

EXHIBIT A

MEMORANDUM
Office of State Fire Marshal
Department of State Police

DATE: March 25, 2008
TO: Lindsey Eichner, Planner
FROM: Kristina L. Deschaine, DSFM
SUBJECT: PA 07-6721

Comments regarding this project-

- Fire department is not adequate. Oregon Fire Code (OFC) Appendix D Requires 20 foot wide, 13 feet 6 inches high, capable of supporting the imposed load of fire apparatus weighing at least 60,000 pounds. Dead end access roads that exceed 150 feet shall be provided with and approved turn around. The inside turning radii throughout the project shall be 28 feet.

- There is no water supply for fire fighting purposes on the provided plan. With over 200,000 square feet of building it will be required. The amount would be determined by the construction type (not provided) and the square footage of the buildings.

- For the buildings that are going to be over 12,000 square feet fire protection sprinklers would be required. Another choice would be to separate them according to the Oregon Structural Specialty Code.

Michael E. Farthing
Attorney at Law

ATTACHMENT 8

462 Kodiak Street
Eugene, Oregon 97401

PO Box 10126
Eugene, Oregon 97440

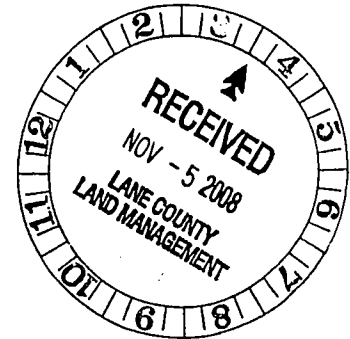
Office: 541-683-1950 ◊ Fax: 541-344-4144

email: mefarthing@yahoo.com

November 5, 2008

HAND DELIVERED

Gary Darnielle
c/o Lindsay Eichner
Lane County Land Management Division
125 E. 8th Avenue
Eugene, OR 97401



Re: Appeal of Director Denial of Application for RV, boat and self-storage facility
PA 07-6721 (McCabe, Applicant)

Dear Mr. Darnielle:

This office represents Cecil Saxon, Jr. and Dorothy Davis. Ms. Davis owns property just west of the subject property and she and Mr. Saxon have been involved in the Brink application (PA 07-6355) which seeks approval of an RV/Boat storage facility on 3.8 acres in an RR zone. We support and agree with your September 2 decision which affirmed the Director's denial of the above-referenced application.

The September 12 appeal statement does not raise any legal arguments or provide any analysis that requires you to change your initial September 2 decision. Further, by holding a reconsideration hearing, you have addressed any issue about whether ORS 197.829(1)(d) applies to this application. The Applicant's appeal statement discusses this statute in great detail thereby eliminating any argument that it has not been raised.

As to the applicability of Goal 14 to this application, the Applicant relies exclusively on *Jackson County Citizens League v. Jackson County*, 171 Or App 149 (2000) (*Jackson County IV*) in arguing that Goal 14 need not be addressed, notwithstanding the clear language of ORS 197.829 (1)(d) which allows LUBA to apply a statewide goal if a local government's interpretation "is contrary" to that goal.

Jackson County IV is not directly applicable to this case because the Court found that *Lane County v. LCDC*, 325 Or 569 (1997) does permit consideration of the goals when LCDC has limited uses in rural areas. *Jackson IV*, S1 Op filed November 22, 2000 at 7. As you noted, LCDC, by administrative rule, has limited the size of rural commercial and industrial uses. OAR 660-022-0030(10) and (11). These limitations were made even more stringent by Lane County. LC 16.292(3)(b)(iii) and 16.291(4)(a). The Applicant's proposed facility far exceeds these

Gary Darnielle
November 5, 2008
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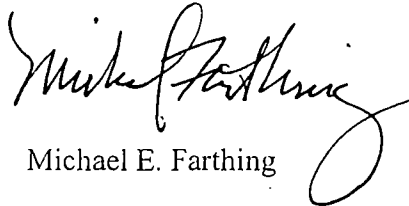
proscribed limits.

The fact that the subject property is zoned Rural Residential and located outside an unincorporated community does not change the fact that rules have been enacted that limit the size of commercial and industrial uses on rural lands. Once this occurred, the holding in *Jackson County IV* no longer applies. The size of the proposed facility far exceed either of these limitations. Further, since you found the use to be "commercial", the disparity in size is even more egregious.

Goal 14 applies in determining whether the use is "urban" in character. Its size speaks for itself. The precedent that would be established if this use is approved would be monumental. This is why Oregon has urban growth boundaries, i.e. to keep urban uses on urban land.

We urge you to affirm your previous decision.

Sincerely,



Michael E. Farthing

Enclosure

cc: Cecil Saxon, Jr.
Gary Darnielle (at L-COG)
Jim Spickerman

September 12, 2008

Planning Director
 Land Management Division
 Public Service Building
 125 East 8th Avenue
 Eugene, OR 97401

Re: Appeal of Hearings Official Denial of McCabe Request
 (PA 07-6721) for a Special Use Permit to Construct an RV Boat
 and Self Storage Facility

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 Ian T. Richardson
 Martha J. Rodman
 Robert S. Russell
 Douglas R. Schultz
 Malcolm H. Scott
 Joshua K. Smith
 James W. Spickerman
 Jane M. Yates

*Also admitted
 in Washington

**Also admitted
 in California

***Also admitted
 in Utah

Dear Planning Director:

This letter is filed in conjunction with the appeal form filed this date.

A. Errors in the decision and reason for reconsideration.

1. The Hearings Official should reconsider his decision because it was based upon a statute and theory not raised in this proceeding. While counsel is aware that similar arguments may have been raised elsewhere, in other special permit proceedings (Essig, Brink), they were not raised here, therefore, counsel did not have the opportunity to address such contentions.

2. As discussed below, the decision was made in error.

B. Identification of reasons for the appeal.

The Hearings Official misinterpreted Lane Code and State law.

C. Discussion

The Hearings Official erred in determining Statewide Goal 14 is applicable to the permit decision. In directly applying the goal, the Hearings Official cites a number of cases and asserts that ORS 197.829(1)(d) alters the effect of ORS 197.175(2)(d) and the holding in *Byrd v. Stringer*, 295 Or 311, 316-317 (1983) and the line of similar holdings that followed. The Hearings Official found Goal 14 to be directly applicable to the application and found the proposed use to be an "urban" use, therefore, determined the use not to be allowable in the Rural Residential district, even if the use complies with the local applicable land use regulation, as shown.

Each and all of the cases cited by the Hearings Official have been reviewed. All of those cases, with the exception of one discussed below, involve adoption of

comprehensive plans or comprehensive plan amendments. Of course, compliance with the Statewide Goals is necessary for acknowledgment of a comprehensive plan (see ORS 197.251) and for amendment of a plan (see ORS 197.835(6)). That is not the land use action at issue.

The one case cited which involves an application for a permit under the local acknowledged land use regulation is *Jackson County Citizens League v. Jackson County*, 171 Or App 149 (2000). That ruling supports the applicant's position that Goal 14 does not apply to this permit approval.

This determinative case, referenced in the opinion itself as *Jackson IV*, is one that, albeit in a confusing fashion, discusses the effect of ORS 197.829(1)(d) in cases where it is contended Goal 14 must be addressed. The short answer is that generally Goal 14 does not have to be addressed in a permit decision. Goal 14 is discussed in *Jackson IV* and ORS 197.829(1)(d) comes into play because one of the criteria for conditional use permit approval in *Jackson IV* was that the application comport with the Jackson County Comprehensive Plan policies, including urbanization policies. Because those policies were in place to carry out the Statewide Goals, Goal 14, pursuant to ORS 197.829(1)(d), became relevant to interpretation of the plan policies.

The tendency, one shared by the writer, is that in reading a case, one seeks to move quickly forward to find the issue actually decided and tends to skim over the history of the case, particularly if it involves previous decisions. In the instance of *Jackson IV*, it is important, in order to fully understand the discussion of ORS 197.829(1)(d) at page 155 of the opinion pertaining to the goals and ORS 197.829(1)(d) (language here was cited in the Essig case in support of direct application of the goals). It is a discussion as to why the appellants did not previously waive their opportunity to claim the statewide goals applicable to interpretation of a policy made applicable by the land use regulation.

That history of the case is set forth commencing at 171 Or App at page 151.

In *Jackson I*, LUBA had ruled that the proposed expansion of a golf course was precluded by certain Goal 3 Oregon Administrative Rules pertaining to golf courses on agricultural lands. In *Jackson II*, the Court of Appeals reversed the decision of LUBA, determining the administrative rules implementing statewide goals were not applicable. In *Jackson III*, LUBA found that Goal 14 did not apply to the permit decision. In *Jackson IV* (would they call the next *Jackson Five?*), at page 152, the court commences explaining how Goal 14 does come into play:

"... However, notwithstanding its holding that Goal 14 was not *directly* applicable to the decision, LUBA concluded that a remand to the county was necessary to determine whether the proposed

expansion was consistent with certain county comprehensive plan urbanization policies that implement the statewide goal.

The county rendered a decision on remand that can be summarily described as holding that the allowance of this use was consistent with the plan policies. Consequently, the county again approved the application. Petitioner then brought the present appeal to LUBA (*Jackson County IV*). Petitioner contended, *inter alia*, that the county's interpretation of its own plan policies as allowing the expansion was contrary to Goal 14, and, therefore, was reversible under ORS 197.829(1)(d). That statute provides"

On pages 154-155 of the opinion, the court deals with a claim of waiver by the petitioner on the issue reviewed to determine if interpretation of the County policy is consistent with the Statewide Goals upon which they are based because this was not raised at an earlier time in litigation. The court acknowledges there are two possible means by which the goals could come into play:

"The upshot is that, in the local and review proceedings on a single application, an opponent can assert both that the goals are directly applicable and preclude approval, *and* that the local regulations instead of the goals are applicable but the former must be interpreted as precluding approval in order to avoid inconsistency with the goals that ORS 197.829(1)(d) proscribes...." 175 Or App at 155.

The court goes on to say:

"In *Friends of Neabeack Hill*, we defined certain limits on the use of the arguably circular process described above. *See Id.*, 139 Ore. App. at 46 (LUBA may not entertain arguments concerning compliance of acknowledged local land use legislation with the statewide goals in reviewing particular land use decisions made pursuant to local legislation). This case, however, does not appear to come within those limits. Rather, it presents a paradigm model of a first appeal that turns on an inapposite goal consistency argument, a resulting remand to apply local provisions instead of the goal, and a second appeal that raises the legislatively declared separate question of whether the ensuing local interpretation of the local provisions is contrary to the goal that was the subject of the argument in the first appeal."

Having decided that there was not a waiver, the court states at page 156:

"... Petitioner's contention that the county's decision applies the plan urbanization policies in a manner that is contrary to Goal 14 and is therefore reversible under ORS 197.829(1)(d) is reviewable under the law as it stands."

The court then goes on to determine what Goal 14 would require in order to determine if the county urbanization policy must be interpreted to require compliance with or an exception to Goal 14.

In the present case, the criteria for approval of the use do not require compliance with comprehensive plan policies. ORS 197.829(1)(d) could only come into play if there were an issue of interpretation of Lane Code 16.290(6). No such issue has been raised. The land use regulation contains no restriction on size of the use permitted in the Rural Residential zone. None can be inferred and it is impermissible to read into an ordinance a requirement the ordinance does not contain. *See Church v. Grant County*, 187 Or App 518, 526 (2003).

D. Other Issues

While the application was denied by the Hearings Official on the above discussed legal issue, the Hearings Official noted other perceived shortcomings. Those are addressed here.

1. Fire apparatus access.

The site plan in the file provides a 30-foot inside radius and a 50-foot outside radius for fire truck turning, which the applicant's engineer understands to meet requirements. The applicant would expect a condition to be imposed that would require that provision for access be made that conforms with IFC requirements.

This feasibility of meeting this condition is obvious. If the present site plan does not comport with the prior code requirement, the applicant can simply shorten, remove or adjust buildings to allow adequate access.

Consistent with ORS 197.522, the permit should be approved if reasonable conditions can be imposed to make the proposed activity consistent with the comprehensive plan and applicable regulations. That is the case here.

2. Sewage disposal system/floodplain.

Attached as Exhibits A and B hereto are a Floodplain Verification and Site Plan. These are copies of documents in the file. Exhibit B demonstrates that the septic system can be located outside the floodplain. Exhibit A indicates "Building A" itself is outside the flood hazard zone and in zone "X."

The Planning Director's decision herein addressed the issue of the sewage disposal system as such an issue is usually addressed:

"If this application would have been approved, the Applicant would be required to meet all sanitation requirements."

The applicant anticipates such a condition will be imposed here as a condition of approval. Again, it is a condition capable of being satisfied, even if there is a determination that the site plan does not allow sufficient room for the septic system and Building A has to be removed or altered to accommodate the system.

3. Issue of significant adverse impacts on uses permitted by zoning on adjacent lands.

The Hearings Official states that while the issue of impacts on existing uses on adjacent lands are discussed, there is no discussion of permitted uses that could be allowed in adjacent zoning districts.

The criterion at issue is Lane Code 16.290(5)(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."

First, such a discussion would involve operating characteristics of the proposed use and whether they would create significant adverse impacts on any of these adjacent or nearby permitted uses. While there are discussions elsewhere, there is a particular discussion of the operating characteristics of the use in the portion of the application that responds to planner Thom Lanfear's letter dated December 10, 2007. The limited operating hours are 10:00 a.m. to 6:00 p.m., Monday through Saturday, closed Sunday, lighting is discussed and described as internally located and low intensity with no spillover light from the facility.

As stated there, the facility will be completely fenced and have a manager on duty at all times. Traffic is expected to be from 6 to 30 movements per day with an average of 16 per day overall. Of course, the facility will have direct access to Highway 58. The actual business operations for the site will be forwarded to the head office elsewhere.

There has been no suggestion that this use will have any significant adverse impacts on adjacent or nearby property. The only evidence is that it will not. Given the state of evidence, it would be difficult to discuss significant adverse impacts on surrounding properties.

The application does contain a discussion of the compatibility of this use on the surrounding properties. A portion of this is contained under the subsection (5)(a) heading. The discussion is also found under LC 16.290(1)(b) addressing the purposes of the Rural Residential zone, particularly that of assuring compatible uses.

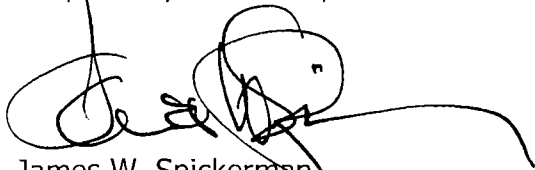
This criterion calls for a review of uses permitted on "undeveloped" land. The Hearings Official findings describes the developed nature of the properties to the north and west of the site. The EFU land to the east and south is developed in pasture and does contain home sites. If, nonetheless, it is considered undeveloped land, if one looks to the list of permitted uses in the EFU district, given the lack of any indication of significant impacts that would be created by the proposed use, none of the permitted uses would suffer significant impact from the proposed use.

E. Conclusion

The Hearings Official's discomfort with the size of this facility is acknowledged, particularly, given the size of the limitations of the Rural Commercial and Rural Industrial districts. I would refer the Hearings Official to my letter of July 24 and August 5, 2008. Both the Rural Commercial and Rural Industrial zoning districts allow a broad range of commercial and industrial uses of any intensity without a calling for examination of whether the uses will adversely impact surrounding uses. The uses are simply permitted outright. That is not the case with the Rural Residential district where, rather than a specific size limit, the uses are subject to the criteria of LC 16.211(5)(a)-(d).

While we may disagree with the legislative choice in this regard, it is an acknowledged land use regulation. Its requirements are unambiguous and are positively addressed by the application.

Respectfully submitted,



James W. Spickerman
spickerman@gleaveslaw.com

jca
Attachments (Exhibits A & B)
cc: Don and Cheryl McCabe

**LANE COUNTY HEARINGS OFFICIAL
 APPEAL OF A PLANNING DIRECTOR DENIAL OF A REQUEST FOR A SPECIAL
 USE PERMIT TO ALLOW FOR AN RV, BOAT AND SEGMENTED SELF-STORAGE
 FACILITY WITHIN A RURAL RESIDENTIAL DISTRICT**

Application Summary

Don & Cheryl McCabe, 362 North 42nd Street, Springfield, Oregon 97478. The applicants request a special use permit to allow a recreational vehicle, boat, and segmented self-storage facility in the Rural Residential (RR5) Zone, pursuant to Lane Code 16.290(4)(r) & (s). The Lane County Planning Director denied the request on April 15, 2008 and a timely appeal was filed by the applicants.

Parties of Record

Don & Cheryl McCabe
 Thomas & Bonnie Woolley

Mike Farthing

Jim Spickerman

Application History

Hearing Date: July 10, 2008
 (Record Held Open Until August 5, 2008)

Decision Date: September 2, 2008

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 16.290(4)(r) & (s)
 Lane Code 16.290(5)

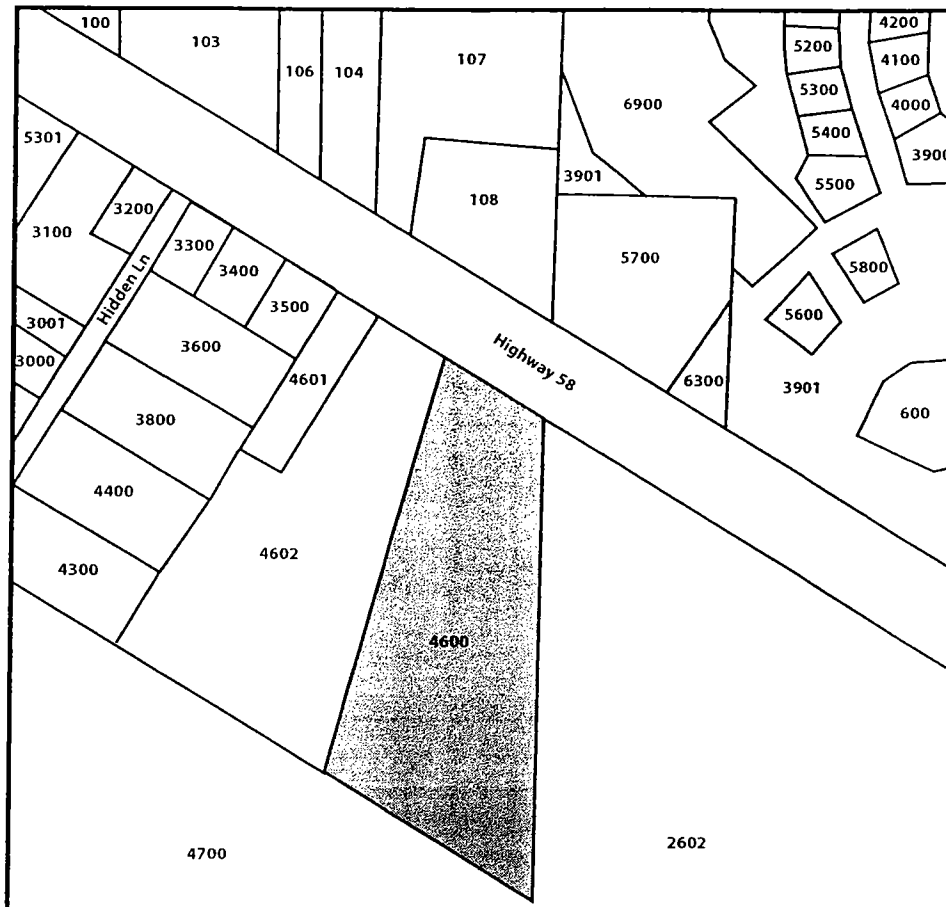
Findings of Fact

1. The property subject to this application, hereinafter referred to as the "subject property," is located east of the rural community of Goshen on the south of State Hwy 58. The subject property is 5.0 acres in size, has a site address of 34570 Highway 58, Eugene and can be identified as Tax Lot 4600, Assessor's Map 18-03-24. It is located on plot 426, is

zoned RR-5/RCP, and lies within "developed and committed" Exception Area 426-2. The subject property lies about one mile from the Community of Goshen and several miles from the Community of Pleasant Hill. It is several miles from the Eugene-Springfield Urban Growth Boundary.

2. The findings of the Planning Director's April 15, 2008 decision are adopted by reference except where explicitly modified by this decision.
3. The applicant is proposing to build seven (7) commercial buildings to store recreational vehicles, boats, and segmented self-storage units. The Applicant is proposing 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. The site is currently developed with a dwelling, a garage, a driveway, a septic system, and a well.
4. The subject property is bordered to the south and east by land zoned Exclusive Farm Use that is currently being farmed with alfalfa and hay. It is bordered on the north, across Highway 58, by land zoned Rural Industrial, and on the west by property zoned Rural Residential (RR-5). Figure 1 depicts the subject property and surrounding tax lots.

Figure 1



More specifically, tax lot 4602, adjacent on the west and zoned RR-5, is occupied with a dwelling and outbuildings and apparently is being used a business involving deliveries, outdoor storage of vehicles, and the indoor manufacturing of RV axles. The storage area occurs on the southern one-half of the property, probably not visible from Highway 58. The remainder of properties immediately to the West are clustered on Hidden Lane and are composed of small residences on substandard lots zoned RR-5. Also located in this area is the Highway 58 Market, located on tax lot 3100 and zoned Rural Commercial.

Directly across Highway 58 from the subject property are tax lots 5700 and 108, zoned Rural Commercial and Rural Industrial, respectively. These tax lots are occupied by Lantz Electric, an electrical contractor with fenced storage yards and offices with some warehousing. To the north of Lantz Electric, on tax lots 107 and 106 are, respectively, Franklin Contracting and the Highway 58 Garage. These tax lots are zoned Rural Industrial. Tax lots 104 and 105, located to the northwest, are vacant. To the west of these parcels is tax lot 103, zoned Rural Industrial, and occupied with a golf driving range.

A 90-lot gated mobile home park called Staffordshire is located about 250 feet to the northwest and across Highway 58 from the subject property. The applicant warrants that residents of this housing area and other properties in the surrounding areas will be the customers and users of the proposed project. This statement is not supported by evidence in the record.

Property adjacent to the south and east is zoned Exclusive Farm Use and is actively farmed for alfalfa and hay. The two adjacent lots, tax lot 4700 and tax lot 2602, are occupied with residences, the closest of which is 1000 feet from the subject property.

5. The State Fire Marshal states in her comments that current configuration does not meet Oregon Fire Code (OFC) regarding access for fire apparatus as well as in-adequate turn around areas.
6. The subject property is also located partially within the Floodway and partially within the "AE" Floodplain zone. The existing subsurface sewage disposal system is located within the floodplain and the applicant intends to relocate it outside of the floodplain if the proposed use is approved. It is not clear where the disposal system can be relocated as the entire property except for a raised fringe parallel to Highway 58 lies within the AE Floodplain Zone or the floodway.

Decision

THE PLANNING DIRECTOR'S DENIAL OF THE MCCABE REQUEST (PA 07-6721) FOR A SPECIAL USE PERMIT TO CONSTRUCT AN RV, BOAT AND SELF-STORAGE FACILITY IS AFFIRMED.

Justification for Decision (Conclusion)

This application is evaluated pursuant to the uses subject to Hearings Official approval and applicable criteria found in Lane Code 16.290(4)(r) & (s) and Lane Code 16.290(5). Lane Code 16.290(4)(r) and (s) allow storage facilities for boats and recreational vehicles and similar uses, respectively, subject to compliance with Lane Code 16.290(5).

It has been argued that besides the criteria incorporated by Lane Code 16.290(4)(s) and Lane Code 16.290(5), a consistency analysis with Statewide Planning Goal 14 should be applied. A similar analysis was applied recently by this hearings official in another appeal of the Planning Director's denial of a special use permit request for an RV and boat storage facility.¹ That facility was located not far from the subject property and on property also zoned RR-5.

It has been suggested that the proposed storage facility, primarily because of the size of its footprint and the location of its clients, is an urban use and, as such, may not be permitted in the Rural Residential District. The argument is based upon the Curry County case,² where the Land Conservation and Development Commission (LCDC) amended Goal 14 to address intensity of uses outside of urban growth boundaries. The argument continues that because OAR 660-022-0030(10) & (11) limits the size of industrial structures to 40,000 square feet and the size of commercial structures to 4,000 square feet, respectively, in non-urban unincorporated communities, it can be presumed that development outside of rural communities must be less intense. The opponents also note that Lane County has limited the size of industrial structures in rural industrial zones to 35,000 square feet and the size of commercial structures in rural commercial zones to 3,500 square feet.³ The applicant has proposed storage facilities that cover over 79,000 square feet or about 36 percent of the subject property.

Traditionally, it has been thought that ORS 197.175(2)(d) shielded land use decisions applying acknowledged land use or comprehensive plan provisions from goal or administrative rule compliance scrutiny.⁴ The adoption of ORS 197.829(1)(d) in 1995, however, has muddied the water. This provision allows LUBA to overrule a local government's interpretation of an acknowledged land use regulation if the interpretation is contrary to state statute, land use goal or rule that the provision implements. I believe the law in this area is generally as follows:

- Compliance of an acknowledged land use or plan provision with the Statewide Planning Goals or LCDC administrative rules cannot be directly challenged but a local government's interpretation of those provisions may be as long as the challenge is not based or dependent upon the proposition that the acknowledged provision itself does not comply with a goal or rule.⁵

¹ *Application of Mark and Kellie Brink*, Lane County Hearings Official Decision in PA 07-6355 (August 27, 2008)

² *1000 Friends of Oregon v. Curry County*, 301 Or 447 (1986)

³ See Lane Code sections 16.292(3)(b)(iii) and 16.291(4)(a), respectively.

⁴ See *City of Corvallis v. Benton County*, 16 Or LUBA 488, 500 (1998).

⁵ *Friends of Neabeack Hill v. Philomath*, 139 Or App 39, 49, rev den 323 Or 136 (1996).

- If a use is allowed by statute in a rural area then it cannot be challenged under Goal 14 because it is a statutorily recognized exception to that rule.⁶

In the present case, the proposed use is allowed in the Rural Residential District, a land use regulation that has been acknowledged by LCDC.⁷ The Planning Director has not suggested that Lane Code 16.290(4)(r) and (s) does not comply with Goal 14 but has essentially opined that an interpretation of these provisions that would allow the a storage facility as large as the proposed use would violate that goal.

The application of Goal 14 to uses outside an urban growth boundary that are not inherently urban or rural must be done on a case-by-case basis.⁸ The question is the whether the proposed use, as warranted by the applicant, represents an urban use that is not allowed outside of an urban growth boundary or within a rural community without an exception to Goal 14. One relevant factor is whether the use is typically located in urban or rural areas.⁹ Also, if the use is commercial in nature, then it is appropriate to ask whose needs are being served by the use. That is, is the use appropriate for and limited to the needs and requirements of the rural area to be served? In a case involving a grocery store that was allowed conditionally in a rural residential district, LUBA pondered whether that use would act as a magnet to shoppers from outside the rural area where it was located.¹⁰

A case closely parallel to this one involved comprehensive plan and zoning amendments that would have allowed RV storage on property adjacent to the McMinville UGB.¹¹ In that case, a similar comparison was made regarding the size of the proposed facility and the square footage constraints found in OAR 660-022-0010. LUBA found that factors concerning location, proximity to an urban growth boundary, and operational characteristics, "... particularly the population it is likely to serve..." were more a relevant indicator than floor space in a determination of whether a use was "urban." Further, 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.¹²

As pointed out previously, a Planning Director denial of similar facility, located in the same exception area as the subject property, was recently affirmed by this hearings official. The applicant in that case identified a number of large RV and boat storage facilities located in unincorporated Lane County outside of rural communities or urban growth boundaries. Most of these facilities, however, 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 decision affirming the Planning Director's denial pointed out that there is no requirement that a local government decision be

⁶ *Jackson Cty. Citizens' League v. Jackson Cty.*, 171 Or App 149 (2000).

⁷ Lane Code 16.290, as it currently exists, was created through the adoption of Ordinance No. 6-02; subsequently acknowledged by LCDC in 2002.

⁸ *Washington County Farm Bureau v. Washington County*, 17 Or LUBA 861, 875 (1989)

⁹ *Shaffer v. Jackson County*, 17 Or LUBA 922 (1989).

¹⁰ *Conarow v. Coos County*, 2 Or LUBA 190, 193 (1981).

¹¹ *Friends of Yamhill County v. Yamhill County*, 49 Or LUBA, 541, *aff'd w/o opinion* 201 Or App 528 (2005)

¹² The contested zoning provisions allowed mini-storage in addition to the storage of boats and vehicles.

consistent with past decisions, only that it be correct when made. *Okeson v. Union Co.*, 10 Or LUBA 1. 5 (1983).

An RV/boat storage and mini-storage facility has a foot in both the industrial and commercial categories. The term "storage" usually connotes an industrial use and the Institute of Traffic Engineers treats storage, including 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 while the proposed use serves the general public, on a client-by-client basis. OAR 660-022-0010(1) defines "commercial use" as "the use of land primarily for the retail sale of products or services, including offices." Subsection (4) of this provision defines "industrial use" as "the use of land primarily for the manufacture, processing, storage, or wholesale distribution of products, goods, or materials." It seems that the proposed use can most accurately be described as a commercial use as it involves the retail sale of a service; the storage of boats, recreational vehicles and household goods.

The following is an analysis of factors that might argue in a determination of whether the proposed storage facility should be characterized as an urban or a rural use. Factors that support a conclusion that the use is urban in nature are as follows:

- 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.
- Lane Code 10.170-10(9), which applies to property within an urban growth boundary, allows for storage buildings for household or consumer goods. (Limited Industrial District). This is not the case with 16.292(3)(b).
- There has been no showing that there is insufficient, suitable land for the use within the Eugene-Springfield Urban Growth Boundary.

Factors that support a conclusion that the use is rural in nature are as follows:

- There appears to be little impact on the neighborhood from traffic generated by the proposed use. The record suggests that most of the impacts from the proposed use on nearby properties will be minimal but, as explained below, this analysis is not complete.
- The predominant character of the neighborhood is a mixture of traditional residential uses with a few commercial and industrial uses. Several properties located across Highway 58 are zoned either Rural Commercial or Rural Industrial.
- Lane Code 16.290 has been acknowledged as being in compliance with the Statewide Planning Goals and the lack of a structural footprint limitation of storage facilities was a

conscious one as other uses allowed by the Rural Residential District are subject to size limitations.¹³

The most important litmus test of whether a use is urban or rural concerns the identity of population that is served by the use. In the present case, the applicant has warranted that the proposed storage facility will primarily serve a rural population but the record does not include any evidence supporting this conclusion. The location of the use, however, suggests that a significant percentage of the clientele may be generated by the nearby major urban growth boundary and two rural communities. One purpose of Goal 14 is to focus growth and intensive uses within more urban areas. The placement of these types of uses near urban growth boundaries and rural communities can have the effect of undercutting the effectiveness of those geographically-based, land use borders. Also, the scale of the proposed use does not seem appropriate to rural residential zoning. If the proposed facility existed at the time the Rural Comprehensive Plan was acknowledged, I suspect that it would have been zoned either Rural Commercial or Rural Industrial to better reflect the type of use and its size.

In the final analysis, I cannot fault the Planning Director's decision to deny the application on the basis of inconsistency with Statewide Planning Goal 14. However, the Director's decision does not articulate the standard that must be met in order for the applicant to gain approval. It has a responsibility to do so. *Philippi v. City of Sublimity*, 10 Or LUBA 24, 30-31 (1984). 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.

Lane Code 16.290(5) requires that uses and development in LC 16.290(4)(a) through (s), except for telecommunication facilities, comply with the requirements of LC 16.290(5). Lane Code 16.290(5)(a) requires that these uses 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. While the applicant has generally identified the impacts of the proposed development and the existing uses in the area, there has been no comparison of these impacts with other uses that could be allowed within the rural residential, rural commercial or rural industrial zones. Compliance with Lane Code 16.290(5)(a) cannot be shown without this analysis.

The mini-storage aspect of the proposed use must be shown to be consistent with the standards of Lane Code 16.290(4)(s)(i)-(v). Lane Code 16.290(4)(s)(iii) requires the proposed use not exceed the carrying capacity of the soil or of the existing water supply resources and sewer service. The subject property is currently served by a subsurface sewage disposal system that is located within the floodplain. The applicant has warranted that this system will be moved to an area that is outside of both the floodplain and floodway. However, the computer-generated floodplain map indicates that the only portion of the subject property outside either of those two

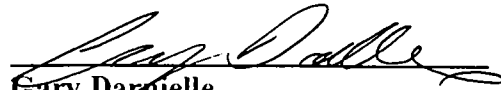
¹³ Lane Code Sections 16.290(4)(j) and (o), respectively, limit the size of animal hospitals outside communities and lodges and grange halls outside communities to 3,000 square feet.

zones lies in a narrow strip of land parallel to Highway 58. There is insufficient evidence in the record to indicate that this land is large enough for the placement of a new system and drainfield and thus that it will be feasible to relocate the current sewage system outside of the floodplain.

Conclusion

The Planning Director's determination that the proposed use should be denied due to inconsistency with Statewide Planning Goal 14 is affirmed.

Respectfully Submitted,


Gary Darnielle
Lang County Hearing Official

JUL 24 2008

HAND DELIVERED

July 24, 2008

Gary Darnielle
 Lane County Hearings Official
 C/O LCOG
 99 E Broadway Ste 400
 Eugene OR 97401

Re: Appeal of Director Denial of Application for RV, Boat and
 Segmented Self Storage Facility, PA 07-6721 (McCabe, Applicant)

Dear Mr. Darnielle:

This firm represents Don and Cheryl McCabe the applicant/appellant herein. We have previously submitted the Appellant's Statement on Appeal, dated July 9, 2008. That statement supplemented the Written Statement submitted by the applicant, a copy of which was attached to the July 9 document.

The Planning Director's decision treated LC 16.290(1), the Purpose statement of the Rural Residential Zone, as containing criteria for approval for the proposed RV, boat and segmented self storage facility. The Appellant's Statement on Appeal addressed the Purpose section but the appellant agrees that, if the proposed use is consistent with the criteria set out in LC 16.290, the use will be consistent with the "Purpose" of the Rural Residential Zone.

As you will recall, LC 16.290(4)(r) allows, subject to approval by the Planning Director, "storage facilities for boats and recreational vehicles." The applicant proposes a segmented self storage facility which would include segmented self storage units, RV and boat storage. This is proposed pursuant to LC 16.290(4)(s) as a clearly "similar" use to the use or uses allowed in LC 16.290(2) and (4).

Urban v. Rural Use

Before addressing the particular criteria of LC 16.290, Mr. Farthing's comments at the public hearing and those contained in his letter of July 15, 2008 are here briefly addressed. The essence of those comments is that the proposed 78,580

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 William H. Martin*
 Walter W. Miller
 Laura T. Z. Montgomery*
 Laurie A. Nelson
 Standlee G. Potter
 Ian T. Richardson
 Martha J. Rodman
 Robert S. Russell
 Douglas R. Schultz
 Malcolm H. Scott
 Joshua K. Smith
 James W. Spickerman
 Jane M. Yates

*Also admitted
 in Washington

**Also admitted
 in California

***Also admitted
 in Utah

square foot facility is so large it somehow becomes "urban in character," therefore, not a rural use. Mr. Farthing does not address the fact that a storage facility for RVs and boats is listed as one of the uses that can be permitted after Planning Director review to assure the criteria of LC 16.290 are met. None of those criteria contain any limitation on size of such a facility, whether it includes segmented storage units for personal property as well as RVs and boats or not. It is simply a matter of whether the criteria of the Code can be met and not a matter of some vague concept of what is urban and what is rural. LC 16.290 has been acknowledged by LCDC as consistent with the Statewide Goals without the presence of size limitation on facilities permitted in the zone.

Comparison of Proposed Use with Listed Use(s)

LC 16.290(4)(s)(ii) states:

"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 opposed use;
- (cc) Parking demand, customer types and traffic generation;
- (dd) Intensity of land use of the site."

Of course, the most direct comparison is to the permitted use of storage facilities for RVs and boats. The analysis is:

(aa) Goods or services traded from the site

The only difference between the specifically permitted and the proposed use is the proposed use will contain facilities where other personal property can be stored as well as RVs and boats. The customers will be of the same type and the activity that will take place on the site will be the same activity, storage, and the storage will be in the same type of units.

(bb) Bulk, size, and operating characteristics of the proposed use

While the listed use, RV and boat storage, is not specified as enclosed or not enclosed, the proposed use, however, will have enclosed units for all of the storage as indicated above. There is no distinction between the use proposed and that listed as it relates to bulk and size.

The operating characteristics of the proposed use also will be very similar to the listed use. If anything, customers of the facility will likely seek access to their RVs and boats more often than to their other goods.

As was indicated in the application, the storage facility will have operating hours from 10 a.m. to 6 p.m., Monday through Saturday, closed Sunday, and will be completely fenced with a chain link fence six feet in height. A manager will be on duty during office hours and on site 24 hours, 7 days a week to provide security. All of the aspects of the proposed facility are similar to the listed use which would only accommodate RVs and boats.

(cc) Parking demand, customer types and traffic generation

Attached as Exhibit A is a copy of a photo of the applicant's existing 76,265 square foot new storage facility in Springfield, showing parking consisting of three regular and one handicap parking spaces. The applicant reports these parking spaces are seldom used, as persons coming to the site drive directly to their storage unit for obvious reasons. As stated in the application, customers tend to spread their access times across available hours and do not develop "rush hours." Traffic generation is very low with either use, with many users rarely accessing the site. Attached as Exhibit B is a portion of the Traffic Impact Analysis for the applicant's Springfield facility of approximately the same size. As you can see, the anticipated "Trip Generation" for PM peak hours is ten vehicles entering the site and ten exiting the site.

The operator of the proposed facility, as indicated above, operates a similar size facility in Springfield and anticipates from 16 to 30 traffic movements per day (entrances and exits are considered separate movements) with an average of 16 per day overall. There will be more traffic expected on the weekends and less on the weekdays, with more in the summer and less in the winter.

Attached as Exhibit C is a portion of City of Eugene SDC Methodology. First, it should be noted that Transportation Use Code 151 "Mini-Warehouse" makes no distinction as to what is stored in the storage unit, whether it be RVs, boats or other personal property. Pages B-11 and B-12 of Exhibit C are included to show that the "trip rate" for "mini-warehouse" is among the very lowest of any of the uses listed.

There is no reason to expect there will be any difference between the uses with regard to parking demand, customer types and traffic generation.

(dd) Intensity of land use of the site

The proposed use, relative to RVs and boats only, would be of the same intensity of use. In this instance, there will be less visual impact than is usually the case with RV and boat storage in that all storage will be in low-rise buildings.

The activity associated with the proposed use, compared to RV and boat storage only, will be very similar. While mini-storage use may involve some rental vans, much of the activity will involve simply passenger cars, as compared to the movement of RVs and boats.

The hours of operation will be the same for the proposed use as the specifically permitted use. The lighting will be the same for both types of uses and the facility will be completely fenced, as is the case with RV and boat storage facilities. There will be a manager on duty, as is the case with both types of storage facilities.

LC 16.290(5)(a)

In addition to the findings required comparing the proposed use with a permitted use or uses called for by LC 16.290(4)(s), the criteria of LC 16.290(5) are applicable. In particular, LC 16.290(5)(a) is addressed, which provides:

“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;”

The enclosed storage facility will have a 900 square foot office/live in manager space, with a 50-foot landscaped setback from the highway to service the office. The business is only for passive rental for storage space and has no outgoing goods or services.

The proposed facility will be located on the portion of the 5-acre parcel adjacent to Highway 58. The parcels east and south of the subject parcel are actively farmed with alfalfa and hay as principal feed crops. The proposed storage development should have minimal impact on the adjoining agricultural property.

The parcel to the west, tax lot 4602, zoned RR-5, is developed with a dwelling and outbuildings and, whether it is a nonconforming use or an illegal use, is an actively operating business with open storage, including derelict vehicles lined up along the common property line. This business involves deliveries, outdoor storage of vehicles and indoor manufacturing of RV axles. A commercial Hyster forklift is used on the property.

Gary Darnielle
July 24, 2008
Page 5

Tax lot 5700, zoned RC, and tax lot 108, zoned RI, located directly across Highway 58, are occupied by Lantz Electric, an electrical contractor, and are developed with fenced storage yards, offices and some warehousing. Behind Lantz Electric, on tax lots 106 and 107, zoned RI, are Franklin Contracting and Highway 58 Garage, both active, operating businesses with offices and warehouse/vehicle buildings.

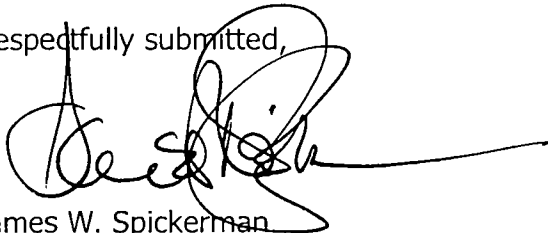
The proposed use will not create significant adverse impacts on these uses, on adjacent and nearby lands or on use permitted on adjacent undeveloped lands, if the agricultural lands could be considered undeveloped.

Other criteria for approval have been addressed in the Written Statement portion of the application and the July 9, 2008 Statement on Appeal.

Conclusion

In this instance, the similar use proposed is, to a high degree, the same use specifically listed in the zone. The Special Use Permit should be approved.

Respectfully submitted,



James W. Spickerman
spickerman@gleaveslaw.com

jca

cc: Don and Cheryl McCabe
Michael E. Farthing
Lindsay Eichner

Exhibits:

- A – Photo of Springfield storage facility
- B – Portion of TIA
- C – Portion of City of Eugene SDC Methodology

Michael E. Farthing
Attorney at Law

462 Kodiak Street
Eugene, Oregon 97401

PO Box 10126
Eugene, Oregon 97440

Office: 541-683-1950 ◊ Fax: 541-344-4144

email: mefarthing@yahoo.com

July 15, 2008

HAND DELIVERED

Gary Darnielle
c/o Lindsay Eichner
Lane County Land Management Division
125 E. 8th Avenue
Eugene, OR 97401

Re: Appeal of Director Denial of Application for RV, boat and self-storage facility
PA 07-6721 (McCabe, Applicant)

Dear Mr. Darnielle:

This office represents Cecil Saxon, Jr. and Dorothy Davis. Ms. Davis owns property just west of the subject property and she and Mr. Saxon have been involved in the Brink application (PA 07-6355) which seeks approval of an RV/Boat storage facility on 3.8 acres in an RR zone.

Our primary concern with this and the Brink proposals is the size of the development proposed. In both instances, the proposed storage facility is urban in character. For Brink, the applicant reduced the size of the facility to 34,000 square feet in order to meet the maximum size allowed for industrial facilities in the Rural Industrial (RI) zone in unincorporated communities. The applicant in this case makes no pretense of trying to meet that size limitation. They seek approval of a 79,000 square foot mixed use (RVs, boats and self-contained units) storage facility on a five-acre RR-zoned parcel. The site plan speaks for itself!

As noted in the Brink appeal and our testimony on July 10, we do not believe the RV/boat storage use that is allowed as a discretionary use in the RR zone includes or means urban-sized facilities. Rural uses must be "rural". There is a limit in the Code and the LCDC's regulatory structure on the size, nature and scope of such facilities in rural areas. Both this and the Brink proposals exceed the intent and purpose of the County Code and LCDC's regulations for this use in this zone. LC 16.290(1)(b) clearly states that uses allowed in the RR zone are limited to "primary and accessory rural residential uses" and "other rural uses compatible with rural residential uses and the uses of nearby lands." A facility that is urban in character, appearance and function, whether it be a nursing home, golf course, school or storage facility, cannot and should not be located in an RR zone, and especially in an RR-zoned property located outside of an unincorporated community.

Gary Darnielle
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Page 2

What is urban and what is rural is a Goal 14-related issue even though Goal 14 does not have direct applicability. To approve this use, the Lane Code still requires that a determination be made as to whether a proposed use is "rural". As a starting point, the size limits in the RI (35,000 s.f.) and RC (3,500 s.f.) zones provide guidelines for assessing whether this type of use is rural or urban. An assumption can be made that a facility which exceeds these maximum size limits is not rural in character. The facility proposed by this application is over twice the size allowed in the RI zone and over 25 times the maximum size allowed in the commercial zone.

The applicant's response is that this proposed facility is neither an industrial or a commercial use and therefore the size limits in the RI and RC zone have no relevance. This makes no sense and is intuitively contrary to LCDC's rules (OAR 660, Division 022) for planning and zoning in unincorporated communities. LUBA recognized this logic when it stated:

"As DLCD reminded the county during the initial proceedings below, Goal 14 authorizes counties to include within unincorporated uses that are more intensive than uses allowed on rural lands outside unincorporated communities. See n 1. By negative implication, DLCD argued, the intensity of uses allowed on rural lands outside unincorporated communities must be less than the maximum intensity allowed inside such communities."

(Emphasis supplied) Friends of Yamhill County v. Yamhill County, LUBA No. 2005-057, Sl Op 7. This case strongly suggests that the intensity of uses allowed in RR zones should be markedly less in areas outside of unincorporated communities. We believe LUBA, DLCD and LCDC would be shocked if this proposed facility was approved in these circumstances.

Related to the size of the proposed facility particularly in the context of the limitation in the RI and RC zone is the applicant's characterization of the use as rural but not industrial or commercial. Ironically, we agree with the applicant's assertion that the proposed use is not "industrial". This is because it is a "commercial" use in its operation and function. It clearly involves the "retail sale of products or services, including offices." OAR 660-022-0010(1). The "product" being sold is a storage space. Anyone in the general public can buy such a space. In this regard, it is no different than an office. Again, we believe the size limits in the RC zone and LCDC's rules operate as maximum limits on this proposed facility. *Supra*, Sl Op 9.

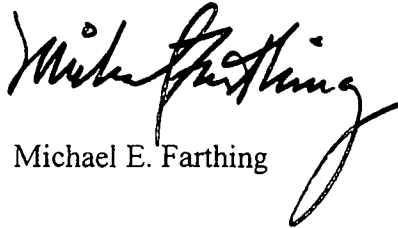
Finally, as in the Brink appeal, the precedent that would be established if this facility is allowed is quite significant. All RR-zoned properties in the County would become candidates for development storage facilities of this size and magnitude. A use of this size is not consistent with the interest and purpose of the County's RR zone and is in conflict with LCDC's overall approach to allowing commercial and industrial uses in rural areas, whether they be unincorporated communities or developed and committed exception areas. There is something

Gary Darnielle
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Page 3

very incompatible with allowing a use that should be inside an urban growth boundary. The proposed facility is not a rural use because of its size, function and operation. It is a retail commercial operation that should be limited in size to those allowed in the RC zone. Otherwise, and in its present size, it should be located in an incorporated city.

One other matter should be addressed. Site review should be required if this use is approved. How it is developed will be primary focus of whether it is compatible with adjacent uses and the neighborhood.

Sincerely,

A handwritten signature in black ink, appearing to read "Mike Farthing". The signature is written in a cursive, flowing style with a large loop at the end.

Michael E. Farthing

Enclosure

cc: Cecil Saxon, Jr.
Gary Darnielle (at L-COG)
Jim Spickerman

RECEIVED AT HEARING

P.A. NO. 07-6721 A

ATTACHMENT 13

DATE: 7/10/08 EXHIBIT NO. _____

APPELLANT'S STATEMENT ON APPEAL

In the matter of Planning Director Denial

File No. PA 07-6721

Don and Cheryl McCabe, Applicant/Appellant

The Planning Director misinterpreted both the text and context of Lane Code 16.290, Rural Residential Zone (RR). This discussion will follow the format of the Planning Director's findings.

Attached, for the sake of convenience, is the Written Statement from the application addressing the criteria for Planning Director approval. LC 16.290(4) allows, subject to approval by the Planning Director, "storage facilities for boats and recreational vehicles." The applicant proposes a segmented storage facility which would include segmented self storage units, RV and boat storage. This is proposed pursuant to 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."

As discussed in the application, this development will provide a facility for area residents for the storage of boats, RVs and other personal property.

This appeal statement will focus on the key findings in the Planning Director's decision.

Lane Code Chapter 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.**

Finding 1

Central to the Planning Director decision is the statement found in the first beginning paragraph of Exhibit C, page 5 of the staff report:

"LC 16.290(1)(b) states that the purpose of the Rural Residential Zone is to limit the allowed uses and development to primary and accessory rural residential uses. The phrase 'limit the allowed uses' effectively prohibits uses identified and allowed in another zone. The Rural Residential Zone limits storage uses specifically to RV and boat storage under (4)(r). Staff disagrees with the Applicant when they stated that storage by itself is not an industrial use. Multiple industrial zones in Lane Code list storage as an industrial use, see below...."

In construing LC 16.290(1)(b), the Planning Director has both omitted what has been inserted and inserted what has been omitted, contrary to ORS 174.010. The misconstruction of the Code provision starts with the first sentence above quoted. The Planning Director chooses to look to only the first portion of LC 16.290(1)(b). In its entirety, the sentence reads:

"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...." (Emphasis added.)

The purpose statement clearly does not limit the purpose of the district to allow only primary and accessory rural residential uses. There is simply no ambiguity in the statement. There are two categories of uses set forth in the disjunctive.

The Planning Director goes on to allege that the purpose statement somehow, in referencing limiting allowed uses, "effectively prohibits uses identified and allowed in another zone." There is simply no language in the Purpose section that so limits uses to those not allowed in another zone, particularly since it references "other rural uses compatible with rural residential uses and the uses of nearby lands." RV and boat storage is a specifically listed "other rural use" and the use proposed is one similar to that use.

The Planning Director, sets out the following to demonstrate that the Code lists storage as an industrial use:

Lane Code 10.170. Limited Industrial District (M-1)
10.170-10(9) Storage buildings for household or consumer goods

Lane Code 16.224. Limited Industrial Zone (M-1)
(1)(i) Storage buildings for household or consumer goods

Lane Code 16.292. Rural Industrial

(3)(b) Small-scale, low impact manufacturing, assembling, processing packaging, storage, wholesale distribution, testing, or repairing that does not include radioactive materials or hazardous waste byproducts in the manufacturing process and that may occur outside a building or in one or more buildings containing not more than:

(iii) 35,000 square feet of floor area in any one or combination of buildings on the same parcel or lot in an exception area that is not designated by the RCP as an unincorporated community.

With respect to LC 10.170 and LC 16.224, the reference is to "storage *buildings*" and specifically for "household or consumer *goods*." It is submitted that these use listings contemplate buildings in the nature of warehouses to store commodities before sale. Wikipedia defines "consumer goods":

"Consumer goods are final goods specifically intended for the mass market."

The Planning Director points out that the Rural Industrial district at (3)(b), above set out, includes storage. The context of that term must be considered. As stated in the attached application Written Statement:

"This section of the Code clearly contemplates industrial uses that are active in nature, such as manufacturing, processing, packaging, testing, and repairing. These uses would automatically mean employees, parking, traffic, shipping and so on. The storage referred to in this section is storage ancillary to these active uses and not as a 'stand-alone' use. The limitation of building square footage is meant to restrict the size of the underlying industrial use including storage in order to keep it '*small scale and low impact*' and should not be applied to the passive storage that we propose which is more like grain storage, or hay storage or other agricultural equipment storage that would require buildings to protect against weather and provide security.

Storage, by itself, is not an industrial use. Storage becomes an industrial use when it is associated with manufacturing, processing, packaging, testing, and repairing...."

As stated above, the "similar use" provision of LC 16.290(4)(s) does not limit those uses to those not provided for elsewhere in the Code. The fact is, however, the use proposed is not listed in the industrial district. Rather, the use is very similar to and includes that provided in subsection (r), boat and RV storage.

Finding 2

The Planning Director states:

"Lane Code 290(1)(b), states that all permitted uses in the Rural Residential Zone shall be compatible with rural residential living."

As a matter of fact, the quoted section provides for "other rural uses compatible with rural residential uses and the uses of nearby lands...." The Planning Director then discusses OAR 660-022-0030 pertaining to Planning and Zoning of Unincorporated Communities, pointing out:

"Industrial uses (in OAR 660-022-0030) are limited to a building or buildings not to exceed 40,000 square feet of floor space. Lane Code's Rural Industrial Zone (LC 16.292) includes a similar limitation for industrial uses within unincorporated communities...."

Assuming that the proposed use is an industrial use, the Planning Director wants to make the case that the size of industrial uses are limited in even the industrial zones in unincorporated communities. This is irrelevant. Under neither the Lane Code nor the Oregon Administrative Rules is the proposed use an "industrial use." OAR 660-022-0010(4) defines "industrial use":

"'Industrial Use' means the use of land primarily for the manufacture, processing, storage, or wholesale distribution of products, goods, or materials. It does not include commercial uses."

As with the discussion of Lane Code, the mention of "storage" in this context means storage ancillary to the manufacture, processing, storage, or wholesale distribution of products, goods, or materials. It does not contemplate storage similar to storage facilities to accommodate the needs of individual RV and boat owners.

The Planning Director states that there are also size limitations on RV and boat storage facilities in areas outside the designated unincorporated communities and within the Rural Commercial Zone. In fact, the use permitted in the Rural Commercial Zone is not simply RV and boat storage. LC 16.291(3)(q) allows, subject to Director approval, the following:

"Recreational vehicle or boat storage, sales, repair and subordinate boat building that comprises less building floor area than used for boat sales or rentals."

This is not simply a provision for RV and boat storage but contemplates a more intense commercial use.

The Planning Director also references limitations on the size of commercial buildings in OAR 660-022-0030. As with the Director's referenced administrative rules pertaining to industrial uses, it is important to consider the definition for the use regulated. OAR 660-022-0010(1) defines the term:

"'Commercial Use' means the use of land primarily for the retail sale of products or services, including offices. It does not include factories, warehouses, freight terminals, or wholesale distribution centers."

The limitation on location of commercial uses is irrelevant in that the proposed use does not involve "retail sale of products or services."

The Planning Director would make much of the size limitation on these uses. It is important to note that uses discussed in the Industrial and Commercial Zones are not subject to the criteria of LC 16.290(5), as are the LC 16.290(4) uses. Most important of those criteria, a standard not applicable to the industrial and commercial uses, is LC 16.290(5)(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;"

While there is no limitation on size of the rural residential uses, they must be compatible with their setting and they must be consistent with the other criteria in LC 16.290(5). If the Code intended some limitation on size, it could have so provided.

Finding 3

The Planning Director simply finds:

"The proposed RV and boat storage facilities are an allowed use in the zone. The size of the proposed facilities is not consistent with the purpose of the zoning, please refer to Finding 2."

As stated above, there is not a limitation on size.

Finding 4

LC 16.290(4)(s) sets out the criteria for determining whether the use is similar to a listed use. The Planning Director simply makes a negative finding "based on Finding #1 and 2." The applicant has addressed these criteria for similarity commencing at the bottom of the fourth page of the attached land use application.

The remainder of the criteria received cursory discussion in the Planning Director decision. The findings appear to acknowledge that those criteria can be met, particularly, if conditions are imposed where necessary.

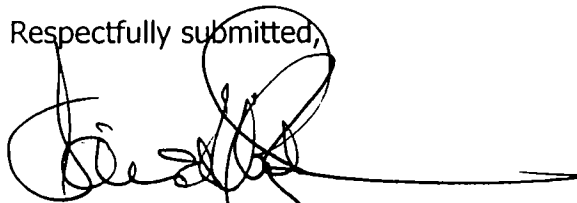
Conclusion

The Planning Director simply misconstrued LC 16.290(1)(a) to limit the "similar use" section to primary access rural use and failing to recognize, by the terms of the ordinance, other rural uses compatible with rural residential uses and the uses of nearby land that are intended to be allowed in the rural residential district. To simplify the issue, the proposed storage facility is most like, and includes, RV and boat storage, a specified use, both by its

very nature and by virtue of the fact that it meets the criteria for determination of similar uses as those are set forth in LC 16.290(4)(s).

The special use permit should be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'James W. Spickerman', with a long horizontal line extending to the right.

James W. Spickerman
Of Attorneys for Applicants

Attachment: Applicant's Written Statement

EXISTING IMPROVEMENTS Does the property contain any roads, structures, etc.?

THE SITE NOW HAS A THREE BEDROOM, TWO BATH, RESIDENCE WITH TWO CAR GARAGE AND HAS A WELL WATER SYSTEM AND A "STANDARD" SUBSURFACE SEWAGE DISPOSAL SYSTEM.

PHYSICAL FEATURES: Describe the site. Identify any steep slopes, water bodies (creeks, ponds, etc.) or other significant features. Include additional pages if necessary.

THE SITE IS FLAT, VARYING IN ELEVATION ONLY TWO FEET OVERALL. A FLOODPLAIN VERIFICATION ASSESSMENT INDICATES THAT THE MAJORITY OF THE SITE IS WITHIN ZONE "AE" . A SMALL AREA TO THE SOUTH IS WITHIN THE FLOODWAY ZONE "FW" AND IS SHOWN ON THE ATTACHED PLAN. A 77' STRIP OF THE SITE ALONG HIGHWAY 58 IS ZONE "X", OUTSIDE THE FLOOD HAZARD ZONE.

APPROVAL CRITERIA

What criteria are applicable to this application? List the Chapter, Sections(s) and Subsection(s) from the Lane Code. For example: F2 (Impacted Forest) LC 16.211.

Base Zone: LC 16.290 RR-5

Approval Criteria: LC 16.290(1)(b);

LC 16.290 (4)(r)(s)(i)(ii)(aa)(bb)(cc)(dd)(iii)(iv)(v);

LC 16.290 (5)(a)(b)(c)(d);

LC 16.290 (7)(a)(i)(ii)(g)(i)(ii)(iii)(h).

Combining Zone(s): LC FP-RCP 16.244 (7)(b)(ii)(v)(aa)(vi)(aa)(bb)(cc)(vii)(aa)(bb)(viii)(aa)(bb).

WRITTEN STATEMENT

We wish to construct a recreational vehicle/boat and segmented storage facility to be located at an elevation of one foot above the BFE for the development site. The BFE varies and has been determined by a Floodplain verification conducted by the Lane County Land Management Division, January 2007. A previous owner in 1998, had approval for a 38 space recreational vehicle park with a sewage treatment and disposal facility and had started construction before being stopped by personal health considerations.

We wish to build approximately 78,580 square feet of segmented storage including RV and boat storage, a 900 square foot office/live-in manager space, and install a replacement septic tank and septic field in the 50 foot landscaped setback area from the highway to service the office. The business is only for the passive rental of storage space, has no outgoing goods or services, and is a very low traffic generator.

We believe that this proposal is in accordance with the general purpose of development in RR-5.

LC 16.290(1)(b) states that the purpose of the zone is 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."*

The parcel to the East and South of the subject parcel is being actively farmed with alfalfa and hay as principal feed crops. The proposed development of storage on the subject parcel should have a minimal impact on this adjoining agricultural property.

The parcel to the West (TL 4602 zoned RR5) is being utilized in a business involving deliveries, outdoor storage of vehicles and indoor manufacturing of RV axles. A commercial Hyster fork lift is used on the property. There are no farm practices being conducted on this parcel. Traffic to and from this business is moderate. The impact on this property should also be minimal.

The remainder of the properties to the West within the RR5 zone, are clustered on Hidden Lane and are small residences, built at a time when the 5 acre minimum was not in force. They include the small grocery store, Highway 58 Market, located on the tax lot 3100 with RC zoning. They do not adjoin the subject property and so should not be affected.

Directly across Highway 58, TL 5700 zoned RC and TL 108 zoned RI, are occupied by Lantz Electric, an electrical contractor with fenced storage yards and offices and some warehousing. Behind Lantz Electric on TL 107 and TL 106 with RI zoning are Franklin Contracting and Highway 58 Garage, both active operating businesses with offices and warehouse/vehicle buildings. Tax Lots 104 and 105 with RI zoning, are vacant. Tax Lot 103 with RI zoning is a golf driving range. All these properties would not be negatively impacted by the proposed construction of a storage facility.

The adjacent property to the west boundary of the subject property (TL 4602 zoned RR5) is developed with a dwelling and out buildings and has become an active operating business with open storage including derelict vehicles lined up on the common property line (see photo). The lots to the east and south are zoned Exclusive Farm Use and are developed with homesites, the closest of which is approximately 1000 feet from the subject property. Property across the highway is zoned RC and RI, with an urban density housing area, called Staffordshire, zoned RR2, a 90 lot gated mobile home park, located approximately 250 feet northeast of the site. Residents of this housing area and other properties in the surrounding areas will be the customers and users of the proposed development. This development will be an accessory rural residential use as contemplated in LC 16.290(1)(b) and will be a community storage asset.

LC 16.290(4) states that the uses and developments in LC 16.290(4)(r)and(s) are allowed and require the approval of the Director.

Subsection (4)(r) indicates that an allowed use subject to approval is *"storage facilities for boats and recreational vehicles"* and is silent on the matter of intensity of use.

Subsection (4)(s) allows *"uses and development similar to uses and development allowed by LC 16.290(2) or (4) above if found clearly similar to the uses and development allowed by LC 16.290(2) or (4) above."*

Subsection (4)(s)(i) states that *"the proposed use and development shall be consistent with the purpose in LC 16.290(1)"* which requires that the proposed development promotes *"compatible and safe"* rural residential living. Residents of this area and other housing in the surrounding areas will be the customers and users of the proposed development. This development will be a community storage asset.

Subsection (4)(s)(ii) states that *"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 "(aa),(bb), (cc), and (dd)."*

Our proposal for a combination of covered recreational vehicle storage, boat storage and segmented storage is consistent with this section and is also consistent with the criteria used to compare similar uses in subsections (aa)(bb)(cc)and (dd).

(aa) Goods and services traded from the site:

Both uses are similar in that the customers are the same, the contract is for rental of space only and does not involve vehicle servicing or maintenance, and neither use generates much customer traffic. The perception from the highway and neighboring properties will be that the use of the property is passive with either use. The only difference is that boat and RV storage alone, without segmented storage, would probably need to draw customers from a wider area around the surrounding community to be economically viable. This extra outside traffic would make the combination of uses that include segmented storage more desirable than a single use and more compatible with "rural residential living."

(bb) Bulk, size and operating characteristics of the proposed use:

A typical boat and RV storage facility would present a similar aspect to the neighboring properties except that our proposed facility would be almost completely enclosed, be set back from the property lines and the storage would not be visible. Instead of uncovered vehicles through a chain-link fence, the view would be of neat, well maintained low rise buildings, with landscaped set back areas to soften the view. As far as operating characteristics go, the uses would be virtually identical. In balance, the appearance of the storage buildings would be much more appealing than that of the typical uncovered boat and RV storage facility which is an allowed use.

(cc) Parking demand, customer types and traffic generation:

There is minimal demand for parking in either use and the customer profile is similar. Customers tend to spread their access times across the available hours of opening and do not develop "rush hours." Traffic generation is very low with either use. Many users either never access the site or let months pass between visits.

(dd) Intensity of land use of the site:

Either use, for boats and recreational vehicles only, or for segmented closed storage and boat and RV storage, could be of the same intensity of use except for the visual impact of the typical uncovered boats and RV's compared to the orderly appearance of our low-rise storage buildings. We believe that our buildings, rather than open storage, would be much preferable to our neighbors if they had a choice.

In summary, the proposal meets the similarity criteria outlined in LC 16.290 (4)(s)(ii)(aa)(bb)(cc)(dd).

Subsection LC 16.290(4)(s)(iii) states that "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."

Water Supply:

In November 1997 a 6" well was drilled on the property by Casey Jones Well Drilling Co., Inc. to a depth of 65'. A pump test was conducted by Rainbow Pump Co., Inc. November 21, 1997 with the well level stabilized at 44' after 2 hours at 22 gpm. Static level was 10'. Water was sampled and tested by Analytical Laboratory & Consultants, Inc. and indicated less than .005 mg/l of arsenic and 4.1 mg/l of nitrate-N, both below maximum allowable contaminant levels. Coliform bacteria and E.Coli were absent. A well log inventory collected of 97 well logs in Sections 19 and 24 drilled from 1950 to 1997, indicated an average well depth of 114 feet and average yield of 26 gallons per minute.

This well has been the domestic supply for the existing residence for the last 12 years with no evident problems. The proposed change in use will be less demanding in terms of water usage than the existing three bedroom dwelling.

Sewage Disposal:

The existing "standard" subsurface sewage system has been in use for 12 years or more and has been functioning well. It consists of a septic tank and drain field of approximately 150 feet in length.

This proposal is to abandon the existing system in the floodplain area and relocate it about 100 feet North, outside the floodplain in the setback from Highway 58. Demand on the relocated system will be substantially less because it need only support the office for the storage business and not a full family residence.

The previous owners applied for and received approval for a General Permit 5200A in 1998 for a sewage system to service a proposed RV park. The permit was issued September 24, 1998 for a RGF (recirculating gravel filter) sewage treatment and disposal system. The system was limited to a maximum of 3,100 gallons per day. It was to be located within the 100-year flood plain area, along the Eastern boundary of the site.

The soil type at the location of the proposed drain line is Malabon Silty Clay Loam, type 75, with a permeability of .6 to 2.0 inches per hour at 0 to 12" in depth; .2 to .6 inches per hour at 12 to 42"; and .6 to 2 inches per hour at 42 to 60 inches in depth according to the USDA Soils Survey of Lane County.

Presently, negotiations are being conducted by the owner with DEQ to produce a new site evaluation study for the new "standard" subsurface sewage disposal system location which will provide sewage disposal for a substantially diminished demand due to the removal of the family residence.

Subsection LC 16.290(4)(s)(iv) states that *"the proposed use and development shall not result in public health hazards or adverse environmental impacts that violate state or federal water quality regulations."*

The new disposal field will be located down gradient, 100 feet away from the existing well in accordance with DEQ regulations and will require DEQ approvals in conformity with the new site evaluation. This should guarantee that the development does not create a public health hazard. The diminished disposal requirements of the new development should further reduce the hazard potential.

Subsection LC 16.290(5) contains the approval criteria for uses and development contemplated by LC 16.290(4)(a) through (s).

LC 16.290(5)(a) states that it *"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;"*

The land West of the subject parcel is zoned RR5 and is being used for a dwelling, outbuildings, and an ongoing business with outdoor storage. The properties across Highway 58 are zoned RI/RC Industrial/Commercial and are operating businesses. The Eastern and Southern tax lots are zoned Exclusive Farm Use and are essentially vacant. Property to the Northeast is intensively developed as a gated mobile home park. None of the adjacent and nearby properties will be adversely impacted in terms of noise, appearance, traffic, air quality, or groundwater quality, by the proposed development.

Further, LC 16.290(5)(b) states *"where necessary, measures are taken to minimize potential negative impacts on adjacent and nearby lands;"*

The visual impact of the cluster of storage unit buildings can be softened by fencing and landscaping the 10 foot setback with low level trees or bushes. The large existing Sequoia trees along Highway 58 will be retained as a very effective visual screen and neighborhood landmark.

Further, LC 16.290(5)(c) requires that *"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;"*

Under the response to Subsection LC 16.290(4)(s)(iii) above, We described the proposed water system with an sustained availability of 22 gallons per minute. We also described the relocated subsurface

sewage disposal system in detail and the fact that both the water and sewage demands will be substantially reduced from the existing uses, because of the removal of the family residence from the site. Approval of the type and the placement of the relocated subsurface sewage system is presently being worked out with DEQ.

Finally, LC 16.290(5)(d) states that *"the proposed use and development shall not result in public health hazards or adverse environmental impacts that violate state or federal water quality regulations."*

The new disposal field will be located down gradient, 100 feet away from the existing well in accordance with DEQ regulations and will require DEQ approvals in conformity with the new site evaluation. This should guarantee that the development does not create a public health hazard.

LC 16.290 (7)(a)(i)(ii)(g)(i)(ii)(iii)(h) outlines the setback and property development standards applicable to this development. The closest buildings will be located 50 feet from the highway right-of-way, the side yards will be set back 10 feet from all adjacent property lines, and the development will conform to all the sign and parking requirements of this subsection.

Most of the property subject to this development proposal is within the flood hazard zone "AE" as shown on Map#41039C1655F, the zones of this map have been shown on the attached plans. The property is subject to the following overlay of regulations:

Combining Zone(s): LC FP-RCP 16.244 (7)(b)(ii)(v)(aa)(vi)(aa)(bb)(cc)(vii)(aa)(bb)(viii)(aa)(bb).

Lane County issued a floodplain permit March 24, 1998 which stated, in part, *"The property is located within the 100 year flood hazard area, in Zone 'A5', as per Flood Insurance Rate Map(FIRM) Panel #0610C and Floodway Panel #0026, both effective December 18, 1985. The Base Flood Elevation is 480.2' M.S.L. for the restrooms and 480.1' M.S.L. for the office. The velocity is 4.2 feet per second."*(The last sentence was in reference to the portion of the site within the floodway). This approval subsequently expired.

This proposal is for development within the floodplain and above the floodplain only, with no structures within the floodway as shown on the attached development plan.

A floodplain verification was issued by Lane County, January 2007, File #PA 07-5101 which shows the BFE for the locations of the proposed buildings within the floodplain to vary between 480.1 and 481. The buildings shown on the plan have their finished floor elevations at 1 foot above the base flood elevations at the locations determined by this floodplain verification.

Subsection 16.244(7)(b)(ii) requires that *"New [non-residential] construction and substantial improvement of any commercial, industrial or other nonresidential structure shall either have the lowest floor, including basement, elevated to a level at least one foot above the base flood elevation;"*

Subsection 16.244(7)(b)(v)(aa) specifies that *"all new construction subject to less than 18 inches of flood water during a 100-year flood shall be anchored to prevent flotation or lateral movement"*

All buildings will be constructed one foot above the BFE determined by the floodplain verification to avoid inundation and will be constructed with a reinforced concrete slab foundation which will resist flotation and movement.

Subsection 16.244(7)(b)(vi)(aa) requires that *"all new construction and substantial improvements shall be constructed with approved materials and utility equipment resistant to flood damage."*

And Subsection 16.244(7)(b)(vi)(bb) further requires that *"all new construction and substantial improvements shall be constructed using approved methods and practices that minimize flood damage"*.

And Subsection 16.244(7)(b)(vi)(cc) further states that *"electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities shall be designed and/or otherwise elevated or located so as to prevent water from entering or accumulation within the components during conditions of flooding."*

All proposed buildings are to be designed and constructed with impervious materials using accepted commercial standards and potential flooding criteria to meet these requirements. The buildings typically are not heated, power ventilated, or plumbed and need only electrical power to meet customer needs. Electric outlets and lighting can easily be limited to upper areas of the units to avoid flood damage.

Subsection 16.244(7)(b)(vii)(aa) requires that *"all new replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system."*

Although the water source/system is not being replaced, the replacement building being built around the existing well-head is proposed to have a concrete floor and a base floor elevation at one foot above the BFE which should provide reasonable protection from flood waters.

Subsection 16.244(7)(b)(vii)(bb) requires that *"new and replacement sanitary systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharged from the systems into flood waters."*

The replacement subsurface sanitary system proposed is to be located out of the floodplain to an area adjacent to Highway 58 right-of-way. This is within flood Zone X and is not subject to the 100-year flood and therefore should be less subject to potential inundation.

Subsection 16.244(7)(b)(viii)(aa) concerns the construction of roads in that *"adequate provisions shall be made for accessibility during a 100-year flood, so as to ensure ingress and egress for ordinary and emergency vehicles and services during potential future flooding."*

Subsection 16.244(7)(b)(viii)(bb) also requires that *"no road surface of any new street, road or access road shall be at an elevation less than one foot below the base flood height."*

The access roads and driveways to the segmented storage units will all be constructed to an elevation of not less than ½ foot above the BFE and so will be available and accessible during the 100-year flood. Design elevations are specified on the construction plans.

In summary, this proposed development meets or, during design and construction, can meet all the requirements of the overlay zone.

In a letter dated December 10, 2007, Thom Lanfear, Associate Planner in the Lane County Land Management division asked for the following information in order to complete the application:

- ***Identification of the RV and boat storage units on the submitted plot plan.***

All storage units of RV's and boats have been identified on the revised plot plan.

The units around the perimeter of the site are the larger units that will be allocated for RV and boat storage. They are shown on the plan as Buildings A, B, and G and they are more suitable because of size and location.

- ***Identification of the respective number of units used for RV and boat storage and "segmented storage."***

The numbers of units that will be utilized for RV and boat storage have been estimated and presented on the attached plot plan. Of the buildings designated to this purpose, Building A has 11 units, Building B has 61 units and Building G has 43 units for a total of 115 units. The remainder of units in Buildings C,D,E, and F, or 344 will be probably designated as segmented storage. Units utilized for RV and boat storage will be 115÷459 or 25% of the total number of units, but 30920÷78570 or 39% of the space.

Many more units in the center segmented storage area could be changed and made larger, as market demand requires, to house the various vehicles that typically are stored in such a location. These would include motorcycles, quads, small travel trailers, campers, snowmobiles, jet skis, and rafts. Agricultural or Industrial equipment and supplies that need weather proofing or high security could also be stored. The center wall on the back to back units can be easily removed, leaving doors on both ends to produce a drive-through for improved access.

There is an increasing demand for covered RV and boat storage in Oregon because of our weather. The trend is also that larger covered spaces are being constructed. The monthly periodical, "Inside Self Storage" has many articles on constructing boat and RV storage in conjunction with traditional self storage. See www.insideselfstorage.com for more information.

- *Identification of farm practices occurring on adjacent parcels and a discussion of compatibility between the proposed use and the farm practices.*

The parcel to the East and South of the subject parcel is being actively farmed with alfalfa and hay as principal feed crops. The proposed development of storage on the subject parcel should have a minimal impact on this farm property.

Informal discussions have been held between the owner of the farm property and the owner of the subject property and we can report that the adjacent owner has been cooperative in a relocation of the existing common fence and had no objections to the development being proposed. Obviously he feels that the proposed buildings and fencing are compatible with his operation and future plans.

The parcel to the West (TL4602 zoned RR5) is being utilized in a business involving deliveries, outdoor storage of vehicles and indoor manufacturing of RV axles. A commercial "Hyster" fork lift is used on the property. There are no farm practices being conducted on this parcel. Traffic to and from this business is moderate.

The remainder of the properties to the West within the RR5 zone, are clustered on Hidden Lane and are small residences, built at a time when the 5 acre minimum was not in force. They include the small grocery store, Highway 58 Market, located on the Tax Lot 3100 with RC zoning.

Directly across Highway 58, (TL 5700 zoned RC) and (TL 108 zoned RI), are occupied by Lantz Electric, an electrical contractor with fenced storage yards and offices and some warehousing. Behind Lantz Electric on TL 107 and TL 106 with RI zoning are Franklin Contracting and Highway 58 Garage, both active operating businesses with offices and warehouse/vehicle buildings. Tax Lots 104 and 105 with RI zoning, are vacant. Tax Lot 103 with RI zoning is a golf driving range.

- *Identification of operating characteristics including but not limited to: hours of operation, lighting, fences, and frequency of use:*

The operating hours will be: 10AM to 6PM, Monday to Saturday, closed Sundays.

Lighting will be internally located and of low intensity. There will be no spill over of light from the facility. The facility will be completely fenced with a chain link fence of six feet in height.

There will be one manager on duty during office hours and onsite 24/7 to provide security. Traffic at this facility is expected to be from 6 to 30 movements per day (both entrance and exit are considered separate movements) with an average of 16 per day overall. There will be more traffic expected on weekends and less on weekdays, with more in summer and less in winter.

The daily business data generated on-site will be forwarded to head office on a daily basis, with all the record keeping at the central office on 42nd Street, Springfield.

- *explain how the size of this industrial use can be considered a “rural use” when the size exceeds the allowable limits in the industrial zone [LC 16.292(3)(b)(iii)].*

LC 16.292(3)(b)(iii) states that *“Small scale, low impact manufacturing, assembling, processing, packaging, storage, wholesale distribution, testing, or repairing that does not include radioactive materials or hazardous waste byproducts in the manufacturing process and that may occur outside a building or in one or more buildings containing not more than: (iii) 35,000 square feet of floor area in any one or combination of buildings on the same parcel or lot located in and exception area that is not designated by the RCP as an unincorporated community”.*

This section of the Code clearly contemplates industrial uses that are active in nature, such as manufacturing, processing, packaging, testing, and repairing. These uses would automatically mean employees, parking, traffic, shipping and so on. The storage referred in this section is storage ancillary to these active uses and not as a “stand-alone” use. The limitation of building square footage is meant to restrict the size of the underlying industrial use including storage in order to keep it *“small scale and low impact”* and should not be applied to the passive storage that we propose which is more like grain storage, or hay storage or other agricultural equipment storage that would require buildings to protect against weather and provide security.

Storage, by itself, is not an industrial use. Storage becomes an industrial use when it is associated with manufacturing, processing, packaging, testing, and repairing. Or storage could become a commercial use on commercial property. Similarly, when combined with farm activity and required storage of farm products, farm equipment, and supplies, storage becomes an agricultural use. When associated with storage of RV’s and boats, storage becomes an allowed use subject to approval of the Director within an RR5 zone, but it is not an industrial use.

LC 16.292(3)(b)(iii) only applies to industrial uses.

The reason that LC 16.292(3)(b)(iii) restricts the building size to 35,000 square feet is to control the extent of the underlying industrial use and have it remain *“small scale and low impact”*.

Our application is made under the RR5 zoning.

LC 16.290(1)(b) expresses the purpose of the RR5 zoning is *“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;”*.

Our proposed storage facility is not incompatible with adjacent rural uses in any way, and will be a community asset. We expect that nearby rural businesses, farms, and residents will utilize the storage facility whenever they have high value/volume items or products that need protection from the elements or a need for a greater level of security. This is indicative of compatibility with the surrounding properties and the purpose of the RR5 zoning under LC 16.290(1)(b).

LC 16.290 (4)(r) indicates that an allowed use subject to approval is *“storage facilities for boats and recreational vehicles”* and is silent on the matter of intensity of use and the use of buildings to create that storage. We have elected to create storage facilities for boats and recreational vehicles through the construction of secure weatherproof buildings. We have noted that the amount of agricultural storage created by farm use under LC 16.212(3)(b) is not restricted by the Code. And, as previously stated, there is no restriction in the size or intensity of use for open uncovered storage in an RR5 zone. We have concluded that there should be no restriction in size for covered storage buildings, either.

Further, Subsection (4)(s) allows *“uses and development similar to uses and development allowed by LC 16.290(2) or (4) above if found clearly similar to the uses and development allowed by LC 16.290(2) or (4) above.”*

The ancillary use of segmented storage that is proposed is clearly similar to the RV and boat storage category outlined in Subsection (4)(r) using the following criteria:

(aa) Goods and services traded from the site:

Both uses are similar in that the customers are the same, the contract is for rental of space only and does not involve vehicle servicing or maintenance, and neither use generates much customer traffic.

(bb) Bulk, size and operating characteristics of the proposed use:

The bulk and size of a typical boat and RV storage facility would be similar to the neighboring properties except that our proposed combination facility would be almost completely enclosed, be set back from the property lines and the storage would not be visible. The operating characteristics would be almost identical.

(cc) Parking demand, customer types and traffic generation:

There is minimal demand for parking in either use and the customer profile is similar. Customers tend to spread their access times across the available hours of opening and do not develop "rush hours." Traffic generation is very low with either use. Many users either never access the site or let months pass between visits.

(dd) Intensity of land use of the site:

Either use, for boats and recreational vehicles only, or for segmented closed storage and boat and RV storage, could be of the same intensity of use depending on demand.

In summary, the addition of segmented storage to the storage facilities for boats and recreational vehicles meets the similarity criteria outlined in LC 16.290 (4)(s)(ii)(aa)(bb)(cc)(dd) and should be an allowed use subject to the approval of the Director.

- *Explanation of proposed on-site drainage facilities.*

The drainage facilities that we propose are to be area drains within the driveways, which collect and filter the run off and lead to slit trenches between each row of buildings, that are filled with granular material to facilitate absorption, and sized to control the storm water run off from a 5 year storm event. Roof drains will be connected directly to the trenches to reduce contamination of storm run off. Details and drawings are available from the Engineer and will be submitted for approval at a later date.



NOTICE OF PENDING LAND USE DECISION BY THE LANE COUNTY PLANNING DIRECTOR

LAND MANAGEMENT DIVISION
http://www.LaneCounty.org/PW_LMD/

Department File:	PA 07-6721
Property Owner:	Don & Cheryl McCabe
Agent:	Gary Reed & Doug Weber
Property Address:	34570 Highway 58, Eugene
Map & Tax Lot:	18-03-24 #4600
Acreage:	5.0 acres
Base Zone:	Rural Residential Zone (RR5)
Combining Zone:	Floodplain Combining Zone /FP
Comprehensive Plan:	Lane County Rural Comprehensive Plan (/RCP)
Staff Planner:	Lindsey Eichner, (541) 682-3998

You own or occupy property near the above referenced property that is the subject of a land use application and pending decision for **Denial** of this application by the Lane County Planning Director.

Notice to mortgagee, lien holder, vendor or seller: ORS Chapter 215 requires that if you receive this notice, it must be forwarded to the purchaser.

The purpose of this notice is to inform you about the proposal and pending decision, where you may receive more information, and the requirements if you wish to appeal the pending decision by the Director to the Lane County Hearings Official. Any person who is adversely affected or aggrieved or who is entitled to written notice may appeal the decision by filing a written appeal in the manner and within the time period as provided below. Mailing of this notice to you precludes an appeal directly to the Land Use Board of Appeals.

PROPOSAL: Request for Director Approval for construction of a recreational vehicle, boat, and segmented self storage facility in the Rural Residential (RR5) Zone, pursuant to Lane Code 16.290(4)(r) & (s).

The proposed use(s) that could be authorized by approval of the land use application:
Development of a recreational vehicle, boat, and segmented self storage facility.

The application, all documents and evidence relied upon by the applicant, the applicable criteria, and a copy of the Lane County Planning Director's report are available for inspection at the Lane County Land Management Division at no cost, and copies will be provided at reasonable cost. The name of the Lane County Land

Management Division representative to contact Lindsey Eichner and the telephone number where more information can be obtained is (541)682-3998.

This decision will become final at 5 P.M. on 9/28/2008 unless before this time a completed **APPLICATION FOR AN APPEAL OF A DECISION BY THE PLANNING DIRECTOR** form is submitted to and received by the Lane County Land Management Division. **This form is enclosed and must be used if you wish to appeal this decision.**

1. To complete this form, fill in the required information and attach to it all of the materials and information required in numbers 2, 3 and 6 of the appeal form.
2. Then, submit the completed form to Lane County Planning Director so that it is received by him or her prior to the above mentioned time that the decision becomes final.
3. The Lane County Planning Director shall reject an appeal if it is not received prior to the time that the decision becomes final or if it is not complete.

Failure of an issue to be raised in a hearing, in person or in writing, or failure to provide statements of evidence sufficient to afford the Approval Authority an opportunity to respond to the issue precludes raising the issue in an appeal to the Land Use Board of Appeals.

Prepared by: Lindsey A. Eichner
Lindsey A. Eichner, Planner

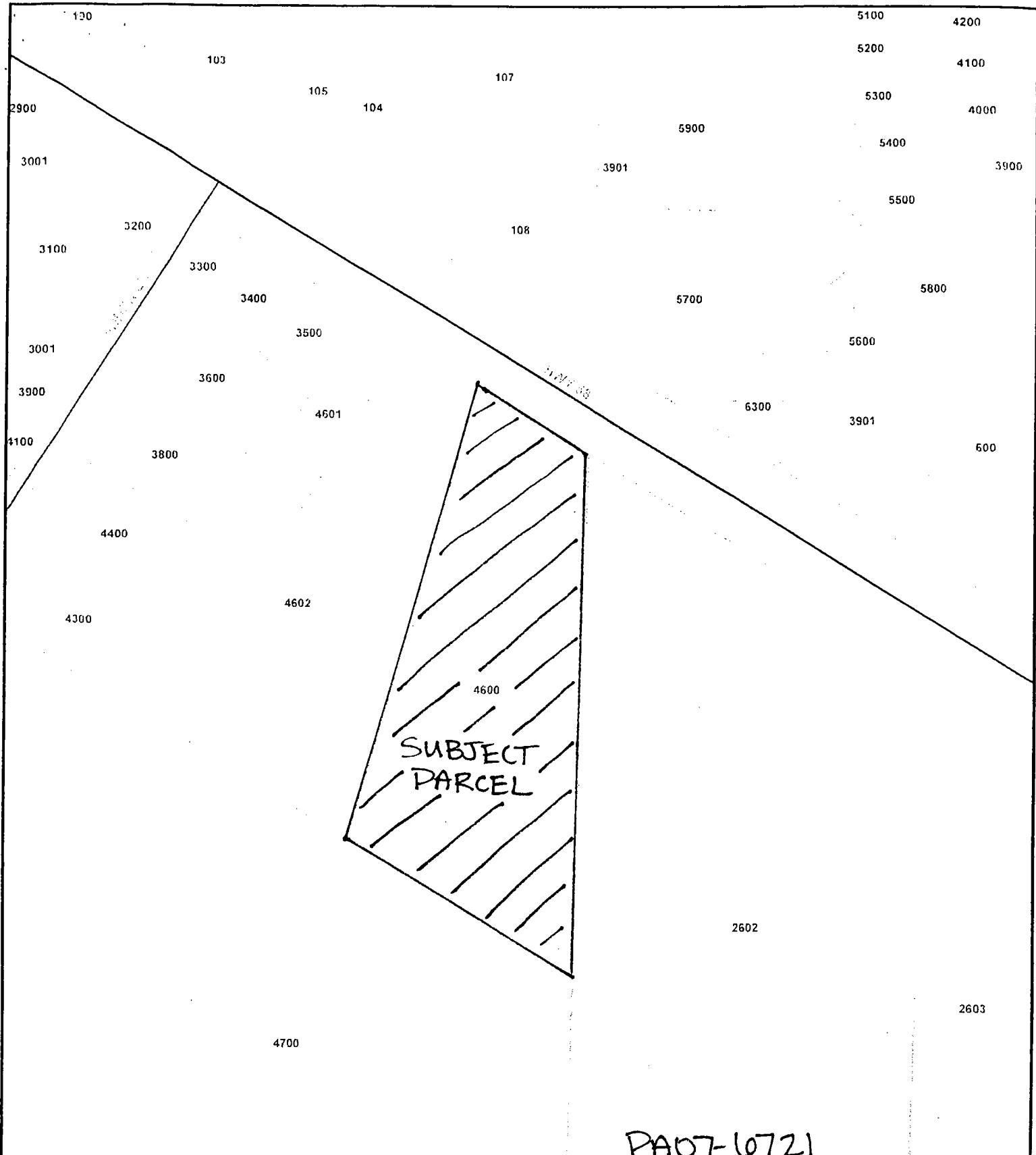
Date: 4/15/08

Authorized by: Kent Howe
Kent Howe, Planning Director

Date: 15 Apr 08

EXHIBITS

- A – Vicinity Map
- B – Plot Plan
- C – Staff Report



PA07-6721

The information on this map was derived from digital databases on the Lane County regional geographic system. Care was taken in the creation of this map, but is provided "as is". Lane County cannot accept any responsibility for errors, omissions, or positional accuracy in the digital data or the underlying records. Current plan designation, zoning, etc., for the specific parcels should be confirmed with the appropriate agency. There are no warranties, expressed or implied, accompanying this product. However, notification of any errors will be appreciated.

1" = 200'



VICINITY MAP

EXHIBIT A



W&A
 W&A Engineering, Municipal Engineering, Land Planning

BENCHMARK DATUM

BENCHMARK NO. 74827 BEING A STAIN CAP SET OF
 APPROXIMATELY 1945, IS THE POINT OF BENCHMARK
 OF THE STATE DEPARTMENT OF TRANSPORTATION
 OF OREGON. THE BENCHMARK IS LOCATED ON THE
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 34570 HIGHWAY 58
 EUGENE, OR 97405

OWNER/APPLICANT
 DON MCCABE
 318 NORTH 42ND STREET
 SPRINGFIELD, OR 97478
 541-912-8117 (cell)
 541-746-2534 (office)
 541-937-2450 (home)
 541-988-9981 (fax)

SURVEYOR
 DAVE SWANSON
 541-485-7318 (office)
 LANDSCAPER
 LEE LANDSCAPE & IRRIGATION
 541-7479771

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

SCALE: 1" = 30'

EXHIBIT B

SITE PLAN PA07-6721

NO. DATE REVISION

DATE: NOVEMBER 2007
 DRAWN BY: Cary Reed
 CHECKED BY: DOUG WELCH
 W&A PROJECT NO. 07-23
 CITY PROJECT NO. 070

Highway 58 Mini-Storage

SHEET NUMBER 1 OF 2

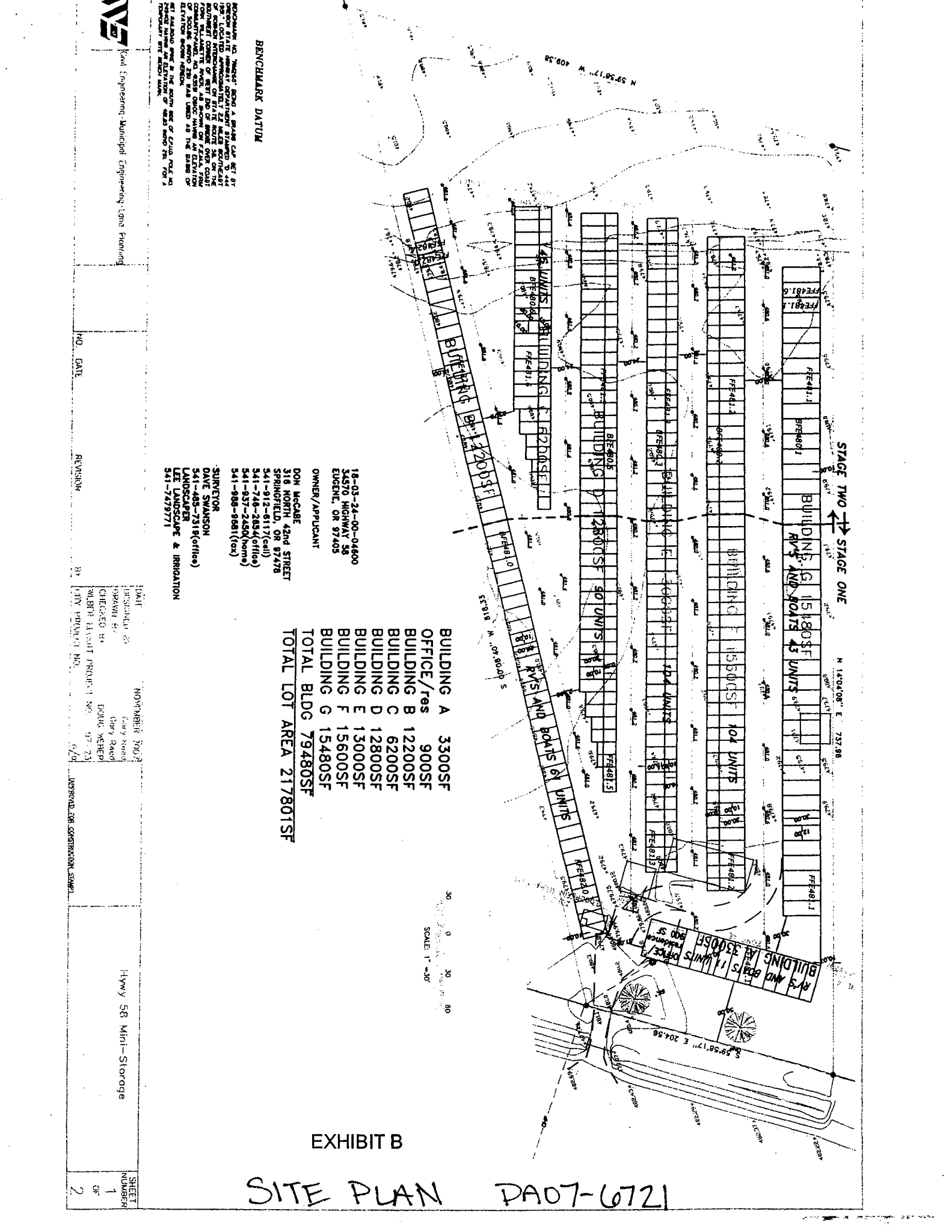


EXHIBIT C
STAFF REPORT

Report Date: April 15, 2008
Department File: PA 07-6721
Property Owner: Don & Cheryl McCabe
Agent: Gary Reed & Doug Weber
Property Address: 34570 Highway 58, Eugene
Map & Tax Lot: 18-03-24 #4600
Staff Planner: Lindsey Eichner, (541) 682-3998

I. PROPOSAL

Request for Director Approval for construction of a recreational vehicle, boat, and segmented self storage facility in the Rural Residential (RR5) Zone, pursuant to Lane Code 16.290(4)(r) & (s). More specifically, the Applicant is requesting to construct 115 RV/boat storage units, 384 self storage units, an office/caretaker residence in 7 buildings covering over 79,000 square feet of the subject property's 217,800 square feet.

II. BACKGROUND INFORMATION

On November 8, 2007, a request to establish a construct a recreational vehicle, boat, and segmented self storage facility was submitted to Lane County Land Management Division. The application was reviewed and accepted as complete on December 26, 2007.

On February 25, 2008, referral responses were solicited from affected agencies, service providers and surrounding property owners. Comments from agencies and service providers as they relate to the applicable criteria are incorporated in the findings and decision below. Copies of all written comments are included in the application file for this proposal.

III. PROJECT DESCRIPTION

The subject property is identified as Assessor's Map 18-03-24 #4600 and is located to the east the rural community of Goshen on the south side of Highway 58. The parcel is 5.0 acres in size and has a site address of 34570 Highway 58, Eugene. The property is within Developed and Committed Area 4262 in the Lane County Rural Comprehensive Plan and is zoned Rural Residential Zone (RR5/RCP), consistent with the designation.

The parcel was verified as a legal lot in 1999 under a preliminary legal lot verification, PA99-0105.

The subject property is surrounded to the north, across the highway by land zoned Rural Industrial (RI), to the west by land zoned Rural Residential (RR5), and to the south and east by land zoned Exclusive Farm Use (E30) and is currently being farmed.

The applicant is proposing to build seven (7) commercial buildings to store recreational vehicles, boats, and segmented self storage units. The Applicant is proposing 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. The site is currently developed with a dwelling, a garage, a driveway, a septic system, and a well.

IV. APPROVAL CRITERIA & FINDINGS OF FACT

The purpose of this report is to verify if the above referenced structure complies with the requirements of Lane Code 16.290(4)(r) & (s), Lane Code 16.290(5), and Lane Code 16.290(7). The code language is in **boldface** type, followed by the Findings of Fact.

Lane Code Chapter 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.**

Finding 1. The Applicant has proposed a recreational vehicle, boat, and self-storage facility. In the application, it states that these uses are accessory to the rural residential uses in the area. Recreational vehicle (RV) and boat storage is listed as an allowed use under director approval. Self-storage has been addressed as a similar use to the RV and boat storage facilities.

Staff requested additional information be provided in a letter dated December 10, 2007. In that letter, Staff requested that the Applicant address the Rural Industrial Zoning, LC16.292(3)(b), where it lists storage as a permitted use under director approval. In the additional information provided, the Applicant states that self-storage is not an industrial

use, that it is a similar use to the recreational vehicle and boat storage facilities, and is an accessory rural residential use under Lane Code 16.290(4)(s).

LC 16.290(1)(b) states that the purpose of the Rural Residential Zone is to limit the allowed uses and development to primary and accessory rural residential uses. The phrase "limit the allowed uses" effectively prohibits uses identified and allowed in another zone. The Rural Residential Zone limits storage uses specifically to RV and boat storage under (4)(r). Staff disagrees with the Applicant when they stated that storage by itself is not an industrial use. Multiple industrial zones in Lane Code list storage as an industrial use, see below:

Lane Code 10.170. Limited Industrial District (M-1)
10.170-10(9) Storage buildings for household or consumer goods

Lane Code 16.224. Limited Industrial Zone (M-1),
(1)(i) Storage buildings for household or consumer goods

Lane Code 16.292. Rural Industrial
(3)(b) Small-scale, low impact manufacturing, assembling, processing, packaging, storage, wholesale distribution, testing, or repairing that does not include radioactive materials or hazardous waste byproducts in the manufacturing process and that may occur outside a building or in one or more buildings containing not more than:
(iii) 35,000 square feet of floor area in any one or combination of buildings on the same parcel or lot in an exception area that is not designated by the RCP as an unincorporated community.

Since storage is a listed use in multiple industrial zones, it is not a residential use and shall not be allowed in the Rural Residential Zone, beyond the listed use of RV and boat storage facilities. This application does not comply with the purpose of the Rural Residential Zone.

Finding 2. Lane Code 290(1)(b), states that all permitted uses in the Rural Residential Zone shall be compatible with rural residential living. The proposed RV, boat, and segmented self-storage facilities total over 79,000 square feet in floor space and is located outside of a rural unincorporated community.

OAR 660-022-0030 addresses the Planning and Zoning of Unincorporated Communities. This rule regulates small-scale, low impact industrial and commercial uses within rural unincorporated communities. Industrial uses are limited to a building or buildings not to exceed 40,000 square feet of floor space. Lane Code's Rural Industrial Zone (LC 16.292) includes a similar limitation for industrial uses within unincorporated communities, and a more restrictive limit of 35,000 square feet for areas

outside of unincorporated communities. OAR 660-022-0030 also limits commercial uses to a building or buildings not to exceed 4,000 square feet of floor space. Again, Lane Code's Rural Commercial Zone (LC 16.291) includes a similar limitation for commercial uses within unincorporated communities, and a more restrictive limit of 3,500 square feet for areas outside of unincorporated communities.

OAR 660-022-0030 specifically applies to lands within Unincorporated Rural Communities, which are defined as consisting primarily of permanent residential dwellings but also has at least two other land uses that provide commercial, industrial, or public uses (including but not limited to schools, churches, grange halls, post offices) to the community, the surrounding rural area, or to persons traveling through the area. Lane County's Rural Comprehensive Plan identifies 34 rural unincorporated communities. These are areas where more intensive development exists and is meant to occur. Areas outside of unincorporated communities are characterized by less intense development and tend to be more residential in nature. This difference in the intensity of existing and allowed uses within and outside of unincorporated communities is evidenced by the above mentioned size limitations in Lane Code's Rural Commercial and Rural Industrial Zones.

RV and boat storage is an identified use in both the Rural Residential and Rural Commercial Zones subject to the approval of a Special Use Permit. Though the Rural Residential Zone does not specify a maximum size, the Rural Commercial Zone limits such facilities, outside of any designated unincorporated community, to no more than 3,500 square feet in size. What's more, storage uses in the Rural Industrial Zone are limited to 35,000 square feet when outside of unincorporated communities.

Given the subject property is zoned Rural Residential and is located outside of a designated unincorporated community, and given the size limitations in OAR 660-022-0030 and in Lane Code's Rural Industrial and Rural Commercial Zones, it is not reasonable to conclude that a proposal which exceeds these size limitations could be consistent and compatible with the rural residential environment identified in the purpose statement of the Rural Residential Zone and the character inherent in an area outside of an unincorporated community.

- (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.**
- (r) Storage facilities for boats and recreational vehicles.**

Finding 3. The proposed RV and boat storage facilities are an allowed use in the zone. The size of the proposed facilities is not consistent with the purpose of the zoning, please refer to Finding 2.

- (s) **Uses and development similar to uses and development allowed by LC16.290(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.**

Finding 4. Based on Finding #1 and 2, the proposed segmented self storage facilities are not an allowed use and do not meet the above criteria.

- (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;**

Finding 5. The subject property is bordered to the south and east by land zoned Exclusive Farm Use which is currently being farmed with alfalfa and hay. The application states that none of the adjacent or neighboring properties will be adversely impacted in the terms of noise, appearance, traffic, air quality, or groundwater quality, by the proposed development. Comments from one set of neighbors were received, expressing their concerns with an increase in traffic and the decrease in their quality of life. No comments were received regarding adverse impacts to the adjacent farm uses. The State Fire Marshal states in her comments that current configuration does not meet Oregon Fire Code (OFC) regarding access for fire apparatus as well as in-adequate turn around areas.

- (b) Where necessary, measures are taken to minimize potential negative impacts on adjacent and nearby lands;**

Finding 6. The application proposes to soften the buildings by fencing set 10 feet off of the property line and landscaping within that setback area. The existing large sequoia trees along Hwy 58 will be left to be a visual screen. If this application would have been approved, the Applicant would be required to provide more information on the visual screening, including a landscaping plan.

- (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**

Finding 7. The existing single family dwelling on the subject property is currently being served by a well. The proposed development would be less demanding in terms of water usage than the existing dwelling. If this application would have been approved, the Applicant would have been required to show that the well provided adequate water for a fire fighting plan required by the State Fire Marshal. There is an existing septic system serving the existing dwelling. The application proposes to abandon the exiting system and relocate it outside of the flood plain. If this application would have been approved, the Applicant would be required to meet all sanitation requirements.

- (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.**

Finding 8. The application states that the new septic system will decrease any possible public health hazards. The subject property is also located partially within the Floodway and partially within the "AE" Floodplain zone. The Applicant has proposed to keep the Floodway clear of all structures and that all structures within the "AE" Floodplain zone will be constructed with a reinforced concrete slab foundation one foot above the Base Flood Elevation (BFE). The Applicant has also stated that an on-site drainage plan will be engineered at the same time the buildings are engineered.

(7) Property Development Standards. All uses or development permitted by LC 16.290(2) through (4) above, except as may be provided therein, shall comply with the following development standards:

- (a) Property Line Setbacks. Structures other than a fence or sign shall be located:**
- (i) At least 20 feet from the right-of-way of a State road, County road or a local access public road specified in LC Chapter 15;**
 - (ii) At least 10 feet from all other property lines; and**
 - (iii) Notwithstanding LC 16.290(7)(a)(ii) above, a structure that contains less than 120 square feet of floor area and that is located more than 10 feet from other structures may be located in the 10 foot setback otherwise**

required by LC 16.290(7)(a)(ii) above provided it complies with LC 16.290(7)(d) below.

Finding 9. All proposed structures are at least 10 feet from interior property lines and at least 30 feet from the edge of the public right of way.

(g) Signs.

- (i) Signs shall not extend over a public right-of-way or project beyond the property line.**
- (ii) Signs shall not be illuminated or capable of movement**
- (iii) Signs shall be limited to 200 square feet in area.**

Finding 10. There are no proposed signs at this time.

(h) Parking. Off street parking shall be provided in accordance with LC 16.250.

Lane Code 16.250 PARKING SPACE, HEIGHT, AREA, GENERAL BUILDING AND GENERAL LOT AREA AND WIDTH SETBACK REQUIREMENTS

(2) Nonresidential Private Parking.

- (a) Automobile parking space allowing 300 square feet per automobile (parking, plus driving space) shall be provided and maintained for any new or enlarged building as listed below:**
 - (i) For business or commercial buildings or structures, at least one permanently maintained parking space for every 300 square feet or fraction thereof of floor space within the building, exclusive of automobile parking space.**

Finding 11. The site plan did not show any proposed parking spaces. If this application would have been approved, it would require at minimum 3 spaces based on the 900 square foot office/residence.

V. OTHER DEVELOPMENT STANDARDS

LC 16.244, Floodplain (/FP) requirements:

Finding 12. The subject property is located within a flood hazard area. A floodplain verification was completed by Lane County in January 2007, Lane County File PA07-5101.

LC 16.259, Greenway requirements:

Finding 13. Not applicable for the subject property.

LC 16.005(4), Sensitive Bird Habitat Protection:

Finding 14. As shown on Lane County's Comprehensive Plan Map for Wildlife Habitat, no inventoried wildlife habitat sites are located on the parcel.

ORS 215.418, Wetlands:

Finding 15. The subject property does not contain any mapped wetlands or waterways as indicated on the National Wetlands Inventory Map.

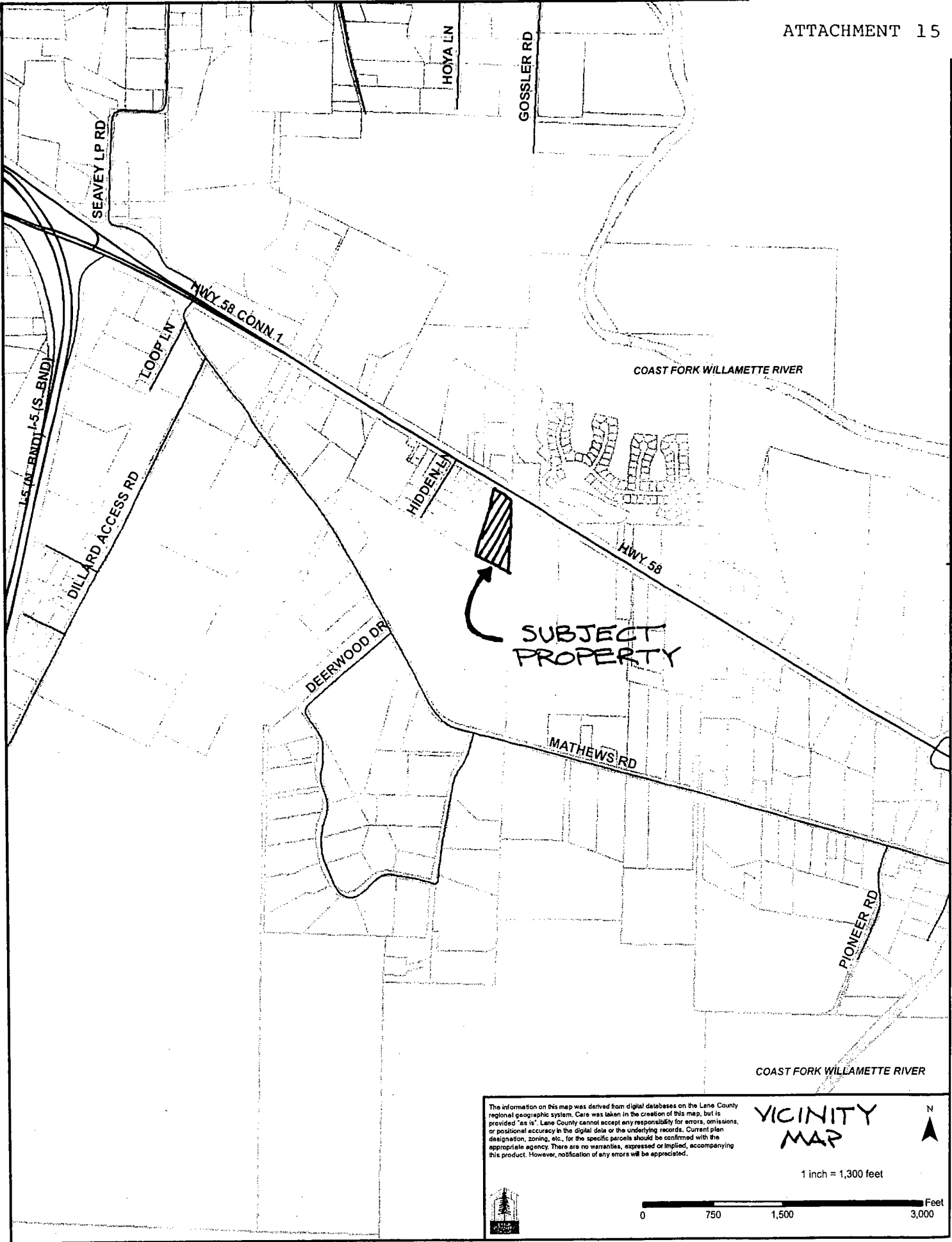
Access Requirements:

Comments from Oregon Department of Transportation staff:

Access to this proposal is from Highway 58, which is a state highway. At this time this approach is permitted for a residence only, at this time it looks like a change in use and a new permit is needed.

VI. DECISION

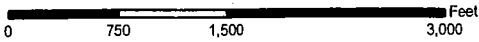
Based upon the findings above and the conditions as applied, the proposed development is not consistent with the applicable criteria of Lane Code 16.290(1), (4)(r) and (s), Lane Code 16.290(5), and Lane Code 16.290(7) and other applicable siting and development standards. Therefore, based on the findings of this staff report, this application is **DENIED.**

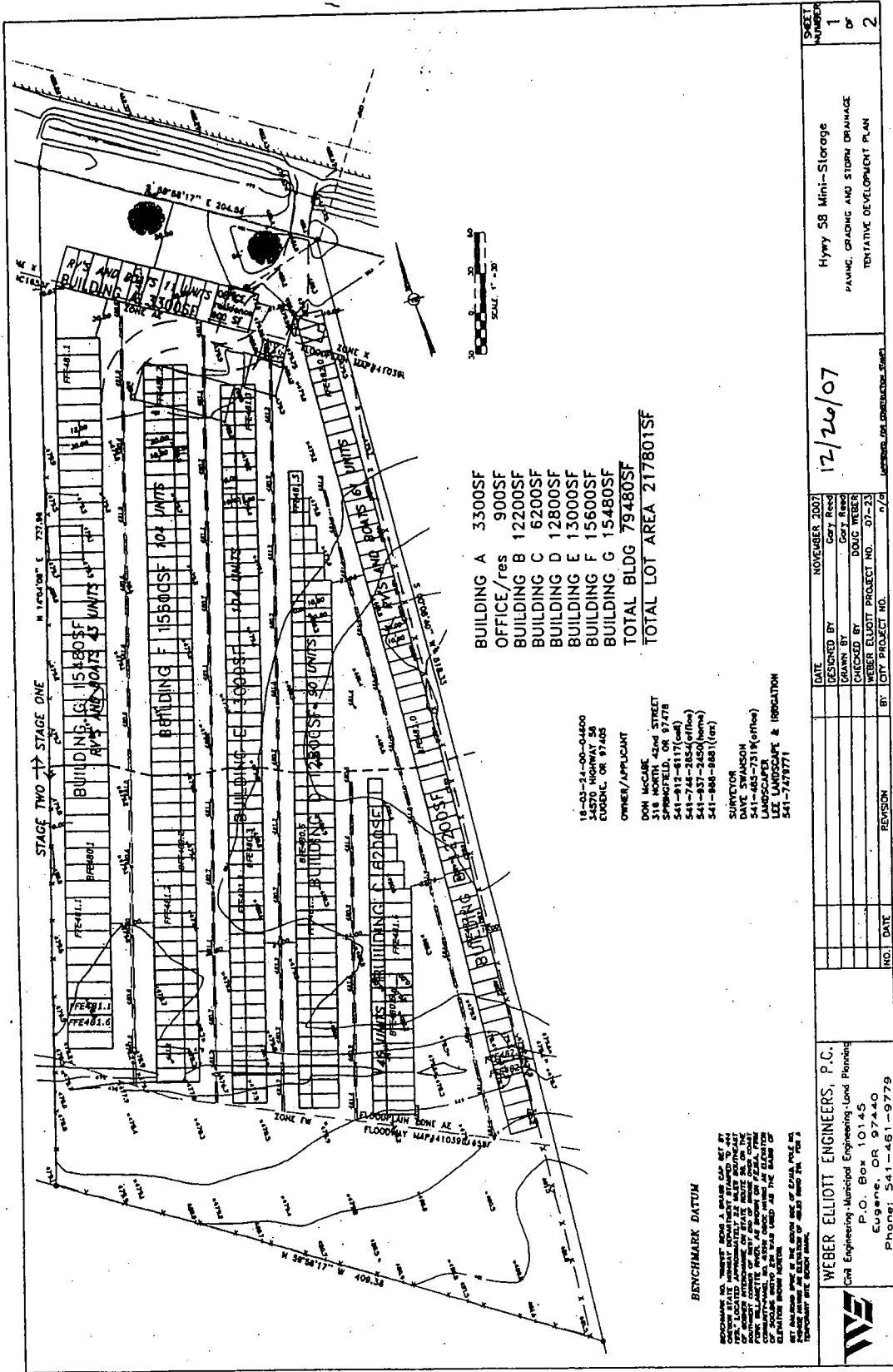


The information on this map was derived from digital databases on the Lene County regional geographic system. Care was taken in the creation of this map, but it is provided "as is". Lene County cannot accept any responsibility for errors, omissions, or positional accuracy in the digital data or the underlying records. Current plan designation, zoning, etc. for the specific parcels should be confirmed with the appropriate agency. There are no warranties, expressed or implied, accompanying this product. However, notification of any errors will be appreciated.

**VICINITY
MAP** 

1 inch = 1,300 feet





-REDUCED-

PA 07-6721
FILE RECORD INDEX

Exhibit No.	Description	Date
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 07-6721C)	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 07-6721B)	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