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BEFORE THE HEARINGS OFFICER  
FOR MULTNOMAH COUNTY, OREGON  
FINAL ORDER

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**Conditional Use Permit for a Type B Home Occupation**

**Case File:** CU 0-6

**Proposal:** A request for Conditional Use approval for a Type B Home Occupation to operate a skateboard instructional facility. All of the proposed activities will be conducted in four existing barns and the courtyard between the barns. No more than 30 total students a day will receive instruction. The proposed business hours are Monday and Wednesdays from 4 PM to 8 PM, and Fridays, Saturdays and Sundays from 9 AM to 8 PM. The subject parcel is zoned Exclusive Farm Use (EFU).

**Location:** 100 SE Littlepage Road  
Tax Lots 15, 16 and 17, Section 35, T1N, R4E, WM  
Tax Account # R-40440-0850

**Applicant:** Aron Faegre, Architect  
520 SW Yamhill  
Portland, OR 97204

**Owner:** Don and Caz Helmstetter  
100 SE Littlepage Road  
Corbett, OR 97019

**Site Size:** 19.68 acres

**Current Zoning:** Exclusive Farm Use (EFU)

**Hearings Officer Decision:**

Denial of the proposed Conditional Use, CU 0-6, for a Type B Home Occupation to operate a skateboard instructional facility. The evidence presented by the applicants does not demonstrate that the request meets the applicable Multnomah County Code provisions and Comprehensive Plan Policies.

## PROCEDURAL ISSUES

### Impartiality of the Hearings Officer.

- A. No ex parte contacts. I did not have any ex parte contacts on 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.

### BURDEN OF PROOF

The burden of proof in this proceeding is upon the applicant. The applicant needs to provide substantial evidence, of a type that a reasonable person would rely on, to demonstrate that each applicable criterion is satisfied.

### SUMMARY OF PROPOSED USE

According to the application, Caz Helmstetter proposes to teach skateboarding at his home to children in the age range of 12 to 17 years. Operating hours would be after school on Monday and Wednesday from 4:00 PM 8:00 PM and on Friday, Saturday and Sunday from 9:00 AM to 8:00 PM. The applicant proposes to have no more than 30 students per day with approximately 10 students per class. Although there may be up to ten students in a class, only one student would be skating at a time. The applicant proposes that the home occupation will be an "incubator business" - he expects that within three years he will either terminate the use or establish it at a different location.

The applicant provided the following summary of the proposed use in a May 16, 2000 statement included within his application submittal at pages 19-22.

#### 1. Background:

Caz Helmstetter as of January 19, 1999 became the World Amateur Street Skateboarding Champion. As a skater he travels around the country to take part in competitions and events. Caz, at 22, is a Corbett success story. He came to the area three years ago, and found out about the Burnside Skate Park in Portland where he started "messing around" and it grew into a passion -- so much so that he has now earned his pro status as the 1999 Vans Amateur Skateboard Champion.

Caz has been a skateboarder in the Portland-Gresham-Corbett area for the three years that he has lived here. He has found that there are relatively few places for the people to take their sport. Therefore, they take to the city streets in-groups. There is no place for the healthy training of this sport. Most of the skate parks are outdoors, with no supervision, no instructors, no protection of the younger enthusiasts, and no sense of order prevailing. The area needs to remedy this situation. The City of Gresham, for one, has encouraged Caz to develop his park there in order to answer the outcry for private lessons; but the costs of the commercial building was prohibitive for

an untried venture. He would like to start his business in an affordable place, and grow out of it as it proves worthy of the investment.

Caz has created his own indoor skateboard ramps at his property, so that he can practice his moves, invent new ones, and stay in good skating shape. He is applying for a Home Occupation Permit from the County so that he can share his indoor skating area by teaching local skateboarding kids some of the moves. With an approved home occupation permit, it will allow him to also make some of his income from his teaching efforts.

2. Who Caz Will Be Teaching:

The target is for Caz to be teaching kids in the age range of 12 to 17 years old. Most of the kids will come from the Corbett-Troutdale area, and will be brought by their parents for lessons.

3. Hours of Use:

Caz plans to have classes for kids after school on Mondays and Wednesdays, from 4 PM to 8 PM. On Fridays, Saturdays and Sundays classes will occur at various times between the hours of 9 AM to 8 PM, depending on how much interest is generated. (The Friday time period is longer since in Corbett school is not held on Fridays). On Tuesdays and Thursdays there will be no lessons given.

4. Number of Skaters:

It is expected that the number of skaters who will be learning will be as few as 4 at a time and could on occasion be as many as 30 total during one day. On average it is expected that there will be 10 skaters attending a class.

5. What if Caz is Too Successful:

If the demand is greater than 30 kids, Caz will then develop a skateboard park in Troutdale, Gresham, or Portland, as a major commercial enterprise. He would still teach small groups at his home.

6. Number of Employees:

Including Caz, there will be only two employees (both living in the farmhouse on the property).

7. Activities:

During the hours of operation the typical activity will be individual lessons, however if there is demand there will be birthday parties or other such events for groups of kids. It is anticipated that four times a year there will be a Saturday event in which Caz and some of his friends will demonstrate skateboarding for public viewing.

8. Not a Drop-In Use:

All kids coming for training will be required to have their parents sign waivers in advance of taking lessons. There will not be any 'drop-in' use at the facility. The waivers will be similar to those used at arenas where horse training lessons and events are held.

9. Activities in Barns Only:

All of the activities will take place in the existing barns and the courtyard between the barns. The home occupation will utilize the "skateboard furniture" being created inside the barns for Caz's personal skateboard training. Some landscape planting will be added to screen the auto parking area.

10. Traffic Issues:

Kids from the Corbett area will simply ride the school bus to the Helmstetter property after school, or will often simply ride their bicycles to the property for lessons. Otherwise, parents will drive their kids to the property. Kids with a driver's license may drive to the property, but this is expected to be a minority of the students. The Corbett high school and junior high are nearby, and this home occupation is intended to serve students from those schools who are interested in skateboarding.

11. Land Use Process:

Caz has talked to the Multnomah County Land Use Planning Division and he has been told that in order to teach kids at his property, he must apply for a home occupation permit. He intends to apply for a permit in the next month.

12. Why Corbett:

Caz is only 23 years old. He has lived in the Portland area for three years, and found that he liked the Corbett area best, so he bought this property for his home -with the help of his father. The barns were falling down and not of any current agricultural use, so he knew he could fix them up for skateboarding inside. The property is small, so it's also a good size to learn about farming, without taking on too much responsibility all at once.

13. The Farm:

The farmland itself will continue in agricultural use. Caz current[ly] plans to initiate organic vegetable farming during the next growing season, working with other local farms. The soil to the east of the barns is considered good for agricultural use, while the soil from the buildings west is considered poor for agricultural use (per the attached USDA map). Thus, the skateboard activities taking place in the barns will be within the poor agricultural soil area. The barns are very old. and are believed to have not directly served

agriculture use for more than ten years. They have recently been repaired in order to keep them from falling down or becoming a hazard. However, the barns are beautiful structures representative of older agricultural practices in the area, and thus are likely worth preserving from a cultural landscape standpoint.

14. Similarity to other Home Teaching Occupations:

Caz ran a skate park in Minnesota for several years before coming to Oregon, and was good at working with the youth to develop an interest in the sport of skateboarding and is very strong at passing on techniques to children. Caz has a unique talent that he wants to be able to share with other kids -- not unlike a talented musician that gives lessons at this home. Or perhaps, an even more fitting analogy, like a horse barn where lessons, clinics, or events are held.

15. Neighborhood Involvement:

Prior to the initiation of this land use review, Caz has been working with the community and neighbors to attempt to have this home occupation fit in as much as possible. Caz went around the neighborhood with a project summary and a petition to gain support for his project. He found that there was great positive interest and excitement about his being able to provide skateboard lessons at his property. Copies of those petitions are attached elsewhere in these application materials.

In addition, Caz held an open house at his home on Saturday, January 30th, from 1 to 3 PM for anyone in the community who had interest or concerns about the proposed home occupation. Approximately 40 adults came to the open house to learn more about Caz's proposal and to see the barn areas that would be used for skateboard instruction. It was a good informational meeting, and the result appears to be that there are currently no neighbors known to be opposed to the proposal.

The Staff Report contained the following additional background information and summary of the staff's reasoning in its denial recommendation at pages 4-6.

Background:

The applicant requests approval of a Type B Home Occupation to operate a skateboard instructional facility at 100 SE Littlepage Road. The applicant intends to provide skateboard instruction within the facility to local residents. The applicant proposes the use of three existing barns, and a barn to be reconstructed. All the barns surround a central courtyard. A proposed wall will connect the buildings and restrict access to the buildings and courtyard. The total square footage for the facility is approximately 22,000 square feet. An existing driveway will provide access to the facility. The site plan is attached as Exhibit 1.

The subject parcel is 19.68 acres and zoned Exclusive Farm Use (EFU). Multnomah County zoning on adjacent properties is Exclusive Farm Use to the west, Multiple Use Agriculture (MUA) to the north and south, and Commercial Forest Use to the east. Access to the lot is available from SE Littlepage Road. The subject property has been historically used for agricultural purposes. Currently, the property owner is developing an organic farm, and some cattle are grazed on the property. In addition, to the farm buildings proposed for the home occupation, there is a garage and single-family dwelling on the property. No streams, lakes or wetlands are found within the property's boundaries.

Staff's [denial] recommendation is predicated on five important factors, which are part of the findings and conclusions:

- 1) The appropriateness or compatibility of the proposed home occupation on land zoned for agricultural use;
- 2) The commercial nature and scale of the proposed home occupation;
- 3) The consistency of the proposed home occupation with the rural character of the area;
- 4) Enforcing the conditions of approval, such as hours of operation;
- 5) Concerns about safety and noise.

Pursuant to Statewide land use goals, Multnomah County adopted Policy 9 (Agricultural Land) "to preserve the best agricultural lands from inappropriate and incompatible development." The proposed home occupation is development that is neither appropriate nor compatible with farm uses. The conversion of the farm buildings to a skateboard park, at a minimum for the duration of the home occupation, will prohibit the use of these buildings for farming practices. The subject property is considered high-value farm land, and is highly suitable for a variety of farm uses. The purpose of the Exclusive Farm Use District (MCC 11.15.2002) is "to preserve and maintain agricultural lands for farm use consistent with existing and future needs for agricultural products." An integral component of farm use on the property, now and in the future, will be the use of the existing farm buildings.

Multnomah County adopted the Type B Home Occupation "to address the need for home based business that are small scale businesses and that fit in with the characteristic of the neighborhood or the area." Pursuant to the Multnomah County ordinance (No. 900) which established the Type B Home Occupation, home occupations should not have the impacts that are associated with uses allowed in the rural center or urban zoning districts. The proposed business is more characteristic of a commercial enterprise, and not a home occupation. This type of business is more similar to uses allowed in Multnomah County's urban-commercial district. In the General Commercial

(C-2) zoning district, a designated use is the operation of an amusement enterprise, which can include billiard or pool hall, bowling alley, boxing arena, dance hall, etc. The proposed skateboard instructional facility would have impacts, such as hours of operation, number of clientele, more similar to an amusement enterprise, and therefore be more appropriate for a rural center or urban zoning district.

Pursuant to Multnomah County Ordinance No. 900, "protecting the rural character of areas in unincorporated Multnomah County" is a high priority. The proposed skateboard instructional facility would not compliment the rural character of the area. All of the surrounding land is either zoned for residential, farm or forest use. The proposed home occupation would have no connection to farming or forest management, the two primary uses in the area. The commercial nature of the business could potentially introduce problems, such as increased traffic, or parking problems, not associated with any other uses in the surrounding rural area.

Conditions of approval, such as hours of operation, would be difficult to enforce or regulate. Pursuant to Multnomah County Ordinance No. 900, the intent of the home occupation ordinance was to "make an enforceable code that does not place additional burdens on the code enforcement staff." If a complaint was received about the use of the skateboard instructional facility, it may be difficult to distinguish between the use of the facility by paying customers, and the use of the facility by the property owner or invited guests. Thereby, making a condition of approval, such as the hours of operation, difficult to enforce.

Finally, staff has some concerns about safety and noise associated with the proposed home occupation. Although the applicant would regulate the use of the skateboard instructional facility, the property and the facility would be a draw for children and adults in the area. As a result, traffic and congestion may increase on Littlepage Road. This road is rated moderate for traffic flow, and has no designated bike lanes. Children biking to the site may be exposed to an increased risk of accidents or they may potentially cause problems for drivers of automobiles or other vehicles (e.g. farm equipment). In addition, the proposed demonstration events to be held four times a year, would attract more people to the property and probably increase concerns about traffic, parking and congestion. Noise is also a concern. The level of noise from the students practicing, whether the minimum or maximum number, in the farm buildings could possibly exceed the County's code restriction (MCC 11.15.7465 (G)) on noise level at the property line. The applicant has not provided an analysis demonstrating compliance with the restriction on noise level.

## **TESTIMONY AND EVIDENCE PRESENTED**

A duly advertised public hearing was held on July 19, 2000. The following persons testified:

1. Kerry Rappold, County planner summarized his staff report.
2. Aron Faegre, representative for the applicants, testified in favor of the proposal. He summarized the information contained in his memorandum in response to the staff report (Exhibit H1).
3. Caz Helmstetter, applicant, testified about his teaching experience, that he is a professional skateboarder and Vans world amateur champion last year. He summarized the information contained in his application.
4. Don Helmstetter, applicant and father of Caz, testified that he is trying to help his son develop a career around his skateboarding interest. He said he started looking at urban commercial properties but because they need a large space it was not affordable to start a new business in a commercial facility. They thought the subject parcel was well suited to their proposed use because the barns are centered on the parcel, shaped in a U and have no windows or doors exposed on the sides of the buildings facing toward the property lines.
5. Robert Clark testified against the proposal. Mr. Clark and his wife, Sue, own a 4.9 acre parcel adjacent to the subject site to the south, zoned multiple use agriculture. He doesn't feel that a skateboard instructional facility is compatible with the character of the area. He expressed safety concerns from increased traffic, lack of "sign-off" from the fire district on fire access and the applicants' failure to show that the use would be consistent with the character of the area. He does not believe it is possible to condition the use so that it would fit in with the character of the surrounding area. He noted that the other two home occupations that had been approved in Corbett, a recording studio and a hair salon, were limited to 12 and 10 visitors per day respectively, a third of the maximum daily visitors of this proposed used.
6. Sue Clark, a neighbor, testified against the proposal. She is the owner of Windy Ridge Farm, an equine breeding facility on the south side of the subject site. In addition to breeding horses she teaches equine management at Mount Hood Community College. She said that on one recent day she counted 40 horses in pastures in the area. She said that people in the area often ride their horses along Littlepage Road to go to Oxbow park to ride. Also, horses are frequently moved between pastures and Littlepage Road is used to do that. She observed that cars and horses don't mix well. She expressed concern that children will be attracted to the facility, biking and walking to it along Littlepage Road. In addition, the road is used frequently by families who walk and bike on the road. She testified that the noise, just from the property owners' own use of the subject parcel for skateboarding is "bone jarring" when he does jumps. The result has already been that the tranquility that is part of the character of the area is gone.



7. Wayne Miller owns a parcel abutting the subject site on the south. He said he has lived there 25 years. He bikes daily on Littlepage Road. Traffic on Littlepage Road has increased over the years. He believes that any increase in traffic will be detrimental. He was concerned that the three employees could not provide supervision at the three barns at all times. He also had concern about whether the buildings had adequate fire escape routes and construction standards.
8. Deb Ballard owns an adjacent property abutting the subject parcel to the north. She expressed concern about the affect of the use on property values in the area.
9. Ken Cahill owns lands to the west of the subject site, within 500 feet. He stated that he has many years experience in the building industry and that the use would be detrimental to property values.
10. Kerry Rappold responded to the applicant's testimony that this use was similar to two other home occupations approved in the Corbett community. He stated that the recording studio was in a CFU-4 zone not an EFU zone and its customers were limited to 3 per day average (with a maximum in any given day of 12). The hair salon was in a MUA-20 zone and was limited to one chair (1 person at a time) with 9-10 persons maximum per day and the hours were limited to between 8:00 AM and 6:00 PM. Neither did a traffic study.

#### **STANDARDS, CRITERIA, ANALYSIS AND FINDINGS OF FACT**

In this section, Multnomah County Code requirements are quoted in **bold font** followed by the Hearings Officer's findings of fact, discussion of issues and conclusions on each applicable criterion.

#### **ORS 215.448**

ORS 215.448(1) enables counties to approve home occupations and places limits on that authorization. While ORS 215.448(1) is an enabling statute, it both authorizes local governments to approve home occupations and place limits on that authorization. Therefore, the County may not violate the statutory limitations on home occupations in ORS 215.448(1). Wuester v. Clackamas County, 25 Or LUBA 425, 431, (1993). The Hearings Officer first compared the provisions in the County Code to those in ORS 215.448(1) to be sure that the County Code provisions contain the provisions required by ORS 215.448. This comparison revealed that the County Code does not contain the statutory limits in ORS 215.448(1)(c) and that the provision in ORS 215.448 may be different than the parallel provision in the County Code, which is subsection 11.15.7120A.3.

ORS 215.448 provides that in an exclusive farm use zone, forest zone or a mixed farm and forest zone that allows residential uses, a home occupation:

(c) **It shall be operated substantially in:**

(A) **The dwelling; or**

**(B) Other buildings normally associated with uses permitted in the zone in which the property is located;**

**(d) It shall not unreasonably interfere with other uses permitted in the zone in which the property is located.**

**Findings and Conclusions.** LUBA considered the meaning of the requirements that home occupations be conducted in "other buildings normally associated with uses permitted in the zone in which the property is located" in Joseph v. Lane County, 18 Or LUBA 41 (1989). This proposed home occupation would take place within existing barns. The barns are traditional farm type barns that are normally associated with farm uses that are permitted in the EFU zone in which the property is located. LUBA considered the legislative history of ORS 215.448. LUBA concluded:

We conclude the provisions of ORS 215.448 were intended to depart from the previous statutory standards for home occupations in an exclusive farm use zone which required that the home occupation be an accessory use in a dwelling or other building supporting accepted farm practices. We, therefore, interpret ORS 215.448(1)<sup>o</sup> [and Lane County's provision] to require only that an existing building proposed for use for a home occupation, be a structure normally found in association with uses permitted in the [EFU] zone. Neither the statute nor the Lane Code requires that any part of such building be used for farm use, or for other uses allowed in the [EFU] zone, concurrently with its use for the home occupation.

The ORS 215.448(1)(d) requirement that home occupations "not interfere with existing uses on nearby farm land or with other uses permitted in the zone in which the property is located" requires a finding both that the home occupation won't interfere with existing uses and also that it won't interfere with other uses permitted in the zone. *Id.*, at 437. The County Code's parallel provision (MCC .7120A.3.) only requires that the home occupation "will not conflict with farm or forest uses in the area," which appears to be limited to existing uses in the area. The applicants and the staff report only addressed the County Code Criteria. Consequently there is no evidence concerning whether the proposal would interfere with uses, other than existing uses, permitted in the EFU zone.

The requirements of ORS 215.448 are not satisfied.

## **MCC 11.15.0010 Definitions**

### **Home Occupation**

**(A) A type A home occupation is one where the residents use their home as a place of work. Type A home occupations may have up to one non-resident employee or customer on the premises at any one time in addition to the resident participant. No new buildings or modifications to existing structures shall be allowed (constructed after March 14, 1998). No deliveries other than those normally associated with a single family dwelling and between the hours of 7 a.m. - 6 p.m. No outdoor storage or displays shall occur (including vehicle parking associated with the Home Occupation). No signage shall be allowed (including temporary signage and those exempted under MCC 11.15.7912 with the exception of those required under MCC**

11.05.500 - .575), and no noise above 50 dab (decibels adjusted) at the property lines shall be permitted. No repair or assembly of any vehicles or motors can occur as part of a type A home occupation. A type A home occupation may not serve as headquarters or dispatch where employees come to the site. A type A home occupation must have direct access to a public road (no easements). Type A home occupations shall be filed on a form provided by the Planning Director. Type A Home Occupations must be in conformance with all other applicable state codes.

- (B) Type B home occupation is one where the residents use their home site as a place of work but exceeds the standards of the type A home occupation. Type B home occupations shall be approved as per MCC 11.15.7105 and .7455.

*[Amended 1984, Ord. 431 § 2; Amended 1998, Ord. 900 § III].*

Findings and Conclusions. The proposed use is not a Type A Home Occupation because the applicant proposes to have more than one customer on the premises at any one time in addition to the resident participant. Type B Home Occupations are ones where the residents use their home site as a place of work but exceed the standards of the Type A Home Occupation. Type A home occupations are subject to the standards in this section. Type B home occupations are subject to more extensive approval standards because they potentially create greater impacts. Type B Home Occupations are subject to MCC 11.15.7105 and .7455. The applicant's request for a skateboard instructional facility has been reviewed according to those standards listed below.

#### Exclusive Farm Use (EFU)

##### **11.15.2002 Purposes**

The purposes of the Exclusive Farm Use District are to preserve and maintain agricultural lands for farm use consistent with existing and future needs for agricultural products, forests and open spaces; to conserve and protect scenic and wildlife resources, to maintain and improve the quality of the air, water and land resources of the County and to establish criteria and standards for farm uses and related and compatible uses which are deemed appropriate. Land within this district shall be used exclusively for farm uses as provided in the Oregon Revised Statutes Chapter 215 and the Oregon Administrative Rules Chapter 660, Division 33 as interpreted by this Exclusive Farm Use code section.

##### **11.15.2004 Area Affected**

MCC .2002 through .2032 shall apply to those areas designated EFU on the Multnomah County Zoning Map.

Findings and Conclusions. The subject parcel is zoned EFU according to the zoning maps on file at Multnomah County.

## 11.15.2012 Conditional Uses

The following uses may be permitted when approved by the Hearings Officer pursuant to the provisions of MCC .7105 to .7135:

\* \* \*

(F) Type B home occupation as provided for in MCC 11.15.7455 and provided:  
*[Amended 1998, Ord. 900 § III]*

1. That no sale of merchandise is made from the premise; and  
*[Renumbered 1998, Ord. 900 § III]*
2. That noise, odor, smoke, gases, fallout, vibration, heat or glare resulting from the activity is not detectable at any property line.  
*[Renumbered 1998, Ord. 900 § III]*

A home occupation located on high-value farmland may employ only residents of the home.

Findings and Conclusions. No sale of merchandise is proposed.

The applicants submitted a memorandum at the public hearing concerning results of a noise test which contained the following information:

Noise measurements were taken by Aron Faegre with a Larson-Davis 720 Integrating Noise Meter. Prior to testing it was provided with a new battery, was calibrated and tested for proper functioning. Noise measurements were made on July 14, 2000.

It was found that the banging noise from skateboarders inside the barn develop typical interior noise levels of 70 to 80 dBA. The greatest inside noise level that was created during tests -- from a particularly loud fall -- was measured at 86.5 dBA. The existing exterior wall is an uninsulated wall of wood shingles on plywood on vertical boards on studs and heavy timber. Actual tests of noise levels outside the building at a distance of 20 feet from the outside wall found typical peaks of 47 to 61 dBA, which indicates a current reduction through the wall of approximately 19 to 23 dBA. It was found that at a distance of 70 feet from the existing wall, all skateboarding sounds were less than 50 dBA. Since the property line of the closest neighbor is approximately 215 feet away, the existing walls should be adequate to keep all skateboard noise levels at the property line well below the County standard of 50 dBA

According to the applicants, skateboard activities will take place inside the barns, and will not be permitted in any outdoor locations. They submitted evidence of a noise test they performed that showed the noise levels were at or below 50 dba 70 feet from the barns. They argued that because the barns are approximately 200 feet from the property lines, noise will not be detectable from the skateboarding activities inside the barns. The noise

test should have been taken at the property lines where the standard requires there be no detectable noise.

MCC .7464(G) contains a general noise standard that the noise not exceed 50 dba at the property line. However, the more restrictive standard of no detectable noise at the property line applies to home occupations.

There was testimony at the hearing by Sue Clark, an adjacent property owner south of the subject site, that the noise from skateboarding in the barns now disturbs the tranquility of the area and is "bone jarring."

The applicants performed their own noise testing and do not describe how representative the skateboarding activity that was tested for noise was, compared to maneuvers that could be expected to occur during operation of the proposed use. The test was not taken at the property lines which would be more direct evidence relating to the home occupation noise standard. The Hearings Officer is not persuaded that the evidence proves that the noise levels will meet the standard at the property line. The Hearings Officer is not persuaded for several reasons. First, there was contrary testimonial evidence from the abutting property owner. Second the test wasn't done at the property line. Third, the test conditions were not described. Finally, the applicants' evidence on other criteria reflect a poor grasp of the land use process and what constitutes reliable evidence.

Sue Clark testified that the noise from Caz Helmstetter's skating in the barns is "bone-jarring." She expressed concern that this would be made worse if there are up to 30 individuals skating at the facility. The Hearings Officer notes that the unrefuted evidence about the numbers of persons skating at a time is that there will be only one person. If there is noise it relates to duration caused by more skaters not to the level of noise. The duration that a home occupation can generate noise is not regulated. What is regulated is that there can be no detectable noise at the property line.

Sue Clark's testimony suggests that the noise issue may be a vibration issue as well as a decibel issue. There is no evidence demonstrating that vibration will not be detectable at the property line.

No smoke, gases, fallout or heat are generated by teaching skateboarding.

The applicants stated that because there will be no skateboarding outside of the barns, there is no need for high intensity outdoor lighting. They plan to use only normal residential type outdoor light fixtures which do not create glare.

The property is primarily composed of high value farmland because more than 51% of the property is Class I or Class II soils. Pursuant to MCC 11.15.2012, a home occupation located on high-value farmland may employ only residents of the home. The site is primarily high value farmland, although the area where the barns are does not. Nonetheless, a "whole parcel: analysis is required in EFU zones. Smith v. Clackamas County, 313 Or 519, 836 P2d 716 (1992). Consequently, employees of the home occupation must be residents of the residence on the site. The applicant proposes to employ two persons to assist in the home occupation who will reside in the residence on the property.

All criteria except the noise criterion are satisfied or could be satisfied by imposing conditions of approval. Concerning noise see MCC .7465(G).

#### **11.15.2016 Dimensional Requirements**

- (A) Except as provided in MCC .2018, the minimum lot size for new parcels shall be 80 acres in the EFU district.

Findings and Conclusions. The subject parcel contains 19.68 acres, which is less than the 80 acre minimum lot size of the EFU zoning district. Pursuant to .2018, a lot is considered legally created if it satisfied all applicable laws when the parcel was created. As discussed under section .2018 the parcel meets an exception provided in that section for a lot which satisfied all applicable laws when the parcel was created.

- (B) That portion of a street which would accrue to an adjacent lot if the street were vacated shall be included in calculating the size of such lot.

Findings and Reasons. Inclusion of the street in calculating the size of the lot does not affect the conclusion that the parcel meets an exception from the 80 acre minimum lot size requirement.

- (C) 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

Findings and Conclusions. The applicant's site plan demonstrates compliance of the proposed skateboard instructional facility with the front, side, and rear yard setback requirements. The applicants did not submit construction documents for the farm buildings, therefore the Hearings Officer is unable to determine the height of the buildings. However, because the farm buildings are barns, they may exceed the height requirement pursuant to .2016 (E). The application meets the criteria.

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

Findings and Conclusions. Alan Young of the Multnomah County Right-of-Way division stated that no additional right-of-way is required. This criterion does not apply.

- (E) Structures such as barns, silos, windmills, antennae, chimneys or similar structures may exceed the height requirement if located at least 30 feet from any property line.

Findings and Conclusions. The applicant has not submitted construction documents for the farm buildings, therefore the Hearings Officer is unable to determine the height of the buildings. However, because the farm buildings are barns, they may exceed the height requirement.

#### **11.15.2018 Lot, Parcel and Tract Requirement**

- (A) The Lot, Parcel and Tract requirement shall be applied to all uses in this district except for Single Family Heritage Tract Dwellings: MCC 11.15.201(F), MCC 11.15.2012(O) or MCC11.15.2012(P). For the purposes of this district, a lot, parcel or tract is defined as:

\* \* \*

(2) A lot or parcel of land:

- (a) For which a deed or other instrument creating the parcel was recorded with the Department of General Services, or was in recordable form prior to February 20, 1990;
- (b) Which satisfied all applicable laws, including but not limited to land divisions and zoning ordinance, when the parcel was created; and
- (c) Does not meet the minimum lot size requirements of MCC .2016; and
- (d) Which was not contiguous to another substandard parcel or parcels under the same ownership on or after February 20, 1990, or

Findings and Conclusions. Staff has reviewed the land use and zoning maps on file at Multnomah County's Land Use Planning office. Zoning maps from 1962, 1977, 1980, 1993, and 1998 were used to determine compliance with the Lot of Record standards. The zoning map from 1962 showed the current configuration for the three tax lots that comprise the subject parcel. The 1962 zoning map showed the zoning for the subject parcel was Agricultural District (F-2). The minimum lot size for the F-2 zoning district in the 1962 Multnomah County Code was 2 acres. Therefore, the subject parcel met the applicable standards when it was created. The tract is thus exempt from the 80-acre minimum parcel size requirement in the EFU zone.

## Home Occupations - CU

### 11.15.7455 Definitions

- (A) **Employee** – one full or part time participant, resident or non-resident, in the business shall constitute one employee.
- (B) **Customers** – Any person visiting the site that is not an employee who is associated with the home.
- (C) **Normal deliveries** – The home occupation shall not involve the use, parking, storage or repair of any vehicle exceeding a gross vehicle weight of 11,000 pounds, except deliveries by parcel post, United Parcel Service, or similar in-town delivery service trucks. These deliveries or pick-ups of supplies or products, associated with business activities, are allowed at the home only between 7 a.m. and 6 p.m.
- (D) **Headquarters** – A business operation where employees come to the site at any time.
- (E) **Motor vehicles** – vehicles or equipment with internal combustion engines (such as autos, motorcycles, scooters, snowmobiles, outboard marine engines, lawn mowers, chain saws, and other small engines).

### 11.15.7460 Purposes

The purposes of the type B home occupation section are to address the need for home based business that are small scale businesses (not more than 5 employees) and that fit in with the characteristic of the neighborhood or the area. The regulations are designed to:

- (A) Protect the individual characteristics of areas in unincorporated Multnomah County and maintain the quality of life for all residents of the communities.
- (B) Join in an effort to reduce vehicle miles traveled, traffic congestion and air pollution in the State of Oregon.

### 11.15.7465 Criteria for Approval

The approval authority shall find that the following standards are met:

- (A) The standards found in MCC 11.15.7120.

Findings and Conclusions. The Hearings Officer concluded in the discussion below of Section .7120 that the applicant did not demonstrate that the proposal was consistent with the character of the area and would not impact accepted farm or forest practices in the area or significantly increase the cost of farm and forest practices in the area. This criterion is not satisfied.



**(B) The home occupation does not employ more than 5 employees.**

Findings and Conclusions. The applicant proposes only two employees besides himself will run the home occupation. MCC 11.15.2012 (F) provides that "a home occupation located on high-value farmland may employ only residents of the home." Because the subject property is considered high-value farmland, employees are required to be residents of the home. The property owner, Caz Helmstetter, will be one of the employees, and the other two employees will also reside in the farm house. This criterion is satisfied.

**(C) The site has on-site parking as per MCC 11.15.6100 to accommodate the total number of employees and customers.**

Findings and Conclusions. The applicant's site plan includes an existing gravel parking area for the house and barns, and a proposed gravel parking area with six (6) parking spaces for the home occupation. As discussed in detail under the parking and loading standards, below, the Planning Director determined 22 spaces are required. The applicant has not proposed sufficient on-site parking to accommodate the total number of employees and customers.

The applicants stated in the application that they would provide improvements to the parking area and/or landscape buffering if this is deemed desirable by the community and/or the Hearings Officer. They argued that existing driveway and graveled areas may well be adequate because vehicular access would be principally to drop off students and pick them up. The Hearings Officer has concluded in the parking and loading discussion below that the Hearings Officer does not have jurisdiction to consider the parking requirement determined by the Planning Director.

This criterion is not satisfied.

**(D) No deliveries other than those normally associated with a single family dwelling and between the hours of 7 a.m. – 6 p.m.**

Findings and Conclusions. The applicant accepted a limitation on deliveries to between the hours of 7 AM – 6 PM. This home occupation does not involve sale of merchandise, assembly of materials, or other such activities that require regular deliveries. This criterion could be satisfied by the imposition of a condition of approval.

**(E) No outdoor storage or display.**

Findings and Conclusions. The applicant accepted this limitation on outdoor storage and display. This criterion could be satisfied with the imposition of a condition of approval.

**(F) No signage (including temporary signage and those exempted under MCC 11.15.7912) with the exception of those required under MCC 11.05.500 - .575.**

Findings and Conclusions. The applicants have acknowledged they will comply with this standard. This criterion could be satisfied with a condition of approval.

**(G) No noise above 50 dba at the property lines.**

Findings and Conclusions. Both the home occupation provisions (MCC .7455 - .7465) and the conditional use provisions (MCC .7105 - .7135) contain a noise standard. The Type B home occupation standard in MCC .2012, "not detectable at any property line" is more restrictive than the conditional use standard of no greater than 50 dba at the property line. Applying the maxim that the more specific provision controls over the more general provision, the Hearings Officer concludes that more restrictive home occupation standard applies to a home occupation application.

**(H) No repair or assembly of any vehicles or motors.**

Findings and Conclusions. The proposed home occupation is not related to motor vehicle repair or assembly. This criterion is satisfied.

**(I) The application has been noticed to and reviewed by the Small Business Section of the Department of Environmental Quality.**

Findings and Conclusions. The applicants provided no evidence that the application has been noticed to and reviewed by the Small Business Section of the DEQ. This criterion has not been satisfied.

**(J) Each approval issued by a hearings officer shall be specific for the particular home occupation and reference the number of employees allowed, the hours of operation, frequency and type of deliveries, the type of business and any other specific information for the particular application.**

Findings and Conclusions. The applicants submitted information on the number of employees, the hours of operation, and the type of business to be conducted. That information was quoted in the Background section of this Decision. On Page 26 of the application the applicants provide the following additional information:

The need for skateboard teachers in the greater Portland area is far greater than our ability to fill, since the proposal is restricted to 30 students. If one goes to any other skateboard park, the number of users far exceeds 30 at any one time. We will restrict our numbers because in discussing [this] with out [sic] neighbors, it was a limitation that they requested in order to be in support of our proposal. This will be done by a membership requirement, and appointment setting with the students. One big incentive for us to grow out of using our home site as an occupation location will be the demand we anticipate for training and use of the skate park facilities. If it is successful as we hope it will be, it may dictate that we expand to commercial property as soon as it is affordable.

Marketing will be done via word-of-mouth, and flyers will be put in local retail shops in the area.

## **CONDITIONAL USES**

### **11.15.7105 Purposes**

**Conditional uses as specified in a district or described herein, because of their public convenience, necessity, unique nature, or their effect on the Comprehensive Plan, may be permitted as specified in the district or described herein, provided that any such conditional use would not be detrimental to the adjoining properties or to the purpose and intent of the Comprehensive Plan.**

### **11.15.7115 Conditions and Restrictions**

**Except as provided for Mineral Extraction and Processing activities approved under MCC .7305 through .7325 and .7332 through .7335, the approval authority may attach conditions and restrictions to any conditional use approved. Conditions and restrictions may include a definite time limit, a specific limitation of use, landscaping requirements, off-street parking, performance standards, performance bonds, and any other reasonable conditions, restrictions or safeguards that would uphold the purpose and intent of this Chapter and mitigate any adverse effect upon the adjoining properties which may result by reason of the conditional use allowed.**

### **11.15.7120 Conditional Use Approval Criteria**

**(A) A Conditional Use shall be governed by the approval criteria listed in the district under which the conditional use is allowed. If no such criteria are provided, the approval criteria listed in this section shall apply. In approving a Conditional Use listed in this section, the approval authority shall find that the proposal:**

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

**Findings and Conclusions.** Before it is possible to assess whether the proposal is consistent with the character of the area, the character of the area needs to be established. The applicant submitted an aerial photograph of an area containing a little more than a square mile with the subject property located in the southeast corner of the site. The photograph shows the Corbett Middle and High Schools at the northwest corner of the photograph. The area shown on the photographic map, except for the schools, appears to contain scattered residential and farm structures. Approximately 20 percent of the area of the photograph appears to be in timber and the remainder cleared lands, possibly pasture. Some cleared areas appear to have crops. Although the applicant stated that the structures on the property are "centered on it," they appear in the photo to be sited more closely to Littlepage Road. The parcels to the south and southeast of the subject site along Littlepage and Knieriem Roads appear to be in rural residential use. Across Littlepage Road the lands appear to be in farm use but the type of use is not identifiable in the photograph. All of the surrounding land is zoned either for residential, farm or forest use. This photograph provides some information about the uses of the area but do not identify what the character of the area is. The applicant did not attempt to define what the character of the area is.

There is some ambiguity in the language of section (A) concerning what aspect of an application needs to be consistent with the character of the area - the use or the entire proposal. This requirement applies to approvals of conditional uses, implying that the "use" needs to be consistent with the character of the area. However, the provision states that the decision-maker must find that the "proposal" is consistent with the character of the area. The "proposal" includes not only the use but also its design and operational feature such as parking, access, landscaping, use of building materials, colors, hours of operation, numbers of customers, etc. Considering the context of the provision the Hearings Officer concludes that both the use itself (skateboard instruction, music lessons, horse riding academy, hair salon, etc.) as well as its design and operating features are factors to consider in deciding consistency of a proposal with the character of the area.

Finally there's the question of what "consistent" means. Does it mean that there's some positive connection between the use and the area's character, or does it mean that there is a lack of conflict between the proposal and the area's character? The dictionary definition of consistent is "in agreement; compatible; congruous; uniform; not contradictory or opposed . . ." Thus, one method the Hearings Officer uses to determine consistency is whether the proposal is not contradictory or opposed to the character of the area - if it is not contradictory to the character, it is compatible with it.

The applicant has not defined what the character of the area is. Nonetheless, the applicant argued that the proposed home occupation is consistent with the unidentified character of the area:

The proposed home occupation is consistent with the character of the area because it does not require the construction of new buildings, and it involves only a small number of people so that there is no significant transportation impact. In fact, the proposed use of the barns for skateboard instruction to some extent preserves the visual character of the area. This is because current farming practices do not utilize the type of historic barn structures now on the property. Modern barns are constructed as much larger pole barns covered with metal siding rather than the old-fashioned smaller barns' wood siding.

The park fits in the character of the area because we are using existing barns and all activity takes place within them. The barns lend themselves to a "closed compound" where access is restricted to one entry area, which is manned throughout. To the traveler looking over our property, they will see existing attractive barns in a farm setting, nothing more. If a non-member comes to the farm and has not signed up as part of the program, he/she cannot enter, and has no place to watch the activities, since all are centered within internal-facing windows and doors. There will be no place for people to stay outside and no reason for "hanging out" since all the activities are inside protected areas. This will minimize vandalism, and give no place for outside gathering of youth. [Page 26 of the application.]

The barns have not been used for agricultural purposes for 5 years or more and were in such poor condition that they were potentially becoming a hazard. Under the proposed temporary 3 year use the barns are being

repaired and rehabilitated, which will allow them to be "preserved and maintained for farm use" in the future. In other words without this temporary use the farm buildings would likely soon have collapsed and become unusable. The temporary use has provided a mechanism to rehabilitate and save the barns for agricultural uses. [July 17, 2000 Response to the Staff Report].

In summary, the applicants' argue that their proposal is consistent with the character of the area for the following reasons. The existing wood barns with shake siding are architecturally traditional farm barns characteristic of traditional farm areas. The proposed home occupation use would generate revenues to rehabilitate these architecturally significant buildings, allowing them to continue to serve as traditional barns instead of being replaced with modern pole barns with steel siding and roofs. Because the barns are sited to form a U shape and the fourth open side can be enclosed by a wall, none of the home occupation activity will be visible from outside the property. Essentially they argue that the use, its design and siting of the buildings will not be contradictory to and therefore it will be consistent with the character of the area.

The staff argued the proposed home occupation is not consistent with the character of the area.

...The proposed home occupation would have no connection to farming or forest management, the two primary uses in the area. The commercial nature of the business could possibly introduce elements, such as increased traffic, or parking problems, not associated with any other uses in the surrounding rural area. The proposed home occupation is more similar to uses allowed in Multnomah County's urban-commercial district. In the General Commercial (C-2) zoning district, a designated use is the operation of an amusement enterprise, which can include billiard or pool hall, bowling alley, boxing arena, dance hall, etc.

In the memorandum responding to the staff report the applicants make the following statements.

Staff has completely misunderstood the intensity of use of the proposed temporary home occupation. Skateboarding requires a large area for the construction of a "bowl" or other kind of ramp. However, unlike the billiard or pool hall, a bowling alley, a boxing arena, amusement park, or a dance hall, instruction is achieved with only one or two students using the large space at a time. There may be several other students present watching the instructor teach the student that is in the "bowl". This is a one-on-one form of teaching. Staff imagines that there are many kids skateboarding at a time inside of these barns like a roller skating rink. Rather, this is a very exhausting, physical activity and skaters generally skate individually for an intensive period and then sit and watch others practice while waiting for their turn.

Home occupations which have a strong connection to farming or forest management would likely be outright allowable uses under the EFU zone and not require a permit such as this one. If home occupation uses were

required to have a connection to farming or forest management, then a home occupation could not include such common activities as: a recording studio (one has already been approved by the County), a hair dresser (one has already been approved by the County), a piano or voice teacher, an educational tutor, and any number of other common home occupations. [Memorandum responding to the staff report (Exhibit H1)].

The staff was concerned because the proposed use lacks a connection to farm and forest uses. ORS 215.283 authorizes counties to allow nonfarm uses, including home occupations, in exclusive farm zones subject to certain statutory standards. Multnomah County adopted its home occupation requirements to conform to the statute (and included additional local standards). The statute does not require a home occupation in an EFU zone to be connected to the purposes of the zone or similar to farm uses. It only requires that the home occupation not "unreasonably interfere" with uses permitted in the zone, and not significantly impact accepted farm and forest practices in the area or the costs of those practices. Although Multnomah County uses slightly different terminology than "unreasonably interfere" when it uses "will not conflict with" it also does not require a home occupation in an EFU zone to be connected to farm uses permitted in the zone.

Concerning the commercial nature of the use, the Hearings Officer could find no criteria for approving a home occupation that concerns whether the proposed use has a "commercial" component. The term "commercial" is not defined in the Zoning Code. One general meaning of the word is distribution of products in the market place. This proposed use does not produce a product, it is an instructional facility. It is not a commercial use in that meaning of the term. Another common meaning is to pursue an endeavor for profit. The applicants' purpose is to make a profit. However, that is the purpose of all home occupations. The Hearings Officer concludes that the Code does not prohibit a commercial non-farm enterprise in the EFU zone if that enterprise is otherwise allowable.

The staff may have been concerned with the nature and scale of the use rather than its "commercial" nature. Theoretically, the nature of a use could be inherently inconsistent with the character of a farm and forest area. However, there is no evidence in the record, and the Hearings Officer can think of nothing about giving skateboarding lessons inside a building that is inherently inconsistent with the character of a farm and forest area.

Undoubtedly the scale of an otherwise allowable use could be inconsistent with the character of a farm and forest area. The scale of the use does not relate to the size of the structure that the use takes place in because new structures are not allowed to be built for home occupations. The scale of the use could concern for example, the numbers of customers of delivery trucks arriving and departing from the home occupation.

In this case, the concern about the scale of the use seem to relate to the volume of customers. That concern seems to relate more to the impacts of the scale of the use, which are subjects to be considered under MCC.7120(3) than it does to consistency with the character of the area. That section concerns whether the use with conflict with farm or forest uses in the area and whether the impacts will be significant on farm and forest practices on surrounding lands. The Hearings Officer concluded in addressing those criteria that the applicant had failed to carry his burden to prove that the proposed use is consistent with those criteria.

When the staff says this use is more like uses in the urban commercial district than it is like farm and forest uses, it suggests that the distinction makes this proposed use not "consistent with the character of the area." Because the reason for the home occupation provision is to allow nonfarm business uses in the EFU zones, the Legislature and the Board of County Commissioners intended to allow uses that are of types not otherwise allowed in EFU zones.

Home based businesses are allowable in the EFU zone so long as they are small scale businesses. The home occupation section refers to small scale as including businesses with no more than five employees. This proposed use is consistent with those provisions. The staff says the skateboard facility is like the "amusement enterprise" use category allowed in the urban commercial C-2 district. The staff appears to conclude that because the use is like a category of urban uses and not like categories of permitted farm uses, it cannot be approved in the EFU zone. However, the Code does not limit any category of business activity that may be pursued as a home occupation. The Code instead limits the size of the business by consideration of the maximum number of employees, limits the impacts that a home occupation may have on surrounding farm and forest lands and limits those that would be detrimental to the intents and purposes of the Comprehensive Plan.

The Hearings Officer concludes that neither the statute nor the County Code require a home occupation to further the purposes of the EFU zone but only that the use should "not interfere" with permitted EFU uses and be consistent with the "character of the area."

The applicants have not provided evidence about the character of the area and therefore cannot have demonstrated that the proposed use is consistent with that character of the area.

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

Findings and Conclusions. There are no streams, lakes or wetlands within the subject property's boundaries. The applicant proposes two "port-a-potty" type toilets with disposal provided by a rental company. The Hearings Officer notes under the discussion of Comprehensive Plan Policy 37 that the only allowable sewage service would be an onsite subsurface sewage disposal system. Construction of an on-site system is required to comply with DEQ standards. Compliance with those standards should assure that the land and groundwater qualities are not adversely affected. No adverse impacts to natural resources are anticipated.

Farm and forest lands are natural resources. Those resources are addressed separately under the following section, which concerns significant change in the accepted farm or forest practices on surrounding land and costs of those practices. This subsection concerns natural resources other than farm and forest values. This criterion is satisfied.

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

Findings and Conclusions. The subject property is zoned Exclusive Farm Use (EFU). Multnomah County zoning on adjacent properties is Exclusive Farm Use to the west, Multiple Use Agriculture (MUA) to the north and south, and Commercial Forest Use to the east. The applicants' aerial photograph suggests that there are farm and forest practices occurring in the area. The term "farm use" however has a statutorily defined meaning. ORS 215.203(2) defines farm use as follows:

"As used in this section, 'farm use' means the current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting and selling crops for the feeding, breeding, management and sale of, or the produce of, livestock, poultry, furbearing animals or honey bees or for dairying and the sale of dairy products or any other agricultural or horticultural use or animal husbandry or any combination thereof. 'farm use' includes the preparation and storage of the products raised on such land for human use and animal use and disposal by marketing or otherwise."

Because "farm uses" are only those listed activities that are pursued for the "primary purpose of obtaining a profit in money" not all activities that might look agricultural are necessarily "farm uses" within the meaning of this provision.

The County's provision mirrors the language in state law. ORS 215.283 authorizes counties to allow home occupations. State law requires that if a home occupation is to occur in an EFU zone certain state standards must be applied, including those in ORS 215.296(1), which Multnomah County adopted verbatim. The statutory language was interpreted by the Land Use Board of Appeals (LUBA) in a December 1999 opinion, Turner Community Association v. Marion County, \_\_\_ Or LUBA \_\_\_ (LUBA No. 99-024, 12/16/99) citing Schellenberg v. Polk County, 21 Or LUBA 425, 440 (1991). [The Hearings Officer notes that the recording studio application was approved before Turner was decided].

To establish compliance with the requirement in ORS 215.296 and MCC .7120(A)(3) applicant for a home occupation must show that (1) the use will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use, nor (2) significantly increase the cost of those practices. The applicant must do the following:

1. Identify the accepted farm or forest practices occurring in the area.<sup>1</sup>

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<sup>1</sup> Examples of farm practices are activities that occur on the property that allow farm use to occur. These are such things as the ground and aerial application of pesticides and



2. Identify the likely impacts of the proposed use on the identified farm or forest practices.
3. Determine whether the impacts will cause a significant change in farm or forest practices or significantly increase costs of those practices.

The applicants have not identified an area of potential impact. They have not identified parcels are subject to farm or forest use or what farm or forest practices occur on those parcels. Because the surrounding area is variously zoned for exclusive farm use, multiple use agriculture and commercial forest uses it could be expected that there in fact are farm and forest practices occurring within the area but they have not been identified.

The applicants argued that the proposed home occupation will not impact farm or forest practices on surrounding lands because the home occupation will take place only within existing barn buildings and that consequently there will be no increase in cost of farm or forest practices on surrounding lands, since this use will have no impact on them.

At the hearing there was testimony that one farm practice in the area is the pasturing of horses and the movement of horses along Littlepage Road between pastures. An impact on that practice identified in the hearing was increased vehicular traffic on Littlepage Road and the increase conflict between the horses and the vehicles.

In the memorandum responding to the staff report (Exhibit H1) the applicants stated:

The applicant requests the Hearings Officer to consider "common sense." If the proposed home occupation were that of a piano teacher, school tutor, or dance instructor it is unlikely this question would be asked. It appears that staff are imagining the home occupation as an activity which is similar to an urban amusement park, bowling alley, pool hall, or other such intensive use. Rather, we are proposing a place for a small number of school-age children who already are skateboarding somewhere in the community. What is being provided here is a local home occupation in which they can learn the sport in a safe and controlled setting. Skateboarding in some places has a negative connotation in our modern American culture. Caz's home occupation is attempting to provide a wholesome home setting for students in the Corbett area who wish to learn the sport. Perhaps sometimes it is appropriate to reverse a question such as this one from staff and ask: "What possible negative impact could this home occupation have on the surrounding farm uses?" The applicant's planning professional is licensed as architect and a professional engineer, and has been involved with many sensitive land use issues. He is not able to think of a single impact of any significance, beyond

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herbicides, irrigation of fields, field plowing, movement of farm machinery on the farms and on area roadways, disposal of animal waste, fertilizer application to fields, crop harvesting, pasture cultivation and other similar activities.

simply a "fear of impact". Protection of farmland from incompatible uses is an important part of Oregon land use law. Protection of farm land should not require that rural areas become sterile of all other forms of activities – especially as concerns children. The use is initially for a small number of children, and for a temporary 3 year period to avoid potential impacts to agricultural lands.

The County code and state law require a specific analysis, based on detailed facts concerning area farm and forest practices. The applicants have not conducted that analysis. The applicants have not met their responsibility to provide the required evidence necessary to satisfy this requirement.

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

Findings and Conclusions. The Applicant stated that no additional public services will be required for this home occupation. The staff argued that the applicant is required to provide certification of septic and water service and provide police and fire district approval for the proposed use. The staff concluded that the applicants had not satisfied this criterion.

This criterion concerns "public" service not "private" services. There is no public sanitary sewer service or water service available to this area. Even if public sanitary sewer were nearby it could not be extended to this site because of an LCDC administrative rule, as discussed under Comprehensive Plan policy 37. This criterion does not require approval from the police or fire service provider. It asks whether public services will be required to be provided that have not be programmed for the area because of the use. The only public services needed are police and fire protection services. The County and the Fire District have programmed levels of service to meet projected needs for the adopted land use for the area. This use would not require additional services to be provided. This criterion is satisfied.

**(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;**

Findings and Conclusions. The subject parcel is not located within a big game winter habitat area. This criterion is not applicable.

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

Findings and Conclusions. Access to the site is off Littlepage Road. Littlepage Road extends south from the Columbia River Highway to Rickert Road and connects to Hurlburt Road which is an access to Oxbow Park, a regional park facility. Access from the site to the Corbett Middle and High Schools can be gained by traveling Littlepage Road north to the Columbia River Highway or by going south on Littlepage Road and connecting to Powder Road and then north to the Columbia River Highway.

Littlepage Road has a forty (40) foot right-of-way and minimal paved width. Sections of the road are steep. There is no evidence in the record about the actual paved width or the

nature of the road's shoulders. Littlepage Road is designated as a local rural road, which is meant to handle low traffic volume. No bikeways are planned for Littlepage Road on Multnomah County's Bicycle Master Plan (December, 1990).

The applicant responded to this criterion as follows:

"A significant number of students today own skateboards and desire to know how to safely use them. This home occupation will promote safety in the use of skateboards."

"Littlepage Road currently has only intermittent use by automobiles, and in this regard has enormous available capacity. In addition, the proposed use is so small that it clearly would have no significant impact on Littlepage Road traffic. The applicant will commission a traffic impact analysis if the County Traffic Engineer disagrees with this analysis, but we would request the Traffic Engineer visit the site first to confirm our description.

The record contains no evidence concerning the existing volume of traffic on Littlepage Road. There is no evidence on what the capacity of the road is and what the existing level of service is. Without that evidence it is not possible to conclude whether the (unidentified) increase in this existing volume caused by the proposed use would be significant. The Hearings Officer needs to impose "clear and objective" conditions to approval of an application. If the Hearings Officer lacks adequate information to show that the criteria can be satisfied the Hearings Officer cannot draft a condition of approval that does not require a later discretionary decision by someone else.

The staff report expressed concerns about the safety of children traveling to the site, or congregating by the road if they cannot enter the subject property. Several persons testified about safety concerns for people who live in the area and who use Littlepage Road for horseback riding, bicycling, and walking resulting from increased traffic. There was testimony that people who live along Littlepage Road commonly ride horse along it to ride in Oxbow Park. There was also testimony that horses are moved along the road when they are moved from pasture to pasture. There was also concern expressed about the safety of clients of the home occupation who would bicycle or walk to it along Littlepage Road.

The staff report expressed concern that the home occupation will be a significant attraction, especially for children in the local area, and may lead to conflicts between motorists and people gathered near the subject property. Any increase in traffic or congestion associated with the proposed home occupation will potentially create problems for motorists, bicyclists, and pedestrians on Littlepage Road. The applicants' proposal for demonstration events four times a year might significantly increase the risk of problems associated with parking, traffic, and congestion.

In the memorandum responding to the staff report (Exhibit H1) the applicants provided the following statement:

The proposed use will have virtually negligible impact on traffic and parking since it is primarily parents dropping their kids off to take skateboard lessons and/or kids riding their bikes or a school bus to the property for a lesson.

Agricultural activities such as blueberry farms, riding stables, and orchards would be examples of uses that are allowed under the EFU zone and which often have very large traffic and/or parking problems associated with them. The existing Littlepage Road has virtually no traffic on it.

Staff seems to be imagining this as a more "urban" kind of use where there would be many cars needing to park. Rather, this is a home occupation in which instruction is principally accomplished one-on-one, so that there are not a large number of students at the facility at a time. . .

As to road traffic, if the Hearings Officer feels it is appropriate, the applicant will be pleased to commission a traffic study by a professional traffic engineer and make the approval contingent upon a review and approval of that document by County traffic engineers. However, Littlepage Road has an extremely low level of traffic. Children already ride bicycles along the road as is common in rural areas such as this. We feel that staff's concerns here are more of an "urban" kind of concern. In a rural area such as this, pedestrians, bicycles, horses, farm equipment, cars, and trucks commonly make good and safe use of a very low traffic volume road such as Littlepage road.

A feature of the application is the applicant putting on public demonstrations of his skateboarding and events for his students to demonstrate what they have learned. The applicants have not identified the numbers of persons they might expect to attend such events, which the applicants said might take place about four times a year. If the attendees included only a mother and a father of each of the maximum 30 students there would be at least 90 persons attending, probably more. The applicants have not addressed how parking would be provided for these attendees nor addressed the impacts on the surrounding area.

The applicants have not satisfied this criterion.

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

Findings and Conclusions. The Comprehensive Plan Policies are discussed in this Decision separately below.

**11.15.7127 Design Review Exemption**

Exempted from the Design Review criteria of MCC .7805 through .7870(A), include:

- (A) Single family residences.**
- (B) Type B Home Occupations that require the addition of less than 400 square feet of ground coverage to the structure.**

Findings and Conclusions. The applicants' proposal for the home occupation does not involve the addition of more than 400 square feet of ground coverage to any structure. Existing barns, and a barn to be replaced, using the existing footprint, will be used for the

home occupation. The residence would be used only for bookkeeping. This application is exempt from the Design Review requirements.

## **OFF-STREET PARKING AND LOADING**

### **11.15.6102 General Provisions**

**In the event \* \* \* any change in the use of an existing building \* \* \* 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.**

### **11.15.6108 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.**

### **11.15.6110 Use of Space**

- (A) Required parking spaces shall be available for the parking of vehicles of customers, occupants, and employees without charge or other consideration.**
- (B) No parking of trucks, equipment, materials, structures or signs or the conducting of any business activity shall be permitted on any required parking space.**
- (C) A required loading space shall be available for the loading and unloading of vehicles concerned with the transportation of goods or services for the use associated with the loading space.**
- (D) Except for residential and local commercial districts, loading areas shall not be used for any purpose other than loading or unloading.**
- (E) In any district, it shall be unlawful to store or accumulate equipment, material or goods in a loading space in a manner which would render such loading space temporarily or permanently incapable of immediate use for loading operations.**

### **11.15.6116 Change of Use**

- A. Any alteration of the use of any land or structure under which an increase in the number of parking or loading spaces is required by this Section shall be unlawful unless the additional spaces are provided.**

- B. In case of enlargement or change of use, the number of parking or loading spaces required shall be based on the total area involved in the enlargement or change in use.

#### **11.15.6122 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.

#### **11.15. 6148 Appeal of Administration Decision**

A decision of the Planning Director under the provisions of MCC .6100 through .6148 may be appealed by the applicant to the hearings officer in the manner provided in MCC .8290 and .8295.

Findings and Conclusions. The applicant has submitted a site plan (Exhibit 1) which shows six gravel parking spaces for the home occupation. Pursuant to MCC .6142 (F), the Planning Director has determined that the required number of parking spaces for the proposed use shall be twenty-two (22). This was based on County standards for an amusement park. See the Hearings Officer discussion below under MCC .6142 (F). This criterion is not satisfied.

#### **11.15.6126 Design Standards: Scope**

- (A) The design standards of this section shall apply to all parking, loading, and maneuvering areas except those serving a single or two-family residential dwelling or mobile home on an individual lot.

Findings and Conclusions. Type B home occupations only need to comply with the required numbers of parking spaces in accordance with MCC .7465 (C) because the primary use on the site is for a single-family dwelling and single family dwellings are exempt from the design standards of the parking requirements according to MCC .6126 (A). The applicant is required to provide a parking plan which indicates the number of required parking spaces that the Planning Director has determined are required. The Director has determined that 22 parking spaces are required. The applicants' site plan provides only 6 (six) spaces. This criterion is not satisfied.

#### **11.15.6130 Dimensional Standards**

- (A) Parking spaces shall meet the following requirements:
- (1) 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.

## **11.15.6142 Minimum Required Off-Street Parking Spaces**

### **(A) Residential Uses**

#### **(1) Single Family Dwelling - Two spaces for each dwelling unit.**

\* \* \*

### **(F) Unspecified Uses**

**Any use not specifically listed above shall have the requirements of the listed use or uses deemed most nearly equivalent by the Planning Director.**

Findings and Conclusions. Because the proposed use is not listed under MCC .6142, the Planning Director has utilized an equivalent use. The use most closely associated with the proposed use is an amusement park, which is considered a commercial recreational use. One space for each 1,000 square feet of public area is required for an amusement park. The proposed skateboard instructional facility, including barns and the courtyard area, will include approximately 22,000 square feet of public space. Therefore, twenty-two (22)-parking spaces are required for the proposed home occupation.

The applicants propose six gravel-parking spaces for the home occupation. The applicants believe that the amusement park standards should not apply to their application.

Again, we feel staff is imagining this is a more "urban" kind of use where there would be many cars needing to park. Rather, this is a home occupation in which instruction is principally accomplished one on one, so that there are not a large number of students at the facility at a time. In addition, most of the auto traffic will involve a parent dropping off a student, so there will not be a need for anything like 22 spaces. If desired by the Hearings Officer, the applicant will hire a professional traffic engineer to perform an analysis and determine an appropriate number of parking spaces based on engineering analysis. Alternatively, the applicant will put in 22 parking spaces if the Hearings Officer so desires, although we feel this would be wholly unnecessary.

Under the Code it is the Planning Director who has the authority to interpret the parking and loading standards. The Hearings Officer is only authorized to consider that interpretation if there is an appeal of the Planning Director's final decision. MCC .8290. An administrative decision by the Planning Director is final 10 days after it is filed with the Director or the Department of Environmental Services (DES). Because the staff report says that the Planning Director made a decision on the parking interpretation, I assume that the decision was in writing and was filed with the Director of DES. The applicants could have appealed that decision but there's no evidence that they did. In the absence of an appeal the Hearings Officer is not authorized to consider the matter. The Code specifically says that failure to file a Notice of Appeal within the time limit prescribed is a "jurisdictional defect" and precludes review by the Hearings Officer. MCC .8290 D. The Planning Director's determination is final and may not be reevaluated in these proceedings.

This criterion is not satisfied because the applicant proposes six spaces while 22 are required.

**Comprehensive Plan Policies:**

**Plan Policy 9 Agricultural Land Area**

The County's policy is to designate and maintain as exclusive agricultural land, areas which are:

- A. Predominantly agricultural soil capability I, II, III, and IV, as defined by U.S. Soil Conservation Service;
- B. Of parcel sizes suitable for commercial agriculture;
- C. In predominantly commercial agriculture use; and
- D. Not impacted by urban service; or
- E. Other areas, predominantly surrounded by commercial agriculture lands, which are necessary to permit farm practices to be undertaken on these adjacent lands.

The County's policy is to restrict the use of these lands to exclusive agriculture and other uses, consistent with state law, recognizing that the intent is to preserve the best agricultural lands from inappropriate and incompatible development.

**Findings and Conclusions.** This policy says that the County will designate and maintain as EFU lands those lands that meet the criteria in subsections A through E. It then says Multnomah County's policy is to restrict the uses to "exclusive agriculture" and "other uses" consistent with state law. The policy states that the County recognizes that the intent of the County (consistent with statewide Goal 3) is to preserve farm lands from inappropriate and incompatible development.

Multnomah County did done the first part of what the policy requires when it designated the land EFU. It has complied with the remainder by enacting zoning regulations to implement the policy including the allowance for "other uses" in the EFU zone that are consistent with state law. One of the other uses allowed by the Code is a home occupation and the Code contains standards for reviewing home occupation applications.

Plan Policy 9 does not contain language that suggests that it applies to quasi-judicial land use decisions. On its face, Plan Policy 9 does not apply directly to a decision on a home occupation application. However, the purposes section of the home occupation section says that specific conditional uses may be permitted provided that it would "not be detrimental to the purposes and intent of the comprehensive plan". MCC .7105. Consequently, conditional use decisions need to consider whether the use would be detrimental to the intent of Plan Policy 9. The intent of the Policy is to "preserve" EFU lands from "inappropriate and incompatible development."



The staff applied the policy to this application and concluded that the proposal was not consistent with it because the proposed home occupation would be neither "appropriate" nor "compatible with" farm uses. That conclusion was based on the "commercial nature" of the proposed use and because the use of the barns for a skateboard instructional facility would take these buildings out of farm use for the duration of the home occupation. The Hearings Officer concluded earlier that the commercial feature of the proposed use does not preclude its approval.

The applicants argued that the proposal is consistent with Policy 9 because a home occupation is an allowable use of agricultural land per the Multnomah County Zoning Ordinance, the proposal is to utilize existing barn buildings and no significant changes would be made to the property. Therefore, it can continue to be utilized as agricultural land.

Plan Policy 9 is a policy that primarily relates to the County's policy choices. The County implemented the "appropriate and compatible with farm use" statement in the policy when it adopted the approval criteria for home occupations in the EFU zone. Those criteria include the standards that the home occupation use should not have a significant impact on farm and forest practices in the area or the costs of those practices. One of the criteria adopted is that each conditional use application needs to evaluate whether the particular use proposed would be detrimental to the intent and purposes of Comprehensive Plan Policies. Consequently, each conditional use application in the EFU zone needs to evaluate whether the particular use proposed would be detrimental to the intent to preserve EFU lands from inappropriate or incompatible development. Because the detriment consideration is not limited, it concerns detriment to both the site of the proposed use and surrounding EFU lands.

The Code defines the term "development" as:

Any act requiring a permit stipulated by Multnomah County Ordinances as a prerequisite to the use or improvement of any land, including a building, land use, occupancy, sewer connection or other similar permit, and any associated grading or vegetative.

This application is a development application as defined because it involves an act requiring a permit for the use of land. Only the portion of the site occupied by existing barns and the courtyard they enclose will be affected by the proposed home occupation. There was testimony and evidence presented that the remainder of the 19.68 parcel is used for grazing and growing crops. The proposed use will not be detrimental to the agricultural use of those lands. The site contains 4 large barns. Just because those barns will be used for skateboarding instruction does not mean that they cannot also be used for activities related to agricultural use of the site. More significantly, LUBA has held that ORS 215.448 does not require that any part of a building be used for farm use or a use allowed in the EFU zone concurrently with its use for the home occupation. Joseph, supra. The Hearings Officer can see no requirement in Plan Policy 9.

The detrimental effects on preserving agricultural lands in the surrounding EFU lands are embraced in the criteria in the Conditional Use provisions MCC .7120. In considering

those criteria the Hearings Officer concluded that the applicants have not met their burden to provide evidence demonstrating that the home occupation will not force a significant change in accepted farm practices or the costs of those practices on surrounding farm lands.

### **Plan Policy 13 Air, Water, Noise Quality**

**Multnomah County, recognizing that the health, safety, welfare, and quality of life of its citizens may be adversely affected by air, water and noise pollution, supports efforts to improve air and water quality and to reduce noise levels. Therefore, it is Multnomah County's policy to:**

- A. Cooperate with private citizens, businesses, utilities and public agencies to maintain and improve the quality of air and water, and to reduce noise pollution in Multnomah County.**
- B. Support and participate in the implementation of state and regional plans and programs to reduce pollution levels.**
- C. Maintain healthful air quality levels in the regional airshed, to maintain healthful ground and surface water resources, and to prevent or reduce excessive sound levels while balancing social and economic needs in Multnomah County.**
- D. Discourage the development of noise-sensitive uses in areas of high noise impact.**

**Furthermore, it is the County's policy to require, prior to approval of a legislature 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. If the proposal is a noise-sensitive use and is located in a noise-impacted area, or if the proposed use is a noise generator, the following shall be incorporated into the site plan:**

- 1. Building placement on the site in an area having minimal noise level disruptions.**
- 2. Landscaping or other techniques to lessen noise generation to levels compatible with surrounding land uses.**
- 3. Insulation or other construction techniques to lower interior noise levels in noise-impacted areas.**

**Findings and Conclusions.** The home occupation will occur inside of four existing barn buildings. No streams, lakes, or wetlands are located on the subject property. The air and water quality impacts from the home occupation will be those impacts typically associated with a single-family dwelling except for the minimal increase in air quality resulting from additional traffic for up to 30 students per day. If all the students arrive in a car there would be an additional 60 vehicle trips per day five days a week.

Skateboarding will create some sounds within the barn. The applicants performed a noise impact test of the applicant skateboarding. That test indicated that the noise level was at or below 50 dba at a distance of 70 feet from the barns which are located 200 feet from the property lines. The Hearings Officer concluded that the applicants had not adequately shown compliance with the noise standard. The conclusion was reached because the noise evidence did not identify the nature of the skateboarding that created the noise, whether it was the kind of skateboarding that would occur during operation of the instructional facility, and because there was testimony that noise from the skateboarding is now disturbing the adjoining property owner to the south. Therefore, this Comprehensive Plan Policy is not satisfied.

#### **Plan 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 sewer and water system, both of which have adequate capacity; or**
- **The proposed use can be connected to a public water system, and the Oregon Department of Environmental Quality (DEQ) will approve a subsurface sewage disposal system on the site; or**
- **There is an adequate private water system, and the Oregon Department of Environmental Quality (DEQ) will approve a subsurface sewage disposal system; or**
- **There is an adequate private water system, and a public sewer with adequate capacity.**
- **There is adequate capacity in the storm water system to handle the run-off; or**
- **The water run-off can be handled on the site or adequate provisions can be made; and**
- **The run-off from the site will not adversely affect the water quality in adjacent streams, ponds, lakes or alter the drainage on adjoining lands.**
- **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.**

**Findings and Conclusions.** The applicants propose that two "port-a-potty" type toilets will be used with disposal provided by the rental company. Alternatively, two single occupancy, ADA accessible toilets can be added in the area of the home occupation use.

They stated in their application that the existing septic system will either be modified (if needed) to accept the toilets, or a new disposal system provided.

Policy 37 requires that every quasi judicial decision include a finding that the proposed use can be connected to a public sewer or that the Oregon department of Environmental Quality (DEQ) will approve a subsurface sewage disposal system on the site. The "port-a-potty proposal is not an approvable alternative.

The staff argued that the applicant is required to provide certification of septic, and water service for the proposed home occupation. There is no public sewer service available to serve this area and public sewers are prohibited from be extended to resource lands by OAR 660-011-0060. There is no evidence in the record concerning whether DEQ will approve a subsurface sewage disposal system on the site.

In the memorandum in response to the staff report (Exhibit H1) the applicants stated:

Prior to filing of the land use application, Aron Faegre contacted Randy Trox, the DEQ permit reviewer for projects in this area (541-686-7838), to discuss DEQ sanitary requirements and options for this proposed use. DEQ's response was that part of any application and review by DEQ must include a land use compatibility statement (LUCs form) as part of the application. Thus DEQ review and approval can only be initiated once the County has completed and approved the conditional use for the home occupation. The applicant agrees to apply for and achieve all required permits prior to occupancy of the proposed facility, as a condition of approval for this project.

The applicant is misinformed about the process for individual sanitary sewer system approvals. DEQ has authorized the County to implement DEQ regulations. The person responsible for the County's implementation is the County Sanitarian. The Sanitarian will inspect an existing septic system or test drain holes before land use permits are issued.

The subject property is not within the Corbett Water District or any other water purveyor. Water service in this area is provided by individual wells. The residence on the parcel is served by a well and that well is proposed to serve the proposed use. Domestic wells are exempt from water rights permit requirements if less than 1500 gallons are pumped per day. Because the well would serve the general public, approval may be needed for a "community water system" from the Oregon State Health Division

The applicant argues that no information need be provided concerning storm water run-off because no new structures are proposed and the run-off "will be same as it has been for the 50 to 100 years that the barns and courtyard have been in existence. The temporary home occupation will not change existing storm water run-off.

This Comprehensive Plan Policy is not satisfied because the applicants have not provided evidence of sanitary sewer service.

## **Plan Policy 38 Facilities**

**It is the County's Policy to coordinate and encourage involvement of applicable agencies and jurisdiction in the land use process to ensure:**

### **School**

- A. The appropriate school district has had an opportunity to review and comment on the proposal.**

### **Fire Protection**

- A. There is adequate water pressure and flow for fire fighting purposes; and**
- B. The appropriate fire district has had an opportunity to review and comments on the proposal.**

### **Police Protection**

- A. The proposal can receive adequate local Police protection in accordance with the standards of the jurisdiction providing police protection.**

**Findings and Conclusions.** The subject site is within the boundary of the Corbett School District, the Corbett Rural Fire Protection District #14 and within the jurisdiction of the Multnomah County Sheriff. The applicants argued that:

There are no known conflicts with school, fire protection, or police protection requirements of the community. It is believed that the community supports the concept of having a place where students can safely learn and practice skateboarding.

The staff argued that:

The applicant shall provide police and fire district approval for the proposed use. Staff made findings under MCC .7120 (A)(4) for public services. The applicant has not satisfied this standard. Staff will not request the applicant complete the School District Review form because it is not applicable to the proposed Type B Home Occupation. Therefore, this Comprehensive Plan Policy is not satisfied.

The applicants submitted a memorandum at the hearing concerning police and fire service (Exhibit H1). That memo stated:

As regards to the Fire Department: Tom Layton, from Fire District 14, came over to my house and told me that my driveway was okay for their fire trucks to enter. So we wouldn't have to change that at all. They did say that they'd like to wait until the project is approved before they come out and do a full check on the facility. Also, I tried to contact Gus Lian of the Gresham Fire Department, but never did get any response from him.

As to the Police, I have called several times to the Troutdale Police to try to get them to visit the house and review the proposal. They said that they don't feel it is important to come out. They have no reason to come out and its not something that people normally ask for. I didn't know what else to tell them.

At one point we had a Multnomah County Sheriff, Jose Torres, come out. It was after Halloween when my mailbox got busted down. I showed him around and he said he supports the project 100% and that is something that the community needs.

The applicant's memo does not respond to considerations that the policy is directed at. Concerning schools and police protection, the County uses Service Provider Forms that the applicant gives to each service provider and obtains a signature and perhaps a comment from the service provider. Those returned signed forms satisfy the school district and police protection requirement for an opportunity to review and comment. The applicants have submitted no Service Provider Forms. The Hearings Officer notes that the City of Troutdale police have service responsibilities only within the corporate boundary of the City, which is approximately two miles west of the subject site. A response from the County Sheriff is needed.

With respect to fire protection, the policy asks for evidence that there is adequate water pressure and flow for fire fighting and evidence that the fire district has had an opportunity to review and comment on the proposal. Only the Corbett Fire District need respond. The Gresham Fire Department has no direct fire response obligations in this area, although it might respond to an emergency in the area under mutual aid agreements as the contract provider of service to the Multnomah County RFPD #10, an adjacent fire district. Response from the fire district is needed before approval of a conditional use because the Hearings Officer needs to know whether it is feasible to meet fire district access, turn-around and water access standards. Additionally, the conditions of approval that a Hearings Officer can include in an approval are required to be "clear and objective." Without the specific information obtained after fire department review it is not possible to write "clear and objective" conditions.

### **ISSUES RAISED**

The applicants raised an issue concerning the staff's rational for its denial recommendation - possible problems in enforcing conditions of approval. The staff said it was concerned about enforcing conditions because "conditions of approval, such as hours of operation, would be difficult to enforce" and "it may be difficult to distinguish between the use of the facility by paying customers and the use of the facility by the property owner or invited guests." The applicants responded in H1 that:

This same concern would likely exist for virtually any kind of home occupation permit. For a piano teacher, is the sound coming from the house from the piano teacher practicing by themselves or practicing with the student?! In Caz's proposed home occupation it will be easy for the County to distinguish between paying customers and invited guests because as a

business the applicant will require all customers to sign in before beginning a class. This sign-in sheet will be made available to Multnomah County as a record for them to use during spot inspections or through regular audits, if desired.

The Code at section .7465(J) specifically requires a Hearings Officer's approval of a home occupation to specify "the number of employees allowed, the hours of operation, frequency and type of deliveries, the type of business and any other specific information for the particular application." In addition, the Hearings Officer is required to adopt "clear and objective conditions of approval. Difficulty of enforcing conditions that the Code specifically requires the Hearings Officer to impose is not a criterion for approving or denying an application. However, the information available to the Hearings Officer when a decision is made to approve a home occupation necessarily must be specific enough to allow the Hearings Officer to draft clear and objective criteria. Here, the applicants have not provided enough specific information for the Hearings Officer to draft the clear and objective conditions.

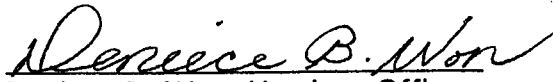
### CONCLUSION

1. The evidence presented in this application and public hearing is not sufficient to identify the "character of the area" and thus the Hearings Officer cannot conclude that the proposed use is consistent with the character.
2. The evidence presented in this application and public hearing is not sufficient to identify the accepted farm and forest practices in the surrounding area. The potential impacts to those unidentified practices are not identified. Consequently the Hearings Officer cannot conclude that the proposed use will not force a significant change in those practices or their costs or in the alternative impose clear and objective criteria to assure that such impacts do not occur.
3. The evidence does not prove that the proposed use will not create hazardous conditions. There may be hazardous conditions created by inviting young people to bike from their schools and/or homes along steep narrow roads that lack bike lanes for example. Without adequate parking on site visitors for events would be required to park on the street, creating hazardous conditions.
4. The Hearings Officer was not persuaded that the noise standard will be met.
5. The Planning Director, who has authority to determine the parking standard, not the Hearings Officer, determined that 22 parking spaces are needed. The applicant only proposed six.
6. The applicant did not provide information required from service providers.

## DECISION

Based on the findings of fact and conclusions on each criterion in this Decision, the Hearings Officer concludes that Proposal CU 0-6 should be denied.

NOW THEREFORE, IT IS SO ORDERED, this 10<sup>th</sup> Day of August, 2000.

A handwritten signature in cursive script, reading "Deniece B. Won". The signature is written in dark ink and is positioned above the printed name.

Deniece B. Won, Hearings Officer



**Case File: CU 0-6**

**Location:** 100 SE Littlepage Road, Tax Lots 15, 16 and 17 of Houston Acres, Section 35, Township 1N, Range 3E

**Application Timeline:**

Pre-application Conference: December 17, 1999.

Application received with full fees: May 19, 2000.

Application incomplete letter mailed: NA.

Determination that application is complete: June 19, 2000.

Begin "150" day timeline" on June 19, 2000.

Notice of a Public Hearing (mailed): July 7, 2000.

Staff Report available: July 10, 2000.

Public Hearing before Hearings Officer: July 19, 2000. Day 30

Hearings Officer Decision: August 9, 2000. Day 51

**List of Exhibits:**

**List A: Staff/Applicant Exhibits:**

1. Applicant's revised site plan and cover letter (June 16, 2000).
2. Applicant's narrative and supporting documents.
3. Site visit photos showing the farm buildings (exterior and interior) and map with numbered buildings.

**List B: Notification Information:**

1. "Complete Application" Letter, 1 page.
2. Notice of Hearing, 5 pages.
3. Completed Affidavit of Posting, 1 page.

**List C: Multnomah County Documents:**

1. Staff Report – July 10, 2000

**List H: Documents Submitted at July 19, 2000 Public Hearing:**

1. Applicants' Response to staff Report - Dated July 17, 2000
2. Photograph of Barn being refurbished
3. Photograph of Refurbished Barn
4. Chart comparing State law with County Code

