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

MULTNOMAH COUNTY

Notice of Hearings Officer Decision

Attached please find notice of the Hearing Officer's decisions in the matters of **T3-03-010.** This notice is being mailed to those persons entitled to receive notice under MCC 37.0660(D).

The Hearing Officer's Decision may be appealed to the State of Oregon Land Use Board of Appeals (LUBA) by any person or organization that appeared and testified at the hearing, or by those who submitted written testimony into the record. **Appeal instructions and forms are available from the Land Use Board of Appeals at 550 Capitol Street NE, Suite 235, Salem, Oregon 97301; 503-373-1265 (http://luba.state.or.us/).**

For further information call the Multnomah County Land Use Planning Division at 503-988-3043.

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DECISION OF HEARINGS OFFICER

Conditional Use Permit for a Type B Home Occupation

Case File: T3-03-010

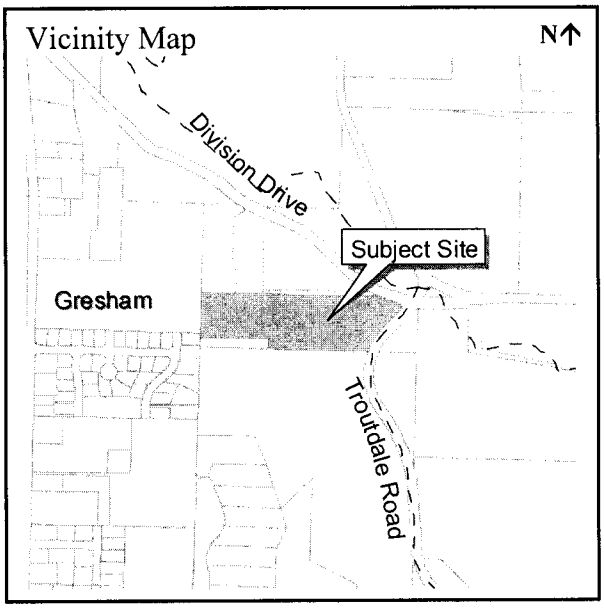
Hearings Officer: Liz Fancher

Hearing Date: February 20, 2004

Post-Hearing Evidence Due: March 12, 2004

Rebuttal Due: March 19, 2004

Final Argument: March 26, 2004



Location: 27530 SE Division Drive
TL 1700, Section 12, 1S 3E
R#99312-1670

Applicant: Randy and Dr. Jennifer Reid
2466 NE Francis Place
Gresham, OR 97030

Owner: Ron Place
27530 SE Division Drive
Gresham, OR 97030

Summary: Conditional Use permit for a Type B Home Occupation for a County Naturopathic Doctor's office in the Rural Residential Zoning (RR) Zoning District.

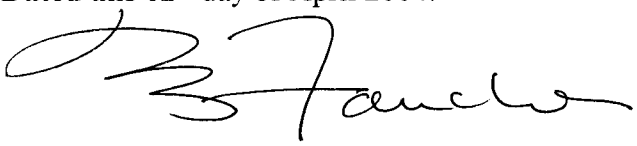
Zoning: Rural Residential (RR)

Site Size: 8.07- Acres

Hearing Officer Decision:

The applicant's request for a Conditional Use Type B Home Occupation is DENIED. The applicant failed to demonstrate that all applicable approval criteria have been or will be met by the applicant's proposed use and development of the subject property. This decision is supported by the findings of fact provided below.

Dated this 12th day of April 2004.



Liz Fancher, Hearings Officer

Appeals to the Land Use Board of Appeals

The Hearings Officer Decision may be appealed to the Land Use Board of Appeals (LUBA) within twenty-one (21) days of when the Hearings Officer signed the decision.

Findings of Fact

Formatting Note: Staff as necessary to address Multnomah County ordinance requirements provides Findings referenced herein. Headings for each finding are underlined. Multnomah County Code requirements are referenced using a **bold** font. Written comments prepared by the applicant are *italicized.* Planning staff comments and analysis may follow applicant comments. Where this occurs, the notation "Staff" precedes such comments. The hearings officer's findings are preceded by the notation "Hearings Officer." The hearings officer has also marked up staff and applicant findings to delete findings that are not consistent with the hearings officer's interpretation of the evidence and law. In places, certain assertions of fact or law are retained without change but are rebutted by the hearings officer's findings. In such cases and throughout the decision, the findings of the hearings officer control over contrary findings offered by the applicant or staff.

1. **Project Description**

Staff: The applicant has proposed to establish a Type B Home Occupation for a Naturopathic Doctors' Office on the subject site. The doctors' office would be placed in an existing accessory structure in the middle of the property. That structure would be remodeled and brought up to current code but not require any new structures, pavement, or land disturbance. The applicant has proposed to start the clinic with one naturopath and one administrative staff. The office would be run between the hours of 9AM and 6PM three days a week. The applicant proposes to eventually have a maximum operation of two naturopaths and one administrative staff and to run the office between the hours of 9AM and 6PM four days a week with occasional evening training sessions. The applicant currently has roughly two trainings a month of unknown size or duration.

Hearings Officer: The building in which the proposed use would be located is 1,770 square feet in size. It is one of two garages located on the subject property. The large garage is located a significant distance behind and above the main house. An accessory building that appears to be

a second or guest residence and a 350 square foot garage are located near the main house at approximately the same elevation as the house. The small garage and the accessory structure are located on the downhill side of the driveway that the applicant proposes to use for access to the naturopath's office. To reach the office, it will be necessary for vehicles to enter the property, pass by the residence, accessory building and garage before turning sharply and ascending an extremely steep hillside. At the top of the hill a turn of approximately 90 degrees or more is required before vehicles reach the garage and associated parking areas.

The driveway is too narrow to accommodate two-way traffic for most of its length. The width of the driveway ranges from 12 to 20 feet. Most of the driveway is only wide enough for one-way traffic. The entire steep hillside run of the driveway is too narrow to accommodate two-way traffic. Additionally, there are no areas where vehicles heading up or down hill may pull over to allow opposing traffic to pass. Drivers of vehicles descending the steep hillside on icy winter days would have no place to pull off the steep driveway and stop, if the vehicle began to slide on ice. A fence adjoins one side of the driveway and the area on the other side is elevated and is not a part of the subject property. Additionally property on the outside of the hillside run of the driveway has banks that rise above the elevation of the driveway. Vehicles descending the steep hillside, if they proceed straight ahead, could end up in the creek that runs along the front of the subject property. Photographs and maps supplied with the application also indicate that vehicles heading downhill and making the turn at the bottom of the steep hill might also slide into the small garage structure.

2. **Site Vicinity and Characteristics**

Staff: The subject property is located in an area just outside of the Urban Growth Boundary and the City of Gresham. The western property line is the dividing point between the UGB and the City of Gresham and unincorporated Multnomah County. The property is situated on the southwest corner of SE Division Drive and SE Troutdale Road. All the properties to the west of SE Troutdale Road and in unincorporated Multnomah County, including the subject site, are zoned Rural Residential. All the nearby properties on the east side of SE Troutdale Road are zoned Exclusive Farm Use. As seen on the County Air Photo (Exhibit A), the immediate area is heavily forested. Dwellings are located on the three properties directly north of the subject lot. The property to the south is a large lot owned by the Arrow Creek Owners Association and is open space for a Planned Development. The property directly across SE Troutdale Road is vacant and triangular in shape. Beaver Creek runs along the eastern property line adjacent to SE Troutdale Road. The property has a steep upward slope going from east to west that when measured averages out to roughly 27%. A dwelling established in 1925 and an associated guest house and garage built around the same time are located on the eastern portion of the property. A large accessory building/garage is situated in the center of the property and is the structure proposed to be converted into the naturopath doctors' office. The central area of the property is comprised mainly of an open field that appears to have been in farm production at some point in time.

3. **Proof of Ownership**

MCC 37.0550 Initiation of Action

Except as provided in MCC 37.0760, Type I - IV applications may only be initiated by written consent of the owner of record or contract purchaser.

Staff: County Assessment and Taxation records show Ron Place as owner of the subject property. Ron Place has written and signed a letter authorizing an action to be taken on this property (Exhibit B).

4. **TYPE III CASE PROCEDURES, PUBLIC NOTICE**

MCC 37.0620: At least 20 days prior to the hearing, the County shall prepare and send, by first class mail, notice of the hearing to all owners of record, based upon the most recent Multnomah County records, of property within 750 feet of the subject tract and to any County-recognized neighborhood association or identified agency whose territory includes the subject property. The County shall further provide notice at least 20 days prior to a hearing to those persons who have identified themselves in writing as aggrieved or potentially aggrieved or impacted by the decision prior to the required mailing of such notice. The County shall also publish the notice in a newspaper of general circulation within the County at least 20 days prior to the hearing.

Staff: Notice was provided to all properties within 750 feet of the subject tract and recognized neighborhood organizations on January 26, 2004, more than 20 days in advance of the hearing. The notice was posted in the Oregonian on Friday, January 30, 2004.

5. **The Proposed Use Is a Conditional Use in the RR Zoning District**

MCC 36.3115 Uses.

No building, structure or land shall be used and no building or structure shall be hereafter erected, altered or enlarged in this district except for the uses listed in MCC 36.3120 through 36.3130 when found to comply with MCC 36.3155 through 36.3185.

* * *

MCC 36.3130 Conditional Uses.

The following uses may be permitted when found by the Hearings Officer to satisfy the applicable Ordinance standards:

(C) Type B home occupation as provided for in MCC 36.6650 through 36.6660.

Applicant: As cited below, a Type B Home Occupation is a conditional use that may be permitted by the Hearings Officer to satisfy the applicable ordinance standards. In the following narrative information is provided to establish that applicable standards will be satisfied to conduct a home-based Naturopathic physician business at 27530 SE Division Drive.

Please note that while a medical practice, which is described more fully below, is not specifically listed as a "Community Service Use," it nevertheless is a community service in a functional

sense. Many of the Community Service Uses allowed under MCC 36.6000 and 36.6050 are not uniquely rural in nature, though still allowed, with approval in RR and MUA-20 zoning districts (e.g., "Health center, including counseling, well-baby clinic, or physical therapy"). Therefore, I believe my practice would be consistent with the needs of the rural community as recognized in MCC 36.6000 and 36.6050.

Staff: The use that is proposed is allowed as a conditional use and subject to the Conditional Use standards as well as the Home Occupation standards as outlined below.

Hearings Officer: This section of the code allows the Hearings Officer to approve the use requested by the applicant if the applicable approval criteria are satisfied.

6. **The Proposed Use Meets the RR Dimensional Standards**

MCC` 36.3155 Dimensional Standards and Development Requirements.

All development proposed in this district shall comply with the applicable provisions of this section.

A. **(A) Except as provided in MCC 36.3160, 36.3170, 36.3175 and 36.4300 through 36.4360, the minimum lot shall be five acres. For properties within one mile of the Urban Growth Boundary, the minimum lot size shall be as currently required in the Oregon Administrative Rules Chapter 660, Division 004.**

Applicant: The subject site is 8.07 acres, which is greater than the 5-acre minimum lot size. New development or subdivisions are not proposed in this application. OAR Chapter 660-004 does not apply because there will be no subdivision.

Staff: Multnomah County Assessment and Taxation lists the property as being 8.07 acres – over the five-acre minimum lot size.

Hearings Officer: The property owner of the subject property is seeking approval of a lot line adjustment. After adjustment, the subject property will continue to meet the 5-acre minimum lot size required by the zoning district.

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

Applicant: Subsection is not applicable because there are no street vacations proposed or required.

Staff: The property is larger than the minimum lot size and does not require adding the right-of-way into the calculation of the lot size.

Hearings Officer: The applicant is not relying on street right-of-way area to meet the minimum lot size of the zoning district. The property meets the minimum lot size required, without including road right-of-way when calculating lot size. As a result, this code provision is not material to the decision of this application.

C. **(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.

Applicant: Minimum Yard Dimensions in feet. The existing detached garage proposed for conversion to a medical practice office is the following distance from the nearest property lines.

Front	Side	Street Side	Rear
490'	120'	490'	540'

These distances are in excess of the minimum requirements listed in MCC 36.3155 (C). The maximum height of the existing structure is approximately 18 feet, which is below the current maximum height standard. The approximate front lot line length is 500 linear feet, which is in excess of the 50-foot standard in the MCC.

Staff: No new buildings or structures are being constructed under this proposal. The existing structure meets the setbacks as seen on the submitted site plan (Exhibit C).

D. **(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 requirements not otherwise established by Ordinance.**

Applicant: This subsection discusses the need to increase the minimum yard requirement should the street right-of-way be of "insufficient" width. SE Division Drive abuts the subject site and is at least 60 feet wide and asphalt-paved. Moreover, as indicated in the previous paragraph, there is significant setback from the street to meet this standard.

Staff: No new structures are a part of this applicant, therefore the yard requirements do not need to be increased.

E. **(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.**

Staff: No new structures are a part of this application.

F. **(F) On-site sewage disposal, storm water/drainage control, water systems unless these services are provided by public or community source, required parking, and yard areas shall be provided on the lot.**

(1) Sewage and stormwater disposal systems for existing development may be off-site in easement areas reserved for that purpose.

(2) Stormwater/drainage control systems are required for new impervious surfaces that are greater than 400 square feet in area. The system shall be adequate to ensure that the rate of runoff from the lot for the 10 year 24-hour storm event is no greater than that before the development.

Applicant: There is on-site sewage disposal and stormwater/drainage control for the existing detached garage proposed for use by the medical practice. The garage currently has a connection to an on-site septic tank and drain field that were permitted by the City of Portland. Stormwater/drainage consists of on-site ground infiltration and an on-site stormwater swale. There will be no new impervious surfaces necessary for the proposed use. Domestic water is provided by the Lusted Water District (see certification form attached).

Staff: The City of Portland Sanitarian, who by intergovernmental agreement acts as the Department of Environmental Quality representative, has determined that a new septic tank is needed and the drainfield will need to be upgraded (Exhibit D). This shall be a condition of approval.

No new impervious surfaces are being added as a result of this application. As such, there is no requirement for a stormwater drainage control system other than what is already in place.

G. **(G) Grading and erosion control measures sufficient to ensure that visible or measurable erosion does not leave the site shall be maintained during development. A grading and erosion control permit shall be obtained for development that is subject to MCC Chapter 29.300.**

Applicant: There are no new structures or additions to the existing structure planned under the proposed practice. Therefore, grading and erosion control measures are not applicable.

Staff: Staff concurs, no new structures are a part of this application and no grading is proposed. As such, no grading and erosion controls are necessary.

H. **(H) New, replacement, or expansion of existing dwellings shall minimize impacts to existing farm uses on adjacent land by:**

Applicant: There will be no "new, replacement, or expansion of existing dwellings" as part of the proposed Type B Home Occupation. Therefore, this criterion is not applicable. However, I recognize that the subject site is within a region where farm activities occur.

(1) Recording a covenant that implements the provisions of the Oregon Right to Farm Law in ORS 30.936 where the farm use is on land in the EFU zone; or

(2) Where the farm use does not occur on land in the EFU zone, the owner shall record a covenant that states he recognizes and accepts that farm activities including tilling, spraying, harvesting, and farm management activities during irregular times, occur on adjacent property and in the general area.

Staff: No new, replacement or expansion of a dwelling is a part of the proposal.

8. **The Subject Lot Is Not a Lot of Record**

MCC 36.0005(L)(13)

(13) Lot of Record - Subject to additional provisions within each Zoning District, a Lot of Record is a parcel, lot, or a group thereof which when created and when reconfigured (a) satisfied all applicable zoning laws and (b) satisfied all applicable land division laws. Those laws shall include all required zoning and land division review procedures, decisions, and conditions of approval.

(a) "Satisfied all applicable zoning laws" shall mean: the parcel, lot, or group thereof was created and, if applicable, reconfigured in full compliance with all zoning minimum lot size, dimensional standards, and access requirements.

(b) "Satisfied all applicable land division laws" shall mean the parcel or lot was created:

1. By a subdivision plat under the applicable subdivision requirements in effect at the time; or

2. By a deed, or a sales contract dated and signed by the parties to the transaction, that was recorded with the Recording Section of the public office responsible for public records prior to October 19, 1978; or

3. By a deed, or a sales contract dated and signed by the parties to the transaction, that was in recordable form prior to October 19, 1978; or

4. By partitioning land under the applicable land partitioning requirements in effect on or after October 19, 1978; and

5. "Satisfied all applicable land division laws" shall also mean that any subsequent boundary reconfiguration completed on or after December 28, 1993 was approved under the property line adjustment provisions of the land division code. (See Date of Creation and Existence for the effect of property line

adjustments on qualifying a Lot of Record for the siting of a dwelling in the EFU and CFU districts.)

Hearings Officer: The property owner is seeking to resolve the legal lot of record issue by filing an application for a property line adjustment to legalize the existing boundaries of the subject property. County planner Don Kienholz has reviewed the application and has offered his professional opinion that the application for adjustment can be approved under the relevant approval criteria of the County's land use regulations. This opinion has not been contradicted and, therefore, is accepted by the Hearings Officer. It, therefore, is feasible for the applicant to obtain a correction of the legal lot of record problem that exists for the subject property (discussed below) and a condition of approval can be imposed to assure compliance with the legal lot of record requirement.

(c) Separate Lots of Record shall be recognized and may be partitioned congruent with an "acknowledged unincorporated community" boundary which intersects a Lot of Record.

1. Partitioning of the Lot of Record along the boundary shall require review and approval under the provisions of the land division part of this Chapter, but not be subject to the minimum area and access requirements of this district.

2. An "acknowledged unincorporated community boundary" is one that has been established pursuant to OAR Chapter 660, Division 22.

MCC 36.3170 Lot of Record.

(A) In addition to the Lot of Record definition standards in MCC 36.0005, for the purposes of this district the significant dates and ordinances for verifying zoning compliance may include, but are not limited to, the following:

(1) July 10, 1958, SR zone applied;

(2) July 10, 1958, F-2 zone applied;

(3) December 9, 1975, F-2 minimum lot size increased, Ord. 115 & 116;

(4) October 6, 1977, RR zone applied, Ord. 148 & 149;

(5) October 13, 1983, zone change from MUF-19 to RR for some properties, Ord. 395;

(6) October 4, 2000, Oregon Administrative Rules Chapter 660 Division 004, 20 acre minimum lot size for properties within one mile of Urban Growth Boundary;

(7) May 16, 2002, Lot of Record section amended, Ord. 982.

(B) A Lot of Record which has less than the minimum lot size for new parcels or lots, less than the front lot line minimums required, or which does not meet the access requirement of MCC 36.3185, may be occupied by any allowed use, review use or conditional use when in compliance with the other requirements of this district.

(C) Except as otherwise provided by MCC 36.3160, 36.3175, and 36.4300 through 36.4360, no sale or conveyance of any portion of a lot other than for a public purpose shall leave a structure on the remainder of the lot with less than minimum lot or yard requirements or result in a lot with less than the area or width requirements of this district.

(D) The following shall not be deemed to be a lot of record:

(1) An area of land described as a tax lot solely for assessment and taxation purposes;

(2) An area of land created by the foreclosure of a security interest.

(3) An area of land created by court decree.

Applicant: According to Multnomah County Land Use Planning staff, two questions must be answered to establish whether the subject site (1S3E12D 1700) is the Lot of Record: (1) Did the property meet the land division requirements in place at the time the property was created, and (2) Did the property meet the zoning requirements in place at the time it was created.

~~(1) In answer to the first question, Multnomah County affirmed the current 8.07-acre subject site as the Lot of Record in three separate decisions made by Multnomah County. The three events are described below. First, I will provide some site history for context:~~

Tax Lot 1S3E12D 400 (0.68 acres) once was part of a rectangular parcel of land that totaled 10 acres (then numbered lot 32). The 0.68-acre lot was numbered 161. Clifford C. and Jean Q. Vorm owned the 10-acre property prior to 1978. Troutdale Road was constructed through the original 10 acres, leaving the 0.68-acre triangular lot separated from the main part of the property. Shortly after the October 19, 1978 implementation date of an ordinance that required land use review by Multnomah County, the 0.68 parcel was deeded to Donald T. and Betty L. Davis by Clifford C. and Jean Q. Vorm on November 9, 1978. A copy of the deed is included as Exhibit 1 (recorded November 28, 1978, Book 1311, Page 2112). ~~Considering the short timeframe (21 days) between the date of the ordinance and the date of the deed, it is obvious that the parcel was actually "divided" before October 19, 1978 because a survey was performed to establish the legal description and there must have been a negotiation and escrow that began before October 19, 1978.~~ Clifford Vorm sold the parcel to Davis because Troutdale Road divided the larger property and because Davis already owned a property contiguous to the 0.68-acre lot.

Hearings Officer: The County code requires that when an applicant relies on a deed alone to prove lawful creation of a lot, the deed must be recorded prior to October 19, 1978 or be in "recordable form" prior to that date. The applicant's "actually divided" argument does not have direct bearing on this question.

Applicant: Sometime prior to June 6, 1979, the 10-acre lot 32 was divided into two lots: (lot 32 of 3.51 acres and lot 167 of 4.99 acres). Lot 167 included the house and outbuildings. A Special Warranty Deed, dated September 5, 1985 (Book 1880, Page 1545), states that a Contract recorded June 6, 1979, in Book 1357, Page 769, between Charles R. Tibbett (grantor) and Clifford and Jean Vorm (grantee) was fulfilled and Tibbett released interest in ***Lot 167*** (Exhibit 2). This indicates that Lots 32 and 167 were divided no later than June 1979.

On January 15, 1986, Ron K. Place purchased lot 167 under a real estate contract, dated January 15, 1986 and recorded January 21, 1986, in Book 1879 on Page 1662. The contract was fulfilled and Clifford C. Vorm and Jean Q. Vorm provided a Special Warranty Deed to Ron K. Place, dated June 28, 1990 (Book 2318, Page 599). See Exhibit 3. In 1986, Ron Place sought to build an addition to the existing 1925 house on lot 167. Multnomah County, Department of Environmental Services, Permit Division stated on Ron Place's February 1986 permit application that:

> "Permit is for both TL '167' and '32', a total of 8.51 acres. Requires consolidation of Tax Lots when contract is fulfilled. See attached from A&T. [initials]" (Exhibit 4).

Multnomah County also provided a copy of Multnomah County Ordinance 11.45.040(B), which was circled, informing Ron Place that the County could not approve his building permit because "a division of land which is contrary to an approved subdivision plat or partition map is a violation of this chapter." See Exhibit 4. In other words, Multnomah County states that in order for there to be a Lot of Record, Ron Place had to purchase lot 32 and consolidate it with lot 167. Multnomah County, at that time did not consider lot 161 to be problematic to recognizing the consolidation of only lots 32 and 167 to have a legal Lot of Record.

Hearings Officer: This building permit activity does not establish compliance with the County's legal lot of record argument. The legal theories of issue preclusion and claim preclusion do not assist the applicant in obtaining this new approval. The Oregon Land Use Board of Appeals has held that issue and claim preclusion theories do not apply to quasi-judicial land use decisions. Likewise, the theories should not be extended to protect decisions made in the building permit application process – a process that does not provide the notice and opportunity for a hearing required in land use and limited land use proceedings. The informality of the building permit decision and lack of a hearings review process also means that the lot of record issue presented was not fully litigated and is not an issue to which issue preclusion should be applied in this proceeding.

Applicant: On June 10, 1986, Clifford C. and Jean Q. Vorm sold to Ronald K. Place, with a Warranty Deed, the "upper" 3.51 acres (Book 1913, Page 422). The legal description describes the "North 10 acres of the West one-half..." excepting lot 167, excepting lot 161 (0.68 acres sold to Donald and Betty Davis), and excepting that portion within SE Division Drive and Troutdale Road. Please note that Ron Place had to show evidence to Multnomah County that the parcel was purchased to receive his building permits. The deed's legal description clearly identifies the Davis property as not being included in the purchase by Ron Place (see Exhibit 5).

The zoning and land division boxes on Ron Place's building permit application are initialed and dated June 26, 1986. Multnomah County approved the building permit for zoning and land

division once Ron Place showed evidence he owned lots 167 and 32. ~~This is the first affirmation by Multnomah County that the subject site (Tax Lot 1700) is a Lot of Record~~.

Hearings Officer: This "affirmation" does not establish compliance with the County's current lot of record requirements that apply to the decision of the home occupation application. This is not a method of lot creation recognized by the applicable approval criteria/lot of record code.

Applicant: On July 12, 1986, Clifford C. and Jean Q. Vorm conveyed approximately 417 square feet off of lot 167 to Multnomah County (Deed for Road Purposes, Book 1936, Page 1852) because "said property is desirable for use as a part of the road system of Multnomah County, and that the Director of the Department of Environmental Services has recommended that said deed be accepted and said property be accepted and established as a County Road...." See Exhibit 6. ~~Multnomah County itself was a party to a land division from what they have affirmed as a Lot of Record (otherwise known as Tax Lot 1700, the subject site).~~

Hearings Officer: This conveyance involved a very small area of land that was dedicated for road purposes. The applicant has not established that legal lot status of the subject property was addressed or resolved at the time. The addition of land to an existing road parcel effectuated a lot line adjustment between the County road "parcel" or right-of-way and the remaining property. It was not a land division.

Applicant: On January 27, 2000, Multnomah County Land Use Planning Division issued a Decision of the Planning Director denying a property line adjustment requested by Ron Place (PLA 17-99). The County noted that the request involved a 0.4-acre parcel (Tax Lot 1500) that apparently was not a proper land division and was one of the reasons for issuing the denial. The Findings of Fact did not indicate that the 8.07-acre Tax Lot 1700 was an illegal land division. ~~This would be the third time Multnomah County affirmed Tax Lot 1700 as a Lot of Record~~.

Hearings Officer: The County was not bound, in its denial of PLA 17-99 to determine the legal lot status of the subject property. As a result, the lack of a decision on the issue has no bearing on the lot of record question presented by this application.

(2) The current zoning of the site is rural residential (RR). The subject site was first developed with a single-family house and at least one accessory building in the mid-1920s. The house and one accessory building are still present on the site. In the late 1980s, the detached garage (proposed location for the medical practice) was constructed under permit with Multnomah County as a shop/garage. According to the current owner (Ron Place) and a previous owner, the subject site has been used for residential and farming since the 1920s. I believe that the land use has been consistent with the RR zoning since the RR zone was applied in October 1977, and the current uses of the property were in place before the first "significant date and ordinance" listed in MCC 36.3170, which was July 10, 1958.

Hearings Officer: The hearings officer views the County's lot of record requirement as a prerequisite to further land development approval of the subject property only. It is not germane to the legality of existing, lawfully allowed development that has occurred in the past.

Additional Applicant Information Submitted January 22, 2004.

Applicant: The purpose of this letter is to notify your office that we are declaring our permit application package complete as of January 22, 2004, and request that your office begin all necessary actions to place our case on the February 20, 2004 hearing agenda.

On December 23, 2003, we submitted an application for a conditional use permit (Type-B Home Occupation) along with the permit fee. We understand there is a 30-day time period for Multnomah County Planning staff to determine whether our permit application is complete. On January 12, 2004, we submitted additional information for consideration in our permit that answered all questions raised during the pre-application meeting of December 23, 2003.

The time delay between the permit submission date and submission of the additional information is due to the holidays our vacation, and the weather that shut down the county offices during the week of January 5th. Moreover, the City of Portland Environmental Soils Division of the Building Services Department lost our certification form and was not discovered until January 9, 2004. The City of Portland finally responded after personal visits by us to their office on January 13, 2004. The City of Gresham Fire Department, also backlogged because of the weather, did not respond to our request until January 14th. All the certification forms are now in your file.

We believe that our permit application (dated December 31, 2003) was complete and answered all Multnomah County Codes (MCC) cited in your pre-application notes provided on December 23, 2003. One issue raised by you on December 23, 2003 involved "Lot of Record." We understand that you believe the subject site (Tax Lot 1700) is not a legal Lot of Record because 0.68-acre parcel was sold to another party on November 9, 1978, a mere 21 days after the implementation of a MCC that required land use review for partitions. It is logical to conclude, however, that the transaction that involved Tax Lot 400 was being negotiated and surveyed prior to October 19, 1978.

On January 21, 2004, you provided us one possible remedy for the Lot of Record issue in addition to the option of purchasing the Tax Lot 400 back from the current owner. The timing of stating a possible remedy 29 days after the pm-application meeting did not leave us much flexibility in addressing the issue.

Possible remedies suggested by planning staff:

1. Purchase Tax Lot 400 back from Donald and Betty Davis (who also own the adjoining Tax Lot 500).
2. Conduct a Property Line Adjustment (PLA) with the cooperation of Davis. Submit the PLA application concurrent with the Type-B Home Occupation permit for the February 20, 2004 hearing date for consideration by the hearings officer.

~~The current owner of Tax Lot 1700 (Ron Place) has approached Davis twice to offer to purchase Tax Lot 400 or conduct the PLA at our expense. Mr. Davis has flatly refused any possible cooperation with Ron Place for either option. Given that these are the only two possible remedies suggested by planning staff, the current owner and we have no apparent ability to make Tax Lot 1700 whole or its own Lot of Record. Mr. Place is now precluded from any possible improvement to his property (irrespective or the current application) under the current~~

~~ordinances and the value of his property is severely harmed should this situation continue. It should be noted that Ron Place was not a party to the transaction that split Tax Lot 400, but Davis was. Davis is now holding Tax Lot 1700 hostage using the MCC as his shield.~~

~~With all due respect, this stalemate is absolutely pointless. Tax Lot 400 is irrelevant to any current or future uses of Tax Lot 1700. The two lots have different zoning. The two lots are separated by Troutdale Road. Tax Lot 400 is virtually inaccessible from any public road except by foot. Tax Lot 400 is currently vacant and cannot be developed in any way. At any time in the future, Davis can fix his own problem with a PLA. In effect Tax Lot 400 is an absolutely useless lump of land.~~

~~You have stated twice to us that even though four previous Multnomah County decisions affirmed Tax Lot 1700 as a Lot of Record, today's research efforts by planning staff are more diligent that in the past. However, the county has had 18 years to notify Ron Place that he did not have a lot of record, which would have afforded him significant time to remedy the issue. The County's body of documentation is no different today than it was in 1986 when Ron Place first pulled building permits for his house.~~

We believe that a remedy can be found in MCC 36.2675(A)(2)(a) and (b)(2) "Lot of Record." This part of the MCC 36.2675(A)(2)(a) and (b)(2) states that:

> "for the purposes of this district a Lot of Record is…A group of contiguous parcels or lots which were held under the same ownership on February 20, 1990; and which individually or when considered in combination, shall be aggregated to comply with a minimum lot size of 19 acres without creating any new lot line. An exception to the 19 acre minimum lot size requirement shall occur when the entire same ownership grouping of parcels or lots was less than 19 acres in area on February 20, 1990, and then the entire grouping shall be one Lot of Record."

Both Tax Lot 400 and 500 were held by the same owner, Donald and Betty Davis on February 20, 1990. These lots are contiguous and the Davis family owns no other adjacent lots. The total of these lots is 3.39 acres, which is well under the 19-acre minimum lot size for EFU land in this district. However, the MCC 36.2675(A)(2)(b)(2) provides an exception for lots totaling less than 19 acres. An example in the ordinance (Example 3) exactly mirrors the current situation of the Davis properties. The last line of the paragraph outright defines this situation as a Lot of Record. You have indicated that the purpose of this ordinance is to keep smaller, separate EFU parcels in single ownership and from breaking up into a patchwork of lots. Example 3 shows that three "lots" can be combined to form one Lot of Record, but it does not require that the individual lot lines be removed or that the individual lots be each a Lot of Record. If it did, this MCC section would be absolutely pointless. Through this ordinance, this purpose could be fulfilled because the two lots would be considered a single Lot of Record within the EFU zone.

Hearings Officer: The applicant's argument addresses the legal lot of record status of land owned by the Davis family. At best, the argument shows that a part of the original parent parcel that was used to illegally create the subject property has now been aggregated with other lots into a single legal of record for development purposes. It does not demonstrate that the other parcel, the Place parcel, was lawfully created or that it is a legal lot of record.

Applicant: Ron Place and we wish a remedy to the Lot of Record issue. Mr. Place has made a good faith effort to enlist help from the Davis family, but to no avail. We have gone to great efforts to enlist the planning staff's help through numerous phone calls and a meeting between Ron Place, the realtor, you, Derrick Tokos, and us. We have provided extensive deed and building permit history in the permit application to show that Multnomah County has affirmed Tax Lot 1700 as a Lot of Record.

Hearings Officer: Mr. Place has now obtained the cooperation of the Davis family to seek approval of a lot line adjustment to correct the legal lot of record problem. The alleged difficulty has been resolved.

~~This is an issue that is over 25 years old and yet it only now comes to the surface. Does this have to go on for another 25 years? This issue can be put to rest by planning staff recommending that the Hearings Officer declare Tax Lot 1700 a Lot of Record in the February 20, 2004 hearing.~~

~~We trust that planning staff can see the situation we are in through no fault of Ron Place or us. Please consider the whole body of evidence I have presented and the current disposition of Tax Lot 400. By accepting Tax Lot 1700 as a Lot of Record and Tax Lots 400 and 500 as a Lot of Record there will be absolutely no change in status of Tax Lot 400 from the way it was for the last 100 years. The only difference will be that someone else's name is on the deed.~~

~~Please keep me informed of any decisions your office makes about this issue.~~

Additional Applicant Information Submitted January 28, 2004.

In the following discussion, the following parcels are referenced:

lS3E12D 1700 Ron Place (owner of 8.07-acre subject site related to Type-B Home Occupation Permit)
lS3E12D 400 Donald &Betty Davis (owners of undeveloped 0.68-acre parcel)
lS3E12D 500 Donald &Betty Davis (owners of residential 3+-acre parcel)

On January 27, 2004, the Multnomah County Land Use Planning office offered an alternative solution to the Lot of Record issue than the two cited by me in my January 22, 2004 letter (letter declaring my application complete). The original two "solutions" were as follows:

> 1. Purchase Tax Lot 400 back from Donald and Betty Davis (who also own the adjoining Tax Lot 500). [or]
>
> 2. Conduct a Property Line Adjustment (PLA) with the cooperation of Davis. Submit the PLA application concurrent with the Type-B Home Occupation permit for the February 20, 2004 hearing date for consideration by the hearings officer.

As stated in our letter, dated January 23, 2004, Ron Place, the current owner of Tax Lot 1700 approached Mr. Davis and offered both the above remedies. Mr. Davis flatly refused to cooperate, feeling satisfied that he had a deed and stating that he had other plans for the property.

The most recent remedy offered by MCLUP was to apply Oregon Revised Statute (ORS) Chapter 92.177, which is quoted in full below:

> **92.177 Creation of lot or parcel following improper formation.** Where application is made to the governing body of a city or county for approval of the creation of lots or parcels which were improperly formed without the approval of the governing body, the governing body of a city or county or its designate shall consider and may approve an application for the creation of lots or parcels notwithstanding that less than all of the owners of the existing legal lot or parcel have applied for the approval. [1993 c.436 §2; 1995 c. 595 §14]
>
> **Note**: 92.177 was added to and made a part of 92.010 to 92.190 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

By this letter, absent other specific procedural guidelines by MCLUP, we are making a formal application to MCLUP to consider and note the applicability of ORS 92.177 to Tax Lot 1700. We are asking the MCLUP to approve outright as a "designate" or recommend approval to the hearings officer that Tax Lot 1700 is a Lot of Record under this law. Tax Lot 1700 meets all PLA criteria, including minimum lot size, for Rural Residential (RR) zoned properties. The PLA criteria allow a RR-zoned parcel that results from the PLA to be smaller than the original parcel (MCC 36.3160(B)(1)and (2)).

The question is then raised about Tax Lot 400 and whether it can be "fixed" by Davis at a later date through a PLA. Tax Lot 400 and Tax Lot 500 are zoned Exclusive Farm Use (EFU). The Davis home is on a Lot of Record (Tax Lot 500). There are no improvements to Tax Lot 400. According to MCC 36.2670 and MCC 36.7970, the two contiguous parcels owned by Davis (Tax Lots 400 and 500) do meet the PLA criteria should one be requested by Davis in the future. Although both Davis parcels are below the 80-acre minimum lot size for EFU land, the Planning Director may apply MCC 36.7970(B) for approving the PLA. The two parcels could simply be combined into one Lot of Record, and the resulting parcel would be no smaller than the total acreage of the two individual parcels.

Please note the following regarding ORS 92.177, which was cited by the Oregon Land Use Board of Appeals (LUBA) in a Final Opinion and Order for *Perkins v. Umatilla County* (LUBA No. 2003-098):

> [10]ORS 92.177 was adopted in 1993 as a legislative response *to Kilian v. City of West Linn*, 88 Or App 242, 744 P2d 1314 (1987). In Kilian, the court affirmed a LUBA decision reversing the city's approval of a partition. The partition involved a parcel that the previous landowners, the Kostas, had unlawfully divided into five lots by means of deed conveyances, without obtaining the requisite city approval. The partition applicant owned two of the lots, and after learning that the lots were illegal and unbuildable obtained from the city a "partition" that recognized three legal parcels, the two owned by the applicant and the remainder, owned by other persons who were not party to the application. The petitioner owned one of the three lots that comprised the remainder. The Court held that the partition under ORS 92.010 to 92.285 was inappropriate.

"Petitioner did not seek to divide land into parcels. It applied, in effect, to have its land which the Kostas had already unlawfully parcelized, recognized as a parcel independent of the unpartitioned property of which it is a part. Only the concerted action of all of the owners of the original Kosta property may invoke the City's authority to partition that property under the ORS chapter 92 provisions. ***"

The parties in Kilian ultimately obtained a judicial partition of the parent parcel into separate units of land. *State ex rel Kilian v. City of West Linn*, 112 Or App 549, 829 P2d 1029, *rev den* 314 Or 391 (1992). Against this background, the apparent intent of ORS 92.277 [sic] is to allow local governments the authority to remedy improperly formed lots or parcels by "creating" lots or parcels, notwithstanding that not all of the "owners of the existing legal lot or parcel" apply for that remedy.

The reference in the last paragraph obviously should be ORS 92.177, not 92.277. The text of the decision can be found at: http://luba.state.or.us/pdf/2003/oct03/03098.htm. The discussion in the last paragraph explains the intent of the law generally, and LUBA states that local governments do have the authority to remedy improperly formed lots or parcels by "creating" a new legal Lot of Record. ~~Not only does LUBA's language indicate this law can be applied to Tax Lot 1700, but also to Tax Lot 400 with or without Davis applying for the remedy.~~ Now the question is: why wouldn't MCLUP use this remedy to fix an intractable problem? As far as I can tell, there is no MCC that can take precedence over this Oregon State law, and there is no MCC that precludes MCLUP from applying this law to Tax Lot 1700.

Hearings Officer: ORS 92.177 offers the property owner the ability to apply to correct the illegal lot creation problem. It is only relevant in this case to help determine whether it is feasible for the applicant to correct noncompliance with the legal lot of record rules. As the applicant has obtained the consent of the other property owner whose property was included in the parent parcel from which the subject property was created, ORS 92.177 is no longer relevant to decision of this case.

Applicant: On the basis of the above discussion and ORS 92.177, we believe that this issue should no longer be considered incomplete because there is a clear roadmap to obtaining a legal Lot of Record determination by the hearings officer, especially if MCLUP provides their recommendation.

Staff: First, none of the County's past actions spoke to the land division that carved off the .68-acre property. That land division is a problem in finding the subject lot is a Lot of Record.

In order for a property to be a legal Lot of Record, it must meet two distinct tests. The first is: Did the property meet ***all*** the required zoning rules in place at the time it was created? The second test is: Did the property meet ***all*** the required land division rules in place at the time it was created? As such, staff will address each test separately.

A **Did the property meet *all* the required zoning rules in place at the time it was created?**

According to Multnomah County's 1978 parcel maps (Exhibit E), the subject property was a 9.45-acre property that included a triangular piece across SE Troutdale Road. The

1979 parcel map (Exhibit F) then shows the subject lot as an 8.77-acre property without the triangular piece and the triangular piece being its own tax lot at .68-acres. This would give the indication that the property was divided into two separate lots: The subject property at 8.77-acres and the Triangular remainder across SE Troutdale at .68-acres.

A Deed written on November 9, 1978 and recorded on November 28, 1978 in Book 1311, at Page 2112 describes the Triangular piece as a separate, conveyable piece of property that was in fact conveyed from the Vorm family to the Davis family, confirming the property was divided off.

The history of the zoning districts for the properties is as follows: The first zone placed on the properties was Suburban Residential (SR) back in 1958. On October 6, 1977, the 8.77-acre portion was rezoned Rural Residential (RR) and the .68-acre portion was rezoned Multiple Use Agriculture (MUA-20). Both zoning districts had provisions that allowed for separate Lots of Record to be created if the property was intersected by a road or a zoning district:

> The RR district language said: 3.154.2(c) – "Separate Lots of Record shall be deemed created when a street or zoning district boundary intersects a parcel of land."
>
> The MUA-20 district language said: 3.134.2(c) – "Separate Lots of Record shall be deemed created when street or zoning district boundary intersects a parcel of land."

Therefore, the property contained two Lots of Record. When the .68-acre triangular piece was divided off, it was below the minimum lot size of the MUA-20 zoning district it was in but the above provision allowed for such a lot. The RR zoned property met the minimum lot size.

Additionally, both properties met the requirements of having over 50-feet of road frontage and road access. The .68-acre property was, and is, vacant and would not have had to have met the setback requirements since no structures were on the property. The subject 8.77-acre property had a dwelling that was built in 1925 with a couple of accessory structures on the eastern portion of the property. One of the structures appears to be a guest house or cottage that appears to have been built at, or around, the same time as the dwelling. However, this has not been confirmed. The applicant did not address the potential second dwelling in the application. The potential dwelling would need to be determined to be a non-conforming use or converted to an allowed use. The second structure appears to be a single-car garage. No zoning rules were in place in 1925 and therefore the dwelling and structures would not have needed to meet any yard setbacks, assuming the two other structures were built at the same time as the dwelling. As such, both properties met the zoning rules in place at the time they were divided on November 9, 1978.

Both lots met the zoning requirements in place at the time they were created. Criterion met.

B **Did the property meet *all* the required land division rules in place at the time it was created?**

The County did not have land division requirements for divisions of three lots or less when the first zoning districts were adopted in 1958. The County has had subdivision regulations in place since the late 1800's. However, land divisions involving the creation of three or fewer properties became regulated under the County's land division ordinance that went into affect on October 19, 1978. Prior to that date, land divisions could be accomplished simply by conveying property by deed. After October 19, 1978, all land divisions were required to be reviewed by the County through an established process. Minor partitions were exempt from the 1978 land division ordinance if they did not meet the Type I, Type II, or Type III land division designation requirements. Dividing the triangular property off would have been classified as a Type III land division since:

1. The partition would have resulted in one or more parcels with a depth to width ration exceeding 2.5 to 1;
2. The partition would have resulted in a proposed parcel with an area four or more times the area of the smallest proposed parcel

The applicant included a deed recorded on November 28, 1978 creating the .68-acre triangular lot out of the subject lot and reducing that subject lot to 8.77-acres. The County has no record of reviewing the land division. The applicant states:

> *"Considering the short timeframe (21 days) between the date of the ordinance and the date of the deed, it is obvious that the parcel was actually "divided" before October 19, 1978 because a survey was performed to establish the legal description and there must have been a negotiation and escrow that began before October 19, 1978."*

What the applicant says may very well be true. The property may have been surveyed and the descriptions written prior to October 19, 1978. However, no evidence has been submitted to substantiate this. No recorded surveys, no recorded contracts prior to October 19, 1978, etc. The standard in the code is that the deed be in *recordable form* prior to the enacting date of the land division ordinance. The contract submitted was signed on November 9, 1978 and then recorded on November 28 of that same year. Neither date falls before the date the Multnomah County Land Division Ordinance took effect. As such, staff cannot make a finding that either lot met the land division requirements in place at the time they were created.

Neither lot met the land division requirements in place at the time they were created. Criterion not met.

C. **Prior County Decisions Did Not Speak To 1998 Land Division.**

The applicant states that the County, on three separate occasions, affirmed the subject site was a Lot of Record. They rely upon a 1986 building permit (Exhibit G), a 1991 Property Line Adjustment (PLA) (Exhibit H) and a 1999 PLA that was denied (Exhibit I). In examining those cases, the triangular property was never mentioned and findings were not made regarding the status of it as a Lot of Record. The 1986 building permit shows

that County staff required the combination of two lots that were created between 1979 and 1986 out of the subject 8.77-acre property without County review - prior to the issuance of building permits for the three car garage. In that case, the County appropriately discovered a land division violation and required the applicant correct the problem. The documents do not indicate that the triangular-shaped property was considered by staff.

In 1991, a Property Line Adjustment was granted that exchanged a small portion of the subject property to the large vacant lot to the south. The purpose was to provide the property to the south enough area to add an additional lot to a Planned Development. County code allowed for certain land divisions and property line adjustments to occur as over the counter Exempt Minor Partitions and Property Line Adjustments during that time. But again, no findings were made regarding the Lot of Record, and more specifically the triangular property's status.

The 1999 denial of a property line adjustment dealt with the subject 8.77-acre property and a flag piece of property adjacent to the north. The PLA was denied based upon the flag pole property having been broken off of an adjacent lot improperly in the past and not meeting the zoning or land division rules in place at the time the division occurred. The sole fact that the flag pole was not a Lot of Record required denial of the application. Staff did not examine the current property or the triangular property across SE Troutdale Road.

In addition, what constitutes a Lot of Record, the review process and the impact on a property has changed over time to become more thorough and restrictive – meaning staff may not have found some land division problems in the past because of the review process, or lack thereof.

Not finding the land division problem in the past does not prevent the County from finding it in the present or requiring the subject lot to be in full compliance with all applicable codes in order to obtain a building permit or land use approval as per MCC 37.0560.

The County is not required to overlook a problem that had not been discovered earlier in order to approve an application. The property is not a Lot of Record.

ORS 92.177

The statute mentioned by the applicant could potentially be used to fix the Lot of Record problem for the 8.07-acre property. Multnomah County has not codified ORS 92.177 and has no implementing language for it. ~~The County sees no reason why the applicant cannot request action on the subject lot under this provision as part of their application.~~

~~However, the County cautions the Hearings Officer against "fixing" a property under this statute unless:~~

~~1. The fix does not preclude the other piece of property (the Triangular shaped property) from being corrected in the future. It should be noted the County is~~

~~not sure if approving a PLA would be appropriate because the .68-acre property is not a "parcel" as defined under MCC 36.0005(P)(1). However, it might be a solution if the .68-acre property is absorbed into the EFU property to the south of the triangular property via deed using ORS 92.177.~~

2. ~~If the 8.07-acre property is fixed than a partition map as a condition of approval may be warranted as a lack of a partition document was the reason the problem came into existence in the first place.~~

Hearings Officer: ORS 92.177 is no longer needed to facilitate review and approval of a lot line adjustment to make the subject property a legal lot of record.

9. **The Subject Lot Has Access**

MCC 36.3185 Access.

Any lot in this district shall abut a street, or shall have other access determined by the approval authority to be safe and convenient for pedestrians and passenger and emergency vehicles.

Applicant: As stated previously, the entrance to the existing detached garage and proposed home-based medical practice is an existing concrete-paved driveway that connects to SE Division Drive on the eastern property boundary of the subject site. The driveway provides access to the detached garage. The driveway connection to SE Division Drive has reportedly been present since the mid-1920s, when the on-site house was first constructed.

The City of Gresham Fire Department has determined that access to the proposed medical practice is adequate provided a fire protection system is installed (i.e., fire suppression sprinkler system). The interior improvements planned for the building will include a fire suppression sprinkler system. See Gresham Fire Department certification form, attached.

Additional narrative from January 27, 2004 letter.

The Gresham Fire Department has provided a certification statement for our proposed land use subject to installing a commercial fire sprinkler system connected to "an approved water source for not less than 30-minutes of water flow per NFPA 13." The source of the water will be municipal water supplied by the Lusted Water District. The subject site's water is exclusively provided by Lusted Water District. Water tanks or retention ponds will not be necessary for the fire sprinkler system, and the system will be installed per NFPA 13.

Therefore, we believe that this issue should no longer be considered incomplete.

Staff: The subject site has direct access to SE Division Drive from two locations on the subject property. Multnomah County Transportation has identified some concerns regarding the access points and the angle in which traffic could enter the property as outlined in the memo from Alison Winter (Exhibit J). Transportation staff notes the main concern with the property is the tight angle onto the first access point and the potential traffic backup onto SE Division Drive if the gate were to be closed during business hours for the second access point. No information on

the number of trips or their frequency has been provided, **as of the date the staff report was prepared**.

The first access point is on an adjacent property to the north of the lot and connects with SE Division Road at a very tight angle, as Transportation staff pointed out. That access also has a very steep incline onto the property. The applicant has stated in conversations and elsewhere in their narrative that this access ***will not*** be used for the Home Occupation. The applicant has indicated that the second access, a gated access on the subject lot, shall be used by the customers for entry onto the property:

> *"Because of Multnomah County Land Use Planning staff concern about whether Tax Lot 1500 is a proper lot of record, we have elected to not utilize this road for the proposed practice until such a time the lot's status as a lot of record is established."*

Tax Lot 1500 is the flag property to the north of the subject lot found to have been improperly created in PLA 17-99. Multnomah County Transportation staff has indicated the gated access to be the preferred access due to potential hazardous conditions with the sharp angle of the flag property access. If the Hearings officer determines the application is approvable, a Condition of Approval should require the applicant use the gated access for the business and require that the gate remain open during business hours.

A second point of concern is the curve of the driveway on the property just before the incline to the proposed medical building. There is a roughly 27% incline up the hill. The driveway is roughly 12-feet in width. The curve of the driveway as seen in the staff photos (Exhibit K) is right at the bottom of the incline and directly adjacent to the creek. Any adverse condition, such as nightfall, rain, snow, ice, freezing fog, etc. would make that point of the access hazardous. ~~Because the medical facility would a residential use and the public would be entering the property in the form of customers, a higher standard of safety would need to be in place. As explained under Finding #10(F), this condition needs to analyzed more thoroughly to determine the access is appropriate and safe.~~

Hearings Officer: The subject property abuts a street. It, therefore, complies with this approval criterion. The "safe and convenient" access requirement does not apply to this application. It applies only where "other access" is needed, where a lot does not abut a street.

10. **The Proposal Does Not Meet the Conditional Use Approval Criteria**

MCC 36.6315 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:

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

Applicant: Proposed Land Use: I (Dr. Jennifer C. Reid, N.D., a Naturopathic physician) am asking for a Type B Home Occupation permit to operate a small home-based medical practice (country family doctor) on an 8-acre property in Multnomah County. I believe that rural east Multnomah County is not served by a locally accessible "country" doctor and as such, I believe my presence would be a benefit to the rural community. The subject property previously had a history of agricultural/farm uses (horses, cows, blueberries, and hay). I will be using the property for my residence, medical practice, raising horses, grazing/hay production, and harvesting blueberries. Because the medical practice will use an existing detached garage (associated with the residence) surrounded by on-site pastures and fields, I believe that my practice and the farm uses are compatible and will complement each other.

Subject Property/Building Description: The property is situated just east of the Gresham corporate limits. Public road access to the property is SE Division Drive along the eastern property line. Troutdale Road intersects SE Division Drive near the site's southeast corner. No other public roads border the property. The main entrance that will be used for the medical practice is through a gate at SE Division Drive and along a paved driveway to an existing detached garage in the center of the 8-acre site. The detached garage is associated with the on-site residence where I will be living. Patient parking will be located within an existing concrete-paved parking area on the east side of the detached garage, which is screened from all neighbors because of the building orientation, trees, and three-rail fencing.

There is a paved private road inside the north property line (part of property but on separate tax lot) that also connects to the existing detached garage. Because of Multnomah County Land Use Planning staff concern about whether Tax Lot 1500 is a proper lot of record, we have elected to not utilize this road for the proposed practice until such a time the lot's status as a lot of record is established. All patients who come to my (Dr. Reid's) office will use the main entrance as shown on the Site Plan of Existing Conditions (Figure 1).

The medical practice would use an existing 4-car detached garage that was constructed in the late 1980s by the current owner. The owner has historically used the well-finished building for home office work, displaying classic cars, and storing drywall equipment. There is an open carport on the north end. The building currently has oil-fired heat, a septic tank connection, hot/cold water supply, electricity, and phone service. The building is fully insulated and has an approximately 7-inch concrete slab on crushed rock. There is an existing office in the building. The garage is located approximately 120 feet from the northern and southern property lines of Tax Lot 1700 (and ~145 feet from the northern property line of Tax Lot 1500). The detached garage is also located approximately 540 feet from the western property line. The wood-framed building was well constructed with architectural accents, lap siding, and a cedar shake roof. There is a concrete slab parking area on the eastern side of the building, which is shielded from adjacent property owners.

Proposed Type-B Home Occupation: The medical practice is owned and operated by me (Dr. Jennifer C. Reid). I am a Naturopathic Physician and have been practicing my profession in Gresham and Troutdale for the past six years. My practice can be described

as general family medicine. Patients are seen on an appointment basis only and the practice does not rely on or seek walk-in clients. Patients usually visit for 45 to 90 minutes. I do not "stack" or "double-book" patients as is typical in other medical group buildings in urban areas. The office hours are typical business hours, Monday through Friday. I currently average about 6 patients per day.

Although I have operated the medical practice on a "part-time" basis of three days per week for the past 6 years, I plan to retain an associate who will also work one to three days per week. A staff employee (receptionist) will be available when the doctors are present. It is possible that I or the associate may expand to four days a week. The doctors will have staggered schedules as much as possible.

Regional Geographic Setting & Nearby Land Uses: The property is located in a somewhat hilly region on an east-facing slope. The Beaver Creek drainage is to the east of the property and SE Division Drive. Forested areas are located to the north, east, and south.

The land uses to the east consist of undeveloped properties and farmland. There is a rural residential property and farmland to the southeast, beyond Troutdale Road. The undeveloped Beaver Creek drainage is to the northeast and north, more than 500 feet from the proposed country doctor office. Adjacent and north of the property are three rural residential homes on large forested lots. The closest home is about 270 feet from the proposed medical practice. Each of these homes is at least partially screened by large trees. Beyond these lots are SE Division Drive, undeveloped land, Beaver Creek, and farmland. To the west of the property is a fallow field that appears to have once been an orchard with an old farmhouse and outbuildings about 600 feet away. To the southwest, within the City of Gresham, is a residential subdivision. The back of one house is visible from the middle of the subject property. Along the entire southern border is a heavily wooded undeveloped area with a residential subdivision beyond. The closest home is approximately 675 feet to the south.

Similar Uses in the Area: To our knowledge there are no country medical doctors in the immediate area. There is a psychiatrist approximately 2.7 miles to the southeast on SE Orient Drive (Multnomah County). There is a pediatric therapy service also on SE Orient Drive, approximately 2.6 miles southeast of the subject property. There is at least one other small business in the immediate area, which is a frame shop on Troutdale Road.

Noise Levels, Equipment Use, Air/Water Quality: We do not expect noise levels to be higher than a typical rural residential property. The medical practice has no noise or air/water pollution producing equipment or operations. There will be no storage of hazardous materials associated with the medical practice. There will be typical disinfectants used for interior cleaning.

(Added from January 27, 2004 letter)

> As stated on Page 7 of the narrative, there is no storage of hazardous materials associated with the medical practice. Medicine is not a hazardous material and it is not disposed. Only "natural" supplements are kept on-site for patients. I have typical housekeeping disinfectants for cleaning surfaces. Since the property is

connected to a septic system, only "septic" friendly cleansers will be used. I do not typically perform body cavity exams that would require a higher level of disinfectant usage. Mr. Reid spoke with the water quality and air quality duty officers at Oregon Department of Environmental Quality (DEQ) about our business and the proposed use. Neither duty officer raised any concern about a Naturopathic medical practice being a potential threat to the environment.

Traffic Patterns: We do not expect the medical practice to have a significant impact on traffic patterns. The vehicle pattern is completely within the subject property boundary and most of the access road is not visible from any neighbors. Clients will arrive for 45 to 90 minute appointments. Any overlap and stacking of patients is avoided. The access road is located completely within Tax Lot 1700. Dr. Reid currently averages 6 patients per day. We believe ingress to and egress from the subject property can be performed easily and safely from SE Division Drive. There are no blind spots for exiting the property. There are no known accidents associated with the subject site's driveway in at least the past 27 years, according to the current owner.

A December 22, 2003 Memorandum prepared by Alison Winter, Transportation Planning Specialist, stated that an access analysis is required. She stated that no construction/improvements were required. The access analysis is as follows:

The medical practice will see patients Monday through Friday during normal business hours (approximately 9:00 am to 6:00 pm). Patients are seen by appointment only and are scheduled in a serial fashion. Patients are not "stacked" or double-booked. Appointments last from 45 to 90 minutes. Dr. Reid's practice averages 6 patients a day. Dr. Reid and the associate will be staggering hours and patient appointments so the receptionist can assist one patient at a time and reduce waiting within the office. This will also help with traffic flow in that no more than one vehicle should be entering or exiting the property at any one time. It should be noted again that the medical practice is that of a country doctor and not an urban-type medical center.

The gate located at the main entrance will be left open during business hours. There will be no stacking of vehicles behind the gate or in the road right-of-way.

I believe that the practice will not have a noticeable impact to the traffic pattern adjacent to the subject site and even less to the extended area.

Ms. Winter also states under "Dedication Requirements," that size and slope specifications need to be provided for all cross-culverts that outfall along the site's frontage to Multnomah County. There is one culvert for the S. Fork Beaver Creek under SE Division Drive, which to my knowledge, belongs to Multnomah County. Therefore Multnomah County should already have specifications for the culvert that they installed.

Conclusion: We believe the presence of a "country" family doctor will be a benefit to the community as it is not currently served by a rural-based doctor. The rural character of the subject property will be maintained so as to provide a tranquil setting for treating and providing care to people with varying needs. Additionally, the rural character of the property and region will benefit the natural health image of the business. Outside the

medical practice, we plan to conduct some farm-related activities such as raising horses, planting Christmas trees, and/or harvesting blueberries. Farm-related activities on the subject property have disappeared in recent years, but we plan to enhance the property because it will, in part have a benefit to the medical practice. Having a medical practice that fits seamlessly with the rural East County area is important to us, and an important reason for requesting a permit to conduct a medical practice at this location.

Additional information from the January 27, 2004 letter:
The area is defined as the rural, unincorporated Multnomah County primarily, and unincorporated north Clackamas County. The two "medical" professional businesses I cite on Page 7 of my December 30,2003, narrative presumably have business hours and patient loads at similar or higher volumes compared to what I am proposing. These two businesses are:

Carol Landesman, PhD
8347 SE Orient Drive
Gresham, OR 97080
Approximately 2.7 miles southeast of the subject site

Bobi Culter
Pediatric Therapy Service
Physical Therapy
7927 SE Orient Drive
Gresham, OR 97080
Approximately 2.6 miles southeast of the subject site

I conducted a medial professional/clinic search on Beechstreet.com, which is a referral service for a wide variety of medical plans that do business in Oregon and Washington. I conducted a search of all doctors/clinics within 20 miles of the subject site. The search results indicated that there were 886 listings at 248 locations. All these doctors/clinics were located well inside the city limits of Gresham and Portland. None were located to the east or south of the subject site. This supports my contention that the rural area (unincorporated Multnomah and north Clackamas Counties) is not served by a local, primary care physician.

Medical doctors (MDs and DOS) and chiropractors rely on high volume practices for success. These providers also rely on a patient base that is covered by insurance plans. These medical groups typically have multiple medical professionals, they "stack" or double-book patients, and a single doctor might see approximately 45 to 55 patients per day. By contrast, my practice averages approximately 6 patients per day, which is normal volume for a Naturopathic medical practice.

Therefore, we believe this issue should no longer be considered incomplete.

Staff:

Area: To determine if a use is consistent with an area, two things must occur. First, the area must be defined. Second, the use that is proposed needs to be analyzed and compared to the uses located in the defined area as well as its character.

The burden of proof is on the applicant when describing the area and uses the proposal is similar to and consistent with. The applicant did not define what the "area" is that the proposed use is to be compared to for consistency or in character. The applicant did mention "rural East County." However, this area is not officially recognized as a defined region. Generally, East County includes the rural east county area from the city boundaries of the City Gresham and Troutdale all the way east to the Hood River County line. That area consists of roughly one half of the entire Multnomah County land area. Additionally, one half to two thirds of the rural East County area is made up of the Mount Hood National Forest. With such a large area and no definition by the applicant, Staff cannot determine what the "area" is to include.

Uses: Staff is unsure of what a "Country Doctor" is or how it is different from an "Urban Doctor." It would seem that a doctor of any kind is a general practitioner without regard to the location of the patients. ~~The applicant did not explain the difference nor how their business is geared to primarily serve the rural population.~~

The applicant listed three uses they have determined to be similar uses. However, no locational information was given so staff could verify whether or not the uses were in rural Multnomah County or in an urban area. Without knowing the location, staff cannot make a determination as to if the uses are in the "area," the legal status of the mentioned uses, nor the intensity at which they operate. In order for a comparison to be made, the uses must be legally established – Staff cannot approve an application based on consistency with unlawful or unpermitted uses.

Character: Rural Multnomah County is characterized by farms, forest lands, and residential properties. This is also true for the eastern portion of the County. Generally speaking, commercial uses are found only in local communities that have been established for some time. Examples would include Springdale, Orient, and Corbett. The character of an established community differs greatly from a community made up of farm properties or residential properties. The subject lot is located in an area of Rural Residential zoned property to the north and south of SE Division Road and Exclusive Farm Use zoned property east of SE Troutdale Road. The properties within a half mile of the subject lot that are in rural unincorporated Multnomah County are made up of residential lots and homes or nurseries and farms. The subject property borders the Urban Growth Boundary (UGB) and the City of Gresham on the western property line. However, lands within the UGB are not used when comparing a use to the character of the area.

~~A Medical practice, whether naturopathic or otherwise, is not generally consistent with a residential neighborhood or a farming community. Having the area undefined as the applicant has left it makes the matter even more complicated and impossible to make a determination of consistency with. However, even with a definition of a large "area", the~~

~~local area make up would not change. Rural residential properties and farm properties are not consistent with a doctors' office. It is also not clear what impact a staggered schedule would have on the area, especially considering having multiple doctors. The applicant mentioned two doctors and one administrative staff in their narrative but elsewhere mentioned employing up to four. So the County is not sure as to what capacity the fourth person would work. Are they another doctor?~~

Addendum Regarding Additional January 27, 2004 Narrative:
In the additional information, the applicant does define what the "area" is. That area has been defined as rural Multnomah County primarily and also unincorporated Clackamas County. Staff believes this area to be too broad for the purposes of this application. The guiding principals of the West of Sandy River Rural Area Plan discuss the need to business to be focused on the needs to the local rural residents (Policy 15 and Strategy 15.2). Such an area would not, and could not, include North Clackamas County. That area is served by its own rural communities such as Sandy, Boring, Estacada and the urbanized area of Happy Valley, etc. A rural business should be locally oriented to serve the immediate local area, which must be appropriately defined. While there is ambiguity as to what the "area" may encompass, it must still be an "area" that the local residents would actually do their business in, not one where residents from outside communities would commute to.

The applicant listed two businesses that are of a similar nature in which to show consistency with the area. The pediatric business located at 7927 was approved under a conditional use in 2000. No records are on file for a business at 8347 SE Orient Drive. Therefore, it may not be a lawfully established business and may not be utilized to compare character to.

Hearings Officer: This approval criterion serves to assure that the use does not alter the character of the area immediately around the subject property. It is not intended to match the service area of the doctor's practice. Both staff and much of the applicant's findings focus on a far broader area. Those findings, including the findings about other medical practices, are not responsive to this approval criterion and are not accepted as findings of the hearings officer. The staff findings, above, relate to other approval criteria so have been retained (the criteria that require the business to primarily serve the rural local area).

The applicant's findings and the record do provide a general picture of the surrounding rural area. It contains a mix of forest, agricultural and rural residential properties. It is located on busy streets and adjoins an urban area. The appearance of the subject property will not change materially if this use is approved. The structures used to conduct the "home occupation" are consistent with rural residential development – the use allowed by the applicable zoning ordinance. The level of traffic should be relatively low if the applicant continues to practice medicine as claimed in the application materials. While doctors' offices have been disappearing from rural areas, they have historically been a part of the rural landscape. While a high-volume doctor's office in a modern building would not fit into the area around this property, the small and low-volume practice proposed by the applicant would be a reasonable fit. The hearings officer, therefore, finds that the use proposed is consistent with the character of the area.

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

Applicant: As stated above, there are no storage of hazardous materials, discharge of wastewater, or air emissions associated with the medical practice. The practice will be completely contained within an existing building constructed around 1988. There will not be a need to change, expand, or build new on-site roads. The parking area has been concrete paved for the past 20 years. The closest creek drainage is approximately 450 feet from the subject building. The Beaver Creek drainage is approximately 525 feet northeast of the subject site. The nearest forested land is approximately 120 feet south of the subject building. The proposed use will not create any significant change in land use of the subject property.

Staff: No new development or ground disturbance will take place with the proposed use. The office will use an existing accessory building and parking area. Traffic will increase on site but will not require the widening of any portion of the accessway as the applicant has not proposed any and Multnomah County Transportation is agreeable to the existing access. Beaver Creek runs along the eastern boundary of the property but will not be impacted by the proposed use as the structure to be used is in the middle of the property and well over 200-feet away. The applicant has stated:

> *"The medical practice has no noise or air/water pollution producing equipment or operations. There will be no storage of hazardous materials associated with the medical practice. There will be typical disinfectants used for interior cleaning."*

A site visit to the property on January 30, 2004 revealed an outflow pipe that dumps into Beaver Creek. It appears the source of the runoff is from the concrete driveway from the house to the accessory structure in the middle of the property. Based on County air photos from 1974 and 1986, it appears the driveway was constructed just after 1986, when building permits were taken out for the accessory structure in the middle of the property. While it is a concern that the outflow contains chemicals, oil and other harmful elements attributed to surface runoff, such an outflow would not have been regulated in the late 1980's. The County's Grading and Erosion Control permit and Hillside Development Permit, which have drainage requirements in them, were not required until the early 1990's. Therefore, the outflow appears to be non-conforming.

With no hazardous materials or medicines used in the proposed use and no outside storage, it does not appear natural resources will be adversely affected by the proposed use.

C. **(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.

Applicant: As stated in the conclusion of Item 1, farm-related activities will likely be re-introduced to the subject property; therefore, we believe the medical practice will not conflict with farm/forest uses but actually have a positive effect on the rural character of the area and the use of the site itself.

Farm-Related Traffic: As can be seen from the previous two sections, the traffic associated with the medical practice will be limited relative to the traffic present on SE Division Drive and Troutdale Road. Ingress and egress to/from the subject property can safely be performed. The nearby 4-way stop at SE Division Drive and Troutdale road already requires the slow down of through traffic. In relation to the movement of farm equipment on public roads, access to the property on southbound SE Division Drive does not have farm equipment traffic. Access from Troutdale Road has very limited farm equipment traffic due to the lack of fields adjacent to the road. The proposed use will not require the use of any private farm roads. The access will be from major arterials, such as Division Street, Troutdale Road, and 282nd Avenue.

Spraying: To the best of our knowledge, there is no agricultural pesticide/fertilizer spraying any closer than 825 feet from the subject building. The land to the south and north has historically been an un-cultivated forested tract and will not likely be logged. However, I understand that spraying does occur in rural lands.

Fire Protection: To the best of our knowledge, there are no recorded easements across the property for forest fire protection. However, we would not hinder access should fire protection services be needed for the forested area to the south. It should be noted that there are no existing fire roads through that area.

The City of Gresham Fire Department has determined that access would be considered adequate to the proposed medical practice provided a fire protection system is installed (i.e., fire suppression sprinkler system). The interior improvements planned for the building will include a fire suppression sprinkler system. See Gresham Fire Department certification form, attached.

Staff: The subject site is located within an area zoned Rural Residential. According to the County Air Photo (Exhibit A) and confirmed during a staff site visit, the properties to the north are occupied by single-family dwellings. The property to the south is heavily forested but still zoned Rural Residential. It is open space associated with a Planned Development that takes access off of Powell Valley Road. The triangular property across SE Troutdale Road is zoned Exclusive Farm Use and forested. The lot to the south of the triangular lot across Troutdale Road contains a dwelling. With no hazardous materials being used in the proposed use and the surrounding properties being used for single family dwellings, there are no foreseeable conflicts with farm or forest uses.

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

Applicant: The subject building is described in Item 1 on Page 5. All required services are currently provided to the property and building. Since these services have been in use for the past 20 years to a similar load as that proposed, we do not anticipate any conflicts

with existing services. The certification forms provided by the Lusted Water District, City of Gresham Fire Prevention, and the City of Portland Bureau of Buildings, Environmental Soils Section are attached stating that the proposed use does not require public services other than those that are existing (Appendix B).

Staff: The subject site already has fire service (Exhibit L), is connected to the Lusted Water District (Exhibit M), and has an existing septic system (Exhibit D). No public services need to be provided to the property for the existing dwelling or proposed medical clinic to function.

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

Applicant: According to Multnomah County Planning counter staff in a conversation prior to December 23, 2003, the subject site is not located within a big game winter habitat area as defined by ODFW.

Staff: The subject site is not identified on Multnomah County maps as being located in a big game winter habitat area as defined by the Oregon Department of Fish and Wildlife.

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

Applicant: As indicated in the previous sections, we do not anticipate the creation of safety hazards because of the proposed use. Access to the detached garage is via a concrete driveway located on the subject property. There is sufficient width for vehicles to travel and pass on the driveway. The driveway is in excellent condition. Moreover, the expected patient use of the driveway will average only six cars per day. Patient appointments are not stacked or double-booked. This practice will reduce potential congestion on the driveway. The slopes are negotiable by a truck pulling a horse trailer. The driveway curves have wide radius turns. Business will not be conducted when the roads are icy. There will be no impacts to the subject property soil or slope stability. The current access road and concrete parking area have been present for at least 20 years. Additionally, we will not be developing an addition or new building for the proposed use.

There will be no storage of hazardous materials or generation of hazardous waste associated with the medical practice. There will be no discharge of hazardous wastewater to the site or surrounding properties. The building is already connected to a septic system. There will be no disposal of chemicals to on-site drains other than typical household cleaning products. There will be no air emissions.

Additional information from January 27, 2004 letter (Staff note the page references were taken off of the applicant's narrative):

Storage of medicines, disinfectants, etc. (Page 7 of narrative)
As stated on Page 7 of the narrative, there is no storage of hazardous materials associated with the medical practice. Medicine is not a hazardous material and it is not disposed. Only "natural" supplements are kept on-site for patients. I have typical housekeeping

disinfectants for cleaning surfaces. Since the property is connected to a septic system, only "septic" friendly cleansers will be used. I do not typically perform body cavity exams that would require a higher level of disinfectant usage. Mr. Reid spoke with the water quality and air quality duty officers at Oregon Department of Environmental Quality (DEQ) about our business and the proposed use. Neither duty officer raised any concern about a Naturopathic medical practice being a potential threat to the environment.

Traffic Patterns (Pages 7 and 8 of narrative)
Ms. Allison Winter, the Transportation Planning Specialist, asked me to "complete an access analysis to determine what, if any, mitigation is needed as a result of this proposal. An access analysis is required to determine the impact of this proposed conditional use on the public roadway system and to identify mitigation measures needed to address those impacts.

On December 23, 2003, Mr. Don Kienholz introduced me (Randy Reid, co-applicant) to Ms. Winter after the pre-application meeting. The purpose was to clarify what she was requiring and to change the road that we were expecting to use as the access to the medical I explained office. I asked her at that time what was required for an "access analysis" and who could provide the information. I specifically asked her whether a "traffic engineer" would need to perform the analysis and what were the parameters or findings that were required for the analysis. I described to Ms. Winter that we estimate an average of 6 patients per day and the typical time interval (45-90 minutes). Ms. Winter stated that I could meet her requirements for an "access analysis" by describing what I did on Pages 7 and 8 of the narrative. She stated that I did not need to retain a traffic engineer to perform the analysis. On January 27, 2004, Ms. Winter confirmed that the information provided in the narrative was sufficient and that her office had no dissenting opinion on the access analysis.

MCC 36.6315(A)(6)Width of access road and gate use
The minimum width of the on-site access road is 12 feet. The road is concrete-paved. There is an approximately 180-foot long section of the road in front of the house that is wide enough for two cars to pass (15-20 feet wide). There is another 120-foot long section at the top of the access road from the curve to the parking lot where two cars may pass (15-20 feet wide).

I agree that waiting for the front gate to open would be inconvenient. Therefore, on Page 8 of the narrative, I stated that, "the gate located at the main entrance will be left open during business hours. There will be no stacking of vehicles behind the gate or in the road right-of-way." It is counter-productive to the convenience of my patients to have them wait at the gate. The gate is electronically controlled (like a garage door opener). I have the ability to lock the gate been during business hours. Randy Reid also explained this to Ms. Winter on December 23, 2003 and again on January 26, 2004. Since the gate will be left open during all times the business is in operation, Ms. Winter's suggestion that relocating or removing the gate will not be necessary. This was the only on-site and off-site mitigation measure that Ms. Winter suggested might be necessary in her December 22, 2003 memorandum, and presumably was the reason for requesting an "access analysis." It was during our conversation on December 23, 2003, that I explained how

the gate will be operated, and she subsequently indicated the only information I needed to provide for the access analysis is what was included on Pages 7 and 8 of the narrative. On January 27, 2004, Mr. Reid spoke again with Ms. Winter and confirmed that the operation of the gate described above satisfied Transportation's concern.

Staff: For this criterion, "Hazardous Conditions" means a number of varied issues as outlined below:

Access: The subject site is located on the corner of SE Division Road and SE Troutdale Road. This intersection has been identified by Multnomah County Transportation staff as being problematic due to site distances, slopes and road configuration. The subject site has two access points onto the property. The first access point is using an access road to the north of the subject lot that also accesses three other dwellings. This accessway poses significant problems with the safe and controlled flow of traffic. The angle customers would need to turn onto the property from SE Division Road heading east is severely tight. Sight distance, as well as stopping distance, would be of concern. In addition, the accessway is not wide enough to accommodate ingress and egress traffic at the same time. The applicant has stated previously that this access is no longer to be included in the application as an option to get to the medical office building in the middle of the property, rather, the second, gated access will be used. Staff concurs that this is the best option. With the applicants' response in mind as well as the potential hazards associated with increased traffic, a Condition of Approval will require the applicant to chain off or gate and lock the access to the property and medical office as shown in Exhibit N – Access Control. The lower gated access shall be kept open during business hours and used by all customers.

The steep slope of the chosen accessway is still of concern as identified during a staff site visit on January 30, 2004. The driveway is concrete and roughly 12-feet wide. The steep slope of the driveway is roughly 27%. The driveway to the proposed office curves just south of the house eastwardly and up the steep incline over a distance of 300-feet. The curve is directly adjacent to a steep decline into Beaver Creek that could pose a safety hazard. See staff photos (Exhibit K) to see the relation of the incline, curve, and embankment to the creek. No safety measures are present to prevent a vehicle from going down the embankment and into the creek. Since this issue was not addressed by the applicant, should the Hearings Officer approve the proposal, staff recommends that this safety concern be addressed and that some form of guardrail or some other safety device be installed. Multnomah County Transportation staff noted that if a similar situation existed in the County right-of-way, the ASHTO Roadside Design Guide would be used for determining what kind of safety barrier would be places on the site. A similar guide could be used for the subject lot. Staff believes there is a hazardous condition present at the curve but does not know the extent of it based on the available information.

Hearings Officer: The applicant suggests that the actual grade of the driveway is 20% and that the staff estimate of grade is in error. The hearings officer finds that while the staff estimate of grade is not precisely accurate, it gives a reasonably accurate indication of the grade of the steepest parts of the driveway. The staff determined the rise in elevation for the steep part of the driveway and divided the rise by the approximate

length of the steep section of the driveway. This calculation was made based on topographic maps and the applicant's site plan.

The applicant relies on the opinion of a private planner, Jerry Mitchell, to establish that the grade of the driveway is 20% and that such a grade is reasonable for the use proposed. This estimate appears to be based on Mr. Mitchell's visit to the subject property. The hearings officer is not persuaded that Mr. Mitchell's estimate is reliable. The opinion letter from Mr. Mitchell does not explain how the grade was calculated or why the estimate of Mr. Kienholz is not accurate. As Mr. Kienholz's estimate is backed up by topographic maps overlaid on an aerial photograph and distances calculated based on site plan information, the hearings officer finds the Kienholz estimate more reliable. Nonetheless, in either case (20% or 26+%), the grade of the hillside is too steep for safe two-way travel in the winter.

Mr. Mitchell points to the fact that developments in the Portland area have streets with grades of approximately 20% or more. Mr. Mitchell says that these streets are "apparently" working well. This is not much of a rousing testimonial to the safety of these streets. Additionally, streets and a narrow, single-lane private driveway with a few places that allow passing are not comparable. New streets are sized for two-way traffic. Public streets typically have curbs. This evidence does not persuade the hearings officer that the increased, two-way use of the driveway will not present a hazardous condition for patients, employees and seminar guests who will come to the property in winter.

Emergency Services: The Gresham Fire Department has indicated that there is a concern about the availability of water for fire suppression (Exhibit L). Mike Kelly of the Gresham Fire Department has required that an approved water source for not less than 30 minutes of water flow be provided. As such, a Condition of Approval will require the applicant to provide plans of the water source, approved by the Gresham Fire Department, prior to the issuance of building permits. Additionally, the fire department will need to explicitly approve the selected accessway to the medical facility. The Fire district review form did not indicate which accessway the fire department reviewed for adequate access and with two accessways currently available and one to be gated and locked, the accessway that is now proposed for the use must be explicitly approved.

Materials Associated with the use: The applicant has stated that no hazardous materials shall be used in running the medical facility. This shall include medical waste, medicinal waste, as well as any other unmentioned hazardous materials. Staff believes that hazardous materials will not be used for the naturopathic business.

Criterion not met.

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

Staff: The applicable Comprehensive Plan Policies are addressed under Finding #12

H. **(8) The use is limited in type and scale to primarily serve the needs of the rural area.**

Applicant: During my (Dr. Reid) experience as a naturopathic physician in family practice, I have served the local community in which I have been located. Therefore, once the practice moves to a rural setting, I will be serving the rural community of East Multnomah County. Patients prefer a local doctor that is readily accessible. For instance, mothers of sick children want a doctor who is close at hand. As a family doctor, I care for people with illnesses, injuries, and health maintenance issues. My function as a doctor does not change with location; however, I will be serving the local rural community in which the practice is located. I currently practice in Troutdale, which is only 3.5 miles from the subject site, and as such I already have a significant patient base from rural East Multnomah County. Moreover, my marketing efforts will continue to be based on referrals and free informational seminars. Seminars are normally conducted in the homes, schools, or businesses of patients. For the past 6 years, these two methods are the only form of "advertising" I have used. Therefore, the nature of the outreach to existing and potential patients has been and is primarily directed to the local community. In this case, the local community I will serve will be the rural area outside the urban growth boundary. I will accomplish this by conducting free informational seminars in the homes of patients that reside in the rural area.

The type of practice that I have operated the past 6 years has been a comfortable, non-institutional environment that is rare in conventional medical offices. My practice is an appointment-only practice. I spend from 45 to 90 minutes with each patient. I do not schedule overlapping appointments or "stack" patients in exam rooms. I believe this type and scale of the naturopathic family practice works in the rural setting where a traditional medical group office does not.

I believe that rural East Multnomah County is not served by a local family doctor and that rural residents are forced to go to city centers for care. Based on six years of business experience, I believe that the model described above will work well at the 27530 SE Division Drive property. Though a family doctor is not uniquely rural (like a feed store), a family doctor in a rural location serves the needs of rural patients that an urban medical group does not.

[This portion of the narrative taken from their response to MCC 36.6315(A)(7)]

The *Multnomah County West of Sandy River Transportation and Land Use Plan*, adopted December 12, 2002, page 42, lists various strategies for achieving the policy, such as:

- "Residences, agriculture and forestry operations as primary uses. Wholesale and retail sales, community facilities, cottage industries, and extractive industries or tourist uses as conditional uses."

The proposed home-based medical practice is arguably less intensive and intrusive than each of the conditional uses listed in the paragraph, both in terms of impact to the property, traffic, and impact to neighboring properties. Specific Policy 15 strategies 15.1 and 15.2 are addressed below:

15.1 It is recognized that the location of the proposed medical practice is within an agricultural region. I recognize the right of nearby farm managers to farm their land as they see fit, provided it is within applicable codes. The proposed Home Occupation for a "country" doctor's office on the subject site will not impact on-site or off-site farming activities. Since the medical practice will utilize an existing detached garage, driveway, and parking area for the operation of the business, farming activities, historic or existing, will not be displaced by the operation of the business.

15.2 This strategy articulates a desire to limit non-agricultural businesses in scale and type to serve the needs of the local rural area through the zoning ordinance. As has been stated elsewhere in this permit application, my practice serves the community in which it is located. If the practice is in a rural area, it will naturally draw a clientele from the rural area. Moreover, it is my desire to serve a community that is not served by a country doctor currently. Additional discussion on this topic is provided under criteria 8 of this section. The zoning ordinance for Rural Residential allows a non-agricultural business like I am proposing through the Type B Home Occupation Conditional Permit.

Strategies within Policy 15 do not preclude the proposed Home Occupation from occurring on Rural Residential-zoned land. In fact, the Home Occupation permit that I am requesting can be approved under the provisions of the conditional use permit process.

Applicant Information Submitted January 27, 2004

According to my patient database, the majority of my business comes from the Gresham/Troutdale area. Of these active files approximately 60% come from the unincorporated rural areas surrounding the Gresham, Troutdale, Corbett, Sandy, Kelso, Boring, Orient, Redland, and Estacada communities.

Currently, I give one seminar a month on various topics at my office. This practice will continue when my practice moves. These informational seminars have always attracted the local area residents. Advertising for these seminars is placed at the local chamber of commerce, local churches, schools, and sometimes the local paper. Currently all of my upcoming seminars are located in the rural area (also see attached flyer):

March 3: Seminar on children's health at a residence on Troutdale road about ¾ miles north of site.

April 7: Seminar on depression/anxiety at a residence in Corbett.

May 5: Seminar on women s health at a residence in Sandy.

Once my practice moves to a more rural area, the focus of my practice will change. By this I mean that I will more heavily target rural residents in my advertising. Once the practice moves to the subject site, I will have a second "satellite" office in Fairview to see

my "urban" patients as needed. I have a similar arrangement for a group of patients located in Eugene and Lane County where I travel to Eugene once per month.

Therefore, we believe this issue should no longer be considered incomplete.

Staff: The applicant is currently operating the business in an urban setting. The existing business is located in Troutdale ~~and primarily serves an urban clientele~~. The applicants are proposing to move the existing business to the subject site.

This criterion focuses on two important aspects about establishing a Home Occupation business in the rural area. Staff will address each separately below. Part of the purpose of this standard is to protect the rural area. The West of Sandy River Rural Area Plan adopted policies that help shape this criterion.

Policy 15 of that plan focuses on the Rural Residential zoning district and states: "Protect farmland from encroachment by residential and other non-farm uses that locate in the RR zone." Strategy 15.2 of the policy is what shaped this zoning standard and calls for any non-agricultural business to be limited... limited in scale and type to serve the needs of the local rural area. Across Troutdale Road is a large swath of Exclusive Farm Use zoned land. So the policy is meant to protect those properties, even if some of those lots are small.

When the plan was adopted, the County identified the Orient and Pleasant Home communities as areas where more intense uses such as commercial and industrial uses should locate. Policy 21 makes it clear that the purpose of the new zones in those communities is to 'maintain the rural character of the communities, to support the agricultural economy of the area, and to ensure that new non-agricultural businesses primarily support the needs of residents and tourism."

1. **Use Limited in Type to Primarily Serve Needs of the Rural Area**

   Staff recognizes the need for doctors to serve the rural population, and this need could very well encompass customary medical practices as well as alternative forms such as naturopathic medicines, acupuncture, chiropractors, etc.

   It is important to understand that this criterion does not contain a standard that the use must ***exclusively*** serve the needs of the rural area. Rather, it must ***primarily*** serve those needs. As such, a business may have a portion of the customer base from an urban or suburban area, but the majority needs to be in the local rural area. Businesses such as tractor sales, feed lots, country stores etc. certainly provide goods and services to the rural areas, but it is also known that they do serve a small portion of urban residents as well. The same may be said for a doctor, or naturopathic doctor, as is the case of this application. However, staff does not believe the applicant has established the business would primarily serve the needs of the rural area.

   The applicant has an existing business located in Troutdale, a suburban community within the Urban Growth Boundary. The applicant has stated that

according to their patient base, the majority of business comes from the Gresham/Troutdale area. The applicant goes on to state that within the active files, approximately 60% of clients come from "the unincorporated rural areas surrounding Gresham, Troutdale, Corbett, Sandy, Kelso, Boring, Orient, Redland, and Estacada Communities." This is a far-reaching area that includes some areas of unincorporated Multnomah County. Corbett and Orient are included in unincorporated Multnomah County and are appropriate to consider as the rural area whose needs will be served.

Sandy is an incorporated city inside an Urban Growth Boundary in Clackamas County. Kelso is an incorporated city about 30-40 miles north of Portland in Washington State. Estacada is an established community deep within Clackamas County. Boring is a "Rural Community" as shown on the Clackamas County Map (Exhibit O) and allows more intense uses than typically allowed outside of a UGB. Redland, Oregon is also located deep inside Clackamas County. Due to the sheer distances of Sandy, Kelso, Estacada, Boring, and Redland, and the fact they are located deep within Clackamas County or Washington State, they are not appropriate to include in the area the proposed business would primarily serve when considering this criterion. This is partly due to distance, but also due to the fact that each location is located closer to an urban area that would have similar uses to serve those communities.

Of the 60% of customers the applicant states come "from the unincorporated rural areas surrounding the Gresham, Troutdale, Corbett, Sandy, Kelso, Boring, Orient, Redland, and Estacada communities," it is unclear how many actually come from unincorporated Multnomah County or the "local" rural community, the area the code directs the business to serve. Without knowing that data, staff cannot determine if the use is primarily serving the needs of the rural area of Multnomah County. With just the information provided, it would seem reasonable that at a maximum, perhaps only 20% of the active files come from Orient, Corbett or those areas directly outside of Troutdale and Gresham. If 60% of clients come from "from the unincorporated rural areas surrounding the Gresham, Troutdale, Corbett, Sandy, Kelso, Boring, Orient, Redland, and Estacada communities," then it makes sense that 40% of the clients come from urban or suburban areas. Of the 60% that come from the listed local communities, it is reasonable to believe that over 50% of them come from Sandy, Boring, Redland, and Estacada. That would leave, generously, 30% of the total customer base coming from actual unincorporated Multnomah County. As such, 30% does not meet the threshold of "to primarily serve the needs of the rural area." Staff should point out that all these numbers are estimates and may not accurately reflect what is in the applicant's client database.

The applicant also stated that the marketing efforts will continue to be based on referrals and free information seminars. A list of upcoming seminars was listed in the response letter dated January 27, 2004 and as a separate attachment (Exhibit P). If 70% of clients come from areas outside of unincorporated Multnomah County, then the majority of referrals and business growth will come from those same areas. The attached seminar schedule does list a few sites that are located in

rural Multnomah County and would help build a rural base of clients. But it seems unlikely that the rural base would be built up enough to qualify the business as being limited in type to primarily serve the needs of the rural area.

The applicant states in their January 27 response that they "will have a second "satellite" office in Fairview to see my "urban" patients as needed." Such a satellite office could help reduce the primary focus of the home occupation on the urban and suburban areas, provided there were assurances that urban patients would be directed to the satellite office and only rural patients would be served at the subject site. However, the satellite office seems to be a last second throw in and is not consistent at all with the original narrative. It would seem unrealistic to operate two offices for a part time business. If an office was to be located in Fairview, it would seem logical that the office could and should handle the entire client load.

Staff does not believe the applicant has established that there is an aspect of the proposed business that is particularly targeted to rural lifestyles or the rural area. The location of the business makes it difficult to make a finding the business is in fact targeted to serve the rural area because it is immediately adjacent to and bordering the Urban Growth Boundary and all the subdivisions immediately within that boundary. Division Drive is an arterial that leads into the heart of Gresham and would act as a direct feed for urban patients. The same is true of SE Troutdale Road and its direct access to Troutdale and Gresham. Both roads make the site readily accessible to the urban market and not enough to the rural market. Common sense would indicate that those customers closest to a business would be the main patrons, which in this case would be the subdivisions directly on the other side of the Urban Growth Boundary. This standard requires the service of a proposed use to be primarily directed to the rural area. The applicant has not shown how this will be achieved.

Standard not met.

Hearings Officer: The fact that the applicant has selected a rural property that immediately adjoins an urban area indicates an intention to serve urban, as well as rural populations. The use proposed draws rural patients from a wide-ranging area. These rural patients will not receive service in their own local rural communities. Instead, they will drive long distances to visit this doctor's office. This is contrary to the intent of MCC 36.665(B) to reduce the distance of vehicle trips by allowing home occupation uses that serve the local rural community.

The applicant's attorney argues that Dr. Reid will use a targeting marketing plan to draw customers from the local rural community. This effort, if undertaken, might help to fill vacant slots in Dr. Reid's schedule. Mr. Reid's testimony, however, indicates that Dr. Reid's practice is well-established and is "built on referrals." The general impression was that there are not many slots, if any, for new patients as Dr. Reid has been so successful, limits her hours of work and spends 45 minutes to one hour per patient. Dr. Reid's current clients live in far-flung locations. This will not change when she moves her practice to a property

adjacent to Gresham unless Dr. Reid undertakes a plan to eliminate non-local patients from her practice. Dr. Reid has not committed to such a plan. As a result, the hearings officer finds that it is unlikely that the use of the marketing plan will change the fact that most of Dr. Reid's patients will not come from the local rural community.

2. **Use Limited in Scale to Primarily Serve Needs of the Rural Area**

Staff: The applicants have provided the following information on the proposed scale of their business:

> Beginning: One naturopath, one patient per hour, eight hours a day, three days a week. That equals a weekly business of: 24 clients per week, and using an average of 4.2 weeks per month, an average monthly business of 100.8 clients.
>
> Peak: Two naturopaths, one patient per naturopath per hour, eight hours a day, four days a week. That equals a peak business of 64 clients a week, and 268.8 clients per month.
>
> * This does not take into account the fourth employee that has been mentioned by the applicant. There is no information on what the fourth employee would do.

Hearings Officer: The applicant submitted information to show that there may be a significant demand for naturopathic medicine in the nearby rural area. The scale of the practice is not necessarily too great to serve the needs of the rural area. Dr. Reid's hours and patient scheduling practices will keep the intensity of the use modest enough to be said to be of a scale that will primarily serve the needs of the rural area. Somewhat paradoxically, the small scale of Dr. Reid's practice will likely keep her from being able to serve local rural area as the business will continue to serve established clients who live outside the local rural area.

11. **The Home Occupation Standards Are Not Met**

A. **MCC 36.6655 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.

Applicant: The country doctor medical practice proposed will be a "home-based business" that is "small scale" (less than 5 employees) utilizing an existing detached garage near the middle of the subject site. We do not anticipate having more than ***four employees (including the applicant)*** [Emphasis added by staff] involved in the business, and it is probable that three of the employees will have staggered schedules. My aim is to have a business that serves and fits in with the rural character of the site and rural community. The rural image is a key element to how the practice will present itself. I want the exterior and interior of the office to reflect a warm, non-stressful atmosphere for patients. I believe my business will protect the individual characteristics of unincorporated Multnomah County and maintain the quality of life for its residents because the business is small-scale, will use an existing building that is architecturally well-designed, and will serve local residents.

With respect to reducing vehicle miles traveled, Dr. Reid will no longer have a commute. While serving the local population of rural East Multnomah County, Dr. Reid's clients will no longer have to travel from the rural areas to city centers for their health and medical needs.

In the pre-application notes provided by Don Kienholz, a question was raised whether a Type B Home Occupation permit could only be approved for the actual residence. In MCC 36.0005(H)(8)(b), the following phrase is used, "where the residents use their *home site* as a place of work but exceeds the standards of the Type A home occupation." The language specifically uses "home site" rather than dwelling, which is defined in MCC 36.0005. A *home site* does include the property where the home is located, not just the footprint of the dwelling structure. Please note that the MCC does not preclude Multnomah County from approving a Type B Home Occupation permit in a detached garage (that is essential to the dwelling) or an accessory building.

The pre-application meeting notes indicated "by definition, a Home Occupation is located in the home, or residence." The Type B Home Occupation definition does not use the word residence (or dwelling). The definition uses the phrase "home site," which is different than the Type A Home Occupation definition that references the word, "home." Therefore, the MCC does allow for the approval of the Type B Home Occupation permit.

Staff: The definition of a Type B Home Occupation under MCC 36.0015(H)(8) is: *"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 36.6300 and 36.6650."*

While the term "home site" does not restrict the business to being wholly within the residence, the phrase "Home Based Business" and "Home Occupation" envision a relationship between the residence and business that does not appear to exist in this application. The proposed medical use is an entirely separate use conducted in a completely separate building that is far removed from the residence. ~~Furthermore, "Home Occupation" and "Home Based Business" suggest that the business~~

~~activity is ancillary to a residential use, which is not evident in the subject circumstances~~.

Hearings Officer: The quoted purpose statement provides general direction about the overall purpose of the applicable home occupation approval criteria but is not an approval criterion. The hearings officer, therefore, has not relied on the language of the purpose statement as a basis of denial of this application.

The code section cited by staff, MCC 36.0015(H)(8), however, is a mandatory approval criterion. It defines what use is allowed. A Type A home occupation is a use where "residents use their home as a place of work" with a maximum of one non-resident employee or customer on the property at any one time. The Type B home occupation "is one where the residents use their home site as a place of work but exceeds the standards for the Type A home occupation." MCC 36.0015(H)(8)(b). The applicant argues that the term "home site" is broader than the term "home" and that the home site includes one of the two detached garages located on the subject property.

The area proposed for development of a doctors' office is a very large detached garage located up above and hundreds of feet from the home – the "home site" area of the subject property. The home is located down the hill, hundreds of feet away. The doctor's office is served by a separate septic system. The proposed business location, in one of two detached garages located far from the part of the property developed with the home residence and second garage and accessory building, is not the "home site."

In reviewing the definition of a Type B home occupation, it is not absolutely clear whether the Type B home occupation "home site" language is intended to allow expansion of the existing home, construction of new structures or the use of detached structures for the "home occupation." No new buildings or modifications are permitted for Type A home occupations. The fact that this limitation is not repeated in the Type B regulations raises some question whether new buildings or expansions are allowed for Type B uses. After considering the clear label applied to the use, "home occupation," the hearings officer finds that the term "home site" is not intended to allow the conversion and use of completely separate structure, other than the home, for the conduct of the business.

The term "home occupation" indicates an intention to limit the business to one that occupies or is located inside the home. One that occupies a separate structure cannot reasonably be said to occupy the home. The County's code does, however, refer to the home site. Taken literally, this means the place where the home is located on the subject property. This is, by definition, within the home or the location where a home was formerly located. In this case, there is no evidence that the second of two garages is located on a former home site or on the home site part of the subject property. The garage is too distant from the home to be considered a part of the "home site."

A Type B home occupation is one that "exceeds the standards of a Type A home occupation" and one that shall meet the Type B regulations. This language indicates that a more intensive home occupation use is allowed but the scope of the increased use is described in the Type B approval criteria. No provision of the type B regulations says that a Type B use may be located in an accessory structure and remain a home

occupation. It seems logical that if the County intended to allow a Type B "home occupation to be located outside of the home or the site of the home, it would have specifically said this in the Type B home occupation regulations or in the definition of the use. The County would, logically, have adopted some limits on such outside of the home and home site uses. This is how the code addresses the increased number of employees, parking and other issues that are different for Type B uses and it is logical to infer that they would have done the same for the home use requirement if it was one of the requirements that the County intended to expand or liberalize for Type B uses.

B. **MCC 36.6660 Criteria for Approval.**

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

1. **(A) The approval criteria listed in MCC 36.6315.**

   Applicant: Approval criteria listed in MCC 36.6315. See Section 5 above for a detailed explanation of how we satisfy the approval criteria.

   Staff: The approval criteria of MCC 36.6315 are addressed under Finding #10.

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

   Applicant: The Home Occupation will not employ more than 5 employees.

   Staff: The applicant has stated throughout their application that the proposed business would employ at most two naturopathic doctors and one administrative staff and one additional employee.

3. **(C) The site has on-site parking as required in MCC 36.4100 to accommodate the total number of employees and customers.**

   Applicant: As required by MCC 36.4100, the site has on-site parking to accommodate up to three employees and three customers; however, there likely will not be more than four vehicles at the building at any one time. The parking spaces will be provided on an existing concrete parking surface and will meet the dimensional standards of MCC 36.4175 and MCC 36.4180. It should be noted that the doctors will be working staggered schedules as much as possible and patients are not stacked or double-booked.

   Staff: As shown on the submitted site plan (Exhibit C) and discussed in the narrative, the property contains enough area to accommodate the parking needs of the proposed three employees and customers on site. The applicant has indicated that no "stacking" will take place which will also reduce the need for parking on the property since customers would not be on the site concurrently waiting to be seen by the doctors. However, it is not clear how stacking will be avoided with two doctors on site. Additionally, the applicant said working staggered schedules will be done "as much as possible," which is no guarantee. Criterion not met.

Hearings Officer: This code section applies the on-site parking rules of MCC 36.4100 to Type B home occupation uses. Parking must be provided in an amount sufficient to accommodate employees and customers and the parking must comply with the requirements of Chapter 36.4100 (MCC 36.4100 – 4215). The applicant has failed to meet its burden of proving that there will be adequate parking or that the parking will comply with MCC 36.4100 rules.

The applicant is seeking approval for a four-person office – two doctors and two office staff members. The applicant has stated that Dr. Reid will park at the residence, rather than at the office. It is not clear from the evidence in the record, however, that there is adequate parking elsewhere on the property for residence-related parking – either adequate to accommodate actual traffic likely to be generated by the use or adequate to meet the standards of MCC 36.4100 et. seq., the County's parking district rules.

If there is insufficient parking for the residential use, the family will need to park in the doctor's office parking area. This will reduce the parking available for the doctors' office below the six space level needed to meet the requirements of MCC 36.4205 for a medical office.

There is a small garage near the house but it is only 320 square feet – not necessarily large enough to accommodate two vehicles, particularly is yard or vehicle-related items are also stored in the garage. It seems likely that the family will need at least two parking spaces on the property for personal use by the family. This is also the amount of parking required for a single family residence by MCC 36.4205(A)(1). MCC 36.4205(C)(3) requires six parking spaces for the 1700 square foot doctor's office use. As a result, a total of at least 8 parking spaces are required for the property. The evidence in the record is insufficient to support a finding that 8 parking spaces will be available on the property.

Additionally, the applicant proposes to use the office for promotional health seminars. This is not a medical office use. This is a meeting room use. Such uses require one space per 60 square feet of floor area in the area in the room to be used for meetings. The applicant has not attempted to demonstrate compliance with this standard or to show that the parking area on the subject property will accommodate all of the persons who will attend seminars. As the office is removed from public roadways and there are no identified alternative parking areas for guests, the hearings officer is unable to find there will be adequate parking for this proposed use.

The parking area proposed by the applicant also fails to comply with MCC 36.4170(A). That section requires that parking areas like the one proposed by the applicant that do not directly abut a public or private street must be served by an "unobstructed paved drive not less than 20 feet in width for two-way traffic, leading to a public street or approved private street." The long and steep driveway that will be used for two-way traffic access to the doctor's office parking area is not 20 feet wide for its entire length. This deficiency supports

denial under MCC 36.6315(A)(6) as its substandard width, combined with the steep slope, creates hazardous conditions, especially in winter months, for patients, persons who attend seminars and office staff.

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

   Applicant: Occasional deliveries will be from a common carrier such as UPS or FedEx between 9 am and 4 pm.

   Staff: The applicant has indicated that no deliveries shall occur outside the hours of 9AM and 4PM. The applicant may still receive deliveries between the times allowable by code if normally associated with a single-family dwelling. This can be ensured as a condition of approval.

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

   Applicant: There will be no outdoor storage or displays.

   Staff: A condition of approval can ensure no outdoor storage or display occurs.

6. **(F) No signage (including temporary signage and those exempted under MCC 36.7420) with the exception of those required under the applicable street naming and property numbering provisions in Multnomah County Code.**

   Applicant: There will be no signage with the exception of those required under the applicable street naming and property numbering provisions in the MCC.

   Staff: A condition of approval will ensure that no signage is placed on the property.

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

   Applicant: There will be no noise associated with the medical practice above 50 dba at the property lines.

   Staff: The proposed use is not one that would generally produce noise. No machinery or moving parts are a part of the application. Additionally, the structure which the applicant proposes to use is located in the center of the property.

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

   Applicant: There will be no repair or assembly of any motor vehicles or motors associated with the Home Occupation permit.

Staff: The proposal does not include any element that would incorporate the repair or assembly of any motor vehicle or motor.

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

Applicant: This application will be noticed for a review by the Small Business Section of the Department of Environmental Quality, if such an office still exists.

Staff: Staff sent a copy of the Notice of Public Hearing to an appropriate representative of DEQ on January 30, 2004. A copy can be found in the case file.

Hearings Officer: The record fails to demonstrate that the Small Business Section of DEQ has reviewed the application. Such review is required by this approval criterion.

10. **(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.**

Applicant: The hearings officer will issue an approval specific to the particular home occupation and reference the number of employees allowed, the hours of operation, frequency and type of deliveries, and the type of business. The following data about the business proposed is provided for clarity:

a. There will be up to four employees (including the applicant)
b. The hours of operation will be Monday through Friday, 9 am to 6 pm.
c. UPS and/or FedEx deliveries will be about once per week.
d. The type of business is a country doctor, Naturopathic physician in family practice

Staff: Conditions of approval have been included in this recommendation to the Hearings Officer and the Hearings Officer shall render the final County decision in matter of T3-03-010.

Hearings Officer: This section does not apply as the application has been denied.

12. **<u>The Comprehensive Plan Policies Are Met</u>**

A. **Policy 14 Development Limitations**

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

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

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

A. Slopes exceeding 20%;
B. Severe soil erosion potential;
C. Land within the l00-year flood plain;
D. A high seasonal water table within O-24 inches of the surface for 3 or more weeks of the year
E. A fragipan less than 30 inches from the surface;
F. Land subject to slumping, earth slides or movement.

This policy refers to "development" and "land form alterations" not a Type B-Home Occupation permit that requires no new development, exterior expansion, or new roads. The building and road improvements have been located at the subject site since 1986 have not been subject to caused flooding, soil erosion, slumping, earth slides or movement. According to Mr. Ron Place, the site owner, the February 1996 storm (which was a 500-year flood event) did not involve flooding of any on-site structures, soil erosion, landslides, or slumping. There is no surface evidence of such land form changes. The interior of the proposed medical office is "bone dry" and does not appear affected by the conditions stated above. On January 26, 2004, Mr. Kienholz stated during a phone conversation that is was sufficient for us to explain that no development or land form alterations were proposed for this Type B Home Occupation Permit.

Therefore, we believe this issue should no longer be considered incomplete.

Staff: The application for a naturopathic medical clinic does not contain any land alterations or new development in the form of new buildings or structures. The only modifications that would take place would be interior alterations to the accessory structure. As such, the applicant is not required to address criteria that relate to new buildings, structures or land disturbance.

Hearings Officer: The subject property contains slopes that exceed 20% in grade. It may also have some of the other conditions listed in this Plan policy. The applicant has not shown that widening of the driveways can occur in compliance with this policy. As a result, the hearings officer was unable to approve the application with a condition of

approval requiring widening of the existing access driveway to 20 feet in width, in order to assure compliance with parking district regulations.

B. **Policy 37 - Utilities**

Water and Disposal Systems

A. Shall be connected to a public sewer and water system, both of which have adequate capacity; or
B. Shall 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
C. Shall have an adequate private water system, and the Oregon Department of Environmental Quality (DEQ) will approve a subsurface sewage disposal system; or
D. Shall have an adequate private water system, and a public sewer with adequate capacity.

Drainage

E. Shall have adequate capacity in the storm water system to handle the run-off; or
F. The water run-off shall be handled on the site or adequate provisions shall be made; and
G. The run-off from the site shall not adversely affect the water quality in adjacent streams, ponds, lakes or alter the drainage on adjoining lands.

Applicant: Policy 37 primarily deals with utilities for new development, not existing land uses. While no new development is proposed, the subject site and the detached garage already has domestic water supplied by Lusted Water District, an on-site septic tank and drain field, and a stormwater retention basin. There will be no impact to stormwater runoff attributable to the proposed business.

Staff: The applicant has provided a Certification of Water Service from signed by a representative of the Lusted Water District demonstrating the site is connected to a public water system (Exhibit M). The City of Portland's sanitarian, who is the representative of the Oregon Department of Environmental Quality, has determined that the existing septic system will need upgrades in order to serve the proposed use. This shall be a condition of approval. No new impervious surfaces are proposed so the drainage characteristics of the property will not change.

Hearings Officer: In the event that site driveways were widened to meet County standards, the applicant would need to demonstrate compliance with this Plan policy. Evidence to support a finding of compliance for a driveway widening project (to meet code standards) is absent from the record.

C. **Policy 38 - Facilities**

Fire Protection

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

Applicant: Planning staff did not require certification forms from the local school district or Multnomah County Sheriff. A certification form was required for the Gresham Fire Department. The Fire Marshall has stipulated that the access is adequate provided a fire protection system (sprinklers) is installed in the proposed medical office space.

Staff: The local fire district stated on the Fire District Review Form that the applicant will need to sprinkler the building and provide a minimum 30-minute water flow on site (Exhibit L). A site plan was not returned with the fire district approval to indicate which access the district reviewed to ensure there was adequate access. ~~As such, a condition of approval will require the applicant/owner to obtain explicit approval from the district that the chosen access way is adequate.~~

Exhibits

A. County Air Photo with Contours
B. Authorization Letter from Ron Place
C. Applicant's Site Plan
D. On-Site Septic Certification Form
E. 1978 Parcel Map
F. 1979 Parcel Map
G. Copy of 1986 Building Permit
H. 1991 Property Line Adjustment
I. 1999 Denied Property Line Adjustment
J. Memo From Multnomah County Transportation
K. Staff Photos
L. Fire District Review From
M. Water District Review Form
N. Air Photo Showing Access Control Location
O. Clackamas County Map
P. Applicant's Free Seminar List
Q. Multnomah County Assessment and Taxation Property Improvement Information
R. Application Timeline
S-1 Color map prepared by Multnomah County superimposed on aerial photograph
S-2 Letter from resident of Boring, Oregon (signature not decipherable)
S-3 Letter from March Burns
S-4 Letter from Darci Martin
S-5 Letter from Debby and Gary Simone
S-6 Letter from Roseanne Hudson
S-7 Letter from Dana Northrup (spelling of last name not certain)
S-8 Letter from Robert Cruser
S-9 Letter from Michele Rosier
S-10 Letter from April Eaton
S-11 Letter from Sue Clark

S-12 Letter from Daylene Cahill
S-13 Letter from Yvonne Buchanan
S-14 Marketing Plan Update and Scale of Office Information
S-15 Letter from planner Jerry Hammond, AICP re driveway grade
S-16 Hearings Officer's Decision for T2-03-022 (property line adjustment)
T-1 March 11, 2004 letter from Dan Kienholz re property line adjustment application with enclosures (application materials)
T-2 March 12, 2004 letter from G. Frank Hammond to Don Kienholz
T-3 March 12, 2004 letter from G. Frank Hammond to Hearings Officer Liz Fancher and enclosures
T-4 March 26, 2004 final argument letter from G. Frank Hammond