

Appeal MP 22-04 and PLA 22-20
Applicants: Probst Family Trust and David and Phyllis White
Before the Columbia County Board of Commissioners
Public Hearing December 21, 2022

Written Testimony by James and Paulette Lichatowich
P O Box 535, Columbia City, OR 97018

**Jim and Paulette Lichatowich
P O Box 535
Columbia City, OR 97018**

Dated: December 18, 2022

**Appeal MP 22-04 and PLA 22-20 – Probst Family Trust and David and Phyllis White
to the Columbia County Board of Commissioners
Written Testimony for Public Hearing December 21, 2022**

We are appealing MP 22-04 and PLA 22-20 based on our letter submitted on February 7, 2022 to Land Development Services and Appeal/Referral Form with fee dated July 6, 2022.

Basis for our Appeal

Our appeal is based on Modification to Road Standards Columbia County Final Order 76-2003 Item Numbers 3, 3.E, 3.I, and 3.K.

And begins on Page 2 of the Final Order 76-2003:

NOW, THEREFORE, IT IS HEREBY ORDERED as follows:

Item 3. states,

The Application to Modify the Road Standard, is approved subject to the following conditions of approval. Prior to recording of MP 02-13, or any other further division or development of land with access onto Miloris Way, the Applicant shall:

The order requires all conditions approved before “any other further division or development of land with access onto Miloris Way.” We identify in our appeal that one condition has not been met and therefore partitioning and development along Miloris Way cannot continue.

Item 3.E states,

Construct a standard paved turnaround in the vicinity of the existing gravel turnaround, as directed by the Public Works Director.

The condition for a paved turnaround has not been met. In Photos 1 and 2 we show there is not a paved turnaround and there never was a paved turnaround.

Item 3.I states,

All road improvements are subject to the direction of the Columbia County Public Works Director. All improvements shall be approved by the Public Works Director.

Simply stated, the Public Works Director's duty was to carry out the County Commissioners' order and to verify the work. David Hill's memo quoted in their staff report is not a complete statement of approval. (See our Page 40A). A site visit proves there is not a paved turnaround and there never was a paved turnaround.

And item 3.K states,

The Road Modification is approved to allow additional residential lots to have access onto Miloris Way up to a maximum of 11 residential lots in addition to one municipal reservoir site.

Background Notes for the Modification to Road Standards for Miloris Way

Regarding the Board of Commissioners hearing in 2003 – the hearing was necessary to correct a land use decision for Miloris Way in Variance 98-7 which allowed an unlimited number of houses along Miloris Way (a private road). The developer said he would pave the turnaround and create an easement as early as 1998 in his application. Public Works Director, David Hill and Road Engineer Lonny Welter, stated many times that there was a requirement for a cul-de-sac or a paved turnaround that could withstand 50,000 pounds load to be constructed for Miloris Way. And in the Order 76-2003 county file a letter dated October 22, 2003 written by David Hill repeated text from the Road Standards Modification Application submitted by Voris and Mildred Probst that there would be a paved turnaround. The commitment is shown in Probst's own words in the Probst Application dated July 10, 2003, Page 2. Item 4 – *The existing turn around at the reservoir site near the water tanks will be paved and an easement will be provided assuring access to the lots and site on Miloris Way. ... The applicant will provide evidence of concurrence with this request from the fire district.*

In the Circuit Court of Columbia County Case No. 0222000: Stipulated General Judgement included the conditions in Columbia County Final Order 76-2003 and listed them under the Exhibit 1: Settlement Agreement and Mutual Release (9 pages). On page 6, item C. states: Completion of Improvements. Voris and Mildred Probst and the Miloris Corporation agree, at their sole cost, will to [sic] comply with the order of Columbia County, No. 76-2003. This again documents that the parties understand the conditions in County Order 76-2003. (See our Pages 83-94.

A Partial History of Miloris Way Serial Development

We have lived at 36343 Miloris Way for more than 22 years. Currently there are seven residential homes along Miloris Way plus the City of Columbia City's municipal water tank. In July 2003 we were one of four homeowners who hired Mr. Ty Wyman, an attorney with Dunn Carney Allen Higgins & Tongue LLP. to represent us in a Columbia County Board of Commissioners (BOC) public hearing to Modify County Road Standards for Miloris Way. Voris and Mildred Probst had submitted a road modification application to allow 12 homesites on a private road. However, Columbia County Road Standards allow 6 homesites on a private road.

Thus, the developer needed a new variance of county road standards to partition his land for more than 6 homesites.

After months of BOC and Columbia County Engineers analysis and consultations Final Order 76-2003 was written and signed by the BOC on February 4, 2004. The BOC order allows up to 11 homesites along Miloris Way if the road is built to conditions stated in Final Order 76-2003. Documents and background records for this BOC decision and final order are attached to our appeal submission demonstrating our assertion that the BOC ordered a paved turnaround but the turnaround was never paved.

David Hill, Public Works Director wrote a short 2 sentence memorandum to the Glen Higgins with a copy to Alana Probst on December 3, 2004 which has become controversial and problematic. (See our Page 40A for a copy of the memo.) The background documents we discuss throughout this appeal submission, including the decision for Final Order 76-2003 are inventoried and listed on page 11.

The LDS staff report of December 14, 2022 for this appeal states that David Hill, Public Works Director stated in a memorandum to Glenn Higgins on December 3, 2004, that *(1) Condition No. 3 (A through G) for the Final Order 76-2003 relating to the road improvements on Miloris Way has been satisfied and (2) I do not believe there are any outstanding issues related to the road improvements. (See our page 40A)*

David Hill's statement here is problematic for several reasons:

1. Did the Public Works Director David Hill visit the site to verify that there was a paved turnaround. If he would have visited the end of Miloris Way he would not have seen or found a paved turnaround. In his statement, he qualifies his comment #1 by saying in comment #2 "I do not believe there are any outstanding issues related to the road improvements."
2. The original location identified for the turnaround was purchased by David and Phyllis White in 2002 and was no longer owned by the developer who was to pave the turnaround as stated in the 2004 County Order 76-2003.
3. The easement on the David and Phyllis White's lot is the recorded/deeded easement owned by the City of Columbia City. It was never paved.
4. David Hill's statement is also problematic because he advocated for a paved turnaround for many years as we show and discuss in Table 1 that follows.

It's important that you know that the discussion regarding a paved cul-de-sac or paved turnaround for Miloris Way has been ongoing for the last 24 years. In the following table we present quotes by the Public Works Director and Road Master as well as the developer who promises to construct a paved turnaround.

Table 1. A list of comments in the county record showing intent by county staff to require a paved turnaround for Miloris Way. These comments were used in developing the conditions for continued partitioning and development along Miloris Way and show the intention that Final Order 76-2003 would require a paved turnaround. The Probst re-application for modification to road standards was an issue to their prior Road Variance V 98-7.

<p>March 6, 1998 Variance V 98-7 - Condition #1 <i>A cul-de-sac or other suitable turnaround shall be constructed at the end of the road and approved in writing by the County Public Works Director and the St. Helens Rural Fire District</i></p> <p>This condition of approval was never met.</p>
<p>February 17, 1998 Variance V 98-7 - Road Standards Modification Application Supporting Narrative Exhibit D Comments: #1 The County Transportation Planner... His concerns also include the steepness of the road (up to 20%), the unstable slopes above the road, and on the downhill side a culvert has drained water onto the toe of the slope, eroding a head wall with a vertical drop of 12'. He also mentions that a cul-de-sac or other suitable turnaround at the end of the road will be required.</p> <p>Follow up by county staff is not evident.</p> <p>Comments: #3 The Columbia City Planner, Planning Commission, and City Council reviewed the proposal... 1) Consider requiring another way in and out of this area in case of emergencies – either by extending the street and making a loop or connecting to Smith Road. Columbia City Comments ignored.</p>
<p>October 2, 2002 Memo from Lonny Welter, Columbia County Road Department to Land Development Services MP-02-13 – item 6. <i>A standard, paved, turnaround or cul-de-sac near the water tanks.</i></p>
<p>July 10, 2003 Road Standards Modification Application, Submitted by Voris and Mildred Probst Page 2. #4 The existing turn around at the reservoir site near the water tanks will be paved and an easement will be provided assuring access to the lots and site on Miloris Way.</p> <p>... The applicant will provide evidence of concurrence with this request from the fire district. Per the Probst application commitment for a paved turn-around and easement. They were not done.</p>

October 17, 2003

Letter to from Jay Tappan, Fire Marshal to Todd Dugdale, Land Development Services
RE: Miloris Way Turnaround (Voris and Mildred Probst) Paragraph 2 (See our Page 18)

Currently the turnaround area is well-located near the end of Miloris and has a minimum gravel base and surface. The Probsts' have proposed to improve this by paving the turnaround and certifying that it will be capable of sustaining the required 50,000 pound point load. This will meet the provisions if the County Fire Service Access Standard and is thereby approved by the Fire District.

Jay Tappan says if they do what they propose, he will approve.

October 22, 2003

Memo from David Hill, Public Works Director to Glen Higgins, LDS (See our Pages 19-29)
The conditions that the Probst' propose are basically... Paved turn-around

Was not paved as promised in the Probst application

October 29, 2003

Letter from David Hill, Public Works Director to to Larry Derr, Probst's attorney
Paragraph 2 (See our Page 30)

I believe you asked if the conditions of V 98-7 have been satisfied. Based on the comments from Jay Tappan, Fire Marshall, there still needs some work done to the turn-around near the end of the road. I believe it should be constructed per our standard dimensions and paved. I believe the rest of the work has been done however I have not personally verified it.

Note the statement by David Hill that he had not personally verified it [the road work].

November 5, 2003

See Supplemental Findings attached to Staff Report (13 pages total)

Source: Columbia County Land Development Services Staff Report, November 5, 2003, Board of County Commissioners, Road Modification and Partition (23 pages total)

Page 10 Findings 10 text as typed in staff report:

Letter from Jay Tappan to Todd Dugdale, dated October 17, 2003 (Our Page 18)

The Fire Department has commented that they are satisfied with emergency access to the proposed parcel, the turnaround area is well located and when paved the turnaround will need to be certified that it will capable of sustaining the required 50,000 pound point load.

The actual text of Mr. Tappan's letter is more explicit: *Currently the turnaround area is well-located near the end of Miloris and has a minimum gravel base and surface. The Probsts' have proposed to improve this by paving the turnaround and certifying that it will be capable of sustaining the required 50,000 pound point load. This will meet the provisions if the County Fire Service Access Standard and is thereby approved by the Fire District.*

There is no paved turnaround at the end of Miloris Way as promised by Probst.

Page 17 Findings 17

It is connected to K Street, a public street and ends with an approved turnaround, which is proposed to be paved.

There is not a paved turnaround.

Page 18 Item 6

A 45 foot radius cul-de-sac, or other suitable turnaround, at the terminus of the private road of within 200 feet of its terminus.

Page 21 Item 7

Received September 12, 2002 - The St. Helens-Columbia City CPAC Minutes of September 11, 2002. Item#2 Probst request for a Partition be denied. And recommended that a) all of the conditions of V98-7 regarding the cul-de-sac be satisfactorily completed.

No cul-de-sac was built as required in Variance 98-7
And conditions were not satisfied.

Page 21 Item 8

Received September 12, 2002 - Dunn Carney Allen Higgins & Tongue LLP. b)' Frank Hilton Jr. to Todd Dugdale states that the turnaround required as a condition in V98-7 was not constructed, and no proof can be found.

No turnaround was built as required in Variance 98-7
Approved in 1998.

Page 21 Item 9

Received September 16, 2002 - Dunn Carney Allen Higgins & Tongue LLP. by Frank Hilton Jr. Separate letters to Mr. Dave Hill, Mr. Glen Higgins and Mr. Rich Morse states that the turnaround required by V98-7 was not complete, paving required by MP02-04 was not completed.

Turnaround was not completed as required in Variance 98-7
Approved in 1998. See Minor Partition 02-04 conditions for the history

Pages 22 and 23

The Public Works Director's finding that improvements to the road should be as recommended by the Public Works Director Report. If additional residential parcels are allowed and this modification and application approved the following conditions are recommended:

Item 7

Construct a standard paved turnaround in the vicinity of the existing gravel turnaround, as directed by the Public Works Director.

A standard paved turnaround does not exist.

December 3, 2003

Memorandum to Columbia County Board of Commissioners from Ty Wyman, Dunn Carney Allen Higgins & Tongue LLP, attorney for the four homeowners along Miloris Way (See our page 31-32)

Paragraph 2

Requesting BOC deny the partition and force applicant to submit a full subdivision plan.

Last Paragraph

... since Voris Probst testified under oath that he never built the road to county standards. Demonstrates the lack of commitment by the applicant to honor county ordinances.

December 10, 2003

Minutes, Columbia County Board of Commissioners Board Meeting

Page 2, Paragraph 2 (See our Page 33-37)

Under Discussion, Commissioner Bernhard needed clarification that the road improvements will be completed prior to recording of the final partition plat. Sarah stated that is covered in the conditions.

The BOC intended that the road improvements be completed prior to platting. Improvements to the road, include the paved turnaround. The paved turnaround did not and has never existed.

As an example of the Public Works efforts to have a paved turnaround constructed, in a letter dated October 29, 2003 from David Hill to Larry Derr, at Josselson Potter & Roberts, the attorney for Voris and Mildred Probst, Hill states:

“Based on the comments from Jay Tappan, Fire Marshal, there still needs some work done to the turn-around near the end of the road. I believe it should be constructed per our standard dimensions and paved. I believe the rest of the work has been done however I have not personally verified it.” (See our Page 30)

This comment to Mr. Derr, the developer’s attorney shows that David Hill, Public Works Director recommend a paved turnaround. This letter also shows he did not personally verify it (the rest of the work). This statement is similar to the statement Hill makes in his qualifying statement of December 3, 2004 when he says, “.

The documents and statements listed in Table 1 showing the need for a cul-de-sac or paved turnaround demonstrates why Final Order 76-2003 included a paved turnaround as a condition for continued partitioning and development along Miloris Way. It’s logical that the BOC in 2003 thought their order would be carried out.

Approximately two months before David Hill wrote his two-sentence problematic memorandum on December 3, 2004, another letter was written. In that letter dated October 14, 2004 to Commissioner Tony Hyde, one of the homeowners asks for help in assuring that all conditions of the Final Order would be met. (See our Page 38 – Letter from Mike Delaney to Tony Hyde). And Mike says, “...it shouldn’t be necessary to camp out on the courthouse steps to ensure the LDS staff follows through on BOC decisions – and I wish to avoid being a nuisance...”

We show in Photo 1 (page 12) the original never-paved turnaround on David and Phyllis White's property on the right side of the photo and the second never-paved turnaround site on the left side of the photo on the adjacent parcel owned by the developer. There is not a recorded/deeded easement for the turnaround which is problematic.

Because the developer is in non-compliance of constructing and paving a turnaround described in County Final Order 76-2003 partitioning cannot continue along Miloris Way and that is why we are appealing MP 22-04 and PLA 22-20.

Staff Report Dated December 14, 2022 Deficiencies and Mistakes

Page 1 – Title of this appeal is incorrect. As written the states: “Appeal of Planning Commission’s Approval of a Minor Partition and Property Line Adjustment in the Rural Residential (RR-2) Zone.” Please correct the record. This is an appeal of the Land Development Services Planning Director’s Decision.

Page 5 – Quote “The Appellants’ 07/06/2022 Point of Issue is unique in that their Appeal of the Planning Director’s Final Decision was to the Board of Commissioners, and not the Planning Commission...” This is false. Their statement is complex and difficult to follow and is false.

The staff acquired a copy of our personal letter sent to Commissioner Henry Heimuller and inserted it into their staff report as though it was submitted with our one-page Appeal/Referral Form. LDS staff packaged two separate documents into their staff report, shows on pages 206 and 207. This is irresponsible. Please correct the record to show:

1. We submitted the appropriate one-page Appeal/Referral Form to the Planning Commission to appeal MP 22-04 and PLA 22-20 with the appropriate fee. Submission date July 6, 2022. We request that you correct your report.
2. We wrote a personal letter to Commissioner Henry Heimuller on July 7, 2022 requesting he meet with us to discuss the background and ongoing issue of non-compliance. This letter was sent to Commissioner Heimuller suggesting that we talk about planning issues and who has jurisdiction to enforce the county order. We did not submit the letter with our Appeal/Referral Form. However, LDS staff added this letter to the appeal file and then proceeded to misrepresent our application on page 5 of their staff report. Our appeal form dated July 6, 2022 was an appeal to the Planning Commission which is the normal steps in appealing any LDS Director’s administrative land use decision. The personal letter written to Mr. Heimuller was not submitted with our appeal form. We request that you correct your report.

Page 8 – first paragraph. Quoting from Joel Kalberer’s letter “... also provides the following Oregon statutory law governing Land Use Planning...” Then staff continue to include the text of 4 paragraphs submitted by Mr. Kalberer. (See staff report for the full text of his quote.)

These statements from a letter sent to LSD and was inserted in the staff report. The letter, dated October 18, 2022 from Mr. Joel Kalberer, Wetherford Thompson Attorneys, Albany, Oregon who is the attorney for the developer conflagrates that we are appealing MP 02-13 and

says that with the recording of the partition plat for MP02-13 in 2005 all conditions of Final Order 76-2003 were fulfilled and he says it's long past the appeal date. His letter is a distraction from our appeal of MP 22-04 and PLA 22-20 for non-compliance of a road modification order requiring conditions be met before "*any other further division or development of land with access onto Miloris Way, the Applicant shall...*". This requirement still exists and before MP 22-04 and PLA 22-20 application can be approved the turnaround must be paved.

Page 8 – Finding 1- "...Staff finds that the authorized party acknowledged a standard paved turnaround for Miloris Way was installed by Probsts [sic] subject to the direction of and approval of the County Public Works Director in December 2004."

We restate: "Did the Public Works Director, David Hill visit the site to verify that there was a paved turnaround? If he visited the end of Miloris Way he would not have seen or found a paved turnaround. In his statement, he qualifies his comment #1 by saying in comment #2 "I do not believe there are any outstanding issues related to the road improvements." There was never a paved turnaround even if an authorized party says in a statement that a paved turnaround was installed. (See our Page 40A for the two sentence approval document with a copy to Alana Probst.)

Page 8 – Finding 2 – Staff claims we are revisiting conditions that were signed off on by the Public Works Director, even though there never was a paved turnaround and currently they are defending their actions in this matter.

Page 10 – Continuing with Finding 2 second paragraph – Mike Russell, current Public Works Director write's "The new turnaround has not been paved and remains gravel. The new turnaround is obviously constructed for the purpose of a fire turnaround as it is signed as such. Public Works desires that the developer meet the original intent of previous requirements and pave this turnaround." (See Email from Mike Russell to Spencer Parsons, December 13, 2022 our page 81).

Once again, our current County's Public Works Director says the intent of the previous requirement was for a paved turnaround. But it has never existed, even if an authorized party said there was one. That is simply twisted logic by county planning staff.

Page 10 – Finding 3 – The Staff Reports first states that the Public Works Department is correct that the improvements shall be approved by the Public Works Department and then states that the minimum turnaround requirements are what should be a condition of approval. We note that the minimum road standard is different than the original Columbia County Road Modification for Miloris Way in County Order 76-2003. Therefore, they use twisted logic and ask you, the BOC to underwrite their twisted logic by adding provisions of Part II (C) for a standard unpaved turnaround. They completely disregard the intent of all the research and work done by the road engineers, David Hill, Lonny Welter and Mike Russell as documented in Table 1 and text above.

Recommendations to the BOC

The documents presented in our appeal packet includes evidence of continuous non-compliance since 2004 with continued partitioning along Miloris Way. It's time for county housekeeping and restating and clarifying Final Order 76-2003. The two applications should be denied. Final Order 76-2003 must be amended so future development can continue in an orderly fashion. Once BOC amends the Final Order, the developer can submit applications for partitioning and development. We recommend:

1. **Deny the applications** – Denial is based on non-compliance with Columbia County Final Order 76-2003 condition numbers: 3, 3.E, 3.I, and 3.K. Include a clarification statement within this new BOC amendment that the prior condition in Final Order 76-2003 was not met by the developer.
2. **Amend Final Order 76-2003** – If the developer wants to continue his serial development along Miloris Way an amended order should be written that clearly defines that there is to be a paved turnaround. That amended document would include all the previous conditions in the 2004 County Final Order plus the deeded easement and paved turnaround stipulation for a condition of approval.
3. **Record the Turnaround Easement** – Deed and record with the County an easement for the permanent turnaround site approved by both the Public Works Director and BOC within 30 days.

A permanent recorded/deeded easement for the paved turnaround at the end of this dead end road is necessary. There must be certainty of the permanent location of the paved turnaround so it cannot be moved. Consider that a future landowner can simply decide he wants to use the turnaround for other purposes, and he wipes it out unless there is an easement deeded and recorded.

4. **Pave the Turnaround** – Pave the deeded/recorded easement identified as the turnaround to Columbia County Amended Final Order 76-2003 with written direction and approval from both Public Works Director and BOC before June 1, 2023.

These steps are necessary because other LDS applications have been approved while in non-compliance of Final Order 76-2003.

Thank you for your consideration of this matter. We will be glad to answer any questions you may have.

Listing of supporting records showing proof for the planned paved turnaround requirement in Final Order 76-2003, but not executed. (The folklore of Miloris Way)

Doc. #	Document Description	Page #
1	Voris Probst Summary of Land Use History September 1979 to September 2002, 6128-000-00300 (3 pages)	13
2	Memorandum from Jim Holycross to Todd Dugdale, Compliance with Prior Conditions of Approval, September 17, 2002 (1 page)	16
3	Memorandum from Lonny Welter to LDS, October 2, 2002 (1 page)	17
4	Letter from Jay Tappan, Fire Marshal to Todd Dugdale, Director LSD, October 17, 2003 (1 page)	18
5	Memorandum from David Hill to Glen Higgins, LSD, Dated October 22, 2003, Subject: Road Standards Modification Application, (11 pages)	19
6	Letter from David Hill, Public Works Director to to Larry Derr, Probst's attorney, October 29, 2003 (1 page)	30
7	Memorandum from Ty Wyman to Columbia County Board of Commissioners, December 3, 2003 (2 pages)	31
8	Columbia County Board of Commissioners Board Meeting Minutes, December 10, 2003 (5 pages)	33
9	Letter from Mike Delaney to Tony Hyde, October 14, 2004 (2 pages)	38
10	Memorandum from David Hill to Glenn Higgins, December 3, 2004	40A
11	Final Order No. 76-2003 Findings and Conclusions, February 4, 2004, (4 pages)	40B
12	LDS Staff Report for Road Modification and Partition dated November 5, 2003, (23 pages)	44
13	Attachment 4 - Supplemental Findings, (13 pages)	67
14	Email from Hyden Richardson to Linsey McLane-Goodwin dated August 4, 2022, 1:23 p.m. (1 page)	80
15	Email from Mike Russell to Spencer Parsons, December 13, 2022, 10:12 a.m. (2 pages)	81
16	Circuit Court of Columbia County Case No. 0222000 Stipulated General Judgement and signed by all parties, (12 pages)	83

Photo 1. Miloris Way Unpaved Turnaround Photos taken June 30, 2022



Pictured on the right side of photo is the original gravel turnaround showing David and Phillis White's garage roof encroaching and thus impeding large emergency vehicles. Also pictured is the City of Columbia City's Water Tank. In the recent past the turnaround was shifted to the adjacent parcel and is still unpaved as specified in Final Order 76-2003. Also pictured on the left is the Miloris Water Association water system and water well for this development. The property is changing ownership. Because there is no recorded easement that guarantees a permanent paved turnaround the turnaround could be blocked or removed after development is completed.

Photo 2. This is the end of Miloris Way paved to 20 ft wide. The photo shows the road reduces to 10 ft wide with two additional homes on that portion of Miloris Way.



This neighborhood has one road in and one road out and needs an adequate paved turnaround to accommodate fire department vehicles for wildfire protection, Columbia City water reservoir protection, Miloris Way water supply protection and ambulance services.

Voris Probst
Summary of Land Use History
September 1979 to September 2002
5128-000-00300

1. September 10, 1979, The County Board of Commissioners approved the creation of a private road off the end of K Street in Columbia City. The road was to be a 20' wide gravel road with access to one building location. See Board No. 79-17-08 filed in Book 6, Page 149, County Clerk's Records. Tax Account # 5128-000-00300. See File 1979 Partition.
2. September 10, 1979, The County Planning Commission approved a major partition to divide a 96.51 acre property into two parcels, consisting of 2.00 acres and 94.51 acres. The Partition was conditioned to allow only one building permit on the new 2 acre parcel. Tax Account # 5128-000-00300. See File 1979 Partition.
3. June 2, 1982, The Board of Commissioners approved a minor partition to divide a 94.51 acre property into three parcels, consisting of two 2 acre parcels and one remainder of 90.51 acres. Tax Account # 5128-000-00300. See File 1979 Partition.
4. July 11, 1988, The County Board of Adjustments approved a lot size variance to allow a 2.10 acre parcel in the RR-5 zone. Tax Account # 5128-000-00300. See File V 16-88.
5. February 21, 1989, The County Planning Commission approved a variance/major partition to allow the use of the existing road, that exceeds street grade standards, for access to four residential parcels. The road, now named Miloris Way, was found to be between 9% and 17% slope. Miloris way was allowed to be gravel for access to three homesites, with the building permit for the fourth homesite triggering paving 18' wide and 22' wide on the corners. This file also appears to have divided what was formerly tax lot 302 which consisted of 2.92 acres, into two parcels. Tax Account # 5128-000-00300/00301/00302. See File MP 3-89.
6. November 8, 1991, The Department of Land Development Services approved a minor setback variance for Scott Parker to construct a garage with a 25' front setback instead of the standard 30' setback. Tax Account # 5128-000-00302. See File V 37-91.

7. February 3, 1992, The County Planning Commission approves a major variance to allow tax lot 303 which consisted of 3.16 acres to be divided into two parcels in the RR-5 zone. The decision was appealed by DLCD on February 11, 1992. The variance to the minimum lot size in the RR-5 zone was subsequently denied by the County Board of Commissioners on March 25th, 1992. See Board Order No. 117-92. Tax Account # 5128-000-00303. See File V 38-91.

8. March 6, 1998, The Planning Commission approves a major variance to Section 604.5(A). This variance will allow continued development of 2 acre parcels without public road frontage. Access will be from a private road, Miloris Way. Also, gives variance to Section 604.2 (C) requiring service by a rural fire district. Tax Account # 5128-000-00300, File V 98-07. This file also includes some supplemental findings by the Columbia County Planning Commission. The applicant has not provided evidence that the conditions of approval were ever satisfied. The variance is conditioned as follows:

see V-98-7
X
↙

Before any more building permits are issued for properties with frontage on the private road:

1. *A cul-de-sac or other suitable turnaround shall be constructed at the end of the road and approved in writing by the County Public Works director and the St. Helens Rural Fire District.*
2. *The following three areas of the road must be repaired, to the satisfaction of the Director of Public Works, and the repairs must be approved in writing by him:*
 - a) *A small section of broken paving between a dwelling and its garage across the road, on the level upper part of the road;*
 - b) *a section where the hillside above the road is washing down onto the paved surface; and*
 - c) *an area where a culvert has eroded the land below the road and created an almost vertical cut about 12' high which is only 4' of the paved surface.*

10. March 19, 1999, The Department of Land Development Services approved a property line adjustment between 5128-000-00300 and 5128-000-00303. Tax lot 303 was reduced from 3.16 acres to 2.01 acres. See File PLA 99-46.

11. June 24, 1999, The Department of Land Development Services approved a property line adjustment between 5128-000-00300 and 5128-000-00301. This PLA changed the configuration of tax lot 301 however there was no net change in acreage. Tax lot 301 continued to be 2.00 acres in size. See File PLA 99-67
12. November 21, 2001, The Department of Land Development Services tentatively approves a partition to create one 2.08 acre parcel. Conditions of approval include \$3,000 of road improvements prior to final plat approval. Applicant files a road bond see receipt # 2504. LDS signs final plat on December 18, 2001, Partition Plat # 2001-28. Tax account Number 5128-000-00300/00309/00310, File MP 02-04. File also contains Memo from Oregon Department of Forestry discussing slope instability issues. Conditions of approval, prior to any building permits, include the following:
 - (4) *All applicable provision of the fire code for adequate water supply and fire access must be met before building permits can be issued.*
 - (6) *A County Road Access Permit is required before building permits may be issued for parcels resulting from this partitioning.*
13. September 4, 2002, The Department of Land Development Services deems complete a Partition application to divide another 2.00 acre parcel from tax lot 5128-000-00300, File MP 02-13. This partition also includes a property line adjustment (replat) of PP2001-28, to alter a property line around a septic system. No decision has been at this time. (9/23/02).

9/23/02

Matt Laird/mos

[h:\ML\Misc\Voris Probst land use History.ml]

Attachments:

- Overall Development Plan included in File V 38-91
- Overall Development Plan included in File V 98-07

CC: Todd Dugdale
Glen Higgins
File (MP 02-13)

MEMORANDUM

Columbia County Land Development Services Department

TO: Jim Holycross, Planner II
FROM: Todd Dugdale, Director *TD*
RE: Probst Partition Request MP 01-13
Compliance with Prior Conditions of Approval
DATE: September 17, 2002

As we have discussed previously, serial partitioning and issuance of some building permits may have proceeded without compliance with prior conditions on approval in this development. In particular, Frank Hilton, attorney for several property owners in the development have alleged the following: (Hilton's Letter dated September 13, 2002, attached).

1. Before subsequent Building Permits, a condition on V 98-7 requiring construction and written approval by the Public Works Director and Fire District of a cul-de-sac at the end of Miloris Way has not been constructed.
2. Before Final Plat sign-off and subsequent Building Permit issuance, a condition of MP 02-04 and V 98-7 requiring certain improvements to Miloris way (ie paving, repairs) has not been completed.
3. Before subsequent Building Permits, a condition of MP 02-04 requiring applicable provisions of the fire code for adequate water supply and fire access must be met. It is alleged that water service is inadequate to serve the existing six homes (water pressure) and cannot handle any additional homes. Evidence from the Columbia City and the Fire District addressing this issue should be obtained.

In addition, I note that a condition of MP 02-04 required that a County Access Permit is required for any building permits are issued for parcels resulting from the partition. A check of our records should be made to determine if permits were issued for parcels created by MP 02-04 and if the records show that a County Access permit was issued for these permits.

Would you research each of the above and provide me with your findings prior to further work on your review of MP 02-13. I note that the comments are due on this request on 9/19/02. Please arrange a meeting with Public Works and the Fire District to review the information you have collected on the above issues and to determine an appropriate course of action and response. Advise me of the meeting date/time.

Attachment:

Letter from Frank Hilton
cc Glen Higgins, Chief Planner
Dave Hill, Public Works Director



Columbia County Road Department
P.O. Box 366, 1004 Oregon Street, St. Helens, OR 97051

Transportation Planner

Phone (503) 397-5090
Fax 397-7215

TO: LDS
FROM: Lonny R. Welter *LRW*
REF: MP 02-13, Miloris Way, Columbia City

DATE: Oct 02, 02

DISCUSSION: The Columbia County Road Department recommends Denial of MP 02-13, based on County Road Standards of the maximum build out of a private road is limited to six dwellings. Miloris Way currently has six dwellings, with an approval for a seventh. This minor partition will allow an eighth dwelling.

Miloris Way has a history, and if a variance is allowed by the County Board of Commissioners for more than the max six dwellings standard on a private road, then the following conditions must be met:

1. The paved road surface must be a minimum of 20 feet wide for three dwellings or more. Two dwellings may be served with a 12 foot wide surface.
2. There must be a four foot clear zone on both sides of the road. This may include ditches, or gentle slopes provided they are not greater than 3% slope.
3. The existing road surface has areas of alligator cracking, which must be paved with a 1 1/2 inch overlay. Requirements to include 300 feet paving south of new overlay and 300 feet north of new overlay (top of Miloris Way) and starting at K Street 450 feet up the road, for a total of 1,050 of new overlay.
4. Core samples, conducted by others, is authorized, and if the road is shown to have insufficient base, additional AC will be required as needed.
5. To protect a dwelling on the bottom portion of Miloris Way, 150 feet of guardrail.

6. A standard, paved, turnaround or cul-de-sac near the water tanks.

If the County Board of Commissioners grants a variance to the private road standards by allowing more than six dwellings, and the above conditions have been met, a maximum build out of 10 dwellings on Miloris Way will be authorized by the Columbia County Road Department.



Columbia River Fire & Rescue

ADMINISTRATIVE OFFICES

270 Columbia Boulevard • St. Helens, Oregon 97051-2022

Phone: (503) 397-2990

Fax: (503) 397-3198

October 17, 2003

Todd Dugdale, Director
Land Development Services
230 Strand Street
Columbia County Courthouse
St. Helens, Oregon 97051



RE: Miloris Way Turnaround (Voris and Mildred Probst)

Dear Todd:

I have been requested by the Probsts' legal counsel to again address the access details for the on-going development on Miloris Way. Specifically, they want our comments on the proposed turnaround area on Miloris.

Currently, the turnaround area is well-located near the end of Miloris and has a minimum gravel base and surface. The Probsts' have proposed to improve this by paving the turnaround and certifying that it will be capable of sustaining the required 50,000 pound point load. This will meet the provisions in the County Fire Service Access Standard and is thereby approved by the Fire District.

If you have questions on any of the above, please call me.

Sincerely,

Jay M. Tappan
Fire Marshal

cc: Lawrence R. Derr
Law Offices of Josselson, Potter, and Roberts
The Gregory, Suite 306
425 NW 10th Avenue
Portland, Oregon 97209
file



Columbia County Road Department
1054 Oregon Street, St. Helens, OR 97051

Dave Hill, Public Works Director

Ph: (503) 366-3964 Fax: 397-7215
e-mail: hilld@co.columbia.or.us

to: Glen Higgins, Land Development Services
from: Dave Hill, Public Works Director
date: October 22, 2003
subject: Probst, Road Standards Modification Application

Voris and Mildred Probst have requested a modification to the section of the road standards that states that up to six lots or parcels may be accessed by a private road or easement. Voris and Mildred Probst are requesting the modification "to allow twelve residential lots and a municipal reservoir site to be served by Miloris Way, subject to satisfaction of all applicable land use standards and requirements and the conditions proposed below." The conditions that the

Probst' propose are basically:

- 2" overlay
- 4' clear zone on both sides of the road
- 150 feet of guardrail
- • Paved turn-around
- Approved signs

The Probst' would like a commitment from the County that if this application is approved that the Road Standards will not be an issue when they request the additional partitions of land (up to twelve total to be served by the roadway).

There are currently 7 existing residential lots approved for development and one municipal reservoir site, and the request is to allow for 5 additional residential lots. A vicinity map and a conceptual development plan, as submitted by the Probst', is attached (exhibit 1 and 2).

Process. The application was submitted in the form requested by the Road Department, and all questions were answered as requested on the form.

The Road Standards also mention that the modification request should reference nationally accepted standards. An engineer hired by Scott Parker (supportive of the application), submitted a letter subsequent to the application, referencing national construction standards. This report will also later discuss other applicable standards.

→ The Road Standards state that the modification shall not compromise public safety or the intent of the County's standards. The standards also state that the Public Works Director may grant minor modifications (side slopes, shoulders, and alternative drainage) but the Public Works Director cannot grant major modifications (pavement width, design speed, grade, engineering, or drainage capacity).

Road Standards. The "PRIVATE ROADS" section of the Road Standards are also attached (exhibit 6). The first sentence of this section states "Private roads may serve up to six lots upon approval by the Land Development Services office of the county, may be located within an Urban Growth Boundaries upon concurrence with the city, and must access directly to a public road."

Page 35 B) 2) of the Road Standards states the required base rock to be 10 inches of pit run or 8 inches of 4"-0 base rock or equivalent, plus 2 inches of 3/4"-0 surface rock.

Page 36 B) 5) of the Road Standards states that the finish grade shall not exceed 17%, and any section of road grade that exceeds 12% (except very short sections) shall be paved. Minimum depth of pavement on a private road shall be 2 inches.

Page 36 B) 8) states "All private road points of access to public roads shall include a landing area to extend 20 feet minimum beyond the shoulder of the public road on which the profile grade shall not exceed 3%."

Background.

In 1976, Voris and Mildred Probst and a partner acquired the property.

In 1979, the Probst' obtained approval for a private road and a partition for their homesite. The road requirements placed on them by the planning commission were 20' finish base, 6" of 1 1/2"-0, and 3" of 3/4"-0 and one building permit (see attached exhibit 7).

In 1982, two residential parcels were approved.

In 1989, two additional parcels were approved, and a condition imposed that the road had to be paved prior to construction of the fourth home. The Subdivision / Partitioning Ordinance Design requirements at the time were that street grades shall not exceed 12%, except where unavoidable topographic conditions, grades to 15% may be permitted. The report indicates the existing grades varied from 9% to 17%. Approval was given with condition that "the applicant provides an engineer's statement verifying the road base, travel surface, final paving standards and slopes are adequate to provide safe ingress and egress to the development."

In 1998, a major variance was approved by the Columbia County Planning Commission "to continue developing 2-acre residential lots, with frontage on a private rather than a public road." Conditions of the variance included construction of a turnaround at the end of the road, repair broken paving, repair a section of the hillside above the road that washed down, and repair culvert erosion. The Road Department comments at the time are attached (exhibit 8).

In 1999, the configuration of two parcels was approved.

In 2002, a minor partition approved the seventh lot, and the Road Department required a \$3,000 deposit to secure minor improvements to the road. Road Department comments in consideration of this partition, dated November 19, 2001 are attached (exhibit 9).

In 2002, MP 02=13 was applied for and the Road Department responded with comments dated Oct 02, 02 (attached exhibit 10). The Road Department recommended denial of the partition with the thought that the Board of Commissioners would need to consider the request for a variance for additional homes on the road, as our Road Standards only allow six. In the event that more home sites were allowed, we also indicated on our comments what additional work would be needed on the road. Our comments suggested overlaying about half of the road, installing about 150 feet of guardrail, and constructing a turn-around. It was also noted that if the base was found to be insufficient, that additional asphalt would be required.

Discussion. The Road Department started the process of evaluating the request for modification of the Road Standards and received comments back as follows:

- Jay Tappan, Fire Marshal, Columbia River Fire and Rescue. The current road access is acceptable to the Fire District. The turnaround area is usable, but needs some improvement to support 50,000 lb point load apparatus. Although this request does not necessarily address fire flow issues, future increased density may require extension of the water line. (See attached exhibit 11)
- Lisa Smith, Planning Consultant, Columbia City. "Columbia City respectfully requests that Columbia County deny the variance to the road standards for Miloris Way." Columbia City is concerned about unstable soils and the impacts of increased soil saturation resulting from additional wastewater drain fields, and impacts from increased structural weight. Columbia City has previously objected to proposed partitions on this site due to access (private, winding, steep, narrow) and private utility systems... (See attached letter exhibit 12).
- S. A. Marson, CPAC Member. Concerned about slope stability, utilities, and secondary fire escape. (See attached letter exhibit 13).
- Frank H. Hilton, Jr., Attorney for most of the homeowners along Miloris Way objecting to the modification as requested. They believe that the road is already falling apart under the loads of traffic for six homes. They have hired Carlson Testing, Inc. to sample the roads and it is their contention that there was never enough base rock placed on the road. Carlson Testing reports that there is a range of base rock from 0 - 4 inches, and asphalt ranged from 2 inches to 4 inches. Asphalt at 8 of the 10 core locations measured less than 3 inches. They suggest that a 2 inch overlay would be a short term remedy, but if it is placed they recommend that the areas of cracking be reconstructed first. Frank Hilton suggests that what should be done is to "Clean ditches and repair slopes, grind entire roadway and leave in place, place 4" rock and slope to drain, place 2-1/2" Class A asphalt." They obtained an estimate from Lakeside Industries, Inc. for this work at a cost of \$77,585. (See attached letters (2) from Frank Hilton, Jr. and report from Carlson Testing, Inc. exhibit 14)
- Lawrence R. Derr, Attorney for Voris and Mildred Probst. Larry Derr reviewed a report prepared by Brian D. Lee, PE, of Lee Engineering and indicates that the Probsts are in full agreement with Mr. Lee's report. Mr. Lee states, "Over the last 14 years, the clayey soil has migrated up into the base rock. This makes it very difficult to identify distinct layer change from the base rock to the natural subgrade soil... The fact that the roadway has lasted 14 years is proof that the roadway has sufficient base rock. But the roadway is starting to show its age... At this time Miloris Way is still in good enough condition that it can be brought up to exceed County Standards for a private roadway and be adequate for 12 homes and the reservoir site without the need for total reconstruction." Through an analysis in our road standards, Mr. Lee concludes that a full depth asphalt design would be 4.8 inches. As a check using a

guide from the Asphalt Institute for a local street, the full depth asphalt would be 5 inches over a poor subgrade.

Mr. Lee recommends that the sections of the road that are "aligating" be dug out

6" below the existing asphalt and 3/4"-0 crushed rock compacted in place and patched back with 3" of class C asphalt. The entire road should then be overlaid with 2.5" of asphalt. This will make a total road section of approximately 5" of asphalt. (See attached exhibit 15)

Recommendation. The question that I believe needs to be answered is how many lots can be served by Miloris Way and what improvements need to be made to the road to serve as access to those lots?

Miloris Way served as a driveway in 1979 and the County required it to meet the private road standards of that time. Around 1989, the road was paved and the fourth home constructed. The County currently has a standard for private roads that limits the number of lots to 6, and it can be 20 feet wide and gravel (10 inch depth), but if it exceeds 12% it must be paved with 2 inches of asphalt. Maximum grade is 17%.

The County does not limit the number of lots on a public road. The standard width is 20 feet of asphalt with 3 foot gravel shoulders, 12 inches of base rock, paving depth of 3 inches, and maximum grade of 12%.

If Miloris Way was a public road constructed to public road standards, then the road standards would not limit the number of houses that could be built in the area, and accessed by the road. Because of topography and physical features, the road cannot be constructed to public road standards. If this was proposed to be a public road, I would be concerned about the steepness of grade, sharpness of curves, and lack of shoulders, for public drivers that may simply be out on "a Sunday drive for the view". But as a private road, it serves almost exclusively as access to private properties, and motorists are predominantly familiar with the road features, and as a private road the public in general does not have an assumed right to use the road.

Therefore, I think it is appropriate that Miloris Way stay as a private road, and I think that most of the residents would like it to stay as a private road.

However, by the standards a "private road" can only serve 6 lots.

I looked at the topography of the land in the area, and reviewed the USGS quad map (attached exhibit 4), to see if there was a feasible way for a different public road to be constructed to access this development. The topography of the land would allow a public road to be built from this area to either Hankey Road or Pittsburg Road, or perhaps into the Morse Bros. quarry area, but this is not practical because of the distance, and I would probably even recommend against it. If a long section of public road was connected to Miloris Way, there is a very high likelihood that the traffic would want to use Miloris Way as a through route or short cut, and motorists will just about always desire to take the shortest distance. It would not be acceptable to have a lot of other traffic outside of the Probst development to use Miloris Way.

In reviewing the road and determining the appropriate amount of traffic for the road, I think we need to look at the safety features of the road, and then look at the structural features of the road.

The American Association of State Highway and Transportation Officials (AASHTO) publishes the most nationally recognized guide titled "A Policy on Geometric Design of Highways and Streets." In 2001, they also published "Guidelines for Geometric

Design of Very Low-Volume Local Roads. This defines a very low-volume road as one that is a local road with a design volume of less than 400 vehicles per day, and a sub-class of "rural minor access roads" as those that serve almost exclusively to provide access to adjacent property, with no through continuity, and are typically short. Because their sole function is to provide access, such roads are used predominantly by familiar drivers. Such roads need to be accessible to school buses, fire trucks, other emergency vehicles, and maintenance vehicles such as snow plows and garbage trucks. The guide indicates that an 18 foot roadway (which includes shoulders) can accommodate traffic speeds up to 40 mph. In urban areas (2 or fewer units per acre), a 20 foot width or greater may be needed. Therefore (and in accordance with our standards), the 20 foot width of the roadway should not be an issue.

The curvature of the roadway is also important. Without a detailed survey it is hard to know the curvature of the road as it is constructed. Design speeds depend heavily on horizontal curvature. The Road Department uses a vehicle mounted indicator to determine safe operating speeds around corners, and we have determined that the sharpest curve on Miloris Way could safely be traveled at 15 mph, with the remainder of the road at 20 mph. The guide states, "For improvement projects on existing very low-volume local roads, the existing horizontal curve geometry should generally be considered acceptable unless there is evidence of a site-specific safety problem related to horizontal curvature." I am not aware of any particular problem of accidents on this roadway, and therefore, at least for the existing traffic, the horizontal curvature should be adequate.

For clear zones (shoulder recovery area) and traffic barriers (guardrail), the guide states, "Research has found that roadside clear zones provide very little benefit, and that traffic barriers are not generally cost-effective, on roads with very low traffic volumes. However, there are no established criteria to identify those limited situations where provisions of a roadside clear zone or a traffic barrier may be warranted." In the case of Miloris Way, I believe the shoulder area is adequate for the roadway, however there is potential in one area that if a vehicle left the roadway that there is a high likelihood that it would collide with a house and therefore I believe a guardrail is warranted, as much of protection for the homeowner as for the motorist, and the Probst' have agreed to install the guardrail at this location.

Maximum grades is not discussed in the very low-volume guide, but in the primary policy guide they suggest in mountainous terrain a maximum grade of 17% for a design speed of 15mph, 16% for 20 mph, 15% for 25 mph ... It is also recommended that local urban streets should be less than 15%. The section of "K" St that approaches Miloris Way (about 125 feet) is a grade ranging between 16.6% and 19.1%. From this point to the end of the road, there are a couple short sections (100 feet or so) that are about 14.6% - 15.3%, and the road is fairly flat on top. By comparison, the section of "J" St. close to Hwy 30 is 23%.

Based on curvature, the safe speed of the road would be 15 - 20 mph, and based on grade the safe speed would be 15-30 mph. Therefore, I conclude that the safe operating speed of the roadway is 15 mph. This corresponds with our design speed for private roads in our road standards, at 15 mph. Design speed for public roads is 25 mph.

Traffic volumes. The basic question for Miloris Way is how much total traffic can it handle, which then can be equated to total number of home sites. The guides don't give any hard and fast numbers for this type of roadway, but there are some generalities. They mention that a single lane road should be less than 50 vehicles per day (vpd). The lowest classification for very low-volume roads is less than 100 vpd which generally speaks to 15 mph design speed, 18 foot roadway width, and 17% grades. In reviewing the current traffic in correspondence to the

current number of homes (6), the current traffic volume seems to be light. This could be partially due to relatively few occupants of the homes in comparison to the average. The average number of trips per single family residence is between 9 and 10.

Comments from others. The Fire District believes that the road is adequate with some minor improvements. Columbia City objects to more partitions of the property on the private, winding, steep, and narrow roadway; and is also concerned about slope stability and utilities. (I believe it is important not to hinder any future plans of any City, but with this issue of the Miloris Way, I don't believe the city has any plans to develop in this direction.) Most, but not all, of the adjacent homeowners object to the partition that seems to be based on the strength of the existing road, but have also complained about the narrow winding road.

The strength of the road has been mentioned as a primary concern of the current residents. It has been suggested by the opponents that the road should be ground up, additional base rock placed on the road, and then paved with 2 ½ inches of asphalt. Brian Lee, of Lee Engineering, Inc. suggests digging out the "aligatored" sections, placing base rock and paving those sections, and then overlaying the entire roadway with 2 ½ inches of asphalt.

In reviewing the history of the road, the road was a gravel road for about 10 years, and then it was paved prior to the 4th home. As a gravel road, there must have been at least some gravel placed on the roadway or the residents would not have been able to travel on the road in the winter. Carlson Testing indicates that the core samples show no rock base at some locations. This is probably explained as described by Lee Engineering in that over time the clayey soils have migrated toward the surface. It seems then that more rock would have been placed on the road than the results of the core samples indicate.

It is my opinion that the roadway has held up fairly well over the last 14 years since it has been paved, which is likely due to relatively minor truck traffic. The road in general seems to be stable and sound and has held its general shape well. In pulverizing the existing road, the strength of the existing asphalt will be lost, as it cannot be recompacted to the same "hot-placed" strength. There are many sections of the roadway that are in good condition and placing 2 ½ inches of additional asphalt over these "good" sections will make these sections very good. Digging out the aligatored sections, and placing 3 inches of asphalt over these patches, and then overlaying it again with another 2 ½ inches should make these sections very strong as well. The only questionable part should be in marking out what sections are aligatored and should be dug out.

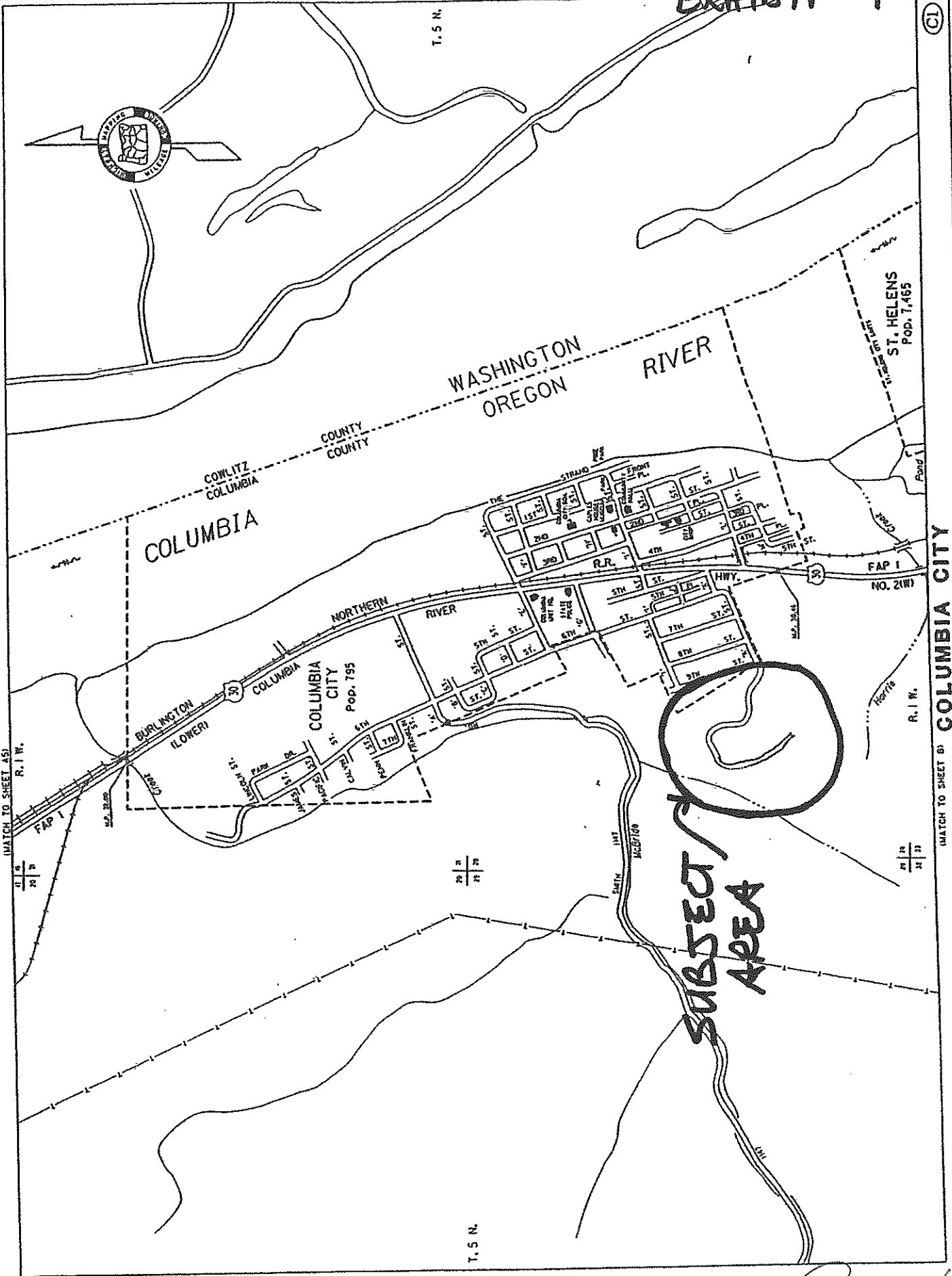
In consideration of above, it seems reasonable to me that provided there is additional work done to Miloris Way, that additional home sites should be allowed. In the memo from Lonny Welter dated Oct 02, 02, we made reference to similar road improvements and mentioned a maximum buildout of 10 dwellings. Ten (10) dwellings and a water facility seems to correspond to about 100 vehicles per day.

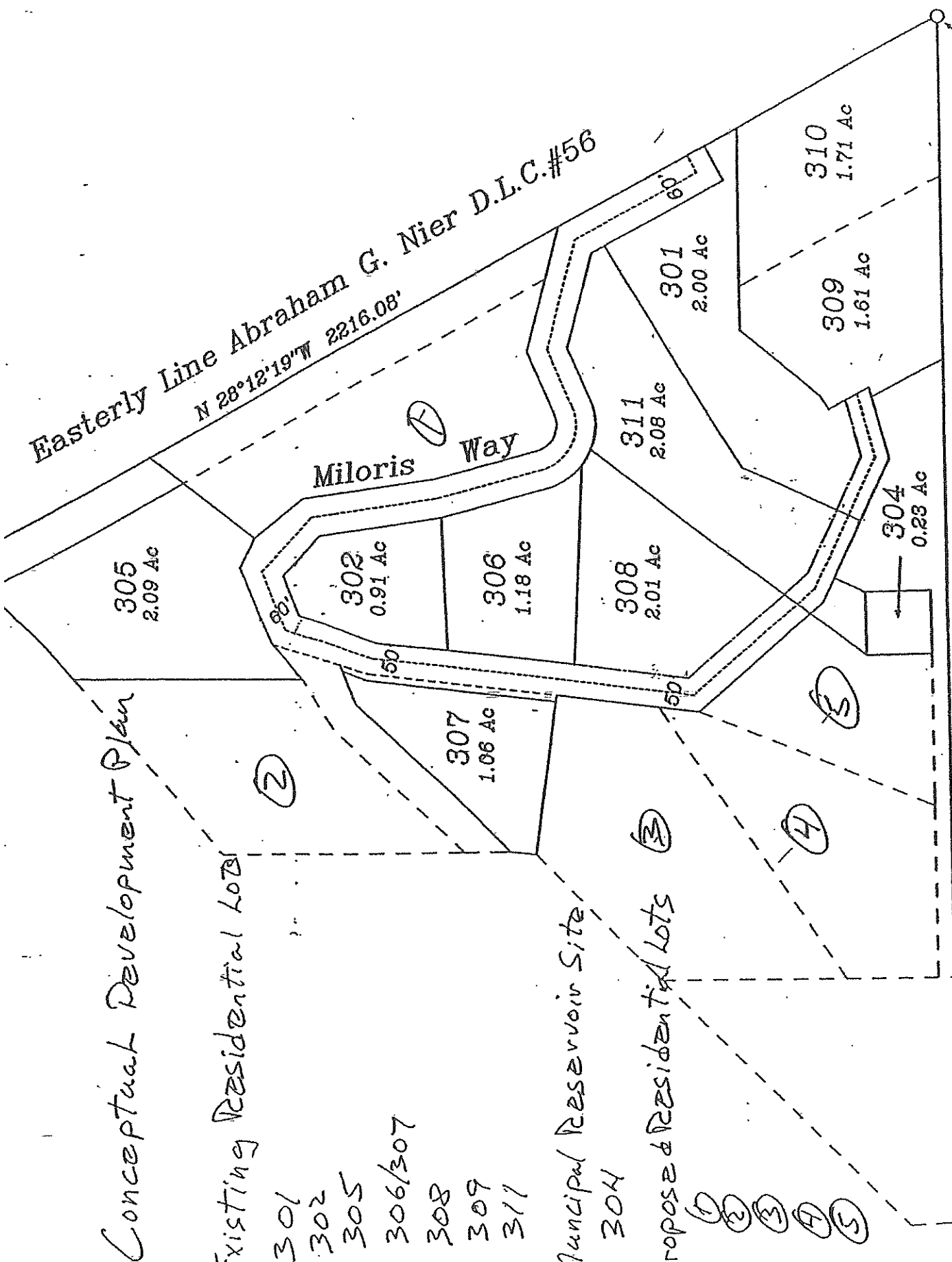
The road improvements should consist of:

- excavating the aligatored areas as determined by the Public Works Director to a minimum depth of 11 inches below the current road surface (or farther if the subbase is soft), placing and compacting 8 inches of base rock, and placing and compacting 3 inches of asphalt to match the existing road surface.
- Remove the brush and grade the ditches and shoulder areas as directed by the Public Works Director
- Place 150 feet of ODOT standard guardrail near the bottom of Miloris Way, in the location as Directed by the Public Works Director

- Construct a standard paved turnaround in the vicinity of the existing gravel turnaround, as Directed by the Public Works Director
- Overlay the entire road with 2 ½ inches Asphalt, 20 foot width where there are more than 3 residences, 12 foot width elsewhere. Provide shoulder gravel on the edge of the asphalt. Overlay should extend to the west boundary of the intersection with 9th Street. Modification will be granted for the grade that exceeds the road standards.
- Place white delineator posts with reflectors along the fill slope.

VICINITY MAP





Easterly Line Abraham G. Nier D.L.C.#56
 N 28°12'19"W 2216.08'

Miloris Way

305
2.09 Ac

302
0.91 Ac

306
1.18 Ac

308
2.01 Ac

311
2.08 Ac

301
2.00 Ac

310
1.71 Ac

309
1.61 Ac

304
0.23 Ac

Conceptual Development Plan

Existing Residential Lots

- 301
- 302
- 305
- 306/307
- 308
- 309
- 311

Municipal Reservoir Site

Proposed Residential Lots

- (1)
- (2)
- (3)
- (4)
- (5)

N 89°10'00"E 2644.12'

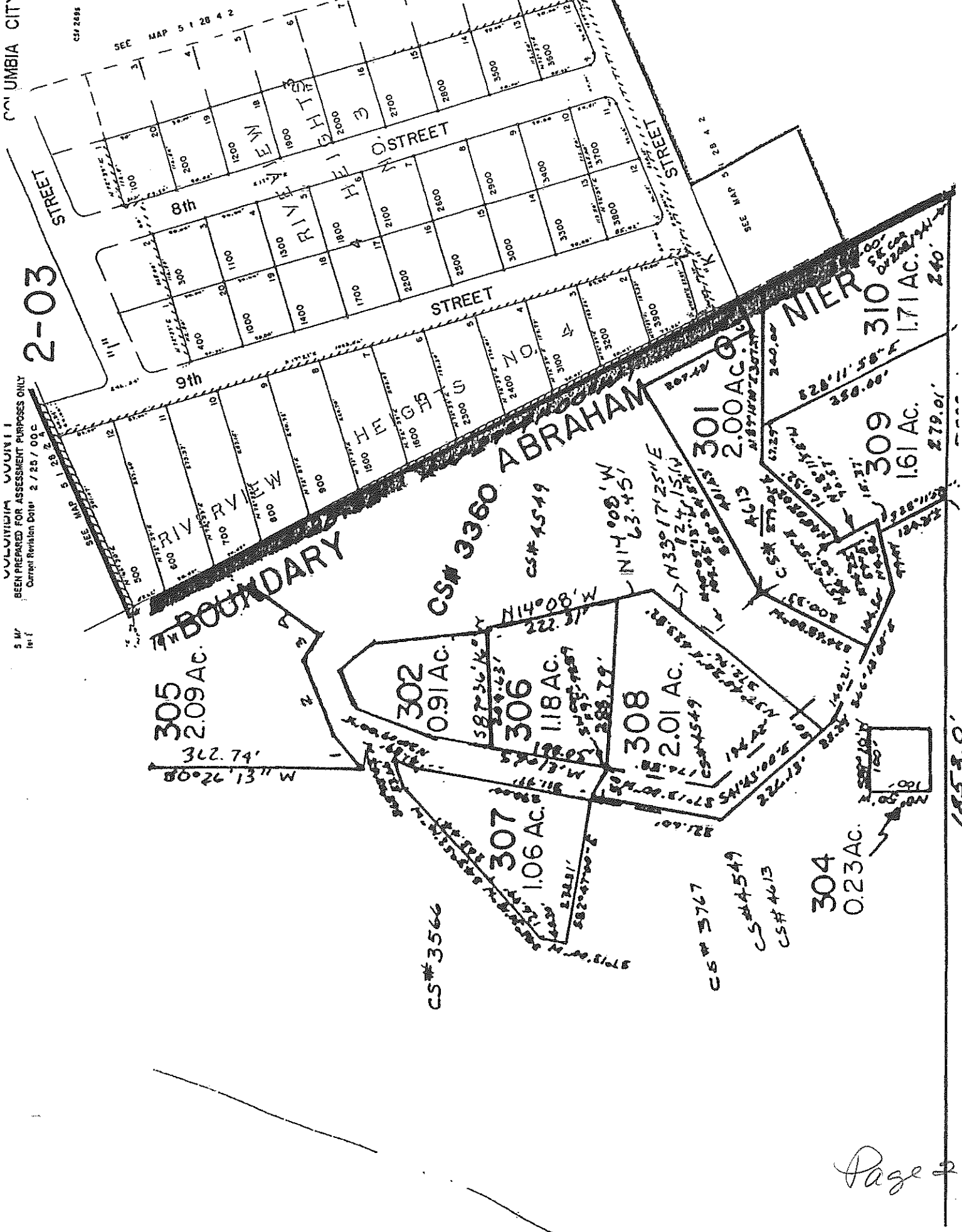
Intersection of the Easterly extension of the North Line of the Gorig D.L.C. and the East

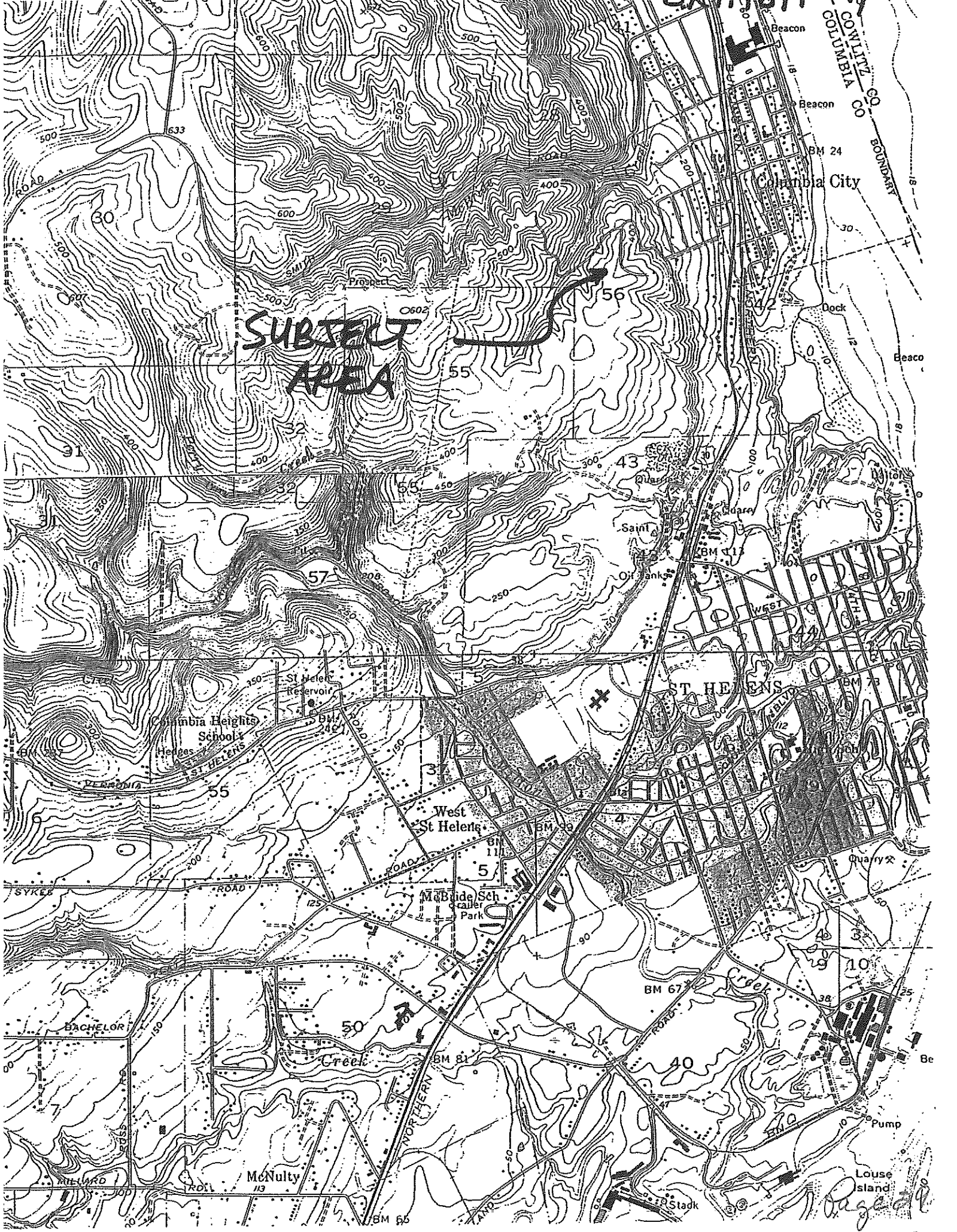
Easterly Extension of the North Line of the Francis Gorig D.L.C. No 55

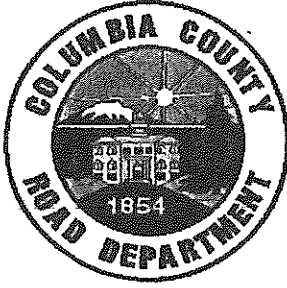
COLUMBIA CITY

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BEEN PREPARED FOR ASSESSMENT PURPOSES ONLY
Current Revision Date: 2 / 25 / 00 C

2-03







Columbia County Road Department
1054 Oregon Street, St. Helens, OR 97051

Dave Hill, Public Works Director

Ph: (503) 397-5090 Fax: 397-7215
e-mail: hilld@co.columbia.or.us

October 29, 2003

Larry Derr
Jösselson, Potter & Roberts
425 NW 10th Ave, Suite 306
Portland OR 97209

RE: Request for Information

Per your request, I have copied my report and attached exhibits, and all other correspondence in my files that you might not have, relating to the road modification request from Voris and Mildred Probst.

I believe you also asked if the conditions of V 98-7 have been satisfied. Based on the comments from Jay Tappan, Fire Marshall, there still needs some work done to the turn-around near the end of the road. I believe it should be constructed per our standard dimensions and paved. I believe the rest of the work has been done however I have not personally verified it.

Per the County's Fee Ordinance for copies, for these 80 pages, please send a check to the County in the amount of \$20.00.

Sincerely,

David A. Hill, PE
Public Works Director

Memorandum

Transmitted Via Facsimile and
Hand-Delivery to Sarah Tyson

To: Columbia County Board of Commissioners
Date: December 3, 2003

From: Ty Wyman
File No: DEL022-0002

Re: County LDS File No. MP 02-13 and Associated Road Modification

As you know, we represent owners of four of the six homes along Miloris Way. This memo responds to documents that the Applicant filed with the Board last week.

As a general matter, the Applicant's submittals simply reinforce the fact that, had he subdivided the neighborhood before developing it, the sufficiency of its infrastructure would already be assured. Just as important, a subdivision would create a neighborhood association, which is a far better suited than this Board to deal with these issues. To avoid having this matter return to you at some later date, we urge the Board to deny the partition and, thus, force the Applicant to submit a full subdivision plan before developing any more lots.

Soils. GRI's geotechnical analysis of the Columbia City reservoir site bears out the previously stated concern of both the Columbia City and us. Specifically, in response to the "potential for slope instability," the report recommended and the Columbia City undertook substantial measures to stabilize that site for construction.

Water. The Applicant does not rebut Sherden Rigdon's testimony that water pressure to existing Miloris Way homes failed 10 times between July 2002 and Sept. 2003. Instead, he submits an analysis by Crow Water Systems. Crow asserts, among other things, that the "water shortage can only be explained by the unrestricted usage of the connected homes." This assertion is not well taken.

As an initial matter, none of my clients owns either a swimming pool or water fountain. Furthermore, all of them have for the past two years obeyed a ~~voluntarily~~ voluntary water conservation plan, in which they watered their lawns on alternate days. Thus, as shown on the attached table of water usage dated July 16, 2003, the meters for the Rigdons, Lichatowichs, Jacksons, and Mr. Delaney show an aggregate average daily use of 3,173 gallons during the summer months.

In addition, we note that insufficiency of groundwater systems is neither novel nor isolated. To the contrary, the County Comprehensive Plan (at page 196) that "[p]reliminary geological surveys and well drilling data indicate many areas of the County have only enough ground water for very low-density development." See also Part IV, item 8 (calling on the County to "[e]valuate capacities of community water sources providing water to residential areas on a periodic basis to determine source stability in comparison to anticipated growth.")

Having corrected Crow's assertion about water usage by existing homes, we support his conclusion. In order to serve additional homes, the Applicant must bring the existing second well and storage tank on line.

Page 31

Road. The Applicant submitted nothing to rebut the evidence in the record that the road (1) was not built to the standards set forth for it by the County and (2) has failed a number of times in the past, necessitating large overlays. (Indeed, the applicant's assertion that traffic on the road has been light simply bears out the insufficiency of the road and the need to have it built, 24 years after the fact, to the original standards.) The Board should simply require the Applicant to build the road to its original standards since Voris Probst testified under oath that he never built the road to county standards.

Again, we appreciate the Board's attention to these problems and stand ready to address any questions that you may have.

Attachment

cc: Lisa Smith, Columbia City
Lawrence R. Derr (via hand-delivery)

COLUMBIA COUNTY BOARD OF COMMISSIONERS
BOARD MEETING

MINUTES

December 10, 2003

The Columbia County Board of Commissioners met in scheduled session with Commissioner Joe Corsiglia, Commissioner Rita Bernhard and Commissioner Anthony Hyde, together with Sarah Tyson, Assistant County Counsel, and Jan Greenhalgh, Board Secretary.

Commissioner Corsiglia called the meeting to order and led the flag salute.

PRESENT PLAQUE TO RUTH BAKER:

The Board presented Ruth Baker and her staff with a Certification of Achievement of Excellence. Ruth thanked the Board and also thanked her staff for their help in achieving this.

MINUTES:

Commissioner Bernhard moved and Commissioner Hyde seconded to approve the minutes of the December 3, 2003 Board meeting. The motion carried unanimously.

DELIBERATIONS: VORIS PROBST ROAD MODIFICATION REQUEST:

This is the time set for deliberations, "In the Matter of the Application of Voris Probst for a Modification of Columbia County Road Standards and a Minor Partition to Create an 8th 2 Acre Lot with Access onto Miloris Way".

Sarah reviewed. The Board held a hearing on 11/10, after taking testimony the hearing was closed and the Board allowed 2 weeks for additional written comments and 1 week for rebuttal. The record is now closed and this is the time set for the Board to deliberate. The following items have been received: *Exhibit "9"* letter from Columbia City received 11/24/03; *Exhibit "10"* letter from Susan Ziglinski dated 11/26/03; *Exhibit "11"* letter and documents from Ty Wyman received 11/26/03; *Exhibit "12"* letter and documents from Larry Derr received 11/26/03; *Exhibit "13"* letter from Ninth Street Homeowners received 11/25/03; *Exhibit "14"* minutes of the Planning Commission meeting of 3/2/98; *Exhibit "15"* Permit to Appropriate the Public Waters submitted by Alana Probst on 11/26/03; *Exhibit "16"* letter to Larry Derr from Lancaster Engineering submitted by Alana Probst on 11/26/03; *Exhibit "17"* letter from GRI submitted by Alana Probst on 11/26/03; *Exhibit "18"* letter from Bill Eagle to Mr. Probst submitted by Alana Probst received 11/26/03; *Exhibit "19"* letter from Crow Water Systems submitted by Alana Probst received 11/26/03; *Exhibit "20"* letter from Columbia Soil and Water Conservation District submitted by Alana Probst on 11/26/03; *Exhibit "21"* letter to Dave Graham received from Alana Probst on 11/26/03; *Exhibit "22"* letter from Ty Wyman received 12/3/03; *Exhibit "23"* supplemental staff report received 12/3/03; and *Exhibit "24"* e-mail from Dave Michael to Alana Probst received from Alana Probst on 12/3/03.

The Board stated that they have reviewed the number of additional submittals that were received in the two weeks since the hearing was closed. The two issues are, does the Board approve the road modification request and, if so, for how many homes.

After lengthy discussion and review with staff, Commissioner Hyde moved and Commissioner Bernhard seconded to approve the application request to modify the Columbia County Road Standards along Miloris Way, adding the road modification conditions as recommended by staff including condition #8 to articulate a maximum of eleven (11) dwellings. Under discussion, Commissioner Bernhard needed clarification that the road improvements will be completed prior to recording of the final partition plat. Sarah stated that is covered in the conditions. With the vote taken, the motion carried unanimously.

Further, Commissioner Hyde moved and Commissioner Bernhard seconded to approve the application for a minor partition to create an 8th residential lot on Miloris Way, subject to conditions recommended by staff and supplemental condition #10. The motion carried unanimously.

CONSENT AGENDA:

Commissioner Corsiglia read the consent agenda in full. With that, Commissioner Bernhard moved and Commissioner Hyde seconded to approve the consent agenda as follows:

- (A) Ratify the Select to Pay for 12/9/03.
- (B) Ratify the Partition Plat for "Country Meadow Estates".
- (C) Order No. 73-2003, "In the Matter of Establishing a Bail Schedule Pursuant to Section 21 of the Columbia County Enforcement Ordinance.
- (D) Order No. 74-2003, "In the Matter of the Application by Ron and Diana McLaughlin to Name a Private Road Located in St. Helens, Oregon as "McLaughlin Lane".
- (E) Order No. 75-2003, "In the Matter of Adopting a Fee for Processing Private Citizen Urinalysis Tests".
- (F) Authorize the County Assessor to fill the vacant Data Analyst position.
- (G) Authorize Human Resources to begin recruitment to fill one Legal Secretary position in the District Attorney's office.
- (H) Approve the creation of the Solid Waste Program Administrator and authorize the LDS Director to fill that position.
- (I) Approve the issuance of the Request for Proposals for the Transfer Station Design.

- (J) Approve the issuance of the Request for Proposals for the Transfer Station Operations.

AGREEMENTS/CONTRACTS/AMENDMENTS:

- (K) Agreement between Columbia County Community Corrections and the Department of State Police, Law Enforcement Data System Division and authorize Jim Stewart to sign.
- (L) Personal Services Contract with Woodland Management for Forestry Consulting Services.

The motion carried unanimously.

DONNA TEWKSBURY, CCMH: GRANT APPLICATION:

Donna Tewksbury, Columbia Community Mental Health, came before the Board to request Board support for a grant they are writing in concert with Clatsop County. It will be coming through the county if approved. It will provide services to children who are identified with having behavioral and/or social problems. The goal is to help these kids succeed in school. It will also provide addiction programs to adults. Donna explained the administrative process. This application must be received by the State tomorrow. After discussion, Commissioner Bernhard moved and Commissioner Hyde seconded to approve grant application. The motion carried unanimously.

HELION CONTRACT FOR CLERK'S RECORDING SYSTEM:

As the Budget Officer, Commissioner Hyde reported on this. The Budget committee was aware that this would be coming up. After some discussion, Commissioner Hyde moved and Commissioner Bernhard seconded to approve the expenditure of \$51,800 for the Helion contract. The motion carried unanimously.

COMMISSIONER CORSIGLIA COMMENTS:

Commissioner Corsiglia has been working on establishing the Cultural Trust grant committee. He reviewed the proposed committee members. With that, Commissioner Hyde moved and Commissioner Bernhard seconded to appoint Connie Budge, Ken Bailey, Larry Cole, Elsa

Wooley, Bonnie Shoop, Steve Gibbons and Sally Harrison to the Cultural Trust Committee. The motion carried unanimously.

Commissioner Corsiglia was in Vernonia, Natal and Clatskanie over the weekend attending their holiday events.

COMMISSIONER BERNHARD COMMENTS:

Commissioner Bernhard spent the weekend attending various events. The Clatskanie Winter Gala, Toy & Joy, the Chamber After Hours, the SOLV recognition event, and the Boise Cascade safety awards in Portland.

Commissioner Bernhard met with Betty Huser, John Knight, Brian Little and the city attorney regarding the dog licensing issue. John explained that the County will try to come up with some type of agreement with the city to deal with the issues of concern. John will be bringing an agreement before the Board in the next week or two for consideration.

COMMISSIONER HYDE COMMENTS:

Last week, Commissioner Hyde attended the annual O&C meeting in Eugene. Elections were held and he was elected as Vice President to the O&C Board. It is important to be on this committee because O&C funding is the second largest revenue stream for Columbia County and that funding is in jeopardy. He will focusing a lot of time on this issue over the next year.

He attended a meeting in Salem to discuss the implications of the measure to be voted on in February.

On Friday, he attended a meeting with 4 other counties in the Regional Emergency Management group on Homeland Security.

Commissioner Hyde stated that the final EDA grant application was submitted last Friday for the \$1 million grant for the Port Westward project. This will trigger the other \$3 million.

EXECUTIVE SESSION UNDER ORS 192.660(1)(d):

The Board recessed the regular session to go into Executive Session as allowed under ORS 192.660(1)(d). Upon coming out of Executive Session, no action was taken by the Board.

With nothing further coming before the Board, the meeting was adjourned.

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Dated at St. Helens, Oregon this 10th day of December, 2003.

NOTE: A tape of this meeting is available for purchase by the public or interested parties.

BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

By: Joe Corsiglia

Joe Corsiglia, Chair

By: Rita M. Bernhard

Rita Bernhard, Commissioner

By: Anthony Hyde

Anthony Hyde, Commissioner

Recording Secretary:

By: Jan Greenhalgh
Jan Greenhalgh

P O Box 487
Columbia City, OR 97018
October 14, 2004

Tony Hyde, Commissioner (Via FAX)
Columbia County Courthouse
St. Helens, OR 97018

Subject: Notice of Pending Final Plat Review on Partition MP02-13, Dated 10/11/04
Columbia County Final Order 76-2003, Dated 2-4-04

Dear Mr. Hyde:

On November 12, 2003, I, as an affected homeowner living on Miloris Way, attended a hearing before the Columbia County Board of Commissioners (BOC) on the referenced partition. A request for a modification of private road standards was addressed at the same hearing, and final order (FO) 76-2003 was adopted in response to the two issues. You were instrumental in formulating the BOC decision, which was, in my opinion, both reasonable and equitable. Now, it appears that the FO requirements might be overlooked so I am requesting your assistance in ensuring that that doesn't happen.

The referenced notice (copy faxed herewith) doesn't even mention the FO, although it would seem appropriate to have it listed in the 'Applicable Criteria' section, along with the county and state regulations. Regardless, the majority of FO requirements have not been met and the partition should not be approved until they are. Here is a list of FO tasks as yet undone:

- 3.3 Brush removal and shoulder grading (paving resulted in a dangerous, abrupt edge, up to 8" high in some places)
- 3.4 Installation of 150' of guard rail
- 3.5 Installation of a paved turnaround (there is one but it is not what we envisioned; we do not know if it has been approved by the county)
- 3.7 Installation of white delineator posts with reflectors
- 4.4 Have water system plans prepared by registered civil engineer, submit plans to county and have them approved (may have been done; if so, we have not seen the documents)
- 4.5 Submit written certification from registered civil engineer that water system improvements have been constructed to approved plans.
- 4.6 Submit road maintenance agreement for the new lot (may have been done; if so, we have not seen it)

As you may recall from the hearing, the history of serial development on Miloris Way goes back about 25 years. For much of that time, the developer did whatever he darn well pleased, without benefit of county permits, inspections or approvals. I understand that the county has a tight budget and that staff can't be everywhere at once. Still, I sincerely hope that the 'bad old days' are firmly behind us, and I see you as the best hope in that regard.

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I would like to meet with you at your earliest opportunity to discuss this matter and get answers to these questions:

1. Wouldn't it have been appropriate to include FO requirements in the notice?
2. Why was the final plat review notice sent out at this time, even though numerous FO tasks remain undone?
3. I realize that it is the citizen's duty to protect him/herself by being vigilant in regard to land use decisions. However, it shouldn't be necessary to camp out on the courthouse steps to ensure the LDS staff follows through on BOC decisions - and I wish to avoid being a nuisance, making a difficult job even more so. That said, how do you suggest my neighbors and I proceed?
4. Can you help ensure the FO requirements are met prior to partition approval?

I will call you later today, or Monday at the latest, to arrange a meeting time.

Thank you.

Mike Delaney



Columbia County Road Department
1054 Oregon Street, St. Helens, OR 97051

RECEIVED
DEC 07 2004
LAND DEVELOPMENT SERVICES

Dave Hill, Public Works Director

Ph: (503) 366-3964 Fax: 397-7215
e-mail: hilld@co.columbia.or.us

to: Glen Higgins, LDS
from: Dave Hill, Public Works Director
date: December 3, 2004
subject: Miloris Way, Order 76-2003

A handwritten signature in black ink, appearing to be "DH", is written over the "from:" line of the header.

Condition No.3 (A through G) for the Final Order relating to the road improvements on Miloris Way has been satisfied.

I do not believe there are any outstanding issues related to the road improvements.

cc: Alana Probst
PO Box 81
Columbia City, OR 97018

A large, handwritten blue mark resembling a stylized "2" or a checkmark is located on the right side of the page.

Page 40 A

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

In the Matter of the Applications of) FINAL ORDER NO. 76-2003
Voris and Mildred Probst for a Modification)
of Columbia County Road Standards and) FINDINGS AND CONCLUSIONS
a Minor Partition to Create an 8th 2 Acre Lot)
With Access onto Miloris Way)

WHEREAS, on September 4, 2002, Voris and Mildred Probst submitted an application to partition a 2 acre parcel from a parcel consisting of approximately 82 acres near the end of Miloris Way, a private road; and

WHEREAS, the Columbia County Road Standards, Section IV, allows a private road to serve up to six lots; and

WHEREAS, the Applicant proposed to partition an 8th lot with access onto Miloris Way, which would exceed the permissible number of lots with access onto a private road; and

WHEREAS, on July 10, 2003, Voris and Mildred Probst submitted an application for a Modification of Columbia County Road Standards to allow twelve residential lots and a Municipal Water Reservoir Site to be served by Miloris Way; and

WHEREAS, because the application for a Modification of Road Standards has a significant impact on the Minor Partition and future development on Miloris Way, the Board determined that the Road Modification application is a land use decision; and

WHEREAS, the Board of County Commissioners asserted original jurisdiction over the Minor Partition and scheduled a hearing on both matters before the Board of County Commissioners during a Special Hearing on November 12, 2003; and

WHEREAS, on November 12, 2003, the Board of County Commissioners held a Special Public Hearing on both applications; and

WHEREAS, during the hearing evidence was received into the record, a list of which is attached hereto as Attachment 1, and is incorporated herein by this reference; and

WHEREAS, after hearing testimony and receiving evidence, the Board closed the hearing and left the record open until November 26, 2003, for new evidence, and until December 3, 2003, for rebuttal evidence, and continued the matter for deliberations to December 10, 2003; and

WHEREAS, on December 10, 2003, the Board reconvened for deliberations; and

WHEREAS, prior to deliberating, a list of the additional evidence received was read, a copy of which is attached hereto as Attachment 2, and is incorporated herein by this reference; and

WHEREAS, having considered the evidence and testimony in the record, the Board of County Commissioners deliberated on the matter and voted to approve the application for a Modification of Road Standards for up to 11 lots with access onto Miloris Way subject to several conditions of approval, and voted to approve the application for a Minor Partition MP 02-13 subject to several conditions of approval;

NOW, THEREFORE, IT IS HEREBY ORDERED as follows:

1. The Board of County Commissioners adopts the Findings of Fact and Conclusions of Law 1-4, 6-9, 12 and 13 in the Staff Report to the Board of County Commissioners, dated November 5, 2003, for the Minor Partition, which is attached hereto as Attachment 3, and is incorporated herein by this reference.
2. The Board of County Commissioners adopts Supplemental Findings for the Minor Partition and Modification of Road Standards, as set forth in Attachment 4, which is attached hereto and is incorporated herein by this reference.
3. The Application to Modify the Road Standard is APPROVED subject to the following conditions of approval. Prior to recording the final plat for MP 02-13, or any other further division or development of land with access onto Miloris Way, the Applicant shall:
 - A. Excavate the alligatored areas according to the directions of the Public Works Director to a minimum depth of 11 inches below the current road surface (or further if the subbase is soft), placing and compacting 8 inches of base rock and placing and compacting 3 inches of asphalt to match the existing road surface.
 - B. Excavate and fill previously repaired areas according to the direction of the Public Works Director.
 - C. Remove the brush and grade the ditches and shoulder areas as directed by the Public Works Director.
 - D. Place 150 feet of ODOT standard guardrail near the bottom of Miloris Way, in the location directed by the Public Works Director.
 - E. Construct a standard paved turnaround in the vicinity of the existing gravel turnaround, as directed by the Public Works Director.
 - F. Overlay the entire road with 2 and ½ inches Asphalt, 20 foot width where there are more than 3 residences, and 12 foot width elsewhere. The Applicant shall provide

shoulder gravel on the edge of the asphalt. The Applicant shall also extend the overlay to the west boundary of the intersection with 9th street. The road grade may exceed the grade required in the road standards.

- G. Place white delineator posts with reflectors along the fill slope.
- H. Comply with all fire safety requirements for private roads as determined by Columbia River Fire and Rescue.
- I. All road improvements are subject to the direction of the Columbia County Public Works Director. All improvements shall be approved by the Public Works Director.
- J. Provide documentation which shows that each owner of property served by the Private Road is covered under one or more existing Road Maintenance Agreements, each of which must state that:
 - 1. The Maintenance Agreement is enforceable by a majority of the homeowners served by the road; and
 - 2. The owners served by the road, their successors, or assigns, shall maintain the road, either equally or in accordance with a specific formula that is contained in the Maintenance Agreement; and
 - 3. Amendments to the Maintenance Agreement are allowed by written and recorded agreement and consent of 75% of the property owners adjacent of the road.

In the alternative, the Applicant shall provide a new Maintenance Agreement for the 8th -11th lots which must make statements 1-3, above, and which shall state that all owners of property served by Miloris Way are Third Party Beneficiaries of the Agreement for purposes of amending and enforcing the Agreement. Upon sale of additional lots served by Miloris Way, the Applicant shall have new owners sign the Maintenance Agreement which shall be recorded with the plat creating the specific lot.

- K. The Road Modification is approved to allow additional residential lots to have access onto Miloris Way up to a maximum of 11 residential lots in addition to one municipal reservoir site.
4. The application for Minor Partition MP 02-13 is approved subject to the following conditions of approval. Prior to recording the final plat for MP 02-13, the applicant shall:
- A. Survey the property and all division lines, prepare a plat map and record the plat map with the Columbia County Clerk. A final plat must be prepared and submitted to land Development Services within one year of the date of approval of the Preliminary

Plat. If the Final Plat is not submitted within one year after the Preliminary Plat is approved, the Preliminary Plat must be resubmitted to Land Development Services for approval under the then current Subdivision and Partitioning Ordinance.

- B. Provide any improvements required for fire protection as determined by Columbia River Fire and Rescue.
- C. Assure that each residential parcel shall be at least 2 acres in size.
- D. Submit water system plans to the Public Works Director and obtain approval of such plans from the Public Works Director. The plans must be prepared by a registered civil engineer for water system improvements which meet or exceed applicable standards of the State of Oregon and the American Public Works Association.
- E. Provide written certification by the registered civil engineer that water system improvements have been constructed according to approved water system plans.
- F. Provide documentation which shows that each owner of property served by the Private Road is covered under one or more existing Road Maintenance Agreements, each of which must state that:
 - 1. The Maintenance Agreement shall be enforceable by a majority of the homeowners served by the road; and
 - 2. The owners served by the road, their successors, or assigns, shall maintain the road, either equally or in accordance with a specific formula that is contained in the Maintenance Agreement; and
 - 3. Amendments to the Maintenance Agreement shall be allowed by written and recorded agreement and consent of 75% of the property owners adjacent of the road.

In the alternative, the Applicant shall provide a new Maintenance Agreement for the 8th lot which must make statements 1-3, above, and which shall state that all owners of property served by Miloris Way are Third Party Beneficiaries of the Agreement for purposes of amending and enforcing the Agreement. Upon sale of the 8th lot the Applicant shall have new owners sign the Maintenance Agreement which shall be recorded with the plat creating the 8th lot.

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COLUMBIA COUNTY LAND DEVELOPMENT SERVICES

STAFF REPORT

BOARD OF COUNTY COMMISSIONERS

11/05/03

Road Modification and Partition

FILE NUMBER: MP 02-13 (Partition)
Road Standards Modification Application, Dated July 10, 2003

APPLICANT: Voris and Mildred Probst
PO Box 275
St. Helens, Oregon 97051

OWNER: SAME

PROPERTY LOCATION: The land being considered for partition is near the end of Miloris Way, private road. Miloris Way starts at the end of "K" Street in Columbia City and continues up the hill ending at the City water reservoir.

REQUEST: To partition one parcel of 2 acres from a parent parcel of 82+ acres.

A Road Standard Modification is required before the applicant could partition the requested 2 acre residential parcel.

TAX ACCT. NUMBER: 5128-000-00300

ZONING: Rural Residential (RR-2) A portion of the parent parcel is zoned Rural Residential (RR-2), along Miloris Way, and the remainder (largest) portion is zoned Primary Forest (PF-76).

PARTITION APPLICATION COMPLETE: September 4, 2002 **150 DAY DEADLINE:** Waived
ROAD MOD APPLICATION RECEIVED: July 10, 2003

REVIEW CRITERIA:

Columbia County Subdivision & Partitioning Ordinance

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Columbia County Comprehensive Plan

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Columbia County Road Standards

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BACKGROUND:

Single family lot development on the Probst property (Tax Lot #300) has proceeded since 1979 along a private road (Miloris Way) which continues along a ridge beyond the end of K Street above Columbia City. The County approved the first residential partition on the private road in 1979. From 1979 through 1992, each time Mr. Probst wanted to partition another home site he would apply for a variance to the standard of 50 feet of public street frontage. Finally, in 1998 a variance for continued lot development without frontage on a public street was approved by the Planning Commission, and since that time two new lots have been approved, bringing a total of seven residential lots and six dwellings built along it. In September 2002, Voris Probst applied for a partition (MP02-13) to create an eighth lot. Land Development Services advised the applicant that he would

need to obtain a modification of road standard to allow continued development of lots beyond the standard of six lots on a private road under the County Roads Standards Ordinance. The applicant submitted the modification of road standards in July 2003.

Existing residents along Miloris Way are engaged in litigation with the developer Voris Probst over road maintenance, water service and property development issues. At the September 9, 2003 Board of Commissioners Work Session the board decided to review the partition request at the same hearing as the road modification since the land use issues associated with both requests are closely related. The hearing date was set for November 12, 2003 and public notifications were sent as per Sections 1603 and 1608 of the Columbia County Zoning Ordinance.

Actions approving additional lot development on the private road, Miloris Way, have proceeded since 1998 primarily on the basis that the Planning Commission approved a variance from the requirement that each lot have at least 50 feet of frontage on a public street. The Planning commission decision on the variance was "to continue developing 2-acre lots, with frontage on a private rather than a public road." The variance decision was not specific as to how many additional 2-acre lots would be allowed. The applicant assumes that the 12 lots depicted on his "development plan" submitted with the variance request would control. Residents on the private road believe that lot development should have been limited to 6 lots as specified in the Road standards. The County has approved 7 lots to date. The Board may interpret the variance decision in terms of the number of lots which were authorized to be developed on the private road and will need to grant a modification of road standard to allow any further lot creation including the pending partition application MP02-13 which would create the eighth residential lot on a private road.

REVIEW CRITERIA:

Columbia County Subdivision & Partitioning Ordinance

SECTION 205. APPLICATION FOR APPROVAL OF SUBDIVISION OR PARTITION TENTATIVE PLAN.

- A. Preliminary Sketch and Discussion. Prior to commencing the application process required by ORS 92.040 et seq., the applicant proposing the subdivision or partition shall submit a sketch to the Planning Department and discuss the property to be divided with respect to the standards of this ordinance, the requirements of state law, any existing private and public development, the relationship to the Comprehensive Plan, and any special problems that may be encountered. The discussion shall include any modification or changes in the sketch plan if the plan, as submitted, does not meet the objectives of those local and state laws.
- B. Compliance With County Ordinances. The Planning Department shall not approve any

tentative plan for any proposed subdivision or partition unless the plan complies with the Columbia County Zoning Ordinance, as amended, applicable regulations, this ordinance and any other county ordinance.

FINDING 1: The applicant proposes to partition a two acre parcel directly west of the water storage tank. The applicant has submitted the necessary information and paid the required fee to process the partition. Compliance with other county ordinances and applicable regulations will be discussed later in this report.

Continuing with Columbia County Subdivision & Partitioning Ordinance

SECTION 213. NOTICE REQUIREMENTS.

A. Notice of Public Hearing Items. The Planning Department shall provide notice of any required public hearings, in writing, to the applicant and owners of record of property on the most recent property tax assessment roll where such property is located:

- (1) Within 100 feet of the property which is the subject of the notice where the subject property is wholly or in part within an urban growth boundary;
- (2) Within 250 feet of the property which is the subject of the notice where the subject property is outside an urban growth boundary and not within a farm or forest zone; or
- (3) Within 500 feet of the property which is the subject of the notice where the subject property is within a farm or forest zone.

The notice shall contain all the information required by ORS 197.763(3), and shall be mailed at least 20 days before the hearing.

B. Notice of Administrative Application. Adjoining property owners within the same distances as noted in Section 213.A shall be notified of the request, as shall the CPAC and any affected agencies. Any of these parties shall be given 10 calendar days in which to respond, and may request the application be referred to the Planning Commission for consideration. If such a request is made with the appropriate fee, the request will be placed on the next possible Planning Commission agenda. Notice of the Planning Commission hearing shall be in accordance with Section 213.A. of this ordinance. *[Amended 7-15-97]*

FINDING 2: The proposed partition is located outside the City of Columbia City incorporated boundary and outside the urban growth boundary. Initially, on September 5, 2003 Land Development Services sent notice for

the partition as an Administrative Decision to property owners within 250 feet of the partition, affected agencies and the local CPAC. After receiving comments, the Planning Division advised the Applicant that a road standards modification would be necessary prior to a decision on the partition. The Board determined that a land use process would be required for the Road Modification decision process and the Partition request should be heard at the same time. In accordance with CCZO Section 1603, notice addressing the road modification and partition was sent to property owners within 250 feet of the subject division, affected agencies and published in a newspaper of record. Notice was provided on October 9, 2003 to the applicant and owners of record of property within the prescribed distances. (See also Finding 12)

Continuing with the County Subdivision and Partitioning Ordinance:

ARTICLE VII – MINOR LAND PARTITIONING

SECTION 701 SUBMISSION OF TENTATIVE MAP AND PLAN.

A tentative plat and plan for the minor partitioning of the land shall be submitted to the Planning Department for approval in conformance with these regulations.

- A. Applicability. All proposals for a minor land partition that meet the criteria outlined in Article III Section 301(A)(1)-(3), must follow the procedures for a Future Development Plan as set forth in Article III. [Enacted by Ordinance No. 01-09 effective 4/07/02].

FINDING 3: A tentative plat map was submitted in the application. Article III - Special Requirements For Land in the St. Helens Urban Growth Area is not applicable to this application because the subject property is not within the St. Helens Urban Growth Area.

Continuing with the County Subdivision and Partitioning Ordinance:

SECTION 702. CONTENTS OF TENTATIVE MAP FOR MINOR PARTITIONING.

- A. The following general information shall be shown on the tentative map:
 - (1) Location of the partition by (quarter-quarter) section, township, and range and a legal description sufficient to find the location and boundaries of the proposed tract or the tract designation or other description. (Assessor’s map is recommended.)
 - (2) Date, north point, and scale of drawing.
 - (3) Appropriate identification clearly stating the map is part of the minor partition.

- (4) Names and addresses of the owner, partitioner, engineer and/or surveyor, land planner, if any, or any other professional person employed in the preparation, layout design of the minor partition.
- (5) The location, approximate dimensions, and acreage of lots, and the proposed lot and block numbers.
- (6) Location of approved means of sewage disposal for each lot in accordance with Section 913.2 of this ordinance, if known.
- (7) Location of approved means of water supply for each lot in accordance with Sections 913.C.(1) and 913.D.(1) of this ordinance, if known.

B. Existing Conditions. The following existing conditions shall be shown on the tentative plan for a minor partition:

- (1) The location, width, and names of both opened and unopened streets within or adjacent to the project area, together with easements, other rights-of-way, and other important features such as section lines, corners, city boundary lines, and monuments.
- (2) The location, width, and use or purpose of any easement on the property.
- (3) The location and direction of all water courses and the location of all areas subject to flooding.
- (4) The location of structures, irrigation canals and ditches, pipelines and railroads, and any natural features such as rock outcroppings and cover which are of an area or size sufficient to influence the design of the minor partition.
- (5) Existing uses of the property, including location of all existing structures to remain on the property after development, and the location of any well(s) and septic system(s).
- (6) The location within the development area and in the adjoining streets and property of existing sewers and water mains, culverts and drain pipes, and elevations of sewers at points of probable connection.
- (7) Approximate location of boundary lines of property adjacent to the development.
- (8) Zoning classification of the land and adjoining land.

FINDING 4: All of the above information was included in the application, sufficient to process and review

this request.

Continuing with the County Subdivision and Partitioning Ordinance:

SECTION 704. REVIEW OF MINOR PARTITIONS.

- A. Upon receipt of the application for minor partition by the Planning Department, the Director shall determine whether or not the proposed minor partition meets the standards of this ordinance. If a variance from the standards of this ordinance is necessary, the provisions as stated in Section 210 of this ordinance shall be followed. The Planning Director shall submit the application for minor partition to the Planning Commission for its review and approval, remand or denial.
- B. If the application for minor partition is found to meet the specifications of this ordinance, the Planning Director shall review and approve the proposal, provided that he or she finds the application to be in conformance with the Comprehensive Plan, Zoning Ordinance and any other pertinent ordinances.

FINDING 5: Land Development Services determined that the partition application did not need a variance to County Subdivision and Partitioning Ordinance since a prior variance to the public road frontage standard had been granted by the Planning commission (V98-7). Notice was sent as per an administrative decision. During the initial comment and review period the Director determined that a modification of road standards was necessary to allow more than six dwellings on a private street (Part IV Columbia County Road Standards) prior to the decision on the partition. The process for Road Standards Modification involves a decision by the Board of Commissioners. On September 9, 2003 the Board decided to hold a Special Hearing to review both the Partition request and the Modification of Road Standards. That Hearing was set for November 12, 2003.

Continuing with the County Subdivision and Partitioning Ordinance:

SECTION 1001. MINIMUM STANDARDS.

The requirements and standards set forth in this ordinance are the minimum ones to which a subdivision plat shall conform before approval by the Commission. These requirements are also the minimum ones to which partitions must conform when the standard is applicable.

FINDING 6: The proposed partition will conform with the minimum standards as set forth in the Columbia County Subdivision and Partitioning Ordinance, as attested through Findings 1 through 5 above, and 8 and 9 below.

Continuing with the Subdivision and Partitioning Ordinance:

SECTION 1002. CONFORMITY TO THE COMPREHENSIVE PLAN.

The intent and design of the proposed subdivision shall conform to and be in harmony with the Comprehensive Plan and County Zoning Ordinance.

FINDING 7: The applicable provisions of the Comprehensive Plan and Zoning Ordinance will be addressed later in this Staff Report. The application can not be approved unless it is conformance with both the applicable provisions of the Comprehensive Plan and the Zoning Ordinance. (See Findings 15 and 16)

Continuing with the Subdivision and Partitioning Ordinance:

SECTION 1003. LOTS.

The minimum area, width, depth, and frontage of lots and the minimum building setback line from streets shall conform to the requirements of the County Zoning Ordinance, where applicable, and all other applicable regulations. However, in no case shall a lot be approved which is less than 7,000 feet in area, has a width less than 70 feet, a depth of less than 80 feet, a frontage of less than 30 feet. No building setback line from a street of less than 20 feet shall be accepted. A minimum of 50 feet of usable road frontage shall be provided for access to each lot created.

For unincorporated areas within the St. Helens urban growth area, lots proposed to be created through subdivision or major or minor partition, shall conform to the size and dimension standards outlined in the City of St. Helens Comprehensive Plan and implementing ordinances. [Amended by Ordinance No. 01-09 effective 4/07/02].

FINDING 8: The minimum area, width, depth and frontage of the proposed partitioned parcel will conform to the requirements of the County Zoning Ordinance. (see Finding 10) The proposed parcel will be at least 2 acres in size The proposed parcel will maintain at least 50 feet of usable road frontage on a private right-of-way for access. The proposed parcel of this application is not within the St. Helens urban growth area.

Continuing with the Subdivision and Partitioning Ordinance:

(Section 1003 Lots)

A. Lot Improvements.

(2) Lot Dimensions. The lot dimensions shall comply with the minimum standards of

the Zoning Ordinance. When lots are more than double the minimum required area for the zoning district, the Commission may require that such lots be arranged so as to allow further subdivision and the opening of future streets where they would be necessary to serve such potential lots.

FINDING 9: The proposed two acre parcel is somewhat a trapezoid in shape with dimensions, starting at the top, of 159', then 263' and 488' on the sides and 385' on the bottom. Pursuant to Section 705 of the Columbia County Zoning Ordinance the minimum lot or parcel size for the subject parcel is two acres. The proposed parcel will conform to minimum lot standards of the Zoning Ordinance. In addition, the subject parcel is not more than double the minimum required for the RR-2 zoning district; therefore, lot arrangement to allow further subdivision and future street provision is not required.

Columbia County Zoning Ordinance

Section 620 RURAL RESIDENTIAL - 2 RR-2
[Amended 2-2000]

621 **Purpose:** This district is designed for rural areas where lot sizes at the time of initial zoning are predominantly two acres or less. The intent is to recognize existing areas, not to create substantially new two acre parcel areas. Uses in this zoning district will be predominantly residential with a rural level of public services; i.e., domestic water from water districts, sewage disposal using on-site systems, adequate fire and emergency service by fire districts, and rural road standards per County plans and regulations. Other uses will be those customary to such areas, including farm and forest uses, and home occupations of a rural character.

624 **Standards:**

- .1 The minimum lot size for uses permitted under this section shall be 2 acres.
- .2 Dwellings permitted under this section must meet all of the following standards:
 - A. be within an existing public or community water district providing adequate domestic water; and
 - B. be approved for an individual subsurface septic system, or be served by a public or community sewer system; and
 - C. have direct access onto a public right-of-way meeting applicable County road standards; and
 - D. be within and can be served by a rural fire protection district.
- .3 The minimum average lot width shall be 100 feet.

- .4 The minimum average lot depth shall be 100 feet.

FINDING 10: The minimum lot width and depth requirements in the RR-2 zone are exceeded by the proposed parcel. The proposed residential parcel will be served by an existing public water system, Miloris Water System. The Sanitarian with the Columbia Health Department confirmed the Miloris Public Water System has less than 15 users and has been consistently submitting the required testing results on a quarterly basis. The proposed 2 area parcel has been approved for an on-site sewer septic system on July 22, 2002. The area to be partitioned is within the Columbia River Fire and Rescue District (Fire Department), and has fire hydrants, serviced by the Columbia City community water system at the reservoir near the end of Miloris Way. The Fire Department has commented that they are satisfied with emergency access to the proposed parcel, the turnaround area is well located and when paved the turnaround will need to be certified that it will capable of sustaining the required 50,000 pound point load. The proposed 2 acre parcel does not have frontage onto a public right-of-way meeting applicable county standards, however, the Planning Commission has approved a variance (V98-7) to this standard, to allow additional residential parcel creations along Miloris Way with frontage on a private rather than a public road.

There are six existing dwellings and a potential seventh dwelling, residential lot, that rely exclusively on access from Miloris Way private road. The Planning Commission, after many years of reviewing access issues with this site approved a variance to allow additional RR-5 residential lot divisions to be served by a good private road, because of the characteristics of the site area and limited number of potential residential lots in the area zoned residential. That decision is relevant to this proceeding because an upper limit or total number of residential units allowed to be served in this development by a private road was not decided by the Planning Commission. Further more, the variance decision pertained to the then RR-5 zoned land along Miloris Way, not the current RR-2 zoned land. Rezoning of the area from RR-5 to RR-2 occurred in January 2002 as part of the County's periodic review rural lands amendments. An upper limit for use of a private road has been set by the Columbia County Road Standards in Part IV, administered by the Public Works Department, allowing up to six lots to be served by a private road when brought up to minimum standards. The Board could interpret the scope of the Planning Commission approved variance in relation to the amount and type of traffic allowable for an access less than that of a standard public road.

Continuing with Columbia County Zoning Ordinance

624 Standards: (RR-2)

- .5 Lots or parcels shall conform to the following requirements before a building permit may be issued for construction on the property;
- A. All lots or parcels legally recorded on or after June 4, 1991 shall have a minimum of 50 feet of usable frontage on a public right-of-way. The entire public right-of-way adjacent to the property shall be improved in accordance with the

requirements of the Columbia County Road Standards. In lieu of such improvements, the owner or developer of the lot or parcel may secure a surety bond, or place cash in escrow or trust, to insure that the improvements will be completed according to the procedure outlined in Section 801 of the Columbia County Subdivision and Partitioning Ordinance.

- B. All lots or parcels legally recorded before June 4, 1991 shall have a minimum of 50 feet of usable frontage on a public right-of-way or private non-exclusive easement. One-half of the public right-of-way or private non-exclusive easement adjacent to the lot or parcel shall be improved in accordance with the requirements of the Columbia County Road Standards. If the parcel to be developed abuts the end of a private non-exclusive access easement, one-half of the width of the easement shall be improved to current County Road Standards from the property line of the subject parcel to its connection to a public right-of-way. In lieu of such improvements, the owner or developer of the lot or parcel may secure a surety bond, or place cash in escrow or trust, to insure that the improvements will be completed according to the procedure outlined in Section 801 of the Columbia County Subdivision and Partitioning Ordinance. However, in the sole discretion of the Board, in lieu of the improvements or cash or surety bond to secure such improvements, the Board may require the owner or developer of the lot or parcel to put up cash in an amount equivalent to the cost of such improvements dedicated toward the improvement of the entire road rather than just the portion adjacent to the lot or parcel.

FINDING 11: The subject application is proposing creation of a lot to be recorded after June 4, 1991, and therefore, according to this standard requires “public road frontage”. The Planning Commission has granted variances to minimum lot sizes and access standards for other previously platted residential lots along Miloris Way private road in the past and, also granted a variance (V 98-7) for continued lot development on Miloris Way. Columbia County Road Standards allow only up to six lots to be served by a private road. (See discussion in Finding 10 above) The Board of Commissioners can interpret the decision made in V98-7, as to how many residential lots can be served by this short private road, Miloris Way, and to what construction standard it should be brought. Attached is recommendation from Dave Hill, Public Works Director, with discussion on these two points.

From a planning perspective, private roads are typically used to serve an exclusive small specified population where no thoroughfare is needed or possible in the future. A private road is only intended to be used by those immediate adjacent owners and affiliated residential traffic. Miloris Way fits this situation. It leaves the block platted area of Columbia City at the end of K Street and proceeds into a hilly area where typical lot and block divisions are impractical. After the road winds up the hill to the top of the ridge it flattens out where some residential view lots have been created in unusual patterns, fitting the terrain. Connecting Miloris Way with any other city street would not be possible or would be highly unlikely. Because of the steep terrain the only other possible connection to Miloris Way would be to the south near it’s end. The property to the south is a tract of 141 acres owned by Oregon Timber Company which is zoned Primary Forest. The property to the west is the remaining parcel of 75 + acres zoned Primary Forest, but is too steep for a road extension. The property to the

vest has frontage and access to a public road, Smith Road.

As far as a private road serving a small specified population, the question arises as to how many potential residential lots are possible to create fronting Miloris Way, given the RR-2 zoning. The Development Plan submitted by the applicant with the variance (V98-7) showed 12 lots; however, one of the lots, lot 3, is located in the PF-76 zone and would not be currently allowed to be partitioned. So, the total possible residential parcels in the current RR-2 zoned land fronting Miloris Way, according to the applicant, is eleven (11). Staff believes that the one planned lot between Miloris Way as it cuts through the hillside, and the City limits, has some severe slope restrictions and may be too steep for residential construction. Presently there are 7 residential parcels; the applicant may be seeking an additional 3 or 4. Given the current zoning and physical restraints, staff finds that there are a total of 10 lots of the 12 lots proposed by the applicant in the 1998 variance application that are currently suitable for rural residential development.

Continuing with Columbia County Zoning Ordinance

1603 Quasijudicial Public Hearings: As provided elsewhere in this ordinance, the Hearings Officer, Planning Commission, or Board of Commissioners may approve certain actions which are in conformance with the provisions of this ordinance. Zone Changes, Conditional Use Permits, Major Variances, and Temporary Use Permits shall be reviewed by the appropriate body and may be approved using the following procedures:

- .1 The applicant shall submit an application and any necessary supplemental information as required by this ordinance to the Planning Department. The application shall be reviewed for completeness and the applicant notified in writing of any deficiencies. The application shall be deemed complete upon receipt of all pertinent information. If an application for a permit or zone change is incomplete, the Planning Department shall notify the applicant of exactly what information is missing within 5 days of receipt of the application and allow the applicant to submit the missing information. The application shall be deemed complete for the purpose of this section upon receipt by the Planning Department of the missing information. *[effective 7-15-97]*
- .2 Once an application is deemed complete, it shall be scheduled for the earliest possible hearing before the Planning Commission or Hearings Officer. The Director will publish a notice of the request in a paper of general circulation not less than 10 calendar days prior to the scheduled public hearing. Notices will also be mailed to adjacent individual property owners in accordance with ORS 197.763. *[effective 7-15-97]*

[Note: ORS 197.763 requires 20 days notice (or 10 days before the first hearing if there will be 2 or more hearings), and that notice be provided to property owners within 100' (inside UGBs), 250' (outside UGBs), or 500' (in farm or forest zones).]

- .3 At the public hearing, the staff, applicant, and interested parties may present information

relevant to the criteria and standards pertinent to the proposal, giving reasons why the application should or should not be approved, or what modifications are necessary for approval. [effective 7-15-97]

- .4 Approval of any action by the Planning Commission at the public hearing shall be by procedure outlined in Ordinance 91-2. [effective 7-15-97]

FINDING 12: The partition application was deemed complete on September 4, 2002 and notices to property owners within 250 feet of the subject partition and to affected agencies were mailed on September 5, 2002. The applicant submitted a Road Modification request, the Board ordered a Special Hearing under CCZO Section 1612 and appointed itself as the Hearings Officer. The Board published notice of both the partition and road modification requests in the approved newspapers on October 29, 2003. Notice was mailed to property owners within 250 feet of the subject property on October 9, 2003.

Continuing with Columbia County Zoning Ordinance

1608 Contents of Notice: Notice of a quasijudicial hearing shall contain the following information:

- .1 The date, time, and place of the hearing;
- .2 A description of the subject property, reasonably calculated to give notice as to the actual location, including but not limited to the tax account number assigned to the lot or parcel by the Columbia County Tax Assessor;
- .3 Nature of the proposed action;
- .4 Interested parties may appear and be heard;
- .5 Hearing to be held according to the procedures established in the Zoning Ordinance.

FINDING 13: The notice had all of the above information included.

Continuing with Columbia County Zoning Ordinance

1612 Special Hearings: The Board of County Commissioners, in its discretion, may order any quasi-judicial land use application or type of quasi-judicial land use application to be heard at a Special Hearing in lieu of a hearing before the Planning Commission or the Board of County Commissioners.

1613 Appointment of Hearings Officer: Special Hearings shall be heard by a hearings officer appointed

by the Board of County Commissioners.

- 1614 Requests for Special Hearings: In addition to Special Hearings ordered by the Board of County Commissioners on its own initiative, Special Hearings may be initiated by the Board at the request of the Planning Director or his or her designate, or a majority of the Planning Commission, for any quasi-judicial land use application or type of quasi-judicial land use application.
- 1616 Procedure for Special Hearings: The procedure for Special Hearings shall, to the greatest extent practicable, be the same as for other quasi-judicial land use hearings as set forth in the Columbia County Zoning Ordinance, Planning Commission Ordinance, and Subdivision and Partitioning Ordinance, and ORS Chapters 92, 197 and 215. When a Special Hearing is held in lieu of a Planning Commission hearing, the hearings officer's decision may be appealed as provided in Sections 1700 through 1703 of this ordinance. When a Special Hearing is held in lieu of a Board of County Commissioners' hearing, the hearing officer's decision may be appealed as provided in ORS Chapter 197 for appeals to the Land Use Board of Appeals.

FINDING 14: At the September 9, 2003 Board of Commissioners Work Session the Board ordered a Special Hearing, over which they would preside as the hearings officer. They concluded that, given the two issues at hand, a partition and a modification of road standards, a hearing before the Planning Commission is not appropriate because of their lack of expertise in road standards, and the county has not procured a hearings officer. Notices for the Board hearing followed the procedure for quasi-judicial hearings set forth in CCZO Section 1603.

Continuing with Review Criteria

Columbia County Comprehensive Plan

Part XIII

TRANSPORTATION

GOAL:

The creation of an efficient, safe, and diverse transportation system to serve the needs of Columbia County residents.

Policy 2. The dedication of adequate rights-of-way to meet the standards set in the Transportation Plan shall be required of any person seeking a Zone Change, Conditional Use Permit, Subdivision, or Partition. The developer of a subdivision in an urban growth area will be required to make the appropriate improvements to any related street to meet the standards set in a Transportation Plan.

Finding 15: Miloris Way is the transportation improvement to serve the proposed partition. Miloris Way is a 50 feet wide easement, which is adequate width under the Columbia County Road Standards. No additional width is required. The developer will be required to make the appropriate improvements to Miloris Way to meet

the standards of Columbia County Road Standards and Transportation Plan as approved by the Board. See road standard Findings 17 and 18, also see Public Works Director Report attached.

Continuing with the Comprehensive Plan

Part VII

RURAL RESIDENTIAL

GOAL: It is the goal of the County to provide for the continuation and needed expansion of Rural Residential uses on those resource lands where a valid exception can be, or has been shown to be, justified.

Policy 4. Establish a Rural Residential Zone with a 2-acre minimum lot or parcel size, where such lands will not create "spot zoning" (a relatively small area with different zoning than its surroundings) and, as determined by the County: *[Amended by Ordinance No. 98-4 effective November 1998].*

- A. Are within an existing public or community water district providing adequate domestic and fire flow water. *[Amended by Ordinance No. 98-4 effective November 1998].*
- B. Have soils capable of accommodating a subsurface septic system. *[Amended by Ordinance No. 98-4 effective November 1998].*
- C. Have access onto a public right-of-way meeting applicable County Road Standards. *[Amended by Ordinance No. 98-4 effective November 1998].*
- D. Are within, and can be served by a rural fire protection district. *[Amended by Ordinance No. 98-4 effective November 1998].*
- E. A 2-acre minimum parcel size is appropriate to maintain the rural character of the area. *[Amended by Ordinance No. 98-4 effective November 1998].*
- F. The conversion complies with the Oregon Administrative Rule requirements for an exception to Goal 14. *[Added by Ordinance No. 98-4 effective November 1998', Amended by Ordinance No. 00-05, effective 11/13/00].*

Policy 6. Encourage rural growth in exception areas where facilities and services such as adequate transportation networks, school facilities, fire districts, water and police services, etc. already exist so as to minimize costs of providing such services to these areas.

Finding 16: With the initial adoption of Columbia County Comprehensive Plan in 1984, approximately 30 acres of view property, now being served by Miloris Way, had a valid exception to resource uses shown to be

Justified and the area was zoned for residential use. In 1998, because of the smaller lot patterns in the area and closeness to a city, the county determined that it should be zoned RR-2 with a 2 acre minimum lot size. The area in question on this land use action is already zoned Rural Residential - 2 acres, nothing is being proposed for conversion. The area is served by a public water system, has soils on the site that are capable of treating sewage on-site with an approved septic system, is within and can be served by a fire protection district, and two acre lot sizes are appropriate to maintain the rural character of the area. It has been shown that for this diverse, small population a private right-of-way for access is appropriate, and variances have been approved for creation of 2 acre lots without being served by a public road. ... Policy 6 above encourages rural growth in this area that is close to schools, fire districts, public water and police services. The private road has served the small population of homeowners adequately, without major problems. Continued development with a few more home sites would seem consistent with the Comprehensive Plan as long as adequate improvements can be made to the private road and continued maintenance is assured.

Columbia County Road Standards

Section IV. Private Roads

Private roads may serve up to six lots upon approval by the Land Development Services office of the county, may be located within an Urban Growth Boundary upon concurrence with the city, and must access directly to a public road. Private roads shall comply with Fire Department Fire Apparatus Access Road standards and the following:

A) Minimum Requirements

- 1) Private roads shall not be approved if the road is presently needed, or is likely to be needed, for public road purposes in the normal development of the area, or if the private road is intended to facilitate more intensive development of the area, or if the private road is intended to serve commercial or industrial uses. Private roads shall not be approved for commercial or industrial land divisions.
- 2) The minimum easement width for a private road shall be 40 feet, except where the natural slope or topography of the land requires a greater width. The minimum right-of-way width shall accommodate the required cut and fill slopes, ditches, turnouts and cul-de-sacs. Additional right-of-way will be required to be dedicated from developers of property if the easement is not currently 40 feet wide or if additional right-of-way is required for the necessary improvements within the limits of the property being developed.
- 3) A lot or parcel abutting a railroad or limited access road right-of-way may require special consideration with respect to its access requirements.
- 4) Guardrails are required on all bridges and for a distance 40 feet along the approaches to all bridges. A guardrail is also required along any roadway where the fill slope, natural

ground slope below the road is steeper than 1:1, over 10 feet high, and is within 10 feet horizontally of the edge of the traveled road surface. The guardrail materials must conform to the Oregon State Highway Standard Drawings and Specifications.

- 5) The county may require that the private road being created for partition or other development be dedicated for public road purposes and improved to the applicable standards, if it is determined by the Public Works Director or the Columbia County Land Development Services Department that the access and transportation needs of the public would be better served by such a change.

The determination made by the County will include the following:

- a) Proximity of other roads being used for the same purpose,
 - b) Topography of the parcel and contiguous parcels,
 - c) Potential development and potential buildout densities as determined by the zoning,
 - d) Safety factors such as visibility, frequency or road access points.
- 6) All private dead-end roads shall have a cul-de-sac or other suitable turnaround.
 - 7) A private road shall directly connect only to a public road. (It shall not connect to another private road.)
 - 8) The County shall require that a maintenance agreement be recorded in the office of the County Clerk of Columbia County with the map or plat creating the private road, and the agreement shall include the following terms:
 - a) That the agreement for maintenance shall be enforceable by a majority of the homeowners served by the road.
 - b) That the owners served by the road, their successors, or assigns, shall maintain the road, either equally or in accordance with a specific formula that is contained in the maintenance agreement.
 - c) Amendments shall be allowed by written and recorded agreement and consent of 75% of property owners adjacent to the road.
 - 9) The County shall require that an easement over the private road for access, including the right of maintenance, be conveyed to the properties served by the road.

Finding 17: The applicant is seeking a modification to the standard of a private road may serve up to six lots. In findings 10 and 11 above it was discussed why Miloris Way is appropriate to be a private road because the area would be unlikely needed to be served by a public road in the future, the area has a rural lot pattern of 2 acres and no commercial or industrial uses are present or planned in the future. The easement width for Miloris Way is 50 feet wide. Guardrails are proposed to be installed where adjacent slopes are excessive. Miloris Way is an already existing private road that serves 6 residential dwellings and a city reservoir. It is connected to K Street, a public street and ends with an approved turnaround, which is proposed to be paved. There is a private road

maintenance agreement recorded in the Clerks Office which meets the requirements of Section 8 (a through c) above.

Continuing with Road Standards- Private Roads

B) Minimum Construction Standards

- 1) Twelve foot wide improved travel surface for one or two lots. Twenty foot wide improved travel surface for 3 to 6 lots.
- 2) The travel surface of the private road shall be constructed to ensure access for the parcels served during all climatic conditions. Minimum requirements:
 - a) Ten inches of pit run or eight inches of 4"-0 base rock or equivalent. The grade of rock shall be approved by the County Road Department prior to construction.
 - b) Two inches of 3/4"-0 surface rock.
- 3) Turnouts shall be required on 12 foot wide roadways at 400 foot maximum intervals, or at distances which ensure continuous visual contact between turnouts. Turnouts shall be constructed to the following dimensional standards: 40 feet in length and 8 feet in width, with 12 foot tapers on each end back from its point of connection with the private road.
- 4) The minimum cut and fill slope ratio shall be 1 1/2 units horizontal to 1 unit vertical (1 1/2 : 1). The developer shall be required to provide all erosion control measures necessary to maintain the standard cross section and to eliminate increases in any stream turbidity.
- 5) The finish grade within 20 feet of the traveled portion of the public roadway shall not exceed +3 percent. Elsewhere the finish grade shall not exceed 17%. Any section of the road grade that exceeds an average of 12% (excepting up to 75 foot sections of up to 15%) shall be paved. Any section of road with a grade in excess of 15% shall be paved. Minimum compacted depth of pavement on a private road shall be 2 inches.
- 6) A 45 foot radius cul-de-sac, or other suitable turnaround, at the terminus of the private road of within 200 feet of its terminus.
- 7) All culverts, bridges and other waterway crossings shall be constructed and maintained to carry American Association of State Highway and Transportation Officials (AASHTO) HS-20 loading. All culverts shall have a minimum diameter of 12 inches. Bridges and other large water crossings shall be certified by a registered professional engineer.
- 8) All private road points of access to public roads shall include a landing area to extend 20 feet minimum beyond the shoulder of the public road on which the profile grade shall not exceed 3 percent. A greater landing area may be required to allow for future road improvements.

- 9) If the intersecting public road is paved (or asphalt oil matte), the private road shall be paved at least 20 feet back from the edge of the existing asphalt roadway.
- 10) Centerline curve radius shall be at least 45 feet.
- 11) Overhead clearance shall be maintained at least 13 feet 6 inches.
- 12) Variances to this standard shall require a written letter of approval from the appropriate fire department, Rural Fire District, or Oregon State Board of Forestry.
- 13) Approved signs shall be provided and maintained by the owners of the property being accessed by the private road to identify the road and to prohibit parking or obstruction of the roadway as required by the Columbia County Fire Services Apparatus Access Road and Driving Standard.
- 14) An access permit is required from the Road Department for a driveway that accesses a private road.

Finding 18: The travel surface of Miloris Way is constructed to 20 foot width for that portions serving 3 or more residences. If there are some places where this standard is not quite met the Public Works Director is recommending that it be constructed the full 20 feet. All of the above standards have been shown to be met except for questions have arose about the base rock or equivalent and surface rock under the pavement. See Public Works Director Report discussion attached.

Continuing with Columbia county Road Standards

Section VI(G) (1) General - Request to Modify Specifications/Standards

To seek approval, non-complaint specifications / standards must be sent through the following process. It is to be noted that if the requested modification involves public safety, the county will rule in the direction of safety.

2) MODIFICATION PROCESS

a) SUBMITTAL

Requests to modify shall be submitted in writing to the County Public Works Director on the application form (exhibit 5). This written request shall state the desired modification(s), reason(s) and a comparison between the specification(s) or standard(s) and the modification(s) as far as performance, etc.

Any modification or variance of these standards should be documented and reference

nationally accepted specifications / standards. The use thereof shall not compromise public safety or the intent of the County's standards.

b) REVIEW

The request to modify shall be reviewed by the County Public Works Director, county Counsel, Land Development Services Staff, and the appropriate Fire Services Officer. The Public Works Director shall make a report to the Board of Commissioners, who shall make one of the following decisions:

- Approve as is,
- Approve with changes, or
- Deny with explanation.

Approval of a request shall not constitute a precedent.

c) CRITERIA FOR MODIFICATION OF SPECIFICATIONS / STANDARDS

The County Public Works Director may grant a minor modification to the adopted specifications or standards, without requiring the process of steps a and b above, when any of the following conditions are met:

The standard or specification does not apply in the particular application. Topography, right-of-way or other geographic conditions impose an economic hardship on the applicant and an equivalent alternate which can accomplish the same design is available.

A minor change to a specification or standard is required to address a specific design or construction problem, which, if not enacted, will result in an undue hardship.

Minor modifications include modifications to the requirement for plan submittals, cut or fill slopes, minor shoulder narrowing if other delineation is provided, and alternative drainage facilities and designs. Major modifications not subject to appeal by the Public Works Director include pavement width, right-of-way, or drainage capacity.

Finding 19: The applicant submitted the modification application on forms provided by the Public Work Director and has referred application to the Board of Commissioners. See Public Works Director Report attached. The Board determined a public hearing was necessary and scheduled the hearing for November 12, 2002. See related findings 2 and 5 above.

COMMENTS:

1. Received September 27, 2002 - Columbia City commented by Referral and Acknowledgment attached letter by Lisa Smith is concerned of the impacts of the on going partitions on the city

streets and existing private street, and the impact for future lot development at urban densities if ever annexed.

2. Received September 13, 2002 - The County Road Department commented by Referral and Acknowledgment by Lonny Welter recommends denial that County Road Standards only authorize 6 dwellings on a private road and improvements required by V98-7 may not have been completed.
3. Received October 2, 2002 - The County Road Department memo from Lonny Welter: if the Board of Commissioners allow a modification to the road standards then six (6) conditions of improvement to the road are recommended (see memo). A maximum of 10 dwellings should be allowed on Miloris Way.
4. Received September 6, 2002 - The County Sanitarian commented by Referral and Acknowledgment by Ron Wilson that they have no objection to the proposal.
5. Received September 18, 2002 - The Columbia River Fire and Rescue (Fire Dept) by Jay Tappan commented by Referral and Acknowledgment that the applicant must ensure adequate fire flow by hydrant or an alternative source of fire flow mechanism.
6. Received October 17, 2003 - The Columbia River Fire and Rescue (Fire Dept) by Jay Tappan a letter addressing Miloris Way turnaround that the present gravel turnaround is well located and when paved it must be certified capable of sustaining 50,000 pound point load.
7. Received September 12, 2002 - The St. Helens-Columbia City CPAC Minutes of September 11, 2002. Item #2 Probst request for a Partition be denied. And recommended that a) all of the conditions of V98-7 regarding the cul-de-sac be satisfactorily completed; b) that code enforcement be carried out including regarding a road maintenance agreement in effect for all parties, that the applicant proves an adequate supply of water exists, both flow and potability, there is adequate pressure for present and future consumers and the system is constructed to the State and Public Works Association standards. The CPAC further recommends that the Board of Commissioners make no exceptions to the use of private roads.
8. Received September 12, 2003 - Dunn Carney Allen Higgins & Tongue LLP, by Frank Hilton Jr. to Todd Dugdale states that the turnaround required as a condition in V98-7 was not constructed and no proof can be found. Also the water system is inadequate for additional homes.
9. Received September 16, 2002 - Dunn Carney Allen Higgins & Tongue LLP, by Frank Hilton Jr. Separate letters to Mr. Dave Hill, Mr. Glen Higgins and Mr. Rich Morse states that the turnaround required by V98-7 was not complete, paving required by MP02-04 was not completed and the water system is inadequate for additional homes.
10. Received September 30, 2002 - Dunn Carney Allen Higgins & Tongue LLP, by Frank Hilton Jr. Letter to Todd Dugdale stating that the Miloris Way had an insufficient sub-base and his clients

conducted core samples done by Carlson Testing results attached

11. Received February 25, 2003 - Dunn Carney Allen Higgins & Tongue LLP, by Frank Hilton Jr. Letter to Glen Higgins requesting that all property owners on Miloris Way receive notice of any hearing before any action is taken on the application.
12. Received August 13, 2003 - S. A. Marson, Member CPAC Concerned about the stability of the land under Miloris Way. Concern over the steepness of the road and eroding under it. Concern over the water system to support 12 homes. Concern that the current owners on Miloris Way have been informed of this road modification request.
13. Letter dated August 14, 2003 - Dunn Carney Allen Higgins & Tongue LLP, by Ty K. Wyman to Glen Higgins stating that the road standards modification is a land use action and requires notification with an opportunity for a hearing.

No other comments have been received as of the date of this staff report, November 5, 2003.

CONCLUSION AND RECOMMENDATION:

The Applications and Staff Report is for two separate actions. Staff recommends that Board make a decision on each separately.

Based on the above findings the Partition request (MP 02-13) meets all of the criteria in the county ordinances and should be approved, if a Modification to Road Standards is approved for more than 6 dwellings to be served by a private road. The Planning Division agrees with the Public Works Department (see memo from Dave Hill) that this small residential area served by Miloris Way will only be accessed by this private road. The question remains: how many residential parcels can be served by this short private road and to what improved standards can it be constructed. The applicant is asking for a total of 12 parcels, however, one of the 12 proposed parcels is not allowed unless it is rezoned to RR-2 because it is in the Forest Zone and another proposed parcel is on steep terrain (see Finding 11) leaving a total of 10 parcels either developed or suitable for development at this time. The Public Works Department is recommending a threshold of 100 vehicle trips per day, which corresponds to 10 parcels to be served by an improved the private road. The Planning Division recommends a limit of 10 residential lots on Miloris which would include 7 existing lots, the lot proposed by MP02-13 and two additional lots within the RR-2 zoned area adjacent to Miloris Way.

The Public Works Director's finding that improvements to the road should be as recommended by the Public Works Director Report. If additional residential parcels are allowed and this modification and application approved the following conditions are recommended:

1. The property and all division lines must be surveyed, a plat map prepared and recorded in the office of the County Clerk, Courthouse, St. Helens, Oregon. A final plat must be prepared and submitted to Land Development Services within one year of the date of approval of the Preliminary Plat. If this one year deadline is not met, the Preliminary Plat must be resubmitted

for approval under the current Subdivision and Partitioning Ordinance.

2. The applicant shall provide any improvements required for fire protection as determined by the Columbia River Fire and Rescue.
3. Each residential parcel shall be at least 2 acres in size.

The road improvements should consist of:

4. Excavating the alligatored areas as determined by the Public Works Director to a minimum depth of 11 inches below the current road surface (or farther if the subbase is soft), placing and compacting 8 inches of base rock, and placing and compacting 3 inches of asphalt to match the existing road surface.
5. Remove the brush and grade the ditches and shoulder areas as directed by the Public Works Director
6. Place 150 feet of ODOT standard guardrail near the bottom of Miloris Way, in the location as Directed by the Public Works Director
7. Construct a standard paved turnaround in the vicinity of the existing gravel turnaround, as Directed by the Public Works Director
8. Overlay the entire road with 2 ½ inches Asphalt, 20 foot width where there are more than 3 residences, 12 foot width elsewhere. Provide shoulder gravel on the edge of the asphalt. Overlay should extend to the west boundary of the intersection with 9th Street. Modification will be granted for the grade that exceeds the road standards.
9. Place white delineation posts with reflectors along the fill slope.

Attachments: - Correspondence received by the Planning Department
 -Application
 -Vicinity Map
 -Zoning Map
 -Address Map
 - Preliminary Plat
 - Current Development Plan / Status of Development on Miloris Way (Staff Map)
 - Memo from Dave Hill, Report and Recommendation Probst Road Modification

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ATTACHMENT 4
SUPPLEMENTAL FINDINGS

A. MINOR PARTITION

1. Columbia County Zoning Ordinance, § 624.2 sets forth the minimum standards for the Rural Residential-2 Zone. The standards for the zone limit the minimum lot size to 2 acres, and requires that dwellings permitted in the zone meet four requirements, as follows:
 - a. Be within an existing public or community water district providing adequate domestic water; and
 - b. Be approved for an individual subsurface septic system, or be served by a public or community sewer system; and
 - c. Have direct access onto a public right-of-way meeting applicable County road standards; and
 - d. Be within and can be served by a rural fire protection district.

Lot Width.

The standards also specify that the minimum average lot width shall be 100 feet, and that the minimum average lot depth shall be 100 feet. The Board of County Commissioners finds that the Applicant meets the minimum lot width and depth requirements in the RR-2 zone. As shown on the survey map, "parcel #2" is well over the minimum width and depth.

Septic System.

The Board of County Commissioners finds that the subject property was approved for an individual septic system by the Columbia County Sanitarian on July 22, 2002. A copy of the Site Evaluation Report which approves a sandfilter sewage disposal system for a home with a maximum of 4 bedrooms is in the record. The Board finds that this method of sewage disposal is in accordance with the requirements and standards for sewage disposal administered by and under the jurisdiction of the Oregon Department of Environmental Quality in compliance with Columbia County Subdivision and Partitioning Ordinance Section 1013(B).

Fire Protection.

The Board of County Commissioners finds that the proposed parcel is within the Columbia River Fire and Rescue District. The area to be partitioned has fire hydrants which are serviced by the Columbia City community water system at the reservoir near the end of Miloris Way. The Fire Department has commented that they are satisfied with emergency access to the proposed parcel, and with the location of the turnaround area provided that the turnaround is paved to withstand a 50,000

pound point load. The Board of County Commissioners finds that there is substantial evidence in the record that the parcel can be served by a rural fire protection district.

Domestic Water.

The Board of County Commissioners further finds that the applicant will meet the criteria that the lot is within an existing public or community water district providing adequate domestic water. Evidence was presented during the hearing that the community water system which currently serves the existing 6 dwellings in Miloris Estates provides inadequate domestic water. Testimony established that at times there is no water pressure from the system despite a voluntary water conservation plan that the residents have implemented which restricts irrigation watering to every other day. Property owners on Miloris Way presented evidence that additional residences will burden the existing system and make the existing inadequate domestic water service worse.

The Applicant recognized that there is a problem with the existing system; that it is inadequate to serve the existing lots and the addition of the proposed lot with unrestricted residential use including irrigation. The Applicant retained the services of Dave Graham of Crow Water Systems who retained John Borden, a civil engineer specializing in water system engineering. In his report, Mr. Borden indicated that the current system is connected to the smaller of two wells which has a safe continuous yield of at least 6 gpm and pumping capacity of at least 6 gpm. The report also indicated that the small well and pump have, at times, not kept up with demand including irrigation. The report suggested that sufficient capacity could be added to the system to meet the current demand by adding a larger well and pump to the system. The Applicant has water rights to a second well at Miloris Estates. According to Mr. Borden, the second well has the capability of producing an additional 21 gpm. Furthermore, the Applicant owns a 12,000 stainless steel storage tank which is currently on-site, albeit uninstalled. Mr. Borden's report indicated that by adding the large well and storage tank to the existing community water system, the system will be capable of serving at least 12 homes and their irrigation demands.

The Board finds that the Applicant is willing and able to install improvements to the existing system to make the water adequate to meet the needs of residents of Miloris Estates, in accordance with Mr. Borden's recommendations. As a condition of approval, the Board will require the Applicant to make the water system improvements prior to the recording of the final plat. The system improvements must be designed and certified by a registered civil engineer and be approved by the Columbia County Public Works Director. Upon compliance with these conditions of approval, the Applicant will meet the requirement in CCZO § 624.2(A) for the creation of the 8th lot in Miloris Estates.

The Board of County Commissioners finds that the Applicant has also met the requirements for water facilities in rural areas as set forth in Columbia County Subdivision and Partitioning Ordinance, Section 1013(D)(1) which requires that "(w)ater lines serving the subdivision or partition shall be installed to provide

adequate water pressure to serve present and future consumer demand. Materials, sizes and locations of water mains, valves, and hydrants shall be in accordance with the standards of the Fire District, the County, the State and the American Public Works Association.” The Applicant has stated an intent to have 12 residential lots in Miloris Estates. The evidence that the Applicant submitted showed that the water system improvements recommended by John Borden, when made, will create a water system sufficient to serve at least 12 residential dwellings with water pressure adequate to meet consumer demand. The water improvements shall be required to meet the American Public Works Association Standards as well as the Standards of the Fire District, the County and the State.

Public Right-of-Way Access.

The Board of County Commissioners finds that the applicant cannot meet the criteria found in CCZO § 624.2(C), which requires direct access onto a public right-of-way meeting applicable County Road Standards, or CCZO § 624.5(A) which requires that “(a)ll lots or parcels legally recorded on or after June 4, 1991 shall have a minimum of 50 feet of usable frontage on a public right of way.” The Columbia County Public Works Director testified and the Board finds that the existing private road cannot meet the standards as a Public Road and it is not in the best interest of the County to accept roads into the public road system unless they first meet the current standards. The Public Works Director also looked at the topography of the land in the area and reviewed the USGS quad map to see if there is a feasible way for a different public road to be constructed to access the development. The topography of the land would allow a public road to be built from the development to Hankey Road or Pittsburg Road, but the Public Works Director did not recommend that those options be required because of the distance and the impracticality of building a public road to serve this small development. The Board agrees with the Public Works Director that it would be impractical to build a public road to serve this small development.

The Applicant acknowledges that the Applicant cannot meet the Public Road Standards as required in CCZO § 624.2(C) and CCZO § 624.5(A). In 1998, in conjunction with another application for a Partition, the Applicant filed a request for a Variance to Columbia County Zoning Ordinance § 604.5 which required that “all lots or parcels legally recorded on or after June 4, 1991 shall have a minimum of 50 feet of usable frontage on a public right-of-way.”¹ On March 6, 1998, the Columbia County Planning Commission granted the Variance in Final Order V 98-7 “to continue developing 2-acre residential lots, with frontage on a private rather than a

¹At the time the variance was granted the property was zoned RR-5. The County had granted go-below development of 2 acre lots in the RR-5 zone. In 1998, after the Variance was granted, the County adopted amendments to Columbia County Zoning Ordinance and Comprehensive Plan, eliminating the go-below, adopting RR-2 rules, and re-zoning the subject property to RR-2.

public road, in the RR-5 zone.” There was no limiting language in the Final Order as to how many lots would be allowed to be developed on the private road. The Applicant has argued that the road standards in the RR-2 zone will never limit the number of dwellings that he can build because the Variance does not specifically limit the number of dwellings.

The Board disagrees with the Applicant’s argument. The Board of County Commissioners heard testimony from the Planning Commission Chair that indicated the Planning Commission did not intend to limit the number of lots with access onto Miloris Way. The Board finds that while the Planning Commission Chair can speak of his own recollection of the events and of his intent, he cannot speak for the entire Planning Commission or presume to know what was intended by the group as a whole. His testimony is therefore, not compelling. The Board also finds that the Applicant submitted a conceptual site plan with the Variance application which showed 12 lots in Miloris Estates. Furthermore, in testimony before the Planning Commission, the Applicant indicated that there were only going to be 10 houses on the road, possibly another if a dwelling is placed on the 62 acres of forest land behind Miloris Estates. The Applicant also indicated that he may seek to place up to 4 dwellings on a parcel of land adjacent to Miloris Estates which would be served by a spur road connecting with Miloris Way, and, would not have direct access or frontage onto Miloris Way.

The Board finds that based on the site plan submitted by the Applicant to the Planning Commission and the Applicant’s own testimony, there was no discussion during the Planning Commission hearing or evidence showing the intent to have more than 12 dwellings with direct access and frontage on Miloris Way. The Board also finds that it is against the public interest to have an on-going Variance of the type the Applicant suggests he has. It is the Board’s planning responsibility to consider the long-term ramifications of the Variance, and how many lots could possibly be added onto Miloris Way in the future if the Applicant was able to develop lots on the Road indefinitely. The 30.6 acres of RR-2 property could arguably be divided into 15 lots at its current zoning density. Furthermore, in the future, zoning could change to allow a higher density on the RR-2 property, and forest land surrounding the RR-2 property could be re-zoned to allow for high density residential development. According to the Applicant’s argument, the County would never be able to revisit whether or not adding additional dwellings onto the private road would be contrary to public safety under the RR-2 road standards. The Board finds that the Variance is limited to a maximum of 12 residential lots as was clearly contemplated by the Planning Commission and the Applicant.

The Board of County Commissioners finds that the Variance allows the division of the 8th lot with access onto a private road, rather than a public road. Therefore, CCZO § 624.2(C) and CCZO § 624.5(A), are met. The Board finds that Miloris Way must meet the County Road Standards for private roads.

2. The Board of County Commissioners finds that the Columbia County Zoning

Ordinance and the Columbia County Planning Commission Ordinance allow the Board of County Commissioners to take original jurisdiction over a quasi-judicial land use decision. Columbia County Zoning Ordinance § 1612 allows the Board to order quasi-judicial land use applications heard at a Special Hearing in lieu of a hearing before the Planning Commission. Section 1612 allows the Board to appoint a hearings officer to hear such a Special Hearing. Finally, Columbia County Planning Commission Ordinance § 11, Appeals and Board Jurisdiction, allows the Board of Commissioners to assert original jurisdiction over any land use application and bypass prior Planning Commission Review. At its Work Session on September 9, 2003, the Board of County Commissioners voted to hold a special hearing to consider both the Application for a Road Modification to allow more than 6 residential lots with access onto Miloris Way, and the Application for a Minor Partition. The Columbia County Land Development Services Director normally would make the decision on an application for a Minor Partition. The Board of Commissioners has original jurisdiction to make a decision on an application for Road Standards Modification according to the Columbia County Road Standards. At the hearing on November 12, 2003, the Board of County Commissioners took original jurisdiction over the Minor Partition Application, and appointed the Board as the Hearings Officer to hear both matters during the Special Hearing.

3. The Columbia County Subdivision and Partitioning Ordinance, § 1002, requires that applications for partitions must conform to the Columbia County Comprehensive Plan. Columbia County Comprehensive Plan, Part VII, Rural Residential, states that the Goal of the County is “to provide for the continuation and needed expansion of Rural Residential uses on those resource lands where a valid exception can be, or has been shown to be, justified.” The Board of County Commissioners finds that the subject property was zoned Rural Residential (RR-5) upon initial adoption of the Columbia County Comprehensive Plan. In 1998 the property was re-zoned RR-2 because of its proximity to the Columbia City Urban Growth Boundary. The development of additional parcels in the RR-2 zone complies with the goal by expanding rural residential uses on resource lands having valid exceptions.

Policy 4 of the Rural Residential Goal requires that the County “Establish a Rural Residential Zone with a 2-acre minimum lot or parcel size, where such lands will not create spot zoning...and, as determined by the County:

- a. Are within an existing public or community water district providing adequate domestic and fire flow water;
- b. Have soils capable of accommodating a subsurface septic system;
- c. Have access onto a public right-of-way meeting applicable County Road Standards;

- d. Are within, and can be served by a rural fire protection district...**

The Board of County Commissioners finds that the proposed new parcel will be served by an existing community water system which serves Miloris Estates. As stated in Supplemental Finding #1, above, the Applicant will be required to make water system upgrades to assure adequate domestic water flow to both the existing and new residential parcels. In addition, the Board of County Commissioners finds that the Applicant has received approval for a sand filter septic system on the proposed parcel and the County Sanitarian has determined that the soils are capable of accommodating a subsurface septic system. The Board of Commissioners also finds that the proposed parcel will be served by the Columbia Rural Fire District upon compliance with fire improvements to the road. Finally, the Board finds that the Applicant obtained a variance to the requirement that the new parcel have access onto a public right-of-way, and the Board has granted a Road Standards Modification authorizing additional residential lots to be developed on a private road. The Applicant will be required to meet the County Road Standards for Private Roads as discussed herein. Therefore, the Board finds that the Applicant has complied or will comply with Policy 4.

Policy 6 of the Rural Residential Goal requires that the County, "Encourage rural growth in exception areas where facilities and services such as adequate transportation networks, school facilities, fire districts, water and police services, etc. already exist so as to minimize costs of providing such services to these areas." The Board of County Commissioners finds that upon compliance with the conditions of approval the proposed new parcel will have adequate existing transportation network and water facilities. The new parcel will also be served by an existing fire district. Therefore, the Board finds that it is appropriate to encourage the creation of the new proposed parcel.

4. The Columbia County Subdivision and Partitioning Ordinance, § 1002, requires that applications for partitions must conform with the Columbia County Comprehensive Plan. Columbia County Comprehensive Plan, Part XIII, Transportation, states that the Goal of the County is "The creation of an efficient, safe, and diverse transportation system to serve the needs of Columbia County residents." Policy 2 of the Transportation Goal states, "The dedication of adequate rights-of way to meet the standards set in the Transportation Plan shall be required of any person seeking a Zone Change, Conditional Use Permit, Subdivision, or Partition...**" Miloris Way is a 50 foot private road. Its width is sufficient to meet the County Road Standards for private roads which requires a 40 foot wide right-of-way. Therefore, no additional right-of-way will be necessary to meet the private road standards. However, safety and efficiency improvements are necessary to comply with the Goal. The Public Works Director has recommended specific improvements to the Road to assure that the Road meets the County Road Standards for Private Roads, and is efficient and safe for the residents on Miloris Way. The Board of County

Commissioners finds that upon compliance with such improvements, the Applicant will meet the Goal of the Columbia County Comprehensive Plan, Part XIII, Transportation.

5. Columbia County Subdivision and Partitioning Ordinance Section 1013(D)(2) requires that “underground utilities are not required but are encouraged where the cost of installing underground and above ground utilities are approximately equal. Utilities shall be installed pursuant to the requirements of the utility company. Electric power transmission lines (over 50,000 volts or primary feeder lines), and transformer vaults are exempted from these requirements.” The Board of County Commissioners finds that all utilities serving the present homes on Miloris way are constructed underground. The Applicant has testified that the proposed new parcel is already served with underground utilities to the site. Such utilities shall be installed pursuant to the requirements of the utility company.
6. Neighboring property owners expressed concern about slope instability in the area which might effect the development of the 8th lot. The Board finds that there is substantial evidence in the record that the 8th lot is proposed to be located in an area where there are no slope issues. The Board finds that the testimony and evidence showed that if there are unstable slopes in the general area, they are not relevant to the current application because they are not actually within the area to be partitioned.

B. ROAD STANDARDS MODIFICATION.

1. The Board of County Commissioners finds that the Columbia County Zoning Ordinance and the Columbia County Planning Commission Ordinance allow the Board of County Commissioners to take original jurisdiction over a quasi-judicial land use decision. Columbia County Zoning Ordinance § 1612 allows the Board to order quasi-judicial land use applications at a Special Hearing in lieu of a hearing before the Planning Commission. Section 1612 allows the Board to appoint a hearings officer to hear such a Special Hearing. Finally, Columbia County Planning Commission Ordinance § 11, Appeals and Board Jurisdiction, allows the Board of Commissioners to assert original jurisdiction over any land use application and bypass prior Planning Commission Review. At its Work Session on September 9, 2003, the Board of County Commissioners voted to hold a special hearing to consider both the Application for a Road Modification to allow more than 6 residential lots with access onto Miloris Way, and the Application for a Minor Partition. The Columbia County Land Development Services Director normally would make the decision on an application for a Minor Partition. The Board of Commissioners has original jurisdiction to make a decision on an application for Road Standards Modification according to the Columbia County Road Standards. At the hearing on November 12, 2003, the Board of County Commissioners took original jurisdiction over the Minor Partition Application, and appointed the Board as the Hearings

Officer to hear both matters during the Special Hearing.

2. The Board of County Commissioners finds that its decision on the application for a Road Standards Modification is a land use decision. The need for the Road Standards Modification arose out of the Applicant's application for a Minor Partition (MP 02-13). The Applicant had previously received a Variance from the Zoning Ordinance requirement that the new parcel have 50 feet of usable access onto a public road. However, a similar standard exists in the Columbia County Road Standards, specifically, Section IV, Private Roads. That standard allows a private road to serve up to six lots. Because the Applicant is requesting to partition an 8th lot with access onto Miloris Way, a private road, the Applicant does not comply with Section IV of the Columbia County Road Standards. Therefore, it is necessary for the Applicant to receive a Road Standards Modification in order to obtain approval for the Minor Partition.

Not only does the Road Standards Modification have a significant impact on the current partition application, it has significant impact on the future development of the remainder of the Applicant's property adjacent to Miloris Way. The Applicant has indicated that he plans to develop up to 12 residential lots with access onto Miloris Way. As indicated above, the Applicant cannot develop such additional residential lots without meeting the Road Standards or obtaining a Modification of the Road Standards. Therefore, the decision will have a long-term impact on land development on Miloris Way. Because of the significant impact that the Road Standards Modification decision will have on present and future land uses, the Board of County Commissioners finds that the decision is a land use decision.

3. Columbia County Comprehensive Plan, Part XIII, Transportation, states that the Goal of the County is "The creation of an efficient, safe, and diverse transportation system to serve the needs of Columbia County residents." Policy 2 of the Transportation Goal states, "The dedication of adequate rights-of-way to meet the standards set in the Transportation Plan shall be required of any person seeking a Zone Change, Conditional Use Permit, Subdivision, or Partition...*" Miloris Way is a 50 foot private road. Its width is sufficient to meet the County Road Standards for private roads which requires a 40 foot wide right-of-way. Therefore, no additional right-of-way will be necessary to meet the private road standards. However, safety and efficiency improvements are necessary to comply with the Goal. The Public Works Director has recommended specific improvements to the Road to assure that the Road meets the County Road Standards for Private Roads, and is efficient and safe for the residents on Miloris Way. The Board of County Commissioners finds that upon compliance with such improvements, the Applicant will meet the Goal of the Columbia County Comprehensive Plan, Part XIII, Transportation.
4. Columbia County Comprehensive Plan, Part VII, Rural Residential, states that the Goal of the County is "to provide for the continuation and needed expansion of Rural

Residential uses on those resource lands where a valid exception can be, or has been shown to be, justified.” The Board of County Commissioners finds that the subject property was zoned Rural Residential (RR-5) upon initial adoption of the Columbia County Comprehensive Plan. In 1998 the property was re-zoned RR-2 because of its proximity to the Columbia City Urban Growth Boundary. The development of additional parcels in the RR-2 zone complies with the goal by expanding rural residential uses on resource lands having valid exceptions.

Policy 4 of the Rural Residential Goal requires that the County “Establish a Rural Residential Zone with a 2-acre minimum lot or parcel size, where such lands will not create spot zoning...and, as determined by the County:

1. Are within an existing public or community water district providing adequate domestic and fire flow water;
2. Have soils capable of accommodating a subsurface septic system;
3. Have access onto a public right-of-way meeting applicable County Road Standards;
4. Are within, and can be served by a rural fire protection district...*”

The Board of County Commissioners finds that the proposed new parcel will be served by an existing community water system which serves Miloris Estates. As stated in Supplemental Finding #1, above, the Applicant will be required to make water system upgrades to assure adequate domestic water flow to both the existing and new residential parcels. In addition, the Board of County Commissioners finds that the Applicant has received approval for a sand filter septic system on the proposed parcel and the County Sanitarian has determined that the soils are capable of accommodating a subsurface septic system. The Board of Commissioners also finds that the proposed parcel will be served by the Columbia Rural Fire District upon compliance with fire improvements to the road. Finally, the Board finds that the Applicant obtained a variance to the requirement that the new parcel have access onto a public right-of-way, and the Board has granted a Road Standards Modification authorizing additional residential lots to be developed on a private road. The Applicant will be required to meet the County Road Standards for Private Roads as discussed herein. Therefore, the Board finds that the Applicant has complied or will comply with Policy 4.

Policy 6 of the Rural Residential Goal requires that the County, “Encourage rural growth in exception areas where facilities and services such as adequate transportation networks, school facilities, fire districts, water and police services, etc. already exist so as to minimize costs of providing such services to these areas.” The Board of County Commissioners finds that upon compliance with the conditions of approval the proposed new parcel will have adequate existing transportation network

and water facilities. The new parcel will also be served by an existing fire district. Therefore, the Board finds that it is appropriate to encourage the creation of the new proposed parcel.

5. The Columbia County Road Standards set forth several criteria for Private Roads in Section IV. The Section states, "Private Roads may service up to six lots upon approval by the Land Development Services office of the county...*" The Applicant has applied for a modification of this Road Standard to allow Miloris Way, a private road, to service up to 12 lots in addition to a lot on which a water reservoir is located. The Columbia County Road Standards adopted in 1996, set forth the requirements for a Road Modification in Section VI(G). Subsection (2)(a) requires that "requests to modify shall be submitted in writing to the County Public Works Director on the application form (Exhibit 5). This written request shall state the desired modification(s), the reason(s) for the request(s) and a comparison between the specification(s) or standard(s) and the modification(s) as far as performance, etc. Any modification or variance of these standards should be documented and reference nationally accepted specifications/standards. The use thereof shall not compromise public safety or the intent of the County's standards."

The Road Standards Modification process calls for the Public Works Director to make a recommendation to the Board of County Commissioners upon which the Board will make a decision to approve "as is", approve with changes, or deny with an explanation. The Public Works Director issued a recommendation to the Board of Commissioners on October 22, 2003. The Public Works Director recommended to the Board that it is appropriate for Miloris Way to stay as a private road because it cannot be constructed to public road standards due to the steep grade, sharp curves, and lack of shoulders which might be unsafe for unfamiliar drivers. The Public Works Director also indicated that due to the topography of the land, it would not be practicable to require the Applicant to build a public road from the development to either Hankey Road or Pittsburg road or to the Morse Bros. quarry area because of the distance and expense. He suggested that even if there were a public road connected to Miloris Way, traffic would use Miloris Way because it would be the shortest distance.

Having made the recommendation to grant the Road Standard Modification, the Public Works Director then discussed the issue of how much total traffic Miloris Way can safely handle. The Public Works Director used the American Association of State Highway and Transportation Officials guides entitled "A policy on Geometric Design of Highways and Streets," and "Guidelines for Geometric Design of Very Low-Volume Local Roads" which give generalities about road volume. The lowest classification for very low-volume roads is less than 100 vehicles per day (vpd) which generally speaks to 15 mph design speed, 18 foot roadway width and 17% grades. According to the guides, the average number of trips per single family residence is between 9 and 10, which would limit the number of homes with access to Miloris Way to 10, in order to meet the 100 vpd guideline. Therefore, the Public

Works Director concluded that Miloris Way can handle traffic from 10 homes.

In response to the Public Works Director's recommendation, outlined above, the Applicant submitted a traffic study which documented the number of trips that occurred on Miloris Way during a one week period. The Applicant submitted documentation from Lancaster Engineering which indicated that based on the traffic study done by the Applicant, the Average Daily Traffic (ADT) on Miloris Way is currently 30.4 for the existing dwellings. The report then indicated that the average weekday total for the potential 6 new dwellings is expected to be 58 for a total of 88 trips per day for 12 dwellings. The total did not include trips to and from the reservoir. Based on that evidence the Applicant suggested that the Board could approve the modification for up to 12 dwellings.

The Board of County Commissioners finds that the County must base the road modification decision not merely on the trips generated by the current residents of the existing dwellings, but must also look to the trips possibly generated in the future by new residents. The Board finds that the Applicant has submitted evidence in the record suggesting that the actual trips generated by the current Miloris Estates dwellings is less than the average. The Lancaster Engineering Report suggested that the new dwellings would likely produce less traffic than the average of 58 trips per day, and the Board finds that the conclusion is reasonable given the neighborhood. However, the County must consider the number of vehicle trips of the possible future residents. The Board finds that the 30.4 trips per day projection is not likely to be an accurate projection over time. The Board finds that it is more likely that any change in the trip generation over time will be an increase rather than a decrease. It would only take one or two families to move into Miloris Estates with children and multiple vehicles to significantly increase the total trips generated in Miloris Estates. The Board cannot assume, without any evidence to the contrary, that no such households will ever be established in Miloris Estates. The Board finds that by averaging the actual average trips per day (30.4) with the potential average trips per day (58) the County will account for fewer trips associated with the high-end homes in Miloris Estates, while also allowing for increased trips that are likely to occur sometime in the future. Averaging the two, the Board concludes that the existing 6 dwellings generate an average of 48 trips per day. According to the Applicant, the additional 6 dwellings are expected to generate 58 trips per day, or 9.6 trips per new dwelling per day. The total for all 12 dwellings is therefore 106, which exceeds the 100 vpd guideline. The total for 11 dwellings is 96.4, which falls within the 100 vpd guideline. Therefore, the Road Standards Modification approval shall be limited to 11 new residential lots having access on Miloris Way.

6. The Board of County Commissioners finds that the existing road is not adequate to support the existing and proposed dwellings without significant improvements. In a letter dated November 26, 2003, Carlson Testing stated that the road currently has areas which are clearly failing. These areas are evidenced by an alligatoring effect on the road. The letter also indicated that 8850 square feet, or 18.5% of the road

surface has been previously repaired, and the nature of the repairs have not been established. The Public Works Director testified that although the road has held up fairly well over the last 14 years since it was paved, there are sections that are alligatored and need to be repaired. The Public Works Director also agreed that there have been past repairs to the road, and the nature of the past repairs is unknown. Property owners living in Miloris Estates testified and submitted documentation that up to 30 percent of the road has been improperly repaired.

The Board finds that the road must meet the private road standards and shall be improved in a manner that will not compromise the safety of the existing or proposed new dwellings or occupants. The Public Works Director has recommended that several conditions be placed upon the Road Modification approval and Minor Partition approval to ensure the safety and stability of the road. He indicated that additional testing would be required to determine which previously repaired portions of the road, if any, need to be dug up prior to the overlay. The Board finds that the conditions proposed by the Public Works Director are reasonable and will sufficiently protect the private road users from road failure. The improvements must be done before a final plat is recorded to ensure that the road meets private road standards and satisfies the Public Works Director's concerns prior to construction of any new dwellings and generation of additional traffic.

7. The Board of County Commissioners finds that the Applicant must comply with the minimum construction standards for private roads found in Columbia County Road Standards Section IV(B). All road improvements are subject to the approval of the Columbia County Public Works Director. The Public Works Director has indicated that such private road standards can be met.
8. Section IV(A)(8) of the Columbia County Road Standards states that the County shall "require that a maintenance agreement be recorded in the office of the County Clerk of Columbia County with the map or plat creating the private road, and the agreement shall include the following terms:
 - A. That the agreement for maintenance shall be enforceable by a majority of the homeowners served by the road.
 - B. That the owners served by the road, their successors, or assigns, shall maintain the road, either equally or in accordance with a specific formula that is contained in the maintenance agreement.
 - C. Amendments shall be allowed by written and recorded agreement and consent of 75% of property owners adjacent to the road.

The Board finds that there is little evidence in the record regarding Maintenance Agreements for Miloris Way signed by the various owners of the property in Miloris

Estates. Because the lots were created and sold at different times, the Board assumes that there are multiple Agreements which may or may not all conform to the requirements in Section IV(8). The Applicant did not submit substantial evidence showing that the requirements in Section IV(8) are met in the existing Agreements.

Rather than deny the minor partition or road modification the Board will condition approval of the minor partition upon compliance with the standard. The Board finds that the Private Road Standard applies not only to the creation of the 8th lot, and new owner in Miloris Estates, but applies to all lots with access onto the private road and is meant to be for the benefit of all lots with access onto the private road. The Board finds that Applicant can comply with this Private Road Standard by either submitting all Maintenance Agreements for all lots on Miloris Way, which must show that each specifically complies with subsection 8, or by signing a new Maintenance Agreement with the owner of the 8th lot, which must specifically incorporate the requirements in Section IV(8), and state that all of the current owners of property in Miloris Estates are third party beneficiaries of the Agreement. The intent of the Road Standard is to give all property owners on a jointly maintained private road an equal right to determine the terms of the Agreement. All of the owners of property on the private road must be given that right, and the right to enforce the Agreement. Therefore, it is imperative that every existing Maintenance Agreement include the terms set forth in Section IV(8), or that all current and future owners of property with access onto the private road be specifically named as third party beneficiaries of the new Maintenance Agreement for purposes of amending and enforcing the Agreement.

building@columbiacountyor.gov or planning@columbiacountyor.gov.

From: Linsey McLane-Godwin <LinseyG@mssengineering.com>

Sent: Thursday, August 4, 2022 1:26 PM

To: Hayden Richardson <Hayden.Richardson@columbiacountyor.gov>; Suzie Dahl <Suzie.Dahl@columbiacountyor.gov>

Cc: Peter Seaders <Peter@mssengineering.com>; 18136 Probst Miloris Estates <18136@mssengineering.onmicrosoft.com>; Deborah Jacob <Deborah.Jacob@columbiacountyor.gov>; Brad.Probst <mooseranch@hotmail.com>

Subject: RE: Probst MP 22-04 Appeal of Final Decision

Hi Hayden,

Thanks for the update. Hopefully the improvements can be made without the appeal. Could someone notify me if the appeal is withdrawn?

Thanks,

Linsey McLane-Godwin

Planner II | MSS Inc.

215 NW 4th St. | Corvallis, 97330

O: (541) 753-1320

D: (541) 714-3060

From: Hayden Richardson <Hayden.Richardson@columbiacountyor.gov>

Sent: Thursday, August 4, 2022 1:23 PM

To: Linsey McLane-Godwin <LinseyG@mssengineering.com>; Suzie Dahl <Suzie.Dahl@columbiacountyor.gov>

Cc: Peter Seaders <Peter@mssengineering.com>; 18136 Probst Miloris Estates <18136@mssengineering.onmicrosoft.com>; Deborah Jacob <Deborah.Jacob@columbiacountyor.gov>; Brad Probst <mooseranch@hotmail.com>

Subject: RE: Probst MP 22-04 Appeal of Final Decision

Hi Linsey,

The Board did take jurisdiction over the appeal of MP 22-04 & PLA 22-20. Before scheduling it for a hearing date, staff has reached out to the appellant regarding the improvements that Brad is willing to complete to address the conditions of approval in the 2003 Board Final Order. At this point, we are waiting to hear back from the appellant to see if these improvements are sufficient enough to withdraw the appeal, or if she would like to continue with the appeal regardless, at which time we will get the hearing scheduled and send notice.

Let me know if you have any questions in the meantime. Otherwise, we will follow up with the Board notification.

Hayden Richardson

Planning Manager

(503) 397-7216

Hayden.richardson@columbiacountyor.gov

445 Port Ave, St. Helens, OR 97051

Please note:

Land Development Services has moved to a temporary location at 445 Port Avenue, St. Helens.

We're available to assist you in person, by phone 503-397-1501 and email:

building@columbiacountyor.gov or planning@columbiacountyor.gov.

Hayden Richardson

From: Michael Russell
Sent: Tuesday, December 13, 2022 10:12 AM
To: Spencer Parsons
Cc: Hayden Richardson; Department-Counsel; Scott Toenjjes
Subject: RE: MP 22-04 PLA 22-20 Appeal Staff Report

Hi Spencer,

Thank you for the opportunity to comment on this.

It is Public Works desire that there be an adequate paved turnaround for fire apparatus at the end of Miloris Way consistent with previous development requirements.

It is my understanding that the initial paved turnaround next to a garage is insufficient for use by a fire truck and therefore a new turnaround was constructed. The new turnaround has not been paved and remains gravel. The new turnaround is obviously constructed for the purpose of a fire turnaround as it is signed as such. Public Works desires that the developer meet the original intent of previous requirements and pave this turnaround.

Public Works staff have inspected the site and determined that the new turnaround is adequate as constructed but needs to be prepared and paved to be finalized.

Mike Russell | Director | Columbia County Public Works |
1054 Oregon Street, St Helens, OR 97051
503-397-5090 | F 503-397-7215 | Michael.russell@columbiacountyor.gov
Service ~ Engagement ~ Connection ~ Innovation

From: Spencer Parsons <Spencer.Parsons@columbiacountyor.gov>
Sent: Tuesday, December 13, 2022 9:56 AM
To: Michael Russell <Michael.Russell@columbiacountyor.gov>
Cc: Hayden Richardson <Hayden.Richardson@columbiacountyor.gov>; Department-Counsel <department-counsel@columbiacountyor.gov>
Subject: FW: MP 22-04 PLA 22-20 Appeal Staff Report

Good morning Mike,

I told Hayden Richardson I would check in with you to see if you had any comments regarding the Miloris Way partition application that is on appeal before the Board of Commissioners, the hearing for which is scheduled next Wednesday, 12/21. LDS is looking for any comments Public Works might have on the matter (see p. 10 of attached draft staff report). Of greatest value for the Board would be comments on the turnaround issue, which is discussed starting on p. 5 of the report.

State law requires that the LDS staff report be made available at least one week before the date of the hearing (tomorrow), so LDS is shooting to have a finalized report over to the Board's office by the end of the day today. If you have comments, it would be most helpful to have them included in the staff report, both so that staff is working with the input provided and so that the general public has the comments to consider together with the staff report. Even if it isn't

feasible to get comments over today, however, any received will still be included in the record separately for consideration by the Board and the public.

Thanks,

Spencer

Spencer Parsons (He/Him/His) | Senior Assistant County Counsel | Columbia County | 503-397-3839 |
230 Strand, Room 20, St. Helens, Oregon 97051 | spencer.parsons@columbiacountyor.gov

CONFIDENTIALITY NOTICE: This email, including any attachments, may contain information that is privileged, confidential, or otherwise exempt from disclosure under applicable law. If you are not the addressee or it appears from the context or otherwise that you have received this email in error, please notify me immediately by reply email, keep the contents confidential, and immediately delete the message and any attachments from your system.

From: Hayden Richardson <Hayden.Richardson@columbiacountyor.gov>
Sent: Thursday, December 8, 2022 4:29 PM
To: Spencer Parsons <Spencer.Parsons@columbiacountyor.gov>
Cc: Deborah Jacob <Deborah.Jacob@columbiacountyor.gov>; Department-Counsel <department-counsel@columbiacountyor.gov>; Suzie Dahl <Suzie.Dahl@columbiacountyor.gov>
Subject: MP 22-04 PLA 22-20 Appeal Staff Report

Hey Spencer,

Attached is a draft of the BOC Appeal Staff Report for MP 22-04 and PLA 22-20 (Miloris Way).

There are a couple of highlighted sections in the report that we are holding for Public Works and CRF&R comments. We've reached out to the multiple times over the past week and have yet to get comments.

I'm out of the office tomorrow, but will be back in on Monday.

Thanks for all your help. Let me know if you need anything else.

Hayden Richardson
Planning Manager
(503) 397-7216
Hayden.richardson@columbiacountyor.gov
445 Port Ave, St. Helens, OR 97051

Please note:

Land Development Services has moved to a temporary location at 445 Port Avenue, St. Helens.
We're available to assist you in person, by phone 503-397-1501 and email:
building@columbiacountyor.gov or planning@columbiacountyor.gov.

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J

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF COLUMBIA

ROBERT K. JACKSON, TRUSTEE OF)
THE ROBERT K. JACKSON FAMILY)
TRUST DATED NOVEMBER 5, 1985;)
FRANCIS M. DELANEY; JAMES A.)
LICHATOWICH and M. PAULETTE)
LICHATOWICH, husband and wife; and)
OLLIE LEROY RIGDON and SHERDEN)
SUE RIGDON, husband and wife,)

Case No. 022200

STIPULATED GENERAL JUDGMENT
OF DISMISSAL WITH PREJUDICE

Plaintiffs,

v.

VORIS PROBST, MILDRED PROBST)
and MILORIS CORPORATION, an)
Oregon Corporation,)
Defendant.)

This matter coming before the Court upon the stipulation of the parties hereto, by and through their respective attorneys, for a Judgment of Dismissal With Prejudice and Without Cost to either party as to Plaintiff's case against Defendant, in that the action has been fully settled and compromised, and the Court being otherwise fully advised in the premises,


IT IS HEREBY ADJUDGED that the within captioned case is dismissed with prejudice and without cost to either party.

DATED this 15th day of February, 2006

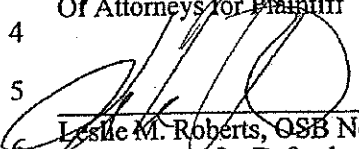
[Signature]
Circuit Court Judge

1 IT IS SO STIPULATED:

2

3 
4 J. David Zehnbauer, OSB No. 96467
5 Of Attorneys for Plaintiff

6

7 
8 Leslie M. Roberts, OSB No. 72214
9 Of Attorneys for Defendant

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Page 2

STIPULATED GENERAL JUDGMENT OF DISMISSAL WITH PREJUDICE
DUNN CARNEY ALLEN HIGGINS & TONGUE LLP
Attorneys at Law
851 SW Sixth Avenue, Suite 1500
Portland, OR 97204-1357
503.224.6440 / Fax: 503.224.7324

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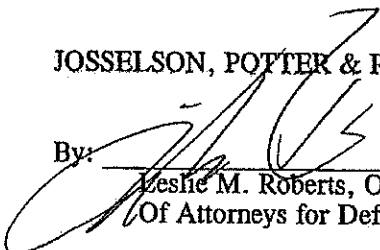
CERTIFICATE OF SERVICE

I certify that on February 10, 2006, I caused the attached **STIPULATED GENERAL JUDGMENT OF DISMISSAL WITH PREJUDICE** to be served by depositing in the U.S. Mail at Portland, Oregon, in a sealed envelope with postage paid and addressed to counsel for the parties as follows:

J. David Zehntbauer
Dunn Carney Allen Higgins
& Tongue LLP
Attorneys at Law
851 S.W. Sixth Avenue, Suite 1500
Portland, Oregon 97204-1357

JOSSelson, POTTER & ROBERTS

By:



Leslie M. Roberts, OSB #72214
Of Attorneys for Defendants

Page 1 - CERTIFICATE OF SERVICE

JOSSelson, POTTER & ROBERTS
Attorneys at Law
425 N.W. 10th Avenue, Suite 306
Portland, OR 97209
Telephone: (503) 228-1455

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

I. PARTIES

The parties to this Settlement Agreement and Mutual Release are Robert K. Jackson, individually and as trustee of the Robert K. Jackson Family Trust, and Luann Jackson; Francis M. Delaney; James A. Lichatowich and M. Paulette Lichatowich; Ollie Leroy Rigdon and Sherden Sue Rigdon (collectively referred to as 'Plaintiffs'); Voris Probst and Mildred Probst; and the Miloris Corporation (collectively referred to as 'Defendants'). Alana Probst holds water rights as transferee, subject to the earlier created rights of Plaintiffs, and by concurring in this agreement, concurs that her interests are subject to the interests as created or amended by the terms of this Settlement Agreement and the Water Agreement created under the terms of this Settlement Agreement.

II. INTRODUCTION

- A. The Robert K. Jackson Family Trust, Francis M. Delaney, James and Paulette Lichatowich, Ollie and Sherden Rigdon, Voris and Mildred Probst, and the Miloris Corporation all own real property along Miloris Way in Columbia County, Oregon. Each is either a party, or a successor in interest to a party to a Water Agreement entered into with Voris and Mildred Probst, establishing a terminable easement for water from property owned by Voris and Mildred Probst.
- B. A dispute exists between the parties regarding their rights and obligations under the water agreements. Additional disputes have also arisen between the parties concerning a number of other issues. The parties' disputes are more particularly described in the lawsuit entitled "*Robert K. Jackson; Trustee of the Robert K. Jackson Family Trust Dated November 5, 1985; Francis M. Delaney; James A. Lichatowich and M. Paulette Lichatowich, husband and wife; Ollie Leroy Rigdon and Sherden Sue Rigdon, husband and wife, v. Voris Probst; Mildred Probst; and Miloris Corporation, an Oregon corporation*", pending in Columbia County Circuit Court and which bears Case No. 022200.
- C. On or about February 4, 2004, Columbia County Board issued Final Order No. 76-2003, in conclusion of a quasi-judicial proceedings in which Plaintiffs and Defendants Probst participated.
- D. The parties agree that it is in their mutual best interest to settle the disputes and claims asserted in the lawsuit described in Paragraph B above, subject to the provisions below.

III. TERMS OF SETTLEMENT AND RELEASE

- A. New Water Agreement. The parties shall execute a new water agreement and easement to replace their current water agreements and easements.
1. Water Association: The new water agreement shall require the formation of a Water Association to own and maintain the water system. The parties shall approve Articles of Incorporation and Bylaws for the Water Association, and enter a new, replacement Water Agreement, with provisions, collectively, as follows:
 - a. The Water Association shall be comprised of Users.
 - i. A User is a person or persons with an ownership interest in an individual Lot, defined as one of up to eleven lots developed or to be developed by Probsts on or accessed from Miloris Way. The Lots are those which have been improved to date, or will be improved with a single family residence under construction or completed, and hooked to the Water System. The Water System is the distribution system originally built by Defendants to deliver water from water wells on Defendants' property, to the Lots (The Water System includes pump house and contents, tanks, distribution lines to the Lot line; but the meters, backflow devices, and lines on the Lot, shall be owned by and the responsibility of the Lot owners.)
 - ii. A person with ownership in more than one Lot, must elect which single, developed Lot is to be considered the qualifying Lot for purposes of that person's participation in the Water Association. That person cannot hold an additional vote on account of additional developed lots.
 - iii. No matter how many people have an ownership interest in one qualifying Lot, there can be only one 'User' and hence only one vote in the Water Association, for each single Lot.
 - b. Board of Directors: The Water Association shall be governed by a board of directors as follows:
 - i. For three years from the date of this Settlement Agreement and Mutual Release, the board of directors shall be comprised of Scott Parker and Ollie Leroy Rigdon. If, during the initial three year term, Ollie Leroy Rigdon shall resign, his successor director shall be a ~~Member~~ ^{User} chosen by

Voris and Mildred Probst, from any then eligible ^{Users} Members other than themselves; and if during the initial three year term Scott Parker shall resign, his successor shall be a ^{User} Member chosen by Plaintiffs, collectively, from any then eligible ^{User} Member other than any of themselves; and any subsequent vacancy in the Rigdon or Parker position will be filled in the same manner, during the original three years of the Association.

- ii. During the three year term of the Water Association's initial board of directors, the Operator (retained as provided below) shall be allowed to cast an ex officio vote to break any tie votes between the directors, other than a vote with regard to the Operator's selection, termination, or compensation, or with regard to a dispute with Operator regarding Operator's qualifications or contract. After the election of the three member board as provided in the following subparagraph, the Operator will no longer have voting privileges with regard to decisions of the Water Association's board of directors.
 - iii. At the expiration of the three year term described above, the initial directors may be replaced by three directors chosen by a majority of the Water Association's Users.
- c. The Operator: The Water Association's board of directors shall retain a qualified professional to maintain and operate the water system as the "Operator."
- i. The Operator shall be responsible for maintaining and operating the water system. The Operator shall make all technical decisions regarding the operation, maintenance, repairs, or necessary alterations to the water system, in consultation with the Water Association Board; except that, in the event of a disagreement among Users, and subject to the other provisions of this agreement, the Operator's decision shall be final on technical matters, which includes the necessity for maintenance, repairs, and other measures necessary to provide potable water efficiently and safely to the Users, consistent with the obligation established by this Agreement to provide water service.
 - ii. The initial Operator shall be ^{est} Andy Tinkis who shall serve as Operator for at least three years from the date of this Settlement Agreement and Release, unless terminated for

good cause, upon a two-thirds vote of the Water Association's board of directors. In the case of a vacancy in the position of Operator during the initial ~~two~~^{three} year period, the Operator shall be chosen jointly by the two User members of the Board of the Association.

- d. Water Association Functions: The Water Association, by its board of directors, shall budget, collect, and allocate funds for the operation and maintenance of the water system as determined by the Operator, subject to the terms of this Agreement.
 - e. Disapproval of Major Expenditures: A "major expenditure" shall be a single expenditure in excess of \$1,500, advised by the Operator. If the Operator proposes such a "major expenditure," the expenditure is authorized unless disallowed by a 2/3 vote of the Board of Directors of the Water Association, subject to the obligation of the Water Association, enforceable in accordance with paragraph f, below; or a 3/4 vote of the all Users, conducted prior to incurring the expenditure. Any Member may seek arbitration and establish that the objecting Member may not be charged for a major expenditure, if the Member proves that the expenditure is not reasonable or necessary or consistent with the obligation of the Water Association in accordance with paragraph f, below.
 - f. Obligation to Provide Water Service: The Water Association's sole function, and its responsibility, shall be to maintain and operate the water system to provide non-discriminatory water service to ~~up to~~ all Users, for domestic water and irrigation consistent with existing uses at the time of execution of this agreement. This obligation may be enforced against the Association as provided in the dispute resolution provisions of the Water Agreement by any person who is bound by the Water Agreement, as a User, a party, or a successor or assign of the Water Agreement. The Water Association does not guarantee the quantity or quality of the water available to the Water Association.
 - g. Amendment requires unanimous consent: The Water Association may not amend its articles of incorporation or bylaws without the unanimous consent of Users.
2. Replacement of Existing Easement: The New Water Agreement will provide for an Easement that will replacing the existing Water Agreement and Easement. Except as specifically provided in this Settlement

Agreement, the new easement will not enlarge the rights of the Plaintiffs (or other new Users) in the real property and water of the Defendants. Among other limitations that continue is that the Easement is divisible and non exclusive, and will terminate at a time that city water service is available; however, so long as the Water Association operates and maintains at the expense of the Water Association, the wells providing water to the water system pursuant to the Water Agreement, no other use may be made of the wells so operated and maintained.

3. The Water Agreement shall provide that the Water Association's easement includes the right, without further payment to Defendants, to repair or replace an existing well, if and when a well fails.
4. The Water Association will pay the property tax for water easement area, after the operation of the system is transferred to the Association. If possible the parties shall obtain a separate tax lot number for the area of the water system, but if this is not feasible, the parties will agree on a ratio for allocating the taxes that the Water Association shall pay in order to achieve the same end.

B. Payment to Defendants.

1. Payments by Plaintiffs. Upon the execution of this Settlement Agreement, the new water agreement called for by the Settlement Agreement, and the approval of the Articles of incorporation and Bylaws for the Water Association provided for here, The Robert K. Jackson Family Trust, Francis M. Delaney, James and Paulette Lichatowich, and Ollie and Sherden Rigdon, shall each pay to Voris and Mildred Probst, the Miloris Corporation, \$5,250.00, for a combined payment of \$21,000.00;
2. As a condition to hook-up to the Water System, new and future Users (not presently drawing water from the Water system) may be required to pay to Voris and Mildred Probst a charge as they shall agree between them, in compensation for the the Probsts' expenditures in establishing the Water System. The Water Association shall not be entitled to charge an additional hook-up charge related to capital investment in the system prior to the time the new or future User connects to the system, or as a condition to hooking up to the Water System, although the new or future User may be required to pay for the actual costs of hookup, and a new meter and backflow device if necessary, as well as all lines on the User's Lot.
3. Payment of Operating Costs to Date. The Robert K. Jackson Family Trust, Francis M. Delaney, James and Paulette Lichatowich, Ollie and Sherden Rigdon, each agree to reimburse Voris and Mildred Probst and

the Miloris Corporation a total of \$362.00 for unbilled operating costs of the water system prior to the execution of this Settlement Agreement and Mutual Release;

- C. Completion of Improvements. Voris and Mildred Probst and the Miloris Corporation agree, at their sole cost, will to comply with the order of Columbia County, No. 76-2003.
- D. Drainage to Miloris Road. Dave Hill, County Roadmaster, shall determine what, if anything, must be done to correct drainage from the Jackson, Delaney, and Rigdon properties, onto, under, or into the roadway of Miloris Way, in order to prevent damage to the road. All parties shall abide by his decision: that is, the Jackson, Delaney, and Rigdon parties shall take corrective measures he determined necessary; and Defendants shall not otherwise pursue claims regarding the issue.
- E. Drainage from Delaney property, to the property of Defendant Probst. Francis Delaney will take all measures necessary to prevent the drainage of water from his property to the property of the defendants. Dave Hill shall determine whether drainage is flowing from the Delaney property directly or indirectly to the Probst property, and if so what measures must be taken to prevent further drainage. All parties shall abide by his decision: that is Delaney shall take corrective measures Dave Hill determines to be necessary; and Defendants shall not otherwise pursue claims regarding the issue.
- F. Fill Removal. Robert Jackson will remove any fill material that he placed, or caused to be placed, onto the lot adjacent to his garage.
- G. Mutual Releases. In consideration of their mutual undertakings in this Settlement Agreement, Defendants release Plaintiffs and Plaintiffs release Defendants from all claims and causes asserted in the lawsuit described in Paragraph II above, based on actions, known or unknown, to the date of the execution of this Agreement.
- H. Dismissal of Lawsuit. Upon the parties execution of this Settlement Agreement and new water agreement, and approval of the articles of incorporation and bylaws for the Water Association, and payment of the sums required by this Settlement Agreement, the parties shall stipulate to a judgment of dismissal of the above described lawsuit, with prejudice and without award of costs or fees to any party.
- I. Dispute Resolution. Any dispute among parties regarding this Settlement Agreement, or any of the documents or instruments entered into pursuant to it shall be determined, unless otherwise specified in this Settlement Agreement, by arbitration by a single arbitrator under Rules in accordance with under the rules

then current for Court-Annexed Arbitration in Multnomah Circuit Court, except for rules regarding filing and appeal of the award, which shall be instead controlled by the provisions of ORS 36.700-.715, 36.730. The prevailing party shall be entitled to recover from the opposing party or parties, reasonable attorney fees incurred in arbitration and on trial or appeal.

- J. Settlement of Disputed Claims. The parties acknowledge and agree that this Settlement Agreement and Mutual Release does not constitute an admission of liability by any party.
- K. Binding Agreement. The parties acknowledge and agree that they have read the terms of this Settlement Agreement and Mutual Release and that by voluntarily placing their signatures upon it they intend to be bound by it.
- L. Persons Bound. The rights and obligations of this Agreement and of the Documents entered into pursuant to it, shall bind and inure to the benefit of the heirs, representatives, agents, employees, directors, officers, and successors-in-interest, and assigns of the Parties.
- M. Discharge of Claims to Date; Future Operating Expenses. The payment of the settlement amount called for from each of plaintiffs under this agreement shall discharge the obligation of the plaintiffs, and of their successors in interest to the Lots which the plaintiffs respectively own, to reimburse Defendants for expenditures related to the water system, to the date of this agreement. Thereafter, pursuant to the new water agreement executed in compliance with this settlement agreement, all Users will be obligated to pay operating expenses of the system equally, or according to a uniform formula for charges based on water usage, as determined by the Water Association, and for maintenance and additional capital improvements.

Dated:

Robert K. Jackson, individually and
as trustee of the Robert K. Jackson Family Trust

Luann Jackson

Francis M. Delaney

James A. Lichatowich

M. Paulette Lichatowich

Ollie Leroy Rigdon

Sherden Sue Rigdon

Voris Probst

Mildred Probst

Alana Probst

Miloris Corporation

p. 3 - (interlineation) change "Members" to "Users"

p. 4, ¶ A1 (g) add at end of sentence: with respect to the obligation or purposes of the Water Association. Any other amendment shall require a $\frac{3}{4}$ majority vote of all Users.

p. 6 I.F. add at the end of paragraph: After removing all fill (non-native soil) in his opinion, R. Jackson shall so notify Defendants. Within 36 hours, defendants will inspect and approve, or object to the adequacy of the excavation. If the later, R. Jackson will do additional excavation until the removal of all fill is approved, or there has been no objection within 36 hours after notice to Defendants of completion of the removal.

p. 4 -^IA.1.e. - \$ 2000 instead of \$ 1,500.
disapproval will require $\frac{2}{3}$ vote of all Users.
Remove last sentence of paragraph.

p. 4, ^IA.1. (g). add last sentence: Notwithstanding the foregoing, The Water Association is not required to increase the water system capacity over the capacity of that the two wells and 12,000 gal. tank, which have, ~~when~~ upon connection and operation under paragraph I.C. of this Agreement.