



MULTNOMAH COUNTY OREGON

LAND USE AND TRANSPORTATION PROGRAM

1600 SE 190TH Avenue Portland, OR 97233

PH: 503-988-3043 FAX: 503-988-3389

http://www.co.multnomah.or.us/dbcs/LUT/land_use

NOTICE OF DECISION

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

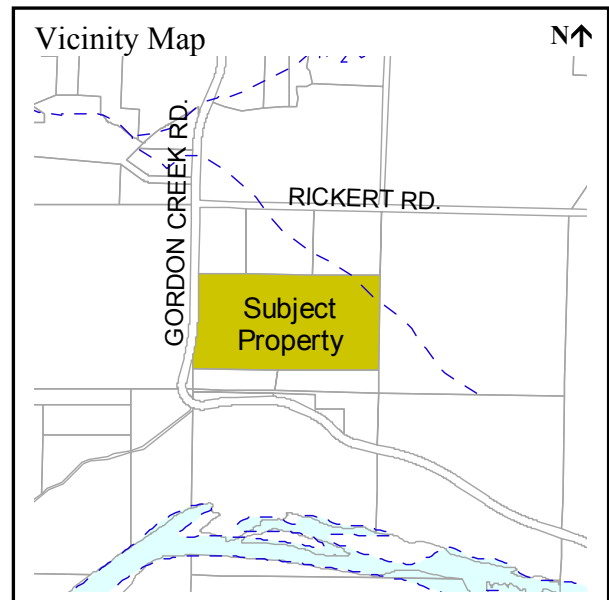
Case File: T2-04-025

Permit: Director's Determination.

Location: 36403 SE Gordon Creek Road
TL 400, Sec 11BB, T1S, R4E, W.M.
Tax Account #R994110230

Applicant: Donald Strum,
P.O. Box 245
Corbett, OR 97019

Owner: Donald G. & Rosina L. Strum,
P.O. Box 245
Corbett, OR 97019



Summary: Request for a primary farm dwelling customarily provided in conjunction with a farm use on property within the Exclusive Farm Use Zone District.

Decision: Approved

Unless appealed, this decision is effective August 11, 2004 at 4:30 PM.

Issued by:

By: _____
George A. Plummer, Planner

For: Karen Schilling- Planning Director

Date: Wednesday, July 28, 2004

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's 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 George A. Plummer, Staff Planner at 503-988-3043.

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 (LUBA) 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 August 11, 2004 at 4:30 pm.

Applicable Approval Criteria: Multnomah County Code (MCC): Chapter 37: Administration and Procedures and MCC 35.2600 through .2690: Exclusive Farm Use District. Copies of the referenced Multnomah County Code sections can be obtained by contacting our office at 503-988-3043 or by visiting our website at http://www.co.multnomah.or.us/dbcs/LUT/land_use.

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. **Pursuant to MCC 37.0690, this land use permit expires two years from the date the decision is final if; (a) development action has not been initiated; (b) building permits have not been issued; or (c) final survey, plat, or other documents have not been recorded, as required. The property owner may request to extend the timeframe within which this permit is valid, as provided under MCC 37.0690 and 37.0700. Such a request must be made prior to the expiration date of the permit.**

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, George Plummer, at (503) 988-3043, 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 area are needed for building permits signed off.

<p>Notice to Mortgagee, Lien Holder, Vendor, or Seller:</p>
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<p>ORS Chapter 215 requires that if you receive this notice it must be promptly forwarded to the purchaser.</p>

FINDINGS AND CONCLUSIONS

This decision is based on the findings and conclusions in the following section.

Staff Report Formatting Note: To address Multnomah County Code requirements staff provides findings as necessary, referenced in the following section. Headings for each category of finding are underlined. Multnomah County Code language is referenced using a **bold** font. The Applicant's narrative, when provided, follows in *italic font*. Planning staff analysis and findings follow the **Staff** label. Staff conclusions follow the findings and are labeled **Conclusion**. At the end of the report, Exhibits are described. The applicant's submittal is included and made part of this decision as Exhibits I.

1. DESCRIPTION OF THE PROPOSAL:

Applicant: *Sturm's Berry Farm owns the subject site. Two other parcels are part of the farm operation but income generated from those parcels will not be used to justify income for the farm dwelling on TL 23. The Sturm's specializes in red raspberries, and the 20 AC. parcel is fully occupied with the production of red and black raspberries. There are no dwellings on any of the land farmed by the Sturm 's. According to the Sturm 's, the 20 AC. parcel has earned in excess of \$80,000.00 in gross farm income for three out of the last five years. (See attached farm income statement and company spread sheet)*

Staff: The applicant is proposing to build a dwelling "customarily provided in conjunction with a farm use," his berry farming operation.

2. SITE AND VICINITY CHARACTERISTICS

Staff: The subject property is 20 acres which is predominately farmland employed in growing raspberries. The northeast corner, about a fifth of the property is forested (Exhibit 2.6). The proposed dwelling will be sited in forested area north on the existing driveway (Exhibit 1.14). The property has a slight slope due to small raise in the center of the property and creek running through the northeast corner. The Significant Environmental Concern (SEC) Overlay Zone Districts associated with the Sandy River cuts across the southern portion of the property. The proposed dwelling location is north of the SEC-g boundary (Exhibit 2.2).

In the surrounding vicinity the properties are used for a mix of farm, residential and forest uses. The property is surrounded on all but the southern property boundary by property within the Exclusive Farm Use (EFU) Zone District (Exhibit 2.2). To the south is a narrow strip, two properties (150 feet wide) within the Multiple Use Agriculture -20 (MUA-20) Zone District, both of which are farmed. The forested properties south of the MUA-20 properties are within the Commercial Forest Use – 4 (CFU-4) Zone District.

3. OWNERSHIP

MCC 37.0550: Except as provided in MCC 37.0760, Type I - IV applications may only be initiated by written consent of the owner of record or contract purchaser.

Staff: County Assessment records show the property owners are Donald G. and Rosina L. Strum (Exhibit 2.1). Special Warranty Deed, Recording No. 2003-070344 recorded on 03/31/2003 fulfilling contract recorded 1/6/95 as Fee No. 95-3406 showing Donald G. and Rosina L. Strum as

the owning the subject property (Exhibit 1.6). Mr. Strum is the applicant and signed the application as the property owner.

4. TYPE II CASE PROCEDURES

Staff: The application was submitted April 1, 2004 (Exhibit 1.1) and was deemed incomplete on April 15, 2004 (Exhibit 2.3). The application was deemed complete on June 16, 2004 (Exhibit 2.4) after the applicant's last submittal. An "Opportunity to Comment" notice (Exhibit 2.5) was mailed on June 21, 2003 to all properties within 750 feet of the subject property. Property owners were provided a 14-day period to provide comments on the application (MCC 37.0530). No comments were received.

5. EFU DISTRICT LOT OF RECORD

MCC 35.2675 (A) In addition to the *Lot of Record* definition standards in MCC 35.0005, for the purposes of this 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

* * *

MCC 35.2675 (B) In this district, significant dates and ordinances applicable for verifying zoning compliance may include, but are not limited to, the following:

- (1) July 10, 1958, F-2 zone applied;
- (2) December 9, 1975, F-2 minimum lot size increased, Ord. 115 & 116;

* * *

MCC 35.0005(L)(13) Definition of Lot of Record – Subject to additional provisions within each Zoning District, a Lot of Record is a parcel, lot, or a group thereof which when created and when reconfigured (a) satisfied all applicable zoning laws and (b) satisfied all applicable land division laws. 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.)

Finding: The subject property was not in a contiguous ownership on February 20, 1990 as shown on the tax assessment microfiche records for 1989 and 1990, stored in the County Land Use Planning office. The applicant has submitted a copy of a deed, Book 112, Page 214, recorded August 21, 1964 (Exhibit 1.7). This deed demonstrates the property existed in 1964, indicating the property was either created prior to zoning regulations (through an earlier deed) or during a time when the F-2 zone applied (Exhibit 2.7). F-2 zoning required a minimum of two acres (Exhibit 2.8). This property would have met that requirement and satisfied all applicable zoning laws when created.

6. REVIEW USE IN EFU DISTRICT

MCC 35.2625 (D) A dwelling, including a mobile or modular home, customarily provided in conjunction with a farm use:

- (1) On lands identified as high-value farmland, a dwelling may be considered customarily provided in conjunction with farm use if:**
 - (a) The subject tract is currently employed for the farm use, as defined in ORS 215.203, that produced at least \$80,000 (1994 dollars) in gross annual income from the sale of farm products in the last two years or three of the last five years; and**
 - (b) Except as permitted in ORS 215.283 (1) (p) (i.e. seasonal farmworker housing), there is no other dwelling on the subject tract; and**
 - (c) The dwelling will be occupied by a person or persons who produced the commodities which grossed the income in subsection (a) of this subsection;**

Applicant: *We, Donald and Rosina Strum are owners of Sturms Berry Farm, Inc who produce the commodities which grossed the income for the home dwelling application at 36403 SE Gordon Creek Road case no T2-04-25. Don and Rosina Sturm are going to occupy the proposed dwelling.*

Staff: The subject property is predominately Cornelius silt loam 10B a type II soil and Powell silt loam a class III soil. These soils are considered high value soils by the State of Oregon. The State of Oregon has amended the income requirement setting the income requirement at \$80,000 (current dollar value) dropping the 1994 dollar adjustment (OAR 660-003-0135). The County recently adopted this requirement but the application was submitted prior to the adoption. The OAR takes jurisdiction or the County Code in this case thus the \$80,000 current value requirement applies.

The proposed dwelling is in conjunction with a farm use of the land which is growing berries. The subject property is currently in farm use growing berries. The applicant has submitted gross sales farm income spreadsheet records for the subject property for 1998 through 2003 (Exhibit 1.3 and 1.12). The applicant has also submitted copies of federal income tax forms for entire farm operation (including other none adjacent property) for prior mentioned years (Exhibit 1.4 and 1.13). The spreadsheet records show a gross sales income for the subject property, Tax Lot 23 (subject property's old county tax lot number) that meets the \$80,000 gross annual income from the sale of farm products requirement (table below). The applicant submitted additional packets including receipts and spreadsheets for the years 1998 through 2003 from the companies which purchased the berries: Rainsweet Inc., Scenic Fruit Company and Hoodsport Winery. Rainsweet purchased the Willamette Reds raspberries and Scenic Fruit purchases the Black Cap black raspberries. These are the types of berries grown on the subject property. The applicant states that the subject property are his only fields of the Willamette Reds and Black Caps. There are other types of berries listed on some of the documents such as Meeker Reds and Chilliwack Reds which the Strum grow on other properties. These berries are not included in the income totals. The

submitted records show that the property meets both the last two year income requirement and the three out of the last five year requirement. There is no other dwellings on the subject property or other farm property owned by the Strum's. The income tax forms show the Strum's have been the farm operators producing the commodities which grossed the farm income. The Strum's will be occupying the dwelling. The submitted documents demonstrate that the property met these criteria.

7. CONCLUSION:

Staff: The applicant has demonstrated that the subject property meets the requirements for an approval of a dwelling customarily provided in conjunction with a farm use in the EFU Zone District.

8. EXHIBITS

8.1 Exhibits Submitted by applicant:

- Exhibit 1.1: Application form submitted 4/1/04 (1 page);
- Exhibit 1.2: Narrative submitted with prefile included at applicant's request (2 pages);
- Exhibit 1.3: Spreadsheet for subject property income from 1998 through 2002 submitted with prefile included at applicant's request (1 page);
- Exhibit 1.4: Income Tax Return forms for 1997 through 2002 for the entire farm operation submitted with prefile included at applicant's request (6 pages);
- Exhibit 1.5: Aerial photo site map showing subject property and general location of proposed dwelling submitted 4/1/04 (1 page);
- Exhibit 1.6: Special Warranty Deed (copy), Recording No. 2003-070344 recorded on 03/31/2003 showing ownership of subject property submitted 4/1/04 (1 page);
- Exhibit 1.7 Warranty Deed (copy), Book 112, Page 214, recorded August 21, 1964 submitted 4/1/04 (1 page);
- Exhibit 1.8 Septic Site Evaluation from the City of Portland Bureau of Development Services submitted 4/1/04 (1 page);
- Exhibit 1.9 Certificate of Water Service signed by Marc Caldwell, Interim Manager, Corbett Water District submitted 4/1/04 (1 page);
- Exhibit 1.10 Fire District Review signed by District Fire Chief submitted 4/1/04 (1 page);
- Exhibit 1.11 Supplemental narrative submitted 5/27/04 (2 pages);
- Exhibit 1.12 Supplemental spreadsheet showing income from 2003 submitted 5/27/04 (1 page);
- Exhibit 1.13 Income Tax Return form for 2003 for the entire farm operation submitted 5/27/04 (1 page);
- Exhibit 1.14 Site plan with enlargement area showing the development site detail submitted 5/27/04 (2 pages);
- Exhibit 1.15 Spreadsheet for 2003 with attached spreadsheet receipts from Rainsweet Inc and Scenic Fruit Company submitted July 23, 2004 (6 pages);
- Exhibit 1.16: Spreadsheet for 1998 to 2002 with attached spreadsheet receipts from Rainsweet Inc, Scenic Fruit Company and Hoodspout Winery submitted July 23, 2004 (19 pages);
- Exhibit 1.17: Fax from the applicant detailing raspberries yield information from the Washington with attached document from State Washington Red Raspberry Commission submitted July 27, 2004 (5 pages).

8.2 Exhibits provided by the County

- Exhibit 2.1: County Assessment Records (2 pages);

- Exhibit 2.2: Zoning Map (1 page);
- Exhibit 2.3: Letter dated April 15, 2004, deeming application incomplete (4 pages);
- Exhibit 2.4: Letter dated June 17 deeming application complete (2 pages);
- Exhibit 2.5: Opportunity to Comment notice (4 pages);
- Exhibit 2.6: Aerial Photo show subject property (1 page);
- Exhibit 2.7: 1962 Zone Map 1 page);
- Exhibit 2.8: F-2 Zone District Code 1958 to 1977 (2 pages);
- Exhibit 2.9: Aerial photo showing soil types for the subject property (1 pages).