

NOTICE OF DECISION

Case File: T2-2019-12283

Permit: Lot of Record Verification

Applicant(s): Jenny Beal **Owner(s):** Richard and Joyce Bergeron

Location: 7920 SE 252nd Avenue
Tax lot 4200, Township 1 South, Range 3 East, Section 23D, W.M.
Tax Account #R092605100 Property ID #R118917

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

Overlays: Significant Environmental Concern for Water Resources (SEC-wr)
Significant Environmental Concern for Wildlife Habitat (SEC-h)
Flood Hazard (FH)

Proposal Summary: The applicant is requesting a Lot of Record Verification for property described above.

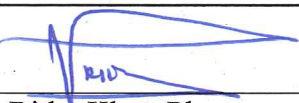
Determination: At this time, tax lot 4200, Township 1 South, Range 3 East, Section 23D, W.M is not a Lot of Record pursuant to MCC 39.3005 and MCC 39.3080.

This decision is final and effective at the close of the appeal period, unless appealed. The deadline for filing an appeal is Thursday, November 7, 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 Rithy Khut, Staff Planner at 503-988-0176 or at rithy.khut@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:



Rithy Khut, Planner

For: Adam Barber,
Interim Planning Director

Date: Thursday, October 24, 2019

Vicinity Map

N↑



Applicable Approval Criteria:

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

Multnomah County Code (MCC): Violations, Enforcement and Fines: MCC 39.1515 Code Compliance and Applications

Definitions: MCC 39.2000 Definitions

Lot of Record General Provisions: MCC 39.3005 Lot of Record – Generally

Lot of Record Requirements Specific to Each Zone: 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.**

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 is requesting a Lot of Record Verification for property located at 7920 SE 252nd Avenue also known as tax lot 4200, Township 1 South, Range 3 East, Section 23D, W.M.

2.0 Property Description & History:

Staff: The Lot of Record Verification is for one tax lot located at 7920 SE 252nd Avenue (also known as tax lot 4200). The property is 4.98 acres and is located on the east side of SE 252nd Avenue within the Multiple Use Agriculture – 20 (MUA-20) zoning district in the West of Sandy River Rural Area. A part of the Botefuhr Tracts Subdivision, the property is configured as a flag lot and has multiple overlays on the property including: Significant Environmental Concern for Wildlife Habitat (SEC-h), Significant Environmental Concern for Water Resources (SEC-wr) and the Flood Hazard (FH). The SEC-h overlay covers the northeastern portion of the property and the SEC-wr and FH overlay bisect the middle of the property.

Multnomah County Department of Assessment, Records, and Taxation (DART) indicate that the subject property is owned by Richard and Joyce Bergeron. According to DART records, the subject property contains a single-family dwelling with an attached deck and a shop. The dwelling was first assessed in 1979. Aerial photos indicate that the “shop” did not appear on the property until after 1986. No land use permits were identified for the construction of the “shop.” The property has one previous land use/building permit associated with the subject property:

- March 23, 1978 – Permit No. 780601 – New single-family dwelling

3.0 Code Compliance and Applications Criteria:

3.1 § 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: As required above the County shall not make a land use decision approving development 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. The applicant's request is for a Lot of Record Verification. No development is being approved as part of this review.

Additionally, in comparing aerial photos from 1986 and 1990, it appears that the accessory building was placed on the property at some point between those dates. A Code Compliance case #UR-2019-12059 was opened at the request of the property owner to provide a pathway to permit the accessory building. Although, the accessory building authorization will not be part of this application, the Lot of Record Verification is a component of the sequencing of permits or other approvals that is part of a voluntary compliance agreement between the property owner and the County Code Compliance Program. In issuing this determination, it will move the property towards full compliance with all applicable provisions of Multnomah County Code.

4.0 Lot of Record Criteria:

4.1 § 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:

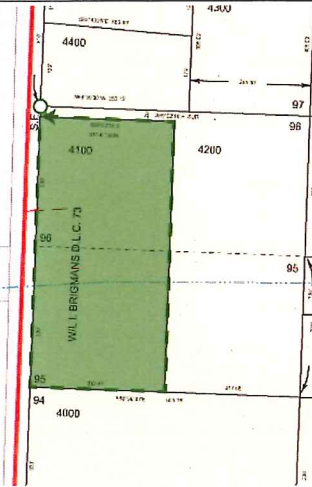
1. By a subdivision plat under the applicable subdivision requirements in effect at the time; or
2. By a deed, or a sales contract dated and signed by the parties to the transaction, that was recorded with the Recording Section of the public office responsible for public records prior to October 19, 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.)

Staff: The applicant has provided a number of deeds to verify the Lot of Record status of tax lot 4200, Township 1 South, Range 3 East, Section 23D. The discussions below outline the deed history chronologically and illustrate the property configuration of each deed provided by the applicant.

| Exhibit | Instrument | Grantor | Grantee | Recording Date | Staff Graphic |
|---------|---|---------|---------|----------------|---------------|
| B.3 | <p>Botefuhr Tracts Subdivision Plat recorded in Book 621, Page 61</p> <p>Zoning: N/A</p> | N/A | N/A | March 23, 1915 | |

Portions of the subject property were originally platted as Botefuhr lot 95 and 96 as shown above. The lots were platted in 1915 (Exhibit B.3). At that time in 1915, the County did not have zoning requirements. The County adopted zoning requirements in 1955. The Botefuhr Tracts subdivision was signed by the County Officials and recorded as required by law at the time.

| Exhibit | Instrument | Grantor | Grantee | Recording Date | Staff Graphic |
|---------|---|---------------------------|--|--------------------|---|
| A.3 | <p>Warranty Deed recorded in Book 1130, Page 2313- 2314</p> <p>Zoning: Suburban Residential (SR)</p> | Francis Midway Inc. | Gary W. Knox and Nancy Ellen Knox | October 5, 1976 |  |

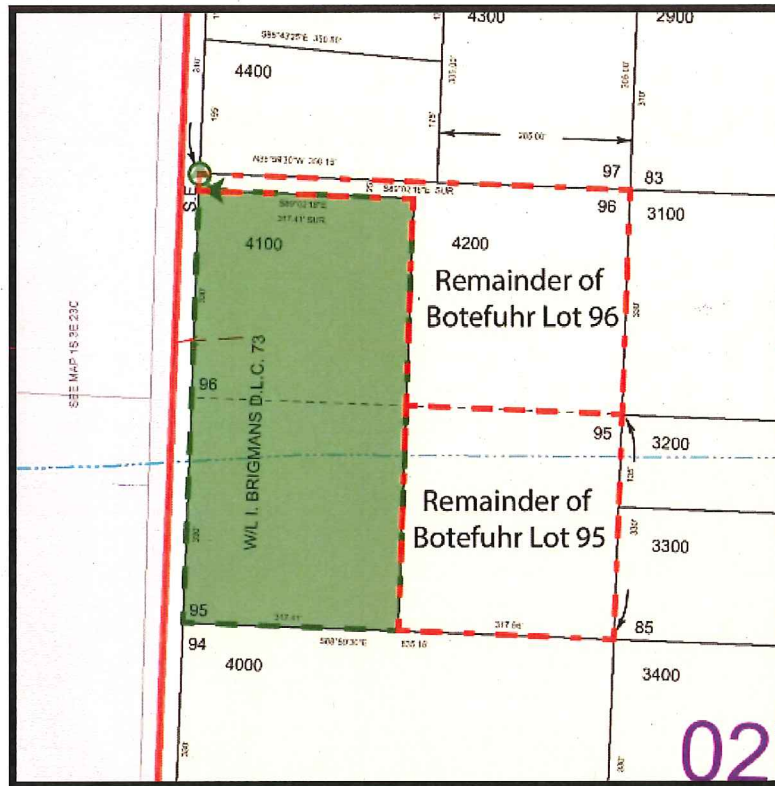
The next deed provided by the applicant was a warranty deed that re-divided lots 95 and 96, Botefuhr Tracts into a different configuration. The deed was recorded on October 5, 1976 and described the adjacent property now known as tax lot 4100 that is to the west of the subject property (Exhibit A.3). The creation of the unit of land now known as tax lot 4100, left as a remainder, the eastern portions of lots 95 and 96. Unlike tax lot 4100 at the time, tax lot 4200 did not have a deed or a sales contract that specifically describes it as a single parcel or unit of land.

The subject property was zoned Suburban Residential (SR) from 1958 to October 5, 1977. The SR zone had various minimum lot sizes (40,000 to 10,000) depending on circumstances, but also required public street access or approval by the Planning Commission for “other access.” The County’s SR zone did not contain provisions to adjust common property lines between adjacent properties known today as a “Lot Line Adjustment” or “Property Line Adjustment.” As was typical during this time, the recording of deeds was the only mechanism to adjust common property lines but the reconfigured parcels or units of land had to meet the minimum lot size and access requirements for the zone.

In this case, tax lot 4100 created by the warranty deed, referenced above, conveyed a portion of both lot 95 and lot 96 to create a new parcel of land and by default left remaining two units of land (eastern portions of both lots 95 and 96) that had yet to be described (Exhibit A.3). Tax lot 4200 consists of the “Eastern half of Lot 95” and the “Eastern half of Lot 96.” The “Eastern half of Lot 95” and the “Eastern half of Lot 96” can each be considered as Lots of Record, if both properties met the zoning requirements at the time the warranty deed creating tax lot 4100 was recorded. In 1976, the Suburban Residential (SR) zone required a minimum lot size of 40,000 square feet, a water supply, an individual sewage disposal system, and public access. The minimum lot width was required to be 70 feet and depth 100 feet (Exhibit B.4 and B.5).


As remainder units of land, tax lot 4200 was a portion of subdivision lot 95 and 96, which were still considered discrete lots as shown in Figure 1 below.

Figure 1 –Warranty Deed recorded in Book 1130, Page 2313-2314 and Remainder Lots



The “Eastern portion of Lot 96” (the north unit of land) is 112,730.05 square feet (2.59 acres) and has public access via a flagpole (15-foot wide strip of land), which would have met the SR zoning requirements. The “Eastern portion of Lot 95” (the south unit of land) is 104,134.80 square feet (2.39 acres), but did not have public access as the unit of land is landlocked. As described, the “Eastern half of Lot 95”, which continued to be a discrete unit of land did not meet the Suburban Residential standards in 1976 when it was created.

In 1982, a Warranty Deed was recorded that described tax lot 4200. The description describes, “Lots 95 and 96, BOTEFUHR TRACTS, in the County of Multnomah County and the State of Oregon, EXCEPTING therefore the following described tract: [description tax lot 4100 as described in Book 1130, Page 2313-2314]” (Exhibit B.8). The zoning at the time was Multiple Use Agriculture – 20 (MUA-20).

| Exhibit | Instrument | Grantor | Grantee | Recording Date | Staff Graphic |
|---------|---|--|---|----------------|---|
| B.8 | <p>Warranty Deed recorded in Book 1607, Page 883</p> <p>Zoning: Multiple Use Agriculture – 20 (MUA-20)</p> | William H. Clark and Kathleen L. Clark | Richard N. Bergeron and Joyce C. Bergeron | July 20, 1982 |  |

In 1982, the MUA-20 zone, had a minimum lot size of 20 acres except as provided under the Lots of Exception provisions (MCC 11.15.2140) or Lot Sizes for Conditional Uses (MCC 11.15.2144), Planning staff found no Lot of Exception or Conditional Use approval for the creation of a parcel less than 20 acres in size. Tax lot 4200 did not satisfy all applicable zoning laws when it consolidated the “Eastern half of Lot 95” and the “Eastern half of Lot 96” into a single 4.99-acre unit of land (Exhibit B.8).

Based in the information provided, tax lot 4200 did not satisfy all applicable zoning laws and all applicable land division laws at the time of the property’s creation. Therefore, utilizing the facts above, the subject property is not considered as a Lot of Record.

(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: The unit of land contained in tax lot 4200 and is subject to this land use application is not congruent with an “acknowledged unincorporated community” boundary, which intersects a Lot of Record. The subject property is a unit of land that was created as a remainder of Botefuhr Lot 95 and 96 and is described in a warranty deed recorded in July 20, 1982. Additionally the applicant is not requesting a partitioning of the Lot of Record along the boundary therefore this criterion is not applicable. *This criterion is not applicable.*

4.2 § 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.

Staff: Criterion (A) does not affect the determination on this case. *This criterion is not applicable.*

(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: Criterion (B) does not affect the determination on this case. *This criterion is not applicable.*

(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: The applicant is not proposing the sale or conveyance of any portion of a lot therefore; Criterion (C) does not affect the determination on this case and is not applicable. *This criterion is not applicable.*

(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 described by the Department of Assessment, Records, and Taxation, the unit of land known as tax lot 4200 is not an area of land described solely for assessment and taxation purposes. Additionally, tax lot 4200 is not an area of land created by the foreclosure of a security interest or an area of land created by court decree. The unit of land known as tax lot 4200 was created as a remainder of Botefuhr Lots 95 and 96 and is described in a warranty deed recorded in July 20, 1982 (Exhibit B.8), and is not part of a court decree. *This criterion is met.*

5.0 Conclusion:

Based on the findings and other information provided above, tax lot 4200 is not currently a Lot of Record. The property owner will need to utilize the County's Legalization of Lots and Parcels that were Unlawfully Divided provisions under MCC 39.9700 to establish a legal parcel and Lot of Record pursuant to MCC 39.3005 and MCC 39.3080.

6.0 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 T2-2019-12283 at the Land Use Planning office.

| Exhibit # | # of Pages | Description of Exhibit | Date Received/ Submitted |
|-----------|------------|---|--------------------------|
| A.1 | 1 | General Application Form | 07/24/2019 |
| A.2 | 1 | Parcel Record – Cartographic Unit Card for 1S3E23D -04200 | 07/24/2019 |
| A.3 | 2 | Warranty Deed recorded in Book 1130, Page 2313-2314 on October 5, 1976 | 07/24/2019 |
| A.4 | 1 | Site Plan (reduced to 8.5" x 11") | 07/24/2019 |
| A.5 | 1 | Record of Survey registered as No. 39903 on January 18, 1976 | 07/24/2019 |
| | | | |
| 'B' | # | Staff Exhibits | Date |
| B.1 | 2 | Department of Assessment, Records, and Taxation (DART) Property Information for 1S3E23D -04200 (#R092605100) | 07/24/2019 |
| B.2 | 1 | Department of Assessment, Records, and Taxation (DART) Property Information Map with 1S3E23D -04200 (#R092605100) highlighted | 07/24/2019 |
| B.3 | 1 | Botefuhr Tracts Subdivision recorded in Book 621, Page 61 on March 23, 1915 (reduced to 11" x 17") | 09/02/2019 |
| B.4 | 1 | Zoning Map adopted prior to October 5, 1977 | 09/02/2019 |
| B.5 | 5 | Zoning Code adopted as of May 17, 1974 pages 12-13 and 17-9 | 09/02/2019 |
| B.6 | 1 | Parcel Record – Cartographic Unit Card for 1S3E23D -04100 | 09/02/2019 |
| B.7 | 2 | Warranty Deed recorded in Book 1552, Page 1232-1233 on August 28, 1981 | 09/02/2019 |
| B.8 | 2 | Warranty Deed recorded in Book 1607, Page 883-884 on July 20, 1982 | 09/02/2019 |
| | | | |
| 'C' | # | Administration & Procedures | Date |
| C.1 | 1 | Complete Letter (Day 1) | 08/21/2019 |
| C.2 | 5 | Opportunity to Comment | 09/10/2019 |
| C.3 | 11 | Administrative Decision | |
| | | | |