

1600 SE 190<sup>th</sup> Ave, Portland OR 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:** T2-2018-10124

**Permit:** Administrative Decision by Planning Director

**Location:** Tax Lots 300, 302, 600, and 700 of Multnomah County Assessor's Map Township 2 North, Range 1 West, Section 33A.

**Applicant:** James Howsley, Jordan Ramis PC for Andrew Lightcap

**Property Owners of the Properties Involved:** Andrew Lightcap, David & Shawn Looney, Arthur & Patricia Wagner

**Base Zone:** Commercial Forest Use – 2 (CFU-2)

**Summary:** The applicant has requested an interpretation by the Planning Director that the June 21, 1993 land use decision, Lot of Exception 14-92 and Land Division 49-92, is void.

**Decision:** The Planning Director has determined that the June 21, 1993 land use decision, Lot of Exception 14-92 and Land Division 49-92 is not void.

Unless appealed, this decision is effective August 9, 2018, at 4:00 PM.

Issued by:

By:



Michael Cerbone, AICP  
Planning Director

Date: Thursday July 26, 2018

**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 (8 am to 4 pm Tuesday through Friday). 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 503.988.0202 or [george.a.plummer@multco.us](mailto:george.a.plummer@multco.us) for assistance.

**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, August 9, 2018 at 4:00 pm.**

**Applicable Criteria:** Multnomah County Code (MCC): Chapter 37: Administration and Procedures, specifically MCC 37.0740(A) and (B) Interpretations....

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).

**This decision is final at the close of the appeal period, unless appealed. The deadline for filing an appeal is Thursday, August 9, 2018 at 4:00 pm.**

### **NOTICE OF POTENTIAL APPEAL HEARING**

**If an appeal of this decision is filed, a public hearing will be held on Thursday, August 16, 2018. The hearing will begin at 9:00 AM or soon thereafter.**

**The hearing will take place in Room 103 (Columbia Room) at the Land Use Planning office located at 1600 SE 190th Avenue, Portland, OR 97233. If no appeal is filed, a notice canceling this hearing will be posted on the outside of the Yeon Annex Building doors. You can also call the receptionist at 503-988-3043 option '0' to inquire on the status of the hearing after Thursday, August 9, 2018.**

Any issue that is intended to provide a basis for an appeal to the Land Use Board of Appeals (LUBA) must be raised prior the close of the public record. Issues must be raised and accompanied by statements or evidence sufficient to afford the County and all parties an opportunity to respond to the issue.

**A public hearing to consider any appeal will be conducted before one of the County Hearings Officer's.**

**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. Staff analysis and comments are identified as ‘**Staff:**’ and address the applicable criteria. Quoted text may be *italic*.

### **1. APPLICATION REQUEST**

**Staff:** The applicant’s stated request is for a Director’s Interpretation regarding whether the June 21, 1993 land use decision for county file numbers LE 14-92 and LD 49-92 is void.

### **2.00 LAND USE HISTORY**

**Staff:** The June 21, 1993, Decision on files LE 14-92 and LD 49-92 (“Decision”) addressed an application that would create two Lots of Exception, which also required approval of a Type I land division (Exhibit B.11, page 1). The applications involved four different Tax Lots (13, 15, 17, and 62) and three different land owners (the Wagners, the Lightcaps, and the Looneys) (Exhibit B.11, pages 1, 6):

| <b>Property Interests in LE 14-92 and LD 49-92</b> |                       |              |
|--|-----------------------|--------------|
| <b>Property Owner</b>                              | <b>Tax Lot Number</b> | <b>Acres</b> |
| Wagners  | Tax Lot 13            | 9.97         |
| Looneys  | Tax Lot 17            | 0.99         |
|  | Tax Lot 62            | 0.32         |
| Looneys/Lightcaps                                  | Tax Lot 15*           | 34.07        |

*\*The Decision also references Tax Lot 33, which, as described below, was created after 2.5 acres of Tax Lot 15 was purportedly sold to the Looneys in 1985. (Exhibit B.11, page 8).*

The applications were brought to correct a failed land division of a parcel (Tax Lot 15) within a 35.38-acre Lot of Record (Tax Lots 15, 17, and 62) zoned Multiple Use Forestry – 19 (MUF-19) (Exhibit B.11, pages 1, 6-8).

#### **Failed Land Division**

On November 5, 1985, Fred Bernet, the then-owner of Tax Lot 15, purported to sell 2.5 acres of that property to the Looneys (creating Tax Lot 33), along with the sale of a 1.31 acre parcel (Tax Lots 17 and 62) (Exhibit B.11, page 8; Exhibit A.3, pages 27-30). On March 30, 1989, Fred Bernet purported to sell Brian and Christine Lightcap the 31.57 remainder of Tax Lot 15 (Exhibit A.3). Bernet made the sales purporting to divide Tax Lot 15 without County approval of a land division. The zoning at the time was MUF-19 but since the Looney’s unit of land did not meet the zoning requirements, Multnomah County Planning determined that the Lightcap parcel had issues, too because it was created from an unlawful land division. Additional information can be found in the Decision on land use cases LE 14-92 and LD 49-92 (Exhibit B.11).

In 1989, for the purpose of legalizing the sales to the Looneys and the Lightcaps, Mr. Bernet submitted an application request for a “Land Division and Lot of Exception approval to create a 3.82 acre parcel and a 31.57 acre parcel out of this 35.39 [sic] acre Lot of Record.” That application was approved, but, due to a failure to submit a final partition map, that approval

expired and the Land Division and Lot of Exception were not perfected. (Exhibit B.11, page 9).

### 1992 Application

In 1992, Mr. Looney submitted an application request for a Lot of Exception (Case LE 14-92) and a Land Division (Case LD 49-92) for the purpose of legalizing the sales from Mr. Bernet to the Looneys and the Lightcaps and to add to the proposed Looney parcel, with 0.05 acres from the Lightcaps and 0.05 acres from the Wagners.

As the Hearings Officer explained, the 1992 application was necessary because “there was no prior approval of a land division, so whatever Bernet sold to the Looneys (and Lightcaps) it was not the ownership of separate parcels.” (Exhibit B.11, page 8). The Hearings Officer went on to suggest that “the Looneys and Lightcaps may own an unequal, but undivided, interest in the original, 34.07 acre parcel, former Tax Lot 15.” (Exhibit B.11, page 8, 6).

As a result, the 1992 applications sought first to transfer the additional 0.05 acres from the Wagner Lot of Record to the Lightcap/Looney Lot of Record (processed as a Lot of Exception, as explained below) before creating the Looney Lot of Exception, the creation of which also required a land division:

*“Applicants request approval of a 9.92-acre Lot of Exception through a property line adjustment to transfer .05 acre from a 9.97-acre Lot of Record [Wagner] to an adjoining 35.39-acre Lot of Record [Lightcap/Looney]. From the resulting 35.44-acre tract [Lightcap/Looney], applicants request approval of a 3.92-acre Lot of Exception [Looney]. Due to the request for the 3.92-acre Lot of Exception, applicants also seeks approval of a Type I land division.”* (Exhibit B.11, page 1).

### The Decision (June 21, 1993)

Through the Decision, the Hearings Officer approved a Lot of Exception to allow the transfer of 0.05 acres of land from the 9.97 acre Wagner Lot of Record to the Lightcap/Looney Lot of Record (Exhibit B.11, page 37-38). The Lot of Exception process was the County’s methodology for approving a “property line adjustment” because the zoning code did not include a provision for property line adjustments at that time and the adjustment of the Wagner parcel, which was below the minimum lot size of 19 acres, required an exception (Exhibit B.10 & B.11).

The Hearings Officer also approved the proposed Looney Lot of Exception to create a new Looney parcel, concluding that it met the requirements of both the Lot of Exception and Land Division provisions. (Exhibit B.11, page 35). The Looney Lot of Exception included Tax Lots 62, 17, and 33, as well as the additional 0.05 acres from the Lightcaps (Exhibit B.11, page 35). The Looney Lot of Exception approval, LE 14-92, contained the following condition (“Consolidation Condition”):

“[T]he lot of exception is approved subject to the condition that the Looney’s apply for and receive approval for a lot line adjustment under MCC 11.15.2061 to consolidate Tax Lots 62 (in Section 28) 17, 33 (and the 0.05 acre parcel split off from the Wagner parcel) no later than the

end of this calendar year [December 31, 1993] or the date at which they receive approval for a replacement dwelling, whichever comes first. Failure to consolidate the parcels by the deadline will render this approval void." (Exhibit B.11, page 35).<sup>1</sup>

On November 5, 1993, three property line adjustment legal descriptions – for the Looneys, Lightcaps, and Wagners – were approved by the County (Exhibits B.13, B.14, and B.15). A replacement dwelling was authorized for the Looney property by the approval of SEC 26-96/PRE 16-96 (a Significant Environmental Concern and Use Under Prescribed Conditions consolidated application) on January 13, 1997.

### 3. **LETTERS OF COMMENT**

**Staff:** The County received two letters of comment, which are listed below with staff summarized description.

**3.1 Staff:** Letter of comment from David and Shawn Looney (Exhibit C.1), the property owners of Tax Lots 300 and 302. Mr. Looney was the applicant for the Lot of Exception Case LE 14-92 and Land Division Case LD 49-92. The Looneys describe their understanding of the history of the properties involved. They also state that this application is causing the family concern and stress.

**3.2 Staff:** Letter of comment from Brian Lightcap (Exhibit C.2) the previous owner of the Lightcap property. The property is now owned by his son (Andrew). Mr. Lightcap identifies concerns about the Opportunity to Comment notice County Land Use Planning sent to neighbors because the property owner's name was not included. He states that he thinks the ruling that "prevented [him] from building a home on the referenced parcel" should be voided, but that Looney's residence should be "grandfathered."

### 4. **LE 14-92 AND LD 49-92 DISCUSSION**

**Staff:** The applicant is seeking a Director's Interpretation regarding whether the Decision approving LE 14-92/LD-49-92 is void. Pointing to the Consolidation Condition, the applicant asserts that there is no evidence that the Looneys received approval to consolidate Tax Lots 62, 17, and 33 within the timeline required. As a result, the applicant states that the plain meaning of the Consolidation Condition renders the Decision void.

The Consolidation Condition required the Looneys to "apply for and receive approval for a lot line adjustment" to consolidate the three Tax Lots in their ownership, as well as the 0.05 acre parcel divided from the Wagner's property, prior to the end of 1993 or the date on which they received approval for their replacement dwelling, whichever came first. The Looneys did not receive approval for their replacement dwelling until January 13, 1997. Therefore,

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<sup>1</sup> The Hearings Officer imposed a nearly identical condition for the approval of the Wagner Lot of Exception (property line adjustment), LD 49-92 (Exhibit B.11, page 38). However, applicant has asserted that the Wagner approval is not relevant to the request for interpretation (Exhibit A.2, page 2). Even if the approval in LD 49-92 were relevant, the analysis would not differ given the similarity of the conditions.

December 31, 1993 came first and is the relevant date for purposes of satisfying the Consolidation Condition.

The County approved a series of property line adjustments on November 5, 1993. Exhibit B.13 is the approved property line adjustment for the Looney parcel, and it consolidates Tax Lots 62, 17, and 33, as well as the .05 acre parcel split off from the Wagner parcel. Related property line adjustments were approved for the Wagner and Lightcap parcels (Exhibit B.14 and B.15). Exhibit B.13, along with Exhibits B.14 and B.15, demonstrates the Looneys applied for and received approval for a lot line adjustment prior to December 31, 1993 and, in doing so, consolidated the necessary parcels as required by the Consolidation Condition.

Therefore, the Consolidation Condition was met within the required timeline and does not render the Decision void.

## 5. CONCLUSION

**Staff:** Based on the historical facts and evidence relating to the land use decision in question, the Decision approving LE 14-92 and LD 49-92 is not void.

## 6. EXHIBITS

'A' Applicant's Exhibits

'B' Staff Exhibits

'C' Comments Received

| Exhibit # | # of Pages | Description of Exhibit   | Date Received/ Submitted |
|-----------|------------|--|--------------------------|
| A.1       | 1          | Submitted Application Form   | 3/13/18                  |
| A.2       | 5          | Narrative Submittal  | 3/13/18                  |
| A.3       | 43         | Chain of Title for the Subject Property owned by Andrew B. Lightcap described as Tax Lot 00600 (2N1W33A) formerly known as Tax Lot 15.             | 3/13/18                  |
| A.4       | 58         | Chain of Title for the property owned by David R Looney and Shawn S. Looney described as Tax Lot 00300 (2N1W33A) formerly known as Tax Lot 33.     | 3/13/18                  |
| A.5       | 54         | Chain of Title for the property owned by David R Looney and Shawn S. Looney described as Tax Lot 00302 (2N1W33A) formerly known as Tax Lot 17.     | 3/13/18                  |
| A.6       | 30         | Chain of Title for the property owned by Arthur J. Wagner and Patricia G. Wagner described as Tax Lot 00700(2N1W33A) formerly known as Tax Lot 13. | 3/13/18                  |
|           |            |  |                          |
| 'B'       | #          | Staff Exhibits   | Date                     |
| B.1       | 3          | Current County Assessment record property information sheet for Tax Lot 600 owned by Andrew B. Lightcap  | 7/16/18                  |

|      |    |   |         |
|------|----|---|---------|
| B.2  | 4  | Current County Assessment record property information sheets for Tax Lots 300 and 302 owned by David R Looney and Shawn S. Looney                       | 7/16/18 |
| B.3  | 2  | Current County Assessment record property information sheet for Tax Lot owned by Arthur J. Wagner and Patricia G. Wagner                                | 7/16/18 |
| B.4  | 1  | Current County Assessment Tax Map with properties Labeled   | 7/16/18 |
| B.5  | 1  | 10/13/1983 Zoning Map (MUF-19 in effect until 1/7/1993)   | NA      |
| B.6  |    | 3/23/1982-Zoning Code MCC Chapter 11.15 Zoning Code MCC Chapter 11.15 as amended Multiple Use Forest – 19 (MUF-19) Zone                                 | NA      |
| B.7  | 1  | 1/7/1993 Zoning Map (CFU in effect until 7/9/1998)  | NA      |
| B.8  | 1  | 7/9/1998 Zoning Map (CFU-2 current zoning)  | NA      |
| B.9  | 1  | 1999 Zoning Map (shows current zoning with more detail)   | NA      |
| B.10 | 8  | 2/20/1990-Zoning Code MCC Chapter 11.15 as amended Multiple Use Forest – 19 (MUF-19) Zone in effect for the properties until 1/7/93 when changed to CFU | NA      |
| B.11 | 38 | Hearing Officer Decision for Lot of Exception Case LE 14-92 and Land Division Case LD 49-92 issued June 21, 1993  | NA      |
| B.12 | 1  | Property Line Adjustment survey by Lyle M. Nold, Case, Jones & Associates recorded with Multnomah County Survey Records on December 7, 1993             | NA      |
| B.13 | 3  | Property Line Adjustment approved by Multnomah County for the Looney property issued on November 5, 1993  | N/A     |
| B.14 | 3  | Property Line Adjustment approved by Multnomah County for the Wagner property issued on November 5, 1993  | N/A     |
| B.15 | 3  | Property Line Adjustment approved by Multnomah County for the Lightcap property issued on November 5, 1993  | N/A     |
| B.16 | 4  | Quitclaim Deed transferring property from Looney to Wagner  | N/A     |
|      |    |   |         |
| 'C'  | #  | Comments Received (if needed)   | Date    |
| C.1  | 5  | Letter of comment from David and Shawn Looney   | 5/22/18 |
| C.2  | 1  | Letter of comment from Brian Lightcap   | 5/29/18 |