

NOTICE OF DECISION

Case File: T2-2021-15035
Permit: Lot of Record Verification
Applicants: Derra Gannon **Owners:** Derra Gannon and Matt Schaeffer
Location: 18120 NW Sauvie Island Road, Portland **Map, Tax lot:** 2N1W17D -01900
Tax Account #: R583602610 **Property ID #:** R221069
Base Zone: Multiple Use Agriculture – 20 (MUA-20)
Overlays: None
Proposal Summary: The applicant is requesting a Lot of Record Verification for the above property. A Lot of Record Verification determines 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. The applicant does not propose any development as part of this application.

Determination: The subject property known as 2N1W17D -01900 is a Lot of Record in its current configuration.

This decision is final at the close of the appeal period, unless appealed. The deadline for filing an appeal is Monday, January 17, 2022 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 for review by contacting Marisol Cervantes, Staff Planner at 503-988-9452 or at Marisol.Cervantes@multco.us. Copies of all documents are available at the rate of \$0.40/per page.

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: Monday, January 03, 2022



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 39.3080 Lot of Record – Multiple Use Agriculture-20 (MUA-20).

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

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 request a Lot of Record Verification for the property identified as 2N1W17D -01900 (“subject property”). 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 reconfiguration of the parcel, lot, or unit of land satisfied all applicable zoning laws and all applicable land division laws in effect on the date of its creation or reconfiguration.

2.0 Property Description & History:

Staff: The subject property is located in unincorporated west Multnomah County in the area known as Sauvie Island. The property is zoned Multiple Use Agricultural (MUA-20) and is located outside of Metro’s Urban Growth Boundary (UGB). The subject property is occupied by a 1953 single-family dwelling, a farm building and a detached garage.

3.0 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.

4.0 Code Compliance and Applications Criteria:

4.1 § 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.

(A) A permit or other approval, including building permit applications, may be authorized if:

- (1) It results in the property coming into full compliance with all applicable provisions of the Multnomah County Zoning Code. This includes sequencing of permits or other approvals as part of a voluntary compliance agreement; or**
- (2) It is necessary to protect public safety; or**
- (3) It is for work related to and within a valid easement over, on or under an affected property.**

(B) For the purposes of this section, Public Safety means the actions authorized by the permit would cause abatement of conditions found to exist on the property that endanger

the life, health, personal property, or safety of the residents or public. Examples of that situation include but are not limited to issuance of permits to replace faulty electrical wiring; repair or install furnace equipment; roof repairs; replace or repair compromised utility infrastructure for water, sewer, fuel, or power; and actions necessary to stop earth slope failures.

Staff: This standard provides that the County shall not make a land use decision approving development for a property that is not in full compliance with County Code or previously issued County approvals, except in the following instances: approval will result in the property coming into full compliance, approval is necessary to protect public safety, or the approval is for work related to or within a valid easement.

This standard was originally codified in the Zoning Code chapter related to land use application procedures and, by its terms, expressly applies to the application review process. Although now codified in the enforcement Part of the Zoning Code as a result of the more recent code consolidation project, the language and intent was not changed during that project and remains applicable to the application review process and not to the post-permit-approval enforcement process.

Importantly, a finding of satisfaction of this standard does not mean that a property is in full compliance with the Zoning Code and all prior permit approvals (and, accordingly, does not preclude future enforcement actions relating to uses and structures existing at the time the finding is made). Instead, a finding of satisfaction of this standard simply means that there is not substantial evidence in the record affirmatively establishing one or more specific instances of noncompliance. As such, an applicant has no initial burden to establish that all elements of the subject property are in full compliance with the Zoning Code and all previously approved permits; instead, in the event of evidence indicating or establishing one or more specific instances of noncompliance on the subject property, the applicant bears the burden to either rebut that evidence or demonstrate satisfaction of one of the exceptions in MCC 39.1515.

For purposes of the current application, staff is not aware of any open compliance cases on the subject property, and there is no evidence in the record of any specific instances of noncompliance on the subject property. *This criterion is met.*

5.0 Lot of Record Criteria:

5.1 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.)**

(c) Separate Lots of Record shall be recognized and may be partitioned congruent with an “acknowledged unincorporated community” boundary which intersects a Lot of Record.

- 1. Partitioning of the Lot of Record along the boundary shall require review and approval under the provisions of the land division part of this Chapter, but not be subject to the minimum area and access requirements of this district.**
- 2. An “acknowledged unincorporated community boundary” is one that has been established pursuant to OAR Chapter 660, Division 22.**

Staff: To qualify a Lot of Record, the subject property, when created or reconfigured, must meet MCC 39.3005(B) of this section and meet the Lot of Record standards set forth in the Multiple Use Agricultural (MUA-20) zoning district. More specifically, section (B) above requires demonstration that the subject property (a) satisfied all applicable zoning laws and (b) satisfied all applicable land division laws.

The subject property was originally Lot 12 of Morgan’s Island Acres Plat; it was platted on March 2, 1949 (Exhibit B.3). The applicant provided a Warranty Deed (Exhibit A.3) dated February 1, 1954 to support the Lot of Record request. The applicant’s deed describes most of the subject property, but its legal description (Exhibit A.3) excludes the additional five feet from Lot 13 (Exhibit A.7) which is now a part of the subject property.

On June 17, 1963, a Sales Contract was recorded (Exhibit A.5) which added the southeasterly five feet from Lot 13. The legal description in this Sales Contract (Exhibit A.5) matches the

current legal description for the subject property (Exhibit A.7). The 1963 Sales Contract reconfigured the subject property from its 1954 legal configuration.

In 1963, the subject property was zoned R-10. The R-10 zone had a minimum lot size of 10,000 sq. ft. It required a minimum average lot width of 70 feet and a minimum lot width at the building lines of 70 feet. The minimum lot depth was 100 feet. In addition, lots in this district were required to abut a public road or have alternate access to be found suitable.

The subject property is 1 acre (43,560 sq. ft.). It has a minimum average lot width of 83.87 feet. The lot width at the front of the existing dwelling is 71.00+/- feet. The property has an average lot depth of 498+/- feet. The subject property front onto the public street known as NW Sauvie Island Road.

In 1963, the process to create or divide a parcel 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 evidence by the 1963 Sales Contract deed (Exhibit A.5), the applicable land division laws were satisfied.

Based upon the above, the subject property satisfied all applicable zoning and land division laws when it was created or reconfigured in 1963.

5.2 MCC 39.3080 LOT OF RECORD – MULTIPLE USE AGRICULTURE-20 (MUA-20).

(A) In addition to the standards in MCC 39.3005, for the purposes of the MUA-20 district the significant dates and ordinances for verifying zoning compliance may include, but are not limited to, the following:

- (1) July 10, 1958, SR zone applied;**
- (2) July 10, 1958, F-2 zone applied;**
- (3) December 9, 1975, F-2 minimum lot size increased, Ord. 115 & 116;**
- (4) October 6, 1977, MUA-20 zone applied, Ord. 148 & 149;**
- (5) October 13, 1983, zone change from EFU to MUA-20 for some properties, Ord. 395;**
- (6) May 16, 2002, Lot of Record section amended, Ord. 982, reenacted by Ord. 997.**

(B) A Lot of Record which has less than the minimum lot size for new parcels or lots, less than the front lot line minimums required, or which does not meet the access requirement of MCC 39.4345, may be occupied by any allowed use, review use or conditional use when in compliance with the other requirements of this district.

Staff: Section (A) is for information purposes. The subject property has less than the minimum lot size for new parcels or lots in this zone and is subject to (B) above. It may be occupied by any allowed, review or conditional use when in compliance with the other requirements of this district provided it remains a Lot of Record. *Criteria met.*

(C) Except as otherwise provided by MCC 39.4330, 39.4335, and 39.5300 through 39.5350, no sale or conveyance of any portion of a lot other than for a public purpose shall leave a structure on the remainder of the lot with less than minimum lot or yard requirements or result in a lot with less than the area or width requirements of this district.

Staff: Subsection (C) is for informational purposes. The property owner is not proposing to convey any portion of the lot at this time. *Criterion met*

(D) The following shall not be deemed to be 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) An area of land created by court decree.**

Staff: As discussed above under section 5.1, the subject property is not an area of land described as a tax lot solely for assessment and taxation purposes. The subject tracts are not an area of land created by the foreclosure of a security interest or created by court decree. *Criteria met.*

Based on the findings in 5.1 & 5.2, the subject property is a single Lot of Record.

6.0 Exhibits

‘A’ Applicant’s Exhibits
‘B’ Staff Exhibits
‘C’ Procedural Exhibits

All exhibits are available for review in Case File T2-2021-15035 by contacting the Case Planner.

| Exhibit # | # of Pages | Description of Exhibit | Date Received / Submitted |
|------------------|-------------------|--|----------------------------------|
| A.1 | 4 | General Application Form and E-mail Requesting a Lot of Record Verification | 09.08.2021 |
| A.2 | 1 | Chain of Title Timeline | 09.08.2021 |
| A.3 | 2 | Warranty Deed recorded in Book 1642, Page 110 on February 1, 1954 | 09.08.2021 |
| A.4 | 1 | Warranty Deed recorded in Book 1700, Page 198 on January 12, 1955 | 09.08.2021 |
| A.5 | 2 | Contract of Sale recorded in Book 2172, Page 489-490 on June 17, 1963 | 09.08.2021 |
| A.6 | 2 | Warranty Deed recorded in Book 940, Page 906-907 on July 30, 1973 | 09.08.2021 |
| A.7 | 3 | Statutory Warranty Deed recorded as Instrument #2017-111379 on September 15, 2017 | 09.08.2021 |
| ‘B’ | # | Staff Exhibits | Date |
| B.1 | 2 | Division of Assessment, Recording, and Taxation (DART): Property Information for 2N1W17D -01900 (Alt Acct #: R583602610) | 09.08.2021 |

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| B.2 | 1 | Assessor's Map for subject property 2N1W17D -01900 | 09.30.2021 |
| B.3 | 1 | Morgan's Island Acres Subdivision Plat (PL-1181) recorded on March 2, 1949 | 09.30.2021 |
| B.4 | 1 | 1962 Zoning Map | 12.14.2021 |
| B.5 | 3 | 1962 R-10 Zoning Regulations | 12.14.2021 |
| 'C' | # | Administration & Procedures | Date |
| C.1 | 2 | Complete letter (day 1) | 09.30.2021 |
| C.2 | 3 | Opportunity to Comment and mailing list | 10.15.2021 |
| C.3 | 8 | Administrative Decision and mailing list | 01.03.2022 |