

BEFORE THE BOARD OF COUNTY COMMISSIONERS  
FOR COLUMBIA COUNTY, OREGON

In the Matter of the Application of Michael )  
Ahn for a Type 2 Home Occupation )  
Conditional Use Permit to Operate a )  
Transmission Exchange Business )  
on a Parcel Zoned Rural Residential (RR-5) )

ORDER No. 68-01  
FINDINGS AND CONCLUSIONS

WHEREAS, on June 13, 2000, Michael Ahn filed an application for a Type 2 Home Occupation Conditional Use Permit (CU-00-64) to operate a transmission shop in an existing outbuilding on 14.59 acres zoned Rural Residential (RR-5), located at 23700 Beaver Falls Road, Clatskanie, Oregon, and having tax account number 7317-010-00300, with the Columbia County Land Development Services Department; and

WHEREAS, on August 24, 2000, said Application was deemed complete; and

WHEREAS, on October 2, 2000, the Columbia County Planning Commission postponed the hearing on the application to February 5, 2001, at the request of John Salisbury, attorney for Applicant; and

WHEREAS, on February 5, 2001, the Columbia County Planning Commission opened the public hearing on the application, and continued the hearing to March 5, 2001; and

WHEREAS, on March 5, 2001, after hearing evidence and testimony, the Columbia County Planning Commission denied the application and on March 14, 2001, Planning Commission Chair, Jeffrey VanNatta, signed Final Order CU 00-64, denying application; and

WHEREAS, on March 22, 2001, Michael Ahn, appealed the Planning Commission's final decision to the Columbia County Board of County Commissioners; and

WHEREAS, a hearing was scheduled before the Columbia County Board of Commissioners for April 25, 2001; and

WHEREAS, prior to said hearing, John Salisbury, attorney for Michael Ahn, requested a postponement of the hearing for 30 to 60 days; and

WHEREAS, on April 25, 2001, the Board of County Commissioners postponed the hearing to May 30, 2001; and

WHEREAS, on May 29<sup>th</sup>, 2001, John Salisbury, attorney for Michael Ahn, submitted an amended application to operate transmission exchange business on the subject property; and

WHEREAS, on May 30, 2001, the Board of County Commissioners, opened the public hearing, heard from staff and continued the hearing to June 27, 2001; and

WHEREAS, on June 1, 2001, notice of the new June 27, 2001, hearing date was mailed to surrounding property owners and faxed to the local newspaper of record; and

WHEREAS, on June 27, 2001, the Board re-opened the public hearing for evidence and testimony; and

WHEREAS, during the hearing Glen Higgins, Chief Planner with the County Land Development Services Department, presented the staff report, reviewed the changes in the amended application, and recommended denial of the application; and

WHEREAS, John Salisbury, attorney for Applicant, and Robert Albright, neighboring property owner, testified in favor of the application; and Paul Purdue, Ringo Lyons, and Sid and Diane Young, neighboring property owners, testified in opposition of the application; and

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

Exhibit 1- County Counsel's hearing file containing:

1. Notice of Public Hearing (Publication) dated April 3, 2001;
2. Notice of Public Hearing (Property Owner Notice) dated April 3, 2001;
3. Affidavit of Mailing dated April 3, 2001;
4. Affidavit of Publication dated April 3, 2001;
5. Staff Report to Planning Commission dated 1/24/01;
6. Board Communication from Todd Dugdale dated April 20, 2001, with the following attachments:
  - A. Letter from John Salisbury dated September 27, 2000;
  - B. Letter to Mr. Ahn from Jim Holycross dated October 3, 2000;
  - C. Conditional Use Permit Application CU 00-64;
  - D. Onsite Wetland Determination Report dated September 27, 2000;
  - E. Letter to Mr. Ahn from Environmental Inspection Services;
  - F. Lab Report from WyEast Environmental Sciences, Inc.;
  - G. Letter to Mr. Ahn from James McIntyre, LDS;
  - H. Letter to LDS from 12 neighbors dated July 13, 2000;
  - I. Letter to LDS from Ringo Lyons dated September 21, 2000;
  - J. Waiver of 150 day requirement for final decision;
  - K. Customer Activity Site Detail from Spencer Environmental dated February 12, 2001;
  - L. Onsite WRAP "to do" list from DEQ;

- M. Map of property location;
  - N. Tax Lot map of property;
  - O. Site map of property;
  - P. Staff Report amended April 20, 2001, to Board of County Commissioners;
7. Final Order CUP 00-64 dated March 14m 2001;
  8. Appeal from Final Order CU 00-64 dated March 22, 2001;
  9. Letter from John Salisbury amending application, dated May 29, 2001;
  10. Comments from Rainier CPAC;
  11. Comments from Building Official;
  12. Comments from Columbia 911;
  13. Comments from Roadmaster;
  14. Comments from Columbia River PUD;
  15. Comments from Clatskanie Fire District;
  16. Comments from Sanitarian;
  17. 2 photos received at March 5, 2001, Planning Commission hearing from applicant;
  18. 12 photos received at February 5, 2001, Planning Commission hearing from applicant;
  19. Letter dated September 18, 2000, from concerned citizens;
  20. Letter dated jan 21, 1994, to applicant from James McIntyre;
  21. 3 photos received January 8, 2001, from applicant;
  22. March 5, 2001, Planning Commission hearing Minutes;
  23. Feb. 5, 2001, Planning Commission hearing minutes;
  24. 6 color photos of property taken September 19, 2000;
  25. Copy of yellow pages advertisement from Longview phonebook;
  26. ESA and Local Governments:Information on 4(d) Rules;
  27. Complaint form filed by Ringo Lyons, dated September 1, 2000;
  28. Notice of June 27, 2001, Public Hearing, (Publication);
  29. Notice of June 27, 2001, Public Hearing (Property Owner Notice);
  30. Affidavit of publication dated June 27, 2001;
  31. Affidavit of mailing dated June 27, 2001;
  32. Board Communication from Todd Dugdale, dated June 22, 2001 with amended staff report and amended application materials;

- EXHIBIT 2- Letter to BOC from Karyn Purdue & Jack Jordan dated May 30, 2001;
- EXHIBIT 3- 39 photos of subject property submitted by John Salisbury;
- EXHIBIT 4- 16 photos of adjacent property submitted by John Salisbury;
- EXHIBIT 5- Letter from Spencer Environmental to Michael Ahn dated February 13, 2001, submitted by John Salisbury;
- EXHIBIT 6- DEQ Waste Reduction Assistance Program (WRAP) "to do" list submitted by John Salisbury;
- EXHIBIT 7- Onsite Wetland Determination Report submitted by John Salisbury;
- EXHIBIT 8- Packet of information (76 pages) submitted by Paul Purdue;

EXHIBIT 9- 10 photos of cars submitted by Paul Purdue;  
EXHIBIT 10- Log of vehicles parked daily on Ahn property and surrounding roads, submitted by Paul Purdue; and

WHEREAS, having heard evidence and testimony, the Board of County Commissioners closed the public hearing, deliberated on the matter and voted unanimously to deny the application;

NOW, THEREFORE, IT IS HEREBY ORDERED as follows:

1. The Columbia County Board of County Commissioners adopts Findings 1-4 and On Appeal Findings 1-4, in the Staff Report to the Board of County Commissioners dated June 14, 2001, which is attached hereto as Attachment A, and is incorporated herein by this reference.
2. The Columbia County Board of Commissioners adopts supplemental findings which are attached hereto as Attachment B, which is incorporated herein by this reference.
3. The application by Michael Ahn for a Type 2 Home Occupation Conditional Use Permit (CU 00-64) to operate a transmission exchange business in connection with a single family dwelling at 23700 Beaver Falls Road, Clatskanie, Oregon, on property zoned RR-5 , and having tax account number 7317-010-0200, is DENIED.
4. Michael Ahn shall immediately cease operating any and all home occupations on the 14.59 acre parcel described herein, located at 23700 Beaver Falls Road, Clatskanie, Oregon, and having tax account number 7317-010-00300.

DATED this 8<sup>th</sup> day of August, 2001.

BOARD OF COUNTY COMMISSIONERS  
FOR COLUMBIA COUNTY, OREGON

By: not present  
Rita Bernhard, Chair

By: [Signature]  
Anthony Hyde, Commissioner

By: [Signature]  
Joe Consiglia, Commissioner

Approved as to Form:

By: Sarah Tyson  
Office of the County Counsel

ATTACHMENT A

Home Occupation

COLUMBIA COUNTY  
**BOARD OF COMMISSIONERS**  
**On-Appeal**

Amended Application Staff Report  
06/14/01  
"Home Occupation"

FILE NUMBER: CU 00-64

APPLICANT: Michael Ahn  
P.O. Box 1137  
Clatskanie, Oregon 97016

PROPERTY LOCATION: ½ mile north of Delena Between Hwy. 30, Beaver Falls Road, on north bank of Beaver Creek.

REQUEST: To place a home occupation in connection with a single-family residence in an RR-5 zone.

TAX ACCT. NUMBER: 7317-010-00300

EXISTING ZONING: Rural Residential (RR-5)

**BACKGROUND:**

The original application was denied by the Planning Commission. The applicant has appealed the denial to the Board of County Commissioners and proposes an amended application.

**Original Application:** The applicant requests approval of a Type 2 Home Occupation to operate a Transmission Repair Shop in connection with his residence in the RR-5 zone. This application is the result of code enforcement action (See COD 2000-00036) against the applicant who after consultation with the chief planner in 1994 sited the business anyway. The purpose of this application is to attempt to legalize the business which has operated without the benefit of a permit out of this location for approximately 6 years. Water is provided by a well. Sewage is treated by an existing subsurface septic system. The property is within the Clatskanie Rural Fire Protection District. The applicant has recently applied for the following permits also associated with the subject property: TP 00-26, "Storage of Structures or Equipment"; V 00-12, "Variance to Lot Size"; MP 00-26, "Partition Property into 3 Parcels".

**Please Note:** The Planning Commission postponed the hearing date for this application from October 2, 2000 until the February 5, 2001 hearing date so that the applicant could address issues as specified in the conditions of approval of this staff report.

**Amended Application:** The applicant's attorney has requested an amended application in a letter dated May 29, 2001 which states that the applicant would like to provide new responses to criteria and findings in the original staff report and reasons for denial by the Planning Commission. The On-Appeal findings are located at the end of this staff report.

## 1994 LETTER FROM CHIEF PLANNER

In 1994 James McIntyre, Chief Planner at the time wrote Michael and Hyo Sim Ahn a letter stating the following in part:

"... As we discussed on the phone, there is no provision for the establishment and operation of light industrial uses in the RR-5 Rural Residential zone. The uses you specifically asked about, which included a transmission shop, and auto dismantler, and an auto-parts remanufacturer, are not permitted or conditional uses in that zone. I appreciate your position regarding the large building on your property, but barns are allowed as accessory buildings for the farm uses, or the propagation or harvesting of forest products, which are permitted uses in that zone. The simple presence of a large building on a property does not grant a right to the property owner to establish an industrial use in that building.

## PLANNING COMMISSION FINDINGS:

The Rural Residential (RR-5) Zone lists the following conditional use:

- .3 Home occupations consistent with ORS 215.448, as provided in Section 1507.

**Finding 1:** The subject property is located in the Rural Residential (RR-5) zone. Home occupations are listed as conditional uses in this zone per section 603.3.

... continuing with Section 1507 Home Occupations

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

A. It shall be operated by a resident of the property on which the business is located;"

**Finding 2:** Michael Ahn who lives on the property at 23700 Beaver Falls Road will operate the business which is the subject of this home occupation permit. A neighboring property owner stated at the September 21, 2000 Rainier CPAC meeting that Mr. Ahn lives in Longview and not at this site.

Continuing with Section 1507.2 of the Zoning Ordinance:

"B. It shall employ on the site no more than five full-time or part-time persons.

**Finding 3:** If approved a condition of approval shall be that the applicant meets this and all other standards and shall employ on site no more than five full-time or part-time persons.

Continuing with Section 1507.2 of the Zoning Ordinance:

"C. Signs are permitted as per Section 1300 of the CCZO.

**Finding 4:** The applicant did not indicate that a sign would be used for this home occupation. A condition of approval shall be that if the applicant proposes to place a sign for this home occupation that all provisions of the County Sign Ordinance shall be followed and that the design and specifications of the sign must be approved by Land Development Services before a building permit may be issued for the construction and placement of the sign.

Following with Section 1507.3

A. A home occupation shall be operated substantially in:

1. The dwelling; or
2. Other buildings normally associated with uses permitted in the zone in which the property is located; and"

**Finding 5:** The applicant has operated the transmission business illegally since around 1994. The Code Compliance Officer has said there were up to 60 cars parked all around the property as a result of the business. This was in violation of the above provision which states that "A home occupation shall be operated substantially in the dwelling; or other buildings normally associated with uses permitted in the zone in which the property is located. In addition there were piles of transmission cases and tires visible on the property. The existing building could not hold the amount of vehicles and transmission cases to be stored. If approved the applicant will be required to operate the proposed home occupation out of the existing buildings on the property. In addition a condition of approval shall be that the existing cars and pile of transmission cases must be removed from the property or stored in the existing building before this permit is valid. The storage of materials for the operation of the proposed home occupation must be entirely within the buildings normally associated with the uses in this zone. It should be noted that the applicant has made substantial progress in cleaning up the cars and transmission cases on the property as of September 19, 2000. Subsequent to this staff drove by the property on January 17, 2001 and observed approximately 15 to 20 cars parked in and around the house and shop area that was supposed to be cleaned up. During a telephone conversation after this Mr. Ahn said he would remove the cars.

Continuing with Section 1507.3 of the Zoning Ordinance:

"B. A home occupation shall not unreasonably interfere with other uses permitted in the zone in which the property is located.

**Finding 6:** Permitted Uses in the RR-5 zone include single family dwellings, farm use, forest use, and

accessory structures to those uses. Conditional uses include signs, off-street parking and loading, home occupations, and churches. The subject home occupation may not unreasonably interfere with other permitted or conditional uses in the zone where the subject property is located. Several neighboring property owners have written letters about this application, and they contend that this industrial use is not compatible with the residential neighborhood and interferes with their quiet and peaceful enjoyment of the natural area.

... and following with Section 1503 of the Zoning Ordinance:

"1503 Conditional Uses:

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

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

**Finding 7:** The RR-5 zone lists Home Occupations under "Conditional Uses" per Section 603.3 of the CCZO.

Continuing with Zoning Ordinance section 1503.5:

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

**Finding 8:** The only criteria listed is consistency with ORS 215.448. This has been shown to be complied with in Findings 1 through 7 above.

Continuing with Zoning Ordinance 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;"

**Finding 9:** The property which gently slopes towards the south and east is bordered by Beaver and Lost Creeks on its eastern boundary. The property is not well suited to a business that may harm the water quality of Beaver and Lost Creeks. The applicant has run a transmission repair shop out of the existing location for approximately 6 years prior to this application. The applicant states that the property has "a good location, good storage building, and large parking lot."

Continuing with Zoning Ordinance 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."



**Finding 10:** The only transportation system in the area is Beaver Falls Road. Public facilities are electric power and telephone. These facilities make the proposed home occupation timely. The applicant states that, "the location is good since it is the only transmission shop from St. Helens to Astoria." The public facilities and services to accommodate oil, grease and fluid by-products and wastes for a transmission shop are not present and available on the site.

Continuing with Zoning Ordinance 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;"

**Finding 11:** The proposed transmission shop should not limit, impair, or preclude the use of surrounding properties for the primary uses listed in the underlying district. A neighbor has complained that the character of the neighborhood has been changed by the transmission shop and that his property value is less because of the junkyard appearance of the subject property with all of the cars, tires, and transmission cases piled around.

Continuing with Zoning Ordinance section 1503.5:

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

**Finding 12:** The Comprehensive Plan allows residential uses in the Rural Residential zone. A home occupation is a conditional use in the residential zone, and therefore satisfies this goal. There are no policies applicable to home occupations. The Comprehensive Plan identifies one water resource policy in particular which applies to and has been violated by the existing use of the transmission shop. Water Quality policy #11 states, "require that all development be planned, designed, constructed, and maintained so as to avoid the probability of accelerated erosion; pollution, contamination, or siltation of lakes, rivers, and streams; damage to vegetation; or injury to fish and wildlife habitats."

Continuing with Zoning Ordinance section 1503.5:

"G. The proposal will not create any hazardous conditions."

**Finding 13:** A neighbor has complained that, "I have been fishing out garbage from Beaver Creek that has come from Mr Ahn's place up stream from me for several years. I find an oily substance in the stream several times a year that was never there before he started working on transmissions...." The applicant states that oil will be collected from environmental services. Waste transmission oil, solvent, and other hazardous fluids are a problem that needs to be addressed so they do not end up in the nearby stream courses. If approved, a condition of approval shall be that the applicant provide an oil and other hazardous material containment plan approved by DEQ and a copy of the contract with the company which will provide waste oil disposal.

Continuing with Zoning Ordinance section 1503:

- "6 Design Review: The Commission may require the Conditional Use be subject to a site design review by the Planning Commission."

**Finding 14:** A Site Design Review may be required by the Planning Commission.

**COMMENTS:**

1. Columbia 911 has reviewed the application and has no objection to its approval as submitted.
2. The Fire Chief of the Clatskanie Rural Fire Protection District has no objection to approving the application as submitted.
3. The Roadmasters office has reviewed the application and has no objection to its approval as submitted. The access will require review for commercial activity.
4. The Columbia River PUD has reviewed the application and has no objection to its approval as submitted.
5. The County Sanitarian has reviewed the application and has no objection to its approval as submitted. "Applicant has installed a rest room in shop bldg & connected to residential septic system. No permits issued."
6. Ringo Lyons, a neighbor, commented, "Mr. Ahn has been operating a transmission business on his property for over 5 years, without regards to his neighbors. I have been fishing out garbage from Beaver Creek that has come from Mr. Ahn's place up stream from me for several years. I find an oily substance in the stream several times a year, that was never there before he started working on transmissions. Mr. Ahn's property has turned into a junkyard, with all the vehicles parked on his property. This is causing my property value to be lower than it would be if there weren't any junkyard around my property etc. etc."
7. Twelve concerned citizens responded by letter to Mr. Ahn's temporary use permit, TP 00-26, application notice and stated in part regarding the existing transmission shop, "... we do not understand why Mr. Ahn is still in business. What he is doing is illegal. ... Based on information provided in this letter, we strongly urge the appropriate authorities to cause this business to cease operation and to clean up the mess he has created."
8. The Rainier CPAC recommends denial of the application, "until applicant provides proof that all criteria of CUP and Home Occupation in RR-5 zone are met, and a report from the DEQ has been received that all hazardous conditions have been abated and cleaned up and transmission shop will be in compliance with all state and federal laws governing such businesses."

**NOTE:** Please see attached letters from neighbors

No other comments have been received from adjacent or nearby property owners or government agencies as of the date of this staff report (September 22, 2000).

### CONCLUSION AND RECOMMENDATION:

After careful consideration of the previous history of non-compliance by Mr. Ahn and complaints received to date staff recommend that this application be **denied** by the Planning Commission for the following reasons:

1. The scale of operation is best suited to an industrial area of the County that is zoned appropriately for that use and not in the rural countryside near waterbodies such as Lost and Beaver Creeks which flow into the Columbia River System.
2. The environmental damage that may have occurred to water quality and fish habitat in Beaver Creek from Mr. Ahn's past practices at his illegal transmission shop. A downstream neighbor stated that he had observed an "oily substance in the stream several times a year".
3. Under federal regulations found in the 4D Rule the County may be held liable for allowing activities that allow the "taking" of salmonoid fish species within the jurisdiction of the County.
4. The unsightliness of 60 automobiles parked around Mr. Ahn's illegal transmission shop.
5. The unsightliness of a pile of transmission cases that may have leaked residual oil into Beaver Creek.
6. The fact that the Chief Planner in 1994, James McIntyre, advised Mr. & Mrs. Ahn by letter dated January 21, 1994 that a transmission shop, auto dismantler, and an auto-parts remanufacturer are not allowed in the RR-5 zone.
7. Facilities necessary for preservation of the ecosystem of the area for industrial uses are not present at the site.

The applicant is advised to search for a light industrial location that is zoned appropriately for a transmission shop use.

If the Planning Commission determines that this home occupation should be approved then staff recommends the following conditions of approval at a minimum:

1. Before other conditions of approval can be met the applicant shall submit an environmental assessment to Land Development Services and complete any remedial action necessary to clean up any contaminants.

**The following conditions of approval cannot be met until condition #1 is satisfactorily completed.**

2. All activities and storage of materials associated with the operation of the home occupation shall be conducted entirely within the home or accessory buildings on the property. Cars and piles of

transmissions and tires shall not be stored outside of buildings but rather shall be stored inside of buildings normally associated with the RR-5 zone. Periodic unannounced site visits shall be made by the Code Compliance Officer or other Land Development Services staff to determine compliance.

3. The applicant shall submit an oil and other hazardous substance containment plan indicating how hazardous materials such as transmission fluid will be stopped from leaving the building and entering the water bodies nearby. The Planning Commission shall approve of this plan before the plan's submittance to Land Development Services.
4. The applicant shall provide a copy of the contract with the company which will provide waste oil disposal for transmission oil, solvent, or other hazardous fluids.
5. No new structures, nor any additions to existing structures, are permitted as a result of this application alone.
6. All restrictions pertaining to Home Occupations, in the Columbia County Zoning Ordinance, shall be strictly observed and enforced.
7. This home occupation permit shall be reviewed by the Planning Commission every 12 months following the date of issuance, and may be re-approved or revoked at each review depending upon the applicant's compliance with these conditions.
8. The applicant shall provide Land Development Services with a letter from the Division of State Lands Wetlands Program indicating that the proposed transmission shop will not cause negative impacts to the wetlands located on the property. Please contact Lori Warner at (503) 378-3805 Ext. 246.
9. If the applicant proposes to site a sign for this home occupation then all provisions of the County Sign Ordinance shall be followed with the design and specifications of the sign being approved by Land Development Services before a building permit may be issued for the construction and placement of the sign.

### AMENDED ON-APPEAL FINDINGS

The Columbia County Zoning Ordinance, Section 1507, states that following:

The applicant's "amended application" includes the applicant's responses to Home Occupation criteria and reasons for denial as stated in the PC staff report which have been incorporated into the amended findings as follows:

#### **1507 HOME OCCUPATIONS** *[amended 3-2000]*

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

- .1 Type 1: A Type 1 home occupation is reviewed administratively by Land Development

Services and presents no indication of a business to the neighboring property owners. In addition to the general criteria in Subsection 1507.3, the following criteria shall apply to a Type 1 home occupation:

- A. It shall be operated by a resident of the property on which the business is located.
- B. No non-residents shall be employed on the property.
- C. The business generates not more than 20 customer vehicle trips to the property per week.
- D. Signs are not permitted.

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

- A. It shall be operated by a resident or employee of a resident of the property on which the business is located.
- B. It shall employ on the site no more than five full-time or part-time persons.
- C. Signs are permitted as per Section 1300 of the CCZO.

**On-Appeal Finding 1:** The proposed home occupation is a Type 2 Home Occupation since the business was visible to the neighborhood in which it is located; and because the application was originally submitted as a result of an enforcement action by Land Development Services. The application was referred to the Planning Commission by Land Development Services. Staff Response: This criteria is met.

**On-Appeal Finding 2:** The applicant states that, "Mr. Ahn is a resident of the property on which the business is located." This meets the criteria regarding the home occupation that, "It shall be operated by a resident or employee of a resident of the property on which the business is located." No evidence to the contrary has been submitted, Staff Response: This criteria is met.

**On-Appeal Finding 3:** The applicant states that, "Mr. Ahn has one employee now and does not intend to have more than one employee in the future. This meets the requirement that there be no more than five full-time or part-time persons working on the property." Staff Response: This criteria is met.

**On-Appeal Finding 4:** The applicant states, "Signs are permitted in the RR-5 zone as a conditional use. Mr. Ahn does not intend to have a sign." Staff Response: This criteria is met.

And following with Zoning Ordinance, Section 1507:

- .3 The following criteria shall apply to all home occupations:
- A. A home occupation shall be operated substantially in:
    1. The dwelling; or
    2. Other buildings normally associated with uses permitted in the zone in which the property is located.

**On-Appeal Finding 5:** The applicant states, "Mr. Ahn will meet this requirement by operating the business which will be a transmission exchange business entirely within the accessory building which is located on his property. This accessory building was on the property when Mr. Ahn bought the property and is an outbuilding typical of the neighborhood. It is an accessory building normally associated with uses permitted in the zone, being a large barn-like structure." Staff Response: This criteria is met.

- B. A home occupation shall not unreasonably interfere with other uses permitted in the zone in which the property is located.

**On-Appeal Finding 6:** The applicant states, "Mr. Ahn will agree to a condition that there be no more than five cars parked outside the building. The transmission exchange business will consist of Mr. Ahn or his employee going to other shops in the area and picking up a transmission only, not a vehicle, and bringing the transmissions inside the accessory building on his property. Mr. Ahn and his employee will then overhaul the transmission and then put it in Mr. Ahn's truck and drive the overhauled transmission in it to the automotive repair shop in the area. There will be no retail, consumer traffic in and out of Mr. Ahn's business. There will be no automotive repair conducted on Mr. Ahn's premises. All uses will be fully contained within the building. Because the operation will be entirely confined within the building, there will be no unreasonable interference or in fact any interference at all with the uses permitted in the zone." Staff Response: The County has not yet heard neighboring property owners response to this issue. A transmission exchange is not a Rural Home Occupation but rather an urban type use that belongs inside an urban growth boundary or city limit where public services are available and present to facilitate containment and treatment of any waste products.

And following with the Zoning Ordinance, 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;

**On-Appeal Finding 7:** The Rural Residential (RR-5) Zone 'Purpose' statement states in regards to the types of uses that, "...Uses in this zoning district are anticipated to be predominantly residential with a rural level of public services; i.e., domestic water from private wells, sewage disposal using on-site systems, adequate fire and emergency service by fire districts, and road access consistent with the County Transportation Plan and County Road Standards. Other uses shall be those customary to such areas, including farm and forest uses and home occupations of a rural character." "The applicant states that, "A home occupation is a conditional use specifically allowed by section 603.3 of the Columbia County Zoning Ordinance." Staff Response: Staff agree with the applicant in that a home occupation is a conditional use specifically provided for in section 603.3 however staff point out that the applicant has not made the distinction of how the proposed home occupation is a home occupation of rural character. The proposed home occupation is not a home occupation of rural character, but in fact requires services that are urban in character and not normally associated with rural uses. This criteria is not met.

Continuing with Section 1503.5:

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

**On-Appeal Finding 8:** The applicant states that, "Pursuant to 1503.5(d) of the Columbia County Zoning Ordinance, this use meets with specific criteria established in the underlying zone. The home occupation is specifically allowed in the RR-5 zone." **Staff Response:** Home occupations of a rural character are allowed in the Rural Residential zone. The proposed transmission exchange is an urban use and not a home occupation of a rural character. Just because home occupations are provided for as conditional uses in the RR-5 zone and the applicant is applying for a home occupation does not mean the applicant meets the criteria in the RR-5 zone. Transmission exchanges are allowed inside urban growth boundaries in the Heavy Industrial zone. Urban type home occupations do not meet the purpose of the Rural Residential Zone. The proposed home occupation does not meet the criteria of the underlying zone. This criteria is not met.

Continuing with 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;

**On-Appeal Finding 9:** The applicant states that, "It can not be questioned that the characteristics of the site are suitable for the proposed use considering size, shape, location, topography, existence of improvements, and natural features. The size of the building is appropriate for the use. The shape of the building is appropriate. This is the only transmission shop between St. Helens and Astoria and is therefore an appropriate location for a transmission exchange. The land is flat and suitable for a transmission exchange shop. This building is appropriate for a transmission exchange; it has proper lighting, a concrete floor and other amenities which make it appropriate for this business."

**Staff Response:** Staff disagrees with the applicant regarding the characteristics of the site including location, existence of improvements, and natural features and the site suitability for a "transmission exchange."

The location of a transmission exchange or business of this scale outside of urban growth boundaries of incorporated cities is not allowed. However within urban growth boundaries of incorporated cities, specifically in the Heavy Industrial zoning district as depicted in Section 932.3 of the County Zoning Ordinance, "Automobile assembling, painting, upholstering, rebuilding, reconditioning, body and fender work, truck repair or overhauling, tire retreading or recapping, and battery manufacture" which would include transmission exchange would be allowed. The location is inappropriate for this proposed use. Location criteria is not met.

The rural residential zone and rural area where the business is proposed does not have adequate infrastructure or the existence of other improvements to deal with the type and scale of the proposed use. The County Zoning Ordinance states in Section 601 regarding the purpose of the rural residential zone that, "...Uses in this zoning district are anticipated to be predominantly residential with a rural level of public services; i.e., domestic water from private wells, sewage disposal using on-site systems, adequate fire and emergency service by fire districts, and road access consistent with the County Transportation Plan and County Road Standards. Other uses shall be those customary to such areas, including farm and forest uses and home occupations of a rural character." Staff maintains that a "transmission exchange" and all of the improvements the applicant proposes to handle the impacts of a transmission exchange does not fit within the purpose of the rural residential zone, nor fit within the context of a "Home Occupation of Rural Character." A transmission exchange is an urban use that is

permitted and better suited to an area of urban character within an Urban Growth Boundary where adequate improvements such as those proposed by the applicant already exist. Location, Rural Residential, criteria is not met.

Natural features identified on the subject property include Lost Creek and Beaver Creek and their respective flood and wetland designated areas which are identified on FEMA Flood Insurance Rate Map (FIRM), Panel 175; and National Wetland Inventory (NWI) map "Delena". Comprehensive Plan Policy, "Natural Areas" states, "It shall be the policy of the County to ... Protect the significant character of identified natural areas and direct incompatible land uses away from sensitive areas." The significant character of the above natural areas would not be protected if the proposed urban use were allowed to operate in this rural area in proximity to these natural features. The proposed urban type use is an incompatible land use with the sensitive wetland and flood hazard areas of Lost and Beaver Creeks. Natural features criteria is not met.

Continuing with 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;

**On-Appeal Finding 10:** The applicant states that, "The site and proposed development are timely because the transportation systems are adequate. The public facilities and services existing are appropriate. Columbia County Zoning Ordinance section 1503.5 (d) Highway 30 adequately provides transportation to and from the location."

**Staff Response:** There are adequate transportation systems, electrical, telephone, fire and police protection serving the site, for a "rural" type home occupation as intended for the Rural Residential zone, however staff disagrees with the applicant that there are adequate public facilities and services existing or planned for the area affected by the use for a home occupation of this nature which would be better suited for the Heavy Industrial (M-1) Zone inside an incorporated city's Urban Growth Boundary where land is appropriately zoned and facilities and services are in place to handle that type of use. The proposed development of a transmission exchange as a home occupation in this location in the Rural Residential zone is not timely and does not fit the intent of the purpose statement of the RR-5 zone. This criteria is not met.

Continuing with 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;

**On-Appeal Finding 11:** The applicant states, "The proposed use will be virtually invisible to the surrounding neighbor. Only when the doors of the accessory building are opened will any evidence of the business be apparent from the neighborhood. If the operation is conducted entirely within the building, there will be no limitation, impairment or preclusion of use of the surrounding property for residential uses. If the home occupation is conducted entirely within the building on the property, there will be no reduction in the



property value of the neighboring properties. Mr. Ahn estimates that he will be making approximately two to three trips per day to other shops to obtain transmissions so there will be no appreciable increase in traffic around the premises which would alter the character of the rural residential zone."

**Staff Response:** The character of the rural residential zone is that of rural uses primarily of residential, farm or forest in nature. A Transmission Exchange which is an urban type use does not fit within the character of the rural residential area or zoning district where the subject property is located. The proposed use will alter the character of the surrounding area. Neighboring property owners have already submitted information and testified during the Planning Commission hearing that the applicant's illegal use of the property in the past has impaired the rural residential use of their properties by having an unsightly business operating in their neighborhood. This criteria is not met.

Continuing with Section 1503.5:

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

**On-Appeal Finding 12:** The applicant states, "The proposal must satisfy the goals and policies of the comprehensive plan which apply to the proposed use. Col. Cty. Zoning Ord. 1503.5F. The comprehensive plan does have water quality policy 11 which states a requirement "that all development be planned, designed, constructed, and maintained so as to avoid the probability of accelerated erosion; pollution, contamination, or siltation of lakes, rivers, and streams; damage to vegetation; ; or injury to fish and wildlife habitat. The State Department of Environmental Quality has inspected the premises and prepared a waste reduction assistance program. The plan, a copy of which I enclose, requires Mr. Ahn to undertake certain actions to comply with DEQ requirements."

**Staff Response:** The proposed transmission exchange does not meet the intent of Comprehensive Plan, Part VII, "Rural Residential"; and Part XVI, Goal 5: Open Space, Scenic and Historic Areas, and Natural Resources; Fish Habitat, Summary. The Rural Residential Goal states, "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." Nor is this proposal consistent with Columbia County Zoning Ordinance, Rural Residential (RR-5) Zone, provision 601, "Purpose" which states that, "Uses in this zoning district are anticipated to be predominantly residential with a rural level of public services; i.e., domestic water from private wells, sewage disposal using on-site systems, adequate fire and emergency service by fire districts, and road access consistent with the County Transportation Plan and County Road Standards. Other uses shall be those customary to such areas, including farm and forest uses and *home occupations of a rural character*." Placing an urban type use and accompanying facilities in a rural zoned setting is not appropriate and a *home occupation of a rural character* merely because, as the applicant has stated, "The shape of the building is appropriate. This is the only transmission shop between St. Helens and Astoria and is therefore an appropriate location for a transmission exchange. The land is flat and suitable for a transmission exchange shop. This building is appropriate for a transmission exchange; it has proper lighting, a concrete floor and other amenities which make it appropriate for this business." The proposed transmission exchange is not a rural residential use nor would it be a *home occupations of a rural character*; but rather, would be appropriate for an urban area inside an incorporated city's urban growth boundary. For these reasons it is not consistent with the goals and policies which apply to the use. The RR-5 Zone which implements the Goal and Policies of the Comprehensive Plan, lists "Home Occupations" as a conditional use. The "qualifier" for Home Occupations is that the proposed business must be a *home occupation of a rural character* as stated in the purpose statement of the use in which the subject property is located.

Comprehensive Plan, Part XVI, Goal 5: Open Space, Scenic and Historic Areas, and Natural Resources; Fish Habitat, Summary, states, "...Many of the activities that affect a stream or lake and reduce the fish habitat are subject to state and federal regulations. The County will rely on implementation of these programs to protect fish habitat....". As stated in the Planning Commission staff report and as a reason for denial, "Under federal regulations found in the 4D Rule the County may be held liable for allowing activities that allow the "taking" of salmonoid fish species within the jurisdiction of the County." The County does not want to be held liable for allowing an urban type of business, namely a transmission exchange using "solvents, kerosene, and oils," in proximity to Beaver Creek and Lost Creek, which drain into the Columbia River System, and which may result in a "taking" of Salmonoid Fish species if they enter the fish habitat. The applicant has not given the County assurances that an accident will not happen. The County exercises prudent risk management by following the provisions of its Comprehensive Plan and Zoning Ordinance when making a determination of whether or not a use such as a transmission exchange is allowed as a home occupation in a Rural Residential zone.

Continuing with Section 1503.5:

G. The proposal will not create any hazardous conditions.

**On-Appeal Finding 13:** The applicant states, "Mr. Ahn is willing to comply with all requirements on the DEQ "to do" list. Mr. Ahn has no objections to the granting of a conditional use permit which will require Mr. Ahn to comply with all DEQ regulations. Specifically, Mr. Ahn will purchase a containment unit for solvent and kerosene drips or build a containment. Mr. Ahn is also willing to purchase a new oil tank as specified by DEQ. He will also agree to not store transmissions with oil on the bottom storage shelf and is agreeable to having that as a condition of the granting of the conditional use permit. He has already complied with this requirement. He will also label all containers and tanks with used oil "used oil". He will also build a containment area around the used oil storage tanks. He will also plug the drainage tables. He will also continue his shop and floor cleaning activities. In summary, Mr. Ahn will comply with all requirements the DEQ has imposed upon him. He also has a continuing arrangement and agreement with Spencer Environmental to pick up his oil. I enclose a customer activity site detail which indicates that Spencer will continue to pick up additional gallons every five to six months per his phone call request. His oil and other hazardous containment plan will be the one that DEQ has presented to him. ... Because the use will be entirely within the building, there will be no effect on the rural countryside. Mr. Ahn specifically denies that he has caused any environmental damage to Beaver Creek or Lost Creek or any other creek in the past. Mr. Ahn did not put any garbage in Beaver Creek or Lost Creek and he did not cause any oily substance in the stream at any time in the past and does not intend to do so in the future. His compliance with DEQ requirements should allay any concerns about this."

**Staff Response:** The proposed urban type, transmission exchange, will create potential hazardous conditions by the mere presence of solvent, kerosene, and transmission oils in proximity to the nearby sensitive groundwater table; and area of Beaver and Lost Creeks, and their respective wetland and flood hazard areas that drain into the Columbia River system. This is why the purpose statement of the underlying rural residential zone states that, "...Uses in this zoning district are anticipated to be predominantly residential with a rural level of public services; i.e., domestic water from private wells, sewage disposal using on-site systems, adequate fire and emergency service by fire districts, and road access consistent with the County Transportation Plan and County Road Standards. Other uses shall be those customary to such areas, including farm and forest uses and home occupations of a rural character." A transmission exchange that creates the potential for hazardous conditions is not customary to this area and zone, is not a farm or forest use, and is definitely not a home occupation of rural character. This criteria is not met.

and following with other matters that were grounds for denial of the conditional use permit by the Planning Commission as discussed below:

**On-Appeal Finding 14:** The applicant states, "With respect to the 4(d) rule, we respectfully submit that it is impermissible for the County to use this federal law as a basis for a decision in this matter. Rule 4(d) has been promulgated under the Endangered Species Act, not the Columbia County zoning ordinance. The Endangered Species Act is not relevant to this conditional use application because the Columbia County approval criteria do not require that the applicants demonstrate compliance with the Endangered Species Act. Mr. Ahn is willing to comply with all DEQ requirements. This should be sufficient basis for the granting of the conditional use permit. Applicant is unaware of any LUBA opinion which presents the issue of whether the County may import a 4(d) requirement into its zoning code, but in the recent case of Gillespe, Z0050-01-D before a Clackamas County Hearings Officer (April 30, 2001), the hearings officer held that "while the Endangered Species Act, Clean Water Act and other federal regulations may impact the development, they are not relevant to this application, because the County approval criteria do not require the applicants demonstrate compliance with these regulations. Final Order, p. 4, para. 9. (Copy enclosed). Likewise here, the Endangered Species Act and Rule 4(d) are not relevant because they are not relevant to the Columbia County home occupation criteria in an RR-5 zone."

**Staff Response:** Staff disagrees with the applicant in that the County can use state and federal regulations to implement its policy regarding Goal 5 resources. The County Comprehensive Plan, Part XVI, Goal 5: OPEN SPACE, SCENIC AND HISTORIC AREAS, AND NATURAL RESOURCES; Fish Habitat, Summary, states: "...Many of the activities that affect a stream or lake and reduce the fish habitat are subject to state and federal regulations. The County will rely on implementation of these programs to protect fish habitat...". As stated in the Planning Commission staff report and as a reason for denial, "Under federal regulations found in the 4D rule the County may be held liable for allowing activities that allow the "taking" of salmonoid fish species within the jurisdiction of the County." All persons, including the applicant and the local government whose jurisdiction the Home Occupation is in, must comply with the National Marine Fisheries rule for protection of the endangered species. The County is not convinced a "taking" will not happen and appropriately does not feel comfortable with the risk associated.

Continuing with other matters that were grounds for denial of the conditional use permit by the Planning Commission as discussed below:

**On-Appeal Finding 15:** The applicant states that, "Mr. Ahn is willing to comply with all DEQ requirements. This should be sufficient to preserve the ecosystem in the area. A home occupation is a permissible use in this area with a conditional use permit. There is no prohibition on a transmission exchange shop in the RR-5 zone so long as it otherwise complies with the home occupation requirements. Mr. Ahn respectfully requests that the County Commissioner grant Mr. Ahn's application for a conditional use permit for a home occupation to allow a transmission exchange shop which will be conducted entirely within the building on the property. Mr. Ahn is also willing to entertain the possibility of additional conditions being put on his use of the property so as to allay any concerns the county may have about this proposed use."

**Staff Response:** Staff disagrees with the applicant's statement above that, "There is no prohibition on a transmission exchange shop in the RR-5 zone so long as it otherwise complies with the home occupation requirements." The Rural Residential Zone purpose statement specifically states, "...Uses in this zoning district are anticipated to be predominantly residential with a rural level of public services; i.e., domestic water from private wells, sewage disposal using on-site systems, adequate fire and emergency service by fire districts, and

road access consistent with the County Transportation Plan and County Road Standards. Other uses shall be those customary to such areas, including farm and forest uses and home occupations of a rural character." The words "transmission exchange" does not bring to mind "rural character" or "customary use". This application should be denied.

This proposal for a home occupation to allow a transmission exchange clearly does not comply with the home occupation requirements and should be sited in an appropriate zone inside an urban growth boundary.

### ON-APPEAL RECOMMENDATION:

To reiterate what the Chief Planner explained to the applicant in a 1994 letter, "The simple presence of a large building on a property does not grant a right to the property owner to establish an industrial use in that building." Based upon "On-Appeal Findings 7, 8, 9, 10, 11, 12, 13, 14, and 15; and for the reasons stated by the Planning Commission, staff recommend that the Board of County Commissioners uphold the Planning Commission's denial of this proposal and deny this On-Appeal proposal for the following reasons:

- On-Appeal Finding 7 Reason: The applicant never made the distinction of how the proposed "transmission exchange" is a "home occupation of rural character" or is a "customary use" for that area and the RR-5 zone.
- On-Appeal Finding 8 Reason: The proposed "transmission exchange" home occupation does not meet the criteria in the underlying zone since the criteria are intended to implement the purpose of the underlying zone.
- On-Appeal Finding 9 Reason: The site location, existence of improvements, and natural features are not suitable for a transmission exchange.
- On-Appeal Finding 10 Reason: There is a lack of existing facilities and services for a transmission exchange at that location.
- On-Appeal Finding 11 Reason: A transmission exchange will alter the character of the area.
- On-Appeal Finding 12 Reason: A transmission exchange does not meet the goals and policies of the Comprehensive Plan.
- On-Appeal Finding 13 Reason: The applicant did not demonstrate in his application that a transmission exchange would not create any hazardous conditions.
- On-Appeal Finding 14 Reason: The County Comprehensive Plan, Goal 5, allows the County to rely on state and federal regulations to protect fish habitat. The county, state and federal levels of government share a common goal of protection of endangered species. All citizens must comply with ESA regulations, including local governments. Under federal regulations found in the 4D Rule the County may be held liable for allowing activities that allow the "taking" of salmonoid fish species within the jurisdiction of the County."
- On-Appeal Finding 15 Reason: The Rural Residential Zone specifically states that, "...Uses in this zoning district are anticipated to be predominantly residential with a rural level of public services; i.e., domestic water from private wells, sewage disposal

using on-site systems, adequate fire and emergency service by fire districts, and road access consistent with the County Transportation Plan and County Road Standards. Other uses shall be those customary to such areas, including farm and forest uses and home occupations of a rural character." The words "transmission exchange" do not bring to mind "rural character" or "customary use".

**ATTACHMENT B**  
Supplemental Findings- Order No. 68-01

1. Columbia County Zoning Ordinance, Section 1507.3(A) requires that a home occupation shall be operated substantially in the dwelling or "other buildings normally associated with the uses permitted in the zone in which the property is located." Applicant has not submitted substantial evidence that the home occupation will be operated substantially in the proposed outbuilding. The Board of County Commissioners interprets "substantially in the dwelling or other buildings" to mean that the business operations must be conducted primarily in the buildings, and only de minimis operations, that are not generally visible to surrounding property owners, may be conducted outside of the buildings. The Board finds that parking or storing vehicles in conjunction with auto transmission repair is not de minimis, and is visible to the surrounding property owners.

The Board of Commissioners finds that over the last six years there have been up to 60 vehicles parked all around the subject property in conjunction with the transmission business. The County Code Compliance officer has indicated that, in addition to the vehicles at the business site, there have been piles of transmission cases and tires on the property, associated with the business. Neighboring property owner, Paul Purdue, submitted photographs of transmission cases piled around the property. These vehicles and other parts were on the property in conjunction with the Applicant's illegal home occupation, despite having been told that the home occupation was illegal.

Despite the Applicant's history of storing large numbers of vehicles and vehicle parts on the property in violation of the Zoning Ordinance, the Applicant testified that he has cleaned up the property by removing both the parts and the vehicles. The Board finds that there is substantial credible evidence in the record that the property has been cleaned up with regard to the parts once stored there. County staff has indicated that the parts have been removed from the property or stored in the outbuilding. Furthermore, neighboring property owners testified that the property has improved in appearance in the last year because the piles of transmission cases have been removed. However, the Board of County Commissioners finds that the Applicant continues to store and park vehicles associated with his transmission business on the property. Substantial evidence has been presented that the Applicant parked several vehicles both on the property and on side streets in the surrounding neighborhood for repair, even during the pendency of the Application.

The application for this Home Occupation Permit first indicated that the Applicant would store all of his vehicles in the proposed outbuilding. The Applicant proposed to have the cars driven on the property and worked on one at a time in the outbuilding. He explained that he could have all of the cars in the outbuilding. The Board finds, according to the Applicant's testimony, that Applicant's shop is the only auto transmission shop between St. Helens and Astoria. The Board also finds that the Applicant advertises his transmission repair business in the local phone books, giving the address of the property, a map to the property, and indicating there are free pick up and drop off services available when delivering a vehicle for repair. The Board finds that due to the nature of auto repair business,

people often drop off vehicles and leave them for repair. The Board finds that it is doubtful that the Applicant would be able to control how many cars enter the property for repair, or that he would limit the numbers to those that would fit into the outbuilding.

The Board finds that despite the amended Application in which the Applicant proposes a “transmission exchange business” whereby he would pick up transmissions and bring them onto the property for repair in the outbuilding, the Applicant has not submitted substantial evidence that vehicles would be kept substantially in the outbuilding. First, the Applicant proposes to have five vehicles on the property at any one time in conjunction with the home occupation. Such a proposal, in and of itself, is not consistent with his statement that no vehicles would be brought onto the property. Second, the Applicant did not submit any evidence that he would discourage or prevent customers from dropping off their vehicles for repair.

Finally, the Board finds that the Applicant’s testimony that the vehicles are being stored in the outbuilding is inconsistent with the actual state of the property. Staff presented statements and evidence that the Applicant made “substantial progress in clearing up the cars and transmission cases on the property as of September 19, 2000, which was just before the October Planning Commission hearing. However, by January 17, 2001, the Applicant again had 15 to 20 cars parked in and around the house and shop area that the Applicant said was cleaned up. At the hearing before the Board of Commissioners, the Applicant again indicated that the vehicles were removed and the only vehicles remaining were being kept in the outbuilding. The Applicant then showed photographs to that effect taken in April of 2001. However, Applicant’s neighbors testified and submitted evidence that the vehicles still remain both on the property and parked along roads outside the property.

The Board finds that the evidence submitted by Paul Purdue, Ringo Lyons and Sid and Diane Young is credible evidence that in June of 2001, the vehicles were back on the property and also parked on the side of the road. For instance, according to Exhibit 10, there were anywhere from 7 to 22 cars on the property and up to 3 parked in the road right of way, in June of 2001. There was also testimony that on the day of the final hearing, there were 20-22 cars parked on the property waiting to be repaired. Additional testimony was given that the Applicant has been parking vehicles on the side of the road in an attempt to disguise the actual number of vehicles he has for repair. Paul Purdue testified that in response to the number of cars on the side of Lost Creek Road, he contacted the Sheriff’s Department. The Sheriff’s Department then red tagged the vehicles, and the Applicant then moved them back on the subject property and replaced them with different vehicles. The Board concludes that the Applicant has not submitted substantial credible evidence that he can control or is willing to control the number of vehicles on his property or that the home occupation will remain substantially in the outbuilding.

2. Columbia County Zoning Ordinance Section 1507.3(B) requires that a home occupation shall not “unreasonably interfere with other uses permitted in the zone in which the property is located.” The Board of County Commissioners finds that permitted uses in the RR-5 zone include single family dwellings, farm uses, forest uses, and structures accessory to those uses. Conditional uses in the RR-5 zone include signs, off-street parking

and loading, home occupations and churches. The Board of County Commissioners finds that there is not substantial evidence in the record that the home occupation proposed by Applicant will not unreasonably interfere with such permitted uses. The Amended Application proposes to have up to five cars parked outside of the outbuilding at any given time. The Amended Application further proposes to have no retail, and no consumer traffic on the property. The Board finds, as explained in supplemental finding 1, that the Applicant has not submitted substantial credible evidence that he can control or is willing to control the number of vehicles on his property or that the home occupation will remain substantially in the outbuilding. The Board further finds that there is substantial evidence in the record that the vehicles on the property are unsightly and thereby unreasonably interfere with neighboring properties' rural residential uses. For example, Paul Purdue, Ringo Lyons and Sid and Diane Young, neighboring property owners, testified of the unsightliness of the vehicles on the property. The Board finds that the use and enjoyment of their property is diminished by the presence of the vehicles.

In addition, the Board finds that parking vehicles in the public road right of way presents risks to neighboring residential property owners' ingress and egress onto public rights of way. Furthermore, neighboring RR-5 residential property owners gave credible testimony to the Board that the transmission repair business causes substantial noise and substantially interferes with the residential use and enjoyment of their property. Sid Young testified that vehicles are being delivered constantly, at all hours of the day and night, and that there is consistent noise from the shop and from movement outside of the shop even during the middle of the night, and that this occurs 6 days a week. Applicant did not submit substantial evidence showing that such noise either does not exist, or does not substantially interfere with the neighbors' use and enjoyment of their property.

Finally, the Board of County Commissioners finds that the Applicant did not provide substantial evidence showing that pollution will not substantially interfere with the residential, forest and farm uses of adjacent properties. Evidence was presented in the record that Beaver Creek and Lost Creek run through the Applicant's property. Evidence was also presented that during the 1996 flood, the outbuilding proposed for the home occupation was flooded, and materials, including oil, were carried into Beaver and Lost Creeks. Furthermore, neighboring property owners testified to seeing oily substances consistent with motor oil and other garbage in the creek during non-flood periods. During the hearing, the Applicant denied having dumped any oil into the creek, and showed that the Oregon Department of Environmental Quality (DEQ) has given him a "to do" list of actions to take to prevent contamination. However, the Board finds that the Applicant did not submit substantial evidence supporting a conclusion that contamination will be adequately prevented.

The Board finds the testimony of Ringo Lyons to be credible. Mr. Lyons, a neighboring property owner, testified, that before he retired he was an environmental consultant for the Port of Portland. During the hearing, Mr. Lyons testified that the DEQ "to do" list is not indicative of the actions needed to comply with DEQ commercial waste regulations. Mr. Lyons testified that the WRAP "to do" list was issued by DEQ in response to complaints of violations, and is not a stamp of approval for a commercial operation. He



further testified that the department of DEQ issuing that list was not the department responsible for commercial siting and that the commercial siting department has never been involved in the Applicant's business because no commercial siting application has been submitted to the DEQ. Mr. Lyons testified that the Applicant could not meet the DEQ regulations for DEQ commercial siting because the property is connected to a subsurface septic system rather than a public sewer which is required for a proper oil/water separator. Mr. Lyons also testified that, despite the Applicant's statements to the contrary, he has not complied with the "to do" list requirements.

Paul Purdue also testified that according to a letter to the Applicant from Environmental Services dated January 3, 2000, the Applicant was to do seven things to mitigate the environmental impact of the transmission business, including constructing a berm around the Creek, and building a chain link fence. These actions were to be completed between January and February of 2001, but have not even been started. In addition, Sid Young, another neighboring property owner, testified that on the day of the hearing, they saw a "big gob" of oil near the Applicant's driveway. Finally, the Board finds that even if the "to do" list requirements were complied with, the risk of oil and other transmission repair contaminants is not completely mitigated, especially in the event of another flood. The Board finds that the risk of pollutants getting into the groundwater and/or Beaver and Lost Creeks substantially interferes with the residential, forest and farm uses permitted in the RR-5 zone, by harming fish, wildlife and plant life and by potentially threatening well water used by neighboring residences.

3. Columbia County Zoning Ordinance § 1503.5(A) requires that the Applicant demonstrate that the proposed use is a use listed as a conditional use in the zone which is currently applied to the site. The Board of County Commissioners finds that home occupations are conditional uses in the RR-5 zone. However, the Board of Commissioners further finds that the RR-5 zone restricts home occupations to those of "rural character" according to the Columbia County Zoning Ordinance. The Zoning Ordinance sets forth the purpose of the RR-5 zone, to allow for uses that are predominantly residential with a rural level of public services. It further states, "other uses shall be those customary to such areas, including farm and forest uses and home occupations of a rural character." The Board of County Commissioners finds that a home occupation of a rural character is one that blends in with other rural uses such as farming, forestry, and rural living. The Board of County Commissioners finds that the operation of a transmission repair shop is not a home occupation of a rural character because it requires services that are urban in character and not normally associated with rural uses, such as sewer and specialized waste disposal services. Furthermore, it is not rural in character because of the number of vehicles serviced and the ensuing traffic, noise, pollution and unsightliness. In addition, neighboring property owners testified that they do not consider the transmission repair shop to be rural in character, and that it does not blend in with surrounding rural farming, forestry, and residential properties. The Board finds that a transmission repair shop is a use that one more commonly associates with urban uses, and does not blend in with the rural landscape.

4. Columbia County Zoning Ordinance § 1503.5(B) requires that the home occupation use meet the specific criteria established in the underlying zone. The Board finds that the Columbia County Zoning Ordinance § 603.3 limits home occupations in the RR-5 zone to those of a rural character. As set forth in Supplemental Finding 3, the Applicant has not submitted substantial evidence that a transmission repair shop is a home occupation of rural character.

5. Columbia County Zoning Ordinance § 1503.5(C) requires that the “characteristics of the proposed site be suitable for the proposed use considering the size, shape, location, topography, existence of improvements, and natural features.” The Board of County Commissioners finds that the Applicant has not submitted substantial evidence to show that the site is suitable for the proposed use. The Applicant testified that the site is suitable because the size of the building is appropriate for the use, the shape of the building is appropriate and because this is the only transmission shop between St. Helens and Astoria and is therefore an appropriate location for a transmission exchange. Furthermore, the Applicant stated that the building is appropriate because it has proper lighting, a concrete floor and other amenities which make it appropriate for this business.

The Board of County Commissioners finds that such testimony is not entirely responsive to the criteria, and that the Applicant has failed to submit substantial evidence of the suitability of the site. CCZO § 1503.5(D) speaks to the character of the site, and not only the building in which the home occupation will be sited. Specifically, as staff set forth in the staff report, the property gently slopes towards the south and east and is bordered by Beaver and Lost Creeks on its eastern boundary. Applicant failed to address the suitability of the business considering such natural features and the risk of water contamination. Natural features identified on the subject property include Lost Creek and Beaver Creek and their respective flood and wetland designated areas which are identified on FEMA Flood Insurance Rate Map (RIF), Panel 175; and National Wetland Inventory (NWI) map “Delena”, as set forth in the staff report. The Applicant failed to address the wetlands.

Furthermore, the Applicant failed to address how the rural location is appropriate for an urban-type use such as a transmission repair shop. In addition, the Applicant makes a mere conclusion that “the site is suitable” and does not address its size or shape. Finally, the Board finds that Applicant’s remarks that the transmission shop is the only one between St. Helens and Astoria does not speak to the suitability of the site, but to the economic viability of the proposed home occupation. The market demand for a transmission repair shop would likely be as good in the nearest urban area (Clatskanie) as in the proposed rural area, and this statement is therefore not persuasive as to the suitability of the site.

6. Columbia County Zoning Ordinance, § 1503.5(D) requires that the site and proposed development be “timely, considering the adequacy of transportation systems, public facilities, and services existing or planned for the area affected by the use.” The Board of Commissioners finds that there is substantial evidence in the record that the transportation system is adequate for the proposed use. However, the Applicant has failed to submit substantial evidence to show that the other public facilities and services are appropriate.

Rather the Applicant simply states that they are appropriate. During the hearing, the Board heard testimony which suggested that a transmission repair shop might require public sewer as opposed to a sub-surface septic system. Applicant failed to provide evidence to show otherwise.

7. Columbia County Zoning Ordinance § 1503.5(E) requires that the “proposed use will not alter the character of the surrounding area in a manner which substantially limits, impairs, or precludes the use of surrounding properties for the primary uses listed in the underlying district.” The Board of County Commissioners finds that the primary uses listed in the underlying district are single family dwellings, and farm and forest uses. These uses are rural in nature. The Applicant has failed to submit substantial evidence to show that the urban character of the transmission repair business will not alter the rural character of the surrounding properties. The Board finds that while the Applicant’s amended application states that the business will not be visible to other properties, he has requested to have up to 5 vehicles on the property at any given time. This request is inconsistent with Applicant’s statement that the business will not be visible. In addition, as the Board found in Supplemental Finding 1, the Applicant has not submitted substantial credible evidence that he can control or is willing to control the number of vehicles on his property or that the home occupation will remain substantially in the outbuilding. Therefore, the Board finds that the home occupation will be visible from the highway and from the surrounding properties.

The Board finds that the existence of such transmission repair shop will alter the character of the surrounding area in a manner which substantially limits, impairs or precludes the use of the surrounding properties. The Board heard evidence from several neighboring property owners that the transmission shop and its vehicles interferes with their use and enjoyment of their rural property. The Board finds that the urban character of the transmission business has altered the character of the area, making it appear more urban than rural, and would continue to do so in the future. The Board finds credible the witness testimony regarding the unsightliness of the Applicant’s property.

The Board further finds that it is possible that contaminants from Applicant’s operations will enter the wetland and Creek systems. Such pollution would substantially alter and impede the agricultural and forest uses of surrounding properties by possibly injuring wildlife and livestock as well as crops. Such pollution could also substantially impair residential uses if toxins entered ground water and well water supplies. Applicant has not presented substantial evidence to the contrary.

8. Columbia County Zoning Ordinance § 1503.5(F) requires the Applicant to submit substantial evidence to show that the proposed home occupation “complies with the goals and policies of the Comprehensive Plan which apply to the proposed use.” The Board of County Commissioners finds that the Applicant addressed only one Comprehensive Plan Policy in its application, Water Quality Policy 11, and has not provided substantial evidence that the proposal complies with the applicable Comprehensive Plan provisions. The Board finds that the following Comprehensive Plan Goals and Policies are also applicable: Part VII, “Rural Residential”; and “Goal 5: Open Space, Scenic and Historic Areas, and Natural

Resources; Fish Habitat, Summary; and Natural Areas.” The Rural Residential goal states “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.” The Board finds that because the proposed use is more urban in character than rural, the proposed use does not satisfy this Goal .

Furthermore, Comprehensive Plan, Part XVI, Goal 5: Open Space, Scenic and Historic Areas, and Natural Resources; Fish Habitat states, “Many of the activities that affect a stream or lake and reduce the fish habitat are subject to state and federal regulations. The County will rely on implementation of these programs to protect fish habitat...” The Board finds that the Endangered Species Act prohibits the taking of fish by injury to habitat. The Board further finds that the Applicant has not submitted substantial evidence to show that his proposed use will not effect or reduce fish habitat.

Finally, Comprehensive Plan Policy, Natural Areas states that it shall be the policy of the County “...to protect the significant character of identified natural areas and direct incompatible land uses away from sensitive areas.” The Board finds that the Applicant has failed to submit substantial evidence showing that the proposed use is compatible with sensitive wetlands as identified on the National Wetland Inventory Map, and thereby complies with the Comprehensive Plan.

9. Columbia County Zoning Ordinance § 1503.5(G) requires that the proposed home occupation will not create any hazardous conditions. The Applicant has submitted a DEQ “to do” list which sets forth the actions DEQ has suggested he take to avoid contamination. The Applicant has stated that he is willing to purchase a containment unit for solvent and kerosene drips or build a containment. He has also indicated that he would purchase a new oil tank, and to store transmissions with oil on upper shelves, and take other measures including labeling tanks to indicate their contents. Furthermore, the Applicant indicated that he would build a containment area around the used oil storage tanks, and plug the drainage tables as well as continue with floor cleaning activities. The Board of County Commissioners finds that the presence of the proposed home occupation will create a hazard despite the Applicant’ testimony.

The Board of County Commissioners interprets this code provision to mean that the proposed home occupation cannot create more of a hazard than would normally be associated with a residence, or with uses allowed in the underlying RR-5 zone. Here, the Applicant proposes to store significant amounts of solvent and transmission oils in proximity to the nearby sensitive wetlands and creeks. The Board finds that the quantities of these materials proposed by the Applicant are not generally associated with residential or forest/agricultural uses. Furthermore, the record shows that the property, including the shop, flooded in 1996, and that oil and other chemical materials were washed into Beaver Creek and into the wetlands. In addition, because the property is in a flood hazard area, the Board of County Commissioners finds that the recurrence of such flooding is likely, and would cause oils and other materials to be washed into the water systems, even if the existence of such materials were minimized by following the DEQ plan. The Board of County Commissioners finds that oils and other materials will likely cause harm to fish, other wildlife, and plant life, when

introduced into the Creeks and wetlands. The Board finds that compliance with the DEQ “to do” list is not sufficient to prevent contamination, as further explained in Supplemental Finding 2. Therefore, the proposed home occupation creates a hazardous condition.

In addition, testimony given to the Board, including the Applicant’s testimony provided evidence to the Board that the Applicant has constructed additions to the outbuilding proposed for use without obtaining building permits from the County Building Department. The Applicant has also done substantial electrical work in the outbuilding without electrical permits from the County, and has not had such work inspected or approved by the County. The Board finds that it is extremely hazardous to operate the proposed home occupation in the outbuilding because of the risk of fire and injury associated with the uninspected electrical work. In addition, the Board finds that the Applicant added a bathroom in the outbuilding without seeking prior septic approval. Testimony during the hearing confirmed that there were several septic problems associated with the Applicant’s work on the septic system, including exposed raw sewage. Since that time, the County has inspected the septic system for residential use. However, the Department of Environmental Quality has jurisdiction to inspect and approve commercial septic systems. Because the Applicant has not obtained DEQ septic approval for the operation of a commercial enterprise, the proposed home occupation creates a hazardous condition.