

# ANNOTATED MINUTES

Tuesday, October 28, 1997 - 9:30 AM  
Portland Building, Second Floor Auditorium  
1120 SW Fifth Avenue, Portland

## LAND USE PLANNING 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.*

P-1      CS 3-97/PLA 5-97 DE NOVO HEARING, TESTIMONY LIMITED TO 20 MINUTES PER SIDE Regarding Appeal of the Hearings Officer Decision Approving a Community Service Use and Property Line Adjustment, Subject to Conditions and Approval, for Property Located at 4280 NW NORTH ROAD, PORTLAND.

**CHAIR STEIN EXPLAINED QUASI-JUDICIAL PROCESS. AT CHAIR STEIN'S REQUEST FOR DISCLOSURE, NO EX PARTE CONTACTS WERE REPORTED. AT CHAIR STEIN'S REQUEST FOR CHALLENGES AND/OR OBJECTIONS, NONE WERE OFFERED. PLANNER ROBERT HALL PRESENTED CASE HISTORY. VIA SPEAKERPHONE, HEARINGS OFFICER LIZ FANCHER PRESENTED CONDITIONS, FINDINGS OF FACT AND CRITERIA USED IN DETERMINATION TO APPROVE APPLICATION. APPELANTS' ATTORNEY TY WYMAN AND APPELLANTS VIJAY SHANKAR AND ANNE SHANKAR SUBMITTED WRITTEN MATERIAL AND PRESENTED TESTIMONY URGING BOARD TO OVERTURN DECISION AND DENY APPLICATION. APPLICANTS' ATTORNEY KEVIN HANWAY TESTIMONY IN SUPPORT OF HEARINGS OFFICER DECISION. WEST'S ATTORNEY LAWRENCE DERR SUBMITTED WRITTEN MATERIAL AND TESTIFIED IN SUPPORT OF HEARINGS OFFICER DECISION. ACTING COUNTY COUNSEL LAURIE CRAGHEAD RESPONSE TO BOARD QUESTIONS.**

**IN RESPONSE TO CHAIR STEIN'S REQUEST FOR CONTINUANCE OR OBJECTION TO HEARING, NONE WERE OFFERED. HEARING CLOSED. MS. CRAGHEAD, MS. FANCHER, MR. HALL AND MR. DERR RESPONSE TO BOARD QUESTIONS. FOLLOWING DISCUSSION, COMMISSIONER KELLEY MOVED, SECONDED BY COMMISSIONER HANSEN, TO UPHOLD THE HEARINGS OFFICER DECISION. COMMISSIONER COLLIER URGED THE DISTRICT TO INITIATE A GOOD NEIGHBOR POLICY AND ENCOURAGED THEM TO MEET WITH THE APPELLANTS TO ADDRESS THEIR CONCERNS. MS. CRAGHEAD RESPONSE TO QUESTION OF COMMISSIONER SALTZMAN REGARDING A SETBACK. UPON MOTION OF COMMISSIONER KELLEY, SECONDED BY COMMISSIONER HANSEN COMMUNITY SERVICE COMPLIANCE UNANIMOUSLY APPROVED. HEARINGS OFFICER DECISION UNANIMOUSLY UPHELD. CHAIR STEIN ADVISED ALL PARTIES WILL RECEIVE A COPY OF THE BOARD'S WRITTEN DECISION, WHICH MAY BE APPEALED TO LUBA.**

*There being no further business, the land use planning meeting was adjourned and the briefing convened at 10:40 a.m.*

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Tuesday, October 28, 1997 - 10:30 AM  
Portland Building, Second Floor Auditorium  
1120 SW Fifth Avenue, Portland

## **BOARD BRIEFING**

B-1      Report and Recommendation of the Evaluation Task Force: Measuring for Results in Multnomah County. Presented by Vickie Gates, Susan Clark and Jim Carlson.

**VICKIE GATES, JIM CARLSON AND SUSAN CLARK  
PRESENTATION AND RESPONSE TO BOARD  
QUESTIONS AND DISCUSSION.**

*There being no further business, the meeting was adjourned at 11:49 a.m.*

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Wednesday, October 29, 1997 - 6:00 PM  
Portland Building, Second Floor Conference Room C  
1120 SW Fifth Avenue, Portland

## **JOINT PUBLIC HEARING**

*Vice-Chair Gary Hansen convened the meeting at 6:00 p.m., with Commissioners Sharron Kelley and Tanya Collier present, and Commissioner Dan Saltzman and Chair Beverly Stein excused.*

PH-1      The Multnomah County Board of Commissioners and City Council Officials from Fairview, Gresham, Maywood Park, Portland, Troutdale and Wood Village Will Meet to Hear Public Testimony Concerning Proposed Revisions to the Multnomah County Animal Control Code, Including an Amendment Adding New Exotic Animal Definitions and Regulations. Public Testimony Limited to Three Minutes Per Person.

**HANK MIGGINS PRESENTATION. TESTIMONY FROM CARLA ALMARAZ FERRETS, RICHARD CAPLAN IN SUPPORT OF BAN, PETER BURCH IN SUPPORT OF LICENSING POISONOUS REPTILES, BEATRICE LYDECKER IN OPPOSITION TO BAN, UNENFORCEABLE, JACKIE SINNOTT IN OPPOSITION TO BAN, TOM JAMES IN SUPPORT OF LICENSING, JOHN THOMAS SMITH IN SUPPORT OF REGULATIONS, JEFF MILLER IN SUPPORT OF RESPONSIBLE OWNERSHIP, DAVID BECKEN IN OPPOSITION TO BAN, DR. MARK BURGESS IN OPPOSITION TO BAN, IN SUPPORT OF PERMITS, DR. PATRICIA HUFF IN OPPOSITION TO INCLUSION OF WOLF HYBRIDS IN BAN, MELISSA KIMMEL WANTS POTBELLIED PIGS CLASSIFIED AS DOMESTIC AND WEIGHT CLASSIFICATION RAISED, ANDY TURUDIC IN OPPOSITION TO BAN, DWAYNE KAPTUR IN OPPOSITION TO BAN, MARGARET STANTON IN OPPOSITION TO BAN, GREG ANDERSON IN**

OPPOSITION TO BAN, SUPPORTS PERMITS, JOHN VAN STRY IN OPPOSITION TO BAN, SUPPORTS PERMITS, GINGER BECKEN IN OPPOSITION TO BAN, BARBARA WILTON IN OPPOSITION TO BAN, WILLING TO WORK WITH OWNERS, KIM HERMAN, IN OPPOSITION TO BAN, UNENFORCEABLE, DAVID ERICKSON SUPPORTS CAREFULLY CRAFTED LEGISLATION IN CONCERN FOR CARE OF PREDATORY ANIMALS, JODY SHERRY IN OPPOSITION TO INCLUSION OF WOLF-DOG TO BAN, JACK TUCKER WANTS POTBELLIED PIGS CLASSIFIED AS DOMESTIC, DAVID HATCH CONCERNING MR. ANDERSON'S TIGER, SHARON HARMON IN SUPPORT OF CAREFULLY REVISED LEGISLATION WITH IMPROVED PROVISIONS, DEBBIE WALDING IN OPPOSITION TO BAN, OFFERS ASSISTANCE, ANNE HATCH CONCERNING MR. ANDERSON'S TIGER, MICHAEL TWAIN IN SUPPORT OF BAN WITH "GRANDFATHER CLAUSE" FOR EXISTING PETS, OFFERS ASSISTANCE, MARY JO MARTIN, WANTS BETTER DEFINITION AS THERE IS NO SWINE RABIES VACCINE, MIKE KEELE IN OPPOSITION TO EXOTICS AS PETS, CONCERN FOR ANIMAL HEALTH, KIMBER BRAWLEY IN SUPPORT OF PORTIONS OF DRAFT, NOT SECTION E, OFFERS ASSISTANCE VIA A TASKFORCE, GEORGE STEIN, SUPPORTS DIVERSITY, JENNIFER CHACON SUGGESTING CHANGES TO VARIOUS SECTIONS OF DRAFT ORDINANCE, BOB SALLINGER, SUGGESTING CHANGES TO VARIOUS SECTIONS OF DRAFT ORDINANCE, 14D NEEDS TO BE EXEMPTED, JAN HIXSON IN SUPPORT OF BAN, BRET SELLERS EDUCATION REGARDING VENOMOUS SNAKES, MICHAEL ILLIG REGARDING SPECIES SURVIVAL PLAN, REED GLEASON REGARDING ADEQUATE PLACE FOR ANIMALS TO LIVE, CYNTHIA IKEDA IN OPPOSITION TO BAN, MOLLY SCHAEFER IN OPPOSITION TO BAN, STEVE JOHNSON EDUCATION REGARDING RESCUED BOBCATS, COUGARS, OCELETS, KATIE SCHENK IN

**OPPOSITION TO BAN, REBECCA LAFORE IN  
OPPOSITION TO BAN, STEVEN BELKNAP IN  
OPPOSITION TO BAN.**

*There being no further business, the meeting was adjourned at 8:45  
p.m.*

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

**REGULAR MEETING**

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

**CONSENT CALENDAR**

**UPON MOTION OF COMMISSIONER KELLEY,  
SECONDED BY COMMISSIONER COLLIER, THE  
CONSENT CALENDAR (ITEMS C-1 THROUGH C-3)  
WAS UNANIMOUSLY APPROVED.**

**DEPARTMENT OF COMMUNITY AND FAMILY SERVICES**

- C-1      Amendment 2 to Intergovernmental Revenue Agreement 101618 with  
the State Mental Health Division to Fund the Local Medicaid Match for  
DARTS and DD Case Management

**DEPARTMENT OF JUVENILE AND ADULT COMMUNITY JUSTICE**

- C-2      Budget Modification DCJ 3 Adding \$12,168 Metro Revenue to the  
Payback Restitution Program Dedicated to Youth Landscape  
Maintenance Services at the South Exchange Center
- C-3      Budget Modification DCJ 4 Reprogramming \$351,501 General Fund to  
Increase Direct Contracted Services in the Turnaround School Program

**AT THE REQUEST OF VICE-CHAIR HANSEN AND  
UPON MOTION OF COMMISSIONER KELLEY,**

**SECONDED BY COMMISSIONER COLLIER,  
CONSIDERATION OF THE FOLLOWING ITEM WAS  
UNANIMOUSLY APPROVED.**

**NON-DEPARTMENTAL**

- UC-1 PROCLAMATION Proclaiming October 27 through November 2, 1997 as CHILDREN'S WEEK and CELEBRATION OF ALBERTINA KERR CENTERS' 90TH ANNIVERSARY OF COMMUNITY SERVICE in Multnomah County, Oregon

**COMMISSIONER KELLEY MOVED AND  
COMMISSIONER COLLIER SECONDED,  
APPROVAL OF UC-1. JIM CLAY AND GEOFF  
KNAPP EXPLANATION AND RESPONSE TO BOARD  
COMMENTS IN SUPPORT. PROCLAMATION 97-191  
UNANIMOUSLY APPROVED.**

**REGULAR AGENDA**

**PUBLIC COMMENT**

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

**ATTORNEY JEFF BACHRACH REQUESTED THAT  
THE BOARD NOT MAKE A DECISION ON R-6  
TODAY AND TO SCHEDULE A PUBLIC HEARING  
ON THE MATTER. COUNSEL SANDRA DUFFY  
RESPONSE TO QUESTIONS OF COMMISSIONER  
COLLIER, EXPLAINING THE COUNTY HAS AN  
OBLIGATION TO COMPLY WITH THE 120 DAY  
RULE, BUT THAT IT COULD SET THE MATTER TO  
NEXT WEEK. ATTORNEY JAKE TANZER ADVISED  
HE WOULD BE IN TRIAL NEXT WEEK AND  
REQUESTED THAT THE BOARD SET R-6 OVER  
FOR TWO WEEKS.**

**NON-DEPARTMENTAL**

- R-2 Intergovernmental Agreement 500748 with the City of Portland for Metropolitan Human Rights Center Funding

**COMMISSIONER KELLEY MOVED AND  
COMMISSIONER COLLIER SECONDED,  
APPROVAL OF R-2. CAROL FORD EXPLANATION  
AND RESPONSE TO BOARD QUESTIONS.  
AGREEMENT UNANIMOUSLY APPROVED.**

**PUBLIC CONTRACT REVIEW BOARD**

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

- R-3 ORDER Authorizing Exemption to Exceed the 33% Change Order  
Limitation for Remodel of the Restitution Center

**COMMISSIONER KELLEY MOVED AND  
COMMISSIONER COLLIER SECONDED,  
APPROVAL OF R-3. FRANNA HATHAWAY  
EXPLANATION. ORDER 97-192 UNANIMOUSLY  
APPROVED.**

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

**DEPARTMENT OF COMMUNITY AND FAMILY SERVICES**

- R-4 RESOLUTION to Develop and Implement a Community Building  
Initiative
- R-5 Budget Modification CFS 2 Transferring \$65,000 from County General  
Fund Contingency to CFS Department Management for Professional  
Services in Support of the Community Building Initiative

**AT THE REQUEST OF VICE-CHAIR HANSEN AND  
UPON MOTION OF COMMISSIONER KELLEY,  
SECONDED BY COMMISSIONER COLLIER, R-4  
AND R-5 WERE UNANIMOUSLY RESET TO  
THURSDAY, NOVEMBER 13, 1997.**

**DEPARTMENT OF ENVIRONMENTAL SERVICES**

- R-6 FINAL ORDER and Adoption of Findings and Conclusions in Land  
Use Planning Case SEC 3-97 to DENY the Application and REVERSE

the June 1, 1997 Hearings Officer Decision and the March 11, 1997 Planning Director's Decision Regarding a Significant Environmental Concern Permit for a Single Family Dwelling in a Wildlife Habitat Area Land Use Planning

***FOLLOWING DISCUSSION AND UPON MOTION OF COMMISSIONER KELLEY, SECONDED BY COMMISSIONER COLLIER, R-6 WAS UNANIMOUSLY RESET TO THURSDAY, NOVEMBER 13, 1997.***

- R-7      Amendment to Intergovernmental Agreement 300468 with the City of Portland Establishing New Responsibilities for Completing Metro Urban Growth Management Functional Plan Work and Urban Reserve Planning Work

***AT THE REQUEST OF VICE-CHAIR HANSEN AND UPON MOTION OF COMMISSIONER COLLIER, SECONDED BY COMMISSIONER KELLEY, R-7 WAS UNANIMOUSLY RESET TO THURSDAY, NOVEMBER 6, 1997.***

- R-8      Fourth Reading and Adoption of an ORDINANCE Adopting the Sauvie Island/Multnomah Channel Rural Area Plan, a Portion of the Multnomah County Comprehensive Framework Plan

***ORDINANCE READ BY TITLE ONLY. COPIES AVAILABLE. COMMISSIONER COLLIER MOVED AND COMMISSIONER KELLEY SECONDED, APPROVAL OF FOURTH READING AND ADOPTION. NO ONE WISHED TO TESTIFY. ORDINANCE 887 UNANIMOUSLY APPROVED.***

- R-9      Budget Modification DES 4 Transferring \$51,000 from General Fund Contingency to the Transportation and Land Use Planning Budget for 1 Planner and 1 OA2 Plus Supplies and Materials to Implement the Moorage Component of the Sauvie Island/Multnomah Channel Rural Area Plan

***COMMISSIONER KELLEY MOVED AND COMMISSIONER COLLIER SECONDED, APPROVAL OF R-9. KATHY BUSSE***



**EXPLANATION. BUDGET MODIFICATION  
UNANIMOUSLY APPROVED.**

*There being no further business, the regular meeting was adjourned and the briefing convened at 10:00 a.m.*

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Thursday, October 30, 1997 - 10:30 AM  
Portland Building, Second Floor Auditorium  
1120 SW Fifth Avenue, Portland

**BOARD BRIEFING**

B-2 Update on Juvenile Truancy Program Provided as a Partnership with Multnomah County, Portland Public Schools and North Family Center. Presented by Elyse Clawson and Bill Morris.

***FOLLOWING BOARD DISCUSSION WITH ELYSE CLAWSON, BRIEFING CANCELLED TO A LATER DATE.***

*There being no further business, the briefing was adjourned at 10:05 a.m.*

OFFICE OF THE BOARD CLERK  
FOR MULTNOMAH COUNTY, OREGON

**Deborah L. Bogstad**

Deborah L. Bogstad



## MULTNOMAH COUNTY OREGON

**DEBORAH BOGSTAD, 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  
**OCTOBER 27, 1997 - OCTOBER 31, 1997**

Tuesday, October 28, 1997 - 9:30 AM - Land Use Planning..... Page 2

Tuesday, October 28, 1997 - 10:30 AM - Board Briefing ..... Page 2

Wednesday, October 29, 1997 - 6:00 PM - Joint Public Hearing..... Page 2

Thursday, October 30, 1997 - 9:30 AM - Regular Meeting ..... Page 3

Thursday, October 30, 1997 - 10:30 AM - Board Briefing ..... Page 5

The Wednesday hearing will be cable-cast live by Portland Cable Access Television and taped and can be seen by cable subscribers in Multnomah County on Channel 30 at 6:00 pm Wednesday, 5:00 pm Friday, 6:00 pm Saturday, 8:30 pm Sunday and 8:00 pm Tuesday.

The Thursday meeting will be cable-cast live by Multnomah Community Television and taped and can be seen by cable subscribers in Multnomah County on Channel 30 at 9:30 am Thursday, 10:00 pm Friday and 1:00 pm Sunday.

AN EQUAL OPPORTUNITY EMPLOYER

Tuesday, October 28, 1997 - 9:30 AM  
Portland Building, Second Floor Auditorium  
1120 SW Fifth Avenue, Portland

## **LAND USE PLANNING MEETING**

- P-1      CS 3-97/PLA 5-97 DE NOVO HEARING, TESTIMONY LIMITED TO 20 MINUTES PER SIDE Regarding Appeal of the Hearings Officer Decision Approving a Community Service Use and Property Line Adjustment, Subject to Conditions and Approval, for Property Located at 4280 NW NORTH ROAD, PORTLAND. 1 HOUR REQUESTED.
- 

Tuesday, October 28, 1997 - 10:30 AM  
**(OR IMMEDIATELY FOLLOWING PLANNING MEETING)**  
Portland Building, Second Floor Auditorium  
1120 SW Fifth Avenue, Portland

## **BOARD BRIEFING**

- B-1      Report and Recommendation of the Evaluation Task Force: Measuring for Results in Multnomah County. Presented by Vickie Gates, Susan Clark and Jim Carlson. 45 MINUTES REQUESTED.
- 

Wednesday, October 29, 1997 - 6:00 PM  
Portland Building, Second Floor Conference Room C  
1120 SW Fifth Avenue, Portland

## **JOINT PUBLIC HEARING**

- PH-1      The Multnomah County Board of Commissioners and City Council Officials from Fairview, Gresham, Maywood Park, Portland, Troutdale and Wood Village Will Meet to Hear Public Testimony Concerning Proposed Revisions to the Multnomah County Animal Control Code, Including an Amendment Adding New Exotic Animal Definitions and Regulations. Public Testimony Limited to Three Minutes Per Person.

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

## **REGULAR MEETING**

### **CONSENT CALENDAR**

#### **DEPARTMENT OF COMMUNITY AND FAMILY SERVICES**

- C-1      Amendment 2 to Intergovernmental Revenue Agreement 101618 with the State Mental Health Division to Fund the Local Medicaid Match for DARTS and DD Case Management

#### **DEPARTMENT OF JUVENILE AND ADULT COMMUNITY JUSTICE**

- C-2      Budget Modification DCJ 3 Adding \$12,168 Metro Revenue to the Payback Restitution Program Dedicated to Youth Landscape Maintenance Services at the South Exchange Center
- C-3      Budget Modification DCJ 4 Reprogramming \$351,501 General Fund to Increase Direct Contracted Services in the Turnaround School Program

### **REGULAR AGENDA**

#### **PUBLIC COMMENT**

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

#### **NON-DEPARTMENTAL**

- R-2      Intergovernmental Agreement 500748 with the City of Portland for Metropolitan Human Rights Center Funding

#### **PUBLIC CONTRACT REVIEW BOARD**

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

- R-3 ORDER Authorizing Exemption to Exceed the 33% Change Order Limitation for Remodel of the Restitution Center

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

#### **DEPARTMENT OF COMMUNITY AND FAMILY SERVICES**

- R-4 RESOLUTION to Develop and Implement a Community Building Initiative
- R-5 Budget Modification CFS 2 Transferring \$65,000 from County General Fund Contingency to CFS Department Management for Professional Services in Support of the Community Building Initiative

#### **DEPARTMENT OF ENVIRONMENTAL SERVICES**

- R-6 FINAL ORDER and Adoption of Findings and Conclusions in Land Use Planning Case SEC 3-97 to DENY the Application and REVERSE the June 1, 1997 Hearings Officer Decision and the March 11, 1997 Planning Director's Decision Regarding a Significant Environmental Concern Permit for a Single Family Dwelling in a Wildlife Habitat Area Land Use Planning
- R-7 Amendment to Intergovernmental Agreement 300468 with the City of Portland Establishing New Responsibilities for Completing Metro Urban Growth Management Functional Plan Work and Urban Reserve Planning Work
- R-8 Fourth Reading and Adoption of an ORDINANCE Adopting the Sauvie Island/Multnomah Channel Rural Area Plan, a Portion of the Multnomah County Comprehensive Framework Plan
- R-9 Budget Modification DES 4 Transferring \$51,000 from General Fund Contingency to the Transportation and Land Use Planning Budget for 1 Planner and 1 OA2 Plus Supplies and Materials to Implement the Moorage Component of the Sauvie Island/Multnomah Channel Rural Area Plan

Thursday, October 30, 1997 - 10:30 AM  
**(OR IMMEDIATELY FOLLOWING REGULAR MEETING)**

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

## **BOARD BRIEFING**

- B-2      Update on Juvenile Truancy Program Provided as a Partnership with Multnomah County, Portland Public Schools and North Family Center. Presented by Elyse Clawson and Bill Morris. 45 MINUTES REQUESTED.

Meeting Date: OCT 28 1997  
Agenda No: P-1  
Est. Start Time: 9:30am

(Above Space for Board Clerk's Use ONLY)

### AGENDA PLACEMENT FORM

**SUBJECT:** DeNovo Hearing regarding the Hearings Officer's decision on  
CS 3-97 & PLA 5-97.

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

**REGULAR MEETING**      Date Requested:      October 28, 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:** Robert Hall / Liz Fancher

### ACTION REQUESTED

☐ Informational Only      ☐ Policy Direction      ☐ Approval      ☒ Other

### SUGGESTED AGENDA TITLE

DeNovo Hearing regarding and appeal of the Hearings Officer's decision regarding an approval of  
a Community Service Use and Property Line Adjustment, subject to conditions and approval.

### SIGNATURES REQUIRED

**Elected Official:** \_\_\_\_\_  
or

**Department Manager:** Larry F. Nicholas

BOARD OF  
COUNTY COMMISSIONERS  
97 OCT 22 PM 3:14  
MULTI-HUMAN COUNTY  
OREGON



CASE NAME Significant Environmental Concern Permit Request NUMBER CS 3-97/PLA 5-97

## 1. Applicant Name/Address

Wolf Creek Water District  
1850 SW 107th Avenue  
Beaverton, OR 97006-4211

## 2. Action Requested by Applicant

Modification of prior Community Service approval to reduce the size of the Tualatin Valley Water District reservoir property from 4.88 acres to 2.8 acres and to add the remainder of the property to the adjacent property to the north through a property line adjustment. Approval of the property line adjustment would increase the area of the lot to the north from 9.48 acres to 11.52 acres.

## ACTION REQUESTED OF BOARD

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

## 3. Planning Staff Recommendation

Approval with conditions

## 4. Hearings Officer Decision:

Approval with conditions

## 5. If recommendation and decision are different, why?

N/A

6. The following issues were raised at the hearing (*who raised them?*)

- a. Prohibition of development on the new northerly parcel. (adjacent neighbor).
- b. Require a new conditional use for the reservoir (adjacent neighbor).
- c. Height of existing reservoir (adjacent neighbor).
- d. Consistency with character of the area (adjacent neighbor).
- e. Impact on natural resources (adjacent neighbor).
- f. Development limitations of the property (adjacent neighbor).
- g. Illegality of existing reservoir (adjacent neighbor).

## 7. Do any of these issues have policy implications? Explain.

No, they all relate to application of the Zoning Code.





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

NOTICE OF REVIEW

26#  
PERMITS 500.00  
TOTAL 500.00  
0000-001 9/ 5/97  
4695-CHUCK 2:50PM

1. Name: Shankar , Vijay and Anne
2. Address: 4200 NW North Road , Portland , Oregon 97210
3. Telephone: ( 503 ) 297 - 9461
4. If serving as a representative of other persons, list their names and addresses:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

5. What is the decision you wish reviewed (e.g., denial of a zone change, approval of a subdivision, etc.)?
- Community Service zone designation and Property
- Line Adjustment.

6. The decision was announced by the Hearing Officer on \_\_\_\_\_, 19 \_\_\_\_

7. On what grounds do you claim status as a party pursuant to MCC 11.15.8225?
- Please refer to accompanying letter dated September 5, 1997, from
- Ty K. Wyman of Bogle & Gates P.L.L.C.

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RECEIVED  
97 SEP -5 PM 2:31  
PLANNING SECTION  
MULTNOMAH COUNTY

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

Please refer to accompanying letter dated September 5, 1997 from

Ty K. Wyman of Bogle & Gates P.L.L.C.

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:

Ty K. Wyman, Att'y. for Shankars

Date:

9/5/97

Ty K. Wyman, Attorney for Shankars

For Staff Use Only

Fee:

Notice of Review = \$500.00

Received by:

Date:

Case No.

# BOGLE & GATES P.L.L.C.

A Professional Limited Liability Company

LAW OFFICES

TY K. WYMAN

1400 KOIN Center  
222 S.W. Columbia  
Portland, Oregon 97201-6793

Direct Dial: (503) 721-3634  
Main Office: (503) 222-1515  
Facsimile: (503) 721-3666  
Internet Email: twyman@bogle.com

Anchorage  
Bellevue  
Seattle  
Tacoma  
Vancouver, B.C.

73033/00001

September 5, 1997

## VIA HAND DELIVERY

Ms. Kathy Busse  
Planning Director  
Multnomah County Planning Department  
2115 SE Morrison  
Portland, OR 97214

Re: County Case File No. CS 3-97 and PLA 5-97

Dear Ms. Busse:

This firm represents Vijay and Anne Shankar in the above-referenced matter. This letter constitutes the Shankars' Notice of Review, pursuant to Multnomah County Code (MCC) § 11.15.8260, of the Hearings Officer's decision approving the application.

The Tualatin Valley Water District (TVWD) asks the County to approve a substandard lot in the Rural Residential (RR) zone in order to facilitate expansion of an adjacent lot for more intense development. Specifically, TVWD seeks modification of the Community Service overlay zone designation on its 5-acre reservoir site to allow the same development on 3 acres. The severed portion would then be sold to an adjacent property owner to give him a partitionable lot. As abutting property owners, the Shankars are concerned about the intensity of development in this rural area. The question presented is whether the County Code supports density increases in the RR zone, or whether it protects those who seek to protect in the area's rural nature.

As an initial matter, the Shankars wish the Board to know that they have met with the Applicant's representative, Kevin Hanway, and continue to believe that they can reach agreement with the Applicant on a condition approval to the application which would address the Shankars' concerns. However, until such an agreement is reached, this appeal must be pursued.

MULTNOMAH COUNTY  
PLANNING SECTION

97 SEP -5 PM 2:31

RECEIVED

**MCC 11.15.8260(B): A Notice of Review shall contain:**

**(1) An identification of the decision sought to be reviewed, including the date of such decision;**

The decision sought to be reviewed is CS 3-97 and PLA 5-97, which was signed by the Hearings Officer on August 14, 1997.

**(2) A statement of the interest of the person giving the Notice of Review;**

The Shankars own the southerly abutting lot to the project site. They appeared, through this office and in person, at the July 16, 1997 hearing before the Hearings Officer, in opposition to the application. They also submitted, through this office, a letter (dated July 23, 1997) into the record, further setting forth their opposition.

**(3) The specific grounds relied upon for review; and**

The grounds for this appeal are as follows:

1) The Hearings Officer mistakenly found compliance with Code § 11.15.2224(B) and Plan Policy 2.

Code § 11.15.2224(B) requires that the minimum lot size for the reservoir use be based on "the nature of the proposed use in relation to the impacts on nearby properties."

The Hearings Officer found that the nature of the proposed use does not change with this application, and therefore neither does its impact on adjacent properties. This turns a blind eye to the importance of the density of development. Development on five acres is fundamentally different than development on three acres because it is more dense. This application will allow development at a density greater than the RR five-acre lot size minimum, i.e. 3 separate developments on 14 acres.

The Shankars abut the reservoir property to the south. The lot size of the reservoir was critical to their decision to buy their home, and remains very important to them. A reservoir on five acres fits within they can live with. But a reservoir on three acres will allow development within 10 feet of the Shankars' property in this *rural* zone. The area has very low ambient noise, significantly increasing the impact of any noise on nearby homes. The area is also characterized by pristine views, which should not be interrupted by such close development.

The negative impact on the Shankars of allowing the reservoir use on a substandard lot dictates that the application be denied.

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Plan Policy 2 states that "the County's policy is to apply conditions to its approval of land use actions where it is necessary to: (a) protect the public from the potentially deleterious effects of the proposed use." This application requests approval of a Community Service overlay designation on a reduced lot size.

The Shankars voiced concerns about the effect of reducing the TVWD lot by two acres. They suggested that a condition on the approval of this application would resolve their concerns. Specifically, they asked that the application be conditioned that no development take place on the severed two acre area in question.

The Hearings Officer concludes that Policy 2 does not support such a condition because the application does not request approval of a "use" per se. This conclusion fails to recognize that 1) the application is for a use designation (CS), and 2) this Plan policy is an applicable criterion. Obviously, if this application did not involve a proposed use, Policy 2 would not apply.

The Board can alleviate the Shankars' concern and uphold their investment expectation by placing a fairly simple condition on its approval. Specifically, the Shankars suggest that any approval be conditioned to assure that there will be no physical development of the 2 acres which are the subject of the Lot Line Adjustment request. Such a condition is fully supportable under Plan Policy No. 2, Off-Site Effects, which specifically provides for the use of conditions to protect neighbors from off-site impacts. Such a condition would not preclude a future partition of the expanded Lot 31, nor its eventual development with two homes. It would simply assure that no development would take place within what the Shankars had understood to be a buffer area. Without such a condition, the application fails to show compliance with Code § 11.15.2224(B) and Plan Policy No. 2.

The proposed use is a reservoir on a substandard lot. The Board has the authority to condition any approval of this application to protect adjacent property owners. It should use that authority.

- 2) The Hearings Officer mistakenly found that the application complied with MCC § 11.15.7015(A).

This provision requires the proposal to be "consistent with the character of the area". The proposal is not consistent with the character of the area because it reduces an existing developed lot below the five-acre minimum, and will allow development at a higher density than exists or is permitted, *i.e.* three developments on 14 acres. Furthermore, the Shankars bought this property specifically because of the rural environment assured by the RR district, an environment which is jeopardized by this application.

- 3) The Hearings Officer mistakenly found that the application complied with MCC 11.15.2224.

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The Applicant requested relief from the five-acre lot size minimum of the Rural Residential (RR) zone, pursuant to Code § 11.15.2224, "Lot Sizes for Conditional Uses." Code § 11.15.2224 allows reduction of the size of a lot below the minimum only for conditional uses "permitted pursuant to Code § 11.15.2212."

Code § 11.15.2212, meanwhile, merely lists conditional uses which "may be permitted" subject to a hearing process. One of those uses which can be permitted as a conditional use is a Community Service Use. Therefore, to fall within 11.15.2224 applies only to lots which have received a Conditional Use permit pursuant to 11.15.2212. The Applicant has not received a Conditional Use permit, and therefore cannot get approval of a reduced lot size under Code § 11.15.2224.

The Hearings Officer concluded that the "records of prior conditional use approvals for the Tualatin Valley property . . . establish that the community service use that exists on the Tualatin Valley property was approved as a conditional use." In fact, the TVWD did not receive a conditional use permit to develop its property.

TVWD received approval of CS 3-86a in 1991. The decision says that it "changes the zone designation from RR to RR/CS." Therefore, the 1991 approval placed an overlay zone on the site. A Conditional Use permit is not an overlay zone. Furthermore, the decision in CS 3-86a considered only MCC § 11.15.7015, which are the criteria for placement of a Community Service zone. A Conditional Use permit, on the other hand, is evaluated under the criteria of MCC § 11.15.7105, *not* § 11.15.7015.

The simple fact is that since nothing in the record indicates that a Conditional Use permit has been obtained, the Applicant cannot obtain approval of a substandard lot under Code § 11.15.2224.

4) The Hearings Officer mistakenly found compliance with Code § 11.15.2218(C) regarding maximum structure height.

The maximum allowed structure height in the RR zone, per MCC § 11.15.2218(I) is 35 feet. The staff report itself indicates that the reservoir is at least 45' from base to top. The Applicant's rebuttal on this issue was that compliance could be assumed from the prior Design Review approval. However, no specific contrary measurement of the height of the structure was presented. Instead, the Applicant claimed that compliance could be assumed from the prior Design Review approval. However, the Applicant is required to establish compliance with this Code section as part of this approval process. The structure is not old enough to be a "grandfathered" non-conforming use. To the contrary, if the structure exceeds the maximum height for the zone, then it is currently illegal and needs a variance. Certainly, no modification of the prior CS permit approval can be approved with this nonconformity.

The Hearings Officer found that the 35-foot maximum structure height in the RR zone does not apply. This finding is curious given that MCC 11.15.2218 was listed as an applicable criterion in the notice, and was addressed in both the application and the staff report. Clearly, in order to obtain a new and different approval of the CS overlay on a smaller area of land, all criteria must be addressed.

In the alternative, the Hearings Officer finds that Code § 11.15.0010 requires measurement of the average height of the structure, and that the average height is less than 35 feet. To the contrary, nothing in MCC § 11.15.0010 on "building height" even discusses average height. Instead, a reference grade point is determined. Nothing in the record establishes that this reference grade brings the height of the structure down to 35 feet.

*(4) If de novo review or review by additional testimony and other evidence is requested, a statement relating the request to the factors listed in MCC .8270(E).*

The Shankars do not request de novo review, nor that additional evidence be added to the record. The Shankars do ask for the opportunity to discuss the impacts of this project directly with the Board.

A completed County Notice of Review form and a check from the Shankars for the \$500 filing fee is enclosed. It is my understanding (via telephone conversation of September 4, 1997 between Carol Lockhart of this officer and JoAnn of your office) that there is no additional deposit for the transcript. Thank you for your assistance in processing this appeal.

Very truly yours,

BOGLE & GATES P.L.L.C.



Ty K. Wyman

Enclosures

cc: Vijay & Anne Shankar  
Kevin Hanway, Tualatin Valley Water District  
Larry Derr, Esq.

BOGLE & GATES P.L.L.C.



MULTNOMAH COUNTY

Department of Environmental Services  
Transportation and Land Use Planning Division  
2115 SE Morrison Street  
Portland, OR 97214 Phone: (503) 248-3043

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## DECISION OF HEARINGS OFFICER

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Case File: CS 3-97 and PLA 5-97

Hearing Date: July 16, 1997

Hearings Officer: Liz Fancher

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**WHAT:** Modification of prior Community Service approval to reduce the size of the Tualatin Valley Water District reservoir property from 4.88 acres to 2.8 acres (CS 3-97) and add the remainder of the property to the adjacent property to the north in a property line adjustment request (PLA 5-97). Approval of the property line adjustment would increase the area of the lot to the north from 9.48 acres to 11.52 acres.

**PROPERTY LOCATION:** Address: 4280 NW North Road  
(CS 3-97): Lot 32, Bonny Slope Subdivision, Tax Acct. # R 09060-2440  
(PLA 5-97): Lot 31, Bonny Slope Subdivision, Tax Acct. # R 09060-2420  
Lot 32, Bonny Slope Subdivision, Tax Acct. # R 09060-2440

**WHO:** *Applicant:* Tualatin Valley Water District  
Post Office Box 745  
Beaverton, OR 97075

*Lot 32, Bonny Slope*  
*Property Owner:* Tualatin Valley Water District  
Post Office Box 745  
Beaverton, OR 97075

*Lot 31, Bonny Slope*  
*Property Owner:* Wayne and Mona West  
Post Office Box 482  
Beavercreek, OR 97004

**ZONING DISTRICT:** Rural Residential (RR), Community Service (CS)

**Hearings Officer Decision:** Approve, subject to compliance with specific conditions, the proposal to modify prior Community Service approval to reduce the size of the Tualatin Valley Water District reservoir property from 4.88 acres to 2.8 acres (CS 3-97) and add the remainder of the property to the adjacent property to the north in a property line adjustment request (PLA 5-97). Approval of the property line adjustment would in-



crease the area of the lot to the north from 9.48 acres to 11.52 acres, all based on the findings and conclusions, contained herein.

## CONDITIONS:

1. The applicant shall file the deed restrictions proposed by the Applicant in this application, to restrict future development on proposed Tract 1 (the water district property). The restrictions shall be approved as to form by the County Counsel's Office and recorded by the applicant in the deed records of the County Clerk's Office.
2. The applicant shall complete the process described in the *Applicant's and Surveyor's Instructions for Finishing a Lot Line Adjustment*.

## FORMAT OF DECISION

The Hearings Officer has used the staff report prepared for this application as a starting point for writing this decision. The staff report and this decision reference the statements made by the applicant and adopt those findings as findings in support of this decision, except where noted otherwise in this decision. The sections which begin with the designation "FINDINGS" contain the findings of the Hearings Officer that are added to the findings provided by the applicant. In the event of conflict, the findings of the Hearings Officer control.

## RECORD OBJECTION BY OPPONENTS

On July 30, 1997 new evidence and legal argument was submitted into the record by Lawrence R. Derr on behalf of Wayne West, the owner of Tax Lot 31. On July 30, 1997, the record was closed to all parties except for the applicant. Mr. West is not the applicant in this matter. As a result, the information submitted by Mr. Derr is not admissible and is rejected by the Hearings Officer. Mr. Derr requested that the Hearings Officer reopen the record and admit this evidence. I decline to do so as reopening the record would delay the processing of this land use application. If this decision is appealed, Mr. Derr may enter his comments into the record at that time.

On July 30, 1997, the Hearings Officer received new evidence and legal arguments from Kevin Hanway, on behalf of the applicant. The Hearings Officer is required by ORS 197.763 (6)(e) to accept written argument from the applicant to and through July 30, 1997. The Hearings Officer is not, however, allowed to accept new evidence from the applicant. The materials submitted by Mr. Hanway include legal argument and new evidence. As the Hearings Officer found from her review of the evidence, excluding Mr. Hanway's final submittals, that approval of this application was warranted, she did not consider any part of Mr. Hanway's July 30, 1997 documents in making her decision of this matter. The documents submitted by Mr. Hanway are, however, properly part of the record in this matter.

## DESCRIPTION OF PROPOSAL, SITE AND VICINITY:

1. *Applicant's Description of Proposal:* "Tualatin Valley Water District (Applicant) is a water district serving over 135,000 residents of Washington County. Applicant is the owner of Tax Lot 32, on which it has located a reservoir. The concrete reservoir, with a capacity of 3 million gallons, is partially buried. Applicant proposes a property line adjustment to sever two acres (tract 2) of surplus property from the rear portion of its lot and a

small area (tract 2A) at the northwest corner of the reservoir site. Those areas would be transferred to the owner of Tax Lot 31. Because Tax Lot 31 could, after the adjustment, potentially qualify to partition its lot, this property line adjustment application must be handled as a conditional use. No development or partition is planned at this time by the water district or the owner of Lot 31."

**FINDINGS:** The applicant is required to obtain approval of a modification of its previously issued conditional use permit for a community service use because the applicant is modifying the approved lot size of its property. The size of a parcel in a community service zone is determined during conditional review based upon the application of subjective factors. The current parcel size for the Tualatin Valley Water District property was accepted by the County as appropriate in 1986 and 1991 by the County's approval of CS-3-86 and CS-3-86a.

Approval of the lot line adjustment is required by MCC 11.45.115. Whether the lot line adjustment results in creating a parcel which could potentially qualify for a partition appears to be irrelevant to whether a person is required to file for County land use approval of the adjustment.

**2. Applicant's Description of Site and Vicinity:** "The site is located on the east side of NW North Road, near where that road becomes NW East Road. The site is primarily covered with dense brushy growth and small trees. The land slopes generally to the west, with elevations ranging from approximately 950 feet at the northeast corner to approximately 670 feet at the southwest corner. The reservoir was constructed with its base at an elevation of approximately 775, rising to a maximum elevation of approximately 820 feet. The reservoir area is fenced.

Surrounding properties to the north, west and south are in the Bonny Slope subdivision. This 1923 plat divided the area into roughly 5-acre tracts. The area is characterized by steep terrain, with brush or forest cover. Many of the lots have single family homes; however, most of the Bonny Slope lots immediately adjacent to the subject site remain vacant. A house is located on the lot immediately to the south of the subject site.

Lands to the east are within the City of Portland. These areas are generally upslope from the reservoir site. They are primarily wooded, undeveloped hillsides, and are designated for low density residential uses."

## **ZONING CODE (MCC 11.15) APPROVAL CRITERIA:**

### **1. DIMENSIONAL REQUIREMENTS:**

RURAL RESIDENTIAL DISTRICT (MCC 11.15.2218 Dimensional Requirements):

(A) Except as provided in MCC .2220, .2222, .2224, and .7720, the minimum lot size shall be five acres.

\* \* \*

(B) Minimum Yard Dimensions

\* \* \*

Rear 30 Minimum Front Lot Line Length - 50 feet

COMMUNITY SERVICE OVERLAY (MCC 11.15.7025 Restrictions)

**A building or use approved under MCC .7020 through .7030 shall meet the following requirements:**

- (A) Minimum yards in EFU, CFU, F-2, MUA-20, MUF, RR, . . . and R-10 Districts:
- (1) Front Yards shall be 30 feet.
  - (2) Side Yards for one-story buildings shall be 20 feet; for two story buildings, 25 feet.
  - (3) Rear yards shall be as required in the district.

***Applicant's Response:***

"The location of existing reservoir exceeds all yard requirements. No new improvements are proposed. No minimum lot size is specified for community service uses. Applicant has no plans to expand storage capacity at this site. No improvements are located on or proposed on the portions of the parcel proposed for adjustment and transfer to Lot 31."

**2. LOT AREA REQUIREMENTS (MCC 11.15.2224 Lot Sizes for Conditional Uses):**

**The minimum lot size for a conditional use permitted pursuant to MCC .2212, except (B)(8) thereof, shall be based upon:**

- (A) The site size needs of the proposed use;

***Applicant's Response:***

"Applicant has constructed a 3 million gallon concrete water reservoir on the site. The reservoir occupies the western portion of the site, approximately 510 feet from the current rear lot line. After the proposed adjustment, the reservoir will be 130 feet from the adjusted rear lot line, which is more than an adequate setback to accommodate any activities related to the reservoir. This site was selected because it provided the elevation needed to provide adequate gravity-feed service from the reservoir to its service territory. Applicant does not have plans for expansion of the existing reservoir, or any additional reservoirs, making the eastern portion of the lot superfluous for its needs. The adjusted portions of the site would become part of Lot 31, which already exceeds the minimum lot area for this district."

- (B) The nature of the proposed use in relation to the impacts on nearby properties; and

***Applicant's Response:***

"No changes are proposed in the use of applicant's property. The reservoir is an unmanned reservoir operation which has no significant impacts on nearby properties. Trips to and from the site are limited to occasional inspection and maintenance by district employees. Potential drainage impacts have been addressed through the construction of drainage ditches, perimeter drains, and an overflow dissipation basin. Tract 2A has been located to assure that the dissipation structure is not affected by any improvements made for access to Lot 31. Potential visual impacts from the use have been minimized by placing the reservoir partially underground. No use is proposed for Lot 31. The portions of Lot 32 transferred to Lot 31 would revert to the RR District designation."

**FINDINGS:** The Hearings Officer agrees that the nature of the community service use is not being changed by this application. The change requested will bring private property ownership closer to the east side of the re-

servior but the person impacted by that change is one of the two owners who have agreed to the boundary line adjustment.

**(C) Consideration of the purposes of this district (MCC 11.15.2202 Purposes):**

**The purposes of the Rural Residential District are to provide areas for residential use for those persons who desire rural living environments; to provide standards for rural land use and development consistent with desired rural character, the capability of the land and natural resources; to manage the extension of public services; to provide for public review of non-residential use proposals and to balance the public's interest in the management of community growth with the protection of individual property rights through review procedures and flexible standards.**

***Applicant's Response:***

"The existing reservoir is one of the uses permitted in the Community Service overlay zone ("other public utility buildings")."

**3. Community Service Approval Standards: (MCC 11.15.7015 Approval Criteria):**

**In approving a Community Service use, the approval authority shall find that the proposal meets the following approval criteria, except for transmission towers, which shall meet the approval criteria of MCC .7035, and except for regional sanitary landfills which shall comply with MCC .7045 through .7070.**

**(A) Is consistent with the character of the area;**

***Applicant's Response:***

"The character of this area has not changed since the previous conditional use approval. This is a rural residential neighborhood. The Bonny Slope subdivision consists generally of 5-acre tracts. To the east are wooded undeveloped hillsides designated for low density residential uses. Applicant's reservoir was developed in compliance with the conditions of the earlier approval, which were imposed to minimize visual and drainage impacts on the neighborhood. No changes are proposed to applicant's use on the site. The portions of the site to be transferred to Lot 31 will revert to the RR designation, to preserve its current character."

**FINDING:** Both lots involved in this application are zoned RR at this time. Approval of an amendment to the community service approval will remove the portion of the Tualatin Valley lot which is being added to the adjoining property from the area of the lot which has been approved for a community service conditional use. Approval of the change in size of the lot will not have any impact upon the question of whether the community service use is consistent with the character of the area.

**(B) Will not adversely affect natural resources;**

***Applicant's Response:***

"Applicant's reservoir was developed in compliance with the conditions and design review procedures of the earlier approval, which required preservation of natural features to the maximum extent practical. No new development is proposed for the property."

**FINDINGS:** The modification of the lot size will not change the impact that the community service use will have upon natural resources as the operation will remain the same.

**(C) Will not conflict with farm or forest uses in the area;**

*Applicant's Response:*

"Properties in this area are not used for or designated for agricultural or forest use."

**(D) Will not require public services other than those existing or programmed for the area;**

*Applicant's Response:*

"No public service needs are created by this request as no new development is proposed."

**(E) Will be located outside a big game winter habitat area as defined by the Oregon Department of Fish and Wildlife or that agency has certified that the impacts will be acceptable;**

*Applicant's Response:*

"This site is not identified as a big game habitat area in the Comprehensive Plan or by the Oregon Department of Fish and Wildlife."

**(F) Will not create hazardous conditions; and**

*Applicant's Response:*

"The reservoir was constructed in compliance with the Hillside Development and Erosion Control Permit. The slope below the reservoir appears to be stable. Tract 2A allows an adequate buffer between the dissipation structure on Lot 31 and potential driveway improvements on Lot 31 to prevent any undercutting of the drainage improvements. No new development is proposed for either property."

**FINDINGS:** The approval of this application will not increase the risk of flooding posed by the reservoir as the land being transferred to the adjoining property owner is located uphill from the reservoir.

**(G) Will satisfy the applicable policies of the Comprehensive Plan.**

*Applicant's Response:*

"The following policies of the Comprehensive Plan are applicable to this request: Policy 2 - Off-site Effects; Policy 13 - Air, Water and Noise Quality; Policy 14 - Development Limitations; Policy 22 - Energy Conservation; Policy 37 - Utilities; Policy 38 - Facilities. They are addressed below."

**FINDINGS:** The Hearings Officer's findings regarding the applicability of Plan policies are discussed below.

**(H) Will satisfy such other applicable criteria as are stated in this Section.**

***Applicant's Response:***

"This section does not contain any other applicable approval criteria."

**Staff Comment:** "The other applicable criteria in the CS Section of the code are the yard (setback) restrictions in the preceding MCC 11.15.7025(A) and the required off-street parking standards in MCC 11.15.7025(E)."

**COMPREHENSIVE FRAMEWORK PLAN POLICIES:**

**1. POLICY NO. 2, OFF-SITE EFFECTS.**

THE COUNTY'S POLICY IS TO APPLY CONDITIONS TO ITS APPROVAL OF LAND USE ACTIONS WHERE IT IS NECESSARY TO:

- A. PROTECT THE PUBLIC FROM THE POTENTIALLY DELETERIOUS EFFECTS OF THE PROPOSED USE; OR
- B. FULFILL THE NEED FOR PUBLIC SERVICE DEMANDS CREATED BY THE PROPOSED USE.

***Applicant's Response:***

"The reservoir was constructed in compliance with the plans submitted pursuant to earlier approvals to mitigate or avoid potential off-site effects. No new development is proposed.

No development is proposed for Lot 31. Although the additional area resulting from the property line adjustment would result in sufficient area to site 2 residences, that could not occur without a partition, which would be subject to review and imposition of conditions by the county."

**FINDINGS:** The change in the lot size will not change the use of the Tualatin Valley property in any way. Further, the reduction in the size of the lot will not change the potentially deleterious effects of the reservoir use approved in 1986 and 1991 because the portion of the lot which is being transferred to the Wests is located uphill from the reservoir where it would not be harmed by a sudden or slow loss of water from the reservoir. The impact of the use on views in the area will remain the same before and after the lot reduction because any home placed in the new area of the West lot would be located further from the reservoir than would a home that is placed on the existing West lot, just north of the reservoir and within 10' of the southern boundary of the West property.

**2. POLICY NO. 13, AIR, WATER AND NOISE QUALITY.**

MULTNOMAH COUNTY, ... SUPPORTS EFFORTS TO IMPROVE AIR AND WATER QUALITY AND TO REDUCE NOISE LEVELS. ... FURTHERMORE, IT IS THE COUNTY'S POLICY TO REQUIRE, PRIOR TO APPROVAL OF A LEGISLATIVE OR QUASI-JUDICIAL ACTION, A STATEMENT FROM THE APPROPRIATE AGENCY THAT ALL STANDARDS CAN BE MET WITH RESPECT TO AIR QUALITY, WATER QUALITY, AND NOISE LEVELS.

***Applicant's Response:***

"The reservoir was constructed in compliance with the design review and hillside protection conditions imposed with the earlier approval. No new development is proposed. Future development on the expanded Lot 31 would be subject to conditions imposed under its building permit, or during its land division process, if a partition is proposed."

### 3. POLICY NO. 14, DEVELOPMENTAL LIMITATIONS.

THE COUNTY'S POLICY IS TO DIRECT DEVELOPMENT AND LAND FORM ALTERATIONS AWAY FROM AREAS WITH DEVELOPMENT LIMITATIONS EXCEPT UPON A SHOWING THAT DESIGN AND CONSTRUCTION TECHNIQUES CAN MITIGATE ANY PUBLIC HARM OR ASSOCIATED PUBLIC COST, AND MITIGATE ANY ADVERSE EFFECTS TO SURROUNDING PERSONS OR PROPERTIES. DEVELOPMENT LIMITATIONS AREAS ARE THOSE WHICH HAVE ANY OF THE FOLLOWING CHARACTERISTICS:

- A. Slopes exceeding 20%;
- B. Severe soil erosion potential;
- C. Land within the 100 year flood plain;
- D. A high seasonal water table within 0-24 inches of the surface for 3 or more weeks of the year;
- E. A fragipan less than 30 inches from the surface;
- F. Land subject to slumping, earth slides or movement.

#### *Applicant's Response:*

"The reservoir was constructed in compliance with the design review and hillside protection conditions imposed with the earlier approval. No new development is proposed. Future development on the expanded Lot 31 would be subject to conditions imposed under its building permit, or during its land division process, if a partition is proposed."

### 4. POLICY NO. 22, ENERGY CONSERVATION.

#### *Applicant's Response:*

"The reservoir is a very low level energy user. No new development or energy consuming uses are proposed."

**FINDING:** The Hearings Officer has considered the factors listed in Policy No. 22 when rendering this decision.

### 5. POLICY NO. 31 COMMUNITY FACILITIES AND USES

#### *Applicant's Response:*

"Items A, B, C and D. This site was selected as a reservoir location because its elevation allows Applicant to provide gravity-fed water service to a large portion of its service territory. Maintaining this reservoir site will support the location and scaling of community facilities meeting the needs of the community identified for urban density development inside the urban growth boundary and urban reserves. After the proposed lot line adjustment the remaining site will continue to be capable of serving the water supply needs of this area."

"Items E and F. Water storage is classified as a Community Service Foundation facility. The plan policy specifies the applicable limitations on slopes where such facilities may be located. The slope of this site exceeds the applicable slope limitation for this class of use, and applicant supported its original application for construction of the reservoir with engineering data demonstrating that the associated development limitations could be mitigated. The reservoir was constructed in accordance

with the engineered plans. The proposed lot line adjustment will not affect that engineered slope, and Applicant has proposed conditions to prohibit any non-water related improvements on its retained property."

"Items G and H. The reservoir does not generate traffic which create dangerous intersections or traffic congestion, nor does it generate truck traffic through neighborhood streets. Applicant's employees make occasional visits to the site by automobile or pickup truck for monitoring and maintenance. No change in the level of traffic visiting this site will occur as the result of the proposed lot line adjustment."

"Item I. Applicant's 10-year capital improvement plan does not include any additional water-delivery structures on this site, and Applicant does not anticipate the need for any new reservoirs there at any time in the future. The remaining site will adequately accommodate the existing reservoir, and the structure is located in a way which maximizes the Applicant's convenience and access."

- J. PROMOTE COMPATIBLE DEVELOPMENT AND MINIMIZE ADVERSE IMPACTS OF SITE DEVELOPMENT ON ADJACENT PROPERTIES AND THE COMMUNITY THROUGH THE APPLICATION OF DESIGN REVIEW STANDARDS CODIFIED IN MCC 11.05.7805-11.05.7865.

***Applicant's Response:***

"Item J. The existing reservoir was approved through all applicable design review standards. The only property which might potentially be impacted by the proposed lot line adjustment is Lot 31. The West's, owners of Lot 31, have consented to the proposed adjustment."

- K. PROVIDE FOR THE SITING AND EXPANSION OF COMMUNITY FACILITIES IN A MANNER WHICH ACCORDS WITH THE OTHER APPLICABLE POLICIES OF THIS PLAN.

***Applicant's Response:***

"Item K. Compliance with other applicable comprehensive plan policies is addressed elsewhere in this application."

**6. POLICY NO. 37, UTILITIES.**

THE COUNTY'S POLICY IS TO REQUIRE A FINDING PRIOR TO APPROVAL OF A LEGISLATIVE OR QUASI-JUDICIAL ACTION THAT:

**WATER AND DISPOSAL SYSTEM**

- A. THE PROPOSED USE CAN BE CONNECTED TO A PUBLIC SEWER AND WATER SYSTEM, BOTH OF WHICH HAVE ADEQUATE CAPACITY; OR
- B. THE PROPOSED USE CAN BE CONNECTED TO A PUBLIC WATER SYSTEM, AND THE OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY (DEQ) WILL APPROVE A SUBSURFACE SEWAGE DISPOSAL SYSTEM ON THE SITE; OR



- C. THERE IS AN ADEQUATE PRIVATE WATER SYSTEM, AND THE OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY (DEQ) WILL APPROVE A SUBSURFACE SEWAGE DISPOSAL SYSTEM;  
OR
- D. THERE IS AN ADEQUATE PRIVATE WATER SYSTEM, AND A PUBLIC SEWER WITH ADEQUATE CAPACITY.
- E. THERE IS ADEQUATE CAPACITY IN THE STORM WATER SYSTEM TO HANDLE THE RUN-OFF;  
OR
- F. THE WATER RUN-OFF CAN BE HANDLED ON THE SITE OR ADEQUATE PROVISIONS CAN BE MADE; AND
- G. THE RUN-OFF FROM THE SITE WILL NOT ADVERSELY AFFECT THE WATER QUALITY IN ADJACENT STREAMS, PONDS, LAKES OR ALTER THE DRAINAGE ON ADJOINING LANDS.
- H. THERE IS AN ADEQUATE ENERGY SUPPLY TO HANDLE THE NEEDS OF THE PROPOSAL AND THE DEVELOPMENT LEVEL PROJECTED BY THE PLAN; AND
- I. COMMUNICATIONS FACILITIES ARE AVAILABLE.

***Applicant's Response:***

"No changes are proposed in the reservoir use. It was constructed with the required water, energy and communications utilities. No sewage disposal is required. The storm drainage system and slope treatments were constructed in compliance with the conditions of the earlier approval. Future development on the expanded Lot 31 would be subject to conditions imposed under its building permit, or during its land division process, if a partition is proposed."

**7. POLICY NO. 38, FACILITIES.**

THE COUNTY'S POLICY IS TO REQUIRE A FINDING PRIOR TO APPROVAL OF A LEGISLATIVE OR QUASI-JUDICIAL ACTION THAT:

**SCHOOL**

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

**FIRE PROTECTION**

- B. THERE IS ADEQUATE WATER PRESSURE AND FLOW FOR FIRE FIGHTING PURPOSES;  
AND
- C. THE APPROPRIATE FIRE DISTRICT HAS HAD AN OPPORTUNITY TO REVIEW AND COMMENT ON THE PROPOSAL.

**POLICE PROTECTION**

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

***Applicant's Response:***

"All applicable service providers have been contacted regarding this application. (The county sanitarian was not contacted as no sewage disposal facilities are needed to serve this unmanned site.) No impact is created on the ability of these providers to serve the site as no new development is proposed. Applicant's records do not indicate that there have been any calls to police or fire service providers in relation to this use."

**PROPERTY LINE ADJUSTMENT APPROVAL CRITERIA FROM THE LAND DIVISION CODE (MCC 11.45):**

**MCC 11.45.115 Property Line Adjustment (Lot Line Adjustment):**

A property line adjustment is the relocation of a common property line between two abutting properties. (A) The Planning Director may approve a property line adjustment between two properties, in either the Urban Area or the Rural Area, where an additional lot or parcel is not created and where the existing lot or parcel reduced in size by the adjustment is not reduced below the minimum lot size established by the applicable zoning designation.

[The minimum lot size for the proposed lot containing the Community Service Use is that lot size as determined in an "action proceeding" by a hearing authority under the preceding provisions of MCC 11.15.2224 Lot Sizes for Conditional Uses.]

***Applicant's Response:***

"The applicable standards are in MCC 11.15.2224, and are addressed in this application."

**(C) Property line adjustments approved under subsections (A) and (B) above shall meet the following additional standards:**

- (1) No additional lot or parcel shall be created from any parcel by the property line adjustment;  
and**

***Applicant's Response:***

"The proposed property line adjustment will not result in the creation of an additional lot or parcel. Applicant will retain ownership of the western portion of the property where the reservoir is located. The areas included in the proposed adjustment will become part of the lot to the north, increasing its area to approximately 11.44 acres.

Planning staff has expressed concern that the ordinance would permit Applicant, after the lot line adjustment, to construct a dwelling unit on its retained property. Such a result would be in violation of this subsection of the code, as it would permit the construction of 3 residences (1 on applicant's site, and 2 on the adjusted Lot 31), where currently only 2 are allowed (one residence on each lot, based solely on the area of each lot).

For a number of reasons, Applicant's lot would not be buildable after the lot line adjustment. There will not be adequate depth from the rear of the existing reservoir to the adjusted rear lot line to place a residence. The slope above the reservoir was already excavated to partially bury the reservoir. There will be only

about 20' between the top of the cut and the new rear lot line. It would not be safe to alter the engineered slope to place a residence in that area; that slope is a rise of 63' over an 80' run (79 % slope). Increasing that slope or placing pilings in that slope creates the potential of making the slope unstable. In addition, the remaining property below the reservoir is not a buildable site. Much of that area is occupied by a water main and a storm drain line. The vacant portion below the reservoir is very steep, with a 75' rise over 165' run (45 % slope).

Applicant proposes a condition be placed on approval of this application requiring Applicant to record restrictions in favor of Multnomah County which would prohibit the construction of any improvements, other than water-related structures, on Applicant's remaining property. Proposed language for this condition and the deed restriction are attached as Exhibit 1A. Under these restrictions, no residence could be built on Applicant's property. The restrictions could be never be changed without the County's consent. The owner of Lot 31 may later seek approval for a second residence on his adjusted lot, but that would return the number of residences permitted on these two lots to 2, no more than are permitted now.

**[Applicant's Proposed] CONDITIONS OF APPROVAL**

As a condition of approval, Applicant shall execute and record a Declaration of Covenants, Conditions and Restrictions in the Real Property Records of Multnomah County, Oregon, attached hereto and incorporated by reference. The Declaration shall state that the only structures that will be allowed on Applicant's remaining property will be the reservoir, piping and related water facilities, and that non-water related facilities shall not be constructed thereon without the express-written consent of the Planning Director of Multnomah County, Oregon, which consent shall be recorded in the Multnomah County Real Property Records."

**FINDINGS:** The Hearings Officer will impose the suggested condition of approval because the applicant has offered to impose such a restriction on its property.

- (2) Owners of both properties involved in the property line adjustment shall consent in writing to the proposed adjustment and record a conveyance or conveyances conforming to the approved property line adjustment; and**

***Applicant's Response:***

"Applicant and the owners of Lot 31 (the adjacent property to the north), have submitted, with this application, written consent to the proposed property line adjustment."

- (3) The adjusted properties shall meet all dimensional requirements in the underlying zoning district designation except for lot area.**

***Applicant's Response:***

"The tentative plan map shows the location of improvements on applicant's property, demonstrating that lot dimension and setback standards are met. Applicant's property will be 2.8 acres after the property line adjustment. Minimum lot sizes in the Rural Residential zone for community service uses are subject to a conditional use process. Those standards are addressed elsewhere in this application.

Lot 31 does not have any improvements. After the adjustment Lot 31 will continue to comply with all of the dimensional and area requirements of the RR zone."

- (4) The right-of-way width between the front line of each adjusted property and the centerline of any adjacent County road shall comply with the applicable provisions of the Street Standards Ordinance as determined by the County Engineer.

***Applicant's Response:***

"The adjustment at the northwest corner of applicant's lot (Tract 2A) will improve access to tax lot 31. The proposed adjustment does not increase the potential traffic impacts from the lots."

**OPPONENTS' OBJECTIONS**

The Hearings Officer makes the following findings of fact and conclusions of law regarding the objections raised by the opponents, Vijay and Anne Shankar. The Shankars own land which adjoins the Tualatin Valley property. The portion of the Tualatin Valley property which will be added to the West property also adjoins the Shankars' side lot line.

**Shankars:** The Hearings Officer should prohibit development of the land which is being added to the West lot under the authority of Comprehensive Plan Policy 2. This prohibition is required by MCC 11.15.2224 (B).

**Hearings Officer:** The Hearings Officer finds that residential development within ten feet of a property boundary is allowed by the Rural Residential District, the district in which the subject properties lie and in which the Shankars invested. That policy allows the Hearings Officer to protect the public from potentially deleterious effects *of a proposed use* but no use approval is being requested in the lot line proceeding. The modification of the conditional use approval for the reservoir does not increase the impact of the *reservoir use* upon the Shankars so may not be imposed as a condition of the modified conditional use approval of the community service use. Instead, the use which is of concern to the Shankars is the future development division and development of the West property with two homes, uses allowed in the Rural Residential zone under prescribed conditions. Whether a 10' setback meets the Hearings Officer's idea of what is or is not appropriate in a rural area is not important where, as here, the County has determined that such setbacks are appropriate for all properties in the RR zone. Further, the Hearings Officer views the request as a "no build" easement, an interest in land, and has grave doubts that the exaction requested by the Shankars would "pass muster" under the Dolan test.

MCC 11.15.2224 (B), likewise, does not compel the Hearings Officer to prohibit development of two acres of the enlarged West property. That code section requires the Hearings Officer to look at the size of the Tualatin Valley tract, not the West tract. The fact that the Tualatin Valley lot will be smaller than it was in the past does not change the nature of the use of the Tualatin Valley tract. The new West lot is not governed by MCC .2224 (B) as no conditional use is being considered proposed for that lot at this time and MCC .2224 (B) is an approval criterion for conditional uses and their lots.

**Shankars:** The Applicant needs to obtain conditional use approval in order to obtain approval for a lot that is smaller than five acres in size.

**Hearings Officer:** The Hearings Officer requested that Planning Division staff submit copies of the records of the prior conditional use approvals for the Tualatin Valley property into the record. Those records establish that the community service use that exists on the Tualatin Valley property was approved as a conditional use. The

application filed in this case is a request to modify the conditional use approval of this community service use. A community service use is listed as a conditional use allowed in the Rural Residential zone. MCC 11.15.2212(A). The community service use on the Tualatin Valley property was permitted under the authority of that code section. As such, the lot size provisions of MCC 11.15.2224 apply to the Tualatin Valley property and authorize the reduction in size requested by the District.

**Shankars:** The Applicant must prove that the Tualatin Valley reservoir complies with the height limitations of the Rural Residential zone.

**Hearings Officer:** The Hearings Officer reviewed the approval criteria for community service uses because the Applicant is requesting to modify the size of the lot. That change may affect the factual assumptions which led to the approval of the original conditional use approval of the community service use. Whether the reservoir does or does not comply with the height limitations of the Rural Residential zone is not relevant to a determination of whether the lot size of the Tualatin Valley property may be modified. The height of the structure is one factor to be considered in determining the proper size of the District's lot but the applicant need not demonstrate compliance with each and every zoning district restriction which applies to its reservoir as a precondition of modifying the size of its lot. If the reservoir violates the height limits of RR zone, the Shankars may take action to compel compliance with that limit by filing a legal action against the District or requesting the County to take enforcement action against the District. Further, the average height of the reservoir is used to determine compliance with MCC 11.15.2218(C) per MCC 11.15.0010. The record indicates that the average height of the reservoir is 35' or less.

**Shankars:** The proposal is not consistent with the character of the area because it reduces an existing developed lot below the five-acre minimum and allows development at a higher density than exists or is permitted.

**Hearings Officer:** The Rural Residential zone provides a flexible lot size for most conditional uses, not a five acre minimum lot size. The five acre minimum lot size applies to permitted and residential uses, including residential PUD developments. It does not apply to other conditional uses. As such, the existence of one community service conditional use and two dwellings in a 14 acre area does not conflict with what is allowed in the Rural Residential zone and is consistent with the planned character of the area. The code sections cited by the Shankars, MCC 15.2224 (1) and 11.15.7015 (A) apply to the Tualatin Valley property only and its conditional use, not to the lot line adjustment application. The Shankars concerns are all directed to the land which is being added to the West property and impacts that flow from uses allowed in the Rural Residential zone, not from a community service use. As such, they do not form a basis for denial of the modification request.

**Shankars:** The proposal may adversely affect natural resources and violate MCC 11.15.7015(B).

**Hearings Officer:** The quoted code section applies to review of the community service use, not to lot line adjustment and to the land which is being added to the West property. As the evidence in the record shows that the smaller size of the Tualatin Valley property will not cause the community service use (the reservoir) to adversely affect natural resources, no violation of MCC 11.15.7015 (B) can be found to exist.

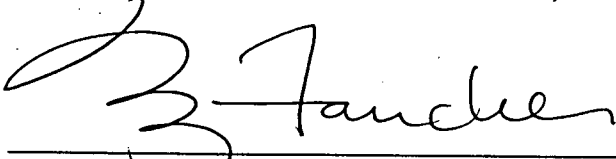
**Shankars:** The application fails to demonstrate compliance with Plan Policy 14.

**Hearings Officer:** The Hearings Officer finds that Policy 14 is a policy which directs the County to take action and does not serve as an approval criterion for land use applications. This policy is implemented by the County's land use regulations, including its design review process and by the application of large lot sizes in areas which are subject to developmental limitations due to factors listed in Policy No. 14. Any development which occurs on the subject property will be subject to the regulations which the County has adopted to effectuate the direction provided by Policy 14.

**Shankars:** The existing reservoir is not one of the uses permitted in the community service overlay zone because it is not a public building and, therefore, violates MCC 11.15.2212.

**Hearings Officer:** MCC 11.15.2212 lists community service uses under the provisions of MCC 11.15.7005 through .7041 as conditional uses. MCC 11.15.7020(A)(6) lists a government building *or use* as a community service use. There is no question that the reservoir is a governmental use as it is a reservoir owned by a governmental entity which stores water to enable the governmental entity to perform its governmental function of supplying water to residents of its district.

DATED THIS 14TH DAY OF AUGUST, 1997.



LIZ FANCHER, Hearings Officer

**Appeal to the Board of County Commissioners:**

The Hearings Officer's 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" for and a fee of \$500.00 plus a \$3.50 - per- minute charge for a transcript of the initial hearing(s). [ref. MCC 11.15.8260(A)(1) and MCC 11.15.9020(B)] Instructions and forms are available at the County Planning Office at 2115 SE Morrison Street (in Portland) or you may call 248-3043, for additional instructions.

## CS 3-97 & PLA 5-97 LIST OF EXHIBITS

### **"A" - Applicant Submittals:**

- A 1 - General Application Form
- A 2 - Applicant's Response to Approval Criteria, 7 pages
- A 3 - Addendum to Applicant's Submittal, 4 pages
- A 4 - Service Provider forms: sewer, water, fire, school, and police
- A 5 - Vicinity and Site plans, 5 pages
- A 6 - Property Owner Consent Form, 2 pages

### **"B" - Notification Information:**

- B 1 - Notice of Public Hearing
- B 2 - Affidavit of Posting

### **"C" - Multnomah County Items:**

- C 1 - Staff Report

### **"D" - Pre-Hearing Submittals**

- D 1 - Letter from Anne & Vijay Shankar

### **"E" - Documents Submitted at 7/16/97 Public Hearing:**

- E 1 - Record of CS 3-86-a (1991 Community Service application & approval)
- E 2 - Record of CS 3-86 (1986 Community Service application & approval)

### **"F" - Documents Submitted after 7/16/97 Public Hearing:**

- F 1 - July 23, 1997 letter from Ty K. Wyman
- F 2 - July 30, 1997 letter from Kevin Hanway & Applicant's Rebuttal (w/ exhibits)
- F 3 - August 5, 1997 letter from Ty K. Wyman

### **"G" - Documents Rejected by the Hearings Officer**

- G1 - July 30, 1997 letter from Lawrence Derr

97 OCT 16 PM 3:58

MULTNOMAH COUNTY  
OREGON

# MEMORANDUM

**To:** Sandra Duffy, Multnomah County Counsel's Office

**From:** Liz Fancher, Hearings Officer

**Subject:** Shankar Appeal of Tualatin Valley Water District Community Service and Lot Line Adjustment Application, CS 3-97 & PLA 5-97

**Date:** October 13, 1997

**CC:** Robert Hall, Planner

The following is a summary of the major events and claims raised in the above land use matter. I have also included a response to the issues on appeal.

## **Staff Report Recommendation**

**Approve** SEC permit modification and lot line adjustment to reduce size of lot used for existing community service lot from 4.88 acres to 2.8 acres in RR, Rural Residential zone.

## **Decision of Hearings Officer**

**Approve** SEC permit modification request to reduce lot size and lot line adjustment request. The applicant proved that the community service, RR zoned lot being reduced in size by the lot line adjustment met the minimum lot size required for a community service use in the RR zone. The lot size for a CS use is to be determined by the County based upon site size needs, nature of use in relation to impact on neighboring properties and purpose of RR zone. The Hearings Officer found that:

- A. The 2.8 acre lot size was adequate to accommodate the existing reservoir; and
- B. The reduction in size would not change the impact of the reservoir on neighboring properties as it would not bring the reservoir closer to any existing home. The reservoir use, the focus of the application, will not be moved or altered in any way as a result of approval of the application.
- C. The only impact of the change in lot size would be to make it possible to divide the West property and to site an additional home on that property. The impact of the reservoir on that property was not viewed as adverse by



Mr. West as he wishes to acquire that land for future development and joined in filing the land use application.

- D. The use proposed is one which is specifically allowed in the Community Service overlay zone. The modification of the lot size does not prevent the use from complying with the approval criteria which apply to community service uses.

**Appeal of Hearings Officer's Decision by Shankars**

The Shankar appeal lists four grounds for appeal.

1. *The Hearings Officer mistakenly found compliance with MCC 11.15.2224 (B) and Plan Policy 2. The Hearings Officer erred in finding that the nature of the proposed use (reservoir) does not change as a result of the application and, therefore, does not impact adjoining properties. Approval of the application allows the reservoir development to occur on 2.8 rather than 5.0 acres, in violation of the County Code. The reduction in size of the reservoir property will allow the West property to be divided to create two residential lots at 5 acres each in size, thereby adversely affecting the Shankar property by allowing development within 10 feet of the Shankar property.*

RESPONSE: The Shankars' legal position is based upon the clearly erroneous legal assumption that a five-acre minimum lot size applies to the Tualatin Valley community service use. It does not. This is clear from MCC 11.15.2218 which states that the minimum lot size shall be five acres *except* as provided in MCC .2220, .2222, .2224 and .7720. MCC .2224 requires the county to determine the appropriate lot size for conditional uses, including, community service uses, based upon the factors listed in MCC 11.15.2224. A community service use under the provisions of .7005 through .7041 is a conditional use. MCC 11.15.2212.

The 2.8 acre lot size does nothing to increase the impact of the reservoir, the community service use, on the Shankar home. The potential development of land which is not a part of the community service use is not relevant to a decision whether the lot size of the reservoir lot is appropriate to accommodate the reservoir use. Further, the five acre lot size and setbacks which the Shankars object to for future development on the West property are those established by the RR zone. The RR zone

gives the Shankars no right to prevent RR zone allowed development adjacent to their property.

The Shankars claim that the District failed to obtain a conditional use approval for the reservoir and, therefore, may not use a lot size of less than 5 acres. The Shankars argue that the lot size provisions of MCC 11.15.2224 do not apply to conditional uses until the uses are approved by the county. The Hearings Officer disagrees with this reading of the ordinance. Even if that reading is accepted, however, the prior community service use approval for the reservoir was clearly an approval under MCC .7005 through .7041, the standards and approval process which MCC 11.15.2212 specifies for .2212 community service conditional uses.

The Shankars also claim that the county's prior approval of the Tualatin Valley community service use changed the zone designation to a RR/CS zone and, therefore, could not be a conditional use approval. The fact that the prior approval resulted in adding a CS zone overlay onto the subject property does not change the fact that community service uses are conditional uses described in MCC 11.15.2212 whose lot sizes are regulated by MCC 11.15.2224.

2. *The Hearings Officer mistakenly found that the application complied with MCC 11.15.7015 (A) which requires that the proposal be consistent with the character of the area.*

RESPONSE: This approval criterion requires the decision maker to make a subjective determination. The Hearings Officer believes that the character of an RR zone area is not adversely impacted by allowing a community service use to be sited on a 2.8 acre parcel and for a new residence to be sited on a 5-acre lot, assuming that the West property is lawfully partitioned into two lots after approval of the CS use modification and lot line adjustment. The RR zone does not provide any person living in the zone with a guarantee of a 5-acre minimum lot size for all uses in the zone as is evident from the terms of MCC 11.15.2224.

3. *The Hearings Officer mistakenly found that the application complied with MCC 11.15.2224 regarding the appropriate lot size for conditional uses in the RR zone. MCC 11.15.2224 applies to uses which have conditional permits issued under the authority of MCC 11.15.2212, not to uses which lack such approval. The Tualatin Valley District lacks such approval.*

RESPONSE: The Tualatin Valley Water District obtained a community service use approval for their reservoir in 1986 and 1991 as an MCC 11.15.2212 conditional use. The approval was granted pursuant to .7005 through .7041, the standards which MCC 11.15.2212 says are the applicable review criteria for a community service conditional use.

4. *The Hearings Officer mistakenly found compliance with MCC 11.15.2218 (c) regarding maximum structure height.*

RESPONSE: The reservoir is in existence. The height of the structure has no relevance to the appropriate lot size for the use, the only aspect of the community service conditional use approval which requires modification. As such, the *height standard* of MCC 11.15.2218 is not an approval criterion for a modification of the lot size requirement. Other parts of MCC 11.15.2218 provide review criteria, such as the proper required yard for the reservoir property. The Hearings Officer recommends, however, that if the county approves the community service use modification that it include findings of compliance with that standard as well to minimize the chance that the Board's decision will be overturned on appeal.

**LIZ FANCHER, ATTORNEY**

25 NW Minnesota Avenue, Suite 5

Bend, Oregon 97201

541-385-3067

Fax: 541-385-3076

**FAX COVER SHEET**

FAX NUMBER TRANSMITTED TO: 503-248-3013

To: DEBORAH BOGSTAD  
Of: MULTNOMAH COUNTY  
From: Liz Fancher  
Client/Matter: HEARING RE SHANKAR APPEAL (TUALATIN VALLEY WATER DISTRICT)  
Date: October 27, 1997

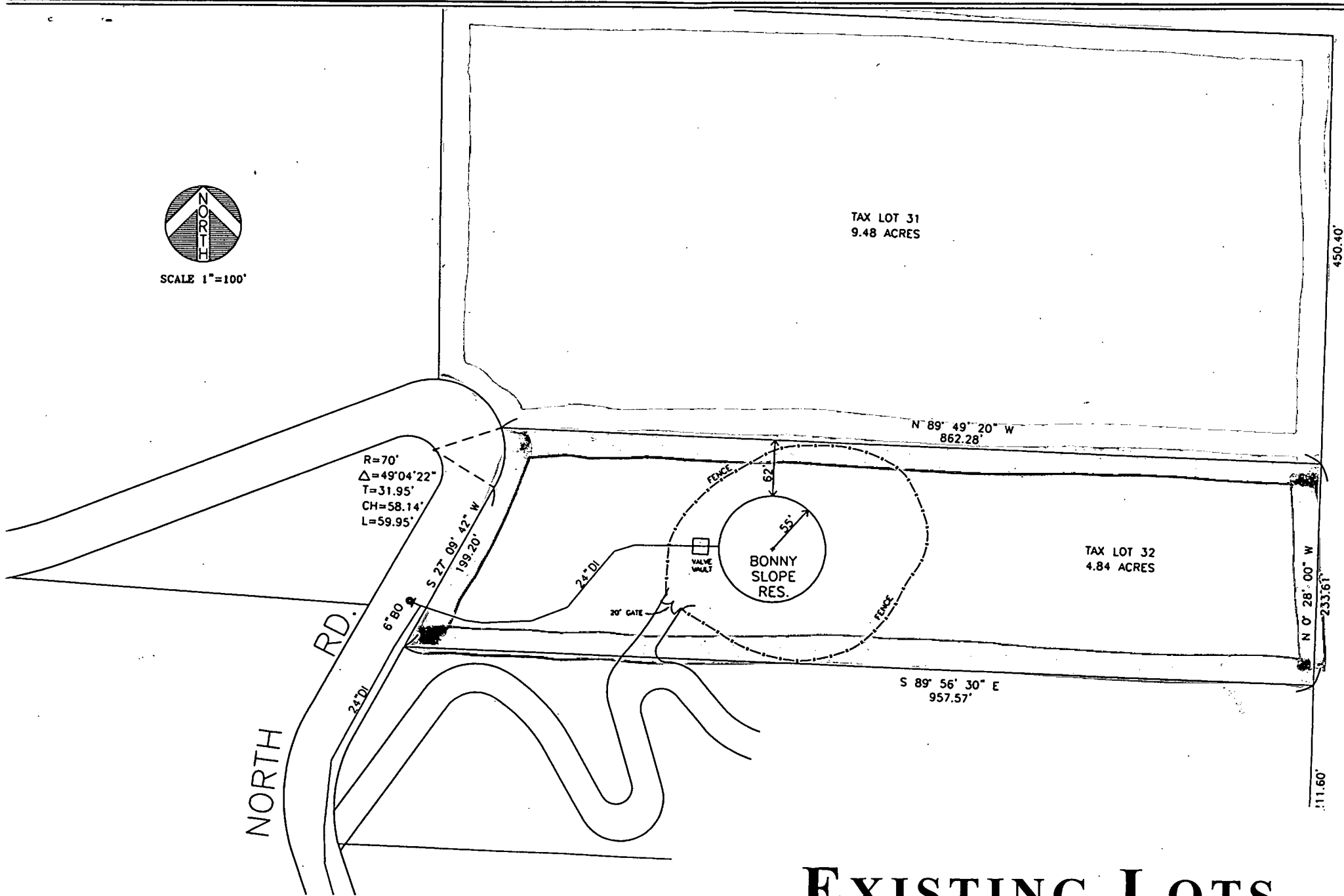
COMMENTS: I have your address, e-mail address & fax number in my files but not your phone number! Do you know whether the Shankar appeal is still scheduled for tomorrow and whether the speaker phone in the hearing room is working? THANKS. I will drive over to the valley tonight if I the matter is going forward and the speaker phone is not working.

Original will NOT follow.

\* NOT COUNTING COVER SHEET. IF YOU DO NOT RECEIVE ALL PAGES, PLEASE TELEPHONE US IMMEDIATELY AT 541-385-3067.



SCALE 1"=100'



EXISTING LOTS





SCALE 1"=100'

NORTH

RD.

R=70'  
Δ=49°04'22"  
T=31.95'  
CH=58.14'  
L=59.95'

S 27° 09' 42" W  
199.20'

OLD LINE

TRACT 2A  
.04 ACRES

482.28'

NEW LINE

24" DI

20' GATE

577.57'

VALVE  
WALAT

BONNY  
SLOPE  
RES.

55'

130'

6'

FENCE

FENCE

TRACT 1  
2.80 ACRES

N 89° 49' 20" W

862.28'

OLD LINE  
380.00'

N 0° 28' 00" W

234.40'

NEW LINE

S 89° 56' 30" E

957.57'

380.00'

ES.

450.40'

N 0° 28' 00" W  
233.61'

211.60'

# PROPOSED LOTS

SCALE 1"=100'

Trinidad Valley Water District

# BOGLE & GATES P.L.L.C.

A Professional Limited Liability Company

## LAW OFFICES

TY K. WYMAN

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222 S.W. Columbia  
Portland, Oregon 97201

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Seattle  
Anchorage  
Bellevue  
Tacoma  
Vancouver, B.C.  
Washington, D.C.

July 23, 1997

## VIA FACSIMILE & HAND DELIVERY

Ms. Liz Fancher  
Hearings Officer  
c/o Multnomah County  
Planning Department  
2115 SE Morrison  
Portland, OR 97214

Re: County Case File No. CS 3-97 and PLA 5-97

Dear Madam Hearings Officer:

As you know, this firm represents Vijay and Anne Shankar, owners of the property which abuts the site of the above referenced application to the south. This letter:

- 1) reiterates my oral comments on the matter given at last week's hearing;
- 2) responds to some of the Applicant's rebuttal testimony;
- 3) makes a few additional points; and
- 4) proposes a condition to address the Shankar's concern about the application.

It is worth repeating that the Shankars are very concerned about the nature of any proposed or prospective development on abutting property. At staff's suggestion, they did meet with the Applicant's representative, Kevin Hanway, immediately after the hearing to discuss their specific concerns about this proposal. Although this initial contact has not borne fruit, it remains the sincere wish of the Shankars to reach agreement with the Applicant on revisions to the application which would alleviate the Shankars' concern.

### **Plan Policy 2: A Simple Condition Would Address the Shankars' Concern**

Notwithstanding the initial inability to obtain revisions to the application which would address the Shankars' concern, the Hearings Officer retains authority to condition any approval to do so. Both Code § 11.15.2224(B) and Plan Policy 2 require consideration of potential off-site impacts resulting from approval of this application. The need for this buffer area was addressed in Mr. Shankar's hearing testimony. Approval of this application would facilitate development within just 10 feet of the Shankars' property in this *rural* zone. The area has very low ambient noise, significantly increasing the impact of any noise on nearby homes. The area is also characterized by pristine views, which should not be interrupted by such close development. Given that the Shankars purchased their property based upon the understanding that the adjacent reservoir site would not be subject to further development, they are very concerned about that possibility.

The Hearings Officer can alleviate the Shankars' concern and uphold their investment expectation by placing a fairly simple condition on its approval. Specifically, the Shankars suggest that any approval be conditioned to assure that there will be no physical development of the 2 acres which are the subject of the Lot Line Adjustment request. Such a condition is fully supportable under Plan Policy No. 2, Off-Site Effects, which specifically provides for the use of conditions to protect neighbors from off-site impacts. Such a condition would not preclude a future partition of the expanded Lot 31, nor its eventual development with two homes. It would simply assure that no development would take place within what the Shankars had understood to be a buffer area. Without such a condition, the application fails to show compliance with Code § 11.15.2224(B) and Plan Policy No. 2.

### **Code § 11.15.2212: The Applicant Needs a Conditional Use Permit**

The Applicant requests relief from the five-acre lot size minimum of the Rural Residential (RR) zone, pursuant to Code 11.15.2224, Lot Sizes for Conditional Uses. Code § 11.15.2224 applies only to conditional uses "permitted" pursuant to Code § 11.15.2212. Code § 11.15.2212, meanwhile, merely lists conditional uses which "may be permitted" subject to a hearing process. Since nothing in the record indicates that a Conditional Use Permit has been obtained, the Applicant cannot obtain approval of a substandard lot under Code § 11.15.2224.

### **Code § 11.15.2218(C): No Evidence of Compliance with Maximum Structure Height**

The Applicant seems to recognize that to modify the prior Community Service permit approval, it must show compliance with the applicable development standards. However, the Applicant fails to provide evidence of compliance with Code § 11.15.2218, regarding maximum structure height in the RR zone of 35'. Again, the staff report itself



indicates that the reservoir is at least 45' from base to top. The Applicant's rebuttal on this issue was that compliance could be assumed from the prior Design Review approval. However, the staff report still stands as the only specific evidence in the record regarding the height of the structure. The prior Design Review provides no legal protection for an overheight structure, since it does not predate adoption of the Code standard. To the contrary, if the structure exceeds the maximum height for the zone, then it is currently illegal and needs a variance. Certainly, no modification of the prior CS permit approval can be approved with this nonconformity.

### **Additional Compliance Failures**

In addition to the above, the application fails to provide sufficient evidence of compliance with several other criteria, as discussed below. We note that a consistent theme throughout the application is that it does not have adverse effects because it proposes no "development." However, the Code's definition of development is quite broad, including anything requiring a permit. Code § 11.15.010. Therefore, this is "development" for purposes of the Code.

- Code § 11.15.2224(1) and § 11.15.7015(A). The proposal is not consistent with the character of the area because it reduces an existing developed lot below the five-acre minimum, and will allow development at a higher density than exists or is permitted, i.e. three developments on 14 acres. Furthermore, the Shankars bought this property specifically because of the rural environment assured by the RR district, an environment which is jeopardized by this application.
- Code § 11.15.7015(B). The proposal may adversely affect natural resources. It will facilitate development of a densely forested, steeply sloped lot directly adjacent to a designated watercourse. The application fails to address potential adverse affects on natural resources.
- Plan Policy 14. The application fails to address the County's policy to direct development away from areas with developmental limitations. Again, the area is densely forested, steeply sloped and near a recognized watercourse. The Applicant must address now why it is creating a lot which facilitates further development.
- Code § 11.15.2212. The Applicant states that the existing reservoir is one of the uses permitted in the Community Service overlay zone ("other public utility buildings"). With reference to Code § 11.15.010, the reservoir is clearly not a "building." Therefore, the Application fails to provide evidence of compliance.

Ms. Liz Fancher  
July 23, 1997  
Page 4

As a final note, though not relevant to the proceeding, contrary to Mr. Hanway's hearing testimony, the price offered by the Shankars for the two-acre piece was not "several times" less than that offered by the Wests. Rather, it was just a fraction less.

Please include this letter in the record of your decision on this matter. Thank you for your consideration.

Very truly yours,

BOGLE & GATES P.L.L.C.



Ty K. Wyman

TW4/maz

cc: Vijay and Anne Shankar (via regular mail)  
Walter McMonies, Esq.

[49\CL\MCMONIES\TW4\SHANKAR.LTR]

# BOGLE & GATES P.L.L.C.

A Professional Limited Liability Company

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73033/00001

September 5, 1997

## VIA HAND DELIVERY

Ms. Kathy Busse  
Planning Director  
Multnomah County Planning Department  
2115 SE Morrison  
Portland, OR 97214

Re: County Case File No. CS 3-97 and PLA 5-97

Dear Ms. Busse:

This firm represents Vijay and Anne Shankar in the above-referenced matter. This letter constitutes the Shankars' Notice of Review, pursuant to Multnomah County Code (MCC) § 11.15.8260, of the Hearings Officer's decision approving the application.

The Tualatin Valley Water District (TVWD) asks the County to approve a substandard lot in the Rural Residential (RR) zone in order to facilitate expansion of an adjacent lot for more intense development. Specifically, TVWD seeks modification of the Community Service overlay zone designation on its 5-acre reservoir site to allow the same development on 3 acres. The severed portion would then be sold to an adjacent property owner to give him a partitionable lot. As abutting property owners, the Shankars are concerned about the intensity of development in this rural area. The question presented is whether the County Code supports density increases in the RR zone, or whether it protects those who seek to protect in the area's rural nature.

As an initial matter, the Shankars wish the Board to know that they have met with the Applicant's representative, Kevin Hanway, and continue to believe that they can reach agreement with the Applicant on a condition approval to the application which would address the Shankars' concerns. However, until such an agreement is reached, this appeal must be pursued.

**MCC 11.15.8260(B): A Notice of Review shall contain:**

**(1) An identification of the decision sought to be reviewed, including the date of such decision;**

The decision sought to be reviewed is CS 3-97 and PLA 5-97, which was signed by the Hearings Officer on August 14, 1997.

**(2) A statement of the interest of the person giving the Notice of Review;**

The Shankars own the southerly abutting lot to the project site. They appeared, through this office and in person, at the July 16, 1997 hearing before the Hearings Officer, in opposition to the application. They also submitted, through this office, a letter (dated July 23, 1997) into the record, further setting forth their opposition.

**(3) The specific grounds relied upon for review; and**

The grounds for this appeal are as follows:

1) The Hearings Officer mistakenly found compliance with Code § 11.15.2224(B) and Plan Policy 2.

Code § 11.15.2224(B) requires that the minimum lot size for the reservoir use be based on "the nature of the proposed use in relation to the impacts on nearby properties."

The Hearings Officer found that the nature of the proposed use does not change with this application, and therefore neither does its impact on adjacent properties. This turns a blind eye to the importance of the density of development. Development on five acres is fundamentally different than development on three acres because it is more dense. This application will allow development at a density greater than the RR five-acre lot size minimum, i.e. 3 separate developments on 14 acres.

The Shankars abut the reservoir property to the south. The lot size of the reservoir was critical to their decision to buy their home, and remains very important to them. A reservoir on five acres fits within they can live with. But a reservoir on three acres will allow development within 10 feet of the Shankars' property in this *rural* zone. The area has very low ambient noise, significantly increasing the impact of any noise on nearby homes. The area is also characterized by pristine views, which should not be interrupted by such close development.

The negative impact on the Shankars of allowing the reservoir use on a substandard lot dictates that the application be denied.

Plan Policy 2 states that "the County's policy is to apply conditions to its approval of land use actions where it is necessary to: (a) protect the public from the potentially deleterious effects of the proposed use." This application requests approval of a Community Service overlay designation on a reduced lot size.

The Shankars voiced concerns about the effect of reducing the TVWD lot by two acres. They suggested that a condition on the approval of this application would resolve their concerns. Specifically, they asked that the application be conditioned that no development take place on the severed two acre area in question.

The Hearings Officer concludes that Policy 2 does not support such a condition because the application does not request approval of a "use" per se. This conclusion fails to recognize that 1) the application is for a use designation (CS), and 2) this Plan policy is an applicable criterion. Obviously, if this application did not involve a proposed use, Policy 2 would not apply.

The Board can alleviate the Shankars' concern and uphold their investment expectation by placing a fairly simple condition on its approval. Specifically, the Shankars suggest that any approval be conditioned to assure that there will be no physical development of the 2 acres which are the subject of the Lot Line Adjustment request. Such a condition is fully supportable under Plan Policy No. 2, Off-Site Effects, which specifically provides for the use of conditions to protect neighbors from off-site impacts. Such a condition would not preclude a future partition of the expanded Lot 31, nor its eventual development with two homes. It would simply assure that no development would take place within what the Shankars had understood to be a buffer area. Without such a condition, the application fails to show compliance with Code § 11.15.2224(B) and Plan Policy No. 2.

The proposed use is a reservoir on a substandard lot. The Board has the authority to condition any approval of this application to protect adjacent property owners. It should use that authority.

- 2) The Hearings Officer mistakenly found that the application complied with MCC § 11.15.7015(A).

This provision requires the proposal to be "consistent with the character of the area". The proposal is not consistent with the character of the area because it reduces an existing developed lot below the five-acre minimum, and will allow development at a higher density than exists or is permitted, *i.e.* three developments on 14 acres. Furthermore, the Shankars bought this property specifically because of the rural environment assured by the RR district, an environment which is jeopardized by this application.

- 3) The Hearings Officer mistakenly found that the application complied with MCC 11.15.2224.

The Applicant requested relief from the five-acre lot size minimum of the Rural Residential (RR) zone, pursuant to Code § 11.15.2224, "Lot Sizes for Conditional Uses." Code § 11.15.2224 allows reduction of the size of a lot below the minimum only for conditional uses "permitted pursuant to Code § 11.15.2212."

Code § 11.15.2212, meanwhile, merely lists conditional uses which "may be permitted" subject to a hearing process. One of those uses which can be permitted as a conditional use is a Community Service Use. Therefore, to fall within 11.15.2224 applies only to lots which have received a Conditional Use permit pursuant to 11.15.2212. The Applicant has not received a Conditional Use permit, and therefore cannot get approval of a reduced lot size under Code § 11.15.2224.

The Hearings Officer concluded that the "records of prior conditional use approvals for the Tualatin Valley property . . . establish that the community service use that exists on the Tualatin Valley property was approved as a conditional use." In fact, the TVWD did not receive a conditional use permit to develop its property.

TVWD received approval of CS 3-86a in 1991. The decision says that it "changes the zone designation from RR to RR/CS." Therefore, the 1991 approval placed an overlay zone on the site. A Conditional Use permit is not an overlay zone. Furthermore, the decision in CS 3-86a considered only MCC § 11.15.7015, which are the criteria for placement of a Community Service zone. A Conditional Use permit, on the other hand, is evaluated under the criteria of MCC § 11.15.7105, *not* § 11.15.7015.

The simple fact is that since nothing in the record indicates that a Conditional Use permit has been obtained, the Applicant cannot obtain approval of a substandard lot under Code § 11.15.2224.

- 4) The Hearings Officer mistakenly found compliance with Code § 11.15.2218(C) regarding maximum structure height.

The maximum allowed structure height in the RR zone, per MCC § 11.15.2218(I) is 35 feet. The staff report itself indicates that the reservoir is at least 45' from base to top. The Applicant's rebuttal on this issue was that compliance could be assumed from the prior Design Review approval. However, no specific contrary measurement of the height of the structure was presented. Instead, the Applicant claimed that compliance could be assumed from the prior Design Review approval. However, the Applicant is required to establish compliance with this Code section as part of this approval process. The structure is not old enough to be a "grandfathered" non-conforming use. To the contrary, if the structure exceeds the maximum height for the zone, then it is currently illegal and needs a variance. Certainly, no modification of the prior CS permit approval can be approved with this nonconformity.

The Hearings Officer found that the 35-foot maximum structure height in the RR zone does not apply. This finding is curious given that MCC 11.15.2218 was listed as an applicable criterion in the notice, and was addressed in both the application and the staff report. Clearly, in order to obtain a new and different approval of the CS overlay on a smaller area of land, all criteria must be addressed.

In the alternative, the Hearings Officer finds that Code § 11.15.0010 requires measurement of the average height of the structure, and that the average height is less than 35 feet. To the contrary, nothing in MCC § 11.15.0010 on "building height" even discusses average height. Instead, a reference grade point is determined. Nothing in the record establishes that this reference grade brings the height of the structure down to 35 feet.

***(4) If de novo review or review by additional testimony and other evidence is requested, a statement relating the request to the factors listed in MCC .8270(E).***

The Shankars do not request de novo review, nor that additional evidence be added to the record. The Shankars do ask for the opportunity to discuss the impacts of this project directly with the Board.

A completed County Notice of Review form and a check from the Shankars for the \$500 filing fee is enclosed. It is my understanding (via telephone conversation of September 4, 1997 between Carol Lockhart of this officer and JoAnn of your office) that there is no additional deposit for the transcript. Thank you for your assistance in processing this appeal.

Very truly yours,

BOGLE & GATES P.L.L.C.



Ty K. Wyman

Enclosures

cc: Vijay & Anne Shankar  
Kevin Hanway, Tualatin Valley Water District  
Larry Derr, Esq.

BOGLE & GATES P.L.L.C.



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

## NOTICE OF REVIEW

1. Name: Shankar, Vijay and Anne
2. Address: 4200 NW North Road, Portland, Oregon 97210
3. Telephone: ( 503 ) 297 - 9461

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

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

Community Service zone designation and Property  
Line Adjustment.

6. The decision was announced by the Hearing Officer on \_\_\_\_\_, 19 \_\_\_\_

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

Please refer to accompanying letter dated September 5, 1997, from  
Ty K. Wyman of Bogle & Gates P.L.L.C.

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Vijay & Anne Shankar  
4200 NW North Road,  
Portland, OR 97229

Multnomah County Land Use Application Nos. CS 3-97 and PLA 5-97  
Public Hearing Scheduled Before Multnomah County Board of County Commissioners

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October 28, 1997

Respected Members of the Multnomah County Board of County Commissioners

Before I start, my wife and I wish to thank you for agreeing to listen to our situation. We sincerely appreciate the opportunity. We are the owners of the adjacent property who would be adversely affected by this proposal.

The case before you is one in which the Water District wants to create a substandard 2.88 acre lot in a 5 acre RR district and a real estate developer wants to increase its property from 9.48 acres to 11.52 acres. The real estate developer wants to buy the land from the Water District to build a second house within 10 feet of our property. If the Water District's proposal is approved it represents a huge step in legitimizing that possibility.

Such an eventuality represents a nightmare for us. We purchased our property primarily because zoning restrictions mandate a rural character. It was also our expectation that public ownership of the Water District property would protect us from future exploitation by private real estate developers. Accordingly, we designed our house to make maximum use of the sights, sounds and smells of the forested land. It was built as close to the forest as possible and oriented to the North and West. Large ceiling to floor picture windows, doors and decks were deliberately placed to take advantage of the land in its natural state. Deer, a family of hawks, wild cats, wolves and a variety of other natural inhabitants have been regular features in the years that we have lived there. We purchased the property because we cherish these things. All of that is now at substantial risk because of the proposal in front of the Board.

The main argument presented by the Water District simply put is that the:

1. Current modification proposed does not change the nature of the use as a reservoir and that

2. Therefore, it does not increase the impact of the reservoir use on nearby properties.

We believe that there is a serious error of omission in such a line of reasoning. The lack of change in the nature of the use as a reservoir may not increase the impact of the reservoir use on nearby properties. However, the potential sale of the 2.08 acres by the Water District certainly disturbs the relationship between use, impact and lot size that was crafted by the county per MCC 11.15.2224(B) when the conditional use of the Water District property was originally approved. This is supported by the Hearings Officer finding that "The current parcel size for the Tualatin Valley Water District property was accepted by the county as appropriate in 1986 and 1991 by the county's approval of CS-3-86 and CS-3-86a" (Decision of Hearings Officer. P.3). Since the modification disturbs that important relationship, it was incumbent upon the Hearings Officer to redress that imbalance by a reapplication of MCC 11.15.2224(B). It is our belief that she was in error in NOT so doing.

Getting an accurate and realistic perspective on the impact of the nature of the proposed use on our property is critical to an understanding of our objections to the proposal. We know what they are first hand because we have been living next to the Water District property for about four years now and have personally had to endure several of those impacts. These have included (1) the sheer size of the structure (2) its aesthetic appeal or lack thereof (3) use of the property by the general public, and (4) the industrial nature of the traffic to and from the structure. Because of time limitations, I will focus only on two of them, but I can assure you that all of them are important.

**The sheer size of the structure:** The water tank is essentially a cylinder with a radius of approximately 114 feet and a height of 45 feet. That makes the area of the base 10,200 square feet. If we assume that rooms in a normal house are approximately 10 feet high, the water tank is the equivalent of a 46,000 square foot house. If we assume that an average house has a square footage of about 3000 square feet, the water tank is the equivalent of 15 to 16 houses. In zoning terms if 15 to 16 houses were indeed built on the 4.88 acres of the water district property it would have more of the character of an R10 to R20 residential district than a rural residential district. So, clearly the sheer size of the structure represents a huge negative impact.

**The potential to attract public use of the property:** The public nature of the Water District property encourages public use of the property. Loud teenage parties are common affairs. Garbage is strewn all over the entrance to the Water District property, there is graffiti on the water tank, camp fires are lit, people tend to gather there at any time of the night, and often tend to be hostile and aggressive to us. The police have made two drug arrests and just yesterday a stolen car was found off our driveway. We have two children and my 76 and 84 year old parents also live with us. Needless to say we live in fear of violence, the potential for gangs and of physical harm to us and our property. Numerous complaints to the police have been made. During one party that had to be broken up by the police there were fifty to one hundred cars parked on our driveway. There is also another complication here. The only road access to the Water District property is through our driveway. We provided them with an easement for that purpose. The consequence is that our driveway is being used as though it were a public access street. Signs that we place signifying that private property is being entered are vandalized. I talked to the police officer handling the stolen car yesterday and he said that it would be very difficult to patrol the water district property to the extent needed to reduce such public use. Clearly, the public nature of the conditional use represents a huge negative impact on us.

We believe that the intent of MCC11.15.2224(B) is to protect the rights of private property owners against such negative impacts. We fully believe that when the county in its wisdom decided to consider the current parcel size as appropriate in its 1986 and 1991 decisions it was attempting to balance the concerns of neighboring properties and protect their rights. We see the Water District's attempt to now sell the 2.08 acres of forest land as seriously threatening to unravel that balance. Our experience of the reality of the reservoir next to us has validated the fairness of such a consideration. We believe that the Hearings Officer was in error in deciding to ignore these considerations.

Another consistent theme that is used by the applicant is that

1. Our objections are over future development and division, and that
2. Since there are no current plans for development, our current objections are irrelevant.

However, that is an inaccurate representation of our position. The only reason we are even mentioning the real estate developer is because an approval of the Water District proposal would move the real estate developer towards legitimizing what he plans to do. He has made no secret of his desire to develop a second property up to within 10 feet of our property. If he is allowed to do so, much of what we have accomplished and seek to preserve will be destroyed. Simply put, if the proposal is approved we will have a building within 10 feet of our property line. On the other hand, if their proposal is denied, we will continue to have the sights, sounds and smells of forest and wild life as our neighbors. The difference between approval and denial of the Water District proposal is that dramatic for us.

Despite our deep concern in preserving the Water District property as is, we have repeatedly invited the real estate developer to talk to us in a spirit of compromise so that all of our needs can be met. We stressed that openly before the public hearing of July 16, 1997, publicly during the hearing, in conversations with the Water District and directly with the Wests and their attorney. To date the Wests have themselves talked to us directly only once in connection with this proposed sale. That discussion took place a few days before the bidding for the property when Mr. West suggested that one of us pay the other \$20,000 to abstain from bidding for the property. We declined that offer because it was explicitly prohibited by the conditions of the bidding process. At the attorney level we have consistently maintained that we would be sympathetic to the real estate developer's desire for two properties which would require only an additional half acre if he was willing to be sympathetic to our desire to maintain the forested area as is. In that spirit, several offers were made by our attorney including one in which we offered to split the property in half and to pay pro rata for our half. However, all of these offers were rejected and hence withdrawn by us. Counter offers that were made showed a lack of seriousness and complete disregard for our concerns. One such offer was of a 20 foot no build zone which would represent less than 3% of the width of their proposed combined property. Another was for us to buy the proposed combined property at a price that implied paying three times his purchase price for his current property from two years ago. Unfortunately, the Wests don't appear to be interested in negotiating any further. Finally, there are a two points that are of relevance when viewed in a larger context.

1. We have offered to pay either the real estate developer or the Water District pro rata for up to 100% of the property in question at the price that was negotiated between the Water District and the real estate developer. The Water District and the real estate developer know that but have chosen instead to fight us.
2. Given that we are willing to allow the real estate developer to develop two properties by his purchasing half an acre and our purchasing the rest or some combination thereof, there are no implications for the county in terms of its tax rolls.

Although these are of somewhat indirect relevance, they are nevertheless important

To summarize, our position is as follows:

1. We believe that MCC 11.15.2224(B) was correctly applied when the conditional use of the Water District property was originally approved in 1986 and 1991.
2. We believe that the current Water District property size of 4.88 acres represents a balance in the relationship between use, impact and lot size as it was crafted by the county.
3. We believe that the proposed modification would violate that balance and should be denied or at a minimum instigate a re-application of MCC 11.15.2224(B).
4. Although our fear is of what the real estate developer could do in the future the focus of the current appeal is to protest the modification proposed by the Water District.
5. We are willing to work with the real estate developer in a spirit of compromise if serious offers are proposed.

Finally, I would like to say that my wife, my two children and my parents moved from the East Coast to significantly improve the quality of our life. We believe we have found it in Oregon and the property that we live on. All of a sudden we are finding that some of what we moved here for is at risk. We are placing our trust in the institution of the County Board and in the wisdom of its members in our hope that you will protect our rights. We are truly grateful for your granting us the opportunity to present you with our side of the case.

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

**Tualatin Valley Water District's  
Testimony on Appeal of the Hearings Officer's  
Approval of CS 3-97 and PLA 5-97**

**Presented by Kevin Hanway,  
TVWD Coordinator of Planning and Intergovernment Relations**

Applicant, Tualatin Valley Water District, has requested approval of a modification of its conditional use approval for the existing Community Service (CS) use (a reservoir) and a property line adjustment to allow it to sell property that is not needed to carry on the reservoir use. The Hearings Officer's decision found that compliance with all of the applicable standards for these actions has been demonstrated.

Appellant disagrees with the Hearings Officer's decision that all of the standards have been met. Appellant contends that the impacts from the potential construction on the new Lot 31 are such that the proposed property line adjustment should either be denied, or that no construction should be permitted on the land which would be transferred from Applicant to the owner of Lot 31.

Whether any new homes on the new Lot 31 would have any impact on Appellant is not the issue before the Commission today. In fact, that issue was decided many years ago when the Commission applied the RR zone to this area. At that time, when Lots 31, 32, and 33 were all placed in the 5-acre minimum Rural Residential RR zone, it was determined that it was appropriate for one house to be placed on each lot. Side yard setbacks of 10' were established for any structures built on these lots.

Appellants contend that TVWD's request must be denied because the Shankars bought their property expecting that the entire reservoir site would remain as it is. The zoning code does not protect the investment expectations of those whose expectations are based on a misunderstanding of the code. TVWD made no representations to the Shankars that the land would remain vacant. Nothing in the zoning code requires or implies that the land remain vacant for the benefit of the Shankars. In fact, the county staff has interpreted the code to allow construction of a residence on the existing Lot 32 in addition to the existing reservoir. The Shankars are not entitled to a condition which institutionalizes their misunderstanding by prohibiting development on the portion of the site to be transferred to the owners of Lot 31.

The only issue before the Commission today is whether the proposal to reduce the size of the CS lot to 2.8 acres complies with the applicable standards for approval of the proposed conditional use modification and property line adjustment.

## **I. Modification of the Conditional Use Approval for the Reservoir**

### **A. Does the Proposal Comply with the Community Service (CS) Zone Criteria?**

The existing reservoir is a permitted Community Service use. MCC 11.15.7020 (A) lists the Community Service uses that may be permitted in any district. A reservoir is permitted under (A)(8) as a "power substation or *other public utility building or use.*"

Uses permitted in the Community Service zone, and this modification to the approved CS designation, must also comply with the standards of MCC 11.15.7015, which are addressed below.

**MCC 11.15.7015** "In approving a Community Service use, the approval authority shall find that the proposal meets the following approval criteria....:

(A) "Is consistent with the character of the area."

In its original approval of the reservoir (CS 3-86a #112; January 7, 1991) the county already made the required finding that the reservoir is consistent with the character of the area. No change to the reservoir is proposed, so its consistency with the character of the area is unchanged. The size of the lot on which the reservoir is placed is a separate issue. (See I. B. herein, the discussion of MCC 11.15.2224, RR – lot sizes for conditional uses). The RR zone, by providing a different set of standards for establishing minimum lot sizes for conditional uses, establishes that lots smaller than 5 acres can be consistent with the character of this area.

(B) "Will not adversely affect natural resources."

As no modifications to the reservoir are proposed, no impacts on natural resources are created by this proposal. The possibility of impacts from potential development on the Wests' expanded Lot 31 is irrelevant to the current question; if and when they propose any construction on their land, they will have to comply with all regulations controlling impacts on natural resources.

(C) "Will not conflict with farm or forest uses in the area."

Properties in this area are not used for or designated for agricultural or forest use.

(D) "Will not require public services other than those existing or programmed for the area."

As no modifications to the reservoir are proposed, no public service needs are created by this request.

(E) "Will be located outside a big game winter habitat area as defined by the Oregon Department of Fish and Wildlife or that agency has certified that the impacts will be acceptable."

This site is not identified as a big game habitat area in the Comprehensive Plan or by the ODFW.

(F) "Will not create hazardous conditions."

As no modifications to the reservoir are proposed, no hazardous conditions are created by this request.

(G) "Will satisfy the applicable policies of the Comprehensive Plan."

Because it has been raised in the Shankars' Notice of Review, Plan Policy 2 will be addressed here in detail. Please refer to the original application for a discussion of the other applicable plan policies.

The Shankars, citing their "investment expectations," contend that Plan Policy 2 permits and requires the Board to impose a condition on the CS modification prohibiting the development of the land to be transferred. Appellants have not justified the condition they proposed. They have not demonstrated any negative impact on their property which has not already been considered by the county in its adoption of the zoning code.

The zoning standards for the RR zone establish permitted uses, a minimum lot size, setback and frontage requirements, and structure height limits. A residential dwelling is a permitted use in this zone. [11.15.2208(C)] Section 11.15.2218 sets out the dimensional requirements for a dwelling in this zone: 5 acre minimum lot size, front and rear yard setbacks of 30 feet, side yard setbacks of 10 feet, and a maximum structure height of 35 feet. By adopting these standards, the county has determined that neighboring structures built in compliance with these standards are appropriate in this neighborhood and that any negative impacts on each other have been sufficiently limited or mitigated. If in the future the Wests seek a variance from any of these standards it would then be appropriate for the Shankars to raise the issue of negative impacts. In the absence of any variance request or demonstration of special circumstances, the standards in the ordinance are controlling.

Opponent raises the issue of noise impacts. There is no information in the record nor any other reason to believe that the noise generated by a potential residence on this property would be greater than that from any other residence (existing or to be built) in the neighborhood. The most significant noise would occur during the limited period while the house is being constructed. The county's noise ordinance protects the Shankars from that construction noise and any other noise generated on this property.

Likewise, the pristine views cited in Mr. Wyman's letter are the same views that are enjoyed by residences throughout the neighborhood. The county has already established that a 10-foot sideyard setback is adequate to buffer residences from the impact on their views of structures on adjacent lots. This standard recognizes, among other factors, the heavily wooded nature of this area. Photographs taken from the Shankars' north property line show the dense underbrush and the heavy mixed evergreen and deciduous tree cover along the boundary. (See Exhibit A.) Aerial photos of the area also demonstrate the density of the tree cover. (See Exhibit B.) The mix of evergreens and deciduous trees assures that an adjacent structure will be sufficiently obscured from the Shankars' view even during the Fall and Winter months. Furthermore, the Shankars' primary vista is to the southwest toward the valley. No structure built to the north of them by the Wests would obscure that view.

The community plan for this area is the best indicator of the adequacy of the existing RR standards. *A comprehensive update of the applicable community plan (the West Hills Rural Area Plan, October 1996) did not recommend any changes to the zoning standards for this neighborhood.* The community plan was prepared by an advisory committee of West Hills area residents beginning in November 1993, and was the subject of a series of public meetings and hearings. The plan identified seven basic qualities which the



residents wanted to preserve to protect the rural character of the West Hills: low population / density, peace and quiet / privacy, private property rights, abundant wildlife, clean air and water, renewable resource use (forest and agriculture), and greenspace/open space. The plan does not include any findings or policies declaring the existing development standards inadequate to protect these seven qualities. In fact, its discussion of protection includes the following statement regarding the protection of scenic view qualities and, by implication, the adequacy of the existing standards:

*“It is important to note that the outstanding scenic qualities of the West Hills derive solely from the vantage points below - views from the West Hills outward, or within the West Hills itself, are not judged to be outstanding and thus are not protected beyond the protection afforded by continuing rural zoning and development standards.”* (Page 22)

The Shankars also contend that allowing the smaller reservoir site, coupled with the potential for a partition of the expanded Lot 31, would destroy the rural character of this neighborhood by allowing 3 separate developments on the 14 acres adjacent to their property. The development code, however, has been interpreted by staff to permit a residence to be sited on Applicant's existing 5-acre lot in addition to the existing reservoir structure. No change is proposed which would allow a new development in addition to the reservoir and two residences already permitted on Lots 31 and 32.

(TVWD volunteered to record deed restrictions on Lot 32 prohibiting any residential development on its retained property. The Hearings Officer's decision required these deed restrictions as a condition of approval.)

The Shankars' misunderstanding of the protections offered by the development code does not entitle them to a condition which institutionalizes their misunderstanding. They have not demonstrated any impacts not already addressed by the code and are, therefore, limited to the protections afforded by the code. Consistent with the standards for this rural neighborhood, that will allow development within 10 feet of the Shankars' property. The county, by adoption of these standards, has already determined that this setback is appropriate to protect the rural character of this area.

The Shankars residence is adequately protected from the negative impacts of a potential residence on this site by the development standards in the zoning code. Plan Policy 2 does not mandate or permit a condition which prohibits any development on the entire two acres as they have requested.

Finally, the Shankars also contend that they bought their property based on their understanding that the entire reservoir site would be a buffer area for them. No basis is offered for this understanding. No such assurance was given by Applicant or by any of its employees.

(H) “will satisfy such other applicable approval criteria as are stated in this Section.”

All applicable criteria have been addressed.

## **B. Does the Smaller Lot Comply with the RR Zone Conditional Use Criteria?**

### **1. The Conditional Use Criteria of MCC 11.15.2212(A) Control in this Case**

Appellant contends that the existing reservoir has not received a Conditional Use permit and, therefore, that the requested modification to its conditional use approval cannot be granted. They contend that a conditional use permit issued pursuant to MCC .7105 - .7640 is required. This contention appears to be based on a misreading of MCC 11.15.2212, Conditional Uses in the RR zone. That section reads:

“The following uses may be permitted when found by the Hearings Officer to satisfy the applicable Ordinance standards:

(A) *Community Service Uses under the provisions of MCC .7005 through .7041.*

(B) The following Conditional Uses under the provisions of MCC .7105 through .7640....”

Community Service Uses are expressly subject to the standards of the CS zone, not to the standard conditional use criteria in MCC .7105 *et seq.* There is a logical reason for this different set of standards. Unlike the standard conditional use proposal, a Community Service use serves a broad public purpose and is not simply for the benefit of the applicant. This reservoir is an excellent example. The reservoir must be located within a small area at a specific elevation to economically provide water service to a large territory. Few properties will have the location, elevation, and land area necessary to achieve that purpose. The county has determined that it is appropriate to review these uses against the criteria in the Community Service zone.

Just as with other conditional uses, the Community Service designation is not permanent; it expires after two years unless substantial construction or development has occurred. This gives the County the opportunity to protect neighboring owners against impacts if circumstances have changed and the CS use has not yet been begun. This reservoir, for example, was approved in 1991 as CS 3-86a, #112, after its 1986 approval had expired without any construction having begun. The 1991 decision contains the following Conclusion and Decision:

#### **“Conclusions:**

1. Based on the findings above, the proposal – as conditioned – satisfies approval criteria for a Community Service Use.
2. Conditions of approval are necessary to minimize potential adverse impacts from the use and assure compatibility with surrounding land uses.

#### **Decision:**

Approve, subject to conditions, the requested Community Service use Designation for the property described above, to allow development of a three-million gallon water reservoir...” (Four conditions were imposed.)

This reservoir has received the necessary conditional use approval as a Community Service Use in a Rural Residential RR zone.

## **2. The Proposed Lot Size Complies with the Applicable Criteria of the RR Zone**

Approval of the proposed conditional use modification also requires a demonstration of compliance with specified criteria in the RR zone. MCC 11.15.2224 lists the factors to be considered in setting the minimum lot size for a CS conditional use, such as this reservoir, in the RR zone:

### **MCC 11.15.2224**

#### **(A) "The site size needs of the proposed use."**

The proposed site is more than adequate to accommodate the land area needed for the existing reservoir. No modifications are proposed or planned for the reservoir. The front and side yard setbacks will not change. The proposed rear yard is 130 feet, extending well beyond the reservoir and related improvements.

#### **(B) "The nature of the proposed use in relation to the impacts on nearby properties."**

The reservoir improvements will not change, so there will be no difference in their impacts on nearby properties. The reduced rear yard will leave the reservoir closer to private property, but the owner of Lot 31 (the effected property) has consented to the proposed changes.

A complete discussion of the issue of impacts on the Shankars' property is included above at I.A. (pp. 2-4) and will not be repeated here. The discussion demonstrates that the reduced lot size and the location of the reservoir do not negatively impact the Shankars.

#### **(C) "Consideration of the purposes of this district."**

Those purposes are detailed in MCC 11.15.2202:

"The purposes of the Rural Residential District are to provide areas for residential use for those persons who desire rural living environments; to provide standards for rural land use and development consistent with desired rural character, the capability of the land and natural resources; to manage the extension of public services; to provide for public review of non-residential use proposals and to balance the public's interest in the management of community growth with the protection of individual property rights through review procedures and flexible standards."

The proposed modification to the conditional use approval improves the reservoir's consistency with the purposes of the RR zone. The proposed change in lot size to 2.8 acres reduces the land area that is diverted from the first, and presumably primary, purpose of the district of providing rural residential sites. The reservoir has already been approved, as part of the purpose of managing the extension of public services (in this case, water delivery). No modifications are proposed for the reservoir, so the ability of the land and natural resources to accommodate the reservoir is unchanged. The need for public review of the reservoir has been satisfied by the original 1991 approval and by the current proceedings.

### **C. Conclusion**

The proposed modification to the reservoir's CS conditional use approval in the RR zone satisfies all of the applicable zoning standards and plan policies.

## **II. Property Line Adjustment**

### **A. Property Line Adjustment Standards**

MCC 11.45.115 lists the standards for approval of a property line adjustment:

**MCC .115 (A)** Not Applicable

**MCC .115 (B)** "The Planning Director may approve a property line adjustment between two properties in the Rural Area where an additional lot or parcel is not created but where one or both of the adjusted properties are below the minimum lot size established by the applicable zoning district designation. Such an adjustment shall comply with any applicable zoning district standards for a Lot of Exception or Lot Line Adjustment."

Lots 31 and 32 are the subjects of the proposed lot line adjustment. Lot 32, at 4.67 acres, is below the 5-acre minimum lot size of the RR zone. The RR district standards for a lot of exception are listed at MCC 11.15.2220(A):

"The Hearings Officer may grant an exception to permit creation of a lot of less than five acres, after, October 6, 1977, when in compliance with the dimensional requirements of MCC .2218 (C) through (E)." (The code continues, listing standards that must be met if exceptions to those dimensional requirements are sought.)

No exception to the dimensional requirements is sought, as the proposed reservoir site exceeds all of the minimum yard requirements, so only the standards of .2218 (C) through (E) apply here.

**MCC .2218(D)** allows for an increase of the front yard requirement under certain circumstances:

"The minimum yard requirement shall be increased where the yard abuts a street having insufficient right-of-way width to serve the area. The Planning Commission shall determine the necessary right-of-way widths and additional requirements not otherwise established by Ordinance."

According to earlier approvals, adequate right-of-way currently exists in North Road. The front yard of 270 ft. allows for additional right-of-way if necessary.

**MCC .2218(E)**, which specifies the circumstances when certain accessory structures may exceed the underlying height requirement, does not apply here. The reservoir does not exceed the RR zone maximum height of 35 ft.

**MCC .115 (C)** "Property line adjustments approved under subsections (A) and (B) above shall met the following additional standards:

- (1) "No additional lot or parcel shall be created from any parcel by the property line adjustment."

The proposed property line adjustment will enlarge Lot 31 by reducing the area of Lot 32; no new parcels or lots are created by the proposal.

- (2) "Owners of both properties involved in the property line adjustment shall consent in writing to the proposed adjustment and record a conveyance or conveyances conforming to the approved property line adjustment."

The written consents of both owners were included with the application for the property line adjustment. The appropriate conveyances will be recorded after approval.

- (3) "The adjusted properties shall meet all dimensional requirements in the underlying zoning district except for the lot area."

As was demonstrated above, all dimensional requirements are met except, as is permitted, the minimum lot area.

MCC .2218(C) lists the RR zone setbacks, while MCC .7025(A) establishes or references the minimum yard requirements for CS uses in the RR zone:

	<u>RR Minimum</u>	<u>CS Minimum</u>	<u>Actual</u>
Front yard	30 ft.	30 ft.	270 feet
Side yard	10 ft.	25 ft.	62 ft.
Rear yard	30 ft	30 ft.	130 ft.

In addition, MCC .2218(C) requires a minimum front lot line length of 50 feet. The street frontage of Lot 32 is 199 feet.

- (4) "The right-of-way width between the front line of each adjusted property and the centerline of any adjacent County road shall comply with the applicable provisions of the Street Standards Ordinance as determined by the County Engineer."

Existing right-of-way widths are adequate.

#### **B. Conclusion**

All applicable criteria for the proposed property line adjustment are satisfied, and the criteria for creation of a lot less than 5 acres are met.

### **III. Reservoir Height**

#### **1. Applicability of MCC 11.15.2218(C)**

Appellants contend, apparently, that no modification of the Community Service conditional use can be approved in the absence of a showing that the building height standard is met. There is no contention that the reservoir's height creates a negative impact on the Appellants, so that issue is irrelevant to the question before the Board, which is the approval of a reduced lot size for the reservoir. The Shankars' appropriate remedy, if there were a violation of the height standard, is to pursue a zoning

enforcement action either through the courts or through the County's code enforcement procedures.

For the convenience of the Board, this testimony details the height calculations and demonstrates that the height limit is not exceeded.

MCC 11.15.0010 defines how building height is to be calculated. It directs the use of one of two identified "reference datum." Reference datum (a) does not apply in this case because the highest adjoining ground surface is more than 10 feet above the lowest grade. Therefore, reference datum (b) must be used. It provides that the building height shall be measured from "an elevation 10 feet higher than the lowest grade when the sidewalk or ground surface described in Item (1) above [reference datum "a"] is more than 10 feet above the lowest grade."

Copies of relevant portions of the plans for the reservoir are attached as Ex. C. They show that the finish grade at the base of the reservoir is 776.94' (the lowest grade within 5' of the building) and is sloped to a level at the top of the reservoir of 820.84' (the highest grade). Because this difference in grade is more than 10', reference datum (b) must be used.

To generate the most conservative height calculation, dimensions for all elements of the structure will be included. [Because the structure's footing and a portion of the reservoir is partially buried at the lowest finished grade, the true calculated height of the reservoir will be less than this calculated figure.]

The height includes the footing (1'), the wall (43'0"), pads (1/2"), and the roof (8" + 3.5"), for a total of 45'0". Subtracting 10' from that height as provided by datum (b) produces a calculated height of 35'0". That is the maximum height permitted by MCC 11.15.2218(C).

## **2. Calculations Summary**

Total height of the structure:

1'0"	Footing
43'0"	Reservoir wall
0.5"	Pads
8"	Roof
3.5"	Lip at peak of roof
45'0"	Total height
<u>- 10'0"</u>	MCC 11.15.0010: Def. Of "Building Height," Reference Datum b
35'0"	Building Height, calculated per MCC 11.15.0010

Since the footing and a portion of the reservoir wall are buried at the lowest elevation, the actual calculated height of the reservoir is less than the limit of 35'.

#### **IV. Summary and Conclusions**


The points raised by the Shankars in their Notice of Review are either based on incorrect interpretations of the code, or have been rebutted.

- The action proposed by TVWD will not increase the potential density on the properties adjacent to the Shankars.
- The reservoir and potential homes, built in compliance with RR zone standards, are consistent with the rural character of this neighborhood and will not create impacts on the Shankars beyond those already contemplated by the RR zone.
- The Shankars are not entitled to a condition prohibiting development on the adjacent property to protect their “understanding” that it would serve as a buffer for them.
- The reservoir has received the required Conditional Use approval.
- Although this issue is irrelevant to the case before the Board, the reservoir does not violate the RR zone height standard.

Therefore, the Board should approve the requested modification to the Community Service use approval to reduce the reservoir’s lot size, and the property line adjustment to transfer the eastern part of the site to the owners of Lot 31.

**LOCATION**  
**NORTH ROAD RESERVOIR**

The map shows a complex road network surrounding the North Road Reservoir. Key roads include NW Laidlaw Rd, NW Marcotte Rd, NW Thompson Rd, NW Skyline Blvd, NW Daniel Rd, NW Layton Rd, NW Layton Ct, NW Layton Pl, NW Layton Dr, NW Layton Way, NW Layton Ave, NW Layton St, NW Layton Ter, NW Layton Ln, NW Layton Cir, NW Layton Pkwy, NW Layton Hwy, NW Layton Expy, NW Layton Bypass, NW Layton Loop, NW Layton Turnpike, NW Layton Freeway, NW Layton Expressway, NW Layton Interchange, NW Layton Junction, NW Layton Roundabout, NW Layton Overpass, NW Layton Underpass, NW Layton Tunnel, NW Layton Bridge, NW Layton Viaduct, NW Layton Causeway, NW Layton Fwy, NW Layton Expwy, NW Layton Intch, NW Layton Jctn, NW Layton Rndbt, NW Layton Ovps, NW Layton Undrps, NW Layton Tnl, NW Layton Brdg, NW Layton Vdct, NW Layton Cswy.





## **EXHIBIT A**

Site photographs taken on July 18, 1997.

Photographs 1 – 5 are taken on the Shankar property looking in a northerly direction toward applicant's property, showing the Shankars' driveway in the foreground. The photographs illustrate the dense mixture of evergreen and deciduous trees, as well as the dense ground cover, which buffer the Shankar residence from the view of any structures to be built on the adjacent property.

Photographs 6 and 7 are taken from the applicant's property looking southerly toward the Shankar residence, from points approximately 15' to 20' from the property line. Photograph 6 is from a point directly north of the residence. The peak of the roof is visible through the trees. Photograph 7 is from a point approximately 50' to 60' east of the vantage point of #6, looking southwesterly toward the residence. An arrow indicates the roofline barely visible through the vegetation cover.

Photograph 8 is taken from north of the Shankar residence, looking southwesterly, showing the residence set back an additional distance from the driveway and property line.

## **EXHIBIT B**

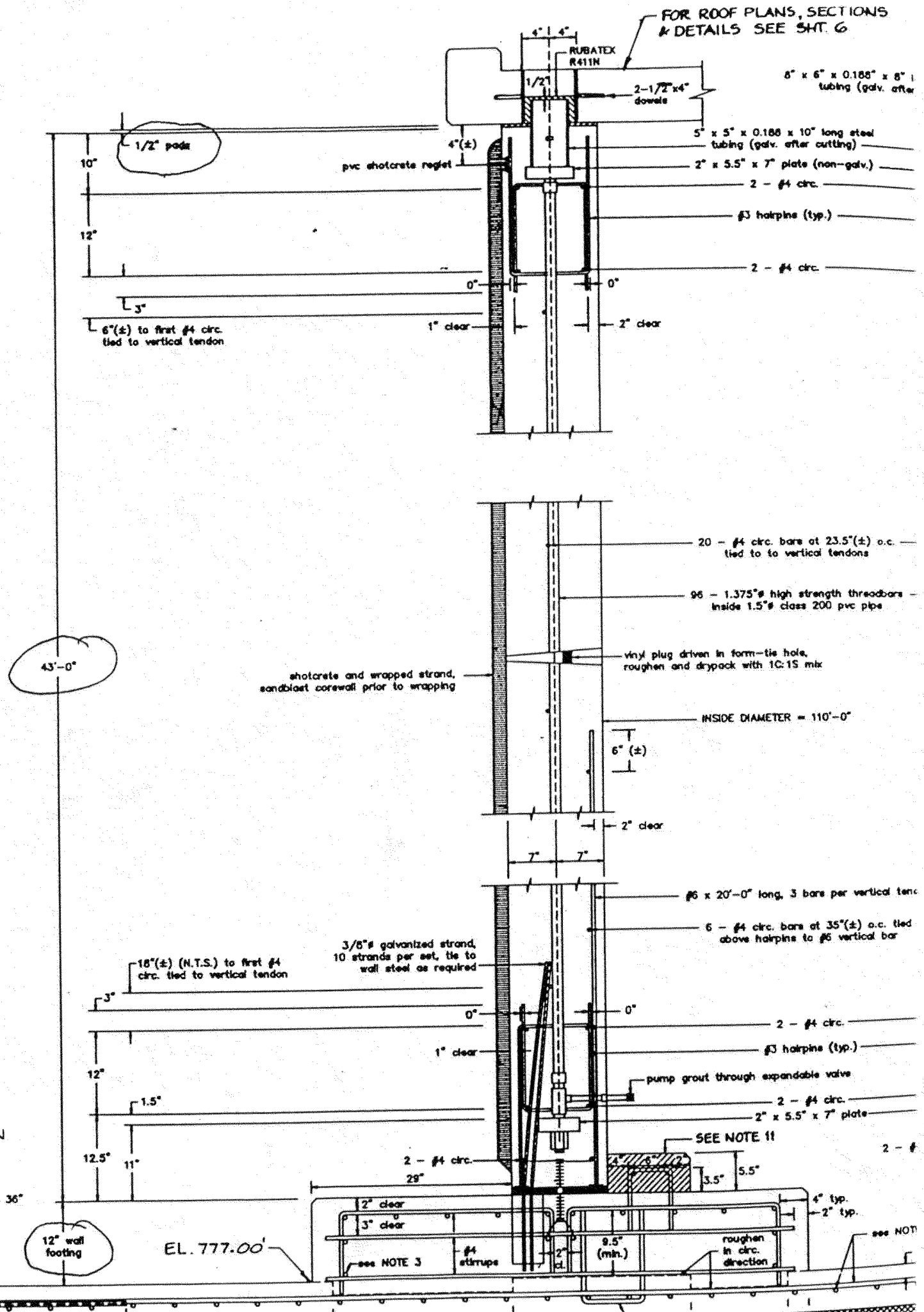
This is an aerial photo of this neighborhood taken by Spencer B. Gross, Inc., on 8/25/94. Although property lines are not shown on the map, the orientation of the structures indicates the general relationship of the properties to each other. Applicant's reservoir is shown at the center of the photo. NW North Road is shown winding from south to north, then becoming an access road to Lot 31 and the upper portion of Applicant's property. The Shankar's residence appears just below the right center of the photo.

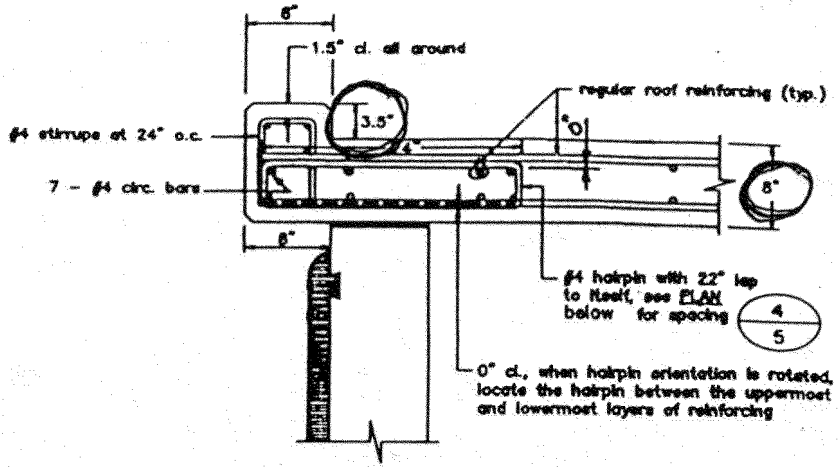
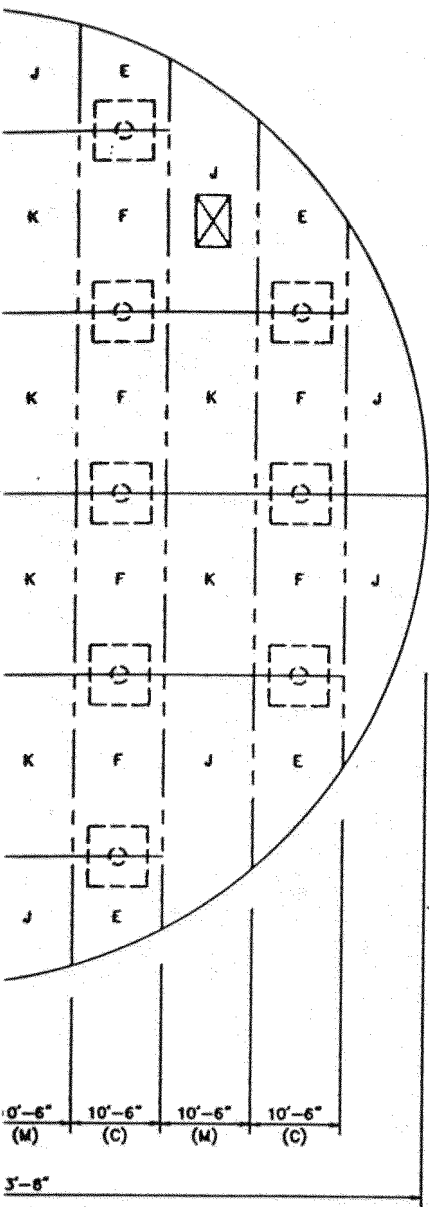
The photograph clearly illustrates the extremely dense forest cover (both evergreen and deciduous trees) in the area north of the Shankar residence, the area which is proposed for the property line adjustment.

## **EXHIBIT C**

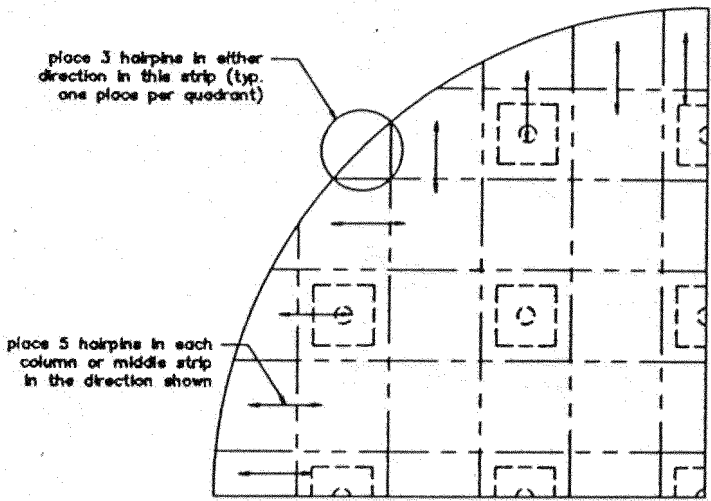
The attached sheets are details from the building plans for the reservoir. They include the relevant information for calculating the height of the reservoir according to MCC 11.15.0010.





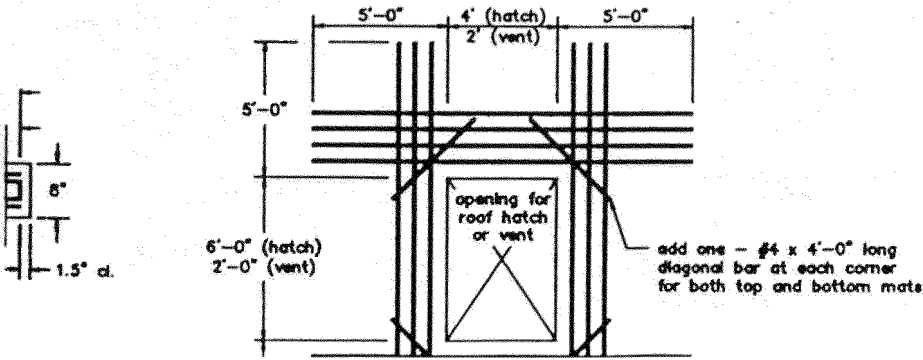


RADIAL VERTICAL SECTION OF ROOF EDGE 3  
5



PLAN OF ROOF EDGE HAIRPINS 4  
5

IN THE NORTH-SOUTH DIRECTION 2  
5  
below for bar size, length and spacing)



LAW OFFICES OF  
JOSSELYN, POTTER & ROBERTS  
53 S.W. YAMHILL STREET  
PORTLAND, OREGON 97204

TELEPHONE (503) 228-1455  
FACSIMILE (503) 228-0171

October 13, 1997

**Via Telecopier 721-3666**

Ty Wyman  
Bogle & Gates PLLC  
Suite 1400, 222 SW Columbia Street  
Portland, OR 97201

Dear Mr. Wyman:

In the interests of seeking a negotiated resolution of the appeal filed on behalf of your clients in the above cases, we discussed several settlement offers.

I renewed an offer previously made on behalf of Wayne and Mona West through Kevin Hanway to setback any residence on the West property the same distance that the Shankar residence is setback on their property. You did not respond directly to that proposal, but instead offered to divide the lot line adjustment property in half with each party paying one-half of the District sale price, thereby providing Shankars with over 100 feet of property under their control.

I related that offer to my clients and advised you that they rejected it because it would remove one of the two building sites. I then proposed that the Shankars purchase the Wests' existing property together with the District's lot line adjustment property for a combined price of \$300,000.

Today a I received a letter from you by fax rejecting the purchase and sale offer.

In that letter you make another offer, namely that the Wests agree to restrict the southerly half of the lot line adjustment property against all development. That is the same offer my clients rejected last week except that you have apparently withdrawn the proposal that the Shankar pay for the property that they would effectively control. If this is indeed a new offer, it is also rejected.


The Wests will be entitled to build within ten feet of the common property line. Instead, they have offered to set back any residence subsequently approved and built on the

JOSSELYN, POTTER & ROBERTS

Ty Wyman  
October 13, 1997  
Page 2

property an equal distance to the Shankars' actual set back. Any restriction greater than that is unreasonable and unacceptable.

Very truly yours,



Lawrence R. Derr

LRD:lb

cc: Kevin Hanway  
Wayne West  
Mona West



LAW OFFICES OF  
**JOSSelson, POTTER & ROBERTS**  
53 S.W. YAMHILL STREET  
PORTLAND, OREGON 97204  

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TELEPHONE (503) 228-1455  
FACSIMILE (503) 228-0171

October 13, 1997

Board of County Commissioner  
Multnomah County  
1120 SW 5th Avenue, Room 1500  
Portland, OR 97204

Re: County Case file Nos. CS 3-97 and PLA 5-97  
Tualatin Valley Water District

Dear Commissioners:

This testimony is presented on behalf of Wayne and Mona West in connection with an appeal from approval of the above-described applications. The Wests own one of the two parcels that are the subject of the lot line adjustment approval and will purchase the excess land from the Water District pursuant to the approval. The Wests acquired the right to purchase the land by submitting the best bid in an open, competitive bidding process in which the appellants, the Shankars, participated.

In their notice of appeal, the Shankars unsuccessfully attempt to describe errors in the application of the Zoning Code and Comprehensive Plan. Each of those contentions are addressed below.

**Proposed Development Restriction**

The real issue, however, is the demand of the Shankars that the County prohibit any development on the 2.8 acres that is the subject of the lot line adjustment. See July 23, 1997 letter from Ty Wyman to the Hearings Officer, page 2 and September 5, 1997 Wyman letter with grounds for appeal, page 3.

That condition would prevent any beneficial use of property being purchased by the Wests from the District for \$80,000. The effect would be to create a 233' plus buffer strip between any new development on the Wests' property and the Shankars' home and other structures that they constructed between 10 and 25 feet of their north property line. The condition would be unlawful because it would be a taking without a valid public purpose. Even if it could be justified as a public purpose taking, it would require that the Wests be

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compensated by the County. The Hearings Officer expressed her "grave doubts" that the condition could avoid being construed as a taking. Opinion p 13.

If the Water District retained the 2.8 acres it would be entitled to construct a house on it within 10 feet of the Shankars property line. Nothing in the Community Service designation of the property prevents making a use allowed by right in the RR District. Instead, the District will restrict the reservoir property against residential development and transfer the balance of the property to the neighboring owner, who is free to make any development allowed by the Code and Plan. There is no rational basis to impose the condition sought by the Shankars.

The Hearings Officer decision satisfies all applicable Code and Plan requirements. The objections raised in the notice of appeal are as follows:

**Code § 11.15.2224 Lot Sizes for Conditional Uses, Criterion (B)**

"The nature of the proposed use in relation to the impacts on nearby properties;"

Shankars' fundamental error is in their contention that this lot line adjustment will allow development within 10 feet of their property. They offer no other reason why this criterion is violated.

It is the setback provisions of the Zoning Code that allow development within 10 feet of the property line, not this lot line adjustment.

**Plan Policy 2**

"the County's policy is to apply conditions to its approval of land use actions where it is necessary to: (a) protect the public from the potentially deleterious effects of the proposed use."

The Shankars acknowledge that if the application does not involve a proposed use, then this Policy does not apply. It does not involve a proposed use and the Shankars do not explain why they believe it does, other than to claim incorrectly that it is an application for a use designation.

**Code § 11.15.7015 Approval Criteria, Criterion (A)**

"Is consistent with the character of the area;"

This contention is also based on errors in interpretation of the Code. Shankars claim that the approval will reduce the Water District lot below a five acre minimum and will allow

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Multnomah County  
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Page 3

development at a higher density than is permitted, "i.e. three developments on 14 acres".

There is no fixed minimum lot size for a Community Service use. Therefore, there is no five acre minimum that applies to the reservoir use. There is no density restriction that prohibits "three developments on 14 acres". Lot sizes are determined by various provisions of the Code based on the nature of the use. The only lot that will remain at less than five acres is the reservoir site and its proposed size has been justified. The other lot will increase in size.

#### **Code § 11.15.2224 Lot Sizes for Conditional Uses**

This Section provides standards to establish lot sizes for conditional uses pursuant to §11.15.2212. That section, in turn lists conditional uses that are permitted in the RR District. One of the listed categories is a Community Service use. § 11.15.2212(A). The Water District has received a Community Service designation and approval for its reservoir use.

#### **Code § 11.15.2218 Dimensional Requirements, Criterion (C) Height**

This is not an application to approve the reservoir. If the reservoir was approved for a height that violated .2218(C), then the time to object has long past. If the reservoir was built in violation of its approval, then an enforcement proceeding is appropriate. In either case, the conformity of the reservoir with a height standard is not a part of this proceeding.

The District has demonstrated that the reservoir is within the height standard. The Shankars have provided no evidence to the contrary.

JOSSELYN, POTTER & ROBERTS

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Multnomah County  
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Page 4

## Conclusion

The appellants have presented no basis for overturning the decision of the Hearings Officer. The condition they seek as an alternative to denial is overreaching, unjustified and unlawful.

Very truly yours,



Lawrence R. Derr

LRD:lb

cc: Multnomah County Planning Department  
Liz Fancher  
Ty Wyman  
Kevin Hanway  
Wayne West  
Mona West

MEETING DATE: October 28, 1997

AGENDA #: B-1

ESTIMATED START TIME: 10:30 AM

(Above Space for Board Clerk's Use ONLY)

## AGENDA PLACEMENT FORM

SUBJECT: Board Briefing and Recommendations from the Evaluation Task Force

BOARD BRIEFING: DATE REQUESTED: Tuesday, October 28, 1997

REQUESTED BY: County Commissioners

AMOUNT OF TIME NEEDED: 45 minutes

REGULAR MEETING: DATE REQUESTED: \_\_\_\_\_

AMOUNT OF TIME NEEDED: \_\_\_\_\_

DEPARTMENT: Support Services DIVISION: \_\_\_\_\_

CONTACT: Vickie Gates TELEPHONE #: 306-5880

BLDG/ROOM #: 106/1400

PERSON(S) MAKING PRESENTATION: Vickie Gates, Susan Clark and Jim Carlson

### ACTION REQUESTED:

☒ INFORMATIONAL ONLY ☒ POLICY DIRECTION ☐ APPROVAL ☐ OTHER

### SUGGESTED AGENDA TITLE:

**Report and Recommendation of the  
Evaluation Task Force: Measuring for Results in Multnomah County**

### SIGNATURES REQUIRED:

ELECTED OFFICIAL: \_\_\_\_\_  
(OR)

DEPARTMENT MANAGER: Vickie Gates

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

Any Questions? Call the Board Clerk @ 248-3277

# **Measuring for Results in Multnomah County**

**A Report to the Board of County Commissioners  
by the Program Evaluation Workgroup  
October 23, 1997**

Vickie Gates, Director, Department of Support Services

Jim Carlson, Evaluation Specialist, Department of Support Services

Denise Chuckovich, Director, Office of Planning and Development,  
Health Department

Susan Clark, Director of Operations, Department of Community and  
Family Services

Jim Clay, Director Multnomah Commission on Children and Families

Karyne Dargan, Budget Supervisor, Department of Support Services

Suzanne Flynn, Deputy Auditor, Multnomah County Auditor's Office

Steve Pearson, Budget Analyst, Department of Support Services

Steve Rider, Evaluation Specialist, Dept. of Community and Family  
Services

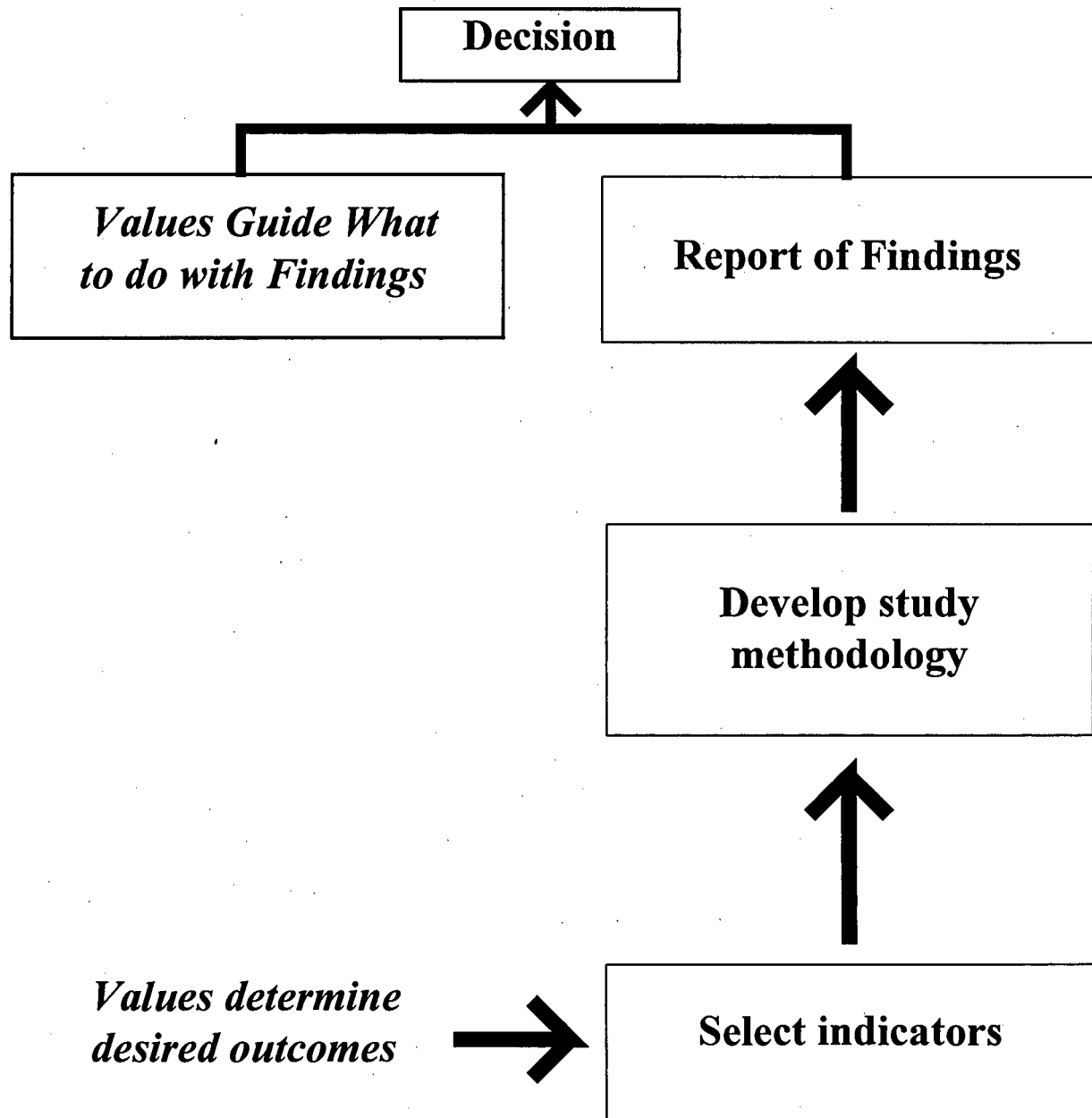
Meganne Steele, Resource Mgt. Manager, Department of Juvenile and  
Adult Community Justice

Barb Timper, Contracts and Evaluation Unit Supervisor, Department of  
Community and Family Services

# **Purposes of this Presentation**

- 1. Establish guidelines for program evaluation**
- 2. Clarify use of terms**
- 3. Recommend next steps**

# Values Make the Final Decision; Measures Alone Don't





# GUIDING PRINCIPLES IN PROGRAM EVALUATION

- Clear measurable outcomes

Program planning should ensure that program outcomes are clearly stated and support the overall goals of the County. Evaluation measures attainment of these outcomes; it does not determine what the program's outcomes should be.

- Collaborative process

Program planning should be a collaborative process involving program staff, providers, and the community. Evaluators should be included in the early stages of program planning to help determine how program goals will be measured and linked to longer term desired social outcomes.

- Cost effective

Each evaluation should be useful and cost-effective by clarifying the information needs of policy-makers, administrators, and other stakeholders. Consider the relative costs and utility of a variety of evaluation approaches.

- Learning process

The evaluation process should foster a spirit of cooperation and continuous improvement to increase acceptance of evaluation findings and to set the stage for implementation of recommendations.

- Clear, candid results

In the reporting process, evaluators should be clear, candid, and constructive in presenting findings.

- Credibility

Findings must be unbiased, supportable, and clearly linked to the underlying data. Peer review, or outside evaluation in some cases, should help ensure objectivity.

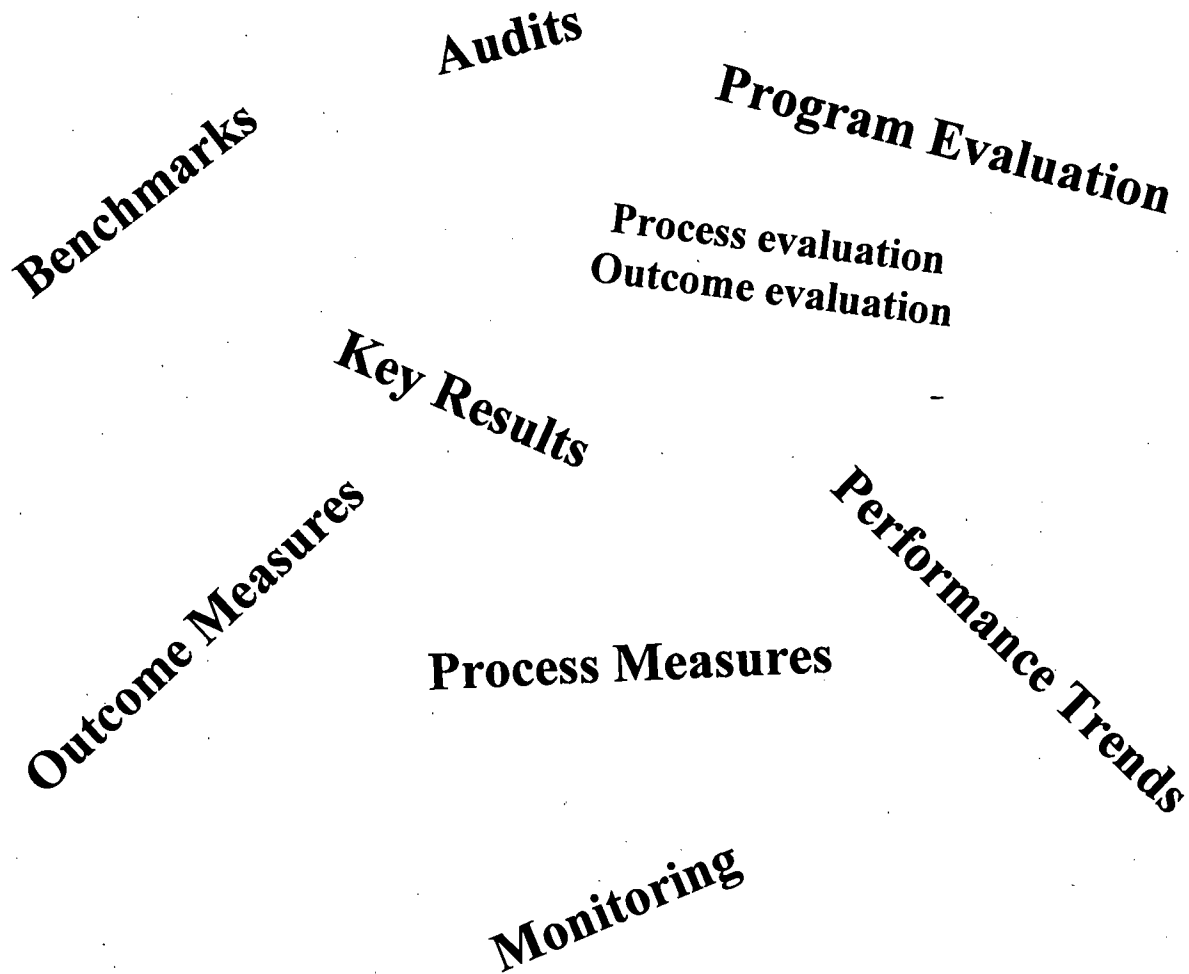
- Results used

After the evaluation, as opportunities arise, the County should assist key stakeholders to utilize the evaluation for upcoming decisions.

# KEY STRATEGIES

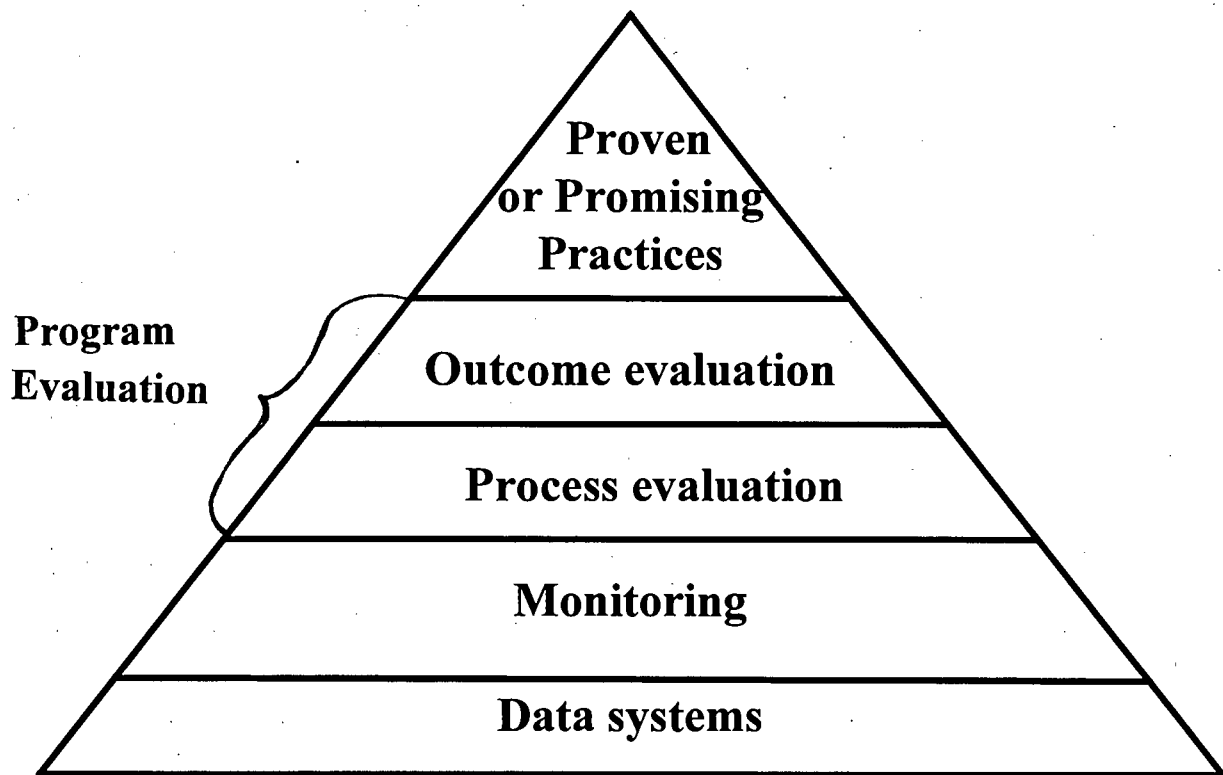
- Be flexible in evaluation design, within the limits of appropriate methodology.
- Test program models to ensure public accountability and encourage continuous improvement.
- Request funding for program evaluation, including data collection and analysis, as part of proposals for program start-up or expansion.
- Ensure that evaluation staff are able to provide an objective, unbiased perspective on the program(s) being evaluated.
- Develop and share written evaluation plans including statements of the evaluation purpose, criteria, roles and process with key stakeholders, as appropriate, before the evaluation begins.
- Provide the programs being evaluated with the opportunity to review drafts and respond to reports before they are finalized.
- Ensure the significance of evaluation findings is clearly understood and stated for policy and decision-makers.
- Accommodate as much as possible the program's internal schedules and resources when conducting an evaluation.
- Develop a protocol for the steps to be taken in completing an evaluation and standards to be applied for use of evaluation findings.

# **Terminology**



**There is a jumble of terms used in different ways in Multnomah County. This has made it difficult to agree on a common approach to program evaluation.**

# How confident are we that we understand why something is happening?



1. Data systems are the base of the pyramid. They support all the other levels.
2. We monitor Multnomah County programs using Key Results. We gather enough indicators to briefly describe what is happening, but not enough to determine why. Monitoring can identify areas of concern where we can focus limited evaluation resources.
3. Program evaluations vary in their degree of rigor. Outcome evaluations are more expensive, but tell us with more surety both what is happening and why it is happening.
4. Proven or promising practices offer the highest level of surety because they are based on the results of many evaluations.

# The Measurement Continuum

Measurement continuum:		Definition:	Examples:
Program Evaluation	Proven or Promising Practices	Results from many evaluations are combined to determine what has been shown to work the “best” in many different localities.	Describe what national research says are the most promising ways to prevent teen pregnancy.
	Outcome Evaluation	Determines <b>why</b> specific <i>outcomes</i> are being achieved in a particular program. This is done by <i>experimental design</i> .	Do teens who use the school based health centers get pregnant less than comparable teens who don't use the health centers?
	Process Evaluation	Describes <b>what</b> is being done in some detail, often in comparison to a prescribed “recipe for success”. Many <i>process indicators</i> are used.	How many times do these clients use the school based health centers? What type of services do they receive?
	Monitoring (Also called Performance Measurement)	Uses a few <i>indicators</i> to describe in very little detail both <b>what</b> is being done ( <i>process indicators</i> ) and <b>what</b> is being achieved ( <i>outcome indicators</i> ).	The number and percent of family planning clients who use school based health centers who don't get pregnant during the school year.

# What Populations Do We Measure in Multnomah County?

People Served by Individual Programs	People Served by Departments	The Entire Community
<p><b>Key Results</b></p> <p>Usually Key Results measure <b>program outcomes</b>. Some Key Results are <i>efficiency measures</i>; they describe the “cost per output”.</p>	<p><b>Performance Trends</b></p> <p>Performance Trends measure the outcomes of many Multnomah County <b>programs in combination</b>.</p>	<p><b>Benchmarks</b></p> <p>Most Benchmarks measure <b>community conditions</b>. Most of the people counted in the Benchmark are not directly served by Multnomah County programs.</p>
<p><b>Example 1:</b></p> <p>a. Family planning clients who use the school based health centers who don’t get pregnant during the school year. b. Cost per visit.</p>	<p>Pregnancy rate of all teen females served by the Health Department.</p>	<p>Teen pregnancy rate for Multnomah County.</p>
<p><b>Example 2:</b></p> <p>a. Percent of juveniles drug free for 1 year post treatment. b. Cost to send a juvenile to alcohol and drug treatment.</p>	<p>The recidivism rate of all juveniles served by Juvenile and Adult Community Justice (JAC). Multiple JAC programs contribute to this overall recidivism rate.</p>	<p>The juvenile delinquency rate in Multnomah County.</p>

## Recent Examples of Measurement

<b>Measurement continuum:</b>	<b>Who Is Being Measured?</b>		
	<b>People Served by Individual Programs</b>	<b>People Served by Departments</b>	<b>The Entire Community</b>
<b>Proven or Promising Practices</b>	Example: Each provider submits quality assurance plans that model national client care standards (peer review, internal monitoring)	Example: Measuring offenders risk of re-offense and supervising them according to their risk level.	Example: Measuring and building on the assets (strengths) of school children to increase their chances of success.
<b>Outcome Evaluation</b>	Example: Evaluation of effectiveness of the postponing sexual involvement program	Example: Evaluation of Senate Bill 1145 (local supervision of felons)	<b>Comprehensive Evaluation</b>  (Commission on Children and Families; Public Safety Council)
<b>Process Evaluation</b>	Example: Adult Foster Care Audit	Example: Mental Health Crisis System Evaluation	
<b>Monitoring</b>	<b>Key Results &amp; Contract Monitoring</b>	<b>Performance Trends</b>	<b>Benchmarks</b> Portland-Multnomah Progress Board

# Building Blocks for Accountability

	What should be? <sup>1</sup> Is the program well managed? Is this the best possible program design?	What is happening? Why is it happening?	
Type of Review:	Performance Audits	Prog. Evaluation	Monitoring
Who Does It?	Auditor's Office	Departments; County evaluation unit; or outside contractors	Departments with County coordination
Motivation	To ensure management is efficiently and effectively using public resources	To determine if the program is effective and why.	To keep a broad overview of all County-funded programs

In order to answer “What should be?” the Auditor will also ask “What?” and “Why?” Therefore, Audits often involve program evaluation. Evaluators almost always stay with “What?” and “Why?” questions, and seldom stray into “What should be?” unless they cite proven or promising practices.

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# **What Accountability Building Blocks Do We Have in Place?**

**Audits:** The auditor's office is able to complete about 5 audits per year.

**Proven or Promising practices:** Most departments are able to keep somewhat abreast of "best practices" by attending national and regional conferences. A more systematic gleaning and application of national "best practices" could probably improve the state-of-the-art of many county programs.

## **Program Evaluation:**

- 1) The Health Department has a pre-eminent evaluation capacity, but it is primarily funded by and focused on state and federal grants.
- 2) The Sheriff's Office, Juvenile and Adult Community Justice, and Department of Community and Family Services (DCFS) can do a limited number of evaluations per year. DCFS also has a separately funded Target City evaluation staff, however, this is federally funded and is focused entirely on the Target Cities project.
- 3) Aging and Disability Services, Environmental Services, the District Attorney, and the Library do not have evaluation staff.
- 4) Support Services has one evaluation position to improve departmental capacity to do monitoring and evaluation

- 5) The Public Safety Coordinating Council has one research director, and an evaluation plan. There are limited evaluation resources to carry out the plan.
- 6) The Commission on Children and Families is currently considering evaluation initiatives via professional evaluation services.

### **Monitoring:**

- 1) All departments, with varying degrees of rigor, monitor their programs with Key Results and Performance Trends. Capacity of the Department of Community and Family Service to monitor its programs was reduced in the 1997-98 budget.
- 2) The Portland-Multnomah Progress Board monitors local Benchmarks.
- 3) The State Progress Board monitors State of Oregon Benchmarks; most data is available by county.
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- 5) The Public Safety Coordinating Council publishes a monthly report which includes a limited number of criminal justice agency output indicators.
- 6) The Multnomah County Auditor and City Auditor jointly monitor citizen satisfaction with local government services.

## **What Are Our Next Steps?**

- 1) Make better use of what we already collect. Multnomah County already collects data at three levels: community, departmental, and program.
  - a. Improve linkage of these measures to determine how program level changes contribute to departmental level and community level outcomes.
  - b. Systematically use these linked measures when funding new programs or reviewing progress toward strategic goals.
- 2) Continue efforts to establish a base capacity of all departments to monitor their programs and to use those measures in program management.
- 3) Improve our use of “proven or promising practices.”
  - a. The Board should insist on a presentation of proven or promising practices before funding new programs.
  - b. Explore better linkages with institutions of higher education.
  - c. Explore other ways to ensure that County programs are using state-of-the-art practices.

## **Next steps--continued**

- 4) Department of Support Services (DSS) should continue to assist departments as needed in evaluation of programs of strategic importance to the County.

Evaluations which DSS is currently assisting include:

- a. Evaluation of Senate Bill 1145--local supervision of felons with sentences under one year (underway for 6 months);
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- d. Evaluation of the Strategic Investment Program.
- e. Evaluation of RESULTS and Diversity implementation—Process Improvement Team registration data base and Diversity conference evaluation.

- 5) Explore ways to better address provider concerns about data collection, evaluation, and system improvement. For example, process improvement teams, a RESULTS tool, jointly comprised of providers and county staff could be used to gather and analyze data and make recommendations to improve system operation.

## **Next steps—continued**

- 6) A Program Evaluation Workgroup should meet quarterly to:
  - a. review funding proposals for evaluation;
  - b. share best practices and current evaluation activities;
  - c. help formulate strategy for better linking with outside resources, such as local universities;
  - d. provide for peer review/outside perspective on departmental evaluations;
  - e. inventory program evaluation expertise within the County.
  
- 7) The Board should designate an evaluation contingency fund in each year's budget for evaluation of programs which are critical to achieving strategic priorities. The Program Evaluation Workgroup would review evaluation proposals for importance and methodology and report back to the Board to authorize release of funds.

## **Funding Recommendations**

- 1. Re-establish base capacity in the Department of Community and Family Services to monitor and evaluate their programs.**

**\$144,972**

- 2. Establish an evaluation contingency fund to carry out specific program evaluations, or provide specific outside evaluation expertise, for example, consulting on best practices, scanner technology.**

**\$120,000**

- 3. Enhance Department of Support Service's capacity to assist departments to develop their evaluation capacity**

**\$30,311**

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**Total request: \$295, 283**

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accountability, and accountability comes  
from management taking time  
to assess the organization's progress  
toward improvement goals.**

Making Quality Happen  
Jossey-Bass Publishers

## Glossary:

*Benchmark* - "Vital signs" of our community which are tracked in order to maintain or improve its condition, for example, the "high school completion rate" or the "crime rate".

*Comprehensive evaluation* - evaluation of an entire system. This type of evaluation determines the effects of multiple related programs on the functioning of a whole community or population.

*Evaluation* - Systematic collection and analysis of data to determine in some detail what is happening (process evaluation) and why it is happening (outcome evaluation).  
[Also see definition of *Monitoring*]

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*Indicators* - Indicators are nothing more than measures. There are many types of indicators. One way to classify indicators is to describe what is measured:

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*Efficiency indicators* measure how much one unit of process, output, or outcome costs. For example: \$100 per evaluation (*cost per process*); \$200 per client evaluated (*cost per output*); \$700 per client who successfully learns parenting skills (*cost per successful outcome*).

*Key Result* is the name that Multnomah County uses to describe an *outcome* at the program level. Sometimes Key Results measure *outputs* or *efficiency*.

*Monitoring* is use of a few indicators to measure **what** is happening in a program. Monitoring does not use enough detailed systematic measurements to describe in depth what is happening or why it is happening.

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<sup>3</sup> Schandl, C.W. *Theory of Auditing*, Houston, Texas: Scholars, 1978, p.4.

SHARRON KELLEY  
Multnomah County Commissioner  
District 4



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Portland, Oregon 97204  
(503) 248-5213  
E-Mail: sharron.e.KELLEY@co.multnomah.or.us

## MEMORANDUM

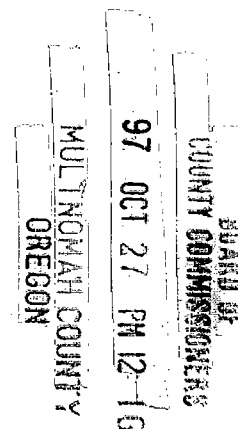
TO: Board of Commissioners

FROM: Commissioner Sharron Kelley

RE: Organizational Location of Evaluation Services

DATE: October 27, 1997

CC: Vickie Gates



### Background

The Board decision in June to set aside \$300,000 for evaluation issues provides a rare window of opportunity to move toward a more centralized approach to outcome evaluation. As recently as September 10, the Memo from Dave Warren to the Board on the status of General Fund Contingency describes a formal setaside of \$300,000 for a "central evaluation component".

The \$300,000 corresponded to funds cut from the CFS budget for their contacts monitoring unit as well about other funds sought by DSS for a position to assist Jim Carlson. The proposal from the Program Evaluation Workgroup would replace most of what was lost at the time of the June budget. The CFS funding covers not only base service data related to outcomes but also monitoring the level of service contractors are providing, quarterly reports, and process evaluations. The Workgroup proposal also takes the salary savings of \$120,000 for the Work Group to recommend a future BCC allocation of these funds for professional services. Six potential purposes are listed for the centralized contracting; and five of these fit with a decentralized system rather than a centralized unit.

The annualized costs of the Work Group budget recommendation exceed \$300,000 by about \$62,348. Because the annualized cost for personnel is \$262,000, and because the budget recommendations would stage an immediate funding of personnel while delaying the funding of centralized contracting, the Work Group proposal only leaves about \$38,000 for any enhanced centralized approach if BCC stays within budget. Future allocations of the professional

services spending may be chilled if the library levy were to fail on the turnout issue, leaving a projected deficit of \$8 million.

### Discussion

I believe the Work Group has failed to realize (or not considered) the overriding benefits for the County of a more centralized approach to outcome evaluation.

A centralized evaluation unit (or budget for outside contractors) would allow the Chair and the Board to dedicate resources to evaluating priority issues and benchmarks and the relative success of the strategies undertaken to achieve them. It would also assure more objectivity in the evaluations themselves, and insulate the evaluation function from competing with the programs themselves within the intra-departmental budgeting processes.

There are three primary downsides to leaving outcome evaluation with the departments:

1. The departments will continue to play a good cop/bad cop role in relation to their contractors. The outcome tracking role can at times interfere with the relationship building needed for system development and technical assistance. The latter functions are best performed at the department level. Outcome tracking could be handled centrally under the Department of Support Services (or the Auditor if DSS does not want to do it).
2. By leaving evaluation as a line-service function within the departments, the evaluators are more likely to see their role as advocates for programs.
3. The evaluation unit will remain vulnerable to budget cuts at the Department Manager level.

There are, admittedly, some advantages to the decentralized approach the Work Group would leave in place. Some managers are likely to continue with outcome evaluations even as the centralized approach is enhanced. Other managers may perceive themselves off the hook to track outcomes. Decentralized evaluators may have more program expertise and a greater sense of the relevance of data to management issues. All of these issues could be resolved, however, by pulling people out of each department who have expertise in evaluation as well as the department. The personnel shift could be accomplished in a staged approach. Fundamentally, the rationale for a centralized evaluation unit is the same as or even stronger than the reasons for a centralized budget office.

# **Measuring for Results in Multnomah County**

**A Report to the Board of County Commissioners  
by the Program Evaluation Workgroup  
October 28, 1997**

Vickie Gates, Director, Department of Support Services

Jim Carlson, Evaluation Specialist, Department of Support Services

Denise Chuckovich, Director, Office of Planning and Development,  
Health Department

Susan Clark, Director of Operations, Department of Community and  
Family Services

Jim Clay, Director Multnomah Commission on Children and Families

Karyne Dargan, Budget Supervisor, Department of Support Services

Suzanne Flynn, Deputy Auditor, Multnomah County Auditor's Office

Steve Pearson, Budget Analyst, Department of Support Services

Steve Rider, Evaluation Specialist, Dept. of Community and Family  
Services

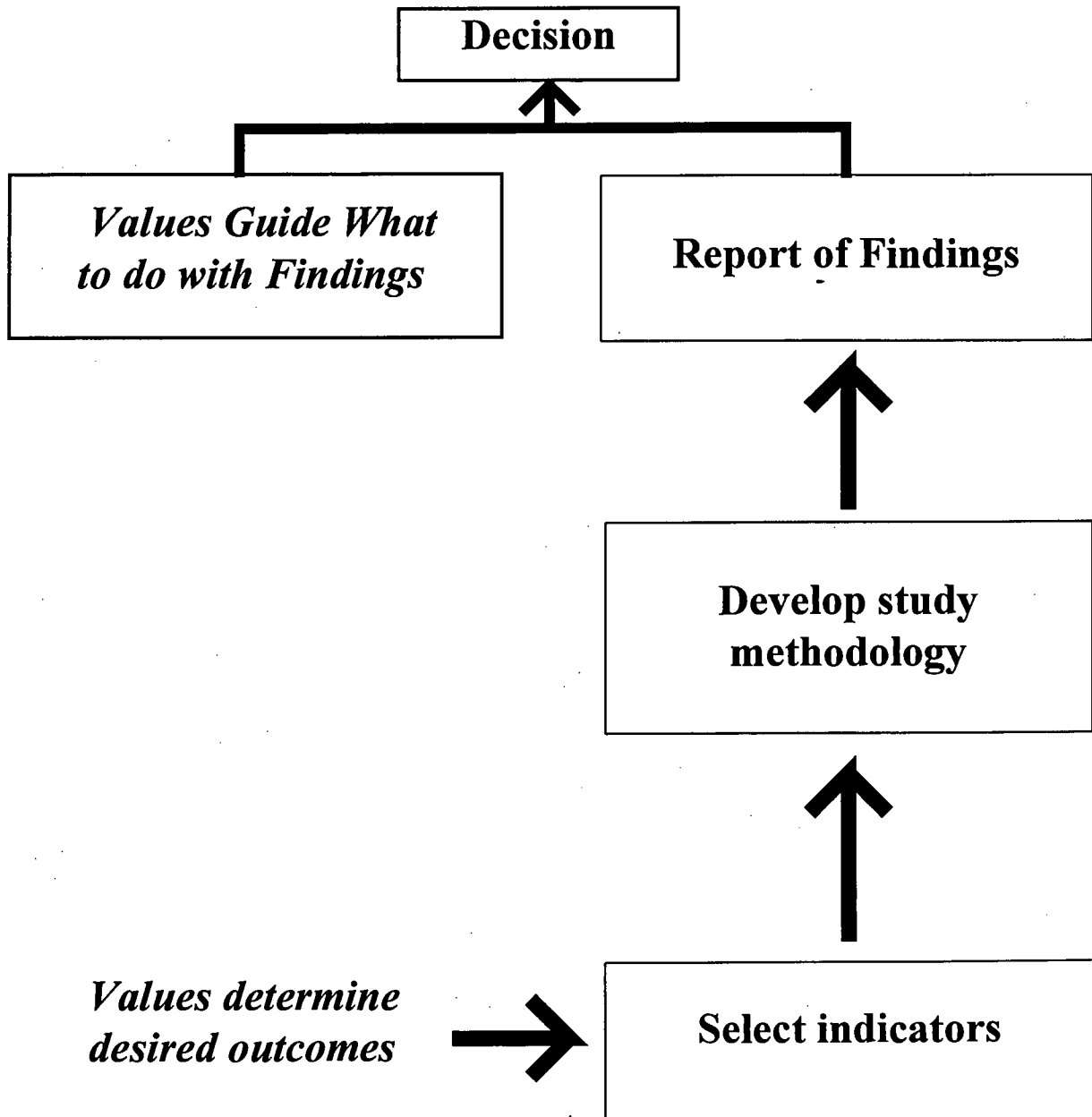
Meganne Steele, Resource Mgt. Manager, Department of Juvenile and  
Adult Community Justice

Barb Timper, Contracts and Evaluation Unit Supervisor, Department of  
Community and Family Services

# **Purposes of this Presentation**

- 1. Establish guidelines for program evaluation**
- 2. Clarify use of terms**
- 3. Recommend next steps**

# Values Make the Final Decision; Measures Alone Don't



# GUIDING PRINCIPLES IN PROGRAM EVALUATION

- Clear measurable outcomes

Program planning should ensure that program outcomes are clearly stated and support the overall goals of the County. Evaluation measures attainment of these outcomes; it does not determine what the program's outcomes should be.

- Collaborative process

Program planning should be a collaborative process involving program staff, providers, and the community. Evaluators should be included in the early stages of program planning to help determine how program goals will be measured and linked to longer term desired social outcomes.

- Cost effective

Each evaluation should be useful and cost-effective by clarifying the information needs of policy-makers, administrators, and other stakeholders. Consider the relative costs and utility of a variety of evaluation approaches.

- Learning process

The evaluation process should foster a spirit of cooperation and continuous improvement to increase acceptance of evaluation findings and to set the stage for implementation of recommendations.

- Clear, candid results

In the reporting process, evaluators should be clear, candid, and constructive in presenting findings.

- Credibility

Findings must be unbiased, supportable, and clearly linked to the underlying data. Peer review, or outside evaluation in some cases, should help ensure objectivity.

- Results used

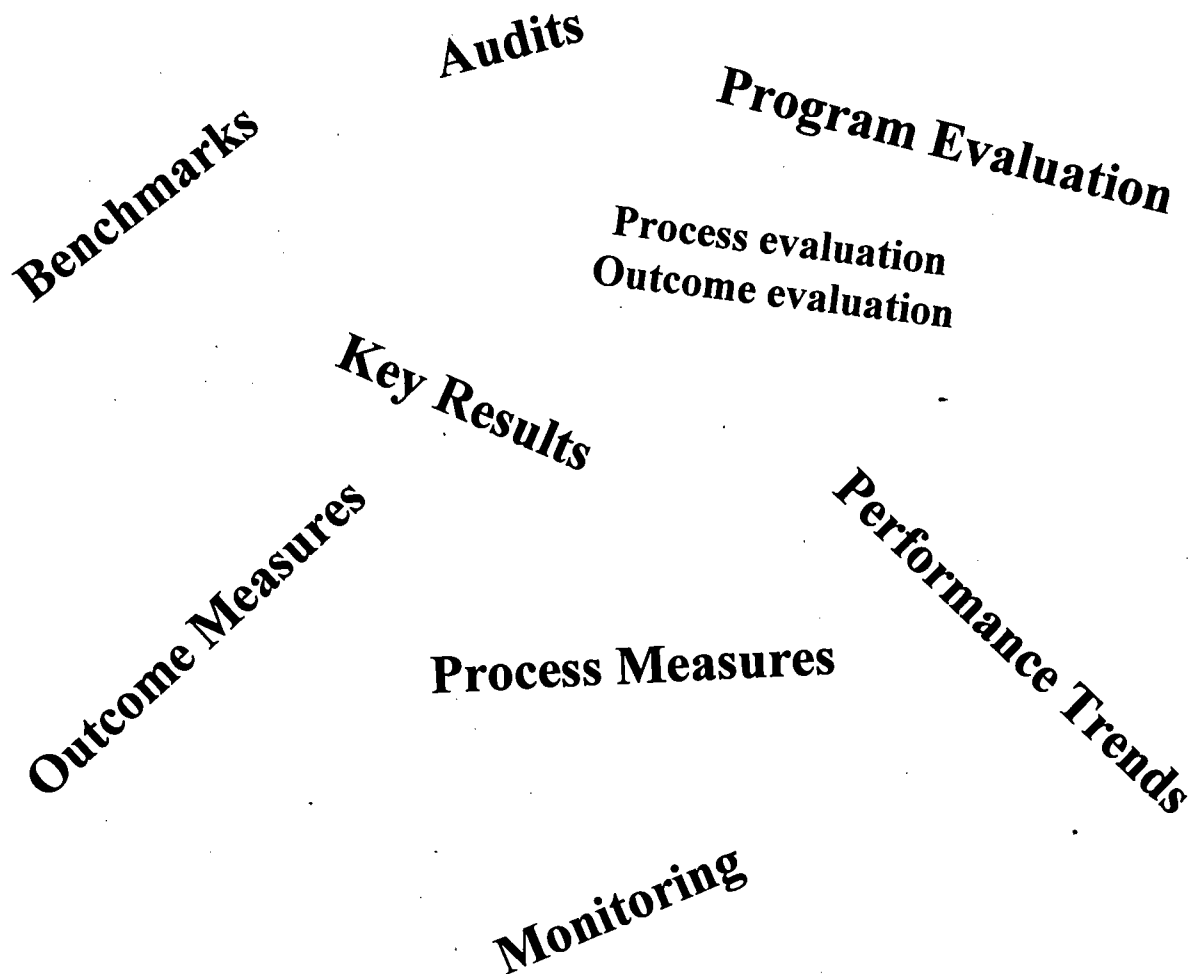
After the evaluation, as opportunities arise, the County should assist key stakeholders to utilize the evaluation for upcoming decisions.

# KEY STRATEGIES

- Be flexible in evaluation design, within the limits of appropriate methodology.
- Test program models to ensure public accountability and encourage continuous improvement.
- Request funding for program evaluation, including data collection and analysis, as part of proposals for program start-up or expansion.
- Ensure that evaluation staff are able to provide an objective, unbiased perspective on the program(s) being evaluated.
- Develop and share written evaluation plans including statements of the evaluation purpose, criteria, roles and process with key stakeholders, as appropriate, before the evaluation begins.
- Provide the programs being evaluated with the opportunity to review drafts and respond to reports before they are finalized.
- Ensure the significance of evaluation findings is clearly understood and stated for policy and decision-makers.
- Accommodate as much as possible the program's internal schedules and resources when conducting an evaluation.
- Develop a protocol for the steps to be taken in completing an evaluation and standards to be applied for use of evaluation findings.

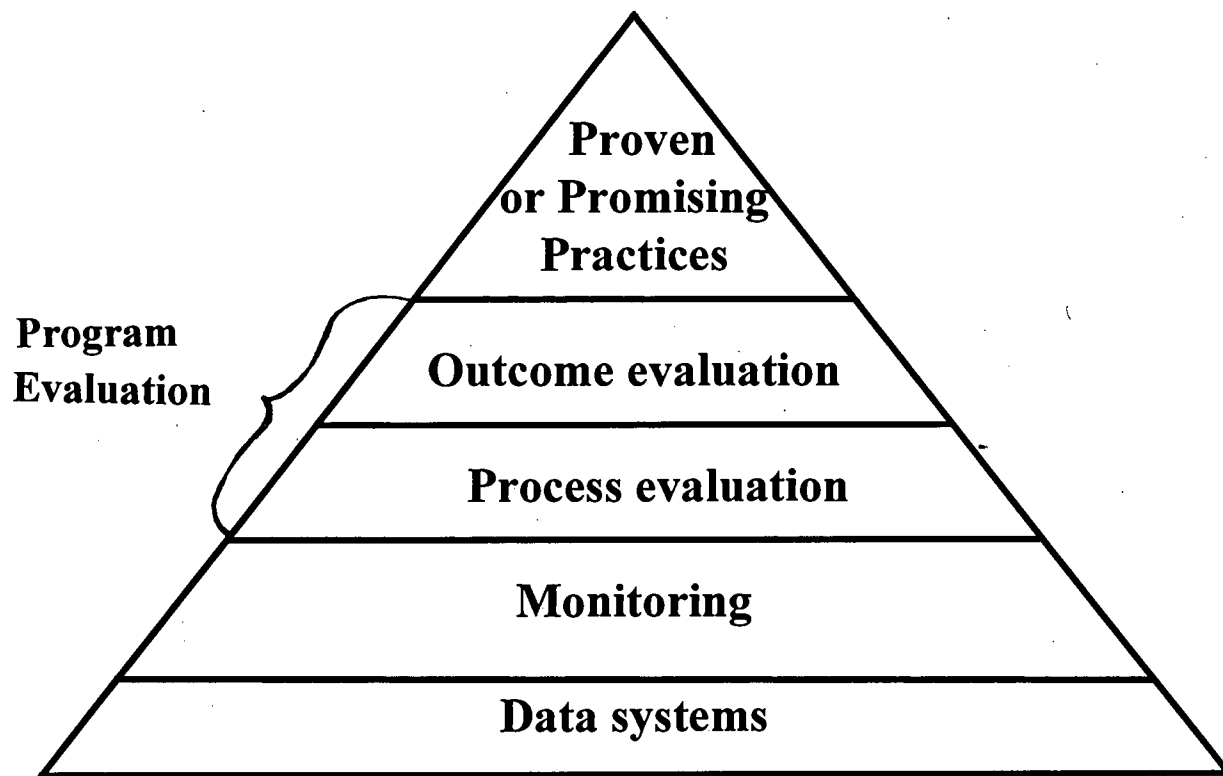


# Terminology



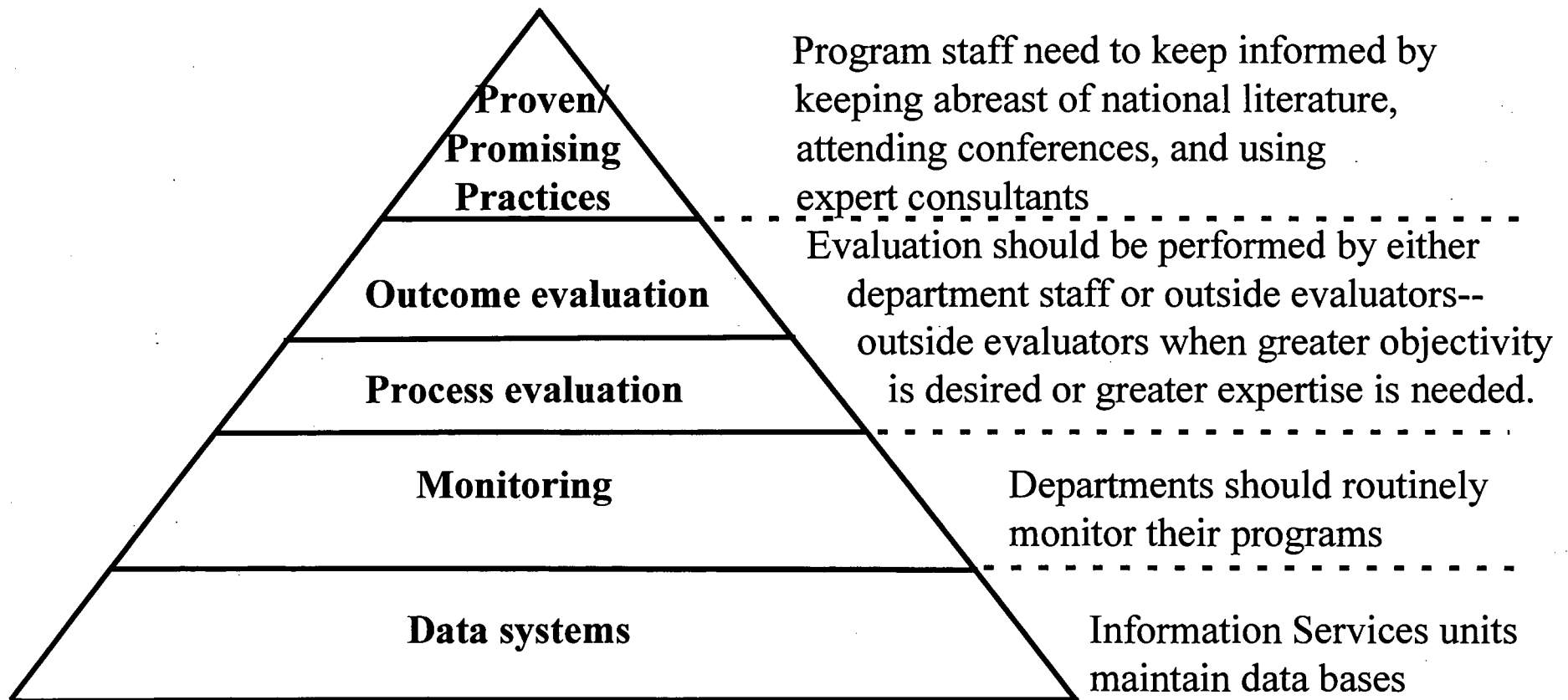
**There is a jumble of terms used in different ways in Multnomah County. This has made it difficult to agree on a common approach to program evaluation.**

# How confident are we that we understand why something is happening?



1. Data systems are the base of the pyramid. They support all the other levels.
2. We monitor Multnomah County programs using Key Results. We gather enough indicators to briefly describe what is happening, but not enough to determine why. Monitoring can identify areas of concern where we can focus limited evaluation resources.
3. Program evaluations vary in their degree of rigor. Outcome evaluations are more expensive, but tell us with more surety both what is happening and why it is happening.
4. Proven or promising practices offer the highest level of surety because they are based on the results of many evaluations.

# Who Should Perform These Functions?



**Measurement in Multnomah County is performed using a mix of departmental, centralized, and outside expertise**

# The Measurement Continuum

Measurement continuum:		Definition:	Examples:
Program Evaluation	Proven or Promising Practices	Results from many evaluations are combined to determine what has been shown to work the “best” in many different localities.	Describe what national research says are the most promising ways to prevent teen pregnancy.
	Outcome Evaluation	Determines <b>why</b> specific <i>outcomes</i> are being achieved in a particular program. This is done by <i>experimental design</i> .	Do teens who use the school based health centers get pregnant less than comparable teens who don’t use the health centers?
	Process Evaluation	Describes <b>what</b> is being done in some detail, often in comparison to a prescribed “recipe for success”. Many <i>process indicators</i> are used.	How many times do these clients use the school based health centers? What type of services do they receive?
	Monitoring (Also called Performance Measurement)	Uses a few <i>indicators</i> to describe in very little detail both <b>what</b> is being done ( <i>process indicators</i> ) and <b>what</b> is being achieved ( <i>outcome indicators</i> ).	The number and percent of family planning clients who use school based health centers who don’t get pregnant during the school year.

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<sup>2</sup> Comptroller General of the United States, *Government Auditing Standards, 1994 Revision*, Washington, D.C.: U.S. General Accounting Office, 1994, p 14.

<sup>3</sup> Schandl, C.W. *Theory of Auditing*, Houston, Texas: Scholars, 1978, p.4.