



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: T2-04-081

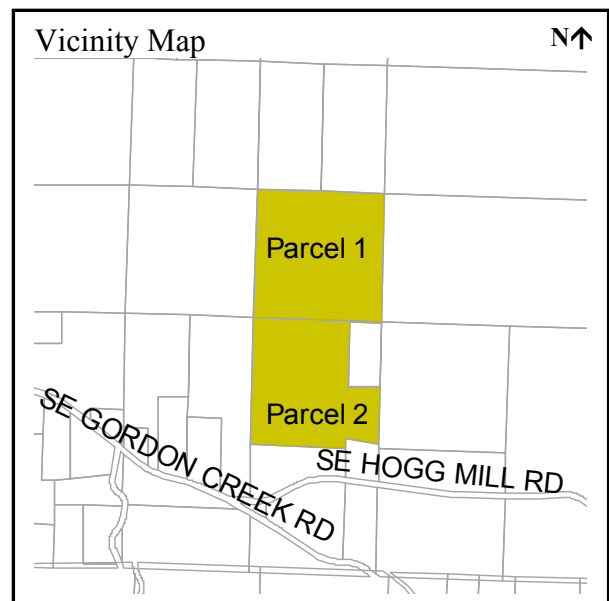
Permit: Property Line Adjustment

Parcel 1: 42719 SE Hogue Mill Rd.
TL 700, Sec 20, T1S, R5E
Tax Account #R99520-0100

Parcel 2: 42717 SE Hogue Mill Rd.
TL 200, Sec 20C, T1S, R5E
Tax Account #R99520-0160

Applicant/ Bernard Younker
Owner 47219 SE Hogue Mill Rd
Parcel 1: Corbett, OR 97019

Owner Mary Lou Bowman
Parcel 2: 42711 SE Hogue Mill Rd.
Corbett, OR 97019



Summary: Property Line Adjustment to relocate the common boundary between 42719 and 42717 SE Hogue Mill Road. The easterly 460 feet of the common boundary will move south approximately 680 feet.

Decision: Approved with Conditions

Unless appealed, this decision is effective July 25, 2005, at 4:30 PM.

Issued by:

By: _____
Tammy Boren-King, AICP
Planner

For: Karen Schilling- Planning Director

Date: July 11, 2005

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 Tammy Boren-King, 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 July 25, 2005 at 4:30 pm.

Applicable Approval Criteria: Multnomah County Code (MCC): 37.0560 - Code Compliance And Applications; 35.0005(L)(13) – Lot of Record; 35.2225-Review Uses; 35.2260- Dimensional Standards; 35.2270-Lot Line Adjustments; 35.2275 - Lot of Record; 35.7970 - Property Line Adjustment.

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.**

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. **The property owner, or representatives thereof, shall complete the adjustment pursuant to the attached “Applicant’s Instructions for Finishing a Property Line Adjustment,” and “Surveyor’s Instructions for Finishing a Property Line Adjustment” included as Exhibits 14 and 15 respectively. This will entail survey and monumentation of the new lot line by a registered surveyor and verification by survey of the location of the existing dwellings and other structures in relation to lot lines as required by MCC 35.7970(C).**
2. **Final approval of the subject property line adjustment shall not be granted until the property line adjustment tentatively approved in case T2-05-019 has received final approval and deeds have been recorded to implement the exchange.**

- 3. After the surveyor has prepared the legal descriptions and final map, call planner Tammy Boren-King (503-988-3043) to schedule an appointment for final approval of the legal descriptions and survey. Bring proof of recordation of the deeds required to finalize the adjustment approved in case T2-05-019 along with three copies of the final map and three copies of the legal descriptions for the subject property line adjustment to this meeting.**
- 4. After final approval of the final map and legal descriptions has been granted, finalize the property line adjustment through the recording of a conveyance conforming to the approved configuration as described in the Applicant's Instructions included as Exhibit 14.**

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: 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 is proposing to adjust the common property line between 42719 and 42717 SE Houge Mill Road as shown on the applicant's site plan included as Exhibit 1. The northerly parcel, 42719, will be referred to as Parcel 1 throughout this document. Likewise, the southerly parcel, 42717, will be referred to as Parcel 2.

As shown on Exhibit 1, the transfer area is approximately 319,400 square feet or 7.33 acres. Parcel 2 will decrease in size from 34.36 acres to approximately 27.03 acres. Parcel 1 will increase in size from 40 acres to approximately 47.33 acres. The transfer area includes a rectangle 460 feet wide by 680 feet deep west of the property identified on Exhibit 1 as Tract 4 as well as the 20 foot deep by 330 foot wide strip of land north of the property identified on Exhibit 1 as Tract 4. Tract 4 is a separate property which is not involved in the subject property line adjustment. It is included for reference purposes only.

2. **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 Director's decision shall become final at the close of business on the 14th 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 June 21, 2005. The comment period was open for 14 days. No written comments were received. Copies of both the opportunity to comment and the mailing list are included in the file.

Procedures met.

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 Mary Bowman as the owner of Parcel 2 (Exhibit 3) and show Bernard and Ruth Younker as the owner of Parcel 1. Deed records included as Exhibits 4, and 5 have been submitted that verify the ownership of both parcels. Copies of the deeds are included in the file. Mary Bowman, Ruth Younker, and Bernard Younker have signed the Statement of Property Owner Consent form authorizing the property line adjustment (Exhibit 2).

Criterion met.

4. **The properties are in Full Compliance as required by MCC 37.0560.**

§ 37.0560 Code Compliance And Applications.

Except as provided in subsection (A), the County shall not make a land use decision, or issue a building permit approving development, including land divisions and property line adjustments, 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: Parcel One (the Younker Parcel) contains a home and four accessory buildings. The dates of construction of the house and accessory buildings are unclear given the records available to staff. No building permit records exist for the house or accessory buildings. The Sanitarian's office verbally informed staff on June 23, 2005 that they have no records for this address other than the green form signed by Mike Ebling for the current property line adjustment application. The site plan Mr. Younker submitted shows the house being on a cess pool, not a septic system.

The assessment information shows the "Year Built" date of the dwelling as 1957. On June 24, 2005, staff spoke with Mel Feinstein, Appraiser 2 with the County's Assessment and Taxation Division, regarding how the year built date was assigned to properties during this period of time. Mr. Feinstein informed staff that in this period of time there was a six year appraisal cycle. Once every six years an appraiser would make a field visit to the property and re-assess the value based on the improvements in place during the field visit. The year built date would reflect the first year the house was added to the tax roles. For someplace remote, like Hogg Mill Road, it is likely that

the house would not have been noticed and would have only been added to the tax roles through the normal appraisal cycle.

Deed records submitted with the application shown Mr. Younker bought the property in 1952. His application materials state that the house was built in 1953. The earliest aerial photos staff has access to that extend this far east date from 1977. The 1977 aerial photos do clearly show all of the structures currently in existence on the Younker property. A copy of the 1977 aerial photo is included in the file.

If the house was built in 1953, it would pre-date building code and zoning requirements. The Younkers could have built the existing house without needing any permits or meeting any setback requirements in 1953. If the accessory buildings were built throughout the 1950's and 1960's, it is unlikely that any building permit records would exist. Agricultural buildings, such as those contained on Mr. Younker's property, are exempt from the building code. Multnomah County land use planning has records of exempt agricultural structures dating back through the late 1970's, but has little in the way of records for exempt agricultural structures prior to the late 1970's.

A review of the County's records has discovered no citation or compliance problems. There is no evidence that there is any compliance issue for this property. There is insufficient evidence to support a finding that Parcel One is not in compliance with the code.

Parcel Two (the Bowman Parcel) was recently involved with a property line adjustment in case T2-05-019. The purpose of this property line adjustment was to correct a setback encroachment resulting from the placement of the dwelling. The tentative approval for case T2-05-019 became final on 6-17-05. After the final approval of the property line adjustment shown in case T2-05-019, parcel 2 be in full compliance. A condition of approval has been included requiring the adjustment approved in T2-05-019 to receive final approval and for deeds executing the transfer to be recorded prior to the final approval for the subject proposal being granted.

Criteria me with condition.

5. **Both Properties Involved Are Lots Of Record under MCC 35.0005(L)(13) and MCC 35.2275.**

Staff: Parcel 2 was put into its current configuration through a property line adjustment approved by the County in casefile T2-05-019. This adjustment was reviewed and determined to be in compliance with all applicable zoning and land use laws in casefile T2-05-019. This satisfies the criteria under MCC 35.0005(L)(13).

Deed records included as Exhibit 5 show that Parcel 1 was put into its current configuration by the deed recorded in book 1545 on page 451 on June 28, 1952. Multnomah County first adopted zoning on May 26, 1953. As such, Parcel 1 was created before land use regulations existed in Multnomah County. Parcel 1 satisfies the criteria under MCC 35.0005(L)(13).

Additional Lot of Record standards are included in the CFU-4 zone which require the aggregation of lots under common ownership on February 20, 1990 if the lots are under 19 acres. Ownership information for February 20, 1990 is not available to staff. However, ownership information is available for 10-15-1989 and 5-1-1990. Staff checked the ownership on these dates and found no change in the ownership of the subject parcels or the surrounding parcels between 10-15-1989 and

5-1-1990. As such, staff will rely on the available information to determine ownership on February 20, 1990.

Exhibit 13 contains a map showing the alternate tax account numbers and 1990 ownership for both subject properties and all adjacent parcels. Parcel 1 was owned by Ruth and Bernard Younker; the property known as R995200050 was owned by Bernard Younker. Parcel 1 is shown on the County's tax maps as being 40 acres. The property known as R995200050 is shown on the County's tax maps as also being 40 acres. Since both of these properties exceed 19 acres in size, they are not aggregated together for Lot of Record purposes pursuant to MCC 35.2275(A)(2). Parcel 1 is a Lot of Record pursuant to MCC 35.2275(A)(2).

Parcel 2 was owned by Allen Baker, Ruth Baker, James Baker, Ardis Baker, Frank Dunlap and Catherine Dunlap. Frank and Catherine Dunlap also owned the property to the West of Parcel 2 (R995200270). Parcel is shown as 34.36 acres on the County's tax maps. The property known as R995200270 is shown as 20.53 acres on the County's tax maps. Since both of these properties exceed 19 acres in size, they are not aggregated together for Lot of Record purposes pursuant to MCC 35.2275(A)(2). Parcel 2 is a Lot of Record pursuant to MCC 35.2275(A)(2).

Both properties are Lots of Record pursuant to both the definition of Lot of Record contained in MCC 35.0005(L)(13) and the Lot of Record standards in MCC 35.2275.

Criteria met.

6. **Property Line Adjustments Are Allowed In The Commercial Forest Use-4 Use Zoning District.**

§ 35.2225 Review Uses

(H) Lot Line Adjustment pursuant to the provisions of MCC 35.2270.

Staff: Property line adjustments are a listed Review Use allowed in the district. The request is reviewed for compliance with MCC 35.2270 below.

Criterion met.

7. **The Proposed Configuration Meets The Property Line Adjustment Approval Criteria of MCC 35.2270.**

§ 35.2270 Lot Line Adjustment

(A) An adjustment of the common lot line between contiguous Lots of Record based on a finding that:

7.1 **(1) The permitted number of dwellings will not thereby be increased above that otherwise allowed in this district;**

Staff: Each property currently contains one dwelling. No additional dwelling rights will be created by the subject request.

- 7.2 **(2) The resulting lot configuration is at least as appropriate for the continuation of the existing commercial forest practices in the area as the lot configuration prior to adjustment;**

Applicant: For the record, (there are two) reasons I request an adjustment to the property line in case T2-04-081. (The) first is to put our front parking area in our ownership. (The second is) this piece of property from Tract 2 is logged over clear cut ground with logging slash left. Although it has been replanted to trees the area is growing up in noxious weeds such as Tansy Ragwort, Scotch Broom, Bull Thistle, Canada Thistle, and blackberry vines. I would appreciate if you would expedite the approval of this application so I can be prepared to control these weeds. I have Tract 1 free of these noxious weeds but seeds from Tract 2 are blowing onto Tract 1.

Staff: The house on Parcel 1 is in close proximity to the area to be transferred as shown on the applicant's site plan (Exhibit 1) and a 2002 aerial photo included as Exhibit 6. The area to be transferred has been logged and is having a difficult time re-establishing marketable timber due to the presence of noxious weeds. The house on Parcel 2 is at the far end of the property making it difficult for the property owner to devote intensive attention to removal and control of invasive plant species in the portion of the property proposed for transfer. The proposed re-configuration is to allow the resident of the home on Parcel 1 to care for the land in a manner that reduces the competition between the seedling trees and invasive species which threaten the survival of the seedling trees.

The proposed lot configuration will allow for more intensive care of the transfer area by the owner of Parcel 1 in an effort to increase the survival potential of the trees re-planted after the last logging operation. The result will be a configuration that is at least as appropriate for the continuation of commercial forest practices as the current configuration.

Criterion met.

- 7.3 **(3) The new lot line is in compliance with the dimensional requirements of MCC 35.2260 (C) through (D); and**

Staff: The dimensional standards of MCC 35.2660(C) and (D) require the new lot line to be at least 130 feet from any structure. The newly configured lot line will be over 700 feet from any structure on the property as shown on the applicant's site plan (Exhibit 1).

Criteria met.

- 7.4 **(4) Neither of the properties is developed with a dwelling approved under the provisions for a mobile home on a Health Hardship, or a dwelling for the housing of help required to carry out a farm or forest use.**

Staff: Both properties contain primary dwellings. Neither of these dwellings were permitted as Health Hardship dwellings or as housing for help required to carry out a farm or forest use.

Criterion met.

8. **The Proposed Configuration Meets The Property Line Adjustment Approval Criteria of MCC 35.7970.**

35.7970 Property Line Adjustment (Lot Line Adjustment)

- 8.1 A property line adjustment is the relocation of a common property line between two abutting properties.**

(A) The Planning Director may approve a property line adjustment between two properties, in the Rural Area, where an additional lot or parcel is not created and where the existing lot or parcel reduced in size by the adjustment is not reduced below the minimum lot size established by the applicable zoning designation.

(B) The Planning Director may approve a property line adjustment between two properties in the Rural Area where an additional lot or parcel is not created but where one or both of the adjusted properties are below the minimum lot size established by the applicable zoning district designation. Such an adjustment shall comply with any applicable zoning district standards for a Property Line Adjustment or Lot Line Adjustment.

Staff: The proposed property line adjustment is between two abutting properties. No additional lot or parcel will be created. Both properties are below the minimum lot size prior to the adjustment. The proposal has been reviewed for compliance with the zoning district standards for a property line adjustment in section 6 of this document. The proposal meets the requirements of part (B) above.

Criteria met.

(C) Property line adjustments approved under subsections (A) and (B) above shall meet the following additional standards:

- 8.2 (1) No additional lot or parcel shall be created from any parcel by the property line adjustment; and**

Staff: No additional lot or parcel is being created. Two properties exist before the adjustment. Only two properties will exist after the adjustment.

Criterion met.

- 8.3 (2) Owners of both properties involved in the property line adjustment shall consent in writing to the proposed adjustment and record a conveyance or conveyances conforming to the approved property line adjustment; and**

Staff: Multnomah County Assessment and Taxation records show Mary Bowman as the owner of Parcel 2 (Exhibit 3) and show Bernard and Ruth Younker as the owner of Parcel 1. Deed records have been submitted that verify the ownership of both parcels. Copies of the deeds are included as Exhibits 4 and 5. Mary Bowman, Ruth Younker, and Bernard Younker have signed the Statement of Property Owner Consent form authorizing the property line adjustment (Exhibit 2).

A condition of approval will require the applicant to finalize the property line adjustment request through the recording of a conveyance conforming to the approved configuration.

Criterion met with conditions.

- 8.4 **(3) The adjusted properties shall meet all dimensional requirements in the underlying zoning district designation except for lot area.**

Staff: This has been addressed in finding 7.3.

Criterion met.

- 8.5 **(4) The right-of-way width between the front line of each adjusted property and the centerline of any adjacent County road shall comply with the applicable provisions of the Street Standards Code and Rules as determined by the County Engineer.**

Staff: Neither property has frontage on a County Right-of-Way. This standard does not apply to either of the subject properties.

Criterion does not apply..

(D) The procedure and forms for obtaining approval of a property line adjustment shall be as provided for by the Planning Director.

Staff: The property line adjustment is being processed as a Type II land use decision as required by MCC 35.2225. The applicant has followed the procedures and used the forms provided by the Planning Director.

Criterion met.

Conclusion

Based upon the findings contained herein, the applicant has carried the burden necessary to demonstrate that, with conditions, the criteria for a Property Line Adjustment contained in the Zoning and Land Division codes have been met.

Exhibits

1. Site Plan
2. Property Owner Consent Form
3. Taxation Printouts showing ownership (2 pages)
4. Deed Records for Parcel 2
5. Deed Records for Parcel 1
6. 2002 Aerial photo of subject properties
7. On-Site Sanitation Review Form for Parcel 2
8. On-Site Sanitation Review Form for Parcel 1
9. Water Review Form for Parcel 2
10. Water Review Form for Parcel 1
11. Fire Access Review Form for Parcel 2
12. Fire Access Review Form for Parcel 1
13. Map showing property ownership in 1990
14. Applicant's Instructions for Finishing Property Line Adjustment
15. Surveyor's Instructions for Finishing Property Line Adjustment