

BEFORE THE BOARD OF COUNTY COMMISSIONERS  
FOR COLUMBIA COUNTY, OREGON

In the Matter of the Application )  
of Dale Fischer, Trustee of the Dale Fischer )  
Living Trust, for a Home Occupation )  
Conditional Use Permit to Operate a )  
Trucking Excavation Business )  
on a Parcel Zoned Rural Residential (RR-5) )

ORDER No. 16-2002

FINDINGS AND CONCLUSIONS

WHEREAS, on November 7, 2001, Dale Fischer, Trustee of the Dale Fischer Living Trust, filed an application for a Type II Home Occupation Conditional Use Permit (CU 02-22) to operate a trucking excavation business out of an existing residence on 4.25 acres zoned Rural Residential (RR-5), located at 56186 and 56230 Old Portland Road, and having tax account numbers 4119-040-01704 and 4119-040-01800, with the Columbia County Land Development Services Department; and

WHEREAS, on November 15, 2001, said Application was deemed complete; and

WHEREAS, on January 7, 2002, the Columbia County Planning Commission held a hearing on the Application. After hearing evidence and testimony, the Columbia County Planning Commission denied the application and on January 14, 2002, Planning Commission Chair, Jeffrey VanNatta, signed Final Order CU 02-22, denying the application; and

WHEREAS, on January 30, 2002, Dale Fischer, Trustee of the Fischer Living Trust, appealed the Planning Commission's decision to the Columbia County Board of Commissioners; and

WHEREAS, a hearing was scheduled before the Columbia County Board of Commissioners for March 20, 2002; and

WHEREAS, on March 20, 2002, the Board of County Commissioners opened the public hearing; and

WHEREAS, David Brian Williamson, attorney for Dale Fischer, testified in favor of the application; and Anna-Marie Updegraff, Richard Gross, Mike Gruetzemacher, and Pat Zimmerman, testified in opposition of the application; and

WHEREAS, at the hearing the following Exhibits were introduced into the record:

Exhibit 1- County Counsel's hearing file containing:

ORDER NO. 16-2002

- A. Notice of Public Hearing (Publication);
- B. Notice of Public Hearing (Property Owner Notice);
- C. Affidavit of Mailing;
- D. Affidavit of Publication;
- E. Appeal of CU 02-22, received January 30, 2002;
- F. Final Order CU 02-22, dated January 14, 2002;
- G. Staff Report to the Planning Commission dated December 21, 2001, with the following attachments:
  - 1. Letter from Scappoose CPAC;
  - 2. Letter from Kathy Schemp, Oregon Department of Transportation, dated December 12, 2001;
  - 3. Letter from Marah Danielson, Oregon Department of Transportation; dated December 17, 2001;
  - 4. Settlement Agreement dated October 4, 2001;
  - 5. Copies of Citations 800 SW- 810 SW;
  - 6. Photo taken March 8, 1999;
  - 7. Photo taken September 2, 1999;
  - 8. Citation 02494;
  - 9. 2 photos taken July 16, 1999;
  - 10. Citation 02493;
  - 11. Photo and notes dated April 6, 1998;
  - 12. Citation 02491;
  - 13. Photos of property and citations/notes from County enforcement file;
  - 14. Letter from Peggy Hennessy dated February 22, 1999;
  - 15. Citation 02490;
  - 16. Complaint form dated February 22, 1999;
  - 17. Tax Record dated April 13, 1999;
  - 18. 3 site maps;
  - 19. Information Summary dated April 13, 1999;
  - 20. Email from Todd Dugdale to Glen Higgins;
  - 21. Public Records Request from Richard Gross;
  - 22. Appeal of land use decision received April 16, 1998;
  - 23. Complaint from Ernest Smith dated November 20, 1997;
  - 24. 2 maps of property;
  - 25. Letter from Richard Gross dated March 9, 1998;
  - 26. Letter from Richard Gross dated January 20, 1998;
  - 27. Complaint by Doug Paxton dated November 19, 1997;
  - 28. Complaint from the Borjessons dated November 21, 1997;
  - 29. Complaint from Larry and David Oliver dated December 5, 1997;
  - 30. Complaint from Larry and David Olson dated December 10, 1997;
  - 31. Photo dated July 16, 1999;
  - 32. 7 photos of property;
  - 33. Photo of property taken April 8, 1999;

- 34. Photo of property taken April 8, 1999;
- 35. Conditional Use Permit application 02-22 with 5 maps;
- H. Letter from Kathy Schemp dated November 27, 2001;
- I. Referral and Acknowledgment from County Roadmaster;
- J. Referral and Acknowledgment from St. Helens Fire District;
- K. Referral and Acknowledgment from County Sanitarian;
- L. Referral and Acknowledgment from Warren Water District;
- M. Referral and Acknowledgment from Diana Boom, Scappoose CPAC;
- N. Referral and Acknowledgment from County Building Official;
- O. Memo from Anna-Marie Updegraff dated December 28, 2001;
- P. Letter from William and Lorraine Borjesson received January 7, 2002;
- Q. Letter from Alan and Kim Bronson dated January 4, 2002;
- R. Letter from Dan and Nancy Barrett dated January 3, 2002;
- S. Letter from Michael Gruetzemacher received January 3, 2002;
- T. Revised notice of Hearing date dated November 19, 2001;
- U. List of persons to receive notice;
- V. Information Summary dated December 5, 2001;
- W. Returned Notice;
- X. Certificate of mailing dated January 25, 2002;
- Y. 2 public notices;
- Z. Notice of mailing of staff report dated December 28, 2001;
- AA. Certificate of mailing dated November 19, 2001;
- BB. Certificate of mailing dated November 16, 2001;
- CC. Referral Contact List;
- DD. Board Communication from Todd Dugdale dated March 20, 2002, with the following attachments:
  - 1. Appeal of Planning Commission decision;
  - 2. Minutes of January 7, 2002, Planning Commission Hearing;
  - 3. Planning Commission Final Order CU 02-22;
  - 4. Staff Report to the Board of County Commissioners dated March 12, 2002, with attachments;

- Exhibit 2- Letter to Board of County Commissioners from Dan and Nancy Barrett dated March 18, 2002;
- Exhibit 3- Letter to Jeffrey VanNatta from Alan & Kim Bronson dated March 18, 2002;
- Exhibit 4- Letter to Planning Commission from Lorraine & William Borjesson dated March 20, 2002;
- Exhibit 5- Letter to Board of County Commissioners from Quentin and Amy Frugia;
- Exhibit 6- 2 photos of Ernie Smith's property submitted by David Brian Williamson;
- Exhibit 7- 10 photos submitted by David Brian Williamson;
- Exhibit 8- Letter to Board of County Commissioners from Anna-Marie Updegraff;

WHEREAS, having heard evidence and testimony, the Board of County Commissioners

closed the public hearing, deliberated on the matter and voted unanimously to deny the application;

NOW, THEREFORE, IT IS HEREBY ORDERED as follows:

1. The Columbia County Board of Commissioners adopts Findings 2-5, 10, 13, and 15-17, in the Staff Report to the Board of County Commissioners dated March 12, 2002, which is attached hereto as Attachment A, and is incorporated herein by this reference.
2. The Columbia County Board of Commissioners adopts Supplemental Findings which are attached hereto as Attachment B, and are incorporated herein by this reference.
3. The application by Dale Fischer, Trustee for the Dale Fischer Living Trust, for a Type II Home Occupation Conditional Use Permit (CU 02-22) to operate a trucking excavation business in connection with a single family dwelling on property zoned RR-5, and having tax account numbers 4119-040-01704 and 4119-040-01800, is DENIED.
4. Dale K. Fischer, and residents of the property shall immediately cease operating any and all business activities, including the home office, on the parcels described herein, located at 56186 and 56230 Old Portland Road, Warren, Oregon, and having tax account number 4119-040-01704 and 4119-040-01800.

Dated this 27<sup>th</sup> day of March, 2002.

BOARD OF COUNTY COMMISSIONERS  
FOR COLUMBIA COUNTY, OREGON

By: [Signature]  
Chair

By: [Signature]  
Commissioner

By: [Signature]  
Commissioner

Approved as to Form:

By: [Signature]  
Office of the County Counsel

ATTACHMENT A

**COLUMBIA COUNTY  
BOARD OF COMMISSIONERS**  
Appeal Staff Report

Home Occupation - Conditional Use Permit

**DATE:** March 12, 2002

**FILE NUMBER:** CU 02-22

**APPLICANT/ OWNER:** Dale Fischer, Trustee of the Fischer Living Trust  
56186 Old Portland Road  
Warren, Oregon 97053

**PROPERTY LOCATION:** Approximately 2½ miles south of the City of St. Helens, at 56186 and 56230 Old Portland Road, Warren, Oregon.

**TAX ACCT. NUMBER:** 4119-040-01704 2.00 acres  
4119-040-01800 2.25 acres

**ZONING:** Rural Residential (RR-5)

**REQUEST:** A home occupation conditional use permit to allow the owner to operate the office of a trucking excavation business from a single family residential dwelling.

**APPLICATION COMPLETE:** 11/15/01 **150 DAY DEADLINE:** 04/14/02

**REVIEW CRITERIA**

<u>Columbia County Zoning Ordinance</u>		<u>Page</u>
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<u>Oregon Revised Statutes</u>		
ORS 215.448	Home Occupations	14
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## BACKGROUND:

This property and the current owner, Mr. Dale Fischer, have a land use history that dates back to November 1997, when this office (LDS) received its first complaint from neighbors in the area regarding the operation of a commercial/industrial trucking company in a residential zone. Mr. Fischer claimed the use of the land for a trucking company was a legal non-conforming use because a previous owner (Decker) operated a trucking company from the site prior to the acknowledgment of our current zoning ordinance.

In response to the neighbors complaints, the Planning Director researched the history of the site and determined on April 3, 1998, that the previous use of the land as a trucking operation had been discontinued for more than one year and the land had lost its legal non-conforming status. Mr. Fischer appealed the Directors decision to the Columbia County Planning Commission which after holding a public hearing upheld the Directors decision. Mr. Fischer then appealed the Planning Commission decision to the Oregon Land Use Board of Appeals. After the County withdrew its decision for reconsideration and filed its amended final decision, Mr. Fischer failed to re-file his appeal, and LUBA dismissed the appeal on April 16, 1999.

After various attempts to cause Mr. Fischer to cease operating a business on the property, on September 28, 2000, the County filed a complaint in the Columbia County Circuit Court seeking equitable relief, enjoining and requiring the defendant to cease using the property for business purposes. The complaint was assigned case No. 00-2503.

March 16, 2001, the Columbia County Code Enforcement Officer issued six citations against Dale Fischer for conducting a business not allowed in a residential zone, and using the property for more than one primary use, in violation of the Columbia County Zoning Ordinance. On March 27, 2001, the Columbia County Code Enforcement Officer issued five additional citations for conducting a business not allowed in a residential zone, and using the property for more than one primary use, in violation of the Columbia County Zoning Ordinance.

On October 4, 2001, Mr. Fischer and Columbia County entered into a settlement agreement where, among other things, Mr. Fischer was required to cease all business operations on the property except to the extent that a valid home occupation conditional use permit is granted by Columbia County.

On November 7, 2001, Mr. Fischer applied for a for a home occupation to allow the operation of an office for a trucking excavation business from a single family residential dwelling. The application states there will be four employees. The applicant states in the application that "The machinery associated with the proposed use will be the applicant's and employees' personal vehicles, customer and supplier vehicles, and equipment limited to a tractor with accessories, a mower, trailers for the tractor and mower, one dump truck, one trailer, one backhoe and one Caterpillar."

The Planning Commission heard the home occupation request at the January 7, 2002, public hearing. After reviewing the staff report and taking testimony from all interested parties, the Planning Commission voted to reject the staff recommendation and deny the application. The Planning Commission included five reasons for denial on the final order. Mr. Fischer appealed the Planning Commission decision on January 30, 2002. The appeal was filed in a timely manner with the appropriate fee.

Improvements on the site include a single family dwelling, a large shop, a large gravel parking area, Warren water, and a subsurface septic system. The dwelling was previously altered in such a way that the attached garage has been converted into office space. Staff finds no records of any building permits for this activity. A small blue sign approximately 2' x 3' has been attached to the residence next to the office entrance. Access to this property is provided from Old Portland Road and two private easements. The property is also currently using a rail crossing to access directly onto Highway 30, however, ODOT Rail Division has stated that this crossing is not legal and may be removed.

Other properties adjacent to and contiguous with this site are characterized by residential uses. All of the homes in the area are clustered and generally in close proximity to one another. This site is not within an acknowledged urban growth boundary. Emergency services are provided by the Scappoose Rural Fire District and the Columbia County Sheriff. The subject property is also located within the conical surface of the airport landing field overlay zone.

Physically, the subject property has no steep slopes (<3%) and is basically flat. Overall the property slightly slopes to the south and to the east. There is a small ravine located along the south property line that drains east toward Scappoose Bay. The January 2000, Scappoose Bay Watershed Assessment, has identified Scappoose Bay as nodal habitat and the highest priority salmonid refugia in the watershed. Extra precaution should be taken to ensure negative impacts to Scappoose Bay are eliminated. Vegetation is mainly grass with some trees near the house and on the south side of the property. According to the FEMA flood hazard map (41009C0465C) and the National Wetlands Inventory, St. Helens quad, there are no wetlands or flood hazard areas on the subject property.

## REVIEW CRITERIA:

The following sections of the Columbia County Zoning Ordinance apply to this application:

### Section 100

#### GENERAL DEFINITIONS:

##### .36 Home Occupation:

A business which is located in a zone not normally oriented to commercial activities. The home occupation is a low key operation, which does not change the character of the neighborhood in which it is located. It is operated by a resident of the property or an employee of the resident. Traffic generated by the business should not be greater than what is normally found in the zone.

Examples of home occupations include beauty salons, bookkeeping operations, and professional offices. A portion of the home occupation may include the parking of vehicles related to the business. See Section 1507 for review criteria.

**Finding 1:** The applicant's proposal to operate a trucking excavation business office from the existing dwelling appears to be low key, however, storing heavy equipment on the site as the applicant proposes would not be low key and would change the character of the neighborhood from residential to industrial. Allowing heavy trucks and equipment would also increase the traffic beyond



what is normally found in the RR-5 zone. Residential dwellings in this area are in close proximity to each other so impacts associated with a trucking business would conflict with residential use of the adjacent properties. The subject property is highly visible from Highway 30 and neighboring properties, making storage of heavy equipment aesthetically incompatible with the area. Additionally, a home occupation must be operated by a resident or an employee of the resident. Staff has determined that Dale Fischer is not a resident in the dwelling that is proposed to be used for the home occupation. Staff finds that Dale Fischer lives on the adjacent property with the address 56230 Old Portland Road. The dwelling that is proposed to be used as the home office is 56186 Old Portland Road which is occupied by Wes Fischer, son of Dale and partial owner of the business DGW, Inc. While the above definition of a home occupation specifically mentions a professional office, it makes no mention of storage of heavy equipment.

Continuing with the Columbia County Zoning Ordinance:

**Section 1300      SIGNS**

1301 Use: No sign may be established, altered, or expanded hereafter in any district in Columbia County, except in accordance with the provisions outlined in this section. The sign provisions are not a district but apply to signs established in conjunction with any residential, commercial, or industrial use in the county. These provisions also regulate the placement of billboards or any other off-site advertising sign within the county.

1302 General Provisions:

- .1 Design Review: The size, design, color, lighting, and location of signs and supporting structures for all commercial, industrial, or off-site advertising signs shall be subject to design review under the provisions of this ordinance.
- .2 Setbacks: All signs shall be situated in a manner so as not to adversely affect safety, corner vision, or other similar conditions. Unless otherwise specified, all signs shall observe the yard setback requirements of the districts in which they are located.
- .3 Blanketing: No sign shall be situated in a manner which results in the blanketing of an existing sign.
- .4 Illuminated Signs: Signs shall be non-flashing and non-revolving. Artificially illuminated signs, or lights used to indirectly illuminate signs, shall be placed, shielded, or deflected so as not to shine into residential dwelling units or structures. The light intensity of an illuminated sign shall not exceed the accepted standards of the sign industry, as provided by the Oregon Electric Sign Association.
- .5 Pre-Existing Signs: Signs and sign structures not conforming to the requirements of this ordinance shall be subject to the provisions of Section 1506



for Non-Conforming Uses, except that the copy area of a pre-existing sign may be changed, subject to staff review of the design, color, and lighting of the sign and supporting structure.

- .6 Sign Clearance: A minimum of 8 feet above sidewalks and 15 feet above driveways shall be provided under free-standing signs.

**Finding 2:** The applicant has installed a sign on the side of the house near the office entrance. Staff estimates the size of the sign as approximately 2' x 3'. The sign is non-illuminated and is blue with white letters. The sign says DGW, Inc. and lists the address and phone number. The sign is attached to the building and does not block vehicle vision. There are no other signs in the area.

Continuing with the Columbia County Zoning Ordinance:

1306 Signs pertaining to rural home occupations:

- .1 Shall not exceed 6 square feet.
- .2 Only one such sign shall be permitted upon the premises.
- .3 Shall not be artificially illuminated.
- .4 Shall be located at least 5 feet from the front property line.

**Finding 3:** The submitted application does not address the existing sign or any other proposed signs. The existing sign appears to be 2' 3', non-illuminated sign, that is located greater than 5' from the front property line. The existing sign would be consistent with the above criteria. No other signs will be allowed.

Continuing with the Columbia County Zoning Ordinance

**Section 1400 OFF-STREET PARKING AND LOADING**

- 1401 General Provisions: At the time of the erection of a new building, or an addition to an existing building, or any change in the use of an existing building, structure, or land which results in an intensified use by customers, occupants, employees, or other persons, off-street parking and loading shall be provided according to the requirements of this section.
- 1402 Continuing Obligation: The provisions for and maintenance of off-street parking and loading facilities shall be a continuing obligation of the property owner. No building or any other required permit for a structure or use under this or any other applicable rule, ordinance, or regulation shall be issued with respect to off-street parking and loading, or land served by such land, until satisfactory evidence is presented that the property is, and will remain, available for the designated use as a parking or loading facility.

1403 Use of Space:

- .1 Required parking spaces shall be available for parking of vehicles of customers, occupants, and employees.
- .2 No parking of trucks, equipment, or the conduct of any business activity shall be permitted on the required parking spaces.
- .3 Required loading spaces shall be available for the loading and unloading of vehicles concerned with the transportation of goods and services.
- .4 Excepting residential and local commercial districts only, loading areas shall not be used for any other purpose than for loading and unloading.
- .5 In any district it shall be unlawful to store or accumulate goods in a loading area in a manner which would render the area temporarily or permanently incapable of immediate use for loading operations.

1405 Plans Required: A plot plan shall be submitted in duplicate to the Director with each application for a building permit or for a change of classification to OP. The plot plan shall include the following information:

- .1 Dimensions of the parking lot.
- .2 Access to streets and location of curb cuts.
- .3 Location of individual parking spaces.
- .4 Circulation pattern.
- .5 Grade and drainage.
- .6 Abutting property.
- .7 A landscaping plan which shall include the location and names of all vegetation, and the location and size of fencing or other screening material. This plan shall be approved by the Director.

1410 Size:

- .1 The standard size of a parking space shall be 9 feet by 18 feet.
- .2 Handicapped parking spaces shall be 12 feet by 18 feet.
- .3 Parallel parking, the length of the parking space shall be increased to 22 feet.

1412 Access: There shall be no more than one 45 foot wide curb cut driveway per 150 feet of street frontage, or fraction thereof, permitted per site.

1416 Minimum Required Off-Street Parking Spaces:

.3 Retail Uses:

Bank or office, including  
medical and dental:

One space for each 300 square feet  
plus one space for each two employees.

**Finding 4:** It appears the proposal for an office would require three parking spaces and no off street loading space. This would not include parking and storing of heavy equipment. The subject property has a very large gravel parking area that can easily accommodate three parking spaces near the entrance to the office. Parking and storing heavy equipment would be considered an industrial use and not appropriate as a home occupation.

Continuing with the Columbia County Zoning Ordinance:

**Section 1500 DISCRETIONARY PERMITS**

**Section 1503 CONDITIONAL USES**

.5 Granting a Permit: The Commission may grant a Conditional Use Permit after conducting a public hearing, provided the applicant provides evidence substantiating that all the requirements of this ordinance relative to the proposed use are satisfied and demonstrates the proposed use also satisfies the following criteria:

A. The use is listed as a Conditional Use in the zone which is currently applied to the site;

**Finding 5:** Section 603.3 of the Columbia County Zoning Ordinance (CCZO) lists home occupations as a conditional use in the Rural Residential Five zone.

Continuing with Section 1503 of the Columbia County Zoning Ordinance:

B. The use meets the specific criteria established in the underlying zone;

**Finding 6:** The applicant has indicated on the submitted site plan that a portion of the existing house will be used as the office space. A single family dwelling is a permitted use in the zone and the existing dwelling was legally sited. However, the applicant has altered the dwelling and converted the attached garage into office space without any building permits. The Building Department states the office area will need to meet current codes and will need to meet ADA requirements such as

bathrooms. A change of occupancy permit will also be required. Presently, the office space is in violation of the uniform building code. Additionally, section 603.3 of the Zoning Ordinance governing conditional uses in the RR-5 zone requires home occupations to be consistent with ORS 215.448 as provided in Section 1507 of the Columbia County Zoning Ordinance (CCZO), see findings 12-14 of this report.

Continuing with Section 1503 of the Columbia County Zoning Ordinance:

- C. The characteristics of the site are suitable for the proposed use considering size, shape, location, topography, existence of improvements, and natural features;

**Finding 7:** Physically it appears the site is suitable for the proposed office use. It is generally a flat piece of ground, with a house, a shop and a large gravel area. The shape of the property is roughly rectangular and at 2.25 acres in size, the site provides plenty of room for parking on the existing graveled area. The site is located within a residential zone and is near to dwellings on adjacent properties. A quiet office with little to no traffic would not be expected to negatively impact the neighbors, however, the presence of heavy equipment would conflict with surrounding uses as was seen in the past by the numerous complaints that were filed between 1997 and 2000. The existing improvements on the property include a single family dwelling with a garage that has been converted to office space and a large shop. Natural features in the area include Scappoose Bay located approximately 500' east of the subject property. Scappoose Bay contains wetlands and floodplains and is an environmentally sensitive area that provides nodal habitat to endangered species such as chinook salmon. Parking, storing and maintaining heavy equipment near this area would increase the possibility of contamination due to the large quantities of fuel, oil, grease, solvents, and other petroleum products typically associated with heavy machinery. Additionally, access to this property is currently provided via a private easement onto Old Portland Road and a rail crossing with direct access onto Highway 30. ODOT Rail Division has informed us that this rail crossing is not valid and will likely be removed. Old Portland Road is posted for no heavy trucks. Therefore, staff finds the characteristics of the site would not be suitable for any type of heavy trucks or equipment being located at the site, however, a small office that dispatches trucks and equipment located at another site, may be suitable.

Continuing with Section 1503 of the Columbia County Zoning Ordinance:

- D. The site and proposed development is timely, considering the adequacy of transportation systems, public facilities, and services existing or planned for the area affected by the use;

**Finding 8:** The transportation systems that will be effected with this project are Old Portland Road, U.S. Highway 30, and the ODOT Rail line between Portland and Astoria. Old Portland Road is a 21' wide, two lane, paved road on a public right-of-way, that transitions to a private gravel road as it approaches the subject property. Staff recommends against allowing heavy trucks and equipment to be located on the subject property. The primary reasons being that Old Portland Road is posted for no heavy truck traffic and if it was used would rapidly deteriorate the road bed and would route heavy trucks

near to existing dwellings. When heavy trucks were sited on the subject property in the past, they used the Highway 30 access and crossed the rail road at an unsignalized crossing. The main problem with this is the rail crossing is not valid, according to ODOT Rail Division, and the fact that there were traffic conflicts using the center turn lane. Specifically, heavy trucks traveling south to the subject property, and school buses traveling north to Warren Elementary School, would conflict in their turn lanes. These reasons indicate that the transportation system is not adequate for heavy trucks and equipment. In regards to the personal vehicles of four employees using Old Portland Road for access, staff finds the transportation system adequate. The only other public facilities or services in the area are electricity and warren water. The proposed home occupation is not expected to negatively impact power and water supplies in the area. In summary, staff finds the transportation system is not adequate for any type of heavy trucks or equipment but is adequate for personal passenger vehicles.

Continuing with Section 1503 of the Columbia County Zoning Ordinance:

- E. The proposed use will not alter the character of the surrounding area in a manner which substantially limits, impairs, or precludes the use of surrounding properties for the primary uses listed in the underlying district;

**Finding 9:** The proposed home office is not expected to alter the character of the surrounding area. However, heavy trucks and equipment on the site would negatively affect the character of the surrounding area. The site is highly visible from the highway and from the adjacent properties. Heavy equipment is generally seen as aesthetically unpleasing in a residential area. Additionally, the sounds associated with operating diesel trucks and equipment are not residential in nature. When heavy trucks and equipment were present in the past, this department received many complaints from surrounding neighbors stating that the operation was impairing the use of their land for residential purposes. Also, the private road access onto Old Portland Road is not sufficient for heavy truck traffic and would route large trucks very close to existing dwellings. The road bed in this area is also not sufficient for heavy truck traffic and Old Portland Road has been posted for no through trucks. Staff finds a small office that dispatches equipment from another location would not negatively affect the character of the surrounding area as long as no heavy trucks and equipment are brought to the site.

Continuing with Section 1503 of the Columbia County Zoning Ordinance:

- F. The proposal satisfies the goals and policies of the Comprehensive Plan which apply to the proposed use;

The Columbia County Comprehensive Plan Section titled "ECONOMY" lists the following goals and policies:

- Goal: 1. To strengthen and diversify the economy of Columbia County and insure stable economic growth.

Policies:

1. Encourage the creation of new and continuous employment opportunities.
2. Encourage a stable and diversified economy.\*

**Finding 10:** The proposed home occupation satisfies the Comprehensive Plan as it will be a new private business that may continue on and provide employment opportunity. It is staff's opinion that this business has grown past what is normally considered a home occupation and is large enough to operate in an industrial zone where it should be located. However, the applicant proposes to operate the office portion of the trucking excavation business from the home. According to the applicant, the office portion of the business includes 4 employees.

Continuing with Section 1503 of the Columbia County Zoning Ordinance:

- G. The proposal will not create any hazardous conditions;

**Finding 11:** This proposal for a home office is not expected to create any hazardous conditions as long as no heavy trucks and equipment are allowed on the site. Traffic and environmental hazards are both associated with heavy trucks and equipment and therefore should be prohibited.

Continuing with the Columbia County Zoning Ordinance:

**Section 1507 HOME OCCUPATIONS**

Land Development Services or the County Planning Commission (or the County) may allow the establishment of a Type 1 or Type 2 home occupation in any zone that allows residential uses. The following provisions shall apply:

**Finding 12:** The County Planning Commission may allow the establishment of a home occupation on lands zoned for residential uses. In the construction of the language of this review criteria, the word "may" is permissive but is not mandatory, therefore the planning commission does not have to allow a home occupation depending upon the circumstances of the situation, even if the application meets the specific criteria regarding home occupations. The applicant is applying for a Type 2 home occupation.

Continuing with the Columbia County Zoning Ordinance Section 1507:

- .2 **Type 2:** A Type 2 home occupation is reviewed as a conditional Use by the Planning Commission and may be visible to the neighborhood in which it is located. In addition to the general criteria in Subsection 1507.3, the following criteria shall apply to a Type 2 home occupation:

- A. It shall be operated by a resident or employee of a resident of the property on which the business is located.

- B. It shall employ on site no more than five full-time or part-time persons.
- C. Signs are permitted as per Section 1300 of the CCZO.

**Finding 13:** (A) The applicant, Dale Fischer, is the owner of the subject property although it is staff's understanding that Mr. Fischer does not reside in the dwelling that is proposed for the home office. Staff finds that Wes Fischer, son of Dale Fischer and partial owner of DGW, Inc., resides in the dwelling that is proposed to house the home office. (B) The application indicates 4 employees are expected. It is unclear if the entire business has 4 employees or if there will only be 4 employees employed on the site. Staff finds that the home occupation is limited to only 5 employees on site. (C) A 2' x 3' non-illuminated sign has been attached to the side of the dwelling near the office entrance. The sign appears to be consistent with Section 1300 of the CCZO.

Continuing with the Columbia County Zoning Ordinance Section 1507:

.3 The following criteria shall apply to all home occupations:

- A. A home occupation shall be operated substantially in:
  - 1. The dwelling; or
  - 2. Other buildings normally associated with uses permitted in the zone in which the property is located.
- B. A home occupation shall not unreasonably interfere with other uses permitted in the zone in which the property is located.

**Finding 14:** The proposed home office will be operated within the existing dwelling. The heavy trucks and equipment associated with the trucking and excavation business will be located at another site. A substantial portion of the business will be located off site and not operated within the dwelling or the shop building, thus not meeting the intent of a home occupation permit. Also, if heavy trucks and equipment were allowed on the site, they would be stored outside of the dwelling or the shop and thus would not meet the above criterion. Staff finds that a home office that dispatches trucks and equipment located at another site, would not interfere with nearby residential uses. Furthermore, staff finds that heavy trucks and equipment should be prohibited from being located at the subject property because they will unreasonably interfere with surrounding residential uses. Evidence of this can be seen by the numerous complaints that were received from surrounding neighbors between 1997 and 2000 when trucks and equipment were located on the site. Generally, once heavy trucks and equipment are brought to the site it changes the scale and the scope of the operation to the point of not being compatible with surrounding uses.



Continuing with the Columbia County Zoning Ordinance:

**Section 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 15:** The applicant submitted an application on the proper forms on November 7, 2001. The application was reviewed and deemed complete on November 15, 2001. The matter was scheduled for the earliest available public hearing which was January 7, 2002. Notice of the hearing was given to the applicant, surrounding property owners within 250' and published in the local news media.

Continuing with the Columbia County Zoning Ordinance:

**Section 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 16:** The notice of the hearing will be published on December 26, 2001. The notice will be published in The Chronicle, The Spotlight, and The Columbia Review. The notice will contain all of the above required information.

Continuing with the Columbia County Zoning Ordinance:

**Section 1700    APPEALS**

**1701    Appeal Procedures:**

- .1 **General Procedure:** A land use decision, as it is defined in ORS 197.015(10), made by the Director, Hearings Officer (in lieu of the Planning Commission), Planning Commission, or the Design Review Board shall be final at the end of 7 calendar days following the date notice of the decision is mailed to the applicant, and other persons entitled to notice of the decision as provided by ORS 197.763, unless a notice of appeal of decisions to the Planning Commission or the Board of Commissioners is filed with the County Clerk's office. A notice of appeal can be obtained from the Planning Department or from the Clerk's office and shall contain: *[effective 7-15-97]*
  - A. The name, address, and telephone number of the person filing the notice;
  - B. An identification of the decision sought to be reviewed, including the date the decision was made; and
  - C. In the case of decisions by the Planning Commission or Hearings Officer, the specific reasons why the decision should be modified or reversed.

.3 Any person entitled to notice of the decision as provided by this ordinance or by state law who desires to appeal the decision shall file the notice of appeal with the required fee. Failure to file a notice of appeal, or make payment of the required fee, within the designated time limit, shall be a jurisdictional defect and shall preclude review.

.4 When a notice of appeal is properly and timely filed in compliance with this section, and timely payment of the filing fee is made, a de novo appeal hearing shall be scheduled at the earliest opportunity. Notice of the hearing shall be mailed to the appellant, the applicant, the property owner, if different from the applicant, and any other persons who requested notice of the appeal hearing in writing. Notice of the appeal hearing shall be published in a newspaper which covers the property subject to the appeal. Notice of the appeal hearing shall be mailed to the parties and distributed to the newspapers no later than 7 days prior to the scheduled hearing date. *[effective 7-15-97]*

1703 Appeal of a Planning Commission Action: Any land use decision by the Planning Commission or Hearings Officer (in lieu of the Planning Commission), over which either body had original review authority, may be appealed to the Board of Commissioners by the Board of Commissioners, or by persons who appeared before the lower decision making body, either in person or in writing. The appeal may concern the approval or denial of an application or any conditions attached to the approval of an application. The de novo appeal hearing shall be scheduled before the Board of County Commissioners at the earliest opportunity, and notice of the appeal shall be sent in accordance with procedures outlined in CCZO 1701.4. *[effective 7-15-97]*

**inding 17:** The Planning Commission denied this application at the January 7, 2002 public hearing. Notice of the decision was mailed on January 23, 2002. The appeal deadline was 7 days from the date the notice of decision was mailed, January 30, 2002. Mr. Fischer filed a notice of appeal on January 30, 2002. The appeal was filed on the proper forms, with the appropriate fee, and in a timely manner. The appeal included the name, address, and telephone number of the person filing notice; the decision to be reviewed and the date of the decision, and reasons why the decision should be reversed. Appeals of the Planning Commission decision will be heard by the Columbia County Board of Commissioners. The Board will hold a de novo appeal hearing on March 20, 2002. Notice will be provided to all participants and will be published in the local news media at least 7 days prior to the scheduled hearing date.

## Oregon Revised Statutes

### 215.448 Home Occupations;

- (2) The governing body of the county or its designate may establish additional reasonable conditions of approval for the establishment of a home occupation...
- (3) Nothing in this section authorizes the governing body or its designate to permit construction of any structure that would not otherwise be allowed in the zone in which the home occupation is to be established.

- (4) The existence of home occupations shall not be used as justification for a zone change.

**Finding 18:** Reasonable conditions of approval may be established by the Planning Commission. In this case staff recommends prohibiting any type and amount of heavy trucks or equipment from being located on the subject property. Staff also recommends that standard business hours should apply to the site such as Monday through Friday, 8:00 am to 6:00 pm. The applicant proposes to operate the home office from a portion of the existing house that has been previously converted to office space without any building permits. The County Building Official has commented that the office portion of the structure will need to get building permits and must be constructed to ADA requirements and will require a change of occupancy to a Class B for commercial business. A commercial business structure would not be allowed to be constructed in the RR-5 rural residential zone, therefore, it is questionable whether this use can be allowed. The existence of this home occupation shall not be used to justify a rezone application on this property or any surrounding properties.

**Comments:**

1. The County Sanitarian has reviewed the application and has no objection to its approval as submitted.
2. The County Building Official has reviewed the matter and comments: "Office area will need to meet current codes and will need to meet ADA including bathrooms. Alterations will require a building permit. A change of occupancy is required to a -B- (Commercial Business).
3. The Warren Water District has reviewed the application and has no objection to its approval as submitted.
4. The St. Helens Fire District has reviewed the application and has no objection to its approval as submitted.
5. The Columbia County Road Department comments: "The Road Department has no objection to a business office at this location, however there will be denial of any application to use Old Portland Road (Warren Area) for any heavy equipment or large truck traffic. The road is already posted for "No Trucks". ODOT Rail and Highway division have also indicated that there is no legal crossing of the rail tracks, or any legal access to Highway 30 at this location."
6. The Scappoose CPAC has reviewed the application and recommends denial of the home occupation. Reasons justifying their decision can be found as Attachment "A".
7. The Oregon Department of Transportation - Rail Division has reviewed the application and has submitted comments that can be found as Attachment "B".
8. The Oregon Department of Transportation - Highway Division has reviewed the application and has submitted comments that can be found as Attachment "C".

9. Mr. Dale Fischer submitted a notice of appeal January 30, 2002. The notice contained the following reasons for appeal:

*"1. The Planning Commission finds that the applicant has a history of blatant disregard for land use laws and has operated in violation of the laws and that there is a high likely-hood that the applicant will bring heavy truck traffic onto the site if the office is approved."*

Applicant Response: "This is an improper and illegal criterion. It is a finding about applicant, not about the proposed use. Even if it was relevant, it is irrational. If applicant intended to use the property in violation of the land use laws, he could do so whether or not the conditional use permit is granted. In any event, applicant has entered to a settlement agreement with the Board of Commissioners in which applicant agrees to cease all business operations except as permitted under a valid home occupation conditional use permit. This application is a fulfillment of applicant's obligations under that agreement."

Staff Response: It is appropriate for the Planning Commission to consider the applicant's long history of past violations and knowing disregard of local land use laws. Further, the applicant has violated the settlement agreement by not ceasing all business operations but continuing to operate the office from the site without a valid home occupation permit.

*"2. The Planning Commission finds the application is not consistent with Section 1503.D of the Zoning Ordinance. Specifically, the transportation system (road network) is not adequate for the proposed use."*

Applicant Response: "This reason is erroneous for two reasons. The first is that applicant's access to Old Portland Road, and Old Portland Road itself, is adequate for one office staff person to drive to work in the morning and leave at the end of the day, that will be the majority of the traffic associated with the proposed use. The second is that applicant has direct access to US Highway 30 by way of a private crossing over the railroad tracks."

Staff Response: Staff finds that according to ODOT, the applicant does not have legal access onto Highway 30. Further, Old Portland Road is posted "No Through Trucks" and not an appropriate roadway for heavy trucks and equipment such as a dump truck, trailer, backhoe, and cat.

*"3. The Planning Commission finds the application is not consistent with Section 1503.E of the Zoning Ordinance. Specifically, the proposal will likely impair the use of surrounding properties for residential purposes."*

Applicant Response: "One office staff person going to work will have no impact on surrounding residential uses. If the Commission permits a limited amount of equipment, it will be consistent with the activities of at least one nearby neighbor who stores excavation equipment on his property."

Staff Response: Trucking and excavation is a use normally found in a Heavy Industrial zone, not a residential zone. The past operations of this business generated many complaints by neighbors, further indicating the use negatively impacted and impaired the use of surrounding properties for residential purposes.

*"4. The Planning Commission finds the application is not consistent with Section 1503.G of the Zoning Ordinance. Specifically, the proposed use has in the past and will likely again in the future, create traffic conflicts on US Highway 30."*

Applicant Response: "The proposed use is an office which will most likely have one non-residential (sic) employee. The Planning Commission was either unable to understand this or deliberately ignored it. Past use included numerous trucks and pieces of equipment using the property on a daily basis. Applicant is not proposing to return to that intensity of use."

Staff Response: Heavy truck traffic has in the past caused traffic conflicts with school buses in the center turn lane on Highway 30. Staff acknowledges that one personal vehicle will not create a traffic conflict but is concerned that heavy trucks will visit the site if the office is allowed to continue.

*"5. The Planning Commission finds the application is not consistent with Section 1507.3(A) of the Zoning Ordinance. Specifically, a substantial portion of the trucking and excavation business will be located at another site and not operated within the dwelling or a building normally associated with a residential use."*

Applicant Response: "The only business that will be conducted on the subject property is an office. Columbia County Zoning Ordinance 1507.3 (A) refers not to business conducted other than on the subject property. Instead, it refers to operations on the subject property which are not conducted substantially in the dwelling or in other buildings associated with uses permitted in the applicable zone."

Staff Response: Staff finds the request is not consistent with Section 1507.3(A). The majority of the home occupation business will be located at another site that is zoned industrial. Therefore, the home occupation business will not be operated substantially in the dwelling or other building normally associated with uses permitted in the RR-5 zone.

No other comments have been received from government agencies or nearby property owners as of the date of this staff report (March 12, 2002).

## **STAFF COMMENTS, CONCLUSIONS, AND RECOMMENDATIONS:**

Additionally, staff finds that from 1997 to 2001 the owner, Dale Fischer, operate a trucking and excavation business from the subject property. Columbia County received numerous complaints from neighbors and in response to those complaints expended much energy and resources into removing the trucking and heavy equipment operation from the subject property. Now that the operation has been removed from the site, the County has received a home occupation permit to allow a business on the subject property. The home occupation is described as a home office for a trucking and excavation company with associated machinery consisting of "personal vehicle, customer and supplier vehicles, and equipment limited to a tractor with accessories, a mower, trailers for the tractor and mower, one dump truck, one trailer, one backhoe and one caterpillar." It seems the applicant is asking to be allowed to bring the trucking and excavation business back to the site. Staff finds several areas with this request for a home occupation problematic. First, according to ODOT, the site does not have legal access to cross the railroad and access Highway 30, although it does have access onto Old Portland Road. Second, Old Portland Road is posted for no heavy truck traffic. Third, Heavy trucks and equipment have caused negative impacts to neighbors in the past. Fourth, a substantial portion of the business will not be operated within the dwelling or the shop building. Fifth, a portion of the single family dwelling has been converted to office space without building permits. Sixth, obtaining the required building permits will include changing the occupancy on a portion of the dwelling to a class B commercial business occupancy in a residential zone. Finally, the subject property is located near an environmentally sensitive area. Staff concludes that the primary conflict with this business is the presence of the heavy trucks and equipment in a residential zone negatively impacting neighbors. The other problems do not affect the neighbors as much and can be solved. Staff also concludes the subject property has access to Old Portland Road via private easement making the Highway 30 access unnecessary. Staff recommends that all heavy trucks and equipment be prohibited from the site. Furthermore, staff recommends the office be allowed to remain as long as it receives all of the necessary building permits and that it only dispatches trucks and equipment that are located at another site.

Based on the above findings, the Planning Director recommends **APPROVAL** of this request to operate a home office for a trucking and excavation business as a home occupation in the Rural Residential (RR-5) zone, with the following conditions:

### **Conditions of Approval**

1. This permit shall become void 2 years from the date of the final decision if the use has not been initiated. Extensions of time may be granted by the Planning Director if requested in writing before the expiration date, with the appropriate fee and if the applicant was not responsible for the failure to initiate the home occupation.
2. No permanent new structures, or subsurface sewage disposal systems, are permitted as a result of this application alone, a building permit is still required.
3. The applicant will employ on site no more than five full or part-time persons.



4. The applicant shall maintain at least three parking spaces. The parking spaces should be at least 9 feet wide and 18 feet long. These parking spaces may not block the driveway and must meet the dimensional criteria for a standard parking space pursuant to section 1410 of the Columbia County Zoning Ordinance.
5. Prior to operating the business, the applicant shall provide evidence that all building permits have been finalized regarding the conversion of a portion of the dwelling to office space. This will include a change of occupancy permit approved by the Columbia County Building Department.
6. Heavy trucks and equipment are prohibited from visiting the site, or from being stored, parked or maintained on the site at all times.
7. The applicant shall provide documentation of a private rail crossing agreement and ODOT access permit in order to access directly onto Highway 30.
8. The business office shall maintain normal business hours of Monday through Friday, 8:00 am to 6:00 pm for non-resident employees and visitors.

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H/Matt Laird/mos

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Attachments:   A - Letter From Scappoose CPAC  
                  B - Letter from ODOT Rail  
                  C - Letter from ODOT Highway  
                  D - Settlement Agreement  
                  E - Citations  
                  F - Photographs, Citations, and Complaints  
                      - Owner's submitted application  
                      - Vicinity Map  
                      - Zoning Map  
                      - Address Map  
                      - Site Plan  
                      - Digital orthophoto

cc: Dale Fischer  
David Brian Williamson, Attorney At Law  
File

## ATTACHMENT B

### SUPPLEMENTAL FINDINGS DALE FISCHER HOME OCCUPATION- CONDITIONAL USE PERMIT CU-02-22

1. Columbia County Zoning Ordinance Section 100.36, Home Occupations, defines a home occupation as, “a business which is located in a zone not normally oriented to commercial activities. The home occupation is a low key operation, which does not change the character of the neighborhood in which it is located. It is operated by a resident of the property or an employee of the resident. Traffic generated by the business should not be greater than what is normally found in the zone. Examples of home occupations include beauty salons, bookkeeping operations and professional offices....” The Board of County Commissioners finds that the Applicant is requesting to run a trucking excavation office out of an existing dwelling on the property. The Board finds that the Applicant is also requesting to park and operate large equipment associated with the trucking excavation business on the property as part of the home occupation. While the Applicant states in the conditional use permit fact sheet that the use of the property, “will be limited to an office in the house,” the Applicant has also indicated that the use will not be limited to an office in the house. The application proposes to use the outside parking area to store equipment, including “a tractor with accessories, a mower, trailers for the tractor and mower, one dump truck, one trailer, one backhoe, and one caterpillar.” In testimony received by the Board, the Applicant indicated that there is actually more than one tractor which he is requesting to be kept on the property. It is unclear to the Board from the application documents and the testimony received into evidence, what equipment the Applicant intends to bring on the property. In the past, the Applicant has consistently parked heavy equipment on the property, including semi trucks, dump trucks, caterpillars and other large excavation equipment. The Board infers from the Applicant’s ambiguity, and inconsistent testimony, that the Applicant will use the property in the same or similar manner as before. The Board finds that the Applicant has not provided sufficient evidence in the record as to the true proposed use of the property as a home occupation.

The Board finds that the use of the property for customer and supplier vehicles, and equipment including a tractor with accessories, a mower, trailers for the mower and tractor, one dump truck, one trailer, one backhoe and one caterpillar, is not a “low key” operation and will change the character of the surrounding property. The surrounding property is RR-5, and consists largely of small parcels with residences. The Applicant’s neighbors have vigorously complained over the last several years about the negative impact his business operations have had on the use and enjoyment of their land, especially from the noise and dust created by the business. The Board finds that the use of the property for parking large trucks and excavation equipment, even occasionally, is inconsistent with the character of the RR-5 properties surround the Applicant’s property. The Applicant has pointed to the Ernie

Smith property and introduced photographs of this property which supposedly show excavation equipment parked on Mr. Smith's property.<sup>1</sup> Based on these photographs the Applicant argues that the existence of his excavation equipment is consistent with the character of the area. The Board finds however, that the Applicant did not submit evidence of the zoning of the Smith property or whether the equipment purportedly stored on the property is legally stored on the property.<sup>2</sup> The Board finds that if there is a violation of the County zoning ordinance on the Smith property, then it should be enforced. However, the Applicant errs in basing the character of the neighborhood on a possible illegal use of one parcel. To the contrary, there is substantial evidence in the record that proposed home occupation would change the character of the neighborhood. The surrounding properties are zoned for rural residential. There are several residential dwellings in this area in close proximity to one another so impacts associated with a trucking business would conflict with residential uses of the adjacent properties. The subject property is highly visible from Highway 30 and neighboring properties, making storage of heavy equipment aesthetically incompatible with the area. The evidence shows that surrounding properties have a natural and peaceful character. The proposed uses of the property would be inconsistent with such a natural and peaceful character. The Applicant's proposal is to again treat the property as a huge industrial gravel parking lot for heavy excavation equipment. The Board finds that the noise and dust and general unsightliness associated with such a proposed use is clearly inconsistent the otherwise peaceful and natural character of the surrounding properties.

The Board further finds that the increased traffic generated on the property from the 5 proposed employees' personal vehicles, customer and supplier vehicles, and the heavy equipment, would increase the traffic beyond what is normally found in the RR-5 zone. The existence of excavation equipment and supplier/customer and personal vehicles for 5 proposed employees makes the use more appropriate in an industrial zone, not as a home occupation in the RR-5 zone. The Board finds that in the rural residential zone, one typically finds farm equipment and residential vehicles. The Board finds that farm equipment on such rural residential property is generally kept on the property for which it is needed and not driven on and off the property very much. The Board finds that the Applicant did not submit evidence which would support a different conclusion. There is evidence in the record that the private rail crossing will be closed by ODOT. When that occurs, all vehicles going to the Applicant's property will have to use Old Portland Road which dead ends on the Fischer property. There is currently no pass-through traffic on Old Portland Road and therefore, traffic is very light. The addition of 5 employee vehicles and the other proposed vehicles and

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<sup>1</sup>Reference to the Applicant's testimony is also to Applicant's attorney, David Brian Williamson.

<sup>2</sup>The Board notes that it the County has not received any complaints against the Smiths or that property by surrounding neighbors and infers that whatever uses are actually being made of that property are not bothersome to the surrounding properties due to the silence of otherwise very vocal neighbors.

equipment would increase the traffic generally found in this RR+5 zoned neighborhood.

2. Columbia County Zoning Ordinance Section 1503.5(B) requires that a conditional use must meet the specific criteria established in the underlying zone. The underlying zone in this case is RR-5. The Board of County Commissioners finds that single family dwellings are permitted in the RR-5 zone, and home occupations are also permitted as conditional uses in the zone. However, the home occupation must meet the underlying criteria as set forth in CCZO 1507 and ORS 215.448. The Board finds that the Applicant has not submitted evidence in the record that the proposed home occupation meets such criteria. (See Supplemental Finding 8, herein).
3. Columbia County Zoning Ordinance Section 1503 (C) requires that the characteristics of the site be suitable for the proposed use considering size, shape, location, topography, existence of improvements, and natural features. The Applicant stated in his application that "the site is suitable because it has already been used in the proposed manner. The office and parking area already exist. It is located with access to U.S. Highway 30, and though (sic) a private road to Old Portland Road." The Board finds that the Applicant has not provided sufficient evidence in the record to support a finding that this criteria has been met. The Board finds that the fact that the excavation business has been operated illegally since 1997 is not an appropriate measure of the site's suitability for the proposed use. In addition, the Board finds that there is substantial evidence in the record tending to prove that the site is not suitable for the proposed use considering size, shape, location, topography, existence of improvements and natural features. The Board finds that the site is located off of Highway 30. Access to the property may be made from a private railroad crossing directly off of Highway 30, or by way of Old Portland Road, a County Road, which is also accessible from Highway 30. The Board finds that there is no turn lane off of Highway 30 into either access and it is dangerous to have trucks and other large equipment going on or off the property onto Highway 30. The Board further finds that Old Portland Road prohibits truck traffic, and ODOT has indicated that the private rail crossing is invalid and will be shut down. It is likely that there will be no legal access onto the property for the excavation equipment or other traffic associated with the home occupation. Therefore, the Board finds that there is substantial evidence in the record that the site is not suitable for the propose use due to its location. The Applicant provided no evidence which would support any other conclusion.

In addition, the Board finds that the natural features on the site include proximity to Scappoose Bay and its wetlands and flood plains. Scappoose Bay is an environmentally sensitive area providing nodal habitat to endangered species such as coho salmon. Parking, storing and maintaining heavy excavation equipment near this area would increase the possibility of contamination due to large quantities of fuel, oil, grease, solvents, and other petroleum products typically associated with heavy machinery. Therefore, there is substantial evidence in the record that the site is not suitable for the proposed use due to its natural features. The Applicant provided no evidence which would support any other conclusion.

4. Columbia County Zoning Ordinance Section 1503(D) requires that the site and proposed development be timely, considering the adequacy of transportation systems, public facilities, and services existing or planned for the area affected by the use. The Board finds that while there is substantial evidence in the record that public facilities and services are adequate for the proposed use, there is substantial evidence in the record that the transportation system is not adequate. The transportation systems effected by the proposed uses are Old Portland Road, U.S. Highway 30 and the ODOT Rail Line between Portland and Astoria. Old Portland Road is a 21' wide, two lane, paved road on a public right-of way, which transitions into a private gravel road as it approaches the subject property. The road is not capable of withstanding heavy truck traffic and has been posted for no heavy trucks by the County. Highway 30 is a State Highway. There are no turn lanes onto either Old Portland Road, or onto the private rail crossing. There are no traffic signals on either access point, and trucks and other traffic would be forced to stop on railroad tracks prior to entering onto the highway. The Board further finds that ODOT has a rail crossing agreement regarding the private easement onto the Fischer property. There is evidence in the record that ODOT will be discontinuing the private crossing. Therefore, the Board finds that there will be no access to the property for trucks and other excavation equipment and therefore, the transportation systems are inadequate to support the proposed uses. The Board finds that the Applicant has not provided evidence in the record that this criteria is met. The Applicant provided testimony that he believes whether or not he has access to his property by way of the state railroad crossing agreement is none of the County's concern and should not be considered. The Applicant has the burden of showing the transportation systems are adequate. The only indication in the record that such access will be available is the Applicant's statement that he will fight the private crossing closure with the state. The Board finds that such a statement is insufficient evidence to show that there is an adequate transportation system to support the proposed uses.
5. Columbia County Zoning Ordinance Section 1503(F) requires that the proposed use will not alter the character of the surrounding area in a manner which substantially limits, impairs, or precludes the use of surrounding properties for the primary uses listed in the underlying district. The Board of County Commissioners find that the Applicant has not submitted evidence in the record to show that the proposed use of the property for a trucking excavation business will not alter the character of the surround area. The Applicant stated in his application that the proposed use will not alter the character of the surrounding area in a manner which substantially limits, impairs, or precludes the use of surrounding properties for the primary uses listed in the underlying district because the "use is consistent but less intense with prior uses on the same parcels." The Applicant then simply concludes that "it will have no affect on the use of surrounding parcels for single family detached dwellings, farm use, forestry and accessory structures which are permitted uses in the zone (CCZO 602)." The Board of County Commissioners finds that the illegal past use of the property as a trucking business is not an accurate basis for determining whether the character of the surrounding area will be altered.

At the outset, the Board finds that it is doubtful whether the proposed use will truly be “less intense” than the prior illegal use. Before the Applicant was cited for land use violations, the Applicant parked his excavation equipment on the property, and ran a home office. The current proposal is to do the same thing. However, even if the use is less intense than the prior illegal use, the Board finds that it must look at the affects of the use on the surrounding properties. The Board finds that uses on the surrounding properties include residences, and some farming uses. The Board finds that there is ample evidence in the record which tends to show that the character of the surrounding properties will be altered by the proposed use. The neighboring property owners have testified that the existence of truck and excavation equipment has in the past and will in the future impair their ability to live on their property, given the noise, dust, and unsightliness. The site is highly visible from the highway and from the adjacent properties. Heavy equipment is not aesthetically pleasing to the general population. The Board finds that most people, including the Applicant’s neighbors, do not want to live next to it. The Board finds that when heavy trucks and equipment were on the property in the past, the County was inundated with complaints about the how the business operation, including its dust, noise, and traffic impacts was impairing the use of neighbors’ land for residential purposes. Also, the Board finds that if the private rail crossing is closed, then the Applicant would be forced to bring his excavation equipment onto the property through Old Portland Road. The existence of heavy trucks on the road, going past residences, some of which are very near the road, will greatly impact the neighbors by causing additional noise, dust and unsightliness. The sum total of the impact is a substantial impairment in the neighbors’ right to use their property for residential purposes. Given the substantial evidence in the record showing such impairment and no evidence to the contrary, the Board must find that this criteria is not met.

6. Columbia County Zoning Ordinance, Section 1503(G) requires that the proposal will not create any hazardous conditions. The Applicant has stated that “the use creates no more hazards than any small office and parking area,” as evidence that this criteria has been met. The Board of County Commissioners finds that such a statement is no evidence, much less substantial evidence tending to showing that the use does not create any hazardous conditions. The Board finds that there is substantial evidence in the record that there could be very serious hazardous conditions created by the introduction of excavation equipment and other vehicles on the property. The Applicant has not even addressed that possibility. The Board finds that there are no turn lanes or signals onto Highway 30 which could pose serious safety issues for equipment drivers as well as for employees driving personal vehicles. Furthermore, the Board finds that there is substantial evidence in the record that there is a serious risk of environmental hazards due to oil and other excavation equipment residues being washed into Scappoose Bay. Without any evidence to the contrary, the Board cannot find that this criteria is met.
7. Columbia County Zoning Ordinance, Section 1507 states that the County “may allow the establishment of a Type 1 or Type 2 home occupation in any zone that allows the residential uses.” ORS 215.448 also contains the same discretionary language. The Board of County

Commissioners finds that the Board has the discretion under this section to allow or disallow a home occupation. Nevertheless, as set forth in these supplemental findings, the Board finds that there is substantial evidence in the record that the Applicant has not met all the criteria for a conditional use permit, and therefore, the Board cannot grant such a permit.

8. Columbia County Zoning Ordinance, Section 1507.3 requires that a home occupation “be operated substantially in 1. The dwelling; or 2. Other buildings normally associated with uses permitted in the zone in which the property is located.” Furthermore, the section requires that the home occupation, “shall not unreasonably interfere with other uses permitted in the zone in which the property is located.” The Board of County Commissioners finds that there is substantial evidence in the record that the home occupation will not be operated in the dwelling or other buildings associated with the proposed RR-5 property. The Applicant has not submitted evidence in the record which tends to show that the uses will be operated substantially in the dwelling or other buildings normally associated with the uses permitted in the zone. Part of the proposal is to park one “tractor with accessories, a mower, trailers for the tractor and mower, one dump truck, one trailer, one backhoe, and one caterpillar” on the property. The Applicant has not shown how these items of heavy equipment could be operated in the dwelling or other permitted building. It is clear to the Board that these items will be kept outside on the large graveled parking lot constructed by the Applicant for that purpose, and will be in clear view of anyone driving by and of the neighbors. The Board interprets the purpose of the home occupation regulations as restricting businesses on residentially zoned properties to those which will not be overly intrusive on the surrounding neighborhood. Keeping the uses within the dwelling or associated buildings conforms with that policy, while allowing large trucks and equipment to be parked, stored and operated in clear view of everyone, does not conform with that policy. For these same reasons, the Board finds that there is substantial evidence in the record that the proposed home occupation will unreasonably interfere with other uses, including residential uses, in the rural residential zone.
9. The Board of County Commissioners finds that the Applicant has the burden of providing evidence into the record of the proceeding to show that each and every criteria is met. The Board further finds that substantial evidence is credible evidence which a reasonable person would rely on in making a decision. The Board finds that the Applicant’s past history of non-conformance and illegal use of the property deride his credibility in this instance. In addition, the Applicant’s testimony and application are inconsistent in several respects. The application listed one proposed tractor, yet testimony reflected the Applicant’s desire for more than one (although the exact number was never confirmed). The application further listed a series of heavy equipment items that were proposed to be kept on the property. The Applicant later stated that this use would only be “occasional.” The Board of County Commissioners find that this statement is not reliable as an indicator of what the Applicant actually will do on the property, and that the Board does not rely on it in making this decision. The Board believes, due to the Applicant’s ambiguity and past use of the property, that the Applicant intends to make the same use of the property as he did in the past. The



Applicant has argued to the Board that it is not permitted to consider the Applicant's credibility and reliability in making its decision. The Board disagrees. Nevertheless, the Board finds that the Applicant has not met his burden of providing substantial evidence in the record that the criteria have been met, in more than one respect, and the application for a conditional use home occupation permit cannot be granted.