



MULTNOMAH COUNTY OREGON

LAND USE AND TRANSPORTATION PROGRAM

1600 SE 190TH Avenue Portland, OR 97233

PH: 503-988-3043 FAX: 503-988-3389

http://www.co.multnomah.or.us/dbcs/LUT/land_use

NOTICE OF DECISION

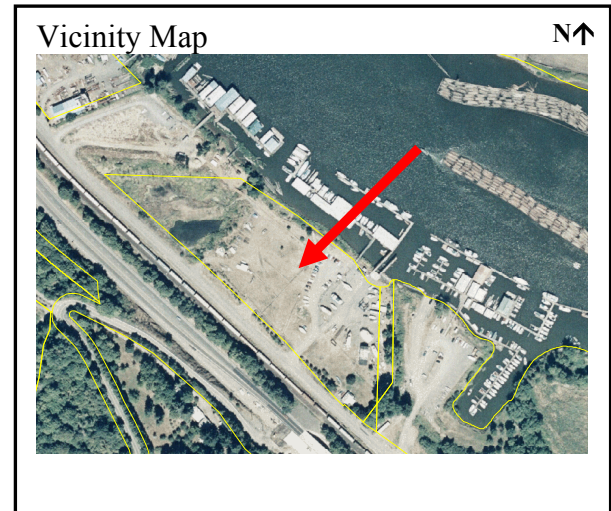
This notice concerns a Planning Director Decision on the land use case(s) cited and described below.

Case File: T2-04-010

Permit: Six-month extension to permit
T3-01-007.

Location: TL 100, Sec 33, T2N, R1W, W.M.
Tax Account # R-971330240

**Applicant/
Owner:** Joe & Shirley Ashton
PO Box 10447
Portland, OR 97296



Summary: This is a request for a six-month extension to the two year approval granted by a Conditional Use, Community Service Use, Non-Conforming Use, Willamette River Greenway, Design Review and Minor Variance Land Use permits for six months (permit T3-01-007). **This permit expires September 8th, 2004.**

Decision: **Approved, with conditions.**

Unless appealed, this decision is effective Monday, March 22, 2004 at 4:30 PM.

Issued by:

By: _____

Adam Barber, Planner

For: Karen Schilling - Planning Director

Date: Close of Comment Period, Monday March 8, 2004

Opportunity to Review the Record: A copy of the Planning Director's Decision, and all evidence submitted associated with this application, is available for inspection, at no cost, at the Land Use Planning office during normal business hours. Copies of all documents may be purchased at the rate of 30-cents per page. The Planning Director's Decision contains the findings and conclusions upon which the decision is based, along with any conditions of approval. For further information on this case, contact Adam Barber, Staff Planner at 503-988-3043.

Opportunity to Appeal: This decision may be appealed within 14 days of the date it was rendered, pursuant to the provisions of **MCC 37.0640**. An appeal requires a \$250 fee and must state the specific legal grounds on which it is based. To obtain appeal forms or information on the procedure, contact the Land Use Planning offices at 1600 SE 190th Avenue (Phone: 503-988-3043). This decision cannot be appealed to the Land Use Board of Appeals (LUBA) until all local appeals are exhausted.

This decision is final at the close of the appeal period if no appeal is filed. The deadline for filing an appeal is **Monday, March 22, 2004 at 4:30 pm.**

Applicable Approval Criteria: Multnomah County Code Chapter 37, Administration and Procedures; (MCC): **37.0690**, Expiration and Extension of a Type II Decisions in Exception Areas.

Copies of the referenced Multnomah County Code sections can be obtained by contacting our office at 503-988-3043 or by visiting our website at:

http://www.co.multnomah.or.us/dbcs/LUT/land_use/index.shtml

Scope of Approval

1. Approval of this land use permit is based on the submitted written narrative(s) and plan(s). No work shall occur under this permit other than that which is specified within these documents. It shall be the responsibility of the property owner(s) to comply with these documents and the limitations of approval described herein.
2. Pursuant to **MCC 37.07000**, **this land use permit expires six months from the date the decision is final (expiring September 8, 2004)** if; (a) development action has not been initiated; (b) building permits have not been issued; or (c) final survey, plat, or other documents have not been recorded, as required.

Conditions of Approval

The conditions listed are necessary to ensure that approval criteria for this land use permit are satisfied. Where a condition relates to a specific approval criterion, the code citation for that criterion follows in parenthesis.

1. Pursuant to **MCC 37.07000**, **this land use permit expires six months from the date the decision is final (expiring September 8, 2004)** if; (a) development action has not been initiated; (b) building permits have not been issued; or (c) final survey, plat, or other documents have not been recorded, as required.
2. **All conditions set forth in permit T3-01-007 are still in effect for this permit.**

DECISION OF THE PLANNING DIRECTOR

Findings of Fact

Summary of Request

1. Staff: In 2002, The Multnomah County Planning Department approved a request to reconfigure and expand an existing moorage at 12900/12902 NW Marina Way. This permit – T3-01-007 – involved a Conditional Use, Community Service Use, Non-Conforming Use, Willamette River Greenway, Design Review and Minor Variance land use reviews. A copy of the Hearing's Officer Decision is presented as Exhibit A1 to this report. The highlights of the proposed development approved are listed below. Please see permit T3-01-007 for more complete descriptions.
 - Alterations to the wet moorage (replacing 12 non-covered slips with 10, gangway replacement, installation of downward directed lighting, replacement of wood pilings with steel pilings and concrete decking).
 - Dry moorage (construction of a dry moorage facility in the southeast corner of the property).
 - Marina Office, chandlery and patio (construction of building to provide restrooms, showers, laundry, store/deli, reception area, information desk, marina office, sales area and meeting/conference room).
 - Enhancement of existing boat repair facility (installation of steel forklift ramp, conversion to dustless sanders, addition of security fencing and planting of native vegetation for screening).
 - Alterations to existing trailer/boat storage (fencing of existing storage area).
 - Septic upgrade (construction of a new sewage pump-out facility including a 3,000 gallon holding tank).
 - Wetland and picnic access (restoration of wetland area, installation of a foot trail and bridge).
 - Parking (installation of porous paving system, planting of native vegetation).
 - Storm water management (installation of porous pavement in the parking area, use of oil/grit separator and addition of storm drain filters).

The Hearing's Officer Approval (T3-01-007) became effective at the end of the 21-day appeal period to the Land Use Board of Appeals. This corresponds to the close of business on March 7, 2002. An approval becomes void if, within two years of the date of the final decision, the development action is not initiated (**MCC 37.0700(A)(2)**). This standard voids the approval of case T3-01-007 at the close of business on March 7, 2004. We have extended the deadline voiding case T3-01-007 to the close of business the next day, Monday, March 8th, since March 7th fell on a Sunday. The applicant has requested a six month-extension to the expiration of permit T3-01-007 due to hardship discussed in detail within this report.

Ownership Authorization

2. Proof of record ownership of the tract and the representative's authorization must be demonstrated to process any land use application (**MCC 37.0590(A) & (C)**). A signature provided by Joe Ashton, representative for the Multnomah Yacht Harbor, is provided on the General application form presented as Exhibit A9. This signature provides adequate authorization for the County to process this request.

Vicinity and Property Description

3. Staff: The subject property is referred to as the Multnomah Yacht Harbor, located at both 12900/12902 NW Marina Way. The site is a developed marina on Multnomah Channel – a slough off the Willamette River. Yacht Harbor is located on the west bank of the channel roughly $\frac{3}{4}$ of a mile downriver from where the channel branches off from the mainstem of the Willamette River. The upland portion of the moorage totals roughly 11 acres and is located northeast of NW Mariana Way, between Marina Way and the Channel. A map showing the location of the property is presented as Exhibit A2. A 2002 aerial photo of the moorage is presented as Exhibit A3. County zoning maps indicate that the area within which the parcel is located is zoned Multiple Use Agriculture-20 (MUA-20), within the Sauvie Island Rural Plan Area (Exhibit A4).

Extension of a Type II Decision on Exception Land

4. All Type II decisions involving exception lands automatically become void if, within two years of the date of the final decision, all necessary building permit(s) have not been issued, if required; or if within two years of the date of the final decision, the development action or activity approved in the decision is not initiated or, in situations involving only the creation of lots or property line adjustments, the final survey or plat has not been approved by the Planning Director and recorded (**MCC 37.0700(A)(1) and (2)**).

Staff: A condition of the Hearing's Officer Decision was that a 10-inch water main and fire hydrants shall be installed and able to provide 2,000 gallons per minute at 44 pounds per square inch. The applicant would need to demonstrate this condition was met by the close of business on March 8th, 2004, as this would be the last day this permit would be considered valid. The applicant submitted a request for a permit extension on February 18, 2004 due to difficulty complying with this condition. The request for a permit extension was submitted before the original permit expired.

- 4.1 Notwithstanding Subsection (A) of this section, on exception lands the decision maker may set forth in the written decision, specific instances or time periods when a permit expires (**MCC 37.0700(B)**).

Staff: The Scope of Approval section of this report clearly states that this extension expires September 8th, 2004 if no appeal is filed. This criterion has been met.

- 4.2 The Planning Director may extend, prior to its expiration, any approved decision for a period of six months up to an aggregate period of one year; provided, however, that there has been substantial implementation of the permit. Any request for an extension shall be reviewed and decided upon by the Planning Director as a Type II decision (**MCC 37.0700(C)**).

Applicant: "The permit conditions and requirements have been completed and we have been prepared to file for the City-of Portland building permits with the exception of meeting fire hydrant standards. We are requesting an extension of the permit in order to resolve the fire hydrant/fire protection issue. The following is a list of completed permits and conditions required by the Multnomah County and City of Portland. Completed permits and conditions:

1. Connection to new water main system -permitted, constructed, approved and finalized (City of Portland).

2. *New approaches from NW Marina Way to site permitted, constructed, and approved ODOT).*
3. *Underground Utilities 80% complete. Power and communication system installed and inspected by PGE. Work continues on the remaining conduits and transformer pads. Finalization pending building permits/construction.*
4. *Rough grading completed and seeded-with grass.*
5. *Dock Construction under way and the new piling and piers are on site.*
6. *Preliminary Site Plan review for all buildings completed with City of Portland Building Department and Fire Marshall.*
7. *Structural Engineering completed, awaiting fire protection design, which is contingent on Burlington Water District system completion.*
8. *Landscaping screening complete. Twenty-eight 12 -foot high deciduous trees and sixteen 4-foot high evergreen trees have been planted to meet permit requirements. Additional planting is awaiting construction of buildings. Non-native species removed and ongoing maintenance performed.*
9. *Wetland Enhancement 90% complete.*

We have a significant vested interest in completing the County and City permits and meeting all the conditions and requirements associated with these permits. It is our desire to construct the buildings included in the County permit at the same time, once the fire hydrant standards are met. However, if necessary we are prepared to file City permits to construct the equipment/tool storage and Chandlery building immediately.”

Staff: The applicant has made significant development progress since the issuance of the original land use approval including the placement of in-water structures, obtaining access permits from Oregon Department of Transportation, completing upland site grading, utility installation, foundation construction and landscaping implementation. This request for the extension is being processed as a Type II decision pursuant with the requirements of **(MCC 37.0700(C))**.

- 4.3** Substantial implementation of a permit shall require at a minimum, for each six month extension, demonstrable evidence in a written application showing **(MCC 37.0700(D))**:

- 4.3.1** The permit holder has applied for all necessary additional approvals or permits required as a condition of the land use or limited land use permit **(MCC 37.0700(D)(1))**;

Staff: A condition of permit T3-01-007 required that the applicant submit copies of Oregon Department of Transportation approach permits authorizing construction of the new main drive and emergency access (see Exhibit A1 for the conditions of approval within case T3-01-007). The applicant has submitted evidence, presented as Exhibit A5, demonstrating the Oregon Department of Transportation has issued permits for “Encroachment, Construction, Operate, Maintain on or Use of State

Highway Approach” at the subject property (Permit # 51055, granted September 17, 2003).

Another condition of permit T3-01-007 required the applicant obtain a Grading and Erosion Control Permit for grading work attributed to the project. County records show a Grading and Erosion Control permit was issued for the proposed grading work on February 27, 2002. The permit number is T1-01-036 which authorized approximately 4,195 cubic yards of ground disturbing activity associated with the expansion of a marina/moorage.

A final condition of the Hearing’s Officer Decision required evidence of Fire District approval of adequate water pressure prior to building permit signoff. This condition was not met due to unforeseen hardships caused by construction delays of the main waterline project managed by the Burlington Water District and inaccurate projections of the available water pressures. Compliance with this condition is evaluated in detail within this extension request. Staff finds that all conditions requiring subsequent permits have been fulfilled with exception to the demonstration of adequate water pressure - the subject of this report.

- 4.3.2** Further commencement of the development authorized by the permit could not practicably have occurred for reasons beyond the reasonable control of the permit holder (**MCC 37.0700(D)(2)**);

Applicant: “We are requesting an extension of permit T3-01-007, due to circumstances beyond our control. The Multnomah Yacht Harbors ability to meet Multnomah County's permit requirements and proceed further with development has been delayed due to the following set of circumstances:

1. In order to meet the requirements of permit T3-01-007, building permits are required from the City of Portland. The application and filing process with the City of Portland has been delayed due to the Burlington Water District 's construction of a 10-inch water main. While this project is independent of the Multnomah Yacht Harbor 's development/permits, the water main will feed the fire hydrants, which are required to meet minimum standards prior to filing for a building permit.

2. The Burlington Water District forecasted completion of the water main project to be spring/summer 2002: Currently the fire hydrants do not meet minimum standards and this has delayed filing for City of Portland building permits. The following is our understanding of the history/status of the Burlington Water District water main project:

Initially (2001) permitting issues and a right of way issue at the north end of Manna Way Drive resulted in 16 months of delays. To our knowledge this has been resolved since the water main was put online in October 2003. However, we were not able to obtain the necessary information needed to proceed with our fire protection system because it is not available from the Burlington Water District. It is our understanding that the Burlington Water District has not yet tested or verified the system.

Anticipating the completion of the water main project in 2002, the Multnomah

Yacht Harbor contracted the installation of a sprinkler system in order to meet fire protection requirements. Concerned by lack of data from the District, the independent contractor obtained by the Multnomah Yacht Harbor, tested the system twice over the past 13 months. The-most current test was completed in February 2004 and was witnessed by the Burlington Water District. Attached are the initial and most current test results.

The Burlington Water District's water main was designed to exceed minimum standards by 2.5 times. According to independent test results, the current system does not meet even the minimum requirements for fire hydrants. The Burlington Water District has not addressed this issue; however during the most recent test in February 2004, our contractor reported that the operational or construction issues that have caused the systems inadequate performance could be easily remedied.

The Burlington Water District delays could not have been anticipated. Though we monitored the progress, we have relied on the information provided to us by the District. Based on this information, we believed that the system would be completed by now. It is only now-after independent testing that we have enough information to make a decision to wait for the District to fix the system or install a private system ourselves."

Staff: The Hearing's Officer Decision states, "*The Burlington Water District is running a new 10-inch water main down Marina Way with fire hydrants, which will provide adequate water pressure and flow (Exhibit A1, page 50).*" This demonstrates that at the time of permit issuance in 2002, the County projected adequate water pressure would become available for fire fighting purposes before the permit expired.

A water test performed in 2003 yielded unexpected and unacceptable water pressures (Exhibit A6). Mr. Tom Hanna with Viking Automatic Sprinkler learned from the Burlington Water District that the unexpected low pressures were most likely attributed to hydraulic friction through a 8,000 foot section of 6-inch water line. In order to alleviate this problem, the Burlington Water District was in the process of enlarging that section of pipeline to a 10-inch diameter pipe. This construction was delayed due to easement complications.

The applicant had the water pressure tested approximately 1-year later (February 18, 2004) and found the water pressures were still no longer sufficient to meet the fire flow requirements. This is demonstrated in a letter sent to the applicant from Tom Hanna, Viking Automatic Sprinkler Service (Exhibit A7). This test was performed after the 8,000 foot section of 6-inch pipe had been enlarged – suggesting the cause of the problem may not have been internal pipe wall friction as suggested by the Burlington Water District. At this point, the applicant realized the situation could not be resolved in time to meet the conditions of the County approval and the request for a permit extension was filed.

Since the applicant has no control over the engineering constraints and timelines involved with municipal water projects, Staff finds the cause of the hardship delaying compliance with the County approval was beyond the control of the applicant and a reasonable attempt to comply with the condition of approval was

made. The narrative submitted by the applicant is presented as Exhibit A8 to this report. This criterion is met.

- 4.3.3** The request for an extension is not sought for purposes of avoiding any responsibility imposed by this code or the permit or any condition there under; and **(MCC 37.0700(D)(3))**;

Applicant: "The permit conditions and requirements have been completed and we have been prepared to file for the City-of Portland building permits with the exception of meeting fire hydrant standards. We are requesting an extension of the permit in order to resolve the fire hydrant/fire protection issue."

Staff: The delay in complying with the fire flow condition of the Hearing's Officer Decision appears to partially have been contributed to projections and feasibility statements provided by the Burlington Water District. We have obtained no evidence suggesting the applicant filed for building permits with the City of Portland, for example, in the attempt to avoid complying with all conditions set forth by the County permit T3-01-007. In conclusion, this criterion is met as Staff has not found the applicant has avoided or is attempting to avoid permitting responsibility through the filing of this permit extension request.

- 4.3.4** There have been no changes in circumstances or the law likely to necessitate significant modifications to the approval **(MCC 37.0700(D)(4))**.

Staff: No modifications to the approval have been requested, with exception to the expiration date. Changes to County ordinance prohibiting this request today have not occurred. This criterion is met.

- 4.4** New application required. Expiration of an approval shall require a new application for any use on the subject property that is not otherwise allowed outright **(MCC 37.0700(E))**.

Staff: Since no new uses area proposed, a new application identical in scope to permit T3-01-007 is not required. The extension request submitted only needs to address the approval criteria discussed within this decision. This criterion is met.

Comments

- 5.** Upon receipt of a complete application, notice of the application and an invitation to comment is mailed to the applicant, recognized neighborhood associations and property owners within 750-feet of the subject tract **(MCC 37.0530(B))**. Written comments were not received from any party noticed pursuant to the provisions of **MCC 37.0530(B)**.

Conclusion

Considering the findings and other information provided herein, this application, as conditioned, satisfies applicable Multnomah County Zoning Ordinance requirements. A 6-month extension to case T3-01-007 is granted.

Exhibits

All materials submitted by the applicant, prepared by County staff, or provided by public agencies or members of the general public relating to this request are hereby adopted as exhibits hereto and may be found as part of the permanent record of this application. Exhibits referenced herein are enclosed, and a brief description of each is listed below:

<u>Label</u>	<u>Pages</u>	<u>Description</u>
A1	53	Hearing's Offer Decision T3-01-007
A2	2	Vicinity Map
A3	1	2002 Aerial Photo of the Subject Property
A4	1	Zoning Map
A5	5	Oregon Department of Transportation Access and Construction Permit
A6	1	Letter from Tom Hanna, Viking Automatic Sprinkler Company, January 29, 2003
A7	1	Letter from Tom Hanna, Viking Automatic Sprinkler Company, February 18, 2004
A8	6	Applicant's Narrative
A9	2	General Application Form and Ownership Record for Subject Property