

ANNOTATED MINUTES

Tuesday, September 16, 1997 - 9:30 AM
Portland Building, Second Floor Auditorium
1120 SW Fifth Avenue, Portland

Chair Beverly Stein convened the meeting at 9:35 a.m., with Commissioners Sharron Kelley, Tanya Collier and Dan Saltzman present, and Vice-Chair Gary Hansen arriving at 9:38 a.m.

BOARD BRIEFING

B-1 Multnomah County Health Department Tobacco Prevention Plan.
Presented by Wendy Rankin.

***COMMISSIONER SALTZMAN, WENDY RANKIN
AND DENISE CHUCKOVICH PRESENTATION AND
RESPONSE TO BOARD QUESTIONS, DISCUSSION
AND COMMENTS IN SUPPORT.***

*There being no further business, the meeting was adjourned at 10:12
a.m.*

Tuesday, September 16, 1997 - 10:30 AM
Portland Building, Second Floor Auditorium
1120 SW Fifth Avenue, Portland

LAND USE PLANNING MEETING CANCELLED

P-1 PLA 2-97 The DE NOVO HEARING Regarding the Hearings Officer Decision Regarding Denial of an Appeal of the Planning Director's Decision Which Found that the Application for a Lot Line Adjustment Did Not Meet All of the Approval Criteria, for Property Located at 14007 NW SKYLINE BOULEVARD, PORTLAND, has been CANCELLED due to the Withdrawal of the Appeal by Applicant Fred H. Bender.

Thursday, September 18, 1997 - 9:30 AM
Portland Building, Second Floor Auditorium
1120 SW Fifth Avenue, Portland

REGULAR MEETING

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

CONSENT CALENDAR

**UPON MOTION OF COMMISSIONER KELLEY,
SECONDED BY COMMISSIONER HANSEN, THE
CONSENT CALENDAR (ITEMS C-1 THROUGH C-4)
WAS UNANIMOUSLY APPROVED.**

DISTRICT ATTORNEY'S OFFICE

- C-1 Intergovernmental Agreement 500498 with the State of Oregon Services to Children and Families to Fund a Social Service Worker IV to be Located at the Waverly Hotline Office for Child Abuse Investigations on CAMI Cases
- C-2 Intergovernmental Agreement 500508 with the State of Oregon Services to Children and Families to Fund a Social Services Specialist to be Located at the Portland School Police Office for Child Abuse Investigations on CAMI Cases

SHERIFF'S OFFICE

- C-3 Retail Malt Beverage Liquor License Change of Ownership Application for HAGAR'S AT VIKING PARK, 29311 SE STARK STREET, TROUTDALE

DEPARTMENT OF JUVENILE AND ADULT COMMUNITY JUSTICE

- C-4 Intergovernmental Revenue Agreement 700278 with Columbia County for Exclusive Use of One Bed Space in the Juvenile Justice Complex for the Detention of Youth Referred to the Columbia County Juvenile Justice System

REGULAR AGENDA

DEPARTMENT OF SUPPORT SERVICES

UC-1 PROCLAMATION Proclaiming the Week of October 6 to October 10, 1997 as MINORITY ENTERPRISE DEVELOPMENT WEEK

**COMMISSIONER KELLEY MOVED AND
COMMISSIONER SALTZMAN SECONDED,
APPROVAL OF UC-1. JERRY WALKER
EXPLANATION. PROCLAMATION 97-179
UNANIMOUSLY APPROVED.**

PUBLIC COMMENT

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

NO ONE WISHED TO COMMENT.

DEPARTMENT OF ENVIRONMENTAL SERVICES

R-2 CS 3-97/PLA 5-97 Report to the Board the Hearings Officer Decision Regarding an Approval of a Community Service Use and Property Line Adjustment, Subject to Conditions and Approval, for Property Located at 4280 NW NORTH ROAD, PORTLAND; and Due to Receipt of a Notice of Review Filed in this Matter, a Request that the Board Set a De Novo Hearing, Testimony Limited to 20 Minutes Per Side, for 10:30 Am, Tuesday, September 30, 1997

***AT THE REQUEST OF CHAIR STEIN WHO
ADVISED AN APPEAL WAS FILED, AND UPON
MOTION OF COMMISSIONER KELLEY, SECONDED
BY COMMISSIONER COLLIER, IT WAS
UNANIMOUSLY APPROVED THAT A DE NOVO
HEARING BE SCHEDULED FOR 10:30 AM,
TUESDAY, SEPTEMBER 30, 1997, TESTIMONY
LIMITED TO 20 MINUTES PER SIDE.***

NON-DEPARTMENTAL

R-3 RESOLUTION Declaring the Intent to Support the Reduction of the Debt of the Oregon Museum of Science and Industry and Setting Conditions Thereon

**COMMISSIONER COLLIER MOVED AND
COMMISSIONER HANSEN SECONDED, APPROVAL**

OF R-3. COMMISSIONER COLLIER EXPLANATION AND COMMENTS IN SUPPORT. PATRICK LACROSSE, LYNDIA WALKER AND RUTH MCFARLAND TESTIMONY IN SUPPORT OF COUNTY FUNDING FOR OMSI. ALICE NORRIS, ROY JAY, JOE D'ALESSANDRO, HARRIET SHERBURNE, DON GALE, RON ANDERSON AND MARTHA RICHARDS TESTIMONY IN OPPOSITION TO USING HOTEL/MOTEL TAX REVENUE TO ASSIST OMSI AND RESPONSE TO BOARD QUESTIONS. COMMISSIONER HANSEN COMMENTS IN SUPPORT. COMMISSIONER SALTZMAN COMMENTS IN OPPOSITION. COMMISSIONER HANSEN RESPONSE TO QUESTIONS OF COMMISSIONER COLLIER. COMMISSIONER KELLEY COMMENTS AND CHAIR STEIN COMMENTS IN OPPOSITION. COMMISSIONER COLLIER COMMENTS IN SUPPORT. RESOLUTION FAILED, WITH COMMISSIONERS HANSEN AND COLLIER VOTING AYE, AND COMMISSIONERS KELLEY, SALTZMAN AND STEIN VOTING NO.

- R-4 First Reading of a Proposed ORDINANCE Amending MCC 5.40.100
Dedicating a Portion of Motor Vehicle Rental Taxes to Cultural Tourism
Projects

ORDINANCE READ BY TITLE ONLY. COPIES AVAILABLE. COMMISSIONER HANSEN MOVED AND COMMISSIONER KELLEY SECONDED, TO POSTPONE INDEFINITELY. ORDINANCE POSTPONED INDEFINITELY, WITH COMMISSIONERS KELLEY, HANSEN, SALTZMAN AND STEIN VOTING AYE, AND COMMISSIONER COLLIER VOTING NO.

- R-5 Budget Modification NOND 3 Authorizing a \$200,000 General Fund
Contingency Transfer for a Contribution to the Oregon Museum of
Science and Industry

COMMISSIONER COLLIER'S MOTION FOR APPROVAL FAILED FOR LACK OF A SECOND.

The regular meeting was adjourned at 10:36 a.m. and the briefing convened at 10:42 a.m.

Thursday, September 18, 1997 - 10:00 AM
Portland Building, Second Floor Auditorium
1120 SW Fifth Avenue, Portland

BOARD BRIEFING

B-2 Report on the Multnomah County Auditor's Office August 1997 Review of Law Enforcement Cost Recovery. Presented by Gary Blackmer, John Hutzler and Dan Noelle.

GARY BLACKMER, JOHN HUTZLER AND DAN NOELLE PRESENTATION AND RESPONSE TO BOARD QUESTIONS, COMMENTS AND DISCUSSION. CHAIR STEIN SUBMITTED A DRAFT RESOLUTION APPROVING RECOMMENDATIONS OF THE AUGUST, 1997 LAW ENFORCEMENT COST RECOVERY AUDIT FOR REVIEW AND COMMENT.

JOE D'ALESSANDRO REPORTED THAT AFTER THIS MORNINGS' VOTE, HOTEL INDUSTRY REPRESENTATIVES IN ATTENDANCE MET IN THE LOBBY AND DECIDED TO IMMEDIATELY FORM A TASK FORCE TO RAISE \$200,000 IN ORDER TO HONOR MULTNOMAH COUNTY'S COMMITMENT TO OMSI.

COUNTY COUNSEL TOM SPONSLER REPORTED ON THE RESULTS OF COURT REVIEW AND MODIFICATION OF THE BALLOT TITLE FOR MEASURE 26-58, THE PUBLIC LIBRARY FIVE YEAR SERIAL LEVY.

There being no further business, the meeting was adjourned at 11:24 a.m.

OFFICE OF THE BOARD CLERK
FOR MULTNOMAH COUNTY, OREGON

Deborah L. Bogstad



MULTNOMAH COUNTY OREGON

BOARD CLERK

OFFICE OF BEVERLY STEIN, COUNTY CHAIR
1120 SW FIFTH AVENUE, SUITE 1515
PORTLAND, OREGON 97204-1914
TELEPHONE • (503) 248-3277
FAX • (503) 248-3013

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

MEETINGS OF THE MULTNOMAH COUNTY BOARD OF COMMISSIONERS

AGENDA

FOR THE WEEK OF

SEPTEMBER 15, 1997 - SEPTEMBER 19, 1997

Tuesday, September 16, 1997 - 9:30 AM - Board Briefing..... Page 2

Thursday, September 18, 1997 - 9:30 AM - Regular Meeting Page 2

Thursday, September 18, 1997 - 10:00 AM - Board Briefing Page 4

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

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

Friday, 10:00 PM, Channel 30

Sunday, 1:00 PM, Channel 30

Produced through Multnomah Community Television

INDIVIDUALS WITH DISABILITIES MAY CALL THE BOARD CLERK AT (503) 248-3277, OR MULTNOMAH COUNTY TDD PHONE (503) 248-5040, FOR INFORMATION ON AVAILABLE SERVICES AND ACCESSIBILITY.

AN EQUAL OPPORTUNITY EMPLOYER

Tuesday, September 16, 1997 - 9:30 AM
Portland Building, Second Floor Auditorium
1120 SW Fifth Avenue, Portland

BOARD BRIEFING

- B-1 Multnomah County Health Department Tobacco Prevention Plan.
Presented by Wendy Rankin. 1 HOUR REQUESTED.
-

Tuesday, September 16, 1997 - 10:30 AM
Portland Building, Second Floor Auditorium
1120 SW Fifth Avenue, Portland

LAND USE PLANNING MEETING CANCELLED

- P-1 PLA 2-97 The DE NOVO HEARING Regarding the Hearings Officer
Decision Regarding Denial of an Appeal of the Planning Director's
Decision Which Found that the Application for a Lot Line Adjustment Did
Not Meet All of the Approval Criteria, for Property Located at 14007 NW
SKYLINE BOULEVARD, PORTLAND, has been CANCELLED due to
the Withdrawal of the Appeal by Applicant Fred H. Bender.
-

Thursday, September 18, 1997 - 9:30 AM
Portland Building, Second Floor Auditorium
1120 SW Fifth Avenue, Portland

REGULAR MEETING

CONSENT CALENDAR

DISTRICT ATTORNEY'S OFFICE

- C-1 Intergovernmental Agreement 500498 with the State of Oregon Services
to Children and Families to Fund a Social Service Worker IV to be
Located at the Waverly Hotline Office for Child Abuse Investigations
on CAMI Cases

- C-2 Intergovernmental Agreement 500508 with the State of Oregon Services to Children and Families to Fund a Social Services Specialist to be Located at the Portland School Police Office for Child Abuse Investigations on CAMI Cases

SHERIFF'S OFFICE

- C-3 Retail Malt Beverage Liquor License Change of Ownership Application for HAGAR'S AT VIKING PARK, 29311 SE STARK STREET, TROUTDALE

DEPARTMENT OF JUVENILE AND ADULT COMMUNITY JUSTICE

- C-4 Intergovernmental Revenue Agreement 700278 with Columbia County for Exclusive Use of One Bed Space in the Juvenile Justice Complex for the Detention of Youth Referred to the Columbia County Juvenile Justice System

REGULAR AGENDA

DEPARTMENT OF SUPPORT SERVICES

- UC-1 PROCLAMATION Proclaiming the Week of October 6 to October 10, 1997 as MINORITY ENTERPRISE DEVELOPMENT WEEK

PUBLIC COMMENT

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

DEPARTMENT OF ENVIRONMENTAL SERVICES

- R-2 CS 3-97/PLA 5-97 Report to the Board the Hearings Officer Decision Regarding an Approval of a Community Service Use and Property Line Adjustment, Subject to Conditions and Approval, for Property Located at 4280 NW NORTH ROAD, PORTLAND; and Due to Receipt of a Notice of Review Filed in this Matter, a Request that the Board Set a DE NOVO HEARING, TESTIMONY LIMITED TO 20 MINUTES PER SIDE, for 10:30 AM, TUESDAY, SEPTEMBER 30, 1997

NON-DEPARTMENTAL

- R-3 RESOLUTION Declaring the Intent to Support the Reduction of the Debt of the Oregon Museum of Science and Industry and Setting Conditions Thereon
 - R-4 First Reading of a Proposed ORDINANCE Amending MCC 5.40.100 Dedicating a Portion of Motor Vehicle Rental Taxes to Cultural Tourism Projects
 - R-5 Budget Modification NOND 3 Authorizing a \$200,000 General Fund Contingency Transfer for a Contribution to the Oregon Museum of Science and Industry
-

Thursday, September 18, 1997 - 10:00 AM
(OR IMMEDIATELY FOLLOWING REGULAR MEETING)

Portland Building, Second Floor Auditorium
1120 SW Fifth Avenue, Portland

BOARD BRIEFING

- B-2 Report on the Multnomah County Auditor's Office August 1997 Review of Law Enforcement Cost Recovery. Presented by Gary Blackmer, John Hutzler and Dan Noelle. 1 HOUR REQUESTED.

MEETING DATE: SEP 16 1997
AGENDA NO: B-1
ESTIMATED START TIME: 9:30 am

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: Briefing on Multnomah County Tobacco Prevention Plan

BOARD BRIEFING: DATE REQUESTED: September 16, 1997
 REQUESTED BY: Dan Saltzman
 AMOUNT OF TIME NEEDED: 1 Hour

REGULAR MEETING: DATE REQUESTED: _____

DEPARTMENT: Commissioner Saltzman DIVISION: _____

CONTACT: Cameron Vaughan-Tyler TELEPHONE #: 248-5220
 BLDG/ROOM #: 106-1500

PERSON(S) MAKING PRESENTATION: Wendy Rankin-Multnomah County Health Dept.

ACTION REQUESTED:

☒ INFORMATIONAL ONLY ☐ POLICY DIRECTION ☐ APPROVAL ☐ OTHER

SUGGESTED AGENDA TITLE:

Briefing on Multnomah County Tobacco Prevention Plan

SIGNATURES REQUIRED:

ELECTED OFFICIAL: _____
(OR)
DEPARTMENT
MANAGER: _____

Dan Saltzman

BOARD OF
COUNTY COMMISSIONERS
97 SEP 10 AM 11:34
MULTNOMAH COUNTY
OREGON

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

Any Questions: Call the Board Clerk @ 248-3277



DAN SALTZMAN, Multnomah County Commissioner, District One

1120 S.W. Fifth Avenue, Suite 1500 • Portland, Oregon 97204 • (503) 248-5220 • FAX (503) 248-5440

TO: BOARD OF COUNTY COMMISSIONERS

FROM: CAMERON VAUGHAN-TYLER

TODAY'S DATE: SEPTEMBER 8, 1997

REQUESTED PLACEMENT DATE: SEPTEMBER 16, 1997

RE: MULTNOMAH COUNTY HEALTH DEPARTMENT TOBACCO
PREVENTION PROGRAMS

I. Recommendation/Action Requested:

This briefing is to update the Board of Commissioners on the status of the Ballot Measure 44 dollars soon to be available to Multnomah County and to discuss the plan for smoking cessation programs to be run by the Multnomah County Health Department.

Now that the administrative rules regarding the distribution of the money are in place, the Oregon Health Division will be issuing a request for proposals from local coalitions and community based programs

II. Background/Analysis:

In the fall of 1996, Oregon voters passed Ballot Measure 44, which levied a sales tax on tobacco products throughout the state. Ten percent of the money accrued will be allocated to community based tobacco prevention programs.

TOBACCO PREVENTION STAFF REPORT PAGE 2

Given this extraordinary opportunity, the Multnomah County Health Department staff have been working closely with the local tobacco control coalition to develop a comprehensive and effective community based proposal which will encompass the four key areas identified by the Oregon Health Division:

1. **Reducing youth access to tobacco**
2. **Creating tobacco free environments**
3. **Decreasing tobacco advertising and promotion**
4. **Creating community linkages to tobacco cessation**

After careful research with the coalition, we have come up with what we feel will be a blueprint for success and a schedule of programs which could ultimately serve as a model for the rest of the state.

III. **Financial Impact**

The total funds available for the state per year will be \$3,250,000. Multnomah County, with its estimated population of 636,000 represents 19.99% of the state, thereby, funds budgeted for the county will total approximately **\$469,074**.

IV. **Legal Issues**

N/A

V. **Controversial Issues**

The Board of County Commissioners is aware of the controversial issues linked to tobacco use.

VI. **Link to Current County Policies:**

Multnomah County Benchmarks specifically point to the need to:

⇒ **Increase the percentage of infants whose mothers did not use alcohol, illicit drugs or tobacco during pregnancy.**

⇒ **Increase the percentage of students not involved with alcohol, illicit drugs or tobacco.**

VII. **Citizen Participation:**

Citizen involvement is the cornerstone of this program. The coalition and staff has and will continue to encourage citizens and other community based organizations to participate.

VIII. **Other Government Participation:**

We have initiated discussion with Washington and Clackamas Counties and are looking at the potential of joining forces once our Multnomah County program is underway. We will also be involving other Multnomah County departments, school districts, chambers of commerce, neighborhood associations, parks and recreation programs and other organizations.

SEP 16 1997

Meeting Date: JUL 15 1997
Agenda No: P-2 P-1
Est. Start Time: 10:30 am 10:30 am

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: DeNovo hearing regarding the Hearings Officer's decision on PLA 2-97.

BOARD BRIEFING Date Requested:
 Amt. of Time Needed:
 Requested By:

REGULAR MEETING Date Requested: July 15, 1997
 Amt. of Time Needed: 1 Hour

DEPARTMENT: DES **DIVISION:** Transportation & Land Use Planning
CONTACT: Robert Hall **TELEPHONE:** 248-3043
 BLDG/ROOM: 412 / 109

PERSON(S) MAKING PRESENTATION: Joan Chambers / Robert Hall

ACTION REQUESTED

☐ Informational Only ☐ Policy Direction ☐ Approval ☒ Other



SUGGESTED AGENDA TITLE

A DeNovo hearing of the Hearings Officer's decision regarding an denial of an appeal of the Planning Director's decision on case PLA 2-97.

SIGNATURES REQUIRED

Elected Official: _____

or

Department Manager: _____

KB Lou E. Nicholas

BOARD OF
COUNTY COMMISSIONERS
97 JUL - 8 PM 12:04
MULTNOMAH COUNTY
OREGON



BOARD HEARING OF July 15, 1997

TIME 10:30 am

CASE NAME: Appeal of Denial on a Lot Line Adjustment

NUMBER: PLA 2-97

1. Applicant Name/Address

Fred Bender
20285 NW Cornell Road
Hillsboro, OR 97124

2. Action Requested by Applicant

Applicant appealed the Planning Director's Decision of PLA 2-97 for a Lot Line Adjustment between two contiguous properties in the Exclusive Farm Use zoning district.

3. Planning Staff Recommendation

Staff recommended that the Hearings Officer uphold the Planning Director's Decision of PLA 2-97.

4. Hearings Officer Decision

The Hearings Officer found that the applicant had not met all of the approval criteria for a lot line adjustment between two contiguous properties in the Exclusive Farm Use zoning district.

5. If recommendation and decision are different, why?

None

ISSUES
(who raised them?)

6. The following issues were raised:

The applicant appealed the Planning Director's decision based on three issues. The approval of the proposed Lot Line Adjustment would increase the permitted number of dwellings above that otherwise allowed in the zoning district; the issue of whether a deed or other instrument creating Parcel 2 recorded with the Department of General Services or in "recordable" form prior to February 20, 1990; and whether the properties in question under the "same ownership".

7. Do any of these issues have policy implications? Explain: None identified at this time.

Action Requested of Board

☐ Affirm Hearings Officer Dec.

Hearing/Rehearing

Scope of Review

☐ On the record

☒ De Novo

New information allowed

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

See attached legal memorandum.

9. Scope of Review (Check One):

(a) ☒ On the Record

(b) ☐ On the Record plus Additional Testimony and Evidence

(c) ☐ De Novo (i.e., Full Rehearing)

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

Signed: [Signature] Date: July 10, 1997

For Staff Use Only	
Fee	
Notice of Review	\$500.00
Transcription Fee	
Length of Hearing	x \$3.50/minute = \$
Total Fee	\$
Received by	Date Case No.

BEFORE THE BOARD OF COMMISSIONERS
FOR THE COUNTY OF MULTNOMAH

In Re: THE APPLICATION OF)	File No. PLA 2-97
FRED H. BENDER)	
)	APPEAL OF PLANNING DIRECTOR'S
)	DECISION

I. BACKGROUND

The requested property line adjustment affects the following parcels, both of which are designated Exclusive Farm Use:

Tax Lot 36 (3.07 acres) owned by Nancy Olsson¹.

Parcel 2 of Partition Plat 1990-43, consisting of Tax Lots 1 (14.08 acres) and 2 (9.75 acres) owned by Western States Development Corp. (Referred to herein as "Parcel 2.")

The proposed lot line adjustment would result in a new Adjusted Tax Lot 36 (12.82 acres), consisting of Tax Lot 36 combined with Tax Lot 2 of Parcel 2; Tax Lot 1 of Parcel 2 would remain as the sole lot comprising Parcel 2 of Partition Plat 1990-43. Exhibit 2.

The following facts about the parcel at issue are not in dispute:

Tax Lot 36 is vacant. It was created some time prior to 1937, and thus the Planning Director deemed it to have been a lawfully created lot that satisfied applicable laws when it was created. At 3.07 acres in size, Tax Lot 36 does not meet the current minimum parcel size of 80 acres in the EFU district; so it is a "substandard parcel" pursuant to MCC 11.15.2018(A)(2)(c) and (d).

Parcel 2 was created as part of a three-lot minor partition approved by the county in 1989 (file number LD25-89). Exhibit 3. Parcel 2 is divided by Skyline Boulevard. Tax Lot 2 of Parcel 2 is on the west side of the road and its northern border is adjacent to Tax Lot 36. It is a vacant and unused

¹ On February 28, 1997, the date the application was submitted, the Applicant/Owner of Tax Lot 36 was Fred H. Bender. Nancy Olsson has subsequently completed the purchase of Tax Lot 36. The new property deed, and Ms. Olsson's affidavit authorizing Fred Bender to continue as the applicant/appellant, are attached hereto as Exhibits 7 and 8.

parcel. Tax Lot 1 is on the other side of Skyline Boulevard.

Concurrent with the 1989 land division, Western States applied for, and the county approved, the siting of a dwelling in conjunction with a farm management plan on Parcel 2 (PRE-24-89) (Exhibit 4) as well as on the other two lots created by the partition. The farm management plan approved for Parcel 2 calls for siting the house and planting five acres of Christmas trees on the east side of Skyline Boulevard (Tax Lot 1 of Parcel 2). There is currently an approved mobile home on Tax Lot 1. Thus, the requested lot line adjustment would not affect the approved farm management plan and dwelling site on Tax Lot 1 because the application would combine Tax Lot 2 of Parcel 2 with Tax Lot 36. The 1989 land division did not include Tax Lot 36.

II. APPROVAL CRITERIA

The approval criteria in effect when the application was submitted in February of this year are found at MCC 11.15.2017 and .2018 of the EFU Chapter. The new version of the EFU Code Chapter that took effect April 6, 1997, is not applicable to this application. Unless otherwise indicated, all references to the county code will be to the version (adopted June 1995) that the Planning Director correctly applied to this application.

The relevant approval criteria are set out below:

11.15.2018 Lot of Record.

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

* * *

(2) A parcel of land:

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

- (b) Which satisfied all applicable laws when the parcel was created;
- (c) Does not meet the minimum lot size requirements of MCC .2016; and
- (d) Which is not contiguous to another substandard parcel or parcels under the same ownership, or

* * *

(B) For the purposes of this subsection:

* * *

* * *

- (3) *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.

III. ASSIGNMENT OF ERROR

Subsection .2018(A)(2)(a) is satisfied because the land division approval (LD25-89) issued by the county on October 25, 1989 is the instrument in recordable form that created Parcel 2.

The Hearings Officer found that the application does not satisfy MCC 11.15.2018(A)(2)(a) based on the conclusion that “[t]he tentative plan approved by LD 25-89 did not constitute acceptance of the partition plat.” Exhibit 1, p. 7.

The Hearings Officer misapplied subsection .2018(A)(2)(a). The Hearings Officer focused on the requirements for the recording of a final plat. The second part of that subsection, however, where it states “ . . . or is in recordable form prior to February 20, 1990,” clearly creates an alternative point in the process, other than the final recording of the plat, for establishing that a parcel was created prior to the deadline date.

The Hearings Officer’s decision does not recognize the distinction between the two alternative

approaches allowed by the plain language of the subsection. Her finding does nothing more than conclude the subsection is violated because a final plat was not recorded, or approved by the county surveyor by February 20, 1990. It is a clearly wrong interpretation to ignore the disjunctive 'or' in subsection .2018(A)(2)(a), thereby making the recordable form provision the same as the actual recording provision in the first part of the subsection. "Recordable form" must mean something different than the actual recording of the final plat.

It is more consistent with both the county code and state law to interpret the recordable form provision as being satisfied with the issuance of the final land use decision approving the creation of the three parcels. That was the reading of subsection .2018(A)(2)(a) offered by the planning staff in an informal opinion issued to Western States Development Corp. in a letter dated February 7, 1992. Exhibit 5. That letter states: "Tax lot 36 and Parcel 2 are contiguous and were both created before February 20, 1990." The Hearings Officer's decision offers no explanation as to why the county is retreating from its prior position.

The issuance of LD 25-89 by the county in October, 1989, satisfies the plain language of the code because, consistent with state law, it is a recordable instrument under ORS Chapter 205 and, pursuant to ORS Chapter 92, it grants a vested right to record the final partition plat. ORS 205.130 (1) and (2) provide that counties shall record any "properly acknowledged or proved . . . interests affecting the title to real property." An approved tentative plat for a land division is a property right that runs with the land. Preliminary plats are recordable as interests affecting title to real property. Some jurisdictions require that final land use decisions, such as those approving preliminary or tentative plats, must be recorded. Portland Zoning Code Section 33.730.120, for example, calls for the recording of final land use decisions (which is different than the subsequent administrative decision to approve the final plat). Exhibit 6. Moreover, the fact that LD 25-89 was a document in

recordable form is further demonstrated by the fact that the Planning Director did have it recorded with the county's Department of Environmental Services. Exhibit 5, page 13.

Although ORS 92.040(1) refers to land division approvals such as LD 25-89 as "the tentative plan for the proposed subdivision or partition," the statute and case law make clear that such approvals are anything but "tentative"; rather, they create a binding obligation that requires local jurisdictions to allow the creation of the approved lots or parcels:

"... approval of the tentative plan is binding on the city under ORS 92.040 and there is nothing in ORS 92.010 to 92.160 which would prevent the subdivider from proceeding with construction. The filing and recording of the final plat is only necessary to enable the subdivider to sell the property.

* * *

ORS 92.040 provides that approval 'shall be binding upon the city or county for the purpose of the preparation of the [final] plat or map.' The apparent intent of this provision is to enable the subdivider to proceed with his project, including not only the preparatory steps to filing a final plat, but actual construction, with the assurance the city cannot later change its mind."

Bienz v. City of Dayton, 29 Or App 761, 769, 566 P2d 904 (1977). See also, *Commonwealth Properties, Inc. v. Washington County*, 35 Or App 387, 582 P2d 1391 (1978).

The Hearings Officer's determination that LD 25-89 does not satisfy subsection .2018(A)(2)(a) is at odds with the binding legal obligation imposed on the county when it approved the partition. LD 25-89 is an instrument in recordable form that creates a vested right for the property owner (and any subsequent owners) to take all steps necessary to implement the creation of the approved parcels.

Respectfully Submitted,



D. Daniel Chandler, OSB #90153
Of Attorneys for Applicant



MULTNOMAH COUNTY OREGON

O'DONNELL RAMIS CREW
CORRIGAN & DACHRACH

GFH

JUL 07 1997

DEPARTMENT OF ENVIRONMENTAL SERVICES
TRANSPORTATION & LAND USE PLANNING DIVISION
2115 S.E. MORRISON STREET
PORTLAND, OREGON 97214
(503) 248-3043

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

Multnomah County Hearings Officer Decision

Attached please find a copy of the Hearings Officer's decision in the matter of PLA 2-97. A copy of the Hearings Officer's decision is being mailed to those persons entitled to be mailed notice under MCC 11.15.8220(C) and to other persons who have requested the same.

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 \$500.00 [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, Portland, Oregon.

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

Signed by the Hearings Officer:	July 1, 1997
Decision Mailed to Parties:	July 1, 1997
Decision Submitted to Board Clerk:	July 1, 1997
Last day to Appeal Decision:	July 10, 1997
Reported to Board of County Commissioners:	July 10, 1997

**BEFORE THE HEARINGS OFFICER
FOR MULTNOMAH COUNTY, OREGON
FINAL ORDER**

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

July 1, 1997

PLA 2-97

Appeal of an Administrative Decision which found that the application for a lot line adjustment did not meet all of the approval criteria.

Property Location:

14007 NW Skyline Boulevard

Property Description:

Tax Lot 36, Section 25, T2N, R2W, and Parcel 2,
Partition Plat 1990-43 (consisting of Tax Lots 1 & 2)

Property Owner:

Tax Lot 36, Section 25, T2N, R2W:
Fred Bender (at time of application)
20285 NW Cornell Road
Hillsboro, OR 97124

Tax Lot 36, Section 25, T2N, R2W:
Nancy Olsson (at time of hearing)
20285 NW Amberwood Drive
Hillsboro, OR 97124

Parcel 2, Partition Plat 1990-43
(consisting of Tax Lots 1 & 2)
Western States Development Corp.
20285 NW Cornell Road
Hillsboro, OR 97124

Applicant:

Fred Bender
20285 NW Cornell Road
Hillsboro, OR 97124

Zoning Designation:

Exclusive Farm Use - EFU

Hearings Officer Decision:

Deny appeal and affirm administrative decision, which found that the applicant had not met all of the approval criteria for a lot line adjustment between two contiguous properties in the Exclusive Farm Use zoning district, which properties were identified as Tax Lot 36, Section 25, T2N, R2W, and Parcel 2, Partition Plat 1990-43 (consisting of Tax Lots 1 & 2), based on the following findings and conclusions.

PROCEDURAL ISSUES

1. IMPARTIALITY OF THE HEARINGS OFFICER

- A. No ex parte contacts. I did not have any ex parte contacts prior to the hearing of this matter. I did not make a site visit.
- B. No conflicting personal or financial or family interest. I have no financial interest in the outcome of this proceeding. I have no family or financial relationship with any of the parties.

BURDEN OF PROOF

In this proceeding, the burden of proof is upon the applicant/appellant.

SCOPE OF APPEAL

The hearing before the Hearings Officer on a matter appealed shall be limited to the specific grounds relied on for reversal or modification of the decision in the Notice of Appeal. The appellant's Notice of Appeal stating the grounds for the appeal of the administrative decision is attached hereto as Exhibit "A" and is incorporated by this reference herein. The specific grounds raised by the applicant will be discussed in the body of this decision.

FACTS

1. APPLICANT'S PROPOSAL

The applicant requests approval of a Lot Line Adjustment between two contiguous properties in the Exclusive Farm Use zoning district, identified as Tax Lot 36, Section 25, T2N, R2W (3.07 acres) and Parcel 2, Partition Plat 1990-43 (consisting of Tax Lots 1 & 2) (23.83 acres). At the time of the application, Tax Lot 36 is in the ownership of Fred H. Bender and Parcel 2 was owned by Western States

Development Corp. On June 11, 1997 Fred Bender conveyed his interest in Tax Lot 36 to Nancy Olsson.

2. SITE AND VICINITY INFORMATION

The subject property is located at 14007 NE Skyline Boulevard, in the Exclusive Farm Use zone. The site plan is attached hereto as Exhibit "B", and incorporated by this reference herein.

3. TESTIMONY AND EVIDENCE PRESENTED

- A. During and prior to the hearing the exhibits which are listed on the attached Exhibit "C", which is incorporated by this reference herein, were received by the Hearings Officer.
- B. Bob Hall testified for the County, summarizing the history of the application and the Administrative Decision and subsequent appeal therefrom.
- C. Jeff H. Bachrach, an attorney, submitted oral and written testimony and a legal memorandum in support of the appeal.
- D. Ronald E. Sprague, Co-Trustee of the Frederick T. King Trust, testified and presented written evidence that Frederick T. King Trust owned a parcel which was adjacent to Tax Lot 2 of Parcel 2, on Partition Plat 1990-43, and that the adjacent parcel (Lot 24) had the interest in a 16 foot wide roadway easement, the centerline of which was the northern boundary of Tax Lot 2 on Parcel 2. Mr. Sprague wanted to make sure that the County was aware of the easement and that the Partition Plat map 1990-43, dated 1/26/90, failed to show the easement.

ISSUES ON APPEAL

- 1. Would approval of the proposed Lot Line Adjustment increase the permitted number of dwellings above that otherwise allowed in the zoning district?
- 2. Was a deed or other instrument creating Parcel 2 recorded with the Department of General Services or in "recordable" form prior to February 20, 1990?
- 3. Are the properties in question under the "same ownership"?

STANDARDS AND CRITERIA ANALYSIS AND FINDINGS OF FACT

This is an appeal relating to an Administrative Decision concerning an application for a Lot Line Adjustment. Multnomah County Planner Bob Hall prepared a written decision which discussed relevant criteria and facts, some of which will not be addressed in this opinion. The appeal is related to specific issues raised by the appellant. Those issues and findings which were addressed in the Administrative Decision, but have not been challenged on appeal, are incorporated by this reference herein.

- 1. Would approval of the proposed Lot Line Adjustment increase the permitted number of dwellings above that otherwise allowed in the zoning district?**

Findings:

During the appeal hearing Senior Planner Robert Hall indicated that the applicant had not demonstrated that the permitted number of dwellings would not be increased above that otherwise allowed in the district, because the applicant had not addressed the economic test relative to dwellings in conjunction with farm use pursuant to Oregon Administrative Rule 660-33-135.

Mr. Bachrach, the attorney who filed the appeal, indicated during the hearing that he did not feel that the staff had clearly articulated in the staff decision that this criteria was in fact a basis for denial. Mr. Bachrach correctly pointed out that the staff conclusion listed two basis for denial, one of which was that there were no deeds or other instruments creating Parcel 2 of Partition Plat 1990-43, recorded or in recordable form prior to February 20, 1990, and secondly, that Parcel 2 and Tax Lot 36 were in the same ownership. The conclusion does not site the above criteria as a grounds for denial.

During the hearing we took a short recess, during which I reviewed the standards set forth in OAR 660-33-135. Upon resuming the hearing, I indicated that I felt the applicant had in fact met the criteria set forth above. The standard in question does not reference OAR 660-33-135. I do not find OAR 660-33-135 to be applicable in this situation. OAR 660-33-135 relates to dwellings in conjunction with farm use on parcels of at least 160 acres in size. Since the criteria in question relates to lot line adjustments between "lots of record", which by definition do not meet the minimum lot size requirements of the EFU zone, OAR 660-33-135 is not applicable.

The applicant has indicated that there is a dwelling on Parcel 2 that has been in place before the approval of Partition Plat 1990-43. In addition, Parcel 2 has been approved for a farm dwelling under a farm management plan. The proposed adjustment will not affect the farm management plan and related dwelling approval because all of the farm

area that was the basis of the approval remains in the adjusted Parcel 2. There is no dwelling on Tax Lot 36 and application has not been made for a dwelling.

Accordingly, I find that the proposed lot line adjustment will not increase the permitted number of dwellings above that otherwise allowed in this zoning district. The applicant has met this criteria.

2. Was a deed or other instrument creating Parcel 2 recorded with the Department of General Services or in "recordable" form prior to February 20, 1990?

MCC 11.15.2018 Lot of Record.

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

...

(2) A parcel of land:

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

Findings:

Tentative approval of the proposed partition plat that created Parcel 2 of Partition Plat 1990-43 was granted by the Planning Director on October 15, 1989. However, as recognized by ORS 92.040, that tentative approval did not constitute final acceptance by the county of the partition plan which actually created the parcel.

ORS 92.040 provides in relevant part, ". . . Approval of the tentative plan shall not constitute final acceptance of the plat of the proposed subdivision or partition for recording; however, approval by a city or county of such tentative plan shall be binding upon the city or county for the purposes of the preparation of the subdivision or partition plat, and the city or county may require only such changes in the subdivision or partition plat as are necessary for compliance with the terms of its approval of the tentative plan for the proposed subdivision or partition."

Approval of a tentative plan does not constitute final acceptance of a partition plat. If the plat which is later submitted does not comply with the tentative plan approval, the County can require revisions to the proposed plat. If the proposed plat is not submitted within the time frame for approval, the County would have to reject the proposed plat.

It is during the tentative plan stage that discretionary decisions regarding parcel configuration and size are made. Applicants are given the opportunity to submit tentative plans for conceptual approval prior to incurring the cost of substantial engineering and/or survey work inherent in plat approval. Conditions are added to the tentative plan approval which must be met prior to acceptance of the final plat.

MCC 11.45.750 (1990 version) stipulated that plats were not final until recorded. The document that became Partition Plat 1990-43 was submitted for review to the County Surveyor on July 2, 1990. The County Surveyor approved the document on July 17, 1990, and the partition plat was recorded July 19, 1990. The instrument creating Parcel 2 of Partition Plat 1990-43, therefore, was not recorded prior to February 20, 1990.

The appellant argues that the land division approval in October 1989 was an "instrument creating" Parcel 2 in a sufficiently "recordable form" so as to satisfy subsection .2018(A)(2)(a). The question thus becomes when is an instrument creating a parcel in recordable form.

The appellant argues that the staff decision LD 25-89 could have been recorded, yet cited no authority for that assertion. The act of recording a document generally has no effect unless the recordation is specifically required or authorized by statute. In this instance, the relevant statutes are the subdivision and partition laws set forth in ORS Chapter 92. It is the provisions of ORS Chapter 92 that determine when a partition plat is in "recordable form". It is the partition plat, not the conditional tentative plan approval, that "created" the parcels.

In order for a partition plat to be "recordable", the plat must have been surveyed. ORS 92.050. That statute also requires that the survey and plat of the partition be made by a registered professional land surveyor. This section also sets forth technical requirements regarding the details to be set forth on the plat and requires that locations and descriptions of all monuments be set forth on the plat.

The plat must have a surveyor's certificate, together with the seal and signature of the surveyor having surveyed the land represented on the plat, to the effect that the surveyor has correctly surveyed and marked the proper monuments, the lands as represented. ORS 92.070.

In addition, pursuant to ORS 92.075, in order to partition any property, the declarant shall include, on the face of the partition plat, a declaration, taken before a notary public or other person authorized by law to administer oaths, stating that declarant has caused the partition plat to be prepared and the property partitioned in accordance with the provisions of ORS Chapter 92. That dedication/declaration on Partition Plat 1990-43 was not signed until March 15, 1990.

ORS 92.100 provides that before any partition plat can be recorded, a partition plat must be approved by the County Surveyor before it is recorded. The surveyor reviews the plat to determine if the requirements of ORS Chapter 92 for recording the plat have been met. Without the signature of the County Surveyor, the partition plat cannot be recorded, according to the subdivision laws. Thus, prior to the affixing of the signature by the County Surveyor on the partition plat, the partition plat is not in "recordable form".

The tentative plan approved by LD 25-89 did not constitute acceptance of the partition plat, nor was it an instrument in recordable form which created a parcel. The tentative plan had not been surveyed and did not contain any legal descriptions for the proposed parcels. LD 25-89 was simply a land use approval which authorized the next step of a two-step process. However, at any point in that process, if the applicant had failed to meet any of the conditions or submit the partition plat in accordance with the requirements of the tentative plan, that partition plat would not have been accepted. The conditional tentative plan approval was not a recordable document which created a parcel.

A review of Partition Plat 1990-43 indicates that the partition plat was not in recordable form until July 17, 1990, the date on which the Multnomah County Surveyor affixed his signature to the partition plat.

Accordingly, while it is clear that Tax Lot 36 was a lot of record as of February 20, 1990, I find that Parcel 2 of Partition Plat 1990-43 was not a legal lot of record as of February 20, 1990. The applicant has failed to meet this approval criteria.

3. Are the properties in question under the "same ownership"?

Findings:

Both Tax Lot 36, Section 25, T2N, R2W and Parcel 2 Partition Plat 1990-43 are legally created lots and are discrete units of land as recognized by ORS 92.017. Tax Lot 36, Section 25, T2N, R2W was not required to be included in Partition Plat 1990-43 due to its discrete nature, not its ownership.

The Planning staff determined that Tax Lot 36, Section 25, T2N, R2W and Parcel 2, Partition Plat 1990-43 were not separate Lots of Record as defined in MCC 11.15.2018, because they are in the same ownership.

Fred H. Bender (20285 NW Cornell, Hillsboro, OR 9712) is registered with the Oregon Secretary of State Corporation Commission as the president of Western States Development Corporation (registration #210665-19). Staff also found that Western States Development Corporation owns Tax Lots 1 & 2 of Parcel 2, Partition Plat 1990-43 and Fred H. Bender owns Tax Lot 36, Section 25, T2N, R2W.

In order to qualify as a lot of record, a parcel of land cannot be contiguous to another substandard parcel or parcels under the same ownership. MCC 11.15.2018.

MCC 11.15.2018(B)(3) provides:

"(3) *Same ownership* refers to parcels of which greater than possessory interests are held by the same person or persons, spouse, minor aged child, single partnership, or business entity separately or in tenancy in common."

The definition of same ownership requires several things. The ownership must be of greater than possessory interest. The interest must be held by the same person or persons, spouse, minor aged child, single partnership, or business entity separately or in tenancy in common. Thus, if an individual owned property with a spouse or a child or in partnership, separately or as tenants in common, you would have the "same ownership". However, where an individual owns one parcel of property and a corporation, a separate and distinct legal entity, owns another piece of property, the two parcels are not in the "same ownership".

Staff has indicated that the Board of County Commissioners has previously found *same ownership* as defined by MCC 11.15.2062(B)(3) to include a family trust with a husband and wife as trustee to be the equivalent of the term spouse in the same definition. Therefore, the Board required a parcel owned by an individual to be combined with contiguous property controlled by a trust, of which one of the trustees was the individual's spouse. 11.15.2018(B)(3) is identical in wording to that of MCC 11.15.2062(B)(3).

However, a family trust is significantly different than a corporation. A family trust is generally used as an estate planning device to transfer property to a future generation without the necessity of going through probate. The individual establishing the trust or the trustor often retains a possessory interest in the property transferred during his or her life.

That is a different situation from corporate ownership of an asset. As the appellant points out in their Memorandum in Support of Appeal, staff's interpretation is contrary to ORS Chapter 60, which recognizes that a corporation is a distinct and separate entity from its individual owners. Accordingly, I find that the properties are not in the same ownership.

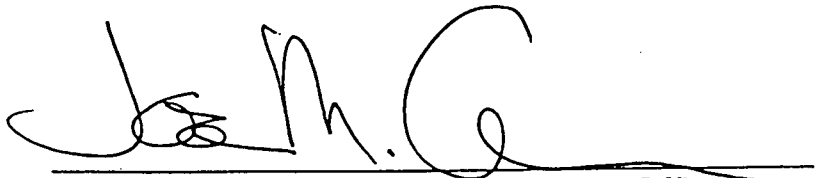
Since I find that the properties, as of the date of the application, were not in the same ownership, I will not rule on the effect of the purported transfer of the property to Nancy Olsson on June 11, 1997. Accordingly, I will not discuss the practical or legal effect of the applicant's effort to convey Tax Lot 36 during the pendency of this application.

Accordingly, I find that the two parcels in question were not in the "same ownership" within the meaning and context of MCC 11.15.2018.

CONCLUSION

I find that Parcel 2 was not a lot of record as of February 20, 1990 on the grounds and for the reasons that the instrument (i.e., partition plat) which created Parcel 2, was neither recorded nor in "recordable form" as of February 20, 1990. Therefore, I affirm the Planning Director's decision denying a request for a property line adjustment between Tax Lot 36, Section 25, T2N, R2W, and Parcel 2, Partition Plat 1990-43 (consisting of Tax Lots 1 & 2). The appeal is denied and the Planning Director's decision denying the request for the property line adjustment is affirmed, as discussed herein.

IT IS SO ORDERED, this 1st day of July, 1997.



JOAN M. CHAMBERS, Hearings Officer



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

NOTICE OF APPEAL
ADMINISTRATIVE DECISION

SANK OF AMERICA
FOR DEPOSIT ONL
ACCT#261350000
MULTNOMAH COUNT

1. Name: Bachrach, H., Jeff
Last Middle First
2. Address: 1727 NW Hoyt Street, Portland, OR 97209
Street or Box City State and Zip Code
3. Telephone: (503) 222 - 4402

4. If serving as a representative of other persons, list their names and addresses:
Of attorneys for applicant/appellant, Fred H. Bender.

5. What is the decision you wish reviewed (e.g., denial of a minor variance, approval of a Greenway Permit, etc.)?
Planning Director's denial of PLA 2-97 property line adjustment.

6. Date the decision was filed with the Director of the Department of Environmental Services: May 1, 1997

7. Describe specific grounds relied on for reversal or modification of the decision.
(use additional sheets if necessary)
See attached notice of appeal.

Signed: [Signature] Date: May 12, 1997

Staff Use Only

Notice of Appeal Fee = \$300.00

EXHIBIT, A Page, 1 of 3

Received by: _____ Date: _____ Case No. _____

97 MAY 12 PM 3:42

PLANNING SECTION

BEFORE THE MULTNOMAH COUNTY LAND USE HEARINGS OFFICER

Appeal of Planning Director's Denial of)
Application of Fred H. Bender for a Lot Line) No. PLA 2-97 Notice of Appeal
Adjustment.) (Specific Grounds for Reversal)
)

Pursuant to MCC 11.15.8290(B)(3), this memorandum is submitted on behalf of the applicant/appellant to set out the specific grounds relied on to request reversal of the Planning Director's decision. The decision being appealed denied the requested lot line adjustment based on the following two findings:

1. Parcel 2 of Partition Plat 1990-43 is not a lot of record because there was not "a deed or other instrument creating the parcel ... in recordable form prior to February 20, 1990." MCC 11.15.2018(A)(2)(a).
2. The two parcels at issue are under the "same ownership," as that term is applied by the MCC 11.15.2018(B)(3) and 11.15.2018(A)(2)(d).

The two findings summarized above are based on incorrect interpretations and applications of the applicable county provisions and state law. Therefore, the Planning Director's decision should be reversed.

More specifically, the decision's interpretation of MCC 11.15.2018(A)(2)(a) is incorrect as a matter of law; it is contrary to both prior county actions and ORS Chapter 92, Chapter 205 and case law thereunder. Moreover, the decision's conclusion regarding the lot of record status of Parcel 2 is based, in part, on the mistaken assumption that the future siting of a dwelling on Parcel 2 is subject to the requirements of OAR 660-33-35. That is incorrect. OAR 660-33-35 is

not applicable because Parcel 2 has a vested right to site a dwelling pursuant to the farm management plan that was approved by the county's decision in PRE 24-89, September 14, 1989.

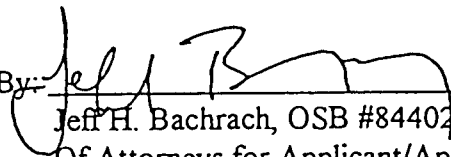
The conclusion that the two parcels are in the same ownership is based on an incorrect interpretation and application of the county code. Moreover, the county's interpretation and application of the code's "same ownership" provision violates ORS Chapter 60 and common law protections afforded to corporations.

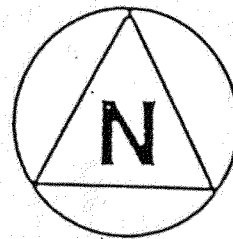
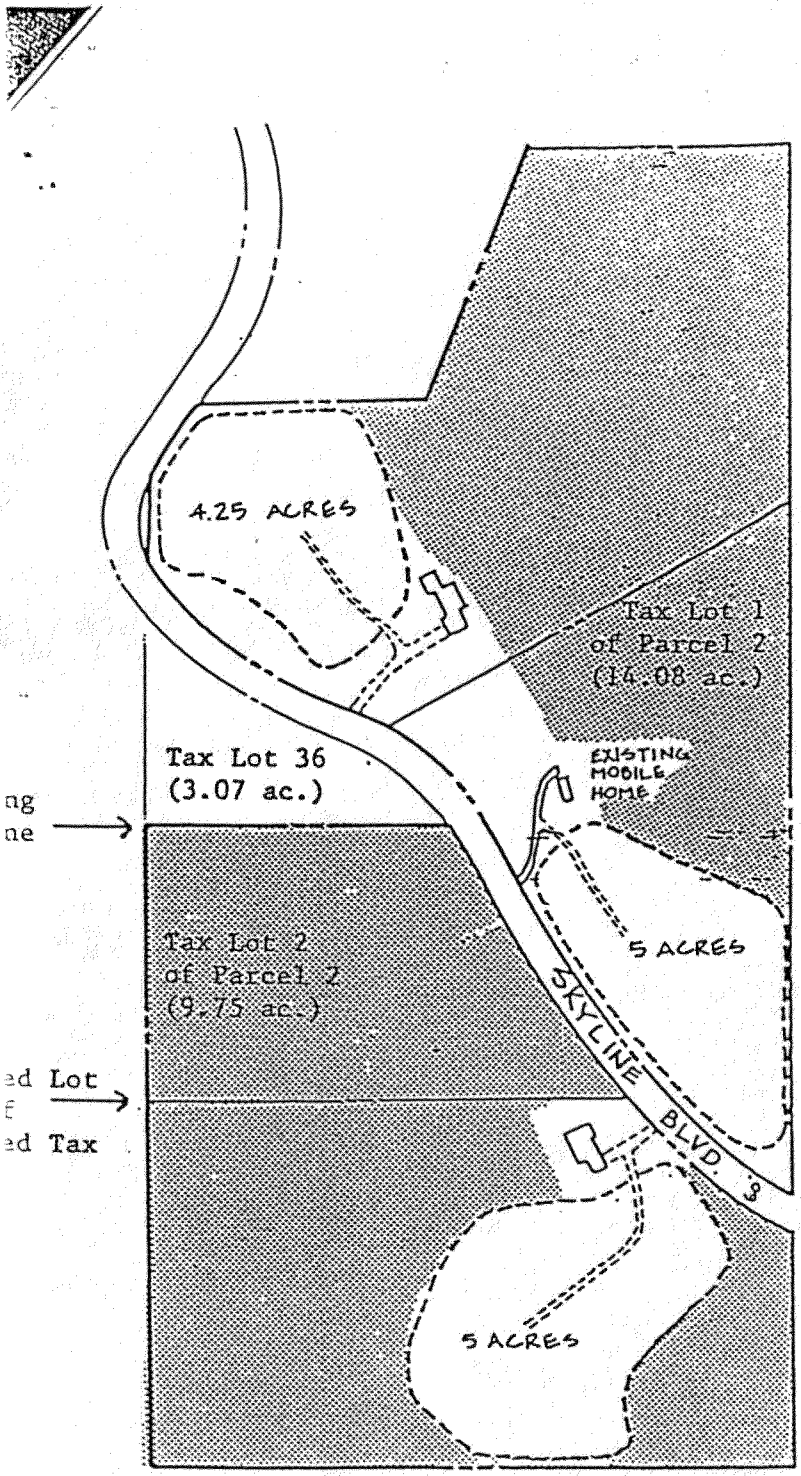
The appellant intends to submit a more detailed legal memorandum to the hearings officer in advance of the hearing.

DATED this 12th day of May, 1997.

Respectfully submitted,

O'DONNELL RAMIS CREW
CORRIGAN & BACHRACH

By: 
Jeff H. Bachrach, OSB #84402
Of Attorneys for Applicant/Appellant,
Fred H. Bender



SCALE: 1" = 400'
APRIL 22, 1989

LEGEND

- XMAS TREES
- FOREST & BRUSH
- EXISTING ROAD
- PROPOSED ROAD
- HOMESITE

SITE PLAN

OR:
WESTERN STATES DEVELOPMENT CORP.
20285 N.W. CORNELL ROAD
HILLSBORO, OREGON 97124
PHONE: 645-5544

TAX LOTS 13 & 30

PLANNING
RESOURCES, INC.

3681 S.W. Carman Drive
Lake Oswego, Oregon 97035
(503) 636-5422

List of Exhibits
PLA 2-97

"A" Applicant's Submittals

- A1 General Application form (2 pages)
- A2 Application for EFU Lot Line Adjustment
- A3 Property Owner Consent Form
- A4 Application Checklist with post it note from Alan young
- A5 A & T printout and ownership map (2 pages)
- A6 Applicant's narrative dated February 28, 1997 with maps (6 pages)
- A7 Craven v. Jackson County (submitted by applicant)
- A8 Parsons v. Clackamas County (submitted by applicant)
- A9 Letter from Will Selzer
- A10 Revised narrative and cover letter from Jeff Bachrack (9 pages)
- A11 Legal Memorandum in Support of Appeal

"B" Notification Information

- B1 Decision of Planning Director for PLA 2-97
- B2

"C" Multnomah County Items

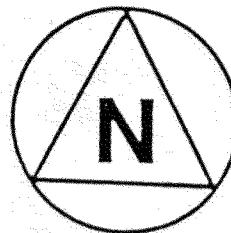
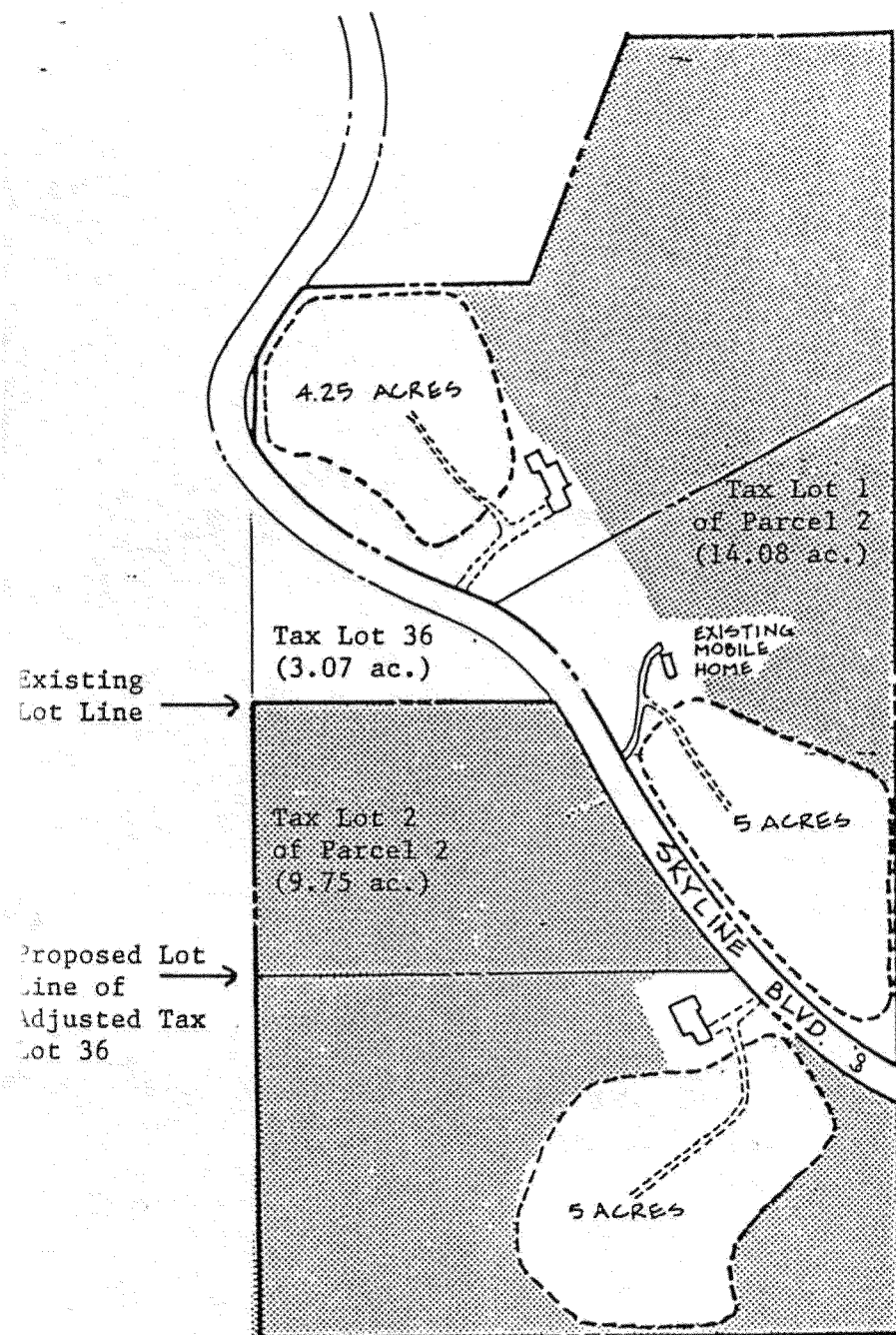
- C1 Excerpts from ORS Chapter 92 (5 pages)
- C2 A & T deed history for properties with cover note from Barry Benson (15 pages)
- C3 Recorded copy of Partition Plat 1990-43
- C4 Copy of recorded easement across the northerly portion of that portion of Parcel 2 west of Skyline Blvd., submitted by Ron Sprague on 6/3/97 (7 pages)

"D" Appeal Material

- D1 Notice of Appeal with narrative and cover letter from Jeff Bachrach
- D2 Affidavit of Posting

"E" Documents Submitted at 6/18/97 Public Hearing

- E1 Letter and attachments from Ron Sprague
-
-
-
-
-
-
-



SCALE: 1" = 400'
APRIL 22, 1989

LEGEND

- XMAS TREES
- FOREST & BRUSH
- EXISTING ROAD
- PROPOSED ROAD
- HOMESITE

SITE PLAN

FOR:

WESTERN STATES DEVELOPMENT CORP.
20285 N.W. CORNELL ROAD
HILLSBORO, OREGON 97124
PHONE: 645-5544

TAX LOTS 13 & 30
SECTION 25, T2N, R2W, W.M.

PLANNING
RESOURCES, INC.

Land Use &
Site Planning
Services

3681 S.W. Carman Drive
Lake Oswego, Oregon 97035
(503) 636-5422



RECEIVED

OCT 27 1989

MULTNOMAH COUNTY OREGON

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

BOARD OF COUNTY COMMISSIONERS
GLADYS McCOY • CHAIR OF THE BOARD
PAULINE ANDERSON • DISTRICT 1 COMMISSIONER
GRETCHEN KAFOURY • DISTRICT 2 COMMISSIONER
RICK BAUMAN • DISTRICT 3 COMMISSIONER
SHARRON KELLEY • DISTRICT 4 COMMISSIONER

TYPE III LAND DIVISION

TENTATIVE PLAN DECISION

LD 25-89

October 25, 1989

Location: 13855 N.W. Skyline Boulevard

Legal Description: Tax Lots 13 and 30, Section 25 T 2N R 2W

Legal Owner: Manifold Business and Investments, Inc.
7315 S.E. 82nd Avenue
Portland, Oregon 97266

Applicant: Western States Development Corp.
20265 N.W. Cornell Road
Hillsboro, Oregon 97124

DECISION: The Tentative Plan for the Type III Land Division requested, a minor partition resulting in three parcels is hereby approved in accordance with the provisions of MCC 11.1345.400.

Conditions of Approval:

1. Within one year of the date of this decision, deliver the final partition map and other required attachments to the Planning and Development Division of the Department of Environmental Services in accordance with MCC 11.145.710. The enclosed Summary Instruction Sheet contains detailed information regarding the final partition map and the remaining steps for completing the land division.

2.

Prior to recording the final partition map, complete a Statement of Water Rights in accordance with the provisions of Senate Bill 142 as adopted by the 1987 Oregon Legislature (instructions enclosed). Please contact the State Water Resources Department at 378-3066 for additional information.

3.

Prior to recording the final partition map, comply with the following Engineering Services Division requirements:

A. Commit to participate in future improvements in N.W. Skyline Boulevard through deed restrictions. Contact Ike Azar at 248-5050 for additional information.

4. In conjunction with issuance of building permits for either parcel construct on-site water retention and/or control facilities adequate to insure that surface runoff volume after development is no greater than that before development per MCC 11.45.600. Plans for the retention and/or control facilities shall be subject to approval by the County Engineer with respect to potential surface runoff on the adjoining public right-of-way.

5. Prior to issuance of building permits for either parcel apply for and obtain a Land Feasibility Study confirming the ability to use on-site sewage disposal system on the parcel for which the building permit is sought.

6. Endorsement of the final partition map shall occur only after the approval of the following "Use Under Prescribed Conditions" cases under MCC 11.15.2010(C)(2): PRE 23-89, PRE 24-89 and PRE 25-89.

7. Prior to endorsement of the final partition map, provide evidence that water in sufficient amounts and pressure will be available to serve a residence on any parcel. Evidence that a private well in feasible may consist of:

A. Written testimonials from drillers of successful wells in the area, or

B. Data from the Department of Water Resources in Salem (378-3066), regarding private wells in the immediate area, that would substantiate the likelihood of a successful well being drilled on the property.

2
the
Final
plan

8. Prior to endorsement of the final partition map, the applicant shall apply for and obtain approval of annexation of the subject property to the boundaries of Multnomah County Rural Fire Protection District No. 20.

Findings of Fact:

1. Applicant's Proposal: The applicant proposes to divide two parcels containing about 66.6 acres into two smaller lots. Parcel 1 is vacant and contains about 21.1 acres. Parcel 2 has a mobile home on it and contains about 24 acres. Parcel 3 is vacant and contains about 21.5 acres. Christmas tree farms are proposed on each parcel. As required by the Zoning Ordinance, the applicant has requested approval of a "use under prescribed conditions" for each of the proposed 20-acre parcels under cases PRE 23-89, PRE 24-89 and PRE 25-89. The applicant states that a residence on each parcel "is likely in the third year of each Christmas tree farm's operation."
2. Site Conditions and Vicinity Information: Site conditions as shown on the Tentative Plan Map area as follows:
 - A. The site is on the westerly side of N.W. Skyline Boulevard about 1 1/4 miles from the intersection of N.W. Cornelius Pass Road.
 - B. Future Street Improvements (N.W. Skyline Boulevard): N.W. Skyline Boulevard is not fully improved to county standards at this time. The County Engineer has determined that in order to comply with the provisions of MCC 11.60 (The Street Standards Ordinance) it will be necessary for the owner to commit to participate in future improvements to N.W. Skyline Boulevard through deed restrictions as a condition of approval.
3. Land Division Ordinance Considerations (MCC 11.45):
 - A. The proposed land division is classified as a Type III because it is a *minor partition which will result in one or more parcels with a depth to width ratio exceeding 2.5 to 1* [MCC 11.45.100(D)]. Parcel 2 has a depth to width ratio of 3.1 to 1.
 - B. MCC 11.45.390 lists the approval criteria for a Type III 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 complies with the applicable provisions, including the purposes and intent of [the Land Division] chapter.[MCC 11.45.230(C)].*

(4) *. . . and that the tentative plan complies with the Zoning Ordinance. (MCC 11.45.390).*

C In response to the above approval criteria for a Type II Land Division, the following findings are given:

(1) **Comprehensive Plan:** Finding 4 indicates that the proposal is in accord with the applicable policies of the Comprehensive 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. For these reasons, the proposed land division complies with MCC 11.45.230(A).

(2) **Development of Property:**

Applicant's Response: "This proposal does not affect access to or development of adjoining property. All three parcels have sufficient frontage on Skyline Boulevard to provide a safe route for access to the property. All three parcels have sufficient land to make commercial tree

farms feasible on each. All three parcels have suitable dwelling sites. The applicant will address this issue in more detail when it is time to seek approval for a dwelling in conjunction with the farm use."

Staff Comment: After approval of the proposed land division. Parcels 1,2 and 3 will contain 21.1, 25 and 21.5 acres, respectively. No further division of any parcel will be possible under the EFU zoning because 19 acres is the smallest parcel size allowed under MCC 11.15.2010(C)(2). Approval of the land division will not affect the development of or access to adjoining land. For these reasons, the proposed land division complies with MCC 11.45.230(B).

(3) Purposes and Intent of Land Division Ordinance: Finding 5 indicates that the land division complies with the purposes and intent of the Land Division Ordinance.

(4) Zoning Ordinance: Finding 6 indicates that the tentative plan complies with the Zoning Ordinance, subject to approval of cases PRE 23-89, PRE 24-89 and PRE 25-89.

4. Applicable Comprehensive Plan Policies: The following Comprehensive Plan Policies are applicable to the proposed land division. The proposal satisfies those policies for the following reasons:

A. Policy No. 9 - Agricultural Lands: This policy states in part that *"[t]he county's policy is to restrict the use of [EFU-zoned] 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."* In order to create the proposed 20-acre parcels in the EFU zone the applicant must obtain approval of a "use under prescribed conditions" for all three parcels pursuant to MCC 11.15.2010(C)(3). Obtaining such approval requires, among other things, the preparation of a farm management plan. The plan must be certified by a person with agricultural expertise as being *"appropriate for the continuation of the existing commercial agricultural enterprise within the area."* [MCC 11.15.2010(C)3(c)]. As stated in Finding 1 the applicant has requested such approval under cases PRE 23-89, PRE 24-89

and PRE 25-89. Subject to approval of those cases and for the reasons stated in Finding 6, the proposal satisfies Policy No. 9.

B. Policy No. 13, Air, Water, and Noise Quality:

Applicant's Response: "This proposal will not affect the air and water quality of the Skyline Boulevard area. There will be minimum motor vehicle traffic associated with the occasional site visits required for planting, tending, and harvesting the trees. The traffic generated by 2 dwellings 3 years into the plan is also minimal. The main sound associated with the tree farms will be at harvest, if motorized chain saws are used. But the sound of chain saws is common in rural Oregon, and, in this case, the impact would be mitigated by 2 factors: (1) the trees will be 3 inches to 4 inches thick at the base and will cut quickly, and (2) the slope of the land and the distance from neighboring dwellings will reduce the effective sound levels."

Staff Comment: Obtaining a Land Feasibility Study from the County Sanitarian for any parcel is a condition of approval. For this reason and for the reasons stated by the applicant, the proposal complies with this policy.

C. Policy No. 14 - Development Limitations: This policy considers development limitation areas as those (a) with slopes exceeding 20 percent; (b) with severe soil erosion potential; (c) within the 100-year flood plain; (d) with a high seasonal water table within 0-24 inches of the surface for three or more weeks of the year; (e) with a fragipan or other impervious layer less than 20 inches from the surface, or (f) subject to slumping, earth slides or movement. The Land Division Ordinance also addresses these same factors under the section titled "Land Suitability" (MCC 11.45.460). Below is the applicant's response to MCC 11.45.460.

Applicant's Response:

"Slopes Exceeding 20%"

The Soil Conservation Service survey grades soils according to slope, with the pertinent breakdown being 8%-15% for a "C" rating.

All of the projected tree farm activity will be on Cascade silt loam soil grades 7C (8%-15% slope). Prudent Christmas tree planting avoids slopes in excess of 15%. Christmas tree consultant Bernard Douglass has walked this site and determined that it is feasible to plant Noble fir on the 7C area of the property. The 3 lots created by this partition would each have sufficient gently sloping terrain to support the proposed Christmas tree farm and dwelling on each lot.

Portions of all three lots have slopes of greater than 15% (See soils map) The Christmas tree plantings will be on the 7C soils adjacent to Skyline Boulevard on all three parcels. The lesser slopes allow intensive tree care and provide good access to and from the highway. The farms will avoid the steeper portions of the property.

Severe Soil Erosion

The areas cleared for hay farming have the least slope and, therefore, the least potential for erosion problems. That is where the Christmas trees will be planted. Cleared land that is not used for tree farms will remain in grass or be reforested. Surface water follows natural drainage swales or Skyline Boulevard ditches.

There is some slope exceeding 30% in the northwest corner of Parcel 1. This area will remain in long-term timber production and will not be cultivated.

The steepest land is a hindrance to most activity and does limit the acreage on the parcel that is suitable for farming. However, this limitation does not render the overall parcel unsuitable for agricultural use and will not prevent implementation of the Farm Management Plan.

Within the 100-Year Flood Plain

The property is near the top of Skyline Ridge, several hundred feet above the elevation of Rock Creek to the west. No 100-year flood plain exists on the site.

High Seasonal Water Table (0"-24")

The main concern with a high water table is the potential for killing the plants with too much water. Noble fir will not tolerate wet ground. According to the SCS soil tables, the water table on Cascade silt loam soils ranges from 18 inches to 30 inches below the surface over the winter. In general, the property is well drained because of the overall slope to the west and south.

Cascade soil is rated by the SCS as acceptable for growing fir trees; with a Douglas fir site index of 150-165--about average for growing long-term commercial sized trees. The Noble fir plantings described in the Farm Management Plan will be preceded by ground preparation that will locate wet areas to avoid in planting, if there are any. There is no indication that this land is unsuitable or incapable of being made suitable for supporting this proposed farm use.

Fragipan (Less Than 30" from Surface)

The main concern in this standard is that root systems cannot penetrate into the fragipan. According to the SCS soil survey, there is a slowly permeable fragipan at a depth of 20 inches to 30 inches in the Cascade soils that dominate this parcel. This is a marginally acceptable rooting depth for Douglas fir trees in a commercial forest. The site is also suitable for the proposed Noble fir seedlings, when grown to the 6' or 7' Christmas tree height.

This is marginal land for any farm use, but Christmas trees are traditionally grown on marginal farm land. The fragipan depth limitation does not make this land unsuitable for the proposed farm use.

Stability

The vicinity is generally stable. There are many dwellings on similar soils along Skyline Boulevard in both directions from this property. The cleared fields on the gentler slopes on top of the ridge are stable. The steeper portions of the area are generally forested. There is no instability that would make this parcel unsuitable for the proposed farm uses."

Staff Comment: For the reasons stated by the applicant, the proposal complies with Policy.14 and MCC 11.45.460.

- D. Policy No. 15 - Areas of Significant Environmental Concern: The subject property is not in an area designated as an "Area of Significant Environmental Concern" by Multnomah County.
- E. Policy No. 37 - Utilities: Water will be provided to future residences on each parcel from private wells in accordance with Condition 7.. Obtaining a Land Feasibility Study from the County Sanitarian regarding the use of on-site sanitation on each parcel is a condition of approval.
- F. Policy No. 38 - Facilities: The property is located in the Portland School District, which can accommodate student enrollment from future houses on the subject property. Although the site adjoins land inside Multnomah County Fire District #20, County Assessment and Taxation records show the site itself as not being taxed by the district. Annexation of the site to the district is a condition of approval. Police protection is provided by the Multnomah County Sheriff's Office. Subject to annexation to Fire District #20, the proposal complies with Policy 38.

5. Purpose and Intent of Land Division Ordinance.

- A. 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:

- (1) Subject to approval of cases PRE 23-89, PRE 24-89 and PRE 25-89, the size and shape of the proposed parcels will accommodate proposed uses and development in a

manner that is consistent with the character of the area, and will thereby protect property values.

- (2) Finding 4.E indicates that a private well will provide water for future houses on each parcel. A condition of approval assures that adequate provision will be made for on-site sewage disposal on each parcel. Finding 4.F indicates that fire protection is available to the site, subject to annexation to Multnomah County Fire District #20. Finding 4.F also indicates that police protection is available to the site. For these reasons, the proposal further the health, safety, and general welfare of the people of Multnomah County.
- (3) Finding 4 indicates that the proposed land division complies with the applicable elements of the Comprehensive Plan. Since the Comprehensive Plan has been found to be in compliance with Statewide Planning Goals by the State Land Conservation and Development Commission as stated in Finding 3.C, the proposed land division complies with the Statewide Planning Goals.
- (4) 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 III Land Division and meets the approval criteria for Type III Land Divisions as stated in Findings 3, 4, and 5. The conditions of approval assure the installation of appropriate improvements in conjunction with the proposed land division.

B. MCC 11.45.020 states that the intent of the Land Decision 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:

- (1) The proposal minimizes street congestion because commitment to future improvements to the abutting road

will be required through deed restrictions as a condition of approval in accordance with the Street Standards Ordinance, as stated in Finding 2.

- (2) As stated in Finding 4.F, public fire protection will be available to the site subject to annexation to Fire District #20. As stated in Finding 4.C, there are no development limitations that would preclude development of the subject property as proposed. The additional new houses will not significantly increase air pollution levels. For these reasons, the proposal secures safety from fire, flood, geologic hazard, and pollution.
 - (3) Subject to approval of cases PRE 23-89, PRE 24-89 and PRE 25-89, the proposal meets the area and dimensional standards of the EFU zoning district as explained in Finding 6 and thereby provides for adequate light and air and prevents the overcrowding of land.
 - (4) Road issues are addressed in Findings 2. Water supply and sewage disposal are addressed in Finding 4.E. Storm drainage is addressed in Condition 4. Education, fire protection and police service are addressed in finding 4.F. Based on the above Findings, the proposed land division facilitates adequate provision for transportation, water supply, sewage disposal, drainage, education, and other public services and facilities.
5. Zoning Ordinance Considerations: The applicable Zoning Ordinance criteria (MCC 11.15) are as follows:
- A. The site is zoned EFU, Exclusive Farm, Use District.
 - B. The following minimum area and dimensional standards apply per MCC 11.15.2016:
 - (1) The minimum lot size shall be 38 acres, including one-half of the road right-of-way adjacent to the parcel being created, except that, pursuant to MCC 11.15.2010(C), the lot size may be as small as 19 acres when the lot is created under the Land Division Ordinance in conjunction with an approved Farm Management Plan. Parcels 1, 2 and 3 are being proposed under the provisions of the

Land Division Ordinance and, as shown on the Tentative Plan Map, contain 21.1, 25 and 21.5 acres, respectively. The applicant has submitted Farm Management Plans under cases PRE 23-89, PRE 24-89 and PRE 25-89 for Parcels 1, 2 and 3, respectively. Pursuant to Condition 6, endorsement of the final partition map for this land division will occur only after final approval of PRE 23-89, PRE 24-89 and PRE 25-89.

- (2) The minimum front lot line length shall be 50 feet. As shown on the Tentative Plan Map, both parcels exceed this requirement.
- (3) The minimum yard setbacks are 30 feet front, 10 feet side, and 30 feet rear. As shown on the Tentative Plan Map, the residence on Parcel 2 exceeds all yard requirements and there is adequate area on Parcels 1 and 3 for a future residence on each of those parcels to meet all yard requirements.

Conclusions:

1. Based on Finding 4, the proposed land division satisfies the applicable elements of the Comprehensive Plan.
2. Based on Findings 3 through 5 the proposed land division satisfies the approval criteria for Type III land divisions.
3. Based on Finding 6, the proposed land division complies with the zoning ordinance, subject to approval of cases PRE 23-89, PRE 24-89 and PRE 25-89.

IN THE MATTER OF LD 25-89

MULTNOMAH COUNTY, OREGON
DIVISION OF PLANNING AND DEVELOPMENT

By David H. Prescott
David H. Prescott, Planner

For: Director, Planning & Development

This decision filed with the Director of the
Department of Environmental Services on
October 25, 1989.

cc: Ike Azar, Engineering Services
Phil Crawford/Mike Ebeling, Sanitarians
John Dorst, Right-of-Way Use Permits
Dick Howard, Engineering Services

DP:mb

NOTICE: This decision may be appealed within ten (10) days under the
provisions of MCC 11.45.3880(C).

29.66 AC.



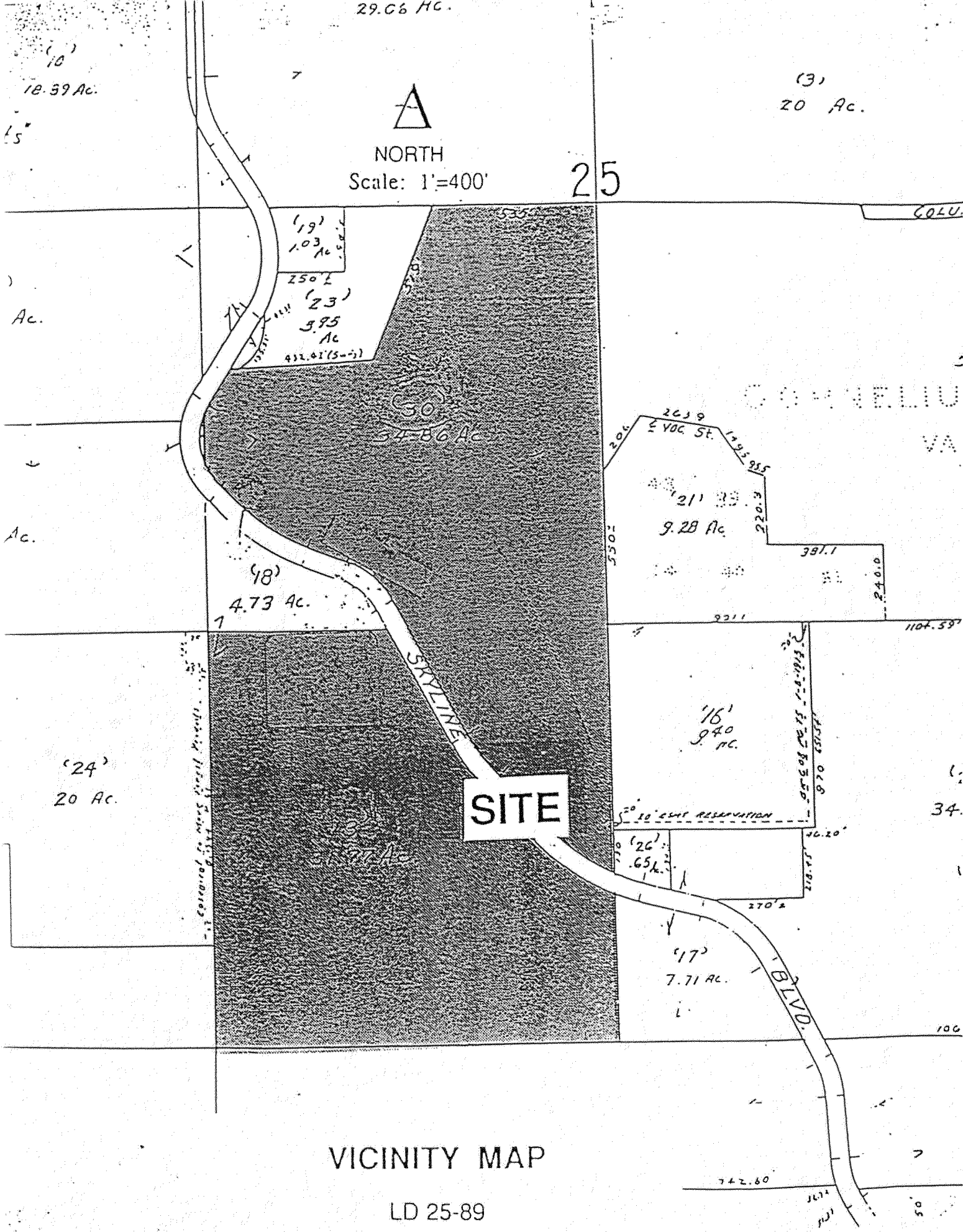
NORTH

Scale: 1"=400'

25

(3)
20 AC.

COLU.



VICINITY MAP

LD 25-89

13855 N.W. Skyline Boulevard

Tax Lot 13 and 30 Section 25 T2N R2W

September 14, 1989

PLANNING DIRECTOR DECISION IN THE MATTER OF PRE 24-89

PROPERTY LOCATION: 13855 NW Skyline Blvd.

LEGAL DESCRIPTION: Parcel '2' of LD 25-89

PROPERTY OWNER: R. Lenske & Manifold Business and Investment
7315 SE 82nd Avenue
Portland 97266

APPLICANT: Western States Development Corporation
20285 NW Cornell Road
Hillsboro 97124

DECISION: APPROVE a resource-related, single family residence on a 21.5 acre lot in the Exclusive Farm Use District, subject to a condition, based on the following findings and conclusions.

CONDITION:

This decision shall become effective ten days following the date of notification of surrounding residents, unless appealed under MCC 11.15.2010(C)(5).

FINDINGS OF FACT:

1. Applicant's Proposal: Applicant requests approval of a single-family residence in conjunction with a proposed farming operation on this property.
2. Ordinance Considerations: Subsection 11.15.2010(C) authorizes the Planning Director to approve a residence in conjunction with a farm use when it is found that the proposal is:
 - A. Located on a lot created under MCC 11.45, Land Divisions, after August 14, 1980, with a lot size less than 76 acres, but not less than 38 acres on Sauvie Island or less than 38 acres but not less than 19 acres elsewhere in the EFU district; and
 - B. Conducted according to a farm management plan containing the following elements:

- (1) A written description of a five-year development and management plan which describes the proposed cropping or livestock pattern by type, location and area size and which may include forestry as an incidental use;
 - (2) Soil test or Soil Conservation Service OR-1 soils field sheet data which demonstrate the land suitability for each proposed crop or pasturage use;
 - (3) Certification by the Oregon State University Extension Service, or by person or group having similar agricultural expertise, that the production acreage and the farm management plan are appropriate for the continuation of the existing commercial agricultural enterprise within the area. For the purposes of this chapter appropriate for the continuation of the existing commercial agricultural enterprise within the area means:
 - (a) That the proposed farm use and production acreage are similar to the existing commercial farm uses and production acreages in the vicinity, or
 - (b) In the event the proposed farm use is different than the existing farm uses in the vicinity, that the production acreage and the farm management plan are reasonably designed to promote agricultural utilization of the land equal to or greater than that in the vicinity. Agricultural utilization means an intended profit-making commercial enterprise which will employ accepted farming practices to produce agricultural products for entry into the conventional agricultural markets.
 - (4) A description of the primary uses on nearby properties, including lot size, topography, soil types, management practices and supporting services, and a statement of the ways the proposal will be compatible with them.
 - (5) *Exception.* A written description of the farm management program on that parcel as a separate management unit for the preceding five years may be substituted for subsections (a), (b) and (c) above.
3. Site and Vicinity Characteristics: This property is located on the east side of Skyline Blvd. approximately $\frac{3}{4}$ south of its intersection with NW Rock Creek Road. The property varies in slope from nearly level to over thirty degrees, and has been used for various agricultural purposes for a number of years. Soils of this and the majority of the surrounding property are Cascade silt loam, plus areas of Delina and Goble silt loam. Those soils have an Agricultural Capability Class of III.

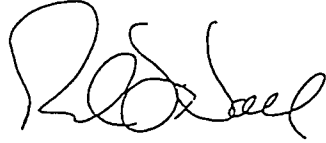
Properties in the surrounding area range in size from less than one to over 80 acres. The majority of the properties are utilized for various forms of agriculture ranging from pasture to nursery stock.

4. Proposed Management Plan: The applicant has submitted a proposed management plan for a Christmas tree operation. That plan has been reviewed by Bernard Douglas of Douglas Tree Farm who has 25 years of experience in the Christmas tree business. He indicates that the proposed operation is similar to existing nursery operations in the vicinity.

CONCLUSIONS:

1. The applicant has satisfied the approval criteria for a farm-related, single-family residence in the Exclusive Farm Use District through the submission of a proposed five-year management plan which has been certified by Bernard Douglas of Douglas Tree Farm.

For the Planning Director

A handwritten signature in black ink, appearing to read 'R. N. Hall', written over a horizontal line.

Robert N. Hall Senior Planner

NOTICE: A Decision of the Planning Director on an application for a Use Under Prescribed Conditions may be appealed by the applicant to the Hearings authority in the manner provided in MCC 11.15.8290 through .8295.



MULTNOMAH COUNTY OREGON

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

BOARD OF COUNTY COMMISSIONERS
GLADYS MCCOY • CHAIR OF THE BOARD
PAULINE ANDERSON • DISTRICT 1 COMMISSIONER
GARY HANSEN • DISTRICT 2 COMMISSIONER
RICK BAUMAN • DISTRICT 3 COMMISSIONER
SHARRON KELLEY • DISTRICT 4 COMMISSIONER

February 7, 1992

Kevin Bender, Vice President
Western States Development Corp.
20285 NW Cornell Road
Hillsboro, Oregon 97124

RE: Lot of Record Status
Tax Lot 36, Sec. 25, 2N 2W and Parcel 2, Partition Plat 1990-43
(NW Skyline Boulevard)

Dear Mr. Bender:

This is regarding our telephone conversation of Thursday, February 6, 1992 concerning the status of Tax Lot 36, Section 25, T 2N, R 2W (Tax Lot 36). After you spoke with Mark Hess of our staff on Monday, February 3, 1992, you wanted to know whether Tax Lot 36 could stand by itself as a buildable parcel. After reviewing the Zoning Ordinance, I have concluded that Tax Lot 36 cannot stand by itself as a buildable parcel but is aggregated with Parcel 2 of Partition Plat 1990-43 (Parcel 2). The reasons for this conclusion are as follows:

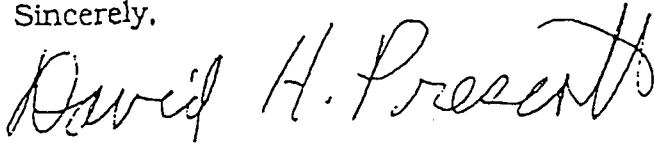
1. Tax Lot 36 and Parcel 2 are both zoned EFU Exclusive Farm Use.
2. Tax Lot 36 and Parcel 2 are contiguous and were both created before February 20, 1990; thus the two properties fall within the provisions of MCC 11.15.2018(A)(3)(a).
3. Tax Lot 36 and Parcel 2 satisfied all applicable requirements when they were created; thus the two properties fall within the provisions of MCC 11.15.2018(A)(3)(b).
4. Tax Lot 36 by itself does not meet the EFU minimum lot size requirement of 38 acres, but when Tax Lot 36 is combined with Parcel 2, the combined acreage exceeds nineteen acres and fall within the provisions of MCC 11.15.2018(A)(3)(c).

Page 2
Kevin Bender
February 7, 1992

5. Tax Lot 36 and Parcel 2 are both held under the same ownership; thus the two properties fall within the provisions of MCC 11.15.2018(A)(3)(d)..

If you have any questions please call me at 248-3043.

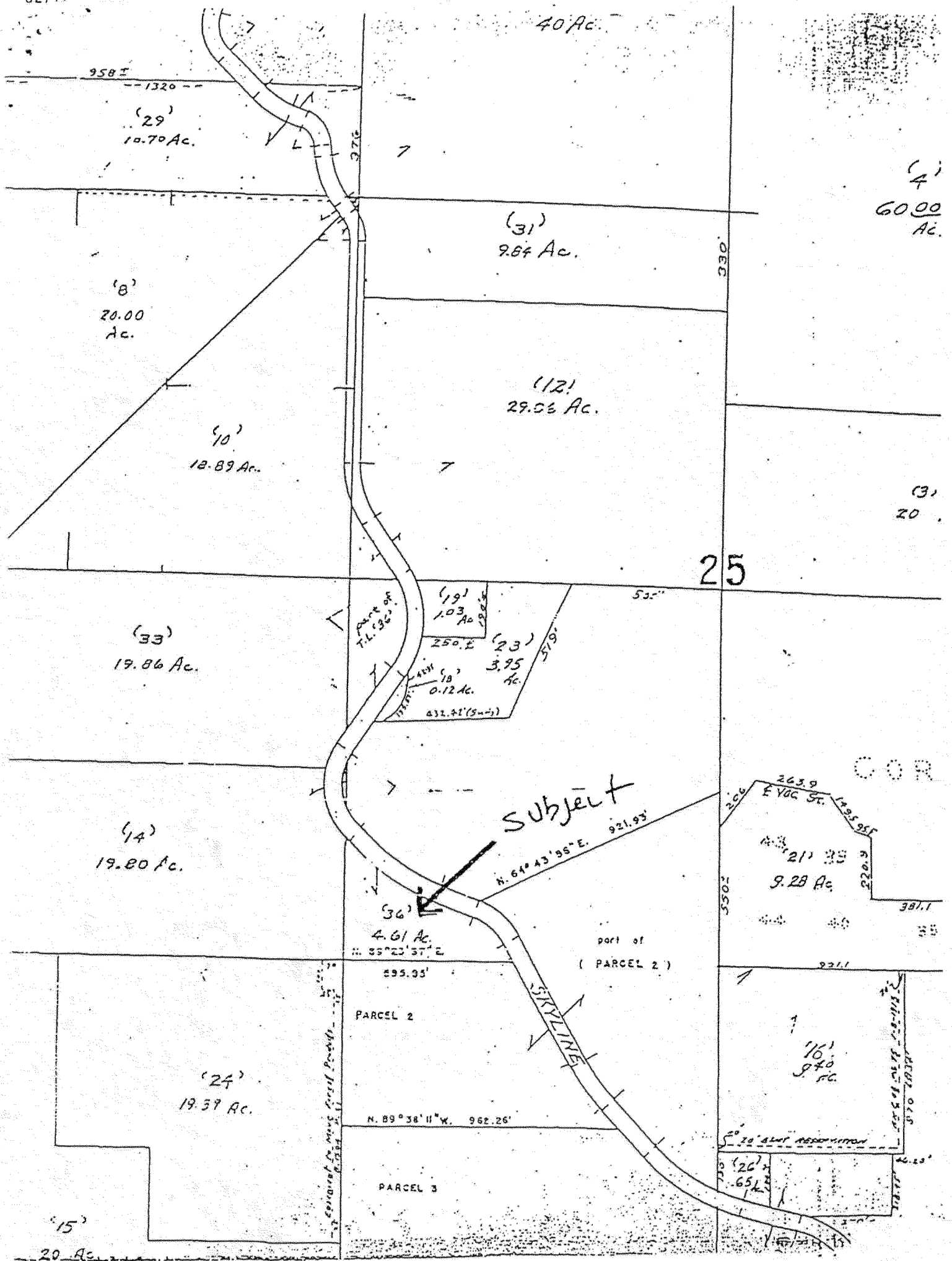
Sincerely,



David H. Prescott, AICP
Planner

cc: Mark Hess
R. Scott Pemble

File: LD 25-89a



- C. **Hearing record.** Written minutes must be prepared as required by ORS 192.650. A record of all public hearings must be made and retained in written or electronic form for at least 3 years. If a case is appealed beyond the jurisdiction of the City, the record must be retained until the final disposition of the case. Verbatim transcripts will not be produced unless requested and paid for as provided by Chapter 33.750, Fees.

33.730.110 Ex Parte Contact

- A. **Private contacts.** Prior to rendering a decision, a member of a review body may not communicate, directly or indirectly, with any person interested in the outcome. Should such communication occur, at the beginning of the hearing the member of the review body must:
1. Enter into the record the substance of the written or oral communication; and
 2. Publicly announce the content of the communication and provide any person an opportunity to rebut the substance of the contact.
- B. **Bureau of Planning contact.** The Director and Bureau of Planning staff may communicate with applicants, owners, their representatives, citizens, City agencies and other public and private organizations as part of the processing of land use applications.

After the Final Decision

33.730.120 Recording an Approval

To record a final decision for approval, the applicant pays the recording fee to the City Auditor. The City Auditor, in turn, records the final decision in the appropriate county records. The decision must be recorded before the approved use is permitted, any permits are issued, or any changes to the Comprehensive Plan Map or Zoning Map are made.

33.730.130 Expiration of an Approval (Amended by Ord. No. 165376, effective 5/29/92.)

- A. **Expiration of unused land use approvals issued prior to 1979.** All unused land use approvals issued prior to 1979, except for zoning map or Comprehensive Plan map amendments, where the proposed development is not constructed or where a subdivision or partition is not recorded, are void.
- B. **When approved decisions become void.** All land use approvals, except for zoning map or Comprehensive Plan map amendments, become void under any of the following circumstances.
1. If within 3 years of the date of the final decision a building permit has not been issued; or
 2. If within 3 years of the date of the final decision the approved activity has not commenced or, in situations involving only the creation of lots, the land division has not been recorded.

Fred H. Bender
20285 NW Amberwood Drive
Hillsboro, OR 97124

Grantor's Name and Address

Nancy Olsson
20285 NW Amberwood Drive
Hillsboro, OR 97124

Grantee's Name and Address

After recording, return to (Name, Address, Zip):

Nancy Olsson
20285 NW Amberwood Drive
Hillsboro, OR 97124

(If requested otherwise, send all but statements to (Name, Address, Zip):

Nancy Olsson
20285 NW Amberwood Drive
Hillsboro, OR 97124

SPACE RESERVED
FOR
RECORDERS USE

STATE OF OREGON,

County of _____ ss.

I certify that the within instrument
was received for record on the _____ day
of _____, 19____, at
_____ o'clock _____ M., and recorded in
book/reel/volume No. _____ on page
_____ and/or as fee/file/instru-
ment/microfilm/reception No. _____,
Records of said County.

Witness my hand and seal of County
affixed:

NAME

TITLE

By _____, Deputy.

BARGAIN AND SALE DEED

KNOW ALL BY THESE PRESENTS that FRED H. BENDER

hereinafter called grantor, for the consideration hereinafter stated, does hereby grant, bargain, sell and convey unto

NANCY M. OLSSON

hereinafter called grantee, and unto grantee's heirs, successors and assigns, all of that certain real property, with the tenements, heredi-
ments and appurtenances thereunto belonging or in any way appertaining, situated in Multnomah County,
State of Oregon, described as follows, to-wit:

All that portion of the Northeast Quarter of the Southwest Quarter
of Section Twenty-five in Township 2 North, Range 2 West, of the
Willamette Meridian, Multnomah County, Oregon, lying and being
west of Skyline Boulevard, which is Road No. 1295-C-60' being
about 3.07 acres and referred to as Tax Lot 36; and all appurtenances,
attachments, easements, fixtures and improvements of every
description on or pertaining to said real property.

(IF SPACE INSUFFICIENT, CONTINUE DESCRIPTION ON REVERSE)

To Have and to Hold the same unto grantee and grantee's heirs, successors and assigns forever.

The true and actual consideration paid for this transfer, stated in terms of dollars, is \$ 2500. However, the
actual consideration consists of or includes other property or value given or promised which is ☐ part of the ☐ the whole (indicate
which) consideration. (The sentence between the symbols @, if not applicable, should be deleted. See ORS 93.030.)

In construing this deed, where the context so requires, the singular includes the plural, and all grammatical changes shall be
made so that this deed shall apply equally to corporations and to individuals.

IN WITNESS WHEREOF, the grantor has executed this instrument this 11th day of June, 1997; If
grantor is a corporation, it has caused its name to be signed and its seal, if any, affixed by an officer or other person duly authorized
to do so by order of its board of directors.

THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN
THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGU-
LATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON
ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPRO-
PRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES
AND TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST
PRACTICES AS DEFINED IN ORS 30.930.

Fred H. Bender
Fred H. Bender

STATE OF OREGON, County of Washington ss.

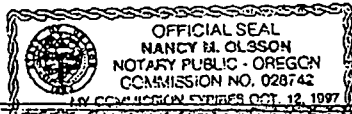
This instrument was acknowledged before me on June 11th 1997,
by Fred H. Bender

This instrument was acknowledged before me on _____, 19____,

by _____

ss _____

of _____



Nancy M. Olsson
Notary Public for Oregon
My commission expires 10/12/97

612 Recording
97087814

BEFORE THE MULTNOMAH COUNTY LAND USE HEARINGS OFFICER

Appeal of Planning Director's Denial of) No. PLA 2-97
Application of Fred H. Bender for a Lot Line)
Adjustment) Affidavit of Nancy Olsson

STATE OF OREGON)
County of Washington) ss

I, Nancy Olsson, being first duly sworn do depose and say that:

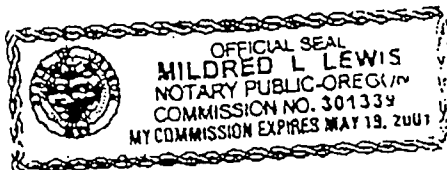
1. I am the sole fee simple owner of Tax Lot 36, Section 25, T2N, R2W.
2. For valuable consideration, I acquired Tax Lot 36 from Fred Bender.
3. I am not the spouse, child or any other family relation to Fred Bender or to Kevin Bender, Vice President of Western States Development Corp.
4. I am not a partner in any legally constituted partnership nor a member/owner of any legally constituted business entity.
5. Fred Bender and any of his designated representatives or agents are hereby authorized to act on my behalf, as owner of Tax Lot 36, in appealing to all appropriate forums the decision of the Multnomah County Planning Director in file number PLA 2-97.

DATED this 11 day of June, 1997.

Nancy M. Olsson
Nancy Olsson

STATE OF OREGON)
County of Washington) ss

Subscribed and sworn to before me this 11 day of June, 1997.



Mildred L. Lewis
NOTARY PUBLIC FOR OREGON
My Commission Expires: May 19, 2001

**BEFORE THE HEARINGS OFFICER
FOR MULTNOMAH COUNTY, OREGON
FINAL ORDER**

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

July 1, 1997

PLA 2-97

Appeal of an Administrative Decision which found that the application for a lot line adjustment did not meet all of the approval criteria.

Property Location:

14007 NW Skyline Boulevard

Property Description:

Tax Lot 36, Section 25, T2N, R2W, and Parcel 2,
Partition Plat 1990-43 (consisting of Tax Lots 1 & 2)

Property Owner:

Tax Lot 36, Section 25, T2N, R2W:
Fred Bender (at time of application)
20285 NW Cornell Road
Hillsboro, OR 97124

Tax Lot 36, Section 25, T2N, R2W:
Nancy Olsson (at time of hearing)
20285 NW Amberwood Drive
Hillsboro, OR 97124

Parcel 2, Partition Plat 1990-43
(consisting of Tax Lots 1 & 2)
Western States Development Corp.
20285 NW Cornell Road
Hillsboro, OR 97124

Applicant:

Fred Bender
20285 NW Cornell Road
Hillsboro, OR 97124

Zoning Designation:

Exclusive Farm Use - EFU

Hearings Officer Decision:

Deny appeal and affirm administrative decision, which found that the applicant had not met all of the approval criteria for a lot line adjustment between two contiguous properties in the Exclusive Farm Use zoning district, which properties were identified as Tax Lot 36, Section 25, T2N, R2W, and Parcel 2, Partition Plat 1990-43 (consisting of Tax Lots 1 & 2), based on the following findings and conclusions.

PROCEDURAL ISSUES

1. IMPARTIALITY OF THE HEARINGS OFFICER

- A. No ex parte contacts. I did not have any ex parte contacts prior to the hearing of this matter. I did not make a site visit.
- B. No conflicting personal or financial or family interest. I have no financial interest in the outcome of this proceeding. I have no family or financial relationship with any of the parties.

BURDEN OF PROOF

In this proceeding, the burden of proof is upon the applicant/appellant.

SCOPE OF APPEAL

The hearing before the Hearings Officer on a matter appealed shall be limited to the specific grounds relied on for reversal or modification of the decision in the Notice of Appeal. The appellant's Notice of Appeal stating the grounds for the appeal of the administrative decision is attached hereto as Exhibit "A" and is incorporated by this reference herein. The specific grounds raised by the applicant will be discussed in the body of this decision.

FACTS

1. APPLICANT'S PROPOSAL

The applicant requests approval of a Lot Line Adjustment between two contiguous properties in the Exclusive Farm Use zoning district, identified as Tax Lot 36, Section 25, T2N, R2W (3.07 acres) and Parcel 2, Partition Plat 1990-43 (consisting of Tax Lots 1 & 2) (23.83 acres). At the time of the application, Tax Lot 36 is in the ownership of Fred H. Bender and Parcel 2 was owned by Western States

Development Corp. On June 11, 1997 Fred Bender conveyed his-interest in Tax Lot 36 to Nancy Olsson.

2. SITE AND VICINITY INFORMATION

The subject property is located at 14007 NE Skyline Boulevard, in the Exclusive Farm Use zone. The site plan is attached hereto as Exhibit "B", and incorporated by this reference herein.

3. TESTIMONY AND EVIDENCE PRESENTED

- A. During and prior to the hearing the exhibits which are listed on the attached Exhibit "C", which is incorporated by this reference herein, were received by the Hearings Officer.
- B. Bob Hall testified for the County, summarizing the history of the application and the Administrative Decision and subsequent appeal therefrom.
- C. Jeff H. Bachrach, an attorney, submitted oral and written testimony and a legal memorandum in support of the appeal.
- D. Ronald E. Sprague, Co-Trustee of the Frederick T. King Trust, testified and presented written evidence that Frederick T. King Trust owned a parcel which was adjacent to Tax Lot 2 of Parcel 2, on Partition Plat 1990-43, and that the adjacent parcel (Lot 24) had the interest in a 16 foot wide roadway easement, the centerline of which was the northern boundary of Tax Lot 2 on Parcel 2. Mr. Sprague wanted to make sure that the County was aware of the easement and that the Partition Plat map 1990-43, dated 1/26/90, failed to show the easement.

ISSUES ON APPEAL

- 1. Would approval of the proposed Lot Line Adjustment increase the permitted number of dwellings above that otherwise allowed in the zoning district?**
- 2. Was a deed or other instrument creating Parcel 2 recorded with the Department of General Services or in "recordable" form prior to February 20, 1990?**
- 3. Are the properties in question under the "same ownership"?**

STANDARDS AND CRITERIA ANALYSIS AND FINDINGS OF FACT

This is an appeal relating to an Administrative Decision concerning an application for a Lot Line Adjustment. Multnomah County Planner Bob Hall prepared a written decision which discussed relevant criteria and facts, some of which will not be addressed in this opinion. The appeal is related to specific issues raised by the appellant. Those issues and findings which were addressed in the Administrative Decision, but have not been challenged on appeal, are incorporated by this reference herein.

- 1. Would approval of the proposed Lot Line Adjustment increase the permitted number of dwellings above that otherwise allowed in the zoning district?**

Findings:

During the appeal hearing Senior Planner Robert Hall indicated that the applicant had not demonstrated that the permitted number of dwellings would not be increased above that otherwise allowed in the district, because the applicant had not addressed the economic test relative to dwellings in conjunction with farm use pursuant to Oregon Administrative Rule 660-33-135.

Mr. Bachrach, the attorney who filed the appeal, indicated during the hearing that he did not feel that the staff had clearly articulated in the staff decision that this criteria was in fact a basis for denial. Mr. Bachrach correctly pointed out that the staff conclusion listed two basis for denial, one of which was that there were no deeds or other instruments creating Parcel 2 of Partition Plat 1990-43, recorded or in recordable form prior to February 20, 1990, and secondly, that Parcel 2 and Tax Lot 36 were in the same ownership. The conclusion does not site the above criteria as a grounds for denial.

During the hearing we took a short recess, during which I reviewed the standards set forth in OAR 660-33-135. Upon resuming the hearing, I indicated that I felt the applicant had in fact met the criteria set forth above. The standard in question does not reference OAR 660-33-135. I do not find OAR 660-33-135 to be applicable in this situation. OAR 660-33-135 relates to dwellings in conjunction with farm use on parcels of at least 160 acres in size. Since the criteria in question relates to lot line adjustments between "lots of record", which by definition do not meet the minimum lot size requirements of the EFU zone, OAR 660-33-135 is not applicable.

The applicant has indicated that there is a dwelling on Parcel 2 that has been in place before the approval of Partition Plat 1990-43. In addition, Parcel 2 has been approved for a farm dwelling under a farm management plan. The proposed adjustment will not affect the farm management plan and related dwelling approval because all of the farm

area that was the basis of the approval remains in the adjusted Parcel 2. There is no dwelling on Tax Lot 36 and application has not been made for a dwelling.

Accordingly, I find that the proposed lot line adjustment will not increase the permitted number of dwellings above that otherwise allowed in this zoning district. The applicant has met this criteria.

2. **Was a deed or other instrument creating Parcel 2 recorded with the Department of General Services or in "recordable" form prior to February 20, 1990?**

MCC 11.15.2018 Lot of Record.

- (A) **For the purposes of this district, a Lot of Record is:**

...

- (2) **A parcel of land:**

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

Findings:

Tentative approval of the proposed partition plat that created Parcel 2 of Partition Plat 1990-43 was granted by the Planning Director on October 15, 1989. However, as recognized by ORS 92.040, that tentative approval did not constitute final acceptance by the county of the partition plan which actually created the parcel.

ORS 92.040 provides in relevant part, ". . . Approval of the tentative plan shall not constitute final acceptance of the plat of the proposed subdivision or partition for recording; however, approval by a city or county of such tentative plan shall be binding upon the city or county for the purposes of the preparation of the subdivision or partition plat, and the city or county may require only such changes in the subdivision or partition plat as are necessary for compliance with the terms of its approval of the tentative plan for the proposed subdivision or partition."

Approval of a tentative plan does not constitute final acceptance of a partition plat. If the plat which is later submitted does not comply with the tentative plan approval, the County can require revisions to the proposed plat. If the proposed plat is not submitted within the time frame for approval, the County would have to reject the proposed plat.

It is during the tentative plan stage that discretionary decisions regarding parcel configuration and size are made. Applicants are given the opportunity to submit tentative plans for conceptual approval prior to incurring the cost of substantial engineering and/or survey work inherent in plat approval. Conditions are added to the tentative plan approval which must be met prior to acceptance of the final plat.

MCC 11.45.750 (1990 version) stipulated that plats were not final until recorded. The document that became Partition Plat 1990-43 was submitted for review to the County Surveyor on July 2, 1990. The County Surveyor approved the document on July 17, 1990, and the partition plat was recorded July 19, 1990. The instrument creating Parcel 2 of Partition Plat 1990-43, therefore, was not recorded prior to February 20, 1990.

The appellant argues that the land division approval in October 1989 was an "instrument creating" Parcel 2 in a sufficiently "recordable form" so as to satisfy subsection .2018(A)(2)(a). The question thus becomes when is an instrument creating a parcel in recordable form.

The appellant argues that the staff decision LD 25-89 could have been recorded, yet cited no authority for that assertion. The act of recording a document generally has no effect unless the recordation is specifically required or authorized by statute. In this instance, the relevant statutes are the subdivision and partition laws set forth in ORS Chapter 92. It is the provisions of ORS Chapter 92 that determine when a partition plat is in "recordable form". It is the partition plat, not the conditional tentative plan approval, that "created" the parcels.

In order for a partition plat to be "recordable", the plat must have been surveyed. ORS 92.050. That statute also requires that the survey and plat of the partition be made by a registered professional land surveyor. This section also sets forth technical requirements regarding the details to be set forth on the plat and requires that locations and descriptions of all monuments be set forth on the plat.

The plat must have a surveyor's certificate, together with the seal and signature of the surveyor having surveyed the land represented on the plat, to the effect that the surveyor has correctly surveyed and marked the proper monuments, the lands as represented. ORS 92.070.

In addition, pursuant to ORS 92.075, in order to partition any property, the declarant shall include, on the face of the partition plat, a declaration, taken before a notary public or other person authorized by law to administer oaths, stating that declarant has caused the partition plat to be prepared and the property partitioned in accordance with the provisions of ORS Chapter 92. That dedication/declaration on Partition Plat 1990-43 was not signed until March 15, 1990.

ORS 92.100 provides that before any partition plat can be recorded, a partition plat must be approved by the County Surveyor before it is recorded. The surveyor reviews the plat to determine if the requirements of ORS Chapter 92 for recording the plat have been met. Without the signature of the County Surveyor, the partition plat cannot be recorded, according to the subdivision laws. Thus, prior to the affixing of the signature by the County Surveyor on the partition plat, the partition plat is not in "recordable form".

The tentative plan approved by LD 25-89 did not constitute acceptance of the partition plat, nor was it an instrument in recordable form which created a parcel. The tentative plan had not been surveyed and did not contain any legal descriptions for the proposed parcels. LD 25-89 was simply a land use approval which authorized the next step of a two-step process. However, at any point in that process, if the applicant had failed to meet any of the conditions or submit the partition plat in accordance with the requirements of the tentative plan, that partition plat would not have been accepted. The conditional tentative plan approval was not a recordable document which created a parcel.

A review of Partition Plat 1990-43 indicates that the partition plat was not in recordable form until July 17, 1990, the date on which the Multnomah County Surveyor affixed his signature to the partition plat.

Accordingly, while it is clear that Tax Lot 36 was a lot of record as of February 20, 1990, I find that Parcel 2 of Partition Plat 1990-43 was not a legal lot of record as of February 20, 1990. The applicant has failed to meet this approval criteria.

3. Are the properties in question under the "same ownership"?

Findings:

Both Tax Lot 36, Section 25, T2N, R2W and Parcel 2 Partition Plat 1990-43 are legally created lots and are discrete units of land as recognized by ORS 92.017. Tax Lot 36, Section 25, T2N, R2W was not required to be included in Partition Plat 1990-43 due to its discrete nature, not its ownership.

The Planning staff determined that Tax Lot 36, Section 25, T2N, R2W and Parcel 2, Partition Plat 1990-43 were not separate Lots of Record as defined in MCC 11.15.2018, because they are in the same ownership.

Fred H. Bender (20285 NW Cornell, Hillsboro, OR 9712) is registered with the Oregon Secretary of State Corporation Commission as the president of Western States Development Corporation (registration #210665-19). Staff also found that Western States Development Corporation owns Tax Lots 1 & 2 of Parcel 2, Partition Plat 1990-43 and Fred H. Bender owns Tax Lot 36, Section 25, T2N, R2W.

In order to qualify as a lot of record, a parcel of land cannot be contiguous to another substandard parcel or parcels under the same ownership. MCC 11.15.2018.

MCC 11.15.2018(B)(3) provides:

"(3) *Same ownership* refers to parcels of which greater than possessory interests are held by the same person or persons, spouse, minor aged child, single partnership, or business entity separately or in tenancy in common."

The definition of same ownership requires several things. The ownership must be of greater than possessory interest. The interest must be held by the same person or persons, spouse, minor aged child, single partnership, or business entity separately or in tenancy in common. Thus, if an individual owned property with a spouse or a child or in partnership, separately or as tenants in common, you would have the "same ownership". However, where an individual owns one parcel of property and a corporation, a separate and distinct legal entity, owns another piece of property, the two parcels are not in the "same ownership".

Staff has indicated that the Board of County Commissioners has previously found *same ownership* as defined by MCC 11.15.2062(B)(3) to include a family trust with a husband and wife as trustee to be the equivalent of the term spouse in the same definition. Therefore, the Board required a parcel owned by an individual to be combined with contiguous property controlled by a trust, of which one of the trustees was the individual's spouse. 11.15.2018(B)(3) is identical in wording to that of MCC 11.15.2062(B)(3).

However, a family trust is significantly different than a corporation. A family trust is generally used as an estate planning device to transfer property to a future generation without the necessity of going through probate. The individual establishing the trust or the trustor often retains a possessory interest in the property transferred during his or her life.

That is a different situation from corporate ownership of an asset. As the appellant points out in their Memorandum in Support of Appeal, staff's interpretation is contrary to ORS Chapter 60, which recognizes that a corporation is a distinct and separate entity from its individual owners. Accordingly, I find that the properties are not in the same ownership.

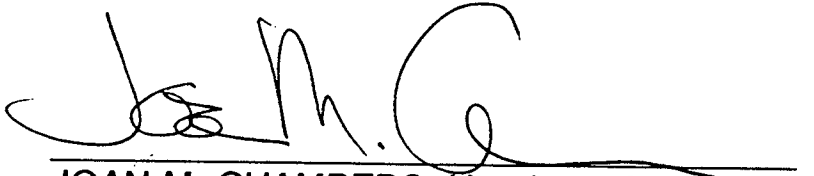
Since I find that the properties, as of the date of the application, were not in the same ownership, I will not rule on the effect of the purported transfer of the property to Nancy Olsson on June 11, 1997. Accordingly, I will not discuss the practical or legal effect of the applicant's effort to convey Tax Lot 36 during the pendency of this application.

Accordingly, I find that the two parcels in question were not in the "same ownership" within the meaning and context of MCC 11.15.2018.

CONCLUSION

I find that Parcel 2 was not a lot of record as of February 20, 1990 on the grounds and for the reasons that the instrument (i.e., partition plat) which created Parcel 2, was neither recorded nor in "recordable form" as of February 20, 1990. Therefore, I affirm the Planning Director's decision denying a request for a property line adjustment between Tax Lot 36, Section 25, T2N, R2W, and Parcel 2, Partition Plat 1990-43 (consisting of Tax Lots 1 & 2). The appeal is denied and the Planning Director's decision denying the request for the property line adjustment is affirmed, as discussed herein.

IT IS SO ORDERED, this 1st day of July, 1997.



JOAN M. CHAMBERS, Hearings Officer



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

NOTICE OF APPEAL
ADMINISTRATIVE DECISION

BANK OF AMERICA
FOR DEPOSIT ONLY
ACCOUNT #261350000
MULTNOMAH COUNTY

1. Name: Bachrach, H., Jeff
Last Middle First
2. Address: 1727 NW Hoyt Street, Portland, OR 97209
Street or Box City State and Zip Code
3. Telephone: (503) 222 - 4402

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

Of attorneys for applicant/appellant, Fred H. Bender.

5. What is the decision you wish reviewed (e.g., denial of a minor variance, approval of a Greenway Permit, etc.)?

Planning Director's denial of PLA 2-97 property line adjustment.

6. Date the decision was filed with the Director of the Department of Environmental Services:

May 1, 1997

7. Describe specific grounds relied on for reversal or modification of the decision.
(use additional sheets if necessary)

See attached notice of appeal.

Signed: [Signature] Date: May 12, 1997

Staff Use Only

Notice of Appeal Fee = \$300.00

Received by: _____ Date: _____ Case No. _____

EXHIBIT, A Page, 1 of 3

BEFORE THE MULTNOMAH COUNTY LAND USE HEARINGS OFFICER

Appeal of Planning Director's Denial of)
Application of Fred H. Bender for a Lot Line) No. PLA 2-97 Notice of Appeal
Adjustment.) (Specific Grounds for Reversal
)

Pursuant to MCC 11.15.8290(B)(3), this memorandum is submitted on behalf of the applicant/appellant to set out the specific grounds relied on to request reversal of the Planning Director's decision. The decision being appealed denied the requested lot line adjustment based on the following two findings:

1. Parcel 2 of Partition Plat 1990-43 is not a lot of record because there was not "a deed or other instrument creating the parcel ... in recordable form prior to February 20, 1990." MCC 11.15.2018(A)(2)(a).
2. The two parcels at issue are under the "same ownership," as that term is applied by the MCC 11.15.2018(B)(3) and 11.15.2018(A)(2)(d).

The two findings summarized above are based on incorrect interpretations and applications of the applicable county provisions and state law. Therefore, the Planning Director's decision should be reversed.

More specifically, the decision's interpretation of MCC 11.15.2018(A)(2)(a) is incorrect as a matter of law; it is contrary to both prior county actions and ORS Chapter 92, Chapter 205 and case law thereunder. Moreover, the decision's conclusion regarding the lot of record status of Parcel 2 is based, in part, on the mistaken assumption that the future siting of a dwelling on Parcel 2 is subject to the requirements of OAR 660-33-35. That is incorrect. OAR 660-33-35 is

not applicable because Parcel 2 has a vested right to site a dwelling pursuant to the farm management plan that was approved by the county's decision in PRE 24-89, September 14, 1989.

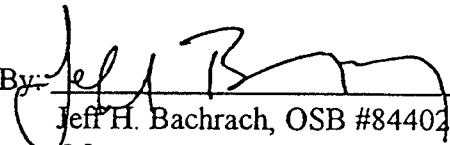
The conclusion that the two parcels are in the same ownership is based on an incorrect interpretation and application of the county code. Moreover, the county's interpretation and application of the code's "same ownership" provision violates ORS Chapter 60 and common law protections afforded to corporations.

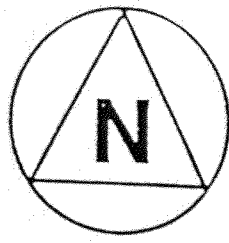
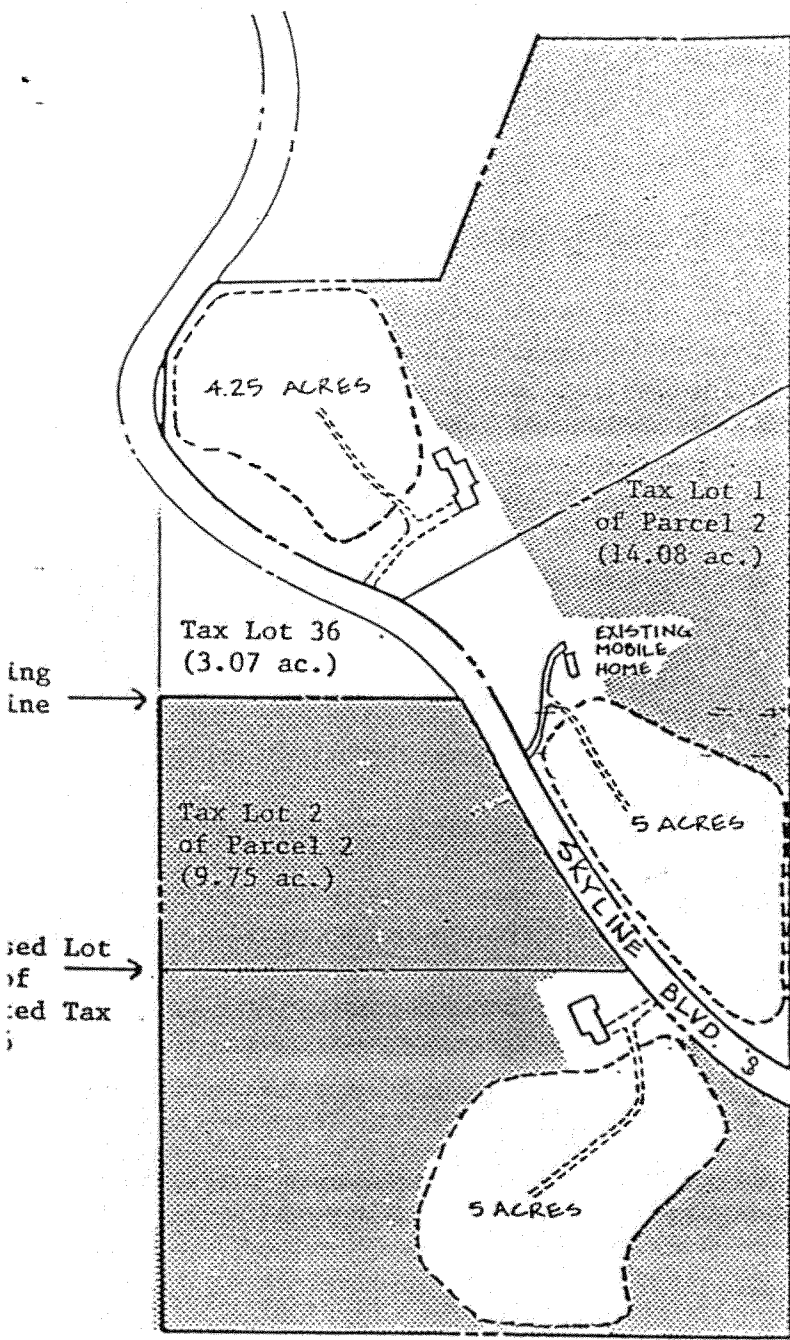
The appellant intends to submit a more detailed legal memorandum to the hearings officer in advance of the hearing.

DATED this 12th day of May, 1997.

Respectfully submitted,

O'DONNELL RAMIS CREW
CORRIGAN & BACHRACH

By: 
Jeff H. Bachrach, OSB #84402
Of Attorneys for Applicant/Appellant,
Fred H. Bender



SCALE: 1" = 400'
APRIL 22, 1989

LEGEND

- XMAS TREES
- FOREST & BRUSH
- EXISTING ROAD
- PROPOSED ROAD
- HOMESITE

SITE PLAN

OR:
WESTERN STATES DEVELOPMENT CORP.
20285 N.W. CORNELL ROAD
HILLSBORO, OREGON 97124
PHONE: 645-5544

TAX LOTS 13 & 30
SECTION 25, T2N, R2W, W.M.

PLANNING
RESOURCES, INC.

3681 SW. Carman Drive
Lake Oswego, Oregon 97035
(503) 636-5422

Land Use &
Site Planning
Services

**List of Exhibits
PLA 2-97**

"A" Applicant's Submittals

- A1 General Application form (2 pages)
- A2 Application for EFU Lot Line Adjustment
- A3 Property Owner Consent Form
- A4 Application Checklist with post it note from Alan young
- A5 A & T printout and ownership map (2 pages)
- A6 Applicant's narrative dated February 28, 1997 with maps (6 pages)
- A7 Craven v. Jackson County (submitted by applicant)
- A8 Parsons v. Clackamas County (submitted by applicant)
- A9 Letter from Will Selzer
- A10 Revised narrative and cover letter from Jeff Bachrack (9 pages)
- A11 Legal Memorandum in Support of Appeal

"B" Notification Information

- B1 Decision of Planning Director for PLA 2-97
- B2

"C" Multnomah County Items

- C1 Excerpts from ORS Chapter 92 (5 pages)
- C2 A & T deed history for properties with cover note from Barry Benson (15 pages)
- C3 Recorded copy of Partition Plat 1990-43
- C4 Copy of recorded easement across the northerly portion of that portion of Parcel 2 west of Skyline Blvd., submitted by Ron Sprague on 6/3/97 (7 pages)

"D" Appeal Material

- D1 Notice of Appeal with narrative and cover letter from Jeff Bachrach
- D2 Affidavit of Posting

"E" Documents Submitted at 6/18/97 Public Hearing

- E1 Letter and attachments from Ron Sprague
-
-
-
-
-
-
-

O'DONNELL RAMIS CREW CORRIGAN & BACHRACH

JEFF H. BACHRACH
FAMILA J. BERRY
MARK L. BUNCH
D. DANIEL CHANDLER **
DOMINIC G. COLLETTA **
CHARLES E. CORRIGAN *
STEPHEN F. CREW
MARTIN C. DOLAN
PAUL C. EISNER
GARY F. FIRESTONE *
WILLIAM E. GAAR
O. FRANK HAMMOND *
KENNETH D. HELM
MALCOLM JOHNSON *
MARK F. O'DONNELL J.
JAMES E. OLIVER, JR.
TIMOTHY V. RAMIS
WILLIAM J. STALNAKIK

ATTORNEYS AT LAW
1727 N.W. Hoyt Street
Portland, Oregon 97209

TELEPHONE: (503) 232-4402
FAX: (503) 240-2044

PLEASE REPLY TO PORTLAND OFFICE

July 14, 1997

CLATSOP COUNTY OFFICE
181 N. Grant, Suite 202
Curby, Oregon 97013
TELEPHONE: (503) 264-1149

VANCOUVER, WASHINGTON OFFICE
First Independent Place
1220 Main Street, Suite 431
Vancouver, Washington 98660-2964
TELEPHONE: (360) 699-7257
FAX: (360) 699-7231

JAMES M. COLEMAN
SUEAN J. WIDDER
SPECIAL COUNSEL

* ALSO ADMITTED TO PRACTICE IN WASHINGTON
** ALSO ADMITTED TO PRACTICE IN CALIFORNIA
** ALSO ADMITTED TO PRACTICE IN WASHINGTON AND MONTANA

Mr. Stuart Farmer, Senior Administrative Analyst
Multnomah County Transportation and
Land Use Planning Division
2115 S.E. Morrison, Room 109
Portland, OR 97214

Re: Postponement of Appeal Hearing on PLA 2-97

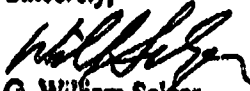
Dear Mr. Farmer:

This firm represents the applicant Fred H. Bender in PLA 2-97. With this letter we are requesting a postponement of the appeal hearing scheduled for July 15, 1997.

The applicant agrees to stay the 120-day clock on this application until a new hearing date set no later than September 16, 1997.

Please inform the Board of this request. Thank you.

Sincerely,


G. William Selzer
Legal Assistant

cc: Jeff H. Bachrach
Fred H. Bender

BOARD OF
COUNTY COMMISSIONERS
97 JUL 14 PM 2:32
MULTNOMAH COUNTY
OREGON

O'DONNELL RAMIS CREW CORRIGAN & BACHRACH

JEFF H. BACHRACH
PAMELA J. BERRY
MARK L. BUNCH
D. DANIEL CHANDLER ++
DOMINIC O. COLLETTA**
CHARLES E. CORRIGAN*
STEPHEN F. CREW
MARTIN C. DOLAN
PAUL C. EISNER
GARY F. FIRESTONE*
WILLIAM E. GAAR
O. FRANK HAMMOND*
MALCOLM JOHNSON*
MARK P. O'DONNELL
JAMES E. OLIVER, JR.
TIMOTHY V. RAMIS
WILLIAM J. STAINAKER

ATTORNEYS AT LAW
1727 N.W. Hoyt Street
Portland, Oregon 97209
TELEPHONE: (503) 232-4402
FAX: (503) 243-2944

PLEASE REPLY TO PORTLAND OFFICE

September 10, 1997

CLACKAMAS COUNTY OFFICE
181 N. Grant, Suite 303
Canby, Oregon 97013
TELEPHONE: (503) 266-1149

VANCOUVER, WASHINGTON OFFICE
First Independent Place
1220 Main Street, Suite 451
Vancouver, Washington 98660-3964
TELEPHONE: (360) 699-7287
FAX: (360) 699-7221

JAMES M. COLEMAN
SUSAN J. WIDDER
SPECIAL COUNSEL

* ALSO ADMITTED TO PRACTICE IN WASHINGTON
** ALSO ADMITTED TO PRACTICE IN CALIFORNIA
++ ALSO ADMITTED TO PRACTICE IN WASHINGTON AND MONTANA

Mr. Stuart Farmer, Senior Administrative Analyst
Multnomah County Transportation and
Land Use Planning Division
2115 S.E. Morrison, Room 109
Portland, OR 97214

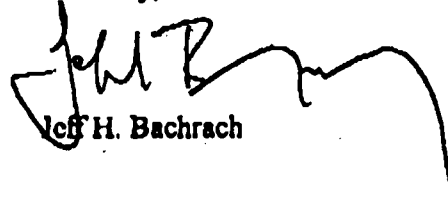
Re: Withdrawal Appeal on PLA 2-97

Dear Mr. Farmer:

This firm represents the applicant Fred H. Bender in PLA 2-97. With this letter we are requesting that you withdraw the appeal, which is scheduled at 10:30 AM, September 16, 1997, before the Board of County Commissioners.

Please inform the Board of this request. We also request a refund of the appeal fee. Thank you.

Sincerely,


Jeff H. Bachrach

cc: Fred H. Bender

BOARD OF
COUNTY COMMISSIONERS
97 SEP 10 AM 11:15
MULTNOMAH COUNTY
OREGON