

1600 SE 190th Ave, Portland OR 97233-5910 • PH. (503) 988-3043 • Fax (503) 988-3389

CORRECTED

NOTICE OF DECISION

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

Case File: T2-2017-7941

Permit: Administrative Decision by Planning Director

Location: 18630 NW Gillihan Rd
Tax Lot 00202, Section 14, Township 2 North, Range 1 West, W.M.
Alt. Acct # R649800580
Property ID# R491288

Applicants: Michael T. Trapold

Owners: Michael T. Trapold & Thomas A. Trapold & Sheila J Trapold

Base Zone: Exclusive Farm Use (EFU)

Vicinity Map

N↑



Summary: Application request for an Administrative Decision by Planning Director for a conversion of a relative farm help dwelling on the property to a primary farm dwelling for the farm operator and family.

Decision: Approved with Conditions

Unless appealed, this decision is effective February 15, 2018 at 4:00 PM.

Issued by:

By:


George A. Plummer, Planner

For: Michael Cerbone, AICP
Planning Director

Date issued: February 1, 2018

Instrument Number for Recording Purposes: # 2010022974

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 George Plummer, Planner at george.a.plummer@multco.us or (503) 988-0202 (8 am to 4 pm Tuesday through Friday).

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 February 14, 2018 at 4:00 PM.

Applicable Approval Criteria: Multnomah County Code (MCC): MCC 34.2625: EFU Review Uses; MCC 34.2655: Review Uses, MCC 34.2675 Lot of Record

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 <http://www.multco.us/landuse>

Scope of Approval

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.

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 building permit sign-off, the property owner shall record this Notice of Decision including the Conditions of Approval of this decision (pages 1 through 3) with the Multnomah County Recorder. The Notice of Decision shall run with the land and the conditions shall be met by the current and future property owner(s) unless amended through a later decision by an authorized authority. Proof of recording shall be submitted to Multnomah County Land Use Planning prior to the issuance of any permits. Recording shall be at the applicant's expense. [MCC 37.0670]
2. Approval of this land use permit is for a primary farm dwelling on a commercial farm operation is based on the submitted written narrative and documents for a primary farm dwelling for the farm owner/operator. The primary farm dwelling shall be used as a residence for the farm

owner/operator and family. The dwelling shall not be rented to another party. [MCC 37.0530 and MCC 34.2625(D)]

3. The property owner shall sign and record with Multnomah County Records in the deed records for the county a document binding the landowner, and the landowner's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under ORS 30.936 or 30.937. [MCC 34.2655]
4. The property owner shall provide County Land Use Planning office evidence within 90 days that the covenants, conditions and restrictions form referred to as "Exhibit A" in OAR 660-033-0135(9) has been recorded with the Multnomah County Records. The covenants, conditions and restrictions shall be recorded for parcel subject to the application for the primary farm dwelling. [MCC 34.2625(D)(1)(e)]
 - a. The covenants, conditions and restrictions shall preclude all future rights to construct a dwelling except for accessory farm dwellings, relative farm help dwellings, temporary hardship dwellings or replacement dwellings allowed by ORS Chapter 215.
 - b. The covenants, conditions and restrictions shall preclude the use of any gross farm income earned on the lots or parcels to qualify another lot or parcel for a primary farm dwelling.
 - c. The covenants, conditions and restrictions are irrevocable, unless a statement of release is signed by an authorized representative of the county or counties where the property subject to the covenants, conditions and restrictions is located.
 - d. Enforcement of the covenants, conditions and restrictions may be undertaken by the Department of Land Conservation and Development or by the county or counties where the property subject to the covenants, conditions and restrictions is located.
 - e. The failure to follow the requirements of this section shall not affect the validity of the transfer of property or the legal remedies available to the buyers of property which is subject to the covenants, conditions and restrictions required by this section.
 - e. The County Planning Director shall maintain a copy of the covenants, conditions and restrictions that have been filed in the county deed records pursuant to this sub-section and a map or other record depicting the lots and parcels subject to the covenants, conditions and restrictions. The map or other record required by this subsection shall be readily available to the public in the county planning office.

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. PROJECT DESCRIPTION

Staff: Application request for an Administrative Decision by Planning Director for a conversion of a relative farm help dwelling on the property to a Primary Farm Dwelling for the farm operator and family.

2. PROPERTY DESCRIPTION & HISTORY

Staff: The subject property is an 80 acre farm on which the farmer grows crops that include vegetable and flower seedlings (starts) for transplanting. The subject property was created through approved Partition Plat 2000-015. Later a Property Line Adjustment Case T2-08-020 reconfigured Parcel 1 and Parcel 2 of Partition Plat 2000-015. The existing dwelling, a manufactured home was approved for the property as a relative farm help dwelling for the farm operator’s son at that time, Michael T. Trapold. The son, Michael T. Trapold has since has since taken over the management of the farm operation on the subject property and has made the request to convert the relative farm help dwelling to the primary farm dwelling as he is now the farm owner/operator.. The other parcel that was part of the farm when the relative farm help dwelling was approved has been sold to another farmer.

3. EXCLUSIVE FARM USER ZONE

3.1. Single Family Dwellings Condition of Approval - Prohibition on Claims Alleging Injury from Farm or Forest Practices

MCC 34.2655 As a condition of approval of a single family dwelling, the landowner for the dwelling shall sign and record in the deed records for the county a document binding the landowner, and the landowner's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging in-jury from farming or forest practices for which no action or claim is allowed under ORS 30.936 or 30.937.

Staff: A condition of approval will require this standard be met. *This standard is met through meeting a condition of approval.*

3.2. Dimensional Requirements and Development Standards

MCC 34.2660(C): Minimum Yard Dimensions - Feet

Front	Side	Street Side	Rear
30	10	30	30

Structure Height – 35 feet

Staff: The dwelling approval is for an existing relative farm help dwelling which was previously permitted on the property. The dwelling meets the minimum yard and maximum height standards. This dwelling will become the primary farm dwelling through this decision. *These standards are met.*

3.3. Lot of Record

MCC 34.2675(A): In addition to the Lot of Record definition standards in MCC 34.0005, for the purposes of this district a Lot of Record is either:

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 de-scribed in MCC 34.7785. Those laws shall include all required zoning and land division re-view 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:

* * *

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 district.)

Staff: The subject property was created through an approved Partition Plat 2000-015. Later a Property Line Adjustment Case T2-08-020 reconfigured Parcel 1 and Parcel 2 of Partition Plat 2000-015. Thus, the property was lawfully created per zoning and land division requirements. *The subject property is a Lot of Record.*

4. EFU FARM OPERATOR DWELLING REVIEW

Review Uses

4. **MCC 34.2625(D):** A dwelling, including a mobile or modular home, customarily provided in conjunction with a farm use:

(1) **High-value farmland soils, \$80,000 income.** On lands identified as high-value farmland, a dwelling may be considered customarily provided in conjunction with farm use if:

Staff: The Soil Survey of Multnomah County, Oregon by Soil Conservation Service labels the subject property #45 – Sauvie silt loam a “High Value” farmland soil. The submittal includes 2014, 2015 and 2016 IRS Tax Return Transcripts for Michael T Trapold, farm operator and one of the current property owners showing gross income exceeding \$80,000 for each of the years ((Exhibits A.13, A.14 and A.15).

4.1. (a) The subject tract is currently employed for the farm use, as defined in ORS 215.203, that produced at least \$80,000 in gross annual income from the sale of farm products in the last two years or three of the last five years, or the average farm income earned on the tract in the best three of the last five years; and

Staff: The submittal includes 2014, 2015 and 2016 IRS Tax Return Transcripts for Michael T Trapold, farm operator and one of property owners showing income exceeding \$80,000 for

each of the years (Exhibits A.13, A.14 and A.15) demonstrating gross annual income from the sale of farm products exceeded \$80,000 gross income for the last two years. *This criterion is met.*

- 4.2 (b) Except as permitted in ORS 215.283 (1) (p) (1999 Edition) (i.e. seasonal farmworker housing), there is no other dwelling on land designated for exclusive farm use that is owned by the farm or ranch operator, or that is on the farm or ranch operation. "Farm or ranch operation" shall mean all lots or parcels of land owned by the farm or ranch operator that are used by the farm or ranch operator for farm use as defined in ORS 215.203; and**

Staff: There is an existing dwelling on the farm that was approved as a relative farm help dwelling. That dwelling is owned by the farm operator on the farm operation. That dwelling will become the primary farm dwelling through this decision. There are no other dwellings on the farm operation (A.17). *This criterion is met.*

- 4.3 (c) The dwelling will be occupied by a person or persons who produced the commodities which grossed the income in subsection (a) of this subsection; and**

Staff: The proposal is for a dwelling for the farm operator Michael T Trapold, property owner. *This criterion is met.*

- 4.4. (d) In determining the gross income required by subsection (a) of this subsection:**
- 1. The cost of purchased livestock shall be deducted from the total gross income attributed to the farm or ranch operation;**
 - 2. Only gross income from land owned, not leased or rented, shall be counted; and**
 - 3. Gross farm income earned from a lot or parcel which has been used previously to qualify another lot or parcel for the construction or siting of a primary farm dwelling may not be used; and**
 - 4. For the purposes of this subsection, lots or parcels zoned for farm use in Multnomah County or contiguous counties may be used to meet the gross income requirements.**

Staff: The income was earned through sale of crops grown on the farm operation. The applicant is an owner of the subject property. The parcel has not been used previously to qualify another lot or parcel for the construction or siting of a primary farm dwelling. *This criterion is met.*

- 4.5. (e) Prior to the final approval for a dwelling, the applicant shall provide evidence that the covenants, conditions and restrictions form referred to as "Exhibit A" in OAR 660-033-0135(9) has been recorded with the county clerk of the county or counties where the property subject to the covenants, conditions and restrictions is located. The covenants, conditions and restrictions shall be recorded for each lot or parcel subject to the application for the primary farm dwelling.**
- 1. The covenants, conditions and restrictions shall preclude all future rights to construct a dwelling except for accessory farm dwellings, relative farm help dwellings, temporary hardship dwellings or replacement dwellings allowed by ORS Chapter 215.**
 - 2. The covenants, conditions and restrictions shall preclude the use of any gross farm income earned on the lots or parcels to qualify another lot or parcel for a primary farm dwelling.**

3. The covenants, conditions and restrictions are irrevocable, unless a statement of release is signed by an authorized representative of the county or counties where the property subject to the covenants, conditions and restrictions is located.
4. Enforcement of the covenants, conditions and restrictions may be undertaken by the Department of Land Conservation and Development or by the county or counties where the property subject to the covenants, conditions and restrictions is located.
5. The failure to follow the requirements of this section shall not affect the validity of the transfer of property or the legal remedies available to the buyers of property which is subject to the covenants, conditions and restrictions required by this section.
6. The County Planning Director shall maintain a copy of the covenants, conditions and restrictions that have been filed in the county deed records pursuant to this subsection and a map or other record depicting the lots and parcels subject to the covenants, conditions and restrictions. The map or other record required by this subsection shall be readily available to the public in the county planning office.

Staff: A condition of approval will require this standard be met. *This standard is met through meeting a condition of approval.*

6. COMMENTS

Staff: Mark Greenfield submitted comments to staff in an email dated October 12, 2017. In the email Mr. Greenfield stated concerns that in the future the dwelling may not be occupied by the farm operator. Mr. Greenfield has requested that conditions of approval include a condition that if it is discovered that the dwelling is used for a different purpose then the approval, that the dwelling be removed. The County Code does not include that requirement, thus staff can not include it as a condition. Mr. Greenfield also requested a condition that if the property is sold, the dwelling be removed. A primary dwelling for the operator of the farm can be sold along with the property for the next farm operator. The County Code does not include a requirement for removal if sold, thus staff can not include that requirement as a condition. However, a condition of approval is required that the dwelling be used for the farm operator and that it can not be used as a rental.

6. CONCLUSION

Based on the findings and other information provided above, the applicant has carried the burden necessary for the Administrative Decision by Planning Director to allow for the conversion of a relative farm help dwelling on the property to a Primary Farm Dwelling for the farm operator and family in the EFU zone. This approval is subject to the conditions of approval established in this report.

7. EXHIBITS

- 'A' Applicant's Exhibits
- 'B' Staff Exhibits
- 'C' Comments Received

Exhibit #	# of Pages	Description of Exhibit	Date Received/ Submitted
A.1	1	Application Form	6/21/17

A.2	8	Narrative addressing code	6/21/17
A.3	1	List of Attachments	6/21/17
A.4	5	Attachment A: Case PRE 0-2, Decision of the Planning Director for approval of Accessory Farm Help Dwelling	6/21/17
A.5	1	Attachment B: Aerial Photo Site Plan	6/21/17
A.6	3	Attachment C: 2013, 2014, & 2015 Federal Farm Income Tax Form for Michael T. Trapold	6/21/17
A.7	2	Attachment D: Partition Plat 2000-15	6/21/17
A.8	7	Attachment E: Prefile PF 08-031 & PF 05-050 Notes	6/21/17
A.9	2	Attachment F: Email dated 3/14/2017 from George Plummer, County Land Use Planning, Planner to Bruce Vincent, Trapold Land Use Planning Consultant	6/21/17
A.10	1	Attachment G: Partial Copy Current Deed	6/21/17
A.11	10	Attachment H: Current Title Report for Subject Site	6/21/17
A.12	1	Addendum to the Narrative0	9/11/17
A.13	6	2014 IRS Tax Return Transcript for Michael T Trapold	9/11/17
A.14	6	2015 IRS Tax Return Transcript for Michael T Trapold	9/11/17
A.15	7	2016 IRS Tax Return Transcript for Michael T Trapold	9/11/17
A.16	24	Trapold Greenhouses 2017 Plant List	9/11/17
A.17	4	Deed demonstrating that an adjacent property that was owned by the farm operator parents (part owners of the subject property) has been sold.	1/24/18
	24		
'B'	#	Staff Exhibits	Date
B.1	2	A&T Property Information	NA
B.2	1	A&T Tax Map with Property Highlighted	NA
B.3	1	2016 Aerial Photo	NA
'C'	#	Comments Received	Date
C.1	1	Email comments dated Oct 12, 2017 from Mark Greenfield	10/12/17