

To the Multnomah County Land Use Planning Division

Application for Lot of Record Verification and Declaration of Legally Established Habitable Dwelling

by Dan and Jennifer Prince

(Applicants' Narrative, August 27, 2021)

This narrative demonstrates that the Subject Property (41029 SE Loudon Road, Corbett; Tax Lot No: 1S5E06 -00700) constitutes a Lot of Record under Multnomah County Land Use Code MCC 39.3005 (Lot of Record – General) and MCC 39.3050 (Lot of Record standards for CFU-4). In addition, it will demonstrate that an existing dwelling on the Subject Property is a Lawfully Established Dwelling and a Habitable Dwelling under the definitions in MCC 39.2000.

PRIOR LAND USE ACTIONS:

LD-3-88 – Type III Land division/Partition to create two parcels. Land totaling 54.72 acres was divided into two parcels. Parcel 1 became a 34.80 Acre parcel, resulting in what was the Tax Lot R99506-0260 (Old Tax Lot 26). Parcel 2 was mapped as a 19.0 acre parcel and became Tax Lot R99506-0180 (Old Tax Lot 18). The application was submitted so that the new owner of the property now in R99506-00120 (Tom and Mariah Steenson) could develop a single family dwelling. That parcel was given a new Tax Lot designation as Lot 700 (1S5E06-00700). (See **Exhibit 1**)

Multnomah County Zoning Review for a SFD – June 07, 1989. No associated building permit # or inspections listed. (See **Exhibit 13**)

LFS 83-89 Land Feasibility Study for on-site subsurface septic system. (See **Exhibit 12**)

Permit 11562 – for Subsurface Sanitation system, 1,000 gallon Septic tank and drain field. (See **Exhibit 14**, pg 2)

T2-05-079 – Property Line Adjustment. The application sought to change the boundaries between the two parcels created with LD-3-88. Tax Lot 1S5E06-00700 (Old Tax Lot 18 or R995060180) would be reduced in size to 10.75 acres. The intent was for the remainder area to be added to the existing property at 41025 SE Loudon Road, 1S5E06C-00100. However, the actual result was a new tax lot parcel, 1S5E06-00701, an 8.24-acre parcel. This occurred because of an error in the names of the Grantees on the deed recorded to convey that property to the owners of 41025 SE Loudon Road. This meant that the County Recorder would not combine the areas into the existing parcel. (See **Exhibit 2**)

2019-118732 Pre-Filing Conference – Applicants applied with a preliminary plan for a lot line adjustment. A recent survey showed that the dwelling that was thought to be on Tax Lot 1S5E06-00700 was actually on the adjacent property to the north, Tax Lot 1S5E06D-00100. The goal of the adjustment was to add enough land to the existing Tax Lot 1S5E06-00700 so that its boundaries would contain the dwelling, while reducing its

size a corresponding amount and adding that land to Tax Lot 1S5E06D-00100 to compensate for the lost area in that northern parcel.

PF-2021-14443 – The Pre-Filing Conference that is the precursor to this current application.

BACKGROUND:

The Subject Property was created in its current configuration through the two land division actions referred to above **LD-3-88** and **T2-05-079**. With this current application, Applicant submits a series of maps to help understand the changes in the properties over time, particularly those resulting from the two land use actions. These maps are based on a Composite Tax Lot map that combines three existing tax lot maps into one view (**Exhibit 3 Map of Prince Property**). There will also be references to historical tax lot maps from Multnomah County's collection of historical tax lot and zoning maps, found on the county website at: http://www4.multco.us/lup_historical_maps/. Tax Lot numbers have been altered over time, making it easy to confuse the identity of the parcels.

Attached as **Exhibit 4** (Historical Tax Lot Map 1978-MARKED) is a copy of one of the historical tax lot and zoning maps from 1978. This map shows how the parcels were configured prior to the land division LD-3-88. The parcel marked in red and showing “(18)” in the center is what was then referred to as Tax Lot 18; the parcel marked in yellow and bearing the number “(12)” was at the time referred to as Tax Lot 12, and is the parcel that would eventually become the Subject Property. Prior to the land division LD-3-88, both parcels were owned by John Chamberlin.

John Chamberlin conveyed a one-half interest in the property he owned to his wife Ellen Madnick in 1988, through the deed attached as **Exhibit 5**, Deed Creating Estate by the Entirety Book 2070 Page 463 (1988-000259).

Mr. Tom Steenson negotiated with Mr. Chamberlin to purchase some of the property in the two parcels. In order to create a parcel that had its own access to SE Loudon Road, they came up with a plan for a land division to create two parcels in a new configuration.

Mr. Steenson applied for a Land Division in 1988 (LD-3-88) to create a separate parcel from the property known by the address 41025 SE Loudon Road, and the description of that action is provided above. See **Exhibit 1** (LD-3-88 Type III Land Division) The resulting Steenson property was 19 Acres at the time and was designated as Tax Lot R99506-0180 (Old Tax Lot 18). This land use action was approved, and the lots reconfigured. **Exhibit 6** is the Assessor's Cartography Department Parcel Record for this property, Lot 700. It refers to LD-3-88 on the second page of the record with notations on the changes in the sizes of the parcels in the land division. **Exhibit 7 Historical County Tax Map 1999 MARKED** shows these parcels as they existed after the land division LD-3-88. The 19-Acre parcel marked in yellow on Exhibit 7 in the left center as Tax Lot 18, “(18) 19.0 Acres”, became a Legal Lot of Record at the conclusion of the land division action, because it was created through an approved land use action.

Tom Steenson acquired the newly configured 19-Acre Tax Lot 18 through a deed recorded in 1989, attached as **Exhibit 8 - Quit Claim Deed Book 2209 Page 836 (1989-044833)**. This deed provided the new legal description for the property following the land division action, LD-3-88:

A tract of land in the S.E. ¼ and the S.W. ¼ of Section 6 T.1 S., R. 5 E., W.M. Multnomah County, Oregon described as follows:

Beginning at a point in the North line of Louden Road that is North 89° 03' 41" West 400.00 feet and North 4° 39' 15" East, 30.10 feet from the South quarter corner of Section 6; thence continuing North 4° 39' 15" East parallel with the center of the section a distance of 1059.00 feet; thence South 89° 03' 41" East parallel with the South line of the Section a distance of 400.00 feet to a point in the center line of said section 6; thence South 4° 39' 15" West along said center line a distance of 209.85 feet; thence South 89° 03' 41" East 1030.55 feet; thence North 3° 43' 52" East 398.10 feet; thence North 87° 47' West 1022.89 feet to a point in the centerline of Section 6; thence North 4° 39' 15" East along said centerline a distance of 1195.47 feet to a point in County Road No. 556; thence in said road South 89° 55' West 130.0 feet; thence North 83° 19' West 115.20 feet; thence leaving said road South 4° 39' 15" West parallel with the centerline of the section a distance of 1366.20 feet; thence North 89° 03' 41" West 204.80 feet; thence South 4° 39' 15" West parallel with the centerline of the section a distance of 1109.00 feet to a point in the North line of Louden Road; thence South 89° 03' 41" East along said North line a distance of 50.00 feet to the point of beginning.

Containing 827,736 sq. ft. or 19.00 acres more or less...

In 2005, Mr. Steenson submitted an application to adjust the boundary of his property with that of Chamberlin/Madnick. The land use action, **T2-05-079** is described above. (See **Exhibit 2**) The applicants' intent was to reduce the Steenson property to 10.77 acres, and adding the remainder area to the Chamberlin/Madnick property. To finalize the property line adjustment, Mr. Steenson recorded a deed on 1/27/2006, attached here as **Exhibit 9 Warranty Deed 2006-015964**. This deed established the legal description for the new configuration of the Steenson Property as a 10.77- Acre parcel, and was given the designation 1S5E06 -00700, or Tax Lot 700, and it has been referred to as Tax Lot 700 since that time.

The deed recorded to transfer the "Transfer Parcel" to Chamberlin/Madnick should have consolidated that parcel into the existing Chamberlin/Madnick property, through a deed attached here as **Exhibit 10 Quit Claim Deed 2006-015962**. Steenson conveyed the remainder of his property after the lot line adjustment to Chamberlin/Madnick. However, a small error in the naming of the Grantees in that deed caused the Assessor's Parcel Unit to reject the consolidation of the parcels, and instead created a new parcel, Tax Lot 701, or 1S5E06 -00701 (further discussion below, see the two paragraphs covering **Exhibit 2** (T2-05-079 Property Line Adjustment) below on page 5).

The Applicants purchased the Subject Property from Tom Steenson in 2006. Attached as **Exhibit 11 Statutory Warranty Deed 2006-023014**, recorded 2/7/2006. The legal description for the Prince Property is the same on the deed Steenson recorded to finalize the property line adjustment, **Exhibit 10 (2006 – 015962)**:

A tract of land in the Southeast one-quarter of the Southwest one-quarter of Section 6, Township 1 South, Range 5 East, of the Willamette Meridian, in the County of Multnomah and State of Oregon, described as follows:

Beginning at a point in the North line of Louden Road that is North 89° 03' 41" West, 400.00 feet and North 4° 39' 15" East, 30.10 feet from the South one-quarter corner of Section 6; thence continuing North 4° 39' 15" East, parallel with the center of the section 1,059.00 feet; thence South 89° 03' 41" East, parallel with the South line of the section 400.00 feet to a point in the center line of said Section 6; thence South 4° 39' 15" West, along said center line 209.85 feet; thence South 89° 03' 41" East, 1,030.55 feet; thence North 3° 43' 52" East, 398.10 feet; thence North 87° 47' West, 922.90 feet; thence South 4° 39' 15" West, 368.99 feet; thence North 89° 03' 41" West, 50.00 feet; thence North 4° 39' 15" East, 209.85 feet; thence North 89° 03' 41" West, 500.11 feet; thence South 4° 39' 15" West, 1,109.00 feet, more or less, to the North line of Louden Road; thence South 89° 03' 41" East along said North line, a distance of 50.00 feet to the point of beginning. (Containing 10.767 Acres, more or less)

THE DWELLING:

At some point between 1984 and 1989, Mr. Steenson began construction of a single-family dwelling on what he thought was his property. The available records existing show that a house was "under construction" at the time the application for LD-3-88 was submitted. **Exhibit 1** (LD-3-88) includes a site plan that shows a "RESIDENCE – (under const)" (See Page 10 and 62 of **Exhibit 1**). It also contains at page 4 of 5 of the Type III Land Division Decision a statement that the Corbett Water District has verified that a public water system with a 6- inch line is available at Louden Road to supply the property with water service.

A search has been made of the records of Multnomah County, City of Gresham, and the City of Portland for any building permit files for this dwelling. Multnomah County had none in its records, but the county contracted with the City of Portland for some permitting services including pre-approval of septic systems. The County also contracted with the City of Gresham during the 1980's for the city to handle building permits for this area of the county.

Attached as **Exhibit 12 LFS-83-89** is a Land Feasibility Study file from the City of Portland's records. Mr. Steenson is the applicant, applying for review for pre-approval of an on-site septic system. The application shows the address 41025 SE Louden Road, the address for the adjacent property that was part of the land division, but the application is for Old Tax Lot 18. In the copy of the application file at page 4, the applicant indicates that there is an existing building "under construction". The site plans included at pages 3, 7 and 8 also show a residence under construction on the property.

Attached as **Exhibit 13 06-07-1989 Zoning Review** is a copy of Multnomah County Planning Department's file for a Zoning Review of the construction of a single family dwelling on the Subject Property submitted by Tom Steenson. The documents in this file do not show that building, electrical, or mechanical permits were finalized. However, these permits would not have been issued by Multnomah County at the time (June of 1989), so we cannot say that they were not issued based on this.

Attached as **Exhibit 14 41025-41029 SE Louden** are file documents from the City of Portland Bureau of Environmental Services. The first two pages ("Permit 10862") in the file are related to the property now at 41025 SE Louden. Pages 3 & 4 ("Permit 11562") show the installation and inspection of a 1,000 gallon on-site septic system installed by Tom Steenson on his property.

Although the City of Gresham would be the likely agency to issue a building permit for this site, due to Multnomah County having contracted with Gresham for building permitting services, a search of Gresham's files did not turn up a permit for this property's dwelling. See **Exhibit 15, Email RE 41029 SE Louden Road - Building Permit search**, from Ms. Sally Cox of the City of Gresham, reporting that records from the time period of the dwelling's construction would no longer exist.

Applicant submits the **Declaration of Daniel Prince and Jennifer Prince ("Declaration")**, with accompanying exhibits in support of this application (submitted as **Exhibit 16**). In their Declaration, the Princes show that during the time they first saw the property in 2005 and when they purchased it in 2006, the dwelling had the requisite features of a Habitable Dwelling. Attached to the Declaration are photographs showing the bathroom sink, toilet and bathtub; kitchen, power panel and meter; wood stove and electric wall heaters that were in the dwelling when they purchased it; and the ductless heat pump system installed by them in 2015 (**Declaration Exhibits A-F**).

Exhibit 2 (T2-05-079 Property Line Adjustment) is a copy of Multnomah County Land Use file T2-05-079 relating to the application in 2005 by Mr. Steenson to further adjust the lot lines of his property and the adjacent property belonging to John Chamberlin and his wife Ellen Madnick ("Chamberlin Property"). By 2005, Multnomah County had changed their tax lot numbering system, and so these two lots are referred to in this application by new Parcel Numbers. The Steenson Property is referred to as Tax Lot 1S5E06-00700 ("Tax Lot 700"), and the Chamberlin Property is referred to as Tax Lot 1S5E06C-00100 ("Tax Lot 100"), the designations they carry today. As noted above, the application's intent was to re-configure the two parcels so that Mr. Steenson's property was reduced to approximately 10 acres from 19 acres, and the Chamberlin Property increased from 34.8 acres to 43.8 acres. The file indicates that the application was Approved, with conditions. The deed establishing the new legal description of the Steenson Property was properly recorded and acknowledged by the Department of Assessment and Taxation as evidenced by the Parcel Record **Exhibit 6** (Parcel Record for Lot 700).

However, because of the error in the preparation of the deed transferring the Transfer Parcel in the application, the area described as the Transfer Parcel was entered in the Assessor's records as a new tax lot, Tax Lot 701. **Exhibit 17 Parcel Record for Lot 701** notes the establishment of this parcel through deed 2006-15962. On page 3 of the Parcel Record, there is the notation to "Add to 1S5E06C 100", which refers to the Chamberlin Property. This notation is crossed out, and replaced by "Make new 1S5E07C 701" dated 7-20-06. According to a verbal report from the Cartography Department, this is because in the transferring deed, the Grantee name did not exactly match the Grantee on the Chamberlin property Tax Lot 100, so the department could not, according to their policies, consolidate the area of what is now Tax Lot 701 into Tax Lot 100 and it became a separate parcel. This was received from the County Assessor's office:

Response from DART Multnomah County
Tom,

I think if you look at the stated grantee on the vesting doc for account number R588865 that was created from the PLA (2006-015962) and the stated grantee on the vesting doc for account number R342782 that was to be the receiving parcel (Book 2070 Page 0463) you will find they are not identical. Although I suspect the difference is quite minor.

Sincerely,
Keith Michel
Parcel Management
dart.parcel.mgmt@multco.us
503-988-9780 – Phone

(See **Exhibit 18 Email from DART-Parcel Management-Multnomah County**)

The difference in the grantors/grantees is this: in Book 2070, Page 0463, the Grantees are stated as: “Grantor: John **G.** Chamberlin, Grantee: Ellen **G.** Madnick,” - this is the deed where Ms. Madnick comes into her share of title. In the deed recorded as 2006-015962, they are stated as: “Grantor: Tom Steenson; Grantee: John Chamberlin & Ellen Madnick”. This latter deed is the deed transferring the “Transfer Area” or what became Tax Lot 701. Because the latter lacks the middle initials in the grantees’ names, the grantees are not deemed to be identical, causing the Parcel Management Unit to create a new parcel instead of consolidating the area of what is now Tax Lot 701 with the existing Chamberlin/Madnick property (1S5E06C 100).

This should not affect Tax Lot 700. The approval of the Land Use Application T2-05-079, and the recording of the proper deeds to create the new configuration of that parcel complied with the code at that time. Tax Lot 700, in its current size and configuration, was created through a valid Land Use action, and therefore exists today as a Lot of Record.

DISCUSSION

MCC 39.2000 Definitions – Habitable Dwelling

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.

*APPLICANT: Photos submitted as **Declaration Exhibit(s) A-F** show the dwelling as it exists today. According to the current owners, all of the physical characteristics of the dwelling have existed for all the time they have occupied the Subject Property. The house has exterior walls and roof; indoor plumbing with kitchen sink, toilet(s) and bathing facilities. **Exhibit 14** (41025-41029 SE Louden) is evidence that a sanitary waste disposal system in the form of an on-site septic tank system was installed during the construction of the dwelling. The system was inspected and approved on 9-21-1989.*

*The Applicant cannot produce an approved building, or electrical, or mechanical, or plumbing permit to demonstrate compliance with 39.2000 **Habitable Dwelling** (e). In the same vein,*

Applicant cannot rule out that such permits did exist at one time. Applicant has produced records of the on-site septic system installation.

Applicant has submitted a sworn statement attesting that the structural elements, the plumbing system and electrical system are part of the dwelling and have been there all the time that the Applicant has occupied the property. See Declaration of Daniel Prince and Jennifer Prince.

Applicant is willing to submit to current inspections of the dwelling and its plumbing and electrical systems to demonstrate that they are adequate under the building codes. This would also demonstrate that the dwelling is connected to a public water system, and establish that the plumbing system is connected to the on-site septic system.

MCC 39.2000 Definitions – Lawfully Established Dwelling.

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.

APPLICANT: as noted above, applicant cannot produce evidence that “all permits necessary to qualify the structure as a dwelling unit were obtained...” Applicant has provided evidence of the septic system permit application and the electrical permit. According to the City of Gresham, records of permits have been discarded over the years. As also noted above, the Applicant will submit to current inspections of the dwelling to confirm that “all qualifying permitted work (was) completed.”

MCC 39.3050 Lot of Record – Commercial Forest Use – 4 (CFU-4)

MCC 39.3005- Lot of Record Generally.

(B) A Lot of Record is a parcel, lot, or a group thereof that, when created or reconfigured, either satisfied all applicable zoning laws and satisfied all applicable land division laws, or complies with the criteria for the creation of new lots or parcels described in MCC 39.9700. Those laws shall include all required zoning and land division review procedures, decisions, and conditions of approval.

...

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.)

*APPLICANT: The parcel Tax Lot 700 was created by a recognized and approved land use action in 1988-89. **Exhibit 1** (LD-88) is a copy of the Multnomah County land use file approving the land division action. All required steps were completed to create the adjusted property lines for Tax Lot 700. For the remainder tax lot (“the Transfer Property”) that was to be transferred to the adjacent neighbor, Chamberlin and Madnick, the process was not completed as intended by staff or applicants. However, this should not invalidate the creation of the parcel that is referred to here as Tax Lot 700.*

Conclusion:

Applicant has demonstrated that the parcel designated as Tax lot 700 is a lot of record, created through a valid land use partition process. The dwelling that exists is habitable under the definition in the County Code.

LIST OF EXHIBITS FOR APPLICATION

Application for Lot of Record Verification
and Declaration of Legally Established Habitable Dwelling
by Dan and Jennifer Prince

No.	Description
1	LD-3-88 Type III Land Division
2	T2-05-079 Property Line Adjustment
3	Composite Tax Lot Map of Prince Property
4	Historical Tax Lot Map 1S-5E 1978 MARKED
5	Book 2070 Page 463 (1988-000259) Deed Creating Estate by the Entirety
6	Parcel Record for Lot 700 R342776
7	Historical Tax Lot Map 1s5e05 06 07 08 1999 - MARKED
8	Bk 2209 Pg 836 Quit Claim Deed 1989-06-05
9	Warranty Deed 2006-015964 recorded 2006-01-07
10	Quit Claim Deed 2006-015962 recorded 2006-01-27
11	Statutory Warranty Deed 2006-23014 - recorded 2006-02-07
12	Land Feasibility Study 83-89
13	Multnomah County 06-07-1989 Zoning Review
14	41025-41029 SE Loudon –BES City of Portland
15	Email RE 41029 SE Loudon Road - Building Permit search
16	Declaration of Daniel Prince and Jennifer Prince
17	Parcel Record for Tax Lot 701 R588865
18	Email from DART-Parcel Management Multnomah County