

AGENDA COVER MEMO

W. a. d.

DATE: February 6, 2006 (Date of Memo)
February 22, 2006 (Date of Meeting)

TO: Lane County Board of Commissioners

DEPT.: Public Works Department

PRESENTED BY: Jerry Kendall, ^{JK} Associate Planner, Land Management Division

AGENDA ITEM TITLE: Order No. 06-_____ In the Matter of Electing Whether or Not to Hear Arguments on an Appeal of a Hearings Official's Decision Affirming a Planning Director Denial of a Request for a Special Use Permit for a Home Occupation to store and distribute Class B and C Fireworks and chemicals within an EFU Zone as provided by LC 16.212(4)(a). (File PA 05-5382/Tanner)

I. MOTION

MOVE TO ADOPT THE ORDER ESTABLISHING THE BOARD'S ELECTION TO NOT HEAR ARGUMENTS IN AN APPEAL OF THE HEARINGS OFFICIAL'S DECISION AND TO AFFIRM THE HEARINGS OFFICIAL'S INTERPRETATION OF STATE LAW ON THE RECORD.

II. ISSUE OR PROBLEM

An appeal to the Board, contesting a Hearings Official decision affirming the Planning Director denial of an Application for a Home Occupation to store and distribute Class B and C fireworks and chemicals within the Exclusive Farm Use (E-25) Zone, has been received by the Director. Pursuant to Lane Code 14.600, the Board must now decide whether or not to hear the appeal by applying criteria set forth in the Code.

III. DISCUSSION

A. Background

1. Property involved in this action is a 1.35 acre parcel identified as Map 18-02-27, tax lot 900 located at 36366 Valley Road, Pleasant Hill, and zoned E-25 (Exclusive Farm Use), within the jurisdiction of the Lane County Rural Comprehensive Plan and Lane Code Chapter 16.
2. In the form of application PA 05-5382, the Applicant submitted a request on March 28, 2005 to store and distribute Class B and C Fireworks and chemicals within an EFU Zone as provided by LC 16.212(4)(a).

3. The Planning Director denied the application on July 7, 2005.
4. A timely appeal of the Planning Director decision was filed on July 18, 2005. The Planning Director affirmed the decision and scheduled the appeal for a de novo review by the Hearings Official.
5. A hearing before the Lane County Hearings Official was held on September 1, 2005. The record was held open until October 26 at the request of parties.
6. On November 21, 2005, the Hearings Official issued a decision affirming the Planning Director's denial of the proposal.
7. A timely appeal of the Hearings Official's decision was filed by the Applicant on December 1, 2005. On December 8, the Hearings Official affirmed his decision.

B. Elective Board Review Procedure

The Elective Board Review Procedure in Lane Code 14.600(2)(c) and (d) provides the Board with three options:

- To hear the appeal on-the-record,
- To not hear the appeal and to remain silent on the Hearings Official's decision, or
- To not hear argument in the appeal but to expressly agree with any interpretations of the comprehensive plan policies and implementing ordinances made by the Hearings Official in the decision being appealed and affirm the Hearings Official's decision.

The applicable subsections are:

LC14.600(2)(c) The Board shall specify whether or not the decision of the Board is to have a hearing on the record for the appeal and shall include findings addressing the decision criteria in LC 14.600(3) below. If the Board's decision is to have a hearing on the record for the appeal, the Board order shall also specify the tentative date for the hearing on the record for the appeal and shall specify the parties who qualify to participate in the hearing on the record for the appeal.

LC14.600(2)(d) If the decision of the Board is to not have a hearing, the Board order shall specify whether or not the Board expressly agrees with or is silent regarding any interpretations of the comprehensive plan policies or implementing ordinances made by the Hearings Official in the decision being appealed. The Board order shall affirm the Hearings Official decision.

If the Board's decision is to hear arguments on the appeal, then the Board must adopt an Order and findings specifying the tentative date for a hearing and the parties who qualify to participate in a hearing on the record for the appeal. Such an Order is not attached here and will need to be produced if the Board elects to hear.

In order for the Board to hear the appeal, the Decision Criteria of LC 14.600(3) requires that one or more of the four criteria cited below, be satisfied:

(3) Decision Criteria. A decision by the Board to hear the appeal on the record must conclude the issue raised in the appeal to the Board could have been and was raised before the close of the record at or following the final evidentiary hearing and must comply with one or more of the following criteria:

- a) The issue is of Countywide significance.***
- b) The issue will reoccur with frequency and there is a need for policy guidance.***
- c) The issue involves a unique environmental resource.***
- d) The Planning Director or Hearings Official recommends review.***

C. Analysis.

Character of the Appeal.

Basically stated, the proposal was denied because mandated setbacks could not possibly be met on the narrow parcel. The Hearings Official found that the required setbacks are either 270' or 540' from the storage magazine to lot lines and inhabited buildings, the two distances dependent on whether the magazine is barricaded or not. The parcel is less than 214' wide.

The chain of regulation that leads to that conclusion is described in the Hearings Official's decision, and is not repeated here.

The Applicant claims that the Hearings Official exceeded his authority by failing to follow the procedure and language of the 2004 Structural Specialty Code, misreading a footnote in Table 415.3.1 and reaching the conclusion that the storage magazine for the fireworks is subject to the provisions of that table, including the need for the setbacks described above.

In addition, the Applicant maintains that the Hearings Official further misread another footnote in Table 415.3.1, which, the Applicant maintains, exempts the storage magazine from the Table's requirements. Contrary to the Applicant's assertion, the Hearings Official noted that the footnote applies to "buildings containing explosive material", and therefore the table restriction applied.

Lastly, the Applicant maintains the 2003 version of the International Fire Code applies, resulting in only a 100' separation for Class C fireworks storage from inhabited buildings and the county road which fronts the parcel, and a 50' separation between the above ground magazine and the operations building. Likewise, the Applicant reasons that a 75' and 50' separation is required for Class B fireworks, attainable on the subject property. The Hearings Official disagrees, noting that the 2004 edition of the International Fire Code is applicable, per OAR 837-040-0010.

Both LMD staff and the Hearings Official were assisted throughout by LMD Building Official Tony West and Kristina Deschaine of the State Fire Marshall's Office. While some interpretation of the state codes and associated tables were done by the Hearings Official, such were done in the context of the broader codes, and appears to be logical.

If, pursuant to Lane Code 14.600(2)(d), the Board agrees with the Hearings Official's decision and affirmation of his decision, it is then appropriate not to hear arguments on the appeal and to adopt the attached Order affirming and adopting the Hearings Official's justification for the decision, findings of fact, and conclusions of law as written in his decision of November 21, 2005.

If on the other hand the Board concludes that further interpretation of issues raised in the appeal is necessary, then it is appropriate to schedule an on the record hearing as authorized by Lane Code 14.600(2)(c) and conducted pursuant to Lane Code 14.600. A new Order with Findings will be needed in lieu of the attached Order.

Analysis of Election to Hear Criteria.

Each Lane Code 14.600(3)(a)-(d) election-to-hear criterion is presented below with the Director's analysis.

a. *The issue is of Countywide significance.*

The application was denied on a site specific issue, that the small dimensions of the parcel made it impossible to meet mandated setbacks for the storage of fireworks. The subject parcel, zoned Exclusive Farm Use, is only 1.35 acres in size, far below the 25 acre average parcel size for the E-25 zone. The setbacks are for fireworks per the Structural Specialty Code. Commercial fireworks endeavors are not found throughout the county in frequency or geographical distribution.

b. *The issue will reoccur with frequency and there is a need for policy guidance.*

The issue is not expected to occur with frequency, as the proposal was denied solely on the inability to meet required setbacks. As stated above, the 1.35 acre parcel is much smaller than average for the zone. In addition, businesses involving fireworks are rare in Lane County. Only one other such business is known to exist, and has ample acreage wherein setbacks are not problematic. There is no need for policy guidance.

c. *The issue involves a unique environmental resource.*

No unique or rare environmental resources on the property have been identified in the record.

d. *The Planning Director or Hearings Official recommends review.*

Neither the Hearings Official nor the Planning Director recommends review of the appeal.

D. Options

1. To hear the appeal on the record;
2. To not hear arguments on the appeal and to remain silent on the Hearings Official's decision and interpretations; or
3. To not hear arguments on the appeal, affirm the Hearings Official's decision, and to expressly agree with any interpretations of the comprehensive plan policies, or implementing ordinances or state law made by the Hearings Official in the decision being appealed.

E. Recommendation

Option 3 is recommended.

F. Timing

If the Board elects to hear the appeal, a date for an on-the-record hearing will need to be established following adoption of an Order electing to hear.

IV. IMPLEMENTATION/FOLLOW-UP

Notify the parties of the Board decision to adopt the attached Order, or

If the Board elects to hear the appeal, a new Order and Findings will need to be prepared and adopted, and notice of a hearing given, as soon as possible.

V. ATTACHMENTS

1. Board Order electing to not hear the appeal, with Exhibits "A" (findings) and "B" (Hearings Official Decision, November 21, 2005 with Affirmation of decision, December 8, 2005).
2. Appeal of Hearings Official November 21, 2005 decision, received on December 1, 2005, with arguments.
3. Map illustrating location of property.

More background information can be supplied if needed. If an on-the-record appeal hearing is scheduled, a complete copy of the record with all evidence will be made available to the Board.

IN THE BOARD OF COMMISSIONERS OF LANE COUNTY, OREGON

Order No. 06-_____ (In the Matter of Electing Whether or Not to Hear
(Arguments on an Appeal of a Hearings Official's Decision
(Affirming a Planning Director Denial of a Request for
(a Special Use Permit for a Home Occupation to store and
(distribute Class B and C Fireworks and chemicals within
(an EFU Zone as provided by LC 16.212(4)(a). (File PA 05-
(5382/Tanner)

WHEREAS, the Lane County Hearings Official has made a decision on application PA 05-5382;
and

WHEREAS, the Lane County Planning Director has accepted an appeal of the Hearings
Official's Decision to the Board of County Commissioners pursuant to LC 14.515; and

WHEREAS, the Lane County Hearings Official has affirmed his decision on application PA 05-
5382; and

WHEREAS, Lane Code 14.600 provides the procedure and criteria which the Board follows in
deciding whether or not to conduct an on the record hearing for an appeal of a decision by the Hearings
Official; and

WHEREAS, the Board of County Commissioners has reviewed this matter at a public meeting
of the Board; NOW

THEREFORE, BE IT ORDERED the Board of County Commissioners of Lane County finds
and orders as follows:

1. That the appeal does not comply with the criteria of Lane Code Chapter 14.600(3) and
arguments on the appeal should therefore not be considered. Findings in support of this
decision are attached as Exhibit "A".
2. That the Board of County Commissioners expressly agrees with any interpretations of
the comprehensive plan policies, implementing ordinances, and state law made by the
Hearings Official in the decision attached as Exhibit "B".
3. That the Lane County Hearings Official decision dated November 21, 2005 is affirmed
by the Board of County Commissioners.

DATED this _____ day of February, 2006.

APPROVED AS TO FORM

Date 2-14-2006 lane county


OFFICE OF LEGAL COUNSEL

Chair, Lane County Board of Commissioners

FINDINGS IN SUPPORT OF THE ORDER

1. Property involved in this action is a 1.35 acre parcel identified as Map 18-02-27, tax lot 900 located at 36366 Valley Road, Pleasant Hill, and zoned E-25 (Exclusive Farm Use), within the jurisdiction of the Lane County Rural Comprehensive Plan and Lane Code Chapter 16.
2. In the form of application PA 05-5382, the Applicant submitted a request on March 28, 2005 to store and distribute Class B and C Fireworks and chemicals within an EFU Zone as provided by LC 16.212(4)(a).
3. The Planning Director denied the application on July 7, 2005.
4. A timely appeal of the Planning Director decision was filed on July 18, 2005. The Planning Director affirmed the decision and scheduled the appeal for a de novo review by the Hearings Official.
5. A hearing before the Lane County Hearings Official was held on September 1, 2005. The record was held open until October 26 at the request of parties.
6. On November 21, 2005, the Hearings Official issued a decision affirming the Planning Director's denial of the proposal.
7. A timely appeal of the Hearings Official's decision was filed by the Applicant on December 1, 2005. On December 8, the Hearings Official affirmed his decision.
8. In order for the Board to hear arguments on the appeal, Lane Code 14.600(3) requires one or more of the following criteria to be found by the Board to apply to the appeal:
 - *The issue is of Countywide significance.*
 - *The issue will reoccur with frequency and there is a need for policy guidance.*
 - *The issue involves a unique environmental resource.*
 - *The Planning Director or Hearings Official recommends review.*
9. The Board of Commissioners finds that there are no issues of countywide significance. The application was denied on a site specific issue, that the small dimensions of the parcel made it impossible to meet mandated setbacks for the storage of fireworks. The subject parcel, zoned Exclusive Farm Use, is only 1.35 acres in size, far below the 25 acre average parcel size for the E-25 zone. The setbacks are for fireworks per the Structural Specialty Code. Commercial fireworks endeavors are not found throughout the county in frequency or geographical distribution.
10. The Board finds that the issue is not expected to occur with frequency, as the proposal was denied solely on the inability to meet required setbacks. The 1.35 acre parcel is much smaller than average for the zone. In addition, businesses involving fireworks are rare in Lane County. Only one other such business is known to exist, and has ample acreage wherein setbacks are not problematic. There is no need for policy guidance.

11. The Board of Commissioners finds that the subject property is not a unique environmental resource.
12. Neither the Planning Director nor the Hearings Official recommends review.
13. To meet the requirements of Lane Code 14.600(2)(b), the Board is required to adopt a written decision and order electing to have a hearing on the record for the appeal or declining to further review the appeal.
14. The Board has reviewed this matter at its meeting of February 22, 2006, and finds that the appeal does not comply with the criteria of Lane Code Chapter 16.600(3), and elects to not hold an on the record hearing.

**LANE COUNTY HEARINGS OFFICIAL
APPEAL OF A PLANNING DIRECTOR DENIAL OF A REQUEST FOR SPECIAL USE
PERMIT FOR A HOME OCCUPATION TO STORE AND DISTRIBUTE CLASS B AND
C FIREWORKS AND CHEMICALS WITHIN AN EFU DISTRICT**

Application Summary

Daniel Tanner, 36366 Valley Road, Pleasant Hill, OR 97455. The applicant requests special use permit approval of a home occupation to allow the storage and distribution of Class B and C fireworks within the EFU Zone (E-25/RCP). The Planning Director denied the application on July 6, 2005, on that basis that it did not meet the criteria of Lane Code 16.212(4)(a)(v) and (viii) because a proposed storage magazine and shop could not meet the setback requirements of the State of Oregon 2004 Structural Specialty Code amendments. A timely appeal to the Lane County Hearings Official was filed.

Parties of Record

Daniel Tanner

Roger Lee Clark

William Tanner

Application History

Hearing Date: September 1, 2005
(Record Held Open Until October 26, 2005)

Decision Date: November 21, 2005

Appeal Deadline

An appeal must be filed within 10 days of the issuance of this decision, using the form provided by the Lane County Land Management Division. The appeal will be considered by the Lane County Board of Commissioners.

Statement of Criteria

Lane Code 16.212(4)(a)

Findings of Fact

1. The property subject to this application, hereinafter referred to as the "subject property," is located at 36366 Valley Road, Pleasant Hill, on the south side of the Road. The subject property is 1.35 acres in size and can be identified as tax lot 900, assessor's map 18-02-27. It is located on plot 473 and is zoned E-25/RCP. The subject property is currently

occupied by a dwelling, a manufactured home, a barn, woodshed, tool shed, pump house, storage shed and steel fireworks shed. The applicant/operator lives in the temporary mobile home, placed via permit BP 85-2262, for a medical hardship. The necessary renewals are current. The subject property is between 213.75 and 212.9 feet wide along its east-west axis.

The subject property is composed of 100 Oxley gravelly silt loam soil, which is not a high value farm soil. There are no Class I streams located within 100 feet from any of the structures to be used for the proposed use nor is the property located within a flood hazard area. The National Wetlands Inventory Map for the area (Jasper 1) does not show any wetlands or waterways on the subject property and the Rural Comprehensive Plan does not identify it as unique wildlife habitat.

2. The applicant requests a home occupation to allow the storage and distribution of Class B and C fireworks that are manufactured in China and the storage of chemicals. The fireworks storage would occur within an 8' x 6' x 4' Type IV magazine structure located in the southeast corner of the subject property, 11 feet from the south lot line and 16 feet from the east lot line. The magazine is located more than 198 feet from the western property line and slightly over 160 feet from Valley Road. No more than 250 pounds of 1.4G consumer fireworks and no more than 50 pounds of already manufactured 1.3G consumer fireworks would be stored in this structure. The structure has been approved by the US Bureau of Alcohol Tobacco and Firearms and is metal lined with a wooden exterior.

The 2003 International Fire Code organizes fireworks into two categories: 1.4G (Formerly known as Class C, Common Fireworks) and 1.3G (Formerly Class B, Special Fireworks). The former consist of small fireworks designed primarily to produce visible or audible effects by combustion. These fireworks are not considered to be explosive materials if they comply with certain construction, chemical composition and labeling regulations. 1.3G fireworks are considered large fireworks devices which are explosive materials intended for use in fireworks displays. These fireworks include firecrackers that contain more than 2 grains of explosive composition, aerial shells containing more than 40 grams of pyrotechnic composition, and other display pieces that don't qualify as 1.4G fireworks. 1.4G fireworks can be stored in magazines rated to hold 1.3G fireworks but the reverse is not true.

The storage of chemicals will be in a 24' x 14' existing shop located 26' south of the single family dwelling. This structure is typical in construction and design to many personal use workshops found on rural land. The chemicals include:

1. Aluminum powder (Coated): 1 drum (50 lbs)
2. Potassium Nitrate (50 lb bag)
3. Ammonium Nitrate (50 lb bag)
4. KCL04 1 drum (50 lbs)
5. Titanium Sponge 1 drum (50 lbs)

And the following in smaller quantities which are seldom used, but used occasionally in study or testing:

1. Strontium Nitrate (2 lbs)
2. Zirconium Hydride (2 lbs)
3. Barrium Nitrate (2 lbs)
4. Titanium flakes (2 lbs) for flitter
5. Standard grade Glyserine (1 bottle)
6. Calcium Carbonate (2 lbs) (Commonly known as Plaster of Paris)

Some of the chemicals will be sold individually and, when mixed off-site, will be considered as a Class A explosive.

The applicant also provides the service of designing fireworks. This work primarily consists of developing experimental formulations for special effects. The proposal does not involve the detonation of fireworks or explosives on the subject property nor will customers come to the site.

3. Lands surrounding the subject property are relatively flat and generally are devoted to pasture. A dwelling is located on tax lot 902, adjacent to the west. The next closest dwelling is about 500 feet to the north of the subject property. Tax lots 901 and 1004, which border the subject property on the south and east, respectively, are in pasture.
4. Standards applicable to the storage of fireworks include the following:

Lane Code 11.010(1). Effective July 1, 2004, Lane County adopted the Building Code as defined in ORS 455.010(8).

ORS 455.010(8) states that the State building code includes the combined specialty codes. Within this category of specialty codes is the Oregon Structural Specialty Code, which prescribes structural standards for building construction.¹

Section [F]414.6 of the 2004 Oregon Structural Specialty Code provides that “[T]he outdoor storage, dispensing and use of hazardous materials shall be in accordance with the *Oregon Fire Code*.” Section 415.1 of the same code provides that buildings and structures with an occupancy in Group H shall also comply with applicable provisions of the *Oregon Fire Code*. Section [F]307.5 of the 2004 Oregon Structural Specialty Code classifies buildings and structures that contain consumer fireworks (1.4G Class C Common) as an H-3 High-Hazard Group.

Section 415.3.1 of the 2004 Oregon Structural Specialty Code provides setbacks from lot lines for buildings containing Group H occupancies. Table 415.3.1 provides minimum distance standards regarding the separation between lot lines and inhabited buildings and barricaded and unbarricaded magazines. The separation depends upon the quantity of

¹ ORS 455.010(9)

explosive material stored in the magazine. Table 415.3.1 also provides minimum separation distance between magazines that are also based upon the quantity of explosive material stored in the magazines.

Applicable to the proposed home occupation, Table 415.3.1 requires the buildings that store between 250 and 300 pounds of explosive material be located either 270 or 540 feet from the building to property lines and inhabited buildings, respectively, depending upon whether the building is barricaded or unbarricaded, Footnote "e" of Table 415.3.1 of the 2004 Oregon Structural Specialty Code provides that a magazine is a building or structure, other than an operating building, approved for the storage of explosive materials. This footnote also provides that "portable or mobile magazines not exceeding 120 square feet in area need not comply with the requirements of this code..." although it is made clear the magazines still must comply with the *Oregon Fire Code*.

OAR 837-040-0010 adopts the 2003 edition of the International Fire Code, subject to exclusions there from and amendments, as the Oregon Fire Code, 2004 edition. The storage and handling of fireworks as permitted in the Section 3304 of the International Fire Code were specifically excluded from the 2003 edition adopted by OAR 837-040-0010.

OAR 837-040-0140 adopts the fire and life safety provisions of the 2004 edition of the Oregon Structural Specialty Code as a standard for the purpose of evaluation of existing buildings. Section 3301.1.6 of the 2004 *Oregon Fire Code* requires that the manufacture, assembly and testing of fireworks shall comply with the requirements of the National Fire Protection Association (NFPA) 495 and NFPA 1124. Table 6-4.1 of NFPA contains standards for the separation of structures containing explosive materials from inhabited buildings that are identical to those contained in Table 415.3.1 of the 2004 edition of the Oregon Structural Specialty Code for between 250 and 300 pounds of explosive material. The separation requirement for magazines are correspondingly identical with Table 415.3.1 adopting the Table 6-4.1 standard for an unbarricaded magazine.

Decision

THE PLANNING DIRECTOR'S DENIAL OF THE TANNER REQUEST (PA 05-5382) FOR A HOME OCCUPATION IS AFFIRMED.

Justification for Decision (Conclusion)

This application is evaluated pursuant to the uses subject to the applicable criteria found in Lane Code 16.212(4).

Lane Code 16.212(4)(a) Home occupations that comply with these requirements:

(i) Shall be operated by a resident of the property on which the business is located;

The applicant/operator lives in the temporary mobile home, placed via permit BP 85-2262, for a medical hardship. The necessary renewals are current.

(ii) Shall employ on the site no more than five full-time or part-time persons;

While the applicant primarily runs the business by himself, his mother may be employed at times. While he has no current plans to add more employees, this provision does allow for employment of up to five employees, not counting the applicant.

(iii) Shall be operated substantially in the dwelling, or other buildings normally associated with uses permitted by LC 16.212;

The business will be conducted in three structures. One is the aforementioned 24' x 14' existing shop building, another is the 8' x 4' x 6' storage magazine structure. Per the applicant, the magazine is approved by the Bureau of Alcohol Tobacco and Firearms. It is metal lined with a wooden exterior. The third structure is the Applicant's dwelling, a mobile home, in which office work will be performed (using a computer, phone, fax).

The exterior of the shop looks typically like many personal use shops found on rural land, including land zoned for farm use. The magazine is relatively small in size and resembles (with the exception of the word "Explosives" on the exterior) the miscellaneous structures which can be found on farm zoned land, and used for storage, small animal coops, etc. The majority of the business activity will occur either within the shop building (design work) or as office work within the mobile home.

(iv) No structure shall be constructed for the home occupation use that would not otherwise be allowed by LC 16.212;

The Planning Director considered this standard to be met by the proposal but noted that the placement of the structures, as required by the Building Code, would be impossible on the lot because the required building code setbacks are greater than the width of the lot.

(v) Shall not unreasonably interfere with uses permitted by LC 16.212 or with existing uses permitted by the zoning of nearby lands;

The subject property is surrounded by land zoned E-25, Exclusive Farm Use, and nearby surrounding uses are pasture and a residence adjacent to the west.

The magazine storage unit will be located in the southeast corner of the property, 11' from the south property line, and 16' from the east line. The property is slightly less than 214 feet at its widest point so the magazine's location is over 300 feet from the nearest inhabited dwelling and slightly over 160 feet from Valley Road. The Planning Director, in part, denied the requested home occupation on the basis that the applicant could not

meet the fireworks setback standards imposed by the 2004 Oregon Structural Specialty Code, as adopted by Lane County.

Of primary issue is the identification of standards that are applicable to the storage of between 250 and 300 pounds of fireworks. The applicant has made two arguments supporting his contention that his proposal meets or can meet applicable standards. First, he argues that because the magazine in which he intends to store the fireworks is less than 120 square feet in area (it is 32 square feet) it does not have to comply with the minimum separation requirements of Table 415.3.1 of the 2004 Oregon Structural Specialty Code. Second, he argues that OAR 837-040-0010 adopts the 2003 edition of the International Fire Code and that Table 3304.5.2(4) requires 1.4G fireworks in excess of 50 pounds to only have a separation distance of 100 feet from inhabited buildings and public highways and 50 feet from above-ground magazines and operating buildings. Table 3304.5.2(3) requires 1.3G fireworks of less than 1000 pounds to only have a separation distance of 75 feet from inhabited buildings and public highways and 50 feet from above-ground magazines and operating buildings.

The applicant is incorrect in his assessment of which standards are applicable to the storage of fireworks in Lane County. Lane County has adopted the 2004 Structural Specialty Code and fireworks magazines are considered a Group H-3 structure for the purposes of that code. Table 415.3.1 of the Structural Code provides minimum separation distances for different quantities of explosive material. The applicant's first argument is based upon an erroneous reading of Footnote "e" of the "Separation of Magazines" column in this table. Footnote "e" states that a portable or mobile magazine that does not exceed 120 square feet in area does not have to comply with the requirements of the Structural Specialty Code. The applicant reads this provision literally and concludes that his portable magazine has not required setbacks from either lot lines or inhabited buildings.

This reading of Footnote "e" is both too literal and too broad. A more reasonable reading is that the footnote only applies to the code provisions that concern the separation between magazines. I arrive at this interpretation from two directions. First, the format followed in the table is to apply a footnote to each column to which it applies. Thus, Footnote "d" is attached to the columns titled "Barricaded" and "Separation of magazines." Footnote "e" only modifies the latter column. Second, the distinction between a portable and a permanent magazine that store the same amount of explosive material makes no sense when applied to setbacks that are intended to provide a safety buffer between the material and people. It is rationale that less concern be directed to the distance between the magazines themselves.

Even if the applicant were correct in his interpretation of Footnote "e" of Table 415.3.1, he still would not prevail as that provision explicitly notes that the small, portable magazines must comply with the *Oregon Fire Code*. As provided by OAR 837-040-0010, the *Oregon Fire Code*, 2004 edition, is comprised of the 2003 edition of the International Fire Code subject to exclusions there from (*emphasis mine*). Section 3301.1.3 of the 2003 edition of the International Fire Code was not adopted. This section

prohibited the storage of fireworks with several exceptions, one of which was: "Storage and handling of fireworks as permitted in Section 3304." Instead, Section 3301.1.6 of the 2003 edition of the International Fire Code was adopted. This section provided that the "manufacture, assembly and testing" of fireworks comply with the requirements of NFPA 495 and NFPA 1124. Table 6-4.1 of NFPA (within NFPA 495) adopts standards for the separation of structures containing explosive materials from inhabited buildings that are identical to those contained in Table 415.3.1 of the 2004 edition of the Oregon Structural Specialty Code for between 250 and 300 pounds of explosive material.

I must conclude that the Planning Director's interpretation of applicable regulations regarding the storage of fireworks is correct, as is his conclusion that the narrow dimensions of the subject property prohibit the applicant from meeting the setbacks required by these regulations. The proposed home occupation therefore unreasonably interferes with the safety of residential and agricultural uses on adjacent properties.

(vi) LC 16.212(10)(f) through (g) below;

Lane Code 16.212(10)(f): Will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm and forest use.

The Planning Director found that because the proposed use was primarily for the storage of materials and for office use, no change in farm use of nearby farm-zoned land was foreseen. This determination was not challenged.

LC 16.212(10) (g) Will not significantly increase the cost of accepted farm or forest practices on lands devoted to farm or forest use.

The Planning Director found that no increase in the cost of accepted farm operations (grazing) were anticipated, as the use is essentially passive storage of fireworks products, and this determination was not challenged.

(vii) Shall not be used as a justification for a zone change;

This standard could be incorporated into conditions of approval.

(viii) Shall comply with any additional conditions of approval established by the Approval Authority;

One of the conditions which would have been imposed if this proposal was approved would have been to obtain the proper building permits for the magazine(s) and shop. Such permit review would include required setbacks, which, as detailed above, cannot be met because of the property's limited width. Since the applicant would not be able to comply with this setback condition, this standard has not been met.

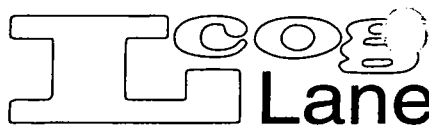
Conclusion

The proposed application is not consistent with Lane Code 16.212(4)(v) and (viii).

Respectfully Submitted,

A handwritten signature in cursive script, appearing to read "Gary Darnielle", is written over a horizontal line.

Gary Darnielle
Lane County Hearing Official



Lane Council of Governments

99 East Broadway, Suite 400, Eugene, Oregon 97401-3111 (541) 682-4283 Fax: (541) 682-4099 TTY: (541) 682-4567

December 8, 2005

Mr. Kent Howe, Director of Planning
Lane County Land Management Division
125 E. 8Th Ave.
Eugene, OR 97401

Re: *Appeal of Hearings Official decision in PA 05-5382 (Tanner)*

Dear Mr. Howe:

On December 1, 2005, Daniel Tanner appealed my November 21, 2005 decision in PA 05-5382 affirming the Planning Director's denial of a special use permit for a home occupation to store and distribute Class B and C fireworks and chemicals. Upon my review of this appeal, I find that the allegations of error have been adequately addressed in my decision and that a reconsideration of that decision is not warranted.

In specific, I do not concur with the argument that Footnote "e" of Table 415.3.1 of the 2004 Oregon Structural Specialty Code exempts the appellant from the minimum distance setbacks from lot lines and inhabited buildings. I believe that the exemption only applies to code regulations that address the separation of magazines. I also do not agree that Footnote 14 of Table 6-4.1 of the NFPA regulations exempts the appellant's magazine. While this footnote exempts the handling and temporary storage of commercial explosive materials from all minimum separation distances I do not believe that the applicant's magazine can be categorized as being a temporary storage facility. The applicant's magazine is portable but is intended for the permanent storage of explosive material in the sense that explosive materials will be stored in that facility on a continuous basis although specific materials will be removed and then replenished.

Accordingly, on the authority of Lane Code 14.535(1), I shall affirm my November 21, 2005 decision without further consideration. Please advise interested parties of this decision.

Sincerely,

Gary L. Darnielle
Lane County Hearings Official



APPEAL OF A HEARINGS OFFICIAL DECISION

PA05-5382B

PUBLIC WORKS DEPARTMENT 125 E 8th AVENUE, EUGENE OR 97401
 Planning: 682-3807 Building: 682-3823 Sanitation: 682-3754

DEC 01 2005

For Office Use Only: FILE # CODE: BCAPEAL FEE: \$3,490

Appellant: DANIEL TANNER

Mailing address: 36366 VALLEY RD, PLEASANT HILL, OR 97455

Phone: 541/744-1406 Email: DANIEL@TANNERITE.COM

Signature: [Signature] Daniel TANNER

Appellant's Representative: ROGER LEE CLARK, ESQ.

Mailing address: P.O. Box 10243, EUGENE, OR 97440

Phone: 541/942-7929 Email: -ND-

Signature: [Signature]

Required submittals. Your appeal application will be rejected if it does not contain all the required information.

1. A copy of the decision being appealed, with the department file number. File # PA-05-5382
2. The \$3490 appeal fee, payable to Lane County. (See the reverse side for important fee information)
3. Indicate the deadline to submit the appeal. (Found in the Hearing Official's Decision) 12/1/05
4. Check one of the items below to identify your party status with the right to appeal the Hearings Official's decision:
 - I am the owner or contract purchaser of the subject property;
 - I am the applicant for the subject application;
 - Prior to the decision by the Hearings Official, I submitted written testimony into the record
 - I am not one of the persons mentioned above, but wish to appeal the Hearings Official's decision for the reasons explained in my letter.
5. A letter that addresses each of the following three standards:
 - a. The reason(s) why the decision of the Hearings Official was made in error or why the Hearings Official should reconsider the decision;
 - b. An identification of one or more of the following general reasons for the appeal, or request for reconsideration:
 - The Hearings Official exceeded his or her authority;
 - The Hearings Official failed to follow the procedure applicable to the matter;
 - The Hearings Official rendered a decision that is unconstitutional;
 - The Hearings Official misinterpreted the Lane Code, Lane Manual, State Law, or other applicable criteria.
 - c. The Hearings Official should reconsider the decision to allow the submittal for additional evidence not in the record that addresses compliance with the applicable standards or criteria.
6. Any additional information in support of your appeal.



LANE COUNTY RECEIPT

DEC 01 2005

RECEIPT NUMBER: R05009623

12-01-2005

PLANNING ACTION #: PA055382B

TYPE: APPEAL TO BCC
SITE ADDRESS: 36366 VALLEY RD PLE
PARCEL: 18-02-27-00-00900
APPLICANT: TANNER DANIEL
36366 VALLEY RD
PLEASANT HILL OR

97455
541-744-1406

Type	Method	Description	Amount
Payment	Check	1517	3,490.00

	Description	Current Pymt
2000	New Technology Fee	10.00
2100	Administrative Fee	435.00
3056	Planning BCC Appeal	2,900.00
3065	Long Range Planning Surc	145.00

PAID BY: DANIEL TANNER

DANIEL TANNER BOARD OF COMMISSIONERS
PA 05-5382
12/01/05

DEC 01 2005

AMENDED APPEAL LETTER

Good Day:

As required by the appeal form, I submit the following points and authorities as to why my appeal should be upheld:

- I. The hearings official exceeded his authority;
- II. The hearings official failed to follow the procedure applicable to this matter; and
- III. The hearings official misinterpreted the 2004 Oregon Structural Specialty Code.

COMBINED ARGUMENT

The Hearings Official exceeded his authority by failing to follow the procedure and language of the 2004 Oregon Structural Specialty Code when he stated the "reading of footnote 'e' is both too literal and too broad." Applicant asserts there is no ambiguity within the language of footnote "e" which would allow the hearings official to reinterpret the plain language meaning of the code provision. Simply, the code provision clearly states the applicant's magazine in this matter is not subject to the provisions of Table 415.3.1, including the setbacks.

Further, the hearings official makes a circular argument when he states the 2003 Oregon Fire Code didn't adopt a similar provision within that code, so that somehow negates the exemption stated in the 2004 Oregon Structural Specialty Code. Applicant asserts there is nothing in the language of either code that supports such a circular interpretation.

Also, the hearings official states it is a more reasonable reading of footnote "e" that it only applies to the latter column, despite the plain language which states Applicant's magazine is of such a character that it does not have to comply with the "code." The use of the word "code" makes this interpretation erroneous and frivolous.

Additionally, the hearings official states that NFPA 495 Table 6-4.1 has the same setback requirements of 2004 Oregon Structural Specialty Code Table 415.3.1. However, this table is not applicable to Applicant's magazine and proposed fireworks storage and distribution because footnote "14" of that table states, in relevant part:

DEC 01 2005

"This table applies only to the manufacture and permanent storage of commercial explosive materials."

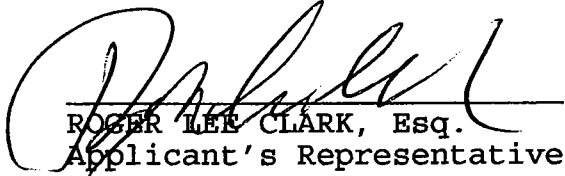
As stated in Applicant's September 22nd proposed business operation, there will be no manufacture of any commercial explosives or fireworks. Thus, Table 6-4.1 (NFPA 495) is inapplicable in this matter.

Finally, the hearings official states that even if the planning director had approved the setbacks, an additional condition of building permits would have been required. Applicant asserts that the character of the magazine structure is exempt from a building permit requirement because of footnote "e", and as stated in the 2004 Oregon Structural Specialty Code § 105.2(1), which states, in relevant part:

"Permits shall not be required for * * * 1. One-story detached accessory structures used as tool and storage sheds * * * provided the floor area does not exceed 120 square feet."

And, Applicant is ready and willing to obtain a building permit for his shop, if it is required. *THE HEARINGS OFFICIAL SHOULD RECONSIDER THE DECISION TO ALLOW FOR FURTHER SUBMITTAL OF ADDITIONAL EVIDENCE.*

Respectfully,



ROGER LEE CLARK, Esq.
Applicant's Representative

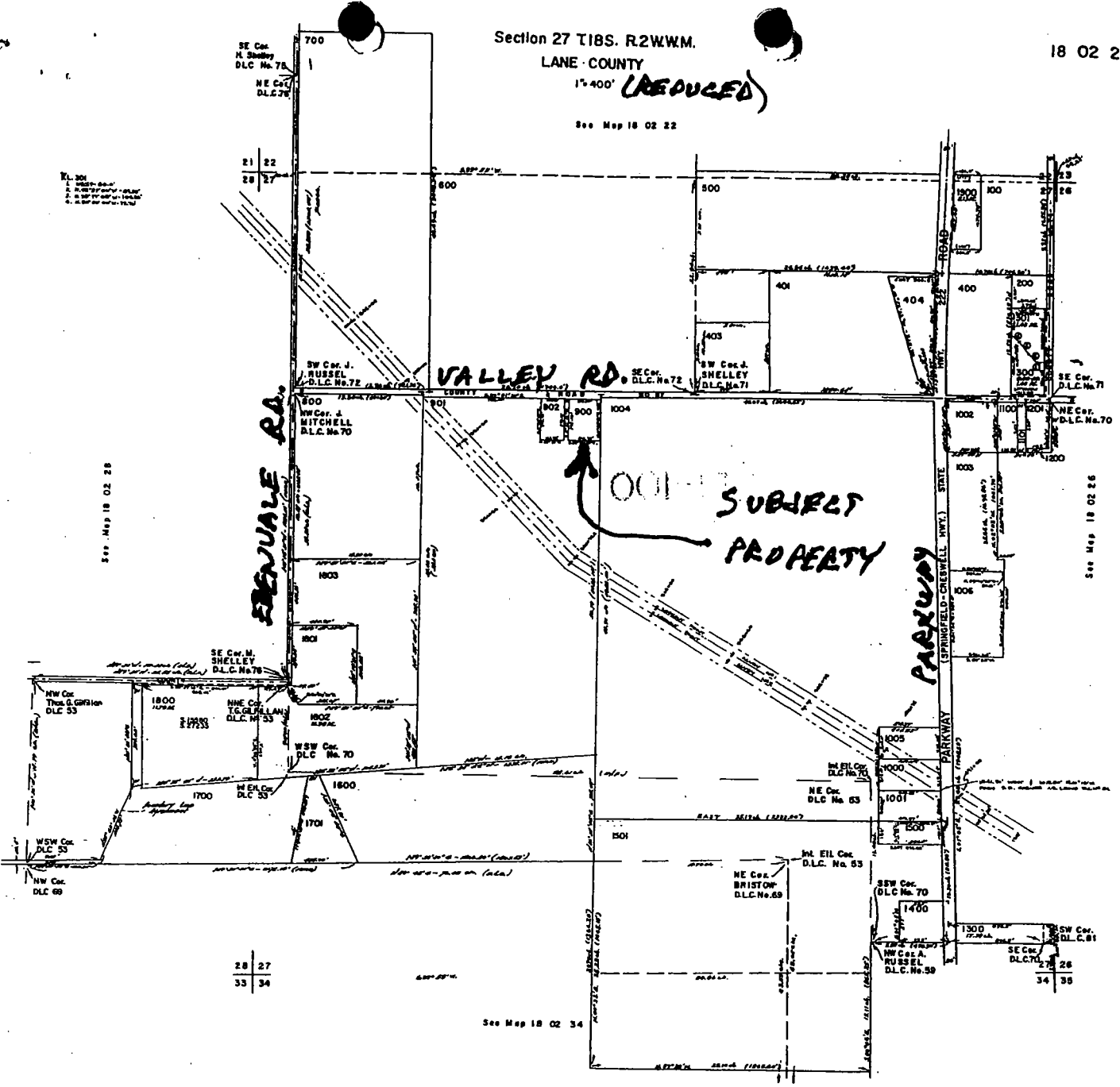
RL 30
1. 1/2" = 100'
2. 1/4" = 50'
3. 1/8" = 25'

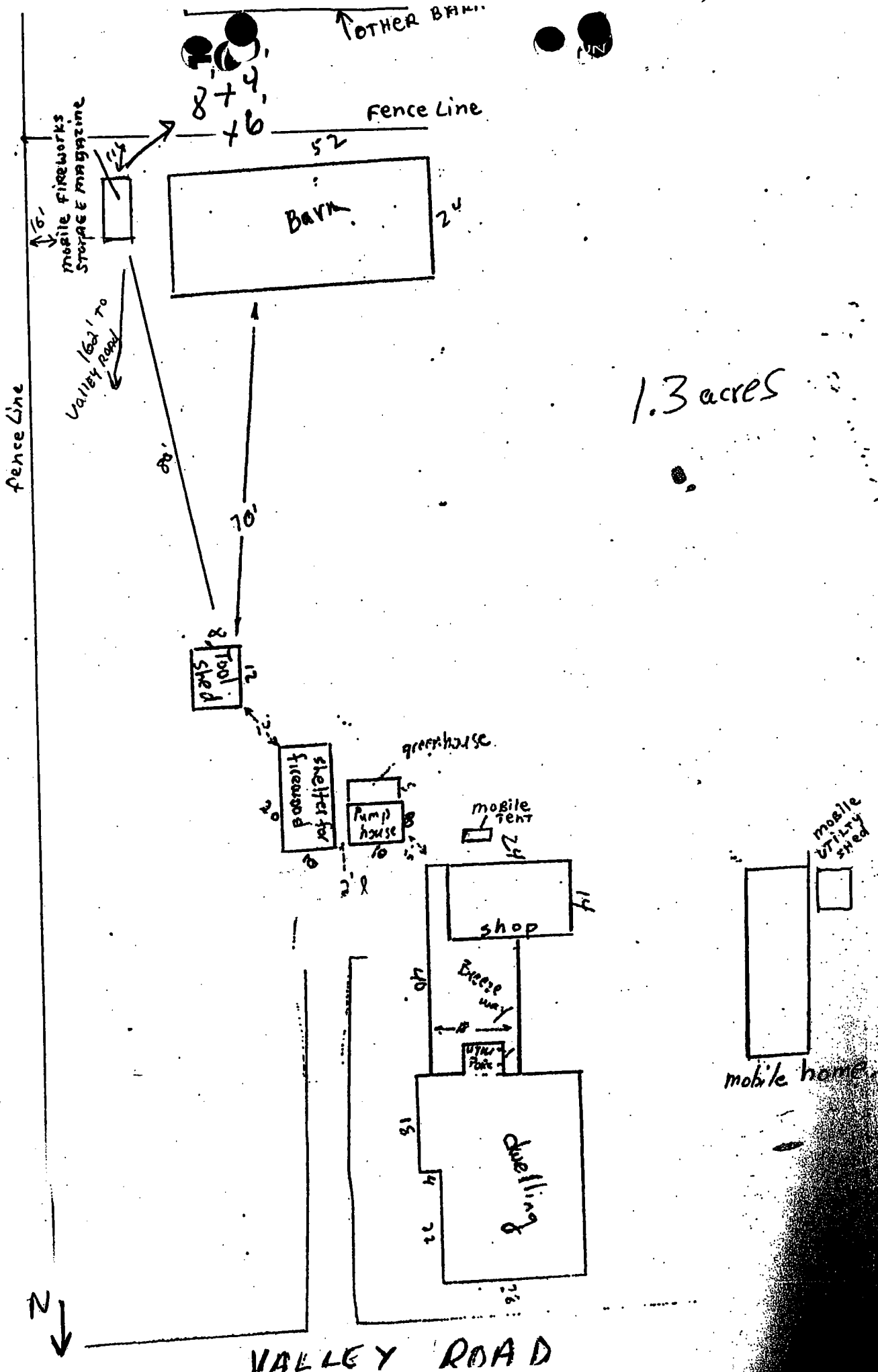
See Map 18 02 28

See Map 18 02 26

28 27
33 34

See Map 18 02 34





1.3 acres

↑ OTHER BARN

Fence Line

MOBILE FIREWORKS STORAGE MAGAZINE

BARN

Fence Line

VALLEY ROAD

Tool shed

shelter for firewood

pump house

greenhouse

mobile tent

shop

mobile utility shed

Egress way

WATER PUMP

Paving

mobile home

VALLEY ROAD

← E

↓ N