



MULTNOMAH COUNTY
LAND USE PLANNING DIVISION
1600 SE 190TH Avenue Portland, OR 97233
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**BEFORE THE HEARINGS OFFICER
FOR MULTNOMAH COUNTY, OREGON
FINAL ORDER**

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

July 26, 2004

Case File: T3-04-003

Proposal: A request for approval of a Conditional Use Permit for Type B Home Occupation for a Photographic Studio in the Multiple Use Agriculture – 20 (MUA-20) Zone District.

Property Address: 17133 NW Lucy Reeder Road, Portland, Oregon

**Assessor's
Map Description:** TL 300, Sec. 6A, T2N, R1W, W.M.

Applicant: Paul Thacker
17133 NW Lucy Reeder Road, Portland, OR 97231

Owner: Paul and Lisa Thacker
17133 NW Lucy Reeder Road, Portland, OR 97231

Site Size: Subject property is 11.92 acres (7.9 acres after property line adjustment)

Zoning Designation: Multiple Use Agriculture – 20 (MUA-20) Zone District

PROCEDURAL ISSUES

1. Impartiality of the Hearings Officer

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

2. Jurisdictional Issues

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

3. Applicant's Proposal and Site Information

A. PROJECT DESCRIPTION:

Applicant: *Proposal is to locate a small scale photographic/artist studio at 17133 NW Lucy Reeder Rd., Portland, OR 97231. This property consists of an approximately 2700 sq. ft. residence, a rundown outbuilding of approximately 860 sq. ft., an approximately 1-acre dahlia flower "u-cut", and 6 acres of cultivated hay. The remaining area is planted with a wonderful variety of trees. The outbuilding to be used for the studio would need basic electricity, plumbing and septic. A 400-sq. ft. addition would be added at the time of renovation to optimize the building space. Because of the private nature of the property and the small scale of the business, area residences would not be aware of the studio's activities. A preliminary, updated business plan foresees three basic activities in the studio: 1. Commissioned portraits for private and commercial clients, 2. The administration of a photographic note card business (offset printing would be done offsite) and 3. The cultivation of private photographic projects. It is expected that the business would see no more than 2 clients daily during normal business hours 10am-4pm, and many days no clients would visit the studio.*

Staff: The applicant proposes Type B Home Occupation for a photographic studio within an existing outbuilding. The applicant proposes an addition to an existing 675-square foot out-building. In a conversation the applicant stated that the proposed addition will be less than 400 square feet. The applicant has described the proposed business in detail above.

B. SITE AND VICINITY CHARACTERISTICS:

Applicant: *Lucy Reeder Rd. is a dead end road located off of Sauvie Island Road on the western side of Sauvie Island. To the west of our property and on both sides of Lucy Reeder Rd. are small, approximately 2-10 acre, parcels consisting of single family*

residences. Further down Lucy Reeder Rd. a wheat field stretches to the north and a small corn field to the south of before coming to Sauvie Island Rd.

On the adjacent property to the north of 17133 NW Lucy Reeder Rd. is a tiny fish farming project. To the east, Lucy Reeder is bordered by farm land and a few residences before it dead ends. During certain times of the year, agricultural activities characterize Lucy Reeder in this direction with workers and equipment.

17133 NW Lucy Reeder Rd. Portland, OR 97231 is a property with three distinctive functions. One, it is a private residence with a lovely home originally built in 1984. Two, it is Sauvie Island's oldest "u-pick" dahlia flower farm. And three, there is a small hay field.

Its second owner made several modifications to the residence including adding a handsome shiny, galvanized roof. As the property's third owner, we have made our own contribution to the home and property. Through a combination of home remodeling and tending to the 8 acre property after years of neglect, the result to date is a much improved property. Water drains more effectively away from the house, trees are regularly maintenance by a professional arborist, a new 90 ft. well has been drilled and a drip, water-conserving irrigation system has been added to the dahlia garden.

Renovating the dilapidated outbuilding into a functional, tastefully designed and inconspicuous studio building will further under score our commitment to the property as a whole. Currently, the outbuilding to be remodeled is not in character with the area. Because it was part of an inappropriate and abandoned building project conducted by the previous owner, it is not functional. It needs roofing repairs and gutters. A new septic system. Updated electrical and HVAC service. Presently, it has no services except electrical to operate the well and water treatment system for the residence. Its interior is configured oddly and unusable, and its exterior is an eye sore.

Once remodeled and put to good use, however, the property will conform in every way to the character of the area and all applicable county codes. Instead of being unsightly, its exterior will neatly match that of the residence and blend in naturally with the grounds and trees. Instead, of being an abandoned project serving no purpose, it will comply with every applicable county code in operating a small environmentally responsible photographic/artist studio.

Staff: The subject property is located on Lucy Reeder Road about two-thirds of a mile east of Sauvie Island Road. The property has an existing dwelling with an attached garage and an outbuilding used for agricultural equipment storage. The residential development on the property is located about 320 feet north of the road and is surrounded by a dense growth of trees and shrubs. The County Assessment records show the property is 11.92 acres, however a property line adjustment (Case T2-02-084) has been approved which reduces the property to 7.9 acres. The property line adjustment is to merge four acres on the northern end of the property into the adjacent property to the west. This property line adjustment does not impact this decision. The subject property is currently used for both residential and agricultural uses described by the applicant and is relatively flat.

The subject property is located on the eastern edge of a nearly 75 acre area zoned Multiple Use Agricultural – 20 (MUA-20). These properties range from two to ten acre parcels and are dedicated to residential use. This MUA-20 land area is surrounded by the land that is within Exclusive Farm Use (EFU) Zone District. The EFU is predominately farmed in row crops and landscaping crops. The subject property abuts agricultural land on the east and MUA-20 land (after property line adjustment).

4. Testimony and Evidence Presented

- A.** Staff Planner, George Plummer, gave the staff report for the County. Staff reviewed the County Staff Report and pre-hearing exhibits, as listed on the attached Exhibit “A”. The hearing exhibits are also listed on Exhibit “A”, which is attached hereto and incorporated by this reference herein.
- B.** Applicant Paul Thacker, spoke in support of the application, and discussed his plans for the proposed photographic studio on the subject property.
- C.** Andrew Hansen, an adjacent property owner, presented neutral testimony.

STANDARDS, CRITERIA, ANALYSIS AND FINDINGS OF FACT

1. PROPOSED USE IS A CONDITIONAL USE IN THE MUA-20 DISTRICT:

- A. MCC 34.2830(D) Type B home occupation as provided for in MCC 34.6650 through 34.6660.**

MCC 34.0005(H)(8) Definition: Home Occupation:

- (b) Type B home occupation is one where the residents use their home site as a place of work but exceeds the standards of the type A home occupation. Type B home occupations shall be approved as per MCC 34.6300 and 34.6650.**

Staff: The proposed use, a photography studio, will be operated by the property owner, the resident of the home site. The proposed use exceeds a Type A home occupation because the studio will not be within the home. The photography studio will be in an existing 675 square foot accessory building with a proposed addition of less than 400 square feet.

Hearings Officer: This application requires review under Type B home occupation criteria.

B. Dimensional Standards

MCC 34.2855(C) Minimum Yard Dimensions - Feet

Front	Side	Street Side	Rear
30	10	30	30

Maximum Structure Height 35 feet.

Staff: The proposed use will be within an existing building which will remodeled with a 400 foot addition. The existing building and the proposed addition meet the required minimum yard setbacks. The existing structure is two stories and meets the maximum height restrictions.

Hearings Officer: This application meets the requirement of the dimensional standards of the ordinance.

C. Lot of Record

MCC 34.2870(A) In addition to the Lot of Record definition standards in MCC 34.0005, 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, MUA-20 zone applied, Ord. 148 & 149;
- (5) October 13, 1983, zone change from EFU to MUA-20 for some properties, Ord. 395;
- (6) May 16, 2002, Lot of Record section amended, Ord. 982, reenacted by Ord. 997.

MCC 34.2870(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 34.2885, may be occupied by any allowed use, review use or conditional use when in compliance with the other requirements of this district.

MCC 34.0005(L)(12) Definition: 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 district.)

Staff: The subject property meet the requirements for MCC 34.2870 as a lot of record. In property line adjustment Case T2-02-084 the property was found to be a Lot of Record. Tax Assessment maps show that the property described as Tax Lot 300 was in existence in 1962 and in the Agricultural (F-2) Zone District (Exhibit 2.5). If the property was created in 1962 or earlier there was no Land Division Review required, however, the property would have had to meet an F-2 District two acre minimum once that district was adopted in 1958. The property was 11.9 acres (prior to the property line adjustment), meeting the minimum two acre requirement when it was created, thus Tax Lot 300 is a Lot of Record. The property has since been adjusted and is now 7.9 acres.

Hearings Officer: I concur with staff that the subject property meets the requirements as a lot of record under MCC 34.2870.

2. CONDITIONAL USE APPROVAL CRITERIA

MCC 34.6315 (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. MCC 34.6315 (A)(1) Is consistent with the character of the area;

Applicant: *17133 NW Lucy Reeder Rd. Portland, OR 97231 is a dead end road located off of Sauvie Island Road on the western side of Sauvie Island. To the west of our property and on both sides of Lucy Reeder Rd. are small, approximately 2-10 acre, parcels consisting of single family residences. Further down Lucy Reeder Rd. a wheat field stretches to the north and a small corn field to the south of before coming to Sauvie Island Rd.*

On the adjacent property to the north of 17133 NW Lucy Reeder Rd. is a tiny fish farming project. To the east, Lucy Reeder is bordered by farm land and a few residences before it dead ends. During certain times of the year, agricultural activities characterize Lucy Reeder in this direction with workers and equipment.

The character of the area is a combination of both private residences with limited or no agricultural affiliation and seasonal, full time agricultural work. Our proposed project will be located at the end of a 140 yard long tree lined drive way and approximately 30 yards from the nearest (eastern) property boundary which is also visually fenced by high hedges, the studio's existence, operational and otherwise, will blend naturally into the existing private and public character of Lucy Reeder Rd. and not be seen from Lucy Reeder Rd. or adjacent properties. Proposed activities may add no more than 1-2 visitors daily.

Because of the private nature of the property and the small scale of the business, area residences would not be aware of the studio's activities. A preliminary, updated business plan foresees three basic activities in the studio: 1. Commissioned portraits for private and commercial clients, 2. The administration of a photographic note card business (offset printing would be done offsite) and 3. The cultivation of private photographic projects. It is expected that the business would see no more than 2 clients daily during normal business hours 10am-4pm, and many days no clients would visit the studio.

Staff: Lucy Reeder Road is a dead-end road with a mix of residential and agricultural uses. As the applicant states, to the west on both sides of the road are 2 to 10 acre parcel properties. These properties are in the MUA-20 district (Exhibit 2.2). Nearly all of these properties have an established residential use. These dwellings are all within a quarter mile of the proposed use. Surrounding this pocket of residential properties are larger parcels in the Exclusive Farm Use Zone District (Exhibit 2.2). These properties are cultivated for farm crops. The subject property is about two-thirds of a mile east on Lucy Reeder Road from Sauvie Island Road. Lucy Reeder Road continues on for a little less than two-thirds of a mile.

The proposed photography business will include portrait sittings predominately conducted indoors for one or two clients per day, processing of these photographs, and other photographic projects. The general nature of this type of business is low impact. Given the size of the property, distance from the road, distance from other dwellings

(closest being about 370 feet away), and the substantial amount of vegetation (trees and shrubs) surrounding the buildings, there should be no indication of any of the business activity (Exhibit 2.3). The proposed use will not result in any increase in noise or any other form of pollution leaving the site. The proposed use will result in an increase of traffic on Lucy Reeder Road of at most four vehicle trips per day, given two clients per day. This amount of traffic will be a minor increase over the existing traffic on Lucy Reeder and will not result in a notable change. The proposed use will be consistent with the character of the area due its lack of noticeable impacts. This criterion is met.

Hearings Officer: For the reasons stated by staff in its analysis, I concur that this criterion is met.

B. MCC 34.6315 (A)(2) Will not adversely affect natural resources;

Applicant: *Both as a renovated working building and as a small scale photographic studio, all operations will in no way adversely affect the water, air or land. In the future, the studio portrait work may move to a digital work flow that will not produce any hazardous chemicals or material waste. When traditional photography is used, exhausted developers and fixers will be disposed of responsibly through an agreement with Blue Moon Camera and Machine at 8417 N. Lombard St. Portland, Oregon 97203 in St. John's. There, the silver rich fixer will be decanted into a silver reclamation unit and the exhausted mild developers will be added to the city sewage system where their treatment can be handled easily and efficiently. If for any reason the arrangement with Blue Moon becomes unworkable, any hazardous wastes can be easily dropped off at Metro Central Hazardous Waste Facility 6161 NW 61st Ave. Portland, Or 97210. A Metro/CEG ID#00228 has been secured for the studio's needs. Regular septic waste from the studio building will be managed via a new septic system. Office paper waste will be disposed of with the household rubbish. There will be no air or land pollutants generated.*

Since 1988, I have worked as a professional photographer. Among the duties I have performed during these years, I spent 5 years at the University of Michigan where I served as production manager for the nation's largest medical photographic department of its kind. There along with my many other duties, I supervised waste and work place management. The policies I oversaw fell within the guidelines of University of Michigan and OSHA safety policies. This experience along with continuing research with manufactures and city officials has kept me up to date with the most current and approved methods in photographic waste disposal.

As a small scale photographic studio, no operation or subsequent waste will create a hazardous condition. Traditional black & white photography incorporates developers and fixers. Developers are mildly alkaline and fixers are mild acids. As both agents are incompatible with a septic system, all depleted chemistry will be collected in assigned containers within the confines of a "work room" specifically designed for darkroom work. Never will chemistry be used, transported or handled in unsecured containers. Also, the

collection containers will be no larger than 2.5 gallon capacity. This small size will facilitate easy handling and guard against accidental spill during transport. The studio in Ann Arbor, MI produced no more than 3-5 gallons of exhausted fixer on a monthly basis. Developers even less. In partnership with Blue Moon Camera and Machine at 8417 N. Lombard St. Portland, Oregon 97203 in St. John's exhausted photographic chemistry will be dealt with appropriately. The silver rich fixer will be poured into a silver reclamation unit and exhausted developers can be added to the city sewage system where their treatment can be handled easily and efficiently. If for any reason the arrangement with Blue Moon becomes unworkable, any depleted chemistry can be easily dropped off at Metro Central Hazardous Waste Facility 6161 NW 61st Ave. Portland, Or 97210. Metro/CEG ID#00128 has been secured for the studio's needs.

Staff: The applicant has provided an approval from the Sanitation Program for a septic system for the proposed business. The applicant has extensive knowledge and experience working with hazardous material used for photography businesses such as film developers and fixers. The applicant understands the responsibility and necessity to provide proper disposal and has provided for proper disposal through an agreement with Blue Moon Camera and Machine, or if need be through disposal at Metro Central Hazardous Waste Facility. The applicant has obtained a permit from Metro for the disposal of hazardous waste (Exhibit 1.5 to Staff Report). Staff recommends a condition of approval that all hazardous wastes must be properly disposed of according to requirements of the State, Federal, and Metro laws and rules. This criterion can be met through the recommended condition of approval.

Hearings Officer: I concur with staff that this criterion can be met through a condition of approval. Accordingly, a condition of approval (condition 5) will be imposed which specifies that "All hazardous waste shall be properly disposed of according to requirements of the State, Federal, and Metro laws and rules (MCC 34.6315(A)(2))".

- C. MCC 34.6315(A)(3) Will not conflict with farm or forest uses in the area:**
- (a) Will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; and**
 - (b) Will not significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.**

Applicant: *The farm land near 17133 Lucy Reeder Rd. is comprised of row crops cultivated for both nursery and food stuffs. There is minimal pesticide usage and tilling the soil happens on schedule per the crop planted. As the area is made up of many permanent non-farm residences, there exists a cooperative spirit between the farmers, farm workers and the residents. I can in no way think of an example of how this project will adversely affect the character of the area, the natural resources -nor impact the surrounding farming industry. Neither studio water usage, daily client meetings, the simple existence of the building nor any other aspect of this project will be noticed by the agricultural industry in the area.*

Staff: The subject property abuts farmland along the north and east property lines. The residential area within which this property is located is surrounded farm crop land. Nearest farm crop land to the proposed use is about 130 feet to the east. The proposed use will predominately take place within a structure which surrounded by dense growth of trees and shrubs (Exhibit 2.3 to Staff Report) and is approximately 130 feet from the nearest farmed crop land. Given the distance and setting of the proposed use it is unlikely there will be any conflict or impact on farm use in the area. We recommend a condition of approval include a covenant to the deed stating that the property owner recognizes that farm practices occur on adjacent lands and understands they may be exposed to common and accepted farm practices (Exhibit 2.4 to Staff Report). The criterion can be met through the recommended condition of approval.

Hearings Officer: The applicant has demonstrated that the proposed use will not force a significant change in accepted farm or forest practices on surrounding lands and that the proposed use will not significantly increase the cost of accepted farm or forest practices on surrounding lands. The subject property itself has an old, well-established dahlia farm on it. A condition of approval will be imposed requiring the applicant to recognize that farm practices occur on adjacent land and understands that they may be exposed to common and accepted farm practices.

D. MCC 34.6315(A)(4) Will not require public services other than those existing or programmed for the area;

Applicant: *As 17133 NW Lucy Reeder Rd. is a rural property. Except for roadways and fire service, all other services will be supplied by applicant. A 78' well provides adequate water will supply both our residence and the studio building. An attached certificate from the Sauvie Island fire service shows their ability to respond in the case of an emergency.*

Staff: The proposed use will use the exiting public services. No additional public services will be required to operate the business. Criterion has been met.

Hearings Officer: This criterion has been met.

E. MCC 34.6315(A)(5) Will be located outside a big game winter habitat area as defined by the Oregon Department of Fish and Wildlife or that agency has certified that the impacts will be acceptable;

Applicant: *Sauvie Island is not in the big game winter habitat area defined by ODFW.*

Staff: We concur with the applicant, this area is not big game winter habitat.

Hearings Officer: The applicant has demonstrated that the proposed use will be located outside a big game winter habitat area, since there is no big game winter habitat area on Sauvie Island.

F. MCC 34.6315 (A)(5) Will not create hazardous conditions; and

Applicant: *Since 1988, I have worked as a professional photographer. Among the duties I have performed during these years, I spent 5 years at the University of Michigan where I served as production manager for the nation's largest medical photographic department of its kind. There along with my many other duties, I supervised waste and work place management. The policies I oversaw fell within the guidelines of University of Michigan and OSHA safety policies. This experience along with continuing research with manufactures and city officials has kept me up to date with the most current and approved methods in photographic waste disposal.*

As a small scale photographic studio, no operation or subsequent waste will create a hazardous condition. Traditional black & white photography incorporates developers and fixers. Developers are mildly alkaline and fixers are mild acids. As both agents are incompatible with a septic system, all depleted chemistry will be collected in assigned containers within the confines of a "work room" specifically designed for darkroom work. Never will chemistry be used, transported or handled in unsecured containers. Also, the collection containers will be no larger than 2.5 gallon capacity. This small size will facilitate easy handling and guard against accidental spill during transport. The studio in Ann Arbor, MI produced no more than 3-5 gallons of exhausted fixer on a monthly basis. Developers even less. In partnership with Blue Moon Camera and Machine at 8417 N. Lombard St. Portland, Oregon 97203 in St. John's exhausted photographic chemistry will be dealt with appropriately. The silver rich fixer will be poured into a silver reclamation unit and exhausted developers can be added to the city sewage system where their treatment can be handled easily and efficiently. If for any reason the arrangement with Blue Moon becomes unworkable, any depleted chemistry can be easily dropped off at Metro Central Hazardous Waste Facility 6161 NW 61st Ave. Portland, Or 97210. Metro/CEG ID#00128 has been secured for the studio's needs.

Staff: The applicant has extensive knowledge and experience working with hazardous material used for photography businesses such as developers and fixers. The applicant understands the responsibility and necessity to provide proper disposal and has provided for proper disposal through an agreement with Blue Moon Camera and Machine, or if need be through disposal at Metro Central Hazardous Waste Facility (Exhibit 1.7). The applicant has obtained permit from metro for the disposal of hazardous waste. Staff recommends a condition of approval that all hazardous waste must be properly disposed of according to requirements of the State, Federal, and Metro laws and rules. This criterion can be met through the recommended condition of approval.

Hearings Officer: This application will not create hazardous conditions, provided that the photographic studio waste, consisting of fixers and developers are appropriately disposed of. The applicant has obtained a permit from Metro for the disposal of hazardous wastes. A condition will be imposed, requiring applicant to comply with all

state, federal and Metro laws and regulations related to the proper disposition of hazardous wastes.

G. MCC 34.6010 (G) Will satisfy the applicable policies of the Comprehensive Plan.

Staff: For all quasi-judicial actions, such as that described herein, compliance with the following Comprehensive Framework Plan policies must be established.

Policy 37: Utilities
Policy 38: Facilities

Each of these policies are addressed in the findings in the following sections.

1. Policy 37: Utilities: Water Systems, Disposal Systems and Drainage

* * *

C. Shall have an adequate private water system, and the Oregon Department of Environmental Quality (DEQ) will approve a subsurface sewage disposal system;

* * *

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: *Proposed water usage estimate: approx. 20 gals per hour and 100-120 gallons per printing day which happens 1-2 times a week. Approx. 250-300 gallons weekly. The State of Oregon Water Resource Department's publication, A Consumer's Guide to Water Well Construction, Maintenance and Abandonment, states on page 5 Obtaining Wafer Rights, "The following uses of ground water do not require a water right permit:: Any single industrial or commercial development up to 5000 gallons per day." (per Connie at WRD 2/17/04 503 986-0803.)*

Water and Disposal System

The proposal at 17133 NW Lucy Reeder Rd. will take advantage of a 78 'private well and an Oregon Department of Environmental Quality approved subsurface septic sewage disposal system. Splash blocks and an underground drainage system will be used for storm water management.

Sanitarian Review:

Please see attached to application, Site Evaluation Report #LFS lo-04

Drainage

Stormwater run-off shall be handled on site and shall not adversely affect the water quality in adjacent streams, lakes, ponds, or alter the drainage on adjoining lands. An underground gutter system in combination with splash blocks is currently in place.

Staff: The applicant has submitted a completed Certificate of On-Site Sewage Disposal signed by a City of Portland Sanitarian as well a copy of the Site Evaluation Report by the sanitarian (Exhibit 1.5 to Staff Report). The applicant has contacted the Oregon State Department of Water Resources and has confirmed that the proposed commercial use meets their requirements. This exception from water rights requirements is in line with previous cases we have reviewed. We recommend that a condition of approval require a registered engineer review the stormwater disposal system and certify that the system can process the 10 year storm event without increased flow off the property from the new impervious surfaces.

Hearings Officer: I concur with staff that the applicant has met this criterion and that it would be appropriate to impose a condition of approval requiring that a registered engineer review the stormwater disposal system and certify that the system can process the 10 year storm event without increased flow off the property from the new impervious surfaces.

At the hearing, adjacent property owner, Andrew Hansen spoke in regards to the question of placement of the septic system. Mr. Hansen had no objection to the application, but was concerned that his well, which is shown on Exhibit H-11 as well #2, be given appropriate protection when the placement of the septic system was determined. Accordingly, an additional condition will be imposed which requires the applicant to set back the septic system, at least 150 feet from well #2, located on the Hansen property, and illustrated on Exhibit H-11.

2. **Policy 38: It is the County's Policy to coordinate and encourage involvement of applicable agencies and jurisdiction in the land use process to ensure:**

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: *Please see attached to application, Fire District Review*

- B. There is adequate water pressure and flow for fire fighting purposes*
- C. The Sauvie Island fire district has had an opportunity to review and comment on this proposal.*

Staff: The applicant has submitted a completed Fire District Review Form signed by the Sauvie Island Volunteer R.F.P.D #30J Chief (Exhibit 1.6 to Staff Report) stating that district provides fire suppression and medical aid.

Hearings Officer: To the extent this comprehensive plan provision constitutes approval criteria, the applicant has demonstrated compliance therewith.

3. APPROVAL CRITERIA FOR TYPE B HOME OCCUPATIONS

A. MCC34.6660(A) The standards found in MCC 34.6315.

Applicant: *Proposal will satisfy all the standards found in MCC 34.6315 as described earlier in this document.*

Staff: The proposal has satisfied all the standards found in MCC 34.6315 or can satisfy the standards through recommended conditions of approval.

Hearings Officer: The hearings officer concurs.

B. MCC34.6660(B) The home occupation does not employ more than 5 employees.

Applicant: *The proposal will employ only one (1) employee for the foreseeable future. No more than two (2) employees ever would be added in the future.*

Staff: The proposal meets this criterion.

Hearings Officer: The application satisfies this criterion.

C. MCC34.6660(C) The site has on-site parking as per MCC 34.4100 to accommodate the total number of employees and customers.

Applicant: *17133 NW Lucy Reeder Rd. currently has eight (8) parking spaces. Two (2) of the eight (8) are garaged. The remaining parking spaces are located at the end of the driveway adjacent the residence and the proposed studio building. The studio proposal will cover two (2) of the existing parking spaces for the convenience and comfort of arriving clients during wet weather. These preexisting parking spaces will serve all client and employee needs easily.*

Staff: A site visit by staff has confirmed an abundance of parking. The site meets this criterion for off-street parking (Exhibits 1.11 and 2.3 to Staff Report).

Hearings Officer: The existing parking on site satisfies the off-street parking criterion.

D. MCC34.6660(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: *Proposal will not receive more deliveries than a normal residence. Deliveries will occur between the hours of 9 am and 6 pm. Deliveries will be rare. Probably 1-3 per 6 weeks.*

Staff: The proposal meets this criterion.

Hearings Officer: This criterion is satisfied.

E. MCC34.6660(E) No outdoor storage or display.

Applicant: *Proposal will not include outdoor display or storage*

Staff: The proposal meets this criterion.

Hearings Officer: The application satisfies this criterion.

F. MCC34.6660(F) No signage (including temporary signage and those exempted under MCC 34.7420) with the exception of those required under the applicable street naming and property numbering provisions in Multnomah County Code.

Applicant: *Proposal will not require any sign age with the exception of those required under the applicable street naming and property numbering provisions in Multnomah County.*

Staff: The proposal meets this criterion.

Hearings Officer: This criterion is satisfied.

G. MCC34.6660(G) No noise above 50 dba at the property lines.

Applicant: *Proposal will not create noise levels above 50db's at the property lines. The only exterior noise heard may be an occasional car door closing.*

Staff: There is no noise generated from the proposed use other than conversation and vehicle arrivals and departures. The proposal meets this criterion.

Hearings Officer: This criterion is satisfied.

H. MCC34.6660(H) No repair or assembly of any *motor vehicles* or motors.

Applicant: Proposal will not include the repair or assembly of any motor vehicles or motors

Staff: The proposal meets this criterion.

Hearings Officer: The application does not involve the repair or assembly of any motor vehicles or motors.

I. MCC34.6660(I) The application has been noticed to and reviewed by the Small Business Section of the Department of Environmental Quality.

Applicant: *Application has registered with Metro 's Conditionally exempt generator hazardous waste program and has secured CEG ID#00128.*

Staff: Metro handles the hazardous waste in concert with DEQ requirements. The applicant has registered with Metro for the proposed business. The Portland City Sanitarian has issued an approval for a site elevation for the proposed business for the septic system. The Portland City Sanitation Program contracts with DEQ to provide these services. This criterion has been met.

Hearings Officer: The application was reviewed by DEQ in accordance with this Code provision.

J. MCC34.6660(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: *Applicant understands that 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.*

Staff: The applicant proposes that no more than two employees will be need in the future. The applicant proposed hours limited from 10 a.m. to 4 p.m. The applicant states that deliveries are limited to about one every two weeks or less. The applicant proposes one to two clients per day for photograph sessions.

The recommended Conditions of Approval will 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.

Hearings Officer: Conditions of approval will be imposed consistent with this Code section requirement.

4. DESIGN REVIEW IS NOT REQUIRED

MCC 34.6330 Exempted from the Design Review criteria of MCC 34.7000 through 34.7060, include:

* * *

(B) Type B Home Occupations that require the addition of less than 400 square feet of ground coverage to the structure.

Staff: The proposed addition will be less than 400 square feet.

Hearings Officer: I concur with staff's analysis.

CONCLUSION

Based on the findings and substantial evidence cited or referenced herein, the applicant has demonstrated that this request for approval of a conditional use permit for Type B home occupation for a photographic studio in a Multiple Use Agriculture - 20 (MUA - 20) zoning district, satisfies all applicable approval criteria, provided that the conditions of approval imposed herein are complied with. Accordingly, the conditional use application is hereby approved, subject to the conditions of approval contained herein.

CONDITIONS OF APPROVAL:

1. The approved use is a photography studio with three basic activities in the studio: 1. Commissioned portraits for private and commercial clients, 2. Administration of a photographic note card business (offset printing would be done offsite) and 3. Private photographic projects. Photography sessions shall be conducted predominately within the studio (MCC34.6660(J)).
2. The maximum number of clients per day shall be two per day with hours of operation limited to between 10 a.m. and 4 p.m. Client shall be defined as an individual or small group of six or less involved in one photo session (MCC34.6660(J)).
3. The of number of employees for the approved home occupation shall not exceed two (MCC34.6660(J)).
4. Deliveries shall be limited to those such as a residential dwelling would receive through delivery services that service residential customers. Deliveries to the home occupation shall be limited to no more than one per a two week period. Delivery parcels shall be of a size that can be handled by hand (without forklift equipment) (MCC34.6660 (J)).

5. All hazardous waste shall be properly disposed of according to requirements of the State, Federal, and Metro laws and rules (MCC 34.6315(A)(2))
6. The property owners shall record a covenant to the deed stating that the property owner recognizes that farm practices occur on adjacent lands and understand they may be exposed to common and accepted farm practices as stated in Exhibit 2.4 (MCC 34.6315(A)(3)).
7. Prior to building permit zoning review by the County, the property owner shall submit a registered engineer's design for a stormwater disposal system and certify that the system can process the 10 year storm event without increased flow off the property from the new impervious surfaces (MCC 34.6010 (G) and Comprehensive Plan Policy 37).
8. The addition shall be less than 400 square feet or a Design Review Permit approval shall be obtained (MCC 34.6330(B)).
9. The applicant must set back the septic system at least 150 feet from well #2, located on the Hansen property, which well is illustrated on Exhibit H-11.

IT IS SO ORDERED, this 26th day of July, 2004.



JOAN M. CHAMBERS, Hearings Officer

EXHIBITS

Exhibits Submitted by the Applicant

- Exhibit 1.1: Application Form submitted 4/28/04 (1 page);
- Exhibit 1.2: Site Plan submitted 4/28/04 (1page);
- Exhibit 1.3: Application narrative addressing the criteria submitted 4/28/04 (5 pages);
- Exhibit 1.4: Metro Certification Form for hazardous waste 4/28/04 (1 page);
- Exhibit 1.5: Certificated of On-Site Sewage Disposal signed by Philip Crawford, Sanitarian, City of Portland Sanitation Program and copy of the Site Evaluation submitted 4/28/04 (2 Pages);
- Exhibit 1.6: Fire District Review signed by Sauvie Is. Volunteer R.F.P.D #30J Fire Chief submitted 4/28/04 (1 page);
- Exhibit 1.7: Certification of Water Service submitted 4/28/04 (1 Page);
- Exhibit 1.8: Title Report submitted 4/28/04 (5 pages);
- Exhibit 1.9: 2002 County Aerial Photo showing property in center of photo submitted 4/28/04 (1 page);
- Exhibit 1.10: Photographs of the showing the existing accessory building proposed for the photographic studio submitted 4/28/04 (1 page);
- Exhibit 1.11: Revised site plan map submitted 6/18/04 (1 page);
- Exhibit 1.12: Site plan enlargement show the existing building proposed for the studio and addition submitted 6/21/04 (1 page);
- Exhibit 1.13: Sign posting form submitted 6/23/04 (1 page).

Exhibits Included by the County

- Exhibit 2.1: County Assessor's Records for the subject property (1 page);
- Exhibit 2.2: County Zoning Map (1 page);
- Exhibit 2.3: Photograph taken of the property during site visit (1 page);
- Exhibit 2.4: Farm practices covenant (1 page);
- Exhibit 2.5: 1977 Zoning map showing the property.

Hearings Exhibits

- Exhibit H-1: Letter in support of application from Ronald and Joanne Rembalski;
- Exhibit H-2: Letter in support of application from Marla and Brad Koslin;
- Exhibit H-3: Aerial photo with Assessor's map lot line designations;
- Exhibit H-4: Existing plan, ground level view;
- Exhibit H-5: Studio elevations;
- Exhibit H-6: Studio plan;
- Exhibit H-7: North and south studio elevation plans;
- Exhibit H-8: East and west studio elevation plans;
- Exhibit H-9: Example of studio photography;
- Exhibit H-10: Proof of posting;
- Exhibit H-11: Parcel map illustrating Hansen approved well locations;
- Exhibit H-12: Witness sign-in sheet.