

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

NOTICE OF APPEAL

EVERY NOTICE OF APPEAL SHALL INCLUDE:

1. The county's case file number and date the decision to be appealed was rendered.
2. The name, mailing address, and daytime telephone number for each appellant.
3. A statement of how each appellant has an interest in the matter and standing to appeal.
4. A statement describing the specific reason for the appeal which includes the criteria or standard the appeal is addressing.
5. The appropriate appeal fee.

It is the responsibility of the Appellant to complete a Notice of Appeal as set forth in the Multnomah County Code. Failure to complete all of the above may render an appeal invalid. Any additional comments should be included on this form.

APPELLANT INFORMATION (Person or group making appeal)

1. Appellant:

If several individuals are appealing together, list the additional names and addresses on a separate sheet and identify a representative in #2 below. If an organization is appealing, indicate group's name and mailing address here and identify a representative in #2 below.

Name: Prince, Daniel, _____
Last First Middle

Address: 41029 SE Loudon Road, Corbett, OR, 97019
Street or P.O. Box City State Zip Code

Telephone: (503) 312 - 7192 (Day) or (_____) _____ - _____

Fax: _____ Email Address: fourprinces@cascadeaccess.com

2. Authorized Representative:

Name of representative if different from the appellant indicated above. Groups and organizations must designate one person as their representative/contact person.

Name: Wyman, Ty, _____
Last First Middle

Address: 851 SW Sixth Avenue, Ste 1500, Portland, OR, 97204
Street or P.O. Box City State Zip Code

Telephone: (503) 417 - 5478 (Day) or (_____) _____ - _____

Fax: 503-224-7324 Email Address: twyman@dunncarney.com

(over)

DECISION BEING APPEALED

CASE INFORMATION

Decision being appealed (e.g., denial of a NSA Site Review, approval of a SEC permit, etc.):

Partial Denial - Denies that existing dwelling is a lawfully established dwelling

Case Number: T2-2021-15041 Date of Issuance of Decision: June 30, 2022

APPEAL INFORMATION

Answer each question as completely and specifically as you can. (Attach separate sheets if needed)

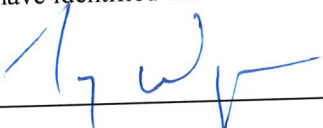
1. **What is your interest in this decision? (State your interest in the matter and your standing to appeal)**

Applicant.

2. **What are your objections to the decision? (State the specific grounds for the appeal, i.e. criteria or standard)**

Please see July 14, 2022 letter from Ty Wyman, filed herewith.

Standing to appeal: those who are entitled to appeal a decision include those who are entitled to notice under Multnomah County Code and include: owners of record of property within 750 feet of the subject tract, neighborhood associates, and persons who have identified themselves in writing as interested parties or as to be potentially aggrieved or impacted by the decision.

SIGNATURE:  DATE: 7.14.22

CHECK ONE: APPELLANT AUTHORIZED REPRESENTATIVE

Appeals and fees must be received prior to the close of the appeal deadline.

Deliver or mail appeal and fee to:
MULTNOMAH COUNTY
Land Use Planning Division
1600 SE 190th Ave., Suite 116, Portland, OR 97233
Phone: (503) 988-3043

Appeal Notice

FOR STAFF USE ONLY	
Fee: Notice of Appeal for Planning Director's Decision: \$250.00	
Received by: _____	Date: _____

July 14, 2022

Via Messenger Service Delivery

Multnomah County Land Use Planning Division
1600 SE 190th Avenue
Portland, OR 97233-5910

Re: Notice of Appeal
County Case File: **T2-2021-15041**
Site: 1S5E, Section 6, Tax Lot 00700 and 1S5E06D, Tax Lot 00100
Applicants: Dan and Jennifer Prince
Our File No.: PRI37.1

To whom it may concern:

We represent the applicants in the referenced matter, on which the Planning Director issued a decision dated June 30, 2022. That decision, the County-mailed copy of which was received in my office on July 6, denied the underlying application. The applicants hereby appeal the decision.

MCC 39.1140 governs the appeal process and MCC 39.1160(A)(3) spells out the requirements of this appeal, *viz.*:

- (a) The county's case file number and date the decision to be appealed was rendered.
- (b) The name, mailing address and daytime telephone number for each appellant.
- (c) A statement of how each appellant has an interest in the matter and standing to appeal.
- (d) A statement of the specific grounds for the appeal.
- (e) The appropriate appeal fee.

We set forth the remainder of this information in the letter and the attached form, which County staff provided to us. As to the "specific grounds for the appeal," we note that (per MCC 39.1160(A)(6)) the hearing is to be *de novo*, and "all issues relevant to the applicable approval criteria may be considered." This regulation appears to track the mandate of ORS 215.416(11)(a)(D) ("An appeal from a hearings officer's decision made without hearing



under this subsection shall be to the planning commission or governing body of the county. An appeal from such other person as the governing body designates shall be to a hearings officer, the planning commission or the governing body. In either case, the appeal shall be to a de novo hearing.”) Regardless, in order to aid the hearings body, we provide the following observations.

The Decision finds as follows:

The County did not authorize construction of a dwelling on tax lot 1S5E06D-00100 (R995060080) in 1989. No evidence has been found or presented that the construction of the dwelling was permitted by Land Use Planning or the Building Department on tax lot 1S5E06D-00100 after-the-fact.

This finding is unpersuasive for a few reasons. First, the applicants did submit evidence of lawful establishment. The Decision precedes the above-quoted finding with citation to only some of that evidence.

Second, nothing in the record undermines the credibility or persuasiveness of the applicants' evidence. The applicants submitted both expert and lay testimony substantiating lawful establishment of the subject dwelling. In a declaration dated Feb. 10, 2022, Peter Finley Fry, AICP, recited the history of both construction of the dwelling and the zoning laws then in effect. The latter included both land division criteria and building code criteria. He determined, based on review of public records, that a dwelling was first established at this location in 1984 and constructed in compliance with the County's 1982 zoning code, which applied then.

The applicants also submitted evidence of compliance with building code criteria applicable to the subject dwelling, including:

- a Site Evaluation Report, part of the land feasibility study process for the installation of a subsurface septic system, issued on June 19, 1989.
- a Report of Subsurface Sewage System from Portland's Bureau of Environmental Services, noting "Permit No 11562" and showing installation of a 1,000 gallon septic tank and 265 lineal feet of drainfield absorption trenching, inspected on Sept. 21, 1989.
- a March 3, 2022 email from PGE attesting that it installed on Oct. 28, 1987 the transformer servicing the subject dwelling (Exhibit 20);
- a Permit document from City of Gresham Electrical Safety Section dated August 3, 1990, and showing two inspections dated November 30, 1990 and April 4, 1991; and



Multnomah County Land Use Planning Division
July 14, 2022
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- permits and final inspection supporting the 2016 installation of electrical service for an outbuilding accessory to the subject dwelling.
- the March 7, 2022 declaration of John Chamberlin, substantiating the upshot of the written records described above, *i.e.*, that the prior owners of the Prince parcel (the Steensons) obtained all necessary building permits.

The decision fails even to list Mr. Fry's declaration as part of the record. Furthermore, the findings fail to explain why any of the applicants' submitted evidence is either irrelevant or unpersuasive. As such, contrary to basic procedural requirements, they fail even to sufficiently state the facts on which the Decision is based. *Seaton v. Josephine County*, 47 Or LUBA 178 (2004) (Remanding findings that are conclusory.)

To complete this appeal, we enclose a completed, signed notice of appeal form and check for \$250. Should you need any further information, please let me know.

Very truly yours,

Ty K. Wyman

TKW:

Enclosures

cc: Clients (w/encl. via email)
Peter Finley Fry "

DCAPDX\4312976.v3



DUNN CARNEY
LLP

Suite 1500, 851 SW Sixth Avenue
Portland, Oregon 97204

RECEIVED
JUL 14 PM 1:33
MULTNOMAH COUNTY
PLANNING DIVISION

RECEIVED

2022 JUL 14 PM 1:34

MULTNOMAH COUNTY
PLANNING DIVISION

APPEAL FILING FOR T2-2021-15041
Multnomah County Land Use Planning Division
1600 SE 190th Avenue
Portland, OR 97233-5910