

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

In the Matter of the Applications of the)
Fred Luttrell Trust for 5 Conditional Use)
Permits for Non-Resource Dwellings in the)
Primary Agriculture (PA-38) Zone) FINAL ORDER NO. 124-2007

WHEREAS, on April 26, 2007, Fred Luttrell, Trustee of the Fred Luttrell Trust, applied for five Conditional Use Permits to site 5 non-resource related dwellings, one on each of five 2 acre lots by Fred's Row Lane off Pittsburg Road, being Parcels 1 and 2 of Partition Plat 2007-20 and Parcels 1, 2 and 3 of Partition Plat 2007-19, having tax account numbers 5236-030-00100 and 5236-030-00203; and

WHEREAS, the Applications were deemed complete on May 11, 2007; and

WHEREAS, on April 25, 2007, the Board of County Commissioners asserted original jurisdiction over the Applications and scheduled a Special Public Hearing on the matter for June 13, 2007; and

WHEREAS, on June 13, 2007, the Board carried over the Application to July 11, 2007; and

WHEREAS, the Board held a Special Public Hearing on all five Applications on July 11, 2007;

WHEREAS, at the July 11, 2007 hearing, after hearing testimony and receiving evidence, the Board closed the hearing, deliberated on the matter and voted to tentatively approve the Applications 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 in the Staff Report to the Board of County Commissioners, dated July 5, 2007, which is attached hereto as Attachment 1, and is incorporated herein by this reference.
2. The Applications for five Conditional Use Permits to site five non-resource related dwellings under CU 07-28, are APPROVED subject to the following conditions of approval:
 - A. These permits shall become void 2 years from the date of the final decision if development has not begun on the property. Extensions of time may be granted by the Planning Director if requested in writing before the expiration date and if the Applicant was not responsible for the failure to develop.

- B. The Applicant shall consult with the County Tax Assessor's office and remove the five subject properties from the farm deferral program according to the provisions of ORS 215.236.
- C. The property owner shall sign a Waiver of Remonstrance regarding current and accepted farm and forest management practices on adjacent properties devoted to agricultural use. This document, obtained from the Department of Land Development Services and recorded with the County Clerk's office shall run with the land and shall be binding upon the property owner(s), and their heirs and assigns.
- D. The following shall be completed before the issuance of any Building Permits:
 - 1. Road Access Permits shall be obtained from the County Road Department for all five properties.
- E. **THESE CONDITIONAL USE PERMITS ARE SUBJECT TO THE TERMS AND CONDITIONS OF A MEASURE 37 WAIVER, ORDER NO. 41-2006, AS AMENDED. THE WAIVER IS PERSONAL TO FRED LUTTRELL, AS AN INDIVIDUAL, DOES NOT RUN WITH THE LAND, AND IS NOT TRANSFERABLE EXCEPT AS REQUIRED BY LAW. THE COUNTY MAKES NO REPRESENTATIONS ABOUT THE LEGAL EFFECT OF THE WAIVER ON THE SALE OF LOTS RESULTING FROM ANY LAND DIVISION, ON THE RIGHTS OF FUTURE LAND OWNERS TO BUILD OR OTHERWISE, OR ON ANY OTHER PERSON OR PROPERTY OF ANY SORT.**

Dated this 18th day of July, 2007.

BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

By: 
Rita Bernhard, Chair

By: 
Anthony Hyde, Commissioner

Approved as to form

By: 
Office of the County Counsel

By: 
Joe Corsiglia, Commissioner

COLUMBIA COUNTY BOARD OF COMMISSIONERS

STAFF REPORT - PA-38 ZONE

July 5, 2007

Conditional Use Permit Non-Farm Dwellings

FILE NUMBER: CU 07-28

**APPLICANT/
OWNER:** Fred Luttrell Trust
61160 Skeet Avenue
St. Helens, Oregon 97251

LOCATION: Five 2-acre parcels are accessed by Fred's Row Lane off Pittsburg Road.

REQUEST: Conditional Use Permits to place non-farm single family dwellings on five undersized parcels created by recorded Partition Plats 2006-37, 38 and 39 pursuant to waivers of PA-38 minimum lot size and partitioning criteria necessary to allow division of one to two acre parcels pursuant to County Measure 37 Claim Nos. CL 05-20, CL 05-21 and CL 05-22 and State Measure 37 Claim # M1 18688.

**TAX ACCOUNT/MAP
ID NUMBERS:** 5236-030-00100 - Two 2-acre Parcels of PP 2007 - _____
5236-030-00203 - Three 2-acre Parcels of PP 2007 - _____

ZONING: Primary Agriculture (PA-38)

DATE APPLICATION COMPLETE: May 11, 2007
150 DAY DECISION DEADLINE: September 23, 2007

REVIEW CRITERIA:

COLUMBIA COUNTY ZONING ORDINANCE	<u>Page</u>
CCZO, Section 300	3
CCZO Section 303	3 -5
CCZO, Section 306	6
CCZO, Section 1503	6 - 9

BACKGROUND:

Pursuant to the Zoning Ordinance Section 1612 Special Hearings provision, the Board of Commissioner's has taken jurisdiction for the review and decision on these conditional use permits.

The applicant, the Fred Luttrell Trust, requests approval to place a "Dwelling Not in Conjunction with Farm Use" on five 2-acre parcels all of which are zoned Primary Agriculture (PA-38), an exclusive farm use zone. All parcels are accessed from Fred's Row Lane, a publically dedicated and improved 50' right-of-way off of Pittsburg Road. The parcels have been approved for onsite septic systems and are served by the McNulty Water Association. According to the FIRM Map Panel # 435 none of these properties are located in any floodplain. Additionally, the National Wetlands Inventory Maps of the Trenholm, Chapman, and Deer Island area indicates there are no wetlands on the subject property. Although none of these parcels are within an urban growth area, they are served by the Columbia County Sheriff and Columbia River Fire & Rescue.

These 5 undersized parcels were created through Partition Plat No's 2007- _____ & 2007 - _____ based on a waiver of PA-38's minimum lot size requirements of Sections 304.1 of the Columbia County Zoning Ordinance (CCZO) in response to County Measure 37 Claim #'s CL 05 -21, 22 & 23 and State Claim # M1 18688. The State Claim further, waived the "applicable provisions (related to development and land uses on exclusive farm uses) of the State of Oregon's Planning Goal 3, ORS 215, and OAR 660, Division 33, enacted or adopted after November 6, 1964".

On May 17, 2006 the Board of County Commissioners issued Order No. 41-2006 in the matter of the applicant's Measure 37 Claims, CL 05 -19, CL 05-20, CL 05- 21 and CL 05-22 that waived provisions of Columbia County Zoning Ordinance Sections 210, 300, 302, 303, 304.1, 305.2 and 309 to the extent necessary to allow the Claimant to divide the subject properties into one to two acre parcels for residential homesites.

On June 6, 2007, through Board Order No. 90-2007 (attached), the Board amended Order No. 41-2006 and revoked the waiver of CCZO Sections 300, 302, 303 (with exception of 303.13(A) and 303.13(D)), 305.2 and 309.

Because these 5 properties have already been platted and recorded pursuant Board Order 41-2006 granting Measure 37 waivers, this Report will not address the partition criteria contained in CCZO Sections 305.2 and 309.

The remainder of this Report will address the extent to which these five proposed new non-farm use single-family dwellings on newly partitioned and undersized PA-38 parcels comply with the provisions of CCZO Sections 300, 303 (with exceptions to 303.13 (A) and 303.13 (D)), and 1503.

REVIEW CRITERIA & FINDINGS:

Columbia County Soil Survey:

The Soil Survey of Columbia County, Oregon indicates the soils on all of these 5 parcels consist of Cornelius silt loam with 8 - 15% slopes. Cornelius silt loam falls within an Agricultural Capability of Class III, a farm soil, and is a soil well suited for the cultivation and production of food and fiber.

Beginning with Columbia County Zoning Ordinance, Section 300:

Section 300 PRIMARY AGRICULTURE - 38

PA-38

301 Purpose: This district is intended to preserve, enhance, and stabilize those prime agricultural lands and farm use areas within the County which are being used, and offer the greatest potential, for food and fiber production.

303 Conditional Uses:

.13 Single-family dwellings or mobile homes and their accessory uses, not provided in conjunction with farm use, may be granted conditional approval upon a finding that each such proposed use:

A. Is compatible with farm uses and is consistent with the intent and purpose set forth in this ordinance relating to farm lands; and

Discussion: These properties have been zoned PA-38 since 1984, and after the applicant first acquired interest in these properties in 1964, 1966 and 1967. Mr. Luttrell has owned and operated large farms in the St. Helens area for many years but has ceased farming operation over the past 16 years. All 5 properties soils characteristics, identified in the previous section, demonstrate these properties contains only one soil type, Cornelius silt loam with 8 - 15% slopes, which is a Class III soil that is well suited for the cultivation and production of food and fiber.

Although non-farm use single family dwellings in exclusive farm zones may not be incompatible with adjacent properties' farm uses, these 5 residential sized parcels were approved based on the applicant's successful Measure 37 Claims that waived the County Zoning Ordinance PA-38 Zone minimum lot size and partitioning requirements necessary to allow the creation of one to two-acre parcels intended for residential homesites on these lands designated for exclusive farm uses. Consequently, the applicant's Measure 37 Claims which approved the creation of small

acreage residential homesites and waives the siting of dwellings on good farm soils, on PA-38 zoned land and are inherently inconsistent with the intent and purpose of the PA-38 Zone. The Board of Commissioners agreed to waive this Section 303.13(A).

Finding 1: Staff finds that because the applicant's approved Measure 37 Claims waived the PA-38 Zone's minimum lot size requirement and waived this criterion, 303.13(A), this criterion is met.

Continuing with the Columbia County Zoning Ordinance (CCZO); Section 303.13:

- B. Does not interfere seriously with accepted farming practices on adjacent lands devoted to farm use; and
- C. Does not materially alter the stability of the overall land use pattern of the area; and

Discussion: These 5 subject properties are surrounded on all sides by properties zoned for Forestry-Agriculture (FA-19), PA-38, or Primary Forest (PF-76) resource uses and developed with single-family dwellings. Land Development Services' and the County Assessors' records indicate that within the approximately 582 acres of Section 36 in which the subject parcels are located at least 30 other existing residences, averaging 1 residence for every approximately 19.4 acres. Only 18-acres, located in Section 36's Northwestern corner, are zoned Rural Residential (RR-5). Within Section 36, the Community Service - Institutional (CS-I) Zone includes the 13.41-acres of the Yankton School properties and the 5.75-acres of the Yankton Community Church and its cemetery. Staff does not foresee significant impacts resulting from these five proposed additional non-farm use single family residences that will alter the stability of the overall land use pattern of this area of our county.

One condition of final approval will be to require the property owners to sign and record a waiver of remonstrance against farm and forest practices on adjacent properties in order to further protect accepted farms practices occurring on adjacent exclusive farm use lands. If the Board approves these 5 additional non-farm use dwellings, these residences do not appear to seriously interfere with the activities normally associated with the other approximate 30 single-family dwellings located on other resource and residential lands within Section 36.

Finding 2: Staff finds that these proposed 5 additional non farm related single family dwellings will be able to comply with the first criterion by requiring signed and recorded waiver of remonstrances prior to final conditional use permit approval. Staff also finds these 5 additional non farm related single family dwellings already comply with the second criterion in that they will not materially alter the overall land use pattern in this unincorporated area of our county.

Continuing with the Columbia County Zoning Ordinance (CCZO); Section 303.13:

- D. Is situated upon generally unsuitable land for the production of farms crops and livestock, considering the terrain, adverse soil or land conditions, drainage and flooding, vegetation, location and size of the tract.

Discussion: According to the Soil Survey of Columbia County, Oregon demonstrated in Page 3 of this Report, the soils in their entirety on all five proposed residential homesites are classified with agricultural capabilities of Class III, a classification that is well suited for the cultivation and production of food and fiber. The terrain on all five parcels is relatively flat and do not contain any other physical constraints related to drainage, flooding or vegetation that will not allow each parcel to safely and adequately support their anticipated farm use. However, this criterion has been waived through Board Amended Order No. 90-2007 and is not applicable.

Finding 3: Staff finds that because this criterion is met through the applicant's approved Measure 37 Claims which waived the PA-38 Zone's minimum lot size requirement and partitioning requirements and also waived the this criterion allowing the intended residential development of these exclusive farm use parcels.

Continuing with the Columbia County Zoning Ordinance (CCZO); Section 303.13:

- E. Any application for a non-farm dwelling in an exclusive farm use zone shall be approved only if the parcel on which the dwelling is to be built has been removed from the farm tax deferral in accordance with the provisions of ORS 215.236.

Discussion & Finding 4: State law prohibits the county from granting final approval for proposed non-farm dwellings in exclusive farm zones until the affected properties have been removed from farm tax deferral. Consequently, Staff recommends this condition of final approval: the 5 subject properties must be removed from farm tax deferral.

Following with CCZO Section 306:

306 Special Notification Requirements:

- .1 The County Agricultural Extension office and the Soil and Water Conservation Service shall be notified of all requests made under Section 303 and 305 of this chapter. These two agencies will be given 10 working days to comment on such requests.

Discussion & Finding 5: The Soil and Water Conservation District and Oregon State University Extension Office were both notified of these conditional use permits in May 18, 2007. As of the

date of this Report, Land Development Services has yet to hear from these agencies. Staff finds this criterion has been met.

Following with CCZO, Section 1503:

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

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

Finding 6: Pursuant to the Special Hearings provision of the Zoning Ordinance's Section 1612 these conditional use permits will be heard by the Board of County Commissioners instead of the Planning Commission. Section 303.13 lists "Single family dwelling or mobile homes and their accessory uses, not provided in conjunction with farm use, ..." may be granted conditional approval upon a finding that each such proposed use meets specified provisions. These provisions have already been discussed during Findings 1 through 4 of this Report. Staff finds these 5 conditional use permits comply with this criterion of Section 1503.5(A).

Continuing with CCZO, Section 1503.5:

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

Discussion: Specific criteria for the proposed residential development of these five PA-38 zoned properties are found in 303.13 A, B, C, D, & E and Section 304.1 through 7 of the CCZO. County Claim #'s CL 05-20, CL 05-21 and CL 05-22 have already waived the provision of Section 304.1 related to minimum lot sizes for these newly partitioned PA-38 properties. Other applicable provisions listed in Section 304.2 - 7 require newly partitioned PA-38 properties to have:

1. Minimum average parcel widths and depths of 100 feet,
2. Minimum of 50 foot frontage on a public or private right-of-way,
3. Minimum 40 foot front, side and rear yard setbacks, and
4. Structural height restrictions of 50 feet or 2 ½ stories, whichever is less.

Staff confirmed all parcels complied with these dimensional and access requirements. Prior to the issuance of any building permits, the proposed non farm use single family dwellings will also be required to comply with all yard setbacks and height restrictions.

Finding 7: Staff finds that the 5 newly partitioned PA-38 zoned parcels have sufficient width, depth, area, and road frontage to satisfy these site specific development criteria. Staff finds this criterion can be met with requirements related to setbacks and structural height limitations prior to the issuance of any building permits.

Continuing with CCZO, Section 1503.5:

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

Discussion: As discussed previously in Findings 1, 2, 6, & 7 of this Report, the applicant's Measure 37 Claims allowed the applicant to partition these undersized PA-38 parcels specifically for residential homesites. Prior to Final Partition Plat approval, LDS staff's review ensured all proposed parcels would comply with the dimensional, acreage, and road frontage provisions for these 5 parcels. The applicant built and dedicated a new public right-of-way, Fred's Row Lane. Additionally, the applicant also provided written documentation verifying the adequacy of the McNulty Water Association to serve all 5 parcels and the County Sanitarian has approved each parcel's onsite sewage disposal system.

Consequently, LDS would not have approved the applicant's 2 Partition Plats unless all undersized PA-38 parcels' physical characteristics and natural features were suitable for their intended use stated in the applicant's Measure 37 Claims.

Finding 8: Staff finds that the characteristics of the five 2-acre parcels' proposed home sites are suitable for these proposed non-farm single family dwellings. These site specific development criteria can be met with requirements related to setbacks from property lines prior to the issuance of building permits.

Continuing with CCZO, Section 1503.5:

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

Discussion: As discussed in previous portions of this Report and prior to the issuance of any building permits, the access to all 5 of these properties shall comply with applicable County Road Standards, will have approved methods of sewage disposal systems, and provide written documentation of an adequate water supply. Because utilities can be extended to the proposed building sites along the existing dedicated right-of-ways along Fred's Row Lane these 5 proposed single family dwellings will not require any additional access or utility easements.

Finding 9: Staff finds the 5 undersized parcels comply with this criterion because the existing transportation system, public facilities and services available to them are adequate for these proposed five additional non farm related single family dwellings.

Continuing with CCZO, Section 1503.5:

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

Discussion: As discussed previously in Findings 2, 7, 8, & 9 of this Report, this unincorporated area in Section 36, Township 5 North, Range 2 West already contains 30 existing residences on other similarly sized properties, averaging 1 residence for every 19.4 acres,. Consequently, these proposed five additional non-farm use single family dwellings will not alter the character of or land uses on the surrounding resource lands already containing single family dwellings.

Finding 10: Staff finds these 5 proposed single family dwellings have met this criterion.

Continuing with CCZO, Section 1503.5:

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

Discussion: Section 300 of the Zoning Ordinance specifies how Primary Agriculture (PA-38) zoned land can be developed which, in turn, implements the County Comprehensive Plan's Agricultural Land Goals and Policies. By waiving the siting criteria in Section 303.13 (A) & (D) for these 5 conditionally permitted non-farm use single family residences, the Board allows the applicant to use these properties for residential development as stated in his approved Measure 37 Claims. These parcels were allowed to be created through approved Measure 37 Claims, where the State of Oregon waived the applicable provisions related to development and land uses on exclusive farm uses, and Columbia County also waived PA-38 district minimum lot size requirements and siting criteria.

Finding 9: Staff finds that the goals and policies are implemented through the PA-38 zoning district regulations and that the applicant's Measure 37 Claims' waiver of PA-38 Zone's minimum lot size and waived the siting criterion requiring compliance with the Goals and Policies of the County Comprehensive Plan.

Continuing with CCZO, Section 1503.5:

G. The proposal will not create any hazardous conditions.

Discussion: As mentioned previously in this Report, surrounding properties within Section 36 consist of 30 other existing residences on similarly zoned PA-38, FA-19, or PF-76 resource properties. Additionally, all five parcels and their proposed non-farm use single family dwellings have already been approved for onsite sewage disposal systems, will be served by the McNulty Water Association, and have access to a publically dedicated Fred's Row Lane . Staff does not foresee any hazardous conditions resulting from these conditionally permitted five additional single family dwellings in this unincorporated area of our county.

Finding 10: Staff finds that these proposed 5 non-farm use single family dwellings do not appear to result in any hazardous conditions which complies with this criterion.

COMMENTS RECEIVED:

Notice of these Conditional Use Permits were sent to surrounding property owners and Government Agencies May 18, 2007. As of the date of this Report, July 5, 2007 ,Land Development Services has not received any comments.

CONCLUSION AND RECOMMENDATION:

Lot sizes and the siting of dwellings on good farm soils have been waived pursuant to Measure 37 and parcels were created that are not adequately sized for farm use per Board Order No. 90-2007.

Based on the above findings, Staff recommends **APPROVAL** of these 5 Conditional Use Permits (CU 07 28) to site non-farm single family dwellings on Parcels ___ & ___ of PP 2007 - ___ (Map ID #5236-030-00100) and Parcels 1, 2 & 3 of PP 2207 - ____ (Map ID # 5236-030-00203) in the PA-38 zone with the following conditions:

Conditions of Approval:

1. These permits shall become void 2 years from the date of the final decision if development has not begun on the property. Extensions of time may be granted by the Planning Director if requested in writing before the expiration date and if the applicant was not responsible for the failure to develop.
2. The applicant shall consult with the County Tax Assessor's office and remove the five subject properties from the farm deferral program according to the provisions of ORS 215.236.

3. The owner shall sign a "Waiver of Remonstrance" regarding current and accepted farm and forest management practices on adjacent properties devoted to agricultural use. This document, obtained from the Department of Land Development Services and recorded with the County Clerk's office, shall run with the land and be binding upon all 5 (five) property heirs and assigns.
4. The following shall be completed prior to the issuance of any Building Permits
 - a. A Road Access Permit shall be obtained from the County Road Department for all five properties.

Attachments: Application
 Board Order 41-2006, Amended 90-2007
 Vicinity, Soils, Zoning, Address Maps

cc: County Counsel

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

In the Matter of Appointing William L.)
Boysen as Justice of the Peace, Pro)
Tempore, to the Columbia County)
Justice of the Peace District)

RESOLUTION NO. 123-2007

WHEREAS, the Justice of the Peace for the Columbia County Justice of the Peace District, the Honorable Rod B. McLean, occasionally must decline to hear a case because of a conflict of interest or for other reasons; and

WHEREAS, William L. Boysen is retired after a lengthy career with the U.S. Federal Marshal's Office and is a citizen of the United States, has been a resident of Oregon for at least three years and has maintained his principal office in Vernonia for a least one year, immediately prior to the date of this order, and is in all respects fully qualified to temporarily fulfill the duties of the Justice of the Peace as authorized by ORS 51.260(2).


NOW, THEREFORE, IT IS HEREBY ORDERED as follows:

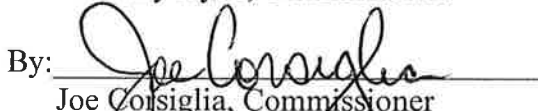
1. William L. Boysen is appointed as Justice of the Peace, Pro Tempore, to the Columbia County Justice of the Peace District, effective July 1, 2007.
2. William L. Boysen may serve as Justice of the Peace, Pro Tempore, only during any temporary absence or other incapacity of Justice McLean, such as when Justice McLean has a conflict of interest.
3. This appointment shall expire on December 31, 2007.

Dated in St. Helens, Oregon, this 18th day of July, 2007.

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: 
Office of County Counsel

RESOLUTION NO. 123-2007