

W. 11.a.

AGENDA COVER MEMO

DATE: July 27, 2009 (Date of Memo)
August 18, 2009 (Date of Meeting)

TO: Lane County Board of Commissioners

DEPT.: Public Works Department, Land Management Division

PRESENTED BY: Rafael Sebba, Land Management Division

AGENDA ITEM TITLE: ORDER NO: _____ / IN THE MATTER OF ADOPTING FINDINGS OF FACT, CONCLUSIONS AND A FINAL DECISION IN THE APPEAL OF A HEARINGS OFFICIAL'S RECONSIDERED DECISION AND DENYING AN APPLICATION FOR A RECREATIONAL VEHICLE, BOAT, AND SELF-STORAGE FACILITY IN THE RURAL RESIDENTIAL ZONE (RR-5), MAP AND TAX LOT T18-R03-S24 TL 4600 (FILE NO. PA 07-6721/MCCABE).

I. MOTION

1. ALTERNATIVE MOTIONS AFTER DELIBERATIONS:

A. I MOVE TO ADOPT THE ORDER.

OR

B. I MOVE TO DIRECT STAFF TO REVISE THE FINDINGS FOR FINAL ACTION.

II. ISSUE OR PROBLEM

The Board needs to adopt an Order that represents the Board's final decision on File No. PA 07-6721/McCabe.

III. PROCEDURE

The Board of Commissioners may follow these Meeting procedures:

1. Announce the meeting is closed to testimony and the purpose of the meeting is for the Board of Commissioners deliberations;
2. Disclose any ex parte contacts;
3. Call for abstentions due to ex parte contacts or biases;
4. Request the Director or staff to present an introductory report, and provide such information as may be requested by the Board of Commissioners ("Board", hereinafter);

5. Board deliberations;
6. At the conclusion of deliberations, the Board has several options:
 - a) the Board may adopt the Order; or
 - b) the Board may assign the drafting of revised findings of fact, conclusions, or conditions to the staff for adoption at a subsequent meeting.

IV. DISCUSSION

A. Background

1. The subject property is 5.0 acres in size and is identified as Tax Lot 4600, Assessor's Map 18-03-24. The property is located about one mile east of the rural community of Goshen on the south of State Hwy 58 and has a site address of 34570 Highway 58. It is zoned RR-5/RCP, lies within "developed and committed" Exception Area 426-2, and is not located within an unincorporated community. The subject property lies several miles from both the Eugene-Springfield Urban Growth Boundary and the community of Pleasant Hill. The property is currently developed with a dwelling, garage, septic system, and well.
2. The Applicant submitted an application for a special use permit on November 8, 2007. The applicant requested Director Approval to build seven (7) commercial buildings to store recreational vehicles, boats, and segmented self-storage units. The proposal includes 115 RV/boat units and 384 self-storage units, totaling over 79,000 square feet in floor area. One of the buildings will also include a 900 square foot office/caretaker residence.
3. The Planning Director denied the application on April 16, 2008.
4. A timely appeal of the Planning Director decision was filed on April 28, 2008, by the applicants, Don and Cheryl McCabe, who are represented by James Spickerman. 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 July 10, 2008.
6. On September 2, 2008, 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 Applicants on September 12, 2008.
8. The Hearings Official held a reconsideration hearing on November 6, 2008.
9. On January 5, 2009, the Hearings Official issued a reconsidered decision affirming, in part, and reversing, in part, the previous decision. The Hearings Official approved the RV/boat storage component of the proposal, and denied the self-storage component.
10. A timely appeal of the Hearings Official's reconsidered decision was filed on January 15, 2009, by Cecil Saxon Jr., who is represented by Michael Farthing. On January 23, 2009, the Hearings Official affirmed his reconsidered decision.

11. The appeal of the reconsidered decision was taken before the Board of Commissioners on February 18, 2009, and the Board approved Order No. 09-2-18-10 to hear the appeal, with findings that it complied with the criteria of Lane Code 14.600(3), and elected to conduct an on-the-record hearing on April 1, 2009, at 1:30 PM. Notice of this hearing was sent to all parties of record. The appellant and his representative were present on April 1, 2009, however, neither the applicant nor his representative were in attendance. At that time, the hearing was continued to April 15, 2009, at 2:00 PM, and staff was instructed to verify the intent of the applicant. On April 10, staff received a letter from the applicant's agent indicating he would not be participating in the hearing. On April 13, in conversation with staff, the applicant indicated he would not be participating in the hearing either.
12. On April 15, 2009, the Board heard arguments on the appeal and tentatively affirmed the Hearings Official's September 2, 2008 decision affirming the Planning Director's decision and denying the application in file PA 07-6721, and directed staff to prepare an order with appropriate findings for final action.

B. Record

Evidence submitted for this application consists of the Exhibits listed in the File Record Index.

C. Analysis

1. Applicable Criteria

The application for the storage facility, including both recreational vehicle and boat storage units and self-storage units, was evaluated under two separate provisions of the Rural Residential Zone in Lane Code (LC):

- 1) the recreational vehicle and boat storage provision in LC 16.290(4)(r)
- 2) the similar uses and development provision in LC 16.290(4)(s)

LC 16.290(4) Uses and Development Subject to Approval by the Director. The uses and developments in LC 16.290(4)(a) through (s) below are allowed subject to: submittal of a land use application pursuant to LC 14.050; compliance with the applicable requirements of LC 16.290(5) below and elsewhere in LC Chapter 16; and review and approval of the land use application pursuant to LC 14.100 with the options for the Director to conduct a hearing or to provide written notice of the decision and the opportunity for appeal.

LC 16.290(4)(r) Storage facilities for boats and recreational vehicles.

LC 16.290(4)(s) Uses and development similar to uses and development allowed by LC 16.290(2) or (4) above if found by the Planning Director to be clearly similar to the uses and development allowed by LC 16.290(2) through (4) above. Such a finding shall be made by the Director and shall comply with the following criteria:

- (i) *The proposed use and development shall be consistent with the purpose in LC 16.290(1).*
- (ii) *When compared with the uses and development permitted by LC 16.290(2) or (4) above, the proposed use and development is similar to one or more of these uses and development. A comparison shall include an analysis of the:*
 - (aa) *Goods or services traded from the site;*

- (bb) Bulk, size, and operating characteristics of the proposed use;
- (cc) Parking demand, customer types and traffic generation; and
- (dd) Intensity of land use of the site.
- (iii) The proposed use and development shall not exceed the carrying capacity of the soil or of the existing water supply resources and sewer service. To address this requirement, factual information shall be provided about any existing or proposed sewer or water systems for the site and the site's ability to provide on-site sewage disposal and water supply if a community water or sewer system is not available.
- (iv) The proposed use and development shall not result in public health hazards or adverse environmental impacts that violate state or federal water quality regulations.
- (v) It shall be the applicant's responsibility to provide sufficient information to allow the Director to make the above determination.

LC 16.290(5) Approval Criteria. Uses and development in LC 16.290(4)(a) through (s) above, except for telecommunication facilities allowed in LC 16.290(4)(d) above, shall comply with the requirements in LC 16.290(5) below. Telecommunications facilities allowed by LC 16.290(4)(d) above shall comply with the requirements in LC 16.264.

- (a) Shall not create significant adverse impacts on existing uses on adjacent and nearby lands or on uses permitted by the zoning of adjacent or nearby undeveloped lands;
- (b) Where necessary, measures are taken to minimize potential negative impacts on adjacent and nearby lands;
- (c) The proposed use and development shall not exceed the carrying capacity of the soil or of the existing water supply resources and sewer service. To address this requirement, factual information shall be provided about any existing or proposed sewer or water systems for the site and the site's ability to provide on-site sewage disposal and water supply if a community water or sewer system is not available; and
- (d) The proposed use and development shall not result in public health hazards or adverse environmental impacts that violate state or federal water quality regulations.

Also relevant to this case is the purpose statement of the Rural Residential zone included in LC 16.290(1).

LC 16.290(1) Purpose. The purposes of the Rural Residential Zone (RR) are:

- (a) To implement the policies of the Lane County Rural Comprehensive Plan (RCP) pertaining to developed and committed lands. LC 16.290 does not apply to lands designated by the RCP as non-resource lands;
- (b) To promote a compatible and safe rural residential living environment by limiting allowed uses and development to primary and accessory rural residential uses and to other rural uses compatible with rural residential uses and the uses of nearby lands;
- (c) To provide protective measures for riparian vegetation along Class I streams designated as significant in the RCP; and
- (d) To provide that LC 16.290 shall not be retroactive and that the Director shall not have authority to initiate compliance with LC 16.290 for uses and development lawfully existing (per LC Chapter 16) on the effective date that LC 16.290 was applied to the subject property.

2. Proposed Findings

The attached findings correspond to the Board tentative decision of April 15, 2009 in the following manner:

1. The Hearings Official's January 5, 2009 reconsidered decision is reversed in part, and the Hearings Official's September 2, 2008 is affirmed;
2. Findings have been drafted that correspond to the Board discussion of April 15, 2009, which focused on the correctness of the Hearings Official's decisions, as well as an interpretation of LC 16.290(4)(r) that would allow only personal storage of RVs and boats.

D. Alternatives/Options

Two options are available to the Board:

1. If the Board finds that the Order with attached findings of fact and conclusions corresponds to the will of the Board, Move to adopt the Order.
2. If the Board finds that revisions to the findings or conditions are necessary prior to adoption, Move to direct staff to prepare revisions to the findings of fact, conclusions and conditions for subsequent final adoption.

E. Recommendations

Staff recommends Option 1.

F. Timing

The Order will take effect immediately upon final adoption by the Board.

IV. IMPLEMENTATION/FOLLOW-UP

Notice of the Board's final decision will be mailed to all parties.

V. ATTACHMENTS

1. Proposed Board Order with Exhibit "A" (findings)
2. Exhibit "B" File Record Index\
3. Vicinity Map
4. Site Plan as Proposed

IN THE BOARD OF COMMISSIONERS OF LANE COUNTY, OREGON

ORDER NO: IN THE MATTER OF ADOPTING FINDINGS OF FACT, CONCLUSIONS AND A FINAL DECISION IN THE APPEAL OF A HEARINGS OFFICIAL'S RECONSIDERED DECISION AND DENYING AN APPLICATION FOR A RECREATIONAL VEHICLE, BOAT, AND SELF-STORAGE FACILITY IN THE RURAL RESIDENTIAL ZONE (RR-5), MAP AND TAX LOT T18-R03-S24 TL 4600 (FILE NO. PA 07-6721/MCCABE).

WHEREAS, the Lane County Hearings Official, on September 2, 2008, made a decision affirming the Planning Director's denial of a recreational vehicle, boat, and self-storage facility on tax lot 4600 of Assessor's Map 18-03-24; and

WHEREAS, the Lane County Hearings Official, on January 5, 2009, made a reconsidered decision affirming in part, and reversing in part, the Hearings Official's previous denial of the recreational vehicle, boat, and self-storage facility; and

WHEREAS, the Lane County Hearings Official, on January 23, 2009, affirmed his reconsidered decision on the application and appeal in File No. PA 07-6721; and

WHEREAS, the Board of County Commissioners decided to hear the appeal pursuant to Order No. 09-2-18-10, adopted on February 18, 2009; and

WHEREAS, the Board of County Commissioners conducted an on-the-record hearing on April 15, 2009, and heard oral arguments regarding the appeal from participants appearing;

NOW, THEREFORE, BE IT ORDERED that based on the record of this matter and the findings of fact and conclusions of law in Exhibit "A" attached and adopted here as if fully set forth, the Board of County Commissioners of Lane County finds and orders as follows:

1. It is found that the record in this matter consists of those items listed on the File Record Index identified as "Exhibit B" attached and incorporated here by this reference.
2. The Hearings Official's analysis, findings of fact, and interpretations in support of the January 5, 2009, reconsidered decision approving, in part, application PA 07-6721 are inconsistent with the evidence in the record, applicable state law, Lane County ordinances, and the acknowledged Lane County Rural Comprehensive Plan and that decision is reversed.
3. The Planning Director's April 15, 2008 decision, the Hearings Official's September 2, 2008 decision, and the portions of the Hearings Official's January 5, 2009 decision that relate to the denial of the self-storage component of the proposed recreational vehicle, boat, and self-storage facility are affirmed as the Board's own analysis, findings of fact, interpretations and conclusions to the extent that they are consistent with the findings of fact and conclusions of law set forth in Exhibit "A."

4. Based on this order and the findings of fact and conclusions of law set forth in Exhibit "A" attached and incorporated here by this reference, as well as the record of evidence and arguments described in Exhibit "B," application PA 07-6721 for a recreational vehicle, boat, and self-storage facility in the Rural Residential zone is denied.

DATED this _____ day of _____, 2009.

Pete Sorenson, Chairperson
Lane County Board of Commissioners

APPROVED AS TO FORM

Date 8-11-2009 Lane County


OFFICE OF LEGAL COUNSEL

Order Exhibit "A"

FINDINGS IN SUPPORT OF THE ORDER

1. The subject property is 5.0 acres in size and is identified as Tax Lot 4600, Assessor's Map 18-03-24. The property is located about one mile east of the rural community of Goshen on the south of State Hwy 58 and has a site address of 34570 Highway 58. It is zoned Rural Residential (RR-5/RCP), lies within "developed and committed" Exception Area 426-2, and is not located within an unincorporated community. The subject property lies several miles from both the Eugene-Springfield Urban Growth Boundary and the community of Pleasant Hill. The property is currently developed with a dwelling, garage, septic system, and well.
2. The applicant proposes to build a commercial facility for recreational vehicle and boat storage, and segmented self-storage. The individual storage units will be leased or rented to the general public. As such, the proposal goes beyond what would be considered personal storage. The proposal consists of seven buildings totaling 79,480 square feet in floor area. The proposal includes space for 115 RV/boat units within 30,980 square feet, and 384 self-storage units within 47,600 square feet. One of the buildings will also include a 900 square foot office/caretaker residence. The proposed buildings alone will occupy 36.5% of the property. When parking and circulation areas are factored in, the proposal's total lot coverage is approximately 69%.
3. The Applicant submitted an application for the recreational vehicle, boat, and self storage facility under two separate provisions of the Rural Residential Zone in Lane Code (LC 16.290): the recreational vehicle and boat storage provision pursuant to LC 16.290(4)(r); and the similar uses and development provision pursuant to LC 16.290(4)(s). These provisions read as follows:

LC 16.290(4)(r) Storage facilities for boats and recreational vehicles.

LC 16.290(4)(s) Uses and development similar to uses and development allowed by LC 16.290(2) or (4) above if found by the Planning Director to be clearly similar to the uses and development allowed by LC 16.290(2) through (4) above. Such a finding shall be made by the Director and shall comply with the following criteria:

- (i) *The proposed use and development shall be consistent with the purpose in LC 16.290(1).*
- (ii) *When compared with the uses and development permitted by LC 16.290(2) or (4) above, the proposed use and development is similar to one or more of these uses and development. A comparison shall include an analysis of the:*
 - (aa) *Goods or services traded from the site;*
 - (bb) *Bulk, size, and operating characteristics of the proposed use;*
 - (cc) *Parking demand, customer types and traffic generation; and*
 - (dd) *Intensity of land use of the site.*
- (iii) *The proposed use and development shall not exceed the carrying capacity of the soil or of the existing water supply resources and sewer service. To address this requirement, factual information shall be provided about any existing or proposed sewer or water systems for the site and the site's ability to provide on-site sewage disposal and water supply if a community water or sewer system is not available.*
- (iv) *The proposed use and development shall not result in public health hazards or adverse environmental impacts that violate state or federal water quality regulations.*
- (v) *It shall be the applicant's responsibility to provide sufficient information to allow the Director to make the above determination.*

The Board takes note that LC 16.290(4)(r) above does not specify the listed use includes commercial storage facilities, though this was an assumption made when the application was submitted. It may be

reasonable to interpret this provision as not allowing commercial facilities, but rather, RV and boat storage facilities for personal use by the property owner only. This interpretation of LC 16.290(4)(r) was mentioned by the appellant at oral argument and it provides an additional basis for denial of the application.

4. The Planning Director denied the application on April 16, 2008.
5. On September 2, 2008, the Hearings Official issued a decision affirming the Planning Director's denial of the proposal.
6. On January 5, 2009, the Hearings Official issued a reconsidered decision affirming, in part, and reversing, in part, the previous decision. The Hearings Official approved the RV/boat storage component of the proposal, and denied the self-storage component.
7. On January 15, 2009, an area resident appealed the Hearings Official's approval of the RV/boat storage component of the facility. The Hearings Official's denial of the self-storage component of the facility was not appealed or disputed.
8. The appeal of the reconsidered decision was taken before the Board of Commissioners on February 18, 2009, and the Board approved Order No. 09-2-18-10 to hear the appeal, with findings that it complied with the criteria of Lane Code 14.600(3), and elected to conduct an on-the-record hearing on April 1, 2009, at 1:30 PM. Notice of this hearing was sent to all parties of record. The appellant and his representative were present on April 1, 2009, however, neither the applicant nor his representative were in attendance. At that time, the hearing was continued to April 15, 2009, at 2:00 PM, and staff was instructed to verify the intent of the applicant. On April 10, staff received a letter from the applicant's agent indicating he would not be participating in the hearing. On April 13, in conversation with staff, the applicant indicated he would not be participating in the hearing either.
9. On April 15, 2009, the Board heard arguments on the appeal and tentatively reversed the Hearings Official's reconsidered decision of January 5, 2009, and affirmed the Hearings Official's September 2, 2008 decision affirming the Planning Director's decision and denying the application in file PA 07-6721, and directed staff to prepare an order with appropriate findings for final action.
10. The Board finds that, in his reconsidered decision of January 5, 2009, the Hearings Official misinterpreted Lane Code and state law as expressed in LUBA and Court decisions and Oregon Revised Statutes, and that the decision is inconsistent with the evidence in the record, applicable state law, Lane County ordinances, and the acknowledged Lane County Rural Comprehensive Plan.
11. The Rural Residential Zone (LC 16.290) was established during Lane County's Rural Comprehensive Plan Periodic Review Program in 2002. Lane County consolidated the various zones that it applies to developed and committed exception areas into five rural zoning districts: Rural Residential (LC 16.290), Rural Commercial (LC 16.291), Rural Industrial (LC 16.292), Rural Public Facilities (LC 16.294), and Rural Park and Recreation (LC 16.295). The purpose of this effort and consolidation was specifically described to get Lane County into compliance with Statewide Goal 14 as implemented by OAR 660-004 and 660-022. One of the emphases for these zones is to promote rural, rather than urban uses on lands outside of urban growth boundaries. This can be seen and is reflected in the purpose statement of the Rural Residential Zone:

LC 16.290(1) Purpose. The purposes of the Rural Residential Zone (RR) are:

- (a) *To implement the policies of the Lane County Rural Comprehensive Plan (RCP) pertaining to developed and committed lands. LC 16.290 does not apply to lands designated by the RCP as non-resource lands;*
- (b) *To promote a compatible and safe rural residential living environment by limiting allowed uses and development to primary and accessory rural residential uses and to other rural uses compatible with rural residential uses and the uses of nearby lands;*

- (c) *To provide protective measures for riparian vegetation along Class I streams designated as significant in the RCP; and*
- (d) *To provide that LC 16.290 shall not be retroactive and that the Director shall not have authority to initiate compliance with LC 16.290 for uses and development lawfully existing (per LC Chapter 16) on the effective date that LC 16.290 was applied to the subject property*

The purpose statement of LC 16.290(1) is essentially an overarching provision that establishes the main reason for the Rural Residential zone is for rural uses. It provides a context for the specific uses allowed throughout LC 16.290, and specific to this case, those allowed by LC 16.290(4). The introductory statement of LC 16.290(4) also suggests that there is a broader context to be considered for uses permitted in this subsection with the use of the phrase "...and elsewhere in LC Chapter 16..."

LC 16.290(4) Uses and Development Subject to Approval by the Director. The uses and developments in LC 16.290(4)(a) through (s) below are allowed subject to: submittal of a land use application pursuant to LC 14.050; compliance with the applicable requirements of LC 16.290(5) below and elsewhere in LC Chapter 16; and review and approval of the land use application pursuant to LC 14.100 with the options for the Director to conduct a hearing or to provide written notice of the decision and the opportunity for appeal.

12. The Board agrees with the analysis in the Hearings Official's September 2, 2008 decision in which the Hearings Official found that the proposed facility is most accurately categorized as being commercial in nature, at least for the purposes of establishing appropriate size limitations in comparison to what other zones would allow. In his decision he concluded:

" . . . In the present case, I believe that because the storage facility serves individual members of the community rather than an industry, it should be characterized as being commercial in nature. Given that characterization, I do not believe that its size can exceed the size limitations placed on commercial uses allowed within, the Rural Commercial District."

The Hearings Official's determination was partly informed by a case closely parallel to this one involving comprehensive plan and zoning amendments that would have allowed RV storage on property adjacent to the McMinville UGB (*Friends of Yamhill County v. Yamhill County*, 49 Or LUBA, 541, *aff'd w/o opinion* 201 Or App 528 (2005)). In that case, LUBA noted that because the facility did not appear to be associated with any industry, it was probably more accurately characterized as a commercial rather than an industrial use (The contested zoning provisions allowed mini-storage in addition to the storage of boats and vehicles). In that case, LUBA did concede that characterizing this type of facility can be uncertain. The Board finds the Hearings Official's determination reasonable and consistent with the text and context of LC 16.290.

The Hearings Official also evaluated OAR 660-022-0010(1), which defines "commercial use" as "the use of land primarily for the retail sale of products or services, including offices", as well as subsection (4) of this provision, which defines "industrial use" as "the use of land primarily for the manufacture, processing, storage, or wholesale distribution of products, goods, or materials." In his September 2, 2008 decision, the Hearings Official acknowledged that an RV/boat storage and mini-storage facility has a foot in both the industrial and commercial categories. He went on to explain that the term "storage" usually connotes an industrial use, and the Institute of Traffic Engineers treats mini-storage units as an industrial use for purposes of traffic generation. On the other hand, industrial storage is usually associated with a particular industry. The proposed use serves the general public, on a client-by-client basis, and is not associated with an industrial activity. In the September 2, 2008 decision, it seemed to the Hearings Official that the proposed use can most accurately be described as a commercial use as it involves the retail sale of a service to the general public; the storage of boats, recreational vehicles and household goods. The Board finds this conclusion reasonable and consistent with the text and context of LC 16.290.

It may be difficult to categorize the proposed use in its entirety for all purposes. However, based on the rationale presented above, the Board finds that, for the purposes of comparing what is an appropriately sized facility in the Rural Residential Zone to that which is allowed in other zones, the proposed use is accurately classified as being commercial in nature.

13. The Board agrees with the analysis in the Hearings Official's September 2, 2008 decision, and those portions of the January 5, 2009 decision in which the Hearings Official found that the proposed facility is most accurately categorized as being urban in nature.

In *Friends of Yamhill County v. Yamhill County*, 49 Or LUBA, 541, LUBA found that factors concerning location, proximity to an urban growth boundary, and operational characteristics, "... particularly the population it is likely to serve..." were all considerations in determining whether a use was "urban." The Hearings Official identified a number of factors in support of a conclusion that the use is urban in nature, including:

- The scale of the proposed use, as measured by its structural footprint, is nearly twice that of the largest industrial use permitted in a non-urban, rural community. The operational floor area of the proposed use exceeds the maximum size of industrial uses allowed in the Rural Industrial District by 34,000 square feet and of commercial uses allowed in the Rural Commercial District by 75,500 square feet.
- The subject property lies a few miles from the Eugene-Springfield Urban Growth Boundary and is located between two rural communities.
- There is no evidence in the record that substantiates the applicant's conclusion that the proposed facility will serve rural needs.
- There has been no showing that there is insufficient, suitable land for the use within the Eugene-Springfield Urban Growth Boundary.

Regarding whether the proposed facility will serve rural needs, common sense dictates that, generally speaking, residents in rural areas are far less likely to need storage services for RVs and boats because rural properties tend to be larger than urban properties and can better accommodate storage of such vehicles. Urban residents, on the other hand, face constraints ranging from small properties to restrictive regulations specifically pertaining to RV storage. Therefore, it is fair to ascertain that commercial RV and boat storage facilities tend to cater to residents in urban areas.

Based on the analysis above, that in the Hearings Official's September 2, 2008 decision, and those portions of the January 5, 2009 decision in which the Hearings Official found that the proposed facility is most accurately categorized as being urban in nature, the Board finds that the proposed facility, including both the self-storage component and the RV and boat storage component, is urban in nature and character.

14. In his September 2, 2008 decision, the Hearings Official invoked ORS 197.829(1) in support of his decision. Though the Hearings Official abandoned this statutory justification in his January 5, 2009 decision, it is relevant to the Board's present interpretation of Lane Code. ORS 197.829(1)(b) and (d) necessitate an interpretation by the County that is consistent with "the purpose for the comprehensive plan or land use regulation" and not contrary to the "state statute, land use goal or rule that the comprehensive plan provision or land use regulation implements." Notwithstanding arguments regarding the applicability of ORS 197.829 to a decision made by the Hearings Official, it is certainly applicable to, and must inform, the Board's decision and interpretation of Lane Code since review of any County decision may be subjected to analysis under the requirements of the statute.

In the case at hand, the relevant purpose is that of Lane Code 16.290, and the relevant land use goal is Statewide Planning Goal 14. It is not suggested that Lane Code 16.290(4)(r) does not comply with the purpose of Lane Code 16.290 or Goal 14, but rather that an interpretation of LC 16.290(4)(r) that would allow the proposed urban commercial RV and boat storage facility would violate the purpose of Lane Code 16.290 and Goal 14.

In interpreting LC 16.290(4)(r) to allow only facilities that meet the purpose of LC 16.290, consideration is given to the introductory language of LC 16.290(4), which states “The uses and developments in LC 16.290(4)(a) through (s) below are allowed subject to... compliance with the applicable requirements of LC 16.290(5) below and elsewhere in LC Chapter 16...” The phrase “elsewhere in LC Chapter 16” indicates that approval of these uses is not, in fact, limited only to the approval criteria LC 16.290(4)(r) and LC 16.290(5), as was propounded in the Hearings Official’s reconsidered decision. While the purpose statement of LC 16.290 is not expressly made a separate approval criterion, the introductory language of LC 16.290(4) suggests that consistency with the purpose statement of the Rural Residential Zone is a valid consideration for proposals made pursuant to LC 16.290(4)(a) through (s). It also provides context for the text of those subsections. Even where text is clear, reviewing bodies may look to context and purpose to inform the correct interpretation of the applicable provision and such analysis is necessary to determine a decision will not be reversed or remanded under ORS 197.829.

In light of ORS 197.829(1)(b) and (d), as well as the introductory statement of LC 16.290(4), the Board interprets LC 16.290(4)(r) to allow only facilities that are consistent with the purpose of LC 16.290 and not contrary to Statewide Planning Goals 2 and 14 and applicable administrative rules that implement those Goals and govern zoning of exception areas.

The Board finds that the Hearings Official’s January 5, 2009 reconsidered decision is not consistent with the purpose of the Rural Residential Zone and is contrary to Statewide Planning Goal 14, in that it did not apply the basic tenet of Oregon land use law that Goal 14 prohibits urban uses on rural land, and that it failed to recognize that uses allowed in the RR zone must be rural in nature.

15. The RV and boat storage provision in LC 16.290(4)(r) appears to have been carried over from the older Rural Residential Zone in LC 16.231(4) during Lane County’s Rural Comprehensive Plan Periodic Review Program in 2002. At that time, Lane County consolidated the various zones that it applies to developed and committed exception areas into five rural zoning districts: Rural Residential (LC 16.290), Rural Commercial (LC 16.291), Rural Industrial (LC 16.292), Rural Public Facilities (LC 16.294), and Rural Park and Recreation (LC 16.295). The purpose of this effort and consolidation was specifically described to get Lane County into compliance with Statewide Goals 2 and 14 and applicable administrative rules, including OAR 660-004 and 660-022.

Within the older Rural Residential Zone in LC 16.231, RV and boat storage facilities are subject to Hearings Official approval and were required to be consistent with Rural Comprehensive Plan policies. The purpose statement of LC 16.231 makes no reference to allowing exclusively “rural” uses, only to “primary and accessory residential uses, and nonresidential uses which may be compatible with primary residential uses.”

By contrast, the purpose statement of LC 16.290 is more explicit: “To promote a compatible and safe rural residential living environment by limiting allowed uses and development to primary and accessory rural residential uses and to other rural uses compatible with rural residential uses and uses of nearby lands.”

The inclusion of the reference to “rural uses” in LC 16.290 is directly attributable to the efforts and intent to achieve compliance with Statewide Planning Goal 14 and OAR 660-004 and 660-022 for the consolidated “rural” zones. The purpose statement goes beyond incorporating the term “rural”; it shifts the entire focus from allowing listed uses to promoting a rural residential environment by limiting uses. This language is a clear indication of a much more restrictive approach to appropriate listed uses within the Rural Residential Zone.

The omission of a specific size limitation in LC 16.290(4)(r) cannot be construed as allowing a commercial use in the Rural Residential Zone that is more intense than would be allowed in either the Rural Commercial or Rural Industrial Zones. It is highly unlikely that this provision was intended to create a loophole that effectively circumvents the size limitations for the same use in other, more intense zones. Such an interpretation results in an illogical state of affairs where there are no size

constraints on these facilities in the Rural Residential Zone while their size is explicitly limited if they are located on industrially- or commercially-zoned land within and without rural communities. The absurd consequence of this situation is demonstrated by the number of applications for storage facilities located on rural residential property recently submitted to the county. It reflects an interpretation that the Board considers contrary to Statewide Planning Goal 14, OAR 660-004, 660-022 and the purpose for the zone.

In his reconsidered decision, the Hearings Official wrote,

“Normally, the language of a purpose statement in a zoning ordinance is not considered to be traditional approval criterion. However, a purpose statement in a land use regulation may be both an explicit statement of the purpose of the regulation and the context for interpreting the provisions of that regulation. In some cases the language may impose an “additional affirmative duty” that must be fulfilled prior to final approval. *Concerned Homeowners v. City of Creswell*, 52 Or LUBA 620, 628 (2006). In the *Concerned Homeowners* case, LUBA found that the purpose statement of one of the city’s sub-zoning districts required that the city had to ensure that “traditional residential” uses were not approved unless it was shown that such uses were “necessary to support the primary recreationally-oriented uses.” Similarly, the language of Lane Code 16.290(1)(b) suggests that the county not approve uses in the Rural Residential District that are not, in fact, rural.”

The Board agrees that the purpose statement of the Rural Residential Zone provides context for and limits allowed uses not just to those compatible with rural residential uses and other nearby uses, but also to those that are rural in nature and character.

In the Hearings Official’s September 2, 2008 decision, he made mention of a Planning Director denial of a similar facility that had been recently affirmed by the Hearings Official. The Hearings Official noted that, in that case, the applicant identified a number of large RV and boat storage facilities located in unincorporated Lane County outside of rural communities or urban growth boundaries. The Hearings Official pointed out that most of these facilities occupied land that was zoned Industrial. That applicant also directed the Hearing Official’s attention to a 90,000 square foot RV and boat storage facility permitted in 2004 by the Planning Director on land zoned RR-5. The Hearings Official stated that there is no requirement that a local government decision be consistent with past decisions, only that it be correct when made. *Okeson v. Union Co.*, 10 Or LUBA 1, 5 (1983). The Board agrees with this assertion and interpretation of the Hearings Official.

In his September 2, 2008 decision, the Hearings Official speculated that if the proposed facility existed at the time the Rural Comprehensive Plan was acknowledged, it would have been zoned either Rural Commercial or Rural Industrial to better reflect the type of use and its size. The Board agrees. The Hearings Official also concluded that, given its commercial characterization, the size of the proposed facility cannot exceed the size limitations placed on commercial uses allowed within the Rural Commercial Zone. The Board agrees with this assessment, as well, if LC 16.290(4)(r) were interpreted to allow commercial, rather than personal storage facilities.

In the aforementioned LUBA case, *Friends of Yamhill County v. Yamhill County*, 49 Or LUBA, 541, it was opined that building floor space alone is not the only, and perhaps not even the best, approach to demonstrating whether uses allowed on rural lands outside unincorporated communities are consistent with Goal 14. LUBA noted that:

“...it is not clear to us that proposed industrial or commercial use of outdoor areas is irrelevant under Goal 14, at least where OAR 660-022 does not apply. For example, in evaluating amendments that would allow a 100,000 square foot outdoor RV sales lot and a 1,000-square foot sales office on rural land outside an unincorporated community, it would seem strange to focus exclusively on the size of the building.”

This same principal is applicable to RV and boat storage facilities on rural land outside an unincorporated community. Operationally, there is no difference between indoor RV and boat storage

and outdoor RV and boat storage. If anything, outdoor storage is more unsightly. Indeed, it would be inconsistent to limit the amount of indoor storage space exclusively, while allowing an unlimited amount of outdoor storage space, given the intent is to constrain proposed facilities to rural intensities. Therefore, the Board finds that size limitation should apply to the entire facility, including indoor, covered, and outdoor storage areas.

It is found that, if Lane Code 16.290(4)(r) were interpreted to permit commercial, rather than personal storage facilities, only those facilities with an operational size that does not exceed those limits for commercial uses in the Rural Commercial Zone, including indoor, covered, and/or outdoor storage could be allowed. Additionally, it is found that size is not the only consideration for such facilities. It would also have to be demonstrated that a facility serves rural needs, which includes factors such as, but not limited to, location, proximity to an urban growth boundary, operational characteristics, and the population that is likely to be served. The proposed commercial storage facility exceeds the size limitations of the Rural Commercial Zone, and it has not been demonstrated that the proposed facility serves rural needs, based on the factors identified above. Therefore, pursuant to the above interpretation, the proposed facility is denied.

16. Whether or not commercial storage facilities are appropriate at all in the Rural Residential is arguable. Given the commercial nature of these facilities and their typical size requirements, a commercial or industrial zone is clearly more suitable. When the purpose statement in LC 16.290(1)(b) is taken into consideration, it strengthens the case that this type of facility may not belong in the Rural Residential Zone at all. As discussed above, LC 16.290(1)(b) simultaneously promotes a *residential* living environment and limits development to *rural* uses. Large scale storage facilities neither promote a residential living environment, nor can they be considered a rural use.

Analysis of LC 16.290(1), LC 16.290(4), and LC 16.290(4)(r) leads the Board to conclude that another interpretation of LC 16.290(4)(r), equally reasonable and consistent with Rural Residential purpose statement in LC 16.290(1)(b), is one that allows only personal storage of RVs and boats belonging to the property owner. Nothing in the language of these provisions suggest that facilities other than those for personal storage should be permitted, while still maintaining internal consistency and consistency with Statewide Planning Goal 14. Though this interpretation may deviate from past practice, the introduction of OAR 660-004 and 660-022 and the County's response through the creation of LC 16.290 has changed the playing field somewhat. As discussed above, the creation of LC 16.290 has resulted in a much more restrictive approach to appropriate uses within the Rural Residential Zone.

The Board finds that an alternate interpretation of Lane Code 16.290(4)(r) would only permit facilities for personal storage of boats and RVs that are accessory to a residential use on a property. Pursuant to this interpretation, the proposed facility is denied because it is commercial in nature and not for personal storage of RVs and boats belonging to the property owner.

17. It is found that the record in this matter consists of those items listed on the File Record Index identified as "Exhibit B" attached and incorporated here by this reference.

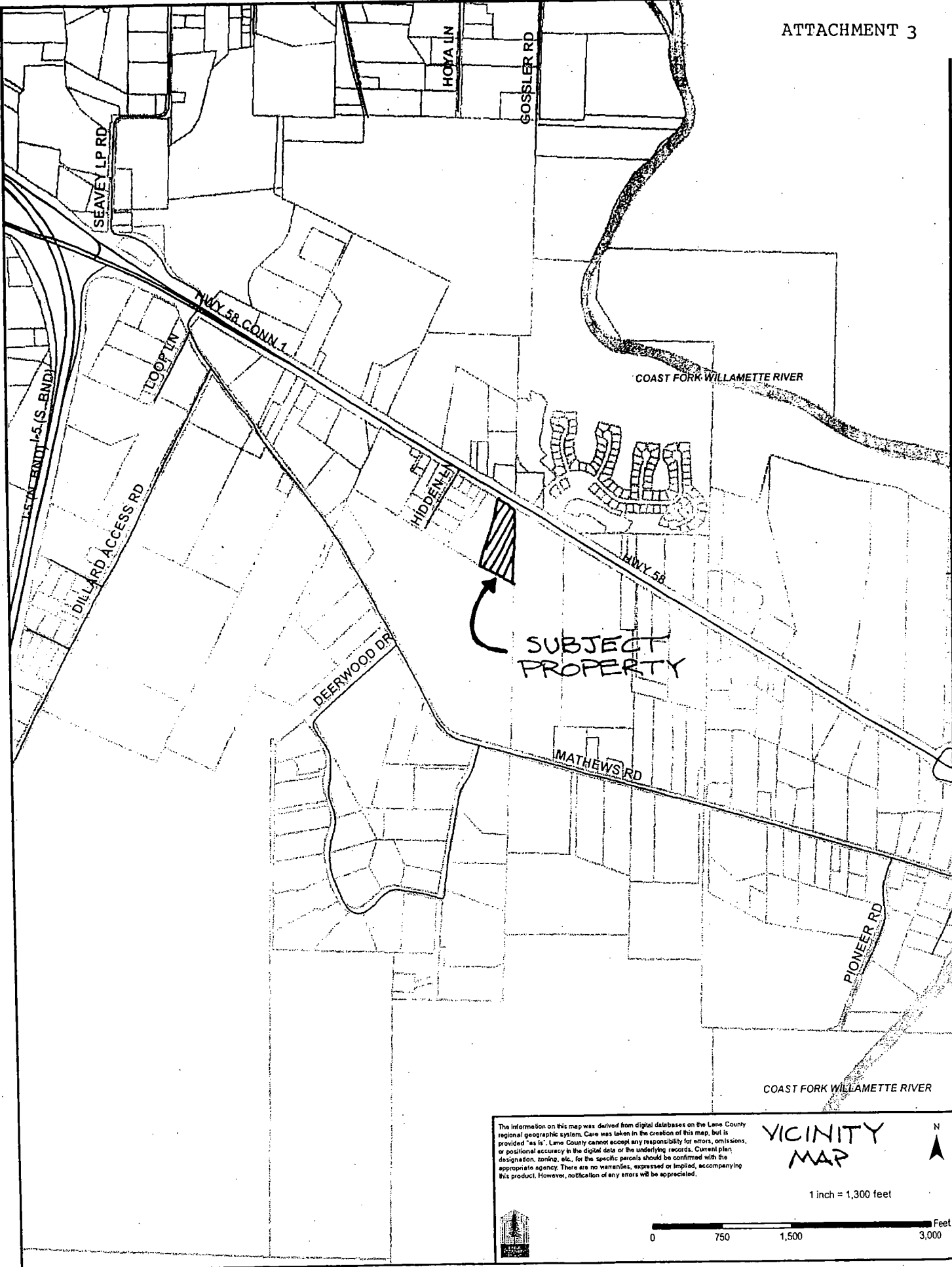
Order Exhibit "B"

PA 07-6721 FILE RECORD INDEX

Exhibit No.	Description	Date
Exhibit 57	BCC Cover Memo and Exhibits	07/27/2009
Exhibit 56	Staff Memo Regarding Participation	04/14/2009
Exhibit 55	Spickerman Letter Regarding Participation	04/10/2009
Exhibit 54	Letter to McCabe Regarding Participation	04/02/2009
Exhibit 53	Spickerman E-mail Regarding Participation	04/01/2009
Exhibit 52	Notice of BCC On The Record Hearing	03/18/2009
Exhibit 51	BCC Hearing Cover Memo and Attachments	03/18/2009
Exhibit 50	BCC Order 09-2-18-10 Electing to Hear Appeal	02/09/2009
Exhibit 49	BCC Elect to Hear Cover Memo and Attachments	02/09/2009
Exhibit 48	Notice of HO Affirmation of Reconsidered Decision	01/23/2009
Exhibit 47	Notice of Appeal	01/20/2009
Exhibit 46	Appeal of Hearings Official's Decision (PA 07-6721 C)	01/15/2009
Exhibit 45	HO Reconsidered Decision	01/05/2009
Exhibit 44	Spickerman Letter to HO	12/18/2008
Exhibit 43	Farthing Letter to HO	12/12/2008
Exhibit 42	Spickerman E-mail Clarifying Timelines	12/08/2008
Exhibit 41	Deschaine E-mail to Eichner	12/05/2008
Exhibit 40	Spickerman E-mail to Eichner	12/04/2008
Exhibit 39	Spickerman Letter to HO	11/17/2008
Exhibit 38	HO E-mail Clarifying Timelines	11/06/2008
Exhibit 37	Spickerman Letter to HO	11/06/2008
Exhibit 36	Reconsideration Hearing Sign-up Sheet and Agenda	11/06/2008
Exhibit 35	Staff Memorandum to HO	11/05/2008
Exhibit 34	Farthing Letter to HO	11/05/2008
Exhibit 33	HO Letter Clarifying Hearing Notice	09/23/2008
Exhibit 32	Spickerman Letter to Planning Director	09/22/2008
Exhibit 31	Notice of Reconsideration Hearing Date	09/16/2008
Exhibit 30	Assessment & Taxation Records for Nearby Properties	Undated
Exhibit 29	Copy of 08/27/2008 HO Decision for PA 07-6355 (Brink)	Undated
Exhibit 28	Copy of 12/26/2007 Site Plan	Undated
Exhibit 27	Staff Notes	Undated
Exhibit 26	Copy of 04/10/2007 Sebba/Vorhes e-mail	Undated
Exhibit 25	Appeal of Hearings Official's Decision (PA 07-6721 B)	09/12/2008
Exhibit 24	HO Decision and Letter to Planning Director	09/02/2008
Exhibit 23	Spickerman Letter to HO on Behalf of Applicant	07/24/2008
Exhibit 22	Farthing Letter to HO on Behalf of Opposition	07/15/2008
Exhibit 21	Appellant's Statement and Exhibits	07/10/2008

Exhibit 20	Appeal Hearing Sign-up Sheet	07/10/2008
Exhibit 19	Appeal Staff Report	07/02/2008
Exhibit 18	Oregon Department of Transportation Comments	06/25/2008
Exhibit 17	Notice of Appeal Hearing	06/11/2008
Exhibit 16	Notice of Appeal Acceptance and Decision Affirmation	05/01/2008
Exhibit 15	Appeal of Director's Decision (PA 07-6721A)	04/28/2008

Exhibit 14	Planning Director Decision & Notice	04/16/2008
Exhibit 13	Sebba/Vorhes e-mail	04/10/2008
Exhibit 12	Oregon Department of Transportation Comments	Undated
Exhibit 11	State Fire Marshal Comments	03/25/2008
Exhibit 10	Lane County Transportation Planning Comments	03/10/2008
Exhibit 9	Woolley Comments	03/03/2008
Exhibit 8	Referral Notice	02/25/2008
Exhibit 7	RLID Printout & Tax Map	Undated
Exhibit 6	Permit History Printout	Undated
Exhibit 5	Wetlands and Floodplain Maps	Undated
Exhibit 4	Staff Notes	Undated
Exhibit 3	Revised Application	12/26/2007
Exhibit 2	Incomplete Application Notice	12/10/2007
Exhibit 1	Original Application (PA 07-6721)	11/08/2007

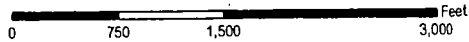


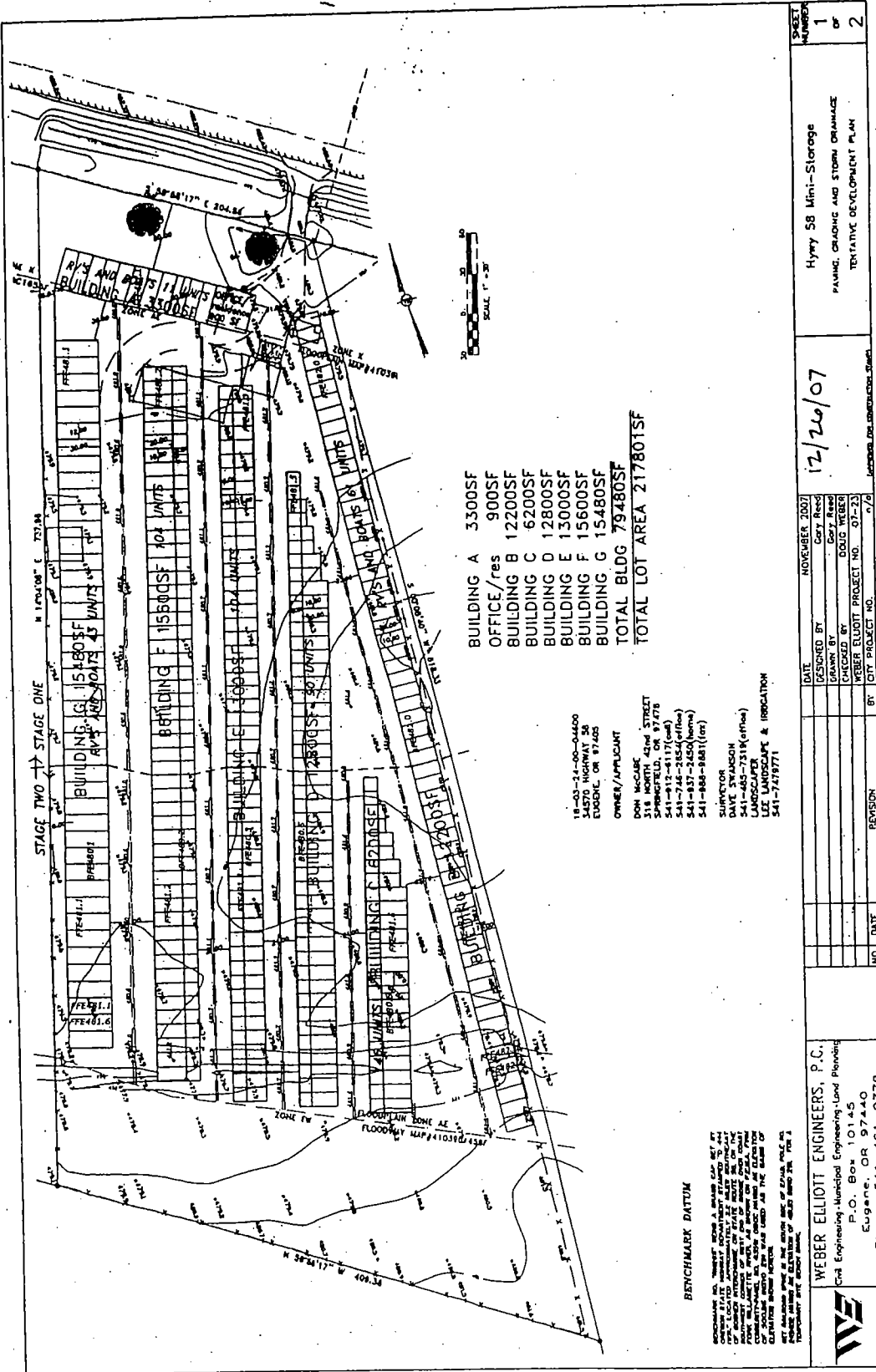
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VICINITY
MAP



1 inch = 1,300 feet





BUILDING A 3300SF
 OFFICE/res 900SF
 BUILDING B 12200SF
 BUILDING C 6200SF
 BUILDING D 12800SF
 BUILDING E 13000SF
 BUILDING F 15600SF
 BUILDING G 15480SF
 TOTAL BLDG 79480SF
 TOTAL LOT AREA 217801SF

18-03-21-00-04400
 54270 HIGHWAY 38
 LOGGIC, OR 97145
 OWNER/APPLICANT
 DON MCGUIRE
 318 NORTH 42nd STREET
 SPRINGFIELD, OR 97478
 541-912-4117 (cell)
 541-274-2824 (office)
 541-887-8821 (home)
 541-889-8821 (fax)
 SURVEYOR
 DAVID SWANSON
 1000 1/2 NORTH 10th STREET
 LANDSCAPER
 LEE LANDSCAPE & IRRIGATION
 541-749771

BENCHMARK DATUM
 BENCHMARK NO. 1000000
 BENCHMARK ELEVATION 1000.00
 BENCHMARK TYPE
 BENCHMARK LOCATION
 BENCHMARK DATE
 BENCHMARK DESCRIPTION

WEBER ELLIOTT ENGINEERS, P.C. Civil Engineering - Municipal Engineering - Land Planning P.O. Box 10145 Eugene, OR 97440 Phone: 541-461-9779		DATE NOVEMBER 2007 DESIGNED BY Cory Reed DRAWN BY Cory Reed CHECKED BY DOUG WEBER WEBER ELLIOTT PROJECT NO. 07-23 BY CITY PROJECT NO. 070	SHEET NUMBER 1 OF 2
HYVRY 58 Mini-Storage PARKING, GRADING AND STORM DRAINAGE TENTATIVE DEVELOPMENT PLAN		12/26/07	

-REDUCED-