

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

**In the Matter of the Review of
the Planning Commission Decisions
which approved "Skyline Meadows",
a 12-lot Rural Planned Development
and Land Division.**

FINAL ORDER
Denying RPD and LD
RPD 1-90/LD 1-90

90-66

This matter came before the Board of Commissioners (Board) for a hearing on April 24, 1990. The Board hereby reverses the decisions of the Planning Commission regarding this application based on the findings and conclusions contained herein.

The Planning Commission (Commission) held a public hearing on the RPD request on January 22, 1990. After receiving testimony, the Commission approved the RPD in a 3-2 split vote. The Commission adopted Findings supporting the approval decision on February 26, 1990. The Commission heard and approved the LD on February 26, 1990; they adopted Findings the same date. On March 20, 1990, the Board, by its own motion, scheduled a “De Novo” hearing to review the Planning Commission’s approval of the RPD and LD. The Board conducted a de novo review on April 24, 1990. After considering evidence, staff recommendations, arguments from the applicant, and other testimony, the Board reversed the Planning Commission’s decisions and denied the RPD and LD requests.

The Board called the review as provided by MCC 11.15.8260(A)(2) and MCC 11.15.8265. The Board may affirm, reverse, or modify a decision of the Planning Commission as specified under MCC 11.15.8280.

1 **I. APPLICABLE REVIEW STANDARDS**

2 There are three areas in the Zoning Ordinance which specify criteria for
3 RPD applications in the MUF district. The first group are within the MUF Sec-
4 tion of the Ordinance, [MCC 11.15.2172(C)(1-3a)]. The section cross references
5 *Conditional Use Approval Criteria* in MCC .7105 – .7640 and required *Findings*
6 for approval of an RPD in MCC .7705 – .7760.

7
8 The proposal must meet the following requirements:

9
10 A. Under MCC .7120, the Conditional Use must be one that:

- 11 (1) Is consistent with the character of the area;
12 (2) Will not adversely affect natural resources;
13 (3) Will not conflict with farm or forest uses in the area;
14 (4) Will not require public services other than those existing or pro-
15 grammed for the area;
16 (5) Will be located outside a big game winter habitat area as defined
17 by the Oregon Department of Fish and Wildlife or that agency has
18 certified that the impacts will be acceptable;
19 (6) Will not create hazardous conditions; and
20 (7) Will satisfy the applicable policies of the Comprehensive Plan.

21
22 B. Under MCC .2171[C][3], the RPD (Conditional Use) must meet the follow-
23 ing standards:

- 24 (1) The capability of the land for resource production is maintained;
25 (2) The use will neither create nor be affected by any hazards; and
26 (3) Access for fire protection of timber is assured;

1 C. Rural Planned Developments for single family residences shall satisfy
2 provisions of MCC .7705 through .7760:

- 3 (1) Substantially maintain or support the character and the stability of
4 the overall land use pattern of the area;
- 5 (2) Utilize as gross site acreage, land generally unsuited for agricultur-
6 al or forest uses, considering the terrain, adverse soil conditions,
7 drainage or flooding, vegetation or the location or size of the tract;
- 8 (3) Be compatible with accepted farming or forestry practices on adja-
9 cent lands;
- 10 (4) Be consistent with the Comprehensive Plan and the purposes
11 described in MCC.7705.
- 12 (5) Satisfy applicable standards of water supply, sewage disposal, and
13 minimum access; and
- 14 (6) Not require public services beyond those existing or programmed
15 for the area.

16
17 D. Under MCC 11.45.230, the approval authority must find the Land Divi-
18 sion Tentative Plan is in accordance with:

- 19 (1) the applicable elements of the Comprehensive Plan;
- 20 (2) Approval will permit development of the remainder of the property
21 under the same ownership, if any, or of adjoining land or of access
22 thereto, in accordance with this and other applicable ordinances;
23 [MCC 11.45.230(B)]
- 24 (3) The Tentative Plan or Future Street Plan complies with the appli-
25 cable provisions, including the purposes and intent of this Chapter;
26 [MCC 11.45.230(C)]

1 Boulevard, immediately to the north of the Bonny Slope Subdivision. The site is
2 outside the Urban Growth Boundary (UGB) and zoned MUF-19 (Multiple Use
3 Forest, 19-acre minimum lot size). The UGB borders the site on the east and
4 north, and is in close proximity to the site on the south and west. The eastern
5 and northern boundaries of the site are adjacent to the Portland City Limits.
6 The entire site is identified as Tax Lot 4, Section 22, 1N-1W. Approval of the
7 requests would amend Sectional Zoning Map #109, changing the described prop-
8 erty from MUF-19 to MUF-19/RPD and allow a twelve-lot land division. Each
9 lot could be developed with a single family residence.

10
11 The 120-acre site is described (by the applicant) as three subareas that
12 have distinct characteristics. The first subarea consists of 60 acres in the north
13 one-half of the property. This subarea is characterized by a steep ravine, with
14 slopes ranging from 30 to 70 percent, leading to an intermittent stream running
15 from east to west. The primary vegetative cover is hardwood trees with a few
16 scattered conifers. The second subarea is 21 acres of relatively flat open mead-
17 ows along the ridge top in the center of the property. This includes the proposed
18 right-of-way extensions and home sites for the RPD. This area is not forested
19 and affords views of the Tualatin Valley. The third subarea is the southern 40
20 acres of the site. It consists of moderate slope ranging to 30 percent. The vege-
21 tative cover is a mixture of heavy brush, grass, and hardwoods.

22
23 The site is completely undeveloped. A 20-foot wide utility easement for a
24 high-pressure petroleum products pipe line crosses the site from the northeast
25 to the southwest.

III. EVALUATION OF THE APPLICATION

After hearing testimony, arguments and weighing the evidence, the Board finds the proposal does not satisfy the approval criteria and review standards set forth below. These are grouped into four subject areas.

1. Suitability for Forest Use

- The RPD does not utilize as gross site acreage, land generally unsuited for agricultural or forest uses, considering the terrain, adverse soil conditions, drainage or flooding, vegetation or the location or size of the tract;

2. Character of the Area

- The RPD is not consistent with the character of the area;
- The RPD will not substantially maintain or support the character and the stability of the overall land use pattern of the area;

3. Comprehensive Plan Considerations

- The RPD will not satisfy the applicable policies of the Comprehensive Plan.
- The RPD is not consistent with the Comprehensive Plan and the purposes described in MCC.7705.

4. Land Division Criteria

- Approval of the land division cannot occur without approval of the RPD.

1. Suitability for Forest Use

To approve an RPD, the County must find the gross site acreage ***is generally unsuited for forest use*** (Reference Staff Rept.:pg.8-9, and 18-26). Appli-

1 cant presents two basic arguments on site suitability: 1) economic and, 2) envi-
2 ronmental.

3
4 **Economic Suitability** — The Commission and Board reviewed extensive evi-
5 dence (pro and con) analyzing the economic suitability of the site for forest use.
6 The Board notes that despite evidence on both sides of this question, RPD
7 approval criteria do not require a finding of economic viability, nor do they speci-
8 fy a profit threshold or minimum rate of return to determine a site *generally*
9 suited or unsuited for forest use. Applicant's claim of unsuitability for forest
10 use in large part relies on an economic analysis (see Staff Rept.pgs. 21-24). The
11 fact that projected economic returns from forest use of the site are lower than
12 the applicant's expectations or desires does not render the site unsuitable for
13 forest use. State Goals and County policies protecting forest lands do not
14 require an economic viability test to determine which lands are suitable for for-
15 est use.

16
17 We note that the Soil Conservation District and SCS and the Office of the
18 State Forester did not agree with applicant's conclusions regarding economic
19 viability of the site for forest use. The State Forester provided written com-
20 ments to County Planning Staff which stated in part that "...[t]he analysis actu-
21 ally tells the reader that quite simply, the potential investor will just not receive
22 as much as he had wished to receive, but the returns will be positive." The State
23 Forester further wrote that "...the analysis did not determine the schedule of
24 practices and harvests which maximizes the rate of return or present net value
25 for the parcel. It is possible that higher stocking levels and intermediate com-
26 mercial harvests could have produced different (and better) results. It is also

1 possible that exotic or more inventive management can produce intermediate
2 income that makes the land a better investment.” The Board is persuaded by
3 these comments. Based on testimony heard, evidence in the record and points
4 raised in the Forestry Department response, the Board finds that economic con-
5 straints do not, by themselves or in combination with other factors, render the
6 site *generally unsuitable* for forest uses.

7
8 **Environmental Suitability** — The Board heard testimony and received evi-
9 dence that the soils and slopes on this site are typical of productive forest
10 resource lands throughout northwest Multnomah County. The Geotechnical
11 Report (Appendix E) provides a preliminary reconnaissance of soil and slope
12 conditions on the site. The State Forest Practices Act provides rules and mini-
13 mum standards to enhance the growing and harvesting of trees and protect
14 other environmental resources (air, water, soil, and wildlife) through regulation
15 of slash removal, road construction, chemical applications, and impacts to
16 streams. *1000 Friends of Oregon* states in a January 4, 1990 letter to the Com-
17 mission that “... the Cascade soils ...[have]... only slight to moderate forest man-
18 agement concerns for equipment use, seedling mortality, windthrow hazard, and
19 plant competition.” Anthony Boutard, a forester representing *1000 Friends of*
20 *Oregon*, testified before the Board that the physical character of the site is well
21 suited to forest practices common to northwest Oregon; he presented evidence
22 regarding the site’s suitability for forest use in a January 4, 1990 letter to the
23 Planning Commission. The West Multnomah Soil and Water Conservation Dis-
24 trict and USDA Soil Conservation Service responded in a memorandum Decem-
25 ber 27, 1989. They state in part that “...[t]he Cascade soil is one of the more
26 productive forest soils in Multnomah County. Site Index is a measure of the pro-

1 ductive potential of a soil for tree growth. For the Cascade soil, the Multnomah
2 County Soil Survey interpretive record ... lists a Site Index of 115 for Douglas
3 Fir. Trees planted on these soils could be expected to be 110 feet high at 50
4 years of age. Site indices are grouped into site classes for forestry purposes.
5 Site Class I has the highest potential, site class V the lowest. Cascade soils are
6 generally rated a low site class II or a high site class III in this area." The
7 Board finds the site is predominately composed of soils having a Class II or III
8 site rating and, therefore, suitable for production of forest crops.

9
10 We do not agree that proximity to rural residential land and land inside
11 the UGB necessarily renders the site unsuitable for forest use. Evidence indi-
12 cates the management of forest land for timber production is protected under
13 State Law. Surrounding non-forest uses cannot restrict common forest practices
14 on the site (Reference 1000 Friends letter). Further, we find that low residential
15 densities allowed in the area, coupled with the large size of the subject site (120-
16 acres), provides opportunities to buffer future residences from potential forest
17 management activities on the site.

18
19 The Board concludes that testimony and substantial evidence in the
20 record regarding the terrain, soils, drainage, vegetation, location and size of the
21 tract, support a finding that this site is suitable for forest uses. The RPD
22 request does not meet the *generally unsuitable for forest uses* standard.

23 24 2. Character of the Area

25 The 120-acre site is located in unincorporated Multnomah County, is
26 undeveloped and surrounded by a mix of resource and rural residential land

1 uses. The site is bordered on its eastern and part of its northern sides by both
2 the UGB and the Portland city limits. The western boundary of the site is
3 approximately one quarter mile from Washington County and the UGB. Part of
4 the southern boundary is adjacent to a 40-acre undeveloped parcel, zoned MUF-
5 19. The remainder adjoins the Bonny Slope Subdivision, zoned Rural Residen-
6 tial (RR), with a five-acre minimum lot size. The UGB is located approximately
7 one-half mile from the southern boundary. The Bonny Slope subdivision (the
8 southern boundary) includes 57 lots, and has an average lot size of 5.18 acres.
9 This area is characterized by several vacant sites (primarily wooded) and rural
10 residences.

11
12 Forested lands encompass a large proportion of the surrounding lands
13 uses. Much of these lands are within the City of Portland and the UGB. These
14 areas (inside the city) are zoned Farm and Forest (FF), with a two acre mini-
15 mum lot size. Land uses to the east of the site, along Skyline Boulevard, include
16 a number of small lots that comprise less than one acre of land and are devel-
17 oped with single family residences. Those parcels within the UGB are pro-
18 grammed for non-resource dwellings. Forest designated lands near the site in
19 unincorporated Multnomah County are generally west and north. There are
20 also agricultural resource lands to the north and northwest. The diverse mix of
21 existing and planned land uses in the area — with both resource (farm or forest)
22 and non-resource (urban and rural residential) uses — pose challenges when
23 assessing the RPD's effects on, and consistency with, the area character.

24
25 Testimony and evidence suggests that based on existing land use pat-
26 terns, logical public service extensions, and the location of the UGB in relation

1 to the site, the area around the site is expected to become increasingly more
2 urban in the coming years. Applicant and others note that in time, the UGB
3 may be shifted outward, to include areas surrounding the site. If the overall
4 land use pattern is in transition from rural to urban, division of 120 acres into
5 twelve lots rather than the six lots now permitted would not substantially main-
6 tain or support the current forest and farm resource character of lands to the
7 southwest, north and northwest. Neither would the division support the expand-
8 ing urban land use pattern characteristic of properties to the east, and further to
9 the south and west. Testimony indicates the long term availability of the land
10 for conversion to urban use is greatly diminished by the proposal and it would
11 also destabilize the resource designated lands west and north of the site by com-
12 mitting a 120-acre tract to rural residential use.

13
14 The above Findings are based on testimony from representatives from the
15 Metropolitan Service District, the City of Portland and Staff. We find the RPD
16 would not support the character and stability of the overall land use pattern of
17 the area.

18 19 *3. Comprehensive Plan Considerations*

20 The RPD promotes a sprawled residential development pattern. It com-
21 mits the 120 acres to low density, rural non-resource use immediately adjacent
22 to the UGB. This pattern does not support compact urban growth form and is
23 therefore contrary to the Energy Conservation policy (#22).

24
25 The Board heard testimony that in roughly 25 to 50 years, this property
26 may be suitable for much more intense development than the proposed 12 hous-

1 es on the 120 acres. When there is a demonstrated need for additional residen-
2 tial land within the UGB, the boundary may shift outward to include this and
3 nearby properties. Division of the property as proposed is both inefficient and
4 short sighted. It would create lot sizes and configurations which preclude the
5 future land base needs of the adjacent urban area.

6
7 This illustrates a unique problem; we have found the density – as pro-
8 posed – inconsistent with the density of the MUF zone, while at the same time
9 the proposed density is also inconsistent with future urbanization. This pre-
10 sents a unique situation in that the proposal does not provide for orderly growth
11 for either resource or urban land uses.

12
13 The subject property is in the path of urban development approaching
14 from the east, south and west. The Board heard testimony that retention of
15 larger land holdings near the urban growth boundary will assure that these
16 lands can contribute substantively to the urban land base when needed and pro-
17 mote compact urban growth. Comprehensive Plan Policy #6 and Statewide
18 Planning Goal 14 address urban land area and urbanization respectively. Both
19 encourage orderly and efficient extension of urban services and efficient conver-
20 sion of land from rural to urban. Policy #6 states in part “ **Provide for order-**
21 **ly growth ... (and) [d]irect growth into relatively compact ... communi-**
22 **ties**”. The Board heard testimony that this RPD will allow the division of the
23 property into much smaller parcels than could economically and efficiently
24 urbanize when the need arises. This argument is supported by the Portland
25 Bureau of Planning in a letter dated December 28, 1989 which states in part “...
26 [t]he Northwest Hills study of 1985 reaffirmed that there is sufficient land avail-

1 able for residential development within the Urban Growth Boundary. Metro
2 projects a demand for approximately 2,200 new housing units in the Northwest
3 Hills study area over the next 20 years. Development potential already inside
4 the Urban Growth Boundary exceeds twice that amount, and the Forest Heights
5 project alone will provide nearly that many units.

6
7 If the Urban Growth Boundary is expanded in the future based on the
8 need for more residential land, land must be available for an urban level of
9 development. The proposed development would preclude the ability to efficient-
10 ly provide urban services to that level of development by creating lots that are
11 not suitable for further division.” The Commission and Board also received com-
12 ments from the Planning Director for the Metropolitan Service District (Metro)
13 urging the County to consider the implications for effective urban growth man-
14 agement if the land is divided as proposed. Policy #4 (Intergovernmental
15 Coordination) calls for coordination with Metro and others in maintaining the
16 UGB and addressing future urban service issues. An RPD approval would allow
17 division of this site into 12 parcels (some as small as 3-acres); without an RPD,
18 only 6 parcels could be created (none less than 19-acres). The critical issue
19 effecting urbanization potential is the multiple ownerships (12 proposed) and lot
20 size pattern which the RPD would allow.

21
22 The Board finds that those portions of the site with development limita-
23 tions and steep sloped areas can contribute to future urban land base needs if
24 included in the UGB in the future. Within a short distance of this site (in Port-
25 land’s West Hills, Sylvan area, *etc.*) we observe numerous examples of dense
26 urban scale development on slopes equal or similar to those on this site — and

1 with similar soil and erosion conditions to contend with. We acknowledge that
2 development limitations constrain large portions of the site, but similar limita-
3 tions on other nearby urban land have not prevented urban densities from being
4 realized. These more difficult development sites do get developed for urban use
5 in many instances, especially when the real estate market and buyer demand
6 defrays the additional expenses needed to develop steeper land. In situations
7 where development limitations cannot be resolved, urban zoning provisions
8 allow clustering of the houses on less constrained portions of the site, and there-
9 by maintain urban residential density goals. These observations were confirmed
10 in testimony from County Staff and Bob Clay, from Portland's Planning Bureau.
11 In conclusion, the above findings regarding urbanization supports a determina-
12 tion that the proposed division of the site — double the number of lots allowed
13 by the base zone — immediately adjacent to the UGB is not consistent with
14 Framework Plan policies regarding Intergovernmental Coordination (Policy 4),
15 Growth Management (Policies 6, 8, and 12) and Arrangement of Land Uses (Pol-
16 icy 20).

17
18 One purpose of the RPD section is to allow “... **orderly development of**
19 **rural land demonstrated as not suitable for . . . forest use, but adequate**
20 **for rural residential purposes.**” (MCC .7705). Aside from the *suitability for*
21 *forest use* question (discussed above), we find this land not *adequate for rural*
22 *residential purposes* because it is located so close to the UGB. Division of the
23 site into 12 lots (as proposed) doubles the number allowed by the current zoning.
24 Allowing an increase in the number of lots, just beyond the UGB, limits the pub-
25 lic's ability to plan and manage growth for the adjacent urban area.

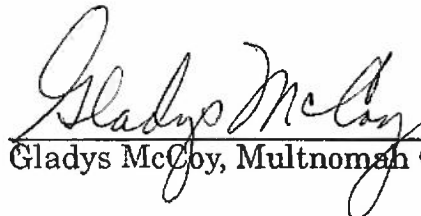
1 2.9 and 20 acres. Since several lots would be less than the 19-acre minimum
2 required in the underlying MUF-19 zone, approval of the land division is depen-
3 dent on approval of the related RPD request. As explained in the findings
4 above, the proposed RPD does not meet the applicable approval criteria. As a
5 result, the lots as proposed do not meet the minimum MUF-19 area standards.
6

7 IV. CONCLUSIONS AND DECISION

8
9 Based on the above findings and evaluation, the Board of Commissioners con-
10 cludes that the proposed RPD and LD does not comply with applicable stan-
11 dards of the Multnomah County Code. Therefore, the Board of Commissioners
12 hereby reverses the Planning Commission decisions in this matter and denies
13 the Rural Planned Development and Land Division requested in RPD 1-90/ LD
14 1-90.
15



16 DATED this 1st day of May, 1990

17
18 
19 Gladys McCoy, Multnomah County Chair
20

21 REVIEWED AS TO FORM:
22 LAURENCE KRESSEL, COUNTY COUNSEL
23 FOR MULTNOMAH COUNTY, OREGON
24

25 By: 
26 John DuBay, Chief Deputy County Counsel