

## NOTICE OF DECISION

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

**Case File:** T2-2013-3135

**Permit:** Application for Planning Director's  
Determination of a Lawfully Established  
Habitable Dwelling

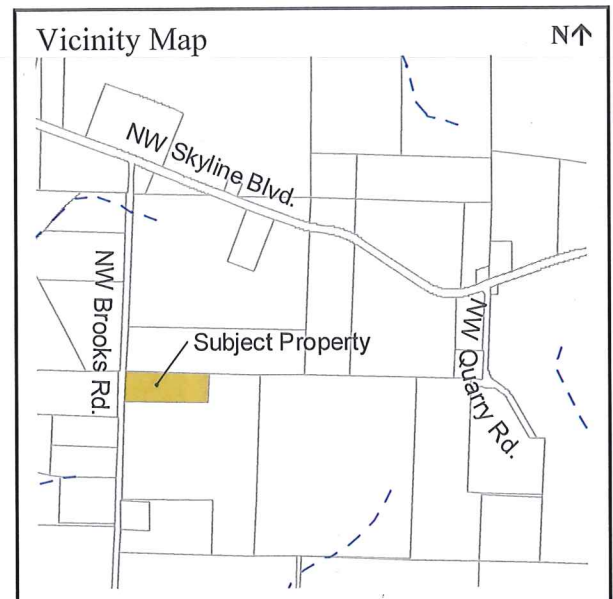
**Location:** 10950 NW Brooks Road  
Tax Lot 1400, Section 06A,  
Township 1N, Range 1W, W.M.  
#R961060430

**Applicants:** Ron Crutcher  
Wendie Kellington

**Owners:** Ron Crutcher

**Base Zone:** Exclusive Farm Use (EFU)

**Overlays:** Significant Environmental Concern – Wildlife Habitat (SEC-h)

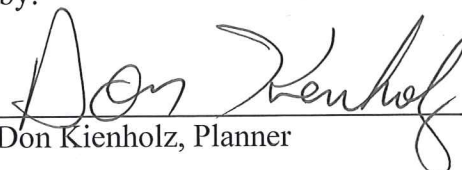


**Summary:** The applicant is seeking a determination that the dwelling on the subject property was lawfully established and is habitable as defined in MCC 33.0005.

**Decision:** The Planning Director finds that the dwelling was lawfully established. The Planning Director also finds that the dwelling is currently habitable as defined in MCC 33.0005.

Unless appealed, this decision is effective Tuesday, December 31, 2013, at 4:00 PM.

Issued by:

By:   
Don Kienholz, Planner

For: Karen Schilling- Planning Director

Date: Tuesday, December 17, 2013

**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 Tuesday, December 31, 2013 at 4:00 pm.**

**Applicable Approval Criteria:** Multnomah County Code (MCC) and Multnomah County Road Rules (MCRR): MCC 33.0005 Definitions – Lawfully Established Dwelling, Habitable Dwelling.

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.

#### **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 a Planning Director’s Determination that the dwelling was lawfully established when placed on the property and that it is currently habitable as defined in MCC 33.0005 for the purposes of facilitating a future replacement dwelling application. A Planning Director’s Determination is not approval of development, but rather only a determination on the status of the dwelling.

### **2.00 Lawfully Established Dwelling:**

#### **MCC 33.0005 Definitions**

**Lawfully established dwelling – A dwelling that was constructed in compliance with the laws in effect at the time of establishment. The laws in effect shall include zoning, land division and building code requirements. Compliance with Building Code requirements shall mean that all permits necessary to qualify the structure as a dwelling unit were obtained and all qualifying permitted work completed.**

**Staff:** To determine if the subject dwelling was lawfully established, the date the dwelling was constructed or placed on the property must first be known in order to determine what laws were in effect. A quick history of County codes is as follows:

- August 4, 1955 – County adopts first primitive zoning regulations.
- August 4, 1955 – County adopts first building code requirements that required building permits.
- July 10, 1958 – Comprehensive zoning ordinance adopted for the Northwest Portion of the County. Property zoned F2.
- December 9, 1975 – F2 zone substantially changed to include development standards, variable minimum lot sizes, and other zoning requirements.
- October 6, 1977 – Property rezoned to Multiple Use Agriculture.
- August 14, 1980 – Property rezoned to Exclusive Farm Use

Staff’s first source of information to determine the date of establishment of a dwelling is generally to look at tax and assessment records. According to the readily available Assessment and Taxation information (Exhibit B.1), the dwelling was established in 1980. In 1980, the dwelling would have required zoning approval and building permits of which there is no record of. However, the applicant disputes that date of establishment. The applicant’s narrative (Exhibit A.3) asserts the dwelling was a ‘Vanport defense house’ relocated to the property in 1948.

With the applicant disputing the authenticity of the 1980 establishment date provided by Assessment and Taxation, staff researched a second tier of available evidence to help corroborate the true date of establishment of the dwelling. Those second tier records available to planning staff include a 1977 air photo (Exhibit B.6) which displays a dwelling on the property in the exact location of the current dwelling as well as a 1952 land use survey (Exhibit A.7) that displays the area around the current dwelling as vacant. The 1977 air photo supports the applicant's general assertion the home was established prior to 1980 while the 1952 land use survey contradicts the assertion that the home was established on the property in 1948. Because of the contradicting evidence, discretion must be applied to make a finding on the true date of establishment of the dwelling. Because of the contradicting evidence, the applicant provided additional evidence into the record as part of this land use application to further their argument that the dwelling was lawfully established in 1948, prior to the adoption of zoning or building code requirements.

Evidence submitted by the applicant includes anecdotal historic evidence in the narrative (Exhibit A.3, B.3) from neighbors and the Brooks family – residents of the area for whom NW Brooks Road is named after and who established several of the early dwellings in the surrounding community. The applicant also included USGS maps for the years 1961 (Exhibit A.5) and 1954 (Exhibit A.6); a building permit card for Tax Lot 4 Section 6 1N 1W from 1956 (Exhibit A.8); Tax Roll records from 1956 for property known as #R961060270 owned by Leonard Brooks (Tax Lot 27) (Exhibit A.9); and tax lot records from 1966-76 for Tax Lot 24 (Exhibit A.11).

Staff contact Multnomah County Assessment and Taxation and had a conversation with a tax exemption specialist about the dates supplied as “year built” dates on the information sheets such as Exhibit B.1. The specialist noted that generally speaking, the year listed is the year the home was built. However, if a home has undergone significant improvements, then the year built date of a home could be altered to reflect a new effective date based on those improvements. If the home underwent significant renovations and improvements, then the ‘year built’ date could be changed. Based on the exterior architecture of the home (Exhibit A.12 and A.13), it is clearly not a 1980's home but rather a mid century home. That would be consistent with the applicant's argument.

The applicant postulates that the 1952 land use survey the county had commissioned contained erroneous information for the subject property. The applicant points out that the 1952 land use survey showed a 1-acre property (known today as 10610 NW Brooks) to the south of the subject property as having a dwelling. However, the applicant has provided a building permit card for 10610 NW Brooks from 1957 (Exhibit A.8), which would indicate the property was vacant at the time of the 1952 land use survey. The other tax roll information provided by the applicant (Exhibit A.9) demonstrates that property known as #R961060270 (now addressed as 10610 NW Brooks) was not taxed for improvements through 1957. Staff finds that the building permit card and tax roll information demonstrate the 1952 land use survey was incorrect in showing Tax Lot 27 as having a dwelling.

Similarly, the applicant has provided Tax Roll card information (Exhibit A.11) for the property subject to this application. That tax roll card shows that in 1955, the subject property (Tax lot 24 at the time) had value assessed for improvements in the amount of \$1650 (Labeled Page 2 of 16 of applicants Tax Roll evidence – Exhibit A.11). This information contradicts the 1952 land use

survey that indicated Tax Lot 24 was vacant. This information also corroborates the applicant's Brooks family history found in the Attachment E narrative from case T2-2013-3036 on the history of the area and the dwellings (Exhibit B.3). A document outlining historical median home values by the US Census (Exhibit B.2) shows the median home value in Oregon in 1950 to be \$6,846. The value on the tax rolls is much lower but is still reasonable for a simple home in the rural area.

Lastly, the applicant provided USGS Survey maps from 1954 and 1961 (Exhibits A.5 and A.6). As seen on the 1954 survey map, there is a single dwelling icon on the east side of NW Brooks Road. That icon is located in the general proximity of the subject property (the applicant labeled as 'Crutcher'). A driveway heading east off of NW Brooks Road lies a fair distance to the south. Staff finds that the depicted driveway on the 1954 survey map corresponds to and is in fact the driveway for property known currently as 10914 NW Brooks Road. The 1961 USGS Survey map (Exhibit A.5) shows a second dwelling icon just south of that depicted driveway that corresponds to a current air photo (Exhibit B.6) showing a dwelling listed for 10610 NW Brooks, built in 1957 according to Assessment and Taxation (Exhibit B.8). Therefore it is clear that the single dwelling icon shown on the 1954 survey had to represent a dwelling on the subject property, which corroborates the applicant's argument.

Based on the above evidence, staff finds that the 1952 county land use survey and Assessment and Taxations establishment date of 1980 are incorrect. Staff finds that there was in fact a dwelling on the subject property in 1954 as tax roll cards, the USGS survey map, and family testimony demonstrate. As such, the dwelling located at 10950 NW Brooks, Property #R961060430, was placed on the property prior to the County's adoption in 1955 of land use and building codes and therefore was lawfully established.

In 1984 the dwelling was updated and added onto. Building permits were pulled for the addition, electrical and plumbing work (Exhibit B.4). Since permits were pulled for the work, they were lawful.

*The subject dwelling was lawfully established dwelling.*

### **3.00 Habitable Dwelling:**

**Staff:** The applicant has also requested that the County make a determination that the dwelling on the subject property is currently habitable as defined in MCC 33.0005.

#### **MCC 33.0005 Definitions**

**Habitable Dwelling – An existing dwelling that:**

- (a) Has intact exterior walls and roof structure;**
- (b) Has indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system;**
- (c) Has interior wiring for interior lights;**

**(d) Has a heating system; and**

**(e) Was lawfully established.**

**Staff:** The applicant has submitted a series of photographs (Exhibit A.13) from the Redfin website used to help advertise the dwelling when it was for sale. The photographs printed on October 24, 2013 demonstrate the subject home has intact exterior walls and roof; a stove and kitchen sink; working interior lights with electrical service, a fireplace heating system, and restroom facilities consisting of a sink, toilet and a bathing facility. Staff made a finding Under 2.000 above that the subject dwelling was lawfully established.

*The subject dwelling is a habitable dwelling.*

#### **4.00 Conclusion:**

Based on the findings and other information provided above, the applicant has carried the burden necessary to demonstrate the dwelling was lawfully established prior to the adopting of zoning and building permit requirements and is currently habitable.

#### **5.00 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 T2-2013-3135 at the Land Use Planning office.

Exhibit #	# of Pages	Applicant Exhibits:
A.1	1	General Application Form
A.2	1	Copy of General Application Form Signed by Wendie Kellington, Counsel for Applicant and Owner
A.3	5	October 24, 2013 Applicant Narrative
A.4	2	Applicant Request for Waiver of Pre-Filing Conference
A.5	2	1961 USGS Survey Maps, Including Large Scale and Close-up
A.6	2	1954 USGS Survey Maps, Including Close-up and Large Scale
A.7	1	Applicant’s Copy of the Multnomah County 1952 Land Use Survey
A.8	1	Building Permit Card for 10610 NW Brooks Road
A.9	5	Tax Roll Information for 10610 NW Brooks. Alternative Tax Account #R961060270. Legal Description of 1N 1W, Section 6, Tax Lot 27 and Owned by Leonard and Cora Brooks
A.10	2	Property and Dwelling Information for 10610 NW Brooks From

		<a href="http://www.Zillow.com">www.Zillow.com</a>
A.11	12	Tax Roll Information for the Subject Property, 10950 NW Brooks Road. Alternative Tax Account #R961060240. Legal Description 1N 1W Section 6, Tax Lot 24.
A.12	3	Photos of the Exterior of the Subject Dwelling
A.13	12	Real Estate Website Redfin Property Information and Photos of Habitable Dwelling
'B'	#	Staff Exhibits:
B.1	2	A&T Property Information for Subject Property
B.2	2	United States Census Bureau Indicating Median Home Values: Unadjusted for 1940 Through 2000
B.3	3	Historical Narrative Information From T2-2013-3036
B.4	3	Building Permit Records for 10950 NW Brooks
B.5	1	1962 Zoning Map
B.6	1	1977 Air Photo
B.7	1	Current Air Photo
B.8	2	A&T Property Information for 10610 NW Brooks