

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

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

Dated this 4th day of February, 2004.

BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

By: 

Rita Bernhard, Chair

By: 

Anthony Hyde, Commissioner

By: 

Joe Corsiglia, Commissioner

Approved as to form

By: 
Assistant County Counsel

ATTACHMENT 1

EXHIBIT 1-

- (1) Notice of Public Hearing (Publication)
- (2) Notice of Public Hearing (Property Owner Notice)
- (3) Affidavit of Mailing
- (4) Affidavit of Publication
- (5) Board Communication from Todd Dugdale with the following attachments:
 - a. Staff Report to the Board of County Commissioners
 - b. Correspondence received, including the following:
 - i. Referral and Acknowledgment- City of Columbia City;
 - ii. Referral and Acknowledgment- County Roadmaster;
 - iii. Letter to LDS from Lonny Welter dated October 2, 2002;
 - iv. Referral and Acknowledgment from County Sanitarian;
 - v. Referral and Acknowledgment from St. Helens Fire District;
 - vi. Letter to Columbia River Fire to Todd Dugdale dated October 17, 2003;
 - vii. Minutes of the St. Helens CPAC
 - viii. Letter from Frank Hilton to LDS dated September 11, 2002;
 - ix. Letter from Frank Hilton to Todd Dugdale dated September 13, 2003;
 - x. Letter to Dave Hill from Frank Hilton dated September 13, 2003;
 - xi. Letter to Glen Higgins from Frank Hilton dated September 13, 2003;
 - xii. Letter to Rich Morse from Frank Hilton dated September 13, 2003;
 - xiii. Final Order MP 02-04;
 - xiv. Final Order V 98-7
 - xv. Letter to Todd Dugdale from Frank Hilton dated September 27, 2002;
 - xvi. Letter to Frank Hilton from Carlson Testing, Inc. dated August 15, 2003;
 - xvii. Letter to Glen Higgins from Frank Hilton dated February 25, 2003;
 - xviii. Letter to Planning Director from Sally Ann Marson, St. Helens CPAC;
 - xix. Letter to Dave Hill from Frank Hilton dated August 13, 2003;
 - xx. Letter to Dave Hill from Larry Derr dated July 7, 2003 with Road Standards Application;
 - xxi. Letter to Glen Higgins from Ty Wyman dated August 14, 2003
 - c. Application for Minor Partition MP 02-13 received March 15, 2002;
 - d. Report and Recommendation from Davie Hill, Public Works Director with Modification Application with the following attachments:
 - i. Vicinity map;
 - ii. Conceptual Development Plan;
 - iii. Tax Account Map;
 - iv. Topographical Map;
 - v. Road Standards Modification Application;
 - vi. Columbia County Road Standards;
 - vii. Application to create a road located off of K Street in Columbia City No. 79-17-08 dated September 10, 1979;
 - viii. Memo to LDS from Lonny Welter dated Jan. 30, 1998;

- ix. Memo to LDS from Lonny Welter dated November 19, 2003;
 - x. Memo to LDS from Lonny Welter dated October 3, 2002;
 - xi. Referral and Acknowledgment from Jay Tappan;
 - xii. Letter to Lonny Welter from Lisa Smith; Columbia City Planning Consultant;
 - xiii. Letter to Dave Hill from Sally Ann Marson dated August 13, 2003;
 - xiv. Letter to Dave Hill from Frank Hilton dated August 13, 2003;
 - xv. Letter to Dave Hill from Frank Hilton dated August 15, 2003;
 - xvi. Letter to Frank Hilton from Carlson Testing;
 - xvii. Letter to Dave Hill and Glen Higgins dated October 21, 2003 with attached Lee Engineering report to Scott Parker dated October 20, 2003;
- (6) Letter to Larry Derr from David Hill dated October 29, 2003;
 - (7) Final Order V 98-7 with variance fact sheet;
 - (8) Final Order MP 03-89 In the Matter of the Application of Voris Probst for a Variance from the standards of the Subdivision. Ordinance in the Creation of a Road
 - (9) Board Communication dated October 7, 2003 with the following attachments:
 - a. List of interested parties to receive notice;
 - b. List of Affected Agencies;
 - (10) Board Communication dated September 8, 2003 with attached summary of Land Use History;
 - (11) Letter to Board of County Commissioners and attachments from Ty Wyman dated August 21, 2003;
 - (12) Minutes from September 9, 2003 work session;
 - (13) Letter to Board of County Commissioners from Larry Derr dated October 1, 2003;
 - (14) Site Visit Checklist;
 - (15) Letter to Alana Probst from Dave Hill dated August 13, 2003;
 - (16) Memo from LDS to Jim Holycross dated November 19, 2001;
 - (17) Photographs of property;
 - (18) Variance V 98-7 with attached staff report;
 - (19) Addendum to the application for a partition on Miloris Estates dated September 23, 2002;

EXHIBIT 2-Letter from City of Columbia City, received November 10, 2003;

EXHIBIT 3-Letter from Sally Ann Marson, received November 10, 2003;

EXHIBIT 4-Letter from Stan Mendenhall, received November 10, 2003;

EXHIBIT 5-Exhibit list submitted by Larry Derr received November 10, 2003;

EXHIBIT 6-Letter from Jeff VanNatta received November 10, 2003;

EXHIBIT 7- Letter from Scott Parker received November 10, 2003;

EXHIBIT 8-Documents submitted by Ty Wyman on November 10, 2003;

ATTACHMENT 2

- EXHIBIT 9-Letter from City of Columbia City received November 24, 2003;
- EXHIBIT 10- Letter from Susan Ziglinski dated November 26, 2003;
- EXHIBIT 11-Letter and documents from Ty Wyman received November 26, 2003;
- EXHIBIT 12-Letter and documents from Larry Derr received November 26, 2003;
- EXHIBIT 13-Letter from Ninth Street Homeowners received November 25, 2003;
- EXHIBIT 14- Minutes of Planning Commission meeting March 2, 1998 with tape submitted by Alana Probst on November 26, 2003;
- EXHIBIT 15- Permit to Appropriate the Public Waters submitted by Alana Probst on November 26, 2003;
- EXHIBIT 16- Letter to Larry Derr from Lancaster Engineering submitted by Alana Probst on November 26, 2003;
- EXHIBIT 17- Letter from GRI submitted by Alana Probst on November 26, 2003;
- EXHIBIT 18- Letter from Bill Eagle to Mr. Probst submitted by Alana Probst received November 26, 2003;
- EXHIBIT 19-Letter from Crow Water Systems submitted by Alana Probst received November 26, 2003;
- EXHIBIT 20- Letter from Columbia Soil and Water Conservation District submitted by Alana Probst on November 26, 2003;
- EXHIBIT 21- Letter to Dave Graham received from Alana Probst on November 26, 2003;
- EXHIBIT 22- Letter from Ty Wyman received December 3, 2003;
- EXHIBIT 23-Supplemental Staff Report received December 3, 2003;
- EXHIBIT 24- Email from Dave Michael to Alana Probst received from Alana Probst on December 3, 2003;
- EXHIBIT 25- Final Argument submitted by Larry Derr received December 9, 2003.

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 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 restrains, 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

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.