

NOTICE OF DECISION

Case File:	T2-2022-16084	Permit:	Lot of Record Verification
Applicant:	Benjamin Strickland	Owner:	The Raymond Smith LLC
Location:	North of 38530 SE Howard Rd. and East of 38701 SE Howard Rd., Corbett		
Map, Tax Lot:	1S4E01B-00800 and 1S4E01B-01000		
Alternate Account #:	R994010050 and R994010160		
Property ID #:	R341079 and R341089		
Base Zone:	Commercial Forest Use – 4 (CFU-4) & Exclusive Farm Use (EFU)		
Overlays:	Significant Environmental Concern for streams (SEC-s); Geologic Hazards (GH)		
Proposal Summary:	The applicant requests a single Lot of Record Verification for the above tax lots (the “subject property”). A Lot of Record Verification determines if the subject 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.		

Determination: The subject property consisting of 1S4E01B-00800 and 1S4E01B-01000 is a single, aggregated 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 Tuesday, January 03, 2023 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. Paper copies of all documents are available at the rate of \$0.40/per page. For further information, contact anna.shank-root5@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 land.use.planning@multco.us or at (503) 988-3043. The appeal form is available at www.multco.us/landuse/application-materials-and-forms under Other Application Materials and information. This decision is not appealable to the Land Use Board of Appeals until all local appeals are exhausted.

Issued by: _____

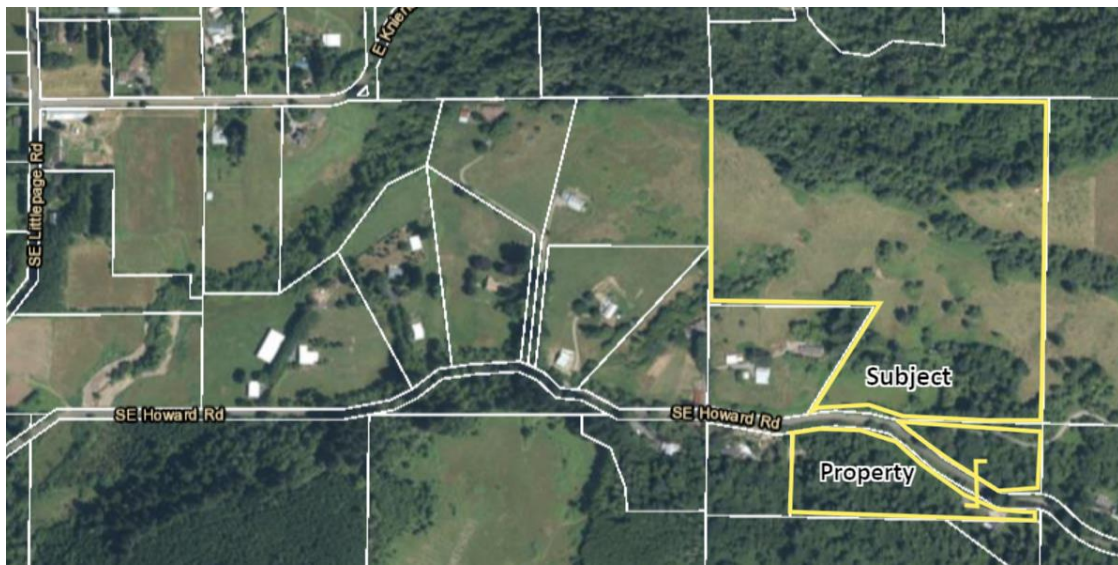
By: Chris Liu, Senior Planner

For: Adam Barber,
Interim Planning Director

Date: Tuesday, December 20, 2022

Vicinity Map

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Applicable Approval Criteria:

Multnomah County Code (MCC): MCC 39.1515 Code Compliance and Applications, MCC 39.3005 Lot of Record – Generally, MCC 39.3050 Lot of Record – CFU-4, MCC 39.3070 Lot of Record – EFU.

Copies of the referenced Multnomah County Code sections are available by contacting our office or by visiting our website <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 requests a Lot of Record Verification for the property consisting of two tax lots identified as 1S4E01B -00800 and 1S4E01B-01000 (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. In the CFU/EFU zone, the County also considers adjacent 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 parcel, lot, or unit of land met all applicable zoning laws, applicable land division laws and meets the aggregation requirements, it may be determined to be a Lot of Record.

2.0 Property Description:

Staff: The subject property is located in unincorporated east Multnomah County in the area known as the East of the Sandy River rural area. Tax Lot 800 (TL 800) is zoned CFU-4 and Tax Lot 1000 (TL 1000) is zoned EFU. The subject property is located outside of Metro’s Urban Growth Boundary (UGB). TL 800 contains a building, while TL 1000 is vacant.

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 (Exhibit C.3). Staff subsequently mailed a revised notice to the required parties (Exhibit C.4). Staff did not receive any public comments during the 14-day comment period for either notice.

4.0 Code Compliance and Applications Criteria:

4.1 MCC 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 Section 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.*

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

*** * ***

Staff: To qualify as 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 CFU-4 and EFU zoning districts. 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 Lot of Record standards set forth in the EFU and CFU-4 districts establish additional requirements unique to the districts, which are evaluated in Sections 5.2 and 5.3 of this decision. The findings below analyze whether the Lot of Record provisions in section (B) have been met.

The applicant provided a chain of title for TL 800 (Exhibits A.2 – A.12) and TL 1000 (Exhibits A.14 – A.27) to support the Lot of Record request.

On December 09, 1996, the County approved land use case no. PLA 9-96 (Exhibit B.5) which authorized a lot line adjustment for TL 800 and an adjacent property. The decision notes that “Approval of this property line adjustment does not in any manner recognize Tax Lot ‘5’ (TL 800) to be a “Lot of Record” separate from the adjacent Tax Lot ‘16’ (TL 1000). As defined in MCC 11.15.2062(A)(3), Tax Lots ‘5’ and ‘16’ together comprise only one “Lot of Record...”. Recorded survey no. 56090 (Exhibit B.6) and recorded warranty deed no. 97-178807 (Exhibit A.8) document the approved lot line adjustment. The current deed and legal description for TL

800 (Exhibit A.2) matches the approved, adjusted configuration shown in land use case no. PLA 9-96. The current deed and legal description for TL 1000 (Exhibit A.19) matches the configuration of TL 1000 shown in land use case no. PLA 9-96.

Based on the above, the subject property complied with all applicable zoning and land division laws at the time of its reconfiguration in 1996-1997.

5.2 MCC 39.3050 LOT OF RECORD – COMMERCIAL FOREST USE-4 (CFU-4)

(A) In addition to the standards in MCC 39.3005, for the purposes of the CFU-4 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: Staff reviewed historic County tax records which show that Reuben Lenske was the listed property owner for both TL 1000 and TL 800 on February 20, 1990. As TL 800 was under 19.0 acres in size, TL 800 aggregated with TL 1000 to form a single Lot of Record. *Criteria met.*

(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, F-2 minimum lot size increased, Ord. 115 & 116;**
- (3) October 6, 1977, MUF-20 and CFU38 zones applied, Ord. 148 & 149;**
- (4) August 14, 1980, MUF-19 & 38 and CFU-80 zones applied, Ord. 236 & 238;**
- (5) February 20, 1990, Lot of Record definition amended, Ord. 643;**
- (6) January 7, 1993, MUF-19 & 38 zones changed to CFU-80, Ord. 743 & 745;**
- (7) August 8, 1998, CFU-4 zone applied, Ord. 916 (reenacted by Ord. 997);**

* * *

(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 39.4135, may be occupied by any allowed use, review use or conditional use when in compliance with the other requirements of this district.

Staff: Section (B) is for information purposes. The subject property has less than the minimum lot size for new parcels or lots in the CFU-4 zone and is subject to (C) 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.*

(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: 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 or a mortgage lot. The subject property is not an area of land created by the foreclosure of a security interest or created by court decree. *Criteria met.*

5.3 MCC 39.3070 LOT OF RECORD – EXCLUSIVE FARM USE (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: Staff reviewed historic County tax records which show that Reuben Lenske was the listed property owner for both TL 1000 and TL 800 on February 20, 1990. As TL 800 was under 19.0 acres in size, TL 800 aggregated with TL 1000 to form a single Lot of Record. *Criteria met.*

(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 EFU-38 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;**

(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: Section (B) is for information purposes. The subject property has less than the minimum lot size for new parcels or lots in the EFU zone and is subject to (C) 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.*

(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: 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 or a mortgage lot. The subject property is 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 Sections 5.1 - 5.3 above, the subject property consisting of TL 800 and TL 1000 is a single, aggregated 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 T2-2022-16084 by contacting Anna Shank-Root via email at anna.shank-root5@multco.us

Exhibit #	# of Pages	Description of Exhibit	Date Received / Submitted
A.1	1	General Application Form	08.19.2022
A.2	5	Warranty Deed recorded on 12/30/2009 at Instrument # 2009-178463	08.19.2022
A.3	8	Access Easement recorded on 12/21/2009 at Instrument # 2009-174668	08.19.2022
A.4	13	Warranty Deed recorded on 07/16/2004 at Instrument # 2004-130412	08.19.2022
A.5	15	Correction Warranty Deed recorded on 09/30/2005 at Instrument # 2005-188639	08.19.2022

A.6	1	Bargain and Sale Deed recorded on 10/13/2000 at Instrument # 2000-142449	08.19.2022
A.7	3	Correction Bargain and Sale Deed recorded on 02/13/2001 at Instrument # 2001-020278	08.19.2022
A.8	1	Warranty Deed recorded on 11/18/1997 at Instrument # 97-178807	08.19.2022
A.9	1	Warranty Deed recorded on 1/26/1977 at Book 1153, Page 737	08.19.2022
A.10	5	Contract of Sale signed August 21, 1973	08.19.2022
A.11	2	Warranty Deed signed August 24, 1973	08.19.2022
A.12	1	Bargain and Sale Deed signed August 20, 1973	08.19.2022
A.13	1	Revised General Application Form	10.18.2022
A.14	15	Deed Correcting Legal Description recorded September 20, 2005 as instrument no. 2005-188639	10.18.2022
A.15	9	Contract Extension recorded July 08, 2004 as instrument no. 2004-124356	10.18.2022
A.16	8	Contract Extension recorded April 21, 2004 as instrument no. 2004-068361	10.18.2022
A.17	8	Contract Extension recorded April 21, 2004 as instrument no. 2004-068362	10.18.2022
A.18	6	Contract Extension recorded July 15, 2003 as instrument 2003-162914	10.18.2022
A.19	3	Quitclaim Deed recorded July 24, 2000 as instrument no. 2000-102402	10.18.2022
A.20	1	Warranty Deed recorded September 03, 1981 in Bk. 1548, Pg. 423	10.18.2022
A.21	1	Warranty Deed recorded August 03, 1978 in Bk. 1284, Pg. 1070	10.18.2022
A.22	1	Warranty Deed recorded January 26, 1977 in Bk. 1153, Pg. 737	10.18.2022
A.23	7	Contract recorded April 30, 1975 in Bk. 1038, Pg. 465 – 471	10.18.2022
A.24	4	Contract of Sale recorded September 04, 1973 in Bk. 946, Pg. 1603 - 1606	10.18.2022
A.25	2	Bargain and Sale Deed recorded August 23, 1973 in Bk. 946, Pg. 1601 – 1602	10.18.2022
A.26	1	Bargain and Sale Deed recorded August 20, 1973 in Bk. 946, Pg. 1600	10.18.2022

A.27	1	Warranty Deed recorded August 29, 1973 in Bk. 946, Pg. 130	10.18.2022
A.28	2	Warranty Deed recorded September 28, 1946 in Bk. 1104, Pg. 434 – 435	10.18.2022
‘B’	#	Staff Exhibits	Date
B.1	5	Division of Assessment, Recording, and Taxation (DART): Property Information for 1S4E01B-00800 and 1S4E01B-01000 (Alt Acct# R994010050 and R994010160)	08.19.2022
B.2	1	Division of Assessment, Recording, and Taxation (DART): Map for 1S4E01B	08.19.2022
B.3	4	Parcel Record Card for R994010050	10.25.2022
B.4	3	Parcel Record Card for R994010160	10.25.2022
B.5	36	Copy of Land Use Case no. PLA 9-96	10.25.2022
B.6	1	Copy of Survey no. 56090	10.25.2022
‘C’	#	Administration & Procedures	Date
C.1	3	Incomplete letter	03.03.2022
C.2	1	Complete letter (day 1)	09.16.2022
C.3	2	Opportunity to Comment	09.20.2022
C.4	2	Revised Opportunity to Comment	10.21.2022
C.5	9	Decision	12.20.2022