subject only
14 to the approval of the city or county surveyor.

15 (2) Before approving the subdivision plat as required by this section, the county surveyor shall
16 check the subdivision site and the subdivision plat and shall take such measurements and make such
17 computations as are necessary to determine that the subdivision plat complies with the applicable
18 provisions of this chapter and with the subdivision requirements in effect in the area. For perform-
19 ing such service the county surveyor shall collect from the subdivider a fee of \$100 plus \$5 for each
20 lot contained in the subdivision. The governing body of a city or county may establish a higher fee
21 by resolution or order.

22 (3) Before approving the partition plat as required by this section, the county surveyor, as pro-
23 vided by subsection (1) of this section, shall check the partition plat and make such computations
24 and other determinations that the partition plat complies with the provisions of this and other ap-
25 plicable laws. For performing such service, the county surveyor shall collect from the partitioner
26 a fee to be established by the governing body.

27 (4) Any subdivision or partition plat prepared by the county surveyor in a private capacity shall
28

NOTE: Matter in boldfaced type in an amended section is new; matter (*italic and bracketed*) is existing law to be omitted.
New sections are in boldfaced type.

subdivider shall take a signed receipt from the purchaser upon delivery of such a statement, shall immediately send a copy of the receipt to the commissioner and shall keep any such receipt on file in this state, subject to inspection by the commissioner, for a period of three years after the date the receipt is taken. (Amended by 1955 c.31 §1; 1955 c.756 §13; 1963 c.393 §1; 1973 c.696 §16; 1974 s.s. c.74 §3; 1983 c.309 §7; 1989 c.772 §13; 1991 c.331 §22; 1991 c.763 §15)

92.095 Payment of taxes, interest or penalties before subdivision or partition plat recorded. (1) No subdivision or partition plat shall be recorded unless all ad valorem taxes, including additional taxes, interest and penalties imposed on land disqualified for any special assessment and all special assessments, fees, or other charges required by law to be placed upon the tax roll have been paid which have become a lien upon the land or which will become a lien during the tax year.

(2) After July 1, and before the certification under ORS 311.105 of any year, the subdivider or partitioner shall:

(a) If the exact amount of taxes, penalties, special assessments, fees and charges are able to be computed by the assessor, pay such amount to the tax collector. The assessor is authorized to levy and the tax collector is authorized to collect such amount.

(b) If the assessor is unable to compute such amount at such time, either (A) pay the amount estimated by the assessor to be needed to pay the taxes, penalties, special assessments, fees and other charges to become due, or (B) deposit with the tax collector a bond or irrevocable letter of credit with a good and sufficient undertaking in such amount as the assessor considers adequate to insure payment of the taxes to become due. In no event shall the bond or irrevocable letter of credit amount exceed twice the amount of the previous year's taxes, special assessments, fees and other charges upon such land.

(3) Taxes paid or for which security is given under subsection (2)(a) or (b) of this section shall be entitled to the discount provided by ORS 311.505.

(4) ORS 311.370 shall apply to all taxes levied and collected under subsection (2) of this section, except that any deficiency shall constitute a personal debt against the person subdividing or partitioning the land and not a lien against the land, and shall be collected as provided by law for the collection of personal property taxes.

(5) If a subdivision or partition plat is recorded, any additional taxes, interest or penalties imposed upon land disqualified for

any special assessment shall become a lien upon the land on the day before the plat was recorded. (1965 c.393 §2; 1973 c.696 §17; 1979 c.350 §3; 1981 c.804 §69; 1983 c.462 §1; 1989 c.772 §14; 1991 c.331 §23; 1991 c.459 §336; 1993 c.19 §1)

92.097 Employment of private licensed engineer by private developer; government standards and fees. (1) No city, county or special district shall prohibit the employment by a developer of a licensed engineer to design or supervise the installation of the improvements of streets, water and sewer lines or other public improvements that are to be installed in conjunction with the development of land using private funds.

(2) When design or supervision of installation of improvements is performed by a licensed engineer under subsection (1) of this section, the city, county or special district may elect to establish standards for such improvements, review and approve plans and specifications and inspect the installation of improvements. The city, county or special district may collect a fee for inspection and any other services provided in an amount not to exceed the actual cost of performing the inspection or other services provided. (1979 c.191 §2)

92.100 Approval of plat by city or county surveyor; procedures; approval by county assessor and county governing body; fees. (1) Before any subdivision or partition plat can be recorded, covering land within the corporate limits of any city, it must be approved by the county surveyor. Notwithstanding ORS 92.170, the governing body of the city may, by resolution or order, designate the city surveyor to serve in lieu of the county surveyor. Except as provided in subsection (4) of this section, if the land is outside the corporate limits of any city, the subdivision or partition plat shall be approved by the county surveyor before it is recorded. All subdivision plats must also be approved by the county assessor and the governing body of the county in which the property is located before recording. However, a county may provide by ordinance for the approval of subdivision plats by the county assessor and the chairperson or vice chairperson of the governing body of the county. Unless provided for by ordinance of the governing body, partition plats shall be subject only to the approval of the city or county surveyor.

(2) Before approving the subdivision plat as required by this section, the county surveyor shall check the subdivision site and the subdivision plat and shall take such measurements and make such computations and other determinations as are necessary to determine that the subdivision plat complies with this and other applicable laws and with