



## 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:** T2-05-019

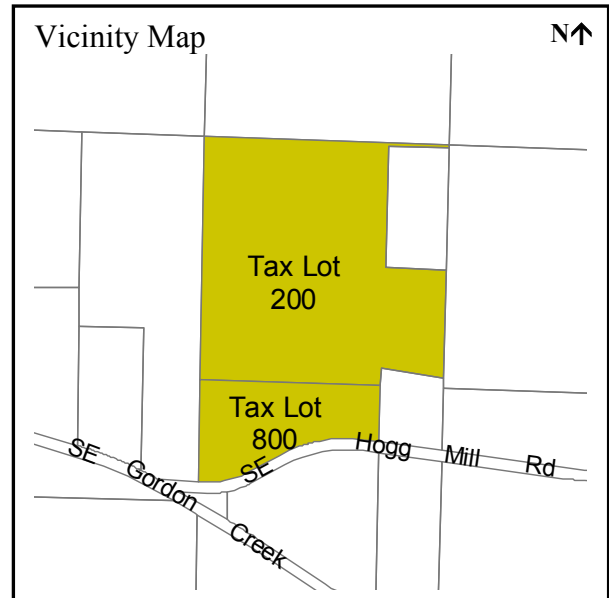
**Permit:** Property Line Adjustment

**Parcel 1:** 42711 SE Hogue Mill Rd.  
TL 800, Sec 20C, T1S, R5E  
Tax Account #R99520-0170

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

**Applicant:** Bernard Younker  
47219 SE Hogue Mill Rd  
Corbett, OR 97019

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



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**Summary:** Property Line Adjustment to relocate the common boundary between 42711 and 42717 SE Hogue Mill Road. The westerly 400 feet of the common boundary will move south 160 feet in order to bring the existing barn into compliance with the current setbacks.

**Decision:** Approved with Conditions

Unless appealed, this decision is effective Friday, June 17, 2005 , at 4:30 PM.

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Issued by:

By: \_\_\_\_\_  
Tammy Boren-King, Planner

For: Karen Schilling- Planning Director

Date: Friday, June 03, 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 Tuesday, Friday, June 17, 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](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 15 and 16 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).**

#### **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 42711 and 42717 SE Houge Mill Road as shown on the applicant's site plan included as Exhibit 1. The northerly parcel, 42717, will be referred to as Tract 2 throughout this document. Likewise, the southerly parcel, 42711, will be referred to as Tract 1.

Tract 2 contains a house which is very close to the property line and a barn which is over the property line. The subject request is intended to move the westerly 400 feet of the common boundary south 160 feet in order to bring the house and barn into compliance with the current setbacks.

The transfer area is approximately 64,000 square feet. Tract 2 will increase in size from 34.3 acres to approximately 35.8 acres. Tract 1 will decrease in size from 8.5 acres to approximately 7 acres.

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 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 April 7, 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 both pieces of property involved with the adjustment (Exhibit 3). Deed records have been submitted that verify the ownership. Mary Bowman has 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:** The subject properties are out of compliance with the dimensional standards of the zoning code. The subject application is intended to rectify this situation and reconfigure the properties so that the dimensional standards are met. Once the property line adjustment has been finalized, the properties will be in full compliance.

The subject request can be approved under MCC 37.0560(A)(1) as it will result in the property coming into full compliance.

*Criteria met.*

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

**Staff:** Deed records included as Exhibit 4 show that Tract 2 was put into its current configuration by the deed recorded in book 2052 on page 80 on 3-13-1961. The zoning was F2 at that time,

which required a two-acre minimum lot size. The lot remained over 2 acres in size and has not been reconfigured since. This property was created in accordance with the zoning and land division laws in effect at the time it was created. This satisfies the criteria under MCC 35.0005(L)(13).

Deed records included as Exhibit 5 show that Tract 1 was put into its current configuration by the deed recorded in book 2052 on page 82 on 3-13-1961. The zoning was F2 at that time, which required a two-acre minimum lot size. The lot remained over 2 acres in size and has not been reconfigured since. This property was created in accordance with the zoning and land division laws in effect at the time it was created. This satisfies the criteria established 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 17 contains a map showing the alternate tax account numbers and 1990 ownership for both subject properties and all adjacent parcels. Tract 1 was owned by Ralph and Mary Bowman, who did not own any other contiguous parcels or lots. Tract 1 is a lot of record pursuant to MCC 35.2275(A)(1). Tract 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 Tract 2 (R995200270). Tract 2 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). Tract 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;**

**Staff:** The proposed re-configuration is intended to bring the existing structures into compliance with the CFU-4 forest practices setbacks. These setbacks are intended to provide adequate separation between non-forest uses and forest land in order to minimize conflicts arising from commercial forest practices and to minimize risks associated with forest fires. Bringing the lots into compliance with the standards will result in a configuration that is more appropriate for the continuation of commercial forest practices than 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 requirements of MCC 35.2260 (C) and (D) establish the forest practices setbacks of 60 feet from the center line of the road from which access is gained and 130 feet on all other sides. The purpose of the subject request is to come into compliance with these standards. After the property line adjustment is complete, all structures on the properties will comply with the forest practices setbacks as shown on the applicant's site plan included as Exhibit 1. This site plan includes a chart showing the distance from each structure to each property line. According to this chart, the closest any structure will be to a property line is 130 feet.

*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 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.

*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:** Both properties are owned by Mary Bowman. Mary Bowman has consented in writing on behalf of both properties by signing the Property Owner Consent form included as 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:** Tract 1 has frontage on SE Hogue Mill Road, which is County Road 2020 and is designated as a local road. This road currently has 60 feet of Right-of-Way. The County's standard right-of-way requirement for a local road is 50 feet. SE Hogue Mill Road has adequate Right-of-Way to meet the County's standards.

The proposal was reviewed for compliance with the Street Standards Code and Rules by the County's transportation planning specialist. An email included as Exhibit 8 indicates the County's transportation division has no issues with the proposal.

*Criterion met.*

**(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.*

9.           **The Proposal Meets The Comprehensive Plan Policies**

**Policy 37 Utilities**

**Water and Disposal Systems**

- A. Shall be connected to a public sewer and water system, both of which have adequate capacity; or**
- B. Shall be connected to a public water system, and the Oregon Department of Environmental Quality (DEQ) will approve a subsurface sewage disposal system on the site; or**
- C. Shall have an adequate private water system, and the Oregon Department of Environmental Quality (DEQ) will approve a subsurface sewage disposal system; or**
- D. Shall have an adequate private water system, and a public sewer with adequate capacity.**



## **Drainage**

- E. Shall have adequate capacity in the storm water system to handle the run-off; or**
- F. The water run-off shall be handled on the site or adequate provisions shall be made; and**
- G. The run-off from the site shall not adversely affect the water quality in adjacent streams, ponds, lakes or alter the drainage on adjoining lands.**

9.1 **Staff:** The subject application is for a property line adjustment. There is an existing septic system on each site. The sanitarian has determined the existing septic systems are adequate and that the property line adjustment will not have a negative impact on those systems (Exhibits 9 and 10). The dwellings are served by an adequate private well producing 7 gallons per minute as indicated in the applicant's Certification of Water Service (Exhibits 11 and 12) signed by the property owner. No new construction is proposed as part of the subject application, thus no new water run-off will be created. If at a future date new construction is proposed, the applicant will be required to provide a statement from a Registered Professional Engineer that an adequate system exists on site to handle the drainage from a 10-year, 24-hour storm.

*Criteria met.*

## **Policy 38**

**It is the County's Policy to coordinate and encourage involvement of applicable agencies and jurisdiction in the land use process to ensure:**

### **Fire Protection**

- B. There is adequate water pressure and flow for fire fighting purposes; and**
- C. The appropriate fire district has had an opportunity to review and comments on the proposal.**

9.2 **Staff:** Multnomah County Rural Fire Protection District #14 was given the opportunity to review and comment on the proposal. The applicant has submitted two service provider letters signed by Thomas Layton, Fire Chief of District 14 determining that the existing accesses are adequate (Exhibits 13 and 14).

*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 Tract 2
5. Deed Records for Tract 1
6. 1998 Building Permit for dwelling on Tract 2
7. 1980 Building Permit for dwelling on Tract 2
8. Email from Transportation Planning Specialist Regarding Proposal
9. On-Site Sanitation Review Form for Tract 2
10. On-Site Sanitation Review Form for Tract 1
11. Water Review Form for Tract 2
12. Water Review Form for Tract 1
13. Fire Access Review Form for Tract 2
14. Fire Access Review Form for Tract 1
15. Applicant's Instructions for Finishing Property Line Adjustment
16. Surveyor's Instructions for Finishing Property Line Adjustment
17. Map showing property ownership in 1990