

**BEFORE THE LAND USE HEARINGS OFFICER
FOR MULTNOMAH COUNTY, OREGON**

In the Matter of a Type III appeal of a Type II Director's decision on a Lot of Record and Lawfully Established Dwelling Request on ~10.77 acres zoned CFU-4 in unincorporated Multnomah County, Oregon

**ORDER on Request for
Continuance**

**Prince Lot of Record Appeal
T2-2021-15041**

I. Summary:

In this interim Order the Multnomah County Land Use Hearings Officer denies the applicants' request for an indefinite continuance of this appeal proceeding. The open-record schedule stated at the conclusion of the September 9, 2022 hearing shall remain in place, and the Hearings Officer's Final Order and Opinion shall issue in due course.

II. The Application, Appeal and Public Process:

The underlying application concerns Tax Lot 700,¹ and the applicants sought a legal lot of record verification pursuant to MCC 39.3050 and a verification of a lawfully established dwelling under MCC 39.2000. After several requests, or at least suggestions, to supplement the application, the applicants provided a substantial amount of documentation about the history of TL 700 and the home that the applicant's predecessors (Tom and Mariah Steenson) constructed in ~1984. Based on this evidentiary record, the Director issued a June 30, 2022 Type II decision approving/verifying the legal lot of record aspect of the application but denying the lawfully established dwelling request. The Director concluded that, despite documentation that the home was lawfully established in 1984 with county permits (Ex. A.17) and a stamped survey verifying its location on TL 700 (Exs. B.5 & B.6), it now appears to be situated on an adjacent lot (TL 8) contrary to what the 1984 building permit stated.

Applicants timely appealed, and the matter came before the Hearings Officer at a September 9, 2022 Type III public appeal hearing. At the September 9th hearing County Planning Staff Planner Lisa Estrin presented the underlying Director's Decision and described the applicants' appeal arguments. The applicants/appellants appeared through their attorney Ty Wyman, and in their own right, and the following neighbors testified in support of the application and appeal: Dennis Waincko, John Chamberlin, Michael Arion, Klaus Heyne and Peter Finley Fry. Chamberlin and Waincko apparently own TL 8, which is adjacent to TL 700. No one testified in opposition.

At the conclusion of the September 9th public hearing, the Hearings Officer ordered the following open-record schedule, to which the applicants and staff agreed:

September 23, 2022 – Submission of any new/additional documents on any relevant issue by anyone.

¹ Tax Lot 700 in Section 6, Township 1 South, Range 5 East, Alternative Tax Acc't No. R342776, Street Address: 41029 SE Loudon Road, Corbett.

September 30, 2022 – Any response to the materials submitted during the first segment, most notably staff's final review and response.

October 7, 2022 – Applicant's final rebuttal, no new evidence.

The only item submitted during the open record period, at least so far, was a September 22, 2022 request from the applicants' attorney for an indefinite continuance of this appeal proceeding to allow the applicants/appellants to formulate and initiate an alternative plan for obtaining verification of the lawful status of the applicants' family home on Tax Lot 8 adjacent to TL 700.

III. Discussion:

This application and appeal is controlled by the following definition of "lawfully established dwelling" in MCC 39.2000:

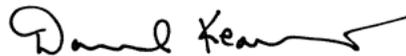
***Lawfully Established Dwelling** – A dwelling that was constructed in compliance with the laws in effect at the time of establishment. The laws in effect shall include zoning, land division and building code requirements. Compliance with Building Code requirements shall mean that all permits necessary to qualify the structure as a dwelling unit were obtained and all qualifying permitted work completed*

Under this provision, this case turns on whether there is sufficient credible evidence in the record from which a reasonable person could conclude that, "at the time of establishment," the dwelling in question "was constructed in compliance with the laws in effect." This appears to be a snap-shot in time determination.

IV. Decision:

While the Hearings Officer is mindful on the applicants' desire to make the best record they can, there appears to be sufficient evidence in the whole record to decide this issue as described herein and the case on appeal. Absent any contrary argument or testimony, I see no good reason to suspend indefinitely this application, and the request to do so is denied.

Date of Decision: September 28, 2022.



By: _____

Daniel Kearns,
Land Use Hearings Officer

Notice of Appeal Rights

This is an interim non-final order and is not separately appealable under state law or the local code.