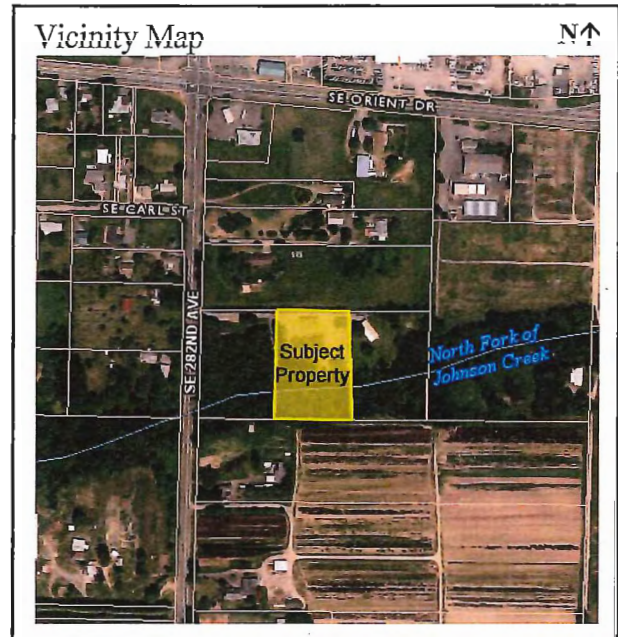


1600 SE 190<sup>th</sup> Ave, Portland OR 97233-5910 • PH. (503) 988-3043 • Fax (503) 988-3389

## NOTICE OF DECISION

This notice concerns a Planning Director Decision on the land use case(s) cited and described below.

**Case File:** T2-2016-5086  
**Permit:** Temporary Health Hardship  
**Location:** 7404 SE 282<sup>nd</sup> Avenue  
Tax Lot 1600 , Section 19BC  
Township 1 South, Range 4 East, W.M.  
Tax Account #R994191470  
**Applicants:** Rick and Linda Elliott  
**Owners:** Rick and Linda Elliott  
**Base Zone:** Multiple Use Agriculture – 20  
(MUA-20)  
**Overlays:** Significant Environmental Concern for  
Water Resources (SEC-wr)  
Significant Environmental Concern for  
Wildlife Habitat (SEC-h)



**Summary:** Applicant is requesting a renewal of a Health Hardship permit, which was previously approved as land use case T2-2014-3298, to allow for the continued use of a manufactured dwelling on the property for the care of a relative.

**Decision:** Approved with Conditions

Unless appealed, this decision is effective Wednesday, September 14, 2016 at 4:00 PM.

Issued by:

By:

  
Rithy Khut, Planner

For: Michael Cerbone, AICP  
Planning Director

Date: Wednesday, August 31, 2016

**Opportunity to Review the Record:** A copy of the Planning Director Decision, and all evidence submitted associated with this application, is available for inspection, at no cost, at the Land Use Planning office during normal business hours. Copies of all documents may be purchased at the rate of 30-cents per page. The Planning Director Decision contains the findings and conclusions upon which the decision is based, along with any conditions of approval. For further information on this case, contact Rithy Khut, Staff Planner at 503-988-0176.

**Opportunity to Appeal:** This decision may be appealed within 14 days of the date it was rendered, pursuant to the provisions of MCC 37.0640. 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 offices at 1600 SE 190th Avenue (Phone: 503-988-3043). This decision cannot be appealed to the Land Use Board of Appeals until all local appeals are exhausted.

**This decision is final at the close of the appeal period, unless appealed. The deadline for filing an appeal is Wednesday, September 14, 2016 at 4:00 pm.**

**Applicable Approval Criteria:**

Multnomah County Code (MCC): MCC 37.0560 Code Compliance and Applications, MCC 36.0005 Definitions, MCC 36.2825(A) Review Uses, MCC 36.2855 Dimensional Standards and Development Requirements, MCC 36.2870 Lot of Record, MCC 36.2885 Access, MCC 36.0515 Temporary Health Hardship Permit

Multnomah County Road Rules (MCRR): 4.000 Access to County Roads

Copies of the referenced Multnomah County Code (MCC) and Multnomah County Road Rules (MCRR) sections can be obtained by contacting our office at 503-988-3043 or by visiting our website at <http://www.multco.us/landuse>

**Scope of Approval**

- 1. Approval of this land use permit is based on the submitted written narrative(s) and plan(s). No work shall occur under this permit other than that which is specified within these documents. It shall be the responsibility of the property owner(s) to comply with these documents and the limitations of approval described herein.**
- 2. This Temporary Health Hardship Permit expires automatically two years after the date of final approval of the permit unless an extension is approved.**
- 3. The expiration date of a Temporary Health Headship Permit may be extended upon satisfactions of the requirements in 36.0515(B)(1) through (4). More than one extension may be granted, but each extension is limited to a period of two years from the date the permit would have otherwise expired. To obtain an extension, the property owner shall use the forms provided by the Planning Director and shall submit the application at least 30 days prior to expiration of the permit. Upon approval of an extension, the Planning Director shall mail notification to the property owners that are contiguous to the subject lot.**

## **Conditions of Approval**

The conditions listed are necessary to ensure that approval criteria for this land use permit are satisfied. Where a condition relates to a specific approval criterion, the code citation for that criterion follows in parenthesis.

1. This health hardship permit authorizes the placement and maintenance of a temporary dwelling to be occupied by Shirley Dikeman. Occupancy of the temporary dwelling may occur only while Shirley Dikeman, for which the Temporary Health Hardship Permit was granted, lives on the property. This health hardship permit is not transferable to another party. [MCC 36.0515(F)]
2. The temporary dwelling shall be removed and utility and septic connections shall be terminated within 30 days of expiration of the Temporary Health Hardship Permit, end of the health hardship or the provision of supervision or assistance with daily care of Shirley Dikeman. [MCC 36.0515(G)]
3. The property owner shall provide proof that a covenant or record a covenant that states that the dwelling is temporary and must be removed as set forth in point #2 has been completed. [MCC 36.0515(C)(2)]
4. The property owner shall acquire a driveway permit within 30 days of this decision for the site's access onto SE 282nd. because access permits were found on file for the subject property. All access points to County Right-of-Way need to be permitted. If applicant can provide proof of a prior Right-of-Way sign-off, the driveway permit application fee will be waived. The applicant will need to submit driveway permit application with description of driveway width and type (gravel/paved). Applicant will also need to submit site 11x17 site plan showing house, driveway, and 282nd avenue. [MCRR 4.000]

**Note:** Once this decision is final, application for building permits may be made with the City of Gresham. When ready to have building permits signed off, the applicant shall call the Staff Planner, Rithy Khut, at (503) 988-0176, for an appointment for review and approval of the conditions and to sign the building permit plans. Please note, Multnomah County must review and sign off the building permits before the applicant submits building plans to the City of Gresham. Three (3) sets each of the site plan and building plans are needed for building permit sign off. At the time of building permit review, a fee will be collected. In addition, an erosion control inspection fee may be required.

### **Notice to Mortgagee, Lien Holder, Vendor, or Seller:**

ORS Chapter 215 requires that if you receive this notice it must be promptly forwarded to the purchaser.

## **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*.

### **1.00 Project Description:**

The applicant, Linda Elliott is requesting a Health Hardship permit in order to allow a temporary dwelling to remain on the subject property so that she can provide care for her mother, Shirley Dikeman. Shirley Dikeman will live in the temporary dwelling and Linda Elliot will assist Shirley Dikeman with daily care.

### **2.00 Property Description & History (if needed):**

The subject property is 2 acres and contains an existing single-family dwelling and an existing detached shop/garage. The dwelling was constructed in 2006 and was authorized by land use case T2-05-050. The garage and subsequent addition to the garage was authorized by building permit BP-2015-4052. At present, the property has a single-family dwelling, a health hardship dwelling, and a garage.

In 1997, the applicant Linda Elliott requested a Health Hardship permit so that she could provide care for her mother Shirley Dikeman. The Health Hardship permit was authorized allowing the placement of the existing singlewide manufactured dwelling located to the northwest of the primary dwelling. The application was renewed in 1999. Unfortunately, the Health Hardship permit was allowed to lapse two years later. In 2005, T2-05-050 the Health Hardship permit was reauthorized. However, the permit has lapsed again. A new Health Hardship Dwelling permit was authorized in 2014 as land use case T2-2014-3298 and now the applicant/property owners have requested this application to reauthorize the Health Hardship permit so that Shirley Dikeman can reside in the temporary health hardship dwelling and receive care from the Linda and Rick Elliott.

### **3.00 Code Compliance:**

#### **37.0560 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 Land Use Code and/or any permit approvals previously issued by the County.**

**(A) A permit or other approval, including building permit applications, may be authorized if:**

- (1) It results in the property coming into full compliance with all applicable provisions of the Multnomah County Code. This includes sequencing of permits or other approvals as part of a voluntary compliance agreement; or**
- (2) It is necessary to protect public safety; or**
- (3) It is for work related to and within a valid easement over, on or under an affected property.**

**Staff:** There are no known code compliance issues associated with the property and as such the County has the authority to issue this land use decision. *This criterion is met.*

#### **4.00 Lot of Record**

#### **36.0005 LOT OF RECORD**

**Lot of Record** – Subject to additional provisions within each Zoning District, a Lot of Record is a parcel, lot, or a group thereof that, when created or reconfigured, (a) satisfied all applicable zoning laws and (b) satisfied all applicable land division laws, or (c) complies with the criteria for the creation of new lots or parcels described in MCC 36.7785. 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
4. By partitioning land under the applicable land partitioning requirements in effect on or after October 19, 1978; and
5. "Satisfied all applicable land division laws" shall also mean that any subsequent boundary reconfiguration completed on or after December 28, 1993 was approved under the property line adjustment provisions of the land division code. (See Date of Creation and Existence for the effect of property line adjustments on qualifying a Lot of Record for the siting of a dwelling in the EFU and CFU districts.)

(c) Separate Lots of Record shall be recognized and may be partitioned congruent with an "acknowledged unincorporated community" boundary which intersects a Lot of Record.

1. Partitioning of the Lot of Record along the boundary shall require review and approval under the provisions of the land division part of this Chapter, but not be subject to the minimum area and access requirements of this district.
2. An "acknowledged unincorporated community boundary" is one that has been established pursuant to OAR Chapter 660, Division 22.

\* \* \*

#### **36.2870 LOT OF RECORD.**

(A) In addition to the Lot of Record definition standards in MCC 36.0005, for the purposes of this district the significant dates and ordinances for verifying zoning compliance may include, but are not limited to, the following:

- (1) July 10, 1958, SR zone applied;
- (2) July 10, 1958, F-2 zone applied;

- (3) December 9, 1975, F-2 minimum lot size increased, Ord. 115 & 116;
- (4) October 6, 1977, MUA-20 zone applied, Ord. 148 & 149;
- (5) October 13, 1983, zone change from EFU to MUA-20 for some properties, Ord. 395;
- (6) May 16, 2002, Lot of Record section amended, Ord. 982.

(B) A Lot of Record which has less than the minimum lot size for new parcels or lots, less than the front lot line minimums required, or which does not meet the access requirement of MCC 36.2885, may be occupied by any allowed use, review use or conditional use when in compliance with the other requirements of this district.

(C) Except as otherwise provided by MCC 36.2860, 36.2875, and 36.4300 through 36.4360, no sale or conveyance of any portion of a lot, other than for a public purpose, shall leave a structure on the remainder of the lot with less than minimum lot or yard requirements or result in a lot with less than the area or width requirements of this district.

(D) The following shall not be deemed to be a lot of record:

- (1) An area of land described as a tax lot solely for assessment and taxation purposes;
- (2) An area of land created by the foreclosure of a security interest.
- (3) An area of land created by court decree.

**Staff:** The subject property was approved in its current configuration through two land use decisions in cases LE 15-78 and MC 16-81. MC 16-81 was decided by a Hearings Officer and upheld by the Board of Commissioners. These two decisions approved access via easement to a neighboring lot and established that tax lots 1700 and 1600 on map 1S 4E 19BC are one legal lot of record. The subject tax lot (tax lot 1600) is not a lot of record on its own, but is a lot of record together with the land in tax lot 1700. The current deed to the property as was shown as Exhibit B.4 in land use case T2-2014-3298 describes tax lot 1600 and 1700 the properties as one lot, thereby in compliance with LE 15-78. Therefore, the properties known as tax lot 1600 and tax lot 1700 together are one Lot of Record.

*These criteria are met.*

## **5.00 Multiple Use Agriculture – 20 Criteria**

### **§ 36.2825 REVIEW USES.**

Uses listed in this section may be permitted after required review as Type II decisions pursuant to MCC 37.0510 through 37.0800, or as specified for the use.

(A) Temporary uses when approved pursuant to MCC 36.0510 and 36.0515.

**Staff:** The applicant has requested a health hardship permit pursuant to MCC 36.0515. *This criterion is met.*

### **§ 36.2855 DIMENSIONAL STANDARDS AND DEVELOPMENT REQUIREMENTS.**

All development proposed in this district shall comply with the applicable provisions of this section.

(C) Minimum Yard Dimensions - Feet

Front	Side	Street Side	Rear
30	10	30	30

**Maximum Structure Height - 35 feet**

**Minimum Front Lot Line Length - 50 feet.**

**Staff:** The manufactured dwelling used for the health hardship situation is located 12 feet from the western side property line, over 30 feet from the front property line to the north, over 200 feet from the rear property line to the south and 200 feet from the eastern side property line. The manufactured dwelling is less than 35 feet in height. *These criteria are met.*

**(F) On-site sewage disposal, storm water/drainage control, water systems unless these services are provided by public or community source, required parking, and yard areas shall be provided on the lot.**

**(1) Sewage and stormwater disposal systems for existing development may be off-site in easement areas reserved for that purpose.**

**(2) Stormwater/drainage control systems are required for new impervious surfaces. The system shall be adequate to ensure that the rate of runoff from the lot for the 10 year 24-hour storm event is no greater than that before the development.**

**Staff:** The health hardship dwelling is currently connected to an on-site sewage disposal system. The storm water was reviewed as part of the original permit for the dwelling placement in 1997. *This criterion is met.*

#### **§ 36.2885 ACCESS.**

**All lots and parcels in this district shall abut a public street or shall have other access determined by the approval authority to be safe and convenient for pedestrians and for passenger and emergency vehicles. This access requirement does not apply to a pre-existing lot and parcel that constitutes a Lots of Record described in MCC 36.2870(B).**

**Staff:** The subject property has been previously reviewed by County Right-of-Way, but does not have an access permit. Currently, the property has an easement onto the public right-of-way known as SE 282<sup>nd</sup> Ave. The previous land use cases for the replacement dwelling and building permits for the addition to the garage (2015) and the original health hardship permit (1997) were reviewed by Multnomah County Transportation Division and have Right-of-Way approval. To ensure that an access permit is acquired within 30 days of this decision, the applicant will need to apply and receive an access permit. *As conditioned, this criterion is met.*

#### **6.00 Temporary Health Hardship Criteria**

##### **§ 36.0515 TEMPORARY HEALTH HARDSHIP PERMIT**

**(B) The Planning Director may grant a Temporary Health Hardship Permit to allow occupancy of a temporary dwelling on a lot in conjunction with an existing single-family dwelling allowed in the zone subject to the following:**

**(1) The person with the health hardship is either one of the property owners or is a relative of one of the property owners.**



- (a) If the person with the health hardship is one of the property owners, then the care provider in the other residence is not required to be a relative.
- (b) If the person with the health hardship is a relative of one of the property owners, then the care provider must be a relative.
- (c) For the purposes of this section, a relative is defined as a grandparent, grandchild, parent, child, brother or sister, wife, husband, brother-in-law, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, first cousin, step-parent, step-child, step-grandparent, or step-grandchild either by blood or legal relationship.

**Staff:** Shirley Dikeman is the mother of Linda Elliott (Exhibit A.3). Linda and Rick Elliott are the property owners of the property (Exhibit B.1). Linda is the primary care provider for Shirley Dikeman (Exhibit A.4). *This criterion is met.*

**(2) For each person with a health hardship, a written statement by a licensed physician dated within 90 days of submittal of the initial application, verifying the following information:**

- (a) The person identified in the application has a health hardship as defined in MCC 36.0005;
- (b) The person needs supervision and/or assistance with daily care as that term is defined in MCC 36.0005; and
- (c) The proposed care provider is capable of providing the supervision and/or assistance with daily care needed by the person with the health hardship.

**Staff:** A written statement by a licensed physician has been provided that meets the above requirements (Exhibit A.4). *This criterion is met.*

**(3) Each proposed care provider shall provide a written statement dated within 90 days of submittal of the initial application that the provider understands the physician's determination of the extent of daily care required and is capable of providing and will provide the necessary supervision and/or assistance during implementation of the Temporary Health Hardship Permit.**

**Staff:** Linda Elliott has provided a written statement that she is capable of providing the necessary daily care needs of Shirley Dikeman. (Exhibit A.4). *This criterion is met.*

**(4) The following criteria are satisfied:**

- (a) The temporary dwelling shall be either a mobile home, park-model recreational vehicle or travel trailer.
- (b) The temporary dwelling shall be located within 100 feet of the single-family dwelling on the subject lot, unless an adjustment or variance pursuant to MCC 36.7601 through 36.7616 is approved. This distance shall be measured from the closest portion of each building.
- (c) The temporary dwelling shall be connected to the same utilities (on-site sewage disposal, power main, well/water meter) as the single-family dwelling. In addition, the temporary dwelling shall be accessed by the same driveway entrance as the single-family dwelling, although the driveway may be extended.



**(d) The temporary dwelling will not require any attached or detached accessory structures other than wheelchair ramps.**

**Staff:** The temporary dwelling is a manufactured home, which by definition as per MCC 36.0005 includes residential trailers and manufactured homes. The temporary dwelling is located within 10 feet of the permanent dwelling on the property (Exhibit B.3). The manufactured home is connective to the same utilities as the permanent dwelling and uses the existing driveway. *This criterion is met.*

**(C) Prior to installation of the temporary dwelling on the site, the property owner shall:**

- (1) Obtain the necessary permits to place the temporary dwelling on the site and connect utilities,**
- (2) The property owner shall record a covenant that states that the dwelling is temporary and must be removed as set forth in (G) below and that the Temporary Health Hardship Permit is not transferable to another party.**
- (3) In the EFU & CFU zones, the property owner shall record a statement that the owner and the successors in interest acknowledge the rights of owners of nearby property to conduct forest operations consistent with the Forest Practices Act and Rules and to conduct accepted farming practices.**

**Staff:** The permit authorizing the temporary health hardship permitted included a condition requiring that the property owners record the above covenant within 30 days. No covenant was found in land use case T2-2014-3298 nor was a covenant submitted as part of this land use application. A condition of approval has been included requiring that within 90 days of this decision the property owners record the above covenant or provide evidence that the covenant has been record. *As conditioned, this criterion is met.*

## **7.00 Transportation Standards**

### **MCRR 4.000 Access to County Roads**

#### **MCRR 4.100 Required Information:**

**Applicants for a new or reconfigured access onto a road under County Jurisdiction may be required to provide all of the following:**

- A. Site Plan;**
- B. Traffic Study-completed by a registered traffic engineer;**
- C. Access Analysis-completed by a registered traffic engineer;**
- D. Sight Distance Certification from a registered traffic engineer; and**
- E. Other site-specific information requested by the County Engineer.**

**Staff:** The applicant has submitted an application to renew health hardship dwelling permit onto 282<sup>nd</sup> Ave, a County road under County Jurisdiction. The subject property has been previous reviewed by County Right-of-Way, but does not have an access permit. Currently, the property has an easement onto the public right-of-way known as SE 282<sup>nd</sup> Ave. The previous land use cases for the replacement dwelling and building permits for the addition to the garage (2015) and the original health hardship permit (1997) were reviewed by Multnomah County Transportation Division and have Right-of-Way approval. However, no access permits were found on file for the subject property. The applicant will need to submit driveway permit application with description of driveway width and type

(gravel/paved). Applicant will also need to submit site 11x17 site plan showing house, driveway, and 282nd avenue. To ensure that an access permit is acquired, within 30 days of this decision, the applicant will need to apply and receive an access permit. *As conditioned, this criterion is met.*

**MCRR 4.200 Number:**

**Reducing the number of existing and proposed access points on Arterials and Collectors and improving traffic flow and safety on all County roads will be the primary consideration when reviewing access proposals for approval. One driveway access per property will be the standard for approval. Double frontage lots will be limited to access from the lower classification street. Shared access may be required in situations where spacing standards cannot be met or where there is a benefit to the transportation system.**

**Staff:** The subject property is served by one driveway through use of an easement onto the public right-of-way known as SE 282<sup>nd</sup> Ave. *This criterion is met.*

**7.00 Conclusion**

Based on the findings and other information provided above, the applicant has carried the burden necessary for the renewal of a Health Hardship permit in the Multiple Use Agricultural – 20 (MUA-20) zoning district. This approval is subject to the conditions of approval established in this report: -- --

## 8.00 Exhibits

'A' Applicant's Exhibits

'B' Staff Exhibits

'C' Procedural Exhibits

All other exhibits are available for review in Case File T2-2016-5086 at the Land Use Planning office.

Exhibit #	# of Pages	Description of Exhibit	Date Received / Submitted
A.1	1	General application form	06/01/2016
A.2	1	Authorization Correspondence from Rick Elliot	06/01/2016
A.3	1	Narrative	06/01/2016
A.4	2	Health Hardship Medical Verification Form	06/01/2016
'B'	#	Staff Exhibits	Date
B.1	2	A&T Property Information for 1S4E19BC -01600	06/01/2016
B.2	1	A&T Tax Map with 1S4E19BC -01600 Highlighted	06/01/2016
B.3	1	Site Plan	08/22/2016
B.4	2	Bargain and Sale Deed	08/22/2016
'C'	#	Administration & Procedures	Date
C.1	1	Complete Letter (Day 1)	07/01/2016
C.2	3	Opportunity to Comment	07/06/2016
C.3	1	Request for Waiver of Pre-Filing / Pre-Application Meeting Requirement	08/22/2016