

NOTICE OF DECISION

Case File: T2-2019-11649
Permit: Lot of Record Verification
Applicant: Nathan Arnold, Faster Permits **Owner:** Adam Seay
Location: 13807 NW Charlton Road
Tax Lot 400, Section 16C, Township 2 North, Range 1 West, W.M.
Tax Account #R971160290 Property ID # R324953
Zoning: Exclusive Farm Use
Overlays: None
Proposal Summary: Lot of Record Verification of Tax Lot 400, Section 16C, Township 2 North, Range 1 West, WM

Decision: Approved, the property is a Lot of Record

This decision is final and effective at the close of the appeal period, unless appealed. The deadline for filing an appeal is July 30, 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 George Plummer, Planner at (503) 988-0202 (8 am to 4 pm Tuesday through Friday) or george.a.plummer@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: 
George A. Plummer, Planner

For: Adam Barber,
Interim Planning Director

Date: July 16, 2019



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

Applicable Approval Criteria: Multnomah County Code (MCC): MCC 39.3005 et al: Lot of Record – Generally and MCC 39.3070 Lot of Record – Exclusive Farm Use (EFU) Zone. 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*.

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. PROPOSED REQUEST

Staff: Request for a Lot of Record Verification for a 3 acre property in the Exclusive Farm Use Zone.

2. PROPERTY DESCRIPTION & HISTORY

The Lot of Record Verification is for Tax Lot 400, Section 16C, Township 2 North, Range 1 West, which is located at the end of NW Charlton Road. The property is located within the Exclusive Farm Use (EFU) zoning district in the Sauvie Island/Multnomah Channel Rural Area. The property is not located within any environmental overlays.

The Multnomah County Department of Assessment, Records, and Taxation indicate that the property was previously owned Bobby and Beverly Talbert. The current property owner, Adam Seay eventually purchased tax lot 400 and the adjacent tax lot 300 in 2017. Tax lot 400 is 2.00 acres and currently contains a single-family dwelling. The property consists of a clustering of trees near the single-family dwelling and open pasture on the eastern and northern portions of the properties.

The single-family dwelling was first taxed in 1942 as shown on records from Multnomah County Department of Assessment, Records, and Taxations. There are no building permits associated with the property.

There are no active code compliance issues associated with this property; therefore, the County has the authority to make a land use decision. These criteria are met.

3. CASE BACKGROUND

Staff: A previous application, Case T2-2018-10700 for a Lot of Record Verification was submitted for Tax Lot 400 (Section 16C, Township 2 North, Range 1 West, W.M.). Case T2-2018-10700 was withdrawn so that the property owner could consolidate another one acre adjacent property in the same ownership to meet the Lot of Record EFU aggregation requirement of MCC 34.2675(A)(2) which has been renumbered MCC 39.3070 (A)(2). When these parcels were created the area was in the Agriculture Zone (F-2) with a two acre minimum which Tax Lot 400 met and former Tax Lot 300 did not meet the two acre minimum. The two properties have since been consolidated into one property (Exhibit A.14). See Section 4.2 of this decision for current MCC 39.3070 (A)(2) findings for this decision on the consolidated parcel. The two properties have since been consolidated into one property (Exhibit A.14).

4. LOT OF RECORD

4.1 Lot of Record – Generally

- 4.1.1. MCC 39.3005(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.**

Staff: The property is in the Exclusive Farm Use (EFU) Zone, thus must meet the standards of MCC 39.3005(B) and MCC 39.3070 (A) to be a stand-alone Lot of Record. See the findings in the following section of this decision demonstrating compliance with the required standards.

- 4.1.2. MCC 39.3005(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: This application is for a Lot of Record Verification for the property known as Tax Lot 400 (Section 16C, Township 2 North, Range 1 West, W.M.). According to documents in the application submittal, Tax Lot 400 was created by a Contract recorded in Book 589, Page 917-918 on October 31, 1967 (Exhibit A.5). According to a submitted deed, another adjacent property in the same ownership, formerly known as Tax Lot 300 Section 16C, Township 2 North, Range 1 West, W.M., (R971160330, R324957) was created by a Warranty Deed recorded in Book 844, Page 1059 on March 10, 1972 as a one acre parcel (Exhibit A.5).

When these parcels were created the area was in the Agriculture Zone (F2) with a two acre minimum. Tax Lot 400 met the minimum standard for an F2 property. Former Tax Lot 300 did not meet the two acre minimum.

The property known as Tax Lot 400 met the applicable zoning laws and land divisions laws that were in place to lawfully establish a unit of land in 1967 (Exhibit B.3 and B.4). The Contract was recorded and was dated and signed by the parties to the transaction that was recorded with the with County Records Section of the County prior to October 19, 1978.

The property known as Tax Lot 400, Section 16C, Township 2 North, Range 1 West WM is a legal parcel.

A Warranty Deed for tax lot 300 was also provided. As discussed in Section 1.1.2, tax lot 400 is aggregated with tax lot 300. Therefore, it must be determined if tax lot 300 is a separate unit of land. A Warranty Deed recorded in Book 844, Page 1059 on March 10, 1972 describes Tax Lot 300 (2N1W16C) (Exhibit A.5). At that time, the zoning for the property was Agricultural Zone (F2). The minimum standard for lot size was 2 acres. The property was 1 acre, which is less than the minimum lot size to establish a new parcel. Tax lot 300 did not meet the applicable zoning laws and land divisions laws that were in place to lawfully establish a unit of land.

The property known as Tax Lot 300 (2N1W16C) was not a legal parcel.

The table below illustrates the property configuration of each deed provided by the applicant.

Exhibit	Instrument	Recording Date	Staff Graphic
A.4	Contract recorded in Book 589, Pages 917-918 Zoning: Agricultural F2 (2 acre min. lot size)	Oct. 31, 1967	
A.5	Warranty Deed recorded in Book 844, Page 1059 Zoning: Agricultural F2 (2 acre min. lot size)	Mar. 10, 1972	

Exhibit	Instrument	Recording Date	Staff Graphic
A.8	<p>Warranty Deed recorded in Book 2073, Page 343</p> <p>Zoning: Exclusive Farm Use (EFU) (76 acres min. lot size)</p>	Jan. 15, 1988	
A.9	<p>Statutory Warrant Deed recorded as 2010-153819</p> <p>Zoning: Exclusive Farm Use (EFU) (80 acres min. lot size)</p>	Dec. 6, 2010	
A.11	<p>Statutory Warrant Deed recorded as 2017-118743</p> <p>Zoning: Exclusive Farm Use (EFU)</p>	Oct. 3, 2017	

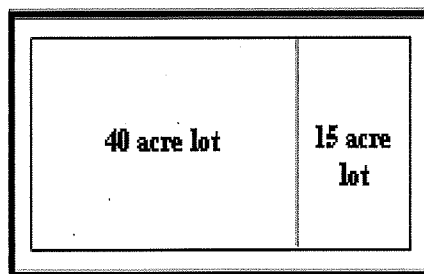
Additional deeds were supplied that continue to describe the above properties. No description changes were made on these deeds. The area of land continues to be zoned Exclusive Farm Use (EFU) with an 80-acre minimum lot size. No land use application to divide the area of land has been subsequently approved during after the original creation of these properties.

Based on the discussion above, the tax lot 300 is not a legal parcel and tax lot 400 is a legal parcel. Tax lot 300 was consolidating it into tax lot 400 consolidating the ownership into one parcel (Exhibit A.14). The Type 1 Lot Consolidation pursuant to MCC 34.7794 allowed this issue to be remedied. The consolidation corrected the past unlawful land division.

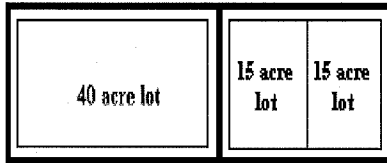
4.2. Lot of Record – Exclusive Farm Use (EFU)

MCC 39.3070 (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.**
 - 1. Each Lot of Record proposed to be segregated from the contiguous group of parcels or lots shall be a minimum of 19 acres in area using existing legally created lot lines and shall not result in any remainder individual parcel or lot, or remainder of contiguous combination of parcels or lots, with less than 19 acres in area. See Examples 1 and 2 in this subsection.**
 - 2. There shall be an exception to the 19 acre minimum lot size requirement when the entire same ownership grouping of parcels or lots was less than 19 acres in area on February 20, 1990, and then the entire grouping shall be one Lot of Record. See Example 3 in this subsection.**
 - 3. Three examples of how parcels and lots shall be aggregated are shown in Figure 1 below with the solid thick line outlining individual Lots of Record:**
 - 1. Each Lot of Record proposed to be segregated from the contiguous group of parcels or lots shall be a minimum of 19 acres in area using existing legally created lot lines and shall not result in any remainder individual parcel or lot, or remainder of contiguous combination of parcels or lots, with less than 19 acres in area. See Examples 1 and 2 in this subsection.**
 - 2. There shall be an exception to the 19 acre minimum lot size requirement when the entire same ownership grouping of parcels or lots was less than 19 acres in area on February 20, 1990, and then the entire grouping shall be one Lot of Record. See Example 3 in this subsection.**
 - 3. Three examples of how parcels and lots shall be aggregated are shown below with the solid thick line outlining individual Lots of Record:**

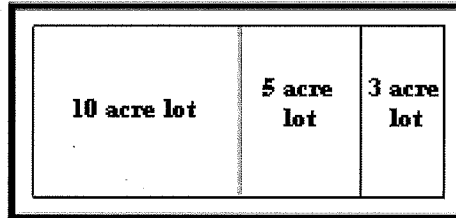


**Example 1:
One 55 acre Lot of Record**



Example 2:

**One 40 acre Lot of Record and
one 30 acre Lot of Record**



Example 3:

One 18 acre Lot of Record

Staff: The contracts and deeds supplied by the applicant indicate that the properties were sold/conveyed multiple times. On February 20, 1990, the property known as tax lot 400 was owned by Bobby Dean Talbert and Beverly Ann Talbert. The property was conveyed from Jean O'Mara to Bobby Talbert and Beverly Talbert in a Warranty Deed recorded in Book 2073, Page 343 on January 15, 1988. The property known as tax lot 300 was also owned Bobby Dean Talbert and Beverly Ann Talbert. The property was conveyed from William Dewey Charlton and Lilly J. Charlton to Bobby Talbert and Beverly Talbert in a Warranty Deed recorded in Book 844, Page 1059 on January 15, 1988.

According to Multnomah County Department of Assessment, Records and Taxation records, the surrounding properties were not owned by Bobby Talbert and Beverly Talbert on February 20, 1990. Tax lot 200 and 700 (R971160400 and R971160410) were owned by Jean A. O'Mara and tax lot 900 (R971160060) was owned by Elinor D. Wiley. None of the adjacent properties are aggregated with the subject properties in this land use case.

Alternative Account #	Pre-1990 Tax Roll Property Owner	Post-1990 Tax Roll Property Owner
R97116 -0290	Bobby and Beverly Talbert	Bobby and Beverly Talbert
R97116 -0330	Bobby and Beverly Talbert	Bobby and Beverly Talbert
Adjacent Property to the Subject Properties		
R97116 -0060	Elinor D. Wiley	Elinor D. Wiley
R97116 -0400	Jean A. O'Mara	Jean A. O'Mara
R97116 -0410	Jean A. O'Mara	Jean A. O'Mara

Tax lot 300 is 1 acre and tax lot 400 is 2 acres. Together they were in the same ownership of Bobby Dean Talbert and Beverly Ann Talbert on February 20, 1990. The two properties are smaller than 19 acres and therefore shall be aggregated to comply with a minimum lot size of 19 acres.

The property owner on February 27, 2019 recorded with Multnomah County Official Records a Bargain and Sale deed Instrument Number 2019-020235 (Exhibit A.14) that consolidated properties (Exhibit B.5) known as Tax Lot 400 and formerly known as Tax Lot 300 into one parcel as described on the deed. The filing of this deed resulted in a three acre parcel that was the ownership on February 20, 1990.

3.3. Lot of Record Conclusion

Staff: The subject property meets the standards to be a Lot of Record. Consolidating the two properties (Exhibit A.14 and B.5), one a legal parcel meeting the zoning and land division requirement when created and the other parcel merged into the legal parcel resulting in one, three acre property know as Tax Lot 400 (2N1W16C) that meets the zoning and land division requirements when the properties were divided. There is no other adjacent property in same ownership on February 20, 1990. *The subject property is a Lot of Record.*

5. Conclusion:

Based on the findings and other information provided above, the applicant has carried the burden necessary for the Lot of Record Determination to establish the subject property described as Tax Lot 400 (Section 16C, Township 2 North, Range 1 West, W.M.) located in the EFU Zone in its current configuration as described in Deed Instrument Number Instrument Number 2019-020235 (Exhibit A.14) is a Lot of Record. *The subject property is a Lot of Record.*

6. Exhibits

‘A’ Applicant’s Exhibits

‘B’ Staff Exhibits

Exhibit #	# of Pages	Description of Exhibit	Date Received/ Submitted
A.1	1	Application Form	03/01/2019
A.2	4	Fidelity National Title: Title Records Report	03/01/2019
A.3	1	Department of Assessment, Records and Taxation (DART): Map showing 2N1W16C -00300 and -00400 (R971160290 and R971160330)	03/01/2019
A.4	2	Contract from Book 589, Page 917-918 recorded on October 31, 1967	03/01/2019
A.5	1	Warranty Deed from Book 844, Page 1059 recorded on March 10, 1972	03/01/2019
A.6	3	Bargain and Sale Deed from Book 1061, Page 1697-1699 recorded on September 16, 1975	03/01/2019
A.7	3	Bargain and Sale Deed from Book 1061, Page 1700-1702 recorded on September 16, 1975	03/01/2019

A.8	1	Warranty Deed from Book 2073, Page 343 recorded on June 15, 1988	03/01/2019
A.9	2	Statutory Warranty Deed recorded as Instrument #2010-153819 on December 06, 2010	03/01/2019
A.10	2	Certificate of Death recorded as Instrument #2017-118727 on October 03, 2017	03/01/2019
A.11	3	Statutory Warranty Deed recorded as Instrument #2017-118743 on December 03, 2017	03/01/2019
A.12	1	Record of Survey recorded as #33913 on September 27, 1971	03/01/2019
A.13	1	Record of Survey recorded as #33915 on September 27, 1971	03/01/2019
A.14	2	Bargain and Sale Deed recorded as Instrument #2019-020235 on February 27, 2019	03/01/2019
'B'	#	Staff Exhibits	Date
B.1	2	County Assessment Property Information for 2N1W16C - 00400 (R971160290)	NA
B.2	1	County Assessment Map with 2N1W16C -00300 and -00400 (R971160290 and R971160330) Highlighted	NA
B.3	1	Zoning Map indicating zoning prior to December 09, 1975	NA
B.4	4	Zoning Ordinance #100 and F-2 zoning	NA
B.5	3	County Land Use Planning Type I lot Consolidation Case T1-2018-11253	2/13/2019