



## MULTNOMAH COUNTY OREGON

### LAND USE AND TRANSPORTATION PROGRAM

1600 SE 190<sup>TH</sup> Avenue Portland, OR 97233

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

[http://www.co.multnomah.or.us/dbcs/LUT/land\\_use](http://www.co.multnomah.or.us/dbcs/LUT/land_use)

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# NOTICE OF DECISION

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

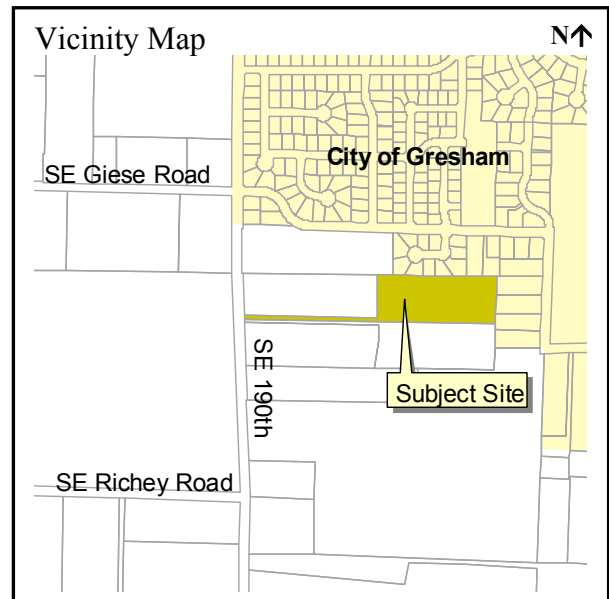
**Case File:** T2-04-036

**Permit:** Planning Director's Determination Of An  
Accessory Use

**Location:** 7300 SE 190<sup>th</sup>  
TL 1100, Sec 20, T1S, R3E, W.M.  
Partition Plat 1991-150; Lot 2  
Tax Account #R64971-8980

**Applicant:** Peter Wasch  
13600 SE Taylor Court  
Portland, OR 97233

**Owner:** Jim Pliska  
7300 SE 190<sup>th</sup> Drive  
Gresham, OR 97080



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**Summary:** Request for a Planning Director's Determination on a 4000 square foot storage building/garage as an accessory use to the residence.

**Decision:** Denied. The Planning Director finds that the applicant failed to demonstrate the proposed structure is customarily accessory or incidental to the primary use, a residence, on the property.

Unless appealed, this decision is effective Friday, October 15, 2004, at 4:30 PM.

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Issued by:

By: \_\_\_\_\_  
Don Kienholz, Planner

For: Karen Schilling- Planning Director

Date: Friday, October 1, 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 Don Kienholz, 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 Friday, October 15, 2004 at 4:30 pm.**

**Applicable Approval Criteria:** Multnomah County Code (MCC): MCC 11.15.2214(D)

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

**FINDINGS:** Written findings are contained herein. The Multnomah County Code criteria and Comprehensive Plan Policies are in **bold** font. Staff comments and analysis are identified as **Staff:** and follow Applicant comments identified as **Applicant:** to the applicable criteria. Staff comments include a conclusionary statement in *italic*.

1. **Project Description**

**Staff:** The applicant has proposed a 4000 square foot accessory structure that contains 1000 square feet of garage space and 3000 square feet of shop space. The structure measures 40x100 on the submitted site plan and is near the north property line.

2. **Site Characteristics**

**Staff:** The area of unincorporated Multnomah County the property is in is all zoned Rural Residential (RR). The subject lot takes access off of 190<sup>th</sup> and the City of Gresham borders the property to the north and to the east. Unincorporated properties in the area are roughly 5-acres in size and contain residential and farm uses. The land is generally flat and cleared of forest lands. The subject lot contains a large dwelling, pool, and graveled/paved parking area situated to the rear (east) of the property. Access is shared with the property to the south.

3. **Proof of Ownership**

**37.0550 Initiation Of Action.**

**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. PC (legislative) actions may only be initiated by the Board of Commissioners, Planning Commission, or Planning Director.**

**Staff:** Multnomah County Assessment and Taxation records show James and Linda Pliska as owners of property known as 7300 SE 190<sup>th</sup> Drive. Both James and Linda Pliska signed a letter authorizing Peter Wasch to sign the General Application form as the acting agent of the property owners.

*Criterion met.*

4. **Public Comment**

**MCC 37.0530(B) Type II Decisions**

**(B) Type II decisions involve the exercise of some interpretation and discretion in evaluating approval criteria. Applications evaluated through this process are assumed to be allowable in the underlying zone. County Review typically focuses on what form the use will take, where it will be located in relation to other uses and natural features and resources, and how it will look. However, an application shall not be approved unless it is consistent with the applicable siting standards and in compliance with approval requirements. Upon receipt of a complete application, notice of application and an invitation to comment is mailed to the applicant, recognized neighborhood associations and property owners within 750 feet of the subject Tract. The Planning Director accepts comments for 14 days after the notice of application is mailed and renders a decision. The Planning Director's decision is appealable**

**to the Hearings Officer. If no appeal is filed the Planning Directors decision shall become final at the close of business on the 14<sup>th</sup> day after the date on the decision. If an appeal is received, the Hearings Officer decision is the County's final decision and is appealable to LUBA within 21 days of when the decision is signed.**

**Staff:** An opportunity to comment was mailed to property owners within 750-feet of the property lines on May 7, 2004. The County received letters from six property owners concerning the proposed structure.

The comments received centered on:

1. Blocked views
2. Drainage impacts
3. Diminished property values
4. The size of the building
5. The building should undergo the Design Review criteria of MCC 11.15.7850
6. Septic drainfield location

Whether or not the proposed building can be approved is completely based on if the proposal meets the approval criteria which are found in MCC 11.15.2214(D) under Accessory Structures and the dimensional standards of MCC 11.15.2218. There are no overlay zones on the property that require the review of the location of a new structure. Only the dimensional requirements of MCC 11.15.2218 have an impact on the location. Runoff generated from the structure and its associated drainage area is reviewed if it may have an adverse impact. Staff required the applicant to obtain a Professional Engineer who certified the additional runoff generated from the proposed structure would be handled on site up to the County's standard of a 10-year/24-hour storm event. Property values are not reviewed as part of the zoning code. A Design Review permit is not a required permit for building accessory to the residence under the zoning code.

*Procedures met.*

5. **The Proposed Structure Is Not Customarily Accessory or Incidental To A Primary Use In This District**

**MCC 11.15.2214 Accessory Uses**

**(D) Other structures or uses customarily accessory or incidental to any use permitted or approved in this district;**

**Applicant:**

**April 29, 2004 Submittal:** The scope of this project shall consist of a 4000 sq ft steel building. The building shall be divided into a storage area and a garage/shop area. The storage area will be used for the storage of a motor home, a back hoe, farm tractor and associated equipment to maintain a 5 acre rural residential lot. The garage/shop area shall be used for a work shop for the owner personal hobbies.

This building meets the county requirements for a accessory building by being incidental to the existing house on this lot. The existing house ground floor sq ft is 4968. and the existing height is 40 feet. The proposed building is 4000. sq ft and the height is 30' which is well under the size of the existing house and meets the Multnomah County zoning requirements.

This proposed accessory building is not uncommon in this area with adjacent neighbors having larger accessory buildings in relations to there existing houses then we are proposing. The property directly to the west has a accessory building about 2500 sq ft with a house around the same size. The property directly to the south has two accessory building the one on the east is about 2000 sq ft with the roof peak around 30' and the accessory building in the middle of the lot about 10000 to 12000 sq ft.

**September 1, 2004 Submittal:** This office represents Mr. Jim Pliska in connection with his application for an accessory building on his property in unincorporated Multnomah County (Case#T2-04-036). This letter responds to your May 6, 2004, letter to Peter Wasch, the applicant's engineer. Pursuant to your letter, you have questioned whether the proposed 4,000 square foot workshop/garage qualifies as an "accessory use or structure." For the following reasons, we believe that the applicant's proposed accessory building is an outright permitted use on the subject property and that the County has no discretion to deny the application.

The County has adopted a bright-line policy that structures such as the proposed workshop/garage that do not exceed either the floor area or height of the primary structure on the property are automatically deemed to be "accessory structures." The County, in fact, approves such uses as ministerial actions, exempt from the statutory definition of a land use decision. In this case, the applicant proposes a workshop/garage. The proposed building does not exceed the floor area or height of the primary structure on the property. Although the applicant has proposed a 30-foot structure, to fit within the County's policy, the structure will not exceed the height of the residence. Consequently, under the County's long-established policy, approval should be treated as a ministerial action. Attached is a copy of the County's accessory structure policy clearly stating that structures such as the proposed workshop/garage are exempt from planning director review. Also attached are copies of a number of County decisions identifying the accessory use policy. Because the County has adopted a policy regulating approval of accessory structures and because under the policy the proposed use is automatically deemed to be an accessory structure, the County has no discretion to subject the proposal to a formal land use review or to deny the proposal.

Even if the County does not follow its long-standing policy, the proposal still falls squarely within the definition of an accessory structure. Whether or not the proposed building qualifies as an accessory building is determined by the County's Rural Residential land use regulations. Under MCC 11.15.2206, primary uses in the rural residential zone include the following:

A. Farm use, as defined in ORS 215.203(2)(a)for the following purposes only:

1. Raising and harvesting of crops;
2. Raising of livestock and honeybees; or
3. Any other agricultural or horticultural purpose or animal husbandry purpose or combination thereof, except as provided in MCC .2212(B).

B. The propagation or harvesting of forest products;

C. Residential use consisting of a single family dwelling constructed on a lot; and

D. Public and private conservation areas and structures for the protection of water, soil, open space, forest and wildlife resources.

E. Actions taken in response to an emergency/disaster event as defined in MCC 11.15.0010pursuant to the provisions of MCC 11.15.2282.

The Rural Residential Accessory Use provisions provide that in addition to the primary use of the property "other structures or uses customarily accessory or incidental to any use permitted or approved in this district" may be allowed in the Rural Residential zone. Similarly, the MCC defines "Accessory Building" as "a subordinate building, the use of which is clearly incidental to that of the main building on the same lot." Consequently, as long as the proposed accessory building is accessory or incidental to the primary use, the County must approve the application, provided of course, that it meets applicable development standards.

The "main building on the same lot" is the applicant's residence. The residence is 8,428 square feet, including the attached garage. The proposed accessory building is 4,000 square feet. Obviously the accessory building will be the subordinate building on the property, both in terms of its use and its size. The accessory building will be used for storage of general household goods, farm equipment and vehicles. The building will also include a shop area. These uses are clearly incidental to the primary residential use of the property.

Moreover, the subject property is used for farm use as allowed in the Rural Residential zone. The Rural Residential regulations allow for accessory uses and buildings incidental to "any use permitted" in the zone, including farm use. Thus the use of proposed building for storage of farm equipment is authorized by MCC 11.15.2214.

Your primary objection is to the size of the building in relation to the existing house. As a starting point, there is no express limitation on the size of an accessory building. Other than lot coverage standards, the only limitation in the MCC is that "the use [of the building] is clearly incidental to that of the main building on the same lot." MCC 11.15.0010. Thus the issue is not the size of the accessory building, but the use to which it is put. The use must be accessory. Here, that is clearly the case. The use of the building for storage and a shop area will not become the primary use on the property. The primary use of the property will remain residential. The use of the building for storage and a shop area by the applicant is incidental to the applicant's residential use of the property. Consequently both the use and the building qualify as "accessory."

The applicant does not have to demonstrate that the accessory building is similar in scale to other buildings or that its size is roughly proportional to other accessory buildings in the area. Even so, the applicant's proposed structure is well within the range of accessory structures in the area. As the attached chart shows, the average ratio between the size of a finished house and the size of accessory buildings is roughly 52%. In other words, for houses in the area that have accessory buildings, on average, accessory buildings are roughly 52% as large as the finished house (excluding unfinished portions and garages). The finished size of the applicant's house is 7,196 square feet, while the accessory building is 4,000 square feet. Thus, the applicant's accessory building is roughly 55% of the size of the primary residence—well within the range of similarly situated properties.

In the applicant's submittal the applicant provided information regarding the size and location of similar buildings located on adjacent and nearby properties. In your letter you state that, because the underlying properties are in farm deferral, they cannot be used for comparison purposes. That statement is incorrect as a matter of law. All of the properties referenced in the application are zoned Rural Residential. Consequently, whether they are in farm deferral has no bearing whatsoever on whether the buildings constitute accessory buildings for purposes of the Rural Residential zone. The primary and accessory use provision of the MCC controls, regardless of whether the underlying property qualifies for farm tax deferral. Farm tax deferral is a property tax issue, not a land use issue.

While the applicant appreciates the concerns raised by your department and those of nearby property owners, the concerns related to the size of the building in general and in proportion to the size of the residence do not relate to the approval criteria for this application. Because the applicant has demonstrated that both the size of the building and the use of the building are incidental to the primary residence on the property, the applicant has met its burden of proof. Consequently, the County lacks the discretion to deny this application.

**Staff:**

**Administrative Guidelines**

In framing the issue at hand – whether or not the proposed structure is an accessory building and use – the applicant has misunderstood the term “Policy” as used in the County’s LUP Administrative Guidelines 13 (Exhibit 1). The applicant has misinterpreted the term to mean a binding, codified regulation. This is not the case. The Accessory Structures Administrative Guideline is one of a series of “policies” developed to guide the day-to-day operations of the planning office. They have not been reviewed or approved by the Planning Commission or Multnomah County Board. The guidelines for Land Use Planning cover a wide range of issues such as a policy for out-of-office time, a policy for vacation scheduling, a policy for mailing procedures, etc., in addition to a policy on accessory structures. The “policy” guideline for accessory structures is intended to provide guidance to staff as to when a structure/use is clearly accessory. As such, the administrative guideline and policy should not be looked at as a binding regulation.

**Use of Structure**

When determining whether or not a use is accessory “to any use or approved or permitted in this district,” staff must first look to the primary use of the property. What is allowed as an accessory use is determined by that primary use. Further, the code narrows what is allowable by limiting the use to other accessory uses allowed or permitted elsewhere in the zoning district. With this in mind, staff examined what the subject property was being used for. Multnomah County Assessment and Taxation shows the land as “residential” – meaning the primary use of the property is a single-family dwelling. The property is in the Rural Residential (RR) zoning district therefore staff limited the comparative analysis to RR properties where the primary use is a single-family dwelling.

With a residence as the primary use on the property, the applicant must demonstrate that the proposed structure and use of that structure are “customarily accessory or incidental” to the residence. The clause “customarily accessory or incidental” sets boundaries on what an accessory use can be and looks to ensure the nature and extent of uses and structures are in fact subordinate to a primary use. “Customarily” also requires commonality in the zoning district the subject property is located in.

With that in mind, staff must first determine if the proposed uses are commonly encountered in the Rural Residential (RR) zoning district. It also requires consideration of the scale, bulk and intensity of the structure and use and if at the levels proposed, they are commonly found. Staff has determined that uses such as garages, carports, pump houses, workshops, garden sheds, and green houses are commonly encountered in the RR district. The applicant has proposed a combined shop and garage, which are commonly found uses.

The structure being customarily accessory or incidental is the issue due to scale. Is a 4000 square foot garage/shop a subordinate item or of a minor or casual nature? Is it commonly encountered? Based on a floor plan submitted by the applicant, the garage would occupy 1000 square feet of the building and the shop 3000 square feet. The existing dwelling on the subject property already contains 1232 square feet of garage space. To put this in perspective, the Off-Street Parking Standards of the zoning code requires parking spaces to be 9x18, or 162 square feet. Using those dimensions, the existing garage has enough space to park 7.6 vehicles. The 1000 square feet of proposed garage space would add an additional 6.2 parking spaces for a total of 13.8 parking spaces. The applicant has not demonstrated how 13 or 14 parking spaces are customary for single-family dwellings in the Rural Residential zoning District. Additionally, the County has a provision under the conditional uses section for the storage of vehicles of special interest. Because collectors of cars often have large numbers of vehicles that they store and/or work on as a hobby, the County saw that having an unusual amount of vehicles was not common or accessory and required a special permit to authorize the use on residential land. Having enough space to store between 13 and 14 vehicles would seem to more appropriately fit in under that category.

The County used a sampling of RR zoned properties in the immediate area to analyze what was customary (Exhibit 2), staff found that dwellings ranged in size from 660 square feet to 4028 square feet in size according the Multnomah County Assessment and Taxation information. In the table below it shows that residential accessory structures for the area range in size from 234 square feet to 1560 square feet. The property with the most area dedicated to residential accessory structures has three buildings that when combined are 2040 square feet. Even with the three residential accessory structures combined the applicants' proposed structure is nearly 100% larger. Such a large building is not commonly encountered.

Next, the proposed 3000 square foot shop space must be analyzed in the same manner. Using the same properties to compare to, it is even more out of place as an accessory structure. If using only the shop's 3000 square feet, the building would be nearly 100% larger than the largest existing accessory structure (1560 square feet) in the sampling area. The applicant has not demonstrated that a 3000 square foot shop is customary. In fact, at 3000 square feet, the shop would be larger than seven of the 10 homes in the area of analysis. A structure of such size is no longer subordinate or minor in use and since it is a shop, could easily take on characteristics of a commercial use due to its sheer size and scale. The applicant has not provided information on what the shop will consist of, what it is for, or what machinery or uses will be in it.

When the garage and shop are combined to be analyzed at 4000-square feet, the single structure becomes even more of an anomaly. There is no evidence in the record that a 4000 square foot accessory residential structure can be found in the area and is therefore not customary. Additionally, such a large structure is no longer a subordinate structure, especially given the common size of primary dwellings in the area. It is also no longer a minor use and as said before, could easily be seen as commercial. No information is in the record that would indicate its use is restricted to residential purposes.



Map #	Address	R#	# of Accessory Residential Structures	Size of Structures in Square Feet
1	7400 SE 190 <sup>th</sup>	#R993200990	0	-
2	7240 SE 190 <sup>th</sup>	#R993200970	0	-
3	7200 SE 190 <sup>th</sup>	#R649718960	1	400
4	19208 SE Butler	#R993200070	0	-
5	7424 SE 190 <sup>th</sup>	#R993200740	0	-
6	No Address	#R993200690	0	-
7	7620 se 190 <sup>th</sup>	#R993200490	3	1560 / 240 / 240
8	7704 SE 190 <sup>th</sup>	#R993200750	0	-
9	7077 se 190 <sup>th</sup>	#R123900010	1	324
10	18840 SE Giese Road	#R123900050	0	-
11	No Address	#R993200770	3	960 / 400 / 400
12	18960 SE Richey Road	#R993200300	2	240 / 240
		Average Size of Structures:		500.4 SF
		How Much Larger the Proposed Structure is:		3499.6 SF

The applicant makes an argument that there are some accessory buildings in the general area that are comparable in size to the proposed structure or of a similar size ratio and therefore the application should be approved because the structure is customary (see applicants' table identified as Exhibit 3).

Staff has determined that the structures used by the applicant as a comparison are farm buildings and are accessory to a farm use. Each property noted by the applicant is in farm deferral and the structures are listed by Multnomah County Assessment and Taxation as "(FRM) Farm BLDG." The structures the applicant used to compare the proposed building with are not similar in use and cannot be used to show commonality or similarity to.

Staff noted on the table in Exhibit 4 what property the applicants' listed properties correspond to on the staff supplied map (Exhibit 5). The case file contains Assessment and Taxation property information printouts for the 12 adjacent properties indicated on the staff map, including the applicants' identified properties.

### **Farm Use**

It is customary for farm properties to have large structures to help support a farm, a primary use under the zoning code. Whether the buildings are used for hay storage, horse stabling, equipment storage and repair etc, it is obvious that they are for the running of the farm. Residential use and farm use are completely different uses which require completely different structures and therefore they can not be compared with each other for being "customary."

The applicant indicates in a September 1, 2004 letter that the property is in farm use and therefore the building should be permitted as proposed because part of the building is being used for farm use to store farm equipment.

*"Moreover, the subject property is used for farm use as allowed in the Rural Residential zone. The Rural Residential regulations allow for accessory uses and buildings incidental to "any use permitted" in the zone, including farm use. Thus, the use of proposed building for storage of farm equipment is authorized by MCC 11.15.2214."*

There is no evidence in the record to suggest the property is being used as a farm. The subject property is not enrolled in Multnomah County Assessment and Taxation's Farm Deferral program which is a reliable indicator of actual farm use. The State has defined Farm Use under ORS 215.203 and that statute requires that to be called a "farm use", the land must be currently employed for the primary purpose of obtaining a profit in money by raising or harvesting crops or other various products as defined by the State. Simply stating the property is in farm use does not carry the burden necessary to establish the fact; especially since a site visit by staff and the County's 2002 air photo do not indicate any defined farm activity on the site.

*Criterion not met.*

### **Conclusion**

Based upon the findings contained herein, the applicant has not carried the burden necessary to demonstrate that the proposed 4000-square foot structure is customarily accessory or incidental to any use permitted or approved in the Rural Residential district. Therefore, Staff finds the proposed structure is not an accessory use and is denied.

### **Exhibits**

1. Administrative Guidelines – LUP 13.
2. Staff's Sampling of Nearby Properties and Their Assessment and Taxation Information.
3. Applicant's Submitted Comparison Table.
4. Applicant's Comparison Table With Staff Notes Indicating Which Properties Match Properties on Staff's Sampling Map (Exhibit 5).
5. Staff Map of Properties in the Sampling for Comparative Purposes and Their Corresponding Assessment and Taxation Information.
6. Site Plan
7. Floor Plan
8. Elevation Plans

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