

NOTICE OF DECISION

Case File: T2-2021-14361

Permit: Lot of Record Verification

Applicant: Patrick Maher

Owner: Michael Robideau & Mabel
Estate

Location: 16900 NW Sauvie Island Rd., Portland

Map, Tax Lots: 2N1W21 – 01100 & 2N1W21 -01200

Tax Account #R971210140 & R971210150

Property ID #R325150 &

R325151

Base Zone: Exclusive Farm Use (EFU)

Overlays: Flood Hazard (FH) & Significant Environmental Concern for wetlands (SEC-w)

Proposal Summary: The applicant requests a Lot of Record Verification to determine if the subject property known as (2N1W21-01100) and (2N1W21-01200) is a Lot of Record. A Lot of Record Verification confirms that a property was lawfully established in compliance with zoning and land division laws at the time of its creation or reconfiguration and the County's aggregation requirements, if applicable.

Determination: The subject property known as 2N1W21 – 01100 is a single Lot of Record when aggregated with 2N1W21-01200 in its current configuration.

This decision is final at the close of the appeal period, unless appealed. The deadline for filing an appeal is August 20, 2021 at 4:00 pm.

Opportunity to Review the Record: The complete case file, including the Planning Director Decision containing Findings, Conclusions, Conditions of Approval, and all evidence associated with this application is available by contacting the case planner. Copies of all documents are available at the rate of \$0.35/per page. For further information, contact Marisol Cervantes, Staff Planner at 503-988-9452 or at *Marisol.Cervantes@multco.us*

Opportunity to Appeal: 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 office at 1600 SE 190th Avenue (Phone: 503-988-3043). This decision is not appealable to the Land Use Board of Appeals until all local appeals are exhausted.

Issued by: _____

By: Marisol Cervantes, Planner

For: Carol Johnson, AICP
Planning Director

Date: Friday, August 06, 2021

Vicinity Map



Applicable Approval Criteria:

For this application to be approved, the proposal will need to meet applicable approval criteria below:

Multnomah County Code (MCC): General Provisions: MCC 39.1515 Code Compliance and Applications, MCC 39.2000 Definitions

Lot of Record: MCC 39.3005 Lot of Record – Generally, MCC 39.3070 Exclusive Farm Use (EFU)

Copies of the referenced Multnomah County Code sections are available by contacting our office at (503) 988-3043 or by visiting our website at <https://multco.us/landuse/zoning-codes/> under the link:

Chapter 39 - Zoning Code

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. 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.

1. Prior to Land Use Planning approving any development, building permit, zoning review, T1, T2 or T3 permit, the units of land contained in tax lots 2N1W21-01100 and 2N1W21-01200 shall be consolidated into a single parcel. The property owner or their representative shall apply for a Lot Consolidation pursuant to MCC 39.9200 before consolidating these two units of land. Once the two units of land are consolidated into a legal parcel, the parcel will be a Lot of Record.

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*.

1.0 Project Description:

Staff: The applicant requests a Lot of Record Verification for the property identified as 2N1W21 – 01100 and 2N1W21-01200 and is known as 16900 NW Sauvie Island Rd. (the “subject property”). The subject property is located on Sauvie Island in west unincorporated Multnomah County in the Exclusive Farm Use (EFU) zone. Tax records indicate a single - family dwelling and one outbuilding exist on the subject property. Tax-lot #01200 is located across the street of tax-lot #01100, the property fronts the Multnomah Channel. The application does not propose any new development at this time.

Through the Lot of Record Verification process, the County reviews the creation or reconfiguration of each parcel, lot or unit of land involved in the request. The County then verifies that the creation or reconfiguring of the unit of land satisfied all applicable zoning laws and all applicable land division laws in effect on the date of its creation or reconfiguration. In the EFU zone, the County also considers adjacent property ownership on February 20, 1990 in determining whether a parcel, lot or unit of land is a Lot of Record on its own. If the unit of land met all the applicable zoning and land division laws in effect at the time, and meets the aggregation requirements, it may be determined to be a Lot of Record.

2.0 Public Comment:

Staff: Staff mailed a notice of application and invitation to comment on the proposed application to the required parties per MCC 39.1105 as Exhibited in C.2. Staff did not receive any public comments during the 14-day comment period.

3.0 General Provisions:

3.1 § 39.1515 CODE COMPLIANCE AND APPLICATIONS.

Except as provided in subsection (A), the County shall not make a land use decision approving development, including land divisions and property line adjustments, or issue a building permit for any property that is not in full compliance with all applicable provisions of the Multnomah County Zoning Code and/or any permit approvals previously issued by the County.

Staff: As noted in 1.0 above, this application is a request for a Lot of Record Verification, which does not require the County to approve development, a land division, a property line adjustment, or a building permit. Therefore, this standard is not applicable.

4.0 Lot of Record Criteria:

4.1 MCC 39.3005 Lot of Record – Generally

(A) An area of land is a “Lot of Record” if it meets the standards in Subsection (B) of this Section and meets the standards set forth in this Part for the Zoning District in which the area of land is located.

(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.

(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:

1. By a subdivision plat under the applicable subdivision requirements in effect at the time; or

2. By a deed, or a sales contract dated and signed by the parties to the transaction, that was recorded with the Recording Section of the public office responsible for public records prior to October 19, 1978; or

3. By a deed, or a sales contract dated and signed by the parties to the transaction, that was in recordable form prior to October 19, 1978; or

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.)

Staff: To qualify as a Lot of Record, the subject property, when created or reconfigured, must have (a) satisfied all applicable zoning laws and (b) satisfied all applicable land division laws.

The Multnomah County Assessment and Taxation provided a recorded deed from 1968 (Exhibit B.5) that contains a legal description that matches the current legal description for tax lot 2N1W21- 1100 (Exhibit A.4). Tax lot 2N1W21- 1100 was zoned ‘F-2’ in 1968 per County Zoning Map (Exhibit B.2). The F-2 zone had a minimum lot size of 2 acres. Tax lot 2N1W21- 1100 when it was created in 1968 was 20.00 +/- acres and the fronts onto NW Sauvie Island Road (Exhibit B.5). Tax lot 2N1W21- 1100 remains 20 acres in size and continues to have NW Sauvie Island road frontage (Exhibit B.1).

According to Assessment and Taxation's Parcel Record Card (Exhibit B.7 & B.9) tax lot 2N1W21-01200 was created in 1967 through probate distribution of the Rose Howell Estate. Rose Mable Dudley was a beneficiary of the Estate. In 1967, the tax lot was zoned 'F-2'. Its division would not have met the minimum lot size of 2 acres at the time as it is approximately 1.39 acres including half of the Sauvie Island Road right-of-way. To resolve its unlawful creation, a condition of approval has been included in this decision requiring that tax lot 2N1W21-01200 be consolidated into tax lot 2N1W21-01100 as allowed by MCC 39.9200 (Consolidation of Parcels and Lots).

Based on the above, tax lot 2N1W21-01100 satisfied the applicable zoning laws of the F-2 zone in 1968. Tax lot 2N1W21-01200 did not.

In 1968, the process to divide a property required a deed or sales contract dated and signed by the parties to the transaction. The document needed to be in recordable form or recorded with the County Recorder prior to October 19, 1978. As stated above, a deed for the area of land contained in tax lot 2N1W21-01100 was recorded on March 12, 1968 and met these requirements (Exhibit B.5). Planning staff was unable to find a recorded deed separate from the Probate document contained in Exhibit B.8. Staff cannot find that tax lot 2N1W21-01200 met the above land division requirements. A condition of approval has been included with this decision requiring that area of land contained in tax lot 2N1W21-01200 be consolidated with the legal parcel in tax lot 2N1W21-01100.

Rose Mable Dudley owned both subject properties 2N1W21-01100 and 2N1W21-01200 in 1967 per the Probate Order Distribution.

Tax lot 2N1W21-01100 satisfied all applicable land division laws in 1968. Tax lot 2N1W21-01200 could not be found to have complied with the applicable land division laws of the time.

4.2 MCC 39.3070 Lot of Record – (EFU)

(A) In addition to the standards in MCC 39.3005, for the purposes of the EFU district a Lot of Record is either:

(1) A parcel or lot which was not contiguous to any other parcel or lot under the same ownership on February 20, 1990, or

(2) A group of contiguous parcels or lots:

(a) Which were held under the same ownership on February 20, 1990; and

(b) Which, individually or when considered in combination, shall be aggregated to comply with a minimum lot size of 19 acres, without creating any new lot line.

Staff: Per County Tax Records Mabel Rose Dudley owned tax-lot 2N1W21-01100 (01100) and 2N1W21-01200 (01200) on February 20, 1990 (Exhibit B.7). Tax-lot 01100 is 20.05 acres and tax-lot 01200 is approximately 1.39 acres. Tax-lot 01200 is contiguous to tax-lot (01100) and the two units of land are aggregated based on the aggregation requirement of MCC 39.3070(A)(2). The term "Contiguous" is defined in the EFU zone in section MCC 39.4210 Definitions as follows:

“Contiguous – refers to parcels or lots which have any common boundary, excepting a single point, and shall include, but not be limited to, parcels or lots separated only by an alley, street or other right-of-way.

The two tax lots would aggregate into one Lot of Record if they were both lawfully established parcels. In the case of tax lot 2N1W21-01200, it was not lawfully established. A condition of approval has been included to correct this unlawful creation by consolidating tax lot 2N1W21-01200 with tax lot 2N1W21-01100. After consolidation, the two tax lots would be one legal parcel.

If in the future, tax lot 2N1W21-01100 is found to be a legal parcel based on new information, the two units of land are aggregated as a single Lot of Record.

4.3 (B) In this district, significant dates and ordinances applicable for verifying zoning compliance may include, but are not limited to, the following:

- (1) July 10, 1958, F-2 zone applied;**
- (2) December 9, 1975, RL-C zone applied, F-2 minimum lot size increased, Ord. 115 & 116;**
- (3) October 6, 1977, MUA-20 and EFU38 zones applied, Ord. 148 & 149;**
- (4) August 14, 1980, zone change from MUA-20 to EFU-38 for some properties, zone change from EFU-38 to EFU-76 for some properties. Ord. 236 & 238;**
- (5) February 20, 1990, lot of record definition amended, Ord. 643;**
- (6) April 5, 1997, EFU zone repealed and replaced with language in compliance with 1993 Oregon Revised Statutes and 1994 Statewide Planning Goal 3 Oregon Administrative Rules for farmland, Ord. 876;**
- (7) May 16, 2002, Lot of Record section amended, Ord. 982, reenacted by Ord. 997;**

Staff: Section (B) is for information purposes only.

(C) A Lot of Record which has less than the minimum lot size for new parcels, less than the front lot line minimums required, or which does not meet the access requirements of MCC 39.4260 may be occupied by any allowed use, review use or conditional use when in compliance with the other requirements of this district.

Staff: Once the two units of land are consolidated in to a single parcel, the subject property is a Lot of Record, which is substandard to the Exclusive Farm Use minimum lot size for new parcels. But as stated it may be occupied by any allowed use, review use or conditional use when in compliance with the other requirements of the Exclusive Farm Use.

4.4 (D) The following shall not be deemed a Lot of Record:

- (1) An area of land described as a tax lot solely for assessment and taxation purposes;**
- (2) An area of land created by the foreclosure of a security interest;**
- (3) A Mortgage Lot.**
- (4) An area of land created by court decree.**

Staff: The subject properties are not an area of land described as a tax lot solely for assessment and taxation purposes; an area of land created by the foreclosure of a security interest; a mortgage lot. Tax lot 2N1W21-01200 was created by a Circuit Court Probate action in 1967. It was created by a court decree and is not presently a legal parcel. Tax lot 2N1W21-01100 was created by a deed and not a court decree (Exhibit B.5 and B.9).

Once the two units of land are consolidated into a single legal parcel, the new parcel will be a Lot of Record.

5.0 Exhibits

‘A’ Applicant’s Exhibits

‘B’ Staff Exhibits

‘C’ Procedural Exhibits

Exhibits with a “*” after the exhibit # have been included as part of the mailed decision. Those exhibits have been reduced to a size of 8.5” x 11” for mailing purposes. All other exhibits are available for review in Case File T2-2021-14361 at the Land Use Planning office.

Exhibit #	# of Pages	Description of Exhibit	Date Received / Submitted
A.1	1	General Application form	02.17.2021
A.2	2	Title Records Report from Ticor Title	02.17.2021
A.3*	2	Bargain and Sale Deed, recorded April 11, 1968 in Book 611 pages 1616 and 1617	02.17.2021
A.4*	2	Transfer on Death Deed, recorded September 10, 2018, 2018-126304	02.17.2021
A.5	1	Toll Form	07.02.2021
A.6	1	Amended General Application form to include map tax-lot (2N1W21-01200)	07.02.2021
A.7	1	Permission Letter from Mabel Dudley Estate for Lot of Record Verification review (tax-lot #1200)	07.06.2021
‘B’	#	Staff Exhibits	Date
B.1	2	Assessment and Taxation Property Information for 2N1W21-01100 (Alt Acct#R971210140)	02.17.2021
B.2	1	1962 Zoning Map for 2N1W21-01100	06.04.2021
B.3	3	Parcel Record Card tax-lot (2N1W21-01100)	03.23.2021
B.4	2	Deed recorded April 12, 1962 in Book 2111, Pages 178 and 179	03.23.2021
B.5	2	Deed recorded March 12, 1968 in Book 608, Pages 1086 and 1087	03.23.2021

B.6	2	Assessment and Taxation Property Information for 2N1W21-01200 (Alt Acct#R971210150)	07.01.2021
B.7	2	Parcel Record Card tax-lot (2N1W21-01200)	07.01.2021
B.8	1	Deed description for tax-lot (2N1W21-01200)	07.01.2021
B.9	3	Probate Department, Order Distribution Book 1251, Page 615	07.27.2021
B.10	1	Map showing contiguous property ownerships for tax lots adjacent to 2N1W21 – 01100.	07.27.2021
‘C’	#	Administration & Procedures	Date
C.1	1	Complete Letter	03.19.2021
C.2	2	Opportunity to Comment and mailing list	04.02.2021
C.3	8	Administrative decision and mailing list	08.06.2021