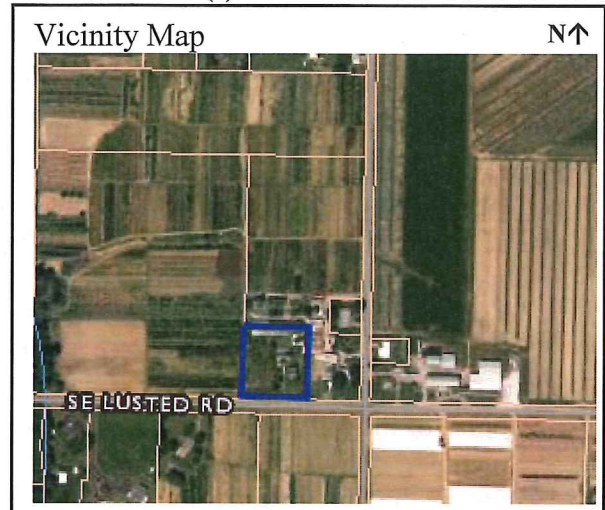


1600 SE 190<sup>th</sup> Avenue, Portland Oregon 97233-5910 • PH. (503) 988-3043 • Fax (503) 988-3389

## NOTICE OF DECISION

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

**Case File:** T2-2017-6939  
**Permit:** Temporary Health Hardship  
**Location:** 32539 SE Lusted Rd Gresham, OR  
1S4E16CC Tax Lot 500 #R994160360,  
1S4E16CC -00200 # R994160080,  
1S4E16CC -00300#R994160190,  
1S4E16CC -00400##R994160510  
**Applicant:** James and Chryste Carlson  
**Owners:** Carlson Nursery/James Carlson  
**Base Zone:** Exclusive Farm Use (EFU)  
**Overlays:** None



**Summary:** Applicant is requesting a Health Hardship permit to allow for placement of a manufactured dwelling on the property for the care of a relative.

**Decision:** Approved with Conditions

Unless appealed, this decision is effective Friday, May 19, 2017, at 4:00 PM.

Issued by:



Katie Skakel, Senior Planner

For: Michael Cerbone, AICP  
Planning Director

Date: Friday May 5, 2017

**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 Katie Skakel, Senior Planner at 503-988-0213.

**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 Friday May 19, 2017 at 4:00 pm.**

**Applicable Approval Criteria:** Multnomah County Code (MCC): Exclusive Farm Use MCC 36.2610 DEFINITIONS Same Ownership; 36.2625 REVIEW USES (O) One Manufactured Dwelling in conjunction with an existing dwelling as a temporary use for the term of hardship; MCC 36.0515 Temporary Health Hardship Permit. MCC 36.2655 Dimensional Standards and Development Requirements; MCC 36.0515 Temporary Health Hardship Permit.

Copies of the referenced Multnomah County Code (MCC) sections can be obtained by contacting our office at 503-988-3043 or by visiting our website at [multco.us/landuse/zoning-codes](http://multco.us/landuse/zoning-codes) at the link Chapter 36: West of Sandy River Rural Plan Area..

### **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. Approval of this land use permit is based on the submitted written narrative(s) and plan(s).
2. The Temporary Health Hardship Permit expires automatically two years after the date of final approval of the permit unless an extension is approved. The VCA (UR-2017-7400) will need to be completed prior to approval on an extension.
3. The expiration date of a Temporary Health Hardship Permit may be extended upon satisfaction of the requirements in MCC 36.0515 (B)(1) through (4). More than one extension may be granted, but each extension is limited to a period of two years from the date the permit would have otherwise expired. To obtain an extension, the property owner shall use the forms provided by the Planning Director and shall submit the application at least 30 days prior to expiration of the permit. Upon approval of an extension, the Planning Director shall mail notification to the property owners that are contiguous to the subject lot.
4. This health hardship permit authorizes the placement and maintenance of a temporary dwelling to be occupied by Pamela L. Hunter and Anthony G. Hunter. Occupancy of the temporary dwelling may occur only while Pamela and Anthony Hunter for which the Temporary Health Hardship Permit was granted lives on the property. This health hardship permit is not transferable to another party. [MCC 36.0515(F)]

5. The temporary dwelling shall be removed and utility and septic connections shall be terminated within 30 days of expiration of the Temporary Health Hardship Permit, end of the health hardship or the provision of supervision or assistance with daily care of Pamela and Anthony Hunter. [MCC 36.0515(G)]
6. Prior to land use sign-off for building plan check, the property owners shall record a covenant that states that the dwelling is temporary and must be removed as set forth in MCC 36.0515(G) and that the Temporary Health Hardship Permit is not transferable to another party. [MCC 36.0515(C)(2)]
7. Applicant must adhere to Voluntary Compliance Agreement UR-2017-7400. If the property owners do not bring the property and ownership into compliance with the County's land use laws by January 1, 2019, the renewal of the health hardship application shall be denied and the dwelling removed immediately. [MCC 37.0560].
8. Prior to land use sign-off for building plan check, the property owner will be required to submit a stormwater certificate to address placement of manufactured dwelling on the property.

**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, James and Chryste Carlson are requesting a Health Hardship permit in order to allow a temporary dwelling to remain on the subject property so that Pamela and Anthony Hunter may live in it and her family to assist her with daily care.

### **2.00 Property Description & History:**

**Staff:** The subject Tax Lot is 1.63 acres in size and contains an existing single family dwelling and an existing detached shop/garage and a number of hoop structures that cross over property lines and do not meet minimum yard setbacks. Tax lot 1S4E16CC – 00500 is one of four tax lots that constitutes the County’s Lot of Record for the property. The existing dwelling on tax lot 500 was constructed prior to zoning (apparently built in 1890) prior to implementation of zoning. At present, the property has farm structures (hoop houses) without permits.

The property owners have requested this application to establish a health hardship dwelling for use by Pamela and Anthony Hunter (Chryste Carlson’s parents). At present, Land Use Planning has identified three land use issues on the Lot of Record. The first issue is the construction of the hoop houses without permits. The second issue is the creation of a 17,424 sq. ft. parcel (tax lot 1S4E16CC – 00400) in the EFU zone that did not meet the minimum lot size for the Suburban Residential (SR) zone of 20,000 sq. ft. The final issue is to demonstrate building permits were obtained for the construction of the dwelling currently located on tax lot 1S4E16CC - 00400.

MCC 37.0560 requires the County deny the land use application for properties not in compliance with the County’s land use laws unless the property owners enter into a Voluntary Compliance Agreement with the County. In order to approve the request to authorize the Temporary Health Hardship, the property owners have signed a Voluntary Compliance Agreement UR-2017-7400 that requires the three land use issues be resolved by January 1, 2019.

### **3.00 Exclusive Farm Use :**

#### **3.01 § 36.2625 (O) 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.**

**(A) Temporary uses when approved pursuant to MCC 36.0510 and 36.0515.**

**Staff:** The applicant has requested a health hardship permit pursuant to MCC 36.0515. Please see additional findings in Section 4 below.

#### **3.02 § 35.2600 DIMENSIONAL STANDARDS AND DEVELOPMENT REQUIREMENTS.**

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

**(C) Minimum Yard Dimensions – Feet**

Front	Side	Street Side	Rear
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30	10	30	30
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### **Maximum Structure Height - 35 feet**

**Staff:** The manufactured dwelling used for the health hardship situation is proposed to be located 65 feet from the western side property line, over 74 feet from the front property line to the north, over 200 feet from the rear property line to the south and 200 feet from the eastern side property line. The manufactured dwelling is less than 35 feet in height. *All Criteria are met.*

### **3.03 (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.**

**(1) Sewage and stormwater disposal systems for existing development may be off-site in easement areas reserved for that purpose.**

**(2) Stormwater/drainage control systems are required for new impervious surfaces. The system shall be adequate to ensure that the rate of runoff from the lot for the 10 year 24-hour storm event is no greater than that before the development.**

**Staff:** The health hardship dwelling will be connected to the existing on-site sewage disposal system located on the property. As a condition of approval prior to Building Permit sign off, the applicant will be required to submit a stormwater certificate. *With condition of approval criteria will be met.*

### **3.04 § 33.0005 DEFINITIONS.**

**As used in this Chapter, unless the context requires otherwise, the following words and their derivations shall have the meanings provided below.**

**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.)**

**Staff:** The applicant has provided a deed from 1956 (Exhibit A.3) that describes tax lot 1S4E16CC – 00500 in its current configuration. The County did not commence zoning until 1955. The 1.63 acre unit of land known as tax lot 1S4E16CC – 00500 was established before any applicable zoning and land division laws and is a lawfully established unit of land, but presently it is not a Lot of Record. Please see additional findings under Section 3.06 regarding the Lot of Record.

**3.05 (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.**

**Staff:** The subject property, 1S4E16CC – 00500 is zoned Exclusive Farm Use. All contiguous tax lots to the subject property are also zoned Exclusive Farm Use (EFU). The EFU zone is not part of an “acknowledged unincorporated community”. *This criterion is not applicable.*

**3.06 § 36.2675 LOT OF RECORD**

**(A) In addition to the Lot of Record definition standards in MCC 36.0005, for the purposes of this district a Lot of Record is either:**

**(1) A parcel or lot which was not contiguous to any other parcel or lot under the same ownership on February 20, 1990, or**

**(2) A group of contiguous parcels or lots:**

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

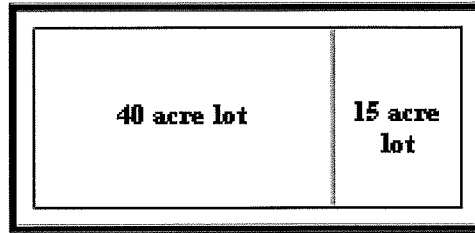
**(b) Which, individually or when considered in combination, shall be aggregated to comply with a minimum lot size of 19 acres, without creating any new lot line.**

**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. See Examples 1 and 2 in this subsection.**

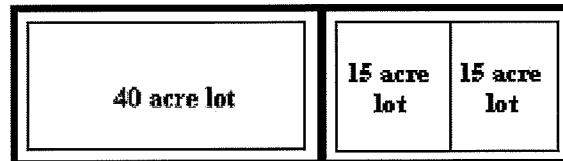
**2. There shall be an exception to the 19 acre minimum lot size requirement when the entire same ownership grouping of parcels**

or lots was less than 19 acres in area on February 20, 1990, and then the entire grouping shall be one Lot of Record. See Example 3 in this subsection.

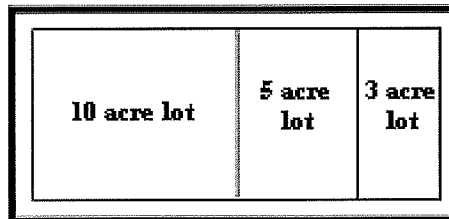
3. Three examples of how parcels and lots shall be aggregated are shown below with the solid thick line outlining individual Lots of Record:



**Example 1:**  
**One 55 acre Lot of Record**



**Example 2:**  
**One 40 acre Lot of Record and**  
**one 30 acre Lot of Record**



**Example 3:**  
**One 18 acre Lot of Record**

4. The requirement to aggregate contiguous parcels or lots shall not apply to lots or parcels within exception or urban zones (e.g. MUA-20, RR, BRC, R-10), but shall apply to contiguous parcels and lots within all farm and forest resource zones (i.e. EFU and CFU), or

**(3) A parcel or lot lawfully created by a partition or a subdivision plat after February 20, 1990.**

**Staff:** The subject property, 1S4E16CC – 00500 is a 1.63 acre unit of land which was lawfully established prior to zoning. It is currently zoned Exclusive Farm Use (EFU). Tax lot 1S4E16CC – 00500 is contiguous to tax lots 1S4E16CC – 00200, 1S4E16CC – 00300, and 1S4E16CC – 00400. The aforementioned Tax lots are also zoned EFU.

The deed information provided by the applicant indicates that the subject property,



1S4E16CC – 00500 and tax lots 1S4E16CC – 00200, 1S4E16CC – 00300, and 1S4E16CC – 00400 were under common ownership on February 20, 1990. Tax lot 400 when created did not meet the minimum lot size for the SR zone. Tax lot 400 must be recombined with Tax lot 300 to re-establish a legal parcel. Once Tax lot 300 is recombined with Tax lot 400 it will be a legal parcel. Tax lot 500 and Tax lot 200 are currently legal parcels. Tax lot 500 and the combination of Tax lot 300&400 are each less than 19 acres in size. As such, pursuant to MCC 36.2675(A)(2) the three legal units of land are aggregated into a single lot of record.

Exhibit #	Instrument	Date	Ownership	Described Area	Acreage
A.3	Warranty Deed	4/12/1954	Loren & Naomi Bennett.	1S4E16CC – 00500	1.63 acres
A.4	Warranty Deed	1964	Robert H. & Annell R. Carlson	1S4E16CC – 00200	18.73 acres
A.5	Warranty Deed	11/25/1930	Harry J. & Mabel V. Carlson	1S4E16CC – 00300	8.82 acres
A.6	Warranty Deed	3/7/1966	Robert H. & Annell R. Carlson	1S4E16CC – 00400	0.4 acres

*When aggregated, the three legal parcels (Tax lot 500, 200, and the combination of Tax lot 300&400) is a single Lot of Record.*

3.07

**(4) Exception to the standards of (A)(2) above:**

**(a) Where approval for a “Lot of Exception” or a parcel smaller than 19 acres under the “Lot size for Conditional Uses” provisions has been given by the Hearing Authority and the parcel was subsequently lawfully created, then the parcel shall be a Lot of Record that remains separately transferable, even if the parcel was contiguous to another parcel held in the same ownership on February 20, 1990.**

**Staff:** Planning staff reviewed County records and did not find an approval of a Lot of Exception or a conditional use permit to allow the disaggregation of tax lot 1S4E16CC – 00500 from the Lot of Record. *This Lot of Record exception is not applicable to this property.*



**(B) In this district, significant dates and ordinances applicable for verifying zoning compliance may include, but are not limited to, the following:**

- (1) July 10, 1958, F-2 zone applied;**
- (2) December 9, 1975, RL-C zone applied, F-2 minimum lot size increased, Ord. 115 & 116;**
- (3) October 6, 1977, MUA-20 and EFU-38 zones applied, Ord. 148 & 149;**
- (4) August 14, 1980, zone change from MUA-20 to EFU-38 for some properties, Ord. 236 & 238;**
- (5) February 20, 1990, lot of record definition amended, Ord. 643;**
- (6) April 5, 1997, EFU zone repealed and replaced with language in compliance with 1993 Oregon Revised Statutes and 1994 Statewide Planning Goal 3 Oregon Administrative Rules for farmland, Ord. 876;**
- (7) May 16, 2002, Lot of Record section amended, Ord. 982;**

**(C) A Lot of Record which has less than the minimum lot size for new parcels, less than the front lot line minimums required, or which does not meet the access requirements of MCC 36.2690 may be occupied by any allowed use, review use or conditional use when in compliance with the other requirements of this district.**

**(D) The following shall not be deemed 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) A Mortgage Lot;**
- (4) An area of land created by court decree.**

**Staff:** Criterion (B), (C) and (D) do not affect the determination on this case.

In order to approve the request to authorize the Temporary Health Hardship, the property owners needed to sign and have signed a Voluntary Compliance Agreement UR-2017-7400 - that requires a group of contiguous parcels to be aggregated into a single Lot of Record. The VCA agreement requires the Carlson's to bring the property into full compliance by May 16, 2018. The tax lot identified as 6345 SE Altman (1S4E16CC - 00400) (contains a single family dwelling which was constructed in 1961) shall be recombined with the tax lot identified as 32627 SE Lusted Rd (1S4E16CC - 00300) which has a single family dwelling/garage built in 1925 (pre-zoning). These two tax lots need to be recombined to create a Legal Lot of Record. The applicants must submit permit records for the dwelling located at 6345 SE Altman Rd that appears to have been built in 1961 as planning staff has not been able to determine it was lawfully established. Based on documents provided by applicants and review of deeds, the following describes the deed history of the properties and lot of record findings. The tax lot identified as 6345 SE Altman (1S4E16CC - 00400) (contains a single family dwelling which was constructed in 1961) shall be recombined with the tax lot identified as 32627 SE Lusted Rd (1S4E16CC - 00300) which has a single family dwelling/garage built in 1925 (pre-zoning). These two tax lots need to be recombined to resolve Lot of Record issue. The applicants must submit permit records for the dwelling located at 6345 SE Altman Rd

that appears to have been built in 1961 as planning staff has not been able to determine it was lawfully established.

#### **4.00 Health Hardship Criteria**

##### **4.01 § 36.0515 TEMPORARY HEALTH HARDSHIP PERMIT**

**(B) The Planning Director may grant a Temporary Health Hardship Permit to allow occupancy of a temporary dwelling on a lot in conjunction with an existing single-family dwelling allowed in the zone subject to the following:**

- (1) The person with the health hardship is either one of the property owners or is a relative of one of the property owners.**
  - (a) If the person with the health hardship is one of the property owners, then the care provider in the other residence is not required to be a relative.**
  - (b) If the person with the health hardship is a relative of one of the property owners, then the care provider must be a relative.**
  - (c) For the purposes of this section, a relative is defined as a grandparent, grandchild, parent, child, brother or sister, wife, husband, brother-in-law, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, first cousin, step-parent, step-child, step-grandparent, or step-grandchild either by blood or legal relationship.**

**Staff:** Pamela and Anthony Hunter are the parents of Christy Carlson. James and Chryste Carlson are the property owners of the property. Chryste Carlson is the care provider for Pamela and Anthony Hunter. The Carlsons will be installing a manufactured dwelling that the Hunters will be living in. The Carlsons will be living in the permanent dwelling. *Criteria met.*

- 4.02 (2) For each person with a health hardship, a written statement by a licensed physician dated within 90 days of submittal of the initial application, verifying the following information:**
  - (a) The person identified in the application has a health hardship as defined in MCC 36.0005;**
  - (b) The person needs supervision and/or assistance with daily care as that term is defined in MCC 36.0005; and**
  - (c) The proposed care provider is capable of providing the supervision and/or assistance with daily care needed by the person with the health hardship.**

**Staff:** A written statement by a licensed physician has been provided that meets the above requirements (Exhibit A.2). *Criteria met.*

- 4.03 (3) Each proposed care provider shall provide a written statement dated within 90 days of submittal of the initial application that the provider understands the physician's determination of the extent of daily care required and is capable of providing and will provide the necessary supervision and/or assistance during implementation of the Temporary**

## **Health Hardship Permit.**

**Staff:** Chryste Carlson has provided a written statement (Exhibit A.3) that as the care provider she is capable of providing the necessary daily care needed by Pamela and Anthony Hunter. *Criterion met.*

### **4.04 (4) The following criteria are satisfied:**

- (a) The temporary dwelling shall be either a mobile home, park-model recreational vehicle or travel trailer.**
- (b) The temporary dwelling shall be located within 100 feet of the single-family dwelling on the subject lot, unless an adjustment or variance pursuant to MCC 36.7601 through 36.7616 is approved. This distance shall be measured from the closest portion of each building.**
- (c) The temporary dwelling shall be connected to the same utilities (on-site sewage disposal, power main, well/water meter) as the single-family dwelling. In addition, the temporary dwelling shall be accessed by the same driveway entrance as the single-family dwelling, although the driveway may be extended.**
- (d) The temporary dwelling will not require any attached or detached accessory structures other than wheelchair ramps.**

**Staff:** The temporary dwelling is a mobile home. The temporary dwelling is located within 10 feet of the permanent dwelling on the property. The mobile home is connected to the same utilities as the permanent dwelling and uses the existing driveway. *Criteria met.*

### **4.05 (C) Prior to installation of the temporary dwelling on the site, the property owner shall:**

- (1) Obtain the necessary permits to place the temporary dwelling on the site and connect utilities,**
- (2) The property owner shall record a covenant that states that the dwelling is temporary and must be removed as set forth in (G) below and that the Temporary Health Hardship Permit is not transferable to another party.**

**Staff:** The necessary building and electrical permits will be obtained for the temporary dwelling on the site. This permit will reauthorize a temporary health hardship on the site. A condition of approval has been included requiring that the property owners record the above covenant within 30 days. *As conditioned, criteria met.*

## **5.00 Conclusion**

Based on the findings and other information provided above, the applicant has carried the burden necessary for the Health Hardship permit to establish the use on the site in the EFU zone. This approval is subject to the conditions of approval established in this report.

## **6.00 Exhibits**

- 'A' Applicant's Exhibits**
- 'B' Staff Exhibits**
- 'C' Procedural 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 T2-2017-6939 at the Land Use Planning office.

Exhibit #	# of Pages	Description of Exhibit	Date Received/ Submitted
A.1	1	General Application Form	2-10-2017
A.2	1	Site Plan	2-10-2017
A.3	2	Warranty Deed Book 1956 Page 342 (4-12-1954)	March 16, 2017
A.4	1	Warranty Deed Book 2191 Page 478 (1964)	March 16, 2017
A.5	3	Warranty Deed Book 105 Page 510 (11-25-1930)	March 16, 2017
A.6	2	Warranty Deed Book 484 Page 27 (3-7-1966)	March 16, 2017
A.7	3	Medical Letter dated December 22, 2016	2-10-2017
B.1	5	Voluntary Compliance Agreement	4-20-2017
‘C’	#	Administration & Procedures	Date
C.1	2	Incomplete Letter	2-28-2017
C.4	2	Opportunity to Comment	4-06-2017
C.5	5	Administrative Decision	5-5-2017