

Memorandum



Tuesday, February 17, 2015

To: Project Team
From: Rithy Khut
Re: Lot of Record Analysis

SUMMARY

The purpose of this memo is to provide information regarding “lot of record” requirements in Multnomah County. The lot of record code requirements for lots or parcels are to ensure that property within the county has been properly divided according to the zoning and land division requirements in place when the property was put into its current configuration. Establishing a lot of record determines whether property is eligible for development under the development code. This requirement is a critical component within the county’s development code that ensures the county’s goal of preserving agricultural land and conserving forest land by maintaining large parcels suitable for commercial farm and forest practices and ensuring land divisions are done properly. Since this component is critical for the county’s efforts, this analysis will compare the county’s lot of record regulations to Oregon Revised Statutes and Oregon Administrative Rules to determine possible outcomes if the requirements were changed. By comparing the requirements, this analysis will provide background information toward possible regulatory changes regarding lot of record requirements.

BACKGROUND

In Multnomah County, as part of development review process, the county requires the owner to demonstrate that their piece of property is a “lot of record”. The term lot of record is also sometimes loosely defined as a legally created property. The main goal of the lot of record requirements is to confirm the property’s legal status, which determines whether the property is eligible for potential development under the development code. The lot of record regulations are a requirement in all zones in the county and verification is a prerequisite to apply for building permits or other development applications.

As part of MCC chapter 37, Administration and Procedures, it has been interpreted by staff that any development actions that would initiate a land use application would trigger an analysis to determine the parcel or lot’s lot of record status. The code states in MCC chapter 37:

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 Land Use Code and/or any permit approvals previously issued by the County.

Therefore, to establish that a lot or parcel has been legally created, the property owner needs to provide evidence that the piece of property has met all applicable zoning and land division laws in effect on the date it was put into its current configuration.

Within many of the resource zones, the lot of record requirements are expanded to include aggregation requirements. Aggregation is the grouping together of adjacent properties in common ownership for development purposes. Additionally, properties that were adjacent, in common ownership and included a property under 19-acres in size on February 20, 1990 must always remain in the same ownership going forward, which means the parcels comprising the property must be conveyed as a single unit of land. Properties that are currently aggregated but were not in common ownership on February 20, 1990 may be conveyed independently. This property aggregation is used in part with zoning requirements to align with the Comprehensive Framework Plan's goal to preserve agricultural land and conserve forest land against development by retaining large parcel sizes for commercial farm and forest use.

Two zones differ in aggregation requirements. In the West Hills plan area, CFU-5 does not require aggregation under any circumstances and in the East of Sandy River plan area, CFU-4 allows for dis-aggregation, which allows aggregated properties to be separated in determining dwelling siting requirements, under very specific circumstances (see table 1).

Table 1. – Comparison of Lot of Record Requirements within the resource zones

| | West Hills | | | | Sauvie Island / Mult. Channel | East of Sandy River | | | West of Sandy River | |
|------------------------------------|------------|-------|-------|-----|----------------------------------|---------------------|-------|-----|---------------------|-----|
| | CFU-1 | CFU-2 | CFU-5 | EFU | EFU | CFU-3 | CFU-4 | EFU | CFU | EFU |
| Aggregation Required | Y | Y | N | Y | Y | Y | Y | Y | Y | Y |
| Dis-Aggregation Allowed | N | N | N | N | N | N | Y | N | N | N |

In the West Hills plan area, CFU-5 covers approximately 92 acres, most of which are along Highway 30 near the county line with Columbia County. This area was initially identified in the West Hills Rural Area Plan as a Goal 4 (Forest Lands) exception zone and would be rezoned from commercial forest use to rural residential. The Oregon Land Conservation and Development Commission (LCDC) denied the request and the area was zoned CFU-5 in 1998 due to the abnormally small lot sizes and the density of existing residential development.

In the East of Sandy River plan area, CFU-4 allows for dis-aggregation. Dis-aggregation allows an existing legally-created aggregated lot to be considered for an additional template or heritage tract dwelling if:

- It consists of two legally created, aggregated lots or parcels and:
 1. The dis-aggregation occurs along existing lot or parcel lines without creating any new lots or parcels
 2. One of the lots or parcels is currently developed with a legally established dwelling

3. The lot or parcel on which application will be made for the new dwelling is less than 19 acres
4. The lots or parcels constituting the dis-aggregated Lot of Record were in the same ownership prior to January 1, 1985.

Or,

- It consists of three or more lots or parcels and:
 1. Only one lot of less than 19 acres shall be dis-aggregated;
 2. The remaining lots or parcels shall be combined into a single lot; and
 3. The dis-aggregation occurs along existing lot or parcel lines without creating any new lots or parcels;
 4. One of the lots or parcels is currently developed with a legally established dwelling;
 5. The lot or parcel on which application will be made for the new dwelling is less than 19 acres; and
 6. The lots or parcels constituting the dis-aggregated Lot of Record were in the same ownership prior to January 1, 1985.

According West of Sandy River Rural Area Plan, the reasoning behind the decision to allow for dis-aggregation in the CFU-4 zone was due to the already existing development pattern of the zone area. There was less need to impose strict limitations on additional dwellings because of the number of dwellings and size of parcels already existing there. Further, the amount of eligible properties and the amount of potential new dwellings using dis-aggregation would not change the character of the rural area.

In 2001, the County reevaluated the use of lot of record requirements. The main goal of the project was to modify the lot of record requirements to be more understandable and workable. The lot of record requirements were made consistent across resource zones and one date of ownership, February 20, 1990, was chosen for aggregation requirements whereas previously any time properties came under the same ownership and one was under 19-acres in size they were aggregated together going forward. This new date was needed because aggregation requirements have changed multiple times since their first adoption in 1975 as part of the Rural Lands – Conservation (RL-C) zone. Since February 20, 1990 is the most current date of the last redrafting of the language, it was chosen to provide consistency.

LOT OF RECORD REQUIREMENTS

In order to meet the lot of record provisions, there is one set of requirements in resource zones and another set in non-resource zones. Across all zones, at minimum, the parcel, lot or a group thereof must meet three requirements:

- (a) satisfied all applicable zoning laws in effect at the time it was created or reconfigured, and
- (b) satisfied all applicable land division laws in effect at the time it was created or reconfigured, or
- (c) complies with the criteria for the creation of new lots or parcels

To comply with the first requirement the property must have met all zoning minimum lot size, dimensional standards, and access requirements. For the second requirement, there are five options for having met the land division laws:

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.

The final requirement is met through the land division section within the specific zoning district.

In addition to these requirements, some zoning districts have additional requirements. In farm and forest zones, except CFU-5 in the West Hills, lots or parcels must be aggregated. The code also defines what should not be deemed a Lot of Record in order to account for other bodies of statute and law that could affect zoning codes:

- (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.

COMPARISON WITH STATE REQUIREMENTS

In comparing the county's lot of record requirements with state requirements, a majority of the language comes from either ORS chapter 215, County Planning; Zoning; Housing Codes or ORS chapter 92, Subdivisions and Partitions. However, the language in the county development code is not taken verbatim from state rules or statutes.

The state provides definitions of what constitutes a lot or parcel in ORS 92. The terms, lot and parcel are nearly synonymous, the main difference being how the land was created. A lot is created by the subdivision of land and a parcel is created by a partition of land. Both, however, must comply with all applicable planning, zoning and land division ordinances and regulations. This statute matches the county's requirement of meeting all applicable zoning laws and similarly, the county's requirement of satisfying all applicable land division laws.

In resource zones, the county is more restrictive than the state by requiring aggregation. The state mandates that counties adopt the concept of "tract" requirements in both exclusive farm and forest zones. Tracts are similar to aggregated lots or parcels in that both are contiguous properties under the same ownership. The main difference between the state's tracts and the

county's aggregated properties occurs when a person initiates development. For tracts, individual lots or parcels within the tract may be sold off at any time if they were lawfully established before the time of application for development. However, aggregated lots and parcels are evaluated as a group of lots or parcels that cannot be separately conveyed because doing so would break up the lot of record status and lose the development potential if they were in common ownership on February 20, 1990. Aggregated lots and parcels that were not in common ownership on February 20, 1990 may be conveyed separately and in the CFU-4 district, the aggregated properties may be separated under the specific circumstances discussed previously.

The state's tract requirements are relatively new in comparison to the county's aggregation requirements. The county first adopted aggregation requirements in 1975 when the county adopted the Rural Lands – Conservation (RL-C) zone. With no initial guidance from the state and development pressures from the Portland Metropolitan region, the county implemented the aggregation requirement as part of a mix of zoning standards to meet statewide planning goals. Since the aggregation requirement has been in continual use since 1975 and was fully reevaluated during the last revision of the Lot of Record requirements in 2001, the county is hesitant to remove the aggregation requirement unless there are corresponding additions to the code that can address developmental pressures on rural lands from the urban areas. Additionally, having already issued a significant number of final land use decisions and conditions of approval centered on aggregation for different properties, removing the requirements could cause a problematic and fractured regulatory framework and could possibly result in many non-conforming situations.

CONCLUSION

The county's lot of record requirements partly match state requirements and definitions; however, its aggregation requirement is more restrictive than what the state requires and is unique to Multnomah County. The aggregation requirement was designed to meet statewide planning goals and the Comprehensive Framework Plan's goal to preserve agricultural land and conserve forest land against development as well as preserving the commercial viability of farm and forest uses by retaining large parcel sizes. Nevertheless, as part of the Comprehensive Plan update, there needs to be additional analysis to investigate whether the aggregation requirement can be altered or simplified without jeopardizing the overriding goal of farm and forest land protection.