

**MULTNOMAH COUNTY****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.

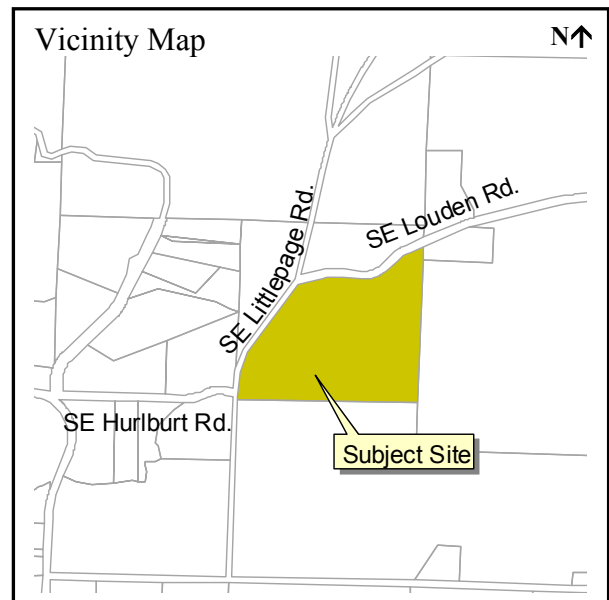
Case File: T2-05-061

Permit: EFU Heritage Tract Dwelling

Location: Corner of Littlepage and Pounder Roads
TL 300, Sec 2, T1S, R4E, W.M.
Tax Account #R99402-0250

Applicant: David West

Owner: Walter Vockert, Jr.



Summary: The applicant is requesting a dwelling on Exclusive Farm Use land under the Heritage Tract Dwelling Provisions

Decision: Approved with Conditions

Unless appealed, this decision is effective Tuesday, September 20, 2005, at 4:30 PM.

Issued by:

By: _____
Don Kienholz, Planner

For: Karen Schilling- Planning Director

Date: Tuesday, September 6, 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 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 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, September 20, 2005 at 4:30 pm.

Applicable Approval Criteria: Multnomah County Code (MCC): 35.2625(F) - Review Uses; 35.2660 - Dimensional Requirements; 35.2675- Lot of Record; 35.0005(L)(13) - Lot of Record

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. A request for permit extension may be required to be granted 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. **Prior to the issuance of building permits, the applicant/owner shall consolidate the two properties forming the Lot of Record (properties known as #R99420340 and #R994020250) into one lot. A copy of the recorded legal description shall be submitted to the Land Use Planning [MCC 35.2625(F)(5)].**

2. **The County Assessor shall be notified when the building permit is approved [MCC 35.2526(F)(6)].**

NOTE:

Once this decision becomes final, applications for building permits may be made with the City of Portland. **When ready to have building permits signed off, call the Staff Planner, Don Kienholz, at (503)-988-3043 to schedule an appointment.** Multnomah County must review and sign off building permit applications before they are submitted to the City of Gresham. Four (4) sets each of the site plan and building plans are required at the building permit sign-off.

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 requesting an approval for an Exclusive Farm Use zone Heritage Tract Dwelling. The single-family dwelling is proposed to be located near an existing Bonneville Power Administration (BPA) transformer and will take access off of the driveway to the BPA equipment area on the southern portion of the driveway, almost across from the intersection of SE Littlepage Road and SE Hurlburt Road. The proposed home is a manufactured dwelling.

2. **Site Characteristics**

Staff: The subject site is a 25.20-acre lot located off of the intersection of Littlepage and Loudon Roads in the East of the Sandy River Rural area south of Corbett. The area consists of medium sized farms off of Loudon and Littlepage Roads and smaller homesites off of Hurlburt Road. A stream runs along Littlepage Road and follows Loudon Road to the north of the subject site. The topography of the area consists of rolling hills but no extreme slopes. The subject site itself has an open field area that is being farmed on the lower 2/3rds of the property while the upper 1/3 contains a small forested area.

3. **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 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 July 18, 2005. One comment in support of the request was received.
Procedures met.

4. **Proof of Ownership**

MCC 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 Walter Vockert as the owner of the subject lot (Exhibit 1). Mr. Vockert has signed the application form as the owner and David West has signed the General Application Form as the applicant (Exhibit 2).

Criterion met.

5. **Heritage Tract Dwelling is an Allowed Use**

MCC 35.2625 Review Uses

(F) Notwithstanding the *same ownership* grouping requirements of the Lot of Record section, a single family *heritage tract dwelling* may be allowed on land not identified as high-value farmland when:

A. (1) The lot or parcel on which the dwelling will be sited meets the following requirements:

(a) A deed or other instrument creating the lot or parcel was recorded with the Department of General Services, or was in recordable form prior to January 1, 1985; and

(b) The lot or parcel satisfies all applicable laws when the lot or parcel was created; and

(c) The lot or parcel was acquired and owned continuously by the present *owner*:

1. Since prior to January 1, 1985; or

2. By devise or by intestate succession from a person who acquired and had owned continuously the lot or parcel since prior to January 1, 1985; and

Applicant: This property has had one owner since 1968. Parcel was lawfully created by contract of sale between Walter E Vockert and Marie Vockert on April 27, 1968, and recorded in the book of records, book 617, page 100, with Multnomah County on April 30, 1968. At that time, zoning was 2 acres minimum. See Exhibit A.

Staff: The applicant has demonstrated that the property has been held under the same ownership since at least January 1, 1985 by submitting the April 27, 1968 deed which created the property. In 1968, the property was zoned F-2, which had a minimum lot size of 2-acres. At over 25 acres, the subject lot met the zoning requirements when it was created. The County did not regulate partitions until 1978, therefore it was lawful to create the property by recording a deed.

Criteria met.

B. (2) The tract on which the dwelling will be sited does not include a dwelling; and

Staff: Neither parcel in the tract contains a dwelling according to Multnomah County Assessment and Taxation records.

Criterion met.

C. (3) The proposed dwelling is not prohibited by, and will comply with, the requirements of the Comprehensive Plan, land use regulations, and other provisions of law; and

Applicant:

- a. **Policy 14** -See Exhibit F, Multnomah county soils survey maps, and Exhibit C for support for the following:
 - i. There are no slopes exceeding 20%. Overall slopes are about 14%. The slope on development site itself is about 1%.
 - ii. There is no severe erosion potential
 - iii. The property is not within the 100 year flood plain. The building site is 300' from the creek. Big Creek flows through the property to the west of Little Page Road and has a 300' riparian setback requirement. The building site is east of the road and outside the setback.
 - iv. The property has no issue with a high seasonal water table.
 - v. The property has no fragipan less than 30 inches from the surface
 - vi. The property has shown no tendencies for slumping, earth slides or movement.
- b. **Policy 37-**
 - i. Water and disposal system: See land feasibility study and water service provider documents, Exhibit D and site plan showing drain field layout Exhibit C, and Site Evaluation Report for sewage disposal system Exhibit B.
 - ii. Drainage: Storm water will be handled on site. See engineer study and details, Exhibit E. Stormwater disposal for the house is to be similar to that approved for the existing pole barn (arena)
 - iii. East of Sandy River Plan; Exclusive Farm Use
 - (8) Exclusive farm use will be maintained. Fields previously grazed by bulls will be grazed by horses. No new partition except for one acre for the house location, which has been removed from deferment status as required by Multnomah County.
 - (9) New farm buildings are allowed on Exclusive Farm Use lands under Heritage Tract options.
 - (10) Lot meets state law requirements regarding lots of record continuously owned since 1985, and so is exempt from standards requiring farm income for a new dwelling. Lot has been owned by Walter Vockert since April 27, 1968. The parcel will be consolidated with the property across the road as required, by legal

description only.

Staff: The applicant has accurately identified the applicable Comprehensive Plan policies. The heritage tract dwelling is allowed by state law as well as under Multnomah County code. No components of the Comprehensive Plan would prohibit a heritage tract dwelling on the subject property.

The development review standards have all been met because the property has slopes less than 20% on the development site, proper erosion control will be required at the time of development through a Minimal Impact Project or Grading and Erosion Control Permit, the development area is outside a flood plain, and has an adequate water table.

Fire service, water service and on site septic service are also all available as demonstrated with the completed service provider forms.

Criteria met.

D. (4) The lot or parcel on which the dwelling will be sited does not lie within an area designated by the Comprehensive Plan as a Big Game habitat area; and

Applicant: The property is not located in a Big Game area designated by the Comprehensive Plan as a Big Game Habitat area. (As noted in the Pre-Filing Meeting notes

Staff: The subject site is not on the County's maps indicating areas of big game habitat.

Criterion met.

E. (5) The lot or parcel on which the dwelling will be sited is part of a tract, the remaining portions of the tract shall be consolidated into a single parcel when the dwelling is allowed; and

Applicant: Tax Lot 200 and Tax Lot 300 will be consolidated, as applicable, by legal description only.

Staff: The applicant has indicated that the property across Littlepage Road that is in common ownership shall be consolidated into the subject property as one parcel. A Condition of Approval shall require proof of the consolidation prior to the issuance of building permits.

Criterion met.

F. (6) The County Assessor shall be notified when the permit is approved.

Staff: A condition of approval shall require the county assessor to be notified when building permits are signed off.

Criterion met.

G. (7) Approval of the dwelling would not:

a. **(a) Exceed the facilities and service capabilities of the area; and**

Applicant: See Exhibit B for signed forms from water service, fire district and septic system providers.

Staff: The required service provider forms that certify a dwelling will have adequate water, emergency service and sewage disposal have been providing indicating the dwelling would not exceed those service capabilities in the area

Criterion met.

b. **(b) Materially alter the stability of the overall land use pattern of the area; and**

Applicant: The size, configuration and location of the project, as shown by the site plan, Exhibit C, is compatible with the overall land use pattern of the area as exclusive farm use. This is a single family dwelling for two people with provisions for raising and stabling horses. Surrounding properties are under similar use.

Staff: In looking at the subject site and properties within the general vicinity, it is apparent the land use pattern for the area will not be materially altered. The dwelling is being clustered near a Bonneville Power Authority powerline and maintenance area and an agricultural building approved by the County within the last year on the subject site. Properties immediately to the west are generally smaller in size and contain single-family dwellings and other out buildings. Properties to the east are roughly the same size or larger but also generally contain single-family dwellings and medium sized farms. The proposed dwelling is located over 300-feet from the nearest adjacent farm, so it would not interfere with common farming practices. As proposed, a dwelling on the subject site would be consistent with the overall dwelling pattern and development pattern of the area.

Criterion met.

c. **(c) Create conditions or circumstances that are found to be contrary to the purpose or intent of the Comprehensive Plan or MCC Chapter 35.**

Staff: The purpose and intent of the Comprehensive Plan and Chapter 34 are to preserve farm lands and help keep them viable. The addition of the dwelling would not create a situation or circumstance that is contrary to that intent and purpose. The property would be enlarged which would help make it more viable for a commercial farm. Additionally, the site of the proposed dwelling is clustered with existing development on the lot and would not adversely impact the farming of the property. And lastly, the dwelling is being located near an agricultural building that the occupant uses for the stabling, training and boarding of horses, a farm use as defined by ORS 215203.

Criterion met.

6. **The Proposed Dwelling Meets The EFU Dimensional Requirements**

MCC 35.2660 Dimensional Requirements

(C) Minimum Yard Dimensions - Feet

Front	Side	Street Side	Rear
30	10	30	30

Maximum Structure Height – 35 feet

Minimum Front Lot Line Length – 50 feet.

Staff: As seen on the submitted site plan (Exhibit 3), the proposed dwelling is over 350-feet from any property line. The elevations for the dwelling show a one story dwelling with a height under 20-feet.

Criteria met.

7. **The Property is a Lot of Record**

MCC 35.0005(L)(13) 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.)**

MCC 35.2675 Lot of Record

(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:

(2) A group of contiguous parcels or lots:

(a) Which were held under the *same ownership* on February 20, 1990; and

(b) Which, individually or when considered in combination, shall be aggregated to comply with a minimum lot size of 19 acres, without creating any new lot line.

1. Each Lot of Record proposed to be segregated from the contiguous group of parcels or lots shall be a minimum of 19 acres in area using existing legally created lot lines and shall not result in any remainder individual parcel or lot, or remainder of contiguous combination of parcels or lots, with less than 19 acres in area.

2. An exception to the 19 acre minimum lot size requirement shall occur when the entire same ownership grouping of parcels or lots was less than 19 acres in area on February 20, 1990, and then the entire grouping shall be one Lot of Record.

4. The requirement to aggregate contiguous parcels or lots shall not apply to lots or parcels within exception, urban, or Columbia River Gorge National Scenic Area zones (e.g. MUA-20, RR, RC, R-10, GGA-40), but shall apply to contiguous parcels and lots within all farm and forest resource zones (i.e. EFU and CFU), or

Staff: The applicant submitted a deed recorded September 9, 1974 describing the 25.20 acre subject lot in its current configuration demonstrating it has remained unchanged since it was created. The applicant also submitted a deed recorded April 27, 1968 describing the 6.7 acre lot across Littlepage Road known as R994020340. At that time, both properties were zoned F2 and had a two acre minimum lot size. Both properties met the minimum zoning requirements in place at the time. Partition requirements were not in place until October of 1978. With no partition requirements in place, both lots met the land division laws at the time they were created.

The deeds also demonstrate both properties were in common ownership on February 20, 1990 and are aggregated for Lot of Record purposes. Both are still under common ownership. Therefore, both properties are legal lots and aggregated to form one Lot of Record.

| *Criterion met.*

Conclusion:

Based on the findings and other information provided above, this application for a Heritage Tract Dwelling satisfies the Exclusive Farm Use Approval Criteria, subject to the listed conditions.

Exhibits

1. Multnomah County Assessment and Taxation Information Sheet
2. General Application Form
3. Site Plan