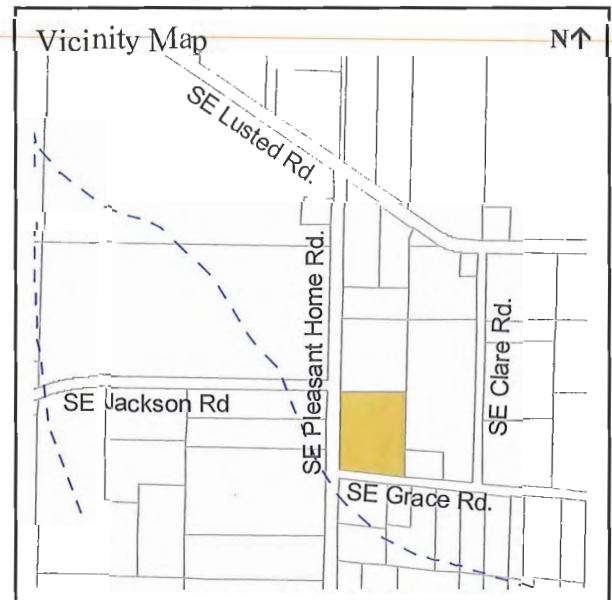


NOTICE OF DECISION

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

Case File: T2-2013-3043
Permit: Accessory Use Determination
Location: 31751 SE Grace Road
Tax Lot 1400, T1S, R4E, Section 20AA
#R677802790
Applicants: Cecil Shuler
Owners: University Development, LLC;
Cecil Shuler
Base Zone: Multiple Use Agriculture (MUA) - 20
Overlays: Significant Environmental Concern –
Water Resources (SEC-wr)

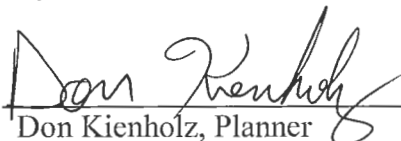


Summary: The applicant seeks approval of an Accessory Use Determination for an existing structure that was built without prior land use review or building permits.

Decision: Approved with Conditions.

Unless appealed, this decision is effective Thursday, January 23, 2014, at 4:00 PM.

Issued by:

By: 
Don Kienholz, Planner

For: Karen Schilling- Planning Director

Date: Thursday, January 9, 2014

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 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, ext. 29270.

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 Thursday, January 23, 2014 at 4:00 pm.

Applicable Approval Criteria: Multnomah County Code (MCC) 37.0560 Code Compliance, 36.0005 and 36.2870 Lot of Record, 36.2825(I) Review Uses, Structures Accessory, and 36.2855 Dimensional Standards and Development Requirements.

Copies of the referenced Multnomah County Code (MCC) and Multnomah County Road Rules (MCRR) sections can be obtained by contacting our office at 503-988-3043 or by visiting our website at <http://www.co.multnomah.or.us/landuse> or <http://web.multco.us/transportation-planning>.

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. **This land use permit expires two years from the date the decision is final pursuant to MCC 37.0690(B) as applicable. The property owner may request to extend the timeframe within which this permit is valid, as provided under MCC 37.0695, as applicable. The request for a permit extension must be submitted prior to the expiration of the approval period.**

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 land use sign-off for building permits, the owner shall complete the septic system upgrades required by the City of Portland Sanitarian. Evidence of completion shall be submitted to land use planning staff [Multnomah County Comprehensive Plan Policy 37].**
- 2. The owner shall submit plans to Multnomah County Land Use Planning for zoning sign-off for building permits. The plans shall include accurately sealed site plans and floor plans showing the measurements of the floor area of the building. Once stamped off, the owner shall take those plans to the City of Gresham to obtain retroactive building permits for the structure [MCC 37.0560].**

Note: Once this decision is final, application for building permits may be made with the City of Gresham. When ready to have building permits signed off, the applicant shall call the Staff Planner, Don Kienholz, at (503) 988-3043 ext. 29270, for an appointment for review and approval of the conditions and to sign the building permit plans. Please note, Multnomah County must review and sign off the building permits before the applicant submits building plans to the City of Gresham. Three (3) sets each of the site plan and building plans are needed for building permit sign off. At the time of building permit review, a fee of \$61.00 will be collected. In addition, an erosion control inspection fee of \$82.00 may be required.

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 of Fact

FINDINGS: Written findings are contained herein. The Multnomah County Code (MCC) criteria and Comprehensive Plan Policies are in **bold** font. Staff analysis and comments are identified as ‘**Staff:**’ and address the applicable criteria. Staff comments may include a conclusionary statement in *italic*.

1.00 Project Description:

Staff: The applicant is seeking approval of an accessory structure approximately 1,525-square feet in area. The building was constructed in 1994; however, the property owner at the time of construction did not obtain the required land use and building permits. The current owner and applicant is seeking approval in order to correct the land use and building code violations and bring the property into compliance. The applicant intends to use a portion of the accessory building as a personal carpenter shop and tool storage and the other portion for the storage of a utility trailer.

2.00 Property Description & History:

Staff: The 2.52 acre parcel is located in the Multiple Use Agricultural 20 (MUA-20) zone and sits on the north east corner of Grace Road and Pleasant Home Road. The parcel was created as part of the Proctor Subdivision, platted in 1912. The applicant has indicated that the two main uses of the site are as a single family residence and as a small family farm for personal use.

Existing structures on site include an approximate 3,264 square foot single family residence, 2,000 square foot out building constructed in 1965 and a 1,525 square foot accessory building constructed in 1994. A building permit for the structure built in 1966 was obtained. The applicant indicated that the structure is used for livestock, poultry and storage of hay and farm implements associated with the family farm.

The 1994 accessory building is being reviewed under this permit because land use and building permits were not obtained for the structure.

3.00 Code Compliance:

MCC 37.0560 CODE COMPLIANCE AND APPLICATIONS.

Except as provided in subsection (A), the County shall not make a land use decision approving development, including land divisions and property line adjustments, or issue a building permit 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.

(B) For the purposes of this section, Public Safety means the actions authorized by the permit would cause abatement of conditions found to exist on the property that endanger the life, health, personal property, or safety of the residents or public. Examples of that situation include but are not limited to issuance of permits to replace faulty electrical wiring; repair or install furnace equipment; roof repairs; replace or repair compromised utility infrastructure for water, sewer, fuel, or power; and actions necessary to stop earth slope failures.

Staff: According to the applicant's narrative, the accessory building was constructed in 1994 without obtaining land use permits or building permits by the owner at the time. The applicant is seeking to retroactively correct the land use and building permit violations by submitting this application to bring the property into compliance. Staff reviewed the permit records and concurs with the applicant that no permit is on file for the 1994 accessory structure. The dwelling, built in 1935, did not require a building or land use permit. The first accessory structure was permitted in 1966 (Exhibit B.6).

Because the second accessory structure was not reviewed in 1994 when it was constructed, it must be reviewed under the rules in place at the time of application. Approval of this application and compliance with the conditions of approval will bring the property into compliance with Multnomah County Code requirements.

Not related to this application, the property owner has been working with the Sanitarian to replace the septic drain field. In order to ensure completion of that project and full compliance on the site, the Sanitarian has requested a condition of approval be adopted, requiring the property owner to complete the septic system upgrades prior the County signing off for plan check for the accessory structure building permit. A condition of approval is provided.

There is a discrepancy between the applicant's square footage listed for the structure and the square footage listed by Multnomah County Assessment and Taxation. The applicant's narrative indicates the accessory structure is 1,525 square feet while Assessment and Taxation has the structure listed as 2,000 square feet in area. Based on the scale of the applicant's site plan (Exhibit A.5), the building measures 45x35-feet, or 1,575-square feet. Staff did a cursory measurement of the accessory structure on an aerial photograph and also came up with the dimensions of 45x35-feet. Given the discrepancy between the applicant's measurements and Assessment and Taxation's, staff's measurements from the site plan and air photo and the margin of error from measuring on air photos, this notice of decision defers to the applicant's written documentation that the accessory structure is 1,525 square feet. A condition requiring the applicant to submit a scaled site plan depicting the actual structure size as well as a floor plan of the interior of the structure has been included in this decision.

Approval of this application will bring the property into full compliance.

3.00 Lot of Record:

MCC 36.0005 DEFINITIONS

Lot of Record – Subject to additional provisions within each Zoning District, a Lot of Record is a parcel, lot, or a group thereof that, when created or reconfigured, (a) satisfied all applicable zoning laws and (b) satisfied all applicable land division laws, or (c) complies with the criteria for the creation of new lots or parcels described in MCC 36.7785. 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.)

(c) Separate Lots of Record shall be recognized and may be partitioned congruent with an "acknowledged unincorporated community" boundary which intersects a Lot of Record.

1. Partitioning of the Lot of Record along the boundary shall require review and approval under the provisions of the land division part of this Chapter, but not be subject to the minimum area and access requirements of this district.

2. An "acknowledged unincorporated community boundary" is one that has been established pursuant to OAR Chapter 660, Division 22.

* * *

MCC 36.2870 LOT OF RECORD.

(A) In addition to the Lot of Record definition standards in MCC 36.0005, for the purposes of this district the significant dates and ordinances for verifying zoning compliance may include, but are not limited to, the following:

- (1) July 10, 1958, SR zone applied;**
- (2) July 10, 1958, F-2 zone applied;**
- (3) December 9, 1975, F-2 minimum lot size increased, Ord. 115 & 116;**
- (4) October 6, 1977, MUA-20 zone applied, Ord. 148 & 149;**
- (5) October 13, 1983, zone change from EFU to MUA-20 for some properties, Ord. 395;**
- (6) May 16, 2002, Lot of Record section amended, Ord. 982.**

(B) A Lot of Record which has less than the minimum lot size for new parcels or lots, less than the front lot line minimums required, or which does not meet the access requirement of MCC 36.2885, may be occupied by any allowed use, review use or conditional use when in compliance with the other requirements of this district.

(C) Except as otherwise provided by MCC 36.2860, 36.2875, and 36.4300 through 36.4360, no sale or conveyance of any portion of a lot, other than for a public purpose, shall leave a structure on the remainder of the lot with less than minimum lot or yard requirements or result in a lot with less than the area or width requirements of this district.

(D) The following shall not be deemed to be a lot of record:

- (1) An area of land described as a tax lot solely for assessment and taxation purposes;**
- (2) An area of land created by the foreclosure of a security interest.**
- (3) An area of land created by court decree.**

Staff: The parcel is a lot of record as the lot was created through the Proctor subdivision in 1912.

The property is a Lot of Record.

4.00 Accessory Use Determination:

MCC 36.2825 REVIEW USES.

Uses listed in this section may be permitted after required review as Type II decisions pursuant to MCC 37.0510 through 37.0800, or as specified for the use

(I) Structures or uses customarily accessory or incidental to any use permitted or approved in this district, which do not meet the “accessory structures” standard in MCC 36.2820 Allowed Uses.

Staff: The applicant has indicated that the two main uses on the property are a single family residence and a small family farm. Accessory uses with a cumulative 2,500 square feet are classified as review uses subject to a Type II Land Use review. Approval may be obtained when the applicant demonstrates that the proposed structure or use is customarily accessory and incidental to any use permitted in the underlying zone. The structure being reviewed under this application will create a combined footprint greater than 2500 square feet when including the footprint of the 1965 structure, requiring a Type II Land Use review.

The single family residence is approximately 3,260 square feet. The shop being reviewed through this application is roughly 1,525 square feet and will be used as a personal carpenter shop with tool storage as well as for the storage of a utility trailer. As described above, there is a slight discrepancy regarding the actual size of the structure. A condition of approval has been included requiring the site plan for building plan check show the actual building footprint size.

The applicant indicated that older 1966 building, which is approximately 2,000 square feet in area, is used in association with the family farm. Given 2.5 acre parcel size, a small family farm for personal use is a reasonable use of the property, common in the West of Sandy River Plan area, and not affiliated with the residential use of the property. Staff finds the 1966 building is accessory to the family farm use of the property.

Staff reviewed aerial photographs and tax assessment records of nearby properties to determine if the proposed accessory structures are common (customary) to the general vicinity within the MUA-20 zone. Surrounding uses include single family lots, small farms, and parcels with a combination of both single family residences and small farms. The table below demonstrates that the proposed structure, combined with the existing accessory structure will continue to be similar to characteristics of parcels within the area.

Property Address		Structure square footage	Use
	Proposed Accessory Use	1,525	Storage/Garage/Shop
	Existing Accessory Structure	<u>2,000</u>	Hobby Farm Use
		Total: 3,525	
1	6915 SE Pleasant Home Rd (R994200020)	1,728 384 572 <u>576</u> Total: 3,260	Hobby Farm Use Hobby Farm Use Shed Garage
2	32109 SE Grace Street (R677805390)	1,440 225 225 <u>400</u> Total: 2,290	Hobby Farm Use Shed Shed Storage
3	31842 SE Lusted Road (R677804120)	1,152 <u>600</u> Total: 1,752	Hobby Farm Use Shed
4	31904 SE Lusted Road (R677803400)	Total: 1,730	Hobby Farm Use
5	6710 SE Clare Road (R677804800)	902 615 <u>336</u> Total: 1,853	Shop Shed Shed
6	30723 SE Jackson Road (R337600010)	1092 2400 <u>80</u> Total: 3,572	Detached Garage Hobby Farm Use Shed
7	33133 SE Dodge Park Blvd	2592 <u>1000</u> Total: 3,592	Hobby Farm Use Storage

The sampling above includes properties containing typical accessory structures listed in MCC 36.2820 and structures accessory to hobby farm uses (non-commercial farms on property not in farm deferral). The combined foot print of the two accessory structures for the subject property will be approximately 3,525 square feet. As demonstrated above, the largest combined accessory structure footprint is 3,592 square feet and the smallest combined footprint is 1,730 square feet. There are two properties with a cumulative square footage of accessory uses slightly higher and in the same range as the subject property and one property just 300 square feet less. Based on the information above, staff finds the proposed accessory structure and cumulative square footage is within the range of accessory uses in the area and thus considered customarily accessory and incidental.

Criterion met.

5.00 Dimensional Standards:

MCC 36.2855 DIMENSIONAL STANDARDS AND DEVELOPMENT REQUIREMENTS.

All development proposed in this district shall comply with the applicable provisions of this section.

- A. **(A) Except as provided in MCC 36.2860, 36.2870, 36.2875, and 36.4300 through 36.4360, the minimum lot size shall be 20 acres.**

Staff: The applicant is not proposing to partition the lot.

Criterion not applicable.

- B. **(B) That portion of a street which would accrue to an adjacent lot if the street were vacated shall be included in calculating the area of such lot.**

Staff: The applicant is not proposing to partition the property, therefore lot area is not applicable.

Criterion not applicable.

- C. **(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: The accessory structure is located approximately 65 feet from the front property line and is greater than 10 feet from the side and rear property lines (Exhibit A.5). The accessory structure is not taller than 35 feet in height (Exhibit A.6).

Criteria met.

- D. **(D) The minimum yard requirement shall be increased where the yard abuts a street having insufficient right-of-way width to serve the area. The county Road Official shall determine the necessary right-of-way widths based upon the county “Design and Construction Manual” and the Planning Director shall determine any additional yard requirements in consultation with the Road Official.**

Staff: The 65 foot setback is more than adequate to accommodate any needed widening of the adjacent street.

Criterion met.

- E. **(E) Structures such as barns, silos, windmills, antennae, chimneys or similar structures may exceed the height requirement if located at least 30 feet from any property line.**

Staff: The structure does not exceed the 35-foot maximum height limitation.

Criterion met.

- F. **(F) On-site sewage disposal, storm water/drainage control, water systems unless these services are provided by public or community source, required parking, and yard areas shall be provided on the lot.**

Staff: The City of Portland Sanitarian has reviewed the proposal and found the site to be adequate to accommodate a relocated drain field (not part of this permit). However, to ensure compliance with all code requirements as described in Finding 3.00 the Sanitarian has requested that the relocation of the drain field work be completed prior to Multnomah County signing off on the plan check for the building permit. A condition has been included in this notice of decision.

- G. **(G) Grading and erosion control measures sufficient to ensure that visible or measurable erosion does not leave the site shall be maintained during development. A grading and erosion control permit shall be obtained for development that is subject to MCC Chapter 29.**

Staff: Grading is not proposed, the structure has already been built.

Criterion not applicable.

- H. **(H) New, replacement, or expansion of existing dwellings shall minimize impacts to existing farm uses on adjacent land (contiguous or across the street) by:**

Staff: Replacement or expansion of the existing dwelling is not proposed.

Criterion not applicable.

- I. **(I) Agricultural structures and equine facilities such as barns, stables, silos, farm equipment sheds, greenhouses or similar structures that do not exceed the maximum height requirement may have a reduced minimum rear yard of less than 30 feet, to a minimum of 10 feet.**

Staff: The structure satisfies all setbacks required in MCC 36.2855(C).

Criterion met.

7.00 Conclusion

Based on the findings and other information provided herein, the applicant has carried the burden necessary for the Accessory Use Determination to establish the proposed accessory structure in the Multiple Use Agriculture 20 zone. This approval is subject to the conditions of approval established in this report.

8.00 Exhibits

‘A’ Applicant’s Exhibits

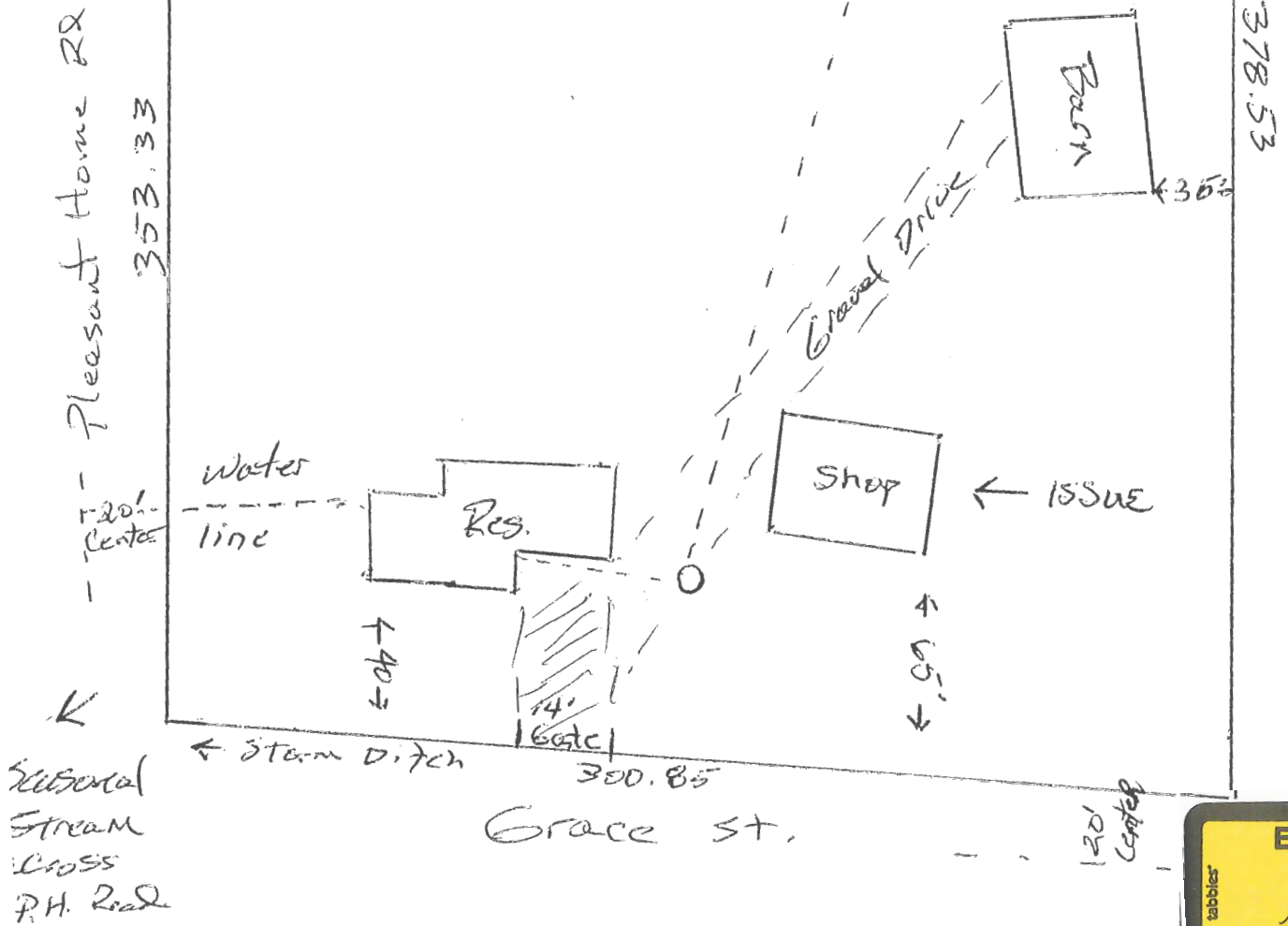
‘B’ Staff Exhibits

Exhibits with a “*” after the exhibit # have been included as part of the mailed decision. All other exhibits are available for review in Case File T2-2013-3043 at the Land Use Planning office.

Exhibit #	# of Pages	Applicant Exhibits
A.1	1	General Application Form
A.2	1	Applicant’s Assessment and Taxation Map
A.3	1	Application Statement and Authorization Signed by Cecil Shuler and Alan Anderson, University Development LLC
A.4	4	Applicant’s Type II Land Use Process and Checklist Form
A.5*	1	Applicant’s August 21, 2013 Site Plan
A.6*	1	Applicant’s Map Identifying the Subject Structure
A.7	3	Portland Maps Information
A.8	6	Title Report for Subject Property Showing Ownership
A.9	1	Applicant’s Incomplete Letter Response
A.10	6	Land Feasibility Study LFS 33-13
A.11	7	Completed and Signed On-Site Sewage Disposal Certification Form and Plans
A.12	4	Fire Service Agency Certification Form and Plans
		Staff Exhibits
B.1	2	A&T Property Information
B.2	1	A&T Tax Map with Subdivision Lots Shown
B.3	2	September 19, 2013 Incomplete Letter
B.4	1	October 3, 2013 Complete Letter
B.5	6	October 23, 2013 Opportunity to Comment and Mailing List
B.6	2	1966 Building Permit for Accessory Utility Building

8-22-13

N
↑



Subsided
Stream
Cross
R.H. Road

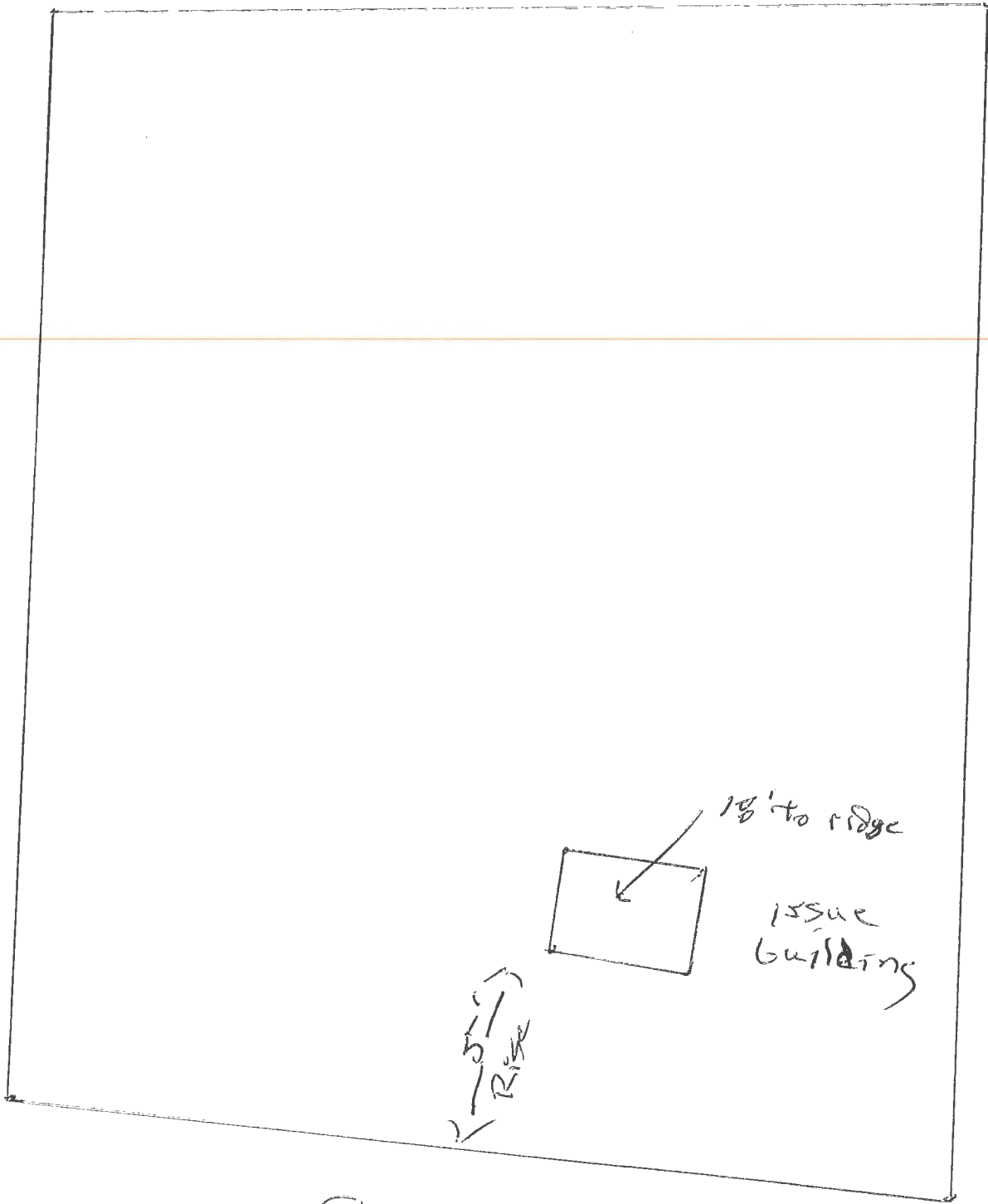
Grace St.

31725 SE Grace St
Gresham, OR 97080
154P 20AA-01400
677802790

1" = 50'

Building Elevation

Pleasant Home Rd.



Grace st

EXHIBIT

A.6

tabbles