



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

635 Capitol Street, Suite 150

Salem, OR 97301-2540

(503) 373-0050

Fax (503) 378-5518

www.lcd.state.or.us

NOTICE OF ADOPTED AMENDMENT

July 17, 2008



TO: Subscribers to Notice of Adopted Plan
or Land Use Regulation Amendments

FROM: Mara Ulloa, Plan Amendment Program Specialist

SUBJECT: Morrow County Plan Amendment
DLCD File Number 001-08

The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. A copy of the adopted plan amendment is available for review at the DLCD office in Salem and the local government office.

Appeal Procedures*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: August 1, 2008

This amendment was submitted to DLCD for review 45 days prior to adoption. Pursuant to ORS 197.830 (2)(b) only persons who participated in the local government proceedings leading to adoption of the amendment are eligible to appeal this decision to the Land Use Board of Appeals (LUBA).

If you wish to appeal, you must file a notice of intent to appeal with the Land Use Board of Appeals (LUBA) no later than 21 days from the date the decision was mailed to you by the local government. If you have questions, check with the local government to determine the appeal deadline. Copies of the notice of intent to appeal must be served upon the local government and others who received written notice of the final decision from the local government. The notice of intent to appeal must be served and filed in the form and manner prescribed by LUBA, (OAR Chapter 661, Division 10). Please call LUBA at 503-373-1265, if you have questions about appeal procedures.

***NOTE: THE APPEAL DEADLINE IS BASED UPON THE DATE THE DECISION WAS MAILED BY LOCAL GOVERNMENT. A DECISION MAY HAVE BEEN MAILED TO YOU ON A DIFFERENT DATE THAN IT WAS MAILED TO DLCD. AS A RESULT YOUR APPEAL DEADLINE MAY BE EARLIER THAN THE ABOVE DATE SPECIFIED.**

Cc: Doug White, DLCD Community Services Specialist
Jon Jinings, DLCD Regional Representative
Carla McLane, Morrow County

<paa> ya

DEPT OF DLCD NOTICE OF ADOPTION

This form must be mailed to DLCD within 5 working days after the final decision per ORS 197.610, OAR Chapter 660 - Division 18

JUL 14 2008

(See reverse side for submittal requirements)

LAND CONSERVATION AND DEVELOPMENT

Jurisdiction: Morrow County Local File No.: ACM-005-08 AZM-007-08 (If no number, use none)

Date of Adoption: July 9, 2008 (Must be filled in) Date Mailed: July 11, 2008 (Date mailed or sent to DLCD)

Date the Notice of Proposed Amendment was mailed to DLCD: February 29, 2008

- Comprehensive Plan Text Amendment [] Comprehensive Plan Map Amendment [X]
Land Use Regulation Amendment [] Zoning Map Amendment [X]
New Land Use Regulation [] Other: [] (Please Specify Type of Action)

Summarize the adopted amendment. Do not use technical terms. Do not write "See Attached."

0.77-ACRE WAS removed from within the city of Boardman and added to the Urban Growth Area. Both the Comprehensive Plan and Zoning Maps were amended.

Describe how the adopted amendment differs from the proposed amendment. If it is the same, write "Same." If you did not give notice for the proposed amendment, write "N/A."

Same

Plan Map Changed from: City to Residential w/in the UGB
Zone Map Changed from: City to Suburban Residential
Location: 4N 25 16 T2 407 605 Acres Involved: 0.77
Specify Density: Previous: N/A New: 1 ACRE MINIMUM

Applicable Statewide Planning Goals: 1
Was an Exception Adopted? Yes: [] No: [X]

DLCD File No.: 001-08 (16741)

Did the Department of Land Conservation and Development receive a notice of Proposed

Amendment **FORTY FIVE (45) days prior to the first evidentiary hearing.** Yes: No:

If no, do the Statewide Planning Goals apply. Yes: No:

If no, did The Emergency Circumstances Require immediate adoption. Yes: No:

Affected State or Federal Agencies, Local Governments or Special Districts: _____

City of Boardman, DLCD

Local Contact: Carla McLane Area Code + Phone Number: 541 922-4624

Address: PO Box 40

City: Irrigon Zip Code+4: 97844

ADOPTION SUBMITTAL REQUIREMENTS

This form **must be mailed** to DLCD **within 5 working days after the final decision**
per ORS 197.610, OAR Chapter 660 - Division 18.

1. Send this Form and TWO (2) Copies of the Adopted Amendment to:

**ATTENTION: PLAN AMENDMENT SPECIALIST
DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
635 CAPITOL STREET NE, SUITE 150
SALEM, OREGON 97301-2540**

2. Submit **TWO (2) copies** the adopted material, if copies are bounded please submit **TWO (2) complete copies** of documents and maps.
3. Please Note: Adopted materials must be sent to DLCD not later than **FIVE (5) working days** following the date of the final decision on the amendment.
4. Submittal of of this Notice of Adoption must include the text of the amendment plus adopted findings and supplementary information.
5. The deadline to appeal will be extended if you submit this notice of adoption within five working days of the final decision. Appeals to LUBA may be filed within **TWENTY-ONE (21) days** of the date, the "Notice of Adoption" is sent to DLCD.
6. In addition to sending the "Notice of Adoption" to DLCD, you must notify persons who participated in the local hearing and requested notice of the final decision.
7. **Need More Copies?** You can copy this form on to 8-1/2x11 green paper only ; or call the DLCD Office at (503) 373-0050; or Fax your request to:(503) 378-5518; or Email your request to Larry.French@state.or.us - ATTENTION: PLAN AMENDMENT SPECIALIST.



PLANNING DEPARTMENT

P. O. Box 40 • Irrigon, Oregon 97844
(541) 922-4624 or (541) 676-9061 x 5503
FAX: (541) 922-3472

NOTICE OF DECISION

July 11, 2008

AC(M)-005-08 Morrow County Comprehensive Plan Map
AZ(M) 007-08 Morrow County Zoning Map

This notice is to inform you that on July 9, 2008, the Morrow County Court adopted Ordinance Number MC-05-2008 amending the Morrow County Comprehensive Plan Map and Zoning Ordinance Map. Specifically Morrow County amended the above maps accepting .77-acre into the Boardman Urban Growth Boundary and applying Suburban Residential zoning to the .77-acre.

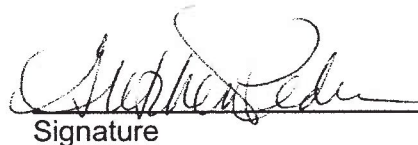
The requirements for filing an appeal of the decision to the Land Use Board of Appeals (LUBA) are set forth in ORS 197.830 to 197.845. State law and associated administrative rules promulgated by LUBA describe the period within which any appeal must be filed and the manner in which such an appeal must be commenced. Presently, ORS 197.830(9) requires that a notice of intent to appeal plan or land use regulation amendments adopted pursuant to ORS 197.610 to 197.625 "shall be filed not later than 21 days after notice of the decision sought to be reviewed is mailed or otherwise submitted to parties entitled to notice under ORS 197.615." Notice of this decision was mailed on July 11, 2008. The deadline to appeal is August 1, 2008.

Cordially,

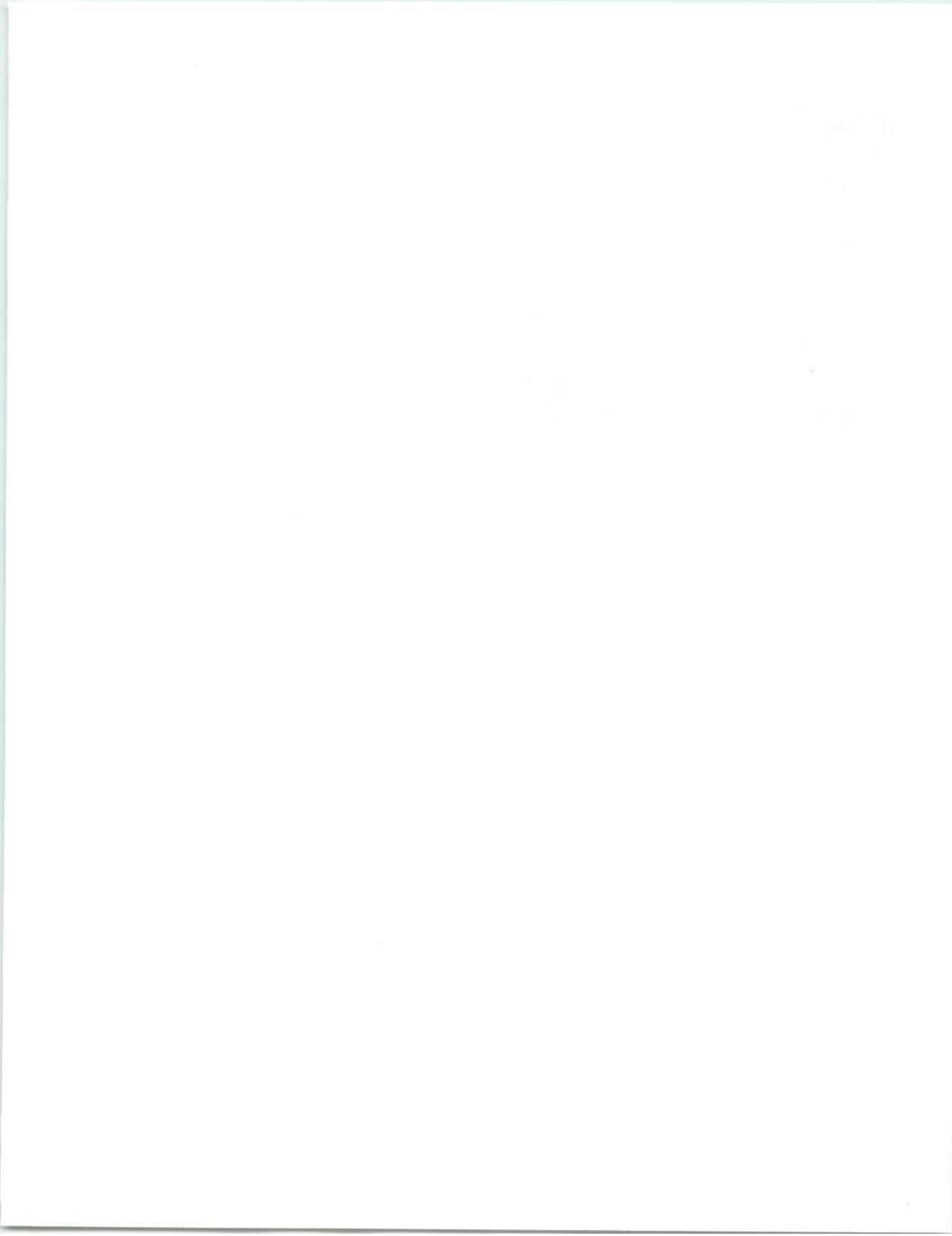


Carla McLane
Planning Director

I certify that on July 11, 2008, I mailed a copy of this Notice of Decision by first class mail to all persons entitled to notice of this decision.


Signature

7-11-08
Date



BEFORE THE MORROW COUNTY COURT
OF MORROW COUNTY

AN ORDINANCE ADOPTING CHANGES TO
THE MORROW COUNTY COMPREHENSIVE
PLAN AND ZONING MAPS AMENDING THE
CITY OF BOARDMAN URBAN GROWTH
BOUNDARY AND APPLYING SUBURBAN
RESIDENTIAL ZONING TO THE .77-ACRE
ADDED TO THE URBAN GROWTH AREA.

COUNTY ORDINANCE
NO. YMC.05-2008

WHEREAS, ORS 203.035 authorizes Morrow County to exercise authority within the county over matters of County concern; and

WHEREAS, Morrow County adopted a Comprehensive Land Use Plan which was acknowledged by the Land Conservation and Development Commission on January 15, 1986; and

WHEREAS, Mike Allison and the City of Boardman made application to the County for necessary changes to the Comprehensive Plan and Zoning Maps based on errors found during other land use approval processes; and

WHEREAS, the Morrow County Planning Commission held a hearing to review the request on April 29 and May 20, 2008, at the Morrow County School District Building in Lexington, Oregon; and

WHEREAS, the Morrow County Planning Commission unanimously recommended approval of the request and adopted Final Planning Commission Findings of Fact; and

WHEREAS, the Morrow County Court held a hearing to consider the recommendation of the Morrow County Planning Commission on June 18, 2008, at the Port of Morrow Riverfront Center in Boardman, Oregon; and

WHEREAS, the Morrow County Court did consider the testimony and evidence presented to them;

NOW THEREFORE THE COUNTY COURT OF MORROW COUNTY ORDAINS AS FOLLOWS:

Section 1 Title of Ordinance:

This Ordinance shall be known, and may be cited, as the "Boardman 2008 Urban Growth Boundary Change."

Section 2 Affected Document

The Morrow County Comprehensive Plan and Zoning Maps shall be amended as reflected in the attached map identified as Exhibit 1

Section 3 Effective Date

As other land use matters are pending the Morrow County Court does declare an emergency. This ordinance shall be effective on July 9, 2008, following the second reading.

Date of First Reading: July 2, 2008

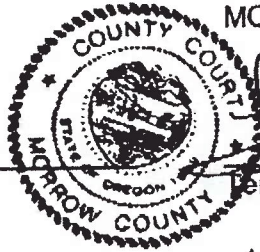
Date of Second Reading: July 9, 2008

DONE AND ADOPTED BY THE MORROW COUNTY COURT THIS 9th DAY OF July, 2008

ATTEST:

MORROW COUNTY COURT:

Bobbi Childers
Bobbi Childers
County Clerk



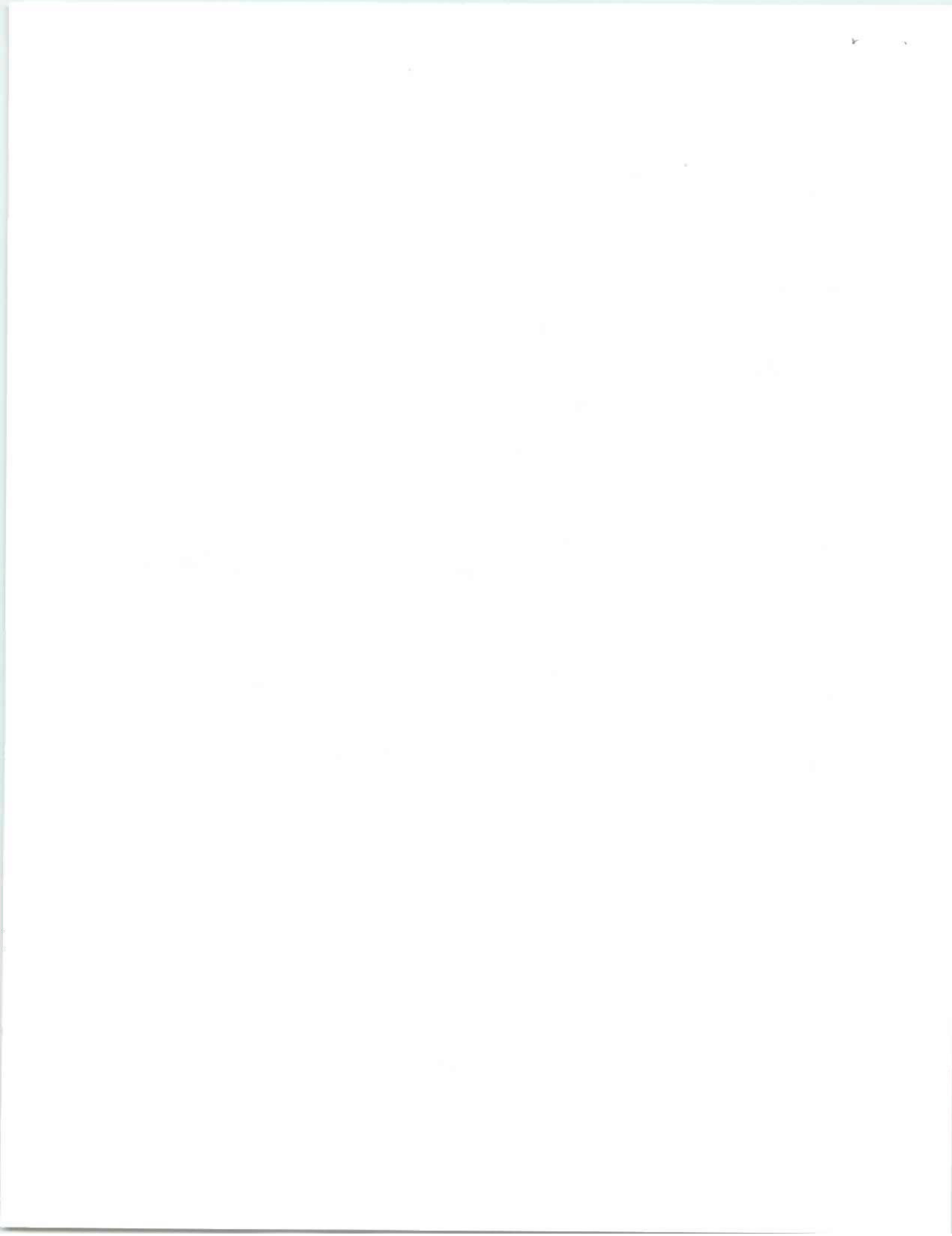
Jerry K. Tallman
Jerry K. Tallman, Judge

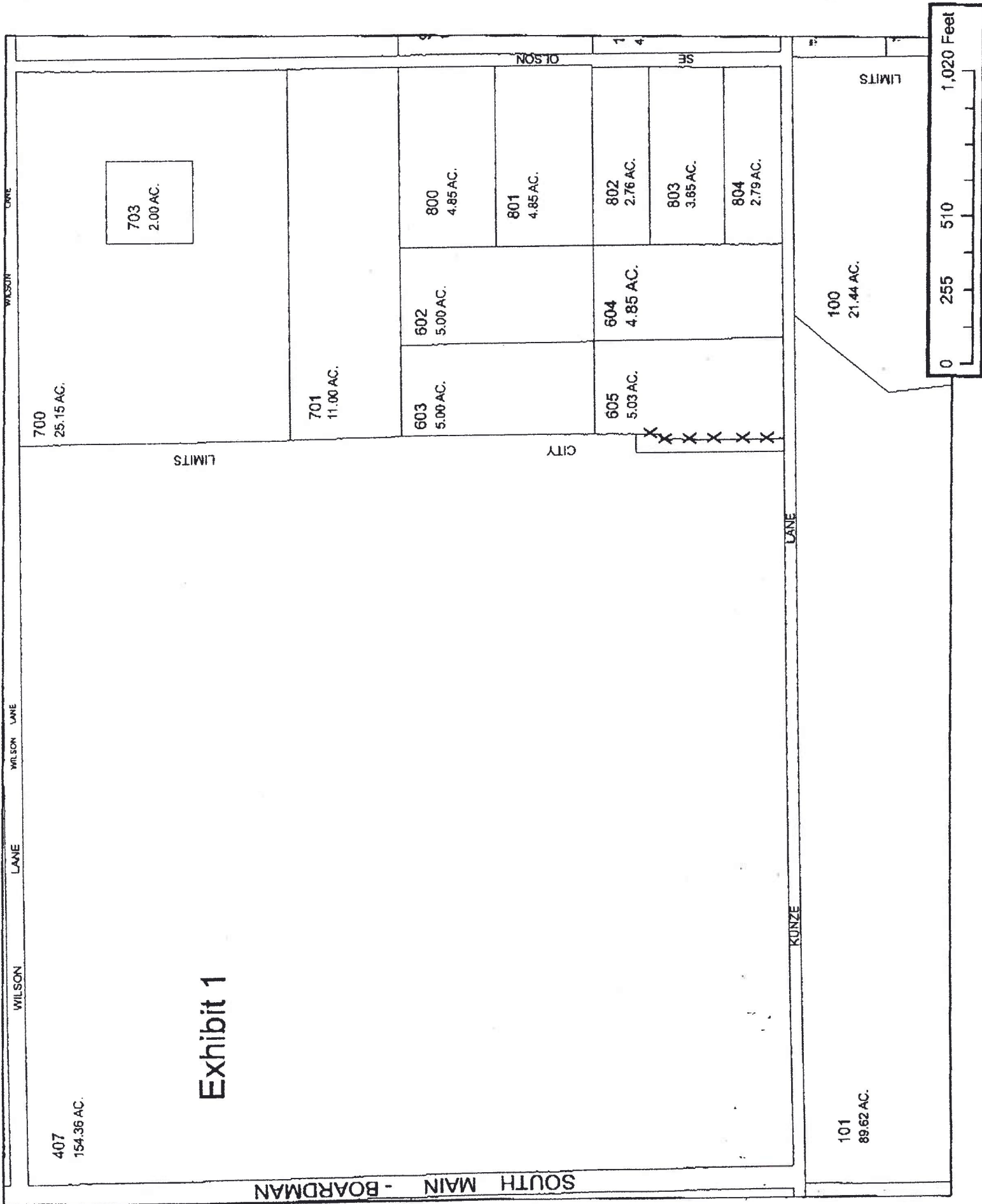
John E. Wenholz
John E. Wenholz, Commissioner

APPROVED AS TO FORM:

Recused (15)
Ryan Swinburnson
County Counsel

Ken Grieb
Ken Grieb, Commissioner





407
154.36 AC.

703
2.00 AC.

700
25.15 AC.

701
11.00 AC.

603
5.00 AC.

602
5.00 AC.

605
5.03 AC.

604
4.85 AC.

800
4.85 AC.

801
4.85 AC.

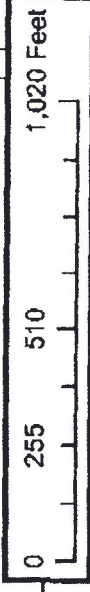
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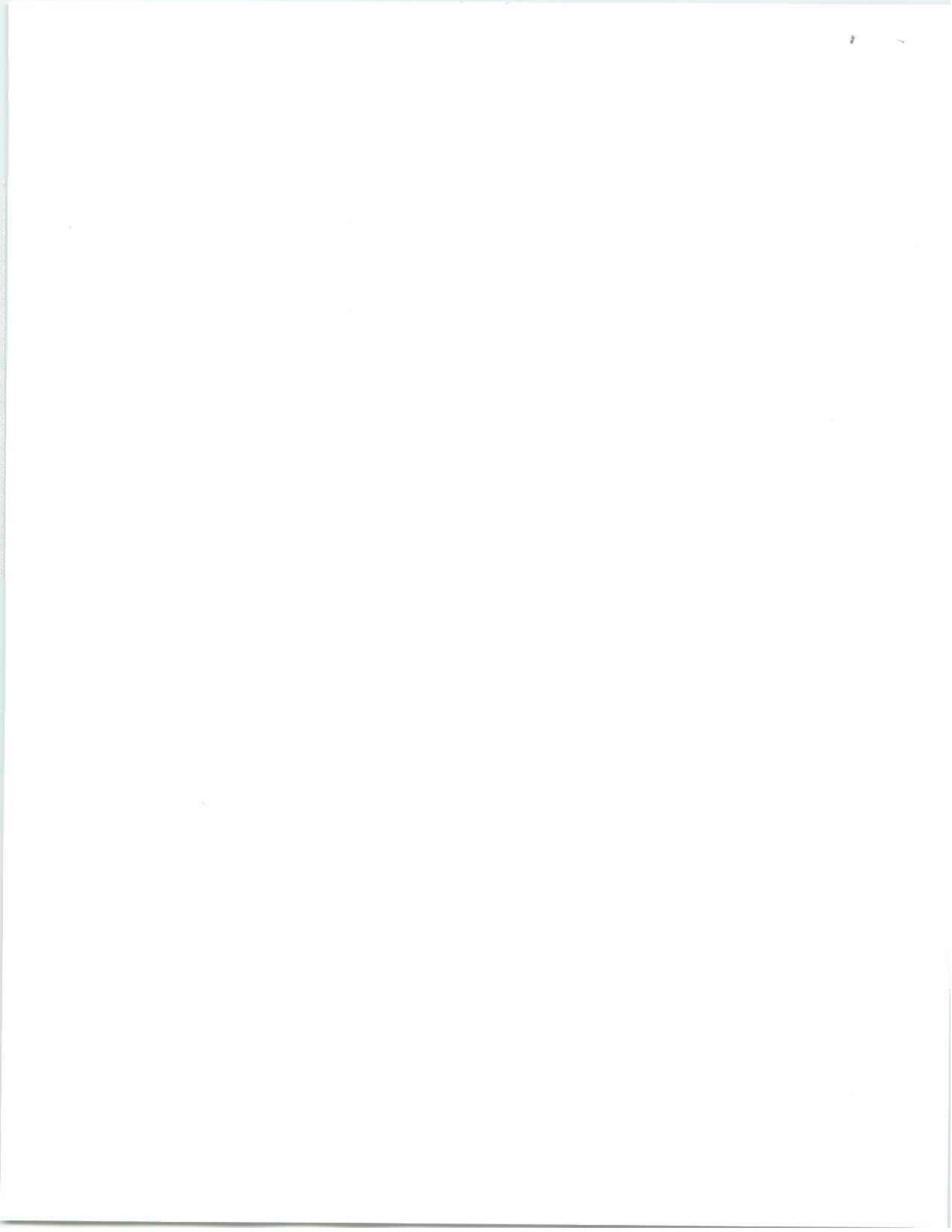
803
3.85 AC.

804
2.79 AC.

101
89.62 AC.

100
21.44 AC.





**Morrow County Planning Commission
Final Findings of Fact
AC(M)-005-08 and AZ(M)-007-08: Zoning and Comprehensive Plan Map Amendments
Urban Growth Boundary Amendment - Boardman**

REQUEST: Amend the Boardman Urban Growth Boundary by adding approximately .75-acre currently within the Boardman City Limits and apply Suburban Residential Zoning.

APPLICANT AND OWNER: Mike Allison
70641 Kunze Lane
Boardman OR 97818

PROPERTY DESCRIPTION: Assessor's Map 4N 25 16 tax lot 407 and 605

PROPERTY LOCATION: South of Boardman along Kunze Lane, between Main Street and Olson Road.

I SUMMARY OF APPLICATION AND PROCESS:

The attached City of Boardman Staff Report clearly outlines the applicant's dilemma and the necessary steps required of the City and County to achieve the desired end result. Planning staff will not restate the background here.

As required by the Morrow County Zoning Ordinance three public hearings will be required – two Planning Commission and one County Court – prior to approval of the requested changes. The tentative hearing schedule is included at the end of these Findings of Fact.

II SUMMARY OF APPLICABLE CRITERIA To approve the requests the Planning Commission will need to make findings to show that the requests meet the necessary criteria in the Morrow County Zoning Ordinance, specifically Article 8 Amendments Section 8.050 Burden and Criteria. Those criteria are presented below in **bold** print with responses in regular print.

Morrow County Zoning Ordinance Article 8 Amendments Section 8.050 Burden and Criteria: The proponent of the application or permit has the burden of proving justification for its approval. The more drastic the request or the greater the impact of the application or permit on the neighborhood, area, or county, the greater is the burden on the applicant. The following criteria shall be considered by the Planning Commission in preparing a recommendation and by the County Court in reaching their decision.

A. That conditions have changed since the adoption of the Comprehensive Plan and zoning map that warrant an amendment, or that there was a mistake in the original designation.

Planning staff would find that no mistake was made in the designation, simply that over time parties were not fully aware of the property boundary. In most cases a simple property line adjustment could 'fix' this problem. The existence of a city limit line complicates the issue.

B. That public services and facilities are sufficient to support a change in designation, including but not limited to, streets and roads (refer to the Transportation System Plan and Transportation Planning Rule).

Planning staff would find that this action has no impact to the TSP or the TPR.

1. Amendments to the zoning ordinance or zone changes which significantly affect a transportation facility shall assure that land uses are consistent with the function, capacity, and level of service of the facility identified in the Transportation System Plan. This shall be accomplished by one of the following:

- a. Limiting allowed land uses to be consistent with the planned function of the transportation facility or roadway;**
- b. Amending the Transportation System Plan to ensure that existing, improved, or new transportation facilities are adequate to support the proposed land uses consistent with the requirement of the Transportation Planning Rule; or,**
- c. Altering land use designations, densities, or design requirements to reduce demand for automobile travel to meet needs through other modes.**

Again, no impact.

2. A plan or land use regulation amendment significantly affects a transportation facility if it:

- a. Changes the functional classification of an existing or planned transportation facility;**
- b. Changes standards implementing a functional classification;**
- c. Allows types or levels of land use that would result in levels of travel or access that are inconsistent with the functional classification of a transportation facility; or**
- d. Would reduce the level of service of the facility below the minimal acceptable level identified in the Transportation System Plan. (MC-C-8-98)**

No impact.

C. That the proposed amendment is consistent with unamended portions of the Comprehensive Plan and supports goals and policies of the Comprehensive Plan, that there is a public need for the proposal, and that the need will be best served by allowing the request. If other areas in the county are designated for a use as requested in the application, then a showing of the necessity for introducing that use into an area not now so zoned and why the owners there should bear the burden, if any, of introducing that zone into their area.

Not applicable.

D. The factors listed in ORS 215.055 or others which relate to the public need for healthful, safe and aesthetic surroundings and conditions.

ORS 215.055 was repealed in 1977. Staff find the balance of the criteria not applicable.

III DLCD 45 DAY NOTICE: February 29, 2008

IV PROPERTY OWNER NOTICE: April 9, 2008

V **LEGAL NOTICE:** Heppner Gazette Times and East-Oregonian
April 16 and May 7, 2008


VI **AGENCIES NOTIFIED:** Jon Jinnings and Mara Ulloa, Department of Land Conservation
and Development; Barry Beyeler, City of Boardman; Greg Sweek, Morrow County
Assessor

VII **HEARING DATES:**
Planning Commission
April 29 and May 20, 2008
Morrow County School District Building
Lexington, Oregon

County Court
June 18, 2008
Port of Morrow Riverfront Center
Boardman, Oregon

IX **RECOMMENDATION OF THE MORROW COUNTY PLANNING DEPARTMENT:**
Recommend to the Morrow County Court approval of the application as presented:

- Add the subject property, approximately .75-acre, to the Boardman Urban
Growth Boundary and apply the required Suburban Residential Zoning.


Leann Rea, Chair

5-27-2008
Date

Attachments:
Vicinity Map
Boardman Staff Report



CITY of BOARDMAN

Community Development

STAFF REPORT

DATE: April 9, 2008

TO: Boardman Planning Commission

FROM: Barry C. Beyeler, Community Development Director

SUBJECT: Post Acknowledgement Plan Amendment 01-2008

Post Acknowledgement Plan Amendment 01-2008 is to amend the City's Comprehensive Plan Map and Zoning Maps brought forward by a request to remove approximately 0.77-acre of property from the Boardman City Limits. This action will allow for the City of Boardman and Morrow County to accomplish other land use actions correcting survey and construction location errors.

BACKGROUND

On November 14, 2007, the applicant submitted a request for partition of approximately 6.71 acres from tax lot #407 of Morrow County Tax Map 4N 25 16, to complete a sales agreement with the owner of tax lot #407. The application was submitted by the owner of tax lot #605 of Morrow County Tax Map 4N 25 16, which abuts tax lot #401. Tax lot #605 is listed as a 5.03 acre lot which is outside of the city limits and within the Urban Growth Boundary. There are a house and two accessory structures associated with this property.

Upon completion of the necessary survey work several issues for resolution were noted. Key issues included; 1) The large accessory structure, which is an agriculturally related shop, associated with tax lot #605 has the city limits boundary through the middle of the structure; 2) the City has no jurisdictional control over tax lot #605, which the accessory structures are related to; 3) the County can not perform a lot line adjustment to correct the errors identified by the survey; and, 4) the City does not have adequate Development Code language or zoning for the existing operation. The applicant's survey map is attached with this report as "Exhibit A".

On February 19, 2008, the applicant, Morrow County Planning Director and the City Community Development Director met to discuss options to correct the issues raised by survey data obtained in the original partition request to the city. Options such as annexation of tax lot #605 into the city, removal of a small portion of tax lot #407 from the city to allow for County action on a lot line adjustment, and discussion of possible methods of accomplishing the applicant's desires while meeting respective codes, rules and statutes were discussed thoroughly. As a result of this meeting, the applicant

submitted a request to remove 0.77-acre of tax lot #407 of Morrow County Tax Map 4N 25 16 from the city limits of Boardman on February 26, 2008. This request is attached as "Exhibit B".

PROCESS TO BE USED

There are separate actions needing to take place in order to accomplish the original request of a partition of 6.71 acres from Tax Lot #407 of 4N 25 16. These actions are multi-jurisdictional in nature because the City of Boardman must perform two actions and Morrow County two actions. The City actions are to initiate a Post Acknowledgement Plan Amendment to change the existing Comprehensive Plan and Zoning Map by removing 0.77-acre from the city limits of Boardman and to perform the original partition upon completion of the removal of the aforementioned property. The County must initiate a Post Acknowledgement Plan Amendment to change the County's Comprehensive Plan and Zoning Maps so as to accept the 0.77- acre of property into the County jurisdiction within the Urban Growth Boundary of the City and performance of a lot line adjustment to incorporate the 0.77-acre of property with accessory structures associated with tax lot #605 of 4N 25 16 into tax lot #605.

Although these actions are integrally tied together, the City and Morrow County, have decided to follow the Post Acknowledgement Plan Amendment process to allow for adequate hearings at each level of local government. Both agencies decided against joint hearings because the logistics of joint hearings by volunteer Commissions and Councils. Additionally, both agencies determined a more thorough vetting of the issues would be attained by the increased number of hearings by running two separate but concurrent Post Acknowledgement Plan Amendment processes. To facilitate the needed actions and hearings City planning staff will be at all hearings at the County level, and County planning staff will be present at all hearings at the City level.

WITHDRAWAL OF TERRITORY

The withdrawal of territory from a jurisdiction is regulated by: **Oregon Revised Statute 222.460 Procedures for withdrawal of territory; content of resolution; hearing; election; taxes and assessments.** This section of statute describes the necessary process and legal framework to accomplish removal of property within the city to be incorporated into the county. After review of the statute the Post Acknowledgement Plan Amendment process appeared to be a very effective method for meeting the legal requirements of statute by providing the necessary hearings and legislative actions required of both jurisdictions. ORS 222.460 is attached with this report as "Exhibit C".

APPLICABLE STATEWIDE PLANNING GOALS

The applicable statewide planning goals for the actions associated with City of Boardman Post Acknowledgement Plan Amendment 01-2008 are Goal 1, Goal 2, Goal 11, Goal 12 and Goal 14.

Goal 1 – Citizen Involvement: The Post Acknowledgement Plan Amendment process to change the City's Comprehensive Plan and Zoning Map by withdrawal of territory from the city limits meets Goal 1 by providing public hearings at Planning Commission level covering a Quasi-Judicial review and at the City Council which provides a Legislative review. There will be no fewer than three public hearings on this issue at the city level and no fewer than two at the Morrow County level concerning this Post Acknowledgement Plan Amendment.

Goal 2 – Land Use Planning: The coordination of separate and concurrent Post Acknowledgement Plan Amendment processes by the City of Boardman and Morrow County, notification and consultation with affected agencies and public notification will allow for adequate public and agency input on the Post Acknowledgement Plan Amendment. Goal 2 is met by correcting the discrepancies discovered when new survey data indicated violations of City Development Code and County Zoning Ordinances.

Goal 11 – Public Facilities: Goal 11 criteria are not applicable in this Post Acknowledgement Plan Amendment there are no public services to the property in question and no short term plan for public facilities to be available for the property.

Goal 12 – Transportation: Goal 12 criteria are not applicable in this Post Acknowledgement Plan Amendment as there is no increase to existing traffic on City, County or State roadways.

Goal 14 – Urbanization: Goal 14 criteria are met in this Post Acknowledgement Plan Amendment as this action will maintain the property within the Urban Growth Boundary for annexation in the future allowing a more efficient transition to city limits at an appropriate time. By allowing for the existing use, allowed by Morrow County Zoning Ordinances, which would not be viable in the city under current Boardman Development Code, it allows for best practicable use of the property into the near future.

FINDINGS OF FACT

- 1) On November 14, 2007, the applicant submitted a qualified application for a partition of 6.71 acres from tax lot #407 of Morrow County Tax Map 4N 25 16.
- 2) On January 18, 2008, the city received electronically the results of the Survey performed by Rogers Surveying Inc., P.S.
- 3) The City began review of the drawings on January 21, 2008, to determine the status of the partition request for tax lot #407 of Morrow County Tax Map 4N 25 16.
- 4) In the January 21, 2008 review of the survey data from Rogers Surveying Inc., P.S. for the partition application it was determined there were several legal issues to be resolved to proceed with the original partition request.
- 5) The City Community Development Director consulted the Morrow County Planning

Director, the NE Region Department of Land Conservation and Development Regional Planner and several websites including League of Oregon Cities, State of Oregon DLCD, Statutes, Administrative Rules and case law and head notes about the process necessary to remove property from within the city limits.

- 6) On February 19, 2008, The Morrow County Planning Director and the City of Boardman Community Development Director met with the applicant to discuss possible options and to determine the direction the applicant wished to pursue.
- 7) On February 19, 2008, the Boardman Community Development Director Discussed this matter with the City of Boardman Council during the regularly scheduled City Council meeting to determine City Council position on pursuing withdrawal of territory from the city limits to correct the discrepancies brought forward by the applicant's survey data. The City Council indicated likely support for the process identified and instructed staff to begin the process for hearings.
- 8) On February 26, 2008, the applicant submitted a letter requesting removal of 0.77-acre of property on tax lot #407 of Morrow County Tax Map 4N 25 16 from the Boardman city limits.
- 9) On February 29, 2008, a "DLCD NOTICE OF PROPOSED AMENDMENT" was mailed to the Department of Land Conservation and Development with April 16, 2008, identified as the date of the first evidentiary hearing on the matter.
- 10) On March 26, 2008, Public Notice of a public hearing before the Boardman Planning Commission scheduled for April 16, 2008, was published in the East Oregonian newspaper, posted on the property and sent to all property owners within 250 feet of the subject properties meeting public notification requirements.
- 11) "Oregon Revised Statute 222.460 Procedures for withdrawal of territory; content of resolution; hearing; election; taxes and assessments.", is the regulating statute for removal of property within city limits.
- 12) Pursuant to Oregon Revised Statute 222.460 (1) the City of Boardman Charter does not expressly prohibit the removal of territory from the boundaries of the city, as long as, the public interest will be furthered by a withdrawal or detachment of territory from the city as provided in Oregon Revised Statute 222.460 (2).
- 13) Tentatively on April 15, 2008, the Boardman City Council will take action on Resolution # 10-2008 pursuant to Oregon Revised Statute 222.460 (2) to remove 0.77-acre of territory of tax lot #407 of Morrow County Tax Map 4N 25 16, of which contained all elements as required pursuant to Oregon Revised Statute 222.460 (3). Resolution #10-2008 is attached with this report as "Exhibit D".

- 14) Pursuant to Oregon Revised Statute 222.460 (4) a public hearing in front of the Boardman Planning Commission has been scheduled for April 16, 2008, in association with Post Acknowledgement Plan Amendment 01-2008.
- 15) Pursuant to Oregon Revised Statute 222.460 (4) The Boardman City Council has scheduled a public hearing for the matter on May 6, 2008, to hear public comment on the withdrawal of territory.
- 16) On May 6, 2008, the Boardman City Council has tentatively scheduled a hearing to hear public comment on Post Acknowledgement Plan Amendment 01-2008.
- 17) Pursuant to Oregon Revised Statute 222.460 (5), upon completion of the public hearings the City Council may alter the boundaries by withdrawal of territory identified by entering an order to do so with a final hearing to be held no sooner than 20 days and no later than 50 days from the order.
- 18) Pursuant to Oregon Revised Statute 222.460 (6), no election on the withdrawal of the affected territory from the city will be necessary as the applicants are the only electors in the affected territory being withdrawn from the city boundaries, therefore precluding other electors with standing for submission of written requests for an election.
- 19) As there are no electors, other than the applicants, there would be no qualified electors to call for an election pursuant to Oregon Revised Statute 222.460 (7-9).
- 20) Pursuant to Oregon Revised Statute 222.460 (10), the applicant, upon submission of the final order shall remain subject to any bonded or other indebtedness existing at the time of the entry of the final order by the City.
- 21) Submitted as "Exhibit E" is a letter on the interpretation of Oregon Revised Statute 222.460 by City Counsel, Doug Hojem, of Corey, Byler, Rew, Lorenzen & Hojem L.L.P.

SUMMARY, CONCLUSIONS AND RECOMMENDATIONS

The applicant's request for a partition on tax lot #407 of 4N 25 16 appeared to a very straight forward request until new survey data indicated several discrepancies which would violate Boardman Development Code, Morrow County Zoning Ordinances, and applicable state rules and laws. After discussion of the issues by the City, County and applicant, and the subsequent request of the applicant to remove 0.77-acre from the Boardman city limits, the definition of how to accomplish the applicant's original request, while meeting applicable state rules and laws, was identified and Post Acknowledgement Plan Amendment 01-2008 was initiated. This Post Acknowledgement Plan Amendment is to change the Comprehensive Plan and Zoning Map to allow for the removal of the property allowing the applicant to meet City, County and State rules and laws.

The coordination with Morrow County and the timing issues for public hearings associated with this Post Acknowledgement Plan Amendment and the statutory requirements for withdrawal of territory, outlined in Oregon Revised Statute 222.460, will require numerous levels of public notification and public hearings to accomplish. The timing of these separate, yet concurrent, City and County actions will require action at each level in a very timely manner by the Boardman Planning Commission and Boardman City Council as well as the Morrow County Planning Commission and Morrow County Court.

The request of the applicant is not only reasonable it is quite admirable. The applicant wishes to correct the discrepancies found with the new survey data and bring them to a legally defensible land use for the applicant, the County and the City.

Staff recommendation is for the Planning Commission to understand the proposal and request to a level where action can be taken to move Post Acknowledgement Plan Amendment 01-2008 forward to the City Council with any additional conditions the Commission may require; however, staff is not recommending any additional conditions because the request is so reasonable.

Exhibit "A"

PARTITION PLAT NO. LOCATED IN THE SE & SW 1/4, OF SECTION 10 TOWNSHIP 4 NORTH, RANGE 24 EAST, W.M. CITY OF BOARDMAN, MORROW COUNTY, OREGON

RECORD LEGAL DESCRIPTIONS

SECTION 10, TOWNSHIP 4 NORTH, RANGE 24 EAST, W.M., MORROW COUNTY, OREGON. THE EAST HALF OF THE SOUTHWEST QUARTER OF SECTION 10, TOWNSHIP 4 NORTH, RANGE 24 EAST, W.M., MORROW COUNTY, OREGON. THE WEST HALF OF THE SOUTHWEST QUARTER OF SECTION 10, TOWNSHIP 4 NORTH, RANGE 24 EAST, W.M., MORROW COUNTY, OREGON. THE NORTHWEST QUARTER OF SECTION 10, TOWNSHIP 4 NORTH, RANGE 24 EAST, W.M., MORROW COUNTY, OREGON. THE SOUTHWEST QUARTER OF SECTION 10, TOWNSHIP 4 NORTH, RANGE 24 EAST, W.M., MORROW COUNTY, OREGON.

OWNER'S DECLARATION

I, THE UNDERSIGNED, OWNER OF THE LAND DESCRIBED HEREIN, HEREBY DECLARE THE LAND TO BE MY OWN AND THAT I AM NOT A MINOR, AN INCOMPETENT, AN INTERDICTED PERSON, A PERSON UNDER A GUARDIANSHIP, A PERSON UNDER A CURATEL, A PERSON UNDER A RECEIVERSHIP, A PERSON UNDER A TRUST, OR A PERSON WHO HAS BEEN DECEASED OR WHOSE RIGHTS ARE OTHERWISE RESTRICTED BY LAW.

ACKNOWLEDGMENT

I, THE UNDERSIGNED, HAVE BEEN DULY INFORMED OF THE NATURE AND CONSEQUENCES OF THE FOREGOING, AND VOLUNTARILY AND KNOWINGLY HAVE EXECUTED THIS INSTRUMENT OF CONVEYANCE FOR THE PURPOSES AND OBJECTS THEREIN SET FORTH. I HAVE NOT BEEN UNDER ANY UNLAWFUL INFLUENCE, AND I HAVE NOT BEEN UNDER ANY UNLAWFUL RESTRAINT.

APPROVALS

CITY OF BOARDMAN PLANNING COMMISSION _____ DATE _____
MORROW COUNTY CLERK _____ DATE _____
MORROW COUNTY ASSESSOR _____ DATE _____
MORROW COUNTY SHERIFF _____ DATE _____

I HEREBY CERTIFY THAT ALL TAXES AND UNDEVELOPED ACCOUNTS HAVE BEEN PAID IN FULL BY THE UNDERSIGNED AS OF THE DATE OF RECORDING OF THIS INSTRUMENT.

WARRANTY COUNTY RECORDER _____ DATE _____
STATE OF OREGON _____
COUNTY OF MORROW _____

I HEREBY CERTIFY THAT THIS INSTRUMENT WAS RECEIVED AND FILED FOR RECORD ON _____ DATE OF _____ 2007 A.D. AT _____ OREGON _____
WITH RECORDS IN THE NO. _____
BOOK _____ PAGE _____

MORROW COUNTY CLERK _____

AGENT _____

CLIENT _____

PROJECT _____

SCALE 1" = 200' _____

APPROVED FOR _____

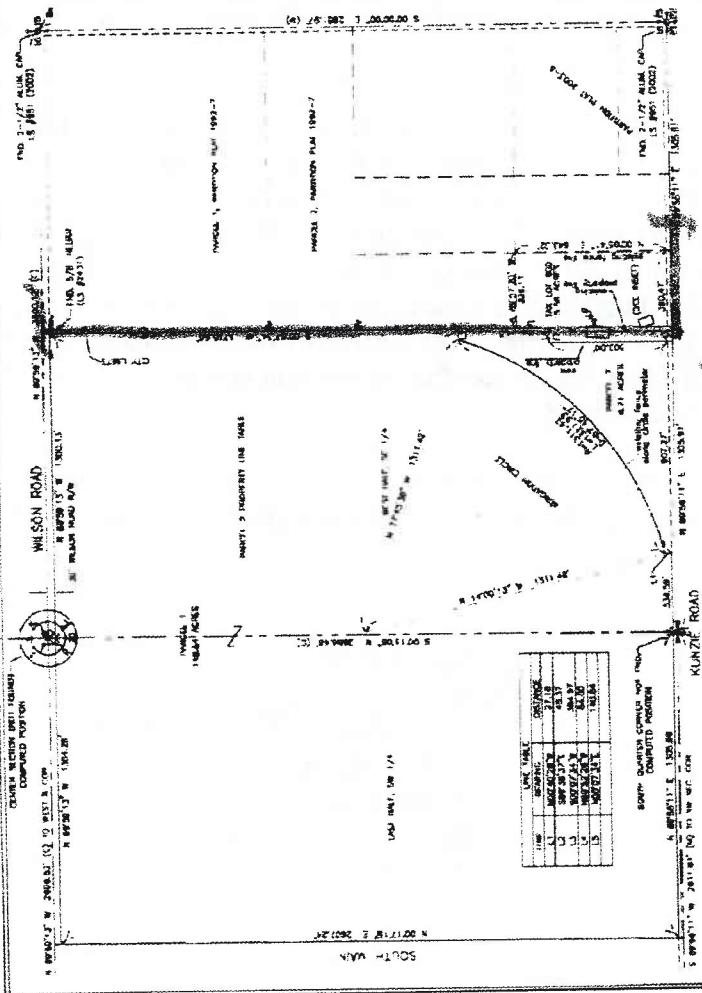


Table with 4 columns: LINE, BEARING, DISTANCE, POINTS

LINE	BEARING	DISTANCE	POINTS
1	S 89° 17' 12" E	202.24	...
2	N 07° 17' 12" W	202.24	...
3	S 89° 17' 12" E	202.24	...
4	N 07° 17' 12" W	202.24	...

SURVEY NARRATIVE

ON JANUARY 2007, THE UNDERSIGNED WAS Hired BY THE BOARDMAN PLANNING COMMISSION TO CONDUCT A SURVEY OF THE LAND DESCRIBED IN THE PLAT AND TO PREPARE THIS INSTRUMENT. THE SURVEY WAS CONDUCTED ON JANUARY 2007, AND THE INSTRUMENT WAS FILED FOR RECORD ON JANUARY 2007. THE SURVEY WAS CONDUCTED IN ACCORDANCE WITH THE OREGON SURVEYING ACT AND THE RULES AND REGULATIONS OF THE OREGON SURVEYING BOARD.

NOTES:

- THE BOUNDARIES OF THE SURVEYED LAND ARE SHOWN IN THIS PLAT AS BEING THE BOUNDARIES OF THE SURVEYED LAND AS SHOWN IN THE PLAT.
- (M) - MEASURED BEARING & DISTANCE TO THE POINT.
- (C) - COMPUTED BEARING & DISTANCE TO THE POINT.
- (X) - POINTS NOT VISIBLE FROM THE SURVEY STATION.
- (S) - DISTANCE FROM THE POINT TO THE SURVEY STATION.
- THE SURVEY WAS CONDUCTED IN ACCORDANCE WITH THE OREGON SURVEYING ACT AND THE RULES AND REGULATIONS OF THE OREGON SURVEYING BOARD.

SURVEYOR'S CERTIFICATION

I, THE UNDERSIGNED, A PROFESSIONAL LAND SURVEYOR, HAVE PERSONALLY AND INDEPENDENTLY CONDUCTED THE SURVEY DESCRIBED IN THIS INSTRUMENT, AND I HEREBY CERTIFY THAT ALL INSTRUMENTS HAVE BEEN BLANKETED AND FILED FOR RECORD IN ACCORDANCE WITH THE OREGON SURVEYING ACT AND THE RULES AND REGULATIONS OF THE OREGON SURVEYING BOARD.



AGENT: MIKE ALLISON
PROJECT: PARTITION PLAT
PORTION OF SOUTH HALF - SECTION 10
SCALE: 1" = 200'
DATE: JAN 25, 2007

EXISTING City Limits
Proposed City Limits

Exhibit "B"

February 26, 2008

City of Boardman
P.O. Box 229
Boardman, Oregon 97818
ATTN: Planning Department

RE: Request to remove 0.77 acre of Tax Lot #407 of Morrow County Tax Map 4N 25 16 from City Limits.

This letter is to request the removal of 0.77 acre of tax lot #407 of tax map 4N 25 16 from the city limits of Boardman. Upon survey work performed in association with a partition request to the city, for this lot, it was discovered the city limits line runs right through the middle of the shop building associated with my home lot (tax lot # 605 of 4N 25 16). My home lot is within the county and I would like to have my shop and another accessory structure on the same lot, which is what I believed was the case until the survey work was completed.

From meeting with Barry Beyeler, planner for the City of Boardman and Carla McLane, planner for Morrow County, it was determined the shop in its current location would be a violation of both the city and county zoning codes. As a result, I would like to have the county perform a lot line adjustment to incorporate all structures associated with my home lot into one lot. However, in order to accomplish this action a strip of property 64 feet wide (E-W) and 523 feet (N-S) needs to be removed from the city limits to legally accomplish this lot line adjustment. I will provide all of the survey data necessary for the city to take this action, which will allow for the confusion and non-compliant nature of the structures on these two lots to be corrected.

I understand this is an unusual request and appreciate the complications created by the discovery with this survey data. Thank you in advance for your consideration and action on this request.

Respectfully,



Mike Allison
70641 Kunze Ln.
Boardman, OR 97818
541-571-7139

Exhibit "C"

WITHDRAWAL OF TERRITORY

222.460 Procedures for withdrawal of territory; content of resolution; hearing; election; taxes and assessments. (1) Except as expressly prohibited by the city charter, when the legislative body of a city determines that the public interest will be furthered by a withdrawal or detachment of territory from the city, the legislative body of the city, on its own motion, may order the withdrawal of territory as provided in this section.

(2) A withdrawal of territory from the city shall be initiated by a resolution of the legislative body of the city.

(3) The resolution shall:

(a) Name the city and declare that it is the intent of the legislative body of the city to change the boundaries of the city by means of a withdrawal of territory;

(b) Describe the boundaries of the affected territory; and

(c) Have attached a county assessor's cadastral map showing the location of the affected territory.

(4) Not later than 30 days after adoption of the resolution, the legislative body of the city shall hold a public hearing at which the residents of the city may appear and be heard on the question of the withdrawal of territory. The legislative body of the city shall cause notice of the hearing to be given in the manner required under ORS 222.120 (3).

(5) After receiving testimony at the public hearing, the legislative body of the city may alter the boundaries described in the resolution to either include or exclude territory. If the legislative body of the city still favors the withdrawal of territory pursuant to the resolution, as approved or modified, it shall enter an order so declaring. The order shall set forth the boundaries of the area to be withdrawn. The order shall also fix a place, and a time not less than 20 nor more than 50 days after the date of the order, for a final hearing on the resolution. The order shall declare that if written requests for an election are not filed as provided by subsection (6) of this section, the legislative body of the city, at the time of the final hearing, will adopt a resolution or ordinance detaching the territory from the city.

(6) An election shall not be held on the question of withdrawal of the affected territory from the city unless written requests for an election are filed at or before the hearing by not less than 15 percent of the electors or 100 electors, whichever is the lesser number, registered in the territory proposed to be withdrawn from the city.

(7) At the time and place set for the final hearing upon the resolution for withdrawal, if the required number of written requests for an election on the proposed withdrawal have not been filed, the legislative body of the city shall, by resolution or ordinance, declare that the territory is detached from the city.

(8) If the required number of requests for an election are filed on or before the final hearing, the legislative body of the city shall call an election in the city upon the question of the withdrawal of the affected territory.

(9) If an election is called and a majority of the votes cast at the election is in favor of the withdrawal of the designated area from the city, the legislative body of the city shall, by resolution or ordinance, declare that the territory is detached from the city. If the majority of the votes cast is against the withdrawal, the legislative body of the city shall enter an order declaring the results of the election and that no withdrawal shall occur.

(10) The described area withdrawn shall, from the date of entry of the order, be free from assessments and taxes levied thereafter by the city. However, the withdrawn area shall remain subject to any bonded or other indebtedness existing at the time of the order. The proportionate share shall be based on the assessed valuation, according to the assessment roll in the year of the levy, of all the property contained in the city immediately prior to the withdrawal. [1985 c.702 §2; 1989 c.1063 §13]

Exhibit "D"

**CITY OF BOARDMAN
RESOLUTION NO. 10 - 2008**

**A RESOLUTION TO REMOVE 0.77-ACRE OF TAX LOT 407 OF MORROW
COUNTY TAX MAP 4N 25 16 FROM THE CITY LIMITS OF THE CITY OF BOARDMAN**

WHEREAS, as a result of new survey data performed by a property owner indicated accessory structures associated with a county lot encroach into city limits; and

WHEREAS, a formal request to remove 0.77-acre of Tax Lot #407 of Morrow County Tax Map 4N 25 16 was received from the owner of the property; and

WHEREAS, the current city limits run through one of the accessory structures which is partially on tax lot #407 and partially on tax lot #605 of Morrow County Tax Map 4N 25 16; and,

WHEREAS, the primary structure, or home, is located on tax lot #605 of Morrow County Tax Map 4N 25 16, which the accessory structures in question are associated with; and

WHEREAS, tax lot #605 is within the Urban Growth Boundary and withdrawal of the territory described below would allow for the withdrawn territory to be annexed at a future date; and

WHEREAS, with the new survey data provided it has become apparent the location of the accessory structures would not comply with the provisions of City of Boardman Development Code Chapter 2.1.190(F)(1) should the property remain within the City limits; and

WHEREAS, pursuant to Oregon Revised Statute 222.460 – WITHDRAWAL OF TERRITORY, and in particular Oregon Revised Statute 222.460(2) the City Council of the City of Boardman must initiate the withdrawal of territory by resolution of the legislative body of the city and Oregon Revised Statute 222.460(3) the resolution must provide intent of the legislative body, description of the territory to be withdrawn, and maps to indicate the territory; and

WHEREAS, the Boardman City Council intends to change boundaries of the City of Boardman by withdrawal of a strip of land 64 feet east and west and 523 feet north and south in the most southwesterly corner of tax lot # 407 of Morrow County Tax Map 4N 25 16; and

WHEREAS, Exhibit A indicating the survey data which led to the property owner's request and Exhibit B which is Morrow County Tax Map 4N 25 16 are attached with this Resolution to properly identify the territory being withdrawn from the boundaries of the city;

NOW, THEREFORE, BE IT RESOLVED, pursuant to Oregon Revised Statute 222.460, the Boardman City Council intends to change the city boundaries by withdrawal of 0.77-acre of tax lot #407 of Morrow County Tax Map 4N 25 16 as described above.

Adopted this _____ day of _____, 2008

CITY OF BOARDMAN

Mayor

Councilor

Councilor

Councilor

Councilor

Councilor

Councilor

ATTEST:

City Recorder

Note: 222.460 and 222.465 were added to and made a part of ORS chapter 222 by legislative action but were not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

222.465 Effective date of withdrawal from domestic water supply district, water control district or sanitary district. Notwithstanding any provision of this chapter or ORS chapter 199 which provides a different effective date, when territory is withdrawn by a city from a domestic water supply district organized under ORS chapter 264, a water control district organized under ORS chapter 553 or a sanitary district organized under ORS chapter 450, if the ordinance, annexation or incorporation that results in the withdrawal is enacted or approved after March 31 in any year, the effective date of the withdrawal of territory shall be July 1 in the following year. However, if the ordinance, annexation or incorporation that results in the withdrawal is enacted or approved before April 1 in any year, the effective date of the withdrawal of territory shall be July 1 in the same year. When less than the entire area of a domestic water supply district organized under ORS chapter 264, a water control district organized under ORS chapter 553 or a sanitary district organized under ORS chapter 450 is annexed by or incorporated into a city, the district shall, for purposes of administration, operation and the collection of service charges, continue to operate that portion of the district separately until the effective date of the withdrawal of territory as determined under this section. This section does not limit any agreement between a city and a district under ORS 222.530 (5), 222.540 (4) or 222.560 (4). [1985 c.702 §4a]

Note: See note under 222.460.

Exhibit "E"

COREY, BYLER, REW, LORENZEN & HOJEM, L.L.P.
ATTORNEYS AT LAW

STEVEN H. COREY*
HENRY C. LORENZEN
DOUGLAS E. HOJEM
PATRICIA SULLIVAN
DAVID M. BLANC*
TIMOTHY P. O'ROURKE
STEVEN N. THOMAS
*Admitted in Oregon and Washington

222 S.E. DORION AVENUE
P.O. BOX 218
PENDLETON, OREGON 97801-0218
TELEPHONE (541) 276-3331
FAX (541) 276-3148

GEORGE H. COREY, RETIRED
LAWRENCE B. REW, RETIRED
ROBERT E. O'ROURKE, RETIRED
STEPHEN M. BLOOM, RETIRED
ALEX M. BYLER, DECEASED

March 10, 2008

Mr. Barry Beyeler
City of Boardman
P. O. Box 229
Boardman, Oregon 97818

Re: ORS 222.460

Dear Barry:

You asked me to have a look at ORS 222.460, and more particularly Subsection 6 thereof so that I could advise you as to its application in the following circumstance: As I understand it, you want to remove .77 acres of land from the city boundary. As I understand it, the owner of that land applied to the City asking for the withdrawal of that small parcel. I further understand that there are no residences, and that this is basically bare ground.

You were asking whether the City had to conduct an election under Subsection 6. That subsection states:

"An election shall not be held on the question of withdrawal of the affected territory from the City unless written requests for an election are filed at or before the hearing by not less than 15 percent of the electors or 100 electors, whichever is the lesser number, registered in the territory proposed to be withdrawn from the City."

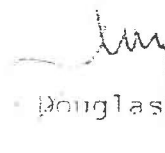
You have told me that there are no homes nor residences on this .77 acre parcel. Hence, there should be no electors "registered in the territory proposed to be withdrawn from the City." And that assumption I think is conclusive when we consider that the owner of this bare land is the applicant.

Mr. Barry Beyeler
March 10, 2008
Page Two

So my opinion is that you do not need to have an election. However, if you do receive some objections and someone purports to be an elector that is registered in the property that would be withdrawn, you may need to contact the county elections office to see if the person who purports to be such an elector in fact meets the terms of the statute. Now I think the possibility of that occurring is extremely remote, if not impossible. But I would suggest that if you do receive an objection, you should do some investigation with the elections department to see what those objectors have as a registered address for their voting privileges.

If you have any further questions, please don't hesitate to call.

Yours very truly,


Douglas E. Hojem

DEH/sl