

**MULTNOMAH COUNTY****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

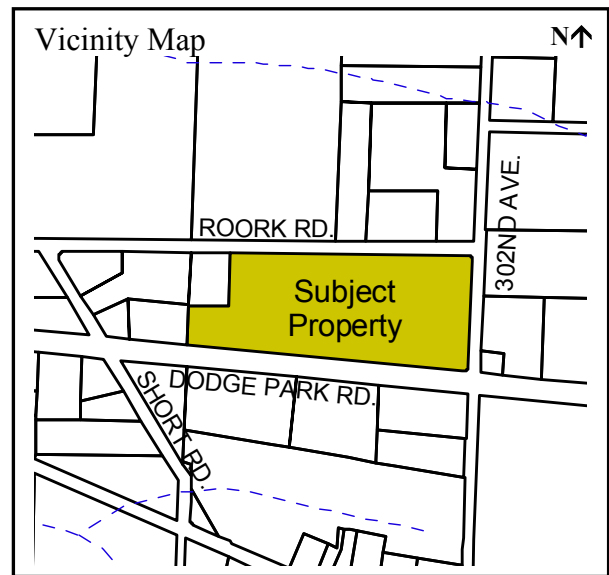
This notice concerns a Planning Director Decision on the land use case(s) cited and described below.

Case File: T2-05-036

Permit: **Administrative Modification of
Condition # 10 Established in Case T3-
04-004**

Location: 7125 SE 302nd Ave
Tax Lot 102, Section 19AD,
Township 1 South, Range 4 East, W.M

Applicant Tom Orth
Owner: Tom Orth Construction
PO Box 2247
Gresham, OR 97030



Summary: A request to remove Case T3-04-004 Condition of Approval #10 requiring street lighting.

Decision: This Approval modifies Case T3-04-004 Condition of Approval #10 replacing it with the language as follows: The property owner shall file a deed restriction for each lot in Harris Acres, when deeds are recorded for the subdivision lots, that requires the property owners within the subdivision provide street lighting according the Road Design and Construction requirements of the jurisdiction in charge of the streets when the subdivision is annexed into a lighting district. County Transportation Program will provide the deed language.

Unless appealed, this decision is effective June 17, 2005, at 4:30 PM.

Issued by:

By: _____
George A. Plummer, Planner

For: Karen Schilling- Planning Director

Date: Monday, June 06, 2005

Opportunity to Review the Record: A copy of the Planning Director 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 George A. Plummer, 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 \$250.00 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, unless appealed. The deadline for filing an appeal is Error! Reference source not found. at 4:30 pm.

Applicable Approval Criteria: Multnomah County Code (MCC): Chapter 37; MCC 37.0660 (E) Modification of Conditions; MCC 36.7815: Category 1 Tentative Plan Map Contents; MCC 36.8000: Other Utilities; and Multnomah County Road Rules, Section 6.000

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.

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 37.0690, this land use permit expires two years from the date the decision is final 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. The property owner may request to extend the timeframe within which this permit is valid, as provided under MCC 37.0690 and 37.0700. Such a request must be made prior to the expiration date of the permit.**

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. Case T3-04-004 Condition of Approval #10 shall be modified, replacing it with the language as follows: The property owner shall file a deed restriction for each lot in Harris Acres, when deeds are recorded for the subdivision lots, that requires the property owners within the subdivision provide street lighting according the Road Design and Construction requirements of the

jurisdiction in charge of the streets when the subdivision is annexed into a lighting district. County Transportation Program will provide the language to be recorded with the deed.

Notice to Mortgagee, Lien Holder, Vendor, or Seller:

ORS Chapter 215 requires that if you receive this notice it must be promptly forwarded to the purchaser.

Note: To address Multnomah County Code requirements staff provides findings as necessary, referenced in the following section. Headings for each category of finding are underlined. Multnomah County Code language is referenced using a **bold** font. The Applicant's narrative, when provided, follows in *italic font*. Planning staff analysis and findings follow the **Staff** label. At the end of the report, Exhibits are described. The applicant's submittal is included and made part of this decision as Exhibit I.

1. **REQUEST FOR AN ADMINISTRATIVE MODIFICATION OF A CONDITION**

MCC 37.0660 (E) Modification of Conditions. Any request to modify a condition of permit approval shall be processed in the same manner, and shall be subject to the same standards, as was the original application provided the standards and criteria used to approve the decision are consistent with the current code. However, the decision maker may at its sole discretion, consider a modification request and limit its review of the approval criteria to those issues or aspects of the application that are proposed to be changed from what was originally approved.

Applicant: Applicant requests that "Conditions of Approval #10" street lighting be administratively removed from requirement.

Staff: The applicant is requesting an Administrative Modification of Condition #10 to remove it from the requirements of Case T3-04-004. MCC 37.0660 (E) allows for modification of conditions.

2. **REQUIREMENTS ADDRESSING STREET LIGHTING IN THE LAND DIVISION CODE**

MCC 36.7815 Category 1 Tentative Plan Map Contents. The tentative plan map shall indicate the following:

(C) Proposed improvements: (8) Other utilities: the approximate location and nature of other utilities including the location of street lighting fixtures.

MCC 36.8000 Other Utilities. Other utilities, including electric, gas, street lighting and cable television facilities shall be provided as required by this Chapter and as follows:

(A) In a public street - in accordance with the Street Standards Code and Rules;

Staff: The Land Division Code for the West of the Sandy River Plan Area requires street lighting shown on the tentative plan map and for a proposed public street in accordance with Street Standards Code and Rules. Street Standards Code and Rules has been replaced by Multnomah County Road Rules (MCRR). Given these code requirements, for Case T3-04-004, staff requested Alison Winter, County Transportation Planning Specialist to include these requirements in her review of the transportation standards for the development of the proposed public street. Ms. Winter submitted a memorandum dated November 3, 2004 included as Exhibit 2.2 and an email dated October 25, 2004 included a Exhibit 2.9 addressing County Transportation requirements for the proposed public street. In the memorandum, under item number 4, Ms. Winter stated as a requirement that the applicant, "Furnish street lighting facilities as required."

According to the County Design and Construction Manual (Section 6), all new urban street construction should incorporate street lighting. Street lighting shall be located in the public right of way or easement and it must conform to County standards (as

described in Multnomah County Design and Construction Manual Section 6). The proposed improvement plan does not indicate the existing or proposed shoulder width along Roork Road. We are unable to determine if this condition is met.”

In the email Ms. Winter provided these additional comments:

“Street Lights:

- Because there is no mechanism in place at this location to pay for the operation and maintenance of street lights, the applicant will need to (1) establish a Homeowner’s Association or (2) annex into the lighting district.
- The street lights must be in the ROW or in a public easement designated for utilities (including lighting).
- The proposed street light on Roork Road east of the new north/south street shall be moved approximately 100 feet south of the proposed location on the east side of the new north/south street.”

The Decision for Case T3-04-004 included Condition of Approval 10 which required the following:

“Street lighting shall be located in the public right of way or easement and it shall conform to County standards (as described in Multnomah County Design and Construction Manual Section 6). Street lighting shall be of a fully shielded type so that no light is emitted above the horizontal. (MCC 36.3455(G), MCC 36.7815(C)(8))”

The applicant is requesting that the street lighting be provided at a later date because there is no lighting district for the area and there are no other streetlights in this rural area. He believes that such lighting would out of place in the rural setting and may be offensive to nearby neighbors.

2. MULTNOMAH COUNTY ROAD RULES SECTION 6.000

MCRR 6.100: Site Development: The owner of the site or the applicant for a proposed development, which is found to cause a Transportation Impact will be responsible for improvements to the right-of-way as follows:

MCRR 6.100 A: Improvement Requirements subsection 6.100: The owner is responsible for a pro-rata share, as determined by the County Engineer, of right-of-way and easement dedications necessary to bring the affected, existing, created or planned public streets and other facilities within and abutting the development to the current County standard. The dedication of the required easements and right-of-way may be conditions of approval of Design Review or any other development permit related to the proposal.

MCRR 6.100 B: Frontage Improvement Requirements: Improvements shall satisfy the standards of the County Design and Construction Manual based upon the functional classification of the road(s). The commitment to improve the affected streets or other facilities to the required standards shall be conditions of approval of Design Review or any other development permit related to the proposal. Half-street improvements can include all of the following:

* * *

7. Lighting facilities

Multnomah County Road Design and Construction Manual, Section 6.1: Street Lighting Placement Criteria: All new urban street construction or reconstruction should incorporate street lighting.

Applicant: In accordance with Multnomah County Road Rules Section 16.300, I wish to hereby request that Improvement #5 & #9 “Street Lighting facilities as required” be removed from the improvements to be required for the construction of the subdivision HARRIS ACRES. This request for variance is based on the following items:

- 1) There is no Lighting District for the area.
- 2) There are no other streetlights in this rural area.
- 3) There are no curbs or sidewalks in this subdivision.
- 4) Street lighting was not a requirement but merely boilerplate wordage overlooked.

Staff: The Multnomah County Road Rules state the property owner is responsible for a pro-rata share of improvement to serve a proposed development. MCRR 6.100 B: Frontage Improvement Requirements include street lighting as an improvement to satisfy the standards of the County Design and Construction Manual. Multnomah County Road Design and Construction Manual, Section 6.1: Street Lighting Placement Criteria states, “All new urban street construction or reconstruction should incorporate street lighting.” The Road Design and Construction Manual is silent about rural areas.

Ms Winter has provided an additional memorandum dated April 13, 2005 (Exhibit 2.4) in which she states,

“This memo is in response to the applicant’s “Request for Variance” dated April 11, 2005 to Gregory Kirby. The subdivision was approved with a condition to furnish street lighting facilities as required. In lieu of furnishing street lights at this time, County Transportation has determined that a non-remonstrance agreement, or “Deed Restriction”, to furnish the street lighting at a future date when a lighting district is available in the area will be the desired compliance method for this requirement. As a result, a variance from this condition will not be required since compliance will be obtained through a deed restriction.”

While Orient is an unincorporated community, it is designated in the West of the Sandy Rural Plan as a Rural Community. Orient retains a rural nature with predominately residential development on larger lots than an urban setting. The minimum lot size requirement is one acre with the lots approved by T3-04-004 at or close to that minimum. This area is outside existing lighting districts. Given the current rural nature of the Orient area this lighting requirement can be delayed until the area is annexed into a lighting district. A condition can require a deed restriction as stated by Ms. Winter to furnish the street lighting at a future date when a lighting district is available in the area.

Dolan findings for street improvements presented at the public hearing for Case T3-04-004 (attaché to that case as Exhibit H-2). The Dolan findings are adopted for this case as well and included as Exhibit 2.5. These findings address the need for street improvements which would

include lighting. The Road Design and Construction Manual requires street lighting as an improvement when the area becomes urban.

3. TYPE II CASE PROCEDURES

MCC 37.0530 (B): Type II decisions involve the exercise of some interpretation and discretion in evaluating approval criteria. Applications evaluated through this process are assumed to be allowable in the underlying zone. County Review typically focuses on what form the use will take, where it will be located in relation to other uses and natural features and resources, and how it will look. However, an application shall not be approved unless it is consistent with the applicable siting standards and in compliance with approval requirements. Upon receipt of a complete application, notice of application and an invitation to comment is mailed to the applicant, recognized neighborhood associations and property owners within 750 feet of the subject tract. The Planning Director accepts comments for 14 days after the notice of application is mailed and renders a decision. The Planning Director's decision is appealable to the Hearings Officer. If no appeal is filed the Planning Director's decision shall become final at the close of business on the 14th day after the date on the decision. If an appeal is received, the Hearings Officer decision is the County's final decision and is appealable to the Land Use Board of Appeals (LUBA) within 21 days of when the signed Hearings Officer decision is mailed pursuant to 37.0660(D).

Staff: Procedures outlined in MCC 37.0530 were followed in processing this case. An opportunity to appeal this case will be provided, if no appeal is filed the decision will become final 14 days after the date on the decision. The application was submitted April 11, 2005 and was deemed complete as of the date it was submitted.

An "Opportunity to Comment" notice was mailed on May 6, 2005 to all owners of property within 750 feet of the subject site and parties to Case T3-04-004. They were given a 14-day period to provide comments on the application (MCC Chapter 37). There was no opposition expressed.

5. CONCLUSION

Considering the findings and other information contained herein, the fact that street lighting is required in urban areas and the standards in the Multnomah County Road and Multnomah County Road Design and Construction Manual are silent about rural areas, street lighting can be required at a later date when the area is urbanized. Condition #10 of Case T3-04-004 can be amended as follows: The property owner shall file a deed restriction for each lot in Harris Acres when deeds are recorded for the subdivision lots that requires the property owners within the subdivision to provide street lighting according the Road Design and Construction requirements of the jurisdiction in charge of the streets when the subdivision is annexed into a lighting district.

6. EXHIBITS

Exhibits 1: Submitted by the Applicant

- Exhibit 1.1: Application form submitted April 11, 2005 (1 page);
- Exhibit 1.2: Narrative submitted April 11, 2005 (1 page);

Exhibits 2 Supplied by County

- Exhibit 2.1: County Assessment Records (1 page);
- Exhibit 2.2: Memorandum dated November 3, 2004 by Alison Winter, County Transportation Planning Specialist (5 pages);
- Exhibit 2.3: Email dated October 25, 2004 by Alison Winter, County Transportation Planning Specialist (1 page);
- Exhibit 2.4: Memorandum dated April 13, 2005 by Alison Winter, County Transportation Planning Specialist (2 pges);
- Exhibit 2.5: Memorandum dated November 2, 2004 by Alison Winter, County Transportation Planning Specialist including Dolan findings (3 pages)