

NOTICE OF DECISION

Case File: T2-2019-11623

Permit: Property Line Adjustment

Applicant(s): Jamie Van Agtmael **Owner(s):** Tract 1: Jose Gutierrez & Sonia Lopez
Tract 2: Scott Ekstrom

Location: 7808 SE 282nd Ave., Gresham

Tract 1 Tax Lot 300, Section 19CB, Township 1 South, Range 4 East, W.M.
Alt. Acct # R994191440 Property ID#R342236

No Address (SE 282nd Ave.), Gresham

Tract 2 Tax Lot 400, Section 19CB, Township 1 South, Range 4 East, W.M.
Alt. Acct # R994190860 Property ID#342186

Zoning: Multiple Use Agriculture – 20 (MUA-20)

Overlays: None

Proposal Summary: A request for a property line adjustment to transfer approximately 0.48 acres from Tract 1 to Tract 2 in the Multiple Use Agriculture – 20 (MUA-20) zone. After the completion of the property line adjustment, Tract 1 will be 1.52 acres and Tract 2 will be 4.75 acres. This property line adjustment application replaces land use case #T2-2018-10162 which was not completed.

Decision: Approved with Conditions

This decision is final and effective at the close of the appeal period, unless appealed. The deadline for filing an appeal is Monday, April 22, 2019, 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 at the Land Use Planning office. Copies of all documents are available at the rate of \$0.30/per page. For further information, contact Chris Liu, Staff Planner at 503-988-2964 or at chris@multco.us.

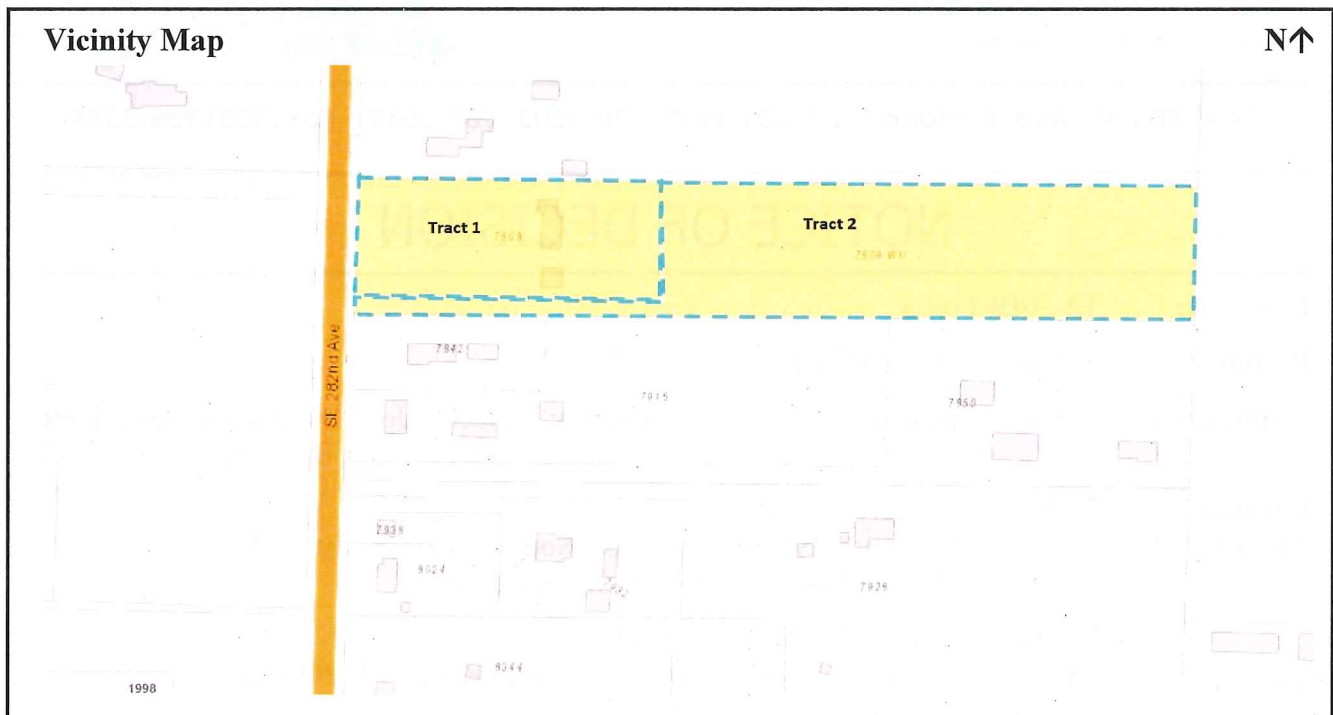
Opportunity to Appeal: An appeal requires a \$250.00 fee and must state the specific legal grounds on which it is based. To obtain appeal forms or information on the procedure, contact the Land Use Planning office at 1600 SE 190th Avenue (Phone: 503-988-3043). This decision is not appealable to the Land Use Board of Appeals until all local appeals are exhausted.

Issued By: 
Chris Liu, Assistant Planner

For: Michael Cerbone, AICP
Planning Director

Date: Monday, April 8, 2019

Instrument Number for Recording
Purposes: #2018-092241 (Tract 1)
#2018-092240 (Tract 2)



Applicable Approval Criteria: Multnomah County Code (MCC): MCC 39.1515: Code Compliance and Applications, MCC 39.3005 & MCC 39.3080: Lot of Record, MCC 39.4325: Dimensional Requirements, MCC 39.4345: Access, MCC 39.4330(B): Property Line Adjustment, MCC 39.9300: Property Line Adjustments

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: Multnomah County 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.

1. 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.
2. **This land use permit expires two (2) years from the date the decision is final pursuant to MCC 39.1185(A) as applicable. For this property line adjustment to be completed, the survey shall be recorded and new deeds with adjusted legal descriptions shall be recorded with the County Recorder. The property owner may request to extend the timeframe within which this permit is valid, as provided under MCC 39.1195, as applicable. The request for a permit extension must be submitted prior to the expiration of the approval period.**

- a) Failure to record new deeds with the adjusted legal descriptions after this decision becomes final will result in the expiration of this decision after two years.
- 3. Prior to County Land Use Planning approval of the legal descriptions and survey for the property line adjustment:
 - a) Submit copies of the draft deeds, legal descriptions, and survey to County Land Use Planning for review prior to their recordation to ensure compliance with this decision.
- 4. Once County Land Use Planning approves the draft deeds, legal descriptions and survey:
 - a) Record pages 1 through 3 of this Notice of Decision with the County Recorder. The Notice of Decision shall run with the land. Recording shall be at the applicant's expense. [MCC 39.1175]
 - b) Record the new deeds, legal descriptions and survey for the property line adjustment with the County Recorder.
 - c) Submit a copy of the recorded deeds, legal descriptions, survey, and pages 1 through 3 of this Notice of Decision to County Land Use Planning.
- 5. No additional lots or parcels shall be created through the recordation of the property line adjustment. [MCC 39.9300(A)]

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 property line adjustment to transfer approximately 0.48 acres from Tract 1 to Tract 2 in the Multiple Use Agriculture – 20 (MUA-20) zone. After the completion of the property line adjustment, Tract 1 will be 1.52 acres and Tract 2 will be 4.75 acres. This application modifies the conditions of approval for land use case #T2-2018-10162 so that the property line adjustment will not need to be completed with a plat.

2.0 Property Description & History:

Staff: The subject properties are located in the Multiple Use Agriculture 20 zone near the border of Clackamas County, immediately outside the Urban Growth Boundary, and approximately a mile away from the city border for Gresham. The surrounding area is a mixture of urban, rural residential, and farm land. SE 282nd Ave. provides access to both properties.

Tract 1 has two lawfully established buildings consisting of an approximately 2,308 sq. ft. single-family dwelling with attached garage and an approximately 890 sq. ft. shop outbuilding. Tract 2 is vacant and utilized for agricultural purposes.

As referenced above, this application modifies and approves the property line adjustment previously approved in land use case # T2-2018-10162.

3.0 ADMINISTRATIVE PROCEDURES CRITERIA:

3.1 MCC 39.1515: Code Compliance and Applications

Staff: Both properties (in their configurations noted in case #T2-2018-10162) are individual Lot of Records as described in case# T2-2018-10162. As noted in Section 4.1, a portion of Tract 1 is under new ownership, despite the fact that the conditions of approval from case # T2-2018-1062 were not met. This Property Line Adjustment application will restore the Lot of Record status of both Tract 1 and Tract 2 after the conditions of approval are met.

4.0 MULTIPLE USE AGRICULTURE - 20 ZONE CRITERIA:

4.1 Lot of Record

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, (a) satisfied all applicable zoning laws and (b) satisfied all applicable land

division laws, or (c) 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.

MCC 39.3080: Lot of Record – Multiple Use Agriculture -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.

(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.

(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 noted in land use case #T2-2018-10162, the subject properties (as described in that land use case) are each an individual Lot of Record. The current Lot of Record for Tract 1 (R994191440) is 2 acres. The current Lot of Record for Tract 2 (R994190860) is 4.27 acres. A condition of approval in T2-2018-10162 required the recording of a new plat (partition plat) to complete the lot line adjustment. As noted previously, this application modifies the conditions of approval of case #T2-2018-10162, as a new partition plat was not recorded.

Since the time of the decision for case #T2-2018-10162, the original owner (Ekstrom) sold a portion of Tract 1 (the desired adjusted 1.52 acres configuration of Tract 1) to the current owners. Through the approval of this Property Line Adjustment application and satisfaction of the conditions of approval, Tract 1 and Tract 2 will be re-established as individual Lots of Record. The Lot of Record for Tract 1 (R994191440) will be reduced to 1.52 acres. The Lot of Record for Tract 2 (R994190860) will be increased to 4.75 acres. *Criteria met.*

4.2 REVIEW USES

MCC 39.4315: The following uses may be permitted when found by the approval authority to satisfy the applicable standards of this Chapter.

(C) Property Line Adjustment pursuant to the provisions of MCC 39.4330.

Staff: The applicable provisions of MCC 39.4330 for the proposed property line adjustment are addressed in section 5.0 below. *Standard met.*

4.3 DIMENSIONAL REQUIREMENTS AND DEVELOPMENT STANDARDS

MCC 39.4325: All development proposed in this base zone shall comply with the applicable provisions of this section.

(A) Except as provided in MCC 39.3080, 39.4330, 39.4335 and 39.5300 through 39.5350, the minimum lot size for new parcels or lots shall be 20 acres.

(C) Minimum Yard Dimensions – Feet

Front	Side	Street Side	Rear
30	10	30	30

Maximum Structure Height - 35 feet

Minimum Front Lot Line Length - 50 feet.

(D) The minimum yard requirement shall be increased where the yard abuts a street having insufficient right-of-way width to serve the area. The county Road Official shall determine the necessary right-of-way widths based upon the county “Design and Construction Manual” and the Planning Director shall determine any additional yard requirements in consultation with the Road Official.

Staff: As described in section 4.1 above, the subject properties in the original configuration as described in case #T2-2018-10162 are each a Legal Lot of Record and are less than 20 acres in size. As allowed in MCC 39.4325(A), the existing Lots of Record can be reduced below 20 acres through MCC 39.4330. The existing structure meets the maximum height requirements and the front lot line is approximately 190 feet (Exhibit A.3 – A.4). After the property line adjustment, the existing buildings on Tract 1 will be approximately 275 +/- feet from the front lot line, approximately 25+ feet from the northern side lot line, approximately 15 +/- feet from the southern side lot line and approximately 35 +/- feet from the rear lot line (eastern lot line). Transportation Planning has indicated no additional right-of-way is necessary for SE 282nd Avenue, so the minimum yard requirements are those listed above in MCC 39.4325(C). After the property line adjustment, the improvements on Tract 1 will continue to meet the Minimum Yard Dimensions of MCC 39.4325(C). *Criteria met.*

4.4 MCC 39.4325(G): On-site sewage disposal, storm water/drainage control, water systems unless these services are provided by public or community source, required parking, and yard areas shall be provided on the lot.

Staff: The County Sanitarian has reviewed the proposed property line adjustment for the on-site sewage disposal system. They have found that the reduced Tract 1 can provide the existing and replacement disposal system on site (Exhibit A.6 and A.7). A Stormwater Certificate was submitted indicating that the new Tract 1 can handle its existing stormwater on site for a 10-year/24 hour storm event (Exhibit A.5).

4.5 MCC 39.4325 (B), (E), (F), (H), (I), (J), (K)

Staff: The above standards are not applicable to this proposed property line adjustment application as no new development is proposed. *Standards not applicable.*

4.6 LOTS OF EXCEPTION AND PROPERTY LINE ADJUSTMENTS

MCC 39.4330(B): Property Line Adjustment

Pursuant to the applicable provisions in MCC 39.9300, the approval authority may grant a property line adjustment between two contiguous Lots of Record upon finding that the approval criteria in (1) and (2) are met. The intent of the criteria is to ensure that the property line adjustment will not increase the potential number of lots or parcels in any subsequent land division proposal over that which could occur on the entirety of the combined lot areas before the adjustment.

(1) The following dimensional and access requirements are met:

(a) The relocated common property line is in compliance with all minimum yard and minimum front lot line length requirements;

(b) If the properties abut a street, the required access requirements of MCC 39.4345 are met after the relocation of the common property line; and

Staff: The relocated common property line provides a minimum 30 ft. rear yard between the single-family dwelling and the rear lot line. All other minimum yard requirements and lot line length requirements continue to be met following the adjustment (Exhibit A.3 – A.4) as discussed in finding 4.3 above. Adequate access is provided and was verified by County Transportation Planning (Exhibit A.9). *Criteria met.*

4.7 (2) One of the following situations occurs:

(a) The lot or parcel proposed to be reduced in area is larger than 20 acres prior to the adjustment and remains 20 acres or larger in area after the adjustment, or

(b) The lot or parcel proposed to be enlarged in area is less than 40 acres in area prior to the adjustment and remains less than 40 acres in area after the adjustment.

Staff: Tract 1 is less than 20 acres prior to the adjustment and will be 1.52 acres after the adjustment is completed. Tract 2 is 4.27 acres in its legal configuration and will remain below 40 acres at 4.75 acres. Both parcels are under 40 acres in area currently and will remain less than 40 acres after the adjustment (Exhibit A.3 – A.4). *Criteria met.*

5.0 PROPERTY LINE ADJUSTMENT CRITERIA

5.1 MCC 39.9300: A property line adjustment is the relocation of a common property line between two abutting properties. The Planning Director may approve a property line adjustment based upon findings that the following standards are met:

(A) No additional lot or parcel shall be created from any parcel by the property line adjustment; and

Staff: No additional lots or parcels will be created as part of the proposed property line adjustment. The common property line between Tract 1 and Tract 2 is proposed to be relocated to reduce the size of Tract 1 and increase the size of Tract 2 (Exhibit A.3 – A.4). A condition of approval has been included as part of this application to ensure compliance. *Criteria met.*

5.2 (B) Owners of both properties involved in the property line adjustment shall consent in writing to the proposed adjustment and record a conveyance or conveyances conforming to the approved property line adjustment; and

Staff: All property owners listed on tax records signed the application form (Exhibit A.1). indicating their consent to the proposed Property Line Adjustment. *Criteria met.*

5.3 (C) The adjusted properties shall meet the approval criteria for a property line adjustment as given in the base zone; and

Staff: The application successfully demonstrated compliance with the Property Line Adjustment requirements outlined in MCC 39.4330(B). See section 4.6 & 4.7 of this decision. *Criteria met.*

5.4 (D) The procedure and forms shall be submitted for obtaining approval of a property line adjustment as provided for by the Planning Director

Staff: Applicant Jamie Van Agtmael provided the necessary forms and information for the Property Line Adjustment application (Exhibits A.1 – A.10). *Criteria met.*

6.0 Conclusion

Based on the findings and other information provided above, the applicant has carried the burden necessary for the Property Line Adjustment to transfer approximately 0.48 acres from Tract 1 to Tract 2 in the MUA-20 zone. This approval is subject to the conditions of approval established in this report.

7.0 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. All other exhibits are available for review in Case File T2-2019-11623 at the Land Use Planning office.

Exhibit #	# of Pages	Description of Exhibit	Date Received/ Submitted
A.1	2	Property Line Adjustment Application Form	2.19.2019
A.2	2	Statutory Warranty Deed recorded on March 18, 2011 as instrument #2011-034517	2.19.2019
A.3*	1	Tentative Plan Map (Not To Scale)	2.19.2019
A.4	1	Tentative Survey Plat (Not To Scale)	2.19.2019
A.5	7	LEI Engineering & Surveying Stormwater review dated April 3, 2018: a. Storm Water Certificate for Land Divisions & Property Line Adjustments (3 pages) b. Hydrology Analysis and Site Plan dated April 3, 2018 (5 pages)	2.19.2019
A.6	2	Septic Review Certification for property ID# R994190860	2.19.2019
A.7	3	Septic Review Certification for property ID# R994191440	2.19.2019
A.8	4	Deed information provided in land use case # T1-2016-6379	2.19.2019
A.9	1	Transportation Planning Review Form	2.19.2019
A.10	1	Tentative Survey Plat (To - Scale)	2.19.2019
'B'	#	Staff Exhibits	Date
B.1	2	A&T Property Information for 1S4E19CB - 00300	2.19.2019
B.2	2	A&T Property Information for 1S4E19CB - 00400	2.19.2019
'C'	#	Administration & Procedures	Date
C.1	1	Complete Letter (Day 1)	2.21.2019
C.2	3	Opportunity to Comment	2.26.2019
C.3	9	Administrative Decision	4.8.2019

