



MULTNOMAH COUNTY
LAND USE PLANNING DIVISION
1600 SE 190TH Avenue Portland, OR 97233
(503) 248-3043 FAX: (503) 248 -3389

**BEFORE THE HEARINGS OFFICER
FOR MULTNOMAH COUNTY, OREGON
FINAL ORDER**

This Decision consists of Conditions, Findings of Fact and Conclusions.

June 30, 2000

CU 0-4

Appeal of an Administrative Decision

A Conditional Use Permit application for development of a landscaping business.

Location:

6615 SE Powell Valley Road
Parcel 1 of Partition Plat 1998-27

Map Description:

Tax Lot 6200, Section 21, T1S, R4E, W.M.
Tax Account #R64978-1050

Zoning Designation:

Rural Center (RC)

Site Size:

1.0 acre

Applicant:

James Card
22148 SE Bohna Park Road
Boring, Oregon 97009

Owner:

John and Betty Holmlund
29285 SE Highway 212
Boring, Oregon 97009

Hearings Officer Decision:

Approval, subject to conditions of the Conditional Use Permit application for the development of a landscaping business.

RECEIVED
MULTNOMAH COUNTY
PLANNING SECTION
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PROCEDURAL ISSUES

1. Impartiality of the Hearings Officer

- A. No ex parte contacts. I did not have any ex parte contacts prior to the hearing of this matter. I did not make a site visit.
- B. No conflicting personal or financial or family interest. I have no financial interest in the outcome of this proceeding. I have no family or financial relationship with any of the parties.

2. Jurisdictional Issues

At the commencement of the hearing I asked the participants to indicate if they had any objections to jurisdiction. The participants did not allege any jurisdictional or procedural violations regarding the conduct of the hearing.

FACTS

1. Applicant's Proposal

The applicant is proposing to use an existing building on the subject property for a landscaping business, employing 15 to 20 people.

2. Site and Vicinity Information

The subject property, zoned Rural Center, is 1.0 acre in size, created as the result of a two lot partition approved by the County in 1997 with Case #LD 6-97. Existing development consists of a single, 8,640 square foot enclosed structure located at the west end of the property. Vehicle access is available directly off of Powell Valley Road, a paved rural collector roadway, which abuts the property to the south. The east side of the property is grassed, and contains scattered deciduous trees. SE Teal Drive borders the east line of the property. This street provides access to new residential development to the north, and is paved with a sidewalk. A white rail fence runs the full length of the property adjacent to this road.

Multnomah County zoning on properties adjacent to the east, west and south is Rural Center. As illustrated on the aerial photographs and map of surrounding uses (attached to the Staff Report as Exhibits 3 and 4), a wide range of land uses are currently conducted within this zone district, in close proximity to the applicant's property. Such uses include an auto wrecking yard, retail tractor sales, farming of nursery stock, and rural residential development. Land immediately north of the property is within the corporate limits of the City of Gresham, and contains several new single family

dwellings. A solid wood privacy fence has been constructed, between most of the new residences and the subject site.

3. Testimony and Evidence Presented

- A. Virginia Bowers, presented the Staff Report for Derrick Tokos.
- B. Dorothy Cofield, the attorney for applicant, spoke on behalf of the application.
- C. James Card, the applicant, spoke in support of the application.
- D. The exhibits received and reviewed by the Hearings Officer are referenced in the attached Exhibit "A", which is incorporated by this reference herein.

STANDARDS, CRITERIA, ANALYSIS AND FINDINGS OF FACT

- 1. Proposed Uses Are Subject to Conditional Use Approval in the Rural Center Zone District:

Per MCC 11.15.2246, Uses, No building, structure or land shall be used and no building or structure shall be hereafter erected, altered or enlarged in this district except for the uses listed in MCC .2248 through .2256.

MCC 11.15.2252(B), Conditional Uses, Establishes that the following uses may be permitted when found by the Hearings Officer approval authority to satisfy the applicable provisions of MCC .7105 through .7640:

- (3) **The Light Manufacturing Uses of MCC .5120 which require the daily employment of twenty or fewer persons;**

MCC 11.15.4120, Primary Uses, The following uses, conducted within an enclosed building;

- (G) **Building, building maintenance, plumbing, electrical, heating, roofing, glass, landscaping, painting or similar contractor's office, shop, warehouse, equipment sales or maintenance;**

Applicant: *The applicant is proposing to conduct a landscaping business in the existing building on the property which is defined as a primary light industrial use allowed as a conditional use in the RC district (.5120(G)). The applicant's landscaping business will require the daily employment of twenty or fewer persons. Therefore, the conditional Use Criteria of MCC .7105 through .7640 is applicable to the application which are addressed below.*

Staff: Multnomah County Sectional Zoning Map #703 (Exhibit 5) shows that the property is zoned Rural Center. As established under MCC 2252(B)(3), light manufacturing uses such as a landscaping business, requiring the daily employment of twenty or fewer persons and which are conducted within an enclosed building or buildings, requires Conditional Use approval in this zone district.

Hearings Officer: The applicant has made the requisite application for Conditional Use approval.

2. Off-street Parking Authorized as an Accessory Use and Required in the Rural Center District Pursuant to the Provisions of MCC 11.15.6100 through .6148:

MCC 11.15.2254(B), Accessory Uses, Off-street parking and loading;

MCC 11.15.2266, Off-street Parking and Loading, Off-street parking and loading shall be provided as required by MCC .6100 through .6148.

Applicant: *The applicant will have off-street parking and loading areas as shown on the attached site plan. Off-street parking and loading are an accessory use in the Rural Center district. The applicant meets all the off-street parking and loading requirements pursuant to MCC .6100 through .6148 as discussed below.*

Staff: As indicated under MCC 11.15.2254(B), Off-street parking is allowed in the Rural Center district when accessory to a permitted use. Such parking is required to be consistent with the provisions of MCC 11.15.6100 through .6148 (ref: MCC 11.15.2266). Evidence that this application complies with these provisions is discussed under Finding #9.

Hearings Officer: This issue is discussed later in this Opinion.

3. Compliance with Applicable Dimensional Requirements of the Rural Center Zone District:

- A. **MCC 11.15.2258(A), Except as provided in MCC .2260, .2262, .2264, and .7720, the minimum lot size shall be one acre.**

Staff: The subject property is 1.0 acre in size, in full compliance with the minimum lot size standard of this district.

B. **MCC 11.15.2258(B), Minimum Yard Dimensions - Feet**

Front	Side	Street Side	Rear
30	10	30	30

Maximum Structure Height – 35 feet

Minimum Front Lot Line Length – 50 feet.

Applicant: *The applicant's site plan shows the existing building setbacks from the property lines. Pursuant to LD 6-97, the north property line has been approved for a 10-foot rear setback from the north property line. LD 6-97 required as a condition of approval that the applicant obtain a 10-foot setback to the north (rear) property line. See Administrative Decision, attached as Exhibit 6 to the Staff Report. The building was modified so that it is now 10' from the north property line and meets the rear setback requirement. To the west, the applicant meets the side setback of 10' because the side of the building is not adjacent to a side street. The front setback to the south property line meets the 30-foot setback requirement as does the street side setback to the east. The height of the building is 20' and meets the maximum height structure of 35 feet.*

Staff: Existing and proposed development satisfy the dimensional requirements of this district. A copy of an exempt farm permit to modify the existing structure to meet a 10' setback from the north property line is attached to the Staff Report as Exhibit 7. Photographs taken by staff on site visit performed April 13, 2000 (attached as Exhibit 8 to the Staff Report), show that the structure has been modified consistent with this permit.

Hearings Officer: The applicant has demonstrated compliance with the dimensional requirements.

4. **Compliance with Access Requirements for the Rural Center District:**

Per MCC 11.15.2268, Access, Any lot in this district shall abut a street, or shall have other access determined by the Hearings Officer to be safe and convenient for pedestrians and for passenger and emergency vehicles.

Applicant: *The subject lot abuts Powell Valley Road. There is an existing 40-foot wide access to the property. The access will be paved and will serve for ingress and egress to Powell Valley Road as shown in the site plan attached to the Staff Report as Exhibit 1.*

Hearings Officer: The Applicant has demonstrated the ability to comply with access requirements.

5. Compliance with Applicable Conditional Use Approval Criteria:

Per MCC 11.15.7120(A), In approving a Conditional Use listed in this section, the approval authority shall find that the proposal:

A. **MCC .7120(A)(1), Is consistent with the character of the area;**

Applicant: *The proposed land use is to use an existing building on the subject property for a landscaping business. The applicant proposes to store landscaping equipment, materials and supplies within the existing building and at some future time, to conduct related office activities within the building. There will be approximately 15-20 employees who will use the site to pick up landscaping materials and trucks. The employees will work off the site at various locations in the area and region.*

The applicant's landscaping business consists of providing landscaping installation, service and maintenance for the area and region. Operation of the landscaping business will involve parking and loading of landscaping vehicles, storage of landscaping supplies, and routine office management. The proposed business will provide local employment, and will satisfy local and area needs for landscaping. Hours of operation will be 6:30 am to 6:30 pm. The applicant may site a temporary greenhouse on the property subject to seasonal needs and weather conditions to grow plant material. The applicant will purchase landscaping materials from local nursery growers in the area. There are several wholesale nurseries adjacent to the applicant's property (TL 56,47,46,45 and 183 and on the north side of SE Orient.

The proposed use will have a negligible effect on noise levels because the property will involve storing nursery product on the property and loading the nursery product onto contractor's trucks for installation and maintenance off-site. The applicant will use small material handling equipment or farm equipment to load and unload plant material and machinery used for the landscaping installation and services offsite. The traffic generated by the application will be the traffic generated by up to 20 employees, parking their personal vehicles on-site and using small trucks owned by the applicant for transporting landscaping material off-site. All of the vehicles will be parked in the paved parking area or stored inside the building. Plant materials may be stored inside the building with some trees and shrubs located on the material storage area. Other uses in the Rural Center area are as shown on the "Adjacent Uses Map", attached as Exhibit 4 to the Staff Report. Besides wholesale nurseries, there are several residential properties, several automobile towing/wrecking businesses, a retail tractor business, and some vacant land. Thus, the proposed landscaping contractor business that will use existing wholesale nurseries for part of its inventory, is consistent with the character of the area.

Staff: A landscaping business is consistent with the character of the Orient area, within which the property is located. Such a business serves the rural area by providing local nurseries a venue for marketing their goods. The intensity of development is comparable to that which currently exists on Rural Center zoned lands in the area.

Hearings Officer: The business as planned is consistent with the character of the area.

B. MCC .7120(A)(2), Will not adversely affect natural resources;

Applicant: *There are no natural resources in the area as shown in the aerial map attached as Exhibit 3 to the Staff Report. There are no streams, rivers, wetlands, or forests. However, drainage from the site is to Johnson Creek which is 1.5 to 2.0 miles south and west of the subject property. Johnson Creek watershed is the habitat for several species of endangered fish. The applicant proposes to construct an on site water retention facility to ensure that the surface water run off volume after development is no greater than that before development. Therefore, water run-off will not affect Johnson Creek. Most of the property in the area is developed with small scale retail and industrial uses, or is used for growing nursery products. A discussion of the impact on farm and forest uses in the area is discussed below. Because there are no natural resources in the area, the proposed landscaping business will not adversely affect natural resources*

Staff: No significant natural resources are known to exist on or immediately adjacent to the property. Johnson Creek is the stream tributary that will receive run-off from this site. This stream is a significant natural resource. Nothing in the applicant's description of this project indicates that this tributary will receive any toxic or otherwise adverse discharges as the result of this business. In consideration of this, and the applicant's narrative above, this project will not adversely affect natural resources.

Hearings Officer: The applicant has demonstrated that the project will not adversely affect natural resources.

C. MCC .7120(A)(3), Will not conflict with farm or forest uses in the area;

(a) Will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use;

(b) Will not significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.

Applicant: *The surrounding area is an area of mixed rural, residential and commercial uses. See Area Uses Map, attached as Exhibit 4 to Staff Report. The land immediately north of the subject parcel is in the City of Gresham and is developed with a subdivision. However, there are several parcels in the area that are being used for farm uses. Tax Lot 47 is used for cultivating nursery product. Tax Lot 46 is leased by the owner of the*

subject property. The property is used for cultivating and storing nursery product. Tax Lot 45 and 183 is used for cultivating nursery product and is owned by William Richard. Tax Lot 32 is south of Powell Valley Road and is used to raise conifers for landscaping.

According to John Holmlund, who owns and operates John Holmlund Nursery, cultivation of nursery crops has a three to five year growing cycle, with nursery product harvested yearly as it matures from December through May. The nursery crop is sprayed on a seasonable basis using a contained ground spray. The nursery product is shipped by truck using existing public roads. The nursery product is shipped December through May. The proposed landscaping contractor's business will have its slower season during the nurseries active harvesting and shipping season. Conversely, the applicant's busier season will occur during the more dormant cycle of the adjacent farm nursery businesses. Therefore, the applicant's landscaping business will not force a significant change in these accepted farm practices for nursery cultivation. The proposed use will have a limited impact on the roads the adjacent nurseries use to ship their nursery product, especially considering that the applicant will be limited to 20 employees and will have its primary season during the cultivation, not shipping portion, of the adjacent farms. Due to the fact that nurseries do not use aerial sprays, spraying practices will not be impacted nor will the cost of spraying be increased. Because the applicant will in effect be a customer of the neighboring farms in its use of landscaping product for its landscaping business, the cost of accepted farm practices will not be increased and may in fact be reduced due to the proximity of the applicant to the wholesale nursery products being cultivated on nearby parcels.

Staff: The applicant's narrative sufficiently addresses this criterion.

Hearings Officer: The application has met this criteria.

D. MCC .7120(A)(4), Will not require public services other than those existing or programmed for the area;

Applicant: *The property is fully served by all necessary public services such as tire, police, utilities, water, and sewage (private septic system). See Service Provider Forms, attached to Staff Report.*

Staff: This criterion has been satisfied. Public services impacted by this project include police, fire, water, and roads. Responses from the Gresham Police Department, Gresham Fire Department, and Lusted Water District (Exhibits 9, 10, and 11) all confirm that existing services are adequate to serve this project. The transportation division has indicated that SE Powell Valley Road, a collector roadway, is sufficiently sized to accept the additional vehicle traffic attributed to this development.

Hearings Officer: The service providers have all confirmed that existing services are adequate to serve this project.

- E. **MCC .7120(A)(5), Will be located outside a big game winter habitat area as defined by the Oregon Department of Fish and Wildlife or that agency has certified that the impacts will be acceptable;**

Applicant: *According to the County's Big Game Wintering Habitat Maps, there are no big game habitat areas west of the Sandy River. The applicant's property is west of the Sandy River.*

Staff: This property is not located in a big game winter habitat area, as defined by the Oregon Department of Fish and Wildlife and illustrated on maps available for review at the Planning Office.

Hearings Officer: The application meets this criteria.

- F. **MCC .7120(A)(6), Will not create hazardous conditions;**

Applicant: *The use of the property for a landscaping business will not create hazardous conditions. Access to the property will be from a single access point off of Powell Valley Road. Multnomah County Transportation has indicated that this project should be limited to a single point of access onto SE Powell Valley Road. The landscaping business will have a maximum of twenty vehicles which would generate approximately 40 vehicle trips a day. Other vehicle trips will be those generated to off-site locations for installation of landscaping, maintenance, and picking up plant materials and supplies. The traffic impact onto Powell Valley Road will therefore be minor. The landscaping business does not generate potential pollution hazards as plant materials are brought on site for a limited period of time and there is no cultivation requiring the use of hazardous sprays. Small farm equipment will be used to load and unload the plant materials and supplies. The landscaping business will use its own trucks for transporting the product and for maintenance of landscaping. Except for paving the parking area, installing an on-site detention pond, installing fences, construction of the septic field, and a temporary portable greenhouse, there will be limited impacts on the soils. As explained below, all construction work will ensure that erosion and sediment are controlled using the management practices designed by East Multnomah Soil and Water Conservation District.*

Staff: The applicant's narrative is sufficient to establish that this project will not create and hazardous conditions. All materials and equipment are to be stored within the existing building and greenhouse, leaving nothing exposed which could harm children who might trespass from adjoining residential development. Changes to ingress/egress onto SE Powell Valley Road will require review and approval by the transportation division.

Hearings Officer: The applicant meets this criteria.

- G. **MCC .7120(A)(7), Will satisfy the applicable policies of the Comprehensive Plan;**

Staff: Compliance with applicable Comprehensive Plan policies is addressed under Finding #10.

6. Alternative Permit Expiration Date, in Excess of the Two Year Fixed Time-frame Listed under MCC 11.15.7110:

MCC 11.15.7110(C)(2), General Provisions, establishes that except as provided in MCC .7330, the approval of a Conditional Use shall expire two years from the date of issuance of the Board Order in the matter, or two years from the date of final resolution of subsequent appeals, unless the Approval Authority establishes an expiration date in excess of the two year period.

Applicant: *The applicant is proposing to conduct a landscaping business within the existing building (warehouse). The landscaping business will include the storage of landscaping materials and supplies for installation and maintenance at off-site locations. The applicant would like to have an office within the building but will not be able to improve the building for an on-site office within the two-year expiration of a Conditional Use. Therefore, the applicant would like the approval authority to establish an expiration date of four years for the contractor's office and a two year expiration for the landscaping warehouse use.*

Staff: We have no objection to this request. As indicated by the applicant, the contractor's office is a small component of this project, being located within an existing building and involving only 2 of the 15 to 20 employees. As such, construction of the office, by itself, adds little to the intensity of development and will have a limited impact on the surrounding area, even if delayed for several years.

Hearings Officer: I concur with staff. It is appropriate to allow a four year expiration date for establishment of the contractor's office, provided that the landscaping warehouse use is itself established within two years.

7. Compliance with Applicable Off-Street Parking and Loading Requirements:

- A. **MCC .6102, General Provisions, In the event of the erection of a new building or an addition to an existing building, or any change in the use of an existing building, structure or land which results in an intensified use by customers, occupants, employees or other persons, off-street parking and loading shall be provided according to the requirements of this Section.**

Staff: As indicated by the applicant, the existing building is used for storage, and is the only use of the property at this time. Conversion of this structure to house a landscaping business and the addition of a new greenhouse is an intensification of use, requiring that off-street parking and loading be provided.

Hearings Officer: I concur with the staff analysis.

- B. **MCC .6108, Plan Required, A plot plan showing the dimensions, legal description, access and circulation layout for vehicles and pedestrians, space markings, the grades, drainage, setbacks, landscaping and abutting land uses in respect to the off-street parking area and such other information as shall be required, shall be submitted in duplicate to the Planning Director with each application for approval of a building or other required permit, or for a change of classification to O-P.**

Applicant: *The applicant's site plan shows the dimensions, access and circulation layout for vehicles, setbacks, landscaping and on-site uses. The applicant's off-street parking will be implemented as part of Design Review. The applicant has shown that it is feasible to meet the requirements of this section as a condition of approval.*

Staff: The applicant's site plan, at as Exhibit 1 to the Staff Report, contains the required plan information.

Hearings Officer: I concur with staff.

- C. **MCC .6122, Interpretation, Off-street parking or loading requirements for structures or uses not specifically listed in MCC .6142 and .6144 shall be determined by written decision of the Planning Director. The Director shall base such requirements on the standards for parking or loading of similar uses.**

Staff: A landscaping business is not a use specifically listed in MCC .6142 and .6144. Parking provided is as proposed by the applicant, including one space per employee. All landscaping vehicles are to be stored inside the existing building. Areas sufficient for loading vehicles exist south and east of the building as illustrated on the site plan. Such accommodations for parking and loading vehicles exceeds the minimum required for manufacturing and storage uses, which are similar uses listed under MCC .6142 and .6144.

Hearings Officer: The applicant has demonstrated compliance with this requirement.

- D. **MCC .6130(A), Dimensional Standards, Parking spaces shall meet the following requirements;**
- **At least 70% of the required off-street parking spaces shall have a minimum width of nine feet, a minimum length of 18 feet, and a minimum vertical clearance of six feet, six inches.**

- Up to 30% of the required off-street parking spaces may have a minimum width of eight-and-one-half feet, a minimum length of 16 feet, and a vertical clearance of six feet if such spaces are clearly marked for compact car use.
- For parallel parking, the length of the parking space shall be 23 feet.
- Space dimensions shall be exclusive of access drives, aisles, ramps or columns.

MCC .6130(B), Aisle width shall be not less than:

- 25 feet for 90 parking,
- 20 feet for less than 90 parking, and
- 12 feet for parallel parking.
- Angle measurements shall be between the center line of the parking space and the center line of the aisle.

MCC .6130(C), Loading spaces shall meet the following requirements:

- | | | |
|------------|---------------|---------------|
| • District | Minimum Width | Minimum Depth |
| All Others | 12 Feet | 25 Feet |
- Minimum vertical clearance shall be 13 feet.

Applicant: *The proposed parking spaces meet the minimum dimensional requirements of nine feet by 18 feet, exclusive of aisle width. The aisle width is approximately 20 feet for less than 90 degree parking. See Site Plan, attached to Staff Report. The applicant has shown that it is feasible to meet the requirements of this section as a condition of approval.*

Staff: Parking stalls and circulation patterns are illustrated on the applicant's initial site plan (Exhibit 12). This plan has since been revised, however, the stall and circulation pattern information is as it is currently proposed and is adequate to show that the dimensional standards of MCC .6130 can be satisfied.

Hearings Officer: The applicant has shown that it is feasible to meet these requirements.

- E. **MCC .6132(A), Surfacing,** All areas used for parking, loading or maneuvering of vehicles shall be surfaced with two inches of blacktop on a four inch crushed rock base or six inches of portland cement or other material providing a durable and dustless surface capable of carrying a wheel load of 4,000 pounds.

Large parking fields for intermittent uses such as amusement parks, race tracks, stadiums, and the like may be surfaced with gravel or grass and spaces may be unmarked if the parking of vehicles is supervised.

MCC .6132(B), Curbs and Bumper Rails, All areas used for parking, loading, and maneuvering of vehicles shall be physically separated from public streets or adjoining property by required landscaped strips or yards or in those cases where no landscaped area is required, by curbs, bumper rails or other permanent barrier against unchanneled motor vehicle access or egress.

The outer boundary of a parking or loading area shall be provided with a bumper rail or curbing at least four inches in height and at least three feet from the lot line or any required fence.

MCC .6132(C), Marking, All areas for the parking and maneuvering of vehicles shall be marked in accordance with the approved plan required under MCC .6108, and such marking shall be continually maintained.

MCC .6132(D), Drainage, All areas for the parking and maneuvering of vehicles shall be graded and drained to provide for the disposal of all surface water on the lot.

Applicant: *The applicant has proposed a paved parking area in order to comply with 11.15.6132(A). However, if possible the applicant would like to be approved for a gravel parking lot area which would reduce the amount of impervious surface and the size of the detention pond.*

The Off-Street Parking standards are generic standards that apply to both urban and rural areas. The reasons for paved parking areas in urban areas makes sense because of the effects of urbanization. In this Rural Center, a graveled parking lot would provide a durable area that is capable of carrying a wheel load of 4,000 pounds.

The applicant will provide all improvements as requirement pursuant to .6132(B-E) as part of Design Review. The applicant has shown that it is feasible to meet the requirements of this section as a condition of approval.

Staff: MCC .6132(A) requires that all areas used for parking, loading or maneuvering of vehicles shall be surfaced with two inches of blacktop on a four inch crushed rock base or six inches of portland cement or other material providing a durable and dustless surface capable of carrying a wheel load of 4,000 pounds. A typical gravel road and parking area will not satisfy the dustless surface requirement. Gravel is a loose material. Roads and parking areas surfaced with gravel will wear down to a dirt surface after a period of use. Dust generated from such a surface could be a nuisance to adjoining residential development.

Improvement requirements listed under MCC .6132 can be addressed with Design Review. Consistent with MCC .6132(D), drainage of parking and drive areas has been considered in the applicant's drainage analysis, attached as Exhibit 13 to Staff Report.

Hearings Officer: At the hearing, the applicant and his attorney presented additional information regarding their proposed use of DUSTAC 100 or a similar product, to serve as

a dust control binder in lieu of surfacing the parking, loading and maneuvering areas with blacktop. The applicant is requesting the authority to use a gravel road and parking area, treated with a commercial product that provides dust control.

This proposal raises questions regarding long-term maintenance of the surface, the degree of dust control provided, and the durability of the surface. It appears that this is an issue that can be addressed in design review. Accordingly, I will find that if the applicant does in fact pave the surface as originally shown on his plans, this condition can be met. However, the applicant is given leave to provide additional information for design review. If design review finds that the surface as proposed to be treated by the applicant is in fact durable, and dust-less, and long-term maintenance can be assured, then design review would certainly have the authority to allow the applicant to use a surface other than paved asphalt.

- F. **MCC .6134, Lighting, Any artificial lighting which may be provided shall be shielded or deflected so as to not shine into adjoining dwellings or other types of living units, and so as not to create a hazard to the traveling public on any street.**

Applicant: *The applicant does not propose to light the property.*

- G. **MCC .6136, Signs, pursuant to the provisions of 11.15.7964.**

Applicant: *The applicant does not propose to have signage.*

- H. **MCC .6138, Design Standards: Setbacks**

- **Any required yard which abuts upon a street lot line shall not be used for a parking or loading space, vehicle maneuvering area or access drive other than a drive connecting directly to a street.**
- **A parking or loading area not in a residential or office district listed in MCC .2002 through MCC .2966, but which adjoins such district along the same street shall not be located closer to the street property line than the required setback of the adjoining district for a distance of 50 feet from the boundary of any such district.**
- **A parking or loading area not in a residential or other district listed in MCC .2002 through MCC .2966, but which is across a street from such district, shall have a setback of not less than five feet from the street property line, and such five foot setback area shall be permanently landscaped and maintained.**
- **A required yard which abuts a street lot line shall not be paved, except for walkways which do not exceed 12 feet in total width and not more than two driveways which do not exceed the width of their curb cuts for each 150 feet of street frontage of the lot.**

Applicant: *The parking places are not situated on the street lot line of Powell Valley Road to the south and SE Teal Drive to the east. The applicant has shown that it is feasible to meet the requirements of this section as a condition of approval.*

Staff: The applicant's site plan is sufficient to show that the site is of adequate size to accommodate new parking, loading, and drive areas in general compliance with these design standards. Some minor adjustments to the configuration of these areas may be necessary to ensure full compliance with these standards, however, such adjustments can be made with Design Review.

Hearings Officer: I concur with staff.

I. **MCC .6140, Landscape and Screening Requirements**

- The landscaped areas requirements of MCC .7855(C)(3) to (7) shall apply to all parking, loading or maneuvering areas which are within the scope of design standards stated in MCC .6126(A).
- Parking or loading spaces located within 50 feet of a property line of a lot in a residential or other district listed in MCC .2002 through MCC .2966 shall be separated from such property line by a sight-obscuring fence with height and materials suitable to meet the requirements of subsection MCC .7850(A)(7).

Applicant: *The applicant will meet the landscape requirements for parking as part of Design Review. The site plan shows areas with existing trees that will be protected during construction. The applicant will separate the neighboring residential property to the west with a site-obscuring fence which will meet the requirements of .7850(A)(7). The applicant plans to have a security fence around the rest of the property.*

Staff: The site plan clearly shows that the property is of adequate size to accommodate new parking, loading, and drive areas along with the requisite landscaping and screening. Detailed review of proposed landscaping and screening will occur with Design Review.

Hearings Officer: The applicant has demonstrated that this criteria can be met.

8. **Compliance With Applicable Comprehensive Plan Policies:**

A. **Policy 13: Air, Water And Noise Quality**

It is the county's policy to require, prior to approval of a legislative or quasi-judicial action, a statement from the appropriate agency that all standards can be met with respect to air quality, water quality, and noise levels.

Applicant: *The applicant's proposed use is not a noise sensitive use located in a noise impacted area, nor is it a noise-generator. The applicant's proposed landscaping business will employ up to twenty employees who will travel to the site by public transportation or by their own vehicles. Employee vehicles will be parked on the site during regular business hours. Employees will use small farm equipment to load and unload nursery products and supplies for use in the landscaping business. These uses will not generate incompatible noise levels, air quality, or water quality. On-site drainage as discussed above will control water quality in Johnson Creek.*

Staff: The applicant's narrative is sufficient to establish that objectives of this policy have been satisfied. No specific standards are known to exist in this area with respect to noise or air quality. Water quality could be impacted by additional storm run-off attributed to this development, however, this has been anticipated by the applicant and is addressed with on-site drainage improvements, as illustrated on the site plan.

Hearings Officer: I concur with applicant and staff.

B. Policy 14: Developmental Limitations

The County's policy is to direct development and land form alterations away from areas with development limitations except upon a showing that design and construction techniques can mitigate any public harm or associated public cost, and mitigate any adverse effects to surrounding persons or properties. Development limitations areas are those which have any of the following characteristics:

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

Applicant: *The slopes on the subject site do not exceed 20%. According to the East Multnomah County Soils and Water Conservation District, the soils are mapped as Powell silt loam. See, East Multnomah County Soils and Water Conservation District Comments, attached to Staff Report as Exhibit 14. In order to protect soil erosion, the applicant will provide on-site drainage detention as shown on the attached site plan...*

The area to be paved is already graded to the proposed detention pond area and would allow the natural grade of the property to allow the run-off from the pavement to go to the detention pond. The non-paved areas of the property have a natural grade to the detention pond area and to the existing drainage ditch along the front of the property. Surface water runoff volume after development will be no greater than before development. The run-off will drain to the ditch adjacent to Powell Valley Road. Sediment controls will be used to control erosion, sediments, and turbidity which could affect Johnson Creek. The subject property is not within a 100-year flood plan. There are no fragipans. The land is not subject to slumping or earth slides. All earth disturbing activities will meet the East Multnomah County Soils and Water Conservation District recommendations 1-8 as a condition of approval.

Staff: Where Policy 14 development limitations exist on-site, in areas proposed for development (e.g. high seasonal water table and fragipan), design and construction techniques can be implemented to mitigate any public harm or associated public cost, and mitigate any adverse effects to surrounding persons or properties. Such techniques will be evaluated concurrent with design review, and could include erosion control requirements.

Hearings Officer: This Comprehensive Plan policy has been addressed adequately.

C. Policy 37: Utilities

The County's policy is to require a finding prior to approval of a legislative or quasi-judicial action that:

- **The proposed use can be connected to a public water system, and the Oregon Department of Environmental Quality (DEQ) will approve a subsurface sewage disposal system;**

- **The water run-off can be handled on the site or adequate provisions can be made; and**
- **There is an adequate energy supply to handle the needs of the proposal and the development level projected by the plan; and**
- **Communications facilities are available.**

Applicant: *The Portland Sanitarian has identified that the Land Feasibility Study (LSF 97-64) (attached as Exhibit 15 to the Staff Report) applies to the subject property. The LFS demonstrates that the site is suitable for an alternative capping fill system that can serve up to 1,500 gallons. The Site Plan (attached to the Staff Report as Exhibit 1) shows a new drainfield and replacement drainfield that is capable of serving the proposed use according to the applicant's engineer. The septic drainfield will not be used for vehicle traffic. The applicant's engineer has calculated storm water run-off and designed a 2,175 cubic foot detention pond that is adequate to handle the proposed storm run-off without impacting the septic drainfield...*

The subject property is served by Lusted Water District. There is a 4" water line located on Powell Valley Road that will serve the property. See Water Service Review Form, attached to the Staff Report.

The Preliminary Drainage Calculations, attached to the Staff Report demonstrate that a 10-year storm event and associated storm run-off can be handled on-site with the proposed storm detention pond. The Preliminary Drainage Calculations are based on a paved asphalt parking area... The applicant will only pave a minimum amount of the property necessary to meet paving requirements for parking. The applicant will meet the recommendations of the East Multnomah County Soil and Water Conservation District recommendations to ensure that run-off from the site will not adversely affect water quality in Johnson Creek...

Staff: The requirements of this Policy have been satisfied. Comments received from the Lusted Water District indicate that the development can be served by a four-(4) inch line adjacent to Powell Valley Road (attached to the Staff Report as Exhibit 11). The City of Portland Sanitarian is an agency authorized to review and approve certain subsurface disposal systems on behalf of DEQ. The Land Feasibility Study prepared by the City of Portland, confirms that the subject property is suitable for an alternate capping and fill system. Drainage calculations prepared by Dan E. Symons, P.E., indicates that storm-water attributed to the development can be adequately handled on-site with a stormwater detention system (attached as Exhibit 13 to the Staff Report).

Hearings Officer: The requirements of this policy have been satisfied. However, if design review approves the use of gravel roads and parking surface, there will be less impervious surface, which may effect the size of the detention pond needed for drainage. Accordingly, design review will also need to review this issue.

F. **Policy 38: Facilities**

The County's policy is to require a finding prior to approval of a legislative or quasi-judicial action that:

- **The appropriate school district has had an opportunity to review and comment on the proposal.**
- **There is adequate water pressure and flow for fire fighting purposes; and**
- **The appropriate fire district has had an opportunity to review and comment on the proposal.**
- **The proposal can receive adequate local police protection in accordance with the standards of the jurisdiction providing police protection.**

Applicant: *The City of Gresham Fire Department has been provided a site plan and has indicated that the existing access to the proposed development is adequate (See Exhibit 10, attached to Staff Report). The Fire District Review also shows that there is adequate water pressure and flow for fire fighting purposes depending on the building construction type to be determined during plan review.*

The subject property is served by the Gresham Police Department (See Exhibit 9, attached to Staff Report).

Staff: Exhibits 9 and 10 (attached to Staff Report) demonstrate that police and fire protection services are adequate to serve the proposed uses.

Hearings Officer: I concur with staff.

G. **Policy 40: Development Requirements**

The county's policy is to encourage a connected park and recreation system and to provide for small private recreation areas by requiring a finding prior to approval of legislative or quasi-judicial action that:

- Pedestrian and bicycle path connections to parks, recreation areas and community facilities will be dedicated where appropriate and where designated in the bicycle corridor capital improvements program and map.
- Landscaped areas with benches will be provided in commercial, industrial and multiple family developments, where appropriate.
- Areas for bicycle parking facilities will be required in development proposals, where appropriate.

Applicant: *The subject property is not near to any park and recreation area. Therefore, no pedestrian and bicycle path connections are required. Bicycle parking facilities and landscaped areas with benches will be provided as a condition of approval if found to be appropriate to comply with the Development Requirements.*

Staff: Bicycle facilities and landscaped areas with benches are improvements more appropriately required with the more intense commercial/industrial development typical of an urban environment.

Hearings Officer: This policy has been given adequate consideration.

9. Compliance with Oregon Administrative Rule (OAR) 660-022 for Unincorporated Communities:

OAR 660-022-0000, Purpose

- (1) The purpose of this division is to establish a statewide policy for the planning and zoning of unincorporated communities that recognizes the importance of communities in rural Oregon. It is intended to expedite the planning process for counties by reducing their need to take exceptions to statewide planning goals when planning and zoning unincorporated communities.

- (2) This division interprets Goals 11 and 14 concerning urban and rural development outside urban growth boundaries and applies only to unincorporated communities defined in OAR 660-022-0010.

OAR 660-022-0010, Definitions

- (10) "Unincorporated Community" means a settlement with all of the following characteristics:

- (a) It is made up primarily of lands subject to an exception to Statewide Planning Goal 3, Goal 4 or both;
- (b) It was either identified in a county's acknowledged comprehensive plan as a "rural community", "service center", "rural center", "resort community", or similar term before this division was adopted (October 28, 1994), or it is listed in the Department of Land Conservation and Development's January 30, 1997 "Survey of Oregon's Unincorporated Communities";
- (c) It lies outside the urban growth boundary of any city;
- (d) It is not incorporated as a city; and
- (e) It met the definition of one of the four types of unincorporated communities in sections (6) through (9) of this rule, and included the uses described in those definitions, prior to the adoption of this division (October 28, 1994).

660-022-0030, Planning and Zoning of Unincorporated Communities

- (3) County plans and land use regulations may authorize only the following new industrial uses in unincorporated communities:

- (c) Small-scale, low impact uses;

- (6) County plans and land use regulations shall ensure that new uses authorized within unincorporated communities do not adversely affect agricultural or forestry uses.

(7) County plans and land use regulations shall allow only those uses which are consistent with the identified function, capacity and level of service of transportation facilities serving the community, pursuant to OAR 660-012-0060(1)(a) through (c).

(8) Zoning applied to lands within unincorporated communities shall ensure that the cumulative development:

(A) Will not result in public health hazards or adverse environmental impacts that violate state or federal water quality regulations; and

(B) Will not exceed the carrying capacity of the soil or of existing water supply resources and sewer services.

(9) County plans and land use regulations for lands within unincorporated communities shall be consistent with acknowledged metropolitan regional goals and objectives, applicable regional functional plans and regional framework plan components of metropolitan service districts.

(11) For purposes of this section, a small-scale, low impact industrial use is one which takes place in an urban unincorporated community in a building or buildings not exceeding 20,000 square feet of floor space, or in any other type of unincorporated community in a building or buildings not exceeding 10,000 square feet of floor space.

660-022-0070, Applicability

For each unincorporated community in the county, by January 1, 1998, or a date specified in a periodic review work program, all counties shall:

(2) Demonstrate that all uses authorized by acknowledged comprehensive plans and land use regulations for unincorporated communities are rural, in compliance with statewide planning Goals 11 and 14; or

Applicant: In regards to the Rural Communities Rule that the county has not yet adopted, the proposed use meets OAR 660-022-0030(3)(c). A small scale, low impact industrial use is one that is limited to a maximum of 10,000 feet of floor area. As shown in the Site Plan, attached to the Staff Report, the existing building is 8,640 square feet and the greenhouse is 1350 square feet, for a total of 9,999 square feet of floor area. The proposed use meets the definition of "industrial use" as defined in OAR 660-022-010(4) because the proposed landscaping business uses the land primarily for storage and wholesale distribution of products, goods and materials.

The proposed use also meets OAR 660-022-0030(3)(e). The proposed landscaping business will not exceed the capacity of water and sewer service available to the site as shown in the Water Provider Form and Land Feasibility Study 64-97, which is attached to the Staff Report.

OAR 660-22-070 gives counties the option of planning for unincorporated communities under OAR 660-022 or demonstrating that a use is authorized by an acknowledged comprehensive plan and in compliance with Goal 11 and 14. As demonstrated above, the proposed use meets both OAR 660-022-0030(c) and (e). However, the county can also demonstrate that the proposed use is authorized by an acknowledged comprehensive plan and complies with Goal 11 and 14 as follows. The subject property is an acknowledged exception area in the county's comprehensive plan. See "Compliance Acknowledgment Order." (attached as Exhibit 16 to Staff Report). The Exceptions Statement demonstrate that land zoned "Rural Centers" are not subject to Goal 3 because they are built and committed to non-farm use. The subject property had a water service extension from Lusted Water District before the adoption of OAR 660-22. The proposed use of the property will not require the establishment of new sewer systems outside the urban growth boundary because the proposed use will rely on an approved septic system which only serves one parcel. OAR 660-011-0060(f). OAR 660-011-0065 does not apply to this application because the proposed use is not residential. As either a small-scale industrial use, a use that will not exceed the water and sewer capacity or a use that is in compliance with Goal 3, 11 and 14, the proposed use is in compliance with the requirements for Unincorporated Communities.

Staff: The applicant's narrative is sufficient to establish that the proposed uses comply with this rule.

Hearings Officer: The application meets this criteria.

Conclusion

Considering the findings and other information provided herein, this application for a new landscaping business, as conditioned, satisfies applicable requirements of the Multnomah County Zoning Ordinance and Comprehensive Framework Plan.

Conditions of Approval


1. This Conditional Use approval is based on the submitted written narrative and plans, and shall be specific to the use described together with the limitations or conditions as determined herein. Any change of use or modification of limitations or conditions shall be subject to approval by the approval authority and may require a public hearing.

2. As required under MCC 11.15.7125, the applicant/owner is to obtain design review approval of all proposed site improvements including, but not limited to, grading, clearing, landscaping, fencing, and exterior structural design. Site work shall not proceed until required Design Review approvals are obtained. Specific design features represented in this application shall be reflected in plans submitted for design review. The applicant may submit alternative plans for gravel parking and drive surfaces, for review by design review as provided in Condition 3. If such surface is approved, the applicant may also modify the storm drainage/detention basin plans to address the revised storm drainage calculations, subject to approval by design review.
3. Off-street parking and loading improvement standards (MCC 11.15.6132), design standards (MCC 11.15.6138), and landscaping/screen criteria (MCC 11.15.6140) are detailed requirement, to be satisfied with Design Review. The applicant has requested approval of gravel parking and drive areas, to be treated with a product similar to DUSTAC 100, in order to provide a dustless surface. Whether or not such a product will satisfy the requirements for durability, maintenance and dustless surface, will be left to Design Review, to determine.
4. The landscaping business may employ a maximum of twenty persons and shall be conducted within an enclosed building or buildings (MCC 11.15.2252(B)). No outdoor storage of planting materials or equipment is permitted.
5. Total building floor area for the landscaping business is limited to a maximum of 10,000 square feet (OAR 660-022-0030(3)(c)).
6. Alterations to existing ingress/egress onto Powell Valley Road may require a permit from the Multnomah County Transportation Division (contact Alan Young, ROW Permit Supervisor, at 503-988-3582).
7. This Conditional Use approval shall expire two years from the date a decision on this application is final, unless design review has been granted for all phases of development, and construction of the landscaping business has either concluded or substantial construction has been determined as per code. Approval for the contractor's office element of this project shall expire four years from the date of approval, provided that the landscaping business has been established at the site within two years from the date this decision becomes final.

Order

Based on the findings and the substantial evidence cited or referenced herein, I conclude that the application CU 0-4 for the development of a landscaping business should receive conditional use approval, subject to the conditions listed above.

IT IS SO ORDERED, this 30th day of June , 2000.

A handwritten signature in black ink, appearing to read "Joan M. Chambers", written over a horizontal line.

JOAN M. CHAMBERS, Hearings Officer

Exhibit "A"

<u>Label</u>	<u>Pages</u>	<u>Description</u>
B1	19	Staff Report

Attachments to the Report:

<u>Label</u>	<u>Pages</u>	<u>Description</u>
1	1	Site Plan, Revised May 25, 2000
2	1	Applicant Memo Titled "Routine Daily Business Activities," Received May 30, 2000
3	1	Copy Of A 1998 Aerial Photograph Of The Property
4	1	Surrounding Land Uses Map
5	1	Copy Of The Zoning Map For The Subject Property
6	1	Copy Of The County Land Use Action Card For Case #LD 6-97
7	2	Exempt Farm Structure Permit With Attached Site Plan, Dated March 6, 1998
8	1	Photographs Of The Existing Building Taken By Staff, April 13, 2000
9	1	Police Services Review Form, Signed September 28, 1998
10	1	Fire Service Review Form, Signed February 16, 2000
11	1	Water Service Review Form, Signed September 28, 1998
12	1	Site Plan Submitted February 23, 2000, Showing Parking And Circulation Pattern
13	8	Preliminary Drainage Calculation Prepared By Dan E. Symons, Dated May, 2000
14	3	Letter Dated November 4, 1999 From James G. Barrett, East Multnomah Soil And Water Conservation District
15	3	City Of Portland Sanitarian Land Feasibility Study LFS 64-97, Dated June 13, 1997
16	15	Land Conservation And Development Commission Compliance Acknowledgment Order, Signed November 6, 1980 With Attachments

Other Applicant Information:

<u>Label</u>	<u>Pages</u>	<u>Description</u>
A1	1	General Land Use Application Form
A2	2	Assessment And Taxation (A&T) Sheet For The Parcel

A3	1	Vicinity Map
A4	13	Conditional Use Application Received February 22, 2000
A5	1	Applicant's Narrative Statements
A6	3	Fax Dated February 11, 2000, From Dorothy S. Cofield, Attorney At Law, With Attachments
A7	1	Letter Dated February 18, 2000, From Dorothy S. Cofield, Attorney At Law
A8	1	April 11, 2000 Letter From Dorothy S. Cofield, Attorney At Law
A9	3	May 26, 2000 Letter From Dorothy S. Cofield, Attorney At Law
A10	1	Site Map Of The Subject Property
A11	1	Aerial Photograph Of The Property
A12	1	Letter Titled "Area Comparison," Received May 30, 2000
A13	1	Letter From Ron Fortune To James Card, Dated May 22, 2000
A14	1	Fire District Review Form, Initial Submittal
A15	5	Certification Of Private On-Site Sewage Disposal, With Attached Land Feasibility Study LFS 65-97, For Parcel Adjacent To The East

Other Staff Information:

<u>Label</u>	<u>Pages</u>	<u>Description</u>
B2	2	Aerial Photographs Of The Subject Property
B3	8	Photographs Of The Property Taken April 13, 2000
B4	2	March 23, 2000 Completeness Review Letter
B5	1	Letter Dated June 2, 2000 Confirming The Application Complete On May 30, 2000
B6	12	Notice Of Public Hearing, Mailed June 2, 2000
B7	1	Mailing List Of Those Persons Receiving Notice Of The Hearing
B8	1	Sheet Confirming Posting Signs Received By The Applicant June 6, 2000

Documents Submitted For Hearings Officer Hearing:

<u>Label</u>	<u>Pages</u>	<u>Description</u>
H1		Letter regarding DUSTAC 100 and material safety data sheet
H2		Information regarding DUSTAC 100
H3		Information regarding application of DUSTAC 100 to the subject site