

NOTICE OF DECISION

Case File: T2-2021-15041

Permit: Decision by the Planning Director and Lot of Record Verification

Applicant: Daniel Prince **Owners:** Daniel & Jennifer Prince

Location: **Address:** 41029 SE Loudon Road, Corbett **Map, Tax Lot:** 1S5E06 -00700
Alternate Account #: R995060180 **Property ID #:** R342776

Base Zone: Commercial Forest Use – 4 (CFU-4)

Overlays: Geologic Hazards (GH)

Proposal Summary: The applicant requests a Decision by the Planning Director to determine if the subject house is a lawfully established habitable dwelling as defined in MCC 39.2000. The request includes a Lot of Record Verification to determine if the current configuration of the subject property met the zoning and land division regulations at the time of creation and aggregation requirements.

Decision: 1) The subject property is a single Lot of Record in its current configuration.

2) Based on the findings herein, the evidence in the record does not sufficiently demonstrate that the subject dwelling is a lawfully established dwelling as defined in MCC 39.2000.

This decision is final at the close of the appeal period, unless appealed. The deadline for filing an appeal is Thursday, July 14, 2022 at 4:00 pm.

Opportunity to Review the Record: The complete case file, including the Planning Director Decision containing Findings, Conclusions, Conditions of Approval, and all evidence associated with this application is available for review by contacting Chris Liu via email at chris.liu@multco.us. Copies of all documents are available at the rate of \$0.40/per page.

Opportunity to Appeal: An appeal requires a \$250.00 fee and must state the specific legal grounds on which it is based. To obtain appeal forms or information on the procedure, contact the Land Use Planning office via phone at (503) 988-3043. This decision is not appealable to the Land Use Board of Appeals until all local appeals are exhausted.

Issued by: _____

By: Lisa Estrin, Senior Planner

For: Carol Johnson, AICP
Planning Director

Date: Thursday, June 30, 2022

Vicinity Map

N↑



Applicable Approval Criteria [Multnomah County Code (MCC)]:

General Provisions: MCC 39.1515 Code Compliance and Applications

Lot of Record: MCC 39.3005 Lot of Record – Generally, MCC 39.3050 Lot of Record – Commercial Forest Use – 4

Lawfully Established Habitable Dwelling: MCC 39.2000 Definitions – Lawfully Established Dwelling; Habitable Dwelling

Copies of the referenced Multnomah County Code sections are available by contacting our office at (503) 988-3043 or by visiting our website at <https://multco.us/landuse/zoning-codes/> under the link:
Chapter 39 - Zoning Code

Findings of Fact

FINDINGS: Written findings are contained herein. The Multnomah County Code (MCC) criteria and Comprehensive Plan Policies are in **bold** font. Staff analysis and comments are identified as ‘**Staff:**’ and address the applicable criteria. Staff comments may include a conclusionary statement in *italic*.

1.0 PROJECT DESCRIPTION:

Staff: The applicant requests a Decision by the Planning Director to determine if the subject house (the “Dwelling”) is a lawfully established habitable dwelling as defined in MCC 39.2000. The request includes a Lot of Record Verification to determine if the current configuration of the subject property met the zoning and land division regulations at the time of creation and [CFU zone] aggregation requirements.

2.0 PROPERTY DESCRIPTION:

Staff: The subject property is located in the rural area of east unincorporated Multnomah County and outside the Metro Urban Growth Boundary. The subject property is zoned Commercial Forest Use – 4 (CFU-4). Portions of the property are within the mapped Geologic Hazards (GH) overlay. According to County Assessment and Taxation records, the subject property contains a single-family dwelling and an outbuilding.

3.0 PUBLIC COMMENT:

Staff: Staff mailed a notice of application and invitation to comment on the proposed application to the required parties per MCC 39.1105 (Exhibit C.4). Staff did not receive any public comments during the 14-day comment period.

4.0 GENERAL PROVISIONS:

4.1 § 39.1515 CODE COMPLIANCE AND APPLICATIONS.

Except as provided in subsection (A), the County shall not make a land use decision approving development, including land divisions and property line adjustments, or issue a building permit for any property that is not in full compliance with all applicable provisions of the Multnomah County Zoning Code and/or any permit approvals previously issued by the County.

* * *

Staff: As noted in Section 1.0 above, this decision does not approve any development, land divisions, or property line adjustments. Therefore, this criterion is met.

5.0 LOT OF RECORD CRITERIA:

5.1 MCC 39.3005 Lot of Record - Generally

(A) An area of land is a “Lot of Record” if it meets the standards in Subsection (B) of this Section and meets the standards set forth in this Part for the Zoning District in which the area of land is located.

(B) A Lot of Record is a parcel, lot, or a group thereof that, when created or reconfigured, either satisfied all applicable zoning laws and satisfied all applicable land division laws, or complies with the criteria for the creation of new lots or parcels described in MCC 39.9700. Those laws shall include all required zoning and land division review procedures, decisions, and conditions of approval.

(a) “Satisfied all applicable zoning laws” shall mean: the parcel, lot, or group thereof was created and, if applicable, reconfigured in full compliance with all zoning minimum lot size, dimensional standards, and access requirements.

(b) “Satisfied all applicable land division laws” shall mean the parcel or lot was created:

- 1. By a subdivision plat under the applicable subdivision requirements in effect at the time; or**
- 2. By a deed, or a sales contract dated and signed by the parties to the transaction, that was recorded with the Recording Section of the public office responsible for public records prior to October 19, 1978; or**
- 3. By a deed, or a sales contract dated and signed by the parties to the transaction, that was in recordable form prior to October 19, 1978; or**

*** * ***

MCC 39.3050 Lot of Record – Commercial Forest Use – 4 (CFU-4)

(A) In addition to the standards in MCC 39.3005, for the purposes of the CFU-4 district a Lot of Record is either:

(1) A parcel or lot which was not contiguous to any other parcel or lot under the same ownership on February 20, 1990, or

(2) A group of contiguous parcels or lots:

(a) Which were held under the same ownership on February 20, 1990; and

(b) Which, individually or when considered in combination, shall be aggregated to comply with a minimum lot size of 19 acres, without creating any new lot line.

*** * ***

Staff: According to the applicant’s narrative (Exhibit A.3), two prior land use cases led to the creation of the current configuration of the subject property. Land Use case no. LD 3-88 (Exhibit A.5) authorized a land division to create a 19-acre parcel, which became the subject property. The applicant provided a quit claim deed from June 05, 1989 (Exhibit A.12), historical tax map from 1999 (Exhibit A.11), and a County Assessor’s parcel record card (Exhibit A.10) to depict the effects of case LD 3-88.

The applicant further describes land use case T2-05-079 (Exhibit A.6), which authorized the reconfiguration of the aforementioned 19-acre parcel through a property line adjustment.

Through the property line adjustment, the subject property was reduced from 19 acres to approximately 10.77 acres and an adjacent property ('Tax Lot 100') was increased in area. The applicant provided a Warranty Deed [Instrument no. 2006-015964, Exhibit A.13], which established the new legal description for the reconfigured subject property. Following the recording, the County Assessor designated the subject property 'Tax Lot 700'.

The 'Transfer Deed' [Instrument no. 2006-15962, Exhibit A.14] conveying the "adjusted area" to Tax Lot 100, contained an error in the naming of the Grantees. Hence, the County Assessor rejected what was supposed to be the consolidation deed and created 'Tax Lot 701'.

The current property owners purchased the subject property in 2006 via Warranty Deed [Instrument no. 2006-023014, Exhibit A.15]. The legal description matches the legal description of the subject property in Instrument no. 2006-015964 (Exhibit A.13), established following the 2006 Lot Line Adjustment (Exhibit A.6).

The Steenson family owned the subject property on February 20, 1990 (Exhibit A.12). According to historic county tax records, the Steenson's did not own any contiguous property at that time. Therefore, the subject property is not aggregated with any contiguous parcel(s) / lot(s) under MCC 39.3050.

Based on the above, the current configuration of the subject property remains a single Lot of Record. Criteria met.

6.0 DECISION BY THE PLANNING DIRECTOR:

6.1 MCC 39.2000 Definitions

As used in this Chapter, unless the context requires otherwise, the following terms and their derivations shall have the meanings provided below:

* * *

Habitable Dwelling – An existing dwelling that:

- (a) Has intact exterior walls and roof structure;**
- (b) Has indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system;**
- (c) Has interior wiring for interior lights;**
- (d) Has a heating system; and**
- (e) Was lawfully established.**

* * *

Lawfully Established Dwelling – A dwelling that was constructed in compliance with the laws in effect at the time of establishment. The laws in effect shall include zoning, land division and building code requirements. Compliance with Building Code requirements shall mean that all permits necessary to qualify the structure as a dwelling unit were obtained and all qualifying permitted work completed.

Staff: As discussed in Section 6.2 below, the Dwelling is a 'Habitable Dwelling' as it is an existing dwelling that has the amenities listed in (a)-(d). As discussed in Section 6.3 below, the evidence in the record is insufficient to demonstrate that the Dwelling was lawfully established.

6.2 Habitable Dwelling Analysis

Staff: The following documentary and photographic evidence establishes that the Dwelling has the required amenities of a habitable dwelling as described below:

1. Intact Exterior Walls and Roof Structure

Exhibit A.29 contains pictures of the [intact] exterior walls and roof structure of each side of the Dwelling (East, West, North, and South).

2. Indoor Plumbing/Sanitary Waste Disposal

Exhibit A.4 contains pictures of the bathrooms, sinks, shower and tub. Exhibit A.18 (Page 3 – 4) is a copy of the original septic permit.

3. Interior Wiring for Interior Lights

Exhibit A.4 contains pictures of the Electrical Panel and PGE meter. Exhibit A.4 also contains pictures showing [working] interior lighting in various rooms of the Dwelling.

4. Heating System

Exhibit A.4 contains pictures of the wood stove and wall mounted heaters. Exhibit A.4 also contains pictures of the ductless heat pump system installed in 2015.

The documentary and photo evidence described above suffices to establish that the Dwelling has the required amenities of a habitable dwelling. Therefore, the evidence suffices to find that the Dwelling is habitable.

6.3 Lawfully Established Dwelling Analysis

Staff: As defined in MCC 39.2000, a *Lawfully Established Dwelling* is a dwelling that was constructed in compliance with the laws in effect at the time of establishment. The laws in effect shall include *zoning (land use approval, setbacks, development standards), land division and building code requirements*. Compliance with Building Code requirements shall mean that all permits necessary to qualify the structure as a dwelling unit were obtained and all qualifying permitted work completed.

1. Establishment of the Dwelling

The applicant's supplemental narrative (Exhibit A.23) states that the Dwelling was constructed sometime between 1984 -1989. Current County Assessor records list 1984 as the year built for the Dwelling. It appears from the record (Exhibit A.5 & A.17) that the commencement of construction on the dwelling started before Planning authorized the dwelling. The 1989 County zoning review (Exhibit A.17) contains a site plan [dated June 07, 1989] showing a residence on the subject property with the note 'under const.'

2. Historical Evidence for the Application

The following summarizes the documentary evidence provided by the applicant to support the subject application:

Staff notes that some of the documents described use the address 41025 SE Loudon Road, which is currently the address associated with another property (Alt. Acct. #R995060260).

However, the documents reference Alt. Acct. #R995060180 [which continues to be associated with the subject property], the previous property owner (Tom Steenson), and/or provide other known indicators/identifiers for the subject property.

- **1988 - Land Use Case no. LD 3-88 (Exhibit A.5):** Case no. LD 3-88 approved a land division to create the initial 19-acre configuration of the subject property. The decision contains a number of Conditions of Approval that require the applicant to complete actions “*Prior to issuance of a building permit for Parcel B*”. ‘Parcel B’ is the subject property and is referred to as ‘Parcel 2’ on the tentative plan map. The recorded plan map shows the Dwelling as ‘under construction’ (Exhibit B.5).
- **1989 - Land Feasibility Study no. LFS 83-89 (Exhibit A.16):** The LFS showed that the subject property qualified for a permit to construct a septic tank/drainfield disposal system. On Page 4 of the document, there is a section completed by the County Zoning Dept. (now known as the Multnomah County Land Use Planning Division). The County Zoning Dept. completed the aforementioned section on March 10, 1988, noting outstanding land use regulations needed to be met before the issuance of a septic permit, specifically ‘LD 3-88’. Case no. LD 3-88 is the approved land division referenced above.
- **1989 - County Zoning Review (Exhibit A.17):** On June 07, 1989, the County completed a zoning review for a new single-family dwelling for the subject property (Alt. Acct. no. R995060180). The signature page contains initials and dates under ‘Zoning’ and ‘Land Division’, with a reference to land use case LD 03-88. On Page 6, there is a site plan stamped with ‘Multnomah County Zoning Approval’. The stamped site plan references land use case LD 03-88 and has a note stating ‘Complete new residence on Parcel #2’.
- **1989 - Septic Permit no. 11562 (Exhibit A.18, Page 3 – 4):** On June 27, 1989, the City of Portland issued a permit to Tom Steenson for a new septic system. The listed address is 41025 SE Loudon Road; however, the record (Exhibit A.18, Page 1 – 2) contains a copy of another septic permit for what is currently 41025 SE Loudon Road. Permit no. 11562 references LFS 83-89, which is the feasibility study referenced above. The permit lists the date of inspection for the septic system as September 21, 1989.
- **1990 – City of Gresham Electrical Inspection (Exhibit A.26):** The applicant provided a picture of a sticker on the Electrical Panel (shown in Exhibit A.4). The sticker has a heading with ‘City of Gresham – Electrical Safety Section’, dated with the year 1990, and lists 41029 SE Loudon as the project address. An email from Portland General Electric (Exhibit A.25), states that the company installed the transformer [#40061] serving the subject property on October 28, 1987.
- **2022 - Declaration of John G. Chamberlin (Exhibit A.24):** Chamberlin is the owner of the adjacent property and was a party to land use case no. LD 03-88, along with Tom Steenson. Chamberlin notes that they undertook construction of a dwelling on their property in 1987 and that there were many visits from municipal planning and building officials. During one such visit, the Steenson dwelling was “red-tagged” and the Steenson’s were required to move out for a period. In a subsequent visit, Chamberlin asked a municipal building official about the status of the Steenson dwelling and was told that the Steenson’s were “good to move [back] in” to the home.

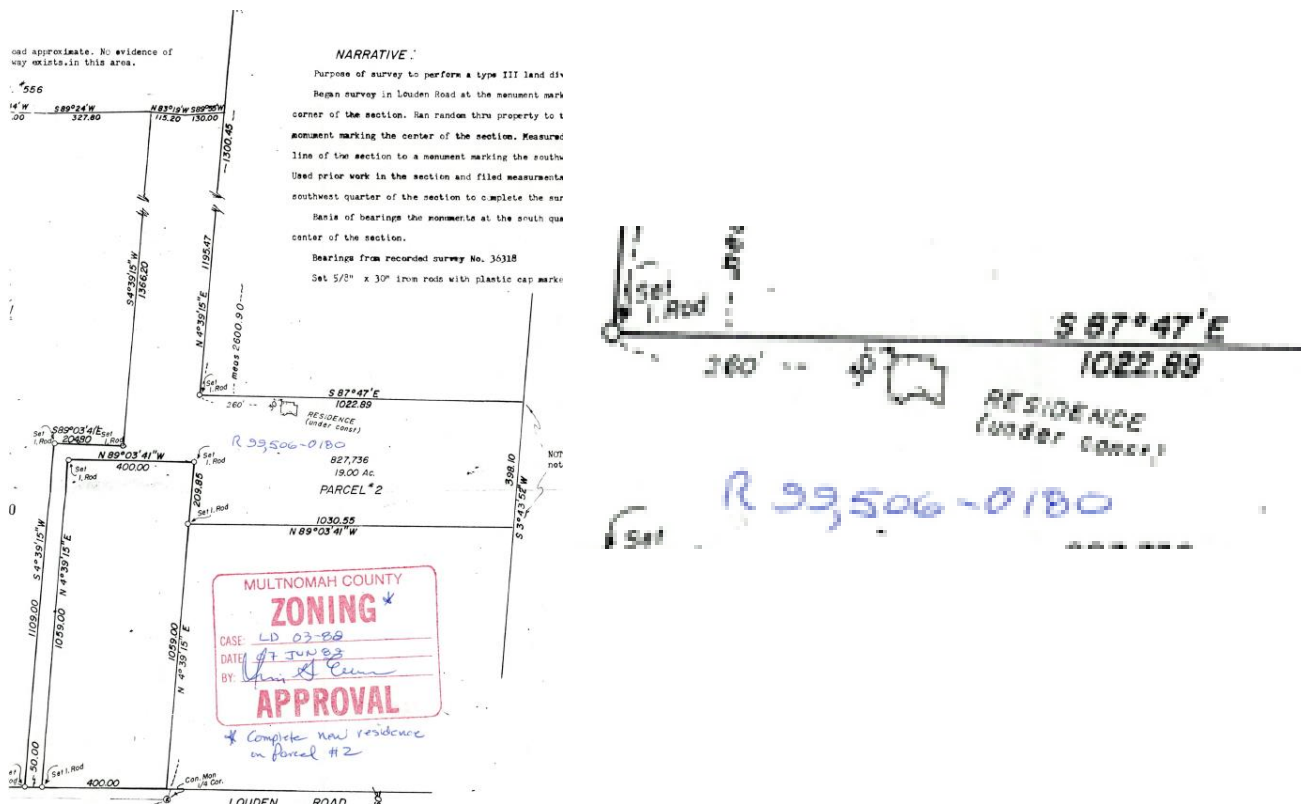
3. Applicable Laws in effect at the time of establishment (1989)

In 1989, the subject property was zoned 'MUF-19' per historic county zoning maps (Exhibit B.3). The MUF zoning regulations allowed single-family dwellings as a permitted use for lots that were 38 acres or larger. For lots under 38 acres, a residential use (single-family dwellings) was a use permitted under prescribed conditions. MCC 11.15.2178 outlined required setbacks and MCC 11.15.2194 outlined development standards for residential uses (Exhibit B.4).

Under MCC 11.15.2194(G) and (H), construction [of a dwelling] must comply with the standards of the Building Code and the dwelling must be attached to a foundation for which a building permit has been obtained. In addition, a 30-ft wide fire lane was required between a residential structure and an adjacent forested area. A building permit (Exhibit A.17) was issued on June 7, 1989. The permit was issued for tax lot R995060180. No building permit was issued for the dwelling to be placed on the tax lot 1S5E06D-00100 (R995060080) on which it is located (Exhibit B.6).

The Minimum Yard Dimensions for a dwelling under MCC 11.15.2178 were as follows: 30-ft. Front, 10-ft Side, 30-ft Street Side and 30-ft Rear. Graphic #1 shows the approved location of the dwelling from Exhibit A.17:

Graphic #1



The dwelling was to be placed 30 feet south of the 1,022.89 ft. long property line on tax lot R995060180 (Tax lot '18', Section 6, 1 South, 5 East) (Exhibit A.17). This 30-ft distance from the property line would meet the setbacks and would have allowed for the 30-ft fire lane required between a dwelling and adjacent forested area (Exhibit B.4, MCC 11.15.2194(A)(1)). The construction of the dwelling failed to meet this requirement. In Applicant's Narrative (Exhibit A.3, page 1, last paragraph), it states "A recent survey showed that the dwelling that

was thought to be on Tax Lot 1S5E06-00700 was actually on the adjacent property to the north, Tax Lot 1S5E06D-00100.” Exhibit B.6 shows the location of the dwelling 6.2 feet from the southern property line of 1S5E06D-00100. No portion of the dwelling building exists on tax lot 1S5E06-00700 (R995060180). The County did not authorize the construction of a dwelling on tax lot 1S5E06D-00100 (R995060080) in 1989. No evidence has been found or presented that the construction of the dwelling was permitted by Land Use Planning or the Building Department on tax lot 1S5E06D-00100 after-the-fact.

The documentary evidence in the record is insufficient to demonstrate that the the Dwelling was constructed in compliance with the laws in effect at the time of its establishment in 1989. Therefore, the Dwelling was not Lawfully Established.

7.0 Exhibits

‘A’ Applicant’s Exhibits

‘B’ Staff Exhibits

‘C’ Procedural Exhibits

All exhibits are available for review in Case File T2-2021-15041 by contacting the case planner, Lisa Estrin at lisa.m.estrin@multco.us.

Exhibit #	# of Pages	Description of Exhibit	Date Received / Submitted
A.1	1	General Application Form	09.08.2021
A.2	2	Cover Letter	09.08.2021
A.3	9	Applicant Narrative	09.08.2021
A.4	7	Applicant Declaration	09.08.2021
A.5	63	Exhibit 1 – Copy of LD 3-88	09.08.2021
A.6	59	Exhibit 2 – Copy of T2-05-079	09.08.2021
A.7	1	Exhibit 3 – Map of Property	09.08.2021
A.8	1	Exhibit 4 – 1978 Tax Map	09.08.2021
A.9	2	Exhibit 5 – 1988 Deed	09.08.2021
A.10	6	Exhibit 6 – Parcel Record Card for R995060180	09.08.2021
A.11	1	Exhibit 7 – 1998 Tax Map	09.08.2021
A.12	3	Exhibit 8 – 1989 Deed	09.08.2021
A.13	2	Exhibit 9 – Deed 2006-015964	09.08.2021
A.14	2	Exhibit 10 – Deed 2006-015962	09.08.2021
A.15	2	Exhibit 11 – Deed 2006-23014	09.08.2021
A.16	8	Exhibit 12 – Copy of LFS 83-89	09.08.2021
A.17	6	Exhibit 13 – Copy of 1989 Zoning Review	09.08.2021

A.18	4	Exhibit 14 – Copy of BES Permit	09.08.2021
A.19	2	Exhibit 15 – Copy of Email from Gresham Building Dept. employee	09.08.2021
A.20	7	Exhibit 16 – Copy of Applicant Declaration	09.08.2021
A.21	3	Exhibit 17 – Parcel Record Card for R995060300	09.08.2021
A.22	1	Exhibit 18 – Copy of Email from Multnomah County DART employee	09.08.2021
A.23	4	Applicant’s Supplemental Narrative	03.07.2022
A.24	2	Exhibit 19 – Chamberlin Declaration	03.07.2022
A.25	1	Exhibit 20 – PGE Email	03.07.2022
A.26	1	Exhibit 21 – Copy of City of Gresham Electrical Inspection	03.07.2022
A.27	5	Exhibit 22 – Copy of 2016 Electrical Permit	03.07.2022
A.28	2	Exhibit 23 – Memo from Land Use Consultant	03.07.2022
‘B’	#	Staff Exhibits	Date
B.1	2	Division of Assessment, Recording, and Taxation (DART): Property Information for <State ID> (Alt Acct#)	09.08.2021
B.2	1	Division of Assessment, Recording, and Taxation (DART): Map for	09.08.2021
B.3	1	1980 Historic Zoning Map for 1S5E06	03.07.2022
B.4	11	MUF Zoning Regulations in MCC 11.15 as adopted March 23, 1982	03.07.2022
B.5	1	Copy of Survey record no. 50584	06.10.2022
B.6	2	Proposed Property Line Adjustment Maps from Surveyor Chase, Jones & Associates, Inc. dated Jan 30, 2019	06.27.2022
‘C’	#	Administration & Procedures	Date
C.1	2	Incomplete letter	10.06.2021
C.2	1	Applicant’s acceptance of 180 day clock	11.02.2021
C.3	1	Applicant’s Response to Incomplete Letter	03.07.2022
C.4	5	Opportunity to Comment	05.18.2022
C.5	10	Decision	06.30.2022