BEFORE THE CODE COMPLIANCE HEARINGS OFFICER
OF WASHINGTON COUNTY, OREGON

In the Matter of Robert Duncan Respondent	**FINDINGS AND FINAL ORDER** Notices of Civil Violation Nos. 00132 & 00136 Case Nos: UV17-0088 & UV17-0147

I. BACKGROUND INFORMATION

Site Location: 42585 NW Cedar Canyon Road, Banks, Oregon (Tax Map 2N4250002300)

Description of Alleged Violations: Unpermitted auto repair in the FD-20 district (NCV 00132) and unpermitted fill in the 100-year flood plain (NCV 00136).

II. ORDER

1. NCV Nos. 00132 and 00136, alleging that Respondent is responsible for violation of Washington County Community Development Code ("CDC") Sections 309 and 421 are affirmed.

2. Respondent is fined $2,500 for the violation of CDC 309. $1,250 of this penalty is suspended and will be dismissed if Respondent remedies the violation of CDC 309 by ceasing all prohibited commercial activities on the Property within sixty (60) calendar days from the date of this Final Order. If Respondent fails to remedy the violation within sixty (60) calendar days, then the full $2,5000 monetary penalty shall be imposed.

3. Respondent is fined an additional $2,500 for the violation of CDC 421.

a. This penalty is suspended and will be entirely dismissed if Respondent within sixty (60) calendar days from the date of this Final Order submits a delineation demonstrating that the fill was placed entirely outside of the actual flood plain boundary.

b. If the delineation demonstrates that the fill is located in the flood plain, the fine will be reduced to $1,000, provided Respondent submits a flood plain alteration application within sixty (60) calendar days from the date of this Final Order.

c. If Respondent fails to submit a flood plain and drainage hazard area delineation and/or a flood plain alteration application within sixty (60) calendar days from the date of this Final Order, then the full $2,5000 monetary penalty shall be imposed.

4. All penalties will be due within 30 days of issuance of an invoice by the County.

III. SUMMARY OF PROCEEDINGS

1. Pursuant to Washington County Code ("WCC") 1.14.170, Joe Turner, the County's duly authorized Hearings Officer, held a hearing on the above cited violations beginning at 9:30 a.m. on March 15, 2018.

2. Washington County was represented by senior planner Stephen Shane and principal planner Tom Harry. The County submitted copies of Exhibits PH-2 through PH-22 into the record, including copies of the Notices of Civil Violation ("NCVs") Nos. 00132 & 00136, which were issued to Robert Duncan ("Respondent"), Exhibits PH-1 and PH-16. City of Banks planner Stacey Goldstein also testified in support of the Citations. Banks city attorney Dan Kearns submitted Exhibit H-1. Respondent appeared at the hearing personally and through his attorney, Dean Alterman. Mr. Alterman submitted Exhibit H-2. All testimony was under oath.

3. At the conclusion of the hearing the hearings officer held the record open for two weeks, until March 29, 2018, to allow the County an opportunity to submit additional testimony and evidence. The hearings officer held the record open for another two weeks, until May 12, 2018, to allow Respondent an opportunity to respond to the County's submittal, and for a final week, until May 19, 2018, for the County's closing argument. During the open record period the parties submitted Exhibits ORA-1 through ORA-3, OR-B, and ORC-1.

IV. FINDINGS

1. Respondent is the legal owner of the 0.66-acre property located at 42585 NW Cedar Canyon Road, Banks, Oregon (Tax Map 2N4250002300) (the "Property"). Respondent purchased the Property on April 30, 2015. (Ex. PH-5). Respondent leases the Property to Duncan Automotive Services, LLC. (Testimony of Alterman and Respondent). Duncan Automotive Services, LLC is operating a commercial automotive repair business on the Property. (Testimony of Alterman and Respondent and Exs. PH-2b, PH-2d, & PH-2e).

2. The Property is within the City of Banks' Urban Growth Boundary ("UGB") and currently zoned Washington County FD-10 (Future Development, 10-acre minimum lot size). (Shane test.).

3. The Property was originally zoned F-1 in January 1970. (Ex. H-1). Most non-farm commercial uses, including auto repair, were prohibited in that zone. (Attachment D of Ex. ORA-1).

4. The Property was rezoned to AF-20 in 1982. (Ex. H-1). Most non-farm commercial uses, including auto repair, were prohibited in that zone. (Attachment E of Ex. ORA-1).

5. The Property was rezoned to FD-10 in 1982. (Ex. H-1). Most non-farm commercial uses, including auto repair, are prohibited in that zone. (Attachment F of Ex. ORA-1 and Attachment G of Ex. ORA-2).

6. In 1958 the Property and the lot abutting the southeast corner of the Property, in the northwest quadrant of the NW Cedar Canyons Road/Nehalem Highway intersection were in the same ownership. The corner lot housed a gas station/shop. Both properties were used for automotive related uses; a gas station on the corner lot and vehicle towing, storage, and repair on the Property. (Attachments A through D[1] of Exhibit ORB-1). In 1958 there was a building on the Property in roughly the same location as the current shop building that was used in conjunction with the towing and auto repair business. (Attachment A of Exhibit ORB-1). However that building on the Property was torn down at some point prior to 1984. (Attachment A of Exhibit ORB-1 and Attachment B of Ex. H-2). The gas station use on the corner lot ceased around 1974. (Attachment C of Exhibit ORB-1). The auto repair business continued on the Property until at least 1982. (Attachment D of Exhibit ORB-1).

7. John and Sharon Hasenkamp owned the Property "from approximately 1984 through April 2005." There was no shop building on the Property when Mr. Hasenkamp purchased the Property. (Attachment B of Ex. H-2). Mr. Hasenkamp obtained a Washington County building permit for a 2,560 square foot "storage pole building" on the Property on May 17, 1985. The building permit application states that the proposed building was "not for commercial use." (Attachment A of Ex. H-2 & Attachment B of Ex. ORA-1). Mr. Hasenkamp completed the shop building in 1986. Mr. Hasenkamp operated Triangle Sheet Metal from the shop on the Property between 1986 and 1991. After he closed his business Mr. Hasenkamp "[c]ontinued to use the shop to fabricate sheet metal products for paying customers." (Attachment B of Ex. H-2). The Hasenkamp's sold the Property to "the Stockers" in April 2005. (*Id.*).

8. Ronnie Saner and his wife owned the Property from December 2010 to April 2015. (Attachment D of Ex. H-2). Mr. Saner formed Ronnie Saner Racecraft, LLC (aka RS Racecraft), a research and development operation and motorcycle modification business, on March 23, 2005. On June 29, 2011 Ronnie Saner Racecraft, LLC listed the Property as its principle place of business. (Attachment E of Ex. H-2). RS Racecraft "provided the technical services and team staff for Latus Motors Racing [between 2009 and 2013]." In 2013 Mr. Saner began his own professional motorcycle racing team. (Attachment C of Ex. H-2). Mr. Saner testified that "While living on the property, I used the shop to run a motorcycle modification business." (Attachment D of Ex. H-2). However, in June 2010 Mr. Saner's attorney stated that the Saners "[a]re not operating a

[1] For ease of reference, the hearings officer identifies the letters attached to Exhibit ORB-1 with the following labels:
March 14, 2018 letter from Bob McGrotty - Attachment A;
April 11, 2018 letter from Robert Weaver - Attachment B;
April 12, 2018 letter from Jerry Wick - Attachment C;
April 11, 2018 letter from Todd W. Duncan - Attachment D;

business from their residence. The pole barn [on the Property] is being utilized for personal use, or for agricultural purposes only." (Attachment C of Ex. ORA-1 and Attachment B of Ex. ORA-2). Mr. Saner's attorney further stated that in 2009 Mr. Saner began work as a crew chief on an AMA Race Team for Latus Motorsports. "He travels with his family in the RV that is parked at [the Property] all over the United States to make his living at the race tracks...Mr. Saner does not conduct a business from [the Property]." (Attachment A of Ex. ORA-2).

9. Mr. Alterman submitted aerial photos of the Property from June 1994, May and August 2002, August 2005, June 2006, July 2008, May 2010, August 2010, August 2011, July 2012, July 2013, July 2014, April 2015, July 2016, and May 2017. The photos show various numbers and types of vehicles parked around the shop building on the Property. (Attachments G of Ex. H-2).

10. Portions of the Property are within the 100-year flood plain of the West Fork of Dairy Creek (Ex. PH-22). Respondent placed asphalt chippings over the existing gravel surfaced vehicle parking and maneuvering areas on the Property sometime on or before September 21, 2017. (Alterman and Goldstein test. and Exs. PH-11, PH-17, PH-18a & b, and H-2). The County issued a Stop Work Order prohibiting this activity on October 9, 2017. (Ex. PH-17).

VI. CONCLUSIONS

Citation No. NCV 00132 - unpermitted auto repair:

1. The county has the burden of proving the alleged zoning violation by a preponderance of the evidence. Washington County Code ("WCC") Section 1.08.050.C. The hearings officer finds that the County met that burden by demonstrating that Respondent is operating a commercial automotive repair facility on Property zoned FD-10, where commercial auto repair is a prohibited use. CDC 309-5.1 provides that structures or uses not specifically authorized in Section 309 are prohibited in the FD-10 zone. Automotive repair is not listed as a permitted use in Section 309. Therefore it is prohibited, pursuant to CDC 309-5.1.

2. Respondent argued that commercial auto repair is permitted on the Property as a nonconforming use. This is an affirmative defense and Respondent has the burden of proof to demonstrate by a preponderance of the evidence that this nonconforming use exists on the Property. *Lane County v. Bessett*, 46 Or App 319, 323-24, 612 P.2d 297 (1980). (Respondent in an enforcement case has the burden of proving the existence of a nonconforming use before relying on the existence, nature and extent of such a nonconforming use as a justification for continuing the use).

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3. ORS 215.130 provides, in relevant part:

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> (5) The lawful use of any building, structure or land at the time of the enactment or amendment of any zoning ordinance or regulation may be continued. Alteration of any such use may be permitted subject to subsection (9) of this section. Alteration of any such use shall be permitted when necessary to comply with any lawful requirement for alteration in the use. Except as provided in ORS 215.215, a county shall not place conditions upon the continuation or alteration of a use described under this subsection when necessary to comply with state or local health or safety requirements, or to maintain in good repair the existing structures associated with the use. A change of ownership or occupancy shall be permitted.
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> (6) Restoration or replacement of any use described in subsection (5) of this section may be permitted when the restoration is made necessary by fire, other casualty or natural disaster. Restoration or replacement shall be commenced within one year from the occurrence of the fire, casualty or natural disaster. If restoration or replacement is necessary under this subsection, restoration or replacement shall be done in compliance with ORS 195.260 (1)(c).
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> (7)(a) Any use described in subsection (5) of this section may not be resumed after a period of interruption or abandonment unless the resumed use conforms with the requirements of zoning ordinances or regulations applicable at the time of the proposed resumption.
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> ...
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> (8) Any proposal for the verification or alteration of a use under subsection (5) of this section, except an alteration necessary to comply with a lawful requirement, for the restoration or replacement of a use under subsection (6) of this section or for the resumption of a use under subsection (7) of this section shall be subject to the provisions of ORS 215.416. An initial decision by the county or its designate on a proposal for the alteration of a use described in subsection (5) of this section shall be made as an administrative decision without public hearing in the manner provided in ORS 215.416(11).
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> (9) As used in this section, "alteration" of a nonconforming use includes:
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> (a) A change in the use of no greater adverse impact to the neighborhood; and
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> (b) A change in the structure or physical improvements of no greater adverse impact to the neighborhood.

(10) A local government may adopt standards and procedures to implement the provisions of this section. The standards and procedures may include but are not limited to the following:
  (a) For purposes of verifying a use under subsection (5) of this section, a county may adopt procedures that allow an applicant for verification to prove the existence, continuity, nature and extent of the use only for the 10-year period immediately preceding the date of application. Evidence proving the existence, continuity, nature and extent of the use for the 10-year period preceding application creates a rebuttable presumption that the use, as proven, lawfully existed at the time the applicable zoning ordinance or regulation was adopted and has continued uninterrupted until the date of application;
  (b) Establishing criteria to determine when a use has been interrupted or abandoned under subsection (7) of this section; or
  (c) Conditioning approval of the alteration of a use in a manner calculated to ensure mitigation of adverse impacts as described in subsection (9) of this section.
(11) For purposes of verifying a use under subsection (5) of this section, a county may not require an applicant for verification to prove the existence, continuity, nature and extent of the use for a period exceeding 20 years immediately preceding the date of application.

4. CDC 440-4 provides:

> If a nonconforming use of land or structure is discontinued or abandoned for more than one (1) year for any reason except bona fide efforts to market the property or structure, it shall not be resumed unless the resumed use conforms with the applicable requirements of this Code at the time of proposed resumption. Once a nonconforming use has been changed to a conforming use, no structure or land shall be permitted to revert to a nonconforming use. Any future uses shall conform with the applicable requirements of this Code.

5. Therefore, Respondent must demonstrate that a commercial use was legally established on the Property prior to January 1970, the date restrictive zoning first applied to the Property, as well as the scope and nature of the use at that time. *Lawrence v. Clackamas Co.*, 40 Or. LUBA 507, 509 (2001), *aff'd* 180 Or App 495, 497, 42 P.3d 1192 (2002), *citing Spurgin v. Josephine Co*, 28 Or LUBA 383, 390 (1994).

a. Contrary to Respondent's assertion at p. 3 of Exhibit ORB-1, proof of the existence and continuity of the use for the past twenty years does not create a rebuttable presumption that the use existed at the time zoning was applied to the Property.

i. ORS 215.130(10) provides that the County *may* adopt procedures whereby proof of the existence, continuity, nature and extent of a nonconforming use for the 10-year period immediately preceding the date of application creates a rebuttable presumption that the use, as proven, lawfully existed at the time restrictive zoning was adopted. However Washington County has not adopted such procedures. *See* CDC 440. Therefore this presumption does not apply in this case.

ii. ORS 215.130(11) provides that the County may not require an applicant for verification to prove the existence, continuity, nature and extent of the use for a period exceeding 20 years immediately preceding the date of application. However the proponent of the use must still prove the lawful existence, scope and nature of the use at the time restrictive zoning was applied. *Aguilar v. Washington Co.*, 201 Or.App. 640, 645 & 650, 120 P.3d 514 (2005).

b. The hearings officer is not reviewing a request for verification of a nonconforming use that is subject to the procedural requirements of ORS 215.416. The hearings officer is merely considering the Respondent's affirmative defense that the current commercial auto repair use is allowed on the Property as a legally established nonconforming use. The hearings officer's decision is not determinative as to whether a nonconforming use exists on the Property. Respondent may apply for verification of a nonconforming use on the Property and this decision will have no preclusive effect on such an application. However the hearings officer must address Respondent's affirmative defense that the current auto repair use is allowed on the Property as a continuation of a legally established nonconforming use in order to resolve this enforcement proceeding.

6. The hearings officer finds that Respondent failed to sustain its burden of proof that the current commercial auto repair use on the Property is permitted as a continuation of an existing nonconforming use. There is evidence that some kind of commercial automotive business existed on the Property in January 1970. Long-term residents testified that the owner of the Property was operating an automotive towing, storage and repair business on the Property at that time. However there is no evidence regarding the scope and intensity of that use, i.e., the number of employees, the number of customers and/or vehicles served, the extent of the use on the Property, the size of any structures used, etc. Evidence regarding the nature and scope of the use at the time it became nonconforming is important because the protected right to continue a nonconforming use is a right to continue the nature and extent of use that existed at the time the use became nonconforming. *Tylka v. Clackamas County*, 28 Or LUBA 417 (1994) *citing Polk County v. Martin*, 292 Or 69, 366 P2d 952 (1981) and *Spurgin v. Josephine County*, 28 Or LUBA 383. Therefore, because there is no evidence regarding the nature and extent of the alleged use occurring on the Property in January 1970, the hearings officer cannot find that Respondent's current use of the Property for commercial automotive repair is permitted as a continuation of a legally established nonconforming use.

7. Even if there were evidence that commercial automotive repair was a legally established on the Property at the current nature and scope in January 1970, Respondent

failed to demonstrate that the use has continued without being discontinued or abandoned for more than one year during the past twenty years. ORS 215.130(7) and CDC 440-4. In this case, where there is no "application," the hearings officer finds that the twenty-year period should begin on February 5, 2018, the date the County issued NCV 00132. Therefore, in order to allow the current auto repair business on the Property, Respondent must demonstrate that a commercial use of the same nature and extent as the existing use has existed on the Property since February 5, 1998 and that the use has continued without interruptions of one year or more. ORS 215.130(11). The hearings officer finds that Respondent failed to meet this burden of proof.

a. The Hasenkamps owned the Property on February 5, 1998 and there is no evidence that any commercial auto repair activities were occurring on the Property at that time. Mr. Hasenkamp used the shop on the Property "[t]o fabricate metal products for paying customers." Attachment B of Exhibit H-2. However sheet metal fabrication is not a continuation of the nonconforming commercial auto repair use allegedly in existence in January 1970, the date restrictive zoning was adopted. A nonconforming use cannot be changed to a new and different use and continue to be protected. *Parks v. Board of County Com'rs of Tillamook County*, 11 Or.App. 177, 501 P.2d 85 (1973), *citing Chilson v. Zoning Board of Appeal of Attleboro*, 344 Mass. 406, 182 N.E.2d 535 (1962). CDC 440-6.2.B requires that any change to a lawful nonconforming use must be approved by the County. There is no evidence that the County approved this change from auto repair to sheet metal fabrication. Therefore the hearings officer finds that any nonconforming use of the Property for auto repair was discontinued and abandoned when the Property was used for sheet metal fabrication between February 5, 1998 and April 2005, the date The Hasenkamps sold the Property. Because the auto repair use was discontinued for more than one year, the use may not be resumed. CDC 440-4.

b. There is no evidence that the Property was used for auto repair or any other commercial use between April 2005 and December 2010, when "the Stockers" owned the Property. Mr. Hasenkamp testified that he understood that the Stockers wished to use the shop for commercial purposes. (Attach B of Ex H-2). However there is no evidence in the record that they actually did so, i.e., statements from the Stockers about their use of the Property, utility bills, business records, etc.

i. Respondent offered unsupported general recollections from area residents that the Property was continuously used for commercial purposes. However their testimony conflicts with other evidence in the record. Mr. Wick testified that he "[r]ecall[s] this location consistently being used for some similar car repair purposes ever since [1971]. (Attachment C of Ex. ORB-1). Mr. Duncan testified that "[t]here has been various auto related businesses located there, up to the current time." Mr. Deeth testified that "Since [1991] the workshop on [the Property] has been used for some sort of equipment repair." However, according to Mr. Hasenkamp's testimony, the Property was not used for auto or equipment repair during the 25-year period he owned the Property, between 1984 and April 2005. Because the residents' recollections about the uses on the Property conflict with evidence about the actual use of the Property, the hearings officer cannot give much weight to those unsupported recollections.

c. There is no evidence that Mr. Saner was conducting a legal commercial use on the Property during the four-year period he owned the Property, between December 2010 and April 2015. Mr. Saner testified that he was operating a "motorcycle modification business" on the Property during this period. (Attachment D of Exhibit H-2). However in 2009 his attorney claimed that the Saners were not operating a business on the Property. The attorney stated that the Saners utilized the shop building on the Property for personal and/or agricultural use. Given these conflicting statements, the hearings officer cannot find that Mr. Saner's business was legally established on the Property and therefore adequate to continue any nonconforming rights to continue commercial activities on the Property.

d. Mr. Alterman argues that the number and type of vehicles visible in the aerial photos of the Property show that some type of commercial activity was continuously occurring on the Property during the past twenty years. However there are significant gaps in the photo record; there are no photos in the record for 1995-2001, 2003, 2004, 2007, and 2009. Given these gaps, the photos are inadequate to support a finding that any commercial use continued without interruptions of one year or more during since February 5, 1998. In addition, the number of vehicles on the Property varies substantially over time. Although there are a significant number of vehicles present in some photos, others show only one, two or three vehicles. The vehicles visible in some of the photos may be consistent with the 2009 statement from Mr. Saner's attorney that Mr. Saner was traveling the country in an RV. A semi-truck and trailer and between zero and two other vehicles are visible in the photos from May 2010, August 2010, August 2011, and July 2013. What appears to be an RV is visible in the August 2011, July 2012, and July 2013 photos. The hearings officer finds that the aerial photos are inadequate to support a finding that the Property was continuously used for any sort of commercial purpose, let alone an auto repair use consistent with the nature and extent of the use occurring January 1970, when restrictive zoning was first applied to the Property.

e. Even if the aerial photos and neighbors' testimony were sufficient to support a finding that some sort of commercial use existed on the Property, there is no evidence regarding the scope and intensity of the use on the Property during the past 20 years. Therefore the hearings officer cannot find that scope and intensity of the current use is consistent with uses on the Property occurring during the past 20 years.

f. Finally, any commercial uses occurring inside the building on the Property were not legal, because the building was never approved for commercial use. The building was approved as a "storage pole building" that was expressly "not for commercial use." Although the building permit was issued more than 20 years ago, the building could not be legally used for commercial purposes during the relevant 20-year period.

g. Therefore the hearings officer cannot find that a legal commercial auto repair business continuously operated on the Property at the current nature and extent for the past twenty years.

8. The hearings officer finds that Respondent's use of the Property for commercial auto repair is a violation of CDC 309-5.1. Respondent failed to demonstrate that the use is allowed as a legal nonconforming use. Therefore NCV 00132 must be affirmed.

Citation No. NCV 00136 - fill in the flood plain:

9. CDC prohibits placement of fill in a flood area without a flood plain or drainage hazard area alteration permit.

10. There is no dispute that Respondent placed fill (asphalt chips) on the Property without obtaining a flood plain permit. The hearings officer finds that the fill was located within the mapped 100-year flood plain of the West Fork of Dairy Creek. Exhibit PH -22 shows the mapped flood plain boundaries of the West Fork of Dairy Creek overlain on an aerial photo of the Property. The mapped flood plain covers the northern portion of the Property; the southern extent of the mapped flood plain roughly aligns with the entry sign over the driveway and the mid-point of the shop building. Exhibit PH-17 shows a pile of fill in the area of the Property north of the shop building on the Property. Exhibit PH-18b shows additional fill in the driveway serving the shop building, north of the "Duncan Automotive" entry sign over the driveway. Both of these areas of fill are located within the mapped flood plain as shown in Exhibit PH-22. Therefore the hearings officer finds that the preponderance of the evidence supports a finding that Respondent violated CDC 421-14.8 by placing fill within the mapped flood plain without a permit and NCV 00136 must be affirmed.

a. The fact that purpose of the fill was to maintain existing vehicle parking and maneuvering areas on the Property is irrelevant. The Code does not provide an exception from permit requirements for such "maintenance" fill within the flood plain.

Fines:

11. Respondent is the Property owner and therefore liable for these violations.

12. The violations continued to exist on the Property as of the date of the hearing; Respondent continues to operate an auto repair facility and the unpermitted asphalt chip fill remains in place on the Property.

13. WCC 1.14.110 authorizes the hearings officer to require violations be abated, impose penalties, suspend other county permits, and take other actions necessary to address the violations.

14. The Board of County Commissioners adopted a priority classification for violations by Resolution and Order #08-04, pursuant to WCC 1.14.210. The operation of an unpermitted commercial use is listed as a Priority 2 violation. flood plain and Drainage Hazard Area disturbances are Priority 1 violations.

15. WCC 1.14.210.B provides a minimum monetary penalty of $750 per violation and a maximum monetary penalty of $5,000 per violation for Priority 1 violations a minimum monetary penalty of $500 per violation and a maximum monetary penalty of $2,500 per violation for Priority 2 violations. Each day that a violation occurs constitutes a separate violation. WCC 1.14.210(C).

16. The County cited Respondent for violations of CDC 309 and 421 on a single day, October 12, 2017. Therefore, the minimum penalty would total $1,250 and the maximum penalty would total $7,500.

17. WCC 1.14.210 provides that the hearings officer may consider a variety of factors in deciding the amount of the penalties for each violation. In this case, the violations could have been corrected in a timely manner:

a. Respondent could have ceased use of the Property for auto repair when the County initially informed him that the use was illegal on June 20, 2017. However Respondent continued to operate his business on the Property since County staff informed him of the violation on June 20, 2017. Respondent discussed with staff the possibility of seeking submitting an application for verification of a nonconforming use. However the Respondent never submitted such an application and continued to operate his business on the Property. Therefore the hearings officer finds that the maximum fine of $2,500 is warranted for this violation.

i. However the Code encourages compliance over monetary penalties. Therefore the hearings officer will suspend one half of the monetary penalty ($1,250), provided Respondent ceases all prohibited commercial activities on the Property within sixty (60) calendar days from the date of this Final Order.

b. Respondent could have submitted a grading or other application for approval of the fill in the flood plain. In addition, as noted in Exhibit PH-23, Respondent placed the fill to maintain existing vehicle parking and maneuvering areas on the Property. This fill may have been unnecessary if Respondent were not operating a prohibited commercial use on the Property. However CDC 421-1.2 acknowledges that the actual flood plain boundaries cannot be determined from the maps alone. A flood plain and drainage hazard area delineation is necessary to determine the exact boundaries of the flood plain and drainage hazard area on a particular property. Therefore the hearings officer will suspend the fine for violation of CDC 421:

i. If Respondent submits a delineation demonstrating that the fill was placed entirely outside of the actual flood plain boundary, the hearings officer will waive the entire fine;

ii. If the delineation demonstrates that the fill is located in the flood plain, the hearings officer will reduce the fine to $1,000, provided Respondent submits a

flood plain alteration application within sixty (60) calendar days from the date of this Final Order.

iii. If Respondent fails to submit a flood plain and drainage hazard area delineation and/or a flood plain alteration application within sixty (60) calendar days from the date of this Final Order, then the entire $2,500 fine will become due and owing.

Dated this 9th day of May 2018.

Joe Turner, AICP
Washington County Hearings Officer